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March 26, 2007

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket Nos. 06-150 and 06-169; PS Docket No. 06-229

Dear Ms. Dortch:

Frontline Wireless, LLC, hereby submits a working draft of proposed service rules for the upper 700 MHz commercial band in WT Docket No. 06-150, copies also to be placed in PS Docket No. 06-229 and WT Docket 06-169. These proposed rules would implement Frontline's Public Safety Broadband Deployment Plan ("Plan"), which is described in Frontline's recently-filed comments in certain of these dockets.¹ We urge the Commission promptly to issue a Public Notice asking for comment from the public on these suggestions, so that the auction will proceed without delay (an objective Frontline strongly supports).²

¹ See, e.g., Comments of Frontline Wireless, LLC, *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150 (filed March 6, 2007); Comments and Reply Comments of Frontline Wireless, LLC, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229 (Feb. 26, 2007 and March 13, 2007). As a necessary complement to these commercial Part 27 rule amendments, the Commission should, in parallel, implement the Ninth Notice of Proposed Rulemaking and adopt appropriate Part 90 rule changes.

² The Commission has often taken this step in similar circumstances. See, e.g., Public Notice, *Comment Sought on Alternative Rulemaking Proposal Regarding Issues Related to Inmate Calling Servs.*, CC Docket No. 96-128 (Mar. 2, 2007); Public Notice, *Comments Sought on*

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Frontline developed its Plan to meet a variety of public policy objectives. Some involve public safety -- how to pay for early and extensive network build-out (at a cost of \$10-15 billion), how to provide more spectrum for public safety use in times of emergency, and how to provide a 4G, interoperable, locally controlled network that is “open” with respect to both devices and services. Some of the policy goals involve other constituencies -- smaller wireless carriers with a need for roaming capability outside their service areas, rural wireline carriers, rural health care and infrastructure providers, and technology innovators, among others. From these various constituencies, Frontline has received encouraging support. They understand the tight time constraints imposed by the requirement to auction the commercial spectrum no later than January, but likely sooner. And they understand that this is the last bona fide opportunity for the foreseeable future -- but one of high promise -- for the Commission to use its allocation authority and responsibility to serve these ambitious but achievable public policy goals. Frontline believes that its Plan, as implemented by the enclosed draft rules, will successfully carry forward and fulfill the Commission’s policy objectives, particularly as they were effectively articulated in the Ninth Further Notice of Proposed Rule Making.

At the same time as Frontline has been encouraged by the response to its Plan, many of those who reacted favorably to the Plan have raised issues, asked questions and made

(continued...)

Amendments to the Missoula Plan Intercarrier Comp. Proposal to Incorporate a Fed. Benchmark Mechanism, CC Docket No. 01-92 (Feb. 16, 2007); Public Notice, *Nat'l Exchange Carrier Ass'n, Inc.'s Proposed 2007 Modification of Avg. Schedule Formulas*, WC Docket No. 06-223 (Jan. 29, 2007).

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suggestions. This process has been healthy, has improved the Plan and has informed the draft service rules that Frontline here submits. Frontline also recognizes that this collaborative and evaluative process has not fully run its course. Therefore, it submits these service rules as a “working draft,” with the understanding that additional changes may be needed. The input of interested parties will continue to improve the proposed rules as part of the public comment process that Frontline here requests the Commission promptly to undertake.

The service rules themselves cannot and should not bear the full burden of reaching the optimal arrangement for use of this spectrum. Instead, some of the issues that have been identified should be addressed in the Report and Order adopting the new 700 MHz service rules or in the ultimate network sharing agreement between the commercial E Block licensee and the public safety licensee.

As with any proposal involving public safety/commercial build-out and operations, including the proposal in the Ninth Notice of Proposed Rulemaking, there will be a great many details to work out. Some cannot now be foreseen and others may be better resolved on a regional basis or even a public-safety-agency-by-public-safety-agency basis. Any effort to resolve all of these issues through regulation would be futile and unacceptably time-consuming. Worse, it would be undesirable. The Commission should establish the regulatory framework, as embodied in the proposed service rules and the accompanying Report and Order, and then let the interested parties with many common or mutually supportive interests work out the implementation details, as they may vary in time and from place to place. Frontline believes that the proposed service rules strike the appropriate balance between a general framework

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established by the Commission as part of its allocations responsibility³ and the flexibility and in-the-trenches expertise that the two parties -- the E Block licensee and the public safety licensee -- will bring to the process of hammering out an agreement and then adjusting it from time to time in light of future operational experience.

