

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands	)	WT Docket No. 06-150
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229
	)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86
	)	
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**COMMENTS OF VERIZON WIRELESS**

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**COMMENTS OF VERIZON WIRELESS**

**I. INTRODUCTION AND SUMMARY**

The development of a nationally interoperable system for public safety communications has been a public policy objective for decades, and its paramount importance became apparent in the aftermath of the 9/11 terrorist attacks.<sup>1</sup> In its *Second Report and Order*, the Commission adopted a “centralized and national approach” to meet this objective by inducing the construction of a nationwide wireless broadband network for public safety use.<sup>2</sup> To address the limited

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<sup>1</sup> See Congressional Research Service, CRS Report for Congress: Public Safety Communications Policy, 1 (Jan. 31, 2007) (tracing interoperability concerns to 1982 plane crash in Washington, D.C.); see also Dep’t of Homeland Security, The System of Systems Approach for Interoperable Communications, 6 (same), available at [www.safecomprogram.gov](http://www.safecomprogram.gov).

<sup>2</sup> Second Report and Order, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, 22 FCC Rcd 15289, ¶ 365 (2007) (“*Second Report and Order*”).

availability of public funding to construct such a network, the Commission adopted a regulatory framework that would establish a public/private partnership between a 700 MHz commercial licensee of the “D Block” and a 700 MHz Public Safety licensee.<sup>3</sup> The Commission posited that such a partnership would promote commercial investment in the construction of a shared network that would satisfy public safety’s needs, as well as the communications needs of the general public.<sup>4</sup> While this goal is a laudable one, the D Block partnership framework established in the *Second Report and Order* is fundamentally flawed, as evidenced by the failure to secure a commercial partner in the recently concluded 700 MHz auction.

The Commission is now faced with the task of reassessing its D Block rules. It would be a mistake to use this proceeding merely to determine how to re-auction the D Block under what would amount to so-called “D Block Lite” conditions.<sup>5</sup> Instead, the Commission should take full advantage of this proceeding to undertake a comprehensive evaluation of public safety’s communications needs and to re-examine whether the D Block national partnership approach remains the best way to ensure that our nation’s first responders have access to the communications systems they need on a timely and nationwide basis.

Experience suggests that it may not be. The failure of the D Block auction to attract a successful bidder cannot be remedied by simply reducing the minimum reserve price, eliminating the default penalty, or rolling back the network build-out requirements. Although each of these license conditions contributed to the lack of commercial interest in the D Block,

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<sup>3</sup> *Id.* ¶ 396.

<sup>4</sup> *Id.*

<sup>5</sup> *See Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecom. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008) (statement of Rep. Harman).

there were good reasons for their adoption, and they are not the primary reasons that the auction failed. The D Block approach, which is based on the premise that a commercial entity will build a broadband network for public safety in exchange for gaining access to public safety's spectrum, is fundamentally flawed. The cost of building such a network far exceeds the value of the spectrum that public safety would contribute, and the amount of revenue that might be generated from the network from both public safety and commercial users is impossible to predict under the framework adopted by the Commission. Moreover, the uncertainty associated with the "buy now, negotiate later" approach set forth in the *Second Report and Order* puts prospective bidders in the position of not knowing what obligations they might be incurring. As a result, prospective bidders cannot determine whether the public/private partnership represents a profitable venture that warrants investing billions of dollars.

The Commission should use this proceeding to step back and reassess what it hopes to accomplish for public safety with the remaining 700 MHz spectrum. In the Ninth Notice of Proposed Rulemaking that led to the adoption of the nationwide D Block partnership model, the Commission identified its top three objectives to be the attainment of nationwide interoperability, the deployment of broadband, and the identification of adequate funding sources for public safety communications.<sup>6</sup> While these objectives are related, they are not the same, and they may each demand different policy approaches and entail different trade-offs. The Commission should confirm whether these remain the top objectives and how they can best be balanced. That, in turn, requires a comprehensive evaluation of public safety's communications

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<sup>6</sup> Ninth Notice of Proposed Rulemaking, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, 21 FCC Rcd 14837, ¶¶ 11-14 (2006) ("*Ninth Notice*").

needs – driven by input from the public safety community. Only then can the Commission decide how the remaining 700 MHz spectrum can be most effectively used.

Verizon Wireless strongly believes that public safety should have the benefit of the very best communications technologies available and looks forward to hastening their deployment to public safety users. With so much at stake in this proceeding, we welcome the opportunity to assist the Commission in this important task and respectfully provide below our comments, which can be summarized as follows:

**1. *The D Block concept is fundamentally – and fatally – flawed.*** The capital investment required to construct a nationwide, broadband network built to public safety’s more rigorous standards is substantial, far outweighing the investment in spectrum that might be saved by having public safety contribute its spectrum to the partnership. This would be true even if the D Block were given away for free. Moreover, the “buy now, negotiate later” auction structure is plagued with uncertainty because it deprives potential bidders of the information necessary to evaluate the consequences of a winning bid. Even if the Commission were prepared to provide additional certainty by better defining the specifications of the prospective network, doing so would not be enough to rehabilitate the D Block concept because there is no way of knowing how much of the network’s capacity would be required by public safety and how much would be available for commercial use or how much revenue the network would generate.

**2. *Public/private partnerships can address the communications needs of public safety, but they require a framework that provides a clear description of public safety’s requirements and proper incentives for commercial participation.*** Despite the fundamental flaws of the D Block concept, Verizon Wireless continues to believe that public safety can benefit when the public and private sectors develop effective partnerships. In order to achieve that goal, the

Commission should begin by re-assessing public safety's needs and priorities and then determine whether those needs and priorities are best addressed through the proposed national broadband network or through some other means. For example, what role should the proposed national broadband network play in addressing the lack of interoperable, mission-critical voice communication systems available to first responders? Is it the Commission's intent that the national broadband network be used as a replacement for the thousands of local narrowband public safety networks that are deployed throughout the country? Or, is it expected that these networks will coexist, and therefore, will need to be interoperable with one another? Local governments and others have made, and will continue to make, substantial investments in narrowband Land Mobile Radio (LMR) systems to promote greater interoperability and to meet the Commission's narrowbanding requirements.<sup>7</sup> The Commission needs to assess how its pursuit of a nationwide wireless broadband network will affect efforts to achieve voice interoperability on existing LMR systems, and whether the public safety community as a whole is committed to that approach. Ensuring that the spectrum is used in accordance with public safety priorities should be the guiding principle of this proceeding.

The Commission must also attend to the private side of the public/private partnership by ensuring that its approach is commercially viable and provides proper commercial incentives. Public safety users already rely on commercial voice and data services, and commercial infrastructure can play a key role in the future development of public safety networks. An

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<sup>7</sup> See Third Memorandum Opinion and Order, Third Further Notice of Proposed Rule Making and Order, *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 As Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, 19 FCC Rcd 25045 (2004); Testimony of Deputy Chief Charles F. Dowd, Before the House Committee on Telecommunications and the Internet, at 3 (April 15, 2008) (noting that "narrowbanding will require New York City to replace its entire radio system at an estimated cost of over 400 million dollars").

effective public/private partnership requires clearly defined expectations and obligations, selection of commercial partners through an open and competitive process, and an opportunity for both the public and private partners to fully assess the benefits and risks of the arrangement. The D Block approach does not satisfy these criteria. While we will keep an open mind as to the Commission's ability to correct these deficiencies, we are skeptical about its ability to do so and believe that other alternatives should be considered. In particular, we believe these requirements are more likely to be met through a competitive request for proposal (RFP) process than through an auction because RFPs allow for the consideration of a broad range of alternatives and enable public safety to partner with whomever develops the proposal that best suits their needs and resources. The Commission also should reject calls to impose eligibility limits that would exclude the major carriers from serving public safety because their exclusion would increase both the cost and deployment time of public safety wireless broadband systems. Because the primary purpose of this proceeding is to serve the interests of public safety, it should not be used to pursue unrelated policy objectives regarding market entry and diversification of ownership.

**3. *A centralized national licensing scheme is not required to develop and operate a nationally integrated system.*** The centralized approach to the construction and operation of the network set forth in the *Second Report and Order* is not the only way of achieving national interoperability or national broadband deployment. The Commission should consider whether a nationally integrated broadband network might be more effectively developed on a so-called "network of networks" or "system of systems" basis using regional licenses, subject to national standards to ensure nationwide interoperability.

