

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

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

REPLY COMMENTS OF SOUTHERNLINC WIRELESS

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EXECUTIVE SUMMARY

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC”) urges the Commission to proceed carefully as it considers the next steps for the D Block spectrum. A meaningful and robust partnership between the private and public sectors, whether through an auction or an alternative mechanism, is the only way to ensure that public safety has access to the types of communications networks necessary to support its mission critical operations. Accordingly, SouthernLINC objects to any effort to “water down” the Public/Private Partnership in order to make a D Block auction more commercially attractive to potential bidders. Alternatively, if the Commission finds that an approach combining the D Block auction with the Public/Private Partnership will not achieve its goal of nationwide, interoperable public safety broadband communications, SouthernLINC believes the Commission should immediately move to a re-auction of the D Block without the Public/Private Partnership condition. As the record in this proceeding makes clear, there is significant, unmet demand for commercial spectrum by small- and medium-sized operators and new entrants who participated in the 700 MHz auction.

SouthernLINC is a Tier III provider with a robust network infrastructure specifically designed to withstand stressful weather conditions caused by hurricanes in the Southeastern United States; federal, state, and local agencies comprise nearly one-quarter of SouthernLINC’s customer base. As such, SouthernLINC has the experience to show that a CMRS provider is able to develop a hardened network that will satisfy the needs of public safety and that, accordingly, a 700 MHz Public/Private Partnership can work. Commercial-grade networks are not sufficient for the needs of public safety, especially in times of emergency, and the 700 MHz Public/Private Partnership condition only serves the meaningful purpose the Commission intended if it is

designed to provide public safety with something above and beyond what the large majority of today's CMRS networks are able to offer. Thus, the Commission should reject the arguments of commenters who call for network construction based on commercial-level best practices for reliability, limited population coverage requirements, or a reduction in network reliability level.

If the Commission believes that it cannot promote commercial interest in a D Block re-auction without diluting the basic requirements of the 700 MHz Public/Private Partnership, then the Commission should abandon the partnership approach entirely and proceed to an unencumbered D Block re-auction. In the event the Commission makes such a determination, SouthernLINC supports the suggestion of several commenters that the Commission open a proceeding to consider a competitive Request for Proposal ("RFP") approach to address the challenges of public safety interoperability and broadband communications deployment. In addition, SouthernLINC urges the Commission to adopt service and licensing rules for the D Block without the Public/Private Partnership condition that will promote access to the 700 MHz spectrum by smaller providers and new entrants in the CMRS marketplace. Specifically, the Commission should offer the D Block spectrum on a CMA basis and establish either an eligibility restriction or wholesaling/mandatory roaming requirements.

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Southern Communications Services, Inc. d/b/a SouthernLINC Wireless

(“SouthernLINC”), by its attorney, files these reply comments on the Second Further Notice of Proposed Rulemaking (“FNPRM”) of the Federal Communications Commission (“FCC” or “Commission”) addressing the upper portions of the 698-806 MHz band (“700 MHz Band”), and, specifically, the status of the Upper 700 MHz D Block (758-763/788-793 MHz) (“D Block”) and the associated 700 MHz Public/Private Partnership.¹ Given the lack of consensus in the record on the best approach for a D Block auction with a Public/Private Partnership condition, SouthernLINC urges the Commission to proceed with great caution as it considers its next steps for the D Block. In particular, SouthernLINC objects to any effort to “water down”

¹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Second Further Notice of Proposed Rulemaking, WT Docket 06-50, PS Docket No. 06-229 (rel. May 14, 2008) (“FNPRM”). The FNPRM was published in the Federal Register on May 21, 2008. 73 Fed. Reg. 29582 (May 21, 2008).*

the Public/Private Partnership in order to make a D Block auction more commercially attractive to potential bidders. A robust partnership between the private and public sectors, whether through an auction or an alternative mechanism, is the only way to ensure that public safety has access to the types of communications networks necessary to support its mission critical operations. If the Commission finds that an approach combining the D Block auction with the Public/Private Partnership will not achieve its goal of nationwide, interoperable public safety broadband communications – and there clearly is support in the record for such a determination – SouthernLINC believes the Commission immediately should (1) open a proceeding to consider a competitive Request for Proposal (“RFP”) approach, as suggested by several commenters, to address the challenges of public safety interoperability and broadband communications deployment; and (2) move to an immediate re-auction of the D Block without the Public/Private Partnership condition subject to the service and licensing rules discussed below.

