

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

In the Matter of)	
)	
SOMERSET COUNTY, NEW JERSEY)	File Nos. 0004598355, 0004598366,
)	0004598374, 0004598382, 0004983388,
Request for Waiver of Sections 20.9(a)(6), 22.651,)	0004993152, 0004994418, 0004994929
90.303, 90.305(a), 90.307(d) and 90.311 of the)	
Commission's Rules)	

ORDER

Adopted: April 4, 2013

Released: April 4, 2013

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

I. INTRODUCTION

1. Somerset County, New Jersey (Somerset or the County) filed four applications for television spectrum and an associated waiver request,¹ and four applications for Part 22 spectrum and an associated waiver request² to use certain UHF television channels³ and an unassigned Part 22 channel in the UHF "T-Band" (470-512 MHz band).⁴ Somerset proposes to add eight new Part 90 frequency pairs, six of which are in the television (TV) Channel 19 band (500-506 MHz),⁵ and one Part 22 frequency,⁶ to its existing licenses. Specifically, Somerset seeks waiver relief, pursuant to Section 1.925 of the

¹ See File No. 0004983388 (filed December 7, 2011, modification of Station WIK392), File No. 0004993152 (filed December 15, 2011, modification of Station WIK355), File No. 0004994418 (filed December 16, 2011, modification of Station WIL900) and File No. 0004994929 (filed December 16, 2011, modification of Station WPVM588). See also associated attachment Request for Waiver (TV Waiver Request), In Support Of Somerset County, NJ, Channel 19 TV Sharing Waiver Request (TV Waiver Support). We note that File Nos. 0004983388, 0004993152, 0004994418, and 0004994929 replaced four applications previously associated with the TV Waiver Request, File Nos. 0004624208, 0004624213, 0004625897, 0004625899 (filed February 22, 2011, amended November 3, 2011 and November 4, 2011), which have been dismissed at the request of Somerset.

² See File No. 0004598355 (filed February 1, 2011); File No. 0004598366 (filed February 1, 2011, modification of Station WPPB311), File No. 0004598374 (filed February 1, 2011, modification of Station WQBL367), and File No. 0004598382 (filed February 1, 2011, modification of Station WQBL360). See also associated attachments Request for Waiver (Part 22 Waiver Request), In Support Of Somerset County, NJ Part 22 UHF Frequency Waiver Request (Part 22 Waiver Support).

³ TV Waiver Request at 1.

⁴ Part 22 Waiver Request at 1.

⁵ The Part 90 frequencies are 477/480.4500, 477/480.7750, 500/503.3250, 500/503.8000, 500/503.9500, 501/504.6750, 502/505.5250, and 502/505.5500 MHz. See File Nos. 0004983388, 0004993152, 0004994418, and 0004994929. Frequencies 477/480.4500 and 477/480.7750 MHz are within the TV Channel 15 band and thus are available to the private land mobile radio service in the New York/Northeast New Jersey urbanized area, where Somerset is located. See 47 C.F.R. §§ 90.303, 90.305(a). The remaining six frequencies are in the TV Channel 19 band and are subject to the TV Waiver Request.

⁶ The Part 22 frequency is 473.1375 MHz. See also File No. 0004598382.

Commission's rules,⁷ to "modify current licenses to adjust parameters, including new directional antenna patterns, and add additional frequencies at new or existing sites that are more than 50 miles (80 kilometers) from Philadelphia"⁸ However, after Somerset filed its applications, a freeze on applications seeking to change frequencies or expand coverage in the T-Band was placed into effect on April 26, 2012.⁹ Accordingly, Somerset amended its applications to also seek waiver of the freeze.¹⁰ For the reasons stated below, we grant both Waiver Requests.