**4. *The Commission should enforce the principle that private entities should be prohibited from profiting from the management role of the Public Safety Spectrum Trust***

*(PSST)*. In the discussions leading up to Auction 73, Cyren Call undermined this principle by proposing terms that would have created a specially privileged competitor to the D Block winner. The Inspector General's investigation was informative but insufficient in addressing the numerous issues that have been raised regarding Cyren Call's relationship with the PSST. For example, questions remain over the terms of Cyren Call's loan to the PSST and whether it violates either the letter or spirit of the Commission's rules. The Commission should request that Cyren Call and the PSST provide the information that would be necessary to evaluate what safeguards are needed if they continue to play a role in the disposition of the remaining 700 MHz spectrum.

## **II. THE D BLOCK CONCEPT IS FUNDAMENTALLY AND FATALLY FLAWED.**

The Commission's previous attempt to induce the construction of a new nationwide broadband network for public safety by trading spectrum for capital investment was an innovative concept, but the economics did not – and cannot – work. The costs of building out a network to meet public safety specifications far exceed the value of the remaining 700 MHz spectrum. And the uncertainties inherent in how public safety would use that network, what they would pay, and what capacity would remain for commercial use make it infeasible for potential bidders to forecast the revenues the new network would generate and therefore to justify a business case for bidding on the D Block. These uncertainties were exacerbated by the auction's "buy now, negotiate later" structure, which left most of the details of the public/private partnership to be negotiated after the auction and meant that potential bidders had no way of knowing what specific obligations they would assume if they were to win the D Block.

Although the Commission recognizes that a "buy now, negotiate later" model will discourage participation in a re-auction of the D Block and apparently intends to take steps to

increase certainty about the respective partners' obligations,<sup>8</sup> ultimately the problems with the D Block concept are not fixable. The economics of the D Block approach will not support a public/private partnership that relies on the value of the spectrum contributed by public safety to finance the construction of a national public safety broadband network because the costs of building such a network are simply too great. In other words, the implicit assumption in the D Block approach that the spectrum has a value that is comparable to the costs of constructing a network is simply incorrect. The costs of constructing a broadband network are substantially greater than the costs of the spectrum on which that network would be built. That value gap only increases when the more rigorous requirements associated with the proposed public safety network are taken into account. Indeed, even the *incremental* cost of “hardening” the network to public safety specifications and extending coverage beyond existing commercial footprints would exceed \$20 billion – which alone is greater than the value of the spectrum that would be contributed by public safety.

Thus, as a funding mechanism, the D Block and public safety broadband spectrum are not worth nearly enough to offset the massive cost of building a national broadband network to the mission-critical specifications of public safety. This would be true even if the D Block were given away for free. Of course, the Commission could minimize the value gap by reducing coverage and performance specifications to levels at or below that of existing commercial systems, but that would frustrate the very purpose of constructing a new network for public safety use. A funding shortfall is inevitable under this model and would require a substantial commitment of public funds to overcome.

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<sup>8</sup> See Second Further Notice of Proposed Rulemaking, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, ¶ 138 (rel. May 14, 2008) (“*Further Notice*”).

This basic flaw in the D Block concept is exacerbated by the fact that there is no way of knowing in advance of an auction how much revenue the new network would generate. Thus, a key element of the Commission's D Block partnership concept – i.e., commercial access to the public safety spectrum would defray network construction costs – is undermined by the uncertainty associated with the D Block partnership structure. As an initial matter, it is unclear what rates public safety would pay to use the network, since those details would be negotiated with the Public Safety Spectrum Trust (PSST) after the conclusion of the auction. However, Verizon Wireless understands that there is an expectation that public safety users would not pay fees that would recover the capital costs of constructing the broadband network, including the incremental costs of hardening the network to public safety specifications.<sup>9</sup>

Instead, public safety's use of the network would effectively have to be subsidized through the rates charged to commercial users.<sup>10</sup> But the amount of the necessary subsidies is uncertain, and it is unclear how such subsidies could be sustained in a competitive environment in which other carriers would be offering service to commercial users at rates that did not include public safety subsidies. Further, a carrier has no way to forecast how much commercial revenue it could generate from this new network. That is true for at least two reasons. First, it is difficult to forecast how much capacity public safety will use and therefore how much will remain for commercial users. Second, providing priority access to public safety users on a preemptive basis reduces the value of the network to their commercial counterparts; it is unrealistic to expect

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<sup>9</sup> See Public Safety Spectrum Trust Public/Private Partnership Bidder Information Document 22-24 (Nov. 15, 2007), available at [http://www.psst.org/documents/BID2\\_0.pdf](http://www.psst.org/documents/BID2_0.pdf) (“[T]he negotiated fees should not include any elements designed to allocate among or recover from public safety users any significant items of capital or other costs associated with the initial build of the [network].”).

<sup>10</sup> See *Second Report and Order*, ¶ 451.

commercial users to pay as much for what would be second-class service on one network as they would for first-class service on another.<sup>11</sup> As a result, a carrier might well be required to charge below-market rates for a network that would have cost *more* to build than other commercial networks because of the “hardening” and other features necessary to meet public safety specifications. Thus, not only are commercial revenues difficult to forecast, but there is strong reason to believe that in the context of a competitive wireless environment they would be inadequate for cross-subsidization of public safety users.

The Commission attempts to address these fundamental flaws in the D Block partnership model by positing that mandatory usage of the public safety broadband network by all public safety users and the establishment of rate-of-return or cost-plus pricing mechanisms might provide the certainty and financial incentives necessary to attract a commercial partner.<sup>12</sup> These proposals would undermine the very goals that the Commission is trying to achieve and should be rejected. The Commission was correct in concluding that public safety can benefit from the use of commercial technologies and from potential public-private partnerships that would leverage those technologies and the successes of the commercial marketplace. But those successes can be attributed to the presence of robust wireless competition – competition that continues to spur the development of new technologies and greater benefits for wireless consumers. Establishing what would effectively be a national monopoly provider to public

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<sup>11</sup> See *Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecom. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008) (statement of Coleman Bazelon) (noting that spectrum for “interruptible services” should “come with the advertising slogan: ‘Guaranteed NOT to work when you need it most.’”).

<sup>12</sup> See *Further Notice*, ¶¶ 37, 78.

safety would not extend the benefits of the wireless marketplace to first responders, but would relegate them to the same high cost, outdated arrangements from which they currently suffer.

The problems associated with the D Block concept cannot be easily resolved. It would not be enough simply to define network specifications up front or eliminate the high default penalties for failing to reach agreement with the PSST over the terms of the network sharing agreement that would govern the partnership. Instead, to provide the certainty necessary for a carrier to justify bidding billions of dollars, the Commission would have to determine facts that are unknowable at this time – such as how much capacity public safety would use both now and in the future – and undertake the virtually impossible task of defining a national rate structure that would both be sustainable in a dynamic competitive environment and generate sufficient revenues to justify the cost of building the network. No matter what the Commission does to clarify or alter the conditions, the basic D Block concept – auctioning spectrum to a single licensee on a national scale in exchange for a commitment to construct a network built to public safety specifications and on which public safety would have priority use – is inherently flawed and unlikely to attract a commercial bidder.

### **III. A PUBLIC/PRIVATE PARTNERSHIP MUST SERVE PUBLIC SAFETY’S COMMUNICATIONS NEEDS AND BE COMMERCIALY VIABLE.**

Despite the fundamental flaws of the D Block model, the *Second Report and Order* introduced an important concept: the use of public/private partnerships to promote more effective emergency communications for first responders.<sup>13</sup> Verizon Wireless continues to believe that effective partnerships offer a way to minimize the costs associated with building and operating public safety wireless broadband networks by leveraging commercial infrastructure and securing the benefits of a competitive wireless environment for public safety. The failure of

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<sup>13</sup> See *Second Report and Order*, ¶ 396.

the D Block auction does not close the door on the viability of such partnerships. However, it does suggest that a one-size-fits-all approach is unlikely to be an effective solution. To maximize the chance of success for any public-private partnership, the Commission must better understand public safety's needs and take steps to ensure that the approach it adopts will promote partnerships that are commercially viable.

