

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 SPRINT NEXTEL CORPORATION**

Lawrence R. Krevor  
Vice President, Government Affairs  
Trey Hanbury  
Director, Government Affairs  
2001 Edmund Halley Drive  
Reston, VA 20191

June 20, 2008

**TABLE OF CONTENTS**

Page

- I. INTRODUCTION AND SUMMARY .....1
- II. SPRINT NEXTEL LEADS THE INDUSTRY IN EMERGENCY COMMUNICATIONS EXPERIENCE, WITH A LONG HISTORY OF SERVING THE PUBLIC SAFETY COMMUNITY .....3
  - A. Sprint Nextel Has Developed Interoperable Communications Services Specifically to Aid First Responders .....3
  - B. Sprint Nextel’s Emergency Response Team Provides Public Agencies with Continuous Wireless Connectivity During Emergencies and Natural Disasters .....4
  - C. Sprint Nextel’s Mobile Solutions Assist Public Safety .....6
  - D. Sprint Nextel Plays an Active Role in Supporting Public Safety Providers .....7
- III. THE D BLOCK CAN STIMULATE CRITICAL PUBLIC SAFETY INTEROPERABILITY .....8
  - A. The Public/Private Partnership Remains the Best Method for Achieving a Nationwide Broadband Network for Public Safety .....10
  - B. The D Block Public Safety Requirements Should Remain Largely Intact.....11
- IV. BIDDING CREDITS SHOULD BE USED TO PROMOTE AUCTION PARTICIPATION AND TO PROVIDE A COMMERCIALY VIABLE PATH FOR CONSTRUCTION OF THE NETWORK .....13
  - A. Bidding Credits Would Stimulate Bidder Participation While Enhancing the Shared Network.....13
  - B. The Commission Has Ample Authority to Adopt Bidding Credits to Promote a More Robust Shared Wireless Broadband Network.....16
- V. CONCLUSION.....18

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 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 SPRINT NEXTEL CORPORATION**

**I. INTRODUCTION AND SUMMARY**

Sprint Nextel Corporation (“Sprint Nextel”), a leading provider of services to the public safety community and the only carrier offering instant national and international push-to-talk capabilities, supports the Commission’s public safety goals for the D Block spectrum and recommends using a combination of mandatory minimum standards and optional bidding credits to achieve them.<sup>1</sup> The public/private partnership, with a single D Block licensee, remains the best option for achieving nationwide interoperability on a spectrally efficient, cost effective basis. In revising its rules for the re-auction of the D Block, the Commission should use targeted bidding credits to create the commercial incentives necessary to ensure the construction of a nationwide, interoperable, wireless network that will serve the needs of public safety users.

---

<sup>1</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Further Notice of Proposed Rulemaking, FCC 08-128 (rel. May 14, 2008) (“*2d FNPRM*”).

The cost of constructing a network to exacting public safety standards exceeds the costs of a typical commercial network. For example, the Commission noted, based on data submitted in the record, the current D Block population coverage requirement of 99.3% would increase the network construction costs by more than six billion dollars compared to a 95% population coverage requirement, which is already higher than the typical commercial network coverage of about 90%.<sup>2</sup> To make the shared network commercially viable and to promote widespread participation in the auction, the Commission should offer a series of bidding credits to encourage carriers to offer specific network features and characteristics. Under this plan, certain "core" D Block requirements – namely, a nationwide license and an interoperable broadband network – would not change in any way and would not be affected by the bidding credits. For other D Block public safety standards, however, the minimum requirement that the D Block licensee must satisfy for certain quantifiable standards would remain substantially higher than current commercial standards, but would be adjusted slightly downward from the current D Block targets to make the network more economically viable. Bidding credits would then be available to provide an incentive for the D Block licensee to agree to achieve the more demanding “target” goal for the network that the Commission sought during the first D Block auction. The license applicant could choose from the various bidding credit options, which could be aggregated for a credit against the gross winning bid amount.

The Commission has ample authority to adopt such bidding credits to promote important public interest goals, particularly for goals related to public safety. As the Commission has previously determined, Section 309(j)(3) of the Communications Act “directs the Commission to

---

<sup>2</sup> See *2d FNPRM* at ¶ 91, n. 113.

design bidding systems that promote the objectives of Section 1 of the Act.”<sup>3</sup> Section 1 requires the Commission to promote “safety of life and property through the use of wire and radio communications,”<sup>4</sup> a goal that a public/private D Block partnership would serve. Moreover, the Commission has clarified that nothing in the Communications Act restricts the use of credits only to small businesses or to the other examples enumerated in Section 309(j)(4)(D),<sup>5</sup> and the Commission has previously used bidding credits to promote new broadcast entrants, and for the provision of wireless service to tribal lands.<sup>6</sup> By establishing core system requirements and then using targeted bidding credits to reach the original D Block mandates, the Commission can provide public safety users with a public-private network that can provide critical public safety support services to the country.

