

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

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules)	WT Docket No. 06-169
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86

**REPLY COMMENTS OF ACCESS SPECTRUM, LLC, DOMINION 700, INC.,
HARBOR GUARDBAND, LLC, AND PEGASUS COMMUNICATIONS
CORPORATION**

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June 4, 2007

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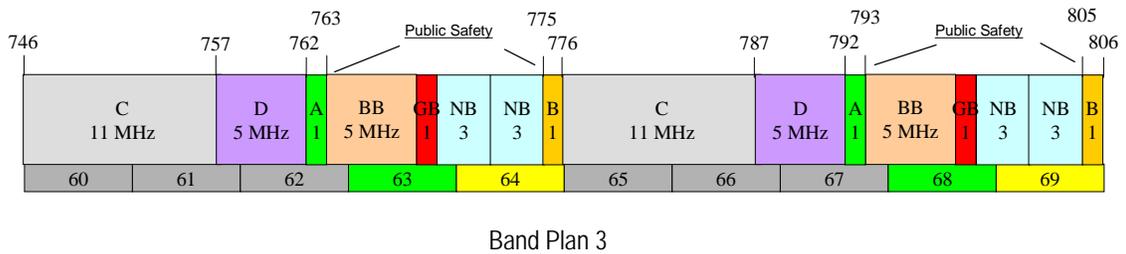
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I. INTRODUCTION AND SUMMARY

The choice among the band plans presented in this proceeding may appear complex, but in fact, it is straightforward. Only Band Plan Proposal Number 3 (or its variations, Band Plan Proposal Numbers 4 and 5) (“Band Plans 3, 4, or 5”) will give Public Safety the nationwide interoperability that the Commission promised to ensure when it allocated greenfield spectrum in the Upper 700 MHz band to Public Safety. Only Band Plans 3, 4, or 5 will ensure that Public Safety finally has the authority to deploy broadband in its allocated spectrum without footing the bill for retuning existing systems.

Further, the record demonstrates widespread Public Safety and commercial support for the adoption of Band Plan 3, and a recognition that Band Plan Proposal Numbers 1 and 2 (“Band Plans 1 and 2”) fail to ensure the nationwide availability of public safety interoperability channels. Through this failure, Band Plans 1 and 2 preclude nationwide interoperability for Public Safety’s mission-critical narrowband voice operations, and therefore must be rejected. The Commission should adopt Band Plan 3 immediately and must reject Band Plans 1 and 2.¹



These reply comments discuss the support in the record for Band Plan 3; describe an approach to modify or grandfather the Upper 700 A and B Block licenses to permit the Commission to implement Band Plan 3; explain why Alcatel-Lucent’s proposal to resolve the international border issue fails to accomplish its purpose; and briefly discuss other issues arising out of the comments filed on May 23, 2007.

II. THE COMMISSION SHOULD ADOPT BAND PLAN 3 FOR THE UPPER 700 MHZ BAND.

As summarized below, the record demonstrates strong support for the adoption of Band Plan 3 among a significant group of commenters, including: public safety representatives such as APCO, NPSTC, and others; commercial interests such as Verizon

¹ Access Spectrum, LLC; Dominion 700, Inc.; Harbor Guardband, LLC; and Pegasus Communications Corporation (collectively, “Upper 700 MHz Licensees”) believe Band Plan 3 is the clear choice; however, Band Plans 4 or 5 would solve the Public Safety-related issues that require the Commission to reject Band Plans 1 and 2.

Wireless, Motorola, Northrop Grumman, and the Coalition for 4G in America, which includes DIRECTV, EchoStar, Google, Intel, Skype, and Yahoo!; and existing licensees in the Upper 700 MHz band.²

As APCO explains, Band Plan 3 “offers the best approach for addressing [the Canadian interoperability] issue, as it allow[s] border areas access to narrowband channels, including the nationwide mutual aid channels.”³ According to Verizon Wireless, “[n]o other band plan accommodates the Commission’s multiple policy objectives as well as [Band Plan] 3.”⁴ For example, Band Plan 3: (1) provides a diversity of license sizes, when combined with the Lower 700 MHz band plan proposal, which will afford opportunities for small entrants and rural providers; (2) addresses the needs of Public Safety, including the possibility of access to additional spectrum through a public-private partnership; and (3) advances the deployment of next generation broadband services by providing for 22 MHz of spectrum to be licensed on a REAG basis.⁵ In expressing its support for Band Plan 3, the Coalition for 4G in America stated that “[b]y creating a band plan with a least one large spectrum block, the Commission would take a significant step toward enabling deployment of advanced wireless

² Many other parties, including the Ad Hoc Public Interest Spectrum Coalition, Cellular South, and U.S. Cellular supported Band Plan Proposal Numbers 4 and/or 5, which are variations of Band Plan 3. Leap Wireless, MetroPCS, and SpectrumCo also support Band Plan 5 in the event that the Commission does not adopt Band Plan 2 (with Leap Wireless supporting a variation on the geographic areas depicted in Band Plan 5).

³ Comments of the Association of Public-Safety Communications Officials-International, Inc. (APCO) at 10 (“APCO Comments”). (Unless otherwise indicated, all comments cited herein were filed in WT Docket No. 06-150 on May 23, 2007.)

⁴ Comments of Verizon Wireless at 8 (“Verizon Wireless Comments”).

⁵ *Id.* at 16-18.

broadband technologies.”⁶ Motorola and numerous other commenters support Band Plan 3 because it enables interoperability for public safety mission-critical narrowband operations and provides funding for public safety radio and database reprogramming made necessary by reconfiguring the public safety band.⁷

Many of these same entities have strongly opposed adoption of Band Plans 1 and 2.⁸ As NPSTC noted in its comments, it would be a “tragedy” if the FCC were to implement Band Plans 1 or 2, which rely on an easement approach to interoperability, when the Commission can easily implement Band Plans 3, 4 or 5.⁹ As NPSTC points out, Band Plans 1 and 2 suffer from numerous deficiencies. First and foremost, the easement approach set forth in Band Plans 1 and 2 “defeats the objective that the 700 MHz band provide regional, statewide and national interoperability.”¹⁰ Second, under

⁶ Comments of the Coalition for 4G in America at 5-6 (“4G Coalition Comments”).

