

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Amendment of Part 90 of the Commission's Rules)	WP Docket No. 07-100

**COMMENTS OF
CITY OF CHESAPEAKE, VIRGINIA
DALLAS/FORT WORTH INTERNATIONAL AIRPORT
JOINT COUNCIL ON TRANSIT WIRELESS
AMERICAN ASSOCIATION OF STATE
HIGHWAY & TRANSPORTATION OFFICIALS**

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SUMMARY

The City of Chesapeake, Virginia, the Dallas/Fort Worth International Airport, the Joint Council On Transit Wireless and the American Association of State Highway & Transportation Officials (the “Joint Commenters”) file these Comments in response to the Commission’s Notice of Proposed Rule Making in the above-captioned proceeding.

It is the opinion of the Joint Commenters that portions of the Commission’s NPRM are premature, and should await further development by the public safety industry. In other areas, the Joint Commenters urge the Commission to only adopt those regulations absolutely necessary to ensure the rapid deployment of a totally interoperable public safety broadband network. The Commission should regulate as minimally as possible, to enable the industry to develop standards, and change those standards as equipment and systems mature, without the need for a notice and comment rule making proceeding.

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The City of Chesapeake, Virginia (“Chesapeake”), the Dallas/Fort Worth International Airport (“DFW”), the Joint Council on Transit Wireless (“Joint Council”) and the American Association of State Highway Transportation Officials, Inc. (“AASHTO”)(the “Joint Commenters”), through counsel and pursuant to Section 1.415 of the Commission’s Rules, 47 C.F.R. §1.415, hereby respectfully submits their comments in response to the Fourth Notice of Proposed Rulemaking (“*NPRM*”) in the above-captioned proceeding.¹

¹ 76 FR 10295 (February 24, 2011).

I. BACKGROUND

A. The City Of Chesapeake, Virginia

The City of Chesapeake, Virginia is one of the jurisdictions which received an early-build Waiver from the Commission. Access to the 700 MHz public safety broadband spectrum will enable Chesapeake to deploy a local wireless data network that will facilitate high-speed mobile data IP connectivity to the City's established network, thereby serving the interests of public safety and public service responders.

Currently, the City is forced to rely too heavily on its public safety voice radio network. While the Chesapeake Police Department obtains service from a commercial broadband wireless data network, that network lacks sufficient RF coverage to provide network connectivity to emergency responders in all but the most populated areas of the City. In areas not served by the commercial wireless network, on-scene responders must transmit and obtain vital information via the current voice radio network, thus limiting the amount of data that an Incident Commander can obtain for making split-second decisions to preserve life and property during an emergency event. In addition, the reliability of this commercial wireless network is questionable during and after weather events that may cause damage to the commercial wireless system and render it inoperable. Finally, the subscription costs for access to the current commercial wireless network do not provide a return to the City beyond the ability to remotely connect to the City's private network.

The Chesapeake Fire Department, for example, does not operate on any broadband wireless data network. Therefore, on-scene responders are required to obtain vital information via the current voice radio network regardless of their location, similarly limiting the ability of Incident Commanders to preserve life and property during emergencies.

In addition, Public Service responders, which are heavily utilized during emergency operation activation periods, such as hurricane strikes, have no method for remote wireless connectivity to the City's private network to provide damage assessment and recovery reporting. All Public Service reporting during emergency operations activation periods must be accomplished via the City's current voice radio network.

Though a regional unlicensed mobile data network has been deployed on spectrum in the 900 MHz band through the COPS program in 2004, this spectrum does not provide the operational coverage required for public safety emergency responders and has been plagued by connectivity issues with client devices during numerous system tests in the Hampton Roads region. To obtain adequate RF coverage, at least 300 new access points would have to be deployed in the City. The cost of such a deployment is prohibitive. Use of the 700 MHz public safety broadband spectrum would allow the City to achieve its communications goals at a lesser expense.

Since the grant of the Waiver, and after the loss of a BTOP grant to fund the system's construction, the City has actively sought alternative methodologies to enable immediate system construction. In addition, the Chesapeake has actively participated in various committees which are working to ensure that the nationwide 700 MHz network is built, and that the network is truly interoperable.

