

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

In the Matter of)	
)	
NEW YORK CITY POLICE DEPARTMENT)	File No. 0008188382
)	
Request for Waiver of the T-Band Freeze)	

ORDER

Adopted: November 15, 2018

Released: November 15, 2018

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

I. INTRODUCTION AND BACKGROUND

1. The New York City Police Department (NYPD) filed an application¹ to modify public safety radio station call sign WIM668, by modifying a repeater (Location 1) and adding another repeater station (Location 3) operating in the 470-512 MHz band (T-Band).² NYPD also requested a waiver³ of the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau's (Bureaus) suspension of the acceptance and processing of certain T-Band applications.⁴ We grant NYPD's waiver request and direct the application to be processed, subject to the conditions described below.

2. Under the *Suspension Notice*, T-Band applications that expand a station's geographic footprint are suspended from processing.⁵ With the *Suspension Notice*, the Bureaus sought to stabilize the spectral environment while the Commission considers issues surrounding future use of the T-Band and implementation of the Middle Class Tax Relief and Job Creation Act of 2012 (the Act).⁶ The Bureaus determined that prudent spectrum management dictated suspending the acceptance and processing of T-Band licensing applications that could alter the spectrum landscape and make implementing the Act more difficult or costly.⁷ Specifically, the Bureaus will not accept or process modifications to existing licenses

¹ File No. 0008188382 (filed Apr. 23, 2018) (NYPD Application).

² Station WIM668 is authorized on frequency pair 483/486.9125 MHz for base/mobile operations and frequency 485.3875 MHz for control station operations. Location 2 designates mobile units operating within a 48-kilometer radius around Location 1.

³ NYPD Application, attached Waiver Request of the T-Band Freeze (Waiver Request).

⁴ *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*).

⁵ *Id.* at 4219.

⁶ Pub. L. No. 112-96, 126 Stat. 156 (2012). Section 6103 of the Spectrum Act provides that, not later than nine years after the date of enactment, the Commission shall "reallocate the spectrum in the 470-512 MHz band ... currently used by public safety eligibles ..." *Id.*, § 6103(a). The Act instructs the Commission to "begin a system of competitive bidding under Section 309(j) of the Communications Act of 1934 (47 U.S.C. 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).

⁷ *Suspension Notice*, 27 FCC Rcd at 4218.

to change technical parameters that expand the station's geographic footprint to add or change locations.⁸ However, applicants may request an exception to the filing and processing freeze.⁹ In June 2012, the Bureaus issued a *Clarification Notice* indicating that “[l]ocations may be added or changed if the new site does not increase the licensed contour.”¹⁰

II. DISCUSSION

3. To obtain a waiver, 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.¹¹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹²

4. NYPD states that “there is no expansion of base station facilities, so the licensed footprint among the associated call sign remains unchanged.”¹³ However, Commission staff found that the requested modification of the repeater at Location 1 would result in extension of the licensed footprint of Station WIM668.¹⁴ Due to an error, Station WIM668 was licensed with inaccurate coordinates. The modification will update the license to reflect actual coordinates, and there will be no changes to the physical facilities. We find that this modification would not materially alter the spectrum landscape. Therefore, we find that in view of unique or unusual factual circumstances of the instant case, application of the *Suspension Notice* in this case would be inequitable to NYPD. Next, with respect to the Location 3 repeater addition, staff confirmed no extension of the licensed footprint. Thus, in accordance to the *Clarification Notice*, this site addition is permitted.

5. Accordingly, we find that a waiver of the *Suspension Notice* is warranted, and NYPD meets the *Clarification Notice* requirements for adding a repeater. The application will be processed with the following special conditions:

- Authorization is subject to implementation of Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (enacted February 22, 2012), which 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.” 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. See the Middle Class Tax Relief and Job Creation Act of 2012, Section 6103(b), (c).
- Because the addition of Location 3 (40-46-20.3 N, 073-50-21.5 W) is granted after

⁸ *Id.* at 4219.

⁹ *Id.*, note 4, citing to the waiver provision in Section 1.925 of the Commission's rules (47 CFR § 1.925).

¹⁰ *Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Clarify Suspension of the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum*, Public Notice, 27 FCC Rcd 6087, 6088 (WTB/PSHSB 2012) (*Clarification Notice*).

¹¹ 47 CFR § 1.925(b)(3)(i-ii).

¹² *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).

¹³ Waiver Request at 1.

¹⁴ Staff contacted NYPD to determine the circumstances of the Location 1 modification, and NYPD indicated that it is a data correction.

passage of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (enacted February 22, 2012), the licensee shall have no expectation of receiving funds to cover the cost of relocating the Location 3 facilities covered by this authorization from the 470-512 MHz band spectrum. *See* the Middle Class Tax Relief and Job Creation Act of 2012, Section 6103(b).

III. ORDERING CLAUSES

6. ACCORDINGLY, IT IS ORDERED that, pursuant to Sections 1, 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, the Waiver Request filed by the New York City Police Department, IS GRANTED as conditioned herein and to the extent set forth in this order.

7. IT IS ORDERED that the foregoing application, File No. 0008188382, filed by the New York City Police Department, SHALL BE PROCESSED as conditioned herein.

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

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau