



PUBLIC NOTICE

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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON TRANSITION PROCESS FOR 700 MHZ PUBLIC SAFETY BROADBAND WAIVER RECIPIENTS

PS Docket No. 12-94

Comment Date: April 20, 2012

On February 22, 2012, the Middle Class Tax Relief and Job Creation Act of 2012 (Spectrum Act or Act)¹ became law.² The Spectrum Act directs the Commission to reallocate the 700 MHz “D Block” (758-763 MHz/788-793 MHz) for public safety services and to assign a license for both the D Block and the existing public safety broadband spectrum (763-769 MHz/793-799 MHz) to the First Responder Network Authority (FirstNet).³ FirstNet is an independent authority to be formed within the National Telecommunications and Information Administration (NTIA) at the Department of Commerce to oversee the establishment of a nationwide public safety broadband network.⁴ The Commission is required to “take all actions necessary to facilitate the transition” of the existing public safety broadband spectrum to FirstNet.⁵ Upon its establishment, FirstNet is responsible for taking “all actions necessary to ensure the building, deployment and operation of the nationwide public safety broadband network.”⁶ Among the transition issues that must be addressed in order to ensure that FirstNet can fulfill its mission is the disposition of the incumbent operators in both the public safety broadband spectrum and the D Block.

The spectrum to be assigned to FirstNet under the Spectrum Act is occupied by four classes of incumbents: (1) jurisdictions operating narrowband systems that predate the Commission’s 2007 *Second*

¹ See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012)(Spectrum Act).

² *Id.* § 6201(a).

³ See Spectrum Act § 6201(a).

⁴ *Id.* §§ 6101(a); 6201(a); 6204; 6206(b)(1).

⁵ *Id.* § 6201(c).

⁶ *Id.* § 6206(b)(1). The Spectrum Act also prescribes a process by which a state may opt out of participation in the nationwide network. See *id.* § 6302(e).

Report and Order,⁷ some of which received waivers for continued deployment,⁸ (2) jurisdictions at the planning or deployment stage, which have been granted waivers to operate broadband systems (Broadband Waiver Recipients);⁹ (3) two jurisdictions operating wideband systems pursuant to waiver or Special Temporary Authority (STA);¹⁰ and (4) one commercial incumbent in the D Block spectrum, PTPMS II, licensed in the 761-763/791-793 band in the Des Moines-Quad Cities and El Paso-Albuquerque Major Economic Areas (MEAs).¹¹

The transition issues related to the Broadband Waiver Recipients are the most time-sensitive. Among other things, that is because of the near-term deployments planned by some of these jurisdictions and the plans to award contracts by others. Accordingly, this Public Notice focuses on the issues relating to the Broadband Waiver recipients. The Commission will separately evaluate the appropriate actions to take as to the other classes of incumbents.

Background

The D Block and the existing public safety broadband spectrum are part of the Upper 700 MHz Band (746-806 MHz). In the *Second Report and Order*, the Commission sought to create a public-private partnership for the development of a nationwide interoperable public safety broadband network in the 700 MHz band between a nationwide public safety licensee and the nationwide winner of the adjacent block of commercial spectrum called the D Block. Soon after the release of the *Second Report and Order*, the Commission selected the Public Safety Spectrum Trust (PSST) to serve as nationwide public safety licensee.¹² However, an auction of the D Block in early 2008 failed to produce a winning bid, and the Commission began to reexamine the basic approach it had established for creating an interoperable broadband public safety network.¹³ At the time the Spectrum Act was enacted, this reexamination was still in process, and, consequently, the Commission had conducted no further auctions for the D Block.

⁷ See Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289, 15291 ¶ 1 (2007) (*Second Report and Order*).