B. Dallas/Fort Worth International Airport

Located halfway between the cities of Dallas and Fort Worth, Texas, the Dallas/Fort Worth International Airport is the world's third busiest, offering nearly 1,750 flights per day and serving 60 million passengers a year. DFW provides non-stop service to 144 domestic and 44 international destinations worldwide. Sitting on a campus of 18,000 acres, the airport is larger

than the island of Manhattan. The Airport operates 5 passenger terminals, two full service hotels and is an international port of entry to the United States. For the past four years in a row, DFW has ranked in the top five for customer service among large airports worldwide in surveys conducted by Airports Council International.

DFW International Airport is an incorporated city and a sovereign jurisdiction within the State of Texas. The Airport has a commissioned police department that includes 179 sworn police officers, a fire department consisting of 195 commissioned firemen, and a private security detail of 115 security officers.

DFW maintains a Critical Communications Infrastructure to provide RF communications to all divisions of the Airport. The Airport's system was installed initially with 5-channels to support analog transmissions. The system was upgraded to 10-channels in 1995. The Radio System was upgraded to full digital ProVoice communications in November of 2001 and its communications were digitally encrypted for greater security in September of 2002.

Today, the Airport's RF communications environment consists of numerous Radio System platforms, in-building distributed antenna systems, distributed bi-directional amplifier deployments, conventional and trunked technologies. The current environment contains 800 MHz trunking, 700 MHz trunked, 450 MHz UHF conventional, 150 MHz VHF conventional, fully digital and analog transmissions capabilities and complete digital security encryption both at the radio level and the system level. The Critical Communications Infrastructure is supported by a fully fault tolerant redundant network switching center with two fully installed sites located in disparate locations. The center supports circuit switching CDMA technology from the Airport's legacy communications environment, advanced Packet switching TDMA, technology from recent system deployments, and fully compliance APCO P25 communications protocols

through inner subsystem interfaced to radio systems of all major manufacturers. The Critical Communications Infrastructure is a Harris Communications Private Radio System.

DFW Airport is probably the most prominent terrorist target in the Northeastern region of the State of Texas as well as the region's largest economic generator. From a security perspective, the Airport relies heavily on technology to enable it to detect and apprehend persons that pose potential threats to the Airport. A very important need is the ability to transfer video from the Airport's security surveillance environment to security officials within the passenger terminals and to police vehicles on the DFW Campus. The ability for DFW to transmit high speed data for similar reasons is also critical to the successful operations of the Airport. Decisions made regarding the use of 700 MHz broadband spectrum from the public safety trust are very important to the Airport as they affect its ability to provide a safe and secure environment for its employees, its tenants and to the traveling public.

C. The American Association of State Highway & Transportation Officials

AASHTO, formed in 1914 as an association with 27 members, brings together each state and territory's bureau, department, or administration agency responsible for the building and maintenance of roads and highways. Since the association's founding its membership has increased to include all 50 states, the District of Columbia and the Commonwealth of Puerto Rico providing a national and international voice for all five modes of transportation, law enforcement, fire and emergency medical services, local, county, tribal, and state governments. AASHTO is designated by the Federal Communications Commission as the only agency authorized to recommend or approve applications for radio frequencies in the Public Safety Highway Maintenance Pool. This authorization was subsequently extended to include all

frequencies assigned to the Public Safety Frequency Pool and the SMR 800 MHz pool being vacated by Sprint-Nextel.

AASHTO is internationally recognized for its pioneering work in providing for the safety of the millions of travelers using highways, trains, ferries, airports and public transit systems daily. AASHTO develops recognized standards for the design and operation of roads, rail systems, ports and waterways, airport facilities and transit systems with the sole intent of protecting the traveling public. In its role of representing state departments of transportation, AASHTO directly supports and integrates with the police, fire and medical services operated by its members for the protection of life, health and property of those using the nation's multiple transportation systems. AASHTO is a founding member of the National Public Safety Telecommunications Council ("NPSTC") and an initial member of the Public Safety Spectrum Trust Corporation ("PSST"), holders of the nationwide public safety broadband network license. AASHTO has been selected to serve as a member of the Emergency Response Interoperability Center's Public Safety Advisory Committee ("ERIC PSAC"). AASHTO works with the other Frequency Advisory Committees ("FACs") on the Land Mobile Communications Council ("LMCC") and the Public Safety Communications Council ("PSCC") in setting policy and procedures for coordinating and assigning radio frequencies under Part 90 of the Commission's Rules.

D. The Joint Council On Transit Wireless

The Joint Council On Transit Wireless is an alliance of professionals and transportation organizations created to represent surface land passenger transportation service operators nationwide on matters of wireless voice and data communications. The Council membership is drawn from public agencies, private providers and industry serving road, water and rail transit.

