

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

In the Matter of
TOWNSHIP OF WOODBRIDGE
Request for Waiver of Sections 90.305(a),
90.307(a), 90.307(d), and 90.309 of the
Commission's Rules
File Nos. 0003424274, 0003424276

ORDER

Adopted: December 5, 2008

Released: December 5, 2008

By the Chief, Policy Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The Township of Woodbridge, New Jersey ("Woodbridge" or "the Township") filed two applications and an associated Waiver Request for authority "to operate a trunked public safety communications system" on fifteen frequency pairs in the television (TV) Channel 20 (506-512 MHz band). Woodbridge seeks waiver of Sections 90.305(a), 90.307(a), 90.307(d), and 90.309 of the Commission's rules, to use these frequencies pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act), or in the alternative, Section 1.925 of the Communication's rules. By this Order, we grant Woodbridge's Waiver Request as conditioned herein.

II. BACKGROUND

2. Woodbridge states that it is "the fifth largest municipality in New Jersey," and that "[a]ll Northeast corridor railroads cross Woodbridge and include public industrial stations and depots, including Metropark, New Jersey's largest commuter rail facility." Woodbridge adds that its "location and industrial activity contributes to extensive office park, retail shopping, and educational facilities," including "major hospital and health care complexes" as well as the Township's school system comprised of "24 public school facilities and numerous private education facilities." Woodbridge states that its "[e]mergency communications are strained by poor or no coverage, antiquated equipment and inadequate

1 See File Nos. 0003424274 and 0003424276 (filed May 1, 2008, amended May 6, 2008, June 25, 2008, Aug. 15, 2008, and Aug. 18, 2008) and Applications and Waiver Request of Woodbridge Township, New Jersey Under Section 337(c) of the Communications Act of 1934, as Amended (Waiver Request).

2 Waiver Request at 6.

3 See id. at 6-7.

4 See 47 C.F.R. §§ 90.305(a), 90.307(a), 90.307(d), 90.309.

5 47 U.S.C. § 337(c).

6 47 U.S.C. § 1.925. See Waiver Request at 1.

7 Waiver Request at 2.

8 Id.

9 Id. at 2-3.

capacity.”¹⁰ Woodbridge also states that “[d]ivergent spectrum resources exist between the police, fire and emergency medical agencies ... and [m]utual aid responsibilities with adjoining jurisdictions ... are hindered considerably.”¹¹

3. Woodbridge proposes to operate a trunked public safety communications system on fifteen frequency pairs in the TV Channel 20 band.¹² Woodbridge states that its proposal “reflects a regional strategy benefitting other jurisdictions,” providing “effective and broader coverage to emergency services in the region, ... extend[ing] wireless communications and emergency response capability ... and embrac[ing] a direct path to narrowband communications on a regional basis.”¹³ Woodbridge states that its proposal will enable agencies to “use less spectrum, with less infrastructure” and “bring real communications interoperability to the region’s mutual aid relationships.”¹⁴

4. Woodbridge is currently licensed on six frequency pairs in the TV Channel 14 and 15 bands.¹⁵ The Township states that the “[c]hannels are blocked from expansion by other licensees on the first adjacent channel or other wideband licensee on the second adjacent channel” and that the “current channel base cannot be used to generate sufficient capacity” and does not “conform to the Commission’s mandate to narrowband.”¹⁶ Woodbridge states that, if the Commission grants the applications and Waiver Request, it would “return to the Commission its authority to operate on its current inventory” of frequencies including 477.1625 and 477.2875 MHz, “with the exception of those dedicated to fire ground operations.”¹⁷

5. Woodbridge states that its consultant conducted a search “to evaluate the spectrum environment, technologies and requirements.”¹⁸ Woodbridge asserts that the search “revealed that no channels are available in the public safety pool”¹⁹ to meet Woodbridge’s requirements, “nor can Woodbridge’s current resources be used.”²⁰ According to Woodbridge, “[t]he Frequency Advisor of the Association of Public-Safety Communications Officials, International, Inc. (APCO) also “confirms that there are no channels available to meet Woodbridge’s requirement.”²¹ Woodbridge provided a technical analysis and concludes that “the proposal will cause no interference with entities authorized to operate within frequency band 470-512 MHz.”²²

¹⁰ *Id.* at 3.

¹¹ *Id.*

¹² *See id.* at 7.

¹³ *Id.* at 1-2.

¹⁴ *Id.* at 2.

¹⁵ *See id.* at 4. Woodbridge operates existing stations under call signs WIL224, KLL610, WNBU370, KLL607, KG2294, WNCL911, and WNUJ415.

