



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

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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 CITY OF CHICAGO, ILLINOIS TO UTILIZE UHF PAGING
CONTROL FREQUENCIES AND REQUEST FOR WAIVER OF TV PROTECTION CRITERIA**

Comment Date: December 29, 2005

Reply Date: January 9, 2006

By this *Public Notice*, the Wireless Telecommunications Bureau ("the Bureau") seeks comment on a waiver request by the City of Chicago, Illinois ("the City"), which seeks to modify the license for its public safety radio communications system, Call Sign WPSG985, to authorize use of twenty-six unassigned Part 22 paging control frequencies in the 470-512 MHz band, and requests a waiver of the Commission's television (TV) station protection criteria for these frequencies and fourteen other land mobile frequencies in the 470-512 MHz band. See FCC File No. 0002136559 (filed April 25, 2005, amended April 27, 2005, August 2, 2005, and August 17, 2005).

By way of background, Chicago has a permanent resident population of three million people, with a transient population of commuters, tourists, and business travelers increasing the total to over four million daily. Due to unmanageable congestion of the current radio system consisting of sixteen frequency pairs, the City is in the process of implementing a multi-year plan to add capacity to its existing wireless communications network. Population growth and the additional demands placed on the City's emergency services organizations by post-9/11 security concerns have further prompted the City to seek additional spectrum.

The City contends that use of the requested channels is necessary due to the insufficient availability of public safety channels. To fulfill its needs, the City determined that a minimum of twenty additional frequency pairs are required. According to the City, it performed an exhaustive frequency search and monitored every proposed channel to determine their suitability. The City came to the conclusion that insufficient channels are available in the frequency bands designated for public safety land mobile use. The City found twenty available frequency pairs in the UHF television band (470-512 MHz). Seven of the pairs are allotted for Part 90 land mobile use. The other thirteen pairs are allotted for Part 22 paging use.

The City requests waivers of Sections 22.501, 22.621, 90.303, 90.307, and 90.309 of the Commission's Rules, 47 C.F.R. §§ 22.501, 22.621, 90.303, 90.307, 90.309 and any other Commission rules that are necessary to grant its application, pursuant to Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, or in the alternative, Section 337(c) of the Communications Act, as amended (the Act), 47 U.S.C. § 337(c). Section 22.501 defines the scope of the licensing and operation of the Public Paging and Radiotelephone Service. Section 22.621 of the Commission's Rules sets forth frequencies, some of which are in the 470-512 MHz band, that are available for point-to-multipoint systems. Section 90.303 of

the Commission's 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 Chicago urbanized area. The City seeks a waiver of the Commission's Rules to use spectrum designated for Part 22 paging operations because insufficient Part 90 land mobile radio spectrum is available. Sections 90.307 and 90.309 of the Commission's Rules set forth protection criteria of TV stations in the 470-512 MHz band.

The City states that a grant of its waiver request would be consistent with Section 1.925 of the Commission's Rules. According to Section 1.925 of our rules, a request for a rule waiver 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.

In the alternative, the City 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.

Interested parties may file comments on the waiver request on or before December 29, 2005. Parties interested in submitting reply comments must do so on or before January 9, 2006. 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. 20554.¹

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

¹ This address 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 at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. 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. 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).

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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