

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

In the Matter of)	
)	
TOWNSHIP OF WOODBRIDGE, NEW JERSEY)	File No. 0004182796
)	
Request for Waiver of Section 90.303(c) of the)	
Commission's Rules)	

ORDER

Adopted: August 13, 2010

Released: August 13, 2010

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

I. INTRODUCTION

1. The Township of Woodbridge, New Jersey (Woodbridge, or the Township), filed an application¹ and associated waiver request for authority to use, for public safety communications purposes, “six frequenc[y] pairs from the 482-488 MHz segment,” for a trunked public safety communications system.² Section 90.303(c) of the Commission’s rules provides that the band 482-488 MHz (TV Channel 16) is available for use by eligibles in the Public Safety Radio Pool in certain specified counties within the New York City metropolitan area.³ Because Woodbridge is located in Middlesex County, New Jersey,⁴ which is not one of the areas specified by Section 90.303(c), Woodbridge seeks a waiver of this rule,⁵ pursuant to Section 1.925.⁶ Also, Woodbridge needs a waiver of Section 90.313(c) of the Commission’s rules,⁷ because the Township’s proposed base stations are located less than 64 kilometers from two co-channel, incumbent public safety licensees. By this Order, we grant the Waiver Request on a conditional basis as discussed herein.

II. BACKGROUND

2. The Township states that “[o]n December 5, 2008 the Commission granted Woodbridge’s request to be licensed on fifteen frequency pairs in the channel 20 television band (506-512 MHz).”⁸ The

¹ See File No. 0004182796 (filed March 22, 2010 by the Police Department on behalf of the Township), attachment entitled, “Application and Waiver Request of Woodbridge Township, New Jersey” (Waiver Request).

² Waiver Request at 1.

³ See 47 C.F.R. § 90.303(c). The areas are “New York City; Nassau, Suffolk, and Westchester counties in New York State; and Bergen County, New Jersey.” *Id.* The Township of Woodbridge is located in Middlesex County, New Jersey.

⁴ See Waiver Request at 3.

⁵ See *id.* at 9.

⁶ 47 C.F.R. § 1.925.

⁷ 47 C.F.R. § 90.313(c).

⁸ Waiver Request at 1. See Township of Woodbridge, *Order*, 23 FCC Rcd 17406 (PSHSB PD 2008), and licenses for call signs WQJS363 and WQJS365.

Township asserts that the “frequencies are the foundation of Woodbridge’s new trunked land mobile system intended to serve police, fire and emergency services and other government responsibilities of Woodbridge and those of adjacent municipalities.”⁹ According to Woodbridge, “[t]he system was completed in late summer 2009” with an “approximate cost [of] \$10 million.”¹⁰

3. The Township states that “[d]uring system startup and optimization, intermittent interference was identified.”¹¹ Woodbridge “retained experts to identify the type and strength of the interference” and found that “the source of the interference is the digital signal from television (TV) channel 20 station in Waterbury, Connecticut (WTXX).”¹² The Township contends that “[t]he interference is attributed to ducting ...,” which “disables Woodbridge’s system for an unacceptable periods of time for police, fire and emergency response to rely on” because “[t]he network’s portable radios are unable to communicate back to the system.”¹³ The Township’s “radio engineering consultant and Motorola, Inc. examined alternatives to filter or otherwise overcome the interference” without success.¹⁴ Woodbridge contends that its “\$10 million investment in radio system infrastructure is now stranded.”¹⁵

4. The Frequency Advisor of the Association of Public-Safety Communications Officials, International, Inc. (APCO) reports that “there are no channels in the VHF, UHF, 470 MHz, and 800 [MHz] bands ... available to meet the Township’s needs.”¹⁶ Woodbridge also states that “[c]hannels in the 700 MHz public safety band were seriously considered.”¹⁷ However, “[t]he Region 8 700 MHz plan provides agencies in Middlesex County eight 25 kHz channels.”¹⁸ Woodbridge asserts that “[t]he number of state, regional and local agencies within the County is large; demand for spectrum resources continues to exceed supply.”¹⁹ Woodbridge contends that “[t]here is no realistic opportunity for Woodbridge to obtain adequate capacity.”²⁰ Woodbridge continues, “[m]ore significantly, Woodbridge’s system was

⁹ Waiver Request at 1-2.

¹⁰ *Id.* at 2.

