

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

In the Matter of)
)
Petition by the State of New Mexico) **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 State of New Mexico (“SONM”), 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 a statewide interoperable 700 MHz public safety system in the State of New Mexico. The SONM 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 State of New Mexico, that will function as an integral part of the nationwide interoperable public safety broadband system.

BACKGROUND

The State of New Mexico, known as “the Land of Enchantment,” is rich in its history and diverse in its culture and geography, with significant Native American and

Hispanic populations. The State encompasses a large geographic area of 121,655 square miles with a population of just under two million. The State's population has grown at a rate of about ten percent since the 2000 census and this trend is expected to continue.

While New Mexico has urban areas including the capital of Santa Fe and Albuquerque, it is one of the least densely populated states in the nation, with fewer than twenty persons per square mile. The State is bordered by Mexico to the South, with some population centers such as Las Cruces located near the Mexican border. The landscape ranges from wide, rose-colored deserts to broken mesas to high, snow-capped mountain peaks. Although the State is known for its arid climate much of New Mexico is covered by heavily forested mountain wilderness, especially in the northern parts of the State. The Sangre de Cristo Mountains, the southernmost part of the Rocky Mountains, run roughly north-south along the east side of the Rio Grand River in the rugged, pastoral north. As part of its natural beauty there are millions of acres of national forests located within the State, including Carson National Forest, Cibola National Forest, Lincoln National Forest, and Santa Fe National Forest.

The vast array of differing topographies with remote wildernesses and very low population density present significant needs and challenges to public safety communications.

1. EARLY DEPLOYMENT OF A 700 MHZ PUBLIC SAFETY BROADBAND SYSTEM IS NEEDED IN THE STATE OF NEW MEXICO

The State of New Mexico 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

technologies. These broadband technologies play a vital role in emergency situations such as natural disasters or terrorist attacks.

Because New Mexico is one of the least densely populated states in the nation, commercial providers face significant economic challenges in serving the rural areas of the State. As a result, government involvement is essential to the early buildout and deployment of a 700 MHz broadband public safety system to meet the critical needs of public safety users in urban areas such as Santa Fe and Albuquerque as well as the rural regions.

The State of New Mexico is keenly aware that state-wide coordination amongst Public Safety providers should be the model for effective deployment of the 700MHz broadband frequencies and New Mexico is poised to utilize this asset through a vibrant public-private partnership. Because of the size of the state and the primarily rural demographics, the State of New Mexico has experienced the trauma and disappointment of disparate communication technologies which is a particularly important issue impacting public safety. SONM believes the best way to address the issue is to utilize a singular state-wide broadband technology to enhance the State's primary duty of providing for the common welfare of all New Mexicans, its businesses, and any visitors to the Land of Enchantment. Coordination among the various Public Safety agencies, including Homeland Security, will enhance our ability to facilitate the most effective and responsive deployment of assets in times of crisis and when we are proactively planning for the Public's welfare.

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

Grant of the waiver will allow early deployment of a public safety broadband network within the State of New Mexico to serve the immediate broadband communications needs of the State's public safety users. SONM supports the public-private partnership approach to a nationwide 700 MHz public safety broadband network and will design its 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 within the State of New Mexico 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

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.*

network for public safety users.”² A public/private partnership between the D Block Licensee and the Public Safety Broadband Licensee was 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

² Second Report and Order, ¶3.

³ Second Report and Order, ¶13.

⁴ 47 C.F.R. § 27.1330 and § 90.143.

the early deployment of a public safety broadband system in the State of New Mexico 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 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 SONM to pursue public funding and/or its own public-private partnership within New Mexico to commence construction and early deployment of a public safety broadband system in the State that will be interoperable with the eventual nationwide system. Without access to the 700 MHz public safety spectrum in New Mexico 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.

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."

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, 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, SONM 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 in the State of New Mexico. 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.

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

⁸ Recovery Act § 6001(k)(2)(D).

CONCLUSION

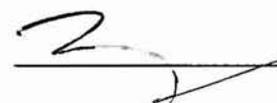
In view of the foregoing, SONM requests that the Commission grant a waiver of the 700 MHz rules to allow for the early construction and deployment of an interoperable 700 MHz public safety system in the State of New Mexico.

Respectfully Submitted,

STATE OF NEW MEXICO
OFFICE OF THE GOVERNOR

By: 
Brian Condit

STATE OF NEW MEXICO
Department of Information Technology
Cabinet Secretary/CIO

By: 
Marlin Mackey

Of Counsel:

Albert J. Catalano
Matthew J. Plache
Catalano & Plache, PLLC
1054 31st Street, NW, Suite 425
Washington, DC 20007
Telephone: 202-338-3200
Facsimile: 202-338-1700
Email: ajc@catalanoplache.com

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