arrangement with the Commission prior to the public safety entity commencing any operations. We will require that the spectrum leasing arrangement take the form of a spectrum manager leasing arrangement under the Commission's spectrum leasing rules.[996] We will not permit such arrangements to take the form of long-term *de facto* transfer spectrum leasing arrangements. We believe that it is necessary that the Public Safety Broadband Licensee retain not only *de jure* control of all of the spectrum associated with the Public Safety Broadband License, even in areas not scheduled for build-out, but also *de facto* control of the spectrum leased for use by public safety entities. As described elsewhere, the Public Safety Broadband Licensee has a number of important responsibilities related to the entire public safety community's use of the 700 MHz broadband spectrum. In order to carry out these responsibilities with respect to this early build-out option, the Public Safety Broadband Licensee must exercise actual oversight of its spectrum lessee's activities, including maintaining actual working knowledge about the spectrum lessee's activities and facilities that could affect compliance with applicable Commission rules.[997] Early build-out even in areas without a build-out commitment can impact adjacent or nearby build-out of the shared network by the D Block licensee. Accordingly, we find it essential that, as provided under the spectrum manager leasing rules and as distinguished from the long-term *de facto* transfer leasing arrangement, the Public Safety Broadband Licensee maintain actual oversight and working knowledge of its spectrum lessees' activities in order to ensure compliance with all requirements of the Communications Act, the Commission's rules, and the obligations set forth in this Second Report and Order.[998]

483. In addition to compliance with the Commission's spectrum leasing requirements, the public safety spectrum lessee must ensure that the following conditions are met: (1) the network must provide broadband operations; (2) the network must be fully interoperable with the shared national broadband network required by the NSA; (3) the network must be available for use by any public safety agency in the area; and (4) the network must satisfy any other terms or conditions required by the Public Safety Broadband Licensee. These conditions specifically must be included in the spectrum manager lease agreement entered between the Public Safety Broadband Licensee and the public safety entity. Consistent with Section 90.551 of the Commission's rules, which contains the general 700 MHz public safety spectrum construction requirements, the lease agreement between the parties must specify that the public safety entity must construct and place into operation its network within one year of the effective date of the spectrum manager leasing arrangement,[999] and if not, then the Public Safety Broadband Licensee will terminate the spectrum leasing arrangement pursuant to the Commission's rules.[1000] The separate network need not, however, meet the other specifications of the D Block licensee's shared national network. In particular, absent agreement of the public safety entity, the Public Safety Broadband Licensee, and the D Block licensee, the separate network may not operate using any spectrum associated with the D Block license. Finally, as required by the Commission's spectrum leasing rules, the Public Safety Broadband Licensee must notify the Commission of the spectrum manager leasing arrangement as part of the Commission's spectrum manager lease notification procedures.[1001] The notice must identify the public safety entity leasing the spectrum and the particular areas of spectrum leased as part of this

[996] 47 C.F.R. § 1.9020.

[997] *See* 47 C.F.R. § 1.9010 (standard for retaining *de facto* control under a spectrum leasing arrangement).

[998] *See* 47 C.F.R. §§ 1.9010-1.9030 (distinguishing between the licensee's responsibilities with regard to its spectrum lessee depending on whether they have entered into a spectrum manager leasing arrangement or, instead, a *de facto* transfer spectrum leasing arrangement).

[999] The public safety entity may seek extended implementation authority from the Commission pursuant to the requirements of Section 90.629. 47 C.F.R. § 90.629.

[1000] 47 C.F.R. § 1.9020(h)(3) (permitting licensee to terminate the spectrum leasing arrangement).

[1001] 47 C.F.R. § 1.9020(e).

build-out option.

484. We emphasize that under no conditions may a public safety entity construct a network using 700 MHz public safety broadband spectrum in an area absent the approval of the Public Safety Broadband Licensee. We find that permitting individual public safety entities to construct their own networks using this spectrum without such approval would lead to the same balkanization problems of existing public safety spectrum use that we seek to avoid here, and would be contrary to the Commission's determination that the public safety broadband spectrum shall be a single nationwide license subject to the authority of the Public Safety Broadband Licensee. Use of the public safety broadband spectrum without a spectrum lease from the Public Safety Broadband Licensee approved by the Commission would also be inconsistent with Section 310 of the Act, which requires Commission authorization for the use of licensed spectrum.[1002] Nothing in this determination should be construed, however, to prohibit the Public Safety Broadband Licensee from being responsive to requests from localities to opt out and provide separate network services pursuant to a spectrum lease approved by the Public Safety Broadband Licensee and the Commission.

485. *Conditions for Waiver to Allow Limited and Temporary Wideband Operations.* In the *700 MHz Further Notice,* we asked for comment on our tentative conclusion to prohibit wideband operations on a going forward basis, and deferred consideration of adopting a wideband interoperability standard.[1003] The record contains comments in support of and in opposition to allowing wideband operations.

486. In general, those supporting a wideband option argue that broadband operations are not needed everywhere,[1004] result in significant additional costs,[1005] and would take too long to build out.[1006] Some commenters disagree with the Commission's tentative conclusion that allowing wideband could hinder interoperability.[1007] Some commenters believe that we should take a "flexible" approach to permitting wideband operations, such as leaving the decision on whether to deploy a wideband system up to local/regional planners rather than establishing a regulatory mandate requiring use of broadband systems.[1008] Hampton Roads states that it is important for public safety disciplines "to have the flexibility to choose and deploy the best communication solutions based on the jurisdictions' specific needs as they relate to technologies, geographic challenges and increasing financial constraints."[1009] Region 33 (Ohio)

[1002] 47 U.S.C. § 310.

[1003] *700 MHz Further Notice*, 22 FCC Rcd at 8156 ¶ 253 & n.521. At the same time, we also stated we would work with public safety entities to extend previous grants of Special Temporary Authority (STA), to the extent such public safety entity has constructed, deployed, and is currently operating a wideband system pursuant to STA. *Id.* at ¶ 250 n.512.

[1004] For example, Region 40 states that one size does not fit all when it comes to communications solutions. Region 40 (Texas North) *700 MHz Further Notice* Comments at 2.

[1005] L-3 *700 MHz Further Notice* Comments at 4.

[1006] APCO, for example, states that even "the most ambitious public safety broadband proposals will leave some portions of the country unserved for many years, and perhaps indefinitely." APCO *700 MHz Further Notice* Comments at 6; *see also* Fort Lauderdale *700 MHz Further Notice* Comments at 3; Hawaii *700 MHz Further Notice* Comments at 2; Region 16 (Kansas) *700 MHz Further Notice* Comments at 3.

[1007] *See, e.g.*, Region 9 (Florida) *700 MHz Further Notice* Comments at 2; Tacoma, WA *700 MHz Further Notice* Comments at 2.

[1008] *See, e.g.*, Tacoma, WA *700 MHz Further Notice* Comments at 2; Motorola *700 MHz Further Notice* Comments at 4-5; Region 16 (Kansas) *700 MHz Further Notice* Comments at 2.

[1009] Hampton Roads Interop *700 MHz Further Notice* Comments at 1; *see also* Region 40 (Texas North) *700 MHz Further Notice* Comments at 2.

contends that everything it has planned for in the future can be accomplished with wideband communications (150 kHz channels), and that a broadband requirement would be a disservice to Ohio and its citizens.[1010] NATOA states that flexibility is critical and that public safety entities must have the option to choose the technology (wideband or broadband) that best serves their unique requirements and budgets.[1011]

487. Several commenters argue that the Commission should allow "mixed use" of wideband or broadband, but only in the upper 1.25 megahertz of the broadband segment and/or the guard band (a total of 2.25 megahertz),[1012] with the decision whether to implement wideband in this 2.25 megahertz segment left up to regional planning committees or state/local government.[1013] NPSTC proposes that wideband use in this segment be given primary status until 2019 and that such systems could maintain primary status beyond 2019 if the spectrum was not needed for broadband operations in the area.[1014] Under the NPSTC approach, wideband or local broadband systems also could operate on a secondary basis under certain conditions.[1015]

488. Other commenters support prohibiting wideband operations.[1016] In general, they argue that permitting a mixed deployment (wideband and broadband) undermines public safety capabilities. According to commenters opposing wideband operation, broadband provides for significantly more throughput, greater capacity, and better coverage, whereas wideband is an outdated, costly technology, the deployment of which would have a negative impact on interoperability. For example, Qualcomm states that it supports the Commission's tentative conclusion to prohibit wideband operations in the broadband segment, contending that to do otherwise may make it difficult to achieve full interoperability.[1017] Alcatel-Lucent argues that permitting operation of wideband technologies "will only perpetuate the shortcomings of today's public safety systems: limited, lower bandwidth applications; high cost of user devices; and limited interoperability."[1018] Frontline argues that, if the Commission allows wideband operations, it should only be in the narrowband portion of the spectrum.[1019] Cyren Call urges the Commission to permit both wideband and narrowband operations in the narrowband segment and suggests that the decision on whether to deploy wideband operations on narrowband general use channels would be left up to the regional planning committees.[1020]

[1010] Region 33 (Ohio) *700 MHz Further Notice* Comments at 3.

[1011] NATOA *700 MHz Further Notice* Comments at 6-7; *see also* California *700 MHz Further Notice* Comments at 8, Region 16 (Kansas) *700 MHz Further Notice* Comments at 1-3; Region 9 (Florida) *700 MHz Further Notice* Comments at 2.

[1012] Under this approach, the lower 3.75 megahertz of the broadband segment would be reserved for broadband only.

[1013] *See* NPSTC *700 MHz Further Notice* Comments at 20; *see also* APCO *700 MHz Further Notice* Comments at 6-7; Region 40 (Texas North) *700 MHz Further Notice* Comments at 2-3; San Diego County *700 MHz Further Notice* Comments at 8-9.

[1014] NPSTC *700 MHz Further Notice* Comments at 20-21.

[1015] *Id.* at 21.

[1016] See, *e.g.*, Alcatel-Lucent *700 MHz Further Notice* Comments at 13-15; Northrop Grumman *700 MHz Further Notice* Comments at 2-3; Qualcomm *700 MHz Further Notice* Comments at 17-31; Alcatel-Lucent *700 MHz Further Notice* Reply Comments at 3-6.

[1017] Qualcomm *700 MHz Further Notice* Comments at 31.

[1018] Alcatel-Lucent *700 MHz Further Notice* Comments at i-ii.

[1019] Frontline *700 MHz Further Notice* Comments at 55.

[1020] Cyren Call *700 MHz Further Notice* Comments at 24.

