

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

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
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REPLY COMMENTS OF VERIZON WIRELESS

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I. INTRODUCTION AND SUMMARY

The first round of comments submitted in response to the Second Further Notice of Proposed Rulemaking reveals an emerging consensus on the most important issues before the Commission. As set forth below, several key themes are apparent from the range of suggestions offered in the comments and should shape the Commission's efforts as it moves forward in this proceeding:

1. The D Block concept is based on flawed economic assumptions that do not conform to commercial reality. The comments identify a large chasm between what the D Block approach was expected to deliver and what is now understood to be economically feasible. The basic flaw of the D Block concept is that the cost of building a nationwide broadband network for public safety exceeds the value of the remaining 700 MHz spectrum that was intended to finance it. In light of this funding shortfall, these excess costs would have to be recouped from public safety users or commercial users of the network, neither of which are realistic options. The first round of comments thus makes clear that, absent public funding, network coverage and performance specifications would have to be scaled back so substantially as to frustrate the very purpose of building a public safety network in the first place. As a result, it is clear that the support from key stakeholders that would be required for a D Block re-auction to succeed is no longer available. The Commission therefore is left with little choice but to re-evaluate the D Block approach and consider instead whether to adopt an alternative model.

2. The Commission should pursue an approach in which: (a) the remaining 700 MHz spectrum is licensed regionally, (b) private partners are selected through a competitive requests for proposal (RFP) process, and (c) opportunities to leverage existing commercial infrastructure are maximized. The comments reflect support for three key elements of an

alternative policy. First, the spectrum should be licensed on a regional basis (either to private sector licensees or to public safety entities on a regional basis with congressional authorization) rather than to a single national licensee, subject to a national framework that would facilitate the development of a nationally integrated “network of networks.” As a number of public safety and government commenters (especially the New York City Police Department and the cities of Philadelphia and San Francisco) explain, a regional approach will provide greater flexibility and better match network requirements to local needs. In accordance with this approach, the Commission should consider whether to designate corresponding regional Public Safety Broadband Licensees (“PSBLs”), with perhaps a new national public safety coordinating entity to ensure national interoperability and other necessary standardization.

Second, public/private partnerships should remain a key part of the solution, but should be formed on the basis of RFPs rather than auctions. RFPs will enable the public partner to select a private counterpart that best meets public safety needs across a range of criteria, rather than simply which entity offers the best price.

Third, the Commission should encourage full commercial participation and leveraging of existing commercial infrastructure and should not impose obstacles to that goal, such as restrictive eligibility conditions designed to pursue social policy objectives unrelated to those of public safety. In particular, as the comments of public safety organizations reflect, the Commission should not exclude participation by the largest carriers, because they often will be best positioned to offer the requisite capabilities at the lowest cost and with the shortest deployment time.

3. The Commission should ensure that Cyren Call’s participation does not deter potential private-sector partners. Cyren Call is simultaneously playing the following roles:

First, it is the PSST's advisor, and in that capacity presumably has had access to the PSST's confidential information and plans for nearly the past year. Second, it is the PSST's lender, having loaned \$4 million last year to cover the PSST's expenses, including payments back to Cyren Call for services rendered. Third, it planned to serve as a Mobile Virtual Network Operator (MVNO), profiting from the PSST's position as the PSBL, prompting pointed criticism from Chairman Martin at a recent congressional hearing. And fourth, it is reported to be actively assembling a bidding consortium for the D Block in the event of a re-auction.

Several commenters note how these roles create irreconcilable conflicts in the relationship between Cyren Call and the PSST. Cyren Call cannot act as the PSST's advisor at the same time it has designs on the D Block. Nor can it act as the PSST's lender while claiming it exerts no influence over the PSST's actions. Cyren Call's attempt to position itself as a privileged, monopoly provider of service to public safety users was exposed in a congressional hearing earlier this year. Many commenters (including in the public safety community) have expressed serious concerns that Cyren Call's self-serving business model undermined the viability of the public/private partnership model, and others have noted the apparent conflict of interest between the needs of public safety and the profit expectations of Cyren Call and its private equity investors. Cyren Call's relationship with the PSST, which includes a \$4 million loan that was made apparently without the Commission's knowledge or approval, prompted many public safety commenters to call for the adoption of strict conflict of interest rules that would prohibit advisors of the PSBL from profiting from business activities related to their work with the PSBL. The Association of Public Safety Communications Officials ("APCO") and others have also urged governance reforms to the PSST and questioned whether the PSST should remain as the licensee for the public safety broadband spectrum. Verizon Wireless supports

these public safety comments and urges the Commission to conduct a full review of the relationship between the PSST and Cyren Call to ensure the goals of public safety are not compromised by improper profit motives or conflicts of interest.

Verizon Wireless fully supports the Commission's efforts to develop a nationally integrated and interoperable wireless broadband network for public safety. Whether Verizon Wireless will participate in a new RFP or auction process necessarily will depend on what the final rules provide and the commercial viability of such participation. But Verizon Wireless remains firmly committed to serving the communications needs of the public safety community and remains optimistic that public/private partnerships can be an effective means of providing wireless broadband services to public safety in a timely and efficient manner.

