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
	)	
Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems	)	CC Docket No. 94-102
	)	
Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones	)	WT Docket No. 01-309
	)	WT Docket No. 03-264
Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services	)	
	)	WT Docket No. 06-169
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules	)	
	)	PS Docket No. 06-229
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	WT Docket No. 96-86
	)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010	)	

JOINT REPLY COMMENTS OF:

THE REGION 20 [DISTRICT OF COLUMBIA, MARYLAND & NORTHERN VIRGINIA], 700 MHZ PLANNING COMMITTEE,

THE REGION 28 [EASTERN PENNSYLVANIA (EAST OF HARRISBURG), SOUTHERN NEW JERSEY & DELAWARE], 700 MHZ PLANNING COMMITTEE,

THE REGION 9 [FLORIDA], 700 MHZ REGIONAL PLANNING COMMITTEE,

THE REGION 33 [OHIO], 700 MHZ REGIONAL PLANNING COMMITTEE,

THE REGION 17 [KENTUCKY], 700 MHZ REGIONAL PLANNING COMMITTEE

THE REGION 30 [EASTERN UPSTATE NEW YORK], 700 MHZ REGIONAL PLANNING COMMITTEE

THE COMMONWEALTH OF PENNSYLVANIA,

THE DIVISION OF COMMUNICATIONS, DEPARTMENT OF SAFETY AND HOMELAND SECURITY, STATE OF DELAWARE,

THE DIVISION OF COMMUNICATIONS, MARYLAND STATE HIGHWAY ADMINISTRATION,

THE MARYLAND STATE POLICE,

ARLINGTON COUNTY, VIRGINIA,

CHESTERFIELD COUNTY, VIRGINIA,

TOWN OF WARRENTON – FAUQUIER COUNTY, VIRGINIA JOINT COMMUNICATIONS,

BERKS COUNTY, PENNSYLVANIA, AND

RCC CONSULTANTS, INC.

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Appendix A

The Region 20 [District of Columbia, Maryland & Northern Virginia], 700 MHz Regional Planning Committee, the Region 28 [Eastern Pennsylvania (East of Harrisburg), Southern New Jersey & Delaware], 700 MHz Regional Planning Committee, the Region 9 [Florida], 700 MHz Regional Planning Committee, the Region 33 [Ohio], 700 MHz Regional Planning Committee, the Region 17 [Kentucky], 700 MHz Regional Planning Committee, the Region 30 [Eastern Upstate New York], 700 MHz Regional Planning Committee, the Commonwealth of Pennsylvania, the Division of Communications, Department of Safety and Homeland Security, State of Delaware, the Division of Communications, Maryland State Highway Administration, the Maryland State Police, the County of Arlington, Virginia, Town of Warrenton – Fauquier County, Virginia, Joint Communications, Chesterfield County, Virginia, Berks County, Pennsylvania, and RCC Consultants, Inc. ("RCC"), hereby submit these ***JOINT REPLY COMMENTS OF THE REGION 20 [DISTRICT OF COLUMBIA, MARYLAND & NORTHERN VIRGINIA], 700 MHZ PLANNING COMMITTEE, THE REGION 28 [EASTERN PENNSYLVANIA (EAST OF HARRISBURG), SOUTHERN NEW JERSEY & DELAWARE], 700 MHZ PLANNING COMMITTEE, THE REGION 9 [FLORIDA], 700 MHZ REGIONAL PLANNING COMMITTEE, THE REGION 33 [OHIO], 700 MHZ REGIONAL PLANNING COMMITTEE, THE REGION 17 [KENTUCKY], 700 MHZ***

REGIONAL PLANNING COMMITTEE, THE REGION 30 [EASTERN UPSTATE NEW YORK], 700 MHZ REGIONAL PLANNING COMMITTEE, THE COMMONWEALTH OF PENNSYLVANIA, THE DIVISION OF COMMUNICATIONS, DEPARTMENT OF SAFETY AND HOMELAND SECURITY, STATE OF DELAWARE, THE DIVISION OF COMMUNICATIONS, MARYLAND STATE HIGHWAY ADMINISTRATION, THE MARYLAND STATE POLICE, THE COUNTY OF ARLINGTON, VIRGINIA, TOWN OF WARRENTON – FAUQUIER COUNTY, VIRGINIA, JOINT COMMUNICATIONS, CHESTERFIELD COUNTY, VIRGINIA, BERKS COUNTY, PENNSYLVANIA, AND RCC CONSULTANTS, INC. (these "Joint Reply Comments" and the entities collectively, the "Joint Filers"), in response to certain of the comments filed by other parties in response to the *Further Notice of Proposed Rulemaking* of the Federal Communications Commission (the "Commission") in the above-entitled proceedings that was adopted on April 25, 2007 (the "April 25, 2007, R&O and FNPR"). These Joint Reply Comments supplement the previously-filed ***COMMENTS OF RCC CONSULTANTS, INC.*** (the "RCC Opening Comments"), in response to the April 25, 2007, R&O and FNPR.

I. Introduction and Summary

In the RCC Opening Comments, RCC asserted that: " … RCC is in a strong position to gain a sound and sensitive understanding of the interests and concerns of public safety agencies as they relate to the April 25, 2007, R&O and FNPR. RCC has sought to reflect that understanding as faithfully and effectively as possible in these Comments."

Based upon a review of the comments filed by public safety agencies and regional planning committees ("RPCs"), RCC believes that the RCC Opening Comments do, in fact, reflect a truly sound and sensitive understanding of the interests and concerns of public safety agencies as they relate to the April 25, 2007, R&O and FNPR. RCC is further confirmed in this belief by the support of the other Joint Filers.

The opening comments of substantially all public safety agencies in relation to making interoperable broadband service available to public safety (collectively, the "Public Safety Broadband Comments") make clear that:

- **There is almost no public safety support for the framework developed by the Commission in the Ninth NPRM for the development of a national interoperable public safety broadband network as it presently stands (the "Commission's Public**

Safety Broadband Proposal") or the proposal of Frontline Wireless, LLC ("Frontline") for a public private partnership to develop a national broadband network in the upper 700 MHz band in its current form (the "Frontline Proposal");

- **Without substantial modification, neither the Commission's Public Safety Broadband Proposal nor the Frontline Proposal would effectively serve the interests of public safety agencies; and**
- **The following elements of the Commission's Public Safety Broadband Proposal (and the Frontline variation thereon), among others, are deeply troubling to public safety agencies:**
    - **The failure to provide a very substantial role for RPCs in the development of high speed data networks for public safety;**
    - **The deprivation of options to public safety agencies to provide for high speed data networks by means other than one national interoperable broadband network;**
    - **The structural shortcomings that do not provide assurance that the interests of public safety will be adequately protected and reflected in the development of a national interoperable broadband network;**
    - **The lack of assurance that the coverage needs of public safety agencies will be met; and**

- **The non-recognition of the precedence of local needs over national interoperability in relation to high speed data requirements.**

All modifications to the Commission's Public Safety Broadband Proposal as presently framed or to the Frontline Proposal in its current form required by the Public Safety Broadband Comments are included in the broadband proposal made in the RCC Opening Comments (the "RCC Broadband Proposal"). The RCC Opening Comments and the RCC Broadband Proposal are clearly attuned to the overwhelming weight of public safety sentiment in relation to public safety broadband network in the 700 MHz band and reflect the concerns and requirements of public safety agencies more accurately than do the recent pronouncements of the Commission or Frontline.

The fundamental elements of the RCC Broadband Proposal are the following:

- ***The insertion of the RPCs into a significant role in the development of a national public safety broadband network;***
- ***The utilization of the RPCs as vehicles both to provide the required authorizations for the proposed national public safety broadband licensee and to bring the developer of the proposed network closer to the potential public safety users thereof;***
- ***The delegation of critical choices more directly to the potential public safety users of the proposed network;***

- ***The redefinition of the role of the proposed national licensee to assure that such role is in accord with public safety sentiment expressed through the RPCs and does not extend to matters not strictly related to the development of the proposed network;***
- ***The provision of safeguards to assure that there is a reasonable balance of bargaining power between the developer of the proposed network, on the one hand, and the proposed national licensee and the RPCs on the other;***
- ***The requirement that critical technical issues be promptly and effectively addressed by a competent body subject to appropriate approvals; and***
- ***The establishment of a dispute settlement process and a definitive frame of reference therefor.***

The RCC Broadband Proposal is comprehensively set forth as a series of rules in Part VI of the RCC Opening Comments (the "Rules of the RCC Broadband Proposal" or the "Rules").

The recently filed comments of Frontline (the "Frontline Opening Comments") address none of the concerns expressed in the Public Safety Broadband Comments or address none of those concerns effectively.

Many of the comments recently filed by parties other than public safety agencies and RPCs could be accommodated by adjustments to aspects of the RCC Broadband Proposal.

For these reasons, if:

- **the Commission believes that a national interoperable public safety network is a worthwhile goal, and**
- **the Commission believes that concerns of public safety should be fully addressed in the creation of the rules governing the development of a national interoperable public safety broadband network,**

then the RCC Broadband Proposal:

- **should be given very serious consideration by the Commission as an approach to giving effect to the concerns of public safety agencies in relation to high speed data networks in the 700 MHz band,**
- **should serve as the proper starting place for any effort by the Commission to modify either the Commission's Public Safety Broadband Proposal or the Frontline Proposal, and**
- **should, by the adoption thereof, be able to assure the support of public safety agencies for the development of any new proposal for a national interoperable public safety broadband network.**

The adoption of any proposal for that development of a national interoperable *public safety* broadband network that does not meet the clearly expressed concerns and requirements of

***actual public safety agencies* seems inconceivable, and, therefore, neither the Commission's Public Safety Broadband Proposal nor the Frontline variation thereon, both of which are deeply troubling to public safety agencies, can, without the modification of the kind set forth in the RCC Broadband Proposal, be properly adopted.**

II. Public Safety Agencies Have Substantial Substantive Reservation Respecting the Commission's Public Safety Broadband Proposal (and the Frontline Variation Thereon).

As noted above, the following elements of the Commission's Public Safety Broadband Proposal (and the Frontline variation thereon) are deeply troubling to public safety agencies:

- The failure to provide a very substantial role for RPCs in the development of high speed data networks for public safety;
- The deprivation of options to public safety agencies to provide for high speed data networks by means other than one national interoperable broadband network;
- The structural shortcomings that do not provide assurance that the interests of public safety will be adequately protected and reflected in the development of a national interoperable broadband network;
- The lack of assurance that the coverage needs of public safety agencies will be met;
- The non-recognition of the precedence of local needs over national interoperability in relation to high speed data requirements; and
- Other elements of the Commission's Public Safety Broadband Proposal or the Frontline Proposal that were troubling to public safety agencies, including the matter of the Commission's authority.

In Sections II.A-F of these Joint Reply Comments, the Joint Filers demonstrate that each of those concerns of public safety agencies is given vigorous and repeated expression in the Public Safety

Broadband Comments. In those sections, the Joint Filers address all of the Public Safety Broadband Comments and organize them in relation to the concerns of public safety as outlined above.

The clarity and uniformity of the Public Safety Broadband Comments is manifest and compels the conclusions that:

- The overwhelming weight of public safety comments serves to express material reservations respecting the Commission's Public Safety Broadband Proposal and the Frontline Proposal; and
- Without substantial modification, neither the Commission's Public Safety Broadband Proposal nor the Frontline Proposal would effectively serve the interests of public safety agencies in the view of public safety.

A. The Failure to Provide a Very Substantial Role for RPCs in the Development of High Speed Data Networks for Public Safety

A substantial number of the Public Safety Broadband Comments make reference to the failure to provide a very substantial role for RPCs in the development of high speed data networks for public safety. The relevant language of those comments is included below.