II. BACKGROUND

2. Somerset is located in North Central New Jersey with a population of about 360,000.¹¹ Currently, Somerset "is licensed to operate [on] TV Channel[s] 14, 15 and 19... under the Call Signs WIL900 and WPVM588 in the trunked mode and under WIK355 and WIK392 in the conventional mode."¹² The County's "radio system serves all public-safety and municipal services, including police, fire, EMS, emergency management, roads and bridges, water, sewer, and elder transportation" and "[t]hrough its interoperable capabilities Somerset system participants can communicate on the UHF (450-512 MHz) band with a myriad of state and local agencies."¹³

3. Somerset asserts that "[t]he purpose of this request is to license additional frequencies at new or existing sites and to re-license various, existing channels at new sites using directional antenna patterns, ERP and AGL" and "correcting erroneous site coordinates at some existing sites."¹⁴ Somerset states that "the modifications to the existing licenses do not alter the 'footprint' of coverage beyond that of the current system and would not otherwise create interference."¹⁵

4. Somerset argues that Public Safety Pool channels in the UHF band "are not available to meet the County's requirements, and the additional channels requested can be used without causing interference to existing licensees."¹⁶ With respect to the 700 MHz band, the County states that while some 700 MHz channels are available, these channels "are not compatible with the existing, established county-wide system."¹⁷ Hence, Somerset asserts that the use of 700 MHz would cause "a far greater

⁷ See 47 C.F.R. § 1.925.

⁸ TV Waiver Request at 1. Somerset proposes adding 7 new base stations ranging from 69.806 kilometers to 101.596 kilometers from the Philadelphia, Pennsylvania reference coordinates. Somerset currently operates 12 base stations ranging from 68.380 kilometers to 97.659 kilometers from the Philadelphia, Pennsylvania reference coordinates. See File Nos. 0004983388, 0004993152, 0004994418, and 0004994929.

⁹ Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, 27 FCC Rcd 4218 (WTB/PSHSB 2012) (*Freeze Notice*).

¹⁰ See File Nos. 0004598355, 0004598366, 0004598374, 0004598382, 0004983388, 0004993152, 0004994418, and 0004994929, attachment entitled, Request for Waiver (filed May 02, 2012) (Freeze Waiver Request).

¹¹ TV Waiver Support at 1.

¹² *Id.* See FCC File Nos. 0004994929, 0004994418, 0004983388 and 0004993152: Frequency Tab.

¹³ TV Waiver Support at 1.

¹⁴ Part 22 Waiver Support at 2.

¹⁵ TV Waiver Request at 2.

¹⁶ *Id.* at 1.

¹⁷ *Id.* at 2. Part 22 Waiver Support at 2.

expense and hardship than could be reasonably imposed on any governmental entity and its local funding base.”¹⁸ Somerset also states that it has explored the possibility of adding public safety pool channels in the 450-512 MHz band, but concludes that “no channels [are] available.”¹⁹

5. In support of its four applications for television spectrum, Somerset obtained concurrences from Stations WPPZ550, MIC Talk, Inc.; WPMU674 and WIM582, Northampton County, PA; WIL678, Monmouth County; WQBH754, KEF776 and WPYP906, Southeastern Pennsylvania Transportation Authority; and WQMG213, Home Box Office.²⁰ Somerset also entered into a Memorandum of Understanding with Mountain Broadcasting Corporation, the licensee of television Station WMBC.²¹ The Association of Public-Safety Communications Officials International, Inc., (APCO) an FCC-certified frequency advisor, coordinated Somerset’s Part 90 applications.²² The County also submitted a TSB 88²³ Interference Study and RS6602²⁴ Co-channel and Adjacent Channel Studies and RS6602 System Footprint Study.²⁵

6. On September 6, 2012, the Public Safety and Homeland Security Bureau issued a public notice²⁶ seeking comment on the applications and Waiver Requests. The Enterprise Wireless Alliance filed comments in support of the County’s requests.²⁷

¹⁸ Part 22 Waiver Support at 2.

¹⁹ *Id.* at 2-3. TV Waiver Support at 3.

