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July 24, 2007

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Dispute resolution between the NPSL and the D Block licensee:
WT Docket Nos. 96-86, 06-150; PS Docket No. 06-229

Dear Chairman Martin:

In the upcoming landmark decision in these proceedings, the Commission has, quite rightly, focused on how to avoid and/or resolve disputes between the D Block licensee and the national public safety licensee.

The Commission properly should retain flexibility -- Frontline Wireless understands that the draft order reserves to the Commission various options for dealing with an impasse between the two parties. Such options include the Commission's participating in the negotiations informally, trying to bring the parties together, extending the deadline for the negotiations, arbitrating *or* rebidding the D Block spectrum. We think it is wise for the Commission to retain flexibility to select, depending on the circumstance at the time, the appropriate mechanisms for resolving any disputes that might arise. However, two features of the draft order, as we understand it, could do serious harm to the proper functioning of the auction and to the interests of the public safety and commercial licensees in a fair, reliable and prompt process for deciding upon the specifications of the shared network and the structure of the public safety/D Block licensee partnership.

The D Block license should not be held hostage -- The gaping hole in the proposed process is the Commission's apparent intention to withhold issuance of the D Block license until the network sharing agreement and any disputes have been finally resolved. This will constitute an open invitation for losing bidders, incumbents and other competitors to poison the negotiations and even the dispute resolution process, in an effort to force an impasse in the hope that the D-Block will be re-auctioned or otherwise to gain private advantage. It would be unthinkable in a normal commercial context for the winning bidder to have to wait months and months for its bid to be finally accepted, while others try to induce the seller to reject its high bid.

The FCC's traditional right to revoke licenses affords wholly adequate protection -- Instead of withholding the grant of the license for the D Block, the FCC should encourage both sides to reach accord which, given the incentives of both parties, would likely occur without Commission intervention. If the Commission is unable, through arbitration or other mechanisms, to resolve any disputes, the FCC may exercise its well-established authority to revoke the license since all Commission licenses are subject to conditions subsequent (construction requirements in the case of broadcasters, milestones in the case of satellite operators, coverage or operational requirements in the case of wireless licenses).

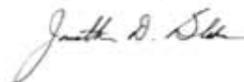
The threat of no license being issued would deter investment particularly for new entrants -- There is no practical or legal difference in terms of protecting the public interest between the Commission's revoking a license or declining to issue it after it has been withheld. However, in addition to promoting a spoiler mentality among self-interested third parties, a scheme that calls for withholding the license during the negotiation and dispute resolution process would also deter investors from providing the resources necessary to participate in the auction. This punitive effect would fall heavily on new entrants and not at all on incumbents who can easily fund their bidding activities from their ongoing cash flows. While we would expect the Commission of course to deal in good faith and not withhold a license from a deserving party, this will not be sufficient assurance for investors. Even those investors sophisticated in FCC regulation will be skittish about lending to an entity who could have its otherwise high bid cancelled because of a the objections of a third party.

License revocation should occur only if the D Block licensee acts in bad faith -- This deterrent effect will be magnified if there are no standards governing when the Commission can unilaterally cancel the results of the auction and rebid the D Block license. To avoid these unintended consequences, the Commission's order should make clear that it will not cancel the results of the D Block auction if the high bidder is willing to accept the Commission's resolution of any impasse or if the Commission determines that the D Block high bidder has acted in good faith.

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These simple and elementally fair adjustments to the Commission's order would ameliorate a well-intentioned process for protecting public safety's interests in the public/private negotiating process, while at the same time providing wholly effective protection for these interests.

Respectfully submitted,



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