II. THE D BLOCK CONCEPT IS FUNDAMENTALLY FLAWED.

The basic economic assumption underlying the D Block concept was that the value to a carrier of being able to use the 10 MHz of public safety broadband spectrum would be sufficient to cover the cost of building a national network to public safety specifications.¹ But that assumption is false. Even the *incremental* cost of hardening Verizon Wireless's existing commercial network to public safety specifications would exceed the value of the 10 MHz of

¹ See Second Report and Order, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, 22 FCC Rcd 15289, ¶¶ 386, 416 (2007) (“*Second Report and Order*”).

public safety broadband spectrum and the 10 MHz of D Block spectrum combined.² A new carrier building a network from scratch would face an even starker financial imbalance.³ Reducing the minimum bid or modifying the default penalty, as some commenters suggest, would be beside the point – even giving the 20 MHz of spectrum away for free would not overcome the financial shortfall inherent in the D Block model. The simple fact is that there is no excess spectrum value to cover the cost of the network; rather, there are excess costs that would have to be recouped over the duration of the license.⁴ In the absence of public funding, such recoupment must occur from either public safety users or commercial users – neither of which are realistic options.

As to public safety users, the PSST has made clear that it expects that they would pay substantially less than commercial users and that the D Block licensee could not recoup its

² See Comments of Coleman Bazelon at 2 (estimating the value of an unrestricted D Block to be \$3 to \$5 billion); see *Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecomm. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008) (testimony of Steven E. Zipperstein, Vice President, Legal and External Affairs and General Counsel, Verizon Wireless) (noting that the cost of building a nationwide network from the ground up would be “orders of magnitude” higher than the \$6 to \$7 billion estimates that some had proposed).

³ See Comments of the Public Safety Spectrum Trust Corporation (“PSST”) at 37 (The costs of building a network “will vary considerably depending on the D Block winner. An incumbent with built-out infrastructure and an in-place retail service business will have different requirements than a new entrant that would need to build a network from scratch.”).

⁴ See Comments of Motorola, Inc. at 4 (“Motorola believes that the initial auction of the Upper 700 MHz D-Block was not successful because commercial entities could not absorb the additional costs of building a commercial system designed to public safety specifications while still being able to charge commercially competitive rates.”).

capital expenditures from public safety.⁵ Nor will the necessary funding be available from commercial users on the network. As Verizon Wireless and others explain in their comments, the competitive wireless environment leaves no protected margin with which to subsidize the public safety users on the network.⁶ This is especially true because commercial users would likely be willing to pay only below-market rates for service on the network, since they would be subject to preemption by public safety users.⁷ Indeed, the PSST proposes that as much as 70% of the network (including 40% of the commercial D Block) would be subject to public safety pre-emption.⁸ Thus, the chasm between the commercial realities and the PSST's expectations cannot be bridged, and – in the absence of public funding – the D Block model is not

⁵ See PSST Comments at 36-37. The PSST's other suggestions – i.e., that the Commission subject 70% of the network to public safety preemption, defer fee negotiation to the post-auction negotiation of the NSA, require the D Block winner to cover “most” of the PSST's ongoing operational expenses through spectrum lease payments, and require the D Block winner to reimburse the PSST for its unenumerated expenditures to date – do nothing to improve the commercial viability of the prospective partnership. See PSST Comments at 24, 33, and 53.

⁶ See Comments of Verizon Wireless at 8-9; Motorola Comments at 7 (“The underlying assumption behind the public-private partnership is that it is possible to build a viable business case for a commercially competitive broadband network while also meeting public safety requirements. Despite the best efforts of all parties, it appears that this is not a realistic goal absent some level of supplemental funding from Government.”); see generally Comments of AT&T, Inc. at 1-2 (“[P]otential commercial bidders refused to participate in the D Block auction because of the undefined logistical, operational, and functional requirements of the Public/Private Partnership. . . . Moreover, the significant investment obligations placed on the D Block winner suggested to potential bidders that an adequate return on investment was unlikely.”); Comments of Leap Wireless, International, Inc. at 11 (“As a practical matter, the[] requirements [imposed by the *Second Report and Order*] do not present a realistic opportunity for a commercial entity to make a sufficient return on its investment to justify the venture to its shareholders – let alone to continue operating the network as a going enterprise.”); Comments of MetroPCS Communications, Inc. at 11 (“MetroPCS suspects that *any* mandatory public/private partnership for the D-Block is doomed for failure.”) (emphasis in original).

⁷ See Verizon Wireless Comments at 9-10.

⁸ See PSST Comments at 33.

commercially viable. We therefore agree with San Francisco’s stark assessment: “The failure of the initial auction to meet a reserve price shows that the proposed process is flawed, fraught with difficulties, and probably unworkable in any form.”⁹

To be sure, there are ways to reduce the costs of building the proposed network. As various commenters suggest, the Commission could reduce the geographic coverage requirements to carve out difficult-to-serve areas, reduce the performance specifications from public-safety grade to commercial grade, or reduce or otherwise limit public safety’s priority access. For example, Leap Wireless suggests that coverage requirements be reduced from 99.3% to 75% of the population, that the network be built only to “commercially reasonable specifications,” and that public safety’s priority access be limited to 50% of the network.¹⁰ But these modifications would frustrate the very purpose of building a new dedicated public safety network.¹¹ A network that was not materially different than commercial networks would be unlikely to attract the critical mass of public safety users necessary for the endeavor to succeed in meeting its intended purpose.

⁹ Comments of the City and County of San Francisco at 7; *see also* Motorola Comments at 2 (“While Motorola applauds the FCC for pursuing a creative approach to meeting the needs of public safety, it fears that the goal of developing a commercially viable broadband network that also meets the needs of public safety most likely presents insurmountable hurdles absent direct government funding.”).

¹⁰ *See* Leap Wireless Comments at 11-14.

¹¹ *See* Motorola Comments, Summary (“Elimination of the public safety specifications and requirements, however, would fail to meet the primary goal of providing a public safety grade network.”); *see also* PSST Comments, Attach. D (maps showing portions of the country that would go uncovered as coverage is reduced to various levels below the 99.3% coverage requirement adopted in the *Second Report and Order*).

