

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

In the Matter of)	
)	
NEW YORK DEPARTMENT OF HEALTH)	File Nos. 0004525958 and 0004525959
AND MENTAL HYGIENE)	
)	
Petition for Reconsideration of Grant of Licenses)	
for Station Call Signs WQNE923 and WQNE927)	

ORDER ON RECONSIDERATION

Adopted: April 6, 2011

Released: April 6, 2011

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

1. *Introduction.* On February 11, 2011, the Port Authority of New York and New Jersey (Port Authority) filed a petition for reconsideration¹ of a Commission action granting two applications² for authority to operate Stations WQNE923 and WQNE927 filed by the New York Department of Health and Mental Hygiene (Health Department). For the reasons set forth below, we grant the petition for reconsideration in part, set aside the Health Department's authorizations to operate Stations WQNE923 and WQNE927, and return the Health Department's applications to pending status.

2. *Background.* At the time of the September 11, 2001, terrorist attacks on the World Trade Center, the Port Authority was licensee for a number of stations located at the World Trade Center, including microwave Stations WNEE495, WNEE496 and WPNI363.³ Pending reconstruction of the World Trade Center, the Port Authority has requested a series of consecutive waivers of the one-year construction period and of the Commission's rules governing discontinuance of operations⁴ for its stations located at the World Trade Center. In each instance, the Commission has granted the Port Authority's requests.⁵

¹ Port Authority Petition for Reconsideration (filed Feb. 11, 2011) (Petition).

² See File Nos. 0004525958 and 0004525959.

³ For a list of these stations, see the attachment to Port Authority of New York and New Jersey, *Letter Order*, 25 FCC Rcd 17555 (PSHSB PD 2010) (*December 2010 Letter Order*).

⁴ 47 C.F.R. §§ 90.157, 101.65(b).

⁵ See Port Authority of New York and New Jersey, *Order*, 17 FCC Rcd 16784 (WTB PSPWD 2002); Port Authority of New York and New Jersey, *Order*, 18 FCC Rcd 19243 (WTB PSPWD 2003); Letter dated Nov. 10, 2004 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, to Jeffrey S. Green, Esq., General Counsel, Port Authority of New York and New Jersey; Letter dated Aug. 10, 2006 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, to Darrell Buchbinder, General Counsel, Port Authority of New York and New Jersey; Port Authority of New York and New Jersey, *Letter Order*, 23 FCC Rcd 1753 (PSHSB PD 2008); Port Authority of New York and New Jersey, *Letter Order*, 23 FCC Rcd 16622 (PSHSB PD 2008); Port Authority of New York and New Jersey, *Letter Order*, 24 FCC Rcd 14426 (PSHSB PD 2009); Port Authority of New York and New Jersey, *Letter Order*, DA 10-2384 (PSHSB PD Dec. 20, 2010).

3. The Port Authority filed its most recent petition for waiver extension on September 9, 2010.⁶ On November 5, 2010, Micronet Communications, Inc. (Micronet), then the frequency coordinator for the Health Department, submitted a Prior Coordination Notice (PCN) to, among others, the Port Authority, regarding a proposed 11.2 GHz system between Cortlandt and Gotham Center in New York City.⁷

4. On November 29, 2010, responding to the PCN, Comsearch, the frequency coordinator for the Port Authority, notified Micronet that: “Potential direct interference case(s) have been found in our analysis. ... Your proposal will not be acceptably coordinated with our client until these cases are resolved. Our client has the right to object to any FCC filing that has not been acceptably coordinated.”⁸ Comsearch’s letter indicated that the affected Port Authority stations were WNEE495, WNEE496 and WPNI363.

5. By letter of the same date, Micronet replied to Comsearch in relevant part as follows: “On September 9th 2009 your client ... was granted a one year extension of their Waiver ... to construct the frequencies assigned to WNEE495 (2 WTC). This waiver expired September 10, 2010. No applications have been filed for this license since it’s [sic] renewal in 2008 and there are no current coordination notices for this call sign. Therefore we consider these cases resolved.”⁹

6. On December 7, 2010, the Health Department submitted two applications for the proposed Cortlandt/Gotham Center New York 11.2 GHz system.¹⁰ The attached “Supplemental Showing Part 101.103(d)” stated: “There were no unresolved interference objections.”¹¹ On December 9, 2010, Comsearch wrote Micronet in relevant part as follows: “Our client Port Authority of New York & New Jersey has an ongoing agreement with the FCC to hold these frequencies because of the event on September 11... [w]e are requesting your client to immediately withdraw their applications.”¹²

7. On December 15, 2010, the Health Department’s application appeared on public notice as accepted for filing.¹³ On December 20, 2010, the Bureau granted the Port Authority’s most recent waiver request, *nunc pro tunc*, extending Port Authority’s construction period until September 11, 2011, for all of its World Trade Center facilities, including stations WNEE495, WNEE496 and WPNI363.¹⁴ On

⁶ See Request for Extension of Waiver of Sections 90.157 and 101.65(b) of the Commission’s Rules (dated Sept. 9, 2010).

