

LAWLER, METZGER, MILKMAN & KEENEY, LLC

2001 K STREET, NW
SUITE 802
WASHINGTON, D.C. 20006

RUTH MILKMAN
PHONE (202) 777-7726

PHONE (202) 777-7700
FACSIMILE (202) 777-7763

June 25, 2007

Via Electronic Filing

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: WT Docket Nos. 96-86, 06-150, and 06-169;
PS Docket No. 06-229
Ex Parte Notice

Dear Ms. Dortch:

On June 22, 2007, Andrew Rein and the undersigned on behalf of Access Spectrum, LLC, and Cheryl Crate, on behalf of Pegasus Communications Corporation, met with Commissioner Tate and Aaron Goldberger. During the meeting, Access Spectrum and Pegasus urged the adoption of Band Plan Proposal Number 3, consistent with their comments submitted on May 23, 2007 in the above-referenced dockets. The attached slides were discussed during the course of the meeting.

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record in the above-referenced proceedings.

Sincerely,

/s/ Ruth Milkman
Ruth Milkman

Attachment

cc: Commissioner Tate
Aaron Goldberger

Optimizing the 700 MHz Band: The FCC's Further NPRM

June 2007

Introduction

- Band Plans 1 and 2 are highly problematic for public safety and should not be adopted
- Band Plan 3 is the right choice
- The Commission should treat the Upper 700 MHz licensees equitably

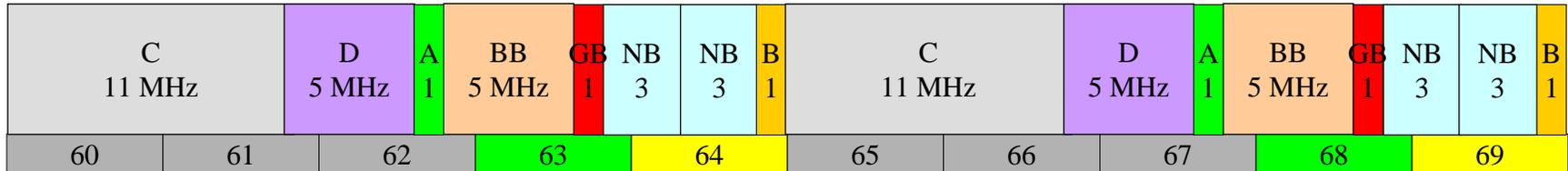
Band Plans 1 and 2 must not be adopted

- Band Plans 1 and 2 would be catastrophic for Public Safety
 - Ensure that there will be **no** interoperability for Public Safety’s mission-critical narrowband voice networks in the Canadian and Mexican border regions
 - Saddle Public Safety with the costs of re-tuning its narrowband systems
 - NPSTC Comments regarding the adoption of Band Plans 1 or 2
 - *“This presents an unacceptable risk to the safety of members of the public safety community and the citizens in these border areas.” (p. 24)*
 - *“This fact underlines what a tragedy it would be for the FCC to adopt Band Plans 1 or 2. These proposals are only made possible by public safety’s cooperation yet the effect would be devastating on the public safety community.” (p. 24 fn 11)*

- Band Plans 1 and 2 also would be sub-optimal for commercial purposes
 - Utilize an easement on the adjacent commercial allocation, which will drive down the value of the spectrum and invite litigation
 - Create a “Swiss cheese” spectrum plan as the Upper 700 MHz D Blocks will be only 4 MHz paired in 15% of the country

- Careful review of the record indicates that virtually all support for Band Plans 1 or 2 is driven by a preference for particular license or geographic sizes that could easily be accommodated under Band Plans 3, 4 or 5

Band Plan 3 is the right choice



- Ensures public safety interoperability in the international border regions and provides funding mechanism for re-locating its existing narrowband operations
 - The Upper 700 MHz licensees have agreed to fund the re-location under certain conditions outlined on slide 5
- As licensees, our interest is in seeing the most competition for licenses in the 700 MHz band, a band plan suited for 4G deployments and an environment suitable for robust public-private partnerships
 - Band Plan 3 facilitates the provision of next-generation wireless broadband, permits the entry of a major, nationwide wireless broadband operator (which requires one 22 MHz license) and enables the entry of multiple regional/local wireless broadband operators
 - Like the AWS auction, Band Plan 3, in conjunction with the Lower 700 MHz band, has a wide variety of geographic and license sizes
 - The Lower 700 MHz band (as proposed) contains 24 MHz of unauctioned spectrum and 12 MHz of previously auctioned spectrum in EAs and CMAs that can be used for wireless broadband upon the completion of the DTV transition

