

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

In the Matter of
STATE OF MINNESOTA
Request for Waiver of Section 90.617(g)(1)
of the Commission's Rules
File Nos. 0002923557, 0002923558,
0002932070

ORDER

Adopted: September 26, 2007

Released: September 27, 2007

By the Associate Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. We have before us three applications filed by the State of Minnesota (Minnesota) seeking authority to expand their public safety land mobile operations on frequency 858.6625 MHz in the southeastern region of Minnesota. Minnesota seeks a waiver of Section 90.617(g)(1) of the Commission's rules in order to use this frequency at six new sites prior to the end of the 800 MHz rebanding process in the region, the date by which the frequency would normally become available for public safety use. For the reasons discussed herein, we grant Minnesota's request.

II. BACKGROUND

2. Minnesota operates a statewide mobile data system in the 800 MHz band used by police patrol cars to share real-time data in emergency situations. The mobile data system consists of vehicular-mounted computers installed in every patrol car and ninety base stations situated across the state of Minnesota. In August 2005, as part of 800 MHz band reconfiguration, the operating frequency of three Minneapolis/St. Paul mobile data base stations in the system was retuned from General Category frequency 852.2875 MHz to frequency 858.6625 MHz in the interleaved portion of the band, which was vacated by Sprint Nextel Corporation (Sprint) in the Minneapolis/St. Paul area to accommodate the

1 This frequency is paired with frequency 813.6625 MHz, which is incorporated by reference for purposes of this Order.

2 See FCC File Nos. 0002923557, 0002923558 and 0002932070.

3 47 C.F.R. § 90.617(g)(1).

4 See letter from Colonel Mark A. Dunaki, Chief Minnesota State Patrol, to Federal Communications Commission, Wireless Telecommunications Bureau (Aug. 27, 2007) (attached to applications 0002923557, 0002923558 and 0002932070) (Minnesota Supplemental Waiver Request). See also 47 C.F.R. § 90.617(g)(1).

5 Minnesota Supplemental Waiver Request at 1.

6 Id.

assignment of the channel to Minnesota.<sup>7</sup> Minnesota would now like to expand the operation of its mobile data system beyond the Minneapolis/St. Paul area by adding new sites in southeastern Minnesota that would also operate on the retuned channel, *i.e.*, 858.6625 MHz.<sup>8</sup>

3. Except in the Minneapolis/St. Paul area served by Minnesota's three existing mobile data base stations, frequency 858.6625 MHz remains licensed to Sprint on a wide-area basis throughout Minnesota.<sup>9</sup> As part of rebanding, Sprint will vacate this frequency in its entirety at the end of the 36-month rebanding period,<sup>10</sup> at which point Section 90.617(g)(1) of the Commission's rules provides that the frequency will become available for licensing to eligible public safety entities.<sup>11</sup> Thus, under the applicable rule, Minnesota cannot apply to add new sites to its system on 858.6625 MHz until the conclusion of rebanding. Minnesota, however, wishes to expand its operations on this frequency before rebanding is concluded, and thus seeks a waiver of Section 90.617(g)(1).<sup>12</sup>

4. In support of its waiver request, Minnesota states that it urgently needs to extend its law enforcement mobile data network to the southeastern part of the state.<sup>13</sup> Minnesota states that its first responders are very concerned about the lack of mobile data service in this area, and that this lack of service has adversely impacted their ability to respond to incidents efficiently, appropriately, and safely.<sup>14</sup> In addition, Minnesota includes a letter from the American Association of State Highway and Transportation Officials (AASHTO), an 800 MHz frequency coordinator, indicating that no other Public Safety Pool frequencies are available in this area that would satisfy the technical requirements for Minnesota's proposed expansion.<sup>15</sup> Finally, Minnesota has obtained Sprint's consent for Minnesota to add the requested sites on 858.6625 MHz before the end of the rebanding transition period.<sup>16</sup>

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<sup>7</sup> See letter from Guy Chambers, Radio Engineer, State Patrol Radio, Minnesota Department of Transportation to Federal Communications Commission, Wireless Telecommunications Bureau (Feb. 9, 2007) (attached to applications 0002923557, 0002923558 and 0002932070) (Minnesota Initial Waiver Request).

