

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

In the Matter of	)	
	)	
Application of Baldwin Fire District	)	DA- 07-5008
And Request for Waiver	)	FCC File No. 0003023736

**REPLY COMMENTS OF THE NATIONAL PUBLIC SAFETY  
TELECOMMUNICATIONS COUNCIL**

The National Public Safety Telecommunications Council (NPSTC) submits these Reply Comments addressing the application and waiver request of the Baldwin, New York Fire District (Baldwin).<sup>1</sup> Baldwin has applied to use channels that are designated in both the broadcast and paging service but are not currently licensed. It asks the Commission for a waiver of its rules so it can operate a public safety communications system using these channels. Baldwin seeks a waiver pursuant to Section 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 337(c) (section 337(c)) and/or the general waiver policy under Section 1.925 of the Commission's rules.

NPSTC urges the Commission, in considering waiver applications, including those under section 337(c), to comprehend that the 700 MHz band

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<sup>1</sup> In the Matter of the Application of the Baldwin, New York Fire District, *Public Notice*, DA 07-5008, File No. 0003023736 (December 14, 2007).

does not by itself satisfy local, county, tribal and state public safety communications needs. Access to channels not currently in use and allocated to commercial services remains a crucial resource to improve public safety communications. To do otherwise will preclude an established and important path that has assisted numerous agencies. It will also undermine the national priority to improve region wide interoperability.

### **The National Public Safety Telecommunications Council**

The National Public Safety Telecommunications Council is a federation of public safety organizations dedicated to improving emergency service communications. It has participated throughout the Commission's examination of the 700 MHz band and in other proceedings addressing public safety. Its member organizations and those who participate in its deliberations have plenary responsibility for the range of emergency communications networks dedicated to Public Protection and Disaster Recovery.

NPSTC pursues a role of resource and advocate for public safety organizations in the United States on matters relating to public safety telecommunications. NPSTC has promoted implementing the Public Safety Wireless Advisory Committee (PSWAC) and the 700 MHz Public Safety National Coordination Committee (NCC) recommendations. NPSTC explores technologies and public policy involving public safety agencies, analyzes the ramifications of particular issues and submits comments to governmental bodies with the objective of furthering public safety communications worldwide. NPSTC

serves as a standing forum for the exchange of ideas and information for effective public safety telecommunications.

The following 14 organizations participate in NPSTC:

American Association of State Highway and Transportation Officials

American Radio Relay League

Association of Fish and Wildlife Agencies

Association of Public-Safety Communications Officials-International

Forestry Conservation Communications Association

International Association of Chiefs of Police

International Association of Emergency Managers

International Association of Fire Chiefs

International Municipal Signal Association

National Association of State Chief Information Officers

National Association of State Emergency Medical Services Officials

National Association of State Foresters

National Association of State Telecommunications Directors

National Sheriffs' Association

Several federal agencies are liaison members of NPSTC. These include the Department of Agriculture, Department of Homeland Security (the Federal Emergency Management Agency, the Office of Emergency Communications, the Office of Interoperability and Compatibility and the SAFECOM Program), Department of Commerce (National Telecommunications and Information Administration), Department of the Interior, and the Department of Justice

(National Institute of Justice, CommTech Program). NPSTC also has a liaison relationship with the Telecommunications Industry Association.

### **The Baldwin Application**

Baldwin seeks frequencies 502.5250/505.5250 MHz and 479.0625/479.1625 MHz. These channels are drawn from broadcast channel 19 and the Part 22 Paging Service, respectively. The channels present core public safety communications capability in the UHF band. The Commission has approved several waivers in these bands enabling individual public safety agencies to construct and deploy much improved systems. The waivers have increased redundancy, promoted ubiquitous coverage, improved communications and expanded interoperability, particularly in metropolitan areas where UHF operations are prominent. The Commission's work under section 337(c) is a tangible demonstration of how its commitment and decisions have resulted in enhancing public safety communications.

Baldwin references the Commission's consideration, technical analysis and ultimate grant of authority to the Nassau County Police Department to conduct public safety communications on channel 19 in the New York Metropolitan area under call sign WPVS875.<sup>2</sup> Nassau County's application was considered under the provisions of section 337(c).

In its *Public Notice*, the Commission inquires whether its analysis under section 337 and its general waiver criteria should be affected by the 700 MHz

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<sup>2</sup> Application of Nassau County Police Department and Waiver Request for a Public Safety License, *Order on Reconsideration*, 19 FCC RCd 10088 (2004).

public safety band and whether this band provides agencies a viable alternative. Under the Wireless Telecommunications Bureau and now the Public Safety and Homeland Security Bureau's decisions implementing section 337(c), an agency must demonstrate there are no channels available in any public safety band. The Commission emphasizes the approaching February 17, 2009 digital television transition date when analog television broadcast operations must cease and recent actions to facilitate a nationwide, interoperable public safety network.<sup>3</sup>

Two comments were filed by broadcast interests seeking additional details addressing the technical parameters of Baldwin's operations.<sup>4</sup> NPSTC takes no position with regard to these comments.

