

Summary of the 700 MHz Proceeding Second Report and Order

Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, et al.
Released August 10, 2007

I. INTRODUCTION

In the Second Report and Order ("Order"), the Federal Communications Commission ("FCC" or "Commission") establishes rules governing wireless licenses in the 698-806 MHz Band (the "700 MHz Band"), spectrum that is currently occupied by television broadcasters in TV Channels 52-69. The spectrum was previously made available for wireless services as a result of the digital television ("DTV") transition. Some of the spectrum was already licensed for commercial services and the FCC previously set aside and adopted rules intended to govern the 24 megahertz of 700 MHz spectrum designated for public safety operations. In the Order, the FCC adopted rules that will govern the licensing and use of the 62 megahertz of commercial spectrum that remains unlicensed, modified its rules for some of the commercial spectrum that has already been licensed and enacted regulations modifying the use of the 24 megahertz of public safety spectrum.

In addition to making new frequencies available in what is considered a valuable segment of the spectrum, the FCC took two notable actions. First, it created an "open access" requirement for the licensees of the largest blocks of 700 MHz commercial spectrum. The requirement obligates licensees to permit the use of any compatible devices and software on their wireless network. Second, the FCC will license spectrum to a private entity that will be obligated to construct a network using its spectrum and spectrum licensed to a nationwide public safety licensee in a public/private partnership.

II. COMMERCIAL 700 MHZ BAND, INCLUDING 700 MHZ GUARD BANDS

A. Band Plan

1. Commercial 700 MHz Band

Through auction, the FCC will license four purely commercial blocks of paired spectrum – the 12 megahertz B Block (comprised of paired 6 megahertz blocks) in 734 Cellular Market Areas ("CMAs"), the 12 megahertz A Block (comprised of paired 6 megahertz blocks) in 176 Economic Areas ("EAs"), the unpaired E Block of 6 megahertz of spectrum on an EA basis and the 22 megahertz C Block (comprised of paired 11 megahertz blocks) in twelve Regional Economic Area Groupings ("REAGs"). In addition, the FCC will auction the nationwide D Block of 10 megahertz of spectrum (comprised of paired 5 megahertz blocks) which will be associated with a 700 MHz Public/Private Partnership. In addition to this 62 megahertz of spectrum to be auctioned, the FCC has already licensed 18 megahertz of spectrum in the Lower C and D Blocks and reconfigures in this Order what is now 4 megahertz of so-called Guard Band spectrum and retains (but reconfigures) its 24 megahertz allocation of spectrum for public safety operations (for a total of 108 megahertz of spectrum in the former television channels 52-69).

The following chart depicts the revised band plan:

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REVISED 700 MHz BAND PLAN FOR COMMERCIAL SERVICES

									757	763	775	787	793	805				
A	B	C	D	E	A	B	C	C	A	D	Public Safety	B	C	A	D	Public Safety	B	
CH. 52	CH. 53	CH. 54	CH. 55	CH. 56	CH. 57	CH. 58	CH. 59	CH. 60	CH. 61	CH. 62	CH. 63	CH. 64	CH. 65	CH. 66	CH. 67	CH. 68	CH. 69	
698	704	710	716	722	728	734	740	746	752	758	764	770	776	782	788	794	800	806
LOWER 700 MHz BAND (CHANNELS 52-59)									UPPER 700 MHz BAND (CHANNELS 60-69)									

Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	EA	176
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	CMA	734*
D	716-722	6 MHz	unpaired	EAG	6*
E	722-728	6 MHz	unpaired	EA	176
C	746-757, 776-787	22 MHz	2 x 11 MHz	REAG	12
D	758-763, 788-793	10 MHz	2 x 5 MHz	Nationwide	1**
A	757-758, 787-788	2 MHz	2 x 1 MHz	MEA	52***
B	775-776, 805-806	2 MHz	2 x 1 MHz	MEA	52***

*Blocks have been auctioned.

**Block is associated with the 700 MHz Public/Private Partnership.

***Guard Bands blocks have been auctioned, but are being relocated.

The FCC generally patterned its allocation of 700 MHz spectrum after the allocation of advanced wireless service (“AWS”) spectrum. The Commission provided the following additional rationale for its licensing decisions for the purely commercial spectrum it will auction:

- *B Block - CMAs in a 12 megahertz Spectrum Block (Comprised of Paired 6-Megahertz Blocks).* This spectrum is immediately adjacent to the existing CMA-based C Block licenses. Licensees can therefore combine B Block licenses with licenses in the adjacent C Block.
- *A Block - EAs in a 12 megahertz Spectrum Block (Comprised of Paired 6 megahertz Blocks).* The FCC believes this will provide potential applicants flexibility to implement their business plans by allowing these parties the option of bidding on a geographic license area of a size that is between smaller CMAs and larger REAGs, permitting applicants the option of obtaining a single EA license or aggregating multiple EA licenses.
- *E Block - EAs in a 6 megahertz Unpaired Spectrum Block.* An EA service area for the E Block provides licensees with flexibility to combine spectrum either with the adjacent A Block or the adjacent D Block spectrum

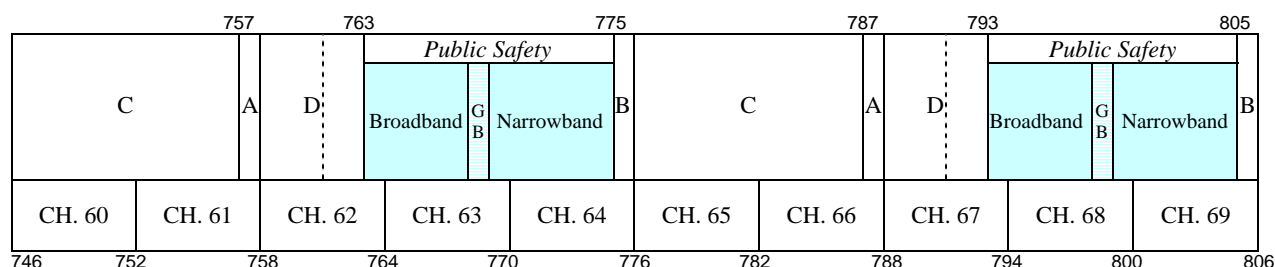
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- C Block - REAGs in a 22 megahertz Spectrum Block (Comprised of Paired 11 megahertz Blocks).*
This large REAG block is viewed as important for potential new entrants and other bidders that seek to provide a nationwide service. This C Block will be the only spectrum block larger than 12 megahertz in the 700 MHz Band. By creating a larger spectrum block in the 700 MHz Band, the FCC believes that many services, including voice over Internet Protocol (“VoIP”), broadband Internet access, and streaming audio and video programming, can be offered at higher speeds, to a greater number of subscribers, and with more advanced capabilities than could be offered on smaller-sized spectrum blocks in the band. The FCC specifically noted that this spectrum could be used to compete with wireline broadband alternatives. This large spectrum block eliminates the need for internal guard bands that would otherwise be necessary if two smaller spectrum blocks were acquired by different licensees. The larger spectrum block will also provide flexibility for C Block licensees to address potential interference issues.

2. Guard Band Spectrum

The FCC adopted a revised band plan for the 700 MHz Guard Band spectrum. Previously, the Guard Bands consisted of two blocks licensed on a Major Economic Area (“MEA”) basis -- the Guard Band A Block, consisting of 2 megahertz of spectrum (comprised of a pair of 1 megahertz channels) and the Guard Band B Block, consisting of 4 megahertz of spectrum (comprised of a pair of 2 megahertz channels). In the Order, the FCC eliminated the current Guard Band B Block and “repacked” and relocated the Guard Band A Block between the Upper 700 MHz Band C and D Blocks. The revised band plan with a detail of the Guard Bands is depicted below:

REVISED UPPER 700 MHz BAND PLAN INCLUDING GUARD BANDS



The FCC modified the licenses of all existing Guard Band A Block licenses to the reconfigured Guard Band A Block located at 757-758 MHz and 787-788 MHz through a consensual arrangement, with the exception of PTPMS Communications II, LLC (“PTPMS”). Existing Guard Band A Block licensees were provided with special temporary authority (“STA”) to continue to operate in the existing Guard Band A Block for 180 days. PTPMS, which holds one Guard Band A Block license in Buffalo did not join the repacking agreement. The Order modifies PTPMS’s Guard Band A Block license in Buffalo to operate in the same geographic area but in the reconfigured A Block at 757-758 MHz and 787-788 MHz.

