

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

In the Matter of	)	
	)	
AMERICAN MEDICAL RESPONSE, INC.	)	FCC File Nos. A051269 – A051297,
	)	A051359
Applications for Transfer and Assignment of	)	
Licenses for Industrial/Land Transportation	)	
Frequencies; and Request for Waiver of the Inter-	)	
Category Sharing Freeze at 800 MHz and Section	)	
90.621(e)(1) of the Commission's Rules.	)	

**ORDER ON RECONSIDERATION**

**Adopted:** October 27, 2000

**Released:** November 1, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. On August 25, 2000, American Medical Response, Inc. (AMR) petitioned for reconsideration<sup>1</sup> of the July 28, 2000 dismissal of its assignment applications<sup>2</sup> by the Public Safety and Private Wireless Division, Licensing and Technical Analysis Branch (Branch).<sup>3</sup> The Branch also denied AMR's associated Request for Waiver of the inter-category sharing freeze,<sup>4</sup> and Section 90.621(e)(1) of the Commission's Rules.<sup>5</sup> Based on our review of the record in this matter, we conclude that grant of the waiver request and the assignment applications<sup>6</sup> are warranted.

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<sup>1</sup> American Medical Response, Inc. (AMR) Petition for Reconsideration (filed Aug. 25, 2000) (Petition).

<sup>2</sup> See 47 C.F.R. § 1.948(a) which provides that authorizations in the Wireless Radio Services may be assigned by the licensee to another party only upon application to and approval by the Commission. The conditions for such transfer and assignments are delineated in 47 C.F.R. § 1.948(b)-(i).

<sup>3</sup> Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, FCC, to Greg Sim, American Medical Response (July 28, 2000) (Branch Letter).

<sup>4</sup> AMR Request for Waiver (filed Sept. 8, 1999) (Waiver Request).

<sup>5</sup> 47 C.F.R. § 90.621(e)(1).

<sup>6</sup> The 30 assignment and transfer license applications are as follows: A051269 - WNHD727, A051270 - WNHD745, A051271 - WPJH390, A051272 - WNIC341, A051273 - WNHD763, A051274 - WNHD761, A051275 - WNHD762, A051276 - WNRN202, A051277 - WNHD750, A051278 - WNHD752, A051279 - WNHD751, A051280 - WNHD759, A051281 - WNHD759, A051282 - WNHD758, A051283 - WNPB432, A051284 - WPFW723, A051285 - WNPB432, A051286 - WNPP305, A051287 - WPCW967, A051288 - WPDB587, A051289 - WNHD731, A051290 - WNHD733, A051291 - WNHD733, A051292 - WNHD760, A051293 - WNHD734, A051294 - (continued....)

## II. BACKGROUND

2. Inter-category Sharing under Section 90.621(e). Private Land Mobile Radio (PLMR) service frequencies in the 806-821/851-866 MHz bands (the “800 MHz band”) are divided into the following “categories” or “pools:” (a) Specialized Mobile Radio (SMR), (b) Public Safety, (c) Business, (d) Industrial/Land Transportation (I/LT) and (e) General.<sup>7</sup> As a general matter, applicants are licensed on frequencies in the category or categories for which they meet the eligibility criteria. However, Section 90.621(e) of the Commission’s Rules permits “inter-category sharing” whereby applicants that are eligible for licensing in the 800 MHz Public Safety, Industrial/Land Transportation or Business Categories can be licensed on channels outside of their respective categories if no channels are available in the category for which the applicant is eligible.<sup>8</sup>

3. Inter-category Sharing Freeze. On April 5, 1995, the Wireless Telecommunications Bureau (Bureau) suspended the acceptance of applications for inter-category sharing (inter-category sharing freeze) of all private mobile radio service frequencies in the 806-821/851-866 MHz bands.<sup>9</sup> The Bureau determined that the inter-category sharing freeze was warranted to ensure that the successful resolution of the spectrum allocation issues raised in PR Docket No. 93-144 and the future radio spectrum needs of the public safety community would not be compromised.<sup>10</sup>

4. AMR Waiver Request. The captioned applications seek Commission consent to the assignment of thirty I/LT licenses from Northwest Pipeline (Northwest) to AMR. AMR, which states that it is eligible for licensing in the Public Safety Category, requests a waiver of the inter-category sharing freeze and Section 90.621(e)(1) of the Rules to permit it to become the licensee of these thirty I/LT channels.<sup>11</sup> In support of its request, AMR submits that it does not seek new out-of-category channels that would result in depletion of either Public Safety or I/LT frequencies.<sup>12</sup> In addition, AMR provided letters of consent and support for the proposed assignment and subsequent operations from the FCC-certified frequency coordinators for the Public Safety Category and the I/LT Category – *i.e.*, APCO and ITA,

(Continued from previous page) \_\_\_\_\_

WNHD730, A051295 - WNHD735, A051296 - WNIC339, A051297 - WNIC340 and A051359 - WNNY702.

