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
	)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86

Comments of the Public Safety Spectrum Trust Corporation

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November 3, 2008

EXECUTIVE SUMMARY

The Public Safety Spectrum Trust Corporation ("PSST") agrees with the Federal Communications Commission's ("FCC or Commission") assessment that "a public/private partnership condition on the D Block remains the best option to achieve nationwide build-out of an interoperable broadband network for public safety entities, given the current absence of legislative appropriations for this purpose and the limited funding available to the public safety sector."[1]

A majority of the proposals in the *Third Further Notice of Proposed Rulemaking* ("Third FNPRM") are consistent with a viable partnership arrangement—one that will satisfy public safety requirements and still attract the private investment necessary for a successful D Block auction and deployment and operation of the shared network. The Commission's efforts to provide greater clarity and certainty regarding the D Block winner's obligations should resolve a number of the concerns that discouraged parties from participating in the initial 700 MHz D Block auction. While the PSST recommends certain adjustments to these proposed rule changes, it generally agrees with most of the technical standards that the Commission has proposed. The PSST also generally endorses the Commission's proposed changes for the auction, which should promote robust competition in the bidding process and reflect the FCC's recognition that, in this instance, the success of the auction should be measured by the population that will be covered by the network rather than maximum revenue generation.

At the outset, the PSST reiterates that a single, nationwide D Block license would best serve the needs of public safety and would allow for the most efficient implementation of the

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[1] In the Matter of Service Rules for the 678-746, 747-767 and 777-792 MHz Bands, *Third Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, 73 FR 57,750 ¶ 2 (2008) ("Third FNPRM").

SWBN. Recognizing the challenge this represents to certain prospective bidders, however, the PSST believes that the Commission's proposal – which incorporates both nationwide and regional license options – may be the best approach. The PSST therefore supports this approach, provided that the Commission also provides a manageable process for dealing with multiple regional licenses (such as a National Committee of Licensees discussed in Section I.A. below) and also for additional PSST resources that will be necessary if a regional approach is adopted.

The PSST does not believe, however, that the FCC achieved the optimal balance in its assignment of operational responsibilities between the D Block licensee(s) and the PSST or in its oversight of both licensees in the Third FNPRM. As discussed in these comments, the PSST has no intention of undercutting the D Block operator's network control or business opportunities, or of duplicating its capabilities. The PSST is concerned that the Commission's proposals so severely limit the authority of the PSST that the PSST is blocked from monitoring the network and the public safety users' experience on the network. Implementation of the FCC's proposals on these matters could hamper the PSST's ability to ensure that the needs of public safety are being met. The PSST's status as a Commission licensee, as the representative of public safety interests in this network, and as an equal partner in this undertaking requires that the PSST occupy a meaningful position and have appropriate related roles and responsibilities that are not captured in certain of the Third FNPRM proposals. The PSST also questions why the Commission seeks to assume unprecedented oversight of the PSST's internal and external activities in its partnership role, but not the activities of its D Block partner(s).

From the perspective of the public safety community that is the principal intended beneficiary, the PSST urges the Commission to provide the PSBL with greater authority to act on behalf of public safety vis-à-vis the D Block partner(s). The Commission should allow the PSST

to organize and implement priority access to the shared network by users on an expedited basis. The Commission should also make some adjustments to its technical and coverage rules to ensure that the needs of public safety users are addressed. The PSST urges the Commission to add a 7-year build-out requirement to its current proposal and to adopt a modest increase in the proposed coverage requirements. The PSST also urges the Commission to require the designation of 50% of sites as critical, and to grant the PSST sufficient input to determine the number of sites needed for critical site hardening in a given region. Each of these elements are integral to the implementation of a shared network that will serve its intended purpose.

With respect to PSST funding, the PSST believes that providing for funding directly within the FCC's rules represents a sensible step with public safety's interests in mind. However, the PSST believes that the $5 million annual cap should be raised to $10 million, and $2 million of that $10 million annual payment be advanced so that it may be dedicated to expenses incurred by the PSST in conducting NSA negotiations. In addition, a further one-time $10 million payment should be required to be made to the PSST to allow for the complete discharge of past PSST expenses.

The PSST believes that many of the proposals made by the FCC relating to oversight and PSBL internal matters are reasonable. A few of the proposals, however, will adversely affect the PSST's ability to perform its functions and, therefore, will impede the success of the Public/Private Partnership and the shared network that the Partnership is to build and operate. In particular, the PSST strongly believes that the Commission should refrain from changing the PSST's internal operations in ways that would impair the PSST's ability to act prior to completion of the auction and negotiation of the Network Sharing Agreement ("NSA"). To that end, the PSST strongly urges the Commission to permit the current Executive Committee to

serve through completion of their current terms of office. Finally, the PSST urges the Commission to refrain from separating the Chairman and CEO positions until the PSST has received funding.

The modifications proposed herein will assist the PSST in fulfilling its mission and will facilitate the deployment of the SWBN in a manner that preserves the commercial viability of the D Block auction and the shared network construction and operation while also serving the needs of public safety.

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Comments of the Public Safety Spectrum Trust Corporation

The Public Safety Spectrum Trust Corporation ("PSST") respectfully submits its comments in response to the *Third Further Notice of Proposed Rulemaking* ("Third FNPRM") in this proceeding. The PSST considers the Third FNPRM another major step forward in establishing a framework for a viable Public/Private Partnership, which will result in the deployment of a commercially attractive SWBN that satisfies essential public safety communications requirements. In seeking to achieve these goals, the Commission must adopt rules that will strike the appropriate balance between public safety and commercial interests.

The PSST has evaluated the Third FNPRM proposals based on the following guiding principles:

- Whether the proposed rule would increase the probability of a successful auction, one that is likely to attract a qualified bidder for a national license or multiple qualified bidders for markets that cover an acceptable percentage of the nation's population;

- Whether the proposed rule would help lead to a commercially viable network that is also adequate to satisfy public safety requirements, and that would enable the PSST to meet its obligations as an FCC licensee, as a representative of the public safety community, and as an equal partner with the D Block operator(s); and

- Whether the proposed rule would permit the PSST to function effectively internally, including its need for adequate funding to meet its obligations to the public safety community and to current and future third parties who provide goods and/or services that are required by the PSST.

The PSST generally finds the Third FNPRM proposals to be consistent with these principles, although in a few cases it believes that the overall structure and the interests of public safety can be better served by some modifications. Accordingly, the PSST urges the Commission to adopt rules consistent with the modifications described below.

I. FURTHER RULE REVISIONS ARE REQUIRED TO ENSURE A SUCCESSFUL D BLOCK AUCTION AND TO PROTECT THE INTERESTS OF PUBLIC SAFETY

A. A Single Nationwide D Block License Remains the Best Approach, but a Regional License May be Acceptable with Proper Conditions in Place.

In its previous comments in this proceeding, the PSST expressed its very strong preference that the D Block spectrum be awarded to a single entity as a 10 MHz nationwide license.[2] The PSST noted that a nationwide D Block license would be consistent with the national authority granted to the PSST as the Public Safety Broadband Licensee ("PSBL") in the Public/Private Partnership.[3] It explained that unless the D Block spectrum is deployed as a single, integrated network using a common air interface, it would be incapable of meeting one of the FCC's primary objectives in this proceeding—the establishment of a nationwide, interoperable public safety network.[4] The PSST also described the functional and financial

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[2] The Public Safety Spectrum Trust Corporation Comments, WT Docket No. 06-150, 38 (filed June 20, 2008) ("PSST Comments"); The Public Safety Spectrum Trust Corporation Reply Comments, WT Docket No. 06-150, 11 (filed July 7, 2008) ("PSST Reply Comments").
[3] *Id*.
[4] *See id*.

burdens it would shoulder if required to work with multiple D Block licensees, including, but not limited to, the difficult challenge of negotiating individual NSAs with multiple D Block winners.[5]

In the Third FNPRM, the FCC proposes alternative auction possibilities that will determine both the geographic scope and technology platform for the D Block. The Commission proffered such proposals in response to comments from commercial entities that expressed interest in participating in the auction on a regional level because they do not have the resources to pursue a national license.[6] Therefore, the Commission tentatively concludes that it should retain the option of bidding on a single, national D Block license, but also proposes regional auctions based on 58 Public Safety Regions ("PSRs") that mirror the 55 700 MHz Regional Planning Committee ("RPC") regions and three additional regions.[7] The FCC also proposes that if there is no successful national bid, either regional auction could be considered complete as long as PSRs covering 50% of the U.S. population have bids.[8]

The PSST's primary objective in this proceeding remains a successful auction that will produce a robust network with maximum coverage of the U.S. population and a partnership arrangement that will foster a long-term commitment to the SWBN.[9] A single national licensee remains the simplest path toward that end because it allows for a more efficient coordination scheme with the PSBL and it is the best way of meeting the primary objective of deploying a

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[5] PSST Reply Comments at 12.

[6] Third FNPRM at ¶¶ 61-62, 70, n. 137.

[7] Third FNPRM at ¶ 63. There are 55 RPCs to which the FCC has proposed adding three regions covering the Gulf of Mexico, the Territory of Guam and the Commonwealth of Northern Mariana Islands, and the Territory of American Samoa, which are identical to the current Economic Area licensing areas for those same regions.

[8] *See id*. at ¶¶ 246-47, 255.

[9] Because the PSST views maximum coverage as a key component of a successful SWBN, it encourages the FCC to give serious consideration to the Sprint Nextel Corporation proposal for performance-based financial incentives or bidding credits where there is a commitment to exceed the coverage requirements. Third FNPRM at ¶¶ 284-286, *see infra* Section II.B.

cohesive, integrated system. Nonetheless, the PSST is mindful of the concerns raised by prospective bidders about taking on a project of this size. In light of the initial experience with the D Block auction, which did not attract a successful qualifying bid for the nationwide D Block license, and the further record in this proceeding, the PSST believes that the FCC's proposed regional approach should be adopted as a possible alternative to a single nationwide license, provided certain safeguards are implemented.[10]

The Commission addressed one of the PSST's concerns by making coverage, rather than total bid amounts, the determinative element in a winning bid. The PSST believes coverage is critical to the nation's first responders, who are responsible for the safety of life, health, and property no matter where located, so it is appropriate that this factor is given the highest priority in the FCC's auction approach. The Commission also addressed an important concern in its tentative conclusion to require a common air interface through its auction mechanism.[11]

Additionally, the FCC's tentative conclusion that it should reduce the D Block minimum opening bid price to a total of $750 million and to forgo establishing a higher reserve price for either the national or regional licenses also is likely to promote broader network coverage. While the PSST agrees with this step, the PSST also believes that further reductions in the minimum opening bid prices (of each license) would be appropriate[12] given the current economic climate where commercial partners may face severely limited access to capital. Indeed, the Commission itself emphasized that the value of having the network is in meeting the needs of

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[10] The PSST agrees that PSRs are the optimal size for regional D Block auction licenses. They strike the right balance between being large enough to produce a manageable number of potential D Block licensees, subject to the conditions detailed below, without being so large as to discourage the largest number of prospective bidders.

[11] Third FNPRM at ¶¶ 110-14; *see also id.* at ¶¶ 244-45.

[12] *See infra* at Section I.A. The PSST notes the only bid made in the initial D Block auction was for less than $500 million, and while the rule changes proposed in the Third FNPRM should make the license considerably more attractive to bidders, the severe downturn in the credit markets must also be taken into account.

public safety: "[t]he successful creation of a nationwide interoperable broadband network meeting the needs of public safety will be of enormous value to the public, quite possibly exceeding the value of any potential revenue for the public from the sale of licenses for the D Block."[13]

In the unlikely event that a very small number of PSRs remain available, the PSST tentatively agrees that the FCC should reallocate the spectrum and assign those PSRs to the PSST. While the PSST may be well-positioned to administer a Request for Proposal ("RFP") process for those PSRs based on demonstrations from commercial operators about how they would develop partnerships for the deployment of the SWBN with public safety as well as those who won the D Block licenses at auction, it is critical that the Commission consider the PSST's resources to take on this role.[14] The Commission should ensure that the PSST is not faced with multiple NSA negotiations as well as the administration of a complex and difficult RFP process without adequate funding to complete these important tasks.

A necessary corollary to having multiple D Block auction winners is to have a legally enforceable mechanism requiring all of these entities to form an organization that would act on their behalf in many of their dealings with the PSST. This concept was proposed by United States Cellular Corporation ("USCC")[15] and the PSST agrees that is essential for a regional auction process to be feasible. Without it, the PSST could be left with the responsibility of negotiating and coordinating with as many as 58 different D Block operators—not only in agreeing to the NSA, but in performing its oversight and compliance monitoring functions and

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[13] Third FNPRM at ¶ 275.

[14] The rules must allow the PSST adequate personnel and other resources to negotiate multiple RFPs should they become necessary, a task that likely would involve not only locating and encouraging bidders but negotiating an NSA in each case that is specific to the terms of the individual RFP. As discussed below, the current proposed budget would not be adequate to cover that responsibility.

[15] Third FNPRM at ¶ 173.

resolving any other multi-region interoperability matters. This charge would severely tax the resources of the PSST, and ultimately could result in conflicts between different operators that are highly detrimental.

USCC specifically recommends that all D Block winners be required to participate in a National Committee of Licensees ("NCL"), which would fulfill the following functions:

> (1) "serve as a single point of contact for FCC, PSST and public safety agencies with licensees on national issues;" (2) "develop licensees' recommendations for any FCC rule changes;" (3) "negotiate changes in national NSA with PSST;" (4) "arrange support services for operations requiring inter-carrier coordination;" and (5) "work in conjunction with existing standards bodies and clearing houses."[16]

The PSST supports this proposal and recommends that the NCL also be charged with negotiating at least a template NSA that would address the majority of issues for all regional licensees. The FCC provides guidance on this subject by identifying a summary of major terms to be addressed in the NSA in an NSA Term Sheet attached as Appendix E to the Third FNPRM.[17] If the NSA Term Sheet is used as a starting point for the negotiation of a template NSA, both sides can be confident that the resulting document will address all matters that the FCC considers essential, even if certain issues have to be separately discussed with individual D Block auction winners.[18]

Moreover, requiring completely separate negotiations with each licensee seems inconsistent with the FCC's assumptions for seamless roaming and interoperability for public safety users on the SWBN. Those goals appear to require, at minimum, a fairly

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[16] *Id*.

[17] *Id*., Appendix E at 189.

[18] The PSST envisions that the template would definitively resolve a number of issues common to all licensees, while specifically reserving other issues, such as the specifics of coverage and build-out in a region, to individual negotiations with licensees. The PSST estimates that the template could be done in the first few months after the auction, and that the individual negotiations could be completed in another few months, depending on the number of D Block auction winners and the range and complexity of the licensee-specific issues.

high level of operational conformity and consistency between separate network segments in the different licensed areas. Requiring the PSST to negotiate completely separate and individualized NSAs with numerous D Block auction winners would require far more time and money than would serve the public interest and would over-tax the PSST's limited resources.[19]

B. The Commission Should Require the D Block Winner to Advance Funds in Support of the NSA Negotiation Process In Place of the Standard Default Payment Obligation.

Throughout this proceeding, the PSST has encouraged the FCC to adopt a less onerous option than its typical default payment provision in the event a D Block winner defaults.[20] The PSST supports the FCC's tentative conclusion not to impose the standard default payment obligation on a winning bidder in the event there is no agreement on the terms of the NSA, provided the party agrees to accept the FCC's resolution of the negotiation impasse (and presuming that the Commission otherwise has not found the bidder to be unqualified or to have negotiated in bad faith).[21]

As discussed in more detail below, however, the Commission proposes stringent restrictions on funding sources available to the PSST. These restrictions fail to consider the fact that the PSST will have financial requirements related to the NSA negotiation process itself that must be addressed. The PSST therefore recommends that the FCC address both issues at once by requiring the D Block winning bidder(s) to advance annual payment funds into the Commission's proposed escrow account upon conclusion of the auction to support the PSST's

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[19] If much of the NSA is left to separate negotiations with individual licensees, the PSST would want more time to conclude the NSA process, perhaps another several months, and to have the FCC separate the NSAs into different tranches so the PSST does not have to conduct all the NSA negotiations simultaneously.

[20] *See* PSST Comments; *see also* Cyren Call Communications Corporation Petition for Reconsideration and for Clarification, WT Docket No. 06-150; PS Docket No. 06-229 (filed Sept. 24, 2007).

[21] Third FNPRM at ¶¶ 206, 223.

NSA negotiation work before the issuance of the D Block license(s). Should the parties not reach agreement on the NSA, these funds would be non-refundable, but could be credited against the amount of any default payment imposed on that winning bidder should the parties not reach agreement on the NSA.

Based upon the FCC's assumption that negotiation of the NSA would take three months, the PSST is recommending that this default payment/PSST funding be set at $2 million for the PSST's expenses on this task and its other obligations during this period.[22] This amount would be a portion of the annual payment to support the PSST and would give the PSST the operating capital it needs to complete the NSA negotiations.[23] Also, this $2 million would be used for current expenses, primarily those incurred in the course of the NSA negotiations, and not for the payment of previously-incurred expenses.[24]

The PSST strongly supports the Commission's tentative conclusion that in the event that for any reason, including its failure to successfully negotiate the NSA, the provisionally winning bidder is not assigned a license, the Commission shall offer any unassigned D Block license(s) to the next highest bidder(s).[25] As the PSST originally explained in its Comments, this measure will serve as an additional incentive – which may be more effective than a financial penalty both in motivating the provisionally winning bidder to negotiate an NSA in good faith and in keeping

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[22] *See infra* Section III (discussing PSST funding proposals). This figure is based upon having a single nationwide licensee or template NSA for multiple regional licensees. To the extent that much of the NSA is left to individual negotiations, the PSST estimates that this figure would need to be at least doubled because of the substantial additional time that would be required and the PSST's likely inability to carry on all of the NSA negotiations with multiple D Block winners at once.

[23] As discussed in Section III below, the PSST is proposing that the funding cap be increased to $10 million, and that the $2 million in operating capital proposed here would effectively be an advance of the first year's budget, so it would not increase the overall amount paid by the D Block winners.

[24] As discussed in Section III, the PSST also proposes that the Commission approve an additional one-time up-front payment of $10 million that would go toward uncompensated liabilities that the PSST has incurred so that the PSST may be free from ongoing debt obligations.

[25] *See* Third FNPRM at ¶ 204.

multiple bidders interested in an auction's outcome. It will also discourage parties that are not qualified or that seek to disrupt the NSA process and ensure that the process for replacing that party with a legitimate bidder is swift and resistant to legal challenge.[26]

II. THE SHARED WIRELESS BROADBAND NETWORK REQUIREMENTS MUST BE REVISED TO ALLOW THE PSST AN ADEQUATE OVERSIGHT ROLE AND CAN BE REFINED IN ADDITIONAL AREAS

A. The Commission Must Expand the PSST's Oversight Role for the Effective Administration of Access to the Public Safety Spectrum.

The Third FNPRM attempts to further clarify the respective roles of the PSST and the D Block licensee(s) in the construction and operation of the SWBN. The FCC notes specifically that it "do[es] not propose any changes to the responsibilities of the Public Safety Broadband Licensee…that were established by the *Second Report and Order*,"[27] which are set out in Section 90.1403(b)[28] of the FCC's rules.

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[26] PSST Comments at 40-43.

[27] Third FNPRM at ¶ 196.

