

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

In the Matter of)	
)	
TOWNSHIP OF WAYNE, NEW JERSEY)	File Nos. 0003959144, 0003959145
)	
Request for Waiver of Sections 90.305(a),)	
90.307(d), and 90.313(c) of the Commission's)	
Rules)	

ORDER

Adopted: August 11, 2010

Released: August 11, 2010

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

I. INTRODUCTION

1. The Township of Wayne, New Jersey (Wayne, or the Township) filed two applications and an associated waiver request¹ for authority “to implement a new seven-channel, four-site, P25 trunked system, and a two-channel, four-site, conventional system” by reusing its existing frequency assignments in the TV Channels 14, 15, and 19 bands at the new transmitter sites.² Specifically, the Township proposes to use its frequency assignments in TV Channels 14 and 15 for trunked operations and its frequency assignments in TV Channel 19 for conventional operations. Wayne seeks waiver of Sections 90.305(a), 90.307(d) and 90.313(c) of the Commission’s rules,³ to use these frequencies pursuant to Section 1.925.⁴ By this Order, we grant Wayne’s Waiver Request as conditioned herein.

II. BACKGROUND

2. Wayne currently operates on nine ‘T-Band’ channels under call signs WPYW893, KZV273, WQEK857, WPSH811, and WIL599, and “[a]ll of the channels operate in the conventional, non-trunked mode.”⁵ Wayne states that it “is currently using an antiquated mix of radio equipment and frequencies that [make] interoperability impossible.”⁶ Therefore, the Township proposes to implement a new seven-channel, four-site, P25 trunked system, and a two-channel, four-site conventional system.⁷

¹ See File Nos. 0003959144 and 0003959145 (filed Sept. 8, 2009, amended Oct. 14, 2009) and attached Supplemental Statement and Waiver Request (Waiver Request). See also Incumbent Station and Contour Studies attached to the Waiver Request (Technical Study).

² Waiver Request at 1. See Frequency Information pages on FCC 601 Main Form.

³ 47 C.F.R. §§ 90.305(a), 90.307(d), and 90.313(c). See Waiver Request at 3-6.

⁴ 47 C.F.R. § 1.925; Waiver Request at 5.

⁵ Waiver Request at 1.

⁶ *Id.* at 5.

⁷ *Id.* at 1.

Wayne states that “the new system will provide both needed coverage and interoperability between all public safety agencies.”⁸

3. TV Channel 19 is allocated to the Private Land Mobile Radio Service (PLMRS) in the Philadelphia, PA urbanized area, and base stations may be authorized within 80 kilometers of Philadelphia’s geographic center as listed in the rules.⁹ Because Wayne is located more than 80 kilometers from Philadelphia, Wayne requests a waiver of Section 90.305(a)¹⁰ to build new sites that would operate on its frequency assignments in the TV Channel 19 band.¹¹ Wayne also requires waiver of Section 90.307(d)¹² because its proposed TV Channel 15 operations are short-spaced less than 145 kilometers to adjacent TV Channel 16 Station WNEP-TV, and its TV Channel 19 operations are short-spaced to adjacent TV Channel 18 Station WMBC-DT. Finally, Wayne seeks waiver of Section 90.313(c)¹³ because distances for certain locations on frequencies 472.1500, 476.4500, 501.0625, and 500.8125 MHz are short-spaced less than 64 kilometers to co-channel incumbent PLMRS stations.¹⁴

4. On May 27, 2010, the Public Safety and Homeland Security Bureau (Bureau) placed Wayne’s waiver request and associated applications on public notice.¹⁵ The Bureau received no comments addressing the merits of the application and waiver request were filed in response to the *Public Notice*.

III. DISCUSSION

5. Section 1.925 of the Commission’s rules provides that to obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: “(i) [t]he 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 waiver would be in the public interest; or (ii) [i]n 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.”¹⁶ Applicants seeking a waiver face a high hurdle

⁸ *Id.* at 5.

⁹ See 47 C.F.R. §§ 90.303, 90.305.

¹⁰ 47 C.F.R. § 90.305(a).

