

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

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

COMMENTS OF SPACE DATA CORPORATION

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COMMENTS OF SPACE DATA CORPORATION

Space Data Corporation (“Space Data”), in response to the Third Further Notice of Proposed Rulemaking in the above-captioned proceeding (“*700 MHz Third NPRM*”),¹ offers three proposals that will: (1) encourage additional participation in the re-auction of the 700 MHz D Block, (2) ensure the licensee(s) have maximum flexibility to use innovative technologies to construct and operate a shared, interoperable public safety and private broadband network on the D Block spectrum (the “Shared Network”), and (3) facilitate economic build out of rural areas that may otherwise go unserved. The current economic climate in the United States only highlights the importance of ensuring that no unnecessary financial and technical barriers impede potential bidders’ participation in the D Block auction and the construction of the Shared Network.

¹ See *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 (rel. Sept. 25, 2008) (“*700 MHz Third NPRM*”).

I. INTRODUCTION AND SUMMARY.

The Shared Network holds great promise for realizing at last an advanced, nationwide, interoperable public safety network. Public safety groups and the American public, however, can benefit fully from the Shared Network only if the D Block licensee(s) can economically acquire spectrum and construct the Shared Network. The record in this proceeding amply demonstrates that substantial resources will be required to build out the Shared Network, even to the reduced population levels proposed by the Commission. Build out of up to 98, 94 and 90 percent of the respective Tier 1, Tier 2 and Tier 3 Public Safety Regions (“PSRs”) leaves a significant amount of population and territory without coverage. This includes more than 18 million people and more than 2.25 million square miles, or 75 percent, of the continental U.S. landmass) where there are often no wireless networks.² The lack of service to vast geographic areas raises significant public safety concerns for those who live, work and/or travel in these sparsely populated areas. For example, critical public safety activities in these regions include fighting forest fires, responding to natural disasters, tracking criminal and terrorist activities, and protecting U.S. borders. It is essential that the D Block licensee(s) have maximum flexibility to construct the Shared Network economically and efficiently, speeding the delivery of broadband services as quickly as possible.

Space Data offers three proposals that, if implemented, could make the D Block spectrum and the Shared Network more attractive to investors and operators, yet still achieve the Commission’s public safety goals. First, the Commission should permit D Block licensees to use non-terrestrial technologies in conjunction with terrestrial technologies to build the Shared

² Space Data supports the Commission’s alternative approach of requiring the D Block licensee(s) to provide signal coverage and offer service to at least 95 percent of the population of each PSR by the end of the 15 year. *See id.* at ¶ 164. Even with 95 percent coverage, 68 percent of the landmass of the continental U.S. and around 14 million people could be left without coverage.

Network on the D Block spectrum to satisfy the Commission’s population-based build out requirements. Certain non-terrestrial technologies, such as Space Data’s “near space” SkySite[®] platform, can provide broadband services (as defined by the Commission) that are comparable to traditional terrestrial networks. Use of SkySite platforms would not require new handsets or subscriber equipment. Rather, subscribers could continue to use their existing 700 MHz handsets, even single-mode, single-band handsets.³ So long as a licensee can satisfy the Commission’s 700 MHz D Block service requirements, it should receive credit for building out the Shared Network, regardless of the technology it uses to do so. Arbitrarily limiting a licensee from using any technology that is not a traditional terrestrial tower-based architecture conflicts with the Commission’s policy of adopting technology-neutral regulations and harms the public interest by deterring potential auction bidders and hampering build out of the Shared Network.

The Commission also should ensure that the D Block technical rules do not prohibit unnecessarily a D Block licensee from using non-traditional technologies. Specifically, the Commission should (1) amend the definition of “base station” in Section 27.4 of the rules to include “alternative technologies that perform the same functions as land stations,” **and** (2) provide that any technical requirements in Sections 27.50 – 27.70 of the rules that apply to base stations, fixed stations, fixed towers, or tower antennas similarly apply to non-traditional technologies that perform the same functions as base stations or towers. These amendments would ensure the rules do not prohibit a D Block licensee from using a non-terrestrial technology to construct the Shared Network.

³ Subscribers of other 700 MHz bands (e.g., the A, B, C, and E 700 MHz Blocks) also may be able to benefit from the expanded service areas provided by the D Block licensees by being able to make emergency 911 calls using their existing devices in areas where only the Shared Network has been constructed.

Second, the Commission should offer bidding credits to promote participation in the auction and construction of the Shared Network. In particular, bidding credits should be awarded to licensees that will build the Shared Network more quickly and provide greater coverage than required in the Commission's proposed construction requirements. Additional bidding incentives will help offset the costs associated with building the Shared Network, particularly in rural areas where it often is more costly to construct a network.

Third, the Commission should consider package bidding for the regional D Block licenses to facilitate participation in the auction, particularly in the least densely populated areas. Package bidding would provide bidders with the flexibility to combine certain licensed areas that best suit their needs without risking their ability to execute their business plans if they fail to win critical licenses. Without this flexibility, potential bidders may otherwise limit their participation in the auction.