489. On balance, we find that the benefits of selecting a band plan that lays the foundation for the deployment of a nationwide, interoperable broadband network outweigh the near term and relatively limited potential advantages of allowing wideband systems to disrupt the national broadband scheme. Based on the record before us, we affirm our tentative conclusion in the 700 MHz Further Notice that providing wideband flexibility could hinder efforts to deploy a nationwide, interoperable broadband network by perpetuating a balkanization of public safety spectrum licenses, networks, and technology deployment.[1021] Only through use of broadband networks can public safety leverage advanced commercial technologies and infrastructure to reduce costs, speed deployment, and enable the potential for priority access to commercial networks during emergencies.[1022] Unfettered deployment of wideband systems in the broadband allocation will impede nationwide broadband interoperability and continue the balkanization of the public safety network landscape we seek to prevent. We are convinced that allowing wideband operations, particularly in the broadband segment intended to be part of a public/private relationship, could present relocation problems down the road. We, therefore, prohibit wideband operations in the public safety allocation of the 700 MHz Band, subject to the limited exceptions set forth herein.

490. Even in light of the advantages and opportunities that can be made available by broadband technologies, we recognize that some public safety entities may wish to deploy wideband systems based on specific needs pending deployment of the broadband network. We conclude, however, that such deployments should be rare and subject to certain criteria. Accordingly, we will require public safety entities seeking to deploy wideband systems to satisfy the following conditions and restrictions.[1023]

491. First, wideband operations in the 700 MHz public safety spectrum will be permitted only upon grant of a properly supported request for waiver of the requirement to conform to the band plan we adopt herein, *i.e.*, one that permits only broadband or narrowband operations.[1024] In the interests of ensuring the integrity of the public/private partnership for construction of a nationwide broadband, interoperable network, we find it necessary to consider requests to deploy wideband only in a waiver context. In this manner, the Commission will be able to best consider the particular facts and circumstances of each case, and balance the needs of the requesting public safety agency with the overarching goals of promoting a nationwide, interoperable broadband network. Requests for waiver to conduct wideband operations must be accompanied by an application for authorization.

492. Second, any petition for waiver must be accompanied by a letter from the Public Safety Broadband Licensee, confirming that the proposed wideband deployment is not inconsistent with the broadband deployment plan for the affected or adjacent service areas. We encourage public safety entities seeking such waivers to cooperate with the Public Safety Broadband Licensee to reach agreement on the conditions, if any, to be placed on any wideband deployment, including the appropriate plan for

[1021] *700 MHz Further Notice*, 22 FCC Rcd at 8156 ¶ 253.

[1022] *Id.*

[1023] We direct the PSHSB to grant a public safety entity that has constructed, deployed, and is currently operating a wideband system pursuant to STA to grant requests to extend the STA grant up until, but not later than, six months following the selection of the Public Safety Broadband Licensee (such operations to be referred hereafter as Grandfathered Wideband STA Operations). In this manner, public safety entities operating wideband systems under such circumstances will be afforded time to plan their spectrum usage to be able to conform to the requirements we adopt herein. We otherwise direct the PSHSB to deny any pending STA request to commence new wideband operations. Such applicants may submit new requests for authority to operate wideband systems only in conformance with the requirements we adopt herein.

[1024] *See* 47 C.F.R. § 1.925; *WAIT Radio v. FCC*, 418 F.2d 1153, 1158-59 (D.C. Cir. 1969), *aff'd*, 459 F.2d 1203 (D.C. Cir. 1972).

transition to the nationwide broadband, interoperable network.[1025] All requests for waiver must include any agreed-upon conditions and transition plan.

493. Third, except as discussed below, we will restrict grants of waiver to the deployment of a wideband system in the consolidated narrowband spectrum or the internal public safety guard band. We must limit any wideband operations in this manner in order to ensure the full preservation of the broadband segment, and thereby enable the goals of the public/private partnership for a common broadband network and architecture. Based on the record before us, we are not convinced that any wideband operations could not be designed to operate in the narrowband and internal guard band spectrum. We also believe that the regional planning committees will continue to serve an important role in overseeing and crafting appropriate spectrum use; to that end, petitions for waiver in the narrowband spectrum must also include a letter from the appropriate regional planning committee or state licensee confirming that the proposed wideband deployment will not disrupt any regional or state planning efforts that are underway. We encourage the Public Safety Broadband Licensee to coordinate with the applicable regional planning committee or state licensee when these entities are asked to consider any wideband deployment in the narrowband portion of the public safety spectrum, to ensure proper coordination with existing and pending narrowband applications.

494. If there are instances where spectrum in the narrowband segment or internal guard band is unavailable for wideband operations, we will permit submission of request for waiver to operate in the upper 1.25 megahertz of the broadband allocation. We emphasize, however, that applicants seeking waiver relief to deploy wideband networks in the public safety broadband spectrum face a very high hurdle. As a threshold requirement, we will consider requests for waiver to conduct wideband operations in the broadband allocation only upon submission of a substantially supported, detailed technical showing demonstrating why there is insufficient spectrum in the narrowband allocation or internal guard band to support the desired wideband operations. As with requests to conduct wideband operations in the narrowband segment or internal guard band, any request for waiver to conduct wideband operations in the upper 1.25 megahertz of the broadband allocation must be accompanied by a letter from the Public Safety Broadband Licensee confirming that the proposed wideband deployment is not inconsistent with the broadband deployment plan for the affected or adjacent service areas, and all requests for waiver must reflect any conditions and transition plan agreed upon by the petitioner and the Public Safety Broadband Licensee. The public safety entity seeking to establish wideband operations in the broadband segment must have first issued a request for proposal (RFP) that permitted interested parties to submit broadband proposals that are technically consistent with the Public Safety Broadband Licensee network. Finally, the wideband applicant must include with its waiver request proof that responses to the RFP proposing a broadband network were more costly, provided less coverage as measured by throughput at the network edge, or were otherwise inferior to the accepted wideband proposal.

495. Notwithstanding anything herein to the contrary, we will not entertain any request for waiver seeking to permit wideband operations in the broadband segment in areas scheduled for broadband deployment within the first three years of the build-out plan for the national public safety broadband network. We believe that it would be unduly and unnecessarily disruptive to the national public safety broadband network to permit wideband deployment where the broadband network would be constructed at the same time or shortly thereafter. Particularly in light of the extensive benefits afforded by broadband technology, it would be wasteful of limited resources and contrary to principles of sound

[1025] For example, wideband operations, even if occurring outside the broadband allocation, may conflict with the broadband deployment, whether due to interference concerns caused by the presence of wideband operations within the public safety band, or because the Public Safety Broadband Licensee determines that because of the broadband deployment, either the guard band must be cleared of any wideband operations, or the narrowband channels need to be used solely to satisfy narrowband needs.

spectrum management to permit deployment of wideband technology in areas scheduled to receive broadband service. In addition, consistent with the waiver discussion herein, the Commission will not grant any waiver request for any wideband deployment in the broadband segment that does not include a detailed plan, accompanied by attestation, specifying how and by what date the wideband applicant will integrate its proposed wideband system into the national broadband network. The Commission shall condition any waiver relief for wideband operations in the broadband segment upon acceptance of the applicant's integration plan. As a further condition of any wideband operations proposed in the broadband segment, we will require all devices operating on the wideband system to be designed such that they also must be interoperable with the nationwide, broadband network.[1026] In order to ensure that our goals for the deployment of the nationwide broadband network are met, the authority granted for any wideband operations in the broadband segment will expire automatically upon the D Block licensee's initiation of service in areas where wideband has been deployed. Further, any Grandfathered Wideband STA operations or wideband authority granted by waiver in the public safety segment of the 700 MHz Band shall be secondary to primary narrowband or broadband applications, as applicable. Finally, as a condition of the grant of waiver allowing deployment of a wideband system in the broadband segment, a public safety entity must certify in its application and waiver request its acknowledgement that it may not seek reimbursement for any costs involved in converting the wideband system to the national broadband network upon completion of the broadband network in the subject area.

496. License terms for wideband operations granted under waiver – whether they are in the narrowband, internal guard band, or broadband segments of the 700 MHz public safety spectrum – will be limited to no more than five years, and may be granted for less time depending on the particular circumstances presented. The Commission must receive requests for renewal of the license granted pursuant to waiver request not less than 180 days prior to expiration of the license. Renewal requests must include a showing that continued operation of the wideband system is in the public interest. Renewal requests for wideband operations in the broadband segment also must be accompanied by a letter from the Public Safety Broadband Licensee confirming that continuing wideband operations are not inconsistent with the broadband deployment plan for the affected or adjacent service areas. The license term for any renewal of waiver will not exceed three years and a wideband waiver licensee may only receive a single extension. Any renewal of a wideband authorization shall continue to be on a secondary basis only to primary narrowband or broadband applications, as applicable. Finally, in light of the waiver process we describe above, we find it unnecessary to adopt any particular wideband interoperability standard.

3. Safeguards Relating to the Public/Private Partnership

a. Rules for Establishment, Execution and Application of the NSA

497. Background. In the *700 MHz Further Notice*, we tentatively concluded that, in the event the Frontline proposal was adopted, we would need to impose conditions to deal with the circumstance where the winning bidder of the commercial license and the "national public safety licensee" are unable to reach agreement on a network sharing agreement.[1027] We specifically proposed requiring the winning bidder and the national public safety licensee to enter into binding arbitration in the event that they cannot resolve outstanding issues.[1028] We further tentatively concluded that, to provide incentives to reach an agreement, we would not grant a license to the winning bidder of the commercial license at auction until

[1026] Motorola *700 MHz Further Notice* Comments at 20-21.

[1027] *See 700 MHz Further Notice*, 22 FCC Rcd at 8165 ¶ 282.

[1028] *See id.*

after it filed a network sharing agreement with the Commission, and received approval.[1029]

498. We also sought comment on several other issues and possible conditions, including whether (1) we should adopt a requirement that the parties report to the Commission on the status of the negotiations, (2) other conditions should be adopted that "ensure that an agreement is reached quickly and in a manner that is satisfactory to public safety," (3) we should adopt other options to provide additional oversight, (4) we should require an agreement by a certain date, and (5) in the absence of an arbitration option, whether the Commission should be authorized to appoint board members to the governance of the D Block licensee.[1030]

499. Commenters on this subject generally support requiring good faith negotiations,[1031] ongoing Commission oversight,[1032] waiting to grant the commercial license until the network sharing agreement is filed,[1033] and placing a deadline on the negotiation of that agreement.[1034] Commenters also argue that, regardless of the remedies adopted, the Commission should assume an active role in oversight through reporting requirements and dispute resolution processes to ensure that the interests of public safety are adequately protected.[1035]

500. Commenters are divided on the issue of whether the Commission should resolve negotiation disputes through mandatory binding arbitration. While some commenters support an arbitration if it were done by the Commission,[1036] a number of public safety commenters strongly oppose any mandatory arbitration, whether private or by the Commission.[1037] They argue that mandatory dispute resolution would take control of public safety spectrum out of the hands of the national public safety licensee and would force the public safety community nationwide into a long-term partnership with an entity over whose selection they would have no control and who would be chosen solely by competitive bidding.[1038] They insist that the only appropriate remedy in the event the parties are unable to negotiate

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[1029] *See id.*

[1030] *See id.*, 22 FCC Rcd at 8165 ¶ 283.

[1031] *See* NPSTC *700 MHz Further Notice* Comments at 12.

[1032] *See* Cyren Call *700 MHz Further Notice* Comments at 15 (Commission should "engage in an ongoing review process as the [NSA] is being developed by the parties and [] require status reports on a regular basis . . . .").

[1033] *See* APCO *700 MHz Further Notice* Comments at 15; Cyren Call *700 MHz Further Notice* Comments at 14-15; Fire Fighters Virginia *700 MHz Further Notice* Comments at 2; Fire Fighters Oregon *700 MHz Further Notice* Comments at 1; NPSTC *700 MHz Further Notice* Comments at 10.

[1034] *See* APCO *700 MHz Further Notice* Comments at 15.

[1035] *See* Cyren Call *700 MHz Further Notice* Comments at 10-12, 17 (recommending that, "[a]t a minimum, the rules should require an annual report from the parties, one that provides status updates on key Network Sharing Agreement elements and, more generally, keeps the FCC apprised of the 'State of the Network.'"); NPSTC *700 MHz Further Notice* Comments at 12.

[1036] *See* Frontline *700 MHz Further Notice* Comments at 44.

[1037] *See* APCO *700 MHz Further Notice* Comments at 16; NPSTC *700 MHz Further Notice* Comments at 10-11 (opposing third-party arbitration); Cyren Call *700 MHz Further Notice* Reply Comments at 15; *but see* NPSTC *700 MHz Further Notice* Comments at 11-12 ("While still problematic, submitting disputes to the Commission . . . may be a viable option . . . .").

[1038] *See* APCO *700 MHz Further Notice* Comments at 16 ("We strongly oppose [binding arbitration] as it would also take control of the [public safety] spectrum out of the hands of the public safety licensee . . . . While [resolution by the Commission is] preferable to binding arbitration by a third party, this approach could still force public safety into a long term partnership with an entity that fails to understand public safety needs and obtained its license merely by (continued....)

an agreement would be to auction a new license for the commercial spectrum.[1039]

501. Discussion. Based on the record, we specifically condition the D Block license on the following requirements to ensure the establishment and execution of the NSA in a timely manner while safeguarding the public interest.

502. *Approval of NSA as Pre-Condition for Granting the D Block license.* Because the terms of the NSA are critical to the success of the partnership, the D Block license will not be issued until the Commission has approved the NSA and following such approval, the parties execute the NSA and file an executed copy with the Commission. As several public safety commenters recognize, this condition for granting the license will ensure that the winning bidder for the D Block license has appropriate incentives to reach an agreement on the NSA in good faith and cannot stall the negotiations to avoid its obligations to public safety.[1040]

503. We recognize that the D Block licensee will be subject to an aggressive build-out schedule, and an applicant for the license may wish to commence certain initial construction activities prior to the grant of an authorization. We do not prohibit the winning bidder of the D Block license from engaging in network build-out during the NSA negotiation period and prior to grant of the license, but to ensure that such build-out does not frustrate the interests of public safety or preempt the negotiations regarding the appropriate build-out schedule, we require that any such build-out occur only with the approval of the Public Safety Broadband Licensee. Similar to service rules for other spectrum licenses,[1041] such construction is conducted at the sole risk of the applicant, is subject to the Commission's authority to provide notification to stop such build-out, and cannot result in commercial operation unless and until the Commission has granted the D Block license.

504. *Timeframe for Negotiation.* We also establish a deadline for the parties to reach agreement on the terms of the NSA to ensure that the Public/Private Partnership implementation is not indefinitely delayed. Specifically, we require the parties to commence negotiations on the terms of the

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being the highest bidder."); NPSTC *700 MHz Further Notice* Comments at 10-11. *See also* California *700 MHz Further Notice* Comments at 5-6 (supporting Frontline proposal if it is established by a "mutually agreeable" NSA).

[1039] *See* APCO *700 MHz Further Notice* Comments at 17 (re-auctioning "avoids the problem of a forced partnership. . . . The key to success is to ensure that public safety, not a commercial auction, decides the fate of public safety spectrum."); Cyren Call *700 MHz Further Notice* Comments at 15 (national public safety licensee should "not be forced to accept as its long-term partner . . . an entity determined exclusively by the size of its entity's auction bid" and if there are intractable disputes, "the National Licensee should be permitted to terminate the negotiation process and, at its discretion, consider partnership arrangements with other commercial 700 MHz licensees with authority to permit them secondary access to Public Safety's broadband spectrum."); NPSTC *700 MHz Further Notice* Comments at 11 ("The only appropriate solution . . . is to re-auction the spectrum, . . . the only remedy that preserves public safety control over public safety spectrum.").

[1040] *See* APCO *700 MHz Further Notice* Comments at 15-16; Cyren Call *700 MHz Further Notice* Reply Comments at 14 (also suggesting requiring a showing of financial *bona fides* before using a license). In one of its more recent filings, Frontline opposes this measure, arguing that it would be "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 . . . ." Frontline July 24, 2007 *Ex Parte* at 1. Given that such parties will not be participating in the negotiations, however, we think that the risk that they could "poison" the negotiations is minimal. Further, we note that Frontline itself, in its original comments, supports this very condition when combined with binding dispute resolution, arguing that it "incentivizes the E Block licensee to reach a mutually beneficial agreement with the NPSL in a timely manner." Frontline *700 MHz Further Notice* Comments at 44. As stated elsewhere, the Commission will retain the option of engaging in binding dispute resolution in the event negotiations are unsuccessful.

[1041] 47 C.F.R. § 22.143.

NSA on the date that the winning bidder of the D Block license files its long form application[1042] or the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later, and we further require the parties to conclude negotiations not later than six months after the commencement date. As soon as the parties have reached an agreement on all the terms of the NSA, but not later than five days after the six month period for negotiation has expired, they must submit for Commission approval the NSA together with all agreements and other documents referred to in the NSA, including the agreement reached on the broadband technology standard. The Commission will act on the NSA within 60 days of receipt. If the parties have not reached agreement on all terms of the NSA by the end of the six-month period, they must notify the Commission not later than five days after the expiration of the six-month period of the terms agreed upon, the nature of the remaining issues and each party's position on each issue (whether in the form of final best offers, or a characterization of the parties jointly on the positions of the parties and reason for impasse), whether additional negotiation is likely to produce an agreement, and, if so, a proposed deadline for completing the agreement.

505. *Requirement of Good Faith.* We require the parties to negotiate in good faith the specific terms of the NSA pursuant to the conditions, requirements, and guidance established in this Second Report and Order. We also require the parties to act in good faith in the performance of the NSA. To provide additional assurance that negotiations are proceeding in good faith, and except as explicitly set forth herein, the Commission will oversee the negotiation of the NSA, and will play an active role in the resolution of any disputes among the relevant parties (including the winning bidder for the D Block; the D Block licensee; the Operating Company; the Network Assets Holder; and the Public Safety Broadband Licensee), both resulting from the negotiations and once the parties are operating under the terms of the NSA.

506. *Progress Reports During Negotiations.* The winning bidder for the D Block license shall file an initial report within 10 days of the commencement of the negotiations period certifying that active and good faith negotiations have begun, providing the date on which they commenced, and providing a schedule of the initial dates on which the parties intend to meet for active negotiations, covering at a minimum the first 30-day period. We require that two members of the Commission's staff, one from the Wireless Bureau, and one from the Public Safety and Homeland Security Bureau, be present at all stages of the negotiation of the NSA as neutral observers. We do not intend, however that the staff act as arbitrators. Disputes must still come to the Commission for resolution. Beginning three months from the triggering of the six-month negotiation period, the winning bidder for the D Block license and the Public Safety Broadband Licensee must jointly provide detailed reports, on a monthly basis and subject to a request for confidential treatment, on the progress of the negotiations throughout the remainder of the negotiations. These reports should include descriptions of all material issues that the parties have yet to resolve. The monthly reports will enable us to identify any areas of significant disagreement between the winning bidder for the D Block license and the Public Safety Broadband Licensee. The Commission also reserves the right to require the parties to meet with Commission staff to discuss their negotiations or reports at any time during the negotiation process.

507. These reporting requirements, together with the authority we reserve to observe negotiations, will ensure that the Commission's participation is not limited to dispute resolution. We intend to actively monitor and, if required, participate in the negotiation process. Such involvement may help to avoid intractable disputes and to produce an agreement consistent with the rules we are establishing and the goals of the proceeding in a timely manner. This process may also help to determine whether parties are likely to reach an agreement prior to, but not later than the end of the negotiation period. If the Commission determines that parties are unlikely to reach an agreement or they violate certain obligations (*e.g.*, good faith negotiation obligations), the Commission (or the Bureaus) may take,

[1042] *See* 47 C.F.R. §§ 1.2107-1.2109.

on its own motion, actions pertaining to dispute resolution before the NSA approval, described elsewhere in this Second Report and Order, without waiting for the six-month negotiation period to fully elapse.

508. *Resolution of Negotiation Disputes.* Either upon notice of a dispute at the end of the six-month negotiation period, or on their own motion at any time, if the Chiefs of PSHSB and WTB determine that negotiations have reached a likely impasse, we delegate authority to the Chiefs of PSHSB and WTB to take certain actions jointly in the public interest to adjudicate the dispute.[1043] As appropriate, these actions may include but are not limited to one or more of the following: (1) granting additional time for negotiation; (2) issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with their decision; (3) directing the parties to further brief the remaining issues in full for immediate Commission decision; and/or (4) immediate denial of the long-form application filed by the winning bidder for the D Block license. Remedies shall not, however, include ordering private third-party arbitration. In the event that the long-form application filed by the winning bidder for the D Block license is denied, the winning bidder for the D Block license will be deemed to have defaulted under Section 1.2109(c) of the Commission's rules, it will be liable for the default payment set forth in § 1.2104(g),[1044] and the full Commission, at its discretion, shall decide whether to offer a new license for the spectrum to existing or new applicants, offer a new license to the other highest bidders (in descending order) at their final bids, or choose any other process within the Commission's statutory authority to reassign the license, in light of the public interest goals served by the Public/Private Partnership.[1045]

509. Our approach to adjudicating disputes during the NSA negotiations responds to the concerns of public safety commenters, including APCO, NPSTC, and Cyren Call, who have argued the only remedy the Commission should apply in the event of negotiation failure is to conduct a new auction for a new license for the spectrum.[1046] We note that, while public safety commenters have generally opposed a requirement of mandatory private third-party arbitration, they also concede that having the Commission adjudicate their disputes rather than a private party would address some of their concerns on this issue,[1047] and other commenters fully support adjudication of disputes by the Commission.[1048] We agree that it would be inappropriate to have issues regarding the use of public safety spectrum resolved by a private party and preclude that option as a remedy. We find, however, that we should not at this time preclude the option of disputes being adjudicated by the Commission. Rather, providing the Commission with discretion to choose from a range of remedies will enable the Commission to choose the most appropriate option in the context of the specific concerns raised by the parties. When the specific disputes are presented, the Commission will be in a better position to determine whether the goals of the 700 MHz Public/Private Partnership and the interests of public safety and the public will be best served by conducting a new auction for a new license for the D Block spectrum, or whether adjudication of disputes or another remedy is the best course.

