



PUBLIC NOTICE

Federal Communications Commission
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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER FILED BY DALLAS COUNTY SCHOOLS, TEXAS TO OPERATE A NEW PUBLIC SAFETY COMMUNICATION SYSTEM USING PART 22 FREQUENCIES IN THE TELEVISION CHANNEL 16 (482-488 MHZ) BAND

File Nos. 0003823315 and 0003823334

Comment Date: January 29, 2010
Reply Comment Date: February 5, 2010

The Public Safety and Homeland Security Bureau seeks comment on the applications and waiver request, initially filed on April 30, 2009, by the Dallas County Schools, Texas (DCS).¹ DCS 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, frequencies in television (TV) Channel 16 Band (482-488 MHz) allocated for Part 22 point-to-multipoint service.² Specifically, DCS seeks to license “18 channels of 12.5 kHz bandwidth.”³ In the alternative to Section 337(c) of the Act, DCS requests waiver relief pursuant to Section 1.925 of the Commission’s rules, 47 C.F.R. § 1.925.⁴

With respect to its proposed use of the requested Part 22 frequencies, DCS seeks waiver of the following Commission rules, as of the latest amendment:⁵

- Section 20.9(a)(6), which provides that Part 22 frequencies shall be regulated as a commercial mobile radio service,⁶

¹ See File Nos. 0003823315 and 0003823334 (filed April 30, 2009, amended October 6, 2009) and associated attachments “Request for Waiver of Sections 22.7, 22.501, 22.621, 90.305(b), 90.311, and 90.313(c) of the FCC Rules and Regulations Under Section 337(c) of the Communications Act of 1934, as Amended” (Waiver Request), “Dallas County Schools Public Safety and Homeland Security Activities” (DCS PSHS Activities), and “Response to E-mail Request for Additional Information and Request for Waiver of Additional Rule Sections, File Numbers 0003823315 and 0003823334,” (Oct. Amendment).

² See Frequency Information pages on FCC 601 Main Form attached to File Nos. 0003823315 and 0003823334. See also Waiver Request at 3, 5.

³ Waiver Request at 3.

⁴ See *id.* at 4-5, 7.

⁵ See Oct. Amendment at 1-3.

⁶ 47 C.F.R. § 20.9(a)(6).

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- Section 22.377, which requires that all transmitters used in the Public Mobile Services must be certificated for use in the radio services regulated under Part 22;⁷
- Section 22.657(b), which provides that mobile transmitters must not be operated at locations more than 48 kilometers (30 miles) from all associated base stations;⁸
- Section 22.621, which provides that the frequencies are allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service;⁹ and
- Section 22.623(b), which requires that the channels may be assigned in an unpaired configuration only to control base stations in the public mobile service.¹⁰

DCS states that it “is a county school district responsible for the health and safety of over 425,000 students and a team of over 1,700 professionals.”¹¹ In addition, DCS states that it “transports approximately 60,000 students to and from school” and “provides a vital asset to the Dallas County Office of Security and Emergency Management and the State Governor’s Office.”¹² DCS states that it “currently holds two licenses, WPUW404 and WQBQ662, both for UHF channels in the Industrial/Business pool.”¹³ DCS argues that “[a]ll of the eight repeater channels licensed under WPUW404 are shared with numerous other business/industrial users in the Dallas area.”¹⁴ DCS concludes that “this is also true of the mobile-only channel authorized under WQBQ662” and “[a]ll of the channels are subject to interference.”¹⁵ Therefore, “DCS desires to improve the quality of radio communications circuits that are available and to expand overall capacity to accommodate its total communications needs.”¹⁶

DCS “has begun a review of how it will accomplish both its educational and homeland security responsibilities in the future” and has concluded “that the current communications system is woefully inadequate.”¹⁷ Furthermore, to support its request DCS conducted “a review of the UHF spectrum in and around Dallas” and the review “revealed that existing UHF land mobile spectrum that can be licensed under Part 90 is already heavily congested, whether in the business/industrial or public safety pools” and

⁷ 47 C.F.R. § 22.377.

