

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

In the Matter of
TOWNSHIP OF WOODBRIDGE, NEW JERSEY
Request for Waiver of Sections 20.9(a)(6), 22.621,
22.623(b), 22.625(b)(1), 90.305(a), and 90.307(d)
of the Commission's Rules
File No. 0004536973

ORDER

Adopted: September 12, 2012

Released: September 13, 2012

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

I. INTRODUCTION

1. The Township of Woodbridge, New Jersey (Woodbridge, or the Township), through its Police Department filed an application and request for waiver to use, for public safety communications purposes, seven frequency pairs from the 500-506 MHz (TV Channel 19) band located beyond 80 kilometers (50 miles) from Philadelphia, Pennsylvania, the maximum distance allowed under the Commission's rules. The Commission's rules designate four of the frequencies for Part 22 point-to-multipoint operations. As described herein, the application represents a swap of frequencies to enable Woodbridge to avoid interference its public safety communications system currently experiences on frequencies in the 506-512 MHz (TV Channel 20) band. However, a suspension on applications that change frequencies in the 470-512 MHz band (T-Band) has been in effect since April 26, 2012. Accordingly, Woodbridge seeks waiver of this suspension. For the reasons stated below, we grant the Waiver Request.

II. BACKGROUND

2. On December 5, 2008, the Public Safety and Homeland Security Bureau's Policy Division granted Woodbridge a waiver request to operate on fifteen frequency pairs in the TV Channel 20

1 File No. 0004536973 (filed Dec. 12, 2010, amended July 13, 2011, July 18, 2011, January 18, 2012, April 10, 2012, and July 11, 2012), attachments entitled, "Application and Waiver Petition of Woodbridge Township, New Jersey" (Waiver Request); "Supplemental Pleading" (dated Jan. 18, 2012) (Supplemental Pleading). Woodbridge seeks Part 22 frequencies 500.1875, 503.1875, 500.2125, and 503.2125 MHz; and Part 90 frequencies 501.3000, 504.3000, 501.4000, 504.4000, 501.5750, 504.5750, 501.7750, 504.7750, 501.8750, and 504.8750 MHz.

2 Waiver Request at 1; see also 47 C.F.R. § 90.305(a). The maximum base station distance from Philadelphia is 65.2 miles (104.9 kilometers). See Waiver Request at 5.

3 See 47 C.F.R. Part 22.

4 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 Red 4218 (WTB/PSHSB 2012) (Suspension Notice).

5 See File No. 0004536973 "Petition for Waiver of Woodbridge Township, New Jersey" (dated July 10, 2012) (Suspension Waiver).

band beyond 80 kilometers from Philadelphia, Pennsylvania.⁶ However, Woodbridge experienced intermittent interference that it attributes to atmospheric ducting from co-channel digital TV station WCCT-TV, Waterbury, Connecticut.⁷ The Township contends that the interference “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.”⁸

3. The instant application and waiver request represents the second of two applications to remedy the interference.⁹ Woodbridge states that “[t]his second application will substitute frequencies within the 500-506 MHz band segment for the remaining channel 20 frequency pairs still licensed.”¹⁰ Woodbridge commits to returning the TV Channel 20 frequencies to the Commission as soon as the replacement frequencies are deployed and operating.¹¹

4. In support of its Waiver Request, Woodbridge argues that use of T-Band frequencies will allow its “investment to be preserved.”¹² Woodbridge argues that “examination of the VHF, UHF, 470 MHz, and 800 MHz bands presents no alternatives.”¹³ Woodbridge states that “[c]hannels in the 700 MHz band were considered,” but “in addition to the challenge that there are more agencies seeking channels than capacity available and length of the review leading to licensing, Woodbridge’s system was designed and deployed to use UHF spectrum.”¹⁴ Woodbridge asserts that it “knows of no reasoned path to integrate, in a cost efficient manner, [into] its current infrastructure, 700 MHz frequencies.”¹⁵

5. On July 23, 2012, the Public Safety and Homeland Security Bureau (Bureau) issued a public notice¹⁶ seeking comment on the applications and Waiver Request. The Enterprise Wireless Alliance filed comments in support of the Township’s request.¹⁷

III. DISCUSSION

6. To obtain a waiver of the Commission’s rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the

⁶ Waiver Request at 2. See Township of Woodbridge, *Order*, 23 FCC Rcd 17406 (PSHSB PD 2008) (*Woodbridge 2008 Order*), and licenses for call signs WQJS363 and WQJS365.

