



Federal Communications Commission  
Washington, D.C. 20554

October 28, 2015

DA 15-1217

Mr. Lawrence Chau  
Supervisor, Electronics Maintenance  
San Francisco Municipal Transportation Agency  
1 South Van Ness Avenue, 7th Floor  
San Francisco, California 94103

Re: FCC File No. 0006810781 - Request for waiver of Section 90.629.

Dear Mr. Chau:

This letter addresses the above-referenced request for waiver of Section 90.629<sup>1</sup> of the Commission's rules filed by the San Francisco Municipal Transportation Agency (SFMTA).<sup>2</sup> SFMTA requests the waiver to extend until March 31, 2017 the construction deadline associated with 700 MHz narrowband public safety license WQMJ646 that will be integrated into SFMTA's Radio System Replacement Program (RSRP). For the reasons discussed below, we waive Section 90.629 of the Commission's rules and extend SFMTA's construction deadline until March 31, 2017.

The SFMTA RSRP consists of "a 700 MHz P25 Phase II Trunked Voice and Data Network, an 800 MHz OpenSky™ TDMA Data Network, a 5.9 GHz Dedicated Short-Range Communications (DSRC) network and Point-to-Point Microwave Service network."<sup>3</sup> The RSRP would replace SFMTA's existing "T-Band" (470-512 MHz) system.<sup>4</sup> Specific to this Extended Implementation Plan (EIP), the SFMTA currently holds one 700 MHz license for four sites under call sign WQMJ646. The four sites (collectively Forest Hill, One Market Place (OMP), South Hill and Christmas Tree Point) are subject to an October 2, 2015 construction deadline.

On May 1, 2015, SFMTA filed the instant request for waiver claiming that due to the size, complexity and budgeting for SFMTA's replacement system, SFMTA seeks to modify its EIP.<sup>5</sup> In the waiver request, SFMTA lists a number of unforeseen circumstances that delayed construction of the four sites and that required redesign, including analyzing replacement sites.<sup>6</sup> First, SFMTA submits that it discovered that the South Hill site was potentially unavailable and that an alternative San Bruno Mountain

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<sup>1</sup> 47 C.F.R. § 90.629.

<sup>2</sup> See Further Request for Waiver filed by San Francisco Municipal Transportation Agency (dated May 1, 2015) (Waiver Request) attached to FCC File No. 0006810781 (May 21, 2015 amended May 22, June 15, 2015, Oct. 2, 2015 and Oct. 15, 2015) (Waiver Request). SFMTA initially requested a waiver for 700 MHz call sign WQMJ646 and five 800 MHz call signs (WQKE739, WQKE988, WQRB984, WQRP482 and WQRP484). SFMTA, however, withdrew its extension request relative to the five 800 MHz call signs. See FCC File Nos. 0006786264 (filed Jun. 18, 2015) *re* WQKE739; 0006841077 (filed Jul. 14, 2015) *re* WQKE988; 0006786267 (Jun. 15, 2015) *re* WQRB984; 0006786268 (Jun. 18, 2015) *re* WQRP482; and 0006786269 (Jun. 17, 2015) *re* WQRP484.

<sup>3</sup> Waiver Request at 2.

<sup>4</sup> *Id.* at 2. SFMTA notes that T-Band licensing activities are frozen and that T-Band incumbents must relocate to different bands and relinquish their T-Band spectrum licenses by February, 2021. *Id.* SFMTA claims that it is – by default – complying with this requirement ahead of schedule. *Id.*

<sup>5</sup> Waiver Request at 2.

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

site was also unavailable, thus SFMTA determined to replace the South Hill site with Bayview.<sup>7</sup> SFMTA anticipates “emitting” from Bayview by December 18, 2015.

Second, SFMTA submits that the OMP site required asbestos remediation testing to be performed. Although the asbestos testing has not been completed, SFMTA anticipates transmitting from the OMP site in November 2015.

Third, SFMTA submits that the Forest Hill site required design modifications due to “shelter space” restrictions. SFMTA notes that the redesign for the site was completed in March 2015 and that it anticipates the Forest Hill site to begin emitting signals in November 2015.

