

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

In the Matter of)
State of Maine –)
MSCommNet Project)
File Nos. 0007903503, 0007903504,
0007903505, 0007903506, 0007903507,
0007903508, 0007903509, 0007903510,
0007903511, 0007903512

ORDER AND PROPOSED ORDER OF MODIFICATION

Adopted: October 22, 2018

Released: October 22, 2018

By the Chief, Mobility Division, Wireless Telecommunications Bureau:

1. Introduction. In this Order, the Mobility Division (Division) of the Wireless Telecommunications Bureau (Bureau) addresses the request by the State of Maine (Maine or the State) for a waiver to extend the construction deadline for ten Part 22 Paging and Radiotelephone Service (paging) licenses. Maine operates the licenses as a part of the Maine State Communications Network (MSCommNet), a statewide, interoperable public safety communications network. For the reasons stated below, the Division denies the request for extension and finds that Maine did not satisfy the construction requirement for these licenses.

2. Based on our review of the record, however, we find on our own motion that the public interest supports a partial waiver of the construction requirements and of relevant technical rules to the extent necessary to permit continued operation on the Part 22 paging frequencies in use as of September 1, 2017, and supports a limited grant of special temporary authority to operate while Maine brings the system into compliance with our rules. In light of these waivers, we also propose to modify the geographic license area for the ten licenses at issue. The technical waivers are conditioned on Maine obtaining consent of relevant other licensees and completing required international coordination within six months. We conclude that such relief is in the public interest given the unique factual circumstances involved and that the conditions will promote use of spectrum for important public safety functions, while protecting against harmful interference to adjacent licensees.

I. BACKGROUND

3. Construction Requirements. Section 22.503(k) of the Commission's rules requires a Part 22 paging licensee to construct and operate sufficient facilities to cover one-third of the population in its paging geographic area no later than three years after the initial grant of its license, and cover two-thirds of the population within the final five-year deadline. A licensee may notify the Commission at the three-year deadline that it elects the alternative of providing "substantial service" in the paging geographic area by the five-year construction deadline for the license. Section 22.503(k)(3) defines "substantial service" as service that is "sound, favorable, and substantially above a level of mediocre service that would barely

1 Part 22 License Construction Build-Out Extension Request, File Nos. 0007903503, 0007903504, 0007903505, 0007903506, 0007903507, 0007903508, 0007903509, 0007903510, 0007903511, 0007903512 (filed Aug. 24, 2017) (2017 Extension Request) (regarding call signs WQMT752, WQMT753, WQMT754, WQMT755, WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761).

2 47 CFR § 22.503(k).

3 Id. § 22.503(k)(1).

warrant renewal.”⁴ If a licensee fails to make the required showing, the license automatically terminates as of the construction deadline.⁵ Licensees must file separate notifications showing they have met the construction requirements for each license.⁶

4. *Canadian Coordination Requirements.* The Commission is bound by international agreement to coordinate with the Canadian government when a U.S. applicant proposes to operate stations north of “Line A” using frequencies in the 30-174 MHz band.⁷ Line A is an imaginary line within the U.S. approximately paralleling the U.S.-Canadian border.⁸ Licensees may not include a transmitter site located north of Line A for the purpose of meeting their construction obligations until Canada has approved the proposed site.⁹

5. *Procedural History.* In the early 2000s, Maine began development of MSCommNet, an upgraded statewide public safety/law enforcement radio communications network serving the state’s law enforcement and public safety and public service agencies.¹⁰ Maine described the prior systems as “outdated, difficult to maintain, and no longer adequate to serve respective departments’ critical needs,” and as suffering increasing outages, among other issues related to their obsolescence.¹¹ MSCommNet would consolidate these multiple independent systems, building out a trunked statewide private land mobile radio system using frequencies in the VHF band.¹² In the course of planning the network, Maine was unable to find sufficient public safety channels in the VHF band to meet the system’s requirements, and sought additional spectrum.¹³

6. In 2010, the Commission held Auction 87 for licenses in the lower and upper paging bands.¹⁴ The ten licenses at issue here transmit on Part 22 VHF paging channels and were granted to Harris

⁴ *Id.* § 22.503(k)(3).

⁵ *Id.* § 22.503(k)

⁶ Guidance on Compliance with Construction Requirements for Auction 95 Paging & Radiotelephone Serv. Licenses, *Public Notice*, 31 FCC Rcd 11664, 11665 (WTB 2016) (*Auction 95 Guidance Public Notice*), citing ATT: Jeff Sohn, *Letter*, 27 FCC Rcd 5864, 5865 (WTB 2012), Cingular Interactive, L.P., Showing of Substantial Service Pursuant to Section 90.665(c), File No. 0000226552, *Order*, 16 FCC Rcd 19200, 19203 (WTB 2001).

⁷ See 47 CFR § 1.928 (Commission rules on frequency coordination with Canada), 47 CFR § 90.7 (definition of Line A).

⁸ 47 CFR §§ 1.928(e), 90.7.

⁹ *Auction 95 Guidance Public Notice*, 31 FCC Rcd at 11665.

¹⁰ MSCommNet provides land-mobile radio communications for the Maine State Police/Department of Public Safety; Game Wardens/Department of Inland Fisheries and Wildlife; Forest Rangers/Department of Agriculture, Conservation, & Forestry; Marine Patrol/Department of Marine Resources; Maine Emergency Management Agency (MEMA); the Department of Environmental Protection, among others, and provides for interoperability with public safety partners available for all municipal, county, tribal, adjacent State, and Federal public safety agencies. See MSCommNet (Radio Network), <https://www.maine.gov/oit/services/radio/mscommnet/index.html> (last visited Sept. 19, 2018).

¹¹ State of Maine – MSCommNet Project, Request for Waiver of Sections 90.35(a), 20.9(a)(6), 22.377, and 22.565(f) of the Commission’s Rules, *Order*, 27 FCC Rcd 8891, 8891-92, paras. 2-3 (PSHSB/WTB 2012) (*2012 Waiver Order*).

¹² *Id.* at 8891-92, paras. 2-3.

¹³ *Id.* at 8891-92, paras. 5, 8.

¹⁴ See *Wireless Telecommunications Bureau Grants Lower & Upper Paging Bands Licenses*, Public Notice, 25 FCC Rcd 15324 (2010).

Corporation on November 3, 2010, creating a three-year construction deadline of November 3, 2013 and a five-year deadline of November 3, 2015.¹⁵

7. On May 22, 2012, Harris Corporation assigned the Part 22 paging licenses to the State of Maine and Maine requested various rule waivers from the Bureau and the Public Safety and Homeland Security Bureau (PSHSB) to allow it to operate the licenses in conjunction with its Part 90 VHF public safety frequencies as a part of MScCommNet.¹⁶ Maine stated that MScCommNet would provide “improved geographic radio coverage, voice quality/clarity and channel capacity,” and that it would allow for “seamless interoperability across all levels of government (including non-State agencies).”¹⁷ Maine also noted that the VHF band (specifically, 150-170 MHz) was the only suitable frequency band for MScCommNet because the band’s propagation characteristics made it the sole viable option in the many areas of the state with sparse population and heavily forested terrain, and that the VHF band was the only band that provided “state-wide interoperability among federal, state and local public safety agencies.”¹⁸ Maine also stated that it sought many unpaired frequency assignments as a result of a region of limited spectrum availability due largely to the shared border with Canada.¹⁹

8. In July of 2012, the Division granted Maine’s waiver requests via a joint order with PSHSB’s Policy and Licensing Division.²⁰ The *2012 Waiver Order* found that Maine had a legitimate need to incorporate Part 22 Paging channels into its system, finding that it was in the public interest to provide waivers with respect to both the Part 90 and Part 22 frequencies, in furtherance of the interoperability and functionality of the statewide public safety network.²¹

9. At the three-year interim construction deadline in November 2013, Maine elected to demonstrate “substantial service” by the five-year deadline. Maine failed to make the final construction filings by the deadline of November 3, 2015, causing the licenses to automatically move into termination pending status. On January 8, 2016, Maine filed one-page Petitions for Reconsideration for each call sign, asking that the licenses be returned to active status because the “facilities were placed in operation” as of 2014 but omitting the required coverage showings that demonstrated that Maine was in compliance with its construction obligations.²² The Division subsequently returned the licenses to active status and granted a temporary extension of the construction deadline to allow Maine to file construction notifications. Maine filed the notifications on August 26, 2016, with data showing only partial construction and use of the licenses.²³

¹⁵ *Id.*

¹⁶ *2012 Waiver Order*, 27 FCC Rcd 8891, Tables 1-4.

¹⁷ *Id.* at 8891-92, paras. 2-3.

¹⁸ *Id.*

¹⁹ *Id.* at n. 21 (citing justification for unpaired frequencies attached to the applications).