Comments of the City of New York: "An important instrument in structuring spectrum resources to meet local needs has been the regional planning committee process previously established by the Commission, which the *Further Notice* ignores." (At pp. 2-3)

Comments of the Region 33 (Ohio) 700 MHz Planning Committee: "[The Commission's Public Safety Broadband Proposal] favors Federal mandates over regional/local decisions and, if made final, would eliminate the option to deploy cost effective wideband systems or dedicated local agency broadband systems. None of the comments that we reviewed were in favor of that approach. Indeed, if the Commission continues on this track, it is a "slap in the face" to the 55 Regional Planning Committees, who were given creative latitude to design a Plan suited to their Regions' needs." (At p. 2)

Comments of Region 39, Tennessee: "Region 39 is concerned … that one national licensee will cause the loss of Regional Planning Committee … control and influence in system design, build-out, operations and meeting the needs of public safety in local jurisdictions." (At pp. 1-2)

Comments of Region #13 Illinois 700 MHz Planning Committee: "The Committee is not … convinced that reducing local control and limiting the potential for alternative wideband and broadband data options at the local level is in the best interest of the public safety community." (At p. 1)

Comments of the City of Tacoma, WA: "[Under the Commission's Public safety Broadband Proposal, in] areas with populations dense enough to support a profitable commercial broadband business model, the ability to work with Regional Planning Committees and consortiums of agencies to optimize local and regional data deployment would be non-existent." (At p. 3)

Comments of the Region 22 (Minnesota) 700 MHz Public Safety Regional Planning Committee: "MN-RPC believes it is absolutely essential for the Regional Planning Committees, which are best positioned to evaluate solutions for local first responder agencies while weighing competing needs for spectrum, to have a reasonable degree of flexibility to utilize wideband systems in order to meet critical public safety needs that are not met by the future broadband system." (At p. 5)

Comments of William Carter, Chairman Region 54 700 MHz Regional

Planning Committee: "…I have supported broadband in the 700 MHz public safety spectrum. However, with the current FNPRM, local control is lost and it concerns me that the outcome would be out of our hands. I feel a regional approach for data is the best solution, and control should be left to the local Regional Planning Committees." (At p.1)

Comments of Region 43 [State of Washington] Regional Planning Committee*: "Our st*rongest recommendation is that the Commission should not remove public safety spectrum and control from the Regional Planning Committees which are comprised of local government and public safety agencies." (At p. 4)

Comments of the Region 42 (Virginia) 700 MHz Regional Planning Committee: "While supporting the concept of a nationwide wireless broadband network for public safety, we cannot support any plan which removes the 12 MHz of 700 MHz public safety spectrum that state, regional, and local entities have been actively planning to implement for wideband data networks and reallocates it to a national public safety licensee. … We would however be in support of allowing the 700 MHz Regional Planning Committees the flexibility in determining whether to deploy wideband, broadband or a combination of the spectrum use within a Region, based on the needs of the local, regional and state public safety agencies within that Region." (At p.2)

Comments of Region 12 (Idaho), 700 MHz Regional Planning Committee: "First, we believe that the Regional Planning Committees (RPCs) should be given the flexibility to determine the best way to meet the broadband and wideband needs of local agencies within their regions." (At p. 2)

Comments of Region 16 (Kansas) 700 MHz Planning Committee: "Region 16 believes that Public Safety Users and Regional Planning Committees should have the option to choose a solution that best fits their needs, whether that solution is broadband or wideband, a local/regional network or a nationwide network." (At pp. 1-2)

See also: ***Comments of the Hennepin County Sheriff's Office Minneapolis, Minnesota*** (At p. 2); ***Comments of the Metropolitan Emergency Services Board*** **(Minnesota)** (At p. 2); **Comments of the Wisconsin State Patrol** (At. p. 1); ***Comments of Ronald G. Mayworm*** **(Chairman of the Region 49 [Central Texas] 700 MHz and 800 MHz Regional Planning Committees and Radio System Manager for the City of Bryan, Texas)** (At p. 2); ***Comments of King County, State of Washington*** (At pp. 2-4); ***Comments of Grundy County***

> ***[Illinois] Emergency Telephone System Board*** (At pp. 1-2); ***Comments of the Texas Statewide Interoperability Executive Committee*** (At pp. 2-7); **Comments of the City of Independence, Missouri on the Report and Order and Further Notice of Proposed Rulemaking** (At pp. 2-3); ***Comments of the Ohio Statewide Interoperability Executive Committee*** (At pp. 2-4); ***Comments of Mike Jeffres, Chair,, Nebraska 700 MHz Regional Planning Committee [Region 26]*** (At p. 2); ***Comments of the Idaho Statewide Interoperability Executive Committee*** (At p. 2); and ***Comments of the Missouri State Highway Patrol (MSHP) on the Report and Order and Further Notice of Proposed Rulemaking*** (At p. 8).

The failure of the Commission's Public Safety Broadband Proposal and the Frontline Proposal to provide a very substantial role for RPCs in the development of high speed data networks for public safety is of very great concern to public safety agencies.

B. The Deprivation of Options to Public Safety Agencies to Provide for High Speed Data Networks by Means other than One National Interoperable Broadband Network

A substantial number of the Public Safety Broadband Comments make reference to the deprivation of options to public safety agencies to provide for high speed data networks by means other than one national interoperable broadband network. The relevant language of those comments is included below.

> ***Comments of the City of Philadelphia***: "… the City is skeptical that designation of a single licensee to develop and operate a nationwide interoperable broadband network will best serve the needs of local public safety agencies. Public safety agencies should not be precluded from the option to build and operate private, local based broadband networks. ... The City anticipates that it would choose to

utilize wideband services to provide systems for data transport which could be developed on the 700 MHz public safety spectrum if such spectrum is not usurped for the single licensee broadband scheme." (At p. 2)

Comments of the Region 33 (Ohio) 700 MHz Planning Committee: "In a brief review of previously filed comments, most specifically to WT Docket 96-86, including those of our own Statewide Interoperability Executive Committee (Ohio SIEC) filed on June 1, 2006, comments of APCO and other public safety organizations filed at various times, and many other public safety user agencies and individuals, we are at a loss to fathom how the Commission could possibly have 'tentatively concluded' that not allowing for local choice was in the best interests of public safety. Not one public safety commenter that we saw stated 'broadband only – nothing else.'" (At p. 2)

Comments of King County, State of Washington: "The FCC suggests in the FNPRM that public safety overwhelmingly supports the establishment of the broadband segment as proposed. The County contends that this support is grossly misunderstood and is fully explained by a poorly framed question, not an overwhelming need. If public safety is asked, 'Do you support broadband operations?', the answer would be a resounding yes. When asked, 'Would you support trading wideband operation for broadband operation?' we sincerely believe the answers would be met with much more negativity."(At p. 4)

Comments of the City of New York: "The challenges the Further Notice presents commence with not recognizing that a one-size-fits-all concept is counter to effective public safety communications." (At pp. 2-3)

Comments of Region 39, Tennessee: "[The Commission's Public Safety Broadband Proposal] favors Federal mandates over local/regional decisions and … would eliminate the option to deploy cost effective wideband systems or dedicated local agency broadband systems." (At p.2)

Comments of the City of Tacoma, WA: "Several aspects of the [Commission's Public Safety Broadband Proposal] – whereby broadband technology in the public safety 700 MHz spectrum allocation would be available only on a nationwide network with service areas determined by a national operator under a single license – are unacceptable to the City of Tacoma." (At p. 2)

Joint Comments of Regional Planning Committee 20 and the State of Maryland: "The Region and Maryland firmly believe that local jurisdictions should retain control over the use of public safety spectrum and that the Region retains flexibility to aggregate spectrum in the most efficient manner to meet the requirements of the public safety applicant. While a nationwide broadband data network has significant appeal, especially in terms of interoperability, the Region and Maryland cannot support relinquishing operational control over this resource." (At p. 9)

Comments of the National Association of Telecommunications Officers and Advisers, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities in Response to the Further Notice of Proposed Rulemaking: "… it is important to point out that the [Frontline Proposal] poses a threat to local governments' ability to make local and regional decisions concerning data deployment technology. … Flexibility is critical. Public safety entities must continue to have the option to make local and regional decisions and the flexibility to choose the solution that best serves their unique requirements and budgets. Counties, cities, and towns must have the option to implement a high speed data solution, whether that solution is wideband or broadband technology, a local/regional network, or a nationwide broadband network." (At pp. 6-7)

Comments of the Region 22 (Minnesota) 700 MHz Public Safety Regional Planning Committee: "…MN-RPC urges the Commission to act in support of the overwhelming comments submitted by public safety agencies from throughout the country pleading for local control and flexibility to implement both broadband and wideband." (At p. 2)

Comments of Ronald G. Mayworm **(Chairman of the Region 49 [Central Texas] 700 MHz and 800 MHz Regional Planning Committees and Radio System Manager for the City of Bryan, Texas)**: "I agree with the Commission that a broadband allocation for nationwide public safety use is needed at 700 MHz, but this should not come at the expense of losing local RPC flexibility to choose the mix of wideband and broadband technologies that is appropriate for their particular region." (At p. 2)

Comments of Region 40 [Northern Texas], 700 MHz Regional Planning Committee: "Region 40 strongly disagrees with the proposal to eliminate the wideband option in the 700 MHz public safety band and mandate exclusive use of broadband technology." (At p. 2)

Comments of the Nevada (Region 27) 700 MHz Region Planning Committee: "We disagree with the Commission in Paragraph 253 that broadband is the only solution for public safety's requirements." (At p. 3)

Comments of the Indiana (Region 14) 700 MHz Region Planning Committee: "Region 14 believes that the FCC should adopt a bandplan that provides spectrum for both a national broadband network and retains a portion of the 700 MHz data spectrum to remain under local control." (At p. 2)

Comments of the State of Ohio Multi-Agency Radio Communications System (MARCS): "After further reviewing paragraphs 250 through 290 inclusive of the subject FNPRM, Ohio concludes, and not at all tentatively, that one sole broadband network will only hamper our ability to provide service to our user agencies. If we are not permitted flexibility to implement what is best suited for a particular area, it will effectively cripple our attempt to utilize newer technology to improve our homeland security and essential services to our citizens." (At p. 4)

See also: ***Comments of Sherburne County, Minnesota Emergency Services*** (At p. 2); ***Comments of Louisiana Statewide Interoperable Communications Executive Committee*** (At. p. 1); *Comments from the Mower County, Minnesota Office of the Sheriff* (At. p. 1); **Comments of the Wisconsin State Patrol** (At. p. 1); **Comments of the Public Safety Working Group (Region 17 Regional Planning Committee** (At p. 1); ***Comments of Jefferson County, AL*** (At p.2); ***Comments of the Hennepin County Sheriff's Office Minneapolis, Minnesota*** (At p. 2); ***Comments of the Metropolitan Emergency Services Board*** **(Minnesota)** (At p. 2); ***Comments of the Police Executive Research Forum*** **(At p. 2); Comments of the State of Hawaii, Department of Accounting and General Services** (At p. 2); ***Comments of Madison County Communications District (MCCD) a.k.a. Huntsville-Madison County, Alabama 9-1-1 Center (HMC 9-1-1)*** (At pp. 1-2); ***Comments of the Texas Statewide Interoperability Executive Committee*** (At pp. 2-7); *Comments of Region #13 Illinois 700 MHz Planning Committee* (At pp. 1-2); Brief comment of the City of Joplin, MO (At p.1); ***Comments of the Region 42 (Virginia) 700 MHz Regional Planning Committee*** (At pp.2-3); ***Comments of the Ohio Statewide Interoperability Executive Committee*** (At p.2); ***Comments of the San Diego—Imperial County, California Regional Communications System*** (At p. 11); ***Comments of the Ohio Statewide Interoperability Executive Committee*** (At pp. 3-4); ***Comments of Yvonne "Bonnie" V. Guinn*** **[Public Safety Technology Manager, City of El Paso, Texas]** (At p. 2); ***Comments of International Association of Black***

> ***Professional Fire Fighters and Black Chief Officer's Committee*** (At pp. 2-4); ***Comments of the Louisiana Statewide Interoperable Communications Executive Committee*** (At p. 1); ***Comments of Pinellas County [Florida] Emergency Communications*** (At p. 2); ***Comments of Region 9 (Florida) 700 MHz Regional Planning Committee*** (At pp. 2-4); ***Comments of the City of Fort Lauderdale, Florida*** (At pp. 2-4); ***Comments of Northwest Central Dispatch System [Cook County, Illinois]*** (At p. 2); ***Letter of the Virginia Fire Chiefs Association*** (At p. 2); ***Comments of the City and County of San Francisco, etc***. (At pp. 2-3); and ***Comments of Mid-America Regional Council [Kansas City Metropolitan Area]*** (At. p. 2); ***Comments from the Hampton Roads Interoperable Communications Advisory Committee*** (At p. 1); ***Comments of Rick Neathery*** (At p. 1); **Brief Comments of Lake County, Ohio** (At p. 1); **Brief Comments of the City of Pueblo, Colorado** (At p. 1); and ***Comments of the Missouri State Highway Patrol (MSHP) on the Report and Order and Further Notice of Proposed Rulemaking*** (At pp. 8, 28-29). In addition, see: ***Comments of Prince George's County Maryland Office of Homeland Security Public Safety Communications*** (At pp. 9-11)

The deprivation in the Commission's Public Safety Broadband Proposal and the Frontline Proposal of options to public safety agencies to provide for high speed data networks by means other than one national interoperable broadband network is greatly concerning to public safety agencies.

