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WIRELESS TELECOMMUNICATIONS BUREAU ACTION

WIRELESS TELECOMMUNICATIONS BUREAU APPROVES REGION 12 (IDAHO) 700 MHz REGIONAL PLAN

WT Docket No. 02-378

On August 17, 2005, the Region 12 (Idaho)¹ 700 MHz Regional Planning Committee (“Region 12”) submitted a proposed plan (Plan) for the use of the 12.5 megahertz of spectrum in the 764-776 and 794-806 MHz band (700 MHz public safety band) designated for General Use.² Region 12 requested Commission review and approval of the Plan. In addition, Region 12 requested a waiver of Section 90.527(a)(5) of the Commission’s Rules, which provides that regional plans must include an explanation of how the plan had been coordinated with adjacent regions, because Region 12 was unsuccessful in obtaining a Letter of Concurrence and Dispute Resolution Agreement from Region 25 (Montana).³ For the reasons discussed below, we grant the waiver request and approve the Region 12 700 MHz Regional Plan.

¹ The Region 12 (Idaho) 700 MHz regional planning area encompasses the entire state of Idaho, consisting of 44 counties, and shares its northernmost border with Canada at the County of Boundary. *See* Plan Appendix E – Idaho Counties.

² *See* Letter dated Aug. 17, 2005, from Lieutenant Bart Hamilton, Chairman, Region 12 to Marlene H. Dortch, Secretary, FCC (submitting the Region 12 700 MHz Plan on behalf of the Region 12 700 MHz Regional Planning Committee) and Request for Waiver of Concurrence Letter and Dispute Resolution Agreement with Region 25 (Montana), filed on Aug. 17, 2005 (Waiver Request). *See also* Letter dated Sept. 12, 2005, from Lieutenant Bart Hamilton, Chairman, Region 12 to Marlene H. Dortch, Secretary, FCC (submitting certification that all regional planning committee meetings, including subcommittee and executive meetings, held by Region 12 were open to the public), and Letter dated Sept. 12, 2005, from Lieutenant Bart Hamilton, Chairman, Region 12 to Marlene H. Dortch, Secretary, FCC (submitting By-Laws as supplement to Region 12 Plan). The General Use spectrum is administered by regional planning committees and will be licensed for public safety services on a site-by-site basis in accordance with the relevant Commission-approved regional plan and frequency coordination. The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010, *Fourth Memorandum Opinion and Order*, WT Docket No. 96-86, 17 FCC Rcd 4736, 4738 n.8 (2002).

³ *See* 47 C.F.R. § 90.527(a)(5).

Background. In 1998, the Commission adopted a band plan for the 700 MHz public safety band, and established a process to allow regional planning committees (RPCs) maximum flexibility to meet state and local needs, encourage innovative use of the spectrum, and accommodate new and as yet unanticipated developments in technology and equipment.⁴ The Commission's role in relation to the RPCs involves, as a general matter, (1) defining the regional boundaries; (2) requiring fair and open procedures, *i.e.*, requiring notice, opportunity for comment, and reasonable consideration; (3) specifying the elements that all regional plans must include; and (4) reviewing and accepting proposed plans (or amendments to approved plans) or rejecting them with an explanation.⁵

Plan Requirements. There are fifty-five RPCs and each committee is required to submit its plan for the assignment of licenses for General Use spectrum.⁶ Each regional plan must contain certain elements⁷ and must be coordinated with adjacent regions.⁸ RPCs are expected to ensure that their committees are representative of all public safety entities in their regions by providing adequate notice of all meetings, opportunity for comment, and reasonable consideration of views expressed. Plans must include an explanation of how all eligible entities within the region were given such notice.⁹ Plans should list the steps undertaken to encourage and accommodate all eligible entities to participate in the planning process, such as holding meetings in various parts of the region. In addition, a regional plan should describe outreach efforts made to tribal governments.

Regional plans may differ somewhat in approaches to spectrum planning and management. In particular, some plans may make specific assignments to eligible public safety entities, while others may establish an allotment pool approach based on political boundaries such as counties.¹⁰ However, all 700

⁴ See 47 C.F.R. § 90.527; *see also* The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements through the Year 2010, *First Report and Order and Third Notice of Proposed Rulemaking*, WT Docket No. 96-86, 14 FCC Rcd 152 (1998) (*First Report and Order*).

⁵ See *First Report and Order*, 14 FCC Rcd at 195 ¶ 87.

⁶ See 47 C.F.R. § 90.531. The 700 MHz public safety band plan contains twenty-four megahertz of spectrum for public safety services at 764-776 MHz and 794-806 MHz, and is divided into several segments by designated purpose: General Use, Interoperability, Secondary Trunking, State License, Low Power and Reserve channels.

⁷ See 47 C.F.R. § 90.527; *see also First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84.