## **II. SPRINT NEXTEL LEADS THE INDUSTRY IN EMERGENCY COMMUNICATIONS EXPERIENCE, WITH A LONG HISTORY OF SERVING THE PUBLIC SAFETY COMMUNITY**

### **A. Sprint Nextel Has Developed Interoperable Communications Services Specifically to Aid First Responders**

Sprint Nextel has a long history of serving the public safety community with interoperable mobile wireless communications solutions, including Nextel Direct Connect. As the nation’s only commercially available sub-second push-to-talk service, Nextel Direct Connect allows first responders to communicate instantly to make life-saving decisions. Even during emergency response situations when the public switched telephone network (“PSTN”) is unavailable, public safety officials can share critical information and communicate off-network

---

<sup>3</sup> See *Extending Wireless Telecommunications Services to Tribal Lands*, Report and Order and Further Notice of Proposed Rulemaking, 15 FCC Rcd 11794 (2000) (“*Tribal Lands Order*”) at ¶ 18.

<sup>4</sup> 47 U.S.C. § 151.

<sup>5</sup> *Tribal Lands Order* at ¶ 19.

<sup>6</sup> See 47 C.F.R. §§ 73.5007; 1.2110(f).

because these services do not rely on the PSTN. Consistent with its desire to aid first responders, Sprint Nextel has partnered with Motorola to provide advanced communications solutions for public safety personnel. Together, the companies have introduced a local, regional, and national interoperability solution that allows a Nextel Direct Connect user to speak directly to a first responder using a Project 25 land mobile radio.<sup>7</sup> Nextel Direct Connect services have streamlined police, fire, and emergency service operations in multiple communities across the country.<sup>8</sup>

**B. Sprint Nextel’s Emergency Response Team Provides Public Agencies with Continuous Wireless Connectivity During Emergencies and Natural Disasters**

Sprint Nextel’s Emergency Response Team (“ERT”) has unparalleled experience in responding to national emergencies, having responded to 23 presidentially declared disasters. The ERT has nearly 30,000 phones ready for use by public safety organizations in emergency situations. Moreover, the ERT has developed Go-Kits™ so public safety officials can keep a supply of phones on hand for rapid activation during drills or actual crises.<sup>9</sup> Sprint Nextel’s ERT maintains a fleet of proprietary Satellite Cell Sites on Wheels (“SatCOWs”) and Satellite Cell Sites on Light Trucks (“SatCOLTs”) that can restore wireless and IP wireline connectivity without the need for connection to local utilities, permitting first responders to access interoperable communications during emergencies.<sup>10</sup>

---

<sup>7</sup> See Sprint Nextel Press Release, *Sprint and Motorola Offer Network Interoperability Solution* (Feb. 12, 2008).

<sup>8</sup> See Morris County, New Jersey, Iredell County, North Carolina, and Montgomery County, Tennessee Case Studies, *available at* [http://www.nextel.com/en/solutions/govt\\_public.shtml](http://www.nextel.com/en/solutions/govt_public.shtml).

<sup>9</sup> *Id.* at 18 (noting that the ERT Go-Kits™ consist of iDEN that have the capability to communicate with other handsets without the need for any infrastructure over a range of up to six miles).

<sup>10</sup> See Sprint Nextel Press Release, *Sprint Nextel Emergency Response Team Expands Programs for Hurricane Katrina Response and Recovery* (May 17, 2006).

In addition to the activities of its ERT, Sprint Nextel also maintains an active all-hazards business continuation program that consists of business resumption, disaster recovery, and incident management.<sup>11</sup> This program regularly conducts exercises to evaluate the network's emergency readiness through planned drills that simulate real-world situations. Sprint Nextel also participates in Department of Homeland Security and state-sponsored exercises to further improve its readiness and coordination for disasters.<sup>12</sup>

