

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

In the Matter of:)
)
Requests for Waiver of Various Petitioners to) PS Docket No. 06-229
Allow the Establishment of 700 MHz Public)
Safety Wireless Broadband Networks)

To: The Commission

**COMMENTS OF THE
TELECOMMUNICATIONS INDUSTRY ASSOCIATION**

The Telecommunications Industry Association (TIA) hereby submits comments to the Federal Communications Commission (Commission) in the above-captioned proceeding.¹ TIA hopes to provide insight on how to best approach approving Waiver Petitions such as those cited in the 700 MHz Waiver PN.

TIA represents the global information and communications technology (ICT) industry through standards development, advocacy, tradeshow, business opportunities, market intelligence and world-wide environmental regulatory analysis. For over 80 years, TIA has enhanced the business environment for broadband, mobile wireless, information

¹ *In the Matter of Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Public Safety Wireless Broadband Networks*, PS Docket No. 06-229 (rel. Sept. 15, 2010) (700 MHz Waiver PN).

technology, networks, cable, satellite, and unified communications. TIA is accredited by the American National Standards Institute (ANSI).

SUMMARY

A broad range of authority supports the Commission allowing the use of the 700 MHz public safety network by any services meeting the requirements outlined in Section 337 of the Communications Act, including critical infrastructure and emergency support that may not instantly appear to meet Section 337's public safety definition. Allowing the use of this secure network by such entities will increase coordination between public safety and other vital entities and allow for quicker, more educated, and better harmonized efforts that will protect life, health and property in the various Petitioners' regions.

Accordingly, TIA supports rapid approval of all Waiver Petitions filed in this proceeding and urges the Commission to give public safety the discretion to allow appropriate entities to operate in the 700 MHz public safety broadband network that will further the licensee's mission.

TIA also urges the Commission to apply the waiver requirements already adopted to future waiver applicants until final rules are adopted for the 700 MHz public safety network. Uniform application of previously-established baselines will enable the Emergency Response Interoperability Center (ERIC) to make the most predictable and effective decisions, benefitting all stakeholders.

Finally, TIA urges the Commission to develop a publicly-available timeline for its formation of interoperability rules and review of 700 MHz waiver petitions. A timeline providing long-term plans and milestones will give direction and stability to stakeholders, allowing for more informed decisions as the national public safety broadband network continues to evolve.

DISCUSSION

I. TIA SUPPORTS ALLOWING WAIVER GRANTEES TO ALLOW A BROAD ARRAY OF ENTITIES TO ACCESS THE PUBLIC SAFETY NETWORKS

As the Commission makes clear, several of the Petitions filed after the Commission's Waiver Order² indicate that the public safety networks proposed may be utilized by entities that may not immediately be regarded as meeting the requirements of the Waiver Order's limitation of public safety network use to entities of Section 337 of the Communications Act.³ TIA urges the Commission to allow use of the public safety interoperable broadband networks for any services meeting the requirements outlined in Section 337 that will further the protection of life, health and property in the Petitioners' regions.

Seamless interoperability between public safety entities, emergency service support, first responders, critical infrastructure, and other entities that protect the public is vital to the most efficient use of any interoperable public safety broadband network. Because of the

² Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket No. 06-229, *Order*, FCC 10-79 (rel. May 12, 2010) (Waiver Order).

³ See Waiver Order at ¶ 34.

secure nature of such a network, it is ideal for mission-critical communications between public safety and critical infrastructure entities. Invaluable coordination between public safety and transportation, medical, and educational entities, among others, over a secure network will more quickly synchronize these essential organizations, resulting in more informed and effective efforts as well as reduced response times for all entities involved. These benefits will only be amplified for remote and/or underserved regions, such as tribal areas.

Further, use of interoperable broadband public safety networks by utilities could help meet growing and unmet spectrum needs for the Smart Grid. As recently noted by the Department of Energy (DOE), “[m]any utilities assert that they require additional spectrum to meet Smart Grid communications requirements, either on an exclusive basis or shared with other users, for example public safety entities.”⁴ The DOE also suggested that additional spectrum could be used by utilities through leasing agreements with, among other entities, public safety.⁵

Because public safety is in the best position to determine which organizations can best contribute to its own mission-critical efforts, the Commission should allow for public safety entities to exercise discretion regarding which critical infrastructure, emergency support, and other entrants should share in the use of the 700 MHz spectrum.