The proposed rules provide appropriate assurances that the E Block licensee and the public safety licensee will reach a satisfactory agreement. As an initial matter, the service rules will provide a framework in which the negotiations will take place. Frontline's proposal does not "leave it all to negotiations." Particularly from public safety's perspective, it will be protected by rules for scope and timing of coverage build-out to be funded by the E Block licensee, priority use by public safety of E Block spectrum in times of emergency, interoperability, technical performance of the network, openness as to devices and services, and local control.

Further, it is significant that both sides at the negotiation table have concerns. On the one hand, will the E Block licensee with its extensive build-out and other requirements be able to operate a viable business without access to public safety's broadband spectrum when it is not being used to capacity? On the other hand, will the public safety licensee have sufficient leverage vis-à-vis the E Block licensee to achieve the public safety community's objectives?

³ E.g., Second Order on Reconsideration, *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2x4 GHz Bands*, 20 FCC Rcd. 4616 (2005) ("ATC Reconsideration Order").

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Both parties will have strong incentives to reach agreement. The commercial E Block licensee's business plan will rely on the expectation that public safety agencies across the country will subscribe to its joint network either directly or through the public safety licensee. Its business plan will also rely on its having secondary access to unused capacity on public safety's broadband spectrum. It will, therefore, have powerful incentives to reach agreement with public safety. For its part, the public safety licensee will want the assurance that the E Block licensee will, at its cost, build out a common state-of-the-art network under the aggressive coverage and timing requirements established in the Commission's service rules. The public safety licensee will also want a network that is constructed and operated in the ways required by the proposed service rules. And it will want access to the E Block spectrum in times of emergency, which is also required by the service rules.

Still, on public safety's part, an agreement with the E Block licensee is purely voluntary. The obligations that accompany the E Block license only bind the commercial licensee. If public safety prefers to build its own network, it would remain free to do so.

Finally, because the proposed service rules would require the commercial E Block licensee to negotiate in good faith with the public safety licensee, the Commission would retain oversight. Pursuant to that oversight, it could evaluate any particular dispute in the context of the overall negotiation and not in the abstract months or years before any dispute arises. Many negotiations in a variety of circumstances take place pursuant to the Commission's rules. Yet, few require Commission intervention.

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The parties are best equipped to develop an appropriate definition of “emergency”.

Various formulae could be considered in a vacuum to regulate public safety’s preemption of commercial spectrum, but this would be dangerous and is unnecessary. Defining “emergency”, which would trigger public safety’s use of E Block spectrum, should be crafted by the public safety and E Block licensees in their network sharing agreement. That is the best way to accommodate the expert and experience-based input of various public safety agencies rather than to have the government adopt a one-size-fits-all standard. In particular, public safety will need to define protocols for different types of emergencies. In addition, as noted above, the good faith negotiation requirement would apply to this aspect of the agreement, and, therefore, the Commission would have continuing oversight with respect to this issue, as well as others.

The proposed arrangements will assure that the E Block licensee will understand the needs of public safety. The proposed services rules are structured to ensure that the E Block licensee, in constructing and operating the network, will understand public safety’s communications needs. The service rules not only require the commercial licensee to consult with public safety regarding the construction and operation of the network, but also establish specific construction, design and operational standards for the network. Beyond those requirements, provisions in the network sharing agreement can address more specific needs. Providing this flexibility is a far more effective approach than relying on the Commission, in advance, to adopt provisions that may or may not effectively respond to public safety’s diverse needs as the negotiations drill down to specific and detailed issues. The public safety licensee can and should serve the function of identifying and negotiating for these specific needs and

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Frontline is prepared to provide appropriate funding to support this important function which will be ongoing.⁴

The proposed coverage and build-out obligations for the common public safety/E Block network are rigorous and will serve the public interest. Some of the reactions and questions Frontline encountered in connection with its Plan dealt with coverage and build-out. The Plan proposed 25% *geographic* coverage of CONUS within four years, 50% within seven years and 75% within 10 years, subject to discussions with public safety. We were told that (1) the requirements should be expressed in terms of population, which is more meaningful, (2) public safety's needs and desires may not always equate with maximization of population coverage, and (3) the obligations should extend to Hawaii and Alaska, the latter of which has special needs and challenges. As reflected in the proposed service rules, we have adjusted our proposals to take these perspectives into account.