**A. The Commission Should Ensure That Its Partnership Model Is Designed to Best Serve the Interests of Public Safety.**

The Commission should use this proceeding as an opportunity to step back and fully assess what public safety objectives it is trying to serve. Multiple, competing needs have already been identified, including voice interoperability, deployment of wireless broadband for high-speed data services, and the provision of adequate funding to cover public safety's communications needs.<sup>14</sup> Balancing these objectives in terms of both timing and tradeoffs will be a complex undertaking: for example, the fastest way to achieve voice interoperability might well be to adapt existing LMR systems, but that may leave little funding for the deployment of a "hardened" wireless broadband network and vice-versa. Chairman Martin recognized some of the tradeoffs in his testimony early last year, while the decision to pursue a national broadband network was under consideration:

The Commission recently asked for comments on creating a nationwide, interoperable broadband network for public safety officials in the 700 MHz band. In the meantime, technology is available now that could provide a temporary solution to the need for more interoperability. By adding IP-based technologies to existing public safety network equipment (a so-called "IP patch") and deploying portable IP-based network equipment where necessary, public safety officials would achieve functional, if not full, interoperability. If Congress made sufficient funds available now, such functional interoperability for public safety

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<sup>14</sup> See *Ninth Notice*, ¶¶ 12-14.

communications systems could be available in selected areas in the near term and throughout most of the nation within four years.<sup>15</sup>

The Commission should ensure that the partnership framework best reflects the entire public safety community's preferred balancing and prioritization of the competing objectives, and not just the preferences of certain constituencies.

As part of the Commission's assessment of public safety needs and priorities, it should explore how to address existing LMR systems and whether it is desirable to transition away from such systems in favor of a national broadband network. Regardless of whether LMR is an adequate long-term solution for public safety's communications needs, the Commission should assess what role, if any, LMR systems should play at least on a transitional basis and whether it makes sense to use them as a bridge to voice-interoperability in the short term. Indeed, the Department of Homeland Security has identified – and funded – means of achieving voice interoperability through currently available technologies, such as IP-based patches, that work

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<sup>15</sup> *Assessing the Communications Marketplace: A View from the FCC: Hearing before the S. Comm. on Commerce, Science & Transportation* (Feb. 1, 2007) (statement of the Hon. Kevin J. Martin, Chairman, Federal Communications Commission).

within the LMR environment,<sup>16</sup> and reported real progress in improving interoperability on LMR systems.<sup>17</sup>

The Commission should also explore what measures public safety agencies have adopted (or plan to adopt) that could affect their interest in a public/private partnership devoted to the pursuit of a nationally integrated wireless broadband network. This is not a trivial matter.

Recent reports suggest that 800 MHz rebanding remains a top priority for public safety agencies

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<sup>16</sup> See generally SAFECOM, Recommended Federal Interoperable Communications Grant Guidance Fiscal Year (FY) 2008, 8 (“SAFECOM Grant Guidance”); see also Government Accountability Office, Report to Congress, First Responders: Much Work Remains to Improve Communications Interoperability, GAO-07-301, 9-10 (April 2007) (“GAO Report”); FCC, Report to Congress on the Study to Assess Short-Term and Long-Term Needs for Allocation of Additional Portions of the Electromagnetic Spectrum for Federal, State, and Local Emergency Response Providers, ¶ 47 (Dec. 19, 2005) (“IP-based systems are capable of enabling communications between diverse radio systems and frequencies without requiring the replacement of existing radios. These systems interconnect emergency personnel and other resources across existing radio networks and other communications networks, and thus can achieve immediate interoperability of existing push-to-talk radio systems operating in separate spectrum bands as well as commercial voice and broadband systems.”) (“2005 Report to Congress”); *id.*, App. B at 4 (“The emergence of communications gateways offers the public safety community the potential for nationwide, interoperable mobile communications because a gateway will interconnect multiple frequency bands and links trunked talk groups, encrypted networks, cell phones, satellite phones, and the public switched telephone network.”).

<sup>17</sup> See SAFECOM, 2006 National Interoperability Baseline Survey, 13 (Dec. 2006) (finding that two-thirds of public safety agencies use some degree of interoperable communications), available at <http://www.safecomprogram.gov>. A 2007 case study by the Government Accountability Office of four states that had received large amounts of federal funding described the progress they had made since 9/11 and noted that more progress could be expected in the short term. See GAO Report, App. II, at 50-62 (reviewing interoperability initiatives in Florida, Kentucky, New York, and Oregon). Florida, for example, deployed an IP-based “backbone” system known as the Florida Interoperability Network that connects federal, state, and local dispatch centers across the state; as of January 2007, the network was able to patch communications from first responders in 64 of the state’s 67 counties. At the time of the report, New York had begun deploying a similar network, incorporating both 700 and 800 MHz UHF frequencies as well as lower VHF frequencies to allow communications to difficult-to-serve areas in the Adirondacks and Catskills. Kentucky deployed a wireless data network covering 95% of the state’s road systems, which allows real-time crime coverage, data collection, and instant messaging. In Oregon, plans for a Project 25, trunked digital network were underway, with deployment to begin in October 2009.

and that the rebanding process may continue to demand public safety attention and resources over the coming months and even years.<sup>18</sup> More broadly, a 2006 survey by the Department of Homeland Security found that 68% of public safety agencies had not yet determined whether they would use the 700 MHz spectrum and that 15% reported “no need or desire” to use it.<sup>19</sup> The New York City Police Department has taken the position that a 700 MHz network is unnecessary, and developed its own state-of-the-art wireless broadband network (NYCWIn) rather than await a federal solution.<sup>20</sup>

The pace at which public safety communications could be expected to migrate to a new 700 MHz public safety network, or whether first responders would choose to use such a network at all, has profound implications for any public/private partnership intended to build it. As the Commission has tacitly acknowledged, a network intended as the primary system for public

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<sup>18</sup> See, e.g., Paul Kirby, FCC to Address 800 MHz Band Public Safety Waivers This Week, *TR Daily*, June 16, 2008.

<sup>19</sup> See SAFECOM, 2006 National Interoperability Baseline Survey, 44; see *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, PS Docket 06-229, NATOA Comments, 2 (Oct. 17, 2007) (expressing “skepticism that public safety entities nationwide would be willing to give up their existing – and expensive – networks to pay for the use of an untested system”).

<sup>20</sup> *Public Safety Interoperable Communications Grants: Are the Departments of Homeland Security and Commerce Effectively Coordinating to Meet our Nation’s Emergency Communications Needs? Hearing Before the Subcomm. on Emergency Communications, Preparedness, and Response of the H. Homeland Security Comm.*, (Mar. 14, 2007) (statement of Charles F. Dowd, Deputy Chief, Commanding Officer, NYPD Communications Division).

safety voice and data traffic is very different than one intended merely to supplement existing LMR systems with broadband data services.<sup>21</sup>

Whether public safety needs can best be served through a single national partnership intended to construct a new national broadband network is an open question. At the very least, the Commission should conduct a comprehensive assessment of the views of public safety constituents to ensure that this proceeding in fact serves the interests of public safety. To the extent there are competing interests and preferences within the public safety community, Verizon Wireless respectfully suggests the Commission explore flexible approaches that could accommodate most if not all of them rather than adopt a one-size-fits-all solution.

**B. A Successful Public/Private Partnership Should Leverage Existing Commercial Infrastructure.**

The premise of the public/private partnership model adopted in the *Second Report and Order* was that it was necessary to “harness private sector resources to facilitate the construction” of a broadband network for public safety.<sup>22</sup> Verizon Wireless agrees that the substantial assets of the private sector, both in expertise and existing infrastructure, can help accelerate deployment of wireless broadband for public safety. Any approach to building a public safety network should maximize the substantial opportunities to leverage existing

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<sup>21</sup> See *Further Notice*, ¶ 33 (“We seek comment on which types of public safety users can be expected to use the national public safety broadband network (rather than legacy or new local networks) and on what timeframes. Which public safety communication functions (*e.g.*, voice, remote data access, video upload, photo download) are likely to migrate to the new broadband network (in the short- and long-term) and which will remain on existing networks? What factors will local jurisdictions weigh when making such decisions?”); see also *id.* ¶ 34 (“We seek comment on the extent to which the public safety broadband network will or should be interoperable with existing voice and data networks. How can the Commission encourage interoperability with legacy public safety systems and should interoperability with existing voice and data networks be a mandatory feature of the new broadband network?”).

