

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 763-768 and)	WT Docket No. 06-150
793-798 MHz Bands)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the)	
700 MHz Band)	

**Amended
Request for Waiver from the State of Maryland of the Commission’s Rules to Deploy a
Standards Based 700MHz Public Safety Interoperable Broadband Network**

And

**Response to Commission’s Public Notice DA 10-1748, Public Safety and Homeland
Security Bureau Seeks Comment on Petitions for Waiver to Deploy 700 MHz Public Safety
Broadband Networks**

Submitted by:

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I. Introduction and Summary

The State of Maryland appreciates the opportunity to amend its Waiver submitted previously for the early deployment of a statewide wireless public safety broadband system as well as respond to the Commission's Public Notice seeking comments on the second wave of early deployment broadband waivers. Through this response, Maryland amends the waiver to indicate that the State's Department of Information Technology has the statutory authority to lead this important project on behalf of the agencies and departments of State government. In this filing, Maryland affirms its commitment to advance the development of a statewide public safety wireless broadband system in conformance with the guidelines issued by the Commission.

Maryland believes that it is necessary to foster creative public-private partnerships in order to construct, operate, and upgrade the first responder wireless broadband system. To that end, Maryland recommends that the Commission determine that the requirements of the Communications Act of 1934 (as amended) §337(f) have been met through the issuance of a license to the Public Safety Spectrum Trust. Part 90 licensees and the Commission's Emergency Response Interoperability Center ("ERIC") should be provided with significant latitude to structure public-private partnerships with non-governmental organizations, critical infrastructure providers, and other entities that permit unimpeded operation of the network for first responders while achieving financial support for the network's reasonable and appropriate expenses.

Maryland also affirms its support for the Commission's guidance that calls upon the states to provide collaborative leadership in the development of discrete portions of the nationwide and interoperable wireless public safety broadband network. Maryland

intends to work collaboratively with all of our counties, cities, and other units of government to construct the network in conjunction with the rules of the Commission, the guidance of the ERIC, and the interests of our neighbors. Maryland also supports the Commission's requirements that coordination in the deployment of broadband systems occur at the state level.

Maryland is comfortable with the Commission's protocols pertaining to the solicitation of public comments relative to waves of applications for early deployment. As these systems are deployed and issues associated with the Long Term Evolution technology come to light, the Public Notice process provides the Commission with opportunities to assess changes and provide on-going guidance to recipients of waivers as well as future applicants.

In response to the Commission's final question in the Public Notice, Maryland suggests that issues relative to the budget of the Public Safety Spectrum Trust be deferred for the immediate future. When funding becomes available to support the development of broadband, there will be ample time to revisit this issue.

Finally, Maryland suggests that the Commission prioritize the resolution of network core issues. There is widespread discussion about varying strategies for the provision of core services. This is a topic that truly merits a national perspective and Maryland asks the Commission to provide guidance on this issue as soon as possible.

II. Amended Waiver

A Waiver¹ for the Early Deployment of a 700 MHz public safety broadband radio network was filed with the Federal Communications Commission (“Commission”) on May 21, 2010, on behalf of the State of Maryland as permitted by the Commission’s Second Report and Order.² The purpose of this Amendment is to provide certain clarifications relative to the submitted Waiver and supplement, not supersede, that original filing.

Pursuant to the Annotated Code of Maryland³, the State’s Department of Information Technology (“DoIT”) will be the lead State agency in this matter and act on behalf of the Executive Branch of State government and coordinate activities with all county, city, and other local governments, regions, and authorities (“Stakeholders”) within Maryland. In this regard, DoIT will act “to ensure that deployments are undertaken with sufficient authority, planning, and coordination among all state and local public safety agencies within the state.”⁴ DoIT will also “ensure that early deployments are developed to be consistent with overall plans for intrastate interoperability, and can, consistent with existing mechanisms concerning narrowband interoperability, serve as a single interface with the (Public Safety Spectrum Trust) PSST and (the Emergency Response Interoperability Center) ERIC to minimize the complexity that would otherwise be inherent in coordinating numerous interactions on a jurisdiction-by-jurisdiction basis.”⁵ Maryland’s Statewide Interoperability Coordinator (“SWIC”)⁶ will be an important

¹ See Request for Waiver of the Commission’s Rules to Deploy a 700 MHz Public Safety Interoperable Broadband Network That Can Be Integrated into the Public-Private Partnership Submitted by State of Maryland, Department of Natural Resources, Office of Information Technology Services submitted via the Commission’s Electronic Comment Filing System on May 21, 2010.

