

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

In the Matter of
Town of Acushnet, Massachusetts
Town of Fairhaven, Massachusetts
Town of Mattapoisett, Massachusetts
Requests for Waiver of Sections 90.305(a) and
90.307(d) of the Commission's Rules

File No. 0009464539
File No. 0009464605
File No. 0009464724

ORDER

Adopted: May 11, 2023

Released: May 11, 2023

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

I. INTRODUCTION

1. On September 20, 2019, the Towns of Acushnet, Fairhaven, and Mattapoisett, Massachusetts (collectively, the Towns) filed modification applications for stations KZM468, WBN818, and WBN819, which operate in the 470-512 MHz band (T-Band), accompanied by two waiver requests. The Towns seek waivers of sections 90.305(a) and 90.307(d) of the Commission's rules. For the reasons below, we grant the requested waivers as conditioned herein.

II. BACKGROUND

2. The Towns share a radio system that operates on T-Band frequency pair 482/485.8125 MHz. The Towns seek to replace its single base station with a two-site, simulcast system. The Towns seek a waiver for one of the two fixed sites to be located 0.8 kilometers (0.5 miles) outside the 80-kilometer (50-mile) radius area around Boston, Massachusetts in which fixed stations are normally authorized under the rules. The Towns also seek a waiver of section 90.307(d) to locate the sites 76.3 and 77.9 kilometers, respectively, from broadcast television (TV) station WPXQ-TV, TV Channel 17, Newport, Rhode Island. Section 90.307(d) requires a Private Land Mobile Radio Service (PLMRS) base station which has associated mobile units to be spaced at least 145 kilometers from a protected adjacent

1 See File Nos. 0009464539, 0009464605, and 0009464724 (filed Mar. 22, 2021, amended Apr. 29, 2021), attached Waiver - Expedited Action Requested Involving Licensing in the 470-512 MHz Band (filed Mar. 22, 2021) (Siting Waiver Request); Waiver - Expedited Action Requested Involving TV Protection in the 470-512 MHz Band (filed Apr. 29, 2021) (TV Spacing Waiver Request).

2 47 CFR §§ 90.305(a), 90.307(d) (respectively stating that the transmitter site(s) for base stations shall be located not more than 80 kilometers (50 miles) of the geographic centers of the urbanized areas listed in 47 CFR § 90.303; and the minimum distance between a land mobile base station which has associated mobile units and a protected adjacent channel television station is 145 kilometers (90 miles)).

3 See 47 CFR § 90.185 (setting forth the rules for multiple eligible licensees to share a single radio system).

4 Siting Waiver Request at 1. See also 47 CFR §§ 90.305(a), 90.307(d).

channel TV station.⁵ The Towns have special temporary authority (STA) to operate at the two proposed sites.⁶

3. On December 15, 2022, the Public Safety and Homeland Security Bureau (Bureau) issued a public notice⁷ seeking comment on the applications and Waiver Request. The Enterprise Wireless Alliance filed comments in support of the Towns' requests.⁸

III. DISCUSSION

4. To obtain a waiver, 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.⁹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹⁰

5. The Towns note that their use of a single radio channel pair to support public safety communications for three towns is spectrally efficient and promotes the conservation of valuable and finite spectrum.¹¹ However, because of increased urban density and the greater reliance on hand-held subscriber units, the Towns contend that the current single-site system does not provide adequate coverage for first responder personnel in all areas of the three towns.¹² The Towns therefore propose to modify their radio system by removing the currently licensed site and establishing two new simulcast transmitter sites located 43.4 and 50.5 miles from the center of Boston.¹³ The proposed sites meet separation requirements from other existing stations, and the Towns contend that they are the most appropriate locations to effectively serve all three towns.¹⁴ The Towns also state that the proposed modification is the only reasonable alternative available because they lack the resources to completely replace the radio system with a new system in an alternate frequency band.¹⁵ The Towns also submit that

⁵ 47 CFR § 90.307(d). The smallest separation distance to the proposed sites is 76.3 km. *See* TV Spacing Waiver Request at 3.

⁶ *See* STA call sign WRHT244 (expires Oct. 15, 2023).

⁷ *See Public Safety And Homeland Security Bureau Seeks Comment on Requests for Waiver Filed by the Towns of Acushnet, Fairhaven, and Mattapoisett, Massachusetts to Operate Two T-Band Base Stations*, Public Notice, DA 22-1328 (PSHSB Dec. 15, 2022).

⁸ File Nos. 0009464539, 0009464605, and 0009464724, Comments of the Enterprise Wireless Alliance, (filed Jan. 17, 2023) (stating that the Towns' requests are consistent with the Commission's conclusion in granting waiver relief for Goosetown Enterprises, Inc. [*see infra* para. 7]; the Towns' extension beyond 80 kilometers is *de minimis*; and the Towns have demonstrated that they do not overlap contours with TV Station WPXQ-TV). *Id.* at 2-5.

⁹ 47 CFR § 1.925(b)(3)(i-ii).

¹⁰ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *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).

