

**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 VERIZON WIRELESS

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I. SUMMARY

Verizon Wireless submits these Reply Comments in response to the Comments

received on the *Further Notice of Proposed Rulemaking* in the above-captioned proceeding.¹

The Commission should adopt a band plan and service rules that will advance 4G deployment, while affording opportunities for companies of all sizes to participate in the 700 MHz auction. The Commission should also promote the development of new emergency communications systems by taking actions to encourage the formation of partnerships between the Public Safety community and commercial operators, consistent with the core principles that Public Safety spectrum must be free of interference and encroachment; that Public Safety must have the exclusive right to decide whether and with whom to partner in deploying a broadband, interoperable network; and that Public Safety communications must not be jeopardized by experimenting with risky and untested “open access” to the network it will be relying on to protect life and property. These are the cardinal goals of this and related Public Safety rulemakings. The Commission should focus on these goals, and reject the ill-conceived last minute proposal from Frontline that would undermine them.

Proposal 3 Is the Superior Band Plan for Promoting 4G Deployment While Making Available a Wide Mix of License Sizes. The Commission should adopt band plan Proposal 3 which, considered in combination with the lower 700 MHz band plan, provides a broad mix of license sizes comparable to those made available in the AWS auction. It is the only plan that achieves the objectives of addressing Public Safety issues, providing at least one spectrally-wide block that will facilitate 4G deployment, and providing a mix of small, medium and large geographic sizes

Build Out Requirements Should Be Based on People Served. The record also shows

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 8064 (2007) (“*Report & Order*” or “*Further Notice*”). All Comments submitted in response to this *Further Notice* are short-cited herein.

that population-based performance requirements are far superior to geographic-based requirements for achieving robust build out that serves communities in a way that preserves necessary flexibility for licensees to compete by differentiating their services. In contrast, the very few parties that support geographic build out rules fail to provide any evidence as to the need for such a radically new and intrusive regulatory regime.

Eligibility Requirements and Combinatorial Bidding Should Be Rejected. Nearly all parties support adoption of auction rules that promote open, broad participation and oppose eligibility rules advocated by those who would benefit from such rules. The record confirms the Commission's settled position that eligibility restrictions designed to prevent participation by certain entities, particularly those ready to deploy next generation broadband networks, would distort the auction, depress revenues needed by Congress, and impede rapid deployment of new service. The record also confirms that combinatorial bidding should not be adopted for this auction, because it cannot be accomplished for an auction that will include over 900 licenses, and imposing it on only some but not all licensees would jeopardize the success of the auction.

Public Safety Does Not Support the Frontline Plan, and It Should Be Rejected. Verizon Wireless supports the development of a nationwide, interoperable broadband network for Public Safety, and believes that the considerable assets and experience of the commercial wireless industry would provide enormous benefit to Public Safety in achieving that goal. As a result, we support the Commission's efforts in other rulemakings that would help to establish public-private partnerships. However, the particular partnership proposed by Frontline would not accomplish that goal. Rather, it would undermine efforts to provide first responders with access to enhanced emergency communications and delay the implementation of a nationwide broadband network by many years.

First, Public Safety does not endorse Frontline’s proposal. The Frontline proposal landed with a resounding thud in the Public Safety community, provoking an avalanche of criticism of virtually every element of Frontline’s proposal, from literally dozens of state and local governments and Public Safety organizations. The National Association of Telecommunications Officers and Advisors, the National Association of Counties, the U.S. Conference of Mayors, and the National League of Cities, for example, conclude that Frontline’s plan “shortchanges our nation’s first responders.”² They and nearly every other Public Safety commenter harshly criticize Frontline for taking control of the network away from Public Safety and unlawfully forcing Public Safety to make its spectrum available for commercial use. Public Safety commenters also criticized Frontline’s plan as short on financing specifics, and providing no detail on the network sharing agreement that would form the basis for the partnership.³ They question the wisdom of deferring such critical details until after the auction. They recognize that no viable business could expect to rationally bid on a license subject to such uncertainty, and as a result, Public Safety would not be assured of getting a partner that would be viable over the long term. Public Safety’s opposition to all key components of Frontline’s plan should lead the Commission to reject it on that ground alone.

Second, Frontline’s proposal is fraught with uncertainty and risk for Public Safety. Public Safety would be forced to deal with the entity that wins a particular license or licenses – even if that entity has no experience building wireless networks. Frontline proposes poison pill conditions that would drive away all prospective bidders who currently own spectrum or run wireless networks, leaving Frontline a clear shot at winning the spectrum at a huge discount.

² NATOA *et al.* Comments at 8.

³ *Id.* at 8-15.

Thus, Frontline’s proposal virtually guarantees that Public Safety would be forced into a shotgun marriage with none other than Frontline itself. Worse, Frontline proposes a single network that Public Safety would be forced to share with Frontline’s wholesale customers – a network with “open access” requirements that would create serious operational risk for first responders, undermining the benefits of Public Safety’s access to the E block, while risking Public Safety communications within its own adjacent channels. The open access, wholesale-only, and automatic roaming requirements Frontline proposes would also significantly reduce the interest in the license and impede Public Safety’s efforts to establish partnerships with qualified commercial operators. These onerous conditions would also depress auction revenues, threatening funding for the DTV transition and for the Public Safety initiatives Congress determined will be paid for by the auction proceeds after the deficit reduction goal is met. Moreover, Frontline’s plan for a post-auction “negotiation” of terms and conditions for the national public safety network, with disputes resolved by arbitration, is rife with additional risks for Public Safety. These risks will be avoided if Public Safety can negotiate construction of a broadband network freely with any interested commercial operator, when Public Safety is ready to do so.

Third, comments from many other parties show that Frontline is a stalking horse for net neutrality and other unprecedented and unjustified mandates. These mandates are designed to advance Frontline’s specific business plan, while foreclosing others from bidding on the spectrum in an open, competitive auction. Moreover, Frontline’s poison pills should not be considered because they would reverse years of deregulatory policies for mobile services – policies that the Commission itself has said contributed to the vigorously competitive mobile industry and the benefits it has brought to the national economy and the public.

II. BAND PLAN PROPOSAL 3 IS THE ONLY PLAN THAT ACHIEVES THE COMMISSION'S OBJECTIVES.

The Commission's Upper Band "Proposal 3" – when taken together with the Commission's existing Lower Band plan – will enable the Commission to realize its stated public interest goals in a manner unmatched by any of the Commission's other proposals.⁴ Neither the new band plans offered by commenters nor Proposal 2 or 5, as supported by a number of commenters, can achieve the Commission's stated policy goals as directly as Proposal 3.

As depicted in the Attachment to these Reply Comments (*see* Attachment 1), Proposal 3 provides the diversity of license sizes and geographic areas the Commission seeks. As was the case with the recently licensed AWS spectrum, Proposal 3 provides licenses in 10 MHz paired spectrum blocks and at least a single 20 MHz paired spectrum block (in contrast, the AWS spectrum band plan provided for equal amounts of large and small license blocks).⁵ The plan also provides for a variety of geographic service areas, including REAGs, EAs and CMAs. CMAs and EAs in the lower band will offer ample opportunities to small businesses and rural providers. Some parties incorrectly interpret the Commission's desire to have a mix of licenses

⁴ Verizon Wireless Comments at 7-19.

⁵ *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Order on Reconsideration, 20 FCC Rcd 14,058, 14,066-69 (¶¶ 15, 17, 20) (2005) (adopting a band plan with three 20 MHz paired spectrum blocks and three 10 MHz paired spectrum blocks and finding that the larger 20 MHz paired spectrum blocks will "enable a broader range of broadband services" while the smaller 10 MHz paired spectrum blocks will "enable a wide variety of carriers . . . to deploy advanced services effectively, increase their footprint, and improve service quality"). *See also Amendment of the Comm'n's Rules to Establish New Personal Comm'n's Servs.*, Second Report and Order, 8 FCC Rcd 7700, 7726 (¶ 58) (1993) ("some types of PCS operations will require more than 10 MHz to provide services that require wider bandwidths... allocating additional spectrum in 30 and 20 MHz frequency blocks is appropriate and will facilitate the rapid development and implementation of the fullest range of services").

to mean that both the upper and the lower bands need to include CMA licenses.⁶ The Commission, however, considers the two bands together.⁷ As demonstrated in Attachment 1, Proposal 3 clearly achieves this mix when combined with the Commission’s proposal for the Lower 700 MHz band.

Proposal 3 also provides for 22 MHz of spectrum to be licensed on a REAG basis, which will significantly advance the deployment and delivery of next generation wireless broadband services. Finally, Public Safety interests are accommodated by Proposal 3. The proposal resolves the Canadian border issue and provides for the possibility of additional spectrum through a public-private partnership. No other proposal satisfies all these objectives. Parties that support band plans comprised of many small licenses fail to show how these band plans meet the many objectives outlined above.

In addition, there is broad-based support for adopting Proposal 3. In their initial round of comments, numerous carriers and groups filed in support of Proposal 3. Diverse groups such as the Coalition for 4G in America (“4G Coalition”),⁸ the Association for Public-Safety Communications Officials-International, Inc. (“APCO”),⁹ the Wireless Communications Association International, Inc. (“WCAI”),¹⁰ the National Public Safety Telecommunications

⁶ See, e.g., Alltel Comments at 3-4; Centennial Comments at 2-3, 5-6; Frontier Comments at 2-9.

⁷ *Report & Order*, ¶ 42 (finding that “a mix of geographic licensing areas in the 700 MHz Band [which, by definition, includes both the Upper and Lower 700 MHz Bands] will balance the demand for differently sized licenses”).

⁸ 4G Coalition Comments at 3-8.

⁹ APCO Comments at 7-10.

¹⁰ WCAI Comments at 5-9.

Council (“NPSTC”),¹¹ Google, Inc.,¹² and Access Spectrum, LLC *et al.*¹³ all announced their support for Proposal 3. As Verizon Wireless argued in its comments, and as the 4G Coalition stated, “[o]ne of the principal virtues of Proposal 3 is that it enables an 11 MHz paired block, which is superior both to a 10MHz paired block, and to two 5.5 MHz blocks . . . [because a]n 11 MHz paired block would offer greater benefits for advanced broadband technologies than would a 10 MHz pair.”¹⁴ APCO supported Proposal 3 because, among other reasons, it “offers the best approach for addressing” the need to preserve narrowband spectrum in the Canadian border areas.¹⁵ In addition, Google, Inc. noted that “[a]llowing a total of 22 MHz in a paired block will give greater flexibility to technologies with adjustable signal bands (such as WiMax), and additional capacity for technologies with fixed waveforms (such as EvDO).”¹⁶ Moreover, the 4G Coalition echoed Verizon Wireless’s comment that the Commission should include “spectrum licensed on a REAG” basis.¹⁷

Some commenters instead favor Proposal 2 or, in the alternative, Proposal 5 for the Upper 700 MHz band.¹⁸ Compared to Proposal 3, each of these alternative proposals suffers from significant flaws and fails to achieve the Commission’s goal to maximize available

¹¹ NPSTC Comments at 22-27.

¹² Google Comments at 7.

¹³ Access Spectrum *et al.* Comments at 5.

¹⁴ 4G Coalition Comments at 3.

¹⁵ APCO Comments at 9-10.

¹⁶ Google Comments at 7.

¹⁷ 4G Coalition Comments at 8.

¹⁸ *See e.g.*, SpectrumCo Comments at 8; Leap Wireless Comments at 3-4; MetroPCS Comments at 13.

spectrum for Public Safety uses while providing a variety of spectrum block sizes and geographical services areas for commercial operations.

More specifically, supporters of Proposal 2 fail to recognize the difficulty that this band plan presents for operations in the narrowband portion of the 700 MHz spectrum allocated for Public Safety services. With the reconfiguration of the Public Safety spectrum to place all broadband and narrowband Public Safety operations directly adjacent to one another, the narrowband portion of the Public Safety band is completely located within spectrum allotted for TV Channels 64 and 69 under Proposal 2. However, the TV Channel 64 and 69 spectrum is not available for Public Safety systems in the Canadian border states. While the current treaty, which provides for spectrum in TV Channels 63 and 68, could be amended, this bilateral negotiation will require significant time to negotiate and ratify. As Public Safety has an urgent need for mission critical narrowband voice systems in the immediate future, it is crucial that it have access to spectrum in the TV Channel 63 and 68 spectrum blocks, which is not provided by Proposal 2. As such, the Commission should not consider Proposal 2, given this glaring deficiency.

