



PUBLIC NOTICE

Federal Communications Commission
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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY THE MELVILLE, NEW YORK FIRE DISTRICT TO MODIFY ITS PUBLIC SAFETY RADIO SYSTEM BY REPLACING TWO UHF PAGING CONTROL AND TRUNKED MOBILE FREQUENCIES

Comment Date: January 5, 2005

Reply Date: January 12, 2005

By this *Public Notice*, the Wireless Telecommunications Bureau seeks comment on a waiver request by the Melville, New York Fire District (Melville) to modify its license for Public Safety Pool Station WIG703, Melville, New York. Melville currently is authorized to operate on Part 22 paging control channels 470.1625, 473.1625, 470.2375, and 473.2375 MHz. On November 30, 2004, Melville filed an application, FCC File No. 0001954152, to add frequencies 476.0125 and 479.0125 MHz, which are currently allocated to Part 22 paging control and trunked mobile use, respectively. Melville represents that, upon grant of this application, it will submit an application requesting deletion of frequency pair 470/473.2375 MHz from its license.

By way of background, the Public Safety and Critical Infrastructure Division (Division) granted the Attorney General's Office of the State of New Jersey (New Jersey) Special Temporary Authority (STA) to operate on frequency pair 470/473.2375 MHz on August 6, 2004, and extended the STA on September 20, 2004. On August 10, 2004, the Division released an *Order* approving a proposal submitted pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act), 47 U.S.C. § 337(c), by seven public safety agencies in the New York metropolitan area, including Melville and the County of Bergen, New Jersey (Bergen), to augment the pending individual applications of each agency to use frequencies allocated in Part 22 as paging control and trunked mobile channels to support the communications requirements of the public safety officers of each agency.¹ In particular, the proposal provided that Melville would be assigned frequency pairs 470/473.1625 and 470/473.2375 MHz, and Bergen and Melville would operate co-channel on frequency pair 470/473.2375 MHz. On September 9, 2004, Bergen filed a petition for reconsideration of the *Order*, requesting that the Division limit the authorized power for Melville's operations on frequency pairs 470/473.1625 and 470/473.2375 MHz. On October 20, 2004, Melville filed a petition for reconsideration of the extension of New Jersey's STA to operate on frequency pair 470/473.2375 MHz. The purpose of the present modification application and waiver request is to resolve Melville's co-channel disputes with Bergen and New Jersey.

¹ See Seven Public Safety Agencies in the New York Metropolitan Area, *Order*, 19 FCC Rcd 15355 (WTB PSCID 2004).

Melville requests a waiver of any Commission rules that are necessary to grant its application, pursuant to Section 337(c) of the Act. We note that Melville requires a waiver of Sections 22.621 and 22.651 of our rules set forth frequencies, some of which are in the 470-512 MHz band, that are available for point-to-multipoint and trunked mobile systems, respectively. Melville states that a grant of its request would be consistent with Section 337(c) of the Act and requests that the Commission incorporate by reference Melville's showings in its initial waiver request from January 23, 2004, FCC File No. 0001593425. Section 337(c) of the Act states that the Commission shall grant an application by an entity seeking to provide public safety services to the extent necessary to permit the use of unassigned frequencies, if the Commission makes five specific findings: (1) no other spectrum allocated for public safety use is immediately available; (2) there will be no harmful interference to other spectrum users entitled to protection; (3) public safety use of the frequencies is consistent with other public safety spectrum allocations in the geographic area in question; (4) the unassigned frequencies were allocated for their present use not less than two years prior to the grant of the applications at issue; and (5) the grant of the applications is consistent with the public interest. "Public safety services" are defined by 47 U.S.C. § 337(f) as services the sole or principal purpose of which is to protect the safety of life, health, or property, that are provided by the governmental entities or by non-governmental entities authorized by the governmental entity whose primary mission is the provision of such services, and that are not made commercially available to the public by the provider.

