

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

In the Matter of Applications of)
)
NEW YORK THRUWAY AUTHORITY) FCC File Nos. 0001218554, 0001220099
)
Request for Waiver to Allow the Use of)
42.60 MHz for the Canal Radio System)

ORDER

Adopted: November 19, 2004

Released: November 29, 2004

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

I. INTRODUCTION

1. We have before us two applications and waiver requests filed by New York Thruway Authority (NYTA) for authority to operate a public safety radio system on 42.60 MHz, along the canal system across the State of New York.¹ A waiver is required because this frequency is designated for use by state police licensees.² For the reasons discussed herein, we grant NYTA’s waiver request on the condition that no interference is caused to existing licensees.

II. BACKGROUND

2. The New York canal system runs from Lockport, near Buffalo, east to Mechanicsville, near Albany, and then north to Lake Champlain. The existing transmitter sites used by NYTA are all located at facilities along the historic Erie Canal and Barge Canal, located in the Mohawk and Hudson River valleys.³ The radio system is used for emergency and routine communications among fixed stations, mobile units, and vessels.⁴ The content of the traffic is for security, maintenance, and inspections.⁵ Users include canal administrative staff, and the New York State Police.⁶

3. Typically, the base stations are located below the average level of the surrounding terrain.⁷ NYTA’s radio system currently shares a 47 MHz highway maintenance frequency with the New York State Department of Transportation (NYDOT).⁸ This frequency was used because the canal system was a

¹ Letter dated July 11, 2003 from Roy Sifert, Radio Engineer, NYTA, attached to FCC File Nos. 0001218554, 0001220099 (Waiver Request).

² See 47 C.F.R. § 90.20(d)(16).

³ See Waiver Request at 2.

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ *Id.*

⁸ *Id.* at 1.

division within NYDOT, but was transferred to NYTA in 1996.⁹ The canal radios currently receive interference from NYDOT base stations located on mountain tops and from 4,400 mobile units which operate at higher elevations than the canal radios.¹⁰ NYTA indicates that the interference is so severe that its canal radios consequently become unusable during periods of moderate to heavy NYDOT traffic.¹¹ In order to alleviate the interference, NYTA attempted to find a new frequency for the canal system.¹²

4. NYTA indicates that it was unable to find a single low band¹³ local government frequency to serve the entire canal system, due to the limited number of frequencies available for such use and the large number of stations in the areas which use low-band frequencies.¹⁴ Therefore, after reviewing all possible options, NYTA proposes to use frequency 42.60 MHz for the canal radio system.¹⁵ NYTA requires a waiver because Section 90.20(d)(16) of the Commission's Rules restricts assignment of this frequency to state police licensees or to other police licensees which use the frequency for coordination with state police systems.¹⁶ The frequency 42.60 MHz is currently used for state police operations in six states – including New York – under a national geographic assignment plan.¹⁷

5. NYTA asked the New York State Police to support its request to use frequency 42.60 MHz.¹⁸ The New York State Police concurred and also obtained concurrence from the five other state police organizations that are assigned this frequency.¹⁹ All five states supported NYTA's request to use the frequency, but two of the states' concurrence was conditioned on NYTA's not causing interference to their systems.²⁰

6. NYTA filed the above-captioned applications on February 26²¹ and March 10,²² 2003. The applications were returned to NYTA in July, 2003 because they did not contain a request for a waiver of Section 90.20(d)(16).²³ NYTA amended its applications on July 14, 2003 to request a waiver of Section

⁹ *Id* at 2.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *I.e.*, frequencies between 25 and 50 MHz. *See* Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5214 ¶ 11 (1999).

¹⁴ *See* Waiver Request at 2.

¹⁵ *Id.*

¹⁶ *See* 47 C.F.R. § 90.20(d)(16).

