

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

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and)	WT Docket No. 06-150
777-792 Bands)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the)	
700 MHz Band)	

COMMENTS OF AT&T INC.

AT&T INC.

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EXECUTIVE SUMMARY

AT&T concurs that the Federal Communications Commission (“FCC” or “Commission”) should thoroughly re-examine the framework for selecting a licensee for the Upper 700 MHz D Block as well as for the Public/Private Partnership between that entity and the 700 MHz Public Safety Broadband Licensee (“PSBL”). AT&T continues to believe that a Public/Private Partnership provides the best path to developing a nationwide interoperable broadband communications network for state and local public safety users, while also offering potentially valuable business opportunities for commercial partners. A single, nationwide PSBL will provide unity and leadership in its representation of state and local public safety agencies and will facilitate critical interoperability and efficiency goals. Commercial partners, in turn, will bring invaluable resources and experience to the venture, and potentially existing networks, technical assets and spectrum resources that could significantly expedite and reduce the costs of deployment. Yet, as the initial D Block auction made clear, the success of this Partnership requires clarification of the uncertainties and risks associated with the D Block licensee’s obligations and the nature of the relationship between the partners.

As an initial matter, the Commission must carefully examine whether non-auction alternatives provide a better path to a successful Public/Private Partnership than a reauction of the spectrum. Specifically, the Commission should fully consider mandating the use of a competitive Request for Proposals (“RFP”) process to select public safety’s commercial partner(s). The RFP process is an established and successful mechanism for developing public/private partnerships. The use of an RFP process will thus assist in more clearly establishing the rights and responsibilities for the PSBL and its commercial partner(s) prior to contracting. Moreover, an RFP mechanism appropriately balances the bargaining positions of

the parties and invites the submission of innovative, economically efficient proposals. In these comments, AT&T details how an RFP process might work for the 700 MHz spectrum.

Regardless of whether the Commission pursues the RFP proposal or a reaction, the Commission must clarify the key requirements for the nationwide interoperable network and the rights and responsibilities for all parties to the Public/Private Partnership. According to the FCC Office of Inspector General's report on the D Block auction, potential D Block bidders were discouraged from participating in Auction 73 because of significant areas of uncertainty and risk that faced the commercial D Block licensee. To address this problem, AT&T urges the Commission to adopt clarifications in several areas:

- The Commission should adopt guidelines specifying that the joint network must be built with state-of-the-art, commercially available, standards-based technology, which will be hardened to meet public safety's requirements. The guidelines should be flexible enough to allow commercial partners to utilize existing commercial wireless infrastructure to support the joint network.
- Network performance standards, priority public safety access requirements, and build-out benchmarks should be clarified. The Commission also should clarify the requirements and timelines for network device and application functionality.
- Potential commercial participants require clarification that commercial partners will have operational control over the entire network, subject only to discrete PSBL operational authority defined by the Commission prior to the RFP process or a reaction. The Commission must clarify that the efficiency of market forces render wholesale or open access operating requirements unnecessary and unsound public policy.
- The Commission should clarify the access and service fees that the PSBL and commercial partners may charge, as well as the funding mechanisms for the PSBL. The Commission also should clarify that the PSBL must be a nonprofit entity and that neither the PSBL nor its advisors may profiteer from the Public/Private Partnership, including by serving as mobile virtual network operators.
- The resolution process for contested issues between the PSBL and commercial partners must be redesigned to place all parties on more equal footing during negotiations and dispute resolutions in front of the Commission. If the Commission reacts to the D Block, it should establish minimum requirements that, if met, establish a "safe harbor" whereby the bidder would be deemed to have negotiated in "good faith" and would not be subject to the default penalty.

These clarifications are essential to inform commercial entities about potential risks, benefits, and required amounts of financial investment, which will enable commercial entities to better evaluate the commercial viability of their participation in the Public/Private Partnership.

The Commission should also require that the D Block spectrum be leased (if through an RFP process) or licensed (if through a reauction) on a regional basis – as opposed to one nationwide license. AT&T believes a regional approach will have a number of benefits, including more effectively accommodating the needs of local public safety entities, attracting broader participation from commercial entities, and facilitating more rapid deployment of the public/private network. For similar reasons, the Commission should not prohibit local public safety entities from constructing their own networks in the 700 MHz public safety broadband spectrum, so long as such networks provide seamless roaming onto the public/private network and meet the interoperability requirements detailed by the Commission and the PSBL.

In sum, AT&T strongly supports the goals of the Public/Private Partnership, but believes that the Commission must conduct a comprehensive review of the Partnership structure and must clarify the rights and responsibilities of the parties and the requirements of the network in order for this approach to be successful. The proposals contained herein offer AT&T's thoughts on the best path forward for establishing and deploying a successful Public/Private Partnership that satisfies the needs of both public safety and commercial entities.

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COMMENTS OF AT&T INC.

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively “AT&T”), hereby submits comments on the Commission’s *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”) in the above-referenced proceeding.¹ AT&T believes that a carefully-designed Public/Private Partnership that operates in the Upper 700 MHz D Block (758-763/788-793 MHz) (“D Block”) and the public safety broadband spectrum (763-768/793-798) provides the best path to developing a nationwide interoperable broadband network for state and local public safety users. A Public/Private Partnership can also offer valuable and unique business opportunities for commercial partners.

