

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

In the Matter of the Petition of	)	
	)	
The City of Charlotte, North Carolina	)	
	)	
47 C.F.R. § 90.523(a) and 47 U.S.C.	)	PS Docket No. 06-229
§337(f)(1): Clarification of Public Safety	)	
Services for Purposes of Eligibility to Operate	)	
on 700 MHz Public Safety Broadband	)	
Spectrum	)	
	)	

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.<sup>1</sup> TIA appreciates the opportunity to support the needs of flexible public safety frequency use, ensuring more effective protection of life, health, and property.

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

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<sup>1</sup> Public Notice, *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling Asking To Clarify the Scope of Section 337 Regarding Use by State or Local Government Entities for the 700 MHz Public Safety Broadband Spectrum*, PS Docket No. 06-229, DA 11-537 (Mar. 22, 2011). See also *The City of Charlotte, North Carolina, Petition for Declaratory Ruling*, PS Docket No. 06-229, Mar. 7, 2011, available at <http://fjallfoss.fcc.gov/ecfs/document/view?id=7021033484> (City of Charlotte Petition).

business environment for broadband, mobile wireless, information technology, networks, cable, satellite, and unified communications. TIA is accredited by the American National Standards Institute (ANSI).

## **SUMMARY**

TIA congratulates the Commission in taking this critical step toward promoting enhanced interoperability in the nationwide public safety broadband network by addressing the concerns of public safety as presented by the City of Charlotte. TIA believes that the Commission has the opportunity to provide certainty to participants regarding the critical factor of eligibility, moving another step closer towards the realization of the network. TIA strongly urges the Commission to adopt rules for the 700 MHz public safety broadband network that reflect the unique circumstances of the varied localities across the United States by allowing for local and state public safety licensees to implement policies that fit their unique needs. This can only be accomplished by clarifying that any entity, governmental or non-governmental, which has a primary purpose of the protection of life, health, or property be eligible for participation in the network at the discretion of the relevant local or state public safety licensee.

Consistent with this policy, TIA supports the City of Charlotte's request for the Commission to clarify that network use is allowed by governmental personnel including, but not limited to, those engaged directly in police, fire and medical emergency activities. Governmental entities fundamentally exist to protect life, health, and property, and should therefore be eligible as network participants. The City of Charlotte provides several examples in their petition – such as the need for the City's Department of Transportation and city airport to participate in the network – that illustrate this need to the Commission. Further, the petition points out the danger

in undercutting Broadband Telecommunications Infrastructure Program (BTOP) grants, such as in the case of the City of Charlotte, which were envisioned and invested towards including entities not traditionally considered to be public safety entities in the strictest sense.

TIA believes that the examples and needs noted in the petition are several of many more experienced by public safety entities planning their 700 MHz broadband networks. Only by adopting flexible rules that allow for licensees to make case-by-case evaluations of what eligible entities to include in their network without limiting the pool of these potential network users to governmental entities only, can the Commission ensure that networks are fully harmonized and interoperable, as well as supportive of local public safety needs.

As TIA has noted for the Commission in past related filings, there is a broad range of authority and precedent that supports the Commission determining that any entity that has a primary purpose of the protection of life, health, or property be eligible for network participation under Section 337. The determination TIA requests would be consistent with Congress' definition of "public safety services," multiple actions from the Commission in the public safety frequencies, the National Broadband Plan, several policy leaders on public safety issues, and in the most immediate sense, the City of Charlotte's petition. By allowing for this needed flexibility, the Commission will ensure that key stakeholders are not omitted from the network due to overbroad and uncompromising policies, and will encourage collaborative public-private partnerships. These highly effective partnerships exist today, while others are planned (some using further BTOP funds, such as the State of Nevada 700 MHz Broadband Wireless Network Consortium [SONNet]).

## DISCUSSION

### **I. TIA URGES THE COMMISSION TO CLARIFY ELIGIBILITY FOR USE OF 700 MHZ PUBLIC SAFETY SPECTRUM FOR ANY SERVICE THAT FURTHERS THE PROTECTION OF LIFE, HEALTH, OR PROPERTY.**

#### **A. TIA Supports the City of Charlotte’s Petition for Declaratory Ruling.**

TIA fully supports the Commission’s continued efforts to expedite the most effective use of public safety spectrum. By adopting regulations that reflect the day-to-day, practical needs of the entities that will be using public safety broadband networks, TIA believes that the Commission can create the most effective public safety network possible. For this reason, TIA urges the Commission to confirm that shared 700 MHz public safety broadband network waiver holders’ use is allowed for use by “governmental personnel including, but not limited to, those engaged directly in police, fire and medical emergency activities” as requested in the City of Charlotte’s Petition for Declaratory Ruling.<sup>2</sup> TIA additionally urges the Commission to further clarify that use of the public safety broadband 700 MHz may be used for any service that protects such interests.<sup>3</sup> As public safety organizations are in the best position to determine which organizations can best contribute to their own mission-critical efforts, the Commission should allow for these entities to exercise discretion regarding which critical infrastructure, emergency support, and other entrants should share in the use of the 700 MHz spectrum.

