

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

In the Matter of)
)
COMMISSIONERS OF FIRE DISTRICT NO. 1,) File No. 0005017862
FRANKLIN TOWNSHIP,)
SOMERSET COUNTY, NEW JERSEY)
)
Request for Waiver of T-Band Suspension Notice)

ORDER

Adopted: July 23, 2018

Released: July 24, 2018

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

I. INTRODUCTION

1. On January 5, 2012, the Commissioners of Fire District No. 1, Franklin Township, Somerset County, New Jersey (CFD1), filed an application for a new public safety radio station to operate in the 470-512 MHz band (T-Band).1 CFD1 subsequently requested a waiver2 of the Wireless Telecommunications Bureau’s and the Public Safety and Homeland Security Bureau’s (Bureaus) suspension of the processing of certain T-Band applications, which we address below.3

II. BACKGROUND

2. On April 26, 2012, the Bureaus suspended the acceptance and processing of certain applications for T-Band UHF frequencies that could alter the spectrum landscape (Suspension Notice).4 The Suspension Notice 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).5 The Bureaus determined that prudent spectrum management required that we suspend the acceptance and processing of T-Band licensing applications to avoid making the

1 File No. 0005017862.

2 Id., attached Letter from Robert E. Cuddy, Radio Committee Chairman, Commissioners of Fire District No. 1 to Federal Communications Commission (filed Dec. 15, 2017) (Waiver Request). On October 21, 2017, the Public Safety and Homeland Security Bureau returned the application noting that the application cannot be processed under the Suspension Notice referenced in n. 3 infra. See File No. 0005017862, Notice of Return dated Oct. 21, 2017, Reference Number 6304094.

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 Id.

5 Id.; Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012) (the Act). Section 6103 of the 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).

implementation of the Act more difficult or costly.⁶ Thus, the Bureaus will not accept or process applications for new licenses.⁷ The Bureaus stated that applications that were pending as of April 26, 2012, would not be processed until the Commission decides how it will implement the Act.⁸ The Bureaus stated that applicants could request a waiver of the suspension pursuant to Section 1.925 of the Commission's rules.⁹

III. 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.¹⁰ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹¹

4. CFD1 proposes to use the requested T-Band frequencies 471.275 and 474.275 MHz to coordinate operations and personnel for its four fire departments.¹² CFD1 currently operates station WNWK927 on frequencies 153.77 and 154.16 MHz in the VHF band and has no T-band licenses. CFD1 states that it experiences routine failures with its existing facilities given the proximity of facilities licensed to Somerset County, New Jersey.¹³ CFD1 claims that the requested T-Band frequencies are essential for daily operations and to ensure both the safety and security of the Franklin Township citizens and the firefighters of the district.¹⁴ CFD1 also submits that it would not be in the public's interest to deny its request for a new authorization.¹⁵

IV. DECISION

5. We find that CFD1 has not shown that the underlying purpose of the *Suspension Notice* would not be frustrated by application to the present case. CFD1 would be a new entrant to the T-Band spectrum. A grant of its application would not serve the purpose of the *Suspension Notice* since it would alter the spectrum landscape, thereby complicating the process of finding replacement frequencies for dislocated T-Band licensees. Accordingly, CFD1 does not satisfy the first prong of the waiver standard.¹⁶

⁶ *Suspension Notice*, 27 FCC Rcd at 4218.

⁷ *Id.* at 4219.

⁸ *Id.*

⁹ *Id.*, note 4.

¹⁰ 47 CFR § 1.925(b)(3)(i); 47 CFR § 1.925(b)(3)(ii).

¹¹ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *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).

¹² Waiver Request at 1.

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *See, e.g.*, File No. 0005067486, attached letter from Michael J. Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, to Rocky Point Fire District (dated Nov. 13, 2017) at 3-4 (finding that Rocky Point Fire District, as a proposed new entrant to the T-Band spectrum, does not satisfy the first prong of the waiver standard).

6. Next, we do not find that application of the *Suspension Notice* would be inequitable, unduly burdensome, or contrary to the public interest, or that it has no reasonable alternative. Twelve unassigned 700 MHz band General Use channels are available today in Somerset County which CFD1 has not addressed in its application.¹⁷ We therefore find that CFD1 has a reasonable alternative, *i.e.*, to use 700 MHz band General Use spectrum for its command and on-scene communications. Accordingly, CFD1 does not satisfy the second prong of the waiver standard. Therefore, we find that a waiver of the *Suspension Notice* is unwarranted and the Waiver Request is denied. Since we will not process the associated application, it will be dismissed.

V. ORDERING CLAUSES

7. 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 Commissioners of Fire District No. 1, Franklin Township, Somerset County, New Jersey, IS DENIED.

8. IT IS FURTHER ORDERED, that the application, File No. 0005017862, SHALL BE DISMISSED.

9. 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

¹⁷ The Region 8 Regional Planning Committee (Region 8 RPC) allots 6 channels of 25 kHz bandwidth, equivalent to 12 channels of 12.5 kHz bandwidth, to Somerset County, New Jersey, in which CFD1 is located. FCC Region 8 – 700-MHz Public-Safety Communications Plan, WT Docket No. 02-378 (filed Oct. 30, 2015) at Appendix I. The base sides of the available channels are 769.58750, 770.83750, 771.86250, 772.23750, 772.96250, and 774.41250 MHz. A search of the Universal Licensing System database indicates that none of these channels is assigned to any licensee in Somerset County. <http://wireless.fcc.gov/uls> (searched July 23, 2018).