

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

In the Matter of
Metropolitan Transportation Authority
Request for Modification of Stations KIVD0001
and KIVD0002 to Facilitate Positive Train Control
File Nos. 0010144223, 0010144238

ORDER OF MODIFICATION

Adopted: October 13, 2023

Released: October 13, 2023

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order of Modification (Order), we take further steps to facilitate railroad safety by modifying Stations KIVD0001 and KIVD0002, licensed in the 218-219 MHz Service to the Metropolitan Transportation Authority (MTA) of New York, subject to certain terms and conditions.

1 The 218–219 MHz Service license areas correspond to cellular market areas (CMAs). 47 CFR § 95.1903(c). There are two 500-kilohertz frequency segments available for assignment in each CMA. Frequency segment A is 218.000–218.500 MHz, and frequency segment B is 218.501–219.000 MHz. 47 CFR § 95.1953. MTA is currently licensed under Station KIVD0001 for frequency segment A in the New York, NY-NJ/Nassau-Suffolk CMA (New York CMA or CMA001), and is currently licensed under Station KIVD0002 for frequency segment B in that same CMA, as well as in CMA042, CMA049, CMA144, and CMA151.

2 See Metropolitan Transportation Authority, Proposed Order of Modification, DA 23-523, 2023 WL 4348340 (WTB June 16, 2023) (Proposed Order of Modification or Proposed Order). See also Request for Modification of Licenses of the Metropolitan Transportation Authority, ULS File Nos. 0010144223 (KIVD0001) and 0010144238 (KIVD0002) (filed July 27, 2022, amended Sept. 6 and Oct. 11, 2022, and Mar. 17, 2023) (Modification Request).

3 This spectrum (218.751-219.000 MHz) will augment the 250 kilohertz of adjacent spectrum (218.501-218.750 MHz) that the Bureau provided MTA in 2016 through a prior modification of Station KIVD0002, to enable Metro-North’s then initial PTC deployment in the four counties (each county corresponds to a single CMA): Dutchess County, NY (CMA 151); Orange County, NY (CMA 144); Fairfield County, CT (CMA 042); and New Haven County, CT (CMA 049). See Metropolitan Transportation Authority, Order of Modification, 31 FCC Rcd 8862 (WTB MD 2016) (2016 Order of Modification). See also Metropolitan Transportation Authority, Proposed Order of Modification and Order on Reconsideration, 31 FCC Rcd 1436 (2016) (2016 Proposed Order of Modification and 2016 Order on Reconsideration, respectively), recon. pending.

4 Congress established the PTC mandate in the Rail Safety Improvement Act of 2008, Pub. L. No. 110-432, § 104, 122 Stat. 4848, 4857 (2008), which was amended by the Positive Train Control Enforcement and Implementation Act of 2015, Pub. L. No. 114-73, § 1302, 129 Stat. 568, 576 (2015) (collectively, Rail Safety Act).

(Amtrak).⁵ Additionally, it serves the public interest in rail safety by requiring MTA to provide to New Jersey Transit Corporation (NJ Transit), on commercially reasonable terms, additional spectrum if needed to support NJ Transit's PTC operations in northern New Jersey, as a condition of the modifications.

2. As discussed below, we also grant, as proposed, MTA's related requests for limited waiver of two Commission rules: (1) section 95.1955 (formerly section 95.855), to permit operation at increased power—from 4 to 8 watts for mobile PTC operations, and from 20 to 30 watts for fixed and base station PTC operations, subject to enhanced out-of-band emissions (OOBE) attenuation requirements—under both Stations KIVD0001 and KIVD0002 (as modified by this Order); and (2) section 95.1915(b), which requires a 218-219 MHz Service licensee to file certain information regarding individually licensed base stations.⁶ These limited rule waivers and the enhanced OOBE attenuation requirements are consistent with, and supported by, the *Proposed Order* and the Bureau's 2016 grant of waiver relief to enable MTA's initial PTC deployment under Station KIVD0002.⁷

II. BACKGROUND

A. MTA and Positive Train Control

3. MTA is a New York State public-benefit corporation responsible for public transportation in 12 counties in southeastern New York, and two counties in southwestern Connecticut.⁸ MTA's Metro-North is one of the busiest commuter rail systems in the country. In 2021, Metro-North carried over 30 million passengers, providing an average of 103,000 passenger trips each weekday.⁹ Its service territory spans seven New York State counties (Bronx, Dutchess, New York, Orange, Putnam, Rockland, and Westchester) and two southwestern Connecticut counties (Fairfield and New Haven).¹⁰