II. THE COMMISSION MUST ENSURE THAT THE 700 MHZ D BLOCK RULES ARE TECHNOLOGY-NEUTRAL.

A. The Commission Should Permit D Block Licensees To Use Non-Terrestrial Technologies To Satisfy Population-Based Build Out Requirements.

The Commission should modify its tentative conclusion that a D Block licensee cannot use non-terrestrial technologies to satisfy its population-based build out requirements.⁴ This approach would conflict with the Commission's longstanding policy of adopting technology-neutral regulations and would harm the public interest. Further, this conclusion appears to be based upon the erroneous belief that non-terrestrial technologies cannot provide broadband services that are comparable to traditional terrestrial networks.

⁴ See *id.* at ¶ 153.

A licensee should receive credit for building out the Shared Network on the D Block to all areas where it provides broadband service that satisfies the criteria set forth in the *700 MHz Third NPRM*, irrespective of the technology used to do so.⁵ Accordingly, the Commission should conclude that a D Block licensee can satisfy its population-based build out requirements using a combination of terrestrial and non-terrestrial technologies so long as the licensee otherwise fulfills the Commission's service requirements that apply to the 700 MHz D Block spectrum.

It is a well-established Commission policy to apply technologically-neutral regulations to the wireless telecommunications industry, and the Commission has long recognized that wireless carriers typically are in the best position to choose and use the most effective and efficient technologies to provide service.⁶ Space Data recognizes that there may be limited circumstances in which the benefit of dictating carriers' technologies outweighs the harm of diverging from the Commission's technology agnostic policy (e.g., requiring all D Block regional licensees to use the same wireless protocol to ensure nationwide interoperability of the Shared Network). Prohibiting a D Block licensee from using non-terrestrial technologies to help build out the Shared Network, however, only harms the public interest and presents no countervailing benefits.

Space Data previously demonstrated in this proceeding that some non-terrestrial wide area technologies, such as Space Data's SkySite platform, can be used in conjunction with

⁵ The *700 MHz Third NPRM* proposes several service criteria specific to the 700 MHz D Block, such as network availability levels, particular data speeds for public safety and commercial end users, and other technical features to which the broadband technology platform must conform (e.g., using an IP-based technology platform). *See id.* at ¶¶ 102-131.

⁶ *See, e.g., Amendment of the Commission's Rules to Permit Flexible Service Offerings in the Commercial Mobile Radio Services*, 15 FCC Rcd 14680 (2000); *Commercial Mobile Alert System*, 23 FCC Rcd 6144 (2008).

terrestrial towers to build out the Shared Network in rural and underserved areas where it is often prohibitively expensive to construct a traditional tower network.⁷ Users also would be able to continue to use their existing 700 MHz subscriber equipment, including single-mode and single-band devices. From the perspective of end users, SkySite or other non-terrestrial platforms can provide broadband capabilities that are commensurate with terrestrial broadband services. In fact, from an end user's perspective, broadband services provided via SkySite platforms would be substantially identical to broadband services provided via a terrestrial tower.

SkySites also have sufficient capacity to provide broadband services comparable to terrestrial services. Space Data previously demonstrated that SkySite platforms could provide adequate capacity in rural areas to meet user demand.⁸ Furthermore, the technology in non-terrestrial platforms is anticipated to develop rapidly as power sources improve and microcircuit-based radios become smaller and more power efficient. Advances in technology will allow non-terrestrial platforms to become even more suitable for wireless communications. For this reason, SkySite platforms are ideal to provide coverage to rural, less populated areas where capacity demand is lower, while a terrestrial system is used in more urban areas. As demand in rural areas grows, a D Block licensee could construct additional towers helping to ensure the economic and efficient build out of the Shared Network.

The public interest is poorly served if a D Block licensee is prohibited from utilizing a particular technology to satisfy its population-based build out requirements even though the licensee still could fully satisfy the Commission's other service requirements. For example, unnecessarily restricting the types of technology D Block licensees could deploy hampers build

⁷ See Comments of Space Data Corporation, WT Docket No. 06-150; PS Docket No. 06-22, at 4-8 (June 20, 2008) ("Space Data Comments"); Reply Comments of Space Data Corporation, WT Docket No. 06-150; PS Docket No. 06-22, at 3-12 (July 7, 2008) ("Space Data Reply Comments").

⁸ See Space Data Reply Comments at 9-10.

out. The record in this proceeding demonstrates that the use of wide area technologies, and in particular SkySite platforms, in conjunction with terrestrial towers presents significant cost efficiencies and savings in the construction of the Shared Network.⁹ SkySite platforms can be deployed rapidly to provide wide area coverage including rural and underserved areas, in contrast to the 15-year build out contemplated for terrestrial networks by the *700 MHz Third NPRM*.¹⁰ Public safety and commercial end users would benefit significantly from the faster build out and greater coverage that could be accomplished through non-terrestrial technologies.

