

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

In the Matter of)
COMMONWEALTH OF VIRGINIA)
Licensee of 700 MHz State License WPTZ775)

ORDER

Adopted: December 30, 2016

Released: December 30, 2016

By the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau:

I. INTRODUCTION

1. In this Order, and on our own motion, we authorize the Commonwealth of Virginia (Virginia) to proceed with relocation of existing 700 MHz narrowband operations to state-licensed channels and we grant a conditional waiver of the requirement to coordinate Virginia’s operations on these channels with the Commonwealth of Kentucky (Kentucky).

II. BACKGROUND

2. Virginia is one of a number of 700 MHz public safety narrowband licensees that have existing operations on the 700 MHz public safety broadband spectrum (758-769/788-799 MHz) licensed to the First Responder Network Authority (FirstNet).1 On August 26, 2016, the Commission released a Report and Order and Notice of Proposed Rulemaking that established a mechanism to facilitate the relocation of public safety narrowband incumbents, including Virginia, from FirstNet’s spectrum to the consolidated block of public safety narrowband spectrum (769-775/799-806 MHz).2 Under that relocation mechanism, the Commission permitted incumbents to remain on FirstNet’s spectrum until August 31, 2017, after which they will be required to relocate absent FirstNet’s express written consent to remain longer.3

3. Virginia intends to relocate its operations from FirstNet’s spectrum to the state channels in the consolidated narrowband segment.4 Virginia’s license permits it to operate on state channels in the 700 MHz band under call sign WPTZ775. The state channels consist of ninety-six (96) channel pairs (12.5 kHz bandwidth) in the public safety narrowband segment that are reserved for use by each state,

1 Prior to the Commission licensing the 758-769/788-799 MHz spectrum to FirstNet, Virginia obtained an interim waiver from the Commission allowing Virginia to deploy narrowband operations on the 700 MHz public safety broadband spectrum segment. 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, 22 FCC Rcd 20290 (2007).

2 See Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012, Report and Order and Further Notice of Proposed Rulemaking, 31 FCC Rcd 10253, 10260-63 paras. 19-30 (2016) (Report and Order) citing Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §§ 6001-6303, 6413 (codified at 47 U.S.C. §§ 1401-1443, 1457) (Spectrum Act).

3 Report and Order at 10260 para. 20.

4 Id. at 10262 para. 27.

territory, district or possession (state licensees).⁵ Virginia advised staff that it intends to use 48 of the 96 state channels for relocation of its existing operations from FirstNet's spectrum. To facilitate Virginia's relocation and to mitigate interference with adjacent state narrowband systems, Virginia advised Commission staff that it reached agreement on state border area channel allocations with all states along its geographic borders except Kentucky.

4. When the Commission established state licenses, it adopted certain technical requirements to ensure efficient use of 700 MHz state license spectrum, including a measure to limit the maximum field strength a licensee could provide at the state border, *i.e.*, "a field strength⁶ of 40 dBuV/m⁷ to control harmful interference between state systems[.]"⁸ The Commission stated that "we believe the field strength approach provides established, objective criteria for controlling in-band interference, and gives licensees the ability to construct and operate facilities in boundary areas so long as the limit is met."⁹ The Commission also permitted "adjoining states to agree to alternate field strengths at their common border."¹⁰

5. On October 16, 2014, Kentucky cancelled its state geographic area license WPTZ806.¹¹ Kentucky has advised Commission staff that it anticipates using an undefined number of the state channels covered by its former license at some time in the future. Virginia and Kentucky, however, have been unable to reach agreement on the specific allocation of state channels between them that would allow Virginia to exceed the 40 dBuV/m signal level at the common border when it retunes its system from FirstNet's spectrum to the consolidated block of narrowband channels.