4. The Rail Safety Act¹¹ required most U.S. freight, passenger, and commuter railroads to install and operate interoperable PTC systems by December 31, 2018.¹² Four railroads met this deadline.¹³ As the Rail Safety Act permits, the remaining railroads subject to the PTC mandate, including Metro-North and its affiliate, the LIRR, requested up to a two-year extension, until December 31, 2020, to implement PTC.¹⁴ The FRA found that Metro-North, LIRR, and the other railroads met the statutory

⁵ See 47 U.S.C. § 316(a) (the Commission may modify “[a]ny station license . . . either for a limited time or for the duration of the term thereof, if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, . . .”).

⁶ 47 CFR §§ 95.1955, 95.1915(b); *Proposed Order* at *1, *8-11, paras. 3, 27-40.

⁷ *Proposed Order* at *1, *8-11, paras. 3, 27-40; *Metropolitan Transportation Authority Request for Waiver to Facilitate Positive Train Control System*, Order, 29 FCC Rcd 2004 (WTB MD 2014) (*2014 Power Waiver Order*), modified by *2016 Order on Reconsideration*, 31 FCC Rcd at 1446-47, 1458-59, paras. 32-33, 66.

⁸ Modification Request at 2.

⁹ *Id.* at 3.

¹⁰ *Id.* Three of Metro-North's lines terminate in Manhattan's Grand Central Terminal. *Id.* The Long Island Railroad (LIRR), Metro-North's affiliate, provides commuter rail service from eastern Long Island to Manhattan's Penn Station, in five New York counties (Brooklyn, Nassau, New York, Queens, and Suffolk). *Id.* at 2.

¹¹ See *supra* note 4.

¹² The Federal Railroad Administration (FRA) is responsible for approving each railroad's PTC system, including design, testing, and implementation, and for ensuring compliance with the Rail Safety Act and FRA regulations implementing that statute. U.S. Department of Transportation (DOT), FRA, *Positive Train Control (PTC) Information (R&D) Summary*, <https://www.fra.dot.gov/Page/P0152> (last updated Nov. 13, 2019).

¹³ USDOT, *Statement on Positive Train Control Implementation*, <https://www.transportation.gov/briefing-room/statement-positive-train-control-implementation> (last updated Dec. 31, 2018).

¹⁴ *Id.*

criteria necessary to qualify for an extended implementation schedule and, subsequently, that they met their extended implementation deadlines.¹⁵

5. PTC systems are designed to reduce the risk of human-error rail accidents by “prevent[ing] train-to-train collisions, over-speed derailments, incursions into established work zone limits, and the movement of a train through a switch left in the wrong position.”¹⁶ The U.S. rail industry chose to implement PTC through wireless networks that use radio spectrum. These networks have the capacity to enable real-time information sharing between trains, rail wayside devices, and back office applications, regarding train movement authorities, speed restrictions, train position and speed, and the state of signal and switch devices.

6. *Station KIVD0002*. In 2012, MTA acquired Station KIVD0002, operating on frequency segment B (218.501 to 219.000 MHz) for the New York CMA—for Metro-North and the LIRR to implement PTC.¹⁷ Station KIVD0002’s initial license area covered LIRR’s five-county service territory, and five of the nine counties comprising Metro-North’s service territory. MTA sought to acquire spectrum on the secondary market for Metro-North to implement PTC in the four remaining counties of its service territory (Dutchess and Orange counties, New York, and Fairfield and New Haven counties, Connecticut) not covered by Station KIVD0002, but its efforts were not fruitful due to a lack of suitable spectrum.¹⁸

7. *2016 Modification of Station KIVD0002*. In 2016, at MTA’s request, the Bureau modified Station KIVD0002 by authorizing the use of 250 kilohertz of spectrum from the Commission’s inventory in the four counties needed to complete Metro-North’s PTC spectrum footprint.¹⁹ The Bureau further modified the Station by deleting 250 kilohertz of spectrum authorized under Station KIVD0002 from five New Jersey counties (Essex, Morris, Passaic, Somerset, and Union) and returning it to the Commission’s inventory; that spectrum became unassigned and available for future disposition as determined by the Commission.²⁰ As a condition of the license modification, the Bureau required MTA to provide spectrum to NJ Transit to enable its PTC implementation in northern New Jersey, and MTA did so.²¹

8. *Station KIVD0001*. Following the Bureau’s modification of Station KIVD0002, MTA identified interference issues when using the station’s authorized frequencies to implement PTC.²² MTA

¹⁵ *Id.*

¹⁶ 49 U.S.C. § 20157(i)(5).

