

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Amendment of Part 90 of the Commission's Rules)	WP Docket No. 07-100
)	

To: The Commission

COMMENTS OF SCANA CORPORATION

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EXECUTIVE SUMMARY

SCANA applauds the Commission's efforts to address an issue of extreme importance to the entire nation – creating an effective and technical framework for ensuring the deployment and operation of a nationwide interoperable public safety broadband network.

While the FCC previously tentatively concluded that utility entities are not eligible for use of the public safety spectrum because they do not meet the “sole or primary use” requirement of Section 337(f)(1)(A), SCANA submits that shared access of the public safety spectrum between utilities and public safety entities would be entirely consistent with the plain and unambiguous language of Section 337. Because the language of Section 337 unambiguously supports allowing utilities to access the 700 MHz spectrum, the FCC must give effect to clear Congressional intent in accordance with a *Chevron I* analysis. The plain language of Section 337 provides the Commission with sufficient flexibility and discretion to develop rules for the use of this spectrum that would best facilitate the actual implementation and deployment of a public safety broadband network and serve the public interest. In the event the FCC determines the statute is ambiguous, the legislative history of Section 337, in addition to the policy reasons discussed below, demonstrate that it would be reasonable for the FCC to interpret Section 337 to promote the development of shared public safety-utility radio systems in the 700 MHz band.

In addition to the FCC's statutory authority to permit use of the 700 MHz band by utilities, there are significant public policy reasons why allowing public safety agencies to share use of the 700 MHz band with utilities would serve the public interest. Electric and natural gas utilities are and will continue to be vital partners with public safety entities in a joint effort to provide essential public safety services for the protection of life, health and property. Utilities are almost always involved in emergency response and recovery efforts after natural disasters. Utilities are obligated to their employees and to the general public to conduct their operations in

an exceptionally safe manner and to maintain the constant reliability of their utility services. Utilities rely heavily on their communications systems to support their utility day-to-day operations, such as Supervisory Control and Data Acquisition (“SCADA”) operations for monitoring and controlling critical utility systems at power plants, transmission lines, distribution lines, electric distribution substations, and natural gas pipelines. Control and monitoring of these systems is critical for the safe and reliable delivery of electricity and natural gas.

As discussed in greater detail below, pursuant to a waiver grant, SCANA currently shares the 800 MHz radio network – Palmetto 800 – with state and local governments, public safety entities, law enforcement, fire departments, emergency medical services, hospitals, and other utilities on a non-profit, cost-shared basis for utility and public safety operations across several states. These types of sharing arrangements are in the public interest because they promote interoperability between first responders, enable public safety entities and utilities to make more efficient use of the spectrum, accelerate the deployment of public safety broadband networks through shared infrastructure and spectrum, and allow public safety entities to achieve substantial cost savings at significant benefit to taxpayers.

However, because the FCC does not currently allow utilities to have shared access to the 700 MHz Public Safety broadband spectrum, SCANA’s ability to expand and migrate the shared system to the next generation is extremely limited. It would greatly serve the public interest for the FCC to declare that utilities are eligible to share frequencies currently reserved for public safety users in the 700 MHz spectrum. Shared use of these frequencies by utilities like SCANA would enable the very successful public safety-private partnership with public safety entities in South Carolina, North Carolina and Georgia to continue and migrate to the next generation

communications system. Therefore, SCANA strongly urges the FCC to declare that utilities are eligible to use the 700 MHz Public Safety broadband network.

TABLE OF CONTENTS

- I. INTRODUCTION 2**
- II. THE FCC HAS STATUTORY AUTHORITY TO PERMIT UTILITIES TO SHARE THE PUBLIC SAFETY BROADBAND SPECTRUM..... 3**
 - A. The Plain Language of Section 337 Provides the FCC With Authority to Allow the 700 MHz Public Safety Band to be Used for Other Services 4
 - B. The Legislative History of Section 337 Demonstrates That Use of the 700 MHz Public Safety Band is Not Limited Exclusively for Public Safety Services 6
 - C. The FCC’s Analysis of Section 309(j)(2) Provides Support for Interpreting Section 337 to Allow Utilities to Access the 700 MHz Spectrum on a Shared Basis..... 7
- III. UTILITIES SHOULD BE ALLOWED TO USE 700 MHZ SPECTRUM FOR ESSENTIAL PUBLIC SAFETY SERVICES AND IN SUPPORT OF INTERNAL UTILITY OPERATIONS..... 10**
- IV. ALLOWING UTILITIES TO SHARE 700 MHZ PUBLIC SAFETY SPECTRUM WOULD PROMOTE EXPANSION OF PUBLIC SAFETY-PRIVATE PARTNERSHIPS AND PROMOTE THE PUBLIC INTEREST 12**
 - A. The 800 MHz Palmetto Radio System Serves As a Model of a Successful Public Safety-Private Partnership 14
 - B. Fees for Shared Use of the 700 MHz Spectrum Would Not Violate the Requirements of Section 337 16
 - C. Prioritization of Traffic on Shared 700 MHz Systems Through Contractual Arrangements Would Ensure Systems Are Used for Public Safety Communications 18
 - D. The City of Charlotte’s Petition for Declaratory Ruling Demonstrates that Entities Eligible to Access the 700 MHz Public Safety Broadband Network Should Be Allowed to Use it For Ancillary Purposes 21
- V. CONCLUSION..... 23**