I. BACKGROUND

SouthernLINC is uniquely qualified to comment on the viability of commercial networks that can support public safety communications, due to its existing network and customers. As a Tier III commercial mobile radio service (“CMRS”) carrier,² SouthernLINC provides wireless services, in particular mobile dispatch services, to individual, business, and public safety customers throughout portions of the Southeast. Additionally, SouthernLINC provides communications services to the subsidiaries of Southern Company, a registered holding company

² Tier III carriers are defined as non-nationwide CMRS providers with no more than 500,000 subscribers. *See Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, Phase II Compliance Deadlines for Non-Nationwide Carriers*, CC Docket No. 94-102, Order to Stay, 17 FCC Rcd 14841, 14848 (2002).

under the Public Utility Holding Company Act of 1935, as amended.³ Southern Company's four operating electric utility subsidiaries (collectively the "Operating Companies") provide retail and wholesale electric service to over 4 million customers throughout Georgia, most of Alabama, and parts of Florida and Mississippi, making Southern Company one of the largest electric utilities in the United States. SouthernLINC's wireless service territory generally encompasses the same rural and urban areas served by the Operating Companies, including the Gulf Coasts of Alabama and Mississippi, the Florida panhandle, and the Atlantic Coast of Georgia, all of which are prone to hurricanes and related weather events.

Because of SouthernLINC's critical role in providing services to the Operating Companies, SouthernLINC's infrastructure network was specifically designed to withstand the stressful weather conditions caused by hurricanes in the Southeast. As a result, SouthernLINC's network is far more robust than a traditionally-designed, commercial-grade network designed with some additional redundancy. Every feature of the SouthernLINC network was designed to maximize operational functionality during extreme conditions. Just a few of the many elements of this system design include: (1) to minimize damage during high winds and ice storms, SouthernLINC has built its towers to TIA/EIA standards for structural and wind loading; (2) all of SouthernLINC's operational sites have battery back-up; (3) approximately 85 percent of these operational sites are connected to an emergency generator, with approximately five days of fuel; (4) SouthernLINC uses large reinforced concrete shelters that are ice resistant and bullet proof; (5) enhanced grounding is used to resist lightning strikes (lightning rods, buried ground wire, copper bulkheads, surge suppressors); and (6) in flood prone areas, shelters and propane tanks

³ 15 U.S.C. § 79 *et seq.*

are elevated on piers to help avoid damage due to flooding. SouthernLINC believes that it is one of the few, if not the only, commercial networks designed to these exacting standards.

Not surprisingly, given its hardened network and best of class design, public safety agencies throughout SouthernLINC's territory have relied on SouthernLINC for day-to-day and emergency operations since the network became operational in 1995. Today, federal, state, and local agencies comprise over 24 percent of SouthernLINC's customer base. A substantial portion of these government subscribers are first responders who rely on the company's network and its well known Push to Talk technology to remain in contact when the need for reliable communications is most critical. For example, in the aftermath of Hurricane Katrina, SouthernLINC provided the only immediate means of communication in the hardest hit coastal areas of Mississippi and Alabama. Ninety-eight percent of SouthernLINC's cell sites were online and providing communications on September 1, 2005, only three days after Hurricane Katrina struck, and 100 percent were online and providing communications on September 6, 2005.

II. DISCUSSION

With its history of service to commercial and public safety customers, Southern has first hand experience on the viability of commercial efforts in support of public safety-type communications. A true public-private partnership can work, but it is not easy, and the Commission should recognize that this proceeding may not be the right vehicle to make it happen. The Commission should not compromise the needs of public safety simply to make a D Block auction more attractive. Nor should it burden the D Block spectrum with unrealistic conditions. Although the Commission may have an opportunity to thread the proverbial needle in this proceeding in order to make a D Block re-auction with a 700 MHz Public/Private

Partnership condition truly work, if it cannot do so, it should abandon the condition in favor of an alternative approach that will better serve the public safety community. As discussed below, there is significant support in the record for the Commission to pursue alternative approaches for the D Block that might more easily and realistically satisfy the five goals established for this proceeding.⁴

A. If The 700 MHz Public/Private Partnership Is Retained, The Commission Must Ensure That Its Actions Truly Support Public Safety And That It Does Not Make “Compromises” That Do Very Little To Advance Public Safety Interoperability While Simultaneously Devaluing The D Block Asset.

