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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU APPROVES REGION 47 (PUERTO RICO) 700 MHZ REGIONAL PLAN

WT Docket No. 02-378

Introduction. On January 3, 2012, Region 47 (Puerto Rico)¹ 700 MHz Regional Planning Committee (RPC) (Region 47) submitted a proposed 700 MHz Public Safety Plan (Plan) for General Use² spectrum in the 769-775/799-805 MHz band for review and approval.³ On April 24, 2012, Region 47 requested a waiver of Section 90.527(a)(5) of the Commission's rules,⁴ requiring that regional plans must include an explanation of how the plan had been coordinated with adjacent regions.⁵ Region 47 was unsuccessful in obtaining a Letter of Concurrence and a Dispute Resolution Agreement from Region 48 (U.S. Virgin Islands) – an adjacent region.⁶ For the reasons discussed below, we grant the request for waiver and approve the Region 47 700 MHz Plan subject to the condition that Region 47 continue to pursue adjacent region coordination with Region 48 and conduct inter-region coordination of applications where necessary.

Background. In 1998, the Commission established a structure to allow RPCs optimal 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.⁷ Each of the fifty-five (55) RPCs is required to

¹ The Region 47 (Puerto Rico) 700 MHz regional planning area includes all (78) municipalities in the Commonwealth of Puerto Rico, a self-governing island nation (encompassing 8,870 square kilometers), in association with the United States.

² The General Use spectrum is administered by RPCs and is licensed for public safety services on a site-by-site basis in accordance with the relevant Commission-approved regional plan and frequency coordination.

³ See Letter from Ferdinand Cedeno, Chair, Region 47 (Puerto Rico) 700 MHz Regional Planning Committee to Chairman to Federal Communications Commission, Office of the Secretary, WT Docket No. 02-378 (filed Jan. 3, 2012) (submitting regional plan).

⁴ 47 C.F.R. § 90.527(a)(5).

⁵ See Letter from Ferdinand Cedeno, Chair, Region 47 (Puerto Rico) 700 MHz Regional Planning Committee to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 02-378 (filed Apr. 24, 2012) (Waiver Request).

⁶ *Id.*

⁷ 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 (1998) (*First Report and Order*); *Second Memorandum Opinion and Order*, 15 FCC Rcd 16844 (2000). See also 47 C.F.R. § 90.527.

submit its plan for the General Use spectrum.⁸ 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.⁹

On July 31, 2007, the Commission adopted a *Second Report and Order* revising the rules governing wireless licenses in the 700 MHz band.¹⁰ 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).

Plan Requirements. Each committee is required to submit its plan for the assignment of licenses for General Use spectrum.¹¹ Each regional plan must contain certain elements¹² and must be coordinated with adjacent regions.¹³ 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 notice.¹⁴ 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. Where applicable, a regional plan should describe outreach efforts made to tribal governments.¹⁵

Regional plans may differ in approaches to spectrum planning and management. Some plans may make specific assignments to eligible public safety entities, while others establish an allotment pool approach based on political boundaries such as counties.¹⁶ All 700 MHz plans submitted for review and approval must sufficiently address each of the common elements in the Commission's regional plan

⁸ See 47 C.F.R. § 90.527. Each RPC must incorporate certain common elements into its 700 MHz plan. A list of 700 MHz RPCs and region activities is available at <http://www.fcc.gov/pshs/public-safety-spectrum/700-MHz/>.

⁹ *First Report and Order*, 14 FCC Rcd at 195 ¶ 87.

¹⁰ 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*).

¹¹ See 47 C.F.R. §§ 90.527, 90.531. The 700 MHz public safety band plan contains 24 MHz of spectrum for public safety services at 763-775 MHz and 793-805 MHz, and the narrowband allocation is divided into several segments by designated purpose: General Use, Interoperability, Secondary Trunking, State License, Low Power and Reserve channels.

¹² See 47 C.F.R. § 90.527(a); see also *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84.

¹³ See 47 C.F.R. § 90.527(a)(5); see also *First Report and Order*, 14 FCC Rcd at 190-96 ¶¶ 77-89.