<sup>7</sup> See 47 C.F.R. §§ 90.615, 90.617. Although they are regulated under Part 90 of the Commission Rules, SMR and General frequencies generally are used to provide commercial radio services, rather than private land mobile radio services.

<sup>8</sup> See 47 C.F.R. § 90.621(e)(1). That provision also requires that no public safety systems are authorized on those channels under consideration to be shared. Further, the Commission’s Rules require that the frequency coordinator certify that frequencies are not available in the applicant’s own category, and that there be coordination by the applicable out-of-category coordinator. See 47 C.F.R. § 90.621(e)(5).

<sup>9</sup> See In the Matter of Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands, *Order*, 10 FCC Rcd 7350 (WTB 1995) (*Inter-Category Order*); *aff’d on recon.*, 11 FCC Rcd 1452 (WTB 1995).

<sup>10</sup> *Id.* at 7352 ¶¶ 5-7.

<sup>11</sup> Waiver Request at 1-2.

<sup>12</sup> *Id.* at 2.

respectively.<sup>13</sup> We note that APCO supports AMR's request despite the fact that in certain geographic areas there are frequencies in the Public Safety Category available for use by AMR.<sup>14</sup> In this regard, AMR submits that the cost of modifying Northwest's system to available Public Safety frequencies would be prohibitive.<sup>15</sup> AMR also notes that its parent company, Laidlaw Transportation (Laidlaw),<sup>16</sup> is an I/LT eligible.

5. Branch Letter. In denying the Waiver Request, the Branch noted that AMR did not provide an estimate of the cost of modifying Northwest's system to utilize available Public Safety Category frequencies.<sup>17</sup> It also noted that Laidlaw—as an I/LT eligible—could have the subject licenses assigned to it without the necessity of a waiver.<sup>18</sup> Also, the Branch stated that, under a newly adopted Commission rule,<sup>19</sup> Laidlaw as an I/LT licensee is permitted to share its facilities with AMR, a Public Safety eligible.<sup>20</sup>

### III. DISCUSSION

6. Petition for Reconsideration. AMR states that it is a nationwide, private ambulance company that supports local government and public safety interests by providing emergency transportation and care to individuals in need of basic and advanced life support.<sup>21</sup> To properly and efficiently fulfill its responsibilities, AMR states that it needs a modern, fully integrated 800 MHz communications network

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<sup>13</sup> *Id.* at Attachment.

<sup>14</sup> *Id.*

<sup>15</sup> *Id.* at 2.

<sup>16</sup> *Id.*

<sup>17</sup> Branch Letter at 2.

<sup>18</sup> *Id.*

<sup>19</sup> See *id.* citing 47 C.F.R. § 90.179(h), which will permit licensees authorized to operate radio systems on Industrial/Business Pool frequencies to share their facilities with Public Safety Pool entities (and Federal Government entities) on a non-profit, cost-shared basis. The Commission adopted this provision on June 28, 2000, and it will become effective on November 12, 2000. See 1998 Biennial Review -- 47 C.F.R. Part 90 -- Private Land Mobile Radio Services, WT Docket No. 98-182, Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them, and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd 16673 (2000) (*Biennial Review Report and Order*).

<sup>20</sup> Branch Letter at 2.

<sup>21</sup> Petition at 2.

that spans Washington and Oregon.<sup>22</sup> To meet this goal, AMR seeks to acquire Northwest's modern, wide-area, fully integrated 800 MHz communications network, which spans both Washington and Oregon.<sup>23</sup>

7. AMR contends that its existing radio system has limited effectiveness in parts of Washington and Oregon because it is currently operating in the VHF and UHF frequency ranges and is consistently struggling with the problems surrounding the "shared" frequency environment.<sup>24</sup> It also alleges that AMR's current system is incapable of providing a much-needed link to the company's mutual aid counterparts.<sup>25</sup> It asserts that if permitted to acquire the Northwest system, AMR's services would be significantly enhanced.<sup>26</sup> In this connection, AMR contends that assignment of Northwest's I/LT frequencies to AMR would enable the latter to quickly improve its coverage,<sup>27</sup> system reliability, and efforts to facilitate interoperability with local fire, police and emergency medical agencies.<sup>28</sup> AMR also asserts that this option provides a timely and cost-effective means<sup>29</sup> for establishing a superior communications system.<sup>30</sup>

8. Decision. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate that a grant of the waiver would be in the public interest and the underlying purpose of the rule(s) would be frustrated or not served by application to the present case.<sup>31</sup> Or, in the alternative, a petitioner must show that, 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 that the applicant has no reasonable alternative.<sup>32</sup> Based on the record in this proceeding, we find that the request for waiver of Section 90.621(e)(1) of the Commission's Rules and the inter-category sharing freeze is warranted. We make this finding on the basis that AMR has demonstrated that grant of the waiver would be in the public interest and the underlying

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<sup>22</sup> *Id.* at 2-3. AMR states that it provides injured persons and its public safety partners state-of-the-art communications during emergency situations. *Id.*

<sup>23</sup> *Id.* at 3.