²⁰ *See generally 2012 Waiver Order*, 27 FCC Rcd 8891.

²¹ *Id.* at 8891-92, para. 11. In addition to the waivers in the *2012 Waiver Order*, the Policy and Licensing Division has also granted numerous similar waivers, extensions, and petitions to facilitate completion and operation of MScCommNet, finding that “Maine’s upgrade to its statewide public safety radio communications network in the public interest because it will facilitate interoperability between federal, state and local public safety officials.” *See, e.g., State of Maine – MScCommNet Project, Request for Waiver of Sections 90.35(b)(2)(ii) and 90.187(d) of the Commission’s Rules, Order*, 29 FCC Rcd 7398 (PSHSB 2014).

²² *See Letter from John E. Richards, Director Radio Operations, State of Maine, Office of Information Technology, to Federal Communications Commission (Jan. 8, 2016).*

²³ Letter from Keith Harper, Associate Chief, Mobility Division, to Robert H. Isby, Engineer Specialist IV, HARRIS Corporation Communication System (Sept. 13, 2016) (*2016 Letter Order*).

10. On September 13, 2016, the Division notified Maine that its filings did not show substantial service sufficient to meet the construction requirement, and granted on our own motion a waiver and extension of the deadline to September 1, 2017 (the extended construction deadline), similar to relief given to certain other paging licensees.²⁴ The Division also dismissed without prejudice Maine's pending construction notifications.²⁵ The extension letter explained that the additional time was to allow Maine to either meet the substantial service requirements for the entire market area, or to file applications partitioning the license, cancelling the unused license area, and filing a construction notification demonstrating substantial service for the retained license area.²⁶

11. On June 29, 2017, well after the licenses had been in operation, Maine filed the required forms to begin the process of Canadian coordination for these and other licenses with operations above Line A. These applications are still pending, and the Division's review of the information therein shows that Maine appears to be operating in violation of various of the Commission's technical rules, including failing to complete the required international coordination prior to operations.

12. *State of Maine's Request for Relief.* Maine now seeks a waiver pursuant to Section 1.925 of the Commission's rules to extend the deadline to September 1, 2018 to allow more time to file construction notifications as well as to complete required international coordination with Canada.²⁷ Maine represents that its notifications will show that it has met the construction requirements, and states that it has completed MSCommNet with the frequencies at issue here fully incorporated into the network and no plans for additional construction.²⁸

II. DISCUSSION

A. Waiver of Construction and Technical Rules

13. Section 1.925 of the rules states that the Commission may grant a waiver when either the underlying purpose of the rule at issue would not be served or would be frustrated by application to the instant case, and a grant would be in the public interest, or where, "in view of unique or unusual factual circumstances," application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.²⁹ In addition, Section 1.3 allows the Commission to waive any provision of its rules on its own motion for good cause.³⁰

14. *Construction Requirements and Request for Extension of Time.* Based on the information before us, we deny Maine's request for extension of time. Maine's final construction deadline was September 1, 2017, at which time the State was required to demonstrate substantial service on an individual basis for each license.³¹ Staff analysis of Maine's submissions indicates that Maine's service coverages for its licenses are quite low, and no individual market reaches a level that would be considered

²⁴ *Id.* at 1-2.

²⁵ *Id.*

²⁶ *Id.* at 2.

²⁷ See Letter from John E. Richards, Director Radio Operations, State of Maine, Office of Information Technology, to Federal Communications Commission (Aug. 24, 2017), at 1-2 (2017 Extension Request) (regarding call signs WQMT752, WQMT753, WQMT754, WQMT755, WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761).

²⁸ *Id.* at 1-2.

²⁹ 47 CFR § 1.925(b)(3)(i)-(ii).

³⁰ 47 CFR § 1.3 ("Any provision of the rules may be waived by the Commission on its own motion or on petition if good cause therefor is shown."); see also *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

³¹ See *supra* n. 6.

substantial or above mediocre. Maine's actual construction with respect to its Part 22 Paging licenses is low by any measure, with the State having constructed only one or two Part 22 base stations in certain markets, or using the frequencies for mobile use only.³² Viewing Maine's operations from a population coverage standpoint, the ten markets range from several with zero percent coverage, to coverages for the rest of the markets from four percent to thirty percent. It also appears that some of the frequencies are only being used when overflow capacity is required.

15. We recognize that Maine relies on these frequencies as part of a larger system, and previously granted certain waivers to permit them to do so, but this use does not relieve the State of its obligation to meet the construction requirement for each license individually. Nor do our previous waivers relieve the State of the obligation to petition for all necessary waivers where, as here, its actual use of the frequencies does not comport with our rules. In any event, and even if Maine had showed much greater service coverage, Maine is operating most, if not all, of the licenses in violation of a Part 22 rule and is operating each license without required coordination with Canada, and therefore its operations cannot be counted towards its construction obligations.

16. We note that since the original deadline in 2015, Maine has been given multiple opportunities and reminders to comply with its construction obligations. The Division has previously granted multiple extensions of time and none of the information Maine provided supports a finding of completion of any additional construction. By Maine's own assertion, it completed the network in 2015 and has no plans for additional construction, and believes its current showings are sufficient to demonstrate compliance.³³ The State says that it requests more time only for Canadian coordination and to "afford the Commission and the State sufficient time to review the detailed Build-Out [sic] documentation,"³⁴ not to complete additional construction or provide more coverage. None of its filings indicate that granting an extension of the deadline would result in the State's being able to meet its construction requirement. Thus, we conclude that providing additional time would not be in the public interest.

17. While we conclude that providing Maine an extension to meet its construction obligations is not warranted, we find on our own motion that the unique circumstances present here justify granting limited relief to the State of Maine via a waiver of Section 22.503(k) to the extent necessary to allow the State to keep the portions of the license area where it was operating as of the extended construction deadline of September 1, 2017. Without such a waiver, failure to meet the Commission's construction requirements results in automatic termination of the entire license³⁵ and would disrupt the functioning of Maine's public safety communications system.

18. Maine's system is predicated on use of only the VHF band, as the only band allowing for statewide interoperability. We have already recognized Maine's legitimate need to incorporate these frequencies into its statewide public safety network, and that it would be contrary to the public interest for Maine to build a statewide system that was incapable of interoperating throughout the state.³⁶ Given the nature of Maine's use of the Part 22 licenses, automatic termination of the licenses wholesale would necessarily limit the statewide operation and interoperability between all levels of government that we have found to be in the public interest.³⁷ We thus conclude that the public interest supports granting a waiver to permit the State to retain its operations as of the extended construction deadline rather than terminating the licenses in their entirety.

³² In certain markets, Maine pairs mobile use with Part 90 or other Part 22 paging base stations rather than with base station frequencies associated with the particular market.

³³ See 2017 Extension Request at 1.

³⁴ *Id.*

³⁵ 47 CFR § 22.503(k).

³⁶ 2012 Waiver Order, 27 FCC Rcd 8891-92, paras. 4-11.

³⁷ *Id.*

19. Although Maine has not established a level of construction and service that would constitute substantial service for any of its ten licenses, we agree that it is currently operating in portions of a given market area for each license as part of its statewide public safety system. We also agree that in doing so, Maine is using the only spectrum available that can provide coverage in some areas. We have previously granted relief related to these licenses in order to permit them to be used as part of the MSCommNet system, recognizing the benefits MSCommNet will provide to mission-critical public safety activities statewide.³⁸ This waiver allows the network to continue operating in those areas it was serving as of the extended construction deadline, maintaining the functionality of the network in total, while ultimately requiring return of spectrum not in use by MSCommNet to the Commission's inventory.

20. *Technical Waivers and Special Temporary Authority to Continue Operations.* Maine is operating its Part 22 paging licenses within a public safety system made up of primarily Part 90 and other non-Part 22 licenses, and this operation has resulted in multiple inconsistencies between the operation of the Part 22 licenses and our technical rules. Our review of the information Maine provided revealed that the State requires additional rule waivers beyond those that it has already requested from this Bureau and PSHSB.³⁹ While we are permitting Maine to retain areas in which it was operating as of the extended construction deadline, Maine's operation of these licenses would remain out of compliance with our rules, and we therefore grant limited waivers of certain technical rules to enable continued use of the licenses. As we recognized in the *2012 Waiver Order*, it is in the public interest to facilitate operation of the statewide network and its interoperability for federal, state, and local public safety entities.⁴⁰

21. To bring MSCommNet's operations into compliance with the rules, we grant waivers on our own motion for the technical rules discussed below, as well as special temporary authority (STA) for these stations to continue operating for an interim period of six months while the State comes into compliance with the conditions set out in this section.⁴¹ Each of these waivers is specifically conditioned on the concurrence of licensees who would potentially be affected by Maine's operation of MSCommNet at the waived technical parameters in order to ensure protection from harmful interference for other licensees. Maine is using these licenses to fill gaps where traditional public safety spectrum is not available, and we find that the following waivers, as conditioned, will bring its operations into compliance with the rules while maintaining MSCommNet's functionality and minimizing the risk of harmful interference.