² See Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Second Report and Order*, 22 FCC Rcd 15289, 15406 ¶ 322 (*Second Report and Order*).

³ See Md. Ann. Code, State Finance & Procurement (“SF&P”) § 3A 308(e).

⁴ See FCC 10-79 at paragraph 50.

⁵ *Id.*

member of the Stakeholder team collaboratively developing the statewide 700 MHz public safety broadband network. In addition to the SWIC, state and local government Chief Information Officers, as well as public safety communications officials, will be critical participants in the planning and deployment of the State's proposed 700 MHz broadband system.

The Commission has also stated that “[w]e believe coordination is critical for a number of reasons, primarily to ensure that there is an opportunity for state-level participation in the planning and deployment of networks within the state. Coordination will also facilitate seamless operation of adjacent networks and development of mutually agreed-upon protocols within the state.”⁷ No Maryland county or local governments have filed Waiver applications with the Commission relative to this matter. DoIT will collaboratively and cooperatively work with all Stakeholders to develop the 700 MHz wireless public safety broadband system within Maryland. DoIT will also carefully coordinate all planning and deployment activities with the District of Columbia, National Capital Region (“NCR”), and our neighboring states. DoIT recognizes and appreciates that the appropriate role of state government in this matter is to provide collaborative leadership and coordination with Stakeholders and public safety partners within and outside of Maryland.

Additionally, the Commission stated, “we require, prior to construction or deployment, that any non-state Petitioner submit evidence of coordination with the state to ERIC. Specifically, petitioners must certify that they have provided notice to the appropriate state official, such as a state Chief Information Officer, or other appropriate officer or entity...”⁸ Pursuant to this Amendment and as provided by the Annotated Code of Maryland, the Chief Information Officer for the State of Maryland is Secretary Elliot Schlanger and Secretary

⁶ Mr. Ray Lehr is the Maryland's Statewide Interoperability Coordinator.

⁷ *Id.* at paragraph 51.

⁸ *Id.* at paragraph 52.

Schlanger directs the activities of DoIT. Secretary Schlanger has directed that Mr. Gregory Urban, Deputy Chief Information Officer, and Mr. Denis McElligott, Director of Wireless Services, will assume the day-to-day leadership role in coordinating the deployment of the 700 MHz public safety broadband network if the Waiver submitted on May 21, 2010, and amended by this filing, is approved by the Commission. Messrs. Urban and McElligott will work collaboratively with all Stakeholders to ensure that DoIT will maintain an “affirmative commitment to work on an ongoing basis with the state, the Commission, and ERIC to ensure interoperability both technically and as a matter of governance.”⁹

Maryland will also work with Stakeholders to “offer service or access to all eligible public safety entities within... (the) proposed geographic service area.”¹⁰ While not unique among the States, Maryland has a considerable federal law enforcement and Homeland Security presence in the NCR as well as in many of our counties and cities. To ensure that nationwide interoperability is extended to every public safety partner, regardless of governmental level, Maryland will construct and operate a system that supports federal, state, county, regional, and local law enforcement and emergency services. Because of the significant federal presence in Maryland, the State particularly welcomes the potential federal funding contemplated by the enactment of Senate Bills 3625 or 3756 or similar legislation and the resulting auction of spectrum as contained in the proposed legislation. The passage of a bill with the federal caveats for broadband deployment funding will help Maryland to expedite the implementation of the 700 MHz public safety broadband network.

With respect to the provision of system deployment within Maryland, DoIT is being guided by the Commission’s publication, “*A Broadband Network Cost Model: A Basis for Public*

⁹ *Id.*

¹⁰ *Id.* at paragraph 54.

