

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

In the Matter of )  
 )  
47 C.F.R. § 90.523(a) and 47 U.S.C. § 337(f)(1): ) PS Docket No. 06-229  
Clarification of Public Safety Services )  
for Purposes of Eligibility to Operate on )  
700 MHz Public Safety Broadband Spectrum )

To: Chief, Public Safety and Homeland Security Bureau

**REQUEST FOR DECLARATORY RULING**

Respectfully submitted,

**THE CITY OF CHARLOTTE, NORTH CAROLINA**



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## SUMMARY

The City of Charlotte, North Carolina requests the Commission to clarify the scope of activities that are permitted to be conducted by state and local entities authorized to operate on 700 MHz broadband public safety spectrum. The City holds a conditional 700 MHz broadband lease and has secured BTOP funding to deploy a 700 MHz broadband network. Its BTOP grant specifies that BTOP-funded network assets are restricted to use by public safety entities as that term is defined by the Commission.

The FCC has considered the issue of what is commonly termed “Section 337 Eligibility” over the past several years, most particularly with regard to the use of 700 MHz broadband spectrum by non-governmental entities such as utilities and, on a secondary basis, by subscribers to commercial systems. In the context of those discussions, the question has arisen as to whether even public safety entities may only allow personnel that, individually, have as their sole or principal purpose the safety of life, health and property to use such systems, or whether other governmental employees may share the use of a broadband network with emergency responders.

For the reasons described herein, the City believes that the Communications Act, the legislative history accompanying Section 337, and the Commission’s rules all confirm that a proper use of the 700 MHz public safety allocation is “to develop multiple user public safety communications systems and local and regional interoperability systems that effectively incorporate all public safety services providers.”<sup>1</sup> The City of Charlotte requests that the FCC issue a declaratory ruling confirming that the City and other entities with broadband waivers are permitted to allow shared use of their 700 MHz broadband spectrum by governmental personnel

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<sup>1</sup> Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152 at ¶ 5(1998).

including, but not limited to, those engaged directly in police, fire and medical emergency activities.

The City of Charlotte, North Carolina (“Charlotte” or “City”), by its attorneys and in accordance with Section 1.2<sup>2</sup> of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations, respectfully requests the Commission to clarify the scope of activities that are permitted to be conducted by state and local entities authorized to operate on 700 MHz broadband public safety spectrum. The City was granted a conditional broadband waiver by the FCC on May 10, 2010.<sup>3</sup> It subsequently entered into a spectrum lease with the Public Safety Spectrum Trust, which was approved by the Commission on September 2, 2010.<sup>4</sup> On August 17, 2010, Charlotte was granted funding toward deployment of a 700 MHz broadband network through the National Telecommunications & Information Administration (“NTIA”) Broadband Technology Opportunities Program (“BTOP Grant”).<sup>5</sup>

The BTOP Grant was awarded to Charlotte and provided stimulus funding under the American Recovery and Reinvestment Act of 2009 for the “CharMeck Connect” project. As the City has explained to the Commission in quarterly reports required pursuant to the Waiver Order, the CharMeck Connect project is a partnership encompassing the City, Mecklenburg County, and the Towns of Cornelius, Davidson, Huntersville, Matthews, Mint Hill and Pineville. The project is intended to provide broadband capabilities to partnership participants and, ultimately, to be part of a seamless and transparent broadband network for public safety users in the State of North Carolina. As discussed below, Charlotte’s intention in securing the waiver, the 700 MHz spectrum lease, and the BTOP Grant was to provide advanced communications capabilities for

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<sup>2</sup> 47 C.F.R. § 1.2.

<sup>3</sup> See In the Matter of Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, *Order*, PS Docket No. 06-229, 25 FCC Rcd 5145 (rel. May 12, 2010) (“Waiver Order”).

<sup>4</sup> See Public Safety and Homeland Security Bureau Approves Long Term De Facto Transfer Spectrum Lease Agreements filed by Conditional Waiver Recipients to Establish 700 MHz Interoperable Public Safety Wireless Broadband Networks, *Public Notice*, DA 10-1678 (rel. Sept. 2, 2010).

