

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

In the Matter of)	
)	
METROPOLITAN TRANSPORTATION)	File Nos. 0008028094, 0008028126,
AUTHORITY POLICE DEPARTMENT)	0008028199, 0008028242, 0008028247,
)	0008028297, 0008028310, 0008028316,
Request for Waiver of Section 90.551 of the)	0008028328, 0008028335, 0008028341,
Commission's Rules)	0008028345, 0008028349, 0008028365,
)	0008028446, 0008028468, 0008028477

ORDER

Adopted: November 15, 2018

Released: November 15, 2018

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

I. INTRODUCTION

1. The Metropolitan Transportation Authority Police Department (MTAPD) is constructing the Metropolitan Regional Radio System (MRRS), a radio system in the 700 MHz public safety narrowband spectrum that will support transit police operations on MTA facilities in the New York metropolitan area. The Commission granted MTAPD a 5-year extended construction period to construct the system, which ended on December 31, 2017. On December 12, 2017, MTAPD submitted the instant request to extend the construction period by an additional two years through December 31, 2019.¹ Below we address MTAPD's request to waive Section 90.551 of the Commission's rules² governing such requests.

II. BACKGROUND

2. *Extended Implementation.* Section 90.551 of the Commission's rules requires 700 MHz narrowband stations to be constructed and placed into operation within 12 months from the date of grant of the authorization,³ but also allows an applicant to request an extended construction period of up to 5 years pursuant to Section 90.155(b) of the Commission's rules.⁴ Section 90.155(b) also states that a local government entity in the Public Safety Pool can seek an extension pursuant to Section 90.629.⁵ Section 90.629 provides that applicants requesting frequencies for either trunked or conventional operations may

¹ File Nos. 0008028094, 0008028126, 0008028199, 0008028242, 0008028247, 0008028297, 0008028310, 0008028316, 0008028328, 0008028335, 0008028341, 0008028345, 0008028349, 0008028365, 0008028446, 0008028468, 0008028477 (collectively, MTAPD Application). *See also* Letter from Lieutenant J. Vallerelli, Deputy Program Lead/Integration, Metropolitan Regional Radio System Project, MTA Police Department, to Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (dated Dec. 7, 2017) (attachment to MTAPD Application with the subject line "MTAPD Metropolitan Regional Radio System (MRRS) Extended Implementation Plan") (Waiver Request).

² 47 CFR § 90.551.

³ 47 CFR § 90.551. The rule exempts State channels from these buildout requirements because state license implementation is covered by Section 90.529 of the Commission's rules. *See* 47 CFR § 90.529. This aspect of Section 90.551 is irrelevant to our analysis because the licenses at issue here are not state licenses.

⁴ 47 CFR § 90.551 *citing* 47 CFR § 90.155(b).

⁵ 47 CFR § 90.155(b) *citing* 47 CFR § 90.629.

be authorized a period of up to five years, subject to certain conditions, for constructing and placing a system in operation.⁶

3. *MTAPD's Waiver Request.* MTAPD indicates that it intends to use the MRRS in support of its extensive transit police services and to raise situational awareness in and around MTA rights-of-way located in New York, New Jersey, and Connecticut, including New York City transit operations, the Metro North Railroad, the Long Island Railroad, the Staten Island Rapid Transit System, seven bridges and two tunnels.⁷ MTAPD states that its service area “spans fourteen (14) Counties serving a population of 14.4 million people with its nearly 1,000 members.”⁸

4. MTAPD states that it has made substantial progress in deployment of its system but that the requested two-year extension is necessary “to successfully implement and cut-over the entire MTAPD operation onto the new trunked radio network.”⁹ MTAPD also asserts that its funding for the MRRS is secure.¹⁰ As part of its extension request, MTAPD submits an Extended Implementation Plan (EIP) and a schedule that specifies a project completion date of December 11, 2019.¹¹

III. DISCUSSION

5. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the 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.¹² An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹³

6. The underlying purpose of Section 90.551, which references Section 90.629, would not be served if we were to strictly apply Section 90.551 in this case. First, when the Commission adopted Section 90.551, it recognized that state and local governments often follow multi-year cycles for the planning, approval, funding and purchasing of their public safety systems. Therefore, pursuant to Section

⁶ 47 CFR § 90.629. For example, Section 90.629 states, *inter alia*, that extended implementation may be granted when the applicant provides a detailed justification for the extended implementation period and shows that “[t]he proposed system will require longer than twelve (12) months to construct and place in operation because of its purpose, size, or complexity.” 47 CFR § 90.629(a)(1).

