



PUBLIC NOTICE

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

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Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON MONROE COUNTY, NEW YORK REQUEST FOR WAIVER TO OPERATE PUBLIC SAFETY PAGING SYSTEM ON 900 MHz INDUSTRIAL/LAND TRANSPORTATION FREQUENCIES

Comment Date: November 22, 2004

Reply Date: November 29, 2004

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on a waiver request by the County of Monroe, New York (Monroe) to operate a wide-area public safety paging system on two unassigned Industrial/Land Transportation Category channels in the 900 MHz band. Monroe filed the waiver request in conjunction with an application for special temporary authority (STA),¹ FCC File No. 0001867308, on September 10, 2004, and filed an application for permanent authority, FCC File No. 0001897038, on October 12, 2004. Monroe seeks to use frequencies 939.6500 and 900.6500 MHz, which are designated for the Industrial/Land Transportation Category, to support the paging requirements of its public safety agencies.

By way of background, Monroe, which includes the City of Rochester, covers an area of 663 square miles and has a population of 715,000. Monroe contends that it has a critical need to put into service a system of two-way pagers to help carry out its critical role in providing homeland security and to supply interoperability to the police, fire, EMS, and security agencies in Monroe County. Monroe has examined commercial paging as an alternative approach. However, Monroe has determined that this approach would not meet the mission critical communications needs of its public safety agencies. Monroe contends that commercial paging systems cannot provide immediate delivery of pages, a high level of security for the sensitive information to be transmitted, and adequate back-up reliability. Therefore, Monroe seeks to utilize two frequencies in the 939 MHz band on an exclusive basis.

Monroe requests waivers of any 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), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925. We find that Monroe would require a waiver of Section 90.617(b) of the Commission's Rules, 47 C.F.R. § 90.617(b), which allows frequency pair 900/939.6500 MHz to be assigned to eligible applicants in the Industrial/Land Transportation Category. Monroe County is not eligible in the Industrial/Land Transportation Category, but is eligible in the Public Safety Pool.

¹ Monroe's STA request was granted on October 7, 2004 under Call Sign WQBH643, which expires April 7, 2005. That action was without prejudice to our decision regarding a permanent authorization on the requested frequencies.

Monroe 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.

Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, 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.

Interested parties may file comments on the waiver request on or before November 22, 2004. Parties interested in submitting reply comments must do so on or before November 29, 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) Thomas 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 applications 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. Thomas 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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