<sup>22</sup> *Id.*, ¶ 129.

commercial infrastructure, for the reasons set forth in detail in Verizon Wireless's earlier comments.<sup>23</sup> Leveraging commercial infrastructure is likely to be more cost-effective than building a stand-alone, dedicated public safety network because many of the capital costs can be shared across the different user bases, benefiting both consumers and public safety users. Commercial operators like Verizon Wireless, for example, devote substantial resources to building and operating advanced wireless networks that provide high quality services to their customers each and every day, including during times of local or national emergency. Partnering with public safety agencies in this endeavor might be an attractive arrangement, as both the commercial operator and public safety users would get the benefit of a hardened, first-rate network infrastructure for less than if either partner were to undertake the capital expenditures alone. Importantly, leveraging existing infrastructure also will reduce the time needed to deploy and make available to public safety network capabilities that meet their needs than would building a new network.

Further, the Commission has often cited the positive contributions that commercial services play in public safety communications – noting the innovation, cost-effectiveness, and

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<sup>23</sup> See *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, Comments of Verizon Wireless, 11-17 (Feb. 26, 2007) (setting forth savings in initial capital expenditures and ongoing operating costs, as well as decrease in build-out time, that could be achieved through the leveraging of existing commercial infrastructure).

spectrum efficiency that are hallmarks of the commercial marketplace.<sup>24</sup> Public safety users around the country already rely on commercial services to achieve interoperability and to supplement their LMR radio systems with high-speed data technologies.<sup>25</sup> Using commercial equipment would also allow public safety to take advantage of the faster development cycle for commercial equipment. The wireless industry invests tens of billions of dollars annually to construct, operate, maintain, and improve advanced wireless networks. As illustrated by the industry's rapid adoption of third-generation wireless networks and recently announced plans for deployment of fourth-generation technology over the next few years, these networks are refreshed continuously with new technologies that are developed to meet the increasing needs of the marketplace. Commercial capabilities will only improve with the introduction of service on the 700 MHz spectrum obtained in Auction 73, and public safety users should have the benefit of these efforts through partnership opportunities that take advantage of them.

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<sup>24</sup> See *2005 Report to Congress*, ¶ 46 (“Incorporating commercial technologies into networks operated by public safety may provide numerous benefits to the public safety community in terms of cost, access to technological advances and efficient spectrum use. Commercially proven, high-speed mobile data technologies can enhance public safety capabilities in both a timely and cost-effective manner. As to timeliness, public safety would benefit because technologies are already widely available in the commercial marketplace.”); *id.*, ¶ 45 (“While commercial wireless technologies are not appropriate for every type of public safety communication, there may now be a place for commercial providers to assist public safety in securing and protecting the homeland.”).

<sup>25</sup> See Dep’t of Homeland Security, SAFECOM, 2006 National Interoperability Baseline Survey, 45 (reporting that 79% of public safety agencies use PDAs and 68% use commercial wireless phones to achieve interoperability). Verizon Wireless, for example, just recently announced deployment of 19,500 internationally enabled Blackberry 8830 smartphones to the FBI, which provide FBI agents with mobile access to no-fly lists, missing and kidnapped persons lists, and crime alerts; the devices employ asset tagging and tracking capability to ensure that lost or stolen devices can be located, and that any information on them remains secure.

**C. Requests for Proposal (RFPs) Are the Best Model for Developing Successful and Commercially Viable Public/Private Partnerships.**

In its Ninth Notice of Proposed Rulemaking, the Commission took an important step toward improving public safety communications by proposing a comprehensive plan to promote a nationwide broadband public safety network. That plan included proposals designed to promote more effective use of public safety spectrum, greater innovation through the use of commercial technologies, and more economical service arrangements through the use of shared networks.<sup>26</sup> One of the key differences between that proposal and the D Block approach that was ultimately adopted is that the Commission initially proposed the use of requests for proposals (RFPs), and not an auction, as the best means to identify commercial partners that could assist public safety in the construction of a nationwide broadband network.<sup>27</sup> We believe that the Commission's initial assessment of the RFP approach was correct, and we continue to believe that approach provides the best means for establishing public-private partnerships.

RFPs are a highly effective means of bringing together the public and private sector to build and operate public safety communications systems. Unlike an auction, which might force the government into a long-term arrangement with an unacceptable partner that just happens to be the highest bidder, the RFP process allows for the considered evaluation of potential partners

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<sup>26</sup> See *Ninth Notice*, ¶ 3.

<sup>27</sup> See *id.*, ¶ 35 (“In order to expedite the availability of ubiquitous coverage, we believe that the national licensee should issue requests for proposals for the construction of the national network by third parties.”).

on a range of criteria to increase the chances the partnership will succeed.<sup>28</sup> New York City and Washington, DC, for example, both used the RFP process to develop state-of-the-art wireless broadband systems that meet the mission-critical needs of their public safety users and are customized to each city's needs and resources. New York chose to optimize its network (NYCWiN) for a high-density urban environment using a UMTS technology platform operating in a portion of the 2.5 GHz band leased at commercial rates; it also chose to build enough capacity to accommodate non-public-safety government uses.<sup>29</sup> Washington, by contrast, chose EV-DO technology (allowing roaming with neighboring jurisdictions in the National Capital Region), used a portion of the 700 MHz band under a Commission waiver, and limited network access to public safety users.<sup>30</sup> And just last year the federal government used a multi-round RFP process to select partners for the construction and operation of the federal Integrated

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<sup>28</sup> See SAFECOM, *Enhancing Communications Interoperability: Guidelines for Developing Requests for Proposals (RFPs)* (Mar. 31, 2006), available at <http://www.safecomprogram.gov/NR/rdonlyres/48779A66-33A8-4491-A772-7223914A70D2/0/GuidelinesforRFPDevelopmentCW62806.doc> (“The RFP process provides formal, specific guidance to the vendor community on the requirements and expectations of the buyer agency or community that is conducting the procurement. In addition, this process fosters competition among vendors. It also provides advantages to the buyers because a solution, equipment, or service can be selected that best fits their needs at an optimal price. Using the RFP procurement process often leads to a reduction in costs and improved, customer-focused delivery of service.”).

<sup>29</sup> See Linda Spagnoli, *NYC Fights and NYC WiNs!*, LAW ENFORCEMENT TECHNOLOGY, May 2007.

<sup>30</sup> See *The 700 MHz Auction: Public Safety and Competition: Hearing before the S. Comm. on Commerce, Science, & Transportation* (June 14, 2007) (statement of Paul J. Cosgrove, Dep't of Information Technology and Telecommunications, City of New York); Maryann Lawlor, *Capital Region Forges Wireless Way*, SIGNAL, July 2007.

Wireless Network (IWN).<sup>31</sup> It is worth noting that each of these projects was led by a different private-sector partner: in New York, Northrop Grumman; in Washington, Alcatel-Lucent; and for the federal IWN, General Dynamics.

Thus, Verizon Wireless believes that an RFP approach – or some variation thereof, such as a cooperative agreement<sup>32</sup> – should be explored as a more fruitful model than an auction for the development of effective public/private partnerships.<sup>33</sup>

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<sup>31</sup> The federal government's IWN is a wireless network to be shared by the Departments of Treasury, Homeland Security, and Justice. In Phase I of the RFP process, five companies were invited to submit proposals and asked to provide "innovative, big-picture solution sets." General Dynamics and Lockheed Martin were selected to proceed to Phase II. The contract was ultimately awarded to General Dynamics, with cost estimates ranging from \$5 billion to \$30 billion over the next 15 years. *See* Congressional Research Service, Public Safety Communications Policy, 12-13; Spencer S. Hsu & Charles Babington, *IG Criticizes Work on Wireless Network for Law Enforcement*, WASH. POST, March 27, 2007, at A05.

