

November 30, 2007

**FILED ELECTRONICALLY**

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte* Presentation in WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, WT Docket No. 96-86, and WT Docket No. 07-166

Dear Ms. Dortch:

Pursuant to Section 1.1206 of the Commission's rules, 47 C.F.R. § 1.1206, the Commonwealth of Virginia and Pierce Transit submit this notice of *ex parte* presentations in the above-captioned dockets.

On November 29, 2007, on behalf of the Commonwealth of Virginia, Lt. Colonel Robert G. Kemmler and Thomas Struzzieri, Virginia State Police; Bennett Blodgett, Commonwealth of Virginia, Office of Governor Tim Kaine; and Peter Broadbent, Christian & Barton; and on behalf of Pierce Transit, Louise Bray, Pierce Transit; Mark Rupp, State of Washington, Office of Governor Christine Gregoire; Martin L. Stern, K&L Gates; and Shannon Long, Simon and Company, attended meetings with: Angela E. Giancarlo, Legal Advisor to Commissioner Robert M. McDowell, and Bruce Gottlieb, Legal Advisor to Commissioner Michael J. Copps; and, with the exception of Mr. Rupp, a meeting with Erika Olsen, Deputy Bureau Chief and Jeff Cohen, Senior Legal Advisor, PSHSB.

At these meetings, representatives of the Commonwealth and Pierce Transit provided background, respectively on the buildout of the Commonwealth's new STARS communications system and Pierce Transit's new 700 MHz radio systems. They also discussed, as set forth more fully in the attached briefing paper, the impact on the Commonwealth and Pierce Transit, and on other 700 MHz public safety licensees, of the following aspects of the Commission's Second Report and Order in the referenced dockets, and the basis for reconsideration:

- The prohibition on existing public safety licensees from deploying any new narrowband equipment after August 30, 2007 on their licensed frequencies that are in the newly designated broadband segments of the 700 MHz band;
- The limitation on reimbursements for reconfiguration costs to only that equipment which was installed and in operation as of August 30, 2007; and
- The \$10 Million cap placed on aggregate reimbursements for reconfiguration costs to be paid to all incumbent 700 MHz public safety licensees.



**COMMONWEALTH OF VIRGINIA AND PIERCE TRANSIT  
PETITIONS FOR RECONSIDERATION**

**THE FCC SHOULD RECONSIDER ITS RECENT 700 MHZ ORDER IN LIGHT OF  
HUGE ADVERSE IMPACTS ON EXISTING 700 MHZ PUBLIC SAFETY LICENSEES  
IN THE MIDST OF DEPLOYING CRITICAL NEW SYSTEMS**

On August 10, 2007, the FCC released its Second Report and Order in the 700 MHz proceeding, revising the 700 MHz “band plan” and service rules in order to auction licenses for new commercial broadband services and a nationwide public safety broadband network. In establishing the new 700 MHz band plan, the Commission shifted the frequencies on which existing 700 MHz public safety licensees could operate, requiring the reconfiguration of their systems. Consistent with past rebanding efforts, the Commission sought to provide that existing licensees be made whole through reimbursement of their reconfiguration costs by the auction winner of a new commercial nationwide license for a block of spectrum to be used as part of a Public/Private Partnership with a new public safety nationwide broadband licensee.

Unfortunately, the Commission made no provision in its decision for the numerous existing 700 MHz public safety licensees, such as the Commonwealth of Virginia and Pierce Transit, that have not completed their network buildout and are in the process of deploying their networks. In particular, the Commission:

- Prohibited existing public safety licensees from deploying any new narrowband equipment after August 30, 2007 on their licensed frequencies that are in the newly designated broadband segments of the 700 MHz band;
- Limited reimbursements for reconfiguration costs to only that equipment which was installed and in operation as of August 30, 2007; and
- Placed a \$10 Million cap on aggregate reimbursements to be paid to all incumbent 700 MHz public safety licensees.

At this point, petitions for reconsideration of these aspects of the 700 MHz Second Report and Order, filed by Pierce Transit and the Commonwealth of Virginia, remain pending. In addition, waiver requests have been filed by numerous public entities in the midst of deploying their 700 MHz systems in order to avoid the harsh results of the Second Report and Order, including Pierce Transit, Virginia, the states of Arkansas, Colorado, Hawaii, Illinois, Louisiana, Nebraska, and New York, and a number of local public safety agencies. So far, the FCC has acted on Virginia’s request to continue deployment, but deferred all other aspects of the waiver (including reimbursement). The other waiver requests remain pending.

***ACTION REQUESTED:*** The Commission should expeditiously act on these petitions for reconsideration and waiver requests, and ensure that licensees that have already purchased equipment and are in the midst of deployment, can continue to deploy their systems and receive reimbursement for equipment deployed after August 30. The FCC should:

- Remove the \$10 million cap;
- Make clear that parties can continue to construct systems that have already been purchased and are in the process of deployment; (until relocation is necessary) and
- Allow full reimbursement for the reconfiguration of such systems, including for equipment deployed after August 30.

## **The Impact of the Second Report and Order on Existing Public Safety Licensees**

- The net impact of the Second Report and Order for the Commonwealth of Virginia, Pierce Transit and other public safety licensees that are in the midst of deploying new 700 MHz systems, is to either prevent deployment from proceeding, or to the extent continued deployment is permitted (as is expected), denying entities reimbursement for reconfiguration costs associated with equipment deployed after August 30.
- The August 30 deadline makes no allowance for public safety entities who are contractually bound to pay for and take delivery at a later date of systems that were under construction when the deadline fell. Public Safety agencies can only expend authorized funds for a project such as 700 MHz systems. In the event that the Commission does not allow reimbursement for equipment that has been paid for but not deployed as of August 30, there is significant uncertainty as to whether or how public safety agencies could even obtain the authorization needed or receive the funds necessary to pay for the relocation.
- Cost assumptions the FCC made in the course of adopting the \$10 Million reimbursement cap were speculative and according to party that submitted them, were not created for the purposes to which the FCC put them. Virginia alone expected to have relocation costs in excess of \$3 Million, and given numerous public safety licenses, there is a real possibility that relocation costs will greatly exceed \$10 Million cap. This raises the specter that the dozens of affected public organizations may be subject to either pro rata or first come, first serve reimbursements that cannot hope to fully compensate affected entities for their full relocation costs.
- The \$10 Million reimbursement cap in the Second Report and Order and the denial of reimbursement for equipment deployed after August 30 is a radical departure from well-established Commission precedent guaranteeing public safety entities relocated in the course of rebanding proceedings full compensation for the costs of their relocation by successful bidders in spectrum auctions.
  - Historically, new entrants to the spectrum are required to shoulder the costs of the involuntary relocations of the public safety entities to similar facilities, rather than requiring the public safety entities to bear the burden of their own involuntary relocation.
  - Here, the Commission ignored long-standing precedent and policy when it established the \$10 million cap on reimbursements based solely on the estimates of a single manufacturer, which itself has criticized the Commission's use of its estimates.