- *Section 22.503.* Section 22.503(j) contains a site location restriction requiring the transmitting antenna of each facility to be constructed and placed into operation within the geographic market for which it is authorized.⁴² Here, WQMT760 is licensed only for market BEA002, but is currently operating one base station, Cook Hill, that resides in market BEA001. The Cook Hill base station in BEA001 transmits to mobiles in BEA002 on the paired FP channel block,⁴³ even though the State of Maine is not licensed in BEA001 for the FP channel block. We waive 22.503(j) to the extent the State of Maine obtains a lease agreement with the adjacent licensee in BEA001

³⁸ *Id.*

³⁹ We note that Maine was obligated to identify and seek the rule waivers necessary to enable it to incorporate its paging licenses into the MSCommNet system. Licensees may not determine for themselves the Commission rules with which they must comply. Accordingly, our decision herein is without prejudice to further Commission inquiry into this matter and referral for enforcement action, if warranted.

⁴⁰ *2012 Waiver Order*, 27 FCC Rcd at 8891-92, para. 11.

⁴¹ See 47 U.S.C. §§ 154(i), 214(a), 303(r); *see also In re GTE Corp.*, 16 FCC Rcd 15957, 15960 (2001).

⁴² 47 CFR § 22.503(j).

⁴³ We observe that the State appears to be making mobile use of WQMT760 paired with call sign WPZG407 as the fixed side. WPZG407 is operating from one site in BEA001 on channel FP. While WPZG407 is not currently before us, we note that it is not authorized to operate on the FP channel in BEA001, and that this site is located above Line A and has apparently not completed Canadian coordination.

to operate the Cook Hill base station on the FP channel block (which is necessary for the mobile operations in BEA002), and as further conditioned below.

- *Section 22.515.* Section 22.515 provides that, for all paging licenses, mobile stations may communicate only with and through base stations, and vice versa.⁴⁴ Maine has elected to configure its licenses in a manner that results in either the mobiles or the base stations communicating with and through non-Part 22 licenses (e.g., a Part 22 mobile is communicating with a Part 90 base station). We waive Section 22.515 to allow Maine to continue to operate in this manner with respect to call signs WQMT752, WQMT753, WQMT754, WQMT755, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761, but only to the extent Maine continues to observe the Part 22 rules regarding the permissible path of a mobile communicating only with and through a base station, and vice versa, and as further conditioned below.
- *Section 22.531.* Section 22.531 provides that certain unpaired, high VHF channels for paging operation are allocated only for use as base transmitters, and that all channels have a bandwidth of 20 kHz and are designated by their center frequencies in megahertz.⁴⁵ Maine is making mobile use of the frequencies associated with call signs WQMT757, WQMT760, and WQMT761, in contravention of the rule. We grant a waiver of the requirement to use these frequencies only as base transmitters, to the extent that Maine obtains concurrence as per the conditions below, and does not exceed the boundary set forth in the proposed order of modification and attached Appendix.

We also understand that Maine may be operating WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761 such that the bandwidth exceeds the limits in Section 22.531. These licenses have center frequencies in the 152 through 158 MHz frequency band as identified in Section 22.531. The State of Maine has chosen to use channel “offsets” for these licenses, an intentional slight shift of a broadcast channel with an alternate center frequency that resides within the authorized channel block. The offset causes Maine to exceed the bandwidth edge, which could cause spectrally adjacent channel interference.⁴⁶ We waive Section 22.531 for the listed call signs, as conditioned below.

- *Section 22.561.* Section 22.561 provides a similar restriction as 22.531, but for the one-way or two-way mobile operation for the paired channel blocks listed in the rule. Under this section the bandwidth is also 20 kHz, designated by their center frequencies in MHz.⁴⁷ These licenses have center frequencies in the 152 through 159 MHz frequency band as identified in Section 22.561. For licenses WQMT752, WQMT753, WQMT754, and WQMT755, we grant a waiver of this rule to the extent those licenses are operating outside of the prescribed bandwidth, as conditioned below.⁴⁸
- *Power Limits.* Maine is currently operating licenses with call signs WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761 outside of the limits contained in Section

⁴⁴ 47 CFR § 22.515.

⁴⁵ 47 CFR § 22.531.

⁴⁶ Due to the designated transmission of 8 kHz, as identified by the emission designator.

⁴⁷ 47 CFR § 22.561.

⁴⁸ As in the case of licenses subject to Section 22.531, the State of Maine uses channel “offsets,” an intentional slight shift of a broadcast channel with an alternate center frequency that resides within the authorized channel block. As mentioned, the offset causes Maine to exceed the bandwidth edge, which could cause spectrally adjacent channel interference.

22.535(c),⁴⁹ and operating licenses with call signs WQMT752, WQMT753, WQMT754, and WQMT755 outside of the limits contained in Section 22.565(c).⁵⁰ We waive Sections 22.535(c) and 22.565(c) for the listed call signs as applicable in order to allow Maine to maintain its current power levels for these licenses, as conditioned below.

- We note that the *2012 Waiver Order* required Maine to operate its mobile units at least 8 kilometers from the edge of its Part 22 service area⁵¹ when transmitting at power levels above 60 watts on Part 22 paging frequencies and specified that the restriction would remain in effect unless Maine obtains the consent of the Part 22 licensee in the adjacent regions.⁵² The 2012 condition remains in effect, and we clarify that it applies to higher-power use of Part 22 mobiles, regardless of whether they are communicating with Part 22 or Part 90 base stations.
- *Conditions.* We find it necessary to condition the relief granted in order to meet the expectations of neighboring licensees that their operations will be free from harmful interference. Failure to comply with these conditions will result in automatic termination of the technical waiver with respect to the license at issue. The technical rule waivers are conditioned on the concurrence of geographic or spectral neighbors that would potentially be affected. Coordination with neighboring geographic or spectral licensees shall be conducted consistent with the process in Sections 22.503(h) and (i) of our rules that seek to protect adjacent geographic and co-channel licensees from harmful interference.⁵³ Specifically:
 - Waivers of the following rules have the potential to affect adjacent licensees and are conditioned on the concurrence of those licensees:
 - Section 22.515 waiver for WQMT752, WQMT753, WQMT754, WQMT755, WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761.
 - Section 22.531 waiver for WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761.
 - Section 22.561 waiver for WQMT752, WQMT753, WQMT754, and WQMT755.
 - Our waivers of the follow rules have the potential to affect co-channel licensees and are conditioned on the concurrence of those licensees:
 - Section 22.503(j) waiver for WQMT760.
 - Section 22.515 waiver for WQMT752, WQMT753, WQMT754, WQMT755, WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761.
 - Section 22.531 waiver for WQMT757, WQMT760, and WQMT761.

⁴⁹ 47 CFR § 22.535(c). The Height Power Limit for the unpaired channels must not exceed the amount that would result in an average distance to the service contour of 32.2 km.

⁵⁰ 47 CFR § 22.565(c). The Height Power Limit for the paired channels must not exceed the amount that would result in an average distance to the service contour of 41.6 km.

⁵¹ In this case, the Part 22 service area for mobiles communicating with a Part 90 base station will be the service area as calculated under the Part 22 rules, using the technical parameters of the Part 90 base station.

⁵² *2012 Waiver Order*, 27 FCC Rcd 8891.

⁵³ 47 CFR § 22.503(h), (i).

- Section 22.535(c) waiver for WQMT756, WQMT757, WQMT758, WQMT759.
- Section 22.565(c) waiver for WQMT753, WQMT754, WQMT755.
- In seeking concurrence, Maine must provide these licensees with any technical information requested for testing purposes, in order to ensure no harmful interference will exist.
- Within six months of the effective date of this Order, the State of Maine must submit copies of concurrences in ULS under the applicable license.
- In the event the State of Maine cannot comply with the conditions of the technical waivers, it may choose to forgo the waiver and implement an alternative operational solution that complies with Part 22 rules, or to cease operations from the applicable site(s). If Maine cannot comply with the conditions, then within six months of the effective date of this Order, Maine shall notify the Division that it has implemented an alternative solution that complies with the rules or has ceased operations. Any licenses that do not comply with the Part 22 rules or with the waiver conditions by the end of this six-month timeframe will automatically terminate.
- The State of Maine must successfully complete coordination with Canada for operations above Line A within six months of the effective date of this Order. Any licenses that have not completed coordination by the end of this six-month timeframe will automatically terminate. We will not entertain requests for replacement frequencies.

