

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

In the Matter of: )  
 )  
Transition Process for 700 MHz Public ) PS Docket No. 12-94  
Safety Broadband Waiver Recipients ) PS Docket 06-229  
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 )

To: Chief, Public Safety and Homeland Security Bureau

**COMMENTS OF  
THE CITY AND COUNTY OF SAN FRANCISCO, CITY OF OAKLAND AND CITY  
OF SAN JOSE, CALIFORNIA AND THE BAY AREA REGIONAL INTEROPERABLE  
COMMUNICATONS SYSTEMS AUTHORITY**

The City and County of San Francisco, City of Oakland and City of San Jose and the Bay Area Regional Interoperable Communications Systems (“BayRICS”) Authority, (collectively the “Bay Area Cities”) submits these Comments in response to the Federal Communications Commission (“Commission”) Public Notice (“PN”) in the above-captioned proceeding.<sup>1</sup> The Bay Area Cities additionally joins in and supports the Comments of the Operators Advisory Committee to the Public Safety Spectrum Trust (“OAC”), and offer these additional comments to address a narrow issue specific to our waiver.

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<sup>1</sup> Public Notice: Public Safety and Homeland Security Bureau Seeks Comment on Transition Process for 700 MHz Public Safety Broadband Waiver Recipients, DA 12-555, released April 6, 2012.

The Bay Area Cities applauds the Commission for taking proactive steps to address the status of waiver recipients in advance of the spectrum license transition to FirstNet. The Bay Area Cities also enthusiastically welcome the enactment of Title VI of the Middle Class Tax Relief and Job Creation Act of 2012<sup>2</sup> (“Spectrum Act”), which established spectrum allocations, funding and governance structure for the First Responder Network Authority (“FirstNet”), a nationwide wireless broadband network for public safety.

The City and County of San Francisco, City of Oakland and City of San Jose<sup>3</sup> were one of the 21 original jurisdictions to receive a waiver from the Commission to use the 700MHz public safety broadband spectrum. One of the conditions of that waiver was that the waiver recipients execute a lease with the Public Safety Spectrum within 60 days of the waiver order. Unfortunately, the signature on the original spectrum lease was not authorized by the Bay Area Cities.

On December 23, 2011, the City and County of San Francisco, the City of Oakland, and the City of San Jose (the "Bay Area Cities") filed a Petition (“Petition”) asking the Commission to waive the 60-day time limit for entering into a *de facto* transfer spectrum lease with the PSST established in the Commission's May 2010 *Waiver Order* and expeditiously authorize a new *de facto* transfer spectrum lease between the PSST and the Petitioners, the Bay Area Cities. The new *de facto* transfer lease would encompass the Bay Area jurisdictions that intend to participate in the BayWEB project. The Bay Area Cities further stated their intent that, should the

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<sup>2</sup> See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 §6101 (2012) (“Spectrum Act”).

<sup>3</sup> The original waiver was granted to the City and County of San Francisco, City of Oakland and City of San Jose. However, the BayRICS Authority was established primarily to oversee the deployment of the wireless broadband network and represents the jurisdictions that intend to participate in the network.

Commission grant the waiver, the Bay Area Cities will seek Commission and PSST approval to assign the new lease to the BayRICS Authority.

The Bay Area Cities believe that the enactment of the Spectrum Act now offers an opportunity to resolve these lease issues, and thus respectfully requests that the Commission, as part of the 700MHz spectrum transition, grant the relief requested in the Petition, and authorize the extension of interim spectrum rights directly to the BayRICS Authority. In the alternative, we ask the Commission to grant the two-step relief requested in the petition to execute a new spectrum lease between the PSST and the Bay Area Cities, and further authorize the assignment of this new lease from the Cities to the BayRICS Authority.

We believe that the Spectrum Act, enacted on February 22, 2012, after the filing of the Bay Area Cities petition, now provides the Commission with the authority to skip the interim steps of granting the waiver to the Bay Area Cities and having them seek approval to assign the existing lease to the Authority. Under Section 6201, the FCC is instructed to take all actions necessary to “facilitate the transition” of the existing public safety broadband spectrum to FirstNet. Given the approval of the Cities to the Authority as successor to the waiver they have applied for, and given their stated intent to seek approval to transfer the existing lease, nothing stands in the way of the Commission’s interim approval and its corresponding recommendation to FirstNet that the Authority take the new lease when ready.

Grant of this relief will serve the public interest by allowing the Bay Area Cities and the BayRICS Authority to continue its significant efforts to deploy a 700 MHz public safety broadband network and to continue to develop best practices and lessons learned for the benefit of the nationwide network build out. Grant of the waiver is also consistent with the

Commission's goal "to realize the public safety benefits that . . . early deployments can provide" as described in detail herein. Moreover, denial of the waiver would jeopardize the timing for rollout of the BayWEB network and the critical, one-time funding awarded by the NTIA BTOP grant to Motorola to implement the BayWEB project.

The original 2009 Request for Waiver, although filed in the names of the Bay Area Cities, sought coverage for all jurisdictions in the recently created BayRICS Authority, as well as other jurisdictions that have not to date decided whether to join the BayRICS Authority, specifically the Counties of Napa and Santa Cruz (collectively referred to herein as the "BayWEB Jurisdictions"). Each of these jurisdictions has authorized the BayRICS Authority to assume the spectrum rights of BayRICS. Specifically, a resolution (the "Resolution") signed by representatives of the BayRICS Authority, as well as correspondence from Napa and Santa Cruz Counties, authorizing and empowering the BayRICS Authority to enter into a new spectrum lease was attached as Exhibit B of the Petition. The BayRICS Authority was established in part to act as the single point of contact and unified body having responsibility for the BayWEB project and the public safety spectrum rights.

For the reasons stated above, the Bay Area Cities urge the Commission to grant the Petition of December 23, 2011 in the name of the BayRICS Authority and to provide for the Authority to succeed to the existing lease with PSST, pending ultimate review and approval of the lease by FirstNet. Alternatively, BayRICS asks that the Petition be granted in the names of the Bay Area Cities, with approval for them to assign the existing PSST lease to the Authority.

DATED: April 20, 2012

Respectfully submitted,

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