

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

In the Matter of )
Nassau County, New York ) File No. 0008742642, 0008742654
Request for Waiver of Section 90.551 of the )
Commission's Rules )

ORDER

Adopted: January 3, 2020

Released: January 3, 2020

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

I. INTRODUCTION

1. Nassau County, New York (County) is the licensee of two 700 MHz trunked public safety stations, call signs WQUM833 and WQUT752. The Bureau granted the County an extended period until August 19, 2019, to construct these authorizations. On July 26, 2019, the County submitted the instant request for waiver to extend the construction period for nine frequency pairs at three fixed base locations for call sign WQUM833 and for nine frequency pairs at three fixed base locations for call sign WQUT752.1 For the reasons set out below, we grant the County's waiver 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 See Requests for Extended Implementation (Slow Growth) and Waiver of 90.551 To Increase Extended Implementation Period, filed by David K. Stern, Vice President, V-COMM, L.L.C. (Waiver Request). Specifically, the County seeks relief for the following frequency pairs at locations 1 and 3 for station call sign WQUM833: 770.26875/800.26875 MHz, 771.14375/801.14375 MHz, 771.39375/801.39375 MHz, 771.90625/801.90625 MHz, 772.04375/802.04375 MHz, 773.40625/803.40625 MHz, 773.46875/803.46875 MHz, 773.69375/803.69375 MHz and 774.66875/804.66875 MHz. 1 The County also seeks relief for the following frequency pairs at locations 1, 2, and 3 for station call sign WQUT752: 771.13125/801.13125 MHz, 771.38125/801.38125 MHz, 771.86875/801.86875 MHz, 771.91875/801.91875 MHz, 772.03125/802.03125 MHz, 772.96875/802.96875 MHz, 773.21875/803.21875 MHz, 773.41875/803.41875 MHz, and 774.65625/804.65625 MHz.

2 Although the County requested earlier completion dates for some of its sites, for administrative convenience we are extending all site completion dates to June 20, 2020. See infra para. 9.

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. The County states that it has made significant progress within the overall implementation effort for the build-out of the 700 MHz system and that it has completed all necessary design work and requisite equipment ordering, staging and delivery.<sup>5</sup> However, it contends that several contractual, procedural, and technical issues have arisen that require it to request a slow growth extension to fully complete the system build-out.<sup>6</sup>

4. The County received its initial grant funding on August 27, 2015. It issued final contract and purchase orders to Motorola that allowed it to commence work on implementation of the 700 MHz Radio System on December 29, 2017. The County received two grant funding extensions: one extension through December 31, 2018, and a second extension through December 31, 2019. The County claims that the timing of the grants and the subsequent delay in the processing and approval of contracts and purchase orders resulted in the loss of over three years of implementation time.<sup>7</sup>

5. The County notes that call sign WQUM833 (location 1) still requires a significant amount of civil engineering work before it is operational. This latter effort was complicated by the need to remove legacy equipment to make room for the new 700 MHz equipment.<sup>8</sup> The County also notes that, although it encountered significant delays in obtaining access to the site where call sign WQUT752 (location 2) is to be constructed, and difficulty in obtaining permission to use that site, the access and permission issues have been resolved. It anticipates, however, that it will need an additional 3-4 months to get all equipment delivered to the site and installed, all configuration of the equipment completed, and final testing conducted.<sup>9</sup>

6. The County states it faced issues with lease agreements for the sites where call sign WQUM833 (location 3) and call sign WQUT752 (locations 1 and 3) are to be constructed.<sup>10</sup> It states it was required to lease additional space because its prior leased space – adequate to support the existing UHF system – could not accommodate the new 700 MHz combiner and filter systems. The need to negotiate and obtain new lease agreements delayed construction at these locations.<sup>11</sup> The County reports that it entered into the new agreements in the third quarter of 2019 and has completed colocation analyses and procurement activities for all the above sites.<sup>12</sup>

7. The County argues that the County-Wide 700 MHz P25 system is “vital to public safety ensuring a fully functional radio for this large and complex system. As the full scope of this project serves the public interest by providing necessary upgrades to a first responder radio network, applying the five-year extended implementation limit under §90.551 or §90.629, would be contrary to public interest by forcing [the County] to reapply` for the same frequencies. Forcing [the County] to refile for the same frequencies will place undue burden on this project. Refiling could also potentially delay the replacement

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

<sup>5</sup> Waiver Request at 3.

<sup>6</sup> *Id.* at 4.

<sup>7</sup> *Id.* at 4-5.

<sup>8</sup> *Id.* We note that the County requested an extension until December 31, 2019 for these two sites. As discussed *supra*, however, we are granting an extension through June 30, 2020 for all sites.

<sup>9</sup> *Id.* at 5.

<sup>10</sup> *Id.* at 6.

<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

of the [County]’s current, aging UHF T-Band system.”<sup>13</sup>

### III. DISCUSSION

8. 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.<sup>14</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>15</sup>

9. We find the County has met the first prong of the Commission’s waiver standard. There is no indication that the County is “warehousing” spectrum – which the Commission avoids by imposing fixed construction periods.<sup>16</sup> Instead, it has shown to our satisfaction that it has taken concrete steps to implement its proposed system, *e.g.*, developing an implementation schedule, awarding a contract, certifying funding, and expending substantial funds on the project. We therefore believe that the underlying purpose of Sections 90.629 and 90.551<sup>17</sup>—preventing the warehousing of spectrum to the exclusion of other potential users—would not be frustrated by grant of the requested waiver. We also find that application of the rules in this case would be unduly burdensome and contrary to the public interest since the County would need to frequency-coordinate and reapply for its currently-licensed frequencies for which it has obtained sites and ordered equipment. Thus, we afford the County the requested additional time to construct its system, thereby avoiding uncertainty and the potential for incurring unnecessary cost. Although the County requested extension dates earlier than June 30, 2020 for some sites in its system, for administrative convenience, we are extending the completion date for all sites to June 30, 2020.

### IV. ORDERING CLAUSES

10. 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. 0008742642 and 0008742654 filed by Nassau County, New York **ARE GRANTED**.

11. **IT IS FURTHER ORDERED** that the licensing staff of the Policy and Licensing Division of the Public Safety and Homeland Security Bureau **SHALL MODIFY** the licenses associated with call signs WQUM833 and WQUT752 to specify a completion date of June 30, 2020.

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<sup>13</sup> *Id.*

<sup>14</sup> 47 CFR § 1.925(a)(3).

<sup>15</sup> *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).

<sup>16</sup> *See, e.g., Amendment of Part 90 of the Commission’s Rules Governing Extended Implementation Periods*, Report and Order, 8 FCC Rcd 3975, 3976 para 12 (1993).

<sup>17</sup> 47 CFR §§ 90.629, 90.551.

12. 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

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