

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

In the Matter of)
SANTA CLARA COUNTY, CALIFORNIA) File Nos. 0004937682 & 0004937683
Requests for Waiver of Sections 90.305(a) and)
90.307(d) of the Commission's Rules and the)
Suspension of Acceptance and Processing of)
Certain Part 90 Applications in the 470-512 MHz)
Band)

ORDER

Adopted: April 14, 2017

Released: April 14, 2017

By the Acting Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. The County of Santa Clara, California (Santa Clara, or the County) filed two applications and a request for waiver of Section 90.305(a) of the Commission's rules to operate a T-Band (470-512 MHz) public safety land mobile radio system on frequency pair 482/485.3375 MHz at two sites located beyond the allowable 80 kilometers (50 miles) from San Francisco, California. However, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau (Bureaus) have suspended processing of certain applications in the T-Band. Accordingly, the County also sought waiver of this suspension. For the reasons below, we deny the waiver requests and dismiss the applications.

II. BACKGROUND

2. Santa Clara operates on the same frequency pair under call signs KWM757, WQNF935 and WQMI891 at six sites within the allowable 80 kilometers of the San Francisco geographic center coordinates. The County notes that the 80-kilometer radius encompasses the northern third of Santa Clara County and thereby limits the usage of 482.3375 MHz to fixed transmitters located in this area. Santa

1 File Nos. 0004937682 & 0004937683 (filed Nov. 3, 2011, amended Apr. 3, 2013), attachments entitled, "Request for Waiver" (Waiver Request) and "Waiver-Expedited Action Requested To Waive Freeze of the PW Pool in the T-Band 470-512 MHz Affecting Pending Applications FCC Files # 0004937682 and # 0004937683" (Suspension Waiver).

2 Waiver Request at 1; see also 47 CFR § 90.305(a).

3 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 (WTB/PSHSB 2012) (Suspension Notice).

4 Suspension Waiver.

5 Waiver Request at 1.

Clara proposes to expand its radio coverage to the southern areas of the county by adding two fixed radio sites located outside of the allowable 80-kilometer radius for land mobile stations.⁶ The County asserts that the proposed transmitters would provide public safety mutual aid radio communications to the cities of Gilroy, San Martin, Morgan Hill, and parts of the City of San Jose.⁷ Santa Clara also requests a waiver of Section 90.307(d) of the Commission's rules because the County proposes to operate at less than the minimum 145 kilometers (90 miles) from adjacent channel DTV Station KBSV, Ceres, California, Channel 15.⁸ Finally, Santa Clara requests a waiver of Section 90.313(c) to enable it to operate at less than the minimum 64 kilometer spacing from co-channel land mobile Stations KVL967, City of Campbell and WBF769, Town of Los Gatos.⁹

3. On February 22, 2012, President Obama signed the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) into law.¹⁰ Section 6103 of the Spectrum Act provides that, not later than nine years after the date of enactment, the Commission shall reallocate T-Band spectrum "currently used by public safety eligibles."¹¹ On April 26, 2012, the Bureaus issued a *Public Notice* announcing a limited suspension of the acceptance and processing of certain applications for Part 22 and Part 90 services operating in the 470-512 MHz spectrum band (T-Band) that could alter the spectrum landscape.¹² 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 Spectrum Act.¹³ Among other things, the Bureaus stated that they would not accept or process applications for new Part 90 licenses in the T-Band.¹⁴ The Bureaus further stated that "affected applications that are now pending will not be processed until the Commission decides how to implement the act, except that defective applications ... will be dismissed."¹⁵ The *Suspension Notice* provides that applicants may have recourse

⁶ *Id.* The proposed sites at Morgan Hill and Gilroy are 99.3 kilometers (61.7 miles) and 113.6 kilometers (70.6 miles), respectively, from the San Francisco geographic center coordinates.

⁷ *Id.* at 2.

⁸ See *Waiver Request* at 6. See also 47 CFR § 90.307(d). A land mobile base station which has associated mobile units must be separated from a protected adjacent channel television station by a minimum distance of 145 kilometers (90 miles). *Id.* Santa Clara's proposed base stations would be located 44.9 and 58.7 kilometers from Station KBSV.