Sprint Nextel's emergency response expertise was put to the test during the devastating hurricane season in 2005.<sup>13</sup> Four days before Hurricane Katrina hit the United States, Sprint Nextel began pre-positioning generators and fuel, readying specialty vehicles, and assembling the supplies needed to repair damaged electronics.<sup>14</sup> Four hours after Hurricane Katrina's landfall, Sprint Nextel's ERT deployed its unique fleet of SatCOWs and SatCOLTs to over twelve locations, including Emergency Operation Centers, naval installations, and an oil spill site.<sup>15</sup> Specifically, the ERT deployed more than 7600 units to over 75 agencies, made more than 20,000 handsets available to first responders, and provided tactical, interoperability, logistical, and humanitarian support. Within 72 hours of the storm hitting the Gulf Coast, Sprint Nextel had established a fully functional incident command center at the Baton Rouge State Fairgrounds.<sup>16</sup>

---

<sup>11</sup> See *Sprint Business Continuity Program Overview*, available at [available at http://www.nextel.com/en/solutions/govt\\_public.shtml](http://www.nextel.com/en/solutions/govt_public.shtml).

<sup>12</sup> See Comments of Sprint Nextel Corporation, EB Docket No. 06-119 at 10 (filed Aug. 7, 2006).

<sup>13</sup> See Comments of Sprint Nextel Corporation, PS Docket No. 06-229 at 6 (filed Feb. 26, 2007); Comments of Sprint Nextel Corporation, EB Docket No. 06-119 at 4-5 (filed Aug. 7, 2006).

<sup>14</sup> See Comments of Sprint Nextel Corporation, EB Docket No. 06-119 at 2 (filed Aug. 7, 2006).

<sup>15</sup> *Id.* at 5.

<sup>16</sup> *Id.* at 4, n.6 (detailing that the command center, "Sprint City," housed approximately 360 people during Katrina recovery, including network personnel, corporate security, IT, facilities, sales,

Prompted by the devastation of Hurricane Katrina, Sprint Nextel independently and without federal mandate has dedicated more than \$150 million for hurricane preparations in storm-prone communities.<sup>17</sup> The company's investment includes installing permanent generators for critical wireless services at more than 2,100 cell sites and network facilities on Sprint Nextel's Global IP Network, funding the purchase of portable generators and additional Cell Sites on Wheels for the company's disaster response and recovery, and expanding the scope of its ERT.<sup>18</sup>

### **C. Sprint Nextel's Mobile Solutions Assist Public Safety**

In another innovative public safety partnership, Sprint Nextel and Rave Wireless joined forces to provide a suite of mobile solutions to enhance student safety and security on campus. At South Carolina's Allen University, for instance, Sprint Nextel and Rave Wireless provided students with GPS-capable phones preloaded with certain applications allowing the school's public safety officials to identify a student's location, if previously requested by the student, for purposes of an emergency. Similarly, all students who chose to use this mobile solution at the University of Maryland Eastern Shore can communicate with faculty over a unified messaging system, a feature that is especially helpful in emergency situations.<sup>19</sup>

In addition to harnessing its network's unique capabilities to enhance student safety, Sprint Nextel uses its technology to protect children. In 2004, Sprint Nextel was the first

---

environmental, health, and safety officers, Sprint Nextel's Emergency Operations Center representatives, a helicopter pilot, a nurse, and a mental health counselor).

<sup>17</sup> See, e.g., Sprint Nextel Press Release, *Alabama Counts on Sprint as Hurricane Season 2008 Begins* (May 21, 2008); Sprint Nextel Press Release, *Hurricane Season 2007: Sprint Nextel Invests Year-Round so that Texas Residents Can Make the Call* (May 8, 2007).

<sup>18</sup> See, e.g., Sprint Nextel Press Release, *Sprint Nextel Network Resiliency Strengthened as 2006 Atlantic Hurricane Season Begins* (May 21, 2006).

<sup>19</sup> See Sprint Nextel Press Release, *Sprint Nextel and Rave Wireless Introduce Mobile Solutions for College Campuses* (Aug. 21, 2006).

wireless company to develop a wireless text message-based AMBER Alert. By working with state coordinators and the National Center for Missing & Exploited Children, Sprint Nextel was the first carrier to allow customers and law enforcement officials to receive timely, unaltered and geographically targeted messages in the event of an emergency.<sup>20</sup>

**D. Sprint Nextel Plays an Active Role in Supporting Public Safety Providers**

Sprint Nextel has actively participated in joint industry-government forums to improve network resilience and disaster preparedness. Sprint Nextel has served as the chair of the Network Reliability and Interoperability Council, and as a member of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks and the Network Reliability Steering Committee. Moreover, Sprint Nextel has dedicated significant time and resources to advance Commission goals and ensure that there is sufficient spectrum for critical public safety needs. For example, Sprint Nextel has worked with the public safety community to identify how CMRS operations interfered with public safety communications systems in the 800 MHz band.<sup>21</sup> In 2001, Nextel published a White Paper which served as the impetus for an ultimate Commission decision to realign the 800 MHz band in order to solve these interference problems. Given Sprint Nextel's long history of serving public safety – and serving alongside public safety in times of disasters – Sprint Nextel is uniquely qualified to comment on the need for a nationwide broadband wireless network to meet public safety needs.