B. Order of Proposed Modification

22. Section 316(a)(1) authorizes the Commission to modify a station license if, in our judgment, “such action will promote the public interest, convenience, and necessity, or the provisions of this chapter [*i.e.*, the Communications Act] or of any treaty ratified by the United States will be more fully complied with.”⁵⁴ The authority to modify licenses under Section 316(a)(1) is well established and courts have recognized the Commission’s “broad power” to do so, explaining that the Commission “need only find that the proposed modification serves the public interest, convenience and necessity.”⁵⁵

23. We find that a proposed modification of the ten Part 22 Paging licenses here will promote the public interest, convenience, and necessity. Given the role the licenses play in a public safety network that supports over a dozen governmental agencies, we also find that the proposed modification is consistent with our fundamental obligation to promote safety of life and property through the use of wire and radio communications.⁵⁶ In view of the foregoing and pursuant to Section 316(a)(1) of the Act, we propose to modify the geographic authorizations as described below, subject to Maine satisfying the conditions of the construction and technical waivers above. If Maine does not comply with all conditions, we propose to modify the licenses solely to the extent the State is able to provide alternative operational solutions that comply with Part 22 rules, as described above in the conditions and within the six-month timeframe.

⁵⁴ 47 U.S.C. § 316(a)(1).

⁵⁵ *California Metro Mobile Communications v. FCC*, 365 F.3d 38, 45 (D.C. Cir. 2004); *see also* Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Services in the Upper and Lower L-Band, *Report and Order*, IB Docket 96-132, FCC 02-24, 17 FCC Red 2704, 2714, ¶ 25 (2002) (citing *Rainbow Broadcasting Co. v. FCC*, 949 F.2d 405 (D.C. Cir. 1991)) (“the Commission is afforded significant latitude when it exercises its Section 316 authority”) (subsequent history omitted).

⁵⁶ 47 U.S.C. § 151.

24. *Modified License Area.* For each license listed in the extension request,⁵⁷ we propose that Maine retain the areas in which it is using its Part 22 Paging frequencies, with the modified boundaries of the license determined by the formula in the Part 22 rules.⁵⁸ The remainder of the licensed market areas will be terminated and revert to the Commission.

25. Sections 22.537(d) and 22.567(d) of our rules describe the formulas to be used in determining a VHF channel transmitter's interfering contour (the area beyond which signals from the transmitter are deemed not to be causing interference to another transmitter). Using the technical parameters of Maine's operations as they are today, we have calculated an interfering contour with either Section 22.537(d) or 22.567(d), as applicable,⁵⁹ and propose a modified license boundary for each license at issue based on the interfering contour. These modified license boundaries are shown in the attached Appendix.

26. The interfering contour as calculated above will define the modified license boundary for each call sign, except where that contour would reach beyond the geographic market boundary. In those cases, the modified license area will end at the market boundary.

27. While we propose to allow Maine to retain the areas in which they are providing service, we are also mindful of the expectations of, and effect of Maine's operations on, other licensees. We note that where Maine is making mobile use of a Part 22 license in conjunction with a non-Part 22 base station, the expectation of neighboring licensees to be free from harmful interference is based on the assumption that the operation of the mobile channel is in compliance with Part 22 paging rules. We therefore determined the proposed license area in those cases based on the Part 22 rules, rather than the technical parameters being used by the non-Part 22 base station.

28. In addition to proposing to limit the modified license areas to the market boundary, the proposed license areas in the Appendix were calculated using Maine's current technical parameters. As discussed above, these parameters require us to waive certain technical rules that have the potential to affect other licensees. Per the conditions of the technical waivers, Maine is required to notify the Division within six months of the effective date of this Order that it has obtained the required concurrences or forgone the waiver, and therefore either implemented an alternative solution that complies with our current rules or ceased operation.

29. *Protest Rights and Procedures.* Section 316(a)(1) of the Act provides that no proposed order of modification shall become final until the license holder has been provided at least 30 days to protest the proposed order.⁶⁰ We will thus provide Maine with 30 days from the release date of this Proposed Order of Modification to file a protest. Section 316(a)(2) and (3) of the Act also provide that any other licensee or permittee who believes its license or permit would be modified by the proposed action may also protest the proposed action before its effective date and that any protest is subject to the requirements of Section 309 for petitions to deny.⁶¹ Section 309(d) in turn provides that a petition to deny must show that the party has standing and that the Commission's action would be contrary to the public interest.⁶²

⁵⁷ Call signs WQMT752, WQMT753, WQMT754, WQMT755, WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761.

⁵⁸ 47 CFR §§ 22.537(d), 22.567(d).

⁵⁹ The technical criteria found in Section 22.537(d) apply to channels identified in Section 22.531, while the technical criteria in Section 22.567 are specific to paired frequencies identified in Section 22.561. Accordingly, an interfering contour will be calculated using the technical criteria associated with the applicable licensed channel block.

⁶⁰ 47 U.S.C. § 316(a)(1).

⁶¹ 47 U.S.C. § 316(a)(3).

⁶² 47 U.S.C. § 309(d). *See also* 47 CFR § 1.939 (petitions to deny).

III. ORDERING CLAUSES

30. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.925 of the Commission's rules, 47 CFR § 1.925, the State of Maine's request for extension of time to meet the requirements of Section 22.503(k) of the Commission's rules, 47 CFR § 22.503(k), is DENIED.

31. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.3 and 1.925 of the Commission's rules, 47 CFR §§ 1.3, 1.925, waiver of Sections 22.503(k)-(j), 22.515, 22.531, 22.535(c), 22.561, and 22.565(c) of the Commission's rules, 47 CFR §§ 22.503(k)-(j), 22.515, 22.531, 22.535(c), 22.561, and 22.565(c), is CONDITIONALLY GRANTED TO THE EXTENT PROVIDED ABOVE.

32. IT IS FURTHER ORDERED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), the Proposed Order of Modification is ADOPTED.

33. IT IS FURTHER PROPOSED that, pursuant to Sections 4(i) and 316(a) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 316(a), the call signs listed in the Appendix and licensed to the State of Maine BE MODIFIED consistent with Section II.B. and the Appendix of this Order and Proposed Order of Modification.

34. IT IS FURTHER ORDERED that, pursuant to Section 316(a)(1) of the Communications Act of 1934, as amended, 47 U.S.C. § 316(a)(1), the Wireless Telecommunications Bureau SHALL SEND this Order and Proposed Order of Modification by certified mail, return receipt requested, to the State of Maine.

35. These actions are taken under delegated authority pursuant to sections 0.131 and 0.331 of the Commission's rules, 47 CFR §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

APPENDIX

Call Signs

WQMT752, WQMT753, WQMT754, WQMT755, WQMT756, WQMT757, WQMT758, WQMT759, WQMT760, and WQMT761

Proposed Modified License Areas

The proposed modified boundaries of each license area will be defined by the interference contour(s) of its base transmitter(s) as calculated pursuant to Section 22.537(d) or 22.567(d), as applicable.

The following maps depicting the proposed modified license areas of each call sign were derived using technical information provided by the State of Maine (Maine).⁶³ The tables below detail the base transmitter information provided by Maine, including location(s) of the base transmitter(s) being used for the call sign, effective radiated power (ERP), antenna height, and height above average terrain (HAAT) data.⁶⁴ The tables also specify the distances from each base transmitter to its interfering contour along the eight radials that were calculated using Maine's technical data.⁶⁵

Proposed Modified License Area/Contour Information for Calls Signs subject to Section 22.537(d)

Base transmitter information provided by State of Maine – 22.537(d)

Call Sign	Location	Latitude	Longitude	Elevation (m)	Antenna Height (m)	ERP (W)	HAAT (m)
WQMT756	Cooper Mountain	44° 59' 12.7" N	67° 28' 01.8" W	216.7	46.6344	39.81	192.4
	Musquash Mtn	45° 23' 19.6" N	67° 47' 49.2" W	374.8	24.384	26.30	260.2
WQMT757	Priestly Mtn	46° 32' 54.3" N	69° 24' 19.1" W	573.4	18.288	48.98	233.8
	Chase	46° 51' 01.3" N	68° 56' 16.9" W	585.2	21.336	42.66	213.5
	Cooper Mountain	44° 59' 12.7" N	67° 28' 01.8" W	216.7	46.6344	39.81	192.4
WQMT758	Coggans Hill	44° 14' 59.4" N	69° 18' 28.2" W	243.4	46.6344	36.31	202.0
	Gray RCC	43° 55' 46.2" N	70° 21' 06.1" W	96.0	70.104	41.69	68.0
WQMT759	Mt Blue	44° 43' 41.1" N	70° 20' 31.2" W	965.9	41.148	44.67	667.5
	Whitten Hill	44° 06' 06.6" N	70° 00' 14.5" W	183.2	17.3736	38.02	123.7
WQMT760	Cook Hill	44° 29' 20.7" N	69° 39' 03.4" W	139.8	22.86	47.86	103.632
	Granite Hill	44° 18' 30.0" N	69° 49' 58.7" W	144.4	46.0248	44.67	124.968
	Ossipee Mtn	43° 35' 16.3" N	70° 44' 22.7" W	317.6	41.148	29.51	238.049
WQMT761	Whitten Hill	44° 06' 06.6" N	70° 00' 14.5" W	183.2	17.3736	38.02	123.7
	Huntoon	44° 02' 04.7" N	69° 40' 08.0" W	66.8	41.148	35.48	87.1728

Transmitter Radial Values – per Section 22.537(d)

⁶³ The technical information used was provided in Maine's August 26, 2016 construction notifications filed for each license, as well as alternative showings provided via email to FCC staff on August 17, 2016.

