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COMMISSION
ALLAN B. POLUNSKY, CHAIR
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June 27, 2011

Federal Communications Commission
Washington, DC 20554

RE: Request for Expedited Action Concerning Part 5 Experimental Special Temporary Authority Application to Operate in the 763-768/793-798 MHz Band for the Purpose of Testing and Optimizing Broadband Long-Term Evolution in Harris County, Texas

Gentlemen;

Please consider this a request for expedited action concerning the State of Texas application for a Part 5 Experimental Special Temporary Authority to operate in the 763-768/793-798 MHz band for the purpose of testing and optimizing LTE broadband sites in Harris County, Texas. A federal port grant to Harris County, Texas will expire on July 31, 2011. Harris County must test and optimize the said LTE broadband sites in Harris County from July 15 – July 31, 2011 so that the grant project can be completed on time. The State of Texas and Harris County are entering into a partnership agreement so that Harris County may operate these sites under the anticipated STA to the State of Texas.

Respectfully submitted for the State of Texas,

Michael Simpson
TxDPS Assistant Director for Law Enforcement Support

EXHIBIT A

NARRATIVE STATEMENT

Pursuant to Section 5.3(d) and (f) and Section 5.61 of the Commission's rules, 47 C.F.R. §§ 5.3(d), (f), 5.61 (2010), The State of Texas hereby respectfully requests special temporary authority ("STA") from **July 15, 2011 through January 15, 2012**, to operate in the 763-768/793-798 MHz band for the purpose of testing and optimizing broadband Long-Term Evolution ("LTE") coverage for public safety in the Harris County, Texas area.

The Commission granted a conditional waiver for use of the 763-768/793-798 MHz band, the State and the Public Safety Spectrum Trust ("PSST") already entered into a spectrum lease agreement and the Commission has approved that lease.¹ However, the Commission has not yet approved the State's interoperability showing and an experimental STA is required to support coverage testing and optimization.

A request for expedited treatment is being filed concurrently with this request under a separate exhibit.

A. Purpose of Operation and Need for STA:

The State of Texas is a leader in new and innovative communications solutions for public safety. The experimental authority requested herein will allow the State and its constituent jurisdiction, Harris County, to test and optimize the coverage and functionality of broadband operations in the Harris County area. The State of Texas requests that the FCC grant the STA for the period July 15, 2011 through January 15, 2012.

B. Location of Proposed Operation:

The State of Texas with Harris County, TX proposes to conduct testing using six fixed base station transmitter antennas located on existing communications towers at the following locations, communicating with portable units. The radius of coverage

¹ See Order, *In the Matter of Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, PS Docket No. 06-229, released May 12, 2011 granting the waiver and Public Notice, DA 11-1074, approving the long term *de facto* transfer spectrum lease agreement filed by the State of Texas, released June 17, 2011.

for the portable units is one of the parameters to be determined through the testing. The addresses and approximate coordinates (in NAD83) where the fixed stations will be deployed are:

1. Interstate 10 @ South Lynchburg Road
Baytown, Texas

29° 47' 25" North Latitude
95° 03' 38" West Longitude

2. Choate Road, Pasadena, Texas

29° 37' 11" North Latitude
95° 02' 46" West Longitude

3. Pasadena Freeway Frontage Road at Fred Hartman Bridge
Pasadena, Texas

29° 42' 06" North Latitude
95° 01' 16" West Longitude

4. 14350 Wallisville Road, Houston, Texas 77049

29° 48' 19" North Latitude
95° 11' 33" West Longitude

5. 6900 North Gessner Drive, Houston, Texas 77040

29° 52' 06" North Latitude
95° 32' 31" West Longitude

6. 12230 West Road, Houston, Texas 77065

29° 54' 15" North Latitude
95° 35' 56" West Longitude

C. Technical Specifications:

1. Frequencies Desired

The State of Texas requests authorization to operate in the band the 763-768/793-798 MHz public safety block licensed on a nationwide basis to the Public Safety Spectrum Trust ("PSST").

2. Effective Radiated Power

The base stations will be configured to operate at a maximum peak power level of 365 Watts effective radiated power (ERP). The portable units to be deployed are configured to operate at a maximum peak power level of 2.5 Watts ERP.

All power levels will comply with the limits set forth in the FCC's rules, including those relating to human exposure to radiation. The State will evaluate environmental considerations to ensure compliance with Section 1.1306 of the FCC's rules, 47 C.F.R. § 1.1306 (2010), and, in particular, the human exposure requirements set forth in FCC OET Bulletin No. 65.