¹⁶ *Id.* at 4.

¹⁷ *Id.* at 6.

¹⁸ *Id.* at 5.

¹⁹ *Id.* at 8.

²⁰ *Id.*

²¹ *Id.* *See also* File Nos. 0003424274 and 0003424276, Attachment F: Letter from Lieutenant Anthony Melia, APCO – AFC, to William Heinzelman, Township of Woodbridge (dated Feb. 21, 2008).

²² Waiver Request at 10 citing File Nos. 0003424274 and 0003424276, Attachment A; Analysis of Television Broadcasting Protection with Land Mobile Sharing (Attachment A).

6. In the instant application, Woodbridge seeks fifteen frequency pairs in order “to operate a trunked public safety communications system.”²³ The Township states that the proposed “system consists of eight sites, each proposing to simulcast the 15 channels in a trunking configuration” and “will operate in the narrowband mode; utilizing equipment with 11.3 kHz occupied bandwidth.”²⁴ Woodbridge states that “TV Channel 20 is available for allocation in the Philadelphia metropolitan area, which encompasses a radius of fifty miles from the City of Philadelphia.”²⁵ Because Woodbridge seeks to locate base station transmitter sites using TV Channel 20 spectrum more than eighty kilometers (fifty miles) from the geographic center of Philadelphia, Pennsylvania, Woodbridge seeks a waiver of Section 90.305(a).²⁶ In addition, because Woodbridge proposes to operate as close as 145.7 kilometers from co-channel TV Channel 20 Station WTXN, Waterbury, Connecticut, and 70.3 kilometers from adjacent TV Channel 21 Station WLIW, New York, New York, the Township requests waiver of the absolute distance separations in Sections 90.307(a), 90.309 Table A, and 90.307(d).²⁷

7. On September 5, 2008, the Public Safety and Homeland Security Bureau (Bureau) issued a public notice²⁸ seeking comment on the applications and Waiver Request. The Bureau also sought comment on whether the 700 MHz public safety band would provide a viable alternative, in light of the approaching February 17, 2009, digital television transition date and the Commission’s recent actions in facilitating a nationwide, interoperable broadband public safety network.²⁹ The Bureau received four comments in support of Woodbridge’s request,³⁰ and no comments were filed in opposition. Woodbridge filed reply comments reiterating its request for the waiver.³¹

8. The National Public Safety Telecommunications Council (NPSTC) states that “[t]he channels at stake present core public safety communications capability in the UHF band.”³² NPSTC

²³ Waiver Request at 6.

²⁴ See File Nos. 0003424274 and 0003424276, Attachment B, Evaluation of Frequency Request by Township of Woodbridge at 1 (Attachment B).

²⁵ Waiver Request at 6.

²⁶ See *id.*; 47 C.F.R. §§ 90.303, 90.305(a).

²⁷ See Attachment A at 4-5, 8. See also 47 C.F.R. §§ 90.307(a) 90.309. Section 90.307(a) refers to Section 90.309 Table A for protection to co-channel TV stations. Section 90.309 Table A requires a minimum separation of 193 kilometers (120 miles) between a land mobile base station and a co-channel TV station. See also 47 C.F.R. § 90.307(d). A land mobile base station which has associated mobile units must be separated from a protected adjacent channel television station by a minimum distance of 145 kilometers (ninety miles).

²⁸ See Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed By the Township of Woodbridge to Operate a Trunked Public Safety Communications System Using Frequencies in the Television Channel 20 Band (506-512 MHz), *Public Notice*, 23 FCC Rcd 13334 (PSHSB 2008) (*Public Notice*).

²⁹ *Id.* at 3, *citing* Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229; Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communications Requirements through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

³⁰ See Letter from Bruce Chester, State Delegate, Woodbridge PBA Local 38, Woodbridge Policemen’s Benevolent Association to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sep. 24, 2008); Comments of the National Public Safety Telecommunications Council (filed Sep. 24, 2008) (NPSTC Comments); Letter from John A. Crowe, Ed.D., Superintendent of Schools, Woodbridge Township School District to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (filed Sep. 24, 2008); Comments of Motorola, Inc. (filed Sep. 26, 2008) (Motorola Comments).

³¹ See Reply Comments of the Township of Woodbridge, New Jersey (filed Oct. 6, 2008).

