



PUBLIC NOTICE

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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON PETITIONS FOR WAIVER TO DEPLOY 700 MHZ PUBLIC SAFETY BROADBAND NETWORKS

PS Docket No. 06-229

Comment Date: October 16, 2009

Reply Comment Date: November 16, 2009

The Public Safety and Homeland Security Bureau (Bureau) seeks public comment on thirteen petitions for waiver filed by various entities (Petitioners) seeking authority to deploy public safety broadband systems on a local or regional basis in the 10 megahertz of 700 MHz public safety broadband spectrum currently licensed to the Public Safety Spectrum Trust (PSST) (763-768/793-798 MHz).¹ This includes twelve petitions filed by state or local jurisdictions, and one petition filed by a commercial entity as described below.

We seek comment generally on these petitions. In seeking comment, we seek to develop a record that will enable the Commission to explore the full range of alternatives for addressing the waiver requests, while also avoiding prejudgment of pending issues in the Commission's rulemaking proceeding addressing the 700 MHz D Block and public safety broadband allocations.²

Further, in light of the Commission's ongoing rulemaking and the many common issues raised by these related petitions, we set out in Appendix A certain questions that it would be helpful for commenters to address in order to assist the Commission in resolving these petitions. In particular, we

¹ Two petitioners, the State of North Dakota and New EA, Inc. dba Flow Mobile (Flow Mobile) also seek access to portions of the public safety narrowband allocation (769-775 MHz), in addition to the 10 megahertz of broadband spectrum licensed to the PSST (763-768/793-798 MHz). State of North Dakota, Petition for Expedited Waiver, PS Docket No. 06-229, at 1-2 (filed July 17, 2009) (North Dakota Petition).

² See Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, 23 FCC Rcd 8047 (2008) (*700 MHz Second Further Notice*); see also, generally, Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, 23 FCC Rcd 14301 (2008) (*700 MHz Third Further Notice*).

invite commenters to refresh the record on various questions raised in the *700 MHz Third Further Notice* implicated by these waiver petitions. We also seek comment on specific aspects of the requested waivers that will enhance our ability to determine if grant of waiver relief is appropriate. We also encourage commenters to address any other issues that they consider to be material to the Commission's consideration of the petitions.

The state or local jurisdictions seeking waiver are: (1) the City of Boston (Boston); (2) the City and County of San Francisco, the City of Oakland, and the City of San Jose (Bay Area); (3) the State of New Jersey (New Jersey); (4) the City of New York (New York City); (5) the District of Columbia (DC); (6) the State of New York (NYS); (7) the City of Chesapeake, Virginia (Chesapeake); (8) the City of San Antonio, Bexar County, and Comal County, Texas (San Antonio); (9) the State of New Mexico (New Mexico); (10) the State of North Dakota; (11) the City of Charlotte, North Carolina (Charlotte); and (12) several counties and the City of Cedar Rapids, Iowa (Iowa Coalition).³ In addition, one commercial entity, Flow Mobile, has filed a petition.⁴

Generally, each of the Petitioners suggests that it has sufficient funding in place or plans for funding to be secured, such that it could deploy a public safety broadband network. Some Petitioners assert that they can fund such a buildout independently, while others assert that they would seek out commercial or other partners on their own.⁵ Further, the Petitioners generally state that they can deploy their broadband networks in advance of a resolution of the Commission's ongoing 700 MHz D Block proceeding, and that these deployments can be accomplished in a manner that may be integrated into any such network resulting from the Commission's rulemaking.⁶ The Petitioners also generally assert that they can meet the technical proposals put forth by the Commission in the *700 MHz Third Further Notice* and be fully interoperable, and several propose specifically to deploy Long Term Evolution (LTE).⁷ Finally, most of the Petitioners state that they have been in discussions with, or will obtain the consent

