

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

In the Matter of)
) **PS Docket 13-87**
Request for Waiver of WMATA)

Pursuant to §1.925 of the Commission’s rules, the Washington Metropolitan Area Transit Authority (“WMATA”) hereby submits this Amended Request for Waiver of §90.531(b)(2) of the Commission’s rules and such other such rules as necessary to allow WMATA the right to apply for and obtain licenses for 16 (12.5 KHz) frequencies within the 700-MHz reserved channels identified in §90.531(b)(2).

WMATA was already in advanced stages of planning and procuring a new narrowbanded radio system operating in the UHF T-band (470-512 MHz) when the Public Safety Spectrum Act was enacted.¹ With the prospect of being forced to relocate to a different band, possibly before the new system had been fully depreciated, and uncertainty regarding reimbursement for the costs associated with relocation, it is in WMATA’s best interests to pursue alternative spectrum immediately.

WMATA urges the Commission to find that 1) WMATA’s use of the 700-MHz public safety frequency band is authorized under the broad definition of Public Safety radio and 2) WMATA is authorized to apply for and receive not fewer than 16 licenses within that band. In addition to its own public safety radio needs, the 16 licensed frequencies will be used to provide interoperability for other governmental, public safety users in WMATA’s service area. Further,

¹ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012).

authorization of WMATA's use of the 700-MHz Band will allow WMATA to abandon the 22 T-Band frequency pairs (490 MHz) that are currently licensed to WMATA.

I. Current Frequency Use and Availability

- a.** VHF Frequencies. The VHF frequency band in the National Capital Region (NCR) is heavily congested and sufficient spectrum is not available. Upon migration to the requested reserved channels, WMATA will abandon its VHF frequency licenses.
- b.** 800-MHz Frequencies. The 800 MHz frequency band in the D. C. metropolitan area is also heavily congested and sufficient spectrum is not available to meet WMATA's needs.
- c.** 700 MHz General Pool Frequencies. General Pool Frequencies were considered but rejected as an alternative path forward. By their very nature, general pool frequencies are localized and would 1) place a severe burden on Region 20 with respect to coordination issues and 2) force WMATA to adopt a multi-cell design as opposed to the large area, single cell simulcast design being pursued by WMATA.
- d.** 700 MHz State Frequencies. "States" within the mid-Atlantic sub-region called Region 20 were allocated portions of the 700-MHz Frequency Band, but WMATA was not. WMATA has made requests to Region 20 to consider our needs and allocate a portion of the State Channels to our use. Region 20 was unable to provide sufficient 700 MHz spectrum for WMATA's use because 1) the frequencies are being fully utilized in Virginia and Maryland, and heavily used in DC, each representing a portion of WMATA's service area and 2) using the

available DC frequencies in Maryland and Virginia would cause unacceptable interference issues between radio systems.

- e. 700 MHz Reserved Frequencies. After exhausting other possibilities, WMATA filed an Initial Request for Waiver on June 18, 2013. WMATA now makes this Amended Request for Waiver to use Reserved Frequencies in the 700-MHz Band. As shown on Attachment A to this submission, Region 20 supports WMATA's use of the Reserved Frequencies.

II. Public Safety Uses

- a. WMATA. WMATA is an agency and instrumentality of DC, Maryland and Virginia established as a governmental entity to provide for the public transportation needs of the National Capital Region including the entire District of Columbia and the inner suburbs of Virginia and Maryland. WMATA's service area, sometimes called the Transit Zone, includes Prince George's and Montgomery County in Maryland; Arlington and Fairfax Counties in Virginia as well as the Cities of Fairfax, Falls Church and Alexandria. The Metrorail System will expand into Loudon County in the very near future. Our public transit system provides over 800,000 rides a day and operates approximately 1200 rail vehicles along 106 miles of track (of which approximately 50 miles are underground). WMATA's rail operations are supported by seven (7) rail yards. Additionally, WMATA operates a fleet of almost 1600 buses which are supported by ten (10) bus divisions.²

² WMATA's operations also include a paratransit service. Since this service is handled through a third-party contractor, they are not included in the WMATA Radio System.

