

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

In the Matter of)	
)	
LAKE COUNTRY INTERNET)	File No. 0009119762
)	
Requests for Waiver of 47 CFR § 90.1338 and 47)	
CFR § 90.1307(b))	

ORDER

Adopted: August 26, 2020

Released: August 26, 2020

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. In this *Order*, we address two waiver requests filed by Lake Country Internet (LCI) in the 3650-3700 MHz band, call sign WQNM443.¹ First, LCI requests a waiver of 47 CFR § 90.1338 to modify its license to obtain grandfathered status under part 90 of the Commission's rules. Second, LCI requests a waiver of 47 CFR § 90.1307(b) to permit renewal of its license for an additional term. Because LCI's waiver requests fail to satisfy the Commission's standard for granting waivers, we deny the waiver requests and dismiss the application.²

2. LCI, a 3650 MHz licensee, asserts that it is a high-speed broadband internet service provider serving Mecklenburg County, Virginia.³ LCI claims to provide both fixed and satellite wireless service to over 1500 customers along the largest lake in Virginia, typically operating as the only internet service provider.⁴

3. In April 2015, the Commission adopted rules for commercial use of 150 megahertz in the 3550-3700 MHz band (3.5 GHz band), which enabled dynamic spectrum sharing through a three-tiered framework to coordinate shared use of the band among incumbents, Priority Access Licenses (PAL) and General Authorized Access (GAA) users.⁵ In the 3650-3700 MHz band, however, only GAA users and Grandfathered Wireless Broadband Licensees are permitted to operate.⁶ Incumbents across the 3.5 GHz band include federal users, Fixed Satellite Service earth stations and, for a limited period, Grandfathered

¹ We interpret LCI's request as two separate waiver requests due to language in the request stating, "I respectfully request that we are granted a grandfathered status and are allowed to renew our license in order to provide these critical services that our clients depend on." Requests for Waiver of 3650 MHz Grandfathered and Renewal Rules, FCC File No. 0009119762 (filed June 19, 2020) (Waiver Request).

² 47 CFR § 1.925(b)(3).

³ See Waiver Request.

⁴ See *id.*

⁵ See *Amendment of the Commission's Rules with Regard to Commercial Operations in the 3550-3650 MHz Band*, GN Docket No. 12-354, Report and Order and Second Further Notice of Proposed Rulemaking, 30 FCC Rcd 3959, 3962, para. 4 (2015) (*2015 Report and Order* and *2015 FNPRM*, respectively).

⁶ 47 CFR § 96.11; see also *2015 Report and Order*, 30 FCC Rcd at 3978, para. 54.

Wireless Broadband Licenses in the 3650-3700 MHz band.⁷

4. At the same time, the Commission adopted a transition period for certain part 90 incumbent Grandfathered Wireless Broadband Licensees in the 3650-3700 MHz band to transition to part 96 rules.⁸ Wireless broadband licensees in the 3650-3700 MHz band operate under part 90, subpart Z, on a nationwide, non-exclusive basis.⁹ To qualify as a Grandfathered Wireless Broadband Licensee, the licensee must have registered its stations on or before April 17, 2015, and registered stations must have been “constructed, in service, and fully compliant with the rules in Part 90, subpart Z as of April 17, 2016.”¹⁰ The transition periods for grandfathered 3650-3700 MHz band wireless broadband licensees ends between October 17, 2020 and January 8, 2023, depending on the grant and expiration dates of each individual license.¹¹ During the transition period, grandfathered licensees are granted incumbent status with respect to Citizens Broadband Radio Service operations in their protection zones.¹² Non-grandfathered licensees, i.e., part 90 licensees that chose not to apply for grandfathered status or did not have qualifying sites, have the right to operate at existing registered sites under part 90 (on a non-exclusive, unprotected basis) until the date for which each licensee would have qualified for grandfathered status had they applied.¹³ For most of these licensees, this date is the same as the end of their license term.¹⁴ For any license issued or renewed after January 8, 2013, grandfathered status (and the right to operate under part 90) extends only until October 17, 2020, regardless of when each license terminates.¹⁵

5. LCI was issued a 3650 MHz license on March 23, 2011, and its license expires on March 23, 2021.¹⁶ LCI did not register for grandfathered status by the April 17, 2015 deadline.¹⁷ LCI has requested a waiver of 47 CFR § 90.1338 to obtain grandfathered status.¹⁸ Additionally, LCI has requested a waiver of 47 CFR § 90.1307(b) to permit renewal of its license in the 3650-3700 MHz band.¹⁹ LCI claims that grandfathered status and renewal are essential to providing fixed wireless service to customers

⁷ See *The Wireless Internet Service Providers Association and the Utilities Technology Council Request for Waiver of Sections 90.1307(c) and (d) and Sections 90.1338(a) and (b) of the Commission's Rules*, WT Docket No. 18-353, Order, 35 FCC Rcd 2750, 2751, para. 4 (2020) (*2020 3.65 GHz Deadline Extension*); see also 47 CFR § 96.3.

⁸ See *2020 3.65 GHz Deadline Extension*, 35 FCC Rcd at 2755, para. 12; see also 47 CFR §90.1307, 90.1311, 90.1338.

⁹ 47 CFR § 90.1307(a).

¹⁰ 47 CFR § 90.1338(a).