⁸ See 47 C.F.R. § 90.527; *see also First Report and Order*, 14 FCC Rcd at 190-96 ¶¶ 77-89.

⁹ See *First Report and Order*, 14 FCC Rcd at 193-94 ¶ 84. RPCs were directed to promptly adopt operating procedures that “ensure that all entities will be given reasonable notice of all committee meetings and deliberations.” *Id.* at 195 ¶ 86.

¹⁰ See Plan Appendix A Frequency Allocation List. The Region 12 General Use narrowband frequencies are pre-allotted in county-like area frequency pools. Region 12 utilized the frequency packing program within the Computer Assisted Pre-coordination Resource and Database System (CAPRAD) administered by the National Law Enforcement and Corrections Technology Center-Rocky Mountain Region (NLECTC-RM) to create its channel allocation plan. The NLECTC-RM is a program of the National Institute of Justice and is sponsored by the University of Denver through the Denver Research Institute. The CAPRAD system is available at <http://caprad.nlectc.du.edu>. We note that the Region 12 General Use wideband channels are not included in the instant Plan. Therefore, a Plan Amendment will have to be submitted and approved by the Commission before the wideband channels may be licensed.

MHz plans submitted for review and approval must sufficiently address each of the common elements set forth in the Commission's regional plan requirements.¹¹ RPCs also are encouraged to consider utilizing the guidelines developed by the Public Safety National Coordination Committee (NCC).¹²

Review of the Region 12 Plan. Region 12 submitted its proposed plan on August 17, 2005.¹³ Region 12 convened its first of five 700 MHz regional planning meetings beginning on May 22, 2002, wherein it appointed its officers, formed subcommittees and adopted bylaws.¹⁴ The Plan includes copies of published meeting announcements, notices and a detailed membership list.¹⁵ The membership appears to be sufficiently diverse and we note that meetings were held throughout the State, in an apparent effort to encourage participation and facilitate attendance.¹⁶ The Plan details the operations of the regional plan committee, procedures for requesting spectrum allotments, plan modification, and frequency coordination, and interference protection measures.¹⁷ The Plan explains the low power secondary operations criteria and use of lower power channels, and discusses system implementation and spectrum utilization.¹⁸ The Plan was coordinated with five of the six adjacent regions and also includes *Inter-Regional Coordination Procedures and Procedures for Resolution of Disputes that May Arise Under FCC Approved Plans* (signed by the chairpersons of 700 MHz Regional Planning Regions 27, 35, 41, 43 and 46).¹⁹

Waiver Request. Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, provides that a waiver of the Commission's Rules may be granted if it is shown that 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 in view of the unique or unusual circumstances

¹¹ See 47 C.F.R. § 90.527.

¹² The NCC was a federal advisory committee established by the Commission in 1999 to address and advise the Commission on operational and technical parameters for use of the 700 MHz public safety band. The NCC was also tasked with providing voluntary assistance in the development of coordinated regional plans, and developed a *Regional Planning Guidebook*. Following the sunset of the NCC's charter on July 25, 2003, the National Public Safety Telecommunications Council (NPSTC) agreed to continue to provide assistance to regional planners. The *Guidebook* is available at the NPSTC website <http://www.npstc.org/documents.html>.

¹³ See *supra* note 2.

¹⁴ Plan Section 4, Notification Process at 5-6. Region 12 maintains a website <http://www.700region12.org>.

¹⁵ Plan Appendix C – Notices and Minutes. Meetings were held at four locations: Boise, Coeur d'Alene, Meridian and Pocatello.

¹⁶ Plan Appendix B – Regional Plan Members. The Region 12 membership includes representatives from the Shoshone Bannock Tribal government. See also Appendix D – Tribal Information. The list includes Coeur D'Alene Tribal Council; Kootenai Tribal Council, Nez Perce Tribal Executive Committee, and the Northwest Band of Shoshoni Nation.

¹⁷ Plan Sections 5.1 through 5.3 at 6-8, and Section 7 at 11.

¹⁸ Plan Sections 8.1 through 8.3 at 11-14.

¹⁹ Plan Appendix G – Concurrence Letters and Dispute Resolution Agreements (Letters of Concurrence and Dispute Resolution Agreements between Region 12 and adjacent regions, Region 27 (Nevada), Region 35 (Oregon), Region 41 (Utah), Region 43 (Washington) and Region 46 (Wyoming)).

of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest or if the applicant has no reasonable alternative. Region 12 requests a waiver of Section 90.527(a)(5), which provides that regional plans must include an explanation of how the plan had been coordinated with adjacent regions, because Region 12 was unable to obtain a Letter of Concurrence and Dispute Resolution Agreement from Region 25 (Montana).²⁰ In this regard, Region 12 states that it distributed a draft plan to its adjacent regions on January 21, 2005, and in turn received both letters of concurrence and dispute resolution agreements from every region except Region 25 (Montana). Region 12 reports that despite Montana's best efforts on two occasions, it was unable to form a quorum, and therefore was unable to hold a meeting to discuss the Region 12 plan.²¹

