



PUBLIC NOTICE

Federal Communications Commission
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**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST
FOR WAIVER FILED BY THE COUNTY OF WESTCHESTER, NEW YORK
TO USE TWO FREQUENCIES INTERLEAVED BETWEEN THE PART 22 AND PART 90
ALLOCATIONS FOR PUBLIC SAFETY COMMUNICATIONS**

File No. 0003567288

Comment Date: April 17, 2009

Reply Comment Date: April 27, 2009

The Public Safety and Homeland Security Bureau seeks comment on the above-captioned application and waiver request, as amended, filed on September 3, 2008, by the County of Westchester, New York (“Westchester” or “the County”).¹ Westchester seeks waiver relief pursuant to Section 337(c) of the Communications Act of 1934, as amended (“the Act”), 47 U.S.C. § 337(c), to use, for public safety communications purposes, two frequencies interleaved between the allocations in Part 22 and Part 90 of the Commission’s rules.² In the alternative, Westchester requests waiver relief pursuant to Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925.³ Specifically, the County requests frequencies 476.3000 and 479.3000 MHz.

The County currently operates on several frequency pairs from the Part 22 spectrum allocation in the 470-512 MHz band under call sign WQBR539. The Wireless Telecommunications Bureau authorized use of Westchester’s current channels by waivers granted in 2004 and 2005 pursuant to Section 337(c) of the Act.⁴ Westchester states that the previous waiver requests “documented the severe frequency

¹ See File Nos. 0003567288 (filed Sept. 3, 2008, amended Sept. 24, 2008) and Request of Waiver of Sections 22.621, 22.651, 20.9(a)(6), 90.303 and 90.311 of the FCC Rules and Regulations Under Section 337(c) of the Communications Act of 1934, as Amended (Waiver Request).

² See Waiver Request at 5-6.

³ See *id.* at 6.

⁴ See County of Westchester, *Order*, 20 FCC Rcd 18852 (WTB PSCID 2005) (*2005 Order*) (granting a modification application for Station WQBR539, Yonkers, New York, pursuant to Section 337(c) of the Act); County of Westchester, *Order*, 19 FCC Rcd 23189 (WTB PSCID 2004) (*2004 Order*) (granting an application for five Part 22 paging channel pairs pursuant to Section 337(c) of the Act) (collectively, the *Westchester Orders*). Delegated authority for handling all matters pertaining to the licensing and regulation of public safety wireless telecommunications has been transferred from the Wireless Telecommunications Bureau to the Public Safety and Homeland Security Bureau. See Establishment of the Public Safety and Homeland Security Bureau, *Order*, 21 FCC Rcd 10867 (2006).

congestion in the New York and New Jersey areas.”⁵ According to the instant waiver request, Westchester asserts that “[t]he frequency congestion situation has not improved,” and “the congestion is even worse today.”⁶ The County argues that “[n]othing has changed to negate the Commission’s previous findings” in the *Westchester Orders* that the County met all five prongs of Section 337(c) of the Act.⁷ Westchester states that “[t]he requested channels will improve radio service to first responders in Westchester County without causing unacceptable interference to other incumbent licensees.”⁸ Therefore, Westchester “requests that the Commission grant waivers of Sections 22.621, 22.651, 20.9(a)(6), 90.303, 90.311, and any other necessary sections of the FCC Rules and Regulations” to allow it to use the requested frequencies.⁹

The requested frequencies are considered interleaved because they are adjacent to assignable frequencies under both Part 22 and Part 90, but they are not assignable to users under either part. As Westchester describes:

When one looks at the channel allocations for New York in television channel 15, Part 22 operations are authorized in 476/479.0000 to 476/479.3000 MHz. More specifically, Section 22.621 authorizes the highest channel in the 476 MHz range as 476.2875 MHz with a bandwidth of 20 kHz. The channel can be used for point to multi-point operations.¹⁰ Similarly, Section 22.651 authorizes 479.2875 MHz as the highest trunking channel in the 479 MHz range with an authorized bandwidth of 20 kHz.¹¹ Private land mobile operations are authorized in 476/479.3000 to 479/482.0000 MHz. Actual private land mobile channels are between 476/479.30625 MHz and 478/481.99375 MHz, under Section 90.311(a).¹² This allocation scheme eliminates licensing 476/479.3000 MHz in for either Part 22 or Part 90 use. . . . [T]he channel can be license[d] in Westchester County, at 12.5 kHz bandwidth, without causing interference to any Part 22 or Part 90 licensee.¹³

As a part of the analysis under Section 337(c) of the Act, as well as the Commission’s waiver criteria, we also seek comment on whether the 700 MHz public safety band would provide a viable

⁵ Waiver Request at 2. *See also* File Nos. 0001801202 and 0002107869.

⁶ Waiver Request at 2.

⁷ *Id.* at 6.

⁸ *Id.*

⁹ *Id.* at 6-7. *See also* 47 C.F.R. §§ 22.621, 22.651, 20.9(a)(6), 90.303, 90.311.

¹⁰ 47 C.F.R. § 22.621 (citation in original).

¹¹ 47 C.F.R. § 22.651 (citation in original).

¹² 47 C.F.R. § 90.311(a) (citation in original).

