

**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
)	

**REPLY COMMENTS OF TELECOMMUNITY, CHARLOTTE, N.C., HOUSTON,
TEXAS AND MONTGOMERY COUNTY, MD.**

SUMMARY

Commenters, a national local government association and a collection of local governments (together referred to herein as the “Local Community Coalition”), respectfully submit these Reply Comments in response to the Second Further Notice of Proposed Rulemaking (2FNPRM)¹ released by the Commission in the above captioned matter.

The 2FNPRM sought to illicit comments and suggestions on how best the FCC might promote the deployment of a 700 MHz national broadband public safety network. The Local Community Coalition filed comments to articulate that such a network is critically important to local governments for at least three reasons, but not necessarily in the same order of importance for every jurisdiction.

¹In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al, *Second Further Notice of Proposed Rule Making*, (WT Docket No. 06-150, PS Docket No. 06-229), released May 14, 2008 (“2FNPRM”).

1. The plan has the potential to assist communities meet their emergency communications and response needs;
2. The plan will be truly beneficial only if: a) it is clear to permit uses by public entities that are broader than emergency personnel, and b) does not mandate use of the network; and
3. The Commission is right to pursue the plan a second time because of the economies of scale and innovation in a public safety broadband network that are predicted, and may come to pass.

Because the Commission has established that the 2FNPRM is but step one in a two step process to explore the best means to achieve such a network, the Local Community Coalition files these Reply Comments to highlight many areas of agreement among parties commenting, and to demonstrate areas in which our position has changed in light of the insights and explanations of others in the comment round, including:

- The Local Community Coalition is persuaded by the comments of NATOA, AT&T, NENA, Verizon Wireless and others that in light of the financial success of Auction 73, the FCC is free to examine the use of the RFP process to realize the vision of a public/private partnership to achieve broadband public safety interoperability. We believe the Expert Report prepared by CTC and appended to the NATOA comments serves as a good starting point for the development of an RFP. If success in this proceeding is defined as identifying a private partner for the public safety public/private partnership, in an auction, success can only be determined after the fact. With an RFP process, success, or the potential for success can be measured at every step of the process and adjustments made to enhance the potential for success.

- Should the FCC choose to employ an auction to distribute the spectrum; it should keep the goal of deploying the public network as its lead goal. Being so guided, the Local Community Coalition believes that the Commission should:
 - Reject any calls to limit the number of eligible participants, heed the calls for examining the potential for auctioning the spectrum on a regional basis, if such a distribution of spectrum enhances the likelihood of the network becoming a reality, and
 - Consider amending the terms of the auction as suggested by a number of public safety commenters.
- The Local Community Coalition welcomes the comments of Qualcomm, Chuck Jackson and Google on alternative funding mechanisms to supplement or replace the proceeds from the D-Block winner. In our comments we sought FCC support for a direct appropriation, including Rep. Jane Harman’s proposal for funding the operations of the PSBL. We think Jackson’s proposal to dedicate the proceeds from the lease of “white spaces” and Google’s suggestion to reprogram the non-earmarked proceeds from Auction 73 deserve closer attention.
- The Local Community Coalition acknowledges the concerns of the New York Police Department, San Francisco and Washington D.C. that D-Block activity should not serve as a deterrent to regional or communities that are ready to move today. We endorse their suggestions that any program include needed flexibility to permit their plans and that public safety be granted immediate authority for use of the spectrum set aside for those purposes.

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TEXAS AND MONTGOMERY COUNTY, MD.**

I. INTRODUCTION

Commenters², a national local government association and a collection of local governments (together referred to herein as the “Local Community Coalition”), respectfully submit these Reply Comments in response to the Second Further Notice of

² **TeleCommUnity** is an alliance of local governments and their associations which are attempting to refocus attention in Washington on the principles of federalism and comity for local government interests in telecommunications. The organization advocates for local governments’ interests on matters of federal telecommunications and broadband legislation that affect their authority, use and control over public lands and rights-of-way, zoning and public use of frequency spectrum. The **City of Charlotte, North Carolina**, with a population in excess of 630,000 is the largest city in the state of North Carolina and the 20th-largest city in the United States. The city is the seat of Mecklenburg County. The **City of Houston, Texas**, with a population in excess of 2.14 million is the fourth-largest city in the United States. Houston is the seat of Harris County. **Montgomery County, Maryland**, granted a charter form of government in 1948, has grown to a population of 968,000. The County is located just north of Washington D.C. and is an integral partner in the National Capital Area’s public safety response network.

