

April 18, 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:

Access Spectrum and Pegasus continue to believe that the Broadband Optimization Plan (“BOP”) is the best way to optimize the Upper 700 MHz band. The companies recognize, however, that some have expressed concerns about the litigation risk associated with the reallocation of a portion of the B Block spectrum to public safety.¹ In light of this concern, the companies recommend that the Commission consider an alternative band plan, as shown in the attached slide.

In developing this alternative band plan, the companies analyzed the submissions of other parties, and focused on the following additional aspects of the record. First, while there is general agreement that consolidation of the public safety narrowband spectrum would be beneficial for both public safety and commercial entities in the Upper 700 MHz band, public safety has identified certain pre-conditions to consolidation, specifically a solution for the Canadian border regions, and assurance that public safety agencies would not bear the costs of relocation of existing narrowband systems or required changes to the Computer Assisted Pre-Coordination Resource and Database System (“CAPRAD”). Second, the Coalition for 4G in America has described the advantages of having at least one 11 MHz block, which in the Coalition’s proposed band plan is directly adjacent to the Lower 700 MHz C Block. Third, an issue has been raised with respect to the implications of relocating the lower A Block, which, under the current rules, is between the Lower 700 MHz C Block, and the Upper 700 MHz C Block.

Accordingly, if the FCC concludes that it will not adopt the BOP, Access Spectrum and Pegasus recommend that the Commission consider the following alternative. The spectrum blocks would be arranged as shown in the attached slide. The proposal also includes these components:

- The A Block would be relocated and the existing A and B Block licensees would consolidate into the A Block, thereby clearing the B Block. This re-packing

¹ To the extent that the Commission is issuing a further Notice of Proposed Rulemaking, Access Spectrum and Pegasus urge the Commission to frame any discussion of the legal authority issue in a neutral manner.

would result in a significant reduction in the number of MHz-pops held by the current A and B Block licensees. Access Spectrum and Pegasus commit to work with the FCC and the other A and B Block licensees to develop a plan for clearing the B Block.

- The A Blocks would be subject to the same rules as the C and D Blocks. Specifically, the A Blocks would have the same technical rules as the C and D Blocks, including the same out-of-band emissions limits at the band edges,² would be subject to the same service rules as the C and D Blocks, including the secondary markets rules, and would no longer be subject to the band manager rules. The current prohibition on cellular architecture also would be removed.
- If the Commission were to accept this alternative plan, including the relocation of the A Blocks, and harmonization of the A Block rules with the rules that apply to the C and D Blocks, Access Spectrum and Pegasus would make the same funding commitment that they made with respect to the BOP. Specifically, Access Spectrum and Pegasus would commit to fund the conversion of existing 700 MHz narrowband public safety systems and the necessary changes to the Computer Assisted Pre-Coordination Resource and Database System (“CAPRAD”).

This alternative plan builds on the technical analysis that has been conducted with respect to the Broadband Optimization Plan and achieves the following benefits. First, the cooperation of the current A and B Block licensees enables the auction of 32 MHz of commercial broadband spectrum nationwide (the new C and D blocks). Second, it leaves the size of the public safety allocation unchanged and therefore eliminates any litigation risk associated with that aspect of the BOP. Third, it addresses the issues identified by Public Safety as pre-conditions for consolidation of its narrowband spectrum. The Canadian border issue is resolved in the same manner as it would have been resolved under the BOP, that is, the public safety spectrum is shifted down by 1 MHz, enabling permanent nationwide narrowband interoperability channels to be placed in Channels 63 and 68, where Canada has already agreed to the vacation of its broadcasters.³ This is critical to ensuring nationwide interoperability for public safety’s

² The interface between the Public Safety and A Blocks would be handled in the same way as under the BOP, as described in the Report of the Second Technical Working Group, in order to ensure the usefulness of both the public safety and commercial allocations, as well as setting up the band for public-private partnerships. 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 (Jan. 26, 2007).

³ The solution to the Canadian border issue is complicated and was carefully developed through a long and collaborative process. The details are described in the First Report of the Technical Working Group. See 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 (Oct. 23, 2006).

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mission-critical voice communications. Fourth, the alternative band plan is consistent with the 4G Coalition proposal to create an 11 MHz block immediately adjacent to the Lower 700 MHz C Block. Fifth, the 11 MHz C Block allows any licensee that wishes to maintain a 1 MHz buffer between its operations and the Lower 700 MHz block to do so while still having 10 MHz of capacity available. Licensees that do not share these concerns have the ability to make full use of the 11 MHz block.

