

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

In the Matter of)
)
Requests for Waiver of Various) PS Docket No. 06-229
Petitioners to Allow the Establishment of)
700 MHz Interoperable Public Safety)
Wireless Broadband Networks)
)
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COMMENTS OF THE UTILITIES TELECOM COUNCIL

The Utilities Telecom Council (UTC) is pleased to provide the following comments in response to the Commission’s *Public Notice*, released September 15, 2010 in the above referenced proceeding.¹ UTC supports allowing electric, gas and water utilities and other critical infrastructure industries to share 700 MHz public safety spectrum, as part of a consortium of public safety eligibles that have filed a waiver petition with the FCC, seeking authority to deploy public safety broadband systems on a local or regional basis using the 10 megahertz of 700 MHz public safety broadband spectrum currently licensed to the Public Safety Spectrum Trust (PSST) (763-768/793-798 MHz).

As the FCC itself has stated, such sharing will make more efficient use of the spectrum and “help lower costs for all.”² Moreover, this consortium is similar to other public safety/public service shared systems that the FCC has approved in the past, and

¹ 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*).

² National Broadband Plan at 233.

is consistent with Congressional intent and FCC precedent that allow non-governmental entities that support public safety to be licensed on the 700 MHz public safety spectrum, generally. The FCC should encourage such partnerships between utilities and public safety in order to promote the deployment of public safety broadband networks and to support utility communications that together help to protect the health and safety of the public at large, as well as promote homeland security. Thus, the Commission does not need additional authority to permit electric, gas, and water utilities and other critical infrastructure industries to share 700 MHz public safety spectrum, as part of a consortium of public safety eligibles that have filed a waiver petition with the FCC. Therefore, UTC urges the Commission to emphatically and expeditiously grant the currently pending waiver filed by Las Vegas Metropolitan Police Department, Washoe County Sheriff's Department, the Washoe Regional Communications System, the Nevada Department of Transportation, and NV Energy – and to grant similar waivers involving utilities and other critical infrastructure industries that may be filed with the FCC in the future.

I. Introduction and Background

The Utilities Telecom Council is the trade association for the telecom and IT interests of the nation's electric, gas, and water utilities and other critical infrastructure industries. Its members own, manage or control extensive communications systems that they use to support the safe, reliable and efficient delivery of essential services to the public at large. These members range in size from large investor-owned utilities that serve millions of customers across multiple states to relatively small cooperatively-organized and municipal utilities that serve a few thousand customers in rural areas or

isolated communities in various parts of the country. Regardless of the size or type of utility, they all depend on private internal communications to support their core businesses, and as such these networks are designed, built and operated to exceptionally high standards for reliability, coverage, availability and security.

Often, utilities must respond to emergencies, and must be able to communicate and coordinate with public safety. However, many utilities lack adequate communications that are interoperable with public safety, as well as with other utilities. That is one of the many reasons why utilities and public safety entities have partnered with each other to develop and deploy regional shared systems, using public safety and industrial/business or industrial/land transportation frequencies. Therefore, UTC is pleased to file these comments in response to the FCC's *Public Notice* in support of allowing utilities to partner with public safety on 700 MHz public safety broadband networks.

II. Allowing Utilities to Partner with Public Safety Eligibles to Share 700 MHz Public Safety Broadband Networks Will Serve the Public Interest in Making Efficient Use of Spectrum and Promoting Public Safety and Utility Communications.

There are many public interest benefits in sharing 700 MHz public safety spectrum with utilities and other critical infrastructure industries.

First, sharing makes more efficient use of the spectrum and reduces the cost of deploying a broadband network. As the Commission is well-aware, utilities need additional spectrum to support communications for critical voice and data applications, such as emergency response and smart grid. Access to the 10 MHz of 700 MHz public safety broadband spectrum will help to address utilities' urgent need for additional

spectrum that is suitable to support these applications cost-effectively. Further, many utilities have applied for and have been awarded Federal funding for smart grid investment grants and smart grid demonstration projects; and the criteria and conditions for these funds include preferences for projects that promote other national policy goals (such as public safety and broadband) and requirements to use the funding within specified time periods. As such, sharing 700 MHz public safety spectrum can help utilities meet their communications needs for smart grid, and at the same time, can help public safety by leveraging utility resources, including infrastructure and smart grid funding.

Second, utilities and public safety have similar communications needs and are compatible users of the spectrum. As the Commission has recognized,

The wide-area network requirements of utilities are very similar to those of public safety agencies. Both require near universal coverage and a resilient and redundant network, especially during emergencies. In a natural disaster or terrorist attack, clearing downed power lines, fixing natural gas leaks and getting power back to hospitals, transportation hubs, water treatment plants and homes are fundamental to protecting lives and property. Once deployed, a smarter grid and broadband-connected utility crews will greatly enhance the effectiveness of these activities.³

Thus, utilities and public safety eligibles would design, build and operate 700 MHz broadband networks that would meet their mutual needs, and sharing spectrum would promote both public safety and utility communications.

Third, sharing spectrum would promote interoperability between utilities and public safety. As the Commission has recognized, “CII entities often work hand in hand with public safety officials at the scene of an incident. Indeed, reliable CII radio

³ National Broadband Plan at 233.

communications have long proven essential in speeding recovery from natural or man-made disasters.”⁴ However, utilities generally lack communications that are interoperable with public safety entities, which could hamper emergency response. For example, public safety rescue efforts may be delayed, if they can’t communicate with utilities to turn off power, shut off gas, or restore water pressure in an affected area during a storm or other natural or man-made emergency scenario. Sharing spectrum would open up opportunities for the development of interoperable communications between public safety and utilities, thereby promoting emergency response.