³² See NPSTC Comments at 4.

further asserts that “[t]he Commission has approved several waivers in these bands enabling individual public safety agencies to construct and deploy much improved systems.”³³ In this regard, NPSTC states that “[t]he waivers have increased redundancy, promoted ubiquitous coverage, improved communications and expanded interoperability, particularly in metropolitan areas where UHF operations are prominent.”³⁴ In addition, NPSTC states that “channels in the UHF and VHF bands must continue to be available for public safety ... under section 337(c).”³⁵ With respect to use of the 700 MHz band, NPSTC states that, “[t]he number of agencies in the metropolitan areas needing channels and the number of channels needed far exceed the availability, even if the 700 MHz narrowband voice channels were available today”³⁶ and that “[u]ntil 700 MHz channels are available for assignment, assertions that 700 MHz will meet public safety’s requirements in a particular area must be rejected.”³⁷ Motorola, Inc. (Motorola) concurs with NPSTC, stating that the 700 MHz band “does not meet the specific needs of the Township and is therefore not a viable alternative.”³⁸

III. DISCUSSION

9. Section 337(c) of the Act provides that the Commission shall waive any rules necessary to permit entities seeking to provide public safety services to use unassigned spectrum not allocated to public safety, if the Commission makes five specific findings.³⁹ On August 18, 2008, Woodbridge amended its applications to reduce its proposed mobile radii of operation such that all its operations would be within eighty miles of the Philadelphia city center coordinates.⁴⁰ Because the TV Channel 20 band frequencies sought by Woodbridge’s application, as amended, may, under existing FCC rule waiver precedent, be used by land mobile entities, including public safety entities, within eighty miles of the Philadelphia coordinates on a primary basis,⁴¹ we find that Section 337(c) of the Act is not applicable. Accordingly, we consider Woodbridge’s request for waiver pursuant to Section 1.925 of the Commission’s rules.

10. 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,⁴² or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly

³³ *Id.*

³⁴ *Id.*

³⁵ *Id.* at 5.

³⁶ *Id.* at 6.

³⁷ *Id.*

³⁸ Motorola Comments at 4.

³⁹ See 47 U.S.C. § 337(c)(1) (“An application shall be granted under this subsection if the Commission finds that— (A) no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use; (B) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission’s regulations; (C) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made; (D) the unassigned frequency was allocated for its present use not less than 2 years prior to the date on which the application is granted; and (E) granting such application is consistent with the public interest.”).

⁴⁰ See File Nos. 0003424274, 0003424276 (as amended Aug. 19, 2008).

⁴¹ See 47 C.F.R. §§ 90.303, 90.305(a), (b).

⁴² 47 C.F.R. § 1.925(b)(3)(i).

burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.⁴³ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁴⁴ Based on the information before us, we conclude that a grant of the Waiver Request is warranted.

11. *Section 90.305.* Section 90.305 provides that private land mobile radio (PLMR) base stations operating in the 500-512 MHz band (which also constitutes TV channels 19 and 20) may be located not more than fifty miles (eighty kilometers) from the geographic centers of urbanized areas listed in Section 90.303 of the Commission's rules; and that associated mobile units must operate not more than thirty miles (forty-eight kilometers) from the base station, thus creating a circular area with a radius of eighty miles (128 kilometers) within which PLMR stations may operate on a primary basis and shall be afforded interference protection from TV stations.⁴⁵ The Commission established these mileage restrictions to protect over-the-air broadcast operations on TV Channels 14-21 located outside of these cities from harmful interference from PLMR systems operating in the 470-512 MHz band.⁴⁶ Frequencies in the 500-512 MHz band (TV channels 19 and 20) are available for assignment to PLMR users with base stations within fifty miles of the City of Philadelphia, Pennsylvania center coordinates.⁴⁷

12. The Township requests a waiver of Section 90.305 because all eight proposed base station sites are located beyond fifty miles from the Philadelphia, Pennsylvania coordinates.⁴⁸ However, Woodbridge's proposed area of operation for its sites is located within eighty miles of Philadelphia. In 2001, the Commission stated that it would be "more inclined to consider favorably requests for waiver of Section 90.305(a) when the applicant proposes to contain its area of operation within 80 miles of the geographic center of the urban area in question."⁴⁹ Such operation, the Commission believed, "would not adversely impact television stations because televisions stations are already required to protect land mobile stations operating within that area."⁵⁰ Similarly, the Township in the instant matter proposes to limit the mobile area of operation to 9.3 miles (15 kilometers) from its base station locations. Since the maximum base station distance from Philadelphia is 65.2 miles (104.9 kilometers),⁵¹ the proposed mobile area of operation would extend no more than a maximum of 74.5 miles (119.9 kilometers) from the Philadelphia coordinates. Because the Township's proposed operations on the frequencies would be contained within the eighty-mile area where land mobile operations are primary, we conclude that the underlying purpose of Section 90.305 would not be served or would be frustrated by application to the present case.