As an alternative to Proposal 2, these same commenters recommend adoption of band plan Proposal 5. However, Proposal 5 fails to: (1) contain a spectrum block of paired spectrum larger than 11 MHz; and (2) heavily favors the use of EA licensing areas over CMAs and REAGs. The Commission has consistently argued, as have the commenters who support Proposal 5,¹⁹ that any band plan for the 700 MHz band should be flexible and provide spectrum blocks and geographic areas in a variety of sizes to enable all participants in the auction to have a

¹⁹ See e.g., MetroPCS Comments at 9; SpectrumCo Comments at 2.

meaningful opportunity to participate and succeed in the business endeavor they choose.²⁰

However, Proposal 5 fails to provide for a single, paired spectrum block larger than 20 MHz.

Such a result is inconsistent with the provision of broadband services and flatly contradicts past spectrum band plan precedents.

As is shown in Attachment 1 to these reply comments, the AWS band plan contained three 10 MHz paired spectrum blocks and three 20 MHz paired spectrum blocks.²¹ The PCS band plan allocated three 10 MHz paired spectrum blocks and three 30 MHz paired spectrum blocks.²² Proposal 5, which its proponents claim is a “balanced” approach, provides six 10-12 MHz paired spectrum blocks and *no* paired spectrum blocks of 20 MHz or greater. Carving up the available commercial spectrum into such small blocks will lead to aggregation inefficiencies for both established carriers and potential new entrants – the latter group being particularly disadvantaged at any attempts to establish a competitive presence in the wireless marketplace with such an inadequate supply of spectrum. Moreover, Proposal 5 heavily allots spectrum licenses to EA geographic areas (3 licenses to EAs, 2 licenses to CMAs, and a single REAG license for all the paired spectrum in the 700 MHz band) which plainly is inconsistent with the Commission’s stated goal “of providing a mix of licenses that balances competing interests” in the 700 MHz spectrum band plan.²³

²⁰ *Report & Order*, ¶¶ 43-44 (“[A]s a general principle...[the Commission] will consider ‘licensing the spectrum over a range of various sized geographic areas...The same policy of providing a mix of licenses that balances competing interests is appropriate here...We conclude that providing a mix of CMA, EA, and REAG licenses in the 700 MHz Commercial Services spectrum will be an effective means of providing increased access to spectrum, especially in rural areas, while simultaneously meeting other Commission goals”).

²¹ *See* Attachment 1; *see also* 47 C.F.R. § 27.5(h).

²² *See* 47 C.F.R. § 24.229.

²³ *Report & Order*, ¶ 43.

Likewise, the new band plans offered by Cyren Call and Ericsson do not balance all competing issues as well as Proposal 3 and should therefore be rejected. Cyren Call's proposal would expose the Upper 700 MHz C Block to increased interference risk from high-powered transmissions originating in the Lower 700 MHz C Block.²⁴ Ericsson proposes that the Commission group the A and B Blocks together by placing the B Block adjacent to the A Block at 746-747 MHz and 776-777 MHz.²⁵ Ericsson's proposal does nothing to address the Canadian border issue described above. If Ericsson's proposal were adopted, Public Safety would lack the flexibility to deploy cross-border interoperable systems where blocked by Canadian broadcast facilities.

Accordingly, the Commission should adopt Proposal 3 – which enjoys broad-based support from a diverse group of carriers and groups – over the new proposals and the Commission's other proposed band plans.

III. POPULATION-BASED PERFORMANCE REQUIREMENTS WILL ENSURE RAPID, EFFICIENT BUILD OUT OF PUBLIC SAFETY AND COMMERCIAL NETWORKS.

The record in this proceeding demonstrates the superiority of population-based build requirements over geographic performance metrics.²⁶ The few commenters that support geographic performance requirements²⁷ provide no factual basis for the Commission to make this

²⁴ Verizon Wireless Comments at 17-18.

²⁵ Ericsson Comments at 23.

²⁶ *See, e.g.*, SpectrumCo Comments at 24-29 (supporting the population safe-harbors proposed by Verizon Wireless). Many other commenters oppose the Commission adopting any performance requirement other than substantial service. *See* AT&T Comments at 14-15; 4G Coalition Comments at 12-20; Council Tree Communications Comments at 13-14; CTIA Comments at 3-10; Google at 8; Leap Wireless Comments at 6-7; MetroPCS Comments at 29-38; Union Telephone Company Comments at 8; US Cellular Comments at 14-19.

²⁷ *See* Rural Cellular Association Comments at 5-11; Aloha Partners Comments at 3-4.

significant change in policy, let alone the showing of compelling need that is required for new CMRS regulation. As Verizon Wireless explained in its opening comments, population-based performance requirements will incent rapid build out and delivery of broadband communications service.²⁸ By contrast, proposals that the Commission permit unlicensed operations in spectrum not built out by applicable deadlines would frustrate the build out of Public Safety and commercial services. Given the significant amounts of spectrum already available for unlicensed use, the agency should reject such proposals as unnecessary and counter-productive.

Population-based requirements such as those that Verizon Wireless proposed²⁹ would be the most stringent build out mandates the Commission has ever had, and will ensure that U.S. consumers receive the benefits of wireless broadband nationwide on a timely basis.³⁰ Indeed, the Commission has found that U.S. consumers have already been well-served by the Commission's existing market-based approach to performance requirements.³¹

In contrast, geographic-based performance requirements are both ill-designed to meet

²⁸ Verizon Wireless Comments at 19-28, Attachment A – Thomas W. Hazlett, Regulatory Policy at 700 MHz: Competition, Auction Receipts, and Economic Welfare (May 23, 2007). Verizon Wireless also notes that some Public Safety entities also support a population-based rather than geographic build out as the best way to encourage the expeditious build out necessary to meet Public Safety more rigorous build out needs, and to ensure that Public Safety “has the best possible coverage.” NPSTC Comments at 12.

²⁹ Verizon Wireless Comments at 28-30.

³⁰ *Id.* at 29-30 (noting that Verizon Wireless' proposal, if adopted, indeed would be the strictest build out requirements imposed by the Commission ever, thus ensuring “rapid deployment and service to the public”).

