

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

In the Matter of
Town of Bedford Police Department,
Massachusetts
Requests for Waiver of Sections 22.621, 90.307(d),
and 90.311 of the Commission's Rules
File No. 0009935320

ORDER

Adopted: May 11, 2023

Released: May 11, 2023

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

I. INTRODUCTION

1. On March 2, 2022, the Town of Bedford Police Department, Massachusetts (Bedford, or the Department) filed an application to add two, part 22 paging control channels in the 470-512 MHz band (T-Band) to its public safety radio system, accompanied by two waiver requests.

II. BACKGROUND

2. Bedford currently operates a T-Band public safety radio system under call sign WIJ355 on frequencies in the TV Channel 16 band (482-488 MHz). Bedford seeks to add non-public safety frequencies 482.1125 and 485.1125 MHz to the system for public safety radio operations.

3. On February 1, 2023, the Public Safety and Homeland Security Bureau (Bureau) issued a public notice seeking comment on the applications and waiver requests. We received no comments or replies.

III. DISCUSSION

4. To obtain a waiver, 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

1 See File No. 0009935320 (filed Mar. 2, 2022, amended June 27, 2022 and Jan. 5, 2023) attached Letter from John C. Fisher, Chief of Police, Town of Bedford Police Department, to Federal Communications Commission (dated Dec. 29, 2022) (Part 22 Waiver Request); and attached letter from Carol DiCaro, AFC Processor, APCO International, to FCC (dated Feb. 4, 2022) (TV Spacing Waiver Request).

2 See 47 CFR §§ 22.621 (designating certain frequencies for point-to-multipoint transmitters that support transmitters that provide public mobile service), 90.307(d) (requiring a Private Land Mobile Radio Service (PLMR) base station which has associated mobile units to be spaced at least 145 kilometers (90 miles) from a protected adjacent channel TV station), and 90.311 (designating certain frequency ranges for land mobile radio assignment); see also Part 22 Waiver Request at 1.

3 Part 22 Waiver Request at 1.

4 See Public Safety And Homeland Security Bureau Seeks Comment on Requests for Waiver Filed by the Department of Bedford Police Department, Massachusetts to Operate a Public Safety Paging System on Part 22 Spectrum, Public Notice, DA 23-95 (PSHSB Feb. 1, 2023).

grant of the waiver would be in the public interest; 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.⁵ An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.⁶

5. Bedford states that “due to extreme demand for radio frequencies in the Boston area, all frequencies have been exhausted in order to satisfy its growing need for radio capacity.”⁷ The Department indicates that it “has no other choice but to look to commercial radio bands for additional channels.”⁸ Bedford’s frequency coordinator submitted a letter stating that it conducted a search of the 453-470 MHz and 470-512 MHz bands and certified that “there are no public safety channels to be assigned that meet public safety coordination protocols or frequency limitations and will work at all sites for this system.”⁹

6. Bedford seeks a waiver of section 22.621 to provide public safety PLMR service on frequencies 482.1125 and 485.1125 MHz, which are “allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service,” (part 22 use).¹⁰ The Department also seeks a waiver of section 90.311, which provides the specific frequency ranges available for PLMR use under section 90.303. In particular, section 90.311 excludes Channel 16 band frequencies below 482.30625 MHz for base and mobile, and frequencies below 485.30625 MHz for mobile, in the Boston urbanized area from PLMR assignment,¹¹ since section 22.621 allocates such frequencies for part 22 use.¹²

7. Finally, the Department seeks a waiver of section 90.307(d) to modify a station located 119.8 kilometers (74.4 miles) from broadcast television (TV) station WPXQ-TV, TV Channel 17, Newport, Rhode Island.¹³ The modification would increase the antenna height with appurtenances from 18 meters to 21 meters above ground level.¹⁴ Bedford provided an engineering analysis purporting to demonstrate that its 64 dBu contour does not overlap Station WPXQ-TV’s 64 dBu Grade B contour.¹⁵

⁵ 47 CFR § 1.925(b)(3)(i-ii).

⁶ *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969), *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).

⁷ Part 22 Waiver Request at 1.

⁸ *Id.*

⁹ File No. 0009935320, attached letter from Carol DiCaro, AFC Processor, APCO International, to FCC (with Frequency Search Results) (dated June 10, 2022).

¹⁰ 47 CFR § 22.621. Bedford indicates that its transmitters would provide PLMR service rather than public mobile service. *See* File No. 0009935320 (indicating Radio Service Code PW, one of the part 90 Private Land Mobile Radio service codes).

¹¹ 47 CFR § 90.311.

¹² 47 CFR § 22.621.

¹³ TV Spacing Waiver Request at 1. *See also* 47 CFR § 90.307(d). The smallest separation distance to the proposed sites is 76.3 km. *See* TV Spacing Waiver Request at 3.

¹⁴ File No. 0009935320; license for Station WIJ335.