¹⁴ See *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84. The Commission directed RPCs 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.

¹⁵ *Id.* at 193-94 ¶ 84.

¹⁶ See Plan, Appendix G - Channel Assignments by Geographic Area at 74-88.

requirements.¹⁷ RPCs also are encouraged to consider utilizing the guidelines developed by the Public Safety National Coordination Committee (NCC).¹⁸

Review of the Region 47 700 MHz Plan. The Region 47 (RPC) Plan pre-allocates the consolidated narrowband General Use spectrum by geographic area.¹⁹ The RPC reconvened on July 21, 2011, after a period of inactivity dating back to July 2008.²⁰ The RPC created two subcommittees, Technical and Regulatory.²¹ RPC members adopted the Plan on September 12, 2011.²² The Plan includes By-laws,²³ a detailed membership list,²⁴ and meeting notices.²⁵ The Plan details the procedures for requesting spectrum allotments,²⁶ the application review process,²⁷ outlines system implementation criteria,²⁸ spectrum utilization and system implementation.²⁹ The Plan states that the Puerto Rico Emergency Management Agency is the final authority on the interpretation of the distribution of the 700 MHz interoperability channels.³⁰ In addition, the Plan provides guidelines for use of the low power channels,³¹ and states that the Computer-Aided Pre-coordination Resource Database system (CAPRAD)

¹⁷ See 47 C.F.R. § 90.527.

¹⁸ 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. In addition, the NCC was 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. A copy of the 700 MHz Regional Planning Guidebook is available at the NPSTC website at <http://npstc.org/nccSubcommittee.jsp>.

¹⁹ See Plan, Appendix G – Channel Assignments by Geographic Area at 74-88. See also Plan, Appendix C – List of Municipalities within Region 47 with population and land size (square kilometers) at 50-52.

²⁰ See Plan, Section 1.6 Opportunities for Participation in the Plan's Development at 2-3.

²¹ See Plan, Section 1 – 700 MHz Regional Plan for RPC 47 at 2-3.

²² *Id.*

²³ See Plan, Appendix A – Region By-Laws of Region 47 at 41-46.

²⁴ See Plan, Appendix B – Region 47 Member List and Contact Information at 47-49.

²⁵ See Plan, Appendix D – Meeting Notices and Related Documentation (including meeting minutes and sign-in sheets) at 53-66.

²⁶ See Plan, Section 3.0 – Regional Plan Administration and Frequency Coordination at 9-15 (the RPC will announce an initial application filing window immediately following Bureau Plan approval).

²⁷ See Plan, Section 3.2 – Application Requirements and Process at 10-13 (details content of applications for spectrum and packages must be submitted electronically).

²⁸ See Plan, Section 3.9 – Channel Assignments at 20 (reminder of construction requirements under 47 C.F.R. § 90.551).

²⁹ See Plan, Section 6.1 – System Design/Efficiency Requirements at 31-33 (includes interference protection criteria and spectrum efficiency standards).

³⁰ See Plan, Section 7.0 – Interoperability Channels at 34-35. See also Plan, Appendix E – Common Air Interface and Interoperability Channel Technical Parameters at 67-68.

³¹ See Plan, Section 3.11 – Low Power Channels at 21-26 (eligibility, channel use, modulation, service-specific assignments). Low Power Secondary Operations (channels 1–8 paired with 961-968, and 949-958, paired with 1909-1918 for low power, on-scene communications using mobiles and portables, with a transmitter power not to exceed 2 watts ERP).

will be utilized.³² Finally, the RPC Chair has certified that all planning meetings were open to the public, as required by 47 C.F.R. § 90.527(a)(8).³³ On September 22, 2011, Region 47 sent a copy of its draft Plan to Region 48 (U.S. Virgin Islands) for coordination.³⁴ On April 24, 2012, Region 47 requested a waiver of Section 90.527(a)(5) of the Commission’s rules.

On May 22, 2012, the Bureau released a *Public Notice* seeking comment on the Region 47 Plan and waiver request.³⁵ We received no comments.