<sup>32</sup> Verizon Wireless notes that, as a technical matter, if the deployment of a national broadband network were administered at the federal level for the benefit of state and local agencies, the appropriate mechanism may not be a request for proposals, but rather a grant or cooperative agreement under the Grant and Cooperative Agreements Act, 31 U.S.C. § 6301, *et seq.* The Department of Commerce, for example, entered into a cooperative agreement with Network Solutions, Inc. (and later the Internet Corporation for Assigned Names and Numbers, or ICANN) to administer the Internet's domain name system. *See generally* NTIA, Domain Names: Management of Internet Names and Addresses, available at <http://www.ntia.doc.gov/ntiahome/domainname/background.htm>.

<sup>33</sup> If the Commission were to pursue an RFP approach, then it could use the D Block to benefit public safety in one of at least two ways. It could auction the spectrum on an unencumbered basis and give the proceeds to public safety to support the deployment of interoperable communications solutions. Or, if the Commission were to determine that public safety needed access to additional spectrum, it could reallocate the D Block to public safety so that it would have a greater set of options to consider in addressing its communications needs in the context of public-private partnerships. We note that it would be necessary for Congress to take action before the Commission could implement either approach. However, the need for legislative action should not be viewed as an insurmountable barrier to accomplishing what is needed to ensure effective public safety communications.

**D. The Commission Should Reject Eligibility Limits for Participation by Carriers that Would Subordinate Public Safety to Unrelated Policy Objectives.**

The Commission requested comments on whether to limit eligibility to bid for the D Block on the basis of parties' existing access to 700 MHz spectrum.<sup>34</sup> Whatever the merits of ownership limits may be in allocating spectrum for commercial and consumer services, public safety should not be subordinated to policy objectives that are antagonistic to the mission-critical needs of first responders. Verizon Wireless believes that public safety benefits from a competitive wireless environment in which the maximum number of carriers are permitted to compete for public safety contracts. The sole consideration in selecting potential industry partners should be what works best for public safety – *i.e.*, who is best able to provide the robust, reliable, interoperable communications systems that will withstand a natural disaster or national security incident, and do so on the most cost-effective and timely basis. Excluding participation by the companies that have the most experience, the most resources, and the most extensive networks already in place would be directly contrary to that goal.

Large carriers already provide nationwide or near-nationwide service to commercial users, and their infrastructure can serve as the base footprint for most of the areas in which public safety users require service. Excluding the very carriers that possess this infrastructure would increase both costs to the public safety community and, crucially, deployment time. While the cost and deployment timeline depend on the coverage and performance specifications that are ultimately adopted, Verizon Wireless previously estimated (based on the generic network proposed in the *Ninth Notice*) that sharing infrastructure could reduce initial deployment costs by a third, operating costs by a half (over a ten-year period), and the deployment timeline from

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<sup>34</sup> See *Further Notice*, ¶ 157.

seven to four years.<sup>35</sup> These cost savings might allow some smaller public safety agencies to access wireless broadband data services they otherwise would be unable to afford and shave years off the deployment timeline for service to other areas in which only certain providers have the necessary infrastructure in place. Further, to the extent that it is infeasible to build and operate a network meeting public safety specifications in certain areas, public safety users in those areas should be permitted to use commercial services, which could be interconnected with LMR systems through IP-based patches and enable them to attain interoperability on a relatively short timeline.

The Commission itself has recognized that excluding carriers would be contrary to the interests of public safety. As it stated in the *Further Notice*, “we recognize that restricting eligibility may adversely impact the ability of public safety to gain access to an advanced broadband network as quickly as possible. In this respect, it may be desirable to have the broadest pool of bidders possible in order to maximize the likelihood of a successful partnership that will benefit both public safety and consumers.”<sup>36</sup> It is telling that the PSST has opposed their exclusion for the very same reasons.<sup>37</sup>

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<sup>35</sup> See *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, Comments of Verizon Wireless, at 13-14 (Feb. 26, 2007).

<sup>36</sup> *Further Notice*, ¶ 161.

<sup>37</sup> See *Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecom. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008) (statement of Harlin R. McEwen) (“At no time during this process did the PSST ever express a preference for any particular type of D Block winner or commercial business plan – incumbent or new entrant, wholesale or retail, open access or operator controlled access. We were opposed to any limitations on participation in the auction that might deprive public safety of the opportunity to partner with any entity that could best construct and operate a nationwide broadband network capable of meeting public safety’s legitimate mission critical communications needs.”).

A competitive bidding approach, whether conducted through an auction or RFP process, that excluded the major carriers would artificially limit potential services for public safety, as some of the most viable bidders would be absent from the competition. One obvious risk is the loss of revenue (or increased cost) to the government. Another is that the responsibility for the massive undertaking of building out the network – and the spectrum itself – would fall to an unsuitable bidder.

The bottom line is that restricting eligibility would not serve the interests of public safety.

#### **IV. A COORDINATED NATIONAL STRATEGY CAN BE DEVELOPED THROUGH REGIONAL LICENSING, USING A “NETWORK OF NETWORKS” APPROACH.**

In its report to Congress under the Intelligence Reform and Terrorism Prevention Act of 2004, the Commission found that public safety “would benefit from the development of an integrated, interoperable nationwide network capable of delivering broadband services throughout the country.”<sup>38</sup> As set forth in our comments in response to the *Ninth Notice*, Verizon Wireless agrees with the Commission’s finding and continues to support its pursuit of that goal.<sup>39</sup> However, whether the centralized approach of building one national network by a national licensee as set forth in the *Second Report and Order* remains the best means of achieving that goal is an open question.<sup>40</sup> The Commission should instead consider whether to adopt a federal framework using a “network of networks” design for the nationally integrated network and assess whether licensing the D Block and/or public safety broadband spectrum on a regional basis would be more likely to create the conditions for successful public/private partnerships.

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<sup>38</sup> 2005 Report to Congress, ¶ 26; see also Pub. L. No. 108-458, 118 Stat. 3638 (2004).

<sup>39</sup> See, e.g., *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, Comments of Verizon Wireless, Feb. 26, 2007.

<sup>40</sup> See *Further Notice*, ¶¶ 3, 52-53, 183-185, 211.

**A. The Commission Should Consider Adoption of a “System of Systems” Approach.**

One alternative means of creating a national framework without requiring the construction of a single new nationwide network by one carrier is to develop an integrated national network on a so-called “network of networks” or “system of systems” basis – i.e., by interconnecting smaller networks developed on a common set of standards that allow for national interoperability. As Verizon Wireless proposed last year:

The broadband network should be national in scope – a “network of networks” that provides broadband access for all communities regardless of how big or small. . . . The states should have the primary role of building the networks to ensure they meet the specific needs of first responders in different parts of the country.<sup>41</sup>

The Department of Homeland Security has endorsed a “system of systems” approach to achieving nationwide interoperability. Its SAFECOM program uses a “bottom-up” approach in which state and local governments pursue interoperability under a federal framework so their respective communications systems ultimately cohere into a nationally interoperable “system of systems.”

Practitioners helped SAFECOM articulate a long term vision for interoperability which projects that, not later than 2023, first responders will operate on a national system-of-systems using standards-based equipment that provides the capability to respond to an incident anywhere in the country, using their own equipment, on any network, and on dedicated public safety spectrum. They will be able to communicate with each other as authorized via voice, data, and video on demand and in real time.<sup>42</sup>

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<sup>41</sup> *SGA Task Force: Achieving Interoperability for Public Safety Communications*, Response of Verizon Communications and Verizon Wireless, 3 (March 16, 2007).

<sup>42</sup> *See Public Safety Communications from 9/11 to Katrina: Critical Public Policy Lessons: Hearing Before the Subcomm. on Telecom. & the Internet of the H. Comm. on Energy & Commerce* (Sept. 29, 2005) (statement of David G. Boyd, Dir., Office for Interoperability and Compatibility, Dep’t of Homeland Security).

A similar approach – aimed at new wireless broadband deployment rather than SAFECOM’s incremental upgrading of legacy LMR systems – may be appropriate here.