¹⁷ Modification Request at 8.

¹⁸ *2016 Proposed Order of Modification*, 31 FCC Rcd at 1448-49, 1456, paras. 40, 61.

¹⁹ *2016 Order of Modification*, 31 FCC Rcd at 8865, para. 8. Skybridge Spectrum Foundation, an entity currently in receivership, previously filed a Petition for Reconsideration opposing the renewal of Station KIVD0002, ULS File No. 0006109691. That petition will be addressed separately.

²⁰ *Id.*

²¹ *Id.*, 31 FCC Rcd at 8865-66, para. 10 (requiring MTA “to sell or lease on commercially reasonable terms sufficient spectrum [] licensed under Station KIVD0002 to NJ Transit to enable its PTC implementation in seven northern New Jersey counties”). MTA and NJ Transit entered into a spectrum leasing arrangement (a long-term de facto transfer lease) under Station KIVD0002 to enable NJ Transit’s PTC deployment in seven New Jersey counties (Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union). See ULS Lease ID L000023066. We note that, although not required by the *2016 Order of Modification*, MTA also currently leases spectrum to NJ Transit in these same seven NJ counties from Station KIVD0001. See ULS Lease ID L000040457.

²² Modification Request at 10.

implemented several measures to address this problem, which then resulted in a spectrum shortfall.²³ To address the shortfall, in 2019, MTA acquired Station KIVD0001, operating on frequency segment A (218.000 to 218.500 MHz) for the New York CMA. MTA reports, however, that the acquisition of the Station did not resolve interference issues in the four remaining counties served by Metro-North—counties not covered by its current authorization for KIVD0002.²⁴ To remedy those issues, MTA filed its Modification Request seeking modification of KIVD0002 by augmenting its licensed spectrum, as described above.²⁵

9. *Limited Waiver of Section 95.1955.* In 2014, the Bureau granted MTA a limited waiver of section 95.1955's effective radiated power (ERP) limits—permitting an increase from 4 to 8 watts for mobile PTC operations, and from 20 to 30 watts for base station PTC operations—to facilitate PTC implementation under Station KIVD0002 (then limited to CMA001).²⁶ In the *2016 Order on Reconsideration*, the Commission adopted related out-of-band emission (OOBE) attenuation requirements to address the possibility of interference from waiver-enabled PTC transmitters to spectrally adjacent operations.²⁷ Further, the Commission applied the power waiver relief and OOBE attenuation requirements to the frequency segment B spectrum that it authorized by modification of Station KIVD0002 for PTC operations in four counties in New York and Connecticut.²⁸ In its Modification Request, MTA requested that we extend this limited power waiver relief to PTC operations in those same four counties under Station KIVD0002, as modified by the additional spectrum.²⁹ It also requested that we apply the same relief to its PTC operations under Station KIVD0001, as modified by the return of spectrum to the Commission.³⁰

10. *Limited Waiver of Section 95.1915(b).* MTA also requested a waiver of section 95.1915(b) (formerly section 95.815(b)), which requires a 218-219 MHz Service licensee to provide certain information regarding individually licensed base stations.³¹ Section 95.1911(b) provides for individual licensing of base stations in the 218-219 MHz Service where the antenna exceeds 6.1 meters above ground.³² Section 95.1915(b), in turn, requires that each request to add, delete, or modify technical information of an individually licensed base station must include a description of the licensee's system

²³ *Id.* MTA states that its acquisition of Station KIVD0001 provided it with the flexibility to resolve interference by spacing spectrally adjacent frequencies at locations greater distances apart, thereby improving the reliability of its PTC system, but that the only PTC radios suitable for use in its service territory can generate internal system interference during implementation, and to address this problem, it implemented additional filtering and spaced frequency-reuse further apart between transmitter sites. *Id.* However, the need to space frequency-reuse further apart resulted in channel capacity more limited than initially projected, resulting in a spectrum shortfall. *Id.*

²⁴ *Id.* at 11. MTA states that 218-219 MHz Band spectrum is not available on the secondary market in the four counties where additional spectrum is needed to improve the reliability of Metro-North's PTC system. *Id.* at 11-12. The Commission holds the entire 500-kilohertz frequency segment A and 250 kilohertz of the frequency segment B not licensed to MTA under Station KIVD0002.

