

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

In the Matter of)	
)	
Service Rules for the 698-746, 747-782 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
)	
)	

REPLY COMMENTS OF GOOGLE INC.

Richard S. Whitt
Washington Telecom and Media Counsel
Google Inc.
1101 New York Avenue NW
Second Floor
Washington, DC 20005
(202) 346-1236 tel

Donna N. Lampert
E. Ashton Johnston
Mark J. O'Connor
Joanna I. Georgatsos
LAMPERT, O'CONNOR & JOHNSTON, P.C.
1776 K Street NW, Suite 700
Washington, DC 20006
(202) 887-6230 tel
(202) 887-6231 fax

Counsel to Google Inc.

July 7, 2008

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

_____)	
In the Matter of)	
)	
Service Rules for the 698-746, 747-782)	WT Docket No. 06-150
and 777-792 MHz Bands)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in)	
the 700 MHz Band)	
)	
Development of Operational, Technical)	WT Docket No. 96-86
and Spectrum Requirements for Meeting)	
Federal, State and Local Public Safety)	
Communications Requirements Through)	
the Year 2010)	
_____)	

REPLY COMMENTS OF GOOGLE INC.

Google Inc. (“Google”), by its attorneys, submits these reply comments in response to initial comments on the Commission’s *Second Further Notice of Proposed Rulemaking*¹ in the above-captioned proceeding.

I. THE COMMENTS UNDERSCORE THE CONSUMER AND MARKET BENEFITS OF OPEN PLATFORMS

In its Comments, Google stressed the enormous economic, social and competitive benefits of open platforms and applauded the Commission’s leadership in the C Block in promoting open networks for competing devices and applications. Notably, a wide range of parties here agree, including equipment manufacturers, rural carrier groups, public interest advocates, and others, underscoring the importance of ensuring that open platforms becomes a wireless reality rather than a marketing mantra.

¹ FCC 08-128 (rel. May 14, 2008).

The enumerated benefits of promoting open platforms – including open devices, open applications, and wholesale/ resale access – are clear and wholly consistent with vibrant economic wireless deployment.² Innovation, consumer choice, and entry by small and new providers all flow from open platforms. Indeed, as Motorola and others point out, ensuring open devices and services will affirmatively promote public safety given the varied and unique requirements for equipment and applications by the public safety community.³ Open platforms also assist customers of smaller and rural carriers that lack market power to counter the anticompetitive effects of exclusivity arrangements by ensuring they can enjoy the innovation and proliferation of devices and services.⁴

Significantly, even CTIA and AT&T – who otherwise urge the FCC to refrain from mandating open platforms – tout the consumer benefits of carrier practices allowing open applications and devices, but argue that ultimately they are “best achieved by allowing competitive market forces to operate freely.”⁵ Google agrees that ideally, carriers would recognize the economic and related benefits of open platforms and pursue this business model without the need for direct government intervention. If wireless

² *See, e.g.*, Consumer Electronics Association Comments at 6 (open access can “promote consumer choice without inhibiting market forces”). *See also* Public Interest Spectrum Coalition Comments at 9.

³ Motorola, Inc. Comments at 11 (“[G]iven the specialized needs of a relatively small but critical user base, there should be open platform obligations with respect to public safety applications and devices.”). *See also* Wireless Rehabilitation Engineering Research Center Comments at 14 (“An open access network will allow public safety entities access to a variety of suppliers of IP-based communications equipment and systems capable of interconnecting with the nationwide wireless broadband interoperable network.”).

⁴ *See* Rural Telecommunications Group, Inc. Comments at 12 (open platforms will benefit consumers in both rural and urban areas and help foster competitive services.)

⁵ *See* CTIA Comments at 5-6; AT&T, Inc. (“AT&T”) Comments at ii (FCC should clarify that “the efficiency of market forces render wholesale or open access operating requirements unnecessary and unsound public policy.”).

carriers voluntarily adopt policies and practices that allow consumers to enjoy “any apps, any devices,” and allow smaller players to enter the market by promising to wholesale or retail spectrum capacity, the need for federal rules and enforcement mechanisms doubtless would be obviated. Nonetheless, the contemporary wireless environment has made apparent the need for firm leadership and direction to catalyze market forces and ensure that carriers cannot quash competing services and devices.⁶ Just as the Commission correctly recognized that open access conditions in the C Block would help spur “mobile wireless technological innovation” and “the evolution of market and institutional arrangements,”⁷ so too will a clear affirmation here by the Commission of the economic and social benefits of open platforms continue to guide the industry to greater openness.

