



Federal Communications Commission
Washington, D.C. 20554

February 11, 2008

DA 08-328

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Ronald M. Senio
Senior Attorney, Law Department
Port Authority of New York and New Jersey
225 Park Avenue South, 14th Floor
New York, New York 10003

Re: **In the Matter of the Port Authority of New York and New Jersey
Request for Waiver of Sections 90.157 and 101.65(b) of the Commission's Rules**

Dear Mr. Senio:

On behalf of the Port Authority of New York and New Jersey (Port Authority), you filed a request for waiver¹ of Sections 90.157 and 101.65(b) of the Commission's rules,² seeking a one-year extension to construct the stations listed in the attachment to this letter (collectively, World Trade Center Stations).³ For the reasons stated below, we grant, *nunc pro tunc*, the request for extension of waiver, until September 10, 2008. Accordingly, the Port Authority will have until no later than September 10, 2008, to construct and return the World Trade Center Stations to operational status without forfeiting the licenses for permanent discontinuance of operation, pursuant to Sections 90.157 and 101.65(b).⁴

¹ Request for Extension of Waiver of Sections 90.157 and 101.65(b) of the Commission's Rules (dated Sept. 7, 2007) (Waiver Request).

² 47 C.F.R. §§ 90.157, 101.65(b). Pursuant to Sections 90.157 and 101.65(b), any station which has not been operated for one year or more is considered to have been permanently discontinued and is therefore subject to cancellation. *Id.*

³ In four prior instances, the former Public Safety and Private Wireless Division or former Public Safety and Critical Infrastructure Division (collectively, Division) of the Wireless Telecommunications Bureau granted similar Port Authority requests for waiver. *See* Port Authority of New York and New Jersey, *Order*, 17 FCC Rcd 16784 (WTB PSPWD 2002) (*2002 Order*); Port Authority of New York and New Jersey, *Order*, 18 FCC Rcd 19243 (WTB PSPWD 2003); Letter dated Nov. 10, 2004 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, to Jeffrey S. Green, Esq., General Counsel, Port Authority of New York and New Jersey; and Letter dated Aug. 10, 2006 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, to Darrell Buchbinder, General Counsel, Port Authority of New York and New Jersey (*2006 Letter*). In each instance, the Division granted the Port Authority an additional one-year period to complete construction of its World Trade Center Stations.

⁴ The grant of this Waiver Request does not relieve the Port Authority from applying for a renewal of license for any World Trade Center Station listed in the attachment prior to the expiration date of the license. *See* 47 C.F.R. § 1.949(a). Moreover, any renewal application submitted for a World Trade Center Station subject to grant of this Waiver Request will be held in pending status until the extended construction period granted herein is expired. *See* County of Beaver, *Memorandum Opinion and Order*, 18 FCC Rcd 18754, 18758 ¶ 13 (WTB PSPWD 2003) (renewal application for unconstructed station held in pending status until the extended construction period grant is expired).

Consistent with the Commission's rules, the waiver request demonstrates that discontinuance of operations of the World Trade Center Stations was the result of unique and unusual circumstances, namely, the terrorist attacks of September 11, 2001.⁵ Moreover, given the fact that the World Trade Center Stations will continue to serve an integral role in the extensive network of transportation, terminal, and commercial facilities throughout the New York metropolitan area, especially for public safety communications, we find that grant of the waiver request is in the public interest.⁶

Additionally, the Port Authority demonstrates not only that it will continue to require use of the World Trade Center Stations, but also that it continues to proceed diligently to reconstitute its destroyed radiocommunication facilities located at the World Trade Center.⁷ The remaining facilities for which the instant waiver extension is necessary concern Part 90 stations that the Port Authority plans to restore to operation pending reconstruction of the World Trade Center site, and Part 101 stations that have not been restored because of difficulties in finding a suitable site.⁸ In light of these showings, we believe that grant of the waiver request is warranted.