²⁰ See File Nos. 0004983388, 0004993152, 0004994418, and 0004994929, attachment, Somerset County, NJ, Exhibit D, Letters of Concurrence: Letter from Elizabeth R. Sachs, Lukas, Nace, Gutierrez and Sachs, LLP to Mr. Thomas H. Shuler, Blue Wing Services (April 14, 2010); Letter from Todd K. Weaver, ENP, Deputy Director of Systems, County of Northampton, Department of Administration, to Somerset County NJ, Department of Emergency Management (Sept. 7, 2010); Letter from Shaun Golden, Acting Sheriff, Monmouth County Sheriff’s Office to County of Somerset, NJ Office of Emergency Management (Sept. 1, 2010); Letter from Michael Monastero, Chief Operating Officer, Communications & Signals, Southeastern Pennsylvania Transportation Authority to Mr. Roy Gunzelman, Somerset County, Office of Emergency Management (August 23, 2010); Letter from Rebekah Calabrese, Vice President, Business Initiatives, Home Box Office to Mr. William Stahl, Acting Director, Somerset County Emergency Operations Center (Oct. 25, 2010).

²¹ See File Nos. 0004983388, 0004993152, 0004994418, and 0004994929, Exhibit D at 11, Memorandum of Understanding between the County of Somerset, New Jersey and Mountain Broadcasting Corporation (November 18, 2010) (Memorandum of Understanding).

²² See File Nos. 0004983388, 0004993152, 0004994418, and 0004994929.

²³ Telecommunications Industries Association, TIA Bulletin TSB-88.1-C, Wireless Communications Systems Performance in Noise-Limited Situations, Part 1: Recommended methods for Technology-Independent Performance Modeling.

²⁴ Development of VHF and UHF Propagation Curves for TV and FM Broadcasting, J. Damelin, *et al.*, Federal Communications Commission (1974).

²⁵ *Id.* See associated attachment entitled: Somerset County, NJ Exhibit C TSB88 Interference Study (Technical Analysis Exhibit C). Somerset County, NJ Exhibit B RS6602 Co-Channel and Adjacent Channel Studies and RS6602 System Footprint Study Results Includes Upgraded System Antenna Details and List of Sites To Be Decommissioned.

²⁶ See Public Safety and Homeland Security Bureau Seeks Comment on Request for Waiver Filed By Somerset County, New Jersey to Upgrade its Public Safety Communications System by Modifying its Sites and Adding Frequencies in the Television Channel 19 (500-506 MHz) Band and a Part 22 Frequency, *Public Notice*, 27 FCC Rcd 10907 (PSHSB 2012).

III. DISCUSSION

7. To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest;²⁸ or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.²⁹ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.³⁰ Based on the information before us, we conclude that a grant of the Waiver Requests is warranted.

8. *T-Band Freeze*. As a threshold matter, we note that on April 26, 2012, the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau (Bureaus) issued a public notice announcing a limited suspension of the acceptance and processing of certain applications for Part 22 and Part 90 services operating in the T-Band that could alter the spectrum landscape.³¹ The purpose of this freeze is to stabilize the spectral environment while the Commission considers issues surrounding future use of the T-Band and implementation of the Public Safety Spectrum Act.³² The Bureaus "conclude[d] that prudent spectrum management dictates that we should stabilize the existing spectrum landscape by suspending the acceptance and processing of T-Band licensing applications that could alter the spectrum landscape and thereby make implementing the Act more difficult or costly."³³ Specifically, the Bureaus will not accept or process applications for applications that seek to modify existing licenses by, *inter alia*, adding frequencies, which affects Somerset's applications.³⁴ The *Freeze*

(Continued from previous page) _____

²⁷ File Nos. 0004598355, 0004598366, 0004598374, 0004598382, 0004983388, 0004993152, 0004994418, and 0004994929: Comments of the Enterprise Wireless Alliance, filed September 20, 2012.

²⁸ 47 C.F.R. § 1.925(b)(3)(i).

²⁹ 47 C.F.R. § 1.925(b)(3)(ii).

³⁰ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (citing *Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); Birach Broad. Corp., *Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

³¹ See *Freeze Notice*, *supra* note 9.

³² See *id.* at 1; Pub. L. No. 112-96, 126 Stat. 156 (2012) (Public Safety Spectrum Act). Section 6103 of the Spectrum Act provides that, not later than nine years after the date of enactment, the Commission shall "reallocate the spectrum in the 470-512 MHz band ... currently used by public safety eligibles" *Id.*, § 6103(a). The Act instructs the Commission to "begin a system of competitive bidding under Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for the use of the spectrum." *Id.* It also provides that "relocation of public safety entities from the T-Band Spectrum" shall be completed not later than two years after completion of the system of competitive bidding." *Id.*, § 6103(b), (c). On February 11, 2013, the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau sought comment on implementation of these provisions. See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment On Options for 470-512 MHz (T-Band) Spectrum, *Public Notice*, DA 13-187 (WTB, PSHSB rel. Feb. 11, 2013).