²⁵ *Id.* at 11.

²⁶ *2014 Power Waiver Order*, 29 FCC Rcd 2004.

²⁷ *2016 Order On Reconsideration*, 31 FCC Rcd at 1446-47, paras. 32-34.

²⁸ *2016 Order of Modification*, 31 FCC Rcd at 8865, para 9 (applying the relief to MTA's PTC operations in Dutchess County, New York (CMA151), Orange County, New York (CMA144), Fairfield County, Connecticut (CMA042), and New Haven County, Connecticut (CMA049)).

²⁹ Modification Request at 14.

³⁰ *Id.*

³¹ 47 CFR § 95.1911(b); Modification Request at 14.

³² 47 CFR § 95.1911(b).

after the proposed addition, deletion, or modification, including the population served, and an explanation of how the system will satisfy the substantial service requirement of section 95.1931.³³

B. The Bureau's Proposed Order of Modification

11. On June 16, 2023, the Bureau adopted the *Proposed Order of Modification*.³⁴ Section 316(a)(1) of the Communications Act of 1934, as amended (Act), authorizes the Commission to modify any station license “if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provisions of this chapter [*i.e.*, the Act] or of any treaty ratified by the United States will be more fully complied with.”³⁵ In the *Proposed Order*, the Bureau found that the proposed modification of Station KIVD0002 would promote the public interest, convenience, and necessity—the benchmark for modification of a license under section 316(a) of the Act.³⁶ The Bureau stated that “the additional 250 kilohertz of spectrum that we propose to authorize MTA to use under Station KIVD0002 may be used only to comply with Congress’s PTC mandate.”³⁷ The Bureau found specifically that modification of Station KIVD0002 would promote rail safety and serve the public interest, convenience, and necessity under section 316(a)(1) of the Act by:

- providing Metro-North, one of the nation’s busiest commuter railroads, spectrum needed to enhance the resiliency of its PTC system in Dutchess and Orange counties, New York, and Fairfield and New Haven counties, Connecticut, where MTA has been unable to acquire needed spectrum on the secondary market;³⁸
- enabling Amtrak to deploy PTC-equipped passenger trains on Metro-North’s Hudson Line, which traverses Dutchess County, New York, and on Metro-North’s New Haven Line in Fairfield and New Haven counties, Connecticut, where more than 40 million trips are made each year;³⁹

³³ *Id.* § 95.1915(b).

³⁴ *See supra* note 2.

³⁵ 47 U.S.C. § 316(a)(1). The Commission’s authority to modify licenses under section 316(a)(1) is well established. The U.S. Court of Appeals for the District of Columbia Circuit has recognized the Commission’s “broad power to modify licenses” under section 316(a)(1), explaining that the Commission “need only find that the proposed modification serves the public interest, convenience and necessity.” *California Metro Mobile Communications v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004). *See also Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Services in the Upper and Lower L-Band*, Report and Order, IB Docket 96-132, 17 FCC Rcd 2704, 2714, para. 25 (2002) (citing *Rainbow Broadcasting Co. v. FCC*, 949 F.2d 405 (D.C. Cir. 1991), noting the court’s finding that “the Commission is afforded significant latitude when it exercises its Section 316 authority”) (subsequent history omitted).

³⁶ *Proposed Order* at *7, para. 24. The Bureau also found that the proposed modification of Station KIVD0002 is consistent with the Commission’s fundamental obligation to “promot[e] safety of life and property through the use of wire and radio communications” *Id.* at *6, para. 19 (citing 47 U.S.C. § 151).

³⁷ *See id.* at *11, para. 42.

³⁸ *See Modification Request* at 12 (noting that “[s]ince 2010, the MTA has exhausted every reasonable possibility for obtaining needed PTC spectrum.”).

³⁹ *Proposed Order* at *7, para. 24 (citing, at n.73, Letter from Joseph Giulietti, Commissioner, Connecticut Department of Transportation, to Ajit Pai, Chairman, FCC (filed Mar. 17, 2023), ULS File Nos. 0010144223, 0010144238 (included in “Letters of Support and Certification”) (Letters Attachment). The CDOT Letter is dated December 20, 2019, and addressed to former FCC Chairman Pai; MTA filed the letter in support of a similar license modification request, ULS File No. 0009012928. MTA withdrew that request and refiled the CDOT Letter with the instant request.

