

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

In the Matter of Application of)	
)	
CITY OF BURBANK, CALIFORNIA)	File No. 0001073667
)	
To Operate a Public Safety Radio)	
Communications System in Frequency Band)	
470-480 MHz in Burbank, California)	

MEMORANDUM OPINION AND ORDER

Adopted: November 7, 2003

Released: November 12, 2003

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

I. INTRODUCTION

1. We have before us the captioned application and associated request for waiver (Waiver Request) filed by the City of Burbank, California (Burbank), for authority to operate a public safety radio system on UHF frequencies¹ in the Los Angeles metropolitan area.² Burbank seeks a waiver of Part 22 of the Commission's Rules to use spectrum that is designated for non-public safety use.³ For the reasons stated herein, we grant Burbank's Waiver Request.

II. BACKGROUND

2. Burbank, located in the Los Angeles Basin, is a municipality which requires communications for a number of municipal functions. Its population of 100,000 swells to 200,000 during working hours and Burbank is home to a number of industries and motion picture studios, which place increasing demands on municipal functions at various times.⁴ The departments or functions requiring radio communications include police, fire, water, power, public works, park and recreation, animal control, and code inspection.⁵ Additionally, Burbank states that it is involved in the Interagency Communications

¹ Frequencies in the 300 MHz to 3 GHz range are Ultra High Frequencies ("UHF") but land mobile frequencies in the 450-512 MHz range are sometimes known as the land mobile "UHF band." In this *Memorandum Opinion and Order*, references to UHF mean 450-512 MHz. See, e.g. Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, WT Docket No. 99-87, *Notice of Proposed Rule Making* 14 FCC Rcd 5206, 5215 ¶¶ 11-12 (1999).

² See FCC File No. 0001073667, City of Burbank (filed October 29, 2002). The Waiver Request was submitted as an attachment to the application (the "Request").

³ Request at 1.

⁴ See FCC File No. 0001073667, Letter from Jack Wildermuth, Electrical Test Superintendent, City of Burbank Water and Power, to the Federal Communications Commission via APCO Frequency Coordination Department (dated Sept. 12, 2002).

⁵ *Id.* Burbank states that a total of 1350 employees require radio communications. *Id.*

Interoperability System (ICIS) Project, which will aid in wide area coverage for the Los Angeles Basin for police and fire communications and granting the captioned application would enable Burbank to work better in the ICIS project, thereby improving police and fire safety, as well as safety for its citizens.⁶ Burbank states that its current radio system suffers from overcrowding of frequencies and congestion in communications and that the requested channels will relieve these problems during peak periods when more than one user group has to wait for the common channel to clear.⁷

3. *Waiver Request.* The Waiver Request involves only one of the nine frequency pairs requested in the captioned application. Burbank requests a waiver of Part 22 of the Commission's Rules for nonstandard channel pair 470/473.0500 MHz, which is adjacent to paging control channels allocated under Section 22.621.⁸ Specifically, the requested channel pair is located in a guard band between spectrum allocated for Part 90 (private land mobile radio) and Part 22 (paging control) in the Los Angeles area. Because 470/473.0500 MHz is not designated for public safety use, Burbank requires a waiver of Sections 22.7, 22.501, 22.621, 22.651, and 90.311 of the Commission's Rules to use the subject frequency,⁹ which Burbank requests herein pursuant to Section 1.925 of the Commission's Rules.¹⁰

4. In the Los Angeles area, the subject frequency pair (470/473.0500 MHz) is licensed to the City of Pomona (Pomona)¹¹ for public safety use, and immediately adjacent and offset to frequencies licensed to other public safety entities (as well as Burbank itself)¹² in the Los Angeles area. In this connection, Burbank has coordinated the use of the subject frequency pair and received concurrence letters from Pomona as well as the adjacent user.¹³

⁶ *Id.*

⁷ *Id.*

⁸ 47 C.F.R. §§ 22.621.

⁹ 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.311. Section 22.7 limits eligibility to operate on Part 22 frequencies to common (*i.e.*, commercial) carriers. Section 22.501 defines the scope of the licensing and operation of the public paging and radiotelephone service. Section 22.621 requires the use of point-to-multipoint operation. Section 90.311 excludes frequencies in the 470-512 MHz range from assignment to private land mobile radio applicants if the frequencies are allocated for services under Part 22.

¹⁰ 47 C.F.R. § 1.925.

