

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

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229

**REPLY COMMENTS OF THE NATIONAL PUBLIC SAFETY
TELECOMMUNICATIONS COUNCIL**

The National Public Safety Telecommunications Council (NPSTC) submits these reply comments in response to the Commission's *Second Further Notice of Proposed Rulemaking (Second Further Notice)* regarding the 700 MHz D Block, the Public/Private Partnership and the Public Safety Broadband Licensee.¹

NPSTC urges the Commission to remain committed to a public private partnership that will deploy and manage a 700 MHz nationwide interoperable broadband network serving public safety and commercial interests. A predominance of comments reiterates the need and viability of this critical initiative. Proposals to rescind the license of the Public Safety Broadband Licensee (PSBL), to restructure its governance and dilute its public safety representation should be rejected. Such proposals, receiving limited support, are unsound and will cause delay.

¹ In the Matter of the Service Rules for the 698-746, 747-762 and 777-792 MHz Bands and Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, *Second Further Notice of Proposed Rulemaking*, WT Docket 06-150 and PS Docket No. 06-229, FCC 08-128 (released May 14, 2008).

Proposals recommending that the D Block be auctioned and licensed on a regional basis fall short in promoting public safety access and nationwide interoperability should also be rejected.²

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Overwhelming Support for a Public Private Nationwide Broadband Network

Comments responding to the *Second Further Notice* present emphatic support that the remaining 700 MHz band be committed to a nationwide broadband network serving public safety agencies and commercial interests through a public private partnership. Private and public interests are emphatic in attesting to the challenges public safety faces, the fleeting opportunity the 700 MHz band presents and the viability of the initiative. The national priority to improve emergency response and preparedness resonates in the supporting comments.

Support emanates from varied public and commercial interests. Together the comments present a credible foundation that the initiative will become reality. The crucial role of advanced wireless services in the nation's preparedness is embraced as the national priority it is. Similarly important is the understanding that the partnership requires accommodation and balance to work.

² NPSTC's work is a consensus driven process of its participating members. In this matter, the overwhelming majority of NPSTC members embrace the positions set forth in this reply comment. Those members who disagree will submit their views separately to the Commission.

These public and private interests converge in the importance of bringing certainty to the network's requirements and flexibility in its management. The Commission should affirm its previous decision - the public private partnership with a single D Block license remains the best option for achieving nationwide interoperability on a spectrally efficient cost effective basis.³

The supporting comments embrace how the Commission defines the challenge - the lack of access to advanced services by public safety agencies and inadequate funding presents a perilous circumstance to the nation's readiness. The Commission recognizes how entwined advanced services are with improving emergency response and preparedness. It understands that public safety requirements are distinct from those of commercial networks. The Commission's leadership, in bridging the commercial and public sectors, responds directly to the national priority to improve public safety communications.

NPSTC disagrees with Verizon Wireless' position that the public private initiative is fundamentally flawed. Underlying its advocacy is that it is not convinced that the case has been made for a nationwide broadband network capable of serving public safety. Verizon Wireless believes the Commission must first undertake a comprehensive review of public safety's

³ Comments of Sprint Nextel Corporation at 1, *see also* Comments of Northrop Grumman Information Technology, Inc. at 2-3, Comments of American Hospital Association at 1, Comments of American Association of State Highway and Transportation Officials (AASHTO) at 1,7, Comments of the State of California at 7-8, Comments of the Western Fire Chiefs Association, Comments of Alcatel-Lucent at 1-2, Comments of QUALCOMM at 1, 7-8, Joint Comments of the International Municipal Signal Association (IMSA), International Association of Fire Chiefs (IAFC), Congressional Fire Services Institute (CFSI) and Forestry Conservation Communications Association (FCCA) at 12, Comments of Cellular South at 1, Comments of the Public Safety Spectrum Trust Corporation, Comments of Tyco Electronics M/A-COMM at 3-4, Comments of AT&T at i, 1-3, Comments of Google, Inc. at 2-3, Comments of the Association of Public Safety Communications Officials, International (APCO) at 1 & 6, Comments of Ericsson, Inc. at 1-3, Comments of the National Association of Emergency Medical Technicians at 1-2, Comments of Motorola, Inc. at 6-7, Comments of Region 33 (Ohio) 700 MHz Regional Planning Committee at 8, Joint Comments of the National Association of Telecommunications Officers and Advisors, National Association of Counties, National League of Cities and US Conference of Mayors, Comments of Virginia Fire Chiefs Association at 3, Letter of the Honorable Daniel K. Inouye, Chairman, Committee on Commerce, Science and Transportation, U.S. Senate and the Honorable Kay Bailey Hutchison (May 13, 2008).

communications needs.⁴ It recommends that the Commission reassess public safety's needs and priorities. The Commission's record addressing the communications challenges faced by public safety and how a nationwide interoperable broadband network will improve emergency response is well established.⁵ There is no credible debate about the challenges public safety faces or the path to meet these challenges.