Waiver Request. Region 47 requests a waiver of Section 90.527(a)(5) of the Commission’s rules, which provides that regional plans must include an explanation of how the plan had been coordinated with adjacent regions.³⁶ Region 47 states that it was unable to obtain a Letter of Concurrence and Dispute Resolution Agreement from Region 48 (U.S. Virgin Islands).³⁷ Region 47 explains that it sent its final draft plan to Region 48’s representative on September 22, 2011.³⁸ Region 47 states that it has confirmed that Region 48’s representative received the Region 47 plan and request for review through an email acknowledgement.³⁹ Although Region 47 states that it has worked to obtain both a letter of concurrence and a dispute resolution agreement from Region 48, Region 47 observes that its efforts have been unsuccessful to date.⁴⁰

Region 47 states that the Puerto Rico Communications Interoperability Committee (PRCIC) released a radio interoperability concept in 2007 in which they recommend, in part, “that the Government of Puerto Rico and its municipalities begin immediate planning and implementation of a single Project 25 (P25) infrastructure to serve the communications needs of emergency responders.”⁴¹ This network, Region 47 notes, should include, but not be limited to the following:

- Leverage the PRCIC’s Microwave System investment
- Leverage the Puerto Rico Bureau of Homeland Security’s Master Site investment
- Utilize all available spectrum including the newly available 700MHz
- Build upon the Puerto Rico Regional Network
- Incorporate the PREMA [Puerto Rico Emergency Management Agency] 700 MHz

³²See Plan, Section 3.6 – Use of the CAPRAD Pre-Assignment Table.

³³ Plan, Section 9.0 – Certification, pursuant to 47 C.F.R. § 90.527(a)(8) at 39 (dated December 30, 2011) (by the RPC Chair, that all planning committee meetings, including subcommittee or executive meetings were open to the public).

³⁴ Waiver Request at 1; *see also* Plan, Section 5 – Coordination with Adjacent Region – Region 48.

³⁵ See Public Safety and Homeland Security Bureau Seeks Comments on Region 47 (Puerto Rico) 700 MHz Regional Planning Committee Proposed Public Safety Plan, WT Docket No. 02-378, *Public Notice*, 27 FCC Rcd 5349 (PSHSB 2012). Comments were due June 11, 2012, and reply comments were due June 21, 2012.

³⁶ See 47 C.F.R. § 90.527(a)(5).

³⁷ Waiver Request at 1.

³⁸ *Id.*

³⁹ *Id.* On September 22nd Region 47 emailed Region 48’s representative and provided him a copy of the Region 47 plan as well as a sample letter of concurrence. *Id.* On September 23rd, Region 47 states that Region 48’s representative replied via email stating “Okay, will look them over.” *Id.*

⁴⁰ *Id.*

⁴¹ *Id.*

network [⁴²]

Region 47 states that there is “great momentum building in Puerto Rico for the 700 MHz spectrum, and public safety will suffer without a plan in place.”⁴³ Region 47 states that “[t]he delays being faced in Puerto Rico while waiting for Region 48 to complete the necessary concurrence and dispute resolution paperwork is becoming unduly burdensome, inequitable and contrary to the public interest.”⁴⁴ Region 47 notes that it performed its “due diligence in attempting coordination.”⁴⁵ Region 47 includes a chronology of its attempts to obtain concurrence from Region 48 beginning on August 19, 2011 when Region 47 reached out to the USVI point of contact for “Regional activity” and ending on November 7, 2011.⁴⁶ Over that four month period Region 47 notes that it sought the assistance of FCC staff in attempting to facilitate adjacent region coordination prior to submitting its draft Plan to the Commission.⁴⁷ As a result of Puerto Rico’s interoperability needs, and Region 47’s due diligence, Region 47, pursuant to Section 1.925(b)(3) of the Commission’s rules, requests a waiver of Section 90.527(a)(5)’s requirement to obtain a letter of concurrence and dispute resolution agreement from Region 48.⁴⁸