3. Modulation and Emissions

The State proposes to operate using OFDM modulation. The primary emission designators are 5M0G7D, 5M0W7W, 5M0G2D and 5M0D7D. Other emission modes may be utilized, but in no event will the emissions extend beyond the frequency bands requested.

4. Antenna Information

The fixed base station transmitter antennas will be located outdoors at the six sites specified above. The antenna elevation above ground level will be: 100 feet at site 1; 120 feet at sites 2 and 3; and 150 feet at sites 4, 5 and 6. The mobile/portable antennas will be installed at a height not greater than 6 meters above ground when used outdoors or at various locations as needed for testing when used indoors. No antennas will be mounted in a fashion that will require approval under FAA and FCC rules and regulations.

5. Equipment To Be Used

The State of Texas and Harris County will conduct its testing with six LTE eNodeB base units and up to fifteen mobile/portable units.

D. Protection Against Causing Interference:

As noted above, the State of Texas has requested authority to operate in the 763-768/793-798 MHz public safety block licensed on a nationwide basis to the Public Safety Spectrum Trust ("PSST"). The State already has a spectrum lease with the PSST that has been approved by the FCC.

The State's technical advisor searched the Commission's TV database to determine what if any licensed Low Power TV stations are in the area. No licensed co-channel or adjacent channel LPTV stations were found within interference range of the proposed operation. LPTV station KOAB-LP is licensed for operation on channel 69 in Beaumont, TX, approximately 50 miles away from the closest point of Harris County. In addition, Channel 69 (800-806 MHz) is 2 MHz away from 798 MHz, the topmost frequency for the proposed operation. No interference should result from the proposed operation. A translator station application to operate on channel 62 (758-764 MHz) in Vidor, Texas was listed in the FCC's data base, however, there is no indication that any authority to operate has been granted. Vidor is over 60 miles from the closest point of Harris County where the proposed testing will be conducted, so even if the Vidor translator application were granted during the term of the requested experimental STA, no interference should result.

The State's technical advisor also conducted a search of the Commission's Universal Licensing System ("ULS") database to determine if there are any potential interference conflicts with other public safety operations. While Harris County obtained a waiver from the Commission to operate narrowband 700 MHz operations under the former band plan, there are no current operations that overlap the 763-768/793-798 MHz public safety broadband spectrum. No other co-channel public safety authorizations were found with which the proposed experimental operation would conflict.

E. Restrictions on Operation:

The State of Texas recognizes that the operation of any equipment under experimental authority must not cause harmful interference to authorized facilities. Should interference occur, the State will take immediate steps to resolve the interference, including if necessary arranging for the discontinuance of operation.

F. Public Interest:

The State of Texas submits that issuance of an STA as requested is in the public interest, convenience, and necessity. Grant of an STA will help the State and its constituent jurisdiction, Harris County, to test innovative equipment that will accommodate the communications needs of the public safety community.

G. Contact Information:

For questions about this application, please contact:

Michael Simpson
Assistant Director
Texas Department of Public Safety
5805 North Lamar, Bldg.G, Room 219
Austin, TX 78752
Telephone: (512) 424-7427
Mike.simpson@txdps.state.tx.us

In the unlikely event interference concerns should arise during the period of authorization for this STA, please contact:

John Chaney
Mobility Architect
Harris County Information Technology
2500 Texas Avenue
Houston, TX 77003
Telephone: (713) 755-1671
John.Chaney@itc.hctx.net



PUBLIC NOTICE

Federal Communications Commission
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Washington, D.C. 20554

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DA 11-1074

Released: June 17, 2011

PUBLIC SAFETY AND HOMELAND SECURITY BUREAU APPROVES LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT FILED BY THE STATE OF TEXAS TO ESTABLISH A 700 MHZ INTEROPERABLE PUBLIC SAFETY WIRELESS BROADBAND NETWORK

PS Docket No. 06-229

On May 12, 2011, the Bureau released an order (*Texas Waiver Order*) granting the State of Texas (Texas) a conditional waiver for early deployment of a 700 MHz public safety broadband network.¹ The Bureau required Texas “to adhere to the same cumulative conditions as those imposed on the initial group of waiver recipients,” including the “leasing provisions” of the May 2010 *Waiver Order*.² Specifically, the *Texas Waiver Order* required Texas to execute a *de facto* spectrum transfer lease agreement with the Public Safety Spectrum Trust (PSST) and submit the agreement for Bureau approval by July 11, 2011.³

Texas submitted a long term *de facto* transfer spectrum lease agreement to the Bureau on June 7, 2011.⁴ We have reviewed the lease agreement and determined that it satisfies the leasing provisions of the *Waiver Order* as incorporated into the *Texas Waiver Order*. Accordingly, the Bureau hereby approves the Texas lease agreement.

