**Before the**

Federal Communications Commission

Washington, D.C. 20554

|  |  |  |
| --- | --- | --- |
| In the Matter of Request by Itron, Inc. for Waivers of the Commission’s Rules | **)****)****)****)****)****)****)** | WT Docket No. 13-195 |

Order ON RECONSIDERATION

**Adopted: September 25, 2015 Released: September 25, 2015**

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. **INTRODUCTION**
2. This Order addresses a petition by Itron, Inc. (Itron)[[1]](#footnote-2) for reconsideration of our denial[[2]](#footnote-3) of Itron’s request for waivers[[3]](#footnote-4) of certain of the Commission's rules[[4]](#footnote-5) to operate an advanced smart grid half-duplex, non-paging communications using its licenses in the 931 MHz band. As explained below, we grant the Petition in part, and otherwise deny, and therefore grant a waiver of sections 22.355, 22.515, and 22.531 for certain Itron licenses.[[5]](#footnote-6)
3. **BACKGROUND**
4. In 2010, the Wireless Telecommunications Bureau (Bureau) auctioned 9,603 geographic-area paging licenses, with 1,851 of those licenses being in the upper paging bands (929-931 MHz).[[6]](#footnote-7) In announcing Auction 87, the Bureau explained that paging incumbent licenses existed in the bands, and these “[i]ncumbent (non-geographic) paging licensees operating under their existing authorizations are entitled to full protection from co-channel interference.”[[7]](#footnote-8) Itron was the winning bidder in Auction 87 for 155 Major Economic Areas paging licenses in the 931 MHz band,[[8]](#footnote-9) and the Bureau granted the licenses on November 3, 2010.[[9]](#footnote-10)
5. On December 17, 2012, pursuant to sections 1.3 and 1.925 of the Commission’s rules, Itron filed the Waiver Request so that it may use its paging licenses to support and improve its automatic meter reading (AMR) and advanced metering infrastructure (AMI) systems, which are smart grid components.[[10]](#footnote-11) In the Waiver Request, Itron requested waivers of sections 22.515[[11]](#footnote-12) and 22.531,[[12]](#footnote-13) to the extent necessary, to allow it to engage in half-duplex transmissions to facilitate transmissions both to and from Itron’s meter module end points.[[13]](#footnote-14) Taken together, sections 22.515 and 22.531 limit the operation of channels in the 931 MHz band to base transmitters[[14]](#footnote-15) that provide paging services, whereas Itron proposes to utilize non-base transmitters to offer a non-paging data service; accordingly, Itron sought a waiver of sections 22.515 and 22.531.[[15]](#footnote-16)
6. Itron also requested a waiver of section 22.355[[16]](#footnote-17) to permit its fixed and mobile stations that operate with an effective radiated power (ERP) of less than 2 watts to be subject to a frequency tolerance of 5 ppm rather than 1.5 ppm.[[17]](#footnote-18) Itron stated that its planned system architecture would consist of: (1) fixed and mobile readers that generally operate with an ERP of 40 watts or less, and that will always operate with an ERP of 100 watts or less, and (2) customer-premises end points (EPs) that are located on utility meters and that will transmit to the readers at a very low power of between 0.5 to 2 watts ERP.[[18]](#footnote-19) Itron argued that, because these power levels are well below the maximum power that is permitted under the 931 MHz paging rules, the risk for interference to co-channel users of the 931 MHz band will be no more than the risk of interference from other licensed one-way paging systems.[[19]](#footnote-20) Specifically, Itron stated that “[a]lthough the rules permit operation at up to 3500 watts ERP, Itron’s readers typically will operate with an ERP of 40 watts or less, and never will operate with an ERP above 100 watts[,] [and] [t]he power levels for EPs will be even lower, on the order of 0.5 to 2 watts ERP.”[[20]](#footnote-21) Itron further argued that even with a frequency tolerance of 5 ppm rather than 1.5 ppm, its low-power, battery-powered EPs would afford as much or more protection to adjacent channels as devices that satisfy the 1.5 ppm standard.[[21]](#footnote-22)
7. USA Mobility, Inc. opposed the Waiver Request, claiming that the proposed waivers would pose a potentially serious risk of interference to USA Mobility’s paging systems.[[22]](#footnote-23) USA Mobility argued that Itron did not provide enough detail about how its proposed system would operate, and therefore USA Mobility could not ascertain how its own operations would be affected.[[23]](#footnote-24) For example, USA Mobility states that Itron does not specify what type of access methodology will be used by end-point devices communicating with readers, nor does Itron make clear whether the EPs might act as repeaters.[[24]](#footnote-25) USA Mobility also stated its concern “that Itron’s proposed half-duplex transmissions could experience interference from USA Mobility’s high-powered paging transmissions – and that Itron in turn would seek to limit USA Mobility’s operations in some manner.”[[25]](#footnote-26) In addition, USA Mobility argued that Itron’s proposed use is a fundamental change to the technical rules that should be accomplished through a rulemaking rather than by waiver.[[26]](#footnote-27)
8. On January 13, 2015, the Bureau denied the Waiver Request, finding that, despite Itron’s references to regulatory power limits, it was not clear how Itron would protect its co-channel site-based incumbents or co-channel geographic area licensees from harmful interference.[[27]](#footnote-28) We therefore found that Itron had “not shown that a waiver here would be consistent with the underlying purpose of the rules it seeks to waive, namely interference protection to other licensees.”[[28]](#footnote-29)
9. On February 12, 2015, in accordance with section 1.106 of the Commission’s rules,[[29]](#footnote-30) Itron filed the Petition seeking reconsideration of our decision. In the Petition, Itron claims that its fixed and mobile readers (which serve as base stations) and its EPs all will observe the co-channel protection requirements for 931 MHz paging system base stations as set forth in sections 22.537[[30]](#footnote-31) and 22.503[[31]](#footnote-32) of the Commission’s rules.[[32]](#footnote-33) As such, if the interfering contour of one of Itron’s readers and/or EPs overlaps with the service contour of a co-channel base station in an adjacent market, then Itron will coordinate with the adjacent market licensee in accordance with section 22.503(h).[[33]](#footnote-34) In addition, Itron states that it will comply with section 22.503(i) by applying this interfering contour/service contour methodology for its fixed and mobile reader stations and EPs to protect co-channel site-based incumbent licensees.[[34]](#footnote-35) Itron further states that its mobile readers “have GPS functionality that enables Itron to program protection zones for them to observe based on interfering contour/service contour overlaps and the terms of coordination agreements Itron enters into with the licensees of co-channel stations.”[[35]](#footnote-36)
10. Spok, Inc. (Spok), formerly known as USA Mobility, filed an opposition to the Petition reiterating its previous comments, stating that “[b]ecause Itron has merely rehashed its unsupported assertion that its proposed operations will not result in harmful interference, while failing to grapple with the other fundamental flaws that preclude grant of a waiver, the Bureau should summarily deny Itron’s Petition.”[[36]](#footnote-37) Spok also contends that “one-way paging systems simply were not designed to operate in an environment with mobile transmitters. While fixed base stations are sufficiently removed from one another to prevent harmful interference, Itron’s operation of mobile transmitters in proximity to paging devices may well cause critical paging messages to be dropped. Unlike the case with base-station interference, Spok would be unable to detect and respond to such intermittent interference from mobile readers because its source would be impossible to identify.”[[37]](#footnote-38) Spok also argues that Itron fails to justify a waiver here because it does not show that it lacks reasonable alternatives for operating a two-way communications network.[[38]](#footnote-39) Additionally, Spok argues that the Petition does not meet the procedural criteria for reconsideration under section 1.106 of our rules[[39]](#footnote-40) because it merely supplements Itron’s previous technical showing.[[40]](#footnote-41)