First, the enclosed draft service rules call for build-out of 75% of the population of the United States (all 50 states) by the end of the fourth year, 95% by the end of the seventh year and 98% by the end of the tenth year.⁵

Second, public safety may have pressing coverage needs that diverge from the goal of maximizing population coverage. The E Block licensee will work with the public safety licensee in these circumstances. Where accommodations are agreed to, appropriate (and, of course, very limited) exceptions to the coverage milestones would be permitted.

⁴ The E Block license needs to be national in scope because the licensee must build and operate a joint network with public safety, which needs national reach. This decision is unique to the E Block and should not preclude the Commission's licensing other spectrum in the 700 MHz band in smaller geographic designations.

⁵ These population coverage figures equate with the area coverage figures submitted in Frontline's earlier comments in these proceedings.

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Third, both Hawaii and Alaska would be encompassed in these build-out requirements. Because of its unique nature, Alaska would receive an extra measure of protection in the proposed service rules. They would require that coverage be provided to all Alaskan cities of 10,000 or more by the end of the fourth year, and thereafter the E Block licensee would work with the Alaska Land Mobile Project to determine where additional coverage is needed and feasible, taking various factors into account including the availability of satellite services.

These are robust, indeed highly aggressive, construction obligations, both nationwide and in Alaska.

Compliance with CALEA, E911, and other requirements will be assured. Under the Frontline Plan, the E Block licensee would provide network services to commercial retail users, to critical infrastructure providers, and, directly or indirectly, to public safety users. Any retailer of these services will be subject to any CALEA, E911 and other requirements applicable to retail service providers. Accordingly, there is no need to impose these requirements on the E Block licensee who will not be providing services directly to the public on a retail basis. As a consequence, no gap in the enforcement of these requirements will result from Frontline's proposals. Frontline urges the Commission to clarify this point in its Report and Order adopting the service rules.

The rules provide adequate protection in the event that E Block were to go into bankruptcy. The Frontline Plan avoids entirely the concerns and issues associated with Auction 5, where NextWave and other winning bidders defaulted on auction payments to the federal government. Unlike in those situations, the E Block licensee here will be paying *in full* for the spectrum at the time it obtains its license. The bankruptcy issues associated with NextWave, by contrast, arose because NextWave still owed substantial payments for the spectrum long after it

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won the auction. By requiring the E Block commercial licensee to pay for the license up front, the Commission will completely avoid those bankruptcy issues. Moreover, if the E Block licensee encounters financial (or other) problems that prevent compliance with its build-out and other obligations, the Commission may reclaim and re-auction the spectrum.⁶ Accordingly, there is no need for the service rules to address this issue in some special fashion. At most, the Report and Order should clarify the above points.

The Commission should make clear that designated entities be eligible for bidding credits in the E Block auction. The Commission's Report and Order should make clear that the reference in Section 1.2110(b)(iv)(A) to wholesale service does not apply to the E Block licensee's provision of network services to retail service providers, including rural cellular providers and other small business entities.⁷ The limitations in Section 1.2110(b)(iv)(A) were intended to prevent a Designated Entity auction bidder from taking advantage of its DE credit to win the auction and then flipping its spectrum and pocketing the value of the bidding credit. Here, however, the E Block licensee would not be leasing raw spectrum; it would be building a network at a cost of \$10-\$15 billion and providing service to retail service providers, critical infrastructure providers, and public safety users. The E Block licensee would also be providing broadband wireless access. This type of facilities-based service is thus wholly distinct from the spectrum leasing and reselling arrangements that Section 1.2110(b)(iv)(A) was intended to

⁶ This protection exists in most services overseen by the Commission.

⁷ Section 1.2110(b)(iv)(A), by its terms, suggests that a proceeding dealing with service rules is an appropriate forum in which to make such a clarification.

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protect against. A contrary interpretation would make it impossible for any Designated Entity to be eligible for bidding credits in the E Block auction -- a result that the Commission should not intend. The provisions of Designated Entity rules other than those referring to reselling and wholesale arrangements would, however, apply.

