



PUBLIC NOTICE

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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU REMINDS 700 MHZ REGIONAL PLANNING COMMITTEES OF THE JANUARY 31, 2008 DEADLINE TO AMEND 700 MHZ NARROWBAND PLANS AND PROVIDES FURTHER GUIDANCE

PS Docket No. 06-229; WT Docket No. 96-86

On July 31, 2007, the Federal Communications Commission (Commission) adopted a *Second Report and Order* revising the rules governing wireless licenses in the 700 MHz band.¹ The Commission adopted a plan for the 700 MHz band to establish a nationwide, interoperable public safety broadband communications network for the benefit of state and local public safety users. The Commission designated the lower half of the 700 MHz public safety band for broadband communications (763-768/793-798 MHz) and consolidated existing narrowband allocations in the upper half of the public safety 700 MHz band (769-775/799-805 MHz).

In revising the band plan for the public safety 700 MHz band, the Commission noted that consolidating the narrowband channels in the upper part of the band will impact approved and pending 700 MHz regional planning committee (RPC) plans (*i.e.* require that the plans be amended).² The Commission required RPCs with approved plans or plans on file to submit amended plans consistent with the decisions adopted in the *Second Report and Order* by November 23, 2007.³ On November 9, 2007, the Public Safety and Homeland Security Bureau (Bureau) extended the deadline for RPCs to submit

¹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

² *Id.* at ¶ 346. The narrowband General Use spectrum is administered by RPCs and licensed for public safety services on a site-by-site basis in accordance with the relevant Commission-approved regional plan and frequency coordination. 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, *Fourth Memorandum Opinion and Order*, 17 FCC Rcd 4736, 4738 n.8 (2002).

³ As of the adoption date of the *Second Report and Order*, the following regional plans had been approved: Region 5 (Southern California), Region 19, (New England), Region 24 (Missouri), Region 22 (Minnesota), Region 12 (Idaho), Region 43 (Washington), Region 41 (Utah), Region 3 (Arizona), and Region 40 (Northern Texas). The following regional plans are pending approval with the Commission: Region 1 (Alabama), Region 27 (Nevada), Region 45 (Wisconsin), Region 7 (Colorado), Region 9 (Florida), Region 16 (Kansas), and Region 20 (Northern Virginia, Maryland and the District of Columbia).

amended plans, consistent with the decisions adopted in the *Second Report and Order*, to January 31, 2008, and provided additional guidance for the development of plan amendments.⁴

It has come to our attention that some regions continue to experience delays in completing plan amendments due to (1) the non-availability of a revised Computer Assisted Pre-Allocation Resource and Database (CAPRAD);⁵ (2) a lack of responsiveness by RPC members to review and approve proposed plan amendments, or (3) difficulty in obtaining adjacent region review and concurrence. Accordingly, the Bureau provides the following guidance for RPCs in completing their plan amendments by the required January 31, 2008, deadline:

- *Availability of the Revised CAPRAD.* We understand that the CAPRAD modifications – which will reflect the newly consolidated narrowband 700 MHz band plan – will not be completed until late February 2008. Although the Commission has recognized that a pre-coordination database may be a useful planning tool, it has declined to mandate the use of the CAPRAD in the development of regional plans.⁶ Regions may use other programs or methods of pre-allocation to determine how frequencies are pre-allotted among its public safety eligibles, or to establish county-like pool allotments.

However, if a region is relying on CAPRAD for its initial frequency and channel sort, and thus believes it cannot produce its consolidated narrowband 700 MHz frequency and channel allocation tables by January 31, 2008, the region should:

- submit a revised plan by January 31, 2008, as consistent with the requirements of the *Second Report and Order* as possible, and
- include a request for a temporary, limited waiver of Sections 90.527(a)(3) and (6),⁷ and any other relevant rules for which the region requires a waiver, explaining that the region will supplement its January 31, 2008, submission as soon as possible after the necessary CAPRAD updates are completed. Such waivers must comport with the Commission's general waiver standards under Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, and must be adequately supported.