A Meaningful Public/Private Partnership. If the Commission elects to retain the 700 MHz Public/Private Partnership condition as part of a D Block re-auction, SouthernLINC supports those commenters that urge the Commission to ensure the partnership condition remains a meaningful one.⁵ As such, the Commission should reject the arguments of those parties that call for a significant change to the 700 MHz Public/Private Partnership in order to encourage bidder participation.⁶ As SouthernLINC has demonstrated, a CMRS provider can develop a hardened network that will satisfy the needs of public safety. The Commission should not

⁴ FNPRM at ¶ 6. The Commission has announced five goals for this proceeding: (1) to identify concerns with the 700 MHz Public/Private Partnership; (2) to promote wireless innovation and broadband penetration for the first responder community in a commercially viable manner; (3) to facilitate the development of a nationwide interoperable broadband network for public safety; (4) to identify funding for the public safety community; and (5) to maximize to the commercial and public safety benefits of the D Block spectrum.

⁵ See, generally, Comments of Verizon Wireless, Tyco Electronics M/A-Com (“TE M/A-Com”), The Rural Telecommunications Group (“RTG”), American Association of State Highway and Transportation officials (“AASHTO”), National Public Safety Telecommunications Council (“NPSTC”), and Northrop Grumman Information Technology (“Northrop Grumman”).

⁶ See, generally, Comments of Leap Wireless, Consumer Electronics Association (“CEA”), and U.S. Cellular.

modify the fundamental requirements of the 700 MHz Public/Private Partnership simply in order to encourage commercial interest in a D Block re-auction with the partnership condition.

A diverse group of commenters – from public safety agencies to equipment vendors to service providers – have urged the Commission to maintain meaningful technical and reliability standards in the event the Public/Private Partnership is retained. As one commenter succinctly warned, “It would be a mistake to use this proceeding merely to determine how to re-auction the D Block under what would amount to so-called ‘D Block Lite’ conditions.”⁷ Further, TE M/A-Com rightly points out that public safety needs cannot be met by traditional commercial networks:

As with today’s mission-critical voice and data networks, public safety broadband networks must conform to current standards for resiliency and reliability, e.g., hardened sites, reliable backhaul, adequate back-up power sources, and redundancy safeguards. It would be contrary to the public interest to create a nationwide public safety broadband network that fails to provide first responders with broadband service during the nation’s worst emergencies. A broadband network without public safety requirements will not provide any advantage over currently available commercial wireless broadband networks and, therefore, will not meet the needs of public safety users.⁸

SouthernLINC agrees that the goals of 700 MHz Public/Private Partnership will not be satisfied if service providers simply offer their existing commercial networks as the answer to public safety’s needs. The Commission should reject those arguments that call for network construction based on “commercial-level best practices for reliability,”⁹ C Block-type coverage

⁷ Comments of Verizon Wireless at 2.

⁸ Comments of TE M/A-Com at 3.

⁹ Comments of CEA at 3.

requirements of only 75% of the population,¹⁰ or revising the 99.7 percent network reliability level.¹¹ If public safety agencies only need commercial-grade wireless coverage, they simply can subscribe to existing commercial offerings. However, experience has shown that these commercial-grade networks are not sufficient, especially in times of emergency. Thus, the 700 MHz Public/Private Partnership condition only serves the meaningful purpose the Commission intended if it is designed to provide public safety with something above and beyond what the large majority of today's CMRS networks are able to offer.¹²

What public safety users truly need is a hardened network, much like the network that SouthernLINC constructed to satisfy the exacting requirements of the Operating Companies.¹³ A "D-Block lite" approach will do very little to help public safety. A non-hardened network will be susceptible at those times of crisis – during hurricanes, tornadoes, and other natural and man-made disasters – when first responders most need the ability to communicate. Ultimately, a D Block re-auction with a "watered down" 700 MHz Public/Private Partnership will solve nothing. It will fail to provide public safety with any meaningful resolution to its interoperability problem and the challenges of broadband deployment while at the same time devaluing the D Block

¹⁰ Comments of Leap Wireless at 13.

