



PUBLIC NOTICE

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DA 13-39
Released: January 11, 2013

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON REQUEST FOR WAIVER BY LOS ANGELES REGIONAL INTEROPERABLE COMMUNICATIONS SYSTEM JOINT POWERS AUTHORITY TO APPLY FOR 700 MHZ “NARROWBAND RESERVE CHANNELS”

RM-11433

COMMENTS DUE: February 11, 2013

REPLY COMMENTS DUE: February 25, 2013

By this Public Notice, the Public Safety and Homeland Security Bureau (PSHSB) seeks comment on a waiver request filed by the Los Angeles Regional Interoperable Communications System Joint Powers Authority (LA-RICS), to permit LA-RICS and its member public safety entities in the Los Angeles metropolitan area to apply for licenses for the 700 MHz “narrowband reserve channels” and integrate those frequencies into the LA-RICS radio system.¹

LA-RICS had planned that the voice communications platform of its multi-agency, interoperable communications system would operate in the 470-512 MHz band (T-Band).² However, the Middle Class Tax Relief and Job Creation Act of 2012 (Public Safety Spectrum Act), requires public safety incumbents, such as LA-RICS, to vacate the T-Band in the future.³ Specifically, Section 6103 of the Public Safety Spectrum Act requires that the Commission, not later than February 2021: (1) reallocate public safety spectrum in the 470 – 512 MHz band;⁴ (2) begin a system of competitive bidding to grant new initial licenses for such spectrum,⁵ and (3) relocate public safety users not later than two years after said competitive bidding is completed.⁶ Notwithstanding the requirements of Section 6103, LA-RICS states that it “must deploy a new system [...] as its members’ current systems need to be upgraded to replace aging equipment, provide greater efficiency, add capabilities, and promote interoperability across the region.”⁷

¹ Request for Waiver of Section 90.531(b)(2) filed by Los Angeles Regional Interoperable Communications System Joint Powers Authority (Dec. 7, 2012) (Waiver Request).

² *Id.* at 3.

³ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156.

⁴ *Id.* § 6103(a)(1) *citing* 47 C.F.R. § 90.303.

⁵ *Id.* § 6103(a)(2) *citing* 47 U.S.C. § 309(j).

⁶ *Id.* § 6103(c).

⁷ Waiver Request at 4-5.

“[A]bsent repeal of Section 6103,” LA RICS states, “the only viable approach is to deploy a hybrid 470-512 MHz/700 MHz narrowband system.”⁸ LA-RICS submits that a hybrid approach “would provide a logical path to operate a full public safety grade communications system in both bands, and allow for a gradual migration from 470-512 MHz within the time period required by the Act.”⁹ However, LA-RICS states that “the hybrid system requires more 700 MHz narrowband channels than are currently available, either in the interim, while 470-512 MHz is still available, or in the long term if public safety is forced to relinquish 470-512 MHz as required by current law.”¹⁰ LA-RICS therefore requests that all of the 700 MHz reserve channels (48 6.25 kHz channel pairs) be made available for licensing as part of LA-RICS’ hybrid system.¹¹

Under Section 90.531(b)(2) of the Commission rules, the narrowband reserve channels are “undesigned and reserved.”¹² LA-RICS states that “[f]ourteen years have now passed without any further Commission proposals or orders regarding the potential use of the narrowband reserve channels.”¹³ “LA-RICS believes that the highest and best use of that spectrum in the Los Angeles area would be as part of the LA-RICS system, as a means of mitigating the impact of recent legislation regarding the 470-512 MHz band.”¹⁴ Accordingly, LA-RICS requests a waiver pursuant to Section 1.925(b)(3)¹⁵ of the Commission’s rules.¹⁶

In support of its waiver request, LA-RICS states that “[t]he apparent purpose of the relevant rule was to reserve certain narrowband channels to address future requirements.”¹⁷ LA-RICS argues that it “has presented just such a requirement.”¹⁸ Thus, LA-RICS claims, “continuing to reserve the relevant channels in the Los Angeles area would be contrary to the original purpose of the rule and the public

⁸ *Id.* at 5.

⁹ *Id.*

¹⁰ *Id.* at 6.

¹¹ *Id.* at 7.

¹² 47 C.F.R. § 90.531(b)(2).

¹³ Waiver Request at 7. In 2008, the Bureau sought comment on the National Public Safety Telecommunications Council’s (NPSTC) proposal to designate the narrowband reserve channels “to promote deployment of mobile trunked infrastructure that can be transported into [an] incident area.” See Petition for Rulemaking of the National Public Safety Telecommunications Council at 7, RM-11433 (filed Feb. 8, 2008); Public Safety and Homeland Security Bureau Seeks Comment on Petition for Rulemaking of the National Public Safety Telecommunications Council Concerning the 700 MHz Public Safety Narrowband Channels, RM-11433, *Public Notice*, 23 FCC Rcd 395 (PSHSB 2008). The Bureau has also permitted, on a waiver basis, the use of deployable trunked systems on the 700 MHz interoperability spectrum subject to the outcome of the NPSTC petition (*i.e.*, should the Commission authorize the use of deployable trunked systems on the reserve spectrum those waiver recipients shall relocate to the reserve spectrum). See, *e.g.*, State of Colorado, *Order*, 27 FCC Rcd 6051 (PSHSB 2012). Because the LA-RICS’ waiver request raises issues relevant to the NPSTC Petition, we are incorporating the waiver request into that proceeding.

¹⁴ Waiver Request at 7.

¹⁵ 47 C.F.R. § 1.925(b)(3)(i)-(ii).

¹⁶ Waiver Request at 8.

¹⁷ *Id.*

¹⁸ *Id.*

interest.”¹⁹ LA-RICS argues that it “is also facing unique and unusual factual circumstances.”²⁰ “Just as LA-RICS embarked on a major, multi-million dollar project to provide interoperable communications across the Los Angeles area,” LA-RICS states, “Congress has unexpectedly adopted legislation that will take away the principal frequency band to be used in the new system.”²¹ Under such circumstances, LA-RICS contends, “continuing to hold 700 MHz narrowband spectrum in reserve would be ‘inequitable, unduly burdensome’ and ‘contrary to the public interest.’”²² Finally, LA-RICS argues that it has “no reasonable alternative” under current statutory provisions.²³

We seek comment on LA-RICS’s Waiver Request and announce the pleading cycle during which comments and replies may be filed.

This proceeding will be treated as “permit but disclose” for purposes of the Commission’s *ex parte* rules. See generally 47 C.F.R. §§ 1.1200-1.1216. As a result of the permit-but-disclose status of this proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission’s rules applicable to non-restricted proceedings.²⁴ 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). 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.

Parties may file comments on the Waiver Request on or before February 11, 2013. Reply comments may be filed on or before February 25, 2013.

Please place the rulemaking number, RM-11433, on all filings. 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/>.

¹⁹ *Id.*

²⁰ *Id.*

²¹ *Id.*

²² *Id.*

²³ *Id.*

²⁴ 47 C.F.R. § 1.1206.

- 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.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Copies of the Petition and any subsequently filed documents in this matter are also available for inspection in the Commission's Reference Information Center:

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For further information, contact: John A. Evanoff, Esq., Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-0848 or John.Evanoff@fcc.gov.

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

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