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November 18, 2005

Mr. Michael J. Wilhelm
Chief, Public Safety and Private Infrastructure Division
Wireless Telecommunications Bureau
Federal Communications Commission
Washington, D.C. 2055

Re: *Ex Parte* Communication
Improving Public Safety in the 800 MHz Band
WT Docket 02-55
Assignment of New Channels

Dear Mr. Wilhelm:

On behalf of the National Public Safety Telecommunications Council (NPSTC), this letter addresses the challenge of ensuring that the additional channels made available under the Commission's decisions in its proceeding *Improving Public Safety in the 800 MHz Band*, WT Docket 02-55, be awarded to public safety agencies in most need. We think that this objective can be effectively met by an expedited process involving the Regional Planning Committees (RPC), the certified frequency coordinators and the Commission.

The Commission's decision envisions that there will be remaining General Category channels emanating from the Cellular Portion of the rebanding effort after the National Public Safety Advisory Planning Committee (NPSPAC) band is relocated. The Commission determined that these channels will be available only to public safety licensees for a three year period and then to public safety and Critical Infrastructure (CII) licensees for an additional two years. NPSTC agrees with the merits of a structure that affords public safety agencies most in need of additional spectrum with an opportunity to obtain these channels; the initial process should not simply be based on first come, first served. The 800 MHz Regional Planning Committees (RPCs) have served an

important purpose since the inception of the NPSPAC 800 MHz public safety band in fostering discrete and efficient processes. We think that the RPCs can provide an equitable and fair platform to resolve competing requests in the initial assignment of these channels.

A challenge in the assignment of these channels is the technical analysis needed to determine if a channel is available and the parameters a new licensee must operate within. This emanates from several factors. The first is the contrast between how this spectrum was previously licensed, some of which as Economic Service Areas, where the licensee had broad authority to operate, and the public safety environment, where a licensee has a specific geographic assignment and operations must comport with the particulars of the Commission's rules. In the public safety environment, the manner by which each applicant can coexist with other spectrum users must be examined on an individual basis. These matters are of significant complexity and the expertise of a frequency coordinator is relied upon by applicants and the Commission.

Added to the challenge is that the frequencies available will differ from region to region. The frequency coordinators will be able to delineate those regions where adequate channels are available, where there are no channels and when there are competing applications. NPSTC believes that the frequency coordinators are in a unique position to provide the needed technical expertise for these channels to be used effectively, to protect the licensee and other users and to provide the RPCs and Commission with a coordinated description of the environment. The frequency coordinators will bring clarity to the process.

For these reasons, NPSTC recommends that the Commission embrace a process that allows a limited time for agencies in need of additional channels to have their requests evaluated on merit. This short term process will not only promote the most effective use of the spectrum but spur accommodation and resolution among any competing applicants. The process will provide agencies opportunity to submit an application, provide for a technical evaluation by a frequency coordinator and review by an RPC. With this background, an RPC, and ultimately the Commission, will have substantial information to examine competing applications.

NPSTC recommends a process entailing:

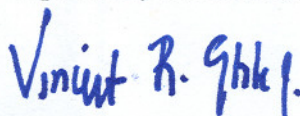
- Once the Commission has determined channels are available for reassignment, a 90 day freeze would be established for applications falling within the category. During the freeze period, agencies would submit requests for channels to a certified frequency coordinator, who will open a filing window for the 90 days. The requests would be submitted consistent with the Commission's application process.
- A frequency coordinator receiving an application will process an application consistent with the Commission's rules and its own processes. It will exchange information among coordinators and identify conflicting applications.

Coordinators may discuss adjustments with applicants to foster resolution among agencies.

- At the expiration of the 90 day filing freeze, the frequency coordinators, within 15 days, shall submit all non-conflicting applications to the Commission. Conflicting applications shall be forwarded to the RPCs. There may be circumstances where more than one RPC will review the applications.
- Following the 90 day freeze period, applications shall be accepted and processed under regular order.
- The RPC's reviewing competing applications shall, within 30 days, examine each competing application and make a recommendation to the coordinators with regard to the priorities of the applications. The RPC shall use its existing evaluation matrix in the review.
- Failure of an RPC who had earlier opted in to evaluate/score mutually exclusive applications to respond within the designated 30 day period will result in the applications reverting back to the coordinators; the applications will be treated on a first come, first served basis.
- For applications where no RPC has opted in to review, applications will be treated on a first come, first served basis. The competing applicants may pursue negotiations with each other.
- In cases where mutually exclusive applications reflect cross region conflicts, such applications may require joint RPC deliberations between the two impacted RPCs in order to determine a resolution. Where only one of the RPCs has opted in to evaluate applications, that RPC shall evaluate both applications on an equal and unbiased basis using its normal scoring/evaluation process.

The opportunities presented by the additional channels from the Commission's 800 MHz rebanding proceedings can have a tangible and enduring effect on public safety communications. NPSTC believes it is important that the initial assignment of these channels be made to agencies most in need of spectrum resources. We urge the Commission to implement a process reflecting this objective.

Respectfully submitted,



Vincent R. Stile, Chair
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