In summary, the alternative band plan described herein, while inferior to the BOP, is significantly better than the current rules and band plan for both public safety and commercial entities in the Upper 700 MHz band. 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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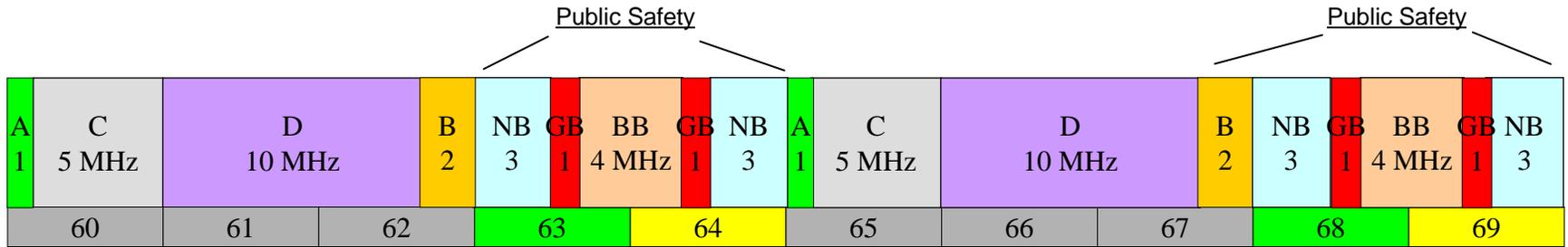
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cc: John Branscome
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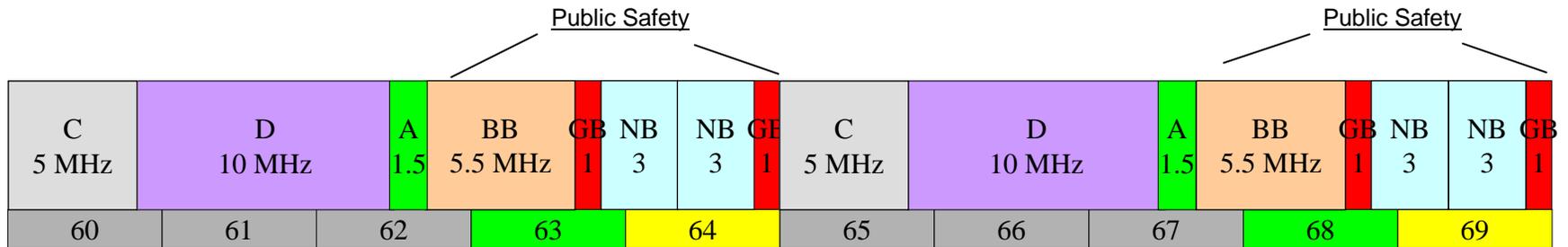
Bruce Gottlieb
Cathleen Massey
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Upper 700 MHz options

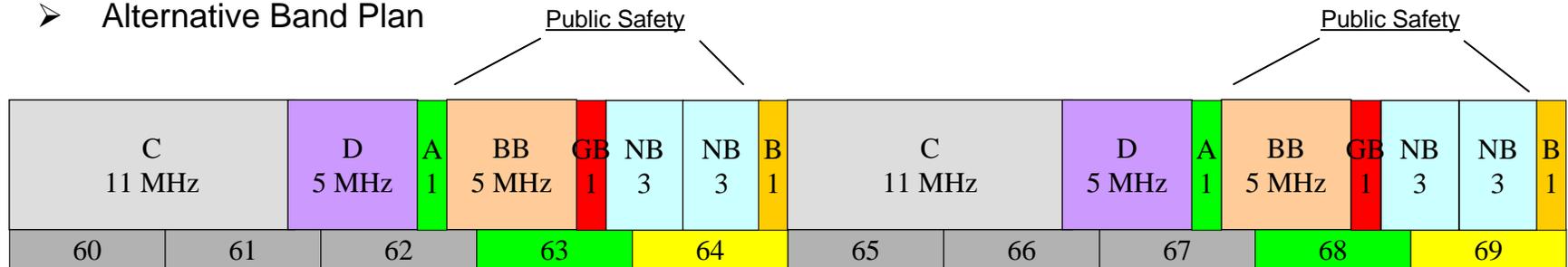
➤ The NPRM Proposals



➤ The Broadband Optimization Plan



➤ Alternative Band Plan



Note: Public safety spectrum in TV channels 64 & 69 (yellow) will be encumbered in the fourteen Canadian border states until Canada requires its broadcasters to vacate those channels. However, the public safety spectrum will be clear in TV channels 63 & 68 (green), because Canada has already agreed to the vacation of those channels.