

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

In the Matter of )
NEW YORK CITY TRANSIT AUTHORITY ) WT Docket 99-87
Request for Waiver of Section 90.209(b) of the )
Commission's Rules )

ORDER

Adopted: July 31, 2012

Released: August 1, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau, and Chief, Policy Division, Public Safety and Homeland Security Bureau:

1. Introduction. We have before us the request of the New York City Transit Authority (NYCTA)1 for a waiver until June 30, 2016, of the Commission's VHF/UHF narrowbanding deadline, which requires private land mobile radio (PLMR) licensees in the 150-174 MHz and 421-512 MHz bands to operate using channel bandwidth of no more than 12.5 kHz or equivalent efficiency by January 1, 2013.2 NYCTA seeks the extension for PLMR Stations KA34484, KB81204, KB81205, KEM727, KG9550, KGL738, KGL739, KGL741, KJ3732, KLE770, KLE772, KLO237, KQT915, KSZ887, KTA917, KTA918, KTA919, KTA920, KTA927, KTA928, WNGI988, WNGX515, WNGX516, WNGZ991, WNHI787, WNSA945, WNZK581, and WPEM901. For the reasons set forth below, we grant the request.

2. Background. NYCTA, the nation's largest provider of mass transit services, operates a subway and bus transportation network in New York City. It requests a waiver of the narrowbanding deadline only with respect to communications equipment deployed on its subway system.3 NYCTA's rapid transit network operates at all hours, and typically makes more than 8,000 scheduled train trips that

1 See Request for Waiver of Commission Rules on Behalf of New York City Transit Authority (filed Jan. 27, 2012) (Request). On May 21, 2012, comment was sought on the Request. See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on New York City Transit Authority Request for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, Public Notice, WT Docket No. 99-87, 27 FCC Rcd 5314 (WTB/PSHSB 2012). (The Request had previously been placed on public notice, see Public Safety and Homeland Security Bureau Seeks Comment on Requests for Waiver of the January 1, 2013 VHF-UHF Narrowbanding Deadline, Public Notice, WT Docket No. 99-87, 27 FCC Rcd 430 (PSHSB 2012), but the May 21 Public Notice provided additional information for interested parties.) Motorola Solutions, Inc filed supporting comments on June 11, 2012.

2 See 47 C.F.R. § 90.209(b)(5); see also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). On April 26, 2012, the Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology waived the January 1, 2013 narrowbanding deadline for 470-512 MHz band frequencies. See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Order, WT Docket No. 99-87, RM-9332, 27 FCC Rcd 4213 (WTB/PSHSB/OET 2012).

3 Request at 3-4.

transport more than 4.5 million customers each workday.<sup>4</sup> The rapid transit operations communications system consists of 119 radio sites, of which 83 are underground and 36 are outdoors.<sup>5</sup> Because channels are reused at multiple locations, however, the system occupies only 23 discrete VHF frequencies, of which 16 are former Railroad Radio Service frequencies.

3. In 2003, NYCTA began an extensive, multiyear program to modernize and upgrade the system and transition to narrowband operations, which included procuring approximately 15,000 portable narrowband-capable radios.<sup>6</sup> NYCTA states that its narrowbanding efforts have been complicated by actions beyond its control that delayed the awarding of the contract to complete the narrowband transition. Specifically, a 2008 change in the project's procurement methodology delayed the awarding of the contract until 2010, at which time the New York State Comptroller rejected the contract that NYCTA awarded.<sup>7</sup> NYCTA then had to request new proposals, and the new contract was not approved until this year.<sup>8</sup>

4. NYCTA requests a 42-month extension, until June 30, 2016, to replace and reprogram radio base stations and related site equipment throughout the subway system. It states that work related to above-ground transmitter sites will be completed first (by August 31, 2014), so that outdoor radio transmissions will be in narrowband mode as soon as possible in order to minimize potential interference to other licensees.<sup>9</sup>

5. *Discussion.* 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;<sup>10</sup> 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.<sup>11</sup> Applying this standard to narrowbanding, we have stated in the *Narrowbanding Waiver Guidance Notice*, jointly issued by the Wireless Telecommunications Bureau, the Public Safety and Homeland Security Bureau, and the Office of Engineering and Technology, that narrowbanding waiver requests "will be subject to a high level of scrutiny" under the waiver standard.<sup>12</sup> We have also provided recommended guidance on the factors that licensees should address in their requests and have recommended that in addressing these factors, licensees should seek to demonstrate that "(i) they have worked diligently and in good faith to narrowband their systems expeditiously; (ii) their specific

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<sup>4</sup> *Id.* at 2.