The Commission has expressed concern that anything less than a centralized national network may forfeit the nationwide interoperability that a centralized scheme would presumably provide.<sup>43</sup> Indeed, in the *Second Report and Order*, the Commission found that “the development of a nationwide broadband interoperability standard is imperative.”<sup>44</sup> There is no question that the balkanization of LMR systems across multiple frequencies, technologies, and configurations has contributed to the lack of interoperability.<sup>45</sup> How those risks play out on IP-based systems accessed through multi-mode devices is less clear: the IP protocol itself may facilitate interoperability at the network level,<sup>46</sup> and the use of multi-mode handsets may allow for roaming across jurisdictions without the need for a common radio access standard.<sup>47</sup>

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<sup>43</sup> See *Further Notice*, ¶ 184 (“In particular, how would we ensure interoperability of communications between public safety users of different regional networks?”).

<sup>44</sup> *Second Report and Order*, ¶ 364.

<sup>45</sup> See GAO Report, 8 (“Historically, first responder communications interoperability has been significantly hampered by different and incompatible radio systems. Different technologies and configurations, including proprietary designs, by different manufacturers have limited the interoperability of public safety wireless communications systems. These systems have also operated on different frequencies in the radio spectrum.”).

<sup>46</sup> See FCC, *2005 Report to Congress*, App. B at 5 & n. 27 (“Just as a computer network uses IP technology to facilitate communication between end users on the network regardless of whether the end users on the network are using Windows, MAC OS, or the LINUX cooperating system, public safety communication devices using IP interconnectivity will reportedly be able to interoperate with other such equipped devices whether the radio side of the devices are operating on spectrum in the UHF/VHF, 700 MHz, 800 MHz, 4.9 GHz, or satellite bands.”).

<sup>47</sup> *Id.*, ¶ 27 (“A nationwide interoperable broadband mobile communications network could potentially include the use of ‘smart radios,’ which are capable of operating on multiple frequencies in multiple formats, so that different systems can connect with each other. Properly implemented, a system with adequate spectrum and smart radios would enhance the instantaneous transmission of both data and voice between agencies.”) (Emphasis added.).

Accordingly, the Commission should use this proceeding to determine whether IP-based systems are themselves sufficient to ensure interoperability at the network level, whether roaming interoperability may be achieved at the device level, or whether additional technical standards are needed.

If technical standards are needed, the Commission should assess whether an industry consensus is emerging on the appropriate family of standards (*e.g.*, LTE) through the commercial marketplace, or whether a formal standards development process is necessary. For example, the Commission could convene an industry working group, as it did with the Commercial Mobile Service Alert Advisory Committee (“CMSAAC”).<sup>48</sup> The Advanced Networks Technology Division of the National Institute of Standards and Technology (NIST) within the Department of Commerce may also be an appropriate forum in which to develop any necessary standards.<sup>49</sup> The Commission also should consider opportunities to coordinate standards development with the Department of Homeland Security, which is charged with “identify[ing] and, if necessary,

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<sup>48</sup> See Public Notice, *Notice of Appointment of Members to the Commercial Mobile Service Alert Advisory Committee*, DA 06-2474 (rel. Dec. 5, 2006). The Commission established the CMSAAC as a working group composed of technical experts, equipment manufacturers, participants in the wireless industry, and public safety advocates pursuant to Section 603 of the Warning, Alert and Response Network Act (“WARN Act”), to develop recommendations on technical standards and protocols to facilitate the ability of commercial mobile service providers to elect to transmit potentially life-saving emergency alerts to their subscribers. By bringing participants in the wireless industry who understand how networks work together with public safety advocates, the Commission succeeded in establishing a framework of standards to allow wireless providers to transmit wireless emergency alert to users throughout the nation. See First Report and Order, *The Commercial Mobile Alert System*, 23 FCC Rcd 6144 (2008) (adopting technical recommendations of the CMSAAC for the transmission of emergency alert messages to the public).

<sup>49</sup> See NIST, Advanced Network Technologies Division, Communications & Networking Technologies for Public Safety, [http://w3.antd.nist.gov/comm\\_net\\_ps.shtml#pubs](http://w3.antd.nist.gov/comm_net_ps.shtml#pubs) (“Specifically, NIST will work closely with industry, the first responder and public safety user communities, government agencies in charge of emergency response and public safety, and standard developing organizations to develop modern, interoperable communications and networking standards for emergency response and public safety.”).

encourag[ing] the development and implementation of voluntary consensus standards for interoperable communications systems to the greatest extent practical.”<sup>50</sup>

If standards are needed, it may be appropriate to designate a national entity to coordinate among the regional licensees to ensure compliance. This coordination could be undertaken by a representative organization such as the PSST or, with appropriate legislation, shifted to a government entity. For example, if the PSST remained as the licensee to some or all of the 700 MHz public safety broadband spectrum, it could condition regional access to the spectrum on compliance with national interoperability standards. If the responsibilities were assigned to a federal entity, such as DHS, it could condition access to federal funding on compliance with those standards. Alternatively, as suggested by several of the commissioners during the April 15 hearing before the House Energy and Commerce Committee’s Subcommittee on Telecommunications and the Internet, the Commission could condition the licenses to require that the networks comply with the standards and use its Title III authority to enforce them.<sup>51</sup>

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<sup>50</sup> See *Implementing Recommendations of the 9/11 Commission Act of 2007*, Pub. L. No. 110-53, § 2201(d), 121 Stat. 266, 537 (Aug. 3, 2007) (“[T]he Assistant Secretary, in cooperation with the Secretary of Homeland Security, shall identify and, if necessary, encourage the development and implementation of, voluntary consensus standards for interoperable communications systems to ensure to the greatest extent practicable, but shall not require any such standard.”).

<sup>51</sup> See *Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecom. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008). In particular:

REP. MARKEY: Commissioner Adelstein, could the commission just insist that everyone of the regional licensees, if you went to the regional license model, had an interoperable system? Couldn’t you just mandate that?

MR. ADELSTEIN: Absolutely. I think that it’s not an impediment at all to interoperability if we structured the rules right. We could require that certain standards would be met that would be interoperable no matter who the licensees were. So you could have six or 10 or 20 different licensees, and all the systems would be required, as a condition of the license, to be interoperable.

**B. Licensing Spectrum on a Regional Basis May Offer Benefits that Are Unavailable Under a Centralized Approach.**

If the Commission finds that an integrated nationally interoperable network can be developed on “network of networks” basis, it should consider the appropriate scale on which to license the spectrum – and to whom it should be licensed. Licensing the spectrum (either the D Block, the public safety broadband spectrum, or both) regionally appears to offer certain benefits that are unavailable under a centralized, single-licensee model.

First, the conditions for successful public/private partnerships might be more readily available if the scale of each partnership were reduced to something other than a national scale, maximizing the potential of the remaining 700 MHz spectrum as both a funding mechanism and as “green space” for new networks. Because considerations relevant to cost, revenue, resources, and needs vary nationwide, the remaining 700 MHz spectrum may support different partnership arrangements in different jurisdictions. For example, densely populated areas that are already well-served by commercial providers might be well-positioned to leverage existing commercial infrastructure in exchange for spectrum access, while sparsely populated, underserved areas might be better positioned to use the availability of new spectrum to induce commercial build-

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REP. MARKEY: Commissioner McDowell, isn't that something that you could do now at the FCC, condition regional licenses, that they all have to be interoperable? Wouldn't that be a reasonable condition and something that you could enforce?

MR. MCDOWELL: Certainly we have the authority to do that, and it should be something that's considered in a public comment period.

REP. MARKEY: Commissioner and Chairman Martin, is that something that you could mandate as a condition if you moved to regional licenses, that they all have to be interoperable?

MR. MARTIN: Oh, I think we can always put that condition on it. I think it was practically how that could be achieved from a technical perspective is where the concerns were raised when we discussed that option last time.

*Id.* at 22-23.

out by new carriers; others might simply sublicense the spectrum to the highest bidder as a funding mechanism to obtain solutions from the commercial market or to offset the costs of other investments.<sup>52</sup> Densely populated areas might have less spectrum available for commercial users (as public safety users presumably would consume more of the 700 MHz spectrum with their own traffic), but lower incremental costs; conversely, less populated areas might have less public safety traffic and be able to rely on a higher ratio of commercial users to cover the higher build-out and operational costs of serving their areas.

Thus, regional licenses would broaden the range of potential partnerships and provide for greater local flexibility in choosing interoperability solutions that reflect particular needs and resources. New York and California may have different needs than New Hampshire and South Dakota, and would be able to spend their resources differently. Licensing the spectrum on a regional basis would promote partnerships and cooperative arrangements between states and local municipalities that share common communications needs and thereby promote greater scale and scope economies.

