

October 10, 2014

DA 14-1482

VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED

Mr. Darrell Buchbinder
General Counsel
Port Authority of New York and New Jersey
225 Park Avenue South, 15th Floor
New York, New York 10003

Re: **In the Matter of the Port Authority of New York and New Jersey
Request for Waiver of Sections 90.157 of the Commission's Rules**

Dear Mr. Buchbinder:

On behalf of the Port Authority of New York and New Jersey (Port Authority), you filed a request for waiver¹ of Section 90.157 of the Commission's rules,² seeking a one-year extension to construct the stations listed in the attachment to this letter (collectively, World Trade Center Stations).³ For the reasons stated below, we grant, *nunc pro tunc*, the request for extension of

¹ Request for Extension of Waiver of Sections 90.157 of the Commission's [sic] Rules (dated Sept. 8, 2014) (Waiver Request).

² 47 C.F.R. §§ 90.157, 101.65(b). Pursuant to Sections 90.157, any station which has not been operated for one year or more is considered to have been permanently discontinued and is therefore subject to cancellation. *Id.*

³ In eleven prior instances, the former Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, the former Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau, the Policy Division of the Public Safety Homeland Security Bureau or the Policy and Licensing Division of the Public Safety Homeland Security Bureau (collectively, Division) granted similar Port Authority requests for waiver. *See* Port Authority of New York and New Jersey, *Order*, 17 FCC Rcd 16784 (WTB PSPWD 2002) (*2002 Order*); Port Authority of New York and New Jersey, *Order*, 18 FCC Rcd 19243 (WTB PSPWD 2003); Letter dated Nov. 10, 2004 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, to Jeffrey S. Green, General Counsel, Port Authority of New York and New Jersey; Letter dated Aug. 10, 2006 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, to Darrell Buchbinder, General Counsel, Port Authority of New York and New Jersey; Port Authority of New York and New Jersey, *Letter Order*, 23 FCC Rcd 1753 (PSHSB PD 2008); Port Authority of New York and New Jersey, *Letter Order*, 23 FCC Rcd 16622 (PSHSB PD 2008); Port Authority of New York and New Jersey, *Letter Order*, 24 FCC Rcd 14426 (PSHSB PD 2009); Port Authority of New York and New Jersey, *Letter Order*, 25 FCC Rcd 17555 (PSHSB PD 10) (Letter dated Nov. 16, 2011, from Thomas J. Beers, Chief, Policy and Licensing Division, to Darrell Buchbinder, General Counsel, Port Authority of New York and New Jersey); Letter dated September 7, 2012, from Thomas J. Beers, Chief, Policy and Licensing Division, to Darrell Buchbinder, General Counsel, Port Authority of New York and New Jersey (*2012 Letter*); Letter dated October 29, 2013, from Thomas J. Beers, Chief, Policy and Licensing Division, to Darrell Buchbinder, General Counsel, Port Authority of New York and New Jersey (*2013 Letter*). In

waiver, until September 10, 2015. Accordingly, the Port Authority will have until no later than September 10, 2015, to construct and return the World Trade Center Stations to operational status without forfeiting the licenses for permanent discontinuance of operation, pursuant to Section 90.157.⁴

Consistent with the Commission's rules, the waiver request demonstrates that unique and unusual circumstances caused the discontinuance of operations of the World Trade Center Stations, namely, the terrorist attacks of September 11, 2001.⁵ Moreover, given the fact that the World Trade Center Stations will continue to serve an integral role in the extensive network of transportation, terminal, and commercial facilities throughout the New York metropolitan area, especially for public safety communications, we find that grant of the waiver request is in the public interest.⁶

Additionally, the Port Authority demonstrates not only that it will continue to require use of the World Trade Center Stations, but also that it continues to proceed diligently and at an accelerated pace to reconstitute its destroyed radio communication facilities located at the World Trade Center.⁷ The Part 90 radio stations which are the subject of the instant waiver request were local area radio facilities used at the former World Trade Center buildings for building security and other purposes.⁸ The Port Authority states that at this time, it "plans to restore the operations of these local area facilities as promptly as reasonable during the World Trade Center site reconstruction process."⁹

In the *2002 Order*, we concluded that a fixed waiver term was appropriate to "avoid any ambiguity concerning the status of the licenses and to allow relicensing of any spectrum that the

each instance, the Division granted the Port Authority an additional one-year period to complete construction of its World Trade Center Stations.