- enabling Metro-North’s PTC operations on three commuter rail branch lines that intersect the New Haven Line in southwestern Connecticut—the New Canaan and Danbury Lines in Fairfield County, and the Waterbury Line in New Haven County;⁴⁰ and
- facilitating NJ Transit’s PTC deployment by the requirement (a condition of the proposed license modifications) that MTA provide, on commercially reasonable terms, additional spectrum to NJ Transit if needed to support its PTC implementation in seven northern New Jersey counties.⁴¹

12. Additionally, the Bureau found that modification of Station KIVD0001 would promote the public interest, convenience, and necessity under section 316(a)(1) of the Act by a return of 250 kilohertz of the licensed spectrum in five counties with a total population of 2,817,837,⁴² in exchange for the 250 kilohertz of spectrum needed by MTA to enhance PTC under Station KIVD0002 in four counties with a total population of 2,519,475.⁴³ As a result of the modification, the Commission’s 218-219 MHz Service spectrum inventory increases by a net 74,590 MHz/pops.⁴⁴

13. Based on the record, the Bureau also found in the *Proposed Order* that the public interest in rail safety will be served by affording MTA—for its modified PTC operations under Stations KIVD0001 and KIVD0002—the same relief granted in the *2014 Power Waiver Order*, as modified by the stricter OOB attenuation requirements adopted in the *2016 Order On Reconsideration*.⁴⁵ The Bureau evaluated MTA’s request for relief under section 1.925(b)(3)(ii) of the Commission’s rules and found that, in view of the PTC mandate and the unique factual circumstances in this case, strict application of section 95.1955’s power limits to Metro-North’s PTC deployment in Dutchess and Orange counties, New York, and Fairfield and New Haven counties, Connecticut (using the additional spectrum authorized herein under Station KIVD0002) would be contrary to the public interest.⁴⁶ For the same reasons, the Bureau proposed to grant MTA a limited waiver of section 95.1955’s power limits to enable PTC operations under Station KIVD0001, as modified by a return of spectrum to the Commission and subject to the stricter OOB attenuation requirements.⁴⁷ The Bureau stated that MTA’s operations on the

⁴⁰ *Proposed Order* at *7, para. 24 (citing, at n.74, Letter from Susan Sarch, Vice President and General Counsel, Metro-North Railroad, to FCC (filed Mar. 17, 2023), ULS File Nos. 0010144223, 0010144238 (included in Letters Attachment)).

⁴¹ *Proposed Order* at *7-8, paras. 24, 26. MTA has committed to leasing additional spectrum to NJ Transit if needed for PTC operations. Modification Request at 13. Importantly, MTA also states that the “modified spectrum requested by the MTA should serve to provide adequate spectral separation for [NJ Transit].” *Id.* at 12-13. See also Letter from Frederick N. Chidester, Senior Director, PTC Coordination, NJ Transit, to FCC (filed Mar. 17, 2023), ULS File Nos. 0010144223, 0010144238 (included in Letters Attachment) (stating NJ Transit’s support for MTA’s Modification Request).

⁴² Based on the 2020 U.S. Census, the population includes, by county: Essex, NJ, 863,728; Morris, NJ, 509,285; Passaic, NJ, 524,118; Somerset, NJ, 345,361; and Union, NJ, 575,345. United States Census, QuickFacts, <https://www.census.gov/quickfacts/fact/table/unioncountynewjersey,somersetcountynewjersey,passaiccountynewjersey,morriscountynewjersey,essexcountynewjersey/PST045222> (last visited Aug. 25, 2023).

⁴³ Based on the 2020 U.S. Census, the population includes, by county: Dutchess, NY, 295,911; Fairfield, CT, 957,419; New Haven, CT, 864,835; and Orange, NY, 401,310. United States Census, QuickFacts, <https://www.census.gov/quickfacts/fact/table/orangecountynewyork,newhavencountyconnecticut,fairfieldcountyconnecticut,dutchesscountynewyork,US/PST045222> (last visited Aug. 25, 2023).

⁴⁴ 250 kilohertz x (2,817,837-2,519,475) = 74,590 MHz/pops.

