

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

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

PROCEDURAL RECOMMENDATIONS BASED UPON RECENT DEVELOPMENTS

This is a very difficult proceeding and, all agree, one of historic dimensions. A major source of difficulty has been the range of issues involved, their interrelationships, the fact that many of the issues appear to be subject to more than two outcomes, and a lack of clear cut choices. But in recent days four clarifying developments have occurred that suggest a way forward: (1) a coalescing around the core principles of the "New Build" Plan -- a 4G broadband wireless network serving virtually the entire U.S. population; (2) the leaking out of the basic details about the Verizon Plan for the 700 MHz spectrum, which details confirm that Verizon's Plan would fall far short of the requirements called for by public safety in the New Build Plan; (3) the pinpointing of resolvable implementation issues involved in the New Build Plan; and (4) the launch of the iPhone and widespread reports about the inadequacy of the AT&T EDGE network on which it exclusively runs. Following on to those developments, this pleading

proposes certain procedural steps for the Commission to take that will allow it to decide in early August whether to adopt the New Build Plan or the Verizon Plan.

I. NEW DEVELOPMENTS: CRYSTALLIZATION OF THE CORE ISSUES.

First Development – the New Build Plan: The core of the New Build proposal is reflected in the policy statement announced on Friday by the National Public Safety Telecommunications Council (“NPSTC”), which calls for the Commission to “facilitate deployment of a nationwide, broadband, interoperable, open standard 4G network built to public safety specifications,”¹ and to that end:

- Designate 10 MHz of the 700 MHz public safety spectrum allocated for broadband use and assign that spectrum to a national public safety licensee (“NPSL”);
- Combine the NPSL spectrum with at least 10 MHz of auctioned spectrum (referred to as the “E Block”) to form a single, shared, nationwide, broadband, 4G interoperable network that provides public safety with priority access through the NPSL;
- License the E Block on a nationwide basis to ensure the goal of nationwide public safety interoperability;
- Require the E Block licensee to fund deployment of the network pursuant to a network sharing agreement with the NPSL; and
- Require the shared network to be built out according to specific interim milestones leading to coverage of virtually the entire U.S. population within 10 years.²

Frontline Wireless (“Frontline”) joins the public safety community in calling for the Commission to adopt the core principles reflected in these recommendations,³ which are

¹ NPSTC, Position Paper at 2 (July 6, 2007).

² Frontline and NPSTC have proposed virtually equal 10-year population milestones that differ by only 0.3 percent.

³ These core principles are also embodied in the specific service rules filed by Frontline on July 3, 2007. See Letter from Jonathan D. Blake, Covington & Burling LLP (July 3, 2007) (“*Revised Service Rules*”).

essential to curing the interoperability crisis identified by the 9/11 Commission and highlighted by Hurricane Katrina. No existing commercial network comes even close to meeting these requirements, meaning that public safety's communication needs can be met only by the New Build Plan. Also, as suggested by certain members of the public safety community and others, Frontline is also withdrawing its proposal that the open access condition of the E Block apply to other licenses held by the winning bidder.

Moreover, Google, the Wireless Founders Coalition for Innovation ("Wireless Innovators"), Cellular South, Embarq, CenturyTel, Citizens/Frontier, the Public Interest Spectrum Coalition, critical infrastructure providers, and many others have urged that the Commission allocate the commercial portion of the E Block network on an open access and wholesale basis. Entrepreneurs at last will have access to a newly built, 4G network virtually every where in the nation to bring new services and devices to the marketplace. The proposal will lead to more competition and more innovation, higher auction revenues, accelerated wireless broadband deployment and penetration, greater spectrum efficiency, and vastly improved public safety communications.

These commercial and other benefits will be achieved while fully protecting the security and integrity of public safety communications. Northrop Grumman and IPWireless have recently documented on the record the technological feasibility *today* of a shared network that serves public safety communications and commercial uses on an open access but secure basis.⁴ Moreover, the revised service rules submitted last week by Frontline provide that "the network cannot become operational unless and until it protects the security and integrity of

⁴ See Letter from Robert F. Brammer, PhD., Senior VP, CTO, Northrop Grumman (June 26, 2007); Letter from Robert P. Quayle, CTO, IP Wireless (June 29, 2007).

public safety’s transmissions.”⁵ And the Wireless Innovators have made clear that the wholesale open access features of commercial operations on the shared network will directly and indirectly benefit the public safety community.⁶

In addition to providing these benefits to public safety and the American consumer, the New Build Plan will attract both incumbents and new entrants to the auction. A Citibank representative explained in a meeting with Commission staff that bidders normally emerge after the service and auction rules are established. He stated his belief that a New Build E Block license will attract substantial bidding interest.⁷ Moreover, Frontline here withdraws its proposal that the open access conditions of the E Block license apply to all other spectrum held by the E Block licensee. This should alleviate constraints incumbents might feel about bidding for the E Block license.⁸ But in that event and to counter the blocking premium that will incent incumbents to submit artificially high bids to foreclose new-entrant competition, the Commission should make available its normal small business credit for the E Block as well as all other licenses to be auctioned.

