

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

In the Matter of
ENTERPRISE WIRELESS ALLIANCE
Request for Extension of Temporary Waiver –
Part 90 Conditional Licensing Authority Above
470 MHz

ORDER

Adopted: December 26, 2013

Released: December 27, 2013

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

1. Introduction. We have before us the request of the Enterprise Wireless Alliance (EWA) to extend a temporary waiver of Section 90.159(b) of the Commission’s Rules to permit applicants for new or modified stations in the 470-512 MHz, 806-824/851-866 MHz, and 896-901/935-940 MHz bands to operate while the applications are pending. We grant the extension request as set forth below.

2. Background. Pursuant to Section 90.159(b), most applicants proposing to operate a new private land mobile radio (PLMR) station or modify an existing PLMR station below 470 MHz that are required to include a showing of frequency coordination are permitted to operate the proposed station during the pendency of the application for a period of up to 180 days, beginning ten days after the application is submitted to the Commission. This conditional authority is not available for applicants in the PLMR frequency bands above 470 MHz.

3. In its initial waiver request, EWA noted that the Commission’s January 1, 2013 PLMR narrowbanding deadline triggered the filing of a large number of Part 90 applications in late 2012 and into 2013, resulting in notably longer processing times for non-Public Safety Pool applications. EWA contended that the limitation in Section 90.159(b) to applications below 470 MHz “creates the anomalous situation whereby, for example, a licensee proposing to upgrade from analog to digital equipment, which requires a modification of the emission designator, can deploy its new technology 10 business days after its below-470 MHz application is filed, yet must wait many months if the system is in the 470-512 MHz,

1 Enterprise Wireless Alliance, Order, 28 FCC Rcd 13910 (WTB MD 2013) (Waiver Order).

2 See 47 C.F.R. § 90.159(b).

3 See Letter dated December 24, 2013 from Mark E. Crosby, President/CEO, EWA to Roger C. Sherman, Acting Chief, Wireless Telecommunications Bureau (Extension Request).

4 See 47 C.F.R. 90.159(b), (b)(6). This conditional authority applies only to applications that meet the following requirements: the proposed station location is south of Line A and west of Line C; the proposed antenna structure has previously been determined by the Federal Aviation Administration to pose no hazard to aviation safety, or the proposed structure height does not exceed 6.1 meters above ground level or above an existing man-made structure; grant of the application does not require a waiver of the Commission’s rules; the proposed facility will not have a significant environmental effect; and the proposed station is not in a quiet zone. 47 C.F.R. 90.159(b)(1)-(5).

5 See Letter dated June 21, 2013 from Mark E. Crosby, President/CEO, EWA to Ruth Milkman, Chief, Wireless Telecommunications Bureau at 1 & n.2.

800 MHz, or 900 MHz frequency bands.”⁶ EWA requested a waiver to grant conditional authority for above-470 MHz applications filed with the Wireless Telecommunications Bureau (WTB) on or before December 31, 2013 that meet all of the other requirements and conditions of Section 90.159(b).⁷

4. WTB’s Mobility Division (Division) granted EWA’s request.⁸ It agreed with EWA that the large number of narrowbanding-related applications and the attendant temporary increase in processing time for all WTB applications was a unique or unusual factual circumstance for which waiver relief was appropriate, and that, under the circumstances, restricting conditional authority to applications involving frequencies below 470 MHz during this period would be inequitable and unduly burdensome to applicants that could not have anticipated this increased processing time.⁹ The Division granted the waiver only for PLMR applications filed on or before December 31, 2013 because it expected processing times to return to normal by the time that applications filed thereafter are processed.¹⁰

5. On December 24, 2013, EWA requested a six-month extension of the waiver. It notes that processing times have improved somewhat since it filed its initial waiver request, but still do not approach WTB’s prior speed-of-service.¹¹ EWA asserts that conditional operation pursuant to the waiver has not produced any complaints of interference or other regulatory issues, and states that it expects a petition for rulemaking to amend Section 90.259 to eliminate the below-470 MHz limitation to be filed in early 2014.¹²

6. *Discussion.* Based on the record before us, we grant EWA’s request to extend the temporary waiver under the same terms as the initial waiver. Specifically, we grant EWA’s request to temporarily waive Section 90.159(b) for applications in the 470-512 MHz, 806-824/851-866 MHz, and 896-901/935-940 MHz bands with WTB radio service codes¹³ filed on or before June 30, 2014 (including applications that are currently pending). The waiver applies only to such applications that meet all of the requirements of Section 90.159(b) other than the below-470 MHz limitation. The waiver does not apply to public safety applicants or licenses.

7. We remind applicants that frequency coordination recommendations are advisory in character and not an assurance that the Commission will grant the requested license.¹⁴ Conditional authority does not prejudice any action the Commission may take on the application, and may be

⁶ *See id.* at 1.

⁷ *See id.* at 1-2.

⁸ *See Waiver Order*, 28 FCC Rcd at 13911 ¶ 6.

⁹ *See id.* at 13911 ¶ 5. The Division also concluded that temporarily allowing above-470 MHz PLMR applicants to initiate service consistent with the requirements of Section 90.159(b) would serve the public interest by permitting the more timely deployment of systems that serve many parties’ communications needs. *Id.*

¹⁰ *See id.* at 13911 ¶ 6.

¹¹ *See Extension Request* at 1. It also notes that the Federal Government shutdown in October negatively affected processing times. *See id.*

¹² *See id.* at 2. When the Commission enacted the rule granting conditional authority below 470 MHz, it stated that it was being conservative in the implementation of conditional authority, and could consider expanding the concept in the future if experience demonstrated that such action was appropriate. *See Amendment of Part 90 of the Commission's Rules to Implement a Conditional Authorization Procedure for Proposed Private Land Mobile Radio Service Stations, Report and Order*, PR Docket No. 88-567, 4 FCC Rcd 8280, 8283 ¶ 25 (1989).

¹³ *See* http://wireless.fcc.gov/uls/index.htm?job=radio_services.

¹⁴ 47 C.F.R. § 90.175(h).

modified or canceled by the Commission at any time.¹⁵ The applicant assumes all risk associated with operation under conditional authority¹⁶ and should be cautious in purchasing radio equipment prior to obtaining a valid permanent authorization from the Commission.¹⁷

8. *Conclusion and Ordering Clauses.* 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 Extension of Temporary Waiver filed by the Enterprise Wireless Alliance on December 24, 2013 IS GRANTED to the extent set forth in paragraph 6.

9. 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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¹⁵ 47 C.F.R. § 90.159(d).

¹⁶ *Id.*

¹⁷ 47 C.F.R. § 90.175(h).