b. WMATA Radio. WMATA's radio system is the one communication system that allows all of our operations to function safely. The radio system does provide operational support, but the principal function of all those communications is to create a safe operating environment for our workers and passengers thus protecting the significant Federal and State investment in WMATA property. The radio system is the principal method for coordinating the safe operations of the 8000 subscribers working in and around the Metrorail System. WMATA operates its radio system to provide the following public safety functions:

- i. METRO Transit Police Department
 1. Internal communications
 2. External coordination with state, local and federal public safety agencies
- ii. Special Police Officers – distinct from Transit Police, the primary function of these officers is the protection of property purchased with federal funds
- iii. Safety employees – first responders to accidents and incidents.
- iv. Inter-agency emergency response coordination.
- v. Interoperability for non-WMATA emergency and police response in WMATA tunnels and when traveling beyond their home jurisdiction.
- vi. Rail Operations – coordinates train movements during revenue hours for safety of the rail and patrons.
- vii. Rail Maintenance Communications– coordinates train/personnel/equipment movement for the safety of workers in the underground and above ground system during non-revenue hours.
- viii. Bus Operations – coordinates emergency response to bus incidents and accidents.
- ix. Bus Yards/Rail Yards – coordinate movement of equipment and persons within WMATA bus/rail yards for the protection of personnel and equipment.
- x. Bus OCC – re-routes buses when needed to avoid road closures and other emergencies like the shooting that the Washington Navy Yard on September 16, 2013.

III. The Project.

a. WMATA's New Radio System. WMATA intends to build a Project 25 system with capability for Dynamic Dual mode operation, so only 16 (12.5 KHz) 700

MHz channels are required to meet 1) the needs of WMATA's existing radio system and 2) the needs of the National Capital Region (NCR) overlay for other governmental users. The proposed system would serve the public safety uses of WMATA and others as described above. By using 700 MHz Frequencies on a P25 infrastructure, WMATA's New Radio System is inherently interoperable with other governmental entities in the NCR, who, as described above, are already in the 700-MHz Band.

- b.** Timing. WMATA requests that the Commission move forward as soon as practical on this request. WMATA's funding is in place for this effort and our existing system is in need of significant upgrade if we are not able to migrate to a new system. Attachment B is a letter from WMATA's Project Manager to Region 20 confirming the availability of funding.
- c.** Coordination. In addition to funding being currently available, WMATA has begun the coordination efforts needed to create an interoperable system for other public safety users in the NCR. These efforts have momentum at the state and local level and are aligned with Region 20 and the Metropolitan Washington Council of Government's draft Memorandum of Understanding on Interoperability. Licensing of the requested 16 (12.5 KHz) frequencies within the 700 MHz band is necessary to achieving the goals of the Commission, Congress, regional stakeholders and WMATA.

IV. Standard of Review

- a.** Waiver. Section 1.925 of the Commission's rules states that a waiver may be granted if it can be shown that:

- i.** The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or
- ii.** In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.

This petition establishes that WMATA has satisfied both of these standards.

- b.** Underlying Purpose. The underlying purpose of Congress' mandate is to move public safety users to the 700-MHz Band. This purpose requires current public safety users like WMATA to relocate from and abandon its licenses in the 490-MHz Band. The underlying purpose of the Commission's division of spectrum by geographic region was to allow coordination among neighbors for frequency uses that will not interfere with each other and that cover a larger geographic region than is addressed by general pool frequencies. Only by granting WMATA's request to use the Reserved Frequencies can these two goals be achieved in a manner that supports the underlying purpose of the statute and the rules.
- c.** Unique or Unusual. WMATA's application meets the unique or unusual test in that we are, as far as we know, the only public transportation entity that serves a geographic area that traverses three separate sovereigns. Further, WMATA was not, because of its unique statutory underpinnings, included in the allocation of frequencies within the State Frequencies process. Again, the only way to prevent

an outcome that is inequitable, unduly burdensome or contrary to the public interest is to grant WMATA's request.

For the forgoing reasons, we respectfully request that the Commission grant a waiver of §90.531(b)(2) and other rules as necessary to allow WMATA to apply for and license 16 (12.5 KHz) frequencies within the designated reserve channels of the 700-MHz band.

Respectfully submitted,

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