

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)
)
Petition by the City of San Antonio, Texas) **PS Docket No. 06-229**
For Waiver of the Commission’s Rules to)
Deploy a 700 MHz Public Safety)
Interoperable Broadband Network)
)
WAIVER – EXPEDITED ACTION REQUESTED)

To: Public Safety and Homeland Security Bureau

PETITION FOR EXPEDITED WAIVER

The City of San Antonio, Texas, on behalf of the San Antonio Urban Area Security Initiative Region (“UASI Region”), and pursuant to Section 1.925 of the Commission’s rules (47 C.F.R. § 1.925), hereby files this petition for expedited waiver to allow for the early construction and deployment of an interoperable 700 MHz public safety system to serve the San Antonio UASI Region. This system will be designed to be fully interoperable with the nationwide Shared Wireless Broadband Network. Expeditious grant of this waiver, to allow for a “sub-license” or a long term de facto transfer lease with the Public Safety Broadband Licensee, is in the public interest and will lead to the early deployment of critical broadband public safety communications in the San Antonio UASI Region, that will function as an integral part of the nationwide interoperable public safety broadband system.

BACKGROUND

The City of San Antonio lies in the Alamo Area Council Of Governments (“AACOG”) that includes the counties of Atascosa, Bandera, Bexar, Comal, Frio, Karnes, Kendall, Kerr, Gillespie, Guadalupe, Medina and Wilson. This geographic area includes more than 31 cities

and 20 school districts. The total population is approximately 1.8 million and the total area encompassed exceeds 11,300 square miles. The City of San Antonio is the largest city in the region, the 2nd largest city in Texas, and the 7th largest city in the United States.

The San Antonio UASI Region has a governance committee and several working groups including a well-established Communications Committee that actively addresses interoperability issues locally and regionally. The San Antonio UASI is a three member, Tier 2 UASI composed of the City of San Antonio, Bexar County, and Comal County. The City of San Antonio and Bexar County serve a population of 1.5 million.

The region is vulnerable to a wide range of natural hazards, including flooding, tornadoes, tropical storms and hurricanes. San Antonio is an extension to the State of Texas Operation Center (SOC) and has been designated as the evacuation and logistic hub for the State of Texas. The San Antonio UASI and the AACOG must build and provide interoperable communications for staging of state and federal resources that stage here during natural disasters.

San Antonio is home to five military installations. Bexar County is the crossroads of IH-35, IH-37 and IH-10, placing it at the forefront of trade between Mexico, Canada and the United States. The business community in the region is bolstered by a huge corporate presence that includes AT&T, Valero Energy, Tesoro Petroleum, United Services Automobile Association, Citicorp, and Toyota Motors. The region is home to several critical telecommunication networks including the 9-1-1 Tandem that supports 9-1-1 throughout all of South Texas. The region is host to an international airport, several colleges and universities, a nationally recognized convention center and an inland port.

1. EARLY DEPLOYMENT OF A 700 MHZ PUBLIC SAFETY BROADBAND SYSTEM IS NEEDED IN THE SAN ANTONIO UASI REGION

The San Antonio UASI Region requires public safety broadband services that are not available currently due to a lack of available public safety spectrum. Innovative, state-of-the-art broadband applications cannot be supported by existing public safety wireless systems. These broadband technologies play a vital role in emergency situations such as natural disasters or terrorist attacks.

The City along with multijurisdictional partners such as the City of Austin, Coastal Plains Area, Lower Colorado River Authority, various public Universities, Independent School Districts, State and Federal Agencies and other local municipalities are proceeding to implement a P25 700 MHz radio layer to provide Interoperable and operable communications for day to day operations and emergency events. The P25 700MHz layer is in its initial stages and currently depending on five (5) State sponsored frequencies. The goal is to provide operable and interoperable communications for every jurisdiction in the region and to provide the accessibility of support to adjacent regions during Federal or State declared emergencies. The region is also attempting to provide a Region Computer Aided Dispatch (CAD) to facilitate instate data communications for all jurisdictions and visiting jurisdictions. The City and Bexar County currently share a 800 MHz Public Safety Radio System and have been building on the system to allow thirty-one (31) multijurisdictional Federal, State, and local agencies to operate daily Public Safety communications.

