

Before the
Federal Communications Commission
Washington, D.C. 20554

MAILED

NOV 27 2007

In the Matter of)
)
Implementing a Nationwide, Broadband,)
Interoperable Public Safety Network in the 700)
MHz Band)

PS Docket No. 06-229

FCC

ORDER

Adopted: November 19, 2007

Released: November 19, 2007

By the Commission:

I. INTRODUCTION

1. In this Order, we grant the application of the Public Safety Spectrum Trust Corporation (PSSTC) for the single nationwide license for the public safety 700 MHz broadband spectrum allocation (i.e., the Public Safety Broadband License).¹

II. BACKGROUND

2. On July 31, 2007, we adopted a *Second Report and Order* revising the rules governing the 700 MHz band.² In the *Second Report and Order*, we re-designated ten megahertz of public safety 700 MHz spectrum (763-768/793-798 MHz) for the purpose of establishing a nationwide, interoperable broadband public safety communications network. We also created a single nationwide license for this spectrum – the Public Safety Broadband License.³ Further, we stated that we would assign this license to a single entity – the Public Safety Broadband Licensee (PSBL).⁴ The Public Safety Broadband License and the PSBL were created for the purpose of partnering with a commercial entity – the auction winner of the immediately adjacent ten megahertz of commercial “D Block” spectrum – in order to facilitate a public/private partnership (the 700 MHz Public/Private Partnership) that would result in the build out of this nationwide public safety network.⁵

3. The *Second Report and Order* also specified the following baseline criteria that the PSBL must satisfy: (1) no commercial interest may be held in or participate in the management of the PSBL; (2) the PSBL must be a non-profit organization; (3) the PSBL must be as broadly representative of the

¹ The license includes ten megahertz of broadband spectrum (763-768/793-798 MHz) and two megahertz of guard band spectrum between the public safety broadband and public safety narrowband allocations (768-769/798-799 MHz). See *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, PS Docket No. 06-229, WT Docket No. 96-86, *Second Report and Order*, 22 FCC Rcd 15289, 15419 ¶ 366, 15415 ¶ 348 (2007) (*Second Report and Order*).

² See generally *Second Report and Order*, 22 FCC Rcd 15289.

³ The license area of the Public Safety Broadband License encompasses the contiguous 48 states, Alaska, Hawaii, the Gulf of Mexico, and the U.S. territories. *Id.* at 15427 ¶ 385 n.825.

⁴ *Id.* at 15419 ¶ 366.

⁵ See generally *id.* at 15428-79 ¶¶ 386-553.

public safety community as possible; and (4) the PSBL must submit written certifications from at least ten geographically diverse state and local government entities in support of its candidacy.⁶ To further ensure that the PSBL focuses exclusively on the broadband needs of public safety entities, the Commission specified the composition of the PSBL's board of directors⁷ and identified specific minimum elements of its Articles of Incorporation and Bylaws.⁸

4. On September 10, 2007, the Public Safety and Homeland Security Bureau issued a *Public Notice* soliciting applications for the Public Safety Broadband License and establishing a deadline of October 10, 2007 for submitting applications.⁹ The *Public Notice* reiterated the criteria set forth in the *Second Report and Order* and provided filing instructions for applicants.

5. In response to the *Public Notice*, we received one application for the Public Safety Broadband License. The application was filed by the PSSTC, an entity incorporated under the laws of the District of Columbia as a non-profit corporation.¹⁰ In its application, PSSTC states that it exceeds the eligibility criteria set forth in *Second Report and Order* and the *Order on Reconsideration* to hold the Public Safety Broadband License.¹¹ The PSSTC asserts that it is managed and controlled by public safety entities, has no commercial interests, is a non-profit organization, and is broadly representative of the public safety community.¹² Further, PSSTC states that it has provided the necessary written certifications

⁶ *Id.* at 15421-22 ¶ 373.

