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ELECTRONICALLY FILED WITH THE FCC 9/16/10

September 15, 2010

Mr. Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C.

Dear Chairman Genachowski:

The State of Texas respectfully submits its 700 MHz interoperable mobile public safety broadband waiver petition, attached, along with support letters from Harris County, the City of Houston, the Greater Harris County 9-1-1 Emergency Network, and the City of San Antonio. Interoperable mobile public safety broadband network implementation is now pending in these initial areas of Texas. The City of San Antonio was granted a waiver by the FCC in Round #1 last May. Harris County and the Greater Harris County 9-1-1 Emergency Network currently have waiver petitions pending at the FCC.

Texas is geographically the second largest state in the nation, covering more than 268,000 square miles, and is home to 25-million persons, meaning that it is also the second U.S. state in population. Texas has five federally-designated Urban Area Security Initiative Regions (more than any other state), with two of these UASI Regions being ranked as "Tier 1." There are more than 1,200 incorporated cities in Texas, 26 commercial airports, 250 general aviation airports, 13 major seaports, and 23 Federal Ports of Entry. A total of 64% of the U.S. southern border with Mexico, 1,254 miles, runs along Texas. Our state hosts 300,000 miles of pipelines that carry oil, gas, and finished products, 7,000 dams, and its own statewide electrical power grid. More than 5,300 public safety agencies in 254 counties serve the citizens of Texas, and these agencies are in immediate need of interoperable mobile public safety broadband services. The State of Texas will not be able to provide those services unless the requested 700 MHz broadband waiver is granted by the FCC to enable spectrum access.

Respectfully submitted,

Michael Simpson

Statewide Communications Interoperability Coordinator (SWIC)
Texas Department of Public Safety Assistant Director, Law Enforcement Support

**Before the
Federal Communication Commission
Washington D.C. 20554**

In the Matter of	§	PS Docket #06-229
	§	
Petition by the State of Texas	§	
For Waiver of the Commission’s	§	
Rules to Allow Establishment of a	§	
700 MHz Interoperable Mobile	§	
Public Safety Broadband Network	§	

PETITION FOR EXPEDITED WAIVER

I. SUMMARY OF REQUEST

Pursuant to Section 47 C.F.R. § 1.925(b)(3), the State of Texas, (“State” or “Texas”) through the Texas Department of Public Safety (“TXDPS”), respectfully submits this Petition for Expedited Waiver of the Commission’s rules to allow the State of Texas to use the public safety broadband spectrum in the 700 MHz band for deployment of a statewide interoperable mobile public safety broadband network. This request emphasizes the commitment of the State of Texas to ensure a statewide interoperable mobile public safety broadband network will be compatible with national standards and fully interoperable with a nationwide network or other regional networks meeting national standards, including those requirements noted in the Commission’s Waiver grant issued May 12, 2010 (FCC Order, PS Docket No. 06-229, released May 12, 2010). The justifications follow the State’s collaboration with the Public Safety Spectrum Trust (PSST), as the current Public Safety Broadband Licensee (PSBL); Harris County, Texas; Greater Harris County 9-1-1 Emergency Network; and the

City of San Antonio, Texas goal of deploying an interoperable mobile public safety broadband network for public safety use.

The Texas Department of Public Safety has worked and collaborated through partnerships with Harris, County Texas; Greater Harris County 9-1-1 Emergency Network; and the City of San Antonio, Texas to begin design and phased construction of an interoperable mobile public safety broadband network in the State of Texas. Granting the requested waiver would allow the State of Texas, along with Harris County, Greater Harris County 9-1-1 Emergency Network, and the City of San Antonio, to move forward with the design and construction of an interoperable mobile public safety broadband network in their respective regions. This collaboration would result in significant cost savings, efficiency benefits, and the accelerated availability of an interoperable public safety voice and broadband data network in the state of Texas, all of which strongly serves the public interest and supports the Commission's goals. These three regional broadband networks would set the foundation for a statewide interoperable mobile public safety broadband “system-of-regional-systems” eventually serving 25 million persons throughout the State.

Therefore, the State of Texas seeks a waiver of the Commission’s rules to grant the State the authorization to use the public safety broadband 700 MHz spectrum (763-768/793-798 MHz). This waiver would allow the State to begin the final planning phase for implementation of an interoperable mobile public safety broadband network. The State of Texas anticipates a “system-of-regional-systems” approach for an interoperable mobile public safety broadband network throughout the state by way of collaboration

with local/regional entities. Upon FCC issuance of the waiver, the State of Texas would take the necessary steps to enter into an appropriate agreement with the PSBL for a sub-license of the public safety spectrum in the State.

II. BACKGROUND

A. The State of Texas

The party submitting this request, the State of Texas, is the second largest state in the nation. The State has 254 counties, five Urban Area Security Initiative (UASI) regions (including two Tier 1 UASI regions), more than 1,200 incorporated cities, 26 commercial airports with more than 250 general aviation airports, 13 major seaports, including the nation's largest port for foreign imports and exports in Houston. Texas has 23 Federal Ports of Entry, more than 1,000 port facilities on 1,000 miles of channel. Included is the Port of Houston, which ranks first in the United States in foreign waterborne tonnage (for 14 consecutive years); first in U.S. imports (for 19 consecutive years); second in U.S. export tonnage; and second in the U.S. in total tonnage (for 19 consecutive years). In addition, the State shares 1,254 miles of border with the country of Mexico, has more than 300,000 miles of pipelines carrying oil, gas and finished products, more than 7,000 dams, and its own electric power grid. Texas is home to the Lyndon B. Johnson Space Center in the third most populated county in the nation, Harris County. The Houston-Galveston Area Council Region has 13 counties covering 12,314 square miles, spanning more than 170 miles of Texas Gulf coastline. The HGAC Region also includes an extensive petrochemical industry with a multitude of petrochemical and fuel refineries, biomedical research facilities, a nuclear power

plant, major air traffic centers, and the Texas Medical Center (the world's largest concentration of medical research and healthcare institutions). The City of San Antonio is the seventh largest city in the nation and home to five military installations. More than 5,300 public safety and first responder entities serve the state. This includes police, sheriffs, EMS, fire-fighting agencies, state agencies, and emergency management entities. These agencies, along with our federal partners which include the FBI, DEA, ATF, ICE, CBP, and U.S. Marshals Service, provide critical public safety services to the residents of Texas. An interoperable mobile public safety broadband network would become an integral part of their functions.

The State of Texas is dedicated to statewide cooperation and a collaborative effort in building and operating public safety infrastructure to provide the highest level of prevention, protection, response and recovery from acts of terrorism and other catastrophic events in the state and nation. Historically, Texas has led the nation in annual federal disaster declarations.

The Commission noted in paragraph 50 of its Waiver grant issued May 12, 2010 (FCC Order, PS Docket No. 06-229, released May 12, 2010) that it was favorably inclined to grant waiver relief to states, saying: "We conclude that waivers for early deployment should meet certain criteria for geographic scope of the proposed deployment. For several reasons, we believe that states provide the most appropriate geographic size for consideration of waiver relief. States offer a reasonable delineation, both geographically and politically, to ensure that deployments are undertaken with sufficient authority, planning and coordination among all state and local public safety

agencies within the state. States can also ensure that early deployments are developed to be consistent with overall plans for intra-state interoperability, and can, consistent with existing mechanisms concerning narrowband interoperability, serve as a single interface with the PSST and ERIC to minimize the complexity that would otherwise be inherent in coordinating numerous interactions on a jurisdiction-by-jurisdiction basis. Further, we believe that state-level waiver deployments will facilitate equipment development and purchase, by ensuring that there is a critical mass of potential users even in the early deployment phase to encourage vendors to compete to provide reasonably priced equipment. The public safety community also has experience with interoperability planning at the state level. For example, under a Department of Homeland Security-administered Public Safety Interoperable Communications (“PSIC”) grant program, each state and territory has developed a statewide communications interoperability plan (“SCIP”). The established governance mechanisms of a state will also facilitate execution of spectrum leases, and coordination of deployments within states and with adjacent states. Finally, we note that state-level systems have the advantage of including a mix of populations, including both urban and rural areas. Thus, state-level governance mechanisms are more likely to ensure that rural areas are included as part of overall deployment plans.” The State of Texas concurs with these statements.