In reexamining the Public/Private Partnership, however, the Commission must account for the fact that the D Block auction failed because of uncertainties and risks associated with the D Block licensee’s obligations and with the Public/Private Partnership. As has been widely reported, potential commercial bidders refused to participate in the D Block auction because of

¹ See *Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, FCC 08-128 (2008) (“*Second Further Notice*”).

the undefined logistical, operational, and functional requirements of the Public/Private Partnership. These concerns were amplified by the absence of a reasonable framework for resolving disagreements between the D Block licensee and the Public Safety Broadband Licensee (“PSBL”). Moreover, the significant investment obligations placed on the D Block winner suggested to potential bidders that an adequate return on investment was unlikely. In the end, the D Block generated a single bid – far below the reserve price of \$1.33 billion – thereby ending the Commission’s first attempt at fostering the Public/Private Partnership.

In light of the failed D Block auction, AT&T analyzed a number of regulatory and legislative options to determine the best way to ensure a successful Public/Private Partnership and to license the D Block. Ultimately, AT&T believes that the selection of commercial partners through a competitive Request for Proposal (“RFP”) process, instead of an auction, offers the best path to achieving the goals of the Public/Private Partnership. AT&T recognizes that this approach likely would require legislative action, and in the absence of such legislative action, AT&T suggests a number of revisions to the existing rules should the FCC proceed with a reauction of the D Block spectrum. Regardless of the Public/Private Partnership’s ultimate form, AT&T strongly believes that the Commission must clarify the key network standards, rights, and responsibilities for the Public/Private Partnership. Failure to do so will deter potential commercial partners and jeopardize the future of the Public/Private Partnership.

I. AT&T CONTINUES TO SUPPORT THE GOALS OF A PUBLIC/PRIVATE PARTNERSHIP.

The public record generated in various FCC proceedings over the past two years strongly suggests that a successful Public/Private Partnership serves the public interest. If carefully designed and executed, the Public/Private Partnership provides the best path to developing a nationwide interoperable broadband network for state and local public safety users while

ensuring spectrum efficiency that benefits public safety and commercial users. The PSBL and its commercial partners both will bring unique capabilities and resources to the partnership that will enable both partners to achieve public interest goals neither could accomplish separately.

A single, nationwide PSBL will provide unity and leadership in its representation of state and local public safety agencies and will facilitate critical interoperability and efficiency goals. By overseeing the nationwide development, deployment, and operations of the network, the PSBL will ensure interoperability and consistency of communications capabilities for public safety users across the entire country. A single PSBL will also facilitate development of open standards for public safety features such as Quality of Service (“QoS”), priority access, and service level performance metrics. Moreover, the PSBL’s nationwide network technology choices will invariably create economies of scale that will drive down the cost of network deployment and end user equipment for public safety. Additionally, a single nationwide PSBL will drive spectrum efficiency by designing and implementing the network from a nationwide vantage point and by overseeing the application of regional approaches as to whether non-terrestrial transport options such as satellite are more appropriate than terrestrial infrastructure.

Commercial partners will bring invaluable resources and experience to the venture. Commercial partners offer the much-needed financial resources to construct a nationwide public safety broadband network – which would otherwise be very difficult given the limited availability of public funding. Commercial partners also can leverage existing networks, technical assets, and spectrum resources to develop the interoperable network as quickly and efficiently as possible. Moreover, commercial partners can share lessons learned from their previous experiences constructing wireless networks to ensure the construction of a reliable and effective public/private wireless broadband network. For example, following Hurricane Katrina,

commercial operators have significantly enhanced their networks with greater back-up power and backhaul diversity. Leveraging this experience and existing investments, commercial partners can utilize their existing facilities to lower the incremental cost of the network buildout while ensuring a robust network for public safety that can withstand the devastating effects of certain emergencies. Utilization of a commercial partner's existing facilities can also expedite the deployment of wireless broadband facilities without having to wait for new 700 MHz facilities to be constructed. When designing and managing the network, commercial partners can also draw from their past experience coordinating with government and non-government entities in providing Wireless Priority Service ("WPS") to public safety users during periods of extreme congestion over circuit switched wireless telephony networks. Commercial partners also can bring to bear their personnel resources to address technical, construction, and customer service issues for the network and its public safety users.

With all parties working together, the Public/Private Partnership will facilitate efficient and intensive use of the 700 MHz spectrum – which is critically important given the rare value of this spectrum. Spectrum access will shift between commercial and public safety users depending on attendant circumstances. During times of emergency, public safety users will have access to the 10 MHz of public safety broadband spectrum as well as some portion of the 10 MHz of "D Block" spectrum as needed. Commercial partners will offer commercial subscribers valuable voice and broadband services over the same 20 MHz of spectrum, consistent with public safety emergency needs. Ultimately, if the Commission properly designs the partnership, the enormous synergies created will provide the best means for satisfying public safety's broadband communications needs while ensuring efficient and effective use of the spectrum.

II. THE COMMISSION SHOULD CAREFULLY CONSIDER WHETHER NON-AUCTION ALTERNATIVES WILL BEST ACHIEVE THE GOALS OF A PUBLIC/PRIVATE PARTNERSHIP.

In the wake of the failed D-Block auction, the Commission must critically examine whether non-auction alternatives provide a better path to a successful Public/Private Partnership than a reauction of the spectrum. In this review, the Commission should fully consider mandating the use of an RFP process to select public safety's commercial partners. As discussed below, the RFP process proposed by AT&T draws from the successful RFP mechanisms that the government frequently relies on for securing partners for important goods and services. And while the proposed RFP process will require legislative amendments to Section 337 of the Communication Act of 1934, as amended ("Act"), AT&T strongly believes that legislative support is attainable given the urgent need to develop an interoperable broadband public safety network. Alternatively, to the extent legislative relief is not achieved or Congress or the Commission prefers a reauction, the Commission must modify its rules to give commercial entities the requisite certainty about their investment and performance obligations so that they might feel comfortable bidding on the D Block.