Melville, through its initial and current waiver requests, asserts that the five requirements of Section 337(c) of the Act have been met: (1) a search for available spectrum indicates that the paging channels sought are the only viable option and no other alternatives exist. (2) Melville's operations will provide protection from harmful interference to existing co-channel and adjacent channel spectrum users. Section 90.313(c) of the Commission's Rules, 47 C.F.R. § 90.313(c), indicates that applicants must locate facilities greater than forty miles from co-channel licensees in the 470-512 MHz band. Frequency pair 476/479.0125 MHz is assigned to the County of Somerset, New Jersey (Somerset) under Call Signs WQBL360 and WQBL367. Somerset and Melville's closest base stations are located approximately fifty-three miles apart. Therefore, Melville can operate on frequency pair 476/479.0125 MHz without causing harmful interference to Somerset. In its initial waiver request, Melville evaluated the impact of its 25 kHz bandwidth operations on adjacent channel licensee Jersey City, New Jersey (Jersey City), which operates with 12.5 kHz bandwidth. Melville's previous demonstration of interference protection to Jersey City applies to the present case, where Jersey City is licensed on frequency pair 476/479.0250 MHz. Accordingly, Melville's operations will protect existing spectrum users. (3) The 470-512 MHz band is used for public safety and land mobile operations the New York metropolitan area. The request is consistent with uses of the channel in the same general geographic area. (4) The unassigned frequencies at issue were allocated for Part 22 paging and radiotelephone service on January 1, 1995, more than two years ago. (5) Granting the application and waiver request would be in the public interest as it will initiate a resolution of potential interference issues with Bergen and New Jersey on frequency pair 470/473.2375 MHz.

Interested parties may file comments on the Waiver Request on or before January 5, 2005. Parties interested in submitting reply comments must do so on or before January 12, 2005. All comments should reference the subject waiver request including the DA number of this *Public Notice*, and should be filed with the Office of the Secretary, Federal Communications Commission, 445 12th Street, S.W., TW-A325, Washington, D.C. 20554. A copy of each filing should be sent to (1) Best Copy and Printing, Inc., 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554; (2) Maria Ringold, Federal Communications Commission, Consumer and Governmental Affairs Bureau, Reference Information Center, 445 12th Street, S.W., Room CY-B529, Washington, D.C. 20554; and (3) Tom Eng, Federal

Communications Commission, Wireless Telecommunications Bureau, Public Safety and Critical Infrastructure Division, 445 12th Street, S.W., Room 3-A360, Washington, D.C. 20554.

The address for FCC locations should be used only for documents filed by United States Postal Service first-class mail, Express Mail, and Priority Mail. Hand-delivered or messenger-delivered documents for the Commission's Secretary are accepted only by the Commission's contractor, Natek, Inc., at 236 Massachusetts Avenue, N.E., Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering 236 Massachusetts Avenue, N.E. Other messenger-delivered documents, including documents sent by overnight mail (other than United States Postal Service Express Mail and Priority Mail) should be addressed for delivery to 9300 East Hampton Drive, Capitol Heights, MD 20743. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission. *See* FCC Announces a New Filing Location for Paper Documents and a New Fax Number for General Correspondence, *Public Notice*, 16 FCC Rcd 22165 (2001).

The application and waiver request can be accessed electronically via the Commission's Universal Licensing System, <http://wireless.fcc.gov/uls>. The full text of the waiver request, comments and reply comments will be available for inspection and duplication during regular business hours in the FCC Reference Information Center (RIC) of the Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, S.W., Room CY-A257, Washington, D.C. 20554. Copies also may be purchased from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, S.W., Room CY-B402, Washington, D.C. 20554. Customers may contact BCPI through its web site, <http://www.bcpiweb.com>, by email at fcc@bcpiweb.com, by phone at (202) 488-5300 or (800) 378-3160, or by facsimile at (202) 488-5563. For further information regarding the public reference file for this waiver request, contact Maria Ringold, Chief, Wireless Branch, RIC, (202) 418-1355.

Unless otherwise provided, requests for waiver of the Commission's Rules are subject to treatment by the Commission as restricted proceedings for *ex parte* purposes under Section 1.1208 of the Commission's Rules, 47 C.F.R. § 1.1208. Because of the policy implications and potential impact of this proceeding on persons not parties to the waiver request, we believe it would be in the public interest to treat this case as a permit-but-disclose proceeding under the *ex parte* rules. *See* Sections 1.1200(a), 1.1206 of the Commission's Rules, 47 C.F.R. §§ 1.1200(a), 1.1206. Therefore, subsequent to the release of this *Public Notice*, *ex parte* presentations that are made with respect to the issues involved in the subject waiver request will be allowed but must be disclosed in accordance with the requirements of Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b).

For further information, contact Mr. Tom Eng of the Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau at (202) 418-0019, TTY (202) 418-7233, or via e-mail to Thomas.Eng@fcc.gov.

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

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