

**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)
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. 03-264)))
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules) WT Docket No.06-169)))
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band) PS Docket No. 06-229))
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010) WT Docket No. 96-86)))

**REPLY COMMENTS OF THE NATIONAL PUBLIC SAFETY
TELECOMMUNICATIONS COUNCIL**

The National Public Safety Communications Council (NPSTC) submits these
reply comments in response to the Commission's *Further Notice of Proposed
Rulemaking (Further Notice)* addressing the structure and rules of the commercial and

public safety segments in the 700 MHz band.¹ These reply comments address positions directed to the proposed national public safety licensee (NPSL) and the E Block licensee recommended by Frontline Wireless, LLC (Frontline). The NPSL would manage a national broadband network on 12 MHz currently allocated to public safety in the 700 MHz band. Frontline proposes the 10 MHz E Block licensee deploy and operate a nationwide interoperable broadband network on the public safety segment and E Block. The E Block licensee and the NPSL would negotiate a network sharing agreement to govern their relationship.

The comments include interests opposing any additional commitment to public safety in the 700 MHz band,² those opposing Frontline's proposed service rules for the E Block, agencies urging that wideband capability be maintained and agencies stating that the 700 MHz public safety segment be individually licensed to local and state agencies. The Commission should reject the advocacy of those who oppose assisting public safety because to agree with them ignores the severe challenges public safety faces and the critical opportunity to make a meaningful contribution to emergency response. NPSTC believes that a workable transition is possible to allow wideband access and that local agencies can be afforded meaningful participation in how 700 MHz resources can most effectively meet their needs.

¹ The *Further Notice* addresses WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket 06-169, PS Docket 06-229 and WT Docket No. 96-86, FCC 07-72 (April 27, 2007).

² Comments of AT&T at 9 (May 23, 2007), Comments of MetroPCS at iv-v, 10-11 (May 23, 2007). MetroPCS opposes any type of Frontline proposal because opportunities exist for public safety to partner with incumbent carriers, that the proposal has not received approval by the federal Department of Homeland Security and that the federal government is deploying a broadband network. No incumbent carrier has presented a realistic proposal that will meaningfully assist public safety. DHS, despite its important role in providing direction in the context of its grant and funding programs, does not assign spectrum. Moreover, emergency response remains a state and local responsibility, including how best to deploy communications assets to support operations. Efforts to deploy broadband networks for federal agencies are not directed toward supporting the primary communications requirements of local and state agencies.

NPSTC’s focus and concern remains the E Block’s licensee’s ability to pursue its commercial strategy while deploying and maintaining a public safety network consistent with mission critical standards which all public safety agencies will use. Cyren Call and Frontline have made important contributions in presenting proposals to assist public safety.³ The challenge is how to ensure that a market driven model, whose success is based on investment return, is accountable to the Commission and able to deploy and maintain a network whose success is measured by the effectiveness of emergency response. NPSTC believes that the Commission must embrace a role for itself to monitor and supervise how the public safety network meets this standard and that operations within the E Block must preserve the integrity of public safety communications.

TABLE OF CONTENTS

The Commission’s Rules And Oversight Are Crucial To A Public Safety Network	3
E Block Operations Must Not Encroach Upon Or Disrupt Public Safety Operations	6
Conclusion	10

The Commission’s Rules and Oversight Are Crucial to a Public Safety Network

NPSTC’s initial comments urged the Commission to establish parameters for the E Block licensee addressing the public safety network. As the Association of Public Safety Communications Officials International (APCO) noted, “Public safety must have the final word regarding any network operating in the public safety spectrum, and must

³ Among these contributions is the commitment to pay expenses relating to the relocation of the 700 MHz public safety voice channels.

not be forced into a long term relationship with a party merely because of its high bid in the auction.”⁴ APCO urged the Commission to proceed on what it correctly characterized as the “conditional auction” approach. How the E Block licensee deploys and maintains the network and works with the NPSL to afford local officials meaningful participation must be outlined in the Commission’s rules. It is important that the rules shape the E Block’s accountability and business strategy and the parameters of the network sharing agreement and place the Commission’s enforcement authority squarely behind the principles associated with a mission critical network used by all agencies.

