

**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
	)	

**COMMENTS  
of the  
ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS-  
INTERNATIONAL, INC. (“APCO”)**

June 20, 2008

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## SUMMARY OF COMMENTS

APCO urges the Commission to retain the public-private partnership model in the D Block auction, as it is the only approach likely to lead to the deployment of a national, interoperable, public safety broadband network.

The Commission's rules should recognize that the shared network will provide essential broadband data and non-mission-critical voice communications for a wide variety of public safety services, but it will not replace current public safety, mission-critical voice systems until far into the future, if ever.

APCO supports the Commission's re-examination of the rules governing the public safety broadband licensee ("PSBL"). Among other changes, APCO supports certain limitations on the PSBL's funding, more transparent PSBL meeting and decision making processes, and modifications to the composition of the PSBL's board of directors to provide greater diversity and expertise. These and other changes should be implemented through either mandated modifications of the current PSBL's governing documents or a rescission and reissuance of the PSBL license.

A successful D Block auction requires that the FCC establish more specific network requirements and D Block licensee obligations prior to the auction. APCO recommends that the Commission specify that public safety users have ruthless pre-emption rights for half of the shared network capacity. We also recommend a re-definition of requirements related to coverage, capacity, throughput, Quality of Service, and reliability to better reflect the realities of how a broadband network will need to be designed and operated for public safety use.

APCO does not believe that the PSBL should act as a "mobile virtual network operator," though the PSBL must maintain sufficient authority and responsibility to protect public safety

needs. The value of the D Block licensee's access to the public safety portion of the network, while subject to pre-emption, has substantial value that must be reflected in the network sharing agreement ("NSA").

The Commission should resolve disputes in the NSA negotiations, but with less severe penalties for a D Block auction winner's failure to reach agreement with the PSBL. The reserve price should be reduced substantially, and the Commission should not break-up the D Block as that could defeat the purpose of creating a national interoperable network.

Finally, the Commission should table any discussion, conclusions, or actions regarding what happens to either the D Block or the public safety broadband spectrum in the event of auction failure.

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**COMMENTS OF APCO**

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s *Second Further Notice of Proposed Rulemaking*, FCC 08-128 (released May 14, 2008) (“*2d FNPRM*”) in the above-captioned proceedings.

Founded in 1935, APCO is the nation’s oldest and largest public safety communications organization. Most of APCO’s nearly 16,000 members are state or local government employees who manage and operate communications systems for police, fire, emergency medical, forestry conservation, highway maintenance, disaster relief, and other public safety agencies. APCO is the largest FCC-certified frequency coordinator for Part 90, Public Safety Pool channels, and appears regularly before the Commission on a wide variety of public safety communications issues. APCO has been a major player in the Commission’s numerous proceedings regarding the 700 MHz Public Safety Band, including the development of the public-private partnership approach to the D Block auction and the creation of a national public safety broadband licensee

(“PSBL”).<sup>1</sup> APCO is among the organizations that the FCC designated in the *Second Report and Order*<sup>2</sup> for representation on the PSBL board of directors.<sup>3</sup>

## I. Introduction

APCO continues to support the development of a *national, interoperable*, broadband network that is *designed, maintained, and operated* to meet the requirements of *public safety* communications to the maximum extent feasible. Each of those criteria is essential. A national, interoperable network is necessary to avoid a continuation of the current patchwork of public safety communications systems with greatly varying degrees of capability, inconsistent levels of interoperability, inefficient use of spectrum, and the lack of a competitive, open marketplace for radio equipment. The network must also meet public safety requirements regarding coverage, reliability, capability, and control to the maximum extent feasible. Otherwise the network will not become a useful, dependable tool for first responders. However, as discussed below, some compromises regarding public safety requirements may be necessary to attract a private sector partner through the D Block auction.

Ideally, a national public safety broadband network could be deployed entirely by public safety entities using only spectrum allocated for public safety use. However, the enormous cost

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<sup>1</sup> In these comments, “PSBL” will be used to refer in general to the national public safety broadband licensee as established in the Commission’s rules, and “PSST” will be used to refer to the specific legal entity, the Public Safety Spectrum Trust, that was awarded the license.

<sup>2</sup> Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94-102, Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01-309, Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03-264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules, WT Docket No. 06-169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06-229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96-86, Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, WT Docket No. 07-166, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (*Second Report and Order*) recon. pending.

<sup>3</sup> APCO disagrees, however, with portions of the comments being submitted by the PSST.

of such a network requires either unprecedented levels of federal funding or a public/private partnership such as that contemplated by the Commission in the D Block auction. The required levels of federal funding are highly unlikely to materialize, even if Congress were to devote the D Block auction revenue to public safety. At most, the D Block auction might yield \$4-6 billion, a substantial sum, but not nearly enough to construct a nationwide public safety broadband network.

The public private partnership creates the opportunity for a commercial enterprise, the D Block auction winner (perhaps with other partners), to build a national broadband network that spans both public safety allocated spectrum and the D Block spectrum. The challenge is to develop rules that encourage potential bidders to take on such a task while still ensuring that the network will meet the special communications needs of public safety agencies. These comments and those of other public safety groups will attempt to provide the Commission with further guidance regarding those issues.

The PSBL is a critical element of the partnership and must be vested with sufficient authority to ensure that public safety needs are addressed in all stages of the deployment and operation of the national broadband network. On the other hand, the PSBL must be subject to appropriate safeguards and oversight to ensure that it serves the needs of public safety agencies in an efficient and effective manner. The PSBL must also have the full support of the public safety community, the Commission, and other parties as it undertakes the enormous responsibilities being imposed upon it. As discussed below, APCO believes that changes are needed to the current rules governing the PSBL.

Finally, APCO urges the Commission to proceed with a D Block auction encompassing the public-private partnership approach, but without establishing any assumptions, procedures or

rules that might apply to a subsequent re-auction if the next effort does not succeed. We fear that adopting such “contingency” rules will have a serious chilling effect on the next auction, as potential auction participants may well stand on the sidelines and wait for the auction to fail.

The following will address the major issues presented in the *2d FNPRM*.

## **A. The Public Safety Broadband Licensee**

### **1. Eligibility and Use**

In this section the Commission seeks comments regarding the statutory and policy issues related to eligibility for the relevant public safety spectrum. These questions presumably flow from the fact that the Public Safety Spectrum Trust (“PSST”) had been exploring operational models that would have involved it acting as a mobile virtual network operator (“MVNO”). The PSST in that scenario would provide service to public safety users as well as “critical infrastructure industry” (“CII”) entities such as utilities who are not eligible to hold licenses for public safety spectrum. Such an operational model could provide for enhanced interoperability between public safety and critical infrastructure users who have similar coverage and reliability requirements. There would also be a significant economic impact in an MVNO model as the revenue from those users would flow to the PSBL, not the D Block licensee. The Commission, in the *2d FNPRM*, expresses doubts regarding the MVNO model, doubts that APCO shares in many respects.<sup>4</sup> In the absence of the MVNO model, the CII eligibility issue may no longer be as relevant. Moreover, there are significant questions as to whether the Communications Act would allow the PSBL to offer service on public safety spectrum to entities not eligible for public safety spectrum under Section 337 of the Act.

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<sup>4</sup> The MVNO model is discussed further in these comments at page 34.

Nevertheless, there remain important questions regarding the degree of priority, if any, that should be afforded to CII users *vis a vis* commercial users of the network. APCO believes that the FCC should require that the D Block licensee provide CII entities with priority access to the commercial portion of the network (secondary, however, to public safety where relevant) consistent with current CII/wireless carrier agreements.

APCO supports a provision that would allow federal public safety use of the broadband network with the concurrence of the PSBL and local public users in the areas in which the federal government desires to operate on the network. In general, federal public safety use should be encouraged as a means of improving interoperability in emergency response activities, but not at the expense of providing sufficient spectrum capacity for state and local governments.

The *2d FNPRM* section on eligibility also includes several paragraphs concerning the nature of potential public safety use of the broadband network. APCO views the principal uses of the network to be for video and other “broadband” data requirements that cannot be accommodated on existing “narrowband” networks, and require coverage and mobility not offered in the 4.9 GHz broadband spectrum now allocated for public safety broadband. Voice, which is the most mission-critical form of communication, will likely remain on current (and new 700 MHz) narrowband land mobile radio networks that have ubiquitous coverage, extremely high levels of reliability and redundancy, and are under the exclusive control of public safety. While voice is likely to be offered on the broadband network, its use will be primarily for non-critical and secondary command and control communications.<sup>5</sup> Eventually, as the public safety broadband network becomes more fully deployed, and if it satisfies mission-critical

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<sup>5</sup> For example, many first responders carry a public safety land mobile radio for their mission-critical communications and a cell phone for more routine matters. This limits congestion on scarce land mobile radio frequencies, and offers a link to the public switched telephone network. The broadband devices offered for the 700 MHz band will probably replace cell phones in many cases for first responders, but are unlikely to replace land mobile radios until much later in the network development, if ever.

communications requirements, it may become a replacement for some narrowband voice systems, but that is highly speculative at this stage.

There are real and important differences between narrowband licensees and the broadband licensee. Narrowband licensees are represented by a diverse assortment of public safety agencies that are building mission-critical voice communications systems to allow for immediate emergency response communications within a defined area of services. Each of these systems is designed and implemented to meet the very specific and unique needs of that agency and those they serve. While standardized equipment is often used and interoperability remains a key element, each system operates on a frequency(s) that each agency is able to license, given the specific coverage, geographical, topographical, and spectrum issues they face. The network, its quality of service, performance level, and service and response time are generally under the direct control of the licensee. These systems are designed to provide coverage where and when the licensee needs it. Public safety will continue to own, operate and maintain their land mobile radio networks well into the future.

In the broadband public/private network, the system will be built to the highest common denominator that is economically viable and technically feasible to serve a mass market. Given the inherent latencies that can be expected in the public/private network and the IP networks with which they may interface, customized features and functions will be primarily limited to application-based services. The end user, no matter how we wish to characterize it, will have very little control over the day-to-day technical or operational capabilities and flexibilities. Our expected quality of service, service response time, routine maintenance, coverage and most operational features will be contingent on detailed contractual arrangement and PSBL general contract management and oversight.

While there is a perception among some that the wireless, broadband network will replace existing mission-critical voice communications service, such an assumption is flawed at the core. Rather, the Commission and the potential D Block bidders must understand that the public/private network will be primarily used for the transport of broadband, high speed data services. Many of the kinds of data services and applications we envision can be found in the TIA/ETSI, Project MESA Statement of Requirements (SoR) and its accompanying Functional Matrix which match the services that public safety has identified with industries understanding of those requirements.<sup>6</sup> Those documents, coupled with the gap analysis now being developed, will further refine in single locations our understanding of public safety's long-term requirements. In the absence of that material, and in a general sense, we believe the broadband network will be used to transport video input and output, high-speed data services, complex engineering and building plans, plans for electrical and gas service, complex medical information, engineering drawings, geographical mapping, fire hot spot locations, firefighter monitoring, undercover services, complex medical files and information, chemical analysis information, robotic control, and so many other broadband high-speed data services that the list is inexhaustible.

The FCC asks, in paragraph 34, whether the public safety broadband network will or should be interoperable with existing networks. It is unlikely that the new broadband network will be interoperable with existing narrowband networks that today provide for most public safety communications. At most, some degree of network patching or gateways may be possible for voice communications. Narrowband networks will lack capacity to handle data from the broadband network at useable transmission rates, even assuming compatible technologies.

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<sup>6</sup> [www.projectmesa.org](http://www.projectmesa.org)

Eventually, some devices could be used that incorporate both a narrowband land mobile radio (more likely for 700/800 MHz narrowband than VHF or UHF bands) and broadband capability. The cost of such devices will be a significant factor, however. APCO does not believe that the Commission should require that broadband devices be interoperable with narrowband voice operations as that would divert scarce resources necessary to ensure that the broadband network meets its primary purpose of providing high speed video and data for public safety.

APCO accepts the Commission's desire and willingness to support continued technology migration paths that are both productive and altruistic, but we do not support any form of technology development mandates nor have we in the past. On the contrary, if the Commission, Congress, industry, the public safety community and the PSBL are successful, our technology needs will be both satisfied and available at a lower price, because they will be leveraged through the commercial sector as well as ours.

The *Second FNPRM*, at paragraph 34, also includes questions regarding "throughput" considerations. From APCO's perspective, throughput will be directly impacted by the number of active users, system design, applications, available bandwidth at any given location and a host of other issues that cannot be precisely quantified in the absence of a great deal of additional information. We anticipate the average public safety consumer will be using bandwidth intensive service. In major metropolitan areas, a saturation point could be arrived at during an emergency situation much more rapidly than may occur in rural areas. In that regard, the ability to maximize the network, performance will be dependent on the quality of network monitoring, design, maintenance and management.

