



PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY CITY OF BAYONNE, NEW JERSEY TO OPERATE A NEW PUBLIC SAFETY SYSTEM SERVING POLICE, FIRE AND OTHER COUNTY PUBLIC SAFETY AGENCIES

Comment Date: September 3, 2002

Reply Date: September 10, 2002

On June 27, 2002, the City of Bayonne, New Jersey ("Bayonne") filed a license application and a request for waiver to use frequency pairs 476.0500/479.2000 MHz, 476.1500/479.1500 MHz, and 476.1750/479.1750 MHz for a new public safety system serving its police, fire and other public safety agencies. Bayonne contends that its public safety communications needs cannot be met by use of frequencies in the 150 MHz VHF band which are currently licensed to Bayonne.

Bayonne requests waivers of Sections 22.621, 22.501, and 90.303 of the Commission's Rules, 47 C.F.R. §§ 22.621, 22.501, 90.303, and any other Commission rules that are necessary to grant its application, pursuant to Section 337(c) of the Communications Act, as amended, 47 U.S.C. § 337(c), or, in the alternative, Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925. Section 337(c) of the Act states that the Commission shall grant an application by an entity seeking to provide public safety services to the extent necessary to permit the use of unassigned frequencies, if the Commission makes five specific findings: (1) no other spectrum allocated for public safety use is immediately available; (2) there will be no harmful interference to other spectrum users entitled to protection; (3) public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question; (4) the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the application at issue; and (5) the grant of the application is consistent with the public interest. "Public safety services" are defined by 47 U.S.C. § 337(f) as services the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by the governmental entities or by non-governmental entities authorized by the governmental entity whose primary mission is the provision of such services, and that are not made commercially available to the public by the provider.

Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, provides that a waiver of the Commission's Rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or if the applicant has no reasonable alternative.

Bayonne indicates that, due to its proximity to New York City, it played a significant role in the regional response to the September 11th terrorist attack on the World Trade Center but deficiencies in its public safety radio system hampered the effectiveness and efficiency of its response. Bayonne states its public safety communications system is no longer able to serve Bayonne's police and fire departments effectively. It submits that its police and fire communications system handles a high volume of radio traffic

and serves the community as a state-certified enhanced 9-1-1 (“E-911”) Public Safety Answering Point (“PSAP”) but, due to age and capacity constraints, various deficiencies in its system threaten effectiveness of Bayonne’s police and fire departments, officers, and citizens on a daily basis. It describes in particular four deficiencies, as follows: (1) *Lack of Channel Capacity*. Bayonne states that two VHF channel pairs each for Bayonne’s police and fire departments are insufficient to permit effective emergency communications. (2) *Dead Spots*. Bayonne represents that its existing communications system is plagued by dead spots, both geographically and in terms of in-building penetration deficiencies. Bayonne claims its attempts over the years to address this problem have been unsuccessful, and a consultant’s suggestion to raise the antenna or boost the signal are not viable solutions because they would result in co-channel interference to other users. (3) *Co-channel Interference*. Bayonne states that its existing VHF system experiences serious co-channel interference, which makes communications between mobile units and its Dispatch Center difficult and unreliable. (4) *Lack of Interoperability/Outdated Technology*. Bayonne represents that the technology of its current system is outdated and that Bayonne’s current system is not interoperable with other Bayonne systems, *e.g.*, the Board of Education system, as well as the police, fire, and emergency medical services of neighboring jurisdictions. It adds that, as part of its PSAP duties, it also handles overflow E-911 traffic from Secaucus, New Jersey, and that radio interoperability with Secaucus would increase greatly the efficiency of this process.

According to Bayonne, in order to rectify the problems and permit it to properly and efficiently fulfill its responsibilities, the only viable course is to replace entirely its existing VHF system and migrate to a trunked, digital UHF radio system. Bayonne claims its proposed network would link all police, fire, emergency medical, city, school, and hospital telecommunications services into one modern, efficient, and flexible radio system, and the network would serve more than 600 units. Bayonne alleges that, although it exhaustively has searched for available spectrum to use in its proposed system, the UHF channels for which it is applying appear to be the only viable option. Bayonne also indicates that its proposed system would permit interoperability with surrounding jurisdictions, most, if not all, of which use frequencies in the UHF band, and migration to the proposed network is expected to produce numerous life-saving benefits. Bayonne submits that it meets the criteria set forth in Section 337(c) of the Act. In this regard, Bayonne has submitted an “Analysis of Frequency Availability” concluding that no VHF, UHF, or 800 MHz channels are available, and that existing television broadcast stations prevent use of 700 MHz band spectrum within television channels 60-69. In the alternative, Bayonne argues that a waiver is justified under the standards contained in Section 1.925 of the Commission’s Rules.

Interested parties may file comments on the Waiver Request on or before **September 3, 2002**. Parties interested in submitting reply comments must do so on or before **September 10, 2002**. All comments should reference the subject waiver request including the DA number of this *Public Notice*, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 Twelfth Street, S.W., TW-325, Washington, D.C. 20054. A copy of each filing should be sent to (1) Qualex International, Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 863-2893; (2) Bert Weintraub, Esq., Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 Twelfth Street, SW, Room 3-A230, Washington, D.C. 20554; and (3) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 Twelfth Street, S.W., Room CY-B529, Washington, D.C. 20554.

The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission’s Secretary are accepted only by the Commission’s contractor, Vistronix, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton

Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, Public Notice, 16 FCC Rcd 22165 (2001).

The full text of the Waiver Request, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail qualexint@aol.com. For further information regarding the public reference file for this Waiver Request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Bert Weintraub, Esq., of the Policy and Rules Branch, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau at (202) 418-1316, TTY (202) 418-7233, or via e-mail to bweintra@fcc.gov.

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau.

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