Federal Communications Commission
Washington, D.C. 20554

December 9, 2009

DA 09-2570

**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED**

Mr. Darrell Buchbinder
General Counsel
Port Authority of New York and New Jersey
225 Park Avenue South, 15th Floor
New York, New York 10003

Re: **In the Matter of the Port Authority of New York and New Jersey**
**Request for Waiver of Sections 90.157 and 101.65(b) of the Commission's Rules**

Dear Mr. Buchbinder:

On behalf of the Port Authority of New York and New Jersey (Port Authority), you filed a request for waiver[1] of Sections 90.157 and 101.65(b) of the Commission's rules,[2] seeking a one-year extension to construct the stations listed in the attachment to this letter (collectively, World Trade Center Stations).[3] For the reasons stated below, we grant, *nunc pro tunc*, the request for extension of waiver, until September 10, 2010. Accordingly, the Port Authority will have until no later than September 10, 2010, to construct and return the World Trade Center Stations to operational status without forfeiting the licenses for permanent discontinuance of operation, pursuant to Sections 90.157 and 101.65(b).[4]

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[1] Request for Extension of Waiver of Sections 90.157 and 101.65(b) of the Commission's Rules (dated Sept. 3, 2009) (Waiver Request).

[2] 47 C.F.R. §§ 90.157, 101.65(b). Pursuant to Sections 90.157 and 101.65(b), any station which has not been operated for one year or more is considered to have been permanently discontinued and is therefore subject to cancellation. *Id.*

[3] In six prior instances, the former Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau, the former Public Safety and Critical Infrastructure Division of the Wireless Telecommunications Bureau, or the Policy Division of the Public Safety Homeland Security Bureau (collectively, Division) granted similar Port Authority requests for waiver. *See* Port Authority of New York and New Jersey, *Order*, 17 FCC Rcd 16784 (WTB PSPWD 2002) (*2002 Order*); Port Authority of New York and New Jersey, *Order*, 18 FCC Rcd 19243 (WTB PSPWD 2003); Letter dated Nov. 10, 2004 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, to Jeffrey S. Green, Esq., General Counsel, Port Authority of New York and New Jersey; Letter dated Aug. 10, 2006 from Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, to Darrell Buchbinder, General Counsel, Port Authority of New York and New Jersey (*2006 Letter*); Port Authority of New York and New Jersey, *Letter Order*, 23 FCC Rcd 1753 (PSHSB PD 2008) (*February 2008 Letter Order*); and Port Authority of New York and New Jersey, *Letter Order*, 23 FCC Rcd. 16622 (PSHSB PD 2008) (November 2008 Letter Order) . In each instance, the Division granted the Port Authority an additional one-year period to complete construction of its World Trade Center Stations.

[4] The grant of this Waiver Request does not relieve the Port Authority from applying for a renewal of license for any World Trade Center Station listed in the attachment prior to the expiration date of the license. *See* 47 C.F.R. § 1.949(a). Moreover, any renewal application submitted for a World Trade Center Station subject to grant of this

Consistent with the Commission's rules, the waiver request demonstrates that discontinuance of operations of the World Trade Center Stations was the result of unique and unusual circumstances, namely, the terrorist attacks of September 11, 2001.[5] Moreover, given the fact that the World Trade Center Stations will continue to serve an integral role in the extensive network of transportation, terminal, and commercial facilities throughout the New York metropolitan area, especially for public safety communications, we find that grant of the waiver request is in the public interest.[6]

Additionally, the Port Authority demonstrates not only that it will continue to require use of the World Trade Center Stations, but also that it continues to proceed diligently to reconstitute its destroyed radiocommunication facilities located at the World Trade Center.[7] The remaining facilities for which the instant waiver extension is necessary concern Part 90 stations that the Port Authority plans to restore to operation pending reconstruction of the World Trade Center site, and Part 101 stations that have not been restored because of difficulties in finding a suitable site.[8] In light of these showings, we believe that grant of the waiver request is warranted.

In the *2002 Order,* we concluded that a fixed waiver term was appropriate to "avoid any ambiguity concerning the status of the licenses and to allow relicensing of any spectrum that the Port Authority may later decide is not necessary for its future operations."[9] In the *November 2008 Letter Order* we again concluded that, in balancing the Port Authority's continued need for additional time to bring facilities back into operation and the need of other public safety entities for spectrum, a further extension of the waiver originally granted in the *2002 Order*, until September 10, 2009, was in the public interest.[10] Similarly, we conclude here that, in balancing the Port Authority's continued need for additional time to bring facilities back into operation and the need of other public safety entities for spectrum, a further extension of the waiver originally granted in the *2002 Order*, until September 10, 2010, is in the public interest. Grant of the waiver request will enable the Port Authority to plan, construct and place into operation its stations and, at the same time, ensure that scarce spectrum is utilized to enhance public safety radio communications at the World Trade Center site. We therefore conclude that the public interest would be served by granting the Port Authority an extension of time to complete construction of the World Trade Center Stations listed in the Attachment.[11]

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Waiver Request will be held in pending status until the extended construction period granted herein is expired. *See* County of Beaver, *Memorandum Opinion and Order,* 18 FCC Rcd 18754, 18758 ¶ 13 (WTB PSPWD 2003) (renewal application for unconstructed station held in pending status until the extended construction period grant is expired).