The Joint Council seeks to educate and inform public and private transportation agencies and providers on issues relating to their use of wireless communications.

II. COMMENTS

A. Overview

The Joint Commenters have provided input into the Comments drafted by the PSST, the Waiver Recipients, and the APCO Broadband Committee. The comments presented herein are generally consistent with these other comments, and should be read in conjunction with the other submissions.

At a very high level, it is the position of the Joint Commenters that the Commission should regulate and mandate only those rules and policies which are absolutely necessary to ensuring that the nationwide 700 MHz network is truly interoperable, and serves the needs and services for which the spectrum was intended. Should the Commission venture further in defining the network in too much detail, the Commission runs the risk of stifling innovation, imposing unnecessary costs on users, and delaying implementation. In this light, the Joint Commenters believe that the Commission has delved too far “into the weeds” of the network in the *NPRM*.

The Joint Commenters are sympathetic to the Commission’s belief that such specificity was necessary. Specifically, the Commission wants to ensure that network construction is not delayed unnecessarily, and that the system is truly interoperable. The Joint Commenters are aware of the issues which have arisen with previous industry attempts at interoperability and, like the Commission, the Joint Commenters wish to avoid such missteps at 700 MHz.

Unfortunately, there are two problems with specifying rules for the network with the level of specificity proposed by the Commission in the *NPRM*. First, should evolving

technology and system needs dictate that one or more rules must be changed, the industry will be forced to go through a notice and comment rule making proceeding which, despite the Commission's best of intentions, will result in a significant delay in implementation of the new technology or innovation.

Second, creating many of these technical rules at this time is premature. The industry is now in active discussion, through a series of committees (both sponsored by the Commission and otherwise) to discuss virtually all of the issues raised by the Commission. That work has only just begun. It is important that these discussions continue to their conclusion. With the release of the Second Report and Order,² the Commission caused a paradigm shift with regard to the licensing methodology for public safety users.

A nationwide public safety network has never been created. A nationwide private LTE network has never been created. A nationwide non-profit system with a single, national license with systems implemented (in some areas) by local users has never been implemented. Further changes will need to be made based upon funding issues presently pending before Congress. All of these issues must be discussion by the impacted parties, and decisions made. The Commission must not impede further progress on these issues by prematurely creating rules for what remains (at this time) an undefined system.

However, the Joint Commenters are sensitive to the need to move forward as quickly as possible. Therefore, we recommend as follows:

The Commission should follow its general practice with the Land Mobile Communications Council ("LMCC"). LMCC consists of all of the land mobile trade

² 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 (2007).

associations which are Part 90 Frequency Advisory Committees (“FACs”). LMCC meets on various frequency coordination and technical issues, and creates policies for the handling of applications. In some cases, LMCC requests that the Commission adopt rules consistent with the adopted policies.³ In other cases, LMCC merely informs the Commission of the adopted coordination policy, and no formal rule is adopted. This enables changes to be made, through industry consensus, as technologies and systems evolve.

A similar process should be followed in this proceeding. The Commission should only adopt at this time those rules absolutely essential to the creation and operation of an interoperable nationwide system. Subsequently, the industry should be required, within a reasonable but short time frame, to provide the Commission with recommendations on the balance of policies adopted by the industry which should be codified, and those that should remain policy. Proceeding in this manner will: (1) enable the industry sufficient time to discuss and ratify necessary technical and operational policies; (2) create rules which ensure an interoperable, nationwide network; and (3) provide sufficient flexibility for future system and service enhancements.

With this position in mind, the Joint Commenters provide the following comments on specific portions of the NPRM.

B. Governance Of The Nationwide, Interoperable 700 MHz Network

The Joint Commenters recognize that the nature of this system has evolved over the past few years. What was once envisioned as a public/private partnership between two sets of disparate license holders has changed into a public safety communications network with a single licensee, multiple lease holders, third party system operators (in some cases) and commercial

³ See, for example, 47 C.F.R. §90.267, which represent LMCC’s adopted coordination procedures for certain frequencies.

roaming partners. On this basis, it is appropriate for the Commission to review the existing governance model, and determine what, if any, changes must be made for the changed circumstances in the band.

As noted previously, AASHTO is a Board Member of the PSST. Chesapeake is a Waiver Recipient. Thus, the Joint Commenters represent both of the significant public safety entities involved in this proceeding, a broadly-based trade association, and a system implementer/user. The Joint Commenters therefore have a unique perspective on this issue.

