

March 21, 2007

*Via Electronic Filing*

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: WT Docket Nos. 96-86, 06-150, and 06-169  
*Written Ex Parte*

Dear Ms. Dortch:

AT&T recently submitted a letter to the Commission in which it criticized several aspects of the Broadband Optimization Plan (“BOP”) as well as the 5.5 MHz commercial building blocks proposed by Access Spectrum, LLC and Pegasus Communications Corporation in the above-referenced dockets.<sup>1</sup> Access Spectrum and Pegasus hereby respond to the inaccuracies contained in the AT&T Letter. In summary:

- The public safety band plan alternative recommended by AT&T would fail to give public safety agencies adequate broadband capabilities, would endanger narrowband voice interoperability in states that border Canada and lacks a proposal for funding the costs associated with public safety narrowband consolidation.
- The bases for AT&T’s legal opposition are flawed and, if accepted, would unnecessarily limit Public Safety broadband capabilities.
- AT&T’s technical criticisms relating to interference issues under the BOP are mistaken. In fact, AT&T fails to offer a technical analysis to counter the intensive analysis performed by the 700 MHz Technical Working Group.
- Finally, the existing record belies AT&T’s contention that there is a technical disadvantage to increasing the commercial block sizes from 5 MHz building blocks to 5.5 MHz building blocks.

The record clearly demonstrates that the availability of the 700 MHz spectrum will offer a one-time opportunity to address the undisputed need for public safety mobile broadband spectrum, and that in order to address this need, the Commission must adopt the BOP immediately.

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<sup>1</sup> Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T Services, Inc., WT Docket Nos. 96-86, 06-150 and 06-169 (Feb. 23, 2007) (“AT&T Letter”).

## Public Safety Band Plan

The BOP, *inter alia*, consolidates public safety narrowband channels, allows broadband operations in the public safety band, and allocates an additional 3 MHz of spectrum to Public Safety. AT&T acknowledges the merit in consolidating the public safety narrowband channels.<sup>2</sup> However, it suggests that merely consolidating the public safety narrowband channels and allowing broadband operations on public safety spectrum previously dedicated to wideband, would be sufficient to provide the public safety benefits of the BOP.<sup>3</sup> AT&T is incorrect. Its proposal is the same 6+6 plan proposed by Alcatel-Lucent<sup>4</sup> and advocated by Verizon Wireless,<sup>5</sup> the deficiencies of which Access Spectrum and Pegasus have explained in detail on several occasions.<sup>6</sup> The Association of Public-Safety Communications Officials-International (“APCO”), the International Association of Chiefs of Police (“IACP”), the International Association of Fire Chiefs (“IAFC”), the Major Cities Chiefs Association (“MCCA”), the Major County Sheriffs’ Association (“MCSA”) and the National Sheriffs’ Association (“NSA”) recently explained that the 6+6 plan is “not a viable option” and urged the Commission to reject

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<sup>2</sup> See AT&T Letter at 1.

<sup>3</sup> See *id.*

<sup>4</sup> See, e.g., Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Michael McMenamin, Global Government & Public Affairs, Alcatel-Lucent, WT Docket Nos. 96-86 and 06-169 (Jan. 26, 2007).

<sup>5</sup> See “The 700 MHz Guard Bands Are Essential to Stop Potential Interference to Public Safety and Commercial Licensees,” filed by letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Donald C. Brittingham, Director – Spectrum Policy, Verizon Wireless, WT Docket No. 06-169 (Feb. 15, 2007).

