

Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of)	
)	
Implementing Public Safety Broadband Provisions)	PS Docket No. 12-94
of the Middle Class Tax Relief and Job Creation)	
Act of 2012)	
)	
Service Rules for the 698-746, 747-762 and 777-)	WT Docket No. 06-150
792 MHz Bands)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the 700)	
MHz Band)	

ORDER

Adopted: August 31, 2012

Released: August 31, 2012

By the Chief, Public Safety and Homeland Security Bureau.

I. INTRODUCTION

1. In this Order, we grant a request filed by the State of Texas (Texas) for Special Temporary Authority (STA) to operate a 700 MHz public safety broadband network in Harris County, Tex.

II. BACKGROUND

2. The Middle Class Tax Relief and Job Creation Act of 2012 (Public Safety Spectrum Act),¹ enacted February 22, 2012, creates the First Responder Network Authority (FirstNet) and directs it to establish a nationwide public safety broadband network spanning the 700 MHz D Block (758-763/788-793 MHz) and the existing public safety broadband spectrum (763-768/793-798 MHz).² On July 31, 2012, the Federal Communications Commission (Commission) released an order (*STA Order*) that provides for limited deployment in the latter spectrum under STA granted for periods of up to 180 days as FirstNet gains its footing.³ The *STA Order* identifies a number of public interest considerations relevant in evaluating applications for STA filed by public safety entities seeking to operate in the spectrum during this transitional period.⁴ The Public Safety and Homeland Security Bureau (Bureau) is directed to grant within thirty days of filing any such requests “that present a compelling basis for relief

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

² See *id.* §§ 6204, 6206; see also *id.* § 6001(14) (defining “existing public safety broadband spectrum”).

³ See Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012, PS Docket No. 12-94, *Order*, FCC 12-85 (rel. July 31, 2012).

⁴ See *id.* at 11-13 ¶ 25.

as articulated in [the *STA Order*].”⁵

3. On August 29, 2012, the Commission adopted an order (*Order on Reconsideration*) permitting operations under STA to proceed on a “10x10 MHz” basis, *i.e.*, to span the existing public safety broadband spectrum and the D Block.⁶ The *Order on Reconsideration* directs the Bureau to review and act upon applications that contemplate 10x10 MHz operations consistent with the Bureau’s prior delegation of authority under the *STA Order*.⁷

4. The Bureau has before it an STA application from Texas filed in the Bureau’s Universal Licensing System (ULS) on August 9, 2012, with an amended version filed on August 28.⁸ The *STA Order* approved Texas’s pending “interoperability showing,” thereby providing Texas interim authority to operate a fourteen-site public safety broadband network within Harris County, Tex., until September 2, 2012.⁹ Texas requests an STA to operate this system for an additional 180 days. As explained in more detail below, we find that Texas’s request adequately addresses each public interest consideration identified by the Commission and overall presents a compelling basis for relief consistent with the terms of the *STA Order*. Accordingly, we grant the request.¹⁰

III. DISCUSSION

5. The *STA Order* provides that applications for STA to operate public safety broadband networks in the public safety broadband spectrum shall be held to “a rigorous standard ‘involving circumstances which are of such extraordinary nature that delay in the institution of temporary operation would seriously prejudice the public interest.’”¹¹ To further clarify this standard, the Commission identified a number of considerations likely to be supportive of a finding that grant of an STA would serve the public interest in a particular case. Texas’s application addresses each of these considerations, which we now consider in turn.

6. *Significant Deployment Prior to Enactment of the Act.* In the *STA Order*, the Commission found that a consideration in assessing whether to grant an STA would include a finding of a “pattern of sustained investment, both monetary and in terms of planning and construction, including whether applicants have significantly deployed their network prior to the Public Safety Spectrum Act’s

⁵ *Id.* at 13-14 ¶ 28.

⁶ See Implementing Public Safety Broadband Provisions of the Middle Class Tax Relief and Job Creation Act of 2012, *Order on Reconsideration*, FCC 12-96 (rel. Aug. 29, 2012).

