



PUBLIC NOTICE

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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON CENTRAL OHIO JOINT FIRE DISTRICT REQUEST FOR WAIVER TO OPERATE VEHICULAR REPEATER UNITS ON A FEDERAL FREQUENCY

Comment Date: September 19, 2012

Reply Comment Date: October 1, 2012

The Public Safety and Homeland Security Bureau seeks comment on the application and waiver request filed on January 10, 2012, by the Central Ohio Joint Fire District (COJFD) to use frequency 172.225 MHz for vehicular repeaters.¹ This frequency is allocated for Federal use, and it is available to state licensees for forest firefighting activities in areas west of the Mississippi River.² COJFD invokes Section 337(c) of the Communications Act of 1934, as amended (the Act) to request waiver of “any applicable FCC rules.”³ COJFD requests this frequency because “the equipment to be used requires a frequency 10 MHz separated from their operational frequencies ... in the 150-160 MHz band.”⁴ The Honorable Bob Gibbs of the U.S. House of Representatives filed a letter in support of COJFD’s application.⁵ However, as we elaborate below, the Forestry Conservation Communications Association (FCCA), the Federal Communications Commission-certified forestry-conservation coordinator for frequency 172.225 MHz, opposes the application.⁶

COJFD serves the Village of Centerburg, Hilliar Township, Liberty Township, Milford Township, and South Bloomfield Township, Ohio.⁷ COJFD covers an area of approximately 128 square

¹ File No. 0005023518 (filed Jan. 10, 2012), attached Request for Waiver (Waiver Request).

² 47 C.F.R. § 90.265(4).

³ 47 U.S.C. § 337(c). *See* Waiver Request at 1.

⁴ *See* Waiver Request at 2. COJFD’s operational frequencies are 154.280, 154.295, and 154.325 MHz under call sign KBL388. *Id.*

⁵ *See* File No. 0005023518, attached letter from The Honorable Bob Gibbs, Congress of the United States, House of Representatives, 18th District, Ohio to Public Safety and Homeland Security Bureau, Federal Communications Commission (dated Feb. 14, 2012).

⁶ *See* File No. 0005023518, attached “Request for Arbitration Between Public Safety Frequency Coordinators,” dated Jan. 5, 2012 (Arbitration Request), and Letter from Russel H. Fox, counsel, Forestry Conservation Communications Association to Public Safety and Homeland Security Bureau, Federal Communications Commission (dated Jan. 18, 2012) (FCCA Petition).

⁷ Waiver Request at 1.

miles and serves approximately 9,000 residents.⁸ COJFD states that having vehicular repeaters “will significantly increase and improve ‘on-scene’ information exchange and interoperability, thus improving fire suppression and safety of life and property operations[,] which is certainly in the public interest.”⁹ COJFD asserts that “staying in this VHF frequency band means firefighters and command personnel only have to carry one hand-held radio to interoperate, rather than multiple radios [if] a different band is utilized.”¹⁰

Frequency 172.225 MHz carries limitations 9 and 49 in the Public Safety Pool Frequency Table.¹¹ COJFD asserts that it satisfies limitation 9, which requires that any request for assignment of frequency 172.225 MHz to non-state licensees be supported by a statement from the State system concerned.¹² COJFD has obtained written support from a state agency, the Ohio Department of Natural Resources, Division of Forestry (DNR),¹³ although it is not authorized on frequency 172.225 MHz because the frequency is available only in areas west of the Mississippi River.¹⁴ DNR states that it “supports the request of COJFD for coordination of activities.”¹⁵

Because COJFD’s firefighting activities would not necessarily be limited to forest firefighting and conservation activities, it appears that COJFD needs waiver of limitation 49 of the Public Safety Pool Frequency Table.¹⁶ COJFD also needs waiver of Section 90.265(c)¹⁷ and subparagraph (4),¹⁸ which limits operation on the frequency to forest firefighting in areas west of the Mississippi River. Section 2.106, footnote US8 of the Table of Frequency Allocations mirrors these rules.¹⁹

⁸ *Id.*

⁹ *Id.* at 2.

¹⁰ *Id.*

¹¹ 47 C.F.R. § 90.20(d)(9), (49).

¹² 47 C.F.R. § 90.20(d)(9). “This frequency is reserved primarily for assignment to state licensees. Assignments to other licensees will be made only where the frequency is required for coordinated operation with the State system to which the frequency is assigned. Any request for such assignment must be supported by a statement from the State system concerned, indicating that the assignment is necessary for coordination of activities.” *Id.*

¹³ See File No. 0005023518, attached letter from Michael W. Bowden, Fire Supervisor, Division of Forestry, Ohio Department of Natural Resources, to Federal Communications Commission (dated Nov. 16, 2011)(DNR Letter).

¹⁴ See 47 C.F.R. § 90.265(c)(4).

¹⁵ DNR Letter at 1.

