

REGION-20 821 MHZ PUBLIC SAFETY LEGISLATIVE/REGULATORY AFFAIRS

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WIRELESS TELECOMMUNICATIONS BUREAU
PUBLIC SAFETY AND PRIVATE WIRELESS DIVISION
WASHINGTON, D.C. 20554**

In the Matter of)	DA 99-1812
)	
Washington, DC Metropolitan Area)	
Regional Public Safety Plan)	GN Docket No. 90-7
(Region-20))	
)	
Philadelphia Metropolitan Area)	
Regional Public Safety Plan)	GN Docket No. 89-573
(Region-28))	

**WRITTEN EX PARTE PRESENTATION:
REPLY COMMENTS**

Submitted by:

Region-20 821 MHz Public Safety Regional Plan Review Committee
Legislative/Regulatory Affairs
Dr. Michael C. Trahos, D.O., NCE, CET - Chairman
4600 King Street, Suite 6K
Alexandria, Virginia 22302-1249

September 23, 1999

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I. INTRODUCTION

1. Before the Federal Communications Commission (Commission) for consideration¹ are the **Written Ex Parte Presentation: Response Statement² (RESPONSE STATEMENT)** and **Second Addendum to the Petition to Amend the Region-20 821 MHz Public Safety Plan³ (SECOND ADDENDUM)** submitted by the Region-20 821 MHz Public Safety Regional Plan Review Committee (Region-20 RPRC or Region-20) pursuant to the conditional acceptance **ORDER** regarding the Region-20 and 28 Plans⁴. The following **REPLY COMMENTS** are hereby submitted in response to the State of Delaware (Delaware) **COMMENTS⁵** of September 17, 1999.

¹ **PUBLIC NOTICE**, DA-1812, September 3, 1999.

² **WRITTEN EX PARTE PRESENTATION: RESPONSE STATEMENT**, GN Dockets Nos. 90-7 & 89-573, Region-20 RPRC Legislative/Regulatory Affairs, September 2, 1999.

³ **SECOND ADDENDUM TOT HE PETITION TO AMEND THE REGION-20 821 MHZ PUBLIC SAFETY PLAN**, GN Docket No. 90-7, Region-20 RPRC Legislative/Regulatory Affairs, September 2, 1999.

⁴ **ORDER**, GN Docket Nos. 90-7 & 89-573, DA 96-2066, December 9, 1996, Paragraphs 10 (a) and 11.

⁵ **COMMENTS**, GN Docket Nos. 90-7 & 89-573 / DA 99-1812, State of Delaware, Office of Information Services, September 17, 1999.

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II. REPLY COMMENTS

2. Delaware states that, with the State of Maryland (Maryland) electing not to build a statewide system using 821-824/866-869 MHz (821 MHz band) frequencies, it does not wish to inadvertently foreclose any frequency assignment options by endorsing an allotment plan that may no longer reflect actual or future uses. This is particularly true given Delaware's potential need for additional frequencies to help enhance the coverage of its existing operational system.⁶ This assertion implies that Maryland's 821 MHz frequency give-backs[≡] to Region-20 would now be available to Delaware for their use⁷. Any such conclusion is absolutely false!

3. Pursuant to the Report and Order in GN Docket No. 87-112,⁸ (**NPSPAC Report & Order**) the Commission allocated the exact same number of 821 MHz band frequencies to each of the 55 Regions, including Regions 20 and 28. Once all these 821 MHz band frequencies have been allocated, a Region *cannot* look to a neighboring Region for a new source of 821 MHz frequencies.

4. Within Region-28, these 821 MHz band frequencies were/are allocated to Public Safety eligibles, such as Delaware, by the Commission designated Region-28 Planning Update Committee for the *intra*-regional construction of Public Safety communications systems. Delaware was allocated the proper number of frequencies necessary to construct a statewide system. Delaware's system has failed not for the lack of frequencies but for the improper design of the

⁶ **Ibid.**, Page 2.

⁷ **The News Journal**, Radio fix for NCCo elusive, by Steven Church - Staff Reporter, September 3, 1999, @ <http://www.delawareonline.com/news/story290399.shtml>

⁸ **REPORT AND ORDER**, GN Docket No. 87-112, FCC 87-359, 3 FCC Rcd 905 (1987).

