



PUBLIC NOTICE

Federal Communications Commission
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November 17, 2004

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST
FOR WAIVER BY THE CITY OF SUMMIT, NEW JERSEY TO OPERATE A PUBLIC SAFETY
RADIO SYSTEM UTILIZING EIGHT PART 22 UHF TRUNKED MOBILE FREQUENCIES**

Comment Date: December 2, 2004

Reply Date: December 13, 2004

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on a waiver request by the City of Summit, New Jersey (Summit) to operate a public safety radio communications system on eight Part 22 trunked mobile frequencies in the 470-512 MHz band. Summit contends that use of the subject channels is necessary due to the lack of available public safety channels. Specifically, Summit filed the waiver request and application, FCC File No. 0001869696, on September 14, 2004 and amendments on October 21, 2004 and October 26, 2004 to use frequencies designated for paging operations to support the communications requirements of its public safety agencies. Summit proposes to operate on frequency pairs 476/479.0375, 476/479.1375, 476/479.1875 and 476/479.2125 MHz. Summit is presently authorized to operate on frequency pair 478/481.5375 MHz. Summit proposes to operate all of the channels with a bandwidth of 12.5 kHz.

By way of background, Summit is located in Union County, New Jersey and is a city of 21,000 residents. Summit is a hub of rail and highway infrastructure through which thousands of commuters travel daily. The growing number of residents and commuters impose increasing responsibilities on Summit's law enforcement, fire, and emergency services. Summit states that its existing communications system on Stations KCZ906 and WIK881 is inadequate to meet these demands. Summit asserts that access to the Part 22 frequencies is the foundation of obtaining critical improvements to expand the coverage and transmission quality of its public safety communications, which are presently confined to a limited number of frequencies in different bands. It will make possible interoperability capability between Summit's first responders and its other public service providers, as well as interoperability capability to over forty surrounding communities, in addition to State and county agencies.

Summit requests waivers of Sections 22.7, 22.621, 22.651, and 90.303 of the Commission's Rules, 47 C.F.R. §§ 22.7, 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 of 1934, 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. 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. Summit 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.

Summit 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.

Summit 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 adjacent municipalities, counties and State of New Jersey agencies. (4) The unassigned frequencies at issue were allocated for Part 22 paging and radiotelephone service more than two years ago. (5) Granting the application 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 county, municipal and state public safety agencies in Northern New Jersey. 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 December 2, 2004. Parties interested in submitting reply comments must do so on or before December 13, 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.

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