Leveraging existing systems is a key theme and is a central concept with the ongoing projects. Connecting similar systems into large systems and then interconnecting them with other, disparate systems will create a system-of-systems approach, which maximizes technology, fosters standards based implementations, prevents agencies from creating "silos" of

interoperability, and represents a huge cost savings for all partners. Overall maintenance and support costs can be better distributed across all users thereby reducing the cost per agency. The technology solutions compliment each other. Technical staff can be better utilized and shared across multiple agencies. Cost-effective measures include: Shared use of City of Austin and LCRA network switches; Shared infrastructure; Shared resources; System augmentation; and leveraging of existing systems and equipment.

The San Antonio UASI Region could deploy a broadband data system with a small additional cost by taking advantage of much of the same capital and resources utilized in deploying the current P25 700 MHz voice system. Use of the 700 MHz broadband spectrum would allow regional public-safety, which includes multi-jurisdictional federal, state and local police, firefighters, rescue/emergency personnel and agencies to achieve cost effective operable and interoperability communications with data capabilities that will not otherwise be available under the voice system. The use of real time video streaming, regional mobile data and access to cross jurisdictional databases will become a reality for some jurisdictions and provide enhanced and quality coverage to others. Access to the 700 MHz public safety broadband spectrum will also allow this spectrum to be used to support local communities that do not have access to any wireless data and to provide instant instructional guidance and awareness during emergencies.

If the waiver is granted, the deployment of 700 MHz Broadband capability will complement all ongoing projects to mesh systems and produce a synergy of shared communications, data, and key intelligence for the protection of citizens in the region, state, and country.

2. GRANT OF THE WAIVER IS IN THE PUBLIC INTEREST AND IT SHOULD BE GRANTED EXPEDITIOUSLY

Grant of the waiver will allow early deployment of a public safety broadband network to serve the immediate broadband communications needs of the San Antonio UASI Region public safety users. The City of San Antonio and the other San Antonio UASI members support the public-private partnership approach to a nationwide 700 MHz public safety broadband network and will design the system to be interoperable with the nationwide public safety system envisioned by the Commission. Because it is uncertain how much more time will pass before final 700 MHz rules are adopted, a successful D Block auction takes place, and a public-private partnership becomes a reality, grant of the waiver is in the public interest and will best serve the public safety community by allowing early deployment of a state-of-the-art 700 MHz public safety broadband system in the San Antonio UASI Region that will be interoperable with the nationwide Shared Wireless Broadband Network.

In adopting rules for the 700 MHz public safety spectrum, the Commission recognized “the rapidly increasing need of public safety users for broadband communications.”¹ To meet these critical public safety needs, the Commission established its goal of “the development of a nationwide interoperable broadband network for public safety users.”² A public/private partnership between the D Block Licensee and the Public Safety Broadband Licensee was

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review -- Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission's Part 1 Anti-Collusion Rule, WT Docket No. 07-166, Second Report and Order, 22 FCC Rcd 15289 (2007)(Second Report and Order), at ¶3.*

² Second Report and Order, ¶3.

chosen as the “means for enabling the construction of a nationwide, interoperable broadband public safety network.”³

In selecting the public/private partnership approach to achieve its goal for the rapid deployment of broadband technologies the Commission did not anticipate that years later the partnership would still not be off the ground with its eventual operations still in the “idea” stage and years away at best. The well-documented failure of Auction 73 to result in a D Block Licensee has stymied the Commission’s ultimate goal of getting interoperable broadband services to the public safety community as expeditiously as possible. With the mechanism established by the Commission to achieve an interoperable public safety network on hold, the Commission must take immediate and decisive action to meet its public interest obligation of opening access on the 700 MHz public safety spectrum to state-of-the-art broadband technologies.