⁷ See Waiver Request at 2. On June 18, 2010, Station WTXX changed its call sign to Station WCCT-TV.

⁸ Waiver Request at 2.

⁹ *Id.* at 2-3. On August 3, 2010, the Policy Division granted the first of the two applications and an associated waiver request to use six frequency pairs within TV Channel 16. See Township of Woodbridge, New Jersey, *Order*, 25 FCC Rcd 10917 (PSHSB PD 2010) (*Woodbridge 2010 Order*), and license for call sign WQMI704.

¹⁰ Waiver Request at 3.

¹¹ *Id.*

¹² Waiver Request at 7.

¹³ *Id.*

¹⁴ *Id.* As we noted above, Woodbridge is operating on TV Channel 20 band frequencies.

¹⁵ Waiver Request at 7.

¹⁶ See Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed By the Township of Woodbridge, New Jersey to Operate a Trunked Public Safety Communications System Using Part 90 and Part 22 Frequencies in the Television Channel 19 (500-506 MHz) Band, *Public Notice*, 27 FCC Rcd 8238 (PSHSB 2012).

¹⁷ File No. 0004536973, Comments of the Enterprise Wireless Alliance, filed Aug. 7, 2012.

present case, and that a grant of the waiver would be in the public interest,¹⁸ or (ii) in 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.¹⁹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²⁰ Based on the information before us, we conclude that a grant of the Waiver Request is warranted.

7. *Section 90.305.* The TV Channel 19 band is available for private land mobile radio service (PLMRS) entities, including public safety entities, in the Philadelphia, Pennsylvania urbanized area.²¹ Because the proposed frequencies are not available for use by PLMRS entities in the Northern New Jersey area, Woodbridge seeks a waiver of Section 90.305(a).²² This rule provides that base station transmitter sites must be located within 80 kilometers (50 miles) from the geographic center of an urbanized area listed in Section 90.303.²³ Frequencies in the 500-512 MHz band (TV Channels 19 and 20) are available for assignment to PLMR users with base stations within fifty miles of the City of Philadelphia, Pennsylvania center coordinates.²⁴ Woodbridge's base stations are located a maximum of 65.2 miles (104.9 kilometers) from the Philadelphia geographic center coordinates.²⁵ Woodbridge notes that "the Commission has granted waivers for numerous agencies and private licensees to operate land mobile operations within 500-506 MHz ... throughout NE New Jersey, NW Pennsylvania, and SE New York."²⁶ The Township argues that its proposed operations "will be a *de minimis* addition to the current 500-506 MHz environment."²⁷

8. The Commission established these mileage restrictions to protect over-the-air broadcast operations on TV Channels 14-21 located outside of these cities from harmful interference from PLMR systems operating in the 470-512 MHz band.²⁸ While this is a concern, we note that Woodbridge entered into a Memorandum of Understanding with Mountain Broadcasting Corporation, the licensee of adjacent channel TV Station WMBC, Montclair, New Jersey, on TV Channel 18.²⁹ Moreover, because the northern New Jersey area is well-populated with public safety agencies that surround Woodbridge and

¹⁸ 47 C.F.R. § 1.925(b)(3)(i).

¹⁹ 47 C.F.R. § 1.925(b)(3)(ii).

²⁰ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *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).

²¹ See 47 C.F.R. §§ 90.303, 90.305(a).

²² See Waiver Request at 5.

²³ See 47 C.F.R. §§ 90.303, 90.305(a). While these rules apply to the Part 90 frequencies, Woodbridge also would need a waiver of 47 C.F.R. § 22.625(a)(1) to use the Part 22 frequencies at locations more than 80 kilometers from Philadelphia.