* * *

Frontline requests that the Commission promptly ask for public comment on the proposed service rules in the enclosed working draft, as further elaborated in its pleadings and in this cover letter.

Respectfully submitted,
/s/ John Blevins

Jonathan D. Blake
Gerard Waldron
Matthew DelNero
John Blevins
Counsel to Frontline Wireless, LLC

[This draft only lists the service rules (or sections) that would be amended and omits the remainder of the applicable rules.]

PART 27 — MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

SUBPART A — GENERAL INFORMATION

§ 27.4 Terms and definitions.

* * * * *

E Block Licensee. The E Block Licensee is the licensee of the 757-762 and 787-792 MHz bands.¹

Network Sharing Agreement. The agreement entered into by the licensee of the 757-762 and 787-792 MHz bands and the national public safety broadband licensee of the 764-770 MHz and 794-800 MHz bands regarding the national broadband services network.

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§ 27.5 Frequencies.

* * * * *

(b) 746-764 MHz and 776-794 MHz bands. The following frequencies are available for licensing pursuant to this part in the 746-764 MHz and 776-794 MHz bands:

(1) Two paired channels of 1 megahertz each are available for assignment. Block A: 746-747 MHz and 776-777 MHz.

(2) Two paired channels of 2 megahertz each are available for assignment. Block B: 762-764 MHz and 792-794 MHz.

(3) Two paired channels of 5 megahertz each are available for assignment. Block C: 747-752 MHz and 777-782 MHz.

(4) Two paired channels of ~~540~~ megahertz each are available for assignment. Block D: 752-~~75762~~ MHz and 782-~~78792~~ MHz.

(5) Two paired channels of 5 megahertz each are available for assignment. Block E: 757-762 MHz and 787-792 MHz.

¹ Conforming changes will be necessary to these proposed rules if the Commission adopts the BOP or a similar bandplan proposal.

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§ 27.6 Service areas.

* * * * *

(b) 746-764 MHz and 776-794 MHz bands. WCS service areas for the 746–764 MHz and 776–794 MHz bands are as follows:

(1) Service areas for Block A in the 746–747 and 776–777 MHz bands and Block B in the 762–764 and 792–794 MHz bands are based on Major Economic Areas (MEAs), as defined in paragraphs (a)(1) and (a)(2) of this section.

(2) Service areas for Blocks C and D in the 747-75762 MHz and 777-78792 MHz bands are based on Economic Area Groupings (EAGs) as defined by the Federal Communications Commission. *See* 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico. *See also* 62 FR 9636 (March 3, 1997), in which the Commission created an additional four economic area-like areas for a total of 176. Maps of the EAGs and the FEDERAL REGISTER Notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the Reference Center, Room CY A-257, 445 12th St., S.W., Washington, DC 20554. These maps and data are also available on the FCC website at www.fcc.gov/oet/info/maps/areas/.

* * * * *

(3) Service areas for Block E in the 757-62 MHz and 787-92 MHz bands shall be the geographic area of the United States, but does not include the Territories or the Canal Zone.

* * * * *

SUBPART B — APPLICATIONS AND LICENSES

§ 27.11 Initial authorization.

* * * * *

(c) 746-764 MHz and 776-794 MHz bands. Initial authorizations for the 746-764 MHz and 776-794 MHz blocks shall be for 1, 2, or 5, ~~or 10~~ megahertz of spectrum in accordance with § 27.5(b) of this part.

(1) Authorizations for Block A, consisting of two paired channels of 1 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1) of this part.

(2) Authorizations for Block B, consisting of two paired channels of 2 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1) of this part.

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on Economic Area Groupings (EAGs), as specified in § 27.6(b)(2) of this part.

(4) Authorizations for Block D, consisting of two paired channels of 5~~10~~ megahertz each, will be based on EAGs, as specified in § 27.6(b)(2) of this part.

(5) Authorizations for Block E, consisting of two paired channels of 5 megahertz each, will extend throughout the geographic area of the United States, as specified in § 27.6(b)(3).²

* * * * *

§ 27.12 Eligibility.

Except as provided in §§ 27.16, 27.604, 27.1201, and 27.1202, any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

* * * * *

§ 27.13 License Period.