¹⁶ 47 C.F.R. § 90.20(d)(49). “This frequency may be assigned only for forest firefighting and conservation activities in accordance with the provisions of § 90.265.” *Id.*

¹⁷ 47 C.F.R. § 90.265(c). “The following center frequencies are available for assignment to licensees engaged in forest firefighting and conservation activities, subject to the provisions of this section.” *Id.*

¹⁸ 47 C.F.R. § 90.265(c)(4). “The frequencies 170.425 MHz, 170.575 MHz, 171.475 MHz, 172.225 MHz, and 172.375 MHz will be assigned for use only in areas west of the Mississippi River.” *Id.*

¹⁹ 47 C.F.R. § 2.106 footnote US8. “The use of the frequencies 170.475, 171.425, 171.575, and 172.275 MHz east of the Mississippi River, and 170.425, 170.575, 171.475, 172.225 and 172.375 MHz west of the Mississippi River may be authorized to fixed, land and mobile stations operated by non-Federal forest firefighting agencies. ... The use of any of the foregoing nine frequencies shall be on the condition that no harmful interference will be caused to Government stations.” *Id.*

Finally, COJFD needs a waiver of Section 90.265(c)(6) because the application is not accompanied by a letter of concurrence from the United States Department of Agriculture (USDA).²⁰ We note that on February 3, 2012, COJFD's application passed coordination with the National Telecommunications and Information Administration's (NTIA) Interdepartment Radio Advisory Committee (IRAC), which includes a representative of USDA.²¹

COJFD's frequency coordinator, the Association of Public Safety Communications Officials-International, Inc. (APCO), requested concurrence from the FCCA, but was denied.²² On January 5, 2012, APCO filed a request for arbitration that describes FCCA's reasons for denial of concurrence.²³ APCO states that it "has performed an exhaustive search of available VHF high band frequency resources and cannot recommend a frequency which would be normally available to this applicant, and is compatible with the frequency separation requirements posed by Pyramid Communications, Inc. (Pyramid)." ²⁴ APCO notes that FCCA objected because the Ohio DNR does not have any system authorized on frequency 172.225 MHz; COJFD does not specifically indicate "wildfire suppression" within the statement of eligibility; and FCCA opposed Pyramid's petition for rulemaking²⁵ to use channels with limitation 49 for vehicular repeaters.²⁶ APCO states that DNR's concurrence does not thwart underlying limitation 9; the public interest is served by COJFD's proposed use of a frequency resource that lies fallow; and that COJFD's request should be considered independent of the Pyramid rulemaking.²⁷ Section 90.175(b)(2) of the Commission's rules states that the statement of the specific frequency coordinator shall contain sufficient detail to permit discernment of the technical basis for denial of concurrence, and that concurrence may be denied only when a grant of the underlying application would have a demonstrable, material, adverse effect on safety.²⁸ We seek comment on whether FCCA's denial of concurrence meets this requirement, and whether a grant of COJFD's application would have a demonstrable, material, adverse effect on safety.

²⁰ 47 C.F.R. § 90.265(c)(6). "All applications for use of these frequencies must be accompanied by a letter of concurrence by the United States Department of Agriculture." COJFD has the option to request written concurrence from USDA and amend its application at any time if COJFD wishes to satisfy this rule to the letter.

²¹ See File No. 0005023518. See also <http://www.ntia.doc.gov/page/irac-functions-and-responsibilities> (last visited July 17, 2012).

²² See Waiver Request at 1.

²³ See Arbitration Request at 1.

²⁴ *Id.*

²⁵ In its petition for rulemaking, Pyramid asked the Commission to make certain channels at 170-172 MHz and at 173 MHz available for communication between portable radios and vehicular repeater units. See Modification of Sections 90.20(d)(34) and 90.265 of the Commission's Rules to Facilitate the Use of Vehicular Repeater Units, Petition for Rule Making of the Pyramid Communications, Inc. (filed June 27, 2011, amended Aug. 16, 2011).

²⁶ Arbitration Request at 2. See also RM-11635, Comments in Opposition filed by the Forestry Conservation Communications Association, dated Nov. 3, 2011.

²⁷ Arbitration Request at 2.

²⁸ 47 C.F.R. § 90.715(b)(2).

On January 18, FCCA filed an Informal Request to Deny COJFD's application.²⁹ FCCA cited that Section 90.265(c) makes the frequency available for Federal government use and only secondarily available for non-government use to "licensees directly responsible for the prevention, detection, and suppression of forest fires."³⁰ Next, FCCA noted that COJFD does not meet these criteria, and that COJFD neither seeks a waiver of the rules nor explains why no such waiver is required.³¹ Finally, FCCA observed that COJFD's application lacks a concurrence letter from USDA.³² We seek comment on whether FCCA has sufficient grounds to petition the denial of the instant application and waiver request. In this connection, we note that frequency 172.225 MHz is available for assignment to non-Federal licensees for forest firefighting activities only in areas west of the Mississippi River,³³ and to Federal users east of the Mississippi River.³⁴

On January 25, COJFD filed a response to the FCCA Petition.³⁵ COJFD argues that "a waiver request under Section 337c takes precedence over Part 90 requirements."³⁶ COJFD also argues that DNR relies on COJFD, as the only fire suppression agency in 128 square miles surrounding Centerburg, Ohio, to be the first responding agency in the event of a forest fire in its area.³⁷ COJFD indicates its understanding that its "use of the frequency would be 'secondary' to Federal operations."³⁸

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*. Parties may file statements and replies: (1) electronically by accessing the applicant's file number(s) in the Commission's Universal Service Licensing System (ULS),³⁹ 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

²⁹ See FCCA Petition.

³⁰ FCCA Petition at 1.

³¹ *Id.*

³² *Id.* at 2.

³³ See 47 C.F.R. § 90.265(c)(2), (4).

³⁴ See 47 C.F.R. § 90.265(c)(1), (4).

³⁵ See File No. 0005023518, attached letter from Chief Joseph Porter, Central Ohio Joint Fire District to Public Safety and Homeland Security Bureau, Federal Communications Commission (dated Jan. 25, 2012).

³⁶ *Id.* at 1.

³⁷ See *id.* at 2.

³⁸ *Id.*

³⁹ 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.

“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.*”⁴⁰ 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 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.

⁴⁰ See 47 C.F.R. Part 1.

- 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 and Licensing 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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