

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of )  
 )  
Amendment of Part 90 ) WP Docket No. 07-100  
of the Commission's Rules )

**To: The Commission**

**COMMENTS OF THE METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA**

The Metropolitan Water District of Southern California ("MWD"), by its attorneys and pursuant to Section 1.415 of the Commission's Rules, hereby files these comments in response to the *Notice of Proposed Rulemaking* ("NPRM") in the above referenced proceeding.<sup>1</sup> The NPRM seeks comments on a broad array of proposals to streamline and improve the Part 90 rules. As discussed below, MWD seeks a simple but important clarification in the wording of the rules governing eligibility for the 700 MHz band public safety interoperability channels, to ensure that joint government entities such as MWD can obtain the spectrum needed to ensure the safe operation of public works projects.

**Statement of Interest**

MWD is a consortium of 26 cities and water districts that provides drinking water to nearly 18 million people in parts of Los Angeles, Orange, San Diego, Riverside, San Bernardino and Ventura Counties in California. MWD currently delivers an average of 1.7 billion gallons of water per day to a 5,200 square mile service area. It is vital that MWD be able to conduct such

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<sup>1</sup> *Notice of Proposed Rulemaking and Order*, WP Docket No. 07-100, 22 FCC Rcd. 9595, released May 14, 2007 (hereinafter "*NPRM*").

vast and critical operations in a safe manner. It is also vital that MWD be able to communicate with law enforcement, homeland security, and fire/rescue authorities, in the event of a natural or man-made disaster, or a terrorist threat. A series of events over recent years have underscored the importance of effective communications for governmental entities that control major public works:

1. Terrorist attacks on New York City and Washington, D.C. on September 11, 2001.
2. The accidental spilling of millions of gallons of raw sewage into the streets of Van Nuys, California during a June 17, 1999 “Y2K” readiness test gone awry.<sup>2</sup>
3. The discovery by law enforcement officials that terrorists have targeted major water works, such as dams.<sup>3</sup>
4. The collapse of the Interstate 35 West Bridge in Minneapolis on August 1, 2007.

### **The Commission Should Clarify Proposed Rule Section 90.523**

Because of the catastrophic consequences that would occur if the water supply for millions of American citizens were to be threatened, or control over other major public works were to be compromised, it is important to clarify that special government-created districts and authorities will be able to obtain licenses for the 700 MHz interoperability bands, so that these governmental entities can maintain communications with public safety and homeland security officials in the event of an emergency. Eligibility for the 700 MHz interoperability spectrum

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<sup>2</sup> See, e.g., ZDNet, “Early Y2K Bugs Aren’t All Fun and Games”, December 20, 1999, <http://news.zdnet.co.uk/security/0,1000000189,2075947,00.htm> (“In June, one of the largest Y2K tests spawned a potential health hazard, as four million gallons of raw sewage spewed onto Southern California streets. During testing at local reclamation plan, a computer shut a gate by mistake, backing up sewage into the city of Van Nuys.”).

should include districts and authorities such as MWD, that have an identified role in public welfare and safety activities, such as water treatment, delivery of water, power generation, and other functions that may be identified by the Department of Homeland Security or other government authorities as requiring communication with emergency services in an area-wide incident response.

Rule Section 90.523 defines eligibility for the 700 MHz public safety spectrum, and appears to be broad enough to include such districts and authorities. In particular, Section 90.523(a) provides that “[a]ny territory, possession, state, city, county, town or similar State or local governmental entity is eligible to hold authorizations in the 764-776 MHz and 794-806 MHz frequency bands.”<sup>4</sup> While MWD believes that a multi-jurisdictional water district would qualify as a “similar State or local governmental entity” under the above-quoted rule language, MWD notes that the Commission has been able to eliminate any doubt on this point elsewhere in the public safety spectrum rules. In particular, Rule Section 90.20, governing eligibility for the Public Safety Pool, contains wording very similar to proposed Section 90.523(a), but goes on to explicitly state in Section 90.20(a)(1)(i) that “a district and an authority” are included in the definition of a “similar governmental entity” eligible to hold authorizations in the Public Safety Pool. It is respectfully submitted that adding similar wording to proposed Section 90.523(a) would help to eliminate any room for confusion about eligibility for the 700 MHz interoperability channels.

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<sup>3</sup> See, e.g., USA Today, “Cyberspace Full of Terror Targets”, May 5, 2002, <http://www.usatoday.com/tech/news/2002/05/06/cyber-terror.htm>.

<sup>4</sup> The Commission has just shifted the Public Safety 700 MHz allocation by 1 MHz, to include the 763-775 MHz and 793-805 MHz bands. See *Second Report and Order*, WT Docket No. 06-150 *et seq.*, FCC 07-132, released August 10, 2007 at para. 11. MWD made a similar request for clarification of the Public Safety 700 MHz eligibility rule in that proceeding, by *Ex Parte* Comment filed April 18, 2007 in PS Docket No. 06-229, but the Commission did not address MWD’s request in the *Second Report and Order*.

The instant *NPRM* offers an appropriate vehicle to clarify Section 90.523. In paragraph 1 of the *NPRM*, the Commission states the purpose of this proceeding as follows:

By this Notice of Proposed Rulemaking and Order, we initiate a proceeding to propose miscellaneous rule changes to Part 90 of the Commission's Rules, and to related rules in other rule parts . . . We also solicit comment on other potential Part 90 rule changes, including suggestions to revise or eliminate provisions that are duplicative, outmoded or otherwise unnecessary. Finally, we take this opportunity to make certain minor editorial amendments to Part 90 to correct errors or omissions of publication, eliminate duplicative language, or conform them with other rule sections. This proceeding is part of our continuing effort to provide clear and concise rules that facilitate new wireless technologies, devices and services, and are easy for the public to understand.

It is respectfully submitted that the proposed clarification of Section 90.523 is precisely the type of "revision" or "minor editorial amendment" that the Commission contemplates, in order to make the Part 90 rules more effective and easier to understand.

#### **Conclusion**

In light of the foregoing, MWD requests that the Commission clarify Rule Section 90.523 to confirm that governmental districts and authorities are eligible for licensing in the 764-776 and 794-806 MHz bands.

Respectfully Submitted,

**METROPOLITAN WATER DISTRICT  
OF SOUTHERN CALIFORNIA**

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