

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

In the Matter of)
)
 Implementing a Nationwide, Broadband,) PS Docket No. 06-229
 Interoperable Public Safety Network in the 700)
 MHz Band)

ORDER

Adopted: March 16, 2012

Released: March 16, 2012

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this *Order*, the Public Safety and Homeland Security Bureau (Bureau) grants the requests for waiver filed by six Petitioners: (1) the City of San Antonio, Texas, (San Antonio);¹ (2) the District of Columbia (D.C.);² (3) the New York State Office of Technology on behalf of the State of New York (New York State);³ (4) the State of New Mexico Department of Information Technology (NM DoIT);⁴ (5) the City of Chesapeake, Virginia (City of Chesapeake);⁵ and (6) the City of New York, New York (City of New York),⁶ seeking an extension of the January 17, 2012, deadline to pay the administrative fee due to the Public Safety Spectrum Trust (PSST) under the approved second-year budget for administration of 700 MHz public safety broadband spectrum leases.⁷

II. BACKGROUND

2. On May 12, 2010, the Commission granted, with conditions, twenty-one waiver petitions filed by public safety entities (Waiver Recipients) seeking early deployment of statewide or local public safety broadband networks in the 700 MHz public safety broadband spectrum (763-768 MHz and 793-

¹ See City of San Antonio, Texas Request for Waiver, PS Docket 06-229 (filed Jan. 27, 2012) (*San Antonio Waiver Request*).

² See District of Columbia Request for Waiver, PS Docket 06-229 (filed Jan. 30, 2012) (*D.C. Waiver Request*).

³ See State of New York Petition for Waiver of Deadline to Submit Lease Administrative Fee, PS Docket 06-229 (filed Feb. 13, 2012) (*New York State Waiver Request*).

⁴ See Request for Waiver State of New Mexico Department of Information Technology, PS Docket 06-229 (filed Feb. 6, 2012) (*NM DoIT Waiver Request*).

⁵ See City of Chesapeake, Virginia Petition for Waiver of Deadline to Submit Lease Administrative Fee, PS Docket 06-229 (filed Feb. 7, 2012) (*City of Chesapeake Waiver Request*).

⁶ See City of New York Request for Waiver of Deadline to Submit Lease Administrative Fee, PS Docket 06-229 (filed Jan. 30, 2012) (*City of New York Waiver Request*).

⁷ See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, DA 11-1918 (PSHSB Nov. 18, 2011) (*Second Year Budget Order*).

798 MHz).⁸ Among other conditions, the Commission required each Waiver Recipient to obtain a long term *de facto* spectrum lease from the PSST⁹ and to remit an administrative fee to the PSST.¹⁰

3. On November 18, 2011, the Bureau approved the PSST's proposed budget for the second year of lease administration, finding the proposed \$13,000 per lessee administrative fee to be reasonable.¹¹ The administrative fee payments were due to the PSST on January 17, 2012.¹²

4. San Antonio and D.C. each filed a request seeking additional time to make the required payment. San Antonio explained that “[d]ue to an unanticipated delay in the administrative check request process ... San Antonio was unable to issue a check in time to meet the January 17 payment deadline.”¹³ San Antonio requested an extension until February 17, 2012 to remit its payment.¹⁴ D.C. explains that it “is in the process of effectuating [its] payment” but that “unforeseen administrative delays” prevented it from meeting the deadline.¹⁵ D.C. requested an extension until March 2, 2012.¹⁶ The PSST has since received both San Antonio's and D.C.'s required payments.

5. New York State, NM DoIT, the City of Chesapeake, and the City of New York each request waiver and extension of the January 17, 2012 payment deadline to accommodate their late-filed payments as timely. The City of Chesapeake and New York State both request extensions until January 18, 2012, the City of New York until January 19, and NM DoIT until January 26—the respective dates on which the PSST received these payments.¹⁷ NM DoIT explains that its late payment was attributable to “[a]n ministerial error by NM DoIT resulting from a change in the PSST mailing address.”¹⁸ The City of New York attributes its delay in payment to “unforeseen administrative delays” related in part to the change in the PSST's mailing address.¹⁹ New York State and the City of Chesapeake assert similar administrative difficulties in processing the payments.²⁰

⁸ See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Order*, 25 FCC Rcd 5145 (2010) (*Waiver Order*). The Public Safety and Homeland Security Bureau granted a twenty-second waiver, to the State of Texas, on May 12, 2011. See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 26 FCC Rcd 6783 (PSHSB 2011) (*Texas Waiver Order*).

⁹ *Id.* at 5152-53 ¶¶ 20-24.

¹⁰ See *id.* at 5166 ¶ 64.

¹¹ See Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Order*, DA 11-1918 (PSHSB Nov. 18, 2011) (*Second Year Budget Order*).

¹² *Id.* at app. A.

¹³ *San Antonio Waiver Request* at 2.

¹⁴ *Id.*

¹⁵ *D.C. Waiver Request* at 1.

¹⁶ *Id.*

¹⁷ See *City of Chesapeake Waiver Request* at 1-2; *New York State Waiver Request* at 2; See *City of New York Waiver Request* at 2; See *NM DoIT Waiver Request* at 1.

¹⁸ *Id.*

¹⁹ See *City of New York Waiver Request* at 3.

²⁰ See *New York State Waiver Request* at 2; *City of Chesapeake Waiver Request* at 2.

III. DISCUSSION

4. 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;²¹ 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.²² An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.²³

5. Based on the information before us, we conclude that grant of San Antonio's and D.C.'s waiver requests are warranted. Both San Antonio and D.C. cite unusual administrative oversights that caused their delay in remitting payment. Both requested only short-term extensions of the payment deadline, and each has since paid. Accordingly, we grant both requests.

6. We also conclude, based on the information before us, that grant of each of the requests for waiver and extension of the January 17, 2012 payment deadline filed by the City of Chesapeake, New York State, NM DoIT, and the City of New York is also warranted. Each of these parties cites delays caused by administrative difficulties in processing the payments. Importantly, we note that these parties took immediate action to make payment and that the delays were short in duration. Accordingly, we grant each request.

V. ORDERING CLAUSES

7. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 301, 303, 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and 337, and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the waiver requests by the City of San Antonio, Texas; the District of Columbia; the New York State Office of Technology on behalf of the State of New York; the State of New Mexico Department of Information Technology; the City of Chesapeake, Virginia; and the City of New York, New York ARE GRANTED.

8. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392, and the *Waiver Order*, 25 FCC Red 5145, 5155, ¶ 33 (2010).

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)
Chief, Public Safety and Homeland Security Bureau

²¹ 47 C.F.R. § 1.925(b)(3)(i).

²² *Id.* at. § 1.925(b)(3)(ii).

²³ *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 Red 1414, 1415 (2003).