⁶⁴ Latitude/longitude coordinates, elevation and HAAT information were updated by FCC staff after technical review of information provided by Maine. Further, FCC staff converted ERP, HAAT, and Antenna Height information from standard/English units to metric units, pursuant to Section 1.19 of the Commission's Rules, 47 CFR § 1.19.

⁶⁵ The ERP and HAAT data provided by Maine were averaged values; the individual radial ERP and HAAT values were derived using these averaged values.

Location	Azimuth	HAAT (m)	ERP (W)	Distance (km)
Cooper Mtn	0	151.1	39.4	49.5
	45	198.5	39.4	53.5
	90	184.7	39.4	52.4
	135	197.1	39.4	53.4
	180	220.3	39.4	55.1
	225	203.6	39.4	53.9
	270	195.6	39.4	53.3
	315	189.3	39.4	52.8
Musquash Mtn	0	269.7	26.1	54.3
	45	228.7	26.1	51.9
	90	297.6	26.1	55.8
	135	304.1	26.1	56.2
	180	240.1	26.1	52.6
	225	247	26.1	53.0
	270	205.2	26.1	50.3
	315	261.2	26.1	53.8
Priestly Mtn	0	282.1	48.5	61.1
	45	246.5	48.5	58.9
	90	248.4	48.5	59.0
	135	264.6	48.5	60.0
	180	230.3	48.5	57.7
	225	203.7	48.5	55.8
	270	167.5	48.5	52.8
	315	239.9	48.5	58.4
Chase	0	223.1	40.6	55.5
	45	188.3	40.6	53.0
	90	305.7	40.6	60.7
	135	256.8	40.6	57.8
	180	162.9	40.6	50.9
	225	164.4	40.6	51.0
	270	171	40.6	51.5
	315	263.7	40.6	58.2
Coggans Hill	0	189.4	36	52.0
	45	217.9	36	54.1
	90	184.5	36	51.6
	135	224.6	36	54.5
	180	221	36	54.3
	225	235.6	36	55.2
	270	208.1	36	53.4
	315	175.9	36	50.9
Gray RCC	0	63.8	41.3	39.2
	45	70.9	41.3	40.4
	90	103.8	41.3	45.0

	135	112.7	41.3	46.0
	180	61.7	41.3	38.9
	225	67.7	41.3	39.9
	270	59.6	41.3	38.5
	315	18.1	41.3	31.8
Mt Blue	0	748.4	44.3	79.1
	45	686.6	44.3	77.2
	90	750.6	44.3	79.2
	135	647.8	44.3	76.0
	180	596.8	44.3	74.2
	225	747.6	44.3	79.1
	270	692.3	44.3	77.4
	315	523.2	44.3	71.6
Whitten Hill	0	121.4	37.7	46.2
	45	128.7	37.7	47.0
	90	135.6	37.7	47.7
	135	138.4	37.7	48.0
	180	127.8	37.7	46.9
	225	134	37.7	47.5
	270	120.3	37.7	46.1
	315	93.7	37.7	43.0
Cook Hill	0	110.8	47.4	46.9
	45	107.6	47.4	46.5
	90	71	47.4	41.4
	135	89.5	47.4	44.1
	180	81	47.4	42.9
	225	98.5	47.4	45.3
	270	82.5	47.4	43.2
	315	64.8	47.4	40.3
Granite Hill	0	109.8	44.3	46.2
	45	132.9	44.3	48.8
	90	127.9	44.3	48.2
	135	132.6	44.3	48.7
	180	121.6	44.3	47.6
	225	123.8	44.3	47.8
	270	97.2	44.3	44.7
	315	89.8	44.3	43.7
Ossipee Mtn	0	229.1	29.2	52.9
	45	269.4	29.2	55.4
	90	278.8	29.2	55.9
	135	266.4	29.2	55.2
	180	245.3	29.2	53.9
	225	165.3	29.2	48.3
	270	180.5	29.2	49.5

	315	224.7	29.2	52.6
Huntoon	0	44.2	35.2	34.4
	45	70.2	35.2	39.2
	90	86.8	35.2	41.6
	135	79.9	35.2	40.7
	180	93.4	35.2	42.5
	225	74.5	35.2	39.9
	270	74.6	35.2	39.9
	315	58.3	35.2	37.2

Proposed Modified License Area/Contour Information for Calls Signs subject to Section 22.567(d)

Base transmitter information provided by State of Maine – 22.567(d)

Call Sign	Location	Latitude	Longitude	Elevation (m)	Antenna Height (m)	ERP (W)	HAAT (m)
WQMT752	Spencer Mtn	45° 46' 30.9" N	69° 26' 38.7" W	967.5	16.764	48.98	597.8
WQMT753	Garland	45° 04' 02.1" N	69° 09' 58.5" W	267.8	28.35	38.02	163.8
	Passadumkeag	45° 07' 48.4" N	68° 21' 24.7" W	438.9	46.94	44.67	374.3
WQMT754	Garland	45° 04' 02.1" N	69° 09' 58.5" W	267.8	28.35	38.02	163.8
	Priestly Mtn	46° 32' 54.3" N	69° 24' 19.1" W	573.4	18.288	48.98	233.8
	Spencer Mtn	45° 46' 30.9" N	69° 26' 38.7" W	967.5	16.764	48.98	597.8
	Fish Hill	45° 20' 45.2" N	68° 30' 24.6" W	201.6	41.148	43.65	148.5
WQMT755	Garland	45° 04' 02.1" N	69° 09' 58.5" W	267.8	28.35	38.02	163.8
	Passadumkeag	45° 07' 48.4" N	68° 21' 24.7" W	438.9	46.94	44.67	374.3
	Fish Hill	45° 20' 45.2" N	68° 30' 24.6" W	201.6	41.148	43.65	148.5
	Musquash Mtn	45° 23' 19.6" N	67° 47' 49.2" W	374.8	24.384	26.30	260.2
	Patten	45° 59' 22.7" N	68° 31' 33.7" W	275.3	41.148	45.71	131.064

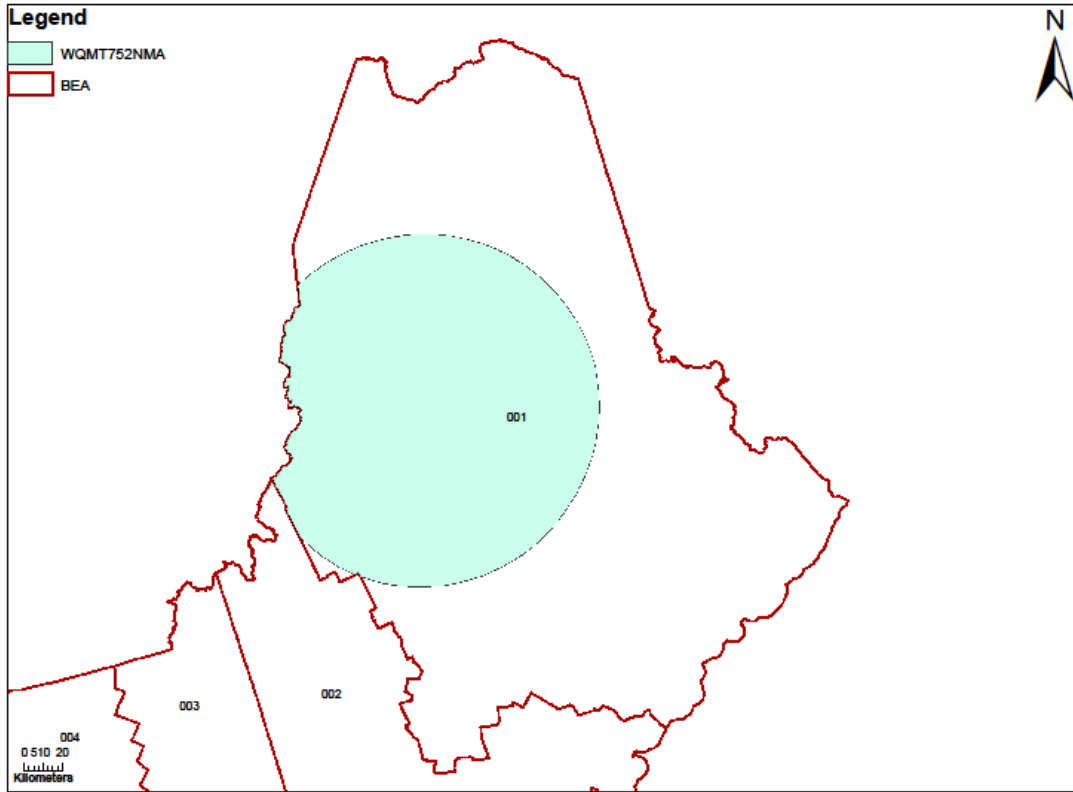
Transmitter Radial Values – per Section 22.567(d)