A. The Commission should strongly consider revising its rules to require the use of an RFP process rather than an auction to select public safety's commercial partners.

The RFP process is an established and successful mechanism for developing public/private partnerships. Indeed, the United States government frequently utilizes the RFP process to purchase its most important security assets and, in fact, Congress has often mandated that federal agencies use this process for procuring property or services.² Here, even though the

² Congress has passed numerous laws outlining competitive procurement requirements and procedures. *See* 10 U.S.C. § 2305 (military procurement laws); 41 U.S.C. § 243a (competitive procurement procedures for public contracts). Additionally, the Federal Acquisition Regulations *Footnote continues on next page . . .*

party issuing the RFP – the PSBL – is not a government entity, the benefits of competitive procurement will still be realized. An RFP process is a well-tested and well understood mechanism. It thus ensures that the rights and responsibilities for the PSBL and commercial partners are clearly established prior to contracting. Moreover, an RFP process appropriately balances the incentives and bargaining positions of the parties and invites the submission of creative, economically efficient proposals that meet the Commission’s and the PSBL’s articulated parameters.

The RFP process AT&T proposes for the Public/Private Partnership is straightforward and captures the benefits found in traditional RFP mechanisms. Initially, the Commission would issue a license for the Upper 700 MHz D Block spectrum to the PSBL. The Commission would require the PSBL to lease the D Block spectrum on a regional basis³ to commercial entities selected through an RFP process who would incur the costs of the network buildout. The RFP issued by the PSBL would outline the technical specifications and functionalities for the network, as well as the rights and responsibilities of the PSBL and the commercial partners, consistent with the framework established by the Commission in this proceeding.⁴ AT&T believes commercial entities should be responsible for network build-out⁵ and operation of the public/private network, but in turn, could access the PSBL’s 700 MHz public safety broadband

(“FAR”) codify the uniform policies for the acquisition of supplies and services by executive agencies. *See* 48 C.F.R. § 1, *et seq.*

³ For example, the 700 MHz Regional Planning Committee areas could be used.

⁴ *See infra* Section III.

⁵ The RFP would permit proposals in which current wireless facilities are utilized to build the network, as long as such facilities satisfy the other requirements of the RFP. In addition to facilities, existing carriers could also use their existing service offerings to assist in satisfying public safety needs.

spectrum for commercial use under the terms outlined in the RFP. Interested commercial entities would respond to the RFP with proposals that explain how they would satisfy these requirements. The PSBL would then select its commercial partners by evaluating which proposals track most closely the Commission's and the RFP's standards, and then comparing those based upon the proposed functionality and deployment plan for the network, the value of services to be provided to public safety, and the commercial entity's experience and resources.

AT&T recognizes that legislative action will be necessary to implement an RFP approach. Specifically, Congress would need to eliminate the provision in Section 337(a)(2) of the Communications Act that requires the Commission to allocate the D Block for commercial purposes, and in turn, mandate that the Commission license the D Block to the PSBL. AT&T believes, however, that given the urgent need for an interoperable broadband network for state and local public safety users, Members of Congress will move quickly to pass such legislation. In sum, while AT&T recognizes that the RFP approach likely will require legislative action, AT&T believes that the RFP process offers the best path to achieving the goals of the Public/Private Partnership because it is well-established and effective, and ensures that all parties enter into the partnership with clearly defined roles and a common goal.

B. In the absence of legislative action to implement the RFP proposal, any reauction of the D Block requires modifications to the existing rules to improve the commercial viability of the 700 MHz Public/Private Partnership.

AT&T strongly supports the RFP proposal discussed above and believes that this option most effectively satisfies the needs of public safety and commercial users. Alternatively, to the extent the required legislative change is not achieved or Congress or the Commission prefers a reauction, the Commission must clarify the relationship, roles, and responsibilities of the commercial D Block licensee and the PSBL. The previous D Block auction failed because potential bidders were wary of the uncertainties and risks associated with the D Block licensee's

obligations and the Public/Private Partnership. The importance of the nationwide interoperable public safety broadband network demands that the Commission not repeat these mistakes. Accordingly, as detailed below in *Section III*, the Commission should clearly define requirements for technical parameters, network coverage, operational control, functionality, shared network use, preemptibility, funding, and issue resolution prior to a reauction or the RFP process. The Commission should also auction the D Block on a regional basis, rather than as one nationwide license. Clarification of these matters will give commercial entities more certainty about investment and performance obligations, which will allay concerns about bidding on the D Block.

III. REGARDLESS OF WHETHER THE COMMISSION PURSUES THE RFP PROPOSAL OR A REAUCION, THE COMMISSION MUST CLARIFY THE KEY REQUIREMENTS FOR THE PUBLIC SAFETY NETWORK AND THE LOGISTICAL, OPERATIONAL, AND FUNCTIONAL REQUIREMENTS OF THE PUBLIC/PRIVATE PARTNERSHIP.