PTPMS also held Guard Band B Block licenses in Des Moines and El Paso-Albuquerque. The Commission “shifted” those licenses down by one megahertz. Now, PTPMS is authorized to operate at 761-763 MHz and 791-793 MHz, which conflicts with the new nationwide D Block license, at 758-763 MHz and 788-793 MHz. That entity will be authorized in Des Moines and El Paso-Albuquerque on a secondary basis to PTPMS. Other than permitting PTPMS to continue to operate in the Guard Band B

Block on a grandfathered basis, the FCC did not adopt regulations for this (now) 2 megahertz of spectrum but will do so in the future.

B. Service Rules

1. Commercial Services (Excluding Guard Bands and Upper 700 MHz D Block)

a. Performance Requirements

The FCC replaced the current “substantial service” requirements for the 700 MHz Band licenses that have not been auctioned with significantly more stringent performance requirements. For licenses issued on a CMA and EA basis, licensees must provide signal coverage and offer service to: (1) at least 35 percent of the geographic area of their license within four years of the end of the DTV transition (*i.e.*, by February 17, 2013); and (2) at least 70 percent of the geographic area of their license at the end of the ten year license term. For licenses based on REAGs, licensees must provide signal coverage and offer service to: (1) at least 40 percent of the population of the license area by the end of the DTV transition; and (2) at least 75 percent of the population of the license area by the end of the ten year license term. The FCC will apply its performance requirements on an EA-by-EA basis for REAG licensees.

The FCC will reduce by two years (from ten to eight years) the license term for licensees that fail to meet the interim performance requirement and may take other enforcement action, including forfeitures. This means that licensees that fail to meet the interim performance requirements will also face an accelerated end-of-term performance obligation. For licensees that do not meet the end-of-term performance requirements, the unused portion of the license will automatically terminate and become available for reassignment through “keep-what-you-use rules” (described below). Licensees that do not meet performance requirements may also be subject to potential enforcement action, including possible forfeitures or cancellation of license.

In order to monitor its performance requirements, the FCC imposed reporting requirements. For licensees that meet their interim benchmarks, these reports must be filed at the end of the second and seventh years following the end of the DTV transition, *i.e.*, February 17, 2011 and February 17, 2016. For licensees that do not meet their interim benchmarks and have their license terms reduced, the second report will be filed at the end of the sixth year following the end of the DTV transition, *i.e.*, February 17, 2015. The information to be reported includes a description of the steps the licensee has taken toward meeting its construction obligations in a timely manner, including the technology or technologies and service(s) being provided and the areas in which those services are available.

Licensees must demonstrate compliance with the FCC’s benchmarks by filing a construction notification within 15 days of the relevant benchmark. The notification must include electronic coverage maps and supporting documentation certifying the type of service the licensee is providing and the type of technology it is utilizing. The public will be given an opportunity to review and comment on the construction notification. After examining the notification and public comments, FCC staff will make a final determination as to the areas within EAs and CMAs that are, and are not, deemed “served.” If the FCC determines that a licensee meets the applicable interim benchmark, the licensee will retain its full license term. Likewise, if the FCC determines that a licensee meets its applicable end-of-term benchmark requirement, it will be deemed to have met the license construction build-out requirement.

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Under the “keep-what-you-use” rule, if a licensee fails to meet its end-of-term benchmark, its authorization (for the relevant geographic unserved portion of the licensed area) to operate will terminate automatically without FCC action. For purposes of reassigning these licenses, the Wireless Bureau has been delegated authority to announce by public notice that licenses for these unserved areas will be made available and to establish a thirty-day window during which third parties may file license applications to serve these areas. During this thirty-day period, licensees that lost their authorizations for the areas that they did not serve may not file applications to provide service to these areas. Applications filed by third parties that propose areas overlapping with other applications will be deemed mutually exclusive and competing applications will be selected through an auction. Following this thirty-day period, if there remain unserved areas, the original licensee and third parties can submit applications. Any mutually exclusive applications filed within thirty days of the initially submitted application will be selected through the auction process. The Commission warned potential participants in this process that agreements to withdraw mutually exclusive applications must comply with the requirements of Section 1.935 of its rules (which limit the consideration that a partying “paying” for withdrawal of an application may provide).

A licensee obtaining spectrum that was lost through the “keep-what-you-use” rule will have one year from the date it is issued a license to complete its construction and provide coverage and offer service to the entire new license area. The FCC will not relicense unserved areas of less than 50 square miles (and that area will continue to be part of the original licensee’s authorization).

b. Partitioning and Disaggregation

The Order clarifies how the performance requirements will apply in the context of 700 MHz commercial spectrum licenses that have not yet been auctioned that are partitioned or disaggregated. For partitioning, the partitioner and partitionee can either certify to the FCC that they will (1) share responsibility for meeting the performance requirements for the entire original geographic license area; or (2) independently meet the applicable performance requirements for each party’s respective partitioned service area. If either the partitioner or partitionee fails to meet the four-year build-out requirement for its respective partitioned service area, then its license term will be reduced by two years.

For disaggregation, the disaggregator, disaggregatee, or both the disaggregator and disaggregatee working together, can meet the four-year and end-of-term construction benchmarks for the entire geographic license area. If either of the parties meet the four-year build-out requirement, then the requirement is considered satisfied for both parties. If neither of the parties meets the four-year build-out requirement, then each of their license terms will be reduced by two years. Similarly, if either of the parties meets the end-of-term build-out requirement, then the requirement is considered satisfied for both parties, and they will retain the ability to continue to build out the unserved portion of their license areas. However, parties that fail to meet the end-of-term benchmarks will be subject to an automatic “keep-what-you-use” rule, under which they will lose their authorization for unserved portions of their license areas, which will automatically return to the FCC for reassignment.

c. Open Platforms for Devices and Applications (Open Access)

The FCC will require licensees in the 22 megahertz C Block to allow customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice under a so-called “open access” requirement, so long as they meet all applicable regulatory requirements and comply with reasonable conditions related to management of the wireless network (*i.e.*, do not cause harm to the network). Specifically, a C Block licensee may not block, degrade, or interfere

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with the ability of end users to download and utilize applications of their choosing on the C Block network. The FCC anticipates that wireless service providers will address this requirement by developing reasonable standards, including through participation in standards-setting organizations.

Wireless service providers subject to this requirement will not be allowed to disable features or functionality in handsets where such action is not related to reasonable network management and protection or compliance with applicable regulatory requirements. For example, providers may not “lock” handsets to prevent their transfer from one system to another. The FCC also prohibited standards that block Wi-Fi access, MP3 playback, ring tone capability, or other services that compete with wireless service providers’ own offerings. Standards for third-party applications or devices that are more stringent than those used by the provider itself would likewise be prohibited. In addition, C Block licensees cannot exclude applications or devices solely on the basis that such applications or devices would unreasonably increase bandwidth demands. The FCC anticipates that demand can be adequately managed through feasible facility improvements or technology-neutral capacity pricing that does not discriminate against subscribers using third-party devices or applications. C Block licensees may not impose any discriminatory charges (one-time or recurring) or conditions on customers who seek to use devices or applications outside of those provided by the licensee. Finally, C Block licensees may not deny access to a customer’s device solely because that device makes use of other wireless spectrum bands, such as cellular or PCS spectrum. However, in accepting a multi-band device for use on its network, a C Block licensee is not required to extend the requirement for open platforms for devices and applications to other spectrum bands on which the provider operates.

The FCC did not require wireless service providers to allow the unrestricted use of *any* devices or applications on their networks. Wireless service providers may continue to use their own certification standards and processes to approve use of devices and applications on their networks so long as those standards are confined to reasonable network management. The FCC declined to impose these same principles or obligations broadly in the 700 MHz Band. In addition, the FCC did not impose additional requirements on the C Block, such as wholesale and interconnection requirements.

Although the FCC did not specify a particular process by which the C Block licensee should develop network management and openness standards, it did impose certain minimum required measures. In particular, a C Block licensee must publish standards no later than the time at which it makes such standards available to any preferred vendors. It must also provide potential customers notice of customers’ rights to request attachment of a device or application to the licensee’s network and notice of the licensee’s process for customers to make such requests. The FCC expects that any standards adopted will be non-proprietary and that the standards applied to third parties will be no more restrictive than those applied to the provider’s preferred vendors. The C Block licensee must establish a reasonable process for expeditiously reviewing requests from manufacturers, application developers and consumers to employ devices on the network. If a provider denies such a request, it must offer a specific explanation and an opportunity for amendment of the request to accommodate the provider’s concerns. The FCC encouraged the development of network management standards by industry-wide bodies and said that where a provider bases its network restrictions on such industry consensus standards, it would afford those restrictions a presumption of reasonableness.