Interests that would commit the remaining 700 MHz segment to other uses abandon the goal that the nationwide broadband network encompasses. Committing the remaining 700 MHz solely to private interests, or that the network only reflect commercial requirements, or to simply assign the spectrum to local agencies, succumbs to the parochial to the detriment of the national interest. The stark result is that advanced services will not readily come to public safety and emergency response will suffer. The lost opportunity will be historic in its own way. The supporting comments reiterate to the Commission a forceful consensus that a nationwide broadband private partnership can be a reality.

The unifying message of the supporting comments is that the public private partnership's ability to deploy a nationwide interoperable broadband network is viable and critical. The comments provide more definitive parameters for potential D Block licensees and also reflect a coalescing with regard to the flexibility and accommodation that will permeate the partnership. Opposing comments generally produced no new proposals or insight into what is an enormous challenge, a challenge dwarfed by the risks of doing nothing. The Commission's sound and

⁴ Comments of Verizon Wireless at 2, 3-5, 7.

⁵ Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission* (June 12, 2006) at 26, Report to the Congress on the Study to Assess the Short-Term and Long-Term Needs for Allocations of Additional Portions of the Electromagnetic Spectrum for Federal, State and Local Emergency Response Providers, WT Docket No.05157 at 14 (December 19 2005), In the Matter of the Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150 et al, 22 FCC Rcd 15289 (2007) (*Second Report and Order*) recon. pending.

reasoned decisions should be affirmed and its deliberations should be directed to encouraging responsible participants for the D Block auction.

The Public Safety Broadband Licensee Structure Should Not Be Changed

The Commission created the Public Safety Broadband Licensee as the responsible authority to manage the 700 MHz public safety broadband segment and to be the D Block Licensee partner in the public private partnership. The Commission detailed the PSBL's obligations, the most significant of which is representing public safety in deploying and managing the broadband network. Subsequently, the Commission conducted a proceeding to designate a licensee. It selected the Public Safety Spectrum Trust Corporation (PSST). The PSST is incorporated under the laws of the District of Columbia as a non-profit organization. No funding was provided to the PSBL.

The Commission's decisions with regard to the PSBL and PSST were subject to the full notice and comment process. Opportunity to ask the Commission to reconsider its actions was afforded. No party challenged or questioned the PSBL structure, its responsibilities or the designation of the PSST as the PSBL.

Two comments propose changes to the PSBL governing structure, including its Board of Director membership. Instead of individual members comprising the PSBL Board of Directors, the comments recommend that the organizations designated by the Commission be the actual members. The comments state that the PSBL has an over-reliance on the Chairman and Chief Executive Office and its three person executive committee. Further, the comments contend that the PSBL too closely mirrors NPSTC's governing structure which inhibits the PSBL's scope of knowledge and diversity.⁶

⁶ Comments of APCO at 23-25, Comments of the National Emergency Number Association (NENA) at 4.

The comments recommend that the Board of Directors be reduced and reconstituted. Current members would be removed and replaced by individuals with experience in public safety radio management, telecommunications, and finance and communications technologies. Under the proposal the Commission should either require the PSST to amend its articles of incorporation, or rescind its license and select a new PSBL. An additional comment supports rescinding the PSST's license.⁷

NPSTC disagrees with these comments and urges the Commission to reject the recommendations. Full opportunity was afforded to present a different governance structure, to object to the Board of Directors or the designation of the PSST. The Commission did in fact alter the Board membership after its initial decision.⁸ In doing so, it established a balance assuring public safety participation with the expertise and experience needed to oversee this critical endeavor.

Principles behind the finality of Commission decisions are particularly meaningful here.⁹ The PSBL's management and Board of Directors have pursued its obligations forthrightly and with energy and integrity. A Commission rescission of the PSBL license or a restructuring of the Board will reverse and forfeit these efforts. It will set back the PSBL immeasurably and undermine its credibility as representative of public safety.

Examining the PSBL must be done in the reality it faced. With no funding, it had to commence operations directly. There was no transition, no start up period. Instead the range of

⁷ Comments of the Public Interest Spectrum Coalition at 1-5.

⁸ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, et al., *Order on Reconsideration*, FCC 07-171 (September 24, 2007).