The Commission must clarify the key requirements for the public safety network and the rights and responsibilities for all parties to the Public/Private Partnership, regardless of whether the Commission adopts the RFP proposal or reauctions the D Block. As the FCC Office of Inspector General's report on the D Block auction indicates, potential D Block bidders were discouraged from participating in Auction 73 because of significant areas of uncertainty and risk that faced the commercial D Block licensee.⁶ Accordingly, AT&T urges the Commission to clarify the network standards and processes for technology selection, the performance and functionality requirements of the interoperable network, and the rights, responsibilities, and operating models for the parties in the Public/Private Partnership. These clarifications will

⁶ See D Block Investigation Report from Kent R. Nilsson, Inspector General, FCC, to Kevin J. Martin, Chairman, FCC, at 23 (April 25, 2008) ("*OIG Report*").

inform commercial entities about potential risks, benefits, and required amounts of financial investment, which will enable commercial entities to evaluate the commercial viability of the Public/Private Partnership. The Commission should also direct the D Block spectrum to be leased or licensed on a regional basis – as opposed to one nationwide license – to attract wider interest among commercial entities and to facilitate deployment.

A. The Commission must provide commercial partners and the PSBL flexible parameters for selecting state-of-the-art commercial network technology that will be hardened to meet the needs of public safety users.

To ensure the implementation of appropriate capabilities for public safety, while providing certainty regarding the bounds of the required commercial investment, the Commission should adopt guidelines specifying that the joint network must be built with state-of-the-art, commercially available, standard-based technology, which will be hardened to meet public safety’s requirements. The guidelines also should clarify the specific network hardening requirements, including how sites should be hardened and which sites should be hardened.⁷ As discussed below, the Commission also should ensure that the network design guidelines are sufficiently flexible to permit the use of existing commercial infrastructure to satisfy the needs of the public/private network. Additionally, allowing the commercial partners to recommend the network’s underlying technology (within the parameters set by the Commission) will result in a more effective public safety network and will encourage broader participation by commercial entities than in Auction 73.

⁷ AT&T supports the Commission’s apparent recognition – in the Technical Appendix of the *Second Further Notice* – of the need to establish different hardening requirements for standard cellular sites and “critical sites.” AT&T believes, however, that the Commission must further explain the different requirements applicable to each type of site and how a site will be determined to be critical or standard. *See Second Further Notice*, at Appendix – “Possible Technical Framework for a 700 MHz Public/Private Partnership Shared Wireless Broadband Network”, Section III.

As an initial matter, the Commission should direct that the network be built on a single advanced commercial wireless technology that is adapted, as needed, to meet the unique needs of public safety users. The use of commercial technologies will facilitate rapid deployment of the public/private network due to widespread availability of equipment. It will also reduce network and device costs due to economies of scale. Another benefit of utilizing commercial technology is that it is typically updated in a backwards-compatible manner, guaranteeing the ability to incorporate new applications and technologies without obsolescing existing equipment. At a minimum, AT&T believes that any technical parameters stipulated for the public/private network's technology should be IP-based and permit the use of Long Term Evolution ("LTE") technology. Use of LTE technology in the public safety network will offer 4G data speeds, global economies of scale derived from user pools exceeding two billion, and compatibility with future networks of potential commercial partners. LTE is by far the most advanced and spectrum efficient technology for the foreseeable future.

The Commission should also ensure that the public/private network's technology requirements are flexible enough to allow commercial partners to utilize existing commercial wireless infrastructure that supports the capability requirements of the network. Allowing commercial partners to leverage their existing infrastructure could substantially reduce construction costs and shave years off deployment schedules. This could attract additional commercial entities to participate as they might view the economics of the opportunity to be more viable. It would also benefit public safety users, who would enjoy extensive access to broadband services much more quickly and perhaps at lower costs.

The Public/Private Partnership's commercial partners should also have the ability to recommend the underlying technology for the network, subject to parameters set by the

Commission in this proceeding. The commercial partners will likely have substantial experience providing reliable wireless service to large populations. This should be brought to bear in network technology decisions for the public/private network. Further, granting commercial partners this flexibility will encourage greater participation in the RFP process or in a reauction since commercial partners will perceive that they will have significant control over the technical feasibility and commercial viability of the network. Allowing a commercial partner to choose technology compatible with its existing network would permit it to incorporate portions of its existing facilities and services into the public/private network. This could substantially reduce build-out costs and the timeframe for deployment, thus benefiting public safety. Moreover, in the event a major portion of the public/private network is preempted by public safety users, commercial partners that have designed the public safety network to be compatible with their existing commercial networks will be able to utilize their other non-preemptible spectrum to serve their entire commercial subscriber base. Such considerations support directing that the commercial partners have a strong voice in recommending the public/private network's technology.

B. The Commission must clarify network performance standards, priority public safety access requirements, and build-out benchmarks.

The network performance standards, details of priority access, and build-out schedule of the interoperable network are critically important to potential commercial participants because they directly affect the cost, speed, and technical feasibility of deployment, as well as compatibility with existing and developing industry standards. To ensure that the optimum public safety network emerges and that commercial entities have the certainty required to invest, the Commission should clarify these requirements while leveraging work already being done to improve network performance.

Before the Commission initiates the RFP process or reactions the D Block, the Commission must work with public safety to clarify network throughput, application requirements and QoS standards. Because the cost and complexity of network construction can vary substantially based upon the data transmission rates required, potential RFP participants or D Block bidders require clarification of the throughput requirements for the network in order to accurately predict the level of investment required. Similarly, because the applications required on a network directly impact design costs, commercial entities need clarity on the types of applications that public safety envisions for this network in the immediate and long-term future. Commercial entities also need precise definitions for QoS standards as well as the processes that will exist for enforcing and monitoring these standards for public safety users. In this regard, AT&T recommends that the FCC encourage the acceleration of standards development of next-generation, IMS-based priority access standards currently being developed by wireless industry standards bodies⁸ and the Department of Homeland Security's ("DHS") National Communications System ("NCS"). This will achieve the QoS goals of public safety more quickly.