Presently, the PSST is an entity without sufficient funding (and therefore insufficient personnel) to address the important issues implicated in construction of this nationwide system.⁴ At the same time, the Waiver Recipients are not Board Members of the PSST, and therefore have insufficient input into the policies and positions of the PSST.⁵ Both of these issues must be addressed by the Commission.

The Joint Commenters are aware of the PSST's governance discussions with the White House and Congress. As a Waiver Recipient with a direct stake in the outcome of those discussions, Chesapeake believes that its input on this issue is crucial. It makes little sense for Chesapeake (and other Waiver Recipients) to continue with their early build-out efforts if they do not know, or have input into, what will ultimately be created.

On this basis, the Joint Commenters believe that an expansion of the PSST concept should be adopted, which includes nationwide Public Safety representatives as well as local Waiver Recipients. This concept of Waiver Recipient inclusion is one that the Commission

⁴ At this point, the PSST's sole funding are the lease payments made by the Waiver Recipients, including Chesapeake.

⁵ It should be noted that Waiver Recipients are members of an advisory council to the PSST.

should adopt now. However, there are a multiple of other components for governance that must also be considered, both at a national and local level.

The Joint Commenters are aware of the proposal by the PSST and others to create a single, nationwide network, and not a “network of networks”. The Joint Commenters are comfortable with this concept. However, until a firm set of requirements, guidelines and standards can be developed through both cooperative effort and experience, a nationwide network must also accommodate local interests, particularly those of the early builders, as well as other users. There are issues to be considered both from a policy standpoint (having public safety users involved in relevant decision making) as well as an operational structure at both a national and local level. Thus, this concept is truly one of “the devil is in the details.”

Further, it should be this entity which is charged with deciding how to deal with issues such as future system upgrades, the creation of additional policies, guidelines and standards, and the relationship of the national network to the local operators. Developing standards for mission-critical voice, PSTN interconnection and roaming represent additional areas where the industry should be given the latitude to develop appropriate standards. The Commission should only intercede if, and where, agreements cannot be reached, or where industry asks for adoption of specific rules. Therefore, consistent with the comments above, it is the recommendation of the Joint Commenters that the Commission provide the industry with the opportunity to work through details, such as those discussed above, before adoption of a strict format at this time. However, the Commission should closely monitor such activity, require appropriate reporting, and ensure that the process does not become bogged down into turf wars.

C. Specific Technical Parameters

The Joint Commenters agree that the Commission should mandate 3GPP LTE as a common, standard technology platform, with a common air interface of LTE E-UTRA. Further, mandating a minimum of LTE Release 8, with backwards compatibility for future releases, is appropriate to ensure the capability of interoperability. Mandating later releases for networks as a base requirement should be left to the industry to develop, if deemed appropriate.

Similarly, the Joint Commenters are comfortable with the Commission's adoption of Out of Band Emission standards ("OOBE") limits. These areas represent those issues traditionally memorialized in specific rules in a variety of Commission proceedings. Interoperability testing ("IOT") is another area where it is important to have a rule established by the Commission. Testing should be at a nationwide level, and there should not be reliance on self-certification. While self-certification may be appropriate for commercial applications, where an incorrect certification has limited consequences, the stakes are far higher on a public safety network. The Joint Commenters believe that the Public Safety Communications Research Program ("PSCR") should provide this service, and establish parameters in conjunction with the system governance organization created to build out the network.

In contrast, the issue of whether to designate a single PLMN ID or multiple PLMN IDs should be an item best left to the industry (through whatever governance is established).⁶ In this regard, the network can operate either way, and it is premature to designate that one PLMN ID is superior to multiple PLMN IDs. In fact, Chesapeake recently participated in a meeting of the APCO Broadband Committee. During this meeting, Chesapeake heard arguments in favor of both methodologies. Chesapeake believes that this issue should be explored by industry further,

⁶ *NPRM* at para. 32.

and in more detail, before a specific path is established. Because the issue does not hinder the implementation of systems at this time, nor represent a danger of interference to other users, the Commission should merely give the PSST (or whatever entity is the final licensee) the option to implement multiple PLMN IDs if the licensee sees fit. By providing such flexibility, the industry can continue to develop the issue, and make an ultimate decision which best fits the other system details as developed.