<sup>8</sup> Minnesota Supplemental Waiver Request at 1.

<sup>9</sup> See licenses WPSB638, WPSB639, WPSB640, WPSB642, WPSB643, WPSB646 and WPSB649.

<sup>10</sup> See Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Third Memorandum Opinion and Order*, FCC 07-167 ¶ 28 (2007).

<sup>11</sup> Certain SMR-category frequencies will become available for licensing to eligible entities in the Public Safety pool once the Commission releases a public notice announcing the completion of band reconfiguration in a given 800 MHz NPSPAC region. See 47 C.F.R. § 90.617(g)(1).

<sup>12</sup> Minnesota Supplemental Waiver Request at 1.

<sup>13</sup> *Id.* at 2.

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

<sup>15</sup> See letter from, William K. Brownlow, Telecommunications Manager, National PH Frequency Coordinator, American Association of State Highway and Transportation Officials (Aug. 27, 2007) (AASHTO Frequency Coordination Letter).

<sup>16</sup> See letters from Garrie C. Losee, Legal Analyst, Government Affairs, Sprint Nextel Corporation to the Public Safety Homeland Security Bureau, Federal Communications Commission (Jan. 23, 2007) attached to applications 0002923557, 0002923558 and 0002932070.

### III. DISCUSSION

5. 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.<sup>17</sup> We conclude that Minnesota's request should be granted under this waiver standard.

6. Specifically, we find that Minnesota has demonstrated a compelling need to expand its operations on frequency 858.6625 MHz before the end of the rebanding transition period. Minnesota has successfully retuned its three existing mobile data base stations to this frequency as part of band reconfiguration, but under the rules, it cannot expand its mobile data system by adding new sites on the same frequency until all rebanding in the region is complete.<sup>18</sup> We believe that requiring Minnesota to delay its expansion would be unduly burdensome and contrary to the public interest. Minnesota has demonstrated that it has no reasonable alternative to using this frequency because no Public Safety Pool frequency is available that will satisfy the minimum co-channel spacing requirements at the proposed sites.<sup>19</sup> Granting the requested waiver serves the public interest because it will enable Minnesota to expand its mobile data system to meet immediate public safety needs in southeastern Minnesota. It will also have minimal impact on other public safety entities in Minnesota that might have an interest in obtaining new channels after rebanding is completed. The waiver only applies to a single channel in a limited geographic area, and this channel would be of limited utility to other public safety entities in any event because they would have to protect Minnesota's existing three base stations that already use the channel.

### IV. CONCLUSION

7. Based on the information before us, we find that Minnesota has satisfied the Commission's waiver criteria in support of its request for a waiver of Section 90.617(g)(1). Thus, we grant Minnesota's request to add the requested sites to its mobile data system on frequency 858.6625 MHz.

### V. ORDERING CLAUSES

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 C.F.R. § 1.925, that the Waiver Requests filed by the State of Minnesota with respect to applications FCC File Nos. 0002806667, 0002780258 and 0002777116 **ARE GRANTED** as noted herein.

9. **IT IS FURTHER ORDERED** that the Policy Division of the Public Safety and Homeland Security Bureau **SHALL PROCESS** application FCC File Nos. 0002923557, 0002923558 and 0002932070 in accordance with this *Order* and the Commission's rules.

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<sup>17</sup> 47 C.F.R. §§ 1.925(b)(3)(i-ii).

<sup>18</sup> Minnesota Initial Waiver Request.

<sup>19</sup> AASHTO Frequency Coordination Letter.

10. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

David Furth  
Associate Bureau Chief  
Public Safety and Homeland Security Bureau