In support of the waiver request, Region 12 explains that (1) the 700 MHz public safety band is immediately available in the State of Idaho because no existing television stations hinder implementation of systems, (2) four public safety agencies have purchased 700 MHz radio systems (Bancock County, Ada County, Bingham County and the City of Sandpoint), and (3) several counties have purchased engineering studies for 700 MHz radio systems.²² In addition, Bancock and the City of Sandpoint are currently utilizing 700 MHz State License frequencies from the State of Idaho's geographic license authorization for Station WPTZ800.²³

Furthermore, Region 12 states that it would be quite costly if Ada County and other public safety agencies exercised the alternative of initiating operations on state geographic frequencies pending receipt of Montana's concurrence, and thereafter reprogrammed the system, master site and all associated subscriber radios with replacement General Use narrowband frequencies.²⁴ It also explains that, due to weather and terrain conditions, site installation can occur only during certain times of the year.²⁵ Region 12 asserts that withholding approval of its Plan pending the Region 25 review would cause delays in system implementation that would be unduly burdensome, inequitable and contrary to the public interest. Based on our review and consideration of the record before us and the circumstances presented, we agree.

²⁰ See 47 C.F.R. § 90.527(a)(5).

²¹ Based on a status update and information obtained by FCC staff, Region 25 (Montana) convened a meeting on September 27, 2005, wherein it assigned the task to its Technical Subcommittee with a ninety-day deadline. It appears, however, based on the record before us, that Region 25 has yet to complete its review.

²² Waiver Request at 1-2.

²³ See 47 C.F.R. §§ 90.529, 90.531(b)(5).

²⁴ Waiver Request at 2. A master site (being purchased with funds from the State of Idaho Bureau of Homeland Security) will be placed at the State Police Headquarters in Meridian, Idaho and will allow other agencies throughout the state to connect using the state police microwave system. This cooperative agreement between Ada County and the State of Idaho will promote and facilitate interoperable communications to all agencies that choose to participate.

²⁵ E-mail dated Jan. 6, 2006, from Lieutenant Bart Hamilton, Chairman, Region 12, and Communications Project Manager, Ada County Sheriff's Office, to Jeannie Benfaida, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, FCC (providing additional scheduling details relating to the installation of sites in Bingham and Ada Counties).

First, we applaud the State of Idaho's considerable efforts to date in the planning and development of a 700 MHz statewide radio system. Second, based on the record before us, we find that Region 12 exercised due diligence in its efforts over the last year to complete the required adjacent region coordination. Furthermore, in view of the implementation steps and timelines outlined in the State of Idaho's plan to utilize the 700 MHz public safety band spectrum, we believe that it would be contrary to the public interest to prevent Region 12 from moving forward with its participation in the State of Idaho's interoperability vision.²⁶ Therefore, we find good cause to grant the Region 12 waiver request. However, this waiver does not relieve Region 25 (Montana) of its continuing obligation to complete its review, and, if appropriate, provide a Letter of Concurrence and enter into a Dispute Resolution Agreement with Region 12.²⁷ Further, this waiver grant does not remove the requirement for Region 12 to conduct inter-region coordination of applications where necessary.

This decision is based on the particular, documented factors presented here, including, but not limited to, Region 12's and the State of Idaho's progress in 700 MHz public safety band implementation, and the organizational challenges experienced by Region 25 (Montana). We do not foresee granting waivers of the adjacent region coordination requirement under circumstances less compelling than those presented here.

On October 3, 2005, the Region 12 Plan was placed on *Public Notice* for comment.²⁸ We received no comments on the Plan. We have reviewed the Plan submitted by Region 12, and conclude it complies with other applicable FCC rules and policies. Accordingly, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Section 1.102(b) of the Commission's Rules, 47 C.F.R. § 1.102(b), the Region 12 (Idaho) 700 MHz Public Safety Plan is APPROVED.

This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Action by the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau.

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²⁶ *Id.* Region 12 reports that State of Idaho Statewide Interoperability Executive Council (SIEC) Concept was released on July 14, 2005 and accepted by Governor Dirk Kempthorne, as first step in the development of a statewide system. See also, *Idaho Cooperative Agencies' Wireless Interoperable Network (I-C-A-WIN), A Radio Interoperability Concept for Idaho*, available at <http://www.siec.id.gov>.

²⁷ Once completed, a copy of such documentation must be filed in WT Docket 02-378, where it will become part the Region 12 700 MHz Plan.

²⁸ See Comments Invited on Region 12 (Idaho) 700 MHz Regional Planning Committee Proposed Public Safety Plan, *Public Notice*, WT Docket No. 02-378, 20 FCC Rcd 15724 (WTB PSCID 2005). Comments were due November 2, 2005 and reply comments were due November 17, 2005.