Second Development – Emergence of a Verizon “Plan”. For four months now, Verizon has attacked the New Build Plan for a 4G, nationwide broadband network shared with public safety (which has evolved from the Commission’s *Ninth NPRM* on which Frontline’s proposal was built), but it has said little on the record about whether or how it would address

⁵ *Revised Service Rules* at 1. These safeguards address the concerns expressed in the NPSTC statement about mandatory open access.

⁶ See Letter from Amol Sarva, Wireless Founders Coalition for Innovation, Att. at 16 (June 22, 2007).

⁷ See Letter from Gerard. J. Waldron, Covington & Burling LLP (June 22, 2007).

⁸ AT&T’s chief federal regulatory officer already expressed an open-mindedness about bidding for an E Block license of this kind. If this is not the case, AT&T should say so on the record.

public safety's needs through the 700 MHz service rules. It has said nothing about how the Commission should solve the need of wireless innovators, device makers, mid-sized ILECs, rural wireless carriers, and others for access to a nationwide, 4G network on an open access and wholesale basis. Likewise, it has refused to state on the record how it would use the 700 MHz spectrum that it will surely bid on, although it has conceded that it would only integrate the spectrum into its existing usage.⁹ Despite this poverty of record information, details have emerged about the Verizon Plan in recent days. Whereas, up until very recently, one could not escape the question -- if not the New Build Plan, then what? -- now at last it is possible to line up the New Build Plan versus the Verizon Plan and evaluate them side by side.¹⁰

It appears that Verizon would have the Commission:

- License the spectrum adjacent to public safety's broadband spectrum in a 22 MHz-wide block that would have no enforceable obligation to build a shared network with public safety or provide priority access to first responders;
- Divide all upper 700 MHz commercial spectrum -- including the block adjacent to the public safety spectrum -- into regional blocks, contrary to (a) public safety's stated need for a nationwide commercial partner in the spectrum adjacent to the public safety broadband spectrum, and (b) rural carriers' urgent call for the auction of at least some spectrum in smaller blocks such as CMAs;¹¹
- Within these large regions, allow the licensees to serve as little as 75 percent of the population, and then only within 10 years. The various regional blocks combined would

⁹ See Comments of Verizon at 26 (May 23, 2007).

¹⁰ Because Verizon has been so unforthcoming about its Plan, the description of it herein may unavoidably be incomplete or inaccurate in certain respects. Verizon should submit corrections and clarifications in order to make the public discourse and Commission decision-making more informed.

¹¹ This proposal maximizes Verizon's ability to block other bidders from providing a nationwide network service to public safety or commercial users. All Verizon must do to block such an outcome, which would otherwise introduce new competition for it and AT&T Wireless, would be to outbid the national network aspirant for one of the country's six regions.

reach only 13 percent coverage of the landmass of the continental United States, falling far short of public safety's stated needs for nearly ubiquitous coverage;¹²

- Let the existing network owners acquire the 700 MHz spectrum to preclude new entrants while failing to create any new facilities, devices or services -- thus falling far short of public-safety grade service and continuing to leave large segments of the U.S. population without robust and competitive broadband wireless services; and
- Allow network owners to freely lock out the devices that consumers and retailers could use on the network and block the content and services that they might otherwise launch or receive (or at most Verizon's Plan would suggest some unspecified open access "principles").

To aid the Commission and the public in comparing the two plans, Attachment A presents a side-by-side comparison.

Third Development -- Identification of Implementation Issues. The NPSTC statement also identified certain issues about *how* to implement the New Build proposal. For example, there is not yet agreement on when to issue the E Block license or whether the NPSL should be able unilaterally to deny that license to a winning bidder that is willing to abide by the Commission's arbitral decision about any disputed term of the network sharing agreement. Uncertainty about how to resolve these implementation issues should not obscure or delay the basic choice between the New Build Plan and the Verizon Plan.