⁴⁵ *Proposed Order* at *9, para. 31 (noting also that “Congress adopted the PTC mandate to save lives and property, and the higher power limits requested here will enable MTA to meet its obligation to deploy PTC.”).

⁴⁶ *Id.*

⁴⁷ *Id.*

additional 250 kilohertz of spectrum that it proposes to authorize MTA to use under Station KIVD0002 “[] and the related power waiver[] may be used only to comply with Congress’s PTC mandate.”⁴⁸

14. Similarly, regarding section 95.1915(b)’s requirement that MTA provide population information for each individually licensed base station and an explanation of how its PTC system will satisfy the substantial service requirement under section 95.1931 each time it adds, deletes, or modifies an individually licensed base station, the Bureau found under section 1.925(b)(3)(ii) that, in view of the unique factual circumstances of the federal PTC mandate, application of such requirement would be unduly burdensome.⁴⁹ The Bureau noted the Commission’s earlier finding that the population served by a specific base station is not germane to assessing the interference potential of an MTA PTC base station change.⁵⁰ For these reasons, the Bureau proposed to grant MTA a limited waiver of the rule.⁵¹

15. Section 316(a)(1) of the Act provides that no proposed order of modification shall become final until the license holder has been provided at least 30 days to protest the proposed order; the Commission may establish a shorter period where the safety of life or property is involved.⁵² In the *Proposed Order of Modification*, the Bureau provided MTA 30 days from its release date to file a protest.⁵³ Section 316(a)(2) of the Act provides that “[a]ny other licensee or permittee who believes its license or permit would be modified by the proposed action may also protest the proposed action before its effective date.”⁵⁴

III. DISCUSSION

A. Modification of Stations KIVD0001 and KIVD0002

16. The period for filing protests of the *Proposed Order* has ended, and neither MTA nor any other party has filed a protest. Therefore, consistent with the Bureau’s analysis and for all the reasons set forth in the *Proposed Order*, as discussed in detail above, we find that the public interest, convenience, and necessity will be served by adopting the license modifications of Stations KIVD0001 and KIVD00002 as proposed.⁵⁵ Pursuant to section 316(a)(1) of the Act, we hereby modify Stations KIVD0001 and KIVD0002 by:

- authorizing the use—solely to comply with Congress’s PTC mandate⁵⁶—of an additional 250 kilohertz of spectrum, 218.751-219.000 MHz, under Station KIVD0002 in Dutchess County,

⁴⁸ See *id.* at *11, para. 42.

⁴⁹ *Id.* at 13, para. 40.

⁵⁰ *Id.* (citing, at n.103, the Commission’s finding in the *2014 Power Waiver Order*, 29 FCC Rcd at 2008, para. 14).

⁵¹ *Id.* (stating, at n.104, that MTA must otherwise comply with section 95.1915(b)’s requirement to file an appropriate application each time it adds, deletes, or modifies an individually licensed base station.

⁵² 47 U.S.C. § 316(a)(1). See also 47 CFR § 1.87(a) (implementing 47 U.S.C. § 316(a)(1)).

⁵³ *Proposed Order* at *11, para 41.

⁵⁴ 47 U.S.C. § 316(a)(2). See also 47 CFR § 1.87(c) (implementing 47 U.S.C. § 316(a)(2)).

⁵⁵As the Bureau noted in the *Proposed Order*, and as the Commission determined in the *2016 Proposed Order of Modification*, the Commission is not required to accept mutually exclusive applications for these spectrum licenses. See *Proposed Order* at *5, para. 17 (citing *2016 Proposed Order of Modification*, 31 FCC Rcd at 1454, para 55). We find in this case that, “[u]nder these exceptional circumstances and consistent with the Commission’s *2016 Proposed Order of Modification*, . . . the public interest is served by not permitting the filing of mutually exclusive applications for the limited spectrum at issue.” *Id.* at *6, para. 18 (citing *2016 Proposed Order of Modification*, 31 FCC Rcd at 1455, para. 56).

⁵⁶ See *id.*, para. 42.