The Commission also must clarify expectations on the amount of capacity public safety will require during emergencies, as well as the duration and scope of emergency preemption. A key element of the Public/Private Partnership has been public safety's priority right of access to the commercial spectrum during times of emergency. However, the extent of the priority access requirement is currently unclear, aside from the Commission's limited explanation that priority access "must be limited to the most serious occasions in order to avoid jeopardizing the

⁸ See 3GPP Release 8 Multimedia Priority Service (MPS) requirements; 3GPP TS 22.153 V8.0.0.

commercial viability” of the partnership.⁹ In order to assess the commercial viability of a Public/Private Partnership, potential commercial participants require more guidance as to the capacity needs of public safety during emergencies, especially considering the spikes in commercial traffic during emergency situations.

In this regard, the *Second Further Notice* sought comment on the definition of “emergency” for the purpose of determining when priority access is appropriate.¹⁰ Having a clear definition of the circumstances that trigger priority access is essential for potential commercial participants to assess the commercial viability of the Public/Private Partnership. Thus, the Commission should work with all interested parties to clarify this term at the outset, before any future offering of this spectrum. Additionally, dynamic priority and preemption guidelines should be articulated to the public safety groups that will use the network to clarify which groups will receive priority access and in what order in the case of emergency preemption. The PSBL, as the representative of public safety, should have a prominent role in determining the provisioning and levels of priority services to its users. In establishing this role, AT&T recommends the FCC follow the model established by the DHS/NCS in the provisioning of WPS, whereby third parties under a federal government contract provide priority telecommunications services according to priority levels prescribed by the NCS.¹¹

⁹ *Second Further Notice*, ¶ 84.

¹⁰ *See id.*, ¶ 86.

¹¹ *See generally The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service*, Second Report and Order, 15 FCC Rcd 16720 (2000); 47 C.F.R. § 64 Appendix B, Priority Access Service (PAS) For National Security And Emergency Preparedness (NSEP).

Potential commercial partners also require clarification of the requirements for network coverage and build-out benchmarks. As the *OIG Report* noted, “uncertainty as to what would be required to finance the build-out of the nationwide public safety network” deterred potential bidders from the D Block auction.¹² Indeed, the level of coverage mandated and the terms of interim and ultimate benchmarks directly impact the cost and feasibility of network construction, as does the ability of auction winners to use existing infrastructure and services to satisfy public safety’s needs. Because this is a primary concern to potential commercial participants, more certainty is needed regarding the level of investment for commercial entities prior to a D Block reauction or RFP process.

Moreover, while AT&T understands the desirability of requiring build-out of a public safety network to cover the vast majority of the U.S. population, extensive construction within the limited timeframe provided by the original auction rules may not be feasible. The requirement in Auction 73 to build out the public/private network to cover 99.3 percent of the population nationwide within ten years may have been overly aggressive.¹³ As noted in the *Second Further Notice*, existing nationwide wireless carriers provide coverage to approximately

¹² See *OIG Report* at 23-24.

¹³ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Declaratory Ruling on Reporting Requirement under Commission’s Part 1 Anti-Collusion Rule, Second Report and Order, 22 FCC Rcd 15289, ¶ 437 (2007) (“Second R&O”).*

90 percent of the U.S. population.¹⁴ Further, most existing networks that have achieved that level of build-out have been deployed for significantly more than ten years. In light of the cost and complexity of network construction, and the diminishing marginal returns as coverage approaches 100 percent, AT&T believes that the Commission, in conjunction with public safety and commercial parties, needs to reevaluate what level of coverage over what timeframe is necessary to achieve the goals of an interoperable nationwide public safety wireless broadband network. During this evaluation, the Commission also should clarify whether the commercial partners may use dual-mode satellite/cellular devices in place of terrestrial infrastructure to achieve the FCC's network coverage build-out requirements in low population density areas.

C. The Commission must clarify the requirements and timeline for network device and application functionality.

Like network performance and build-out requirements, functionality mandates – depending on their nature – can significantly affect the cost and viability of a wireless network. Accordingly, the Commission should provide specific guidance about the types of devices and applications the network will be expected to support, as well as timetables for deployment of these functionalities. This information is essential to commercial entities contemplating participation in an RFP process or a D Block reaction.

AT&T requests clarification of the proposed voice and interoperability requirements for the network. Among other things, the Commission should clarify whether VoIP is an immediate or a long term requirement. Additionally, the Commission should determine whether and when handset-to-handset capability will be required when outside of network coverage, and if required, for what types of devices. Furthermore, there should be clear guidelines on what types of

¹⁴ See *Second Further Notice*, ¶ 91.

devices and applications will need to be supported and when. For example, is it anticipated that the network will initially be used for data applications such as email, database access, and computer-aided dispatching as a complement to existing private land mobile radio for voice communications? Commercial entities also require a more concise definition of “seamlessly interoperable,” including a listing of required “interoperability” network characteristics and the standard by which the Commission will judge “seamlessness.” Finally, clarification is needed on device and application development processes. Commercial entities need to know how development will be funded and their respective roles and responsibilities in the process.

D. The Commission must clarify the scope of a commercial entity’s operational control and the operating model for the Public/Private Partnership.

Potential commercial partners need clarity regarding the scope of a commercial entity’s operational control and the operating model for the Public/Private Partnership. Specifically, the Commission should clarify that commercial partners will have operational control over the entire network, subject only to discrete PSBL operational authority defined by the Commission prior to the RFP process or a reauction. The Commission also should clarify that commercial partners are not required to operate on a wholesale or open access basis.