For the same reason, Sprint-Nextel’s proposal to establish bidding credits as an incentive to increase coverage and to meet other public safety specifications should be rejected.¹² Because the costs of meeting public safety specifications dwarf the value of the spectrum, a savings of 10 or 15 percent on the costs of the spectrum would not come close to tipping the balance in favor of commercial viability. As a result, no commercial carrier is likely to undertake the obligations necessary to receive the credits, and the Sprint-Nextel proposal amounts to no more than a veiled attempt to reduce the network specifications from mission-critical to commercial grade.

The problems with the D Block model are exacerbated by the fact that a commercial carrier has no way to estimate the revenues that would be generated from the new network and to develop a business case that would justify the requisite multibillion-dollar investment. This is because the revenue stream would depend on key variables – rates and usage – that cannot be predicted *ex ante*. First, as the PSST acknowledges in its comments, public safety rates would be left to post-auction negotiation with the PSBL: “While the PSST understands the desire by some parties that service fees be set prior to the auction, *it sees no reasonable way of doing so.*”¹³ A commercial carrier thus has no way to determine how much, if any, of its costs could be recouped from public safety users and how much would have to be passed on to their commercial counterparts.

Second, the network capacity available for commercial use would depend on actual usage by public safety agencies once the network was built. Yet given the conflicting views on how the new network would be used by the public safety community, there is no way to accurately predict the ratio of public safety to commercial usage. For example, APCO envisions a network

¹² See Comments of Sprint-Nextel Corp. at 13-17.

¹³ PSST Comments at 37 (emphasis added).

that would be used only for data and non-mission critical voice communications, but even so anticipates that “the average public safety consumer will be using bandwidth intensive service.”¹⁴ In contrast, the New York City Police Department anticipates that – if the network were properly built and operated – even mission-critical voice communications could migrate to an integrated voice and data network using 700 MHz spectrum, and that such a network could replace LMR systems upon which public safety users would otherwise rely.¹⁵ Further, the relative usage will likely vary substantially by jurisdiction, according to whether public safety agencies have abandoned their LMR systems, whether they have developed alternative wireless broadband networks of their own, or whether they have opted to rely on commercial services instead. For example, San Francisco has taken the position that “the City will most likely be unwilling to use a network controlled by a national commercial licensee,” and notes that it is unlikely that the new network would replace existing LMR systems in the next five to ten years.¹⁶ Region 33 (Ohio) likewise notes that “entities with established voice networks will probably stay with them” and estimates that a majority of public safety agencies would be unwilling to commit to using the new network.¹⁷ It is infeasible to construct a multibillion-dollar business model for a nationwide partnership in the face of so much uncertainty. There are simply too many variables that depend on unknowable information.

¹⁴ APCO Comments at 11-12, 27.

¹⁵ See Comments of the New York City Police Department at 8. It is important to note that the New York City Police Department does not endorse the Commission’s proposal from the *Second Report and Order* and instead favors an assignment of at least the 10 MHz of public safety broadband spectrum directly to public safety on a local or regional basis. See *id.* at 7.

¹⁶ See Comments of the City and County of San Francisco at 5, 9.

¹⁷ See Comments of the Region 33 (Ohio) 700 MHz Regional Planning Committee at 3.

The suggestion by some that the Commission adopt a formal, nationwide rate-setting process only highlights the extent of the problem.¹⁸ Formal rate-setting would isolate the public safety community from the benefits of a competitive wireless market, depriving public safety of one of the principal advantages of the public/private partnership model.¹⁹ Rate-setting could also result in a process of adverse selection that would undermine any attempt at cross-subsidization. Public safety users that could obtain lower rates for comparable service from commercial providers might do so, and commercial providers that could achieve higher rates outside of the rate-setting process would be unlikely to submit to it.²⁰

III. THE COMMISSION SHOULD INSTEAD MOVE TOWARD A NATIONALLY INTEGRATED NETWORK BUILT ON A “NETWORK OF NETWORKS” BASIS.

The Commission is now faced with the decision as to how to proceed in light of the failure of the D Block auction. Commenters have proposed two alternative scenarios for re-auctioning the D Block, but, for the reasons described above, neither of them would serve the interests of public safety. On the one hand, some commenters suggest re-auctioning the D Block

¹⁸ See Second Further Notice of Proposed Rulemaking, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, ¶ 37 (rel. May 14, 2008); APCO Comments at 14-15.

¹⁹ See Verizon Wireless Comments at 10-11; Federal Communications Commission, *Report to Congress on the Study to Assess Short-Term and Long-Term Needs for Allocations of Additional Portions of the Electromagnetic Spectrum for Federal, State and Local Emergency Response Providers*, ¶ 46 (Dec. 19, 2005) (discussing the potential benefits that commercial technologies offer public safety).

²⁰ See New York City Police Department Comments at 7 (“In areas where commercial broadband networks are already deployed, there is no assurance that using the proposed public/private broadband network will be less costly for public safety agencies. If this proves to be true, cash strapped public safety agencies may elect to use an existing commercial broadband network rather than the public/private partnership network, thwarting the Commission’s intent.”).

with only a slight modification of the rules, a course that would virtually guarantee that the auction would again fail and thereby deprive public safety of a dedicated network.²¹ Indeed, some of these comments foreshadow this result by suggesting that upon the failure of the re-auction, the Commission should proceed immediately to re-auction the D Block on an unencumbered basis for commercial use.²² On the other hand, as discussed above, some commenters urge the Commission to reduce coverage and performance specifications to typical commercial levels, an approach that might well draw bidders to the auction, but that would force public safety to settle for a network that did not meet its needs.²³

The Commission should not put public safety agencies across the country to the Hobson's choice of a commercial-grade network or no network at all. Rather, the Commission should pursue a third approach advocated in comments from both public safety constituencies and commercial entities that has the potential to avoid either of these scenarios: building a nationally integrated public safety network on a "network-of-networks" basis, using regional licenses and a competitive selection process that relies on requests for proposals instead of an auction to secure private-sector partners for public safety. This approach would provide the flexibility needed to develop viable partnerships tailored to the circumstances of each region, open the process to a wide array of innovative ideas, and maximize the public safety

²¹ See generally, e.g., PSST Comments at 38-45; Comments of the International Municipal Signal Association, International Association of Fire Chiefs, Inc., Congressional Fire Services Institute, and Forestry Conservation Communications Association ("IAFC") at 4-6.

