

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
STATE OF VERMONT	)	File Nos. 0003628199, 0003628331,
	)	0003628464, 0003628465, and 0003628607
Request For Waiver Pursuant to Section 337(c) of	)	
the Communications Act of 1934, as Amended,	)	
and Section 1.925 of the Commission's Rules	)	

**ORDER**

**Adopted: March 7, 2012**

**Released: March 7, 2012**

By the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

**I. INTRODUCTION**

1. On October 28, 2008, the State of Vermont (Vermont, or the State), filed ten applications, five of which remain pending, and a request for waiver to use certain non-public safety frequencies for public safety communications.<sup>1</sup> Based on the five pending applications, Vermont seeks to use seven frequency pairs from the 450-470 MHz UHF band allocated for assignment under Part 22 of our rules for public land mobile operations.<sup>2</sup> Vermont seeks a waiver pursuant to Section 337(c) of the Communications Act of 1934, as amended (Act),<sup>3</sup> or alternatively, pursuant to Section 1.925 of the Commission's rules.<sup>4</sup> Because these Part 22 frequencies are previously licensed, we deny Vermont's waiver request and dismiss the captioned applications.

<sup>1</sup> See File Nos. 0003628199 (filed Oct. 28, 2008, amended Oct. 29, 2008, Jan. 30, 2009, and Mar. 30, 2009), 0003628331 (filed Oct. 28, 2008, amended Oct. 29, 2008, Jan. 29, 2009, Feb. 20, 2009, and Mar. 30, 2009), 0003628464 (filed Oct. 28, 2008, amended Oct. 29, 2008, Feb. 17, 2009, and Mar. 30, 2009), 0003628465 (filed Oct. 28, 2008, amended Oct. 29, 2008, Jan. 29, 2009, Jan. 30, 2009, Mar. 16, 2009, and Mar. 30, 2009), and 0003628607 (filed Oct. 28, 2008, amended Jan. 29, 2009, Feb. 2, 2009, Mar. 13, 2009, Mar. 30, 2009, and May 29, 2009), and attached Section 337(c) Waiver Request, filed Oct. 28, 2008, amended Jan. 29, 2009 and March 30, 2009 (Waiver Request). The other five applications not included in the caption have been dismissed for procedural reasons or withdrawn. See File Nos. 0003628332 (filed Oct. 28, 2008, amended Oct. 29, 2008, withdrawn Feb. 2, 2009), 0003628333 (filed Oct. 28, 2008, amended Oct. 29, 2008 and Jan. 29, 2009, and Apr. 8, 2009, dismissed Oct. 2, 2010), 0003628604 (filed Oct. 28, 2008, amended Jan. 29, 2009, Jan. 30, 2009, Apr. 8, 2009, and May 7, 2009, and June 30, 2009, dismissed Oct. 3, 2009), 0003628684 (filed Oct. 28, 2008, amended Jan. 29, 2009, Feb. 2, 2009, Mar. 16, 2009, Mar. 30, 2009, May 29, 2009, and July 31, 2009, dismissed Oct. 24, 2009), and 0003628685 (filed Oct. 28, 2008, withdrawn Feb. 2, 2009).

<sup>2</sup> See 47 C.F.R. § 22.561. The three dismissed applications also requested certain frequencies in the 150-160 MHz VHF high band from this rule section. See File Nos. 0003628332, 0003628604, and 0003628684.

<sup>3</sup> 47 U.S.C. § 337(c).

<sup>4</sup> 47 C.F.R. § 1.925.

## II. BACKGROUND

2. Vermont asserts that its public safety agencies operate on different frequency bands and lack interoperability.<sup>5</sup> To address this deficiency and improve overall radio communications, Vermont is seeking to develop a new statewide public safety communications system that would support all public safety users in Vermont, provide statewide communications capability for disaster coordination, and be interoperable with federal users.<sup>6</sup> To provide capacity for the system, Vermont proposes to license VHF high band and UHF frequencies at locations throughout the State.<sup>7</sup> Vermont contends, however, that it requires access to Part 22 frequencies because the capacity requirements of the proposed system “surpass the availability of spectrum designated for public safety use.”<sup>8</sup> Vermont also notes it has limited access to VHF high band or UHF public safety spectrum in the northern portion of the state because these channels are heavily used across the border in Canada.<sup>9</sup>

## III. DISCUSSION

3. Vermont requests access to Part 22 frequencies under Section 337(c) of the Act, which affords public safety entities access to unassigned spectrum not allocated to public safety if the Commission makes certain findings based on criteria specified in the statute.<sup>10</sup> In this case, however, we need not address the statutory criteria because the spectrum at issue is not unassigned as required by Section 337(c)(1).<sup>11</sup> All of Vermont’s requested sites are located in Basic Economic Area (BEA) 004. Although Vermont contends that the requested channels have not been auctioned and are held by the FCC,<sup>12</sup> our review of the record indicates otherwise. All of Vermont’s requested sites are located in Basic Economic Area (BEA) 004, and the Commission’s Universal Licensing System indicates that all of the requested frequencies are assigned to Central Vermont Communications, Inc. in BEA 004. A table of the incumbent licenses is presented below:

Vermont File No.	Frequency Pair	Incumbent Call Sign	Incumbent Licensee Name
0003628199	454.650 / 459.650 MHz	WPZG428	Central Vermont Communications, Inc.
0003628331	454.400 / 459.400 MHz	WPZG436	Central Vermont Communications, Inc.
0003628464	454.075 / 459.075 MHz	WPZG430	Central Vermont Communications, Inc.
0003628465	454.250 / 459.250 MHz	WPZG432	Central Vermont Communications, Inc.

<sup>5</sup> Waiver Request at 5.

<sup>6</sup> *Id.*

<sup>7</sup> *Id.* at 1.

<sup>8</sup> *Id.*

<sup>9</sup> *Id.* at 2.

<sup>10</sup> 47 U.S.C. § 337(c).

<sup>11</sup> 47 U.S.C. § 337(c)(1).

<sup>12</sup> Waiver Request at 4.

0003628465	454.300 / 459.300 MHz	WPZG433	Central Vermont Communications, Inc.
0003628607	454.050 / 459.050 MHz	WPZG429	Central Vermont Communications, Inc.
0003628607	454.550 / 459.550 MHz	WPZG438	Central Vermont Communications, Inc.

4. Because Vermont has failed to meet the requirement that the spectrum it seeks be unassigned, we find that Vermont cannot obtain relief pursuant to Section 337.<sup>13</sup> In addition, we find that in light of the prior licensing of the frequencies at issue, Vermont has not met the standard for waiver relief under Section 1.925. We therefore deny the waiver request and dismiss the captioned applications. We note that nothing in this Order prevents Vermont from seeking use of the subject frequencies by entering into an agreement, consistent with the Commission's rules, with Central Vermont Communications, Inc.

#### IV. ORDERING CLAUSES

5. Accordingly, we DENY the Waiver Request, as amended, associated with the captioned applications filed by the State of Vermont, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, and DENY the captioned applications, consistent with this Order and the Commission's rules.

6. We take this action under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers  
Chief, Policy and Licensing Division  
Public Safety and Homeland Security Bureau

<sup>13</sup> See, e.g., *City of El Segundo, Order*, 19 FCC Rcd 6992, 6995-6 ¶ 8 (WTB PSCID 2004) (“Because El Segundo has failed to satisfy the prerequisite criterion that the spectrum be unassigned, we need not address its arguments regarding the five criteria under Section 337(c)(1) of the Act.”).