Before the
Federal Communications Commission
Washington, D.C. 20554

In the Matter of	)	
	)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands	)	WT Docket No. 06-150
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band	)	PS Docket No. 06-229

Comments of
United States Cellular Corporation
on Third Further Notice of Proposed Rulemaking

UNITED STATES
CELLULAR CORPORATION

Grant Spellmeyer
Director – Regulatory Affairs
United States Cellular Corporation
9410 Bryn Mawr
Chicago, IL 60631
Phone: (773) 399-4280
Fax: (773) 864-3133
Email: grant.spellmeyer@uscellular.com

George Y. Wheeler
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, #100
Washington, DC 20006
Phone: (202) 955-3000
Fax: (202) 955-5564
Email: george.wheeler@hklaw.com

Warren G. Lavey
Craig T. Alcorn
Skadden, Arps, Slate, Meagher & Flom, LLP
333 West Wacker Drive
Chicago, IL 60606
Phone: (312) 407-0830
Fax: (312) 407-8515
Email: warren.lavey@skadden.com

Its Attorneys

November 3, 2008

SUMMARY

The tentative conclusions in the Third Further Notice of Proposed Rulemaking ("Notice") represent excellent progress over the notice the FCC adopted about four months earlier. Generally, the tentative conclusions are close to providing the framework for successfully auctioning the D Block spectrum in licenses covering the entire nation and rapidly developing a high-quality, nationwide, interoperable shared wireless broadband network. Under reasonable rules for the auction and network, United States Cellular Corporation ("USCC") would be ready, willing and able to provide parts of the network under the public/private partnership approach. Refining the proposed rules and proceeding with the re-auction are huge and urgent opportunities for the FCC, public safety entities, and commercial customers.

USCC applauds the progress, hard work and good judgment reflected in most of the Notice. Among the key tentative conclusions that should be adopted are:

- re-auction the D Block spectrum through commercial bidding;
- apply the public/private partnership approach to the entire 20 MHz of D Block and public safety spectrum, with operators having the option to manage all of it as a combined, blended resource;
- offer 58 Public Safety Region area licenses;
- use alternative simultaneous offerings to select a common air interface;
- apply coverage requirements for area as well as nationwide licensees according to three tiers by area population density, phased-in over a fifteen year license term;
- require interconnection with existing public safety networks through gateways or bridges, with reasonable compensation to the operators;
- specify all key baseline requirements before the auction in rules or a term sheet, with post-auction finalization of the Network Sharing Agreement ("NSA") subject to FCC resolution of disputes;
- establish technical standards that include the proposed voice and data throughput requirements, without a required overall network capacity; security and encryption consistent with commercial best practices, utilizing an open standard protocol for authentication; not mandating that all user equipment devices include an integrated satellite solution; conditions for public safety preemption and priority access; 99.6 percent network availability; standards for battery backup, generators and critical sites; mandatory roaming for public safety users; and flexibility for public safety

agencies to procure user equipment devices from any vendor, subject to reasonable network requirements;
- set the minimum opening bids at $750 million in aggregate, with no higher reserve price and triggers for decreasing the minimum opening bids on unsold regional licenses to $0.005 per MHz-pop;
- apply a threshold for granting licenses of bids covering fifty percent of the population; and
- allow early builds of public safety networks, subject to the same technical requirements as the shared network and the ability of a D Block licensee to acquire any such network at the cost that it would have incurred to construct a substitutable portion of the shared network.

Several refinements of some of the proposed rules are necessary, and there are a few additional issues identified in the Notice that should be addressed by rules. USCC explains in these comments the reasons for its proposed rules on the following points:

- rule out package bidding and anonymous bidding because they would unnecessarily deter or disfavor smaller bidders and complicate the auction of area licenses and the alternative nationwide license;
- lower the triggers for decreasing the minimum opening bids and provide new bidding eligibility at that stage of the auction;
- when there is a nationwide bid and bids on area licenses cover at least ninety percent of the population, then allow bidders on the area licenses flexibility to develop commitments to serve the remaining license areas;
- require a nationwide licensee either to select LTE or WiMAX, or to bear the burden of proving that its technology choice will not harm public safety users;
- establish rate principles rather than specific amounts for public safety users' "basic rate" and the gateway-based access charge, with these rate levels set and updated through the NSA;
- set a time frame of three to four months for negotiating the NSA;
- adopt rules for a national platform for public safety applications;
- specify spectrum subject to priority access in terms of 70% or 60% of total engineered capacity in an affected location, and allow recovery of costs for supporting priority access;
- clarify that quality-of-service standards and public safety functionalities apply only to the portion of the shared network controlled by the D Block licensees;
- clarify that in an "integrated satellite solution" the handset or other user equipment device should prioritize acquisition of the 700 MHz terrestrial shared network over satellite service acquisition, and that the FCC does not require a D Block licensee to pay for satellite-capable user equipment devices or become a retailer of satellite services;
- require D Block licensees to negotiate reasonable roaming arrangements (terrestrial-terrestrial as well as terrestrial-satellite);
- implement the framework for a national committee of area licensees;

- clarify that a D Block licensee could acquire compatible 700 MHz public safety networks at any time with compensation equal to the D Block licensee's avoided incremental cost of constructing the shared network;
- limit any requirement of bankruptcy remote entities to the license holder, not the holder of network assets or operations, especially for area licensees covering less than forty percent of the nation's population; and
- establish the spectrum lease fee to provide adequate funding for public safety to negotiate the NSA and satisfy other responsibilities.

The FCC should continue to push forward to adopt reasonable rules for re-auctioning the D Block and operating the shared wireless broadband network. The successful development of the shared network is in sight, to the benefit of public safety as well as commercial users.

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Introduction

Under reasonable rules for the auction and shared wireless broadband network, United States Cellular Corporation ("USCC") would be ready, willing and able to provide parts of the next-generation nationwide, interoperable broadband wireless network in the 700 MHz D Block spectrum through a partnership of public safety agencies and commercial operators. USCC supports the FCC's efforts to adopt rules promptly for a successful re-auction of the D Block spectrum and rapid deployment of broadband public safety and commercial services.

USCC applauds the progress, hard work and good judgment reflected in most of the Third Further Notice of Proposed Rulemaking ("Notice"). Most of the tentative conclusions should be adopted and will form a solid basis for developing the shared wireless broadband network. These tentative conclusions reflect a mix of good approaches which were re-evaluated and retained (such as a the public/private partnership and licensing through an auction) as well as new approaches reflecting better alternatives (such as offering 58 area licenses and more reasonable coverage, availability and hardening standards).

Several of the tentative proposals should be modified in order to promote a stronger auction and improve services to public safety users. Among the points described below, the FCC should avoid prescribing a single "base rate" for public safety users that would be applicable for four years or a gateway-access charge; limit the use of bankruptcy remote entities; and refine the auction rules so that package bidding does not deter participation in the auction and to allow more flexibility for area bidders to obtain nationwide coverage if there is a bid for a national license.

These comments are organized in two parts. First, USCC explains its support for the FCC's tentative conclusions on six topics. In each case, USCC suggests refinements consistent with the proposal. Second, with respect to four topics, USCC responds to the FCC's requests for comment or describes concerns regarding the FCC's analysis and provides proposals on these issues.

I. USCC Supports Most Key Tentative Conclusions for the Re-Auction and Shared Wireless Broadband Network, With Refinements

In each of the following six sections, USCC briefly explains why it supports key tentative conclusions on a given topic in the Notice and suggests refinements to strengthen the proposal.

A. <u>Auctioning 58 Area Licenses Under the Public/Private Partnership Increases the Probability of a Successful Auction and Rapid Deployment of Broadband Services for Public Safety Users</u>. The FCC correctly favors continuing with the public/private partnership for the D Block and re-auctioning this spectrum through commercial bidding.[1] As favored by the FCC, the shared network should use the entire 20 MHz of D Block spectrum and public safety

[1] Notice at paras. 51, 58, 234.

spectrum and operators should have the option of managing the 20 MHz of spectrum as a combined, blended resource, with 50 percent of the capacity available to be assigned to public safety users with associated priority rights.[2] This approach will promote rapid, efficient deployment of a network supporting nationwide, interoperable broadband services. Efficiencies will be gained from constructing and operating a shared network,[3] and there will be other clear benefits for public safety users. Moreover, the auction will further the policies of competitive bidding for spectrum, competition for commercial broadband services, and opportunities for smaller operators.