<sup>6</sup> See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Michael Gottdenker and Ruth Milkman on behalf of Access Spectrum, LLC and Marshall Pagon and Kathleen Wallman on behalf of Pegasus Communications Corporation, WT Docket Nos. 96-86 and 06-169 (Feb. 14, 2007) (“Access/Pegasus Feb. 14 Letter”); see also Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Michael Gottdenker, Andrew Rein, Ruth Milkman and Kenneth Boley on behalf of Access Spectrum, LLC and Marshall Pagon, Cheryl Crate, and Kathleen Wallman on behalf of Pegasus Communications Corporation, WT Docket No. 06-169 (Feb. 28, 2007) (“Access/Pegasus Feb. 28 Letter”); Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Ruth Milkman on behalf of Access Spectrum, LLC and Kathleen Wallman on behalf of Pegasus Communications Corporation, WT Docket Nos. 96-86 and 06-169 (March 2, 2007) (“Access/Pegasus March 2 Letter”).

it.<sup>7</sup> The National Public Safety Telecommunications Coalition similarly urged rejection of the 6+6 Plan.<sup>8</sup>

To summarize briefly, the plan proposed by AT&T has not been vetted technically, and does not solve the Canadian border issue, leaving the fourteen states in the border regions vulnerable to having no interoperability for their state-wide, mission-critical voice systems until Canada agrees to vacate the remaining television broadcast channels. There are no current plans to vacate Channels 64 and 69 in Canada. If past experience is any guide, it seems likely that the Canadian broadcasters will continue to operate in those channels for some period of time, at least 5 years, and perhaps 10 years or longer. In the meantime, New York State, along with the other border states, would be stymied in efforts to have operable narrowband and interoperable narrowband in the border regions.<sup>9</sup> In addition, the failure to add the additional 3 MHz of spectrum to the public safety allocation would significantly hamper – and could eliminate – the ability of certain states to deploy broadband networks since Canada has primary rights to up to 70 percent of the 24 MHz of spectrum currently allocated to Public Safety. The BOP includes 3 MHz of additional broadband spectrum that is vital for states in this situation. The additional spectrum provided by the BOP to Public Safety also permits Public Safety to manage its own guard bands, and presents Public Safety with the unique opportunity to use 1 MHz for much-needed “talk-around” capabilities.<sup>10</sup> Finally, the 6+6 Plan offers no proposal to fund the conversion of existing 700 MHz public safety narrowband systems or the necessary CAPRAD updates. The 6+6 Plan is not only inferior to the BOP, but it also is incapable of providing adequate, nationwide broadband capabilities to Public Safety and resolving the corresponding issues that public safety agencies have emphasized.

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<sup>7</sup> See Letter to Fred Campbell, Chief, Wireless Telecommunications Bureau from Wanda McCarley on behalf of APCO, Alan Caldwell on behalf of IAFC, and Harlin McEwen on behalf of IACP, MCC, NSA and MCSA, WT Docket Nos. 96-86 and 06-169 (March 8, 2007).

<sup>8</sup> Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Vincent R. Stile, Chair, National Public Safety Telecommunications Council, WT Docket Nos. 96-86, 06-150 and 06-169 and PS Docket No. 06-229, at 3 and n.1 (Feb. 23, 2007); *see also* Letter to Fred Campbell, Chief, Wireless Telecommunications Bureau, Federal Communications Commission from Vincent R. Stile, Chair, National Public Safety Telecommunications Council, WT Docket Nos. 96-86, 06-150 and 06-169 and PS Docket No. 06-229 (March 14, 2007).

<sup>9</sup> See Access/Pegasus Feb. 14 Letter at 3-4; *see also* “Optimizing the Upper 700 MHz Band,” Attachment to Letter to Marlene H. Dortch, Secretary, Federal Communications Commission, from Ruth Milkman on behalf of Access Spectrum, LLC (Feb. 23, 2007).

<sup>10</sup> See Comments of Access Spectrum, L.L.C., Columbia Capital III, LLC, Intel Corporation, and Pegasus Communications Corporation, WT Docket No. 96-86 at 6, 15 (June 6, 2006).

## Legal Authority

The BOP is the only plan in the record that would fulfill the Commission's obligation to manage spectrum in a way that promotes the safety of life and property,<sup>11</sup> and it is fully consistent with the Communications Act. AT&T alleges that the BOP conflicts with sections 337 and 309(j) of the Communications Act, as amended.<sup>12</sup> Access Spectrum and Pegasus explain herein that AT&T's legal analysis is either unnecessarily restrictive or simply wrong.