The Commission will grant a waiver request if the waiver proponent shows that: “(i) [t]he 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 (ii) [i]n 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.”⁴⁹

As an initial matter, we note that the Commission has waived the adjacent region coordination requirements of Section 90.527(a)(5) pursuant to the second prong of the waiver standard. Specifically, the Wireless Telecommunications Bureau (WTB) waived Section 90.527(a)(5) and approved the Region 12 (Idaho) and Region 22 (Minnesota) 700 MHz plans subject to certain conditions.⁵⁰ In both instances, Region 12 and Region 22 worked diligently to develop 700 MHz plans to meet regional needs but they

⁴² *Id.* at 1-2.

⁴³ *Id.* at 2

⁴⁴ *Id.*

⁴⁵ *Id.*

⁴⁶ *Id.*

⁴⁷ *Id.*

⁴⁸ *Id.*

⁴⁹ 47 C.F.R. § 1.925(b). On waiver standards generally, see *Northeast Cellular Telephone Co. v. FCC.*, 897 F.2d 1164, 1166 (D.C. Cir. 1990) (“[A] waiver is appropriate only if special circumstances warrant a deviation from the general rule and such deviation will serve the public interest.”) citing *WAIT Radio v. FCC.*, 418 F.2d 1153, 1157-59 (D.C. Cir. 1969).

⁵⁰ See Wireless Telecommunications Bureau Approves Region 12 (Idaho) 700 MHz Regional Plan, WT Docket 02-378, *Public Notice*, 21 FCC Rcd 2382 (WTB PSCID 2006) (*Region 12 PN*); See Wireless Telecommunications Bureau Approves Region 22 (Minnesota) 700 MHz Regional Plan, WT Docket 02-378, *Public Notice*, 21 FCC Rcd 6906 (WTB PSCID 2006) (*Region 22 PN*). We note that the WTB denied Region 24’s (Missouri) request for waiver of the adjacent region coordination requirements of Section 90.525(a)(5) noting that the adjacent regions became active after the filing of the Region 22 Plan. See Letter dated Mar. 29, 2004 from D’Wana R. Terry, Chief Public Safety and Critical Infrastructure Division, to Stephen T. Devine, Chairman, Region 24 700 MHz Planning Committee *re* 700 MHz Regional Planning – Region 24 Regional Plan WT Docket 02-378.

were unable to obtain concurrence from all adjacent regions due to the “organizational challenges”⁵¹ and “inactive status”⁵² of those adjacent regions. Thus the WTB found it would be “inequitable” and not in the public interest to postpone the Commission’s approval of the 700 MHz Plans.⁵³

However, the WTB reiterated that grant of the waiver did not relieve Region 22 of its “continuing obligation to obtain Letters of Concurrence and Inter-Regional-Dispute Resolution Agreements” from the adjacent regions.⁵⁴ Similarly, with regard to Region 12, the WTB emphasized that its decision did not relieve the adjacent region (*i.e.* Region 25 (Montana)) of its “continuing obligation to complete its review, and if appropriate, provide a Letter of Concurrence and enter into a Dispute Resolution Agreement with Region 12.”⁵⁵ In both instances, however the WTB stated that the waiver grant “does not remove the requirement for [Region 12 and Region 22] to conduct inter-region coordination of applications where necessary.”⁵⁶

The WTB stated that the “decision is based on the particular, documented factors presented here, including, but not limited to, [Region 12 and Region 22’s] progress in 700 MHz public safety band implementation,” and the “organizational challenges” and “inactive status” of the adjacent regions.⁵⁷ In addition, the WTB found that Region 22 “exercised due diligence” through its efforts to consider and factor in the future 700 MHz public safety band spectrum needs of adjacent regions through the use of CAPRAD.⁵⁸ With regard to Region 22’s use of CAPRAD, we note that the National Association of Regional Planning Committees commented that the use of CAPRAD “will provide sufficient channel availability to the unformed regions and ensure that users in the unformed regions will have availability to 700 MHz spectrum.”⁵⁹ Finally, in both instances, the WTB stated that “we do not foresee granting waivers of the adjacent region coordination requirement under circumstances less compelling than those presented here.”⁶⁰