⁸ 47 C.F.R § 22.657(b). Specifically, we seek comment on whether DCS should request Special Temporary Authority (STA) to operate outside its area.

⁹ 47 C.F.R. § 22.621.

¹⁰ 47 C.F.R. § 22.623(b).

¹¹ Waiver Request at 1.

¹² *Id.* See DCS PSHS Activities at 3.

¹³ Waiver Request at 2.

¹⁴ *Id.*

¹⁵ *Id.*

¹⁶ *Id.*

¹⁷ *Id.*

“[t]his led DCS to consider T-Band channels.”¹⁸ DCS states that “[e]ven if channels are available at other public safety bands, the applicant would have to buy all new equipment, as its current equipment operates at UHF” and this “would be prohibitively expensive.”¹⁹ We seek comment on this statement considering that DCS’s two UHF licenses contain only one base station,²⁰ and that DCS would construct twelve new base stations for the new system,²¹ which suggests that DCS would have considerable costs to build the system regardless of which frequency band is used. In particular, we seek comment on how DCS would reuse components of its existing system (*i.e.*, would all the mobile units from the two UHF licenses be used in the proposed system, and are they capable of operating in the T band), and what are the costs of building the system as proposed versus constructing the system in another public safety band where adequate spectrum may be available? If the costs are similar, then is it in the public interest for DCS to build its public safety system using non-public safety spectrum?

DCS reviewed “licensing data for the Part 22 allocation in the Dallas area” and “learned that only very few of the available channels are licensed” and “there are 18 channels of 12.5 kHz bandwidth that could be licensed with no other co-channel users and no overlapping bandwidth with any incumbent common carrier licensee.”²² In addition, DCS maintains that “[i]n all cases, there are no co-channel licenses or 12.5 kHz adjacent channel licensees in the Dallas area,” and therefore, “the use of the channels by DCS will have no impact on any incumbent licensee.”²³

DCS asserts that “public interest will be served by allowing DCS construct the proposed facility” “particularly given its responsibilities for the safety of thousands of school children and its newer responsibilities and part of the state’s homeland security team.”²⁴ Furthermore, DCS states that “[r]eliable communications are essential to DCS being able to perform its mandates” and “[i]nterference and channel blocking are putting the public, and first responders in jeopardy.”²⁵ DCS concludes that “[t]he new system will provide both needed coverage and interoperability between DCS and other public safety agencies.”²⁶

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.²⁷ Would DCS be

¹⁸ *Id.* at 3.

¹⁹ Oct. Amendment at 1.

²⁰ *See* licenses for call signs WPUW404 and WQBQ662.

²¹ *See* File Nos. 0003823315 and 0003823334.

²² Waiver Request at 3.

²³ *Id.*

²⁴ *Id.* at 6.

²⁵ *Id.*

²⁶ *Id.*

²⁷ *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).

able to complete its proposed construction and 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, 2013,²⁸ and that DCS holds two licenses in this range. Station WPUW404 is currently operating in wideband mode, while Station WQBQ662 is operating in narrowband mode. 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 assigning non-public safety spectrum to a public safety entity under either Section 337(c) of the Act or rule Section 1.925?²⁹

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),³⁰ 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.*"³¹ 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.

²⁸ 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, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). See also 47 C.F.R. §§ 90.209(b)(5)-(6).

²⁹ 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, *Third Memorandum Opinion and Order and Third Further Notice of Proposed Rule Making and Order*, WT Docket No. 99-87, RM-9332, 19 FCC Rcd 25045 (2004). See also 47 C.F.R. §§ 90.209(b)(5)-(6).

³⁰ 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.

³¹ See 47 C.F.R. Part 1.

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 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 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 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 Chief, Public Safety and Homeland Security Bureau.

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