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State of New Hampshire

DEPARTMENT OF SAFETY
OFFICE OF THE COMMISSIONER
33 HAZEN DR. CONCORD, N.H. 03305
603-271-2791

ROBERT L. QUINN
COMMISSIONER OF SAFETY

December 4, 2019

His Excellency, Governor Christopher Sununu
and the Honorable Council
State House
Concord, New Hampshire 03301

Requested Action

Authorize the Department of Safety, Division of Emergency Services & Communications, to enter into a no-cost Memorandum of Understanding (MOU) with the U.S. Department of the Interior (DOI) for use of Federal interoperability radio frequencies. Effective upon Governor and Council approval through December 31, 2025.

Explanation

This MOU allows both the State of New Hampshire and the US Department of the Interior to utilize radio frequencies set aside for national interoperability between agents of the U.S. Federal Government. These frequencies are designated by the National Telecommunications and Information Administration (NTIA), in paragraph 4.3.16 of the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management, for Interagency Law Enforcement and Incident Response operations. This agreement is needed to provide efficient, cost-effective radio communications to support the protection of life and property executed by the agencies making this agreement. This cooperation is in the best interest of the public.

Respectfully submitted,

Robert L. Quinn
Commissioner of Safety

**MEMORANDUM OF UNDERSTANDING
BETWEEN
THE U.S. DEPARTMENT OF THE INTERIOR
AND
STATE OF NEW HAMPSHIRE
REGARDING THE USE OF FEDERAL INTEROPERABILITY CHANNELS BY NON-
FEDERAL ENTITIES**

I. PARTIES

This Memorandum of Understanding (MOU) is made between the U.S. Department of the Interior (DOI) and **STATE OF NEW HAMPSHIRE**, acting by and through the New Hampshire Department of Safety, Division of Emergency Services and Communications, its successors and assigns, each sometimes hereinafter individually called Party, and both sometimes hereinafter collectively called the Parties. The Parties declare that there is no separate entity being established, but that they will jointly and cooperatively assume the responsibilities described in this MOU.

II. EFFECTIVE DATE

This MOU shall become effective when signed by both Parties, and shall be reviewed every five (5) years. The points of contact information listed in Appendix B shall be reviewed and updated as appropriate at a minimum of every two (2) years.

III. AUTHORITY

This MOU is authorized under the provisions of the following statutory and regulatory authorities:

- *Manual of Regulations and Procedures for Federal Radio Frequency Management*, National Telecommunications and Information Administration (NTIA) Manual, September 2015 Revision of the May 2013 Edition promulgated pursuant to 47 U.S.C. § 305(a) and §§ 901-904, and Executive Order 12046, as amended.

The DOI and the State of New Hampshire acknowledge that this is a contract for the joint exercise of governmental powers in accordance with state law including but not limited to RSA 21-P:34; RSA 21-P:38; and RSA 21-P:48-a, II.

- Authority for representing State organization to engage in this agreement: RSA 21-P:2, II; RSA 21-P:5-a, II; RSA 21-P:34; RSA 21-P:37; RSA 21-P:48, VII; and RSA 21-P:48-a.

The Parties agree that this MOU does not obligate funds.

IV. BACKGROUND

The NTIA *Manual of Regulations and Procedures for Federal Radio Frequency Management*, NTIA Manual, designates specific discrete frequencies in the 162-174 MHz and 406.1-420 MHz bands for use as "Federal Interoperability Channels" available for assignment to all federal agencies to satisfy

law enforcement, public safety, emergency response, and disaster response interoperability requirements. The use of interoperability frequencies by non-federal government agencies is governed by *Sections 4.3.16 Plans for Federal Interoperability Channels for Interagency Law Enforcement and Incident Response Operations in the Bands 162-174 MHz and 406.1-420 MHz*, *7.12 Use of Frequencies Authorized to Non-Federal Stations Under Part 90 of the FCC Rules*, and *8.3.3 Coordination of Frequencies Used for Communication with Non-Federal Stations Licensed Under Part 90 of the FCC Rules* of the NTIA Manual. The Federal Interoperability Channels are available for use among federal agencies and between federal agencies and non-federal entities with which federal agencies have a requirement to operate. The channels are available to non-federal entities to enable joint federal/non-federal operations for law enforcement, public safety, emergency response and disaster response, subject to the condition that harmful interference will not be caused to federal stations. Non-federal use must be coordinated with the FCC through the Statewide Interoperability Coordinator (SWIC) or a state appointed official. The FCC will grant authority to program and use the Federal Interoperability Channels through a signed agreement between the SWIC or state appointed official and a federal user with a valid Government Master File (GMF) assignment. This MOU serves as such an agreement.