Support for Band Plan 3

- Public safety – NPSTC, APCO, National Association of Telecommunications Officers and Advisors, National Association of Counties, the US Conference of Mayors, National League of Cities, Missouri State Highway Patrol, City of Independence (MO)

- Commercial support
 - The Coalition for 4G in America (DirecTV, Echostar, Google, Intel, Skype, Yahoo)
 - Verizon Wireless
 - Motorola
 - Northrop Grumman
 - WCA, CCIA
 - Upper 700 MHz Licensees (Access Spectrum, Pegasus, Dominion 700, Harbor Guard Band)

- Several other entities support Band Plans 4 or 5 or variations thereof . These options are inferior to Band Plan 3 but solve the problems created by Public Safety’s narrowband consolidation
 - Ad Hoc Public Interest Spectrum Coalition
 - SpectrumCo, MetroPCS, Leap Wireless, US Cellular, and several rural operators/coalitions/associations
 - Frontline Wireless and Cyren Call
 - M/A-Com

Implementation of Band Plans 3, 4 or 5

- The Upper 700 MHz licensees must be granted MHz-pop auction discount vouchers for the spectrum they are giving up (*i.e.*, their B Block licenses)

- The new A Block must have its technical rules harmonized to those of the current C&D Blocks

- The Commission should endorse the Upper 700 MHz licensees' "re-packing" agreement
 - Any Upper 700 MHz licensee that prefers to retain its current position should be "grandfathered" as the grandfathering alternatives are far superior to Band Plans 1 or 2

Two-sided auctions: the option variant

- Separate and apart from consideration of the band plan, the Commission should consider implementing the Upper 700 MHz licensees' "option variant"
- The "option variant" requires incumbent A Block licensees to choose to sell immediately post-auction or move to the same geographic territory in the new B Block under guard band rules
- The "option variant" enables the FCC to rationalize the band while:
 - Guaranteeing the D/E Block licensees a full 6 MHz pair
 - Permitting the individual A Block licensees to retain some flexibility
 - Avoiding any complications related to the software required to conduct a two-sided auction
- Decision on how to implement could be delegated by the Commission to the Wireless Telecommunications Bureau

Appendix

The Upper 700 MHz band

➤ The Current Band Plan

Public Safety

Public Safety

A	C	D		B	NB	WB	NB	A	C	D		B	NB	WB	NB
1	5 MHz	10 MHz		2	3	6 MHz	3	1	5 MHz	10 MHz		2	3	6 MHz	3
60	61	62	63	64	65	66	67	68	69						

➤ The NPRM Proposals

Public Safety

Public Safety

A	C	D		B	NB	GBWB/BBGB	NB	A	C	D		B	NB	GBWB/BBGB	NB				
1	5 MHz	10 MHz		2	3	1	4 MHz	1	3	1	5 MHz	10 MHz		2	3	1	4 MHz	1	3
60	61	62	63	64	65	66	67	68	69										

➤ The BOP

Public Safety

Public Safety

C	D		A	BB	GB	NB	NB	GB	C	D		A	BB	GB	NB	NB	GB
5 MHz	10 MHz		1.5	5.5 MHz	1	3	3	1	5 MHz	10 MHz		1.5	5.5 MHz	1	3	3	1
60	61	62	63	64	65	66	67	68	69								

