

NY3G Partnership
40 Woodland Street
Hartford, CT 06105

November 2, 2005

Via Electronic Filing

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: EX PARTE SUBMISSION
WT Docket 03-66; Amendment of Parts 1, 21, 73, 74, and 101 of the
Commission's Rules to Facilitate the Provision of Fixed and Mobile
Broadband Access, Educational and Other Advanced Services in the 2150-
2162 and 2500-2690 GHz Bands

Dear Chairman Martin:

NY3G Partnership ("NY3G") shares your stated goal and that of President Bush for the rapid availability of universal and affordable access to broadband.¹ NY3G holds the license to approximately 24 MHz of BRS spectrum in the New York City market and is working to put that spectrum into use by 2007, the President's proposed deadline for broadband access. NY3G's spectrum can provide wireless mobile and fixed broadband service and create the kind of competitive environment that will make broadband affordable. We recently announced with ADAPTIX, Inc., a WiMAX vendor, a trial broadband deployment in New York City early next year.²

¹ See, e.g., "Online Extra: The FCC's Front Man Talks," BusinessWeek Online, October 12, 2005, available at http://www.businessweek.com/magazine/content/05_44/b3957112.htm (last visited October 26, 2005); "Bush calls for universal broadband by 2007," MSNBC, March 26, 2004, available at <http://www.msnbc.msn.com/id/4609864/> (last visited October 26, 2005).

² See attached Exhibit 1.

To move forward and reach our shared goal, however, the Commission must resolve a unique conflict that we have with the incumbent co-channel EBS licensee in New York City, whose licensed service area substantially overlaps our own. Because our private negotiations with the EBS licensee over the years have failed and are likely to continue to do so, we have suggested to the Commission a compromise in its rulemaking that would let us go forward with enough spectrum for the initial deployment of an efficient broadband service, while preserving the EBS licensee's ability to continue providing its educational service. The attached ex parte describes our compromise proposal in more detail.³

NY3G has the expertise and resources to be able to rapidly deploy a competitive broadband business in New York City and also in other markets. The company is comprised of veteran telecommunications entrepreneurs, several of whom are, in fact, responsible for building the first cellular system in the New York market. As such, we urge your consideration of our proposal in the BRS/EBS rulemaking. Pursuant to the Commission's ex parte rules, this letter has been filed electronically in the above-captioned docket.

Very truly yours,

/s/

Bradley Holmes
Chief Operating Officer
NY3G Partnership

Attachments

cc: Fred Campbell

³ See attached Exhibit 2.

Exhibit 1

NY3G Partnership and ADAPTIX Announce Mobile Broadband Deployment for New York City

Pre-WiMAX Trial in Manhattan to Commence in Early 2006

SEATTLE and NEW YORK – September 8, 2005 – ADAPTIX, Inc., a leader in software defined, all-IP Orthogonal Frequency Division Multiple Access (OFDMA) wireless mobile broadband access technologies, and the NY3G Partnership, a Broadband Radio Services (BRS) spectrum licensee in New York City, today announced a trial of ADAPTIX' line of broadband fixed and mobile OFDMA/TDD pre-WiMAX systems. The trial, to commence in early 2006, will be deployed over several locations on the island of Manhattan.

“As the largest market in the U.S., New York City offers the opportunity for ADAPTIX and NY3G to show the robustness of the OFDMA/TDD platform in a challenging environment for any wireless technology,” said Vern Fotheringham, president and CEO of ADAPTIX. “Now fixed and mobile multi-megabit applications such as Voice over IP, data downloads and transfers, full-length movies and music downloads and multiplayer video games, can finally fulfill the promise of a truly connected Internet, whenever and wherever.”

ADAPTIX recently demonstrated mobile WiMAX capabilities in its GMC Yukon Denali at the WiMAX Forum event on July 15, where it simultaneously received mobile Voice over IP calls, played video content such as feature-length movies and transferred large files, at throughput of up to 2.5 Mbps traveling at vehicular speeds through the coverage area. The technology is based on the forthcoming 802.16e wireless standard, expected to be ratified by the WiMAX Forum and Institute of Electrical and Electronics Engineers (IEEE) later this year.