### **The 700 MHz Band Will Not Satisfy Public Safety Spectrum Needs**

NPSTC believes that channels in the UHF and VHF bands must continue to be available for public safety under the Commission's waiver processes, including those established by its decisions under section 337(c). Baldwin and other applicants must be able to continue to pursue channels in the non public safety bands prior to and subsequent to the analog broadcast transition in February 2009.

NPSTC does note that Baldwin's application to use channel 19 must respect the operations of the Nassau County Police Department that also will operate on channel 19 as well as agencies operating on co or adjacent channels

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<sup>3</sup> *Public Notice* at page 2.

<sup>4</sup> Comment of Mountain Broadcast Corporation, dated January 4, 2008 and Comment of WTXX TV, dated January 4, 2008.

to its proposed use of the paging channels. That such an analysis and accommodation is needed reflects the important contribution section 337(c) and the Commission's waiver policy has made to public safety communications. Waiver decisions allowing emergency services access to other bands when these channels are not used have provided an immeasurable contribution to improved response and more efficient use of the spectrum.

The 24 MHz of the 700 MHz band dedicated to public safety is an important contribution to the communications demands agencies face. The Commission and interested parties have expended enormous effort, including preparing and reviewing extensive technical analysis, to forge a critical opportunity for public safety. The recent decision to designate 10 MHz for broadband communications within this allocation presents real potential for access to robust advanced services.

Yet, the Commission's suggestion to deny access to channels otherwise available on the premise that 700 MHz will satisfy the needs of public safety is wrong. The 700 MHz band will not approach fulfilling public safety's wireless requirements, particularly in regions similar to the New York metropolitan area. These areas are extremely congested with demand far exceeding capacity. The lack of investment in modern communications, in the heavily populated metropolitan areas of the country, is attributable more to the lack of spectrum than to lack of funding. The number of agencies in the metropolitan areas needing channels and the number of channels needed far exceed the availability, even if the 700 MHz narrowband voice channels were available today. NPSTC

can state unequivocally that the New York Metropolitan area will not have adequate spectrum subsequent to when the 700 MHz channels become available.

Any realistic evaluation of spectrum perceived to be available to public safety must also be measured by the realities of the process by which channels will be assigned. There is no assurance that the 700 MHz band will satisfy each agency's requirements; no credible public safety interest has ever suggested such. The regional plan process where narrowband channels will be assigned to local agencies involves technical evaluation, coordination within and across regions, accommodation among agencies and dispute resolution. All these time consuming efforts involve individuals who have full time responsibilities managing their agency's communications system.

The Commission has moved forcefully to implement its 700 MHz narrowband relocation plan and in promoting efforts by the 700 MHz regional planning committees to expedite this process. While important, the likely scenario is that the overwhelming number of 700 MHz narrowband channels will not be available until sometime subsequent to February 19, 2009. Only when channels are actually available and ready for assignment should the 700 MHz band be considered an element in the waiver process.

The Commission's recent summary of the DTV transition presents not insignificant challenges to clearing the 700 MHz band by February 2009 so that channels can be assigned.<sup>5</sup> There is also the justified reluctance of state and

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<sup>5</sup> Third Periodic Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, *Report and Order*, MB Docket No. 07-9, FCC 07-228 (December 31, 2007).

local governments to commit to financing a new communications system until channels are actually available, not simply when the spectrum is cleared of analog broadcasters. Agencies should continue to be afforded the opportunity to demonstrate the technical and requirements of section 337(c) without regard to the possibility that the 700 MHz band may at some later point provide channels.

NPSTC also urges the Commission to reexamine its decisions that a section 337(c) waiver is contingent upon an agency showing the lack of channels in all public safety bands.<sup>6</sup> Such a policy undermines interoperability. It ignores that in many areas emergency service communications are predominant in a particular band. Since the September 11, 2001 attacks the need for interoperable communications across agencies and jurisdictions has moved to a national priority. Compatible systems operating within the same band present significant cost and other efficiencies for interoperability. Precluding applications under section 337(c) because channels are available elsewhere dilutes this crucial objective.

### **Conclusion**


Agencies such as the Baldwin Fire District that are pursuing a waiver under section 337(c) or the Commission's own rules seek to deploy improved communications systems now. While the 700 MHz band will offer meaningful relief, its assistance to the individual agency cannot be determined until the channels become available and capable of being assigned. The Commission should not preclude access to channels outside the public safety services that

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<sup>6</sup> In re Ohio, *Order*, 17 FCC Rcd 439, DA 01-3035 (June 7, 2002) and In re State of Tennessee Department of Transportation, *Order on Reconsideration*, 16 FCC Rcd 24645, DA 00-2803 (December 13, 2000).

are unassigned. The need to improve Public Protection and Disaster Protection communications cannot be halted. Access by agencies to channels in the commercial services that are not licensed remains critical.

Respectfully submitted,

A handwritten signature in cursive script that reads "Vincent R. Stile".

Vincent R. Stile, Chair  
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January 14, 2008

The foregoing Reply Comments of the National Public Safety Telecommunications Council were filed on January 14, 2008 with the Commission's Secretary at its offsite facility. A copy was provided to the following individuals:

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January 14, 2008