In its petition, the City of Charlotte notes several desired uses of critical importance, such as access to the network by the City’s Department of Transportation and airport as network participants.<sup>4</sup> The City notes that these entities’ “ability to serve the public would be greatly

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<sup>2</sup> City of Charlotte Petition at 13.

<sup>3</sup> Comments of TIA, PS Docket No. 06-229 (filed Oct. 18, 2010) (TIA Comments).

<sup>4</sup> See City of Charlotte Petition at 12.

enhanced by their inclusion on the network, both in their day-to-day operations and for interoperability purposes during emergency situations,” going on to conclude that their functions are “identical to those conducted by users who have been granted 700 MHz narrowband licenses and should be permitted to utilize a 700 MHz broadband network.”<sup>5</sup> TIA agrees that, for the most part, governmental entities have as their sole or primary mission the safety of life, health, and property and their status as an eligible network participant in 700 MHz public safety broadband networks should be clarified as expeditiously as possible.

Furthermore, as the City of Charlotte notes, it has already been awarded a Broadband Technology Opportunities Program (BTOP) grant from the National Telecommunications and Information Administration (NTIA) for its CharMeck Connect project, and has premised this project on the inclusion of “other governmental personnel whose shared use of such a network would make its deployment economically justifiable while also enhancing interoperability.”<sup>6</sup> TIA submits that a refusal by the Commission to support the City of Charlotte’s petition could severely undercut the intended purpose of the BTOP-funded CharMeck Connect project as planned, as well as other BTOP-funded projects similarly situated. The result would be an inefficient use of taxpayer funds and a limited return on public investment by creating a system that excludes network points specifically desired by traditional public safety users.

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<sup>5</sup> *Id.* at 12.

<sup>6</sup> *Id.* at 2.

**B. TIA Urges the Commission to Clarify Eligibility under Section 337 for Any Service that has the Primary Purpose of Protection of Life, Health, or Property.**

TIA further believes that, by allowing the use of 700 MHz public safety frequencies by any service that has a primary purpose of protecting life, health, or property, the Commission's overarching goal of achieving interoperability can be achieved consistent with Commission precedent.<sup>7</sup> The access requested by the City of Charlotte is just one of a number of network uses that would bring heightened services to the public; as TIA has previously noted, inclusion at the discretion of the licensee of critical infrastructure, medical, and educational entities, among others, over a protected system, will more speedily harmonize these indispensable organizations, and ensure that the most informed and effective decisions are made.<sup>8</sup> Again, the public safety entities flexibility should determine what services will most effectively serve the public by being afforded access to its public safety network.

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<sup>7</sup> Service Rules for the 698-746, 747-762 and 777- 792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Amendment of Part 90 of the Commission's Rules, WT Docket No. 06-150, PS Docket No. 06-229, WP Docket No. 07-100, *Third Report and Order and Fourth FNPRM* (2011) at ¶ 2.

<sup>8</sup> TIA Comment at 4.

## **II. COMMISSION PRECEDENT AND AUTHORITY SUPPORT THE CLAIMS THAT MANY SERVICES HAVE THE PRIMARY PURPOSE OF PROTECTING LIFE, HEALTH, OR PROPERTY UNDER SECTION 337.**

TIA has previously strongly encouraged the Commission to allow for Section 337 eligibility for any entity that has a primary purpose of protection of life, health, or property based on a wide range of support.<sup>9</sup> However, TIA stresses that private entities should not be excluded from eligibility; only through as flexible and discretionary of Section 337 eligibility rules as possible can state and local authorities be ensured the ability to include each critical stakeholder in the network they deem required, and benefit from invaluable public-private partnerships.

As TIA has noted previously, Congress has defined public safety services as services “the sole or principal purpose of which is to protect the safety of life, health, or property.”<sup>10</sup> The Commission has declared that services can fit under Section 337 if the primary purpose of the service is to protect the safety of life, health or property in assessing the kind of functions allowed to use the public safety network.<sup>11</sup> In this matter, the Commission noted that nongovernmental organizations (NGO) will be allowed to use the network if permitted by a state or local government whose charge is the delivery of public safety services,<sup>12</sup> specifically stating that “utilities and pipelines” were examples of NGO licensees, while indicating that a certification from a public safety broadband network licensee “provides a reasonable measure of confidence” of the use being appropriate.<sup>13</sup> Furthermore, as far back as 2003, the Commission

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<sup>9</sup> TIA Comments at 3-8.

<sup>10</sup> See 47 U.S.C. § 337(f)(1)(a).

<sup>11</sup> 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).

<sup>12</sup> See *id.* at ¶ 56.