⁴ The grant of this Waiver Request does not relieve the Port Authority from applying for a renewal of license for any World Trade Center Station listed in the attachment prior to the expiration date of the license. *See* 47 C.F.R. § 1.949(a). Moreover, any renewal application submitted for a World Trade Center Station subject to grant of this Waiver Request will be held in pending status until the extended construction period granted herein is expired. *See* County of Beaver, *Memorandum Opinion and Order*, 18 FCC Rcd 18754, 18758 ¶ 13 (WTB PSPWD 2003) (renewal application for unconstructed station held in pending status until the extended construction period grant is expired).

⁵ *See* 47 C.F.R. § 1.925(b)(3)(ii).

⁶ *Id.*

⁷ Waiver Request at 2-4, 6. The Port Authority states that its efforts have involved the relocation of certain facilities to other sites, on either a temporary or permanent basis, the establishment of new facilities, and planning for the reconstruction of facilities at the World Trade Center site when a suitable structure becomes available. *Id.* at 2. The Port Authority states that it intends to use one of the licenses for which waiver is requested, WPDU923, for public safety communications on an interim basis from a police trailer in the World Trade Center construction area. *Id.* at 2 (citing File No. 0006387944).

⁸ *Id.* at 3.

⁹ *Id.*

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Port Authority may later decide is not necessary for its future operations.”¹⁰ In the *2013 Letter* we again concluded that, in balancing the Port Authority’s continued need for additional time to bring facilities back into operation and the need of other public safety entities for spectrum, a further extension of waiver originally granted in the *2002 Order*, until September 10, 2014, was in the public interest.¹¹ Similarly, we conclude here that, in balancing the Port Authority’s continued need for additional time to bring facilities back into operation and the need of other public safety entities for spectrum, a further extension of waiver originally granted in the *2002 Order*, until September 10, 2015, is in the public interest. Grant of the waiver request will enable the Port Authority to plan, construct and place into operation its stations and, at the same time, ensure that scarce spectrum is utilized to enhance public safety radio communications at the World Trade Center site. We therefore conclude that the public interest would be served by granting the Port Authority an extension of time to complete construction of the World Trade Center Stations listed in the Attachment.¹²

Accordingly, pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 303(r), and Sections 1.925, 1.946(e), and 90.157, of the Commission’s rules, 47 C.F.R. §§ 1.925, 1.946(e), and 90.157, we GRANT, *nunc pro tunc*, to the extent indicated herein, the Request for Extension of Waiver of Section 90.157 of the Commission’s rules, filed by the Port Authority of New York and New Jersey.

We take this action under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission’s rules, 47 C.F.R. §§ 0.191 and 0.392.

Sincerely,

Thomas J. Beers
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁰ *2002 Order*, 17 FCC Rcd at 16786 ¶ 6. As we noted at the time of our 2013 rule waiver grant, the Port Authority previously surrendered various licenses issued pursuant to Part 101 of the Commission’s rules and returned the frequencies back into the frequency pool: WNEE495 (11215.00000 MHz, 11685.00000 MHz, 11525.00000 MHz), WNEK376 (23075.00000 MHz), WNEK377 (21875.00000 MHz), WNEE496 (10835.00000 MHz), WNEE497 (1087.00000 MHz), WPNI363 (10715.00000 MHz). See *2013 Letter* at 14.

¹¹ *2013 Letter* at 2.

¹² Our action herein does not preclude the Port Authority from requesting additional time should circumstances so warrant.

ATTACHMENT

Table 1: Tabulation of Affected Radio Stations Authorized Under FCC Part 90

Radio Authorization Call Sign	Expiration Date	Radio Service Code	Affected Location Number	Geographic Coordinates N.Lat/W.Long (NAD83)	Frequency (MHz)
KGU999	1/14/2012	PW	1	40-42-43.4 074-00-47.5	150.99500
KGU998	1/14/2012	PW	1	40-42-43.4 074-00-47.5	151.11500
KVN780	10/23/2014	PW	2	40-42-39.4 074-00-43.5	470.56250 470.58750
KVN779	10/23/2014	PW	1	40-42-39.4 074-00-43.5	470.61250
WPDU923	11/18/2013	PW	1	40-42-41.4 074-00-43.5	453.65000