⁷ *Id.* at 15422-23 ¶ 374. The *Second Report and Order* requires that the PSBL be governed by a voting board consisting of eleven members, one each from the nine organizations representative of public safety listed below, and two at-large members selected by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau, jointly on delegated authority. We subsequently revised the composition of the Public Safety Broadband License board of directors, adding three designated members, removing one, and increasing the number of at-large members from two to four. Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06-229, WT Docket No. 96-86, *Order on Reconsideration*, FCC 07-171 at ¶¶ 2, 4-5 (rel. Sept. 24, 2007) (*Order on Reconsideration*). On November 9, 2007, the Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau jointly announced the four at-large members. Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Four At-Large Members of the Public Safety Broadband Licensee's Board of Directors, PS Docket No. 06-229, *Public Notice* (DA 07-4593, rel. Nov. 9, 2007) (*PSHSB/WTB Public Notice*). Accordingly, the Public Safety Broadband Licensee's board of directors is required to consist of the following fifteen organizations: the American Association of State Highway and Transportation Officials (AASHTO); the American Hospital Association (AHA) (at-large); the Association of Public-Safety Communications Officials – International (APCO); the Forestry Conservation Communications Association (FCCA); the International Association of Chiefs of Police (IACP); the International Association of Fire Chiefs (IAFC); the International City/County Management Association (ICMA); the International Municipal Signal Association (IMSA); the National Association of State 9-1-1 Administrators (NASNA) (at-large); the National Association of State Emergency Medical Services Officials (NASEMSO); the National Emergency Management Association (NEMA) (at-large); the National Emergency Number Association (NENA); the National Fraternal Order of Police (NFOP) (at-large), the National Governor's Association (NGA); and the National Sheriffs' Association (NSA).

⁸ *Second Report and Order* at 15423-25 ¶ 375.

⁹ Public Safety and Homeland Security Bureau Solicits Applications for the 700 MHz Public Safety Broadband License, *Public Notice*, DA 07-3885 (PSHSB Sept. 10, 2007) (*Public Notice*).

¹⁰ See Application of the Public Safety Spectrum Trust Corporation to Be the 700 MHz Public Safety Broadband Licensee, at 2 (filed Oct. 10, 2007) (PSSTC Application).

¹¹ *Id.* at 3.

¹² *Id.* at 2-3.

from at least ten geographically diverse state and local government entities.¹³ In addition, PSSTC provides a description of the organization, including its Articles of Incorporation, and a discussion of how it is qualified to carry out the duties and responsibilities of the PSBL.¹⁴

III. DISCUSSION

A. Responsibilities and Role of the PSBL

6. The Commission retains significant oversight of the 700 MHz Public/Private Partnership, including monitoring negotiations and adjudicating disputes arising during the negotiation or implementation of the Network Sharing Agreement (NSA) -- to be executed between the PSBL and the commercial D Block auction winner -- and ultimately approving the NSA itself. The PSBL, however, will bear a significant responsibility and play a substantial role in ensuring the success of the 700 MHz Public/Private Partnership. Among other things, the PSBL must:

- Act as chief promoter of the broadband spectrum needs of public safety entities;
- Negotiate the NSA with the D Block auction winner;
- Administer access to the 700 MHz public safety broadband network;
- Assess usage fees;
- Approve equipment and applications used by public safety entities;
- Oversee the relocation of 700 MHz public safety narrowband operations;
- Review requests for early local build-outs and wideband waiver requests;
- Manage the internal guard band between public safety broadband and narrowband operations; and
- Manage priority access to commercial broadband spectrum in the D Block during emergencies (as defined in the NSA).

7. Fulfilling these obligations will require a significant commitment on the part of the PSBL. Moreover, the PSBL must establish an enduring relationship with all sectors of the public safety community, and assume a relationship with the D Block licensee reflective of a partnership in the true sense of the word, not just in name. As we recognized in the *Second Report and Order*, our goal was to maximize public safety access to interoperable, broadband spectrum in the 700 MHz Band, and to foster and promote the development and deployment of advanced broadband applications using modern, IP-based system architecture.¹⁵ Promoting commercial investment in the build-out of a shared network infrastructure, however, is absolutely necessary to address the limited availability of public funding for such enterprises.¹⁶ We intended the framework we adopted for the 700 MHz Public/Private Partnership to strike an appropriate balance between necessary commercial investment and the needs of public safety.

