

**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)	

REPLY COMMENTS

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 submits its Reply Comments in the above-entitled proceeding.¹ The City’s Declaratory Ruling Request sought to resolve a single, narrow issue within the broader question of secondary usage on 700 MHz public safety broadband spectrum that is before the FCC in its Fourth Further Notice of Proposed Rulemaking in this same proceeding.² Charlotte asked the FCC to issue a declaratory ruling confirming that “[T]erritories, possessions, states, counties, towns or similar State or local governmental entities³ 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.”⁴

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

² 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*”).

³ See 47 C.F.R. § 90.523(a).

⁴ Declaratory Ruling Request at 3.

As explained in the Declaratory Ruling Request, the City asked for confirmation of this specific issue in advance of the Commission's 4th *FNPRM* decisions, both because timely clarification was needed to ensure compliance with Charlotte's BTOP grant requirements, and because this limited issue did not involve the more complex analysis required to resolve the broader Section 337 eligibility question. The record in this proceeding confirms that the Commission would be on firm legal and policy grounds if it issued the declaratory ruling requested by the City.

The great majority of parties that filed comments in response to the 4th *FNPRM* endorsed Charlotte's interpretation of Section 337 eligibility and encouraged timely action by the FCC either in their filings in the rulemaking proceeding, in separate submissions in response to the Declaratory Ruling Request Public Notice, or in both. These comments came from virtually the entire public safety community, including the Public Safety Spectrum Trust ("PSST"), the National Public Safety Telecommunications Council ("NPSTC"), the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), the International Municipal Signal Association ("IMSA"), and numerous public safety entities throughout the nation. Charlotte's request was supported by vendors such as Motorola Solutions, Inc. ("MSI"), Alcatel-Lucent, Harris Corporation ("Harris") and IPWireless, Inc. ("IPW"). It was endorsed by non-public safety trade associations such as the Telecommunications Industry Association ("TIA"), the Utilities Telecom Council ("UTC") and the Enterprise Wireless Alliance ("EWA"). Notably, even the National Telecommunications and Information Administration ("NTIA"), which manages the BTOP Grant program, submitted comments strongly supporting Charlotte's request for a declaratory ruling to resolve uncertainty with regard to this aspect of the Section 337 eligibility issue.

For example, NTIA stated that it “agrees with Charlotte’s interpretation of the Commission’s rules regarding 700 MHz narrowband and broadband system eligibility, *i.e.*, the activities that may be conducted on the 700 MHz spectrum are not limited to those involving police, fire and medical personnel....”⁵ TIA made the following recommendation: “TIA agrees that, for the most part, governmental entities have as their sole or primary mission the safety of life, health, and property and their status as an eligible network participant in 700 MHz public safety broadband networks should be clarified as expeditiously as possible.”⁶ NPSTC echoed these positions, saying “NPSTC also recommends the Commission clarify that all types of government employees, not just core Fire, Police, and EMS users, can use the network, as long as the core users have control over priority access to the network. Given that interoperability is a foundational goal of the nationwide public safety broadband network, it is counterproductive for the FCC to proscriptively limit which government users can have access to the broadband network.”⁷ Reply Comments filed by Harris reached the same conclusion: “The clarification requested by the City of Charlotte complies with the language and statutory intent of Section 337.... A flexible interpretation of Section 337 is also in furtherance of goals set forth by the Commission in the National Broadband Plan.”⁸

The critical public interest in allowing 700 MHz governmental licensees/lessees to identify with whom the broadband network should be shared in their communities was highlighted by a number of jurisdictions. Thus, the Los Angeles Regional Interoperable Communications System Authority (“LA-RICS”) offered several examples of situations in which interoperability with secondary responders proved indispensable to public safety operations.⁹ The City of Mesa,

⁵ NTIA Comments at 2.

⁶ TIA Comments at 5.

⁷ NPSTC Comments at 22.

⁸ Harris Reply Comments at 4 (footnotes omitted).

⁹ LA-RICS Comments at 3-4.

Arizona explained that ensuring a clean water supply, as well as turning electricity and gas on and off when necessary, “...all help protect the public’s personal safety and its property each and every day.”¹⁰ The City of Seattle, Washington agreed and provided several examples of the fact that “[S]tate and local governments have many different departments or functions, but the majority of such functions in some way protect the safety of life, health, or property.”¹¹ As stated by the PSST:

Network user eligibility should include local, tribal, state and federal governmental entities that are not considered public safety core users, as well as health care, transportation and critical infrastructure industry entities (*e.g.*, utilities), as long as core public safety agencies (*e.g.*, police, fire and emergency medical services) are in control of and manage priority access. The PSST eagerly supports the highest degree of interoperable communications achieved over the sharing of common wireless networks and applications.¹²

The FCC is at the forefront of the nation’s effort to make wireless broadband capability accessible across the country and for myriad purposes. This effort must extend to governmental usage and maximum interoperability if the benefits of broadband are to reach their full potential. The record in response to the Declaratory Ruling Request confirms that all elements of the wireless community support the Section 337 eligibility clarification requested by the City. The legal and policy support for that position provided in the Comments and Reply Comments is essentially unanimous and provides a solid foundation for an affirmative Commission decision.

For the reasons described herein and in its Declaratory Ruling Request, Charlotte urges the Commission to issue a Declaratory Ruling confirming that governmental entities that are authorized to operate on 700 MHz public safety broadband spectrum may allow users in addition to police, fire and emergency medical personnel to share the use of this spectrum.

¹⁰ Mesa Comments at 2.

¹¹ Seattle Comments at 2-3.

¹² PSST Comments at 22.

Respectfully submitted,

THE CITY OF CHARLOTTE, NORTH CAROLINA

A handwritten signature in black ink, appearing to read "Elizabeth R. Sachs". The signature is written in a cursive style with a large, prominent initial "E".

By its attorney:
Elizabeth R. Sachs

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