⁷ See *id.*

⁸ See State of Texas, Universal Licensing System, File No. 0005346762 (Aug. 9, 2012) (STA Application); see also State of Texas, Universal Licensing System, File No. 0005346762 (Aug. 28, 2012) (Amended Application). Both versions of the application contain a narrative (STA Application Narrative and Amended Application Narrative, respectively) addressing how grant of Texas’s application would satisfy the public interest considerations articulated in the *STA Order*. The Amended Application Narrative also includes as an attachment a letter of concurrence from the Public Safety Spectrum Trust.

⁹ See *STA Order* at 14-15 ¶ 30. In particular, the network is planned to provide service for “the City of Baytown, the Port of Houston, the Houston Ship Channel Security District and other portions of Harris County.” See Harris County, Texas Filing, PS Docket 12-94 (filed July 13, 2012).

¹⁰ On August 23, 2012, Texas submitted a filing in PS Docket 12-94 clarifying that its STA application seeks authority “for the full 20 MHz (“10 x 10”) operations.” State of Texas Filing, PS Docket 12-94 (filed Aug. 23, 2012); see also State of Texas, Universal Licensing System, File No. 0005346762 (Aug. 30, 2012). Consistent with the *Order on Reconsideration*, we grant Texas’s request for authority to operate on a 10x10 MHz basis.

¹¹ See *id.* at 10 ¶ 23 (citing Section 1.931(b)(2)(v) of the Commission’s rules, 47 C.F.R. § 1.931(b)(2)(v)).

enactment on February 22, 2012.”¹² Texas identifies a number of tasks it had undertaken or completed prior to that date to deploy its network, including “[s]ystem design and planning,” “[g]rant funding applications and planning,” “[n]etwork construction,” and “[c]ontracts.”¹³ In addition, Texas states that the Harris County network had “six eNodeBs fully operational” as of that date.¹⁴ These assertions find support in Texas’s quarterly reports filed in PS Docket 06-229, which have documented Texas’s ongoing progress in the areas of planning, funding and deployment during its tenure as a public safety broadband waiver jurisdiction.¹⁵ Accordingly, we find that Texas had significantly deployed its network prior to the Act’s enactment.

7. *Ability to Deliver Timely Service.* The *STA Order* also directs the Bureau to consider “whether funding is readily available to support network deployment and operation of the scope contemplated in that application (including whether any federal agency that administers the funds upon which an STA applicant intends to rely supports the application), and whether deployment is reasonably likely to commence for the benefit of public safety users well in advance of FirstNet’s offering service.”¹⁶ Texas explains that Harris County has “aggressively implemented the final deployment work items needed to initiate live public safety operation” with the expectation of entering service on the first seven of its fourteen sites “within the near term.”¹⁷ On August 28, Texas filed an amended version of its application to explain that \$2.0 million in previously suspended Department of Homeland Security (DHS) Port Security Grant funding has been released to Harris County,¹⁸ enabling them “to complete all remaining installation and preparation tasks for” the full fourteen-site network.¹⁹ Texas expects “to integrate the remaining seven sites” into its network “on or near September 15, 2012.”²⁰ In sum, as a result of Texas’s early and sustained progress in deployment and the recent developments in funding noted above, service can begin for public safety operation within the near term. We therefore find that Texas has demonstrated an ability to deliver timely service to public safety users in Harris County.

8. *Specific Public Safety Need.* The *STA Order* contemplates approval of applications “only to satisfy a specific compelling public safety need for near-term service that cannot otherwise be substantially achieved,” with the expectation that applicants would cite needs “reflected in specific past problems with the adequacy of alternative public safety, private or commercial service offerings, or clearly anticipated and quantifiable deficiencies in the same.”²¹ Texas explains in its application that the Harris County network “improves overall information-awareness and immediate access to critical

¹² *STA Order* at 12 ¶ 25.

¹³ *Id.*

¹⁴ STA Application Narrative at 1.

