

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of )
)
Implementing a Nationwide, Broadband, ) PS Docket No. 06-229
Interoperable Public Safety Network in the 700 )
MHz Band )

ORDER

Adopted: November 18, 2011

Released: November 18, 2011

By the Chief, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. By this order, the Public Safety and Homeland Security Bureau (Bureau) approves, to the extent indicated below, the Public Safety Spectrum Trust’s (PSST) proposed second-year budget for the administration of public safety broadband spectrum leases.<sup>1</sup>

II. BACKGROUND

2. On May 12, 2010, the Commission granted, with conditions, twenty-one waiver Petitions filed by public safety entities (Petitioners) seeking early deployment of statewide or local public safety broadband networks in the 700 MHz public safety broadband spectrum (763-768 MHz and 793-798 MHz).<sup>2</sup> The Commission directed the PSST, the public safety broadband licensee, to enter into de facto long term transfer leases with each Petitioner as part of the authorization granted to Petitioners by the Commission to deploy and operate public safety broadband networks within their respective jurisdictions.<sup>3</sup> The Commission permitted the PSST to charge Petitioners a leasing fee to recover “legitimate expenses incurred as a result of administering [their] leases” but required that it first submit its proposed budget for the Bureau’s approval.<sup>4</sup> The Commission further required that the PSST account for its collection and expenditure of funds in this limited role in monthly reports filed with the Bureau.<sup>5</sup>

3. On June 11, 2010, the PSST submitted a proposed budget for “Lease Administrative Fees,” which it characterized as the “best estimate, based on current information, for detailing the expenses that the PSST anticipates it will incur in carrying out the responsibilities set forth in the

<sup>1</sup> See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, Order, 25 FCC Rcd 5145 (2010) (Waiver Order); Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, Order, 26 FCC Rcd 6783 (PSHSB 2011) (Texas Waiver Order).

<sup>2</sup> Waiver Order, 25 FCC Rcd at 5171 app. A.

<sup>3</sup> See id. at 5153 ¶ 24.

<sup>4</sup> Id. at 5155 ¶¶ 32-33.

<sup>5</sup> Id. at ¶ 33.

[*Waiver Order*].”<sup>6</sup> The PSST proposed the assessment and collection of \$315,000—\$15,000 from each Petitioner—for the first year of the leases.<sup>7</sup> The PSST further stated that “[a]ssuming no unforeseen circumstances . . . the second year Administrative Fee would be approximately \$5,000 per lessee.”<sup>8</sup> Finding that the PSST’s budget “provided sufficient detail and a reasonable proposal for the administrative fees,” the Bureau approved it as submitted on August 11, 2010.<sup>9</sup>

4. The Bureau released an order on May 12, 2011, granting a conditional waiver to a twenty-second Petitioner, the State of Texas (Texas).<sup>10</sup> The order requires Texas to adhere to the conditions imposed previously on the initial group of Petitioners, including the requirement to submit to the PSST a \$15,000 first-year administrative lease fee.<sup>11</sup> Texas submitted the required fee in July 2011.<sup>12</sup>

5. On August 13, 2011, the PSST submitted its proposed second-year budget, which covers “expenses that the PSST anticipates it will incur between September 1, 2011 and August 31, 2012 in carrying out the responsibilities set forth in the [*Waiver Order*].”<sup>13</sup> The PSST proposes to assess \$273,000—\$13,000 from each of the twenty-one active waiver recipients<sup>14</sup>—for the second lease year.<sup>15</sup> The proposed budget allocates funds for the payment of PSST staff; bookkeeping and accounting; legal and consulting services; and other miscellaneous expenses.<sup>16</sup> The PSST states that this is its “best estimate” based on its “first year experience and current information.”<sup>17</sup> The PSST further proposes that each Petitioner, including Texas, submit its second-year fee within sixty days of the Bureau’s approval of the budget.<sup>18</sup> The PSST also requests that the Bureau “ease the PSST reporting requirements from Monthly to Quarterly” during its second year of lease administration.<sup>19</sup> Finally, the PSST requests

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<sup>6</sup> Letter from Harlin R. McEwen, Chairman, Public Safety Spectrum Trust, to James Arden Barnett, Jr., Chief, Public Safety and Homeland Security Bureau, PS Docket No. 06-229 (June 11, 2010) (PSST Proposed Budget).