B. State of Texas Interoperable Communications

Over the past several months, the State of Texas, through the Texas Department of Public Safety, has collaborated with several regional Broadband Technology Opportunity Program (BTOP) grant applicants, including Harris County, City of San Antonio, Greater Harris County 9-1-1 Emergency Network, Texas Region 18 Education

Service Center, and Texas A&M University. Through collaboration, partnerships, and sharing of existing infrastructure between the State of Texas (TXDPS) and local/regional entities, a statewide “system-of-regional-systems” approach will be taken. This will allow the State to work with local/regional jurisdictions (which have available broadband funding) to ensure National Standards are adopted and the spectrum is maximized and coordinated across the State to eventually benefit all first responder entities within the state.

The City of San Antonio was the only entity in the State to apply and receive a 700 MHz broadband waiver in the first round of waiver approvals from the Commission. As a result, the City of San Antonio submitted a BTOP grant request for approximately \$28-million to help fund an interoperable regional mobile public safety broadband network to be called the Alamo Mobile Net. In addition, Harris County submitted an original BTOP grant request for approximately \$67-million dollars to design and construct an interoperable mobile public safety regional wireless broadband network known as the HC-BIGNET project. The Harris County Regional Public Safety Communications System currently provides wireless interoperable voice communication service to 319 agencies, including: police, sheriff, EMS, fire-fighting, Texas DPS and other State agencies, and Federal agencies. Harris County would leverage its existing voice radio infrastructure to deploy the interoperable regional mobile public safety broadband network and would connect the two systems utilizing a Public Safety Interoperable Gateway (PSIG). This would promote interoperability with the existing 44,000 public safety radio units operating on the large current Harris County Regional Land Mobile Radio (LMR) system.

Through multi-jurisdictional collaborations, the State of Texas can realize significant cost savings by taking advantage of existing capital infrastructure and resources used in the deployment of current voice radio and interoperability networks. The State of Texas is successfully using a “system-of-regional-systems” approach for the implementation of its Statewide Communications Interoperability Plan for voice radio interoperability now underway.

Funding for the envisioned 700 MHz interoperable mobile public safety network infrastructure would come from federal and state grant programs, as well as investments from the participating cities, counties, and districts. The State is considering entering into a public-private partnership, if necessary, to assist in financing and sustaining the project in certain parts of the state. Use of the 700 MHz public safety broadband spectrum is a critical requirement for the State.

III. THE COMMISSION SHOULD GRANT THE REQUESTED WAIVER TO ALLOW THE STATE OF TEXAS TO BUILD AN INTEROPERABLE MOBILE PUBLIC SAFETY BROADBAND NETWORK

A. Applicable Standard

To obtain a waiver of the Commission’s rules, the petitioner must demonstrate either that: (i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or (ii) in view of 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 [47 C.F.R. §1.925(b)(3)]. An applicant seeking a waiver faces a high hurdle and must plead with

particularity the facts and circumstances that warrant a waiver. Although a successful waiver petition needs to satisfy only one of the two tests, the State of Texas will demonstrate this request satisfies both tests.

B. Depriving the State of Texas of Spectrum that It Needs for Its Interoperable Mobile Public Safety Broadband Network Would Not Serve the Commission's Goals and Would Frustrate the Public Interest

Under the first test, the waiver request should be granted if: (a) denying the State of Texas the use of the broadband spectrum, in the hope that a national public-private partnership plan will succeed, would not serve the underlying purposes of the Commission's plan, and (b) granting the waiver would be in the public interest. The waiver request easily meets both requirements.

As shown above, the underlying purposes of the Commission's plans are to overcome the lack of funding for public safety broadband networks and to speed their deployment. The Commission is concerned that a lack of appropriated funding sources will prevent the spectrum from ever being utilized. And recognizing the enormous benefits of wireless broadband services for first responders, the Commission wisely wishes to have public safety broadband networks available for use as quickly as possible. These goals drove the Commission to adopt a national public-private partnership approach under which a single commercial provider would build a nationwide network to be shared by public safety and commercial users. With the failure of Auction 73 and the uncertainties regarding the Commission's plan expressed by key stakeholders, it is unclear whether the Commission's current plan will serve its goals.