⁷ See Petition, Exhibit 1 (Letter, Brad Youngblood to Comsearch, Inc. (Nov. 5, 2010)).

⁸ See Petition, Exhibit 2 (Letter, David L. Wiggins to Brad Youngblood (Nov. 29, 2010)).

⁹ See Petition, Exhibit 3 (Letter, Brad Youngblood to David L. Wiggins (Nov. 29 2010)).

¹⁰ See FCC Universal Licensing System, Microwave Public Safety Pool - 0004525958 - New York Department of Health and Mental Hygiene, available at <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applAdminHistory.jsp?applID=5880944>, and Microwave Public Safety Pool - 0004525959 - New York Department of Health and Mental Hygiene, available at <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applAdminHistory.jsp?applID=5880943>.

¹¹ *Id.* at <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=5880944> and <http://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=5880943>.

¹² See Petition, Exhibit 4, (Letter, David L. Wiggins to Brad Youngblood (Dec. 9, 2010)).

¹³ See *Public Notice*, Report No. 6448 (rel. Dec. 15, 2010).

¹⁴ See *December 2010 Letter Order*, *supra* note 3.

January 13, 2011, the Bureau granted the Health Department's applications under Call Signs WQNE923 and WQNE927.¹⁵

8. On February 11, 2011, the Port Authority filed a timely petition for reconsideration requesting that the Commission "deny" the Health Department's authorizations.¹⁶ On February 18, 2011, Micronet filed a timely Response to the petition for reconsideration.¹⁷ The Port Authority filed a timely reply on February 28, 2011.¹⁸

9. *Discussion.* In its Petition, the Port Authority alleges that the Health Department's applications for Stations WQNE923 and WQNE927 were "defective as a matter of law because [the Health Department] failed to advise the Commission that there were unresolved issues between the Port Authority and [Health Department] regarding ... interference, in contravention of the prior notice coordination requirements."¹⁹ Specifically, the Port Authority alleges a violation of section 101.103(d) of the Commission's rules,²⁰ which provides in relevant part:

- (1) Proposed frequency usage must be prior coordinated with existing licensees ... All applicants and licensees must cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum ...
- (2)(i) ... To be acceptable for filing, all applications ... must certify that coordination, including response, has been completed.

10. In response, Micronet states that it "saw no need to note unresolved interference issues, because the technical details were not disputed here only license status."²¹ Micronet further states that at the time it issued the PCN to the Port Authority, the ULS administrative tab for license WNEE495 contained the Commission's 2009 extension order [2009 FCC Order] for the Port Authority's waiver of the construction deadline, and this order stated that the Port Authority had until "September 10, 2010 to construct and return the World Trade Center Stations to operational status without forfeiting the license."²² Micronet argues that "[b]ased on the available evidence from the FCC, these paths should have been forfeited on 09/10/2010 since there were no pending applications, no pending waiver requests or anything else to indicate that the conditions [of the waiver order] had been or even could be met."²³

11. We find Micronet's argument unpersuasive. Micronet had ample notice that the Health Department's applications were problematic, or at least that the applications required further coordination, based on the concerns raised by Comsearch on November 29, 2010, in response to the PCN

¹⁵ See *Public Notice* Report No. 6553 (rel. Jan. 19, 2011).

¹⁶ Petition at 9.

¹⁷ Micronet Response to Petition for Reconsideration (filed Feb. 18, 2011) (Response).

¹⁸ Reply of the Port Authority of New York and New Jersey to the Opposition Filed on Behalf of the New York Department of Health and Mental Hygiene (filed Feb. 28, 2011) (Reply).

¹⁹ Petition at iii.

²⁰ 47 C.F.R. § 101.103(d). See Petition at 6-7.

²¹ Response at 1.

