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

In the Matter of	)	
	)	
New York State Electric & Gas Corporation	)	
Request for Extension and Consolidation of	)	WT Docket No. 06-173
Construction Deadlines	)	ULS File Nos. 0002652309 *et al.*
	)	
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ORDER

Adopted: January 31, 2007 **Released: January 31, 2007**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this Order, we address the waiver requests by the New York State Electric & Gas Corporation (NYSEG) for an extension of time to construct and a consolidation of construction deadlines and other regulatory relief related to certain Economic Area (EA) 150 MHz Part 22 paging licenses and site-specific 150 MHz Part 90 industrial/business radio pool licenses (I/B Pool).[1] Specifically, NYSEG requests a waiver, pursuant to sections 1.925 and 90.155(g) of the Commission's rules, to complete construction by December 31, 2009 of an integrated communications system covering significant portions of New York State.[2] In addition, NYSEG requests, to the extent necessary, a waiver of the discontinuance rules in sections 1.955(a)(3) and 22.317 of the Commission's Rules for certain previously constructed EA licenses so that it can integrate these licenses into the deployment scheme of its new radio system.[3] These requests are collectively referred to herein as the Waiver Request. For the reasons stated below, we grant the Waiver Request.

II. BACKGROUND

2. NYSEG, a subsidiary of Energy East Corporation, a regional energy services and delivery company in the northeastern U.S., serves approximately 848,000 electricity customers and 253,000 natural gas customers across more than forty-percent of upstate New York.[4] NYSEG states that it operates a private wireless system that supports its internal communications and permits the monitoring of its power generation and distribution systems.[5] NYSEG also states that its current radio system

[1] *See* 47 C.F.R. Part 22, Subpart E and Part 90, Subpart C.

[2] *See* Appendix A attached hereto and ULS File Nos. 0002652309 *et al.*

[3] *See* ULS File Nos. 0002820081 *et al.* (Discontinuance Waiver Request). NYSEG also requests tolling of its construction deadlines while its request is being considered. *See* November 17, 2006 letter from Christine M. Gill, counsel to NYSEG, WT Docket No. 06-173.

[4] Waiver Request at 2.

[5] *Id.*

consists of separate conventional radio systems that serve discrete geographic regions of its service area with limited ability to interoperate.[6]

3. On June 15, 2006, NYSEG filed its initial Waiver Request, which covered thirty-five licenses.[7] On September 15, 2006, the Wireless Telecommunications Bureau (Bureau) sought comment on the Waiver Request.[8] NYSEG filed the only comments to the Bureau's public notice.[9]

4. In support of its Waiver Request, NYSEG states that its communications network is critical to its ability to provide reliable power services and that its new radio system will provide a significant enhancement to its existing network.[10] It will allow field crews to respond to customer needs and to communicate internally while coordinating hazardous tasks such as work with high voltage electrical wires and natural gas lines.[11] NYSEG also states that it is responsible for providing electricity and natural gas to "critical facilities," including hospitals and other emergency care providers that use life support systems and emergency response equipment.[12]

5. NYSEG describes its upgraded system as a single integrated, statewide radio system that will consist of fifty-one sites,[13] with three frequency pairs per site, and will include a centralized switching facility that will provide seamless roaming within and across NYSEG's entire service area.[14] NYSEG asserts that the benefits of its new radio system include spectrum efficiency through frequency re-use, elimination or mitigation of current interference problems with its current systems, improved

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[6] *See* Comments of New York State Electric and Gas Corporation filed on October 16, 2006 in WT Docket No. 06-173 (NYSEG Comments) at 4.

[7] Waiver Request at 13-18.

[8] *See* Wireless Telecommunications Bureau Seeks Comment on Request by New York State Electric and Gas Corporation for Extension of Time and Consolidation of Construction Deadlines for Part 22 and Part 90 Licenses, *Public Notice*, WT Docket No. 06-173, DA 06-1878 (rel. Sept. 15, 2006). On October 2, 2006, NYSEG amended its Waiver Request to add five additional licenses that were acquired after NYSEG filed its initial Waiver Request. *See* ULS File Nos. 0002771223 *et al.* (October 2, 2006 Amended Waiver Request). The substance of this filing is the same as the initial Waiver Request. On November 8, 2006, NYSEG amended its Waiver Request to add thirteen licenses that were acquired after NYSEG filed its October 2006 Amendment. *See* ULS File Nos. 0002812294 *et al.* (November 8, 2006 Amended Waiver Request). The substance of this filing is the same as the initial Waiver Request. On November 15, 2006, NYSEG amended its Waiver Request to add twenty-seven licenses that were acquired after NYSEG filed its initial Waiver Request. *See* ULS File Nos. 0002820081 *et al.* (November 15, 2006 Amended Waiver Request). This filing addresses NYSEG's request for relief of the discontinuance of operation rules.