³ See City of Boston Request for Waiver, PS Docket No. 06-229 (filed Dec. 11, 2008) (Boston Petition); City of Boston Amended Request for Waiver, PS Docket No. 06-229 (filed May 28, 2009) (Boston Amended Petition); City and County of San Francisco, City of Oakland, City of San Jose Request for Waiver, PS Docket No. 06-229 (filed Mar. 24, 2009) (Bay Area Petition); City and County of San Francisco, City of Oakland, City of San Jose Request for Waiver, PS Docket No. 06-229 (filed May 28, 2009) (Bay Area Amended Petition); State of New Jersey Petition, PS Docket No. 06-229 (filed Apr. 3, 2009) (New Jersey Petition); City of New York Petition for Waiver, PS Docket No. 06-229 (filed June 8, 2009) (New York City Petition); District of Columbia Request for Waiver, PS Docket No. 06-229 (filed June 26, 2009) (DC Petition); New York State Request for Waiver, PS Docket No. 06-229 (filed June 30, 2009) (NYS Petition); City of Chesapeake, Virginia, Request for Waiver, PS Docket No. 06-229 (filed July 8, 2009) (Chesapeake Petition); City of San Antonio, Texas, Petition for Expedited Waiver, PS Docket No. 06-229 (filed July 10, 2009) (San Antonio Petition); State of New Mexico, Petition for Expedited Waiver, PS Docket No. 06-229 (filed July 10, 2009) (New Mexico Petition); North Dakota Petition, note 1, *supra*; Petition for Waiver of the City of Charlotte, North Carolina, PS Docket No. 06-229 (filed Aug 4., 2009) (Charlotte Petition); Petition for Expedited Waiver, PS Docket No. 06-229 (filed Aug. 7, 2009) (Iowa Petition)(including the Counties of Blackhawk, Buchanan, Dubuque, Grundy, Johnson, Marshall, and Scott and the City of Cedar Rapids).

⁴ See New EA, Inc. dba Flow Mobile Request for Waiver, PS Docket No. 06-229 (filed July 7, 2009) (Flow Mobile Petition).

⁵ See, e.g., Boston Amended Petition at 6-7; Bay Area Petition at 2, 7; Bay Area Amended Petition at 3; DC Petition at 12; San Antonio Petition at 7.

⁶ See, e.g., Boston Petition at 5, 8-9; Bay Area Petition at 9; New Jersey Petition at 5; Iowa Petition at 5.

⁷ See, e.g., New York City Petition at 8-9; DC at 12; NYS Petition at 7-8; Chesapeake Petition at 6, 8-9.

of, the PSST to deploy in the 10 megahertz of spectrum (763-768/793-798 MHz) currently licensed to the PSST.⁸ Some of the Petitioners seek to secure a “sublicense” to operate, such that they would receive the same rights as a licensee, or seek a long term *de facto* lease.⁹

The PSST has filed a letter conditionally supporting several of the earlier-filed requests provided that sufficient safeguards are adopted to preserve the Commission’s goal of a nationwide, interoperable public safety broadband network.¹⁰ PSST states, however, that interoperability with the shared wireless broadband network to be developed in the public safety broadband spectrum should be “a condition of any relief provided to Petitioners” and that “the FCC – with input from the PSST – should provide specific guidance as to the technological standards and minimum system requirements that must be satisfied.”¹¹

Finally, we note that Flow Mobile (Flow Mobile) filed a request for expedited action, seeking authority to “deploy a statewide, 4-G like interoperable wireless broadband public safety network in the 700 MHz public safety allocation in North Dakota.”¹² Flow Mobile seeks authority to “utilize the narrow band 769-775 MHz licensed to the state of North Dakota as well as the 763-768 and 793-798 MHz band licensed to the [PSST]” to deploy “an interoperable emergency communications and joint use network providing mobile broadband services that would be based using open standards and compatible with LTE and other 700 MHz standards.”¹³ Flow Mobile states that it will provide “commercial and residential services without sacrificing the policy goals the Commission sought to achieve in its 700 MHz rulemaking” and that the network “would meet all the technical specifications proposed for a public safety network and be capable of integration into any shared dual use network.”¹⁴ North Dakota subsequently filed a substantially similar waiver request on its own behalf, indicating that it is working with Flow Mobile and seeking permission for Flow Mobile to deploy its proposed network.¹⁵

Comment Filing Procedures

Interested parties may file comments on the above-referenced petition on or before October 16 2009. Parties interested in submitting replies to such statements must do so on or before November 16, 2009. All comments should reference the appropriate petition(s) and PS Docket No. 06-229.

