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WIRELESS TELECOMMUNICATIONS BUREAU ACTION

WIRELESS TELECOMMUNICATIONS BUREAU APPROVES REGION 19 (NEW ENGLAND) 700 MHz REGIONAL PLAN

WT Docket No. 02-378

On March 25, 2005, the Region 19 (New England)¹ 700 MHz Regional Planning Committee ("Region 19") submitted a proposed plan (Plan) for the use of the 12.5 megahertz of spectrum in the 764-776 and 794-806 MHz band (700 MHz public safety band) designated for General Use and requested Commission review and approval of the Plan.² The Region 19 Plan pre-allocates the narrowband General Use channels by county as listed in the Region 19 Channel Allotments, Appendix L.³ For the reasons discussed below, we approve the Region 19 700 MHz Regional Plan.

Background. In 1998, the Commission adopted a band plan for the 700 MHz public safety band, and established a structure to allow regional planning committees (RPCs) maximum flexibility to meet state and local needs, encourage innovative use of the spectrum, and accommodate new and as yet

¹ Region 19 includes Connecticut (except Fairfield, Litchfield, New Haven and Middlesex counties), Maine, New Hampshire, Rhode Island and Vermont.

² See Region 19 700 MHz Regional Plan (filed Mar. 25, 2005) (Plan). Region 19 initially submitted its proposed plan on March 7, 2005. See Letter dated Feb. 16, 2005, from George J. Pohorilak, Chairman, Region 19 to Marlene H. Dortch, Secretary, FCC (submitting the Region 19 700 MHz Plan on behalf of the Region 19 700 MHz Regional Planning Committee) (filed Mar. 7, 2005). On March 25, 2005, however, it resubmitted the plan because it had inadvertently omitted the adjacent regions' (Region 8-Metropolitan New York and Region 30-Western New York) Letters of Concurrence from the plan submitted on March 7. On March 31, 2005, Region 19 withdrew the March 7, 2005 submission, and stated that only the Plan filed on March 25, 2005 should be considered.

³ See Plan Appendix L Region 19 New England Channel Allotment, which lists the General use, narrowband channels in 25 kHz blocks, pre-allocated in frequency pools for each county within the six-state region. Region 19 utilized the frequency packing program within the Computer Assisted Pre-coordination Resource and Database System (CAPRAD) administered by the National Law Enforcement and Corrections Technology Center-Rocky Mountain Region (NLECTC-RM) to create its channel allocation plan. The NLECTC-RM is a program of the National Institute of Justice and is sponsored by the University of Denver through the Denver Research Institute. The CAPRAD system is available at <http://caprad.nlectc.du.edu>.

unanticipated developments in technology and equipment.⁴ The Commission's role in relation to the RPCs is limited to: (1) defining the regional boundaries; (2) requiring fair and open procedures, *i.e.*, requiring notice, opportunity for comment, and reasonable consideration; (3) specifying the elements that all regional plans must include; and (4) reviewing and accepting proposed plans (or amendments to approved plans) or rejecting them with an explanation.⁵

Plan Requirements. There are fifty-five RPCs and each committee is required to submit its plan for the assignment of licenses for General Use spectrum.⁶ Each regional plan must contain certain elements⁷ and must be coordinated with adjacent regions.⁸ RPCs are expected to ensure that their committees are representative of all public safety entities in their regions by providing adequate notice of all meetings, opportunity for comment, and reasonable consideration of views expressed. Plans must include an explanation of how all eligible entities within the region were given such notice.⁹ Plans should list the steps undertaken to encourage and accommodate all eligible entities to participate in the planning process, such as holding meetings in various parts of the region. In addition, a regional plan should describe outreach efforts made to tribal governments.

Regional plans may differ somewhat in approaches to spectrum planning and management. In particular, some plans may make specific assignments to eligible public safety entities, while others may establish an allotment pool approach based on political boundaries such as counties.¹⁰ However, all 700 MHz plans submitted for review and approval must sufficiently address each of the common elements in the Commission's regional plan requirements.¹¹ RPCs also are encouraged to consider utilizing the guidelines developed by the Public Safety National Coordination Committee (NCC).¹²

⁴ See 47 C.F.R. § 90.527; *see also* The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152 (1998) (*First Report and Order*).

⁵ See *First Report and Order*, 14 FCC Rcd at 195 ¶ 87.

⁶ See 47 C.F.R. § 90.531. The 700 MHz public safety band plan contains 24 MHz of spectrum for public safety services at 764-776 MHz and 794-806 MHz, and is divided into several segments by designated purpose: General Use, Interoperability, Secondary Trunking, State License, Low Power and Reserve channels.

⁷ See 47 C.F.R. § 90.527; *see also* *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84.

⁸ See 47 C.F.R. § 90.527; *see also* *First Report and Order*, 14 FCC Rcd at 190-96 ¶¶ 77-79.

⁹ See *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84. RPCs were directed to promptly adopt operating procedures that "ensure that all entities will be given reasonable notice of all committee meetings and deliberations." *Id.* at 195 ¶ 86.

¹⁰ See Plan Appendix L Channel Allotments. Region 19 frequencies are pre-allocated in county-like area frequency pools. Given this approach, after Commission approval is obtained, any modifications to the existing Region 19 Channel Allotment list will require an amendment to the Plan. Also, the assignments for the wideband General Use channels will require an amendment to the Plan before those wideband channels may be licensed

¹¹ 47 C.F.R. § 90.527.