---

<sup>20</sup> See Sprint Nextel Press Release, *Sprint Nextel Promotes Wireless AMBER Alert Awareness* (Jan. 13, 2006); see also, National Center for Missing & Exploited Children Press Release, *National Center for Missing & Exploited Children Joins Forces with Nextel, Comlabs and the Pennsylvania State Police to Develop New Wireless Amber Alert Service* (July 12, 2004), available at [http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en\\_US&PageId=1670](http://www.missingkids.com/missingkids/servlet/NewsEventServlet?LanguageCountry=en_US&PageId=1670).

<sup>21</sup> See *Promoting Public Safety Communications – Realigning the 800 MHz Land Mobile Band to Rectify Commercial Mobile Radio – Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs*, ET Docket Nos. 00-258 and 95-18, IB Docket No. 99-81, and WT Docket No. 99-87 (Nov. 21, 2001).

### **III. THE D BLOCK CAN STIMULATE CRITICAL PUBLIC SAFETY INTEROPERABILITY**

While there has been much discussion of the communications interoperability problems which hampered the efforts of first responders on 9/11, it is noteworthy that exactly five years earlier – on September 11, 1996 – the Public Safety Wireless Advisory Committee submitted its Final Report to the FCC and NTIA. The 800-page report recounted numerous examples of emergency workers being stymied by the lack of effective, interoperable communications systems, including the example of police officers who could not communicate with fire fighters in trying to rescue victims of the first terrorist attack on the World Trade Center in 1993.<sup>22</sup> The Final Report concluded that “unless immediate measures are taken to alleviate spectrum shortfalls and promote interoperability, Public Safety agencies will not be able to adequately discharge their obligation to protect life and property in a safe, efficient and cost effective manner.”<sup>23</sup>

Almost ten years after the Final Report, another report – the report of the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks – vividly illustrated that little had changed in the past ten years, citing examples of the need to use “human runners to physically carry messages between deployed units and first responders,” and the use of a helicopter to “drop a message in a bottle to warn first responders about a dangerous gas

---

<sup>22</sup> *Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission and the National Telecommunications and Information Administration* (Sept. 11, 1996) (“Final Report”) at 5. The Final Report represented “the best efforts of the Public Safety community to define and document its critical need for communications resources and spectrum which will support them – now and through the year 2010.” *Id.* at 1.

<sup>23</sup> *Id.* at 2.

leak,” in the aftermath of Hurricane Katrina.<sup>24</sup> The Katrina Report, which recommended increased efforts to facilitate first responder interoperability, followed on the heels of the FCC’s own report, six months earlier, which explained to Congress the significant benefits to public safety of an integrated, nationwide interoperable broadband mobile communications network.<sup>25</sup>

Most would agree that, despite the many reports and studies, the fact that the public safety workers who risk their lives daily serving this nation still lack an adequate, interoperable communications network is gravely disappointing. American citizens deserve better, and the United States, as a nation, can afford better.

While Auction 73 was not ultimately successful in licensing the D Block, the Commission was “on the right track” in adopting most of the D Block conditions. No radical departure from these public-safety elements is required to make the Commission’s proposal economically viable. Instead, the Commission can employ minimum standards in combination with targeted bidding credits to ensure that a shared wireless broadband network (“SWBN”) achieves public interest goals within the scope of a commercially viable public-private partnership by the D Block licensee.

The D Block auction offers the Commission a unique opportunity to meet public safety needs. Commissioner Capps underscored the importance of the 700 MHz proceeding last year:

We have here a once-in-a-lifetime opportunity to provide the nation’s first responders with access to a nationwide, interoperable broadband network. . . . The challenge is to make sure that this network *actually works for public safety*. . . .

---

<sup>24</sup> Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Network, *Report and Recommendations to the Federal Communications Commission* (June 12, 2006) (“Katrina Report”), at 26.

<sup>25</sup> *Report to Congress on the Study to Assess the Short-Term and Long-term Needs for Allocations of Additional Portions of the Electromagnetic Spectrum for Federal, State, and Local Emergency Response Providers*, WT Docket No. 05-157 at 14 (Dec. 19, 2005).

