



PUBLIC NOTICE

Federal Communications Commission
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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY THE STATE OF WISCONSIN

File No. 0002917799

Comment Date: April 10, 2009

Reply Comment Date: April 17, 2009

The Public Safety and Homeland Security Bureau seeks comment on the application and waiver request, as amended, filed on February 20, 2007, by the State of Wisconsin (Wisconsin).¹ Wisconsin 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 unassigned Part 22² Paging and Radiotelephone Channel Block FL³ in a portion of Basic Economic Area (BEA) 109 for public safety communications. In the alternative, Wisconsin requests waiver relief pursuant to Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925.

Section 20.9(a)(6) states that Part 22 Paging and Radiotelephone Services shall be treated as commercial radio services.⁴ Because the Commission has not designated Part 22 Channel Block FL for public safety use, Wisconsin requests waiver of Section 20.9(a)(6).⁵ In addition, to the extent Wisconsin seeks to use the frequencies "only for internal, public safety purposes,"⁶ it requires waiver of Section 22.561.⁷ This rule allocates the requested frequencies for paired assignment to transmitters that provide (or support transmitters that provide) one-way or two-way public land mobile service.⁸

¹ See File No. 0002917799 (filed Feb. 20, 2007, amended July 10, 2007 and Sept. 4, 2007) and accompanying Waiver Request, amended July 10, 2007 (Waiver Request).

² 47 C.F.R. Part 22.

³ Channel Block FL, paired frequencies 152.63/157.89 MHz, is allocated for paired assignment to transmitters that provide one-way or two-way public land mobile service under a paging geographic authorization. See 47 C.F.R. § 22.561. Channel Block FL is unassigned. The Commission offered Channel Block FL in Auctions 40 and 48, but it drew no bids in either auction. See Lower and Upper Paging Bands Auction Closes, *Public Notice*, 16 FCC Rcd 21821 (2001); Lower and Upper Paging Bands Auction Closes, *Public Notice*, 18 FCC Rcd 11154 (2003).

⁴ See 47 C.F.R. § 20.9(a)(6).

⁵ See Waiver Request at 2, Exhibit A.

⁶ *Id.*

⁷ 47 C.F.R. § 22.561.

⁸ See *id.*

Wisconsin seeks to “upgrade a significantly limited and aging radio communications system.”⁹ According to Wisconsin, its current system suffers equipment failure, “preclude[s] network enhancements required to accommodate the expanding need for both voice and data communications,” and poses interoperability issues.¹⁰ Wisconsin states that the upgraded system “will greatly increase capacity, fill in coverage gaps, facilitate interoperability, provide mobile data capabilities, and offer seamless, wide-area roaming capabilities.”¹¹ Wisconsin further states that the upgraded system will “support the advanced communications needed for homeland security purposes and will enhance the ability to support first responder personnel.”¹²

Wisconsin states that in order to upgrade its existing communication system, it has conducted an assessment of current spectrum resources, including an evaluation of “a number of frequency bands (VHF, 700, 800) for their adaptability and acceptability.”¹³ Based on its analysis, Wisconsin concludes that “[t]he only band that could provide an acceptable level of coverage throughout the state was the VHF band.”¹⁴ Wisconsin further states that it “thoroughly searched the availability of VHF spectrum allocated under Part 90 within its jurisdiction.”¹⁵ However, Wisconsin states it was not able to obtain licenses for the use of these channels at many of its proposed sites across the state because of “coordination conflicts relating to radio interference.”¹⁶ Accordingly, Wisconsin states it conducted a search of other VHF spectrum available and concluded that “channels allocated under the Part 22 VHF Paging and Radiotelephone band would meet its channel requirements.”¹⁷

As noted, Wisconsin asserts that it has evaluated other bands including the 700 MHz band and concluded that they would not provide an acceptable level of coverage throughout the state.¹⁸ However, 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 alternative, particularly in light of the approaching June 12, 2009 digital television transition date,¹⁹ and the Commission’s recent actions in facilitating a nationwide, interoperable public safety network.²⁰

⁹ Waiver Request at 3, Exhibit A.

¹⁰ *Id.*

¹¹ *Id.*

¹² *Id.*

¹³ *Id.*

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.* at 3-4.

¹⁷ *Id.* at 4.

¹⁸ *Id.* at 3.

¹⁹ 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).

²⁰ *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

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),²¹ 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.*"²² 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.

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

and Local Public Safety Communications Requirements through the Year 2010, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007).

²¹ 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.

²² See 47 C.F.R. Part 1.

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.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 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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