²² See, e.g., MetroPCS Comments at ii ("[I]f the Commission elects to retain the public/private partnership in the forthcoming D-Block auction, the Commission should provide for a prompt commercial-only re-auction in the event there is no successful bidder for the spectrum while encumbered with public safety obligations.").

²³ See, e.g., Leap Wireless Comments at 11-14; Sprint-Nextel Comments at 13-17.

community's ability to leverage the assets and infrastructure of the greatest number of commercial providers.

A. Regional Licensing Offers Significant Benefits that Are Unavailable Through a Centralized National Approach.

Instead of licensing the 700 MHz spectrum to a single national licensee as contemplated in the *Second Report and Order*, the Commission should license it on a regional basis. The comments filed by jurisdictions that have built or planned their own regional networks show that the advantages of a regional approach are not just theoretical, but are reflected in the practical experience of cities like New York, Washington, DC, and San Francisco that have moved forward with regional initiatives independently of a centralized national solution.²⁴

As comments submitted both by various constituencies within the public safety community and a number of other commercial entities reflect,²⁵ a regional approach would offer

²⁴ See New York City Police Department Comments at 3-4 (describing the New York City Wireless Network, or NYCWiN, which is scheduled to be fully deployed by the end of 2008); Comments of the District of Columbia at 7-8 (describing the National Capital Region's Regional Wireless Broadband Network, or RWBN, which currently covers 80-95% of the District – but noting that the regulatory uncertainty created by the pursuit of nationwide public/private partnership threatens the network's continued existence); Comments of the City and County of San Francisco at 3 (describing the San Francisco Bay Area Regional Interoperable Communications System, or BayRICS, and noting that governance and funding mechanisms are already in place, but that broadband spectrum is needed).

²⁵ See, e.g., New York City Police Department Comments at 5 (“We believe that the needs of Public Safety can best be served by changing the rules for the 700 MHz Public Safety spectrum to allow regional or local public safety entities to be licensed on the 700 MHz broadband spectrum.”); Comments of the District of Columbia at 2-3; Comments of the City of Philadelphia at 2; Comments of the City and County of San Francisco at 2; Comments of the Florida Region 9, Regional Planning Committee at 4; Comments of the International Association of Fire Fighters at 6-7; Comments of the National Association of Telecommunications Officers and Advisors, The National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors (“NATOA, NAC, NLC, USCM Comments”) at 9-11; Comments of the United States Cellular Corporation at ii (“Multiple area licenses will yield public interest benefits, including greater responsiveness to the diverse needs of public safety agencies, more opportunities for efficiency and innovation, faster build-out of a nationwide network, and increased competition for commercial services.”); AT&T Comments at 24-26; MetroPCS

three significant advantages as compared to an approach relying on a single national licensee. First, a regional approach would maximize the possibility of developing successful public/private partnerships because they could be tailored to the circumstances of each region, including its particular public safety needs, whether the region is predominantly rural, urban, or some mix, and the current state of commercial deployment of wireless facilities. For example, public safety capacity needs in some high-density areas may be significant – perhaps requiring use of all the network capacity – while the capacity needs elsewhere might be more able to accommodate a shared network. As New York City explains in its comments: “The Commission should be mindful that the needs of one region are very different from another. Since geography, population density and building construction all vary between Regions, public safety broadband standards developed regionally, based on local requirements are far more appropriate than adapting universal or nationwide standards.”²⁶ A regional approach will encourage participation by commercial carriers best positioned to serve that region’s needs.²⁷ By contrast, no single carrier that obtained a national license could possibly have the most suitable facilities in *every* region of the country or the particular capabilities that would be especially useful in a specific geographic area.

Comments at 20-21, Motorola Comments at 15-17; *see generally* Verizon Wireless Comments at 24-32.

²⁶ New York City Police Department Comments at 5.

²⁷ *See* U.S. Cellular Corp. Comments at 10 (“Within the framework of national standards and obligations, diverse area licenses will lead to innovative, cost-effective solutions for public safety agencies.”); Motorola Comments at 16 (“Regional deployment is also likely to lead to more effective deployments as each region will deploy according to their own specific needs, environment, and urgency. Deployments in multiple regions could occur simultaneously, thus creating a nationwide network designed to serve local needs relatively quickly.”).