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COMMENTS OF SCANA CORPORATION

SCANA Corporation, on behalf of itself and its operating affiliates, including SCANA Communications, Inc., SCANA Services, Inc. and South Carolina Electric & Gas Company (“SCE&G”) (collectively, “SCANA”) hereby submits its comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) request for further comment on the implementation of a nationwide interoperable public safety broadband network.¹ In addition to addressing the issues raised in the *Fourth FNPRM*, SCANA also responds herein to the

¹ / *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, FCC 11-6 (rel. Jan. 26, 2011) (“*Third Report and Order*” and “*Fourth FNPRM*”).

Commission's request for comment on a Petition for Declaratory Ruling filed in this docket on March 7, 2011, by the City of Charlotte, North Carolina.²

I. INTRODUCTION

SCANA is an energy-based holding company whose businesses include regulated electric and natural gas utility operations and other energy-related businesses. SCANA's subsidiaries serve approximately 660,000 electric customers in South Carolina and more than one million natural gas customers in South Carolina, North Carolina and Georgia. SCANA has nine significant direct, wholly-owned subsidiaries.

SCANA's principal subsidiary, SCE&G, is a regulated utility engaged in the generation, transmission, distribution and sale of electricity to approximately 660,000 retail and wholesale customers in a service area covering nearly 17,000 square miles in the central, southern and southwestern portions of South Carolina. SCE&G is also engaged in the purchase, sale and transportation of natural gas at retail to approximately 314,000 customers in a service area covering more than 22,000 square miles in central and southern South Carolina.

SCANA Communications, Inc., a subsidiary of SCANA Corporation, provides fiber optic telecommunications, ethernet services and data center facilities, and builds, manages and leases communications towers in South Carolina, North Carolina and Georgia. SCANA Services, Inc. provides administrative, management and other services to the subsidiaries and business units within SCANA Corporation.

² / Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling Asking to Clarify the Scope of Section 337 Regarding Use by State or Local Government Entities of the 700 MHz Public Safety Broadband Spectrum, PS Docket No. 06-229, Public Notice, DA 11-537 (rel. March 22, 2011) ("Public Notice").

II. THE FCC HAS STATUTORY AUTHORITY TO PERMIT UTILITIES TO SHARE THE PUBLIC SAFETY BROADBAND SPECTRUM

As the FCC acknowledges in the *Fourth FNPRM*, it previously tentatively concluded that utilities are not eligible to use the 700 MHz Public Safety spectrum because they do not satisfy the requirement in Section 337(f)(1)(A) that “public safety services” means services “the sole or principal purpose of which is to protect the safety of life, health, or property.”³ However, SCANA agrees that the FCC should reexamine this tentative conclusion in light of the strong desire on the part of the public safety community to include utilities on the 700 MHz network.⁴

The FCC’s interpretation of Section 337 is governed by the two-step process first articulated in *Chevron v. Natural Res. Def. Council, Inc.*, 467 U.S. 837 (1984). Under the first step in the *Chevron* analysis, courts will examine whether Congress has spoken unambiguously “to the precise question at issue.”⁵ If the language of the statute is unambiguous, the courts and the FCC must give effect to clear Congressional intent. If Congressional intent is ambiguous, the second step in the *Chevron* analysis involves an examination of whether the FCC’s interpretation of Congressional intent is reasonable.⁶

Applying the *Chevron I* test to the FCC’s proposals, Congress has spoken precisely to the questions at issue and made clear that Section 337 of the Act does not prohibit the use of the 700 MHz Public Safety broadband spectrum by utilities. The plain language of Section 337 ensures the availability of this 700 MHz spectrum for public safety while providing the Commission with discretion to adopt rules for sharing of this spectrum in order to serve the public interest and accelerate the deployment of a public safety broadband network. However, assuming *arguendo*

³ / *Fourth FNPRM* at ¶ 134.

⁴ / *Id.* at ¶¶ 134 – 135.

⁵ / *Chevron v. Natural Res. Def. Council, Inc.*, 467 U.S. 837, 842 (1984).

⁶ / *Id.* at 844.

that the status is ambiguous and *Chevron II* applies, the legislative history of Section 337 supports an interpretation that the Commission may adopt rules that would facilitate the development of shared networks in 700 MHz band between utilities and public safety entities.

A. The Plain Language of Section 337 Provides the FCC With Authority to Allow the 700 MHz Public Safety Band to be Used for Other Services

Under the *Chevron I* analysis, the plain language of Section 337 is unambiguous and makes clear that the FCC has statutory authority to adopt rules regarding the specific manner in which the 700 MHz spectrum is to be licensed and used, so long as, at a minimum, the spectrum is available for the provision of public safety services by the entities described in Section 337(f).