³¹ *See, e.g., Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Eleventh Report, 21 FCC Rcd 10,947, 10,994-95 (¶¶ 115, 117) (2006) (“*Eleventh CMRS Competition Report*”) (noting the many benefits that consumers currently receive from the wireless industry including widespread and increasing wireless coverage and rapid deployment of new technologies). *See also* Verizon Wireless Comments at 20-22.

consumers' needs and extremely capital-intensive.³² For these and other reasons, the Commission recently has rejected a geographic-based requirement even for rural areas, finding that it would not serve the public interest.³³ Commenters correctly argue that the Commission has provided no basis for reversing its position,³⁴ and doing so without any record basis would be unlawful.³⁵ There is no evidence indicating that a reversal of this approach is necessary or warranted.³⁶ Moreover, those who advocate geographic build out rules fail to show why this approach is needed to serve the Commission's objectives.³⁷

³² Verizon Wireless Comments at 29 (noting that “coverage of land mass [is] a poor measure of the public benefit”), Attachment A – Thomas W. Hazlett, Regulatory Policy at 700 MHz: Competition, Auction Receipts, and Economic Welfare, at 1 (noting that geographic-based build out requirements will “increase the cost of compliance”); Leap Wireless Comments at 6-7; SpectrumCo Comments at 20-21, 26-29.

³³ *Review Spectrum Aggregation Limits for Commercial Mobile Radio Services, Increasing Flexibility to Promote Access to and the Efficient and Intensive Use of Spectrum and the Widespread Deployment of Wireless Services, and to Facilitate Capital Formation*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 19,078, 19,124-25 (¶ 82) (2004).

³⁴ *See, e.g.*, AT&T Comments at 15-16; SpectrumCo Comments at 24-25.

³⁵ *See Atchison v. Wichita Bd. of Trade*, 412 U.S. 800, 807-08 (U.S. 1973) (“A settled course of behavior embodies the agency’s informed judgment that, by pursuing that course, it will carry out the policies committed to it by Congress. There is, then, at least a presumption that those policies will be carried out best if the settled rule is adhered to. From this presumption flows the agency’s duty to explain its departure from prior norms.”); *Mich. Pub. Power Agency v. FERC*, 365 U.S. App. D.C. 313 (D.C. Cir. 2005)(finding that an agency “may change its policy only if it provides ‘a reasoned analysis indicating that prior policies and standards are being deliberately changed, not casually ignored.’”(quoting *Greater Boston Television Corp. v. FCC*, 444 F.2d 841, 852 (D.C. Cir. 1970)); *see also Motor Vehicle Mfrs. Ass'n v. State Farm Mut. Auto. Ins. Co.*, 463 U.S. 29, 42 (U.S. 1983) (“an agency changing its course by rescinding a rule is obligated to supply a reasoned analysis for the change beyond that which may be required when an agency does not act in the first instance”).

³⁶ Verizon Wireless Comments at 20-25.

³⁷ *See* Aloha Partners Comments at 3-4 (supporting the Commission’s milestone proposal but failing to provide any evidence that geography-based milestones are necessary or appropriate); Rural Cellular Association Comments at 5-11 (failing to provide any evidence of (1) rural carriers’ lack of access to spectrum, (2) lack of deployment to rural areas, or (3) that

Just as POPS-based performance requirements would facilitate build out of next-generation networks, proposals that licensees failing to meet their benchmarks surrender a portion of their spectrum for unlicensed use would impede 4G deployment.³⁸ As a threshold matter, abundant spectrum already is available for unlicensed services in the 2.4 and 5 GHz bands.³⁹ Moreover, the Commission likely will make additional spectrum available for unlicensed services as a result of the TV white spaces proceeding.⁴⁰ In addition, were the Commission to permit unlicensed use in “unused” spectrum, the very nature of unlicensed service would prevent any meaningful analysis of whether unlicensed use or subsequent build out by the licensee would best meet a community’s service and coverage needs. Post-benchmark build out by the licensee would surely offer more benefit to an unserved community than a single WiFi “hot spot,” but once the spectrum is opened for unlicensed use the Commission will have no way of knowing whether one or one thousand “hot spots” have been deployed. Such an

geography-based performance requirements will improve rural carriers’ ability to access spectrum or encourage rural deployment).

³⁸ See Ad Hoc Public Interest Spectrum Coalition (“PISC”) Comments at 37 (proposing that the Commission, instead of reclaiming unused spectrum, “designate unserved areas as ‘vacant channels,’ usable by unlicensed devices approved in OET Docket No. 04-186.”); Google Comments at 9 (contending that opening spectrum to unlicensed use where a licensee fails to meet its build out benchmarks “balances the proper incentives for reasonable completion and operation of licensed networks, while at the same time freeing up unused spectrum for unlicensed use”).

³⁹ See 47 C.F.R. Part 15.

⁴⁰ See *Unlicensed Operation in the TV Broadcast Bands*, First Report and Order and Further Notice of Proposed Rulemaking, 12 FCC Rcd 12,266 (2006) (concluding that low power devices generally should be allowed to operate on TV channels in areas where those frequencies are not being used for TV or other incumbent licensed services if such devices comply with appropriate protective measures for ensuring that they do not cause interference to already authorized services and seeking comment on what these measures should be).

arbitrary regime does not serve the public interest, particularly where adequate unlicensed allocations are available in other bands.

IV. THE COMMISSION SHOULD REJECT ELIGIBILITY LIMITS.

The overwhelming view of commenters is that the Commission should neither bar certain parties from participating in the 700 MHz auction, nor adopt rules that warp the auction playing field by providing discounts to some bidders or saddling others with bid surcharges. The Commission also should not adopt auction rules that serve to disadvantage terrestrial service providers.⁴¹ Moreover, closed bidding would distort the auction results, significantly reducing auction revenue and foreclosing participation by parties that have the expertise and experience necessary to deploy 4G communications networks on a broad scale.

Commenters agree with Verizon Wireless that barring parties like incumbent local exchange carriers and cable operators from participating in this auction is unnecessary and antithetical to the public interest.⁴² No commenter has established any harm that would require imposing eligibility restrictions. The few parties that seek such limits resort to conclusory assertions as to lack of competition that are refuted by the Commission's own findings, year after year, of vigorous CMRS competition.⁴³ Their claims for restricting others should be viewed as

⁴¹ See PISC Comments at 34 (proposing to prohibit certain entities from participating in the auction).

⁴² See Verizon Wireless Comments at 31-35; SpectrumCo Comments at 30-33; CTIA Comments at 10-17; AT&T Comments at 20-34; Qualcomm Comments at 9-11; MetroPCS Comments at 38-39; US Cellular Comments at 21.

⁴³ See *Eleventh CMRS Competition Report*, 21 FCC Rcd at 10950 (¶¶ 2-3); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Tenth Report, 20 FCC Rcd 15,908, 15,908-09 (¶¶ 3-4) (2005); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Ninth Report, 19 FCC Rcd

what they are – a transparent effort to reduce auction prices and corner spectrum by keeping out of the auction competing bidders.