Second, regional licensing would provide the local flexibility and control that many public safety commenters advocate. As the City of Philadelphia explains in its comments, “local and regional control over public safety communications . . . is necessary to support effective emergency management” and will permit “regional entities comprised of public safety agencies to negotiate terms of the NSA that affect their operations.”²⁸

Third, a regional approach would open the door to multiple commercial partners that are unwilling or unable to undertake build-out on a national scale and thereby increase the competition among prospective commercial providers that wish to partner with public safety. As MetroPCS observes: “By taking a ‘building block’ approach and offering a sufficient amount of spectrum in small geographic areas, the Commission would permit meaningful participation by a diverse group of carriers – including smaller carriers and prospective new entrants into the marketplace.”²⁹

²⁸ City of Philadelphia Comments at 2-4; *see also* Comments of the City and County of San Francisco at 2 (urging the Commission to develop “a plan to allocate spectrum locally or regionally where local agencies can demonstrate viable and realistic local plans”); Comments of the Florida Region 9, Regional Planning Committee at 3-4 (concluding that the absence of federal funding “leaves few options for a national system licensee” and urging the Commission to “give the Block ‘D’ spectrum back to the RPC’s for use by the States”); Comments of the Commonwealth of Virginia at 11 (“State governments are better situated to address and coordinate implementation challenges of public safety users within a state than the Public Safety Broadband Licensee.”); Comments of the International Association of Fire Fighters (“IAFF”) at 5 (“Despite the importance of achieving nationwide interoperability, it is far more important that public safety agencies have communications systems that best serve their particular agency’s everyday operational needs.”); NATOA, NAC, NLC, USCM Comments at iv (“Public safety agencies must have the option to make local and regional decisions and the ability to choose the solution that best serves their unique requirements and budgets.”).

²⁹ MetroPCS Comments at 20; *see also* Verizon Wireless Comments at 31; AT&T Comments at 25 (“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.”); U.S. Cellular Corp.

Even the PSST concedes that multiple commercial partners with different capabilities may well be needed, but claims that need could be fulfilled through the use of bidding consortia or joint ventures.³⁰ But, as long as multiple commercial partners are needed, it makes sense to use a licensing model that directly reflects that need, rather than one that forces the partners into an artificial national structure under an umbrella licensee. That structure itself might well discourage participation from commercial entities that are either unwilling or unable to partner with their competitors. Moreover, such a structure is not nearly as flexible as regional licensing since the winner still will consist of only a few carriers. Further, while it is unlikely that more than a few nationwide bidding consortia could be formed, it is easy to foresee vigorous competition among prospective partners at the regional level.

A regional licensing approach could be designed in various ways; the appropriate structure would depend in part on whether the Commission regionalized the licenses for only the D Block or for both the D Block and the public safety broadband spectrum currently licensed to the PSST. A critical issue under either approach would be the composition and structure of the PSBL(s). While the constitution of the PSBLs should be driven solely by the needs of the public safety community, Verizon Wireless notes that the sheer number of comments from public safety constituencies favoring greater local or regional control suggests that regional PSBLs might be a

Comments at i (“Creating licenses for the D Block spectrum that are no larger than Major Economic Areas (“MEAs”) would make them accessible to a larger pool of bidders.”).

³⁰ See PSST Comments at 39 (“[T]he PSST appreciates that a successful re-auction may require collaboration among multiple parties with different resources and geographic licenses to form bidding consortia or joint ventures.”).

more attractive option than using a single national PSBL.³¹ Under such an approach, each regional PSBL would more closely represent the interests of the public safety constituencies in its region, would have a better understanding of local needs and obstacles, and would be in a better position to negotiate with the corresponding regional D block licensee. These regional PSBLs could, in turn, coordinate among themselves to ensure national interoperability and any other necessary standardization, or a national coordinating body representing public safety interests or a federal governmental entity could play that role.³² Alternatively, as several of the Commissioners suggested during the April 15 hearing before the House Energy and Commerce Committee's Subcommittee on Telecommunications and the Internet, the Commission could simply impose license conditions that would ensure national interoperability and use its Title III authority to enforce them.³³

B. Requests for Proposals (RFPs) Are the Best Model for Developing Public/Private Partnerships.

As explained in Verizon Wireless's opening comments, a competitive RFP selection process would provide the most promising means for establishing public/private partnerships.³⁴

Other commenters – notably the National Association of Telecommunications Officers and

³¹ See City of Philadelphia Comments at 2 (“The City has serious concerns. . . related to ceding local control over public safety infrastructure to national entities that may be unable to adequately represent the needs of our public safety users. . . [T]he City urges the Commission to revise the scheme set forth in its Second Report and Order to incorporate the local and regional control over public safety communications that the City believes is necessary to support effective emergency management.”); see generally *supra* note 28.

³² See Verizon Wireless Comments at 28.

³³ See *Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecomm. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008); see also Verizon Wireless Comments at 28.

³⁴ See Verizon Wireless Comments at 19-21.

Advisors, the National Association of Counties, the National League of Cities, and the U.S. Conference of Mayors – also support the use of RFPs as an alternative to auctions.³⁵ An auction would force public safety to commit to a single model, specify the key details before the auction, and then partner with the highest bidder (assuming the auction attracted one). By its very nature, the auction model is designed to focus on a single variable – price – and to foreclose other variations among prospective bidders. Indeed, while there is a need to specify the winning bidder’s rights and obligations prior to a re-auction, doing so could have the unintended consequence of deterring potential bidders for whom the final specifications were unfavorable.

In contrast, an RFP approach would allow public safety to consider a range of commercially viable alternatives over the course of the selection process, evaluate them on a broad range of selection criteria, and then partner with the provider that has the most attractive overall proposal. Further, as AT&T noted in its comments:

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.³⁶

The advantages of an RFP process only increase under a regional “network-of-networks” approach, as public safety would have the benefit of a greater number of proposals to consider,

³⁵ See NATOA, NAC, NLC, USCM Comments at 22 (“In earlier comments, Verizon argued that [an RFP] process ‘is the best way to generate a wide range of approaches to meet public safety’s needs,’ and we agree.”); *see also* MetroPCS Comments at 12 & n. 24 (“The simple truth is that an auction is an ill-suited method to pick the optimal partner to construct a nationwide public safety network. . . . The traditional way partners are chosen for public/private partnerships is through a process where the public entity is able to select the private party based on a number of criteria, including the financial considerations, experience, qualifications, etc.”).

