

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

Received & Inspected

OCT - 1 2010

FCC Mail Room

In the Matter of )  
 )  
Improving Public Safety Communications ) WT Docket No. 02-55  
in the 800 MHz Band )  
 )  
New 800 MHz Band Plan for Puerto Rico )  
and the U.S. Virgin Islands )

To: Chief, Public Safety and Homeland Security Bureau

**REQUEST FOR WAIVER**

The 800 MHz Transition Administrator, LLC (“TA”), pursuant to Section 1.925 of the Federal Communications Commission’s (“Commission’s” or “FCC’s”) rules,<sup>1</sup> respectfully requests a waiver of Section 90.621(b) of the FCC’s rules relating to short-spacing separation requirements for public safety licensees in the 800 MHz Band in Puerto Rico.<sup>2</sup> The TA seeks a waiver of that rule to allow public safety licensees in Puerto Rico to reconfigure their radio systems and relocate to their replacement frequencies in the new NPSPAC Band without waiting for the one incumbent Economic Area (“EA”) licensee to clear its licensed frequencies.

**I. BACKGROUND**

In its *Third Report and Order*, the FCC’s Public Safety and Homeland Security Bureau (“PSHSB” or “Bureau”) set forth the sequence of reconfiguration in Puerto Rico. Specifically, the PSHSB provided that all non-Sprint Nextel incumbent licensees be cleared from Channels 1-

<sup>1</sup> 47 C.F.R. § 1.925 (2010).

<sup>2</sup> *Id.* § 90.621.

120 before NPSPAC licensees can relocate to the new NPSPAC Band.<sup>3</sup> All non-Sprint Nextel incumbent licensees except Preferred Communication Systems, Inc. ("PCSI") and Preferred Acquisitions, Inc. ("PAI") (collectively "Preferred") have cleared Channels 1-120.<sup>4</sup> PAI holds five EA licenses in Channels 1-120.<sup>5</sup> PAI has a pending request for waiver of its construction obligations for its EA licenses.<sup>6</sup> In addition, Preferred's licenses in Channels 1-120 are the subject of an FCC proceeding (EB Docket No. 07-147) in which Preferred was ordered to show cause why its licenses should not be revoked.<sup>7</sup> An Administrative Law Judge approved a settlement agreement in that proceeding in 2009,<sup>8</sup> but that approval was appealed to the full Commission and the appeal is pending.<sup>9</sup> The PSHSB noted that, notwithstanding the pendency of these proceedings, Preferred is subject to relocation as part of 800 MHz band reconfiguration and "PCSI and PAI must relinquish their 806-809/851-854 MHz spectrum holdings to allow NPSPAC licensees to relocate into that band segment."<sup>10</sup> The TA has identified replacement frequencies in the ESMR Band for the relocation of Preferred, depending on the outcome of the

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<sup>3</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Third Report and Order and Third Further Notice of Proposed Rulemaking*, 25 FCC Rcd 4443, 4451 ¶ 23 (2010) ("*Third Report and Order*").

<sup>4</sup> PCSI's site-specific licenses in Channels 1-120 have all been cancelled by the FCC.

<sup>5</sup> The call signs are WPRQ948, WPRQ954, WPRQ962, WPRQ967, and WPRQ972.

<sup>6</sup> See Preferred Acquisitions Inc., FCC Form 601, FCC Application for Wireless Telecommunications Bureau Radio Service Authorization, dated Dec. 14, 2005, at Exhibit 1 ("PAI Waiver Request"). PAI subsequently amended this filing on December 22, 2005.

<sup>7</sup> See Preferred Communication Systems, Inc., *et al.*, *Order to Show Cause and Notice of Opportunity for Hearing*, 22 FCC Rcd 13363 (2007).

<sup>8</sup> See Preferred Communication Systems, Inc., *et al.*, *Order*, FCC 09M-51 (Aug. 6, 2009) (granting motion for approval of settlement agreement); Preferred Communication Systems, Inc., *et al.*, *Memorandum Opinion and Order*, FCC 09M-57 (Sept. 25, 2009) (renewing *Order* FCC 09M-51).

<sup>9</sup> See Pendleton C. Waugh, *Notice of Appeal* (filed Oct. 5, 2009).

<sup>10</sup> *Third Report and Order*, 25 FCC Rcd at 4447 ¶ 11.

proceedings. Because of the pending show cause proceeding and construction waiver request, the timing and extent of Preferred's reconfiguration is uncertain.

