

**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  
CTIA – THE WIRELESS ASSOCIATION®**

CTIA – The Wireless Association® (“CTIA”) hereby respectfully submits its reply to comments submitted in response to the Commission’s *Second Further Notice of Proposed Rulemaking* in the above-captioned proceeding.<sup>1</sup> As explained more fully below, CTIA urges the Federal Communications Commission (“FCC” or “Commission”) to: (1) consider the value of unencumbered spectrum as a potential contributor to achieve the goal of a nationwide public safety broadband network; (2) reject self-serving suggestions to impose eligibility restrictions for the D Block spectrum; and (3) if the D Block is licensed without Public/Private Partnership conditions, resist mandating particular business models in the D Block service rules, and instead employ the market-based, flexible-use rules that have served the public well.

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<sup>1</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, Second Further Notice of Proposed Rulemaking, FCC 08-128 (rel. May 14, 2008), 73 FR 29582 (May 21, 2008) (“*Second Further Notice*”).

**I. THE POSSIBILITY OF A SHORTFALL IN FUNDING A NATIONWIDE PUBLIC SAFETY BROADBAND NETWORK HIGHLIGHTS THE VALUE OF UNENCUMBERED COMMERCIAL SPECTRUM AS A POTENTIAL SOURCE OF FUNDING.**

The record generated in this proceeding makes clear that deployment and maintenance of a nationwide, interoperable public safety broadband network will be extremely costly.<sup>2</sup> CTIA urges the Commission to carefully consider the role that an auction of unencumbered, flexible-use spectrum can play as a potential source of funding for the construction of this broadband network for public safety. Indeed, the *Second Further Notice* itself contemplates the possibility of a funding shortfall and asks whether it might be addressed by future auction receipts for the AWS-3 spectrum band and the TV white spaces spectrum if licensed with no commercial service restrictions.<sup>3</sup>

Given the unique coverage and network hardening requirements that public safety use demands, the costs of construction may far exceed those involved in deploying a commercial broadband network.<sup>4</sup> This factor, in and of itself, poses a significant challenge to the successful deployment of a D Block Public/Private Partnership since the competitive Commercial Mobile Radio Service (“CMRS”) side of the broadband network will be unable to subsidize the public safety users.<sup>5</sup> As some commenters have suggested,

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<sup>2</sup> See, e.g., Comments of Verizon Wireless, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 7 (“The costs of building out a network to meet public safety specifications far exceed the value of the remaining 700 MHz spectrum.”); Comments of Wirefree Partners III, LLC, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 11 (“The capital required to buy a nationwide license and build a nationwide network are staggering for a new entrant and may be insurmountable.”).

<sup>3</sup> *Second Further Notice* at ¶ 191.

<sup>4</sup> See Comments of Sprint Nextel Corporation, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 2 (“The cost of constructing a network to exacting public safety standards exceeds the costs of a typical commercial network.”); Comments of Motorola, Inc., WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 8 (“[T]he cost of deploying a nationwide public safety-grade network is high ... [and] the operating expenses for such a network would far exceed that of typical commercial networks, especially when the need to support low density rural areas with redundant backhaul paths is considered.”); Comments of Verizon Wireless, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 7.

<sup>5</sup> It is axiomatic that there are no super economic rents in a competitive market.

the government therefore may be called upon to provide funding to help defray the costs.<sup>6</sup> In addition to the questions raised directly in the *Second Further Notice*, the ranking members of the House Energy and Commerce Committee and its Telecommunications and the Internet Subcommittee recently signaled their interest in considering whether Congress should “direct [auction] proceeds to the construction of a public safety network” and seek answers to the question “how much money the AWS-3 and other spectrum would raise if auctioned without conditions.”<sup>7</sup>