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ See File No. 0004182796, attached Letter from Lieutenant Anthony Melia, Essex County Sheriff’s Office, NJ Frequency Advisor, Association of Public-Safety Communications Officials, International, Inc., to William Heinzelman, Township of Woodbridge Police Department (Feb. 28, 2010).

¹⁷ Waiver Request at 8.

¹⁸ *Id.*, citing FCC Regional Planning Committee 8, Public Safety Communications Plan for the 769-775 and 799 to 805 MHz bands, filed in WT Docket 02-378 (April 24, 2008) (Region 8 Plan), Appendix I at page 117.

¹⁹ Waiver Request at 8.

²⁰ *Id.*

designed and deployed to use UHF spectrum.”²¹ Woodbridge concludes, “[t]he cost of now changing the infrastructure to 700 MHz is prohibitive.”²²

5. The Township seeks “[t]he Commission’s approval of this application for channel 16 frequencies [to] allow Woodbridge to commence operations of the new system.”²³ Woodbridge asserts that it “will return the channel 20 frequencies to the Commission as soon as the replacement substitute frequencies are deployed and operating effectively.”²⁴

6. Woodbridge states that its waiver request “is limited to that part of section 90.303(c) that permits operations in New York City, Nassau, Suffolk and Westchester Counties, New York and Bergen County, New Jersey” because the Township “is located in Middlesex County, New Jersey.”²⁵ Despite the exclusion of Middlesex County from the rule, Woodbridge notes that its location is “directly adjacent to the Borough of Staten Island in New York City, where 482-488 MHz land mobile operations are authorized.”²⁶ Woodbridge also provides a technical analysis as support to its assertion that its operations “will conform to all technical parameters detailed in section 90.303(c).”²⁷

7. Under Section 90.313(c), frequencies that are fully loaded with mobile units are not available for assignment to other users in the same area on a shared basis within a distance of 64 kilometers (40 miles) from the location of base stations authorized on that pair.²⁸ Woodbridge is located less than 64 kilometers from co-channel, fully-loaded licensees Nassau County Police Department (Nassau County) and City of New Rochelle, New York (New Rochelle).²⁹ Therefore, Woodbridge needs a waiver of Section 90.313(c). However, Woodbridge obtained conditional letters of concurrence from Nassau County and New Rochelle.³⁰

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ *Id.*

²⁵ *Id.* at 5. See 47 C.F.R. § 90.303(c).

²⁶ Waiver Request at 5.

²⁷ *Id.* at 5. See also File No. 0004182796, attachment entitled, “Protection Criteria of FCC Rules Section 90.303(c) Operation on TV Channel 16 in the New York/New Jersey Metropolitan Area for the Township of Woodbridge, New Jersey” (Technical Analysis) (purporting to demonstrate how its operations will comply with rule provisions regarding mobile area of operations, antenna heights and mobile and base station power limitations).

²⁸ Section 90.313(c) states in relevant part that “[a] frequency pair may be reassigned at distances of 64 km. (40 mi.), ... or more from the location of base stations authorized on that pair without reference to loading at the point of original installation.” 47 C.F.R. § 90.313(c).

²⁹ Specifically, Public Safety and Homeland Security Bureau staff determined that Woodbridge is located 58.5 kilometers from Nassau County Station WIM212 and 53.3 kilometers from New Rochelle Station WPJS241.

³⁰ See File No. 0004182796, attached Letter from Lieutenant Thomas M. Golder, Radio Office Supervisor, Nassau County Police Department, to Federal Communications Commission (dated Jan. 18, 2010) (Nassau County Letter) and Letter from Capt. Kevin S. Kealy, Commanding Officer, Staff Services Commander, City of New Rochelle, New York, to Federal Communications Commission (dated Feb. 16, 2010) (New Rochelle Letter).