¹³ *Id.* at 7 & Attachment 3.

¹⁴ *Id.* at 2-7.

¹⁵ *Second Report and Order* at 15431 ¶ 396.

¹⁶ *Id.*

As partners, the D Block auction winner/licensee and the PSBL will share the responsibility of maintaining this essential balance.

B. Qualifications of the PSSTC

8. *Baseline Criteria.* We find that that granting the application of the PSSTC to hold the Public Safety Broadband License is consistent with the requirements of the *Second Report and Order* and *Order on Reconsideration*, and serves the public interest. First, subject to the condition set forth at the end of this paragraph, the PSSTC meets the baseline eligibility criteria to hold the 700 MHz Public Safety Broadband License.¹⁷ The PSSTC holds no commercial interests, and no commercial interest is part of its management.¹⁸ Further, the PSSTC is a non-profit organization, is broadly representative of the public safety community, and, subject to the following condition, satisfies the organizational requirements (for both the board of directors and the Articles of Incorporation and Bylaws) specified by the Commission.¹⁹ We impose this condition because the PSSTC's board of directors does not include the four at-large members that we have required the PSBL board of directors to include (AHA, NASNA, NEMA, and NFOP), due to the fact that we only recently announced their selection, which we made after the PSSTC submitted its application. (Otherwise, the PSSTC's board of directors includes the representation required by the *Second Report and Order* and *Order on Reconsideration*.²⁰) Accordingly, we condition the grant of the PSSTC's application on conformance with the requirements for the composition of the PSBL board and any related organizational documents, pursuant to the Commission's orders and the *PSHSB/WTB Public Notice*.

9. *Other Application Requirements.* We also find that the PSSTC's application meets the other requirements specified in the *Public Notice*.²¹ For example, the PSSTC provided written certifications from fourteen geographically diverse state and local governmental entities, with at least one certification from a state government entity and one from a local government entity.²² Each of these certifications verified that: (1) the certifying entity has authorized the applicant to use spectrum at 763-768 MHz and 793-798 MHz to provide the certifying entity with public safety services; and (2) the certifying entity's primary mission is the provision of public safety services.²³ In addition, the PSSTC provided a description of the organization, including information on founders and organizational structure, and a discussion of its qualifications to carry out the duties and responsibilities of the PSBL.²⁴ As we noted in the *Second Report and Order*, in establishing the baseline criteria for the PSBL, the goal was to ensure that the PSBL focuses exclusively on the needs of public safety entities that stand to benefit from the interoperable broadband network.²⁵ Moreover, we expected that the entity selected as the PSBL would leverage the expertise of its members and its experience with public safety radio operations to

¹⁷ See *Public Notice* at 2.

¹⁸ PSSTC Application at 3.

¹⁹ *Id.*

²⁰ *Id.* at 3 & n.4.

²¹ See *Public Notice* at 2-3. On November 6, 2007, PSSTC submitted an amendment to its application to include two missing signature pages concerning the "Amended and Restated Bylaws" and "Written Consent in Lieu of Meeting of the Board of Directors." See Letter from Robert M. Gurrss, APCO, to Derek Poarch, Chief, Public Safety and Homeland Security Bureau, FCC, dated Nov. 5, 2007.

²² PSSTC Application, Attachment 3.

²³ *Id.*

²⁴ *Id.* at 2-7, Attachment 1 and Attachment 2.

²⁵ *Second Report and Order* at 15421-22 ¶ 373.

manage the obligations of the PSBL.²⁶ The broad range of experience represented by the members of the PSSTC, coupled with the safeguards adopted in the *Second Report and Order*, will ensure that the needs of all members of the public safety community are met, and that sound technological and operational decisions are made in managing this critical asset.