In the *2002 Order*, we concluded that a fixed waiver term was appropriate to "avoid any ambiguity concerning the status of the licenses and to allow relicensing of any spectrum that the Port Authority may later decide is not necessary for its future operations."⁹ We again conclude that, in balancing the Port Authority's continued need for additional time to bring facilities back into operation and the need of other public safety entities for spectrum, a further extension of the waiver originally granted in the *2002 Order*, until September 10, 2008, is in the public interest. Grant of the waiver request will enable the Port Authority to plan, construct and place into operation its stations and, at the same time, ensure that scarce spectrum is utilized to enhance public safety radio communications at the World Trade Center site. We therefore conclude that the public interest would be served by granting the Port Authority an extension of time to complete construction of the World Trade Center Stations listed in the Attachment.¹⁰

Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 1.925, 1.946(e), 90.157, and 101.65(b) of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946(e), 90.157, and 101.65(b), the Request for Extension of Waiver of Sections 90.157 and 101.65(b) of the Commission's rules, filed by the Port Authority of New York and New Jersey IS GRANTED, *nunc pro tunc*, to the extent indicated herein.

⁵ See 47 C.F.R. § 1.925(b)(3)(ii).

⁶ *Id.*

⁷ Waiver Request at 2-3, 5. The Port Authority states that its efforts have involved the relocation of certain facilities to other sites, on either a temporary or permanent basis, the establishment of new facilities, and planning for the reconstruction of facilities at the World Trade Center site when a suitable structure becomes available. *Id.* at 2. The Port Authority also states that it continues to make progress on the process for the restoration of facilities destroyed in the September 11, 2001 terrorist attacks and for the construction of a new building complex at the World Trade Center site. *Id.* at 2-3.

⁸ Waiver Request at 3-4.

⁹ *2002 Order*, 17 FCC Rcd at 16786 ¶ 6.

¹⁰ Our action herein does not preclude the Port Authority from requesting additional time should circumstances so warrant.

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 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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

ATTACHMENT

Table 1: Tabulation of Affected Radio Stations Authorized Under FCC Part 90

Radio Authorization Call Sign	Expiration Date	Radio Service Code	Affected Location Number	Geographic Coordinates N.Lat/W.Long (NAD83)	Frequency (MHz)
KGU999	1/14/2012	PW	1	40-42-43.4 074-00-47.5	150.99500
KGU998	1/14/2012	PW	1	40-42-43.4 074-00-47.5	151.11500
KVN780	10/23/2014	PW	2	40-42-39.4 074-00-43.5	470.56250 470.58750
KVN779	10/23/2014	PW	1	40-42-39.4 074-00-43.5	470.61250
WPDU923	11/18/2013	PW	1	40-42-41.4 074-00-43.5	453.65000

Table 2: Tabulation of Affected Radio Stations Authorized Under FCC Part 101

Radio Authorization Call Sign	Expiration Date	Radio Service Code	Affected Location Number Trsmtr	Geographic Coordinates N.Lat/W.Long (NAD83) Trs	Affected Location Number Receiver	Affected Path Number/ Segment	Frequency (MHz)
WNEE495	2/11/2009	MW	1	40-42-40.3 074-00-47.5	**	4s1	11215.00000
WNEE495	2/11/2009	MW	1	40-42-40.3 074-00-47.5	**	5s1	11685.00000
WNEE495	2/11/2009	MW	1	40-42-40.3 074-00-47.5	**	6s1	11525.00000
WPO93	12/6/2010	MW	1	40-42-43.3 074-00-46.5	**	1s1	12470.00000
WNEK376	1/7/2008	MW	1	40-42-43.3 074-00-47.5	**	1s1	23075.00000
WNEK377	1/7/2008	MW	1	40-43-52.3 074-02-37.5	2	1s1	21875.00000
WNEE496	1/6/2008	MW	1	40-46-21.3 073-53-10.4	2	2s1	10835.00000
WNEE497	1/6/2008	MW	1	40-42-14.3 074-09-15.5	2	2s1	10875.00000
WPO92	6/4/2012	MG	1	40-43-53.3 074-03-51.5	2	1s1	12210.00000
WPNI363	1/6/2009	MW	1	40-39-05.3 073-48-34.4	2	1s1	10715.00000

cc: PSHSB/PD chron file

Z. Nakazawa

G. Intoccia

T. Simmons

M. Woodfork

J. Benfaida