

**Before the
Federal Communications Commission
Washington, DC 20554**

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In the Matter of)	
)	
Service Rules for the 698-746, 747-782)	WT Docket No. 06-150
and 777-792 MHz Bands)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in)	
the 700 MHz Band)	
)	
Development of Operational, Technical)	WT Docket No. 96-86
and Spectrum Requirements for Meeting)	
Federal, State and Local Public Safety)	
Communications Requirements Through)	
the Year 2010)	
_____)	

COMMENTS OF GOOGLE INC.

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June 20, 2008

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)	
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COMMENTS OF GOOGLE INC.

Google Inc. (“Google”), by its attorneys, submits these comments in response to the Commission’s *Second Further Notice of Proposed Rulemaking*¹ in the above-captioned proceeding.

I. BACKGROUND AND SUMMARY

Last year, the Commission made tremendous progress in achieving the statutorily mandated transition of 700 MHz spectrum from analog broadcasting to commercial wireless and public safety services. Auction 73 generated proceeds from recovered analog spectrum well in excess of both Congressional budget estimates and the Commission’s own reserve prices for the A, B, C, and E Blocks. The successful auction of the C Block spectrum also triggered network access obligations for that spectrum that

¹ FCC 08-128 (rel. May 14, 2008) (“700 MHz *Second FNPRM*”).

will have “a significant effect on the next phase of mobile wireless technological innovation.”² At the same time, the Commission established the framework of a Public/Private Partnership intended to address “the most significant obstacle to constructing a public safety network – the limited availability of public funding.”³

Although one key component of the Public/Private Partnership – the auction of the 10 MHz D Block spectrum – remains to be completed, the goals of the Public/Private Partnership remain laudable and, Google believes, obtainable. Consequently, in this proceeding, Google urges the Commission to maintain two primary objectives of the 700 MHz spectrum transition: (1) serving the needs of public safety for state-of-the-art and robust wireless communications; and (2) maximizing the viability of the D Block for commercial licensees. These objectives are highly complementary, and changes to the existing 700 MHz Public/Private Partnership structure that enhance the commercial interests of potential D Block licensees should be balanced with corresponding benefits that result in a more robust, flexible, and desirable network for public safety entities.

These two objectives can best be accomplished by retaining the Commission’s existing D Block Public/Private Partnership structure and supplementing it with the proposals set forth below. In particular, Google recommends that the Commission act to: (1) offer one or more D Block licenses on a nationally harmonized basis; (2) combine the D Block and Public Safety Broadband Spectrum into a 20 MHz block for operational purposes; (3) clarify key aspects of the Public/Private Partnership prior to the start of the D Block re-auction; (4) adopt a resale service obligation for a D Block licensee seeking

² In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, 22 FCC Rcd 15289 (2007) (“700 MHz Second R&O”), ¶201.

³ *Id.*, ¶396.

to provide a CMRS-type commercial service on its commercial spectrum; and (5) work with NTIA to use auction proceeds to promote commercial licensees' access to public safety infrastructure while simultaneously promoting public safety access to the shared network. In addition, Google urges the Commission to monitor the adoption of open access business principles by D Block licensees and expressly reserve the right to intervene in the event carriers adopt anti-consumer practices that are inimical to those principles. In combination, all of these measures should attract a diverse group of competitive bidders, resulting in one or more qualified licensees, to the benefit of both the public safety community and the public interest.

II. THE COMMISSION SHOULD LICENSE D BLOCK SPECTRUM ON A NATIONALLY HARMONIZED BASIS

In Auction 73, the Commission unsuccessfully offered the D Block spectrum as a single, nationwide license. The Commission now asks whether it would best serve the public interest to again auction a single nationwide license, or instead to auction the spectrum on some area geographic area basis, such as large regional licenses.⁴

Google supports a band plan based either on a single nationwide license, or, provided that the goal of a nationwide, interoperable shared network is maintained, multiple regional licenses. Thus, if the Commission adopts regional geographic licenses, it should require a seamless interoperable network among the licensees in order to maintain the nationwide level of interoperability required by its rules.⁵ In particular, the Commission should adopt certain minimal requirements and require that these be incorporated into the Network Sharing Agreement (“NSA”) between the D Block

⁴ *700 MHz Second FNPRM*, ¶¶ 183-185.

