



PUBLIC NOTICE

Federal Communications Commission
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DA 10-1277

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**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST
FOR WAIVER FILED BY THE WEST VIRGINIA DEPARTMENT OF HEALTH AND HUMAN
RESOURCES/STATE TRAUMA EMERGENCY CARE SYSTEM OF THE ELIGIBILITY
REQUIREMENTS IN SECTION 90.33 TO USE INDUSTRIAL/BUSINESS POOL FREQUENCIES**

**File Nos. Nos. 0003970835; 0003970845; 0003970965; 0003970968; 0003970971; 0003970976;
0003970979; 0003970983; 0003970984; 0003970985; 0003977301; 0003993361; 0003993598;
0003996650; 0003996837; and 0003996931**

Comment Date: July 28, 2010

Reply Comment Date: August 9, 2010

The Public Safety and Homeland Security Bureau seeks comment on sixteen applications and an associated waiver request filed by the West Virginia Department of Health and Human Resources/State Trauma Emergency Care System (“WVDH”).¹ WVDH seeks a waiver, pursuant to Section 1.925 of the Commission’s rules,² of the eligibility requirements in Section 90.33, and such other Commission rules as may be necessary, to use various Industrial/Business (I/B) Pool frequencies in the UHF band for public safety communications.³

WVDH currently operates a state-wide microwave network and transmitter sites that provides support for the West Virginia Interoperable Radio Project (“WVIRP”), a state-wide interoperable radio network comprised of a UHF digital Project 25-compliant, trunked radio system.⁴ According to WVDH, “there are approximately 7,332 radios operating on the system, from 530 different agencies, using 49 transmitter sites across the state with 25 additional sites that are in the planning and construction phase over the next 24 months.”⁵ In addition, according to WVDH, “[s]ince implementation in 2003,

¹ See File Nos. 0003970835 (filed Sept. 22, 2009); 0003970845 (filed Sept. 22, 2009, and amended on April 13, 2010); 0003970965 (filed Sept. 22, 2009); 0003970968 (filed Sept. 22, 2009); 0003970971 (filed Sept. 22, 2009); 0003970976 (filed Sept. 22, 2009); 0003970979 (filed Sept. 22, 2009); 0003970983 (filed Sept. 22, 2009); 0003970984 (filed Sept. 22, 2009); 0003970985 (filed Sept. 22, 2009); 0003977301 (filed Sept. 25, 2009); 0003993361 (filed Oct. 9, 2009); 0003993598 (filed Oct. 9, 2009, and amended on April 30, 2010); 0003996650 (filed Oct. 14, 2009); 0003996837 (filed Nov. 2, 2009); 0003996931 (filed Oct. 14, 2009); and associated “Request For Waiver” (Waiver Request).

² 47 C.F.R. § 1.925.

³ In total, WVDH seeks to use ninety-four I/B Pool frequencies variously at multiple sites across the state of West Virginia. See File Nos. identified in note 1 *supra*.

⁴ See Waiver Request at 1.

⁵ *Id.* at 2.

approximately \$56.8 million of Federal, State and local funding has been invested, with an additional \$20.7 million to be invested over the next 12 – 24 months.”⁶

WVDH indicates that the goal of WVIRP is to “provide at least six channels at each site to ensure adequate capacity for its diverse and expanding base of public safety users.”⁷ According to WVDH, it initially sought to satisfy these capacity requirements through Public Safety Pool frequencies, but was informed by APCO Automated Frequency Coordination, Inc., that there are not enough Public Safety Pool channels available to meet WVDH’s additional capacity needs.⁸ Because there were insufficient Public Safety Pool channels, WVDH worked with PCIA - The Wireless Infrastructure Association (PCIA), an I/B Pool frequency coordinator, to identify unassigned UHF channels that could be used by the WVIRP at the specified sites in the relevant areas of West Virginia, subject to appropriate waivers from the Commission.⁹

WVDH indicates that it did not consider non-UHF frequencies because such frequencies would not satisfy the WVIRP’s system requirements.¹⁰ In this regard, WVDH asserts that there currently is an “extensive, imbedded base of UHF transmitter sites and UHF mobile/portable radios” used on the WVIRP that “would not work on 700/800 MHz channels or on VHF channels.”¹¹ WVDH also argues that the “VHF band [] consists of unpaired channels and therefore would not meet the trunking requirements of the WVIRP,” and that “[i]ntegrating 700/800 MHz into the WVIRP infrastructure would also be a huge technical and financial challenge as the propagation characteristics of 700/800 MHz would be a poor fit for West Virginia’s unique geography.”¹²

WVDH seeks a waiver of Section 90.33 and such other Commission rules as may be necessary, pursuant to Section 1.925.¹³ In this regard, WVDH argues that a grant of its Waiver Request would “facilitate further deployment of a state-wide interoperable public safety radio network covering the unique terrain and remote communities of West Virginia.”¹⁴ WVDH also argues that “[a]pplication of the [I/B Pool channel eligibility restrictions] would also be inequitable, unduly burdensome, and contrary to the public interest as the frequencies in question are not currently assigned in the relevant areas of West Virginia.”¹⁵ Finally, WVDH argues that it has “no reasonable alternative as there are not enough Public Safety Pool channels in the UHF band to meet its requirements, and other frequency bands are not

⁶ *Id.*

⁷ *Id.* at 2-3.

⁸ *See id.* at 3. A copy of the APCO letter was filed with each application.

⁹ *See id.* A letter from PCIA certifying the availability of the I/B Pool channels requested by WVDH was filed with each application. *See, e.g.*, File No. 0003970976, Letter from Don Andrew, Director, Frequency Coordination Services, PCIA, to Wendy Caruthers, Engineering Coordination Specialist, APCO International, Inc. (dated Sept. 15, 2009) (filed on Sept. 22, 2009).

¹⁰ *See id.*

¹¹ *Id.*

¹² *Id.* WVDH asserts, more specifically, that “[s]cores (if not hundreds) of additional sites would be needed to provide 700/800 MHz coverage into the remote, heavily wooded valleys that can be found across the state.” *Id.*

¹³ *See id.* at 4.

¹⁴ *Id.*

¹⁵ *Id.*

compatible with the WVIRP network or the geography of the area to be served.”¹⁶ We seek comment on WVDH’s request.

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. 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

¹⁶ *Id.*

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.

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, 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 these Applications, 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 Munson of the Policy Division, Public Safety and Homeland Security Bureau at (202) 418-2921 (voice), (202) 418-7233 (tty), or via e-mail to David.Munson@fcc.gov.

By the Chief, Public Safety and Homeland Security Bureau.

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