[5] *See* 47 C.F.R. § 1.925(b)(3)(ii).

[6] *Id.*

[7] Waiver Request at 2-4, 6. The Port Authority states that its efforts have involved the relocation of certain facilities to other sites, on either a temporary or permanent basis, the establishment of new facilities, and planning for the reconstruction of facilities at the World Trade Center site when a suitable structure becomes available. *Id.* at 2. The Port Authority also states that it continues to make progress on the process for the restoration of facilities destroyed in the September 11, 2001 terrorist attacks and for the construction of a new building complex at the World Trade Center site. *Id.* at 2-3.

[8] Waiver Request at 3-4.

[9] *2002 Order,* 17 FCC Rcd at 16786 ¶ 6.

[10] *November 2008Page 2 of 4 Letter Order*, 23 FCC Rcd at 16623..

[11] Our action herein does not preclude the Port Authority from requesting additional time should circumstances so warrant.

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) and 303(r), and Sections 1.925, 1.946(e), 90.157, and 101.65(b) of the Commission's rules, 47 C.F.R. §§ 1.925, 1.946(e), 90.157, and 101.65(b), the Request for Extension of Waiver of Sections 90.157 and 101.65(b) of the Commission's rules, filed by the Port Authority of New York and New Jersey IS GRANTED, *nunc pro tunc,* to the extent indicated herein.

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 and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy Division
Public Safety and Homeland Security Bureau

# ATTACHMENT

## Table 1: Tabulation of Affected Radio Stations Authorized Under FCC Part 90

| Radio Authorization Call Sign | Expiration Date | Radio Service Code | Affected Location Number | Geographic Coordinates N.Lat/W.Long (NAD83) | Frequency (MHz) |
|---|---|---|---|---|---|
| KGU999 | 1/14/2012 | PW | 1 | 40-42-43.4<br>074-00-47.5 | 150.99500 |
| KGU998 | 1/14/2012 | PW | 1 | 40-42-43.4<br>074-00-47.5 | 151.11500 |
| KVN780 | 10/23/2014 | PW | 2 | 40-42-39.4<br>074-00-43.5 | 470.56250<br>470.58750 |
| KVN779 | 10/23/2014 | PW | 1 | 40-42-39.4<br>074-00-43.5 | 470.61250 |
| WPDU923 | 11/18/2013 | PW | 1 | 40-42-41.4<br>074-00-43.5 | 453.65000 |

## Table 2: Tabulation of Affected Radio Stations Authorized Under FCC Part 101

| Radio Authorization Call Sign | Expiration Date | Radio Service Code | Affected Location Number Trsmtr | Geographic Coordinates N.Lat/W.Long (NAD83) Trs | Affected Location Number Receiver | Affected Path Number/ Segment | Frequency (MHz) |
|---|---|---|---|---|---|---|---|
| WNEE495 | 2/11/2009 | MW | 1 | 40-42-40.3<br>074-00-47.5 | ** | 4s1 | 11215.00000 |
| WNEE495 | 2/11/2009 | MW | 1 | 40-42-40.3<br>074-00-47.5 | ** | 5s1 | 11685.00000 |
| WNEE495 | 2/11/2009 | MW | 1 | 40-42-40.3<br>074-00-47.5 | ** | 6s1 | 11525.00000 |
| WPO93 | 12/6/2010 | MW | 1 | 40-42-43.3<br>074-00-46.5 | ** | 1s1 | 12470.00000 |
| WNEK376 | 1/7/2008 | MW | 1 | 40-42-43.3<br>074-00-47.5 | ** | 1s1 | 23075.00000 |
| WNEK377 | 1/7/2008 | MW | 1 | 40-43-52.3<br>074-02-37.5 | 2 | 1s1 | 21875.00000 |
| WNEE496 | 1/6/2008 | MW | 1 | 40-46-21.3<br>073-53-10.4 | 2 | 2s1 | 10835.00000 |
| WNEE497 | 1/6/2008 | MW | 1 | 40-42-14.3<br>074-09-15.5 | 2 | 2s1 | 10875.00000 |
| WPO92 | 6/4/2012 | MG | 1 | 40-43-53.3<br>074-03-51.5 | 2 | 1s1 | 12210.00000 |
| WPNI363 | 1/6/2009 | MW | 1 | 40-39-05.3<br>073-48-34.4 | 2 | 1s1 | 10715.00000 |