



PUBLIC NOTICE

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DA 12-32

Released: January 10, 2012

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON BAY AREA PETITION FOR WAIVER OF DEADLINE FOR ENTERING INTO 700 MHZ SPECTRUM LEASE

PS Docket No. 06-229

Comment Date: January 30, 2012

By this Notice, the Public Safety and Homeland Security Bureau (Bureau) seeks public comment on the Petition for Waiver filed by the City and County of San Francisco, the City of Oakland, and the City of San Jose (Bay Area Cities).¹

In May 2010, the Bay Area Cities were granted a conditional waiver to deploy a regional interoperable public safety broadband network in the 700 MHz public safety broadband spectrum.² Among the conditions specified by the Commission, the Bay Area Cities were required to enter into a long term *de facto* spectrum transfer lease with the Public Safety Spectrum Trust (PSST), the holder of the nationwide license for the 700 MHz public safety broadband spectrum, within 60 days of approval of the *Waiver Order's* information collection requirements by the Office of Management and Budget.³ The Bay Area Cities now ask that the Commission: (1) nullify the original lease for the Bay Area; and (2) grant a waiver of the 60-day time frame to allow a new lease to be executed by the Bay Area Cities with the PSST.⁴

The Bay Area Cities explain that the original lease should be deemed invalid because the named lessee, the "San Francisco Bay Area Urban Area Region," did not exist, and the signatory, the Alameda County Sheriff, did not possess the authority to enter into the lease on behalf of the Bay Area Cities.⁵ Accordingly, they seek a waiver to allow the appropriate parties – the Bay Area Cities – to enter into a lease with the PSST. The Bay Area Cities further explain that a new entity, the Bay Area Regional

¹ See Waiver – Expedited Action Requested, filed by the City and County of San Francisco, the City of Oakland, and the City of San Jose, PS Docket No. 06-229 (filed Dec. 23, 2011) (*Bay Area Waiver Petition*).

² Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket No. 06-229, *Order*, 25 FCC Rcd 5145 (2010) (*Waiver Order*).

³ *Id.* at 5154 ¶ 27.

⁴ *Bay Area Waiver Petition* at 1-2, 6.

⁵ *Id.* at 6.

Interoperable Communications (BayRICS) Authority, has recently been formed⁶ through a Joint Powers Agreement, which includes the Bay Area Cities and all of the jurisdictions originally intended to be covered by the Bay Area Cities' initial waiver request.⁷ Should the instant waiver be granted, the Bay Area Cities assert that they will seek Commission and PSST permission to assign the new lease from the Bay Area Cities to the BayRICS Authority.⁸

The Bay Area Cities argue that expedited grant of the instant waiver is in the public interest, because it will allow the region to move forward with early deployment of the network within the timeframes required by the National Telecommunications and Information Administration (NTIA) Broadband Technologies Opportunity Program (BTOP) grant awarded to vendor Motorola Solutions, Inc. for build out of the Bay Area Wireless Enhanced Broadband (BayWEB) project.⁹

We seek comment on this petition.

Comment Filing Procedures

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries

⁶ *Id.* at 7. The waiver states that the BayRICS authority was formed in August 2011 to "oversee the day-to-day construction and operation of the [Bay Area Wireless Enhanced Broadband (BayWEB)] project and other regional interoperable public safety communications projects and systems and to provide a single, authorized point of contact for all aspects of the BayWEB project." *Id.*

⁷ *Id.* at 2 n.5, 8, Exhibit C. The waiver further explains that a few jurisdictions (Santa Cruz, Napa, and Solano Counties) have expressed interest joining the BayRICS authority but have not yet formally done so.

⁸ *Id.* at 8.

⁹ *Id.* at 9, 13-14. The Bay Area Cities state that they are in the final stages of negotiations with Motorola to establish the terms and conditions under which the network will be built, operated and maintained, and that finalization of this agreement is expected in January 2012. *Id.* at 9-10.

must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
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The proceeding this Notice initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.¹⁰ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda, or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

For further information about this Public Notice, please contact Jennifer Manner at (202) 418-3619, jennifer.manner@fcc.gov.

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¹⁰ 47 C.F.R. §§ 1.1200 *et seq.*