In the Balanced Budget Act of 1997, Congress adopted Section 337 to the Communications Act, which, provides, in pertinent part:

(a) In general

Not later than January 1, 1998, the Commission shall allocate the electromagnetic spectrum between 746 megahertz and 806 megahertz, inclusive, as follows:

- (1) 24 megahertz of that spectrum for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General;

* * *

(f) Definitions

For purposes of this section:

- (1) Public safety services

The term “public safety services” means services—

- (A) the sole or principal purpose of which is to protect the safety of life, health, or property;

- (B) that are provided—

- (i) by State or local government entities; or
- (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and
- (C) that are not made commercially available to the public by the provider.

(47 U.S.C. § 337 (emphasis added)).

Section 337(a) directs the Commission to “allocate” spectrum for “public safety services,” which means that the FCC can designate a certain band of spectrum for a particular purpose, without regard to the type of entity providing the service. Unless explicitly stated otherwise, the allocation of spectrum for a particular service does not mean that the FCC is precluded from allowing other services to be provided on that spectrum on an shared basis, so long as the predominant use of that spectrum is for the service for which it was allocated. Thus, SCANA submits that the Congressional mandate in Section 337 that the FCC allocate 24 MHz of spectrum in the 700 MHz band for “public safety services” does not explicitly provide that the FCC must allocate this spectrum on an exclusive basis.⁷ Section 337 does not explicitly restrict the licensing or usage eligibility of entities that may access this allocation or the specific uses to be made of the spectrum.

Section 337(a) provides that the allocation of this 700 MHz spectrum shall be made “according to the terms and conditions established *by the Commission* in consultation with the Secretary of Commerce and the Attorney General.” Thus, the plain language of the statute provides the Commission with full authority and discretion to develop rules regarding how this

⁷ / SCANA notes that there is no indication in the Conference Report accompanying the Balanced Budget Act of 1997 that Congress intended to allocate this spectrum exclusively for public safety services or to prohibit any other uses of this band on an ancillary basis. See H.R. CONF. REP. NO. 105-217, at 578 – 580 (1997).

spectrum is licensed and used, provided the spectrum is made available for the provision of public safety services by the entities consistent with Section 337(f).

This plain-language reading of the statute ensures that the 700 MHz Public Safety band will remain available for the provision of public safety services. SCANA submits that under a *Chevron I* analysis, the FCC must give clear intent to the directive of Congress to allow utilities to access the 700 MHz Public Safety broadband network.

B. The Legislative History of Section 337 Demonstrates That Use of the 700 MHz Public Safety Band is Not Limited Exclusively for Public Safety Services

Assuming *arguendo* that the FCC determines that Section 337 is ambiguous and therefore subject to interpretation under a *Chevron II* analysis, the legislative history of Section 337, along with the public policy reasons discussed below in Section III, make clear that a reasonable interpretation of Section 337 is that FCC has discretion to adopt eligibility criteria and operational conditions that would, taken as a whole, ensure that the essential character of the allocation would remain true to the congressional directive that the spectrum be available to support safety services.

The legislative history of Section 337 supports an interpretation of the statute that the 700 MHz spectrum was not intended to be used *exclusively* for public safety services. Congress anticipated that the FCC would implement rules to promote the development of shared radio systems between utilities and public safety entities in this band. For example, Senator Bryan stated in the floor debate that he hoped “the FCC will promote the development of shared public safety/public service radio systems.”⁸ Senator Bryan also explained that a shared radio network had been developed in Nevada for use by public safety, utilities, and state and local government

⁸ / 105 CONG. REC. S6325 (1997).

agencies.⁹ Senator McCain agreed with Senator Bryan, explaining, “I would also like to offer my support for the allocation of new spectrum for use by public safety and public service organizations, and would urge the FCC to adopt rules that would facilitate, if not promote, the development of shared radio systems by such entities.”¹⁰

Thus, the legislative history of Section 337 does not contain any support for an interpretation of the statute that would prohibit utilities from accessing the 700 MHz Public Safety broadband network on a shared basis with public safety agencies. SCANA submits that the legislative history provides support under a *Chevron II* analysis for the FCC to implement Section 337 to permit the development of shared systems in the 700 MHz public safety band between utilities and public safety agencies.

C. The FCC’s Analysis of Section 309(j)(2) Provides Support for Interpreting Section 337 to Allow Utilities to Access the 700 MHz Spectrum on a Shared Basis

Additional support for interpreting Section 337 in a manner that allows utilities to share the 700 MHz spectrum with public safety can be found in the Commission’s prior analysis applied in implementing Section 309(j)(2) of the Communications Act, which was also as part of the Balanced Budget Act of 1997.