11. Itron filed comments in reply to Spok[[41]](#footnote-42) reiterating its contention that it “will provide at least as much protection to co-channel stations as the rules contemplate” and that “in practice, by virtue of low power levels, limited duty cycles, and other factors, its system will be more protective of co-channel stations than a maximum-facility base station in a traditional one-way paging system.”[[42]](#footnote-43) It also stated that it does need to show that it has no reasonable alternative to a waiver because it is seeking a waiver under sections 1.3[[43]](#footnote-44) and 1.925(b)(3)(i)[[44]](#footnote-45) of our rules rather than section 1.925(b)(3)(ii).[[45]](#footnote-46) Finally, Itron counters that it “did not just repeat what it had said before and it did not make a new interference argument. Rather, Itron responded to the Bureau’s concerns by clarifying how it will avoid co-channel interference.”[[46]](#footnote-47)
12. **DISCUSSION**
13. The Commission’s rules require that a petition for reconsideration shall “state with particularity the respects in which a petitioner believes the action taken should be changed” and must specifically state the relief sought.[[47]](#footnote-48) A petition for reconsideration that relies on facts or arguments not previously presented to the Commission may be granted where it is determined that consideration of the facts or arguments relied upon is “required in the public interest.”[[48]](#footnote-49) Pursuant to section 1.925 of the Commission’s rules,[[49]](#footnote-50) waiver may be granted if the petitioner establishes that: (1) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and the grant of the waiver would be in the public interest; or (2) in light of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[[50]](#footnote-51) The Commission also may waive any provision of its rules if good cause is shown.[[51]](#footnote-52) In this case, Itron has requested waiver under the first prong of section 1.925(b)(3), as well as section 1.3. We agree with Itron that, in compliance with our rules, it has clarified its previous statement that it would provide at least as much protection as our Part 22 paging rules require[[52]](#footnote-53) by specifying to which service rules it referred and elucidating that it will treat all of its readers and EPs as base stations under the rules. As described below, we find that the underlying purpose of sections 22.355, 22.515, and 22.531 of the Commission's rules would not be frustrated by granting waiver in the instant case.
14. As we stated in the Waiver Denial, “[t]aken together, the rules that govern the operation of 931 MHz systems provide protection to co-channel site-based incumbents, co-channel geographic licensees, and adjacent-channel licensees from inference caused by a 931 MHz licensee.”[[53]](#footnote-54) In this case, Spok, has opposed the Waiver Request and Petition due to the possibility of interference to its systems. Based upon the clarification in the Petition that Itron will provide protection per sections 22.503 and 22.537, the Bureau conducted an interference analysis of how Spok’s Part 22 paging licenses[[54]](#footnote-55) would be impacted by Itron’s proposed operations. For Spok’s co-channel Part 22 paging site-based licenses, we plotted the largest possible service[[55]](#footnote-56) and interference[[56]](#footnote-57) contours under section 22.537 and then analyzed the potential for interference from each of Itron’s market areas. The analysis took into consideration the distance between the licensed geographic service area of Itron and Spok’s licenses and the channel spacing, coupled with the fact that pursuant to section 22.503(h), operations outside the licensed geographic areas require consent of the relevant co-channel licensee. The Mobility Division determined that out of 155 of Itron’s licenses, 128 will not cause interference to Spok’s licenses, regardless of whether Itron’s transmitters are fixed or mobile.[[57]](#footnote-58) This approach provides Spok the same protections under our rules as if any of Itron’s readers and EPs – including those that are mobile – actually are base stations.
15. The Commission long has encouraged flexible and innovative use of Part 22 paging spectrum.[[58]](#footnote-59) More recently, the Bureau sought comment on how it might update the Part 22 paging rules to provide flexibility in the types of uses and technologies that can operate on these channels, recognizing that additional technical and operational flexibility may promote more intensive use of these paging licenses, benefiting users nationwide.[[59]](#footnote-60) The Bureau stated that “[s]uch an update could result in licensees deploying innovative technologies, deploying narrow band equipment, or using offset frequencies if they hold adjacent channel blocks.”[[60]](#footnote-61) We find that Itron’s proposed use of its Part 22 paging licenses meets the Commission’s goals of fostering technological innovation and is in the public interest.
16. With regard to these 128 licenses, listed in Attachment 3, we find that the underlying purpose of sections 22.355, 22.515, and 22.531 would not be frustrated by waiver in this case. And, as stated above, we also find that it is in the public interest to grant a waiver of these rules so that Itron may implement its smart grid technology. In addition, as we have found Itron has met the waiver standard of section 1.925(b)(3)(i), we need not assess it under section 1.925(b)(3)(ii), as Spok argues. In light of all of the above, we find reconsideration here proper under our rules, and, as such, we find that a waiver of sections 22.355, 22.515, and 22.531 is warranted under the circumstances presented.
17. We also disagree with Spok’s contention that this essentially is a rulemaking by waiver. The fact pattern in this case is unique, and Itron’s proposal is a novel application of current technology in this band. Further, this Order is not an “agency statement ... of future effect” such as would constitute a rule under the Administrative Procedure Act.[[61]](#footnote-62) Rather, this waiver is granted on a case-specific basis and is well within the scope of the Bureau’s delegated authority.[[62]](#footnote-63)
18. Finally, for the remaining 27 Itron licenses, we find that Itron still has not sufficiently shown how it would protect from interference its co-channel site-based incumbents and co-channel geographic licensees. For these licenses, listed in Attachment 4, we affirm our decision in the Waiver Denial and these 27 licenses are excluded from this waiver.
19. This waiver is specifically conditioned on the following:
20. This waiver is limited to the Itron licenses listed in Attachment 3.
21. The licenses listed in Attachment 4 are excluded from this waiver.
22. Itron must provide interference protection to its co-channel site-based incumbents, co-channel geographic licensees, and adjacent-channel licensees by treating all of its readers and EPs – including those that are mobile – as base stations under the Commission’s rules.
23. Itron must operate its system as described in its Waiver Request and Petition.
24. Any readers (cell control units, mobile collectors, or hand held mobile devices) operated in connection with this waiver must be operated only within Itron’s licensed areas that are covered by this waiver.
25. Itron must exercise effective operational control over any covered mobile stations receiving service through their fixed stations.
26. If Itron receives a report that station(s) operating in the areas covered by this waiver are causing harmful interference to co-channel site-based incumbents, co-channel geographic licensees, or adjacent-channel licensees, it shall immediately suspend operation under this waiver of such station(s) except for test transmissions to identify and eliminate the interference. Itron may resume operation under this waiver of such station(s) after the interference has been successfully mitigated.
27. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(r), and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(r), 405, and sections 0.331, 1.3, 1.106, and 1.925 of the Commission’s Rules, 47 C.F.R. §§ 0.331, 1.3, 1.106, 1.925, the Petition for Reconsideration filed by Itron, Inc., on March 2, 2015, is GRANTED IN PART AND OTHERWISE DENIED, as described above.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel

Chief, Mobility Division

Wireless Telecommunications Bureau

**Attachment 1**

**List of Itron 931 MHz Licenses**

|  |  |  |
| --- | --- | --- |
| **Call Sign** | **Market Code** | **Channel Block** |
| 1. WQMX694
 | MEA001 | AL |
| 1. WQMX695
 | MEA001 | AM |
| 1. WQMX696
 | MEA001 | AN |
| 1. WQMX697
 | MEA002 | AP |
| 1. WQMX698
 | MEA002 | AQ |
| 1. WQMX699
 | MEA002 | BK |
| 1. WQMX700
 | MEA003 | AC |
| 1. WQMX701
 | MEA003 | AF |
| 1. WQMX702
 | MEA003 | AG |
| 1. WQMX703
 | MEA004 | AP |
| 1. WQMX704
 | MEA004 | AZ |
| 1. WQMX705
 | MEA004 | BK |
| 1. WQMX706
 | MEA005 | AJ |
| 1. WQMX707
 | MEA005 | AM |
| 1. WQMX708
 | MEA005 | AN |
| 1. WQMX709
 | MEA005 | BK |
| 1. WQMX710
 | MEA006 | AP |
| 1. WQMX711
 | MEA006 | AQ |
| 1. WQMX712
 | MEA006 | BF |
| 1. WQMX713
 | MEA007 | AC |
| 1. WQMX714
 | MEA007 | AG |
| 1. WQMX715
 | MEA007 | AM |
| 1. WQMX716
 | MEA008 | AW |
| 1. WQMX717
 | MEA008 | AY |
| 1. WQMX718
 | MEA008 | AZ |
| 1. WQMX719
 | MEA009 | AA |
| 1. WQMX720
 | MEA009 | AB |
| 1. WQMX721
 | MEA009 | AC |
| 1. WQMX722
 | MEA010 | AA |
| 1. WQMX723
 | MEA010 | AB |
| 1. WQMX724
 | MEA010 | AC |
| 1. WQMX725
 | MEA011 | AG |
| 1. WQMX726
 | MEA011 | AM |
| 1. WQMX727
 | MEA011 | BD |
| 1. WQMX728
 | MEA012 | AC |
| 1. WQMX729
 | MEA012 | AJ |
| 1. WQMX730
 | MEA012 | AK |
| 1. WQMX731
 | MEA012 | AL |
| 1. WQMX732
 | MEA013 | AB |
| 1. WQMX733
 | MEA013 | AC |
| 1. WQMX734
 | MEA013 | AG |
| 1. WQMX735
 | MEA014 | AB |
| 1. WQMX736
 | MEA014 | AC |
| 1. WQMX737
 | MEA014 | AG |
| 1. WQMX738
 | MEA015 | AF |
| 1. WQMX739
 | MEA015 | AG |
| 1. WQMX740
 | MEA015 | AH |
| 1. WQMX741
 | MEA015 | AI |
| 1. WQMX742
 | MEA016 | AB |
| 1. WQMX743
 | MEA016 | AY |
| 1. WQMX744
 | MEA016 | AZ |
| 1. WQMX745
 | MEA016 | BK |
| 1. WQMX746
 | MEA017 | AA |
| 1. WQMX747
 | MEA017 | AB |
| 1. WQMX748
 | MEA017 | AC |
| 1. WQMX749
 | MEA018 | AG |
| 1. WQMX750
 | MEA018 | BI |
| 1. WQMX751
 | MEA018 | BK |
| 1. WQMX752
 | MEA019 | AP |
| 1. WQMX753
 | MEA019 | BB |
| 1. WQMX754
 | MEA019 | BC |
| 1. WQMX755
 | MEA020 | AF |
| 1. WQMX756
 | MEA020 | AG |
| 1. WQMX757
 | MEA020 | BJ |
| 1. WQMX758
 | MEA020 | BK |
| 1. WQMX759
 | MEA021 | AA |
| 1. WQMX760
 | MEA021 | AB |
| 1. WQMX761
 | MEA021 | AO |
| 1. WQMX762
 | MEA022 | AA |
| 1. WQMX763
 | MEA022 | AB |
| 1. WQMX764
 | MEA022 | AC |
| 1. WQMX765
 | MEA023 | AA |
| 1. WQMX766
 | MEA023 | AB |
| 1. WQMX767
 | MEA023 | AC |
| 1. WQMX768
 | MEA024 | BH |
| 1. WQMX769
 | MEA024 | BI |
| 1. WQMX770
 | MEA024 | BJ |
| 1. WQMX771
 | MEA025 | AA |
| 1. WQMX772
 | MEA025 | AB |
| 1. WQMX773
 | MEA025 | AC |
| 1. WQMX774
 | MEA026 | AA |
| 1. WQMX775
 | MEA026 | AB |
| 1. WQMX776
 | MEA026 | AG |
| 1. WQMX777
 | MEA027 | AA |
| 1. WQMX778
 | MEA027 | AG |
| 1. WQMX779
 | MEA027 | AJ |
| 1. WQMX780
 | MEA027 | AK |
| 1. WQMX781
 | MEA028 | AA |
| 1. WQMX782
 | MEA028 | AB |
| 1. WQMX783
 | MEA028 | AC |
| 1. WQMX784
 | MEA028 | AG |
| 1. WQMX785
 | MEA029 | AA |
| 1. WQMX786
 | MEA029 | AB |
| 1. WQMX787
 | MEA029 | AF |
| 1. WQMX788
 | MEA030 | AA |
| 1. WQMX789
 | MEA030 | AB |
| 1. WQMX790
 | MEA030 | AK |
| 1. WQMX791
 | MEA031 | AA |
| 1. WQMX792
 | MEA031 | AE |
| 1. WQMX793
 | MEA031 | AJ |
| 1. WQMX794
 | MEA031 | AK |
| 1. WQMX795
 | MEA032 | AE |
| 1. WQMX796
 | MEA032 | AG |
| 1. WQMX797
 | MEA032 | AW |
| 1. WQMX798
 | MEA033 | AF |
| 1. WQMX799
 | MEA033 | AZ |
| 1. WQMX800
 | MEA034 | AA |
| 1. WQMX801
 | MEA034 | AB |
| 1. WQMX802
 | MEA034 | AF |
| 1. WQMX803
 | MEA035 | BE |
| 1. WQMX804
 | MEA035 | BI |
| 1. WQMX805
 | MEA035 | BK |
| 1. WQMX806
 | MEA036 | AA |
| 1. WQMX807
 | MEA036 | AB |
| 1. WQMX808
 | MEA036 | AC |
| 1. WQMX809
 | MEA037 | BC |
| 1. WQMX810
 | MEA037 | BD |
| 1. WQMX811
 | MEA037 | BE |
| 1. WQMX812
 | MEA038 | AD |
| 1. WQMX813
 | MEA038 | AE |
| 1. WQMX814
 | MEA038 | AW |
| 1. WQMX815
 | MEA039 | AD |
| 1. WQMX816
 | MEA039 | AI |
| 1. WQMX817
 | MEA040 | AL |
| 1. WQMX818
 | MEA040 | AY |
| 1. WQMX819
 | MEA040 | BC |
| 1. WQMX820
 | MEA040 | BF |
| 1. WQMX821
 | MEA041 | AJ |
| 1. WQMX822
 | MEA041 | AK |
| 1. WQMX823
 | MEA041 | AL |
| 1. WQMX824
 | MEA041 | BK |
| 1. WQMX825
 | MEA042 | AJ |
| 1. WQMX826
 | MEA042 | AM |
| 1. WQMX827
 | MEA042 | BE |
| 1. WQMX828
 | MEA043 | AI |
| 1. WQMX829
 | MEA043 | AJ |
| 1. WQMX830
 | MEA043 | AN |
| 1. WQMX831
 | MEA043 | AW |
| 1. WQMX832
 | MEA044 | AD |
| 1. WQMX833
 | MEA044 | AO |
| 1. WQMX834
 | MEA044 | AW |
| 1. WQMX835
 | MEA045 | AV |
| 1. WQMX836
 | MEA045 | AW |
| 1. WQMX837
 | MEA045 | AX |
| 1. WQMX838
 | MEA046 | AT |
| 1. WQMX839
 | MEA046 | AU |
| 1. WQMX840
 | MEA046 | AV |
| 1. WQMX841
 | MEA047 | AA |
| 1. WQMX842
 | MEA047 | AB |
| 1. WQMX843
 | MEA047 | AC |
| 1. WQMX844
 | MEA048 | AF |
| 1. WQMX845
 | MEA048 | AG |
| 1. WQMX846
 | MEA048 | AH |
| 1. WQMX847
 | MEA050 | AA |
| 1. WQMX848
 | MEA050 | AB |