²⁴ See 47 C.F.R. § 90.303.

²⁵ See Waiver Request at 5.

²⁶ Waiver Request at 4-5.

²⁷ *Id.* at 5.

²⁸ See 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).

²⁹ See Waiver Request, Attachment 2, Memorandum of Understanding between the Township of Woodbridge, New Jersey, and Mountain Broadcasting Corporation (May 11, 2010).

operate on frequencies in the TV Channel 19 band by waiver, we conclude that the underlying purpose of Section 90.305 would not be served or would be frustrated by application to the present case.

9. *Section 90.307(d)*. Because Woodbridge proposes to operate in an area less than 145 kilometers (ninety miles) from the TV Station WMBC, Montclair, New Jersey, it requests a waiver of Section 90.307(d).³⁰ Woodbridge's base stations range in distance from 30.9 to 39.7 kilometers from Station WMBC.³¹ As we noted above, Woodbridge entered into a Memorandum of Understanding with Mountain Broadcasting Corporation that permits both parties' operations to coexist. Accordingly, we conclude that the underlying purpose of Section 90.307(d) would not be served or would be frustrated by application to the present case.

10. *Section 22.621*. The underlying purpose of Section 22.621 is to reserve certain frequencies "for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service."³² Accordingly, we evaluate the Part 22 licensing landscape in the Philadelphia and New York metropolitan areas. There are no Part 22 entities licensed on the frequencies 500.1875, 503.1875, 500.2125, and 503.2125 MHz in the Philadelphia area. Section 22.621 does not make these frequencies available for point-to-multipoint use in the New York area. Further, potential use of the frequencies by Part 22 entities would be severely constrained by co-channel public safety licensees Nassau County Police Department, New York (Nassau) in the New York area, and the County of Burlington, New Jersey (Burlington) in the Philadelphia area.³³ Moreover, The Township obtained conditional concurrences from Nassau and Burlington.³⁴ Based on the foregoing analysis, we find that the underlying purposes of Sections 22.621 would not be served or would be frustrated by application to the present case.

11. *Section 20.9(a)(6)*. Section 20.9(a)(6) presumes that the proposed frequencies will be reserved for common carriage services and regulated as commercial mobile radio services.³⁵ Woodbridge states that "[i]f the Commission determines that Woodbridge's use of the frequencies for public safety communications is appropriate, the purpose of section 20.9(a)(6), that Woodbridge's use be accompanied by common carriage responsibilities, would not be served" and "would undermine effective public safety communications."³⁶ Because we find that it is in the public interest to allow Woodbridge to use frequencies 500.1875, 503.1875, 500.2125, and 503.2125 MHz for public safety purposes, we conclude that the underlying purpose of Section 20.9(a)(6) would not be served by its application to the present case.

³⁰ See *id.* at 6. See also 47 C.F.R. § 90.307(d). A land mobile base station which has associated mobile units must be separated from a protected adjacent channel television station by a minimum distance of 145 kilometers (90 miles). *Id.*

³¹ Waiver Request at 24-26.

³² 47 C.F.R. § 22.621.

³³ See Supplemental Pleading at 1-2.

³⁴ See Waiver Request, Attachment 3, Letter from Lieutenant Thomas M. Golder, Nassau County Police Department to Federal Communications Commission (dated July 13, 2010); File No. 0004536973, attached Letter from Richard K. Dreby, Director, Public Safety Services, County of Burlington, to Federal Communications Commission (dated June 23, 2010).

³⁵ See 47 C.F.R. § 20.9(a)(6).

³⁶ Supplemental Pleading at 2.

12. *Section 22.623(b)*. Section 22.623(b) requires that the channels may be assigned in an unpaired configuration only to control base stations in the public mobile service.³⁷ Woodbridge states that “[t]he purpose of Rule 22.623(b), to format how frequencies are assigned and deployed, would not be served as it is directed to point to multi point operation services under Part 22” rather than “the public safety service, where channel pairs for base and mobile operations is the norm.”³⁸ Since the Township would not be operating a paging control channel on these frequencies, the underlying purpose of Section 22.623(b) would not be served by application to the present case.