¹¹ Comments of U.S. Cellular at 21.

¹² SouthernLINC supports the efforts of several parties to identify certain technical requirements of the 700 MHz Public/Private Partnership in advance of a D Block auction. It notes, for example, the suggestions of Alcatel-Lucent to define specific network specifications that will support minimum service quality across the network, and endorses the efforts for greater technical certainty. *See* Alcatel-Lucent Comments at 5. Even if these standards cannot be met by many of today's commercial wireless networks, it is useful to set minimum requirements in advance of any auction so that potential bidders can be fully aware of public safety network expectations.

¹³ SouthernLINC notes that some commenters specifically support the use by utility personnel of a future single wireless broadband network. *See* Comments of AASHTO at 8. ("Utility companies must

spectrum. Therefore, if the Commission concludes that a D Block re-auction with a 700 MHz Public/Private Partnership will not result in the kind of hardened network that public safety users need, then it has other options available for consideration that would both promote the deployment of commercial wireless networks and address on a nationwide scale the challenges of public safety interoperability, as discussed below.

Integration of Existing Terrestrial Networks. GeoCommand rightly observes that the Commission should look beyond the 700 MHz band in considering the challenge of public safety interoperability. SouthernLINC supports GeoCommand's observation that "other networks could serve a vital role in the national strategy for modernizing public safety services and could enhance and augment the contemplated 700 MHz network."¹⁴ As SouthernLINC has shown, it is possible to create a public/private partnership that meets the needs of both the network operator and the public safety community. SouthernLINC believes that its hardened network and others like it can serve a useful role in the development of a nationwide interoperable public safety network as envisioned by the Commission.

Moreover, it makes little sense for a future D Block licensee not to take advantage of existing networks that already have been built to many of the exacting specifications of public safety. Such existing networks should be the first place that a future D Block licensee looks as it considers supporting public safety. For example, when dealing with a nationwide coverage requirement, it will be invaluable for the D Block license holder to be able to access a network

be included [in a single network] to restore essential services including power, water sanitation, and telephone service.")

¹⁴ Comments of GeoCommand at 12.

like SouthernLINC's, with its extensive coverage in low-density rural areas.¹⁵ Therefore, to encourage the use of existing facilities, the Commission should adopt the incentive proposed by GeoCommand to permit the coverage of certain qualifying terrestrial networks – those that are sufficiently hardened, reliable, and can be integrated into an interoperable nationwide network – to count towards the coverage and performance imposed on the D Block licensee.¹⁶

Full Use of Twenty Megahertz. SouthernLINC respectfully disagrees with commenters, like the City of Philadelphia, who suggest that the Commission should bar the D Block licensee from accessing unused spectrum if a public safety entity opts to not make use of the new network.¹⁷ This type of rigid exclusion is not in the public interest because it would be an inefficient use of spectrum, would be virtually impossible to administer, and also runs counter to the primary purpose of the 700 MHz Private Partnership. Indeed, as Google noted, “[c]ombined, flexible use of the spectrum in the manner described by the Commission should serve the public interest by allowing more efficient use of the entire 20 MHz of spectrum, making it more

¹⁵ Several satellite companies advocate that the Commission delay or relax D Block build out requirements in areas covered by mobile satellite services if the licensee ensures that handsets with terrestrial and mobile satellite components are available in the areas that have not been built out with terrestrial services. (*See, generally*, Comments of Inmarsat and the Satellite Industry Association.) While Southern supports the use of dual-mode handsets as an important option to public safety agencies in the development of a nationwide interoperable system, it notes the comments of NATOA in questioning whether the Commission should rely on satellite technology as a primary source of communications: “[S]atellite service should not be counted when calculating the network’s 99.3% of the population within 10 years and should not be available to the D Block licensee as a mechanism by which to escape build-out requirements of the D Block licensee.” (Comments of The National Association of Telecommunications Officers and Advisors, et al (“NATOA”) at 18-19.)

¹⁶ Comments of GeoCommand at 12.

