

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

In the Matter of)	
)	
THE NEW YORK STOCK EXCHANGE, INC.)	FCC File No. 0001402577
)	
Application and Request for Waiver for Authority)	
to Operate a Paging System in New York City,)	
NY, on Frequencies 151.190 MHz, 151.220 MHz,)	
151.400 MHz, 159.285 MHz, and 159.420 MHz)	

ORDER

Adopted: February 10, 2004

Released: February 12, 2004

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

I. INTRODUCTION

1. In this *Order*, we address the above-captioned application and waiver request (Request) of the New York Stock Exchange, Inc. (NYSE).¹ NYSE requests waivers of Sections 90.20(a) and 90.35(c)(31) of the Commission's Rules to permit NYSE to be authorized to operate a paging system in New York City on frequencies 151.190 MHz, 151.220 MHz, 151.400 MHz, 159.285 MHz, and 159.420 MHz.² We grant the Request, as set forth and discussed below.

II. BACKGROUND

2. On September 13, 1984, NYSE was granted a license to operate a paging system at its location in Manhattan on frequencies 151.190 MHz, 151.220 MHz, 151.400 MHz, 159.285 MHz, and 159.420 MHz under Call Sign WZU487, for a term not to exceed five years. According to Commission records, the license was not renewed in accordance with Commission rules.³ On November 12, 2002, NYSE filed an application for special temporary authority (STA) to permit temporary operations on the previously authorized facilities, and at a "stand-ready" site in Brooklyn.⁴ On November 13, 2002, the Licensing and Technical Analysis Branch (Branch) of the former Public Safety and Private Wireless Division⁵ of the Wireless Telecommunications Bureau denied the STA because it did not include

¹ FCC File No. 0001402577 (filed July 31, 2003; amended August 5, 2003, January 29, 2004, and February 2, 2004).

² 47 C.F.R. §§ 90.20(a), 90.35(c)(31).

³ The New York Stock Exchange, Inc., *Order*, 18 FCC Rcd 8057, 8057 ¶ 2 (WTB PSPWD 2003) (*NYSE Order*). NYSE asserts that the license was timely renewed except for the most recent renewal term. *See* Request at Attachments B and C. In any event, we note that there is no dispute that at some point the license expired by its own terms.

⁴ FCC File No. 0001087362 (filed Nov. 12, 2002).

⁵ The Commission reorganized the Wireless Telecommunications Bureau effective November 13, 2003, and the relevant duties of the Public Safety and Private Wireless Division were assumed by the Public Safety and Critical Infrastructure Division. *See* Reorganization of the Wireless Telecommunications Bureau, *Order*, 18 FCC Rcd 25414, 25414 ¶ 2 (2003).

evidence of NYSE having been issued a license on the frequencies, and thus appeared to request authorization to initiate service, which is not a permissible purpose for an STA under Section 1.931 of the Commission's Rules.⁶ On February 21, 2003, NYSE filed a new STA application for authorization to operate at the Manhattan and Brooklyn sites, with evidence that NYSE had previously been licensed on the subject frequencies at the Manhattan site.⁷ The Branch granted the application on February 25, 2003, under Call Sign WPXB394.⁸ Subsequently, NYSE filed the captioned application on July 31, 2003, for a new permanent license for the operations currently authorized under Call Sign WPXB394.

III. DISCUSSION

3. Section 1.925 of the Commission's Rules provides that a waiver of the rules may be granted if it is shown that the underlying purpose of the rule(s) to be waived would not be served or would be frustrated, and a grant of the requested waiver would be in the public interest. A waiver also may be granted if it is shown that, in view of unique or unusual factual circumstances, applying the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁹ For the reasons set forth below, we conclude that NYSE has demonstrated that grant of its Request is warranted.

4. Under the Commission's Rules, the subject frequencies are designated for use by Industrial/Business eligibles such as NYSE only in Puerto Rico and the Virgin Islands.¹⁰ In the rest of the country, the frequencies are available only to Public Safety eligibles,¹¹ and are designated for forestry-conservation use.¹² NYSE requested waivers of Sections 90.20(a) (allocation to the Public Safety Pool outside of Puerto Rico and the Virgin Islands) and 90.35(c)(31) (available to Industrial/Business eligibles in Puerto Rico and the Virgin Islands). We believe that NYSE also needs a waiver of 90.20(c)(3) (designation for forestry-conservation use outside Puerto Rico and the Virgin Islands), and that a waiver of Section 90.20(c)(3) would obviate the need for a waiver of Section 90.35(c)(31). Accordingly, we shall treat the Request as seeking waivers of Section 90.20(a) and (c)(3).

