

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

In the Matter of)
CITY OF DENTON, TEXAS) FCC File No. A057457
Request For Waiver to Permit Relocation)
Of 800 MHz General Category Station)
WNGC433, Denton, Texas)

ORDER

Adopted: November 28, 2000

Released: November 30, 2000

By the Deputy Chief, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. We have before us a request by the City of Denton, Texas (Denton) for a waiver to permit it to modify its license for 800 MHz General Category Station WNGC433, Denton, Texas. Specifically, Denton seeks to relocate Station WNGC433's tower 3.3 miles and to permit further short-spacing between the station and other licensed facilities. For the reasons discussed herein, we grant Denton's waiver request.

II. BACKGROUND

2. In 1994, the Commission released a Further Notice of Proposed Rulemaking (Further Notice) that proposed a new licensing framework for Specialized Mobile Radio (SMR) systems in the 800 MHz band. After release of the Further Notice, there was a significant increase in the number of requests for General Category channels made by SMR applicants and licensees. On October 4, 1995, the Wireless Telecommunications Bureau temporarily suspended the filing of new applications for 800 MHz General Category channels, to ensure that resolution of the spectrum allocation issues raised in the Further Notice would not be compromised. The Commission subsequently reallocated the General Category channels exclusively to the 800 MHz SMR service, whereby mutually exclusive initial applications would be subject to competitive bidding, and excluded private licensees from eligibility for this spectrum. In the

1 FCC File No. A057457 (filed July 12, 2000).

2 City of Denton, Texas, Request for Waiver (filed July 12, 2000) (Waiver Request).

3 Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Further Notice of Proposed Rulemaking, PR Docket No. 93-144, PP Docket No. 93-253, 10 FCC Rcd 7970 (1994) (Further Notice).

4 See Licensing of General Category Frequencies in the 806-809.750/851-854.750 MHz bands, Order, 10 FCC Rcd 13190 (WTB 1995).

5 Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rulemaking, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket No. 93-253, 11 FCC Rcd 1463 (1995) (continued....)

800 MHz SMR Memorandum Opinion and Order, however, the Commission reversed its decision concerning eligibility and reinstated the eligibility of private applicants for General Category Channels.⁶ The Commission also partially lifted the freeze on General Category channels to permit potential Economic Area (EA) applicants⁷ to relocate incumbents from the upper 10 MHz block of 800 MHz spectrum to the General Category channels.⁸ In all other respects, the Commission maintained the freeze so as not to frustrate its efforts regarding future licensing of General Category channels.⁹

3. On July 12, 2000, Denton, through the Association of Public-Safety Communications Officials International, Inc., (APCO) an FCC-certified frequency coordinator, filed an application to modify its license for Station WNGC433 by relocating its tower.¹⁰ Denton concurrently requested a waiver of the 800 MHz General Category freeze to allow consideration of its application for modification.¹¹ In addition, Denton requested a waiver of Section 90.621 of the Commission's Rules,¹² which governs the distance separation between co-channel stations in order to protect against interference.¹³ Station WNGC433 is currently short-spaced¹⁴ to stations licensed to Nextel of Texas, Inc. (Nextel) and American Electric Power, Inc. (AEP).¹⁵ A public notice seeking comment on Denton's waiver request was released on July 31, 2000.¹⁶ No comments or reply comments were filed in this proceeding.

(Continued from previous page) _____
(800 MHz SMR Report and Order), and *Memorandum Opinion and Order on Reconsideration*, 12 FCC Rcd 9972 (1997) (800 MHz SMR Memorandum Opinion and Order).

⁶ 800 MHz SMR Memorandum Opinion and Order, 12 FCC Rcd at 9975 ¶ 4.

⁷ In the 800 MHz SMR Report and Order, the Commission adopted geographic licensing for the upper 10 MHz of the 800 MHz SMR service. It adopted rules defining the geographic service areas based on EAs. *See* 800 MHz SMR Report and Order, 11 FCC Rcd at 1484 ¶¶ 24-25. The U.S. Department of Commerce Bureau of Economic Analysis has established 172 EAs which cover the continental United States. *See* Final Redefinition of the BEA Economic Areas, 60 Fed. Reg. 31,114 (Mar. 10, 1995).