[9] *See* Comments of New York State Electric and Gas Corporation filed on October 16, 2006 in WT Docket No. 06-173 (NYSEG Comments). On November 17, 2006, NYSEG submitted a letter to this docket requesting that its construction deadlines be tolled while its Waiver Request is being considered because certain licenses had construction deadlines in December 2006 or that they be tolled to allow construction of the licensees if the extension request is denied. *See* November 17, 2006 letter from Christine M. Gill, WT Docket No. 06-173.

[10] Waiver Request at 1.

[11] *Id.* at 2 – 3. NYSEG states that it must respond "quickly and efficiently" during power outages and natural disasters to ensure continued service to its customers and that its radio network provides "essential" communications during these events. *Id.* at 2.

[12] *Id.* at 3.

[13] As evidence of its diligence, NYSEG states that it has executed leases for approximately seventy-five percent of the 51 sites needed for its system. NYSEG Comments at 11.

[14] *Id.* at 14. NYSEG also states that it developed an implementation schedule, which calls for its new radio system to be built in phases across four separate regions. *Id.* at 7.

coverage, interoperability, and intercommunication with public safety agencies.[15]

6. NYSEG has commenced plans to develop the new system.[16] Specifically, NYSEG has acquired numerous 150 MHz paging and I/B Pool licenses, retained an engineering firm to assist in systems design, and negotiated a contract with an equipment vendor. It contends, however, that implementation of the system will take several years.[17] NYSEG cites the significant physical and practical constraints on its ability to manufacture, factory test, deliver, install, field and coverage test, and implement a system of this magnitude in an abbreviated period.[18] It also notes that severe winter weather in "upstate" New York precludes construction during several months of the year.[19] NYSEG further notes that in addition to securing approvals from the Commission, it must also coordinate 19 proposed sites with Industry Canada[20] and obtain approvals from local authorities before proceeding with construction and operation of its new radio system.[21]

7. In addressing the waiver standard in section 1.925 for its Part 22 and Part 90 licenses, NYSEG argues that application of the construction deadlines for its licenses "would not promote the timely use of this spectrum, would not serve the public interest and would impose inequitable and unduly burdensome obligations."[22] NYSEG contends that grant of its request would increase the overall use of the 150 MHz paging spectrum; further Commission policy objectives regarding deployment of efficient and innovative technologies; and not harm competition in the paging industry.[23] NYSEG also argues that the waiver would serve the public interest by assisting NYSEG in maintaining the safety and reliability of the electric grid and natural gas delivery infrastructure.[24] NYSEG states that its proposal is unique due to its size and complexity, coverage to widely dispersed areas in rural New York State, its combination of Part 22 and Part 90 channels,[25] and its need to coordinate its facilities with Canada. Therefore, if its request was denied, NYSEG argues it would be difficult to support its critical utility operations in furtherance of the public interest.[26]

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[15] *Id.* at 14, 23.

[16] *Id.* at 1.

[17] *Id.* at 5.

[18] *Id.* at 6.

[19] *Id.*

[20] NYSEG reports that as of November 2006, it has received Canadian approval for only a few frequencies at five sites, and that the Canadian coordination process may consume several additional months. Waiver Request at 5; NYSEG Comments at 8-9. As part of its coordination effort with sites above the Canadian Coordination Line A, NYSEG contends that in the last year it filed eighty-nine applications to request clearance of frequencies with Canada. NYSEG Comments at 8.

[21] NYSEG states that it entered into a contract for site development work and that the contractor has visited and compiled data for each site, which includes NYSEG securing zoning approval for over a dozen sites. NYSEG Comments at 11.

[22] Waiver Request at 7 - 9.

[23] NYSEG contends when the Part 22 150 MHz channels were auctioned, thousands of licenses went unsold and due to the underutilization of these frequencies, particularly in rural areas, a waiver would guarantee that the spectrum does not lay fallow. *Id* at 7.

[24] *Id.* at 8.

[25] NYSEG contends that the combination of Part 22 and Part 90 licenses is uniquely challenging because they are subject to different technical, operational, and construction requirements. *Id.* at 9.