Similarly, auction rules that disadvantage incumbent providers to the benefit of potential new entrants are inappropriate and ultimately harmful. Parties propose that the Commission either provide a discount to new entrant bidders⁴⁴ or require wireless providers affiliated with ILECs to pay an auction premium on any winning bids.⁴⁵ Fundamentally, auctioned spectrum should go to the party that values the spectrum most highly and will therefore put that spectrum to its highest and best use.⁴⁶ In order for the Commission’s auction to function properly and lead to the best results, all parties must be on equal footing. Auction rules that favor certain bidders over others upset this balance and would lead to this spectrum being put to less than its best use or lying fallow. Indeed, a bidder benefiting from a spectrum discount may not be financially or technically fit to deploy the infrastructure necessary to utilize this spectrum.

V. PACKAGE BIDDING SHOULD NOT BE USED FOR THIS AUCTION.

Verizon Wireless’s initial comments explained why the Commission should not adopt package bidding for this auction.⁴⁷ A host of commenters agree.⁴⁸

20,597, 20,610-20611(¶¶ 23-28) (2004); *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd 14,783, 14,791-92 (¶¶ 12-14) (2003).

⁴⁴ PISC Comments at 34; Google Comments at 9-10.

⁴⁵ See Alltel Comments at 14.

⁴⁶ See 47 U.S. C. § 309(j)(3)(D) (noting that in designing auction methodologies the Commission should seek to promote “efficient and intensive use of electromagnetic spectrum.”)

⁴⁷ Verizon Wireless Comments at 38-43.

The few commenters⁴⁹ that support using package bidding do not grapple with the fact that, under the existing proposal, with CMA and EA licenses already chosen for the Lower Block, the auction will have over 900 separate licenses and the complexity this will entail.⁵⁰ They also fail to address the complexity of combining a SMR and SMR-PB auction.⁵¹ Indeed, some commenters simply ignore these issues, suggesting that such a package bidding structure would be simple and that winners “could still be determined with a pencil and paper”⁵² or that participation would require only “simple addition.”⁵³ As Verizon Wireless demonstrated in its comments, the complexities go well beyond adding bids together, but go to the structure of the auction itself and the ability of a single bidder to manage its bids and bidding eligibility across two separate auctions. Not only does the Commission have insufficient time to develop rules for hybrid combinatorial bidding or to develop the auction system necessary for this type of bidding, it is questionable whether the Commission could implement such a hybrid system regardless of the amount of time available.⁵⁴

⁴⁸ US Cellular Comments at 9-14; Rural Cellular Association at 14; SpectrumCo Comments at 16-18; Alltel Comments at 10; Aloha Partners Comments at 5-8; Leap Wireless Comments at 9-10; Blooston Rural Carriers Comments at 9-10.

⁴⁹ See, e.g., Cyren Call Comments at 39-40 (supporting package bidding in the C and D blocks but ignoring the complexities associated with package bidding); Google Comments at 7-8.

⁵⁰ See, e.g., Blooston Rural Carriers Comments at 9-10 (opposing package bidding in part because it would be “extraordinarily complex”); Rural Cellular Association Comments at 14 (noting that “package, or combinatorial, bidding is complex”).

⁵¹ See, e.g., 4G Coalition Comments at 10-12; AT&T Comments at 34-36.

⁵² 4G Coalition Comments at 11

⁵³ Google Comments at 8.

⁵⁴ Verizon Wireless is strongly opposed to the Commission conducting the hybrid auction it describes in the *Further Notice*. Should the Commission choose to conduct a package bid of any kind, however, it should not discriminate against terrestrial incumbents. See Cyren Call

Several commenters⁵⁵ seem to confuse the hybrid auction design that the Commission is proposing with the Tiered Package Bidding (“TPB”) described in the recent report by Professors Goeree, Holt and Ledyard.⁵⁶ While the results of the TPB experiments appear promising, the experiments did not attempt to include both SMR and SMR-PB procedures in a single auction. The study is thus not a valid basis on which to consider a hybrid auction, as would necessarily occur here if the Commission excluded smaller licenses from combinatorial bidding. Moreover, while the study shows promise for a TPB auction, it was a lab experiment that does not address the operational issues of how this would transfer to a larger scale auction. Resolving those operational issues would clearly take many more months than are available here.

VI. FRONTLINE’S PROPOSAL IS STRONGLY OPPOSED BY PUBLIC SAFETY AND OTHER COMMENTERS, AND SHOULD BE REJECTED.

A. Frontline Would Force Public Safety Into an Undesirable Partnership and Would Impede Development of a Nationwide Public Safety Network.

NPSTC aptly noted that Public Safety’s relationship to the E Block⁵⁷ licensee “will be the

Comments at 39-40. This type of discrimination will lead to the same competitive and public interest harms described *supra* as other rules that favor some bidders over others. In addition, implementing a system that allows only some bidders to use combinatorial bidding will further complicate the auction procedure both for bidders and the Commission.

⁵⁵ See, e.g., Frontline Comments, Exhibit 1 – The Design of the 700 MHz Spectrum Auction: An Opportunity to Promote Competition and Public Safety, at 22-23.

⁵⁶ See Jacob K. Goeree, Charles A. Holt, and John O. Ledyard, *An Experimental Comparison of Flexible and Tiered Package Bidding*, Prepared for the Wireless Telecommunications Bureau of the FCC (May 25, 2007) at http://wireless.fcc.gov/auctions/data/papersAndStudies/fcc_report_052507_final.pdf.

⁵⁷ Because Frontline and many commenters used the term “E Block” to refer to the license or licenses that would be subject to obligations to Public Safety, Verizon Wireless will use that reference here. However, Verizon Wireless, as set forth in its initial Comments and in these Reply Comments, opposes dividing the Upper Block of the 700 MHz Band into three blocks, and supports preserving only the two “C” and “D blocks identified in Commission Proposal 3.

source of its success or its doom.”⁵⁸ Unfortunately, the conditions proposed by Frontline would practically guarantee the failure of such a partnership. As numerous parties noted in their comments, the “open access,” wholesale-only, and automatic roaming requirements that Frontline proposes will discourage bidding on the E Block license and will substantially reduce interest in participating in a partnership with Public Safety.⁵⁹ Under the Frontline proposal, Public Safety will effectively be barred from partnering with any existing wireless carrier – the very entities that are the most capable of assisting Public Safety in the construction and operation of a nationwide broadband network.

As CTIA described in its comments, the wireless industry has provided enormous benefits to the economy and to wireless consumers, investing billions of dollars each year in the construction and operation of increasingly sophisticated wireless networks. This success is due in part to the substantial flexibility that has been afforded to licensees to use the spectrum as they see fit, in furtherance of their particular business plans. As CTIA notes, establishing a narrow set of license conditions that would dictate a particular business plan would revert back to the days of “command and control” spectrum management. That course of action would be risky for any set of narrowly tailored license conditions. However, as noted by CTIA, imposing the conditions recommended by Frontline would “render the prospects of business success a real and open question.”⁶⁰ Indeed, Frontline’s attempt to differentiate itself in a highly competitive market as an “open access,” wholesale-only, open roaming venture – a business model locked in place by

⁵⁸ NPSTC Comments at 5.

⁵⁹ Verizon Wireless Comments at 44-52; AT&T Comments at 10-11 (stating that Frontline’s proposal “contains burdensome conditions designed to ‘scare off auction competition and increase the chances of Frontline grabbing the licenses for a song’”(quoting Editorial, *The Spectrum Game*, Wall St. J., Apr. 17, 2007, at A18)); Alltel Comments at 5-7.

⁶⁰ CTIA Comments at iii.

regulation – compromises Public Safety’s needs and undermines the Commission’s objective of providing first responders with interoperable communications.⁶¹

Public Safety cautions the Commission about establishing a set of license conditions that give it little choice about with whom to partner. Both NPSTC and APCO stress that Public Safety must not be forced into a long-term relationship with an unacceptable partner under unacceptable terms.⁶² But, this is precisely what the Frontline proposal contemplates. Public Safety would be required to negotiate the construction of a broadband network with whoever wins the designated spectrum block – regardless of that entity’s experience or qualifications. In this way as well, Frontline’s proposal and Public Safety’s needs are irreconcilable.

The comments reveal many more sharp differences between Public Safety’s plans and the Frontline model. For example, while Frontline asserts that the commercial auction winner would negotiate the terms and conditions of building the network, subject to binding arbitration, many Public Safety entities stress the importance of Public Safety having ultimate authority to decide how its network is constructed and how it will access the commercial spectrum.⁶³ In this way as well, Frontline and Public Safety advance inherently conflicting positions. Even if the

⁶¹ Verizon Wireless Comments at 56-58.

⁶² NPSTC Comments 12 (noting that “it is imperative that the Commission assume an active role in dispute resolution to prevent the possibility that public safety finds itself in a permanent relationship with an unacceptable commercial partner under unacceptable terms”); APCO Comments at 3 (insisting that Public Safety “must not be forced into a long-term relationship with a party merely because of its high bid in an auction”).

⁶³ NPSTC Comments at 9, 13-14 (arguing that the network must be deployed consistent with Public Safety standards, that Public Safety be given a veto over any transfer, disaggregation, or partition that it considers harmful, and that there should be “no hierarchy of approvals to invoke access” to commercial spectrum); APCO Comments at 19-20 (noting that the license conditions “must include a provision giving public safety access to as much as 100% of the network”); Spectrum Coalition for Public Safety Comments at 6 (“[t]he “E Block” licensee should be required to provide priority access to public safety users”).

Commission were able to discern a path to reconciling those positions, the mere prospect of having to do so – not only initially, but during the life of the forced marriage between the auction winner and Public Safety -- should give the Commission no confidence that the Frontline scheme could ever be successful. At a minimum, the Commission would become embroiled in literally years of oversight of the operations of a commercial licensee.

In contrast, establishing flexible license conditions and ensuring that no qualified entities are excluded from the auction will help to ensure that Public Safety has a qualified and viable partner should it want to take that path. We reiterate, however, that regardless of the outcome of the auction and whether or not the Commission decides to employ a “conditioned license” approach, Public Safety must be assured the right to negotiate a partnership agreement with any commercial entity. This will ensure that Public Safety has the best partner and the best terms possible. Public Safety wholeheartedly agrees.⁶⁴

B. Frontline’s Open Access Proposal Would Risk Reliable First Responder Communications and Impede Compliance with Public Safety Initiatives.

NPSTC expressed concern about Frontline’s proposal to require the E Block licensee to allow any device or application to access the network.⁶⁵ This concern is well justified. As CTIA noted, “[t]he record unmistakably shows that exposing wireless networks to untested mobile handsets and applications would degrade network performance, create harmful interference, prevent carrier compliance with important social policy obligations, and open networks to

⁶⁴ See Western Fire Chiefs Association Comments at 2 (stating that “steps should be taken to ensure that public safety has the right to negotiate a public-private partnership with any commercial entity regardless of the outcome of the commercial auction”); Idaho Fire Chiefs Associations Comments at 1-2 ; Montana State Fire Chiefs Association Comments at 2; Virginia Fire Chiefs Association Comments at 2.

⁶⁵ NPSTC Comments at 15.

greater security threats.”⁶⁶ Subjecting any network to such a requirement is risky, especially when there is no countervailing public interest benefit. However, as Motorola noted, such a requirement would be especially problematic “for a public safety network that must have the highest level of reliability and where allowing attachment of devices that have not been fully and properly tested could harm the ability of Public Safety to get vital information at critical times.”⁶⁷

Public Safety may require the use of specialized devices, and as a result should be afforded greater flexibility in determining what devices are attached to the network. However, such accommodations should be part of the negotiations between Public Safety and the entity that Public Safety selects to construct its network, whether or not it wins 700 MHz spectrum. The need for such flexibility by Public Safety does not require a broad “open access” requirement that would result in an unlimited and unknown number of untested devices being attached to the network and risking Public Safety communications.

Frontline’s proposal would also undermine the Commission’s Public Safety and other initiatives.⁶⁸ It is worth noting that the *Report and Order* recently adopted in this proceeding established both E911 and Hearing Aid Compatibility (“HAC”) requirements for commercial licensees in the 700 MHz band. However, as Qualcomm noted, “it would be impossible for the Commission to enforce its E911 and HAC mandates if the Commission were to require the ‘open access’ business model.”⁶⁹

Amazingly, while Frontline proposes a series of onerous and self-serving license

⁶⁶ CTIA Comments at 23 (*quoting* CTIA Reply Comments, RM-11361, at 2-3 (filed May 15, 2007)).