³⁶ AT&T Comments at 6.

and prospective partners could tailor their proposals to the specific circumstances of each region. These region-specific circumstances are likely to vary substantially. For example, as APCO observed: “In major metropolitan areas, a saturation point could be arrived at during an emergency situation much more rapidly than may occur in rural areas.”³⁷ A regionalized RFP selection process could accommodate such variations in ways that a nationwide auction could not.

Moreover, a formalized RFP process would bring into the open a process that was conducted behind closed doors prior to the last auction. To develop ideas on how to build and operate the network and prepare its Bidder Information Document (BID), the PSST and Cyren Call met with a number of prospective bidders, including Verizon Wireless, over the course of 2007.³⁸ There is no reason for the consideration of these ideas to be kept from the public: proposals for the network should be brought into the open so that they may be compared – and, if viable, shared – by all concerned. Doing so would ensure that good ideas are brought to light and help ensure that the selection process is kept free from favoritism.³⁹

³⁷ APCO Comments at 12.

³⁸ See Public Safety Spectrum Trust Public/Private Partnership Bidder Information Document, Version 2.0, at 1 (Nov. 30, 2007) (discussing process for developing the PSST’s Bidder Information Document), available at http://www.psst.org/documents/BID2_0.pdf; Verizon Wireless Comments at 34-35.

³⁹ See NATOA, NAC, NLC, USCM Comments at 22 (“Considering earlier efforts by the PSBL to engage potential bidders in discussing how such a network could be built, and the criticism that such meetings generated, the use of an RFP would help ensure that all parties share a level playing field and that respondents’ bids are public rather than secret.”).

C. The Commission Should Ensure That Its Approach Maximizes the Opportunities to Leverage Existing Commercial Infrastructure.

Section 1 of the Communications Act identifies “promoting safety of life and property through the use of wire and radio communications” as one of the Commission’s core missions.⁴⁰ Thus, the Commission should reject self-serving calls from a small number of wireless carriers seeking to limit the universe of potential bidders on the D Block spectrum in derogation of public safety’s best interests.⁴¹ As Verizon Wireless has noted previously, the sole consideration in crafting the rules relating to the licensing of the D Block – and in selecting potential industry partners for public safety – should be ensuring effective deployment of broadband service for first responders and the public safety community.⁴² The Commission’s first priority must be ensuring that public safety users have access to a network providing resilient, reliable, interoperable communications in a cost-effective and timely manner.⁴³

As comments from public safety constituencies recognize, barring the national carriers would be counterproductive and would exclude the parties who have the most experience in providing wireless service on a national basis from participating in efforts to craft a solution for

⁴⁰ 47 U.S.C. § 151.

⁴¹ *See, e.g.*, Comments of Leap Wireless at 7 (calling for eligibility restrictions on carriers with existing 700 MHz spectrum holdings); Comments of Council Tree Communications, Inc. at 14-15 (recommending that the Commission prohibit “the National Carriers” from bidding on the D Block); Comments of the Rural Cellular Association at 3-4 (suggesting that the Commission restrict bidder eligibility based on their 700 MHz spectrum holdings).

⁴² *See* Verizon Wireless Comments at 22.

⁴³ For this reason, the Commission should also reject calls to impose wholesale-only and open-access requirements on the network. *See* Comments of the Public Interest Spectrum Coalition at 7-10. The primary consideration in this proceeding should be serving the interests of public safety, and the Commission should ensure that those interests are not subordinated to unrelated policy objectives.

public safety. Both the APCO and the National Association of Telecommunications Officers and Advisors, among others, oppose such limits,⁴⁴ recognizing that eligibility restrictions aimed at impacting competition and spectrum policy would only distract from the primary objective of finding a commercial partner capable of assisting public safety in developing a national broadband network.⁴⁵ Public safety would be best served by attracting the largest pool of bidders who are qualified to undertake the massive project of building out the public safety network. In addition, as Qualcomm observes, “the failure of the first D block auction should cause the Commission to be less inclined to adopt intrusive rules governing eligibility.”⁴⁶ It would be a mistake for the Commission to subordinate the needs of public safety to policy objectives that are antagonistic to fulfilling the mission-critical needs of first responders.

It would be a waste not to take advantage of the facilities that have already been constructed. Verizon Wireless and other carriers have already invested billions of dollars to build out nationwide or near-nationwide networks that could, given the right circumstances, serve as a basis for providing interoperable broadband service to public safety users around the country. As Verizon Wireless has noted previously, leveraging existing nationwide networks could potentially cut costs for building out a nationwide public safety network by up to one-third

⁴⁴ See APCO Comments at 38 (opposing restrictions on auction participation that are unrelated to the goal of developing a national public safety broadband network); NATOA, NAC, NLC, USCM Comments at 21 (opposing any restrictions on eligibility to bid on the D Block license); *see also* Comments of CTIA at 10 (arguing that “a D Block re-auction with Public/Private Partnership conditions is most likely to succeed if the Commission retains a policy of open eligibility”); Comments of QUALCOMM Incorporated at iv (arguing that the Commission “should continue to adhere to the policies that have made the U.S. wireless market the envy of the world—the spectrum should be auctioned to all comers, without the imposition of any eligibility requirements.”).

⁴⁵ See APCO Comments at 38.

