

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

In the Matter of
TENNESSEE HOMELAND SECURITY
DISTRICT 7
Request for Waiver of Sections 20.9(a)(6) and
22.561 of the Commission's Rules
File Nos. 0003818256, 0003818261

ORDER

Adopted: July 17, 2012

Released: July 18, 2012

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

I. INTRODUCTION

1. The Tennessee Homeland Security District 7, (the District) filed two applications and an associated waiver request for authority to use, for public safety communications purposes, eighteen Part 22 Paging and Radiotelephone Service channel pairs at multiple location sites in Basic Economic Area (BEA) Nos. 71, 72 and 73. The District seeks waiver of Sections 20.9(a)(6) and 22.561 to use these frequencies pursuant to Section 337(c) of the Communications Act of 1934, as amended (the Act), or in the alternative, Section 1.925 of the Communication's rules. As further detailed below, we find that the District does not satisfy the waiver criteria pursuant to either Section 337 of the Act or Section 1.925 because the Commission has awarded the channel pairs to winning bidders in Auction 87. Accordingly, we deny the District's waiver request and dismiss the applications.

II. BACKGROUND

2. The District is located north and west of Nashville, Tennessee, and consists of Cheatham, Dickson, Houston, Humphreys, Montgomery, Robertson, and Stewart Counties in Tennessee, as well as Fort Campbell, a military installation that spans the Kentucky/Tennessee border. The District was

1 See File Nos. 0003818256 (filed April 24, 2009, amended July 15, 2009, July 29, 2009, August 14, 2009, January 7, 2010, and January 8, 2010) and 0003818261 (filed April 24, 2009, amended July 15, 2009, July 29, 2009, January 8, 2010, and February 8, 2010) and associated attachments "Request for Waiver" (Waiver Request), "APCO AFC, Inc. Frequency Search Results" (Frequency Search), Letter from Wendy Caruthers, Engineering Coordination Specialist, Association of Public-Safety Communications Officials-International, Inc. to Federal Communications Commission (dated April 2, 2009) (APCO Letter), Letters from Ken Hunt, Comserv Services, LLC and Ken Hunt, KTI, Inc. (dated Feb. 28, 2009) (Concurrence Letters), "Tennessee Homeland Security District 7 LOC's Requested" (LOC's Requested), and "Further Supplement to Request for Waiver" filed July 29, 2009 (Further Supplement).

2 See LOC's Requested at 1-2. See also Frequency Information attached to File Nos. 0003818256 and 0003818261.

3 47 C.F.R. §§ 20.9(a)(6), and 22.561.

4 47 U.S.C. § 337(c).

5 47 C.F.R. § 1.925; Waiver Request at 1.

6 Waiver Request at 2.

created in 2003 to promote greater interoperability among federal, state and local public safety agencies in the region. In 2004, the District began construction of a "Wide Area Trunking Emergency Communications System" (System), funded by both the U.S. Department of Homeland Security and local governments in 2004.⁷ The System design utilizes twenty-two UHF (450-470 MHz) sites in a trunked configuration, with microwave links connecting each site to wide area network communications.⁸ The District states that it has constructed seventeen sites and purchased infrastructure for the remaining five sites.⁹

3. The District contends that there is a shortfall of available public safety channels to meet the system's operational requirements.¹⁰ Furthermore, the District has submitted a frequency study indicating that "there are no remaining Public Safety Pool channels available to the District in the UHF band."¹¹ The District therefore seeks access to certain unassigned Part 22 paging channels and argues that "[t]hese channels are vitally needed to make this system robust enough to handle current demands and future loading requirements."¹² The District obtained concurrence letters from pre-Auction 87, incumbent licensees Comserv Services, LLC and KTI, Inc.¹³ However, the proposed frequencies are not allocated for public safety private land mobile use and accordingly, the District requests a waiver of Sections 20.9(a)(6) and 22.561 of the Commission's rules.¹⁴

4. On August 12, 2010, while the District's waiver request was pending, the Wireless Telecommunications Bureau (WTB) announced the winning bidders for Auction 87.¹⁵ Subsequently, WTB granted licenses for the same Channel Blocks and BEAs sought by the District to the applicable winning bidders.¹⁶

III. DISCUSSION

5. Section 337(c) of the Act provides that the Commission "shall waive . . . its regulations implementing th[e] Act (other than its regulations regarding harmful interference) to the extent necessary to permit" entities "seeking to provide public safety services" to use unassigned spectrum not allocated to public safety if the Commission makes five specific findings: (i) no other spectrum allocated to public

⁷ *Id.* at 1-2.

⁸ *Id.* at 2.