⁹ Washington Broadcast Management Co. Inc., *Order on Reconsideration*, 15 FCC Rcd 6007 (2000), 47 USC 405, 47 CFR 1.106(f).

complex challenges from promoting participation in the D Block auction to managing the 700 MHz narrowband relocation had to be addressed immediately. That the responsibility encompassed an enormous undertaking requiring consultation and coordination with myriad commercial and public interests profiles the depth of the challenge. NPSTC urges the Commission to comprehend this challenge and the circumstances. More importantly, the Commission should recognize that what emerged were reasoned judgments and actions that emanated from PSBL's management and supported by the overwhelming majority of its Board of Directors.

Altering the Board of Directors will dilute public safety participation to the extreme detriment of the public private partnership. The comments do not indicate how many Directors would be replaced nor which of the current members. Yet at least one-third would be replaced since the proposal includes replacing and reducing the number of Directors. The Board's current membership reflects those who rely on public safety communications daily, who operate networks and who design and acquire systems, all in a myriad of environments. It includes individuals with extensive knowledge of funding large projects, deploying interoperable communications across local, state and federal agencies, and participating in successful public private partnerships. To remove these individuals and substitute individuals with management, finance or other backgrounds removes from the PSBL expertise, experience and credibility. It will also reflect an unwise direction of moving operations from management to the Board of Directors. Such will only diminish accountability and distract the Board of Directors from its principle role of overseeing the PSBL.

Individuals with business and financial expertise are not necessary as voting Board members. Just like many other businesses, the PSBL can hire such expertise without having it

in-house. The same is true for tapping the knowledge of people versed in broadband network design. Voting Board members need to be capable of looking out for public safety, be able to comprehend its daily operations so as to assure that there will be a nationwide broadband network that responds to their needs. The current PSBL membership reflects this standard.

The comments object to the PSBL as reflecting too much of a parallel to NPSTC and to the relationship between the two. The goals of the PSBL and NPSTC are not different. Cooperation in such a critical initiative furthers the objective and should not be stifled by artificial barriers. NPSTC is an umbrella organization of public safety associations. Unlike the PSBL, it has no operational responsibilities. Its function is to air issues of significance to public safety communications with a goal of obtaining consensus. This is a far more productive than having 15 or 20 different associations presenting to the Commission or other agency differing viewpoints and expecting it to discern it all and make the critical decisions for public safety. It is in public safety interest to have a unified voice that clearly articulates public safety's needs and positions.

One of the critical needs is a nationwide broadband interoperable network. It is reasonable and positive for NPSTC to assist where it can. To do otherwise belies the shared goal of improving public safety communications. There is no conflict of interest between the goals of the PSST and NPSTC. Both seek the best for public safety. NPSTC brings together diverse interests and expertise in an environment to exchange ideas and distill issues to provide clarity and direction on difficult topics. This resource should be available to the PSST and other interests promoting public safety communications.

NPSTC believes that the comments with regard to the PSBL governance matters go in the wrong direction and will undermine considerably this initiative and should be rejected. The

fundamental objective of a nationwide interoperable broadband network capable of meeting the range of requirements reflected by local and state agencies and commercial interests will be best served with a PSBL maintaining the discretion and authority and structure originally committed.

Regional Licenses will Undermine Public Safety Access and National Interoperability

Several comments recommend that the Commission license the D Block on a regional basis. Under these proposals, the nationwide system would represent a “network of networks’ or “system of systems’. A framework would be adopted to promote the integration of all the regional networks into one.¹⁰ NPSTC recommends that the Commission not pursue this concept. It adds a significant layer of complexity to an initiative that has many. It will diminish and effectively remove a vital objective, that of nationwide interoperability and connectivity.

Regional networks will afford some impetus to earlier deployment in particular areas. Yet NPSTC’s concern is that the regional model replicates all too much the deployment of commercial cellular service, where investment varied considerably across the nation. It is not too far in the past where large areas of the nation, many with significant population centers, far more than many public safety service areas, had no or extremely limited service that was often unreliable. The regional license model diffuses significantly the crucial goal of providing a nationwide interoperable broadband network whose core premise is to provide broadband service to the range of public safety agencies.

There is more at stake than the goal of nationwide interoperability and connectivity. What a nationwide system will do, with the D Block Licensee and PSBL responsible for promoting use of the network, is pursue bringing services to all public safety agencies. This

¹⁰ Comments of Verizon Wireless at 24-32, Comments of Google at 2, Comments of United State Cellular Corporation at 4-16 and Comments of AT&T at 24-26.

objective, as a national communications policy goal, is enormously different than one directed to servicing only a region. The Commission's enduring objective to promote a national network will be undercut considerably by diffusing this responsibility among varied regional licensees.

