

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

In the matter of)
)
CHARTER COMMUNICATIONS OPERATING,) File Nos. 0005688029-0005688034,
LLC) 0005688036-0005688040,
) 0005688042-0005688047, 0005688049,
Applications for New Licenses in the Microwave) 0005688050
Industrial/Business Radio Pool)
)
Requests for Waivers of Sections 101.103(d),)
101.603(b)(3) and 101.145(b) of the)
Commission's Rules)
)

MEMORANDUM OPINION AND ORDER

Adopted: May 14, 2013

Released: May 15, 2013

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

I. INTRODUCTION

1. In this Memorandum Opinion and Order, we grant waivers to permit Charter Communications Operating, LLC ("Charter") to reclassify existing common carrier fixed point-to-point stations as private operational fixed point-to-point service ("POFS") stations; to continue use of those stations as the final radio frequency ("RF") links in connection with the delivery of programming material to cable head ends in four western states, and to continue operation of two microwave stations that are aimed near the geostationary-satellite orbit. We also grant a waiver of the frequency coordination requirement because a company that Charter is proposing to acquire already operates the proposed facilities under existing licenses.

II. BACKGROUND

2. Bresnan Communications, LLC ("Bresnan") provides video and broadband services to 304,073 subscribers over cable television systems that it operates in Montana, Wyoming, Utah and Colorado.1 A number of these cable systems provide service in remote areas that, due to distance and rugged terrain, cannot receive direct over-the-air access to broadcast television stations, including television stations that are located within the same designated market areas ("DMAs") as the cable communities.2 Charter says that, in order to provide access to these television broadcasters, Bresnan's predecessors developed a number of microwave links to serve the cable communities.3 These stations are licensed as common carrier fixed point-to-point microwave service stations and retransmit the television

1 See File No. 0005688029 (filed Mar. 12, 2013, amended Mar. 14, 2013), Request for Waiver ("Waiver Request"), at 1.

2 Id.

3 Id.

stations' broadcast signals, ultimately to cable head ends.⁴ From there, the signals are retransmitted to Bresnan's cable customers over the cable system networks serving the relevant cable communities.⁵ Some of Bresnan's microwave stations are used as last links for video traffic while others are employed as intermediate hops in the transmission path.⁶

3. Charter, Cablevision Systems Corporation ("Cablevision") and Bresnan are seeking the Commission's consent to transfer control of Bresnan and related companies from Cablevision to Charter.⁷ In the overall transaction that is addressed in part by this application, Charter proposes to acquire control of Bresnan, its cable television systems and the associated microwave facilities that serve the cable systems.⁸

4. On March 12, 2013, Charter filed applications for new Private Operational Fixed Service ("POFS") licenses.⁹ Charter says that it seeks to obtain new licenses in the POFS to replace each of Bresnan's existing common carrier microwave licenses because the microwave links can be characterized more accurately as non-common carrier services.¹⁰ Each of these POFS licenses would use the same frequencies, paths and facilities that are currently licensed under Bresnan's existing common carrier microwave licenses.¹¹ Once the new POFS licenses are granted to Charter, Bresnan plans to surrender the existing common carrier microwave licenses that it holds in connection with the pending transaction.¹²

5. With these applications, Charter requests waivers of Sections 101.103(d), 101.603(b)(3) and 101.145(b) of the Commission's Rules in connection with its applications for new POFS licenses that will use the same frequencies, over the same paths, as are currently in use under Bresnan's existing common carrier licenses.¹³ For certain of its applications, Charter seeks a waiver of Section 101.603(b)(3) of the Commission's Rules allowing it to use the specified POFS frequencies as the final radio frequency ("RF") links in the chain of transmission of program material to the Bresnan cable head ends.¹⁴ For all applications, Charter requests a waiver of the frequency coordination requirement in Section 101.103(d) of the Commission's Rules because its proposed POFS licenses would be operating over the same frequencies and paths, and using the same equipment, as Bresnan's existing common carrier microwave stations.¹⁵ Finally, two of the microwave stations (Stations WQJQ464 and WQJQ487) operate under a waiver that allows them to operate in the 5925 to 6875 MHz frequency band while aimed within 2 degrees of the geostationary-satellite orbit.¹⁶ Charter requests a waiver of Section 101.145(b) of

⁴ *Id.*

⁵ *Id.*

⁶ *Id.*

⁷ See Applications Filed for the Transfer of Control of Bresnan Broadband Holdings, LLC to Charter Communications, Inc. Pleading Cycle Established, MB Docket No. 13-77, *Public Notice*, 28 FCC Rcd 3026 (MB 2013).

⁸ *Id.*

⁹ File Nos. 0005688029-0005688040, 0005688042-0005688047, 0005688049, 0005688050 (filed Mar. 12, 2013). Charter filed amendments of those applications on March 14, 2013.

¹⁰ Waiver Request at 1.

¹¹ *Id.*

¹² *Id.* at 1-2.

¹³ Waiver Request, *citing* 47 C.F.R. §§ 101.103(d), 101.603(b)(3) and 101.145(b).

¹⁴ *Id.* at 2.