**Attachment 2**

**List of Spok Part 22 Paging Licenses**

|  |  |  |
| --- | --- | --- |
| **Call Sign** | **Market Code** | **Channel Block** |
| 1. WPQM446
 | MEA033 | AA  |
| 1. WPQM447
 | MEA042 | AA  |
| 1. WPQM449
 | MEA044 | AA  |
| 1. WPQM473
 | MEA043 | AG  |
| 1. WPQM474
 | MEA044 | AG  |
| 1. WPQM481
 | MEA028 | AI  |
| 1. WPQM482
 | MEA029 | AI  |
| 1. WPQM483
 | MEA030 | AI  |
| 1. WPQM485
 | MEA032 | AI  |
| 1. WPQM487
 | MEA036 | AI  |
| 1. WPQM488
 | MEA037 | AI  |
| 1. WPQM490
 | MEA045 | AI  |
| 1. WPQM491
 | MEA047 | AI  |
| 1. WPQM507
 | MEA031 | AT  |
| 1. WPQM508
 | MEA032 | AT  |
| 1. WPQM509
 | MEA038 | AT  |
| 1. WPQM510
 | MEA031 | AU  |
| 1. WPQM511
 | MEA032 | AU  |
| 1. WPQM512
 | MEA038 | AU  |
| 1. WPQM513
 | MEA039 | AU  |
| 1. WPQM516
 | MEA043 | AV  |
| 1. WPQM517
 | MEA044 | AV  |
| 1. WPQM518
 | MEA017 | AW  |
| 1. WPQM519
 | MEA018 | AW  |
| 1. WPQM520
 | MEA001 | AY  |
| 1. WPQM521
 | MEA002 | AY  |
| 1. WPQM524
 | MEA043 | AY  |
| 1. WPQM525
 | MEA044 | AY  |
| 1. KNLN884
 | MEA033 | AA |
| 1. KNKE385
 | MEA020 | AB |
| 1. KNKJ371
 | MEA040, MEA043 & MEA044 | AG |
| 1. KNKP278
 | MEA043 & MEA044 | AG |
| 1. KNKF684
 | MEA036 & MEA037 | AI |
| 1. KNKL914
 | MEA046 | AI |
| 1. KNKL939
 | MEA045 | AI |
| 1. KNKO969
 | MEA029 | AI |
| 1. KNKP862
 | MEA036 | AI |
| 1. KTS256
 | MEA033 | AI |
| 1. KWU327
 | MEA036 & MEA037 | AI |
| 1. KNKE387
 | MEA004, MEA005 & MEA012 | AL |
| 1. KNKG839
 | MEA006 | AL |
| 1. KNKM814
 | MEA005 & MEA006 | AL |
| 1. KNKO694
 | MEA005 & MEA006  | AL |
| 1. KNKO735
 | MEA004 & MEA005 | AL |
| 1. KNKP215
 | MEA002 | AL |
| 1. KNKO803
 | MEA004 & MEA005 | AO |
| 1. KNKP224
 | MEA005 & MEA006 | AO |
| 1. KNKO564
 | MEA031, MEA032 & MEA038 | AT |
| 1. KNKP213
 | MEA015 & MEA016 | AT |
| 1. KPE466
 | MEA031, MEA032 & MEA038 | AT |
| 1. KNKP212
 | MEA043 & MEA044 | AV |
| 1. KNKS216
 | MEA043 & MEA044 | AV |
| 1. KNKE335
 | MEA017 & MEA018 | AW |
| 1. KNKG834
 | MEA043, MEA044 & MEA045 | AY |
| 1. KNKL939
 | MEA045 | AY |
| 1. KOR233
 | MEA043 & MEA044 | AY |
| 1. KNKE385
 | MEA020 | BB |
| 1. KNKF684
 | MEA029, MEA035, MEA036 & MEA037 | BB |
| 1. KNKM814
 | MEA005 | BB |
| 1. KNKO735
 | MEA004 & MEA005 | BB |
| 1. KNKP215
 | MEA002 | BB |
| 1. KNKJ371
 | MEA040, MEA043 & MEA044 | BC |
| 1. KNKJ205
 | MEA031, MEA032 & MEA038 | BI |
| 1. KNKO386
 | MEA031, MEA032 & MEA038 | BI |
| 1. KNKO927
 | MEA039 | BI |
| 1. KNKO997
 | MEA018 | BI |
| 1. KNKP201
 | MEA001 & MEA002 | BI |
| 1. KNKP275
 | MEA002 | BI |
| 1. KNKM447
 | NW | NW |
| 1. KNKO694
 | MEA005 & MEA006 | AL |
| 1. KNKO735
 | MEA004 & MEA005 | AL |