¹¹ See *id.* Wayne notes that its existing station operating on Channel 19 band frequencies, WIL599, “was granted based on a waiver of Sections 90.305(a) and 90.307(d), granted 08/17/1993.” Waiver Request at 5. We note that, because Wayne is within 80 kilometers of New York, NY/NE NJ, it does not require a waiver of Section 90.305(a) with respect to new sites that would operate on frequencies in the TV Channel 14 and 15 bands.

¹² 47 C.F.R. § 90.307(d).

¹³ 47 C.F.R. § 90.313(c).

¹⁴ See Waiver Request at 3-5. See also Technical Study at Attachments 5, 7, 10 and 12.

¹⁵ See Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed by Township of Wayne, New Jersey to Implement New, Multi-Site, Trunked, and Conventional Public Safety Communications System Using its Existing Frequency Assignments, *Public Notice*, 25 FCC Rcd 5893 (PSHSB 2010).

¹⁶ 47 C.F.R. § 1.925(b)(3).

and must plead with particularity the facts and circumstances that warrant a waiver.¹⁷ We evaluate the waiver request using the first prong of Section 1.925 below.

6. *Section 90.305.* Section 90.305(a) requires PLMRS base stations operating in the 470-512 MHz band to be located within 50 miles (80 kilometers) of the geographic centers of urbanized areas listed in Section 90.303.¹⁸ In addition, Section 90.305(b) permits mobile units to operate within 30 miles (48 kilometers) of the associated base station.¹⁹ The Commission established the mileage restrictions in this rule, combined with other minimum distance separation criteria between PLMRS stations and TV stations, to protect over-the-air broadcast operations on TV Channels 14-21 located outside of the designated urbanized areas from harmful interference from PLMRS systems operating in the 470-512 MHz band.²⁰ In 2001, the Commission observed that combining the parameters of Sections 90.305(a) and (b) creates a circular area with an 80 mile (128 kilometer) radius where PLMRS stations may operate on a primary basis.²¹ At that time, the Commission determined that “new and pending applicants seeking a waiver of Section 90.305 whose area of operation extends outside the 80-mile area could negatively impact the availability of DTV spectrum for television stations.”²² The Commission has stated that in order for a PLMRS provider to obtain a waiver to operate outside the 80-mile/128-kilometer radius of primary PLMRS operation, it must accept secondary status to current and future full power and low power TV stations.²³ The Commission also stated that “[a]ny applicant seeking a waiver to operate outside the 80-mile area must demonstrate that it would provide full protection to any existing full-power or low-power TV station, including allotments and pending applications for such statements, at the time the waiver is filed.”²⁴

7. Distances between Wayne’s proposed sites and the Philadelphia city center coordinates range from 128.967 (80.136 miles) to 137.926 kilometers (85.703 miles). Because Wayne’s proposed operations on the frequencies would not be contained within the 80-mile area where land mobile operations are primary, Wayne can only obtain secondary status with respect to current and future full power and low power TV stations. Accordingly, we implement a secondary status condition on Wayne’s new facilities for TV Channel 19 band frequencies. Regarding the requirement that the waiver applicant must demonstrate that it would provide full protection to any existing full-power or low-power TV station, we find that Wayne satisfies this requirement because Wayne entered into a Memorandum of Understanding with the only affected TV licensee, Mountain Broadcasting Corporation, licensee for TV

¹⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *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).

¹⁸ 47 C.F.R. §§ 90.305(a), 90.303.

¹⁹ 47 C.F.R. § 90.305(b).

²⁰ See Amendment of Parts 2, 89, 91, and 93; geographic reallocation of UHF-TV Channels 14 through 20 to the land mobile radio services for use within the 25 largest urbanized areas of the United States; Petition Filed by the Telecommunications Committee of the National Association of Manufacturers To Permit Use of TV Channels 14 and 15 by Land Mobile Stations in the Los Angeles Area, Docket No. 18261, *First Report and Order*, 23 FCC 2d 325, 342-343 ¶¶ 42, 46 (1970).

²¹ See *Goosetown Enterprises, Inc., Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12795 ¶ 9 (2001) (*Goosetown*).

²² *Goosetown*, 16 FCC Rcd at 12797 ¶ 13.

²³ See *id.*

²⁴ *Id.*

Station WMBC-DT.²⁵ Finally, we note that one of Wayne's existing call signs, Station WIL599, operates on TV Channel 19 band frequencies and was authorized by waiver of Sections 90.305(a) and 90.307(d) on August 17, 1993.²⁶ The distance between WIL599 existing site and Philadelphia city center coordinates is 135.975 kilometers (84.490 miles), on the same order as the distances for the proposed sites. Given these circumstances, we conclude that the underlying purpose of Section 90.305 would not be served or would be frustrated by application to the present case.

