



December 7, 2007

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, DC 20554

RE: *700 MHz Service Rules and Band Plan, Second Report and Order, FCC 07-132 (rel. August 10, 2007), WT Docket No. 06-150, et al.*

Dear Mr. Chairman:

On behalf of the more than 1,500 member organizations of the American Public Transportation Association (APTA), I write regarding the 700 MHz Service Rules and Band Plan adopted in the referenced Second Report and Order (the "700 MHz Second Report and Order"), and ask your assistance in addressing the serious adverse impact that aspects of that decision will have on existing 700 MHz public safety licensees, such as Pierce Transit in Washington State, that are in the midst of deploying new 700 MHz public safety networks.

#### ***About APTA***

APTA is a non-profit international trade association of more than 1,500 public and private member organizations, including transit systems; planning, design, construction and finance firms; product and service providers; academic institutions; and state associations and departments of transportation. More than ninety percent of Americans who use public transportation are served by APTA member transit systems.

In establishing a new 700 MHz band plan to promote the creation of a nationwide public safety broadband network and to facilitate new commercial wireless broadband services, the commission shifted the frequencies on which existing 700 MHz public safety licensees could operate, requiring the reconfiguration of their systems. In addition, 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. In addition, while providing that reimbursement would be paid to the public safety licensees for their reconfiguration costs associated with the rebanding, the commission limited such reimbursements to only that equipment which was installed and in operation as of August 30, 2007. Finally, the commission placed a \$10 million cap on aggregate reimbursements to be paid to all incumbent 700 MHz public safety licensees.

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We understand that petitions for reconsideration of these aspects of the 700 MHz Second Report and Order have been filed by Pierce Transit, as well as the Commonwealth of Virginia. In addition, Pierce Transit, the Commonwealth, and numerous other public entities from around the country that are in the midst of deploying their 700 MHz networks, have filed waivers with the commission seeking permission to continue deploying their systems and the ability to obtain reimbursements for equipment deployed after August 30. We urge the commission to expeditiously act on these petitions and waivers, and ensure that licensees can continue to deploy their systems and receive reimbursement for equipment deployed after August 30. We also ask that the commission eliminate the \$10 million cap on total reimbursements.

The commission has long approached its various rebanding proceedings with an eye towards the public interest and the necessity of allowing public safety entities to fulfill their missions in protecting the safety and welfare of the public. In years past, the commission has actively sought to guarantee that public safety entities relocated in the course of rebanding proceedings were fully compensated for the costs of their relocation by successful bidders in spectrum auctions. It is only natural and equitable that new entrants to the spectrum be 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. Indeed, public safety entities are typically supported by taxpayer funds and simply do not have the private monetary or personnel resources to absorb relocation costs that are often placed upon them in the course of such proceedings.

Yet, the commission's recent order seems to depart from these well-reasoned standards, to the detriment of public safety entities across the nation. We note in particular that the commission's adoption of a cap of only \$10 million for all relocation costs 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 even a handful of affected entities for their full relocation costs. Indeed Virginia alone estimates its relocation costs to be well in excess of \$3 million, Pierce Transit's costs could approach \$1 million, and there are numerous other licensees that will likewise be incurring reconfiguration costs.

Furthermore, the August 30 deadline is unduly harsh with respect to entities like Pierce Transit, that have completely paid for their systems, but are in the midst of deployment, essentially both preventing deployment from proceeding, and denying entities reimbursement for reconfiguration costs associated with equipment deployed after August 30. Coupled with the surprising contents of the order and its departure from earlier commission practices, these deadlines compound the injuries suffered by these public entities.

Pierce Transit's current 900 MHz radio system is now over 17 years old and is experiencing multiple failures that have, so far, been repairable. The safety of its riders (approximately 16,000,000 boarding passengers recorded during the year), and 900+ operators and employees, is dependant on maintaining reliable communications between

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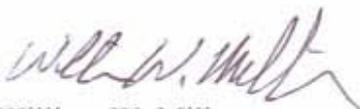
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their vehicles and field supervisors. Pierce Transit is also a lead agency in Pierce County's emergency response plan. Their ability to participate with other first responders in the event of a natural disaster or other emergency could be compromised if delays to this project lead to the failure of their existing system.

We are aware that numerous public safety entities, trade associations, manufacturers, and a number of states have filed requests for waivers and/or support reconsideration of the commission's order. We are concerned by the implications of the commission's order, and the impacts it has had and will continue to have on public safety licensees. Given the extensive and largely uniform response to the commission's order requesting that the commission reconsider its order and grant the relief sought, we encourage the commission to focus its attention on ensuring that public safety entities are not harmed, and indeed made whole, in the course of the reconfiguration activities required by the rebanding scheme adopted in the 700 MHz Second Report and Order.

We appreciate your attention to this matter. For additional information, please contact James LaRusch of APTA's Executive Office at (202) 496-4808 or email [jlarsch@apta.com](mailto:jlarsch@apta.com).

Sincerely yours,



William W. Millar  
President

cc: Commissioner Michael J. Copps  
Commissioner Jonathan S. Adelstein  
Commissioner Deborah Taylor Tate  
Commissioner Robert M. McDowell