¹⁷ Comments of City of Philadelphia at 6-7. (We agree with NATOA that if a public safety entity opts not to make use of the new network, the D Block licensee should not be permitted to make any use of the public safety spectrum in that jurisdiction).

attractive for potential commercial licensees.”¹⁸ Further, it is difficult to understand how a certain public safety entity could elect spectrum availability by this “opt-out” option when there typically are multiple public safety entities serving a particular jurisdiction. Ultimately, the 700 MHz Public/Private Partnership is designed to create a nationwide network for public safety interoperability. The Commission should not allow the network’s spectrum capacity to be reduced in certain areas because “a public entity” elects not to join the network.

Conclusion. If the Commission believes that it must take the advice of some commenters and “water down” the basic requirements of the 700 MHz Public/Private Partnership in order to promote commercial interest in a D Block re-auction, then it should abandon the partnership approach entirely and proceed to an unencumbered D Block re-auction as discussed below. A limited 700 MHz Public/Private Partnership simply maintains the status quo and provides for the public safety community to have access to the same commercial-grade networks that already are available to them. The D Block spectrum is too valuable to small- and mid-sized CMRS providers like SouthernLINC to have it burdened with a Public/Private Partnership condition that serves no real purpose.

B. There Is Significant Support For The Commission To Pursue An Alternative Approaches To The Public Safety Interoperability Challenge And Abandon The 700 MHz Public/Private Partnership.

Mixed Record on the Public/Private Partnership. Several prominent members of the public safety community disagree with the Commission’s decision for a nationwide 700 MHz Public/Private Partnership. For example, the New York City Police Department (“NYPD”) would prefer that the Commission directly license the 10 MHz of public safety spectrum to local

¹⁸ Comments of Google at 4.

agencies because “there is simply no business case for a commercial wireless network operator to build a nationwide network that will meet public safety coverage and survivability standards.”¹⁹ Similarly, the City and County of San Francisco (“City”) suggest that “[r]ather than proceeding once again with an uncertain auction, a vague network sharing agreement, an untested network, and the prospect that many local public safety agencies could choose not to participate, the City recommends that the Commission instead focus on developing both: (1) a plan to allocate spectrum locally or regionally []; and (2) a set of minimum interoperability standards that local agencies would agree to support and build into their local systems.”²⁰ These are noteworthy words of caution that should not be ignored. It is clear that some in public safety do not believe that a commercially-controlled public safety network is sustainable.

Not surprisingly, many CMRS providers share the view of San Francisco and NYPD:

- “The D Block concept is fundamentally – and fatally – flawed.”²¹
- “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.”²²
- “The public/private partnership is inherently unworkable. ... There are too many points of failure, too much unknown, too many aspects subject to abuse.”²³
- “As MetroPCS repeatedly has pointed out, there is serious irreconcilable problems inherent in any mandatory public/private partnership fashioned for public safety purposes, and MetroPCS is concerned that any such proposal,

¹⁹ Comments of NYPD at 3.

²⁰ Comments of City at 2.

²¹ Comments of Verizon Wireless at 4.

²² Comments of AT&T at 2.

²³ Comments of RTG at 2.

despite what may be the Commission's best efforts, may be doomed for failure.²⁴

The level of opposition from both public safety and CMRS providers alike to a D Block re-auction with the 700 MHz Public/Private Partnership raises a very valid question – is there sufficient support for such an undertaking? While SouthernLINC does believe the Public/Private Partnership can work under the right circumstances, the partnership clearly will not work without 100 percent commitment from all involved. The mixed record to date suggests that we are not there yet, and the Commission must be mindful of this opposition as it considers its next steps.

Similarly, there even is a lack of consensus about the merits of combining commercial and public safety interests into a joint network. For example, the International Association of Fire Fighters “are concerned that commercial interests will trump public safety interests under such a system – the proposals that public safety will set the network requirements and will receive ‘priority access’ to the network during an emergency do not adequately address these concerns.”²⁵ The City of Philadelphia adds: “Blending the two spectrum blocks would effectively preclude local governments from building and operating broadband networks, in spectrum intended for public safety use, by making all channels freely available to the D Block commercial licensee.”²⁶ As outlined above, SouthernLINC does believe that a partnership could work, and it has done so on a local basis in the southeast. But at the same time, the Commission could not be faulted for pursuing an alternative approach to the public safety interoperability

²⁴ Comments of MetroPCS Communications (“MetroPCS”) at 5.