Under Section 309(j)(2) of the Communications Act, the FCC’s authority to auction spectrum does not apply to licenses or construction permits issued by the Commission “for public safety services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by

⁹ / *Id.*

¹⁰ / *Id.*

not-for-profit organizations, that (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.”¹¹

The Conference Report accompanying the additions of Sections 337(f) and 309(j)(2) to the Communications Act indicated that the term “public safety radio services” in Section 309(j)(2) “includes ‘private internal radio services’ used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, and volunteer fire departments. Congress explained that the services offered by these entities is to protect the safety of life, health, or property and are not made commercially available to the public.”¹² While the Conference Report discussed that the “public safety radio services” exemption is “much broader than the explicit definition for ‘public safety services’ contained in” Section 337(f)(1),¹³ the Commission’s analysis of Section 309(j)(2) still provides strong analytical support for the Commission’s decision to reexamine Section 337.

In implementing Section 309(j)(2), the FCC concluded that because “[t]he statutory language provides that the exemption applies to ‘public safety radio *services*’,” the auction exemption “should be evaluated in terms of its application to particular services rather than to particular classes or groups of licensees within a service.”¹⁴ Thus, the Commission explained that it would look at what services are being provided in a particular band instead of the identity or nature of the entities using that spectrum band.

¹¹ / 47 U.S.C. § 309(j)(2).

¹² / H.R. Rep. No. 105-217, 105th Cong., 1st Sess., at 572.

¹³ / *Id.*

¹⁴ / *Implementation of Sections 309(j)(2) and 337 of the Communications Act of 1934 as Amended*, WT Docket No. 99-87, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 22709, 22741 ¶ 66 (2000) (“*Report and Order*” and “*Further Notice of Proposed Rulemaking*”) (emphasis in original).

The Commission determined that the public safety exemption would apply only to services in which the public safety uses described under Section 309(j)(2) “comprise the *dominant* use of the spectrum,”¹⁵ but did not mandate that such uses comprise the exclusive use of the spectrum. The Commission explained that because utilities and others “do not use their frequencies exclusively for safety-related purposes, Congress could not have intended that entities using exempt spectrum use that spectrum exclusively for such purposes.”¹⁶ The Commission also noted that “it would be overly burdensome to require licensees to differentiate between, and use different frequencies for, pure public safety communications and business communications which may also serve a safety-related purpose.”¹⁷

In the context of Section 337, the FCC’s analysis above relevant to Section 309(j)(2) provides additional support for the proposition that Section 337(a) requires only that the Commission allocate 24 MHz of bandwidth in the 700 MHz band such that the dominant use of the band, when viewed in the aggregate, will be by entities that have the “sole or principal purpose” to “protect the safety of life, health or property.” Consistent with FCC’s analysis discussed above for Section 309(j)(2), Section 337 does not require the Commission to adopt rules that require that every licensee or every use of this spectrum be limited to the purpose of the protection of the safety of life, health or property. It is sufficient if the principal purpose of the allocation is for services that protect the safety of life, health, or property.

There is no way for the FCC to ensure that the 700 MHz Public Safety broadband network will be used exclusively for “protect[ing] the safety of life, health or property” even by entities who the Commission has previously determined are eligible to use this network. There

¹⁵ / *Report and Order*, 15 FCC Rcd at 22740 ¶ 64 (emphasis added).

¹⁶ / *Id.*, 15 FCC Rcd at 22751 ¶ 85.

¹⁷ / *Id.*

are several uses of “public safety” spectrum allocations by governmental agencies that are not in fact for the “sole or principal purpose” of protecting safety of life, health or property. However, it is clear that these “non-public safety” uses do not diminish the availability of public safety spectrum for public safety purposes.

III. UTILITIES SHOULD BE ALLOWED TO USE 700 MHZ SPECTRUM FOR ESSENTIAL PUBLIC SAFETY SERVICES AND IN SUPPORT OF INTERNAL UTILITY OPERATIONS

As a provider of electric utility services for approximately 660,000 customers in South Carolina and as a provider of natural gas services for more than one million customers in South Carolina, North Carolina and Georgia, SCANA’s communications network is critical to its ability to provide reliable utility services throughout its territory. Unlike commercial wireless carriers, utilities do not generally provide communications services commercially to the public. Instead, utilities design their communications systems similar to public safety agencies because both utilities and public safety have similar communications and interoperability needs.

SCANA operates conventional private land mobile and various microwave communications systems throughout its widespread service territory. These wireless communications systems facilitate SCANA’s internal communications used in support of vital public services; namely, the reliable provision of electric and natural gas delivery service to the public. SCANA uses these systems for a wide variety of needs, including mobile voice and dispatch, backhaul, electric and natural gas transmission and SCADA, electric and natural gas distribution system construction and operations, emergency response, customer service operations, training, and security management.

During power outages and natural disasters, SCANA must respond quickly and efficiently to ensure protection of the public from the potential safety impacts from compromised facilities as well as continued service to its customers. Wireless communications are of the

utmost importance in these situations, particularly given that severe weather can incapacitate wireline communications and the traffic on commercial cellular systems during emergency and disaster conditions can make those systems inaccessible. SCANA's communications facilities provide essential communications for its crews during responses to equipment damage and restoration of natural gas and electric service.