13. *Sections 90.307(a), 90.307(d), and 90.309.* The Township requests waiver of the TV distance separations in Sections 90.307(a), 90.307(d), and 90.309,⁵² because its proposed frequencies,

⁴³ 47 C.F.R. § 1.925(b)(3)(ii).

⁴⁴ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

⁴⁵ *See* 47 C.F.R. §§ 90.303, 90.305(a), (b).

⁴⁶ *See Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, Notice of Proposed Rulemaking*, Gen. Docket No. 85-172, 101 F.C.C. 2d 852 (1985).

⁴⁷ *See* 47 C.F.R. § 90.303.

⁴⁸ *See* Attachment A at 2-4 (listing the base station coordinates and distances from Philadelphia).

⁴⁹ *Goosetown Enterprises, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12797 ¶ 13 (2001).

⁵⁰ *Id.* *See also* 47 C.F.R. §§ 73.623(e), 74.709.

⁵¹ *See* Attachment A at 4 (Site 7 – Amquip is the most distant from Philadelphia).

⁵² *See* Waiver Request at 7, Attachment A at 4-5, 8.

which are in the 470-512 MHz band, would operate “on a geographically shared basis with Television Broadcasting Stations.”⁵³ Woodbridge stated that it “determined that the use of TV Channel 20 would result in the least interference and coexist with current land mobile and TV broadcasting, be consistent with the Commission’s policies and decisions and meet Woodbridge’s requirements.”⁵⁴ In support of its request, Woodbridge performed an analysis and determined that “Woodbridge operations will have no effect” on Stations WTXX and WLIW’s service populations.⁵⁵ The Township also obtained a letter of concurrence from adjacent channel Station WLIW.⁵⁶ Station WLIW states that “[w]e do not anticipate any harmful interference from Woodbridge Township’s operations.”⁵⁷ Station WLIW continues, “[s]hould it occur, Woodbridge Township has committed to work with WLIW to resolve it.”⁵⁸

14. Woodbridge also obtained a letter of consent from WTXX, Inc., licensee of co-channel TV Station WTXX.⁵⁹ Station WTXX states that “Woodbridge has agreed to (i) work with WTXX to correct any instances of interference to WTXX’s analog or digital operations caused by Woodbridge’s land mobile operations on channel 20; and (ii) accept any and all interference to its proposed land mobile operations on channel 20 caused by WTXX’s analog or digital operations on channel 20 including, in particular, any interference from WTXX to Woodbridge’s proposed land mobile operations on channel 20 caused by ducting due to the atmospheric conditions along the coastline.”⁶⁰ In light of Woodbridge’s analysis, the letter of concurrence from WLIW, and letter of consent from WTXX, we conclude that the underlying purpose of Sections 90.307(a), 90.307(d), and 90.309 would not be served or would be frustrated by application to the present case.

15. *Adjacent and co-channel licensees.* To further support its request, the Township submits an engineering analysis to show that its proposed operation will not cause harmful interference to adjacent and co-channel private land mobile radio (PLMR) licensees.⁶¹ Using the Land Mobile Communications Council (LMCC) Consensus criteria,⁶² the Township provides a study purporting to demonstrate that the proposed facilities would cause less than a five percent reduction of the calculated service area reliability to incumbent stations, and that its facilities would experience less than a five percent reduction of the

⁵³ Waiver Request at 9. Frequencies in the 470-512 MHz band, normally assigned to UHF Television channels 14 through 20, were made available for land mobile radio use in 11 cities in the early 1970s in the “UHF-TV Sharing” proceeding. See Land Mobile Use of TV Channels 14 through 20, Docket No. 18261, *Report and Order*, 23 FCC 2d 325 (1970).

⁵⁴ Waiver Request at 5-6.

⁵⁵ Attachment A at 5, 8.

⁵⁶ See Letter of Concurrence from WLIW to Ms. Marlene H. Dortch, Secretary, Federal Communications Commission (dated Aug. 14, 2008) (WLIW Letter).

⁵⁷ *Id.*

⁵⁸ *Id.*

⁵⁹ See Notice of Consent Letter from Thomas P. Van Wazer, counsel to WTXX, Inc., to Federal Communications Commission (dated July 28, 2008), attaching Letter of Consent from Richard Graziano, Vice President & General Manager, Tribune Television, to Ms. Marlene H. Dortch, Secretary to the Federal Communications Commission (dated June 13, 2008) (WTXX Letter).