5. The purpose of those provisions is to ensure adequate spectrum for forestry-conservation activities, and to avoid interference to such communications from incompatible services.¹³ NYSE asserts that, since implementation of its paging system in 1984, it has received no complaints of interference from co-channel users regarding its operations on the subject frequencies and, similarly, has itself received no interference from any such co-channel users when it operates on the frequencies.¹⁴ In addition, we note that NYSE requested and obtained frequency coordination for use of the frequencies from the Forestry Conservation Communications Association (FCCA), the FCC-certified frequency coordinator for spectrum designated for forestry-conservation use, and that FCCA does not object to the Request.¹⁵ We also note that forestry-conservation activity in New York City is limited, at best.

⁶ See *NYSE Order*, 18 FCC Rcd at 8057-58 ¶ 2 (citing 47 C.F.R. § 1.931).

⁷ FCC File No. 0001206658 (filed Feb. 21, 2003).

⁸ The STA was renewed on August 20, 2003, and has a current expiration date of February 20, 2004.

⁹ 47 C.F.R. § 1.925(b)(3).

¹⁰ See 47 C.F.R. § 90.35(c)(31).

¹¹ See 47 C.F.R. § 90.20(a).

¹² See 47 C.F.R. § 90.20(c)(3).

¹³ See Joe Friend, *Letter*, 18 FCC Rcd 24608, 24668-69 (WTB PSPWD 2003).

¹⁴ Request at 1 n.5.

¹⁵ Letter dated July 23, 2003 from Joseph F. Friend, FCCA, to Don Andrew, Personal Communications Industry Association.

Consequently, we agree with NYSE that grant of the Request would not undermine the rule's purpose.

6. We also conclude that grant of the Request is in the public interest. According to NYSE, the system now provides service to more than 900 pagers that generates an average of over 90,000 pages a day, and is relied on by traders and others to identify stocks and their prices for facilitating NYSE's business and the buying and selling of stocks.¹⁶ NYSE argues that, unless the Request and application are granted, termination of the paging service at its previously-authorized location would have a devastating impact on NYSE's operations and, in turn, have catastrophic consequences on the entire economy.¹⁷ NYSE also requests that it be authorized to operate the paging system on the five requested frequencies at an additional location, in Brooklyn, on a standby basis for use when an emergency or other event disrupts operations at the Manhattan site.¹⁸ NYSE states that this request is in response to the events of September 11, 2001, and that the new location, which is within a 25-mile radius of the Wall Street location, would serve as a contingency site at which to continue the disrupted paging operations.¹⁹

IV. CONCLUSION

7. In light of the absence of any interference to any other user from NYSE's proposed use of the requested frequencies for its paging system and the importance to the national economy of NYSE's use at its existing location and at a new backup location in Brooklyn, we find that a grant of NYSE's request for waiver is warranted. We also believe that grant of the Request serves the public interest by making efficient use of the subject spectrum.²⁰

V. ORDERING CLAUSES

8. Accordingly, IT IS ORDERED that, 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, the Request for Waiver associated with the above-captioned application, FCC File No. 0001402577, filed by the New York Stock Exchange on July 31, 2003, as amended on August 5, 2003, IS GRANTED.

9. IT IS FURTHER ORDERED that File No. 0001402577 SHALL BE PROCESSED consistent with this *Order* and the applicable Commission Rules.

10. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commissions Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau

¹⁶ Request at 1, 2.

¹⁷ *Id.* at 2.

¹⁸ *Id.* at 1 n.3.

¹⁹ *Id.*

²⁰ In this connection, we note that grant of the requested relief is consistent with the spectrum utilization goals outlined in the Spectrum Policy Task Force Report, which states that it is important to optimize and facilitate access to, and use of, the radio spectrum. Spectrum Policy Task Force Report, ET Docket No. 02-135, at 15 (Nov. 2002).