13. *Section 22.625(b)(1)*. Section 22.625(b)(1) requires that control transmitter locations must be within 80 kilometers (50 miles) of the designated location, in this case, Philadelphia.³⁹ This rule is the Part 22 counterpart to Section 90.305(a) in Part 90. The underlying purpose of Section 22.625(b)(1) would not be served because we came to the same conclusion for Section 90.305(a).

14. *T-Band Suspension*. On April 10, 2012, Woodbridge filed a letter⁴⁰ to further describe its request in light of the Middle Class Tax Relief and Job Creation Act of 2012,⁴¹ which President Barack Obama signed into law on February 22, 2012. Woodbridge states that “[a]ll infrastructure and subscriber equipment supporting the system have been deployed.”⁴² Woodbridge states that “[m]igration to the proposed channel 19 frequency pairs requires only software and conformance adjustments to the infrastructure and subscriber equipment, the cost of which has been authorized and funded.”⁴³ Woodbridge contends that its “proposal, including returning all channel 20 frequency pairs to the Commission, will not encroach upon the Commission reallocating the 470-512 MHz band to commercial services or add costs to the relocation process.”⁴⁴ Woodbridge states, “Public Law 112-96 does not preclude modifications to public safety licensees in the 470-512 MHz band segment.”⁴⁵

15. 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 applications for Part 22 and Part 90 services operating in the 470-512 MHz spectrum band (T-Band)⁴⁶ that could alter the spectrum landscape. The purpose of the suspension is to stabilize the spectral environment while the Commission considers issues surrounding

³⁷ 47 C.F.R. § 22.623(b).

³⁸ Supplemental Pleading at 2.

³⁹ 47 C.F.R. § 22.625(b)(1).

⁴⁰ See File No. 0004536973, Letter from Captain Scott Kuzma, Commanding Officer, Information and Technology Systems, Woodbridge Police Department, to Mr. David Furth, Deputy Chief, Public Safety and Homeland Security Bureau (dated April 10, 2012) (Kuzma Letter).

⁴¹ See Pub. L. No. 112-96, 126 Stat. 156 (2012) (Spectrum Act). Section 6103 of the Spectrum Act provides that, not later than nine years after the date of enactment, the Commission shall “reallocate the spectrum in the 470-512 MHz band ... currently used by public safety eligibles” *Id.*, § 6103(a). The Act 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).

⁴² See Kuzma Letter at 2.

⁴³ *Id.* at 2.

⁴⁴ *Id.* at 2.

⁴⁵ *Id.* at 3.

⁴⁶ See *Suspension Notice*.

future use of the T-Band and implementation of the Spectrum Act.⁴⁷ The Bureau “conclude[d] that prudent spectrum management dictates that we should stabilize the existing spectrum landscape by suspending the acceptance and processing of T-Band licensing applications that could alter the spectrum landscape and thereby make implementing the Act more difficult or costly.”⁴⁸ Specifically, the Bureau will not accept or process applications for applications that seek to modify existing licenses by, *inter alia*, changing frequencies,⁴⁹ which affects Woodbridge’s application. The *Suspension Notice* provides that applicants may have recourse to the waiver provisions in Section 1.925 to request an exception to the filing and processing suspension.⁵⁰

16. On July 10, 2012, Woodbridge filed a request for waiver of the *Suspension Notice*.⁵¹ Woodbridge details two ducting interference incidents on June 12, and July 3, 2012, that disabled the public safety radio services operating on the TV Channel 20 frequencies for most of the day.⁵² The Township notes that “[e]ach circumstance had a profound and negative [effect] on emergency response and all government services in Woodbridge and the adjoining municipality the system now serves, and engages the Township’s senior leadership at each occurrence.”⁵³ Woodbridge reiterates that it has no reasonable alternative and argues that “channel 19 frequencies are the only path to resolve the difficult and dangerous environment.”⁵⁴ Moreover, Woodbridge argues, “[b]y exchanging the channel 20 frequencies, Woodbridge gains no leverage in a transition and relocation from the 470-512 MHz band.”⁵⁵ Woodbridge continues, “[y]et, its emergency response responsibilities, and that of adjacent municipalities, will be meaningfully improved because ducting will no longer disable the system’s portable and mobile radios.”⁵⁶ The Township states that the channel exchange “will correct an unacceptable environment endangering the public and responding officers.”⁵⁷

