

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

In the matter of)
)
 AM/FM RADIO LICENSES, L.L.C.) File Nos. 0003334573, 0003334578
)
 Applications for Modification of Microwave)
 Industrial/Business Radio Pool Licenses)
 WQHP740 and WQHP743)
)

MEMORANDUM OPINION AND ORDER

Adopted: June 26, 2009

Released: June 26, 2009

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Memorandum Opinion and Order*, we address AM/FM Radio Licenses, L.L.C.’s (AM/FM) request for waiver¹ of Section 101.603(a)(7) of the Commission’s Rules² to permit AM/FM to use its Microwave Industrial/Business Pool Radio Stations WQHP740 and WQHP743 as the final RF link in connection with the delivery of broadcast programming material to the broadcast transmitter sites located at the Empire State Building and Four Times Square, respectively, in New York City. For the reasons stated below, we grant AM/FM’s Request for Waiver.

II. BACKGROUND

2. AM/FM is an indirect subsidiary of Clear Channel Communications, Inc. (CCC, and, collectively with AM/FM, Clear Channel).³ Subsidiaries of Clear Channel are licensed for broadcast radio stations that transmit from the Empire State Building and Four Times Square in New York City.⁴

3. On September 28, 2007, AM/FM was issued licenses for Microwave Industrial/Business Radio Pool Licenses WQHP740 and WQHP743 in the 10.7-11.7 GHz band (11 GHz band).⁵ On February 22, 2008, AM/FM filed the instant applications to modify those licenses to allow those licenses to be used as studio-transmitter links between its studio locations and the transmission facilities at Empire State Building and Four Times Square.⁶ No oppositions or objections were filed.

¹ See Request for Waiver of Section 101.603(a)(7), File Nos. 0003334573, 0003334578 (filed Feb. 22, 2008) (Request for Waiver).

² 47 C.F.R. § 101.603(a)(7).

³ Request for Waiver at 1.

⁴ *Id.*

⁵ See File Nos. 0003148715, 0003148774 (granted Sep. 28, 2007).

⁶ File Nos. 0003334573, 0003334578 (filed Feb. 22, 2008) (Applications).

4. Section 101.603(a)(7) of the Rules⁷ prohibits the use of the 11 GHz band as the final RF link to deliver AM/FM's broadcast signals to its transmitter sites. AM/FM states that Clear Channel has undertaken a review of frequencies typically used for studio-transmitter links, but could not find any viable frequencies for the locations in question.⁸ AM/FM notes that following the loss of the World Trade Center as a transmitting location in 2001, many broadcast stations, including a Clear Channel broadcast station, relocated their transmitters, resulting in a concentration of broadcast transmitting facilities now located at the Empire State and Four Times Square buildings.⁹ AM/FM contends that this concentration of facilities has complicated delivery of broadcast signals from station studios to these transmitting sites by taxing the usual frequencies used for studio-transmitter link operations.¹⁰

5. AM/FM submits documentation from frequency coordination firm Micronet Communications (Micronet) showing that channels in the 944-952 MHz band (948 MHz band) are not available due to potential interference with existing microwave licensees.¹¹ It also submits a study by Micronet showing that no frequencies in the 17.7-17.8 GHz band (18 GHz band) are available to AM/FM, because of potential interference with existing coordinated microwave paths that would exceed the interference protection criteria of Section 101.105 of the Commission's Rules.¹² AM/FM contends that the 23 GHz band would not be suitable because facilities in the band would experience four times more predicted outages than facilities in the 11.2 GHz band, due to rain fade and multipath induced fade.¹³ AM/FM further contends that studies such as that by Micronet do not always accurately predict the uniquely congested conditions found in Manhattan, where higher frequency bands would be even more likely to be subject to outages.¹⁴ AM/FM argues that land-line connections are subject to interruption due to infrastructure failures, such as steam pipe and electrical utility incidents, and therefore it is important that Clear Channel implement use of the licenses for digital audio broadcasts.¹⁵ AM/FM states that the requested frequencies in the 11.2 GHz band were selected based on equipment availability, adequate reliability, and spectral efficiency.¹⁶

6. AM/FM states that Clear Channel will use the licenses to ensure that its digital streams of high-definition radio are transmitted from its operating studios to the Empire State and Four Times Square broadcast transmitting facilities, thereby promoting the public interest.¹⁷ AM/FM notes that the Commission has stated it to be a priority to "foster the development of a vibrant terrestrial digital radio service for the public and to ensure that radio stations successfully implement DAB [digital audio

⁷ 47 C.F.R. § 101.603(a)(7).

⁸ Request for Waiver at 2.

⁹ *Id.* at 2-3.

¹⁰ *Id.* at 3.

¹¹ Request for Waiver, Letter from Brad Youngblood, Systems Engineer for Micronet Communications (Micronet) (dated Feb. 6, 2008) (Micronet February Path Reliability Study).