All comments may be filed using: (1) the Commission’s Electronic Comment Filing System

⁸ *But see*, North Dakota Petition, note 1 *supra*.

⁹ Boston Petition at 8-9; Bay Area Amended Petition at 2; New York City Petition at 13; DC Petition at 1; NYS Petition at 8; Chesapeake Petition at 9-10; San Antonio Petition at 1; New Mexico Petition at 1; Iowa Petition at 8. Charlotte requests that the 700 MHz public safety broadband spectrum be “allocat[ed] . . . directly to Charlotte.” Charlotte Petition at 8.

¹⁰ *See* Letter from Harlin R. McEwen, Chairman, Public Safety Spectrum Trust Corporation, to Acting Chairman Michael J. Copps, PS Docket No. 06-229, at 1 (filed May 7, 2009) (PSST Letter).

¹¹ *Id.* at 3.

¹² Flow Mobile Petition at 2.

¹³ *Id.* at 2-3.

¹⁴ *Id.* at 5-6.

¹⁵ North Dakota Petition at 1.

(ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Statements in support of or in opposition to the Petition and replies to such statements may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- For ECFS filers, in completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the rulemaking number. Parties may also submit an electronic statement in support of or in opposition to the Petition and/or replies thereto by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to: Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via e-mail to fcc@bcpiweb.com.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, 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 the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (Braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Documents submitted in PS Docket No. 06-229, including each petition, will be accessible via the Commission's ECFS (at: <http://www.fcc.gov/cgb/ecfs>) by listing 06-229 in the "Proceeding" search field. These documents also will be available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, D.C.

20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, e-mail fcc@bcpiweb.com.

These matters shall be treated as “permit-but-disclose” proceedings in accordance with the Commission's *ex parte* rules.¹⁶ Persons making oral *ex parte* presentations are reminded that memoranda summarizing such presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one- or two-sentence description of the views and arguments presented generally is required.¹⁷ Other requirements pertaining to oral and written presentations are set forth in section 1.1206(b) of the Commission's rules.¹⁸

For further information regarding this proceeding, contact Jeff Cohen, Public Safety and Homeland Security Bureau, (202) 418-0799, jeff.cohen@fcc.gov.

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¹⁶ 47 C.F.R. § 1.1200 *et seq.*

¹⁷ *See* 47 C.F.R. § 1.1206(b)(2).

¹⁸ 47 C.F.R. § 1.1206(b).

APPENDIX A

We seek comment on the following common issues raised by the petitions in order to develop a comprehensive record for consideration by the Commission. The questions in this Appendix should not be construed as prejudging any pending issue or expressing a view on the merits of the petitions or the rulemaking proceeding.

- 1) **Timing.** Petitioners generally state that they can deploy their proposed networks in advance of the Commission’s action in the larger 700 MHz docket without impacting the Commission’s ability to resolve these issues. Should the Commission consider acting on these petitions prior to completing action on the rulemaking itself, and, if so, are there waiver conditions or other measures it should adopt to avoid prejudging pending issues in the rulemaking?¹⁹
- 2) **Authority to Operate.** The Commission previously granted the 700 MHz nationwide broadband license to the PSST.²⁰ Thus, the spectrum on which the Petitioners propose to operate is currently licensed to another entity. The Bay Area Cities and New York suggest that they would seek a “sub-license” from the PSST for authority to operate, with all the rights of a direct licensee. San Antonio and New Mexico suggest that a long term *de facto* leasing arrangement would be sufficient. Charlotte seeks direct licensing to the locality, rather than any of the other suggested mechanisms.
 - a) What mechanisms, if any, are available to the Commission to authorize or license individual metropolitan, regional, or statewide operations on the 700 MHz broadband spectrum?
 - b) Would a sublicensing mechanism be permissible under relevant statutes and Commission rules? Would a leasing arrangement be permissible?
 - c) Assuming sublicensing and/or leasing would be permissible, how would such arrangements function? Are there specific conditions or safeguards that would need to be imposed?
- 3) **Existing Early Buildout Rules.** In the *700 MHz Second Report and Order*, the Commission provided for early local buildout in areas both with and without buildout commitments from the D Block licensee, after negotiation of a network sharing agreement between the PSBL and the winner of the D Block license.²¹ The Commission also provided a mechanism to ensure that networks built out in advance of the nationwide network would ultimately be integrated into a nationwide network.²²
 - a) To what extent could these early buildout rules be applied to the current petitions? Are there particular rules that would need to be waived?