⁷ See Waiver Request at 1-2. In coordination with municipal and county police and sheriff departments, MTAPD currently provides policing and protection covering nearly 1500 miles of rail and over 160 million transit customers annually in just southern New York and Long Island. *Id.* at 2.

⁸ *Id.* at 2.

⁹ Waiver Request at 1, 3. MTAPD submits that it reached a significant milestone by completing Factory Acceptance Testing for 4 out of 5 zones worth of radio equipment.

¹⁰ MTAPD states that “[t]he MTA Capital Program for 2015-2019, Amendment 2 was approved by the MTA Board on May 24, 2017 and further and finally adopted by the Capital Programs Review Board (CPRB) on July 31, 2017.” *Id.*

¹¹ *Id.* at 4. MTAPD supplemented its waiver request updating the status of the system's construction, including reasons for delay and status of completion of its MRRS project. See September 4, 2018 Letter from Lieutenant J. Vallerelli, Deputy Program Lead/Integration, Metropolitan Regional Radio System Project, MTA Police Department, to Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (Supplemental Letter).

¹² 47 CFR § 1.925(a)(3).

¹³ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp.*, Memorandum Opinion and Order, 18 FCC Rcd 1414, 1415 (2003).

90.155(b), it allowed local government entities five years to place a station in operation if the applicant submits a specific schedule for the completion of each portion of the entire system, along with a showing that the system has been approved and funded for implementation in accordance with that schedule.¹⁴ The Commission included these provisions to ensure that licensees did not warehouse spectrum.¹⁵

7. We see no evidence of spectrum warehousing here. MTAPD has shown substantial progress in implementing the MRRS and demonstrated that it has the financing necessary to complete this complex and sprawling system. Specifically, MTAPD has provided the following details regarding the progress of the system: Zone 4 System Manufacturing 100% complete; Zone 4 System Factory Acceptance (100%) complete; Installation of Zone 1 Sites (19 sites) 60% complete; Installation of Zone 2 Sites (23 sites) 38% complete; Installation of Zone 3 Sites (6 sites) 12% complete; Installation of Zone 4 Sites (17 sites) 56% complete; and Site System Testing to be completed December 2019.¹⁶ In addition to this progress update and the specific target dates for milestone completion that MTAPD has provided in its EIP, we are further assured by the fact that MTAPD will continue to be subject to the reporting requirements of Section 90.629(c).¹⁷ Accordingly, we find that MTAPD has met the first prong of the Commission's waiver standard.

8. We also find that the second prong of the waiver standard is met. As described above, the MRRS is a complex system serving a dense urban environment. Denying MTAPD's request would place an undue burden on MTAPD, would afford MTAPD with no reasonable alternative to complete its system, and would be contrary to the public interest. We therefore grant MTAPD an extension of time until its requested date of December 31, 2019.

IV. ORDERING CLAUSES

9. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 303(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(c), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, that the waiver requests associated with File Nos. 0008028094, 0008028126, 0008028199, 0008028242, 0008028247, 0008028297, 0008028310, 0008028316, 0008028328, 0008028335, 0008028341, 0008028345, 0008028349, 0008028365, 0008028446, 0008028468, 0008028477 filed by the Metropolitan Transit Authority Police Department ARE GRANTED and the associated applications SHALL BE PROCESSED accordingly.

10. This action is taken under delegated authority pursuant to Section 155(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 155(c) and Sections 0.191 and 0.392 of the Commission's rules, 47 CFR §§ 0.191, 0.392.

¹⁴ See *Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010*, First Report and Order and Third Notice of Proposed Rulemaking, 14 FCC Rcd 152, 201 para. 103 (1998). See, e.g., *City of Long Beach*, Order, 32 FCC Rcd 10213, 10216 para. 10 (PSHSB Dec. 7, 2017) (granted the 700 MHz narrowband slow growth request, in part, because of "the complexity of the integrated interoperability system Long Beach implemented.").

¹⁵ See 47 CFR § 90.629. See also, *Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods*, Report and Order, 8 FCC Rcd 3975, para. 5 (1993).

¹⁶ See Supplemental Letter at 5.

¹⁷ 47 CFR § 90.629(c) (Licensees with slow growth authorizations must notify the Commission annually, using FCC Form 601, that they are in compliance with their yearly station construction commitments).

FEDERAL COMMUNICATIONS COMMISSION

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