8. *Section 90.307(d).* Section 90.307(d) requires that PLMRS base stations be separated from adjacent channel TV stations by at least 90 miles (145 kilometers).²⁷ The purpose of Section 90.307(d) is "to protect adjacent channel TV stations from interference caused by PLMRS mobile units operating in or near the TV station's coverage area."²⁸ As noted above, Wayne's proposed TV Channel 15 operations are short-spaced less than 145 kilometers to adjacent TV Channel 16 Station WNEP-TV, and its TV Channel 19 operations are short spaced to adjacent TV Channel 18 Station WMBC-DT.²⁹ With regard to the proposed facilities on TV Channel 19 band frequencies, Wayne submitted a Memorandum of Understanding with Mountain Broadcasting Corporation.³⁰ Based on the terms of the Memorandum of Understanding, we conclude that Wayne may operate short-spaced to Station WMBC-DT.

9. Regarding Wayne's application for facilities on TV Channel 15 band frequencies, Wayne argues that "a waiver of Section 90.307(d) is no longer required" since WNEP-TV vacated TV Channel 16 and moved to TV Channel 49 for digital television (DTV) operations.³¹ However, we note that the rule that requires protection of certain analog stations is still in effect,³² and therefore, licensees and applicants for PLMRS stations authorized under Part 90 of the Commission's rules in the 470-512 MHz band must continue to adhere to existing rules regarding interference protection to broadcast television (TV) stations, notwithstanding the completion of the DTV transition.

10. Section 90.307(e) of the Commission's rules cites the Commission's publication "TV stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz," which lists the TV stations entitled to protection,³³ including TV Station WNEP-TV. The Commission has stated that "any waiver request must demonstrate that ... affected adjacent channel TV

²⁵ See File No. 0003959144, attached Memorandum of Understanding, signed by Mayor Christopher P. Vergano, Wayne Township, and Joon S. Joo, President, Mountain Broadcasting Corporation (dated July 20, 2009) (Memorandum of Understanding).

²⁶ See Waiver Request at 4. See also license for Station WIL599.

²⁷ See 47 C.F.R. § 90.307(d).

²⁸ County of Dauphin, Pennsylvania, *Order*, 22 FCC Rcd 8628, 8631 ¶ 10 (PSHSB PD 2007).

²⁹ See *Supra* footnote 12.

³⁰ See Memorandum of Understanding.

³¹ See File No. 0003959145, attached "Response to Return Letter Dated October 2, 2009, File Number 0003959145, Wayne, Township of" at 1.

³² See 47 C.F.R. § 90.307(e).

³³ See *id.*; "TV stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz" (1974). An amended version of this publication is attached to the Commission's Public Notice, Private Land Mobile Operations in the 470-512 MHz Band, *Public Notice No. 20291* (rel. Oct. 22, 1991) (*1991 Public Notice*).

stations would receive 0 dB protection at their Grade B contours. Additionally, mobile and control stations, associated with base stations located less than the required separation from an adjacent channel TV station, may not operate within 60 miles of that TV station.”³⁴ Wayne notes that “WPSH811 was granted based on a waiver of Section 90.307(d), granted May 1, 2001, to allow land mobile and associated mobile units to operate less than 145 km from affected television station WNEP.”³⁵ In that case, Wayne had demonstrated that Station WNEP-TV would receive 0 dB protection at its Grade B contour from WPSH811.³⁶ Staff performed a contour analysis with respect to the instant application and likewise determined that Station WNEP-TV would receive greater than 0 dB protection from the proposed operations. Next, staff determined that the closest distance between TV Station WNEP-TV and Wayne’s mobile units at their maximum excursion from location 2 on the channel 14 & 15 application³⁷ is approximately 67 miles (108 kilometers). Thus, mobiles would not operate within 60 miles of Station WNEP-TV. Accordingly, we conclude that Wayne satisfies the technical criteria established in the 1991 *Public Notice* to merit a waiver of Section 90.307(d) with respect to TV Station WNEP-TV. Therefore, we conclude that the underlying purpose of Section 90.307(d) would not be served by application to the present case.

