

**Before the
Federal Communications Commission
Washington, DC 20554**

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

COMMENTS OF AT&T INC.

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EXECUTIVE SUMMARY

AT&T strongly supports the Commission's goal of facilitating the provision of improved communications capabilities for our nation's first responders. It is by no means clear, however that the proposal set forth by the Commission in the *Third Further Notice of Proposed Rulemaking* would be an appropriate or effective way to achieve that goal. Although that proposal addresses some of the infirmities of the first failed D Block auction, potential bidders would still lack critical information necessary to evaluate the risks and benefits of participating in the reauction. Moreover, representatives of some of the largest cities have voiced strong opposition to the proposal, arguing that it denies them the ability to ensure that the public safety network reflects their individualized needs. In light of these concerns, and particularly given the first failed D Block auction and current economic conditions, the Commission should not rush ahead with its proposal despite the undeniable importance of establishing a nationwide interoperable public safety network. Rather, the Commission should carefully consider other, creative options that can better meet the needs of public safety and are more feasible in today's economic climate.

One such option, which AT&T has long supported, is to use a regional Request for Proposal ("RFP") process to form the public/private partnership that is needed to develop the shared interoperable broadband network. A successful public/private partnership requires that all parties understand the risks – including the technical, economic, and regulatory risks – revenue sources, and costs of the project at the outset. An RFP process will achieve that because the obligations and limitations of all parties are clearly defined as part of the process of selecting the commercial partner. The regional RFP approach proposed by AT&T would also address public safety's desire for local decisionmaking and control over the 700 MHz public safety spectrum and the D Block spectrum by enabling local entities to have significant input into shaping the

RFP for their region and selecting the entity that can most effectively satisfy these needs. Additionally, an RFP process is a well-established and tested method, which has been used successfully for developing public safety communications networks. In contrast, under an auction approach, many aspects of the shared interoperable broadband network and the operation of the public/private partnership will not be resolved prior to the auction. That significantly increases the risk of the venture to prospective bidders, while also increasing the possibility that the resulting network will not satisfactorily address public safety's unique and varying needs. These uncertainties, which are magnified by current market conditions and the significant default penalties that the Commission continues to propose, will likely discourage auction participation and the timely deployment of the network.

AT&T also continues to believe that the optimal RFP approach is one in which the Upper 700 MHz D Block spectrum would be licensed to the Public Safety Broadband Licensee ("PSBL"), who would, in turn, lease the D Block spectrum on a regional basis to commercial entities selected through an RFP process. Under this approach, commercial entities would be responsible for network build-out and operating the shared network, and could access the PSBL's 700 MHz public safety broadband spectrum for commercial use under the terms outlined in the RFP. The RFP would detail the technical specifications and functionalities for the network, as well as the rights and responsibilities of the PSBL and the commercial partners, consistent with the framework established by the Commission in this proceeding. These standards and specifications would ensure nationwide interoperability for first responders even when the regional networks are managed by different entities. While AT&T recognizes that this approach would require legislative amendment to Section 337 of the Communications Act, it would best achieve the prompt construction and operation of an effective shared network

because the network specifications and obligations of all parties would reflect the individualized needs of local public safety entities and would be clearly defined at the outset.

In the event that such legislative action cannot be accomplished, AT&T proposes an alternative RFP process that is fully consistent with the Communications Act's competitive bidding requirement. Under this alternative, the PSBL would coordinate with the Regional Planning Committees ("RPCs") to issue RFPs to select regional commercial partners to build and operate the shared network; commercial entities selected would then file long-form applications with the FCC for the award of the corresponding regional D-Block license, which would be conditioned on compliance with the RFP contract. Because this RFP process is a "system of competitive bidding" as required by Section 337, no legislative action is needed to proceed.

The selection of commercial partners on a regional basis is critical to meeting the goals of the shared network, whether or not the Commission establishes an RFP process or a reauction. The needs of public safety vary significantly by region, due to differences in demographics, population density, public safety risks, available resources, available resources, and geographic characteristics, among other things. A regional approach is more likely to address these differing needs of local public safety users and facilitate the participation of RPCs. Smaller license or lease areas also will permit participation by commercial partners that lack the resources to build a nationwide network or to meet aggressive national build-out requirements. It will also enable carriers to leverage existing network infrastructure and spectrum resources, thereby permitting a more rapid build-out of a nationwide, interoperable public safety network.

If the Commission nevertheless moves forward with a reauction of the D Block spectrum, detailed technical requirements of the network and obligations of the partners must be specified prior to the auction. At a minimum, the FCC should complete and publish regional-level Network Service Agreements ("NSAs") prior to the auction based on input from a Public-Private

Working Group. Regional NSAs are necessary to account for varying needs of network build-out and network hardening in different parts of the country. The Commission should also require the PSBL to cooperate in conducting a study to determine the projected likely public safety demand for the network. In addition, the Commission should take the following steps to clarify or modify network requirements and obligations to ensure that potential bidders understand the risks and benefits of the venture and to ensure its commercial viability:

- The Commission should further clarify the specific roles and obligations of the D Block licensee(s) and the PSBL, and establish a process for arbitration of disputes, subject to Commission review for the purpose of ensuring that the arbitration decision comports with Commission rules and regulations.
- The Commission should clarify how the network's capacity is to be split 50/50 between commercial users and public safety users. To that end, the Commission should create a well-designed priority access model, rather than an arbitrary division of spectrum.
- The Commission should provide further detail on various technical requirements, including network hardening requirements, security and encryption requirements, network coverage requirements, and the D Block licensee(s)'s role in supporting VoIP and other applications. Such detail would be particularly critical if the Commission does not publish pre-auction NSAs.
- The Commission should clarify its proposal to require that the D Block licensee(s) make available a satellite-capable handset. The Commission should clarify the D Block licensee(s)'s expected role in handset sales and distribution, particularly when there would be no assured purchasers of such handsets.
- The Commission should not adopt its proposed base monthly service fee or its proposed set annual payment to the PSBL. Given the greater cost associated with satisfying many of these specialized requirements, the Commission's proposed base rate service fee based on commercial rates is arbitrary, and may render the network commercially infeasible. The set annual payment to the PSBL fails to account for regional differences in the spectrum needs and operational requirements of the network.

AT&T otherwise supports certain tentative conclusions and proposals in the *Third*

Further Notice as essential to the success of the shared network. First, AT&T concurs with the Commission's tentative conclusion not to impose eligibility restrictions or a reserve price beyond the minimum opening bid(s). Second, AT&T agrees with the FCC's tentative conclusion not to

impose mandatory wholesale or open access conditions on the D Block licensee(s). Third, AT&T supports the Commission's tentative conclusion that the PSBL remain a non-profit entity and be restricted from acting as an MVNO. Fourth, AT&T agrees that the shared network should utilize standardized IP-based commercial technologies and support the 3GPP family of technologies to ensure backward and future compatibility.

Finally, AT&T believes that the sheer complexity of the proposed auction structure will introduce confusion into the bidding process and hurt any chance of a successful D Block auction. Competitive bidders require transparency and certainty to engage in a high stakes auction. The complex offering of simultaneous licenses coupled with anonymous bidding procedures will increase uncertainty and further discourage potential bidders. Moreover, the proposed structure disproportionately favors a nationwide license, which does not serve the public interest.