³³ See *Freeze Notice*, *supra* note 9.

³⁴ *Id.* at 2.

Notice provides that applicants may have recourse to the waiver provisions in Section 1.925 to request an exception to the filing and processing freeze.³⁵

9. On May 02, 2012, Somerset filed a request for waiver of the *Freeze Notice*.³⁶ Somerset states that while its “applications include a request for additional T-Band channels, grant of the applications would also lead to a reduction in the coverage contours of the County’s current system, and a net reduction in the number of sites operating in the T-Band.”³⁷ Somerset states that its “system requires a number of upgrades to improve capacity, efficiency and reliability.”³⁸ Somerset asserts that “[i]n some cases, new 12.5 kHz offset channels are requested to avoid co-channel interference with another licensee, the Southeastern Pennsylvania Transportation Authority (SEPTA), which has completed the narrowbanding of its radio system.”³⁹

10. Furthermore, Somerset states that “[a]dditional capacity is also needed to alleviate regular system overloads and to accommodate the many local public safety agencies that have moved, or intend to move, to the County’s multi-agency, interoperable radio system.”⁴⁰ Somerset reiterates that it has no reasonable alternative and argues that “[t]here are no other 450-512 MHz Public Safety Pool channels available, and frequencies from other bands would be incompatible with the County’s existing infrastructure and mobile/portable radios.”⁴¹ Somerset concludes that “the applications do not expand the coverage area” and “the net result of the pending applications is a reduction, rather than an expansion, of the County’s service area.”⁴²

11. Based on the record, we find that Somerset satisfies the Commission’s general waiver standard. We find that grant of the applications would not frustrate the purpose of the *Freeze Notice* and is in the public interest. Somerset’s modifications “do not expand the coverage area of the current licensed radio system” but rather “would actually lead to a *net reduction* in the number of T-Band sites” because even though “two new sites would be added (Bernardsville Tank and Mountain Top), four sites will be deleted (Mt. Horeb, Warrenville Road, Hillsborough, and Pottersville).”⁴³ Somerset states that “[t]he unusual circumstances of the case involve the addition of channels without any net increase in sites or expanded coverage contours” and that the “[a]pplication of the freeze to Somerset’s applications would also be unduly burdensome.”⁴⁴ Furthermore, Somerset states that “a waiver is warranted as the

³⁵ *See id.*

³⁶ *See Freeze Waiver Request.*

³⁷ *Id.* at 1.

³⁸ *Id.*

³⁹ *Id.* at 1-2.

⁴⁰ *Id.* at 2.

⁴¹ *Id.*

⁴² *Id.* at 3.

⁴³ *Id.* (emphasis in original); *cf.* Town of Sandwich, Massachusetts Request for Waiver of Section 90.305(a) of the Commission’s Rules, *Order*, 21 FCC 9173 (2012) (denying a waiver request that would expand the T-Band interference contour); County of Bedford, Pennsylvania, Request for Waiver of Sections 2.106, 90.303, 90.305(a) and 90.311 of the Commission’s Rules, *Order*, 21 FCC 9178 (2012) (denying a waiver request for new T-Band licenses).

⁴⁴ *See Freeze Waiver Request* at 3.

applications would not ‘destabilize the spectral environment’ or ‘make implementing the Act more difficult or costly.’⁴⁵ Somerset’s commitment to delete four sites would also decrease the degree to which the T-Band currently is licensed, which is consistent with the intent of the *Freeze Notice*.⁴⁶ In reaching this decision, we also consider Somerset’s assertion, as supported by its APCO-certified frequency coordination that “the County has no reasonable alternative to the requested channels as there are no other compatible public safety frequencies available for its use.”⁴⁷