C. The Structural Shortcomings that Do Not Provide Assurance that the Interests of Public Safety Will Be Adequately Protected and Reflected in the Development of a National Interoperable Broadband Network

A substantial number of the Public Safety Broadband Comments make reference to the absence of assurance that the interests of public safety will be adequately protected and reflected in the development of a national interoperable broadband network. The relevant language of those comments is included below.

> ***Comments of the City of Philadelphia***: "The City is also concerned that the development of public safety communications services on the 700 MHz band not be skewed by commercial interests of the licensee charged with its development." (At p. 3)
>
> ***Comments of the City of New York***: "Absent from the *Further Notice* is a mechanism to ensure that the important attributes of mission critical networks are preserved. … Under the proposal, any 700 MHz shared spectrum will be dominated by commercial interests, where deployment and maintenance will be evaluated based on a return on investment rather than the effectiveness of emergency response." (At p. 7)
>
> ***Comments of the National Association of Telecommunications Officers and Advisers, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities in Response to the Further Notice of Proposed Rulemaking***: "Frontline sets forth a number of requirements that would apply to the agreement [between Frontline and the proposed national licensee, many of which give local authorities pause. One requirement states that the E Block licensee 'shall consult with the public safety broadband licensee on design, construction, and operation of the shared network on the E Block and the public safety spectrum.' However, the mere duty to 'consult' does nothing to protect the interests and goals of the public safety community. There is

apparently no requirement that the E Block licensee adopt any recommendation of the public safety group. And considering the fact that the unique construction needs of the public safety network are expensive, it is highly probable that the public safety community's voice will not be heard." (At p. 12)

Comments of William Carter, Chairman Region 54 700 MHz Regional Planning Committee: "If there is one licensee under one control and RPCs were left out of any of the decision process, who then would voice the concerns and needs of local spectrum users?" (At p. 2)

Comments of Region 43 [State of Washington] Regional Planning Committee: "Our greatest concern in response to the FNPRM is the potential intrusion of commercial wireless interests into the management and control of critically needed public safety spectrum" (At p. 7)

Comments of the Region 42 (Virginia) 700 MHz Regional Planning Committee: "… the Region 42 700 MHz RPC does not support the creation of a Nationwide Broadband Interoperable Public Safety Network using the 12 MHz of spectrum previously allocated to Public Safety under the current 700 MHz band plan. The lack of specific details concerning this network, the multiple proposals submitted to build the network and the impact that each of these proposals have on other interrelated 700 MHz proceedings will only continue to delay and hinder public safety efforts to utilize this badly needed resource." (At pp. 2-3)

Comments of the City of Independence, Missouri on the Report and Order and Further Notice of Proposed Rulemaking: "We feel that the creation of a national licensee can enable public safety users to develop new partnerships, utilize additional existing infrastructure and improve the product they provide to those they serve, however we have concerns that if not properly structured state and local public safety interests may be overlooked. … The build out of network should meet public safety national needs and priorities from a regional perspective. " (At pp. 2-3)

Comments of the Missouri State Highway Patrol (MSHP) on the Report and Order and Further Notice of Proposed Rulemaking: "The challenge for the National Licensee will be to be certain that it allows for a mechanism to include all public safety voices in its decision making process." "We have questions as to how public safety is ensured of being able to promote its priorities in such an arrangement or arrangements with private companies, without being in a position to regulate those companies." (At p. 5 and p. 10)

> ***Comments of the City and County of Honolulu***: "We are doubtful that the designation of a single licensee to develop and operate a nationwide interoperable broadband network will best serve the needs of the City's public safety agencies." (At p. 2)
>
> ***Comments of William F. Gordon*** **[President, Wyoming State APCO Chapter]**: "I would have to be cautious about Public Safety relinquishing control solely to private business. When the responsibility is to the shareholders and the bottom line, the priorities are often not productive to the original intent of the working relationship between Private and Public. It is imperative to remember that Public is the first word in Public Safety. Any solution must guarantee that Public Safety is the objective, not the bottom line of private industry. Public Safety Goes with Public Trust. That must never be compromised. (At p. 2)
>
> See also: ***Comments of NENA*** (At pp. 7-13**);** ***Comments of Madison County Communications District (MCCD) a.k.a. Huntsville-Madison County, Alabama 9-1-1 Center (HMC 9-1-1)*** (At p. 2); ***Comments of Yvonne "Bonnie" V. Guinn*** **[Public Safety Technology Manager, City of El Paso, Texas]** (At p. 2); **Letter of Michigan Professional Fire Fighters Union** (At pp.1-2); **Letter of the Oregon State Fire Fighters Council** (At p. 2); ***Reply Comments of the Missouri State Highway Patrol (MSHP) on the Report and Order and Further Notice of Proposed Rulemaking*** (At pp. 4-5); **Letter of Idaho Fire Chiefs Association** (At pp. 1-2); **Letter of Montana State Fire Chiefs Association** (At pp. 1-2); **Brief Comment of Charleston County, South Carolina** (At p. 1); **Letter of Western Fire Chiefs Association** (At pp. 1-2); ***Comments of the City and County of San Francisco, etc***. (At pp. 1,3, and 4); **Letter of the National Association of EMS Physicians** (At pp. 1-2); ***Comments of the Indiana (Region 14) 700 MHz Region Planning Committee*** (At p. 2); and ***Comments of the San Diego—Imperial County, California Regional Communications System*** (At p. 12).

The absence in the Commission's Public Safety Broadband Proposal and the Frontline Proposal of assurance that the interests of public safety will be adequately protected and reflected in the development of a national interoperable broadband network is greatly concerning to public safety agencies.

D. The Lack of Assurance that the Coverage Needs of Public Safety Agencies Will Be Met

A substantial number of the Public Safety Broadband Comments make reference to the absence of assurance that the coverage needs of public safety agencies will be met. The relevant language of those comments is included below.

> ***Comments of the Fargo (North Dakota) Metropolitan Statistical Area Police, Fire and EMS Agencies***: "Historically commercial build out of national Communications networks have not offered the level of coverage and resiliency in non-urban environments, which is required by public safety personnel. This is the primary reason why public safety personnel cannot rely upon these networks in a time of crisis. The Further Notice does not offer any assurances that a nationwide commercial broadband system would not follow the same bailout template. Within the criteria of the Further Notice, a public safety high speed data network in rural America is unlikely to happen in a timely fashion, if ever." (At p.1)
>
> ***Comments of the City of Philadelphia***: " … public safety networks must be developed to serve the entirety of geographic regions, not merely the areas of the highest population density. Even in the densely populated Mid-Atlantic region, it is important that public safety communications systems extend into adjacent rural areas which may not be a natural priority of a commercial operator." (At p. 3)"
>
> ***Comments of Region 39, Tennessee***: "How long would it take to deploy a national wireless data system? Some estimates of eight to ten years have been discussed. In many rural, low population density area, cellular is still not available today, over twenty years since cellular was first deployed. Public Safety needs to be able to control the spectrum allocated and the flexibility of deployment into metropolitan and rural areas with low population." (At p.3)
>
> ***Comments of the City of Tacoma, WA***: "Deployment of such a commercialized network could easily take a decade and be obsolete before ever fully deployed.

Worse, deployment would in all probability never happen in much of the country where population densities do not support profit driven business models." (At p. 3)

Joint Comments of Regional Planning Committee 20 and the State of Maryland: "While the Region and Maryland would, most likely, be one of the first areas to benefit from a broadband data network, we must advocate that the provision of public safety services is ubiquitous and cannot be limited to population demographics. For this reason alone, the Frontline proposal is unacceptable to public safety providers and should be REJECTED without further discussion or investment of time." (At p. 10)

Comments of the Region 22 (Minnesota) 700 MHz Public Safety Regional Planning Committee: "While much has been made of the potential future virtues of broadband technology, it remains to be demonstrated that wireless broadband, which requires a very dense infrastructure to achieve acceptable geographic coverage, is economically feasible in non-urban areas. In fact, the build out requirements proposed by Frontline would insure that it would be over a decade from now until only 75% of the continental US landmass is covered by their broadband system. Public safety agencies typically require between 95% to 97% area coverage throughout their services areas." (At p. 5)

Comments of North Carolina State Highway Patrol (Michael T. Hodgson, Region 31 Chairman): "Given the fact that cellular and PCS service continues to be unavailable in many areas of the state, we find it very difficult to believe that a commercial carrier would even approach the current level of voice service penetration across the state, let alone a fully statewide network. Public Safety operations are truly statewide and often do not follow major thoroughfares or population centers. With this in mind we urge the Commission to stay the course of following through with the already established rules governing operations with the public safety portion of the 700 MHz frequency plan and to not be influenced by grandiose ideas of commercial entities whose systems may well be inadequate in the long run or take so long to construct that current and potential users are left without an effective technology." (At pp. 2-3)

Comments of Region 40 [Northern Texas], 700 MHz Regional Planning Committee: "Our Region, similar to most Regions in this country, has a wide variety of population densities, agency sizes and budget resources. Region 40 has the Dallas/Fort Worth area … as well as some very sparely populated rural areas.

One size definitely does not fit all when it comes to communications solutions, including the emerging advanced high speed data technologies." (At p. 2)

See also: ***Comments from the Mower County, Minnesota Office of the Sheriff*** (At. pp. 1-2); ***Comments of the National Association of Telecommunications Officers and Advisers, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities in Response to the Further Notice of Proposed Rulemaking*** (At pp. 6-8); ***Comments of the Hennepin County Sheriff's Office Minneapolis, Minnesota*** (At p. 2); ***Comments of the Metropolitan Emergency Services Board*** **(Minnesota)** (At p. 2); ***Comments of the Police Executive Research Forum*** (At p. 2); **Comments of the State of Hawaii, Department of Accounting and General Services** (At p. 3); ***Comments of Madison County Communications District (MCCD) a.k.a. Huntsville-Madison County, Alabama 9-1-1 Center (HMC 9-1-1)*** (At p. 2); ***Comments of Ronald G. Mayworm*** **(Chairman of the Region 49 [Central Texas] 700 MHz and 800 MHz Regional Planning Committees and Radio System Manager for the City of Bryan, Texas)** (At pp. 2-3); ***Comments of King County, State of Washington*** **(At pp. 2-4);** ***Comments of the Texas Statewide Interoperability Executive Committee*** (At pp. 2-7); *Comments of Region #13 Illinois 700 MHz Planning Committee* (At pp. 1-2); ***Comments of Region 43 [State of Washington] Regional Planning Committee*** (At pp. 3-4); ***Comments of the Region 33 (Ohio) 700 MHz Planning Committee*** (At p. 3); ***Comments of the Ohio Statewide Interoperability Executive Committee*** (At pp. 3-4); ***Comments of the City and County of Honolulu*** (At p. 2); **Letter of Texas State Association of Fire Fighters** (At pp. 1-2); ***Comments of William F. Gordon*** **[President, Wyoming State APCO Chapter]** (At p. 2); **Letter of Montana State Fire Chiefs Association** (At pp. 1-2); **Letter of Western Fire Chiefs Association** (At pp. 1-2); ***Comments of International Association of Black Professional Fire Fighters and Black Chief Officer's Committee*** (At pp. 2-4); ***Comments of the Louisiana Statewide Interoperable Communications Executive Committee*** (At p. 1); ***Comments of Pinellas County [Florida] Emergency Communications*** (At pp. 3-5); ***Comments of Region 9 (Florida) 700 MHz Regional Planning Committee*** (At pp. 2-4); ***Comments of the City of Fort Lauderdale, Florida*** (At pp. 2-4); ***Comments of the State of Ohio Multi-Agency Radio Communications System (MARCS)*** (At pp. 3-4); ***Comments of the Nevada (Region 27) 700 MHz Region Planning Committee*** (At pp. 3-4); and ***Comments of the Missouri State Highway Patrol (MSHP) on the Report and Order and Further Notice of Proposed Rulemaking*** (At pp. 6, 31).