The open access requirement does not override a wireless service providers’ obligation to ensure that their networks and devices comply with applicable regulatory requirements (*e.g.*, power and emission limits, E911, CALEA, hearing aid compatibility, etc.). However, the FCC found that providers cannot refuse to connect a handset to the network because it is not hearing aid compatible. The FCC found that hearing aid compliance rules only affect handsets “offered” by the provider.

The FCC intends to vigorously enforce the open access requirement through its formal and informal complaint processes. The FCC specifically committed to rule on any complaints within 180 days of receipt. Once a complainant makes a *prima facie* case that the C Block licensee has refused to attach a device or application, the licensee will have the burden of proof to demonstrate that that it adopted reasonable network standards and reasonably applied the standards in the complainant's case.

d. Use of Dynamic Spectrum Management Techniques

In response to a request by Google, the FCC affirmed that nothing in its rules prohibits 700 MHz licensees from using dynamic spectrum management practices and that such practices are generally permitted under its spectrum leasing rules. However, the FCC declined to mandate the use of dynamic spectrum management practices.

e. Protection of 700 MHz Public Safety Operations

The FCC continued to require C Block licensees to meet the $76 + 10 \log P$ and $65 + 10 \log P$ out-of-band-emissions ("OOBE") limits with respect to the public safety bands. The FCC will not, however, require the D Block licensee to meet OOBE limits with respect to the public safety broadband spectrum because the D Block licensee, through the 700 MHz Public/Private Partnership, will operate on adjacent spectrum and use the same infrastructure as the public safety broadband licensee; OOBE was a measure designed to protect public safety operations from interference from *unaffiliated* commercial systems. The D Block licensee will still be required to satisfy the 76 and $65 + 10 \log P$ OOBE limits for the narrowband portion of the public safety spectrum. Finally, the FCC will not require the D Block licensee and Public Safety Broadband Licensee to coordinate with one another to address potential overload interference because under the public/private partnership the D Block licensee and Public Safety Broadband Licensee will be sharing the same infrastructure.

f. Licensee Eligibility

The FCC declined to impose eligibility restrictions for licenses in the 700 MHz Band, concluding that it is unlikely that incumbent local exchange carriers ("ILECs"), cable providers, or large wireless carriers would be able to behave in an anticompetitive manner in their use of any spectrum they gain through the auctions.

2. Guard Bands

a. Treatment of Reconfigured A Block

Providers are no longer required to apply the adjacent channel power ("ACP") emissions criteria in Section 27.53(d) to the A Block because the reconfigured Guard Band A Block will now be located at 757-758/787-788 MHz between the C and D Blocks. Instead, the Commission will continue to apply the $43+10 \log P$ dB OOBE limits. Heightened out-of-band emissions criteria will continue to apply for safety reasons. Transmitter power in the A Block must be attenuated to at least $76 + 10 \log P$ dB, in a 6.25 kilohertz bandwidth for base stations at 763 MHz, and $65 + 10 \log P$ dB for mobile units at 793 MHz.

The FCC will no longer apply the Section 27.601(d) and Section 27.2(b) frequency coordination and cellular architecture prohibitions to reconfigured A Block licenses because the reconfigured Guard Band A Block will not be adjacent to public safety spectrum.

The FCC determined that it is unnecessary to retain the A Block Guard Band at 746-747 MHz to shield Upper 700 MHz Band C Block operations from interference from high power operations allowed in the Lower 700 MHz Band C Block. The Commission reasoned that if the winner of the 22 megahertz Upper 700 MHz Band C Block is concerned about potential interference from higher power operations in the adjacent Lower 700 MHz Band C Block despite the power flux density (“PFD”) limit, it will have ample spectrum to employ an internal guard band.

b. Treatment of Reconfigured B Block

The reconfigured B Block will be vacant for a time (except for the grandfathered PTPMS licenses). Existing licensees will be repacked into a new A Block. Future Guard Band B Block operations will continue to be bound by the FCC’s existing Guard Bands technical rules. Operations in the reconfigured B Block may use the existing ACP limits in Section 27.53(d) of the FCC’s rules or the same OOBE limits used by other commercial licensees to protect public safety, *i.e.*, $76+10 \log P$ dB per 6.25 kHz for base stations and $65+10 \log P$ dB per 6.25 kHz for mobile units.

c. Treatment of PTPMS II Licenses

Existing Guard Band B Block technical rules will continue to apply to PTPMS’s B Block licenses, because they will be adjacent to public safety spectrum.

d. License Terms

License terms for Guard Band A Block licenses, including PTPMS A Block licenses, are extended to February 17, 2019, with 10-year renewals thereafter. The existing license term for the grandfathered PTPMS B Block licenses (due to expire in 2015) is retained with no provision for renewal.

C. Auctions-Related Issues

1. Anonymous Bidding

The FCC found that it is in the public interest to conduct the upcoming auction of 700 MHz Band licenses using anonymous bidding procedures. These procedures will not be contingent on a pre-auction measurement of likely competition based on an eligibility ratio. The FCC delegated authority to the Wireless Bureau to propose and seek comment on detailed anonymous bidding procedures consistent with the FCC’s findings, including: (1) how anonymous bidding would impact a potential re-auction of one or more spectrum blocks if the reserve prices (discussed further below) for the individual blocks are not met; and (2) any additional continuation or alteration to the anonymous bidding rules necessary to preserve the integrity of the subsequent auction.

2. Declaratory Ruling on Anti-Collusion Rule Reporting Requirement

To prevent collusive behavior in auctions, the FCC clarified that applicants in FCC auctions have an obligation to report within five business days any communications of bids or bidding strategies that are prohibited by § 1.2105(c)(1) of its rules. The FCC emphasized that it can and will enforce this reporting obligation and warned against attempts to evade the obligation by waiting out the expiration of the statute of limitations applicable for the enforcement of forfeitures.

3. Package Bidding

Package bidding occurs when a bidder places an all-or-nothing bid on multiple licenses to avoid the risk of winning less than all the licenses needed to justify the bid. The FCC concluded that package bidding only for licenses in the C block would serve the public interest by reducing the “exposure problem” that might otherwise inhibit bidders seeking to create a nationwide footprint.

The Commission directed the Wireless Bureau to implement package bidding procedures for the auction of C Block licenses, including exploring the use of package bidding for any blocks subject to re-auction if a reserve price is not met. The Commission further directed that if it is impractical to implement package bidding by the applicable statutory deadlines, the Wireless Bureau should conduct an auction without package bidding for the C Block.

4. “New Entrant” Bidding Credit

The FCC was not persuaded that it should grant a “new entrant” bidding credit for 700 MHz Band licenses, finding that the number of licenses available and the package bidding proposal provide ample opportunities for new entrants to provide services.

5. Reserve Prices

Block-Specific Aggregate Reserve Prices. The FCC established a separate “reserve price” for each 700 MHz Band block that will be subject to auction. Reserve prices will be in addition to, and separate from, any minimum opening bid that may be established in the auction. If the aggregate reserve is met for a block, all licenses in that block that have winning bids will be eligible for licensing subject to the FCC’s review of long-form license applications. Consistent with typical FCC spectrum auctions, bidders can raise their own provisionally winning bids to attempt to meet the reserve for licenses in any block.

The FCC directed the Wireless Bureau to adopt and publicly disclose block-specific aggregate reserve prices. The FCC noted that using “comparables” of the recent AWS auction, the aggregate reserve price calculation for the 700 MHz auction might be as follows:

700 MHz Block	700 MHz Bandwidth (MHz)	Geographic Area Type	Comparable AWS Block	AWS Bandwidth (MHz)	Bandwidth Ratio 700/AWS	AWS Bids	700 MHz Reserve*
A	12	EA	C	10	1.2	\$1,491,238,000	\$1,789,485,600
B	12	CMA	A	20	0.6	\$2,268,029,200	\$1,360,817,520
E	6	EA	C	10	0.6	\$1,491,238,000	\$894,742,800
C	22	REAG	F	20	1.1	\$4,174,486,000	\$4,591,934,600
D	10	Nationwide**	D and E	10	1.0	\$1,749,031,000	\$1,749,031,000
Total	62						\$10,386,011,520

* Calculated as the bandwidth ratio times AWS bids.

** Since AWS did not have any nationwide licenses, reserve price calculation is based on 10 MHz REAG licenses.

The Commission noted that based solely on geographic area and spectrum block size, AWS auction results might suggest a D Block reserve of \$1.7 billion, but it may also be appropriate for the D Block licensee to contribute only about 75 percent to 80 percent of such an amount or \$1.33 billion because of the requirement to use the spectrum as part of the public/private partnership.

