

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

In the Matter of )
County of Westchester, New York )
Requests for Waiver of Sections 22.621, 90.303, )
and 90.311 of the Commission’s Rules )
File Nos. 0009586826, 0009647521,
0009649008, 0009650843

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 June 15, 2021 and subsequent dates, the County of Westchester, New York (Westchester, or the County) filed four applications to operate a public safety paging system on part 22 paging control channels in the 470-512 MHz band (T-Band), accompanied by two waiver requests. The County seeks waivers of sections 22.621, 90.303, and 90.311 of the Commission’s rules. For the reasons below, we grant the requested waivers as conditioned herein.

II. BACKGROUND

2. The County currently operates a public safety radio system on several T-Band channel pairs from part 22 spectrum as authorized by several prior waiver orders. Westchester seeks to use non-public safety frequencies 470.2000 and 470.2125 MHz for public safety paging operations.

1 See File Nos. 0009586826 (filed June 15, 2021, amended Dec. 28, 2021, Sept. 16, 2022, and Oct. 25, 2022) (requesting frequency 470.2125 MHz), attached Waiver Request (filed June 15, 2021) (Waiver Request – 470.2125 MHz); 0009647521 (filed Aug. 4, 2021, amended Aug. 6, 2021, Dec. 28, 2021, Sept. 16, 2022, and Oct. 25, 2022) (requesting frequency 470.2125 MHz), attached Waiver Request – 470.2125 MHz; 0009649008 (filed Aug. 5, 2021, amended Aug. 30, 2021, Dec. 28, 2021, Sept. 16, 2022, and Oct. 25, 2022) (requesting frequency 470.2000 MHz), attached Waiver Request (filed Aug. 30, 2021) (Waiver Request – 470.2000 MHz); and 0009650843 (filed Aug. 6, 2021, amended Aug. 30, 2021, Dec. 28, 2021, Sept. 16, 2022, and Oct. 25, 2022) (requesting frequency 470.2000 MHz), attached Waiver Request – 470.2000 MHz. All four applications contain a Supplemental Statement In Support of Higher Effective Radiated Power on 470.2000 MHz and 470.2125 MHz For Paging Operations (filed Oct. 25, 2022) (Supplement).

2 See 47 CFR §§ 22.621 (designating certain frequencies for point-to-multipoint transmitters that support transmitters that provide public mobile service), 90.303 (allocating certain TV channels for land mobile use in thirteen urbanized areas), and 90.311 (designating certain frequency ranges for land mobile radio assignment); see also Waiver Request – 470.2000 MHz; Waiver Request – 470.2125 MHz.

3 See County of Westchester, Order, 19 FCC Rcd 23189 (WTB PSCID 2004); County of Westchester, Order, 20 FCC Rcd 18852 (WTB PSCID 2005); County of Westchester, New York, Order, 22 FCC Rcd 19872 (PSHSB PD 2007).

4 Waiver Request – 470.2000 MHz at 2; Waiver Request – 470.2125 MHz at 2.

3. On February 1, 2023, the Public Safety and Homeland Security Bureau (Bureau) issued a *Public Notice*<sup>5</sup> seeking comment on the applications and waiver requests. In particular, the *Public Notice* noted that the County is currently authorized to operate on one of the two frequencies, 470.2000 MHz,<sup>6</sup> but is requesting higher effective radiated power (ERP) levels than currently authorized.<sup>7</sup> For frequency 470.2125 MHz, the County seeks authorization to operate, and at the same increased ERP levels as proposed on frequency 470.2000 MHz.<sup>8</sup> 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 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.<sup>9</sup> An applicant seeking a waiver faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.<sup>10</sup>

5. The County states that “[t]he waiver requests that resulted in the above referenced Orders documented the severe frequency congestion in the New York and New Jersey areas.”<sup>11</sup> Westchester contends that “[t]he frequency congestion situation has not improved since the ... Orders were granted.”<sup>12</sup> Westchester’s frequency coordinator submitted a letter certifying that “there are no UHF or T-band public safety frequencies that can be assigned.”<sup>13</sup>

6. Westchester states that “[t]he requested channel[s] will improve radio service to first responders in Westchester County without causing unacceptable interference to other incumbent land mobile or DTV licensees.”<sup>14</sup> The County states that it “is experiencing poor to no coverage in a number of locations, particularly in larger office buildings and shopping malls.”<sup>15</sup> The County explored alternative solutions such as bi-directional amplifiers (BDAs) and distributed antenna systems (DASs), but states that they “are difficult to install in older buildings and they are very costly.”<sup>16</sup> The County

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<sup>5</sup> See *Public Safety And Homeland Security Bureau Seeks Comment on Requests for Waiver Filed by the County of Westchester, New York to Operate a Public Safety Paging System on Part 22 Spectrum*, Public Notice, DA 23-96 (PSHSB Feb. 1, 2023) (*Public Notice*).

<sup>6</sup> *Id.* at 2; see call signs WQHV394, WREA946, and WREA950.

