



July 28, 2010

Marlene H. Dortch, Secretary  
Federal Communications Commission  
Office of the Secretary  
445 12th Street, SW  
Washington, DC 20554

Re: WT Docket 96-86  
WT Docket 06-150  
PS Docket No. 06-229

Dear Madam Secretary:

In accordance with Section 1.1206(b)(1) of the Commission's Rules, the State of Ohio ("Ohio") submits this written ex parte filing in the above-captioned proceedings.

Ohio asks the Commission to:

1. Support the transfer of the D Block to public safety
2. Refrain from any 700 MHz narrowband voice channel bandplan changes that permit broadband use of this spectrum

Ohio's reasoning for advocating these positions is articulated below. While the comments are not intended to be harsh, the State is very concerned that the Commission has failed to adequately consider the learned opinions of many within the public safety communications community. Ohio believes that public safety has made an unprecedented showing more than adequately demonstrating the need for sufficient 700 MHz broadband spectrum without compromising the narrowband voice channels; however, instead of reaching out to public safety to build upon a common body of technology knowledge and perspective, the Commission has been unyielding in its opposition to the collective wisdom of public safety as well as many in industry.

The state of Ohio owns and operates a statewide 800 MHz digital conventional and trunked radio system known as the Multi-Agency Radio Communications System ("MARCS"). MARCS consists of two hundred and five (205) fixed base station transceiver sites providing digital voice and data services to over seven hundred (700+) federal, state, and local first responder agencies. The first responders of these agencies operate approximately forty-eight thousand (48,000) mobile and portable subscriber units.

Ohio is also in the process of implementing a P25 expansion of MARCS utilizing the 700 MHz narrowband voice channels, starting in the Cuyahoga County (Cleveland) area. This system expansion will provide fully interoperable communications to more than one hundred ("100") additional first

responder agencies in northeast Ohio that have never had such service available to them. To construct this new portion of MARCS, funding from various sources are being employed including local sources (Revenue Bonds) and federal grant programs such as the Public Safety Interoperability Communications (“PSIC”); Department of Homeland Security (“DHS”); Federal Emergency Management Agency (“FEMA”); and National Telecommunications and Information Administration (“NTIA”), to mention only a few.

Ohio has reviewed current, pertinent documents regarding the evolution of the 700 MHz. Public Safety Broadband and Narrowband issues and offer the following comments. The State has reviewed the FCC’s “Capacity” White Paper, *Public Safety Nationwide Interoperable Broadband Network: A New Model for Capacity, Performance and Cost* of June, 2010. Ohio joins with others who believe that this document, while purporting to map an effective future for broadband spectrum capacity in 700 MHz; is comprised of academic conjecture and untested hypotheses.

The State notes further that on July 2, 2010, Motorola responded to the “White Paper” in a very in-depth and systematic analysis of the FCC staff’s conclusions and noted a number of assumptions made by the Commission which Ohio believes to be inapplicable to Public Safety broadband operational requirements. These comments are certainly worthy of note. Over the years, Ohio has found that Motorola engineering capabilities are typically exceptional and we have no reason to doubt their conclusions, especially when so many other learned persons offer similar guidance.

Ohio also notes that on July 2<sup>nd</sup>, NPSTC<sup>1</sup> submitted a letter taking issue with the “White Paper”, stating *“the Commission should provide more deference to input from actual public safety users who are on the ground and have had experience with public safety incidents than calculations from academia.”* Further, NPSTC says *“On February 23, The City of New York submitted a whitepaper addressing why the D block should be reallocated to public safety. This paper included information from real world experiences, not just academic theories. For example, New York City provides the Commission with information on its real world experience of relying on commercial networks, even with priority access.”* Ohio has great respect for the submissions of NPSTC and holds up their comments as meriting Commission consideration.

On June 23<sup>rd</sup>, 2010, Mr. Andrew Seybold<sup>2</sup> submitted a response to The White Paper, also offering point by point arguments as to why the Commission’s assumptions do not fit the real world Public Safety operations. Several Ohio staff members are acquainted with Mr. Seybold and respect him as an astute and knowledgeable person and believe his opinions merit careful consideration and evaluation. NPSTC went on record as supporting Mr. Seybold’s comments<sup>3</sup> and Ohio joins in this support. The State believes that the Seybold response is well-reasoned and consistent with public safety’s requirements.

Finally, the Public Safety Alliance (PSA)<sup>4</sup> submitted a document entitled *“House of Cards, FCC’s Capacity White Paper built on Assumptions and Conjecture.”* The PSA is comprised of America’s leading public safety organizations. Their collective experience should be a siren call to the Commission to re-evaluate the Capacity White Paper. In their submission, the PSA reviewed the

<sup>1</sup> National Public Safety Telecommunications Council, a federation of 15 Public Safety related organizations

<sup>2</sup> Andrew Seybold, CEO and Principal Consultant of Andrew Seybold, Inc.

<sup>3</sup> NPSTC July 2 letter, page 1

<sup>4</sup> PSA is a coalition of 8 administrative level Public Safety organizations, similar to NPSTC but mostly different entities

FCC's White Paper pointing out the *Fallacy of Assumptions* made and certain misrepresentations of facts concerning the amount of spectrum Public Safety has at its disposal, even claiming it has 25 times that of commercial providers. PSA points out, and correctly so, that 50 MHz. of the FCC's stated 60 MHz. of broadband spectrum is in the 4.9 GHz band, which is only usable for point-to-point and hot-spot type transmissions. The 4.9 GHz spectrum provides little to no in-building coverage nor is it suitable for wide area mobile Public Safety or commercial mobile broadband service.