Even during routine operation of SCANA's facilities, these wireless communications systems are indispensable. Utility employees need to engage in instantaneous, uninterrupted communications with each other and with SCANA's headquarters to ensure that work is carried out promptly, safely, and efficiently. Effective and reliable radio communications are essential in light of the field crews' frequent work with high voltage electrical wires, natural gas lines, and other potentially hazardous features of the operational infrastructure. These private radio systems allow field crew employees to respond to customer needs and to communicate with each other while coordinating inherently hazardous work. SCANA's crews must cover a widely dispersed geographic territory, including large rural areas of South Carolina.

Wireless communications systems will always be fundamental to SCANA's utility operations. SCANA supplies the core resources – natural gas and electricity – that permit modern society to function. Because industrial, business, and domestic operations depend on the availability of electricity and natural gas, SCANA's utility services impact the lives of virtually everyone within its service territory. In addition to these customers, SCANA is responsible for providing electricity and natural gas to critical facilities, including hospitals and other emergency care providers that employ life support systems and emergency response equipment. Disruptions in communications increase the risks to lives and property. Simultaneously, SCANA must ensure the safety of field crews maintaining its infrastructure and delivering electricity and

natural gas safely and efficiently to customers. Wireless communications are essential to enable SCANA to keep its systems functioning on a 24-hour-a-day, 7-day-a-week, 365-day-a-year basis to avoid power outages (and to quickly restore services in the event of an outage) that could deprive large areas and populations of electricity and natural gas services. Unquestionably, high reliability and rapid restoration of the power grid and natural gas delivery services in disaster situations are among our nation's highest priorities. They go hand in hand with the core objectives of disaster response efforts. Thus, utilities should be able to share access to the 700 MHz Public Safety broadband spectrum for emergency response and restoration efforts and day-to-day operations that are essential to their internal operations. Denying that access weakens the overall capability to effect prompt and effective emergency response and restoration efforts.

IV. ALLOWING UTILITIES TO SHARE 700 MHZ PUBLIC SAFETY SPECTRUM WOULD PROMOTE EXPANSION OF PUBLIC SAFETY-PRIVATE PARTNERSHIPS AND PROMOTE THE PUBLIC INTEREST

Not only is the FCC permitted by statute to allow utilities to share use of the 700 MHz Public Safety broadband network with public safety agencies, but there are also several public interest benefits that provide strong support for the FCC to permit such sharing arrangements. The FCC has acknowledged there is a “strong desire of many in the public safety community to include secondary users such as utilities, public works and others on their network as a mechanism to coordinate common activities and respond jointly to emergencies, as well as a method to spread costs and capitalize on infrastructure sharing opportunities.”¹⁸ There is no legitimate and effective, community, state, or national emergency response plan and program that does not involve utilities. The FCC has further stated that “[t]his policy goal is worth of

¹⁸ / *Fourth FNPRM* at ¶ 135.

pursuit in light of the otherwise uncertain nature of the funding need to ensure nationwide build out of the public safety broadband network.”¹⁹

Public safety associations have also recognized the important role of utilities in providing vital public safety services. On March 30, 2011, the U.S House of Representatives Homeland Security Committee held a hearing on the communications needs of public safety agencies and first responders. At that hearing, William Carrow, President of the Association of Public-Safety Communications Officials, International (“APCO”), confirmed that utilities play an important role in emergency response efforts.²⁰ Mr. Carrow explained how the statewide public safety radio system for mutual aid assistance in Delaware includes local utilities in the event of major disasters and stated that electric utilities at many times are “more first responder” than traditional public safety agencies.²¹ Chief Jack Parow, President and Chairman of the International Association of Fire Chiefs (“IAFC”), also testified at that hearing that public safety-private partnerships will be an important part of the 700 MHz Public Safety broadband network and that public safety agencies will work with electric and natural gas utilities who respond to emergencies.²²

SCANA strongly agrees with the FCC and the public safety community that allowing utilities to be included as entities eligible to share the 700 MHz Public Safety broadband network is in the public interest because it would allow shared users to make more efficient use of

¹⁹ / *Id.*

²⁰ / Utilities Telecom Council, “APCO Gives Shout Out to Utilities As ‘At Times More First Responder Than We Are,’” (available at <http://www.utccinsight.org/content/apco-gives-shout-out-utilities-times-more-first-responder-we-are>).

²¹ / *Id.*

²² / *Public Safety Communications: Are the Needs of Our First Responders Being Met?*; Hearing before the House Comm. on Homeland Security, 112 Cong., 1st Session (testimony of Chief Jack Parow, President and Chairman of the Board) (March 30, 2011) (available at <http://homeland.house.gov/sites/homeland.house.gov/files/Testimony%20Parow.pdf>).

available spectrum and would accelerate the deployment of the public safety broadband network. As described in greater detail below, shared use of these 700 MHz frequencies would enable SCANA to continue and expand its existing very successful public safety-private partnership with state and local governments and public safety agencies in South Carolina, North Carolina and Georgia.

