

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

In the Matter of)
Westchester County, New York) File Nos. 0008404668, 0008404688,
Request for Waiver of Section 90.551 of the) 0008404694, 0008404700
Commission's Rules)

ORDER

Adopted: May 24, 2019

Released: May 24, 2019

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

I. INTRODUCTION

1. Westchester County, New York (Westchester or the County) is the licensee of four 700 MHz trunked public safety stations, call signs WQSU957, WQSU958, WQUJ897, and WQUJ898. The Bureau granted the County an extended period to construct these authorizations. For authorizations WQUJ897 and WQUJ898, this period ended on November 20, 2018; for authorizations WQSU957 and WQSU958 the extended construction period will end July 29, 2019. On October 17, 2018, the County submitted the instant request to extend the construction period for all referenced authorizations through November 20, 2023.1 As discussed below, we grant the County's extension request.2

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 Section 90.629 of the Commission's rules, however, allows licensees a one-time extended construction period of up to 5 years subject to certain conditions.4

1 File Nos. 0008404668, 0008404688, 0008404694, 0008404700 (collectively, Westchester Application). See also Request for Extension of Time to Place Station in Operation WQSU957, WQSU958, WQUJ897, and WQUJ898, filed by Adam S. Epstein, Program Coordinator - Radio, Westchester County Department of Information Technology to Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, Federal Communications Commission (attachment to Westchester Application) (Waiver Request).

2 While this extension request was pending, the Bureau placed WQUJ897 and WQUJ898 on termination pending status for failure to meet the buildout requirements of Section 1.946(e) of the Commission's rules. Construction/Coverage Deadline, Notice of Termination Pending Status, Reference No. 6423643 re WQUJ897 (dated Nov 7, 2018) and Construction/Coverage Deadline, Notice of Termination Pending Status, Reference No. 6423644 re WQUJ898 (dated Nov 7, 2018).

3 47 CFR § 90.551.

4 47 CFR § 90.629. The conditions include but are not limited to the following: The applicant must justify an extended implementation period. The justification must describe the proposed system, state the amount of time necessary to construct and place the system in operation, identify the number of base stations to be constructed and placed in operation during each year of the extended construction period, and show that: (1) The proposed system will require longer than twelve (12) months to construct and place in operation because of its purpose, size, or complexity; or (2) The proposed system is to be part of a coordinated or integrated wide-area system which will require more than twelve (12) months to plan, approve, fund, purchase, construct, and place in operation; or (3) The

3. *Westchester's Waiver Request.* The County currently operates stations in the T-Band (470-512 MHz), and contends it may lose its T-Band spectrum as a result of Section 6103 of Public Law 112-96 (the Spectrum Act), which requires the FCC to institute an auction of public safety T-Band channels by February 22, 2021 and to remove public safety from the T-Band within two years of the close of the auction.⁵ The County contends that loss of its T-Band stations would require it to relocate those stations to frequencies in the 700 MHz band. Such relocations would require re-design of the County's proposed 700 MHz system to accommodate both law enforcement users and displaced T-Band fire, EMS, and transit users.⁶ The County asserts that the re-design and implementation of its 700 MHz system cannot be completed until uncertainty about whether public safety users will, in fact, be required to relocate from the T-Band has been resolved.⁷

III. DISCUSSION

4. 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.⁸ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁹

5. We find that the County has met the first prong of the Commission's waiver standard. The County is understandably reluctant to finalize the design of its combined 700/800 MHz system until it becomes clear whether and how the design would have to be crafted to account for the potential loss of the County's T-Band channels. Here, stringent application of our rule would effectively require the County to design and complete construction of a combined 700/800 MHz system to accommodate T-Band relocation well before the disposition of the County's T-Band channels is determined. Under these circumstances, we believe the County should be afforded additional time to avoid uncertainty and the potential for incurring unnecessary cost in designing and implementing its public safety communications system. The requested extension is reasonable in light of the fact the County has dedicated funding for the

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applicant is required by law to follow a multi-year cycle for planning, approval, funding, and purchasing the proposed system.

⁵ *Id. citing* Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No 112-16, 126 Stat. 156 (2012).

⁶ Waiver Request at 1-2.

⁷ *Id.* at 3. The County notes that there is pending legislation that would repeal Section 6103 of Public Law 112-96, which would allow the County to maintain its T-Band system, thereby making re-design of its 700/800 MHz system unnecessary. *Id.* at 2-3. The County issued a request for design proposals in late 2017 that included flexible provisions that would allow it to proceed with implementation of its system once the uncertainty surrounding public safety T-Band systems was settled. Waiver Request at 1-2. In June 2018, the County Board of Legislators authorized the sale of capital bonds for the 700/800 MHz system and the County currently is preparing to award a contract for flexible system design and implementation. *Id.*

⁸ 47 CFR § 1.925(a)(3).

⁹ *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 Red 1414, 1415 (2003).

system,¹⁰ has issued a request for proposals for a system design,¹¹ and is prepared to award the design contract once the T-Band matter is resolved.¹²

IV. ORDERING CLAUSES

6. 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. 0008404668, 0008404688, 0008404694, and 0008404700 filed by Westchester County, New York IS GRANTED, and the associated licenses SHALL BE MODIFIED to specify a construction expiration date of November 30, 2023.

7. 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.

FEDERAL COMMUNICATIONS COMMISSION

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

¹⁰ In June 2018, the County Board of Legislators authorized the sale of capital bonds for the 700/800 MHz system. Waiver Request at 2-3.

¹¹ The County issued a request for design proposals in late 2017 that included flexible provisions that would allow it to proceed with implementation of its system once the uncertainty surrounding public safety T-Band systems was settled. *Id.*

¹² *Id.*