⁵ 47 C.F.R. § 90.18.

licensee(s) and the Public Safety Broadband Licensee. Such requirements should include mandatory roaming across networks for public safety users of all D Block networks, interconnection with all other D Block licensees, and technical specifications for interoperability. Similarly, all material terms and conditions of multiple NSAs should be identical, and licensees should work collectively and in good faith with the Public Safety Broadband Licensee to negotiate and finalize the terms of the NSA.

III. A D BLOCK LICENSEE SHOULD BE GRANTED OPERATIONAL ACCESS TO A COMBINED 20 MHz OF SPECTRUM

The Commission seeks comment on whether to amend its rules to clarify that a D Block licensee may construct and operate the shared wireless broadband network using the 10 MHz of commercial D Block spectrum (758-763 MHz and 788-793 MHz) and the 10 MHz of public safety broadband spectrum (763-768 MHz and 793-798 MHz) as a combined, blended resource.⁶ Google supports such a revision.

As the Commission suggests, such an approach could permit the assignment of any spectrum from the combined pool of 20 MHz to either commercial users or public safety users, provided that the latter are guaranteed priority access to at least 10 MHz at all times. The Public Safety Broadband Licensee, of course, must retain operational control of, and other rights associated with, the public safety broadband spectrum, and should have priority access in emergencies to the entire 20 MHz.

Combined, flexible use of the spectrum in the manner described by the Commission should serve the public interest by allowing more efficient use of the entire 20 MHz of spectrum, making it more attractive for potential commercial licensees. At the same time, combining operational use of the spectrum is consistent with the

⁶ 700 MHz *Second FNPRM*, ¶80.

Communications Act. As the Commission noted when it adopted the Public/Private Partnership rules, because priority service will be offered pursuant to commercial arrangements between the D Block licensee and the Public Safety Broadband Licensee, there is no conflict with the Act’s requirement that 36 MHz of 700 MHz spectrum be allocated “for commercial use.”⁷ There likewise is no conflict with the Act’s requirement that 24 MHz of 700 MHz spectrum be allocated “for public safety services according to the terms and conditions established by the Commission,”⁸ because the Act does not require such spectrum to be used exclusively for public safety services, flexibly defines “public safety services” to accommodate secondary uses,⁹ and does not prohibit public safety entities from receiving service from commercial service providers.¹⁰

IV. THE COMMISSION SHOULD MORE CLEARLY DEFINE THE PUBLIC/PRIVATE PARTNERSHIP BEFORE THE START OF THE RE-AUCTION

Throughout the *700 MHz Second FNPRM*, the Commission asks whether various aspects of the relationship between the ultimate D Block licensee(s) and the Public Safety Broadband Licensee should be clarified prior to the re-auction in order to provide certainty to all parties regarding their respective rights and obligations.¹¹ Because so

⁷ *700 MHz Second R&O*, ¶413; 47 U.S.C. § 337(a)(2).

⁸ 47 U.S.C. § 337(a)(1).

⁹ 47 U.S.C. § 337(f)(1); *700 MHz Second R&O*, ¶¶ 419-420.

¹⁰ *See 700 MHz Second R&O*, n.888.

¹¹ *See, e.g., 700 MHz Second FPPRM*, ¶61 (seeking comment on whether the Commission “should clarify or modify any aspect of the technical network requirements”); ¶113 (seeking comment on whether the Commission should provide “additional clarity with regard to the role and responsibilities of the D Block licensee”); ¶121 (seeking comment on whether the Commission “should clarify, revise, or eliminate any of the specific responsibilities ... that the Public Safety Broadband Licensee must assume”); ¶131 (seeking comment on whether the Commission “should further clarify, revise, or specify the service fees that the D Block licensee may charge public safety users for access to the shared network” and on whether the Commission “should provide guidance on whether the Public Safety Broadband Licensee may assess spectrum

many of these questions involve the most fundamental aspects of the Public/Private Partnership, it is clear that the public interest will be served by addressing – and, to the fullest extent possible, answering – them now for the benefit of potential bidders, network users, and other interested parties.