¹² The NCC was a federal advisory committee established by the Commission in 1999 to address and advise the Commission on operational and technical parameters for use of the 700 MHz public safety band. The NCC was also

Review of the Region 19 Plan. Region 19 submitted its proposed plan on March 25, 2005.¹³ Region 19 convened its first of fifteen 700 MHz regional planning meetings beginning on December 7, 2000, wherein it appointed its officers.¹⁴ Bylaws were adopted on March 12, 2002.¹⁵ The Plan includes copies of published meeting announcements, notices and a detailed membership list.¹⁶ The membership appears to be sufficiently diverse and we note that meetings were held throughout the six-state region to encourage participation and facilitate attendance.¹⁷ The Plan details the operations of the regional plan committee, procedures for requesting spectrum allotments, plan modification, frequency coordination and interference protection measures.¹⁸ The Plan explains the low power secondary operations criteria¹⁹ and use of lower power channels, and discusses system implementation and spectrum utilization.

tasked with providing voluntary assistance in the development of coordinated regional plans, and developed a *Regional Planning Guidebook*. Following the sunset of the NCC's charter on July 25, 2003, the National Public Safety Telecommunications Council (NPSTC) agreed to continue to provide assistance to regional planners. The *Guidebook* is available at the NPSTC website <http://www.npstc.org/documents.html>.

¹³ See *supra* note 2.

¹⁴ Plan Part 2, Appendix G at 48-51.

¹⁵ Plan Part 1, Section 3 - Bylaws of the New England 700 MHz Committee/Region 19 (amended and approved March 12, 2002).

¹⁶ Plan Part 2, Appendix G - Initial Planning Meeting, Meeting Minutes, Attendance and Notification Methods. On June 1, 2005, Region 19 submitted a modified Part 1, Section 2, the Regional Planning Membership and Regional Planning Committee Members and Contact Information replacing the March 25, 2005 version to correct the omission of one member's business address. See Letter dated May 31, 2005, from George J. Pohorilak, Chairman, Region 19 to Marlene H. Dortch, Secretary, FCC (submitting the modified Part 1, Section for the New England 700 MHz Plan) (filed June 1, 2005). Section 90.527(a) of the Commission's Rules requires the names, business addresses, business telephone numbers and organizational affiliations of the chairpersons and all members of the planning committee. We note that the Plan indicates that tribal governments were specifically invited to participate. See Plan Part 2, Appendix N.

¹⁷ Plan Part 1, Section 5. We note that although adequate notice was provided throughout the development of the Plan, Region 19's Bylaws define "reasonable and sufficient notice" as at least ten days notice by mail and/or three days verbal notice. However, this seemingly short notice cycle is offset by Region 19's advance planning schedule posted on its website <http://www.ner700mhz.org/meeting.html>, which lists future meeting dates and locations through December 2007. With regard to future planning processes, we remind all RPCs to provide sufficient notice to the public safety public of its meetings and activities in accordance with Section 90.527(a)(7).

¹⁸ Plan Part 1, Section 6 at 1-8. We note that Region 19 states, with respect to the Reserve Spectrum, *see* note 6, *supra*, that frequency use in this category will be recommended by Region 19, if and when the FCC allocates the spectrum. We clarify that at this juncture, the allocation of the reserve spectrum category and whether it will be subject to the regional planning process or administrative oversight is undetermined.

¹⁹ We note that, with respect to Low Power Assignments, the Region 19 Plan, Part 1, Section 6 at 6, states that, "under special circumstances, an applicant may request an ERP [effective radiated power] of 5W for a mobile unit, with the identified antenna restriction of seven meters." Notwithstanding the presence of this provision in the Plan, we caution prospective users that such proposed operations would require a waiver of 47 C.F.R. § 90.541(d), which states that transmitter power must not exceed 2 watts ERP.

Region 19 anticipates two open filing windows per year where applicants may apply for available channels in their county area and encourages small agencies to join multi-agency systems, when possible.²⁰

The Plan was coordinated with the adjacent regions.²¹ The Plan also includes *Inter-Regional Coordination Procedures and Procedures for Resolution of Disputes that May Arise Under FCC Approved Plans* (signed by the chairpersons of 700 MHz Regional Planning Regions 8 and 30).²²

On May 5, 2005, the Region 19 Plan was placed on *Public Notice* for comment.²³ We received no comments on the Plan. We have reviewed the Plan submitted by Region 19, and conclude it complies with FCC rules and policies. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.102(b) of the Commission's Rules, 47 C.F.R. § 1.102(b), the Region 19 (New England) 700 MHz Public Safety Plan is APPROVED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Action by the Chief, Public Safety Division and Critical Infrastructure Division, Wireless Telecommunications Bureau.

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²⁰ Plan Part 1, Section 6 at 4. Regional 19 will accept applications from eligible entities during two application windows per year, beginning May 1 through October and November 1 through April 30 of the next year.

²¹ Plan Appendix O (Letters of Concurrence between Region 19 and adjacent regions, Region 8 (Metropolitan New York) and Region 30 (New York - Albany)).

²² Plan Appendix N, Inter-Regional Dispute Resolution Agreement and Regional Concurrences.

²³ See Comments Invited on Region 19 (New England) 700 MHz Regional Planning Committee Proposed Public Safety Plan, *Public Notice*, WT Docket No. 02-378 20 FCC Rcd 8789 (WTB PSCID 2005). Comments were due June 6, 2005 and reply comments were due June 21, 2005.