III. DISCUSSION

6. To facilitate Virginia's relocation from FirstNet's spectrum, we find good cause to permit Virginia to select 48 state channels for licensed use at the Virginia-Kentucky border and to exceed 40 dBuV/m field strength at the border with Kentucky on these channels when it retunes its system. In the *Report and Order*, the Commission found that the prompt relocation of incumbents remains an imperative to successful deployment of the FirstNet nationwide public safety broadband network, and that certainty with respect to the timing of this process will support this goal.¹² Therefore, to ensure certainty and prompt action on the part of all parties involved, consistent with the Commission's relocation determination and with the mandate of the Spectrum Act to facilitate the transition of the broadband spectrum to FirstNet,¹³ we waive the 40 dBuV/m field strength requirement along Virginia's border with Kentucky because there are no state license operations to protect in Kentucky.

⁵ 47 CFR §§ 90.529 and 90.531(b)(5); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Third Memorandum Opinion and Order and Third Report and Order*, 15 FCC Rcd 19844, 19864 para. 48 (2000) (*Third MO&O and Third R&O*).

⁶ The field strength approach requires a licensee to limit the field strength of its station transmissions to some prescribed level at the licensee's geographic border. *Third MO&O and Third R&O*, 15 FCC Rcd at fn 206.

⁷ The predicted 40 dBu/v field strength shall be calculated using Figure 10 of Section 73.699 of the FCC's rules, with a correction factor for antenna height differential of -9 dB. *Id.* at fn 207 *citing* 47 CFR § 73.699, Fig. 10.

⁸ *Third MO&O and Third R&O*, 15 FCC Rcd at 19873 para. 67.

⁹ *Id.*

¹⁰ *Id.*

¹¹ FCC File No. 0006505437 (Oct. 16, 2014).

¹² *Report and Order*, 31 FCC Rcd at 10260 para. 19.

¹³ "The Commission shall take all actions necessary to facilitate the transition of the existing public safety broadband spectrum to the First Responder Network Authority." 47 U.S.C. § 1421(c).

7. When Kentucky canceled its state license, Kentucky's state channels reverted to general use for site-based licensing subject to regional planning by Region 17 (Kentucky) 700 MHz Regional Planning Committee (RPC).¹⁴ However, the state channels may not be licensed until the Region 17 RPC submits a proposed modification to its existing regional plan to incorporate the former state license channels, and the Commission approves the modified plan.¹⁵ At this time, the RPC has not submitted a proposed modified plan for Commission approval. To enable Virginia to proceed with relocation without delay, we allow Virginia to select 48 of the 96 state channels for use on the Virginia-Kentucky border while preserving the remaining 48 channels for future use by Kentucky, and to exceed the 40 dBuV/m field strength limit at the border with Kentucky on the state channels it selects. Virginia may operate on 48 state channels of its choosing provided that its predicted F:(50,50) field strength contour¹⁶ does not exceed 14 dBuV/m 30 miles outside Virginia's border and inside the territory of Kentucky. We do not require Virginia to obtain Kentucky's concurrence when it relocates, but Virginia must notify Kentucky at the time Virginia begins operations on the state channels.

8. Notwithstanding this waiver, Virginia must continue to work in good faith with Kentucky to mitigate interference and minimize the effect of Virginia's operations on any future operations on the state channels in Kentucky. If and when Kentucky is prepared to license facilities on the former state channels pursuant to a modified regional plan, the Region 17 RPC may negotiate field strength values of its signals at the Virginia border, and Virginia and Kentucky must coordinate any future license applications for state channels to avoid interference conflicts at the border. In the interim, this waiver shall remain in effect and the Region 17 RPC shall protect Virginia's state channel operations as authorized herein.

IV. ORDERING CLAUSE

9. Accordingly, IT IS ORDERED, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.3 of the Commission's rules, 47 CFR § 1.3, that the instant waiver IS GRANTED WITH CONDITIONS.

10. 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.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm
Deputy Chief, Policy and Licensing Division
Public Safety and Homeland Security Bureau

¹⁴ 47 CFR § 90.529(e).

¹⁵ 47 CFR § 90.527(b).

¹⁶ *Supra* n.7.