

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of )  
 ) DA 22-1328  
Towns of Acushnet, Fairhaven, and Mattapoisett, )  
Massachusetts Waiver Requests to Operate Two ) File Nos. 0009464539,  
T-Band Base Stations ) 0009464605, and  
 ) 0009464724

To: Chief, Public Safety and Homeland Security Bureau

**COMMENTS  
OF THE  
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC”) rules, respectfully submits its comments in response to the waiver requests filed by the Towns of Acushnet, Fairhaven, and Mattapoisett, Massachusetts (“Towns”).<sup>1</sup> The Towns request waivers of both Rule Sections 90.305(a) and 90.307(d). For the reasons detailed below, EWA supports both requests and urges the FCC to grant the requested relief promptly.

As described in the Public Notice and in their waiver requests, the Towns share a single-site, single-channel 470-512 MHz (“T-Band”) radio system licensed under call signs KZM468, WBN818, and WBN819. The system supports the collective and collaborative activities of their emergency responders. As the population of the Towns has shifted, the current site no longer provides adequate coverage. To address this situation, the Towns propose to modify the

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<sup>1</sup> *Public Safety and Homeland Security Bureau Seeks Comment on Requests for Waiver filed by the Towns of Acushnet, Fairhaven, and Mattapoisett, Massachusetts to Operate Two T-Band Band Stations*, Public Notice, DA 22-1328 (rel. Dec. 15, 2022) (“Public Notice”).

system by replacing that location with two sites that will operate in simulcast mode using the same channel for which they currently are licensed: 482/5.8125 MHz.

Rule Section 90.305(a) specifies that T-Band base stations must be located within 80 kilometers (50 miles) of the center coordinates of the T-Band market, in this case Boston, Massachusetts. One of the two sites meets this criterion, but the second is 0.8 kilometers (0.5 miles) outside the 80-kilometer (50-mile) radius. The waiver requests include contour maps demonstrating that this barest of extensions beyond the permitted radius results in a *de minimis* difference between the contour from the current single site and the combined contour of the two proposed sites, including the location requiring a waiver. In fact, as noted in the waiver requests, the resulting contour is slightly smaller than the current contour, but is shifted to the northeast following the migration of the Towns' populations.

The Towns' requests are consistent with the conclusion reached by the FCC when granting waiver relief for Goosetown Enterprises, Inc. ("Goosetown") more than 20 years ago.<sup>2</sup>

The FCC stated:

While we disagree with Goosetown that a waiver should be granted solely because the distance in question is only 0.9 miles, we believe that Goosetown has shown that its proposed operation would serve the public interest by increasing the availability of communications services in the Beacon, New York area.<sup>3</sup>

The FCC went on to clarify, "We are more inclined to consider favorably requests for waiver of Section 90.305(a) when the applicant proposes to contain its area of operation within 80 miles of the geographic center of the urban area in question."<sup>4</sup>

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<sup>2</sup> *Goosetown Enterprises, Inc.*, Memorandum Opinion and Order, 16 FCC Rcd 12792 (2001).

<sup>3</sup> *Id.* at ¶ 11.

<sup>4</sup> *Id.* at ¶ 13. At that time, the FCC's concern was focused on ensuring the availability of spectrum for the DTV transition. *Id.* at ¶ 12. That transition is complete.

The Towns' sites would be less of an extension of the market area than was Goosetown's location, and surely the public has a compelling interest in ensuring reliable public safety communications in populated communities. Moreover, the Towns propose to reduce their current mobile area of operation of 48 kilometers around their site in New Bedford to 32 kilometers around the new site in Fairhaven, keeping their mobile area of operation within 80 kilometers (50 miles) of the market's center coordinates.

EWA sees absolutely no basis for concluding that grant of these requests for a waiver of Rule Section 90.305(a) could have an adverse impact on any existing or prospective licensee.

Rule Section 90.307(d) requires Part 90 T-Band licensees with associated mobile units to locate their base stations at least 145 kilometers from protected adjacent channel television (TV) stations. The Towns have requested waiver relief because station WPXQ-TV is authorized on adjacent channel 17 in Newport, Rhode Island at a transmitter location 76.3 kilometers from the closest site proposed by the Towns. In support of their waiver requests, the Towns have included an engineering analysis demonstrating that the 64 dB $\mu$  interfering contour of the proposed system does not overlap WPXQ-TV's 64 dB $\mu$  Grade B service contour, which the Public Notice describes as the generally accepted protection criterion in this situation. They also note that the Town of Fairhaven had been operating at both sites for more than six months prior to submission of the applications and waiver requests pursuant to an STA, call sign WRHT244, and no interference had been reported. Since those filings were made in early 2021, it now has been almost two years, a more than reasonable time for any interference to have been identified.