➤ Band Plan 3

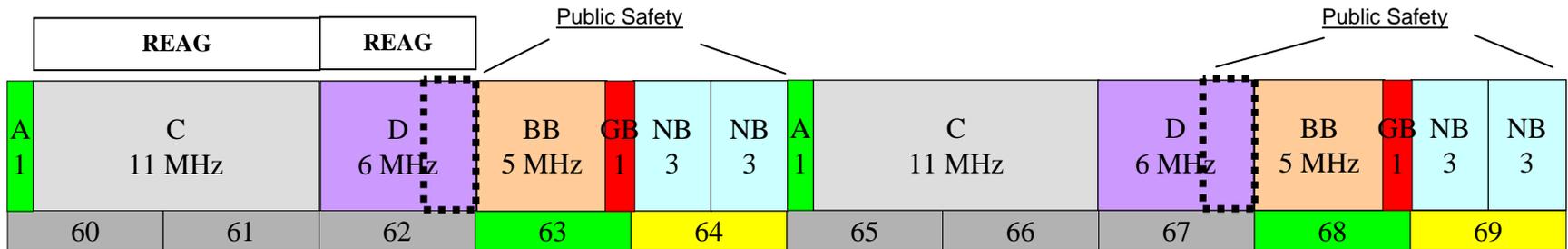
Public Safety

Public Safety

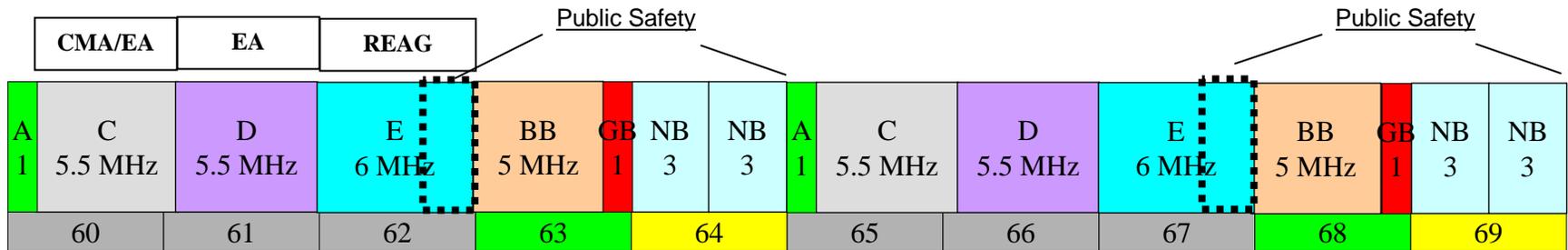
C		D		A	BB	GB	NB	NB	B	C		D		A	BB	GB	NB	NB	B
11 MHz		5 MHz		1	5 MHz	1	3	3	1	11 MHz		5 MHz		1	5 MHz	1	3	3	1
60	61	62	63	64	65	66	67	68	69										

Band Plans – Set 1

➤ Band Plan 1



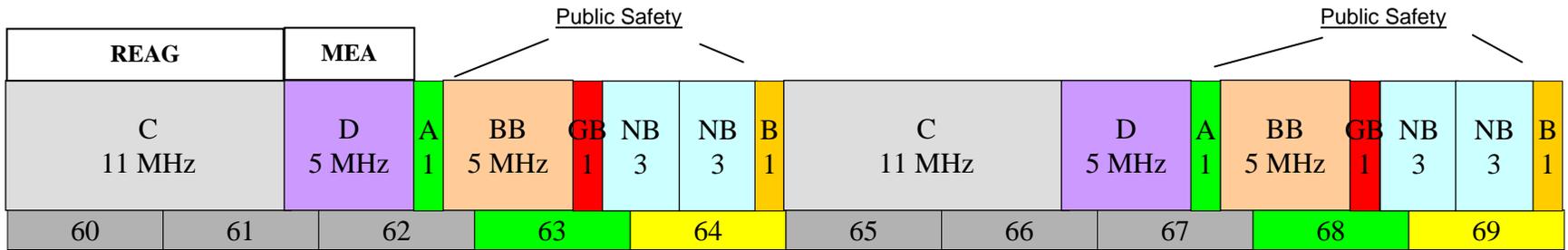
➤ Band Plan 2



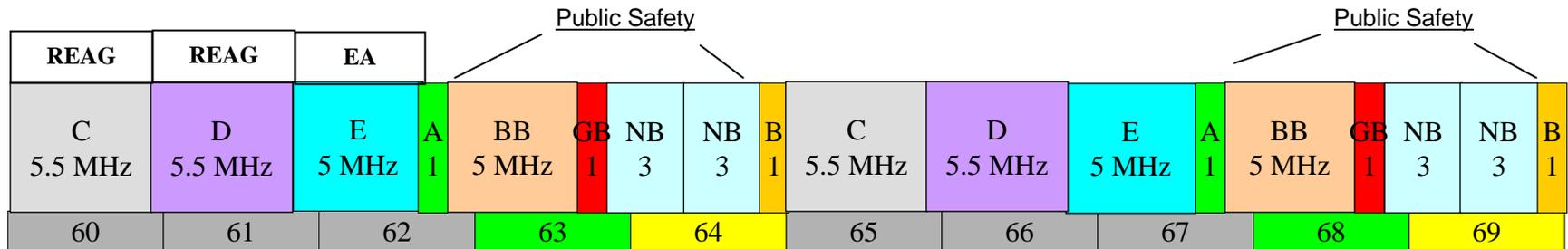
- Note: dotted black line indicates current B Block licensees ($2 \times 2 = 4$ MHz) which hold licenses covering about 15% of the country leaving a 4 MHz pair or 8 MHz in these areas
- Note: these proposals attempt to solve the international border issues through the use of a “temporary easement” instead of a “permanent shift” as in Band Plans 3, 4 and 5; the “temporary easement” does not solve public safety’s interoperability issues

Band Plans – Set 2

➤ Band Plan #3



➤ Band Plan #4



➤ Band Plan #5