10. *Ability to Meet PSBL Responsibilities and Fulfill PSBL Role.* We recognize the importance of the PSBL to the overall success of building a nationwide public safety broadband network in the 700 MHz band.²⁷ Thus, we take very seriously the need to select a well-qualified entity that is committed to this objective. We find that granting the PSSTC's application to hold the Public Safety Broadband License is in the public interest. The PSSTC has demonstrated to our satisfaction that it is well-qualified to hold the Public Safety Broadband License. Based on the information provided in its Application, the PSSTC is committed to achieving the objectives of a nationwide, interoperable broadband public safety network we embraced in the *Second Report and Order*.

11. The PSSTC's participants are drawn from law enforcement, fire, emergency medical services, forestry conservation, and transportation, encompassing agencies ranging from the large, medium to small across urban, suburban, and rural areas, with full time and volunteer agencies represented.²⁸ This inclusion of representatives from all facets of the public safety community across the country demonstrates the PSSTC's commitment to be broadly representative of the public safety community at large in achieving participation in a public safety broadband network having a nationwide level of interoperability. The PSSTC's composition also ensures that the needs of the entire public safety community will be taken into consideration as a nationwide, interoperable 700 MHz broadband network emerges.²⁹ In addition, the member organizations that make up the PSSTC have extensive expertise in operating public safety communications systems, managing spectrum use, and responding to emergencies. This collection of expertise is an invaluable resource and a further example of the PSSTC's qualifications to develop a workable, flexible wireless broadband network that will meet the broadband needs of the public safety community.

12. The PSSTC also acknowledged in its application that both the D Block auction winner and the PSBL must conduct negotiations and ensure that the relationship between the two organizations is "permeated by good faith."³⁰ PSSTC also recognized that the shared network must not only serve the needs of the public safety community, but must also be commercially viable in order for both the public safety community and general public to realize the network's benefits.³¹ These representations made by the PSSTC convince us that the PSSTC appreciates, and is capable of properly carrying out, its role as a partner with the D Block auction winner/licensee in order to best ensure a successful implementation of the public safety broadband network. We fully expect that, as the PSBL, the PSSTC will adhere to these principles, and the Commission remains committed to ensuring that both partners fulfill their obligations.

²⁶ See, e.g., *id.* at 15413-14 ¶ 344.

²⁷ *Second Report and Order* at 15425 ¶ 379.

²⁸ PSSTC Application at 4; Attachment 2.

²⁹ One of the Commission's goals in this proceeding was to ensure that the 700 MHz Public Safety Broadband Licensee focuses on the needs of public safety entities that stand to benefit from the broadband network. See *Second Report and Order* at 15421-22 ¶ 373.

³⁰ PSSTC Application at 5-6. Pursuant to the *Second Report and Order*, both the PSBL and D Block auction winner must act in good faith in negotiating and performing under the NSA. *Second Report and Order* at 15464 ¶ 505.

³¹ PSST Application at 6.

IV. CONCLUSION

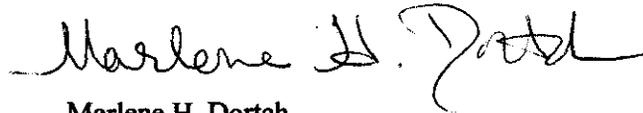
13. For the reasons specified above, we grant the application of the PSSTC for the 700 MHz Public Safety Broadband License, subject to the condition specified above in paragraph 8.³²

V. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED that, pursuant to Sections 4(i), 303(f), 332, 337 and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 303(f), 332, 337 and 405, this Order IS HEREBY ADOPTED.

15. IT IS FURTHER ORDERED that the Application filed by the Public Safety Spectrum Trust Corporation on October 10, 2007 IS GRANTED, subject to the condition specified herein.

FEDERAL COMMUNICATIONS COMMISSION



Marlene H. Dortch
Secretary

³² The Public Safety Broadband License includes the 700 MHz guard band segments (768-769/798-799 MHz). See *Second Report and Order* at 15415 ¶ 348.