I am working with [Chairman Martin], and all of my colleagues, to make sure we get this particular proceeding right. *We cannot – we simply cannot – fail.*<sup>26</sup>

Given this unique opportunity, the Commission should design its D Block service rules with the needs of public safety officials in mind.

**A. The Public/Private Partnership Remains the Best Method for Achieving a Nationwide Broadband Network for Public Safety**

Public/private partnerships have been very successful in addressing the needs of governments in developing and building infrastructure where traditional public financing models are unable to meet the challenge. These arrangements have resulted in the construction of highways, public works facilities, and public buildings, environmental preservation and other large projects in the United States and around the world.<sup>27</sup> Increasingly, public/private partnerships have been shown to be an effective means of galvanizing resources in the telecommunications and technology industries to meet critical needs in the public sector.<sup>28</sup>

---

<sup>26</sup> Testimony of FCC Commissioner Michael J. Copps before the U.S. House Committee on Energy and Commerce Subcommittee on Telecommunications and the Internet (July 24, 2007) (emphasis in the original).

<sup>27</sup> In the United States, the transportation sector has employed public-private partnerships most successfully. The Department of Transportation, Federal Highway Administration maintains an information clearinghouse on public-private partnerships in response to growing interest in this area. <http://www.fhwa.dot.gov/PPP/> (last visited June 16, 2008); *see also* United Nations, Guidebook on Promoting Good Governance in Public-Private Partnerships (2007) (“United Nations Study”) at 77 (providing case studies of effective public-private partnerships applying recommended “good governance” principles). Numerous case studies are also provided by the National Council for Public Private Partnerships at <http://www.ncppp.org/cases/index.shtml> (last visited June 16, 2008).

<sup>28</sup> *See* Keys to Collaboration: Building Effective Public-Private Partnerships, National Association of State Chief Information Officers, Corporate Leadership Council, Issue Brief (May 2006) (“State government leaders can benefit from leveraging the expertise and resources of the private sector to address emerging trends and implement best practices...”). The Department of Justice, National Institute of Justice also maintains a public-private partnership program that allows public safety agencies and vendors to create a partnership to implement interoperability technologies or technological solutions to more localized problems. *See* <http://www.ojp.usdoj.gov/nij/topics/technology/communication/partnerships.htm> (last visited June 16, 2008).

There are several well-documented advantages to public/private partnerships in narrowing the gap between infrastructure needs and resources. Such partnerships have a track record of on-time, on-budget delivery.<sup>29</sup> They lower the costs of infrastructure both initially (during construction) and on an ongoing basis (during the life-cycle of the asset).<sup>30</sup> Most importantly, such partnerships enable the public sector agencies to maintain a focus on their core missions, rather than on the project of building infrastructure that eventually can support them.<sup>31</sup> For public safety agencies whose mission it is to protect this country and its people, it is critical that they remain focused on that mission.

#### **B. The D Block Public Safety Requirements Should Remain Largely Intact**

The D Block should continue to be a single, nationwide geographic area license for the same reason that the Commission determined that the public safety broadband spectrum should be licensed to a single entity: centralizing responsibilities in one entity best serves the goal of achieving nationwide interoperability on a spectrally efficient, cost-effective basis, and eases the administrative burden on both the public safety community and the Commission.<sup>32</sup> Moreover, dividing the D Block into multiple licenses runs the risk that one or more licenses might remain unsold, thereby creating gaps in the nationwide network.

With regard to spectrum sharing, the D Block licensee's access to the Public Safety Broadband Licensee's spectrum should be limited to secondary use on an unconditionally preemptible basis, and that the wireless network must be designed so as to:

---

<sup>29</sup> Deloitte Research Study, *Closing the Infrastructure Gap: The Role of Public-Private Partnerships* (2007) ("Deloitte Research Study") at 1; United Nations Study at 5-6.

<sup>30</sup> Deloitte Research Study at 8; United Nations Study at 6.

<sup>31</sup> Deloitte Research Study at 9.