¹¹ To ensure customers are able to stay connected to broadband and essential services during the declared state of national emergency because of the COVID-19 pandemic, all licensees in the 3650-3700 MHz band that would have had to transition from part 90 to part 96 rules between April 17, 2020 and October 17, 2020 must now transition by October 17, 2020. See *2020 3.65 GHz Deadline Extension*, 35 FCC Rcd at 2750, para. 1; see also 47 CFR § 90.1307, 90.1311, 90.1338.

¹² See *2015 Report and Order*, 30 FCC Rcd at 4076, para. 402.

¹³ See *2020 3.65 GHz Deadline Extension*, 35 FCC Rcd at 2752-53, para. 5.

¹⁴ See *id.*

¹⁵ See *id.* at 2756, para. 13.

¹⁶ 47 CFR § 90.1311.

¹⁷ 47 CFR § 90.1338(a).

¹⁸ *Id.*

¹⁹ 47 CFR § 90.1307(b).

and that, without the requested waiver relief, local customers will not have a fixed wireless provider.²⁰

6. 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 grant of the waiver would be in the public interest; or (ii) in view of the 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.²¹ When seeking waiver of a rule, an applicant "must plead with particularity the facts and circumstances which warrant such action."²² Moreover, it is well established that "an applicant for waiver faces a high hurdle even at the starting gate."²³ We find that LCI has failed to meet either prong of the waiver standard for both requests.

7. We conclude that LCI's assertions do not warrant a waiver of 47 CFR § 90.1338 to grant it grandfathered status in the 3650-3700 MHz band. The purpose of 47 CFR § 90.1338 is to protect existing investments in the 3650-3700 MHz band by permitting Grandfathered Wireless Broadband Licensees the opportunity to continue operating under existing part 90 licenses for a fixed period of time.²⁴ Like all other licensees in the 3650-3700 MHz band, LCI had the chance to apply for grandfathered status five years ago, and LCI chose not to avail itself of that opportunity. LCI has not presented any evidence to support its late-filed request for grandfathered status nor has it demonstrated how granting such a request would be consistent with the underlying purpose of the Commission's rules. Moreover, LCI has not explained why a waiver is now needed or why it cannot transition its equipment from part 90- to part 96-based operations by the end of its license term, which is March 23, 2021.²⁵ Therefore, we find a waiver would frustrate the underlying purpose of 47 CFR § 90.1338.

8. LCI also argues that a waiver of 47 CFR § 90.1338 would be in the public interest because it would allow LCI to continue to provide broadband service to its customers, many of whom have limited available alternatives.²⁶ As discussed, the Commission established a transition window for all wireless broadband licensees in the 3650-3700 MHz band to facilitate a smooth and timely transition from the part 90 licensing regime to the part 96 licensing regime. LCI has not established that it is unable to provide service to its customers absent a waiver, nor does it present facts uniquely applicable to LCI to demonstrate that waiving 47 CFR § 90.1338 would be in the public interest.²⁷ We find that—far from serving the public interest—granting the requested waiver would undermine the Commission's intent to facilitate a smooth and timely transition and would impede investment in the Citizens Broadband Radio Service.²⁸

9. We also deny LCI's request to waive 47 CFR § 90.1307(b), which prohibits Part 90 license renewals in the 3650-3700 MHz band.²⁹ The purpose of 47 CFR § 90.1307(b) is to ensure a clear

²⁰ See Waiver Request at 1.

²¹ 47 CFR § 1.925(b)(3).

²² *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664, 666 (D.C. Cir 1968).

²³ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

²⁴ 47 CFR § 90.1338(a); see also *2015 Report and Order*, 30 FCC Red at 4075-76, para. 400.

²⁵ 47 CFR § 90.1338(a)-(b).

²⁶ See Waiver Request at 1.

²⁷ See *id.*

²⁸ See *2015 Report and Order*, 30 FCC Red at 4079-4080, para. 412.

²⁹ 47 CFR § 90.1307(b).

transition from Part 90 wireless broadband licensees to Part 96 Citizens Broadband Radio Service rules.³⁰ As the Commission made clear in the rules, renewals were generally disfavored; in the limited instance where the rules provide for a renewal opportunity the Commission may only renew that license “for a term ending no later than [October] 17, 2020,”³¹ further evidencing the Commission’s desire to quickly transition the band for part 96 operations. LCI has not demonstrated how granting such a request would be consistent with the underlying purpose of the Commission’s rules. Therefore, we find a waiver would frustrate the underlying purpose of 47 CFR § 90.1307(b). Additionally, a waiver of 47 CFR § 90.1307(b) would not be in the public interest because it would disrupt the transition to part 96 rules by extending the transition deadline and hindering investment in the 3.5 GHz band.³² LCI has not established that it is unable to provide service to its customers absent a waiver, nor does it present facts uniquely applicable to LCI to demonstrate that waiving 47 CFR § 90.1307(b) would be in the public interest.³³ Therefore, we also find that the requested waiver is not in the public interest.

10. 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 Waiver Requests filed on June 19, 2020, in association with application FCC File No. 0009119762 ARE DENIED and application FCC File No. 0009119762 IS DISMISSED.

11. 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.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

³⁰ See *2015 Report and Order*, 30 FCC Rcd at 4079-4080, para. 412.

³¹ 47 CFR § 90.1307(c); *2020 3.65 GHz Deadline Extension*, 35 FCC Rcd at 2756, para. 16.

³² See *2015 Report and Order*, 30 FCC Rcd at 4079-4080, para. 412.

³³ See Waiver Request at 1.