⁹ *Id.*

¹⁰ *Id.* at 2-3.

¹¹ *Id.* See also APCO Letter and Frequency Search.

¹² Waiver Request at 3.

¹³ See Concurrence Letters. Comserv Services, LLC is licensed in BEA 73 on six of the channel pairs sought by the District. KTI, Inc. is also licensed in BEA 73 on one channel pair sought by the District. See also call signs WPVQ457 and WPZN568.

¹⁴ *Id.* at 1-3. See also 47 C.F.R. §§ 20.9(a)(6) and 22.561. Section 20.9(a)(6) provides that these frequencies shall be regulated as a commercial mobile radio service. Section 22.561, which specifies that channels be allocated for paired assignment to transmitters that provide or support (or support other transmitters that provide) one-way or two-way public mobile service.

¹⁵ See Auction of Lower and Upper Paging Bands Licenses Closes, Winning Bidders Announced for Auction 87, *Public Notice*, 25 FCC Rcd 18164 (WTB 2010) (*Auction 87 Closing Public Notice*).

¹⁶ See Appendix A for the list of the licenses.

safety services is immediately available to satisfy the requested public safety service use; (ii) the requested use is technically feasible without causing harmful interference to other spectrum users entitled to protection from such interference under the Commission's regulations; (iii) the use of the unassigned frequency for the provision of public safety services is consistent with other allocations for the provision of such services in the geographic area for which the application is made; (iv) the unassigned frequency was allocated for its present use not less than two years prior to the date on which the application is granted; and (v) granting such application is consistent with the public interest.¹⁷

6. As a threshold matter, we find that the District's request for relief fails to satisfy the requirement pursuant to Section 337(c)(1) that the requested frequencies be "unassigned."¹⁸ The frequencies the District requested are located in BEAs 71, 72 and 73. The Commission previously awarded the channels in these BEAs to winning bidders Central Vermont Communications, Inc., Buttner Holdings, LLC, and KTI, Inc., in Auction 87.¹⁹ Based on our analysis, in cases where the District has concurrence from an incumbent licensee, each base station would cover an area in more than one BEA. The result is that no base station – channel block combination could be used without having impact on an auction-winning licensee.²⁰ Because the District's request fails to seek waiver relief for "unassigned" spectrum, we decline to grant its request pursuant to Section 337(c) and, accordingly, we need not address the District's arguments regarding the five criteria of Section 337(c)(1) of the Act.²¹

7. In addition, we find that the District has not met the standard for waiver relief under Section 1.925. We find that grant of the waiver request would not be in the public interest, because of the potential for harmful interference the District's operations would cause to the primary, geographic-area licensees Central Vermont Communications, Inc., Buttner Holdings, LLC, and KTI, Inc. We therefore deny the waiver request and dismiss the applications. We appreciate and commend the District's commitment to support public safety radio communications in the region. However, the fact remains that the requested frequencies are no longer available for assignment. While we decline to grant the District's request, we note that in addition to seeking other frequencies, another alternative available to the District would be to seek use of the assigned frequencies through partition or disaggregation.

¹⁷ 47 U.S.C. § 337(c).

¹⁸ U.S.C. § 337(c)(1).

¹⁹ See *Auction 87 Closing Public Notice*, Attachment A.

²⁰ For example, on File No. 000318256, the site-channel combination of Location 2 (Scarborough), frequency pair 454.075 / 459.075 MHz (Channel Block GC) would serve an area covering portions of BEAs 71 and 73. See LOC's Requested. For this site-channel combination, the District notes that it has concurrence from Comserv Services, LLC (Comserv). See *id.* However, Comserv's license, call sign WPVQ473, operates on Channel Block GC only in BEA 73, not in BEA 71. Because the District's Location 2 would also cover BEA 71, we must also consider that the license for BEA 71, Channel Block GC was awarded by auction to Central Vermont Communications, Inc., who has not given concurrence to the District. Thus, this site-channel combination is already assigned for the purpose of Section 337.

²¹ See, e.g., *City of El Segundo*, *Order*, 19 FCC Rcd 6992, 6995-6 ¶ 8 (WTB PSCID 2004), ("Because El Segundo has failed to satisfy the prerequisite criterion that the spectrum be unassigned, we need not address its arguments regarding the five criteria under Section 337(c)(1) of the Act.").

IV. CONCLUSION

8. Based on the record before us, we find that the District does not satisfy the waiver criteria pursuant to either Section 337(c) of the Act or Section 1.925 of our rules. Therefore, we deny the waiver and dismiss the captioned applications.

