

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

In the Matter of)	
)	
City of Charlotte, North Carolina)	
Request for Declaratory Ruling:)	PS Docket No. 06-229
Clarification of Public Safety Services)	
for Purposes of Eligibility to Operate on)	
700 MHz Public Safety Broadband Spectrum)	

**OPPOSITION TO REQUEST FOR
EXTENSION OF TIME**

The City of Charlotte, North Carolina (“Charlotte” or “City”), by its attorneys and in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations, respectfully requests the Commission to deny the Request for Extension of Time (“Extension Request”) filed jointly by Harris Corporation, the Telecommunications Industry Association, and the Utilities Telecom Council (“Joint Filers”) in the above-identified proceeding. The proceeding involves the Request for Declaratory Ruling¹ filed by the City seeking clarification of eligibility under Section 337 of the Communications Act.² The Extension Request, filed only two business days before the comment date established by the FCC, urges the FCC to extend both the comment and reply comment deadlines in the proceeding by 45 days. The Extension Request, although late-filed, does not establish, or even attempt to establish, that this is an emergency situation that might warrant acceptance of an untimely extension motion and it seeks more than a brief delay in the deadlines. Moreover, had the Extension Request been timely filed, it still should be denied on its merits.

¹ The City of Charlotte, North Carolina, Request for Declaratory Ruling, PS Docket No. 06-229 (filed Mar. 7, 2011) (“Declaratory Ruling Request”).

² 47 U.S.C. § 337.

The Commission's rules are clear. FCC Rule Section 1.46(a) establishes the general FCC policy that extensions of time will not be granted routinely.³ FCC Rule Section 1.46(b) states the following:

Motions for extension of time in which to file responses to petitions for rulemaking, replies to such responses, comments filed in response to notice of proposed rulemaking, replies to such comments and other filings **in rulemaking proceedings** conducted under Subpart C of this part **shall be filed at least 7 days before the filing date**. If a timely motion is denied, the responses and comments, replies thereto, or other filings need not be filed until 2 business days after the Commission acts on the motion. **In emergency situations, the Commission will consider a late-filed motion for a brief extension of time related to the duration of the emergency** and will consider motions for acceptance of comments, reply comments or other filings made after the filing date.⁴

The Public Notice announcing the comment and reply comment dates in this proceeding was released by the FCC on March 22, 2011 and specifically included this matter in the broader rulemaking proceeding, PS Docket No. 06-229.⁵ Thus, the deadline for seeking an extension of those comment dates was March 29, 2011. The Joint Filers make no attempt to explain or excuse their tardiness in submitting the Extension Request more than a week after the deadline. They simply ignore the FCC's requirement. On that basis alone, the Extension Request must be denied.

If the Joint Filers claim to be proceeding on the basis that the Declaratory Ruling Request is not part of a notice and comment rule making proceeding, the Extension Request still is procedurally defective. FCC Rule Section 1.46(c) reads as follows:

If a motion for extension of time in which to make filings in proceedings other than notice and comment rule making proceedings is filed less than 7 days prior to the filing day, the party filing the motion shall (in addition to serving the motion

³ 47 C.F.R. § 1.46(a). *See e.g.*, Structure and Practices of the Video Relay Service Program, *Order Denying Request for Extension of Time to File Comments*, CG Docket No. 10-51, 25 FCC Rcd 10875 (2010).

⁴ 47 C.F.R. § 1.46(b) (emphasis added).

⁵ Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling Asking to Clarify the Scope of Section 337 Regarding Use by State or Local Government Entities of the 700 MHz Public Safety Broadband Spectrum, *Public Notice*, PS Docket No. 06-229, DA 11-537 (rel. Mar. 22, 2011) .

on other parties) orally notify other parties and Commission staff personnel responsible for acting on the motion that the motion has been (or is being) filed.⁶

There is no certificate of service indicating that the City of Charlotte was served with a copy of the Extension Request by mail or other means, and the City was not orally notified of the motion by the Joint Filers. The filing fails under this rule provision as well and must be dismissed.

Even if the Extension Request were not procedurally deficient, which it is, it should be denied on substantive grounds. The Joint Filers argue that because there is commonality between the single narrower issue presented in the Declaratory Ruling Request and the broader questions about Section 337 eligibility presented by the Commission in the Fourth Further Notice of Proposed Rulemaking in this proceeding,⁷ consideration of the Declaratory Ruling Request should be deferred until the full record has been established in the 4th FNPRM. Why this should be the sequence of filing deadlines is, at best, unclear. In fact, it is counter-intuitive since it proposes to visit the narrower issue after addressing the broader considerations in which it arguably could be subsumed.

The City does agree with the Joint Filers that resolution of matters related to the deployment of a nationwide interoperable public safety broadband network is of the highest national importance. Parties such as the Joint Filers are free to address these issues by filing comments on both the 4th FNPRM and the Declaratory Ruling Request or on only one of the two. In either case, the City assumes that the filings will be thoughtful and comprehensive with regard to the matters the commenting parties choose to address. More important, Charlotte is confident that the Commission is fully capable of evaluating the filings it receives and making a determination as to whether it has a record on which it properly can proceed with regard to both

⁶ 47 C.F.R. § 1.46(c).

⁷ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, WP Docket No. 07-100, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 26 FCC Rcd 733 (rel. Jan. 26, 2011) (“4th FNPRM”).

the specific issue presented in the Declaratory Ruling Request and the broader policy matters raised in the 4th FNPRM . No deferral of the Declaratory Ruling Request filing deadlines is needed and none should be adopted.

For the reasons discussed herein, the City of Charlotte requests that the FCC dismiss the Extension Request as procedurally defective and substantively unwarranted.

Respectfully submitted,

THE CITY OF CHARLOTTE, NORTH CAROLINA

A handwritten signature in black ink, appearing to read "Elizabeth R. Sachs". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

By its attorney:
Elizabeth R. Sachs

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