8. On March 29, 2010, the Public Safety and Homeland Security Bureau (Bureau) placed Woodbridge's waiver request and associated application on public notice.³¹ The Bureau sought "comment on whether the 700 MHz public safety band would provide a viable alternative, particularly since the digital transition date has passed and in the light of the Commission's actions to facilitate a 700 MHz nationwide, interoperable broadband public safety network."³² The Bureau also sought comment on whether the Township would "be able to complete its proposed construction and improve interoperability by using frequencies in the 700 MHz public safety band, rather than using the television T band frequencies."³³ The Bureau received one comment from Motorola, Inc. (Motorola) in support of Woodbridge's request,³⁴ and no comments were filed in opposition. Woodbridge filed reply comments reiterating its request for the waiver.³⁵

9. Motorola states that "[a]s a leading supplier of communications equipment to public safety" it "is familiar with the challenges faced by public safety entities in obtaining sufficient spectrum to meet their needs."³⁶ Furthermore, Motorola states that Woodbridge is being faced by "inadequacy of its current system, the serious deficiencies it presents to emergency response, its inability to conform to the Commission's narrowband technology mandate, [and] the lack of any available spectrum."³⁷ Motorola argues that "[g]iven the high demand for spectrum in the New York City and surrounding area, the Region 8 700 MHz plan provides Middlesex County with only eight 25 kHz channels for public safety."³⁸ Motorola states, "[i]t is unlikely that additional channels will become available in the foreseeable future."³⁹ Motorola continues, "[i]t is therefore not realistic to expect that the Township would obtain sufficient capacity in this band."⁴⁰ Motorola asserts that "allowing the Township to operate on Channel 16 will enable interoperability..." as "[t]he Commission has repeatedly stated that interoperability among public safety networks is a critical policy goal."⁴¹ Motorola concludes that "[t]he issue at hand is resolving interference," and "the use of frequencies on TV Channel 16 would best serve

³¹ See Public Safety and Homeland Security Bureau Seek Comment on Request for Waiver Filed by the Township of Woodbridge, New Jersey to Operate a Trunked Public Safety Communications System Using Frequencies in the Television Channel 16 (482-488 MHz) Band, *Public Notice*, 25 FCC Rcd 3184 (PSHSB 2010) (*Public Notice*).

³² *Id.* at 3-4, *citing* Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229; Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communications Requirements through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*700 MHz Second Report and Order*).

³³ *Public Notice* at 3-4.

³⁴ See Comments of Motorola, Inc. (filed April 19, 2010) (Motorola Comments).

³⁵ See Reply Comments of the Township of Woodbridge, New Jersey (filed April 29, 2010).

³⁶ Motorola Comments at 2.

³⁷ *Id.* at 2-3, *citing* Waiver Request at 3.

³⁸ *Id.* at 5.

³⁹ *Id.*

⁴⁰ *Id.*

⁴¹ *Id.* at 3, *citing* Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Notice of Proposed Rulemaking*, 12 FCC Rcd 14141, ¶ 8 (1997) ("interoperability is critical to coordination of public safety efforts at all levels"); Report to Congress On the Study to Assess Short-Term and Long-Term Needs for Allocations of Additional Portions of the Electromagnetic Spectrum for Federal, State and Local Emergency Response Providers, 14 FCC Rcd 7772 (Dec. 19, 2005) (noting that interoperability is "critical to public safety").

the needs of the Township's public safety network,"⁴² therefore "[g]rant of the requested waiver will preserve the Township's investment and result in 'critical improvements to emergency response.'"⁴³

III. DISCUSSION

10. 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."⁴⁴ Applicants seeking a waiver face a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁴⁵ We evaluate the waiver request using the first prong of Section 1.925 below.

11. *Section 90.303(c)*. Woodbridge states that "Section 90.303(c) of the Commission's rules provides that frequencies within TV channel 16, 482-488 MHz, are available for Public Safety Radio Pool eligible agencies in the New York Metropolitan area."⁴⁶ Woodbridge, however, requires a waiver of Section 90.303(c) because its proposed sites would not be located within one of the permitted geographic areas specified in the rule. The limitations in Section 90.303(c) originate from the geographic locations of the New York Police Department (NYPD) and public safety entities comprising the New York Metropolitan Advisory Committee (NYMAC).⁴⁷ We find that the underlying purpose of these geographic limitations is to permit all public safety agencies in NYPD and NYMAC's areas to operate on TV Channel 16 spectrum, subject to "certain requirements ... that are necessary in order to protect the broadcast television service."⁴⁸ Because Woodbridge's location is "directly adjacent to the Borough of Staten Island in New York City, where 482-488 MHz land mobile operations are authorized,"⁴⁹ we conclude that granting Woodbridge's request for waiver would result in only a modest expansion of the permissible area for PLMR operations on TV Channel 16. We have reviewed the Township's technical showings and verified that the proposed base station antenna heights and effective radiated power values will conform to all technical limitations in Section 90.303(c). Therefore, we conclude that the underlying purpose of Section 90.303(c) would not be served by application to the present case.⁵⁰

⁴² *Id.* at 3, 6.