<sup>24</sup> *Id.*

<sup>25</sup> Many of the 911 networks (*e.g.*, police, fire and emergency medical agencies) in the area of AMR's operations use 800 MHz frequencies for their mobile dispatch operations. *Id.* at 7.

<sup>26</sup> *Id.* at 2.

<sup>27</sup> Depending on the weather, *i.e.*, before winter snows, the new system could be implemented within a two-month period of time. *Id.* at 8.

<sup>28</sup> *Id.* at 2.

<sup>29</sup> According to AMR, the cost of reengineering the Northwest Pipeline system to incorporate Public Safety channels, as opposed to I/LT channels at those sites where the latter is available, would be at a minimum \$450,000 or could run as high as \$900,000. Reengineering the system is a labor intensive endeavor because of the remote and inaccessible nature of most sites. *Id.* at 5.

<sup>30</sup> *Id.* at 3.

<sup>31</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>32</sup> 47 C.F.R. § 1.925(b)(3)(ii).

purpose of the rule and the inter-category sharing freeze would not be served by application to the present case.

9. We find that grant of AMR's request would be in the public interest because allowing the proposed acquisition would promote effective public safety communications and foster interoperability. In this regard, we acknowledge AMR's representation that the system it seeks to acquire would cover a large territory that is mostly remote, with extreme weather conditions, and, at this time, limited public safety communications infrastructure.<sup>33</sup> We also accept AMR's contention that granting the requested waiver would provide AMR with access to a state-of-the-art communications system at a less than cost-prohibitive price.<sup>34</sup> Further, granting the waiver request will permit the expeditious implementation of a crucial communications network, thus better serving the public safety entities and communities of Washington and Oregon.<sup>35</sup> We also are persuaded that granting the requested waiver would significantly enhance AMR's coverage, system reliability, and ability to interface quickly with existing 800 MHz regional communications networks used by police, fire, and emergency medical agencies throughout Washington and Oregon.<sup>36</sup> In this regard, we credit AMR's contention that allowing the assignment of Northwest's system to AMR would result in potentially life-saving benefits<sup>37</sup> by giving AMR the ability to prepare *en route* to a medical scene by having reliable communications with the on-scene commander.<sup>38</sup>

10. In addition, we find that the underlying purposes of either the inter-category sharing freeze or Section 90.621(e) of the Rules would not be served by application to this case. First, we note that the Bureau imposed the freeze largely to preserve the regulatory landscape pending the resolution of certain spectrum allocation issues regarding the 800 MHz band--*e.g.* whether the availability of inter-category sharing channels to SMR licensees should be limited and whether other Part 90 services should be restricted from future eligibility for licenses on SMR Category channels. We further note that under the Commission's rules in effect at the time that the freeze was imposed, 800 MHz SMR licensees were eligible for inter-category sharing on 100 channels in the I/LT and Business Categories.<sup>39</sup> With respect to public safety spectrum in the 800 MHz band, we believe that granting AMR's request will in no way impinge upon 800 MHz frequencies allocated for public safety purposes. With respect to the impact on Business and I/LT Category frequencies in the 800 MHz band, we note that Business Category frequencies are not included in AMR's proposal and the emphasis of the inter-category sharing freeze was on vacant

<sup>33</sup> Northwest's "ribbon" system, which was engineered with the existing I/LT frequencies, is an ideal fit for AMR's geographic requirements because it would permit ubiquitous coverage throughout the rural areas in Washington and Oregon that AMR seeks to serve. Petition at 8.

<sup>34</sup> See *In the Matter of Seminole County, Florida, Order*, 11 FCC Rcd 4105, 4106 ¶ 6 (WTB 1996) (Seminole).

<sup>35</sup> The change over and transfer of equipment to AMR can be completed within two months if the conversion occurs before the winter snow season begins. Petition at 8.

<sup>36</sup> Petition at 2-3. AMR states that it is in the process of purchasing 800 MHz dual mode (trunked and conventional) radios that will enable interoperability among mobile and portable units in the field either directly or through the a dispatch center, which could facilitate a temporary patch in mutual aid situations. *Id.* at 8, n.5.

