

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

In the Matter of
ENTERPRISE WIRELESS ALLIANCE
Request for Temporary Waiver – Part 90
Conditional Licensing Authority Above 470 MHz

ORDER

Adopted: September 26, 2013

Released: September 26, 2013

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

1. Introduction. We have before us the request of the Enterprise Wireless Alliance (EWA) for a temporary waiver of Section 90.159(b) of the Commission’s Rules to permit applicants for new or modified stations in the 470-512 MHz, 806-824/851-866 MHz, and 896-901/935-940 MHz bands to operate while the applications are pending. We grant the request as set forth below.

2. Background. Pursuant to Section 90.159(b), most applicants proposing to operate a new private land mobile radio (PLMR) station or modify an existing PLMR station below 470 MHz that are required to include a showing of frequency coordination are permitted to operate the proposed station during the pendency of the application for a period of up to 180 days, beginning ten days after the application is submitted to the Commission. This conditional authority is not available for applicants in the PLMR frequency bands above 470 MHz.

3. EWA notes that the Commission’s January 1, 2013 PLMR narrowbanding deadline triggered the filing of a large number of Part 90 applications in late 2012 and into 2013, resulting in notably longer processing times for non-Public Safety Pool applications. EWA contends that the limitation in Section 90.159(b) to applications below 470 MHz “creates the anomalous situation whereby, for example, a licensee proposing to upgrade from analog to digital equipment, which requires a modification of the emission designator, can deploy its new technology 10 business days after its below-

1 See 47 C.F.R. § 90.159(b).

2 See Letter dated June 21, 2013 from Mark E. Crosby, President/CEO, EWA to Ruth Milkman, Chief, Wireless Telecommunications Bureau (Waiver Request). The Waiver Request supersedes a previous request from EWA that the Wireless Telecommunications Bureau prioritize the processing of applications above 470 MHz. See Letter dated June 4, 2013 from Mark E. Crosby, President/CEO, EWA to Ruth Milkman, Chief, Wireless Telecommunications Bureau (Prioritization Request).

3 See 47 C.F.R. 90.159(b), (b)(6). This conditional authority applies only to applications that meet the following requirements: the proposed station location is south of Line A and west of Line C; the proposed antenna structure has previously been determined by the Federal Aviation Administration to pose no hazard to aviation safety, or the proposed structure height does not exceed 6.1 meters above ground level or above an existing man-made structure; grant of the application does not require a waiver of the Commission’s rules; the proposed facility will not have a significant environmental effect; and the proposed station is not in a quiet zone. 47 C.F.R. 90.159(b)(1)-(5).

4 See Prioritization Request at 1; Waiver Request at 1 & n.2.

470 MHz application is filed, yet must wait many months if the system is in the 470-512 MHz, 800 MHz, or 900 MHz frequency bands.”⁵

4. EWA believes that conditional licensing is appropriate for all Part 90 bands, and intends to file a petition requesting that the Commission amend its rules to permit this flexibility above 470 MHz.⁶ In the interim, it requests a temporary waiver of the below-470 MHz limitation in Section 90.159(b). Specifically, EWA requests a waiver to grant conditional authority for above-470 MHz applications filed with the Wireless Telecommunications Bureau (WTB) on or before December 31, 2013 that meet all of the other requirements and conditions of Section 90.159(b).⁷

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;⁸ 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.⁹ Based on the record before us, we conclude that EWA has presented sufficient facts to meet the standard for grant of a waiver. We agree with EWA that the large number of narrowbanding-related applications and the attendant temporary increase in processing time for all WTB applications is a unique or unusual factual circumstance for which waiver relief is appropriate.¹⁰ We also agree that, under the circumstances, restricting conditional authority to applications involving frequencies below 470 MHz during this period would be inequitable and unduly burdensome to applicants that could not have anticipated this increased processing time.¹¹ Finally, we conclude that temporarily allowing above-470 MHz PLMR applicants to initiate service consistent with the requirements of Section 90.159(b) would serve the public interest by permitting the more timely deployment of systems that serve many parties’ communications needs.

6. Consequently, we grant EWA’s request to temporarily waive Section 90.159(b) for applications in the 470-512 MHz, 806-824/851-866 MHz, and 896-901/935-940 MHz bands with WTB radio service codes¹² filed on or before December 31, 2013 (including applications that are currently pending). We grant the waiver only for PLMR applications filed on or before that date because we expect processing times to return to normal by the time that applications filed thereafter are processed. This waiver applies only to such applications that meet all of the requirements of Section 90.159(b) other than the below-470 MHz limitation. The waiver does not apply to public safety applicants or licenses.

⁵ See Waiver Request at 1.

⁶ See Prioritization Request at 1. When the Commission enacted the rule granting conditional authority below 470 MHz, it stated that it was being conservative in the implementation of conditional authority, and could consider expanding the concept in the future if experience demonstrated that such action was appropriate. See Amendment of Part 90 of the Commission’s Rules to Implement a Conditional Authorization Procedure for Proposed Private Land Mobile Radio Service Stations, *Report and Order*, PR Docket No. 88-567, 4 FCC Rcd 8280, 8283 ¶ 25 (1989).

⁷ See Waiver Request at 1-2.

⁸ 47 C.F.R. § 1.925(b)(3)(i).

⁹ 47 C.F.R. § 1.925(b)(3)(ii).

¹⁰ See Waiver Request at 2.

¹¹ *Id.*

¹² See http://wireless.fcc.gov/uls/index.htm?job=radio_services.

7. We remind applicants that frequency coordination recommendations are advisory in character and not an assurance that the Commission will grant the requested license.¹³ Conditional authority does not prejudice any action the Commission may take on the application, and may be modified or canceled by the Commission at any time.¹⁴ The applicant assumes all risk associated with operation under conditional authority¹⁵ and should be cautious in purchasing radio equipment prior to obtaining a valid permanent authorization from the Commission.¹⁶

8. *Conclusion and Ordering Clauses.* 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 Temporary Waiver filed by the Enterprise Wireless Alliance on June 21, 2013 IS GRANTED to the extent set forth in paragraph 6.

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
Deputy Chief, Mobility Division
Wireless Telecommunications Bureau

¹³ 47 C.F.R. § 90.175(h).

¹⁴ 47 C.F.R. § 90.159(d).

¹⁵ *Id.*

¹⁶ 47 C.F.R. § 90.175(h).