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Subsequent Auction of Alternative Licenses. If the reserve prices are not met for one or more of the 700 MHz blocks, the FCC would relicense the spectrum without some of the conditions that it applied in the Order. Auction of alternative licenses will be subject to the same reserve prices as the initial auction of licenses. If the FCC splits the C Block in a subsequent re-auction (see below), the Wireless Bureau is delegated authority to determine the appropriate means to reapportion the reserve for the C Block.

Performance Requirements for Alternative A, B and E Block Licenses. The FCC determined that if the auction results for the A, B, and E Block licenses falls below the specific aggregate reserve prices for those blocks, it will re-auction the licenses subject to the population benchmark based performance requirement adopted for the C Block licenses, instead of the geographic based performance requirements adopted in the Order for the A, B and E Block licenses.

Changes to Alternative C Block Licenses. If auction results for the C Block licenses do not satisfy the aggregate reserve price for the C Block, the FCC will offer licenses for the C Block without the open access obligations. In such a case, the FCC will modify the C Block band plan to create two paired blocks of 6 and 5 megahertz each which it will label the C1 and C2 Blocks. The FCC will license the C1 Block based on EAs and the C2 Block based on REAGs.

D Block License. The FCC did not state that it would alter the conditions it adopted for the D Block license if the auction failed to meet the reserve price. The FCC noted that a D Block-specific aggregate reserve of approximately \$1.33 billion is appropriate but if the reserve is not met, the FCC may decide to re-offer the license on the same terms in a subsequent auction or re-evaluate all or some of the applicable license conditions.

Auction Procedures. In providing for a subsequent auction of licenses if block-specific aggregate reserves are not met, the FCC will use the same auction design to the extent possible, including the block-specific aggregate reserve price, anonymous bidding, and package bidding. The reserve prices for each block of licenses will apply in both the initial and subsequent auctions. The FCC directed the Wireless Bureau to adopt procedures for the re-auction and to establish procedures that limit qualified bidders in a subsequent auction of alternative licenses to those that qualify to bid for licenses in all of 700 MHz blocks in the initial auction. The “down payment deadline” in the FCC’s anti-collusion rules will apply until the down payment deadline for the subsequent auction.

6. Statutory Deposit Deadline

To comply with its statutory deposit deadline under the Digital Television Transition and Public Safety Act of 2005 (“DTV Act”), the FCC will deposit whatever payments it receives from successful bidders (including upfront payments, deposits, and final payments) by the Congressionally mandated deposit deadline of June 30, 2008, even if the licensing process has not been completed. The FCC interpreted the term “proceeds” in the DTV Act as consisting of payments made by successful bidders towards their winning bids for licenses made before the deposit deadline.

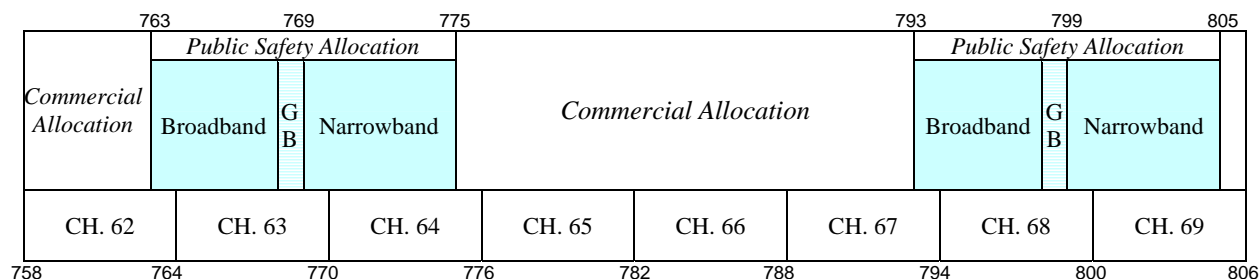
III. 700 MHz Public Safety Spectrum

A. Band Plan

1. Broadband Segment

The FCC adopted the following band plan for the public safety spectrum:

REVISED 700 MHz BAND PLAN FOR PUBLIC SAFETY SERVICES



The FCC designated the lower 5-megahertz paired (10 megahertz total) segment of the 700 MHz Public Safety Band for broadband communications to allow public safety to implement advanced wireless communications systems and to place public safety broadband operations adjacent to spectrum available for commercial broadband.

2. Narrowband Segment

a. Consolidation of Narrowband Channels

The FCC consolidated the public safety narrowband operations in the upper paired 6-megahertz blocks (12 megahertz total) of the 700 MHz Public Safety Band.

b. Timing of Narrowband Consolidation

The FCC required the consolidation of narrowband operations in channels 63 and 68 (and the upper 1 megahertz of channels 64 and 69) no later than the February 17, 2009 DTV transition date. The FCC noted the importance of preventing the commercial D Block licensee and the Public Safety Broadband Licensee from being constrained by the presence of narrowband operations in the public safety broadband allocation.

c. Funding Issues

The D Block licensee will be required to pay costs associated with relocating public safety narrowband operations to the consolidated channels in exchange for the benefits that will accrue to the D Block licensee. The Public Safety Broadband Licensee (discussed below) is responsible for administering the relocation process consistent with the requirements and deadlines in the Order. Every 700 MHz Band public safety licensee (holding individual narrowband authorizations or operating under a State License) is required to provide the following information to the FCC: (1) the total number of narrowband mobile

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and portable handsets in operation in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69, (2) the total number of narrowband base stations serving these handsets in operation, (3) contact information for each identified set of handsets and base stations, as appropriate, (4) the areas of operation of the mobile and portable units (such as defined by the jurisdictional boundaries of the relevant public safety departments), and (5) the location, in latitude and longitude, of the base stations, all as of 30 days after the adoption date of the Order. The information must be accurate as of 30 days after the Order's adoption date. The Public Safety and Homeland Security Bureau will issue a public notice in advance of the effective date announcing the deadline for the certification requirement. The FCC warned that licensees who fail to properly and timely file this certification will forfeit all rights to be reimbursed for associated relocation costs.

Funding of the costs of the relocation of narrowband operation is required only for handsets and base stations that are actually in operation as part of licensed narrowband operations in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69, as of 30 days following the Order's adoption date.

The obligation of the D Block licensee to fund the costs of relocation will be limited to costs directly associated with modifications necessary to implement the relocation of base stations, mobiles, and portables, and not for any unrelated improvements.

The FCC prohibited authorization, whether under individual license or State License, of any new narrowband operations in channels 63 and 68, or in the upper 1 megahertz of channels 64 and 69, as of 30 days from Order's adoption date. Any equipment deployed in these frequencies after this period will be ineligible for relocation funding. Public safety entities may, however, continue to place into operation narrowband equipment in the consolidated narrowband blocks 769-775 and 799-805 MHz.

The winning bidder for the D Block license is required to initiate negotiation of a Network Sharing Agreement ("NSA") with the Public Safety Broadband Licensee on the date it files its long form application or the date that the FCC grants the public safety broadband license, whichever is later. Within 30 days of that date, the two parties are required to jointly submit a relocation plan to the FCC. The plan must be approved by the Chief of the Public Safety and Homeland Security Bureau and must address: (1) the process and schedule for accomplishing narrowband relocation; (2) identification of equipment vendors or other consultants that would perform the necessary technical changes to handsets and base stations; (3) a detailed schedule for completion of the relocation process for every radio and base station identified in the certifications submitted to the FCC; and (4) the total costs of the relocation process.

The total amount that the D Block licensee must pay to cover relocation costs is capped at a \$10 million, an estimate based on radios in operation as of 30 days from the Order's adoption date. The FCC emphasized it does not expect actual costs to reach the cap amount. If the winning bidder of the D Block license and the Public Safety Broadband Licensee reach agreement on an amount below \$10 million, they must report this amount in the relocation plan they submit, with a certification attested to by the winning bidder of the D Block license, the Public Safety Broadband Licensee, and the relevant equipment vendors, verifying that all parties will be bound by the identified costs.

The Public Safety Broadband Licensee will be responsible for implementing the relocation plan, including administering payment of relocation funds to equipment vendors, and ensuring that all affected licensees are relocated in accordance with the relocation schedule in the approved relocation plan. The D Block auction winner will be required to deposit its approved capped amount to finance the narrowband relocation costs into a trust account established by the Public Safety Broadband Licensee no later than the date when the executed NSA is submitted to the FCC. The Public Safety Broadband Licensee may not

draw on this account until the D Block license is granted to the D Block auction winner, and then may use the funds solely for relocating eligible narrowband operations under the Order.

3. Regional Planning Committee Plans

The FCC recognized that its decision to prohibit wideband operations (outside of the waiver process) and to consolidate the narrowband channels will impact existing and pending Regional Planning Committee (“RPC”) plans. However, the FCC found that the substantial benefits resulting from accommodating broadband communications and consolidating the narrowband channels outweigh the near-term concerns of RPCs. Accordingly, all RPCs with approved or filed plans are required to submit amended plans to the FCC within thirty days of the Order’s effective date.

4. Internal Guard Band

The FCC separated the broadband segment and the narrowband segment with a 1 megahertz paired guard band (768-769/798-799 MHz) between the broadband and narrowband segments (2 megahertz paired) because it determined that an internal guard band is needed to minimize interference potential. The Commission declined to adopt proposals to permit coordinated use or to leave the size of the internal guard band to the discretion of the Public Safety Broadband Licensee.

5. Border Issues

The FCC found that by adopting a band plan that implements a shift of the 700 MHz Public Safety Band 1 megahertz lower in the 700 MHz Band, narrowband operations can occur in the uppermost one megahertz of channels 63 and 68 and thus outside of channels 64 and 69 where there will be continued Canadian analog TV operations. The FCC observed that in this case, narrowband operations can occur at 769-770 MHz and 799-800 MHz at the Canadian border without interference concerns. The FCC said that on balance, the benefits of the 1 megahertz downward shift outweigh the limited impact on broadband operations in the border area. The FCC declined to adopt any measures specific to continued TV operations in Mexico and will take future action when appropriate to address matters concerning public safety narrowband operations near the Mexican border.

6. Technical Parameters

a. Broadband Power Limits

The FCC adopted the same PFD limits for public safety broadband as it adopted for the commercial, non-Guard Band licenses in the 700 MHz Band. The FCC will allow 700 MHz public safety broadband base stations employing bandwidths greater than 1 megahertz a maximum of 1kW/MHz effective radiated power (“ERP”) (*i.e.*, no more than 1 kW ERP in any 1-megahertz segment). Stations operating with bandwidths of less than 1 megahertz will be permitted to operate at a power level up to 1 kW ERP over their bandwidth.

The FCC also addressed power limits for rural area operations. It defined “rural areas” as those counties in the United States having a population of fewer than 100 people per square mile based on the most recent Census. The FCC adopted power levels of up to 2 kW/MHz in rural areas and allowed base stations located in these areas operating with bandwidths below 1 megahertz to operate at power levels up to 2 kW ERP over the licensee’s given bandwidth. The FCC declined to adopt a PFD limit in the public safety broadband segment at this time.

The FCC specified that power must be measured in “average” rather than “peak” terms.

b. Broadband Emission Limits

The FCC adopted the following OOB limits for public safety broadband transmissions: for base stations, which will transmit in the 763-768 MHz band, an OOB limit of $76 + 10 \log P$ in a 6.25 kHz band segment in the 769-775 and 799-805 MHz bands; and for mobile/portable stations, which will transmit in the 793-798 MHz band, an OOB limit of $65 + 10 \log P$ in a 6.25 kHz band segment in the 769-775 and 799-805 MHz bands.

The FCC did not adopt an OOB limit for public safety broadband emissions falling outside the bottom part of the band (below 763/793 MHz) with respect to the adjacent D Block spectrum. The FCC reasoned that under the Public/Private Partnership, the Public Safety Broadband Licensee and the D Block licensee will be authorized on adjacent spectrum and will use the same infrastructure.

c. Broadband Interoperability Standard

The FCC concluded that a nationwide public safety broadband interoperability standard is needed because it will lead to development of common network and subscriber equipment, and thus enable the economies of scale for the Public Safety Broadband Licensee. The FCC noted that once a common standard is adopted, all public safety entities will be required to follow this standard to participate in the nationwide broadband network. Rather than setting its own standard, the FCC found it to be more efficient and appropriate to require the D Block licensee and the Public Safety Broadband Licensee to agree to a broadband standard as part of their negotiation of the NSA. The FCC noted that it will have an opportunity to review this standard as part of its overall review of the NSA.

B. Public Safety Broadband Licensee

1. Single Nationwide Geographic Area License

The FCC will license the 700 MHz public safety broadband spectrum as a 10-megahertz block (comprised of paired, 5-megahertz blocks) under a nationwide geographic area license assigned to the Public Safety Broadband Licensee. According to the FCC, institution of a nationwide license will help the Commission achieve its 700 MHz public safety goals of achieving nationwide interoperability within a public safety network that is robust, cost effective, spectrally efficient, and based on a flexible, Internet protocol (“IP”)-based, modern architecture.

2. Eligibility Criteria

The Public Safety Broadband Licensee must be a non-profit entity and must be as broadly representative of the public safety radio user community as possible. No commercial interest may be held in the Public Safety Broadband Licensee, and no commercial interest may participate in the management of the licensee. An organization applying for the Public Safety Broadband License is required to submit written certifications from at least ten geographically diverse state and local governmental public safety entities (at least one certification from a state government entity and at least one from a local government entity) verifying that the entities have authorized the applicant to use the 700 MHz spectrum to provide the authorizing entity with public safety services.

The Public Safety Broadband Licensee will be governed by a voting board consisting of eleven members: two at-large members selected by the Public Safety and Homeland Security Bureau and the Wireless Bureau, and one member from each of the following public safety organizations: the Association of Public Safety Communications Officials, (APCO); the National Emergency Number Association (NENA); the International Association of Chiefs of Police (IACP); the International Association of Fire Chiefs (IAFC); the National Sheriffs' Association; the International City/County Management Association (ICMA); the National Governor's Association (NGA); the National Public Safety Telecommunications Council (NPSTC); and the National Association of State Emergency Medical Services Officials (NASEMSO). The Order specifies certain minimum elements to be included in the articles of incorporation of the Public Safety Licensee and declares that continued FCC oversight of the Licensee is appropriate. The licensee must submit quarterly financial reports to the FCC.

3. Selection Process

The FCC will issue a public notice by September 10, 2007 soliciting applications for the Public Safety Broadband Licensee. The public notice will specify the baseline criteria for selection and describe the procedures and other requirements for submitting applications.

4. Responsibilities of the Public Safety Broadband Licensee

The Public Safety Broadband Licensee will be afforded significant flexibility and control in connection with the construction and use of the nationwide broadband public safety network. The Public Safety Broadband Licensee is assigned the following responsibilities:

- Negotiation of the NSA with the winning bidder at auction for the D Block license.
- General administration of access to the national public safety broadband network by individual public safety entities, including assessment of usage fees.
- Promotion of the needs of the public safety entities that would utilize the national public safety broadband network.
- Interface with equipment vendors (on its own or in partnership with the D Block licensee) to achieve and pass on the benefits of economies of scale for network and subscriber equipment and applications.
- Sole authority to approve (in consultation with the D Block licensee) equipment and applications for use by public safety entities on the public safety broadband network.^{1/}
- Coordination of stations operating on public safety broadband spectrum with public safety narrowband stations, including management of the internal public safety guard band.
- Oversight and implementation of the relocation of narrowband public safety operations in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69.
- Exercise of sole discretion as to whether to permit Federal public safety agency use of the public safety broadband spectrum.
- Responsibility for reviewing requests for wideband waivers and including necessary conditions or limitations.
- Responsibility to facilitate negotiations between the winning bidder of the D Block license and local and state entities to build out on local and state-owned lands.

^{1/} State and local public safety entities must obtain approval from the Public Safety Broadband Licensee prior to employing any equipment or applications on the public safety broadband network. Entities denied the use of equipment or applications on the network may seek FCC review of that decision.

5. Licensing Issues

The 700 MHz Public Safety Broadband License will be issued for a term not to extend beyond February 17, 2019 (which coincides with the term of the NSA and the term of the D Block license). The Licensee will have renewal expectancy. Public safety end users will be permitted to operate without individual licenses under the auspices of the Public Safety Broadband License. The national Public Safety Broadband License may not be disaggregated, partitioned, voluntarily assigned, or control transferred.

IV. 700 MHz Public/Private Partnership

A. Adoption of the 700 MHz Public/Private Partnership

The FCC set aside the D Block in the Upper 700 MHz Band to be licensed to a commercial entity on a nationwide basis for the purpose of entering into the 700 MHz Public/Private Partnership with the Public Safety Broadband Licensee, subject to a number of conditions, requirements, and procedures to safeguard services to public safety entities and address concerns about the success of the partnership.

B. Essential Components of Public/Private Partnership

1. Shared Wireless Broadband Network

The Commission found that, at a minimum, the public/private partnership network must incorporate the following requirements to be implemented by the parties through the NSA (which will also include the detailed specifications of the network that the D Block licensee will construct):

- Specifications for a state-of-the-art broadband technology platform that provides mobile voice, video, and data capability seamlessly interoperable across agencies, jurisdictions, and geographic areas.
- Sufficient signal coverage to ensure reliable operation throughout the service area consistent with typical public safety communications systems (*i.e.*, 99.7 percent or better reliability).
- Sufficient robustness to meet the reliability and performance requirements of public safety, including features such as hardening of transmission facilities and antenna towers to withstand harsh weather and disaster conditions, and backup power sufficient to maintain operations for an extended period of time.
- Sufficient capacity to meet the needs of public safety during emergency and disaster situations.
- Security and encryption consistent with state-of-the-art technologies.
- A mechanism to automatically prioritize public safety communications over commercial uses on a real-time basis and to assign the highest priority to communications involving safety of life and property and homeland security.
- Operational capabilities typical of state-of-the-art public safety systems (such as connection to the public switched telephone network (“PSTN”), push-to-talk, one-to-one and one-to-many communications).
- Operational control of the network by the Public Safety Broadband Licensee to the extent necessary to ensure public safety requirements are met.
- The right for the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment that is used on the network, and the right to purchase its own subscriber equipment from any vendor it chooses, to the extent such specifications and equipment are consistent with reasonable network control requirements established in the NSA.

- Make available to the Public Safety Broadband Licensee at least one handset that would be suitable for public safety use and include an integrated satellite solution capable of operating both on the 700 MHz public safety spectrum and on satellite frequencies.

2. Spectrum Use

The D Block licensee will have the ability to use the public safety broadband spectrum on a secondary and preemptible basis by means of a spectrum leasing arrangement with the Public Safety Broadband Licensee, subject to a requirement that the D Block licensee provide the Public Safety Broadband Licensee with priority access to the D Block license spectrum during emergencies. For this purpose, the FCC waived its spectrum leasing policies and rules insofar as they prohibit public safety licensees from entering into spectrum leasing arrangements for commercial operations. The spectrum leasing arrangement must take the form of a long-term spectrum manager leasing arrangement for the full term of the license, enabling the licensee to accord its spectrum lessee a significant degree of operational autonomy without relinquishing *de facto* control over the licensed spectrum. The FCC does not intend to permit any other leasing arrangements involving the 700 MHz public safety spectrum outside of the unique circumstances of the public/private partnership between the Public Safety Broadband Licensee and D Block licensee.

The D Block licensee's commercial operations in the public safety spectrum must not cause interference to primary users (*i.e.*, public safety users) and must accept interference from primary users at all times. The network must be designed to automatically assign priority to public safety users, to the exclusion and immediate preemption of any commercial use, on a dynamic, real-time priority basis and to guarantee that public safety users suffer no harmful interference, interruption, or degradation of service due to commercial operations in the public safety broadband spectrum.

The potential disruption of commercial service in the D Block license, while appropriate in an emergency situation, must be limited to the most serious occasions to avoid jeopardizing the commercial viability of the 700 MHz Public/Private Partnership. The parties will define "emergency" for purposes of priority access to D Block license spectrum as part of the NSA. On occasions when the parties are unable to agree that an emergency situation requires priority access to the D Block license spectrum, the Public Safety Broadband Licensee may request that the FCC declare, on an expedited basis, that particular circumstances warrant emergency priority access. In order to ensure a prompt response, authority is delegate to the Defense Commissioner to decide such requests.

The D Block licensee must provide appropriate warnings to its commercial customers about potential interruption of their service during emergencies due to preemption by public safety users. The NSA should address how the D Block licensee will satisfy this obligation, including, for example, encouraging the use of devices that can access spectrum other than the D Block. The NSA should also accord some level of priority to emergency 911 calls from commercial users, which may be lower priority than public safety communications but will have priority over all other commercial uses.

3. Performance Requirements

The Order adopts specific performance requirements that include three population-based build-out benchmarks that cover the nationwide D Block license area: the D Block licensee must provide signal coverage and offer service to at least 75 percent of the population of the nationwide D Block license area by the end of the fourth year, 95 percent of the population of the nationwide license area by the end of the

seventh year, and 99.3 percent of the population of the nationwide license area by the end of the tenth year. The 4-, 7-, and 10-year construction benchmarks will be calculated as starting from February 17, 2009,^{2/} the statutorily imposed DTV transition date and the same date that build-out obligations for other unauctioned commercial 700 MHz Band licensees. The FCC will permit the D Block licensee to modify the population-based construction benchmarks where the D Block licensee and the Public Safety Broadband Licensee reach agreement and the full Commission gives its prior approval for a modification. Unlike other commercial licensees, the D Block licensee will not be subject to a "keep-what-you-use" rule. The build-out requirements will be strictly enforced, and if the D Block licensee fails to meet a construction benchmark the FCC may cancel its license, depending on the circumstances.

In order to ensure that less populous areas are not neglected in the D Block licensee's build-out efforts, the D Block licensee must meet initial population benchmarks based on a build-out schedule specified in the NSA consistent with the public safety needs and offer at least one handset suitable for public safety use that includes an integrated satellite solution.

The network and signal levels employed to meet the build-out benchmarks must be adequate for public safety use, and the services made available must be appropriate for public safety entities in those areas. The D Block licensee and Public Safety Broadband Licensee must negotiate inclusion into the build-out schedule coverage of major highways and interstates, as well as incorporated communities with a population in excess of 3,000. To the extent that the D Block licensee chooses to provide commercial services to population levels in excess of the relevant benchmarks, the D Block licensee will be required to make the same level of service available to public safety entities.

4. NSA and Mandatory Provisions

The relationship between the Public Safety Broadband Licensee and the D Block licensee will be governed by the NSA. All parties are required to negotiate in good faith, and the NSA must incorporate all of the substantive rights and obligations of the parties established in the Order. Once the NSA is approved by the FCC and executed by the parties, assuming all other licensing requirements are met, the Commission will grant the D Block license to the winning bidder and compliance with the terms and conditions of the NSA will be license conditions for both the D Block license and the Public Safety Broadband License.

Term of Agreement. The NSA must have a term not to extend beyond February 17, 2019, which coincides with the term of the D Block license. The NSA may be renewed along with the D Block license, subject to FCC approval. The FCC will consider renewal of the license and renewal of the NSA at the same time.

Service Fees. All service fees for public safety service should be specified in the NSA, with the parties left to negotiate reasonable rates in good faith. The FCC expects the parties to negotiate a fee structure for priority access to the D Block in an emergency that will protect public safety users from incurring unforeseen (and unbudgeted) payment obligations in the event that a serious emergency necessitates preemption for a sustained period. The FCC also encouraged the parties to negotiate a fee agreement that incorporates financial incentives for the commercial licensee based on the number of public safety entities and localities that subscribe to the service.

^{2/} The D Block licensee may begin constructing and operating its system prior to February 17, 2009, so long as it provides appropriate interference protection to incumbent co-channel and adjacent channel broadcasters.

The FCC suggests that in negotiation of reasonable rates, typical commercial rates may be useful as a guide, but that the negotiated rates will in fact be lower than typical commercial rates for analogous services. In establishing a D Block license, the FCC anticipated that only a small portion, if any, of the initial construction costs would be recovered through public safety charges and that those fees will be such that public safety entities would be able to afford the services that they require for their public safety functions.

Detailed Build-Out Schedule. The NSA must include a detailed build-out schedule consistent with the mandatory national build-out and performance benchmarks established in the Order. The NSA must identify the specific areas of the country that will be built out by each of the construction deadlines, along with an estimated cost for that portion of the build-out.

Modifications to the NSA. The NSA must specify that any major modification to the terms of the NSA requires not only the agreement of the parties, but also prior Commission approval. All other modifications require prior approval by the Chiefs of the Wireless Bureau and the Public Safety and Homeland Security Bureau on delegated authority.

5. License Term and Renewal Expectancy for the Public/Private Partnership

The initial authorization for the D Block license will be for a term not to extend beyond February 17, 2019. At the end of the 10-year term, the D Block licensee will be allowed to apply for license renewal, although its renewal will be subject to its success in meeting the requirements set forth in the NSA as well as all other license conditions, including meeting the performance benchmark requirements. Because the initial NSA term will expire at the same time, the D Block licensee must also file a renewed or modified NSA for Commission approval at the time of its license renewal application. Due to the other detailed requirements set out by the Order, no separate substantial service showing will be required.

6. Public Safety Satellite Support

The FCC found that satellite service can be a valuable component of a public safety communications network because satellite technology can provide the only means of communicating where terrestrial communications networks have been damaged or destroyed by wide-scale natural or man-made disasters. Satellite services also can enable public safety users to communicate in rural and remote areas that terrestrial services do not reach. Even under the aggressive performance requirements imposed on the D Block licensee, there will remain a number of geographic areas without coverage for a number of years.

For these reasons, the FCC will require that the D Block licensee make available to public safety users at least one handset that includes a seamlessly integrated satellite solution. The handset is not required to use any specific technology, but must be capable of operating both on the 700 MHz public safety spectrum and on the satellite frequency bands or systems of the satellite service providers with which the Public Safety Broadband Licensee has contracted for satellite service. Because handsets offering an integrated satellite solution are not yet available, and their development will take time, the D Block licensee will be required to begin offering at least one handset suitable for public safety use that includes a seamlessly integrated satellite solution only as required by the terms, conditions, and timeframes set forth in the NSA.

The FCC encouraged the Public Safety Broadband Licensee to work with public safety entities throughout the country to facilitate availability of a variety of satellite-based options by such means as using its relatively stronger market power to negotiate large-scale satellite service agreements with

existing providers or working with the D Block licensee to negotiate for satellite service to expand or expedite build-out to rural areas.

7. Local Public Safety Build-out and Operation

Participation in the 700 MHz nationwide public safety network by individual public safety entities will be entirely voluntary. Nevertheless, the Upper 700 MHz Band D Block licensee will have the exclusive right to build and operate the shared wireless broadband network using the 700 MHz public safety broadband spectrum, except that public safety entities are permitted in limited circumstances to construct local broadband and wideband networks in the 700 MHz public safety spectrum subject to certain conditions and restrictions.

Rights to Early Build-out in Areas with a Build-out Commitment. In an area where the D Block licensee has, in the NSA, committed to build out by a certain date, but where a public safety entity wishes a more immediate build-out, the public safety entity may, with the pre-approval of the Public Safety Broadband Licensee, construct in that area at the public safety entity's own expense. The network must be capable of operating on the shared, interoperable broadband network and must meet all of the same requirements and specifications as the shared network required under the NSA. The public safety entity may either construct the network in that area itself, or may require the D Block licensee to construct the network in that area earlier than scheduled, with the public safety entity providing all funds necessary for the early construction of the network. Upon construction, the network must be transferred to the D Block licensee, which shall integrate it into the shared national broadband network constructed pursuant to the NSA.

The parties must, prior to any construction, negotiate an amendment to the NSA regarding the element of the network covered by the early construction. Absent an agreement to the contrary, the amendment must provide that by a date no later than the build-out date specified for that area in the NSA, the D Block licensee will receive full ownership rights and will in turn compensate the public safety entity for the construction of the network, limited to the cost that would have been incurred had the D Block licensee constructed the network itself in accordance with the original terms and specifications of the NSA.

Early build-out is a right to construct only. Operations may not commence on the network until the network is transferred to the D Block licensee. The D Block licensee may include the early build-out for purposes of determining whether it has met its national build-out benchmarks.

The National Capital Region ("NCR") (the area around Washington, DC) has commenced construction and operation of a broadband network in the 700 MHz Band pursuant to an experimental license. Although NCR cannot now obtain a license, because the spectrum will be held by the Public Safety Broadband Licensee, NCR may continue to operate its broadband network until such time as it can be integrated into the nationwide, interoperable broadband network in accordance with the build-out plan set forth in the NSA. NCR is entitled to the same rights and compensation as set established for public safety entities electing to exercise their right to early build out.

Rights to Build Out and Operate in Areas without a Build-out Commitment. In areas where the NSA does not require the D Block licensee to build out the shared broadband network, a public safety entity may build out and operate a separate, exclusive network in the 700 MHz public safety broadband spectrum at any time, provided the public safety entity has received the approval of, and enters into a spectrum leasing arrangement with, the Public Safety Broadband Licensee. Under this option, the public safety entity need not obtain any agreement with the D Block licensee. The Public Safety Broadband Licensee must, however, provide the D Block licensee with notice of the public safety entity's intent to construct in that

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area within 30 days of receipt of a request from a public safety entity wishing to exercise this option, and shall inform the D Block licensee of the public safety entity's anticipated build-out date. If within 30 days of receiving such notice the D Block licensee certifies in writing to the Public Safety Broadband Licensee that it will build out the shared network in the area, within a reasonable time of the anticipated build-out date, then the public safety entity will not have the option of building out and operating its own separate exclusive network in the area.

In addition to compliance with the Commission's spectrum leasing requirements, the public safety entity constructing its own network must ensure that the following conditions are met: (1) the network must provide broadband operations; (2) the network must be fully interoperable with the shared national broadband network required by the NSA; (3) the network must be available for use by any public safety agency in the area; and (4) the network must satisfy any other terms or conditions required by the Public Safety Broadband Licensee. The separate network may not operate using any spectrum associated with the D Block license. Under no conditions may a public safety entity construct a network using 700 MHz public safety broadband spectrum in an area absent the approval of the Public Safety Broadband Licensee.

Conditions for Waiver to Allow Limited and Temporary Wideband Operations. Wideband operations (using 50 kHz wide channels) in the 700 MHz public safety spectrum will be permitted only upon grant of a properly supported request for waiver request accompanied by a letter from the Public Safety Broadband Licensee, confirming that the proposed wideband deployment is not inconsistent with the broadband deployment plan for the affected or adjacent service areas. All requests for waiver must include any agreed-upon conditions and a plan for transition to the nationwide broadband, interoperable network. Petitions for waiver in the narrowband spectrum must also include a letter from the appropriate regional planning committee or state licensee confirming that the proposed wideband deployment will not disrupt any regional or state planning efforts that are underway.

The FCC said that applicants seeking waiver relief to deploy wideband networks in the public safety broadband spectrum face a very high hurdle. The FCC will not entertain any request for waiver seeking to permit wideband operations in the broadband segment in areas scheduled for broadband deployment within the first 3 years of the build-out plan for the national public safety broadband network. In addition, the FCC will not grant any waiver request for any wideband deployment in the broadband segment that does not include a detailed plan, accompanied by attestation, specifying how and by what date the wideband applicant will integrate its proposed wideband system into the national broadband network. All devices operating on the wideband system must be designed such that they also must be interoperable with the nationwide, broadband network. The authority granted for any wideband operations in the broadband segment will expire automatically upon the D Block licensee's initiation of service in areas where wideband has been deployed. Wideband authority granted by waiver in the public safety segment of the 700 MHz Band will be secondary to primary narrowband or broadband applications. A public safety entity must certify in its waiver request its acknowledgement that it may not seek reimbursement for any costs involved in converting the wideband system to the national broadband network upon completion of the broadband network in the subject area.

License terms for wideband operations granted under waiver will be limited to no more than 5 years, and may be granted for less time depending on the circumstances. Renewal requests must include a demonstration that continued operation of the wideband system is in the public interest and must be accompanied by a letter from the Public Safety Broadband Licensee confirming that continuing wideband operations are not inconsistent with the broadband deployment plan for the affected or adjacent service areas. The license term for any renewal of waiver will not exceed 3 years and a wideband waiver licensee may receive only a single extension.

C. Safeguards Relating to the Public/Private Partnership

1. Rules for Establishment, Execution, and Application of the NSA

The D Block license is conditioned on the following requirements to ensure the establishment and execution of the NSA in a timely manner while safeguarding the public interest:

Approval of NSA as Pre-Condition for Granting the D Block license. The D Block license will not be issued until the Commission has approved the NSA and following such approval, the parties execute the NSA and file an executed copy with the Commission. The D Block license may engage in network build-out during the NSA negotiation period and prior to grant of the license, but any such build-out may occur only with the approval of the Public Safety Broadband Licensee. Such construction is conducted at the sole risk of the applicant, is subject to FCC notification to stop such build-out, and cannot result in commercial operation unless and until the FCC has granted the D Block license.

Timeframe for Negotiation. The parties are required to commence negotiations on the NSA on the date that the winning bidder of the D Block license files its long form application or the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later. Negotiations must be concluded not later than six months after the commencement date. The Commission will act on the NSA within 60 days of receipt. If the parties have not reached agreement on all terms of the NSA by the end of the six-month period, they must notify the Commission not later than five days after the expiration of the six-month period of the terms agreed upon, the nature of the remaining issues and each party's position on each issue, whether additional negotiation is likely to produce an agreement, and, if so, a proposed deadline for completing the agreement.