“This trial commences at a very exciting time in the evolution of mobile broadband wireless,” said Bradley Holmes, chief operating officer of NY3G. “NY3G’s spectrum is capable of providing a variety of New York City-wide broadband services to businesses, residents, public safety organizations, community groups and schools. The scalability, flexibility and resource efficiency of the ADAPTIX platform appear to be an ideal fit for our deployment strategy.”

About ADAPTIX

ADAPTIX is headquartered in Seattle, Washington, with product development and manufacturing facilities in Shanghai, China. To meet the exploding demand for integrated mobile voice, video, and data applications, ADAPTIX has developed a dynamic software-defined, hardware enabled infrastructure platform for service providers globally. The ADAPTIX OFDMA/TDD operation system gives service providers the highest level of special and resource flexibility and efficiency to deploy applications such as mobile VoIP, multimedia messaging, and other multi-megabit, QoS dependent services quickly and cost effectively. For more information please visit, www.adaptix.com.

About NY3G Partnership

NY3G Partnership is one of two BRS spectrum licensees in New York City, the nation’s number one market. The partners of NY3G have significant telecom, media, and technology interests and have decades of experience in providing new and innovative wireless services in New York City. They include several founders



of the cellular telephone industry who played key roles in the design, construction and operation of the non-wireline cellular system in New York City. Another provided wireless cable and information services to colleges, hospitals, and assisted living facilities in New York City.

###

All product and company names mentioned herein may be trademarks of their respective owners.

For more information, press only:

Leigh Fatzinger
Executive Director of Marketing
ADAPTIX, Inc.
206-326-1009
media@adaptix.com

Colleen Moffitt, for ADAPTIX
Communiqué PR
206-282-0749
206-979-4696
colleen@communiquepr.com

Bradley Holmes
Chief Operating Officer
NY3G Partnership
202-723-3760
bholmes@att.net

Exhibit 2



Pillsbury
Winthrop
Shaw
Pittman^{LLP}

2300 N Street NW
Washington, DC 20037-1128

Tel 202.663.8000
Fax 202.663.8007
www.pillsburylaw.com

October 17, 2005

Tony Lin
202.663.8000
tony.lin@pillsburylaw.com

Via Hand Delivery

Marlene H. Dortch
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Re: EX PARTE SUBMISSION
WT Docket 03-66; Amendment of Parts 1, 21, 73, 74, and 101 of the
Commission's Rules to Facilitate the Provision of Fixed and Mobile
Broadband Access, Educational and Other Advanced Services in the 2150-
2162 and 2500-2690 GHz Bands

Dear Ms. Dortch:

On October 13, 2005, former FCC Chairman Dennis Patrick, Bradley Holmes, Chief Operating Officer of NY3G Partnership ("NY3G"), and Tony Lin, counsel for NY3G, met with Fred Campbell, legal advisor to Chairman Martin, regarding the above-referenced proceeding. Mr. Patrick served as a Commissioner (1983-1987) and Chairman (1987-1989) of the FCC when the Commission adopted new rules and policies to increase the public benefit from the 48 MHz of spectrum that make up the E and F group channels.¹ Mr. Patrick is an acquaintance of some of the NY3G principals but has no financial investment in NY3G or any other BRS/EBS licensee. He agreed to NY3G's

¹ See, e.g., *In the Matter of Amendment of Parts 2, 21, 74, and 94 of the Commission's Rules and Regulations in Regard to Frequency Allocation to the Instructional Television Fixed Service, the Multipoint Distribution Service and the Private Operational Fixed Microwave Service, Memorandum Opinion and Order on Reconsideration*, 98 FCC 2d 129 (1984).

request to discuss this issue with the Commission out of concern that, even after more than twenty years of Commission effort, this critical spectrum may remain underutilized for millions of consumers in the largest market in the country. This letter summarizes the views expressed by Mr. Patrick and NY3G's representatives, as well as other relevant information in the record.