EWA also notes that WPXQ-TV is authorized in much closer proximity to the protected Boston market than permitted under Rule Section 73.623(e), which states in pertinent part:

*Protection of land mobile operations on channels 14-20.* The Commission will not accept petitions to amend the DTV Table of Allotments, applications for new DTV stations, or applications to change the channel or location of authorized DTV stations that would use channels 14-20 where the distance between the DTV reference point as defined in section 73.622(d), would be located less than ...176 km from the city center of an adjacent channel land mobile operation.

WPXQ-TV's transmitter is only 113.181 kilometers from the Boston market, or 63 kilometers closer than permitted under that rule.

Unlike the Towns' request for a 1% extension of the 80-kilometer radius of T-Band market areas, this more than 33% reduction in the mandatory distance of DTV stations from land mobile market areas was granted without notice or an opportunity to comment. A waiver was granted based on the following statement and associated technical showing submitted by WPXQ-TV:

The FCC rules state that applications for modifications to DTV allotments will be considered where all affected land mobile licensees consent to the requested action. Research of LMR operations on channel 16 within 50 miles of the Boston reference site revealed more than 1800 LMRS records. It is believed this magnitude of LMRS records precludes any practical expectation of receiving consent letters from all affected LMRS station to comply with the FCC rule. **Informal discussions with the FCC staff indicate that implementation of this provision of the FCC rule is likely to be impractical and unworkable given the number of consent letters that would be required.** Station WPXQ-DT respectfully requests a waiver of Section 73.623(e) to the extent necessary to allow the acceptance of an alternative showing to demonstrate interference protection to pertinent LMRS operations on channel 16.<sup>5</sup>

The Boston area is not atypical. Most T-Band market areas support a significant number of land mobile licensees. EWA might have thought that the informal discussion almost 25 years ago, presumably with the Media Bureau, about the "impracticality" of complying with the rule might have prompted consideration of a rule change but that is not the case. EWA and other land mobile interests became aware of multiple waivers of this distance requirement only

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<sup>5</sup> See BPCDT-19991022AAT, Comprehensive Technical Exhibit at 3 (filed Nov. 15, 1999) (emphasis added).

recently, long after the date when parties with standing might have filed Oppositions to the requests.

EWA hopes the Media Bureau at least afforded the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau, even if not the potentially affected land mobile licensees, an opportunity to evaluate WPXQ-TV's showing prior to grant of the waiver. Whether that happened, WPXQ-TV seemingly has coexisted with Boston T-Band licensees for almost two decades, to the best of EWA's knowledge without causing interference. Had WPXQ-TV been required to comply with the FCC's protection standard, the Towns' site would be separated by **at least** 139.3 kilometers, only 5.7 kilometers closer than the prescribed distance. The Towns' proposed 1% extension of the permitted radius, supported by the demonstration of non-overlapping contours, should be afforded waiver relief as well.

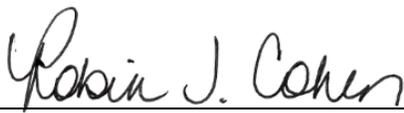
Finally, the Towns have made a compelling waiver showing consistent with the standard set out in Rule Section 1.925(b). It is evident that waiver relief would be in the public interest as the modified system is needed to ensure that emergency responders in the Towns have reliable coverage in areas of population. They have demonstrated that they have no reasonable alternative as they do not have the funding for a full replacement of this highly spectrally efficient system, even assuming they could find an alternative as well-suited for their needs. The underlying purposes of the rules in question would not be served by rigid adherence when the deviations requested are demonstrably *de minimis*, and there is no evidence to support, and much to refute, the possibility that these rule purposes would be frustrated by grant of the relief requested.

For these reasons, EWA strongly recommends prompt approval of the Towns' Waiver Requests. It also questions whether there is any public interest in seeking comment on requests

that are consistent with the precedent established in Goosetown and with what the FCC has described as the generally accepted criterion for demonstrating non-interference to protected television stations. In EWA's opinion, the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau should follow the Media Bureau's example and evaluate waiver requests like the Towns' without seeking input from the public.<sup>6</sup> While land mobile licensees likely had an interest in the waivers granted by the Media Bureau, no entity other than WPXQ-TV, operating pursuant to its own waiver, would potentially be impacted by the Towns' waiver requests. Independent action by the FCC would avoid unnecessary delays for applicants and unnecessary work for FCC staff.

Respectfully submitted,

**ENTERPRISE WIRELESS ALLIANCE**

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<sup>6</sup> Although land mobile licensees had no advance notice of the waiver granted to WPXQ-TV, as an authorized adjacent channel television station it should have the opportunity to comment on the Towns' waiver requests.