

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

In Re Application of)	
)	
PAXSON COMMUNICATIONS LPTV, INC.)	
)	File No. BMP TTL-JG0601AR
For a Construction Permit for Low Power)	
Television Station WPXU-LP, Amityville, New)	
York)	
)	

MEMORANDUM OPINION AND ORDER

Adopted: March 22, 2002

Released: March 25, 2002

By the Chief, Video Services Division:

I. INTRODUCTION

1. The Commission, by the Chief, Video Services Division, Mass Media Bureau, acting pursuant to delegated authority, has before it for consideration the above-captioned application of Paxson Communications LPTV Inc. ("Paxson"), licensee of station WPXU-LP, Amityville, New York to move operations from channel 38 to channel 19.

2. On May 29, 1998, Paxson filed a displacement application to move station WPXU-LP from channel 38 to channel 19, having been displaced by the DTV allotment for channel 38, station WWOR-DT, Secaucus, New Jersey. Several public safety licensees in New York and New Jersey, including Nassau County Police Department ("NCPD") and Bergen County, New Jersey ("Bergen County") (collectively "Petitioners"), as well as Private Land Mobile Radio Service ("PLMRS") licensees such as Atlantic Coast Communications ("ACC"), filed petitions to deny asserting that if Paxson's application is granted, public safety and PLMRS licensees in the region will experience harmful interference in up to 92% of their operating areas.¹ Petitioners also request that the Commission examine the feasibility of any channel 19 assignment in the New York metropolitan area, now or in the future, in light of the significant number of potentially affected land mobile stations.

II. BACKGROUND

3. ACC provides commercial, two-way radio dispatch services in New Jersey in the 470-512 MHz band. Its current users include emergency medical service providers and student transportation services, responsible for disabled and special student transport. NCPD is one of the nation's 10 largest police departments with over 2,800 officers and 4,000 staff providing both law enforcement and emergency medical services throughout Nassau County, New York.² NCPD uses a voice radio communications system which includes approximately 1,700 radio units (500 mobile and 1,200 portable)

¹ The Association of Public-Safety Communications Officials-International, Inc. ("APCO") also filed Comments in support of Petitions to Deny on August 21, 2001. In addition, Petitions to Deny were filed on behalf of the City of Patterson, Town of Kerney, Township of Freehold. These parties raise no new substantive issues and mirror the concerns of Petitioners.

² Nassau County is located on Long Island and covers an area of over 258 square miles.

operating on 11 land mobile channels in the 477-481 MHz band (channel 15).³ Bergen County is New Jersey's largest county and operates radio systems on low band, high band UHF, T band and a mobile data system on 800 MHz. Bergen County states that it is a member of the New York Metropolitan Advisory Committee, whose purpose is to improve the effectiveness and efficiency of all public safety communications.

4. Approximately 146 land mobile base transmitters operate in northern New Jersey on portions of channel 19. NCPD asserts that most of these land mobile licensees received a waiver of Commission rules which allowed their base stations to be located beyond 50 miles of the geographic center of urbanized areas such as the New York metropolitan area. Similarly, ACC states that the Commission has granted it waiver relief at sites serving Holmdel, Neptune, Atlantic City and West Orange, New Jersey under call signs WIJ783, WPMW554 and WPPZ550. NCPD points out that although some of the waivers were conditioned on non-interference to future television stations,⁴ a substantial number of public safety land mobile licenses did not include such conditions.⁵ NCPD argues that these non-conditioned licenses are "permanently protected from interference from future television operations." In addition, Bergen County and NCPD argue that the Communications Act's "promotion of safety of life and property" requirement dictates that public safety users be protected from Paxson's proposed LPTV station.⁶