The Commission, in paragraph 35, asks whether there may be areas in which a local jurisdiction elects not to utilize the public safety broadband network. That may well occur,

especially in the early years of deployment. In principle, there is no reason why the D Block licensee could not make use of that spectrum until such time as there is local public safety use. However, the network sharing agreement should capture the value of that spectrum in some fashion for public safety. The FCC then asks if the local jurisdiction, as opposed to the PSBL, should receive compensation in those instances where there is no local use. There is no rational basis for such compensation to local agencies. The license for the spectrum is held by the PSBL, not the local jurisdiction. Absent a fundamental shift in the licensing of the public safety broadband spectrum, the local jurisdictions will have no financial claim on the spectrum. Furthermore, such a scheme would create incentives for cash-strapped communities to sell off “their” communications capability to the potential harm of other jurisdictions.<sup>7</sup>

The Commission seeks information in paragraph 36 regarding any existing public safety broadband networks. However, those are extremely small in number, and provide only limited guidance. There are systems being deployed in New York City (relying in large part on spectrum that is generally not available elsewhere for public safety use) and in the National Capital Region, as noted in the *Secord Report and Order*.

In paragraph 37, the Commission asks where public safety users “should be required to subscribe to the network.” However, the Commission fails to address or even inquire about the threshold legal questions. We do not believe that the Commission has the legal authority to impose such a requirement on state and local governments. Indeed, even Congress would probably be unable to adopt such an “unfunded mandate.” The Commission goes on to ask whether use of the public safety broadband network should be a condition of government funding. However, that too goes far beyond the Commission’s authority. Only Congress (or the

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<sup>7</sup> There would also be issues regarding which overlapping jurisdiction, the city, the county, or the state, is entitled to the payment.

funding agency operating with clear statutory authority) could condition its grant funds in such a manner. While we appreciate and support the Commission's desire to encourage wide spread use of the public safety broadband network, the final decision whether or not to use the network will necessary rest with state and local government agencies that provide public safety services.

APCO supports the current rules that facilitate local government deployment of broadband networks, subject to eventual integration into the national broadband network. This allows those government entities with the necessary resources to "jump start" broadband deployment in their areas, especially where national network build out may be many years down the road. To the extent such agencies are required to merge into the national network, there should be a requirement that the D Block licensee compensate them for any incorporated assets.

The Commission also opens the door in paragraph 37 to a far-reaching discussion of "rate regulation" in the context of a national public safety network. APCO is pleased that the Commission is exhibiting the foresight to begin to deal with this difficult and complex issue. In fact, per unit and aggregate service pricing has been a major concern for APCO since the inception of this process. Since our membership includes representatives from states, cities, and counties, we are very aware of the fact that it will almost always cost more to provide an equal level of service to the smaller agency that works in remote areas and have wide jurisdictional areas than it will to cover a dense urban area.

This problem in public safety is aggravated by the fact that states and counties have responsibility to provide the same or virtually the same level of service throughout their geopolitical area. As a result of such obligations, it is extremely difficult to see how a D Block licensee can implement quality service with full knowledge that there are insufficient users to

ensure a return on investment. Conversely, it is difficult to understand how having a nationwide system can be claimed in the absence of providing such service.

While technology obviously plays a part in the solution, grass roots economics will in the end be the determining factor. In that regard, APCO believes the Commission needs to create a process that will function independently of normal political consideration and be predicated on a formal rates process that includes the PSBL, independent public safety agency representatives, the D Block licensee, the Commission, and observers from Congress.

At the core of this whole issue is public policy: Should some rate payers, generally urban public safety consumers, subsidize rural rate payers? Should larger service users, for example, the City of New York, subsidize smaller public safety consumers such as Kanab, Utah? This issue could be addressed through blanket Federal subsidies as the Commission has previously alluded to or it could be addressed through a rate structure that is subsidized by the other users, under what the Commission considers a “most favored nation.” Conversely, the Commission or its designated representative may want to direct the establishment of rates structures that are based on creating a projected revenue stream large enough to ensure the PSBL is able to develop sufficient retained earnings to fund an income redistribution program in those areas where a favored nation status may apply. Another option, that clearly requires legislation, would be for the Commission to collect a user fee on all users, similar to a 911 service fund or fee, with the Commission being the center of collection, distribution, and approval of the allocation of funds.

In all of these cases, the Commission could take full advantage of an advisory rate board, commission or advisory group to assist in establishing the rates and future adjustments to them, minimizing either the perception or the reality of one of the participants adjusting rates for their own purpose, at the expense of the other participant.

Finally, APCO would encourage the Commission to establish rules that would allow the PSBL and the D Block licensee to negotiate with qualified public safety agencies to accept capital investments or the use of publicly funded capital investment in exchange for reduced rates. For example, a state may offer a defined level of service on a statewide digital microwave or fiber network in exchange for a defined reduction for a specific number of subscriber units. Such arrangements would allow for the D Block licensee to take advantage of the agency's existing investment, ensure the sites meet the states' requirements for back up service, preclude additional construction and planning costs, and ensure a potentially higher level of services. In addition, if done properly, all the participants could share in HVAC costs, tower construction and maintenance, utility costs, road maintenance costs, and security costs.

## **2. Rules Regarding the PSBL**

The Commission asks a series of questions regarding the non-profit status of the PSBL and, in particular, the nature of the business relationships that it may enter into. Many of these questions obviously flow from the experiences of the PSST to date (or at least perceptions of those experiences).

The creation of a PSBL posed many serious financial questions that the Commission may not have fully anticipated when it adopted the *Second Report and Order*. The PSBL is by definition an entirely new entity with extraordinary near-term, mid-term, and (depending upon its role *vis-a-vis* the D Block licensee) long-term responsibilities. Yet the PSBL has no immediate source of funding. The state and local government agencies that will ultimately use the network have no obligation to fund the PSBL, the PSBL has no tax or bonding authority to raise funds, and it has no tangible assets that could provide security for loans.

The lack of funding avenues is what led the PSST to borrow funds from its agent/advisor, and then use most of those funds to pay for services provided by that agent/advisor. APCO, through its representative on the PSST board of directors, expressed concern with this approach and urged that alternative funding sources be explored, while recognizing how difficult that may be. The agent/advisor's funding of the PSST and the resulting debt creates at least a perception that the agent/advisor could exert undue influence over the PSST. It also imposes a financial burden that could interfere with the PSST's mission. Therefore, APCO believes that the Commission's rules should prohibit the PSBL from borrowing funds from entities that provide substantial services to the PSBL.

On a related issue, the Commission should require that the PSBL adopt strict conflict of interest requirements that include prohibiting its advisors from engaging in business activities resulting from the advice provided to the PSBL. This is especially dangerous if the PSST board lacks sufficient knowledge and expertise to "second guess" the advice it receives. The Commission should also prohibit the PSBL (or its agent/advisor) from establishing business relationships with equipment vendors, service providers, and others with a financial interest in the decisions of the PSBL. The PSBL itself should not be in the "business" of developing or providing devices for use on the network.

