



PUBLIC NOTICE

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

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

DA 10-1227

Released: June 29, 2010

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST
FOR WAIVER FILED BY THE COUNTY OF WESTCHESTER, NEW YORK
SEEKING MAJOR MODIFICATIONS OF ITS PUBLIC SAFETY COMMUNICATIONS
SYSTEM OPERATING ON SPECTRUM ALLOCATED UNDER PART 22**

File No. 0003046341

Comment Date: July 23, 2010

Reply Comment Date: August 2, 2010

The Public Safety and Homeland Security Bureau (Bureau) seeks comment on the above-captioned application and waiver request, as amended, filed on May 30, 2007, 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”),² to modify its public safety communications system authorized under call sign WQBR539, which currently operates on several frequency pairs within frequency ranges designated for use in the Part 22 Paging and Radiotelephone Service in the 470-512 MHz band.³ Although Westchester seeks no new frequencies in this application, Westchester proposes to increase transmitter power and base station antenna heights and adjust certain base station coordinates.⁴ In the alternative, Westchester requests waiver relief pursuant to Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925.⁵

The Wireless Telecommunications Bureau authorized use of Westchester’s current channels under call sign WQBR539 by waivers granted in 2004 and 2005 pursuant to Section 337(c) of the Act.⁶

¹ See File No. 0003046341 (filed May 30, 2007) (Application) and attachment entitled “Request of Waiver of Sections 22.7, 22.501, 22.621, 22.651, 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 47 U.S.C. § 337(c).

³ See Waiver Request at 1.

⁴ See Application.

⁵ See *id.* at 7.

⁶ 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). 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).

Westchester states that the previous waiver requests “documented the severe frequency congestion in the New York and New Jersey areas.”⁷ According to the instant waiver request, Westchester asserts that “[t]he frequency congestion situation has not improved,” and “the congestion is even worse today.”⁸ 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.⁹ Westchester contends that the proposed modifications “will improve radio service to first responders in Westchester County without causing unacceptable interference to other incumbent licensees.”¹⁰ Westchester “requests that the Commission grant waivers of Sections 22.7, 22.501, 22.621, 22.651, 90.303 and 90.311, and any other necessary sections of the FCC Rules and Regulations” to allow it to make the proposed modifications.¹¹ Generally, we note that public safety entities that apply for Part 22 T Band spectrum require waiver of Section 20.9(a)(6) in lieu of Sections 22.7 and 22.501.¹²

Westchester seeks the following modifications: (a) increase effective radiated power (ERP) levels and antenna heights above average terrain (HAAT) at three base stations on frequencies 476.0750, 476.1125, 476.2125, and 476.2375 MHz as illustrated in the table below;

Location Information	Existing ERP	Proposed ERP	Existing HAAT	Proposed HAAT
Location 1 – Yonkers	100 w	242.5 w	65.6 m	78.4 m
Location 2 – Port Chester	45 w	385.7 w	25.5 m	33.7 m
Location 3 – Valhalla	100 w	282.7 w	92.9 m	151.4 m

(b) increase mobile ERP from 25 watts to 106.9 watts, and authorize such mobile units on all of its frequencies, including the lower side of every frequency pair; and (c) make “*de minimis*” changes to the coordinates and ground elevation of Locations 1 and 2.¹³ The changes would increase Westchester’s composite interference contours on spectrum allocated for the Part 22 Paging and Radiotelephone Service. On February 8, 2007, the Bureau granted Westchester a Special Temporary Authority (STA) under call sign WQGJ890 with identical parameters to the proposed modifications contained in the instant application. Westchester continues to operate the STA through periodic renewals.

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 since the digital television transition date has passed, and in light of the Commission’s actions facilitating a nationwide, interoperable public safety network.¹⁴ Would

⁷ Waiver Request at 2. *See also* File Nos. 0001801202 and 0002107869.

⁸ Waiver Request at 2.

⁹ *Id.* at 6.

¹⁰ *Id.* at 7.

¹¹ *Id.* *See also* 47 C.F.R. §§ 22.7, 22.501, 22.621, 22.651, 90.303 and 90.311.

¹² *See, e.g.,* County of Westchester, New York, *Order*, 22 FCC Rcd 19872, 19873 ¶ 2 (PSHSB PD 2007) (making the determination that Westchester requires waiver of Section 20.9(a)(6)). This order does not affect Station WQBR539 and thus is not referenced in n.6 *supra*. *See also* 47 C.F.R. § 20.9(a)(6).

¹³ *See* Waiver Request at 2.

¹⁴ *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). *See also* Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 14301 (2008); *Second Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8047 (2008).

Westchester be able to improve interoperability by using frequencies in the 700 MHz public safety band, rather than using the television T band frequencies?

We further note that the Commission requires private land mobile radio licensees in 150-174 MHz and 450-512 MHz to transition from 25 kHz to 12.5 kHz technology by no later than January 1, 2013,¹⁵ and that Westchester holds several licenses in these frequency ranges. All Westchester's licenses have narrowband (11.25 kHz bandwidth or less) emission designators.¹⁶ We seek comment on whether the Commission should consider the applicant's current progress in achieving this requirement or other measures of spectrum efficiency when determining whether or not the public interest supports the instant waiver request pursuant to rule Section 1.925.

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),¹⁷ 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.*"¹⁸ 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.

¹⁵ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, WT Docket No. 99-87, RM-9332, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, 19 FCC Rcd 25045 (2004). See also 47 C.F.R. §§ 90.209(b)(5)-(6).

¹⁶ See, e.g., licenses for call signs WPVA646, WQBR539, WQGX407.

¹⁷ 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.

¹⁸ See 47 C.F.R. Part 1.

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 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.

- Effective December 28, 2009, all hand-delivered or messenger-delivered paper filings for the Commission’s Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building. The filing hours at this location are 8:00 a.m. to 7:00 p.m. **PLEASE NOTE:** The Commission’s former filing location at 236 Massachusetts Avenue, NE is permanently closed.
- 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.

- FCC -