The absence in the Commission's Public Safety Broadband Proposal and the Frontline Proposal of any assurance that the coverage needs of public safety agencies will be met is greatly concerning to public safety agencies.

E. The Non-recognition of the Precedence of Local Needs over National Interoperability in Relation to High Speed Data Requirements

A substantial number of the Public Safety Broadband Comments make reference to the failure to recognize the precedence of local needs over national interoperability in relation to high speed data. The relevant language of those comments is included below.

> ***Comments of the City of Philadelphia***: "The City believes that the majority of public safety agencies throughout the country are more likely to be better served by reserving spectrum for the development of wideband services in response to emerging local and regional needs." (At p. 2)
>
> ***Comments of the City of New York***: "Imposing a national public safety's licensee's determination will limit how effectively spectrum resources can respond to local needs." (At p. 4)
>
> ***Comments of Jefferson County, AL***: "Jefferson County wants the opportunity to license a local 700 MHz high-speed data network where we control coverage, capability, and capacity. We would like to access a nationwide network for interoperability, but need a local high-speed wireless data network at 700 MHz, especially before the national system is completed." (At p.2)
>
> ***Comments of Northwest Central Dispatch System [Cook County, Illinois]***: "We want access to a nationwide network for interoperability but we need a local high-

> speed data network to be operational before the national network is completed." (At p. 1)
>
> See also: ***Comments of the National Association of Telecommunications Officers and Advisers, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities in Response to the Further Notice of Proposed Rulemaking*** (At pp. 6-7); ***Comments of the City of Tacoma, WA*** (At p. 2); ***Comments of Madison County Communications District (MCCD) a.k.a. Huntsville-Madison County, Alabama 9-1-1 Center (HMC 9-1-1)*** (At p. 2); ***Comments of Ronald G. Mayworm*** **(Chairman of the Region 49 [Central Texas] 700 MHz and 800 MHz Regional Planning Committees and Radio System Manager for the City of Bryan, Texas)** (At pp. 2-3); ***Comments of the Fargo (North Dakota) Metropolitan Statistical Area Police, Fire and EMS Agencies*** (At p.2); ***Comments of Grundy County [Illinois] Emergency Telephone System Board*** (At pp. 1-2); ***Comments of the Texas Statewide Interoperability Executive Committee*** (At pp. 2-7); ***Comments of Region #13 Illinois 700 MHz Planning Committee*** (At pp. 1-2); ***Comments of International Association of Black Professional Fire Fighters and Black Chief Officer's Committee*** (At pp. 2-4); ***Comments of the Louisiana Statewide Interoperable Communications Executive Committee*** (At p. 1); **Brief Comments of the City of Pueblo, Colorado** (At p. 1); ***Comments … [of] Johnson County, KS*** (At p. 1); and **Brief Comment of the City of Joplin, MO** (At p.1).

The failure in the Commission's Public Safety Broadband Proposal and the Frontline Proposal to recognize the precedence of local needs over national interoperability in relation to high speed data is greatly concerning to public safety agencies.

F. Other Elements of the Commission's Public Safety Broadband Proposal or the Frontline Proposal that Were Troubling to Public Safety Agencies, Including the Matter of the Commission's Authority

A substantial number of the Public Safety Broadband Comments make reference to other issues of concern affecting the Commission's Public Safety Broadband Proposal or the Frontline Proposal, including the authority of the Commission to proceed therewith. The relevant language of those comments is included below.

> ***Comments of the City of New York***: "Another serious challenge is the authority of commercial interests to operate in the 700 MHz segment that Congress committed exclusively to public safety communications." (At p. 3)
>
> ***Comments of the National Association of Telecommunications Officers and Advisers, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities in Response to the Further Notice of Proposed Rulemaking*:** "… it is questionable how a private licensee can make use of public safety spectrum without violating section 337 of the Communications Act." (At p. 15)
>
> See also: ***Comments of Miami-Dade County, Enterprise Technology Services Department, Radio Communication, Services Division*** (At p. 1).

Other elements of the Commission's Public Safety Broadband Proposal and the Frontline Proposal are of concern to public safety agencies, including unresolved and unaddressed questions respecting the authority of the Commission in relation thereto.

III. There is Almost No Public Safety Support for the Commission's Public Safety Broadband Proposal as Presently Framed or for the Frontline Proposal in its Current Form.

There is almost no public safety support for the Commission's Public Safety Broadband Proposal as presently framed or for the Frontline Proposal in its current form, and, without substantial modification, neither the Commission's Public Safety Broadband Proposal nor the Frontline Proposal would effectively serve the interests of public safety agencies in their view.

A. The State of Public Safety Opinion

Mr. Robert Pedersen, Director, Division of Communications, State of Delaware, a client of RCC, wrote an email message recently commenting upon and reflecting a high degree of frustration with the Commission's Public Safety Broadband Proposal. The language of that email message provides a particularly economical and graceful summary of the Public Safety Broadband Comments from his standpoint: "It appears that the Commission is asking [all RPCs and state and local public safety agencies] to adopt a 'concept' for a nationwide 700 MHz broadband network that:

- The Commission does not have the authority to create.
- Skips critical steps, such as creating a nationwide 700 MHz broadband policy first.
- Does not identify how … public safety interests will determine the specifications for the network's design.
- Does not specify when the system will be fully operational within [any region].
- Does not guarantee that emergency responders will be able to communicate within all areas of [a region], including low population areas.
- Requires the [RPCs] to ask state and local governments to sign blank checks and commit to long term unknown payments since fees have not been established or advertised for this fee-for-service public safety network.

"The Commission, just as they have with 800 MHz Rebanding, will not be able to adequately manage which will result in the same type of complications that Public Safety officials are experiencing with that public/private imposition."

Neither the Commission's Public Safety Broadband Proposal nor the Frontline Proposal have received any significant public safety support of any kind and even less unqualified support, if any.

See: ***Comments of the State of California***: ("Subject to a mutually agreeable Network Services Agreement between the National Public Safety Broadband Licensee and the 'E' Block licensee(s), the State could support the Frontline Proposal." (At p.5); **Letter of the Massachusetts Chiefs of Police Association**: (E Block licensee should be subject to a binding

network sharing agreement); **Letter of Oregon Fire Chiefs' Association** (E Block licensee should be subject to a binding network sharing agreement and other qualifications); and **Letter of Hawaii Fire Chiefs Association** (E Block licensee should be subject to a binding network sharing agreement and other qualifications).

The vast majority of public safety agencies are clearly very concerned that, despite their repeated expression of their concerns, the Commission is not listening. At times, the concern is coupled with disbelief and frustration as in the email quoted above and in above-referred-to ***Comments of the Region 33 (Ohio) 700 MHz Planning Committee***: "In a brief review of previously filed comments, most specifically to WT Docket 96-86, including those of our own Statewide Interoperability Executive Committee (Ohio SIEC) filed on June 1, 2006, comments of APCO and other public safety organizations filed at various times, and many other public safety user agencies and individuals, **we are at a loss to fathom how the Commission could possibly have 'tentatively concluded' that not allowing for local choice was in the best interests of public safety. Not one public safety commenter that we saw stated 'broadband only – nothing else.**'" (At p. 2) (Emphasis supplied.)

It is not clear whether the Commission intends a clash with the ever so clearly stated interests and requirements of public safety agencies or an accommodation thereof. This point is implicit in the observation made in the ***Comments of the National Public Safety Telecommunications Council (NPSTC)***: "…the proposals reflected in the *Further Notice* in many respects do not recognize the realities of public safety communications. If left unchanged the proposal will

result not only in no improvements but deny access to the 700 MHz band to many agencies." (At pp. 2-3)

B. Clash or Accommodation

Many of the concerns raised in the Public Safety Broadband Comments were previously raised by public safety agencies and others in comments made in response to the Ninth Notice of Proposed Rulemaking (PS Docket No. 06-229 and WT Docket No. 96-86), 21 FCC Rcd 14837 (2006) (the "Ninth NPRM"). The Commission, in the April 25, 2007, R&O and FNPR, did not directly address those previously stated concerns, and those concerns remain outstanding and unresolved.

The Commission's apparent determination not to address the repeated statements of concern on the part of public safety respecting the Commission's Public Safety Broadband Proposal suggests that the Commission may believe that:

- the interests and concerns of public safety as understood and expressed by public safety are not the true interests and concerns of public safety;
- the Commission has a better understanding of the true needs of public safety than does public safety itself; and

- the interests and concerns of public safety as understood and expressed by public safety should be set aside by the Commission in the interest of and out of concern for public safety.

If those beliefs are, in fact held by the Commission, and RCC certainly hopes that they are not, then there is a profound disconnect between the Commission and the public safety community. If that disconnect is present and allowed to persist, the sense, on the part of the public safety community, that the Commission is not listening to public safety and believes that the Commission knows public safety better than public safety knows public safety must necessarily become widely held and usher in an era of distrust and dysfunction that would serve no legitimate interest of any kind.

These dire prospects are eminently avoidable. The concerns of public safety can be addressed without sacrificing the Commission's vision of establishing national public safety interoperability. It is not that vision which generally concerns public safety, but, rather, both the inflexible and prescriptive manner with which, it seems at times, the Commission pursues that vision and the failure of the Commission to consider frankly and seek effectively to reconcile the separate and inconsistent interests of commercial parties and public safety agencies in the context of a public/private partnership. The perfection and realization of the Commission's vision is within reach if only the Commission would pause and undertake the work necessary for that critical consideration and reconciliation process.

If the Commission were to take the time to make a complete review and analysis of the many well motivated and useful comments filed in these proceedings, a path through the various conflicts and problems will, in the view of the Joint Filers, begin to appear. The Joint Filers seek in Sections IV and VI of these Joint Reply Comments to point to that path and to demonstrate that the Commission's vision of establishing national public safety broadband interoperability can be achieved with no sacrifice of that vision and with public safety support by adopting the modifications to the Commission's Public Safety Broadband Proposal or the Frontline Proposal suggested in the RCC Opening Comments and the RCC Broadband Proposal set forth therein. Section IV addresses the specific concerns of public safety agencies and how they are addressed in the RCC Broadband Proposal. Section VI seeks to explain why and how the seemingly inconsistent motivations and requirements of commercial interests and public safety interests can be reconciled in a properly structured public/private partnership.

IV. All Modifications to the Commission's Public Safety Broadband Proposal as Presently Framed or to the Frontline Proposal in its Current Form Required by the Public Safety Broadband Comments Are Included in the RCC Broadband Proposal.

The RCC Opening Comments and the RCC Broadband Proposal are clearly attuned to the overwhelming weight of public safety sentiment in relation to public safety broadband network in the 700 MHz band and reflect the concerns and requirements of public safety agencies more accurately than do the recent pronouncements of the Commission or Frontline.