A. The 800 MHz Palmetto Radio System Serves As a Model of a Successful Public Safety-Private Partnership

In the *Fourth FNPRM*, the FCC has requested comment on several issues regarding the logistics of how utilities and public safety entities could share access to the 700 MHz Public Safety broadband network while ensuring that shared use of the network is consistent with the requirements of Section 337.²³ SCANA recommends that the issues raised by the FCC be addressed through general guidelines or through contractual arrangements between entities that are sharing the network in each locality or region. The statewide shared 800 MHz system in South Carolina, commonly referred to as “Palmetto 800,” serves as a prime example of how these issues can be resolved in a way that preserves the shared system for essential public safety communications. SCANA urges the FCC to allow parties to enter into similar contractual arrangements to share the 700 MHz spectrum.

The State of South Carolina, through its Division of State Information Technology (“SCDSIT”), utilizes one of the largest statewide emergency communications radio systems in the United States, with over 25,517 voice system users, over 1,244 mobile data system users, and 9,800 mutual aid users. In the face of several catastrophic natural disasters, beginning with Hurricane Hugo in 1989, South Carolina’s state and local public safety and law enforcement officials found that the lack of interoperable communications severely limited their ability to

²³ *Fourth FNPRM* at ¶¶ 136-140.

communicate and collaborate between agencies. As a result, SCANA worked to implement a statewide, interoperable network. In order to reduce costs, SCDSIT and SCANA agreed to share costs and infrastructure assets and to jointly work together to solicit local governments to partner in the system. The system was operated on Industrial/Land Transportation (“I/LT”) frequencies licensed to SCANA and on Public Safety and Special Emergency Radio Service (“SERS”) frequencies licensed to the State of South Carolina and certain counties. However, because some sites on the network used only I/LT frequencies or only Public Safety and SERS frequencies, Section 90.179 of the FCC’s rules prevented system users that were not eligible for separate authorization on those frequencies from using all of the sites.²⁴

Thus, in 1997, SCDSIT and SCANA applied for and obtained a permanent waiver of the FCC’s rules to permit the construction and operation of a shared network on Public Safety, I/LT and Business Radio Service (“BRS”) frequencies to be used by Public Safety, SERS and Power Radio Service eligible entities on a non-profit, cost-shared basis.²⁵ Among other things, the FCC found that grant of the waiver was justified because it “would provide the public safety entities of South Carolina the ability to obtain wide-area coverage without incurring, in this time of limited government resources (especially for smaller, rural governmental entities), the expense of constructing an entire wide-area backbone system.”²⁶ The FCC also stated that grant of the waiver “would allow entities providing police, fire, medical, and other public safety services in

²⁴ / 47 C.F.R. § 90.179

²⁵ / *State of South Carolina and SCANA Communications, Inc., Requests for Waiver of the Commission’s Rules*, Order, 13 FCC Rcd 8787 (1997).

²⁶ / *Id.* at ¶ 9.

South Carolina – large and small, state and local – to communicate with one another and with utility companies, both on a day-to-day basis and during emergencies.”²⁷

This shared Palmetto 800 radio network is a unique, cost-shared, public safety-private partnership that has grown to over 381 agencies representing federal, state and local governments, law enforcement, fire services, emergency medical services, school districts, other public safety agencies, and utilities in South Carolina, North Carolina and Georgia. Various agencies responsible for emergency preparedness have been provided 800 MHz radios on the statewide radio system, including all county emergency operations centers, all county 911 centers, all hospital emergency rooms and all national weather service offices. In 2001, Motorola purchased the primary ownership of the Palmetto 800 radio system from SCANA and continues to manage the system under a contract with SCDSIT.

The Palmetto 800 radio system has enabled these state and local governments, public safety agencies, and utilities to achieve direct interoperability with other public safety agencies and private system subscribers. The transmitter sites within the Palmetto 800 radio system are designed with maximum redundancy, with each site equipped with generator back-up power. Motorola also monitors the system 24 hours a day, seven days a week. Sharing of the 700 MHz Public Safety broadband spectrum between public safety agencies and utilities would further promote interoperability between first responders by expanding the pool of spectrum available for the Palmetto 800 radio system.

B. Fees for Shared Use of the 700 MHz Spectrum Would Not Violate the Requirements of Section 337

The FCC seeks comment on whether Section 337(f)(1)(C), which requires that public safety services are not made commercially available to the public, would be violated if utilities

²⁷/ *Id.*

are charged a fee for access to the shared network and whether it makes any difference if such a fee is made through in-kind contributions, such as access to infrastructure.²⁸ SCANA submits that the requirement in Section 337(f)(1)(C) that public safety services “not be made commercially available to the public” should be interpreted by the FCC as prohibiting use of the public safety network by entities that intend to provide wireless telecommunications services to the public for a fee; *i.e.*, there cannot be use of the public safety network by commercial wireless carriers to serve their customers.²⁹ However, Section 337(f)(1)(C) does not prohibit any and all financial arrangements entered into by parties sharing in the use of the network, especially in-kind contributions, such as access to infrastructure that will be essential to public safety-private partnerships necessary to build the public safety broadband network.