[26] *Id.* at 9.

8. NYSEG also argues that an extension is consistent with the Commission's treatment of similarly situated licensees. Specifically, NYSEG contends that section 90.629 allows systems of similar design and complexity five years to construct;[27] and that section 90.155(b) allows public safety eligible entities in the 150 MHz range five years to construct.[28] NYSEG asserts that these extended implementation rules should also apply to critical infrastructure entities such as itself because it is also building a spectrally efficient trunked radio system.[29] NYSEG also argues that a consolidation and extension of its construction deadlines is consistent with the Bureau's treatment of the National Rural Telecommunications Cooperative's (NRTC) extension and license consolidation request.[30] NYSEG argues that both cases involve licensees with a combination of licenses with different regulatory requirements constructing a single integrated system to serve sparsely populated areas.[31] Finally, NYSEG states that it will voluntarily return to the Commission approximately 119 35 MHz and 43 MHz paging licenses that it purchased in Auction No. 48 because its new radio system will be constructed exclusively in the 150 MHz band.[32]

III. DISCUSSION

9. Pursuant to sections 1.946(c) and 1.955(a)(2) of the Commission's rules, NYSEG's licenses will terminate automatically as of the construction deadlines listed in Appendix A if NYSEG fails to meet the requirements of sections 22.503(k)[33] or 90.155(a),[34] unless the Commission grants an extension or waives the construction requirements.[35] The current construction deadlines for the relevant licenses range from December 8, 2006 to March 30, 2009.

10. A waiver may be granted, pursuant to section 1.925 of the Commission's rules, if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[36]

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[27] Section 90.629 allows certain 800 MHz land mobile licenses up to five years to construct their facilities in certain circumstances. *See* 47 C.F.R. § 90.629.

[28] Waiver Request at 10. *See also,* 47 C.F.R. § 90.155(b). NYSEG states that it is a regulated utility providing essential public services and has similar construction challenges to a public safety agency. Waiver Request at 10.

[29] *Id.*

[30] *Id.* at 12. *See* In re National Rural Telecommunications Cooperative, LLC Request for Waiver and Consolidation of 220 MHz Construction Requirements, *Order on Reconsideration*, 17 FCC Rcd 4398 (2002).

[31] *Id.* at 12.

[32] NYSEG Comments at 12.

[33] Pursuant to section 22.503(k) of the Commission's rules, an EA paging licensee must construct facilities to cover one-third of the population of its license area within three years of initial license grant and cover two-thirds of the population of its license area within five years of initial license grant. 47 C.F.R. §§ 22.503(k)(1) and (2). Alternatively, the EA paging licensee may demonstrate that, no later than five years after initial license grant, it provides substantial service to its license area. 47 C.F.R. § 22.503(k)(3).

[34] Pursuant to section 90.155(a) of the Commission's rules, a 150 MHz site-specific I/B Pool licensee must place its stations in operation within twelve months from the grant of its license. 47 C.F.R. § 90.155(a).

[35] 47 C.F.R. §§ 1.946(c), 1.955(a)(2).

[36] 47 C.F.R. § 1.925. The Commission has stated that, in situations in which the circumstances are unique and the public interest would be served, it would consider waiving construction requirements on a case-by-case basis. *See* Amendment of the Commission's Rules To Establish New Personal Communications Services, GEN Docket No.

(continued....)

11. In this case, we find that a waiver for NYSEG to meet its construction requirements is warranted. NYSEG has demonstrated that it faces unique circumstances, where application of the current construction benchmarks would be unduly burdensome and contrary to the public interest. We believe NYSEG has demonstrated that additional time is required for it to construct a spectrally efficient, wide-area integrated radio system. NYSEG has taken several steps to demonstrate due diligence and to demonstrate that it will put its licenses to effective use and a delay in construction would not result in spectrum warehousing.

12. We also recognize the importance of NYSEG's radio system in ensuring reliable power service to the public, responding to weather emergencies and communicating with public safety entities. Furthermore, NYSEG has demonstrated that it needs additional time to redesign and upgrade its current communications system that will, among other things, increase spectrum efficiency through frequency re-use, eliminate or mitigate current interference problems with its current systems, improve coverage, allow interoperability, and interoperability with public safety agencies. Providing NYSEG the additional time it has requested is, therefore, consistent with the Commission's public interest goals of promoting efficient utilization of spectrum.[37] Because we are providing the extension of deadlines as requested, we need not address NYSEG's request for tolling of its construction deadlines.