One key issue that should be resolved now is the definition of “emergency” for purposes of the requirement that a D Block licensee provide priority service to public safety during an emergency. When the Commission adopted the current Public/Private Partnership rules, it concluded that the definition should be left to post-auction negotiation between the D Block auction winner and the Public Safety Broadband Licensee acting on behalf of the public safety community.¹² However, rather than leave the matter entirely to negotiation, the Commission seemingly attempted to narrow the scope of the term, stating that “potential disruption of commercial service ... must be limited to the most serious occasions” and that emergency access “would be triggered only in rare circumstances;”¹³ the Commission also established a mechanism to resolve post-licensing disputes about the term.¹⁴ It is apparent, however, that some representatives of the public safety community have a different and broader view of what constitutes an “emergency.”¹⁵

usage fees for the leasing of public safety broadband spectrum to the D Block licensee or the amount of any fee permitted”); ¶138 (seeking comment on whether “to modify the rules governing negotiation of the NSA, including dispute resolution, to provide bidders with greater certainty regarding their obligations while still protecting the interests and needs of public safety...”).

¹² *700 MHz Second R&O*, ¶426.

¹³ *Id.*, ¶¶ 426, 429.

¹⁴ *Id.*, ¶427.

¹⁵ *See, e.g.*, Association of Public-Safety Communications Officials-International, Inc., Comments, WT Docket No. 06-150 (May 23, 2007), at 19 (“Some may view an emergency as a large scale, relatively rare, event. In reality, much of what a first responder does on a day-to-day

Simply postponing disputes about the definition of “emergency,” the precise penalties in the events auction winners and the Public Safety Broadband Licensee fail to reach agreement on an NSA, and similar issues will not serve the Commission’s goal of a successful auction resulting in the prompt deployment of a nationwide, interoperable network. The clearest lesson learned from Auction 73 is that the relationship between the ultimate D Block licensee(s) and the Public Safety Broadband Licensee must be better defined if the D Block is to attract qualified bidders in the first instance. Adding clarity now will allow prospective bidders to assess more accurately the costs, benefits, and risks associated with constructing and operating an interoperable commercial/public safety network and, consequently, result in greater interest in the D Block spectrum. Moreover, assuming the Commission continues to require that a D Block licensee and the Public Safety Broadband Licensee enter into the NSA after the auction (rather than, for example, conducting a Request for Proposal process before the auction¹⁶), it is important for the Commission to clarify and set its expectations regarding the parties’ rights and obligations, in order that the negotiating parties will have fewer areas of ambiguity to resolve post-auction and so minimize costly and time-consuming disputes.

V. THE COMMISSION SHOULD MONITOR THE FUTURE ADOPTION OF OPEN ACCESS BUSINESS PRINCIPLES BY D BLOCK LICENSEES AND OTHER WIRELESS CARRIERS

The *700 MHz Second FNPRM* asks whether the D Block service rules should be modified to require licensees to operate on an exclusively wholesale and/or consumer

basis involves an ‘emergency’ situation.”). The Public Safety Spectrum Trust’s Bidder Information Document (“BID”) (available at <http://www.psst.org/bidsummary.jsp>) does not define “emergency.”

¹⁶ See *700 MHz Second FNPRM*, ¶189.

open access basis.¹⁷ Google believes that neither approach is indicated for the D Block at this time.

Google strongly believes in the economic power of the open platform. The single best example of such a platform, the Internet, has generated enormous tangible benefits for Americans in the form of increased innovation, real economic growth, and enhanced human potential. Open platforms also create tremendous business opportunities for the providers of such platforms. Ideally the incumbent wireless providers themselves would come to understand the economic virtues of allowing users to utilize the applications and devices of their choice, and consequently would adopt open platforms as a viable business model going forward.

Last year, in the proceeding adopting service rules for 700 MHz spectrum, Google and others urged the Commission to take the narrowly-tailored action of attaching open access conditions to the C Block license. The Commission agreed, recognizing “a window of opportunity to have a significant effect on the next phase of mobile wireless technological innovation, and on the evolution of market and institutional arrangements.”¹⁸ The Commission determined that the “measured step” of imposing these conditions on a single 22 MHz block of 700 MHz commercial spectrum would seize “a rare opportunity to implement pro-consumer concepts without disrupting an existing service.”¹⁹

By any fair measure, the Commission’s leadership in promoting the ubiquitous availability of pro-consumer broadband services has helped serve as a catalyst to open

¹⁷ *Id.*, ¶187.