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(b) 746-764 MHz and 776-794 MHz bands. Initial authorizations for the 746-764 MHz and 776-794 MHz bands, will extend until January 1, 2014, except (1) that a Part 27 licensee commencing broadcast services, will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations, and (2) that the authorizations for the 757-62 MHz and 787-92 MHz bands will extend 15 years from the date the license is granted.

* * * * *

§ 27.14 Construction requirements; Criteria for comparative renewal proceedings.

(a) AWS and WCS licensees must make a showing of “substantial service” in their license area within the prescribed license term set forth in §27.13. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(1) E Block Licensee. The E Block Licensee shall be required to construct broadband network facilities, as provided for in the Network Sharing Agreement, that: (A) provide coverage to 75% of the United States population within four years of the 700 MHz auction clearing date; (B) provide coverage to 95% of the United States population within seven years of the 700 MHz auction clearing date; and (C) provide coverage to 98% of the United States population within ten years of the 700 MHz auction clearing date; and with respect to Alaska, the E Block licensee (D) shall provide coverage to all Alaskan cities of 10,000 or more within four years of the 700 MHz auction clearing date; and (E) shall thereafter work with the Alaska Land Mobile Project

² If the Commission adopts the BOP, then the E Block will be two paired channels of 6.5 MHz each (756-762.5 and 786-792.5 MHz).

and the national public safety broadband licensee to determine where additional coverage is needed and feasible, considering various factors including the availability of satellite services. For purposes of this paragraph, “auction clearing date” refers to the Analog Spectrum Recovery Firm Deadline provided for in Section 3002 of the Deficit Reduction Act of 2005.

* * * * *

§ 27.15 Geographic partitioning and spectrum disaggregation.

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(e) Compliance with construction requirements. The following rules apply for purposes of implementing the construction requirements set forth in § 27.14 of this part.

* * * * *

(3) E Block Licensee. To the extent the E Block Licensee satisfies the construction requirements of § 27.14 through partitioning or disaggregation, it shall do so only through the first options listed in paragraphs (1) and (2).

§ 27.16 E Block License Conditions and Eligibility

(a) E Block. An applicant shall not be eligible to bid for, or hold, the license for the 757-62 MHz and 787-92 MHz bands unless it commits to, and adheres to, the following conditions and requirements:

(1) The E Block Licensee shall comply with the construction requirements set forth in §27.14(a).

(2) The E Block Licensee shall provide reliable, secure, and interoperable broadband service to public safety users operating in the 764-770 MHz and 794-800 MHz bands, with local control capability, pursuant to the Network Sharing Agreement. The E Block Licensee shall be limited to providing service to public safety users, entities that provide retail service and products to end users, and providers and operators of critical infrastructure as defined in Section 2(4) of the Homeland Security Act of 2002 (incorporating the definition in 42 U.S.C. § 5195c(e)).

(3) The E Block Licensee shall be prohibited from blocking users from accessing services or content provided by unaffiliated parties, or otherwise engaging in unreasonable discrimination against such services or content, except with the consent of the user or as required by law. The E Block Licensee shall offer on a reasonable and non-discriminatory basis network quality-of-service capabilities to Internet content, application, and service providers. The requirements of this paragraph shall apply to all licenses owned or controlled by the E Block Licensee.

(4) The E Block Licensee shall comply with the access requirements set forth in §27.51(c).

(5) The E Block Licensee shall provide roaming service to any requesting CMRS operator whose customers are using compatible equipment. The requirements of paragraphs (3) and (4) shall not apply to such roaming services.

(b) Obligations of Network Sharing Agreement. The E Block Licensee shall enter into good faith negotiations with the national public safety broadband licensee of the 764-770 and 794-800 MHz bands (“Public Safety Licensee”) regarding the Network Sharing Agreement. The Network Sharing Agreement shall include the following minimum requirements: (1) The E Block Licensee shall consult with the Public Safety Licensee on the design, construction, and operation of the shared network on the E Block and the public safety spectrum; (2) the E Block Licensee shall permit emergency preemption by public safety users on its commercial spectrum according to procedures, protocols, and fees defined in the Network Sharing Agreement; (3) the 757-62 MHz and 787-92 MHz bands, with the protections and benefits they provide to public safety users, is the only commercial band authorized for broadband network sharing with the Public Safety Licensee; (4) the E Block Licensee is the only commercial licensee designated to use capacity on the 764-770 and 794-800 MHz bands and such service shall be on a secondary and preemptible basis; and (5) the E Block Licensee and the Public Safety Licensee shall make reasonable, good-faith efforts to obtain access to public safety towers and rights of way to facilitate buildout of the shared network. The Network Sharing Agreement, and the requirements of this section (including the requirements of 27.14(a)(1)), shall not apply to the extent that designated public safety representatives have chosen not to participate in the shared network.