Just as significant, is the complex technical and logistic challenge to integrate the various regional systems into one. Even the comments proposing regional licenses indicate such to be a massive undertaking, which will likely consume years to design and more to implement. The Commission itself notes this complexity and the potential inequities that will develop between regions.¹¹ It will also place the PSBL in a position of having to partner with several diverse licensees, none of whom will direct their business model to a nationwide network.

There are opportunities for regional participation that can promote and be integrated into the national network. NPSTC recommended to the Commission that the PSBL and D Block Licensee be afforded flexibility to pursue arrangements with local agencies that commit to the national network as established by the Commission and the public private partnership.¹²

This flexibility should include commercial as well as public entities. Consortia structured by the D Block Licensee on a regional basis present opportunity for regional investment and management and varied business plans. NPSTC believes it important in such a structure that the PSBL have responsibility to ensure that requirements, deployment and access are consistent across the country.¹³ NPSTC has no issue with a consortia of regional operating companies as long as they operate under the direction of a single, nationwide point of contact who holds the D Block license and with which the PSBL would negotiate and provide direction for nationwide deployment of the system.

¹¹ *Second Further Notice* at paragraph 183, Comments of the Rural Cellular Association at 2.

¹² Comments of NPSTC at 12.

¹³ Joint Comments of IMSA, IAFC, CFSI and FCCA at 12.

Proposals recommending regional licenses should be rejected. The challenge is national in character and should not be surrendered to a pact of regional projects where there will be neither leadership nor motivation to serve all public safety agencies.

Promoting a Competitive D Block Auction

NPSTC urged the Commission that the focus of its deliberations, despite the many issues present by its *Second Further Notice*, should be providing an environment for a successful auction that results in a responsible D Block Licensee. The comments present areas that promote such participation while also instilling accommodation and flexibility in the public private partnership.

Comments submitted by APCO and the PSST place on record extensive discussion of network specifications and public safety requirements and parallel in significant degree NPSTC's own technical presentation. Equipment manufacturers serving both the public and private sector provided significant analysis and comment and in several circumstances acknowledge the public safety work, thereby reflecting the broad participation of the effort.¹⁴ Other manufacturers address the technical parameters and particular areas of concern.¹⁵ The extensive analysis emerging from the comments supplements well the Commission's technical Appendix. As a result, the Commission is in a position to provide a much greater clarity. NPSTC agrees with the premise that that the parameters should be presented by the Commission prior to the auction to afford potential D Block Licensees opportunity to evaluate these elements.

¹⁴ Comments of Alcatel-Lucent at 2-7, Comments of Northrop Grumman at 7.

¹⁵ Comments of QUALCOMM at 2-8, Comments of Ericsson at 8-21, Comments of M/A-COMM at 5-7, Comments of Motorola at 11-12.

Alternatives, such as soliciting proposals, will add delays and likely go in the opposite direction of clarity.¹⁶

The comments contribute additional clarity by describing and defining the elements of public safety priority access. NPSTC reiterates that accommodating public safety's broadband requirements and competing demands for priority and capacity to support the communications needs at incidents within the public safety portion of the 700 MHz band should be entrusted to the PSBL. APCO, the PSST and NPSTC emphasize the critical but limited character of this access and how its parameters can be predicted and relied upon. More precise expectations on the part of D Block auction participants will be provided.

Encouraging responsible entities to participate in the D Block auction was the subject of several comments. Extending the license term of the D Block Licensee and the PSBL to meet defined construction mileposts is consistent with NPSTC's position that deployment obligations be flexible yet maintain an underlying build out goal. Providing bidding credits in exchange for build out commitment beyond that which is established is also worthy of consideration. NPSTC also agrees with the Joint Comments of IMSA, IAFC, CFSI, and FCCA¹⁷ that, as an economic incentive for D-block bidders, the overall population coverage requirement may be reduced through a more cost effective approach of having a cache of deployable infrastructure available to be moved into remote areas, as needed, and made instantly operational through satellite links. Eliminating or reducing the auction reserve price, particularly if in its place is the responsibility to fund the narrowband relocation is meritorious.

Recommendations that the default penalty be modified must be examined with the underlying purpose that the Commission's rules and procedures must be adhered to. This is

¹⁶ Comments of the PSST at 30.

¹⁷ Joint Comments of IMSA, IAFC, CFSI and FCCA at 13-14.

particularly so with regard to negotiations and disputes regarding the Network Sharing Agreement, the responsibility to follow a Commission Order and the general obligation of good faith. Any adjustment to the default penalty should retain a motivating force to uphold these precepts.