The Commission should definitively declare that commercial partners will have operational control over the entire joint network, subject only to specific PSBL operational authority that the Commission clearly defines prior to the RFP process or a reauction. Commercial partners require day-to-day operational control over the entire network to ensure that commercial and public safety service offerings meet the high standards expected by commercial and public safety end users on a daily basis. The commercial partners are likely also in the best position to perform this function, given their experience, expertise, and personnel and

financial resources.¹⁵ Without assurance of commercial control over the network's operations, AT&T questions whether any interested commercial parties will participate in a RFP process or reauction. Notably, AT&T believes that the Commission agrees with this view given its statement in the *Second Further Notice* that "primary operational control of the network is inherently the responsibility of the D Block licensee (and its related entities), which would in turn generally provide the operations and services that enable the [PSBL] to ensure public safety requirements are met."¹⁶ AT&T seeks clarification, however, because the Commission stated prior to Auction 73 that the PSBL must have "operational control of the network *to the extent necessary* to ensure public safety requirements are met."¹⁷ In order to assess the commercial viability of the Public/Private Partnership, potential commercial participants need the Commission to eliminate the ambiguity caused by these statements and to provide a concise definition of "operational control."

Prior to the RFP process or a reauction, the Commission should also specify the PSBL's operational responsibilities. The Commission should clarify, among other things, that the PSBL has a responsibility to set priority levels and provision priority users on the public safety network. In this role, AT&T recommends the FCC follow the model established by the DHS/NCS in the provisioning of WPS, whereby third parties under a federal government contract perform the application process, the assignment of priority levels, and the ultimate

¹⁵ A fundamental premise of the Public/Private Partnership concept is that commercial entities will leverage their experience operating communications networks to provide spectrally efficient services over the public/private network to public safety and commercial users.

¹⁶ *Second Further Notice*, ¶ 124.

¹⁷ *Second R&O*, ¶ 405 (emphasis added).

provisioning of priority services with commercial carriers.¹⁸ Additionally, decisions whether a certain public safety device or application should be permitted on the public/private network should rest primarily with the PSBL, although the commercial partner should also be involved to ensure the integrity of the shared network.

Additionally, AT&T strongly opposes the importation of any wholesale or open access operational requirements into the business models of commercial participants in the Public/Private Partnership. While AT&T would not object if a commercial participant voluntarily chooses to operate on a wholesale or open access basis, AT&T believes that mandating a particular business plan violates the Commission's flexible use approach, which has proved the efficiency of market forces in producing the best technologies and business practices. Moreover, AT&T believes that mandating a business model in this situation is particularly inappropriate given the importance and complexity of the Public/Private Partnership. As the failed D Block auction demonstrates, the development and operation of the nationwide interoperable network will be difficult and costly, and commercial participants should not be constrained in how they offer commercial service. If the Commission mandates a wholesale or open access business plan that turns out to be incompatible with realities in the marketplace, the commercial partner will end up facing business failure, with potentially disastrous consequences for public safety.¹⁹

¹⁸ See Government Prime Contract HC1013-04-C-5000, issued by Defense Information Technology Contracting Office (DITCO) and Computer Sciences Corporation f/k/a DynCorp.

¹⁹ See Reply Comments of AT&T Inc., WT Docket 06-150, at 17 (filed June 4, 2007).

E. The Commission must clarify the access and service fees that the PSBL and commercial partners may charge, as well as the funding mechanisms for the PSBL.

The Commission must promulgate guidelines that address the spectrum usage fees the PSBL may charge commercial partners for access to the 700 MHz public safety broadband spectrum. The guidelines should clarify that any lease agreements be negotiated using commercial practices for cost recovery for the PSBL and that the PSBL must be a nonprofit entity that will use the network solely for public safety purposes. However, the Commission should ensure there is an appropriate funding mechanism for the PSBL that will provide the sufficient financial resources to allow the PSBL to participate effectively in the Partnership. To this end, the Commission also should clarify that the PSBL and its advisors may not profiteer from the Public/Private Partnership or act as a mobile virtual network operator (“MVNO”) over the joint network.

The Commission must craft guidelines that address how charges for network usage and spectrum access will be structured. Indeed, the failure to articulate fee guidelines was a factor cited as contributing to the failed D Block auction.²⁰ The *Second Report and Order* provided that all service fees for use of the public safety broadband spectrum and priority use of the D Block spectrum by public safety users would be negotiated in the Network Sharing Agreement (“NSA”).²¹ Yet, the absence of clear processes and guidance for doing so left commercial parties concerned about the ability to negotiate reasonable fees. Additionally, the Commission did not address whether the PSBL may impose spectrum usage fees on the D Block licensee when providing access to the public safety broadband spectrum and whether there were any

²⁰ See *OIG Report* at 24-25.

²¹ See *Second R&O*, ¶ 450.

limitations on such fees.²² These uncertainties prompted some bidders not to participate because it was impossible to assess potential revenues from the Public/Private Partnership.²³

Accordingly, it is critically important that the Commission provide additional guidance in this area to enable potential commercial participants to evaluate the financial prospects of this venture. If the Commission intends to restrict the type or amount of service fees a commercial partner may charge a local public safety user, the Commission must clearly explain this restriction prior to an RFP process or a reauction. Likewise, the Commission must declare whether the PSBL may charge commercial partners an access fee to the public safety broadband spectrum and whether there are any curbs on such a fee. Building and operating the interoperable public safety network is a significant in-kind contribution by itself. Commercial participants need to know if additional financial expenditures will be required.