Fourth Development -- Lessons of the iPhone. A fourth development, not itself regulatory in nature, also has powerful implications for these proceedings. The iPhone phenomenon that was launched last Friday has demonstrated the importance of a mandatory, nationwide, wholesale open access network. To obtain nationwide coverage, Apple (one of the world's most powerful technology companies) could approach only two wireless companies --

¹² By contrast, the New Build approach proposes in year four the same coverage that Verizon does not propose until year ten. By year ten, the New Build approach promises to achieve 99% population coverage, which equates to 67% land mass coverage -- roughly *five times* the coverage Verizon proposes. Moreover, a New Build applicant would build its network into a truly competitive facilities-based rival of Verizon and AT&T.

Verizon and AT&T. Apple was turned down by Verizon, and Apple had to yield to AT&T a five-year exclusive deal. The cost of AT&T's transmission service is three or four times larger than the cost of the Apple device. Large parts or all of 12 states receive no service. And the Apple content must run its raved about service on a network which the *Wall Street Journal* described as "pokey"¹³ and the *New York Times* characterized as "excruciatingly slow".¹⁴

Had there been a national, wholesale, open access wireless provider, Apple could have put together its own network with Leap, Cell South, Clearwire, Embarq, and/or many other regional providers, and supplement it with the New Build network. The service would have been cheaper, of higher technical quality, and universal. A nationwide, wholesale, open access network is needed to make possible the next generation of iPhone services and devices. In their filings, the Wireless Innovators have emphasized this point, and have made clear that the public safety community will benefit massively and continually from the acceleration of innovation that the wholesale open network will facilitate on the commercial side.

II. PROCEDURAL RECOMMENDATIONS.

The above-described developments -- NPSTC's Statement last week, the emergence of the basic contours of the Verizon Plan, the separation out of unresolved implementation issues from the core principles of the New Build Plan, and the iPhone's

¹³ Walter S. Mossberg and Katherine Boehret, *Testing Out the iPhone*, *The Wall Street Journal*, June 27, 2007 (noting that the iPhone "uses a pokey network called EDGE").

¹⁴ David Pogue, *The iPhone Matches Most of its Hype*, *The New York Times*, June 27, 2007 (noting that unless a consumer is within range of a Wi-Fi hotspot, "you have to use AT&T's ancient EDGE cellular network, which is excruciatingly slow. The New York Times's home page takes 55 seconds to appear; Amazon.com, 100 seconds; Yahoo, two minutes. You almost ache for a dial-up modem").

demonstration of the structural deficiencies in the current wireless market -- suggest a number of procedural steps that will assure a fair and wise outcome in these proceedings.

First, parties to this proceeding should comment on the side-by-side comparison of the New Build and Verizon Plans now that the former has been solidified by NPTSC's statement and sufficient information about the latter has emerged. In addition, some in public safety have not understood the benefits flowing from a requirement that the commercial portion of the network be operated under a wholesale and open access framework. They do not oppose open access as a mode of operation by public safety's commercial partner. But they question the desirability of such a requirement. This concern may be eliminated by Frontline's withdrawal herein of its proposal that the open access requirement be applied to other spectrum held by the eventual E Block licensee. The withdrawal of this proposed requirement ensures that all incumbent license holders could bid for the E Block -- an option that some public safety representatives wish to leave open in order to expand the field of potential partners.

Second, the Commission should resolve the core New Build vs. Verizon issues at its August meeting, as early as three weeks away. This will provide sufficient time to facilitate the newly focused comparative evaluation process both by the public and within the Commission, and to receive comment on, and take into account the lessons of, the iPhone experience. There can be no practical difference between a decision in early August as opposed to late July, and the Commission's decision making would surely benefit by allowing a very small amount of additional time for the evaluation of the newly clarified options and the iPhone developments.

Third, the Commission should bifurcate out the issues concerning how best to implement the public/private partnership identified above. These implementation issues should

be resolved separately by early or mid-September, perhaps on circulation. Included in this list should be the issue of how to deal with any stalemate between the commercial operator and the National Public Safety licensee. A deferral of these implementation issues until early or mid-September will in no way impact any entity's ability to raise money for bidding on the E Block.¹⁵

¹⁵ The investment banking fund-raising season does not resume until after Labor Day. The large incumbents will not in any event be prejudiced by such a delay since they can fund bids out of existing resources. For example, the likely cost of a winning bid for the proposed E Block license would be less than one half Verizon's *monthly* cash flow.