⁶⁷ Motorola Comments at 29.

⁶⁸ CTIA Comments at 21-22; Verizon Wireless Comments at 43-56.

⁶⁹ Qualcomm Comments at 12.

conditions, it argues that CALEA, E911 and HAC requirements should not be imposed on the E Block licensee. In a vain attempt to defend its position, it argues that such requirements are unnecessary since the E Block licensee will only operate on a wholesale basis and the retail service providers using its network will already be subject to those requirements. However, it ignores the fact that the E Block licensee will be the one to build and operate the network. The National Emergency Number Association (“NENA”) appropriately rejects Frontline’s assertion.⁷⁰

C. A Viable Public-Private Partnership Requires that Public Safety’s Requirements be Clearly Defined.

The Frontline proposal is void of any detail about its proposed partnership arrangement, noting that those details would be worked out among the parties following the completion of the auction. Of course, the lack of transparency about how a public-private partnership would work comes with enormous risk, as Public Safety recognized. As NPSTC observed regarding the lack of specificity and transparency in Frontline’s proposal, “[t]he 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.”⁷¹ NPSTC further noted, “it is critically important that the auction participants have a strong sense, prior to the auction, of the obligations they will be required to accept.”⁷²

Verizon Wireless completely agrees. No business that expects to be viable over the long term would agree to construct a nationwide broadband public safety network without clearly understanding its obligations and limitations, and the financial terms upon which the network

⁷⁰ NENA Comments at 5-6.

⁷¹ NPSTC Comments at 9-10.

⁷² *Id.* at 10.

will be built and service will be provided. Bidding on the E Block license without fully understanding those details would impose substantial risk on the commercial entity, as well as Public Safety, as it would substantially increase the likelihood that the venture would fail. Moreover, failure to set forth sufficiently in advance of the application filing deadline for the auction would not be consistent with Section 309(j)(3)(E) of the Act.⁷³ The Commission should do everything in its power to promote the establishment of a public-private partnership that will stand the greatest chance of success.

Perhaps the biggest threat to Public Safety from Frontline's proposal is how it will affect the ability of Public Safety to control its own spectrum. While Frontline claims that local agencies will have control, it provides little detail about how it will accomplish that objective. Public Safety is unanimous in its insistence that Public Safety have control over how the network is built and operated and how the spectrum licensed to Public Safety is used.⁷⁴ Verizon Wireless agrees with Public Safety's position.

Public Safety's requirements and the proposed public-private partnership must be clearly defined and provided to prospective bidders in advance of the auction. Without this information, it is impractical for companies to pursue such an arrangement, and as a result, unlikely that a successful partnership will emerge. Unfortunately, from the comments filed with the Commission, it does not appear that there is even agreement within the Public Safety community

⁷³ Verizon Wireless Comments at 58-60.

⁷⁴ NPSTC Comments at 13-14; APCO Comments at 18-19; Louisiana Statewide Interoperable Communications Executive Committee Comments at 1; Ohio (Region 33) 700 MHz. Planning Committee Comments at 1-2; Region 9 (FLORIDA) 700 MHz Regional Planning Committee Comments at 4; Indiana (Region 14) 700 MHz Region Planning Committee Comments at 1.

about what these specifications should include.⁷⁵

Verizon Wireless continues to believe that a more rational approach would be to implement the Request for Proposal (“RFP”) approach outlined in the Commission’s *Public Safety Ninth NPRM*. Under this approach, Public Safety would define its requirements and issue an RFP to all interested parties once the auction is concluded. Solicitations would be invited from all commercial operators and any other interested parties, and not just the E Block winner, which would promote more competitive bids. The RFP process would eliminate the uncertainty and risk associated with auctioning a license subject to conditions that are not clearly defined.

D. Under a Conditioned License Approach, Failure of the Licensee Will Harm Public Safety and Impair the Use of the Spectrum.

Although Public Safety’s analysis of the Frontline proposal identifies significant weaknesses, the record lacks a full discussion of what would transpire if Public Safety and the commercial licensee experience mid-course disagreements or if the commercial venture fails. Particularly given the Commission’s recent experience with innumerable disputes, many still unresolved, over the rebanding process for the 800 MHz band, it would be unwise for the Commission once again to accept promises of future performance predicated on immediate access to valuable spectrum. Should the Commission determine that, despite the many flaws with the Frontline concept, it should proceed, it must clarify upfront its expectations in the event that: (1) Public Safety and the licensee reach initial agreement, but diverge after the enterprise is launched; or (2) the licensee’s business plan fails, resulting in bankruptcy.

⁷⁵ Compare Region 42 (Virginia) 700 MHz Regional Planning Committee Comments at 2-3 (opposing “the creation of a Nationwide, Broadband Interoperable Public Safety Network using the 12 MHz of spectrum allocated to Public Safety under the current 700 MHz band plan.”) and NATOA, National Association of Counties, U.S. Conference of Mayors, and National League of Cities Comments (supporting the Access Spectrum/Pegasus plan) with APCO Comments (supporting a modified Frontline plan that utilizes the 12 MHz of Public Safety spectrum currently allocated in the 700 MHz band) and NPSTC Comments.

Public Safety's comments address management of conflict with the licensee in the formation of an initial agreement, but no such agreement can address all disputes that may occur in a long-term venture. Public Safety's comments focus on the negotiation that must occur immediately subsequent to an auction identifying the licensee. Such a negotiation could be time limited and – with the possibility of a re-auction looming – Public Safety might have sufficient leverage to exercise the “final say.”⁷⁶

But immediately upon licensing, the leverage dynamic would change. The possibility of a reauction would have a diminishing deterrent value as the licensee deployed facilities and began providing service. Were a disagreement to arise mid-course in the relationship regarding spectrum access, preemption or technology choice, it is not at all clear how it would be resolved. Even if an agreement provided for financial penalties for non-performance or Public Safety were to obtain a money judgment against the licensee, such sanctions would undermine the operation and development of Public Safety's own network. Such an arrangement falls short of the long-term stability Public Safety requires.