The initial challenge is providing adequate incentive for a balanced negotiation between the NPSL and the E Block auction winner addressing how the networks will be shared. NPSTC recommended that if an agreement does not emerge, the E Block be re-auctioned, acknowledging that this proposal presented logistical and timing difficulties. Another alternative is to allow the E Block auction winner to obtain a license but at additional cost, determined by the Commission, and reflecting the lack of public safety obligations. A negative to this approach is it leaves public safety with no alternative to deploy and maintain a broadband network. As we have noted previously, the 12 MHz of public safety spectrum does not present a viable economic model for a public private partnership. It is unclear whether any other 700 MHz license holder would engage public safety to form a network sharing agreement. NPSTC remains of the view that if a network sharing agreement does not emerge, the E Block should be re-auctioned.

One area the network sharing agreement will address is the extent of E Block licensee secondary access on an unconditionally preemptible basis to the public safety segment. NPSTC believes that the Commission has authority to authorize the NPSL to

⁴ APCO Comments at 3 (May 23, 2007).

allow secondary access on unconditionally preemptible terms. The premise is the control by the NPSL and the deployment and maintenance of the resulting broadband network. With the NPSL holding both primary and secondary authority over the segments, secondary access will enable the deployment and maintenance of the national public safety broadband network. This important objective is among the “terms and conditions” the law commits to the Commission to further public safety communications in the 700 MHz band.⁵ The provision addresses the historic under funding of local government communications systems. It would be incongruous that a provision, directed toward ensuring a public safety allocation in the 700 MHz band, would preclude effective use by public safety.

A conditional auction, defined parameters in the Commission’s rules, the potential re-auctioning of the E Block and Commission enforcement of the parameter and network sharing agreement should be accompanied by vigorous Commission oversight of the public safety network’s deployment, operations and maintenance. This would include periodic reports by the E Block licensee and NPSL, an opportunity for public comment on the progress and a Commission evaluation of the progress and challenges encountered. There must be a true accounting by the E Block licensee and the NPSL. The objective is to delineate clearly that the E Block licensee has a distinct obligation, separate from whatever its business strategy is, that because of its importance to emergency response, will be subject to scrutiny by the Commission.

The E Block licensee should be judged on an ongoing basis by the quality of service it provides and the number of public safety agencies who have chosen to

⁵ Section 337(a)(1) of the Communications Act of 1934, as amended.

participate in the network.⁶ The criteria should be realistic to the challenge and not tied to the E Block's commercial pursuits. Ultimately, how it performs with regard to the public safety network should determine whether its license is renewed. Renewal of the E Block license should not be automatic, assumed or an expectation. Renewal must rest in large part of a proven record showing a broadband network meeting public safety standards and needs and where the range of public safety agencies choose to participate. The position of the NPSL should be given substantial deference.

The Commission should structure the E Block licensee's responsibility to deploy and maintain the public safety network as a separate and discrete element of its overall responsibilities as a Commission licensee. It should be judged on its technical and logistic expertise in deploying and maintaining a network. Just as important is how it promotes public safety participation. The latter encompasses its relationships with the varied public safety sector members who operate in a range of environments and with varying resources which the E Block licensee must understand and work cooperatively with and deliver advanced services to. The E Block licensee should view its obligations to the public safety network as a trust responsibility that the Commission will oversee and enforce.

E Block Operations Must Not Encroach Upon or Disrupt Public Safety Operations

The efficiencies of the integrated broadband infrastructure are a critical element in the public private partnership's capability to serve separate public safety and commercial users. It is important to public safety for the E Block's commercial ventures to succeed; the ramifications of failure will be severe. Public safety, however, cannot be entwined in

⁶ Comment of Cyren Call at (May 23, 2007).

the E Block licensee's commercial strategy, from either a technical or customer relationship perspective. The line must be distinct.

The E Block's commercial relationships, its investors, management and customers, must comprehend an important premise—the existence of a viable public safety network is as important as meeting its most prominent secured financial obligation. Frontline's technical strategy regarding its network and the recent *ex parte* letter from Google, Inc.,⁷ present concepts, while characterized as innovative, are also evolving. Lacking the clarity accompanying proven experience, their applicability to public safety operations must be approached with caution.

The 700 MHz broadband public safety network, including its priority access to the E Block, cannot be experimental. There can be no guinea pig initiatives in emergency response. This critical principle, in contrast to commercial systems, requires technology and applications with proven reliability. Planning, testing and field experience must emerge prior to deployment decisions. A communications failure presents too large a risk to first responders and citizens; only viable and proven systems can be deployed.