12. *Sections 90.303, 90.305(a)*. The TV Channel 19 band is available for private land mobile radio service (PLMRS) entities, including public safety entities, in the Philadelphia, Pennsylvania urbanized area.⁴⁸ Because the proposed frequencies are not available for use by PLMRS entities in the Northern New Jersey area, where Somerset is located, the County seeks a waiver of Section 90.305(a).⁴⁹ This rule provides that base station transmitter sites must be located within 80 kilometers (50 miles) from the geographic center of an urbanized area listed in Section 90.303.⁵⁰ Frequencies in the 500-512 MHz band (TV Channels 19 and 20) are available for assignment to PLMR users with base stations within 50 miles of the City of Philadelphia, Pennsylvania center coordinates.⁵¹ Somerset states that “[t]he underlying purpose of the relevant Part 90 rules is to prevent land mobile radio interference to television broadcasting.”⁵² Somerset asserts that “[i]n order to license certain frequencies at Green Brook, Verizon, Mountain Top and Bernards Township Water Tank sites it is necessary for the Commission to extend its waiver of §90.305 in regard to use of Channel 19 frequencies outside the 50 mile limit imposed by the Rules.”⁵³

13. The Commission established these mileage restrictions to prevent PLMR systems operating in the 470-512 MHz band from interfering with over-the-air reception of television stations operating on TV Channels 14-21.⁵⁴ Somerset, which proposes to operate on television channel 19, entered into a Memorandum of Understanding with Mountain Broadcasting Corporation, the licensee of Station WMBC, Channel 18⁵⁵ regarding potential adjacent channel interference to the reception of WMBC. Moreover, the northern New Jersey area is well-populated with PLMR stations which operate on frequencies within television channel 19 and, as Somerset points out, “other Somerset sites in this area

⁴⁵ *Id.*

⁴⁶ See Freeze Waiver Request at 2. The *Freeze Notice* states that the Bureaus would not process “any other application that could increase the degree to which the 470-512 MHz band currently is licensed.” *Freeze Notice* at 2.

⁴⁷ Freeze Waiver Request at 4.

⁴⁸ See 47 C.F.R. §§ 90.303, 90.305(a).

⁴⁹ See TV Waiver Request at 1.

⁵⁰ See 47 C.F.R. §§ 90.303, 90.305(a).

⁵¹ See 47 C.F.R. § 90.303.

⁵² TV Waiver Request at 2.

⁵³ *Id.* at 3.

⁵⁴ See Further Sharing of the UHF Television Band by Private Land Mobile Radio Services, *Notice of Proposed Rulemaking*, Gen. Docket No. 85-172, 101 F.C.C. 2d 852 (1985).

⁵⁵ See Memorandum of Understanding. Station WMBC operates on TV Channel 18 adjacent to Somerset’s proposed TV Channel 19.

have previously been waived [sic],”⁵⁶ apparently without interference to reception of WMBC. Thus we conclude that the underlying purposes of Sections 90.303 and 90.305 would not be served by application to the present case and that grant of the waiver would be in the public interest.⁵⁷

14. *Section 90.307(d)*. Somerset seeks waiver of Section 90.307(d) of the Commission’s rules⁵⁸ which requires that land mobile stations operating on frequencies allocated to the broadcast television service be located at least 145 km from adjacent channel television stations. The waiver is required because Somerset’s seven proposed base stations would range from 33.910 kilometers to 60.561 kilometers from adjacent channel television Station WMBC.⁵⁹ The proposed stations, however, do not differ appreciably in this regard from Somerset’s existing twelve stations that range from 32.329 kilometers to 62.454 kilometers from WMBC.⁶⁰ As noted above, Somerset entered into a Memorandum of Understanding with the WMBC licensee, Mountain Broadcasting Corporation in which the television licensee consents to Somerset’s proposed operations.⁶¹ Accordingly, because of the *de minimis* differences in the locations of Somerset’s existing and proposed stations relative to WMBC and because of the Memorandum of Understanding with WMBC, we conclude that the underlying purpose of Section 90.307(d) would not be served by application to the present case and that grant of the waiver would be in the public interest.⁶²