<sup>32</sup> *Second R&O* at ¶ 369.

automatically assign priority to public safety users, to the exclusion and/or immediate preemption of any commercial use on a dynamic, real-time priority basis, and that network specifications are sufficient to guarantee that public safety users suffer no harmful interference or interruption or degradation of service.... Commercial service should therefore operate in an effectively 'invisible' manner with regard to public safety users.<sup>33</sup>

In addition to the fundamental spectrum and network sharing requirements, the *Second R&O* imposed a number of conditions on the D Block licensee. While some of the more broadly worded provisions might be better defined so that applicants can better estimate the costs involved, and, as discussed in Section IV, bidding credits should be used in some cases to achieve the desired network performance levels, the following network requirements form the core of the proposed public safety broadband network:

- Specifications for a broadband technology platform that provides mobile voice, video, and data capability that is seamlessly interoperable across agencies, jurisdictions, and geographic areas. The platform would also include current and evolving state-of-the-art technologies reasonably made available in the commercial marketplace with features beneficial to the public safety community (*e.g.*, increased bandwidth).
- Sufficient signal coverage to ensure reliable operation throughout the service area consistent with typical public safety system requirements.
- Sufficient robustness to meet the reliability and performance requirements of public safety. To meet this standard, network specifications must include features such as hardening of transmission facilities and antenna towers to withstand harsh weather and disaster conditions, and backup power sufficient to maintain operations for an extended period of time.
- Sufficient capacity to meet the needs of public safety, particularly during emergency and disaster situations, so that public safety applications are not degraded (*i.e.*, increased blockage rates and/or transmission times or reduced data speeds) during periods of heavy usage. The network would employ spectrum efficient techniques, such as frequency reuse and sectorized or adaptive antennas.
- Security and encryption consistent with state-of-the-art technologies.
- The offering of one satellite-capable handset.
- A mechanism to automatically prioritize public safety communications over commercial uses on a real-time basis and to assign the highest priority to communications involving safety of life and property and homeland security.

---

<sup>33</sup> *Second R&O* at ¶ 418.

- Operational capabilities consistent with features and requirements specified by the Public Safety Broadband Licensee that are typical of current and evolving state-of-the-art public safety systems (such as connection to the PSTN, push-to-talk, one-to-one and one-to-many communications, etc.).
- The Public Safety Broadband Licensee would have the right to determine and approve the specifications of public safety equipment that is used on the network, and the right to purchase its own subscriber equipment from any vendor it chooses, to the extent such specifications and equipment are consistent with reasonable network control requirements.

**IV. BIDDING CREDITS SHOULD BE USED TO PROMOTE AUCTION PARTICIPATION AND TO PROVIDE A COMMERCIALY VIABLE PATH FOR CONSTRUCTION OF THE NETWORK**

**A. Bidding Credits Would Stimulate Bidder Participation While Enhancing the Shared Network**

Given the outcome of Auction 73, some changes must be made to make the licensing, construction, and operation of the new network commercially viable. While the fundamentals of the SWBN should remain intact, additional commercial incentives are required because the costs involved in constructing a network to exacting public safety standards exceed the costs of a typical commercial network.

To help compensate for these additional costs, and thereby promote greater participation in the auction, Sprint Nextel proposes that a series of separate bidding credits be offered for the D Block re-auction. This approach is consistent with the Commission's questions in the *2d FNPRM*, which suggests that some adjustments to the rules will be needed to stimulate interest

and participation in the D Block re-auction.<sup>34</sup> This approach also recognizes that bidding credits have historically been successful in encouraging greater participation in auctions.<sup>35</sup>

Under this plan, the minimum requirement that the D Block licensee must satisfy for certain quantifiable standards would remain higher than current commercial standards, but would be adjusted slightly downward from the current targets to make the network more economically viable. Bidding credits would then be available to provide an incentive for the D Block licensee to agree to achieve the more demanding “target” goal for the network. While the precise bidding credits may be subject to change, Sprint Nextel proposes that the Commission establish the following combination of minimum requirements and bidding credits for prospective D Block licensees:

**1. Public-Private Build-out.** The D Block auction winner would have to satisfy a minimum build-out coverage requirement of 95% of the nation’s population at the end of the license term. The licensee would receive a 10% bidding credit for committing to cover 98% of the nation’s population by the end of the license term and a 15% bidding credit for committing to cover 99.7% of the United States population by the end of the license term.

**2. Public Safety Preemption.** The D Block auction winner would have to offer public safety licensees “near real-time prioritization.” The auction winner would satisfy this minimum requirement by committing to move all commercial traffic off network within ten minutes of receiving a call from authorized public safety officials. Public safety officials in the affected area would alert the D Block auction winner of the need to preempt commercial traffic by contacting a telephone number that the auction winner must staff 24 hours a day, seven days a week, with personnel authorized to discontinue commercial operations in the

---

<sup>34</sup> See, e.g., *2d FNPRM* at ¶ 22 (“We therefore explore a variety of possible revisions ... to provide greater assurance ... that the shared wireless broadband network will be commercially viable ....”); *id.* at ¶ 85 (seeking comment on whether public safety access to the D Block spectrum is essential); *id.* at ¶ 91 (seeking comment on reducing the 99.3% population coverage requirement); *id.* at ¶¶ 61-83 (seeking comment on possible revisions to various technical requirements) .