Whether the Commission revamps its general approach, it is clear that, with respect to the State of Texas, the current plan does not serve the Commission's purposes.

The State of Texas is home to more than 25 million persons and is committed to collaborating and partnering with local/regional entities to deploy a state-of-the-art interoperable mobile public safety network. Texas can achieve significant cost savings, by taking advantage of the synergies resulting from simultaneously designing and building the public safety voice and broadband data network elements, and exploring a public-private partnership for statewide build out and sustainability. In addition, cost savings would be realized by numerous agencies and entities in the State by discontinuing or reducing current cellular data charges paid to private service providers. Many of the same steps required to build a voice network – such as hiring consultants, managing the competitive solicitation process, and installing the communications infrastructure – apply equally to building the broadband data part of the network. By collaborating with local/regional entities to simultaneously design and construct an interoperable wireless public safety voice and broadband data network at the same time, the State will avoid duplicated effort and more efficiently marshal its resources. However, the State will only be able to make such efficient use of limited federal, state and local resources if the Commission grants the requested waiver and allows public safety agencies within the State to use the public safety broadband spectrum now.

Were the Commission to deny the waiver, the Commission would frustrate its articulated goals. Instead of obtaining the benefits of a broadband network in the next few years, the State would have to wait an unknown period of time, possibly a decade or longer, for a commercial provider to build out a network that may be neither cost effective nor adequate to meet public safety requirements.

Granting the waiver would unequivocally serve the public interest. Above all, 25 million Texans would benefit from the enhanced abilities of first responders to prevent and respond to all types of disasters. Critical first responder tools, such as instant access to criminal databases for suspect information, improved situational awareness using video technologies, and real time tracking of assets, first responders and resources, would be available throughout the regions.

The public interest benefits of a waiver extend beyond the State of Texas. With five UASI regions (more than any other state), including two Tier I UASI regions, the homeland security of the nation as a whole would be improved as the state would be more prepared to respond to terrorist attack.

The State of Texas also recognizes and supports the goal of nationwide interoperability. As the Commission recognized in its *Third Further Notice*, a regional network can be made fully compatible with this goal. The State, through the “system-of-regional-systems” approach will wholeheartedly support efforts to integrate regionally-constructed networks with a national Shared Wireless Broadband Network.

The State recognizes the importance of interoperability planning to homeland security and first responders, and the need for interoperability and network sharing between first responders across the country.

C Given the Particular Circumstances of the State of Texas, Depriving the State of Spectrum for Its Interoperable Mobile Public Safety Broadband Network Would Be Contrary to the Public Interest

Under the second test, the waiver request should be granted if, in light of the State's unique or unusual circumstances, depriving the State of spectrum needed for an

interoperable mobile public safety broadband network would be contrary to the public interest. The request readily meets this standard.

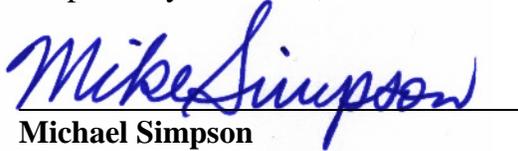
The second test is also met if the requesting party demonstrates it has no reasonable alternative to seeking a waiver. The State's request also satisfies this standard. The public safety broadband spectrum is the State's only reasonable option for broadband communications. Previously, spectrum allocation to public safety was fragmented throughout the frequency ranges, and only made available for voice communications. Further, the 4.9 GHz spectrum is not adequate for large scale, wide area deployments, as its propagation characteristics require significant investment in infrastructure. All other potential spectrum options, including 2.4 GHz Wi-Fi and television white space, do not allow for licensing, rendering systems susceptible to interference and thus unacceptable for public safety use. The 700 MHz broadband spectrum is the only viable solution for a cost effective, statewide interoperable mobile public safety broadband system.