The Commission asks whether the PSBL should be prohibited from obtaining either debt or equity financing from any for-profit entity. Equity funding from any sources should be prohibited, as that would undermine the independence and non-profit status of the PSBL. However, the PSBL must have the ability to seek debt financing (*i.e.*, loans) to fund its operations, and those loans would almost certainly need to be from banks or other "for profit" institutions. As noted above, a more appropriate provision would be to prohibit debt financing

from any entity that provides services to or otherwise has business relationships with the PSBL. Of course, allowing the PSBL to borrow funds from independent banks and other financial institutions does not mean that it will be able to do so. Lacking conventional forms of security, the PSBL is likely to face resistance from traditional sources of debt financing. What could help would be provisions in the FCC rules that make clear that a specific dollar amount must be made available by the D Block licensee to the PSBL to pay back loans obtained from financial institutions to provide operational funds. That could provide sufficient assurances for the lending entities.

The *Second Report and Order* contemplated that the D Block auction winner would agree, as part of the Network Sharing Agreement (“NSA”) to pay a spectrum lease fee to the PSBL for the use of the public safety spectrum when that spectrum is not being used by public safety entities. That concept should remain, though with some further definition by the Commission to provide auction participants with greater certainty regarding their potential obligations. A fee cap may also be appropriate. On the other hand, the D Block licensee should not directly pay the PSBL’s expenses, as suggested in paragraph 42, as that would create potential conflicts of interest. The Commission should consider requiring the D Block licensee to establish a trust fund with a specified dollar amount that the PSBL would be allowed to draw from to pay its operating expenses and otherwise promote expanded local use of the network, provided there is a clearly established and supported operating budget.

As a means of stimulating use of the nationwide broadband network, we would further recommend that the FCC consider requiring that all funds generated through spectrum lease fees in excess of those deemed appropriate to cover the operating expenses of the PSBL be held in trust with a not-for-profit foundation and that public safety users have the ability to apply for

grant funding to that foundation to be used to cover the cost of equipment, devices, and any operating fees associated with the use of the nationwide broadband network. We believe that this would ensure that public safety users receive direct benefit of any spectrum lease payments by the auction winner but as importantly we believe that this will stimulate the growth of the broadband network.

In any event, the value of the D Block licensee's use of public safety spectrum must somehow be accounted for, either in a direct payments or in substantial reductions in the service fees charged public safety users to use the network. We discuss the issue of those payments further at page 37.

The Commission also seeks comments in paragraph 43 regarding the potential use of the Universal Service Fund to support the PSBL. From a public policy perspective, there is much to support using USF in that manner. However, we acknowledge the potential legal issues, at least as to funds being provided to PSBL, which is not a common carrier. There may be a stronger basis for provide USF support to the D Block licensee to promote build out of the network in rural areas.

APCO does not believe that the Commission should impose any arbitrary restrictions on the excess revenues, if any, of the PSBL. We do support Commission oversight, quarterly financial reports, and periodic audits to ensure that the PSBL is operating in conformance with its public responsibilities and Commission rules. The PSBL must be able to enter into usual and customary business relationships to provide the expertise necessary to fulfill its obligations. However, it is important that the Commission require regular audits, that the PSBL abide by generally accepted accounting principles, and that its records be open for public inspection.

### 3. PSBL Governance and Board Composition

In the *Second Report and Order*, the Commission adopted very specific requirements regarding the organization of the PSBL, including provisions that must be included in the PSBL's articles of incorporation and bylaws, determining the number of votes required for certain actions, and defining the organizations that must be represented on the PSBL board of directors. In the *2d FNPRM*, the Commission asks wide-ranging questions regarding those requirements and invites a close re-examination of the PSBL structure and how the PSST has performed as the FCC-selected licensee.

APCO helped to create the PSST and has devoted substantial time and resources to its formation and activities. APCO also greatly appreciates the tremendous dedication of the PSST board members and the organizations they represent. However, APCO strongly supports the Commission's re-examination of the PSBL requirements and believes that fundamental changes are necessary to ensure that the PSBL is a more effective and efficient entity that will promote the interests of the entire public safety community and the nation as a whole.

As an initial matter, the formal relationship between the Commission and the PSBL must be strengthened. The PSST moved in certain policy and business directions that some FCC commissioners and staff subsequently criticized in public forums. That could have been avoided through more substantial communications between the PSBL and the FCC. While we are not recommending that the Commission have veto power over PSBL decisions, we believe they must be more than a disinterested observer and should actively participate in the process. Accordingly, we recommend that the Commission work with the PSBL to establish a formal process to achieve that objective. As noted below, we would support a Commission official serving in an *ex officio* capacity on the PSBL board.

We encourage the Commission to make an effort to strengthen the PSBL rules with regard to public meetings, meeting notices, summary meeting notes, and the use of executive sessions. While we understand the sensitive nature of the work and deliberations of the PSBL, a closed process can lead to a troubling stream of misinformation and a lack of information in the public sector, further complicating both the official message and public safety's understandings of what is taking place. We urge that the FCC require the PSBL board meetings be held in public, with the proviso that the board may go into executive session to address sensitive matters related to NSA negotiations with the D Block auction winner and personnel issues. Minutes should describe the matters addressed in executive session to the extent possible without revealing sensitive information.

We also recommend that the PSBL separate the position of the Chairman of the board of directors from the position of CEO/President. The board of directors needs to focus on representing the critical needs of the public safety community and be sufficiently qualified to do so. The CEO/President needs to manage the business, develop the business plans, manage the budgets and represent the PSBL in day-to-day business dealings with managers, employees, advisors, and other outside services provided and once again, be sufficiently qualified to do so.

The Commission asks whether unanimous votes should be required. We are not convinced that unanimous voting will either streamline or improve the process, and it could lead to a stalemate. We do believe that certain matters, including elections of officers, should be by a supermajority vote. We do not support term limits or mandatory rotation of the chairmanship.

Pursuant to the Commission's orders, the board of directors of the PSBL must consist of representatives of fifteen organizations specified by the Commission. This has had several negative consequences which we believe could become more pronounced if changes are not

required by the Commission. The current PSST board members are dedicated public servants, and we applaud their contributions to the process. However, based upon our experience with the PSST, APCO believes that the Commission needs to modify its rules regarding the membership of the PSBL.

First, the PSST has been formed such that the organizations named by the Commission are not “members” of the PSST, but merely have the right pursuant to the bylaws to name individuals to serve on the board. While there may have been a rationale for this approach under relevant corporate law, in practice it has disenfranchised the very organizations that the FCC felt should be involved in the PSBL. Indeed, the PSST process has discouraged organizational input into matters being voted upon by the PSST Board. Therefore, APCO urges that the FCC clarify that the organizations it names must be the actual members of the PSBL board to the extent that this can be done without creating undue financial liability to the respective organizations.