¹³ Waiver Request at 2-3.

alternative, particularly in light of the approaching June 12, 2009 digital television transition date,¹⁴ and the Commission's recent actions in facilitating a nationwide, interoperable public safety network.¹⁵

Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this *Public Notice*. All comments and reply comments should reference the subject Waiver Request and the DA number indicated on this *Public Notice*. Comments may be filed: (1) electronically by accessing the applicant's file number(s) in the Commission's Universal Service Licensing System (ULS),¹⁶ or (2) by filing paper copies.

- Electronic Filers: Pleadings may be submitted electronically as follows:

From the ULS website at <http://wireless.fcc.gov/uls/>, begin the process of submitting a pleading by clicking on the "ULS Pleadings" link in the menu on the lower left side of the ULS web page. The link will take you to the "*Pleading Information*" screen for "Non-docketed Pleadings" where you select "Reply" in the drop-down window for the type of pleading and then enter the pleadings filer information. Completion of the contact information is optional. Upon completion of this screen, please note the instructions for the filing: "*Pleadings must be dated and must include a signature, in this instance an electronic signature, and the address and phone number of the signing party.*"¹⁷ Click on "CONTINUE".

The second step is to complete the *File Numbers/Call Signs* screen. Click if the pleading pertains to a File Number or Call Sign and enter the File Number or Call Sign. Please note that you must enter a File Number or Call Sign to continue. If the pleading pertains to multiple applications or licenses, you must enter each File Number or Call Sign as appropriate. After clicking the "SUBMIT" button, the screen will update to show all the File Numbers/Call Signs associated with the pleading. At this time, you may delete selected File Numbers/Call Signs from the page before continuing.

The third step is to complete the *Attach File* screen to attach the pleading document. Use the drop down box to select Pleading or Confidential Pleading. The "BROWSE" button opens a file upload window where you will locate and select your pleading file. The Description field allows you to enter a brief description for the pleading. Click the "ADD ATTACHMENT" button to upload your pleading. You may submit up to thirty files for each pleading but each file must be smaller than 10 MB in size. You also have the opportunity to delete any selected file from the pleading.

¹⁴ In the DTV Delay Act that was enacted on February 11, 2009, Congress extended the date for the completion of the nationwide DTV transition from February 17, 2009 to June 12, 2009. See DTV Delay Act, Pub. L. No. 111-4, 123 Stat. 112 (2009). Accordingly, subject to the DTV Delay Act, the Commission extended the analog license terms and adjusted the construction permits for the full power television stations on February 13, 2009. See Implementation of the DTV Delay Act, *Report and Order and Sua Sponte Order on Reconsideration*, MB Docket No. 09-17, 24 FCC Rcd 1607 (2009).

¹⁵ See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229; Development of Operational, Technical and Spectrum Requirements for Meeting Federal State and Local Public Safety Communications Requirements through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007).

¹⁶ See "Wireless Telecommunications Bureau Enhances the Commission's Universal Licensing System to Implement Electronic Filing for Pleadings," *Public Notice*, 21 FCC Rcd 424 (WTB 2006). See http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-06-125A1.pdf.

¹⁷ See 47 C.F.R. Part 1.

Finally, to complete your electronic pleading submission, click on the “SUBMIT PLEADING” button and the *Confirmation* screen will be displayed. The *Confirmation* screen will display your Confirmation Number as well as your entered pleadings information. You may print this page for your records by selecting the Print Page link at the top of the page and have the option of submitting another pleading or returning to the ULS website by selecting a link at the bottom of the page.

The ULS Application and License Search results will display pleadings under the ADMIN tab when a comment or reply comment has been filed. Users can view the pleading by clicking on the link for the specific comment or reply comment in the Description field. The general public will not be able to view confidential pleadings.

For additional information or assistance on how to file a comment or reply comment or other relevant pleading, you may visit the Web at <http://esupport.fcc.gov>. You may also call the FCC ULS Customer Support Center at (877) 480-3201 and select option 2, or (888) 225-5322 and select Option 2, or (717) 338-2888. For TTY, please call (717) 338-2824. Assistance from the FCC ULS Customer Support Center is available between the hours of 8 a.m. to 6:00 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all telephone calls to FCC ULS Customer Support Center are recorded.

- Paper Filers: Parties who choose to file by paper must submit an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission’s Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission’s contractor will receive hand-delivered or messenger-delivered paper filings for the Commission’s Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, DC 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 the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

The application(s), waiver request, and comments and reply comments 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, DC 20554. Copies may be purchased from the Commission’s duplicating contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, S.W., Room CY-B402, Washington, DC 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 this waiver request, contact Lisa Williams, RIC, (202) 418-1352.

Because of the policy implications and potential impact of this proceeding on persons not party to the Application, it is in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. See Sections 1.1200(a) and 1.1206 of the Commission's rules, 47 C.F.R. §§ 1.1200(a) and 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).

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

For further information, contact Mr. David Siehl of the Policy Division, Public Safety and Homeland Security Bureau at (202) 418-1313 (voice), (202) 418-7233 (tty), or via e-mail to David.Siehl@fcc.gov.

By the Deputy Chief, Public Safety and Homeland Security Bureau.

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