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<sup>52</sup> To the extent that additional public funding is required, there are potential mechanisms available at all levels of government. The current PSIC grant program uses \$1 billion drawn from Auction 73 to fund state and local interoperability initiatives; with appropriate legislation, additional grants could be funded with some or all of the \$9 billion in excess proceeds from Auction 73. The Commission has also suggested auctioning the D Block on an unencumbered basis to raise additional funds and noted the possibility of earmarking the proceeds from future auctions for public safety. *See Further Notice* ¶ 191 & n. 222. State and local governments have developed a number of financing mechanisms to fund their own interoperability initiatives. *See CRM Today, US State and Local Governments' Spending on Technology to Improve First Responder Communications to Grow 7% Over Next Five Years* (Jan. 12, 2007) (reporting estimates that spending by state and local governments on first responder communications technology will rise from \$3.2 billion in 2006 to \$4.4 billion in 2011). These include general obligation and special revenue bonds, Department of Motor Vehicle surcharges, and taxes on mobile and landline phones. *See National Governors Association Center for Best Practices, Issue Brief: Strategies for States to Achieve Public Safety Wireless Interoperability* (Nov. 20, 2006), <http://www.nga.org/Files/pdf/0903INTEROP.pdf>; National Governors Association Center for Best Practices, *Issue Brief: Strategies for States to Achieve Public Safety Wireless Interoperability* (Sept. 15, 2003), available at <http://www.nga.org/cda/Files/0903INTEROP.pdf>.

Second, providing the “green space” of new spectrum would allow public safety agencies to build into the new spectrum as they upgrade existing systems in the coming decade.<sup>53</sup> Rather than spending their resources on systems that may soon become obsolete, or relying on ad hoc arrangements to obtain spectrum (as both New York City and the District of Columbia were forced to do), they would be able to build into the new spectrum with networks that are directly compatible with 700 MHz broadband technologies.

Third, an approach using regional licenses would avoid the risk of “putting all the eggs in one basket,” as would be the case under an approach relying on a single partnership to build and operate a national network. Spreading responsibility across multiple partnerships using multiple business models would contain the risk of failure to ensure that the troubles of a single arrangement would not jeopardize the network on a nationwide scale. By the same token, as some models prove themselves more successful than others, regions could gravitate to the more successful models over time.

Fourth, smaller geographic licenses would open the door to participation by regional providers that are unable to compete on a nationwide scale but that may have existing networks that could be leveraged to build out rural or difficult-to-serve areas. Regional providers looking to expand their territory may also be willing to bid in neighboring regions to gain market entry under favorable terms.

And fifth, regional licensing based on partnerships between states and local municipalities could take advantage of mature, politically accountable governance structures that have already been assigned the task of coordinating the interoperability efforts of local agencies

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<sup>53</sup> See SAFECOM, 2006 National Interoperability Baseline Survey, 44 (finding that 87% of public safety agencies plan to replace or upgrade their primary wireless systems in the next 10 years).

within their borders. As a result of their participation in the Public Safety Interoperable Communications (PSIC) grant program, all 50 states have submitted statewide plans to DHS for how they will address interoperability within their borders and as part of the national “system of systems.”<sup>54</sup> Further, in a comprehensive report from 2007, the President’s National Security Telecommunications Advisory Committee endorsed state-level network deployment as a “best practice” and “key enabler” for interoperability.<sup>55</sup>

**V. PRIVATE ENTITIES SHOULD NOT BE PERMITTED TO PROFIT FROM THE MANAGEMENT ROLE OF THE PUBLIC SAFETY SPECTRUM TRUST OR ANY SUCCESSOR ENTITY.**

In the *Second Report and Order*, the Commission adopted the principle that private entities should be prohibited from profiting from the management role of the PSST:

[W]e establish certain baseline criteria for selecting the Public Safety Broadband Licensee. First, we adopt our proposal that no commercial interest may be held in this licensee, and that no commercial interest may participate in the management of the licensee. The 700 MHz broadband spectrum to be licensed to the Public Safety Broadband Licensee is public safety spectrum and must be controlled by and managed by public safety.<sup>56</sup>

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<sup>54</sup> See generally DHS and NTIA, Public Safety Interoperable Communications Grant Program: Program Guidance and Application Kit, 11 (Aug. 16, 2007).

<sup>55</sup> National Security Telecommunications Advisory Committee, Report to the President on Emergency Communications and Interoperability, 21 (Jan. 16, 2007) (“A key enabler and best practice for public safety communications interoperability is the existence or planned deployment of statewide or regional networks. Many States and regions have significant investments in these large-scale, shared, public safety networks, and much of the communications equipment used by emergency responders is being upgraded to standards-based digital equipment. These networks offer a high degree of interoperability within their geographic coverage areas and can be linked to other networks through gateways, which improves communication between State and local Governments and between neighboring local jurisdictions.”)

<sup>56</sup> *Second Report and Order*, ¶ 373.

Verizon Wireless wholly endorses this principle and believes that it should apply in any subsequent arrangements in which the PSST – or any similarly constituted organization – is given substantial influence over the deployment and operation of a public safety network.

The auction structure proposed in the *Second Report and Order* left most of the details of the public/private partnership to be negotiated after the auction, including the rates the PSST would pay for service, the technology and equipment to be used by public safety, the very definition of “public safety users,” and the framework for the relationship between the PSST and the D Block Licensee. Under this “buy now, negotiate later” model, potential bidders had no way of knowing what specific obligations they would assume if they were to win the D Block.<sup>57</sup> This structure gave PSST – and Cyren Call, as its for-profit agent and advisor – immense influence over the direction of the auction.

Yet concerns over the PSST-Cyren Call relationship did not end with the last auction. Cyren Call loaned the PSST \$4 million – a loan that appears to be outstanding and that appears to cover the entirety of the PSST’s operating budget.<sup>58</sup> And Cyren Call now reports that it is “actively engaged in developing one or more qualified consortia to bid for the 700 MHz D

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<sup>57</sup> This uncertainty was compounded by the high default penalties that winning bidders faced in the event they failed to reach agreement with the PSST over the terms of the network sharing agreement that would govern the partnership. While a default penalty is normally an appropriate mechanism to deter speculative bidding, it represented a huge financial risk for prospective bidders given the tremendous uncertainty of the current rules.

<sup>58</sup> See Transcript of Panel II of a Hearing of the Telecommunications and Internet Commerce Subcommittee of the House Energy and Commerce Committee, at 34 (April 15, 2008) (statement of Morgan O’Brien) (acknowledging loan of venture capital funds from Cyren Call to PSST in response to questions from Rep. John Dingell); Telecommunications Reports, *PSST – Cyren Call Relationship Draws Criticisms from Officials*, 2008 WLNR 7603350 (May 1, 2008) (noting \$4 million operational loan from Cyren Call to the PSST).

Block.”<sup>59</sup> Whether – and how – Cyren Call stands to benefit from its past relationship with the PSST is an open question, and Cyren Call’s position as lender, agent, advisor, and potential bidder raises issues concerning potential conflicts and merits much closer scrutiny. For the reasons set forth below, if the Commission proceeds with another approach in which the PSST remains as the Public Safety Broadband Licensee and Cyren Call remains as its agent and advisor, it should take steps to ensure that the no-commercial-profit principle is not violated.

**A. Cyren Call Undercut the Business Case for a Successful Public/Private Partnership During Pre-Auction Negotiations by Proposing a Specially Privileged Competitor to the D Block Auction Winner.**

In order to evaluate the feasibility of bidding on the D Block, Verizon Wireless met with the PSST and Cyren Call prior to the auction to assess the full extent of the duties and obligations of the D Block Licensee – especially the obligations that the Commission had not fully defined in the *Second Report and Order*.

Verizon Wireless met with the PSST in the Spring and early Summer of 2007, before the PSST retained Cyren Call; the PSST provided Verizon Wireless with very little specific information during those meetings that would enable us to make an informed judgment about whether the partnership represented a sound business opportunity. Nevertheless, none of the information provided to Verizon Wireless heightened its level of concern, and Verizon Wireless remained interested in exploring whether a viable partnership could be negotiated with the PSST.

