

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

In the Matter of)
City of New Bedford, Massachusetts) File Nos. 0009981234 and 0010197335
Request for Waiver of Section 90.305(a) of the)
Commission's Rules)

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 April 1 and September 9, 2022, the City of New Bedford, Massachusetts (New Bedford, or the City) filed modification applications for stations WRPE962 and WRTX821, respectively, which operate in the 470-512 MHz band (T-Band), each accompanied by a request for waiver of section 90.305(a) of the Commission's rules. For the reasons below, we grant the requested waiver as conditioned herein.

II. BACKGROUND

2. New Bedford operates a three-site radio system under call sign WRPE962 using three T-Band frequency pairs in the TV Channel 14 band (470-476 MHz), and a four-site radio system under call sign WRTX821 using spectrum in the TV Channel 16 band (482-488 MHz). New Bedford seeks a waiver of section 90.305(a) to add two new base stations to Station WRPE962 at the New Bedford Hotel and the Regency Hotel, located 0.715 and 0.675 kilometers, respectively outside the 80-kilometer (i.e., 0.154 and 0.129 miles, respectively outside the 50-mile) radius area around Boston, Massachusetts in which fixed stations are normally authorized under the rules. The City also seeks a waiver under section 90.305(a) to add one base station to Station WRTX821 at the same New Bedford Hotel site, which would operate on the same three base frequencies in the TV Channel 14 band as Station WRPE962.

1 See File No. 0009981234 (filed Apr. 1, 2022, amended Sept. 20, 2022), attached Waiver (filed Apr. 1, 2022) (WRPE962 Waiver Request); File No. 0010197335 (filed Sept. 8, 2022, amended Sept. 9, 2022, Oct. 14, 2022, Oct. 17, 2022), attached Waiver (filed Sep. 8, 2022) (WRTX821 Waiver Request).

2 47 CFR §§ 90.305(a) (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).

3 File No. 0009981234; call sign WRPE962.

4 File No. 0010197335; call sign WRTX821.

5 File No. 0009981234; WRPE962 Waiver Request at 1. See also 47 CFR § 90.305(a).

6 See supra n.5; File No. 0010197335; WRTX821 Waiver Request at 1. The three frequency pairs are 470/473.5125 MHz, 471/474.0375 MHz, and 471/474.1500 MHz.

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 City's 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 City states that it "is in dire need of improved coverage and building penetration in its historical downtown business district."¹¹ The City contends that "in order to accomplish the required service dependability, it is necessary to construct two sites in that area."¹² The City states that "the prime sites that can provide that coverage are all located greater than 50 miles of the geographic center of Boston."¹³ The City states that a waiver grant is in the public interest and would "provide enhanced public safety radio services to the citizens and visitors in the greater downtown New Bedford."¹⁴

6. The City acknowledges that the sites exceed the 50-mile radius specified in the rules for locating fixed transmitters in the Boston area.¹⁵ However, the City contends that locating the two stations up to 0.154 miles beyond the 50-mile radius is a *de minimis* change.¹⁶

7. We find that the City satisfies 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 2001, the Commission stated that sections 90.305(a) and (b)¹⁷ "create[e] a circular area with a radius of 80 miles (80-mile area) within which PLMR stations may operate without interference

⁷ See *Public Safety And Homeland Security Bureau Seeks Comment on Requests for Waiver Filed by the City of New Bedford, Massachusetts To Add Two T-Band Base Stations*, Public Notice, DA 22-1328 (PSHSB rel. Dec. 15, 2022).

⁸ File Nos. 0009981234 and 0010197335, Comments of the Enterprise Wireless Alliance (filed Jan. 17, 2023) (stating the City's requests are consistent with the Commission's conclusion in granting waiver relief for Goosetown Enterprises, Inc. [*see infra* para. **Error! Reference source not found.**]; the City's extensions beyond 80 kilometers are *de minimis*; and no waiver of TV protection rules is required). *Id.* at 2-3.

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 WRPE962 Waiver Request at 1; WRTX821 Waiver Request at 1.

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ 47 CFR 90.305(b) ("Mobile units shall be operated within 48 km. (30 mi.) of their associated base station or stations.").

from television stations.”¹⁸ The Commission stated that waiver requests that do not involve extension of the 80-mile limit are more likely to receive favorable treatment than requests involving extension of the limit, and that such operation would not adversely impact television stations because television stations are already required to protect land mobile stations operating within that area.¹⁹ Here, the proposed station locations extensions 0.129 and 0.154 miles beyond the 50-mile limit are *de minimis*. Because the City’s proposed base stations and mobile areas of operation are located within 80 miles of Boston, and, therefore, would likely not interfere with TV stations entitled to protection, we find that the underlying purpose of section 90.305(a) would not be served by application of the rule in this instance. Moreover, we have waived section 90.305(a) previously under similar circumstances.²⁰

8. Finally, the City has shown that a waiver is in the public interest by improving the City’s 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 City’s Waiver Requests.

IV. CONCLUSION

9. Based on the information before us, we conclude that the City has demonstrated the criteria set forth under the waiver standard, and that grant of its 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.

V. ORDERING CLAUSES

10. 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 April 1, 2022, Waiver Request and September 8, 2022 Waiver Request, filed by the City of New Bedford, Massachusetts, ARE GRANTED.

11. **IT IS FURTHER ORDERED**, that the applications, File Nos. 0009981234 and 0010197335, SHALL BE PROCESSED in accordance with this Order and the Commission’s rules.

¹⁸ See *Goosetown Enterprises, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 12792, 12795 para. 9 (2001) (*Goosetown MO&O*) citing 47 CFR §§ 90.305(a), 90.305(b).

¹⁹ *Goosetown MO&O* at 16 FCC Rcd 12797 para. 13; see also 47 CFR §§ 73.623(e) (requiring digital television stations to be located at least 250 kilometers (155 miles) from the geographic center of a co-channel land mobile allocation and 176 kilometers (110 miles) from the geographic center of an adjacent land mobile allocation), 74.709 (requiring low power television (LPTV) stations to protect co-channel or first adjacent channel land mobile operations located within a contour radiating 130 kilometers (80 miles) from the geographic center in question).

²⁰ 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*).

12. 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

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