⁶⁰ *Id.* at 1.

⁶¹ See Attachment A.

⁶² See Letter from Larry A. Miller, President, Land Mobile Communications Council to Daniel B. Phythyon, Esq. Acting Chief, Wireless Telecommunications Bureau (dated Sept. 10, 1997). The LMCC Consensus provides that an application shall not be certified if an applicant causes or receives unacceptable interference of more than five percent reduction of the calculated service area reliability. See *id.*, attached Frequency Selection Procedures, 12.5 kHz Offset Assignments at 470-512 MHz, at 2.

calculated service area reliability from interference caused by incumbent stations.⁶³ Woodbridge also determined that co-channel stations are more than 64 kilometers (forty miles) from the proposed locations, and thus, each frequency “passes co-channel distance separation under FCC rules.”⁶⁴ We have verified Woodbridge’s engineering analyses and find that its proposed operations would neither cause harmful interference to, nor experience harmful interference from incumbent co-channel and adjacent channel PLMR licensees.

16. *Public Interest.* We also find that the grant of the request for waiver would be in the public interest. The Township, which is a governmental entity that provides fire, medical emergency, police, and other public safety services, falls within the scope of the Commission’s eligibility criteria to hold authorizations in the Public Safety Pool.⁶⁵ Based on the record, we find that a grant of Woodbridge’s applications and request for waiver would enable it to provide effective public safety services to its residents, such as improvements to security and overall incident management and preparedness.⁶⁶ Indeed, Section 1 of the Act defines one of the Commission’s over-arching purposes as “promoting safety of life and property through the use of radio communication.”⁶⁷ For example, as Woodbridge notes, a grant “will bring enhanced response capability to the area’s largest school system” and that “[t]he improvements will be region wide and accrue to benefit numerous agencies.”⁶⁸ In this regard, we also find significant the Township’s view that granting the instant request will promote UHF interoperability capability with “[l]ocal agencies in New Jersey and those of New York City police, fire, emergency medical and other services” and “the Urban Area Security Initiative (UASI) that includes New Jersey municipal agencies, New Jersey State Police, New Jersey Transit, the Port Authority of New York and New Jersey and New York City and New York State agencies.”⁶⁹ Finally, we note that no commenter opposed Woodbridge’s application and request for waiver.⁷⁰

IV. CONCLUSION

17. Based on the record before us, we conditionally grant Woodbridge’s request for waiver of Sections 90.305(a), 90.307(a), 90.307(d), and 90.309 pursuant to Section 1.925(b)(3) of the Commission’s rules. Specifically, we grant the Waiver Request with the following special conditions:

- (1) The Township of Woodbridge shall work with WLIW to resolve any harmful interference from Woodbridge Township’s operations to WLIW;⁷¹
- (2) The Township of Woodbridge shall (i) work with WTXX to correct any instances of interference to WTXX’s analog or digital operations caused by Woodbridge’s land mobile operations on channel 20; and (ii) accept any and all interference to its proposed land mobile operations on channel 20 caused by WTXX’s analog or digital operations on channel 20 including, in particular, any interference from WTXX to Woodbridge’s proposed land mobile operations on

⁶³ See Attachment B; see also File Nos. 0003424274 and 0003424276, Supplemental Reverse Interference Analysis.

⁶⁴ Attachment B at 2-16. See also 47 C.F.R. § 90.313(c).

⁶⁵ See, e.g., 47 C.F.R. § 90.20; see also Waiver Request at 3 and 12.

⁶⁶ See Waiver Request at 2.

⁶⁷ 47 U.S.C. § 151.

⁶⁸ Waiver Request at 12

⁶⁹ *Id.* at 5.

⁷⁰ See *supra* note 30.

⁷¹ See WLIW Letter.

channel 20 caused by ducting due to the atmospheric conditions along the coastline.⁷²

V. ORDERING CLAUSES

18. 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(b)(3) of the Commission's rules, 47 C.F.R. § 1.925, that the Request for Waiver, as amended, associated with File Nos. 0003424274 and 0003424276 filed by the Township of Woodbridge IS GRANTED, as conditioned herein.

19. IT IS FURTHER ORDERED that File Nos. 0003424274 and 0003424276 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

20. 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

Thomas J. Beers
Chief, Policy Division
Public Safety and Homeland Security Bureau

⁷² See WTXS Letter at 1.