In particular, Mr. Patrick discussed and endorsed Dr. Thomas Hazlett's analysis that uncertainty regarding spectrum rights creates enormous transaction costs and hold-up incentives, resulting in spectrum remaining dramatically underdeveloped and imposing an enormous cost on consumers by depriving them of additional competition.² Mr. Patrick noted that in a number of proceedings the Commission has recognized that negotiations are not always successful and that there must be specific rules to establish clear spectrum rights in the event voluntary negotiations fail.³

Mr. Holmes discussed how, in New York City, these problems have proven uniquely insurmountable. Unlike the situation in other markets, the co-channel F group licensees in New York City have been unable to resolve their differences voluntarily for nearly two decades. NY3G has previously demonstrated that the Commission's proposed "split-the-football" approach will not resolve the uncertainty regarding spectrum rights because in this case, uniquely, it will create a huge exclusion zone. Neither co-channel licensee would be able to provide service in the exclusion zone, effectively forcing the licensees to continue to negotiate with one another without any clarity regarding their relative rights.⁴

² See Hazlett Study attached as Exhibit 2 to Comments of NY3G Partnership (January 10, 2005). As Dr. Hazlett explains, additional entry would "unleash market forces which will lower prices and expand services" and bring large numbers of new subscribers to the high-speed market. Hazlett Study, at 16.

³ See, e.g., *Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies*, 8 FCC Rcd 6589, at ¶¶ 13-18 (1993) (establishing involuntary relocation procedures in the event agreements between incumbent fixed service licensees and new emerging technology licensees are not reached).

⁴ As explained in prior filings on the record, the calculation of the exclusion zone is based on conservative assumptions that base stations and CPE devices transmit at most an EIRP of 0.1 watts towards the GSA. See Engineering Study attached to Reply Comments of NY3G Partnership (February 8, 2005). In practice, however, such a power level could not practically achieve reliable in-building service to the densely urban New York City environment. See Engineering Study attached to Letter to Marlene Dortch from Bruce Jacobs (May 31, 2005).

Footnote continued on next page

The attached maps show the New York City exclusion zone, covering more than seven million people living (and many millions more working, shopping, and traveling) in the heart of the market, including all of Manhattan, the Bronx, and Staten Island and much of Brooklyn, Queens, Westchester County, and Jersey City.⁵

Mr. Patrick emphasized that market failure in such a large market as New York City, with millions of potential broadband users, makes it critical for the Commission to take action and assign clear spectrum rights.

Mr. Patrick expressed his support for the solution proposed by NY3G. *See, e.g.*, Letter to Marlene Dortch from Bruce Jacobs (June 27, 2005). The NY3G alternative would divide the frequencies in those unique cases where split-the-football would create exclusion zones affecting large numbers of people and a large percentage of the market. *See* Attachment B (providing NY3G's specific proposed change to the FCC's rules). This approach would create the clarity regarding spectrum rights that is missing under the existing rules or the split-the-football proposal.⁶

Mr. Patrick supported maximizing the amount of spectrum available for competitive broadband service. Mr. Holmes referenced an analysis by NY3G's consulting engineer demonstrating that NY3G's ability to use three channels instead of two would increase the capacity of its wireless broadband system by as much as 200%,

Footnote continued from previous page

Under more realistic parameters (40 watts maximum EIRP base stations and minus 20 dB for the pattern null aimed towards the GSA border), the exclusion zone would be twice as large, 15.6 km on each side of the GSA border. *Id.* at 2.

⁵ *See* Attachment A. At the request of Mr. Campbell, NY3G is attaching the map previously filed in this proceeding, which depicts the exclusion zone in New York City. *See, e.g.*, Letter to Marlene Dortch from Bruce Jacobs, at Exhibit 2 (October 5, 2005). NY3G is also providing two additional, more detailed maps to highlight the area affected.

⁶ NY3G has also proposed other alternatives that were not discussed at this meeting. These include requiring grandfathered ITFS licensees on the E or F group channels to operate on a secondary non-interference basis to co-channel MMDS licensees in certain situations (Comments of NY3G Partnership (January 10, 2005) or, through an adjudicatory proceeding, enforcing the FCC's rules limiting the ITFS licensee operating on the F group channels in New York City to four channels in a market (Petition to Modify Licenses (January 10, 2005)).

providing additional capacity critical in meeting expected demand in New York City. Additional capacity would facilitate NY3G's ability to be a viable competitor, benefiting consumers through lower prices and more services.⁷

Mr. Patrick emphasized that the Commission's decision is not about choosing between education and commercial interests. He noted that the NY3G proposal provides the EBS licensee with the ability to continue to transmit the same amount of educational programming, in light of the availability of digital compression for transmitting video, NY3G's proposal to pay for the transition to digital compression, and the many alternatives for distributing one-way video programming. *See* Comments of NY3G Partnership, at 8 (January 10, 2005).⁸

⁷ *See* Letter to Marlene Dortch from Bruce Jacobs (June 27, 2005). If the Commission were to assign NY3G only two channels, each base station will be limited to the use of omnidirectional or two-sector antenna installations, instead of six-sector site deployments that are available with a third channel. Without costly site modifications, each base station of a two-channel system will always be limited to a third or less capacity than is available to multi-sector sites within a three-channel system.

⁸ Although not discussed at the meeting, NY3G has shown previously in its filings in this proceeding that in other spectrum management decisions, the Commission has taken into account the value of compression in preserving incumbents' ability to maintain service levels with less spectrum. *See* Comments of NY3G Partnership, at 15 (January 10, 2005) (citing *Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, 11 FCC Rcd 8825, at ¶ 29 (1996) ("Our goal is to foster efficient use of the spectrum, which would be thwarted if all incumbents are relocated to systems with capacity that exceeds their current needs. Also, limiting spectrum to current needs serves the public interest, because we believe that it will promote the development of spectrum-efficient technology capable of increasing capacity without increasing bandwidth.")).

Marlene H. Dortch
October 17, 2005
Page 5

For these reasons, Mr. Patrick urged the Commission to take the necessary actions to ensure that the rules that it establishes for this historically underdeveloped spectrum would allow licensees in all markets, including New York City, finally to put the spectrum to its highest and most-valued use.

Very truly yours,

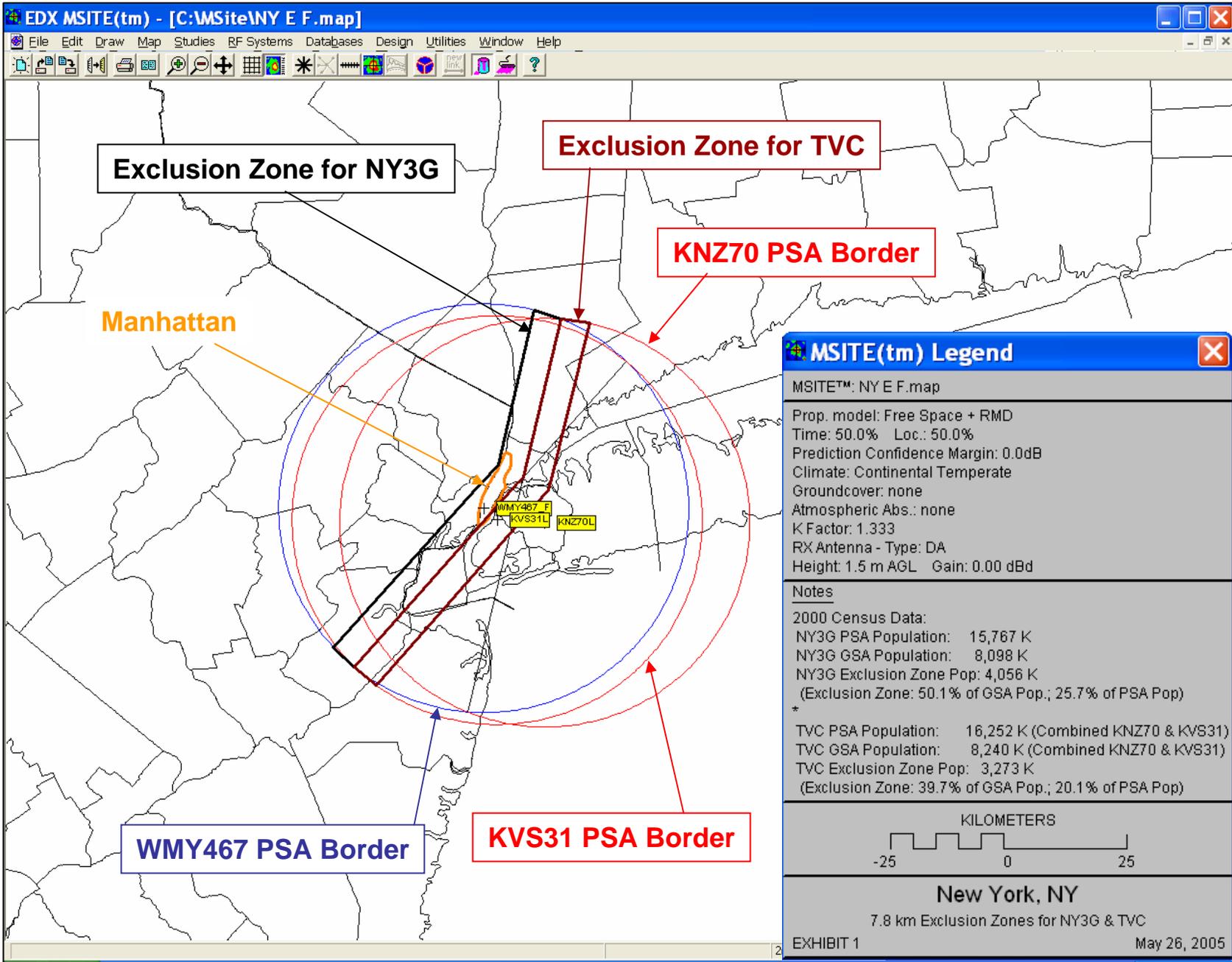
/s/

Bruce D. Jacobs
Tony Lin
Counsel for NY3G Partnership

Attachments

cc: Fred Campbell

Attachment A



Exclusion Zone for NY3G

Exclusion Zone for TVC

KNZ70 PSA Border

Manhattan

WMY467 F
KVS31L
KNZ70L

WMY467 PSA Border

KVS31 PSA Border

MSITE(tm) Legend

MSITE™: NY E F.map
 Prop. model: Free Space + RMD
 Time: 50.0% Loc.: 50.0%
 Prediction Confidence Margin: 0.0dB
 Climate: Continental Temperate
 Groundcover: none
 Atmospheric Abs.: none
 K Factor: 1.333
 RX Antenna - Type: DA
 Height: 1.5 m AGL Gain: 0.00 dBd

Notes
 2000 Census Data:
 NY3G PSA Population: 15,767 K
 NY3G GSA Population: 8,098 K
 NY3G Exclusion Zone Pop: 4,056 K
 (Exclusion Zone: 50.1% of GSA Pop.; 25.7% of PSA Pop)

*
 TVC PSA Population: 16,252 K (Combined KNZ70 & KVS31)
 TVC GSA Population: 8,240 K (Combined KNZ70 & KVS31)
 TVC Exclusion Zone Pop: 3,273 K
 (Exclusion Zone: 39.7% of GSA Pop.; 20.1% of PSA Pop)