For example, the Palmetto 800 radio system partnership provides significant cost savings to its users by spreading the costs to construct and maintain the system over a large number of users, thereby reducing individual user costs. In 2004, SCDSIT estimated that its cost for ten years of service was approximately twenty million dollars, ten million dollars less than anticipated in 1993, and that its portion of the cost-shared mobile data system was less than \$300,000 annually, an approximate 70 percent savings over the cost had the State of Carolina purchased and maintained its own stand-alone system. The Palmetto 800 radio system participants share infrastructure and assets, including towers, property, generators, and frequencies. In order to further reduce system costs, participants can contribute tower space, buildings, microwave paths or other assets, for which they are given credit. Thus, both public safety agencies and utilities mutually benefit under the Palmetto 800 radio system by combining funding resources. This is especially the case with state and local government users of the

²⁸ / *Fourth FNPRM* at ¶ 138.

²⁹ / 47 U.S.C. § 337(f)(1)(C).

Palmetto 800 radio system because they have limited funding on their own to expand their networks. State and local governments and public safety agencies obtain access to a state-of-the-art communications system for significantly less cost than purchasing and maintaining an independent system. Upgrades to the shared system are built into the user fees in order to ensure that cutting-edge technology is available and to eliminate the need for agencies to request additional capital funding when new technology becomes available. This results in taxpayer savings well into the millions of dollars. If the FCC were to allow utilities to expand into the 700 MHz Public Safety broadband spectrum, SCANA and other users of the Palmetto 800 radio system would be able to continue this mutually beneficial relationship and achieve even greater cost savings.

C. Prioritization of Traffic on Shared 700 MHz Systems Through Contractual Arrangements Would Ensure Systems Are Used for Public Safety Communications

The FCC has also requested comment on how to prioritize usage of the 700 MHz Public Safety broadband spectrum if it is shared between public safety agencies and utilities.³⁰ SCANA submits that the essential character of the spectrum as “public safety” can be maintained through contractual arrangements that are developed by the entities sharing the network in each locality or region to develop protocols for prioritizing traffic on the system. While it may be helpful for the FCC to set broad guidelines, SCANA submits that the FCC should not attempt to define any specific, one-size-fits-all, prioritization regime because the types of natural disasters and emergencies will differ from region to region and different types of entities may seek to use the system in each locality or region. Therefore, each locality or region will be in the best position to determine how to prioritize traffic.

³⁰ / *Fourth FNPRM* at ¶ 136.

The Palmetto 800 radio system can serve as an example for how traffic on a shared 700 MHz system can be prioritized to ensure that essential public safety services have priority access during an emergency. For example, the Palmetto 800 radio system has addressed the issue of priority access by adopting a priority access plan for widespread emergencies when large numbers of public safety and private utilities need to access the shared system to respond. Each participating agency is required to divide its talkgroup into three priority levels – High, Medium and Low. In a disaster, the high priority talkgroups would access voice channels first, with the high priority levels reserved for public safety and utility dispatch. The low priority talkgroups would be used for non-life threatening situations. Each individual user agency maintains a ratio of one talkgroup (voice audio path) for every 25 radios. Requests for talkgroups that do not meet the one-to-25 ratio are required to seek approval from an Advisory Committee made up of representatives of users of the Palmetto 800 system. Each individual user agency must also develop essential operation plans for catastrophic disasters, which require the agency to reduce its talkgroup loading to a one-to-fifty ratio or better and to restrict operations to only those that are essential.

The priority access plan has performed well for users of the Palmetto 800 radio system through various natural disasters and emergency situations, including:

- On December 10, 2002, the FCC granted SCANA Special Temporary Authority (“STA”) to operate on nine frequencies licensed to SCANA’s shared 800 MHz system at various locations in North Carolina to assist in restoration efforts after an extraordinarily severe ice storm caused extensive damage statewide and resulted in power outages affecting an estimated 1.8 million customers.
- On January 6, 2005, a northbound freight train passing through Graniteville, South Carolina collided with an unoccupied, parked train causing both trains to derail and release chlorine gas, causing damages exceeding \$6.9 million. EMS, fire departments, law enforcement, hazardous materials personnel, and other mutual aid services responded all using communications radios from the Palmetto 800 radio system. SCE&G also responded to disconnect a downed electrical power line near the wreckage site. Four 800 MHz mutual aid talk groups from the statewide trunked

system were assigned to support these rescue efforts and Palmetto 800 system radios were provided to hazmat units which were not on the statewide system. Overall, the Palmetto 800 radio system supported radio communications for over 200 law enforcement and public safety agencies and received high marks from the agencies involved in the operation.

- In June 2006, a fire at a textile mill in Great Falls, South Carolina released hydrochloric acid and forced a mass evacuation of the town. Fire services and other emergency response personnel responding to the fire relied solely on Palmetto 800 system radios, which provided the only communications service, as commercial cellular service did not work in the area.

SCANA also maintains control radios at its Nuclear Joint Operations Center to interface via the Palmetto 800 radio system with state and county governments in the event of any emergency incidents at the Virgil C. Summer Nuclear Generating Station in Jenkinsville, South Carolina, approximately 30 miles northwest of Columbia.