Second, the large size of the PSST board has led to over-reliance on the Chairman/CEO and a three-person executive committee (the chairman, vice-chairman, and secretary/treasurer) that exercises a substantial degree of discretion without sufficient opportunities for input from other board members. A smaller board would allow for a more inclusive decision-making process.

Third, despite the large size of the PSST board, it does not provide sufficient diversity of interests or required expertise to undertake the extraordinary tasks at hand. For example, very few of the current board members have direct experience in designing or operating public safety communication systems. There is also little or no expertise from the fields of business, finance, or communications technology, all of which are critical to the functions of the PSBL. Such gaps

in the board's experience lead the PSST to rely even more heavily on the advice of its agent/advisor and limits its ability to engage in a thorough critique of that advice.

Fourth, APCO has concerns that the current PSST board membership and leadership (both in terms of associations and individuals) too closely mirrors the Governing Board of the National Public Safety Telecommunications Council ("NPSTC").<sup>8</sup> APCO is a founding member and supporter of NPSTC. However, NPSTC serves a fundamentally different role than the PSBL. NPSTC brings together various public safety organizations to address primarily technical issues regarding public safety radio communications, while the PSBL must address broader network management, system design, and financial matters in a fiduciary manner and under supervision of the FCC. The NPSTC member organizations bring an important perspective to the PSBL, which is further enhanced by the other organizations represented on the PSBL board. However, there remain significant gaps in the experience and expertise necessary for the PSBL's success.

The overlap between the PSST and NPSTC goes beyond board composition. The PSST has entered into arrangements with NPSTC to provide it with advice on certain matters, retained NPSTC's regulatory counsel, and contracted with NPSTC's support office to perform similar duties for PSST.<sup>9</sup> While these NPSTC-related arrangements may provide quality advice and service to PSST, they do not promote diversity of viewpoints or enhance PSST's scope of knowledge. They might even pose potential conflicts of interest.

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<sup>8</sup> Eight of the fourteen organizations currently represented on the PSST Board (one of the 15 seats is currently vacant) are Governing Board members of NPSTC, including the organizations that selected the three individuals serving on the PSST Executive Committee (each of whom also represent those organizations at NPSTC).

<sup>9</sup> The support office arrangement was short-lived due to concerns from some PSST board members regarding the selection process, the size of the potential contract, and PSST's uncertain financial situation.

To address these concerns, APCO suggests that the Commission change the required composition of the PSBL board. We recommend a board of eight to twelve members, with approximately half of the members being diverse organizations that represent potential users of the network and those with expertise in public safety communications matters. The organizations, not their individual representatives, should be members to the extent necessary to ensure input from the relevant organizations. The remaining PSBL board members should be individuals selected by the Commission who do not represent any particular organization but who would add critical knowledge and expertise to the PSBL's decision making. Examples would include individuals with substantial direct experience in public safety radio network management, the telecommunications industry, finance, and communications technologies.<sup>10</sup> This would give the PSBL far greater ability to explore the full range of options without over-reliance on an agent/advisor, or at least provide the PSBL with the ability to examine and challenge the advice it receives in a more comprehensive manner. Of course, the Commission must ensure that a clear majority of the board members directly or indirectly represent public safety entities. A FCC commissioner or high level Commission official, such as the chief of the Public Safety & Homeland Security Bureau, should also serve as an *ex officio* member of the PSBL board.<sup>11</sup>

There are two ways that the Commission could implement the changes recommended above. It could require that the PSST modify its articles of incorporation and bylaws to reflect the new requirements, including the changes to its board. The alternative, identified in the *2d FNPRM*, is for the Commission to rescind the PSST's license, select a new PSBL and allow it to

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<sup>10</sup> To attract qualified individuals, the Commission may need to authorize the PSBL to compensate those individuals for the time and expense of participating on the board. Of course, individuals with outside interests would need to be screened for conflicts of interest.

<sup>11</sup> APCO does not believe it would be appropriate for the FCC to be a voting member of a licensee.

start over with a “clean slate.” APCO can support either of these approaches, provided that the end result is specific changes to the PSBL as discussed above. There must be positive change in the form of the PSBL, and requirements that it operate in a transparent environment that supports consensus building and is guided by a more diverse representation. The Commission should proceed in whatever approach achieves these crucial changes in the most effective manner, whether that means mandating changes to the existing PSBL or rescinding and reissuing the PSBL license.

## **B. The Public-Private Partnership**

### **1.a. Network System Requirements**

APCO and the public safety community as a whole have had to undergo a great deal of contemplation regarding the system performance requirements of the National Broadband Network (NBN). We have come to realize that for a NBN to be economically and logistically achievable, the NBN may not be able to meet every requirement that public safety has, both now and into the future. What the network can offer, however, is a (1) framework that can allow public safety access to more affordable broadband services, and (2) a migration to a broadband network capable of not only meeting more stringent requirements, but also supporting more mission critical services in support of public safety operations. What we offer here is guidance to the Commission in these areas.

#### **i. Technical Requirements**

In paragraph 63 of the *2d NPRM*, the FCC expresses concern that leaving much of the network performance requirements to post-auction negotiations harms the viability of the

auction.<sup>12</sup> APCO agrees with this concern and recommends that all steps be taken to either pre-define or eliminate as many negotiating points of the NSA as possible.<sup>13</sup>

The FCC further requests clarification (see paragraph 70 of the *2d FNPRM*) on how and who should set the technical obligations and specifications of the network.<sup>14</sup> APCO feels that the FCC should develop these obligations and specifications from the record of this proceeding. Although we understand that this may not satisfy all parties, the speed and weight of this proceeding dictates that a pragmatic and impartial body such as the FCC assume the role of establishing the specifications of these network parameters and capabilities. In the following discussion, APCO will provide further guidance to the FCC in several specific areas.

#### ii. Priority Access

One of the most significant areas that presents a challenge to the development of a viable business model of the network has been in the area of priority access for public safety – especially under emergency conditions. Due to the lack of specificity of what actually constitutes an “emergency,” this has presented an issue to potential bidders, as it was unclear exactly how much guaranteed capacity could be available to commercial subscribers under such conditions. As a result, bidders found themselves in a position where they might not be able to effectively market the same services that would attract a new class of customers – that is, broadband data at higher reliability/ availability, and coverage levels than found under existing

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<sup>12</sup> “We seek comment on whether, as a general matter, maintaining parties’ flexibility to negotiate most details of the network specifications would best serve the public interest goals of the partnership. We seek comment on what technical requirements should be specified in advance, rather than being left to be negotiated after the auction.”

