

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

In the Matter of)
NSTAR ELECTRIC COMPANY) WT Docket No. 12-295
Request for Waiver of the Suspension of) FCC File No. 0005174965
Acceptance and Filing of Certain Applications for)
470-512 MHz (T-Band) Spectrum)

ORDER

Adopted: December 13, 2012

Released: December 14, 2012

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

I. INTRODUCTION

1. In this Order, we address the request of NSTAR Electric Company (NSTAR) for waiver of the current suspension on acceptance and processing of certain applications related to the 470-512 MHz spectrum band (T-Band). NSTAR seeks a waiver of the suspension in order for the Commission to process its pending application to modify an existing license to add television channel 16 (482-488 MHz) frequencies to its land mobile facilities in the Boston area. For the reasons set forth below, we grant NSTAR's waiver request and will process its application.

II. BACKGROUND

2. NSTAR is involved in the generation and distribution of electricity and natural gas to customers in eastern, central, and southeastern Massachusetts. It utilizes VHF and UHF land mobile facilities to support its business operations and ensure the safe, efficient, and consistent distribution of electricity and natural gas to its customers. In 2010, NSTAR completed the planning to upgrade its legacy system - in which radios from different NSTAR operating regions were not interoperable and lacked important safety features - to a narrowband UHF system. Applications for narrowband UHF frequencies in central and southeastern Massachusetts were filed and granted in 2010. Due to delays in obtaining required concurrences from affected licensees and completing the frequency coordination process, however, NSTAR's application to modify its license for Station WQAK981 to add television channel 16 frequencies at six base station locations in the Boston area was not filed until April 23, 2012.

3. 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

1 See NSTAR Electric Company, Request for Rule Waiver, FCC File No. 0005174965 (filed September 13, 2012) (Request).

2 Id. at 1.

3 Id. at 1-2.

4 Id.; see, e.g., call signs WQMK618, WQOI702, and WNGP598.

5 Request at 2; see FCC File No. 0005174965.

acceptance and processing of certain applications for Part 22 and Part 90 services operating in the 470-512 MHz spectrum band, including applications that seek to modify existing licenses by adding T-Band frequencies.⁶ The purpose of the suspension is to stabilize the spectral environment while the Commission considers issues surrounding future use of the T-Band and implementation of the Middle Class Tax Relief and Job Creation Act of 2012.⁷ The Bureaus stated that applicants may have recourse to the waiver provisions in Section 1.925 of the Commission's Rules to request an exception to the filing and processing suspension.⁸

4. NSTAR subsequently filed its request for waiver of the suspension in order for the Commission to process its pending application.⁹ It asserts that the requested waiver would result in a minimal increase in the company's spectral footprint in the T-Band on currently authorized channels in the Boston area¹⁰ but that any potential impact to the stability of the spectral environment is far outweighed by the public interest benefits of granting the waiver.¹¹ Specifically, NSTAR claims that its planned narrowband UHF system will serve the public interest by (1) improving the reliability of its electric and gas distribution systems, (2) providing the company with a common radio platform, (3) enabling "truck to truck" communications capabilities, and (4) enabling additional key features such as emergency alerts and GPS tracking that were not available on its legacy VHF system.¹²

5. NSTAR notes that it has already installed the equipment necessary to complete its planned UHF narrowband upgrades and is already using the upgraded system in two of its three territories.¹³ NSTAR states that, if its waiver request is granted, NSTAR will be able to complete these upgrades and meet the Commission's January 1, 2013 VHF-UHF narrowbanding requirement¹⁴ in a timely fashion.¹⁵ If the waiver is not granted, NSTAR will be forced to seek a waiver of the Commission's narrowbanding deadline for its legacy system, and will lose many of the key benefits of the new system.¹⁶

III. DISCUSSION

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

⁶ 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, 4219 (WTB/PSHSB 2012) (*Suspension Notice*).

⁷ See Pub. L. No. 112-96, 126 Stat. 156 (2012).

⁸ *Suspension Notice*, 27 FCC Rcd at 4219 n.4.

⁹ In response to a *Public Notice* seeking comment on the Request, Wireless Telecommunications Bureau Seeks Comment on NSTAR Electric Company's Request for Waiver of the Suspension of Acceptance and Filing of Certain Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 12193 (WTB MD 2012), Enterprise Wireless Alliance, the Utilities Telecom Council, and the Massachusetts Executive Office of Energy and Environmental Affairs expressed support for the Request. No comments were filed in opposition to the Request.

¹⁰ NSTAR currently is licensed for nineteen stations in the Boston area that operate on television channel 16 frequencies.

¹¹ Request at 3-4.

¹² *Id.*

¹³ *Id.* at 4.

¹⁴ See 47 C.F.R. § 90.209(b)(5).

¹⁵ Request at 3-4.

¹⁶ *Id.*

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.¹⁷

7. Based on the factual circumstances presented by NSTAR, we conclude that grant of the request is warranted. NSTAR acted responsibly in completing a plan in 2010 to replace its legacy wideband VHF/UHF system with a new UHF system that would meet the Commission's 2013 narrowbanding requirements and improve the safety and efficiency of NSTAR's operations. Most of the applications associated with the new system were filed and granted before the Bureau suspended the processing of T-Band applications. Indeed, NSTAR already is operating the new system in other areas pursuant to the grant of those applications, and has installed the new system equipment in the service area that is the subject of the instant application. As NSTAR asserts, it filed the pending application later due to circumstances beyond NSTAR's control, and thus the application still pending at the time of the licensing suspension. In addition, the upgraded system will allow NSTAR to improve the reliability of its service offerings and better safeguard its employees.

8. In addition, grant of NSTAR's waiver request will enable it to relinquish VHF frequencies currently used in its legacy system. Denial of the request, however, would compel NSTAR to retain those frequencies and request a waiver of the narrowbanding requirement in order to continue operating in wideband mode, which would have a detrimental effect on the availability of VHF spectrum. Operation under a waiver of the narrowbanding deadline, moreover, would result in the public benefits of NSTAR's investment in a new UHF system not being fully realized.

IV. CONCLUSION

9. For the reasons set forth above, we find that NSTAR's waiver request meets the waiver standard set forth in Section 1.925 of the Commission's Rules. We grant the request, and will process the application.

V. ORDERING CLAUSES

10. 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(b)(3), that the Request for Rule Waiver filed by NSTAR Electric Company on September 13, 2012 IS GRANTED and application FCC File No. 0005174965 SHALL BE PROCESSED consistent with this *Order* and the Commission's 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

Scot Stone
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¹⁷ 47 C.F.R. § 1.925(b)(3)(i)-(ii).