<sup>7</sup> *Id.* at 1-2.

<sup>8</sup> *Id.* at 2.

<sup>9</sup> See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket 06-229, *Order*, 25 FCC Rcd 10813 (PSHSB 2010) (*PSST Budget Order*).

<sup>10</sup> See *Texas Waiver Order*.

<sup>11</sup> *Id.* at 6787-88 ¶¶ 14-18.

<sup>12</sup> See Letter from Harlin R. McEwen, Chairman, Public Safety Spectrum Trust, to James Arden Barnett, Jr., Chief, Public Safety and Homeland Security Bureau, PS Docket No. 06-229 at 1 (Sept. 13, 2011) (Thirteenth Monthly Report for Long-Term De Facto Spectrum Transfer Leases).

<sup>13</sup> Letter from Harlin R. McEwen, Chairman, Public Safety Spectrum Trust, to James Arden Barnett, Jr., Chief, Public Safety and Homeland Security Bureau, PS Docket No. 06-229 at 1 (Aug. 13, 2011) (PSST Proposed Second-Year Budget).

<sup>14</sup> The State of Alabama did not enter into a long term *de facto* transfer spectrum lease with the PSST, nor did it submit the same to the Bureau within the *Waiver Order*’s specified timeframe. Accordingly, Alabama has failed to meet the Commission’s conditions and has no authority to proceed under the *Waiver Order*. Therefore, it is not an active waiver recipient.

<sup>15</sup> PSST Proposed Second-Year Budget at 1.

<sup>16</sup> *Id.* at 2.

<sup>17</sup> *Id.* at 1.

<sup>18</sup> *Id.* at 1.

<sup>19</sup> *Id.*

“flexibility to amend its budget proposal” to reflect changes in “material facts,” such as the passage of relevant legislation or the grant of additional waivers.<sup>20</sup>

6. The Bureau sought comment on the PSST’s proposed budget on August 22, 2011.<sup>21</sup> The City of Chesapeake, a waiver recipient and the only party to file comments, argues that “the coming year’s activities should be more, not less, intensive.”<sup>22</sup> Accordingly, Chesapeake “supports maintaining the current annual lease fee of \$15,000 for at least the coming year.”<sup>23</sup> Chesapeake also supports the PSST’s request for easing its reporting obligations, contending that “monthly reporting does not seem valuable at this juncture, particularly given the costs of such filings.”<sup>24</sup>

7. In a September 14, 2011, *ex parte* filing, the State of Texas objects to the PSST’s proposal that Texas submit its second-year fee on the same schedule as other Petitioners.<sup>25</sup> Texas contends that “any annual administrative fee for the second year of the lease would not be due until one year after the effective date” of the lease, *i.e.*, June 17, 2012, and that its state Constitution prohibits it from paying the fee prior to its due date.<sup>26</sup> The PSST, in a September 20, 2011, *ex parte* filing, continues to advocate that the Bureau “require all lessees to make the administrative fee payment for the PSST’s second ‘budget year’ by the same deadline, even if the deadline is not necessarily identical to the beginning of the second year of the lease term for a particular lessee.”<sup>27</sup>

8. On October 28, 2011, the Bureau requested by letter that the PSST provide additional information to explain the discrepancy between its current second-year budget proposal and the estimate for the second year provided in its first-year budget proposal.<sup>28</sup> In a November 1, 2011 filing, the PSST explained that the increase in its budget estimate reflects “[a] number of unanticipated matters and associated expenses that are directly related to the leases [and] have arisen during the past year.”<sup>29</sup> The PSST confirms, however, that it “will continue to operate as efficiently as possible and may not need to utilize the full estimated budget amount.”<sup>30</sup>