<sup>7</sup> File Nos. 0009649008, 0009650843; see *Public Notice* at 2 for a table of current and proposed power levels by location.

<sup>8</sup> File Nos. 0009586826, 0009647521.

<sup>9</sup> 47 CFR § 1.925(b)(3)(i-ii).

<sup>10</sup> *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).

<sup>11</sup> Waiver Request – 470.2000 MHz at 2; Waiver Request – 470.2125 MHz at 2.

<sup>12</sup> *Id.*

<sup>13</sup> File Nos. 0009586826, 0009647521, 0009649008, 0009650843, attached letter from Judy Stone, Association of Public-Safety Communications Officials (APCO) AFC Team Leader, APCO International, to FCC (dated Sept. 16, 2022).

<sup>14</sup> Waiver Request – 470.2000 MHz at 4; Waiver Request – 470.2125 MHz at 4.

<sup>15</sup> Supplement at 1.

<sup>16</sup> *Id.*

estimates that it has in excess of 1,500 large office, apartment, and condo buildings.<sup>17</sup> The County states that “[i]nitial installation costs would be extremely high and recurring maintenance would be required in each building.”<sup>18</sup> Westchester highlights additional burdens associated with BDAs and DASs including individual written agreements with building owners, liability insurance, obtaining power sources, and “many years” needed to complete installations.<sup>19</sup> Therefore, the County seeks an authorization to operate on frequency 470.2125 MHz, and higher power levels at each site for immediate improved coverage.<sup>20</sup>

7. Westchester seeks a waiver of section 22.621 to provide public safety Private Land Mobile Radio Service (PLMR) on frequency 470.2125 MHz, which is “allocated for assignment to transmitters utilized within point-to-multipoint systems that support transmitters that provide public mobile service,” (part 22 use).<sup>21</sup> The County also seeks a waiver of section 90.303, which allocates certain TV channels for land mobile use in thirteen urbanized areas of the United States.<sup>22</sup> Finally, the County 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 14 band frequencies below 470.30625 MHz in the New York/New Jersey urbanized area from PLMR assignment,<sup>23</sup> since section 22.621 allocates such frequencies for part 22 use.<sup>24</sup>

8. We find that the County satisfies the first prong of the waiver standard, in that they have shown that the underlying purposes of sections 22.621, 90.303, 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,<sup>25</sup> we find that continuing to let the requested frequencies remain fallow (notwithstanding Westchester’s own existing use of frequency 470.2000 MHz) is not in the public interest.

9. We also find that Westchester’s proposal for the unused frequencies entails substantial public safety benefits for preserving the life and property of the County’s population that outweigh reserving the frequencies for part 22 use.<sup>26</sup> The County has shown that a waiver is in the public interest

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<sup>17</sup> *Id.*

<sup>18</sup> *Id.*

<sup>19</sup> *Id.*

<sup>20</sup> *Id.*

<sup>21</sup> 47 CFR § 22.621. Westchester provides that they would use the frequencies for public safety paging operations, rather than for public mobile service. Waiver Request – 470.2000 MHz at 2; Waiver Request – 470.2125 MHz at 2. Additionally, frequency 470.2000 MHz is offset by 12.5 kHz from allocated public mobile service channels 470.1875 and 470.2125 MHz.

<sup>22</sup> 47 CFR § 90.303. Frequencies in the TV channel 14 and 15 bands, including the subject frequencies, are available for land mobile and paging assignment in the New York urbanized area.

<sup>23</sup> 47 CFR § 90.311.

<sup>24</sup> 47 CFR § 22.621.

<sup>25</sup> See *County of Morris, New Jersey*, Order, 24 FCC Rcd 12492, 12496-97 para. 13 n.51 (PSSB PD 2009).

<sup>26</sup> 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 *County of Marin, California*, Order, 26 FCC Rcd 6677, 6683 para.16 (PSSB PLD 2011). Cf. *Fresno City and County 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).

by improving the County'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 New York metropolitan area.

10. Additionally, we find that Westchester's proposed use will not create interference to adjacent channel licensees. Specifically, Westchester's proposed narrow 11.25 kHz bandwidth operations on 470.2000 MHz would not spectrally overlap Borough of Fort Lee, New Jersey's public safety radio system operating on frequency 470.1875 MHz in narrowband mode.<sup>27</sup> Furthermore, no licensee operates on adjacent frequency 470.2250 MHz. Accordingly, we grant the County's Waiver Requests.

#### IV. CONCLUSION

11. Based on the information before us, we conclude that the County 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 paging system as proposed is warranted. We therefore grant the requests for waiver.

#### V. ORDERING CLAUSES

12. 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 June 15, 2021 and Aug. 30, 2021 Waiver Requests, as supplemented, filed by the County of Westchester, ARE GRANTED.

13. **IT IS FURTHER ORDERED**, that the applications, File Nos. 0009586826, 0009647521, 0009649008, and 0009650843, SHALL BE PROCESSED in accordance with this Order and the Commission's rules.

14. 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

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<sup>27</sup> See call sign WQBL382.