¹⁹ See generally, *700 MHz Second Further Notice*; *700 MHz Third Further Notice*.

²⁰ See *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, 22 FCC Rcd 20453 (2007).

²¹ See *Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289, 15453-58 ¶¶ 469-484 (2007) (*700 MHz Second Report and Order*); 47 C.F.R. §§ 27.1330, 90.1430.

²² See 47 C.F.R. § 90.1430; *700 MHz Third Further Notice* at 14395-99 ¶¶ 294-304.

- b) If the Commission were to grant relief to Petitioners, what, if any, waiver conditions or other measures would be needed to ensure that such early buildouts would be integrated with a future national network or regional networks? How should the Commission address any costs that might be incurred for such integration?
- c) Should the Commission condition relief on ensuring interoperability with future national or regional networks, including any associated costs that may be incurred?
- 4) **Narrowband Operations.** In the *Second Report and Order*, the Commission recognized that some public safety narrowband operations had already been deployed in what was then redesignated as public safety broadband spectrum. The Commission proposed that the D Block licensee would be responsible for funding relocation of these narrowband operations.²³ If the Commission were to grant relief to Petitioners, how should it address any existing narrowband operations that have yet to be relocated in the areas where Petitioners propose to deploy their networks?
- 5) **Sufficiency of Pleading.** In considering any waiver, the Commission must have sufficient information to determine whether a waiver is warranted.²⁴ Do the petitions contain sufficient detail for the Commission to act, or should we seek more information details from the Petitioners, *e.g.*, regarding technical details or availability of funding for their proposals?
- 6) **Interoperability.** A primary goal of the Commission in this proceeding has been addressing the need for interoperability for public safety communications.²⁵ In the *700 MHz Third Further Notice*, the Commission stated that “achieving a nationwide level of interoperability among and between public safety communications systems and devices so that public safety entities can communicate and coordinate their activities, particularly in response to emergencies, remains a critical imperative.”²⁶ The Commission also tentatively determined that “rely[ing] solely on local and state entities to build their own networks in the 700 MHz public safety broadband spectrum” was not feasible, and that by allowing such localized build out “we will again end up with balkanized networks incapable of even minimum interoperability.”²⁷

Since the *700 MHz Third Further Notice*, there have been several developments with respect to interoperability recommendations for the 700 MHz public safety broadband spectrum. APCO, NENA, NPSTC and the PSST have each recommended LTE as the preferred technology for a national public safety broadband network.²⁸ In addition, NPSTC has convened a task force to

²³ See *700 MHz Second Report and Order* at 15408-15 ¶¶ 327-344.

²⁴ 47 C.F.R. §1.925(b); *WAIT Radio v. FCC*, 413 F.2d 1153, 1157 (D.C. Cir. 1969) (*WAIT Radio*), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972); *Northeast Cellular Tel. Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

²⁵ See, *e.g.*, *700 MHz Second Further Notice* at 8052 ¶ 6.

²⁶ *700 MHz Third Further Notice* at 14319 ¶ 51.

²⁷ *Id.* at 14321 ¶ 54.