17. Although we need only find that Woodbridge satisfies one prong of the waiver standard, Woodbridge satisfies both prongs. First, based on the record, we find that grant of the application would not frustrate the purpose of the *Suspension Notice* and is in the public interest. Because Woodbridge’s migration to TV Channel 19 frequency pairs requires only software and conformance adjustments to the infrastructure and subscriber equipment rather than investment in new infrastructure and equipment, grant of the application would not make implementing the Spectrum Act more costly than it would be if Woodbridge remained on TV Channel 20. A grant, combined with Woodbridge’s commitment to return its Channel 20 frequencies, would also decrease the degree to which the T-Band currently is licensed,

⁴⁷ *Id.* at 1-2.

⁴⁸ *Id.* at 1.

⁴⁹ *See id.* at 2.

⁵⁰ *Id.*, note 4.

⁵¹ *See* File No. 0004536973, attachment entitled, “Petition for Waiver of Woodbridge Township, New Jersey” (dated July 10, 2012) (T-Band Suspension Waiver).

⁵² *See id.* at 4.

⁵³ *Id.*

⁵⁴ *Id.*

⁵⁵ *Id.*

⁵⁶ *Id.* at 4-5.

⁵⁷ *Id.* at 5.

which is consistent with the intent of the *Suspension Notice*.⁵⁸ Second, we find that, in view of unique or unusual factual circumstances of the instant case, Woodbridge has no reasonable alternative to swapping frequencies within the T-Band. By detailing recent ducting interference events, Woodbridge adequately presents the unique and factual circumstances of the instant case. Woodbridge has no alternative in any other spectrum band that would allow it to preserve its investment in its T-Band communications system.⁵⁹ Within the T-Band, the Commission's rules allow Woodbridge to use frequencies within TV Channels 14 and 15 (470-482 MHz) within the New York City urbanized area,⁶⁰ but previous decisions have found the UHF band, which includes T-Band, to be exhausted in this area.⁶¹ Finally, remaining on TV Channel 20 band spectrum is an untenable option due to the risk of further ducting interference.

18. *Public Interest.* We find that the public interest would be served by grant of the application. The documented cases of interference shows that ducting on TV Channel 20 creates an unacceptable operating environment that endangers responding officers, and as a result, their ability to protect the safety of life and property. Migration from TV Channel 20 to TV Channel 19 frequencies, combined with the Township's TV Channel 16 operations, will improve the Township's emergency response responsibilities because ducting, which appears to be limited to TV Channel 20 based on anecdotal evidence, will no longer disable the system's portable and mobile radios. We find it in the public interest to allow Woodbridge to correct this problem and improve its communications reliability in the limited yet not fully determined period of time leading up to the impending migration of all public safety users off the T-Band. Accordingly, we waive the rules listed above and the provisions of the *Suspension Notice*.

IV. ORDERING CLAUSES

19. 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. 0004536973, filed by the Township of Woodbridge on December 12, 2010, as amended, IS GRANTED.

20. IT IS FURTHER ORDERED that application File No. 0004536973 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

21. 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 and Licensing Division
Public Safety and Homeland Security Bureau

⁵⁸ See T-Band Suspension Waiver at 2. The *Suspension Notice* indicates that the Bureaus would not process "any other application that could increase the degree to which the 470-512 MHz band currently is licensed." *Suspension Notice* at 2.

⁵⁹ See *supra* para. 4.

⁶⁰ See 47 C.F.R. §§ 90.303, 90.305(a).

⁶¹ See *Woodbridge 2008 Order*, *Woodbridge 2010 Order*.