NPSTC is reluctant to express positions addressing Frontline's or any other interest's technical or business concepts such as open access or roaming except where such affects the public safety network. The record reflects extensive debate on these subjects, yet NPSTC does not believe that how these issues relate to public safety will be readily resolved. The environment encompasses not only the complex character of radio

⁷ Letter from Richard S. Whitt, Esq., Washington Telecom and Media Counsel, Google, Inc. to Marlene H. Dortch, Secretary of the Commission (May 21, 2007) set forth in WT Docket No. 06-150, Docket 06-169, PS Docket 06-229 and WT Docket No. 96-86.

waves but the sharing of same infrastructure and user access to the other's channels. Because of this intricate interrelationship, balancing the rules and strategies relating to the E Block and the adjoining public safety channels is difficult and needing analysis beyond the decision deadlines in this proceeding.

The Commission should make clear that E Block operations must coexist and not interfere with the mission critical public safety network. While there is debate addressing how to promote the number of competitors in the auctions, the Commission should emphasize public safety's need for a network reflecting its standards and affordable access. The network must be measured by its ability to deliver effective emergency response, not the auction price of the E Block or the revenues of its licensee.

NPSTC reiterates its concern regarding a mandated open access environment. With the term "open access" subject to varying interpretations, a more appropriate reference may be to compare an "uncontrolled" (open) network to that which is "controlled" (closed). Both present benefits and challenges to public safety. An uncontrolled environment moves flexibility to the user in accessing the network with devices directed to the user's particular need. Spectrum, as a resource, becomes more of a commodity, with the service provider's role as the accountable entity lessened. In a controlled environment, the service provider determines those devices that can access the network, contributing to more predictable traffic and routing engineering and well understood applications and services.

The uncontrolled environment is enhanced in the 700 MHz greenfield, with no legacy infrastructure or user device needing to be confronted. Yet core issues of

confidentiality, authentication, integrity and non repudiation⁸ must all be understood, particularly in the public safety environment. Any latency challenge evolving from the greater number and array of applications must also be comprehended before deployment. NPSTC is not against open access. Nor do we dispute that it may ultimately benefit public safety. What remains at the forefront of viable public safety communications is proven experience, a critical element lacking in the open access model. Open access may be a viable option for the future, however, at this time not enough is known about the effects on the public safety part of the network to mandate it in the rules.

Frontline and Google's embrace of dynamic auction techniques, such as real time auctions, leave unanswered the effect on adjacent public safety channels and on public safety's priority access.⁹ Google promotes modern spectrum sensing technologies as the means to make optimal use of spectrum resources. It urges a "marketplace driven spectrum regime, one responsive to economic signals and the public interest." It states that any successful bidder be able to institute dynamic spectrum auction policies.

While Frontline's E Block proposal has public safety as a core premise, the Google May 21, 2007 *ex parte* letter makes no reference to emergency service communications. While operations substantially distanced from the 700 MHz public safety channels reduce concern, neither Frontline's nor Google's proposals appear so confined. NPSTC participates in an ongoing forum addressing sensing technologies and is committed to its viability, yet none have emerged that approach public safety

⁸ *IPv6 Essentials*, by Sylvia Hagen, O'Reilly Publishers.

⁹ Frontline Comment at vi, 23-24 (May 23, 2007), Letter from Richard S. Whitt, Esq., Washington Telecom and Media Counsel, Google, Inc. to Marlene H. Dortch, Secretary of the Commission (May 21, 2007).

standards. Promotion of market driven policies ignore that emergency response is measured by neither revenues nor return.

NPSTC believes that there must be a reality in the Commission's decisions addressing the relationships between public safety and the private interests in the 700 MHz band. A public private partnership must preserve the integrity of the public safety network. Federal spectrum policy demands it. NPSTC cannot support any proposal that fails to do so.

Conclusion

It is the viability of the national public safety licensee network - its ability to deliver mission critical services by a range of agencies - that remains at the forefront of NPSTC's concerns. Operations in adjacent bands must not disrupt the public safety network. The Commission's supervision and active role is an important element to ensure that the E Block licensee pursues as a discrete responsibility its obligations and that the commercial interests involved comprehend this premise. An effective public private partnership will only emerge with a commitment by the Commission to vigorous supervision.

Respectfully submitted,

Vincent R. Stile

Vincent R. Stile, Chair
NATIONAL PUBLIC SAFETY
TELECOMMUNICATIONS COUNCIL
8191 Southpark Lane, Number 205
Littleton, Colorado 80120-4641
866-807-4755

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