Given the recent spate of public commitments to open access by wireless providers, Google remains hopeful that command-and-control regulations will not be required to bring about truly open platforms for this spectrum. This is particularly the case where the Commission maintains its proposed Public/Private Partnership model to achieve a nationwide, interoperable shared network for the D Block and public safety broadband spectrum. Thus, under current circumstances, Google believes that the Commission rightly may decide at this juncture to commit to closely monitor market

⁶ See, e.g., Rural Cellular Association Petition for Rulemaking Regarding Exclusivity Arrangements Between Commercial Wireless Carriers and Handset Manufacturers (May 20, 2008), RM-____ ; Skype Communications S.A.R.L. Petition to Confirm a Consumer’s Right to Use Internet Communications Software and Attach Devices to Wireless Networks (Feb. 20, 2007), RM-11361.

⁷ See In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, 22 FCC Rcd 15289, ¶206 (2007) 47 C.F.R. §27.16.

developments, while expressly reserving the right to intervene in the event the nascent market forces for open platforms are not heeded by the wireless carriers.

II. INTEROPERABILITY MUST BE REQUIRED IF THE COMMISSION OFFERS MULTIPLE D BLOCK LICENSES

In its Comments, Google noted that it supports either a single nationwide license or multiple regional licenses, provided that the goal of a nationwide, interoperable shared network is maintained. Although several commenters continue generally to support a nationwide license,⁸ a broad cross-section of commercial and public safety entities advocate smaller geographic areas, ranging from large Regional Economic Area Groupings (“REAGs”) to Cellular Marketing Areas (“CMAs”).⁹ A smaller number of commercial entities support only smaller geographic areas in conjunction with other rule changes.¹⁰

⁸ See, e.g., Sprint Nextel Corporation Comments at 11; Rural Cellular Association Comments at 2; Public Safety Spectrum Trust (“PSST”) Comments at 38; Ericsson Inc. Comments at 33; Association of Public-Safety Communications Officials-International, Inc. (“APCO”) Comments at 40; International Municipal Signal Association, *et al.*, Comments at 12; 700 MHz Region Planning Committee 33 (Ohio) (“Region 33”) Comments at 20; Virginia Fire Chiefs Association, Inc. Comments at 3.

⁹ See AT&T Comments at 24 (urging Commission to adopt rules requiring the PSBL to form partnerships with commercial and public safety entities on a regional basis, and license the D Block on a CMA, EA, REAG, or 700 MHz Regional Planning Committee area basis); Verizon Wireless Comments at 24 (advocating a “federal framework using a ‘network of networks’ design for a nationally integrated network”); TeleCommUnity Comments at 13-14 (noting that “emergency management is, by its nature, local/regional in scope”); Wirefree Partners III, LLC Comments at 13 (supporting bidding consortia that include Designated Entity participation for nationwide license, or, alternatively, smaller geographic areas); United States Cellular Corporation (“US Cellular”) Comments at 4-16 (explaining in detail the advantages of and opportunities provided by regional licenses, and advocating areas corresponding to the 55 National Public Safety Planning Advisory Committee regions).

¹⁰ See, e.g., MetroPCS Communications, Inc. Comments at 20; Rural Telecommunications Group, Inc. Comments at 5; Spectrum Acquisitions Inc. Comments at 13-14; Cox Communications, Inc. Comments at 5 (favoring Cellular Market Areas); NTCH, Inc. Comments at 9-10 (favoring Basic Trading Areas).

Parties not favoring multiple licenses list as their chief concerns the interoperability of disparate systems¹¹ and the possibility of unsold licenses.¹² As reflected in its Comments, Google shares the concern about the need for any regional networks to interoperate with each other, and urged the Commission to require nationwide interoperability. Google also asked that the Commission adopt additional requirements, to be included in each Network Sharing Agreement between the Public Safety Broadband Licensee and each regional licensee, if the agency decides to break up the D Block spectrum into smaller geographic areas.¹³ Many commenters agree that an integrated national network on D Block and public safety spectrum remains achievable even if the Commission issues multiple D Block licenses,¹⁴ and that the Commission can and should mandate national standards to assure interoperability.¹⁵

With respect to the second concern of unsold licenses, no supporter of multiple D Block licenses expressly offered a solution. However, those commenters expressing concern about unsold licenses did not attempt to quantify the likelihood or magnitude of such an occurrence. Based on the results of Auction 73 and the level of interest in the D Block as reflected in the initial comments, it appears that there remains substantial

¹¹ *See, e.g.*, PSST Comments at 38.

¹² *See, e.g.*, APCO Comments at 40.

¹³ *See* Google Comments at 3-4.

¹⁴ *See, e.g.*, US Cellular Comments at 6-8 (stating that no single carrier currently offers nationwide coverage solely through its own wireless network; instead, carriers seek to achieve nationwide coverage through interconnection agreements and roaming arrangements); Region 33 Comments at 21 (roaming must “be an essential component for public safety, in order to assure interoperability nationwide.”).