V. PURPOSE

This MOU serves as an agreement between the SWIC or state appointed official and a federal user with valid Government Master File (GMF) assignments for the use of the Federal Interoperability Channels listed in Appendix A by State, Tribal, and local government agencies. This MOU establishes respective responsibilities and commitments of the Parties concerning the use of these channels.

The Parties must adhere to all applicable rules and regulations for the use of these channels as set forth by NTIA and the FCC. Should any provision of this MOU conflict with such rules and regulations, including any future amendments or additions thereto, those rules and regulations shall take precedence over the terms of this MOU.

The purpose of this agreement is to provide for the Parties to utilize radio frequencies set aside for national interoperability between agents of the U.S. Federal Government. These frequencies are designated by the National Telecommunications and Information Administration (NTIA), in paragraph 4.3.16 of the NTIA Manual of Regulations and Procedures for Federal Radio Frequency Management, for Interagency Law Enforcement and Incident Response operations. This agreement is needed to provide efficient, cost effective radio communications to support the protection of life and property executed by the agencies making this agreement. This cooperation is in the best interest of the public.

VI. RESPONSIBILITIES

A. Coordination of Spectrum Support

The Parties agree that they shall comply with all applicable Federal, State, and local laws, regulations, ordinances, guidelines, permits, and requirements that may be applicable to their performance pursuant to this MOU. Each Party shall be responsible for obtaining current information on its compliance with such laws, regulations, ordinances, guidelines, permits, and requirements.

For the purpose of this MOU, the U.S. Department of the Interior shall appoint a point of contact who will coordinate and maintain the spectrum use agreements through the IRAC

process; ensure the frequencies in use by the Parties are in accordance with current regulations; and resolve frequency conflicts for situations such as extended operations.

B. Coordination of Spectrum Use

The Parties agree that, as a means of providing flexibility of use and more effective interoperable emergency communications capabilities, the Federal Interoperability Channels identified in Appendix A of this document may be used within the **STATE OF NEW HAMPSHIRE** by "public safety" agencies at all levels of government as defined by FCC rules subject to the conditions listed in Section C below.

The SWIC, his/her designee, or a state appointed official identified in Appendix B, shall serve as the primary coordination point within **STATE OF NEW HAMPSHIRE** for (1) coordinating between qualified non-federal agencies and the Federal government; (2) providing non-federal agencies with information regarding channel programming and usage, as required; and (3) promoting and monitoring non-federal agency compliance with the conditions listed in Section C below.

C. Conditions for Use of Federal Interoperability Frequencies

Consistent with Section 4.3.16 of the NTIA Manual, the Parties agree that they shall abide by the following conditions for the use of the Federal Interoperability Channels listed in Appendix A¹:

1. These channels are available for use among Federal agencies and between Federal agencies and non-Federal entities with which Federal agencies have a requirement to operate.
2. These channels are available to non-Federal entities to enable joint Federal/non-Federal operations for law enforcement and incident response, subject to the condition that harmful interference will not be caused to Federal stations.
3. These channels are restricted to interoperability communications and are not authorized for routine or administrative uses as defined by the NTIA Manual.
4. Extended operations and congestion may lead to frequency conflicts. Coordination with NTIA (through the sponsoring Federal agency) is required to resolve these conflicts.
5. Only narrowband emissions are to be used on the Federal Interoperability Channels.
6. This MOU does not authorize the provisioning or use of the frequencies listed in Appendix A in any permanent infrastructure.

¹ As noted in Section 7.3.4 – *Emergency Communications for which an Immediate Danger Exists to Human Life or Property*, of the NTIA Manual, additional information regarding interoperable communications can also be found in the *National Interoperability Field Operations Guide (NIFOG)*. Additionally, in situations where immediate danger exists to human life or property, an agency may operate temporarily on any regularly assigned frequency in a manner other than that specified in the terms of an existing agreement.

The sharing provisions set forth herein notwithstanding, each Party shall be entitled to full access to, and control over, its NTIA and FCC licensed radio infrastructure to permit the discharge of all responsibilities and duties prescribed by the Communications Act of 1934, as amended, and all applicable rules and regulations of the NTIA and FCC.