SFTA also identifies several steps it has taken to continue the construction of the replacement system.<sup>8</sup> For example, on October 14, 2015, SFMTA submits that the Christmas Tree Point site is on the air and coverage testing will begin immediately.<sup>9</sup> Further, SFMTA states that funding for the RSRP remains secure and provides a certification from the City of San Francisco’s Chief Financial Officer that the RSRP is fully funded (\$116 million in Federal, State and Local funds SFMTA states that it has expended \$22 million to date on this program with significant contract payment milestones to the prime contractor in the near future.<sup>10</sup>

SFMTA seeks a waiver of Section 90.629’s five year extended implementation period to complete construction of WQMJ646. SFMTA states that final system construction (infrastructure and limited subscriber unit testing) is scheduled for November 2015 and full user transition scheduled for November 2016. SFMTA requests a construction completion deadline of March 31, 2017, inclusive of a three month contingency.<sup>11</sup> In that connection, SFMTA submits a letter from the Region 6 (Northern California) Regional Planning Committee concurring with SFMTA’s proposal to relocate from the South Hill site to Bayview.<sup>12</sup>

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 requested 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,<sup>13</sup> or the applicant has no reasonable alternative.<sup>14</sup> Based on the record before us, we find that SFMTA has met the first prong of the waiver standard.

The Division previously granted SFMTA’s request to revise its EIP for call sign WQMJ646.<sup>15</sup> Due to a number of circumstances, SFMTA has not completed its previously approved EIP. SFMTA,

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<sup>7</sup> *Id.* See FCC File No. 0006810781 (proposing to replace the South Hill location with the Bayview location)

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

<sup>9</sup> See Letter from Lawrence Chau, Supervisor, Electronics Maintenance, and Frank Lau, Radio Program Manager, SFMTA to Michael J. Wilhelm, Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau (dated Oct. 14, 2015) *re* FCC File No. 0006810781.

<sup>10</sup> Waiver Request at 6.

<sup>11</sup> *Id.* at 8.

<sup>12</sup> See Letter from John Lemmon, Chair, Region 6 (Northern California) 700 MHz Regional Planning Committee (dated May 20, 2015) attached to FCC File No. 0006810781.

<sup>13</sup> 47 C.F.R. § 1.925(b)(3)(i).

<sup>14</sup> 47 C.F.R. § 1.925(b)(3)(ii).

<sup>15</sup> On June 27, 2013, the Policy and Licensing Division (the Division) of the Public Safety and Homeland Security Bureau (PSHSB) granted SFMTA’s request for waiver of Section 90.629 of the Commission’s rules to revise the

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however, has made progress towards completing its RSRP. For call sign WQMJ646, SFMTA remains committed to complete final system construction (infrastructure and limited subscriber unit testing) scheduled for December, 2015 and full user transition scheduled for November, 2016.<sup>16</sup>

We see no indication that SFMTA is “warehousing” the spectrum authorized under station call sign WQMJ646.<sup>17</sup> Rather, SFMTA has shown that it will use that spectrum in a new regional system, and already has taken concrete steps toward implementing it, *e.g.*, completing construction of location 2 (*i.e.* the Christmas Tree Point site) developing an implementation schedule, awarding a contract, certifying funding and expending substantial funds on this project. We therefore believe that the underlying purpose of Section 90.629 – preventing the warehousing of spectrum to the exclusion of other potential users – would not be frustrated by grant of the requested waiver until March 31, 2017.

The record reflects that SFMTA’s overall goals are to satisfy SFMTA’s voice, data and capacity needs and replace its T-Band system. We find that SFMTA has demonstrated that these objectives are consistent with the public interest. Because denying the requested relief would have serious implications on the proposed SFMTA regional system, we grant SFMTA its requested extension relative to station WQMJ646.

Accordingly, IT IS ORDERED pursuant to Sections 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), and Sections 1.925, 1.946(e), and 90.629 of the Commission’s rules, 47 C.F.R. §§ 1.925, 1.946(e), 90.629, that the Request for Waiver and Further Extended Implementation Authorization, filed by the San Francisco Municipal Transportation Agency on May 21, 2015, in connection with application FCC File No. 0006810781 IS GRANTED.

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.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm, Deputy Chief  
Policy and Licensing Division  
Public Safety and Homeland Security Bureau

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EIP to construct WQMJ646. *See* City and County of San Francisco, *Order*, 28 FCC Rcd 9118 (PSHSB 2013). Specifically, the Division approved SFMTA’s request to construct WQMJ646 by October 2, 2015. *Id.*

<sup>16</sup> Waiver Request at 8.

<sup>17</sup> *See* 47 C.F.R. § 90.629. *See also* Private Land Mobile Radio Rules, Part 90 Amended, PR Docket Nos. 79-191, 79-334, 79-107, 81-703, *Second Report and Order*, 90 FCC 2d 1281, 1300 (1982).