⁷ See, e.g., Comments of Motorola, Inc. at 14; APCO Comments at 7-10; Comments of the National Public Safety Telecommunications Council at 26 (“NPSTC Comments”); Comments of the Computer & Communications Industry Association (CCIA) at 3; Verizon Wireless Comments at 16-18; Comments of Northrop Grumman Information Technology, Inc. at 4 (“Northrop Grumman Comments”); 4G Coalition Comments at 3-8; Comments of the City of Independence Missouri at 2 (PS Docket No. 06-229, filed May 21, 2007); Comments of the Missouri State Highway Patrol at 5; Comments of the National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities at 5-6; Comments of the Wireless Communications Association International at 5-6 (“WCA Comments”).

⁸ Although some parties, particularly rural carriers, expressed support for Band Plans 1 or 2, these parties likely were not aware of the failure of these band plans to satisfy the preconditions established by Public Safety and the Commission, as their endorsements of Band Plans 1 or 2 were primarily based on preferences for smaller geographic areas and block sizes. Smaller geographic areas and block sizes can, of course, be accommodated in the context of variations on Band Plan 3, such as Band Plans 4 or 5.

⁹ NPSTC Comments at 24 n.11.

¹⁰ *Id.* at 23.

both plans, “public safety systems would have to transition to new narrowband channels at costs to be absorbed by the agency.”¹¹ As NPSTC concludes, Band Plans 1 and 2 “provide no benefit to public safety,” “will do serious harm to public safety communications in the border regions as they fail to resolve Canadian broadcast interference,” and “should be rejected.”¹²

Other commenters – with varied interests – raise similar issues with respect to Band Plans 1 and 2. For example, Northrop Grumman explains that Band Plans 1 and 2 will create incompatibility with non-border areas, result in a loss of universal interoperability, and require public safety systems to incur the added cost and burden of shifting to and from the temporary spectrum assignments.¹³ WCA also recommends that the Commission reject Band Plans 1 and 2 because they are “inconsistent with the principle of nationwide, homogeneous allocation of public safety narrowband and public safety broadband spectrum [and] fail to meet the need for public safety narrowband interoperability.”¹⁴ The Coalition for 4G in America remarked that “Proposals 1 and 2 are at best a laborious and uncertain means to achieve [Public Safety’s] goals, particularly in comparison to Proposal 3, which resolves all issues up front.”¹⁵ The San Diego/Imperial County Regional Communications System similarly opposes Band Plans

¹¹ *Id.* (“[A]gencies in the border regions would face two transitions; first to transition to the ‘temporary’ narrowband channels and second to transition to the ‘permanent’ ones following the completion of the Canadian TV re-location.”).

¹² *Id.* at 25.

¹³ Northrop Grumman Comments at 4.

¹⁴ WCA Comments at i.

¹⁵ 4G Coalition Comments at 22.

1 and 2 because they do not enable interoperability, and require public safety agencies to fund their own reconfiguration expenses.¹⁶

In light of the support for Band Plan 3 among varied but key constituencies affected by this proceeding, the fact that Band Plan 3 satisfies Public Safety's preconditions for reconfiguring its narrowband allocation, and the absence of substantive opposition to Band Plan 3, the Upper 700 MHz Licensees strongly urge the Commission to adopt Band Plan 3 for the Upper 700 MHz Band, consistent with the recommendations made in their comments and the limited grandfathering modifications described herein.¹⁷

III. IMPLEMENTATION OF BAND PLAN 3

This section describes the license modifications and grandfathering required to implement Band Plan 3 (or its variations, Band Plans 4 and 5).

Spectrum Re-packing. The Upper 700 MHz Licensees have signed on to a spectrum re-packing agreement, the details of which are set forth in Appendix A to these reply comments. The re-packing agreement will reorganize A and B Block spectrum, allowing the shift of Public Safety narrowband channels to accommodate the need for nationwide narrowband interoperability channels in TV channels 63, 64, 68 and 69 (as explained in our comments) and enabling an increase in the size of the Upper 700 MHz C Block to 11 MHz paired. Appendix A illustrates the specific A Block geographies each licensee will occupy as well as a summary of the MHz-pop auction discount vouchers

¹⁶ Comments of the San Diego County – Imperial County, California Regional Communications System ¶ 15.

¹⁷ See Comments of Access Spectrum, LLC, Dominion 700, Inc., Harbor Guardband, LLC, and Pegasus Communications Corporation (“Upper 700 MHz Licensees Comments”).

due to each licensee for spectrum yielded in order to implement the re-packing.¹⁸ As explained in our comments, the Upper 700 MHz Licensees will give up their 2 MHz paired B Block licenses, will relocate their 1 MHz paired A Block licenses, and will agree to the modifications to their licenses necessary to implement the re-packing agreement.¹⁹

All the existing A and B Block licensees have agreed to cooperate in this redistribution of spectrum with two exceptions – Radiofone PCS and PTPMS II. Radiofone PCS thus far has not been inclined to participate in a re-packing agreement, in light of the acknowledgement in the *Further Notice* that inclusion of Radiofone PCS's B Block license in the Gulf of Mexico was not critical for implementing the plan.²⁰ PTPMS

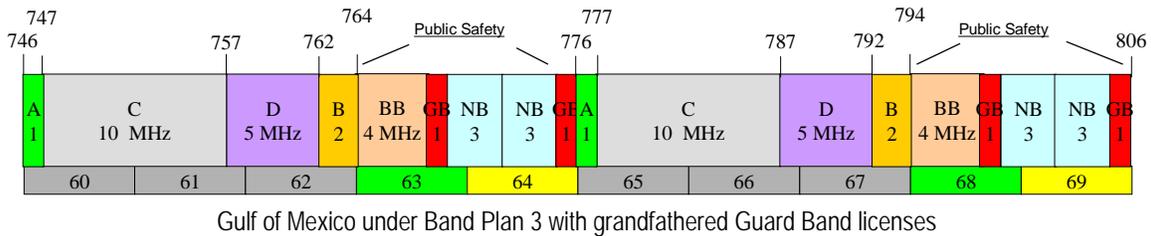
¹⁸ On May 24, 2007, the Commission approved an application for authorization to assign Harbor Guardband's license to Access Spectrum. *See* ULS File No. 0003039739; Public Notice, Report No. 3199, at 15 (May 30, 2007). As a result, Harbor Guardband is not listed as a licensee in Appendix A. Further, the Commission recently approved an application to transfer Motorola's B Block license to Access Spectrum. *See* ULS File No. 0002989869; Public Notice, Report No. 3166, at 16 (May 16, 2007).