510. *Licensing Rules and Procedures Applicable to the D Block license.* Except as provided herein, the Commission's competitive bidding rules applicable to other commercial licenses in the 700 MHz Bands will apply to the winning bidder for the Public/ Private Partnership License, including the

[1043] 47 U.S.C. § 155(c)(1).

[1044] *See* 47 C.F.R. § 1.2104(g).

[1045] *See, e.g.*, 47 C.F.R. § 1.2109.

[1046] APCO *700 MHz Further Notice* Comments at 17; Cyren Call *700 MHz Further Notice* Comments at 15; NPSTC *700 MHz Further Notice* Comments at 11.

[1047] *See, e.g.*, NPSTC *700 MHz Further Notice* Comments at 11-12.

[1048] *See, e.g.*, Frontline *700 MHz Further Notice* Reply Comments at 13.

practices and procedures listed in Part 1 of our rules.[1049] For example, the down payment requirement, the obligation of the winning bidder for the D Block license to file a "long form" license application, and the consequences of a default prior to grant of the license will be in accordance with Sections 1.2104, 1.2105, 1.2106, 1.2107, and 1.2109 of the Commission's rules.

511. If the long form application is denied, the procedures under Section 1.2109 of the Commission's rules will generally apply. We note that we may complete review of the long form application and deny the application without regard to the NSA, if the application is deficient or the grant of the license would otherwise be inconsistent with the Commission's rules. We further clarify that if the winning bidder for the D Block license fails to comply with the procedures we establish for negotiation or dispute resolution, fails to receive final Commission approval of an NSA, or fails to execute an approved NSA, (a) it shall be disqualified from holding the D Block license, (b) the license application will be denied, and (c) it will be deemed to have defaulted and will be subject to all payments and obligations under Section 1.2109 of our rules.[1050]

512. *Process for Final Approval.* The Commission will review and approve the NSA. To facilitate our review, we may seek input from the parties, or invite public comment on the proposed NSA, subject to redactions to protect a legitimate need for confidentiality. After conducting our review, we may approve the NSA in its entirety, approve it with modifications, or require the parties to address additional terms or re-draft existing terms within a specified timeframe. Following approval with or without modifications, the parties shall execute the NSA and submit a copy of the executed NSA to the Commission within 10 days of approval.

b. Ongoing Conditions for the Protection of Public Safety Service

513. Background. In its proposal, Frontline asserted that, if its proposed commercial block licensee encounters financial or other problems that prevent compliance with its obligations, the Commission may reclaim and re-auction the spectrum.[1051] Accordingly, it argued, there is no need for service rules to address this issue in some special fashion.[1052]

514. In the *700 MHz Further Notice*, we sought comment on whether other measures should be adopted to address what actions the Commission might or must take in the event that the commercial licensee fails to comply with its obligations.[1053] In particular, we asked whether (1) there should be a special process for public safety entities or others to challenge the commercial licensee's compliance with its obligations; (2) the license should cancel automatically based on failure to comply with specified obligations; (3) the Commission should establish an unjust enrichment requirement to be paid in the event the Commission is unable to reclaim the license after a failure by the commercial licensee to meet its obligations; (4) in the event the Commission does reclaim the license, it should hold any network infrastructure built by the licensee in trust for public safety to avoid interruption of service to first responders; and (5) the Commission should provide a rebate of a portion of the net bid amount paid by the commercial licensee at auction upon satisfaction of the conditions of the license.[1054]

515. Commenters agree that the rules need to protect against any disruption to public network

[1049] *See, e.g.*, 47 C.F.R. §§ 1.2104 *et seq.*

[1050] *See* 47 C.F.R. § 1.2109.

[1051] Frontline *700 MHz Further Notice* Comments at 9.

[1052] Frontline *700 MHz Further Notice* Comments at 9.

[1053] *See 700 MHz Further Notice*, 22 FCC Rcd at 8167 ¶ 289.

[1054] *Id.*

operations or default on build-out obligations or license cancellation.[1055] Commenters also offer a number of proposals to address these problems. To prevent the interruption of service to public safety users, several commenters propose that the Commission should simply establish an applicable rule similar to Section 214 of the Act and prohibit the commercial licensee from discontinuing operations to public safety without Commission approval.[1056] Verizon Wireless argues that, although a Section 214-like rule can provide for an orderly discontinuation of service, such a rule cannot, as a practical matter, require a failing business to continue to operate by regulatory fiat.[1057]

516. Several commenters recommend some form of financial security from the Public/Private Partnership Licensee, such as a performance bond or letter of credit, to be drawn on in the case of financial or regulatory difficulties.[1058] Commenters also emphasize the importance of continued monitoring by the Commission of the development and operations of the network. For example, Cyren Call proposes that we require annual reports that provide status updates on all key NSA elements to keep the Commission apprised on the state of the network.[1059] Others recommend that, in the event that the commercial licensee is non-compliant with the NSA, the infrastructure of the network should be held in trust for public safety to avoid interruption of services.[1060] Commenters also propose that the Commission establish an expedited process for addressing and resolving claims that the commercial licensee has not complied with its obligations.[1061]

517. Discussion. We conclude that several measures are necessary to address the possibility that problems will arise in the implementation of the NSA or the operation of the common network. We are concerned that such problems, whether financial or otherwise, may threaten the build-out of the public safety network or the continued provision of network services to public safety users. We are also concerned that the D Block licensee or a related entity might, in financial difficulty, draw the D Block license or the network assets, respectively, into a bankruptcy proceeding and attempt to place both the operations of the network and its underlying assets outside of the control of either public safety or the Commission. To address these concerns, while maintaining necessary incentives for investment and preserving commercial viability, we establish a number of inter-related requirements.[1062]

[1055] APCO *700 MHz Further Notice* Comments at 20; Frontline *700 MHz Further Notice* Comments at 47 (the rules should protect against any disruption of public safety use of the network); Cyren Call *700 MHz Further Notice* Comments at 18; GEOCommand *700 MHz Further Notice* Comments at 13; MetroPCS *700 MHz Further Notice* Comments at 65; California *700 MHz Further Notice* Reply Comments at 6. *See also* Arcadian *700 MHz Further Notice* Comments at 5. Similarly, public safety users would be stranded if the E Block licensee failed to meet its construction benchmarks."); CTIA *700 MHz Further Notice* Comments at 22 (asserting that failure of the enterprise would result in significant lost opportunity costs and uncertainty for the deployment and operations of the public safety broadband network).

[1056] *See* APCO *700 MHz Further Notice* Comments at 20; Frontline *700 MHz Further Notice* Comments at 47; NPSTC *700 MHz Further Notice* Comments at 14; Cyren Call *700 MHz Further Notice* Reply Comments at 20.

[1057] *See* Verizon Wireless *700 MHz Further Notice* Comments at 27.

[1058] *See* APCO *700 MHz Further Notice* Comments at 20; Cyren Call *700 MHz Further Notice* Comments at 18-20; NPSTC *700 MHz Further Notice* Comments at 15.

[1059] *See* Cyren Call *700 MHz Further Notice* Comments at 17.

[1060] *See* GEOCommand *700 MHz Further Notice* Comments at 13.

[1061] *See* GEOCommand *700 MHz Further Notice* Comments at 12-13 (public safety entities should have a special ability to challenge the commercial licensee to ensure compliance on a fast track).

[1062] We decline to require the D Block licensee to post a financial security to ensure performance of its obligations. We are concerned that the burden of obtaining such a security could deter qualified entities from bidding on the D Block license and believe that a D Block licensee's financial resources are better used for actual construction and (continued....)

518. *Requirements Relating to Organization and Structure of the Public/Private Partnership.* To support continued construction and operation of the shared wireless broadband network by reducing the risk that the D Block license or the network assets will be drawn into a bankruptcy proceeding, we require the winning bidder for the D Block license to form separate special purpose entities,[1063] which will be bankruptcy remote,[1064] to hold the D Block license and the network assets, respectively. We also require the winning bidder of the D Block licensee to form another vehicle that will also be a bankruptcy remote, special purpose entity (Operating Company). The D Block licensee will lease the spectrum rights associated with the D Block license to the Operating Company pursuant to the Commission's spectrum leasing rules. The spectrum leasing arrangement will be for the entire term of the D Block license and will be renewable, provided that the Commission renews the underlying D Block license. These license transactions will occur following the granting of the D Block license and should follow existing Commission procedures applicable to such transactions. The Operating Company will also be leased secondary use rights associated with the primary license held by the Public Safety Broadband Licensee.[1065] To ensure that these requirements have been met, the D Block auction winner shall submit the proposed organizational structure to the Commission and demonstrate to the Commission's satisfaction that each of the constituent entities is appropriately bankruptcy remote. Finally, it shall be a condition of the D Block license and the Public Safety Broadband License that all special purpose entities and any leasing or other commercial agreements created to implement the public/private partnership will be subject to the Communications Act of 1934, as amended, and the Commission's rules and regulations, and the parties to the NSA shall acknowledge such regulatory authority in a form acceptable to the Commission.

519. The D Block licensee and other entities authorized and required in this Second Report and Order or the NSA will have the obligation to build out the nationwide, shared interoperable broadband network operating on the spectrum associated with the D Block license and the Public Safety Broadband License.

520. In connection with establishing the bankruptcy remote special purpose entities required hereunder, the Commission requires the issuance of one or more legal opinion letters, at the cost of the winning bidder of the D Block license, from bankruptcy counsel chosen by the winning bidder of the D Block license and acceptable to the Commission, and such other parties as the Commission may designate, that clearly states, subject only to customary assumptions, limitations and qualifications that none of the winning bidder, the Operating Company, or any party to the NSA or other related agreements will be substantively consolidated with any entity. The scope of this opinion letter shall also cover such other opinions as the Commission may request.[1066]

521. *Prohibition on Discontinuance of Public Safety Operations.* We prohibit the D Block

(Continued from previous page)

operation costs. *Cf.* Cyren Call *700 MHz Further Notice* Comments at 19 & n.20 (finding that "[m]easures such as obtaining performance bond arrangements are likely not to be available at a reasonable cost . . . .").

[1063] A "special purpose entity" is a legal entity created for a special limited purpose, in this context primarily to hold the D Block license or the network assets, or to conduct the operation.

[1064] A special purpose entity is "bankruptcy remote" if that entity is unlikely to become insolvent as a result of its own activities, is adequately insulated from the consequences of a related party's insolvency, and contains certain characteristics which enhance the likelihood that it will not become the subject of an insolvency proceeding.

[1065] We note that if we cancel the D Block license this spectrum lease arrangement will also be terminated.

[1066] The opinion letter must contain detailed legal analysis of the basis of counsel's opinion. A draft opinion letter must be submitted for review and approval by the Commission's Office of General Counsel prior to issuance of the opinion. Bankruptcy counsel and, if applicable, counsel's firm, must have a Martindale-Hubbell rating of "A/V" and must satisfy the Commission in all other respects.

licensee from discontinuing or degrading the broadband network service provided to the Public Safety Broadband Licensee or to public safety entities unless either at the request of the entity or entities in question or it has first obtained the approval of the Commission.[1067] Further, the D Block licensee must notify the affected public safety entity or entities and the Public Safety Broadband Licensee at least 30 days prior to any unrequested discontinuance or degradation of network service.