¹¹ Siting Waiver Request at 2.

¹² *Id.*

¹³ *Id.* at 3.

¹⁴ *Id.*

¹⁵ *Id.* at 2.

moving out of the T-Band would impair their ability to interoperate with neighboring public safety systems that use the T-Band.¹⁶

6. The Towns acknowledge that one of the sites would be 0.5 miles beyond the 50-mile radius where fixed transmitters are allowed in the Boston area.¹⁷ However, the Towns contend that these modifications will not materially change the current landscape of the T-Band allocations.¹⁸ The Towns further contend that locating one of the two sites 0.5 miles beyond the 50-mile radius is a *de minimis* change.¹⁹ The requested site would share a tower with FM Station WJFD, New Bedford, Massachusetts.²⁰

7. Regarding the Siting Waiver Request, we find that the Towns satisfy the first prong of the waiver standard, in that they have shown that the underlying purpose of section 90.305(a) would not be frustrated by grant of a waiver in the present case. In the 2001 *Goosetown* decision, the Commission stated that it would be “more inclined to consider favorably requests for waiver of Section 90.305(a) when the applicant proposes to contain its area of operation within 80 miles of the geographic center of the urban area in question.”²¹ Such operation, the Commission stated, “would not adversely impact television stations because televisions stations are already required to protect land mobile stations operating within that area.”²² Because the Towns’ proposed base station and mobile area of operation are located within 80 miles of Boston, we are inclined to consider favorably the Towns’ Siting Waiver Request. Specifically, the proposed site location 0.5 miles beyond the 50-mile limit is *de minimis* and unlikely to interfere with television reception. Moreover, we have waived section 90.305(a) previously under similar circumstances.²³

8. Finally, the Towns have shown that a waiver is in the public interest by improving the Towns’ radio coverage for first responders, allowing continued use of a spectrally-efficient shared radio system, and maintaining interoperability with other T-Band public safety agencies in the greater Boston metropolitan area. Accordingly, we grant the Towns’ Siting Waiver Request.

9. Regarding the TV Spacing Waiver Request, we have independently reviewed the Towns’ engineering analysis and agree with its conclusions. The generally accepted protection criterion for a contour analysis between a PLMR station and an adjacent channel TV station is zero dB at the TV station’s Grade B contour.²⁴ Based on the non-overlap of the Towns’ 64 dBu interfering contour with Station WPXQ-TV’s 64 dBu Grade B service contour, we agree that the Towns would provide the requisite zero dB protection to the TV station.²⁵ Moreover, the Towns’ existing base station has operated short-spaced to Station WPXQ-TV with no reported interference issues. We conditionally grant the TV-

¹⁶ *Id.*

¹⁷ *Id.* at 3.

¹⁸ *Id.*

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Goosetown Enterprises, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 12792, 12797 para. 13 (2001) (*Goosetown*).

²² *Id.*; see 47 CFR §§ 73.623(e), 74.709.

²³ See, e.g., *New Brunswick Parking Authority of New Brunswick, New Jersey*, Order, 23 FCC Rcd 6865 (PSHSB 2008) (granting a waiver of section 90.305(a) for a base station located three miles beyond the 50-mile limit from Philadelphia, Pennsylvania); *County of Monmouth, New Jersey*, Order, 25 FCC Rcd 7176, 7182-83 para. 17 (PSHSB PD 2010) (granting a waiver of section 90.305(a) because all operations would be contained within 80 miles of Philadelphia, Pennsylvania, consistent with the *Goosetown MO&O*).

²⁴ See Private Land Mobile Operations in the 470-512 MHz Band, *Public Notice* No. 20291 (rel. Oct. 22, 1991) at 1.

²⁵ TV Spacing Waiver Request at 3-4.

Spacing Waiver Request with a requirement that the Towns must accept any interference caused by full-power and other primary television stations, and must eliminate any interference caused by its facilities to Station WPXQ-TV's viewers.

IV. CONCLUSION

10. Based on the information before us, we conclude that the Towns have demonstrated the criteria set forth under section 1.925, and that grant of their requests for waiver of Commission rules to enable them to modify their shared public safety radio system as proposed is warranted. We therefore grant the requests for waiver, subject to the following condition:

The licensees must accept any interference caused by full-power and other primary television stations, and must eliminate any interference caused by its facilities to viewers located within Station WPXQ-TV's noise-limited service contour (NLSC), 41 dBu F(50,90).

V. ORDERING CLAUSES

11. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1, 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the March 22, 2021 Siting Waiver Request and the April 29, 2021 TV Spacing Waiver Request, filed by the Town of Acushnet, Massachusetts, the Town of Fairhaven, Massachusetts, and the Town of Mattapoissett, Massachusetts, ARE GRANTED as conditioned herein.

12. **IT IS FURTHER ORDERED**, that the applications, File Nos. 0009464539, 0009464605, and 0009464724, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

13. This action is taken under delegated authority pursuant to Sections 0.191(f) and 0.392 of the Commission's rules, 47 CFR §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau