



PUBLIC NOTICE

Federal Communications Commission
445 12th St., S.W.
Washington, D.C. 20554

News Media Information 202 / 418-0500
Internet: <http://www.fcc.gov>
TTY: 1-888-835-5322

DA 12-602

Released: April 17, 2012

**PUBLIC SAFETY AND HOMELAND SECURITY BUREAU SEEKS COMMENT ON
PETITION FOR WAIVER OF RULES FILED BY THE STATE OF MARYLAND REQUESTING
PERMISSION TO OPERATE AIR-TO-GROUND RADIO EQUIPMENT ON 700 MHZ
SECONDARY TRUNKING CHANNELS**

RM-11433

COMMENTS DUE: April 27, 2012
REPLY COMMENTS DUE: May 2, 2012

By this Public Notice, the Public Safety and Homeland Security Bureau (PSHSB) seeks comment on a petition for waiver of the Commission's rules¹ filed by the State of Maryland (Maryland) requesting authorization to use 700 MHz band secondary trunking channels for air-to-ground interoperable radio communications.

Specifically, Maryland seeks to use 700 MHz band secondary trunking channels for air-to-ground interoperable communications in conjunction with its Maryland First Responders Interoperable Radio System Team (Maryland FiRST) system and its Maryland State Police-Maryland Institute for Emergency Medical Services Systems (MSP-MIEMSS) emergency medical system.² Maryland states that all of its police vehicles are migrating to the Maryland FiRST system, a statewide inter-governmental 700 MHz public safety network.³ Noting the important role that Maryland State Police (MSP) helicopters serve in saving lives, Maryland states that first responder aircraft communications systems must migrate to the 700 MHz band to participate in Maryland FiRST.⁴

However, Maryland states that "aircraft employing low-power radios operating on state 700 MHz frequencies would likely interfere with adjoining state operations," and that this interference is particularly likely with respect to the Commonwealth of Virginia, "which makes extensive use of the 700 MHz state frequencies for low-power digital vehicular repeater (DVRS) use."⁵ As an alternative to 700 MHz State License channels, Maryland seeks use of the 700 MHz secondary trunking channels for air-to-

¹ Petition for Waiver of Rules, State of Maryland, RM-11433 (filed Feb. 24, 2012) (Maryland Petition). Because Maryland's petition raises similar issues to the pending petition for rulemaking (RM-11433) previously filed by the National Public Safety Telecommunications Council (NPSTC), we are incorporating the waiver request into that proceeding. See Public Safety and Homeland Security Bureau Seeks Comment on NPSTC's Petition for Rulemaking to Allow Aircraft Voice Operations on Secondary Trunking Channels in the 700 MHz Band, *Public Notice*, DA-11-1146 (Jun. 30, 2011). Maryland filed comments in response to the NPSTC petition for rulemaking, which remains pending.

² Maryland Petition at 5.

³ *Id.* at 7.

⁴ *Id.*

⁵ *Id.* at 3.

ground communications.⁶ Maryland submits that no licenses have been granted for these secondary trunking channels⁷ which “have remained fallow relative to use throughout the United States.”⁸

Maryland commits that if its Petition is granted, it “will follow the Commission’s rules for the use of national interoperability channels as found in Subpart R of Part 90,” and “will permit and encourage the aircraft of other governments and commercial air ambulance aircraft transporting critically injured or ill patients to interoperate with its Emergency Medical Systems Control center (SYSCOM) pursuant to the Commission’s rules and relevant statutes.”⁹ Specifically, Maryland notes that that the channels would be used in law enforcement, fire, and EMS aircraft operated by county governments, the City of Baltimore, the State of Delaware –, which “regularly flies critically injured victims to the Shock-Trauma Center in Baltimore” – and the helicopter fleets of “any adjoining state or local government in an adjoining state, or commercial air ambulance transporting critically injured trauma victims into Maryland for emergency life-saving treatment.”¹⁰

Maryland also notes that it “will operate fixed base stations [throughout the state] which will be individually licensed per Commission rules,” and that if a “catastrophic event” requiring “the temporary emergency establishment of a fixed base station outside of Maryland” arises, it would request Special Temporary Authority to operate such a station.¹¹

Under Section 1.925 of the Commission’s rules, a petitioner must demonstrate that, “the underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that the grant of waiver would be in the public interest,” or that, “in view of the 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.”¹² The applicant faces a high hurdle and must plead with particularity the facts and circumstances that warrant a waiver.¹³

