



# PUBLIC NOTICE

Federal Communications Commission  
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**DA 03-1140**  
**Released: April 15, 2003**

## **WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY MILWAUKEE METROPOLITAN SEWERAGE DISTRICT TO ALLOW FIXED OPERATION ON A PRIMARY BASIS IN THE 450-470 MHz BAND ABOVE THE POWER AND ANTENNA GAIN LIMITS**

**Comment Date: May 15, 2003**

**Reply Comment Date: May 30, 2003**

On February 3 and 10, 2003, the Milwaukee Metropolitan Sewerage District (“the District”) filed two applications<sup>1</sup> for fixed operation at a total of four locations on four frequency pairs in the 450-470 MHz band,<sup>2</sup> accompanied by requests for waiver of Sections 90.261(a), (b), and (c) of the Commission’s rules.<sup>3</sup> The District states that grant of the requested waivers will not affect any incumbent stations and will promote the public interest. We seek comment on the District’s request.

The District operates and maintains a sewerage system that serves most of Milwaukee County, Wisconsin, and parts of four surrounding counties. The District proposes a fixed wireless telemetry and control system to monitor and control water levels and flow within the sewer system, in order to comply with environmental regulations, protect the environment and public health, and mitigate flooding. Section 90.261(a) permits fixed use in the 450-470 MHz band on a secondary basis to land mobile operations.<sup>4</sup> The District requests primary status because the proposed system would not be able to tolerate excessive interference or service interruptions that might accompany secondary status, and thus requests a waiver. Section 90.261(b) limits the transmitter output power of fixed systems, located within 140 km of urbanized areas with 600,000 or more population, to 20 watts.<sup>5</sup> The District requests a waiver of this rule section because it requires higher power for each fixed repeater to serve a radius of at least 32 km. The District requests 100 watts ERP for three sites and 75 watts ERP for the fourth site. Section 90.261(c) limits the base transmitter antenna to unity gain.<sup>6</sup> The District requests a waiver of this rule section to use gain antennas in order to adequately serve the intended service area. The District submitted contour overlap analyses of incumbent co-channel and adjacent channel stations.

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<sup>1</sup> FCC File Nos. 0001181827 and 0001190322.

<sup>2</sup> 453/458.475 MHz, 453/458.750 MHz, 453/458.850 MHz, and 453.458.925 MHz.

<sup>3</sup> 47 C.F.R. § 90.261(a), (b), (c).

<sup>4</sup> 47 C.F.R. § 90.261(a).

<sup>5</sup> 47 C.F.R. § 90.261(b).

<sup>6</sup> 47 C.F.R. § 90.261(c).

The District believes that its requests meet both prongs of the waiver standard of Section 1.925(b)(3).<sup>7</sup> Under the first prong, the District argues that grant of the requested waiver will not undermine the fundamental purpose served by the rules to prevent fixed operations from interfering with land mobile operations. The District believes that with no co-channel users in the area, no interference is anticipated based on the requested power levels. The District argues that a grant of its waiver requests would be in the public interest because the proposed radio system potentially affects the lives and health of thousands of residents, property, and the water environment in and near Milwaukee.

Under the second prong of the waiver standard of Section 1.925(b)(3), the District believes that application of the rule sections would be burdensome and contrary to the public interest. Secondary status might require the system to shut down at a moment's notice. Application of low power limits and no antenna gain would require the construction of numerous additional sites to cover the necessary service area. The District argues that this would be an unnecessary expenditure of public funds and thus contrary to the public interest. The District finds that the 450-470 MHz band is optimal for the proposed system and believes that it has no reasonable alternative.

Interested parties may file comments on the District's Waiver Requests on or before May 15, 2003. Parties interested in submitting reply comments must do so on or before May 30, 2003. All comments should reference the District's Waiver Requests, including the DA number of this Public Notice, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., Room TW-325, Washington, D.C. 20554. A copy of each filing should be sent to: (1) Qualex International, Inc., Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893; (2) Tom Eng, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Private Wireless Division, Policy and Rules Branch, 445 12th Street, S.W., Room 4-B512, Washington, D.C. 20554; and (3) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 12<sup>th</sup> Street, S.W., Room CY-B529, Washington, D.C. 20554.<sup>8</sup>

The District's applications and Waiver Requests can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. In addition, the full text of the Waiver Request, comments and reply comments will be available for inspection and duplications during regular business hours in the 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 may also be purchased from the Commission's duplicating contractor, Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via-e-mail [qualexint@aol.com](mailto:qualexint@aol.com). For further information regarding

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<sup>7</sup> 47 C.F.R. § 1.925(b)(3). The Commission may grant a request for waiver if it is shown that: (i) 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 (ii) In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

<sup>8</sup> 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 at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. 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. 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 public reference file for this 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* 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 Mr. Tom Eng, of the Policy and Rules Branch of the Public Safety and Private Wireless Division of the Wireless Telecommunications Bureau at (202) 418-0019, TTY (202) 418-7233, or via e-mail to [teng@fcc.gov](mailto:teng@fcc.gov).

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

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