As demonstrated above, the Palmetto 800 radio system is a prime example of state and local governments, public safety agencies, and private utilities working together to share spectrum and assets in order to implement a statewide, interoperable communications network on a cost-shared basis. While the Palmetto 800 system has worked so far pursuant to a waiver by the FCC that enables public safety agencies to share SCANA's 800 MHz spectrum, the continued growth and success of the Palmetto 800 radio system would be greatly enhanced by the ability of SCANA to share frequencies currently reserved for public safety users in the 700 MHz band. Due to 800 MHz rebanding, no additional 800 MHz spectrum is currently available for the expansion of the Palmetto 800 radio system. Thus, in order to continue the existing synergies and close working relationship between SCANA and the public safety users of the Palmetto 800 radio system, and to ensure the successful migration of the system to the next generation and to expand broadband services, SCANA strongly urges the FCC to declare the utilities are allowed to share 700 MHz Public Safety broadband spectrum.

D. The City of Charlotte’s Petition for Declaratory Ruling Demonstrates that Entities Eligible to Access the 700 MHz Public Safety Broadband Network Should Be Allowed to Use it For Ancillary Purposes

The FCC requests comment on whether potential shared usage of the 700 MHz Public Safety broadband spectrum must have some “quasi-public safety focus” in order to qualify for access.³¹ The FCC also seeks comment on whether to adopt a limit on the amount of non-public safety service usage permitted on a shared 700 MHz system.³² As discussed above, prioritization arrangements such as the one implemented under the Palmetto 800 radio system can sufficiently ensure that use of the spectrum is preserved for public safety services. It would be spectrally inefficient to limit shared use to some fixed percentage of network capacity, or to state that certain users would always be considered “secondary” if there is capacity on the system and it is not being used.

The FCC should also adopt a requirement that use of the 700 MHz Public Safety broadband spectrum is reserved for entities who will use the system for their own internal communications requirements instead of providing commercial service to the public. Under this standard, it is clear that utilities would qualify for access to the shared system because they primarily use communications to ensure the safe, reliable and effective delivery of electric, natural gas and water services that are essential for the protection of life, health and property. In addition to use of the shared 700 MHz broadband spectrum for storm restoration and other public safety services, utilities should also qualify for shared use of the shared 700 MHz spectrum for day-to-day operations to control and monitor critical utility systems.

On March 7, 2011, the City of Charlotte, North Carolina, filed a Petition for Declaratory Ruling (“Petition”) requesting clarification regarding the scope of activities that entities

³¹ / *Fourth FNPRM* at ¶ 136.

³² / *Id.*

authorized to operate in the 700 MHz Public Safety broadband spectrum may conduct. In particular, the City of Charlotte requested confirmation that a state or local government entity deemed eligible for a license in the 700 MHz Public Safety band is not limited in the types of personnel that may use the system for the day-to-day communications, including for example public works, transportation, or garbage collection personnel. The City of Charlotte contended that state and local governments presumptively have as their “sole or principal purpose” the protection of life, health and property. Thus, it asserted that state and local governments should be allowed to use the 700 MHz Public Safety broadband spectrum for activities conducted by their personnel, regardless of whether or not they are emergency medical services, law enforcement, or fire departments.

The City of Charlotte asserted that if non-emergency personnel are not allowed to use the city’s 700 MHz system, it would either result in wasteful government spending on duplicative systems or that it would be prohibitively expensive for state and local governments to build a broadband network just for first responders. Based on SCANA’s experience with the Palmetto 800 MHz system, such an endeavor would be beyond the financial capabilities of many jurisdictions, even with grant support. Thus, even the traditional public safety community envisions that the 700 MHz Public Safety allocation will be used by eligible entities for many purposes that, taken individually, would not meet the statutory language in Section 337(f) that the “sole or principal purpose” of the service is “to protect the safety of life, health or property.” Use of the 700 MHz spectrum by utilities would be analogous to use of this spectrum by state and local governments because utilities also use communications systems for emergency response and restoration efforts, but also for supplemental uses for day-to-day operations. If utilities are allowed to access the 700 MHz band, the FCC should make clear that such access

entails communications for public safety operations and ancillary uses in support of a utility's internal operations.

V. CONCLUSION

The FCC has wisely recognized that the worthy policy goal of facilitating public safety-utility partnerships can be advanced by declaring that utilities are eligible for use of the 700 MHz Public Safety broadband spectrum. As demonstrated above, the plain language and the legislative history of Section 337 do not preclude the use of this spectrum by utilities. Any concerns regarding the shared use of the spectrum by utilities can be addressed through general guidelines or contractual arrangements between entities using the system in each locality or region in order to ensure that the primary public safety nature of the spectrum is preserved. Therefore, SCANA strongly urges the FCC to adopt rules allowing utilities to access the 700 MHz Public Safety broadband spectrum to advance these important public policy goals.

WHEREFORE, THE PREMISES CONSIDERED, SCANA Corporation respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

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