¹⁹ *See* Upper 700 MHz Licensees Comments at 12-15.

²⁰ *See Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, Report and Order and Further Notice of Proposed Rulemaking, WT Docket Nos. 96-86, 01-309, 03-264, 06-150, and 06-169, CC Docket No. 94-102 and PS Docket No. 06-229, FCC 07-72, 22 FCC Rcd 8064, ¶ 186 n.421 (rel. April 27, 2007) ("*Further Notice*").

II also has thus far declined to join the re-packing agreement, so its licenses also will need to be grandfathered.²¹

Radiofone PCS. Because no state or local public safety operations are planned for the Gulf of Mexico, the Commission has significant flexibility with respect to the configuration of the public safety spectrum in the Gulf. The Commission could consolidate the public safety narrowband spectrum in the Gulf of Mexico but leave the current guard band licenses in place, including Radiofone’s B Block.



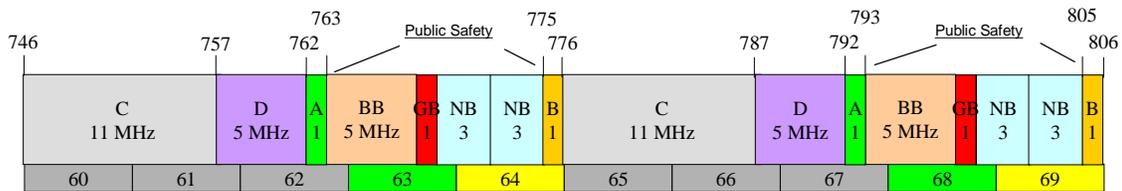
This configuration would reduce the public safety broadband allocation in the Gulf of Mexico from 5 MHz paired to 4 MHz paired, which will have no negative impact on Public Safety given the absence of public safety operations in the Gulf of Mexico. The commercial A Block guard band also would remain in its present location, which would accommodate a customer of Access Spectrum that has spectrum use rights to part of the A Block.²² The retention of the A Block would, in turn, decrease the size of the Upper 700 MHz C Block in the Gulf of Mexico from an 11 MHz pair to a 10 MHz pair.

However, there would remain the option after the auction for the C Block and A Block licensees to negotiate for eventual consolidation of the two licenses in the Gulf.

²¹ PTPMS II holds the A Block license in Buffalo, and the B Block licenses in Albuquerque and Des Moines.

²² Access Spectrum, the current A Block licensee, would retain its A Block license in the Gulf, at its current frequencies.

PTPMS II. The Commission could implement Band Plan 3 and grandfather the three PTPMS II licenses which comprise the 1 MHz paired A Block license in Buffalo, and the 2 MHz paired B Block licenses in Albuquerque and Des Moines. Under Band Plan 3, PTPMS II, which has 2 MHz paired B Block licenses in Albuquerque and Des Moines, would have the 1 MHz paired A Block and the 1 MHz paired B Block in Albuquerque and Des Moines.²³ In these locations, the PTPMS II A and B Block licenses would remain subject to the current guard band rules.²⁴



Band Plan 3 Nationwide

Therefore, PTPMS II would continue to hold 4 MHz of licensed spectrum in these markets that would be subject to guard band rules. The current guard band rules are designed for the use of high-site, narrowband networks that are compatible with the adjacent public safety narrowband networks. There are currently no operations on any of PTPMS II’s spectrum,²⁵ and PTPMS II would continue to hold 4 MHz of spectrum in

²³ In Albuquerque and Des Moines, PTPMS II’s frequencies at 763-764/793-794 MHz (*i.e.*, eighty 12.5 kHz narrowband channels) would be relocated to the operationally identical 775-776/805-806 MHz, resulting in the same number of narrowband channels after the relocation as before.

²⁴ Because the guard band rules that currently govern PTPMS II’s licenses are designed for the provision of narrowband services (*i.e.*, high-site, non-cellular services) due to their proximity to public safety narrowband operations, splitting the spectrum into two separate blocks would not foreclose the provision of any services that are currently permitted on PTPMS II’s licenses.

²⁵ PTPMS II COMMUNICATIONS, L.L.C., Guard Band Manager’s Annual Report (filed Feb. 25, 2007), *available at*: <http://wireless.fcc.gov/services/index.htm?job=guardband_reports&id=700_guard>.

which it could provision the same sort of high-site, narrowband networks permitted under the existing guard band rules. In Buffalo, PTPMS II's 1 MHz paired A Block license would shift frequencies from 746-747/776-777 MHz to 762-763/792-793 MHz. Under this proposal, in all geographies (except for the Gulf of Mexico, as described above), neither the C nor D Blocks would be reduced in size and the public safety spectrum would be harmonized with its allocation in the rest of the nation. As explained in Appendix B, the Commission possesses the authority to modify PTPMS II's licenses in this manner to achieve the considerable benefits for Public Safety that would derive from the adoption of Band Plan 3.

The Upper 700 MHz Licensees will continue to engage with PTPMS II in the coming weeks, with the goal of having a re-packing plan that includes PTPMS II's licenses. However, should PTPMS II prefer to maintain its licenses, the Commission should implement the grandfathering scenario described above. This approach would enable Band Plan 3 to be implemented across the United States²⁶ and would permit nationwide, interoperable narrowband communications for Public Safety. Therefore, it would be far preferable to Band Plans 1 and 2, which would eliminate Public Safety's nationwide interoperability.²⁷

IV. ALCATEL-LUCENT'S PROPOSAL FOR ADDRESSING INTERNATIONAL BORDER ISSUES

As discussed above, the record confirms that Band Plans 1 and 2 are unworkable because they preclude the availability of the necessary interoperability channels. Alcatel-

²⁶ As explained above, the Gulf of Mexico would be the only exception, but Public Safety would not be negatively affected given the absence of planned state or local public safety operations in the Gulf.

²⁷ See Upper 700 MHz Licensees Comments at 22-35.