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system from its conception, an issue currently before the Commission is a related proceeding.⁹

5. Region-20's Commission allocation of 821 MHz frequencies are for Region-20 Public Safety entities, not for Region-28 eligibles such as Delaware. As a result of its Third Application Filing Window, Region-20 has 12 applications requesting over 100 - 821 MHz channels. Region-20 requires its 821 MHz frequencies to fulfill *intra*-Region-20 Public Safety communications needs. Delaware, and Region-28, should not go looking outside its borders for a fix to the state's internal radio system design problems.

⁹ **MOTION FOR EMERGENCY INJUNCTIVE STAY**, Region-20 RPRC against the State of Delaware 821 MHz Station License Authorizations, December 12, 1996.

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6. Delaware expresses concern that Maryland's renewal applications of station authorizations WCFG-834, WCFG-842 and WCFG-858, and in particular channels 642, 678, 730 and 732, will result in co-channel interference to its statewide system.¹⁰ Delaware's concerns have been addressed in the **RESPONSE STATEMENT**.

7. As noted in the **RESPONSE STATEMENT**, after months of intensive deliberations between Regions 20, 28 & 36, an **Inter-Regional Channel Re-Assignment Agreement**¹¹ (**RE-ASSIGNMENT AGREEMENT**) resolution to all apparent *inter*-regional channel conflicts had been achieved. This **RE-ASSIGNMENT AGREEMENT** entails a multi-channel, multi-regional frequency resort, resulting in fifty-five (55) channel changes to Region-28's matrix, forty-one (41) channel changes in Region-36's matrix, and seven (7) channel changes in Region-20's matrix. These changes were based upon Region-20's Second Filing Window, Region-28's Fifth Filing Window, and Region-36's First Filing Window assignments.

8. Those channels listed by Delaware [642, 678, 730, & 732] are part of the **RE-ASSIGNMENT AGREEMENT**, thereby making Maryland's renewal applications conditional on the resolution of any co-channel conflicts as moot. However, all these supposed co-channel conflict resolutions are based upon the premise that constructed Public Safety systems must strictly

¹⁰ **Ibid.**, at Footnote 3, Page2.

¹¹ **Ibid.**, at Footnote 2, Attachment A.

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adhere to the 40 dBu F(95/95) emission contour 3-mile Aout-of-boundary≅ limitations pursuant to the Commission's Rules & Regulations and adopted Regional Plans.

III. CONCLUSION

9. Delaware's **COMMENTS** seemingly imply that Maryland's 821 MHz Agive-back≅ channels to Region-20 could be available to Delaware for their use. This assertion, as seemingly implied is incorrect. Any consideration by the Commission of permitting Delaware use of Region-20 821 MHz frequencies would be a violation of the **NPSAC Report & Order** and fundamentally ill-advised.

10. Delaware's concern for co-channel Maryland interference to their system has been addressed in the **RE-ASSIGNMENT AGREEMENT**, thereby making Maryland's renewal applications conditional on the resolution of any co-channel conflicts as moot. However, the supposed co-channel conflict resolutions are based upon the premise that all constructed Public Safety systems, including Delaware's, are in strict compliance with the Commission's Rules & Regulations and adopted Regional Plans.

11. With the submission of these **REPLY COMMENTS, RESPONSE STATEMENT, SECOND ADDENDUM, and EX PARTE PRESENTATIONS** of January 30, 1997 and August 21, 1998, Region-20 hereby fulfills the requirements of the conditional acceptance **ORDER**.

12. Region-20 requests Commission issuance of an unconditional **MEMORANDUM OPINION AND ORDER** acknowledging the acceptance of the Region-20 filings and the removal of all contingencies from the **ORDER** of December 9, 1996.

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13. Additionally and ***only*** upon issuance of an ***unconditional MEMORANDUM OPINION AND ORDER***, it is requested by Region-20 that the **PETITION FOR EMERGENCY DECLARATORY RULING¹²**, filed against Region-28, be withdrawn without prejudice.

14. Commission issuance of an ***unconditional MEMORANDUM OPINION AND ORDER*** in this matter is appreciated by Regions-20 and its constituents, and is in the **public interest**.

Respectfully submitted,

/s/ Michael C. Trahos, D.O., NCE, CET

Dr. Michael C. Trahos, D.O., NCE, CET
Chairman - Legislative/Regulatory Affairs
Region-20 821 MHz Public Safety RPRC

/s/ Stephen H. Souder

Mr. Stephen H. Souder
Chairman - Region-20 821 MHz Public Safety
Regional Plan Review Committee

MCT/SHS/mct

¹² **PETITION FOR EMERGENCY DECLARATORY RULING**, GN Docket No. 89-573, Region-20 Public Safety Review Committee, Legislative/Regulatory Affairs Committee, December 12, 1996.