The RCC Opening Comments and the RCC Broadband Proposal fully and directly addressed all of the following identified elements of the Commission's Public Safety Broadband Proposal (and the Frontline variation thereon) that are deeply troubling to public safety agencies:

- The failure to provide a very substantial role for RPCs in the development of high speed data networks for public safety;
- The deprivation of options to public safety agencies to provide for high speed data networks by means other than one national interoperable broadband network;

- The structural shortcomings that do not provide assurance that the interests of public safety will be adequately protected and reflected in the development of a national interoperable broadband network;
- The lack of assurance that the coverage needs of public safety agencies will be met;
- The non-recognition of the precedence of local needs over national interoperability in relation to high speed data requirements; and
- Other elements of the Commission's Public Safety Broadband Proposal or the Frontline Proposal that were troubling to public safety agencies, including the matter of the Commission's authority.

In Sections IV.A-E of these Joint Reply Comments, the Joint Filers demonstrate how each of those concerns of public safety agencies is addressed in the RCC Broadband Proposal.

The RCC Broadband Proposal is also generally consistent with the procedural and substantive recommendations made in the ***Comments of the Association of Public-Safety Communications Officials-International, Inc. (APCO)***:

- "Public safety must have the final word regarding any network operating in public safety spectrum, and must not be forced into a long-term relationship with a party merely because of its high bid in an auction." (At p. 3) <u>The RCC Broadband Proposal so provides.</u>

- "The Commission should establish requirements in its rules to ensure that a network resulting from a conditional auction provides sufficient coverage, reliability, quality of service and security for public safety use." (At p. 3) The RCC Broadband Proposal is a set of rules that meets these requirements.
- "…there must be an accommodation for the deployment of separate state or local systems." (At p. 3) The RCC Broadband Proposal so provides.

In addition, the RCC Broadband Proposal is generally consistent with the procedural and substantive recommendations made and concerns expressed in the ***Comments of the National Public Safety Telecommunications Council (NPSTC)***, including the creation of the Public Safety Broadband Trust:

- "The Commission's rules should provide as much detail as possible regarding the core provisions of the 'network sharing agreement' between the winner of the E Block auction and the national public safety licensee." The rules comprising the RCC Broadband Proposal so provide.
- "At the outset is the challenge of how public safety will negotiate on equal footing with the prospective E Block licensee." (At p. 11) The rules of the RCC Broadband Proposal were, in part, designed to create equality of bargaining power in the negotiation by public safety of required agreements with the E Block licensee.

The Commission should explicitly establish the premise that the E Block network is a public safety network constructed and maintained by a private party." (At p. 12) That premise drives the RCC Broadband Proposal.

A. The Failure to Provide a Very Substantial Role for RPCs in the Development of High Speed Data Networks for Public Safety

The failure of the Commission's Public Safety Broadband Proposal and the Frontline Proposal to provide a very substantial role for RPCs in the development of high speed data networks for public safety is remedied in the RCC Broadband Proposal which was set forth in the RCC Opening Comments as a series of rules. (For convenience, the complete rules as revised to reflect input from representatives of public safety are provided as Appendix A to these Joint Reply Comments. Appendix A preserves the reader's ability to note the revisions of the rules from the form of their original publication in the RCC Opening Comments.) The relevant rules are: Rules 2.1-2.6, 4.1-4.2, and 17.1-17.3. These rules clearly and unequivocally establish a central role for RPCs in relation to the establishment of high speed data networks involving the use of public safety spectrum. The rules preserve the right of RPCs to meet local and regional high speed data requirements within or independent of a national public safety broadband network or to allocate spectrum so as to pursue both courses.

B. The Deprivation of Options to Public Safety Agencies to Provide for High Speed Data Networks by Means other than One National Interoperable Broadband Network

The failure of the Commission's Public Safety Broadband Proposal and the Frontline Proposal to create options for public safety agencies to provide for of high speed data networks for public safety by means other than one national interoperable broadband network is remedied in the RCC Broadband Proposal. The options for public safety agencies are preserved in Rule 2.6 and exercised through the mechanism of the RPCs. The rule preserves the right of RPCs to meet local and regional high speed data requirements within or independent of a national public safety broadband network or to allocate spectrum so as to pursue both courses.

C. The Structural Shortcomings that Do Not Provide Assurance that the Interests of Public Safety Will Be Adequately Protected and Reflected in the Development of a National Interoperable Broadband Network

The structural shortcomings of the Commission's Public Safety Broadband Proposal and the Frontline Proposal are remedied in the RCC Broadband Proposal. The rules of the RCC Broadband Proposal address these structural issues by strengthening the bargaining power of the proposed national licensee and the RPCs in dealing with the E Block licensee, by establishing a mechanism for the views of local public safety agencies to be effectively expressed, by providing

express clarification of issues that must be addressed in agreements between the E Block licensee, on the one hand, and the proposed national licensee and the RPCs, on the other, and by explicit allocation of authority to address certain critical issues. The relevant rules are: Rules 2.1-2.6, 3.1-3.3, 4.1-4.2, 5.1-5.4, 6.1-6.3, 7.1-7.3, 8.1-8.11, 9.0, 11.1-11.7, 12.1-12.4, 13.1-13.8, 14.1-14.4, 15.0, 16.0, 17.1-17.3, 18.1-18.3, and 19.1-19.4. These rules clearly and unequivocally establish a framework that provides the means to overcome the structural defects of the Commission's Public Safety Broadband Proposal and the Frontline Proposal.

D. The Lack of Assurance that the Coverage Needs of Public Safety Agencies Will Be Met

The failure of the Commission's Public Safety Broadband Proposal and the Frontline Proposal to provide assurance that the coverage needs of public safety agencies will be met is remedied in the RCC Broadband Proposal. The relevant rules are: Rules 8.1, 11.1-11.6, 17.1-17.3, 18.1-18.3, and 19.1-19.4. These rules clearly provide the proposed national licensee and the RPCs with means to assure that public safety coverage requirements are met.

E. The Non-recognition of the Precedence of Local Needs Over National Interoperability in Relation to High Speed Data Requirements

The failure of the Commission's Public Safety Broadband Proposal and the Frontline Proposal to recognize the precedence of local needs over national interoperability in relation to high speed

data networks is remedied in the RCC Broadband Proposal. The recognition of the precedence of the local needs of public safety agencies is reflected in Rule 2.6. The rule preserves the right of RPCs to meet local and regional high speed data requirements within or independent of a national public safety broadband network or to allocate spectrum so as to pursue both courses.

F. Other Elements of the Commission's Public Safety Broadband Proposal or the Frontline Proposal that Were Troubling to Public Safety Agencies, Including the Matter of the Commission's Authority

The failure of the Commission's Public Safety Broadband Proposal and the Frontline Proposal to address the matter of the authority of the Commission to adopt the Commission's Public Safety Broadband Proposal is remedied insofar as is possible in the RCC Broadband Proposal. The RCC Broadband Proposal provides for the authorizations necessary to meet the requirements of the Licensee Qualification Test of subparagraph (f)(1)(B)(i) and (ii) of 47 U.S.C. § 337, and the Joint Filers believe that this solution is fully satisfactory. The RCC Broadband Proposal provides for the use of certifications of authorizing public safety agencies to meet the requirements of the Affirmative Purpose or Use Test of subparagraph (f)(1)(A) of 47 U.S.C. § 337 and the Licensee Qualification Test of subparagraph (f)(1)(B)(i) and (ii) 47 U.S.C. § 337. Those certifications would be to the effect that (i) joining in a national public safety broadband network is in the best interests of the public safety agency, (ii) in the judgment of the public safety agency such commercial use, if any, as is made of the public safety spectrum in connection with the national

public safety broadband network will be essentially invisible to the public safety agency, and (iii) joining in a national public safety broadband network is the only, the most feasible, or the most practical means of making broadband service available to the public safety agency. The Joint Filers believe that this solution is the best available and should be substantially satisfactory. The Joint Filers believe that the certification solution proposed by RCC, when coupled with the broad general authority of the Commission, should provide adequate specific authority for the Commission to adopt the Commission's Public Safety Broadband Proposal or the Frontline variation thereon. The following are the relevant rules: Rules 2.1-2.6, 4.1-4.6, and 5.1-5.4.

V. The Frontline Opening Comments Address None of the Concerns Expressed in the Public Safety Broadband Comments.

The Frontline Proposal was also framed with knowledge of or with access to knowledge of the previously expressed concerns of public safety. Whatever the attractions of the Frontline Proposal, and there are some, they do not consist in that proposal's having been framed with reference to the concerns previously raised by public safety agencies and others in comments made in response to the Ninth NPRM. The need for modification of the Frontline Proposal to make that proposal acceptable to public safety stems from Frontline's not seizing early the opportunity to address those concerns. Unfortunately, Frontline did not seize that opportunity later either as is demonstrated in this Section V of these Joint Reply Comments.

The Frontline Opening Comments address none of the following identified elements of the Commission's Public Safety Broadband Proposal (and the Frontline variation thereon) that are deeply troubling to public safety agencies:

- The failure to provide a very substantial role for RPCs in the development of high speed data networks for public safety;
- The deprivation of options to public safety agencies to provide for high speed data networks by means other than one national interoperable broadband network;

- The structural shortcomings that do not provide assurance that the interests of public safety will be adequately protected and reflected in the development of a national interoperable broadband network;
- The lack of assurance that the coverage needs of public safety agencies will be met; and
- The non-recognition of the precedence of local needs over national interoperability in relation to high speed data requirements.

The Joint Filer's review of the roughly 125 pages of the Frontline Opening Comments revealed a seemingly profound deafness on the part of Frontline to the previously expressed and recently repeated concerns of public safety agencies.

The vast bulk of the Frontline Opening Comments are addressed to matters of competition as to which public safety agencies have indicated no special interest and to bidding credits which are of vital concern to Frontline, but of no direct interest to public safety.

In so far as the Frontline Opening Comments address issues of concern to public safety, those comments are essentially repetitive of previously inadequate assurances and compel the conclusion that Frontline is unable or unwilling to hear and respond to the concerns of public safety.

- Frontline asserts that 'public safety is in desperate need of an interoperable, nationwide broadband network." (At p. 27) For this conclusion of desperation, Frontline does not

cite a single statement by an actual public safety agency. Frontline simply does not appear to understand, as the Commission does not appear to understand that, in the view of public safety agencies, local needs take clear precedence over national interoperability in relation to high speed data requirements and that in truth the national and interoperable nature of the proposed network are not high priorities for public safety agencies. It is no wonder that Frontline relies entirely upon the Commission for its conclusion respecting public safety needs.

- Frontline asserts that "Frontline's rules ensure that the shared network will serve the communications needs of public safety." (At p.39) The vast majority of public safety agencies as well as the Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Public Safety Telecommunications Council (NPSTC) dissent from Frontline's assertion. The service rules of Frontline do not even begin to address (i) the concern of public safety agencies that RPCs are accorded essentially no role in the development of high speed data networks for public safety, (ii) the concern of public safety agencies that they are deprived of all options to provide for high speed data networks by means other than one national interoperable broadband network, and (iii) the concern of public safety agencies that there are <u>structural shortcomings in the Frontline Proposal and that Frontline's service rules fail to provide assurance that the interests of public safety will be adequately protected or that the coverage needs of public safety agencies will be met.</u>

- Frontline's belated effort to address the discouraging precedent of the 800 MHz Rebanding in relation to public/private partnerships is utterly unconvincing because it assumes that disputes between the E Block licensee and public safety will involve "a simple disagreement between two parties who need to have an ongoing relationship." (At p. 45) The disputes with the national licensee may not and should not be "simple," if the interests of public safety are to be properly protected. Moreover, if RPCs are, as they must be, given their proper role, many disputes between many parties could arise with the result that the 800 MHz Rebanding experience will not be glibly distinguishable from disputes respecting the national public safety broadband network as Frontline suggests.
- It must be hard for any public safety agency to derive even cold comfort from the assurance of Frontline that pricing "should be set according to fair and equitable principles." (At p. 45) In truth, the Frontline Opening Comments seem to assert a more aggressive claim for compensation from public safety agencies than previous descriptions of the Frontline Proposal. The previously claimed "free" build out of the network for public safety is fundamentally undermined by the notion that service fees to public safety agencies must factor in "the cost of building and operating a nationwide network." (At p. 46) Also discouraging is the notion that service rates to public safety agencies must factor in "the ongoing cost to the E Block licensee of providing, in effect, a 'retail' service to public safety users in comparison to the lower costs of providing wholesale

service to its commercial customers." (At p. 46) An inference of vanishing benefits to public safety from the Frontline Proposal is not unreasonable.

- The Frontline Opening Comments do reflect an increased coverage commitment on the part of Frontline. (At p. 40). However, coverage is never defined, and, without technical specification, no indication of the nature and quality of coverage or its utility from a public safety standpoint can be inferred. Moreover, it appears that Frontline may be positioning itself to take credit for broadband network development by public safety agencies themselves because such networks would be "merged into the national network when it goes on line." (At p. 55) Frontline does not indicate that it will purchase those networks built by public safety agencies, and, in consequence, the free build out representation of the Frontline Proposal is further undermined.

From a public safety standpoint, the Frontline Opening Comments create further concerns rather than resolving already identified concerns and generally seem to provide grounds for pessimism that the interests of Frontline and those of public safety agencies are reconcilable. If the Frontline Proposal is to be modified in order to make it acceptable to public safety agencies, Frontline will have to do a great deal more listening than talking as Frontline's further explanations of its proposal in the Frontline Opening Comments are in this respect essentially counterproductive.

VI. The Adoption of any Proposal for the Development of a National Interoperable P*ublic Safety* Broadband Network that Does Not Meet the Clearly Expressed Concerns and Requirements of A*ctual Public Safety Agencies* Seems Inconceivable.

The adoption of any proposal for the development of a national interoperable *public safety* broadband network that does not meet the clearly expressed concerns and requirements of *actual public safety agencies* seems inconceivable, and, therefore, neither the Commission's Public Safety Broadband Proposal nor the Frontline variation thereon, both of which are deeply troubling to public safety agencies, can, without the modification of the kind set forth in the RCC Broadband Proposal, be properly adopted if the views of public safety should be given effect.

***Public safety agencies have spoken*. Their views are neither ambiguous nor conflicting. The record made by the Public Safety Broadband Comments simply precludes the conclusion that either the Commission's Public Safety Broadband Proposal or the Frontline variation thereon have any serious measure of support from the public safety community.**

At the very heart of the problem of the provision of broadband services to public safety by means of a public/private partnership is the question whether the center of gravity in that partnership will lie within the public safety sphere or the private commercial sphere. The question is made

difficult by the facts, which should be neither hidden nor otherwise obscured, that:

- *The profit motive of the commercial interest conflicts with the requirements of meeting public safety obligations; and*
- *Profit simply cannot be maximized without compromising of public safety requirements.*

These conclusions must be recognized as having the status of natural laws and are no more subject to negotiation than is gravity or the speed of light.

The commercial interest cannot, consistent with profit maximization, provide the coverage, network robustness, maintenance and operations protocols, and other system characteristics required by public safety. Public safety interests cannot, consistent with their legal obligations, accept the coverage, network robustness, maintenance and operations protocols, and other system characteristics that the commercial interest would want to offer to maximize profit.

Despite these immutable constraints, it seems to the Joint Filers that it <u>may</u> be possible to reconcile the commercial and the public safety interests if the reconciliation process does not take the form of compromising principles, but, rather, depends upon separating, in some degree, the satisfaction of the profit maximization motive from the means of satisfying public safety requirements. This possible reconciliation by separation depends upon the following observations:

- Profit maximization is inseparable from risk, and, if commercial risk can be reduced, the

absolute dollar amount of required profit can also be reduced, *i.e.*, greater investment would be permissible to meet the requirements of public safety.

- The satisfaction of public safety's network requirements can be given their required preeminence in outcome determinations respecting the network if certain degrees of commercial freedom are sacrificed.

In other words, if public safety agencies were willing to sacrifice certain degrees of commercial freedom respecting choice of network operators, then certain elements of exclusivity and other benefits could be accorded the E Block licensee such that the risk of investment by that licensee is sufficiently lessened so as to enable the required level of investment in a network that truly satisfies the requirements of public safety agencies. This concept is implicit in the Frontline Proposal, but the proper balance between E Block benefits and commitments, on the one hand, and public safety benefits and sacrifices, on the other, is not nearly properly struck in that proposal. Frontline deserves credit for the insight into the possible method of reconciling conflicting interests, but is entitled only to very low marks for the very one-sided and unsatisfactory balance point suggested. The Joint Filer's conclusion in this respect is in accord with the conclusion offered in the ***Comments of the National Public Safety Telecommunications Council (NPSTC)***: "The Frontline proposal is meritorious, but requires substantial revision." (At p. 9)

The question remains whether and, if so, how a proper balance can be struck that well and truly serves the interests of the commercial parties that are not subject to compromise and the interests of the public safety parties that are even less subject to compromise. That question was clearly recognized in the ***Comments of the Association of Public-Safety Communications Officials-International, Inc. (APCO)***: "APCO supports the development of a national public safety broadband network, assuming that there is a realistic model to fund its deployment, that will meet public safety requirements, and that will remain under the control of public safety." (At p. 5) That question was also recognized in the ***Comments of the National Public Safety Telecommunications Council (NPSTC)***: "NPSTC supports an E-Block and public safety network constructed and maintained with public safety standards where all agencies have secure access and commercial interests are afforded a viable investment and participation opportunity." (At p. 9)

The Joint Filers are optimistic, but not certain, that such a realistic business model (such a viable opportunity) can be developed, *i.e.*, that the proper balance of commercial interests and public safety interests can be achieved.

The Joint Filers do, however, recognize that the very pursuit of such a balance is inconsistent with comments of those interested parties that seek more choice for public safety and less assurance of lowered risk to the E Block licensee. (See, *e.g.*, Comments of MetroPCS

Communications, Inc.) The Joint Filers do not believe that the profit motive can be made consistent with the satisfaction of public safety requirements without the sacrifice of some degree of competition and some corresponding degree of loss of freedom of choice for public safety agencies. The Joint Filers believe that, if the public private partnership is to be adopted, then that decision carries with it certain unavoidable consequences including that decrease in potential competition and the diminishment of choices. The Joint Filers express here no view upon the wisdom of pursuing the public/private partnership model, but do recognize that the model, if it can be made to work, could make hard to obtain funds available for a national interoperable public safety broadband network. The Joint Filers further recognize the apparent current favorable disposition of the Commission toward that model.

Accordingly, the Joint Filers have proceeded upon the basis that the vision of the Commission for the development of national public safety broadband interoperability includes reliance upon a public/private partnership as the vehicles to realize that vision. The RCC Broadband Proposal (as modified in accordance with the comments of the other Joint Filers), therefore, assumes such a partnership and seeks to provide the means to achieve that necessary, but elusive, balance between E Block benefits and commitments, on the one hand, and public safety benefits and sacrifices, on the other. The Joint Filers believe that the RCC Broadband Proposal, as modified, should be given very serious consideration by the Commission as the means to assist in achieving that desired balance.

The RCC Broadband Proposal is the only currently outstanding proposal for a comprehensive approach to the modification of the Commission's Public Safety Broadband Proposal or the Frontline Proposal's variation thereon that offers the prospect of:

- **effectively curing all or substantially all of the shortcomings of the Commission's Public Safety Broadband Proposal and the Frontline Proposal from a public safety standpoint; and**
- **sufficiently preserving benefits for the E Block licensee so as to enable a deal with public safety to be made.**

The RCC Broadband Proposal is the best available hope for the realization of the Commission's vision of a national interoperable public safety broadband network created through a public/private partnership that neither compromises inalterable public safety interests nor curtails unnecessarily the incentives required by commercial interests. That hope, if it is to be realized, must be realized in the context of a network sharing agreement, and the RCC Broadband Proposal provides both procedural and substantive means to attempt to assure that the network sharing agreement could be negotiated in a manner such as to meet the needs of both the public safety interests and the commercial interests.

If a network sharing agreement cannot regrettably be negotiated, the clear message is that the public/private partnership model does not work in the case of a national interoperable

public safety broadband network, but that unfortunate conclusion cannot be properly drawn unless and until the RCC Broadband Proposal is tried and found wanting.

VII. Conclusion

For the reasons stated, the Joint Filers respectfully suggest that the RCC Broadband Proposal be adopted. The Joint Filers appreciate the opportunity to provide their views to the Commission. The Joint Filers hope that these Joint Reply Comments will be found by the Commission to be constructive.

Respectfully submitted,

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Appendix A; The Rules Comprising the RCC Broadband Proposal

1. *The General Rules*

Rule 1.1: The Purposes of the Rules of the RCC Broadband Proposal (these "Rules" and, each, a "Rule")

The purposes of these Rules are to address the following problems:

- The Overall Authority Problem;
- The Public Safety Support Problem;
- The Sound Operational Foundation Problem;
- The Sound Technical Foundation Problem;
- The Sound Commercial Foundation Problem;
- The Uncertainty Problem;
- The Objective Realization Problem;
- The Structural Problem;
- The Representation and Choice Problem;
- The Coverage Assurance Problem; and
- The Technical Deficiency Problem.

Rule 1.2: Construction of these Rules

These Rules shall be construed to:

- Assure, to the maximum extent possible, the rapid deployment of a nationwide, interoperable, broadband public safety network (the "Network") and thereby improve emergency responsiveness;
- Maximize, to the greatest practical extent, the effective participation of state, local, and municipal public safety agencies in the design, specification, deployment, and operation of the Network;
- Assure that state, local, and municipal public safety agencies have, to the maximum practical extent, freedom of choice in relation to whether to participate in the Network or obtain broadband services from other sources or by other means;
- Maintain, to the maximum practical extent, the compatibility and interoperability of the Network and any other public safety broadband (or wideband) networks that may be developed by state, local, and municipal public safety agencies in the 700 MHz band;
- Give effect to the recognition that the Network to be successful must not only provide national broadband public safety interoperability, but must also provide broadband service support for local public safety operations that do not depend upon the national or interoperable nature of the Network and that those local operations may supply as much as 98% or more of the public safety traffic offered to the Network;
- Minimize the decisional and representational responsibilities of the proposed national public safety broadband licensee (the "National Licensee") and defer, to the maximum possible degree, to the 700 MHz Regional Planning Committees (the "RPCs") for decisions affecting and representation of their constituent public safety agencies;

- Make clear that the National Licensee has only such license status as is authorized by the RPCs and must utilize that license status solely to benefit the constituent public safety agencies of the authorizing RPCs;
- Assure that the interests of state, local, and municipal public safety agencies in the design, specification, deployment, and operation of the Network are properly represented and that such representation is timely and adequately funded;
- Provide a definitive frame of reference for the development of a network sharing agreement among the E Block Licensee and the National Licensee (the Network Sharing Agreement"); and
- Provide a definitive frame of reference for the development of agreements between the E Block Licensee and the RPCs to join in the Network Sharing Agreement ("Joinder Agreements").

2. The Authorization and Opt-out Rules

Rule 2.1: No Direct Authorization of the National Licensee

The National Licensee shall receive no authorization for the use of public safety spectrum for the Network directly.

Rule 2.2: Direct Authorization of RPCs

Direct authorization for the use of 700 MHz broadband (or wideband) spectrum shall be provided to the RPCs by the Commission and shall extend, in the case of each RPC, only to the territory for which the RPC is responsible.

Rule 2.3: Authorization of National Licensee by RPCs

Any and all authorization of the National Licensee to use public safety spectrum for the Network shall derive from the action of the RPCs in providing that authorization and the action of the Commission in empowering the RPCs to provide authorization to (or withhold authorization from) the National Licensee.

Rule 2.4: No Obligation to Provide Authorization

No RPC shall be obligated to provide authorization to the National Licensee for the use of public safety spectrum for the Network.

Rule 2.5: Territorial Limitations on RPC Authorizations

The authorizations to the National Licensee for the use of the public safety spectrum for the Network shall be provided by the RPCs separately with respect to the geographical area covered thereby.