⁴⁶ Qualcomm Comments at 12.

and deployment times by half.⁴⁷ Recognizing these facts, the PSST notes correctly that the cost for network build-out, and correspondingly, provision of service will be higher for new entrants without an established network infrastructure: “[T]hose costs will vary considerably depending on the D Block winner. An incumbent with built-out infrastructure and an in-place retail service business will have different requirements than a new entrant that would need to build a network from scratch or from a winner that elects to operate on a wholesale-only basis.”⁴⁸ Accordingly, rather than benefiting the public interest, excluding national carriers would simply increase network costs for the public safety community and delay deployment time.

As the Commission and other commenters have recognized, the competitiveness of the wireless market renders eligibility restrictions wholly unnecessary and inappropriate.⁴⁹ After analyzing prior calls for restrictions on eligibility for 700 MHz spectrum, the Commission has made clear that such restrictions are simply unnecessary: new competitors are not foreclosed from entering and competing in the wireless market, which is characterized by a large number of national and regional competitors, or the broader market for provision of broadband service.⁵⁰ In fact, as the Commission has noted, eligibility restrictions on spectrum access only serve to deter wireless broadband deployment and threaten spectrum efficiency.⁵¹ This would be all the more

⁴⁷ Comments of Verizon Wireless, PS Docket No. 06-229, WT Docket No. 96-86, at 3-4 (filed Feb. 26, 2007).

⁴⁸ PSST Comments at 37.

⁴⁹ See *Second Report and Order*, ¶¶ 256-259 (concluding that eligibility restrictions for 700 MHz were inadvisable and unnecessary); see also, e.g., CTIA Comments at 9 (noting that eligibility restrictions would be inappropriate and counterproductive in the highly competitive wireless market).

⁵⁰ See *Second Report and Order*, ¶ 256.

⁵¹ *Id.*, ¶¶ 258-59.

true if the Commission were to adopt a regional approach, because smaller carriers that may well not have the resources to build a broadband network to public safety specifications on a national scale could more realistically participate in a regional public/private partnership.

Finally, the PSST suggests in its comments that the Commission “may wish to consider rules that exclude AT&T and Verizon if they show no interest in bidding on the D Block, so that other potential bidders will not be discouraged from participating.”⁵² Given that Cyren Call, the PSST’s advisor, is reportedly developing a bidding consortium for the D Block,⁵³ it seems highly inappropriate for the PSST to ask the Commission to require potential competitive bidders to reveal their intentions before the auction. No other public safety commenters made such a suggestion, and it seems illogical that any public safety commenter would want to limit the universe of potential private-sector partners on a matter as important to the country as interoperable communications. As we have repeatedly made clear, Verizon Wireless is committed to hastening the deployment of cutting-edge communications technologies to public safety users and, to that end, currently serves hundreds of thousands of federal, state, and local government users throughout the country.⁵⁴ Verizon Wireless remains dedicated to assisting public safety and first responders in their life-saving work. However, neither Verizon Wireless – nor any other carrier – can rationally be expected to take a position on whether it would bid on

⁵² PSST Comments at 44.

⁵³ Olga Kharif, *FCC Wireless Auction Faulted*, BUS. WK. (April 21, 2008) (“Cyren Call Communications, a consultant on public safety issues, is pulling together a consortium of companies to bid for the D block in the event the FCC opts to re-auction it for use by first responders. ‘Because of the cost of creating this network, it may very well be the case that entrants not large enough may not be able to do it alone,’ says Cyren Call spokesperson Tim O’Regan.”).

⁵⁴ Verizon Wireless Comments at 4.

the D Block spectrum, or commit to bid a specified amount, until network requirements and other rules governing the arrangement are settled, and it has the opportunity to evaluate whether the resulting opportunity is commercially viable.

IV. THE COMMISSION SHOULD ENSURE THAT PARTICIPATION BY CYREN CALL DOES NOT DETER POTENTIAL BIDDERS.

A number of commenters have echoed Verizon Wireless's call for the Commission to take a closer look at the role of commercial, for-profit entities in the operation of the PSST and to ensure that for-profit advisors do not undermine plans for a nationwide public safety network.⁵⁵ As Verizon Wireless has noted, Cyren Call's plan to establish a specially privileged competitor to the D Block winner that would enjoy a monopoly over public safety customers undermined the viability of the public/private partnership and represented a disturbing conflict of

⁵⁵ See, e.g., APCO Comments at 17; NATOA, NAC, NLC, USCM Comments at 14-15 (reiterating its call for the Commission to ensure that no commercial interest participate in the management of the PSBL); IAFF Comments at 3-4 (expressing "serious concerns" with Cyren Call's selection as an advisor to the PSST and the advisor's significant role in the PSST's operations and calling upon the Commission to "clarify the requirements and limitations of any relationships the public safety licensee establishes with for-profit entities"); Comments of Telecommunity, Charlotte, N.C., Houston, Texas, and Montgomery County, MD at 12 (recommending that the PSBL be prohibited from entering into relationships with outside advisors who take a debt or equity stake in the PSBL); Comments of AT&T at 19 (recommending that the Commission "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"); Comments of Jon Peha, Center for Wireless & Broadband Networking, Carnegie Mellon University at 10 (arguing that Cyren Call's loan to the PSST represents "a fundamental conflict of interest" and that "[i]t is inappropriate for an organization who loans money to the PSBL to be an advisor"); see also *Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecomm. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008) (statement of Chairman Martin) ("I don't think that the commission ever anticipated or envisioned that the Public Safety entity would try to establish its own for-profit subsidiary, and I think that that is something that we did not anticipate. And I think it is something that has frankly troubled at least myself and I know at least one of the other commissioners, I believe, if not more. And I think that that's something that we would need to try to address going forward.").

interest that threatens to undermine the role of the PSBL and the entire interoperability project.⁵⁶ The multiple roles that Cyren Call is playing – advisor and lender to the PSST, and prospective MVNO and bidder – have created conflicts of interest that must be addressed.⁵⁷