Lucent, however, advocates adoption of Band Plan 1, with a flexible internal guard band variation. The Alcatel-Lucent variation has many of the same flaws as the temporary easement approach described in the *Further Notice*, and is a good deal worse than the temporary easement in an important respect.

In the Upper 700 MHz Licensees Comments filed on May 23, 2007, and in the comments of public safety agencies such as NPSTC and APCO, it was made clear that a temporary solution to the border interoperability problem was unacceptable to Public Safety. It would be unacceptable for Public Safety to lose its mission-critical narrowband interoperability and unreasonable to expect Public Safety to build systems, and then pay to retune them at a later time. The Alcatel-Lucent proposal is inadequate for the same reasons. Both the easement and the proposal described by Alcatel-Lucent would produce the disadvantages of any approach that is temporary and limited in scope to border regions.²⁸ As NPSTC stated in its comments:

The purpose of using radios that utilize standardized interoperability is to avoid the current reprogramming or capacity challenges when out of region agencies are dispatched to an incident. Under the easement proposal, this critical capability will be lost. **Simply put, unless there are permanent narrowband interoperability channels uniformly distributed across states, regions, and the country in *all* of TV channels 63, 64, 68 and 69, there will be no interoperability for agencies in the 18 border states. This presents an unacceptable risk to the safety of members of the public safety community and the citizens in these border areas.**²⁹

Alcatel-Lucent raises an additional, but essentially irrelevant issue, and then proceeds to support a proposal that does not solve the issue it raised and which is inferior

²⁸ See *id.* at 23-32.

²⁹ NPSTC Comments at 24 (emphasis supplied).

even to the easement proposal. Alcatel-Lucent expresses a concern that under Band Plans 3, 4, and 5, 1 MHz paired of the public safety broadband allocation could be impaired by TV broadcasters³⁰ operating on TV channels 62 and 67.³¹ Alcatel-Lucent argues that the Commission therefore should permit the temporary use of Public Safety's internal guard band for narrowband communications.³² Of course, as Alcatel-Lucent acknowledges, a guard band would still be necessary between public safety narrowband and broadband operations.³³ Therefore, if the internal guard band were used for narrowband communications, 1 MHz paired of broadband spectrum would be used as an internal guard band, reducing Public Safety's 5 MHz broadband allocation by 1 MHz paired in the Canadian border regions – precisely the situation Alcatel-Lucent's proposal was supposed to avoid.

Alcatel-Lucent's construct not only would fail to provide Public Safety with mission-critical narrowband voice interoperability in the border regions, but would also preclude public safety agencies from using the full 5 MHz paired of broadband spectrum

³⁰ Although Alcatel-Lucent expresses concern about impairing the use of 1 MHz of public safety broadband spectrum along the border, it subsequently states that “subject to a few exceptions, the border region is not densely populated and there will be some delay in funding and building out these systems regardless. Thus it seems likely that maximum broadband capacity will not be needed immediately.” Comments of Alcatel-Lucent at 24 (“Alcatel-Lucent Comments”). Alcatel-Lucent's expressed concern about interference from broadcast operations on TV channels 62 and 67 appears inconsistent with its conclusion that public safety agencies in border regions are unlikely to require the full 5 MHz for broadband in the near term.

³¹ Public safety agencies located in regions along the border with Mexico would not confront this issue because there are no Mexican television broadcast operations in TV Channels 62 and 67 along the border.

³² Alcatel-Lucent apparently fails to understand that Public Safety is seeking to preserve its ability to interoperate among its own narrowband systems, and that this interoperability is not achieved by permitting the temporary use of the internal guard band for narrowband deployments.

³³ Alcatel-Lucent Comments at 24; *see also Further Notice* ¶ 261 & n.531.

where there are TV broadcasters on TV channels 64 and 69, but not on TV channels 62 and 67.³⁴ In light of the serious potential for harm to the first responders and the American people that reside in the affected border regions, the Alcatel-Lucent proposal should be rejected.

V. OTHER ISSUES

746 MHz Interface. The Upper 700 MHz Licensees have explained in great detail that the Commission did not design the A Block to protect commercial spectrum and in particular that the lower A Block was not intended to protect the Upper 700 MHz C Block from the Lower 700 MHz C Block.³⁵ Yet, Ericsson continues to hold the completely erroneous view that the A Block is designed to protect adjacent commercial licensees from interference,³⁶ an error that is echoed by AT&T.³⁷ It therefore bears emphasis that the removal of the A Block guard band at 746-747 MHz would not change the Lower 700 MHz C Block licensee's obligations to protect its commercial neighbor at 746 MHz and any suggestion that the A Block exists as a "shield" for interference among commercial blocks³⁸ should be rejected.

Ericsson Band Plan. Also in its comments, Ericsson submits a band plan that places the entirety of Public Safety's narrowband allocation on TV channels 64 and 69.³⁹ By foreclosing the possibility of public safety narrowband operations on TV Channels 63

³⁴ This would include the entire Mexican border where there are TV broadcasters operating on TV channels 64 and 69, but none operating on TV channels 62 or 67.

³⁵ Upper 700 MHz Licensees Comments at 43-50.

³⁶ Comments of Ericsson Inc. at 22 ("Ericsson Comments").

³⁷ Comments of AT&T Inc. at 5.

³⁸ *Id.*

³⁹ Ericsson Comments at 24.

and 68, Ericsson's band plan precludes interoperability.⁴⁰ Ericsson also fails to recommend a proposal to fund the consolidation of the public safety narrowband allocation. Ericsson's band plan should be rejected for failure to meet either of the preconditions established by Public Safety and the Commission for consolidating the public safety narrowband allocation.

⁴⁰ In this regard, Ericsson's new proposal is inferior to its previously submitted Reclamation Plan, which enabled interoperability channels in TV channels 63, 64, 68 and 69, an advantage Ericsson identified in the discussion of its previous proposal. *See* Letter from Elisabeth H. Ross on behalf of Ericsson Inc. to Marlene H. Dortch, FCC Secretary (March 21, 2007); *see also* Letter from Michael Gottdenker and Ruth Milkman on behalf of Access Spectrum, LLC and Marshall Pagon and Kathleen Wallman on behalf of Pegasus Communications Corporation, to Marlene H. Dortch, FCC Secretary (March 29, 2007). Ericsson does not explain why it has now proposed a new band plan that clearly fails to address the Public Safety border issues.