<sup>5</sup> See The White House, Office of the Press Secretary, *Vice President Biden Announces Recovery Act Investments in Broadband Projects to Bring Jobs, Economic Opportunity to Communities Nationwide*, at <http://www.whitehouse.gov/the-press-office/2010/08/18/vice-president-biden-announces-recovery-act-investments-broadband-projec> (August 18, 2010); and *Fact Sheet on Today’s Public Safety Broadband Awards*, at [http://www.whitehouse.gov/sites/default/files/microsites/20100818\\_public\\_safety\\_fact\\_sheet.pdf](http://www.whitehouse.gov/sites/default/files/microsites/20100818_public_safety_fact_sheet.pdf) (August 18, 2010).

emergency responders, but also for other government personnel whose shared use of such a network would make its deployment economically justifiable while also enhancing interoperability.

The BTOP Grant includes certain Special Award Conditions. Condition 6, in pertinent part, reads as follows:

The recipient shall comply with the requirements established in the Federal Communications Commission's (FCC) Order in PS Docket 06-229, adopted on May 11, 2010 (FCC 10-79) and all subsequent orders and public notices regarding the use of the 700 MHz public safety broadband spectrum (763-768 MHz and 793-798 MHz).

Condition 13 states, in pertinent part:

Any BTOP-funded network assets will be restricted to use by public safety entities and only such other parties as are specifically detailed in the recipient's BTOP applications.

The BTOP Grant does not itself define "public safety entities" for purposes of compliance with Condition 13, and NTIA has confirmed that the Commission's interpretation of that term will govern permissible use of the BTOP-funded network assets. Thus, before Charlotte commits any expenditure of funds from or related to the BTOP Grant, it must have certainty with regard to the FCC's definition of public safety entities permitted to use the network assets.

The FCC has considered the issue of what is commonly termed "Section 337 Eligibility" over the past several years, most particularly with regard to the use of 700 MHz broadband spectrum by non-governmental entities such as utilities and, on a secondary basis, by subscribers to commercial systems.<sup>6</sup> However, it has not addressed directly the question raised by the City's

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<sup>6</sup> See In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands and Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Second Report and Order* in WT Docket 06-150 and PS Docket No. 06-229, *et al.*, FCC 07-132, 42 CR 210 (rel. August 10, 2007) ("2<sup>nd</sup> R&O"); In the Matter of the Service Rules for the 698-746, 747-762 and 777-792 MHz Bands and Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Second Further Notice of Proposed Rulemaking*, WT Docket 06-150 and PS Docket No. 06-229, FCC 08-128 (rel. May 14, 2008) ("2<sup>nd</sup> FNPR"); In the Matter of the Service Rules for the 698-746, 747-762 and 777-792 MHz Bands and Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Third Further Notice of*

Special Award Condition 13. Therefore, the City asks the FCC to confirm explicitly what the rulings in PS Docket No. 06-229<sup>7</sup> and the processing of 700 MHz narrowband applications indicate implicitly: Territories, possessions, states, counties, towns or similar State or local governmental entities<sup>8</sup> that qualify as 700 MHz lessees/users presumptively have as their sole or principal purpose the protection of the safety of life, health, and property and are permitted to use 700 MHz broadband spectrum for activities conducted by their personnel including, but not limited to, activities of police, fire and medical emergency first responders. An affirmative Commission ruling on this matter will resolve the outstanding issue related to the City’s 700 MHz broadband waiver and its BTOP Grant and will bring additional certainty to an area that has been the subject of substantial FCC discussion in recent years.

## **I. BACKGROUND**

The 700 MHz public safety allocation was established by Congress.<sup>9</sup> Eligibility for and the use of this spectrum in both narrowband and broadband public safety communications systems is governed by Section 337(f)(1) of the Communications Act,<sup>10</sup> which defines “public safety services” as follows:

(f) Definitions – For purposes of this section:

(1) Public Safety Services – The term “public safety services” means services –

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided –

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*Proposed Rulemaking*, WT Docket 06-150 and PS Docket No. 06-229, FCC 08-230 (rel. Sept. 25, 2008)(“3<sup>rd</sup> FNPR”); Waiver Order; and In the Matter of the Service Rules for the 698-746, 747-762 and 777-792 MHz Bands and Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, WT Docket 06-150 and PS Docket No. 06-229, *et al.*, FCC 11-6, 52 CR 399 (rel. Jan. 26, 2011)(“4<sup>th</sup> FNPR”).

