

October 21, 2010

Mr. Gregory J. Ahern, Alameda County Sheriff  
Lakeside Plaza, 1401 Lakeside Drive, 12<sup>th</sup> Floor  
Oakland, CA 94612-4305

Dear Sheriff Ahern,

Thank you for your speedy response to my letter of October 12 and your willingness to answer additional questions.

Since I last wrote, my staff has obtained two agreements and one application all signed by you. I have several questions about the entities on whose behalf you have signed as well as your authorization to sign such documents, which purport to affect the rights of the City of San José. The documents to which I am referring are the following:

1. The Public Private Cooperative Agreement for Bay WEB, which is an agreement between the Alameda County Sheriff and Motorola, Inc.
2. The San Francisco Bay Area Urban Region Long-Term De Facto Transfer Spectrum Lease Agreement, which is an agreement between the Alameda County Sheriff and the Public Safety Spectrum Trust Corporation, which is licensed by the Federal Communications Commission to operate on the 700 MHz public safety broadband.
3. FCC Form 442 #0313-EX-PL-2010, "Application for a New or Modified Radio Station Under Part 5 of FCC Rules – Experimental Radio Service."

**CPRA/FOIA Request Number 1:** Pursuant to my rights under the California Public Records Act and the Federal Freedom of Information Act, I hereby request you to provide me with any and all records that pertain to the your authority to sign the documents as well as the legal status of the entities on whose behalf you signed. Please include any and all correspondence relating to the signing of the documents, including email, text messages or other electronic correspondence relating to all of the requests in this letter.

The Public Private Cooperative Agreement, which was entered into on March 15, 2010, states that it is "between the Alameda County Sheriff as the Region 2 coordinator of mutual aid and the executive sponsor of this initiative (the "Sheriff"), acting on behalf of the Bay RICS Policy Group which is the governing body of the shared San Francisco Bay Area Regional Interoperability Communications System ("Bay RICS")."

**CPRA/FOIA Request Number 2:** In addition to the records requested above, please provide all records relating to the following:

- Governance structure, bylaws, Board of Directors roster, joint powers authority arrangements, memorandums of understanding, or other governing documents and

transfers of authority related for the Region 2 mutual aid system, including legal authority on behalf of the region.

- Governance structure, bylaws, Board of Directors roster, joint powers authority arrangements, memorandums of understanding, or other governing documents and transfers of authority for the Bay RICS Policy Group, including date of incorporation and legal authority on behalf of the region.
- Minutes of any meeting of the governing bodies of the Region 2 mutual aid system, Bay RICS Policy Group, Alameda County Board of Supervisors, or any other governmental entity that authorized the signing of the agreement.
- Final copy of the Public Private Cooperative Agreement with Motorola, reviewed and approved as to form, by the Alameda County Counsel or the counsel of another jurisdiction.

The San Francisco Bay Area Urban Region Long-Term De Facto Transfer Spectrum Lease Agreement states that it is an agreement with "the Alameda County Sheriff's Office on behalf of the San Francisco Bay Area Urban Area Region."

**CPRA/FOIA Request Number 3:** Please provide the following information and all records relating to the information:

- Who or what is the entity described as "the San Francisco Bay Area Urban Area Region" and/or "San Francisco Bay Area Urban Area"?
- Governance structure, bylaws, Board of Directors roster, joint powers authority arrangements, memorandums of understanding, or other governing documents and transfers of authority related for the San Francisco Bay Area Urban Area Region and/or the San Francisco Bay Area Urban Area, including legal authority on behalf of the region.

Section 6 of the lease agreement states:

**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.

**CPRA/FOIA Request Number 4:** Please provide all records relating to these representations and warranties.

On August 27, the FCC granted you an OET Experimental License (Call Sign WF2XMB, File Number 0313-EX-PL-2010). The application narrative states that this license is:

“for the purpose of developing and evaluating the functionality and acceptability of broadband Long-Term Evolution (“LTE”) equipment during a pilot (hereinafter the “Bay WEB pilot”) to be conducted at a limited number of sites, identified, below located in the San Francisco/Oakland metropolitan area.”

It goes on to state:

*In an Order released on May 12, 2010, the FCC granted a conditional waiver to Bay Area for early deployment of a 700 MHz LTE Public Safety wireless broadband communication network. The Bay Area is moving forward expeditiously to address provisions in the Order relating to public safety interoperability. In addition, the Alameda County Sheriff, as the Regional Mutual Aid Coordinator, and on behalf of the San Francisco Bay Area Urban Area Region, is moving forward aggressively to execute a spectrum lease with the Public Safety Spectrum Trust (“PSST”), which holds the nationwide license for the 763-768/793-798 MHz spectrum.*

*The Bay Area is relatively unique among the waiver grantees in that funding to conduct the proposed pilot has been allocated through the Urban Area Security Initiative (“UASI”). This funding will be jeopardized, however, if not expended prior to the end of the 2009 UASI Grant performance period. In addition to helping take advantage of the UASI funding, the experimental license will enable the Bay Area to conduct tests that will provide valuable insight for the Commission and all waiver grantees about the functionality and acceptability of LTE technology. This insight may also help expedite full deployment of regional interoperable broadband systems in a manner that meets public safety requirements once Commission approvals to do so are finalized.*

On May 12, the FCC granted the 700MHz waiver to three entities: the City/County of San Francisco, the City of Oakland, and the City of San Jose.

**CPRA/FOIA Request Number 5:** Please provide all documentation that the Alameda County Sheriff has the authority to enter into leases for the San Jose spectrum or to apply for FCC licenses on behalf of the region.

In your letter of October 15, you state, “I should point out that there is no pilot period within Motorola’s BTOP award and Contract with NTIA.” In the October 12 meeting that you hosted, you and UASI staff made clear statements that Bay WEB and Project Cornerstone are separate projects, and that Bay WEB is not a UASI project.

**CPRA/FOIA Request Number 6:** Please provide all documentation that explains why your FCC filing describes Project Cornerstone as “the Bay WEB pilot,” and why the contacts on the request for the experimental license are a Motorola attorney and the General Manager of the Bay Area UASI?

The Narrative Statement to the FCC lists 10 sites at which Project Cornerstone will be deployed: four in San Francisco, one at the Alameda County jail in Oakland, three in Contra Costa County, one in Sunnyvale, and one in the City of Santa Clara. The UASI Approval Authority allocated UASI funds for Project Cornerstone in Oakland, San Francisco, and San Jose.

CPRA/FOIA Request Number 7: Please provide all documentation to authorize UASI dollars to be expended for a pilot in these other cities, without the approval of the UASI Approval Authority.

I appreciate your prompt response to my previous inquiry and look forward to an equally prompt response to this letter so that I can gather the facts necessary to understand what has happened and how San Jose's interests have been affected.

Sincerely,

A handwritten signature in blue ink that reads "Chuck Reed". The signature is written in a cursive style with a large initial "C" and a long, sweeping tail on the "d".

Chuck Reed  
Mayor