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DA 06-1316
June 27, 2006

WIRELESS TELECOMMUNICATIONS BUREAU ACTION WIRELESS TELECOMMUNICATIONS BUREAU APPROVES REGION 22 (MINNESOTA) 700 MHz REGIONAL PLAN

WT Docket No. 02-378

On October 14, 2005, the Region 22 (Minnesota)¹ 700 MHz Regional Planning Committee 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.² Region 22 requested Commission review and approval of the Plan.³ In addition, Region 22 requested a waiver of Section 90.527(a)(5), which provides that regional plans must include an explanation of how the plan was coordinated with adjacent regions, because it has been unable to obtain Letters of Concurrence and Dispute Resolution Agreements from two unformed 700 MHz regions, Region 32 (North Dakota) and Region 38 (South Dakota).⁴ For the reasons set forth below, we grant the waiver request and approve the Region 22 700 MHz Regional Plan.

Background. In 1998, the Commission adopted a band plan for the 700 MHz public safety band, and established a process 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 unanticipated developments in technology and equipment.⁵ The Commission's role in relation to the RPCs

¹ The Region 22 (Minnesota) 700 MHz regional planning area encompasses the entire state of Minnesota, consisting of eighty-seven counties, and shares its northernmost border with the Canadian provinces of Manitoba and Ontario.

² See Letter dated September 28, 2005 from Steve Pott, Chairman, Region 22 to Marlene H. Dortch, Secretary, FCC (submitting the Region 22 700 MHz Plan on behalf of the Region 22 700 MHz Regional Planning Committee) and Request for Waiver of Concurrence Letter and Dispute Resolution Agreement with Region 32 (North Dakota), filed on October 14, 2005 (Waiver Request); see also Letter dated December 13, 2005 from Steve F. Pott, Chairman, Region 22 to Marlene H. Dortch, Secretary, FCC (submitting revised membership information, Plan Attachment 2), filed December 13, 2005.

³ The Plan includes copies of published meeting announcements, notices, membership and tribal government information. See Plan, Attachments 2, 3 and 5.

⁴ See 47 C.F.R. § 90.527(a)(5). Region 22's adjacent regions are Region 25 (Iowa), Region 32 (North Dakota), Region 38 (South Dakota) and Region 45 (Wisconsin).

⁵ 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, *First*

involves, as a general matter, (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.⁶

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.⁷ Each regional plan must contain certain elements⁸ and must be coordinated with adjacent regions.⁹ 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.¹⁰ 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.¹¹ However, all 700 MHz plans submitted for review and approval must sufficiently address each of the common elements set forth in the Commission's regional plan requirements.¹² RPCs also are encouraged to consider utilizing the guidelines developed by the Public Safety National Coordination Committee (NCC).¹³

Report and Order and Third Notice of Proposed Rulemaking, WT Docket No. 96-86, 14 FCC Rcd 152 (1998) (*First Report and Order*).

⁶ See *First Report and Order*, 14 FCC Rcd at 195 ¶ 87.

⁷ See 47 C.F.R. § 90.531. The 700 MHz public safety band plan contains twenty-four megahertz 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.

⁸ See 47 C.F.R. § 90.527; see also *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84.

⁹ See 47 C.F.R. § 90.527; see also *First Report and Order*, 14 FCC Rcd at 190-96 ¶¶ 77-89.

¹⁰ 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.

¹¹ See Plan, Attachments 7 and 8 for Channel Allotments by Class (General Use Voice 25 kHz) and Allotments by FCC Channel. See Plan Attachments 12 and 13 for Wideband Channel Allotment Per County and Per Channel. Region 22 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>. CAPRAD pre-designated initial allotments are pre-allocated in county-like area frequency pools. Given this approach any modifications to the existing Region 22 Frequency Allotment List will require an amendment to the Plan.

¹² See 47 C.F.R. § 90.527.