13. Accordingly, IT IS ORDERED that, pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, the Request by New York State Electric and Gas Corporation for Extension of Time and Consolidation of Construction Deadlines for Part 22 and Part 90 Licenses and its Request for Waiver of Permanent Discontinuance ARE HEREBY GRANTED to extend the construction deadlines for the licenses listed in Appendix A until December 31, 2009 and to waive the permanent discontinuance rules for the licenses listed in Appendix B until December 31, 2009.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

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90-314, *Memorandum Opinion and Order*, 9 FCC Rcd 4957, 5019 (1994) (*PCS MO&O*), *citing WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

[37] *See* Interstate Power and Light Co, Requests for Extension of Time to Construct Private Land Mobile Radio Stations WPBI312, WPBI313, WPBI314, WPBI315, WPBI316, WPBI317, and WPBI318, and Waiver of Sections 1.946 and 90.629 of the Commission's Rules, *Order*, 18 FCC Rcd 11051, 11056 ¶ 15(2003).

APPENDIX A: Licenses Covered by NYSEG's Construction Deadline Waiver Request

Economic Area (EA) 150 MHz Part 22 Paging Licenses

File Number	Receipt Date	Call Sign	1st Construction Deadline	2nd Construction Deadline	Market Code	Market Name	Channel Block
0002652309	06/15/06	WPVF298	6/21/05	6/21/07	BEA007	Rochester, NY-PA	FR
0002652310	06/15/06	WPVF314	6/21/05	6/21/07	BEA008	Buffalo-Niagara Falls, NY-PA	FR
0002652311	06/15/06	WPXN900	5/13/06	5/13/08	BEA008	Buffalo-Niagara Falls, NY-PA	FM
0002652312	06/15/06	WPZP559	6/21/05	6/21/07	BEA010	New York-North New Jersey-Long Island, NY-NJ-CT-PA-MA-VT	FE
0002652313	06/15/06	WPZP560	6/21/05	6/21/07	BEA010	New York-North New Jersey-Long Island, NY-NJ-CT-PA-MA-VT	FL
0002652314	06/15/06	WPZP561	6/21/05	6/21/07	BEA010	New York-North New Jersey-Long Island, NY-NJ-CT-PA-MA-VT	FN
0002652315	06/15/06	WPZW633	3/30/07	3/30/09	BEA004	Burlington, VT-NY	FC
0002652316	06/15/06	WPZW634	3/30/07	3/30/09	BEA004	Burlington, VT-NY	FG
0002652317	06/15/06	WPZW635	3/30/07	3/30/09	BEA004	Burlington, VT-NY	FH
0002652318	06/15/06	WPZW636	3/30/07	3/30/09	BEA004	Burlington, VT-NY	FL
0002652319	06/15/06	WPZW637	3/30/07	3/30/09	BEA005	Albany-Schenectady-Troy, NY	FB
0002652320	06/15/06	WPZW638	3/30/07	3/30/09	BEA005	Albany-Schenectady-Troy, NY	FC
0002652321	06/15/06	WPZW639	3/30/07	3/30/09	BEA005	Albany-Schenectady-Troy, NY	FG
0002652322	06/15/06	WPZW640	3/30/07	3/30/09	BEA005	Albany-Schenectady-Troy, NY	FH
0002652323	06/15/06	WPZW641	3/30/07	3/30/09	BEA005	Albany-Schenectady-Troy, NY	FL
0002652324	06/15/06	WPZW642	3/30/07	3/30/09	BEA005	Albany-Schenectady-Troy, NY	FO
0002652325	06/15/06	WPZW643	3/30/07	3/30/09	BEA006	Syracuse, NY-PA	EA
0002652326	06/15/06	WPZW644	3/30/07	3/30/09	BEA006	Syracuse, NY-PA	EC
0002652327	06/15/06	WPZW645	3/30/07	3/30/09	BEA006	Syracuse, NY-PA	ED
0002652328	06/15/06	WPZW646	3/30/07	3/30/09	BEA007	Rochester, NY-PA	EA
0002652329	06/15/06	WPZW647	3/30/07	3/30/09	BEA007	Rochester, NY-PA	EC
0002652330	06/15/06	WPZW648	3/30/07	3/30/09	BEA007	Rochester, NY-PA	ED
0002652331	06/15/06	WPZW649	3/30/07	3/30/09	BEA008	Buffalo-Niagara Falls, NY-PA	EA
0002652332	06/15/06	WPZW650	3/30/07	3/30/09	BEA008	Buffalo-Niagara Falls, NY-PA	EC
0002652333	06/15/06	WPZW651	3/30/07	3/30/07	BEA008	Buffalo-Niagara Falls, NY-PA	ED
0002771223	10/02/06	WPVF791	6/21/05	6/21/07	BEA004	Burlington, VT-NY	FI
0002771224	10/02/06	WPWK676	12/9/05	12/9/07	BEA006	Syracuse, NY-PA	FA
0002771225	10/02/06	WPWK677	12/9/05	12/9/07	BEA006	Syracuse, NY-PA	FB
0002812291	11/08/06	WPVF278	6/21/05	6/21/07	BEA006	Syracuse, NY-PA	FE
0002812292	11/08/06	WPVF280	6/21/05	6/21/07	BEA006	Syracuse, NY-PA	FG
0002812293	11/08/06	WPVF284	6/21/05	6/21/07	BEA006	Syracuse, NY-PA	FP
0002812294	11/08/06	WPVF285	6/21/05	6/21/07	BEA006	Syracuse, NY-PA	FQ
0002812296	11/08/06	WPVF292	6/21/05	6/21/07	BEA007	Rochester, NY-PA	FG
0002812297	11/08/06	WPVF293	6/21/05	6/21/07	BEA007	Rochester, NY-PA	FH
0002812298	11/08/06	WPVF294	6/21/05	6/21/07	BEA007	Rochester, NY-PA	FL
0002812299	11/08/06	WPVF309	6/21/05	6/21/07	BEA008	Buffalo-Niagara Falls, NY-PA	FL
0002812300	11/08/06	WPVF310	6/21/05	6/21/07	BEA008	Buffalo-Niagara Falls, NY-PA	FN
0002812301	11/08/06	WPVF312	6/21/05	6/21/07	BEA008	Buffalo-Niagara Falls, NY-PA	FP
0002812302	11/08/06	WPVF790	6/21/05	6/21/05	BEA004	Burlington, VT-NY	FB
0002812303	11/08/06	WPVF792	6/21/05	6/21/07	BEA004	Burlington, VT-NY	FO
0002812295	11/08/06	WPVF286	6/21/05	6/21/07	BEA006	Syracuse, NY-PA	FR