*Section 337.* Access Spectrum and Pegasus have previously explained that allocating a portion of the B Block to public safety use is consistent with section 337.<sup>13</sup> AT&T objects to the BOP's reallocation of a portion of the B Block to public safety use, claiming that this violates section 337 by allocating 27 MHz to public safety use and 33 MHz to commercial use.<sup>14</sup> Fundamentally, however, section 337 requires the Commission to auction a total of 36 MHz of spectrum for commercial use in the 700 MHz band and, at the end of the day, it will have done so: 6 MHz in 2000 and 2001 and the remaining 30 MHz in the upcoming auction. Access Spectrum and Pegasus have explained in more specific terms on several occasions<sup>15</sup> that the Commission already has fulfilled the requirements of section 337 with respect to the Upper 700 MHz A and B Blocks by reallocating 36 MHz of the Upper 700 MHz band (including the A and B Blocks) to make the spectrum available for commercial use,<sup>16</sup> and completing an auction of the A and B Block spectrum.<sup>17</sup> Having discharged its section 337 obligations with respect to the A and B Blocks, the Commission retains the authority conferred on it by the other provisions of the Communications Act.

As explained above, the 6+6 plan advocated by AT&T does not present a viable broadband option for public safety, particularly those public safety agencies located in the fourteen states that border Canada. The BOP is the only public safety band plan in the record that can provide Public Safety with robust broadband capabilities nationwide (and the only one that resolves the corresponding issues that public safety agencies have said are essential to

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<sup>11</sup> 47 U.S.C. § 151.

<sup>12</sup> AT&T Letter at 2-3.

<sup>13</sup> See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Ruth Milkman, counsel to Access Spectrum, LLC and Kathleen Wallman, Adviser to Pegasus Communications Corporation, WT Docket Nos. 96-86, 06-150, 06-169 (Dec. 12, 2006) ("Access/Pegasus Dec. 12 Letter"); see also Access/Pegasus March 2 Letter, *supra* note 6.

<sup>14</sup> AT&T Letter at 2.

<sup>15</sup> See Access/Pegasus Dec. 12 Letter; see also Access/Pegasus March 2 Letter, *supra* note 6.

<sup>16</sup> See *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, Report and Order, 12 FCC Rcd 22953, ¶ 17 (1998).

<sup>17</sup> "700 MHz Guard Bands Auction Closes; Winning Bidders Announced," Public Notice, 15 FCC Rcd 18026 (Sept. 25, 2000) (DA 00-2154).

resolve). In light of the critical and immediate need for public safety wireless broadband capabilities, AT&T's inadequate proposal and its crabbed view of section 337 fail to permit spectrum management in a manner that adequately promotes the safety of life and property. By contrast, the interpretation of section 337 advocated by Access Spectrum and Pegasus allows the Commission to manage the A and B Blocks in a manner that promotes the safety of life and property – one of its prime statutory directives – and therefore is consistent with the canon of statutory interpretation that “where possible, provisions of a statute should be read so as not to create a conflict.”<sup>18</sup>

AT&T contends that Access Spectrum and Pegasus' statutory interpretation is “wholly without merit,” claiming that it “would violate Congressional intent and no court would condone a blatant end-run around Section 337.” Yet, AT&T fails to cite a single case in support of its legal position. Indeed, AT&T fails to provide even a cursory explanation of its legal interpretation. Instead, it supports its proposition by over-simplifying and distorting the legal position of Access Spectrum and Pegasus to the point of inaccurately representing it, claiming that the Access Spectrum/Pegasus theory would permit the FCC to “simply reallocate” to commercial use all of the 700 MHz public safety spectrum identified in section 337.<sup>19</sup> AT&T misrepresents Access Spectrum and Pegasus' theory as standing for the proposition that mere allocation is an end in itself and there is no need to permit actual use in accordance with section 337's allocation or to have allocation decisions be guided by other parts of the statute. Access Spectrum and Pegasus do not advance a theory in which allocation is made for allocation's sake; the B Block has been available for commercial use since it was assigned over six years ago. Nor do Access Spectrum and Pegasus advance a theory in which the Commission's authority is completely unmoored. To the contrary, the agency must act in accordance with the enumerated goals of the Communications Act. Access Spectrum and Pegasus's interpretation is consistent with the Commission's view that it must auction 30 MHz for commercial use<sup>20</sup> and with its efforts to develop rules for the 700 MHz spectrum, including the 24 MHz that has been allocated to public safety use, that would enable full and productive use for Public Safety's current and foreseeable needs.<sup>21</sup> Access Spectrum and Pegasus simply interpret the requirements of section 337 as applied to the A and B Block spectrum in light of a set of facts that includes the A and B Block spectrum already having been allocated, auctioned, licensed, and available for commercial

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<sup>18</sup> See Access/Pegasus March 2 Letter at 6 (citing *Louisiana Public Service Comm'n v. FCC*, 476 U.S. 355, 370 (1986) and *FDA v. Brown & Williamson Tobacco Corp.* 529 U.S. 120, 133 (2000)).

<sup>19</sup> AT&T Letter at 3.

<sup>20</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Notice of Proposed Rulemaking, Fourth Further Notice of Proposed Rulemaking, and Second Further Notice of Proposed Rulemaking, 21 FCC Rcd 9345, ¶ 5 (2006).

<sup>21</sup> See generally *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, Eighth Notice of Proposed Rulemaking, 21 FCC Rcd 3668 (2006) (“8<sup>th</sup> NPRM”).

use for over six years.<sup>22</sup> Access Spectrum and Pegasus's reading of section 337 permits the Commission to comply not only with section 337, but also with the other important statutory directives, including the promotion of safety of life and property.

*Section 309(j)*. The BOP proposes to augment the A Block with 500 kHz paired of former B Block spectrum. AT&T argues that this proposal is "a windfall for the A Block licensees"<sup>23</sup> apparently failing to grasp that Access Spectrum and Pegasus have proposed a spectrum swap, in which they would begin and end with approximately the same number of MHz-pops. The remaining spectrum, now configured in 1.5 MHz blocks, would be auctioned consistent with section 309(j).

After allocating 1.5 MHz paired (3 MHz total) of the B Block to public safety use, there will be 500 kHz paired (1 MHz total) of former B Block spectrum remaining in the commercial allocation. The BOP calls for the Commission to augment the A Block with this 500 kHz from the B Block to create a 1.5 MHz paired A Block.<sup>24</sup> Because of the limited applications it could support, a 500 kHz paired block, standing alone, would be less valuable than it would be if it were combined with a larger block of spectrum. The 1 MHz A Block is an ideal adjunct because, standing alone, it cannot support next generation broadband applications with standard commercial technology. When the spectrum is combined, a modified 1.5 MHz A Block could support broadband operations either on its own or in combination with another spectrum block.<sup>25</sup>

This reconfiguration is accomplished in part through a spectrum swap in which existing licensees turn in some licenses and augment others. AT&T erroneously portrays the BOP as

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<sup>22</sup> The appeal of this approach is enhanced by the independent development of other events. For example, a large part of the B Block spectrum was returned in a separate FCC proceeding thereby facilitating its reallocation. In addition, as Access Spectrum and Pegasus have explained, since the A and B Block spectrum was auctioned, narrowband operations have fully developed in other bands and it has become apparent that the 700 MHz band will be used for broadband operations. The Commission is presented with a scenario in which the 700 MHz spectrum must be reconfigured in order to optimize it for both commercial and public safety operations.

<sup>23</sup> AT&T Letter at 3.