¹³ 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 tasked with providing voluntary assistance in the development of coordinated regional plans, and developed a

Review of the Region 22 Plan. Region 22 submitted its proposed plan on October 14, 2005.¹⁴ Region 22 convened the first of seventeen 700 MHz regional planning meetings beginning on January 8, 2001, wherein it appointed its officers and adopted bylaws.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 State, in an apparent effort to encourage participation and facilitate attendance.¹⁷ The Plan details the operations of the regional plan committee, procedures for requesting spectrum allotments,¹⁸ plan modification, frequency coordination, and interference protection measures. The Plan discusses system implementation and spectrum utilization.¹⁹ The Plan was coordinated with two of four adjacent regions and 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 15 and 45).²⁰

Waiver Request. Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, provides that a waiver of the Commission's Rules may be granted if it is shown that the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or in view of the unique or unusual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or if the applicant has no reasonable alternative. Region 22 requests a waiver of Section 90.527(a)(5), which provides that regional plans must include an explanation of how the plan had been coordinated with adjacent regions, because Region 22 was unable to obtain Letters of Concurrence and Dispute Resolution Agreement from Regions 32 (North Dakota) and Region 38 (South Dakota).²¹ Region 22 states that it distributed a draft plan to its adjacent regions in January 2005, and in turn

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>.

¹⁴ See *supra* note 2.

¹⁵ Plan Section 4, Notification Process at 9-10. See also Attachment 5, Letter to Minnesota Indian Affairs Council dated January 6, 2004. Notification to Tribal police agencies was accomplished through the Minnesota Sheriff's Association and Minnesota Chiefs of Police Association.

¹⁶ Plan Attachments 3 and 4 – Meeting Notices and Minutes. Meetings were held at several locations—Mankato, Shoreview, St. Paul—and also utilized video-conferencing.

¹⁷ Plan Attachment 2 (Revised). See also Letter dated December 13, 2005 from Steve F. Pott, Chairman, Region 22 to Marlene H. Dortch, Secretary, FCC (submitting revised membership information, Plan Attachment 2), filed December 13, 2005.

¹⁸ Plan Section 5.5, Spectrum Allocation Procedure at 12, and Plan Sections 8.1 through 8.3, Allocation of General Use Spectrum at 30-34.

¹⁹ Plan Sections 5.15-5.16, Protection Ratios and Channel Loading Requirements; Plan Sections 6.0-6.8 Interoperability Channels (calling and tactical channels; deployable systems and trunking operations on the interoperability channels); Plan Section 8.10, Trunking Requirements at 38-39; Plan Section 8.13, System Coverage Limitations at 39-40. For a discussion of wideband data channel planning and implementation, see Plan Sections 8.3 through 8.3.5.

²⁰ Plan Attachments 17 and 18. Concurrence Letters and Dispute Resolution Agreements (Letters of Concurrence and Dispute Resolution Agreements between Region 22 and adjacent regions, Region 15 (Iowa) and Region 45 (Wisconsin)).

²¹ See 47 C.F.R. § 90.527(a)(5).

received both letters of concurrence and dispute resolution agreements from Region 15 (Iowa) and Region 45 (Wisconsin). Region 22 states that it has made reasonable efforts to contact and obtain the consent of all adjacent regions.

Region 22 reports that although Region 32 and Region 38 have selected conveners²² they have not yet established dates for their first meetings. In addition, Region 22 states that both North Dakota and South Dakota are involved in large VHF projects and do not anticipate convening a 700 MHz RPC in the near future.²³ Region 22 further states that it provided a copy of the Plan to the 700 MHz conveners and that both conveners felt comfortable that their regions' needs have been addressed, because Region 22 adopted the CAPRAD pre-allocated frequency assignments.²⁴ Region 22 believes that Regions 32 and 38 will have sufficient spectrum to meet their needs when they elect to commence 700 MHz regional planning. Finally, in support of the waiver request, Region 22 explains that the 700 MHz public safety spectrum is available for immediate licensing and implementation with Region 22, upon approval of its Plan.²⁵ Region 22 also states that eligible entities are designing systems and waiting for the actual assignment of the frequencies as allocated in the Region 22 Plan.

On January 19, 2006, the Region 22 Plan was placed on *Public Notice* for comment.²⁶ We received one comment on the Plan.²⁷ The National Association of Regional Planning Committees (NARPC) supports the request for waiver of Rule 90.527(a)(5) citing Region 22's outreach efforts with the representatives of the unformed regions. NARPC further states that Region 22 has demonstrated due diligence in plan development through the utilization of the CAPRAD channel allotments at the border areas which NARPC believes would provide sufficient channel availability for the unformed regions future use. Based on the information before us, we agree.