Equally important, the Commission must ensure there is a funding mechanism that provides the PSBL with the financial resources to participate effectively in the Partnership and to oversee network development and use. Among various options, the Commission could consider whether the PSBL could seek compensation from state and local public safety agencies for the various duties performed by the PSBL, including the provisioning of priority service to local agencies,²⁴ the coordination of cell site arrangements with local agencies,²⁵ and the frequency

²² *Second Further Notice*, ¶ 134. The Commission “assumed that the network service and priority access fees [charged by the commercial partner to public safety agencies] may in fact be lower than typical commercial rates in part to reflect the value of the D Block licensee’s access to the public safety spectrum through leasing.”

²³ *See OIG Report at 24-25* (finding that uncertainties about amounts of potential revenue and lease payments were among the concerns causing some potential bidders not to participate in the D Block auction).

²⁴ *See supra* Section III.D.

and interoperability coordination for local public safety agencies' private networks.²⁶

Alternatively, funding might be available through a surcharge on service fees charged to state and local public safety agencies for use of the public/private network. Another option, of course, is securing appropriations from the federal government for the PSBL.²⁷ It is essential for the Commission to confirm that the PSBL will be a financially viable entity in order to ensure the overall success of the Public/Private Partnership.

The Commission should also clarify that the PSBL must be a nonprofit entity that will use the network solely for public safety purposes. Neither the PSBL nor its advisors should be permitted to profiteer from the Public/Private Partnership.²⁸ In particular, the PSBL and its advisors should be explicitly prohibited from acting as an MVNO for the public safety spectrum. Allowing the PSBL or its advisors to operate as an MVNO or otherwise profiteer from the Public/Private Partnership will likely raise the costs of services for public safety users as well as

²⁵ The PSBL likely will coordinate and broker cell siting arrangements with local agencies to reduce the cost and construction time of site acquisition and leasing.

²⁶ As a service to larger public safety entities that desire to construct a private 700 MHz public safety broadband network, the PSBL would likely serve as a frequency and interoperability coordinator, ensuring the private networks will seamlessly roam and interoperate with the RFP winner's network and other private broadband networks. Compensation for this service would be appropriate.

²⁷ See, e.g., *Public Safety Authorization Act of 2008*, H.R. 6055, 110th Cong. (2008) (establishing a \$2 million grant program for the administrative and operational costs of the PSBL in 2009 and 2010). AT&T believes such legislative relief might be more likely if coupled with legislation needed to authorize AT&T's RFP proposal described in Section II(A).

²⁸ AT&T does not suggest that advisors to the PSBL may not collect consulting fees or any other reasonable payments that directly relate to specific work completed by the advisors on behalf of the PSBL.

discourage commercial participation in the Public/Private Partnership.²⁹ Neither of these outcomes is in the public interest.

F. The Commission must clarify the resolution process for contested issues between the PSBL and Commercial Partners.

The Commission must clarify the resolution process for contested issues and the negotiation of the NSA (if the Commission reauctions the D Block) to ensure that the Public/Private Partnership is a partnership of equals. Indeed, the D Block auction failed because potential bidders perceived an imbalance in negotiating power that provided the PSBL with significant leverage over the winning bidder. Regardless of whether the Commission adopts the RFP proposal or pursues a reauction, the Commission must redesign the rules to place the PSBL and commercial participants on more equal footing during negotiations and dispute resolutions in front of the Commission.

As the *OIG Report* indicates, potential D Block bidders perceived a disparity in negotiating leverage between the PSBL and the D Block licensee that prompted commercial entities not to bid for the D Block license.³⁰ This disparity was compounded by the severe default rule applied by the Commission.³¹ To motivate commercial entities to participate in the

²⁹ See *Second Further Notice*, ¶ 126 (seeking “comment on whether to expressly provide that neither the Public Safety Broadband Licensee nor any of its advisors, agents, or service providers may assume responsibilities akin to a ‘mobile virtual network operator,’ because such a role would be contrary to the respective roles and responsibilities of the D Block licensee and Public Safety Broadband Licensee regarding construction, management, operations, and use of the shared wireless broadband network, may unnecessarily add to the costs of the 700 MHz Public/Private Partnership, and may otherwise permit ‘for profit’ incentives to influence the operations of the Public Safety Broadband Licensee.”)

³⁰ See *OIG Report* at 23.

³¹ Under the default rule, if the Commission determines that negotiations between the D Block licensee and the PSBL have reached an impasse, the Commission is empowered to deny the long-form application filed by the winning bidder for the D Block license. In the event that *Footnote continues on next page . . .*

Public/Private Partnership, the Commission must give commercial entities more influence over major issue resolution and must establish a negotiation structure that puts the parties on equal footing. As discussed above, AT&T strongly supports the RFP proposal because it ensures that the parties approach the negotiations with clearly defined roles and bargaining positions. If the Commission decides to reauction the D Block, however, the Commission must design a system that does not give either party disproportionate negotiating positions or an incentive to allow negotiations to deadlock. Specifically, in the case of failed negotiations, the D Block license should not be reauctioned for general commercial use without the Public/Private Partnership conditions, nor should the commercial participant face any other financial penalties.