¹⁵ *See, e.g.*, Verizon Wireless Comments at 28 and n.51; TeleCommUnity Comments at 14. *See also* AT&T Comments at 25, 26 (PSBL and the Commission should establish interoperability requirements); City of San Francisco Comments at 9-10 (local control and national interoperability are not mutually exclusive).

demand for 700 MHz spectrum. This at least suggests that if the Commission auctions multiple D Block licenses few, if any, of those licenses will not be sold at auction. In any event, historically the Commission has successfully implemented numerous measures as part of the auction process, including lowering reserve prices and minimum opening bids, in order to ensure that the complete inventory of licenses is sold.

In sum, although substantial support remains for a single nationwide license, there are credible and compelling arguments justifying smaller regional licenses, provided that the Commission establishes national interoperability requirements.

III. THE DTT/PS FUND CAN ALLEVIATE FUNDING CONCERNS

The initial comments make clear that commercial operators, public safety service providers and coordinators, and state and local governments all share one overarching concern: the significant financial risk involved in participating in the shared, interoperable, nationwide broadband network. For their part, commercial operators need to calculate what all agree will be the enormous costs of building such a network,¹⁶ while potential public safety users likewise need to understand what they will pay to use the network.¹⁷

Google agrees with other commenters that neither the Universal Service Fund nor the Telecommunications Development Fund appear to be viable sources of funds for these purposes.¹⁸ Nonetheless, as Google has observed,¹⁹ the Digital Television Transition and Public Safety Fund (“DTT/PS Fund”), the recipient of the proceeds of all

¹⁶ See, e.g., Leap Wireless International, Inc. Comments at 9.

¹⁷ See, e.g., Region 33 Comments at 6 (stating that its members’ primary concern is costs, for both subscriber equipment and recurring subscription fees).

¹⁸ See PSST Comments at 25-26; APCO Comments at 19.

¹⁹ Google Comments at 11-12.

auctioned 700 MHz recovered analog spectrum, appears to have a residual of over \$9 billion (not yet including the D Block auction proceeds). Notably, Congress has provided no direction to the National Telecommunications and Information Administration (“NTIA”) on how to dispense the remainder.²⁰ In its Comments, Google recommended that these proceeds be used to ameliorate the financial burdens of both constructing and operating the network, as well as paying for network access. In the interest of creating greater financial stability for the shared network, the Commission should commit to exploring in conjunction with NTIA the use of the DTT/PS Fund for these purposes.

Moreover, the Commission and NTIA should work to promote mutually reinforcing incentives by tying reduced costs for public safety access to the shared network. For example, the agencies could set up grants from the DTT/PS Fund for equipment purchases and operational support. The agencies also could tie the funds to voluntary efforts by public safety users to help reduce the costs of network construction (for example, by making their infrastructure and rights-of-way available to third parties). The initial comments of some public safety community entities acknowledge their potential role in reducing construction costs, as well as a willingness to work cooperatively to achieve common goals.²¹ To be clear, a public safety user’s

²⁰ See Deficit Reduction Act of 2005, P.L. 109-171, Title III. Digital Television Transition and Public Safety (“DTV Act”), § 3004(3) (codified at 47 U.S.C. §§ 309(j)(8)(E)(ii), (iii)); §§ 3005-3012.

²¹ See, e.g., National Emergency Number Association Comments at 2 (supporting incentives to reduce D Block licensees’ costs, including providing access to public safety facilities for antenna siting where feasible); Region 33 Comments at 13 (noting that “[m]uch critical infrastructure is already in place” and that co-location on existing publicly owned or leased radio towers could help defray buildout costs); PSST Comments at 35 and n.74 (PSST is willing to make reasonable, good-faith efforts to assist efforts to obtain access to public safety towers and rights-of-way).

participation in such a program should be voluntary.²² Nonetheless, such a program has tremendous potential to substantially speed network deployment, enhance commercial viability of the network, and drive updated equipment and infrastructure.

CONCLUSION

For the foregoing reasons, the Commission should revise its rules governing the D Block and the Public/Private Partnership consistent with the foregoing and with Google's initial Comments in this proceeding.

Respectfully submitted,



Richard S. Whitt
Washington Telecom and Media Counsel
Google Inc.
1101 New York Avenue, NW
Second Floor
Washington, DC 20005
(202) 346-1236 tel

Donna N. Lampert
E. Ashton Johnston
Mark J. O'Connor
Joanna I. Georgatsos
LAMPERT, O'CONNOR &
JOHNSTON, P.C.
1776 K Street NW, Suite 700
Washington, DC 20006
(202) 887-6230 tel
(202) 887-6231 fax

Counsel to Google Inc.

July 7, 2008

²² Cf. City of San Francisco Comments at 8, n.5 (opposing Commission-mandated use of municipal assets in the shared network).