5. On February 28, 2001, NCPD filed an application and waiver request with the Commission to expand its current public safety use on Long Island, New York. NCPD requests that the Commission allow it to license channel 19 in a land mobile configuration. In its application and waiver request, NCPD asserts that channel 19 cannot be used for a television station in New York because of the large number of existing public safety land mobile facilities operating on that frequency in the northern New Jersey metropolitan area. NCPD also claims that its current voice radio system already is extremely congested, and it is facing rapidly increasing demands for service. NCPD further states that reuse of the existing channels already causes harmful interference within Nassau County's system, impairing critical public safety communications. NCPD notes that its radio system also experiences extremely dangerous "dead spots" in its coverage area and that, in recent years, there have been an alarming number of instances wherein deficiencies in its radio system might have placed police officers and other public safety personnel in dangerous situations. The Wireless Telecommunications Bureau placed NCPD's

³ NCPD also operates 500 mobile data units on five "channel 16" frequencies allotted on an interim basis for public safety use in the New York metropolitan area. In addition, NCPD asserts that it has two VHF frequencies that are used primarily for marine operations.

⁴ See license for WPLU548, authorized for use by the Borough of Fort Lee, New Jersey (operation pursuant to this waiver "... may not cause harmful interference to co- and adjacent channel TV reception within the Grade B contour of any channel 19 TV station ... [and] must accept any harmful interference from TV stations operating in accordance with their station authorizations.")

⁵ See licenses for WIL924, WIL599, WIL942, WIM835, WPGX673, WIL636, WPLX683, WIM315, WIM583, WIL536, WIK355, WIL894.

⁶ Section 337(c) of the Communications Act, 47 U.S.C. § 337(c), 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.

application for expanded service on Public Notice on March 7, 2001.⁷ No oppositions or petitions to deny were filed against NCPD's application.

6. In response to the public safety users' arguments, Paxson argues that its Low Power Television ("LPTV") displacement application should be granted. Paxson certifies that its application fully complies with the relevant interference protection rules. Paxson states that although it was not required to do so, it amended its application to ensure that existing public safety operations could coexist with WPXU-LP. Paxson states, however, that the modified WPXU-LP facilities do not protect NCPD's recently proposed expanded land mobile operations. Paxson asserts that Petitioners' public safety use of the spectrum is secondary to Paxson's LPTV because Petitioners hold waivers to operate on broadcast, and not land mobile, spectrum. Paxson argues that public safety users' current operations on channel 19 are the result of the Commission's "previously permissive waiver policy" and that such waivers did not act to reallocate channel 19 to the land mobile service. Ultimately, Paxson argues that it would be contrary to the public interest to "remove channel 19 from availability for LPTV displacement relief."

III. DISCUSSION

7. Channel 19 is shared by the broadcast and the public safety services. Frequencies in the 470-512 MHz band, normally assigned to UHF television channels 14 through 20, were made available for land mobile use in 11 cities in the early 1970's in the "UHF-TV Sharing" proceeding.⁸ In the 470-512 MHz band, the Commission relied on minimum separation distances based on the various heights and powers of the land mobile stations to prevent harmful interference.⁹ In 1985, the Commission proposed further sharing, or reallocation, of UHF channels in eight large urban areas (including channel 19 in New York) to private land mobile service. The Commission suspended action in that proceeding out of concern that it not adversely affect spectrum options for Advanced Television or DTV.¹⁰

8. The Commission in the DTV proceeding made several channels, including channel 19 in New York, available for LPTV displacement relief, assuming such spectrum was unencumbered. The Commission stated in the *DTV Sixth Report and Order on Reconsideration*: "Low Power licensees are . . . advised that the channels considered for assignment to land mobile services in eight major markets under GEN Docket No. 85-172 are available at this time for low power use and may be requested in displacement relief applications."¹¹ Paxson relies on this passage as evidence that the Commission clearly intended that channel 19 in New York should be available for LPTV displacement relief. We believe such reliance is misplaced. The Commission explicitly stated in that proceeding that it was concerned about broadcast licensees providing protection to existing land mobile services.¹² Pursuant to the DTV

⁷ *Wireless Telecommunications Bureau Seeks Comment on Request for Waiver by Nassau County Police Department to Operate a Public Safety Communications System on 500-506 MHz Frequencies Allocated to Channel 10 Television Operation in the New York Metropolitan Area*, Public Notice, 16 FCC Rcd 5309 (2001).