Rule 2.6: Freedom of Choice

If an RPC determines not to provide authorization to the National Licensee for the use of public safety spectrum for the Network, the RPC may authorize constituent public safety agencies to develop together or separately broadband (or wideband) networks within their respective territories in accordance with the planning processes adopted by the RPC and required by the Commission and subject to the obligations (i) to maintain, to the maximum practical extent, the compatibility and interoperability of the Network and any other public safety broadband (or wideband) networks developed by the RPC's constituent public safety agencies in the 700 MHz band and (ii) coordinate for the purpose of the avoidance of interference with (a) adjacent RPCs that have not provided authorization for the use of the public safety spectrum for the Network and (b) the E Block Licensee with respect to territories of RPCs that have provided authorization for the use of the public safety spectrum for the Network.

3. Rules for the Development of the Network Sharing Agreement

Rule 3.1: Negotiation in the First Instance

The Network Sharing Agreement shall be negotiated in the first instance between the E Block Licensee and the National Licensee.

Rule 3.2: Not Binding upon RPCs

The Network Sharing Agreement negotiated between the E Block Licensee and the National Licensee shall not be binding upon any RPC.

Rule 3.3: Minimum Requirements

The Network Sharing Agreement negotiated between the E Block Licensee and the National Licensee shall meet the requirements of Section 8 of these Rules, shall contain no terms or conditions inconsistent therewith, but shall otherwise contain such terms and conditionsas to the E Block Licensee and the National Licensee seem necessary or proper.

4. Rules for the Development of Joinder Agreements

Rule 4.1: Notification of Interest

RPCs interested in negotiating a Joinder Agreement with the E Block Licensee shall so advise the E Block Licensee and the National Licensee.

Rule 4.2: Minimum Requirements

All Joinder Agreements negotiated between an RPC and the E Block Licensee shall meet the requirements of Section 17 of these Rules, shall contain no terms or conditions inconsistent therewith, but shall otherwise contain such terms and conditions as to the E Block Licensee and the National Licensee seem necessary or proper.

Rule 4.3: RPC Authorization

If a Joinder Agreement is entered into between an RPC and the E Block Licensee, then that RPC shall provide written authorization to the National Licensee to use public safety spectrum for the Network in the territory of that RPC (the "RPC Authorization").

Rule 4.4: Form of RPC Authorization

The RPC Authorization shall be in a form specified by the Commission and sufficient to meet the authorization requirements of applicable law.

Rule 4.5: RPC Certification

If a Joinder Agreement is entered into between an RPC and the E Block Licensee, then that RPC shall provide written certification to the Commission that (i) the Joinder Agreement is in the best interests of the public safety agency constituents of the RPC, (ii) in the judgment of the RPC such commercial use, if any, as is made of the public safety spectrum in the territory of the RPC will be essentially invisible to the public safety constituents of the RPC, and (iii) entry by the RPC into the Joinder Agreement is the only, the most feasible, or the most practical means of making broadband service available to the public safety agency constituents of the RPC (the "RPC Certification").

Rule 4.6: Form of RPC Certification

The RPC Certification shall be in a form specified by the Commission and sufficient to meet the spectrum utilization requirements of applicable law.

Rule 4.7: No Nondisclosure or Confidentiality Agreements

No nondisclosure agreement or confidentiality agreements of any kind shall prevent RPCs from discussing Joinder Agreements among themselves or providing drafts or final versions of Joinder Agreements to one another.

Rule 4.8: Provision to Commission

All Joinder Agreements that have been executed and delivered by RPCs and the E Block Licensee shall be provided to the Commission by the E Block Licensee, and the Commission may determine what, if any, approval process is applicable thereto.

Rule 4.9: Provision to the National Licensee

All Joinder Agreements that have been executed and delivered by RPCs and the E Block Licensee shall be provided to the Commission by the National Licensee, but the National Licensee shall have no right to approve or object to any such Joinder Agreement.

Rule 4.10: Library of Joinder Agreements

The National Licensee shall maintain a library of all Joinder Agreements that have been executed and delivered by RPCs and shall provide access thereto for any RPC or the authorized representative thereof and make copies of such agreements available to such persons electronically with no limitation upon the right to make and use copies thereof.

Rule 4.11: Construction

Joinder Agreement may vary from or conflict with the terms and conditions of the Network Sharing Agreement, and, in the event of such variance or conflict, the Joinder Agreement shall take precedence over the Network Sharing Agreement in the contractual relationship between the E Block Licensee and the particular RPC that entered the particular Joinder Agreement.

5. Rules for Action by RPCs

Rule 5.1: Voting Rules in General

Each RPC shall propose to the Commission rules for the authorization of actions by RPCs respecting the possible entry by the RPC into a Joinder Agreement (the "Voting Rules").

Rule 5.2: Voting Rule Requirements

The Voting Rules shall provide the number of votes to be cast by each constituent public safety agency, the number of votes required to be cast in total for action to be taken, and the percentage of the votes cast that must be in favor of any action for that action to be deemed authorized by the RPC.

Rule 5.3: Local Variation

The Voting Rules for an RPC should reflect the past practices of the RPC, the extent of the responsibilities of the respective constituent public safety agencies, and the need to assure a reasonable high degree of concurrence by constituent public safety agencies in relation to any action proposed to be authorized.

Rule 5.4: No Uniformity

There is no requirement for uniformity of Voting Rules among the RPCs.

Rule 5.5: Discretionary Disclosure

Each RPC may, in its own discretion, determine whether to share Voting Rules with other RPCs, the National Licensee, or the E Block Licensee.

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Rule 5.6: Submission to the Commission

Each RPC that adopts Voting Rules shall provide a copy of those rules to the Commission (together with, if so desired, a request for the confidential treatment thereof), and the Commission may determine what, if any, approval process is applicable thereto.

6. Funding the Negotiation of the Network Sharing Agreement

Rule 6.1: Initial Deposit

Promptly upon the award of the E Block license to the E Block Licensee, the E Block Licensee shall deposit $750,000 in a separate account under the sole control of the National Licensee.

Rule 6.2: Application of Funds

The funds in that account shall be use solely for the operating expenses of the National Licensee during the period of the negotiation of the Network Sharing Agreement, including the costs incurred in connection with such negotiation and any related dispute settlement process by the National Licensee or counsel or other advisers to or administrative support for the National Licensee.

Rule 6.3: Evergreen

Until the Network Sharing Agreement is executed and delivered by the E Block Licensee and the National Licensee or either the E Block Licensee or the National Licensee provides a written declaration to the other to the effect that no Network Sharing Agreement will be reached, the RPC shall advise the E Block Licensee of the balance in that separate account as of the end of each calendar quarter, and the E Block Licensee shall promptly make such deposit into that account as is necessary to restore that balance to $250,000.

Rule 6.4: Default

The consequences of any default by the E Block Licensee in relation to its deposit obligations under this Section 6 of these Rules shall be determined by the Commission.

7. Funding the Consideration and Negotiation of Joinder Agreements

Rule 7.1: Initial Deposit

Promptly upon the execution and delivery of the Network Sharing Agreement by the E Block Licensee and the National Licensee, the E Block Licensee shall deliver a complete copy of the executed and delivered Network Sharing Agreement, together with all exhibits, attachments, addenda, supplements, amendments, or riders or schedules thereto to each RPC and shall deposit for each RPC $250,000 in a separate account under the sole control of that RPC.

Rule 7.2: Application of Funds

The funds in that account shall be used solely for the expenses of the RPC that are related to the consideration and negotiation of a Joinder Agreement between that RPC and the E Block Licensee and any related dispute settlement process, including the costs of the RPC (or its constituent public safety agencies) and counsel or other advisers to and administrative support for the RPC.

Rule 7.3: Evergreen

Until the Joinder Agreement is executed and delivered by the E Block Licensee and the RPC or either the E Block Licensee or the RPC provides a written declaration to the other to the effect that no Network Sharing Agreement will be reached, the National Licensee shall advise the E Block Licensee of the balance in that separate account as of the end of each calendar quarter, and the E Block Licensee shall promptly make such deposit into that account as is necessary to restore that balance to $250,000.

Rule 7.4: Default

The consequences of any default by the E Block Licensee in relation to its deposit obligations under this Section 7 of these Rules shall be determined by the Commission.

8. Requirements Applicable to the Network Sharing Agreement

Rule 8.1: Certain Conditions

Prior to the execution and delivery by the E Block Licensee and the National Licensee of the Network Sharing Agreement, the following documents shall be agreed upon by the E Block Licensee and the National Licensee and shall be attached in definitive form to the Network Sharing Agreement:

- The business plan of the E Block Licensee (the "E Block Business Plan");
- The business plan of the National Licensee (the "National Licensee's Business Plan");
- The technical design, construction, operations, and maintenance specifications for the Network (the "Technical Spec");
- The build out schedule for the Network (the "Completion Schedule");
- The schedule of fees and charges, if any, payable by public safety users of the Network (the "Tariff"); and
- The protocol to the declaration of emergencies and the initiation of spectrum preemption in favor of public safety use in the event of emergencies (the "Emergency Protocol").

Rule 8.2: The E Block Business Plan

The E Block Business Plan shall meet the requirements of Section 9 of these Rules.

Rule 8.3: The National Licensee's Business Plan
The National Licensee's Business Plan shall meet the requirements of Section 10 of these Rules.

Rule 8.4: The Technical Spec

The Technical Spec shall meet the requirements of Section 11 of these Rules.

Rule 8.5: The Completion Schedule

The Completion Schedule shall meet the requirements of Section 12 of these Rules.

Rule 8.6: The Tariff

The Tariff shall meet the requirements of Section 13 of these Rules.

Rule 8.7: The Emergency Protocol

The Emergency Protocol shall meet the requirement of Section 14 of these Rules.

Rule 8.8: No Obligations

The Network Sharing Agreement shall place no obligations upon any RPC or any public safety agencies constituent thereof.

Rule 8.9: E Block Licensee's Rights, Obligations, etc.

The Network Sharing Agreement shall define the rights, obligations, duties, and responsibilities of the E Block Licensee in accordance with Section 15 of these Rules.

Rule 8.10: National Licensee's Rights, Obligations, etc.

The Network Sharing Agreement shall define the rights, obligations, duties, and responsibilities of the National Licensee in accordance with Section 16 of these Rules.

Rule 8.11: Public Safety Access to Commercial Spectrum

The Network Sharing Agreement shall provide that the E Block Licensee shall permit emergency preemption of commercial use by public safety users of the E Block in accordance with the Technical Spec and the Emergency Protocol.

Rule 8.12: Commercial Access to Public Safety Spectrum

The Network Sharing Agreement shall provide that the E Block Licensee is the only commercial licensee to which access shall be provided to the 700 MHz public safety spectrum in the territories of the RPCs that enter into Joinder agreements with the E Block Licensee and that access for the E Block Licensee to such spectrum shall be upon a strictly secondary basis invisible and imperceptible to public safety users and unconditionally preemptible by public

safety users in the event of emergency in accordance with the technical spec and the emergency Protocol.

9. The Requirements respecting the E Block Business Plan

Rule 9.0: Required Assurances

The E Block Business Plan shall provide sufficient assurance to the National Licensee of the high likelihood of the realization thereof and the availability of the capital necessary to accomplish that plan.

10: The Requirements respecting the National Licensee's Business Plan

Rule 10.0: Sustaining the National Licensee

The National Licensee's Business Plan shall include a budget for the operation of the National Licensee and the funds necessary to support those operations and the sources of those funds.

11. The Requirements respecting the Technical Spec

Rule 11.1:.In General

The Technical Spec shall be prepared in accordance with the highest professional standards and shall have at least that level of detail generally found in professionally developed specifications of very large and complex public safety radio systems.

Rule 11.2: Cost Responsibility

The cost of the development of the Technical Spec shall be borne by the E Block Licensee.

Rule 11.3: Preparation Responsibility

Responsibility for the development of the Technical Spec shall rest with the Joint Technical Committee provided for in Rule 11.4.