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<sup>20</sup> *Id.*

<sup>21</sup> See Public Safety and Homeland Security Bureau Seeks Comment on the Public Safety Spectrum Trust’s Proposed Second-Year Budget and Administrative Fees for the 700 MHz Public Safety Broadband Waiver Recipients, PS Docket 06-229, *Public Notice*, DA 11-1440 (rel. Aug. 22, 2010).

<sup>22</sup> Comments of the City of Chesapeake, PS Docket 06-229 at 1 (filed Sept. 12, 2011).

<sup>23</sup> *Id.*

<sup>24</sup> *Id.* at 2.

<sup>25</sup> Ex Parte Filing of the State of Texas, PS Docket 06-229 (filed Sept. 14, 2011).

<sup>26</sup> *Id.* at 1.

<sup>27</sup> Ex Parte Filing of the Public Safety Spectrum Trust, PS Docket 06-229 at 1 (filed Sept. 20, 2011).

<sup>28</sup> Letter from Jennifer A. Manner, Deputy Chief, Public Safety and Homeland Security Bureau, to Chief Harlin McEwen, Chair, Public Safety Spectrum Trust (dated Oct 28, 2011).

<sup>29</sup> Letter from Harlin R. McEwen, Chairman, Public Safety Spectrum Trust, to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket No. 06-229 at 2 (Nov. 1, 2011) (PSST November 1 Ex Parte Filing). The “unanticipated matters” that the PSST identifies include “the filing of more than 25 new early deployment waiver requests,” the “extensive legal and technical issues raised in the *Fourth FNPRM* and other new public safety orders and notices,” and “[s]everal new public safety proceedings that have developed as a result of various third-party public safety petitions,” among other matters. *See id.*

<sup>30</sup> *Id.*

### III. DISCUSSION

9. We find that the PSST has presented a sufficiently detailed and reasonable budget proposal for its second year of lease administration and that the associated lease fee is “reasonable and limited.”<sup>31</sup> Although the proposed second-year budget substantially exceeds the PSST’s original estimate, we find the current proposal reasonable based on our experience with the first year of lease administration and on the further explanation provided by the PSST.<sup>32</sup> The PSST has legitimately incurred significant expenses in administering the leases, and we expect that trend to continue into the second year. Accordingly, we approve the PSST’s proposed budget, which is reproduced in Appendix A. In approving this budget, we acknowledge that the only waiver recipient to comment on the fee amount, the City of Chesapeake, recommended a higher fee than the amount proposed by the PSST. Chesapeake, however, did not provide any convincing rationale for its recommendation, and in light of the PSST’s own assessment that it can perform its duties in administering the leases for the lesser amount, we decline to modify the budget proposal as suggested by Chesapeake.

10. Although we approve the PSST’s proposed budget, we remind the PSST of its obligation under the *Waiver Order* to collect and expend fees only for “legitimate expenses incurred as a result of administering [the] leases.”<sup>33</sup> General operational or other expenses related to the conduct of the PSST’s business are not to be funded by lease administration fees, and the Bureau has the authority to conduct an audit of the PSST’s financial operations to ensure that its activities as lease administrator fall within the circumscribed role assigned to it under the *Waiver Order*.<sup>34</sup> Moreover, our approval of this budget does not prejudice the outcome of any future audit, nor does it constitute approval of a specific activity already undertaken or undertaken in the future.