<sup>13</sup> In the next section we will recommend that the removal of the ability of emergency pre-emption of the commercial spectrum eliminates many difficult negotiation points that deal with capacity management, QoS, priority, etc.

<sup>14</sup> “With these questions and issues in mind, we seek comment on whether the Commission should itself establish in a detailed and comprehensive fashion the technical obligations of the D Block licensee with regard to the network, and if so, what specifications it should adopt.”

networks. The reason is clear – you cannot try to entice subscribers by offering highly available services except during “emergency” conditions; as it is under these conditions that these services<sup>15</sup> are also most required on the commercial side as well.

As alluded to in paragraphs 77-78 of the *2d FNPRM*, providing some risk reduction to potential bidders would require providing a significant amount of detail and definition regarding how priority and preemptive services are implemented, and under what circumstances would such preemption apply. APCO offers an alternative that simplifies matters considerably – removing the requirement that public safety preemption impinges into the D Block virtual capacity under heavy load conditions. Specifically, we feel that under normal circumstances (*i.e.* when there is no system contention for delivery of broadband services) there should be a soft/flexible partition between D-Block Virtual Capacity (DBVC) and Public Safety Virtual Capacity (PSVC). In other words, when no service contention exists public safety utilization may impinge upon DBVC as needed, and commercial utilization may impinge upon PSVC as needed. However, as sector loading increases and service contention starts to occur, there is an immediate transition to a hard partition state where both DBVC and PSVC levels revert to 50% of the paired spectrum. The only time when this hard partition could be removed (and PSVC increased) would be by Presidential Order or by any other existing means where government can seize control of commercial assets – a situation that rarely occurs, and would not be a specific impact to the NBN any more than any other commercial asset.

This approach should provide potential bidders with a more economically viable business model, one that would allow them to market at least 50% of the network capacity to priority and/or guaranteed delivery commercial services under all loading conditions, with significant

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<sup>15</sup> Examples of these classes of subscribers are mobile television news teams, financial and banking services, corporate and executive services, etc.

additional capacity available to market to lower priority services that are available under most all circumstances (*i.e.* when no service contention exists). Although this may seem to be a significant concession to some, APCO feels that not only is this a necessary roadblock to be removed if the NBN is to even be achievable, it is consistent with fact-based reality. If the vision of the NBN cannot be made viable, then public safety will be left with only 10 MHz of spectrum to build their own dedicated network. This is the exactly the same amount that would be available to the PSVC on the NBN – under any conditions. Therefore public safety is not giving anything up by suggesting this approach, they are simply maximizing the possibility of achieving the benefit of a NBN.

This approach would require that public safety take responsibility for managing its bandwidth, however such management was always implicit under any approach. The benefits of any finite resources cannot be maximized without responsible management of that resource. If managed properly, the PSVC utilization can be prioritized so that critical services can be provided under any circumstances. If not managed properly, it very likely that these critical services could not be supported, even if public safety had access to the entire DBVC allocation. Further, having public safety step in to take responsibility for the management of their own capacity utilization shows that they can be a responsible and economically viable partner for a venture such as the NBN.

The need for responsible capacity management is not unique to this proposed approach, but it is often overshadowed by discussions regarding using technology and remote network management as the primary management tools. It is here that the lessons learned from achieving effective interoperability and incident management need to come into play. APCO stresses that more than 99% of the management of PSVC must occur prior to deployment, and must be

embedded into the technology so that the system can quickly adapt and react to changing operations needs automatically and without remote intervention. A local incident command official should be able to manage the incident locally, with only a very rare need to reach out beyond the incident to assign PSVC resource and/or service priorities. It is absolutely critical that nearly all operational aspects of the network service priorities are worked out ahead of time, and that public safety personnel understand and train to the capabilities of the network under diverse circumstances. One of the most important things learned from the study of effective interoperability and incident manage processes is that training and processes are much more critical than technology.

As a final comment in this area, the task of developing prioritization schema for this network is a large and logistically difficult task that must be completed prior to commencing operations on the NBN. Although too complex to detail here, it must consider a multitude of scenarios, each with multiple states of both application service and command level priorities. We feel that this efforts should be undertaken as soon as practicable and should either be initiated as a FCC task force, and interact with or though an existing group such as FEMA has done with the National Incident Management System (NIMS)<sup>16</sup>. We further feel that although the PSST should be a participant in these activities, they should not be the party responsible for their completion.

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<sup>16</sup> NIMS was developed so responders from different jurisdictions and disciplines can work together better to respond to natural disasters and emergencies, including acts of terrorism. NIMS benefits include a unified approach to incident management; standard command and management structures; and emphasis on preparedness, mutual aid and resource management. See <http://www.fema.gov/emergency/nims/>

### iii. Performance Requirements

#### *Coverage Timelines*

Starting at paragraph 88 of the *2d FNPRM*, the FCC seeks comments in many areas of performance requirements as they relate to construction of the NBN. As a practical matter APCO urges that the FCC consider reasonable and achievable timelines to meet critical performance benchmarks. After the initial auction it has become clearer that the economics of building this network are the primary driver, and that there is a complex balance between what is achievable technically and economically, and on what timeline. Certainly at the onset of its deployment, the NBN may not provide every critical requirement of public safety; however there needs to be proper checks and balances, and incentives for the network to evolve into something that can deliver mission-critical services to public safety far in excess of what is possible on ordinary commercial broadband networks. APCO feels that is reasonable to extend the timelines of some of these benchmarks by five years (with a corresponding extension of the license term), but cautions that the FCC note that many of the critical performance specifications lack the detail necessary to provide a proper connection to public safety needs. This will be discussed further in subsequent sections.

#### *Coverage, Capacity, Throughput and QoS Specifications*

APCO believes that the current and proposed coverage definitions are very subjective, and require refinement in order to meet the expectations of public safety, as well as to provide specificity to the commercial partner regarding the scope of the network build out. From a public safety user perspective, coverage/QoS should really be defined as the ability of the network to provide sufficient data rates to a terminal device either running or interfacing to peripherals running data application services. There are different applications, services, and

devices, and the specifications for these may be individually defined. Without knowing what the exact mix of deployed terminal and application services will be, we feel that the PSST Bidders Information Document has at least attempted to try to put some definition in these areas. However further definition will be required. It is expected that the record of this processing will provide some of this additional specificity.

Another important issue that should be clarified is that coverage requirements should be set by edge and average sector throughput under load, and that these data rates should be specified differently for different classes of subscriber terminals. As an example, although a public safety PDA-based mobile radio might have low transmitter power and high antenna/body losses, its requirements for application layer data rates for video are generally low due to its limited display resolution. As another example, higher data rates would be required for a vehicle based application with substantially greater transmission and reception power levels. Coverage should be specified as in-building for all handheld devices, but for engineering planning purposes industry standard design parameters such as 10 or 20 dB building losses should be assumed in the design and planning of the NBN.