Both parties agree to operate and maintain their equipment in accordance with FCC and NTIA regulations and operational parameters as established by this agreement. Before operating on Federal Government interoperability frequencies, a non-federal user agency must apply for and be granted a license by the FCC to operate on specified Federal Government Interoperability frequencies. Each application to the FCC shall be accompanied by a concurrence letter from the SWIC, his/her designee, or a state appointed official.² A state agency may apply for a license which authorizes mobile and portable units to operate statewide on the Federal Interoperability Channels. Upon grant of the application, local and tribal agencies may operate under the state agency's call sign pursuant to 47 CFR § 90.421.³

VII. REPORTING AND DOCUMENTATION

A. Severability. Should any portion of this MOU be judicially determined to be illegal or unenforceable, the remainder of the MOU shall continue in full force and effect, and either Party may renegotiate the terms affected by the severance.

B. Third Party Beneficiary Rights. The Parties do not intend to create in any other individual or entity the status of third party beneficiary, and this MOU shall not be construed so as to create such status. The rights, duties and obligations contained in this MOU shall operate only between the Parties to this MOU, and shall inure solely to the benefit of the Parties to this MOU. The provisions of this MOU are intended only to assist the Parties in determining and performing their obligations under this MOU. The Parties intend and expressly agree that only Parties signatory to this MOU shall have any legal or equitable right to seek to enforce this MOU, to seek any remedy arising out of a Party's performance or failure to perform any term or condition of this MOU, or to bring an action for the breach of this MOU.

C. Sovereign Immunity. The U.S. Department of the Interior and **STATE OF NEW HAMPSHIRE** and its Agencies do not waive sovereign immunity by entering into this MOU, and specifically retain immunity and all defenses available to them as sovereigns pursuant to all applicable State Statute(s) and all other applicable law.

VIII. OTHER PROVISIONS

Nothing in this MOU is intended to conflict with current law or regulation or the directives of the U.S. Department of the Interior or other Federal agencies. If a term of this MOU is inconsistent with such authority, then that term shall be invalid and the remaining terms and conditions of this MOU shall remain in full force and effect.

² Applications to the FCC shall be filed on FCC Form 601 using the FCC's Universal Licensing System (ULS). No application fee is incurred for public safety applicants.

³ If a local or tribal agency wishes to license the Federal Interoperable Channels under their own call sign, they may apply for a license which authorizes mobile and portable units to operate on the Federal Interoperability frequencies in the area specified in the license.

IX. MODIFICATION

Either Party may request changes to this MOU. Any changes, modifications, revisions or amendments to this MOU that are mutually agreed upon by and between the Parties to this MOU shall be incorporated by written instrument, executed and signed by all Parties to this MOU.

X. TERMINATION

Any of the parties, in writing, may terminate this MOU in whole, or in part, at any time before the date of expiration. If this MOU is terminated or expires on its own terms, it shall be the duty of each Party to notify the NTIA and the FCC, in writing, as appropriate.

XI. PRIOR AGREEMENTS

This MOU shall not supersede any prior agreements or MOUs with any other Federal Agencies that have been promulgated for the benefit of the Federal agency.

XII. APPROVALS

In witness whereof, the Parties through their duly authorized representatives have executed this MOU on the days and dates set out below, and certify that they have read, understood, and agreed to the terms and conditions of this MOU as set forth herein. The effective date of this MOU is the date of the last signature affixed to this page.

The Federal signatory of this MOU, as an authorized user in the GMF for the frequencies listed in Appendix A, is authorized to enter into this agreement on behalf of the Federal Government.

U.S. Department of the Interior



By: Russell Sveda
US Department of the Interior,
Radio and Spectrum Chief
Office of the Chief Information Officer
Service Delivery Division
PH: 303-236-5091
E-mail: russell_sveda@ios.doi.gov

Date: 12/09/2019

STATE OF NEW HAMPSHIRE, acting by
and through the New Hampshire Department
of Safety, Division of Emergency Services
and Communications



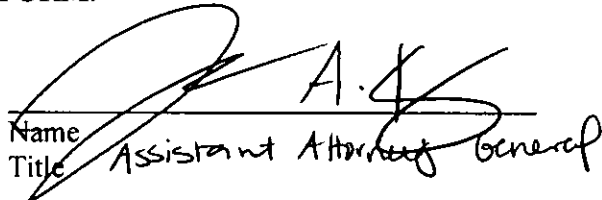
By: Mark E. Doyle
Director
Division of Emergency Services and
Communications



Steven R. Lavioie, Director
Division of Administration
State of New Hampshire Dept. of Safety

Date: 12/12/19

STATE OF NEW HAMPSHIRE ATTORNEY
GENERAL'S OFFICE APPROVAL AS TO
FORM:



Name _____
Title Assistant Attorney General

Date: 1/7/2020

GOVERNOR AND COUNCIL OF NEW HAMPSHIRE

On _____

Signed: _____

Title: _____

ATTACHMENTS

Appendix A: Federal Interoperability Frequencies Available for Use under this MOU
Appendix B: Points of Contact