<sup>35</sup> For example, in two recent auctions, more than 50 percent of the qualified bidders applied for bidding credits. See *Auction of Advanced Wireless Services Licenses; 168 Bidders Qualified to Participate in Auction No. 66; Information Disclosure Procedures Announced*, Public Notice, DA 06-1525 (rel. Jul. 28, 2006) (59.5 percent of the qualified bidders applied for a bidding credit) and *Auction of 700 MHz Band Licenses; 214 Bidders Qualified to Participate in Auction 73*, DA 08-83 at Appendix A (rel. Jan. 14, 2008) (55.6 percent of the qualified bidders applied for a bidding credit).

affected area during the emergency for a pre-defined period of time. If a bidder committed to offer instantaneous or real-time prioritization in lieu of “near real-time prioritization,” the bidder would receive a 5% bidding credit.

**3. Network Reliability.** Network reliability varies between outdoor and indoor settings; therefore, separate standards for these two markedly different environments should exist. Outdoors, the D Block auction winner would have to offer a minimum of 95% reliability over 95% of the coverage area. Indoors, the D Block auction winner would have to offer a minimum of 80% reliability over 80% of its coverage area. A bidder that committed to offer 99.7% reliability over 99.7% of its coverage outdoors and 95% reliability over 95% of its coverage area indoors would receive a 15% bidding credit.

**4. Narrowband Relocation.** Because the costs of relocating narrowband public safety incumbent licensees may exceed the current \$10 million cap on narrowband relocation expenses, a bidder that commits to assuming all expenses associated with relocating narrowband 700 MHz licensees without a cap would receive a 5% bidding credit.

**5. Back-up Power.** The D Block auction winner would have to provide a minimum of at least eight hours of back up power at all transmitter locations. If a bidder committed to install backup systems designed to last 72 hours or more at no less than 50% of its transmitter locations, the bidder would receive a 5% bidding credit. If a bidder committed to install backup systems designed to last 72 hours or more at 100% of its transmitter locations, the bidder would receive a 10% bidding credit.

Mechanically, the bidding credits would work in a manner similar to the Tribal Lands Bidding Credit currently used by the Commission, to the extent that the winning bidder would apply for the credits at the long form application stage. The winning bidder could decide at that point whether to apply for all the credits, no credits, or some combination of credits. The value of the credits selected would then be subtracted from the amount of the final payment owed by the winning bidder. Should the D Block licensee ultimately fail to satisfy the standards associated with any of the credits, the licensee would be required to repay the credit with interest.<sup>36</sup> To encourage performance, additional penalties up to a pre-defined cap might also apply.

---

<sup>36</sup> See, e.g., 47 C.F.R. § 1.2110(f)(3)(viii) (the Tribal Lands Bidding Credit performance penalty).

**B. The Commission Has Ample Authority to Adopt Bidding Credits to Promote a More Robust Shared Wireless Broadband Network**

Under the Communications Act, the Commission has broad authority to promote the public interest when designing spectrum auctions. Section 309(j)(3), for example, states that with regard to auction design, license eligibility, and other license characteristics, the Commission “shall include safeguards to protect the public interest in the use of spectrum and shall seek to promote the purposes specified in section 1 of this Act.”<sup>37</sup> Accordingly, the Commission has recognized that the use of bidding credits is appropriate if it promotes the statutory objectives listed in Section 1.<sup>38</sup> Section 1 requires, among other things, that the Commission promote “safety of life and property through the use of wire and radio communications,”<sup>39</sup> a goal that would be served by establishing a nationwide wireless network for public safety use.

Section 309(j)(4)(D) of the Act expressly requires the Commission to consider the use of “bidding preferences” to promote the participation in spectrum auctions by small businesses, rural telephone companies, and businesses owned by members of minority groups and women.<sup>40</sup> Although 309(j)(4)(D) is the only section to make a specific reference to bidding preferences, it does not act as a limitation on the Commission’s authority to use bidding credits in other contexts. As the Commission previously determined:

There is no indication in Section 309(j)(4)(D) or in its legislative history, however, that the Commission's authority to award bidding preferences is limited to such entities. To the contrary, Section 309(j)(4) provides example of mechanisms that the Commission may employ in serving the key objectives in Section 309(j)(3).<sup>41</sup>

---

<sup>37</sup> 47 U.S.C. § 309(j)(3).