²⁵ Comments of IAFF at 2.

²⁶ Comments of City of Philadelphia at 7.

problem due to the mixed reaction of commenters on the 700 MHz Public/Private Partnership in the record.

The RFP Approach. Indeed, both AT&T and Verizon Wireless suggest that non-auction alternative proposals, in particular the competitive RFP approach, could best achieve the goals of a public/private partnership.²⁷ “Unlike an auction, which might force the government into a long-term arrangement with an unacceptable partner that just happens to be the highest bidder, the RFP process allows for the considered evaluation of potential partners on a range of criteria to increase the chances the partnership will succeed.”²⁸ Indeed, successful RFPs have already led to the deployment of wireless public safety broadband systems in Washington, DC, and New York City. AT&T correctly opines that “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.”²⁹ Similarly, Verizon Wireless notes that “RFPs are a highly effective means of bringing together the public and private sector to build and operate public safety communications systems.”³⁰

SouthernLINC agrees that an RFP approach is a well established vehicle for promoting private solutions for public sector needs. Having already built a network that could be used in such a partnership, SouthernLINC is very interested in a more in-depth review of the specifics of

²⁷ *See, generally*, Comments of AT&T and Verizon Wireless.

²⁸ Comments of Verizon Wireless at 19-20.

²⁹ Comments of AT&T at 6.

³⁰ Comments of Verizon Wireless at 19.

a competitive RFP approach as suggested by Verizon Wireless and AT&T. SouthernLINC agrees that a successful RFP partnership could leverage existing commercial infrastructure more easily than with a 700 MHz Public/Private Partnership associated with a D Block re-auction, primarily because the public safety entities will have significantly more control over the RFP process. For example, the RFP process would allow the Public Safety Broadband License (“PSBL”) to weigh the merits of competing proposals based on common criteria.³¹

SouthernLINC also supports the suggestion that a regional RFP approach may be the best method for creating a nationwide “network of networks” that would be interoperable in support of public safety.³² With the advances of IP-protocol networks, a technological solution to problem interoperability becomes more achievable than even just a few years ago. Smart radio base stations also will make it easier for a network like SouthernLINC’s to be fully integrated into a national public safety interoperable broadband network notwithstanding the use of different spectrum bands.

D Block Must Remain Commercial. While SouthernLINC supports the active consideration of the competitive RFP approach advocated by AT&T and Verizon Wireless, it strongly opposes suggestions to reallocate the D Block to public safety if the Public/Private

³¹ SouthernLINC supports the suggestion of RTG to allow the PSBL “to lease excess capacity to D Block licensees and/or other 700 MHz licensees, in return for network construction and access, should such licensees and the [PSBL] desire to do so.” Comments of RTG at n.3. An RFP approach with the ability to lease spectrum capacity would give the PSBL some useful tools to gaining control of a network without the necessary overhang of a conditioned D Block auction.

³² Comments of Verizon Wireless at 25. (“One alternative means of creating a national framework without requiring the construction of a single new nationwide network by one carrier is to develop an integrated national network on a so-called ‘network of networks’ or ‘system of systems’ basis – i.e., by interconnecting smaller networks developed on a common set of standards that allow for national interoperability.”)

Partnership is abandoned.³³ As the record in this proceeding makes clear, there is significant, unmet demand for commercial spectrum by small- and medium-sized operators and new entrants who participated in the 700 MHz auction.³⁴ SouthernLINC already has a proven record in working with public safety to provide first responders the most advanced and reliable communications services possible. An unencumbered D Block re-auction, with the service and auction rules outlined below, would be a significant opportunity for SouthernLINC and similar companies to supplement their existing spectrum position in order to provide additional capacity and offerings to both commercial and public safety customers alike. The Commission is well aware of the value of the 700 MHz spectrum, and SouthernLINC urges the Commission, if it elects to abandon the Public/Private Partnership, to quickly move to a commercial auction.

C. If The Commission Pursues A D-Block Re-Auction, It Must Adopt Certain License And Service Restrictions To Ensure Maximum Opportunity For Licensees In The 700 MHz Band.

