

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

In the matter of
ATLANTIC BROADBAND (PENN), L.L.C.
Application For New License in the Microwave
Industrial/Business Radio Pool
Request for Waivers of Sections 101.103(d) and
101.603(b)(3) of the Commission's Rules
File No. 0005373654

MEMORANDUM OPINION AND ORDER

Adopted: October 16, 2012

Released: October 17, 2012

By the Deputy Chief, Broadband Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant waivers to permit Atlantic Broadband (Penn), L.L.C. ("Atlantic Broadband") to use a station in the Private Operational Fixed Point-to-Point Microwave Service ("POFS") as the final radio frequency ("RF") link in connection with the delivery of programming material to its cable head end in Cumberland, Maryland. We also grant a waiver of the frequency coordination requirement because Atlantic Broadband is already operating the proposed facility under an existing license.

II. BACKGROUND

2. Atlantic Broadband operates a cable television system serving 24,000 customers in Cumberland, Maryland. It uses a Common Carrier Fixed Point-to-Point Microwave Service station, call sign KQX32 ("Station KQX32"), to retransmit Washington, D.C. over-the-air broadcast signals from Cacapon Mountain, on the border between Virginia and West Virginia, to a reception station on Irons Mountain, Maryland. That license operates on various frequencies and paths in the 5925-6425 MHz band ("Lower 6 GHz Band") and the 10700-11700 MHz band ("11 GHz Band"). From there, Atlantic Broadband carries the signals via optical fiber to its cable head end in Cumberland, Maryland. Atlantic Broadband reports that the microwave facility in question has been used to relay television signals to the

1 ULS File No. 0005373654 (filed Aug. 30, 2012) ("Application"), Request for Waiver of Sections 101.103(d) and 101.603(b)(3) ("Waiver Request") at 1. The Waiver Request describes the location as Cacapon Mountain, West Virginia, but the geographic coordinates in the license for call sign KQX32 place its transmitter on the Virginia portion of that mountain. Compare Waiver Request and Application, Fixed Transmit Location 1.

2 Waiver Request at 1.

3 See Radio Station Authorization, ULS File No. 0004691387, Call Sign KQX32, granted June 27, 2011 ("Station KQX32 Authorization").

4 Waiver Request at 1.

Cumberland cable system since at least 1967.⁵ Originally, Potomac Valley Television Corp. relayed the signals to the Cumberland system on a common carrier basis.⁶ However, Atlantic Broadband states that the service it provides with Station KQX32 is currently not a common carrier service.⁷ The company seeks to obtain a new license in the POFS to replace the license for Station KQX32, using the same frequencies and facilities currently licensed under Station KQX32.⁸ On August 30, 2012, the company filed the instant Application and Waiver Request.⁹ No oppositions or objections were filed.

3. Section 101.103(d) of the Commission's Rules requires applicants to coordinate proposed operations under Part 101 with nearby licensees and applicants prior to filing an application with the Commission.¹⁰ Atlantic Broadband requests a waiver of the frequency coordination requirements in Section 101.103(d), explaining that frequency coordination will be unnecessary if the Commission grants its application for a replacement POFS license and allows it to continue using the same frequencies that are currently assigned to KQX32.¹¹

4. Section 101.603(b)(3) of the Commission's Rules¹² permits transmission of program material in POFS, with the restriction that, where a POFS station is used to provide the final RF link in the chain of transmission of program material to multichannel video programming distributors ("MVPDs"), it can only be used in the frequency bands 6425-6525 MHz, 17,700-18,580 MHz and on frequencies above 21,200 MHz. Atlantic Broadband's Cumberland cable operation is an MVPD under the statutory definition of that term.¹³ Atlantic Broadband requests a waiver of Section 101.603(b)(3) to permit it to obtain a POFS license for the microwave link to its cable system and to continue using the Lower 6 GHz Band and 11 GHz Band frequencies that are currently assigned to Station KQX32.¹⁴

III. DISCUSSION

5. Section 1.925(b)(3) of the Commission's Rules requires parties seeking a waiver to demonstrate that:

- (i) The 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 requested waiver would be in the public interest; or

⁵ *Id.* at 1 n.1. See Potomac Valley Telecasting Corp., Docket Nos. 17510, *et al.*, *Memorandum Opinion and Order*, 9 FCC 2d 785 (1967) ("*Potomac Valley Telecasting*") (referring to use of Station KQX32 to relay Washington television broadcast stations to, *inter alia*, the Cumberland system).