You can view the lease agreement in the Universal Licensing System, located at <http://wireless.fcc.gov/uls>. The agreement is located under the ADMIN tab of the PSST’s call sign, WQHW226.

For additional information or assistance on how to view the lease agreement, you may visit <http://esupport.fcc.gov>. You may also call the FCC Support Center at (877) 480-3201 (TTY) 717-338-2824 and select Option #2. Assistance from the FCC Support Center is available between the hours of 8 a.m. and 6:00 p.m. Eastern Time, Monday through Friday (except Federal holidays). To provide quality service and ensure security, all telephone calls are recorded.

For further information about this Public Notice, please contact Jennifer Manner, Deputy Chief, Public Safety and Homeland Security Bureau, at (202) 418-3619.

-FCC-

¹ See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, DA 11-863 (PSHSB 2011) (*Texas Waiver Order*).

² *Id.* at 5 ¶ 14; 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*, 25 FCC Rcd 5145, 5147 ¶ 7 (2010) (*Waiver Order*).

³ See *Texas Waiver Order* at 6-7 ¶ 18.

⁴ See State of Texas Lease Agreement, PS Docket 06-229 (filed June 7, 2011).



VIA ELECTRONIC DELIVERY

June 7, 2011

Admiral James Arden Barnett, Jr.
Chief, Public Safety & Homeland Security Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

**Re: Long-Term *De Facto* Transfer Spectrum Lease, PS Docket No. 06-229
The State of Texas**

Dear Admiral Barnett:

Pursuant to the terms and conditions of the Commission's May 12, 2011 Order in the above-referenced proceeding,¹ the Public Safety Spectrum Trust Corporation ("PSST") has entered into a long-term *de facto* transfer spectrum lease with the State of Texas. The PSST and the State of Texas have executed the attached spectrum lease and now submit the lease for approval by the Public Safety & Homeland Security Bureau.

Please contact me directly with any questions.

Respectfully submitted,

Chief Harlin R. McEwen
Chairman
Public Safety Spectrum Trust Corporation
(607) 227-1664
chiefhrm@pubsaf.com

cc: David Furth, Deputy Chief, FCC Public Safety & Homeland Security Bureau
Michael Simpson, Asst. Dir., Texas Dept. of Public Safety, Law Enforcement Support Div.

¹ *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, DA 11-863 (PSHSB rel. May 12, 2011).

State of Texas

LONG TERM DE FACTO TRANSFER SPECTRUM LEASE AGREEMENT

This Long Term *De Facto* Spectrum Lease Agreement (“Lease” or “Agreement”) is entered into by the Public Safety Spectrum Trust Corporation (“PSST” or “Lessor”), which is licensed by the Federal Communications Commission (“FCC”) to operate on the 700 MHz Band public safety broadband spectrum (Call Sign WQHW226) (the “Leased Spectrum”), and the State of Texas (“Lessee”) (each a “Party,” and, collectively, “the Parties”). This Lease is subject to the FCC’s May 12, 2011 Order, DA 11-863 (“FCC Order”). Further, this Lease is a long term *de facto* transfer spectrum lease pursuant to Section 1.9030 of the FCC’s rules, 47 C.F.R. § 1.9030, subject to all applicable FCC rules, regulations and policies.

1. Agreement.

a. Conditioned on first obtaining the consent of the Chief of the Public Safety and Homeland Security Bureau of the FCC (the “Bureau”) to the creation of this Lease, Lessor hereby grants to Lessee the exclusive right to use the Leased Spectrum within Lessee’s jurisdiction during the term of this Agreement and in accordance with the provisions hereof. It is the intent of the Parties that this Agreement create a long term *de facto* transfer spectrum leasing arrangement within the meaning (and subject to the requirements) of 47 C.F.R. Section 1.9030.

b. The PSST retains all rights and obligations under its FCC license and as a spectrum lessor, as specified in the Communications Laws (as defined in section 5 of this Agreement), and as subject to the terms of this Agreement. Lessee is subject to the rights and obligations under this Agreement and the Communications Laws. Consistent with FCC rules governing long term *de facto* transfer spectrum leases, Lessee is primarily responsible for complying with the FCC Order and the Communications Laws, including all FCC filing requirements related to the Leased Spectrum, and Lessor retains de jure control of its spectrum license.