The Notice reflects major progress on two fundamental auction design issues. The proposal to offer 58 Public Safety Region ("PSR") area licenses[4] will attract more bidders than a single license and increase the likelihood of rapid nationwide coverage. Regional operators will be able to bid on licenses which allow them to leverage their existing infrastructure and operations without the daunting requirement to provide service to the entire nation or to a mega-region. It is also likely that more companies will have access to sufficient financing to acquire and construct smaller license areas. In addition, regionally-based licensees will likely be more responsive to the needs of local public safety users, be able to more rapidly deploy a network of networks, develop best practices in construction and operations, provide innovative offerings, and lower risks from any single operator failures. USCC supports the

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[2] Id. at para. 79.

[3] See J. Peha, "A 'Successful' Policy for Public Safety Communications" at 3, filed in WT Dkt. No. 06-150 (May 26, 2008) ("there are tremendous economies of scope between serving the public and serving public safety").

[4] Notice at para. 63.

tentative conclusion to use the 700 MHz Regional Planning Committee regions and three additional areas as the PSR areas.

USCC believes that multiple area licensees would generate advantages over a single nationwide licensee, and that in an auction of 58 area licenses, a bidder could be successful in acquiring licenses covering a larger region or even the entire nation. Nevertheless, USCC does not oppose the proposed alternative offering of one package, a nationwide license, if a bidder interested in this opportunity emerges.[5] The related proposal of prohibiting license partitioning and disaggregation[6] would help avoid biasing the auction in favor of a nationwide bidder and against smaller bidders focused on one or a few licenses.

Next, USCC supports the proposed mechanism for selection of a common air interface through alternative simultaneous offerings[7] that would address the bidders' need for certainty on this issue. Individual potential bidders on area licenses may favor LTE or WiMAX, and would be unwilling to bid without knowing the common air interface they would be required to deploy. The proposed mechanism would allow the market to select between these two technologies.

Some refinements of the tentative conclusions on these points would be helpful. USCC is concerned about auction rules that would undermine the offering of 58 area licenses by favoring bidders on the nationwide license or other packages. Of particular concern are

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[5] Because of the inherent advantages of having multiple area licensees, the FCC should adopt auction rules which give smaller bidders a fair opportunity to win licenses, and should closely scrutinize the public interest qualifications of a provisionally winning bidder on the nationwide license.

[6] Notice at para. 73.

[7] Id. at para. 108.

proposed rules that would (a) encourage the Wireless Telecommunications Bureau to adopt further package bidding, thus spawning a confusing labyrinth of packages of more than one of the 58 areas, or (b) provide an inadequate mechanism for how area bidders could obtain nationwide coverage and submit higher bids to top a bid for a national license. USCC's refinements to these rules are described in Section I.D below.

Also, the proposal to allow a nationwide bidder "complete authority and discretion to choose its broadband technology"[8] could harm public safety users. Having the option of selecting any other, perhaps proprietary, technology may encourage some technology developers and other firms to bid on the nationwide license with the realization that public safety users would represent an attractive captive market for their technology solutions. There will be strong competition and economies of scale for equipment under LTE's open standards, with multiple suppliers and operators; this will also be true for WiMAX. If the nationwide D Block licensee could choose another technology without the agreement of the Public Safety Broadband Licensee ("PSBL"), public safety users could face higher equipment costs and fewer choices of user equipment devices for years to come.

A bidder should not be able to win based on a bid which allows it to recoup costs by saddling public safety users with higher charges for equipment. To help provide a fair comparison between bids on area licenses and bids on a nationwide license and to protect public safety users, a prospective nationwide licensee should be required to (a) choose between the two technologies for which area licenses are offered, or (b) bear the burden of proving to the PSBL post-auction (or, in the event of a dispute, to the FCC) that its technology choice will not harm public safety users compared to LTE or WiMAX.

[8] Id. at para. 105.

Summary of Refinements: prohibit regional packages because they would unnecessarily deter or disfavor smaller bidders and complicate the auction of area licenses and the alternative nationwide license; and require a nationwide licensee either to select LTE or WiMAX, or to bear the burden of proving that its technology choice will not harm public safety users.

B. Coverage Requirements Should Differentiate Areas by Population Density, Allow Fifteen-Year License Terms, Apply on an Area-Specific Basis If There is a Nationwide Licensee, and Reflect Interconnections with Satellite and Existing Public Safety Networks. The Notice reflects progress in addressing coverage requirements so as to balance the desire for nationwide public safety capabilities with the need to attract commercial operators. Having area licenses will promote extensive coverage in many communities because the successful bidder may be able to leverage its existing network infrastructure and operations there efficiently to provide the shared wireless broadband network. Also, area licensees are likely to be more responsive than a nationwide licensee to the coverage requests of local public safety agencies. USCC supports several additional steps on coverage in the Notice's tentative conclusions.

USCC supports the proposed coverage requirements in three tiers -- 90, 94 and 98 percent -- based on population densities of the areas.[9] As proposed by the FCC, these requirements should be phased in with intermediate benchmarks,[10] and a longer term of fifteen years would help attract licensees despite coverage standards which exceed current commercial levels. Furthermore, as proposed, these requirements should apply on an area-specific basis if there is a nationwide licensee;[11] applying the same tiered requirements region-by-region within a national license area will help promote a fair alternative auction of area and nationwide licenses and ensure that a possible nationwide licensee provides reasonable coverage in each

[9] Id. at para. 149.

[10] Id. at para. 152.

[11] Id. at para. 154.

area. Finally, the proposals for interconnections with existing public safety networks, as well as coverage of some highways and communities by satellite networks, help address the requests for more extensive coverage requirements without destroying the commercial viability of D Block licensees.[12]

As refinements to these tentative conclusions, the FCC should clarify the D Block licensees' interconnection and satellite responsibilities. These licensees must use good faith efforts to assist in the development and publication of technical standards for interconnections via gateways or bridges with existing public safety networks, and then operate applicable gateways or bridges on commercially reasonable terms. Similarly, licensees must use good faith efforts to facilitate non-terrestrial services for public safety users, through development and publication of technical standards for use of the shared network via a dual mode user equipment device, and offering access to a platform to support public safety applications. In light of the more desirable characteristics of terrestrial 700 MHz services on the shared network compared to satellite services,[13] the rules should clarify the standard for an "integrated satellite solution"; user equipment devices with dual 700 MHz and satellite capabilities must prioritize acquisition of the 700 MHz terrestrial shared network over satellite service acquisition.

The D Block licensees should not have to bear any costs in designing or making available user equipment devices suitable for public safety use that include an integrated satellite solution, or that could be used with existing public safety networks as well as the shared wireless broadband network. To the extent that public safety users value the added functionality, they

[12] Id. at paras. 114, 155.

[13] Id. at para. 153 ("We find that MSS and other non-terrestrial technologies cannot currently provide broadband capabilities comparable to those of a broadband terrestrial network.").

should have the right to procure their own user equipment devices with these capabilities, as proposed in the Notice.[14] Nor should D Block licensees have to bear any costs in implementing capabilities in the network infrastructure or operations of satellite or existing public safety networks. By analogy, CMRS providers are not responsible for implementing equipment in PSAPs to allow public safety agencies to utilize E-911 capabilities.