522. We recognize that such a prohibition cannot by itself prevent discontinuance of a financially ailing business operation indefinitely. We anticipate, however, that in the event of significant problems, it will ensure the continuance of public safety operations in the short term until longer terms measures have been adopted to address the underlying problems.

523. *Failure to Comply with the NSA or the Commission's Rules.* We establish rules to address how the Commission will remedy failures by either the D Block licensee or the Public Safety Broadband Licensee to comply with the NSA or our rules. First, with regard to the D Block licensee, as we have stated elsewhere, we have conditioned the D Block license on compliance with the NSA. Failure to comply with the Commission's rules or the terms of the NSA may warrant cancelling the D Block license, depending on the circumstances, and awarding it to a new licensee. In particular, the full Commission will decide whether to cancel and reassign the D Block license in the event that the D Block licensee either cannot or will not fulfill the critical responsibilities that are being given to it. Accordingly, we provide for a process by which cancellation will occur without threatening network services to public safety entities.

524. In the event that the Commission determines that the D Block license must be cancelled consistent with the Act and the requirements herein, an order shall be issued cancelling the license and announcing the process for awarding rights to the spectrum to a new licensee. However, pending the award to a new licensee, the Operating Company will be issued a special temporary authority (STA) to continue to provide both commercial and public safety service in the Public/Private Partnership spectrum. We find that issuance of an STA in this circumstance will serve the public interest, convenience, and necessity by enabling uninterrupted, seamless service to public safety entities as well as commercial users, pending the grant of a new license.[1068]

525. To further ensure that services to public safety are not threatened by cancellation or otherwise, the NSA shall require, in a separate agreement, the granting of (a) an irrevocable and assignable right of first refusal if the network and network assets are otherwise to be sold; and (b) an irrevocable and assignable option in favor of the Public Safety Broadband Licensee to acquire the network and all network assets if and whenever the D Block license is cancelled or terminated, by reason of default or for any other reason, for a consideration equivalent to the fair market value (FMV) of the

[1067] GEOCommand recommends that we address the threat of discontinuance by establishing a right to place the network assets in a government trust in the event of financial difficulty or non-compliance. *See* GEOCommand *700 MHz Further Notice* Comments at 13. We decline to establish such a rule, however, because we have serious concerns regarding both the legal validity of such a rule, its effectiveness in the event of bankruptcy filing (and the possible incentives created by such a rule for the D Block licensee to seek protection in bankruptcy), and its impact on the investment incentives that will be necessary to generate the capital to build the network. We find that the measures we have adopted, and the active oversight of the Commission, should be sufficient to ensure that public safety services will not be discontinued.

[1068] Under established standards, an STA is appropriate when the proposed action will serve the public interest, convenience and necessity. *See* Accounting Safeguards Under the Telecommunications Act of 1996, *Order*, 16 FCC Rcd 17969, 17970, ¶ 3 (2001); Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Sections 214 and 310 Authorizations and Application to Transfer Control of a Submarine Cable Landing License, Order, 16 FCC Rcd 15957, 15958, ¶ 3 (2001) (addressing standard for granting STAs); *see also* 47 U.S.C. §§ 154(i), 214(a), 303(r), 308(a).

tangible and intangible assets sold. This option shall be senior to, and have priority over, any other right, claim, or interest in or to the network or the network assets. An event of default includes any default of the D Block licensee of a material obligation under the NSA, as determined by the Commission. Valuation will be performed pursuant to a FMV methodology to be agreed upon by the parties and set forth in the NSA. Valuation shall be performed immediately following the occurrence of a triggering event and completed within a reasonable time thereafter. The NSA must further provide that, in the event that the D Block license is awarded to a new entity, the Public Safety Broadband Licensee's right to purchase the network assets shall be reassigned to the new D Block licensee. Thereafter, the Public Safety Broadband Licensee's right to purchase shall be extinguished unless and until a new triggering event described above occurs, as the primary purpose of the right, to enable a smooth transition in the event of a default, would be achieved, and because maintaining the right might adversely impact the incentive of the new D Block licensee to invest in its network.

526. We provide that, in the event that the D Block license is cancelled, the Commission may choose any process within the Commission's statutory authority to reassign the license, in light of the public interest goals served by the Public/Private Partnership. Upon grant of a new license, the Commission, or the Bureaus acting on delegated authority, shall, in coordination with the former licensee and the new licensee, as well as the Public Safety Broadband Licensee, establish the terms and timing under which the temporary authorization shall be cancelled and the new D Block licensee assume the construction and operation of the network.[1069] This decision shall take into account, among other factors, any exercise by the new licensee of its right to purchase the network assets.

527. With regard to the Public Safety Broadband Licensee, in the event that the Public Safety Broadband Licensee fails to adhere to the terms of the NSA, or comply with the Commission's rules or any requirements contained in this Second Report and Order, to an extent giving rise to license cancellation, we delegate authority to the Chiefs, PSHSB and WTB jointly to determine an appropriate remedy. The potential remedies include, but are not limited to, cancelling the license, assigning the license to another entity, directing the Public Safety Broadband Licensee to transfer the assignable option to purchase the assets at fair market value, ordering specific performance, or ordering removal and replacement of individual officers, directors or member organizations of the Public Safety Broadband Licensee. The potential remedies would be consistent with the unique role and responsibilities of the Public Safety Broadband Licensee and the importance of minimizing any disruptions to public safety broadband operations in the 700 MHz Band.

528. *Resolution of Disputes after Grant of the D Block license.* The record supports Commission involvement in the adjudication of disputes arising from the 700 MHz Public/Private Partnership established in this Second Report and Order.[1070] We find that the Commission should assume primary responsibility and jurisdiction for adjudicating intractable disputes that arise once the parties are operating pursuant to the terms of the NSA. While we strongly encourage the parties to first attempt to resolve any disagreements themselves through voluntary means, the parties to the NSA may at any time bring a complaint based on a claim that the other party has deviated from the terms of the NSA, or a petition for a declaratory ruling to resolve the proper interpretation of an NSA term or provision. We emphasize that these shall be the exclusive remedies for claims seeking the interpretation of the NSA in

[1069] As with the original license, a new license shall not be granted until an NSA is approved and executed by the parties. We authorize the Bureaus to adopt a process for establishing an NSA that differs from the process applicable to the establishment of the original NSA, to the extent that such difference will serve the goals of the Public/Private Partnership. For example, the Bureaus may require that the new licensee must accept the terms of the original NSA for its remaining term.

[1070] NPSTC *700 MHz Further Notice* Comments at 13 (submitting disputes regarding performance to the Commission appropriate because of the obligation in the Act to promote safety of life and property).

the first instance. The Commission may, however, as an alternative to adjudicating the issues, require the parties to first seek a settlement to the dispute or authorize them to resolve the dispute through litigation or other means, particularly if the dispute is found to involve no significant public concerns, and the Commission will consider any request by the parties to authorize such means.

529. *In the event the Commission decides to adjudicate the issues, we provide that the* Commission will have full authority to interpret not only its rules but all of the provisions of the NSA.[1071] We further provide that, if the Commission finds a material breach of the NSA, it may apply any remedy or enforcement mechanism within its authority. In particular, insofar as the D Block license is conditioned for its entire license term upon the D Block licensee's compliance with the terms of the NSA, breach of this licensing condition may result in the cancellation of the license or other enforcement action.[1072] Similarly, as discussed elsewhere, the Public Safety Broadband Licensee's breach of its license terms, the NSA, or our rules may also result in the cancellation of its license or other enforcement action. As with adjudication of disputes during the NSA negotiation process, the Chiefs of PSHSB and WTB are delegated joint responsibility for adjudicating any disputes that arise during performance of the NSA. Bureau level adjudications of NSA disputes must be completed within 45 days. The parties may seek review by the Commission of any bureau-level adjudication.[1073] Finally, we establish that, if a breach of the NSA occurs but is not brought to the Commission for resolution, the Commission retains authority to apply all appropriate remedies on its own initiative at any time after the breach occurs.

530. *Reporting Obligations.* Once the NSA is approved by the Commission and executed by the parties, the parties must jointly file quarterly reports with the Commission. These reports must include detailed information on the areas where broadband service has been deployed, how the specific requirements of public safety are being met, audited financial statements,[1074] which public safety entities (*e.g.*, police, fire departments) are using the broadband network in each area of operation;[1075] what types of applications (*e.g.*, voice, data, video) are in use in each area of operation to the extent known; and the number of declared emergencies in each area of operation. We anticipate that this information will be readily available from the billing systems used for the shared network, and reserve the right to specify additional information that the quarterly reports must include at a later date. The D Block licensee and Public Safety Broadband Licensee also have joint responsibility to register the base station locations with the Commission, providing basic technical information, including geographic location. Such registrations may be filed with a request for confidential treatment by the Commission. In this regard, we delegate to the Wireless Bureau authority to adopt rules and procedures to implement this requirement, as well as authority to modify ULS to accept such filings and to issue a Public Notice describing any such

[1071] This is consistent with our requirement that the NSA must be approved by the Commission and the terms of the NSA are part of the license conditions.

[1072] *See* 47 C.F.R. § 1.2109(c). The Commission may reassign the license through competitive bidding to a new applicant.

[1073] 47 C.F.R. § 1.115.

[1074] As part of these quarterly reports, the Commission may require financial information from the ultimate parent entity of the individual parties to the NSA.

[1075] By providing the number of public safety entities that have chosen to receive service from the network, the reports will provide the Commission with an important indicator of the network's success in meeting public safety needs. *See* NPSTC *700 MHz Further Notice* Reply Comments at 5-6. *See also* Cyren Call *700 MHz Further Notice* Comments at 17-18 ("In the end, success must be measured by the network's ability to attract Public Safety users . . . . ."); AT&T *700 MHz Further Notice* Reply Comments at 25 (recommending that the Commission require the D Block licensee to meet certain public safety participation benchmarks by a certain date); *see also* NPSTC *700 MHz Further Notice* Comments at 5-6 (D Block licensee should be judged on an ongoing basis by the quality of service it provides and the number of agencies that have chosen to participate in the network).

modifications and relevant filing procedures.[1076] We delegate to the Wireless Bureau the authority to adopt filing rules and procedures not inconsistent with this Second Report and Order to facilitate these reporting obligations.