Proposed Rulemaking (2FNPRM)³ released by the Commission in the above captioned matter.

The 2FNPRM sought to illicit comments and suggestions on how best the FCC might promote the deployment of a national broadband public safety network plan in the 700 MHz. The Local Community Coalition filed comments to articulate that such a network is critically important to local governments for at least three reasons, but not necessarily in the same order of importance for every jurisdiction.

1. The plan has the potential to assist communities meet their emergency communications and response needs;
2. The plan will be truly beneficial only if; a) it is clear to permit uses by public entities that are broader than emergency personnel, and b) does not mandate use of the network; and
3. The Commission is right to pursue the plan a second time because of the economies of scale and innovation in a public safety broadband network that are predicted, and may come to pass.

Because the Commission has established that the 2FNPRM is but step one in a two step process to explore the best means to achieve such a network and given the short time allowed by the Commission for responses to the initial comments, these reply comments will highlight the many areas of agreement among parties commenting, and to demonstrate areas in which our position has changed in light of the insights and explanations of others in the comment round.

³In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al, *Second Further Notice of Proposed Rule Making*, (WT Docket No. 06-150, PS Docket No. 06-229), released May 14, 2008. (2FNPRM)

II. FIRST DO NO HARM

The Local Community Coalition acknowledges the concerns of the New York Police Department⁴, San Francisco⁵ and Washington D.C.⁶ that D-Block activity should not serve as a deterrent to regional or communities that are ready to move today. We endorse their suggestions that any program the FCC finally adopts must include needed flexibility to permit the plans of these three jurisdictions and the numerous others that may not have filed. Furthermore, public safety be granted immediate authority for use of the spectrum set aside for those purposes.

III. GUIDING PRINCIPLES FOR ACTION

In our opening comments, we offered a list of guiding principles that we suggested the Commission be guided in any future actions concerning the D-Block. The Local Community Coalition is pleased that so many of these principles were shared by the majority, if not all, participants in the comment round.

A. There is broad, if not universal, support for an interoperable broadband network.

The Local Community Coalition stated: “Improved, interoperable regional and even national capabilities are an obvious benefit not requiring much debate.” Comments of Local Community Coalition, WT Docket No. 06-150 (filed June 20, 2008), at 5. We were pleased that so many agreed. For example, Alcatel-Lucent, citing the National Capital Region broadband network, which they built, as a model for the benefits available

⁴ Comments of New York City Police Department, WT Docket No. 06-150 (filed June 19, 2008) (“NYCPD Comments”).

⁵ Comments of The City and County of San Francisco, WT Docket No. 06-150 (filed June 20, 2008), at 7 (“San Francisco Comments”).

⁶ Comments of the District of Columbia, WT Docket No. 06-150 (filed June 20, 2008) (“DC Comments”).

to the nation praised "...the Commission's continuing commitment to the deployment of a nationwide, interoperable broadband public safety network...." Comments of Alcatel-Lucent, WT Docket No. 06-150 (filed June 20, 2008) ("Alcatel-Lucent Comments"), at 1.⁷

As evidenced by comments filed, supporters of a national public safety interoperable network logically included public safety entities, *See, e.g.*, "NYCPD Comments," local governments, *See, e.g.*, San Francisco Comments, Philadelphia Comments⁸), and their national associations. *See, e.g.* Comments of APCO, WT Docket No. 06-150 (filed June 20, 2008) ("APCO Comments"); Comments of NENA, WT Docket No. 06-150 (filed June 20, 2008) ("NENA Comments"); Comments of NATOA, WT Docket No. 06-150 (filed June 20, 2008) ("NATOA Comments"). Supporters also included: impacted parties, *See, e.g.*, Comments of National Association of Emergency Medical Technicians, WT Docket No. 06-150 (filed June 20, 2008) ("Emergency Medical Technicians Comments"); Comments of American Hospital Association, WT Docket No. 06-150 (filed June 20, 2008) ("American Hospital Association Comments"); providers, *See, e.g.*, Comments of AT&T, WT Docket No. 06-150 (filed June 20, 2008) ("AT&T Comments"); Comments of Verizon Wireless, WT Docket No. 06-150 (filed June 20, 2008) ("Verizon Comments"); manufacturers, *See, e.g.*, Comments of Qualcomm, WT Docket No. 06-150 (filed June 20, 2008) ("Qualcomm Comments");

⁷ *See also* Comments of American Hospital Association, WT Docket No. 06-150 (filed June 20, 2008) (strongly supports the Commission's goal of creating a nationwide public safety broadband network); Comments of Qualcomm, WT Docket No. 06-150 (filed June 20, 2008), at i, 7 (Public safety needs a robust interoperable network, regardless of composition); Comments of National Association of Emergency Medical Technicians, WT Docket No. 06-150 (filed June 20, 2008), at 1 ("NAEMT urges the Commission to remain committed to a nationwide interoperable public safety broadband network through a public private partnership").

⁸ Comments of the City of Philadelphia, WT Docket No. 06-150 (filed June 20, 2008) ("Philadelphia Comments")

Alcatel-Lucent Comments) and public interest groups. *See, e.g.*, Comments of the Public Interest Spectrum Coalition, WT Docket No. 06-150 (filed June 20, 2008))

B. But there are major differences on how to achieve that goal.

Despite the unanimity expressed in favor of a public safety broadband interoperable network, there were many skeptical opinions expressed as to the FCC proposal for achieving that vision. Verizon Wireless did not mince its words in expressing “The D Block concept is fundamentally and fatally flawed” (Verizon Comments, at 7), while the International Association of Fire Fighters (“IAFF”) questions whether a national broadband network is even necessary for public safety agencies to achieve interoperability. Comments of IAFF, WT Docket No. 06-150 (filed June 20, 2008), at 7. Finally, the New York City Police Department’s comments would suggest that the Commission not rebid the ‘D’ Block spectrum, rather that it assign all 20 MHz of spectrum to public safety and permit local agencies to develop regional responses and partnerships. NYCPD Comments, at 7.

C. Regardless of whether the network is deployed on a national or regional basis, or by means of an auction or an RFP process, most parties agree⁹:

1. The FCC must establish national standards to ensure interoperability.

There was also broad agreement that regardless of the means for deploying a national public safety network, the Commission must focus on developing a set of minimum interoperability standards that local agencies would agree to support and build

⁹ The reader should not infer that the parties cited in this section were ambivalent as the Commission distributing the spectrum by means of an auction or an RFP process, or that the spectrum should be shared on a regional or national deployment. They are not. This section draws a logical conclusion that their guidance to the Commission would apply in any of the above scenarios. An example of this sentiment can be seen in Qualcomm’s Comments (at 7). (Public safety needs a robust interoperable network, regardless of composition of network.)

into their local systems. *See, e.g.*, San Francisco Comments at 7. In addition, it was suggested that the Commission should “adopt a baseline of desirable public safety operational capabilities.” Alcatel-Lucent Comments, at i.

2. Subscription to the network by local governments cannot be mandatory.

The Commission asked Commenters to offer their thoughts on whether local agencies would be required to employ the network resulting from this docket. (2FNPRM, ¶2)¹⁰ Users¹¹, national organizations of local governments¹², and providers¹³ opposed mandatory subscription to the network.

3. The FCC must provide greater clarity to both the public safety and D-block licensees about their respective rights and responsibilities.

Numerous parties joined the Local Community Coalition in calling upon the FCC to establish clear and developed rules before a second auction is conducted and identify at a minimum the following issues be addressed: minimum bid, build out, and definition of emergency. *See, e.g.* Qualcomm Comments, at iii, iv, 10; USCC Comments, at ii; Comments of Google, WT Docket No. 06-150 (filed June 20, 2008) (“Google Comments”), at 5-6.