Rule 11.4: The Joint Technical Committee

The Joint Technical Committee shall be composed of four members chosen by the E Block Licensee and four members chosen by the National Licensee of whom at least two shall be chosen from among representatives of state, county, ot municipal public safety agencies who have been suggested by RPCs, and all members shall be technically qualified to contribute to the work of the joint Technical Committee. A majority of the members of the Joint Technical Committee shall be required to carry a recommendation in favor of the Technical Spec to the E Block Licensee and the National Licensee. No action respecting a recommendation of the Technical Spec shall be taken by the Joint Technical Committee before the proposed draft of the

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Technical Spec has been circulated to all RPCs for comment and the comments of RPCs have been considered by the Joint Technical Committee.

Rule 11.5: Adoption of the Technical Spec

The adoption of the Technical Spec shall require the concurrence of both the E Block Licensee and the National Licensee. No action respecting the adoption of the Technical Spec shall be taken by the E Block Licensee or the National Licensee unless the Technical Spec has been recommended in accordance with Rule 11.4 hereof.

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Rule 11.6: Comprehensiveness

The Technical Spec shall address specifically and provide an available and feasible solution in actionable form each of the issues identified in Rule 15.7 and any issue deemed critical by at least three members of the Joint Technical Committee.

Rule 11.7: Identified Issues

The following issues shall be addressed in the technical Spec:

- The specific manner in which preemptive use of commercial spectrum by public safety users is achieved;
- The specific manner in which the commercial use of public safety spectrum is unconditionally preempted; and
- The specific manner in which authentication of users seeking access to public safety databases, applications, or dispatch centers is managed and controlled.

12. The Requirements respecting the Completion Schedule

Rule 12.1: In General

The Completion Schedule shall meet the requirements of the service rules adopted by the Commission.

Rule 12.2: Specificity of Detail

The Completion Schedule shall specify by date (month and year for the first two years and quarter and year thereafter) and geography (county by county) when coverage will be provided by the Network and ready for use.

Rule 12.3: Proposal and Approval

The Completion Schedule shall be proposed by the E Block Licensee and subject to approval by the National Licensee.

Rule 12.4: Not Binding upon RPCs

The approval of the Completion Schedule shall not be binding upon any RPC.

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Rule 12.5: Default

The consequences of the E Block Licensee's failure to meet the Completion Schedule shall be addressed by the Commission and may be addressed in the Network Sharing Agreement and in the Joinder Agreements.

13. The Requirements respecting the Tariff

Rule 13.1: In general

The Tariff shall set forth in detail all fees and charges, if any, payable by public safety users of the Network to either the E Block Licensee or the National Licensee. While the Tariff is not binding upon RPCs, uniformity in fees and charges is recognized to have administrative advantages, provided, however, that flexibility is maintained to assure affordable service to all state, county, and local public safety agencies, including those operating in urban, suburban, and rural environments and those operating in economically disadvantaged areas and to assure that the business model for the E Block Licensee is viable and the out of pocket costs of the National Licensee are recovered. In order to assist in the development of the Tariff and to assure the proper balancing of the considerations herein identified, drafts of the Tariff shall be distributed to the RPCs, and the comments of RPC on the draft Tariffs shall be sought and considered in the development of the final Tariff.

Rule 13.2: Recoverable Costs

The Tariff shall not seek to impose fees and charges greater than necessary to collect the strictly incremental out-of-pocket costs of providing broadband service to public safety agencies and shall not include any capital cost or expense that could or may benefit commercial users of the Network (the proper fees and charges, "Recoverable Costs").

Rule 13.3: Tariff Design

The Tariff shall set forth in detail the manner in which the Tariff was designed, including information adequate to understand how the fees and charges, if any, payable by public safety users of the Network to either the E Block Licensee or the National Licensee were calculated and how the magnitude of Recoverable Costs was determined.

Rule 13.4: The Effect of the Promise of the E Block Licensee

The Tariff shall fully reflect the stated intention of the E block Licensee to build the public safety broadband network for free (to public safety), and that stated intention shall in no manner be compromised by any provision of the Tariff, the Network Sharing Agreement, or any Joinder Agreement.

Rule 13.5: Limitation to Purpose

No fees or charges shall be imposed by the Tariff for any purpose other than offsetting Recoverable Costs.

Rule 13.6: Accounting

The Tariff shall provide that the E Block Licensee and the National Licensee shall cause an annual accounting of tariff fees and charges and Recoverable Costs.

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Rule 13.7: Tariff Development

The Tariff shall be jointly developed by the E Block Licensee and the National Licensee and shall be approved by both of them and shall further be subject to approval by the Commission after appropriate notice and opportunity to comment.

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Rule 13.8: Not Binding

The tariff shall not be binding upon any RPC, but RPCs are encouraged to minimize regional variations in costs and charges to the extent reasonably possible and to seek incorporation of regional concerns into the design of the Tariff pursuant to the opportunities afforded under Rules 13.1 and 13.7 hereof.

Rule 13.9: Review

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The Commission shall establish appropriate means to ensure that the Tariff operates and continues to operate in accordance with the provisions of this Section 13. Reports respecting the tentative conclusions of the Tariff review process shall be published, and comment thereon sought from interested parties.

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14. The Requirements respecting the Emergency Protocol

Rule 14.1: Power

The Emergency Protocol shall establish that the power to declare an emergency rests with public safety agency users of the Network which may act alone and in their sole discretion. In the event of a declaration of an emergency, ruthless preemption in favor of public safety users of the use by commercial customers of the network of either or both public safety spectrum and commercial spectrum shall follow in accordance with the rules of this Section 14.

Rule 14.2: Immediate Effect of Declaration

The Emergency Protocol shall provide that the declaration of an emergency by a public safety user of the Network when accompanied by a request for immediate and ruthless preemption by

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public safety of public safety spectrum or commercial spectrum or both shall be given immediate effect and shall not be subject to challenge or review by the E Block Licensee or the National Licensee.

Rule 14.3: Notice

The Emergency Protocol shall provide for the methods of giving notice to the operator of the system of an emergency and a coupled request for immediate and ruthless preemption of public safety of public safety spectrum or commercial spectrum or both.

Rule 14.4: Territorial Effect

The Emergency Protocol shall provide rules for the immediate determination of the territory over which the request for immediate and ruthless preemption is to be given immediate effect.

Rule 14.5: RPC Comment

In order to assure broad input from public safety agencies, drafts of the Emergency Protocol shall be distributed to the RPCs, and the comments of RPC on the drafts of the Emergency Protocol shall be sought and considered in the development of the final Emergency Protocol.

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15. Specification of E Block Licensee's Rights, Obligations, etc.

Rule 15.0: Required Terms

The Network Sharing Agreement shall define the rights, obligations, duties, and responsibilities of the National Licensee and provide, *inter alia*, that:

- The funding of the National Licensee's Business Plan is underwritten in its entirety by the E Block Licensee to the extent that the tariff does not provide financial support for the funding of that plan;
- The E Block Licensee is responsible for the construction, operation, and maintenance of the Network in accordance with the Technical Spec and the Completion Schedule; and
- The E Block Licensee may provide for the return of its own Recoverable Costs in the Tariff, and the Tariff may not in this respect be increased without the consent of the National Licensee.

16. Specification of National Licensee's Rights, Obligations, etc.

Rule 16.0: Required Terms

The Network Sharing Agreement shall define the rights, obligations, duties, and responsibilities of the National Licensee and provide, *inter alia*, that:

- The National Licensee is responsible in the first instance for the representation of the interests of public safety agencies in relation to the Network Sharing Agreement, provided, however, that it is understood that the Network Sharing Agreement is without

force or effect except to the extent that Joinder Agreements are reached with RPCs, and, accordingly, the National Licensee shall proceed in relation to the Network Sharing Agreement in regular consultation with the RPCs which, in the final instance, must determine whether to give the Network Sharing Agreement effect through Joinder Agreements;

- The National Licensee shall use its best efforts to avoid any conflict of interests with public safety agencies, and, in the event of such a conflict or the appearance thereof, the National Licensee shall decline to proceed in relation to such matters as to which such conflicts or appearances are present and defer to the RPCs or supplement the representation of public safety interests by the National Licensee with the direct participation of RPC to the degree necessary to avoid the consequences of those conflicts or appearances;
- The National Licensee shall refrain from representing the interests of public safety agencies in any situation in which the interests of the National Licensee directly conflict with the interests of public safety agencies, including all matters affecting cost recovery or other flow of funds to the National Licensee;
- In carrying out its functions under the Network Sharing Agreement, the National Licensee shall consult with the RPCs and reflect their views in all negotiations and discussions with the E block Licensee and in all matters concerning, relating to, or arising from that agreement, provided, however, that it is understood that the Network Sharing Agreement is without force or effect except to the extent that Joinder Agreements are reached with RPCs, and, accordingly, the National Licensee shall proceed in relation to the Network Sharing Agreement in regular consultation with the RPCs which, in the final instance, must determine whether to give the Network Sharing Agreement effect through Joinder Agreements; and **Deleted:** ;
- The National Licensee may provide for the return of its own Recoverable Costs in the Tariff, and the Tariff may not in this respect be increased or decreased without the consent of the National Licensee, subject to the provisions of Section 13. **Deleted:** .

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17. Requirements Applicable to the Joinder Agreements

Rule 17.1: Document Delivery

As soon as possible and in any event prior to the execution and delivery by the E Block Licensee and an RPC of a Joinder Agreement, the following documents shall be delivered by the E Block Licensee to the RPC:

- The E Block Business Plan;
- The National Licensee's Business Plan;
- The Technical Spec;
- The Completion Schedule;
- The Tariff; and
- The Emergency Protocol.

Rule 17.2: Incorporation of Documents

The Joinder Agreement shall incorporate by reference each of the Network Sharing Agreement and

- The E Block Business Plan;
- The National Licensee's Business Plan;
- The Technical Spec;
- The Completion Schedule;
- The Tariff; and
- The Emergency Protocol.

Rule 17.3: Variations

The Joinder Agreement may modify the Network Sharing Agreement, the Technical Spec, the Completion Schedule, the Tariff, and the Emergency Protocol as they apply to the RPC entering into that Joinder Agreement.

18. Disputes between the E Block Licensee and the National Licensee

Rule 18.1: In General

Both the E Block Licensee and the National Licensee shall seek in good faith to reach an understanding with respect to the Network Sharing Agreement and each of

- The E Block Business Plan;
- The National Licensee's Business Plan;
- The Technical Spec;
- The Completion Schedule;
- The Tariff; and
- The Emergency Protocol.

Rule 18.2: Arbitration

Disputes between the E Block Licensee and the National Licensee respecting the terms and conditions of the Network Sharing Agreement or any of

- The E Block Business Plan;
- The National Licensee's Business Plan;
- The Technical Spec;
- The Completion Schedule;
- The Tariff; or
- The Emergency Protocol

shall be settled by mandatory arbitration under the rules of the American Arbitration Association or such other or similar organization or person upon which agreement is reached by the E Block Licensee and the National Licensee.

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Rule 18.3: Terms of Reference

The terms of reference for the mandatory arbitration shall consist of the relevant pronouncements of the Commission and these Rules, as between which, the pronouncements of the Commission shall have precedence.

19. Disputes between the E Block Licensee and RPCs

Rule 19.1: In General

Both the E Block Licensee and each RPC shall seek in good faith to reach an understanding with respect to a Joinder Agreement, but no RPC shall be obligated to enter into a Joinder Agreement.

Rule 19.2: Arbitration

Disputes between the E Block Licensee and an RPC respecting the terms and conditions of a Joinder Agreement may be settled by mandatory arbitration at the request of the RPC, but no RPC shall be made involuntarily subject to mandatory arbitration.

Rule 19.3: Arbitration Forum

In the event an RPC requests arbitration, such arbitration shall be conducted in accordance with the rules of the American Arbitration Association or such other or similar organization or person or person upon which agreement is reached by the E Block Licensee and the RPC.

Rule 19.4: Frame of Reference

The terms of reference for the arbitration shall consist of the relevant pronouncements of the Commission and these Rule, as between which, the pronouncements of the Commission shall have precedence.

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