V. ORDERING CLAUSES

9. Accordingly, WE ORDER that, pursuant to Sections 4(i) and 337(c) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 337(c), and Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, the request for waiver associated with the captioned applications filed by the Tennessee Homeland Security District 7, on April 24, 2009, IS DENIED, and the captioned applications ARE DISMISSED consistent with this *Order* and the Commission's rules.

10. We take this action under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's rules, 47 C.F.R. §§ 0.191, 0.392.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Beers
Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

Appendix A

| District File No. | Site # | Base Frequency (MHz) | Affected Market and Channel Block | Auc. 87 new licensee | Existing licensee ²² | Call sign |
|-------------------|------------------------|----------------------|-----------------------------------|-----------------------|---------------------------------|-----------|
| 0003818256 | 1 | 454.025 | BEA071-GA | CVC ²³ | | WQMT828 |
| 0003818256 | 1 | 454.175 | BEA071-GG | CVC | | WQMT832 |
| 0003818256 | 1 | 454.425 | BEA071-GQ | Buttner Holdings, LLC | | WQMT706 |
| 0003818256 | 2 ²⁴ | 454.075 | BEA071-GC | CVC | | WQMT829 |
| 0003818256 | 2 | 454.075 | BEA073-GC | | Comserv Services, LLC | WPVQ473 |
| 0003818256 | 2 | 454.600 | BEA071-GX | Buttner Holdings, LLC | | WQMT712 |
| 0003818256 | 2 | 454.600 | BEA073-GX | | Comserv Services, LLC | WPVQ457 |
| 0003818256 | 3 | 454.125 | BEA071-GE | CVC | | WQMT830 |
| 0003818256 | 3 | 454.400 | BEA071-GP | Buttner Holdings, LLC | | WQMT705 |
| 0003818256 | 4 | 454.150 | BEA071-GF | CVC | | WQMT831 |
| 0003818256 | 5 | 454.200 | BEA071-GH | CVC | | WQMT833 |
| 0003818256 | 5 | 454.200 | BEA073-GH | | KTI, Inc. | WPZN568 |
| 0003818256 | 5 | 454.375 | BEA071-GO | Buttner Holdings, LLC | | WQMT704 |
| 0003818256 | 5 | 454.375 | BEA073-GO | | Comserv Services, LLC | WPVQ467 |
| 0003818256 | 5 | 454.450 | BEA071-GR | Buttner Holdings, LLC | | WQMT707 |
| 0003818256 | 5 | 454.450 | BEA073-GR | | Comserv Services, LLC | WPVQ470 |
| 0003818256 | 6 | 454.250 | BEA071-GJ | CVC | | WQMT835 |
| 0003818256 | 6 | 454.250 | BEA072-GJ | [not auctioned] | | |
| 0003818256 | 6 | 454.250 | BEA073-GJ | | Comserv Services, LLC | WPVQ463 |
| 0003818256 | 6 | 454.650 | BEA071-GZ | Buttner Holdings, LLC | | WQMT714 |
| 0003818256 | 6 | 454.650 | BEA072-GZ | [not auctioned] | | |
| 0003818256 | 6 | 454.650 | BEA073-GZ | KTI, Inc. | | WQMT884 |
| 0003818261 | 1 | 454.300 | BEA071-GL | CVC | | WQMT836 |
| 0003818261 | 2 | 454.475 | BEA071-GS | Buttner Holdings, LLC | | WQMT708 |
| 0003818261 | 3 | 454.575 | BEA071-GW | Buttner Holdings, LLC | | WQMT712 |
| 0003818261 | 3 | 454.575 | BEA072-GW | [not auctioned] | | |
| 0003818261 | 3 | 454.575 | BEA073-GW | | Comserv Services, LLC | WPVQ472 |
| 0003818261 | 4 | 454.500 | BEA071-GT | Buttner Holdings, LLC | | WQMT709 |

²² Licensees in this column obtained their licenses prior to Auction 87 and have provided concurrences to the District. *See supra* n. 1 and n. 13.

²³ "CVC" is Central Vermont Communications, Inc.

²⁴ Boldfaced font indicates that the District's particular site-channel combination affects more than one Market-Channel Block. In every case, at least one affected Market-Channel Block is now assigned to an Auction 87 licensee.

| | | | | | |
|------------|---|---------|-----------|--------------------------|---------|
| 0003818261 | 4 | 454.500 | BEA072-GT | [not auctioned] | |
| 0003818261 | 4 | 454.500 | BEA073-GT | KTi, Inc. Buttner | WQMT883 |
| 0003818261 | 5 | 454.525 | BEA071-GU | Holdings, LLC Buttner | WQMT706 |
| 0003818261 | 6 | 454.625 | BEA071-GY | Holdings, LLC | WQMT713 |