c. Lessee shall be responsible to relocate, at its own expense, the operations of any incumbent 700 MHz narrowband licensee in the Lessee’s area of operation, from the Leased Spectrum to the appropriate public safety narrowband spectrum. Alternatively, Lessee agrees to protect such incumbent narrowband operations, either through appropriate engineering measures or geographic exclusion of the narrowband system’s footprint, and to obtain the consent of the incumbent as to its proposed method of protection. Lessee shall also account for narrowband operations in adjacent regions that occur outside of the consolidated narrowband channels, and take all measures necessary to protect such operations from interference.

d. Lessee’s network shall be fully interoperable with any other regional public safety deployments permitted by a waiver granted by the FCC pursuant to the FCC Order, and with any future nationwide or regional public safety broadband networks, including adherence to any technical requirements adopted by the FCC’s Emergency Response Interoperability Center (“ERIC”), the Bureau, or the FCC, and shall be consistent with other nationally coordinated technical standards and operating requirements that the ERIC, Bureau, or FCC may impose from time to time.

i. Lessee must make its network available to all public safety entities eligible under Section 337 of the Communications Act within its jurisdiction.

- ii. Lessee must adhere to all other technical conditions specified in the FCC Order or FCC rule or imposed by ERIC, the Bureau or the FCC.
 - iii. Lessor may not require a bond, letter of credit or other instrument by way of security in connection with the execution of this Agreement for the use of the spectrum; Lessee's sole consideration for use of the Leased Spectrum will be its remittance of the Administrative Fee to the Lessor and compliance with the terms of this Agreement, and any and all FCC, Bureau and ERIC requirements. The Administrative Fee is the fee to be remitted by Lessee to Lessor, as defined and ultimately approved by the Chief of the Bureau, in accordance with the procedures outlined in the FCC Order.
 - iv. Lessor shall maintain *de jure* control over its spectrum license, in accordance with FCC rules.
 - v. Lessor shall submit the monthly reports as required by the FCC Order providing an accounting of the Administrative Fee remitted by Lessee, based upon generally accepted accounting procedures.
 - vi. Lessor shall timely comply with any audit as may be requested at the discretion of the Chief of the Bureau with respect to its collection and expenditure of the Administrative Fee.
- e. Lessee shall be responsible for: (a) obtaining, paying for, operating and maintaining all equipment necessary to build out its network; (b) acquiring all necessary permits, authorizations or consents required for construction and operation of the network; (c) paying any and all other costs and expenses incident to use of the spectrum; and (d) paying the Administration Fee to the PSST. The Lessee has no other financial obligation to the PSST under this Agreement.
- f. Lessee agrees to file, in consultation with the PSST, the quarterly status reports required under the FCC Order on a timely basis. The Lessor and the Lessee jointly and severally agree to timely submit any other filings or information as the FCC, the Bureau, or ERIC may require.
- g. The PSST may rely upon Lessee's operations in demonstrating compliance with any construction or substantial service requirements the FCC may adopt in the future.
- h. The Parties shall maintain such records as may be necessary to comply with FCC reporting requirements and FCC rules, including the specific FCC obligations pertinent to long term *de facto* transfer spectrum leases, lessors and lessees.

2. Scope of Spectrum Usage Rights.

- a. Lessor grants to Lessee the maximum usage rights that Lessor is capable of granting as set forth in the Agreement, including, without limitation, use and operation on the Leased Spectrum in the geographic area of operation within its jurisdiction as permitted under FCC rules and ERIC requirements.
- b. The geographic area of operation within the Lessee's jurisdiction shall be the State of Texas.

3. Term and Renewal.

- a. The Agreement shall have an initial term of two years, commencing on the Effective Date. The Parties have an expectation of renewal, for additional two-year terms as long as the PSST holds the nationwide

license, including any renewals or extensions of the PSST's current license term, except as otherwise agreed to by the Parties or required by the FCC.

4. Termination.

a. Lessee may terminate this Agreement at the Lessee's option, upon 30-days written notice to the PSST and the Bureau. Lessee agrees to remit any remaining or prorated Administration Fee to the PSST no later than 30 days following termination.

b. While Lessee remains in compliance with the Agreement and the Communications Laws (as defined by section 5 of this Agreement), PSST may not terminate the Agreement or otherwise curtail Lessee's use of the spectrum for any reason.