<sup>7</sup>See n. 6.

<sup>8</sup>See 47 C.F.R. § 90.523(a).

<sup>9</sup>See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3004 (1997).

<sup>10</sup>See 47 USC § 337(f)(1).

- (i) by State or local government entities; or
- (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.<sup>11</sup>

The Commission has confirmed that both the Communications Act and its own rules apply the identical standard to 700 MHz narrowband and broadband system eligibility:

The eligibility rules for the 700 MHz public safety band, **including both the narrowband and broadband segments**, are contained in Section 90.523 of our rules. By linking eligibility to the provision of statutorily-defined “public safety services,” Section 90.523 attempts to ensure compliance with the statutory mandate of Section 337(a)(1) of the Communications Act, which requires the Commission to allocate 24 megahertz of spectrum between 746 and 806 MHz for “public safety services.”<sup>12</sup>

FCC Rule Section 90.523 states: “This Section implements the definition of public safety services contained in 47 U.S.C. Section 337(f)(1). The following are eligible to hold Commission authorizations for systems operating in the 763–775 MHz and 793–805 MHz frequency bands.” Subsection (a), which governs eligibility for state or local government entities,<sup>13</sup> reads as follows:

90.523(a) State or local government entities. Any territory, possession, state, city, county, town, or similar State or local governmental entity is eligible to hold authorizations in the 764–776 MHz and 794–806 MHz frequency bands.<sup>14</sup>

This 700 MHz eligibility definition is almost identical to the definition of eligibility for Part 90 public safety spectrum generally:

90.20(a) Eligibility. The following are eligible to hold authorizations in the Public Safety Pool.  
90.20(a)(1)

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<sup>11</sup> *Id.*

<sup>12</sup> 2<sup>nd</sup> FNPR ¶ 25 (emphasis added; footnotes omitted).

<sup>13</sup> 47 C.F.R. § 90.523. The instant request does not address the use of 700 MHz public safety spectrum by non-governmental entities.

<sup>14</sup> 47 C.F.R. § 90.523(a). Although the preamble to this rule was amended to reflect the modified public safety allocation in the revised 700 MHz band plan, it appears that subsection (a) has not been corrected to conform to that change. See 2<sup>nd</sup> R&O at Appendix B.

Any territory, possession, state, city, county, town or similar governmental entity is eligible to hold authorizations in the Public Safety Pool to operate radio stations for transmission of communications essential to official activities of the licensee....<sup>15</sup>

Thus, it is clear that state and local governmental entities are eligible to secure 700 MHz authorizations and also qualify as spectrum lessees. However, Charlotte seeks clarification with regard to which governmental activities can be conducted on this spectrum, while satisfying the statutory reference to public safety services as those involving the safety of life, health, and property. Specifically, is that reference intended to define which entities are qualified to secure 700 MHz authorizations – do those entities have as a sole or principal mission the protection of the public (the “sole or principal mission test”) – or is it interpreted to limit the activities that may be conducted on 700 MHz spectrum – are the activities only those involving police, fire and medical personnel who have as their sole or principal purpose the protection of public safety, health or property?

Charlotte believes that the statute itself, the accompanying legislative history, and the FCC’s decisions regarding 700 MHz matters support a conclusion that the statutory qualifier applies to the eligibility of entities and not to the scope of activities they may undertake on 700 MHz spectrum. However, discussions regarding permissible use of 700 MHz broadband spectrum by **non-governmental** entities have included language that arguably could be read to say that police, fire and EMS services are the only activities that may be conducted on this spectrum, even by governmental entities. The City requests that the Commission resolve any ambiguity on this point by issuing a declaratory ruling clarifying that all governmental entities eligible under FCC Rule Section 90.523(a)<sup>16</sup> presumptively have as their sole or primary mission the safety of life, health and property, and, provided that emergency personnel are utilizing a 700

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<sup>15</sup> 47 C.F.R. § 90.20(a)(1).

<sup>16</sup> 47 C.F.R. § 90.523(a).

MHz broadband system, non-first responder government personnel may operate on the system as well.

