



Federal Communications Commission
Washington, D.C. 20554

May 22, 2020

DA 20-552

Via email: lsachs@fcclaw.com

Elizabeth R. Sachs
Lukas, LaFuria Gutierrez & Sachs, LLP
8300 Greensboro Drive, Suite 1200
Tysons, VA 22102

Re: Long Island Power Authority – Request for Waiver
ULS File Nos. 0008855861, 0008855985, 0008855993

Dear Ms. Sachs:

This letter addresses the request filed on behalf of the Long Island Lighting Company d/b/a Long Island Power Authority (LIPA) seeking a waiver of the 900 MHz application freeze.¹ LIPA is a New York State governmental entity and is the sole provider of electric utility transmission and distribution service to 1.1 million customers in Nassau County, Suffolk County, and the Rockaway Peninsula in Queens County.² For the reasons set forth below, we grant LIPA's request.

In September 2018, the Wireless Telecommunications Bureau (WTB) suspended the acceptance of applications for new or expanded 900 MHz operations to maintain a stable spectral landscape while the Commission determined how to proceed with respect to that spectrum.³ The *Public Notice* noted that licensees have recourse via the Commission's waiver provisions to request an exception to the freeze.⁴ In March 2019, the Commission released a *Notice of Proposed Rulemaking* proposing to realign the 900

¹ Request for Waiver of the 900 MHz Application Freeze, File Nos. 0008855861, 0008855985, and 0008855993 (filed Oct. 30, 2019), <https://wireless2.fcc.gov/UlsApp/ApplicationSearch/applMain.jsp?applID=11789916> (LIPA Waiver Request).

² LIPA Waiver Request at 1.

³ See *Wireless Telecommunications Bureau Announces Temporary Filing Freeze on the Acceptance of Certain Part 90 Applications for 896-901/935-940 MHz (900 MHz Band) Spectrum*, WT Docket No. 17-200, Public Notice, 33 FCC Rcd 8735 (2018) (*900 MHz Freeze Public Notice*).

⁴ See *id.* at 8736, n.4. In October 2019, the Wireless Telecommunications Bureau modified the freeze to provide greater flexibility for 900 MHz band incumbents to relocate out of the broadband segment. Specifically, the modification permits incumbents to exchange frequencies in a manner that does not increase that incumbent's net number of licensed frequencies and is consistent with the Commission's proposed band realignment. *Review of the Commission's Rules Governing the 896-901/935-940 MHz Band; pdv Wireless, Inc. d/b/a Anterix, Request for Modification of 900 MHz Temporary Filing Freeze*, WT Docket No. 17-200, Order, 34 FCC Rcd 9369, 9370, para. 5 (2019) (*900 MHz Freeze Modification*).

MHz band to create a 3/3 megahertz broadband segment, while reserving the remaining 2/2 megahertz of spectrum for narrowband operations.⁵

In October 2019, LIPA filed a request to waive the 900 MHz application freeze in order to facilitate an upgrade to its legacy system.⁶ LIPA states that it has operated throughout Long Island since the 1970s and that the system is no longer supported by its vendors.⁷ LIPA explains that it is in the process of upgrading to a P-25 Phase II digital, trunked, simulcast system, which will provide enhanced capacity and facilitate interoperability during mutual aid operations and power restoration work in coordination with the Public Service Electric & Gas Company in New Jersey.⁸

LIPA indicates that it began discussing the frequency plan for its proposed system with Anterix, a proponent of 900 MHz realignment to transition to broadband, as early as 2017, because it “wished to avoid future frequency changes and the associated system reprogramming should the FCC proceed with a realignment of the 900 MHz band to create a broadband segment.”⁹ LIPA entered into an agreement with Anterix to exchange five 900 MHz channels so that LIPA’s system could be deployed from the outset on channels outside the then-proposed broadband segment, thus ensuring that LIPA’s frequency plan would not disrupt the Commission’s proposed realignment of the 900 MHz band.¹⁰

On May 14, 2020, the Commission released a Report and Order in the 900 MHz proceeding that created a 3/3 megahertz broadband segment and adopted a transition mechanism based primarily on negotiations between prospective broadband licensees and existing narrowband incumbent licensees.¹¹ The Commission partially lifted the 900 MHz freeze for relocation of incumbents as part of a Transition Plan, but the Commission clarified that the current freeze remains in place and continues to prohibit contour extensions. The channels that LIPA seeks to acquire for the upgrade to its system are outside the broadband segment created by the Commission in the *900 MHz R&O*.

Discussion. 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

⁵ See *Review of the Commission’s Rules Governing the 896-901/935-940 MHz Band*, Notice of Proposed Rulemaking, 34 FCC Rcd 1550, 1555, para. 15 (2019) (*900 MHz NPRM*).

⁶ LIPA Waiver Request at 1. The Waiver Request accompanied LIPA’s modification applications filed on October 30, 2019.

⁷ LIPA Waiver Request at 1.

⁸ *Id.*

⁹ *Id.*

¹⁰ See *id.* The five frequency pairs are 896/935.9760 MHz, 896/935.9000 MHz, 896/935.1875 MHz, 896/935.4375 MHz, and 897/936.1750 MHz. Two of the five paired channels—896/935.9000 MHz and 896/935.4375 MHz—are control channels. *Id.* at 2. In implementing its agreement with LIPA, Anterix filed modification applications on May 6, 2020 requesting deletion of relevant frequencies (935.1875 MHz; 935.4375 MHz; 935.9000 MHz; 935.9750 MHz; 936.1750 MHz; and 897.1750 MHz) under the following call signs/file numbers: WQCS342-0009069293; WQCS343-0009069139; WQSY922-0009069147; WQSU788-0009069153; WPZT878-0009069168; and WPHY777-0009069238.