**Attachment 3**

**List of Itron Licenses Included in Waiver**

|  |  |  |
| --- | --- | --- |
| **Call Sign** | **Market Code** | **Channel Block** |
| 1. WQMX694
 | MEA001 | AL |
| 1. WQMX695
 | MEA001 | AM |
| 1. WQMX696
 | MEA001 | AN |
| 1. WQMX698
 | MEA002 | AQ |
| 1. WQMX699
 | MEA002 | BK |
| 1. WQMX700
 | MEA003 | AC |
| 1. WQMX701
 | MEA003 | AF |
| 1. WQMX702
 | MEA003 | AG |
| 1. WQMX705
 | MEA004 | BK |
| 1. WQMX706
 | MEA005 | AJ |
| 1. WQMX709
 | MEA005 | BK |
| 1. WQMX711
 | MEA006 | AQ |
| 1. WQMX712
 | MEA006 | BF |
| 1. WQMX713
 | MEA007 | AC |
| 1. WQMX714
 | MEA007 | AG |
| 1. WQMX716
 | MEA008 | AW |
| 1. WQMX717
 | MEA008 | AY |
| 1. WQMX718
 | MEA008 | AZ |
| 1. WQMX719
 | MEA009 | AA |
| 1. WQMX720
 | MEA009 | AB |
| 1. WQMX721
 | MEA009 | AC |
| 1. WQMX722
 | MEA010 | AA |
| 1. WQMX723
 | MEA010 | AB |
| 1. WQMX724
 | MEA010 | AC |
| 1. WQMX725
 | MEA011 | AG |
| 1. WQMX726
 | MEA011 | AM |
| 1. WQMX727
 | MEA011 | BD |
| 1. WQMX728
 | MEA012 | AC |
| 1. WQMX729
 | MEA012 | AJ |
| 1. WQMX732
 | MEA013 | AB |
| 1. WQMX733
 | MEA013 | AC |
| 1. WQMX734
 | MEA013 | AG |
| 1. WQMX735
 | MEA014 | AB |
| 1. WQMX736
 | MEA014 | AC |
| 1. WQMX737
 | MEA014 | AG |
| 1. WQMX738
 | MEA015 | AF |
| 1. WQMX739
 | MEA015 | AG |
| 1. WQMX740
 | MEA015 | AH |
| 1. WQMX741
 | MEA015 | AI |
| 1. WQMX742
 | MEA016 | AB |
| 1. WQMX743
 | MEA016 | AY |
| 1. WQMX744
 | MEA016 | AZ |
| 1. WQMX745
 | MEA016 | BK |
| 1. WQMX746
 | MEA017 | AA |
| 1. WQMX747
 | MEA017 | AB |
| 1. WQMX748
 | MEA017 | AC |
| 1. WQMX749
 | MEA018 | AG |
| 1. WQMX751
 | MEA018 | BK |
| 1. WQMX752
 | MEA019 | AP |
| 1. WQMX753
 | MEA019 | BB |
| 1. WQMX754
 | MEA019 | BC |
| 1. WQMX755
 | MEA020 | AF |
| 1. WQMX756
 | MEA020 | AG |
| 1. WQMX757
 | MEA020 | BJ |
| 1. WQMX758
 | MEA020 | BK |
| 1. WQMX759
 | MEA021 | AA |
| 1. WQMX760
 | MEA021 | AB |
| 1. WQMX761
 | MEA021 | AO |
| 1. WQMX762
 | MEA022 | AA |
| 1. WQMX763
 | MEA022 | AB |
| 1. WQMX764
 | MEA022 | AC |
| 1. WQMX765
 | MEA023 | AA |
| 1. WQMX766
 | MEA023 | AB |
| 1. WQMX767
 | MEA023 | AC |
| 1. WQMX768
 | MEA024 | BH |
| 1. WQMX770
 | MEA024 | BJ |
| 1. WQMX771
 | MEA025 | AA |
| 1. WQMX772
 | MEA025 | AB |
| 1. WQMX773
 | MEA025 | AC |
| 1. WQMX774
 | MEA026 | AA |
| 1. WQMX775
 | MEA026 | AB |
| 1. WQMX776
 | MEA026 | AG |
| 1. WQMX777
 | MEA027 | AA |
| 1. WQMX778
 | MEA027 | AG |
| 1. WQMX779
 | MEA027 | AJ |
| 1. WQMX780
 | MEA027 | AK |
| 1. WQMX781
 | MEA028 | AA |
| 1. WQMX782
 | MEA028 | AB |
| 1. WQMX783
 | MEA028 | AC |
| 1. WQMX784
 | MEA028 | AG |
| 1. WQMX785
 | MEA029 | AA |
| 1. WQMX786
 | MEA029 | AB |
| 1. WQMX787
 | MEA029 | AF |
| 1. WQMX788
 | MEA030 | AA |
| 1. WQMX789
 | MEA030 | AB |
| 1. WQMX790
 | MEA030 | AK |
| 1. WQMX791
 | MEA031 | AA |
| 1. WQMX792
 | MEA031 | AE |
| 1. WQMX794
 | MEA031 | AK |
| 1. WQMX795
 | MEA032 | AE |
| 1. WQMX796
 | MEA032 | AG |
| 1. WQMX797
 | MEA032 | AW |
| 1. WQMX798
 | MEA033 | AF |
| 1. WQMX799
 | MEA033 | AZ |
| 1. WQMX802
 | MEA034 | AF |
| 1. WQMX803
 | MEA035 | BE |
| 1. WQMX805
 | MEA035 | BK |
| 1. WQMX806
 | MEA036 | AA |
| 1. WQMX807
 | MEA036 | AB |
| 1. WQMX808
 | MEA036 | AC |
| 1. WQMX810
 | MEA037 | BD |
| 1. WQMX811
 | MEA037 | BE |
| 1. WQMX812
 | MEA038 | AD |
| 1. WQMX813
 | MEA038 | AE |
| 1. WQMX814
 | MEA038 | AW |
| 1. WQMX815
 | MEA039 | AD |
| 1. WQMX817
 | MEA040 | AL |
| 1. WQMX819
 | MEA040 | BC |
| 1. WQMX820
 | MEA040 | BF |
| 1. WQMX822
 | MEA041 | AK |
| 1. WQMX823
 | MEA041 | AL |
| 1. WQMX824
 | MEA041 | BK |
| 1. WQMX826
 | MEA042 | AM |
| 1. WQMX827
 | MEA042 | BE |
| 1. WQMX830
 | MEA043 | AN |
| 1. WQMX832
 | MEA044 | AD |
| 1. WQMX833
 | MEA044 | AO |
| 1. WQMX838
 | MEA046 | AT |
| 1. WQMX839
 | MEA046 | AU |
| 1. WQMX840
 | MEA046 | AV |
| 1. WQMX841
 | MEA047 | AA |
| 1. WQMX842
 | MEA047 | AB |
| 1. WQMX843
 | MEA047 | AC |
| 1. WQMX844
 | MEA048 | AF |
| 1. WQMX845
 | MEA048 | AG |
| 1. WQMX846
 | MEA048 | AH |
| 1. WQMX847
 | MEA050 | AA |
| 1. WQMX848
 | MEA050 | AB |