VI. CONCLUSION

In conclusion, we request that the Commission adopt Band Plan 3 and related proposals described in our May 23, 2007 comments and approve the re-packing agreement entered into by the Upper 700 MHz Licensees, as well as grandfathering the Radiofone PCS and PTPMS II licenses.

Respectfully submitted,

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June 4, 2007

APPENDIX A

Illustration of the
Upper 700 MHz Re-Packing Agreement

Currently, existing A and B Block licensees hold 52 A Block licenses and 10 B Block licenses which were assigned pursuant to competitive bidding in auctions held in late 2000 and early 2001. In order to implement Band Plan 3 (or Band Plans 4 or 5), the Upper 700 MHz Licensees will relinquish their B Block licenses and “re-pack” into the re-banded A Block licenses. Presented below is a summary of each licensee’s current A and B Block spectrum holdings and proposed spectrum holdings after implementation of Band Plan 3 and the re-packing agreement (including the issuance of auction discount vouchers) and a map illustrating the specific geographies (MEAs) that each licensee would hold after implementation of Band Plan 3 and the re-packing agreement.

**700 MHz Spectrum Exchange
Upper 700 MHz - A and B Blocks⁽¹⁾**

Licensee	2000 Census								MHz-pops Auction Discount Vouchers
	Pre-swap			Post-swap			Variance		
	# of MEAs	MHz	MHz-pops	# of MEAs	MHz ⁽²⁾	MHz-pops	MHz-pops	% Change	
Pegasus Guard Band	34	2/4	336,080,646	23	2	305,791,020	(30,289,626)	-9.0%	30,289,626
Access Spectrum	22	2/4	259,125,878	24	2	233,563,178	(25,562,700)	-9.9%	25,562,700
PTPMS II	3	2/4	24,611,890	3	2/4	24,611,890	0	0.0%	0
Dominion 700	1	0	17,534,200	1	2	17,534,200	0	0.0%	0
Licensees - Total	60		637,352,614	51		347,937,110	(55,852,326)	-8.8%	55,852,326

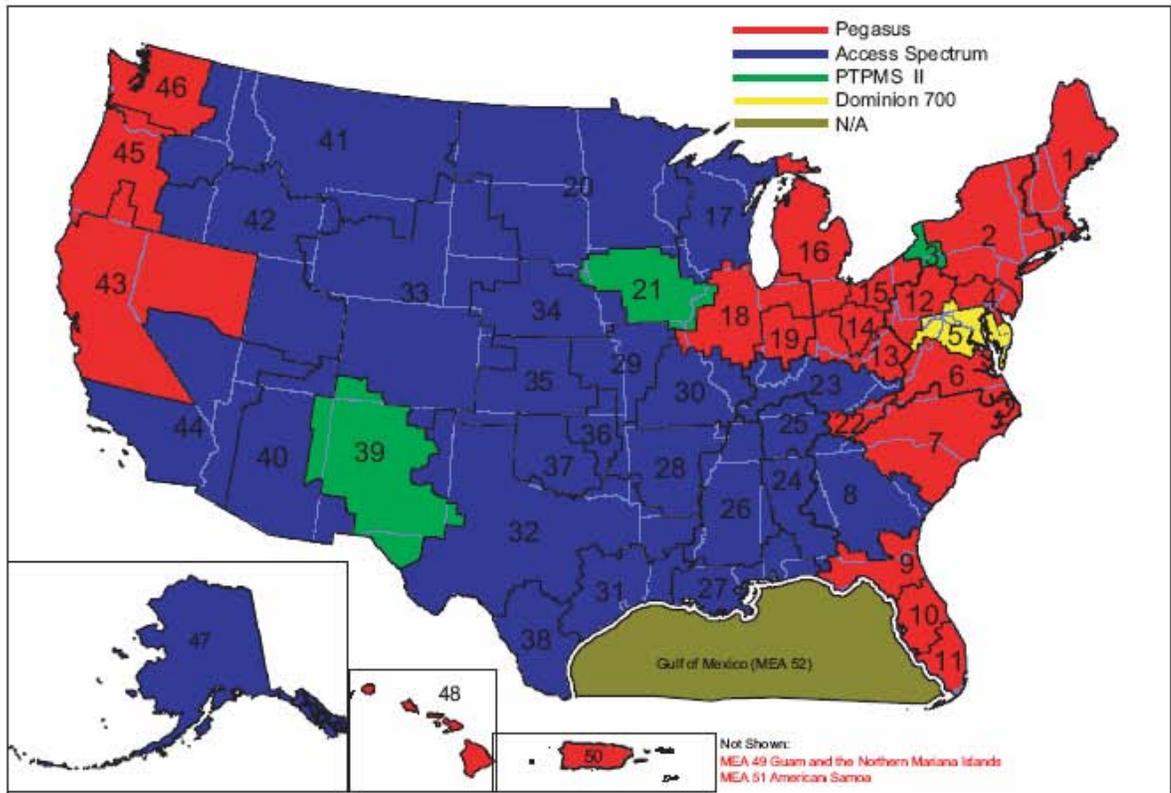
(1) Does not include the Gulf of Mexico (MEA 52) which is not related to the 700 MHz spectrum exchange.

(2) Note that PTPMS II will hold both the A and B Blocks in MEA 21 (Des Moines) and MEA 39 (Albuquerque).