²² *Id.*

²³ *Id.*

filed by Micronet, and again, on December 9, 2010, two days after Micronet filed the applications.²⁴ We also find it significant that prior to the filing of the PCN and up until the Commission granted the Health Department's applications, the ULS indicated that the Port Authority's licenses remained on active status and did not expire until February 11, 2019.²⁵ In light of these circumstances, Micronet's decision to file the applications without informing the Commission of Comsearch's objections was improper and inconsistent with its obligations pursuant to the Commission's general rules regarding the accuracy and truthfulness of applications²⁶ as well as the Part 101 coordination rules.²⁷

12. Moreover, we reject Micronet's assertion that it was reasonable for it to conclude that Port Authority would be unable to meet the September 10, 2010 construction deadline based on the information contained in the administrative tab for license WNEE495. Given the objections raised by Comsearch, and the fact that the license remained in active status in ULS,²⁸ Micronet should have raised these issues or made an inquiry to the Commission. Part 101 coordination procedures require all applicants and licensees to "cooperate fully and make reasonable efforts to resolve technical problems and conflicts that may inhibit the most effective and efficient use of the radio spectrum." We therefore disagree with Micronet's contention that it was not required to note unresolved interference issues because "the technical details were not disputed." The integrity of the frequency coordination process depends on the good faith efforts of frequency coordinators to work together to identify suitable frequencies for the Commission's consideration. When a Part 101 frequency coordinator submits an application to the Commission, the coordinator certifies that due diligence and reasonable efforts have been exercised in the selection of the frequencies. By ignoring Comsearch's objections and by failing to inform the Commission of the same, Micronet undermined this process, which resulted in a faulty coordination.

²⁴ At the time Micronet submitted the Health Departments applications, Comsearch had already put Micronet on notice that the Port Authority considered its license to be active. See Petition, Exhibit 2 (Letter, David L. Wiggins to Brad Youngblood (Nov. 29, 2010)).

²⁵ We also note that the Bureau's December 20, 2010, *nunc pro tunc* grant of the Port Authority's waiver request, as well as the seven previous grants of similar requests (the latter three of which were also granted *nunc pro tunc*), are all publicly available on the Commission's Electronic Document Management System. EDOCS is available at http://hraunfoss.fcc.gov/edocs_public/.

²⁶ Section 1.17(a)(2) of the Commission's rules states that no person may provide, in any written statement of fact, "material factual information that is incorrect or omit material information that is necessary to prevent any material factual statement that is made from being incorrect or misleading without a reasonable basis for believing that any such material factual statement is correct and not misleading. 47 C.F.R. § 1.17(a)(2). See Cricket Communications, Inc., File No.: EB-10-SE-051, *Order and Notice of Apparent Liability for Forfeiture*, DA 11-184, ¶ 5 (EB rel. Feb. 1, 2011). Moreover, all applicants for common carrier fixed point-to-point microwave station licenses must certify that "all statements made in th[e] applications and in the exhibits, attachments, or documents incorporated by reference...are true, complete, correct, and made in good faith." See Form 601 (Application for Wireless Telecommunications Bureau Radio Service Authorization); General Certification Statements. See also 47 C.F.R. § 1.65 (Substantial and significant changes in information furnished by applicants to the Commission).

²⁷ See 47 C.F.R. § 101.103(d).

²⁸ Under the Commission's licensing procedures, a license is not automatically canceled until the Commission takes an affirmative action to do so as reflected by the ULS. Here the license cancellation was tolled by the Port Authority's timely filed waiver extension request, and the ULS correctly indicated that the subject license remained in active status.

13. We therefore find that the coordination and filing of the Health Department applications was improper and contrary to the provisions of section 101.103(d) of the Commission's rules. Because Micronet did not properly coordinate the applications, and given that technical issues surrounding the applications remain in dispute as evidenced by the Petition²⁹ and Micronet's response,³⁰ the public interest warrants that we set aside the Health Department's authorizations to operate Stations WQNE923 and WQNE927. However, rather than denying the applications as requested by the Port Authority,³¹ we return the applications to pending status for sixty days. By taking this action, we provide Micronet further opportunity to evaluate and coordinate the applications by either reengineering the technical specifications of its proposal to avoid interference with Port Authority's authorization or to select alternate frequencies. If the Health Department takes no further action on its applications within sixty days, ULS will automatically dismiss those applications.

14. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i) and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 405, and Section 1.106 of the Commission's Rules, 47 C.F.R. § 1.106, the Petition for Reconsideration filed by the Port Authority of New York and New Jersey on February 11, 2011, IS GRANTED IN PART as set forth herein.

15. IT IS FURTHER ORDERED that the authorization of the New York Department of Health and Mental Hygiene to operate Stations WQNE923 and WQNE927 IS SET ASIDE and returned to pending status.

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

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²⁹ The Port Authority claims that the Health Department's licenses will "interfere with future use of its [the Port Authority's] radio authorization grants." Petition at 1.

³⁰ Micronet states "potential interference issues with the old path from WTC 2 – LA GUARDIA, ... this path has not existed for ten years and will never exist again as it is currently licensed." Response at 1. Micronet further states that "[a]ny new path from WNEE495 to WNEE496 will be a major change from the existing license data with different interference characteristics [and t]his new path would have to be successfully re-coordinated prior to filing 601 applications and before transmitting." *Id.*

³¹ See Petition at 9.