

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)
)
AMERICAN ELECTRIC POWER SERVICE)
CORPORATION)
)
Applications to Modify Licenses for Stations) File Nos. 0007352620, 0007770070
WPLZ771 and WQCM327)
)
)
Requests for Waiver)

ORDER

Adopted: August 30, 2017

Released: August 31, 2017

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. We have before us the above-captioned applications and waiver requests filed by American Electric Power Service Corporation (AEP) to modify its licenses for 800 MHz Industrial/Land Transportation Pool Stations WPLZ771 and WQCM327 by adding frequencies at, respectively, Sugarcreek and New Philadelphia, Ohio. AEP requires waivers of section 90.617 of the Commission's rules for frequencies that currently are available only to public safety eligible entities. In addition, a waiver is needed for 800 MHz Expansion Band frequencies because 800 MHz rebanding has not been declared complete in that area. For the reasons set forth below, we deny the waiver requests, and will process the applications accordingly.

2. Background. In the 800 MHz Report and Order, the Commission ordered 806-24/851-69 MHz (800 MHz) rebanding to resolve interference between commercial and public safety systems in the band. The Commission provided for the rebanding process to be completed on a region-by-region basis. Channels vacated by Sprint in the interleaved portion of the band (809-15/854-60 MHz) are

1 See FCC File Nos. 0007352620 (filed July 26, 2016), Waiver Request (Sugarcreek Request); 0007770070 (filed May 10, 2017), Request for Waiver (New Philadelphia Request).

2 47 CFR § 90.617(g)(1).

3 We agree with AEP that no waiver is needed to add frequencies 856.3625 MHz and 857.3625 MHz at Sugarcreek, and frequencies 856.3375 MHz, 856.8375 MHz, and 858.8375 MHz at New Philadelphia, because the proposed contours are within the contours of AEP's co-channel operations under Call Sign WPCT716. See Sugarcreek Request at 2; New Philadelphia Request at 3; 47 CFR § 90.621(b)(6); Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Channels Relinquished by Sprint Nextel Corporation in the 809-809.5/854-854.5 MHz Band, Public Notice, 23 FCC Rcd 18343, 18344-45 (PSHSB 2008). Consequently, the applications shall be granted with respect to those channels.

4 See Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 14971-73, paras. 1-3 (2004) (800 MHz Report and Order).

5 Id. at 15072, para. 195; see also Wireless Telecommunications Bureau Approves the Basic Reconfiguration Schedule Put Forth in the Transition Administrator's 800 MHz Regional Prioritization Plan, Public Notice, 20 FCC Rcd 5159 (WTB 2005).

reserved for Public Safety applicants for three years from the opening of a filing window, and for Public Safety and critical infrastructure industry (CII) applicants for two years thereafter.⁶ The filing window for the vacated interleaved channels requested by AEP opened on February 10, 2015,⁷ so those channels are available only to Public Safety entities until February 9, 2018. Channels in the Expansion Band (815-816/860-861 MHz) become available for licensing after the required level of clearing has been achieved in that National Public Safety Planning Advisory Committee (NPSPAC) region.⁸ The completion of rebanding in Region 33-Ohio has not been announced, so the Expansion Band channels requested by AEP are not yet available for licensing.⁹

3. AEP is one of the largest utilities in the United States, serving nearly 5.4 million customers in eleven states.¹⁰ It states that it is in the process of upgrading its communications system to provide service to the public that is more energy-efficient and cost-effective, but it needs additional channels in order to fill in coverage gaps and increase spectrum capacity.¹¹ In July 2016, AEP filed an application to modify its license for Station WPLZ771 by adding a new base station at Sugarcreek, Ohio, operating on seven frequencies vacated by Sprint in the interleaved portion of the 800 MHz band.¹² The Wireless Telecommunication Bureau sought comment on the request.¹³ In May 2017, AEP filed an application to modify its license for Station WQCM327 by adding a new base station at New Philadelphia, Ohio (about 20 miles from Sugarcreek), operating on four Sprint-vacated interleaved frequencies¹⁴ and two Expansion Band frequencies.¹⁵ AEP states that there are no other alternative

⁶ See 47 CFR §§ 90.615(a)(1), 90.617(g)(1). After that five-year period, the channels revert to their original pool categories. 47 §§ CFR 90.615(a)(3), 90.617(g)(3).