Regardless of which (or whether) Public/Private Partnership requirements are retained, one thing is clear: the need for a reliable source of funding to support a nationwide, interoperable public safety broadband network highlights the value inherent in unencumbered commercial spectrum licensed under the Commission’s long-standing flexible-use service rules model. The AWS-3, AWS-2 and TV white spaces spectrum, if auctioned in an unencumbered manner, could raise significant capital to address funding shortfalls. To best fulfill this important national goal, therefore, Congress and the FCC should remain mindful that unencumbered, flexible-use spectrum can serve as an important potential source of funding for a nationwide, interoperable public safety broadband network.<sup>8</sup>

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<sup>6</sup> See Comments of Motorola, Inc., WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 2, 8-10 (“[T]he 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. . . . Motorola does not believe that the Public/Private Partnership will be successful if the incremental cost of deploying, operating and maintaining a fully public safety grade network remains solely on the shoulders of the commercial operator.”); Comments of Peter G. Cook Consultancy, Inc. at 7-8 (“Provision for federal funding to remove uncertainty [regarding costs] is one solution.”).

<sup>7</sup> Letter to FCC Chairman Kevin Martin from Reps. Joe Barton and Cliff Stearns (dated June 30, 2008).

<sup>8</sup> CTIA recognizes, as the Commission has, that using auction proceeds for the construction of a public safety network would require legislative action. See *Second Further Notice* at n. 222. One commenter suggested a D Block re-auction without Public/Private Partnership conditions, provided there is an earmark of auction proceeds for the construction of a nationwide public safety infrastructure. See Comments of

There are many sound policy reasons to support an unencumbered, market-oriented spectrum auction policy. CTIA notes that, if the spectrum to be put up for bid in future auctions is kept free from conditions and encumbrances that would reduce its value, those auctions will undoubtedly generate billions of dollars in revenues that could be used to support construction of a public safety broadband network. At least two recent studies support this conclusion:

- The Phoenix Center for Advanced Legal and Economic Public Policy Studies predicted that an auction of the 2155-2180 MHz band (AWS-3) spectrum would generate \$2.8 billion in revenue – and as much as \$5.3 billion – if the Commission does not attach open access or free broadband service conditions on the spectrum.<sup>9</sup>
- In response to the *Second Further Notice*'s question regarding the value of the TV white space, Charles Jackson, Dorothy Robyn & Coleman Bazelon have estimated that an auction of licensed rights to that spectrum 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.<sup>10</sup>

Specifically with regard to the D Block auction, the Commission must address a number of known unknowns. Will there be a D Block bidder who is willing to assume Public/Private Partnership obligations? What rule changes would increase participation in the D Block auction and the likelihood that a Public/Private Partnership will be a success? Regardless of the resolution of the Public/Private Partnership issues, should the government assume any responsibility for funding a nationwide public safety broadband network? In light of the uncertainties concerning how best to structure the D Block

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Rehabilitation Engineering Research Center for Wireless Technologies, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 15.

<sup>9</sup> See George S. Ford, PhD, CALCULATING THE VALUE OF UNENCUMBERED AWS-III SPECTRUM, Phoenix Center for Advanced Legal and Economic Public Policy Studies (rel. June 25, 2008), available at <http://www.phoenix-center.org/perspectives/Perspective08-01Final.pdf>.

<sup>10</sup> See Comments of Charles L. Jackson, Dorothy Robyn and Coleman Bazelon, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 5-7.

service rules and auction to achieve the public policy objective of interoperable public safety broadband communications, Congress and the Commission should be mindful that yet-to-be-auctioned spectrum may be part of the solution. Importantly, the value of this spectrum will be realized only if the Commission refrains from saddling it with service conditions that interfere with the free functioning of the marketplace.