<sup>37</sup> *Id.* at 4.

<sup>38</sup> *Id.* The system would also give emergency personnel traveling to, or already at, the scene would be able to quickly develop a situation-response plan based on realistic timetables and the resources at their disposal. *Id.*

<sup>39</sup> *Inter-Category Order*, 10 FCC Rcd at 7350-7351.

rather than licensed frequencies. Further, we note that AMR's parent company is in fact an I/LT eligible. As a result, we believe that allowing the proposed assignment will not affect or further the underlying purpose of the inter-category freeze.

11. With respect to AMR's request for a waiver of Section 90.621(e) of the Rules, while there are Public Safety Category channels available for AMR's use in some but not all of the areas in which the Northwest system has operated—we nonetheless believe that the concomitant public safety benefits indicate that a grant is warranted under the circumstances. The provision in Section 90.621(e) requiring that there are no frequencies available in the category for which the applicant is eligible was intended to ensure that an applicant would utilize all of the channels in its respective category before seeking those in another category. We believe that such requirement is intended to promote effective and efficient utilization of the spectrum. In the instant matter, while there are Public Safety Category channels available in some of the areas included in AMR's proposal, we also note that there are some areas where Public Safety Category channels are not available. Thus, we believe that we should look at the totality of the circumstances in determining whether the underlying purpose of Section 90.621(e) would be served in this context. In this regard, we believe that the public interest benefits associated with the proposed transaction—*i.e.* a public safety entity's acquisition of a modern communications system with enhanced coverage, increased system reliability, and interoperability features—provides the requisite protection against inefficient or ineffective use of the Public Safety Category channels. We further note that both the in-category (APCO) and out-of-category (ITA) FCC-certified frequency coordinators have recommended approval of the assignment of Northwest's licenses to AMR.<sup>40</sup>

12. We also believe that granting a waiver under these circumstances is consistent with Commission precedent. For example, the Bureau recently granted a waiver to permit sharing of an I/LT system with Public Safety Category eligibles as in the public interest because public safety communications infrastructure would be brought to rural areas and interoperability would be fostered.<sup>41</sup> Also, the Commission recently adopted a rule change to permit Industrial/Business licensees to share their stations with public safety entities.<sup>42</sup> While the instant matter differs from these scenarios in that AMR will be licensed on I/LT channels rather than sharing them with an I/LT licensee, we nonetheless believe that they provide additional support for our determination that grant of the subject waiver request is in the public interest.

#### IV. CONCLUSION

13. For the reasons stated herein, we find that AMR has met the burden for waiver of both the inter-category sharing freeze, and Section 90.621(e)(1) of the Commission's Rules. This *Order* grants AMR's Waiver Request and permits the processing of the subject applications for transfer and assignment.<sup>43</sup> This action serves the public interest in that it will provide substantially improved

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<sup>40</sup> In response to the Branch Letter, AMR submits that due largely to accounting and insurance considerations, its company policies require that AMR itself hold the licenses and own the equipment used in the Northwest system. Petition at 10. Whether Laidlaw, the parent company, or AMR should hold the subject licenses is a matter of business judgment for the licensee, and not a matter for Commission oversight. *Id.* at 10.

<sup>41</sup> See In the Matter of Commonwealth of Pennsylvania and GPU Energy, *Order*, 14 FCC Rcd 14029, 14034-35 ¶¶ 10, 11. (WTB PSPWD 1999) (GPU Energy).

<sup>42</sup> *Biennial Review Report and Order* at 15 FCC Rcd at 16684 ¶ 21.

<sup>43</sup> The waiver grant is conditioned on the completion of the processing of the subject applications for transfer and (continued....)

opportunities for interoperable communications by AMR in serving the public safety communities of Oregon and Washington.<sup>44</sup>

## V. ORDERING CLAUSES

14. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by American Medical Response on August 25, 2000, **IS GRANTED**.

15. **IT IS FURTHER ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925(b)(3), and 90.621(e)(1) of the Commission's Rules, 47 C.F.R. §§ 1.925(b)(3), 90.621(e)(1), the Request for Waiver filed by American Medical Response on September 8, 1999, **IS GRANTED**, as set forth above.

16. **IT IS FURTHER ORDERED** that pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Sections 1.106 and 1.948 of the Commission's Rules, 47 C.F.R. §§ 1.106, 1.948, that the applications for assignment, as listed above, **ARE REINSTATED FOR PROCESSING** in a manner consistent with the instant Order.

17. 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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Chief, Public Safety and Private Wireless Division  
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assignment of Northwest's licenses, and our conclusion that these applications have met the required criteria for grant.

<sup>44</sup> See GPU Energy, 14 FCC Rcd at 14036¶ 15.