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SUBPART C - TECHNICAL STANDARDS

§ 27.50 Power and antenna height limits.

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(b) The following power and antenna height limits apply to transmitters operating in the 746–764 MHz and 776–794 MHz bands:

(1) Fixed and base stations transmitting in the 746–764 MHz band and the 777–792 MHz band must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that (1) antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section and (2) transmissions of an ERP of 2000 watts are authorized for any fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census;

* * * * *

§ 27.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part must be of a type that has been authorized by the Commission under its certification procedure.

(b) Any manufacturer of radio transmitting equipment to be used in these services may request

equipment authorization following the procedures set forth in subpart J of part 2 of this chapter. Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

(c) The E Block Licensee may not block the connection of any terminal equipment to the network provided that the terminal equipment complies with specifications published and filed with the Commission by the E Block Licensee, except that such terminal equipment shall not cause harm to the network or to uses of the network.

§ 27.53 Emission limits.

* * * * *

(c) For operations in the 747 to 762 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 747 to 762 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least $43 + 10 \log (P)$ dB;

(2) On all frequencies between 764-770 to 776 MHz and 794-800 to 806 MHz, by a factor not less than $76 + 10 \log (P)$ dB in a 6.25 kHz band segment;³

* * * * *

(d) For operations in the 777 to 792 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 777 to 792 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least $43 + 10 \log (P)$ dB;

(2) On all frequencies between 764-770 to 776 MHz and 794-800 to 806 MHz, by a factor not less than $65 + 10 \log (P)$ dB in a 6.25 kHz band segment, for mobile and portable stations transmitting in the 777 to 792 MHz band;

³ This section should be changed to align with the Second Technical Working Group if the BOP or some equivalent is adopted.

[This draft only lists the service rules (or sections) that would be amended and omits the remainder of the applicable rules.]

PART 27 — MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES

SUBPART A — GENERAL INFORMATION

§ 27.4 Terms and definitions.

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§ 27.5 Frequencies.

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(b) 746-764 MHz and 776-794 MHz bands. The following frequencies are available for licensing pursuant to this part in the 746-764 MHz and 776-794 MHz bands:

(1) Two paired channels of 1 megahertz each are available for assignment. Block A: 746-747 MHz and 776-777 MHz.

(2) Two paired channels of 2 megahertz each are available for assignment. Block B: 762-764 MHz and 792-794 MHz.

(3) Two paired channels of 5 megahertz each are available for assignment. Block C: 747-752 MHz and 777-782 MHz.

(4) Two paired channels of 5 megahertz each are available for assignment. Block D: 752-757 MHz and 782-787 MHz.

(5) Two paired channels of 5 megahertz each are available for assignment. Block E: 757-762 MHz and 787-792 MHz.

* * * * *

¹ Conforming changes will be necessary to these proposed rules if the Commission adopts the BOP or a similar bandplan proposal.

§ 27.6 Service areas.

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(b) 746-764 MHz and 776-794 MHz bands. WCS service areas for the 746–764 MHz and 776–794 MHz bands are as follows:

(1) Service areas for Block A in the 746–747 and 776–777 MHz bands and Block B in the 762–764 and 792–794 MHz bands are based on Major Economic Areas (MEAs), as defined in paragraphs (a)(1) and (a)(2) of this section.

(2) Service areas for Blocks C and D in the 747-757 MHz and 777-787 MHz bands are based on Economic Area Groupings (EAGs) as defined by the Federal Communications Commission. *See* 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico. *See also* 62 FR 9636 (March 3, 1997), in which the Commission created an additional four economic area-like areas for a total of 176. Maps of the EAGs and the FEDERAL REGISTER Notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the Reference Center, Room CY A-257, 445 12th St., S.W., Washington, DC 20554. These maps and data are also available on the FCC website at www.fcc.gov/oet/info/maps/areas/.

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(3) Service areas for Block E in the 757-62 MHz and 787-92 MHz bands shall be the geographic area of the United States, but does not include the Territories or the Canal Zone.

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SUBPART B — APPLICATIONS AND LICENSES

§ 27.11 Initial authorization.

* * * * *

(c) 746-764 MHz and 776-794 MHz bands. Initial authorizations for the 746-764 MHz and 776-794 MHz blocks shall be for 1, 2, or 5 megahertz of spectrum in accordance with § 27.5(b) of this part.

(1) Authorizations for Block A, consisting of two paired channels of 1 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1) of this part.

(2) Authorizations for Block B, consisting of two paired channels of 2 megahertz each, will be based on those geographic areas specified in § 27.6(b)(1) of this part.

(3) Authorizations for Block C, consisting of two paired channels of 5 megahertz each, will be based on Economic Area Groupings (EAGs), as specified in § 27.6(b)(2) of this part.

(4) Authorizations for Block D, consisting of two paired channels of 5 megahertz each, will be based on EAGs, as specified in § 27.6(b)(2) of this part.

(5) Authorizations for Block E, consisting of two paired channels of 5 megahertz each, will

extend throughout the geographic area of the United States, as specified in § 27.6(b)(3).²

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§ 27.12 Eligibility.

Except as provided in §§ 27.16, 27.604, 27.1201, and 27.1202, any entity other than those precluded by section 310 of the Communications Act of 1934, as amended, 47 U.S.C. 310, is eligible to hold a license under this part.

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§ 27.13 License Period.

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(b) 746-764 MHz and 776-794 MHz bands. Initial authorizations for the 746-764 MHz and 776-794 MHz bands, will extend until January 1, 2014, except (1) that a Part 27 licensee commencing broadcast services, will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations, and (2) that the authorizations for the 757-62 MHz and 787-92 MHz bands will extend 15 years from the date the license is granted.

* * * * *

§ 27.14 Construction requirements; Criteria for comparative renewal proceedings.

(a) AWS and WCS licensees must make a showing of “substantial service” in their license area within the prescribed license term set forth in §27.13. “Substantial” service is defined as service which is sound, favorable, and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

(1) *E Block Licensee.* The E Block Licensee shall be required to construct broadband network facilities, as provided for in the Network Sharing Agreement, that: (A) provide coverage to 75% of the United States population within four years of the 700 MHz auction clearing date; (B) provide coverage to 95% of the United States population within seven years of the 700 MHz auction clearing date; and (C) provide coverage to 98% of the United States population within ten years of the 700 MHz auction clearing date; and with respect to Alaska, the E Block licensee (D) shall provide coverage to all Alaskan cities of 10,000 or more within four years of the 700 MHz auction clearing date; and (E) shall thereafter work with the Alaska Land Mobile Project and the national public safety broadband licensee to determine where additional coverage is

² If the Commission adopts the BOP, then the E Block will be two paired channels of 6.5 MHz each (756-762.5 and 786-792.5 MHz).

needed and feasible, considering various factors including the availability of satellite services. For purposes of this paragraph, “auction clearing date” refers to the Analog Spectrum Recovery Firm Deadline provided for in Section 3002 of the Deficit Reduction Act of 2005.

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§ 27.15 Geographic partitioning and spectrum disaggregation.

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(e) Compliance with construction requirements. The following rules apply for purposes of implementing the construction requirements set forth in § 27.14 of this part.

* * * * *

(3) E Block Licensee. To the extent the E Block Licensee satisfies the construction requirements of § 27.14 through partitioning or disaggregation, it shall do so only through the first options listed in paragraphs (1) and (2).

§ 27.16 E Block License Conditions and Eligibility

(a) E Block. An applicant shall not be eligible to bid for, or hold, the license for the 757-62 MHz and 787-92 MHz bands unless it commits to, and adheres to, the following conditions and requirements:

(1) The E Block Licensee shall comply with the construction requirements set forth in §27.14(a).

(2) The E Block Licensee shall provide reliable, secure, and interoperable broadband service to public safety users operating in the 764-770 MHz and 794-800 MHz bands, with local control capability, pursuant to the Network Sharing Agreement. The E Block Licensee shall be limited to providing service to public safety users, entities that provide retail service and products to end users, and providers and operators of critical infrastructure as defined in Section 2(4) of the Homeland Security Act of 2002 (incorporating the definition in 42 U.S.C. § 5195c(e)).

(3) The E Block Licensee shall be prohibited from blocking users from accessing services or content provided by unaffiliated parties, or otherwise engaging in unreasonable discrimination against such services or content, except with the consent of the user or as required by law. The E Block Licensee shall offer on a reasonable and non-discriminatory basis network quality-of-service capabilities to Internet content, application, and service providers. The requirements of this paragraph shall apply to all licenses owned or controlled by the E Block Licensee.

(4) The E Block Licensee shall comply with the access requirements set forth in §27.51(c).

(5) The E Block Licensee shall provide roaming service to any requesting CMRS operator whose customers are using compatible equipment. The requirements of paragraphs (3) and (4) shall not apply to such roaming services.

(b) Obligations of Network Sharing Agreement. The E Block Licensee shall enter into good faith

negotiations with the national public safety broadband licensee of the 764-770 and 794-800 MHz bands (“Public Safety Licensee”) regarding the Network Sharing Agreement. The Network Sharing Agreement shall include the following minimum requirements: (1) The E Block Licensee shall consult with the Public Safety Licensee on the design, construction, and operation of the shared network on the E Block and the public safety spectrum; (2) the E Block Licensee shall permit emergency preemption by public safety users on its commercial spectrum according to procedures, protocols, and fees defined in the Network Sharing Agreement; (3) the 757-62 MHz and 787-92 MHz bands, with the protections and benefits they provide to public safety users, is the only commercial band authorized for broadband network sharing with the Public Safety Licensee; (4) the E Block Licensee is the only commercial licensee designated to use capacity on the 764-770 and 794-800 MHz bands and such service shall be on a secondary and preemptible basis; and (5) the E Block Licensee and the Public Safety Licensee shall make reasonable, good-faith efforts to obtain access to public safety towers and rights of way to facilitate buildout of the shared network. The Network Sharing Agreement, and the requirements of this section (including the requirements of 27.14(a)(1)), shall not apply to the extent that designated public safety representatives have chosen not to participate in the shared network.

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SUBPART C - TECHNICAL STANDARDS

§ 27.50 Power and antenna height limits.

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(b) The following power and antenna height limits apply to transmitters operating in the 746–764 MHz and 776–794 MHz bands:

(1) Fixed and base stations transmitting in the 746–764 MHz band and the 777–792 MHz band must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that (1) antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section and (2) transmissions of an ERP of 2000 watts are authorized for any fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census;

* * * * *

§ 27.51 Equipment authorization.

(a) Each transmitter utilized for operation under this part must be of a type that has been authorized by the Commission under its certification procedure.

(b) Any manufacturer of radio transmitting equipment to be used in these services may request equipment authorization following the procedures set forth in subpart J of part 2 of this chapter.

Equipment authorization for an individual transmitter may be requested by an applicant for a station authorization by following the procedures set forth in part 2 of this chapter.

(c) The E Block Licensee may not block the connection of any terminal equipment to the network provided that the terminal equipment complies with specifications published and filed with the Commission by the E Block Licensee, except that such terminal equipment shall not cause harm to the network or to uses of the network.

§ 27.53 Emission limits.

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(c) For operations in the 747 to 762 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 747 to 762 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least $43 + 10 \log (P)$ dB;

(2) On all frequencies between 770 to 776 MHz and 800 to 806 MHz, by a factor not less than $76 + 10 \log (P)$ dB in a 6.25 kHz band segment;³

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(d) For operations in the 777 to 792 MHz band, the power of any emission outside the licensee's frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On any frequency outside the 777 to 792 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least $43 + 10 \log (P)$ dB;

(2) On all frequencies between 770 to 776 MHz and 800 to 806 MHz, by a factor not less than $65 + 10 \log (P)$ dB in a 6.25 kHz band segment, for mobile and portable stations transmitting in the 777 to 792 MHz band;

³ This section should be changed to align with the Second Technical Working Group if the BOP or some equivalent is adopted.