¹⁰ *See also* ¶¶ 37, 38.

¹¹ *See, e.g.*, Comments of National Regional Planning Council, WT Docket No. 06-150 (filed June 20, 2008) (“National Regional Planning Council”); The City of Philadelphia commented that flexibility is critical and local governments must retain the ability to make local and regional decisions concerning data technology deployment that best serves their unique requirements and budget restraints. Philadelphia Comments, at 2-4.

¹² “Public safety entities must continue to have the option to make local and regional decisions and the flexibility to choose the solution that best serves their unique requirements and budgets.” NATOA Comments, at 10.

¹³ Comments of United States Cellular Corp., WT Docket No. 06-150 (filed June 20, 2008) (“USCC Comments”), at ii.

4. The funding of the PSBL must be addressed by the FCC before the PSST commences operations.

In its comments at p. 13, the Local Community Coalition called upon the FCC and others to support a direct funding mechanism for the PSST.¹⁴ We are pleased that so many parties agreed that funding sources are imperative to the success of the program. *See, e.g.*, AT&T Comments, at 20 (“the Commission must ensure there is a funding mechanism that provides the PSBL with the financial resources to participate effectively in the Partnership and to oversee network development and use.”); Comments of Motorola, WT Docket No. 06-150 (filed June 20, 2008), at 4 (“Two critical components necessary for providing state of the art broadband capabilities are spectrum and money. While Congress and the FCC have taken critical steps to provide the necessary spectrum, the second critical component – money – remains elusive.”).

The Local Community Coalition is also pleased that parties not only talked about the need for funding, but offered suggestions as to the sources of such funding, be it by means of a direct appropriation,¹⁵ reprogramming of the surplus revenues raised in Auction 73,¹⁶ or employing the proceeds of auctioning off “white spaces.”¹⁷

¹⁴ Specifically, we called attention to H.R. 6055, the “Public Safety Broadband Authorization Act of 2008” championed by Representative Jane Harman (CA-36).

¹⁵ *See, e.g.*, Motorola Comments, at 12 (calling on Congress to allocate funding for the PSST); Local Community Coalition Comments, at 12 (identifying Rep. Jane Harmon’s legislation providing for direct funding of the PSST). The PSST, recognizing that rules would need to be changed because it is not a common carrier, itself calls on the FCC to make the PSST eligible for universal service funds. *See also* NENA’s support for the D-Block winner having access to high cost fund (NENA Comments, at 2).

¹⁶ *See* Google Comments, at 11, 12 (“Google respectfully submits that some 700 MHz auction proceeds, including D Block proceeds, apparently can and should be used. The Digital Television Transition and Public Safety Act of 2005 (“DTV Act”) amended Section 309(j) of the Communications Act by directing that all proceeds from the auction of recovered analog spectrum be deposited into a newly created Digital Television Transition and Public Safety Fund (“DTT/PS Fund”), rather than directly into the federal Treasury. The DTV Act directs the National Telecommunications and Information Administration (“NTIA”) to transfer \$7.363 billion from the DTT/PS Fund to the Treasury by September 30, 2009, and to

IV. THE RFP PROCESS

The Local Community Coalition is persuaded by the comments of NATOA, AT&T, NENA, Verizon Wireless and others that in light of the financial success of Auction 73, the FCC is free to examine the use of the RFP process to achieve the vision of a public/private partnership to achieve broadband public safety interoperability. If success is defined as identifying a private partner for the partnership, in an auction, success can only be determined after the fact. With an RFP process, success, or the potential for success can be measured at every step of the process.

AT&T is correct that, “The RFP process is an established and successful mechanism for developing public/private partnerships.” AT&T Comments, at 5. Moreover, AT&T points out correctly that the use of an RFP: would more clearly establish the rights¹⁸ and responsibilities for the PSBL and its commercial partner(s) prior to contracting and that “...balances the incentives and bargaining positions of the parties and invite the submission of innovative, economically efficient proposals.” *Id* at 1.

