

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

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

**REPLY COMMENTS OF THE COMMONWEALTH OF VIRGINIA**

The Commonwealth of Virginia, by its counsel, hereby submits reply comments in response to comments filed by other parties in the Third Further Notice of Proposed Rulemaking<sup>1</sup> in the above matter (“Third FNPRM”).

**INTRODUCTION**

The issues raised in the above dockets have produced numerous comments, but none of those comments have opposed the reimbursement relief requested by the Commonwealth of Virginia (“Commonwealth”), and a number have expressed concerns that the reimbursement cap proposed by the Commission does not have a sound factual basis, and is unrealistically low.

**BACKGROUND**

As outlined in detail by the Commonwealth in its Comments<sup>2</sup> to the Third FNPRM, the Commonwealth now has reasonably reliable cost estimates that relocation of its STARS system will cost at least \$14.26 million, as opposed to a Commission proposed cap of \$27 million nationally, and a proposed \$2.6 million cap for Region 42 (which covers most of Virginia).

---

<sup>1</sup> Adopted and released September 25, 2008, with notice published at 73 Fed. Reg. 57750 (October 3, 2008).

<sup>2</sup> Comments of the Commonwealth of Virginia to the Third Further Notice of Proposed Rulemaking, WT Docket No. 06-150, PS Docket No. 06-229, filed November 3, 2008.

## SUMMARY

The Commission's tentative conclusion establishing a \$27 million national cap for relocation costs, and a \$2.6 million Region 42 cap, is not based on adequate information. The Commonwealth urges the Commission to require public safety agencies to submit cost estimates or actual costs, to establish a firm national cost basis for relocation. The Commonwealth generally supports the suggestions for relocation clarification and procedures outlined by Motorola in its comments.

## DISCUSSION

The Comments<sup>3</sup> filed by the National Public Telecommunications Safety Council ("NPTSC") in response to the Third FNPRM point out on pages 33-34 that the \$27 million national cap on narrowband relocation costs seems unsupported, and urges the Commission to study PSST's earlier cost estimates, and survey each agency seeking reimbursement:

In pursuing its responsibility to administer the narrowband relocation, the PSST has compiled projected costs that approach \$75 million. Particular review should be directed to vehicle repeaters where units were built to agency specifications and are not readily adjusted. As the universe of agencies subject to relocation is known, NPSTC recommends that the Commission solicit each agency's understanding of what it will cost to relocate. Any ultimate amount should encompass all costs related to the relocation – equipment, transactional and administrative.

The Commonwealth strongly supports NPSTC's recommendations, and urges that the cap be lifted, and individual agency costs assembled. The focus on vehicle repeater costs is particularly appropriate. The Commonwealth also supports NPSTC's conclusion that any ultimate amount to be reimbursed to an agency must "encompass all costs related to the relocation – equipment, transactional and administrative".

---

<sup>3</sup> Comments of the National Public Safety Telecommunications Council, WT Docket No. 06-150, PS Docket No. 06-229, filed November 3, 2008.

The PSST itself has re-affirmed in its Comments<sup>4</sup> to the Third FNPRM that its cost estimate of \$74 million for narrowband relocation is appropriate, and that \$35 million of this is attributable to vehicular repeaters.

The PSST also urged the Commission to require eligible public safety agencies to submit detailed cost estimates to the Commission, to provide much-needed certainty regarding relocation costs, and ensure that sufficient relocation funds are available.

The Commonwealth would point out that it is highly likely that given the current national economic downturn, a 700 MHz reconfiguration project that requires any cost contribution from state and local governments for equipment, services or personnel will most likely not even be funded or started.

The Comments<sup>5</sup> of the Telecommunications Industry Association (“TIA”) in response to the Third FNPRM properly note on pages 9-11 that the full cost of narrowband relocation should be reimbursed, with a total reimbursement based on actual cost data, not speculation.

The Commonwealth agrees that if the Commission required each licensee eligible for relocation costs to submit actual cost data or specific estimates of cost data by a certain date, that there could be some certainty as to costs. The Commonwealth also agrees with TIA that any delay should not be a deterrent to bidders.

The Comments<sup>6</sup> of the Association of Public-Safety Communications Officials – International (APCO) in response to the Third FNPRM also point out that the proposed cap of \$27 million is still too low.

---

<sup>4</sup> Comments of the Public Safety Spectrum Trust Corporation. WT Docket No. 06-150, PS Docket No. 06-229, filed November 3, 2008, pages 40-42. The Commonwealth strongly disagrees with PSST’s alternate suggestion that if additional relocation costs are not made available to public safety agencies by the Commission, that PSST obligations be limited to avoid its incurring budget problems. Public safety relocation costs must be fully funded, and if necessary, actual public safety communications needs must take priority over PSST goals.

<sup>5</sup> Comments of the Telecommunications Industry Association, WT Docket No. 06-150, PS Docket No. 06-229, filed November 3, 2008.

In particular, the [\$27 million] cap does not appear to take into consideration the cost of replacing vehicle repeaters, which constitute a substantial percentage of the 700 MHz narrowband radios currently in use.

