

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

In the Matter of Application of	)	
	)	
BRUBAKER INC.	)	File No. 0003159873
	)	
to Modify the License for Station WPYR587,	)	
Salisbury, Pennsylvania	)	

**ORDER**

**Adopted: March 17, 2009**

**Released: March 18, 2009**

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

1. We have before us an application filed by Brubaker Inc. (Brubaker) to modify its license for 470-512 MHz Industrial/Business Pool Station WPYR587, Salisbury, Pennsylvania.<sup>1</sup> Specifically, Brubaker seeks to add a second base station at Lancaster, Pennsylvania, and increase the number of authorized mobile units from seventy-five to ninety. Brubaker requests a waiver of Section 90.305(a) of the Commission's Rules,<sup>2</sup> because the proposed Lancaster site is more than fifty miles from the geographic center of the Philadelphia, Pennsylvania urbanized area.<sup>3</sup> For the reasons set forth below, we deny Brubaker's request for waiver.

2. Pursuant to Section 90.305(a), base stations operating in the 470-512 MHz band (which also constitutes television channels 14 through 20) must be located within fifty miles of the geographic center of the urbanized areas listed in Section 90.303 of the Commission's Rules.<sup>4</sup> Brubaker, a contracting and repair company, seeks to improve its communications coverage in the western part of its service area by adding a base station at a site that it owns in Lancaster.<sup>5</sup> Because the Lancaster site is approximately 64.3 miles from the geographic center of the Philadelphia urbanized area, Brubaker requests a waiver of Section 90.305(a).

3. A request for a rule waiver in the Wireless Telecommunications Services may be granted if it is shown that (a) the underlying purpose of the rule 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 (b) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>6</sup> We conclude that Brubaker has failed to provide a sufficient showing that grant of the requested waiver is warranted.

4. The purpose of the fifty-mile limitation is to protect over-the-air broadcast operations on television channels 14-20 from harmful interference by private land mobile radio (PLMR) stations

<sup>1</sup> FCC File No. 0003159873 (filed Aug. 31, 2007 and amended Feb. 8, 2008).

<sup>2</sup> 47 C.F.R. § 90.305(a).

<sup>3</sup> See Attachment to FCC File No. 0003159873 (Waiver Request).

<sup>4</sup> 47 C.F.R. §§ 90.303, 90.305(a).

<sup>5</sup> See Waiver Request at 1.

<sup>6</sup> 47 C.F.R. § 1.925(b)(3).

operating in the 470-512 MHz band.<sup>7</sup> Section 90.305 provides that 470-512 MHz band PLMR base stations may be located only within fifty miles of the geographic centers of certain cities, and associated mobile units shall operate within thirty miles of the base station, thus creating a circular area with a radius of eighty miles within which PLMR stations may operate without interference from television stations.<sup>8</sup> The Commission has stated that it is more inclined to consider favorably requests for waiver of Section 90.305(a) when the applicant proposes to contain its area of operations within this eighty-mile area, because that operation likely would not have an adverse impact on television stations and because television stations are required to protect land mobile operations within this area.<sup>9</sup> Our engineering analysis indicates that Brubaker's proposed service contour will extend approximately 29.8 miles from the proposed base station.<sup>10</sup> Given that the proposed base station is 64.3 miles from the geographic center of Philadelphia, the proposed operating area extends 94.1 miles from Philadelphia. Therefore, the service area for the proposed base station would not remain within the eighty-mile area where land mobile operations are primary, and Brubaker would fail to fully protect all television stations that are entitled to protection. We therefore conclude that granting its waiver request would frustrate the underlying purpose of the rule.<sup>11</sup> Nor does Brubaker explain why the targeted area cannot be served by means other than the proposed facility, such as by using a different frequency band.<sup>12</sup>

5. 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, the Request for Waiver filed on August 31, 2007 by Brubaker Inc. IS DENIED, and application FCC File No. 0003159873 SHALL BE PROCESSED in accordance with this *Order* and the Commission's Rules.

6. 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  
Wireless Telecommunications Bureau

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<sup>7</sup> See *Goosetown Enterps., Inc., Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12792 ¶ 2 (2001) (*Goosetown*) (citing 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)).

<sup>8</sup> 47 C.F.R. § 90.305(a), (b).

<sup>9</sup> See *Goosetown*, 16 FCC Rcd at 12797 ¶ 13 (2001).

<sup>10</sup> This is based on a 39 dBu service contour, see 47 C.F.R. §§ 90.187, 90.205, and Brubaker's proposed effective radiated power (fifty watts) and antenna height above mean sea level (100.3 meters). See FCC File No. 0003159873.

<sup>11</sup> Dismissal of the instant application is without prejudice to the filing of a new application and waiver request that does meet the *Goosetown* standard, if Brubaker concludes that such a facility would address its communications needs.

<sup>12</sup> We note that Brubaker already is licensed to operate on a channel outside the 470-512 MHz band at a location in Lancaster. See license for Call Sign WPXB267.