## **II. THE COMMISSION SHOULD REJECT SUGGESTIONS THAT ELIGIBILITY TO ACQUIRE THE UPPER 700 MHz D BLOCK BE RESTRICTED.**

Given the highly competitive state of the wireless industry, the Commission less than a year ago determined that there was no need to impose restrictions on eligibility to bid for 700 MHz spectrum.<sup>11</sup> There is no reason for the Commission to deviate from this view.<sup>12</sup> Aside from making conclusory statements that eligibility restrictions are necessary to promote competition, the proponents of new restrictions have made no serious attempt to show that open eligibility carries with it a “significant likelihood of substantial competitive harm in the broadband marketplace” – the standard set by the Commission when it rejected eligibility restrictions last year.<sup>13</sup> In fact, the reasons supporting the Commission’s refusal to impose eligibility restrictions have not changed: existing competition continues to deter anticompetitive activity; new competitors are still able to gain entry into the market; and eligibility restrictions for the D Block could deter

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<sup>11</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, Second Report and Order, 22 FCC Rcd 15289 ¶ 256 (2007) (“700 MHz Second Report and Order”).

<sup>12</sup> See Comments of CTIA – The Wireless Association®, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 8-10; see also Comments of the Verizon Wireless, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 22-24; 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, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 21; Comments of Space Data Corporation, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 16-17.

<sup>13</sup> See *700 MHz Second Report and Order* at ¶ 256.

broadband deployment and threaten spectrum efficiency.<sup>14</sup> In the Public/Private Partnership context, public safety interests have argued against any restriction on auction participation that is unrelated to the goal of developing a national public safety broadband network.<sup>15</sup> The goal of providing Public Safety with a state of the art broadband wireless network is a daunting enough challenge without arbitrarily disqualifying any potential bidder, let alone companies which possess potential scale and scope economies. Furthermore, imposing a bar on acquiring D Block spectrum could serve to restrict carriers' ability to more effectively compete in the broadband marketplace.

The eligibility restrictions proposed by other commenters are merely transparent attempts to eliminate auction competition masquerading as public policy arguments.

- Council Tree Communications, Inc.: Arguing that national wireless carriers should be denied access to the D Block, Council Tree accuses them of having a “chokehold on the wireless services industry.”<sup>16</sup> This assertion is contradicted by the Commission’s own view, expressed in its recent *CMRS Competition Report*, that “several large regional operators and a large number of mobile telephone operators with smaller geographic footprints compete in many local and regional markets in the United States.”<sup>17</sup> Council Tree also implies that incumbent carriers will be less “dedicated” to the success of the Public/Private Partnership because “the D Block opportunity will necessarily be less important to their operations,”<sup>18</sup> but it provides nothing to back up this bare claim.
- Public Interest Spectrum Coalition (“PISC”): PISC seeks adoption of a 95 MHz spectrum cap.<sup>19</sup> PISC candidly reveals that its motive

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<sup>14</sup> *Id.* at ¶¶ 256-259.

<sup>15</sup> *See, e.g.*, Comments of the Association of Public-Safety Communications Officials-International, Inc., WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 38.

<sup>16</sup> Comments of Council Tree Communications, Inc., WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 15.

<sup>17</sup> *Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993*, Twelfth Report, 23 FCC Rcd 2241, 2268 ¶ 57 (2008).

<sup>18</sup> Comments of Council Tree Communications, Inc. at 16.

<sup>19</sup> Comments of PISC, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 6-7.

is to “exclude Verizon and AT&T[.]”<sup>20</sup> PISC’s position here amounts to no more than a rehash of arguments that were previously made and rejected by the Commission. Furthermore, PISC asks the Commission to specify a hard spectrum cap at 95 MHz, the level recently set by the Commission as the “initial screen” at which a market-specific competitive review is warranted in the merger context.<sup>21</sup> PISC fails to offer an explanation of why a harsher standard should be set in the D Block context.

- *Spectrum Acquisitions, Inc.*: Spectrum Acquisitions asks the Commission to limit participation in an auction of an “expanded” D Block to “designated entities,” with the proceeds transferred to the Public Safety Spectrum Trust for development of a public safety network. But aside from offering its opinion that “it is important that the FCC ensure that new entrants will participate meaningfully both in the auction and in the broadband wireless industry,”<sup>22</sup> Spectrum Acquisition does not explain how this proposal would advance the public interest. In fact, excluding from the D Block all firms that do not qualify as “entrepreneurs” under the Commission’s rules would devalue the spectrum at auction, seriously threaten the goal of a nationwide, interoperable public safety broadband network, and potentially eliminate companies with the most experience and expertise constructing and operating complex wireless networks.