As for the relationship between terrestrial and non-terrestrial services, D Block licensees should have flexibility in developing service arrangements through negotiations with satellite network operators and the PSBL. A licensee may choose whether to become a retailer offering satellite services to users, and, if so, whether to offer bundles of terrestrial and non-terrestrial services. Alternatively, a satellite service provider could offer services directly to public safety users consistent with the standard for an "integrated satellite solution." Public safety users may prefer to have a choice of negotiating services agreements directly with multiple satellite services providers, accessed via multiple types of satellite-enabled user equipment devices that the public safety users could procure directly from manufacturers. Additionally, D Block licensees and satellite operators should negotiate reasonable fees for satellite operator gateway access to a national platform to support public safety applications and other interconnection fees.

Summary of Refinements: clarify that an "integrated satellite solution" in the handset or other user equipment device should prioritize acquisition of the 700 MHz terrestrial shared network over satellite services, and that the FCC does not require a D Block licensee to pay for satellite-capable user equipment devices or become a retailer of satellite services.

C. FCC Should Adopt Detailed Rules and Terms on All Key Baseline Requirements Before the Auction. To decrease uncertainties for potential bidders, the FCC proposes to adopt

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[14] Id. at para. 310.

detailed rules and terms on all key baseline requirements before the auction.[15] The winning bidders would negotiate the Network Sharing Agreement ("NSA") with the PSBL after the auction, subject to FCC resolution of disputes.[16] A default payment would apply if a winning bidder chooses not to accept the FCC's resolution of an NSA issue.[17]

USCC supports these tentative conclusions, with some refinements. As described in Section II.A below, the term sheet should not prescribe a single "base rate" for public safety users that would be applicable for four years, or a rate for gateway-based access of unspecified duration. Instead, the term sheet should reflect rate principles that would be applied to develop rates that reflect more contemporary market conditions.

Next, the rules should specify a timeframe for negotiating the NSA after the close of the auction (USCC suggests three or four months), so that bidders and public safety entities will know that this process will not drag on to delay grant of the licenses and network deployment. The FCC's pre-auction rules and term sheet on all key baseline requirements should facilitate expeditious conclusion of the NSA negotiations.

Finally, the PSBL must have adequate resources to negotiate the NSA so that the parties can agree on reasonable terms within a reasonable timeframe. This point is discussed further in Section II.D below in connection with the spectrum lease payment.

Summary of Refinements: establish rate principles rather than specific amounts for public safety users' "basic rate" and the gateway-based access charge, with these rate levels set and updated through the NSA; set a time frame of three to four months for negotiating the NSA; and establish the spectrum lease fee to provide adequate funding for public safety to negotiate the NSA and satisfy other responsibilities.

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[15] Id. at para. 239.

[16] Id. at para. 206.

[17] Id. at para. 223.

D. The Proposed Key Technical Requirements Generally Strike a Reasonable Balance, and Should Provide for a National Platform for Public Safety Applications, Priority Access to a Percentage of Engineered Capacity, and Quality Standards for the Network Portion Controlled by a Licensee. The Notice shows strong progress on several important technical requirements for the shared wireless broadband network. The new proposals improve the balance between providing attractive services for public safety users and addressing the needs of commercial operators.

USCC supports the tentative conclusions on voice and data throughput requirements, without a required overall capacity of the shared network;[18] security and encryption consistent with commercial best practices, and utilizing an open standard protocol for authentication;[19] not mandating that all user equipment devices include an integrated satellite solution;[20] conditions for public safety preemption and priority access;[21] 99.6 percent network availability standard;[22] standards for battery backup, generators and critical sites;[23] mandatory roaming for public safety users;[24] and flexibility for public safety agencies to procure user equipment devices from any vendor, subject to reasonable network requirements.[25] Additionally, USCC agrees with the tentative conclusion that, along with a D Block licensee's responsibilities

[18] Id. at para. 121-22.

[19] Id. at para. 125.

[20] Id. at para. 131.

[21] Id. at para. 86-87.

[22] Id. at para. 117.

[23] Id.

[24] Id. at para. 111.

[25] Id. at para. 310.

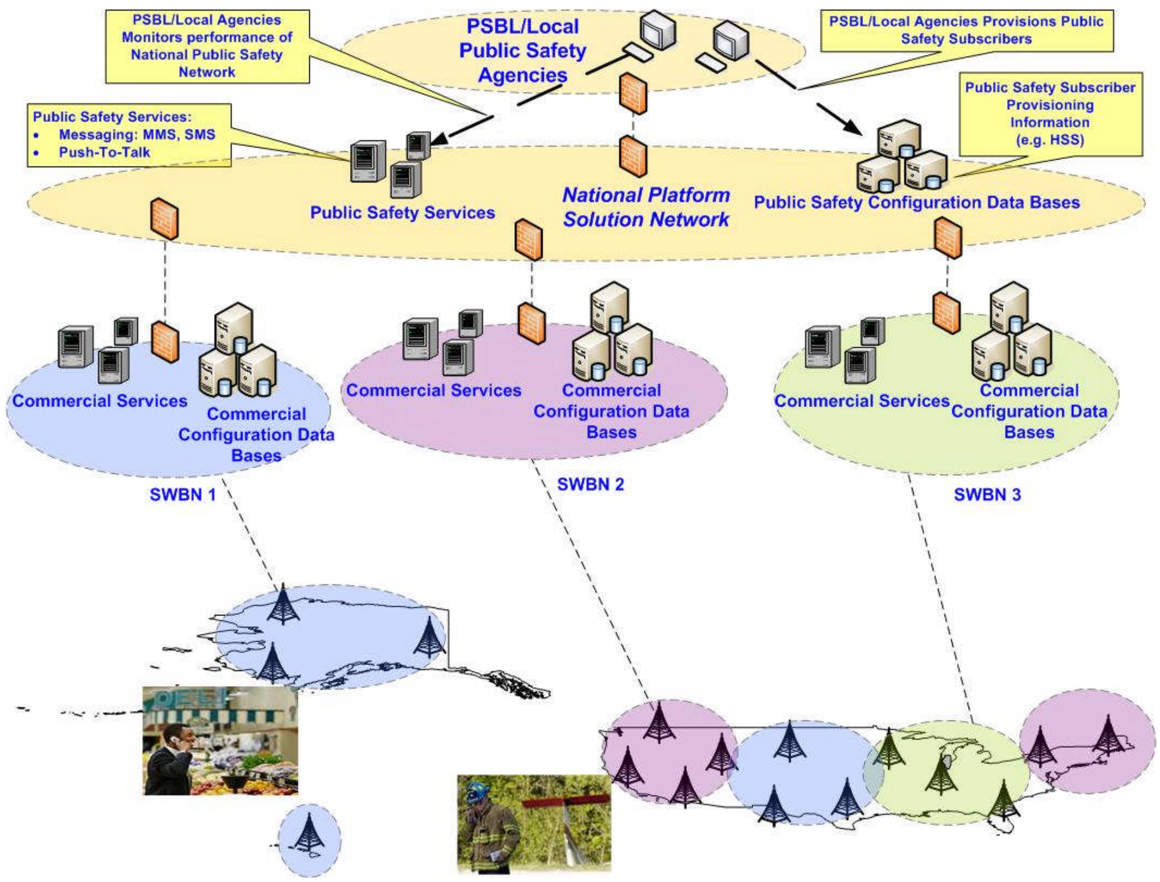
to construct and operate the shared network infrastructure, a D Block licensee should be responsible for day-to-day network monitoring, operations, customer care and related functions.[26]

USCC describes below refinements to the tentative conclusions regarding a national platform for public safety users, priority access and transmission standards.

National Platform. Pursuant to Paragraph 124 of the Notice, USCC clarifies its proposal that the area licensees establish a centralized national platform to support public safety applications. The proposal is intended to promote nationwide access to and interoperability of services for public safety users; allow provisioning of public safety applications on a single set of dedicated servers; provide to the PSBL and D Block licensees the convenience of a central source for authenticating public safety users; and facilitate nationwide monitoring of the performance of public safety uses of the shared network. Figure 1 illustrates a national platform solution to support public safety requirements with multiple commercial operators of area networks.

[26] Id. at para. 197.

Figure 1
National Platform for Public Safety Applications



Under this proposal, all area networks would interconnect with a national platform providing these functions for public safety users: authentication, authorization, user groups for push-to-talk and multimedia messaging, priority access, and other public safety applications. The PSBL would upload data to the national platform regarding the public safety users and their service features. The national platform would ensure nationwide, uniform public safety applications. The D Block licensees would decide how to provide these national platform functions most efficiently, including by considering third-party providers with strong capabilities to serve public safety users. Also, the D Block licensees would pay for the national platform.

Finally, the national platform would promote service continuity via a set of public safety service assets and operations remote from any licensee's finances, assets and operations.

The D Block licensees' ability to support public safety subscribers' requirements effectively with improved operational advantages is made possible because of the physical and logical separation of public safety applications from commercial services realized through the national platform solution. With this level of flexibility, D Block licensees and the national platform operations will be able to add and verify new equipment functionality needed to address capacity and performance requirements without impacting existing systems. The logical and physical separation also enables the national platform solution to provide interoperability at two levels. The first level of interoperability occurs among D Block licensees, where public safety services such as push-to-talk can be deployed in the national platform, in compliance with the FCC mandated quality of service requirements, utilizing a single set of off-the-shelf, standards-compliant equipment. The second set of interoperability occurs between public safety services provided through the national platform and local public safety agencies. In this case, a single set of standards utilized in the national platform for services such as push-to-talk mitigates the need for each pair of public safety agencies to interoperate directly with each other. The gateway in the local public safety network only needs to interoperate with the equivalent standards-based services in the national platform.

Priority Access. The FCC should adopt three refinements to the tentative conclusions on priority access.

First, proposed rule Sections 27.1307(e)(1) and (2) should be revised to state the capacity available for priority access in terms of a percentage of the engineered capacity in any location, not megahertz of spectrum.

The proposed rules in Sections 27.14(l) and 27.1305 would require the licensees to meet scheduled coverage, network availability and throughput standards. Under non-emergency conditions, 50 percent of the engineered capacity would be available for assignment to public safety users.[27] Importantly, none of these standards require use or activation of all 20 MHz of the shared network spectrum. The Notice recognizes that overall capacity requirements for the shared network will vary from location to location.[28] The D Block licensees will deploy the shared network by phasing-in their investments in network capacity according to the subscribers' demand in any location. When demand by all users (public safety together with commercial) in a location can be accommodated with far less capital on a portion of the overall spectrum, it would be a huge cost burden (and contrary to reasonable commercial practices) to require the D Block licensees to undertake the capital expenditures to activate all 20 MHz of the shared network spectrum.

The approach of Sections 27.1307(e)(1) and (2) is that the network capacity for public safety users would rise from 50 percent to 70 percent of deployed shared network capacity under certain extreme emergency conditions, and up to 60 percent of shared network capacity in other emergency conditions. This requirement should be stated in rules that are consistent with the flexibility for a blended network design and deploying network capacity in Paragraphs 80 and 122 of the Notice. Without referring to specific amounts of megahertz available or a band,

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[27] Id. at para. 79.

[28] Id. at para. 122 ("We are not proposing any specific requirements relative to overall capacity of the shared wireless broadband network.... [I]t is not feasible to establish rules that would address the various capacity requirements throughout the nation. For example, the capacity required in a dense urban area where public safety has implemented a wide variety of broadband applications would be much greater than in a rural area where only minimal broadband applications might be used.").

Section 27.1307(e)(1) should provide: "Each Upper 700 MHz D Block licensee must provide public safety priority access to, but not preemptive use of, up to 70 percent of the overall engineered network capacity in any affected location in the following circumstances.…" Similarly, Section 27.1307(e)(2) should provide: "Each Upper 700 MHz D Block licensee must provide public safety priority access to, but not preemptive use of, up to 60 percent of the overall engineered network capacity in any affected location in the following circumstances...."

Next, USCC agrees with the tentative conclusion that a priority access request initiated by the PSBL would cover a 24-hour time period, and must be reinitiated by the PSBL for each 24-hour time period thereafter that the priority access is required.[29] The FCC should clarify this standard by requiring the PSBL to terminate any priority access request promptly (and in each case within four hours) after the emergency condition ends or is downgraded.

Third, the Notice states the FCC's view that separate fees for priority access should not be allowed; but the Notice goes on to propose that the PSBL could decide to establish its own system for authentication and authorization of public safety users, or could define parameters to be implemented by the D Block licensees.[30] There will be significant costs for developing and operating the systems to provide priority access. If the PSBL takes on the responsibilities and costs of these systems, then it may be reasonable for priority access to be allowed without separate fees charged by the D Block licensees. In any case, the ordinary rates charged to public safety users in non-emergency conditions would apply for their usage during priority access conditions.[31] On the other hand, the NSA may provide for the D Block licensees

[29] Id. at para. 87.

[30] Id. at paras. 89, 123.

[31] Id. at para. 89.

to implement these capabilities, because of operational efficiencies or other reasons. In that case, D Block licensees would bear substantial costs for providing priority access. The FCC should adopt a rule allowing the D Block licensees to charge rates that recover their costs of providing support systems for priority access. Because this is a new capability for public safety users, the suggested rate benchmarks to other public safety wireless offerings do not reflect recovery of priority access costs by these carriers and would need adjustment.[32]

Transmission Standards. Throughput, availability and other quality-of-service standards in proposed rule Section 27.1305 should apply only to the portion of the shared network controlled by the D Block licensees. The Notice proposes to interconnect the D Block licensees' networks with the public Internet, web-based email servers and other public safety networks through gateways. Clearly, the quality-of-service standards developed with regard to the D Block licensees' terrestrial networks cannot be applied to services provisioned across these interconnected networks.

This limitation also applies to functionalities provided by the D Block licensees to public safety users. The D Block licensees will deploy these functionalities to support services using the 700 MHz spectrum. While these licensees should engage in good faith discussions with public safety users and satellite service providers for services integrated with the national platform that support public safety applications, these licensees would not be obligated to implement additional capabilities in those other networks or in the national platform to support additional capabilities in those other networks.

Finally, the FCC should clarify that Section 27.1305(f)(2) covers the applications described in Section 27.1305(f)(1). To eliminate possible confusion about

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[32] Id. at para. 391

applications and services not specified in the NSA, Section 27.1305(f)(2) should state: "For applications referred to in Section 27.1305(f)(1), the Shared Wireless Broadband Network shall provide for the application data rates shown in Table 1."[33]

Summary of Refinements: adopt rules for a national platform for public safety applications; specify spectrum subject to priority access in terms of 70% or 60% of total engineered capacity in an affected location, and allow recovery of costs for supporting priority access; and clarify that quality-of-service standards and public safety functionalities apply only to the portion of the shared network controlled by the D Block licensees.

E. The Proposed Auction Rules Should Allow More Flexibility for Area Bidders to Obtain Nationwide Coverage, and Avoid Regional Packages and Anonymous Bidding which Deter or Disfavor Smaller Bidders. In addition to offering area licenses which will attract more bidders to the auction, the proposed auction rules move forward in several ways toward encouraging the participation of more bidders and the development of networks in more areas.

Specifically, USCC supports the proposals to set the minimum opening bids at $750 million in aggregate with no higher reserve price;[34] decrease the minimum opening bids on unsold regional licenses to $0.005 per MHz-pop in the event that specified trigger conditions have been met;[35] apply a threshold for granting regional licenses of aggregate bids on licenses

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[33] These applications must be quality of service ("QoS") aware in that either the application or the servers must request QoS attributes from the shared network to identify what level of QoS grant is required for data streams associated with a session invoked by a user equipment device. In addition to the applications identifying their QoS requirement because the shared network may be unable to identify the applications, the shared network would not be able to adjust grants on the basis of indoor or outdoor use of those applications as suggested by the inclusion of "Indoor video" and "Outdoor video" as separate applications. USCC anticipates QoS capabilities to provide for identified applications or requested QoS attributes; hence, the intelligence of the shared network to identify the application and location of the user is beyond the scope of QoS mechanisms currently in development.

[34] Notice at para. 275.

[35] Id. at paras. 249-50.

covering fifty percent of the population;[36] and in the event of a default by a high bidder, give the FCC flexibility to award that license to the next highest bidder on that license.[37]

At least three aspects of the proposed auction rules require clarification or refinement. Additionally, USCC suggests some other key elements of the auction design in order to help frame the FCC's consideration of these issues.

Flexibility for Area Bidders to Obtain Nationwide Coverage. As Commissioner Copps observed, making 100 percent population coverage determinative in favoring a nationwide bid over area bids can lead to results that are contrary to the public interest.[38] He questioned auction rules that would, if the auction is unable to attract a bidder to just a single small license area, lead the FCC to select a lower bid from a nationwide bidder over higher aggregate bids from area bidders. The auction rules should give area bidders a greater opportunity to build and operate the shared network in light of the many advantages of having multiple area licensees, including greater responsiveness to the needs of local public safety entities, faster network deployments, innovative services and operations, and lower risk from a single licensee's financial or operating failure.

The Notice wisely proposes to spur bids on unsold area licenses by triggering a decrease in the minimum opening bids in a second stage of the auction. (These triggers are discussed next.) However, even after decreasing the minimum opening bids, the auction rules likely will impede bids on the remaining licenses in several ways. Bids on unsold licenses may be blocked because potential bidders have exhausted their eligibility in earlier rounds. To be

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[36] Id. at para. 246.

[37] Id. at para. 217-18.

[38] Concurring Statement of Commissioner Michael Copps at 2.

effective, the second stage of the auction must allow each bidder that initially qualified for the auction sufficient eligibility to bid on unsold licenses.

Additionally, a free riding problem will exist among high bidders on other licenses that would deter bidding on unsold licenses. Each high bidder will want the auction of area licenses to be successful, but might prefer for other high bidders to step up to meet the minimum opening bid and assume the associated obligations for the unsold licenses. This problem would be exacerbated by the anti-collusion rules and anonymous bidding (if required, which creates uncertainty about whether experienced operators are winning bidders and thereby deters aggressive bidding by some entities).

USCC proposes a refinement to the auction rules that would take effect if (a) decreasing the minimum opening bids results in bids covering at least ninety percent of the nation's population but bidding stops with some licenses unsold, and (b) the aggregate of bids on area licenses exceeds the nationwide bid. Under these conditions, the FCC should allow the high area bidders an opportunity to develop commitments to serve the remaining license areas. At this stage in the auction process, there could be no change in the existing bids, but the anti-collusion restrictions would not apply with regard to the unsold licenses. The high area bidders would have a short period of time, perhaps ten days, to discuss among themselves and identify to the FCC proposed licensees for the unsold areas. If area bidders make commitments for all licenses, then the FCC would award the area licenses rather than the nationwide license.

Even if there are a small number of license areas that remain unsold, the FCC should have the discretion to award the area licenses rather than a nationwide license. The FCC should be confident of its ability to obtain a licensee for any of the small remaining areas by promptly re-auctioning them, including by disclosing the identities of the winning bidders and creating an opportunity for fresh eligibility.

Lower Triggers for Decreasing Minimum Opening Bids. The Notice proposes to decrease the minimum opening bids on unsold area licenses if either of two triggers is tripped. Each trigger should be refined with a lower threshold condition.

The first trigger is based on a bid for the nationwide license. The Notice proposes to decrease the minimum opening bids on unsold area licenses only if the sum of the high bids on area licenses already exceeds the nationwide license bid. Suppose that the area license bids sum to $1,000 less than the nationwide bid, and that lower minimum opening bids would lead to bids covering all unsold areas with an aggregate amount of $200,000. The auction result would be improved if the trigger was tripped. This first trigger should not require that the minimum opening bids already exceed the nationwide bid. The final comparison between the aggregate area bids and the nationwide bid will protect against a give-away of area licenses by decreasing the minimum opening bids.

The second trigger is based on the absence of a nationwide bid and area bids covering at least half the nation's population. The FCC correctly proposes to award area licenses as long as bids cover at least half the population. The trigger should provide some flexibility to help reach this threshold. As long as area bids cover at least forty percent of the nation's population and there is no bidding activity on the remaining licenses, then the minimum opening bids for the remaining areas should be decreased.

No Additional Regional Packages or Anonymous Bidding. Adding regional packages and anonymous bidding[39] to the auction of area licenses and a nationwide alternative

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[39] Notice at paras. 254, 286.

would deter potential bidders and favor the largest wireless operators which already have huge amounts of spectrum. Package bidding creates serious auction difficulties (the "threshold problem" and complexity, which disfavor smaller bidders) while supposedly easing another potential difficulty (the "exposure problem", which could affect a large bidder, but has never proven to be a serious detriment to assembling a collection of licenses). In the case of re-auctioning the D Block, the FCC has noted the broad support for smaller area licensing, through 58 PSR areas as opposed to a few mega-regions.[40]

For this particular auction, offering a few large regional (multi-PSR area) packages would deter smaller bidders and impede some of the benefits that multiple area licensees would deliver. For example, a large regional package bidder could be more powerful in negotiating the NSA, to the detriment of public safety users, because the package bidder's refusal to enter into the NSA would greatly disrupt the granting of licenses and deployment of networks.[41]

The auction will already offer the same spectrum in any of the 58 areas in three alternatives -- area license LTE, area license WiMAX, and nationwide license. The three alternatives will require fairly complex rules on eligibility, bid activity, withdrawals, waivers, etc. Any additional packages would have to be offered in LTE and WiMAX versions, and greatly multiply the complexities.

Moreover, as shown by T-Mobile and SpectrumCo in Auction 66 and Frontier Wireless in the E Block of Auction 73, carriers can and do assemble extensive footprints of

[40] Id. at para. 63.

[41] It would be far harder for the FCC to award licenses to the next highest bidder(s) when a default occurs on a package as opposed to on an individual area license.

licensed areas in an auction without package bidding. The FCC has been widely criticized for offering large regional packages in the C Block of Auction 73, which resulted in strategic exploitation of the package-bidding rules and one of the two dominant carriers winning the licenses at depressed prices.[42] Instead, the FCC should direct the Wireless Telecommunications Bureau to develop auction rules in which the only "package" for the D Block is the nationwide license.

Similarly, the FCC should direct the Bureau to adopt auction rules in which the identities of high bidders are revealed in each round. The emphasis of this auction should be on attracting bidders to each license area. Unlike other spectrum auctions, the D Block requires the winning bidders to work closely together in the nationwide interoperable network (e.g., negotiating the NSA, establishing national applications for public safety users, integration of satellite services, and interconnections with existing public safety networks). While this cooperation is a manageable undertaking (see the discussion of the national committee below), the FCC should not impose unnecessary uncertainty on each bidder by concealing the identities of the high bidders with which it would have to work closely.

A potential bidder may be discouraged if experienced operators do not win a number of D Block licenses. Forced to guess about the identities of other bidders by anonymous bidding rules, a bidder may adopt a more cautious approach (assume that the others are inexperienced) and decide to reduce its bid exposure. Also, anonymous bidding in this auction would also be detrimental by raising the free riding problem for licenses that have not attracted bids.

[42] See Testimony of Dr. Coleman Bazelon, Brattle Group, before the House Committee on Energy and Commerce, Subcommittee on Telecommunications and the Internet (Apr. 15, 2008).

Put differently, non-anonymous bidding will facilitate development of a logical awarding of licenses by competitive contest to maximize the effectiveness and efficiency of the shared network. The information revealed will help the area bidders deal with the dual "threshold" problems (raising the aggregate bid while sharing the responsibility for the low-value licenses to achieve nationwide coverage) by making their threshold-burden-sharing actions immediately observable by other bidders.