Should the licensee's business plan fail, Public Safety could not prevent partial or total termination of service or control assignment of the license and the specification of new terms of

⁷⁶ An additional concern is that conferring upon Public Safety a “final say” on the E Block licensee's operations would violate Section 310(d) of the Communications Act. *See* 47 U.S.C. § 310(d) (“No . . . station license, or *any rights thereunder*, shall be transferred, assigned, or disposed of in any manner . . . except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby.”) (emphasis added). In determining whether a licensee exercises control of its license the Commission looks at *de facto* and *de jure control*, as well as direct and indirect, and negative and affirmative control. *See, e.g., Stereo Broadcasters, Inc.*, 55 FCC 2d 819, 821 (1975), *modified*, 59 FCC 2d 1002 (1976). The Commission does not rest its review on legal title but inquires into who is responsible for a licensee's basic operating policies. *See WHDH, Inc.*, 17 FCC 2d 856 (1969) *aff'd sub nom. Greater Boston Television Corp. v. FCC*, 444 F.2d 841 (D.C. Cir. 1970) *cert. denied*, 403 U.S. 923 (1971). An arrangement under which Public Safety has a “final say” on the E Block licensee's basic operating policies would seem to involve an unauthorized transfer of control.

service through the bankruptcy process. Recognizing this, some Public Safety comments suggest use of Section 214-style exit regulation – even though the Commission has forborne from using this landline-centric regulation for mobile services. While the Section 214 process provides for an orderly discontinuation of service, it does not—and cannot—require a failing business to continue by regulatory fiat. Whether or not exit regulation exists, a business that cannot meet its obligations in due course will, at some point, cease to provide service because it can no longer maintain the assets required to do so.

Moreover, if the commercial licensee’s business plan fails, it is unlikely that any investor would step into the licensee’s shoes and pursue the same strategy on the same terms with Public Safety. Rather, as with most restructurings, new investors may arrive, but changes will be negotiated to service arrangements. In any bankruptcy scenario where Public Safety participates as a user of a distressed network, its bargaining leverage will be minimal. As an alternative, Public Safety might favor liquidation and allow the assets of the operator to be repossessed and the license returned to the FCC. But the consequence of that action is that a network they have come to depend upon will no longer exist. Relicensing would take years, and the “new” network created may be incompatible with Public Safety’s equipment. Ironically, the more the network is tailored to Public Safety’s needs, the more they will rely on the network, and the fewer options they will have to access competing networks if the business fails. While the FCC can regulate the transfer of the license to a degree, the practical reality is that a new licensee could not be compelled to accept the terms of the original licensee’s commitment.

Any failure scenario raises difficult questions about the Commission’s ability to reclaim the E Block license and allowing valuable spectrum to lie fallow in the interim. Under Section 312 of the Communications Act, the FCC may revoke a license for “willful or repeated failure to

operate substantially as set forth in the license.”⁷⁷ However, such action requires a hearing⁷⁸ in which the agency bears “the burden of proceeding with the introduction of evidence and the burden of proof.”⁷⁹ If the need to reclaim the license arose because of the licensee’s entering bankruptcy, even thornier issues arise in light of the *NextWave* precedent.⁸⁰ The process for reclaiming the license would be lengthy and uncertain. Even if the E Block licensee demonstrably violated a clear license condition, and the FCC license revocation process and virtually inevitable judicial review proceeded with dispatch, it would be years before the license could be reclaimed and reaucted. In the interim, Public Safety users would be stranded, and 10 MHz of valuable commercial spectrum would lie fallow.

Given all of these problems, both up front and longer term, with attempting to reconcile through regulation the divergent interests of Public Safety and a commercial licensee, the Commission should not adopt Frontline’s scheme to force them into partnership. Instead, it should complete the related proceedings that will assist Public Safety to seek, through its own RFP process, one or more parties that can assist it in constructing a broadband network.

⁷⁷ 47 U.S.C. § 312(a)(3).

⁷⁸ 47 U.S.C. § 312(c).

⁷⁹ 47 U.S.C. § 312(d).

⁸⁰ See *FCC v. NextWave Personal Commc’ns Inc.*, 537 U.S. 293, 302-303 (2003) (rejecting the FCC’s argument that certain regulatory conditions are not properly classified as “debts” under § 525(a) of the Bankruptcy Code).

VII. CONCLUSION

For the foregoing reasons, the Commission should: (1) adopt band plan Proposal 3; (2) adopt population-based performance requirements; (3) reject eligibility requirements for the auction; (4) continue to use the successful simultaneous multiple round auction process; (5) reject Frontline's proposal as inconsistent with the Commission's goal of promoting the development of a nationwide broadband public safety network.

Respectfully submitted,

VERIZON WIRELESS

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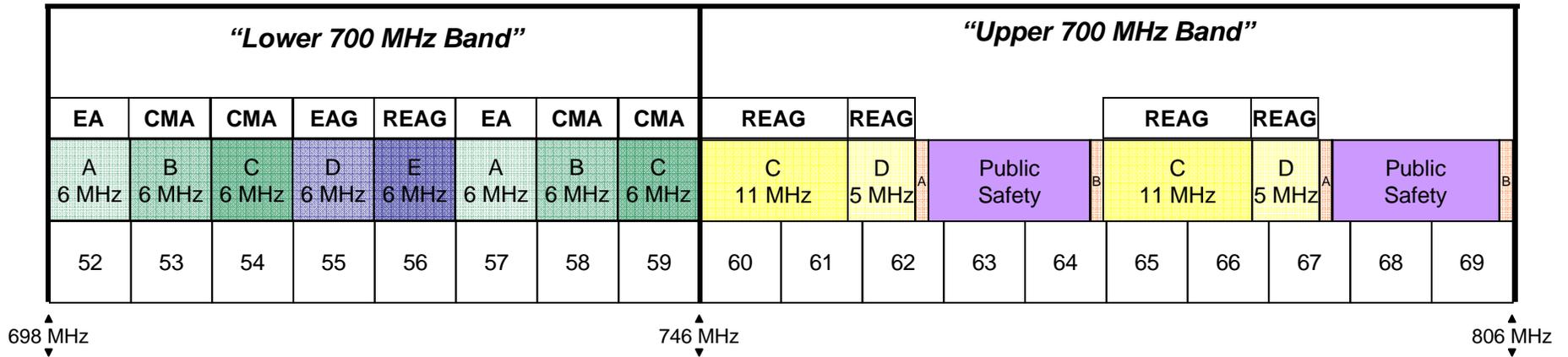
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ATTACHMENT 1

Band Plan Proposal 3



	AWS	700 MHz (Proposal 3)
CMA	1	2
EA	2	1
REAG	3	2
10 MHz licenses	3	4 (3 are 12 MHz)
20 MHz licenses	3	1 (22 MHz)