List of Geographies and Corresponding Licensees Post-Swap

Name of Market	MEA #	Licensee
Boston	1	Pegasus Guard Band
New York City	2	Pegasus Guard Band
Buffalo	3	PTPMS II
Philadelphia	4	Pegasus Guard Band
Washington	5	Dominion 700
Richmond	6	Pegasus Guard Band
Charlotte	7	Pegasus Guard Band
Atlanta	8	Access Spectrum
Jacksonville	9	Pegasus Guard Band
Tampa-Orlando	10	Pegasus Guard Band
Miami	11	Pegasus Guard Band
Pittsburgh	12	Pegasus Guard Band
Cincinnati	13	Pegasus Guard Band
Columbus	14	Pegasus Guard Band
Cleveland	15	Pegasus Guard Band
Detroit	16	Pegasus Guard Band
Milwaukee	17	Access Spectrum
Chicago	18	Pegasus Guard Band
Indianapolis	19	Pegasus Guard Band
Minneapolis-St. Paul	20	Access Spectrum
Des Moines	21	PTPMS II
Knoxville	22	Pegasus Guard Band
Louisville	23	Access Spectrum
Birmingham	24	Access Spectrum
Nashville	25	Access Spectrum
Memphis	26	Access Spectrum
New Orleans	27	Access Spectrum
Little Rock	28	Access Spectrum
Kansas City	29	Access Spectrum
St. Louis	30	Access Spectrum
Houston	31	Access Spectrum
Dallas-Fort Worth	32	Access Spectrum
Denver	33	Access Spectrum
Omaha	34	Access Spectrum
Wichita	35	Access Spectrum
Tulsa	36	Access Spectrum
Oklahoma City	37	Access Spectrum
San Antonio	38	Access Spectrum
Albuquerque	39	PTPMS II
Phoenix	40	Access Spectrum
Spokane-Billings	41	Access Spectrum
Salt Lake City	42	Access Spectrum
San Francisco	43	Pegasus Guard Band
Los Angeles	44	Access Spectrum
Portland	45	Pegasus Guard Band
Seattle	46	Pegasus Guard Band
Alaska	47	Access Spectrum
Hawaii	48	Pegasus Guard Band
Guam and the Northern Mariana Islands	49	Pegasus Guard Band
Puerto Rico and U.S. Virgin Islands	50	Pegasus Guard Band
American Samoa	51	Pegasus Guard Band

Major Economic Areas (MEA)



APPENDIX B

Modification of Certain Licenses Not Included in the
Re-Packing Agreement

This Appendix describes the Commission’s authority to implement the grandfathering approach described in these reply comments and offers two alternatives, one of which would not require modification of any licenses. These alternatives, while less desirable than the approach described in the text of the reply comments, would still enable adoption of Band Plan 3 without disruption of interoperability for Public Safety.

The FCC’s Authority to Modify Spectrum Licenses. The Commission has discretion to modify PTPMS II’s licenses in the manner described in these reply comments if it determines that a modification would serve the public interest, convenience and necessity.¹ Indeed, the modification could even be performed without the consent of the licensee.² Courts have found extensive changes to or limitations on a license to be modifications consistent with the Communications Act where the Commission determined that the modification would serve the public interest and provided the licensee with notice and an opportunity to protest.³ For example, the U.S. Court of Appeals for the D.C. Circuit affirmed an FCC license modification that withdrew authorization to operate over certain limited frequencies over which the

¹ 47 U.S.C. § 316(a)(1) (“Any station license or construction permit may be modified by the Commission 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. . . .”); *see also Improving Public Safety Communications in the 800 MHz Band*, Memorandum Opinion and Order, 20 FCC Rcd 16015, ¶ 67 (2005). A license is considered “modified for purposes of section 316 when an unconditional right conferred by the license is substantially affected.” *P&R Temmer v. FCC*, 743 F.2d 918, 927-928 (D.C. Cir. 1984).

² *See Peoples Broadcasting Co. v. United States*, 209 F.2d 286, 288 (D.C. Cir. 1953).

³ *See California Metro Mobile Communications, Inc. v. FCC*, 365 F.3d 38, 41 (D.C. Cir. 2004) (court upheld the license modification that removed authorization to operate on frequencies over which the licensee previously was authorized to operate because FCC had satisfied the requirement of making a public interest finding, notifying the licensee, and providing the licensee an opportunity to protest); *see also California Metro Mobile Communications Inc.*, Memorandum Opinion and Order, 17 FCC Rcd 22974 (2002).

licensee previously had been authorized to operate, noting that the FCC satisfied the requirements of Section 316(a)(1). In commenting upon the licensee's loss of previously-assigned frequencies, the court explained that

[n]o doubt licensees have a strong and legitimate interest in administrative repose, but the Congress gave the Commission the authority in section 316 to override that interest if doing so serves the public interest, convenience, and necessity.⁴

Section 316 has been found to provide the Commission with authority to modify a license in such a manner as to reduce the size of the license without the consent of the licensee. Therefore, the Commission would possess the authority to complete the much less intrusive modification to the A and B Block licenses of PTPMS II proposed herein, particularly since doing so would promote nationwide, interoperable communications for Public Safety.⁵

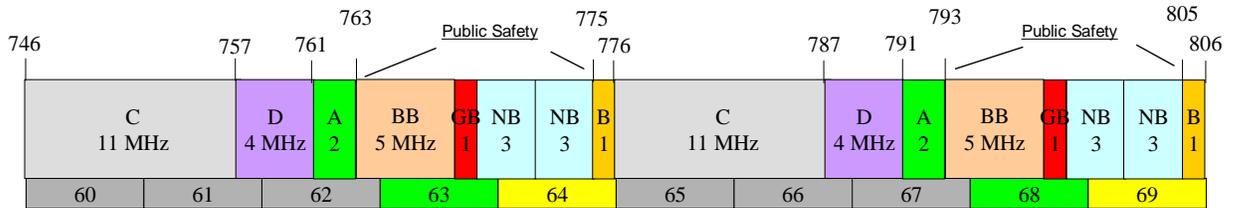
Alternative approaches to Grandfathering PTPMS II's Licenses. If the Commission decides not to modify PTPMS II's licenses as proposed in the main body of these reply comments, it would have two alternative approaches to consider: the first involves license modification, and the second does not. Both alternatives would permit nationwide, interoperable narrowband communications for Public Safety and therefore would be far superior to Band Plans 1 and 2.

The first alternative would require the Commission to modify the PTMPS II B Block licenses by shifting them lower by 1 MHz, and to relocate PTPMS II's A Block license. There currently are no operations on PTPMS II's A or B Block licensed

⁴ *California Metro Mobile Communications v. FCC*, 365 F.3d at 45 (citation omitted).

⁵ The Commission could accomplish the license modification through this rulemaking proceeding. *See, e.g., Amendment of Part 22 of the Commission's Rules*, Memorandum Opinion and Order on Reconsideration, 8 FCC Rcd 1363, ¶ 4 (1993).

spectrum.⁶ Therefore, it should be straightforward to shift the PTPMS II B Block licenses in Albuquerque and Des Moines from 762-764/792-794 MHz to the new A Blocks at 761-763/791-793 MHz. In the same manner, the PTPMS II A Block license in Buffalo would be relocated to 762-763/792-793 MHz. The PTPMS II A and B Block licenses would remain subject to the guard band rules that are in place today.