¹⁸ *See 700 MHz, Second R&O*, ¶206; 47 C.F.R. § 27.16.

¹⁹ *Id.*, ¶¶ 201, 203.

networks for competing devices and applications. Although the tailored C Block open access rule conditions are less than one year old, those rules – in conjunction with the pendency of the Skype petition and critical advocacy work by the public interest community – already have had important salutary effects on the commercial wireless services market. Even before the C Block auction began, Verizon Wireless announced that it would open its CDMA network as a platform for applications and devices supplied by third parties.²⁰ That carrier subsequently has proceeded with its Open Development Initiative (ODI).²¹ Other national wireless carriers, to varying degrees, also have taken steps to build business models premised on allowing consumers to utilize third party devices and applications on their networks.²² And, of course, the Auction 73 results triggered application of the open access conditions for the C Block. Where before many incumbent carriers initially rejected the very concept of open networks, today those same carriers appear to accept,²³ and in some cases even embrace, giving consumers the ability to access and utilize the handsets and applications of their choice. The Commission

²⁰ See News Release, “Verizon Wireless To Introduce ‘Any Apps, Any Device’ Option For Customers In 2008: New Open Development Initiative Will Accelerate Innovation and Growth” (Nov. 27, 2007) (available at <http://news.vzw.com/news/2007/11/pr2007-11-27.html>).

²¹ While Google applauds Verizon Wireless for taking this important step, it remains less than clear whether and how ODI is intended to comply with the C Block open access conditions. See Google Inc. and Google Airwaves Inc. Petition to Condition Grant, File No. 0003382444 (May 2, 2008).

²² For example, Sprint and T-Mobile both were founding members of the Open Handset Alliance and support the development and implementation of Android, the Alliance’s open mobile applications platform. See, e.g., News Release, “Sprint Joins Open Handset Alliance, Committed to bringing new and innovative handsets and services to customers” (Nov. 7, 2007).

²³ Cf. Letter from Robert W. Quinn, Jr., Senior Vice President, Federal Regulatory, AT&T Services, Inc. to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (Jul. 12, 2007) (opposing “all or any aspect of” proposed 700 MHz open access conditions), with AT&T Statement Regarding the Pending Spectrum Auction, attached to Letter from Brian F. Fontes, Vice President, Federal Relations, AT&T Services, Inc., to Marlene H. Dortch, Secretary, FCC, WT Docket No. 06-150 (Jul. 20, 2007) (supporting the C Block open access conditions ultimately adopted by the Commission).

rightfully should claim considerable credit for spurring these encouraging market developments.

In light of these still-evolving business plans, with more carriers appearing publicly to embrace and implement some form of consumer open access, the Commission should continue to closely monitor market conditions – including the results of the D Block re-auction, the C Block license compliance process, and further actions by wireless carriers regarding the treatment of third party devices and applications. Should some carriers proceed to adopt anti-consumer practices that are inimical to open access principles, the Commission must expressly reserve the right to intervene.

At the same time, Google believes that the Commission should consider adopting a simple resale service obligation for a D Block licensee seeking to provide a CMRS-type commercial service on their commercial spectrum. In particular, a D Block licensee should be prohibited from unreasonably restricting resale of its services.²⁴ Adopting such a requirement would not place an onerous burden on the licensee, and yet can provide at least a potential platform for additional competition by resellers using the D Block spectrum.

VI. THE COMMISSION SHOULD PROMOTE INCENTIVES FOR THE PROMPT DEPLOYMENT OF A NATIONWIDE, INTEROPERABLE PUBLIC SAFETY NETWORK

The rapid improvement of nationwide interoperability for public safety communications is a “vitally important problem”²⁵ and a primary goal of this proceeding. Today, despite some great strides, there remain a number of critical gaps in the

²⁴ Such a prohibition would be consistent with the former resale requirement applicable to broadband PCS spectrum, 47 C.F.R. § 20.12.