We note that Region 22, having formed its planning committee in January 2001, has apparently worked diligently to develop a 700 MHz Plan, which it adopted at its October 12, 2004 meeting. Furthermore, we observe that Minnesota has developed an 800 MHz statewide trunked radio system to encourage the development of a multi-agency, multi-tasking shared network.²⁸ Minnesota intends to augment the 800 MHz statewide trunked system with 700 MHz channels at sites where there are insufficient 800 MHz channels.²⁹ We therefore believe it would be inequitable and not in the public

²² See *First Report and Order*, 14 FCC Rcd at 195 ¶ 86. The relevant 800 MHz RPC appoints the 700 MHz regional planning convener to plan and conduct the initial 700 MHz regional planning committee meeting for the purpose to establish the committee and elect officers.

²³ Waiver Request at 1.

²⁴ Waiver Request at 1. CAPRAD channel allotments used by Region 22 at their border areas will provide sufficient channel availability to the unformed regions. See *supra* note 11.

²⁵ See 47 C.F.R. §§ 90.529, 90.531(b)(5).

²⁶ See Comments Invited on Region 22 (Minnesota) 700 MHz Regional Planning Committee Proposed Public Safety Plan, *Public Notice*, WT Docket No. 02-378, 21 FCC Rcd 312 (WTB PSCID 2006). Comments were due February 21, 2006 and reply comments were due March 8, 2006.

²⁷ See Comments filed by Stephen T. Devine, Chair, National Association of Regional Planning Committees, WT Docket No. 02-378, filed Feb 21, 2006.

²⁸ Plan Section 5.9, Statewide Trunking Plan at 14-15.

²⁹ Plan Section 5.9, Statewide Trunking Plan. Minnesota's statewide radio project, the Allied Radio Matrix for

interest to postpone the Commission's approval of the Region 22 700 MHz Plan.³⁰ Accordingly, we grant the requested waiver relief.

However, we reiterate that grant of this waiver does not relieve Region 22 of its continuing obligation to obtain Letters of Concurrence and Inter-Regional Dispute Resolution Agreements from Region 32 and Region 38 once they are formed.³¹ Further, this waiver grant does not remove the requirement for Region 22 to conduct inter-region coordination of applications where necessary.

This decision is based on the particular, documented factors presented here, including, but not limited to, Region 22's progress in 700 MHz public safety band implementation, the phased implementation of Minnesota's statewide trunking system,³² and the inactive status of Region 32 (North Dakota) and Region 38 (South Dakota). In addition, we find that Region 22 has exercised due diligence through its efforts to consider and factor in the future 700 MHz public safety band spectrum needs along the border between Minnesota and North and South Dakota. We do not foresee granting waivers of the adjacent region coordination requirement under circumstances less compelling than those presented here.

We have reviewed the Plan submitted by Region 22, and conclude it complies with other applicable 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 22 (Minnesota) 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 and Critical Infrastructure Division, Wireless Telecommunications Bureau.

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Emergency Response system (ARMER), is a region-wide 800 MHz trunked radio system initially constructed in the seven metropolitan counties plus Chisago and Isanti counties to facilitate reliable interoperability. Plans for expansion include the addition of a high-speed mobile data communications layer. See Plan Attachment 10, *A Plan for Adding a High-Speed Mobile Data Communications Layer to the Region-Wide Public Safety Radio Communications System-Phase One*.

³⁰ See Wireless Telecommunications Bureau Approves Region 12 (Idaho) 700 MHz Regional Plan, *Public Notice*, 21 FCC Rcd 2382 (WTB PSCID 2006).

³¹ Once completed, a copy of such documentation must be filed in WT Docket 02-378 where it will become part the Region 22 700 MHz Plan.

³² See Wireless Telecommunications Bureau Approves Minnesota (Region 22) 800 MHz Public Safety Plan Amendment, *Public Notice*, PR Docket No. 93-130, 20 FCC Rcd 14691 (PSCID WTB 2005). The amendment documented the new and revised channel assignments necessary to accommodate Phase 2 and Phase 3 of Minnesota's ARMER system, a statewide trunking system.