

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of Applications of)	
)	
COUNTY OF YORK, PENNSYLVANIA)	File Nos. 0001695611, 0001695617,
)	0001706930, 0001706931, 0001706932,
To Operate a County-wide Public Safety Radio)	0001706933, 0001706934, 0001706935,
System Utilizing UHF Television Frequencies)	0001706936, 0001706937, 0001714776

ORDER

Adopted: December 20, 2004

Released: December 21, 2004

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

I. INTRODUCTION

1. We have before us eleven applications and a waiver request filed by the County of York, Pennsylvania (York) for authority to operate a public safety land mobile radio system on fifty-eight UHF¹ frequency pairs.² For the reasons stated herein, we grant York's waiver request and will grant its applications to operate a public safety communications system on frequencies in the 500-506 MHz band subject to certain conditions set forth below.

II. BACKGROUND

2. York County is located on the southern border of Pennsylvania, adjacent to the State of Maryland. The county encompasses 904 square miles with a population of 386,000.³ The New Cumberland Army Depot, Three Mile Island nuclear generating station, and Peach Bottom nuclear plant are located on the county's perimeter.⁴ York provides dispatch services for all police, fire, and EMS responders in the county.⁵ York currently relies on antiquated radio systems, some installed more than

¹ Frequencies in the 300 MHz to 3 GHz range are Ultra High Frequencies ("UHF"), but land mobile frequencies in the 450-512 MHz range are sometimes referred to as the land mobile "UHF band." In this *Order*, references to UHF mean 450-512 MHz. See, e.g., Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Notice of Proposed Rule Making*, WT Docket No. 99-87, 14 FCC Rcd 5206, 5215 ¶¶ 11-12 (1999).

² See FCC File Nos. 0001695611 and 0001695617, filed on April 14, 2004; FCC File Nos. 0001706930, 0001706931, 0001706932, 0001706933, 0001706934, 0001706935, 0001706936, and 0001706937, filed on April 21, 2004; and FCC File No. 0001714776, filed on April 27, 2004, Request for Waivers (Request) and System Description and Request for Extended Implementation and Shared Infrastructure (Description).

³ See Letter dated May 20, 2004 from U.S. Senator Arlen Specter to Michael K. Powell, Chairman, Federal Communications Commission; Letter dated June 4, 2004 from U.S. Representative Todd Russell Platts to Michael K. Powell, Chairman, Federal Communications Commission; Letter dated July 22, 2004 from U.S. Senator Rick Santorum to Michael K. Powell, Chairman, Federal Communications Commission.

⁴ *Id.*

⁵ *Id.*

thirty years ago. These systems operate in the 30-50 MHz, 150-174 MHz, and 450-470 MHz bands.⁶ York has no single system covering the entire county and has little or no interoperability between systems or individual agencies.⁷ It states that many areas of the county have little or no coverage by the current mix of radio systems, which puts the lives of first responders and the citizens of the county in jeopardy.⁸

3. York proposes to replace its mixed frequency band systems with a new UHF trunked system that will integrate ten sites and permit reliable communications among all public safety and local government agencies.⁹ York seeks 25 kHz-wide channels for optimum data transmission speed.¹⁰ It anticipates that the system will serve nearly three thousand mobile units.¹¹ York requests a service area that extends up to thirty kilometers beyond its jurisdictional boundaries in order to allow York to respond to emergency incidents in neighboring counties and provide mutual aid functions.¹² Additionally, York states that the power levels requested in its applications are necessary to provide coverage in valleys and inside buildings.¹³

4. Section 90.305(a) of the Commission's Rules provides that land mobile base stations operating in the 470-512 MHz band (which also constitutes television (TV) Channels 14 through 20) may be located only within eighty kilometers (fifty miles) of the geographic centers of the cities listed in Section 90.303 of our Rules.¹⁴ Specifically, frequencies in the TV Channel 19 band, which York is requesting, are available for land mobile assignment in the Philadelphia, Pennsylvania urbanized area.¹⁵ York County is located more than eighty kilometers from Philadelphia. Thus, its proposed base stations are outside the area allowed by our rules.¹⁶ Therefore, York seeks either a waiver pursuant to Section 1.925 of the Commission's Rules, or, alternatively, invokes Section 337(c) of the Communications Act of 1934, as amended ("the Act"), to use the frequencies.¹⁷ On July 7, 2004, the Wireless Telecommunications Bureau placed York's applications and waiver request on public notice.¹⁸

⁶ Description at 1.

⁷ *Id.*

⁸ *See* Request at 7.