Albuquerque and Des Moines under Band Plan 3 with shifted PTPMS II licenses

This configuration would enable the public safety allocation to remain aligned consistently with the rest of the country and would harmonize the Upper 700 MHz C Block nationwide. In Albuquerque and Des Moines, the size of the Upper 700 MHz D Blocks would decrease from 5 MHz paired to 4 MHz paired, at least temporarily. The Upper 700 MHz D Block in Buffalo would continue to be 5 MHz paired, since the PTPMS II Buffalo license is only 1 MHz paired.

The period for grandfathering PTPMS II's three licenses may last only a few years. PTPMS II's three Upper 700 MHz A and B Block licenses expire on January 1, 2015, approximately six years after the DTV transition.⁷ Currently, those licenses are not constructed.⁸ If, upon expiration of their original license term, they remain unconstructed, the Commission should decline to renew the licenses to PTPMS II for

⁶ PTPMS II COMMUNICATIONS, L.L.C., Guard Band Manager's Annual Report (filed Feb. 25, 2007), available at: <http://wireless.fcc.gov/services/index.htm?job=guardband_reports&id=700_guard> ("PTPMS Band Manager Report").

⁷ 47 U.S.C. § 309(j)(14)(A), as amended by Section 3002 of the Digital Television Transition and Public Safety Act of 2005, Title III (§§ 3001-3013) of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006).

⁸ See PTPMS Band Manager Report.

failure to satisfy the conditions of the licenses.⁹ To promote efficient spectrum use and assignment, the D Block licenses for Albuquerque and Des Moines assigned at the 700 MHz auction could include a reversionary interest in 1 MHz of the grandfathered PTPMS II B Block licenses that would become effective if PTPMS II's licenses were not renewed.¹⁰ In the meantime, the D Block licensee in Albuquerque and Des Moines should be permitted secondary use of the PTPMS II B Block licensed spectrum, allowing it to operate over a full 5 MHz of broadband spectrum in Albuquerque and Des Moines as long as it does not interfere with the primary use of the spectrum.¹¹

Although the potential reduction in the usable capacity of the D Block in Albuquerque and Des Moines is not ideal, this approach would be far superior to Band Plans 1 and 2, which contemplate a 4 MHz paired D/E Block in nine license areas that

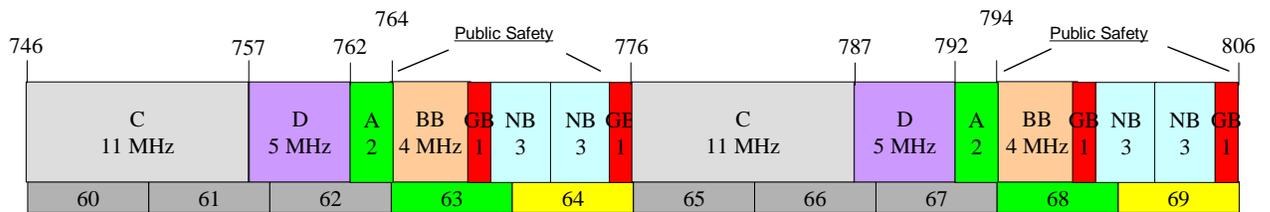
⁹ See 47 C.F.R. §§ 27.607(a) and 27.14(a).

¹⁰ This approach would minimize delays involved in spectrum re-assignment and would put otherwise fallow spectrum to use efficiently and quickly, while still using the Commission's competitive bidding procedures. The spectrum rights would revert in a manner similar to the operation of reversionary interests in other bands. See *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*, Report and Order and Second Notice of Proposed Rule Making, 12 FCC Rcd 18600, ¶¶ 78-79 (1997); see also *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service and Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Report and Order, 10 FCC Rcd 9589, ¶ 42 (1995). However, in this instance, the reversionary interests would have been assigned as part of the D Block licenses in Albuquerque and Des Moines pursuant to competitive bidding in the 700 MHz auction. The reversionary interest would include the right to operate under technical rules consistent with those that apply to the remainder of the D Block licenses.

¹¹ This approach would be similar to the proposal to allow secondary-use easements as a way of promoting the deployment of spectrum-based services in rural areas. See *Facilitating the Provision of Spectrum-Based Services to Rural Areas and Promoting Opportunities for Rural Telephone Companies to Provide Spectrum-Based Services; 2000 Biennial Regulatory Review – Spectrum Aggregation Limits for Commercial Mobile Radio Services; Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19078, ¶ 40 (2004).

make up 15 percent of the country.¹² As explained above, the Commission possesses the authority to make the required modifications to PTPMS II’s licenses.

Should the Commission prefer not to modify the PTPMS II licenses as set forth in the previously-described grandfathering scenarios, the Commission could still implement Band Plan 3 while grandfathering PTPMS II’s licenses without modifications.¹³ Under this alternative, the Commission would design the public safety band in Albuquerque and Des Moines as follows (from left to right): a 4 MHz paired block to broadband use, a 1 MHz paired block to internal guard band use, 6 MHz paired block to narrowband use, and another 1 MHz paired block for internal guard band use.



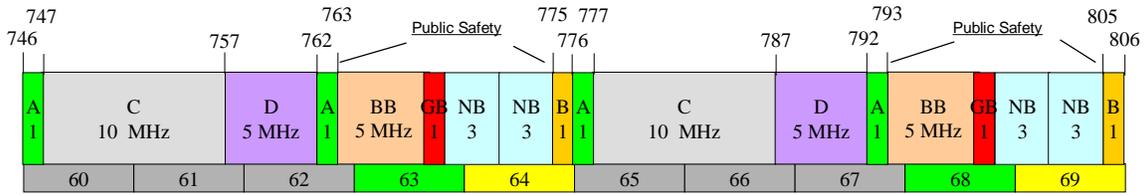
Albuquerque and Des Moines under Band Plan 3 with PTPMS II licenses not modified

This configuration would harmonize the public safety’s mission-critical narrowband operations nationwide, but would have the effect of reducing the public safety broadband allocation by 1 MHz in these two areas, at least until January 1, 2015 (when the original terms of PTPMS II’s licenses expire). The Commission may wish to consider permitting PTPMS II to turn in 1 MHz paired of the licenses for MHz-pops auction discount vouchers to enable the full 5 MHz paired of the public safety broadband allocation. In

¹² See Upper 700 MHz Licensees Comments at 34-35. These nine license areas do not include the Gulf of Mexico, which is discussed elsewhere, and which the Commission has acknowledged could be handled separately. See *Further Notice* at ¶ 186 n.421; see also Upper 700 MHz Licensees Reply Comments, *supra* at 7-8.