Adoption of the RFP process over an auction course of action also does not preclude the ability of the Commission to investigate the opportunities for a regional approach as opposed to a national license. AT&T, at p. 24, notes that the Commission

allocate specific amounts totaling up to an additional \$2,819,500,000 to fund eight designated programs. The DTV Act is silent, however, as to how the balance of the DTT/PS Fund is to be used.”)

¹⁷ See Comments of Chuck Jackson, WT Docket No. 06-150 (filed June 20, 2008) (“Jackson Comments”), at 2 (“[W]e estimate that an auction of rights to the white space would generate from \$9.9 billion to \$24.4 billion, depending on the interference-protection rules and the number of channels covered by the auction.”); Qualcomm Comments, at 12 (stating that if the Commission auctions the D block without the partnership but the revenues from the auction went to public safety - which would take legislation - the shortfall could be made up by auctioning the TV “white spaces.” An analysis it commissioned from the Brattle Group predicted that such an auction could raise between \$9.9 billion and \$24.4 billion.)

¹⁸ See also NATOA at p. 22 (“[T]he use of an RFP would help ensure that all parties share a level playing field and that respondents’ bids are public rather than secret.”) and Verizon Wireless at 19 (RFP offers “... model for developing successful and commercially viable public/private partnerships.”)

could or should require the PSBL to seek regional partners through the RFP mechanism with input from local public safety entities.

V. AUCTION FLEXIBILITY

Should the FCC chose to employ an auction to distribute the spectrum, it should keep the goal of deploying the public network as its lead goal. Being so guided, the Local Community Coalition believes that the Commission should: reject any calls to limit the number of eligible participants,¹⁹ heed the calls for examining the potential for auctioning the spectrum on a regional basis, if such a distribution of spectrum enhances the likelihood of the network becoming a reality, and consider amending the terms of the auction as suggested by a number of public safety commenters.²⁰

VI. FUNDING SOURCES

The Local Community Coalition welcomes the comments of Qualcomm, Chuck Jackson as well as Google on alternative funding mechanisms to supplement or replace the proceeds from the D-Block winner. In our comments we sought FCC support for a direct appropriation, including Rep. Jane Harman's proposal for funding the operations of the PSBL. We think Jackson's proposal to dedicate the proceeds from the lease of "white spaces" and Google's suggestion to reprogram the non-earmarked proceeds from Auction 73 deserve closer attention from the Commission and Congress.

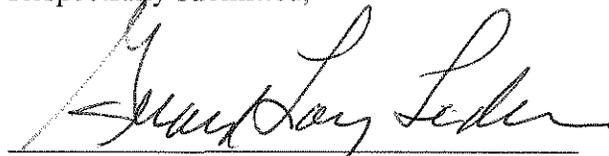
¹⁹ See e.g. Comments of Council Tree, WT Docket No. 06-150 (filed June 20, 2008) at 2-3. Comments of Cox Communications WT Docket No. 06-150 (filed June 20, 2008) in passim. Comments of Rural Cellular Association, WT Docket No. 06-150 (filed June 20, 2008) at 3. If the goal is to identify the best public safety partner, then CTIA's suggestions would be well heeded. Comments of CTIA, WT Docket No. 06-150 (filed June 20, 2008), at 4-8. (Commission should reject any requirements of: an open-platform, a wholesale mandates, and not impose eligibility limitations.)

²⁰ See e.g. APCO Comments at 38-39 ("Since the revenue from other 700 MHz auctions has far exceeded amounts budgeted by Congress, there would seem to be no reason for a substantial reserve price that could discourage bidders" but "... a minimum bid of some amount may be appropriate to ensure" seriousness of bidders.) NENA Comments at 2 (D-Block winner should have access to high cost fund and FCC should consider a reasonable reduction in build out rate.)

VII. CONCLUSION

For the reasons indicated above, the Commission should continue on its path of seeking a public/private partnership for a 700 MHz broadband public safety network plan, but not be so married to the idea of an auction, or a single national provider as not to consider alternative plans outlined in this proceeding.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Gerard Lavery Lederer", written over a horizontal line.

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July 7, 2008