Region 20 supported the Commission's tentative conclusion that STARS should be eligible for relocation reimbursement, and notes in particular that

“STARS should be eligible for full reimbursement cost on all their implemented units, including those implemented after the August 30<sup>th</sup> 2007 cut-off date.”<sup>7</sup>

Pierce Transit urged that upon adoption of a final Order by the Commission, that PSHSB should promptly authorize reimbursement for facilities deployed pursuant to waiver; and also pointed out that there is no basis for the \$27 million cap, which appears “woefully inadequate”. Pierce Transit also noted that unless the Commission requires certification of actual or estimated costs for each licensee by a date certain, to compile total relocation costs, there can be no rational basis for any cap.<sup>8</sup>

The Joint Public Safety Commenters also urged the Commission to adopt the PSST's recommendation of a \$75 million cap, and to adjust any regional caps accordingly.<sup>9</sup>

While the Commonwealth favors a model under which each public safety licensee submits detailed cost information or estimates directly to the Commission, to provide a sound basis for reimbursement, the comments of the Joint Public Safety Commenters, and the other public safety agencies noted above, all support the Commonwealth's position that the \$27 million cap is far too low, and is based on inadequate information.

---

<sup>6</sup> Comments of the Association of Public-Safety Communications Officials – International, WT Docket -6-150, PS Docket 06-229, filed November 3, 2008, pages 25-26.

<sup>7</sup> Response of Regional Planning Committee Twenty, WT Docket No. 06-150, PS Docket No. 06-229, filed November 3, 2008, pages 28-29.

<sup>8</sup> Comments of Pierce Transit, WT Docket No. 06-150, PD Docket No. 06-229, filed November 3, 2008, pages 5-8.

<sup>9</sup> Joint Comments of the American Association of State Highway and Transportation Officials, the Congressional Fire Services Institute, the Forestry Conservation Communicators Association, the International Association of Fire Chiefs and the International Municipal Signal Association, WT Docket No. 06-150, PS Docket No. 06-229, filed November 3, 2008, p. 38-39.

Motorola agrees that “the Commission still does not have an accurate picture of the relocation costs”, and urges that the Commission seek estimated relocation costs from affected licensees.<sup>10</sup>

Motorola proposes that the reimbursement categories must include equipment costs, software costs, labor costs, project engineering, project relocation, technician support and similar costs, all of which will be required for a relocation project by a public safety agency.

Motorola also supports full reimbursement of relocation costs for narrowband licensees granted waiver relief and seeking reimbursement beyond the August 30, 2009 deadline (such as the Commonwealth).

The Commonwealth supports in principle all of the broad recommendations made on relocation costs by Motorola, with the exceptions noted below.<sup>11</sup>

The Commonwealth believes that the PSBL is not the proper entity to administer the relocation process, and that the Commission itself or a neutral entity should be designated.

In addition, the Commonwealth believes that the suggested 120 day deadline for agency finalization of costs and plan approval is optimistic, and that 180 days may be more realistic. Negotiations with vendors and alternate contractors of terms and conditions will be necessary, and compliance with state public procurement requirements may slow down the process.

Motorola has advised the Commonwealth that its Statement of Work for 700 MHz requires

---

<sup>10</sup> Comments of Motorola, Inc., WT Docket No. 06-150, PS Docket No. 06-229, filed November 3, 2008, p. 17, 19-22.

<sup>11</sup> While Motorola is the Commonwealth’s systems integrator contractor for the STARS project, and the Commonwealth necessarily relies upon Motorola for some technical data, Motorola does not speak for the Commonwealth, particularly on issues relating to policy and both design and operational risk for the project and to the users. The Commonwealth further urges the Commission to ensure licensees are present when discussions are held concerning 700 MHz reconfiguration and not only representative organizations or manufacturers. Public safety agencies, particularly in difficult economic times, do not have the budgets to attend conferences or trade shows where information may be communicated by the Commission by vendors or national interest groups. The Commonwealth urges that the Commission directly provide us information when it is available in addition to these venues and to solicit direct input from public safety agency licensees.

negotiations for all issues to be addressed, which may further increase the cost and the time required to develop a firm fixed cost.

However, with the noted exceptions, the Commonwealth believes that the relocation plan outlined by Motorola on pages 17-22 of its Comments offers the most realistic and comprehensive solution to narrowband relocation.

To meet the "gold standard" of a plan that actually delivers for public safety, the Commission must gather the necessary data to support full reimbursement of all narrowband relocation costs, see that those relocation costs (including equipment, software, labor, project engineering, project relocation, technical support and direct internal costs) are reimbursed through a reliable process, and authorize full reimbursement of relocation costs for those licensees granted waiver relief for system installations beyond the August 30, 2007 deadline.

Respectfully submitted,

THE COMMONWEALTH OF VIRGINIA

BY



Peter E. Broadbent, Jr. (VSB 15962)

Christian & Barton, LLP

909 E. Main Street, Suite 1200

Richmond, VA 23219

(804) 697-4109

Attorney for the Commonwealth of Virginia

Dated: November 12, 2008

**CERTIFICATE OF SERVICE**

I hereby certify that on this 12<sup>th</sup> day of November, 2008, a copy of the foregoing Reply Comments of the Commonwealth of Virginia were sent by email to each of the persons listed on the attached service list.



---

Peter E. Broadbent, Jr.

907413.3

**SERVICE LIST BY E-MAIL**

1. [nese.guendelsberger@fcc.gov](mailto:nese.guendelsberger@fcc.gov)
2. [jeff.cohen@fcc.gov](mailto:jeff.cohen@fcc.gov)
3. [fcc@bcpiweb.com](mailto:fcc@bcpiweb.com)
4. [Thomas.Struzzi@vsp.virginia.gov](mailto:Thomas.Struzzi@vsp.virginia.gov)