⁸ *See* 800 MHz SMR Report and Order, 11 FCC Rcd at 1508 ¶¶ 74-75.

⁹ *Id.* at 1509 ¶ 76.

¹⁰ Waiver Request at 1. On July 26, 2000, Denton submitted a supplement to its waiver request. Supplement to Public Interest Showing (filed July 26, 2000) (Supplement).

¹¹ Waiver Request.

¹² *Id.*

¹³ *See* 47 C.F.R. § 90.621.

¹⁴ Short-spacing permits a station to be located closer than would otherwise be allowed by the co-channel separation requirements contained in Section 90.621(b) of the Commission's Rules, 47 C.F.R. § 90.621(b).

¹⁵ In its waiver request, Denton also stated that Station WNGC433 was short-spaced to a third station, which was licensed to Alex A. Tanedo. For reasons unrelated to the disposition this matter, however, the license for that station was deleted from the Commission's licensing database on July 13, 2000.

¹⁶ Wireless Telecommunication Bureau Seeks Comment on Request of City of Denton, Texas for Waiver to Permit Relocation of 800 MHz General Category Station WNGC433, *Public Notice*, 15 FCC Rcd 13331 (WTB PSPWD 2000).

4. Denton is licensed for three General Category frequency pairs¹⁷ and five Industrial/Land Transportation frequency pairs in the 800 MHz band.¹⁸ These eight frequency pairs comprise a system serving 831 mobile and portable units that is used by Denton's police, fire and medical teams.¹⁹ Denton has invested \$3.5 million in the system.²⁰ Denton has operated its 800 MHz facilities from a site known as the Spencer Tower on premises owned by Denton Municipal Electric. Denton states that it now must relocate the tower for station WNGC433 because its area of coverage has changed and it can no longer achieve reliable coverage for its emergency radio communications from its current transmission location.²¹ In this regard, Denton states that is responsible for providing emergency medical services to areas of Denton County that are northwest of the city. In the past, Denton has relied upon the communications facilities of the Westgate Hospital, which was in the northwest portion of the city. However, Westgate Hospital moved to a new location not in the northwest portion of the city, thus, Denton is unable to achieve the desired reliable emergency radio coverage from the hospital's new facility.²² According to Denton, the loss of the Westgate Hospital transmission site has made emergency communications to and from the northwest portion of the county inadequate.²³ Denton is also in the process of expanding its fire and emergency medical services to the areas southwest of Denton.²⁴ In addition, a new community has been planned in Denton which will have 10,000 homes and a fire station.²⁵ These occurrences, combined with the loss of access to the Westgate Hospital's former transmission site, indicate Denton's increased need for a system enabling reliable public safety communications and coverage throughout all of the areas for which Denton has emergency and public safety responsibilities. Denton further states that it has determined that the solution to its coverage problems is to relocate the transmission site to a ridge 3.3 miles west of the current site, to allow it to serve the outlying areas, as well as fill in the coverage gaps within the city.²⁶

5. After Denton submitted its application and waiver request, the Commission conducted an auction for 800 MHz General Category spectrum. Denton's waiver request was included on the accompanying due diligence announcement released August 11, 2000.²⁷ The auction commenced August

¹⁷ The General Category frequencies are 853.9125, 854.5625, and 853.0625 MHz.

¹⁸ Waiver Request at 1. The I/LT Category frequencies are 856.3125, 857.3125, 858.3125, 859.3125, and 860.3125.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.* at 2.

²² *Id.*

²³ Supplement at 1.

²⁴ Waiver Request at 2. The newly covered areas will include Alliance Airport and the Texas Motor Speedway, which can attract crowds as large as 200,000 people.

²⁵ *Id.* at 3.

²⁶ *Id.*

²⁷ See Due Diligence Announcement for Upcoming 800 MHz Auctions, *Public Notice*, 15 FCC Rcd 14935 (2000).