In sum, AT&T strongly urges the Commission to utilize a regional RFP process to select the PSBL's commercial partners. The construction and operation of a state-of-the-art broadband network to support public safety communications and to be shared with commercial operations is an exceedingly important, as well as a massive, complex and highly expensive, venture. An auction of the D Block spectrum has already failed once; the current economic situation in this country only makes the success of a reauction more difficult. Accordingly, the Commission should move forward with the well-established and tested regional RFP process that AT&T has proposed. This process will address the many uncertainties associated with the auction proposal and better ensure the rapid build-out and effective operation of the shared network.

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COMMENTS OF AT&T INC.

AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively “AT&T”), hereby submits these comments on the Commission’s *Third Further Notice of Proposed Rulemaking* (“*Third Further Notice*”) in the above-referenced proceeding.¹ As detailed in AT&T’s earlier comments and reply comments in this proceeding,² AT&T strongly supports the goal of providing improved communications capabilities for our nation’s first responders.

However, in light of the first failed D Block auction – and given the country’s current economic situation – the Commission should consider creative solutions to accomplish this goal, rather than simply proceeding with another auction. This is particularly true given the recent

¹ See *Service Rules for the 698-746, 747-762 and 777-792 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 (2008) (“*Third Further Notice*”).

² Comments of AT&T Inc., WT Docket No. 06-150 (filed June 20, 2008) (“AT&T Comments”); Reply Comments of AT&T Inc., WT Docket No. 06-150 (filed July 7, 2008) (“AT&T Reply Comments”).

letter by public safety entities raising strong objection to the proposed reauction.³ It is thus essential that the Commission not rush to judgment, but rather carefully consider other options that can better meet the needs of public safety and be more feasible in today's economic climate. For this reason, AT&T strongly supports the use of a competitive regional Request for Proposal ("RFP") process to form the public/private partnership that is needed to develop the shared network.

An RFP is an effective process for structuring public/private partnerships and one that, by its nature, defines the details of the project and the obligations of the parties before the partnership is struck. In these uncertain economic times, the certainty inherent in an RFP process is essential to attract commercial entities to commit significant capital investment to the public safety network. The regional RFP approach proposed by AT&T would also address public safety's desire for local decisionmaking and control over the 700 MHz public safety spectrum and D Block spectrum by enabling local entities to have significant input into shaping the RFP for their region and selecting the entity that can most effectively satisfy their needs. Multiple, regional partnerships – rather than a single nationwide entity – should be encouraged, regardless of whether the FCC proceeds by RFP or reauction. For this purpose, AT&T supports the Commission's proposal to create 58 regions that are based primarily on existing public safety regional planning areas. A regional RFP process would spread the risk of deployment among numerous commercial entities, thereby ensuring that a nationwide interoperable network is as extensive as possible, and enabling local and regional public safety entities to have more focused input into the network in the regions in which they will predominately be operating.

³ See Letter from Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation to Kevin J. Martin, Chairman, FCC, WT Docket No. 06-150 (filed Oct. 29, 2008).

If the Commission nevertheless pursues a reauction, several aspects of the FCC's current proposal raise significant questions or concerns. For example, the Commission must provide further clarification on the roles and responsibilities of the D Block licensee(s) and the technical requirements of the shared broadband network. AT&T suggests this could best be accomplished through the publication of regional-level Network Sharing Agreements ("NSAs"), developed by a joint working group of experts in public safety communications and commercial network operations, prior to the submission of short-form applications to participate in any reauction of the D Block spectrum. Additionally, the Commission should require that a demand survey that takes into account regional differences be conducted to develop a forecast of subscribers that a potential bidder can use in developing its bid response or auction amount. Finally, while AT&T agrees that the FCC should not impose open access requirements or eligibility restrictions on D Block licensee(s), and that the commercial entity should have day-to-day operational control of the shared network, AT&T is concerned that the uncertainties remaining about the D Block licensee(s)'s obligations and the complexity of the proposed auction rules will discourage the participation of commercial entities.

I. THE REGIONAL RFP PROCESS PROPOSED BY AT&T OFFERS A MORE EFFECTIVE APPROACH TO ACHIEVING A SUCCESSFUL PUBLIC/PRIVATE PARTNERSHIP THAN A REAUCTION OF THE D BLOCK SPECTRUM.

AT&T continues to support a regional RFP process as the best approach to implementing the public/private partnership needed to create a nationwide interoperable wireless broadband network. A successful public/private partnership involves collaboration, communication and trust, and requires that all parties understand the risks – including the technical, economic, and regulatory risks – revenue sources, and costs of the project from the outset. It also can accommodate what major cities and counties have been asking for consistently in this proceeding

– local decisionmaking and control over the use of the 700 MHz public safety and D Block spectrum and accommodation of unique local circumstances. These goals are more readily achievable through an RFP process than through the auction scenario proposed by the Commission.⁴

Under the auction approach, many aspects of the shared network and the operation of the public/private partnership will not be resolved prior to the proposed reauction. These uncertainties will make it almost impossible for interested bidders to fully evaluate the business implications of becoming a commercial partner before entering the auction.⁵ The resulting high risk of the venture, coupled with current market conditions and the significant default penalties that the Commission continues to propose, will likely discourage auction participation and thus the timely deployment of the network. Conversely, under an RFP approach, the obligations and limitations of all parties – including the means for dispute resolution – are clearly defined at the outset. This provides the certainty commercial entities need to assess participation in the partnership. It also avoids surprises later that could jeopardize the construction of the network. Moreover, a regional⁶ RFP approach enables the Public Safety Broadband Licensee (“PSBL”) to select, after an effective vetting process, commercial partners that will most effectively be able to design, build, and operate the shared network, rather than assigning these critical responsibilities

⁴ See AT&T Comments at 5-7; AT&T Reply Comments at 3-7; Comments of Verizon Wireless, WT Docket No. 06-150, at 19-20 (filed Jun. 20, 2008).

⁵ As detailed in Section III below, there are still many details about the proposed shared network and the D Block licensees’ obligations that remain unclear and thus do not provide potential D Block bidders with sufficient information to estimate the costs, risks or revenue upside of the opportunity.

⁶ As detailed in Section II below, AT&T strongly believes that the public interest would be best served by issuing RFPs for each of the 58 Public Safety Regions articulated by the Commission and by having commercial entities participate on a regional basis rather than having a single national partner.

to companies that may have no experience but who simply bid the highest in a complex multi-round electronic auction.⁷

A regional RFP approach can also better allow for local input into the capabilities of the network to meet unique regional and local public safety needs and differing geographies. As discussed in the next section, the public safety community's requirements for communications capabilities can differ markedly from region to region, as can the challenges in constructing the network. As a result, a number of public safety entities have been vocal about their desire for local decisionmaking as to the use of the 700 MHz public safety spectrum and the D Block spectrum.⁸ The regional RFP approach proposed by AT&T will permit local public safety entities to have significant input into shaping the RFP for their region – ensuring their unique needs and the circumstances of the particular geographic area are identified and incorporated into the RFP.⁹ The commercial partner then selected is not only informed from the beginning as to how best to meet local public safety needs, but also is the entity judged best able to effectively

⁷ The FCC must be careful to avoid both completely discouraging all bidders and the problems witnessed in early C and F Block PCS auctions, when speculators won licenses without the financial ability or experience to buildout and commercialize complex communications networks.

⁸ See Comments of The New York City Police Dep't, WT Docket No. 06-150 (filed June 19, 2008); Comments of the District of Columbia, WT Docket No. 06-150 (filed June 20, 2008); Comments of the Commonwealth of Virginia, WT Docket No. 06-150 (filed June 19, 2008); Comments of the City and County of San Francisco, WT Docket No. 06-150 at 2 (filed June 20, 2008); Comments of Florida Region 9 Regional Planning Committee, WT Docket No. 06-150 (filed June 20, 2008); Comments of The King County, Washington Regional Communications Board, WT Docket No. 06-150 (filed June 20, 2008).

⁹ A regional RFP approach also provides the flexibility to permit local public safety entities with the desire and resources to build their own networks to do so. Public safety entities in a region can decide not to issue an RFP, but rather proceed on their own so long as the network meets interoperability standards. Alternatively, an RFP in a region can carve out certain areas for local public safety build-out and proceed with retaining the commercial partner for the construction and operation of compatible network in other areas within the region.

accomplish that task. Such a process better addresses public safety's differing requirements than the one-size-fits-all network contemplated under the FCC's proposed reaction.

RFP processes are well-established and proven mechanisms frequently employed to form complex public/private partnerships and to purchase the government's most important security assets.¹⁰ Significantly, this process has previously been utilized to form successful public/private partnerships to provide communications networks for law enforcement use. For example, the Illinois Wireless Information Network was formed through a unique contractual partnership between the State of Illinois, Verizon Wireless, and Motorola.¹¹ The network provides a high-speed secure wide area data network to Federal, State, County and local government wireless users within Illinois who require mobile communications. The large enforcement community is the network's largest user.

AT&T continues to believe that the RFP proposal described in its prior comments in this proceeding provides the best path for achieving an interoperable public safety broadband network.¹² Under this proposal, the Commission would issue a license for the Upper 700 MHz D Block spectrum to the PSBL. The Commission would require the PSBL to lease the D Block

¹⁰ Congress has passed numerous laws outlining competitive procurement requirements and procedures. *See* 10 U.S.C. § 2305 (military procurement laws); 41 U.S.C. § 243a (competitive procurement procedures for public contracts). Additionally, the Federal Acquisition Regulations ("FAR") codify the uniform policies for the acquisition of supplies and services by executive agencies. *See* 48 C.F.R. § 1, *et seq.*

¹¹ *See* Illinois Department of Central Management Services, BCCS Services, Wireless-Illinois Wireless Information Network *at* http://bccs.illinois.gov/BCCScatalog/services/Wire_iwin.htm.

¹² AT&T Comments at 5-7. Alternatively, in light of the recently filed joint letter from a coalition of cities and counties, the FCC should consider giving the D Block spectrum to regions that have the desire and resources to build their own network. *See* Letter from Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation to Kevin J. Martin, Chairman, FCC, WT Docket No. 06-150 (filed Oct. 29, 2008). The FCC should then establish an RFP process for all other regions. This compromise approach could satisfy various regional needs while still meeting the FCC's goal of nationwide interoperability.

spectrum *on a regional basis* to commercial entities selected through an RFP process and those entities would be responsible for the construction and operation of the shared network. AT&T's proposal differs slightly from some traditional RFP processes in that the selected commercial entity would incur the costs of the network build-out. However, like traditional RFPs, the RFP issued by the PSBL would detail all the technical specifications and functionalities for the network that would be required to ensure nationwide interoperability from region to region, including the specific technological platform to be used and the minimum level of features, functionality and applications that must be supported. The RFP would also define the rights and responsibilities of the PSBL and the commercial partners, consistent with the framework established by the Commission in this proceeding.

Building on the foundation of a national template, each regional RFP would be tailored by the Regional Planning Committees ("RPCs") to take into account the unique needs and characteristics of their respective regions. Additionally, the RFP would be flexible and allow either a network that builds on existing commercial infrastructure or a stand-alone shared network.¹³ Commercial entities would be responsible for network build-out¹⁴ and operation of the public/private network but, in turn, could access the PSBL's 700 MHz public safety broadband spectrum for commercial use under the terms outlined in the RFP. Interested commercial entities would respond to the RFP with proposals that explain how they would satisfy these requirements. The RPCs, along with the PSBL would then select the commercial

¹³ A hybrid network, that allows for some use of existing commercial infrastructure, would require an RFP that details the specific roles and responsibilities of the parties and provides for the addition of 700 MHz radio access equipment and devices when they become commercially available.

¹⁴ The RFP should permit proposals in which existing wireless facilities and applications are utilized initially to meet public safety requirements in order to expedite the provision of service to the public safety community.

partners by evaluating which proposals track most closely the Commission's and the RFP's standards, and then comparing those based upon the proposed functionality and deployment plan for the network, the value of services to be provided to public safety, and the commercial entities' experience and resources.

While AT&T recognizes that assigning the license to public safety requires legislative amendment to Section 337 of the Communication Act of 1934, as amended, AT&T believes this process offers the best path to achieving the goals of the public/private partnership because the market demand, obligations, and limitations of all parties are clearly defined at the outset. Moreover, under an auction approach, commercial entities would be required to spend hundreds of millions of dollars to purchase D Block licenses and construct the interoperable shared network. Under AT&T's proposal, the savings realized through avoidance of an auction would make available hundreds of millions of dollars (and possibly more) for network and system deployment. Further, AT&T's proposal provides what major cities and counties have been asking for consistently in this proceeding: local decision making and control over the use of the 700 MHz public safety and D Block spectrum and accommodations of unique local circumstances.

In the event legislative action cannot be accomplished, an alternative RFP approach that is consistent with the Communications Act's competitive bidding requirements and that captures the benefits found in RFP mechanisms would be a second-best alternative.¹⁵ Under this alternative, the PSBL would still coordinate with the RPCs to issue RFPs pursuant to

¹⁵ AT&T believes its original RFP proposal is the best path forward because it is well-established and gives the parties access to traditional contract remedies to resolve disputes and ensure proper build-out. Nevertheless, this alternative approach provides a means for the FCC to implement a solution within the next year. A reauction would likely take far longer than AT&T's alternative RFP proposal.

Commission-specified standards and to administer a process of evaluating competing proposals and selecting regional commercial partners that would build and operate a shared network with the PSBL to best meet the needs of state and local public safety users. The difference is that the commercial partners selected through the competitive RFP process would actually be awarded the license, filing long-form applications with the Commission conditioned upon compliance with the terms of their agreed-to RFP contracts and subject to completion of the standard Commission application process, including all applicable eligibility requirements.

This alternative RFP proposal is fully consistent with the Communications Act and therefore is readily adoptable by the Commission without the need for any legislative fix. Section 337 and Section 309 of the Communications Act already authorize the Commission to assign the D Block through a “competitive bidding process,” not specifically through an auction.¹⁶ AT&T’s alternative RFP approach is unquestionably a “system of competitive bidding” within the well-settled meaning of the term.¹⁷ Indeed, the Commission has repeatedly held in other contexts that RFPs are competitive bidding processes.¹⁸ Moreover, the alternative

¹⁶ Section 337(a) of the Act merely provides that the 700 MHz spectrum designated for commercial use is to be “assigned by *competitive bidding* pursuant to Section 309(j),” and Section 309(j) requires only that when mutually exclusive applications are accepted, the Commission “grant licenses” through “a system of *competitive bidding*.” 47 U.S.C. § 337(a), § 309(j). AT&T’s proposal also is consistent with Section 309(j)(6)(E), which provides that nothing “in the use of competitive bidding, shall . . . be construed to relieve the Commission of the obligation in the public interest to continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in application and licensing proceedings.” *Id.* § 309(j)(6)(E).

¹⁷ See *CBOCS West, Inc. v. Humphries*, 128 S. Ct. 1951, 1961 (2008) (“[S]tatutory construction must begin with the language employed by Congress and the assumption that the ordinary meaning of that language accurately expresses the legislative purpose.”) (internal quotation and citation omitted).

¹⁸ See, e.g., *Decreased Regulation of Certain Basic Telecommunications Services*, 2 FCC Rcd 645, ¶ 35 n.62 (1987) (“By ‘competitive bidding process,’ we mean a request for proposals (RFP) or a similar solicitation for bids from a prospective customer to which more than one service provider responds”); *Federal-State Joint Board on Universal Service: Promoting*

RFP approach is consistent with the requirement of Section 337(a) that the D Block be licensed for commercial use¹⁹ – for the same reasons that the Commission’s existing D Block rules are consistent with this requirement.²⁰ Thus, while AT&T believes its original RFP proposal would be the most efficient and effective means to achieve a successful public/private network that meets public safety’s needs, this alternative approach would also achieve the Commission’s goals without legislative action.

II. THE PUBLIC INTEREST WOULD BE BEST SERVED BY HAVING COMMERCIAL ENTITIES PARTICIPATE ON A REGIONAL BASIS RATHER THAN THROUGH THE ISSUANCE OF A SINGLE NATIONAL D BLOCK LICENSE.

AT&T continues to believe that the Commission should enable the participation of commercial entities on a regional basis. Regardless of whether the Commission utilizes an RFP

Deployment and Subscribership in Unserved and Underserved Areas, 14 FCC Rcd 21177, ¶ 185 (1999) (“Local cable television franchising authorities in the United States have generally awarded cable franchises by issuing RFPs which solicit competitive bids”); *Requests for Review of Decisions of the Universal Service Administrator by Caldwell Parish School District, et al.*, 23 FCC Rcd. 2784, ¶ 16 (2008) (“USAC provides guidelines regarding E-rate matters, including competitive bidding, on its website in the form of written training presentations. Specifically, the 2001 training presentation stated that it was permissible for service providers to assist in developing RFPs under certain conditions.”). See also <http://management.about.com/cs/marketingsales/g/req4prop.htm> (“Definition: A Request for Proposal is a document issued when an organization wants to buy something and chooses to make the specifications available to many other companies so they can submit competitive bids”).

¹⁹ 47 U.S.C. § 337(a).

²⁰ The Commission held that the requirements in its existing rules that the D Block spectrum be used to promote public safety does not violate Section 337(a), because the license would be granted to a commercial entity and the successful licensee would be authorized to use the spectrum for commercial as well as public safety purposes. See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289, ¶ 429 (2007) (“*Second Report*”) (“We find that Section 337(a)(2), which directs us to allocate 36 megahertz ‘for commercial use,’ does not prohibit us from requiring the D Block licensee to provide public safety users with priority access to D Block license spectrum in an emergency. The D Block license spectrum is still allocated for commercial use, will be used primarily to provide commercial services to the public at large, and will be assigned by competitive bidding pursuant to Section 309(j) of the Act”).

process or a reauction, a regional approach is more likely to address the needs of public safety users, while more effectively utilizing the resources and experience of the commercial partner. In contrast, nationwide licensing could greatly compromise the goal of a nationwide network, especially in light of current financial uncertainties. As to the size of the region, AT&T supports use of the 58 Public Safety Regions proposed by the Commission.²¹

AT&T repeatedly has demonstrated that regional spectrum leasing or licensing will have far-reaching benefits.²² Non-nationwide licenses or lease areas will allow for local and regional build-out to be managed by specific public safety regional planning committees, ensuring that development, deployment, and training is conducted in cooperation with and in response to the specific needs of local public safety groups. Indeed, the needs and resources of public safety vary greatly across the country – some regions already have extensive and sophisticated public safety networks providing regional interoperability throughout the 700 MHz and 800 MHz bands, while others have wholly inadequate communications systems. In addition, some regions have the resources to deploy their own broadband infrastructure whereas other regions will be completely dependent on the commercial carrier. These differences in existing service levels should be recognized in the regional deployment schedules so that the immediate needs of public safety agencies can be addressed first. For example, in regions with effective communications already, the public safety agencies may prefer to focus initial build-out in rural areas to maximize coverage. In other regions, build-out will need to focus on the core population centers. A regional process will better allow local agencies to influence these decisions.

²¹ See, e.g., AT&T Comments at 24-25; AT&T Reply Comments at 7; see also *Third Further Notice*, ¶¶ 69-72. Some parties have proposed state-level regions. AT&T would have no objection to regions based on state boundaries.

²² See, e.g., AT&T Comments at 24-25; AT&T Reply Comments at 7-9.

A regional approach also will ensure that network specifications best address regional needs. Public safety challenges in urban areas can be quite different from those in rural areas and the establishment of priority access to ensure that critical public safety communications are completed during times of emergency and network congestion must reflect these differences. It also must reflect geographic and topological factors. Designing a wireless network to survive hurricanes, for example, requires different antenna site hardening techniques than designs for withstanding blizzards or earthquakes. Network deployment is also dependent on the type of terrain (flat or mountainous) and the type of structures (wood or steel reinforced concrete) that typify the local environment. Additionally, different levels of population density and potential significant seasonal variations therein will require different network deployment plans. Finally, the types of services demanded by public safety agencies will vary by region. Not all public safety agencies have the resources or need to implement broadband services into their day-to-day operations. Still others are concerned about relying on a network beyond their control for mission critical applications. The varying regional levels of demand for the shared broadband network by public safety will undoubtedly affect the specifications for and construction schedule of the network.

A regional approach will allow these many differences to be considered and addressed in the construction and operation of the shared network. Further, allowing for regional build-out to be managed by specific public safety regional planning committees will enable the PSBL to concentrate on its critical duty – to facilitate and to establish standards necessary for nationwide interoperability. As noted above, even with a regional approach, AT&T believes that all interoperability goals could be easily met by ensuring that each regional RFP contains the same

core set of standards and requirements, ensuring a single technology platform and a minimum set of features and services that must be made available to all network users.

AT&T also continues to believe that regional participation will promote greater commercial interest and commercial viability, as well as more rapid network build-out.²³ Regional participation could result in greater total capital investment in the interoperable network at the outset because multiple commercial partners could raise more capital simultaneously than a single commercial partner could alone. Smaller license or lease areas will also reduce the relative burden of aggressive build-out requirements that a single licensee would face, thereby making participation more attractive to both small and large commercial entities. Additionally, a regional approach will better enable carriers to leverage their existing network infrastructure and spectrum resources since no carrier has network facilities throughout the entire country. Leveraging existing assets ultimately will facilitate simultaneous and rapid network construction. This includes leveraging existing public safety assets as well. The existence of broadband public safety networks in Washington DC and New York City, for example, should be embraced so that broadband service to public safety can be expedited and expanded.

Moreover, by establishing appropriate network requirements and capabilities up-front, the Commission and PSBL will ensure seamless nationwide interoperability, even if the network is built by multiple commercial entities on a regional basis. In fact, as described above, regional partnerships offer unique benefits – not achievable with a national license – that will lead to a nationwide interoperable network much more quickly and cost-effectively than a single national partnership.

²³ *See id.*

In addition to encouraging broader participation, greater overall investment, and faster build-out, a regional approach also avoids the risks to the Commission (and public safety) of putting all eggs in one basket – which is a risk to which the Commission should be particularly sensitive in the current financial climate. To the extent the nationwide licensee is unable to meet its obligations, the construction of the entire network would be threatened. Moreover, with a single nationwide licensee, deployment might be slow and uneven. Such concerns are lessened with regional partners who would be responsible for more manageable pieces of the network and would be more able to leverage existing assets.

III. IN THE EVENT THE FCC PROCEEDS WITH A REAUTION, SEVERAL ASPECTS OF THE FCC’S PROPOSAL RAISE SIGNIFICANT QUESTIONS OR CONCERNS.

Under the approach proposed in the *Third Further Notice*, many aspects of the shared network and the operation of the public/private partnership will not be resolved prior to the proposed reaution. These uncertainties will make it almost impossible for interested bidders to evaluate the business implications of becoming a commercial partner before entering the auction. If left unresolved, these uncertainties could discourage some potential bidders and allow others to make incorrect assumptions about various issues that could jeopardize the success of the network, both from a commercial and public safety perspective. The continuing uncertainty about the network’s requirements and the commercial partners’ role underscores why AT&T strongly supports the use of an RFP process, which by its nature will eliminate many of these questions and uncertainties before the selection of the participating commercial entities.

Nevertheless, to the extent that the Commission continues to pursue a reaution of the 700 MHz D Block spectrum, AT&T believes that the Commission can take two major steps to eliminate much of the uncertainty that potential bidders would face in attempting to develop a realistic business plan for this network. First, regional-level Network Service Agreements

(“NSAs”) should be completed and published prior to the auction. The draft NSAs would include both national-level terms that ensure full interoperability as well as regional-level requirements developed by individual RPCs to allow for consideration of regional differences in topography, population density and other factors. While terms could be amended under the mutual agreement of both the winning bidder and the PSBL post auction, publishing the NSAs prior to the auction will allow bidders more fully to assess their potential risks and liabilities before their bidding interest and strategy. Second, the Commission should require the PSBL to cooperate in a demand study that takes into account regional variations to determine the potential public safety subscribership of the network. This is particularly important because some public safety entities have stated that they would not be likely to use the shared network if it were built. The results of a demand study would allow potential bidders to better estimate the revenues to be generated by the network to balance their obligations and costs as defined by the NSA. This same study should be used to establish an accurate accounting of incumbent 700 MHz radio systems that would have to be relocated in a particular region.

As an integral part of the NSA, the Commission must also provide further clarification on the technical requirements of the shared wireless broadband network (“SWBN”) including: interoperability; robustness and hardening; security and encryption; and the satellite-capable handset requirement. Because the proposed rules provide for public safety specialized technical qualifications that go beyond what is required in a standard commercial network, potential bidders must know the technical requirements in detail to estimate the cost of building and maintaining a network with these specialized features. In addition, given the greater cost associated with satisfying many of these specialized requirements, the Commission’s proposed

capped monthly service fee based on commercial rates is arbitrary, and may render the network commercially infeasible.

A. If the Commission Pursues a Reauction, It Must Provide Potential Bidders with More Specific Information before the Auction through the Publication of Regional Network Service Agreements, and Projected Regional Public Safety Subscriber Demand.

Throughout the *Third Further Notice*, the FCC states that technical issues will be resolved in the post-auction NSA process.²⁴ A number of significant issues are left to be resolved in post-auction negotiations, including, for example the detailed build-out schedules and the number and location sites that must meet certain hardening requirements. However, bidders must know the complete technical requirements of the network in order to estimate the cost of build-out and to make informed business decisions about their interest in the auction and their bidding strategy. These requirements will vary by region. Publication of regional NSAs before the auction will avoid potential defaults, delays and misunderstandings that might arise in if the NSA were negotiated after the auction, as the Commission proposes.²⁵ The FCC should require a Public-Private Working Group (“PPWG”) to be formed to craft standards, requirements, and NSA terms.

The PPWG would consist of experts in commercial wireless network construction and operation as well as experts in public safety communications. The PPWG should also have support from legal and standards experts and regional advisors. The PPWG would be tasked with coordinating the production of regional-level NSA terms and conditions including, again, the specific technical baseline requirements. An auction would take place only after the PPWG

²⁴ See, e.g., *Third Further Notice*, ¶¶ 96, 131, 156 (proposing to leave terms and timeframe of the satellite capable handset requirement to be specified in the NSA); ¶ 163 (proposing to leave creation of a detailed build-out schedule until the NSA is negotiated).

²⁵ *Id.*, ¶ 239.

produced NSAs for all regions. PPWG-approved NSAs published before a reauction would ensure that the requirements and conditions have been vetted through experts experienced in building and running wireless networks and public safety communications systems. AT&T believes that if the NSAs are parsed into national and regional components, certain network costs, like coverage, hardening, and redundancy can be negotiated regionally, based on the number of subscribers that have indicated they would participate in the shared network if built. Though regional NSAs should be published before the auction, the NSAs should define a process by which after the auction the regional D Block licensees and RPCs that eventually become parties to the regional NSAs can negotiate any needed adjustments to specific terms.

While pre-auction NSAs are clearly preferable to post-auction NSA negotiation, to the extent that the FCC pursues its current proposal that provides for post-auction NSA negotiation, the Commission must adopt a clear method for dispute resolution during the negotiation of the NSA. AT&T submits that the Commission should adopt rules that would allow the parties to pursue arbitration before an objective FCC Administrative Law Judge (“ALJ”), who would be required to have extensive engineering experience and be able to reliably assess what is and is not commercially reasonable. The Commission should specify that the ALJ should take into account costs, operational complexities and commercial reasonableness in making his decision. The ALJ decision would be reviewable by the full Commission on the limited question of whether the decision is consistent with the Commission’s rules. The Commission should also provide that the ALJ would issue a decision within a certain number of days, and that if the Commission does not act on an appeal within a certain number of days, the ALJ’s decision is deemed to be affirmed. The FCC should clarify that after an NSA has been executed, any

disputes should be submitted to private arbitrators. Here, again, the arbitrator's decision would be reviewable by the Commission to ensure compliance with the Commission's rules.

In advance of a reauction, the Commission should also require that the PSBL, or its agent, conduct a demand survey that accounts for regional differences. Already, some of the largest public safety groups have indicated a reluctance or skepticism about utilizing the SWBN.²⁶ Given that public safety users in some of the nation's largest markets are planning alternative broadband solutions, potential bidders need to know if the remaining public safety demand can justify the costs of building a commercial network designed with additional public safety features. Therefore, the FCC, in cooperation with the PSBL and its member organizations, should effectuate a demand study to determine the interest in subscribing to the SWBN. The survey should determine how many subscribers from each group would be expected, and break out results by region. In addition, the survey should provide an accurate accounting of the 700 MHz radio systems that must be relocated by region. Such a demand survey would provide potential bidders with data necessary to better determine potential revenue generated by the network and thus to assess their bidding interest.

B. The Commission Must Clarify the Logistical, Operational, and Functional Requirements of the Public/Private Partnership as well as the Technical Requirements for the Shared Network.

Prior to proceeding with a reauction, the Commission must clarify the rights and responsibilities for all parties to the public/private partnership and the technical requirements for

²⁶ See Letter from Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation to Kevin J. Martin, Chairman, FCC, WT Docket No. 06-150 (filed Oct. 29, 2008); Comments of The New York City Police Dep't, WT Docket No. 06-150 at 5 (filed June 19, 2008); Comments of the District of Columbia, WT Docket No. 06-150 at 9 (filed June 20, 2008); Comments of the Commonwealth of Virginia, WT Docket No. 06-150 (filed June 19, 2008); Comments of the City and County of San Francisco, WT Docket 06-150 at 2 (filed June 20, 2008).

the SWBN. These clarifications are especially necessary in the event that the Commission does not direct a PPWG to establish pre-auction NSAs. In that circumstance, a much clearer set of technical requirements by the Commission is necessary to inform commercial entities about potential risks, benefits and the required amount of financial investment needed, so that they can better evaluate the commercial viability of the public/private partnership and the opportunity presented. AT&T reiterates that an RFP process would allow these issues to be addressed naturally during the RFP selection process. However, if the FCC proceeds with a reauction, these issues would need to be clarified upfront, prior to the commencement of the auction.

1. Clarifications are necessary regarding the operational rights and responsibilities of the commercial partners and the PSBL.

Potential commercial partners need clarity regarding the scope of a commercial entity's operational control and the operating model for the public/private partnership. Commercial partners require day-to-day operational control over the entire network to ensure that commercial and public safety service offerings meet the high standards expected by commercial and public safety end users on a daily basis. AT&T, therefore, agrees with Commission's tentative conclusion that the D Block licensee(s) should assume exclusive responsibility for all traditional network service provider operations, including network monitoring and management, operational support and billing systems, and customer care, in connection with services provided to public safety users.²⁷ AT&T also agrees with the FCC's tentative conclusion that the responsibilities and obligations of the PSBL do not include any of the day-to-day network monitoring, operations, customer care, or related functions that are inherent in the D Block licensees' responsibilities to construct and operate the shared network infrastructure.²⁸

²⁷ See *Third Further Notice*, ¶ 169.

²⁸ See *id.*

However, further clarification is needed on the specific roles and obligations of the D Block licensee(s) and the PSBL, as well as on how disagreements between the partners are to be resolved. AT&T submits that such clarification would be inherent in the use of an RFP approach. Indeed, an RFP would allow the commercial partner and the PSBL to clarify all obligations through the contract between the parties. Any disputes could be efficiently resolved through well known contract remedies, in contrast to the uncertain and untested FCC process if the Commission proceeds with an auction.

2. Significant clarifications are necessary regarding limitations on how spectrum capacity is shared between public safety and commercial users.

The *Third Further Notice* proposes that the shared network must be managed so that commercial users and public safety users each have use of 50 percent of the network's capacity.²⁹ However, it is unclear as to how this actually will be accomplished from a technical standpoint. Establishing any measurable definition of capacity would be an onerous task, particularly since capacity will be dynamic based on network loading, types of devices, and other external factors. Further, it may be technically impossible to demark and allocate spectrum resources in a manner that is consistent with any such agreed-upon definition of capacity. Complexities are heightened where a commercial partner incorporates non-D Block commercial spectrum assets into the shared network – which carriers should be encouraged to do to improve the capacity and efficiency of the shared network. Complexities also arise where a carrier has contracted to provide service to a large government entity (*i.e.*, the D.C. government), but not all of the entity's users provide public safety services.

In light of these problems, AT&T believes that the Commission should focus on creating a well-designed priority access model, rather than an arbitrary division of spectrum, to ensure

²⁹ See *id.*, ¶ 79.

that the needs of public safety agencies are satisfied in a manner that is commercially viable.³⁰ AT&T recommends that the FCC encourage the acceleration of standards development of next-generation, IMS-based priority access standards currently being developed by wireless industry standards bodies³¹ and the Department of Homeland Security's National Communications System ("NCS"). Dynamic priority and preemption guidelines should be articulated to the public safety groups that will use the network to clarify which groups will receive priority access and in what order in the case of emergency preemption. The PSBL, as the representative of public safety, should have a prominent role in determining the provisioning and levels of priority services to its users. AT&T recommends the FCC follow the model established by the NCS in the provisioning of the Wireless Priority Service, whereby third parties under a federal government contract provide priority telecommunications services according to priority levels prescribed by the NCS.³² Priority access could be invoked on an "as needed" basis similar to the *272 mechanism in place for circuit switched Wireless Priority Service. Unlike the proposed arbitrary 50/50 split, priority access would provide a dynamic standard that is triggered by network congestion and would be flexible in times of emergency.³³

³⁰ See AT&T Comments at 12-13.

³¹ See 3GPP Release 8 Multimedia Priority Service (MPS) requirements; 3GPP TS 22.153 V8.0.0.

³² See generally The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements For Priority Access Service, Second Report and Order, 15 FCC Rcd 16720 (2000); 47 C.F.R. § 64 Appendix B, Priority Access Service (PAS) For National Security And Emergency Preparedness (NSEP).

³³ The Commission should clarify whether the D Block licensee(s) must provide for priority access of only public safety radio communications or of all public safety communications and applications, as this has a direct bearing on the cost of the network.

3. The Commission must provide further details regarding a variety of technical network issues.

Although the *Third Further Notice* provides additional details about the public safety specialized requirements for the SWBN, further clarifications are needed. In an auction framework, potential bidders must be able to quantify the cost of the network requirements to determine whether or not a business venture will be commercially feasible. The proposed rules indicate that SWBN will require certain characteristics that go above and beyond what would normally be required for a commercial network, particularly in the areas of network hardening, security and encryption, and network coverage. Yet, the rules are ambiguous as to the requirements for support of various applications. All of these characteristics could significantly increase the cost of providing a public safety specialized network, which will discourage bidders if not clarified.

For example, the Commission should provide further clarification on the proposed network hardening requirements. The Commission proposes that sites designated as “critical” have 8 hours of backup power and generators with a 48-hour fuel supply.³⁴ The Commission also proposes that the D Block licensee(s) make reasonable efforts to provide a five-day fuel supply at “critical” sites. While AT&T understands that maximum hardening is desired for public safety communications, these requirements go beyond hardening in commercial networks. What is more, the proposed rules do not clarify how the PSBL and the D Block licensee(s) together, in consultation with the “relevant community,” will designate a site as “critical.”³⁵ The proposed rule states also that “the designation of sites as ‘critical’ shall not be required to cover

³⁴ See *id.*, ¶ 117.

³⁵ See *id.*

more than 35 percent of sites.”³⁶ However, it is not clear, under this 35 percent ceiling, what degree of flexibility will be provided based on commercial or regional considerations. It also makes no distinctions about the location of “critical” cell sites, which can have a substantial effect on cost. Indeed, meeting the proposed hardening requirement at sites in dense urban areas is much more expensive and could cost millions of dollars per site. In addition, the proposed rules state that D Block licensee(s) must make “commercially reasonable efforts” to designate up to 50 percent of sites as critical, but the standard “commercially reasonable” is inadequately defined.³⁷ Accordingly, without the ability to estimate the number and location of cell sites that would be designated as “critical,” a potential bidder would not be able to estimate the added costs of the hardening requirement.

The Commission should also clarify the proposed security and encryption requirements. The *Third Further Notice* proposes that the D Block licensee(s) provide security and encryption consistent with “commercial best practices,”³⁸ but then it specifies that the D Block licensee(s) must provide security on an end-to-end basis.³⁹ Carriers generally provide security only over the air interface. End-to-end security requires that security is provided at the application level from device to device. The security of applications that run over networks is generally provided by the application provider, which may not be the same entity as the wireless carrier. The Commission must clarify the proposed security and encryption standards and the role the D

³⁶ See *id.*

³⁷ See *id.*

³⁸ See *id.*, ¶ 125.

³⁹ The FCC requires that the D Block licensee(s) allow for “public safety network authentication, authorization, automatic logoff, transmission secrecy and integrity, audit control capabilities and other unique attributes.” See *id.*

Block licensee(s) must play to ensure security and encryption when it is not the application provider.

Further, the Commission tentatively concluded that the shared network must provide for fixed and mobile voice, video, and data capability, and that these capabilities must be interoperable.⁴⁰ If the voice, video and data applications are not to be provided by the D Block licensee(s), further clarification is needed as to the licensee(s)'s role in supporting the applications and ensuring interoperability. Is this role limited to providing interoperability and compatibility at the air interface layer only? In addition, the Commission must clarify the D Block licensee(s)'s obligations in light of the fact that many public safety entities have indicated they neither want nor require advanced data or video capabilities for the foreseeable future. Indeed, such requirements will likely vary on a regional basis.

Moreover, the Commission should clarify what the D Block licensee(s) must do to “support” VoIP, including push-to-talk.⁴¹ It is unclear whether “support” means that the D Block licensee(s) actually provide these complete end-to-end services as part of their role as the network operator, or if the D Block licensee(s) may just provide the radio access and core network infrastructure required to enable another service provider to launch VoIP on the network. In the former case, the D Block licensee(s) would need to deploy additional service layer equipment and coordinate these services with all other D Block licensee(s) to ensure interoperability. In the latter case, the D Block licensee(s) would need more specific information about what it means to “support” VoIP, including defined quality of service levels, latency, and functionality. Finally, is it the Commission’s intent for a commercial push-to-talk service to offer the same level of functionality as narrowband systems do today? Commercial cellular

⁴⁰ *Id.*, ¶ 110.

⁴¹ *See id.* Appendix E, § 90.1405(a)(4).

devices do not currently have the capability for simplex, peer-to-peer communications, nor for multicast, where a single VoIP-based push-to-talk transmission can be heard by hundreds of recipients in a single cell sector.

Additionally, significant clarification is needed on the selection process of applications that will run across the network. In the *Third Further Notice*, the Commission tentatively concluded that the PSBL is responsible for approving public safety applications.⁴² Will the D Block licensee(s) be candidates to offer applications? What are the D Block licensee(s)'s responsibilities and financial obligations in terms of providing support for specific functionalities over the network, such as support for certain video encoders or IMS infrastructure?

Moreover, the proposed rules require that the D Block licensee(s) make available a handset that is satellite-capable.⁴³ But the rules also allow public safety subscribers to purchase their own equipment and applications from their vendor of choice.⁴⁴ Clarification is needed as to the D Block licensee(s)'s expected role in handset sales and distribution, particularly when there would be no assured purchasers of such handsets. Given the likely competitive market for public safety handsets that offer dual-mode mobile satellite access, AT&T questions whether there should be any obligation on the D Block licensee(s) to provide satellite enabled handsets.

In addition, the proposed network coverage requirements⁴⁵ require clarification as the cost of meeting these benchmarks would vary significantly by region. Although the *Third Further Notice* proposes an increased time period to reach the 90 percent coverage benchmark, the additional five years does not make the 90 percent coverage requirement economically viable

⁴² *Id.*, ¶ 117.

⁴³ *See id.*, Appendix E, § 21.1310(g).

⁴⁴ *See id.* § 21.1310(f).

⁴⁵ *See id.* ¶ 149.

in low population density areas. Indeed, AT&T's own coverage (independent of roaming partnerships) is well below 90 percent in low density regions. Further, the coverage benchmarks that go beyond the seven-year time period should be negotiated post auction with the regional D block licensee based on the economies of that given region. Additionally, the FCC should consider allowing alternative approaches to achieve coverage, such as roaming on existing networks, disaggregation and partnerships, and the inclusion of satellite coverage. Again, many of these issues would inherently be resolved through an RFP process.

4. The Commission's proposals to cap the monthly service charge to public safety users and set an annual payment to the PSBL are arbitrary.

Given the uncertainties noted above with respect to the technical and performance requirements of the network, it is impossible for the Commission to set an appropriate monthly rate for the service.⁴⁶ The Commission cannot base the rate for a public safety specialized network on the costs of commercial networks. As detailed above, many of the specific network requirements, such as hardening and security, are more complex than commercial standards and thus much more costly. Accordingly, the Commission should allow rates to be set by carriers in a manner similar to NCS's Wireless Priority Service, in which carriers set the rates not the government.

In addition, the Commission's proposal for the D Block licensee(s) to make an annual payment to the PSBL of \$5 million per year for access to the public safety spectrum is arbitrary and fails to account for regional differences in the spectrum needs and operational and management requirements of the network.⁴⁷ The spectrum needs of the network and the value of the spectrum will vary from region to region, as will the commercial revenues derived from the

⁴⁶ *Id.*, ¶ 390.

⁴⁷ *Id.*, ¶ 360.

shared network. Setting an arbitrary, uniform price on access to the public safety spectrum thus does not make sense. Again, these issues underscore the benefits of using an RFP process. An RFP mechanism would establish a process for the PSBL and the winning bidder to negotiate rates and rate changes. It would also allow the negotiation of the annual payment to the PSBL, thus eliminating these concerns.

IV. AT&T SUPPORTS CERTAIN TENTATIVE CONCLUSIONS AND PROPOSALS IN THE *THIRD FURTHER NOTICE* AS CRITICAL TO THE SUCCESS OF THE SHARED NETWORK.

AT&T supports certain tentative conclusions and proposals in the *Third Further Notice* as essential to the success of the shared network. First, AT&T concurs with the Commission's tentative conclusion not to impose eligibility restrictions or a reserve price beyond the minimum opening bid(s). Open eligibility will serve the public interest. Further, reserve prices beyond minimum opening bid(s) could discourage potential bidders. Second, AT&T agrees with the FCC's tentative conclusion not to impose mandatory wholesale or open access conditions on the D Block licensee(s). Untested open access conditions could harm the viability of the partnership and further discourage potential commercial participants. Third, AT&T supports the Commission's tentative conclusion that the PSBL remain a non-profit entity and be restricted from acting as a mobile virtual network operator ("MVNO"). Allowing such activities could raise costs for public safety users as well as discourage commercial entities from participating in the public/private partnership. Finally, AT&T agrees that the shared network should utilize standardized IP-based commercial technologies and support the 3GPP family of technologies to ensure future compatibility.

A. AT&T Agrees with the Tentative Conclusion Not to Impose Eligibility Restrictions and Not to Impose a Reserve Price beyond the Minimum Opening Bid(s).

AT&T applauds the Commission for not imposing eligibility restrictions or a reserve price beyond the minimum opening bid(s).⁴⁸ Eligibility restrictions based on spectrum holdings are unnecessary, given that wireless services are subject to vigorous competition. Equally important, denying carriers with larger spectrum holdings the ability to participate in any auction or RFP would disserve the interests of public safety by excluding carriers that may have the most expertise in building out large scale broadband wireless networks.⁴⁹ In addition to having the financial resources to construct a nationwide broadband network or large regional networks, those carriers also have networks and services in place that can be used to provide a large number of public safety services immediately while further build-out is taking place. The Commission has not established eligibility restrictions in other auctions, and this is certainly not an appropriate context in which to initiate such an unnecessary and harmful policy.

AT&T further concurs that no reserve price above minimum bids should be adopted for a D Block reauction. As the Commission noted, Auction 73 more than satisfied the revenue expectations of Congress. Reserve prices exceeding the minimum opening bids could discourage potential bidders.⁵⁰

⁴⁸ See *id.*, ¶¶ 267, 275.

⁴⁹ See AT&T Reply Comments at 12 (citing Initial Municipal Signal Association et al. Comments, WT Docket No. 06-150 at 14 (filed June 20, 2008), Motorola Comments, WT Docket No. 06-150 at 17-18 (filed June 20, 2008)).

⁵⁰ However, as AT&T discusses below, the Commission's proposed auction process, which could reduce minimum opening bids on unsold licenses could harm the public interest by allowing an unqualified bidder to win the license. See *Third Further Notice*, ¶ 242.

B. AT&T Also Agrees with the Decision Not to Impose a Mandatory Wholesale or Open Access Condition on the D Block Licensees.

AT&T supports the Commission's tentative conclusion not to impose mandatory wholesale or open access conditions on the D Block licensee(s).⁵¹ As AT&T has noted in the past, the wireless marketplace has been a true success story precisely because the Commission did not dictate business models but instead left it to the marketplace to drive business decisions. Mandating a business model for the D Block is particularly inappropriate given the significance and complexity of the public/private partnership.⁵² Because of the costly nature of the development of a public safety network, commercial participants should not be further constrained in how they offer commercial service. If an open access model makes sense from a business standpoint, and is consistent with the public safety requirements imposed on the D Block licensee(s), the licensee presumably will adopt that model. But that should be a decision that the licensee makes. Particularly given the enormous expense to which D Block licensee(s) will incur in connection with what already is an untested business model, the Commission should not risk further compromising the value of the D Block spectrum through open access requirements. Rather, the Commission should recognize that imposing such conditions risks delay or even derailment of the partnership and the shared network.⁵³ It could also compromise the network's performance and security. AT&T therefore agrees with the Commission "that this

⁵¹ *Id.*, ¶ 309.

⁵² *See* AT&T Comments at 18; AT&T Reply Comments at 12.

⁵³ *See Third Further Notice*, ¶ 309 (finding "that the effects of an open access environment were unknown, and before it was mandated, it was necessary to understand the impacts it would have on the public safety environment.")

flexibility improves the viability of the Public/Private Partnership, serves the interest of public safety, and is supported by the record.”⁵⁴

C. AT&T Agrees that the PSBL Should Remain a Non-Profit Entity that May Not Act as an MVNO.

AT&T agrees that the PSBL should remain a non-profit entity that may not act as an MVNO for the public safety spectrum.⁵⁵ Adopting this restriction will help to clarify the roles of the partners in the public/private partnership and assure the commercial partner that its potential revenues would not be reduced in this manner. AT&T agrees with the Commission that the PSBL’s duties should not include any form of day-to-day billing or customer care functions for public safety entities desiring to access the shared broadband network.⁵⁶ To allow such activities would likely raise the costs of services for public safety users and limit commercial revenues for the network, thus discouraging commercial participation in the partnership. AT&T further agrees with the Commission’s proposed steps to insulate the PSBL from undue commercial influence, as well as to ensure greater oversight through additional reporting and auditing requirements.⁵⁷

D. AT&T Agrees that the Shared Network Should Utilize Standardized IP-Based Commercial Technologies and, Specifically, Should Support the 3GPP Family of Technologies to Ensure Future and Forward Compatibility.

AT&T supports the Commission’s proposal that the broadband platform used must be IP-based and should include current technologies reasonably made available in the commercial marketplace.⁵⁸ The Commission’s technology baselines must be sufficiently flexible to permit

⁵⁴ *Id.*

⁵⁵ *See id.*, ¶¶ 198, 346.

⁵⁶ *See id.*, ¶ 198-99.

⁵⁷ *See id.*, ¶ 346.

⁵⁸ *Id.*, ¶ 105.

the use of existing commercial technology. The use of commercially available technology can substantially increase the speed and decrease the cost of deployment of the network.⁵⁹

Standardized IP-based commercial technologies in the 3GPP family will ensure both backward and future compatibility with existing network facilities. AT&T agrees with the FCC's proposal to permit the use of Long Term Evolution ("LTE") technology, which is by far the most advanced and spectrum efficient technology for the foreseeable future.⁶⁰ AT&T believes that LTE will be the best choice for the shared network because it will offer 4G data speeds, global economies of scale derived from user pools exceeding two billion, and compatibility with future networks.⁶¹

V. THE PROPOSED AUCTION PROCESS IS INORDINATELY COMPLEX AND SKEWED SO AS TO DISCOURAGE INTERESTED BIDDERS.

The FCC proposes to offer three alternative licenses at auction simultaneously: a nationwide license with the technology platform to be determined by the winning bidder; a set of regional licenses for use with the LTE technology platform; and a set of regional licenses for use with the WiMAX technology platform.⁶² In addition, the Commission indicates that it will favor a high bid on the nationwide, technology platform over any aggregate bid(s) on the two sets of regional licenses until there are bids on all regions in at least one of the alternatives.⁶³ The

⁵⁹ See AT&T Reply Comments at 18.

⁶⁰ See *Third Further Notice*, ¶ 108.

⁶¹ See AT&T Comments at 10.

⁶² See *Third Further Notice*, ¶¶ 240-86.

⁶³ See *id.*, ¶ 242.

FCC's proposal also provides for the reduction of minimum opening bids on unsold licenses during bidding.⁶⁴

The sheer complexity of the proposed auction structure will introduce confusion into the bidding process and hurt any chance of a successful D Block auction. Competitive bidders require certainty and transparency to engage in a high stakes auction. The past auction failed because of the uncertainties and risks associated with the D Block licensee's obligations. The proposed auction structure only increases uncertainty and likewise will discourage bidders. Further, the reduction of minimum opening bids on unsold licenses during bidding may encourage opportunistic but unqualified entities to bid, thus increasing the chance that the auction will yield an unqualified winning bidder.

Moreover, the proposed auction rules disproportionately favor a nationwide license, which, for the reasons discussed in Section II above, would not serve the public interest. The proposed structure favors a high bid on a nationwide license over aggregate bids on regional licenses, unless certain conditions are met.⁶⁵ As previously explained, selecting a nationwide licensee who would have the entire financial and tactical burden of constructing an unprecedented specialized nationwide broadband network is very risky and potentially reckless, especially given current market conditions.

Although the FCC stated that it will address the details of auction design in its pre-auction notice and comment process, AT&T notes here that it opposes the adoption of anonymous bidding procedures. As AT&T has argued in the past, anonymous bidding will discourage potential bidders.⁶⁶ In an auction environment with high stakes, but little

⁶⁴ *Id.*

⁶⁵ *Id.*

⁶⁶ *See* Comments of AT&T Inc., WT Docket No. 06-150, at 36-40 (filed May 23, 2007).

transparency, withholding bidder information will no doubt increase uncertainty for bidders, thereby increasing perceived risks and reducing the desire to bid aggressively.

VI. CONCLUSION

For the foregoing reasons, AT&T strongly supports the use of an RFP process to select the PSBL's commercial partners. AT&T also believes that the public interest would be best served by having commercial entities participate on a regional basis, regardless of whether the FCC proceeds through an RFP process or a reauction. To the extent the Commission proceeds with a reauction, the Commission must both clarify many uncertain technical requirements and other obligations in the proposed rules, as well as simplify the auction process.

Respectfully submitted,

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