New York (CMA151); Orange County, New York (CMA144); Fairfield County, Connecticut (CMA042); and New Haven County, Connecticut (CMA049);

- deleting the authorization to use 250 kilohertz of spectrum, 218.000-218.250 MHz, under Station KIVD0001 from five New Jersey counties, all in the New York CMA (CMA001)—Essex, Morris, Passaic, Somerset, and Union—which spectrum will become unassigned and available for future disposition as determined by the Commission; and
- adding a special condition requiring MTA to sell or lease, on commercially reasonable terms, additional spectrum to NJ Transit—if needed—to support NJ Transit’s PTC operations in the following seven northern New Jersey counties: Bergen, Essex, Hudson, Morris, Passaic, Somerset, and Union.

17. Consistent with today’s modification of Station KIVD0001, MTA and NJ Transit must modify their existing lease arrangement (Lease ID L000040457) in ULS to reflect the deletion of 218.000-218.250 MHz in the five applicable New Jersey counties.⁵⁷ We clarify that, effective with the release of this Order, NJ Transit is no longer authorized to operate on 218.000-218.250 MHz in those five counties.

B. Limited Waiver of Section 95.1955

18. Further consistent with, and for all the same reasons articulated in the *Proposed Order*, as discussed in detail above, we find that granting MTA’s request for limited waiver of section 95.1955 will promote rail safety and serves the public interest, convenience, and necessity. Operations under this ERP waiver for both Stations KIVD0001 and KIVD0002 are subject to the same stricter OOB attenuation requirements adopted in the *2016 Order On Reconsideration*.⁵⁸

19. Thus, for fixed and base station PTC operations:

- when using increased ERP under the waiver for Station KIVD0001 (which has a frequency midpoint of 218.250 MHz), emissions must be attenuated by at least 29.77 dB in the AMTS lower A Block (217.5 to 218 MHz), and by at least 36.77 dB in the AMTS lower B Block (217 to 217.500 MHz) and AMTS upper A Block (219.500 to 220 MHz); and
- when using increased ERP under the waiver for Station KIVD0002 (which has a frequency midpoint of 218.750 MHz), emissions must be attenuated by at least 29.77 dB in the AMTS upper B Block (219 to 219.500 MHz), and by at least 36.77 dB in the AMTS upper A Block (219.500 to 220 MHz) and the AMTS lower A Block (217.5 to 218 MHz).⁵⁹

20. And, for mobile PTC operations:

- when using increased ERP under the waiver for Station KIVD0001, emissions must be attenuated by at least 31 dB in the AMTS lower A Block (217.500 to 218 MHz), and by at least 38 dB in the AMTS lower B Block (217 to 217.500 MHz) and AMTS upper A Block (219.500 to 220 MHz); and

⁵⁷ See also *infra* para. 26 (Ordering Clause), directing MTA and NJ Transit to file in ULS, within five (5) business days of release of this Order, the requisite application to modify their existing *de facto* transfer leasing arrangement.

⁵⁸ MTA’s non-waiver enabled PTC operations in the 218-219 MHz Band must comply with section 95.1957 of the Commission’s rules, as discussed in detail in the *Proposed Order of Modification*. *Proposed Order* at *9, paras. 32-33.

⁵⁹ See *id.* at *9-10, paras. 33-35.

- when using increased ERP under the waiver for Station KIVD0002, emissions must be attenuated by at least 31 dB in the AMTS upper B Block (219 to 219.500 MHz), and by at least 38 dB in the AMTS upper A Block (219.500 to 220 MHz) and the AMTS lower A Block (217.5 to 218 MHz).⁶⁰

21. As the Bureau stated in the *Proposed Order*, these additional attenuation requirements will ensure that PTC operations under the ERP limits we are allowing by waiver will have no more effect on possible spectrally adjacent AMTS operations than would operations under section 95.1955's ERP limits.⁶¹ Notably, under section 95.1961(b), the Commission retains authority to require modification of PTC operations if we find that such operations under the increased ERP limits (with the required additional OBE attenuation) cause harmful interference.⁶² Consistent with section 95.1961(b), any entity using the spectrum must ensure that the waiver-enabled PTC operations authorized by this Order of Modification do not cause harmful interference to any of the spectrally adjacent stations.

