

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

In the Matter of
BOROUGH OF ROSELLE PARK, NEW
JERSEY
Request for Waiver of Sections 90.305(a),
90.307(d), and 90.309 of the Commission's Rules
File No. 0002932068

ORDER

Adopted: July 25, 2012

Released: July 25, 2012

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

I. INTRODUCTION

1. The Borough of Roselle Park, New Jersey (Roselle Park) filed an application and request for waiver to operate on three 470-512 MHz band (T-Band) frequency pairs in the television (TV) Channel 20 band (506-512 MHz). Specifically, Roselle Park requests a waiver to short-space its proposed base station to adjacent channel TV Station WLIW, Channel 21, Garden City, New York, and co-channel TV Station WCCT-TV (formerly WTXX), Channel 20, Waterbury, Connecticut. Roselle Park also requests a waiver because it proposes to operate more than 80 kilometers (50 miles) outside Philadelphia, Pennsylvania, the maximum distance allowed under the Commission's rules. For the reasons stated below, we deny the Waiver Request and dismiss the application.

II. BACKGROUND

2. In support of its waiver request, Roselle Park states that it initially sought the assistance of a frequency coordinator to obtain a frequency in the 450-470 MHz band, but was informed by the coordinator that there were no available 450-470-MHz frequencies in New Jersey. Roselle Park states that access to Channel 20 T-Band frequencies would enable it to serve its own community and to communicate with two neighboring police and fire departments that use T-Band.

1 File No. 0002932068 (filed Mar. 2, 2007, amended Mar. 10, 2011 and Mar. 11, 2011) and accompanying Waiver Request and Engineering Exhibit (Waiver Request).

2 See Waiver Request at 1. 47 C.F.R. § 90.309 governs co-channel separation, while the applicable rule for adjacent channel separation is 47 C.F.R. § 90.307(d).

3 See Waiver Request at 1; see also 47 C.F.R. § 90.305(a). Roselle Park's proposed base station is located 109.6 kilometers from the Philadelphia center point coordinates. Waiver Request at 1.

4 See File No. 0002932068, attached Letter from Warren Wielgus, Chief of Police and Robert Tobe, Fire Chief, to the Federal Communications Commission (dated Dec. 18, 2006).

5 Id.

III. DISCUSSION

3. On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) into law.⁶ Section 6103 of the Spectrum Act provides that, not later than nine years after the date of enactment, the Commission shall reallocate T-Band spectrum “currently used by public safety eligibles.”⁷ On April 26, 2012, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau (Bureaus) issued a public notice announcing a limited suspension of the acceptance and processing of certain T-Band applications.⁸ The *Suspension Notice* suspended the acceptance and processing of T-Band applications “in order to stabilize the existing spectral landscape while the Commission considers issues surrounding future use of the T-Band, solicits input from interested parties, and works to implement the directives of the Act.”⁹ In the *Suspension Notice*, the Bureaus stated that they would not accept or process applications “that would, if granted, tend to increase the degree to which the 470-512 MHz band is currently licensed,” including applications for new licenses.¹⁰

4. In light of the Spectrum Act and in accordance with the *Suspension Notice*, we find that Roselle Park’s application would, if granted, increase the degree to which the T-Band is currently licensed because the application is for a new license. We further find that Roselle Park has not stated sufficient grounds to justify a waiver of the *Suspension Notice*. Therefore, we deny Roselle Park’s waiver request and dismiss the application.¹¹

IV. ORDERING CLAUSES

5. Accordingly, IT IS ORDERED pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925, that the Waiver Request associated with application File No. 0002932068, filed by the Borough of Roselle Park, New Jersey on March 2, 2007, as amended, IS DENIED.

6. IT IS FURTHER ORDERED that application File No. 0002932068 IS DISMISSED consistent with this *Order* and the Commission’s rules.

⁶ See Pub. L. No. 112-96, 126 Stat. 156 (2012) (Spectrum Act).

⁷ Spectrum Act, § 6103(a). The Act further instructs the Commission to “begin a system of competitive bidding under Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum.” *Id.* It also provides that “relocation of public safety entities from the T-Band Spectrum” shall be completed not later than two years after completion of the system of competitive bidding. *Id.*, § 6103(b), (c).

⁸ Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 4218 (WTB/PSHSB 2012) (*Suspension Notice*).

⁹ *Id.* at 1.

¹⁰ *Id.* at 2.

¹¹ Notwithstanding our decision in this *Order*, Roselle Park may have recourse to the waiver provisions in Section 1.925 of the Commission’s rules to request waiver of the *Suspension Notice*. See *Suspension Notice* at 2 n. 4. Any such request must be based on careful review of the rule’s criteria for a waiver and must provide complete support, including but not limited to documentation, demonstrating that applicant meets the criteria set out in the rule. *Id.*

7. We take this action 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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