²⁵ *700 MHz Second FNPRM*, ¶5.

communications systems and equipment that protects and secures the safety of our nation. These gaps include incompatible and aging communications equipment, and a lack of comprehensive public funding to ensure that state-of-the-art technology and equipment is deployed, available, and interoperable for the nation’s public safety leaders and personnel.²⁶ At the same time, commercial service providers face substantial construction and operational costs in connection with developing a network that will serve public safety needs. While Google recognizes that these issues cannot necessarily be resolved by any one “quick fix,” Google urges the Commission to promote mutually reinforcing incentives that lower costs for commercial operators assuming the obligations of the Public/Private Partnership, while reducing costs for public safety users of the interoperable network and speeding network deployment.

Consistent with the Commission’s request for recommendations addressing these critical matters,²⁷ Google respectfully submits that some 700 MHz auction proceeds, including D Block proceeds, apparently can and should be used. The Digital Television Transition and Public Safety Act of 2005 (“DTV Act”) amended Section 309(j) of the Communications Act by directing that all proceeds from the auction of recovered analog spectrum be deposited into a newly created Digital Television Transition and Public Safety Fund (“DTT/PS Fund”), rather than directly into the federal Treasury.²⁸ The DTV

²⁶ See, e.g., National Security Telecommunications Advisory Committee, Report to the President on Emergency Communications and Interoperability (Jan. 16, 2007).

²⁷ See, e.g., *700 MHz Second FNPRM*, ¶¶ 43, 104, 139.

²⁸ See Deficit Reduction Act of 2005, P.L. 109-171, Title III. Digital Television Transition and Public Safety (“DTV Act”), § 3004(3), codified at 47 U.S.C. § 309(j)(8)(E)(ii) (“Notwithstanding subparagraph (A), the proceeds (including deposits and upfront payments from successful bidders) from the use of a competitive bidding system under this subsection with respect to recovered analog spectrum shall be deposited in the Digital Television Transition and Public

Act directs the National Telecommunications and Information Administration (“NTIA”) to transfer \$7.363 billion from the DTT/PS Fund to the Treasury by September 30, 2009,²⁹ and to allocate specific amounts totaling up to an additional \$2,819,500,000 to fund eight designated programs.³⁰ The DTV Act is silent, however, as to how the balance of the DTT/PS Fund is to be used.

Google urges the Commission to work with NTIA to establish a program that will provide money from the DTT/PS Fund for equipment acquisition and operational support for public safety entities seeking to operate on the Public/Private Partnership shared network. Importantly, if funding is based upon a showing that the pertinent D Block licensee and public safety authorities (i.e., cities, counties and local authorities) have entered into contractual arrangements to make available to the commercial licensee access to public safety infrastructure and rights-of-way to facilitate buildout of the interoperable shared network, such a program can substantially speed the time to build the network and its overall commercial viability. In addition, the Commission should amend its rules to require the Public Safety Broadband Licensee to make reasonable, good-faith efforts to work with public safety organizations to obtain access to public safety infrastructure and rights-of-way.

Although agreements between a D Block licensee, the Public Safety Broadband Licensee, and public safety organizations would not be compelled, they offer a mechanism by which communities that agree to streamline access for the commercial D

Safety Fund.”). *See also* 47 U.S.C. § 309(j)(8)(E)(i) (“There is established in the Treasury of the United States a fund to be known as the Digital Television Transition and Public Safety Fund.”).

²⁹ DTV Act § 3004(3), codified at 47 U.S.C. § 309(j)(8)(E)(iii).

³⁰ DTV Act, §§ 3005-3012.

Block operator can both obtain access to that operator's network more quickly and obtain vital interoperable equipment, which in turn should help drive market-based interoperable protocols for transporting emergency communications services across IP networks.

This proposal presents a classic "win-win-win" for the American public, commercial licensees, and the public safety community. Given the common interests such arrangements would serve, it is likely that this market-based incentive would stimulate cooperation, speed network deployment, and drive updated equipment and infrastructure, creating a much needed public benefit.

VII. CONCLUSION

For the foregoing reasons, the Commission should revise its rules governing the Public/Private Partnership consistent with the foregoing Comments.

Respectfully submitted,



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