The industry must also have the time and opportunity to develop mission critical voice standards. While the technology is certainly capable of supporting mission critical voice, there must be standards established in order to ensure that this capability is truly interoperable. While the concept of migrating various mission critical voice communications to 700 MHz broadband has been bandied about, the reality is that this evolution, if it ever occurs, will be many years in the making. While the goal is valid, it cannot be rushed for political expediency.

The Joint Commenters are concerned with the Commission's references in paragraphs 40-42 to using the public internet as an interconnection hub. The concept of incorporating a non-mission critical network as vital part of a mission critical network is extremely dangerous. Denial of Service ("DOS") and similar attacks could wind up disabling the network, and the public internet is already operating at an occupancy level which makes it unsuitable for this use. Rather, it should be the goal of the public safety network to limit the number of public internet connections, not expand them.

Other technical items which should be left to further develop by the industry include: (1) support of baseline applications; (2) support of capabilities such as home-routed and local-breakout; (3) quality of service; (4) security schemes; (5) minimum network spectral efficiency; (6) coverage reliability; (7) device capabilities; (8) interference mitigation schemes (and the

organizational methodology to ensure compliance); (9) test verifications for interoperability; (10) roaming;⁷ (11) conformance testing; (12) network operations, administration and maintenance; and (13) most importantly, priority access. Some of the decisions involving these issues hinge upon the ultimate disposition of the D Block. Until that issue is resolved, the public safety industry cannot “lock in” certain decisions, and the Commission should not mandate rules which necessitate alteration depending upon whether public safety has access to the D Block. Instead, the public safety industry should have a planning period to discuss these issues. At the end of the planning period, industry should report its conclusions to the Commission, and the Commission should only implement those rules which the industry deems necessary.

In its discussion of priority access, the Commission states in paragraph 45 of the NPRM that:

The determination of connection priority levels and its mapping to user priority, application type and other attributes is a matter which hinges upon both the public safety needs and the technology supporting it.

The Joint Commenters agree with this statement. However, the creation of those priority levels is premature until: (1) public safety needs are developed; and (2) the technology to support it is established. Creating priority rules at this time puts the cart before the horse. The public safety industry should/must establish its application needs, and the public safety industry should be afforded the opportunity to marry those needs to the establishment of the technology. The Commission must give the industry the opportunity to perform this work.

⁷ In this context, “roaming” should be considered roaming off the nationwide public safety network onto a commercial network. Movement within the public safety network from region to region should not be considered roaming. Regardless, setting standards for how these users move from local system to remote system (including the issue of fees), and what applications should be available to such users, should be established by the industry instead of the Commission.

D. Fixed Operation In The 700 MHz Band

The Joint Commenters understand the Commission's reluctance to permit fixed and related operations in the 700 MHz band.⁸ However, the public safety industry has but one opportunity to ensure that this nationwide, interoperable network becomes a reality. In doing so, it is important that the system be economically sustainable. Leveraging fixed operations, in conjunction with mobile operations, will enable the network to serve the highest number of potential uses, while eliminating the need to build redundant networks.

At the same time, such uses cannot be permitted to degrade the quality of communications of the mobile network. The public safety industry is best positioned to determine the appropriate mix of uses, services and priority in the band, and users should be permitted the opportunity to create the correct protocols to maintain a robust mobile network. The Commission should therefore give the public safety industry the flexibility to determine this use.

E. Eligibility To Utilize The Public Safety Network Pursuant To Section 337

Certainly, no portion of the Commission's *NPRM* has generated as much discussion as the question of eligibility pursuant to Section 337 of the Communications Act.⁹ Initially, it should be noted that the Joint Commenters appreciate the Commission's request and encouragement to the public safety, transportation and utility communities to provide record support for its position that all mission critical operations must be accommodated on this network to accomplish the goals for which the spectrum was allocated. Further, the Joint

⁸ *NPRM* at para. 129-130.

⁹ 47 U.S.C. §337.

Commenters believe that the Commission has amply described and defined the situation in paragraph 135 of the *NPRM*.

It is the position of the Joint Commenters that the Commission should not restrictively define “secondary use.” Rather, the “protection of life, health and property” should be viewed broadly, and not just to include police, fire and EMS. In this regard, the “use” may be secondary in terms of the overall usage of the system, but it is not necessarily secondary at that particular time or moment. Recently, the President of APCO stated that utilities “... become at many times more ‘first responder’ than we (public safety) are. If you don’t have electricity and you don’t have the wherewithal to get the job done, we have to rely on them.”¹⁰ The Joint Commenters agree with this assessment, and expand the statement to include the transportation industry.