⁹ Description at 1.

¹⁰ Request at 1.

¹¹ Description at 2.

¹² *Id.* at 3.

¹³ *Id.*

¹⁴ 47 C.F.R. §§ 90.303, 90.305(a).

¹⁵ 47 C.F.R. §§ 2.106 n.NG66, 90.301, 90.303, 90.311.

¹⁶ 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. FCC File Nos. 0001695611 and 0001695617.

¹⁷ *See* 47 C.F.R. § 1.925, 47 U.S.C. § 337(c). Request at 6-10.

¹⁸ *See* 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, *Public Notice*, 19 FCC Rcd 12314 (WTB PSCID 2004). No comments or reply comments were filed.

III. DISCUSSION

5. Under Section 1.925(b)(3) of the Commission's Rules, a request for a rule waiver in the Wireless Telecommunications Services may be granted if it is shown that (a) the underlying purpose of the rule 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 (b) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.¹⁹ For the reasons stated below, we conclude that grant of the requested waiver is warranted, and the applications should be granted, subject to certain conditions.

6. The Commission permitted land mobile sharing of TV Channels 14-21 within certain urbanized areas in order to alleviate shortfalls of land mobile radio spectrum in those cities. However the Commission also imposed restrictions to protect over-the-air broadcast operations on from harmful interference by land mobile systems operating in the 470-512 MHz band.²⁰ Without such rules in place, TV receivers could experience interference from land mobile users. In this case, York states that no incumbent TV station would be affected by the proposed operations on TV Channel 19 or on adjacent TV Channels 18 and 20.²¹ York also states that no new TV Channel 19 could be used in the general geographic area without presenting potential interference to the reception of existing TV stations on TV channels 18, 19, and 20.²² We have reviewed York's engineering analysis and concur that York's proposed base station operations would provide the requisite interference protection to the service contours of incumbent TV stations, and that the TV Channel 19 spectrum in this particular geographic area is unusable by TV stations due to the current environment of TV channel assignments. Therefore, we agree with York that granting a waiver of Section 90.305(a) of our rules in this case would not undermine the purpose of the rules, and because it would allow use of unassigned spectrum without causing interference to any other user.

7. While York's base station transmissions provide the protection required by Section 90.309, Table E of our rules,²³ the rules also require base stations with associated mobiles to be located at least ninety miles from adjacent channel TV stations.²⁴ The purpose of the ninety-mile spacing requirement is to protect adjacent channel TV stations from interference caused by mobile units operating in or near the TV station's coverage area. Combined with Section 90.305(b) of our rules,²⁵ which restricts mobile operation to an area within thirty miles of associated base stations, the base station spacing of ninety miles restricts mobile operations to at least sixty miles from an adjacent-channel TV station. However, a sixty-mile circle around channel 20 TV Station WDCA, Washington, D.C., intersects a portion of southwestern York County. Mobile units operating within this portion of York County on a day-to-day basis would be operating within sixty miles of Station WDCA. In addition, as indicated above, York has requested that its mobile units operate in neighboring counties in response to emergency incidents or mutual aid

¹⁹ 47 C.F.R. § 1.925(b)(3).

²⁰ See Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, *Notice of Proposed Rulemaking*, Gen. Docket No. 85-172, 101 FCC 2d 852 (1985).

²¹ See Request at 6.

²² See *id.*

²³ See 47 C.F.R. § 90.309, Table E.

²⁴ See 47 C.F.R. §§ 90.309, Table E, note 3; 90.307(d).

²⁵ See 47 C.F.R. § 90.305(b).

situations.²⁶ We note that such operations could bring York's mobile units inside the protected contour of Station WDCA, which extends approximately forty-seven miles in the direction of York but does not overlap York County.²⁷ Therefore, we waive the applicable rules, but we will require York to take the necessary steps to prevent its mobile units operating outside the county from operating within 60 miles of Station WDCA, except in emergency situations. In addition, before commencing operation, and before altering its operation in any fashion that could increase the risk of interference, York must notify Station WDCA of the operating parameters of its base and mobile stations. We conclude that granting a waiver of the rules as conditioned will not undermine the purpose of the rules because it will prevent York's mobile units from routinely entering the protected contour of Station WDCA, and it will protect receivers within the protected contour of Station WDCA from harmful interference.