Here, we find the circumstances surrounding the instant request sufficiently compelling to warrant a waiver. First, we find that Region 47 has worked diligently to develop a comprehensive 700 MHz Plan. Second, we observe that Puerto Rico has developed an interoperability concept that encompasses a single P25 infrastructure to serve the needs of emergency responders. Puerto Rico envisions incorporating the 700 MHz spectrum as part of this system. Third, we recognize that Region 47 and FCC staff have exercised due diligence in their numerous attempts to facilitate adjacent region coordination for over a year without success. For example, before the staff sought comment on the draft Region 47 Plan and

⁵¹ *Region 12 PN*, 21 FCC Rcd at 2386.

⁵² *Region 22 PN*, 21 FCC Rcd at 6910.

⁵³ *Region 12 PN*, 21 FCC Rcd at 2386; *Region 22 PN*, 21 FCC Rcd at 6909-10.

⁵⁴ *Region 22 PN*, 21 FCC Rcd at 6910.

⁵⁵ *Region 12 PN*, 21 FCC Rcd at 2386.

⁵⁶ *Id.*; *Region 22 PN*, 21 FCC Rcd at 6910.

⁵⁷ *Region 12 PN*, 21 FCC Rcd at 2386; *Region 22 PN*, 21 FCC Rcd at 6910.

⁵⁸ *Region 22 PN*, 21 FCC Rcd at 6910.

⁵⁹ See Comments of the National Association of Regional Planning Committees, WT Docket 02-378, at 2 (filed Feb. 22, 2006) (supporting Region 22 request for waiver of Section 90.525(a)(5) of the Commission’s rules).

⁶⁰ *Region 12 PN*, 21 FCC Rcd at 2386; *Region 22 PN*, 21 FCC Rcd at 6910.

Waiver Request in May 2012, the staff contacted Region 48's representative at the USVI Bureau Information Technology (BIT). Staff again attempted to contact Region 48's representative on December 20, 2012. Based on the foregoing, we conclude it would be inequitable and contrary to the public interest to continue to postpone the Commission's approval of the Region 47 700 MHz Plan. Accordingly, we grant the requested waiver relief.

However, we reiterate that grant of this waiver does not relieve Region 47 of its continuing obligation to obtain Letters of Concurrence and Inter-Regional Dispute Resolution Agreements from Region 48. Similarly, Region 48 must complete its review, and if appropriate, provide a Letter of Concurrence and enter into a Dispute Resolution Agreement with Region 47. Once completed, a copy of such documentation must be filed in WT Docket 02-378 where it will become part the Region 47 700 MHz Plan. Further, this waiver grant does not remove the requirement for Region 47 to conduct inter-region coordination of applications where necessary.

Our decision is based on the particular, documented factors presented here, including, but not limited to, Puerto Rico's interoperability concept, Region 47's due diligence, Region 48's unresponsiveness, and Region 47's use of the CAPRAD to pre-allocate frequency assignments to ensure that Region 48 will have enough spectrum to meet its' needs. Accordingly, based on the record before us and Commission precedent, we find that there are adequate public interest grounds for grant of the requested waiver.

Based on our review of the Region 47 plan, we conclude that 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 47 (Puerto Rico) 700 MHz Public Safety Plan is APPROVED.

IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.925(b)(3)(ii) of the Commission's rules, 47 C.F.R. § 1.925(b)(3)(ii), the request for waiver associated with the captioned 700 MHz Public Safety Plan filed by Region 47 (Puerto Rico) on April 24, 2012, IS GRANTED SUBJECT TO THE FOLLOWING CONDITIONS:

- (1) Obtain Letters of Concurrence and Inter-Regional Dispute Resolution Agreements from Region 48. Once completed, a copy of such documentation must be filed in WT Docket 02-378 where it will become part the Region 47 700 MHz Plan.
- (2) Conduct inter-region coordination of applications where necessary.

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.

Action by the Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau.

– FCC –