

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

In the matter of)	
)	
GREATER BOSTON RADIO, INC.)	File Nos. 0003242058, 0003242074 and
)	0003242201
Applications for New License in the Microwave)	
Industrial/Business Radio Pool)	
)	
Requests for Waiver of Section 101.603(a)(7) of)	
the Commission's Rules)	
)	

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 applications by Greater Boston Radio, Inc. (GBR) for new fixed point-to-point microwave stations in the 11 GHz band¹ and an accompanying request for waiver² of Section 101.603(a)(7) of the Commission's Rules³ to permit GBR to use the stations as the final radio frequency (RF) links in connection with the delivery of broadcast programming material to the transmitter sites of its Stations WROR(FM), Framingham; WMJX(FM), Boston; WBOS(FM), Brookline, and WTKK(FM), Boston, all in the Boston metropolitan area. For the reasons stated below, we grant GBR's Waiver Request.

II. BACKGROUND

2. GBR owns and operates five Class B FM broadcast radio stations in the Boston area.⁴ It states that, with the advent of high-definition (HD) radio, the amount of audio and data that it needs to send from studios to its various broadcaster transmitter sites has grown enormously.⁵ GBR filed the Applications and its Waiver Request on November 27, 2007.⁶ No oppositions or objections were filed.

¹ GBR proposes to operate the links on frequencies 11.605, 11.525, 11.035, and 11.115 GHz. File Nos. 0003242058, 0003242074 and 0003242201 (filed Nov. 27, 2007) (Applications).

² See Applications, Requests for Waiver of Section 101.603(a)(7) (Waiver Request).

³ 47 C.F.R. § 101.603(a)(7).

⁴ See Waiver Request at 1.

⁵ *Id.*

⁶ Applications. The Applications were accepted for filing on December 5, 2007. See Wireless Telecommunications Bureau Site-by-Site Accepted for Filing, Report No. 3636, *Public Notice* (rel. Dec. 5, 2007) at 29.

3. Section 101.603(a)(7) of the Rules⁷ prohibits the use of the 11 GHz band as the final RF link to deliver GBR's broadcast signal to its transmitter sites. GBR claims that it must rely on spectrum in the 11 GHz band to deliver the broadcast signal from its main studio location to its transmitter sites in Andover and Newton, Massachusetts, and at the Prudential Building in Boston.⁸ According to GBR and Broadcast Signal Lab, LLP (BSL), there is insufficient spectrum available in the 944-952 MHz Broadcast Auxiliary Service (BAS) band to accommodate GBR's needs.⁹ No frequencies in the 18 GHz band are available.¹⁰ GBR contends that frequencies above 21.2 GHz could not adequately support its system because of rain fade, scatter, and multi-path issues.¹¹ GBR notes that it previously attempted to use a 23 GHz link to transmit programming less than two miles from the former WMJX(FM) studio location to the Prudential Tower, but that the link was not reliable in bad weather.¹² GBR further states that it attempted to use spread-spectrum radios with multiple T1 bandwidth capabilities to transmit its signals through unlicensed spectrum in the 2.4 MHz, 5.3 MHz, and 5.8 MHz bands, but that those frequencies proved too congested to support reliable service.¹³ Finally, GBR obtained current quotes from Verizon for two protected OC-3 circuits from its studio facility to the Prudential Building, and two additional protected OC-3 circuits from its studio to its transmitter site in Newton.¹⁴ The quoted cost was \$291,000 a year under a three-year contract.¹⁵ GBR concludes that operation in the 11 GHz band would result in the most spectrally-efficient usage, which would not cause interference to other licensees, and would not suffer substantial fade due to terrain and weather factors.¹⁶

III. DISCUSSION

4. 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.¹⁷

⁷ 47 C.F.R. § 101.603(a)(7).

⁸ *Id.*

⁹ Waiver Request at 3 and Exhibit D, Statement of Rick Levy, CSRE, of Broadcast Signal Lab (Sep. 25, 2007) (BSL Statement).

¹⁰ Applications, Amendment in Response to Staff Technical Questions (filed May 2, 2008), Letter from Thu Nguyen, Spectrum Analyst, Radio Dynamics Corporation.

¹¹ Waiver Request, Statement of Robert S. Krangle, PhD (Exhibit F) at 2, Statement of Steve Hoppe, Director of Sales, Microwave Networks (Exhibit G).

¹² Waiver Request, Statement of Milford K. Smith, Jr., VP Engineering, Greater Media, Inc. (Exhibit H).

¹³ Waiver Request at 3 and Exhibit E.

¹⁴ Amendments to File Nos. 0003242058, 0003242074 and 0003242201 (filed May 2, 2008) at 1.

¹⁵ *Id.*

¹⁶ Waiver Request at 4.

¹⁷ 47 C.F.R. § 1.925(b)(3)(i)-(ii).

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,”¹⁸ and to “lead to economies of scale in microwave equipment production and lower equipment prices to licensees.”¹⁹ 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.

5. We conclude that GBR has justified a waiver under the second prong of the waiver standard. GBR has shown that no reasonable alternative exists to its use of frequencies in the 11 GHz band. Specifically, GBR has shown that BAS frequencies in the 944-952 MHz band are not available,²⁰ that no other frequencies are available that would provide a reliable communications link between its main studio and its transmitter sites,²¹ and that use of landline links would not likely be an economical alternative.²² Furthermore, in light of the fact that GBR intends to use the stations for data network services,²³ we believe that allowing GBR to use the same stations to transmit programming to the transmitter site would be spectrally efficient. In view of the foregoing, pursuant to Section 1.925(b)(3)(ii) of the Commission’s Rules,²⁴ we conclude that grant of the waiver would be in the public interest. We note that GBR’s waiver showing is very similar to waivers granted to other broadcasters.²⁵ Accordingly, we believe that GBR should be granted a waiver of Section 101.603(a)(7)²⁶ of the Commission’s Rules.

IV. ORDERING CLAUSES

6. Accordingly IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission’s Rules, 47 C.F.R. § 1.925, that the waiver requests filed by Greater Boston Radio, Inc. on November 27, 2007 ARE GRANTED.

¹⁸ 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).

¹⁹ *Id.* at 13453. The simplified and streamlined rules also reduced regulatory burdens, benefiting both the public and the Commission. *Id.* at 13452.

²⁰ See Waiver Request, Exhibit D.

²¹ See Paragraph 3, *supra*.

²² See Amendments to File Nos. 0003242058, 0003242074 and 0003242201 (filed May 2, 2008) at 1. While it is readily apparent that \$291,000 per year, the price quoted by Verizon for the redundant OC-3 links specified by GBR, would represent a significant burden for GBR, it is not entirely clear that GBR needs the amount of bandwidth that OC-3 circuits would provide.

²³ Waiver Request at 1.

²⁴ 47 C.F.R. § 1.925(b)(3)(ii).

²⁵ 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).

²⁶ 47 C.F.R. § 101.603(a)(7).

7. IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL PROCESS Greater Boston Radio, Inc.'s applications (File Nos., 0003242058, 0003242074 and 0003242201) in accordance with this *Memorandum Opinion and Order* and the applicable Commission Rules.

8. 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
Deputy Chief, Broadband Division
Wireless Telecommunications Bureau