The State of the CMRS Marketplace. The transitional state of the CMRS marketplace was highlighted in several comments filed by carriers and other interested parties. For example, Leap Wireless noted that “[a]lthough the Commission has often painted a rosy picture of the state of competition in the wireless market, the reality, backed by an abundance of data, is that market power is increasingly being consolidated into the hands of the two largest carriers –

³³ See Comments of AT&T at 6, Comments of Verizon Wireless at 21, n.33. See also Motorola at 14 (“Option 3: Dissolve the Public/Private Partnership and Reallocate the D-Block Spectrum from Commercial to Public Safety Use:”). While SouthernLINC supports the suggestion by Verizon Wireless to auction the D Block spectrum and give the proceeds to public safety to support interoperable communications solutions, it cannot support a complete reallocation of the spectrum to public safety.

³⁴ See, generally, Comments of Cox Communications, Inc.

AT&T and Verizon Wireless – and that consumers are very likely to suffer as a result.”³⁵ The Public Interest Spectrum Coalition (“PISC”) similarly observed that “[t]he Commission must adopt eligibility requirements that exclude Verizon Wireless and AT&T, and adopt mandatory wholesale to provide sufficient spectrum access for existing competitors.”³⁶

Whether or not it elects to keep the 700 MHz Public/Private Partnership condition, the Commission has a unique opportunity in setting rules for the D Block auction to promote access to the 700 MHz spectrum by smaller providers and new entrants in the CMRS marketplace. But, at a time of increasing consolidation in the marketplace, it is critical that the Commission take a proactive role in providing specific safeguards for these providers. While it has been a well-worn phrase, the 700 MHz spectrum truly is “beach front property.” Rather than let two large private houses continue to dominate the shore line through a D Block auction, the Commission would be well served to take the necessary steps to allow less well-heeled vacationers to build a condominium, albeit a modest one, in the same neighborhood.

An Eligibility Restriction. Section 309(j)(3)(B) of the Communications Act is often cited in support of the Commission taking steps to “avoiding excessive concentration of licenses” and to promoting opportunities for a wide variety of applicants.³⁷ But often the argument for conditions to promote a wide distribution of licenses is made in the abstract, i.e., without a clear idea of how an auction actually will play out. In other words, the Commission typically is forced

³⁵ Comments of Leap Wireless at 4-5.

³⁶ Comments of PISC at 7.

³⁷ 47 U.S.C. § 309(j)(3)(B)

to use its best judgment to comply with Section 309(j)(3)(B) in advance of an auction occurring. Once the results are in, the 309(j)(3)(B) argument simply is forgotten.

The current situation before the Commission presents a much different set of facts. Here, the auction essentially already has happened, and with highly compelling results. It is well established that AT&T and Verizon Wireless dominated Auction 73, spending \$16 billion or 83 percent of the total auction revenues. Now, the Commission has a clear path, and indeed a specific obligation, to comply with Section 309(j)(3)(B) by imposing eligibility conditions on a D Block re-auction in order to avoid the further excessive concentration of licenses by AT&T and Verizon Wireless. Many commenters agree and have offered specific suggestion to promote opportunities for other parties:

- “a one-time eligibility rule specific to the 700 MHz band, prohibiting any current license holder or winning bidder that already can reach more than 50% of the nation’s POPs through its 700 MHz holdings.” (Leap Wireless at 7.)
- “PISC therefore recommends again that the Commission adopt spectrum caps as a means of enhancing competition in the wireless market. Specifically, the Commission should prohibit bidders from exceeding the existing 95 MHz [sic] screen used for merger analysis.”³⁸
- “RCA believes that it is imperative that the Commission limit participation in the D-Block re-auction to entities that do not already have nationwide or near-nationwide 700 MHz spectrum holdings.”³⁹
- “RTG requests that the FCC adopt an interim cap restricting any entity from holding an attributable interest in more than twenty-four (24) megahertz of 700 MHz spectrum in any geographic area, as determined on a county basis.”⁴⁰

³⁸ Comments of PISC at 6-7.

³⁹ Comments of Rural Cellular Association at 3

⁴⁰ Comments of RTG at 10.

