



PUBLIC NOTICE

Federal Communications Commission
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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY THE COUNTY OF YORK, PENNSYLVANIA TO OPERATE A COUNTY-WIDE PUBLIC SAFETY RADIO SYSTEM UTILIZING UHF TELEVISION FREQUENCIES

Comment Date: August 6, 2004

Reply Date: August 16, 2004

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on a waiver request by the County of York, Pennsylvania (York) to operate a county-wide, trunked, public safety radio communications system on fifty-eight unassigned UHF frequencies in the television (TV) band of 470-512 MHz. York contends that use of the subject channels is necessary due to the lack of available public safety channels. Specifically, York filed the waiver request and eleven applications¹ to use frequencies allocated to TV channel 19 spectrum, 500-506 MHz, to support the communications requirements of its public safety agencies. York requests a waiver of Sections 2.106, 90.303, 90.305(a), and 90.311 of the Commission's Rules, 47 C.F.R. §§ 2.106, 90.303, 90.305(a), 90.311. York asserts that the purpose of the new system is to upgrade its existing antiquated radio systems operating in the 30-50 MHz, 150-174 MHz, and 450-470 MHz bands in order to provide reliable communications throughout the county and interoperability between all public safety and local government agencies.

By way of background, Section 90.301 of the Commission's Rules, 47 C.F.R. § 90.301, provides that frequencies in the 470-512 MHz band are available for land mobile use on a geographically shared basis with TV broadcast stations. Section 90.303 of the Commission's Rules, 47 C.F.R. § 90.303, states that certain TV channels are allocated to land mobile use in thirteen urbanized areas of the United States. Frequencies in the TV channel 19 band, which York is requesting, are available for land mobile assignment in the Philadelphia, Pennsylvania urbanized area. Eligibility for land mobile use of these frequencies is based in part on distance requirements in order to protect TV stations and their targeted viewing audience outside of these urbanized areas from interference. Section 90.305 of our rules provides that transmitter sites for base stations must be located within 80 kilometers (50 miles) of the geographic center of the urbanized area. York County is located more than 80 kilometers from Philadelphia and thus seeks to locate its base stations outside of the area allowed by our rules. The closest site, Delta, would be located approximately 103 kilometers (64 miles) from Philadelphia, while the farthest site, Dillsburg, would be located approximately 156 kilometers (97 miles) from Philadelphia.² Therefore, York seeks a waiver of our rules to use frequencies in TV channel 19 spectrum outside of the

¹ York filed FCC File Nos. 0001695611 and 0001695617 on April 14, 2004. York filed FCC File Nos. 0001706930, 0001706931, 0001706932, 0001706933, 0001706934, 0001706935, 0001706936, and 0001706937 on April 21, 2004. York filed FCC File No. 0001714776 on April 27, 2004.

² FCC File Nos. 0001695611 and 0001695617.

Philadelphia urbanized area. York states that TV channel 19 is the only channel in the 470-512 MHz band that it could use while protecting TV stations from interference. York also states that channel 19 could not be used by a new television station without presenting potential interference to existing TV stations on channels 18, 19, and 20. Thus, York believes that land mobile use is the only likely use of TV channel 19 in York County.

Section 1.925(a)(3) of our rules provides that a waiver of the Commission's Rules may be granted 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 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 the applicant has no reasonable alternative. In regard to the first prong, York states that the purpose of the applicable rules is to allow land mobile operations to share TV spectrum without causing interference within the service contours of incumbent TV stations. With its waiver request, York provided an engineering study showing that no incumbent television station will be affected by the proposed operations and that the spectrum could be put to virtually no other use because of the number of incumbent television stations. York believes that a grant would be in the public interest because the new system would provide needed public safety communications coverage throughout York County and interoperability between all public safety agencies. Regarding the second prong, York asserts that application of the rules would be contrary to the public interest because perpetuating the use of its antiquated system with mixed frequency bands and radio equipment prohibits interoperability, thus putting the lives of first responders and citizens of the county in jeopardy. Additionally, York's frequency search reveals that no alternative spectrum is available. York seeks 25 kHz-wide channels for optimum data transmission speed. York found that only 12.5 kHz wide channels are available in the 450-470 MHz band, and existing 25 kHz-wide channels have a high potential to receive interference due to adjacent channels offset by 12.5 kHz. Further, York claims that the 700 MHz is unavailable because TV channels 64 and 67 are permanent digital TV allotments in the Philadelphia area, and York's proximity precludes operation on these channels as well as channels 63 and 68. York states that channel 69 does not provide for mobile/base frequency separation. Finally, York claims that there are insufficient frequencies available in the VHF or 800 MHz bands to meet its needs.

In the alternative, York states that a grant of its request would be consistent with Section 337(c) of the Communications Act, as amended (the Act), 47 U.S.C. § 337(c). 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.

York asserts that the five requirements of Section 337(c) of the Act have been met: (1) A search for available spectrum, discussed above, indicates that the UHF T-band channels sought are the only viable option, and no other alternatives exist. (2) The applications and waiver request are supported by engineering analyses which claim to demonstrate interference protection to co-channel and adjacent channel incumbent licensees and TV stations. (3) The TV band channels are used for land mobile

operations in neighboring areas, including New York, Philadelphia, Baltimore, and Washington, DC. The request is consistent with uses of the channel in the same general geographic area. (4) The unassigned frequencies at issue were allocated for TV and land mobile use for more than two years. (5) Granting the applications and waiver request would be in the public interest as it will allow the County to use otherwise vacant spectrum and build a modern communications system in further support of the safety of life and property.

Interested parties may file comments on the Proposal and Waiver Requests on or before August 6, 2004. Parties interested in submitting reply comments must do so on or before August 16, 2004. 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 12th Street, S.W., TW-A325, Washington, D.C. 20054. A copy of each filing should be sent to (1) Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554; (2) 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; and (3) Mr. Tom Eng, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, S.W., 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, Natek, 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).

Each of the applications and waiver requests can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. The full text of the proposal, 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, Best Copy and Printing, Inc., 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 Mr. Tom Eng of the Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418-0019, TTY (202) 418-7233, or via e-mail to Thomas.Eng@fcc.gov.

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

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