Site-Specific 150 MHz Part 90 Industrial/Business Radio Pool Licenses

File Number	Receipt Date	Call Sign	Construction Deadline
0002652345	06/15/06	WQDZ733	12/8/06
0002652346	06/15/06	WQEG663	1/20/07
0002652347	06/15/06	WQEI789	2/6/07
0002652348	06/15/06	WQEQ261	3/22/07
0002652349	06/15/06	WQEQ270	3/22/07
0002652350	06/15/06	WQEQ425	3/23/07
0002652351	06/15/06	WQEQ426	3/23/07
0002652352	06/15/06	WQER995	3/31/07
0002652353	06/15/06	WQES833	4/5/07
0002652354	06/15/06	WQET480	4/10/07
0002771229	10/02/06	WQFE309	6/26/07
0002771230	10/02/06	WQFM860	8/21/07

APPENDIX B: Licenses Covered by NYSEG's Discontinuance Waiver Request

Economic Area (EA) 150 MHz Part 22 Paging Licenses

File Number	Receipt Date	Call Sign
0002820081	11/15/06	WPVI592
0002820083	11/15/06	WPVI593
0002820087	11/15/06	WPVI594
0002820090	11/15/06	WPVI595
0002820092	11/15/06	WPVI596
0002820094	11/15/06	WPVF281
0002820097	11/15/06	WPVI597
0002820099	11/15/06	WPVI598
0002820101	11/15/06	WPVF283
0002820103	11/15/06	WPVI600
0002820105	11/15/06	WPVI601
0002820108	11/15/06	WPVI602
0002820110	11/15/06	WPVI603
0002820112	11/15/06	WPVI604
0002820114	11/15/06	WPVI605
0002820125	11/15/06	WPVI607
0002820140	11/15/06	WQFX997
0002820141	11/15/06	WQFX998
0002820150	11/15/06	WQFX999
0002820151	11/15/06	WQFY200
0002820152	11/15/06	WQFY201
0002820154	11/15/06	WQFY206
0002820155	11/15/06	WQFY207
0002820157	11/15/06	WQFY202
0002820159	11/15/06	WQFY203
0002820160	11/15/06	WQFY204
0002820162	11/15/06	WQFY205