

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

In the Matter of)
OFFSHORE MARINE TOWING) File No. 0004759348
Request for Waiver of Sections 90.307 and 90.309)
of the Commission's Rules)

ORDER

Adopted: December 20, 2012

Released: December 21, 2012

By the Deputy Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. Offshore Marine Towing (Offshore) filed an application and request for waiver for a new 470-512 MHz band (T-Band) private land mobile radio (PLMR) station. Specifically, Offshore requests a waiver because it proposes to operate a mobile relay station in the vicinity of a protected co-channel television station. For the reasons stated below, we deny the Waiver Request and will dismiss the application.

II. BACKGROUND

2. Sections 90.307 and 90.309 of the Commission's Rules provide that T-Band PLMR stations may not be located within a certain distance (depending on the PLMR station's antenna height and effective radiated power) of co-channel and adjacent channel television stations identified in the Commission's publication "TV stations to be considered in the preparation of Applications for Land Mobile Facilities in the Band 470-512 MHz." Offshore acknowledges that Television Station WSEC-TV, Miami, Florida, is identified in the publication and is within the protection criteria of its proposed facility. It notes, however, that the station now broadcasts from another location, which is not within the protection criteria for Offshore's proposed PLMR station. Offshore therefore requests a waiver of Sections 90.307 and 90.309 to permit operation of a co-channel PLMR station at locations in south Florida.

3. On February 22, 2012, the President signed the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act) into law. Section 6103 of the Spectrum Act provides that, not later than nine years after the date of enactment, the Commission shall reallocate T-Band spectrum "currently used by public safety eligibles." The Act further instructs the Commission to "begin a system of competitive

1 File No. 0004759348 (filed June 9, 2011) and accompanying Request for Waiver (Waiver Request) (filed Jan. 4, 2012).

2 See 47 C.F.R. §§ 90.307(c), (e), 90.309(a).

3 Waiver Request at 1.

4 See Pub. L. No. 112-96, 126 Stat. 156 (2012).

5 Id., § 6103(a).

bidding under Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum.”⁶ It also provides that “relocation of public safety entities from the T-Band Spectrum” shall be completed not later than two years after completion of the system of competitive bidding.⁷

4. On April 26, 2012, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau (Bureaus) issued a public notice announcing a limited suspension of the acceptance and processing of certain T-Band applications.⁸ The *Suspension Notice* suspended the acceptance and processing of T-Band applications “in order to stabilize the existing spectral landscape while the Commission considers issues surrounding future use of the T-Band, solicits input from interested parties, and works to implement the directives of the Act.”⁹ In the *Suspension Notice*, the Bureaus stated that they would not accept or process applications “that would, if granted, tend to increase the degree to which the 470-512 MHz band is currently licensed,” including applications that add locations.¹⁰ On June 7, 2012, the Bureaus issued a subsequent public notice to clarify that “applications that seek to add or change locations are suspended only if the new location extends the station’s authorized interference contour in any direction.”¹¹

5. On October 2, 2012, the Commission released a *Notice of Proposed Rulemaking* seeking comment on proposals to implement the Spectrum Act mandate to conduct an incentive auction of broadcast television spectrum, including UHF channels 14-20. While that *Notice* made no proposals regarding the reallocation and auction of the T-Band spectrum used by Public Safety eligibles,¹² the Commission noted that the T-Band would be addressed in a forthcoming *Public Notice* intended to advance the record on issues related to the technical, administrative, legal, and policy implications of the Spectrum Act for T-Band licensees.¹³

III. DISCUSSION

6. In light of the Spectrum Act and in accordance with the *Suspension Notice*, we find that Offshore’s application would, if granted, increase the degree to which the T-Band is currently licensed because the application is for new repeaters that would expand Offshore’s authorized interference contour. We deny Offshore’s request for waiver of Sections 90.307 and 90.309 because, as explained in the *Suspension Notice*, it is not in the public interest for us to expand further T-Band encumbrance, especially into areas where Part 90 of the Commission’s rules does not permit the requested T-Band

⁶ *Id.*

⁷ *Id.*, § 6103(b), (c).

⁸ Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 4218 (WTB/PSHSB 2012) (*Suspension Notice*).

⁹ *Id.* at 4218.

¹⁰ *Id.* at 4219.

¹¹ Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Clarify Suspension of the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 6087, 6087-88 (WTB/PSHSB 2012).

¹² See Expanding the Economic and Innovation Opportunities of Spectrum Through Incentive Auctions, *Notice of Proposed Rulemaking*, GN Docket No. 12-268, 27 FCC Rcd 12357, 12365 ¶ 19 (2012).

¹³ *Id.*

operation.¹⁴ Section 1.934(d)(2) of the Commission's rules provides that an application containing a waiver request is defective if the Commission denies the waiver request and the application does not contain an alternative proposal that fully complies with the rules.¹⁵ Because Offshore submitted no such alternative proposal, we dismiss its application as defective.¹⁶

IV. ORDERING CLAUSES

7. Accordingly, IT IS ORDERED pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, that the Waiver Request associated with application File No. 0004759348, filed by the Offshore Marine Towing on June 9, 2011, IS DENIED.

8. IT IS FURTHER ORDERED that application File No. 0004759348 SHALL BE DISMISSED consistent with this *Order* and the Commission's rules.

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

FEDERAL COMMUNICATIONS COMMISSION

Scot Stone
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Wireless Telecommunications Bureau

¹⁴ See Town of Sandwich, Massachusetts, *Order*, 27 FCC Rcd 9173, 9174 ¶ 4 (PSHSB PLD 2012); Borough of Roselle Park, New Jersey, *Order*, 27 FCC Rcd 8300, 8301 ¶ 4 (PSHSB PLD 2012).

¹⁵ 47 C.F.R. § 1.934(d)(2).

¹⁶ See *Suspension Notice*, 27 FCC Rcd at 4219. We note that, subsequent to the filing of the instant application, Offshore added non-T-Band frequencies at two of the proposed locations under Call Sign KGA455.