⁴³ *Id.* at 3, *citing* Waiver Request at 6.

⁴⁴ 47 C.F.R. § 1.925(b)(3).

⁴⁵ *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).

⁴⁶ Waiver Request at 3.

⁴⁷ *See* Amendment of Parts 2, 73, 74 and 90 of the Commission's Rules to Permit New York City Metropolitan Area Public Safety Agencies to Use Frequencies at 482-488 MHz, ET Docket No. 03-158, MB Docket No. 03-159, *Notice of Proposed Rulemaking*, 18 FCC Rcd 15014, 15025, Appendix B, Report of the Police Department of the City of New York (2003).

⁴⁸ *Channel 16 Report and Order*, 19 FCC Rcd at 6726 ¶ 19.

⁴⁹ Waiver Request at 5.

⁵⁰ *See* 47 C.F.R. § 90.303(c).

12. *Section 90.313(c)*. We find that the underlying purpose of Section 90.313(c)'s distance separation requirement is to protect licensees that meet the loading requirements of Section 90.313 from co-channel interference. As we mentioned above, Woodbridge obtained conditional letters of concurrence from Nassau County and New Rochelle.⁵¹ Nassau County states, "[w]e do not anticipate any harmful interference from Woodbridge Township's operations, but should it occur, Woodbridge Township will take corrective action to mitigate the harmful interference, or cease operations if the harmful interference cannot be corrected."⁵² Likewise, New Rochelle states, "[n]o harmful interference is anticipated from Woodbridge's operations, however, should such harmful interference occur, Woodbridge Township would take any and all corrective actions to mitigate the interference, or cease operation if the interference cannot be corrected."⁵³ Under these conditions, Nassau County and New Rochelle give their concurrence.⁵⁴ Based on the conditional concurrences, we find that application of this rule would not serve the underlying purpose of the rule.

13. *Public Interest*. Based upon the record in this proceeding, we are persuaded that Woodbridge needs access to frequencies in TV Channel 16 in order to promote effective public safety communications throughout the Township. Woodbridge states that a grant of its request is consistent with the *Channel 16 Report and Order* in which the Commission found that "public safety use of the spectrum was in the public interest and that land mobile operations would continue to coexist with broadcast operations."⁵⁵ Woodbridge states that "[t]he public interest will be promoted in a significant and tangible way as it will allow Woodbridge to commence operations of a public safety communications system that will serve its citizens and those of adjoining municipalities more effectively."⁵⁶ We agree. Indeed, Section 1 of the Act defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of radio communication."⁵⁷ We also find that a grant of the request is consistent with the public interest to the extent it will enable Woodbridge to promote interoperability with adjacent municipal agencies that are predominantly located in the UHF band, as well as agencies participating in the Urban Area Security Initiative.⁵⁸ Accordingly, we conclude that grant of Woodbridge's request, as conditioned, is consistent with the public interest.

IV. CONCLUSION

14. Based on the record before us, we conclude that a grant of Woodbridge's request for waiver of Section 90.303(c) to operate a public safety communications system on six frequency pairs in the TV Channel 16 band (482-488 MHz) is warranted and consistent with the public interest. We condition the grant as follows: If operation of this station causes harmful interference to the operations of Stations WIM212 or WPJS241, then the licensee of this station shall take any and all corrective actions to mitigate the interference, or cease operation if the interference cannot be corrected.

⁵¹ See Nassau County Letter; New Rochelle Letter.

⁵² Nassau County Letter at 1.

⁵³ New Rochelle Letter at 1.

⁵⁴ See Nassau County Letter at 1; New Rochelle Letter at 1.

⁵⁵ *Id.* at 7 citing *Channel 16 Report and Order*.

⁵⁶ Waiver Request at 9.

⁵⁷ 47 U.S.C. § 151.

⁵⁸ See Waiver Request at 9.

V. ORDERING CLAUSES

15. 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, that the Request for Waiver, associated with File No. 0004182796 filed by the Township of Woodbridge, New Jersey, IS GRANTED, to the extent indicated herein.

16. IT IS FURTHER ORDERED that File No. 0004182796 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

17. 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