If the Commission decides to conduct the D Block re-auction with Public/Private Partnership conditions, a policy of open eligibility is the most likely path to success. If the Commission decides to license the D Block without Public/Private Partnership conditions, there is no basis to conclude that open eligibility would pose a significant likelihood of substantial competitive harm. In either case, the public interest will be best served if the D Block is put up for bid in an auction that is open to all interested bidders.

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<sup>20</sup> *Id.* at 7.

<sup>21</sup> See *Applications of AT&T Inc. and Dobson Communications Corporation*, 22 FCC Rcd 20295 ¶¶ 39-41 (2007).

<sup>22</sup> Comments of Spectrum Acquisitions, Inc., WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 13.

**III. IN THE ABSENCE OF PUBLIC/PRIVATE PARTNERSHIP REQUIREMENTS, THE COMMISSION SHOULD EMPLOY FLEXIBLE SERVICE RULES FOR THE UPPER 700 MHZ D BLOCK THAT DO NOT MANDATE PARTICULAR BUSINESS MODELS.**

If the Commission licenses the D Block without Public/Private Partnership obligations, it should base its service rules on the same market-oriented, flexible-use service rule model that has been successfully employed in helping create today's highly-competitive commercial wireless marketplace. Some commenters have suggested that D Block licensees should be compelled to open their networks and engage in a wholesale business,<sup>23</sup> and that they should once again be subjected to a resale requirement.<sup>24</sup> All these suggestions should be rejected.

The free functioning of the wireless marketplace – not regulatory fiat – should determine whether open platform initiatives succeed. As CTIA detailed in its initial comments in this proceeding, these initiatives are already underway in the marketplace, making unnecessary any new open platform requirements.<sup>25</sup> The seven (7) different mobile wireless operating systems in existence or under development<sup>26</sup> will compete to determine what consumers want most. Likewise, adoption of a mandatory wholesale obligation in the Upper 700 MHz D Block would constitute an ill-advised substitution of the Commission's judgment for the marketplace's and would contravene long-standing

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<sup>23</sup> See, e.g., Comments of the Consumer Electronics Association, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 6 (“The Commission should pursue an open device policy in the ‘commercial only’ D Block ....”); Comments of PISC, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 7-10 (suggesting adoption of both open platform and mandatory wholesale obligations); Comments of the Rural Telecommunications Group, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 12-13 (urging adoption of open platform requirements and, if licensed on a nationwide or REAG basis, mandatory wholesale obligations).

<sup>24</sup> See Comments of Google, WT Docket No. 06-150 and PS Docket No. 06-229 (filed June 20, 2008) at 10 (“[T]he Commission should consider adopting a simple resale service obligation for a D Block licensee seeking to provide a CMRS-type commercial service on their commercial spectrum.”).

<sup>25</sup> See Comments of CTIA at 4-6.

<sup>26</sup> These operating systems consist of Android, BREW, Linux Mobile, Mac OSX for iPhone, Microsoft Windows Mobile, Research in Motion Blackberry OS, and Symbian.

Commission policies. The Commission wisely chose not to impose wholesale service requirements on other 700 MHz spectrum, and it should not deviate from this determination for the D Block.

The Commission also should reject Google's proposal to reincarnate the now-defunct resale requirement for the D Block. As ordered by the Commission, the wireless resale rule sunset in November 2002, and Google offers no evidence – or indeed much of an argument – that supports re-imposing the rule. The existence of robust MVNO opportunities since the sunset of the resale rule suggests the opposite conclusion. In short, success in the wireless marketplace should depend on whether market participants are able to execute on good business plans, not on whether the Commission mandates their existence.