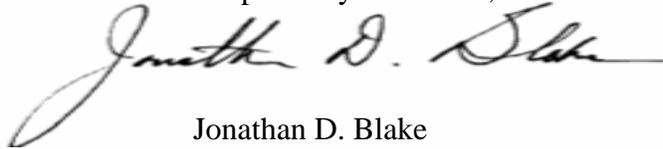
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Accordingly, in light of recent developments, the undersigned parties urge the Commission to take the above-recommended procedural steps.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Jonathan D. Blake". The signature is written in a cursive style with a large, looping initial "J".

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July 9, 2007

THE CHOICE:
NEW BUILD PLAN VS. VERIZON PLAN

Principle	New Build Plan	Verizon Plan
Commitment to serve public safety	<ul style="list-style-type: none"> • National commercial licensee must build shared, public/private nationwide network • Built to public safety grade of service • Aggressive buildout of facilities-based, new 4G network 	<ul style="list-style-type: none"> • No obligation to build anything for public safety; no national partner for public safety • Less robust, commercial grade of service • Spectrum can be merely integrated with existing (not state-of-the-art) facilities
Priority access	<ul style="list-style-type: none"> • Yes. Instantaneous priority access on commercial spectrum for public safety 	<ul style="list-style-type: none"> • No guaranteed priority access for public safety to commercial spectrum; at mercy of licensee
Public safety freedom to choose partner	<ul style="list-style-type: none"> • Yes. Public safety can unilaterally reject arbitral decision of FCC and is free to negotiate with other potential service providers 	<ul style="list-style-type: none"> • Yes, but public safety will have no guarantee of preferred status over commercial uses
Local agency control	<ul style="list-style-type: none"> • Yes, made possible by 4G technology • Open access condition on national network gives local agencies choice over a mix of network services from competing retail systems integrators, agents, and MVNOs 	<ul style="list-style-type: none"> • No • Vertically integrated network means that local agencies can use only what the retail incumbent chooses to offer
Funding for public safety network	<ul style="list-style-type: none"> • Private capital 	<ul style="list-style-type: none"> • Taxpayers
Buildout	<ul style="list-style-type: none"> • 99% population (68% of CONUS) in 10 years; also 75% in 4 years and 95% in 7 years 	<ul style="list-style-type: none"> • No more than 75% population in 10 years (13% of CONUS)

Principle	New Build Plan	Verizon Plan
Type of network	<ul style="list-style-type: none"> • 4G, new wireless broadband network for public safety and commercial users alike • Genuinely nationwide coverage • Interoperable • Secure (4G technology) 	<ul style="list-style-type: none"> • No new network; 3G at best; retail imperatives will prevail • Service targeted to population centers • Not interoperable • Secure (2G or 3G technology)
Band plan	<ul style="list-style-type: none"> • Nationwide, 10 MHz-wide public/private “E” Block next to public safety spectrum • 734 CMA “C” Blocks and 176 EA “D” Blocks (each 10 MHz wide) for new entry 	<ul style="list-style-type: none"> • 12 REAG, 22 MHz-wide private “D” Blocks next to public safety spectrum • 12 REAG, 10 MHz-wide “C” Blocks ripe for bidding by Verizon and other top 4 incumbents
Access to network services	<ul style="list-style-type: none"> • Open Access means public safety will have access to available network interfaces, including geo-location, quality-of-service, and even network health and operational status 	<ul style="list-style-type: none"> • Network operator can keep interfaces hidden, reducing capabilities available to public safety
Competition and innovation	<ul style="list-style-type: none"> • Yes. Rural wireless, mid-size LEC, device makers, wireless entrepreneurs and others have access to wholesale, 4G network service • Open Access means network operator cannot lock out devices or block content and services • Public safety users will have access to licensee’s pricing for other customers 	<ul style="list-style-type: none"> • No. Like today, licensee acts as bottleneck to competition and innovation. iPhone must choose between Verizon or AT&T • Network operator chooses which devices run on the network and the content consumers can see • Lack of price transparency means public safety does not know whether it gets a fair deal
Opportunity for new national entrant	<ul style="list-style-type: none"> • Yes. Even if an incumbent wins the nationwide E Block, it cannot prevent wholesale use of network by entrants • Nationwide E Block ensures a nationwide, interoperable network 	<ul style="list-style-type: none"> • No. Lack of a wholesale allocation gives large incumbents incentive to pay blocking premium to prevent national entrant. • Regional licensing furthers this blocking effect. Incumbents can bid on a single regional license to prevent a nationwide, interoperable network