Accordingly, Verizon Wireless fully supports APCO’s call for adoption of strict governance reforms for the PSBL and stringent conflict of interest requirements that would prohibit a PSBL from borrowing funds from entities that provide substantial services to the PSBL and prevent its advisors from profiting from business activities related to the PSBL.⁵⁸ As APCO notes, equity funding as well as debt financing by entities providing services to a PSBL raise serious concerns about their potential to undermine the PSBL’s independence.⁵⁹ Meaningful conflict of interest rules are necessary to ensure the viability of the planned public safety network. The Commission’s rules make clear that no commercial interest may participate in the management of a PSBL.⁶⁰ Accordingly, further Commission review of Cyren Call’s relationship with PSST is warranted to ensure that it does not improperly influence its decisionmaking or distract from its primary mission. Indeed, the significant divergence between PSST’s comments and those of many other public safety constituencies on key points raises the question whether Cyren Call has unduly influenced PSST’s positions, and whether PSST should

⁵⁶ Verizon Wireless Comments at 35.

⁵⁷ *See, e.g.*, APCO Comments at 17 (calling for further scrutiny of the relationship between the PSST and its advisors and the enactment of strict conflict of interest rules to the potential influence of advisors on the PSBL); IAFF Comments at 3 (calling upon the Commission to “carefully examine” Cyren Call’s role in establishment of the public safety broadband network); AT&T Comments at 19.

⁵⁸ APCO Comments at 17.

⁵⁹ *Id.* at 17-18.

⁶⁰ *See Second Report and Order*, ¶ 373.

continue as the PBSL. A PSBL's main focus must be protecting and serving the interests of the public safety community, and these goals should not be compromised by profit motives or the need to protect the interests of profit-seeking advisors. The Commission should assure itself that neither Cyren Call nor any other private interest has any undue influence over the PSST. To the extent the Commission cannot do so, it should consider whether public safety interests would be best served by designating an alternative entity as the PSBL.

To this end, Verizon Wireless reiterates its call for the Commission to engage in broader scrutiny of Cyren Call's role in the operations of the PSST.⁶¹ The PSST indicates in its comments that "Cyren Call has no management relationship with or management role within the PSST, has no legal or beneficial interest in the PSST, and does not participate in the PSST's management," and declares that "Cyren Call's relationship with the PSST is therefore fully consistent with the FCC's rules."⁶² This general pronouncement does little, however, to address the detailed concerns raised by Chairman Dingell as well so many members of the public safety community regarding the nature of Cyren Call's relationship with the PSST.⁶³ Some essential questions include: What are the terms of Cyren Call's loan to the PSST? What did Cyren Call tell its private equity investors regarding the anticipated future financial return they might receive in exchange for funding the loan? What has the PSST offered as a security interest for that loan? How are the proceeds from the loan being used? And, what sort of influence does the arrangement between Cyren Call and the PSST confer on Cyren Call?

⁶¹ See Verizon Wireless Comments at 36.

⁶² PSST Comments at 51.

⁶³ See *Oversight of the Federal Communications Commission – the 700 MHz Auction: Hearing Before the Subcomm. on Telecomm. & the Internet of the H. Comm. on Energy & Commerce* (April 15, 2008); see also *supra* note 55.

The Inspector General's investigation made clear that Cyren Call's representations on behalf of the PSST deterred a number of potential bidders from bidding for the D Block during Auction 73.⁶⁴ The report also makes clear that many potential bidders were concerned about Cyren Call plans that threatened to reduce the commercial viability of the proposed D Block partnership, while potentially enriching Cyren Call.⁶⁵ The Commission should take this opportunity to conduct a full exploration of the relationship between Cyren Call and the PSST to ensure that no conflict of interests exists and to reassure potential bidders about the integrity of the D Block partnership.

V. CONCLUSION

Verizon Wireless is firmly committed to assisting the public safety community to meet its communications needs and believes that viable public/private partnerships can be highly effective in this regard. However, while we applaud the Commission's willingness to consider and develop innovative policy approaches in this important area, the first round of comments makes clear that the necessary support for the D Block concept is no longer available.

Accordingly, the Commission should pursue an alternative means of developing a nationally

⁶⁴ See FCC, Office of the Inspector General Report, D Block Investigation (April 25, 2008) at 14 (statement of Reed Hundt, Vice Chairman, Frontline) (indicating that Frontline was deterred from bidding on the D Block due, in part, to Cyren Call's stated intention "to create a Mobile Virtual Network Operator ('MVNO') for Cyren Call which would allow Cyren Call to purchase spectrum from Frontline at wholesale prices and sell it to the public safety community for a higher price to gain a profit for Cyren Call"); *id.* at 16 (statement of Tom Peters, Senior Director, Public Safety & Regulatory Engineering, Frontline) (noting that potential investors had expressed concern with Cyren Call's role in the network, and especially with its stated plan to operate as an MVNO); *id.* at 12 (statement of Harold Feld, Senior Vice President, Media Access Project) (discussing possible reasons for lack of bidding on the D Block, including concerns over "potentially difficult negotiations with Cyren Call"); *id.* at 21 (statement of Brian Fontes, External Affairs, AT&T) (noting Cyren Call's intention to act as MVNO and reseller of network capacity).

⁶⁵ See *id.*

interoperable broadband network for public safety. For the reasons stated above and in its opening comments, Verizon Wireless respectfully suggests that the best course is to regionalize the licensing of the remaining 700 MHz spectrum and use an RFP process to match public safety agencies with the commercial partners that offer the proposals best tailored to their needs.

Respectfully submitted,

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