IV. CONCLUSION

For the reasons set forth above, the State of Texas requests the Commission to grant the State a waiver to allow the State of Texas to take advantage of a unique opportunity to plan and implement an interoperable mobile public safety broadband network. The State of Texas acknowledges the FCC has the authority to grant to the State of Texas a waiver for Texas's use of the ten MHz of currently-licensed Public Safety Broadband Spectrum. To prevent this opportunity from passing, the State of Texas respectfully requests the Commission to act on this petition promptly, so the

State and the nation may gain all of the public interest benefits enumerated in this request.

Respectfully submitted,



Michael Simpson
for the State of Texas

Statewide Communications Interoperability Coordinator (SWIC)
Texas Department of Public Safety Assistant Director, Law Enforcement Support

September 15, 2010

Date



September 13, 2010

Federal Communications Commission
Washington, DC 20554

RE: 700 MHz Broadband Waiver Request by the Texas Department of Public Safety

This letter is intended to communicate Harris County's support of the Texas Department of Public Safety's (DPS) waiver request for use of the 700 MHz broadband frequencies within the State of Texas. Harris County will cooperate and coordinate with Texas DPS on Harris County's planned multi-county regional 700 MHz broadband LTE system.

Sincerely,

Ed Emmett
County Judge

EME/DPA/pw



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September 13, 2010

Federal Communications Commission
Public Safety and Homeland Security Bureau
445 12th Street S.W.
Washington, D.C. 20554

To Whom It May Concern:

This letter is intended to communicate the City of Houston's support of the Texas Department of Public Safety's (Texas DPS) waiver request for use of 700 MHz broadband frequencies within the State of Texas. The City will cooperate and coordinate with Texas DPS and other regional partners on any planned broadband LTE implementation within the City of Houston.

The City of Houston has been working with Harris County, Greater Harris 9-1-1, and the State of Texas to help them obtain a waiver(s) for construction and operation of a public safety broadband network. While we will not actually be building the network, we do plan to make use of it once it is built. The City has a pressing need for an extremely reliable broadband network in order to address our many public safety applications.

We have been working with the regional efforts and will continue to do so. We have also made a commitment to work with the State in its efforts to ensure that all broadband is interoperable and serves all public safety users.

Please favorably consider the waiver request of the Texas Department of Public Safety.

Sincerely,

Handwritten signature of Richard F. Lewis in black ink.

Richard F. Lewis
Chief Information Officer



Greater Harris County 9-1-1 Emergency Network

September 14, 2010

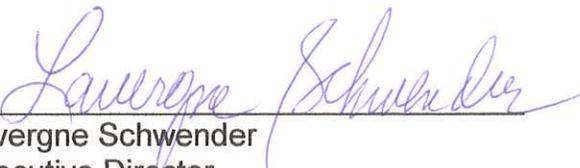
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

RE: 700 MHz Broadband Waiver Request by the Texas Department of
Public Safety

This letter is intended to communicate Greater Harris County 9-1-1
Emergency Network's (GHC 9-1-1's) support of the Texas Department of
Public Safety's waiver request for use of 700 MHz broadband frequencies
within the State of Texas. GHC 9-1-1 will cooperate and coordinate with
Texas DPS on GHC 9-1-1's planned 700 MHz broadband LTE system
implementation.

Sincerely,

Greater Harris County 9-1-1 Emergency Network

By 
Lavergne Schwender
Executive Director



CITY OF SAN ANTONIO

P. O. BOX 839966
SAN ANTONIO TEXAS 78283-3966

September 14, 2010

Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: 700MHZ Broadband Waiver Request by the Texas Department of Public Safety

This letter is intended to communicate the City of San Antonio's support of the Texas Department of Public Safety's waiver request for use of 700 MHz broadband frequencies within the State of Texas. The City of San Antonio will cooperate and coordinate with Texas DPS on the City of San Antonio's planned broadband LTE implementation within the City of San Antonio and vicinity.

Sincerely,

A handwritten signature in black ink, reading "Hugh Miller", written over a horizontal line.

Hugh Miller
Chief Technology Officer/Director
City Of San Antonio