4. *Other Issues*

a. Bidding Credits

531. Background. In the *700 MHz Further Notice*,[1077] we sought comment on whether the Commission's prior determination to provide applicants that are eligible to be licensed as designated entities, *i.e.*, small businesses, with bidding credits in an auction of 700 MHz licenses should apply to the license proposed by Frontline.[1078] Given that the Commission previously has declined to offer designated entities bidding credits for services with high implementation costs, we expressed concern that the capital requirements of constructing a nationwide network for public safety services might make it inappropriate to offer bidding credits in connection with such a proposal.[1079]

532. We further explained in the *700 MHz Further Notice* that Frontline's proposal that its proposed commercial licensee be required to provide only wholesale service created a conflict with the eligibility requirements for entities seeking a designated entity bidding credit.[1080] Section 1.2110(b)(iv) of the Commission's rules restricts an applicant's eligibility for designated entity benefits if it has an "impermissible material relationship," which is defined as an arrangement with one or more entities for the lease or resale (including under a wholesale agreement) of, on a cumulative basis, more than 50 percent of the spectrum capacity of any one of the applicant's or licensee's licenses.[1081] Thus, in considering whether to offer bidding preferences, including small business bidding credits, we noted in the *700 MHz Further Notice* that a wholesale-service-only requirement appeared to "plainly" create a violation of Section 1.2110(b)(iv)(A) of the Commission's designated entity eligibility rules.[1082] We

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[1076] TIA *700 MHz Further Notice* Comments at 5 (recommending that the Commission impose regular reporting requirements to ensure performance).

[1077] *700 MHz Further Notice*, 22 FCC Rcd at 8160 ¶ 268.

[1078] *700 MHz Further Notice*, 22 FCC Rcd at 8166 ¶ 286. We did not specifically seek comment on Frontline's previous proposal, in response to the *700 MHz Public Safety Ninth Notice*, that the Commission should develop bidding credits for bidders making commitments to exceed required coverage benchmarks, modeled on the Commission's tribal lands bidding credits program. *See* Frontline *700 MHz Public Safety Ninth Notice* Comments at 32. Moreover, Frontline did not continue to advocate such a credit in its response to the *700 MHz Further Notice*. *See generally* Frontline *700 MHz Further Notice* Comments; Frontline *700 MHz Further Notice* Reply Comments.

[1079] As explained in the *700 MHz Further Notice*, this was true for services with extremely high capital costs such as direct broadcast satellite service and the digital audio radio service. *700 MHz Further Notice*, 22 FCC Rcd at 8166 ¶ 285. *See generally*, Revision of Rules and Policies for the Direct Broadcast Satellite Service, IB Docket No. 95-168, PP Docket No. 93-253, *Report and Order*, 11 FCC Rcd 9712 (1995) (*DBS Auction Order*); Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Band, IB Docket No. 95-91, *Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking*, 12 FCC Rcd 5754 (1997) (*DARS Auction Order*).

[1080] *700 MHz Further Notice*, 22 FCC Rcd at 8166 ¶ 287.

[1081] 47 C.F.R. § 1.2110(b)(iv)(A).

[1082] *700 MHz Further Notice*, 22 FCC Rcd at 8167 ¶ 287. As the Commission explained in the *700 MHz Further Notice*, "[i]n the event that we offered bidding preferences with respect to such an 'E Block' license, the existing rule plainly would preclude any licensee that is required to operate only as a wholesale provider from receiving designated entity benefits." *Id.*

therefore sought comment on this issue.[1083]

533. In response to the *700 MHz Further Notice*, Frontline argues in favor of providing bidding preferences, such as bidding credits, for applicants applying for the proposed commercial license, now the D Block license, based on their status as a small business or designated entity.[1084] Frontline contends in part that it, and other entities, that meet the Commission's definition of small businesses for purposes of receiving bidding credits are capable of raising the capital necessary to fulfill the obligations of the proposed commercial licensee.[1085] Frontline notes that the Commission's definition of small businesses is based on revenues rather than cash reserves or assets, and asserts that small businesses will be able to attract additional capital as needed to provide service with a Commission license.[1086] Frontline also argues more broadly that providing bidding credits attracts applicants for licenses and thereby enhances the competition for and the efficient assignment of licenses.[1087] In brief, Frontline maintains that bidding credits may help potential applicants overcome efforts by incumbents to prevent others from winning newly available licenses. Commenters such as McBride, Blooston, and Council Tree generally support the availability of designated entity bidding credits either in connection with or without regard to Frontline's specific proposals.[1088]

534. MetroPCS states that, given Frontline's proposal for the obligations of the commercial licensee, it "shares the Commission's 'serious concerns'" about offering bidding preferences to such applicants based on their small business status.[1089] It maintains that the Frontline proposal would cause "a per se violation" of the current designated entity rules concerning impermissible material relationships.[1090] MetroPCS argues that Frontline has effectively requested that the Commission waive or change its designated entity rules for the proposed commercial licensee. It claims that Frontline has offered no grounds to justify such an action and that the Commission's current rules prohibit a wholesale arrangement such as that suggested by Frontline.[1091] The United States Cellular Corporation also opposes the Frontline proposal for both adopting the public/private partnership licensing regulations and offering bidding credits, arguing that such requirements would undermine "existing rules and expectations."[1092]

[1083] In connection with Frontline's material relationship arguments, we note the Office of Advocacy of the Small Business Administration's comments urging the Commission to stay the effect of revisions made in 2006 to the Commission's designated entity rules for the 700 MHz auction. SBA *700 MHz Further Notice* Comments at 2. We find nothing persuasive in the Office of Advocacy's pleading as to why the Commission's current rules should not apply to the auction of 700 MHz licenses.

[1084] Frontline *700 MHz Further Notice* Comments at 58-67.

[1085] *Id.* at 62.

[1086] *Id.* at 60-61.

[1087] Frontline June 28 *Ex Parte*, Attach. at 16.

[1088] McBride Spectrum Partners, LLC *700 MHz Further Notice* Comments at 4-8; Blooston *700 MHz Further Notice* Comments at 7; Council Tree *700 MHz Further Notice* Reply Comments at 5-7.

[1089] MetroPCS *700 MHz Further Notice* Comments at 60.

[1090] *Id.* at 60-61. It should be noted that MetroPCS expresses disagreement "with the Commission's contention that wholesale arrangements are inconsistent with the statutory scheme for DEs." However, it acknowledges that "the holding to this effect, although being challenged, still remains in effect." *Id.* at 61 n. 148; *see also id.* at 63 n.155.

[1091] *Id.* at 61-63. MetroPCS further argues that a grant of Frontline's request should require the Commission to reexamine the future applicability of its designated entity rules to wholesale arrangements in general. *Id.* at 61 n.150.

[1092] USCC *700 MHz Further Notice* Comments at 19-20.

535. Discussion. We conclude that we should provide applicants that are eligible to be licensed as designated entities with bidding credits in the auction of the D Block license, consistent with the Commission's prior decision regarding bidding credits for 700 MHz licenses[1093] and our current designated entity rules.[1094] As explained elsewhere, we do not adopt Frontline's proposal that the D Block licensee be required to provide only wholesale service. Thus, the issues raised by commenters opposing designated entity benefits in light of such a requirement need not be addressed.

536. The Commission employs a service-by-service approach when it comes to defining designated entities eligible for small business bidding credits.[1095] As discussed in detail elsewhere, the D Block license presents a unique and innovative opportunity for a commercial service provider to serve the public interest by forming a public/private partnership with the Public Safety Licensee for the benefit of public safety entities and the public at large. Although the Commission generally has refrained from offering bidding preferences for nationwide licenses with services that may have high capital costs, as stated above, we have reserved our discretion to employ a service-by-service approach when it comes to defining small businesses. Pursuant to that discretion, the Commission has previously offered bidding credits in connection with nationwide licenses where the service specific rules have made it appropriate to do so.[1096]

537. We conclude that the conditions on the D Block license detailed herein, which include compliance with all the terms of the NSA to be negotiated with the Public Safety Broadband Licensee, will deter bidding by parties that likely will be unable to fulfill the crucial financial commitments required to comply with the conditions and retain the license. Given these conditions, parties that are uncertain of their ability to hold the license for the full term are less likely to bid on the D Block license. In order to encourage the widest range of potentially qualified applicants to participate in bidding for the D Block license, we will provide eligible bidders for the D Block license with the existing 15 and 25 percent bidding credits, as the credits may be necessary to create incentives for investors to provide innovative small businesses with the capital necessary to compete for the D Block license at auction.[1097] Pursuant to our existing small business size standards, eligible bidders with average attributable gross revenues for the last three years not exceeding $15 million or $40 million, respectively, may be eligible for bidding credits of 25 percent or 15 percent, respectively.[1098]

[1093] *See Upper 700 MHz First Report and Order*, 15 FCC Rcd at 529-530 (establishing bidding credits for frequencies covered by the D Block).

[1094] *See* 47 C.F.R. § 1.2110.

[1095] Amendment of Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, *Third Report and Order and Second Further Notice of Proposed Rule Making*, 13 FCC Rcd 374, 388 ¶ 18 (1997) ("*Part 1 Third Report and Order*"); 47 C.F.R. § 1.2110 (c)(1).

[1096] *See* "Announcing the High Bidders in the Auction of Ten Nationwide Narrowband PCS Licenses," *Public Notice*, PNWL 94-4 (rel. Aug. 2, 1994). In the nationwide narrowband PCS auction (Auction No. 1), bidding credits on ten nationwide licenses were offered to women- and minority-owned businesses. *See also* "1670-1675 MHz Band Auction Closes, Winning Bidder Announced," *Public Notice*, 18 FCC Rcd 9089 (2003). In the 1670-1675 MHz Band auction (Auction No. 46), the Commission offered a bidding credit on a nationwide license in the 1670-1675 MHz band to small businesses with average annual revenues not exceeding $40 million and very small businesses with average annual revenues not exceeding $15 million.

[1097] 47 C.F.R. § 27.502.

[1098] We note that use of these special small business size standards does not require coordination with the Small Business Administration.

b. License Partitioning, Disaggregation, Assignment, and Transfer

538. Background. Section 27.15 of the Commission's rules permits Part 27 licensees to seek Commission authorization to partition their geographic license areas and disaggregate their spectrum at any time following the grant of their licenses.[1099] Frontline in its "Public Safety Broadband Deployment Plan" proposed that to the extent the commercial licensee satisfies the construction requirements of §27.14 through partitioning or disaggregation, it shall do so through the first options listed in Sections 27.15(d)(1) and (2) of the Commission's rules.[1100] In the *700MHz Further Notice*, we sought comment on the proposed "Public Safety Broadband Deployment Plan," its likely effects on both the commercial and the public safety users in the 700 MHz Band, and whether it would be in the public interest for the Commission to adopt such a proposal, or alternatives to achieve the same or similar public interest goals.[1101] While most of commenters are silent on the issue, NPSTC recommends that the nationwide public safety licensee be provided the authority to veto any subsequent proposed license transfer or disaggregation/partitioning of the proposed commercial license that it believes would be detrimental to the deployment or continued operation of nationwide broadband system.[1102]

539. Discussion. Based on the record, we decide to prohibit geographic partitioning and spectrum disaggregation for the D Block licensee. As discussed elsewhere, the Public Safety Broadband Licensee is also prohibited from partitioning and disaggregation. We reasoned that such restriction is necessary to ensure the integrity of the nationwide broadband network and the public/private partnership we establish.