16, 2000, and closed September 1, 2000.²⁸ With one exception, Nextel was the high bidder for all of the licenses encompassing channels licensed to Denton in the licensing area that includes Denton's proposed site (BEA 127) and the nearest adjoining licensing area (BEA 125).²⁹ Motient Communications Company (Motient) was the high bidder in BEA 125 for channel block FF, which includes one channel licensed to Denton.³⁰

III. DISCUSSION

6. We may grant a request for waiver when (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.³¹ We find that Denton has demonstrated that grant of the requested waiver is warranted under the circumstances presented.

7. First, we find that the underlying purposes of Section 90.621 of the Commission's Rules and the General Category freeze would not be frustrated by granting the waiver. Denton's request for a waiver does not frustrate the underlying purpose of Section 90.621 of the Commission's Rules because Denton already is short-spaced to existing licensed facilities. It is our understanding that the short-spacing would only be slightly increased,³² and that neither AEP nor Nextel objects to Denton's proposed relocation.³³ We also recognize that APCO found that the modification will not cause harmful interference to incumbent licensees, and any such problems that do occur will be handled through the usual coordination process. In addition, the General Category freeze was intended to prevent the filing of new applications for General Category channels in order to preserve the General Category landscape so that the Commission could implement competitive bidding procedures.³⁴ Because granting Denton's request to relocate its tower 3.3 miles would primarily involve additional short-spacing to existing incumbents, its effect on the auctioned spectrum would be minimal.³⁵ Moreover, the potentially affected bidders were on notice of Denton's application, through the July public notice and the August due diligence announcement, and neither Nextel nor Motient opposed the request.

8. Second, we conclude that granting Denton's request is in the public interest. The facilities at issue provide the communications backbone for Denton's police, fire and emergency medical

²⁸ See 800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854) MHz and Upper Band (861-865 MHz) Auction Closes, *Public Notice*, 15 FCC Rcd 17143 (2000).

²⁹ *Id.*

³⁰ *Id.*

³¹ See 47 C.F.R. § 1.925(b)(3)(i)-(ii).

³² Waiver Request at 4.

³³ See Letter from Robert H. McNamara, Director Regulatory Technology and Compliance, Nextel of Texas, Inc., to FCC (June 30, 2000); Letter from Jason D. Griffith, Manager, Telecommunications Wireless, American Electric Power Service Corp., to FCC (June 26, 2000).

³⁴ See 800 MHz SMR Report and Order, 11 FCC Rcd at 1508 ¶¶ 74-75.

³⁵ See New Jersey State Transit Authority, *Order*, 14 FCC Rcd 4334, 4337 ¶ 9 (WTB 1999).

teams,³⁶ thus providing vital public safety services. Denton is currently operating its 800 MHz facilities from the Spencer tower.³⁷ This site, however, has become increasingly inadequate and has caused Denton's police and fire departments difficulty in communicating to and from areas within the city limits.³⁸ As result of these problems, Denton seeks a waiver to move its tower to McKenna Park, 3.3 miles west of the current tower site.³⁹ Furthermore, as Denton's responsibilities for fire and emergency medical services expand into areas southwest of Denton,⁴⁰ and the population which Denton serves continues to grow,⁴¹ Denton will have an even greater need for a reliable communications system. Grant of Denton's waiver is therefore in the public interest as it would allow for the provision of reliable vital public safety communications throughout the area.

IV. CONCLUSION

9. For the reasons discussed herein, we conclude that grant of Denton's waiver request is in the public interest because it facilitates the operation of a system that enhances the safety of the general public located within its service area. We therefore grant Denton's requests for waiver of the General Category freeze and Section 90.621 of the Commission's Rules.

V. ORDERING CLAUSES

10. Accordingly, IT IS ORDERED that pursuant to Section 4(i) of the Communication Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925 and 90.621 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.621, the Request for Waiver filed by the City of Denton, Texas on July 12, 2000, is GRANTED.

³⁶ Waiver Request at 1.

³⁷ *Id.*

³⁸ *Id.* at 1-2.

³⁹ *Id.* at 3.

⁴⁰ *Id.* at 2

⁴¹ *Id.* at 2-3.

11. IT IS FURTHER ORDERED that the application to modify the license for Station WNGC433, FCC File No, A057457, filed by the City of Denton on July 12, 2000, is REFERRED to the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch for further processing consistent with this *Order*.

12. 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

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