⁴ See Public Safety and Homeland Security Bureau Announces an Extension of the Deadline for 700 MHz Regional Planning Committees to Amend 700 MHz Narrowband Plans from November 23, 2007 to January 31, 2008, PS Docket No. 06-229, WT No. Docket 96-86, *Public Notice*, 22 FCC Rcd 19461 (PSHSB 2007).

⁵ CAPRAD contains, among other tools, a frequency packing program for use by regional planners. The database is maintained by the National Institute of Justice, CommTech Program. The CAPRAD system is available at <http://caprad.nlectc.du.edu>.

⁶ See 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, *Fifth Memorandum Opinion and Order, Sixth Report and Order, and Seventh Notice of Proposed Rulemaking*, 20 FCC Rcd 831, 859 ¶ 70 (2005).

⁷ 47 C.F.R. §§ 90.527(a)(3), (6) (requiring that regional plans incorporate a general description of how the spectrum would be allotted among the various eligible users, and a detailed description of how the plan put the spectrum to the best possible use).

- RPC Plan Amendment Review. A region may electronically poll its RPC membership for review and approval of a proposed amendment. Regions may hold online RPC meetings if they so choose. Once region approval is obtained, the RPC Chair should immediately circulate the region-approved amendment to its adjacent regions for review and concurrence.
- Adjacent Region Concurrence. Adjacent regions should initially acknowledge receipt of a region's request and provide a timeframe for when a region can reasonably expect a reply to a request for concurrence. An adjacent region receiving requests from regions for review and concurrence may electronically poll its membership for review and approval of draft plan or plan amendments. Regions missing letters of concurrence should:
 - submit a revised plan by January 31, 2008, as consistent with the requirements of the *Second Report and Order* as possible,
 - include at a minimum evidence (correspondence or email) of distribution to the adjacent regional chair(s), and
 - include a request for a temporary, limited waiver⁸ explaining that the region will supplement its January 31, 2008, submission as soon as possible after receiving all required adjacent region concurrences. Such waivers must comport with the Commission's general waiver standards under Section 1.925 of the Commission's rules, 47 C.F.R. § 1.925, and must be adequately supported.

In order to be considered timely filed, plan amendments must adequately address the Commission's regional planning requirements, as set forth in Section 90.527, and must be received by the Commission no later than January 31, 2008. Plan amendments that are incomplete (missing letters of concurrence or revised spectrum allocation tables, etc.) should be accompanied by a request for waiver of the relevant Commission's rule(s).⁹ Plan amendments that do not adequately address the regional planning requirements will delay Bureau processing and action on such amendments.

We strongly urge all RPCs to fulfill their responsibilities as narrowband 700 MHz spectrum administrators by responding to requests for adjacent region review and concurrence quickly and efficiently. Regions should strive to avoid causing any undue delay to a region seeking review or concurrence. Such delays in inter-regional cooperation would unduly delay those agencies actively deploying 700 MHz systems, many of which may be awaiting additional channel assignments, pursuant to a Commission-approved plan, in order obtain FCC authorization.

⁸ The RPC chairperson is required to certify that the successful coordination of a modified plan with all of the adjacent regions has occurred and that all such regions concur with the modification. See 47 C.F.R. § 90.527(b). The modification also must be accompanied by letters of concurrence signed by the chairperson of each adjacent region. See 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, 196 ¶ 88 (1998).

⁹ To obtain a waiver of the Commission's rules, a petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative. 47 C.F.R. § 1.925(b)(3).

Public safety entities that need to commence operations in advance of Commission approval of an amended regional plan should file a request for Special Temporary Authority (STA). STA requests must be accompanied by a showing that the proposal is consistent with the revised 700 MHz public safety band plan and TV/DTV interference protection criteria,¹⁰ and a letter of concurrence from the RPC chairperson (and adjacent RPCs if necessary for coordination purposes).

Questions regarding this Public Notice may be directed to Jeffrey S. Cohen, Senior Legal Counsel, Public Safety and Homeland Security Bureau, (202) 418-0799.

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¹⁰ See 47 C.F.R. § 90.545.