Location	Azimuth	HAAT (m)	ERP (W)	Distance (km)
Spencer Mtn	0	609.3	48.5	92.6
	45	619.8	48.5	93.0
	90	622.2	48.5	93.1
	135	565.5	48.5	91.0
	180	573.4	48.5	91.3
	225	608	48.5	92.6
	270	595	48.5	92.1
	315	648.8	48.5	94.0
Garland	0	170.9	37.7	66.7
	45	154	37.7	65.2
	90	185.7	37.7	68.0
	135	224.8	37.7	71.1
	180	180	37.7	67.5
	225	165.5	37.7	66.2
	270	133.2	37.7	55.3
	315	138.8	37.7	55.8
Passadumkeag	0	395.7	44.3	82.8

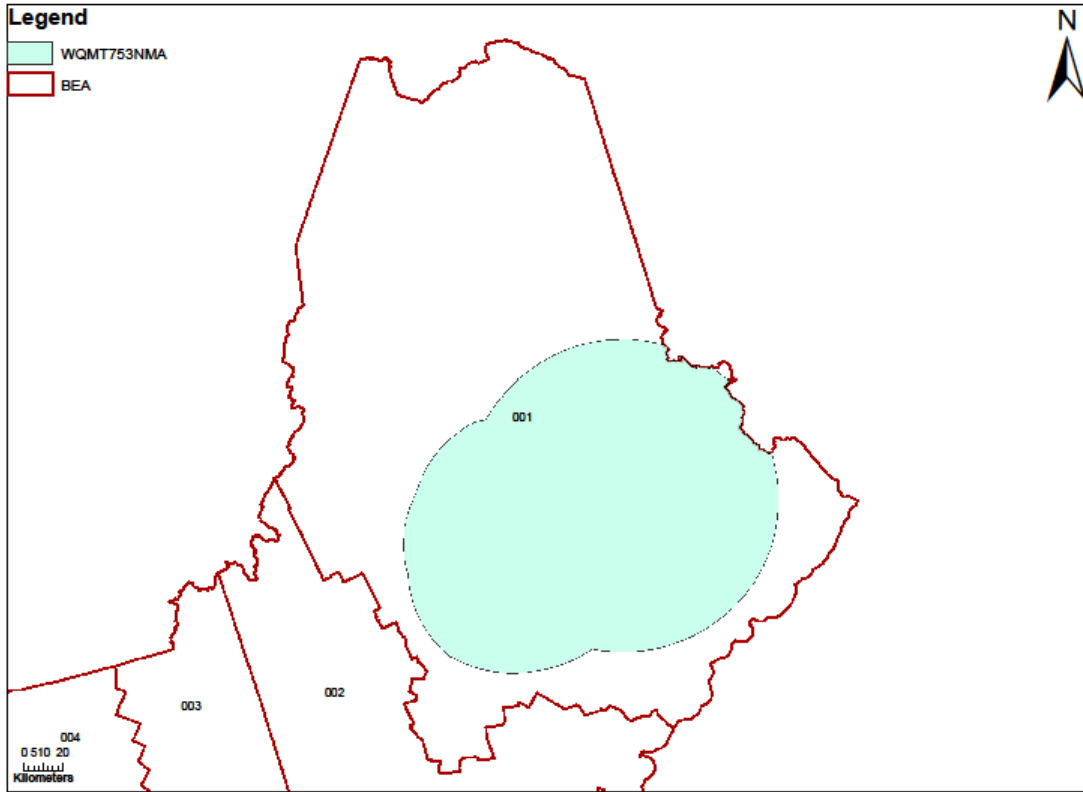
Transmitter Radial Values – per Section 22.567(d)

Location	Azimuth	HAAT (m)	ERP (W)	Distance (km)
	45	386.3	44.3	82.3
	90	345.1	44.3	80.2
	135	361.9	44.3	81.1
	180	354.5	44.3	80.7
	225	357.3	44.3	80.9
	270	411.2	44.3	83.5
	315	385.6	44.3	82.3
Priestly Mtn	0	282.1	48.5	77.6
	45	246.5	48.5	75.2
	90	248.4	48.5	75.3
	135	264.6	48.5	76.4
	180	230.3	48.5	74.0
	225	203.7	48.5	72.0
	270	167.5	48.5	68.8
	315	239.9	48.5	74.7
Fish Hill	0	167.9	43.2	67.7
	45	128.2	43.2	56.2
	90	104.6	43.2	53.6
	135	132.7	43.2	56.7
	180	127.4	43.2	56.1
	225	171.4	43.2	68.1
	270	172.4	43.2	68.2
	315	162.3	43.2	67.2
Musquash Mtn	0	269.7	26.1	70.4
	45	228.7	26.1	67.8
	90	297.6	26.1	72.0
	135	304.1	26.1	72.4
	180	240.1	26.1	68.5
	225	247	26.1	69.0
	270	205.2	26.1	66.1
	315	261.2	26.1	69.9
Patten	0	44.9	45.3	44.1
	45	80	45.3	50.7
	90	151	45.3	66.5
	135	145.7	45.3	58.5
	180	166.7	45.3	68.1
	225	144.7	45.3	58.4
	270	114.6	45.3	55.2
	315	114.2	45.3	55.2

