

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

In the Matter of)
COUNTY OF UNION, NEW JERSEY) File No. 0005123137
Request for Waiver of Section 90.305(a))
Of the Commission's Rules)

ORDER

Adopted: July 23, 2018

Released: July 24, 2018

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

I. INTRODUCTION AND BACKGROUND

1. The County of Union, New Jersey (Union, or the County) seeks to operate a control station on frequency 504.1875 MHz, a frequency, which falls in the T-Band (470-512 MHz), to control dispatch operations of call sign WPIG291 assigned to the Borough of Roselle, New Jersey (Roselle). Accordingly, the County filed an application and request for waiver1 of Section 90.305(a) of the Commission's rules2 on March 12, 2012. The County asserts that Roselle has requested that the County "take over dispatch operations for [Roselle's] Fire Department."

2. The County seeks a waiver because, inconsistent with our rules, the control station would operate in the TV Channel 19 band at a location further than 80 kilometers (50 miles) from the center of Philadelphia, Pennsylvania, where the channel is allocated for land mobile radio use. As an initial matter, we note that the County has filed for a waiver of the wrong rule section. Section 90.305(a) applies to base stations and mobile relay stations, not control stations. The operative rule section here is Section 90.305(c) which states that "control stations must be located within the area of operation of the mobile units."4 Since Union does not have mobile units on frequency 504.1875 MHz, it requires a waiver of Section 90.305(c). Union's application also requires a waiver of the T-Band Freeze because it requests a new license in the T-Band.5

II. DISCUSSION

3. 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

1 File No. 0005123137 (filed Mar. 12, 2012), attached Waiver Request submitted by David Stern, Vice President, V-COMM L.L.C. (dated Feb. 29, 2012) (Waiver Request).

2 47 CFR § 90.305(a).

3 Waiver Request at 3.

4 47 CFR § 90.305(c).

5 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 Red 4218 (WTB/PSHSB 2012) (Suspension Notice).

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.⁶ Well-established Commission precedent holds that “[a]n applicant for a waiver faces a high hurdle even at the starting gate.”⁷

4. Under the first prong, Union has not detailed why the underlying purpose of the rule would not be served by application to the instant case, or why grant of the requested waiver would be in the public interest. Union has also not provided any evidence of Roselle’s concurrence to the proposed control station arrangement.

5. Under the second prong, we find that the Union has reasonable alternatives contingent upon Roselle’s cooperation: (a) Roselle could modify Station WPIG291 to add the control station, then enter into a sharing agreement with the County pursuant to Section 90.179 of the Commission’s rules⁸ to allow Union to operate the control station while Roselle remains the licensee; or (b) Roselle could transfer control of Station WPIG291 to the County. The County could then apply for modification of Station WPIG291 to add a control station.⁹ Accordingly, we find that the County’s instant request does not merit a waiver of either Section 90.305(a) or Section 90.305(c). The County has also failed to show good cause for waiver of the T-Band Freeze.

6. Given that Union does not meet either prong of the waiver standard, the request for a waiver is denied. Accordingly, we dismiss the application without prejudice.¹⁰

III. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 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 the County of Union, New Jersey on March 12, 2012, IS DENIED.

8. IT IS FURTHER ORDERED that File No. 0005123137 IS DISMISSED consistent with this *Order* and the Commission’s rules.

9. IT IS FURTHER ORDERED that a copy of this *Order* shall be sent by first-class mail to Roselle Fire Department, 725 Chestnut Street, Roselle, New Jersey 07203, Attn: Chief Paul Mucha.

⁶ 47 CFR § 1.925(b)(3).

⁷ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁸ 47 CFR § 90.179.

⁹ We do not decide here whether we would approve any future applications. we note that a modification of an existing T-Band license, *i.e.*, WPIG291, to add a control station would not violate the T-Band Freeze; *see Suspension Notice*, 27 FCC Rcd at 4219. Union holds a special temporary authorization (STA) for a control station on call sign WQWY872 for controlling operations of Roselle Station WPIG291. The County shall describe progress with Roselle on a rule-compliant alternative when submitting any further application to renew this STA.

¹⁰ *See* 47 CFR § 1.934(d)(2). The Commission may dismiss an application without prejudice as defective where it finds that the application requests an authorization that would not comply with one or more of its rules and does not contain a request for waiver of those rules, or when the Commission denies a request for rule waiver and there is no alternative proposal that fully complies with the rules.

10. 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
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau