

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF BRIGHT HOUSE NETWORKS**

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Bright House Networks (“BHN”), by its attorneys and pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”) hereby submits these comments in response to the Commission’s inquiry into the appropriate rules for the band 758-763/788-793 MHz (the so-called 700 MHz “D Block”).<sup>1/</sup>

**INTRODUCTION AND SUMMARY**

BHN is the nation’s sixth largest cable Multiple System Operator (“MSO”). BHN is a full-service communications provider in Florida, Alabama, California, Indiana, and Michigan, with approximately 2.4 million customers. In all of its systems, BHN offers advanced digital video, high speed data (“HSD”), and facilities-based competitive voice service.

BHN is actively evaluating the introduction of facilities-based wireless services as part of the array of offerings it provides to customers. To this end, BHN is a member of SpectrumCo LLC, a joint venture of communications companies that has invested billions of dollars in

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<sup>1/</sup> *In the Matter of Service Rules for the 698-746, 747-762, and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Third Further Notice of Proposed Rulemaking, WT Docket No. 06-150, PS Docket No. 06-229, FCC 08-230 (rel. September 25, 2008) (“Third FNPRM”).*

spectrum covering most of the United States;<sup>2/</sup> it participated in the 700 MHz Auction (Auction 76);<sup>3/</sup> and it will be a significant investor in New Clearwire, which upon FCC approval will provide an advanced mobile WiMAX broadband network covering up to 140 million people across the United States.<sup>4/</sup>

BHN is precisely the type of new entrant that the Commission's rules should encourage to enter the wireless marketplace and provide needed price and service competition to existing carriers. In fact, BHN may be one of only a few well-capitalized, well-positioned potential new entrants into the wireless marketplace. As that marketplace continues to see one wave of consolidation after another—Verizon Wireless's anticipated takeover of Alltel is just the most recent example—viable new entrants like BHN are consumers' best hope for competitively priced, innovative new service offerings.

Full-scale entry into the wireless marketplace is currently discouraged, however, by the behavior of incumbent national wireless carriers. These massive carriers have the incentive and ability to outbid BHN at auction, regardless of their actual need for spectrum, particularly when national licenses are being auctioned. These carriers will also use their enormous market power to exclude competition by making roaming arrangements difficult or financially unfeasible. As the Commission is well aware, roaming agreements are the only means for a new facilities-based wireless carrier to provide ubiquitous, reliable service in the near term.

In order to support the development of a national public safety network, to facilitate new entrants to the wireless marketplace generally, and to attract investment in the 700 MHz D Block

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<sup>2/</sup> See, e.g., Comments of SpectrumCo LLC, WT Docket Nos. 07-195 and 04-356 (filed July 25, 2008) ("*SpectrumCo AWS-3 Comments*").

<sup>3/</sup> BHN participated in Auction 76 as Advance/Newhouse Communications.

<sup>4/</sup> See, e.g., Application of Sprint Nextel Corporation and Clearwire Corporation For Consent To Transfer Control of Licenses and Authorizations, WC Docket No. 08-94 (filed June 6, 2008, amended June 26, 2008).

in particular, BHN strongly encourages the Commission to take three steps: (A) impose a mandatory, comprehensive automatic roaming obligation on D Block licensees for all services that they offer; (B) reiterate that roaming rates must be reasonable and nondiscriminatory, and provide some clarity as to what would be considered unreasonable or discriminatory pricing; and (C) auction the D Block licenses on a regional basis only. These three steps provide the Commission with powerful, easily implemented tools to encourage commercial entry into the D Block, which will in turn ensure that a private partner is available to fund the 700 MHz Public/Private Partnership that the Commission is relying on to construct and operate the first nationwide, interoperable public safety network.

**A. THE COMMISSION SHOULD IMPOSE A MANDATORY AUTOMATIC ROAMING REQUIREMENT FOR ALL D BLOCK LICENSEES**

**1. Automatic Roaming is Essential For Wireless Entry**

As the Commission has recognized, wireless consumers expect to be able to operate their devices seamlessly throughout the country.<sup>5/</sup> Yet no wireless carrier in the United States is capable of offering a service plan without relying upon roaming agreements. Even carriers that hold spectrum on a nationwide basis rely upon roaming agreements while they construct their networks, or to fill in coverage holes once their networks are complete. For licensees without a national spectrum footprint, roaming is the only means by which they can offer the type of service that the FCC has recognized that both public safety users and consumers demand. Successful new entry into the wireless marketplace is, therefore, possible only if commercially reasonable roaming agreements—including home roaming agreements and roaming for all services, whether voice or data—are available.

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<sup>5/</sup> See *Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers*, Report and Order and Further Notice of Proposed Rulemaking, 22 FCC Rcd 15817, 15828 ¶ 27 (2007) (“*Automatic Roaming Order*”).

However, new entrants' ability to secure widely available, commercially reasonable roaming agreements relies on the mercy of incumbent providers. Large national carriers such as Verizon Wireless and AT&T Mobility recognize this power, and they can and do stifle competition by refusing to enter into roaming agreements on commercially reasonable terms and conditions. As numerous commenters have noted in a variety of contexts, including the Commission's roaming proceeding<sup>6/</sup> and the *Verizon Wireless/Alltel* merger proceeding, the absolute necessity of securing roaming at commercially reasonable rates from the largest national carriers—and, if the Verizon/Alltel transaction is approved, of securing roaming from Verizon Wireless<sup>7/</sup>—results in wireless market entry having “a very unattractive risk profile” absent assurances that such roaming will be available on a commercially reasonable basis.<sup>8/</sup>

## **2. An Automatic Roaming Requirement is Particularly Necessary For 700 MHz D Block Spectrum**

BHN is mindful that § 20.12 of the FCC's rules requires automatic roaming between and among CMRS (and push-to-talk) providers. However, the current rules do not cover other services such as Short Message Services (“SMS”), Voice over Internet Protocol (“VoIP”), and

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<sup>6/</sup> See, e.g., Comments of Leap Wireless International, Inc., WT Docket No. 05-265, at 13 (filed November 28, 2005) (“Large carriers have demanded rates for automatic roaming that are on average nearly *four times* higher than the average revenue per minute the carrier received for comparable service, and nearly *seven times* what one carrier charged some of its affiliated carriers for the same service.”) (emphasis in original); Comments of SouthernLINC Wireless, WT Docket No. 05-265, at 49-50 (filed November 28, 2005) (reasonability of roaming rates should be judged by reference to lowest prevailing retail rates).

<sup>7/</sup> See, e.g., Petition to Deny of Denali Spectrum *et al.*, WT Docket No. 08-95, at 10 (filed August 11, 2008) (“the newly combined entity will have a decreased need for roaming services from other carriers and, as a result, will have even more leverage over carriers that seek to roam on its network.”); Petition to Deny of the Rural Telecommunications Group, WT Docket No. 08-95, at 10-11 (filed August 11, 2008) (the merger of Alltel with Verizon Wireless will eliminate what little competitive balance remains in the roaming market, and the merged firm will be “indispensable to any and all mobile operators who seek to offer truly nationwide roaming, regardless of air interface technology.”).

<sup>8/</sup> See Petition to Deny of Denali Spectrum *et al.* at 13.

data transfer. These services must also be subject to mandatory automatic roaming, including home market roaming, in the D Block regardless of what the FCC decides for other services or in other proceedings. Because of the unique features of the D Block and the public/private network, there is no reason to wait to clarify that a roaming obligation applies to D Block licensees across all services. Such a roaming requirement is essential to encourage commercial participation beyond the largest national carriers in the 700 MHz Public/Private Partnership.

The D Block is suitable for provision of multiple services; data services, which are not covered by today's roaming rules, are likely to be a significant component of D Block traffic. The Commission itself has determined that the shared, nationwide interoperable broadband network that it envisions for the D Block should support "mobile voice, video, and data capability that is seamlessly interoperable across agencies, jurisdictions, *and geographic areas.*"<sup>9/</sup> The Commission has also mandated that public safety entities have access to commercial D Block spectrum in emergencies.<sup>10/</sup> Therefore, in order for public safety entities to have access to out-of-region D Block spectrum, D Block licensees must permit them to roam onto their systems. Having required that the public safety element of the public/private system be completely interoperable for all of these services, the Commission should extend the benefit of interoperability to require ubiquitous roaming for commercial D Block customers as well.

The *Third FNPRM* recognizes that, because no public funding sources are available on the scale necessary to fund construction of a nationwide public safety network, "the 700 MHz Public/Private Partnership remains the only means, in the absence of legislative appropriations, of obtaining funding for the construction of a network or networks to provide public safety with

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<sup>9/</sup> *Third FNPRM* ¶ 95 (emphasis added).

<sup>10/</sup> *See id.* ¶ 86.

nationwide, interoperable broadband service,”<sup>11/</sup> and any service rules for the D Block must therefore “provide a level of commercial viability sufficient to encourage investor participation and to permit long-term commercial success in a competitive environment.”<sup>12/</sup> The *Third FNPRM* furthermore notes that “there is some tension” between the twin goals of building a hardened, ubiquitous public safety network while at the same time encouraging a viable commercial service.<sup>13/</sup> One very powerful but easily implemented way to ease this tension is to ensure that D Block licensees enjoy mandatory automatic roaming on all D Block networks on reasonable terms for all services, including in their home markets. This simple clarification of roaming rights and obligations for D Block licensees will greatly increase commercial interest in participating in the Public/Private Partnership, particularly by new entrants that may bid on only a limited number of regional licenses, with no corresponding need for appropriation of public funds to subsidize construction.

Therefore, if the Commission is serious about promoting real competition among incumbent wireless providers and new entrants, it must ensure that new entrants are able to obtain roaming agreements that facilitate the offering of wide-area and nationwide service plans. The 700 MHz band may be particularly attractive to new entrants because of, among other reasons, the band’s propagation characteristics. A new D Block competitor may be able to construct a network with fewer base stations in the band and compete with lower capital costs than if spectrum became available in bands higher in the spectrum. Moreover, the 700 MHz band is especially well suited to mobility services (unlike, for example, spectrum above 2 GHz), and 700 MHz D Block licensees will be well positioned to compete against established mobility

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<sup>11/</sup> *Id.* ¶ 53.

<sup>12/</sup> *Id.* ¶ 55.

<sup>13/</sup> *Id.*

service providers. Finally, the 700 MHz band allows better in-building coverage than spectrum in higher bands, giving D Block licensees an advantage against licensees in other bands without that characteristic. However, none of these attributes will attract new market entrants absent assurance that their customers will be able to enjoy all services outside of their home markets. Therefore, regardless of how the Commission addresses these issues in other proceedings, it should seize the opportunity before it to foster competition through its D Block service rules.

D Block licensees should have both roaming rights and roaming obligations. That is, a D Block licensee should be permitted to automatically roam onto the networks of all other D Block licensees. This ability to roam is critical to public safety users, who will be able to access out-of-region networks. The same benefit should be extended to commercial users of the D Block, making the D Block licenses particularly attractive to potential entrants, thereby helping the FCC to ensure that its goal of creating a Public/Private Partnership is realized.

Similarly, a D Block licensee should be obligated to automatically accept public safety and commercial roamers from other technically compatible networks. Licensees in other frequency bands may choose to include 700 MHz D Block chipsets in their customer devices. These customers should have the ability to roam onto the D Block licensee's system, in return for fair compensation, so long as they use technologically compatible devices. The Commission has already stated that D Block licensees are obligated to accept public safety roamers via "gateways."<sup>14/</sup> Therefore, public safety entities using 800 MHz, VHF or other bands that use a gateway enabled device will be able to use D Block networks. There is no reason to restrict this benefit to public safety users. Commercial customers who are technically able to access a D Block network (because, for example, they have purchased a handset with a 700 MHz D Block chipset) should also be able to access a D Block network.

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<sup>14/</sup> *Id.* ¶ 114.

Finally, any mandatory roaming requirement must include a requirement that the host system enable, to the extent technically feasible, all functionality associated with a service so that end users enjoy all of the features associated with their wireless devices while roaming. Host systems should not be permitted to degrade a service provided to a roamer. Because the Commission anticipates that the D Block will support multiple advanced data services across wide geographic areas,<sup>15/</sup> any roaming requirement should allow both public safety and commercial customers to receive the same features and services received from their native provider regardless of whether they are roaming.<sup>16/</sup>

**B. THE COMMISSION SHOULD PROVIDE CLARITY ON WHAT IS “REASONABLE AND NONDISCRIMINATORY” FOR D BLOCK ROAMING RATES**

A simple requirement that D Block licensees make roaming available to other carriers on reasonable and nondiscriminatory terms and conditions, similar to the obligation that already exists in the rules,<sup>17/</sup> would be insufficient to serve the Commission’s goal of encouraging commercial entry and thereby facilitating build-out of a nationwide public safety network. Without clarification of what constitutes a “reasonable and nondiscriminatory” roaming arrangement, the major carriers will simply charge roaming rates that make it impractical for competing carriers to provide roaming capabilities to their customers. In order to make a public safety network a reality, the Commission must ensure that the D Block licenses are attractive to potential providers. In order to do that, it must provide potential licensees with greater comfort than the rules currently provide that automatic roaming will be available at commercially viable

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<sup>15/</sup> *Third FNPRM* ¶ 95.

<sup>16/</sup> *See, e.g.,* Reply Comments of Google, Inc., WT Docket No. 06-50, at 4-5 (filed July 7, 2008) (discussing the importance of interoperability between and among D Block licensees).

<sup>17/</sup> 47 C.F.R. 20.12(d).

rates. That clarity will enable new entrants to know that national carriers will not charge them unreasonably high rates, or rates substantially higher than they charge each other.

The Commission has proposed specific subscriber rates and gateway access rates for public safety entities in this proceeding,<sup>18/</sup> in part to ensure the viability of the D Block licensee and to provide some ability to predict the revenue potential of the shared network.<sup>19/</sup> However, the viability of D Block licensees will be equally, if not more, dependent on carriers' knowledge that the FCC is committed to meaningful enforcement of an automatic roaming obligation. The Commission must demonstrate that commitment by defining how it will determine whether roaming rates are reasonable and nondiscriminatory.

BHN suggests that the FCC use a carrier's retail yield for like services (*e.g.*, for each of voice, data and SMS) as a measure of evaluating whether roaming rates are reasonable and nondiscriminatory. Evaluating roaming rates against retail yield is attractive and feasible to implement because it is already in common use in commercial agreements between wireless carriers.<sup>20/</sup> In order for the FCC to use it as a measure of reasonable and nondiscriminatory roaming rates, retail yield should be reported quarterly by the carrier operating the host system, for all services provided across that licensee's wireless services (*e.g.*, for other 700 MHz, AWS, PCS, SMRS, and cellular services). The calculation should include the average revenue for like services divided by the average usage for like services (*e.g.*, voice, data or text), and should be

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<sup>18/</sup> See, *e.g.*, *Third FNPRM* ¶ 114 and Table 1 (proposing standard per-user charge for gateway access of \$7.10).

<sup>19/</sup> See *id.* ¶¶ 56-57 (describing need to attract investment by ensuring commercial viability).

<sup>20/</sup> See, *e.g.*, iPCS, Inc. August 1, 2008 Quarterly Report (SEC Form 10Q), at 23 (describing roaming agreement setting rates at 90% of retail yield). Retail yield is simply the result of dividing a carrier's average revenue per unit ("ARPU") for a service by its usage for that service for the same time period.

calculated separately for each service. The reasonableness of roaming rates charged to D Block licensees could then be easily evaluated based on these quarterly reports.

To be clear, BHN does not seek to force *discounted* access to other licensees' networks. Clarity on what is reasonable and nondiscriminatory is necessary, however, to provide assurance to D Block licensees that the Commission will keep incumbent carriers from blocking market entry by making roaming practically unavailable to new entrants. BHN suggests that retail yield provides a reasonable starting point for such a determination because it is based upon each carriers' commercial realities, and takes into account pricing activity in a competitive market. Reference to retail yield is an attractive, market-based approach to assessing whether a carriers' roaming rate is reasonable and nondiscriminatory in the context of D Block roaming, such that it will foster the construction and operation of a nationwide interoperable public safety network. However, if the FCC declines to evaluate whether roaming rates are reasonable and nondiscriminatory using retail yield, it still must take some action to provide greater clarity to potential D Block entrants regarding how it will enforce its rules regarding this critical component of wireless service.

**C. THE D BLOCK SHOULD BE LICENSED ON A REGIONAL, RATHER THAN NATIONAL, BASIS**

As the national wireless market continues to become increasingly concentrated, the Commission should take advantage of a simple tool to avoid replicating these market conditions in the D Block, while at the same time increasing the revenue generated by the D Block auction and better serving the needs of public safety agencies: it should license the D Block on a regional, as opposed to national, basis.

As others have noted, ownership of wireless spectrum has become increasingly concentrated, limiting new entrants who can provide different and innovative services or existing

services at prices less than those offered by existing carriers.<sup>21/</sup> Because of the requirement to construct a public/private network and the D Block build-out requirements, entities with existing nationwide telecommunications infrastructure—namely, Verizon—will be most likely to be successful in the D Block auction. Verizon is already required to build out its C Block spectrum in a manner that matches the D Block build-out requirement, a build-out footprint that closely conforms to its current coverage footprint, taking into consideration its anticipated acquisition of Alltel.<sup>22/</sup>

However, structuring the auction to favor Verizon, or any incumbent national carrier, is not in the public interest in general and certainly not in the interest of the public safety users of the combined network. These incumbent entities already have national footprints, and their services are already available to public safety entities (particularly the 700 MHz C Block license, which will contain an open-network feature). If one of them becomes the D Block licensee, public safety entities will have no greater selection of broadband options. However, by licensing regional networks, which may make it easier for new entrants to become D Block licensees, the Commission will be providing public safety entities with an important alternative source for meeting their critical communications requirements.

BHN is mindful that a goal of this proceeding is to create a nationwide, interoperable network. However, there are ways to ensure nationwide interoperability other than having one

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<sup>21/</sup> See, e.g., Petition to Deny of the Rural Telecommunications Group, *supra* note 7, at 6-8. BHN recognizes that the FCC may wish to consider the imposition of a spectrum cap to curtail the acquisition of wireless mobility spectrum by AT&T and Verizon in the future. However, it recognizes that in the context of this proceeding, in which the FCC wishes to employ every incentive to ensure that the D Block is licensed, the imposition of spectrum aggregation limits may not be appropriate.

<sup>22/</sup> See, e.g., *Third FNPRM* ¶ 21. In fact, BHN observes that Verizon will be able to satisfy much of the build-out requirement for the D Block merely by constructing infrastructure to meet the build-out requirement of its 700 MHz C Block license, particularly after its acquisition of Alltel, if approved.

licensee control all of the spectrum, such as imposing common technical and coordination rules. And, in any case, should an operator desire to obtain a nationwide license, licensing the spectrum on a regional basis will not impede that carrier from obtaining multiple regional licenses, or potentially all of the regional licenses. Nonetheless, regional licensing has a number of benefits of which the Commission should take advantage:

*Increased Revenue For the Treasury.* The Commission has a public interest obligation to maximize the selling price of the D Block spectrum. It should not favor licensing the D Block spectrum on a national basis when it can license most of the D Block spectrum on a regional basis at a collectively higher price.

Past auctions have demonstrated that spectrum is worth more when sold on a regional basis than when sold as a nationwide block. For example, in the recent 700 MHz auction (Auction 73), the average sale price (on a per MHz-pop basis) for the A-block, licensed as BEAs, was 1.53 times greater than the C-block, which sold as a (largely) nationwide license. The B-block, made available in even smaller CMAs, sold for 3.53 times the price of the C-block. Regional licenses will enable more competitors to participate, and will result in increased revenue for the Treasury.

*Local Responsiveness.* Regional licensees will be more likely to be responsive to the particular requirements of public safety entities in their regions. For example, a nationwide licensee cannot be expected to be equally responsive to the public safety requirements in disparate locales such as Montana and Mississippi. The Commission recognized that the fundamental organizational leadership of the vast majority of the nation's public safety agencies are individual State governments when it proposed that the regional licenses be generally aligned along state boundaries. Operators of these licenses should be encouraged to be similarly aligned.

*Continuity For Public Safety Agencies.* Any regional licensee will be more likely to retain its authorization than would a single national licensee, which will ultimately inure to the benefit of public safety licensees. A national licensee might lose its authorization (and thus require the Commission to re-issue the entire nationwide license) if it fails to meet its performance requirements in a single region. If licenses are issued on a regional basis, the cancellation of one regional license will not threaten the D Block license (and the public/private network) throughout the remainder of the country.

Likewise, decisions about canceling a license due to non-performance will be easier and will involve less balancing of interests when made on a regional basis as opposed to a national basis—a proposed cancellation for non-performance in a remote area like Alaska, for example, would not need to be balanced against the need for ongoing stability from the same carrier in New York. In this way, regional licensing ensures a higher level of service for all of the nation's population centers.

## CONCLUSION

The Commission has at its disposal three powerful, easily implemented tools to encourage commercial entry into the D Block, which will in turn ensure that a viable private partner is available to fund the 700 MHz Public/Private Partnership. The Commission should (A) impose upon D Block licensees an automatic roaming requirement as set forth herein; (B) reiterate that roaming rates must be reasonable and nondiscriminatory, and give some clarity as to what would be considered unreasonable or discriminatory pricing; and (C) license the D Block on a regional, rather than national, basis. These three rules should be seen as a floor upon which a successful D Block licensing regime can be built; they are necessary for a successful 700 MHz Public/Private Partnership.

Respectfully submitted,

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