<sup>24</sup> See Comments of Access Spectrum, L.L.C., Columbia Capital III, LLC, Intel Corporation, and Pegasus Communications Corporation, WT Docket No. 96-86 (June 6, 2006); Comments of Access Spectrum, LLC, Columbia Capital III, LLC, Pegasus Communications Corporation and Telcom Ventures, LLC, WT Docket No. 06-150 (Sept. 29, 2006) ("Access Spectrum/Pegasus Sept. 29 Comments"); Comments of Access Spectrum, LLC and Pegasus Communications Corporation, WT Docket Nos. 96-86 and 06-169 (Oct. 23, 2006) ("Access/Pegasus Oct. 23 Comments"); Reply Comments of Access Spectrum, LLC and Pegasus Communications Corporation, WT Docket Nos. 96-86 and 06-169 (Nov. 13, 2006) ("Access Spectrum/Pegasus Nov. 13 Reply Comments").

<sup>25</sup> See Access Spectrum/Pegasus Sept. 29 Comments at n.13.

“simply giv[ing] each license another 1 MHz of spectrum,” characterizing it as a “50 percent increase in spectrum.”<sup>26</sup> AT&T fails to recognize that the A Block licensees are also B Block licensees, which are voluntarily turning in their 2 MHz paired B Block licenses (thereby making the enhancements to Public Safety possible). The A Block licensees also will turn in A Block licenses in certain geographies. Under the BOP, A Block licensees will not receive any more spectrum to augment their licenses, measured on a MHz-pop basis, than they give up in the form of A and B Block spectrum.<sup>27</sup>

AT&T also is incorrect in asserting that the spectrum swap would result in no corresponding benefit. To the contrary, the B Block spectrum that will be made available to public safety use allows the BOP to avoid the fatal flaws of the 6+6 proposal, enabling full public safety broadband, nationwide, and permitting state-wide interoperable narrowband deployments, while significantly reducing the potential for interference to narrowband operations.

The Communications Act allows the Commission to proceed in this manner, giving the FCC authority to modify any license “either for a limited time or for the duration of the term thereof, if *in the judgment of the Commission* such action will promote the public interest, convenience, and necessity or the provisions of this Act . . . .”<sup>28</sup> Courts have interpreted that statutory provision as permitting the Commission to authorize spectrum swaps.<sup>29</sup> In the *800 MHz Rebanding Order*, the Commission discussed its authority to order spectrum swaps and described its history of doing so.<sup>30</sup> That decision was upheld on appeal.<sup>31</sup> Augmentation of the A Block as proposed in the BOP is consistent with section 309(j) and existing precedent.

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<sup>26</sup> AT&T Letter at 3. Aloha Partners is similarly misinformed about the BOP and therefore mischaracterizes it as a “give away,” rather than recognizing it as a reconfiguration that would leave existing licensees with the same amount of spectrum, measured in MHz-pops. *See* Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Charles C. Townsend, President & CEO, Aloha Partners, L.P., WT Docket No. 06-169 at 2 (March 6, 2007).

<sup>27</sup> *See* Access/Pegasus Oct. 23 Comments at 19.

<sup>28</sup> 47 U.S.C. § 316(a) (emphasis supplied).

<sup>29</sup> *See, e.g., Rainbow Broadcasting Co. v. FCC*, 949 F.2d 405, 410 (DC Cir. 1991)(“The FCC derives from 47 U.S.C. §§ 309 and 316 of the Communications Act its authority to approve channel exchanges and protect them from competitive bidding.”).

<sup>30</sup> *See Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels; Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems; Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service; Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service; Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for use by the Mobile*

## Interference Protection

The BOP has passed a thorough technical review and the TWG concluded that “there are no technical issues remaining that would prevent the adoption of the BOP by the FCC.”<sup>32</sup> However, AT&T raises concerns regarding near/far interference and intermodulation interference under the BOP. Both of its concerns are addressed in the comments submitted by Access Spectrum and Pegasus, the TWG Reports and, most recently, in the Access Spectrum/Pegasus letter to the Commission responding to similar concerns raised by Verizon Wireless.<sup>33</sup>

AT&T first raises the potential for interference from cellularized commercial broadband operations into adjacent public safety spectrum.<sup>34</sup> AT&T’s fears are premised on a misunderstanding of the BOP. The Second TWG Report recommends technical rules that effectively ensure that any public safety broadband system deployed in the 1.5 MHz directly adjacent to commercial spectrum (the reconfigured A Block) will be compatible with commercial broadband systems, because public safety operations in that spectrum will receive only the level of protection provided for commercial operations in the Upper 700 MHz band, including protections from OOBE. Under the BOP, the 1.5 MHz paired located at 762.5-764/792.5-794 would be buffer spectrum internal to the public safety allocation, in which only broadband operations would be permitted.<sup>35</sup> Public safety operations in this public safety buffer spectrum would be protected from commercial interference only to the same extent as typical commercial operations are protected today.<sup>36</sup> Thus, in areas where Public Safety would deploy commercial-like systems (likely to be in urban and suburban areas), Public Safety would be free to deploy across the full public safety broadband segment. By contrast, in areas where Public Safety would deploy wideband or non-cellular broadband systems (likely to be in rural areas),

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*Satellite Service*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶ 67 (2004).

<sup>31</sup> *Mobile Relay Assocs. v. FCC*, 457 F.3d 1 (D.C. Cir. 2006).

<sup>32</sup> Second Report of the 700 MHz Technical Working Group, transmitted via letter from Ruth Milkman, Counsel for Access Spectrum, LLC and Kathleen Wallman, Adviser to Pegasus Communications Corporation, WT Docket Nos. 06-169 and 96-86 at 2 (Jan. 26, 2007) (“*Second TWG Report*”).

<sup>33</sup> See Access Spectrum/Pegasus Nov. 13 Reply Comments at 5-18; see generally *Second TWG Report*; see also Report of the 700 MHz Technical Working Group, transmitted via letter from Ruth Milkman, Counsel for Access Spectrum, LLC and Kathleen Wallman, Adviser to Pegasus Communications Corp., WT Docket Nos. 06-169 and 96-86 (Oct. 23, 2006) (“*First TWG Report*”); Access/Pegasus Feb. 28 Letter at 6-18.

<sup>34</sup> AT&T Letter at 4.

<sup>35</sup> Access/Pegasus Feb. 28 Letter, at 7, 10-11.

<sup>36</sup> *Id.* at 10.

Public Safety would need to “back off” the edge of its allocation, creating a self-imposed guard band of 1.5 MHz within its own spectrum.<sup>37</sup>

AT&T’s attempts to draw comparisons to the 800 MHz band are counter-factual. At 800 MHz, fully deployed commercial cellular operations and fully deployed non-cellular public safety operations existed on interleaved channels. Under the BOP, public safety narrowband systems would be protected by two 1 MHz guard bands controlled by Public Safety, and the narrowband systems would not be fragmented and interleaved with commercial spectrum as in the 800 MHz band. Thus, the BOP would create a configuration with a distinct absence of the issues that have plagued the 800 MHz band.<sup>38</sup>

Finally, the Second TWG Report concluded that the BOP would decrease the risk of intermodulation interference to narrowband public safety operations.<sup>39</sup> That risk is significant under the current band plan and rules, as well as under the proposals featured in the 8<sup>th</sup> NPRM. By adopting the BOP, the Commission would take necessary action to avoid such interference problems. AT&T critically mischaracterizes the TWG’s conclusions on intermodulation interference as based on theoretical assumption, not hard analysis.<sup>40</sup> The conclusions of the Second TWG Report were based on technical analysis and simulations of the type that are routinely used in system architecture development for avoiding undue interference. AT&T offers no substantive objections to the TWG’s conclusion. Instead, AT&T appears to criticize the need for power controls, proper planning, engineering design, and coordination. Indeed, the features that AT&T criticizes are positive attributes of the BOP’s potential for managing intermodulation interference because the solutions either exist wholly within the control of Public Safety, or they arise through simple coordination. Under the BOP, Public Safety would control its own internal guard bands, thus requiring less coordination than any of the 8<sup>th</sup> NPRM proposals or the so-called 6+6 plan.

### **Upper-Lower 700 MHz Boundary**

AT&T also claims that the BOP’s elimination of the A Block guard band between the Upper 700 MHz C Block and the Lower 700 MHz C Block “increases the risk of interference and forces licensees in these bands to take additional measures to avoid causing interference.”<sup>41</sup> This position is premised on the erroneous assertion that the A Block at 746 MHz was intended to mitigate interference between two commercial blocks.<sup>42</sup>

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<sup>37</sup> See *id.* at 16-17.

<sup>38</sup> See *id.* at 7.

<sup>39</sup> *Second TWG Report* at 7-8.

<sup>40</sup> See AT&T Letter at 5.

<sup>41</sup> *Id.* at 5.

<sup>42</sup> Aloha Partners is mistaken when it claims that “without question, [the 746 MHz A Block] guard band was established to protect against interference.” See Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Charles C. Townsend, President

In their February 28 letter to the Commission, Access Spectrum and Pegasus explain that the lower segment of the A Block is not necessary to protect commercial service in either the Upper or Lower 700 MHz bands.<sup>43</sup> In fact, the A block at 746 MHz was not specifically intended to mitigate interference. The FCC did not create a guard band to separate the Lower 700 MHz C block from the Upper 700 MHz C block at 746-747 MHz, but instead placed the lower segment of the A Block at 746-747 MHz “to allow for a paired block” with the upper segment of the A Block at 776-777 MHz. It is the upper segment of the A Block at 776-777 MHz that the FCC intended as a guard band in order to provide a 1 MHz buffer between the commercial C Block and the adjacent public safety spectrum.<sup>44</sup> Nevertheless, as explained previously, current rules are sufficient to protect against interference between operators in the Upper and Lower 700 MHz bands, despite their different height and power requirements, even assuming implementation of the BOP.<sup>45</sup> More specifically, under the current rules, the Lower 700 MHz C Block licensee must protect commercial operations in the current A Block by meeting a series of requirements at the band edge (*i.e.*, at 746 MHz). Under the BOP, rather than protect the A Block at 746 MHz, the Lower 700 MHz C Block licensee would be required to protect the Upper 700 MHz C Block at 746 MHz by meeting the same set of requirements. Similarly, under the current rules, the Upper 700 MHz C Block licensee must protect the commercial operations in the Upper 700 MHz A Block by meeting a set of requirements. Under the BOP, the Upper 700 MHz C Block licensee would be required to protect the Lower 700 MHz C Block in the same way. Under both the current rules and the BOP, the Upper 700 MHz band spectrum immediately adjacent to the Lower 700 MHz band may be used for commercial services – in neither case must it be left fallow and in both cases it must be protected. At bottom, the current regulatory regime for protection of commercial spectrum in both the Upper and Lower 700 MHz bands would continue to apply under the BOP, as well.

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& CEO, Aloha Partners, L.P., WT Docket No. 06-169 at 1 (March 6, 2007). As discussed below, the Commission’s written orders contradict that position.

<sup>43</sup> See Access/Pegasus Feb. 28 Letter at 6.

<sup>44</sup> *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476, ¶ 34 (2000); see also *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, WT Docket No. 99-168, Second Report and Order, 15 FCC Rcd 5299, n.20 (2000) (“The 746-747 is not immediately adjacent to a public safety band. However, because it is paired with the 776-777 band, which *is* one of the bands situated immediately adjacent to a public safety band, we include the 746-747 MHz band as one of the four Guard Bands to be addressed in this proceeding.”).

<sup>45</sup> See Access/Pegasus Feb. 28 Letter at 17-18; see also Access Spectrum/Pegasus Nov. 13 Reply Comments at 16-18.

## 5.5 MHz Building Blocks

Access Spectrum and Pegasus have demonstrated the advantages that would derive from the use of 5.5 MHz building blocks in the Upper 700 MHz commercial spectrum.<sup>46</sup> AT&T claims that the use of 5.5 MHz blocks in the commercial spectrum would slow deployment and increase costs without providing offsetting benefits, citing only Ericsson's opposition to 5.5 MHz blocks as support for its position.<sup>47</sup> However, the record reveals that there is no basis for Ericsson's opposition. Intel Corporation established that 5.5 MHz channel pairs would give greater flexibility for technology implementation and business plans than is available with the 5 MHz/10 MHz channel pairs under the current plan.<sup>48</sup> In addition, Access Spectrum and Pegasus submitted a declaration from Dr. Paul Kolodzy demonstrating that 5.5 MHz blocks would offer benefits such as increased flexibility, efficiency, and capacity, while decreasing costs in the 700 MHz band.<sup>49</sup> Recently, a coalition comprised of Access Spectrum, EchoStar, DIRECTV, Google, Intel, Skype, and Yahoo! also expressed their support for, *inter alia*, the use of 5.5 MHz building blocks in the commercial spectrum, in this case with an 11 MHz pair and a 5.5 MHz pair. These companies stated that doing so would provide benefits such as an immediate increase in bandwidth, allow more capable next generation broadband network performance and allow greater flexibility in technology implementation and business plans.<sup>50</sup> There is record evidence that 5.5 MHz building blocks would not increase costs or slow deployment but, to the contrary, would offer benefits to both public safety and commercial providers in the band. By contrast, AT&T offers no evidence that certain 3G technologies that have been developed for 5 MHz blocks would be affected negatively in any way by a shift to 5.5 MHz blocks. AT&T recycles Ericsson's claim that the standards bodies would have to develop new standards for these 3G technologies.<sup>51</sup> Of course, this is not the case. There is nothing to stop or hinder a 5 MHz technology being deployed inside a 5.5 MHz block. There is no downside for certain 3G technologies that utilize 5 MHz channels, and a significant upside for 4G technologies as well as 3G technologies that use 1.25 MHz channels.

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<sup>46</sup> See Access Spectrum/Pegasus Sept. 29 Comments at 11-23; *see also* Declaration of Dr. Paul J. Kolodzy, attachment to Access Spectrum/Pegasus Sept. 29 Comments.

<sup>47</sup> AT&T Letter at 6.

<sup>48</sup> See Letter to the Honorable Kevin J. Martin, Chairman, Federal Communications Commission from Marjorie J. Dickman and David M. Horne, Intel Corporation, WT Docket Nos. 96-86, 06-150 and 06-169 (Dec. 18, 2006).

<sup>49</sup> See Declaration of Dr. Paul J. Kolodzy, attachment to Access Spectrum/Pegasus Sept. 29 Comments; *see also* Access Spectrum/Pegasus Sept. 29 Comments at 11-17.

<sup>50</sup> See "The Coalition for 4G in America: Optimizing the 700 MHz Band for Next Generation Technologies and Networks" filed as an attachment to a Letter to Marlene H. Dortch, Secretary, Federal Communications Commission from Ruth Milkman, Counsel to Access Spectrum, LLC, WT Docket Nos. 96-98, 06-150 and 06-169 (March 6, 2007).

<sup>51</sup> Comments of Ericsson, Inc., WT Docket Nos. 96-86 and 06-169 at 13 (Oct. 23, 2006).

## V. Conclusion

For the foregoing reasons, the Commission should reject the 6+6 public safety band plan supported by AT&T. In addition, the Commission should dismiss AT&T's legal and technical objections to the BOP and 5.5 MHz building blocks as flawed and erroneous. It should proceed promptly to adopt the BOP and a commercial band plan based on 5.5 MHz building blocks.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record in the above-referenced proceedings.

Sincerely,

*/s/ Ruth Milkman*

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