⁹ The County has existing letters of concurrence from these licensees that approve "any future applications" on the frequency pair. See File Nos. 0004937682 & 0004937683, attached Letter from Nancy A. Dawn, Administrative Services Manager, Los Gatos Police Department to Santa Clara County Communications (dated July 3, 2010) and Letter from Lisa Tait, Acting Support Service Manager, City of Campbell to Santa Clara County (dated August 16, 2010).

¹⁰ See Pub. L. No. 112-96, 126 Stat. 156 (2012) (Spectrum Act).

¹¹ Spectrum Act, § 6103(a). The Act further instructs the Commission to "begin a system of competitive bidding under Section 309(j) of the Communications Act of 1934 (47 USC 309(j)) to grant new initial licenses for the use of the spectrum." *Id.* It also provides that "relocation of public safety entities from the T-Band Spectrum" shall be completed not later than two years after completion of the system of competitive bidding. *Id.*, § 6103(b), (c).

¹² *Suspension Notice*.

¹³ *Id.*, 27 FCC Rcd at 4218-19.

¹⁴ *Id.* at 4219.

¹⁵ *Id.*

to the waiver provisions of Section 1.925 to request an exception to the filing and processing suspension.¹⁶

4. On April 3, 2013, Santa Clara requested a waiver of the suspension provisions.¹⁷ It claims that the need to provide improved radio coverage for public safety first responders in the fastest growing region of the county is increasingly critical.¹⁸ Santa Clara notes that the 700 MHz Silicon Valley Regional Communications System (SVRCS) project has begun, but that it will take millions of dollars and many years to complete, and there is no other viable interoperable communications solution other than its instant proposal until the 700 MHz system is constructed.¹⁹ The County states that all police agencies that use the 450 MHz band, and users of the 480 MHz band rely on frequency 482/487.3325 MHz as a common mutual aid channel during critical events, and that the frequency is only used during emergencies.²⁰ The County argues that, due to mountainous surroundings of Santa Clara Valley and the County's use of low level sites, the operational impact of the requested applications on any other agencies using T-Band frequencies will be minimal.²¹ While we take these points into consideration, we address other arguments relevant to the suspension in the discussion below.

III. DISCUSSION

5. Section 1.925(b)(3) of the Commission's rules provides the relevant standard for waiver of the Commission's rules: the Commission may grant a request for waiver if it is shown 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.²² Well-established Commission precedent holds that "[a]n applicant for a waiver faces a high hurdle even at the starting gate."²³

6. Santa Clara argues that the applications should be accepted because they were filed three months prior to Congress passing the Spectrum Act and six months prior to the T-Band freeze.²⁴ However, timing relative to the suspension is irrelevant here because the *Suspension Notice* stated that "affected applications that are now pending will not be further processed until the Commission decides how to implement the Act . . ."²⁵ Next, Santa Clara asserts that there is precedent for granting its requested waiver because the Santa Clara Valley Transit Authority (VTA) was granted a waiver to operate a T-Band transmitter at the Gilroy location requested by the County. However, staff determined that VTA only operates T-Band facilities near the proposed Morgan Hill location.²⁶ Moreover, the

¹⁶ *Id.* at 4219 note 4.

¹⁷ Suspension Waiver.

¹⁸ *Id.* at 3.

¹⁹ *Id.* at 4.

²⁰ *Id.* at 3-4.

²¹ *Id.* at 4.

²² 47 CFR § 1.925(b)(3).

²³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²⁴ *Id.* at 3.

²⁵ *Suspension Notice*, 27 FCC Rcd at 4219.

²⁶ Suspension Waiver at 4. See call signs WPTJ628, WPRW624, WPSP534 and WPSE913.

waivers for those VTA T-Band facilities were granted in 2001, well before the freeze was imposed. Thus, the pre-freeze waivers granted to VTA do not serve as precedent for grant of post-freeze waivers to Santa Clara.