15. *Section 90.311*. Section 90.311(a)(2) provides that once a channel in the 470-512 MHz band is assigned in a given urbanized area,⁶³ subsequent authorizations to use the channel within the same urbanized area will be granted only to users of the same category.⁶⁴ For example, if a frequency is first licensed to a Business/Industrial licensee, only Business/Industrial applicants will be eligible for the channel in the same urbanized area. Somerset seeks a waiver of Section 90.311(a)(2) because frequency pair 477/480.7750 MHz is “licensed to two business entities, WQOF281, [Laing] Electronics in Nassau County, NY and WPXS787, Repeater Network, LLC, Pomona, NY.”⁶⁵ Somerset states that these licenses “are separated from the closest proposed Somerset site by 98 and 79 km respectively,”⁶⁶ that “the

⁵⁶ TV Waiver Support at 3.

⁵⁷ See *infra* para. 20.

⁵⁸ 47 C.F.R. § 90.307(d). We note that Somerset also includes 47 C.F.R. § 90.309, which requires a minimum separation distance of 193 kilometers (120 miles) between a land mobile base station and a co-channel TV station, in the list of rules to be waived. See TV Waiver Request at 1. A waiver of this rule is moot because there are no Channel 19 television stations within 193 kilometers of the proposed sites.

⁵⁹ See File Nos. 0004983388, 0004993152, 0004994418, and 0004994929.

⁶⁰ *Id.*

⁶¹ See *supra* note 20.

⁶² See *infra* para. 20.

⁶³ Urbanized areas are listed and defined in 47 C.F.R. §§ 90.303, 90.305.

⁶⁴ 47 C.F.R. § 90.311(a)(2).

⁶⁵ See File Nos. 0004983388 and 0004993152, attached Request for Waiver, 477/480.7750 MHz (filed November 17, 2011) (477/480.775 MHz Waiver Request) at 1.

⁶⁶ *Id.*

separation between those users and the proposed Somerset sites also exceeds the 64 km normally applied as minimum separation between co-channel users.”⁶⁷

16. We note that the frequency coordination performed by APCO indicates that Somerset “has no reasonable alternative to the requested channels as there are no other compatible public safety frequencies available for its use.”⁶⁸ In addition, the T-Band freeze prevents other Business/Industrial entities in the New York/New Jersey area from applying for the proposed frequency. As a result, granting the waiver will not affect prospective users of the same frequency.⁶⁹ Accordingly, we conclude that the underlying purpose of Section 90.311(a)(2) would not be served by application to the present case and that grant of the waiver would be in the public interest.⁷⁰

17. Somerset also requests a waiver of Section 90.311(a)(2) of the Commission’s rules⁷¹ for frequency pair 477 /480.4500 MHz.⁷² Somerset states that “[b]ased on a channel use survey of licensees within 75 miles (120 km) of Somerset, NJ, no licensees in this [Business/Industrial] service were found.”⁷³ The only existing licensees on this frequency pair in the New York urbanized area are public safety licensees “Amityville, NY (WQIN239) and Garrison Volunteer Fire Company, Garrison, NY (WQMN942).”⁷⁴ Because these licensees are in the same public safety category as Somerset, no waiver of Section 90.311(a)(2) is required and Somerset’s request for waiver with respect to this frequency pair is, therefore, moot.

18. *Section 22.651.* Section 22.651 of the Commission’s rules⁷⁵ reserves certain frequencies—including Somerset’s requested frequency 473.1375 MHz—“for assignment to transmitters providing trunked public mobile service” in certain urbanized areas. The County states that “[t]he underlying purpose of the relevant Part 22 rules would not be served as the Part 22 ... channels are vacant and unassigned, or in the case of the requested modifications, already being used by the County pursuant to prior waivers” and that “many of the UHF paging control channels⁷⁶ in this region have already been assigned for public safety use pursuant to waivers.”⁷⁷ Potential use of frequency 473.1375 MHz by Part 22 entities in the New York metropolitan area would be severely constrained by co-channel public safety

⁶⁷ *Id.*

⁶⁸ *See supra* note 45.

⁶⁹ *See supra* note 9.

⁷⁰ *See infra* para. 20.

⁷¹ 47 C.F.R. § 90.311(a)(2).