**Attachment 4**

**List of Itron Licenses Excluded from Waiver**

|  |  |  |
| --- | --- | --- |
| **Call Sign** | **Market Code** | **Channel Block** |
| 1. WQMX697
 | MEA002 | AP |
| 1. WQMX703
 | MEA004 | AP |
| 1. WQMX704
 | MEA004 | AZ |
| 1. WQMX707
 | MEA005 | AM |
| 1. WQMX708
 | MEA005 | AN |
| 1. WQMX710
 | MEA006 | AP |
| 1. WQMX715
 | MEA007 | AM |
| 1. WQMX730
 | MEA012 | AK |
| 1. WQMX731
 | MEA012 | AL |
| 1. WQMX750
 | MEA018 | BI |
| 1. WQMX769
 | MEA024 | BI |
| 1. WQMX793
 | MEA031 | AJ |
| 1. WQMX800
 | MEA034 | AA |
| 1. WQMX801
 | MEA034 | AB |
| 1. WQMX804
 | MEA035 | BI |
| 1. WQMX809
 | MEA037 | BC |
| 1. WQMX816
 | MEA039 | AI |
| 1. WQMX818
 | MEA040 | AY |
| 1. WQMX821
 | MEA041 | AJ |
| 1. WQMX825
 | MEA042 | AJ |
| 1. WQMX828
 | MEA043 | AI |
| 1. WQMX829
 | MEA043 | AJ |
| 1. WQMX831
 | MEA043 | AW |
| 1. WQMX834
 | MEA044 | AW |
| 1. WQMX835
 | MEA045 | AV |
| 1. WQMX836
 | MEA045 | AW |
| 1. WQMX837
 | MEA045 | AX |

