

**Before the
Federal Communications Commission
Washington, D.C. 20054**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and)	WT Docket No. 06-150
777-792 MHz Bands)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the)	
700 MHz Band)	

COMMENTS OF THE COMMONWEALTH OF VIRGINIA

The Commonwealth of Virginia, by its counsel, hereby submits comments in response to the Second Further Notice of Proposed Rulemaking¹ in the above matter (“Second FNPRM”).

INTRODUCTION

While the Commission has asked for a range of comments on a number of 700 MHz issues, the focus of the comments by the Commonwealth of Virginia (“Commonwealth”) will be on narrowband relocation (paragraph 176-182 of the Second FNPRM), though other issues related to 700 MHz administration will also be addressed.

BACKGROUND

The Commonwealth is in the process of implementing the Statewide Agencies Radio Systems (“STARS”) to create a new statewide, state of the art interoperable system to support public safety and homeland security needs.

The Commonwealth signed a final contract with Motorola in July 2004 for over \$329 million to construct STARS on a turnkey basis. With amendments related to specific tower sites, adding two new participating agencies, and additional subscribers,

¹ Adopted and released May 14, 2008, with notice published at 73 Fed. Reg. 29582 (May 21, 2008).

the cost is now in excess of \$338 million, with no allowances for the addition of new projects. STARS facilitates interoperability between 22 participating state agencies, federal agencies, and 134 local communications systems in Virginia. STARS utilizes 700 MHz portable radios and vehicular repeaters, all in the portion of 700 MHz spectrum now licensed for public safety purposes that is to be reclaimed by the FCC.

On August 10, 2007, the FCC released its Second Report and Order in the 700 MHz proceeding², 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 attempted to make provision for existing licensees to be made whole through reimbursement of their reconfiguration costs, in this case by the auction winner for the new public safety nationwide broadband license.

Unfortunately, the Commission made inadequate provisions in its decision for an existing 700 MHz public safety licensee, such as the Commonwealth of Virginia, that had a large network build-out and was in the process of deploying its network. 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;

² PS Docket No. 06-229, WT Docket No. 96-86, Second Report and Order, 22 FCC Rcd 15289 (2007)

- Limited reimbursements for reconfiguration costs to 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.

The net effect would have been to block further deployment of STARS, and prevent the Commonwealth from recovering most of its very significant reconfiguration costs.

The Commonwealth filed a waiver request³ on August 30, 2007, and a Petition for Reconsideration⁴ on September 24, 2007, asking the Commission to grant the Commonwealth a waiver or reconsider these three issues. The Commonwealth also filed Joint Reply Comments⁵ with Pierce Transit on October 26, 2007. While the Commission granted a very limited temporary waiver to the Commonwealth in November, 2007 to allow it to continue some equipment installation⁶, the Commonwealth has otherwise not received any relief from the Commission. The Commonwealth met with Commission staff later in November, and filed a statement for the record⁷ in advance of the D block auction in February, 2008, seeking to focus Commission attention on the Commonwealth's concerns.

The Commonwealth has now reached a crisis point in its efforts to comply with rebanding, since its vendor, Motorola, is insisting on a contractual commitment at a price of approximately \$2.9 million before Motorola and its subcontractors will begin any

³ Letter from Captain John E. Furlough, Communications Officer, Virginia State Police to Marlene Dortch, Secretary, FCC.

⁴ Petition for Reconsideration, PS Docket No. 06-229, WT Docket No. 96-86

⁵ Joint Reply Comments, PS Docket No. 06-229, WT Docket No. 96-86

⁶ Order, adopted and released November 14, 2007, FCC 07-195

⁷ Statement for the Record in PS Docket No. 06-229, WT Docket No. 96-86, filed January 23, 2008

STARS hardware or software rebanding development. This \$2.9 million amount does not include other sizable 700 MHz configuring expenses which the Commonwealth will incur (and which would qualify for reimbursement in the context of 800 MHz rebanding). Without assurances that the Commission will permit reimbursement for equipment installed after August 30, 2007, and will waive its \$10 million national cap, the Commonwealth cannot enter into a new rebanding contract with Motorola, since the state budget provides no new funding for this very material expense. When the Commonwealth requested a waiver from the Commission in August, 2007 it believed that Motorola could complete statewide STARS 700 MHz reconfiguration by January 2009. Due to the lack for a response from the Commission on the key question of reimbursement, and new information from Motorola on the complexity of the hardware replacement which STARS rebanding will require (including at least four months for prototype development), it is now clear that Virginia will not be able to reband until well over one year after the FCC assures the Commonwealth of full reimbursement and a Motorola contract can be negotiated and signed.

Due to the uncertainties of the time necessary for the design and development of new equipment by Motorola and its subcontractor Futurecom, and the phased replacement of hardware (requiring three to four hours of garage time for each of our 2900 vehicles which will be necessary to keep Virginia State Police and other public safety units available and on the state highways at all times), the Commonwealth will need the maximum latitude possible to accomplish rebanding without harming public safety needs. The Commonwealth will therefore need to use its existing 700 MHz

frequencies until at least such time as an auction winner needs to use the frequencies in Virginia.

DISCUSSION

1. Relocation Expenses.

The Commonwealth believes that the \$10 million cap on reimbursement expenses established by the Commission in the Second Report and Order was clearly inadequate. The Commission relied upon one letter from Motorola estimating the nationwide 700 MHz rebanding costs at \$6 million, and then added on a \$4 million allowance for overages or errors, leading to a \$10 million cap figure⁸. Motorola has effectively repudiated that single estimate letter, in comments filed in support of the Commonwealth and Pierce Transit, noting that its initial cost estimates for rebanding were “imperfect and subject to change” and that when it submitted this imperfect number it expressly made clear its view that the “actual costs should in fact be reimbursed”.⁹

The Commission has suggested that parties filing comments in this proceeding provide specific data and cost estimates regarding relocation expense “particularly taking into account the certifications filed in the docket pursuant to the Second Report and Order”.¹⁰

The Commonwealth would respectfully suggest, as a matter of principle, that no “cap” on public safety relocation costs is appropriate given the very substantial proceeds

⁸ Second Report and Order ¶ 333, 341-343.

⁹ Comments of Motorola, Inc. in Support of the Petitions for Reconsideration of the Commonwealth of Virginia and of Pierce Transit, WT Docket No. 06-150, PS Docket No. 06-229, WT Docket No. 96-86 (filed October 17, 2007) at 5.

¹⁰ Second FNPRM ¶ 180. The Commonwealth is not aware that the Commission has ever released any composite report on these certifications, or any Commission estimate as to the total relocation costs represented by the equipment included under these certifications. Consequently, it is not clear how the Commonwealth has the necessary information to take these certifications into account.

which will be realized from this D Block auction. If public safety entities are being required to vacate spectrum to make way for commercial users, then the commercial users should pay the full relocation costs of the public safety entities, who generally lack budget flexibility or surplus funding to allow them to absorb these costs.

The Commission has had ample experience with 800 MHz rebanding, and the Commonwealth believes that 700 MHz relocation costs and 800 MHz relocation costs should be comparable (the Commonwealth's 800 MHz relocation costs are projected as \$4.5 million (subject to negotiations with Nextel and Motorola which are pending); and that would suggest a rough order of magnitude cost to be \$7 million for 700 MHz relocation costs for the Commonwealth). In fact, the Commonwealth's contractor, Motorola, has estimated that its hardware upgrade costs alone will be \$2.9 million for 700 MHz relocation for the Commonwealth, exclusive of firmware, new codeplugs, consultant, and internal costs incurred by the Commonwealth which are reimbursable under 800 MHz rebanding. STARS did not need the vehicular repeaters updated for 800 MHz rebanding as it will for 700 MHz relocations and therefore the total cost is accordingly higher.

However, anecdotal information suggests that while the Commonwealth (and Pierce Transit) were seriously adversely impacted by the Second Report and Order, that no public safety entities other than the Commonwealth and Pierce Transit were caught in the middle of implementing a large-scale, new 700 MHz system requiring waivers for extended implementation schedules.

2. Relocation Date.

The Second Report and Order required that public safety operations be consolidated and cleared no later than the DTV transition date, February 17, 2009.¹¹

The Commonwealth, when it filed its waiver request¹² and petition for reconsideration¹³ early in the fall of 2007, hoping for prompt and permanent Commission relief, believed then that if it received such relief, it could relocate by January 2009.

Unfortunately, two events occurred which make that impossible. First, and most importantly, as Motorola and its subcontractor Futurecom have begun to study the technical aspects of relocation, in addition to software changes, and equipment hardware changes involving at least 2900 public safety vehicles, Motorola and its subcontractor Futurecom will have to design or develop a new filter, with at least four months of prototype development¹⁴ and a year or more for manufacturing and deployment¹⁵, all at a cost of \$2.9 million. Secondly, this sixteen-month lead time period cannot start until Motorola is assured it will receive payment of its \$2.9 million estimate; and until the Commission advises that such relocation costs will be paid for, the Commonwealth has no source of funding, so the project cannot begin. The Commonwealth is also very concerned that design and development of the new hardware may well take Motorola and its subcontractor Futurecom more than four months. Time will also have to be allowed to

¹¹ Second Report and Order ¶ 332.

¹² Letter from Captain John E. Furlough, Communications Officer, Virginia State Police, to Marlene Dortch, Secretary, FCC, filed August 30, 2007.

¹³ Petition for Reconsideration, PS Docket No. 06-229, WT Docket No. 96-86, filed September 24, 2007

¹⁴ A suitable equipment upgrade must be developed to function in the entire consolidated band, including resolution of co-ordination with surrounding states and other interference concerns.

¹⁵ The Commonwealth has been advised by its contractor, Motorola, that approximately 3 to 4 hours of garage time will be required for each of over 2900 vehicles, involving difficulties in both vehicle scheduling and a rotation of spare parts. Equipment change-outs also must be co-ordinated with 800 MHz rebanding, and several 2 GHz relocation projects. The Commonwealth is working diligently to co-ordinate these concurrent demands as it builds out its STARS system, but proper implementation will take time to protect public safety.

negotiate and finalize the Motorola contract once there is an assurance of relocation funding.

Since no equipment solution presently exists, the Commonwealth will need to continue installing new 700 MHz equipment in the existing bands until a relocation solution can be developed and implemented.

Consequently, all that the Commonwealth can say at this point is that it will need between 16 and 24 months to relocate, once it has been assured that all its relocation costs will be repaid. Again since anecdotal evidence suggests that the Commonwealth may be the only large state agency caught in middle of a statewide public agency radio system deployment utilizing the 700 MHz band, its situation may be unique¹⁶; and the Commission may be able to craft a general rule for public safety agencies and a special transition rule for statewide public safety systems applicable to the Commonwealth. The Commonwealth would suggest that under a specific rule for large statewide agency transition, that it will relocate operations after January 1, 2010, only as the new commercial network is deployed in Virginia, and on at least six months notice given by the licensee after that date (i.e., commencing on or after June 30, 2010). If the Commission is unwilling to establish such a mechanism by rule, then the Commonwealth would request that the Commission confirm that it will liberally grant waivers of any transition date where a large statewide public safety agency such as the Commonwealth cannot meet a relocation deadline due to technological or logistical constraints.

3. Reimbursement Mechanism.

¹⁶ The Commonwealth understands that the much smaller Pierce County 700 MHz system has now been fully installed.

The Commission has asked whether changes should be made to the trust fund mechanism, administered by the Public's Safety Broadband Licensee, including how such mechanism would function without a cap and reimbursement mechanics.

The Commonwealth is inclined to believe that the proposed administrative rule of the Public Safety Broadband Licensee would not be the most efficient way to operate the trust fund process.

While the Public Safety Broadband Licensee could hold a deposit of estimated reimbursement funds as a trustee, the Commonwealth believes that the D Block Licensee should deal directly with the public safety entity, subject to Commission guidance.

Commission experience with 800 MHz rebanding should provide a sufficient knowledge base to establish Commission guidelines for the D Block licensee to follow. The D Block licensee should be required to deposit a Commission estimate of total reimbursement costs in trust as part of its bid, but remain liable if public safety relocation costs were incurred beyond the estimate.

Public safety entities seeking reimbursement could provide actual cost numbers for relocation to the D Block Licensee, using the same expense parameters as in 800 MHz rebanding, with requirements of prompt action on reimbursement requests, and availability of Commission staff to resolve disputes.