8. We also conclude that grant of a waiver would be in the public interest. Based upon the record in this proceeding, we believe that York needs access to additional spectrum in order to promote effective public safety communications. We believe that it would further the public interest by affording York's public safety community access to additional radio spectrum in order to allow it to protect lives and property. Indeed, Section 1 of the Act defines one of the Commission's over-arching purposes as "promoting safety of life and property through the use of ... radio communication."²⁸ We also find it significant that granting the instant request will promote interoperability among the public safety and local government agencies in York County.²⁹

9. Finally, York has demonstrated that it has no reasonable alternative in any other spectrum band. It surveyed the VHF, 450-470 MHz, and 800 MHz bands, and determined that insufficient channels were available.³⁰ In addition, York states that 700 MHz band spectrum will never be available in its area because of digital television (DTV) allotments in Philadelphia.³¹ We note that we disagree with this conclusion. The 700 MHz public safety band will be available for exclusive public safety use at the conclusion of the DTV transition.³² However, we are aware that, in many areas, television stations will remain in operation on Channels 60-69 for some time to come. Accordingly, we deem the 700 MHz band "unusable" in the context of York's waiver request.

10. Under Commission precedent, any applicant seeking a waiver of the eighty-kilometer limitation that seeks authorization for an area of operation that extends beyond the eighty-kilometer area must demonstrate that it would provide full protection to any existing TV station, including allotments

²⁶ See para. 3 *supra*.

²⁷ The protected contour for a TV station operating on TV channels 14-69 is the Grade B, 64 dBu, F(50,50) contour. See 47 C.F.R. §§ 73.683(a), 90.307.

²⁸ 47 U.S.C. § 151.

²⁹ The Commission places great importance on facilitating public safety interoperability. See, e.g., The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, *Fourth Memorandum Opinion and Order*, PR Docket No. 96-86, 17 FCC Rcd 4736, 4746 ¶ 24 (2002).

³⁰ Request at 1.

³¹ See *id.* at 2.

³² See, e.g., Amendment of Parts 73 and 74 of the Commission's Rules to Establish Rules for Digital Low Power Television, Television Translator, and Television Booster Stations and to Amend Rules for Digital Class A Television Stations, *Report and Order*, MB Docket No. 03-185, FCC 04-220, ¶ 76 (rel. Sept. 30, 2004).

and pending applications for such stations, at the time the waiver is filed.³³ We are persuaded that York has demonstrated such protection.³⁴ In addition, an applicant that proposes to operate farther than eighty kilometers from the geographic center must state that it is willing to accept a license with the condition that it not interfere with existing and future TV stations, or the waiver request will be dismissed.³⁵ Although, initially, York's request was deficient in this regard, York satisfied the requirement on August 27, 2004 by supplementing its waiver request with a letter stating that York is willing to accept licenses on a non-interference basis relative to TV stations.³⁶ We remind York that it is obligated to prevent interference to reception of Station WDCA's signal in particular, and it must accept any interference or degradation caused by operation of Station WDCA on channel 20.

IV. CONCLUSION

11. We conclude that York's request satisfies the criteria set forth by Section 1.925(b)(3) of our Rules and Commission precedent. We therefore grant York's request for waiver, and will grant its applications as conditioned below to operate a public safety communications system on frequencies in the 500-506 MHz band.

V. ORDERING CLAUSES

12. Accordingly, **IT IS ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request for waiver associated with the captioned applications filed by the York County to use frequencies in the TV Channel 19 band for public safety services **IS GRANTED ON THE CONDITION THAT**

- Operations are secondary to existing and future full power, Class A, and low power TV stations.
- Licensee must take steps to prevent its mobile units operating outside of York County from operating within 60 miles of TV station WDCA, channel 20, Washington, DC, except in emergency situations. Before commencing operation, and before altering its operation in any fashion that could increase the risk of interference, licensee must notify Station WDCA of the operating parameters of its base and mobile stations.

13. **IT IS FURTHER ORDERED** that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, that FCC File Nos. 0001695611, 0001695617, 0001706930, 0001706931, 0001706932, 0001706933, 0001706934, 0001706935, 0001706936, 0001706937, and 0001714776 **SHALL BE PROCESSED** consistent with this *Order* and the Commission's Rules.

³³ Goosetown Enterprises, Inc., *Memorandum Opinion and Order*, 16 FCC Rcd 12792, 12797-98 ¶ 13 (2001) (*Goosetown*).

³⁴ *See* Request, Attachments 1-3.

³⁵ *Goosetown*, 16 FCC Rcd at 12797-98 ¶ 13.

³⁶ Letter dated Aug. 27, 2004 from Eric Bistline, Executive Director, Department of Emergency Services, County of York, to Federal Communications Commission, Wireless Telecommunications Bureau.

14. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

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Wireless Telecommunications Bureau