## **II. THE FCC SHOULD CONFIRM THAT EMERGENCY RESPONDERS AND OTHER PUBLIC SAFETY PERSONNEL MAY SHARE 700 MHz BROADBAND SYSTEMS**

Since the consolidation of individual radio services into the public safety pool more than a decade ago,<sup>17</sup> the Commission has allowed public safety spectrum to be used for any and all “official activities” of the licensee. Having established eligibility by qualifying as a governmental entity in accordance with Section 90.20(a)(1), departments and agencies under the jurisdiction of the licensee are permitted to utilize the spectrum for myriad diverse governmental activities, both those involving emergency response and the more mundane, but still vital, public service functions. Particularly in multi-frequency trunked systems, police, fire and medical personnel frequently share spectrum with co-employees engaged in public works, transportation, and even garbage collection with priority queues and ruthless pre-emption capability to ensure that the most urgent communications are given highest priority. The FCC properly has left to individual public safety entities the responsibility of balancing their own internal communications requirements. Indeed, the Commission has actively promoted technology advances that permit increased public safety spectrum sharing and interoperability within and across jurisdictions without imposing limitations on the specific activities conducted on the spectrum.

Charlotte believes that the same eligibility and usage analysis is applicable to the 700 MHz band. As noted above, the FCC intended Rule Section 90.523(a) to mirror the statutory definition of public safety services. The FCC rule authorizes state and local government entities

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<sup>17</sup> In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services, *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307 (rel. March 12, 1997).

to hold 700 MHz licenses, and neither that nor any other FCC regulation expressly restricts the use of 700 MHz spectrum by those entities to only their police, fire and medical services activities.

A review of 700 MHz narrowband license records confirms that the Commission has not adopted a constricted view of governmental spectrum usage on those channels. Rather, the FCC has looked to the identity of the applicant to determine eligibility and, once satisfied, has not imposed further conditions on the activities to be conducted. For example, the State of Colorado recently completed a statewide 700 MHz narrowband relocation to accommodate the revised 700 MHz band plan. It has been reported that this effort involved some 55,000 radios,<sup>18</sup> a figure that certainly exceeds the number of police, fire and emergency medical personnel using the network. In fact, the Colorado Governor's Office of Information Technology website describes this statewide integrated system as "available to all public safety, public service and other governmental agencies as either their primary radio system or for interoperability only."<sup>19</sup>

Moreover, while most 700 MHz narrowband licenses have been granted to cities, counties, and states whose intended use of the spectrum cannot be determined from their applications, the FCC has issued a number of narrowband 700 MHz authorizations to transit districts. These are one of the few types of governmental districts that, in certain jurisdictions, have independent taxing authority and, therefore, independent eligibility under the FCC rules. Thus, King County Department of Transportation (WQHJ934/5), Pierce Transit (WQHJ937, WQIL226, WQJV723), Tri County Metropolitan Transit District of Oregon (WQND291), Golden Gate Bridge Highway and Transportation District (WQLN447/WQNE542), Dallas Area

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<sup>18</sup> Sandra Wendelken, *Colorado Relocates 700 MHz Narrowband Licenses*, Radio Resource Media Group, Mission Critical Communications, at <http://www.mccmag.com/onlyonline.cfm?OnlyOnlineID=227> (Jan. 26, 2011).

<sup>19</sup> Colorado Governor's Office of Information Technology, *The Story of the Colorado Statewide Digital Trunked Radio System (DTRS)*, at <http://www.colorado.gov/cs/Satellite/OIT-ServicesApps/CBON/1251575060697> (last visited Feb. 23, 2011).

Rapid Transit Authority (KQLF480), and Regional Transportation District of Colorado (WQLZ331) all have been granted 700 MHz licenses based on eligibility statements such as “Transit voice and data,” and “Radios will be used in the performance of the applicants’ duties to the region.” The Metropolitan Washington Airports Authority also holds a 700 MHz narrowband license (WQKR977) with an eligibility statement that reads, “The applicant is a government entity.”

While each of these licensees presumably has safety responsibilities as part of its public transportation obligations, they satisfy the statutory “sole or principal mission test” because they are governmental entities, not based on a claim that they provide first responder services exclusively or have as their primary activity the protection of life, health and property. Nonetheless, the services they provide are essential to the public and are a critical element in the governmental services provided in their respective communities.