Rules designed to speed broadband technologies to the public safety community now unnecessarily delay deployment of these same services. Under the current rules, the D Block licensee will have the “exclusive right to build and operate the Shared Wireless Broadband Network.”⁴ Early build-out by public safety entities in their own local areas is allowed only in limited circumstances that *require* the participation of a currently non-existent D Block Licensee. These and any other 700 MHz broadband rules that impede the early deployment of a public safety broadband system in the San Antonio UASI Region should be waived under Section 1.925(b)(3) of the rules, 47 C.F.R. ¶1.925(b)(3), because they now serve only to frustrate the Commission’s ultimate purpose of deploying a nationwide interoperable public safety broadband

³ Second Report and Order, ¶13.

⁴ 47 C.F.R. § 27.1330 and § 90.143.

system with no countervailing public interest benefit.⁵ In fact, the waiver is in the public interest because it *further*s the Commission's underlying policy of bringing state-of-the-art interoperable broadband technology to public service users on the 700 MHz spectrum.⁶

Grant of the waiver will enable the City to pursue public funding and/or its own public-private partnership to commence construction and early deployment of a public safety broadband system in the San Antonio UASI Region that will be interoperable with the eventual nationwide system. Without access to the 700 MHz public safety spectrum in the San Antonio area through a "sub license" or long term lease arrangement with the Public Safety Broadband Licensee opportunities to proceed with early deployment will be lost. This waiver is consistent with the recent Congressional mandate that broadband technologies be deployed as rapidly as possible to all areas throughout the United States and to serve the needs of homeland security and public safety.

In its recent passage of the American Recovery and Reinvestment Act of 2009,⁷ the "stimulus" legislation, Congress charged the Department of Agriculture's Rural Utilities Service ("RUS") and the Department of Commerce's National Telecommunications and Information Administration ("NTIA") with making grants and loans to expand broadband deployment,

⁵ Section 1.925(b)(3), 47 C.F.R. § 1.925(b)(3), of the Rules states:

(3)The Commission may grant a request for waiver if it is shown that:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- (ii) In view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

⁶ See *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), ""a general rule, deemed valid because its overall objectives are in the public interest, may not be in the 'public interest' if extended to an applicant who proposes a new service that will not undermine the policy served by the rule."

⁷ American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, *123 Stat. 115 (2009)* (Recovery Act)

including deployment for public safety use. A total of \$ 7.2 billion is allocated for these broadband programs. In addition, the Recovery Act specifically requires the Commission to develop a national broadband plan including "a plan for the use of broadband infrastructure and services in advancing . . . public safety and homeland security." ⁸ In light of this legislation, failure to grant this waiver will thwart the intent of Congress to further the broadband communications needs of the nation's public safety providers.

In light of the critical national security and public safety requirements at stake, San Antonio, on behalf of the San Antonio UASI Region, urges the Commission to grant the subject waiver expeditiously and allow for a "sub-license" or long term de facto lease arrangement with the Public Safety Broadband Licensee for spectrum to serve the San Antonio UASI Region. Grant of this waiver is in the public interest and will further the Commission's ultimate goal of deployment of a nationwide interoperable 700 MHz public safety broadband system.

CONCLUSION

In view of the foregoing, the City of San Antonio, on behalf of the San Antonio UASI Region, requests that the Commission grant a waiver of the 700 MHz rules to allow for the early construction and deployment of an interoperable 700 MHz public safety system to serve the San Antonio UASI Region.

⁸ Recovery Act § 6001(k)(2)(D).

Respectfully Submitted,

CITY OF SAN ANTONIO

By:

A handwritten signature in blue ink, appearing to read "Richard Morales, Jr.", written over a horizontal line.

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