⁷ See *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions and the Availability of Additional Sprint Vacated Channels*, Public Notice, 29 FCC Rcd 16290, 16292-93 (PSHSB/WTB 2014).

⁸ See *Improving Public Safety Communications in the 800 MHz Band*, Order, 23 FCC Rcd 15966, 15972-73, para. 17 (2008). The Commission created the Expansion Band and the Guard Band (816-817/861-862 MHz) to provide spectral separation between commercial licensees operating in the Enhanced Special Mobile Radio segment of the band above 817/862 MHz and Public Safety licensees operating below 815/860 MHz. *800 MHz Report and Order*, 19 FCC Rcd at 15053-55, paras. 154-58.

⁹ See *Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions and the Availability of Additional Sprint Vacated Channels*, Public Notice, 31 FCC Rcd 12891, 12898-99 (PSHSB/WTB 2016) (*2016 800 MHz Public Notice*) (listing the regions where 800 MHz band reconfiguration is complete).

¹⁰ See Sugarcreek Request at 1; New Philadelphia Request at 1.

¹¹ See Sugarcreek Request at 1; New Philadelphia Request at 1.

¹² 854.9375 MHz, 856.3625 MHz, 857.3625 MHz, 857.8125 MHz, 858.8125 MHz, 859.8125 MHz, and 859.8375 MHz.

¹³ See *Wireless Telecommunications Bureau Seeks Comment on American Electric Power Service Corporation Request for Waiver Regarding 800 MHz Frequencies Reserved for Public Safety Licensees*, Public Notice, 31 FCC Rcd 10725 (WTB MD 2016). Comments were filed by the Enterprise Wireless Alliance (EWA). Reply comments were filed by the Association of Public-Safety Communications Officials-International, Inc. (APCO), the National Public Safety Telecommunications Council (NPSTC), and jointly by EWA and AEP.

¹⁴ 856.3375 MHz, 856.8375 MHz, 858.8375 MHz, and 859.7875 MHz.

¹⁵ 860.8125 MHz and 860.8625 MHz.

channels at the requested locations for which it is currently eligible.¹⁶ As a CII entity, it will be eligible to apply for the vacated interleaved channels on February 10, 2018.

4. *Discussion.* To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁷ We conclude that AEP's requests should be denied.

5. With respect to the vacated interleaved channels, AEP asserts that grant of a waiver would not undermine the purpose of the rules because there is ample other spectrum available in the area for Public Safety use,¹⁸ and no Public Safety eligible entities have requested vacated interleaved channels in this area.¹⁹ It argues that the purpose of the three-year set aside therefore has been met, and would not be undermined by grant of its waiver requests.²⁰ We disagree with the suggestion that the purpose of the rule has been met because no Public Safety entity applied for the channels before the midpoint of the set-aside period. Moreover, we note that the requested locations, however rural the immediate surroundings,²¹ are close enough to major metropolitan areas that grant of the requests could affect urban spectrum availability.²² The purpose of the three-year exclusivity period for Public Safety applicants is to "accomodat[e] the generally slow budgetary process of public safety agencies."²³ The Commission concluded that three years—not one and a half years, or two and a quarter years—is the appropriate window to meet that purpose.²⁴ That no Public Safety applicant filed a conflicting application in the first or second year of the three-year filing window does not prove that there is no need for or interest in acquiring 800 MHz vacated interleaved channels anywhere that would conflict with AEP's proposed operations.²⁵

6. In addition, we conclude that AEP has not demonstrated that application of the rules would be inequitable, unduly burdensome, or contrary to the public interest, or that AEP has no reasonable alternative. In particular, while the requests explain why AEP seeks to increase its 800 MHz

¹⁶ See Sugarcreek Request at 2-3; New Philadelphia Request at 1-2.