⁸ *See Amendment of Parts 2, 89, 91, and 93, First Report and Order*, Docket No. 18261, 23 FCC 2d 325 (1970).

⁹ *Further Sharing of the UHF Television Band by Private Land Mobile Radio Services*, General Docket No. 85-172, Notice of Proposed Rulemaking, 101 FCC 2d 852, 865 (1985), proceeding suspended, 2 FCC Rcd 6441 (1987).

¹⁰ *Id.*

¹¹ *In the Matter of Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Memorandum Opinion and Order on Reconsideration of the Sixth Report and Order, 13 FCC Rcd 7418, 7466-67 (1998) ("Sixth Reconsideration Order").

¹² *Advanced Television Systems and Their Impact upon the Existing Television Broadcast Service*, MM Docket No. 87-268, Sixth Report and Order, 12 FCC Rcd 14588, 14664 (1997) ("DTV Sixth Report and Order") ("[I]f such problems occur, it will be the initial responsibility of the DTV licensee to protect against or eliminate harmful interference to land mobile services that have commenced operations and that are operating in accordance with our rules at the time the DTV licensee goes on the air.").

proceeding, LPTV stations were afforded the opportunity to relocate their signals to channels in the 470-512 MHz band, but were not guaranteed that such spectrum would be unencumbered or usable. The fact that the Commission stated in the DTV proceeding that channels “may be requested” by displaced LPTV applicants did not confer a guaranteed right that their applications would be granted. Furthermore, the Commission has never held that LPTV stations would have primary status over existing public safety operations in the shared spectrum. The Commission’s rules make clear that a LPTV applicant shall endeavor to select a channel on which its operation is not likely to cause interference.¹³ In addition, the Commission has noted the secondary status of LPTV in prior proceedings and the risks commensurate with that service.¹⁴

9. Pursuant to Section 90.305(a) of the Commission's Rules, 47 C.F.R. § 90.305(a), private land mobile radio (“PLMR”) base stations operating in the 470-512 MHz band must be located within 80 kilometers (“50 miles”) of the geographic center of the urbanized areas listed in Section 90.303 of the Commission's rules, and associated mobile units shall operate within 48 kilometers (30 miles) of the base station, thus creating a circular area with a radius of 80 miles (80-mile area) within which PLMR stations may operate without interference from television stations. This mileage restriction was instituted to ensure that television stations and land mobile stations do not interfere with one another.¹⁵ In order to protect land mobile radio stations operating within the 80-mile area, the Commission historically has evaluated proposals for new television stations to determine whether such stations would protect land mobile operations on a case-by-case basis.¹⁶

10. As noted above, the Commission has granted Petitioners a number of waivers of Section 90.305(a)’s 50-mile rule to relieve spectrum congestion in the New York/New Jersey area. In a recent decision discussing shared use in the 470-512 MHz band, the Commission held that, “Any applicant seeking a waiver to operate outside the 80-mile area must demonstrate that it would provide full protection to any existing full-power or low power TV station, including allotments and pending applications for such stations, at the time the waiver is filed. If an applicant that proposes to operate further than 80 miles [to operate outside the 80-mile area] from the geographic center sufficiently demonstrates that grant of a waiver is warranted, its operation would be secondary to current and future full power and low power TV stations.”¹⁷ However, the Commission in *Goosetown* specifically noted that, “Licensees that have already received waivers may continue to operate pursuant to the terms of their authorization, including any conditions placed on those authorizations, until and unless the Commission modifies such authorizations and/or waivers.”¹⁸

11. We will dismiss Paxson’s application for displacement relief and find that the public interest will be best served by not disrupting existing public safety users. Under *Goosetown*, the

¹³ 47 C.F.R. § 74.702(e).