[28] 47 C.F.R. § 90.1403(b). The responsibilities of the Public Safety Broadband Licensee shall include the following:

(1) Negotiation of the NSA and such other agreements as the Commission may require or allow with the winning bidder at auction for the Upper 700 MHz D Block license, pursuant to the requirements set forth in Sec. 90.1410.

(2) General administration of access to the 763-768 MHz and 793-798 MHz bands by individual public safety entities, including assessment of usage fees and related frequency coordination duties.

(3) Regular interaction with and promotion of the needs of the public safety entities with respect to access and use of the 763-768 MHz and 793-798 MHz bands, within the technical and operational confines of the NSA.

(4) Dealings with equipment vendors on its own or in partnership with the Upper 700 MHz D Block licensee, as appropriate, to achieve and pass on the benefits of economies of scale concerning network and subscriber equipment and applications.

(5) Sole authority, which cannot be waived in the NSA, to approve, in consultation with the Upper 700 MHz D Block licensee, equipment and applications for use by public safety entities on the public safety broadband network. State or local entities may seek review of a decision by the Public Safety Broadband Licensee not to permit certain equipment or applications, or particular specifications for equipment or applications, from the Chief, Public Safety and Homeland Security Bureau.

(6) Coordination of stations operating on 700 MHz public safety broadband spectrum with 700 MHz public safety narrowband stations, including management of the internal public safety guard band.

(7) Oversight and implementation of the relocation of narrowband public safety operations in television channels 63 and 68, and the upper one megahertz of channels 64 and 69.

(8) Exercise of sole discretion, pursuant to Sec. 2.103 of this chapter, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use subject to the terms and conditions of the NSA.

(9) Review of requests for waiver submitted by public safety entities to conduct wideband operations pursuant to the procedures and restrictions in connection with such waivers as described in Sec. 90.1432.

In seeking to clarify rather than alter the PSBL's obligations, the FCC states that the PSST is to discharge its responsibility for administering public safety user access to the SWBN "through the establishment of priority access, service levels, and related requirements within the NSA process"[29] rather than providing any form of hands-on involvement in the processes of assuring that public safety users obtain access to the SWBN and receive satisfactory and contractually defined services on the SWBN. Similarly, the Third FNPRM confirms that the PSST has responsibility for maintaining an active monitoring role in ensuring public safety access to and use of the SWBN, but seeks comment on whether that responsibility can be met by reviewing periodic reports from the D Block licensee(s).[30]

The PSST previously assured the Commission that it did not intend to operate as an MVNO, to duplicate functions performed by the D Block licensee(s) with respect to the SWBN, or to impinge upon the D Block licensee's commercial opportunities.[31] All users of the network, even those whose priority access is the PSST's responsibility, will be the D Block licensee(s)' customers and, thus, the routine customer care and similar back office activities related to such users will be handled by the D Block operator(s). Yet, despite these assurances, the FCC seeks to further limit the PSST's role and restrict its authority as licensee.

The PSST does not believe that it will be able to discharge its responsibility for administering public safety user access to the SWBN or meet its obligations as an FCC licensee, as a representative of the public safety community, and as an equal partner with the D Block

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[29] Third FNPRM at ¶ 198; *see also id.* ¶¶ 197-201. The Third FNPRM states specifically that the PSST's role and its responsibilities "do not include the Public Safety Broadband Licensee assuming or duplicating any of the day-to-day network monitoring, operations, customer care, or related functions that are inherent in the D Block licensee's responsibilities to construct and operate the shared network infrastructure," and that the PSST is not expected to operate as an MVNO or to exercise day-to-day operational control of the network. *Id*. at ¶¶ 197-98. The PSST has previously accepted this position publicly upon guidance from the FCC.

[30] *Id*. at ¶¶ 201-02, 289.

[31] PSST Comments at 11-13.

operator(s) if its only role with respect to the spectrum covered by its license is negotiating the NSA and reviewing periodic reports from the D Block licensee(s) concerning NSA compliance. The PSST also believes that this limited role is not consistent with the Commission's policies concerning control over wireless network operations by the licensee, insofar as that control is limited strictly and solely to the public safety spectrum deployed in and the public safety users receiving services on the SWBN.

Instead, the PSST believes that the PSBL must have a more active role in its oversight of the public safety spectrum operations in order to fulfill its obligation to the public safety entities it represents and those that will operate on the SWBN. The PSST brings to its role knowledge from the public safety community regarding current communications needs for improved technologies (such as the use of medical data from trauma ambulances and helicopters) and how to manage emergencies and other incidents where lives are at stake. This knowledge must be deployed actively as incidents develop to help correctly implement the priority use of spectrum while incidents are in progress—not weeks or months after they are concluded and reports are generated. Such knowledge cannot be incorporated into a legal contract, and cannot be conveyed to the D Block operator through an analysis of monthly reports on usage or service level data. It is critical that the PSST be engaged with the D Block licensee on an ongoing basis, and that the PSST have real-time data from the SWBN, and input into communications management during the emergencies themselves. This does not require control of network operations, but it does require that the PSST have an active role in managing emergency communications, particularly where the public safety spectrum is being deployed.

Moreover, such real-time coordination is necessary to maintain *de facto* control over the public safety broadband spectrum, as required under the Commission's spectrum leasing rules.[32] As the lessor to a spectrum manager lease, the PSBL is "fully responsible for ensuring the [D Block] lessee's compliance" with the Communications Act and the FCC's rules and polices.[33] The PSBL is required to use not only "contractual provisions" (*e.g.*, provisions in the NSA), but also "actual oversight and enforcement of such provisions," and it must maintain "actual working knowledge" over the D Block licensee's activities and facilities by, among other things "coordinating operations and modifications" to the system and inspecting the operations.[34] In short, the PSBL must have sufficient control to know whether the D Block licensee is in fact complying with the Communications Act and the FCC's rules and policies (and the NSA, as an extension of those rules and policies) so that it can take steps to remedy any violations.[35]

The PSST disagrees with the Commission's view that the proposals in the Third FNPRM provide the PSST with sufficient control over the licensed spectrum. The PSST believes that the limitations the Commission proposes here constitute a significant departure from the Commission's rules and precedents. "Ultimate control" would require that the PSST have real-time hands-on involvement, access to relevant information and meaningful opportunities to ensure the prompt correction of problems on the SWBN, not delayed access to "snapshot" reports from the D Block licensee and the possible need to petition the Commission for a declaratory ruling rather than obtaining immediate relief. The PSST cannot meet its obligations as a licensee if it has such limited recourse against the D Block licensee if the D Block licensee

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[32] *See* 47 C.F.R. § 1.9010(b)(1).
[33] *See id.*
[34] *See id.*
[35] The PSBL also must have sufficient control and working knowledge of the D Block licensee's activities so that it can meet its responsibility for all Commission interactions and filings. *See id.* at § 1.9010(b)(2).

fails to perform its obligations. Under the Commission's proposals, the PSST lacks rights that would support any meaningful verification and audit functions, or adequate incident management monitoring.[36]

The PSST urges the Commission to reconsider its proposal on limiting the PSST's role in this manner. Instead, the FCC should ensure that the PSBL has independent authority to inspect the D Block licensee's operations on an ongoing basis and ensure that the SWBN is operated in compliance with the Communications Act, the FCC's rules and policies and the NSA. The results of these investigations should be reflected in quarterly reports by the PSBL that address compliance, and whether the PSBL agrees with the conclusions of the D Block licensee(s) regarding such compliance.[37] These reports would provide appropriate feedback to the D Block licensee(s) and the FCC.[38]

In addition, the PSST urges the Commission to include within the NSA terms that will allow the PSST to have a meaningful role in public safety access to and use of the SWBN, particularly during emergencies but also in ensuring that ordinary public safety concerns are

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[36] While many licensees do not have day-to-day control over their networks, having delegated that task to a professional manager, those licensees must under the FCC's rules have the ability to monitor the performance of the network and fire the manager if it is non-compliant. Because of the unique case of the SWBN, the PSBL does not have the ability to dismiss the D Block licensee, terminate the NSA or impose any commercial damage remedies.

[37] The FCC states that the D Block licensee(s) and the PSBL "jointly" provide quarterly reports with detailed information. Third FNPRM at ¶ 172 (citing Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, *Second Report and Order*, WT Docket No. 06-150, 22 FCC Rcd 15289, 15471 ¶ 530 (2007)). The PSST recommends that such reports include NSA compliance, and that there be a separate section of each report in which the PSST expresses its view on the matters contained in the report, similar to an outside auditor's report on a company's compliance with applicable standards. The PSST would need to have access to the specific data necessary to complete its sections of these reports, not just be restricted to the information the D Block licensee(s) choose to provide. The PSST need not be any more involved in operating the network to perform this function than an outside auditor is in the company's operations.

[38] The Third FNPRM suggests that the PSBL can provide appropriate feedback through joint reports. However, this idea must be developed and expanded to ensure that the PSST has an active role. The PSST also suggests that the Commission require the D Block licensee to show material compliance with the NSA to obtain license renewal and that the FCC may consider the joint reports in making its public interest determination on renewal. Such a measure would provide better assurance that the D Block licensee would comply with the NSA terms and is consistent with the Commission's public interest obligations under Title III of the Communications Act.

addressed in some manner. The PSST needs this authority because it is responsible for public safety access to and usage of this network, so it must be able to monitor that access and usage on a real-time basis, not by reviewing after-the-fact monthly reports that are prepared by the entity whose performance is being monitored.[39] It must also have an opportunity to assist with incident management and with implementation of all public safety related aspects of the SWBN.

The FCC's proposal that the PSST can resolve problems identified in the reports by bringing a complaint or petition for declaratory ruling to the Commission[40] fails to recognize two things: (i) the critical, time-sensitive nature of public safety communications—network problems must be identified and addressed immediately, not 30 or 60 days after they have occurred; and (ii) without a regular role in monitoring compliance and addressing public safety concerns, the PSST will not have the information to reach the right conclusions about whether public safety needs are being met.

The PSST wants to emphasize again that it is not the PSST's intent to duplicate D Block facilities, intrude upon the D Block licensee(s) network control, or add costs that are not needed to fulfill the FCC's objective in establishing the Public/Private Partnership. Rather, as previously stated by the PSST, the PSBL's role requires, in order to appropriately represent the interests of public safety, that it have a direct relationship with public safety users and that it not

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[39] Wireless carriers already permit customers to have effective real-time network monitoring capability for a fee. *See, e.g.*, Michelle Hankins, Service Level Agreements: Customers Demand What Providers Fear, Billing and OSS World, *available at* http://www.billingworld.com/articles/archives/Service-Level-Agreements-Customers-Demand.html; Service Level Monitoring with Cisco IOS Service Assurance Agent, White Paper, *available at* http://www.cisco.com/en/US/tech/tk648/tk362/technologies_white_paper09186a00800e9012.shtml; OpManager with ISPSLA, *available at* http://manageengine.adventnet.com/products/opmanager/opmanager-availability-performance-monitoring.html; AT&T BusinessDirect Portal, Manage Your AT&T Enterprise Networking Solution, *available at* http://www.business.att.com/content/productbrochures/bdportal.pdf. Because the capability to permit this type of monitoring access exists already, the FCC should direct the D Block operator(s) to make it available to the PSST without a fee.

[40] Third FNPRM at ¶ 201.

be entirely dependent on the activities and assurances of D Block operator(s).[41] Moreover, the Commission will have the opportunity to evaluate the PSST's position on this issue during the NSA negotiation process before the agreement is finalized. The Commission will have the ability to limit any overreaching on the part of the PSST should it find it necessary to circumscribe the negotiated role of the PSBL. Therefore, the Commission should not, by rule, foreclose the PSST's ability to find common ground with the D Block licensee(s) in an area that is fundamental to the very purpose of the Public/Private Partnership and the PSST or to limit the PSST's key role in NSA compliance.

Furthermore, limiting the PSST's role to passive review of D Block operators' monthly reports will prove crippling if there are multiple D Block winners. For example, as recognized by many commenters, additional steps must be taken to ensure that the relationship between the PSST and the D Block operators works smoothly, beginning with NSA negotiations and continuing through network construction, operation, and upgrades.[42] As noted previously, the PSST supports taking the additional step proposed by USCC, which contemplates the creation of an NCL or comparable organization comprised of all successful D Block bidders. The PSST will leave to commercial operators the details of how such an organization should function, provided that it is a vehicle that streamlines both the NSA negotiation process and subsequent interactions between the PSST and its commercial partner(s).

A regional approach also will necessitate the development of a distinct public safety core network with its own Home Location Register ("HLR") that contains the relevant information for all public safety users nationwide. Without a separate public safety HLR, it would be

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[41] PSST Comments at 12-13.

[42] The FCC has made it clear that the SWBN must have a common air interface through its proposed auction procedures. It also has expressly required that public safety users be able to roam among any separate facilities operated by multiple D Block entities. Third FNPRM at ¶¶ 110-11.

extraordinarily difficult and time-consuming, perhaps even impossible, for the incident manager responsible for first responder activities at an emergency event to access and assign priority access levels to responders housed on other than its same regional network, defeating the core purpose of the SWBN.[43] Such a public safety core network could be managed by the NCL, by the PSST, or by a third party engaged specifically for that purpose; however, regardless of how it is implemented and managed, the PSST requests that the FCC permit the PSST to have a reasonable role in establishing the public safety core network parameters and an appropriate oversight role in its ongoing utilization. In addition, the PSST urges the Commission to provide the PSBL with authority to create a public safety priority access user list to organize levels of access to the SWBN based on input from local and regional public safety agencies and to implement it at a national level. Such a mechanism would ensure that the PSST can quickly determine which users may receive priority access, and will assist it in coordinating localized emergency response.[44]

B. The Commission Should Modify the Proposed Build-out Benchmarks To More Appropriately Balance Coverage and Cost.

The rules defining build-out requirements for the SWBN are integral to determining the network's utility for the public safety community and its cost. If the coverage requirements are too low, important public safety services will not have access to the SWBN. If they are too high, the cost may cause commercial operators not to bid on the D Block spectrum and no network will be built. Identifying the right balance between these interests is essential to the success of the Public/Private Partnership.

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[43] This may be similar to the "system" described by the FCC as established to accomplish priority access and service levels, and the authentication and authorization of public safety users. *Id*. at ¶ 123.

[44] The PSST provides detailed information concerning its proposed mechanism in Section II.E. *infra*.

In the Third FNPRM, the Commission proposes to extend both the D Block and the PSST license terms from 10 to 15 years, and also recommends a less rigorous D Block build-out schedule.[45] The proposed rules would require that the applicable coverage percentage must be met in each PSR, not on an aggregate basis across all licenses held by an entity or even on a national basis should a nationwide bidder win. Accordingly, every PSR will enjoy some level of coverage if a national bidder prevails and all PSRs that attract a bidder will have coverage under the regional model.

The PSST accepts that the SWBN coverage requirements may be reduced from the 99.3% level it endorsed initially to a somewhat less ambitious standard, while retaining 99.3% as a public interest objective. It is certainly possible that the original rule may have been a deterrent to some entities that otherwise might have bid in the initial D Block auction.

However, the PSST believes that the proposed reductions are too substantial. The reductions likely will result in a network that does not provide public safety with coverage any more extensive than existing commercial networks—coverage the public safety community already made clear is inadequate to address ubiquitous public safety requirements. Although the PSST endorses the FCC's general proposed build-out framework, which establishes a correlation between coverage required and the population density, it supports different obligations than the FCC's proposal, including an additional Year 7 build-out benchmark, a more modest requirement for certain very small PSRs, and the use of county boundaries to calculate coverage.

The PSST proposes a slight revision to the coverage requirements and benchmarks that should not materially alter incentives for prospective bidders. The PSST recommends that the FCC adopt a Year 7 build-out requirement, in addition to the Year 4, 10, and 15 benchmark

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[45] Third FNPRM at ¶ 149.

obligations proposed herein. This will ensure that steady progress is made on network build-out throughout the first 10 years. The PSST also recommends a more modest coverage requirement for what it classifies as Density Category D PSRs, with less than 10 pops per square mile density, and different population thresholds for Density Categories A, B and C.

Specifically, the PSST recommends adoption of the following D Block build-out requirements:

Density Category	**Population Density (pops/ sq mi)**	**Year 4**	**Year 7**	**Year 10**	**Year 15**
A	>300	40%	75%	90%	98%
B	100-300	40%	75%	90%	96%
C	10-99	40%	75%	90%	94%
D	<10	30%	55%	70%	75%

The PSST believes that these percentages represent a more appropriate balance between coverage and cost. The percentages the FCC proposes would not ensure that the SWBN has markedly greater coverage than today's commercial wireless networks at the 10-year build-out benchmark in particular. Because those networks, understandably, are skewed toward metro area service and coverage of major transportation corridors, a standard that demands no more coverage than is available today, they would not be responsive to critical public safety requirements outside those areas. The SWBN was designed to – and should – provide more coverage than is available today, and can do so without jeopardizing its economic viability. The PSST understands, however, that imposing unrealistic requirements on markets with extremely low population densities likely would have the perverse effect of deterring auction interest and thus proposes the new low-density, Category D requirements.

The PSST does not propose to modify the requirement that D Block licensees must provide coverage of interstate highways, as well as coverage of municipalities with greater than 3,000 population, in addition to meeting the benchmarks specified above. The PSST does not agree that if the percentage of population standards are met, a D Block licensee should be permitted to use satellite service to cover these two specific types of areas. In addition, the PSST has studied the FCC's suggested population coverage benchmarks and has compared two alternative methods for computing such coverage using county boundaries and U.S. Census blocks and notes there are issues and inconsistencies with both. The PSST is most concerned, however, that permitting coverage obligations to be satisfied using U.S. Census blocks could result in substantial gaps in the SWBN's geographic coverage and therefore recommends that the Commission use county boundaries to determine whether build-out requirements are met.

Finally, the PSST recommends that the FCC adopt financial incentives, as proposed by Sprint Nextel Corporation,[46] for applicants that commit to coverage beyond that required in the rules and agree to reach the original D Block build-out mandates. By establishing a core system of requirements that the D Block licensee must meet and using financial incentives to compensate the auction winner for committing to construct a network that satisfies the more demanding goal of almost-complete nationwide coverage for the network, the Commission not only will promote increased participation in the auction, but also will encourage carriers to offer specific network features and provide expanded coverage in rural areas.[47]

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[46] Third FNPRM at ¶ 284.
[47] Sprint Nextel Comments at 1-2, 13-14.

C. To Ensure Network Stability During Emergencies, Fifty Percent of Network Sites Should Be Designated as "Critical" for Site Hardening.

In its previously filed comments, the PSST proposed a process whereby the D Block operator and the PSST (the latter having first collaborated with local public safety agencies) jointly designate up to 50% of the SWBN sites as "critical."[48] Sites so designated would have battery backup power of eight hours and generators with a five- to seven-day fuel supply.[49] Under this proposal, certain sites would require redundant backhaul capability to satisfy the network availability standard.[50]

Although the Commission proposes to implement an important aspect of the process recommended by the PSST, the Commission has proposed that the designation of sites as "critical" shall not be required to cover more than 35% of the SWBN sites for the D Block licensee(s), while setting forth that the licensee(s) shall use commercially reasonable efforts to designate as "critical" additional sites requested by the PSBL, up to 50% of all of its sites. The Commission also proposes reduced capabilities at critical sites by mandating that generators have only two days worth of fuel, while similarly urging that operator(s) make "reasonable efforts" to provide fuel for a minimum of five days.[51]

The PSST disagrees with the Commission's proposal to adopt 35% as the benchmark for site hardening. As discussed below, the PSST believes that 50% is the more appropriate benchmark because of the geographic scope of the SWBN. At a minimum, the FCC should adopt rules that permit the PSST and the D Block licensee(s) to agree upon the designation of up to 50% of the total nationwide SWBN sites as critical, with a reasonable allocation of those sites

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[48] PSST Comments, Attachment C at 3.
[49] *Id*.
[50] *Id*.
[51] Third FNPRM at ¶ 117.

among the PSRs and with a reasonable roll-out schedule. The PSST's discretion to allocate those sites and have input into the roll-out schedule is crucial because some geographic areas will require more redundancy than others, and not all PSRs will be equal in their need for critical sites. In densely populated areas, for example, back-up may not be as important because there may already be overlapping coverage. The PSST expects that there will be several critical sites in each PSR. In addition, PSRs may not have adequate incentive to maintain high availability in remote sites that serve limited traffic loads, but are still critical in times of emergency. Accordingly, the PSST should be allowed to negotiate for more critical sites among the PSRs and should be granted the discretion to determine where they are needed in the context of the NSA negotiations.

The public safety community recognizes that the cellularized SWBN system architecture will be different than the typical public safety system that uses a small number of high-site, high-power facilities to achieve maximum coverage. With cellular architecture, sites often provide overlapping coverage, so the loss of a single site generally does not result in a loss of coverage. If this was not the case, the PSST would urge the FCC to require hardening of all sites, as is the norm for public safety systems. However, given the extensive geographic scope of the SWBN, it is reasonable to assume that a substantial number of sites in less populated areas will function more like the traditional public safety system and will operate without duplicative coverage from another location. Thus, 50% hardening seems to be the most appropriate number.

If the FCC subsequently adopts general CMRS rules with respect to site hardening that are more rigorous than those proposed by the PSST, the more stringent rules should automatically apply to the SWBN and its sites. Satellite coverage, while an important element in enhancing network utility, should not be used as a substitute for hardening of critical sites.

D. The Commission Should Implement its Network Robustness Proposal.

The PSST supports the FCC's proposal to require 99.6% network reliability for terrestrial service, while retaining a target of 99.9% network availability.[52] The PSST also agrees that the D Block operator(s) should be permitted to consider satellite coverage to enhance network reliability.

E. The Commission Should Adopt its Proposed Priority Access Scheme, While Reflecting the Practical Need for an Expeditious Triggering Mechanism.

As part of the effort to increase certainty about network requirements and performance, and thereby promote participation in the next D Block auction, the Commission proposes a defined set of circumstances that would trigger public safety priority access to D Block spectrum capacity.[53] These specified events follow:

1. The declaration of a state of emergency by the President or a state governor;
2. An issuance of an evacuation order by the President or a state governor impacting areas of significant scope;
3. The issuance by the National Weather Service of a hurricane or flood warnings likely to impact a significant area;
4. The occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics;
5. The occurrence of manmade disasters, or acts of terrorism of a substantial nature;
6. The occurrence of power outages of significant duration and scope; and
7. The elevation of the national threat level to orange or red anywhere in United States, or elevation of the threat level in the airline sector, or any portion thereof, to red.

The Commission tentatively concludes that occurrence of the first and second instances and when the national or airline sector threat is red would enable public safety to access up to 40% of D Block capacity; all other enumerated instances would entitle public safety to access up to 20% of D Block capacity.[54] Such capacity would be made available to public safety priority access

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[52] *Id*.
[53] *Id*. at ¶ 86.
[54] *Id*. at ¶ 87.

users at no additional cost over and above their basic monthly service charges.[55] Priority access requests initiated by the PSBL would cover a 24-hour period and must be reinitiated every 24-hour period thereafter that priority access is required. The right to emergency-based priority access would be limited to the time and geographic scope of the emergency.[56]

The PSST supports these recommendations to the extent that the Commission also permits the PSBL to utilize an expeditious triggering mechanism to ensure priority access immediately at the outset of a significant disaster or emergency, prior to any federal or state declarations or orders. The PSST suggests that the PSBL be entitled to make this determination following consultation with the appropriate individual in the federal or state government, as designated by the applicable administration from time to time (or if no such individual is designated, as determined by the PSBL in good faith). The PSST has developed an illustration of the Commission's proposed emergency response process, as shown in Appendix A. This illustration also specifies the point at which the PSST's proposed triggering mechanism should be activated (noted as "Local Authorized Public Safety triggers capacity augmentation").

The Commission must recognize that emergency events are unpredictable and can quickly grow in scope and magnitude. In responding to these types of emergencies, it is imperative that the PSBL have an expeditious means of providing public safety users access to the network and that local public safety agencies are able to make priority access decisions quickly and efficiently, without waiting for approval. In general, the PSST emphasizes that the more common local emergencies will be accommodated easily on the 10 MHz of public safety

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[55] *Id*. at ¶ 89.
[56] *Id*. at ¶ 87.

network capacity without tapping into the D Block capacity at all.[57] Also, in many emergency scenarios, public safety agencies will work quickly to resolve problems and the duration of priority access on the D Block spectrum will often be very limited.[58]

There are several possible means by which local public safety agencies can be granted access to additional capacity quickly as emergency events are unfolding. The PSST proposes that the Commission allow it to formalize local public safety processes for doing so within the NSA negotiations. For example, it may be feasible to pre-configure and assign a geographically bounded group of cell sites to an identified set of public safety entities. Designated staff within these local public safety entities could be provided activation codes or be placed on an authorization list so that with the occurrence of an emergency event, these local resources could be made available quickly. The Commission's processes already provide for consultation between the D Block licensee and the PSBL. The PSST proposes that local public safety agencies be granted priority access immediately, and as the Commission's consultation procedures are invoked, any disagreement between the D Block licensee and the PSBL as to the continuing activation of local public safety resources can be resolved as part of the established reinitiation process. This modification, because it provides for immediate priority access, would address the operational realities of emergency response that the Commission's proposal currently lacks. The PSST proposes that the Commission modify the procedure accordingly.

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[57] In the Third FNPRM, the Commission agrees with APCO that "the instances under which emergency-based priority access would be triggered under the definition [the Commission] tentatively propose[s] . . . will be relatively infrequent." *Id.* at ¶ 88.

[58] One example of such an emergency is the Northeast Blackout of 2003 – a massive power outage throughout parts of the Northeastern and Midwestern United States, and Ontario, Canada that occurred on August 13, 2003. The outage affected an estimated 10 million people in Canada and 40 million people in the United States. Although the outage was the most widespread electrical blackout in history, most customers had their power restored within 24 hours.

F. The Commission Should Take Whatever Steps Are Possible to Allow Critical Infrastructure Industry Entities Priority Access To the SWBN.

Throughout this proceeding, the PSST has emphasized the vital importance of implementing the most effective emergency response by granting Critical Infrastructure Industry ("CII") entities some degree of priority access available to public safety users. The PSST has explained that it is essential for power crews, road clearing companies, and other "second and third responder" organizations to have communications capabilities that permit them to coordinate a full-scale response effort with public safety, under the direction of the local public safety incident manager.[59]

The PSST believes that Section 337 of the Communications Act[60] can be read to include such entities at the invitation of public safety and governmental authorities. The PSST understands that the Commission, to date, has reached a different conclusion, and that in the Third FNPRM the FCC reaffirms its position that "both statutory limitations and policy considerations preclude CII entities from accessing the public safety broadband network."[61] The Commission takes the position that these non-public safety entities may access the SWBN only on a commercial basis as D Block operators' customers because of its interpretation of Section 337.[62]

However, the Commission appears to agree that communications among such groups is often critical for the protection of life, health, and property, and has determined in other instances

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[59] PSST Comments at 19-21.
[60] 47 C.F.R. § 337(c).
[61] Third FNPRM at ¶ 323.
[62] *Id*. at ¶ 326. Of course, as stated previously, all users on the SWBN are D Block subscribers, even those that qualify as public safety and are permitted to utilize the public safety spectrum capacity and secure priority access capability from the PSST.

that it is.[63] The PSST now urges the Commission, at a minimum, to ensure the most effective emergency response that can be achieved consistent with the Commission's reading of Section 337 by requiring the D Block licensee(s) to use all commercially reasonable efforts to enable the PSST to manage CII priority access during emergencies. This directive will be particularly important if there are multiple D Block operators. In addition, the PSST should be permitted to integrate communications with essential CII subscriber entities into an emergency response team. Permitting coordinated priority access among all these entities is the only way the FCC will ensure timely, organized emergency response efforts (which were lacking during events such as 9/11 and Hurricane Katrina) that are at the core of a nationwide interoperable network, and are an essential purpose of the Public/Private Partnership. The PSST should be given the maximum authority that is consistent with existing law to coordinate the response among public safety entities and CII users.[64]

To the extent that the Commission will only permit CII users to sign on to the SWBN as commercial customers of the D Block licensee(s), it is also important that CII entities are provided some incentive to do so. As an example, CII entities can be offered a slight discount from the standard commercial rates. Without sufficient voluntary enrollment by CII entities, interoperability between public safety users and CII entities may be undermined and the reliability of a coordinated emergency response may be impeded.

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[63] *See, e.g.*, The Federal Response to Hurricane Katrina, Lessons Learned (Feb. 2006). Notably, the Commission even lists "significant power outages" in the set of circumstances that would trigger public safety priority access, even though power companies, as CII entities would not receive priority access under the Commission's proposal.

[64] To the extent that CII users may be added as customers of the D Block licensee, they should also be included in the PSST's proposed mechanism for allowing priority access as discussed in Section II.B.

Finally, the PSST requests that the rules provide at least enough flexibility to incorporate any changes to Section 337(f) eligibility that Congress may enact in the future, without requiring further amendment of the FCC rules.

G. The Commission Should Specifically Define a Discount Rate In Lieu of Establishing a Fixed Public Safety Usage Fee.

In response to parties that sought greater certainty about public safety usage fees, the FCC tentatively concludes that it should adopt fixed nationwide service fees that the D Block licensee(s) would be permitted to charge public safety users.[65] It proposes a fee of $48.50 per month based on its review of discounted commercial rates currently being charged public safety and governmental users for wireless voice and data services.[66]

While public safety users need to know that their charges will be discounted from normal commercial rates and commercial providers need sufficient specificity to develop a business model, the PSST nevertheless cautions the FCC against establishing a fixed rate at this stage, particularly one that is not tied to a specific set of services or a permissible amount of usage. The advanced technology deployed on the SWBN is likely to permit the development of applications that may not even be envisioned today. Accordingly, it is not possible to anticipate all the ways in which public safety will use the network or the mix of usage by a department or any individual user, as the technology platform has not yet been decided. Likewise, the PSST disagrees with the FCC's proposed interoperability fee of $7.50, which is a term that should be negotiated as part of the NSA.

The PSST urges the Commission to specify a discount from the corresponding commercial service rates that would be available to public safety users rather than establishing a

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[65] Third FNPRM at ¶ 390.
[66] *Id*. at ¶¶ 391-392.

fixed usage fee. Consistent with the FCC's analysis of discounts typically offered to governmental users, the PSST recommends that the rules specify a 20% public safety discounted commercial rate for the same or comparable service offerings. By establishing a discount percentage rather than a set service charge, the FCC will not discourage a D Block operator(s) from offering what could be a more useful, even if more costly, package of services for public safety use to avoid what the operator might otherwise consider an unaffordable subsidy. The PSST is confident that, like competitive wireless offerings, the D Block licensee(s) will develop a multiplicity of service packages designed to meet a variety of requirements and operating budgets.[67] As long as public safety users are guaranteed reasonable discounted commercial rates, and as long as the service provider knows what that discount will be, both sides will have a "fee structure that is reasonably stable and predictable."[68]

H. The Commission Should Adopt Additional Measures to Ensure that Satellite-Capable Handsets are Available for Public Safety Users.

The Commission reaffirms its proposal requiring the D Block licensee(s) to make available at least one handset that includes an integrated satellite solution, but leaves the terms and timeframe for the development of that handset to be negotiated in the NSA.[69] The FCC tentatively declines to adopt a proposal that all public safety handsets be satellite-enabled.[70]

The PSST always has supported an integrated satellite solution as an important element of the SWBN, as satellite capability will be an essential component in the SWBN. This is true not only because the geographic coverage required by public safety could not be fully accommodated through terrestrial deployment due to the cost, but also because we have learned

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[67] The PSST also notes that in certain geographic areas, there may be little incentive for public safety users to sign up for services. These users may need greater financial incentives to utilize the shared network.
[68] Third FNPRM at ¶ 388.
[69] *Id*. at ¶ 131.
[70] *Id*.

that satellite communications may be the best and possibly the only means available during certain catastrophic events.

For these reasons, it is important that the D Block provider(s) be committed to the promotion of satellite-enabled devices. The PSST therefore supports the Commission's proposal, and recommends that the FCC make the following modest additions to its satellite-related rules:

(i) A requirement that at least one laptop modem device, PDA, and traditional voice device be satellite-capable (not just a handset);
(ii) A timetable by which the devices must be offered, which the PSST suggests should be the later of three years from license grant or two years after chip sets are available; and
(iii) A requirement that satellite-enabled devices be updated routinely, consistent with normal commercial wireless device-enhancement schedules.

I. The Commission's Early Public Safety Build-Out Rules Must be Maintained.

The current FCC rules provide for early public safety build-out both in areas that do and do not have a commitment for deployment from the D Block licensee. Licensees in areas with a build-out commitment, who secure the PSST's approval, may construct at their own expense, provided that the broadband network they build conforms to the requirements and specifications of the NSA. The FCC previously determined that an entity that proceeded on that basis would be required to transfer its network to the D Block operator for integration into the SWBN, with its compensation limited to the costs the D Block licensee would have incurred had it constructed that portion of the network itself. Alternatively, the public safety entity may provide the D Block licensee with the funds to build in its area. A licensee in an area with no build-out commitment may arrange for access to spectrum from the PSST to deploy an advanced broadband network at

its own expense, again provided that the network built is fully interoperable with the SWBN. In these cases, the PSST must first offer the D Block licensee in the area the option to build.[71]

The PSST believes that the current rules are sound and should not be modified. They provide an appropriate safety valve for public safety licensees that wish to accelerate broadband deployment in their community and that have the financial ability to do so, without undermining the fundamental purpose of the SWBN: the development of a nationwide interoperable network. Proposals to carve out geographic areas for the construction of stand-alone public safety systems that are capable of meeting local requirements, but that would leave islands of incompatibility within a nationwide broadband network, are contrary to the Commission's objectives in this proceeding and should be rejected.

III. THE COMMISSION SHOULD PROVIDE THE PSST WITH SUFFICIENT FUNDING.

During the first year of its existence, the PSST has carried out its responsibilities with great effort, and in the face of many challenges, to support the objective of implementing a nationwide interoperable public safety network. The PSST is committed to fulfilling its obligations both to the public safety community it represents and to the FCC. The PSST has abided by, and will continue to abide by, the rules established by the FCC regarding its status as a non-profit entity, and it has not taken – and will not take – any actions that could conflict with and compromise its public safety responsibilities.

A substantial portion of the Third FNPRM is devoted to the PSST's external funding options, its business relationships, and its internal organization. The PSST agrees with a number of the positions taken by the FCC on these matters, as many of the proposals are consistent with the current status of the PSST or are in the process of being implemented. However, the PSST is

[71] 47 C.F.R. § 90.1430(b)(5).

troubled by certain restrictions that are likely to leave the PSST without sufficient resources to carry out its mission of delivering an advanced nationwide broadband network capable of meeting public safety requirements while also providing a viable commercial opportunity for the PSST's D Block partner(s).

The FCC tentatively concludes that an annual cap of $5 million for PSST funding from the D Block licensee(s) is sufficient[72] and proposes to clarify that the PSST is prohibited from securing debt or equity financing from any other source, including from non-profit entities or through vendor financing.[73] The FCC's position could even be read to preclude the PSST from accepting governmental or philanthropic grants.[74]

The PSST urges the FCC to reconsider the amount of the annual cap. It recommends that the cap be increased to $10 million per year, an amount the PSST believes is more reflective of its ongoing needs.[75] Until the auction is over and it is clear how many D Block licensees there will be, it is difficult for the PSST to determine its specific funding requirements. However, the Commission should be careful not to handicap the PSST by establishing an annual funding cap below the PSST's potential funding requirements.

The PSST proposes that $2 million of the first year's payment be made by the D Block winner(s) upon conclusion of the auction to support the PSST's ongoing operations, including

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[72] Third FNPRM at ¶ 360. This amount is substantially less than the funding proposed by USCC, a potential D Block partner, which recommended an annual lease payment of 3-5% of the auction price. *See* Letter from Warren G. Lavey, Counsel for United States Cellular Corporation to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket No. 06-229 (filed Sept. 17, 2008), Attachment at 12.

[73] Third FNPRM at ¶ 374.

[74] *Id*. ("Thus, we propose to prohibit the Public Safety Broadband Licensee from entering into any financial arrangements with third party, non-profit entities for the purpose of securing funding.")

[75] The PSST has conducted an analysis to arrive at this figure, and it is prepared to address this further in a confidential submission to the Commission.

efforts involving the NSA.[76] This amount would be an advance payment against the first year's budget, and not an additional obligation for the D Block winner(s). As suggested above, this amount would only cover work on the NSA and PSST operations during the NSA period, and would need to be increased if there are NSA negotiations with multiple D Block winners and no NSA template agreement that is binding on all D Block winners.[77]

With respect to the annual $10 million payment, the PSST anticipates that this amount will be necessary to meet its expenses during each of the first three years following the auction. This phase of the PSST's operations will require concentrated effort and considerable expense as the PSST will be engaged in negotiating one or possibly multiple NSAs with the D Block winner(s). During this period, the PSST will also be responsible for administering the narrowband relocation of public safety users from the lower to the upper portions of the 700 MHz band. The narrowband relocation will also require substantial PSST resources for the time of its personnel and advisors.[78] Although the PSST expects that these initial efforts and responsibilities will be considerable, its ongoing commitments will also be resource-intensive. For example, as additional markets are built-out, the PSST will need to expand its outreach and educational efforts to the public safety community within those areas. This will trigger an increase in PSST expenses, including travel expenses. The PSST acknowledges that the annual payment would be entirely dependent on FCC approval of the PSST's annual budget and would be scrutinized during the quarterly financial accounting and annual audits to which the PSST will

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[76] If the NSA negotiations with a winning bidder are not successful, and a license is not issued to that bidder, that bidder's portion of the $2 million payment could serve as its default payment.
[77] *See supra* Section I.A.
[78] *See infra* Section V. The PSST believes that the FCC has significantly underestimated the funds necessary to complete the narrowband relocation.

be subject; thus, it could not compromise the PSST's public safety obligations.[79] Further, the PSST recommends that the FCC revisit the amount of the annual payment at the end of three years to determine whether it should be adjusted based on the experience of the first three years with FCC-approved budgets. The three-year period is appropriate because this is likely to be the point at which the first phase of the PSST's responsibilities will be complete (*e.g.*, narrowband relocation, NSA negotiation). After that, the PSST's expenses may be reduced, but that is difficult to predict at this time.

The PSST also requests a one-time additional upfront D Block payment not to exceed $10 million to be allocated toward uncompensated liabilities that the PSST will have incurred by the date the payment is made. The Commission has emphasized how important it is for the PSST to be free from debt obligations, but has made no provision in the rules for the PSST to discharge its existing debts at the time its first budget is presented. The PSST's proposal has several objectives. First, the one-time upfront payment would be consistent with the FCC's clear desire that the PSST not have a financial relationship with any entity other the D Block licensee(s). It would allow the PSST to promptly discharge its payment obligations to all third parties who provided goods and/or services that were required by the PSST on terms that permitted the PSST to defer payment of those obligations until it obtained funding. Such deferrals were unavoidable due to the lack of any PSST funding mechanism.

Finally, the PSST requests clarification on the Commission's statement concerning non-equity or debt financial contributions from governmental or philanthropic sources. The PSST urges the Commission to allow it to accept funding from such sources because they do not raise the types of concerns that funding from commercial sources might engender.

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[79] Third FNPRM at ¶ 359. Of course, the input of the D Block operator(s) would be solicited before any adjustments would be made.

IV. THE COMMISSION SHOULD CLARIFY SOME MATTERS RELATING TO PSST INTERNAL GOVERNANCE.

The PSST understands the Commission's desire to make changes with regard to the PSST's internal governance to modify how the PSST operates with regard to certain matters. The Commission notes that its proposed changes are designed to "ensure that [the licensee criteria] are optimal for establishing and sustaining a partnership with a commercial entity, and for efficiently and equitably conducting the business of the [PSBL]."[80] However, making sweeping changes to the Executive Committee and internal governance processes at this time are likely to have the opposite effect. Ultimately, they could skew NSA negotiations in the favor of the D Block licensee(s), which will not be hampered by reciprocal requirements. Accordingly, the PSST strongly urges the Commission to consider the impact of such changes on the NSA negotiation process and the PSST's ability to act quickly and decisively at this crucial juncture. The Commission should not implement reforms that will prevent the PSST from having the internal resources it needs to carry out its mission at this stage.

Moreover, some of the reforms the Commission proposes have already been undertaken by the PSST. As discussed below, the PSST already has taken significant steps to make its Board meetings more public. Also, to date, all major decisions by the Board have been voted with a three-fourths supermajority, even though only a two-thirds supermajority is currently required, and the PSST has implemented a bylaw amendment to require all significant procurements to follow an RFP process. The PSST has formed a Board task group to develop a new Strategic Planning Committee that will be assigned some of the duties now being performed by the Executive Committee. Finally, the existing PSST Chairman is only serving as interim CEO, and will no longer serve in that capacity when a new CEO is hired. Given these steps, and

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[80] *Id*. at ¶ 396.

the NSA-related concerns, the PSST questions the need for further involvement by the FCC in its internal operations, either at all or before the NSA is completed.

A. The PSST Needs Greater Clarification Regarding Establishing Pre- and Post-Auction Business Relationships.

The Commission tentatively concludes that it will adopt sweeping conflict of interest requirements in two areas.

The first requirement is intended to safeguard against the possibility that an entity could influence the PSST's pre-auction activities in such a way as to benefit that entity's or a related entity's subsequent participation in the D Block auction. For that reason, the FCC tentatively concludes that it should prohibit entities that serve as advisors, agents, or managers to the PSST (or their related entities, including affiliates and those controlled by any officer or director of such entity) from participating in the D Block auction unless the entity has completely severed its business relationship with the PSST no later than 30 days after the release of the FCC order adopting final rules in this proceeding.[81] The PSST has no objection to this proposal.

The second proposed requirement covers pre- and post-auction activities, as described in the Third FNPRM as follows:

> we should adopt conflict of interest requirements requiring entities that are serving as advisors, agents, or managers (or their related entities, including affiliates and those controlled by any officer or director of such an entity) of the PSBL from establishing business relationships or otherwise being affiliated with, or holding a controlling interest in, equipment vendors, service providers, or other entities that have a direct financial interest in the decisions of the PSBL.[82]

The PSST has no objection to appropriate conflict of interest regulations. It has followed and will continue to follow such practices as a matter of course with or without an FCC requirement to do so.

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[81] *Id*. at ¶ 351.
[82] *Id*. at ¶ 352.

However, the Commission should ensure that the rules do not preclude the PSST from securing support in needed areas, including legal, accounting, engineering/technical, or other assistance that is consistent with normal professional standards of conduct. Professional organizations are well-equipped to navigate these matters with appropriate protections for all parties. The PSST requests that the FCC make clear that the conflict of interest standards that the PSST must adopt are analogous to those that govern professionals, and that the FCC is not seeking to ensure that professional firms working for the PSST not do any work for D Block bidders, only that its advisors not themselves be D Block bidders or licensees or have affiliations with D Block bidders or licensees.

B. The Changes Regarding PSST Internal Operations Should Be Implemented Carefully to Not Impair the PSST's Ability to Act Prior to Completion of the Auction and the NSA.

The FCC proposes a number of changes to the PSST's internal organization and operations. While, as noted above, the PSST generally accepts the Commission's desire to modify the requirements to be a public safety spectrum licensee, the PSST is concerned that some of these proposed changes will impair its ability to prepare for the auction and conduct NSA negotiations. None of these proposals will impact the SWBN–related activities of its D Block partner, the other party to the NSA negotiations, and it is important that the proposed restrictions not unduly hamper the PSST or skew the NSA negotiations in favor of the D Block licensee(s). The PSST urges the Commission to maintain a level playing field during this critical period and makes the following specific proposals.

a. **The Current PSST Executive Committee Should Continue to Serve Through Their Currently Elected Term.**

The Commission tentatively concludes that the PSST has placed too much reliance on its three-person Executive Committee, consisting of the PSST Chairman, Vice-Chairman, and

Secretary/Treasurer, and that, consequently, the Executive Committee should be reformed. It proposes that the PSST Board hold an election for new officers within 30 days of adoption of final rules in this proceeding. It further proposes that Executive Committee members (i) be limited to a two-year term, and (ii) not be permitted to serve consecutive terms in the same position.[83]

The PSST does not oppose term limits for Executive Committee members. On a near-term basis, the PSST urges the FCC to allow the current Executive Committee members to serve the remainder of their two-year terms, which will end November 2, 2009. Without this modification to the Commission's proposal, the PSST will be unable to maintain continuity of leadership during what is likely to be the most critical year of its existence—the period when it will need to negotiate the NSA(s) that will govern the future of the SWBN and, thus, the future of advanced broadband public safety communications. If the FCC wants the D Block bidders to know what the successor Executive Committee will be, an election can be held in advance of the auction with the new slate to take office at the conclusion of the auction.

The Commission should also recognize that the PSST is an entirely volunteer organization. The Board, and therefore the pool from which the Executive Committee may be drawn, consists of individuals that all have other primary responsibilities, and the current Executive Committee/officer group was formed primarily with the Board members most prepared to put in the extensive effort and time needed by the PSST at the current juncture. In the future, when the PSST has a budget and can hire full-time staff, it would have much less concern with requirements to rotate Executive Committee members and officers. If the Commission has concerns with the potential insularity of the existing Executive Committee, the

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[83] *Id*. at ¶ 412.

PSST recommends that it be permitted to add additional members to the committee rather than having to rotate out some of its most actively engaged Board members.

As previously mentioned, to address the Commission's tentative conclusion that the PSST has placed too much reliance on its Executive Committee, the PSST is in the process of forming a new Strategic Planning Committee that will take on many of the responsibilities of the Executive Committee. As currently being considered, this would include members from outside the PSST Board who have special areas of expertise to offer to the Board.

b. **The Chairman and CEO Positions Should be Separated, but Not Until the PSST has Received Funding.**

The Commission also proposes that the PSST separate the position of Chairman from that of Chief Executive Officer ("CEO") within 30 days of adoption of final rules in this proceeding.[84] Additionally, the FCC proposes that the PSST refrain from hiring an individual to fill the CEO position until the D Block licensee(s) has made funding available for the PSBL's administrative and operational costs, and further directs that the CEO cannot have served on the PSST's Executive Committee during the three years prior to his or her appointment.[85]

The PSST agrees that the positions of Chairman of the Board and CEO are distinctly different and should be handled by different persons. Indeed, the organization's bylaws already contemplate that these functions are separate and distinct positions (although they do not prohibit the same person from occupying both positions). At this time, however, the PSST does not have the funds to pay a full-time professional CEO. It is for this sole reason that the PSST authorized the Chairman of the Board to act as interim CEO on a temporary basis. As soon as funds are available to fill the CEO position with a non-Board member, the PSST will do so, and the PSST

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[84] *Id*. at ¶ 411.
[85] *Id*.

does not object to the FCC's restriction that the Chairman not be eligible for the CEO position from that point forward.

c. **A Higher Supermajority Vote Requirement.**

The FCC tentatively concludes that the PSST must achieve a three-fourths supermajority vote approving all major decisions on the basis that increasing the percentage from its current two-thirds figure, which applied to most major PSBL board decisions, will ensure that the PSST "will only undertake major actions that have the broad support of the PSBL's representative constituents."[86] It proposes to include in the category of "major" decisions actions to change the articles or bylaws, approval of contracts with a cumulative value exceeding $25,000 per year, and expenditures exceeding $25,000 per item.

The PSST understands the FCC's desire for Board decisions to have broad support, and to date all PSST decisions have been approved by at least a three-fourths supermajority. Accordingly, the PSST respects the FCC's tentative conclusion that there be a higher supermajority requirement, although does not see why this change would be necessary.

d. **The PSST Supports Hosting Public Board Meetings.**

Finally, the FCC tentatively concludes that the PSST Board meetings should be public, except when sensitive matters are discussed.[87] Prior to the issuance of the Third FNPRM, the PSST implemented measures to provide for more open Board meetings, which are very similar to those proposed by the FCC. These new measures make Board meetings open to the public, provided that suitable space could be obtained or technology could be put in place to enable the public to listen to the meetings, subject to the right of the Board to close the meetings for

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[86] *Id*. at ¶ 413.
[87] *Id*. at ¶ 414.

sensitive matters. The PSST therefore supports the FCC's tentative conclusion,[88] provided that the Board retains reasonable discretion in determining which matters are sufficiently sensitive to require that it meet in closed session, particularly up to the completion of the NSA, when matters relating to that agreement are likely to be discussed at Board meetings. The PSST would also like to retain such discretion after the NSA is completed, as it cannot anticipate in advance what sensitive matters might arise.

V. THE COMMISSION MUST EITHER PROVIDE FOR A DRAMATIC INCREASE IN THE CAP ON NARROWBAND RELOCATION FUNDING OR LIMIT THE PSST'S OBLIGATIONS WITH REGARD TO NARROWBAND RELOCATION.

In the FCC's Second Report and Order the PSST/PSBL was charged with administering the relocation of narrowband public safety users at 700 MHz from the lower to the upper portion of the band. In that Order, the Commission determined that the costs of funding this relocation would be borne by the D Block licensee and would be capped at $10 million.[89] The cap was based, in part, on the FCC's decision to establish an August 30, 2007 deadline as the date for qualifying facilities for relocation reimbursement.[90] In the Third FNPRM, the FCC generally reaffirms its previous decisions but proposes to increase the reimbursement cap to $27 million.[91] The FCC also tentatively concludes that it will not accept new waivers of the August 2007 deadline or permit the amendment of existing waivers that would increase the total cost of the project.[92]

The PSST appreciates the FCC's desire to limit the cost that prospective bidders would have to pay for this relocation project so that they may include the obligation in their business

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[88] Indeed, the PSST has already formed a committee to begin implementing open meetings.
[89] *Second Report and Order*, WT Docket No. 06-150, 22 FCC Rcd 15289 at ¶¶ 322-341 (2007) ("Second R&O").
[90] *Id*.
[91] Third FNPRM at ¶ 445.
[92] *Id*. at ¶ 449-451.

plans. However, the PSST/PSBL urges the Commission to not place an unreasonable burden upon the PSST/PSBL in this requirement unless adequate funding is provided. Earlier this year, the PSST contacted the public safety agencies that could be eligible for relocation costs and received cost estimates for the narrowband relocation. Based on those efforts, the PSST has established estimates of the costs that, depending on a number of variables, total almost $74 million.[93] The PSST has included in its estimate almost $35 million to replace the significant number of vehicular repeaters utilized in the eligible public safety systems. These cost estimates are significantly higher than the estimates on which the Commission based its proposed $27 million cap and illustrate clearly that much more funding will be needed to complete the relocation. To adequately fund public safety agencies and their costs, and to lessen the burden on potential D Block bidders, the PSST recommends that the Commission consider reducing the proposed minimum opening bid by $75 million.[94]

If the FCC needs more data on this issue, the PSST supports a Commission requirement for eligible public safety agencies to submit detailed cost estimates to the Commission before the auction so that potential bidders have this information well in advance of the auction. This will provide the much-needed certainty regarding relocation costs to be incurred by each agency (rather than a one-size-fits all approach), and will help the Commission to ensure that sufficient funds are available for the relocation.

If the Commission is not prepared to support funding of a significantly higher amount for this project, the PSST requests that the FCC limit the PSST's obligations with respect to

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[93] *See* Appendix B.
[94] *See supra* at 4-5.

narrowband relocation to items that realistically can be accomplished.[95] Limiting the PSST's obligations in this way will ensure that the PSST's relocation responsibilities do not become so burdensome that they ultimately have the effect of altering the core responsibilities of the PSBL or require most of its budget to go to narrowband relocation.

VI. CONCLUSION

The PSST respectfully urges the Commission to adopt the rule modifications articulated above. The PSST agrees with the Commission that the Public/Private partnership is the best approach for ensuring a successful D Block auction and achieving the build-out of a nationwide interoperable SWBN. While the PSST remains committed to this goal, the PSST believes the Commission's proposed rules and policies require further refinement in order to better balance commercial interests and public safety needs. The Commission should adopt rules that provide the PSST with real access to the SWBN and meaningful authority to act on behalf of the public safety community in relation to the D Block licensee(s), and it should not impair the PSST's ability to carry out this goal by making major changes to the PSST's internal structure and operations prior to finalizing the NSA. The PSST's mission requires that it have adequate resources, so the PSST proposes that the Commission increase its proposed annual cap for PSST funding. The PSST also recommends that the Commission implement an additional 7-year build-out benchmark, increase the proposed coverage requirement, designate 50% of sites as critical for hardening purposes, and address the need for additional narrowband relocation funding.

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[95] It has become apparent in the context of other FCC proceedings that relocation efforts often take far more time and resources than originally anticipated.

Respectfully submitted,

/s/ Harlin R. McEwen

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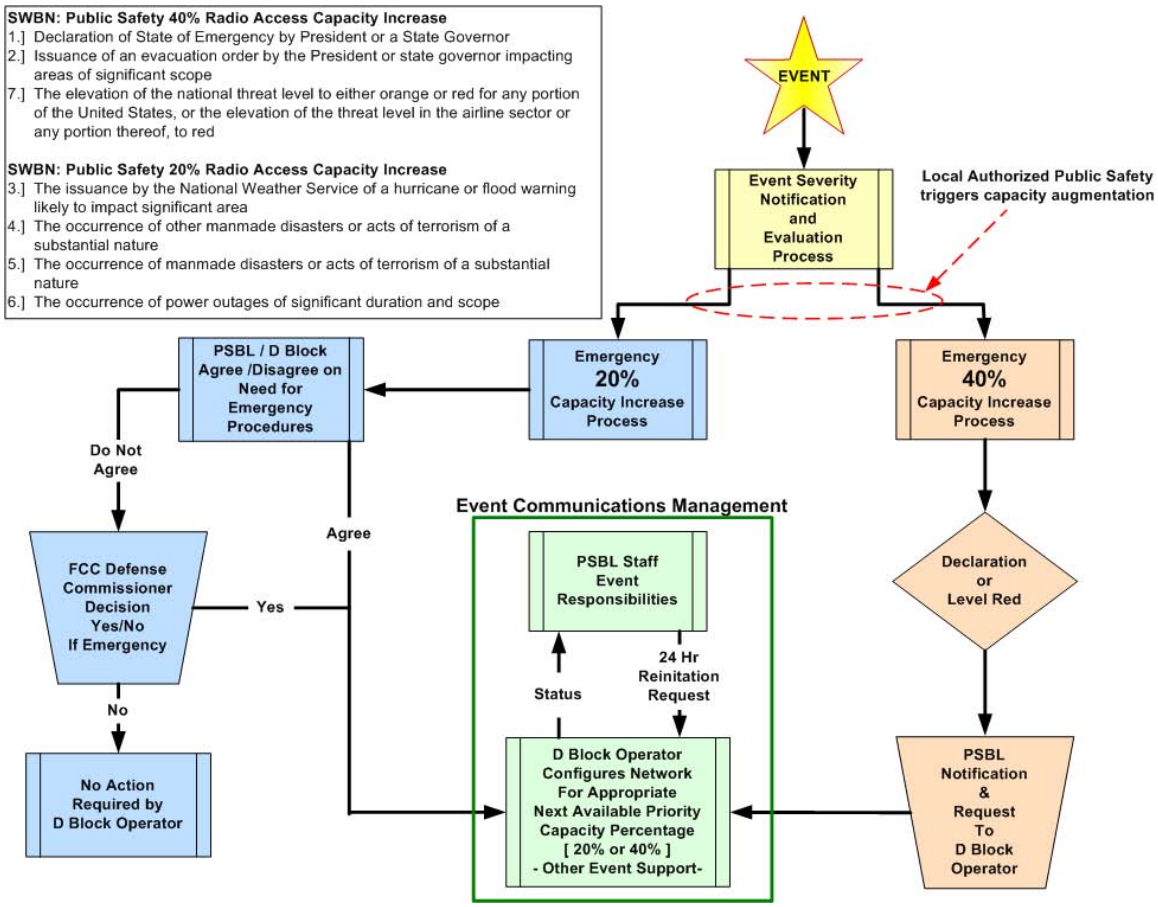
November 3, 2008

Appendix A

Emergency Response Process



Appendix B

Narrowband Relocation Cost Estimates

PSR Region	PSST Estimate PSR Region Cost	FCC Estimate PSR Region Cost	Difference FCC-PSST
3	1,272,724	1,610,111	337,387
4	5,682,122	1,124,900	(4,557,222)
7	6,373,164	2,276,800	(4,096,364)
8	297,798	0	(297,798)
10	1,124,256	0	(1,124,256)
11	36,094	53,000	16,906
12	1,402,452	723,200	(679,252)
13	12,026,044	2,885,800	(9,140,244)
17	23,969	2,472,600	2,448,631
18	6,065,796	3,979,700	(2,086,096)
19	1,872,289	414,400	(1,457,889)
22	291,582	186,000	(105,582)
23	406,181	401,000	(5,181)
24	464,285	244,100	(220,185)
26	387,444	366,400	(21,044)
27	2,396,038	783,000	(1,613,038
31	382,229	826,200	443,971
33	18,964,706	3,893,000	(15,071,706)
35	7,182	7,200	18
39	854,567	231,100	(623,467)
41	174,365	204,100	29,735
42/20	11,361,664	2,614,800	(8,746,864)
43	392,613	209,700	(182,913)
49	192,163	63,800	(128,363)
51	1,384,754	1,034,600	(350,154)
30/55/8	0	78,100	78,100
	73,836,481	**26,683,611**	**47,152,870**