¹⁷ 47 CFR §§ 1.925(b)(3).

¹⁸ See New Philadelphia Request at 2-3; see also EWA Comments at 2.

¹⁹ See Sugarcreek Request at 2-3; New Philadelphia Request at 1-2.

²⁰ See Sugarcreek Request at 3; EWA/AEP Reply Comments at 4; New Philadelphia Request at 4-5.

²¹ See EWA/AEP Reply Comments at 3.

²² Specifically, Sugarcreek is approximately 75 miles from the center of Cleveland, and New Philadelphia is closer than that to the centers of both Cleveland and Pittsburgh. See 47 CFR § 90.303(b) (listing center coordinates for Cleveland, Pittsburgh, and other urban areas).

²³ See *800 MHz Report and Order*, 19 FCC Rcd at 15052, para. 152; see also APCO Comments at 3.

²⁴ See, e.g., *Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations*, Report and Order, 19 FCC Rcd 19331, 19358, n.158 (2004) ("we understand that developing, budgeting for, and implementing public safety communications systems is often a multi-year process").

²⁵ NPSTC Comments at 5-6.

spectrum holdings, it does not explain the consequences to the public of a denial of the request, or set forth circumstances that prevent AEP from waiting until February 10, 2018, to apply for vacated interleaved channels on an equal basis with other CII entities.²⁶

7. Similarly, we conclude that AEP has not shown the requisite compelling reason why we should grant it early access to Expansion Band channels in a NPSPAC region where the completion of 800 MHz reconfiguration has not been announced.²⁷ Grant of a waiver would undermine the goal of maintaining a stable spectrum environment in each NPSPAC region prior to establishing a filing date.²⁸ Moreover, the Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau recently concluded that Expansion Band channels should not be made available for licensing even in NPSPAC regions where rebanding is complete, because doing so would prejudice the pending rulemaking proceeding regarding a proposal to afford filing priority to 800 MHz incumbent licensees.²⁹

8. Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Waiver Requests filed on July 26, 2016 in association with application FCC File No. 0007352620, and May 10, 2017, in association with application FCC File No. 0007770070, by American Electric Power Service Corporation ARE DENIED, and the applications SHALL BE PROCESSED in accordance with this *Order* and the Commission's rules.

9. This action is taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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²⁶ See *City of West Palm Beach, Florida*, Order, 28 FCC Rcd 261, 263, para. 7 (PSHSB PLD 2013) (denying a request for access to vacated interleaved channels ahead of other similarly situated entities in the area); *cf. DPE, LLC*, Order, 31 FCC Rcd 179, 180-81, para. 6 (WTB MD 2016) (granting a waiver request to allow early access to vacated interleaved channels for a licensee that lost its sites due to causes beyond its control, and could not procure sites that would not expand its authorized contours).

²⁷ See *North Carolina State Highway Patrol*, Order, 30 FCC Rcd 10924, 10926, para. 12 (PSHSB PLD 2015) (*North Carolina SHP*) (denying a request for access to Expansion Band channels in a NPSPAC region where rebanding had not been declared complete); *Wake Forest Baptist Hospital*, Order on Reconsideration, 30 FCC Rcd 3705, 3706, para. 6 (WTB MD 2015) (same).

²⁸ *North Carolina SHP*, 30 FCC Rcd at 10926, para. 11 (citing *Public Safety and Homeland Security Bureau Clarifies the Process for Accepting Applications from Public Safety Licensees that Elected to Remain in the 800 MHz Expansion Band*, Public Notice, 30 FCC Rcd 3021, 3022 (PSHSB 2015)).

²⁹ See *2016 800 MHz Public Notice*, 31 FCC Rcd at 12896-97 (citing *Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum; Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion and Guard Band Frequencies; Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz*, Notice of Proposed Rulemaking, 31 FCC Rcd 9431 (2016)).