The Commission’s approval of these applications is entirely consistent with conclusions it has reached when considering the scope of activities permitted under the statute. For example, in discussing the operations that may be conducted on 700 MHz public safety broadband spectrum, the FCC described the statutory test as follows:

The statute flexibly defines “public safety services” as services “the sole or principal purpose of which is to protect the safety of life, health, or property,” which suggests that even the public safety licensee might engage in other uses of the spectrum.<sup>20</sup>

It further determined that “pursuant to the statutory definition, a service can still be considered a ‘public safety service’ even if its purpose is not solely for protecting the safety of life, health or property, so long as this remains its ‘principal’ purpose....”<sup>21</sup>

This sensible interpretation of the intent of Congress in enacting Section 337(f) should be

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<sup>20</sup> 2<sup>nd</sup> R&O at ¶ 420.

<sup>21</sup> 2<sup>nd</sup> FNPR at ¶ 31.

expressly confirmed by the Commission as applicable to broadband as well as narrowband 700 MHz public safety spectrum.<sup>22</sup> It is axiomatic that the “principal purpose” of governmental entities is the protection of the lives, health and property of their citizens. Some government employees fulfill this function as their “sole purpose” by providing police, fire and emergency medical services. Others have it as a principal purpose by virtue of being part of the governmental enterprise, but serve the public by performing public service functions or other ancillary duties. Nonetheless, these non-first responder services, along with police, fire and EMS activities, collectively form a governmental umbrella intended to promote the public weal, most prominently the safety and health of its citizens and the protection of their property.

It is for this enterprise that Congress allocated 24 MHz of spectrum. There is nothing in the legislative history suggesting an intention to segregate the communications of emergency responders from those of other government personnel whose support often is critical in enabling first responders to fulfill their responsibilities. Rather, Congress allocated this spectrum in response to escalating public safety spectrum requirements as described in the Final Report of the Public Safety Wireless Advisory Committee,<sup>23</sup> and the FCC adopted conforming 700 MHz public safety rules that it described as follows:

Specifically, the First Report and Third Notice provides a structure to: (1) enable the development of a national interoperability plan; (2) allow Regional Planning Committees (RPCs) maximum flexibility to meet state and local needs, encourage innovative use of the spectrum, and accommodate new and as yet unanticipated developments in technology and equipment; (3) **provide the spectrum**

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<sup>22</sup> It also should be noted that subsection (c) of this same statutory provision established a waiver process whereby “public safety service” applicants may secure unused spectrum allocated to other services for “the provision of public safety services by such entity.” 47 U.S.C. § 337(c). The relatively scanty legislative history accompanying Pub. L. No. 105-33 describes this waiver process as a safety valve since “in heavily congested markets, sufficient spectrum may not be available between 746 and 806 MHz for public safety services.” See Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 § 3004, Conference Agreement (1997). The Commission has granted a number of waivers pursuant to this provision. While much of the spectrum acquired thereby presumably has been used for the protection of the safety of life, health and property, it also undoubtedly is used by other than emergency responder employees of the successful waiver applicants.

<sup>23</sup> See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking*, 14 FCC Rcd 152 (1998).

**management and planning mechanisms necessary to develop multiple user public safety communications systems and local and regional interoperability systems that effectively incorporate all public safety services providers;** (4) adopt licensing rules for eligibility, permissible use, and coordinated spectrum planning for the 700 MHz band; and (5) adopt such competitively neutral technical standards as are required to efficiently achieve interoperability in designated spectrum.<sup>24</sup>

The fact that the FCC wisely has determined that a portion of this allocation should be made available for broadband systems does not alter the uses that may be accommodated on it. While Congress undoubtedly had as a primary objective addressing the communications needs of first responders, those needs often include a requirement for interoperability with other government personnel whose activities are essential in supporting emergency response efforts. It would be extraordinary if Congress had intended to reverse a growing trend toward increased sharing of public safety systems, including between state and local and federal users, by isolating police, fire and medical personnel on a system that could not be accessed by their co-workers. This bifurcation of operational capabilities would be contrary to good governmental practice even on a multi-frequency trunked system. Given the cost of deploying a broadband system, such an intention by Congress would either: (i) dictate wasteful government spending by requiring that duplicative systems be built to serve discrete subsets of government personnel or (ii) deny non-emergency responders the advanced capabilities available only with broadband technology. In reality, it likely would mean that even first responders would not have broadband access since building a broadband network for their critical, but limited, operations exclusively would be beyond the financial capabilities of most jurisdictions even with grant support.