Funding Essential to Bringing Nationwide Interoperable Communications to America's First Responders."¹¹ DoIT has found this publication to be very helpful. The State's anticipated plan for deployment, subject to Stakeholder concurrence and adherence to State procurement law, is to follow the Commission's recommended strategy as articulated in this publication.

III. Comments of the State of Maryland Pursuant to DA 10-1748

The State is grateful that the Commission has sought comments relative to the second group of early deployment waiver applications. The additional questions posed by the Public Notice ("PN") raise important questions that benefit from nationwide feedback. The PN raises four specific questions which formulate the bulk of our comments. Additionally and as provided in the PN, Maryland raises one additional issue relative to the Network Core that merits, we believe, the priority attention and consideration of the Commission, the Public Safety and Homeland Security Bureau ("Bureau"), and ERIC.

Specific questions included in the PN by the Commission include:

- A. Eligibility of entities under Section 337;
- B. Overlapping requests (for early deployment);
- C. Issues related to the timing of Bureau action and the volume of waivers received in relation to the Commission's overall interoperability goals; and
- D. Impact such additional waivers may have on the budget of the Public Safety Spectrum Trust (PSST).

These questions are individually substantive in scope and merit the thoughtful consideration of all involved with the implementation of a nationwide and interoperable public

¹¹ Federal Communications Commission, OBI Technical Paper Series, April 2010.

safety broadband network. To that end, the State offers comments which we hope will be helpful to the Commission.

1. Eligibility of entities under Section 337

Section 337(f) of the Communications Act of 1934 is instructive relative to the issue of defining “public safety services.” The statute states that the licensee of 700 MHz broadband services must be an entity operating with the characteristic; “the sole or principal purpose of which is to protect the safety of life, health, or property.”¹² Section 337(f) continues by extending eligibility to, “nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services.”¹³ With respect to the potential of crafting public-private partnerships in the development of the nationwide public safety broadband network, the statute seems to grant certain latitude to the Commission to permit the participation of “nongovernmental organizations that are authorized by a governmental entity.”¹⁴

Notwithstanding a broad interpretation of Section 337, Maryland believes that the licensing requirements of the Act were met in full when the Commission issued a license for the broadband 700 MHz spectrum to the Public Safety Spectrum Trust (“PSST”).¹⁵ It is a fact that the sole nationwide licensee of the public safety broadband spectrum is the PSST. As permitted by the Commission, the PSST is merely issuing leases to organizations as approved.

Subsequently, the Commission has authorized a process in which public safety licensees may request a waiver and among other things, seek not a license to operate, but

¹² See Section 337(f)(1)(A) of the Communications Act of 1934.

¹³ See Section 337 (f)(1)(B)(ii) of the Communications Act of 1934.

¹⁴ *Id.*

¹⁵ See WQHW issued to the Public Safety Spectrum Trust on October 24, 2007.

a lease from the PSST which conveys the right to deploy and operate a discrete element of the nationwide broadband network. Maryland sees no reason to change the protocol as relates to licensing and leasing spectrum as the PSST has been entirely responsive to the Orders of the Commission and the numerous requests of early deployers for operating leases.

However, the waivers filed to date have been submitted by governmental organizations that clearly fall within the public safety licensee eligibility requirements established by Section 337(f). These waiver requests essentially have fallen into the category of being the low hanging fruit and in furtherance of the national objective of deploying public safety broadband, the Commission must now more carefully and appropriately, we believe, consider its authority to permit more expansive arrangements such as public-private partnerships with private organizations that have not traditionally fallen into the category of public safety or government. Maryland believes that the Commission has discretion under the provisions of Section 337(f) to consider the statute broadly and grant those public-private partnerships that further the important national goal of constructing discrete elements of the nationwide public safety broadband network.

As noted in the PN, *“several petitions include signatories such as investor-owned utilities or other entities whose eligibility is not readily apparent. We seek comment on how to address these petitions.”* Maryland believes that it is in the best interests of first responders, as well the country, for the Commission to provide the flexibility that allows authorized early deployers, and inferentially other deployers in the future, to consider the potential of relationships with a broad base of private sector entities which benefit public

safety by providing financial resources and operational flexibility that has the end result of supporting the deployment of the nationwide public safety broadband network at the lowest practical cost to the taxpayer. Ultimately, pending some extraordinary and unanticipated federal funding, financial support for the operation, maintenance, and upgrading of the network will revert to states, counties, and local governments that construct the networks.

We believe that the Commission recognizes the potential of a strategy that reaches out beyond tradition and potentially recognizes the value of public-private partnerships. The concept was noted by the Commission in its publication that stated, “*The total present value of the capital expenses and ongoing costs for the network over the next 10 years is approximately \$12-16 billion. State and local governments could contribute funds to cover some of these costs, and there may be additional cost-saving methods that reduce this estimate—such as sharing federal infrastructure, working with utilities, or use of state and local tower sites.*”¹⁶

Maryland believes that the Commission should permit broad flexibility in the use of the public safety broadband network and resulting public-private financial arrangements, provided that access and use by first responders is not affected. An example that is often cited is co-use by a utility that requires access to broadband services over the same kind of broad geographical coverage area as a statewide first responder user. While we agree that such a use might be appropriate, the Commission should also consider broader applications that remove or minimize the financial burden to the taxpayer. Another example, and we do not mean to infer these examples as limitations, is

¹⁶ OBI Technical Paper Series 2 *A Broadband Network Cost Model: A Basis for Public Funding Essential to Bringing Nationwide Interoperable Communications to America's First Responders*, April 2010.

a partnership with a local Internet Service Provider (“ISP”) desiring to provide commercial wireless broadband services through the public safety radio access network. In the broadest sense, utilities, including local ISPs, provide critical infrastructure services that are essential to maintaining medical and life safety services to millions of persons in the United States. In addition to providing financial support for the public safety broadband network, co-use of available network services by an ISP, managed by public safety to ensure that first responder requirements are not adversely impacted, further the important public policy goal of offering reliable and competitively priced broadband service for the nation; particularly in rural underserved areas which often lack competitive broadband services. Maryland has a considerable number of local areas where added competition in the delivery of broadband would be welcome.

Provided that appropriate certifications as to pre-emption and reliability are made to ERIC, Maryland would encourage the Commission to be as flexible as practical in the approval of public-private partnerships provided that all parties understand and acknowledge that first responder operations must have absolute priority of use. All parties to the adjunct use of the network must clearly understand that the operator has the right and responsibility to immediately remove non-public safety users from the system (“ruthless pre-emption”) when required, provided that the non-public safety radio transmission is not reporting an emergency to a 9-1-1 Center if voice services are integrated into the broadband network.

Again, the State’s focus is on the deployment and long term operation of the network, recognizing that future operational costs will also include technology refreshes, through a strategy that does not become a financial burden to the taxpayers. Maryland’s

known future requirements for tax resources are substantial and alternatives in network deployment and operations model that does not add to those future needs are critical. We believe that the future demand for funding to support a broad range of government services is not unique to Maryland and an important national purpose will be served by permitting considerable flexibility for states and other early deployers to craft public-private partnership agreements that have the result of minimizing the cost of operation for the public safety broadband network.

2. Overlapping requests (for early deployment)

Fortunately for Maryland, and as noted in Section II of this submission, none of our counties, cities, or other governmental authorities has filed a waiver for early deployment. As a result, this is not a critical intrastate issue for Maryland; however, it is an important issue for us when coordinating deployments in our neighboring states. We note that both the Commonwealth of Pennsylvania, as well as several of the Pennsylvania counties, have filed waiver requests and are included within the PN seeking these comments.

In other 700 MHz proceedings, the Commission has delegated significant authority to the states for management of voice interoperability channels as well as the issuance of a geographic license for voice channels in support of state government operations. Maryland believes that such designations were wise and reflected an understanding that the states can work together internally and externally to coordinate the deployment of spectrum. However, by accepting multiple intrastate applications for waivers, Maryland potentially may be required to coordinate, not with an overarching state government bordering our state, but with many county governments. While not

impossible to coordinate such deployments, the state government resources required to coordinate with many separate governments in comparison to the requirement of coordination with a smaller number of state governments, would minimize administrative staff support and permit a more rapid deployment of public safety broadband services.

Maryland believes that the Commission set the correct tone in paragraphs 50-53 of the Second Report and Order¹⁷ (“Second R & O”) for intrastate governments to coordinate activities with the states. We believe that the Commission correctly noted that states have the responsibility to *coordinate* the development of the broadband network within their borders by demonstrating leadership in bringing local and county governments together for the common purpose of deploying discrete portions of the nationwide and interoperable broadband public safety network as quickly as practical. We believe that the protocol established in the Second Report and Order requiring state coordination is appropriate. This requirement, “*we believe state-level deployments offer significant advantages, we conclude that these Petitioners should also receive waiver relief, provided that they do so in coordination with state authorities. We believe coordination is critical for a number of reasons, primarily to ensure that there is an opportunity for state-level participation in the planning and deployment of networks within the state,*”¹⁸ ensures that the states and their political sub-divisions work in harmony to deploy the network. However, the protocol also provides an important provision that permits potential lessees to file waivers if a state does not respond to requests in a timely manner. In recognition of the fact that state governments are experiencing increased workloads and often, reduced staff resources, we believe that the

¹⁷ *Id.* Second Report and Order, 22 FCC Rcd 15289, 15406 ¶ 322 (Second Report and Order).

¹⁸ *Id.* at paragraph 51.

provision of the Second R & O permitting applicants to file absent state coordination after sixty days is appropriate and necessary.¹⁹ All of the non-state government waiver applications submitted to the Commission should incorporate a requirement demonstrating compliance with the provisions of the Second R & O that speaks to coordination. Maryland believes that the non-state government waiver applications submitted in the current “round” as well as future “rounds” should not be finalized until the provisions adopted by the Second R & O related to state coordination are satisfied.

3. Issues related to the timing of Bureau action and the volume of waivers received in relation to the Commission’s overall interoperability goals.

Maryland noted that the City of Chicago filed a Waiver²⁰ that suggested among other things, that the important issues related to early deployments had been vetted fully in the original Order issued by the Commission²¹. Maryland appreciates the request of Chicago and acknowledges that the recommended strategy would have the practical effect of expediting the deployment of the network, which is an appropriate and important national goal. However, we also recognize that the implementation of public safety broadband on a nationwide and interoperable basis is very challenging. The Long Term Evolution (“LTE”) technology mandated by the Order is an emerging technology. The Commission’s proposed strategy of co-deployment²² is novel and untried within the country. There will be a continuing series of questions raised with needed guidance from

¹⁹ *Id.* at paragraph 52.

²⁰ See letter from Jose A. Santiago, Executive Director, Office of Emergency Management and Communications, City of Chicago, to the Public Safety and Homeland Security Bureau (June 23, 2010) (Chicago Letter); Expedited Waiver Request of the City of Chicago, PS Docket No. 06-229 (filed June 25, 2010).

²¹ See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket No. 06-229, *Order*, FCC 10-79 (rel. May 12, 2010) (*Waiver Order*).

²² See A Broadband Network Cost Model: A Basis for Public Funding Essential to Bringing Nationwide Interoperable Communications to America's First Responders, April 2010.

the Commission. A comment/reply comment process provides the Commission with time to seek information from the governmental public safety community, manufacturers, public safety organizations, and others. The process that the FCC has fostered in the consideration of the submitted waivers is very much akin to the “application windows” commonly used by the Regional Planning Committees, and we believe that the Commission’s process is appropriate.

Notwithstanding our support for the process, we would urge the Commission to be sensitive to the need to consider applications and as appropriate, authorize leases on a timely basis. The first groups of leases were authorized in May, and the Public Notice process will preclude further lease approvals until the late fall of 2010; probably in the neighborhood of five to six months. Maryland recognizes that this is an emerging process and we do not mean to infer any criticism of the Commission’s process; however, we believe that waivers and leases must be processed in a timelier basis in recognition of the importance of deploying the nationwide and interoperable network as quickly as practical.

Chicago was correct to note that there are elements of commonality that affect all waiver applicants. However, as deployments go forward, new issues important to public safety will be identified and the waiver process may require modification. Maryland recommends that the Commission carefully consider the procedural issues as well as the reality that certain issues have become routine and devise guidelines that permit compliance with all of its rules while processing waiver applications as quickly as practical. The national goal should be to support our nation’s first responders by providing the public safety LTE technology as quickly as possible.

4. Impact such additional waivers may have on the budget of the Public Safety Spectrum Trust (PSST).

Since the release of the Commission's Public Notice²³, the National Telecommunications and Information Administration ("NTIA") has released certain notices of award for Broadband Technology Opportunity Program ("BTOP") funding. Unfortunately, only a few of the Commission's previously approved waiver applicants received BTOP funding. As was noted by some of the waiver recipients, BTOP and other external funding sources are critical to the construction of broadband systems.

This development has the potential impact of affecting the budget of the PSST. The PSST's budget, which was approved by the Commission, was predicated upon each waiver recipient paying a lease fee of \$15,000. It is unclear if the waiver recipients not immediately constructing systems due to lack of funding will pay the mandated lease fees or seek refunds if there is no funding to construct a broadband system. If the construction of public safety broadband is dependent upon federal funding, many potential early deployers will be forced to defer action until spectrum is auctioned either through previously approved legislation or new legislation now in the Senate.

Maryland is also in the position of requiring external federal funding before a statewide public safety broadband system can be deployed. It is entirely likely that many other of the states submitting waivers will also require extraordinary federal funding to deploy these networks. If federal money will not be available until after an auction of radio spectrum, it could be months to years before the financial proceeds are provided to waiver recipients permitting the deployments to proceed. If waiver applicants are

²³ See DA 10-1748, Public Safety and Homeland Security Bureau Seeks Comment on Petitions for Waiver to Deploy 700 MHz Public Safety Broadband Networks.

dependent upon federal money to construct systems and beyond the issue of the PSST budget, it seems logical to ask if the Commission should take action on a submitted or future waiver application if the applicant lacks the financial resources to proceed.

Maryland believes that the Commission should consider the availability of funding liberally and recognize that the construction of discrete parts of a nationwide network require considerable intrastate political and administrative action prior to proceeding with implementation. Progress in the implementation of these broadband systems also necessitates a degree of certainty from the Commission. To that end, Maryland believes that waivers for early deployment should continue to be issued when appropriate with lease fees paid to the PSST. As a new organization, the PSST has no information to predict the eventual scope of lease requests. To that end and like many non-profit organizations, the PSST should be permitted to accumulate reasonable fund balance reserves that permit the delivery of services that facilitate the nationwide implementation of a nationwide public safety broadband network.

With respect to the question specifically posed by the Commission regarding the PSST budget, Maryland recommends that the issue be monitored without specific action until the PSST can react to the impact of BTOP funding affecting systems for which waivers have been granted by the Commission. At this time, the PSST budget, which is predicated upon comparatively small lease fees per system, should remain as an issue of evaluation between the Commission and the PSST.

5. We also encourage commenters to address any other issues that they consider to be material to the Bureau's consideration of the petitions.

As an important feedback comment from Maryland relative to the Commission's deployment questions posed in a recent Public Notice²⁴ relative to the issue of a "Nationwide Core", Maryland requires guidance on this issue as it will be critical to the design of the State's proposed 700 MHz broadband deployment. At a minimum, Maryland anticipates that its internal high-speed data network, bolstered by a recent American Recovery and Reinvestment Act BTOP funding award, will serve as a principle means of connecting the decentralized network components with a central intrastate network core. To ensure that network core services are planned and provided in a manner that meets all Commission requirements and fosters nationwide interoperability, Maryland asks that the Commission prioritize guidance on this important issue.

Conclusion

In conclusion, the State wishes to reiterate that this Amendment supplements, not obviates, the Waiver submitted on May 21, 2010. Maryland looks forward to working with the Commission, PSST, and ERIC if the Waiver application is approved in the deployment of the public safety broadband network.

/s/

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²⁴ See DA 10-884 released May 18, 2010.

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