



PUBLIC NOTICE

Federal Communications Commission
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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON APPLICATIONS AND WAIVER REQUESTS OF THE COUNTY OF BERGEN, NEW JERSEY AND THE ATTORNEY GENERAL'S OFFICE OF THE STATE OF NEW JERSEY

Comment Date: March 22, 2005

Reply Date: March 29, 2005

By this *Public Notice*, the Wireless Telecommunications Bureau (Bureau) seeks comment on applications and waiver requests filed by the County of Bergen, New Jersey (Bergen) and the Attorney General's Office of the State of New Jersey's (New Jersey) to operate wide-area public safety radio communications systems in the New York metropolitan area on four Part 22 paging control and trunked mobile channels in the 470-512 MHz band. As described below, both applications expand the calculated composite service contours of sites previously authorized or placed on public notice.

On August 10, 2004, the Bureau's Public Safety and Critical Infrastructure Division released an *Order*¹ granting a waiver request associated with Bergen's initial application, FCC File No. 0001687496, as well as applications of other public safety entities in the New York metropolitan area, to utilize Part 22 paging control and trunked mobile frequencies for public safety communications pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 337(c). Pursuant to that *Order*, the Commission authorized both Bergen and the Melville, New York, Fire District (Melville) to use frequency pair 470/473.2375 MHz. On August 27, 2004, New Jersey filed an application, FCC File No. 0001855193, and a waiver request to use other Part 22 channels, including 470/473.1625 MHz, for a wide-area public safety communications systems pursuant to Section 337(c) of the Act. The Bureau sought comment on New Jersey's application and waiver request on November 17, 2004. Melville filed comments opposing New Jersey's proposed use of frequency pair 470/473.1625 MHz because Melville is licensed on that channel pursuant to the Division's *Order*.

On February 23, 2005, Melville filed an application, FCC File No. 0002058180, to delete frequency pair 470/473.2375 MHz from its license. Also on that date, New Jersey filed an amendment to FCC File No. 0001855193 to delete several locations on frequency pair 470/473.1625 MHz, and to request the use of frequency pair 470/473.1625 MHz at new locations, which are currently reflected in Bergen's authorization. In addition, Bergen filed a modification application, FCC File No. 0002058421, seeking to expand its use of frequency pair 470/473.2375 MHz by adding locations currently reflected in New Jersey's application. Bergen and New Jersey state that they contemplate sharing facilities and channels pursuant to Section 90.179 of the Commission's Rules, 47 C.F.R. § 90.179.

¹ Seven Public Safety Agencies in the New York Metropolitan Area, *Order*, 19 FCC Rcd 15355 (WTB PSCID 2004).

Bergen and New Jersey seek expanded access to Part 22 frequencies because the UHF band has no other resources in the New York metropolitan area. Through currently pending or previously filed waiver requests, the agencies request waivers of 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, and 90.311, 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 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 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. Section 90.311 provides land mobile users the exact frequency ranges available for assignment, which exclude the frequencies sought by Bergen and New Jersey.

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.

Interested parties may file comments on the Waiver Request on or before **March 22, 2005**. Parties interested in submitting reply comments must do so on or before **March 29, 2005**. All comments should reference the subject waiver requests 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. 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-C306, 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 requests can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. The full text of the waiver requests, 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, 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 these applications, 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 these proceedings on persons not parties to waiver requests, we believe it would be in the public interest to treat these cases as permit-but-disclose proceedings 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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