¹³ In this scenario, the PTPMS II licenses would remain subject to the existing guard band rules.

addition, the PTPMS II A Block license in Buffalo would remain on its current frequencies.¹⁴



Buffalo under Band Plan 3 with PTPMS II license not modified

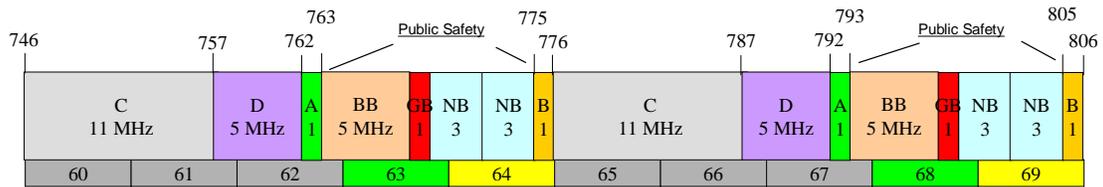
Accordingly, the Upper 700 MHz C Block in Buffalo would be reduced from 11 MHz paired to 10 MHz paired as an initial matter, but the C Block license in Buffalo could include a reversionary interest to the spectrum covered by the PTPMS II A Block license, so that at some future time, if the A Block license term expired, and the license was not renewed, the C Block holder would not have to wait for another auction to harmonize the Buffalo license with other C Block licenses. In the interim, the C Block license in Buffalo also should include a right to secondary use of PTPMS II’s A Block spectrum, consistent with the approach proposed for the D Block license in Des Moines and Albuquerque in the first alternative scenario.¹⁵ The chart and pictures on the following pages summarize the three possible approaches to grandfathering PTPMS II’s licenses while implementing Band Plan 3.

¹⁴ In the event that there is no modification of PTPMS II’s licenses, the Re-Packing Agreement would be modified so that Pegasus would be assigned the A Block in Buffalo and the Pegasus spectrum voucher would be reduced by the appropriate number of MHz-pops.

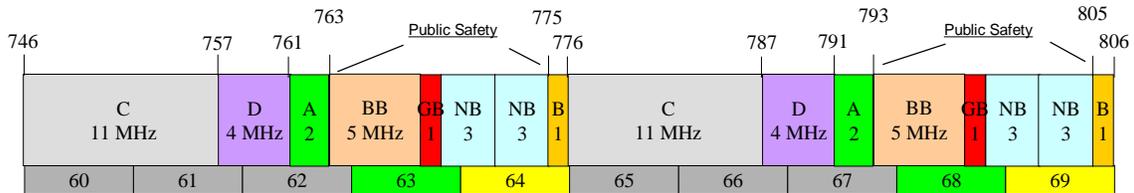
¹⁵ See Appendix B at 3-5, *supra*.

Grandfathering Proposal Number	Impact on Public Safety Allocation*	Impact on Commercial Allocation*	Impact on PTPMS II Licenses
1	None	None	Split the B Block licenses into two 1 MHz pairs so that they become the new 1 MHz paired A Block and the new 1 MHz paired B Block licenses in Albuquerque and Des Moines; shift the A Block license so that it becomes the new 1 MHz paired A Block license in Buffalo.
2	None	1 MHz paired reduction in Albuquerque and Des Moines ONLY	Shift the B Block licenses so that they become the new 2 MHz paired A Block licenses in Albuquerque and Des Moines; shift the A Block license so that it becomes the new 1 MHz paired A Block license in Buffalo.
3	1 MHz paired reduction in Albuquerque and Des Moines ONLY	1 MHz paired reduction in Buffalo ONLY	None

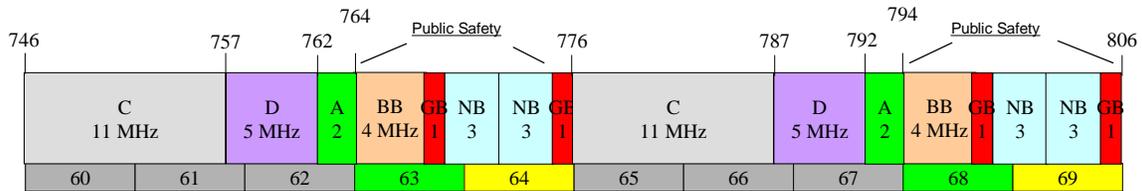
* Impact depicted as compared to Band Plan 3 in the rest of the nation.



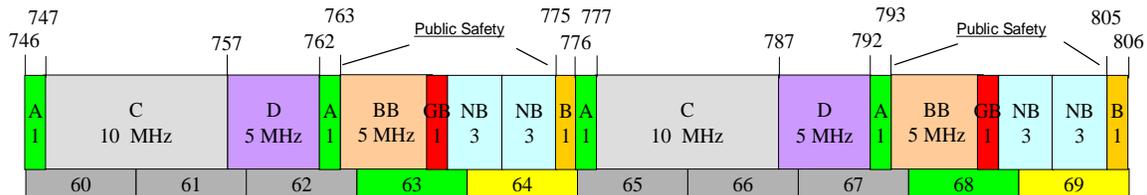
Grandfathering Proposal #1 – Nationwide



Grandfathering Proposal #2 – Albuquerque and Des Moines ONLY



Grandfathering Proposal #3 – Albuquerque and Des Moines ONLY



Grandfathering Proposal #3 – Buffalo ONLY

Certificate of Service

I hereby certify that on this 4th day of June, 2007, I caused a true and correct copy of the foregoing Comments of the Access Spectrum, LLC, Dominion 700, Inc., Harbor Guardband, LLC, and Pegasus Communications Corporation to be mailed by electronic mail to:

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