

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION**

IN THE MATTER OF:

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON
PETITIONS FOR WAIVER TO DEPLOY 700 MHZ PUBLIC SAFETY BROADBAND
NETWORKS**

PS Docket No. 06-229

SUBMITTED OCTOBER 16, 2009

1. The City of Richmond, Virginia (“Richmond”), the County of Chesterfield, Virginia (“Chesterfield”), the County of Hanover, Virginia (“Hanover”), the County of Henrico, Virginia (“Henrico”), and the County of Baltimore (“Baltimore”) known collectively as the “Parties” to this filing come before the Federal Communications Commission (“the Commission”) with comments as solicited by the Commission’s Public Notice DA 09-1819 released on August 14, 2009.
2. Each of the Parties is a political sub-division of the Commonwealth of Virginia or the State of Maryland and is empowered to provide law enforcement, fire suppression, emergency medical, and other public safety services.
3. The Parties note that the Commission specifically seeks comments relative to those issues identified in Appendix A of DA 09-1819 as well as the Third Further Notice of Proposed Rule Making¹ in this matter. Accordingly, the Parties will seek to delimit comments to those matters identified by the Commission.
4. In the Third Further Notice, the Commission stated, “*As an initial matter, we tentatively conclude that we should continue to require, as a license condition, that the D Block*

¹ See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, 73 Fed. Reg. 57750 (Oct. 3, 2008).

licensee enter into a public/private partnership with the Public Safety Broadband Licensee for the purpose of constructing a wireless broadband network that will operate over both D Block spectrum and public safety broadband spectrum and provide broadband services to both commercial users and public safety entities (shared wireless broadband network)”². It has been approximately one year since those words were penned and the Parties believe that the current initiatives underway at the federal level to consolidate the D Block with the 763-768 MHz and 793-798 MHz broadband spectrum (“the broadband spectrum”) have great merit; particularly when coupled with the emerging Long Term Evolution (“LTE”) technology. By integrating these two portions of spectrum into a consolidated twenty (20) megahertz block for public safety; e.g. 758-768/788-798 MHz, the power of LTE could be brought forward to provide reasonably robust broadband service for first responders. Accordingly the Parties support all federal initiatives that will combine the D Block with the public safety broadband spectrum to yield a twenty (20) megahertz block for first responder use.

5. The filers conceptually support the initial thirteen governments proposing to buildout wireless broadband services using the broadband spectrum subject to coordination with and the approval of the Public Safety Spectrum Trust (“PSST”). As will be detailed further in the filing, the parties have serious reservations about North Dakota’s proposed use of the 700 MHz narrowband voice spectrum and do not support that portion of their proposed waiver. Notwithstanding an integration of the current D Block and the public safety broadband spectrum, in many areas, state and local governments do not have the financial resources to construct a wireless broadband network. To that end, the Commission’s initial inclination to support public-private partnerships continues to have

² *Id.* at ¶2

merit and offers the only financially prudent path towards implementation.

6. The filers believe that it is important to affirm support for the wisdom of the Commission in establishing a trustee for public safety broadband services. We believe that the Commission's license, the PSST, has performed a remarkable job of continuing to advance the development of public safety broadband and has done so absent federal or other public funding. The leadership of the PSST's Board has been nothing short of remarkable and the advocates of public safety broadband are indebted to Chief Harlin McEwen and his colleagues for steering this process through extraordinary adversity. In the Third Further Notice, there was a provision requiring the PSST to conduct new elections and mandating the removal of certain PSST Board members. We believe that this part of the Third Further Notice is unnecessary and should not be acted upon by the Commission in the crafting of a final order.
7. With respect to the thirteen filers encompassed within DA 09-1819, the filers support the Commission authorizing the PSST to enter into agreements with local and state governments as well as consortia of governments seeking to develop broadband services in the broadband spectrum. We believe that the Commission should continue its role of providing important nationwide mandates, such as the promotion of interoperability within the broadband spectrum. However, the filers suggest that the Commission should provide the PSST with significant latitude in addressing the manner in which the nationwide standards will be implemented. Based upon our observations, the PSST has carefully coordinated with public safety through the National Public Safety Telecommunications Council ("NPSTC"), Association of Public Safety Communications Officials, ("APCO"), the National Regional Planning Committee ("NRPC") and other

bodies representing public safety communications. We have no reason to believe that the PSST will deviate from this process of consultation provided that the current PSST leadership remains in place.

8. The filers note that the PSST, along with NPSTC, APCO, and the National Emergency Number Association (“NENA”) all adopted the Long Term Evolution (“LTE”) technology for use in the broadband spectrum. Subsequently, the PSST asked NPSTC to lead an effort to adopt nationwide standards for interoperability within the broadband spectrum. This effort was open to myriad organizations and through the leadership of NPSTC and the PSST, a Broadband Task Force Report has been crafted and presented to NPSTC for approval. The filers support the findings of the Broadband Task Force. As importantly, we note that the record of PSST transparency in opening the process and crafting an end product is an exemplary process that the filers support.
9. The filers also note that there are published press reports indicating that Congress may consider the infusion of federal funds for development of the broadband spectrum as well as integration of the D Block spectrum for public safety use. While not a part of DA 09-1819, for the record, the filers would support the infusion of federal funds for the development of public safety broadband communications throughout the United States.
10. The filers view the ability of the thirteen organizations described within the Commission’s public notice to fund the development of broadband services skeptically. This skepticism is not offered as a criticism of the thirteen filers described in DA 09-1819, but a reality that has been experienced in the development of public safety communications systems. These are expensive systems to develop and in the current economic crisis facing our great country, the filers believe that any state, local, or

consortia organizations will be severely challenged to develop broadband services with only state and/or local funding. Even if federal funding from known sources, such as the American Recovery and Reinvestment Act (“ARRA”) are postulated, entities desiring to buildout the broadband spectrum will be financially challenged. Currently there is no federal guarantee that any specific organization will be entitled to ARRA funding for development of the broadband spectrum.

11. The filers believe that it will be necessary for many of the thirteen entities described in DA 09-1819 to craft public-private partnerships to develop the broadband spectrum. While we support the development of public-private partnerships to develop the broadband spectrum, the crafting of the partnership agreement is critical to its potential success. If one agrees that it will be necessary for entities to craft partnership agreements, what are the rules that must be applied by either the Commission or the PSST? Again, the filers believe that the fluid nature of crafting business partnerships is best left to the PSST. Notwithstanding our belief that the PSST should have a critical role in the approval of partnership agreements before a sub-license is approved for an entity, certain issues must be considered; perhaps on a nationwide basis. As an example, if a public-private partnership is crafted, what will be the term of the sub-license? Can that sub-license be renewed? What happens if the partnership dissolves and the reason for dissolution is beyond the control of the partners? What happens if a private partner finds the relationship unprofitable and wants out of the agreement? When nationwide standards change with technology, what is the responsibility of the partnership to support needed technological upgrades financially? Change is particularly critical as when the public safety broadband process began, many jumped on board the CDMA Revision A

technology band wagon. Only a couple of short years later, public safety and many others including AT&T and Verizon adopted the LTE technology for broadband. LTE will one day be replaced with something that offers more advantages to public safety and there must be a funding mechanism in place to support the necessity of technological change. In summary, the filers support the notion of a public-private partnership, assuming that federal funds are unavailable for broadband development; however, we note that there are many very fundamental and serious issues that must be considered either by the Commission or the PSST relative to the longevity of public-private partnerships before a sub-license is issued. These are among the vexing issues that have so negatively impacted broadband development since release of the Second Report and Order back in July of 2007. We believe that the PSST is the right body to address these critical issues related to the crafting of a partnership.

12. The filers specifically do not support the proposed use of the 700 MHz narrowband voice spectrum in North Dakota or anywhere else in the United States. While we recognize that North Dakota is a largely rural state and that the demand for 700 MHz has been so limited that the state's Regional Planning Committee has only recently announced its intent to form and consider the appropriate use of the spectrum, we note that thirty-four 700 MHz frequency pairs have been adopted for nationwide use by the Commission³. In the event of a catastrophe in North Dakota, first responders may come into the state with 700 MHz communications infrastructure designed to render support for first responders. Such communications systems should not be subject to interference from business or household mini-transmitters broadcasting on the frequencies. We believe that when nationwide frequencies are adopted, their use should not be subject to local deviations.

³ See 47 CFR §90.531(b)(1), 47 CFR §90.531(b)(4), and 47 CFR §90.531(b)(7)

Conversely, we recognize and appreciate that North Dakota's interest in supporting use of this spectrum is to roll out broadband services to its citizens. Any use of the narrowband spectrum will require special chipsets designed to operate on the relevant 700 MHz frequencies and if special chipsets are required, it is in the public interest to consider their development on a nationwide basis. We believe that North Dakota should consider other spectrum possibilities for the rollout of wireless broadband spectrum to its citizens. We note that the Commission has been very supportive of programs to consider whitespace technologies within the United States and such an alternative would be vastly preferable to losing nationwide public safety interoperability frequencies in North Dakota or any other rural portion of the United States.

13. If the Commission grants sub-licenses for operation in the broadband spectrum, it will be necessary to address the issue of interference when sub-licenses are authorized in close proximity. The Commission's staff has great experience in addressing the issue of interference and how licenses should be managed to prevent or minimize interference. We believe that this is an area that the Commission cannot defer to the PSST.
14. Finally, the filers note that broadband and the issues of developing a public safety system in the 700 MHz band have been plagued by starts and stops for the last three or more years. Public safety not only needs the spectrum, but the broadband services as well. We would urge the Commission to adopt rules resulting in the certainty that public safety broadband services can be implemented within the United States in the 700 MHz band as soon as possible. To minimize the complexities associated with the federal processes for rule making, we believe that it would be in the national interest for the Commission to delegate to the PSST as much authority as practical and reasonable so that public safety

broadband systems can be developed expeditiously.