7. The purpose of the suspension on acceptance of T-Band applications is to stabilize the spectral environment while the Commission determines how to implement the Spectrum Act.²⁷ One of the Commission's responsibilities under the Spectrum Act is to implement the Incentive Auction, which includes repacking of television stations.²⁸ The Incentive Auction will result in an 84 MHz reduction of spectrum available for TV broadcast,²⁹ and the subsequent TV repacking process (including the filing windows in which stations can request alternative channels)³⁰ will put more stations on the remaining TV channels – including TV Channel 16 – as the Commission clears higher TV broadcast channels within the UHF band for commercial wireless services. The Commission announced that it will require repacked TV stations in the T-Band to protect land mobile urbanized areas as well as existing stations operating, pursuant to waiver, in excess of 80 kilometers from the center of specified urbanized areas.³¹ We deny Santa Clara's request for waiver of the filing suspension and Section 90.305 because granting those waivers of the 80-kilometer restriction would further constrain the repacking process and would impede the Commission's implementation of the Incentive Auction required by the Spectrum Act. We find that enforcement of the suspension in this instance would serve its stated purpose and the public interest.

8. Section 1.934(d)(2) of the Commission's rules provides that an application containing a waiver request is defective if the Commission denies the waiver request and the application does not contain an alternative proposal that fully complies with the rules.³² Because Santa Clara submitted no such alternative proposal, we dismiss Santa Clara's applications as defective.³³ Therefore, we need not address Santa Clara's requests for waiver of Section 90.307(d) and 90.313(c).

²⁷ *Suspension Notice*, 27 FCC Rcd at 4218.

²⁸ Spectrum Act, § 6402. See also *Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions*, GN Docket No. 12-268, Report and Order, 29 FCC Rcd 6567 (2014) (*Incentive Auction Report and Order*).

²⁹ The final stage rule was satisfied on Jan. 18, 2017. See *Incentive Auction Public Reporting System, Forward Auction – Announcements*, https://auctiondata.fcc.gov/public/projects/1000/reports/forward_announcements (last visited Mar. 16, 2017). See also <https://www.fcc.gov/news-events/blog/2017/02/10/incentive-auction-clock-phase-over-what%E2%80%99s-next> (last visited Mar. 16, 2017) (announcing the close of the clock phase of the Incentive Auction).

³⁰ *Incentive Auction Task Force and Media Bureau Announce Procedures for the Post-Incentive Auction Broadcast Transition*, Public Notice, 32 FCC Rcd 858, at 866-70, paras. 27-38 (MB 2017) (*Broadcast Transition Procedures Public Notice*).

³¹ *Incentive Auction Task Force Releases Information Related to Incentive Auction Repacking*, GN Docket No. 12-268, ET Docket No. 13-26, Public Notice, 28 FCC Rcd 10370 (2013) (*Repacking Notice*). Repacking is a “reorganization . . . of the broadcast television bands, which is likely to include the reassignment of some television stations to new channels.” *Id.* Repacked TV stations in the T-Band will observe protection distances from individual land mobile waiver base stations of 185 kilometers for co-channel TV stations and 96 kilometers for adjacent channel TV stations. *Id.*, attached Technical Appendix: Constraint Files Generation. Waiver base stations are located outside 80 kilometers of the city centers pursuant to waivers of 47 CFR § 90.305(a).

³² 47 CFR § 1.934(d)(2).

³³ *Suspension Notice* at 4219; see also *Town of Sandwich, Massachusetts*, Order, 27 FCC Rcd 9173, 9174 ¶ 4 (PSHSB 2012).

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 USC §§ 154(i), 303(r); and Section 1.925(b)(3) of the Commission's rules, 47 CFR § 1.925(b)(3), the Waiver Request filed by Santa Clara County, California on November 3, 2011 and the Suspension Waiver filed by Santa Clara County, California on April 3, 2013, ARE DENIED.

10. IT IS FURTHER ORDERED that File Nos. 0004937682 & 0004937683 ARE DISMISSED consistent with this *Order* and the Commission's rules.

11. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
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