To this end, if the Commission reauctions the D Block, it should promulgate rules that shield a D Block winning bidder from a default payment if it negotiates in “good faith” without reaching an agreement. Because the determination of whether a party negotiates in “good faith” is largely a fact-specific analysis, the Commission also should clarify that a winning bidder’s proposed terms during a negotiation will enjoy a presumption of reasonableness in the event of a dispute with the PSBL. Additionally, the Commission should establish minimum requirements that, if met, would establish a “safe harbor” whereby the bidder would be deemed to have negotiated in “good faith” and would not be subject to the default penalty. Absent these rules, a reauction of the D Block will likely fail because potential bidders will be unable to make rational and informed business decisions about the Public/Private Partnership.

the long-form application is denied, the winning bidder for the D Block license would be deemed to have defaulted under Section 1.2109(c) of the Commission’s rules and would be liable for the default payment set forth in § 1.2104(g) of the rules, which would be, at a minimum, \$133 million. *See Second R&O*, ¶ 508; 47 C.F.R. § 1.2104(g).

Finally, the Commission should adopt the primary responsibility and jurisdiction for dispute resolution between the PSBL and commercial partners. The Commission designed and has continually supported the Public/Private Partnership, and therefore is deeply invested in its success. AT&T believes the Commission will thus resolve disputes quickly and equitably to ensure the rapid deployment of a successful nationwide interoperable network.

G. The Commission should adopt rules that require the PSBL to form partnerships with commercial entities and public safety entities on a regional basis.

AT&T believes a key role of the PSBL should be to represent the needs of local public safety agencies and to facilitate partnerships with the regional commercial RFP winners or auction winners. As such, the Commission should require the PSBL to form partnerships with commercial entities and public safety entities on a regional basis. Specifically, if the RFP process is adopted, the Commission should require the PSBL to seek regional partners through the RFP mechanism, which will be developed, of course, with input from local public safety entities. If the D Block is reauctioned, the Commission should issue D Block licenses in smaller geographic regions, such as CMAs, EAs, REAGs or the 700 MHz Regional Planning Committee areas. As discussed below, commercial participation on a regional basis will provide significant benefits that are not achievable under the single, nationwide commercial D Block licensee model. AT&T also believes that the Commission should permit local public safety entities to construct private broadband networks in the public safety 700 MHz broadband spectrum as long as the private networks satisfy the nationwide interoperability requirements. To assist private broadband network development, the PSBL could provide frequency coordination, standards compliance, and possibly project management and consulting services for local public safety agencies.

The benefits of regional spectrum leasing or licensing will be far-reaching. Smaller license areas will allow for local and regional build-out to be managed by specific public safety regional planning committees, ensuring that development, deployment, and training is conducted in cooperation with and in response to the needs of local public safety groups. This will relieve the PSBL of unnecessary burdens, and will enable the PSBL to concentrate on its critical duties as the umbrella-organization for state and local public safety agencies. Specifically, the PSBL will set national standards, administer access to the network for individual public safety agencies, coordinate frequency usage, assess usage fees, drive economies of scale for public safety user equipment and applications, and oversee regional decisions to ensure interoperability and spectrum efficiency on a national basis.

Additionally, regional participation by commercial entities in the Public/Private Partnership will promote greater commercial viability and rapid network build-out. Smaller service areas will reduce the relative burden of aggressive build-out requirements that a single licensee would have faced under the original Public/Private Partnership design. This will make participation more attractive to smaller commercial entities with more limited financial resources, as well as to larger commercial providers that do not want the sole responsibility for constructing a new nationwide network. Moreover, smaller service areas will facilitate greater commercial interest and serve the public interest because carriers will try to acquire leases or licenses in specific areas of the country where they can leverage their existing network infrastructure and spectrum resources. Ultimately, this will encourage simultaneous and rapid network construction across the country because multiple service providers will leverage the strongest points of their existing networks to construct the public/private broadband network.

AT&T also sees value in a regional approach that permits public safety entities to make broadband communications choices at the local level, and therefore, asks the Commission to remove the prohibition that prevents local public safety entities from purchasing and constructing private broadband networks in the 700 MHz public safety broadband spectrum.³² Some large cities and consortiums, like the National Capital Region, oppose the prohibition and want to construct private networks that will seamlessly roam onto the nationwide public safety network.³³ AT&T sees no reason to prohibit the construction of these private networks as long as the private networks provide seamless roaming onto the public/private network and any 700 MHz public safety broadband spectrum licenses are conditioned on the proposed private networks meeting the interoperability requirements detailed by the Commission and the PSBL.

IV. CONCLUSION

AT&T strongly supports the goals of the Public/Private Partnership, but believes that the Commission must conduct a comprehensive review of the Partnership and the entire D Block spectrum structure. In that review, the Commission should strongly consider revising its rules to require the use of an RFP process rather than an auction to select the PSBL's commercial partners. Alternatively, if the Commission decides to reauction the D Block, the Commission must modify its rules to give commercial entities the requisite certainty about their investment and performance obligations so that they might feel comfortable bidding. Regardless of whether the Commission pursues the RFP proposal or a reauction, the Commission must clarify the key

³² See *Second R&O*, ¶ 470 (concluding “that the Upper 700 MHz Band D Block licensee should have the exclusive right to build and operate the shared wireless broadband network using the 700 MHz public safety broadband spectrum” except in “two limited circumstances”).

³³ “DC Official Opposes National Public-Private Airwaves Deal,” DOW JONES NEWSWIRES, July 12, 2007.

requirements for the nationwide interoperable network, including technology selection, network performance, build-out benchmarks, and functionality. Further, the Commission must delineate the scope of the Public/Private Partnership's operational control, payment structure, and issue resolution. Finally, AT&T believes the public interest would be best served by having commercial entities participate on a regional basis rather than through the issuance of one national D Block license.

Respectfully submitted,

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