With regard to the first prong of the Commission’s waiver standard, Maryland states that “the purpose of . . . the secondary trunking channels was to permit the use of 25 [k]Hz frequencies for trunked radio systems.”¹⁴ Maryland states that it has “no intention of operating or permitting 25 [k]Hz trunked public safety interoperability systems,” and that “none of Maryland’s neighboring states have indicated any interest in operating such a trunked interoperability system with 25 [k]Hz channels as P25 has become the standard for interoperability.”¹⁵ Maryland states that it “will employ appropriate engineering techniques to ensure that adjacent channel interference does not occur,”¹⁶ and “will coordinate with its

⁶ *Id.* at 4.

⁷ *Id.*

⁸ *Id.*

⁹ *Id.* at 5-6.

¹⁰ *Id.* at 9.

¹¹ *Id.*

¹² 47 C.F.R. § 1.925.

¹³ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969), *aff’d*, 459 F.2d 1203 (1973), *cert. denied*, 409 U.S. 1027 (1972) (*citing Rio Grande Family Radio Fellowship, Inc. v. FCC*, 406 F.2d 664 (D.C. Cir. 1968)); *Birach Broad. Corp., Memorandum Opinion and Order*, 18 FCC Rcd 1414, 1415 (2003).

¹⁴ Maryland Petition at 15.

¹⁵ *Id.*

¹⁶ *Id.*

adjoining states should they install 700 MHz fixed base stations on adjacent channels operating under Subpart 531(b)(1)(iii) [Section 90. 531(b)(1)(iii) of the Commission’s rules¹⁷] and at all times maintain a geographical separation sufficient to achieve a 60 dBu interference protection contour.”¹⁸

With regard to the second prong, Maryland points out that its technical analysis shows that, “the State cannot comply with the provisions of DA 01-406 with operations...on the State or general pool channels.”¹⁹ Maryland states that even if it negotiated agreements to use 700 MHz State License channels with adjoining states, “it would be virtually impossible to delimit RF entering New Jersey or Ohio, non-adjoining states,” and that this same interference “would occur with the use of General Pool 700 MHz channels.”²⁰

Maryland states that there are no reasonable alternatives to using the requested secondary trunking channels for interoperable aircraft operations, “because use of the 700 MHz secondary trunking channels is fallow and MSP radios will operate on 700 and 800 MHz channels.”²¹ Maryland submits, therefore, that using the secondary trunking channels for public safety air-to-ground operations would be in the public interest.²²

By this Public Notice, we seek comment on Maryland’s petition and announce the pleading cycle during which comments and replies may be filed.

This proceeding will be treated as “permit but disclose” for purposes of the Commission’s *ex parte* rules. *See generally* 47 C.F.R. §§ 1.1200-1.1216. As a result of the permit-but-disclose status of this proceeding, *ex parte* presentations will be governed by the procedures set forth in Section 1.1206 of the Commission’s rules applicable to non-restricted proceedings.²³ Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). Written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system

¹⁷ 47 C.F.R. § 90. 531(b)(1)(iii).

¹⁸ Maryland Petition at 15-16.

¹⁹ Maryland Petition at 16. *See* Public Safety 700 MHz Band—State License Option to Apply Runs Through December 31, 2001, *Public Notice*, DA 01-406 (rel. Feb. 15, 2001) (State Licensees may operate facilities in interstate boundary areas so long as the field strength of station transmissions is limited to 40 dBu/m at the licensee’s geographic border”).

²⁰ Maryland Petition at 17-18.

²¹ *Id.* at 18.

²² *Id.*

²³ 47 C.F.R. § 1.1206.

available for that proceeding, and must be filed in their native format (e.g., .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission's *ex parte* rules.

Parties may file responses to the Petition on or before **April 27, 2012** and replies on or before **May 2, 2012**. Please place the case identifier, **RM-11433**, on all filings. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.
- Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.
 - All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
 - Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
 - U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.
- People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

Copies of the Petition and any subsequently filed documents in this matter are also available for inspection in the Commission's Reference Information Center:

445 12th Street, S.W., CY-Level
Washington, D.C. 20554
(202) 418-0270

For further information, contact: Aaron Garza, Policy and Licensing Division, Public Safety and Homeland Security Bureau, at (202) 418-0838 or aaron.garza@fcc.gov.

Action by the Chief, Public Safety and Homeland Security Bureau.

– FCC –