¹¹ See City of Pomona, California, *Order*, 15 FCC Rcd 15597 (WTB 2000) (granted Pomona's application to use several non-standard Part 22 frequencies for public safety, including 470/473.0500 MHz) by waiver of the Commission's Rules granted pursuant to 47 U.S.C. § 337(c).

¹² The Waiver Request notes that the upper adjacent Part 90 frequency pair 470/473.0625 MHz is presently licensed to Burbank under call sign WIK334.

¹³ Burbank submitted with its application concurrence letters supporting the application from parties that would be subject to potential interference. See Letter from Frank Westphal, Communications Engineer, City of Pomona, to Jack Wildermuth, City of Burbank Communications (dated Jan. 24, 2001) (Pomona Letter), Letter from Ralph Mailloux, Executive Director, South Bay Regional Public Communications Authority, to Jack Wildermuth, Communications Supervisor, City of Burbank (dated Oct. 16, 2000) (South Bay Letter). The concurrences are all conditioned upon Burbank's agreement to mitigate and successfully solve any interference problems the proposed system may cause.

III. DISCUSSION

5. Section 1.925 of the Commission's Rules 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.¹⁴ We therefore examine whether Burbank meets the criteria supporting grant of a waiver under Section 1.925.

6. In this case, we conclude that Burbank has demonstrated that grant of a waiver is warranted under the first prong of the waiver standard. The purpose of the rules for which a waiver is sought is to assign paging control channels under Part 22 with sufficient guard band spacing to adjacent private land mobile radio operations under Part 90. We conclude that the underlying purpose of the rules would not be served by application to this case because our licensing records reflect that there are no paging licensees on 470/473.0375 MHz, the Part 22 frequency pair that is adjacent to 470/473.0500 MHz. Moreover, this Part 22 frequency pair is licensed to South Bay for public safety operations, and that licensee has provided Burbank with a letter of concurrence.¹⁵ Furthermore, Pomona is already licensed for public safety operations on 470/473.0500 MHz, and that licensee also has provided Burbank with a letter of concurrence.¹⁶ Finally, our licensing records reflect that Burbank is already licensed on the Part 90 frequency pair that is adjacent to 470/473.0500 MHz. Thus, no other concurrence is required.

7. We also conclude that grant of a waiver would be in the public interest. Based upon the record in this proceeding, we believe Burbank's filings demonstrate that it needs access to additional spectrum in order to promote effective public safety communications. We believe that it would further the public interest by affording Burbank's public safety community access to additional radio spectrum in order to allow it to safely protect the lives and property in its care. Indeed, Section 1 of the Communications Act of 1934 defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of...radio communication."¹⁷ Further, we find it significant that access to the subject frequency pair would further Burbank's participation in the ICIS project. Based on the record before us, we believe such participation promotes interoperability between public safety communities in the Los Angeles Basin.

IV. CONCLUSION

8. As discussed above and based on the record before us, we find that Burbank's Request satisfies the criteria set forth under Section 1.925 to obtain a grant of its application to operate a public safety communications system on frequencies in the 470-480 MHz band. We therefore grant Burbank's Request for Waiver.

¹⁴ 47 C.F.R. § 1.925.

¹⁵ See note 13, *supra*.

¹⁶ *Id.* Additionally, Burbank acknowledges that "interference is possible, and that the new licensee has to accept any incidental interference that may be found from an existing licensee who is cooperative enough to provide a concurrence letter to support the new application." See FCC File No. 0001073667, Letter from Jack Wildermuth, Electrical Test Superintendent, City of Burbank Water and Power, to Mr. Tom Eng, Wireless Telecommunications Bureau, FCC (dated July 29, 2003).

¹⁷ 47 U.S.C. § 151.

V. ORDERING CLAUSES

9. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), the request for waiver associated with the captioned application filed by the City of Burbank on October 29, 2002, as amended, to use frequency pair 470/473.0500 MHz, for public safety services as requested in the captioned application **IS GRANTED SUBJECT TO** the following **CONDITIONS**: (1) Burbank's agreement to mitigate and successfully solve any interference problems that its system may cause to the City of Pomona or to the South Bay Regional Public Communications Authority; and (2) Burbank's agreement that its system must accept any incidental interference that occurs from the City of Pomona or from the South Bay Regional Public Safety Communications Authority.

10. **IT IS FURTHER ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that the Licensing and Technical Analysis Branch **SHALL PROCESS** File No. 0001073667 consistent with this *Memorandum Opinion and Order* and the Commission's Rules.

11. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau