

MHz band, rapid adoption and deployment by public safety users, and provide an efficient cost structure for the D Block licensee(s) as it builds out a network capable of supporting commercial and public safety users.

391. As we consider the specific fees to be mandated, we tentatively conclude that the rates being offered today for broadband wireless data service provide a sufficient, forward-looking benchmark upon which to establish a nationwide fee schedule. We tentatively conclude that the characteristics of services, such as those offered by Verizon Wireless, AT&T Mobility, Sprint Nextel, and T-Mobile, are consistent with those that will be associated with the public safety broadband network. We also find that offering such discounted fixed rates is a standard practice of nationwide and regional wireless carriers that have established voice and data service prices for public safety and government users. We base our conclusion on a survey of contracts, as presented in Table 2, that are presently offered to governments and public safety authorities for wireless voice and data services.⁷⁷⁰

Table 2. Survey: Discounted Wireless Data Plans

Contracting Entity	Wireless Operator	Service Plan ⁷⁷¹	Monthly Service Charge
General Services Administration ⁷⁷²	Verizon Wireless	VZAccess (NationalAccess/BroadbandAccess)	\$48.59
Western States	Verizon	BroadbandAccess for Internet and E-	\$49.19 ⁷⁷⁴

⁷⁷⁰ See, e.g., General Services Administration, Federal Supply Service, Cellular/PCS Services, Contract # GS-35F-0119P, available at https://www.gsaadvantage.gov/ref_text/GS35F0119P/0EA660.1OSTP9_GS-35F-0119P_GSAADVANTAGEMOD12GS35F0119P040408.PDF (last viewed on August 27, 2008); Western State Contracting Alliance, at <http://www.aboutwsca.org/welcome.cfm> (last viewed on August 27, 2008); State of New York, Office of General Services, Procurement Services Group, Contract Number PS61217, Group Number 77008 (effective August 15, 2007), available at <http://www.ogs.state.ny.us/purchase/prices/7700802459prices1207.pdf> (last viewed on August 27, 2008).

⁷⁷¹ We note that some of these plans contain restrictions on the use of the wireless data network. For example, Verizon Wireless' contracts discussed herein stipulate its wireless data services may only be used for "(i) Internet browsing, (ii) e-mail, and (iii) intranet access (including access to corporate Intranets, e-mail and individual productivity applications like customer relationship management, sales force and field automation." Verizon Wireless specifically prohibits uses including the "(i) continuous uploading, downloading or streaming of audio or video programming or games, (ii) server devices or with host computer applications, other than applications required for enhanced phone applications, including but not limited to Web camera posts or broadcasts, automatic data feeds, automated machine-to-machine connections, or peer-to-peer file sharing, or (iii) as a substitute or backup for private lines or dedicated data connections." Similarly, Sprint Nextel's contract stipulates that "[s]ervices are not available for use in connection with server devices or host computer applications, other systems that drive continuous heavy traffic or data sessions." See State of New York, Office of General Services, Verizon Wireless Contract Number PS61217 (effective August 15, 2007), available at <http://www.ogs.state.ny.us/purchase/prices/7700802459prices1207.pdf> (last viewed on August 27, 2008) (*New York State Verizon Wireless Contract*); Sprint Nextel Contract Number PS60701 (effective July 15, 2007), available at <http://www.ogs.state.ny.us/purchase/prices/7700802459prices1207.pdf> (last viewed on August 27, 2008) (*New York State Sprint Nextel Contract*). See also General Services Administration, Federal Supply Service, Cellular/PCS Services, Contract # GS-35F-0119P, available at https://www.gsaadvantage.gov/ref_text/GS35F0119P/0EA660.1OSTP9_GS-35F-0119P_GSAADVANTAGEMOD12GS35F0119P040408.PDF (last viewed on August 27, 2008) (*GSA Verizon Wireless Contract*).

⁷⁷² *GSA Verizon Wireless Contract*.

Contracting Entity	Wireless Operator	Service Plan ⁷⁷⁴	Monthly Service Charge
Contracting Alliance ⁷⁷³	Wireless	mail	
	Sprint PCS	Sprint PCS Connection Card Unlimited Usage (applies to usage on both 1xRTT and EVDO networks)	\$49.99
	T-Mobile ⁷⁷⁵	T-Mobile Total Internet Unlimited Usage	\$33.99 ⁷⁷⁶
		T-Mobile Total Internet for Data Cards Unlimited Usage	\$42.49 ⁷⁷⁷
	AT&T Mobility ⁷⁷⁸	Public Safety Unlimited Data	\$49.99
State of New York ⁷⁷⁹	Verizon Wireless	VZAccess (NationalAccess/BroadbandAccess)	\$48.59
	Sprint Nextel	Unlimited Connection Plan EVDO DataLink	\$59.99
		Unlimited Connection Plan 1xRTT DataLink	\$59.99
State of Florida ⁷⁸⁰	AT&T Mobility	Wireless Data Usage Plan Unlimited Usage	\$43.99
	Sprint	Wireless Data Usage Plan	\$44.99

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⁷⁷³ The WSCA is comprised of state purchasing directors that negotiate purchasing contracts for goods and services. WSCA membership consists of the principal procurement official that heads the state central procurement organization, or designee for that state, from the states of Alaska, Arizona, California, Colorado, Hawaii, Idaho, Minnesota, Montana, Nevada, New Mexico, Oregon, South Dakota, Utah, Washington and Wyoming. In addition, the following states use WSCA contracts: Alabama, Arkansas, Florida, Georgia, Iowa, Illinois, Indiana, Kansas, Kentucky, Massachusetts, Maryland, Maine, Michigan, Missouri, Mississippi, North Carolina, Nebraska, New Hampshire, New York, Ohio, Oklahoma, Pennsylvania, Rhode Island, Tennessee, Texas, Wisconsin, and the District of Columbia.

⁷⁷⁴ This amount reflects an 18% discount that Verizon Wireless extends to signatories of the WSCA contract. According to Verizon Wireless, the standard rate is \$59.99. See Verizon Wireless, at <https://b2b.verizonwireless.com/b2b/commerce/shop/viewPlanDetail.go?planId=48372> (last viewed on August 27, 2008).

⁷⁷⁵ Under its contract with the WSCA, T-Mobile extends a 15% discount on recurring monthly charges. See WSCA, Contract for Services of Independent Contractor, T-Mobile USA, available at http://purchasing.state.nv.us/Wireless/T-Mobile_Contract.pdf (last viewed on August 27, 2008).

⁷⁷⁶ This amount reflects a 15% discount off the \$39.99 retail rate.

⁷⁷⁷ This amount reflects a 15% discount off the \$49.99 retail rate.

⁷⁷⁸ See WSCA, Contract for Services of Independent Contractor, AT&T Mobility, available at http://purchasing.state.nv.us/Wireless/Cingular_BB.pdf (last viewed on August 27, 2008).

⁷⁷⁹ *New York State Verizon Wireless Contract; New York State Sprint Nextel Contract.*

⁷⁸⁰ State of Florida, Department of Management Services, MyFloridaSUNCOM Services, at http://dms.myflorida.com/cits/portfolio_of_services/suncom/wireless_services/wireless_data_services_aircard (last viewed August 27, 2008).

Contracting Entity	Wireless Operator	Service Plan ⁷⁸¹	Monthly Service Charge
		Unlimited Usage	
	Verizon Wireless	Wireless Data Usage Plan Unlimited Usage	\$52.59

392. Generally, the service rates charged by these carriers apply nationwide, thus providing a useful model for establishing a nationwide, fixed rate schedule for public safety users of the shared wireless broadband network. Based on our survey, the average discounted service charge is approximately \$48.50 per month, which thus may serve as an appropriate amount. In sum, we seek comment on our tentative conclusions that we should set a specific service fee for public safety users and that such fee be based on rates charged to government users of existing wireless voice and data services. We also seek comment on whether a rate of \$48.50 per user per month as the base rate that will be charged to all public safety users is reasonable.

393. In developing a proposed base rate, we seek to achieve the best approximation of what a competitive, yet discounted rate should be for these services. We seek to ensure an initial stable service arrangement between the D Block licensee(s) and the public safety user community by establishing an initial flat rate for service based on appropriate considerations of commercial viability and the generally limited financial means of the public safety community. We believe this is an important consideration towards ensuring widespread adoption of advanced interoperable services by the public safety community. We recognize, however, that the factors that determine service rates are not static, and that over time marketplace forces will need to be taken into account in the adjustment of public safety service rates. Thus, we tentatively conclude that we will allow the fixed rates we ultimately adopt to sunset coterminous with the expiration of the fourth year build out requirement, at which point we expect the D Block licensee(s) will be providing service to a significant portion of the nation's public safety community. In the fifth year of operation, we expect that the commercial market for D Block spectrum and services will have sufficiently developed so that the General Services Administration likely will have developed a fee schedule for government users of the commercial spectrum. At that time, we propose to use that schedule as the basis for adjusting public safety fees for use of the network. We seek comment on this proposal.

c. Other Essential Components

394. Background. In the *Second Report and Order*, we established certain minimum criteria that the Public Safety Broadband Licensee must meet in order to ensure that it "focuses exclusively on the needs of public safety entities that stand to benefit from the interoperable broadband network."⁷⁸¹ In particular, we established certain criteria for the Public Safety Broadband Licensee eligibility, including a requirement that the Public Safety Broadband Licensee must be broadly representative of the public safety community.⁷⁸² We also required that the Public Safety Broadband Licensee be governed by a voting board consisting of eleven members, one each from the nine organizations representative of public safety, and two at-large members selected by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau, jointly on delegated authority.⁷⁸³ On reconsideration, we revised

⁷⁸¹ *Second Report and Order*, 22 FCC Rcd at 15421-22 ¶ 373.

⁷⁸² *Second Report and Order*, 22 FCC Rcd at 15421-25 ¶¶ 373-375.

⁷⁸³ The nine organizations included: the Association of Public Safety Communications Officials (APCO); the National Emergency Number Association (NENA); the International Association of Chiefs of Police (IACP); the International Association of Fire Chiefs (IAFC); the National Sheriffs' Association (NSA); the International City/County Management Association (ICMA); the National Governor's Association (NGA); the National Public (continued....)

and expanded the voting board, and increased the at-large membership to four.⁷⁸⁴

395. We also required that certain procedural safeguards be incorporated into the articles of incorporation and bylaws of the Public Safety Broadband Licensee.⁷⁸⁵ For example, we specified that the term of the Public Safety Broadband Licensee officers would be two years, and that election would be by a two-thirds majority vote.⁷⁸⁶ A two-thirds majority was also required for certain other Public Safety Broadband Licensee decisions, including amending the articles of incorporation or bylaws.⁷⁸⁷ We also recognized the importance of Commission oversight in the affairs of the Public Safety Broadband Licensee, which we enabled by requiring the Public Safety Broadband Licensee to submit certain reports to the Commission, including quarterly financial disclosures.⁷⁸⁸

396. In the *Second Further Notice*, we sought to reexamine the structure of the Public Safety Broadband Licensee and the criteria adopted in the *Second Report and Order* to ensure they are optimal for establishing and sustaining a partnership with a commercial entity, and for efficiently and equitably conducting the business of the Public Safety Broadband Licensee. As developed more fully below, we sought comment on whether we should reevaluate any of these criteria, whether we should clarify or increase the Commission's oversight of the Public Safety Broadband Licensee, and whether we should make other changes to the license or license eligibility criteria.⁷⁸⁹ We further sought comment on how the Commission can ensure an oversight role for Congress; whether State governments should assume responsibility for coordinating the participation of the public safety providers in their jurisdictions; and whether, in light of possible changes to the eligibility and other criteria that govern the Public Safety Broadband Licensee, we should rescind the current 700 MHz Public Safety Broadband License and seek new applicants.⁷⁹⁰

(i) Articles of Incorporation and By-laws

397. Background. With respect to the articles of incorporation and bylaws that govern the Public Safety Broadband Licensee, we sought comment on the adequacy of the current requirements.⁷⁹¹ We sought comment, for example, on whether we should require a unanimous or super-majority vote in certain instances, whether we should provide for Commission review of such decisions, and whether the

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Safety Telecommunications Council (NPSTC); and the National Association of State Emergency Medical Services Officials (NASEMSO). *Second Report and Order*, 22 FCC Rcd at 15422-23 ¶ 374.

⁷⁸⁴ On reconsideration, we removed NPSTC and included the Forestry Conservation Communications Association (FCCA), the American Association of State Highway and Transportation Officials (AASHTO), and the International Municipal Signal Association (IMSA), and added two additional at-large positions. Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 96-86, *Order on Reconsideration*, 22 FCC Rcd 19935 (2007) (*Order on Reconsideration*). The Chiefs of the Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau jointly appointed to the voting board the American Hospital Association (AHA), the National Fraternal Order of Police (NFOP), the National Association of State 9-1-1 Administrators (NASNA), and the National Emergency Management Association (NEMA). See "Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Four At-Large Members of the Public Safety Broadband Licensee's Board of Directors," *Public Notice*, 22 FCC Rcd 19475 (PSHSB 2007).

⁷⁸⁵ *Second Report and Order*, 22 FCC Rcd at 15423-26 ¶ 375.

⁷⁸⁶ *Second Report and Order*, 22 FCC Rcd at 15423-26 ¶ 375.

⁷⁸⁷ *Second Report and Order*, 22 FCC Rcd at 15423-26 ¶ 375.

⁷⁸⁸ *Second Report and Order*, 22 FCC Rcd at 15426 ¶¶ 376-77.

⁷⁸⁹ *Second Further Notice*, 23 FCC Rcd at 8067 ¶ 48.

⁷⁹⁰ *Second Further Notice*, 23 FCC Rcd at 8067 ¶ 48.

⁷⁹¹ *Second Further Notice*, 23 FCC Rcd at 8067 ¶ 49.

Commission should make certain decisions for the Public Safety Broadband Licensee if unanimity or supermajority is not achieved.⁷⁹² With respect to the voting board, we sought comment on the composition, size and qualifications of the board.⁷⁹³ We also sought comment on whether we should eliminate altogether the requirement of inclusion of specific voting board members, and if so, how we could ensure broad representation of the public safety community.⁷⁹⁴ With respect to the leadership of the board, we asked whether we should revise the terms of the officers; whether we should require a unanimous vote for appointment of officers; whether we should require a rotating chairmanship among the voting board members; and whether the Commission should appoint a chairperson in the event that unanimous consent cannot be attained on appointing such person.⁷⁹⁵

398. Comments. There were a number of comments addressing the composition of the PSBL board of directors and board transparency and voting matters.

399. Board Composition. For its part, the PSST indicated that it “opposes any change in the composition of its Board, including the possibility of including representatives from a variety of non-public safety entities.”⁷⁹⁶ In this regard, the PSST asserted that “the PSST is structured in strict compliance with all applicable FCC requirements,”⁷⁹⁷ and, as currently constituted, “collectively represents virtually every type of public safety and governmental entity that is eligible to operate on the SWBN pursuant to the PSBL license and their interests have been well-represented in the Board’s highly collaborative decision making processes.”⁷⁹⁸ Rather than revise its organizational make-up, the PSST argued that the Commission should “instead work with the organizations represented on the current PSST Board to address any major concerns about the organizational structure and governance of the organization.”⁷⁹⁹ The PSST further indicated that the Commission should not prohibit the PSST Chairman of the Board of Directors from also serving as Chief Executive Officer in favor of creating a separate position of President/CEO to manage the PSST’s business “unless the Commission has some definite funding mechanism for the PSST/PSBL to pay for such a position.”⁸⁰⁰

400. IACP argued that the present PSBL board “represents not only the myriad of agencies, but those who finance, operate and manage public safety systems.”⁸⁰¹ IACP further asserted that reducing “the number of the Board” would “dilute” the link between the Board and public safety.⁸⁰² IACP also asserted that any expertise needed in telecommunications, finance and/or management can be obtained through the retention of experts.⁸⁰³ AASHTO asserted that adding any more PSBL board members “could create a body so unwieldy it is unable to react to the ever changing needs of its users in a timely

⁷⁹² *Second Further Notice*, 23 FCC Rcd at 8067 ¶ 49.

⁷⁹³ *Second Further Notice*, 23 FCC Rcd at 8067 ¶ 50.

⁷⁹⁴ *Second Further Notice*, 23 FCC Rcd at 8067 ¶ 50.

⁷⁹⁵ *Second Further Notice*, 23 FCC Rcd at 8067 ¶ 50.

⁷⁹⁶ PSST Reply Comments at 17. *See also* PSST Comments at 47.

⁷⁹⁷ PSST Comments at 45.

⁷⁹⁸ PSST Comments at 45-46.

⁷⁹⁹ PSST Comments at 47.

⁸⁰⁰ PSST Comments at 46.

⁸⁰¹ IACP Reply Comments at 3.

⁸⁰² IACP Reply Comments at 3.

⁸⁰³ IACP Reply Comments at 3.

manner.”⁸⁰⁴ Ericsson advises that changing the PSBL board composition “at this time could impose additional delay ... and create a new source of uncertainty.”⁸⁰⁵ Other commenters similarly urged the Commission not to reassess the composition or size of the Public Safety Broadband Licensee’s board.⁸⁰⁶

401. A number of commenters, however, proposed various changes to the Public Safety Broadband Licensee’s governance structure. APCO, for example, suggested various modifications regarding membership in the Public Safety Broadband Licensee. First, APCO asked the Commission to “clarify that the organizations it names [to the board] must be the actual members of the PSBL board to the extent that this can be done without creating undue financial liability to the respective organizations.”⁸⁰⁷ Second, APCO contended that “the large size of the PSST board has led to over-reliance on the Chairman/CEO and a three-person executive committee (the chairman, vice-chairman, and secretary/treasurer),” and proposed that a “smaller board would allow for a more inclusive decision-making.”⁸⁰⁸ Third, APCO argued that the PSBL board “does not provide sufficient diversity of interests or required expertise to undertake the extraordinary tasks at hand,” such as “designing or operating public safety communications systems” and in the fields of “business, finance, [and] communications technology.”⁸⁰⁹ According to APCO, such lack of experience on the board lead the PSST “to rely even more heavily on the advice of its agent/advisor and limits its ability to engage in a thorough critique of that advice.”⁸¹⁰ APCO suggested that the Commission change the composition of the PSBL board to “a board of eight to twelve members, with approximately half of the members being diverse organizations that represent potential users of the network and those with expertise in public safety communications matters” and the other half composed of “individuals selected by the Commission who do not represent any particular organization but who would add critical knowledge and expertise to the PSBL’s decision making.”⁸¹¹ APCO further recommended that the “position of the Chairman of the board of directors” should be separated “from the position of CEO/President” because of the very different responsibilities of the two positions.”⁸¹² APCO, however, did “not support term limits or mandatory rotation of the chairmanship.”⁸¹³

402. Region 33 suggested that PSBL board membership be “limited to no more than nine members, jointly selected and approved by both the FCC’s PS&HSB and the LMCC.”⁸¹⁴ Region 33 indicated that board membership should be composed “entirely from the not-for-profit public safety community,” although “ex-officio members could be from the private sector to serve [in a] technical

⁸⁰⁴ AASHTO Comments at 11. In this context, AASHTO advises against adding a Commission or Congressional representative to the Board. *Id.*

⁸⁰⁵ Ericsson Comments at 8.

⁸⁰⁶ See, e.g., IMSA Comments at 11; IMSA Reply Comments at 7-8; ICMA Reply Comments at 2; NPSTC Reply Comments at 7.

⁸⁰⁷ APCO Comments at 22.

⁸⁰⁸ APCO Comments at 22.

⁸⁰⁹ APCO Comments at 22.

⁸¹⁰ APCO Comments at 22.

⁸¹¹ APCO Comments at 24. NENA agreed with APCO’s recommendations on widening the relevant experience of Board members. See NENA Comments at 4.

⁸¹² APCO Comments at 21.

⁸¹³ APCO Comments at 21.

⁸¹⁴ RPC 33 Comments at 7.

advisory role but [would] not vot[e] on the governing issues.”⁸¹⁵

403. NATOA indicated concern “that local governments are not adequately represented by the current makeup of the [PSST].”⁸¹⁶ NATOA observed that “local services, systems, property, and personnel will be directly affected by the construction of a nationwide public safety broadband network,” and argued that “the exclusion of such representation deprives the PSBL of the insights and experience of elected local government officials that represent the entities the PSBL is charged to serve.”⁸¹⁷ Other commenters supported this view.⁸¹⁸

404. NRPC requested that the Commission name it as “a full voting member organization on the Public Safety Broadband Licensee.”⁸¹⁹ In this regard, NRPC indicated that it could provide “a perspective on the 700 MHz narrowband reallocation issue and transition as well as the necessary coordination aspects,” and could “contribute to the effectiveness and coordinated use of the 1 MHz Guard Band between 768-769-798-799 MHz.”⁸²⁰

405. *Board Transparency and Voting.* The PSST stated that “for the most part, conducting open meetings is a good idea to facilitate its efforts to work cooperatively with members of the public safety community, as well as with vendors, commercial operators, and other parties, and believes that appropriate changes in its procedures should be evaluated by the Board.”⁸²¹ APCO urged “that the FCC require the PSBL board meetings be held in public, with the proviso that the board may go into executive session to address sensitive matters,” but with “minutes ... describ[ing] the matters addressed in executive session to the extent possible without revealing sensitive information.”⁸²² Peha similarly stated that “one essential requirement [of the PSBL] is transparency,” and that “requirements related to transparency should be added to the list [of requirements to become the [PSBL],” and that the “current [PSBL], the PSST, would not meet such requirements, and would therefore be ineligible.”⁸²³ Other commenters expressed similar views.⁸²⁴ AASHTO, however, argued that “[a]s a private entity the PSST is not required to make its meetings open to the general public.”⁸²⁵

406. With respect to voting issues, the PSST and other commenters opposed the adoption of any unanimous voting requirement for the Public Safety Broadband Licensee board decisions on the basis that such a requirement could lead to stalemates and dilute leadership accountability.⁸²⁶ NPSTC observed that “[u]nanimous [voting] rules [] place in the hands of one or a few the ability to thwart the best ideas

⁸¹⁵ RPC 33 Comments at 7. *See also* Lencioni Comments at 2 (the PSBL should “be a[s] broadly representative of the public safety radio user community as possible”).

⁸¹⁶ NATOA *et al.* Comments at 15.

⁸¹⁷ NATOA *et al.* Comments at 16.

⁸¹⁸ *See* Philadelphia Comments at 4. Philadelphia expressly endorses “the proposal by NATOA” in this regard. *Id.* *See, also* Philadelphia Reply Comments at 2; Florida Comments at 4.

⁸¹⁹ NRPC Comments at 6.

⁸²⁰ NRPC Comments at 6.

⁸²¹ PSST Reply Comments at 16.

⁸²² APCO Comments at 21.

⁸²³ Peha Comments at 9.

⁸²⁴ *See, e.g.,* RPC 20 Reply Comments at 11; NATOA *et al.* Reply Comments at 7.

⁸²⁵ AASHTO Reply Comments at 5.

⁸²⁶ *See* PSST Comments at 46; NPSTC Comments at 22; APCO Comments at 21.

and initiatives.”⁸²⁷ Both the PSST and APCO, however, supported super-majority voting on certain matters, including election of officers.⁸²⁸ The IMSA urged the Commission not to “micromanage the affairs of the PSST by adopting additional rules on voting majorities.”⁸²⁹

407. Discussion. We agree with commenters who advocate revising the Public Safety Broadband Licensee’s organizational structure to enhance the Public Safety Broadband Licensee’s operational efficiency and transparency. In light of the unique representative nature of the license, which the Public Safety Broadband Licensee holds on behalf of those public safety entities eligible to utilize this spectrum, the public interest favors any changes to the Public Safety Broadband Licensee’s organizational structure that will better ensure that its actions reflect due consideration of the broad panoply of public safety interests it represents. We also consider it important to hold the PSBL to a standard of transparency that will ensure that its obligations are met in a manner that instills public confidence in both the process and the outcome of its actions. We believe improvements in these areas can be achieved with a few modifications to the Public Safety Broadband Licensee’s current organizational structure, along with other modifications we are proposing with respect to the Public Safety Broadband Licensee’s Board’s meeting and voting requirements.

408. Board Composition. We tentatively conclude that we will retain the current PSBL board composition, except that we propose to replace the National Emergency Management Association (NEMA)⁸³⁰ on the board with the National Regional Planning Council (NRPC). We propose to remove NEMA as a representative organization on the board because its initially appointed representative has consistently failed to attend board meetings and the organization has not otherwise materially participated in PSBL board activities. Because NEMA has not meaningfully participated as a member organization of the PSBL, we tentatively conclude that it no longer would serve the public interest to include NEMA as a PSBL board member.

409. We propose adding NRPC as a replacement board member for a number of reasons. The NRPC is a national organization drawn from the FCC-authorized Regional Planning Committees (RPCs), whose affiliation is linked to the states and U.S. Territories. The NRPC’s mission is to serve public safety communications users through planning and management to meet their spectrum needs.⁸³¹ As we observed in the *Second Further Notice*, and consistent with our tentative conclusions herein, we anticipate that some of the PSBL’s roles and responsibilities will be akin to the functions presently performed by the 700 MHz RPCs.⁸³² Thus, the NRPC would bring important and relevant experience to the PSBL board by virtue of its role in assisting regions with coordinating 700 MHz public safety spectrum use. We also agree with the NRPC’s comments on its own behalf that its addition to the board would prove valuable to the PSBL in terms of the narrowband relocation process, and concerning coordination between the use of the public safety broadband spectrum and the guard band and narrowband allocations.⁸³³ We seek comment on these tentative conclusions.

410. On a related matter, as noted above, APCO requests that we clarify that the organizations

⁸²⁷ NPSTC Comments at 22.

⁸²⁸ PSST Comments at 46; APCO Comments at 21.

⁸²⁹ IMSA Comments at 11.

⁸³⁰ NEMA is composed of state directors of emergency management, and is dedicated to enhancing public safety by improving the nation’s ability to prepare for, respond to and recover from all emergencies, disasters, and threats to our nation’s security. See <http://www.nemaweb.org>.

⁸³¹ See National Regional Planning Council at <http://www.nrpc.us/index.jsp>.

⁸³² *Second Further Notice*, 22 FCC Rcd at 8091 ¶ 122.

⁸³³ See NRPC Comments at 6.

we name as PSBL board members “must be the actual members of the PSBL board” in order to avoid “discourag[ing] organizational input into matters being voted upon by the PSST Board.”⁸³⁴ One of the core eligibility requirements of the PSBL is that it be as representative of the public safety community as possible.⁸³⁵ The member organizations were selected in part based on their representation of various sectors of the public safety community. While some member organizations may choose to delegate all decision-making authority to their PSBL representatives on the board, others may prefer that their representatives seek internal approvals so that the member organization can assure that the positions taken by its board representative are reflective of the organization’s core membership. Accordingly, we tentatively conclude that representatives of member organizations, in their service on the PSBL board, should be permitted reasonable accommodation to seek approval of their respective organization’s leadership. At the same time, we would expect the PSST to provide sufficient advance notice of issues to be decided so that board members can obtain any organizational approvals ahead of time, without causing undue delay to board actions. We seek comment accordingly.

411. *Chief Executive Officer.* We agree with APCO that the position of Chairman of the PSBL board of directors should be separated from the position of Chief Executive Officer (CEO) because of the very different responsibilities of the two positions. The Chairman primarily has management responsibilities, while the CEO primarily has charge of day-to-day operations. Separating these positions would allow for a discrete focus on two very different responsibilities, and thus increased efficiency. Accordingly, we tentatively conclude that the Public Safety Broadband Licensee’s positions of Chairman of the Board and Chief Executive Officer must be filled by separate individuals. Our proposal would require that the PSST implement such separation within 30 days of adoption of an Order issuing final rules in this proceeding. Further, we propose that the PSST may not hire a new individual to fill the CEO position until the D Block licensee(s) has made funding available for the PSBL’s administrative and operational costs. In recognition of the separate functions of these roles, we also propose that any individual appointed as CEO cannot have served on the PSBL executive committee during the period three years prior to his or her appointment as CEO. In this regard, we propose that the Public Safety Broadband Licensee’s bylaws be amended to include the following provision: “Duties of Chief Executive Officer. The CEO shall have responsibility for the general supervision and direction of the business and affairs of the Public Safety Broadband Licensee, subject to the control of the Board, and shall report directly to the Board. No CEO shall have served on the Public Safety Broadband Licensee’s Executive Committee for a period of 3 years prior to appointment.”

412. *Officers.* We also agree with APCO that some action should be taken to redress what APCO describes as a previous “over-reliance on the [PSST’s] Chairman/CEO and a three-person executive committee (the chairman, vice-chairman, and secretary/treasurer),” which APCO describes as having exercised “a substantial degree of discretion without sufficient opportunities for input from other board members.”⁸³⁶ We do not agree with APCO, however, that any such “over-reliance” need be resolved by reducing the size of the PSBL board of directors.⁸³⁷ The current members of the board were appointed with due consideration, and with particular attention to the need to establish a board that is broadly representative of the public safety community.⁸³⁸ We believe that any reduction in the number of

⁸³⁴ APCO Comments at 22.

⁸³⁵ See 47 C.F.R. § 90.523(e)(3).

⁸³⁶ APCO Comments at 22.

⁸³⁷ See APCO Comments at 22.

⁸³⁸ See *Second Report and Order*, 22 FCC Rcd at 15422 ¶ 374; *Order on Reconsideration*, 22 FCC Rcd at ¶ 4; Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Four At-Large Members of the Public Safety Broadband Licensee’s Board of Directors, *Public Notice*, 22 FCC Rcd 19475 (PSHSB 2007).

board members would diminish this important objective. Instead, we tentatively conclude that the executive committee should be reformed. Accordingly, we propose to require the PSST board to elect a new executive committee – *i.e.*, the PSST must elect a new Chairman, Vice-Chairman, and Secretary/Treasurer within 30 days of adoption of an Order issuing final rules in this proceeding. We propose that these executive committee members: (i) must be limited to a term of 2 years; and (ii) may not serve consecutive terms in the same position. We further propose that no current executive committee member may be re-elected to the same position on the committee.⁸³⁹ We also propose to prohibit the PSBL from expanding its executive committee beyond these three offices. We seek comment on these proposals.

413. *Supermajority Voting.* We tentatively conclude that we will require three-fourths supermajority voting on all major decisions by the PSBL board of directors. Specifically, for selection of the CEO and election of officers, we propose to require a three-fourths vote of board members present at the board meeting. We also propose to require a three-fourths vote of all board members (not limited to those present at the board meeting) for changes in the articles or bylaws, approval of any contract of a cumulative value exceeding \$25,000 per year, and approval of any expenditure exceeding \$25,000 per item. Both the PSST and APCO supported supermajority voting for certain decisions.⁸⁴⁰ We believe that requiring a three-fourths vote, instead of the two-thirds majority vote currently required for most major PSBL board decisions, will further ensure that the PSBL will only undertake major actions that have the broad support of the PSBL's representative constituents.

414. *Public Board Meetings.* We observe that both the PSST itself as well as public safety interests support the opening of PSBL board meetings to the public.⁸⁴¹ We thus tentatively conclude that we will require PSBL board meetings to be open to the public, except that the board will have a right to meet in closed session to discuss sensitive matters.⁸⁴² Further, we propose that the PSBL must make the minutes of each board meeting publicly available, including portions of meetings held in closed session, but that the published minutes of closed sessions may be redacted. We further propose that the PSBL must provide the public with no less than 30 days advance notice of meetings. Relatedly, we tentatively propose to require that the PSBL present its annual, independently audited financial report (which is a new financial reporting obligation we are proposing elsewhere in this Third Further Notice) in an open meeting. We expect that all of these measures will improve the efficiency and transparency of the PSBL's actions, and seek comment accordingly.

(ii) Commission and/or Congressional Oversight

415. *Background.* With respect to enhancing oversight of the 700 MHz Public/Private Partnership, in the *Second Further Notice* we sought comment on how the Commission can better exercise oversight over the activities of both the Public Safety Broadband Licensee and its commercial partner. We asked, for example, whether quarterly financial reporting is adequate, or whether additional disclosures by the Public Safety Broadband Licensee or commercial partner would be necessary.⁸⁴³ We also asked what additional measures, if any, the Commission should take to ensure the appropriate level

⁸³⁹ Current executive committee members may be elected to positions on the committee other than the ones they currently hold.

⁸⁴⁰ See PSST Comments at 46; APCO Comments at 21.

⁸⁴¹ See PSST Reply Comments at 16; APCO Comments at 21; NATOA *et al.* Reply Comments at 7.

⁸⁴² Sensitive matters warranting closed board meetings would include, for example, matters involving proprietary or confidential information provided by vendors or outside parties for the board's consideration, and matters involving public safety or homeland security not normally made public.

⁸⁴³ See *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 51.

of oversight.⁸⁴⁴ We asked, for example, whether we should require Commission approval of certain Public Safety Broadband Licensee activities, such as requiring Commission approval before the Public Safety Broadband Licensee could enter into contracts of a particular duration or cumulative dollar amount.⁸⁴⁵ We further asked whether we should require or reserve the right to have Commission staff attend meetings of the voting board.⁸⁴⁶ In addition to enhancing Commission oversight of the 700 MHz Public/Private Partnership, we also sought comment on how the Commission can ensure an oversight role for Congress, both in the operations of the Public Safety Broadband Licensee and the 700 MHz Public/Private Partnership.⁸⁴⁷ We asked, for example, whether Congress should designate some of the Public Safety Broadband Licensee's board members.⁸⁴⁸

416. Comments. The PSST opposed "requiring [it] to obtain prior FCC approval for certain decisions" because this "would cause delays that could undermine the PSST's ability to carry out its duties."⁸⁴⁹ The PSST observed that it is already required to submit quarterly financial reporting to the Commission, and to "the extent that the Commission believes that additional oversight is necessary, the PSST can provide additional reports to the FCC on its operational goals and actions."⁸⁵⁰ The PSST stated that a "monthly discussion, or more often if needed, with the appropriate persons at the FCC would be [an] effective means to provide the PSST with guidance and interpretation of FCC intent ... particularly in the early years of its operation."⁸⁵¹ The PSST did, however, support a Commission official serving in an *ex officio* capacity on the PSBL board, and recommended that a Commissioner serve in that role.⁸⁵²

417. APCO, however, argued that "the formal relationship between the Commission and the PSBL must be strengthened."⁸⁵³ Accordingly, APCO indicated support for "Commission oversight, quarterly financial reports, and periodic audits to ensure that the PSBL is operating in conformance with its public responsibilities and Commission rules," as well as having "its records be open for public inspection."⁸⁵⁴ APCO also indicated support for "a Commission official serving in an *ex officio* capacity on the PSBL board."⁸⁵⁵ Most other comments addressing the issue of Commission oversight of the PSBL's activities agreed that such oversight is necessary and important.⁸⁵⁶ AASHTO, however, warned that "[i]ncreasing the reporting activities of the PSBL will have a significant impact as the cost of

⁸⁴⁴ See *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 51.

⁸⁴⁵ See *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 51.

⁸⁴⁶ See *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 51.

⁸⁴⁷ See *Second Further Notice*, 23 FCC Rcd at 8066 ¶ 48.

⁸⁴⁸ See *Second Further Notice*, 23 FCC Rcd at 8066 ¶ 48.

⁸⁴⁹ PSST Comments at 46.

⁸⁵⁰ PSST Comments at 47.

⁸⁵¹ PSST Comments at 48.

⁸⁵² PSST Comments at 48.

⁸⁵³ APCO Comments at 20.

⁸⁵⁴ APCO Comments at 19.

⁸⁵⁵ APCO Comments at 20, 24.

⁸⁵⁶ See NPSTC Comments at 22 (Commission's "oversight should be directed to ensure the PSBL's process results in the handling of relevant issues, the opportunity for debate, and the generation of sound and fair decisions"); Region 20 Reply Comments at 12 ("[a]t a minimum, the books and records of the PSST Board should be always available to the Commission's Office of Inspector General"); Televate Comments at 5 (in the context of its revised plan for implementing a shared broadband network, proposes "appropriate FCC oversight" for the PSST's evaluation of "all proposals from bidders"); Ericsson Comments at 7; Peha Comments at 11.

providing reports and documentation would have to be recovered in additional fees paid by the network user.⁸⁵⁷

418. With respect to Congressional oversight, the PSST stated that it “would welcome Congressional monitoring” but noted that the need for rapid decision-making “will of necessity limit the types of Congressional oversight that could be mandated.”⁸⁵⁸ Region 20 indicated reluctance to mandated Congressional oversight, however, noting that “[t]he current provisions of the [*Second Report and Order*] allow for certain “at-large” appointments and if the PSST Board determines that Congressional participation is in the best interests of public safety communications, the Board should be free to reach out to members of the Congress as “at large” participants.”⁸⁵⁹

419. Discussion. Given the proposed enhancements to the structure and functioning of the PSBL discussed elsewhere in this Third Further Notice, we believe that we have addressed the principal concerns regarding oversight of the PSBL. In addition to affirming and enhancing the PSBL’s reporting requirements, we are also proposing to require the submission of the PSBL’s proposed annual budget to the Commission for review and approval. In this manner, the expected activities and operations of the PSBL can be monitored to ensure the PSBL is staying within its role as representative of the public safety community. Part and parcel with those reporting requirements, we are proposing to require the PSBL to establish an audited annual budgeting process, conducted by an external, independent auditor, which will enhance the ability to oversee the activities and operations of the PSBL. Further, as discussed elsewhere in this Third Further Notice, we have narrowed and clarified the mission and responsibilities of the PSBL. With respect to Congressional oversight, Congress maintains an oversight role over our decisions and thus we see no need for any extraordinary provisions that would presume to compel Congress into an oversight role it has not already defined for itself.

(iii) Role of State Governments

420. We also sought comment in the *Second Further Notice* on whether providing a nationwide, interoperable broadband network might be more effectively and efficiently accomplished by allowing state governments (or other entities that have or plan interoperable networks for the benefit of public safety) to assume responsibility for coordinating the participation of the public safety providers in their jurisdictions.⁸⁶⁰ To that end, we asked parties supporting such action to comment on the proper relationship between the state governments and the Public Safety Broadband Licensee and on our authority to establish such a role for state governments.⁸⁶¹ We asked, for example, whether the Public Safety Broadband Licensee should be authorized to choose a minimum standard for any public safety broadband operation, with the state governments given the responsibility to work with public safety providers to implement operations in their jurisdictions.⁸⁶² We further asked whether such an approach would allow state governments wanting higher-grade networks to implement separately these more-advanced systems, while allowing those wanting networks at the minimum standard to avoid what they may consider unnecessary expenses.⁸⁶³ We also asked whether state governments are better situated to address implementation challenges that cross public safety jurisdictions (e.g., coordinating use by sheriffs departments in neighboring counties) as well as intra-jurisdictional challenges (e.g., coordinating use by

⁸⁵⁷ AASHTO Comments at 11.

⁸⁵⁸ PSST Comments at 49.

⁸⁵⁹ RPC 20 Reply Comments at 11-12. See also RPC 33 Comments at 7.

⁸⁶⁰ *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 52.

⁸⁶¹ *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 52.

⁸⁶² *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 52.

⁸⁶³ *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 52.

the police versus fire departments), or whether, in the event different jurisdictions chose different grades of networks, there would be a resulting lack of economies of scale and thus higher equipment costs for all public safety users.⁸⁶⁴

421. Comments. Commenters expressed mixed views on the issue of allowing states to coordinate the participation in the shared network by the public safety providers in their jurisdictions. ASSHTO, for example, suggested that while there might be benefits in having “[s]tate governments [] assume responsibility for coordinating the participation of the public safety providers in their jurisdictions,” the “networks operated by states for users other than state agencies is voluntary and cannot be impelled.”⁸⁶⁵ Similarly, NRPC asserted that “[s]tates should be utilized in the development of a nationwide public safety broadband network to the degree each state wants to assist and utilize its resources.”⁸⁶⁶ NRPC, however, also emphasized that the Commission should “NOT impose any mandates on states to facilitate, administer or promote any element associated with a nationwide public safety broadband network.”⁸⁶⁷

422. A number of commenters argued, however, that state and local participation in the development and management of the network would be essential. Region 33 stated that “any ‘system’ without local oversight would be unmanageable.”⁸⁶⁸ Wireless RERC suggested that State Emergency Communications Committees and Local Emergency Communications Committees should offer guidance in the “development of any strategic public safety migration plan.”⁸⁶⁹ Rivada asserted that “[b]efore the Commission can responsibly move forward with a revised public/private partnership (or any other resolution of the D-Block and adjacent public safety spectrum) the interests of various public safety agencies at the State, local and Federal level will all need to be surveyed and resolved.”⁸⁷⁰

423. Discussion. While we appreciate the relationships that the states have with the public safety providers in their jurisdictions, we do not believe it would be efficient or beneficial to carve out a specific role for the states in coordinating their public safety providers’ participation in the interoperable shared broadband network. We expect the Public Safety Broadband Licensee to work with all public safety interests, whether at local, Tribal, state or regional levels, to ensure that usage of the interoperable shared broadband network is coordinated to meet the needs of all eligible public safety users in the most efficient manner. Further, we observe that participation on the Public Safety Broadband Licensee’s Board by the National Governors Association already serves as a vehicle to ensure that states have direct input in the Public Safety Broadband Licensee’s activities.

(iv) Reissuance of the Public Safety Broadband License and Selection Process

424. Finally, in light of the potential changes contemplated in the *Second Further Notice*, and the corresponding changes contemplated with respect to the D Block, we sought comment on whether we

⁸⁶⁴ *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 52.

⁸⁶⁵ AASHTO Comments at 11. *See also* NPSTC Comments at 22 (“[the] proposal to place in state governments the operating and policy responsibilities now committed to the PSBL lacks any credible indication that it will work.”); California Comments at 2 (California, “no organization or entity has the legislated authority or funding necessary to assume the statewide responsibility” for coordinating the participation of public safety providers in facilitating the interoperable network in its jurisdiction.).

⁸⁶⁶ NRPC Comments at 9.

⁸⁶⁷ NRPC Comments at 9.

⁸⁶⁸ RPC 33 Comments at 8.

⁸⁶⁹ Wireless RERC Comments at 6.

⁸⁷⁰ Rivada Reply Comments at 4.

should rescind the current 700 MHz Public Safety Broadband License and seek new applicants.⁸⁷¹ In the event such action is warranted, we asked whether we should use the same procedures as before, *i.e.*, delegating authority to the Chief, Public Safety and Homeland Security Bureau to solicit applications, specifying any changed criteria that may be adopted following this Third Further Notice, and having the Commission select the licensee.⁸⁷² We further asked whether there are other considerations that should be taken into account in selecting the licensee.⁸⁷³ In addition, in light of the need to identify the licensee quickly to enable the effective development of the 700 MHz Public/Private Partnership, we sought comment as to the mechanism the Commission should employ to assign the Public Safety Broadband License in the event that there was more than one qualified applicant.⁸⁷⁴

425. Comments. With respect to the issue of rescinding the current PSBL license and opening a new application round, the PSST asserted that “the Commission should reject any suggestion [to rescind its license] and instead work with the organizations represented on the current PSST Board to address any major concerns about the organizational structure and governance of the organization rather than starting from scratch.”⁸⁷⁵ The PSST also contended that “it is our strong belief that the cost and delay in starting up another nonprofit, tax-exempt organization will result in irreparable damage to the substantial efforts of the public safety community to establish a new Public/Private Partnership and SWBN and creates a substantial risk that the entire effort to establish a new SWBN will fail.”⁸⁷⁶ The PSST noted that “there were no other applicants during the initial window.”⁸⁷⁷ The PSST further argued that “potential bidders on the D Block may be discouraged by the uncertainty that would be added to the process if interested parties have no idea who will be representing public safety interests going forward other applicants.”⁸⁷⁸ Finally, the PSST argued that “the PSST and its individual Board members have already contributed enormous efforts to the establishment of the PSST and its related infrastructure [] and it would be wasteful to walk away from this substantial investment when funding and resources are so scarce.”⁸⁷⁹ Other commenters also urged the Commission to reject proposals that advocate rescinding the Public Safety Spectrum Trust’s license.⁸⁸⁰ APCO, however, asserted that, in order to implement its suggested modifications to the PSBL’s structure, APCO is comfortable with either modification of the PSST’s articles and bylaws, or rescission of “the PSST’s license” and selection of “a new PSBL.”⁸⁸¹

426. Discussion. As a threshold matter, we tentatively conclude that the public safety broadband spectrum should continue to be licensed on a nationwide basis to a single Public Safety Broadband Licensee. However, we seek comment on whether we should license the public safety broadband spectrum on a regional basis rather than a nationwide basis. Further, if we were to license the

⁸⁷¹ *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 53.

⁸⁷² *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 53.

⁸⁷³ *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 53.

⁸⁷⁴ *Second Further Notice*, 23 FCC Rcd at 8068 ¶ 53.

⁸⁷⁵ PSST Comments at 47. *See also* PSST Reply Comments at 16.

⁸⁷⁶ PSST Reply Comments at 16.

⁸⁷⁷ PSST Reply Comments at 16.

⁸⁷⁸ PSST Reply Comments at 16.

⁸⁷⁹ PSST Reply Comments at 47-48.

⁸⁸⁰ *See, e.g.*, ComCentric Comments at 3; WFCAs Comments at 1; Oregon Comments at 1; IMSA Comments at 11; NAEMT Comments at 3; NPSTC Reply Comments at 6; NASEMSO Reply Comments at 2; Nextwave Reply Comments at 5; RPC 20 Reply Comments at 11; ICMA Reply Comments at 2.

⁸⁸¹ APCO Comments at 24-25.

public safety broadband spectrum on a regional basis, we seek comment on the procedures and selection criteria for assigning such licenses, and how multiple public safety broadband licensees would be able to ensure a nationwide level of interoperability and otherwise satisfy the roles and responsibilities of the public safety broadband licensee we discuss elsewhere. Assuming that we adopt our tentative conclusion to retain the nationwide Public Safety Broadband Licensee, we also tentatively conclude that is unnecessary to rescind the PSST's license and reissue the license to a new licensee in order to implement the foregoing changes to the PSBL. Pursuant to section 316(a)(1) of the Act, we have the authority to modify "[a]ny station license ... if in the judgment of the Commission such action will promote the public interest, convenience, and necessity, or the provision of this Act."⁸⁸² For all of the reasons set forth in the preceding discussion, it is our judgment that the tentative changes that we propose to the PSBL will promote the public interest, convenience, and necessity, as well as the provisions of the Act. Accordingly, except as otherwise noted above, we expect the PSST to implement the tentative proposals specific to its structure and internal procedures that we have set forth in this Third Further Notice, within 90 days of publication of the relevant final rules in the Federal Register.

3. Narrowband Relocation

427. **Background.** In designating the lower half of the 700 MHz Public Safety band (763-768/793-798 MHz) for broadband communications, the *Second Report and Order* consolidated existing narrowband allocations to the upper half of the 700 MHz Public Safety band (769-775/799-805 MHz).⁸⁸³ To effectuate this consolidation of the narrowband channels, we required the D Block licensee to pay the costs of relocating existing narrowband radios from TV channels 63 and 68 (at 764-767 MHz and 794-797 MHz), and the upper one megahertz of channels 64 and 69 (at 775-776 MHz and 805-806 MHz), and capped the disbursement amount for relocation costs at \$10 million.⁸⁸⁴ We also cautioned that any narrowband equipment deployed in channels 63 and 68, or in the upper one megahertz of channels 64 and 69, more than 30 days following the adoption date of the *Second Report and Order* – i.e., after August 30, 2007 – would be ineligible for relocation funding.⁸⁸⁵ In addition, we prohibited authorization of any new narrowband operations in that spectrum, as of 30 days following the adoption date of the *Second Report and Order* (i.e., as of August 30, 2007).⁸⁸⁶

428. In the *Second Report and Order*, we further found that, in order to maximize the benefits of the 700 MHz nationwide, interoperable broadband communications network, 700 MHz narrowband public safety operations then existing under the old narrowband band plan needed to be consolidated and cleared no later than the DTV transition date (i.e., February 17, 2009).⁸⁸⁷ We required every public safety licensee impacted by the consolidation to file a certification with the Commission no later than 30 days from the effective date of the *Second Report and Order*, including certain information to account for "pre-programmed narrowband radios that public safety agencies may have already taken delivery as of the adoption date of [the *Second Report and Order*] and intend to immediately place into operation."⁸⁸⁸ We emphasized that such information was "integral to the success of the relocation process," and cautioned public safety entities that failing to file this information in a timely manner would result in forfeiture of

⁸⁸² 47 U.S.C § 316(a)(1).

⁸⁸³ *Second Report and Order*, 22 FCC Rcd at 15406 ¶ 322.

⁸⁸⁴ *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 341.

⁸⁸⁵ *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 339.

⁸⁸⁶ *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 339.

⁸⁸⁷ *Second Report and Order*, 22 FCC Rcd at 15406 ¶ 322.

⁸⁸⁸ *Second Report and Order*, 22 FCC Rcd at 15411 ¶ 336.

reimbursement.⁸⁸⁹ As “an additional measure to define and contain the costs that would be entitled to reimbursement,” we prohibited any new authorizations outside of the consolidated narrowband segment, stating that such a prohibition would “ensure that the relocation proceeds in an orderly manner and without complications stemming from additional operations being deployed in spectrum being reallocated.”⁸⁹⁰ Moreover, as “an additional means to ensure the integrity of the relocation process,” we imposed a \$10 million cap based on the best evidence available in the record at the time of the *Second Report and Order*.⁸⁹¹

429. Two parties filed petitions seeking reconsideration of some or all of the foregoing requirements in the *Second Report and Order*.⁸⁹² Among other things, these parties challenged the adequacy of the \$10 million cap on relocation expenses.⁸⁹³ A number of other parties also supported revising or eliminating the relocation cap.⁸⁹⁴

430. One petitioner also asked that the Commission make clear that parties who purchased and began to deploy systems before the August 30, 2007, cut-off date can continue to deploy those systems after August 30, and obtain full reimbursement for the relocation of all such systems.⁸⁹⁵ Another party asked the Commission to modify the *Second Report and Order* to permit continued authorization and deployment of statewide radio public safety systems that were in the process of construction and implementation as of the date of the *Second Report and Order* in channels 63 and 68 and the upper one megahertz of channels 64 and 69 through January 31, 2009; allow the owner of any such statewide radio public safety system to obtain reimbursement for all of its costs incurred in the installation of such system; and reconsider the \$10 million cap on rebanding costs.⁸⁹⁶

431. In the *Second Further Notice*, mindful of the desire to provide certainty to potential bidders as to the relocation obligation that would attach to the winner of the D Block spectrum, we sought comment on whether we should revise or eliminate the \$10 million cap on relocation expenses.⁸⁹⁷ We asked parties to provide specific data and cost estimates regarding relocation expenses, particularly taking into account the certifications filed in the docket pursuant to the *Second Report and Order*.⁸⁹⁸

432. Given the proposed re-auction of the D Block and associated timing, we also sought comment on the date by which such relocation must be completed. In particular, we asked whether we should continue to require that relocation be completed by the DTV transition date or set an alternative date, and if so, what such alternate date should be.⁸⁹⁹ We also asked whether we should allow relocation to occur on a rolling basis, such that the D Block licensee would be required to relocate narrowband operations only as the broadband network is built out in a particular market and, if so, how much notice

⁸⁸⁹ *Second Report and Order*, 22 FCC Rcd at 15411 ¶ 337.

⁸⁹⁰ *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 339.

⁸⁹¹ *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 341.

⁸⁹² See Virginia Petition for Reconsideration; Pierce Transit Petition for Reconsideration.

⁸⁹³ See Virginia Petition for Reconsideration; Pierce Transit Petition for Reconsideration.

⁸⁹⁴ See National Association of Telecommunications Officers and Advisors (NATOA) Comments at 9-11; State of Nebraska (Nebraska) Opposition at 2; Motorola Comments at 1-7.

⁸⁹⁵ See generally Pierce Transit Petition for Reconsideration.

⁸⁹⁶ See generally Virginia Petition for Reconsideration.

⁸⁹⁷ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 180.

⁸⁹⁸ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 180.

⁸⁹⁹ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 181.

the D Block licensee should be required to give to a narrowband licensee in advance of relocation.⁹⁰⁰ We further sought comment on any other viable mechanism for facilitating relocation, and the appropriate timing of such an approach.⁹⁰¹ We also asked whether we should retain the requirement that capped costs be deposited in a trust account to be administered by the Public Safety Broadband Licensee or, if we were to eliminate the cap, how the trust mechanism would function.⁹⁰² With respect to management of the reimbursement process, we asked whether we should continue to require that the Public Safety Broadband Licensee manage the reimbursement process for the narrowband licensees.⁹⁰³ In the event that maintaining such requirement is appropriate, we sought comment on whether we should require that public safety entities seeking reimbursement provide detailed cost information to the Public Safety Broadband Licensee, what such cost information should entail, and whether the Public Safety Broadband Licensee should be afforded discretion in assessing the soundness of the cost estimates.⁹⁰⁴ We also asked whether the Public Safety Broadband Licensee can leverage its status as a nationwide license holder to negotiate terms with equipment and technology vendors to relocate multiple narrowband operations, and thus achieve economies of scale.⁹⁰⁵ We further asked whether the Public Safety Broadband Licensee should have recourse to the Commission if it determines the cost estimates provided by individual public safety entities, including those passed through by technology or equipment vendors, are unreasonable.⁹⁰⁶

433. With respect to the August 30, 2007 cut-off date established in the *Second Report and Order* for narrowband deployments outside of the consolidated narrowband spectrum, we sought comment on whether extension of that deadline is inappropriate, and any other issue related to the reconsideration petitions filed by Virginia and Pierce Transit.⁹⁰⁷ We received a number of comments addressing the various issues associated with the narrowband relocation, as detailed below.

(i) February 17, 2009, Relocation Deadline

434. Comments. With respect to the deadline for relocating narrowband operations that were in place prior to August 30, 2007, several commenters agree that the Commission should extend the February 17, 2009, deadline for such action adopted in the *Second Report and Order*.⁹⁰⁸ The PSST, for example, stated that, “[s]ince the date for the D-Block re-auction has not yet been set, and since the successful auction will be followed by the NSA negotiation process, it does not seem realistic for the FCC to retain the February 17, 2009 completion date.”⁹⁰⁹ The PSST recommended instead that the narrowband relocation deadline be set “twelve months after funding from the D Block winner becomes available.”⁹¹⁰

435. Motorola agreed with the PSST that “a new deadline for relocation be established twelve

⁹⁰⁰ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 181.

⁹⁰¹ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 181.

⁹⁰² See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 181.

⁹⁰³ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 181.

⁹⁰⁴ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 181.

⁹⁰⁵ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 181.

⁹⁰⁶ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 181.

⁹⁰⁷ See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 182.

⁹⁰⁸ See, e.g., Ada County Sheriff's Office Comments at 1; APCO Comments at 39; NRPC Comments at 7; NPSTC Comments at 23; Motorola Comments at 21; Louisiana Comments at 2; TeleCommUnity Comments at 7; Eads Comments at 4; Lencioni Comments at 1.

⁹⁰⁹ PSST Comments at 51-52.

⁹¹⁰ PSST Comments at 52.

months after funding from the D Block winner becomes available.”⁹¹¹ Motorola further asserted that such revised deadline would “provide[] a more realistic time frame to effectuate relocation than the Commission’s previously adopted policies.”⁹¹² AASHTO argued that “the relocation of existing narrowband users should be grandfathered until there are funding mechanisms in place to reimburse the public safety agencies for the costs involved in returning or replacing equipment incapable of being returned.”⁹¹³ AASHTO also supported using “rolling dates for the relocation of existing users coupled with the availability of the network in their area.”⁹¹⁴

436. Discussion. As indicated above, in the *Second Report and Order* we required narrowband operations that had already been deployed under the prior 700 MHz band plan on channels 63 and 68, and the upper one megahertz of channels 64 and 69, to be relocated to and consolidated within the new narrowband channels (at 769-775 MHz/799-805 MHz) by the DTV transition deadline of February 17, 2009.⁹¹⁵ Implicit in our decision to adopt February 17, 2009, as the relocation deadline were the assumptions that Auction 73 would yield a national D Block licensee and that the NSA would be successfully negotiated and approved with sufficient time to effect the narrowband relocations prior to February 17, 2009 – the deadline by which the public safety broadband frequency bands must be vacated by current analog television operations. Those assumptions did not materialize and, therefore, an extension of the current February 17, 2009, deadline for completing the relocation of all narrowband operations to the consolidated narrowband channels appears warranted.

437. In determining a new narrowband relocation deadline, we continue to believe that a uniform deadline is required to allow both the D Block licensee and the public safety community to concentrate on deploying a shared network in the 700 MHz public safety broadband spectrum, unconstrained by the presence of narrowband operations. While we understand that the shared broadband network will be constructed over time, and may reach some areas of the country sooner than others, we believe that tying narrowband relocations to actual or planned buildout of the network on a rolling or otherwise piecemeal basis would be impractical and inefficient, and could cause delays in network deployment. We agree with the PSST that a single relocation deadline tied to the availability of funding is the most prudent course.⁹¹⁶ Accordingly, we propose to extend the narrowband relocation deadline to twelve months from the date upon which narrowband relocation funding is made available by the D Block licensee(s), which as explained below, will be no later than the date upon which the executed NSA(s) is submitted to the Commission for approval.

(i) \$10 Million Cap

438. Comments. As to the \$10 million cap on narrowband relocation cost reimbursement, several commenters argued that the \$10 million cap is inadequate.⁹¹⁷ The PSST, for example, recommended that the Commission “replace the current \$10 Million cap on the D Block licensee’s reimbursement obligation with a cap of \$75 Million.”⁹¹⁸ According to the PSST, “the current cap

⁹¹¹ Motorola Reply Comments at 6.

⁹¹² Motorola Reply Comments at 6.

⁹¹³ AASHTO Comments at 13.

⁹¹⁴ AASHTO Comments at 13.

⁹¹⁵ *Second Report and Order*, 22 FCC Rcd at 15410 ¶ 332.

⁹¹⁶ See PSST Comments at 52. See also Motorola Reply Comments at 6; NPSTC Comments at 24.

⁹¹⁷ See, e.g., Louisiana Comments at 2; APCO Comments at 39; Pierce Transit Comments at 5; NATOA *et al.* Comments at 16; Virginia Comments at 5; NPSTC Comments at 24; Eads Comments at 3; Lencioni Comments at 1; RPC 33 Comments at 20; RPC 20 Reply Comments at 11.

⁹¹⁸ PSST Comments at 53.

substantially underestimates the funds needed to address this situation based on [] extensive work with the affected public safety agencies, equipment vendors and with organizations such as the NPSTC that have committed time and resources toward identifying a cost-effective solution.”⁹¹⁹ The PSST also observed that “it has been determined that the original cost estimate failed to include one critical equipment category: the vehicular repeater,” the retuning of which “will significantly increase the total relocation cost.”⁹²⁰ The PSST further asserted that its proposed \$75 million cap “is but a fraction of the anticipated cost of purchasing the spectrum at auction and deploying and operating the SWBN [and] not an amount that should deter an otherwise interested D Block bidder.”⁹²¹

439. The Ada County Sheriff’s Office argued that, “the \$10M cap...is far too low for the actual cost of relocating users to the new band.”⁹²² According to Ada County Sheriff’s Office, relocation funding should instead be “based upon actual relocating costs for each agency affected.”⁹²³ The Commonwealth of Virginia argued that “no ‘cap’ on public safety relocation is appropriate given the very substantial proceeds which will be realized from this D Block auction ... the commercial users should pay the full relocation costs of the public safety entities, who generally lack budget flexibility or surplus funding to allow them to absorb these costs.”⁹²⁴

440. Pierce Transit argued that “the Commission to this day has no information on which it can rely with any reasonable degree of confidence, as to what the incumbent public safety licensees’ aggregate relocation costs will be,” and “imposing the \$10 million cap, without having any concrete, verifiable information on the true cost of reconfiguring incumbent operations, raises the specter that the dozens of affected public organizations may be subject to either pro rata or first come, first serve reimbursements that cannot hope to fully compensate affected entities for their full relocation costs.”⁹²⁵

441. Motorola observed that “[t]he costs of relocation vary widely,” and thus “[a] complete and accurate estimate of relocation costs can only be created by soliciting information directly from individual public safety agencies as relocation costs will vary by equipment and agency.”⁹²⁶ Motorola further argued that in order to collect this information, “the FCC should require public safety agencies seeking reimbursement to provide detailed cost information to the PSBL or the FCC directly within 90 days from the date of a Commission Public Notice that would start this process.”⁹²⁷

442. The National Association of Telecommunications Officers and Advisors *et al.* asserted that “[t]he cost of relocation must be borne by the D Block licensee, and the timing for accomplishing this task must be more attuned to the timing under which the D Block licensee will be able to make use of the spectrum.”⁹²⁸

⁹¹⁹ PSST Comments at 53. *See also*, Motorola Reply Comments at 5.

⁹²⁰ PSST Comments at 53.

⁹²¹ PSST Comments at 53.

⁹²² Ada County Sheriff’s Office Comments at 1.

⁹²³ Ada County Sheriff’s Office Comments at 1.

⁹²⁴ Commonwealth of Virginia Comments at 5-6.

⁹²⁵ Pierce Transit Comments at 5-6.

⁹²⁶ Motorola Comments at 19. Motorola asserted in its Reply Comments that its initial estimate on narrowband relocation costs “did not include any management costs or other costs that licensees and the parties actually performing the reconfiguration may determine are appropriate and reasonable.” Motorola Reply Comments at 5.

⁹²⁷ Motorola Comments at 19.

⁹²⁸ NATOA *et al.* Reply Comments at 9.

443. Discussion. We agree with the majority of commenters who suggested that the \$10 million cap on narrowband relocation costs to be reimbursed by the D Block licensee may be inadequate to fully reimburse public safety entities for the likely costs of relocation. We adopted the \$10 million cap in the *Second Report and Order* based upon the record received in response to the preceding *700 MHz Further Notice*, which sought information regarding both the number of narrowband radios deployed and in use, and the costs involved in consolidating the narrowband channels.⁹²⁹ We received no information regarding the costs of funding relocation except for a response from Motorola, in which it estimated 750,000-800,000 radios currently deployed and a relocation cost of approximately \$10 million.⁹³⁰

444. Since we adopted the *Second Report and Order*, we have received and reviewed additional information on the number and types of equipment deployed in the 700 MHz band, in the form of the certifications from public safety licensees regarding the number of handsets, base stations and repeaters that they had in operation as of August 30, 2007.⁹³¹ The Commonwealth of Virginia estimates its costs of relocation at \$48 to \$100 per handset, \$1,000 per repeater unit, and \$3,000 per base station.⁹³² Similarly, Motorola estimates the cost of relocation for a mobile/portable unit would be \$100, and the cost for a base transmitter site would be \$3,000.⁹³³ These costs also are consistent with our experience with rebanding efforts in the 800 MHz band. Based on our review of the certifications filed, and using the maximum per-unit estimates suggested by the Commonwealth of Virginia, we calculate the cost of relocating equipment that public safety licensees have certified as being in operation by August 30, 2007, at approximately \$23.6 million.⁹³⁴ This figure also assumes that every handset and transmitter in operation as of the cut-off date would require relocation reimbursement. Moreover, while not all of the entities that have sought waivers of the August 30, 2007, cut-off for new narrowband deployments outside the consolidated channels have sought reimbursement for the costs of relocating such equipment, we note that even if we assumed full reimbursement for each waiver requested, taking such action would add approximately \$3 million to our revised \$23.6 million relocation cost estimate.⁹³⁵ Thus, including

⁹²⁹ Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06-150, 01-309, 03-264, 06-169, 96-86, CC Docket No. 94-102, PS Docket No. 06-229, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064, 8159 ¶ 264 (2007) (*700 MHz Further Notice*).

⁹³⁰ See *Second Report and Order*, 22 FCC Rcd at 15410 ¶ 333.

⁹³¹ See *Second Report and Order*, 22 FCC Rcd at 15411 ¶¶ 336, 337; Public Safety and Homeland Security Bureau Announces an October 23, 2007 Deadline for Filing 700 MHz Relocation Certification Information, PS Docket No. 06-229, WT Docket No. 96-86, *Public Notice* (PSHSB 2007).

⁹³² Virginia Petition for Reconsideration at 10. Virginia suggests that the Commission reopen the record for more information on costs. *Id.* at 11. As we have explained, parties have already had ample notice and opportunity to submit cost information into the record in this proceeding, including a call again for such information in the *Second Further Notice*. See *Second Further Notice*, 23 FCC Rcd at 8111 ¶ 180. Moreover, in light of the information received through the certification process, we find there is no need to reopen this issue.

⁹³³ Motorola June 2007 *Ex Parte* at 2-3.

⁹³⁴ Our review of these certifications has identified approximately: 100,658 mobiles, 6,511 vehicular repeaters, 3,180 control stations, and 1,170 base stations.

⁹³⁵ This \$3 million figure represents the aggregate costs that would apply to relocate the subject waiver narrowband equipment that was contracted, paid for and received to be deployed in the non-consolidated narrowband channels (i.e., in the 764-767/775-776 MHz and 794-797/805-806 MHz frequency bands) prior to the August 10, 2007, release date of the *Second Report and Order* only. In our *Virginia Waiver Order*, we determined that “[i]t is in the public interest, therefore, to provide interim waiver relief for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received (continued....)

both the equipment certified as eligible for reimbursement under the *Second Report and Order* and equipment permitted to be deployed after the August 30, 2007, cut-off date pursuant to a waiver, total reimbursement liability for the D Block licensee(s) would stand at approximately \$26.6 million.⁹³⁶

445. In light of the foregoing, we tentatively propose to cap the narrowband relocation reimbursement costs for which the D Block licensee(s) would be obligated to pay at \$27 million.⁹³⁷ We emphasize that, based upon the entire record before us, this figure should be more than sufficient to ensure that all public safety entities are fully reimbursed their costs for relocating their narrowband systems to the consolidated narrowband channels. This figure includes generous assumptions, using maximum per unit costs and assuming every handset, base station and vehicle repeater, including those that are the subject of waiver requests, would require relocation reimbursement. To account for the possibility that the D Block auction could result in the issuance of regional licenses to more than one regional licensee, we propose setting individual caps for each RPC region based upon the certification and waiver request data before us, with the aggregate cap remaining at \$27 million. The proposed breakdown for the cap for each region is set forth in Appendix D to this Third Further Notice.⁹³⁸ We propose that each regional D Block licensee would be responsible for paying the cost of narrowband relocation within its region(s). In the event that one or more D Block regional licenses remains unsold, we propose that the cost of relocating 700 MHz narrowband facilities in such region(s) would be prorated among the remaining D Block licensees.

(ii) **August 30, 2007 Cut-off Date**

446. Comments. With respect to the August 30, 2007, cut-off date for narrowband deployments outside of the consolidated narrowband spectrum, several commenters proposed that the cut-off date should be extended.⁹³⁹ The Commonwealth of Virginia, for example, asserted that, "any absolute August 30, 2007 cutoff date was inappropriate for systems which had already entered into contractual commitments for system deployment as of the date of the Second Report and Order ... any August 30, 2007 date must apply both to equipment installed as of that date, and contracted for as of that date."⁹⁴⁰ Tyco suggested that "the Commission leniently grant 'case-by-case' waivers for narrowband deployments to ensure the proper function of mission-critical communication systems."⁹⁴¹ According to Tyco, "[s]uch time extensions, coupled with the increased funding, will help to avoid undue burdens on existing public safety users."⁹⁴²

447. The PSST, however, argued that the Commission should "maintain the August 30, 2007

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and/or deployed." Request for Waiver of Commonwealth of Virginia, PS Docket No. 06-229, WT Docket No. 96-86, Order, at ¶ 7.

⁹³⁶ To be clear, this amount represents the aggregate hard costs directly associated with modifications necessary to implement the relocation of base stations, mobiles and portables, and not for any unrelated improvements.

⁹³⁷ We observe that there is no substantiation in the record for the PSST's proposed reimbursement cap of \$75 million.

⁹³⁸ In instances where a state narrowband system operates in more than one RPC region, we propose that the state provide the PSBL with data concerning the location of its narrowband equipment so that the PSBL can apportion the total reimbursement amount to be paid by the respective D Block licensee for each region.

⁹³⁹ See, e.g., Louisiana Comments at 2; Pierce Transit Comments at 6; Motorola Comments at 21; TeleCommUnity Comments at 6; Eads Comments at 4.

⁹⁴⁰ Virginia Comments at 10. See also Motorola Reply Comments at 7.

⁹⁴¹ TE M/A-COM Comments at 9.

⁹⁴² TE M/A-COM Comments at 9.

deadline for equipment whose relocation costs will be reimbursable.”⁹⁴³ The PSST asserted that it “is well aware of the difficulties this presents for certain licensees, but [] sees no reasonable alternative that would not seriously undermine the deployment of the SWBN in a timely fashion.”⁹⁴⁴ The Region 33 (Ohio) 700 MHz Regional Planning Committee agreed that the date should not be changed, stating, “[t]hat was about 10 months ago and agencies have had to make adjustments in their rollout of the affected frequencies. To ask them to change the plan again would be doing them a disservice.”⁹⁴⁵

448. The Virginia Information Technologies Agency (“VITA”) favored an approach “that allows for both a post August 30, 2007 deployment strategy and a process that allows for those units deployed after the August 30, 2007 deployment date to have access to additional relocation funding opportunities to move them to the consolidated band plan in a uniform manner.”⁹⁴⁶ According to VITA, such approach would result in “a congruent process that allows for uniform deployment, band relocation and relocation funding.”⁹⁴⁷

449. Discussion. As indicated, in the *Second Report and Order*, we prohibited new narrowband operations outside of the consolidated narrowband blocks as of 30 days following the adoption date of the *Second Report and Order* – i.e., as of August 30, 2007.⁹⁴⁸ We further required every public safety licensee impacted by such consolidation to file a certification with the Commission identifying narrowband deployment information to account for pre-programmed narrowband radios that public safety agencies may have already taken delivery as of the adoption date of the *Second Report and Order* and which they intended to immediately place into operation.⁹⁴⁹ We emphasized that such information was “integral to the success of the relocation process,” and cautioned public safety entities that failing to file this information in a timely manner would result in forfeiture of reimbursement.⁹⁵⁰ The primary purposes behind the adoption of this cut-off date and associated certification requirements were to clearly define and contain the costs that would be entitled to reimbursement, and to ensure that the relocation of narrowband operations would proceed in an orderly manner and without complications stemming from additional operations being deployed in spectrum being reallocated for broadband use.⁹⁵¹ We made clear that public safety entities could place into operation narrowband equipment in the consolidated narrowband blocks 769-775 and 799-805 MHz.⁹⁵²

450. As advocated by the PSST and others,⁹⁵³ we tentatively conclude that the existing August 30, 2007, cut-off date should not be changed. The underlying necessities of adopting this date – containing relocation costs, encouraging narrowband deployment in the consolidated narrowband channels and, more generally, carrying out a swift and thorough narrowband relocation process in order to quickly and efficiently establish the nationwide, interoperable public safety broadband network – have not

⁹⁴³ PSST Comments at 52.

⁹⁴⁴ PSST Comments at 52.

⁹⁴⁵ RPC 33 Comments at 20.

⁹⁴⁶ VITA Comments at 5.

⁹⁴⁷ VITA Comments at 5.

⁹⁴⁸ *Second Report and Order*, 22 FCC Rcd at 15406, 15412 ¶ 339.

⁹⁴⁹ *Second Report and Order*, 22 FCC Rcd at 15406, 15411 ¶ 336.

⁹⁵⁰ *Second Report and Order*, 22 FCC Rcd at 15406, 15411 ¶ 337.

⁹⁵¹ *Second Report and Order*, 22 FCC Rcd at 15406, 15412 ¶ 339.

⁹⁵² *Second Report and Order*, 22 FCC Rcd at 15406, 15412 ¶ 339.

⁹⁵³ See PSST Comments at 52; RPC 33 Comments at 20.

changed since its adoption in the *Second Report and Order*. We appreciate the Commonwealth of Virginia's arguments that the August 30, 2007, cut-off date may have been inappropriate in cases where entities already entered into contractual commitments for systems prior to the adoption of the *Second Report and Order*.⁹⁵⁴ However, based upon the petitions seeking waiver of this cut-off date that we have received thus far, it appears that relatively few entities fall into this category and we believe such individualized determinations are best made on a case-by-case basis through the waiver process.⁹⁵⁵

451. We recognize, however, that while the waiver process has thus far provided continuing operating authority beyond the August 30, 2007, cut-off deadline for equipment contracted for prior to the adoption of the *Second Report and Order*, a decision as to whether costs for relocating equipment deployed after this date could be reimbursed was deferred until the outcome of this proceeding.⁹⁵⁶ Accordingly, we tentatively conclude that for those parties granted waiver relief to date, and seeking reimbursement for relocating equipment deployed pursuant to such waiver, the costs for relocating such equipment will be eligible for reimbursement by the D Block licensee. In this regard, we would delegate authority to the PSHSB to grant such relief. We also tentatively conclude that the PSHSB, acting under delegated authority, may grant similar relief with respect to pending waiver requests, so long as the request meets the criteria we have established for granting waiver authority to deploy narrowband systems after the August 30, 2007 cut-off date – *i.e.*, where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007, for which equipment has been received and/or deployed. As observed above, we calculate that the total cost of relocating such equipment is approximately \$3 million, and thus there would be sufficient funding available for waiver applicants meeting these criteria. We also tentatively conclude that, as of the release date of this *Third Further Notice*, we will not accept any new waiver requests to deploy narrowband equipment outside of the consolidated narrowband blocks, or amendments to pending waiver requests that would increase the number of narrowband radios that would require relocation reimbursement. We propose taking this action in the interests of ensuring certainty with respect to the total relocation costs and in recognition of the fact that any parties requesting relief would already have submitted waiver requests.

(iii) Funding Mechanism

452. Comments. Most commenters addressing the issue of how the narrowband relocation funding should be processed agreed that the source of such funding should be the D Block licensee and the administration of such funding should be handled by the Public Safety Broadband Licensee. Motorola, for example, asserted that, “if the Commission proceeds with a Public/Private Partnership, once the D-Block is successfully auctioned and appropriate Network Sharing Agreements are executed, the D-Block licensee(s) should be required to deposit the reimbursement funds into a trust fund administered by the PSBL.”⁹⁵⁷

453. The State of Louisiana suggested “a process in which Louisiana and other public safety agencies impacted by the 700 MHz narrowband reconfiguration can develop and provide actual cost

⁹⁵⁴ See Virginia Comments at 10.

⁹⁵⁵ In establishing the prohibition on new narrowband operations after August 30, 2007, it was not our intention to create hardship or delay systems needed to protect the safety of life and property, and we have provided interim waiver relief to various public safety entities for continued deployment outside of the consolidated narrowband channels where there has been a showing of potential public harm and there is evidence of a comprehensive 700 MHz deployment plan that predates August 30, 2007 for which equipment has been received and/or deployed. See *Virginia Waiver Order* at ¶ 7.

⁹⁵⁶ See, e.g., *Virginia Waiver Order* at ¶ 8.

⁹⁵⁷ Motorola Comments at 20.

estimates for the equipment that we have already deployed, and that now needs to be relocated per the new narrowband plan.”⁹⁵⁸ Additionally, the State of Louisiana favored making the PSST “the central clearing point for gathering these cost estimates from all affected public safety agencies.”⁹⁵⁹

454. APCO asserted that “the Commission should retain the requirement that the D Block licensee pay the cost of relocating narrowband licensees,” because “regardless of any public/private partnership, the D Block licensee will benefit from the reconfiguration of the 700 MHz band as it eliminates a potential interference problem.”⁹⁶⁰ APCO further stated, however, that the “Commission should consider relieving the PSBL of the responsibility of managing the relocation funding,” because “it adds a function unrelated to the PSBL’s core activity, and deepens its reliance on outside contractors for which it lacks the funds to support.”⁹⁶¹ APCO contended that “the Commission should [instead] appoint a third party (as it did with the 800 MHz Transition Administrator) or require the D Block licensee to retain the services of an entity that will manage the process.”⁹⁶² NPSTC opposed APCO’s position on removing the PSBL from responsibility for overseeing narrowband relocations, asserting that such action would be a “set back to an important facet of the Commission’s decision to realign the 700 MHz spectrum and create a public private partnership to deploy and manage a nationwide broadband network.”⁹⁶³ NPSTC further argued that “[t]he PSBL’s work with regard to the relocation of 700 MHz narrowband incumbents demonstrates tangibly not only its dedication to the Commission’s decisions but its ability to work with the often competing interests.”⁹⁶⁴

455. Discussion. In the *Second Report and Order*, we required that the Upper 700 MHz Band D Block licensee pay the costs associated with relocating public safety narrowband operations, in recognition of the significant benefits that will accrue to the D Block licensee.⁹⁶⁵ These fundamental benefits would not change under the 700 MHz Public/Private Partnership construct we are tentatively proposing here – whether such partnership is implemented on a regional or nationwide basis. Further, bidders for the D Block licenses will be able to factor the prospective cost of narrowband relocation into their auction bids. Accordingly, we tentatively conclude that we will retain the requirement that the Upper 700 MHz Band D Block nationwide licensee, or regional licensees, as determined by the auction, must pay the costs associated with relocating public safety narrowband operations to the consolidated narrowband channels.

456. In terms of funding mechanics, we also continue to believe that the Public Safety Broadband Licensee is best suited to administer the relocation process consistent with the requirements and deadlines set forth herein.⁹⁶⁶ The Public Safety Broadband Licensee is composed of board members with significant experience and expertise involved with assuming this role and in fact already has demonstrated efforts working on the narrowband relocation issues.⁹⁶⁷

⁹⁵⁸ Louisiana Comments at 2.

⁹⁵⁹ Louisiana Comments at 2.

⁹⁶⁰ APCO Comments at 39.

⁹⁶¹ APCO Comments at 39.

⁹⁶² APCO Comments at 39.

⁹⁶³ NPSTC Reply Comments at 15.

⁹⁶⁴ NPSTC Reply Comments at 15.

⁹⁶⁵ *Second Report and Order*, 22 FCC Rcd at 15336 ¶ 120, 15411 ¶ 336.

⁹⁶⁶ *Second Report and Order*, 22 FCC Rcd at 15413-414, 15426-427 ¶¶ 343-44, 383.

⁹⁶⁷ See, e.g., PSST Comments at 53.

457. We reiterate that under our proposal the D Block licensee(s') reimbursement obligation will be limited to the minimum "hard" costs directly associated with modifications necessary to implement the relocation of base stations, mobiles and portables, and will not extend to any "soft" costs, such as person-hours expended in effecting such modifications, or costs associated with unrelated improvements.⁹⁶⁸ We also will not permit such funding to cover costs associated with any modifications that may be necessary to the Computer Assisted Pre-Coordination Resource and Database ("CAPRAD") system or other programs used by Regional Planning Committees to assign channels, or to any costs associated with amendments to regional plans or narrowband licenses.⁹⁶⁹

458. We understand that the Public Safety Broadband Licensee will incur administrative costs in administering the relocation process. In this respect, the PSBL may recover such costs along with its other administrative and operating costs through the D Block licensee(s) funding mechanisms described elsewhere in this Third Further Notice.

459. We also propose to retain the narrowband relocation implementation process developed in the *Second Report and Order*, with conforming provisions to address the possibility of regional licensing. Under this approach, we will require the winning bidder(s) for the D Block license(s) and the Public Safety Broadband Licensee jointly to submit for Commission approval a narrowband relocation plan(s) within 30 days following the NSA Negotiation Commencement Date.⁹⁷⁰ If the D Block is licensed on a regional basis, the Public Safety Broadband Licensee and regional D Block license winners would jointly submit for Commission approval separate narrowband relocation plans covering each region within 30 days following the NSA Negotiation Commencement Date. If the D Block is licensed on a regional basis, but not all regional licenses are sold at auction, the Public Safety Broadband Licensee will be solely responsible for submitting a separate narrowband relocation plan covering each unsold region for Commission approval within 30 days following the NSA Negotiation Commencement Date. The nationwide narrowband relocation plan, or regional narrowband relocation plans, as applicable, would address the process and schedule for accomplishing narrowband relocation, including identification of the 700 MHz equipment vendor(s), the make and model numbers of the equipment to be relocated and the relocation cost estimates provided by such vendor(s) (on that vendor's letterhead), identification of equipment vendors or other consultants that would perform the necessary technical changes to handsets, vehicle repeaters, and base stations, and a detailed schedule for completion of the relocation process for every radio and base station identified in the certifications we have previously required and for narrowband equipment operating under previously granted waivers.⁹⁷¹ The plan(s) also would specify the total costs to be incurred for the complete relocation process.⁹⁷²

460. If the D Block auction results in a single nationwide D Block license winner, that party would be required, no later than the date upon which the executed NSA is submitted to the Commission, to deposit the total cost amount identified in the narrowband relocation plan, as approved by the Chief of the Public Safety and Homeland Security Bureau, into a trust account established by the Public Safety Broadband Licensee, to finance the narrowband relocation.⁹⁷³ If the D Block auction results in one or

⁹⁶⁸ *Second Report and Order*, 22 FCC Rcd at 15411 ¶ 338.

⁹⁶⁹ *Second Report and Order*, 22 FCC Rcd at 15411 ¶ 338.

⁹⁷⁰ *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 340.

⁹⁷¹ *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 340.

⁹⁷² *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 340.

⁹⁷³ *Second Report and Order*, 22 FCC Rcd at 15412 ¶ 343. As the Commission further indicated in the *Second Report and Order*, and which we tentatively propose to continue to follow, the trust account established by the Public Safety Broadband Licensee would be for the benefit of public safety licensees being relocated, with the Public Safety Broadband Licensee acting as trustee of such account. The Public Safety Broadband Licensee would (continued....)

more regional D Block license winners, that party(ies) will similarly be required, no later than the date upon which the executed NSA is submitted to the Commission, to deposit the total cost amount identified in the narrowband relocation plan(s) that it, together with the Public Safety Broadband Licensee, submitted to the Commission into a trust account established by the Public Safety Broadband Licensee, to finance the narrowband relocation. In the event that the D Block is licensed on a regional basis, but not all regional licenses are sold at auction, the narrowband relocation costs associated with any such unsold region (identified in the individual narrowband relocation plans submitted for each such region by the Public Safety Broadband Licensee) will be borne on a *pro rata* basis by all the regional D Block license winners. In this latter case, the Commission will delegate authority to the Public Safety and Homeland Security Bureau to determine and identify in a public notice the amount each D Block regional licensee is required to deposit into the narrowband relocation trust account established by the Public Safety Broadband Licensee.

IV. PROCEDURAL MATTERS

A. Initial Regulatory Flexibility Analysis

461. Section 213 of the Consolidated Appropriations Act 2000 provides that the Regulatory Flexibility Act (RFA), 5 U.S.C. § 603, shall not apply to the rules and competitive bidding procedures for frequencies in the 746-806 MHz Band,⁹⁷⁴ which includes the frequencies of both the D Block license and the 700 MHz public safety broadband and narrowband spectrum. Accordingly, we have not prepared an Initial Regulatory Flexibility Analysis in connection with the Third Further Notice.

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not be permitted to draw on this account until the D Block license(s) is granted to the D Block auction winner(s), and then would be limited to using these funds solely for relocating eligible narrowband operations consistent with the requirements and limitations set forth herein. The Public Safety Broadband Licensee would then be responsible for implementing the relocation plan, including administering payment of relocation funds to equipment vendors, and ensuring that all affected licensees are relocated in accordance with the relocation schedule contained in the relocation plan as approved by the Chief of the Public Safety and Homeland Security Bureau. *See id.*

⁹⁷⁴ In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. No. 106-113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)-(B); *see* 145 Cong. Rec. H12493-94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)-(B).