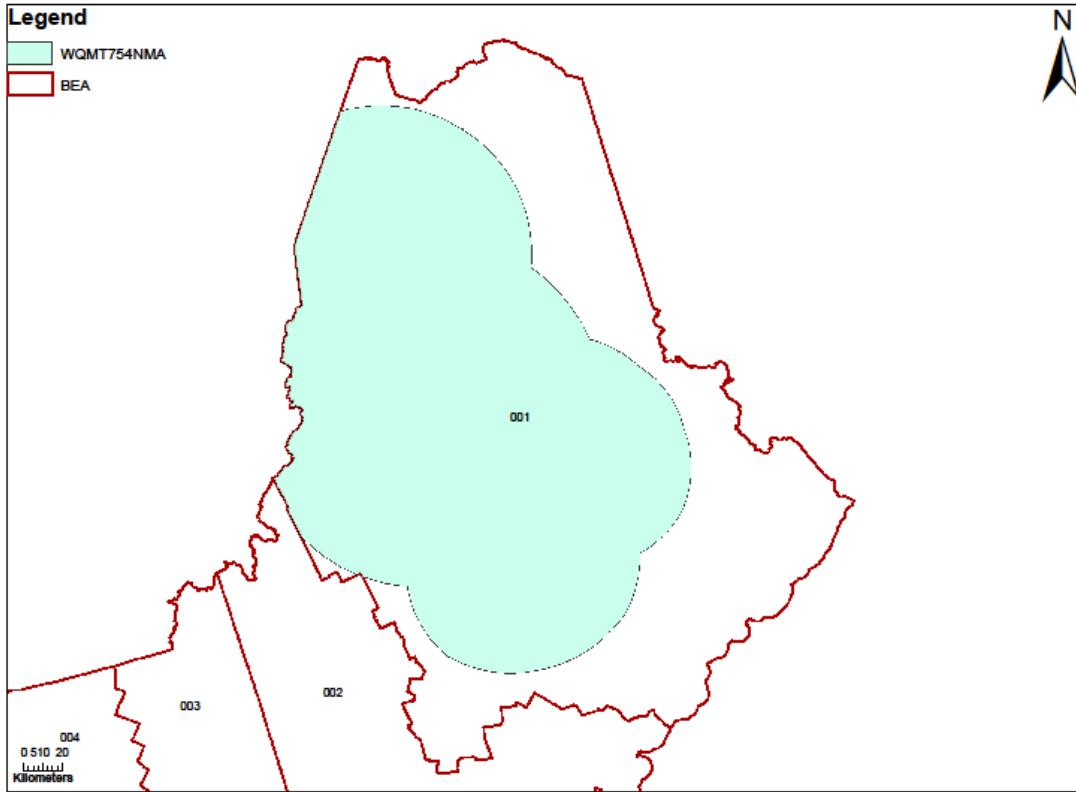
WQMT752 New Market Area



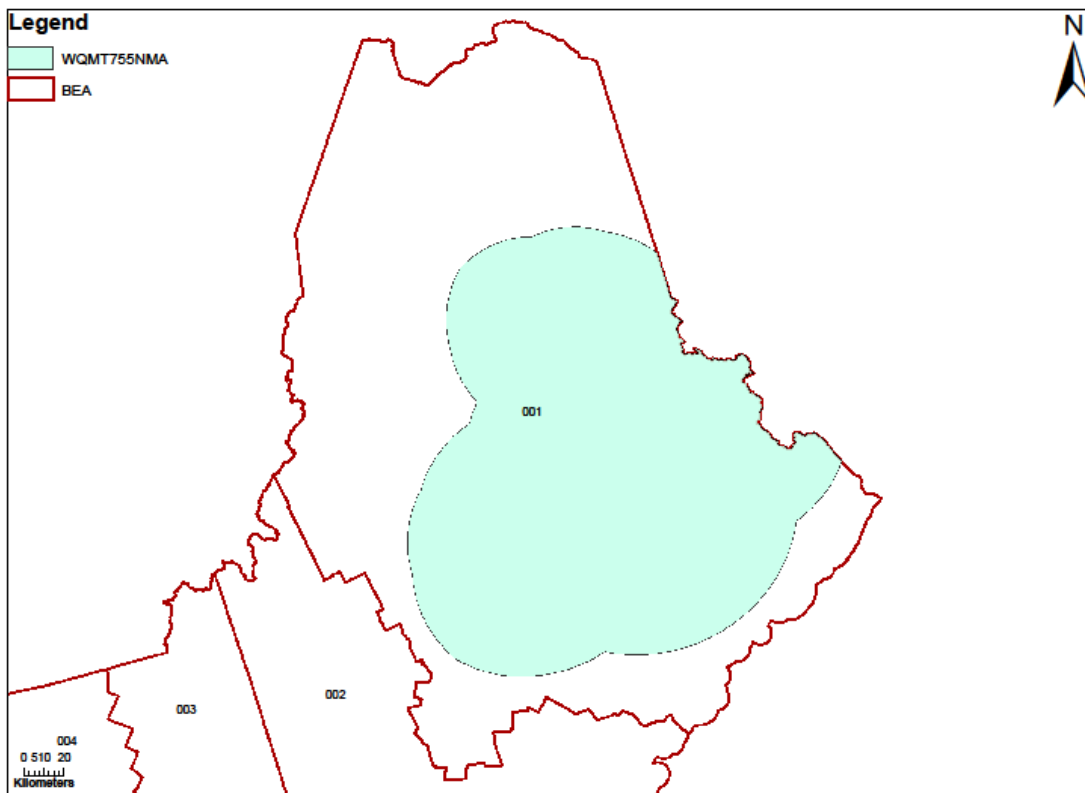
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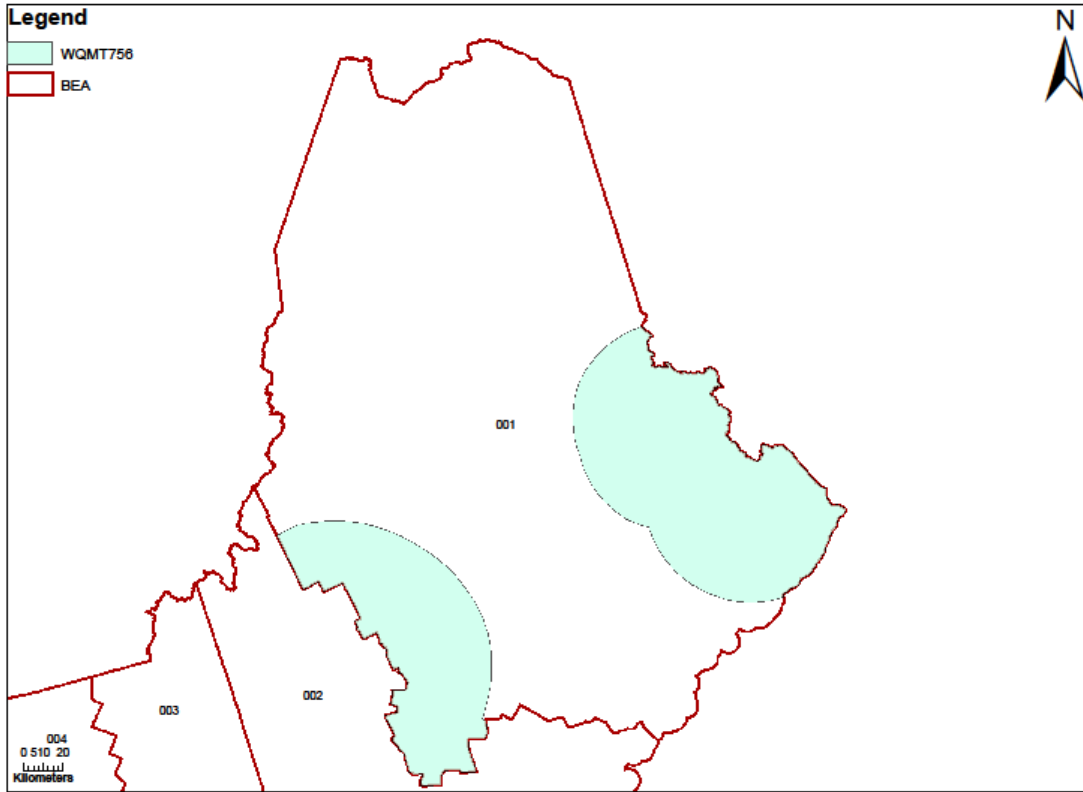
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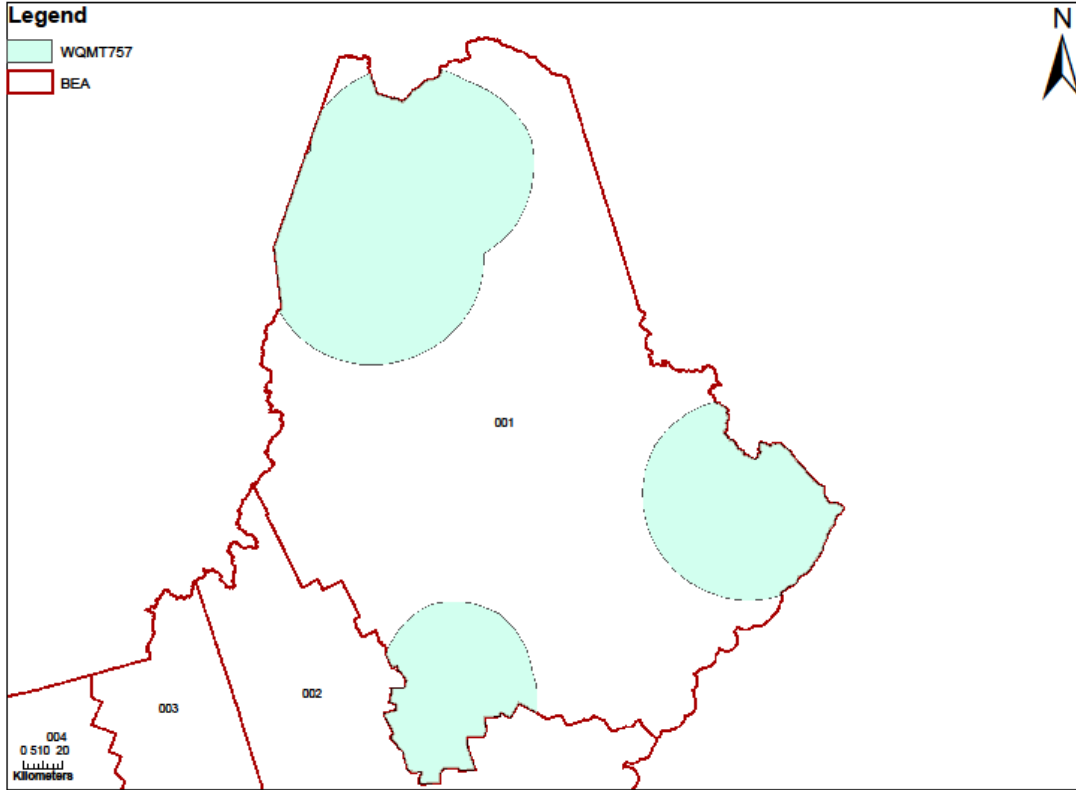
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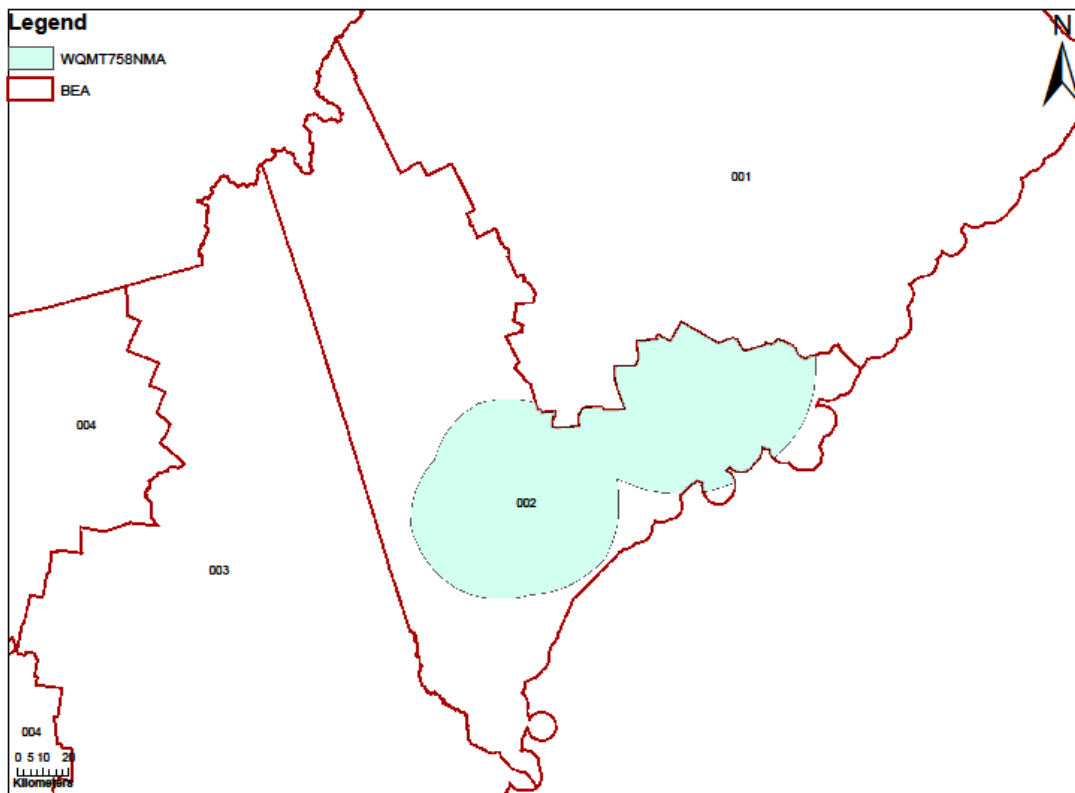
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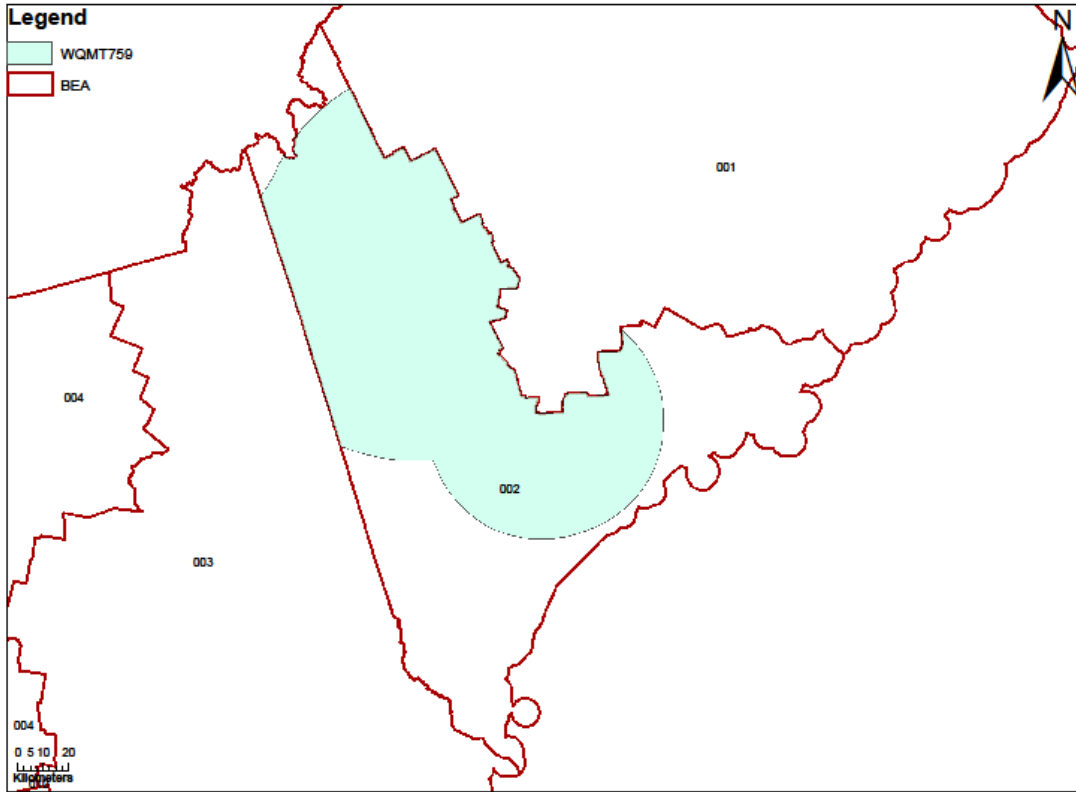
WQMT757 New Market Area