¹² Amendment (filed Jul. 22, 2008), *attaching* Letter from Brad Youngblood, Systems Engineer, Micronet Communications, Inc. (dated Jul. 18, 2008) (Micronet July Path Reliability Study). *See* 47 C.F.R. § 101.105.

¹³ Amendment at 2, *citing* Micronet July Path Reliability Study.

¹⁴ Amendment at 2.

¹⁵ Request for Waiver at 3.

¹⁶ *Id.* at 2.

¹⁷ *Id.* at 3.

broadcasting],”¹⁸ and states that grant of the requested waivers would further this priority.¹⁹ In addition, AM/FM states that Clear Channel plans to use the licenses not only for the transmission of digital broadcast material to the transmitters, but also for data connections from the transmitters to the studios and data paths for business network uses, and notes that only a portion of the microwave licenses’ bandwidth would be used for studio-transmitter link purposes.²⁰ AM/FM contends, therefore, that using the licenses as studio-transmitter links would be spectrally efficient.²¹

III. DISCUSSION

7. Section 1.925(b)(3) of the Commission’s Rules requires parties seeking a waiver to demonstrate that:

(i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or

(ii) 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.²²

The Part 101 rules were simplified and streamlined to “encourage more efficient use of the microwave spectrum by permitting more intensive use of microwave equipment,”²³ and to “lead to economies of scale in microwave equipment production and lower equipment prices to licensees.”²⁴ Section 101.603(a)(7) of the Commission’s Rules ensures that private operational fixed stations are used for private, internal purposes and prevents broadcasters from causing congestion when Part 74 Broadcast Auxiliary Service frequencies are available.

8. We conclude that AM/FM has justified a waiver under the second prong of the waiver standard. Specifically, AM/FM has established that no reasonable alternative exists to its use of frequencies in the 11.2 GHz band. In that regard, AM/FM has shown that frequencies in the 948 MHz and 18 GHz bands are not available and that path reliability in the 23 GHz band does not meet industry standards.²⁵ In light of its preexisting use of the frequencies for data network services, emergency alert system warnings, news, and weather information, and the congested spectrum environment in New York City, AM/FM has shown that its proposed use would be spectrally efficient. We also note that AM/FM is seeking to address a unique situation resulting in part from the loss of the World Trade Center. In view of the foregoing, pursuant to Section 1.925(b)(3)(ii) of the Commission’s Rules,²⁶ we conclude that grant of

¹⁸ *Id.* at 3, citing Digital Audio Broadcasting Systems and Their Impact on the Terrestrial Radio Broadcast Service, *Second Report and Order, First Order on Reconsideration and Second Further Notice of Proposed Rule Making*, 22 FCC Rcd 10344, 10346 ¶ 2 (2007).

¹⁹ Request for Waiver at 3.

²⁰ *Id.*

²¹ *Id.*

²² 47 C.F.R. § 1.925(b)(3)(i)-(ii).

²³ Common Carrier and Private Operational Fixed Services, *Report and Order*, WT Docket No. 94-148, CC Docket No. 93-2, and RM-7861, 11 FCC Rcd 13449, 13452 (1996).

²⁴ *Id.* at 13453. The simplified and streamlined rules also reduced regulatory burdens, benefiting both the public and the Commission. *Id.* at 13452.

²⁵ See Micronet February Path Reliability Study, Micronet July Path Reliability Study.

²⁶ 47 C.F.R. § 1.925(b)(3)(ii).

the requested waiver would be in the public interest. We note that AM/FM's waiver showing is similar to waivers granted to other broadcasters.²⁷ Accordingly, we believe that AM/FM should be granted a waiver of Section 101.603(a)(7)²⁸ of the Commission's Rules.²⁹

IV. ORDERING CLAUSES

9. Accordingly IT IS ORDERED that pursuant to Sections 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 waiver request filed by AM/FM Radio Licenses, L.L.C. on February 22, 2008 IS GRANTED.

10. IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL PROCESS AM/FM's pending applications, File Nos. 0003334573 and 0003334578, in accordance with this *Memorandum Opinion and Order* and the applicable Commission Rules.

11. 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

John J. Schauble
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²⁷ See Pappas Radio of California, *Memorandum Opinion and Order*, 21 FCC Rcd 13528 (WTB BD 2006); Maryland Public Broadcasting Commission, *Memorandum Opinion and Order*, 21 FCC Rcd 1647 (WTB BD 2006); Transmissions Holdings, Inc., *Order*, 14 FCC Rcd 3769 (WTB 1999).

²⁸ 47 C.F.R. § 101.603(a)(7).

²⁹ See, e.g., Pappas Radio of California, *Memorandum Opinion and Order*, 21 FCC Rcd 13528 (WTB BD 2006); Maryland Public Broadcasting Commission, *Memorandum Opinion and Order*, 21 FCC Rcd 1647 (WTB BD 2006); Transmissions Holdings, Inc., *Order*, 14 FCC Rcd 3769 (WTB 1999).