¹⁴ From its creation by the Commission in 1982, the low power television service has been a “secondary spectrum priority” service whose members “may not cause objectionable interference to existing full-service stations, and . . . must yield to facilities increases of existing full-service stations or to new full-service stations where interference occurs.” *Report and Order in BC Docket No. 78-253*, 51 RR 2d 476, 486 (1982). *See also Id.* at n. 23: “[Because] it is integral to the concept of a secondary service that it yield to a mutually exclusive primary service, we shall not take low power stations into account in authorizing full-service stations, and we urge low power applicants to consider this fact when they select channels.”

¹⁵ *Sixth Reconsideration Order* at 7466-67.

¹⁶ *DTV Sixth Report and Order*, 12 FCC Rcd at 14658-59 n.275.

¹⁷ *In the Matter of Application of Goosetown Enterprises, Inc.* (“*Goosetown*”), 16 FCC Rcd 12792, 12797-98 (2001).

¹⁸ *Id.* at n.45.

Commission specifically stated that public safety waivers that were granted prior to the date of the adoption of that order, *e.g.*, June 15, 2001, may continue to operate pursuant to the terms of their authorization. Many of the public safety waivers at issue here were granted prior to that date. Had the Commission in *Goosetown* wanted to make its policy regarding the secondary status of land mobile operations (outside of the 80-mile area) retroactive as opposed to prospective, it could have explicitly done so. Additionally, although Paxson states that it “believes its proposed channel 19 operation can functionally coexist with the existing operations of the Public Safety Users,” we disagree. A grant of Paxson’s displacement application would likely cause significant disruption to existing public safety operations. Paxson proposes a “slight decrease in ERP and a different directional antenna” to alleviate proposed impact to land mobile radio service assignments in Northern New Jersey. However, our independent review confirms the findings of the Vogel Consulting Group that the proposed antenna and energy level by Paxson will not be subject to sufficient attenuation and will encroach upon public safety base stations.¹⁹ Paxson has not contested the analysis provided by the Vogel Consulting Group. Notably, many of the existing land mobile licensees that would be affected by grant of Paxson’s application use their radio systems to dispatch police, fire, and emergency medical personnel. These are critical public safety services in the New York area and we find that the continued operation of an accurate and reliable public safety communications system in the region serves the public interest, especially in light of the tragic events of September 11, 2001.²⁰

IV. CONCLUSION

12. Accordingly, based on the foregoing, we dismiss Paxson Communications LPTV, Inc.’s application for displacement relief and a construction permit to move operations of station WPXU-LP, Amityville, New York to channel 19. We further find that the dismissal of the construction permit and application will serve the public interest, convenience and necessity.

13. In view of the foregoing, IT IS ORDERED, That the petitions to deny filed by Nassau County Police Department, Atlantic Coast Communications, and Bergen County, New Jersey, ARE GRANTED.

14. IT IS FURTHER ORDERED, That the application for modification of Construction Permit for station WPXU-LP, Amityville, New York (FCC File No. BMPTTL-JG0601AR) filed by Paxson Communications LPTV, Inc., IS DISMISSED.

FEDERAL COMMUNICATIONS COMMISSION

Barbara A. Kreisman
Chief, Video Services Division
Mass Media Bureau

¹⁹ See *Report of Vogel Consulting Group, Inc.* (August 2001), attached to Response and Opposition of Bergen County.

²⁰ We note that Petitioners urge us to permanently foreclose assignment of channel 19 for broadcast operations in the future. We decline to do so at this time. The fact that Paxson’s proposed application does not provide adequate interference protection to existing public safety users does not mean that other applications could not conceivably provide such protection. We will review such applications, should any be filed, on a case-by-case basis. Should Petitioners wish to have frequencies in the 470-512 MHz band, such as channel 19 in New York, reallocated to the land mobile service, they should file an appropriate request for rulemaking to do so.