

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

In the Matter of:

	)	
Request by the State of West Virginia	)	
for Waiver of the Commission's Rules to	)	PS Docket No. 06-229
Allow Establishment of a 700 MHz	)	
Interoperable Mobile Public Safety	)	
Broadband Network	)	

**REQUEST FOR WAIVER**

Pursuant to Section 1.925 of the Commission's rules the State of West Virginia ('the State') submits this Petition for Waiver to allow for construction and deployment of an interoperable 700 MHz public safety broadband system. This system will be designed to be fully interoperable, consistent with conditions as recommended by the public safety community and ultimately required by the Commission. The requested waiver is consistent with the twenty-one petitions for waiver the Commission recently granted.<sup>1</sup>

Expeditious grant of this waiver to enable deployment in the 763-768/793-798 MHz band pursuant to a spectrum lease from the Public Safety Spectrum Trust (PSST), nationwide licensee of the spectrum, is in the public interest. Such a grant will provide for deployment of critical broadband public safety communications for the State of West Virginia. The State is aware that the State of Maryland and the Commonwealth of Pennsylvania have also submitted waiver requests to deploy 700 MHz broadband systems. The State will coordinate its deployment with these adjacent entities to avoid conflicts between these systems.

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<sup>1</sup> See Order, PS Docket 06-229, released May 12, 2010.

## **I. Background**

The State of West Virginia has a geographic area of over 24,000 square miles and a population of over 1.8 million people. There are 243 law enforcement agencies in the state, including the West Virginia State Police. Each of the 55 counties in West Virginia has a Sheriff's Department and there are also 185 municipal police departments. There are over 3200 police officers in the state. There are over 400 fire departments in West Virginia. The State has 43 licensed hospitals with 2 Level I, 4 Level II, 3 Level III and 14 Level IV Trauma Centers. All of these critical resources could benefit from the availability of broadband communications.

The State of West Virginia is in the process of deploying a Statewide Interoperable Radio Network in which all first responder agencies are partnering together for build-out and utilization. This statewide network currently consists of 92 tower sites with 15 more tower sites being completed by the end of 2011 for a total of 107 sites, which will be utilized for future broadband communications deployment. The network of the 107 sites will be connected via a high-capacity digital microwave network.

## **II. Granting a Waiver is in the Public Interest**

Communications plays an increasingly important role in public safety and homeland security. Prevention and response activities require relevant and timely information in the field. The faster that information is made available, the more likely lives and property will be saved. For example, according to the U.S. Department of Justice, of the children abducted by strangers and murdered, 75% are killed within the first three hours. Distributing images of both abducted children and any suspected abductors immediately and directly to public safety personnel in the field is one tool to help address this situation. Having the capability to upload this information immediately from a public safety vehicle at the scene of abduction to a dispatcher and other public safety personnel can also be extremely important in battling such crimes.

It is impossible to predict where the next natural or manmade disaster, criminal incident, or terrorist event will occur. Therefore, all jurisdictions must be as prepared as possible to deal with such incidents. Also, public safety requires constant vigilance and response 24 hours a day, 7 days a week.

West Virginia enjoys a relatively low crime rate compared to some other states, however, it is not immune to criminal activity.<sup>2</sup> For example, West Virginia ranked 37<sup>th</sup> out of 50 states and the District of Columbia for violent crime in the year 2008, the latest year for which statistics have been published. The state ranked 33<sup>rd</sup> for murder, 29<sup>th</sup> for aggravate assault and 28<sup>th</sup> for burglary. Law enforcement must be prepared and have access to the best information available to protect the public. Accordingly, the instant availability of criminal and other databases to officers in the field is extremely important. Once authorized and deployed, a public safety broadband system for West Virginia would provide this capability.

Mining is also a way of life in West Virginia and with that come the potential for disasters. For example, in April 2010, 29 coal miners lost their lives in the devastating explosion at Upper Big Branch mine. While there is no certainty that broadband communications would have prevented these deaths, there is also the possibility that some additional piece of information delivered to the right place quickly may have made a difference then or may make a difference in any future mining disasters. Our public safety responders deserve the best possible tools available and that includes information when and where it is needed.

The State envisions a multitude of uses for the broadband network, once it is deployed and some preliminary experience is gained in its use. Examples of these applications include:

- Fast access to multiple databases in the field
- Transfer of images to/from public safety personnel in the field
- Video for surveillance and remote monitoring
- Automatic vehicle location
- Mapping and GIS
- Next generation dispatch functions

These are merely some of the applications the State anticipates for a broadband network. Further, once a communications system is in place, public safety personnel find creative ways to enhance operations that may not have been envisioned at the outset.