<sup>38</sup> *See Tribal Lands Order* at ¶ 18.

<sup>39</sup> 47 U.S.C. § 151.

<sup>40</sup> 47 U.S.C. § 309(j)(4)(D).

<sup>41</sup> *See Tribal Lands Order* at ¶ 19.

As a result, the Commission has extended bidding credits to winning bidders who use licenses to provide service to tribal lands, as well as to new entrants in broadcast license auctions,<sup>42</sup> in addition to credits designed to assist small businesses.

Moreover, Section 4(i) of the Communications Act provides the Commission with broad authority to “perform any and all acts, make such rules and regulations, and issue such orders, not inconsistent with [the] Act, as may be necessary in the execution of its functions.”<sup>43</sup> The Commission has used this section to fashion tools similar to bidding credits. For example, the Commission issued an “auction discount voucher” to Qualcomm which was not specifically contemplated by statute. Relying on its Section 4(i) authority, the Commission explained that: “[w]hile the Communications Act does not specifically authorize the issuance of an [auction discount voucher], neither does it specifically prohibit the Commission from taking this action.”<sup>44</sup> The courts afford the Commission wide discretion in the use of its Section 4(i)

---

<sup>42</sup> See, e.g., *Tribal Lands Order* at ¶ 19 (explaining that the Commission sought to promote the public interest goal of service deployment on tribal lands, which have some of the lowest U.S. telephone service penetration rates); *Implementation of Section 309(j) of the Communications Act - Competitive Bidding for Commercial Broadcast and Instructional Television Fixed Service Licenses, Memorandum Opinion and Order*, 14 FCC Rcd 8724 at ¶ 72 (1999) (explaining that the new entrant credit for broadcast licenses was designed to “to promote diversity in programming services and viewpoints for the broadcast services.”).

<sup>43</sup> 47 U.S.C. § 154(i); see also *id.* §303(r) (stating that “the Commission . . . as public convenience, interest, or necessity requires shall [m]ake such rules and regulations and prescribe such restrictions and conditions, not inconsistent with law, as may be necessary to carry out the provisions of this Act . . . ”); see also *North American Telecommunications Association v. FCC*, 772 F.2d 1282, 1292 (7th Cir. 1985) (Section 4(i) “empowers the Commission to deal with the unforeseen - even if that means straying a little way beyond the apparent boundaries of the Act - to the extent necessary to effectively regulate those matters already within the boundaries.”).

<sup>44</sup> See *Qualcomm Incorporated Petition for Declaratory Ruling Giving Effect to the Mandate of the District of Columbia Circuit Court of Appeals*, Order, 16 FCC Rcd 4042 (2000). Qualcomm had successfully appealed the dismissal of its pioneer’s preference application filed in the PCS context. The Commission developed the voucher mechanism as a remedy. See also *id.* at ¶ 15 (noting that the voucher “is structured to operate in a manner similar to a bidding credit,” and that the “Communications Act expressly authorizes bidding credits”).

authority, particularly regarding issues relating to spectrum usage. The D.C. Circuit has noted that, “[w]hen it is fostering innovative methods of exploiting the spectrum, the Commission ‘functions as a policymaker and, inevitably, a seer—roles in which it will be accorded the greatest deference by a reviewing court.’”<sup>45</sup> Thus, the Commission has ample authority to authorize bidding credits for the D Block license re-auction.

## V. CONCLUSION

To provide for a nationwide, interoperable broadband wireless network that will benefit public safety, the Commission should make modest adjustments to some of the minimum requirements imposed on the D Block licensee. Doing so will make construction of a public-private partnership network commercially viable and promote greater participation in the auction. With public safety users’ network needs in mind, a series of bidding credits should be offered to create incentives for the D Block licensee to construct a network that goes beyond the requirements minimally necessary to conduct basic public safety operations.

Respectfully Submitted,

*/s/ Lawrence R. Krevor*

---

**SPRINT NEXTEL CORPORATION**

Lawrence R. Krevor  
Vice President, Government Affairs  
Trey Hanbury  
Director, Government Affairs  
2001 Edmund Halley Drive  
Reston, VA 20191

June 20, 2008

---

<sup>45</sup> *Teledesic LLC v. Federal Communications Commission*, 275 F.3d 75, 84 (D.C. Cir. 2001).