<sup>5</sup> *Id.* at 8.

<sup>6</sup> *Id.* at 6-7.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 7-8.

<sup>9</sup> *Id.* at 8, 11-12, 16.

<sup>10</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>11</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>12</sup> Wireless Telecommunications Bureau, Public Safety and Homeland Security Bureau, and Office of Engineering and Technology Provide Reminder of January 1, 2013 Deadline for Transition to Narrowband Operations in the 150-174 MHz and 421-512 MHz Bands and Guidance for Submission of Requests for Waiver and Other Matters, *Public Notice*, 26 FCC Rcd 9647 (WTB/PSHSB/OET 2011) (*Narrowbanding Waiver Guidance Notice*).

circumstances warrant a temporary extension of the deadline; and (iii) the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process.”<sup>13</sup>

6. Based on the record before us, we conclude that NYCTA has presented sufficient facts to meet the high standard for grant of the requested waiver. NYCTA has spent considerable time and money and made substantial progress in its effort to narrowband its PLMR system. The record shows that NYCTA began an extensive program to upgrade its subway radio system in 2003. Strict application of the narrowbanding rules would require NYCTA to expedite its contracted work schedule and risk service interruptions for millions of daily customers. We conclude that strict enforcement of the narrowbanding deadline under these circumstances would be inequitable and unduly burdensome, and that a waiver would be in the public interest. In reaching this conclusion, we place significant weight on the showing that NYCTA has made with respect to the factors identified in our *Narrowbanding Waiver Guidance Notice*.

7. First, NYCTA has shown diligence in its transition to narrowband technology. Since 2003, NYCTA has developed a master plan to migrate to narrowband operations, held several rounds of bidding, executed a final contract with a vendor, and purchased approximately 15,000 radios.<sup>14</sup> NYCTA hoped to meet the 2013 narrowbanding deadline before its contracting process was twice interrupted.<sup>15</sup> Furthermore, NYCTA is implementing its narrowband transition as part of a comprehensive, multi-year subway radio system upgrade. Under these circumstances, we conclude that the 42-month waiver period requested by NYCTA is no more than is reasonably necessary to complete its transition to narrowband operations.<sup>16</sup>

8. Second, NYCTA must upgrade its radio system in one of the most complex transit systems in the world. NYCTA operates 119 radio sites with multiple base stations and a network of remote receivers, serving 468 passenger stations and 800 miles of track.<sup>17</sup> Due to its age, all of NYCTA’s rapid transit operations VHF radio equipment must be replaced to comply with the narrowbanding mandate.<sup>18</sup> Unlike most transit systems, NYCTA does not shut down daily to allow for maintenance and upgrades, so most of the work must be conducted along active rights-of-way under temporary service diversions that must end before the next rush hour period.<sup>19</sup> Grant of the waiver will allow NYCTA to continue its contracted transition to narrowbanding technology without jeopardizing essential system reliability as it upgrades. Furthermore, NYCTA plans to upgrade its above-ground transmitters first, thereby minimizing potential interference to other licensees during the transition.

9. *Conclusion and Ordering Clauses.* Based on the foregoing, we conclude that grant of the requested waiver is warranted. Accordingly, we grant NYCTA a waiver of the Commission’s January 1, 2013 VHF/UHF narrowbanding deadline until June 30, 2016, for the above-listed call signs.

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<sup>13</sup> *Id.* at 9649.

<sup>14</sup> Request at 13.

<sup>15</sup> *Id.* at 6.

<sup>16</sup> See *Narrowbanding Waiver Guidance Notice*, 26 FCC Rcd at 9649 (waiver applicant should show that “the amount of time for which a waiver is requested is no more than is reasonably necessary to complete the narrowbanding process”).

<sup>17</sup> Request at 8.

<sup>18</sup> *Id.* at 9.

<sup>19</sup> *Id.* at 9, 14.

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(b)(3) of the Commission's rules, 47 C.F.R. § 1.925(b)(3), that the Request for Waiver of Commission Rules on Behalf of New York City Transit Authority, filed on January 27, 2012 by the New York City Transit Authority IS GRANTED.

11. This action is taken under delegated authority pursuant to Sections 0.131, 0.331, 0.191, and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.131, 0.331, 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

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