Given West Virginia's commitment to meet interoperability requirements, such a network can also serve to provide access to other authorized eligible public safety users. While public safety users might roam into West Virginia from any state, it is more likely that personnel from adjacent states would require interoperability. We note that the Commonwealth of Pennsylvania and the State of Maryland have both submitted similar waiver requests to authorize

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<sup>2</sup> <http://www.disastercenter.com/crime/wvcrime.htm>

deployment of 700 MHz LTE broadband networks. West Virginia looks forward to working cooperatively with these adjacent states to help ensure interoperability and minimize any conflicts at our respective borders.

The current rules envisioned that the public safety broadband network would be deployed under a public/private partnership by the winner of the adjacent “D block” spectrum in the 758-763/788-793 MHz portion of the 700 MHz band. However, auction of the D block spectrum in 2008 failed, introducing significant delays in the plan. The rules that remain on the books two years later severely limit and discourage deployment by state or local governments, the very entities public safety spectrum should serve. Under these rules, the D block licensee will have the “exclusive right to build and operate the Shared Wireless Broadband Network.”<sup>3</sup> For this reason, a number of public safety entities have requested a waiver of the rules to allow deployment in the PSST block of spectrum and the Commission previously granted twenty-one of these waiver petitions. West Virginia seeks a similar waiver to deploy its own broadband public safety network.

Grant of the requested waiver will allow the State of West Virginia to deploy a public safety grade broadband network on the PSST spectrum at 763-768/793-798 MHz, consistent with the Commission’s requirements for interoperability. Such a network would have the advantage of being designed for West Virginia’s public safety needs, including backup power to provide resiliency during natural disasters, coverage over time to ensure officer safety over as much of the state’s geography as possible and security to help support homeland security. We understand the significant challenge of deploying such a broadband network in a state which encompasses a significant amount of rural area. From a practical perspective, it will likely be necessary to plan deployment first in our more populated areas and along major roadways. West Virginia is committed to contributing as much deployment in the state as possible toward the Commission’s overall goal of a nationwide network, consistent with whatever funding is made available.

The Commission already addressed the public policy questions involved in such waiver requests and concluded that: “By enabling early deployment in this band, we take a major step towards development of a nationwide interoperable public safety broadband wireless network.”<sup>4</sup> The State requests the same consideration with the same rights and responsibilities as defined in

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<sup>3</sup> 47 CFR, Sections 27.1330 and 90.143 of the FCC rules.

<sup>4</sup> Order, PS Docket No. 06-229 at page 2.

that Commission decision. By granting the requested waiver, the Commission will serve public safety, the 1.8 million residents of West Virginia, the many visitors to our state and ultimately, the entire country. Deployment of a public safety broadband wireless network in West Virginia would provide yet another segment of a nationwide broadband interoperability solution.

The State of West Virginia understands that it must enter into a spectrum agreement with the Public Safety Broadband Licensee, i.e., the Public Safety Spectrum Trust (PSST). The Commission already set the precedent of endorsing use of such agreements in its Order granting twenty-one previously filed waiver requests and in its follow-up decision approving the spectrum leases between waiver grantees and the PSST which had been submitted for approval.<sup>5</sup>

This waiver request does not include use of the adjacent D block spectrum at 758-763/788-793 MHz because the State understands that the D block spectrum is currently designated for commercial use. However, should the D block be reallocated for public safety use consistent with legislation introduced by West Virginia's own Senator Rockefeller, the State would plan subsequently to request authority to use that spectrum as well.<sup>6</sup>

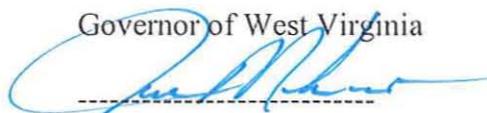
### III. Conclusion

In light of the critical public safety and national security requirements at stake, the State of West Virginia urges the Commission to grant the requested waiver expeditiously. Grant of this waiver request is in the public interest and will further both public safety's and the Commission's goal to deploy a nationwide interoperable 700 MHz public safety broadband network. Grant of this waiver request will move the Commission and the country one step closer to achieving its goal of establishing a nationwide interoperable broadband wireless network for public safety.

Respectfully Submitted,

The State of West Virginia, by

Governor of West Virginia



November 09, 2010

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<sup>5</sup> See Order, PS Docket 06-229, released May 12, 2010 and Public Notice, DA 10-1678, released September 2, 2010.

<sup>6</sup> See S.3756 introduced by Senator Rockefeller August 5, 2010.