Thus, from a statutory perspective, governmental activities are readily distinguished from the non-governmental services that the FCC has not yet concluded may be offered on 700 MHz broadband spectrum. To date, the FCC has read the statute's "sole or principal mission test" as

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<sup>24</sup> *Id.* at ¶ 5 (emphasis added).

mandating that, whatever supporting role utilities play in responding to emergency situations, “this role is ancillary to the entities’ principal purposes, such as providing electricity”<sup>25</sup> and has disallowed their access to this spectrum.

Charlotte confirms the Commission’s assessment that there is a “strong desire of many in the public safety community to include secondary users such as utilities, public works and others on their networks as a mechanism to coordinate common activities and respond jointly to emergencies, as well as a method to spread costs and capitalize on infrastructure sharing opportunities.”<sup>26</sup> For example, the safety of the City’s citizens would be greatly enhanced if private security personnel at the Duke Energy McGuire Nuclear Station and the Duke Energy Catawba Nuclear Station were permitted to access the broadband network Charlotte will deploy. The City is encouraged by the Commission’s willingness to revisit this issue in the 4<sup>th</sup> FNPR and explore whether the statutory definition of public safety services reasonably can be interpreted to encompass such usage. However, that determination is distinct from the clarification requested herein and will be addressed in the context of that rulemaking proceeding.

The City of Charlotte, like other governmental entities, is responsible for protecting its citizens’ lives, health and property. It wishes to deploy a 700 MHz broadband system in furtherance of that principal activity pursuant to the waiver granted by the FCC for use in accordance with the directives set out by the Char/Meck Project. That project is intended to meet the requirements of the Charlotte/Mecklenburg County Radio Communications Council (“RCC”), a collaborative organization of public safety stakeholders guiding long-range system planning and interoperability in accordance within the City of Charlotte/County of Mecklenburg Radio Interlocal Agreement. Providing advanced communications capability for the City’s own police, fire and emergency medical personnel, as well as emergency responders in other

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<sup>25</sup> 3<sup>rd</sup> FNPR at ¶ 324.

<sup>26</sup> 4<sup>th</sup> FNPR at ¶ 135.

communities within the RCC, is and will remain the primary focus of this network. Indeed, the great majority of agencies and departments expected to use the broadband system are engaged directly in protecting the safety of life and property. Additionally, however, Charlotte has identified governmental sub-units such as the City of Charlotte Department of Transportation and the Charlotte/Mecklenburg International Airport, whose ability to serve the public would be greatly enhanced by their inclusion on the network, both in their day-to-day operations and for interoperability purposes during emergency situations. These entities perform functions identical to those conducted by users who have been granted 700 MHz narrowband licenses and should be permitted to utilize a 700 MHz broadband network.

### **III. CONCLUSION**

The City, like many public safety users in major metropolitan areas, has long struggled with the need for sufficient spectrum to meet essential public safety and public service requirements. It has searched for means by which to promote spectrum sharing and improved interoperability as evidenced by its leadership role in the RCC and the Char/Meck Connect project, and in its pursuit of the BTOP Grant. It has devoted considerable resources to identifying both spectrum and funding that will enable it to provide emergency responders and other government personnel with enhanced communications capabilities that are available only on broadband facilities.

Charlotte shares the Commission's commitment to ensuring that the 700 MHz spectrum allocated for public safety services by Congress is used for the purpose envisioned in the enabling legislation. The legislative history accompanying the statute demonstrates an intention to make adequate spectrum available for entities that provide "public safety services" and not allowing it to be used for commercial purposes. It does not suggest that Congress intended entities such as the City to be forbidden from allowing employees in addition to police, fire and

emergency medical personnel from sharing the use of this spectrum in an efficient and publicly beneficial manner, as evidenced by the FCC's description of the objectives addressed in its 700 MHz public safety rules.<sup>27</sup>

For the reasons detailed herein, the City of Charlotte respectfully requests that the FCC issue a declaratory ruling confirming that the City and other entities with broadband waivers are permitted to allow shared use of their 700 MHz broadband spectrum by governmental personnel including, but not limited to, those engaged directly in police, fire and medical emergency activities.

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<sup>27</sup> See n. 24.