Cyren Call provided more specific information during Verizon Wireless’s subsequent meetings in October and November 2007. The more detail Cyren Call provided regarding how the public/private partnership would work, however, the more concerned Verizon Wireless became with the viability of the endeavor. It became clear that Cyren Call sought to establish a

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<sup>59</sup> Cecilia Kang, *Sprint Nextel Stock Rises 10.5% on Talk of Shakeup, Takeover*, WASH. POST, May 6, 2008, at D01.

specially privileged competitor within the structure of the public safety broadband license that would compete for customers with the D Block winner and, through the PSST, have power to set the terms on which the D Block winner could compete in return.

First, Cyren Call indicated that the PSST would “own” the right to provide service to public safety. It would purchase wholesale minutes from the D Block Licensee and resell service to public safety users. As a result, Verizon Wireless would not have the opportunity to serve public safety customers directly; in fact, it stood to lose the valued public safety customers it now serves. This aspect of the proposal was a surprise because it appeared to be inconsistent with the structure envisioned by the Commission. In particular, this concept would, in effect, create a for-profit entity at the heart of the business relationship where the Commission had intended a non-profit to be – and, as a result, this for-profit entity would end up competing with the D Block winner for public safety customers.

Second, Cyren Call took a broad view of the term “public safety,” defining it to include not just first responders but also all other state and local government employees – whether identified as public safety or not – and certain commercial users who, on a regular basis, work with public safety (*e.g.*, utility workers, transportation workers, etc.). This expanded definition raised serious concerns about Verizon Wireless’s ability to continue to serve its current customer base, which includes hundreds of thousands of federal, state, and local government users.

Third, Cyren Call informed Verizon Wireless that the D Block Licensee would not be allowed to recoup any portion of its capital investment through the wholesale rates it charged the PSST for network access. Cyren Call said this provision was required by the Commission’s rules (an interpretation with which we did not agree); and in any event, Cyren Call said, it was

justified because the PSST would be contributing 10 MHz of adjoining spectrum for the D Block Licensee's use.

Finally, days before the Commission's "quiet period" was scheduled to commence, Cyren Call informed Verizon Wireless that the D Block Licensee would be required to make an annual lease payment for access to the public safety spectrum. Cyren Call's position was that the annual payment would be \$50 million. Collectively, Cyren Call's pre-auction proposals further undermined the commercial viability of the D Block public/private partnership model.

**B. Does Cyren Call Have an Interest in the Management of the PSST?**

Further scrutiny is warranted into Cyren Call's role in the operations of the PSST to determine what role, if any, Cyren Call should have in any reaction. The Commission's rules mandate that no commercial interest may be held in the Public Safety Broadband Licensee and that no commercial interest may participate in its management.<sup>60</sup> Yet so little is known about the nature of the PSST's debt obligations to Cyren Call that compliance with the letter and spirit of these rules is an open question. For example, what are the terms of the loan to the PSST? What has the PSST offered as a security interest for the loan? How are the proceeds from the loan being used? What sort of influence does the arrangement confer on Cyren Call?<sup>61</sup>

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<sup>60</sup> See *Second Report and Order*, ¶ 373. The Commission has recognized that creditor/debtor relationships may give rise to improper influence or control. Under the Commission's "equity/debt plus" rule, if an investor holds more than 33% of the total asset value of a licensee (through any combination of debt or equity) and other factors are present, the investor is treated as having an attributable ownership interest in the debtor entity. See 47 C.F.R. § 73.3555.

<sup>61</sup> Verizon Wireless notes that concerns over the Cyren Call-PSST predate the auction. For example, in November 2007, Representative Henry Waxman noted – presciently – that the relationship between the PSST and its for-profit advisor “raises questions about the role for-profit entities might have in developing the terms and conditions of the Network Sharing Agreement (NSA) and influencing decisions about the design, construction, and operation of the public safety communications network.” Letter from Rep. Henry A. Waxman to FCC Chairman Kevin J. Martin, at 1 (Nov. 30, 2007).

Accordingly, Verizon Wireless urges the Commission to explore the many issues surrounding the relationship between Cyren Call and the PSST. The Commission would be assisted by a fuller record on this point (based on submissions by the relevant parties) to determine whether Cyren Call's loan to the PSST gives a for-profit entity an interest in the management of the PSST. Indeed, Cyren Call pledged to make much of this information available in response to pointed questions from Chairman Dingell during the April 15 hearing before the House Energy and Commerce Committee's Subcommittee on Telecommunications and the Internet.<sup>62</sup> In the face of similar concerns in the past, the Commission has inquired into

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<sup>62</sup> See *Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecom. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008). In particular:

REP. DINGELL: Are there any – can you tell us who are these good – if you please – who are these goodhearted venture capital folk that are making these monies available?

MR. O'BRIEN: Yes, sir. It is no secret; there's like five venture capital firms. We'll submit them on the record, all major capital firms. But let me make -- just sure you understand the distinction. They invested in Cyren Call so that Cyren Call would be able to loan money to the PSST to bridge them from now to some opportunity in which they will get access to funding.

REP. DINGELL: Now, if the PSST doesn't have funding, how will it pay back Cyren Call's loan?

MR. O'BRIEN: Well, under the worst-case scenario it won't, and that's the risk we had to take.

MR. MCEWEN: The PSST, Mr. Chairman, has no assets, and assuming that there is no other funding that comes forth from a D block partnership to pay back that funds, then we really basically have no way to pay it back. And those people that invested that money in a loan understand that; they understand there's a certain risk.

REP. DINGELL: Are there any written documents –

MR. MCEWEN: Sure.

REP. DINGELL: – supporting this funding that is flowing from these venture capital firms to Cyren Call?

MR. O'BRIEN: Absolutely. This was negotiated on behalf of the PSST through their counsel and the counsel of Cyren.

REP. DINGELL: Would you submit to us please the written documents that relate to the transfer of these funds –

MR. O'BRIEN: Sure.

whether outside financial interests in a licensee allow a non-licensee to exert de facto control over the licensee's operations.<sup>63</sup> Other factors relevant to the extent of an entity's influence over a wireless licensee's operations include the entity's authority over the licensee's daily operations, policy and personnel decisions, financial obligations, and receipt of monies and profits.<sup>64</sup> Similarly, in other contexts, the Commission has determined that de facto control is demonstrated when an entity – even if it holds only a minority interest in a licensee – obtains “the right to determine the manner or means of operating the licensee and determining the policy that the licensee will pursue.”<sup>65</sup>

## VI. CONCLUSION

For these reasons, Verizon Wireless encourages the Commission to use this proceeding to carefully reexamine how the remaining 700 MHz spectrum can be most effectively used in

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REP. DINGELL: – from the venture capital firms to Cyren Call and then the written documents that relate to the transfer of the funds from Cyren Call to PSST?

MR. O'BRIEN: Yes, sir.

MR. MCEWEN: Yes, sir. We have nothing to hide; there's no reason for you not to see those.

<sup>63</sup> See, e.g., Memorandum Opinion and Order and Hearing Designation Order, *Application of Ellis Thompson Corporation*, 9 FCC Rcd 7138, 7138-7139, ¶ 9 (1994).

<sup>64</sup> *Id.* (applying the Commission's “Intermountain Microwave” criteria).

<sup>65</sup> Memorandum Opinion and Order, *News International, PLC*, 97 F.C.C.2d 349, ¶ 16 (1984). Similarly, the Commission has previously made clear that provisions designed to protect the investment of a licensee's minority shareholder, including provisions giving minority interests the right to exercise negative control over operational and policy decisions, can give rise to concerns about unauthorized control. See Memorandum Opinion, Order and Authorization, *Applications of Space Station System Licensee, Inc., Assignor, and Iridium Constellation LLC, Assignee, for Consent to Assignment of License Pursuant to Section 310(D) of the Communications Act*, 17 FCC Rcd 2271, ¶ 26 (2002) (“Investment protections may confer actual control upon the minority owner where they give it the power to determine the licensee's policies and operation, or to dominate corporate affairs.”).

service of public safety's communications needs. Verizon Wireless looks forward to working with the Commission and the public safety community in this important endeavor.

Respectfully submitted,

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