¹⁵ File No. 0009935320, attached Grade B Contours. The generally accepted protection criterion for a contour analysis between a PLMR station and an adjacent channel TV station is zero dB at the TV station’s Grade B contour. *See* Private Land Mobile Operations in the 470-512 MHz Band, *Public Notice* No. 20291 (rel. Oct. 22, 1991) at 1.

8. Regarding the requested part 22 waiver, we find that the Department satisfies the first prong of the waiver standard, in that they have shown that the underlying purposes of sections 22.621 and 90.311 would not be frustrated by grant of a waiver in the present case. In particular, we find that no part 22 common carrier operations are licensed on the requested frequencies. While the Commission would typically assign a point-to-multipoint channel listed under section 22.621 to a part 22 applicant if that channel was previously unoccupied in that urban area,¹⁶ we find that continuing to let the requested frequencies remain fallow is not in the public interest.

9. We also find that Bedford's proposal for the unused frequencies entails substantial public safety benefits for preserving the life and property of Bedford's population that outweigh reserving the frequencies for part 22 use.¹⁷ The Department has shown that a waiver is in the public interest by improving the Department's radio coverage for first responders, allowing continued use of a spectrally-efficient shared radio system, and maintaining interoperability with other T-Band public safety agencies in the greater Boston metropolitan area.

10. Additionally, we find that the Department's proposed use will not create interference to adjacent channel licensees. Specifically, Bedford's proposed narrow 11.25 kHz bandwidth operations on 482.1125 and 485.1125 MHz will not spectrally overlap Town of Watertown, Massachusetts' public safety radio system operating on frequency pair 482/485.1250 MHz in narrowband mode.¹⁸ Furthermore, no licensee operates on adjacent frequency 482.1000 MHz. Accordingly, we grant the Department's Part 22 Waiver Request.

11. Regarding the TV spacing waiver request under section 90.307(d), we have independently reviewed the Department's engineering analysis and agree with its conclusions. The generally accepted protection criterion for a contour analysis between a PLMR station and an adjacent channel TV station is zero dB at the TV station's Grade B contour.¹⁹ Based on the non-overlap of the Department's 64 dBu interfering contour with Station WPXQ-TV's 64 dBu Grade B service contour, we agree that the Department would provide the requisite zero dB protection to the TV station.²⁰ Moreover, the Department's existing base stations have operated short-spaced to Station WPXQ-TV with no reported interference issues. We conditionally grant the TV-Spacing Waiver Request with a requirement that the Department must accept any interference caused by full-power and other primary television stations, and must eliminate any interference caused by its facilities to Station WPXQ-TV's viewers.

IV. CONCLUSION

12. Based on the information before us, we conclude that the Department has satisfied the criteria set forth under section 1.925, and that grant of the requests for waiver of Commission rules to enable it to operate its public safety radio system on part 22 channels as proposed is warranted. We therefore grant the requests for waiver, subject to the following condition:

¹⁶ See *Town of Morris, New Jersey*, Order, 24 FCC Rcd 12492, 12496-97 para. 13 n.51 (PSHSB PD 2009).

¹⁷ See *Gateway Telecom LLC*, Order, 22 FCC Rcd 15789, 15795 para. 13 (2007) (finding that "no current licensee that would be negatively impacted by granting a waiver" and that "if a waiver is denied, . . . frequencies will lay fallow until the Commission makes the spectrum available through auctions or other means."); see also *Town of Marin, California*, Order, 26 FCC Rcd 6677, 6683 para.16 (PSHSB PLD 2011). Cf. *Fresno City and Town Housing Authorities*, Order on Reconsideration, 15 FCC Rcd 10998, 11001 para. 9 (WTB PSPWD 2000) (weighing the competing public interests and finding that waiver proponent did not demonstrate that the public interest in not allowing a channel temporarily to lie fallow outweighed the public interest in fairness of application process).

¹⁸ See call sign WIK259.

¹⁹ See *Private Land Mobile Operations in the 470-512 MHz Band*, *Public Notice* No. 20291 (rel. Oct. 22, 1991) at 1.

²⁰ File No. 0009935320, attached Grade B Contours.

The licensee must accept any interference caused by full-power and other primary television stations, and must eliminate any interference caused by its facilities to viewers located within Station WPXQ-TV's noise-limited service contour (NLSC), 41 dBu F(50,90).

V. ORDERING CLAUSES

13. Accordingly, **IT IS ORDERED** that, pursuant to Sections 1, 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), and 303(r), and section 1.925 of the Commission's rules, 47 CFR § 1.925, the Feb. 4, 2022 and Dec. 29, 2022 Waiver Requests, filed by the Town of Bedford Police Department, ARE GRANTED as conditioned herein.

14. **IT IS FURTHER ORDERED**, that the applications, File No. 0009935320, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

15. This action is taken under delegated authority pursuant to Sections 0.191(f) and 0.392 of the Commission's rules, 47 CFR §§ 0.191(f) and 0.392.

FEDERAL COMMUNICATIONS COMMISSION

John A. Evanoff
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau