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PUBLIC SAFETY AND HOMELAND SECURITY BUREAU INVITES COMMENTS ON REGION 7 (COLORADO) REVISED 700 MHZ REGIONAL PLAN

PS Docket No. 06-229; WT Docket 02-378

Comments Due: July 17, 2008
Reply Comments Due: July 28, 2008

Introduction. On January 30, 2008, the Region 7 (Colorado)[1] 700 MHz Regional Planning Committee (Region 7) submitted a revised 700 MHz Public Safety Plan (Revised Plan) for General Use[2] spectrum in the 769-775/799-805 MHz band.[3] Region 7 also requested waiver of Section 90.527(a)(5) of the Commission rules because it was unable to coordinate the Revised Plan with two adjacent regions: Region 34 (Oklahoma) and Region 52 (Texas-Lubbock). Section 90.527(a)(5) provides that regional plans must include an explanation of how the plan had been coordinated with adjacent regions.[4]

On April 11, 2008, Region 7 resubmitted its Revised Plan to cure certain deficiencies identified upon initial review. In addition, on June 17, 2008, pursuant to 90.527(a)(8),[5] Region 7 submitted a certification by the regional planning Chair that all planning committee meetings, including subcommittee or executive committee meetings, were open to the public.[6]

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[1] The Region 7 (Colorado) regional planning area includes sixty-four counties, and two federally recognized Tribal Nations, the Ute Mountain and the Southern Ute tribes.

[2] The General Use spectrum is administered by regional planning committees (RPCs) and is licensed for public safety services on a site-by-site basis in accordance with the relevant Commission-approved regional plan and frequency coordination.

[3] *See* Letter from Emery Reynolds, Chairman, Region 7 700 MHz Regional Planning Committee, to Office of the Secretary, Federal Communications Commission, WT Docket No. 02-378, (filed Jan. 30, 2008) (Revised Plan and Waiver Request). The Region 7 Plan was initially submitted to the Commission on April 26, 2007.

[4] *See* 47 C.F.R. § 90.527(a)(5) (each regional planning committee must provide an explanation of how the plan has been coordinated with adjacent regions); *see also*, Revised Plan Appendix N – Adjacent Region Concurrence Waiver Request.

[5] *See* 47 C.F.R. § 90.527(a)(8) (stating that a certification by the regional planning chairperson that all planning committee meetings, including subcommittee or executive committee meetings, were open to the public, must be included in the regional plan).

[6] *See* Letter from Emery Reynolds, Chairman, Region 7 700 MHz Regional Planning Committee, to Office of the Secretary, Federal Communications Commission, WT Docket No. 02-378, (filed Apr. 11, 2008) (resubmitting Revised Plan and Waiver Request); *see also,* letter from Emery Reynolds, Chairman, Region 7 700 MHz Regional Planning Committee, to Office of the Secretary, Federal Communications Commission, WT Docket No. 02-378, (filed June 17, 2008) (submitting certification that all RPC meetings were open to the public).

Background. In 1998, the Commission established a structure to allow RPCs optimal flexibility to meet state and local needs, encourage innovative use of the spectrum, and accommodate new and as yet unanticipated developments in technology and equipment.[7] There are fifty-five RPCs, and each committee is required to submit its plan for the General Use spectrum.[8] The Commission's role in relation to the RPCs is limited to (1) defining the regional boundaries; (2) requiring fair and open procedures, *i.e.*, requiring notice, opportunity for comment, and reasonable consideration; (3) specifying the elements that all regional plans must include; and (4) reviewing and accepting proposed plans (or amendments to approved plans) or rejecting them with an explanation.[9]

The Commission expects RPCs to ensure that their committees are representative of all public safety entities in their regions by providing reasonable notice of all meetings and deliberations. Further, regional plans must include an explanation of how all eligible entities within the region were given such notice.[10] For the initial meeting, called by the convenor to form the RPC and hold elections, the Commission requires at least sixty days notice.[11] In developing their regional plans, RPCs must ensure that their proposed plans comply with the rules and policies governing the 700 MHz public safety regional planning process.[12] We also encourage the RPCs to consider utilizing the guidelines developed by the Public Safety National Coordination Committee (NCC).[13] RPCs may approach the assignment of the spectrum differently, *e.g.*, by making specific assignments to eligible public safety entities, or by establishing an allotment pool approach based on political boundaries such as counties.

On July 31, 2007, the Federal Communications Commission (Commission) adopted a *Second Report and Order* revising the rules governing wireless licenses in the 700 MHz band.[14] The Commission adopted a plan for the 700 MHz band to establish a nationwide, interoperable public safety broadband communications network for the benefit of state and local public safety users. The Commission designated the lower half of the 700 MHz public safety band for broadband communications

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[7] *See* 47 C.F.R. § 90.527; *see also* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking,* 14 FCC Rcd 152 (1998) (*First Report and Order*); *Second Memorandum Opinion and Order*, 15 FCC Rcd 16844 (2000).

[8] *See* 47 C.F.R. § 90.527. Each RPC must incorporate certain common elements into its 700 MHz plan. A list of 700 MHz RPCs and region activities is available at http://www.fcc.gov/pshs/public-safety-spectrum/700-MHz/.

[9] *First Report and Order*, 14 FCC Rcd at 195 ¶ 87.

[10] *Id.* at 193-94 ¶ 84. RPCs must promptly adopt operating procedures that "ensure that all entities will be given reasonable notice of all committee meetings and deliberations." *Id.* at 195 ¶ 86.

[11] *Id.* at 195 ¶ 86 & n.220.

[12] 47 C.F.R. § 90.527; *see also First Report and Order,* 14 FCC Rcd at 190-96 ¶¶ 77-89.

[13] The NCC was a federal advisory committee established by the Commission in 1999 to address and advise the Commission on operational and technical parameters for use of the 700 MHz public safety band. In addition, the NCC was tasked with providing voluntary assistance in the development of coordinated regional plans, and developed a *Regional Planning Guidebook.* Following the sunset of the NCC's charter on July 25, 2003, the National Public Safety Telecommunications Council (NPSTC) agreed to continue to provide assistance to regional planners. A copy of the 700 MHz Regional Planning Guidebook is available at the NPSTC website http://www.npstc.org/documents.html.

[14] Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*).

(763-768/793-798 MHz) and consolidated existing narrowband allocations in the upper half of the public safety 700 MHz band (769-775/799-805 MHz).

In revising the band plan for the public safety 700 MHz band, the Commission noted that consolidating the narrowband channels in the upper part of the band will impact approved and pending 700 MHz regional planning committee (RPC) plans (*i.e.* require that the plans be amended).[15] The Commission required RPCs with approved plans or plans on file to submit amended plans consistent with the decisions adopted in the *Second Report and Order* by November 23, 2007.[16] On November 9, 2007, the Public Safety and Homeland Security Bureau (the Bureau) extended the deadline for RPCs to submit amended plans, consistent with the decisions adopted in the *Second Report and Order,* to January 31, 2008, and provided additional guidance for the development of plan amendments.[17] In a Public Notice released December 27, 2007, the Bureau subsequently provided further guidance with respect to the submission of amended RPC plans.[18]

Region 7 700 MHz Revised Plan. The Revised Plan makes the following changes:

- Replaces references to the former 700 MHz General Use frequencies with the consolidated narrowband voice channels in 769-775 MHz and 799-805 MHz band;[19]
- Deletes references to the assignment of wideband channels;[20] and
- Modifies Appendix I – Interoperability Channels to reflect the *Second Report and Order* new consolidated narrowband frequencies.[21]

The Region 7 Revised Plan also pre-allocates the consolidated narrowband General Use spectrum by county and where appropriate, by metropolitan area.[22] In addition, Region 7 obtained the required Interregional Coordination Procedures and Procedures for Resolution of Disputes agreements from all

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[15] *Id.* at 15414 ¶ 346.

[16] As of the adoption date of the *Second Report and Order*, the following regional plans had been approved: Region 5 (Southern California), Region 19 (New England), Region 24 (Missouri), Region 22 (Minnesota), Region 12 (Idaho), Region 39 (Tennessee), Region 43 (Washington), Region 41 (Utah), Region 3 (Arizona), and Region 40 (Northern Texas). The following regional plans were pending as of the adoption date of the *Second Report and Order*: Region 1 (Alabama), Region 27 (Nevada), Region 45 (Wisconsin), Region 7 (Colorado), Region 9 (Florida), Region 16 (Kansas), and Region 20 (Northern Virginia, Maryland and the District of Columbia).

[17] *See* Public Safety and Homeland Security Bureau Announces an Extension of the Deadline for 700 MHz Regional Planning Committees to Amend 700 MHz Narrowband Plans from November 23, 2007 to January 31, 2008, PS Docket No. 06-229, WT Docket No. 96-86, *Public Notice,* 22 FCC Rcd 19461 (PSHSB 2007).

[18] *See* Public Safety and Homeland Security Bureau Reminds 700 MHz Regional Planning Committees of the January 31, 2008 Deadline to Amend 700 MHz Narrowband Plans and Provides Further Guidance, PS Docket No. 06-229, WT Docket No. 96-86, *Public Notice*, 22 FCC Rcd 21889 (PSHSB 2007) (*Further Guidance PN*).

[19] *See* Revised Plan at 5.

[20] *See* Revised Plan, Section 8.5 - Wideband Data (this section was deleted).

[21] *See* Revised Plan, Section 7.0 Interoperability Channels.

[22] *See* Revised Plan, Appendix L – Frequency Pre-Allotments. The Denver Metropolitan area consists of eleven counties: Adams, Arapahoe, Boulder, Broomfield, Clear Creek, Denver, Douglas, Elbert, Gilpin, Jefferson and Weld.

eight adjacent regions.[23] To date, however, while Region 7 obtained concurrences from six of the eight adjacent regions,[24] it has yet to obtain the necessary concurrences from Region 34 and Region 52.[25] In this respect, the Bureau emphasized in the *Further Guidance PN* the importance of obtaining all required concurrences:

> We strongly urge all RPCs to fulfill their responsibilities as narrowband 700 MHz spectrum administrators by responding to requests for adjacent region review and concurrence quickly and efficiently. Regions should strive to avoid causing any undue delay to a region seeking review or concurrence. Such delays in inter-regional cooperation would unduly delay those agencies actively deploying 700 MHz systems, many of which may be awaiting additional channel assignments, pursuant to a Commission-approved plan, in order obtain FCC authorization.[26]

While Region 7 submitted a properly supported waiver request, including evidence of distribution of the Revised Plan to adjacent regional chairs,[27] nevertheless, now six months after the *Further Guidance PN* was released, Region 7 continues to require concurrence from adjacent regions. Accordingly, we fully expect Region 7 to obtain these remaining concurrences as soon as possible, and again encourage those regions with outstanding requests for their concurrence to be responsive in a prompt manner.

In sum, we have reviewed the Region 7 Revised Plan and, noting the waiver request regarding outstanding adjacent region concurrences and our expectation of resolution, find it to be compliant with the applicable Commission rules and policies, and tentatively accept the Revised Plan.

Prior to taking further action on the Revised Plan, by this Public Notice, we solicit comments on the Revised Plan. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on the Region 7 700 MHz Revised Plan on or before **July 17, 2008**, and reply comments on or before **July 28, 2008.** All comments and reply comments should reference the subject Revised Plan and **PS Docket No. 06-229** and **WT Docket No. 02-378.** Comments and reply comments may be filed by using (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 FR 24121 (1998).

- Electronic Filers: Comments and reply comments may be filed electronically using the Internet by accessing the ECFS: http://www.fcc.gov/cgb/ecfs or the Federal eRulemaking

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[23] *See* Revised Plan, Appendix G - Interregional Coordination Procedures and Procedures for Resolution of Disputes That May Arise under FCC Approved Plans.

[24] *See* Revised Plan, Appendix H - Adjacent Regions Approvals. We note that Region 46 (Wyoming), conditioned its concurrence as follows: "Colorado (Region 7), when applying for 700 MHz frequency licenses within 100 miles of the Wyoming border, will provide technical documentation showing that the frequencies and area applied for will not interfere with the new Wyoming CAPRAD allocated frequencies. If the frequencies applied for do interfere, Colorado will rescind the frequency license request." *See* Tab 7 to Appendix H (January 22, 2008 letter from Mark Joiner, Chair, Region 46, to Emery L. Reynolds, Chair, Region 7).

[25] We note that while Colorado has indicated that it has received concurrence from Oklahoma, it has yet to be filed with the Commission.

[26] *Further Guidance PN*, 22 FCC Rcd at 21891.

[27] *See id.*

Portal: http://www.regulations.gov. Filers should follow the instructions provided on the website for submitting comments.

- For ECFS Filers: In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an email to ecfs@fcc.gov and include the following words in the body of the message: "get form." A sample form and directions will be sent in response.

- Paper Filers: Parties who choose to file by paper must file an original and four copies of each filing.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail (although the Commission continues to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to: Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, NE, Suite 110, Washington, D.C. 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes must be disposed of before entering the building.

- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.

- U.S. Postal Service first-class, Express, and Priority mail should be addressed to 445 12th Street, SW, Washington, D.C. 20554.

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All filings must be addressed to the Commission's Secretary, Marlene H. Dortch, Office of the Secretary, Federal Communications Commission, 445 12th Street, SW, Washington, D.C. 20554. Parties must also serve one copy with the Commission's copy contractor, Best Copy and Printing, Inc. (BCPI), Portals II, 445 12th Street, SW, Room CY-B402, Washington, D.C. 20554, (202) 488-5300, or via email to fcc@bcpiweb.com.

The Revised Plan is available through ECFS at ecfs@fcc.gov. Region 7 Plan documents in **PS Docket No. 06-229** and **WT Docket No. 02-378** are available for public inspection and copying during business hours at the FCC Reference Information Center, Portals II, 445 12th St. SW, Room CY-A257, Washington, D.C. 20554. The documents may also be purchased from BCPI, telephone (202) 488-5300, facsimile (202) 488-5563, TTY (202) 488-5562, email fcc@bcpiweb.com.

For further information regarding this matter, contact Jeannie Benfaida, Policy Division, Public Safety and Homeland Security Bureau at (202) 418-2313 or Jeannie.Benfaida@fcc.gov.

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