APPENDIX A: FEDERAL INTEROPERABILITY FREQUENCIES AVAILABLE FOR USE UNDER THIS MOU

The Federal Interoperability Channels identified in the following table may be used within the **STATE OF NEW HAMPSHIRE**, by public safety agencies at all levels of government subject to the conditions listed in Section VI of this MOU and Section 4.3.16 of the NTIA Manual. LE channels will be identified with Continuous Tone-Controlled Squelch Systems (CTCSS), frequency 167.9 Hz, and/or Network Access Code (NAC) \$68F. IR calling channels will not use CTCSS but CTCSS 167.9 may be used on other IR channels as needed. See notice of existing interoperability use and other restrictions below.

LE VHF PLAN			LE UHF PLAN		
Identifier	Mobile Transmit (MHz)	Mobile Receive (MHz)	Identifier	Mobile Transmit (MHz)	Mobile Receive (MHz)
LEA	167.0875 (Simplex)	167.0875	LEB	414.0375 (Simplex)	414.0375
LE1	162.0875	167.0875	LE10	418.9875	409.9875
LE2	162.2625	167.2500	LE11	419.1875	410.1875
LE3	162.8375	167.7500	LE12	419.6125	410.6125
LE4	163.2875	168.1125	LE13	414.0625 (Simplex)	414.0625
LE5	163.4250	168.4625	LE14	414.3125 (Simplex)	414.3125
LE6	167.2500 (Simplex)	167.2500	LE15	414.3375 (Simplex)	414.3375
LE7	167.7500 (Simplex)	167.7500	LE16	409.9875 (Simplex)	409.9875
LE8	168.1125 (Simplex)	168.1125	LE17	410.1875 (Simplex)	410.1875
LE9	168.4625 (Simplex)	168.4625	LE18	410.6125 (Simplex)	410.6125
IR VHF PLAN			IR UHF PLAN		
Identifier	Mobile Transmit (MHz)	Mobile Receive (MHz)	Identifier	Mobile Transmit (MHz)	Mobile Receive (MHz)
NC 1 Calling	164.7125	169.5375	NC 2 Calling	419.2375	410.2375
IR1	165.2500	170.0125	IR10	419.4375	410.4375
IR2	165.9625	170.4125	IR11	419.6375	410.6375
IR3	166.5750	170.6875	IR12	419.8375	410.8375
IR4	167.3250	173.0375	IR13	413.1875 (Simplex)	413.1875
IR5	169.5375 (Simplex)	169.5375	IR14	413.2125 (Simplex)	413.2125
IR6	170.0125 (Simplex)	170.0125	IR15	410.2375 (Simplex)	410.2375
IR7	170.4125 (Simplex)	170.4125	IR16	410.4375 (Simplex)	410.4375
IR8	170.6875 (Simplex)	170.6875	IR17	410.6375 (Simplex)	410.6375
IR9	173.0375 (Simplex)	173.0375	IR18	410.8375 (Simplex)	410.8375

Notice of existing interoperability use and other restrictions:

Channel	Frequency	Exclusion
LE2	162.2625, 167.2500	DOJ 25 Cities use Statewide, other use requires DOJ/FBI Coordination
LE3	162.8375	No use within 120 km of 455304N, 723117W
LE3	162.8375, 162.7500	DOJ 25 Cities use Statewide, other use requires DOJ/FBI Coordination
LE4	163.2875, 168.1125	DOJ 25 Cities use Statewide, other use requires DOJ/FBI Coordination
LE5	163.4250, 168.4625	DOJ 25 Cities no use Statewide, other use requires DOJ/FBI Coordination
LE6	167.2500	No use within 120 km of 460231N, 715738W
LE7	167.7500	No use within 120 km of 460215N, 715407W
LE8	168.1125	No use within 120 km of the US/Canada Border
NC1	164.7125	No use within 120 km of 452045N, 715520W, nor 450514N, 723304W
IR1	165.2500	No use within 120 km of 460312N, 715318W
IR4	167.3250	No use within 120 km of 450449N, 723305W
IR5	169.5375	No use within 120 km of 452327N, 722819W
IR6	170.0125	No use within 120 km of 452400N, 715353W
IR7	170.4125	No use within 80 km of 453331N, 715843W nor 120 km of 460814N, 704013W
IR9	173.0375	No use within 220 km of 465321N, 713416W

APPENDIX B: POINTS OF CONTACT

The following officials, or their designated representatives, are the points of contact for all matters concerning spectrum use and other spectrum related topics related to the provisions of this MOU. For operational coordination and assignments, users should coordinate through the SWIC or other state appointed official.

