



# PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION

445 Twelfth Street, S.W.

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## WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON SOMERSET COUNTY, NEW JERSEY'S REQUEST FOR WAIVER TO UTILIZE TEN UHF PAGING CONTROL FREQUENCIES TO OPERATE A PUBLIC SAFETY RADIO SYSTEM

Comment Date: January 30, 2004

Reply Date: February 6, 2004

The County of Somerset, New Jersey ("Somerset") has filed two license applications and two requests for waiver to use Part 22 paging control channels for its state-of-the-art, trunked public safety system serving its police, fire, EMS, and other county public safety agencies.<sup>1</sup> Somerset currently utilizes, *inter alia*, Part 22 paging control frequencies 470.1375 MHz, 473.0625 MHz, 476.0125 MHz, 476.0625 MHz, 479.0125 MHz, 479.0625 MHz, 479.2375 MHz, and 479.2875 MHz under Call Sign WPPB311, Bernards Township, New Jersey. Somerset seeks to modify its license to use these frequencies at additional locations throughout the County, and to add frequencies 479.0875 MHz and 479.1125 MHz.

Somerset states that it currently maintains an antiquated public safety communications system consisting of a mixture of different frequency bands, requiring the use of several different types of radio units. Furthermore, some of the channels are licensed to local public safety agencies, not Somerset County. Somerset contends that this situation has made it difficult to coordinate public safety efforts, and has prevented effective interoperability. Somerset states that its current radio facilities are not able to handle voice and data public safety communications during routine dispatch calls or heightened emergency situations. Somerset also states that its current system suffers from dead spots and inadequate building penetration. Finally, Somerset avers that its current system is severely limited by potential interference from adjacent and co-channel users in the New York and Philadelphia urbanized areas.

Somerset proposes to use the Part 22 channels for its state-of-the-art, trunked, UHF, public safety radio communications system to coordinate police, fire, emergency medical, emergency management and related services through a common, interoperable radio communications system. The new system will permit voice (dispatch) and data communications to be operated by all public safety agencies in the county using the same type of radio unit for interoperable communications. Somerset states that it will replace the multiple bands and multiple types of radios that are currently used. Somerset also indicates that the new system will provide portable radio coverage throughout the entire county and an improved countywide paging alerting system for the fire and EMS departments. Finally, Somerset believes that the new system will eliminate dead spots and provide in-building coverage at fire scenes and other emergencies. Upon full conversion by each local public safety agencies, Somerset estimates that over 800 users will be communicating over the proposed system. Somerset contends that it is unable to meet its public safety communications needs by using frequencies in the 30-50 MHz and 150-170 MHz bands. Somerset also anticipates vacating many of its exclusively licensed VHF frequencies upon completion of the new system, and will encourage the local and state agencies that share frequencies with Somerset to vacate those frequencies after they have joined the County system.

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<sup>1</sup> See File Nos. 0001196273 and 0001196472. These applications were originally filed on February 12, 2003 and amended on November 12, 2003.

Somerset requests waivers of Sections 22.7 and 22.653 of the Commission's Rules,<sup>2</sup> and any other Commission rules that are necessary to grant its application, pursuant to Section 337(c) of the Communications Act, as amended.<sup>3</sup> Somerset contends that it meets the five requirements of Section 337(c) of the Communications Act: (1) Somerset alleges that, although it exhaustively has searched for available spectrum to use in its proposed system, the UHF channels for which it is applying appear to be the only viable option. Somerset has determined that all the relevant frequencies in the public safety bands are assigned at locations that would preclude operation by Somerset. (2) Somerset notes that neither the requested channels nor the adjacent channels are assigned to land mobile licensees within seventy-five miles of Somerset County. In its waiver request, Somerset also provides an engineering study to show requisite interference protection to TV stations on Channels 14, 15, and 16. (3) Somerset states that its request is consistent with other public safety entities licensed in the 470-512 MHz band in the Philadelphia and New York regions. (4) The unassigned frequencies at issue were allocated for Part 22 on August 2, 1994, which became effective on January 1, 1995. Therefore, the unassigned frequencies were allocated for their present use more than two years ago. (5) Somerset believes granting of its request will be in the public interest as it will allow otherwise vacant spectrum to be used by Somerset to alleviate spectrum congestion and preserve and promote critical, interoperable communications that protect the safety of life, health, and property. In the alternative to a waiver of Section 337(c), Somerset argues that a waiver is justified under the standards contained in Section 1.925(c)(3) of the Commission's Rules.<sup>4</sup>

Interested parties may file comments on the Waiver Requests on or before January 30, 2004. Parties interested in submitting reply comments must do so on or before February 6, 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 Twelfth Street, S.W., TW-325, Washington, D.C. 20554. A copy of each filing should be sent to (1) Qualex International, Portals II, 445 12<sup>th</sup> Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 863-2893; (2) Tom Eng, Federal Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 Twelfth Street, S.W., Room 3-C425, Washington, D.C. 20554; and (3) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 Twelfth Street, S.W., Room CY-B529, Washington, D.C. 20554.

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<sup>2</sup> 47 C.F.R. §§ 22.7, 22.653.

<sup>3</sup> See 47 U.S.C. § 337(c). Section 337(c) of the Act provides that the Commission must waive any rules necessary to authorize entities providing public safety services to operate on unassigned non-public safety spectrum, if the Commission makes five specific findings:

- 1) public safety spectrum is not immediately available;
- 2) the proposed use will not cause harmful interference to protected spectrum users;
- 3) public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- 4) the unassigned frequencies have been allocated for non-public safety use for more than two years; and
- 5) 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. See 47 U.S.C. § 337(f).

<sup>4</sup> 47 C.F.R. § 1.925(c)(3). Section 1.925(c) provides that a waiver of the Commission's Rules may be granted if it is shown either 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.

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 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, Qualex International, Portals II, 445 12<sup>th</sup> Street, S.W., Room CY-B402, Washington, D.C. 20554, (202) 863-2893, facsimile (202) 863-2898, or via e-mail [qualexint@aol.com](mailto:qualexint@aol.com). 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 (Tel. (202) 418-0019, TTY (202) 418-7233), or via email at [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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