11. *Section 90.313(c)*. Wayne states that “Section 90.313(c) permits a channel to be re-licensed at distance of 64 km or greater.”³⁸ Wayne seeks waiver of Section 90.313(c) because at two of its locations, four of the proposed frequencies (472.1500, 476.4500, 501.0625, and 500.8125 MHz) are short-spaced less than 64 kilometers to four co-channel incumbent PLMRS stations.³⁹ In support of its request, Wayne obtained letters of concurrence from the four incumbents.⁴⁰ Based on the letters of concurrence, we conclude that the underlying purpose of 90.313(c) would not be served or would be frustrated by application to the present case.

12. *Public Interest*. In addition to finding that the relevant rules would not be undermined by a grant of the waiver request, our analysis under the first prong of the Section 1.925 waiver standard requires a finding that grant of the waiver would be in the public interest.⁴¹ Based upon the record, we find Wayne has demonstrated that grant of a waiver would be in the public interest. We agree with Wayne that “[g]ranting of the waivers will be in the public interest as the [sites] are needed in support of protection of life and property for the citizens of Wayne Township.”⁴² We also find it significant that the

³⁴ 1991 *Public Notice* at 1.

³⁵ Waiver Request at 5. *See also* license for Station WPSH811.

³⁶ *See* File No. 0000377951, attached Letter from JoAnne Hodges, Staff Advisor, Association of Public-Safety Communications Officials-International, Inc. to Federal Communications Commission (dated Apr. 16, 2001).

³⁷ *See* File No. 0003959145.

³⁸ Waiver Request at 1.

³⁹ *See* Waiver Request at 3-5. *See also* Technical Study at attachment 5, 7, 10 and 12.

⁴⁰ Wayne’s proposed short-spaced frequencies include 472.1500, 476.4500, 501.0625 and 500.8125 MHz. *See* File No. 0003959144, attached Letter from Kenneth Kersch, Information Manager, South Brunswick Township (Feb. 27, 2009) (WIJ458) and Letter from Division of Police, Township of Marlboro to Lt. Wayne Loughheed, Wayne Police Department (March 23, 2009) (WIM583); File No. 00039591445, Letter from Martin Horvath, Chief of Police, Borough of Jamesburg, New Jersey (March 3, 2009) (WQJG517), and Letter from Richard F. T., System Engineer, Borough of Spotswood, New Jersey (March 12, 2009) (WPXT615).

⁴¹ *See* 47 C.F.R. § 1.925(b)(3)(i).

⁴² *See* File No. 0003959144, attached “Response to Return Letter Dated October 2, 2009, File Number 0003959144, Wayne, Township of” at 1.

proposed operation will allow Wayne to implement a new system that will “provide [the] needed coverage and interoperability between all public safety agencies”⁴³ without a need for additional frequencies. We therefore find that grant of the waiver request is in the public interest.

IV. CONCLUSION

13. Based on the record before us, including the Memorandum of Understanding with Mountain Broadcasting Corporation, we grant Wayne’s request for waiver subject to the following special conditions on its application for TV Channel 19 band frequencies:⁴⁴

- (i) Wayne will have responsibility to cure, at its sole expense, all interference suffered by WMBC-DT’s viewers as a result of its operations;
- (ii) If Wayne cannot cure such interference, Wayne must immediately reduce or terminate its operations, to the extent necessary to cure such interference;
- (iii) The Township must accept all interference from WMBC-DT;⁴⁵ and
- (iv) All operations are secondary to current and future full power and low power TV stations.

V. ORDERING CLAUSES

14. 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(b)(3), that the Request for Waiver, as amended, associated with File Nos. 0003959144 and 0003959145 filed by the Township of Wayne, New Jersey, IS GRANTED, subject to the conditions specified herein.

15. IT IS FURTHER ORDERED that File Nos. 0003959144 and 0003959145 SHALL BE PROCESSED consistent with this Order and the Commission’s rules.

16. 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

⁴³ Waiver Request at 5.

⁴⁴ See File No. 0003959144. The conditions herein neither alter nor apply to Wayne’s previously authorized facilities operating on TV Channel 19 band frequencies under Station WIL599.

⁴⁵ See Memorandum of Understanding at 2.