²⁸ See APCO & NENA Endorse LTE as Technology Standard for the Development of Nationwide Broadband Network (June 9, 2009) at http://www.apcointl.org/new/news/nena_endorse_lte.php; NPSTC Votes To Endorse LTE Technology for Broadband Network (June 10, 2009) at http://www.npstc.org/documents/Press_Release_NPSTC_Endorses_LTE_Standard_090610.pdf; The PSST Endorses LTE as the Preferred Technology Standard for the Nationwide 700 MHz Safety Wireless Broadband Network (July 24, 2009), at <http://www.psst.org/documents/PSSTPress072409.pdf>.

develop recommendations for LTE-based technical, governance, and operations standards to support interoperability.²⁹ We seek comment on how these developments may impact our consideration of these waivers and on what alternatives are available to the Commission that could allow Petitioners to deploy while ensuring the Commission’s ability to fully consider the issues and goals articulated in the context of the larger rulemaking proceeding. Should the Commission adopt conditions relating to interoperability as an element of any relief granted to Petitioners? If so, to what degree, if any, should the Commission consider any of the following elements as components of such conditions?

- a) Adoption of a common air interface among the Petitioners.
 - b) Common technical and organizational governance structures or other mandatory collaboration to ensure ongoing interoperability as networks evolve.
 - c) Adoption of interoperability standards that may be developed by the NPSTC task force.
 - d) “Proof of concept” or other showing of interoperability capability among Petitioners’ systems.
 - e) Roaming capability, *e.g.*, that a “foreign” public safety user would be able to obtain network access on the host network through a dynamic roaming arrangement.
 - f) Ability to share broadband applications.
 - g) Scalability of interoperability solutions.
 - h) Interoperability with future national or regional networks, regardless of geographic or technical configuration.
 - i) Any other common standards or capabilities.
- 7) **Mutually Exclusive Waivers.** Some of the petitions overlap with each other geographically, which may render them mutually exclusive in terms of the Commission’s ability to act on them.³⁰
- a) How should we address multiple requests from jurisdictions that cover the same geographic area?
 - b) Should we require coordination with adjacent regions or jurisdictions or limit waivers to larger geographic regions, such as states, to avoid multiple waivers from a particular area?
- 8) **Enforcement.** Should the Commission act on the Petitioners’ requests and allow early build out, there may be a heightened concern to ensure adherence to any conditions imposed in light of the ongoing proceeding and the Commission’s interoperability goals.
- a) How should the Commission monitor or enforce adherence to any adopted conditions?
 - b) Should all conditions be identical for each petitioner?

²⁹ See NPSTC to Develop Requirements for 700 MHz Broadband Network (June 12, 2009), at http://www.npstc.org/documents/Press_Release_Task_Force_090612.pdf.

³⁰ See New York City Petition; NYS Petition.

- c) Should the continuing validity of any relief granted be contingent on compliance by all those receiving relief?
- 9) **Permissible Users.** In the *700 MHz Third Further Notice*, the Commission suggested that Section 337 imposed certain restrictions on the types of users permitted for the public safety broadband spectrum.³¹ Are the Petitioners' proposed users of the networks appropriate or permissible under Section 337?³²
- 10) **Flow Mobile and North Dakota Petitions.** Specifically with respect to the Flow Mobile and North Dakota Petitions, we seek comment on the following:
- a) Is Flow Mobile eligible to seek such a waiver under the terms of Section 337 of the Act?³³ Can North Dakota seek such a waiver on their behalf?
- b) Are the “commercial and residential services” Flow Mobile seeks to provide permitted on the public safety spectrum under Section 337?
- c) What are the implications of Flow Mobile’s and North Dakota’s proposal to provide broadband service on designated narrowband spectrum? Would this give rise to interference concerns with narrowband operations in adjacent states or current in-state deployments? Is the proposed operation consistent with regional plans for this spectrum?
- d) Is the Flow Mobile/North Dakota proposal to deploy a “4-G-like” network consistent with the Commission’s interoperability and integration goals?

³¹ See *700 MHz Third Further Notice* at 14401-07 ¶¶ 312-327.

³² 47 U.S.C. § 337, *700 MHz Second Further Notice* at 8058-65 ¶¶ 24-38, *700 MHz Third Further Notice* 14335-36 ¶¶ 92-94.

³³ See *700 MHz Third Further Notice* at 14401-07 ¶¶ 312-327.