11. We direct all active waiver recipients granted waivers in the May 2010 *Waiver Order* to remit their \$13,000 lease payment to the PSST within sixty days, by January 17, 2012. For the State of Texas—the waiver recipient that received its waiver a year later in the *Texas Waiver Order*—we are establishing a different payment date. Without reaching the merits of Texas’s legal argument, we find that a deferral of its payment obligation would be fair and reasonable under the circumstances. Texas received its waiver one year after release of the *Waiver Order* and will not enter the second year of its lease until June 17, 2012. Requiring Texas to submit its second-year lease payment far in advance of that date would impose on it an unfair and unnecessary burden. Moreover, the PSST has not established a clear need to receive Texas’s payment on an expedited schedule. Accordingly, we direct Texas to submit its \$13,000 second-year payment by June 17, 2012, the date it enters the second year of its lease.<sup>35</sup>

12. We also find, based on our experience with the first year of lease administration, that quarterly reporting from the PSST would enable sufficient oversight of the PSST’s financial operations. Although we reject the view that monthly reporting is not “valuable,” we find that the value of more frequent reporting is outweighed by the incremental costs of preparing and filing the additional reports. We therefore grant the PSST’s request that we permit the filing of reports on a quarterly rather than monthly basis. We believe that this action will reduce regulatory burdens, including associated costs, on

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<sup>31</sup> *Waiver Order*, 25 FCC Rcd at 5155 ¶ 33.

<sup>32</sup> See PSST November 1 Ex Parte Filing.

<sup>33</sup> See *Waiver Order*, 25 FCC Rcd at 5155 ¶ 32.

<sup>34</sup> See *id.* at ¶ 33 (delegating authority to the Bureau to conduct audits of the PSST’s collection and expenditure of lease fees).

<sup>35</sup> Our deferral of Texas’s second-year fee payment obligation does not preclude the Commission or the Bureau from taking future action to regularize the submission of payments, as well as quarterly reports and other filings, from all entities authorized to operate in the public safety broadband spectrum.

the PSST and the waiver recipients. We reiterate, however, that the PSST remains subject to periodic audits conducted at the discretion of the Bureau Chief,<sup>36</sup> and the Bureau may reinstate a more rigorous reporting obligation if circumstances so warrant.

13. Finally, we acknowledge the PSST's need for "flexibility to amend the proposed budget proposal"<sup>37</sup> in response to changed circumstances. The Bureau would consider any such proposed amendment on a case-by-case basis.

#### IV. ORDERING CLAUSES

14. ACCORDINGLY, IT IS ORDERED, pursuant to sections 1, 4(i), 301, 303, 332, and 337 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, 332, and 337, that the PSST Proposed Second-Year Budget is APPROVED to the extent indicated herein.

15. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392, and the *Waiver Order*, 25 FCC Rcd 5145, 5155, ¶ 33 (2010).

FEDERAL COMMUNICATIONS COMMISSION

James Arden Barnett, Jr., Rear Admiral (Ret.)  
Chief, Public Safety and Homeland Security Bureau

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<sup>36</sup> See *Waiver Order*, 25 FCC Rcd at 5155 ¶ 33.

<sup>37</sup> PSST Proposed Second-Year Budget at 1.

## APPENDIX A

**PSST Proposed Year #2 Budget for Lease Administrative Fees****September 2011 – August 2012**

PSST Staff Hours .....	12 months x 20 hours = 240 hours @ \$150 ...	\$ 36,000.00
PSST Bookkeeping/Accounting .....		\$ 7,000.00
Legal Services .....	12 months x \$15,000 .....	\$ 180,000.00
Consulting Services .....		\$ 15,000.00
Telephone Conference Bridge.....		\$ 1,000.00
Miscellaneous Expenses <i>(this includes partial PSST Board expenses &amp; lease related travel expenses incurred by the PSST Chairman)</i> .....		\$ 34,000.00

**SEPT 2011 – AUG 2012 TOTAL..... \$ 273,000.00**

21 Lessees x \$13,000 = \$273,000.00

The PSST proposes that the second year administrative fee will be due within 60 days after FCC approval of the Budget.