¹¹ See *Review of the Commission’s Rules Governing the 896-901/935-940 MHz Band*, Report and Order, Order of Proposed Modification, and Orders, WT Docket 17-200, FCC 20-67, (May 13, 2020) (*900 MHz R&O*).

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

LIPA asserts that it meets both prongs of the waiver standard, arguing that the purpose of the freeze would not be frustrated by a grant in this case, and that application of the freeze here would not be in the public interest.¹³ Specifically, LIPA explains that application of the freeze would be contrary to the public interest because, absent a waiver, it would be required to retrieve and reprogram several hundred units that have already been distributed to its workforce, a time-consuming and costly undertaking that would delay deployment of an essential system upgrade and contravene efforts to avoid future system disruptions.¹⁴ LIPA argues that application of the 900 MHz Freeze would be contrary to the public interest because the company is “a state-created electric utility providing an essential service to more than a million customers” and waiver is necessary to benefit its many customers and avoid disruption, delay, and expense.¹⁵ LIPA also states that it was working through “the myriad details involved in a project of this size, including equipment procurement, site acquisition, lease negotiations, FCC licensing, and other activities when the 900 MHz Freeze was announced.”¹⁶

We conclude that LIPA has satisfied the first prong of the waiver standard and therefore we grant its request. In the *900 MHz R&O*, the Commission maintained the current freeze, except for relocation purposes tied to prospective broadband licensees’ transition plans because doing so enables a more efficient transition to the provision of broadband through a realigned 900 MHz band.¹⁷ We find that grant of LIPA’s request for waiver, however, would not undermine the purpose of the freeze. Grant of LIPA’s request ultimately will result in a *de minimis* net change to the geographic landscape, given the relocation of channels from Anterix’s sites covering all of Manhattan and parts of Long Island and New Jersey, to LIPA’s sites covering virtually all of Long Island and larger water areas.¹⁸ Further, grant of LIPA’s waiver request ultimately will result in a substantial net decrease of population coverage by relocating channels from facilities currently covering Manhattan to facilities in a network tailored to covering Long Island. We find this situation distinguishable from our denial of a 900 MHz freeze waiver request in *Rohm and Haas Texas Inc.*,¹⁹ where the narrowband incumbent sought to expand its use of 900 MHz frequencies by adding capacity and relocating operations substantially closer to a major market.²⁰

In addition, we find that a grant of LIPA’s waiver request would be in the public interest. LIPA is the *sole* provider of electric utility transmission and distribution to more than a million customers, and

¹² 47 CFR § 1.925(b)(3).

¹³ See LIPA Waiver Request at 3-4.

¹⁴ See LIPA Waiver Request at 3. LIPA explains that if a waiver is not granted, it would need to reprogram the equipment it just received to replace these five channels with five of its existing channels in the proposed broadband segment, and then reprogram the equipment again if the Commission adopts rules consistent with the NPRM. Further, because only two of these channels are control channels, physical reprogramming of each subscriber unit is required, since over-the-air programing is not possible except through a control channel. See *id.*

¹⁵ See LIPA Waiver Request at 3-4.

¹⁶ *Id.* at 3.

¹⁷ See *900 MHz R&O*, FCC 20-67 at para. 176.

¹⁸ See generally LIPA Contour Exhibits.

¹⁹ *Rohm and Haas Texas Inc.*, Order, 34 FCC Rcd 10436, DA 19-1167 (WTB Nov. 13, 2019).

²⁰ *Id.*

its system upgrade is critical to ensure that LIPA can continue to provide safe and reliable communications for its electric utility system that serves these customers. Additionally, the upgrade would provide enhanced capacity and facilitate interoperability during mutual aid operations and power restoration work. Granting a waiver under these circumstances is consistent with our action in *Flint Hills Resources Corpus Christi, LLC*, where we determined that a waiver of the 900 MHz freeze to upgrade obsolete equipment in a legacy narrowband system was in the public interest to ensure safe, reliable communications, including emergency communications for fire protection services.²¹ We also find that granting LIPA's request is distinguishable from our denial of a 900 MHz waiver request in *Eversource Energy Service Company*, where we concluded that neither the proximity of WTB's imposition of the freeze to Eversource's anticipated filing of its application, nor Eversource's stated need for more capacity in an existing service area, was sufficient to justify a waiver.²² Here, we find that the *de minimis* net change resulting from LIPA's transaction with Anterix and significant public interest benefits of LIPA's proposed system upgrade warrant a waiver of the freeze.

Accordingly, IT IS ORDERED, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and section 1.925 of the Commission's rules, 47 CFR § 1.925, that the Request for Waiver of the 900 MHz Application Freeze filed on October 30, 2019 by Long Island Lighting Company d/b/a Long Island Power Authority, IS GRANTED and the Mobility Division licensing staff is directed to process, consistent with Commission rules, FCC File Nos. 0008855861, 0008855985, 0008855993, 0009069293, 0009069139, 0009069147, 0009069153, 0009069168, and 0009069238.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 CFR §§ 0.131, 0.331.

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

²¹ *Flint Hills Resources Corpus Christi, LLC*, Order, 34 FCC Rcd 8071, DA 19-908 (WTB Sept. 12, 2019).

²² *Eversource Energy Service Company*, Order, 34 FCC Rcd 8074, DA 19-909 (WTB Sept. 12, 2019).