Requirement of Good Faith. The parties are required to negotiate in good faith and to act in good faith in the performance of the NSA. To provide assurance that negotiations are proceeding in good faith, the Commission will oversee negotiation of the NSA and will play an active role in the resolution of any disputes, both resulting from the negotiations and once the parties are operating under the terms of the NSA.

Progress Reports During Negotiations. The winning bidder for the D Block license must file an initial report within 10 days of the commencement of the negotiations period certifying that active and good faith negotiations have begun, providing the date on which they commenced, and providing a schedule of the initial dates on which the parties intend to meet for active negotiations, covering at a minimum the first 30-day period. Two FCC staff members, one from the Wireless Bureau and one from the Public Safety and Homeland Security Bureau, will be present at all stages of the negotiation of the NSA as neutral observers.^{3/} Beginning 3 months after the triggering of the 6-month negotiation period, the winning bidder for the D Block license and the Public Safety Broadband Licensee must jointly provide detailed monthly reports on the progress of the negotiations throughout the remainder of the negotiations. The FCC will actively monitor and, if required, participate in the negotiation process.

Resolution of Negotiation Disputes. Either upon notice of a dispute at the end of the six-month negotiation period, or on their own motion at any time, the appropriate FCC Bureau Chiefs may take actions to resolve disputes, including, but not limited to: (1) granting additional time for negotiation; (2) issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent

^{3/} The FCC staff will not act as arbitrators. Disputes must still seek Commission involvement for resolution.

with their decision; (3) directing the parties to further brief the remaining issues in full for immediate Commission decision; and/or (4) immediate denial of the long-form application filed by the winning bidder for the D Block license. Remedies may not include ordering private third-party arbitration.

Licensing Rules and Procedures Applicable to the D Block license. FCC competitive bidding rules applicable to other commercial licenses in the 700 MHz Bands will apply to the winning bidder for the Public/ Private Partnership License. If the winning bidder for the D Block license fails to comply with the procedures established for negotiation or dispute resolution, fails to receive final Commission approval of an NSA, or fails to execute an approved NSA, (a) it shall be disqualified from holding the D Block license, (b) the license application will be denied, and (c) it will be deemed to have defaulted and will be subject to all payments and obligations under FCC rules.

Process for Final Approval. After conducting its review of the NSA, the FCC may approve the NSA in its entirety, approve it with modifications, or require the parties to address additional terms or re-draft existing terms within a specified timeframe. Following approval with or without modifications, the parties must execute the NSA and submit a copy of the executed NSA to the Commission within ten days of approval.

2. Ongoing Conditions for the Protection of Public Safety Service

To address the possibility that problems will arise in the implementation of the NSA or the operation of the common network, the FCC establishes a number of inter-related requirements.

Requirements Relating to Organization and Structure of the Public/Private Partnership. The winning bidder for the D Block license is required to form separate special purpose entities, which will be “bankruptcy remote,” to hold the D Block license, hold the network assets, and act as the Operating Company. The D Block licensee will lease the spectrum rights associated with the D Block license to the Operating Company pursuant to the Commission’s spectrum leasing rules. The Operating Company will also be leased secondary use rights associated with the primary license held by the Public Safety Broadband Licensee. It will be a condition of the D Block license and the Public Safety Broadband License that all special purpose entities and any leasing or other commercial agreements created to implement the public/private partnership will be subject to the Communications Act and the Commission’s rules and regulations.

In connection with establishing the required bankruptcy remote special purpose entities, the FCC will require the issuance of one or more legal opinion letters from bankruptcy counsel, chosen by the winning bidder of the D Block license and acceptable to the Commission, that clearly states, subject only to customary assumptions, limitations and qualifications that none of the winning bidder, the Operating Company, or any party to the NSA or other related agreements will be substantively consolidated with any entity. The scope of the opinion must also cover such other opinions as the FCC requests.

Prohibition on Discontinuance of Public Safety Operations. The D Block licensee is prohibited from discontinuing or degrading the broadband network service provided to the Public Safety Broadband Licensee or to public safety entities unless done at the request of the entities in question or it has first obtained FCC approval. The D Block licensee must notify affected public safety entities and the Public Safety Broadband Licensee at least 30 days prior to any unrequested discontinuance or degradation of network service.

Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C.

SUMMARY OF FCC 700 MHZ ORDER
AUGUST 14, 2007

Failure to Comply with the NSA or the Commission's Rules. Failure to comply with the Commission's rules or the terms of the NSA may result in cancellation of the D Block license, depending on the circumstances, and awarding it to a new licensee. In the event that the Commission determines that the D Block license must be cancelled, an order will be issued canceling the license and announcing the process for awarding rights to the spectrum to a new licensee. Pending the award to a new licensee, the Operating Company will be issued STA to continue to provide both commercial and public safety service in the Public/Private Partnership spectrum.

To further ensure that services to public safety are not threatened by cancellation or otherwise, the NSA will require the granting of (a) an irrevocable and assignable right of first refusal if the network and network assets are otherwise to be sold; and (b) an irrevocable and assignable option in favor of the Public Safety Broadband Licensee to acquire the network and all network assets if and whenever the D Block license is cancelled or terminated for a consideration equivalent to the fair market value ("FMV") of the tangible and intangible assets. The NSA must further provide that, in the event that the D Block license is awarded to a new entity, the Public Safety Broadband Licensee's right to purchase the network assets shall be reassigned to the new D Block licensee.

In the event that the Public Safety Broadband Licensee fails to adhere to the terms of the NSA or comply with the Commission's rules to an extent giving rise to license cancellation, the Chiefs of the Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau are empowered to jointly determine an appropriate remedy. Potential remedies include, but are not limited to, canceling the license, assigning the license to another entity, directing the Public Safety Broadband Licensee to transfer the assignable option to purchase the assets at fair market value, ordering specific performance, or ordering removal and replacement of individual officers, directors or member organizations of the Public Safety Broadband Licensee.

Resolution of Disputes after Grant of the D Block license. The parties to the NSA may at any time submit a complaint based on a claim that the other party has deviated from the terms of the NSA, or a petition for a declaratory ruling to resolve the proper interpretation of an NSA term or provision. The Commission may, however, as an alternative to adjudicating the issues, require the parties to first seek a settlement to the dispute or authorize them to resolve the dispute through litigation or other means. In the event it decides to adjudicate the issues, the Commission will have full authority to interpret not only its rules but also all of the provisions of the NSA. The Chiefs of the Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau are delegated joint responsibility for adjudicating any disputes that arise during performance of the NSA. Bureau level adjudications of NSA disputes must be completed within 45 days. The parties may seek review by the Commission of any bureau-level adjudication.

Reporting Obligations. The parties must jointly file quarterly reports with the Commission that must include detailed information on the areas where broadband service has been deployed, how the specific requirements of public safety are being met, audited financial statements, which public safety entities are using the broadband network in each area of operation; what types of applications (*e.g.*, voice, data, video) are in use in each area of operation to the extent known; and the number of declared emergencies in each area of operation. The D Block licensee and Public Safety Broadband Licensee also have joint responsibility to register the base station locations with the Commission, providing basic technical information, including geographic location.

D. Other Issues

1. Bidding Credits

Applicants that are eligible to be licensed as designated entities will be provided with bidding credits in the auction of the D Block license. Pursuant to existing small business size standards, eligible bidders with average attributable gross revenues for the last 3 years not exceeding \$15 million or \$40 million, respectively, may be eligible for bidding credits of 25 percent or 15 percent, respectively

2. License Partitioning, Disaggregation, Assignment, and Transfer

Geographic partitioning and spectrum disaggregation is prohibited for both the D Block licensee and the Public Safety Broadband Licensee. Such restriction is necessary to ensure the integrity of the nationwide broadband network and the public/private partnership. The D Block licensee would be permitted to assign or transfer its license subject to Commission review and prior approval.

3. Commercial Service Issues

a. Wholesale and Open Access Proposals

The FCC declines to require that the D Block licensee operate exclusively on a “wholesale” or “open access” basis, but provides the D Block licensee with flexibility to provide wholesale or retail services or other types of access to its network that comply with FCC rules and the NSA.

b. Roaming Proposal

The FCC will not impose any special roaming requirements on the D Block Licensee, but will defer to the broader context of the pending roaming proceeding any determination of whether there are public interest benefits in also requiring automatic roaming to be provided by other commercial licensees.

c. Applicability of CALEA, E911, and Other Requirements

E911, CALEA, and other regulatory requirements will apply to services provided using Public/Private Partnership spectrum to the extent and only to the extent that these requirements apply to similar services provided elsewhere in the 700 MHz Band.