540. We agree with NPSTC's concern that unrestricted license transfer or disaggregation and partitioning of the D Block license would be detrimental to the successful deployment and continued operation of nationwide broadband system.[1103] We find that the success of the Public/Private Partnership largely depends on the partnership structure and the negotiated terms of the NSA. Adding new parties into the partnership structure and splitting various obligations among the new partners after the NSA is executed could further complicate the rights and responsibilities of each party. Dealing with multiple licensees in case of disputes may also be unduly burdensome for the Public Safety Broadband Licensee and delay successful resolution of issues. The D Block license has specific license conditions that are designed to facilitate successful deployment and operation of nationwide broadband system. Allowing multiple licensees in the band may impair the nationwide aspect of the broadband network.

541. The record fails to address how the conditions in the NSA will apply to new D Block licensee in cases of partitioning and disaggregation. The goal of specific construction requirements in both the partitioning and disaggregation context is "to ensure that the spectrum is used to the same degree that would have been required had the partitioning or disaggregation transaction not taken place."[1104] As we noted in the *700 MHz Further Notice*, successful negotiation of the NSA is a critical first step to achieving the benefits to public safety.[1105] If the D Block licensee is allowed partitioning and

[1099] 47 C.F.R. § 27.15.

[1100] Frontline Mar. 26 *Ex Parte* in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229 at 4, Attached Proposed Rules. Under this proposal, in partitioning, each D Block licensee should meet the build-out requirements independently within its own license area. After spectrum disaggregation, however, licensees would share the responsibility for the build-out. If either licensee fails, both licensees would be subject to forfeiture.

[1101] *700 MHz Further Notice*, 22 FCC Rcd at 8164 ¶ 277.

[1102] NPSTC *700 MHz Further Notice* Comments at 13.

[1103] NPSTC *700 MHz Further Notice* Comments at 13.

[1104] CMRS Partitioning and Disaggregation Order, 11 FCC Rcd 21831, 21864 ¶ 61 (1996).

[1105] *700 MHz Further Notice*, 22 FCC Rcd at 8165 ¶ 282.

disaggregation, the administrative burden on both D Block licensee and the public safety licensee would outweigh the benefit of flexibility to the licensee.

542. It would best service the public interest to assure reliable partnership between the D Block licensee and the potential Public Safety Broadband Licensee by prohibiting partitioning and disaggregation. We recognize that the Commission's existing Secondary Markets rules governing transfers and assignments would be applicable to the D Block licensee, providing further flexibility to the licensee.[1106] Thus, the D Block licensee would be permitted to assign or transfer its licensee subject to the Commission review and prior approval.[1107]

c. Commercial Service Issues

(i) Wholesale and Open Access Proposals

543. Background. In the *700 MHz Further Notice*, we sought comment on a proposal that the commercial licensee be required to operate as a "wholesale" provider with respect to commercial use of the Public/Private Partnership spectrum.[1108] In its comments, Frontline proposed that the commercial license to be used in the Public/Private Partnership should be allocated exclusively for a wholesale network provider whose sole focus is to operate the continuously reliable and robust network services that public safety needs.[1109] Under this "wholesale only" or "open access" proposal, the licensee would be required not to discriminate against any retail service provider, and users would be allowed to attach any devices to the network and to access services and content provided by unaffiliated parties.[1110] In its comments, Frontline suggests that the commercial licensee be prohibited from selling more than 24.9 percent of its total service capacity to any one entity, and prohibited from selling capacity to affiliated third parties.[1111]

544. Most of the comments regarding this proposal parallel the comments regarding "open access" for other 700 MHz Commercial Services spectrum, which we summarize elsewhere. Proponents cite benefits they expect will flow from adoption of the proposal,[1112] while opponents dispute such claims and predict adverse consequences.[1113] The Wireless Founders Coalition for Innovation urges us to apply

[1106] *See generally Secondary Markets Second Report and Order*, 19 FCC Rcd 17503.

[1107] Because any such application is subject to Commission review and prior approval, however, it is precluded from overnight processing.

[1108] *700 MHz Further Notice*, 22 FCC Rcd at 8163-64 ¶ 276, 8167-68 ¶ 290; *See* Frontline *700 MHz Public Safety Ninth Notice* Comments at 29-31; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 16-19. *See also* Frontline Mar. 26 *Ex Parte* in WT Docket Nos. 06-150- and 06-169 and PS Docket No. 06-229, Attach. (Frontline's proposed 47 C.F.R. §§ 27.16, 27.51).

[1109] Frontline *700 MHz Public Safety Ninth Notice* Comments at 29.

[1110] *See 700 MHz Further Notice*, 22 FCC Rcd at 8168 ¶ 290. This proposal relates to one specific block of 700 MHz Band spectrum, and is separate from PISC's proposal for open access provisions applicable to CMRS spectrum generally in the 700 MHz Band, as discussed elsewhere in this Second Report and Order. *See also* Frontline *700 MHz Public Safety Ninth Notice* Comments at 30; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 16-17; Frontline *700 MHz Further Notice Comments* at 4-5; CCIA *700 MHz Further Notice Comments* at 6.

[1111] Frontline *700 MHz Further Notice* Comments at 19-20.

[1112] *See, e.g.*, CCIA *700 MHz Further Notice* Comments at 6; Frontine *700 MHz Further Notice* Comments at 16-23; PISC *700 MHz Further Notice* Comments at 12-29.

[1113] *See, e.g.*, CTIA *700 MHz Further Notice* Comments at 17-19; Qualcomm *700 MHz Further Notice* Comments at 11-12; Verizon Wireless *700 MHz Further Notice* Comments at 45-49, 51; AT&T *700 MHz Further Notice* Reply Comments at 16-17; CTIA *700 MHz Further Notice* Reply Comments at 11, 12; MetroPCS *700 MHz Further Notice* Reply Comments at 37 n.113, 40; USD Cellular *700 MHz Further Notice* Comments at 23-24.

"Open Services, Open Devices, and Open Auction" requirements to the Public/Private Partnership spectrum "as a sandbox for entrepreneurs."[1114] RCC Consultants, however, notes that, "[t]he vast bulk of the Frontline [Comments] are addressed to matters of competition as to which public safety agencies have indicated no special interest . . . ."[1115] Arcadian observes that "no existing providers offer a wholesale service with automatic roaming and *Carterfone* benefits," and argues that "[t]he Commission should not conduct an experiment with the valuable Public/Private Partnership License spectrum, particularly if our nation's first responders are going to be relying on it."[1116] NPSTC concludes that "[o]pen access may be a viable option for the future, however, at this time not enough is known about the effects on the public safety part of the network to mandate it in the rules."[1117] CTIA, Alltel, and other carriers opposed mandatory "wholesale" requirement, arguing that the Commission should not mandate the "wholesale only" restriction for the commercial licensee and allow the innovation and market competition to determine the best course of the business model for the spectrum.[1118] Cyren Call argues that the proposal would have "very negative consequences . . . for Public Safety" because it would effectively preclude existing carriers from either participating in the auction or from entering into network hosting or other arrangements with the winning bidder.[1119] On the other hand, Google supports the mandatory wholesale/open access component of Frontline's proposal, arguing that it would "ensure that at least some of the spectrum available in the auction would lead to an open broadband platform."[1120]

545. Discussion. Based on the record, we decline to restrict the D Block licensee to operating exclusively on a "wholesale" or "open access" basis. Instead, we provide the D Block licensee with flexibility to provide wholesale or retail services or other types of access to its network that comply with our rules and the NSA. This decision is consistent with our determination, elsewhere in this Second Report and Order, to reject imposing open access requirements broadly in the 700 MHz Band. We also note that concerns about imposing such obligations on the D Block licensee have been raised by a number of public safety commenters.[1121] NPSTC, for example, states that "open access" should not be a requirement for the commercial license associated with the public/private partnership.[1122] NPSTC states that the effects of an open access environment on public safety is unknown and that, before open access is mandated, a number of core issues such as "confidentiality, authentication, integrity and non repudiation must be all understood, particularly in the public safety environment."[1123] We conclude that, given the

[1114] WFCI *Ex Parte*, WT Docket No. 06-150 (filed June 7, 2007) at 2-5.

[1115] RCC *700 MHz Further Notice* Reply Comments at 47.

[1116] Arcadian *700 MHz Further Notice* Reply Comments at 5.

[1117] NPSTC *700 MHz Further Notice* Reply Comments at 9.

[1118] *See* Cyren Call *700 MHz Further Notice* Comments at 24-29; CTIA *700 MHz Further Notice* Comments at 18, 23; Alltel *700 MHz Further Notice* Comments at 6; MetroPCS *700 MHz Further Notice* Comments at 52-55; AT&T *700 MHz Further Notice* Reply Comments at 16-17; CTIA *700 MHz Further Notice* Reply Comments at 12; MetroPCS *700 MHz Further Notice* Reply Comments at 33-34; Stelera *700 MHz Further Notice* Reply Comments at 6.

[1119] Cyren Call *700 MHz Further Notice* Comments at 26; *see also id.* at 29 (Commission should not tie the partnership to a business model with an "uncertain commercial reception and unknown level of acceptance").

[1120] Google *700 MHz Further Notice* Comments at 8-9.

[1121] *See, e.g.*, NPSTC July 6, 2007 *Ex Parte* at 2; APCO *700 MHz Further Notice* Reply Comments at 5.

[1122] NPSTC July 6, 2007 *Ex Parte* at 2.

[1123] NPSTC *700 MHz Further Notice* Reply Comments at 8-9. Cyren Call expresses similar concerns, and states that there are a number of "compelling reasons for rejecting the requirement the 'open access' 'wholesale' model." Cyren Call *700 MHz Further Notice* Comments at 28 (stating that a shared network will have multiple levels of (continued....)

public/private partnership obligations adopted in this Second Report and Order, it would not serve the goals of the Public/Private Partnership to impose special wholesale or open-access requirements (*e.g.*, device, application, or network access conditions) on the D Block licensee specifically. Rather, giving the D Block licensee the flexibility to choose the commercial service it will provide based on its determination of market needs should improve the viability of the 700 MHz Public/Private Partnership and serve the interests of public safety.

546. With respect to the network services offered to public safety, we note that the negotiated terms adopted in the NSA will establish consistent technical requirements for attachment of commercial and public safety devices to the network, as necessary for appropriate network control. The Public Safety Broadband Licensee will also have the right to determine and approve specifications for public safety equipment used on the network, to the extent that such specifications are not inconsistent with network control requirements established in the NSA.

(ii) Roaming Proposal

547. Background. In the *700 MHz Further Notice* we sought comment on Frontline's proposal that its proposed commercial licensee be required, as a condition of its license, to offer roaming to any provider with customers utilizing devices compatible with the open protocol interface of the Public/Private Partnership network, and that such obligation be extended to all spectrum holdings of the commercial licensee.[1124] Frontline argued that this requirement would serve as a benefit to competition generally and small and rural commercial providers particularly.[1125]

548. Supporters of the proposal contend that this requirement will promote public safety in rural areas and that access to a robust, reliable, high-quality wireless network will enable small clinics and mobile health care workers in otherwise uncovered areas to access state-of-the-art IP applications such as remote video feeds and the downloading of visual information.[1126] On the other hand, CTIA, MetroPCS and others oppose Frontline's proposal, arguing that the roaming requirement as well as the wholesale requirement conflict with current CMRS carriers business models and that the Commission should refrain from dictating specific business decisions for the commercial licensee.[1127] Cyren Call further argues against the proposal, as it did with the open access and wholesale proposals, on the grounds that it "would cause more harm than good to take any action that will have as its effect the preclusion of existing wireless carriers from choosing to participate in the [D Block license] auction, or from choosing to enter

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priority access, encryption, and other forms of secured communications requirements, which raise significant unanswered questions vis-à-vis an open access requirement).