1. Petition for Reconsideration filed on March 2, 2015, by Itron, Inc. (Petition). [↑](#footnote-ref-2)
2. Letter from Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, to Ms. Laura Stefani and Mr. Joseph A. Godles, Goldberg, Godles, Wiener & Wright LLP, 30 FCC Rcd 137 (Jan. 13, 2015) (Waiver Denial). [↑](#footnote-ref-3)
3. Itron, Inc. Request for Waiver, WT Docket No. 13-195, filed Dec. 17, 2012 (Waiver Request). The Waiver Request is attached to the Universal Licensing System (ULS) record for each license listed in Attachment 1. *See* http://wireless.fcc.gov/uls/index.htm?job=home. [↑](#footnote-ref-4)
4. In its waiver request, Itron sought waiver of 47 C.F.R. §§ 22.355, 22.515, 22.531, and 22.561. In the *Public Notice* the Commission issued in connection with Itron’s waiver request, we stated that “[i]t appears to us that section 22.561 does not apply to Itron’s requested waiver, since that rule section does not apply to 931 MHz band paging operations.” Wireless Telecommunications Bureau Seeks Comment on Itron, Inc. Request for Waivers of Part 22 Rules to Facilitate Provision of Non-Paging Operations Over 931 MHz Licenses, *Public Notice*, WT Docket No. 13-195, 28 FCC Rcd 11829, 11829 (2013) (*Itron Public Notice*). We further stated that “it does appear that Itron might require a waiver of section 22.531 in order to conduct its half-duplex operations, and we therefore will treat Itron’s filings as seeking a waiver of section 22.531 (instead of section 22.561) to the extent necessary.” *Id.* In addition, in the Petition, Itron seeks waiver of sections 22.355, 22.515, and 22.531, but not section 22.561. We therefore continue to treat Itron’s as seeking a waiver of section 22.531 rather than section 22.561 where applicable. [↑](#footnote-ref-5)
5. 47 C.F.R. §§ 22.355, 22.515, and 22.531. [↑](#footnote-ref-6)
6. *See* Auction of Lower & Upper Paging Bands Licenses Scheduled for May 25, 2010, *Public Notice*, 25 FCC Rcd 6156 (2009) (*Auction 87 Announcement PN*). [↑](#footnote-ref-7)
7. *Auction 87 Announcement PN* at 6157 ¶ 6 (citing Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, WT Docket No. 96-18, *Memorandum Opinion and Order on Reconsideration and Third Report and Order*, 14 FCC Rcd 10030, 10059-60 ¶¶ 42-44 (1999); Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, WT Docket No. 96-18, *Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732, 2764 ¶¶ 57-58 (1997); 47 C.F.R. § 22.503(i)). [↑](#footnote-ref-8)
8. *See* Auction of Lower & Upper Paging Bands Licenses Closes Winning Bidders Announced for Auction 87, *Public Notice*, 25 FCC Rcd 18164 (2010). [↑](#footnote-ref-9)
9. *See* Wireless Telecommunications Bureau Grants Lower & Upper Paging Bands Licenses, *Public Notice*, 25 FCC Rcd 15324 (2010). [↑](#footnote-ref-10)
10. *See* Waiver Request at 1, 2. Specifically, Itron seeks “to provide service, on a non-common carrier basis, to support fixed and mobile functions, including smart grid functions, such as system monitoring, system control, and smart metering.” *Id.* at 2. [↑](#footnote-ref-11)
11. Section 22.515 provides that, for all paging services, “[m]obile stations may communicate only with and through base stations. Base stations may communicate only with mobile stations and receivers on land or surface vessels.” 47 C.F.R. § 22.515. [↑](#footnote-ref-12)
12. Section 22.531 provides that “[t]he following channels [specifically including 931 MHz frequencies] are allocated for assignment to base transmitters that provide paging service . . . .” 47 C.F.R. § 22.531. [↑](#footnote-ref-13)
13. *See* Waiver Request at 3. [↑](#footnote-ref-14)
14. Section 22.99 defines a base transmitter as “[a] stationary transmitter that provides radio telecommunications service to mobile and/or fixed receivers, including those associated with mobile stations.” [↑](#footnote-ref-15)
15. *See* Waiver Request at 3-7. [↑](#footnote-ref-16)
16. Section 22.355 of the Commission’s rules requires that, as relevant to Itron’s proposed 931 MHz band operations, the carrier frequency of each transmitter must satisfy a frequency tolerance limit of 1.5 ppm. 47 C.F.R. § 22.355. [↑](#footnote-ref-17)
17. *See* Waiver Request at 9. [↑](#footnote-ref-18)
18. *See id.* at 3-4. [↑](#footnote-ref-19)
19. *See id*. at 5-7. [↑](#footnote-ref-20)
