



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 04-2840

Released: September 1, 2004

WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY THE COUNTY OF WESTCHESTER, NEW YORK TO OPERATE A COUNTY-WIDE PUBLIC SAFETY RADIO SYSTEM UTILIZING TEN UHF PAGING CONTROL FREQUENCIES

Comment Date: September 22, 2004

Reply Date: October 4, 2004

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on a waiver request by the County of Westchester, New York (Westchester) to operate a wide area, trunked, public safety radio communications system on ten unassigned Part 22 paging control and trunked mobile channels in the 470-512 MHz band. Westchester contends that use of the subject channels is necessary due to the lack of available public safety channels. Specifically, Westchester filed the waiver request and application, FCC File No. 0001801202, on July 9, 2004 and amendments on August 2, 2004 and August 20, 2004 to use frequencies designated for paging operations to support the communications requirements of its public safety agencies. Westchester's July, 9, 2004 application was returned on July 27, 2004 due to minor errors. On August 2, 2004, Westchester filed a corrected application and requested six frequencies, to be paired as follows: 476.0750/479.0750 MHz, 476.1125/479.1125 MHz, and 476.2125/479.2125 MHz. Westchester amended its application on August 20, 2004 to seek the use of four additional frequencies that became available as the result of the recent cancellation of the license of R.E.I. Communications Inc. for Station WPOK969, West Orange, New Jersey, to be paired as follows: 470.0750/473.0750 MHz and 470.1000/473.1000 MHz. Westchester proposes to operate all of the channels with a bandwidth of 12.5 kHz.

By way of background, Westchester is part of the New York City metropolitan area, located north of the Bronx, and has a population of one million people. Westchester asserts that the purpose of the new system is to upgrade its existing antiquated radio systems operating in various frequency bands in order to provide reliable communications and interoperability among all public safety and local government agencies throughout the county. Westchester plans to operate its public safety communications system in two zones, with each zone using different frequencies. Westchester is licensed to operate Station WPVA646, but Westchester states that none of its UHF, trunked frequency pairs can be used in the southern part of the county, closest to New York City, without causing or receiving interference. Therefore, Westchester seeks the subject five frequency pairs for use in the southern zone. Ultimately, Westchester plans to add another frequency pair for a total of six frequency pairs to be used in the southern zone. Westchester states that it will apply for a sixth frequency pair when one becomes available.

Westchester requests waivers of Sections 22.621, 22.651, and 90.303 of the Commission's Rules, 47 C.F.R. §§ 22.621, 22.651, and 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 (the Act), 47 U.S.C. § 337(c). Sections 22.621 and 22.651 of the Commission's Rules set forth frequencies, some of which are in the 470-512 MHz band, that are available for point-to-multipoint and trunked mobile systems, respectively. Section 90.303 of our Rules states that certain TV channels are allocated to land mobile use in thirteen urbanized areas of the United States. Frequencies in the TV channel 14 and 15 bands are available for land mobile and paging assignment in the New York urbanized area. Westchester states that it seeks a waiver of our rules to use spectrum designated for Part 22 paging operations because no Part 90 land mobile radio spectrum is available.

Westchester states that a grant of its request would be consistent with Section 337(c) of the Act. 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.

Westchester 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 paging channels sought are the only viable option, and no other alternatives exist. (2) The application and waiver request are supported by technical feasibility report which demonstrates interference protection to co-channel and adjacent channel incumbent licensees and pending applicants. (3) The TV band channels are used for land mobile operations the New York City metropolitan area. The request is consistent with uses of the channel in the same general geographic area. The proposal will provide for interoperability with New York City, Rockland County, and Nassau County public safety agencies. (4) The unassigned frequencies at issue were allocated for Part 22 paging and radiotelephone service for more than two years ago. (5) Granting the applications and waiver request would be in the public interest as it will cure deficiencies in the existing public safety radio systems and provide interoperability among various fire departments, police departments, emergency medical services corps, and hospitals in Westchester County. The proposed system would be free of interference and crowding from other users in the New York City area, and would be adequate for response to multiple incidents.

Interested parties may file comments on the Waiver Request on or before September 22, 2004. Parties interested in submitting reply comments must do so on or before October 4, 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., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; (2) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 12th Street, S.W., Room CY-B529, Washington, D.C. 20554; and (3) Tom Eng, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, S.W., Room 3-A360, 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).

The application and waiver request can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. 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, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its web site, <http://www.bcpiweb.com>, by email at fcc@bcpiweb.com, by phone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563. 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.

- FCC -