¹⁵ *Id.*

¹⁶ *Id.*

the Commission's Rules so that its proposed POFS stations may operate under the same parameters as the existing Bresnan stations that currently operate under that waiver.¹⁷

III. DISCUSSION

6. 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

(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.¹⁸

7. Initially, we determine that no purpose would be served by requiring Charter to undergo the frequency coordination processes set forth in Section 101.103(d) of the Commission's Rules. Section 101.103(d) of the Commission's Rules normally requires applicants to coordinate proposed operations under Part 101 with nearby licensees and applicants prior to filing an application with the Commission.¹⁹ Here, because there is no reason to believe that reclassifying the regulatory status of existing facilities would generate any additional electrical interference, we find it to be in the public interest to relieve Charter of the burden of undergoing frequency coordination for facilities that are already operating.

8. We also conclude that Charter 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) restricts private operational fixed stations from being used to provide the final RF link in the chain of transmission of program material to MVPDs.²⁰ 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.²¹ Because Bresnan is already using the channels that Charter proposes to reclassify from common carrier to POFS, issuing the requested licenses 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.²² Also, while POFS and common carrier stations were assigned different frequencies at the time the rule was established, the frequencies in the 5925-6425 MHz and 10.7-11.7 GHz bands that Bresnan is using and Charter proposes to use are currently available for both common carrier and POFS operation.²³

¹⁷ *Id.*

¹⁸ 47 C.F.R. § 1.925(b)(3)(i)-(ii).

¹⁹ 47 C.F.R. § 101.103(d).

²⁰ 47 C.F.R. § 101.603(b)(3).

²¹ 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).

²² 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).

²³ See 47 C.F.R. § 101.101.

We also believe granting a waiver would be consistent with recent precedent granting a waiver of Section 101.603(b)(3).²⁴ Under those circumstances, we conclude that a waiver for Charter as it acquires those stations 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 Charter to continue relaying the programming that Bresnan has been conveying to its subscribers, and POFS licenses would more accurately reflect the nature of Charter's intended operations.

9. Finally, we grant Charter's request that we grant it a waiver of Section 101.145(b) of the Commission's Rules to enable it to acquire and continue operating the Bresnan microwave stations that point near the geosynchronous-satellite arc. Section 101.145(b) provides that no directional transmitting antenna utilized by a fixed station operating in the 2655 to 2690 MHz or the 5925 to 7075 MHz band with equivalent isotropically radiated power ("EIRP") greater than 35 decibel watts ("dBW") may be aimed within 2 degrees of the geostationary-satellite orbit.²⁵ That same rule also provides that exceptions may be made where such exceptions would not cause harmful interference to any authorized satellite system and the proposed transmissions would meet certain technical requirements.²⁶ Charter notes that two of Bresnan's common carrier microwave stations, WQJQ464 and WQJQ487, currently operate under a waiver of Section 101.145(b) that allows them to transmit in the 5925-6875 MHz frequency band while aimed within 2 degrees of the geostationary-satellite orbit.²⁷ Charter attaches an exhibit showing that the waiver request that Bresnan submitted with its original applications demonstrated that the stations did not exceed the maximum EIRP that may be allowed pursuant to the waiver guidelines of Section 101.145.²⁸ We find that it is appropriate to grant a waiver to Charter because the Wireless Telecommunications Bureau has previously determined that the facilities fall within the Section 101.145(b) guidelines for waiver grants in circumstances where there is otherwise no evidence that such exceptions would cause harmful interference to an authorized satellite system.²⁹

IV. ORDERING CLAUSES

10. Charter has justified waivers of Sections 101.103(d), 101.603(b)(3) and 101.145(b)³⁰ of the Commission's Rules. We therefore grant its Waiver Request and direct processing of its Applications.

11. 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 Charter Communications Operating, LLC on March 12, 2013 IS GRANTED.

²⁴ See Atlantic Broadband (PENN) L.L.C., *Memorandum Opinion and Order*, 27 FCC Rcd 13082 (WTB BD 2012) (granting waiver of Section 101.603(b) to allow relicensing of common carrier microwave facilities as POFS).

²⁵ 47 C.F.R. § 101.145(b).

²⁶ The Section 101.145(b) waiver criteria that are relevant to Bresnan's FS stations provide that, "If there is no evidence that such exception would cause possible harmful interference to an authorized satellite system, said transmission path may be authorized on a waiver basis where the maximum value of the equivalent isotropically radiated power (EIRP) does not exceed: ... (2) +47 to +55 dBW, on a linear decibel scale (8 dB per degree) for any antenna beam directed between 0.5 degrees and 1.5 degrees of the stationary orbit." See Waiver Request, Exhibit 3.

²⁷ Waiver Request at 2, 4 and Exhibit 3.

²⁸ Waiver Request at 2, 4, *citing* 47 C.F.R. § 101.145(b), and Waiver Request, Exhibit 3.

²⁹ See File Nos. 0003610048, 0003610199 (filed Oct. 14, 2008), granted Nov. 25, 2008) (granting Section 101.145(b) waivers and granting Bresnan licenses for WQJQ464 and WQJQ487, respectively, on Nov. 25, 2008).

³⁰ 47 C.F.R. §§ 101.103(d), 101.603(b)(3) and 101.145(b).

12. IT IS FURTHER ORDERED that the licensing staff of the Broadband Division SHALL PROCESS the pending applications of Charter Communications Operating, L.L.C. on March 12, 2013, as amended on March 14, 2013 (File Nos. 0005688029-0005688034, 0005688036-0005688040, 0005688042-0005688047, 0005688049, 0005688050) in accordance with this *Memorandum Opinion and Order* and the applicable Commission rules.

13. 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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