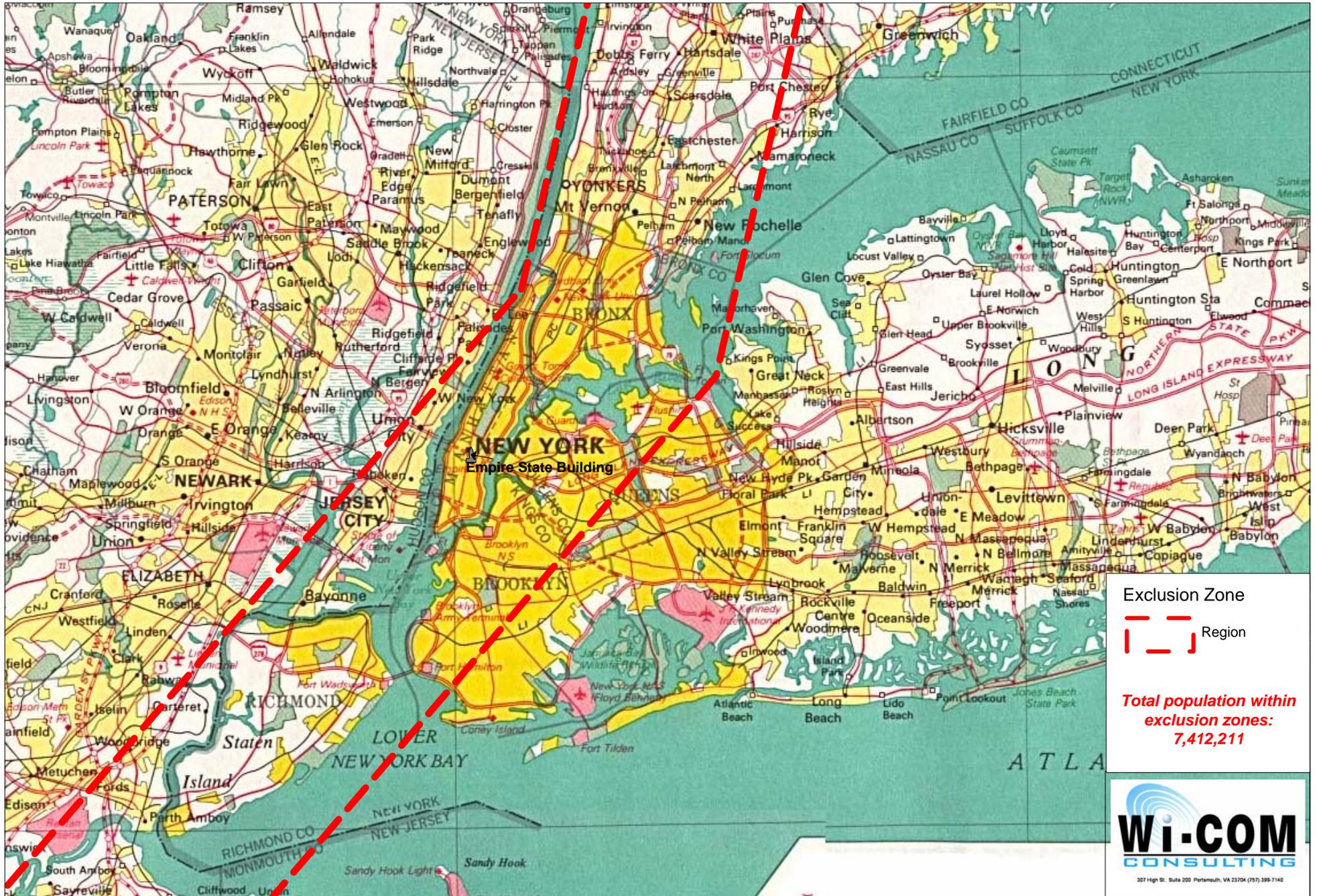


New York, NY
 7.8 km Exclusion Zones for NY3G & TVC

F Group GSA Map - New York City



F Group GSA Map - New York City



Exclusion Zone

Region

Total population within
exclusion zones:
7,412,211

Wi-COM
CONSULTING

307 High St. Suite 200 Portsmouth, VA 23704 (757) 399-7140

Attachment B

§27.1206 Geographic Service Area.

(a) The Geographic Service Area (GSA) is either:

(1) The area for incumbent site-based licensees that is bounded by a circle having a 35 mile radius and centered at the station's reference coordinates, which was the previous PSA entitled to incumbent licensees prior to January 10, 2005, and is bounded by the chord(s) drawn between intersection points of the licensee's previous 35 mile PSA and those of respective adjacent market, co-channel licensees, except if the overlap of the PSAs of incumbent site-based co-channel BRS and grandfathered EBS licensees operating on the E or F group channels would result in an exclusion zone containing [3] million or more people and more than [33]% of the total population of the combined GSAs of the co-channel licensees. (An exclusion zone is the area within 7.8 kilometers of the chord(s) drawn as described above in connection with any two co-channel licensees and within the PSAs of those two co-channel licensees.) In that case, any one of the two affected co-channel licensees may elect during the transition process (see §27.1232 (b),(c)) to divide the channel assignments so that the grandfathered EBS licensee is assigned the one high-powered channel and the BRS licensee is assigned the three low-powered channels. If such an election is made, the GSA for the affected licensees' assigned channel(s) will be the area bounded by that licensee's previous 35 mile PSA centered at the station's reference coordinates and by the chord(s) drawn between intersection points of the licensee's previous 35 mile PSA and those of any other adjacent market co-channel licensees that are operating on the same channels; or:

(2) The BTA that is licensed to the respective BRS BTA authorization holder subject to the exclusion of overlapping, co-channel incumbent GSAs as described in paragraph (a)(1) of this section.

(b) If the license for an incumbent BRS station cancels or is forfeited, the GSA area of the incumbent station shall dissolve and the right to operate in that area automatically reverts to the GSA licensee that held the corresponding BTA.