5. Compliance with FCC Rules, Other Applicable Law and Requirements of This Agreement.

a. The Parties agree to comply with all of the rules, regulations, policies, decisions, and Orders of the FCC, the Bureau, and the ERIC, both currently and as may be adopted in the future, as well as any other applicable laws, including the Communications Act of 1934, 47 U.S.C. Section 151 et seq. (the "Communications Act") (collectively, the Communications Laws).

b. The PSST shall have the right to make scheduled inspections upon reasonable notice to the Lessee to ensure compliance with the Agreement.

c. Each Party must notify the other Party and the Chief of the Bureau within five (5) business days if the Party becomes or expects to become non-compliant with the Communications Laws.

d. If Lessee fails to comply with any of the Communications Laws, this Agreement may be terminated by the FCC, the Bureau, or by the Lessor, but by the Lessor only with the consent of the FCC or the Chief of the Bureau, and only then if such failure of compliance by Lessee is of such a nature that (i) Lessee is causing harmful interference to other spectrum operations protected by FCC Rules, or (ii) if such failure of compliance had been committed by the Lessor in respect of its license, would be reasonably expected to result in the revocation, cancellation or termination of its license by the FCC (either (i) or (ii) constituting a Material Breach).

e. In the event the PSST believes that Lessee has committed a Material Breach, the PSST shall provide written notice to the Chief of the Bureau and the Lessee no later than five (5) days after discovering the Material Breach. The PSST may only terminate this Agreement with the consent of the Bureau or the FCC.

f. In the event the PSST believes that Lessee has committed a non-Material Breach, the PSST shall provide written notice of noncompliance to the Lessee and the Bureau within thirty (30) days after discovering such breach. The Lessee shall have 30 days to cure the breach. If Lessee has failed to cure the breach within 30 days, the PSST shall provide written notice of failure to cure to the Chief of the Bureau. The Chief of the Bureau will then render a decision or finding, which may include an order for the Lessee to cure or such other remedy as the Chief of the Bureau, in his or her discretion, considers reasonable.

6. Representations and Warranties.

Each of the Lessor and the Lessee severally represents and warrants to the other:

- a. that each of them has the requisite corporate power and authority and has taken all corporate action necessary in order to execute and deliver this Agreement.
- b. that each of them is a corporation or other entity duly organized, validly existing and in good standing under the laws of its respective jurisdiction of incorporation or organization.
- c. that the execution and delivery of this Agreement by each of them does not and will not, and the transactions contemplated hereby and thereby will not, with respect to each of the Parties, violate or conflict with any contract or other instrument to which it or he is a party or by which it or he is bound or conflict with any law, regulation, ordinance, judgment, order, writ, injunction or decree or any other requirement of any court or governmental or regulatory body of any jurisdiction.
- d. that the facts stated herein to the extent that they are within such Party's knowledge, are true, complete and accurate.

7. Miscellaneous.

- a. Successors and Assigns. This Agreement shall inure to the benefit of and be binding upon the successors and permitted assigns of the Lessor and Lessee. This Agreement may not be assigned without the express written consent of both the Chief of the Bureau and the other Party. Such consent will be given only upon the proposed assignee demonstrating that it will be able to meet all applicable FCC requirements and the terms of this Agreement.
- b. Governing Law. This Agreement shall be governed by the law of the District of Columbia.
- c. Disputes. The Parties have a duty and obligation to make all reasonable efforts to resolve any disputes that arise under this Agreement. If the Parties are unable to reach a settlement on their own, they agree to submit their dispute to the FCC, which will have sole authority to arbitrate or judge any disputes that would then be binding upon the Parties..
- d. Specific Performance. The Parties shall be entitled to specific performance in the event that either Party fails to perform its obligations hereunder.
- e. Counterparts. This Agreement may be executed in one or more counterparts, each of which when so executed shall be an original, but all of which together shall constitute one agreement. Facsimile signatures shall be deemed original signatures.
- f. Amendments. This Agreement shall not be amended, altered or modified except in accordance with the limitations and procedures specified in the FCC Order.

8. Effective Date. The Parties shall submit for approval an executed copy of this Agreement to the Chief of the Bureau. The Effective Date of this Agreement is the date that the Chief of the Bureau consents to the creation of this Agreement (as specified in section 1).

Harlin R. McEwen, Chairman
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Lessee:
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Bureau:
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David Furth, Deputy Bureau Chief
Public Safety and Homeland Security Bureau
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Email: david.furth@fcc.gov

In WITNESS WHEREOF, the Parties have executed this Agreement as of the date approval is provided by the Chief of the Bureau.

LESSOR: PUBLIC SAFETY SPECTRUM TRUST CORPORATION

By: Harlin R. McEwen
Name: Harlin R. McEwen
Title: Chairman
Dated: June 4, 2011

LESSEE: State of Texas

By: Michael Simpson
Name: Michael Simpson
Title: Assistant Director, Texas Department of Public Safety
Law Enforcement Support Division
Dated: June 6, 2011