The Commonwealth does not believe that the Public Safety Broadband Licensee will have any leverage to negotiate terms with equipment and technology vendors, but would quickly become mired in the details of frequency co-ordination issues and specific equipment performance issues which will be different for each public safety system. The engineering and frequency management staff of some public safety licensees have the

ability and system knowledge to deal with specific issues in each respective jurisdiction directly with equipment manufactures and the D Block licensee without the overlay of Public Safety Broadband Licensee intervention. It is not advisable for the Public Safety Broadband Licensee to attempt to create a solution for licensees.

4. August 30, 2007 Cut-off Date for Reimbursement.

For the reasons noted in its waiver¹⁷, Petition for Reconsideration¹⁸ and Joint Reply Comments¹⁹, the Commonwealth believes that any absolute August 30, 2007 cut-off date was inappropriate for systems which had already entered into contractual commitments for system deployment as of the date of the Second Report and Order.

The Commonwealth appreciates the desirability of the Commission fixing a cut-off date, and has no objection to an August 30, 2007 deadline *per se*, but believes that any August 30, 2007 date must apply both to equipment installed as of that date, and contracted for as of that date.

The Commonwealth originally hoped that this matter could be resolved quickly by a waiver process, and filed a waiver request on August 30, 2007²⁰, but the Commission initially declined to take this approach. Instead, in its Order²¹ responding to the Commonwealth's waiver request, the Commission chose to grant only interim relief, pending consideration of the Commonwealth's Petition for Reconsideration. If the Commission now elects to grant the Commonwealth full relief by waiver, rather than by rule, the Commonwealth will be grateful under either circumstance.

¹⁷ Letter from Captain John E. Furlough, Communications Officer, Virginia State Police to Marlene Dortch, Secretary, FCC, dated August 30, 2007.

¹⁸ Petition for Reconsideration, PS Docket No. 06-229, WT Docket No. 96-86 filed September 24, 2007

¹⁹ Joint Reply Comments, PS Docket No. 06-229, WT Docket No. 96-86 filed October 26, 2007

²⁰ Letter from Captain John E. Furlough, Communications Officer, Virginia State Police to Marlene Dortch, Secretary, FCC.

²¹ FCC 07-195, released November 14, 2007, 23 FCC Rcd 20290 (2007)

5. Role of the Public Safety Broadband Licensee and D Block Licensee.

In response to other issues raised in the Second FNPRM, it is the position of the Commonwealth that:

- Eligible public safety users should not be required to subscribe to the public safety broadband network for service. (Paragraph 37)
- Public safety users should be entitled to receive the lowest rate that the D Block licensee offers to its commercial users for analogous service. (Paragraph 132)
- The Public Safety Broadband Licensee should not have the latitude to construct and operate the shared wireless broadband network using the entire 20 megahertz of D Block spectrum and public safety broadband spectrum as a combined, blended resource. (Paragraph 80)
- Use of the public safety broadband network by public safety users should be free (Paragraph 131-134). We note that most counties and cities do not even have mobile computers in their patrol vehicles today, let alone any applications or funding for broadband.
- The Public Safety Broadband Licensee should not be authorized to choose a minimum standard for any public safety broadband operation. (Paragraph 121)
- State governments are better situated to address and coordinate implementation challenges of public safety users within a state than the Public Safety Broadband Licensee. (Paragraph 52)
- The Commission should continue to require that the D Block licensee provide the Public Safety Broadband Licensee with priority access, during emergencies, to the spectrum associated with the D Block license. (Paragraph 85)

CONCLUSION

The Commonwealth respectfully requests that the Commission remove any reimbursement cap (or establish a new estimate of liability based on 800 MHz relevant cost experience), allow the owner of a statewide radio public safety system (such as the Commonwealth) to obtain reimbursement for all of its costs incurred in this installation for a statewide public safety radio system which was contracted for and in the process of construction and implementation as of the date of the Second Report and Order, and provide an extended and flexible date for relocation, and permit continued authorization and deployment of statewide public safety radio equipment in Channels 63 and 69 and the upper one megahertz of Channels 64 and 69 until such time as new equipment can be developed and deployed. (and not before June 30, 2010)

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA

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CERTIFICATE OF SERVICE

I hereby certify that on this 19th day of June, 2008, a copy of the foregoing
Comments of the Commonwealth of Virginia were sent by email to each of the persons
listed on the attached service list.



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