⁸ See, e.g., 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, Commonwealth of Virginia Request for Waiver, *Order*, 22 FCC Rcd 20290 at ¶ 7 (2007); Request for Waiver of Pierce Transit, *Order*, 23 FCC Rcd 443 (PSHSB 2008); State of New York Request for Waiver, *Order*, 23 FCC Rcd 9610 (PSHSB 2008); State of Arkansas Request for Waiver, *Order*, 23 FCC Rcd 11068 (PSHSB 2008); State of Illinois, Illinois State Police Request for Waiver, *Order*, 23 FCC Rcd 11064 (PSHSB 2008); State of Hawaii Request for Waiver, *Order*, 23 FCC Rcd 11264 (PSHSB 2008); State of Mississippi Request for Waiver, *Order*, 23 FCC Rcd 11620 (PSHSB 2008); City of Phoenix, Arizona Request for Waiver, *Order*, 23 FCC Rcd 16669 (PSBSB 2008); County of Ada, Idaho Request for Waiver, *Order*, 23 FCC Rcd 16665 (PSHSB 2008); Harris County, Texas Request for Waiver, *Order*, 23 FCC Rcd 16661 (PSHSB 2008).

⁹ 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*).

¹⁰ See, Call Sign WQIW915, City of Wasilla Police Department, Wasilla, AK (STA); Call Sign WQIR243, City of Post Falls, ID (License).

¹¹ See *Second Report and Order*, 22 FCC Rcd at 15338-40 ¶¶ 128-134.

¹² See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket 06-229, *Order*, 22 FCC Rcd 20453 (2007).

¹³ See, e.g., See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, FCC 08-230 (2008) (*Third Further Notice*).

Beginning in late 2008, a number of public safety jurisdictions filed petitions seeking waiver of the Commission's rules in order to allow early deployment of local or regional public safety broadband networks in the public safety broadband spectrum.¹⁴ On May 11, 2010, the Commission granted the requests of twenty-one public safety entities, with a number of conditions, including the requirement that the Waiver Recipients enter into a lease with the PSST for access to public safety broadband spectrum.¹⁵ More generally, the Commission made it clear that the Waiver Recipients would ultimately be required to integrate their network operations into whatever nationwide operations the Commission ultimately established for the band.¹⁶ On May 12, 2011, the Commission granted an additional conditional waiver to the State of Texas.¹⁷ These waiver deployments are conditioned on use of the 3GPP Long Term Evolution (LTE) technology platform and on adherence to other requirements, including baseline technical interoperability mandates established by the Public Safety and Homeland Security Bureau in December 2010.¹⁸ The Waiver Recipients are at various stages of deployment.¹⁹

To date, three jurisdictions have filed the interoperability showings that, under the *Waiver Order*, the Commission must approve in order for these jurisdictions' networks to go into service: the State of Texas (Texas), Charlotte, North Carolina (Charlotte), and the Adams County, Colorado, Communication Center (Adams County).²⁰ Texas and Charlotte contemplate entering into service in 2012, with proposed service availability dates of May 31 and June 30 respectively.²¹

Transition Issues

We seek comment on the most expedient and cost-effective way to transition the Waiver Recipients' authorizations. What actions should the Commission take to effectuate the transition? Should the Commission issue a stay to halt deployment by the Waiver Recipients in order to avoid additional costs being incurred by the Waiver Recipients. What impact would such action have on Waiver Recipients' funding, including obligations such as those under the Broadband Technology Opportunities Program (BTOP)?

It appears that jurisdictions such as Charlotte and Texas that plan to go into service in the coming months

¹⁴ See, e.g., Public Safety and Homeland Security Bureau Seeks Comment on Petitions for Waiver to Deploy 700 MHz Public Safety Broadband Networks, 24 FCC Rcd 10814 (PSHSB 2009) (*Waiver PN*) Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket No. 06-229, 25 FCC Rcd 17156, n.14 (PSHSB 2010)(*Interoperability Waiver Order*).

¹⁵ See *Waiver Order*, 25 FCC Rcd at 5152 ¶ 20. The state of Alabama did not sign a lease with the PSST.

¹⁶ See *id.* at 5153 ¶ 22.

¹⁷ 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*, 26 FCC Rcd 6783 (PSHSB 2011) (*Texas Waiver Order*).

¹⁸ See *Interoperability Waiver Order*.