¹⁵ See State of Texas Quarterly Report, PS Docket 06-229 (filed Jan. 13, 2012); State of Texas Quarterly Report, PS Docket 06-229 (filed Oct. 18, 2011); State of Texas Quarterly Report, PS Docket 06-229 (filed July 18, 2011); see also Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 26 FCC Rcd 6783, 6787 ¶ 15 (PSHSB 2011) (*Texas Waiver Order*).

¹⁶ *STA Order* at 12 ¶ 25.

¹⁷ Amended Application Narrative at 2.

¹⁸ See *id.* at 8. Texas provided as an attachment to the Amended Application Narrative a letter from the Federal Emergency Management Agency (FEMA), an agency within DHS, indicating that the funds had been released. See *id.* at 10.

¹⁹ See *id.* at 2.

²⁰ See *id.*

²¹ *STA Order* at 12 ¶ 25.

information to enable better command coordination.”²² In a previous filing Texas noted that the network would enable “[i]ntegration of video, computer aided dispatch, priority service, and LMR Push-to-Talk interoperability along with the ability to roam to a National Carrier with current subscribers being provisioned for the 3G network.”²³ Texas also cited the arrival of hurricane season and the possibility of “wildfires and floods” as creating a specific need for enhanced emergency response capabilities.²⁴ Texas has also explained that the network could improve upon the “degrad[ed]” twenty-year-old public safety communications system that serves the City of Baytown, Tex., home of the nation’s largest oil refinery,²⁵ and serve the Port of Houston, a major port designated as “a significant part of a DHS designated Tier 1 Urban Area Security Initiative (UASI) zone.”²⁶ We thus find that Texas has sufficiently demonstrated the specific public safety needs that the Harris County network would be uniquely capable of addressing.

9. *Compliance With “Minimum Technical Recommendations.”* The *STA Order* finds that “adherence to the ‘recommended minimum technical requirements’ for nationwide interoperability developed by the [Technical Advisory Board for First Responder Interoperability] and transmitted to FirstNet under Section 6203 of the Public Safety Spectrum Act will be critical in determining whether a proposed STA will serve the public interest.”²⁷ Texas’s application contains a “compliance summary” documenting its adherence to these recommended requirements. We accept this summary as sufficient to support a finding that Texas’s will comply with these recommended requirements on an ongoing basis.

10. Overall, we find that the “facts and circumstances” set forth in Texas’s application present “a compelling basis for relief” consistent with the terms of the *STA Order*. Accordingly, we grant Texas’s request for STA and direct the Licensing Branch of the Bureau’s Policy and Licensing Division to grant Texas’s pending STA application for the requested period of 180 days, commencing September 3, 2012.²⁸

IV. ORDERING CLAUSE

11. Accordingly, IT IS ORDERED that pursuant to sections 1, 4(i), 301, 303, and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 301, 303, and 332, and Section 6201(c) of the Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (2012), THIS ORDER in PS Docket No. 12-94, WT Docket No. 06-150, and PS Docket No. 06-229 is ADOPTED.

12. IT IS FURTHER ORDERED that the Licensing Branch of the Policy and Licensing Division SHALL GRANT the pending application for Special Temporary Authority filed by the State of Texas, Universal Licensing System File Number 0005346762.

13. This action is taken under delegated authority pursuant to Sections 0.191 and 0.392 of

²² Amended Application Narrative at 2.

²³ See State of Texas Filing, PS Docket 12-94 at 3 (filed June 1, 2012).

²⁴ See *id.* at 4-5.

²⁵ See *id.* at 6.

²⁶ See State of Texas, Petition for Expedition of Request for Waiver, PS Docket 06-229 at 2 (filed Feb. 15, 2011).

²⁷ *STA Order* at 12 ¶ 25.

²⁸ We advise Texas that the authority granted under this order is limited to operation of the fourteen sites identified in its application, and our grant herein does not prejudice our consideration of any future request to expand or modify the scope of these approved network operations.

the Commission's Rules, 47 C.F.R. §§ 0.191, 0.392, and paragraph 28 of the *STA Order*, FCC 12-85 (rel. July 31, 2012).

FEDERAL COMMUNICATIONS COMMISSION

David S. Turetsky
Chief, Public Safety and Homeland Security Bureau