<u>Some Other Key Elements for the Auction Rules</u>. The Notice wisely leaves certain details of the auction design to be addressed in the Wireless Telecommunications Bureau's pre-auction notice and comment process.[43] In order to help frame the FCC's consideration of a central issue in the Notice (offering a nationwide license without undermining a fair opportunity for smaller bidders to participate in developing a network of networks), USCC takes this opportunity to describe some other key elements for the auction.

USCC recommends that the three auctions -- area licenses LTE, area licenses WiMAX, and nationwide license -- be run as simultaneous, independent auctions. Eligibility and activity rules should be tracked and applied separately in each auction, with no crossover effects. In order to keep a nationwide bidder from gaming the system through withdrawal of bids in the area auctions, no bidder holding eligibility to bid for the nationwide license would be permitted to withdraw any bids in the area auctions.

If the reduction-of-minimum-opening-bids trigger occurs, the bidding eligibility of all originally-qualified bidders should be restored for the unsold licenses. The restored eligibility would be useable only on that set of licenses. From that point onwards, the activity

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[43] Notice at para. 286.

rule would apply separately to two groups of area licenses: those that received bids before the trigger, and those for which the minimum opening bid was decreased.

Auctioning area licenses and a nationwide alternative license with this framework is manageable and can provide a fair opportunity for smaller bidders. However, adding the complexity of regional packages or raising the threshold problem with anonymous bidding may jeopardize the auction of area licenses.

Summary of Refinements: when there is a nationwide bid and bids on area licenses cover at least ninety percent of the population, then allow bidders on the area licenses flexibility to develop commitments to serve the remaining license areas; lower the triggers for decreasing the minimum opening bids and provide new bidding eligibility at that stage of the auction; and prohibit regional packages and anonymous bidding because they would unnecessarily deter or disfavor smaller bidders and complicate the auction of area licenses and the alternative nationwide license.

F. Builds of Networks by Public Safety Entities Should be Allowed on Terms Which Do Not Impede or Burden the Coverage of the Shared Network. The FCC's tentative conclusions recognize that early builds of networks by public safety entities can help meet their needs, but should not be allowed to impede or burden the coverage of the shared network. USCC agrees with several tentative conclusions on this issue.

Specifically, USCC agrees with the tentative conclusion to decline the District of Columbia's request; public safety entities should not have a multiyear right to operate their own networks in the D Block or in the spectrum subject to the public safety broadband license.[44] Any public safety entity deploying a network in any of this spectrum should use the same air interface technology as the shared network, provide interoperability and, in an area in which the D Block licensee has committed to build the shared network, conform to the specifications applicable to

[44] Id. at para. 299.

the shared network.[45] Connections via gateways and bridges do not substitute for full interoperability using a compatible technology. A D Block licensee could at any time acquire the network built by a public safety entity and pay that entity the D Block licensee's avoided incremental cost for building the shared network -- costs the D Block licensee would have incurred if it had constructed the shared network in that area itself, not reimbursement of the public safety entity's costs.[46]

The rules should ensure that any separate public safety network in this spectrum supplements, and does not detract from, the development and operation of the shared network. As they analyze the costs of building the shared network in each area, potential bidders could not assess their future costs under rules requiring them to pay for an unknown number of public safety-built networks at compensation above the avoided costs they would have incurred for the shared networks. Requiring compensation by the D Block licensee for early deployment of incompatible technologies would deter auction participation by commercial entities. Similarly, potential bidders would be deterred by a rule requiring them to pay more than the deployment costs they would have incurred otherwise if they acquire a public safety network using compatible technologies.

The rules should not require a D Block licensee to compensate early public safety builders based upon "commercially reasonable standards." The Notice correctly observes that a network constructed by a local public safety agency may be of little worth to the D Block licensee, and that the vague "commercially reasonable standards" compensation requirement would lead to significant or intractable disputes. The standard for compensation based on the D

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[45] Id. at paras. 294, 302.

[46] Id. at para. 303.

Block licensee's avoided incremental cost of constructing the shared network is clearer and better promotes a successful reauction, rapid deployment of the shared network, and commercially viable operations.

There should be opportunities for early public safety builds. Yet, these opportunities should not impair the long-term development and financial viability of the shared network. Before the award of the D Block licenses, the PSBL could approve construction of a few public safety networks using the PSBL's spectrum where there is a strong showing of need. However, such public safety entities risk being forced to terminate use of their networks at any time after the award of the D Block licenses to make way for the shared network. Additionally, such public safety entities risk receiving little or no compensation if they choose technologies that are not compatible with the technology that will be deployed by the D Block licensee.

Finally, the rules should state that networks built by public safety entities must not interfere with the construction or operation of the shared network in any area, including an obligation on these networks to implement guard bands.

Summary of Refinements: allow a D Block licensee to acquire compatible 700 MHz public safety networks at any time with compensation equal to the D Block licensee's avoided incremental cost of constructing the shared network.

II. FCC's Rules Should Specify Rate Principles, Not Rate Levels; Limit the Inefficiencies Caused by Bankruptcy Remote Entities; Provide for a National Committee of Area Licensees; and Establish the Spectrum Lease Fee to Provide Adequate Funding for Public Safety Operations

The six topics discussed previously represent issues where USCC largely agrees with the tentative conclusions in the Notice, subject to the suggested refinements. In the following discussion, USCC addresses two topics where USCC significantly disagrees with the tentative conclusions, regarding rate levels and bankruptcy remote entities. Also, USCC responds to the FCC's questions on a national committee of area licensees and the spectrum lease fee.

A. <u>The Rules Should Specify Rate Principles, Not Rate Levels, for a Basic Public Safety User Rate and Gateway Access Charge</u>.

The FCC proposes to prescribe two important rates. First, the term sheet would specify a "base rate" for public safety users of a proposed $48.50 per user per month, which will be fixed for four years and subsequently negotiated based on fee schedules developed by the General Services Administration ("GSA") for government users of the commercial narrowband spectrum.[47] Second, the FCC proposes to prescribe a rate of $7.50 per month per user for gateway-based access to the shared network.[48]

In each case, USCC proposes that the FCC should instead adopt rate principles to guide the specification and periodic updating of the relevant rate in the NSA. Reasonable rate principles would provide sufficient certainty to potential bidders and public safety users, and avoid the problems in the FCC's proposals.

Regarding the "base rate" for public safety users, the Notice states the principles that the rate should be uniform nationwide and reflect a discount. Beyond these principles, the Notice is unclear on what services that rate would cover and whether there would be any additional associated charges. Paragraph 392 states: "we should set a specific service fee for public safety users and that such fee should be based on rates charged to government users of existing wireless voice and data services." In contrast, without referring to voice services, Paragraph 391 states: "we tentatively conclude that the rates being offered today for broadband

[47] Notice at paras. 390-93, Appendix E.

[48] <u>Id</u>. at para. 114.

wireless data service provide a sufficient, forward-looking benchmark upon which to establish a nationwide fee schedule." In fact, several of the plans referenced by the FCC impose significant additional charges on voice and other usage. As examples, the Verizon Wireless/GSA plan charges $0.25 per minute for voice calls and $10 monthly for unlimited text messages, and the Western States Contracting Alliance's contracts with Sprint and T-Mobile charge $0.20 per minute for voice calls.

Should the "base rate" cover voice and data services? If so and the GSA rate plan is the benchmark for the "base rate", then the term sheet should allow charges of $0.25 per minute for voice calls for subscribers to the base rate. Also, the GSA rate plan does not specify a data transmission speed or quantity of data transmitted. What transmission speed and quantity of data are covered in the "base rate"? It would be unreasonable to require a broadband network to provide unlimited high-speed data transmissions at a rate established in a GSA contract for narrowband service.

Moreover, the use of "rates being offered today" makes the benchmarking process somewhat arbitrary. The term of the Verizon Wireless/GSA contract is December 3, 2003 through December 2, 2008. Thus, the GSA wireless rate could be quite different by the time the rule is adopted in this proceeding, and certainly by the time the NSA is negotiated and the D Block licenses are awarded. Perhaps there will be different GSA-negotiated rates for different data transmission speeds, or for an offering with unlimited voice and data calls. Similarly, the three State of Florida contracts referenced in the Notice had termination dates in mid-2007. The Western States Contracting Alliance's contracts are for four years and expire on October 9, 2010, several years before the expiration of the rate that the FCC would prescribe for the shared network.

In light of the range of potential relationships between D Block licensees and satellite operators as well as the different costs of supplying terrestrial and non-terrestrial services, the "base rate" should be limited to terrestrial services. Clearly, comparisons to GSA or other government contracts for terrestrial wireless services cannot provide a reasonable benchmark for satellite services offered through user equipment devices capable of using the shared network.

Instead of prescribing a rate level for the "base rate", the FCC should adopt rate principles applicable to negotiating this offering in the NSA. Such principles might be, for example, a uniform nationwide rate; the rate should be discounted off of standard retail commercial rates for similar services available from the D Block licensees or other carriers, with a discount comparable to that in the most similar GSA contracts at that time; the rate would cover terrestrial-only services; and the rate could be benchmarked every four years.

Regarding the proposed rate of $7.50 for gateway-based access, the Notice refers to rates for walkie talkie/push-to-talk services that are add-ons to basic monthly service plans and offered under a few standard government contracts for public safety users. It is unclear what services this charge is intended to cover (conversions to IP?, use of the national platform for public safety applications?), many of which may not be comparable to walkie talkie/push-to-talk services. The Notice does not describe the time period for applying this rate; it is unlikely that any such charge would be reasonable for the entire fifteen year license term. Offerings may evolve such that any such add-on charge is atypical, and that other charges for service features are more comparable to gateway-based access. It would be better to adopt rate principles applicable to negotiating the charge for gateway-based access in the NSA. Such principles might be, for example, a uniform nationwide rate; the rate should be comparable to the charges for the most similar service elements in standard government contracts; and the rate could be benchmarked every four years.

The FCC should also adopt rate principles requiring D Block licensees to negotiate reasonable roaming arrangements (terrestrial-terrestrial as well as terrestrial-satellite), and reasonable charges for uses of the national platform for public safety applications by satellite operators.

Summary of Refinements: establish rate principles rather than specific amounts for public safety users' "basic rate" and the gateway-based access charge, with these rate levels set and updated through the NSA; and require D Block licensees to negotiate reasonable roaming arrangements (terrestrial-terrestrial as well as terrestrial-satellite).

B. <u>The Rules Should Limit the Inefficiencies Caused by Bankruptcy Remote Entities</u>. USCC disagrees with the FCC's tentative conclusion to retain its rules requiring bankruptcy remote entities.[49] Under rules applicable solely to the D Block, each licensee would be required to form and use three bankruptcy remote entities -- a license holder, a network assets holder and an operating company. The entities would have to comply with "insulation" or "non-consolidation" requirements with regard to the financing, assets, operations and agreements of their affiliates.

Continuity of the shared network's services to public safety users is a reasonable concern. Nevertheless, any tool intended for this purpose must be balanced with the goals of attracting commercially viable bidders to the auction and providing high-quality services to public safety users at reasonable costs. Also, each tool must be evaluated in the context of the FCC's proposed use of other tools to serve the purpose of service continuity.

[49] Notice at paras. 174, 288; 47 CFR Sections 27.4, 27.1301, 27.1308.

The insulation requirements may be detrimental to the rapid, efficient deployment and operation of networks by many potential D Block licensees. Current wireless operators will want to leverage their existing financing, network assets, operations, marketing, intellectual property and agreements with third parties to achieve economies and speedy coverage for the D Block shared wireless broadband networks. The willingness of an existing operator to bid on a D Block license will be based on its assessment of the commercial attractiveness of the opportunity, which in turn will depend on its ability to engage in such leverage through integrated ownership and operation. When an existing operator bids on a license, the insulation requirements would likely increase the cost and deployment time for the shared network. To take a specific example, the insulation requirements could force a D Block licensee to procure new cell sites and deploy dedicated radio transmission equipment and backhaul lines for the shared network, even if it (or its affiliate) already has such infrastructure in the area supporting its other wireless operations.

USCC is particularly concerned about inefficiencies and financing problems caused by the proposed insulation of the network assets holder and of the operating company. Among the other protections for service continuity are (a) the rule (47 CFR Section 27.1303(c)) prohibiting a D Block licensee from discontinuing, reducing or impairing service to public safety users without the prior authorization of the FCC; (b) integrated satellite solution in user equipment devices (satellite services would be available if a D Block licensee fails to provide reliable terrestrial services); (c) use of a bankruptcy remote entity for the license holder; and (d) other provisions in the NSA typical of the protections granted to large commercial enterprise customers that have similar concerns about the availability of mission-critical services (e.g., monetary damages (service credits and liquidated damages) for service disruptions, phase-in coordination services, decreased volume and term commitments, damages to cover costs of using alternative services providers, users' rights to operate network assets in the event of prolonged outages, termination right).[50]

In particular, the FCC has pointed to the effectiveness of its service continuity regulations similar to Section 27.1303(c) regardless of a bankruptcy filing.[51] A D Block licensee, or a bankruptcy trustee or debtor-in-possession thereof, could not terminate services to public safety users without the FCC's prior authorization.

The FCC should recognize two developments that would decrease the bankruptcy exposure of public safety users of the shared network. First, inherent in the tentative conclusion to offer 58 PSR area licenses is a decrease in the risk to public safety users of financial or operational failure by any one operator. As noted in comments filed by Verizon Wireless, AT&T and USCC in response to the Second Further Notice of Proposed Rulemaking in this proceeding,[52] area licensees are more commercially viable than a nationwide licensee, and one

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[50] See, e.g., Western States Contracting Alliance, Standard Terms and Conditions, Contract with AT&T Mobility National Accounts LLC (Sept. 4, 2007). See generally Richard Harris, "Negotiating Managed Telecommunications Services Agreements: A Survey of Selected Issues" 34-43 (Negotiating Telecommunications User Deals Conference 2003).

[51] See Letter from FCC Chairman Michael Powell to John Sidgmore, WorldCom dated July 22, 2002 ("If WorldCom's bankruptcy proceeding leads to a discontinuance of services, then, to the extent WorldCom provides services reached under section 214(a) of the Act, such a discontinuance could only take place if WorldCom first meets the notice requirements of the Commission's rules.... We will intervene in bankruptcy proceedings to advise the court if WorldCom or any other party to the proceedings takes or threatens to take steps that would result in an unnoticed termination of service."). See also FCC Wireline Competition Bureau, "Discontinuance of Telecommunications Service: What Companies and Bankruptcy Professionals Must Do" (available at www.fcc.gov/wcb/cpd/other_adjud/business214.html) ("All companies, whether or not they are under bankruptcy protection, must comply with the FCC's discontinuance rules").

[52] Comments of Verizon Wireless at 29-32; Reply Comments of AT&T at 8; Reply Comments of USCC at 3.

licensee's failure would have a smaller, more manageable impact on shared network users. The concerns supporting insulation of a nationwide D Block licensee's assets and operations are much weaker in the case of an area licensee. If the FCC decides to retain assets and operations insulation requirements for a D Block licensee having nationwide or extensive coverage (such as greater than forty percent of the nation's pops covered by the D Block licenses), the FCC should not apply such requirements to smaller area licensees.

Second, the proposal to have public safety applications provisioned through a national platform (discussed in Section I.D. above) could make these national platform and application assets and operations bankruptcy-remote with respect to the area licensees. Again, compared to a nationwide licensee that would likely own and operate these assets itself, area licensing offers greater continuity of services to public safety users without requiring each licensee to use bankruptcy-remote entities. Instead of imposing inefficiencies on and deterring bidding by individual area licensees, the rules could require that the national platform for public safety applications be insulated from any one licensee.

Therefore, USCC proposes that the FCC revise its rules so that no insulation requirement would be applicable to a D Block licensee's own network assets and operations. Such a revision will avoid undermining participation in the auction and will foster rapid, efficient provision of services to public safety users.

Summary of Refinement: limit any requirement of bankruptcy remote entities to the license holder, not the holder of network assets or operations, especially for area licensees covering less than forty percent of the nation's population.

C. <u>The Rules Should Require the Area Licensees to Form a National Committee with Governance Provisions to Protect the Licensees and the Public Interest</u>. The Notice seeks comments on a national committee of D Block licensees.[53] The Notice points to proposals by USCC and the PSST for a structure to facilitate coordination among the licensees, designed to allow a single-point-of-contact interface with the FCC and PSBL as well as to ensure interoperability and roaming.

Committee structures have been used by the FCC and the telecom industry over many decades to coordinate hundreds of carriers and other entities. Examples of FCC-ordered committees include NECA, USAC, NRIC, NPSPAC regions and PSST. Other examples of industry-initiated committees and coordinating organizations include US Telecom, CTIA, IEEE, ATIS, TIA, 3GPP and CableLabs.

The FCC and PSBL will need a framework in which they can manageably deal with multiple licensees on certain matters, and there will be some matters as to which the licensees will need a framework for coordination and decision-making. Without detracting from the independence of each licensee and its operating responsibilities for its own network, the needs for an organizational structure for these licensees could arise in at least five areas: (a) the FCC, PSBL and public safety agencies will need a single point of contact with the licensees on some national issues, including reporting of aggregate usage, performance and capabilities; (b) the licensees will want to discuss recommendations for any FCC rule changes affecting the shared network; (c) for the NSA, the licensees will need an approach to negotiating with the PSBL the initial agreement and any amendments, and seeking resolution of disputes by the FCC; (d) the licensees will decide on arrangements for support services for operations requiring inter-carrier coordination, including a national platform for public safety applications, and bridges or

[53] Notice at para. 173.

gateways with other networks; and (e) the licensees will interface with existing standards bodies and clearing houses on matters including network equipment features and roaming.

To address these needs, following the grant of any Upper 700 MHz D Block licenses, the licensees should be required to form a national committee. The committee should fairly represent the interests of what is likely to be diverse licensees, and provide for public accountability. USCC proposes that the FCC's rules provide for the basic structure and governance of this national committee, as the FCC has done for other organizations like NECA and USAC. Provisionally winning bidders should, within ninety (90) days after the close of the auction of D Block licenses, file proposed bylaws for review by the FCC and identify initial directors for the national committee.

The FCC's rules should provide that the board of directors of the national committee would have three categories of directors, each of which would comprise a minority of the total number of directors: (i) nominees of the largest D Block licensees (by licensed POPs, reflecting all affiliated winning bidders); (ii) nominees of the other licensees; and (iii) independent directors nominated by majority vote of all licensees (with the independent directors having no other business relationship to any licensee and subject to approval by the FCC). The position of chairman of the board should rotate across the three categories of directors. The board could establish an executive committee or other committees as it sees fit.

Actions by the national committee should be taken by majority vote of the board of directors, except that approval by 75 percent of the directors should be required for any supplement or amendment to the NSA applicable to services and networks nationwide which is reasonably expected to have a material adverse effect on any licensee. The board of directors may delegate authority to an executive committee or other committees and to officers of the national committee.

The licensees should pay the expenses of the national committee in proportion to the number of licensed POPs of each licensee.

Summary of Refinement: implement the framework for a national committee of area licensees.

D. The Rules Should Establish the Spectrum Lease Fee to Provide Adequate Funding for Public Safety Responsibilities. The FCC proposes to limit annual payments to the PSBL to $5 million annually, apportioned on a per region basis based on total pops per region.[54] USCC agrees with the apportionment approach. However, USCC is concerned that, with the proposed level of funding, the public safety entities would not have sufficient resources to successfully perform their roles with regard to negotiating and performing under the NSA, establishing and operating systems for authorizing priority access, and other aspects of supporting public safety users of the shared network.

USCC believes that a $10 million annual level, adjusted annually for inflation, would provide much more assurance that the network would be properly specified and overseen. Moreover, to the extent that such a higher level fee was not used for administration under an FCC approved budget, the remainder of the annual spectrum lease fee could provide support for public safety users of the shared network, such as in procuring user equipment devices or modifying their existing systems to interconnect with the shared network through gateways.

Summary of Refinement: establish the spectrum lease fee to provide adequate funding for public safety to negotiate the NSA and satisfy other responsibilities.

[54] Notice at para. 360.

Conclusion

The tentative conclusions in the Notice represent excellent progress. Generally, the tentative conclusions are close to providing the framework for successfully auctioning the D Block spectrum in licenses covering the entire nation and rapidly developing a high-quality, nationwide, interoperable shared wireless broadband network. USCC has stated its support for the network-of-networks approach and the many related proposals which would increase the opportunities for smaller operators and the commercial viability of the D Block licensees.

Because of the large number of issues posed in the Notice, USCC has concentrated on matters requiring refinement and answering the FCC's requests for comments. In particular, USCC urges the FCC to:

- prohibit regional packages and anonymous bidding because they would unnecessarily deter or disfavor smaller bidders and complicate the auction of area licenses and the alternative nationwide license;
- lower the triggers for decreasing the minimum opening bids and provide new bidding eligibility at that stage of the auction;
- when there is a nationwide bid and bids on area licenses cover at least ninety percent of the population, then allow bidders on the area licenses flexibility to develop commitments to serve the remaining license areas;
- require a nationwide licensee either to select LTE or WiMAX, or to bear the burden of proving that its technology choice will not harm public safety users;
- establish rate principles rather than specific amounts for public safety users' "basic rate" and the gateway-based access charge;
- set a time frame of three to four months for negotiating the NSA;
- adopt rules for a national platform for public safety applications;
- specify spectrum subject to priority access in terms of 70% or 60% of total engineered capacity in an affected location, and allow recovery of costs for supporting priority access;
- clarify that quality-of-service standards and public safety functionalities apply only to the portion of the shared network controlled by the D Block licensees;
- clarify that in an "integrated satellite solution" the handset or other user equipment device should prioritize acquisition of the 700 MHz terrestrial shared network over satellite service acquisition, and that the FCC does not require a D Block licensee to pay for satellite-capable user equipment devices or become a retailer of satellite services;
- require D Block licensees to negotiate reasonable roaming arrangements (terrestrial-terrestrial as well as terrestrial-satellite);

- implement the framework for a national committee of area licensees;
- clarify that a D Block licensee could acquire compatible 700 MHz public safety networks at any time with compensation equal to the D Block licensee's avoided incremental cost of constructing the shared network;
- limit any requirement of bankruptcy remote entities to the license holder, not the holder of network assets or operations, especially for area licensees covering less than forty percent of the nation's population; and
- establish the spectrum lease fee to provide adequate funding for public safety to negotiate the NSA and satisfy other responsibilities.

These suggested changes will likely increase the number of bidders for area licenses, improve deployment and operation of the nationwide network of shared broadband networks, and enable the licensees to offer more attractive services to public safety and commercial users.

Respectfully submitted,

UNITED STATES
CELLULAR CORPORATION

By: /s/ Grant Spellmeyer

Grant Spellmeyer
Director – Regulatory Affairs
United States Cellular Corporation
9410 Bryn Mawr
Chicago, IL 60631
Phone: (773) 399-4280
Fax: (773) 864-3133
Email: grant.spellmeyer@uscellular.com

By: /s/ George Y. Wheeler

George Y. Wheeler
Holland & Knight LLP
2099 Pennsylvania Avenue, NW, #100
Washington, DC 20006
Phone: (202) 955-3000
Fax: (202) 955-5564
Email: george.wheeler@hklaw.com

By: /s/ Warren G. Lavey

Warren G. Lavey
Craig T. Alcorn
Skadden, Arps, Slate, Meagher & Flom, LLP
333 West Wacker Drive
Chicago, IL 60606
Phone: (312) 407-0830
Fax: (312) 407-8515
Email: warren.lavey@skadden.com