III. Congressional Intent and Commission Precedent Support Granting 700 MHz Waivers Involving Utilities and Public Safety.

The Commission has ample authority to grant 700 MHz waiver petitions involving utilities and public safety, which is consistent with congressional intent and Commission precedent.

When Congress designated the 700 MHz bands for use by public safety, it specifically provided that these bands could be used by non-governmental organizations that support public safety communications.⁵ As part of the same legislation, Congress also exempted a class of “public safety radio services” from having to compete at auction for spectrum,⁶ and it explained that this class includes “private internal radio services” used by utilities, railroads, metropolitan transit systems,

⁴ Improving Public Safety Communications in the 800 MHz Band, *Fourth Memorandum Opinion and Order*, WT Docket 02-55, 19 F.C.C.R. 14969 at n 11 (2004).

⁵ 47 U.S.C. §337(f)(1) (defining public safety services as services “the sole or principal purpose of which is to protect the safety of life, health, or property;” that are provided by “state or local government entities; or by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and that are not made commercially available to the public by the provider.”).

⁶ 47 U.S.C. § 309(j)(2).

pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, such as the American Automobile Association (“AAA”).⁷

When the FCC implemented these provisions, the FCC clarified that these non-governmental organizations were eligible for licensing in the band, if they were endorsed by a public safety eligible.⁸ In addition, the FCC recognized that utilities and other critical infrastructure industries provide “public safety radio services” as that term was defined by Congress.⁹ Moreover, there are numerous examples of waivers to allow utilities to share public safety frequencies generally that the Commission has granted in the past; and granting the pending 700 MHz waivers would be consistent with those cases.¹⁰

⁷ See H.R. Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997).

⁸ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, *First Report and Order and Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, 14 FCC Rcd. 152 (1988). See also, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, Second Memorandum Opinion and Order, WT Docket No. 96-86, 15 FCC Rcd. 16844 (2000).

⁹ See Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz; Petition for Rule Making of the American Mobile Telecommunications Association, *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87, RM-9332, RM-9405, RM-9705, 15 FCC Rcd 22709 (1999) (implementing the Balanced Budget Act of 1997 provisions including the auction exemptions).

¹⁰ See e.g. State of Colorado and Holy Cross Electric Association, Inc. Request for Waiver of Section 90.179(a) of the Commission's Rules, Order, DA 10-1152, 25 F.C.C.R. 8131 (2010)(granting waiver to allow use of 800 MHz public safety frequencies); State of Ohio and Ohio Rural Electric Cooperatives, Inc. Request for Waiver of Section 90.179(a) of the Commission's Rules, Order, DA 09-423, 24 FCC Rcd. 2289 (2009)(granting waiver to allow use of 800 MHz public safety frequencies; STATE OF ILLINOIS Request for Waiver of Section 90.179(a) of the Commission's Rules, Order, DA 08-124, 23 FCC Rcd. 437 (2008)(granting waiver request to use 800 MHz public safety frequencies, but denying waiver request to use 700 MHz public safety frequencies, citing lack of justification that the sole or principal purpose of the communications are to protect life, health or property (i.e. not because of any inherent ineligibility to access the 700 MHz band)); and Douglas Electric Cooperative Request for Waiver of Section 90.179 of the Commission's Rules, Order, DA 06-1996, 21 FCC Rcd. 11298 (2006)(granting waiver to permit the use of 450-470 MHz public safety frequencies).

Taken together, Congress's Balanced Budget Act provisions and the FCC's implementation of those provisions support the proposition that the FCC has authority to authorize public safety entities to partner with utilities and other critical infrastructure industries and share 700 MHz public safety broadband spectrum. The proposed sharing arrangements in the waiver requests are consistent with congressional intent and the FCC's case precedent in the following respects. First, the entities that are applying for the waiver are in fact public safety entities, as well as non-governmental entities that support public safety communications on a private internal basis (i.e. utilities). Second, the utility partners have been endorsed by public safety entities to share the network, which is inherent in the nature of the sharing arrangement. Third, the sole or principal purpose of the network would be to protect the safety of life, health, or property, and this network would not be made commercially available. That is because utilities generally operated these networks on a non-profit, cost-shared basis to protect the safety of their workers and the public that depends on the essential services they provide. Therefore, the Commission should grant the pending waivers to permit public safety to share their 700 MHz broadband networks with utilities and other critical infrastructure industries, consistent with the FCC's own precedent.

CONCLUSION

For all of these reasons, UTC respectfully requests that the Commission grant the waivers expeditiously to allow utilities and public safety entities to share the 700 MHz broadband spectrum. There is an urgent need to develop these systems, and by working together and sharing resources, utilities and public safety can design, build and operate networks in a quick, cost-effective and spectrally efficient manner. Moreover, the Commission has the authority to allow such sharing arrangements between utilities and public safety. Finally, by granting the pending waivers, the Commission can encourage further partnerships between utilities and public safety. Therefore, the Commission should expeditiously approve the waivers, and allow utilities to partner with public safety to build regional 700 MHz public safety broadband wireless networks together.

Respectfully submitted,

Utilities Telecom Council

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Mike Oldak
Brett Kilbourne
Utilities Telecom Council
1901 Pennsylvania Avenue, NW
Fifth Floor
Washington, DC 20006
202-872-0030

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