¹⁷ *See* APCO Police Low-Band Geographical Assignment Plan, included with Letter dated January 6, 2003 from Roy Sifert, Radio Engineer, NYTA, attached to FCC File Nos. 0001218554 and 0001220099. The other states operating on frequency 42.60 MHz are California, Illinois, North Carolina, Oklahoma, and Pennsylvania.

¹⁸ *See* Waiver Request at 2.

¹⁹ *Id.*

²⁰ *See* concurrence letters included with letter dated January 6, 2003 from Roy Sifert, Radio Engineer, NYTA, attached to FCC File Nos. 0001218554 and 0001220099. The States of Pennsylvania and Illinois concurred on a non-interference basis. *Id.*

²¹ FCC File No. 0001218554.

²² FCC File No. 0001220099.

²³ *See* Return Letters Ref. Nos. 2048586 (July 1, 2003) (0001218554), 2056931 (July 2, 2003) (0001220099).

90.20(d)(16).²⁴ It indicates that approval of the waiver request will allow it to operate a fully usable radio system, thereby improving the safety of the public which utilizes the canal facilities.²⁵

III. DISCUSSION

7. To obtain a waiver of the Commission's Rules, a petitioner must demonstrate either that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case and that grant of the waiver would be in the public interest; or that, 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.²⁶ We believe that NYTA has shown that a waiver is warranted under the first prong.

8. We find that the underlying purpose of Section 90.20(d)(16) would not be frustrated and would be served if the rule were waived in NYTA's case. As indicated above, the purpose of Section 90.20(d)(16) is to restrict 42.60 MHz to state police licensees or to other police licensees that require the frequency to coordinate with state police systems assigned to the frequency. The New York State Police indicates that its Troop T is responsible for policing the canal system.²⁷ Therefore – although the applicant NYTA is not itself a police organization – some radio traffic on the canal system will be generated by the New York State Police. NYTA has documented that all of the state police organizations that are assigned this frequency under the National Geographic Assignment Plan have consented to NYTA's use of the frequency.

9. Granting of the waiver clearly serves the public interest because the proposed radio system will facilitate the safety of the public which uses the canal system as well as the safety of the canal staff. We thus conclude that NYTA's waiver request should be granted subject to the condition that its operations on 42.60 MHz not cause interference to any existing licensee.

IV. ORDERING CLAUSES

10. 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 New York State Thruway Authority with respect to applications FCC File Nos. 0001218554 and 0001220099 ARE GRANTED subject to the CONDITION that its operations cause no harmful interference to any existing license.²⁸

11. IT IS FURTHER ORDERED that the Public Safety and Critical Infrastructure Division SHALL PROCESS applications FCC File Nos. 0001218554 and 0001220099 in accordance with this

²⁴ NYTA also filed three other applications, in March 2003. *See* FCC File Nos. 0001220093 (filed Mar. 4, 2003), 0001220097 (filed Mar. 4, 2003), 0001225045 (filed Mar. 7, 2003). These applications were returned again on January 14, 2004, with a request that NYTA provide additional information regarding the location of mobile operations. *See* Return Letters Ref. Nos. 2479581 (0001225045), 2479582 (0001220093), 2479583 (0001220097). The applications were dismissed on April 5, 2004, after NYTA failed to amend them in response to these return letters. *See* Dismissal Letters Ref. Nos. 2676094 (0001225045), 2676095 (0001220093), 2676096 (0001220097).

²⁵ *See* Waiver Request at 2.

²⁶ 47 C.F.R. § 1.925(b)(3).

²⁷ *See* letters from New York State Police to North Carolina State Highway Patrol; Oklahoma State Highway Patrol, and California State Highway Patrol, included with letter dated January 6, 2003 from Roy Sifert, Radio Engineer, NYTA, attached to FCC File Nos. 0001218554 and 0001220099.

²⁸ FCC File Nos. 0001218554, 0001220093, 0001220097, 0001220099, 0001225045 in accordance with this *Order*.

Order and the Commission's Rules.

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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