There are six public safety licensees that received Frequency Proposal Reports ("FPRs") from the TA with replacement frequencies in the new NPSPAC Band. All six licensees have negotiated their Frequency Reconfiguration Agreements ("FRAs"), which have been approved by the TA, and are ready to proceed with the reconfiguration of their radio systems. However, because Preferred's licenses have not been reconfigured, public safety licensees may not operate on frequencies in the new NPSPAC Band absent a waiver of Section 90.621(b) of the FCC's rules.

### III. REQUEST FOR WAIVER

The FCC may grant a request for waiver if it is shown 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.<sup>11</sup>

The TA requests that the Bureau waive the short-spacing requirements in Section 90.621(b) of the FCC's rules for benefit of the public safety licensees in Puerto Rico that are scheduled to relocate to the new NPSPAC Band and have been assigned replacement frequencies on frequencies that are currently licensed to Preferred.<sup>12</sup>

<sup>11</sup> See 47 C.F.R. § 1.925(b)(3) (2010).

<sup>12</sup> Pursuant to the Puerto Rico band plan, all NPSPAC licensees must relocate to the new NPSPAC Band at 806-809/851-854 MHz. Preferred holds the EA licenses in Puerto Rico for that entire band. Thus, NPSPAC licensees moving to channels for which Preferred holds the EA license is unavoidable.

The purpose of Section 90.621(b) of the FCC's rules is to define the parameters for authorizing 800 MHz stations for a given frequency and to minimize the likelihood of co-channel interference.<sup>13</sup> However, as stated in Preferred's pending request for waiver of the construction requirements under Section 90.685 of the FCC's rules, Preferred has not constructed or operated its system, even if it has taken steps towards its construction obligations by having "the necessary frequency radio neutral equipment on hand or on firm order" and "the necessary commitments for tower site locations."<sup>14</sup> Furthermore, as directed by the PSHSB, the TA has reserved alternative frequencies for Preferred's use in the ESMR Band. Therefore, the Bureau's grant of this waiver request would not frustrate the purpose of Section 90.621(b). Public safety licensees will not suffer from co-channel interference from Preferred because Preferred is not operating on these frequencies. At any such time as Preferred begins operations, it would do so on its replacement frequencies in the ESMR Band that have been reserved by the TA.

Moreover, grant of the waiver request will be in the public interest because it will facilitate the Commission's goal to complete 800 MHz band reconfiguration. Public safety licensees in Puerto Rico will be able to proceed with the reconfiguration of their systems without any delay and address any interference problems in the 800 MHz Band thus promoting reliable public safety communications to ensure the safety of life and property. The PSHSB previously granted a similar waiver to Prince George's County, Maryland to allow it to use frequencies in an EA where Preferred holds an EA license.<sup>15</sup>

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<sup>13</sup> See In the Matter of Application of Progress Energy Service Company, LLC For a 900 MHz Trunked Industrial/Transportation Station License in Zephyrhills, Florida, and Request for Waiver of Section 90.621(b)(4) of the Commission's Rules, *Memorandum Opinion and Order*, 19 FCC Red 10289, 10292 ¶ 8 (2004) (noting that the underlying purpose of Section 90.621(b)(4) is "to provide co-channel stations ... with the same or greater interference protection as would be received under the rule's Short-Spacing Separation Table").

<sup>14</sup> PAI Waiver Request at Exhibit 1 at 5.

<sup>15</sup> See Letter from Michael Wilhelm, PSHSB, to Wayne McBride, Prince George's County (Mar. 24, 2010).

Finally, the unconstructed nature of Preferred's authorizations and the fact that Preferred's authorizations must relocate to new frequencies outside the new NPSPAC Band as part of reconfiguration combine to create "unique or unusual factual circumstances" that warrant a waiver.<sup>16</sup> Given these circumstances, it would be inequitable and contrary to the public interest to delay the reconfiguration of public safety licensees in Puerto Rico until Preferred's licenses have been reconfigured, especially since the timing and extent of Preferred's reconfiguration is uncertain.

#### IV. CONCLUSION

The TA respectfully requests that the Bureau grant a waiver of Section 90.621(b) to allow public safety licensees in Puerto Rico to commence the reconfiguration of their radio systems and relocate to the new NPSPAC Band without further delay. As stated above, grant of the waiver will not frustrate the purpose of the rule and is in the public interest.

Respectfully submitted,

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August 20, 2010

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<sup>16</sup> See 47 C.F.R. § 1.925(b)(3)(i) (2010).