Funding, Critical Infrastructure, Request for Proposals and the Narrowband Relocation

The comments present additional issues regarding the public private partnership. These include funding opportunities to assist the network's deployment, critical infrastructure access to the network, the concept of pursuing a Request for Proposal format instead of an auction process to assign a D Block licensee and the responsibility for relocating incumbent 700 MHz narrowband operations.

NPSTC has noted that as the 700 MHz auctions have exceeded revenue objectives, revenues from the D Block auction should be directed to assisting deployment of the nationwide public safety-grade broadband network.¹⁸ Comments supporting the need to provide additional funding for the deployment of the network reflect the need to explore all paths of support for the initiative.¹⁹ NPSTC does believe that the fundamentals of the public private partnership are viable. This premise is supported by the predominance of comments, several of which are entities that have deployed and operated, or designed and manufactured, large scale wireless systems. The enormous value of 20 MHz in the 700 MHz band and that there is no more 700 MHz left are incentives to innovation and efficiency that should not be understated. There is also the factor that since all of the funding sources suggested must emanate from congressional action, until the Commission resolves the range of issues presented by its *Second Further Notice*,

¹⁸ NPSTC comments at 13.

¹⁹ See comments of Motorola at 12 .

no tangible opportunities will emerge. NPSTC believes that the Commission can move forward with resolving the policy issues before it while continuing to examine possible additional funding sources.

NPSTC reiterates its view that access by critical infrastructure entities to the public safety network is a balance of several interests. There must be adequate capacity for local and state agencies prior to providing access to others; such capacity must be maintained. The responsibilities of critical infrastructure entities in an emergency must also be understood. Incident commanders need to deploy utility crews expeditiously and be able to call upon carriers for transport and logistic support and to speed access to medical facilities. In circumstances where responding public safety agencies have adequate capacity, NPSTC opposes those comments that would restrict critical infrastructure entities to the D Block's commercial network.²⁰

Several comments suggest that the Commission proceed, in assigning a license for the D Block, not via the auction process, but through an RFP procedure.²¹ Under the RFP format, entities would submit proposals to deploy and manage the network. The proposals would be judged based on which best meets the established requirements.

As the comments concede, an RFP format would require amending the Communications Act or obtain other congressional authorization. With the pending national elections, opportunity for congressional action is extremely limited. It is also contrary to the Commission's policies favoring auctions to assign licenses, particularly since it suggests elements of the previous comparative hearing process of awarding licenses, an environment beset by delay and litigation. The comments also lack consistency and clarity of how the process would work in practice.

²⁰ Comments of APCO at 9.

²¹ Comments of Verizon Wireless at 19-21 , Comments of AT&T at 5-7.

These are significant barriers. NPSTC sees value in the concept if the initial establishment of requirements and recommendation to award the license was committed to the PSBL. The Commission should be reluctant to establish network requirements and other elements comprising an RFP. Its role as regulator and adjudicator should be preserved. An adequately funded PSBL, which has the expertise and experience in network deployment and management, is able to best perform these responsibilities.

NPSTC recommends against the one comment proposing that the responsibility to implement the narrowband relocation be removed from the PSBL.²² Such would be a set back to an important facet of the Commission's decision to realign the 700 MHz spectrum and create a public private partnership to deploy and manage a nationwide broadband network. The PSBL's work with regard to the relocation of 700 MHz narrowband incumbents demonstrates tangibly not only its dedication to the Commission's decisions but its ability to work with the often competing interests. It has proceeded to coordinate this responsibility with public safety licensees, manufacturers and others so that a much fuller understanding of what needs to be done is known. The level of technical expertise residing in the PSBL's efforts and its comprehension how the varied interests can be harmonized to accomplish the relocation cannot be readily replicated. It is a discrete yet meaningful reflection that its current structure has provided an important contribution and will continue to do so. The PSBL should remain responsible for the narrowband relocation.

Conclusion

In an era where emergency preparedness is crucial, there is no nationwide public safety network to manage and coordinate response. There is no wide scale broadband technology to

²² Comment of APCO at 39.

expedite analysis and information sharing critical to emergency assistance, investigation and apprehension. Dispatching the right resources in the most efficient way requires modern technology and a pervasive ability to communicate across agencies. The current environment is inadequate and fragile.

Comments responding to the *Second Further Notice* are emphatic in urging the Commission to confront the national priority to improve emergency response and preparedness. A public private partnership between the PSBL and a single D Block license is the best opportunity for providing advanced services to public safety agencies and achieving nationwide interoperability.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ralph A. Haller", with a long horizontal flourish extending to the right.

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