⁶ See *Potomac Valley Telecasting*, 9 FCC 2d at 785-786 ¶ 1.

⁷ Waiver Request at 2.

⁸ *Id.* Compare Station KQX32 Authorization and Application.

⁹ Application, Waiver Request. The Application was accepted for filing on September 5, 2012. See Wireless Telecommunications Bureau Site-by-Site Accepted for Filing, Report No. 8043, *Public Notice* (rel. Sep. 5, 2012) at 52.

¹⁰ 47 C.F.R. § 101.103(d).

¹¹ Waiver Request at 2.

¹² 47 C.F.R. § 101.603(b)(3).

¹³ See 47 U.S.C. § 522(13). See also 47 C.F.R. § 76.1300(d).

¹⁴ Waiver Request at 2.

(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.¹⁵

6. Initially, we determine that no purpose would be served by requiring Atlantic Broadband to undergo the frequency coordination processes set forth in Section 101.103(d), because there is no reason to believe that reclassifying the regulatory status of an existing facility would generate any additional electrical interference. We also find it to be in the public interest to relieve Atlantic Broadband of the burden of undergoing frequency coordination for a facility that is already operating.

7. We conclude that Atlantic Broadband has justified a waiver of Section 101.603(b)(3) of the Commission's Rules under the first prong of the waiver standard. Section 101.603(b)(3) of the Commission's Rules restricts private operational fixed stations from being used to provide the final RF link in the chain of transmission of program material to MVPDs.¹⁶ The original purpose of this rule was to prevent MVPDs from causing congestion on channels that were allocated for private operational fixed stations and intended primarily for private, internal communications.¹⁷ Because Atlantic Broadband is already using the channels that it proposes to reclassify from common carrier to POFS, issuing the requested license could not increase congestion on POFS channels or deprive other POFS applicants from access to spectrum that would otherwise be available to them. We also note that the Commission recently eliminated a similar rule that prohibited broadcasters from using POFS as the final link in distributing program material to broadcast stations.¹⁸ Also, while POFS and common carrier stations were assigned different frequencies at the time the rule was established, the frequencies in the Lower 6 GHz Band and 11 GHz Band that Atlantic Broadband is using are currently available for both common carrier and POFS operation.¹⁹ Under those circumstances, we conclude that a waiver would not frustrate the underlying purpose of the rule. Furthermore, we find that a waiver would be in the public interest because it would allow Atlantic Broadband to continue relaying programming to its subscribers, and a POFS license would more accurately reflect the nature of Atlantic Broadband's operations.

IV. ORDERING CLAUSES

8. Atlantic Broadband has justified waivers of Sections 101.103(d) and 101.603(b)(3)²⁰ of the Commission's Rules. We therefore grant its Waiver Request and direct processing of its Application.

9. Accordingly IT IS ORDERED that pursuant to Sections 4(i) and 309 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 309, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the waiver request filed by Atlantic Broadband (Penn) L.L.C. on August 30, 2012 IS GRANTED.

¹⁵ 47 C.F.R. § 1.925(b)(3)(i)-(ii).

¹⁶ 47 C.F.R. § 101.603(b)(3).

¹⁷ See Amendment of Parts 2, 21, 74, and 91 of the Commission's Rules and Regulations Relative to the Licensing of Microwave Radio Stations Used to Relay Television Signals to Community Antenna Television Systems, Docket No. 15586, *First Report and Order and Further Notice of Proposed Rulemaking*, 1 FCC 2d 897, 901 ¶ 16 (1965).

¹⁸ See Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses and to Provide Additional Flexibility to Broadcast Auxiliary Service and Operational Fixed Microwave Licensees, *et al.*, WT Docket No. 10-153, *et al.*, *Report and Order, Further Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 26 FCC Rcd 11614, 11631 ¶¶ 37-38 (2011).

¹⁹ See 47 C.F.R. § 101.101.

²⁰ 47 C.F.R. §§ 101.103(d), 101.603(b)(3).

10. IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL PROCESS the pending application of Atlantic Broadband (Penn) L.L.C., File No. 0005373654, in accordance with this *Memorandum Opinion and Order* and the applicable Commission Rules.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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