20. *Id*. at 6. [↑](#footnote-ref-21)
21. *See id*. at 9-11. [↑](#footnote-ref-22)
22. See Comments of USA Mobility, Inc., WT Docket No. 13-195, filed Sept. 9, 2013, at 4-7 (USA Mobility Opposition). [↑](#footnote-ref-23)
23. *See id*. at 4-7. [↑](#footnote-ref-24)
24. *See id*. at 4-5. [↑](#footnote-ref-25)
25. *Id*. at 5. [↑](#footnote-ref-26)
26. *Id*. at 9-11. [↑](#footnote-ref-27)
27. Waiver Denial, 30 FCC Rcd at 141. We did, however, find that Itron had demonstrated how it would provide protection to adjacent channel licensees. *Id*. [↑](#footnote-ref-28)
28. *Id*. [↑](#footnote-ref-29)
29. *Id*. [↑](#footnote-ref-30)
30. 47 C.F.R § 22.537. Section 22.537 provides the technical criteria for 931 MHz licensees to provide interference protection to co-channel licensees. [↑](#footnote-ref-31)
31. 47 C.F.R. § 22.503. Section 22.503 provides service rules for Part 22 paging geographic licensees. [↑](#footnote-ref-32)
32. Petition at 4-5. [↑](#footnote-ref-33)
33. *Id.* [↑](#footnote-ref-34)
34. *Id.* [↑](#footnote-ref-35)
35. *Id.* at 5. [↑](#footnote-ref-36)
36. Opposition of Spok, Inc., WT Docket No. 13-195, filed Sept. 9, 2013 at 1 (Spok Opposition). [↑](#footnote-ref-37)
37. *Id*. at 3. [↑](#footnote-ref-38)
38. *Id*. 47 C.F.R. § 1.925(b)(3)(ii) states that the Commission may grant a request for waiver if “the applicant has no reasonable alternative.” [↑](#footnote-ref-39)
39. 47 C.F.R. § 1.106. [↑](#footnote-ref-40)
40. Spok Opposition at 2. [↑](#footnote-ref-41)
41. Reply of Itron, Inc., WT Docket No. 13-195, filed March 2, 2015 (Itron Reply). [↑](#footnote-ref-42)
42. Itron Reply at 2. [↑](#footnote-ref-43)
43. 47 C.F.R. § 1.3. [↑](#footnote-ref-44)
44. 47 C.F.R. § 1.925(b)(3)(i). [↑](#footnote-ref-45)
45. *See* Itron Reply at 6. [↑](#footnote-ref-46)
46. *Id*. at 5. [↑](#footnote-ref-47)
47. [47 C.F.R. § 1.106(d)(1)](http://www.westlaw.com/Link/Document/FullText?findType=L&pubNum=1000547&cite=47CFRS1.106&originatingDoc=Ic77861152be211db8ac4e022126eafc3&refType=LQ&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.Search)). [↑](#footnote-ref-48)
48. *See* 47 C.F.R. § 1.106(c)(2). Itron states that is not presenting new facts or arguments and is “only is clarifying the manner in which it will protect co-channel licensees . . . [but] that consideration of the facts and arguments presented in this Petition is appropriate because it is in the public interest.” Petition at 1, n. 3. [↑](#footnote-ref-49)
49. 47 C.F.R. § 1.925. [↑](#footnote-ref-50)
50. 47 C.F.R. § 1.925(b)(3). [↑](#footnote-ref-51)
51. 47 C.F.R. § 1.3. [↑](#footnote-ref-52)
52. *See supra* note 19. Tables E-1 (service contour) and E-2 (interfering contour) of 47 C.F.R. § 22.537 permit operation at up to 3500 watts ERP. [↑](#footnote-ref-53)
53. Waiver Denial, 30 FCC Rcd at 140. [↑](#footnote-ref-54)
54. The Bureau used the Part 22 paging licenses assigned to Spok in the Universal Licensing System. The complete list of licenses is in Attachment 2. [↑](#footnote-ref-55)
55. 47 C.F.R. § 22.537, Table E-1. This created a contour with a radius of 83.7 kilometers. [↑](#footnote-ref-56)
56. 47 C.F.R. § 22.537, Table E-2. This created a contour with a radius of 191.5 kilometers. [↑](#footnote-ref-57)
57. We also determined the reverse, *i.e.,* that Spok’s operations are highly unlikely to cause interference to these 128 Itron licenses. [↑](#footnote-ref-58)
58. *See, e.g.,* Revision of Part 22 and Part 90 of the Commission’s Rules to Facilitate Future Development of Paging Systems, [*Second Report and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 2732 (1997)](http://www.westlaw.com/Link/Document/FullText?findType=Y&serNum=1997260570&pubNum=4493&originatingDoc=Idcc670e12c0611dbb0d3b726c66cf290&refType=CA&originationContext=document&vr=3.0&rs=cblt1.0&transitionType=DocumentItem&contextData=(sc.UserEnteredCitation)). [↑](#footnote-ref-59)
59. *See* Wireless Telecommunications Bureau Reminds Paging & Radiotelephone Serv. Licensees of Certain Technical Rules & Seeks Comment on the Need for Technical Flexibility, Public Notice, 29 FCC Rcd 12673, 12674 (2014) (*Paging Public Notice*). [↑](#footnote-ref-60)
60. *Id.* [↑](#footnote-ref-61)
61. *See* 5 U.S.C. § 551(4). [↑](#footnote-ref-62)
62. *See* 47 C.F.R. § 0.131. [↑](#footnote-ref-63)