<sup>13</sup> See *id.* at ¶ 72.

recognized the need for flexible uses of public safety spectrum, affording “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.”<sup>14</sup>

TIA supports the National Broadband Plan’s recommendation that public safety licensees should form partnerships with critical infrastructure entities and that secondary use of the public safety broadband network through leasing arrangements are a means of generating revenue that could be used to fund improvements to the network. TIA believes that leasing arrangements can be of great benefit, especially in times where budgets are strained at all levels of government, across the country. The City of Charlotte additionally notes in its petition that many public safety entities are keen to explore methods to capitalize on infrastructure sharing opportunities in order to reduce operating costs.<sup>15</sup>

In addition, as TIA has noted in its previous comment on this matter, several leading policy advocates in the public safety arena support 700 MHz public safety access for a broad range of entities. 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, defined as:

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<sup>14</sup> 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).

<sup>15</sup> City of Charlotte Petition at 11.



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.<sup>16</sup>

NPSTC furthermore advised that entrance be allowed for those involved in mission-critical activities relating to an incident, such as “protecting against the incident, preventing the incident, or recovering from the incident.”<sup>17</sup> Finally, TIA notes that the Public Safety Spectrum Trust (PSST) has also echoed this sentiment, urging eligibility for critical infrastructure entities under Section 337 towards encouraging public-private partnerships in the D Block.<sup>18</sup>

Based on the above, TIA urges the Commission to allow for public safety entities to make case-by-case determinations based on unique circumstances on whether to include *any* entity that provides, as a primary purpose, the protection of life, health, or property in the public safety broadband network. Certainly, as requested by the City of Charlotte, any governmental entity should be allowed to participate, but if the Commission is to limit participation to governmental entities exclusively, it would be employing a one-size-fits-all rule that does not reflect the unique and diverse circumstances that public safety jurisdictions face across the country, and would disregard the value of public-private partnerships previously endorsed by the Commission.

Highly collaborative public-private partnerships exist today that evidence the value of these partnerships. For example, the Nevada Shared Radio System, consisting of Nevada’s two

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<sup>16</sup> 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](http://www.npstc.org/documents/700_MHz_BBTF_Final_Report_0090904_v1_1.pdf) (NPSTC Report).

<sup>17</sup> NPSTC Report at 27.

<sup>18</sup> See Comments of the Public Safety Spectrum Trust at 25-27, WT Docket No. 06-150 (2008).

primary electric utility companies, the Nevada Department of Transportation, the Nevada Department of Public Safety, Washoe County, and local, State, Federal, and tribal organizations, has successfully brought these entities to together since 1995 to plan for and implement the most efficient use of public and private resources in an 800 MHz Enhanced Digital Access Communication (EDAC) system utilizing more than 90 sites.<sup>19</sup> Further, the State of Nevada 700 MHz Broadband Wireless Network Consortium (SONNet), whose members include law enforcement, fire departments, regional and statewide transportation departments, parole and probation services, state universities, and a private statewide utility, is a current 700 MHz public safety broadband network waiver applicant that plans to operate in the same collaborative manner.<sup>20</sup>

If private entities are excluded from Section 337 eligibility, key stakeholders would be excluded from the network – such as utilities or large, wholly-private universities, among others – to the detriment of the public good. Allowing for use by any entity determined by a jurisdiction to have a primary goal of protecting life, health, or property will be consistent with authority, past precedent, the Commission’s own recommendations in the National Broadband Plan, and – as

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<sup>19</sup> See Ex Parte Letter from Robert Chisel, Assistant Director, Nevada Department of Transportation to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket No. 06-229 at 1 (filed Oct. 18, 2010); See also Mark Pallins, Public Safety and Private Utility...A Unique Partnership, Law and Order Magazine, July 2009, available at [http://www.pspc.harris.com/media/Law%20Jul09%20pg42%20w%20ad\\_tcm27-10451.pdf](http://www.pspc.harris.com/media/Law%20Jul09%20pg42%20w%20ad_tcm27-10451.pdf) (noting that, for example, the Nevada utilities in the Nevada Shared Radio System have agreed to concentrate radio coverage on remote areas, while the Nevada Department of Transportation focused on roadway coverage to maximize efficient use of the system).

<sup>20</sup> Las Vegas Metropolitan Police Department, Washoe County Sheriff’s Department, the Washoe Regional Communications System, the Nevada Department of Transportation, and NV Energy, representing the State of Nevada 700 MHz Broadband Wireless Network (SONNet) Request for Waiver – Expedited Action Requested (filed May 13, 2010); Nassau County, NY Request for Waiver (filed May 14, 2010); See also Nevada DOT Ex Parte (noting that, upon approval of their waiver, the consortium will “immediately begin collaborating on how to bring the benefits of interoperable 700 MHz broadband capabilities to users whose obligation it is to best serve the taxpayers and utility ratepayers in the State of Nevada”)

noted by the City of Charlotte in their petition – the desire of many in the public safety community.<sup>21</sup>

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<sup>21</sup> City of Charlotte Petition at 11.