Not only is a 700 MHz eligibility restriction critical to complying with Section 309(j)(3)(B), it also is critical to ensuring that smaller companies and new entrants will have a final opportunity to acquire much-needed 700 MHz spectrum.

Wholesaling and/or Roaming Obligation. In the event the Commission does not adopt an eligibility restriction for the D Block, then it is absolutely critical that the Commission put in place wholesaling and mandatory roaming requirements on the D Block licensee(s).⁴¹ Having been involved in difficult, if not impossible, roaming negotiations for the past 10 years, SouthernLINC could not agree more with the observation of Cellular South that “small carriers and new entrants face exceedingly difficult obstacles – and often outright impossibilities – when seeking access to large carriers’ networks.”⁴² Equally as important as a mandatory roaming/wholesale obligation, the Commission should clearly establish that the rates for roaming and wholesaling must be reasonable and identify a standard for identifying whether rates are, or are not, reasonable.⁴³

CMAs, Package Bidding and Anonymous Bidding. In the event of a D Block auction without the 700 MHz Public/Private Partnership condition, SouthernLINC fully endorses the position of several commenters that advocate for the use of Cellular Market Areas (“CMAs”) who believe that “[t]he use of CMAs results in greater auction and market efficiency because it

⁴¹ SouthernLINC believes that any wholesaling and mandatory roaming requirements would most benefit the public interest if the requirements applied to all voice and data services provided by the D Block licensee over the 700 MHz spectrum. SouthernLINC also believes the wholesaling obligation would require the D Block licensee to make spectrum capacity available to the extent there is additional capacity available on the network.

⁴² Comments of Cellular South at 3.

⁴³ *See, also*, Comments of U.S. Cellular at 20. (“Apply a comprehensive automatic roaming rule to D Block licensees that includes roaming for advanced services.”)

allows bidders to tailor their auction strategy and spectrum acquisitions to meet their business plan.”⁴⁴ Parties like MetroPCS, Cox Communications, and RTG agree that both large and small bidders benefit from the use of CMAs, while the use of larger areas imposes a disproportionate burden on smaller providers and new entrants because they essentially are priced out of the market.

Should the Commission choose to use CMAs, the Commission should not undermine this choice by allowing package bidding that would eliminate many of the public interest benefits that flow from using smaller license areas. As U.S. Cellular correctly notes, in a D Block auction, the Commission should “aim at increasing the pool of bidders and not disadvantage smaller bidders that are able to serve areas but not super-regions”⁴⁵

Finally, SouthernLINC supports those commenters that advocate against the use of anonymous, or blind, bidding.⁴⁶ As these commenters note, “the use of anonymous bidding to address collusion in a highly competitive auction like we saw in Auction 73 – and will undoubtedly see again in any future D Block auction – is misplaced.”⁴⁷ As Cox notes,

⁴⁴ Comments of RTG at 5. If the Commission decides to hold a D Block re-auction with the 700 MHz Public/Private Partnership intact, SouthernLINC supports the use of a nationwide license, with eligibility conditions, as advocated by the Rural Cellular Association (“RCA”). Comments of RCA at 3. (“Grant of a nationwide D-Block license would simplify the Commission’s oversight obligations that follow grant of the spectrum license and would allow the winning D Block licensee and the Public Safety Spectrum Trust (“PSST”) to focus their collective efforts on ensuring the timely completion of an advanced telecommunications network that serves the commercial interests of the D-Block licensee, as well as the nation’s public safety and homeland security needs.”)

⁴⁵ Comments of U.S. Cellular at 22.

⁴⁶ See Comments of Cox Communications at 13; Comments of U.S. Cellular at 26.

⁴⁷ Comments of Cox Communications at 13.

anonymous bidding places a disproportionate impact on smaller, more localized, bidders and should not be used in a D Block re-auction.

III. CONCLUSION

SouthernLINC urges the Commission to proceed carefully as it considers the next steps for the D Block spectrum. While SouthernLINC has the experience to show that a 700 MHz Public/Private Partnership can work, the Commission would be fully justified, based on the record to date in this proceeding, to consider alternative options to deal with the challenge of public safety interoperability and to re-auction the D Block separately subject to service rules designed to promote competition in the 700 MHz band.

Respectfully submitted,

SOUTHERNLINC WIRELESS

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