Accordingly, TIA supports approval each of the Waiver Petitions identified in the 700 MHz Waiver PN.

⁴ Department of Energy, Communications Requirements of Smart Grid Technologies (October 5, 2010), 54, *available at* http://www.gc.energy.gov/documents/Smart_Grid_Communications_Requirements_Report_10-05-2010.pdf.

⁵ *See id* at 60.

The Commission has long recognized that services that are not instinctively regarded as public safety services should be able to operate on a public safety network. Congress mandated that the Commission allocate 24 MHz of spectrum for public safety services.⁶ Congress then defined public safety services as services “the sole or principal purpose of which is to protect the safety of life, health, or property.”⁷ In evaluating the type of services that can operate on the public safety network, the Commission recognized that services can meet the Section 337 definition as long as the principal purpose of the Public Safety Broadband Licensee’s services (PSBL) is to protect the safety of life, health or property.⁸

Further, in codifying Section 337, the Commission stated that nongovernmental organizations (NGO) are eligible to use a public safety network if approved by a state or local government entity whose mission is the oversight or provision of public safety services.⁹ The Commission also indicated that utilities and pipelines were examples of potential NGO licensees.¹⁰ Yet the Commission declined to define each type of NGO that would be eligible, as:

...there are countless variations on how NGO use might present itself among states and localities nationwide. We believe that the certification from one of our licensees provides a reasonable measure of confidence that the NGO has received

⁶ See 47 U.S.C. § 337(a)(1).

⁷ See 47 U.S.C. § 337(f)(1)(a).

⁸ See 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 Further Notice of Proposed Rulemaking, 23 FCC Rcd 8047, ¶ 30 (2008) (*700 MHz Second Further Notice*).

⁹ See *id.* at ¶ 56.

¹⁰ See *id.* at ¶ 72.

authorization from a governmental entity that is appropriate under the circumstances.¹¹

Building upon these findings, the Commission made clear the importance of allowing a diverse array of entities to use the spectrum to protect life, health or property in making 50 MHz of spectrum between 4.940 MHz and 4.990 MHz available for public-safety use:

We believe the rules should be sufficiently flexible to provide a variety of entities access to the 4.9 GHz band, particularly if allowing such entities access would increase the effectiveness of public safety communications, foster interoperability and further ongoing and future homeland security initiatives.¹²

Accordingly, the Commission permitted agreements between 4.9 GHz licensees and entities not eligible for their own licenses under Section 337.¹³ Further, the Commission left to public safety the determination of those entities that would support them:

We will not place any limitation on what type of entity may be a party to such sharing arrangements; rather, we afford traditional public safety providers that are licensed in the 4.9 GHz band flexibility to exercise their discretion regarding what entities in their jurisdiction operate in support of public safety.¹⁴

In the National Broadband Plan, the Commission again supported allowing public safety licensees to partner with other entities, particularly stating that critical infrastructure entities should be able to use the public safety network on a secondary basis through leasing or similar mechanisms.¹⁵ TIA supports the Plan's recommendation that "any revenue received by a public safety entity for such use must be used to build or improve

¹¹ *Id.*

¹² The 4.9 GHz Band Transferred from Federal Government Use, *Memorandum Opinion and Order and Third Report and Order*, WT Docket No. 00-32, FCC 03-99, ¶ 16 (rel. May 2, 2003) (*4.9 GHz MO and O and Third R and O*).

¹³ *See id.* at ¶ 16.

¹⁴ *Id.*

¹⁵ *See* Federal Communications Commission, *Connecting America: The National Broadband Plan*, 315 (Mar. 16, 2010) ("National Broadband Plan").

the public safety broadband network.”¹⁶ Such a provision will provide a much needed source of revenue for the build-out of a broadband public safety network.

