

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

In the Matter of)	
)	
NAVISTAR INTERNATIONAL)	FCC File No. 0002202149
TRANSPORTATION CORP.)	
)	
Request for Waiver of 900 MHz Application)	
Filing Freeze)	

ORDER

Adopted: December 11, 2006

Released: December 12, 2006

By Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

1. *Introduction.* In this *Order*, we address a request for waiver¹ of the 900 MHz application freeze² filed by Navistar International Transportation Corporation (Navistar). For the reasons stated below, we grant the waiver request, and will process the above-captioned application.

Background. Navistar was granted a license for 900 MHz Station WPMK758, Springfield, Ohio, in August 1998, for a five-year license term. On June 2, 2003, the Commission sent a renewal reminder letter to Navistar.³ On August 26, 2003, the license expired by its own terms.⁴

2. On September 17, 2004, the Wireless Telecommunications Bureau (Bureau) instituted a freeze on new 900 MHz applications because it feared that the exceptionally large number of applications it had received could compromise its ability to accommodate displaced systems during the 800 MHz band reconfiguration process designed to resolve interference to public safety communications.⁵ The Bureau stated that it would continue to accept applications for license modification and would entertain requests for waiver of the 900 MHz application freeze.⁶ The Commission subsequently released a *Notice of Proposed Rulemaking* seeking comment on geographic licensing in the 900 MHz band, which reaffirmed the freeze and reiterated that it would consider requests for waiver of the freeze.⁷

¹ Waiver Request filed in association with FCC File No. 0002202149 (filed June 14, 2005, amended June 21, 2005) (*Waiver Request*).

² See Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC 18277 (WTB 2004) (*900 MHz Freeze PN*); see also Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pools, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62, 20 FCC Rcd 3814 (2005) (*900 MHz NPRM*).

³ See FCC Ref. No. 1921904.

⁴ Navistar indicates that it had contracted with a third party to handle the license renewal process, but the third party failed to file the necessary application. See *Waiver Request* at 2.

⁵ See *900 MHz Freeze PN*, 19 FCC Rcd at 18277-78.

⁶ *Id.* at 18278 n.7.

⁷ See *900 MHz NPRM*, 20 FCC Rcd at 3836 ¶ 67.

3. At the time the freeze was imposed, Navistar was in the process of coordinating a new application for authorization to operate on the same frequencies as were authorized to Station WPMK758.⁸ Navistar filed the instant application for a new station and associated waiver request in June 2005. Navistar states that Station WPMK758 was utilized to ensure the safety and security of 14,000 employees at Navistar's manufacturing facility.⁹ Presently Navistar is operating the facility formerly licensed under Call Sign WPMK758 pursuant to Special Temporary Authority (STA) under Call Sign WQBZ527.¹⁰

4. *Discussion.* The Commission will grant a waiver of its rules if (a) it is in the public interest and the underlying purpose of the rule would be frustrated or not served by application to the present case, or (b) 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 the applicant has no reasonable alternative.¹¹ We conclude that a waiver is warranted in the present matter under the first prong of the waiver standard.

5. We do not believe the underlying purpose of the 900 MHz application freeze would be frustrated if a waiver is granted in this case, because Navistar only seeks to obtain the licensing for the exact facilities it operated prior to the institution of the application freeze.¹² We find it significant that the application does not request to modify any aspect of its former license. As a result, we believe that grant of the waiver will not interfere with the spectrum needs associated with the 800 MHz proceeding because Navistar was an established 900 MHz licensee before the 800 MHz reconfiguration decision and, had it filed a timely renewal application, would not have been affected by the application freeze or the *900 MHz NPRM*. Thus, grant of the waiver will not interfere with the purpose of the 900 MHz freeze. We also agree with Navistar that grant of the instant waiver request is in the public interest, as grant of the waiver will promote the safety of life and property.¹³

⁸ See *Waiver Request* at 2-3.

⁹ See *id.* at 1-2.

¹⁰ The STA currently is scheduled to expire on March 25, 2007.

¹¹ See 47 C.F.R. § 1.925(b)(3).

¹² See *Disneyland Resort, Order*, 21 FCC Rcd 536, 539 ¶ 9 (WTB PSCID 2006).

¹³ Notwithstanding our decision in this particular case, we caution that a licensee must abide by the Commission's filing deadlines. All licensees are responsible for filing renewal applications and related petitions in a timely manner. Navistar bears responsibility for its agent's failure to file a timely renewal application. See, e.g., *Town of Jaffrey, Order*, 17 FCC Rcd 3493, 3494-95 ¶ 5 (WTB PSPWD 2002). Thus, we admonish Navistar to conform to this requirement in the future and to take any necessary steps to avoid future occurrences, because the Commission does not routinely grant such waiver requests.

6. 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 filed in association with application FCC File No. 0002202149 IS GRANTED, and the application SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

7. 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

Scot Stone
Deputy Chief, Mobility Division
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