C. Limited Waiver of Section 95.1915(b)

22. Consistent with, and for all the same reasons specified by the Bureau in the *Proposed Order*, we also find that granting MTA a waiver of section 95.1915(b)'s requirement that MTA provide population information for each individually licensed base station and an explanation of how its PTC system will satisfy the substantial service requirement under section 95.1931 each time it adds, deletes, or modifies an individually licensed base station, will promote rail safety and serves the public interest, convenience, and necessity.⁶³ As the Bureau stated in the *Proposed Order*, MTA remains subject to section 95.1915(b)'s requirement to file an appropriate application each time it adds, deletes, or modifies an individually licensed base station.⁶⁴

IV. CONCLUSION AND ORDERING CLAUSES

23. For the reasons stated above and in furtherance of the Commission's fundamental obligation to "promot[e] safety of life and property through the use of wire and radio communications," we modify Stations KIVD0001 and KIVD0002, as described and conditioned above, to enable MTA to facilitate continued compliance with its statutory obligation to deploy PTC as required by Congress in the Rail Safety Act. We emphasize that the additional 250 kilohertz of spectrum authorized for use under Station KIVD0002—and the related power-rule waiver—may be used only to comply with Congress's PTC mandate.⁶⁵

24. Accordingly, IT IS ORDERED that, pursuant to sections 4(i) and (j), 303(r), and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 303(r), and 316(a), and

⁶⁰ See *id.* at *10, paras. 36-37.

⁶¹ *Id.* at *9, para. 30 (explaining that 47 CFR § 95.1957(b)(4) requires 218-219 MHz Service licensees to attenuate their emissions by a least 43 plus 10 log (base 10) (mean power in watts) dB on any frequency removed from the midpoint of the assigned frequency segment by more than 1250 kHz, and that additional attenuation is unnecessary under section 90.1957(b)(4) because the amount of attenuation is directly related to the amount of power used).

⁶² 47 CFR § 95.1961(b) (providing that "[t]he use of any frequency segment (or portion thereof) at a given geographical location may be denied when, in the judgment of the Commission, its use in that location is not in the public interest; the use of a frequency segment (or portion thereof) specified for the 218–219 MHz Service system may be restricted as to specified geographical areas, maximum power, or other operating conditions"). Staff has identified three out-of-band channel 13 digital TV stations (WKOB-LD, WGBY, and WHYY) whose protected service contours partially overlap MTA's service area.

⁶³ 47 CFR § 95.1915(b).

⁶⁴ *Proposed Order* at *11, n.104.

⁶⁵ See *supra* paras. 13 and 16.

sections 1.87 and 1.925(b)(3) of the Commission's Rules, 47 CFR §§ 1.87 and 1.925(b)(3), this Order of Modification IS ADOPTED.

25. IT IS FURTHER ORDERED that, pursuant to sections 4(i)-(j), and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i)-(j), and 316(a), and section 1.87 of the Commission's Rules, 47 CFR § 1.87, Stations KIVD0001 and KIVD0002, licensed to the Metropolitan Transportation Authority, ARE MODIFIED as specified in this Order of Modification. Modification of Stations KIVD0001 and KIVD0002 is effective upon release of this Order of Modification.

26. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 155(c), and 303(r), and section 0.331 of the Commission's rules, 47 CFR § 0.331, and consistent with the modification of Station KIVD0001 as specified in this Order of Modification, the Metropolitan Transportation Authority and New Jersey Transit Corporation ARE HEREBY DIRECTED to file in ULS, within five (5) business days of release of this Order of Modification, the requisite application to modify their existing *de facto* transfer leasing arrangement under Station KIVD0001, Lease ID L000040457, to delete 218.000-218.250 MHz in the following New Jersey counties: Essex, Morris, Passaic, Somerset, and Union.

27. IT IS FURTHER ORDERED that, pursuant to sections 4(i) and (j), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and (j), 155(c), and 303(r), and sections 0.331 and 1.925 of the Commission's rules, 47 CFR §§ 0.331 and 1.925, the waiver requests included in the Request for Modification of Stations KIVD0001 and KIVD0002 to Facilitate Positive Train Control, filed by the Metropolitan Transportation Authority on July 27, 2022, as amended on September 6 and October 11, 2022, and March 17, 2023, File Nos. 0010144223, 0010144238000, for limited waiver of 47 CFR §§ 95.1955 and 95.1915(b) with respect to Stations KIVD0001 and KIVD0002, ARE GRANTED to the extent provided and subject to all terms and conditions enumerated above.

28. IT IS FURTHER ORDERED that, pursuant to section 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. § 316(a), and section 1.87(i) of the Commission's rules, 47 CFR § 1.87(i), the Wireless Telecommunications Bureau SHALL SEND this Order of Modification by certified mail, return receipt requested, to the Metropolitan Transportation Authority.

29. 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