[1124] *700 MHz Further Notice*, 22 FCC Rcd at 8162 ¶ 274; Frontline *700 MHz Public Safety Ninth Notice* Comments at 32-33; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 21.

[1125] *See* Frontline *700 MHz Further Notice* Comments at 24-25 (roaming requirement "will promote and protect competition by enabling mid-sized and rural carriers to remain viable wireless competitors in a concentrated market.").

[1126] *See* Frontline *700 MHz Public Safety Ninth Notice* Comments at 32-33; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 21; CCIA *700 MHz Further Notice Comments* at 7; Cellular South *700 MHz Further Notice Comments* at 19-20; Frontline *700 MHz Further Notice Comments* at 4-5, 14-21; Google *700 MHz Further Notice Comments* at 8-9; CCIA *700 MHz Further Notice Reply Comments* at 6-7; Cellular South *700 MHz Further Notice Reply Comments* at 19-20.

[1127] *See* CTIA *700 MHz Further Notice Comments* at 18; Cyren Call *700 MHz Further Notice Comments* at 24-29; MetroPCS *700 MHz Further Notice Comments* at 52, 54; NENA *700 MHz Further Notice Comments* at 8; CTIA *700 MHz Further Notice Reply Comments* at 18; Cyren Call *700 MHz Further Notice Reply Comments* at 24-29; MetroPCS *700 MHz Further Notice Reply Comments* at 52, 54; NENA *700 MHz Further Notice Reply Comments* at 8.

into network hosting or other arrangements . . . with the winning [D Block license] bidder."[1128]

549. Discussion. We note that the Commission is already considering in another proceeding a broad range of issues related to the automatic roaming obligations for CMRS carriers.[1129] We conclude that we should defer to the broader context of the pending roaming proceeding the determination of whether there are public interest benefits in also requiring automatic roaming to be provided by other commercial licensees. In addition, with regard to the D Block license specifically, we find that the proposed roaming requirement, which Frontline advocates as a benefit to competition generally and small and rural commercial providers particularly,[1130] is not related to the public safety purposes of the Public/Private Partnership, and may, as Cyren Call argues, deter qualified carriers from seeking to bid on the D Block license. We will therefore not at this time impose any special roaming requirements on the D Block licensee.

(iii) Applicability of CALEA, E911, and Other Requirements

550. Background. As part of its proposal on which we sought comment, Frontline asked the Commission to clarify that the regulatory requirements under the Communications Assistance for Law Enforcement Act (CALEA) and E911 rules, as well as "other requirements applicable to retail service providers," do not apply to its proposed commercial licensee.[1131] Frontline argued that the commercial licensee will be providing only wholesale service, that any retailer of its service will be subject to any "CALEA, E911, or other requirements applicable to retail service providers," and that, therefore, "no gap in the enforcement of these requirements will result from Frontline's proposals."[1132]

551. USCC opposes Frontline's requested clarification, stating that "CALEA and E911 are crucial mandates, upon which Frontline's future competitors have spent and will spend millions of dollars."[1133] A number of comments respecting regulatory requirements such as CALEA, E911, and hearing aid compatibility[1134] focus on the Commission's proposed clarification in the *700 MHz Commercial Services Notice*.[1135] CTIA supports the Commission's tentative conclusion in the *700 MHz Commercial Services Notice* that certain services using Part 27 spectrum should be required to fulfill E911 and hearing aid compatibility obligations consistent with the Commission's existing functional criteria for those requirements.[1136] NENA further argues that the burden should be on parties seeking

[1128] Cyren Call *700 MHz Further Notice* Comments at 26.

[1129] *See* Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Automatic and Manual Roaming Obligations Pertaining to Commercial Mobile Radio Services, WT Docket No. 05-265, *Memorandum Opinion & Order and Notice of Proposed Rulemaking*, 20 FCC Rcd 15047, 15048 ¶ 2 (2005) ("*Roaming Reexamination NPRM*").

[1130] *See* Frontline *700 MHz Further Notice* Comments at 24-25 (roaming requirement "will promote and protect competition by enabling mid-sized and rural carriers to remain viable wireless competitors in a concentrated market.").

[1131] *See* Frontline Mar. 26 *Ex Parte* in WT Docket No. 06-150 and 06-169 and PS Docket No. 06-229 at 8. *See also* 47 C.F.R. § 20.18 (establishing E911 requirements for CMRS providers); 5 U.S.C. § 603 (CALEA); 47 C.F.R. Part 1, Subpart Z (establishing requirements under CALEA).

[1132] *See* Frontline Mar. 26 *Ex Parte* in WT Docket No. 06-150 and 06-169 and PS Docket No. 06-229 at 8.

[1133] USCC *700 MHz Further Notice* Comments at 21.

[1134] *Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones*, Report and Order, 18 FCC Rcd 16753, 16764-66 (2003).

[1135] *See 700 MHz Commercial Services Notice*, 22 FCC Rcd at 9388-90 ¶¶ 99-103.

[1136] *See, e.g.*, CTIA *700 MHz Commercial Services Notice* Comments at 21 ("With respect to wireless services, such an approach is dictated by the public safety and public interest determinations underlying the Commission's E911 (continued....)

exemption from E911 obligations to file for a waiver.[1137] By setting the expectation that the Commission's E911 rules will be applicable to services operating in the 700 MHz Band, NENA believes that the repeated rulemakings and costly retrofitting that occurred in the past may be avoided.[1138] In its more recent filings, Frontline modifies its original proposal and now proposes that the commercial licensee will be subject to CALEA requirements and that it must "ensure that the shared network will not inhibit service-specific requirements, such as E911, provided by retailers of commercial services using the shared network ."[1139]

552. Discussion. We decline to categorically exempt services offered by the D Block licensee from E911, CALEA, and other regulatory requirements. Instead, we clarify that E911, CALEA, and other regulatory requirements will apply to services provided using Public/Private Partnership spectrum to the extent and only to the extent that these requirements apply to similar services provided elsewhere in the 700 MHz Band. We have only recently concluded that the E911 requirements established in Section 20.18 of our rules will apply to all commercial mobile radio services, including such services throughout the 700 MHz Band, that meet the functional criteria in Section 20.18(a),[1140] and we see no reason to revisit that decision.[1141] We defer any further examination of regulatory applicability to a more concrete and particular context, *e.g.*, if service providers seek clarification regarding the applicability of a specific regulatory requirement to their specific service.[1142]

553. We also note that, even though the D Block license for spectrum in the "D Block" band will be issued pursuant to Part 27 of the Commission's rules, the licensee will be required to comply with other rule parts, which are applicable to the other commercial 700 MHz bands, unless otherwise stated in this Second Report and Order.[1143] Some of these rule parts will be applicable by virtue of the fact that they apply to all licensees and others will apply depending on the type of services the D Block licensee provide. For example, the D Block licensee will be required to comply with the practices and procedures listed in Part 1 of our rules for license applications, adjudicatory proceedings, etc. In addition, to the extent the licensee provides a Commercial Mobile Radio Service, such service would be subject to the provisions of Part 20 of the Commission's rules, along with the provisions in Part 27.[1144] Part 20 applies to all CMRS providers, even though the stations may be licensed under other parts of our rules.

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and HAC rules, as well as fundamental principles of regulatory parity."); *see also* NENA *700 MHz Commercial Service Notice* Comments at 6 (Commission should make the E911 requirements of Section 20.18 of the Commission's rules applicable to all services operating in the 700 MHz Band that meet the functional criteria set forth in Section 20.18(a) of the rules).

[1137] NENA *700 MHz Commercial Services Notice* Comments at 6.

[1138] *Id.*

[1139] Frontline July 3, 2007 *Ex Parte* at 1-2.

[1140] *See 700 MHz Report and Order*, 22 FCC Rcd at 8108-21 ¶¶ 120-150. We note that while the Commission concluded that providers of digital CMRS in the 700 MHz Commercial Services Band, among others, should be subject to hearing aid-compatibility requirements, it declined to impose such requirements until an appropriate technical standard for compatibility is established, and it established a 24-month period to provide time for the development of such a standard. *See id.* at 8108-21 ¶¶ 142-150.

[1141] We also note that we are not mandating wholesale services in this band.

[1142] We therefore express no opinion as to the applicability of any particular regulatory obligation to providers of wholesale broadband network capacity.

[1143] *See, e.g.*, *Upper 700 MHz Report and Order*, 15 FCC Rcd 476, 509-513 ¶¶ 81-92 (2000).

[1144] 47 C.F.R. Part 20.

IV. PROCEDURAL MATTERS

A. Regulatory Flexibility Act

554. Pursuant to the Regulatory Flexibility Act of 1980, as amended (RFA),[1145] the Final Regulatory Flexibility Analysis (FRFA) for the Second Report and Order is set forth in Appendix C. Although Section 213 of the Consolidated Appropriations Act 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,[1146] we nevertheless believe that it would serve the public interest to analyze the possible significant economic impact of the policy and rule changes in this band on small entities. Accordingly, the FRFA in Appendix C of this Second Report and Order includes an analysis of this impact in connection with all spectrum that falls within the scope of the Second Report and Order, including spectrum in the 746-806 MHz Band.

B. Paperwork Reduction Act of 1995

555. The Second Report and Order contains both new and modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. Comments should address the following: (a) whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4), we previously sought specific comment on how the Commission might "further reduce the information collection burden for small business concerns with fewer than 25 employees." In this present document, we have assessed the potential effects of the various policy changes with regard to information collection burdens on small business concerns, and find that there are no results specific to businesses with fewer than 25 employees. In addition, we have described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix C, *infra*. We note, however, that Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 36 megahertz of the spectrum in the 746-806 MHz Band allocated for commercial use become effective immediately upon publication in the Federal Register without regard to certain sections of the Paperwork Reduction Act.[1147] We are therefore not inviting comment on any information collections that concern those frequencies.

V. ORDERING CLAUSES

556. Accordingly, IT IS ORDERED that pursuant to Sections 1, 4(i), 5, 7, 10, 201, 202, 208, 214, 215, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 229, 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 312, 316, 324, 331, 332, 333, 336, 337, 403, 503, and 710, of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 155, 157, 160, 201, 202, 208, 214, 215, 222(d)(4)(A)-(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)-(5), 251(e)(3), 229, 301, 303, 307, 308, 309, 310, 311, 312,

[1145] *See* 5 U.S.C. § 604.

[1146] In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)-(B); *see* 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)-(B).

[1147] *Id.*