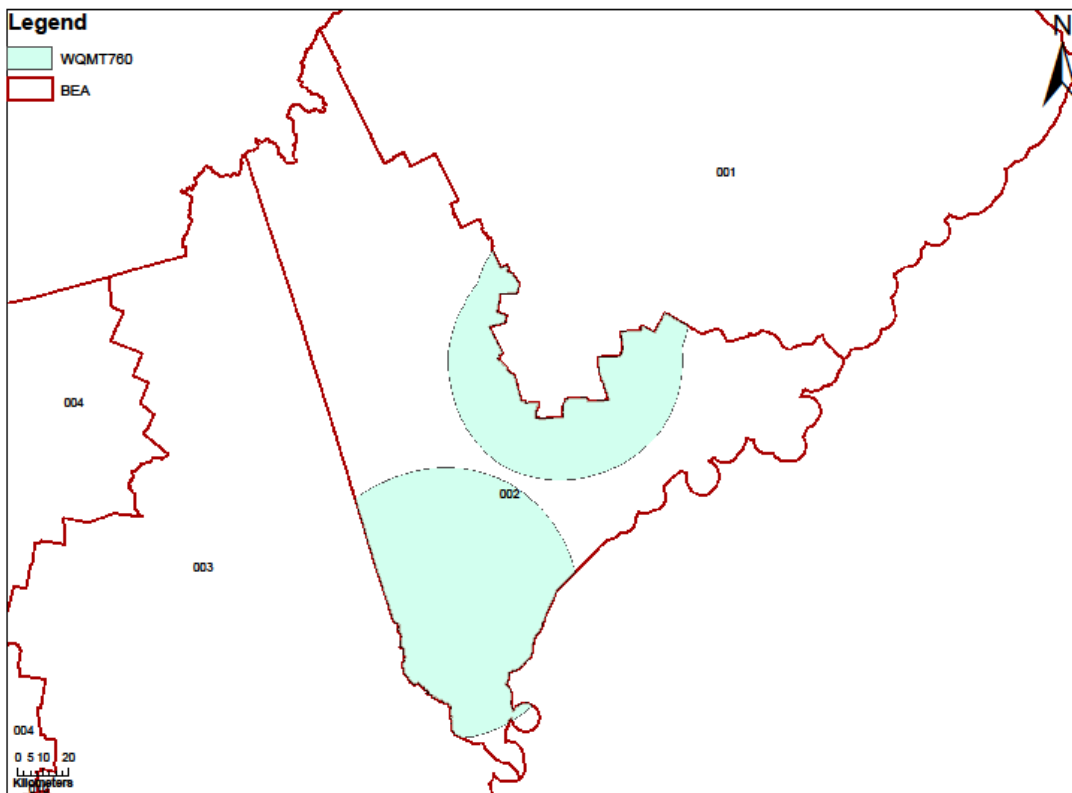
WQMT758 New Market Area



WQMT759 New Market Area



WQMT760 New Market Area



WQMT761 New Market Area

