



# PUBLIC NOTICE

Federal Communications Commission  
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Washington, D.C. 20554

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November 17, 2004

**WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST  
FOR WAIVER BY THE ATTORNEY GENERAL'S OFFICE OF THE STATE OF NEW JERSEY  
TO OPERATE A WIDE AREA PUBLIC SAFETY RADIO SYSTEM UTILIZING TWENTY UHF  
PAGING CONTROL AND 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 Attorney General's Office of the State of New Jersey (New Jersey) to operate a wide area public safety radio communications system on twenty unassigned Part 22 paging control and trunked mobile channels in the 470-512 MHz band. New Jersey contends that use of the subject channels is necessary due to the lack of available public safety channels. Specifically, New Jersey filed the waiver requests and applications, FCC File No. 0001855193 on August 27, 2004 and an amendment on October 26, 2004, and FCC File No. 0001855197 on August 27, 2004 and amendments on October 19, 2004 and October 26, 2004, to use frequencies designated for paging operations to support the communications requirements of its public safety agencies. In FCC File No. 0001855193, New Jersey proposes to operate on frequency pairs 470/473.0875 and 470/473.1625 MHz in the northern counties and cities near New York City. In FCC File No. 0001855197, New Jersey proposes to operate on frequency pairs 500.1625/503.1125, 500/503.2375, 500/503.2625, 506/509.0875, 506/509.1125, 506/509.1625, 506/509.2125, 506/509.2625 MHz in the counties and cities surrounding Philadelphia and the state capital in Trenton. New Jersey proposes to operate all of the channels with a bandwidth of 25 kHz.

By way of background, New Jersey has commenced several initiatives to strengthen statewide response and emergency preparedness in response to the September 11, 2001 attacks. New Jersey states that its expansive corporate and investment banking presence, its enormous rail, shipping, airport, and highway infrastructure, and the proximity to New York City and Philadelphia present severe challenges in responding to emergency circumstances. New Jersey is working with the federal Department of Homeland Security, other federal agencies, and public safety agencies to prepare and implement a plan to improve detection and response. A key ingredient in the plan is an interoperable system of voice and data radio communications across jurisdictions and agencies. New Jersey states that it seeks access to the Part 22 frequencies because the UHF band has no other resources in the New York and Philadelphia metropolitan areas.

New Jersey 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 applications, 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. Section 22.7 of the Commission's Rules sets forth the eligibility requirements for entities in the Public Mobile Services. Sections 22.621 and 22.651 of our 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 (470-482 MHz) are available for land mobile and paging assignment in the New York urbanized area, while frequencies in the TV channel 19 band (500-506 MHz) are similarly available in the Philadelphia urbanized area.

New Jersey 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 applications at issue; and (5) the grant of the applications 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.

New Jersey 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 applications and waiver request are supported by technical analyses which report that New Jersey's operations will provide protection from harmful interference to co-channel and adjacent channel incumbent licensees, pending applicants, and TV stations. (3) The 470-512 MHz band is used for land mobile operations the New York City and Philadelphia metropolitan areas. The request is consistent with uses of the channel in the same general geographic areas. The proposal will provide for interoperability with municipalities, counties and State of New Jersey agencies. (4) The unassigned frequencies at issue were allocated for Part 22 paging and radiotelephone service on January 1, 1995, more than two years ago. (5) Granting the applications and waiver request would be in the public interest as it will modernize the interoperability capability of law enforcement and public safety agencies throughout the state. A grant will help New Jersey bring tangible enhancements to the public's health and safety. The proposed system will make a substantial improvement in security and overall preparedness to prevent, respond to, and mitigate terrorist 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 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.bcpweb.com>, by email at [fcc@bcpweb.com](mailto:fcc@bcpweb.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](mailto:Thomas.Eng@fcc.gov).

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

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