#### *Robustness/Hardening and System Reliability/Availability*

In paragraph 73 of the 2d FNPRM the Commission requests comment on whether the original requirements for reliability need to be modified, redefined, or eliminated. Further in paragraph 75, the Commission requests comment in many areas related to system hardening and the overall robustness of the NBN. The FCC has indicated that various options exist for the specification of these types of system parameters, including:

- Specifying the particular environmental conditions that the site installations must be designed to withstand.

- Specifying the minimal number of hours that base stations and network equipment must be capable of operating in the event of a power outage.
- Requiring onsite power generator and a specific supply of fuel for each base station.
- Specifying only that the network must meet the same requirements regarding backup power applicable to commercial mobile radio service providers, given that these requirements were themselves established to meet homeland security and public safety goals.
- Specifying whether and to what extent redundant infrastructure must be provided, such as provisions for overlapping cell sites that could provide backup coverage in an emergency, and if so, how would such provisions impact the viability of the system and its cost.
- Establishing minimum obligations to have access to backup equipment and systems, such as cellular systems on wheels, or minimum timeframes for system restoration.

APCO believes that in the process of building a record on this matter, there has been too much “mixing” of requirements that do not go together, and specification of requirements that may be inconsistent and/or incomplete.<sup>17</sup> Going forward we feel that there needs to be a more user-centric, focused, functional, and consistent approach taken in the areas of reliability, availability, hardening (similar to what has been recommended in the areas of coverage, QoS and capacity). To be sure, there are certain components of the network that may need to be specified at high reliability levels; these are the points of significant failure such as high capacity backbone connections, high traffic routers, etc. However from the user perspective the network must exhibit high availability, and how this availability is achieved should be transparent. Additionally, the approach of over-specifying how the reliability/availability is achieved can make it difficult to apply creative solutions that offer functionally high levels of reliability using a combination of hot standby equipment, alternate routing, overlapping coverage between site

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<sup>17</sup> As an example, although we understand the Commission’s intent to capture end user perception of availability, we feel that the often used “50/50” coverage reliability is inappropriate, inconsistent with current TSB-88-based methods of coverage assessment, and not compatible or useful in any way to the performance of this network.

and or site sectors, etc. Current mission critical voice systems are designed at the highest reliability levels that can be practically achieved, but even in the best cases these may only offer “four nines” reliability on limited portions of the system, with the remainder of the system achieving between two and three nines reliability on the rest of the system.<sup>18</sup>

APCO believes that there should be a minimum availability specification put in place that will offer performance on par with today’s most robust commercial networks, and that the NSA should include a transition to levels of availability that are achievable and offer significant improvements over what is currently available from commercial networks. We also feel that the system designers should have adequate flexibility in coming up with innovative approaches to provide the necessary redundancy, and that these reliability levels should be enforced through service level agreements (SLA’s) with the resulting D Block winner. This allows the designers to find ways to meet public safety’s requirements through innovative approaches as opposed to mandated approaches. APCO also feels that any downtime of the network be appropriately reflected into the reliability availability specification such that appropriate response times are mandated by the need to meet measured system availability levels without incurring SLA penalties.

It is entirely appropriate to consider functional aspects of system performance such as redundancies achieved through high levels of site overlap in the determination of overall system reliability availability. However, it must be made clear that sites and network components that cover large geographic areas will need to be weighted accordingly in the overall assessment of system reliability. In other words, the computation of network reliability should consider what percentage of the network capacity is available -- weighted by average traffic load, as well as by

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<sup>18</sup> As an example, in one of the most stringent specifications to date, the New York State Statewide Wireless Network, offers between three and four nines reliability of the network backbone, with the resulting implementation and maintenance costs of this statewide network are in excess of two billion dollars over a single state.

what percentage of the network is available -- weighted by the areas served. If this type of approach is not taken, then there is little incentive for the commercial partner to maintain high availability of remote sites that serve limited average traffic loads, yet serve a critical need in times of emergency.

### **1.b Roles and Responsibilities of the PSBL and D Block Licensee**

The Commission seeks comments regarding the relative roles and responsibilities of the D Block licensee and the PSBL. The focus of the Commission's inquiry appears to concern the ability of the PSBL to serve in a capacity similar to a "mobile virtual network operator" ("MVNO"). The Commission asks whether that would duplicate "the network monitoring, operations, customer care, or related functions that are inherent in the D Block licensee's responsibilities to construct and operate the shared network infrastructure."<sup>19</sup> APCO does not believe that it would be appropriate for the PSBL to act as a MVNO. It would add duplication and costs that could become a burden for both the PSBL and, more importantly, end users. The MVNO model also imposes responsibilities on the PSBL for which it is likely to be ill-equipped. Nobody within the public safety community has ever managed a network of this scale or complexity. To accept such a responsibility, the PSBL would need to rely heavily upon commercial contractors, and somehow provide sufficient oversight to ensure that the contractors are serving public safety's interests. Building the required internal management and operational capability would also involve very substantial capital expenditures at the early stages of the network deployment. The PSBL would have no ready source of such capital and would need to rely upon either debt extended by its contractors (raising other concerns noted above) or a

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<sup>19</sup> *2d FNPRM* at ¶125.

substantial payment from the D Block licensee pursuant to the NSA (which would likely discourage bidders once again).

While the PSBL should not act as a MVNO, it does need to have an active role in the operation of the broadband network to ensure that it meets public safety's requirements. In particular, there needs to be a mechanism to oversee priority access and proper incident command and control for the capacity represented by the 10 MHz licensed to the PSBL.

Many public safety users have not had positive relations with carriers that promise one level of service and provide another. However, APCO feels that the PSBL needs to move towards a management structure that monitors D Block licensee contract performance and service relations, without duplicating the D Block licensee's core function or neglecting the agencies and citizens the PSBL is charged to protect. To achieve that objective, the PSBL needs the ability to perform the following tasks or services:

- Creation of a strong PSBL Board of Directors that sets the visions, policies and expectations, as well as a dynamic and knowledgeable PSBL staff that ensures those expectation and performance criteria are being met by the D Block licensee.
- Facilitating the network construction in accordance with the defined technical requirements, while clearly avoiding trying to second guess or manage the D Block licensees' construction process or agreed-upon schedule.
- Facilitating the needs of the public safety users and community in initial local contract negotiation between the D Block license and the public safety agency(s) involved. This is a limited role and not intended to imply the PSBL will perform long-term marketing tasks unless otherwise agreed to in the NSA.

- Ensuring the local public safety agencies are being well served once the networks are in place. The primary focus of this role is to ensure the end user is connected to the right party(s) in the D Block licensee organization.
- Assisting the local community in finalizing long-term contracts and avoiding weakness in their current or proposed service agreements, and to ensure their long-term needs are recorded.
- Helping to facilitate local agreements that address the exchange of services or resources between the D Block licensee and the local consumer.
- Facilitating and coordinating long-term planning between the PSBL and the D Block licensee.
- Facilitating the cooperative development of operational, performance, and maintenance policies and procedures.
- Ensuring that the D Block licensee has adequate policies and procedures in place to escalate problems that are significantly impacting the local users.
- Creating a priority of service escalation plan, both on a local level and a national level, in cooperation with the D Block licensee and the Commission,
- Mediating problems between the public safety consumer and the D Block licensee.
- Cooperating with the D Block licensee in developing and joining data records and records management systems.
- Performing data processing and record management services not otherwise jointly developed or offered by the D Block licensee.
- Developing and implementing in cooperation with the D Block licensee priority restoration and emergency response plans.

- Managing any work that is outsourced to advisors and consultants.
- Maintaining necessary management and accounting teams to coordinate issues, reports, and recommendations to the Commission and Congress.

The Commission also seeks comments on the financial arrangements between the D Block licensee and the PSBL. The D Block's ability to access portions of the spectrum licensed to the PSBL has substantial value, even considering the potential for pre-emption. That value could be captured through a lease payment and/or lower access rates for public safety users. For reasons discussed above, APCO urges that there be safeguards to ensure that any substantial payments going to the PSBL are spent for the benefit of public safety users (*e.g.*, subsidizing service fees or equipment purchases directly or through a non-profit foundation).

We do not believe that the D Block licensee should be able to charge public safety users commercial market rates *and* make no payment for its use of the public safety spectrum. The Commission suggests that perhaps the cost of building out the network is sufficient to justify "free" D Block licensee access to the public safety spectrum. However, the D Block licensee must build a network in any event to serve its own commercial customers. There will be incremental costs associated with building the network to meet public safety specifications, but that should be reflected in the auction bids (especially in the absence of an artificial reserve price). On the other side of the equation, the D Block licensee is also gaining high profile "anchor tenants" in the form of public safety users, a big advantage for a new market entrant in particular. The "hardened" joint network would also be attractive to critical infrastructure and other commercial users who demand very high levels of reliability (*e.g.*, financial institutions and industrial facilities). Putting a price on these various factors is difficult, especially in a

regulatory proceeding. Thus, a better approach would be the Commission's original plan to leave pricing issues to the NSA negotiations, but with FCC oversight.

## **2. Negotiation of the Network Sharing Agreement**

Hopefully, the FCC will be able provide enough pre-auction information to reduce the number and scope of issues to be resolved in the NSA negotiations. Nevertheless, there will still be many substantial issues in play that could have a critical long term impact on public use of the broadband network. Thus, it is important the FCC continue to be the final arbiter of disputes. However, the Commission should modify its rules regarding the consequences of a failed negotiation. Absent bad faith, the D Block auction winner should not pay a substantial financial penalty if NSA negotiations fail (though some cost should be imposed to encourage serious good faith negotiations). We also agree with the suggestion that, if the negotiations fail, the Commission should then turn to the second highest bidder in the auction and allow it to attempt to negotiate a NSA with the PSBL.

## **3. D Block Eligibility and Reserve Price**

APCO does not believe that the Commission should impose restrictions on auction participation that are unrelated to the goal of developing a national public safety broadband network.

Since the revenue from other 700 MHz auctions has far exceeded amounts budgeted by Congress, there would seem to be no reason for a substantial reserve price that could discourage bidders. We do believe that a minimum bid of some amount may be appropriate to ensure that

bidders are serious about pursuing the substantial financial obligations associated with building the shared network.

#### **4. Narrowband Relocation Issues**

APCO urges the Commission to take the following steps regarding the forced relocation of current 700 MHz narrowband users. First, the Commission should retain the requirement that the D Block licensee pay the cost of relocating narrowband licensees. Regardless of any public/private partnership, the D Block licensee will benefit from the reconfiguration of the 700 MHz band as it eliminates a potential interference problem. Second, the data being submitted to the Commission by other parties makes clear that the original \$10 million cap on expenses is too low and must be increased. Third, the Commission should extend the current February 17, 2009, deadline by which the relocation must be complete. The D Block license will not be issued until after the new auction (early 2009?) and completion of the NSA negotiations (3Q 2009?). Any network deployment would not occur until 2010 at the earliest.

Finally, the Commission should consider relieving the PSBL of the responsibility of managing the relocation funding. It adds a function unrelated to the PSBL's core activity, and deepens its reliance on outside contractors for which it lacks the funds to support. The Commission should appoint a third party (as it did with the 800 MHz Transition Administrator) or require the D Block licensee to retain the services of an entity that will manage the process. That could be accomplished if the Commission delays the mandated moves until after the D Block auction is complete.

## **5. Size of D Block**

APCO is opposed to breaking the D Block into smaller blocks. Such a move would make it far more difficult to develop a truly national public safety broadband network. There would also be significant issues with interoperability across geographic areas (though that could be addressed to some degree with mandated standards). Another major concern is that one or more of the blocks could go unsold in the auction, potentially leaving major gaps in the national network. Finally, multiple D Block licensees could require that there be multiple and potentially inconsistent network sharing agreement negotiations.

## **C. Other Options**

APCO does not address the proposed D Block auction rules that might apply in the absence of a public/private partnership, other than to urge the Commission to shelve those issues. Adopting such rules now would encourage some potential auction participants to sit on the sidelines and wait for the conditioned auction to fail.

Similarly, we do not believe that it is productive for the Commission to make any determinations or preliminary judgments regarding what happens to the public safety broadband spectrum if the D Block auction fails again. If and when that occurs, APCO and others in public safety will address various strategies for that spectrum. The very short time allowed for responding to the *2d FNPRM* simply does not provide for a thorough examination of such hypothetical questions. The Commission's statements in the *2d FNPRM* (and the public statements of each commissioner before Congress and elsewhere) indicate a strong desire to pursue the public/private partnership approach through at least another D Block auction. In the

event the Commission decides otherwise in response to the *2d FNPRM*, it should initiate a separate proceeding to explore the public safety spectrum issues apart from the D Block.

## CONCLUSION

APCO urges the Commission to proceed quickly, but carefully, to adopt new rules to promote the development, deployment and operation of a national public safety broadband network as part of a public/private partnership with the D Block licensee.

Respectfully submitted,

/s/

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