



# PUBLIC NOTICE

Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, D.C. 20554

News Media Information 202 / 418-0500  
Internet: <http://www.fcc.gov>  
TTY: 1-888-835-5322

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## WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY THE COUNTY OF WESTCHESTER, NEW YORK TO ADD TWO UHF PART 22 PAGING FREQUENCIES TO ITS COUNTY-WIDE PUBLIC SAFETY RADIO SYSTEM

Comment Date: July 18, 2005

Reply Date: July 28, 2005

By this *Public Notice*, the Wireless Telecommunications Bureau (Bureau) seeks comment on a waiver request by the County of Westchester, New York (Westchester) to modify its license for Station WQBR539, Yonkers, New York, by adding a frequency pair at Port Chester, New York, consisting of a Part 22 paging control channel and a trunked mobile channel in the 470-512 MHz band. Westchester contends that use of the subject channel is necessary due to the lack of available public safety channels. Specifically, Westchester filed the waiver request and application, FCC File No. 0002107869, on March 31, 2005 to use frequencies designated for paging operations to support the communications requirements of its public safety agencies. The two frequencies are 476.2375 and 479.2375 MHz. Westchester proposes to operate the channels with a bandwidth of 12.5 kHz.

By way of background, Westchester is part of the New York City metropolitan area, located north of the Bronx, and has a population of one million people. On November 29, 2004, the Bureau's Public Safety and Critical Infrastructure Division (Division) released an *Order*<sup>1</sup> waiving Sections 22.7, 22.501, 22.621, 22.651, 90.303, and 90.311 of the Commission's Rules, 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.303, 90.311, pursuant to Section 337(c) of the Communications Act, as amended (the Act), 47 U.S.C. § 337(c), to grant Westchester the authority to utilize ten paging frequencies for public safety communications in southern Westchester County. In its initial waiver request, Westchester explained that it needed a total of six frequency pairs to meet its public safety requirements for its southern county communications system. However, it was able to identify only five available frequency pairs at the time. Westchester is now applying for a sixth frequency pair to complete its southern county system.

Westchester requests waivers of Sections 22.7, 22.501, 22.621, 22.651, 90.303, and 90.311, and any other Commission rules that are necessary to grant its application, pursuant to Section 337(c) of the Act. Section 22.7 of the Commission's Rules sets forth the eligibility requirements for entities in the Public Mobile Services. Section 22.501 defines the scope of the licensing and operation of the public paging and radiotelephone service. 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

<sup>1</sup> County of Westchester, *Order*, 19 FCC Rcd 23189 (WTB PSCID 2004).

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. Section 90.311 provides land mobile users the exact frequency ranges available for assignment, which exclude the frequencies sought by Westchester. Westchester 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.

Westchester 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.

Westchester asserts that the five requirements of Section 337(c) of the Act have been met: (1) In its *Order*, the Division concluded that "no other public safety spectrum is immediately available to satisfy the requested public safety service use." Westchester states that the situation has not changed. (2) The Division found that Westchester's earlier application met the spacing requirements for co-channel and adjacent channel television stations. Because Westchester is again proposing to use TV Channel 15 frequencies, and the situation has not changed since the release of the *Order*, the instant application also meets the TV spacing requirements. The application and waiver request are supported by an analysis which demonstrates interference protection to co-channel licensee County of Somerset, New Jersey. In addition, Westchester has obtained a letter of concurrence from co-channel licensee Syosset, New York Fire District. Finally, Westchester states that it will obtain a letter from the Association of Public Safety Communications Officials International, Inc. (APCO) certifying that Westchester's proposed use will not interfere with other incumbent licensees and pending applicants. (3) As was the case in its earlier application, Westchester is proposing to use a frequency pair located in TV Channel 15. Not only will this use be consistent with other public safety use in the New York metropolitan area, but the use of frequency pair 476/479.2375 MHz will be consistent with the frequencies already granted to Westchester. (4) The unassigned frequencies at issue were allocated for Part 22 paging and radiotelephone service for more than two years ago. (5) In the *Order*, the Division noted that "[G]ranteeing the applications 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 fire departments, police departments, emergency medical services corps, and hospitals in Westchester County. 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." Since grant of the instant application will provide Westchester with the sixth frequency pair that is needed, the public interest would be served by grant of the waiver request.

Interested parties may file comments on the Waiver Request on or before July 18, 2005. Parties interested in submitting reply comments must do so on or before July 28, 2005. 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. 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](mailto: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](mailto:Thomas.Eng@fcc.gov).

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

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