¹⁹ See, e.g., Letter from Steve Koman, LTE Broadband Program Office, City of Charlotte, to James Arden Barnett, Jr., Chief, PSHSB, PS Docket No. 06-229 (filed Jan. 13, 2012) (Charlotte Quarterly Report); Quarterly Report #7 of the State of Texas Public Safety LTE Broadband Network, PS Docket No. 06-229 (filed Jan. 13, 2012); Quarterly Report of the Los Angeles Regional Interoperable Communications System Authority, PS Docket No. 06-229 (filed Jan. 10, 2012); Oregon Department of Transportation Major Projects Branch Broadband Waiver Recipient Oregon Quarterly Report #7, PS Docket No. 06-229 (filed Jan. 9, 2012).

²⁰ See City of Charlotte, North Carolina Filing, PS Docket 06-229 (filed Jan. 27, 2012) (Charlotte Showing); See State of Texas Filing, PS Docket 06-229 (June 17, 2011) (Texas Showing); Adams County, Colorado, Communication Center Filing, PS Docket 06-229 (Dec. 20, 2011) (Adams County Showing). Adams County withdrew its interoperability showing on April 3, 2012. See Adams County, Colorado, Communication Center Filing, PS Docket 06-229 (Apr. 4, 2012); Adams County, Colorado, Communication Center Filing, PS Docket 06-229 (Apr. 3, 2012).

²¹ See Texas Showing at 54; Charlotte Showing at 5.

may be differently situated than other Waiver Recipients because their deployments will bring public safety benefits in the very near term. Should these parties be treated differently because they plan to enter into service shortly, or because they have already expended substantial funds? Alternatively, should the Commission decline to act on the interoperability showings for Charlotte, Texas or Adams County, because of the impending transition? What would be the impact to FirstNet if the Commission did authorize these waiver recipients to enter into service? Are there network architectures that the Waiver Recipients who wish to initiate service could utilize that would impact the costs of the transition to FirstNet? What are the costs or other impacts, including lost near term public safety benefits, if the Commission fails to authorize these waiver recipients to enter into service? Commenters should address how their proposals are consistent with the Spectrum Act.

Would one possible approach would be to rescind all the waiver authorizations. What would the impact – including cost – be to the Waiver Recipients of such an approach? Could the cost impact be minimized in any way? For instance, could we rescind the waiver authorizations of only those jurisdictions who have not yet expended significant funds? Is there another method to achieve the same objectives, while minimizing any adverse impacts? Is this approach consistent with the Spectrum Act?

We also recognize that the initial term of the May 2010 Waiver Recipients' leases will end in September 2012, shortly after the August 20, 2012 deadline for establishing the FirstNet board.²² Is there an appropriate way to transition their authorizations coincident with the end of the lease term, or coincident with the issuance of a license to FirstNet? Is such an approach consistent with the Spectrum Act?

Should the Commission simply allow these leases to expire or decline to renew them? Should the Commission allow renewal at the option of FirstNet? Should the Commission allow all or some of the leases to be renewed with the PSST, and then transferred to FirstNet at an appropriate time? Should such lease renewal terms be for a more limited duration than the initial two-year lease? What term? What would be the cost impact of each of these approaches? Could these approaches be structured in a manner that would be consistent with the Spectrum Act?

Should the Commission authorize operations on a special temporary authority (STA) basis during an interim period following the expiration of these leases, until such time as FirstNet can determine whether to enter into a new lease, or until such time as the relevant state determines whether or not it will opt out of the nationwide license? How long could such an arrangement persist? Is this type of arrangement viable for all the Waiver Recipients, or should it be limited to those with imminent deployment plans, or another extenuating circumstance? What factors would the Commission use to make such a determination?

Pursuant to sections 1.415 and 1.419 of the Commission's rules, 47 CFR §§ 1.415, 1.419, interested parties may file 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/>.

²² *See id.* § 6204(e). We note that the term of the lease held by Texas ends June 17, 2013, a date preceded by the statutory deadline for establishing the FirstNet board.

- Paper Filers: Parties who 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 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.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

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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.²³ 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 A. Manner, Deputy Chief, Public Safety and Homeland Security Bureau, at (202) 418-3619 or Jennifer.Manner@fcc.gov.

²³ 47 C.F.R. §§ 1.1200 *et seq.*