⁷² *See* File Nos. 0004983388 and 0004993152, attached Request for Waiver, 477/480.4500 MHz (filed November 3, 2011) at 1.

⁷³ *Id.*

⁷⁴ *Id.*

⁷⁵ 47 C.F.R. § 22.651.

⁷⁶ It is our understanding that Somerset’s reference to “UHF paging control channels” refers collectively to channels available under both 47 C.F.R. § 22.651 and 47 C.F.R. § 22.621. Indeed, in the New York metropolitan area, many channels from both rule sections are assigned to public safety agencies. *See, e.g.*, Seven Public Safety Agencies in the New York Metropolitan Area, *Order*, 19 FCC Rcd 15355 (WTB PSCID 2004) (*Seven Public Safety Agencies Order*).

⁷⁷ Part 22 Waiver Request at 2.

licensee Syosset, New York Fire District, call sign WPYJ816. Accordingly, waiving Section 22.651 to permit use of 473.1375 MHz by Somerset would not reduce available Part 22 spectrum in the metropolitan area. The County and its engineering consultant state that they “have demonstrated that the proposed use would not cause interference to any existing licensees.”⁷⁸ We have previously waived Section 22.651 to permit Somerset to use Part 22 channels,⁷⁹ and find that waiver is warranted here, particularly because the requested frequency is vacant and because its use for public trunked mobile service in the New York metropolitan area is so constrained by the presence of a co-channel licensee in Syosset, New York. We therefore conclude that the underlying purpose of Section 22.651 would not be served by application to the present case and that grant of the waiver would be in the public interest.⁸⁰

19. *Section 20.9(a)(6)*. Section 20.9(a)(6) of the Commission’s rules⁸¹ presumes that frequency 473.1375 MHz will be reserved for common carriage services and regulated as a commercial mobile radio service. As discussed above, potential use of frequency 473.1375 MHz by such Part 22 entities in the New York metropolitan area would be severely constrained by co-channel public safety licensee Syosset, New York Fire District, call sign WPYJ816, and thus this frequency is unlikely to be assigned in this area for the reserved services specified by this rule. We therefore find that the underlying purpose of Section 20.9(a)(6) would not be served by application to the present case and that grant of the waiver would be in the public interest.⁸² Accordingly, we waive the provisions of Section 20.9(a)(6) that would regulate Somerset’s use of frequency 473.1375 MHz as a commercial mobile radio service.

20. *Public Interest*. We find, overall, that the public interest will be served by grant of the waiver requests and the associated applications. We are persuaded by Somerset’s demonstration that its “proposed operations will not cause interference.”⁸³ We concur that instead it would “improve spectrum efficiency and, moreover, serve the public interest by allowing for essential improvements to the County’s radio system, thus promoting the safety of life, health and property.”⁸⁴ Therefore, we find it in the public interest to permit Somerset to use eight Part 90 T-Band frequency pairs and an unassigned Part 22 T-Band frequency to improve its communications reliability in the short term until the Commission makes a further determination about the implementation of the T-Band provisions of the Public Safety Spectrum Act.

IV. ORDERING CLAUSES

21. Accordingly, IT IS ORDERED pursuant to Sections 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3)(i) of the Commission’s rules, 47 C.F.R. § 1.925(b)(3)(i), that the Waiver Requests associated with application File Nos. 0004598355, 0004598366, 0004598374, 0004598382, 0004983388, 0004993152, 0004994418, 0004994929, filed by the County of Somerset on December 07, 2011, as amended, IS GRANTED.

⁷⁸ *Id.*

⁷⁹ *See Seven Public Safety Agencies Order.*

⁸⁰ *See infra* para. 20.

⁸¹ 47 C.F.R. § 20.9(a)(6).

⁸² *See infra* para. 20.

⁸³ The County states that “its engineering consultants have demonstrated that the proposed use would not cause interference to any existing licensees.” TV Waiver Request at 2.

⁸⁴ TV Waiver Request at 2.

22. IT IS FURTHER ORDERED that application File Nos. 0004598355, 0004598366, 0004598374, 0004598382, 0004983388, 0004993152, 0004994418, 0004994929 SHALL BE PROCESSED consistent with this *Order* and the Commission's rules.

23. 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