The Commission’s ongoing policy of allowing access to public safety networks to a broad spectrum of entities that serve public safety is embraced by leaders in public safety policy. In its 700 MHz Public Safety Broadband Task Force Report and Recommendations, the National Public Safety Telecommunications Council (NPSTC) urged that public safety spectrum be used for first responders, which are defined as:

those individuals in the early stages of an incident who are responsible for the protection and preservation of life, property, evidence, and the environment, including emergency response providers as defined in Section 2 of the Homeland Security Act of 2002 (6 U.S.C. §101(6)), as well as emergency management, public health, clinical care, public works, and other skilled support personnel, such as equipment operators, who provide immediate support services during prevention, response, and recovery operations.¹⁷

Under 6 U.S.C. §101(6), Emergency Service Providers include “federal, state, and local emergency public safety, law enforcement, emergency response, emergency medical, including hospital emergency, and related personnel, agencies, and authorities.”¹⁸

NPSTC also urged that access should be provided to support agencies that are involved in mission critical activities relating to an incident, such as “protecting against the incident, preventing the incident, or recovering from the incident.”¹⁹ In its analysis of the NPSTC Report, the Public Safety Spectrum Trust (PSST) echoed these recommendations, urging

¹⁶ *Id.*

¹⁷ See National Public Safety Telecommunications Council, 700 MHz Public Safety Broadband Task Force Report and Recommendations, (Sept. 4, 2009), 22, 27, available at http://www.npstc.org/documents/700_MHz_BBTF_Final_Report_0090904_v1_1.pdf. (NPSTC Report)

¹⁸ 6 U.S.C. §101(6).

¹⁹ NPSTC Report at 27.

access to a host of entities.²⁰ Further, in its comments on the potential developing a public-private partnership in the D Block, PSST agreed with TIA's position that Section 337 undoubtedly allows access to the public safety interoperable broadband network by critical infrastructure.²¹

Given this comprehensive support for allowing a wide array of entities to access public safety networks, TIA urges the Commission to grant all Waivers that propose to allow entities use of the network that will result in increased protection of life, health and property. From a technical perspective, TIA notes that broadband communications networks have the capacity to accommodate different user types and manage those users via subscriber access rights and relative priorities. Moreover, these networks are capable of managing overlapping interoperable public safety systems (e.g. public safety jurisdictions and other entities such as critical infrastructure and emergency support users); thus, there are no technical restrictions for any of the Waivers Petitioners from effectively operating their broadband public safety networks.

²⁰ Public Safety Spectrum Trust Ex Parte, PS Docket No. 06-229, WT Docket No. 06-150 (filed Dec. 15, 2009).

²¹ See Comments of the Public Safety Spectrum Trust, Service Rules for the 678-746, 747-767 and 777-792 MHz Bands, Third Further Notice of Proposed Rulemaking, WT Docket No. 06-150, 73 FR 57,750 (2008) at 25-27.

II. THE COMMISSION SHOULD GRANT FUTURE WAIVERS UNDER THE WAIVER ORDER'S RULES UNTIL DEVELOPMENT OF INITIAL INTEROPERABILITY RULES AND DEVELOP A PUBLICLY-AVAILABLE INTEROPERABILITY TIMELINE

TIA appreciates the daunting task of the Public Safety and Homeland Security Bureau and ERIC to review Waiver requests for the deployment of regional and local interoperable broadband public safety networks amidst its ongoing work to utilize developing information for the creation of initial rules on public safety network interoperability. While TIA supports swift approval of the Waiver Petitions referenced in this proceeding, it also understands the importance of developing long-term plans for creating final interoperability rules.

As the Commission noted in its Waiver Order, it is vital that it act on Waiver Petitions rapidly given the urgency of deploying the infrastructure the public safety networks.²² Given the requirements established in the Waiver Order, the Commission now has a baseline set of requirements to apply to subsequent Waiver Petitions. Thus, TIA urges that the requirements of the Waiver Order apply to subsequent grantees of Waiver Petitions until initial final interoperability rules are established. This will allow ERIC to implement sound initial interoperability rules based on its ongoing evaluation of the Public Safety Communications Research (PSCR) program data and other information that will drive effective policies while allowing networks to be built.

²² See Waiver Order at ¶ 10.

As the Commission proceeds in its laudable work of enabling the deployment of a nationwide interoperable broadband public safety network, TIA believes that stakeholders would benefit greatly from the release of a timeline of benchmarks for the Commission's work in this space. Benchmarks could include target time to respond to a Waiver Petition, incremental assessment of PSCR reporting, and releasing proposed initial interoperability rules. Such a timeline will enable public safety entities to incorporate the Commission's planned timing into their approach to submitting Waiver Petitions. Further, it will give manufacturers targets that will assist in developing technologies meeting public safety's needs in a timely manner. Given the considerable work load of the Commission on this matter, a timeline will streamline all parties' efforts to deploy interoperable public safety networks.