In terms of industry concurrence, the PSA also supports the comments of Andrew Seybold, along with NPSTC and Ohio, and strongly supports H.R. 5081, recently introduced by Representative Peter King (and others). Ohio is in favor of this bill as well and has been in touch with its congressional delegation regarding it. The State is gratified that over fifty members of the House of Representatives have indicated support for H. R. 5081 by joining as co-sponsors. Ohio also welcomes legislation in the Senate, similarly transferring the D Block to public safety and providing a funding stream for deployment.

On the other hand, we are very concerned with a staff discussion draft bearing the proposed name 'Public Safety Broadband Act of 2010' being considered by the House Energy and Commerce Committee, which permits portions of the current 700 MHz voice spectrum to be used for Broadband and further, permits commercial use of 700 MHz voice channels on a secondary basis. If the D Block auction goes forward, public safety will never again have prime access to 20 MHz of 700 MHz spectrum for Broadband. This would be a tragic loss for first responders nationwide and even if there is a modicum of doubt relative to the appropriateness of supporting the D Block transfer, the State of Ohio believes the Commission should "err" on the side of public safety and recommend Congress approve the spectral transfer.

On January 29, 2010, Commissioner Robert McDowell spoke to the Free State Foundation's Annual Winter Telecom Policy Conference in Washington, D.C about the National Broadband Plan. In his speech Commissioner McDowell emphasized "***the Commission's No 1 goal should be to do no harm***". By endorsing the D Block auction, particularly when legislation has been introduced that funds 700 MHz public safety broadband deployment, the Commission will certainly "***do harm***" to Public Safety for many years to come. There will never be another chance to have blocks of contiguous 700 MHz spectrum available to help public safety develop the type of nationwide broadband system that will help first responders to save lives and protect the property from criminals, natural or man-made disasters, or overt acts of terrorism.

To permit portions of the current narrowband 700 MHz voice spectrum to be used for broadband purposes could cause Ohio's in-progress upgrade of MARCS in the Cleveland area irreparable harm and prevent public safety communications-essential Interoperability in Ohio's second largest Metropolitan Statistical Area.

Ohio has reviewed the Ex Parte filing of the state of Delaware ("Delaware") dated July 15, 2010. In the filing, we are reminded of the major part the PS&HSB played in the PSIC funding protocols. On Page 5 we quote "*Recommendations of the Commission from the Hurricane Katrina Report also included a direction to the Bureau to "work with NTIA and DHS to establish appropriate criteria for the distribution of the \$1 billion in a manner that best **promotes interoperability with the 700 MHz band** (emphasis supplied) - among other things, such criteria should mandate that any radios purchased with grant monies must be capable of operating on 700 MHz and 800 MHz channels **established for mutual aid and interoperability voice communications** (emphasis supplied); (3) encourage the expeditious development of regional plans for the use of 700 MHz systems and move*

*promptly to review and approve such plans”<sup>5</sup> From those recommendations, the Commission ordered, “We direct PSHSB to offer to work with NTIA and DHS, as appropriate, to establish criteria for the distribution of the \$1 billion interoperability fund in a manner that best promotes interoperability with the 700 MHz band”<sup>6</sup>.*

The State thanks our colleagues in Delaware for reminding us of the funding history as well as many other issues relative to this over-arching Issue of Broadband and Public Safety. It is well reasoned and very relevant to the important topics at hand and deserves very close attention from the Commission.

Ohio received \$28.9 Million dollars of PSIC funding and nearly all was used by local agencies to purchase interoperable radio equipment for MARCS use that would also be upgradable to the new P25 700/800 MHz system being planned for deployment throughout the State. The state’s PSIC funding portion was used to purchase the Prime Site control equipment necessary to start the system implementation.

Ohio’s SIEC, Region 33 Regional Planning Committee and MARCS have worked closely to develop and implement 700 MHz Interoperability in Ohio and we feel we have done a good job. Ohio has even implemented interoperability between Ohio MARCS, the Indiana IPSC and Michigan’s MPSCS statewide systems. Ohio believes that the Commission correctly labeled interoperability as *“the crowning achievement of this proceeding”* in WT-96-86. Changing the spectrum rules at this time so this newly purchased equipment becomes useless is nothing short of outrageous. That money ultimately comes from the tax-payers. We, the filers all, are tax-payers and we don’t like it one bit.

The Commission has already changed the narrowband voice channel band plan following the issuance of the Second Report and Order on July 31, 2007. That bandplan change caused a great deal of inconvenience, not to mention expense, to many states, including Ohio. The cost was to be reimbursed from the “D” Block auction which was unsuccessful. Following the failure of the auction and the need to come into bandplan conformity, our State agencies couldn’t operate with some radios on the “old” band plan and some on the “new” band plan. All radios were retuned out of necessity and at the agencies expense; probably never to be reimbursed.

Ohio sincerely hopes the Commission will study the filings from the many user agencies, such as Delaware, and take into account the vast amount of “real world experience” offering relevant comments to the Commission. The knowledge of academia is all well and good in the controlled atmosphere of a laboratory, but on the streets, when bullets are flying, structures are burning, and lives are on the line, street-wise communications experience speaks the loudest and clearest.

Respectfully,



Darryl L. Anderson  
Director, Ohio MARCS  
Federally Designated SWIC  
State of Ohio

<sup>5</sup> See FCC 07-107 at paragraph 67

<sup>6</sup> See FCC 07-107 at paragraph 69