Federal Administrative Point of Contact for Coordination of MOU

Address all inquiries regarding coordination and administration of the MOU to:
FedStateMOU@hq.dhs.gov

Statewide Interoperability Coordinator (or Designated State Representative)

Name: John T. Stevens
Title: Statewide Interoperability Coordinator
Organization: Statewide Interoperability Executive Committee

The points of contact information listed in this Appendix should be updated as soon as possible whenever changes of designated representatives or their contact info are made, and shall be reviewed and updated every 2 years, at a minimum.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21-P

DEPARTMENT OF SAFETY

Homeland Security and Emergency Management

Section 21-P:34

21-P:34 Purpose. – Because of the possibility of the occurrence of natural and human-caused disasters resulting from fire, flood, hurricane, earthquake, prolonged power outages, disruption or contamination of the food or water supply, degradation of critical facilities and vital systems, disruption of communication systems, or other natural, technological or human causes, including acts of terrorism, and in order that the state of New Hampshire will be adequately prepared to cope with such disasters; and, generally, in order to preserve the lives and the property of the people of the state, a state division of emergency services, communications, and management is hereby created under the direction of the director of the division of homeland security and emergency management. The emergency management powers provided in this subdivision are conferred upon the governor and upon other executive heads of governing bodies of the state; the creation of local organizations for emergency management in the political subdivisions of the state is authorized; and provision is made for the rendering of mutual aid among the political subdivisions of the state and between this and other states and to cooperate with the federal government with respect to the carrying out of emergency management functions. It is further declared to be the purpose of this subdivision and the policy of the state that all emergency management functions of this state be coordinated to the maximum extent with the comparable functions of the federal government including its various departments and agencies, of other states and localities, and of private agencies of every type, to the end that the most effective preparation and use may be made of the nation's manpower, resources, and facilities for dealing with any disaster or incident of terrorism that may occur.

Source. 2002, 257:7. 2003, 319:106. 2004, 171:2. 2008, 361:2, eff. July 11, 2008.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21-P

DEPARTMENT OF SAFETY

Homeland Security and Emergency Management

Section 21-P:38

21-P:38 Emergency Management Powers and Duties Regarding Communications Systems. –

The division of emergency services and communications shall ascertain what means exist for rapid and efficient communications during natural and man-made disasters. The division shall consider the desirability of supplementing these communications resources or of integrating them into a comprehensive state or state and federal telecommunications or other communications system which may be established for purposes of emergency management. In studying the character and feasibility of any such system or its several parts, the division of emergency services and communications shall evaluate the possibility of the multi-purpose use of such a system for general state and local government purposes. The division shall make recommendations regarding such communications systems to the assistant commissioner as appropriate.

Source. 2002, 257:7. 2003, 319:109. 2004, 171:6. 2008, 361:14. 2011, 224:334, eff. July 1, 2011.

TITLE I

THE STATE AND ITS GOVERNMENT

CHAPTER 21-P

DEPARTMENT OF SAFETY

Emergency Services and Communications

Section 21-P:48-a

21-P:48-a Division of Emergency Services and Communications. –

I. There is hereby created a division of emergency services and communications within the department of safety under the supervision of the director of emergency services and communications and reporting to the assistant commissioner. The commissioner shall nominate a director of the division of emergency services and communications for appointment by the governor, with the consent of the council, who shall serve a term of 4 years until a successor has been appointed. The director shall be responsible to carry out such duties as are specifically enumerated in this subdivision and as may be assigned by the office of the commissioner. The director shall be academically and technically qualified to hold the position and shall receive the salary specified in RSA 94:1-a for the director of emergency services and communications.

II. With the approval of the commissioner, the director may employ such necessary technical, clerical, stenographic, and other personnel, and may make such expenditures from state or federal funds as are or may be made available for purposes of emergency services and communications. The director and other personnel of the division shall be provided with appropriate office space, furniture, equipment, supplies, stationery and printing, and funds for traveling and related expenses, in the same manner as provided for personnel of other state agencies. With general oversight by the assistant commissioner, the director shall coordinate the activities of all organizations for emergency 911 telecommunications within the state, state and local, county, and private, and shall maintain liaison with and cooperate with police, fire, emergency medical, and sheriff's departments and emergency telecommunications organizations of other states and of the federal government. The director shall have such additional duties, responsibilities, and authority authorized by applicable laws as may be prescribed by the commissioner.

Source. 2008, 361:7. 2011, 224:335, eff. July 1, 2011. 2016, 147:3, eff. July 1, 2016.