Obviously, many transportation agencies have their own police forces, as well as specialized fire and rescue services. There can be little doubt that when an incident occurs at DFW Airport, the DFW police force is in every measure a first responder. However, airport incidences involve a variety of personnel beyond just the airport police. Rather, there must be a closely choreographed response between airport police, federal Transportation Security Administration (“TSA”) personnel, private security contractors (at some airports), Federal Aviation Administration (“FAA”) officials, and local airport officials. Not only must the incident itself be handled, but there are literally thousands of people at the airport at any one time that must also be “handled” in a manner to prevent mass hysteria, creating a potential for danger to passengers, and interference with incident management. These incident responders should not be on disparate networks that are incapable of coordination. Rather, the network being built should accommodate all of these potential users on the same network, enabling the most efficient

¹⁰ Testimony of William Carrow, President, Association of Public Safety Communications Officers, before the House Homeland Security Committee, March 30, 2011.

incident handling, and ensuring the greatest economic efficiencies for continued maintenance of the network.

Similarly, actual transportation infrastructure is a critical part of emergency response. Most state and local hurricane evacuation plans involve the close coordination between police, fire and transportation officials. Without this coordinated effort, evacuation simply will not happen, as roadways become jammed, and chaos becomes the order of the day.

When major snowstorms occur, the readiness of police and fire agencies is important, but the true first responders become the transportation crews that must clear the road, and utility personnel which must follow close behind to restore electricity. At these moments, transportation and utility personnel are crucial to the public safety process. Thus, “secondary” must be viewed in the larger context of overall operations, not “secondary” at a crucial moment.

Transportation agencies and utility providers use their communications networks primarily to protect life, health and property. They maintain private internal networks to protect their field crews and to ensure the safety delivery of their services to the public. These agencies are either governmental entities or non-governmental entities that are authorized by a governmental agency. However, regardless of charter, such agencies provide the same services to the public, and should not be treated differently with regard to their ability to access this network.

The Joint Commenters agree with the views of those that have stated that the Commission should interpret Section 337(f) in terms of the services that are offered, and not with regard to the entity that is providing the service, as it did in the *Third Further Notice*.¹¹ By

¹¹ 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, *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 14301 (2008) at para. 323-326.

keeping proper focus on the services that is the service supported by the communication, it is clear that the operation is consistent with Section 337.

Further, at the time that Congress enacted Section 337, it also enacted Section 309(j)(2) which exempts public safety radio services (including utilities) from having to acquire spectrum at auction. This evidences the intention of Congress to treat these “services” together.

The position of the Joint Commenters is consistent with the Commission’s findings in the *First Report & Order*, which adopted a more inclusive interpretation of Section 337(f) by recognizing that the “statute does not require licensees to have the sole or principal purpose of providing public safety services.” Instead, the Section 337(f) “... mandates that this spectrum be used for *services* whose sole or principal purpose is to protect the safety of life, health or property.”¹²

The Joint Commenters believe that industry interests can properly be charged with developing the proper protocols to ensure that, during an incident, communications between all of these first responders can be established, without creating a network which is nothing more than a substitute for commercial networks.¹³ The industry should be permitted to engage in this effort, and create an effective methodology for network access by all necessary responders.

In paragraph 138 of the *NPRM*, the Commission asks whether fees charged for access by these types of users violates the private nature of this network, and thus volatile of Section 337(f)(1)(C). It is the opinion of the Joint Commenters that such payments (or in-kind contributions) would not violate the statute. Since it is common place on wide-area public safety networks for users to pay access fees to offset the operational and technology refreshment costs

¹² *First Report & Order*, Docket No. 96-86 (1998), 63 FR 58685 (released Nov. 2, 1998) at para. 54.

¹³ Once these policies are developed, it would be appropriate for Commission review to ensure that there is no blurring of commercial uses and public safety services which would violate Section 337(a) of the Act.

incurred, this network should not be treated differently. While it may be true that charges should not render the use profit making for the network, the payment concept itself is not foreign and perfectly appropriate.

III. CONCLUSION

WHEREFORE, the premises considered, it is respectfully requested that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

CITY OF CHESAPEAKE, VIRGINIA
DALLAS-FORT WORTH
INTERNATIONAL AIRPORT
JOINT COUNCIL ON TRANSIT WIRELESS
AMERICAN ASSOCIATION OF
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