The ability of D Block licensees to attribute the coverage provided by non-terrestrial technologies towards their population-based build out requirements also could create significant incentive to participate in the D Block re-auction. With the current economic outlook, potential bidders already face tremendous difficulties in financing the purchase of D Block spectrum as well as the construction of the Shared Network.¹¹ The ability to utilize more efficient and cost effective technologies, however, could influence considerably potential bidders' strategic and business plans and result in positive investment opportunities that would not otherwise exist. In contrast, unnecessary restrictions on D Block operations will only further dissuade potential bidders to the detriment of public safety and consumers.

⁹ See *id.* at 10-11.

¹⁰ In fact, under the proposed build out requirements in the *700 MHz Third NPRM* large swaths of rural areas still could remain indefinitely without coverage. See *supra* Figures 1-3.

¹¹ Winning bidders also should not be required to post some form of financial security, such as a letter of credit, to ensure that the Shared Network will be constructed pursuant to the terms of the Network Sharing Agreement and the Commission's rules. See *700 MHz Third NPRM*, ¶¶ 290-93. A financial security requirement only adds another obstacle for potential bidders to secure financing. Furthermore, other remedies exist under the Commission's rules in the event a licensee defaults or otherwise cannot satisfy the terms of the Network Sharing Agreement, Commission rules, or its license.

Several parties attribute in part the failure to previously auction the D Block to unrealistic build out requirements.¹² As demonstrated in Figures 1 through 3 below, however, the Commission's proposal to measure build out on a PSR basis imposes even greater build out demands in large, rural western states.¹³ In the sparsely populated western states, building out to 90 percent of the population of each region actually requires more coverage of these states compared to a 99.3 percent nationwide build out requirement.¹⁴ These additional build out obligations will require additional financial resources from licensees, potentially making these regions less desirable to bidders. These sparsely populated areas are where wide area, non-terrestrial technologies can be ideally used to provide coverage economically and with enough capacity to satisfy the regional population-based build out requirements. Thus, it is even more critical to allow innovative approaches like non-terrestrial technologies to be used in conjunction with terrestrial technologies build out the Shared Network.

¹² *See id.* at ¶ 139.

¹³ *See id.* at ¶¶ 151-152, 164. Specifically, Figures 1-3 compare the original 10-year coverage requirements for the D Block (i.e., 99.3 percent nationwide) and the newly proposed 15-year regional coverage requirements (either the tiered structure depending on a region's population density or a flat 95 percent coverage requirement that applies to all regions).

Figures 1-3 assume that each terrestrial site covers at least 100 square kilometers in rural areas and that the sites are built from the location with the highest population density in a region (or the nation) incrementally to the location with the next highest population density until the required population coverage is achieved.

¹⁴ For example, 90 percent population coverage of the North Dakota PSR requires building out to a density level of 2.6 people per square mile, whereas building out on a nationwide basis to 99.3 percent of the population requires building out the North Dakota PSR to a density level of 7.3 people per square mile. Space Data estimates that it would require more than twice the number of towers in North Dakota to meet the 90 percent coverage requirement.

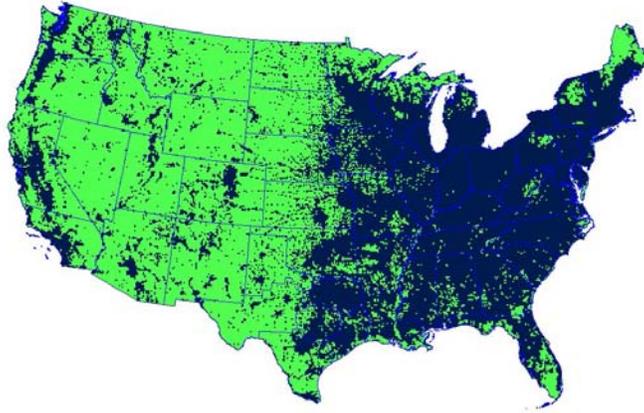


Figure 1: 10-year build out for nationwide coverage of 99.3 percent population (Auction 73)

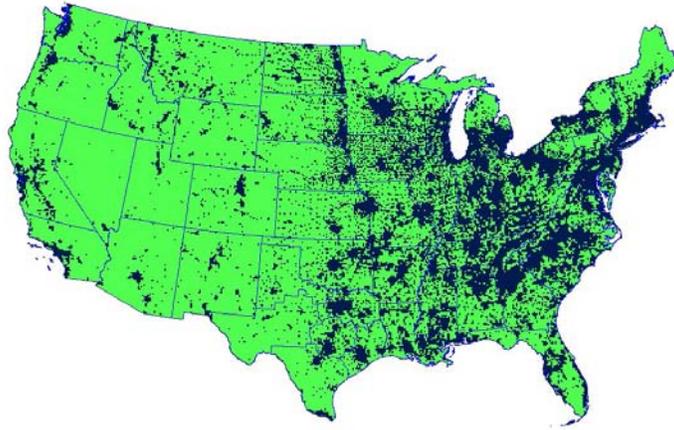


Figure 2: 15-year build out with each PSR built to 98, 94 or 90 percent population coverage based on tiered population density proposal

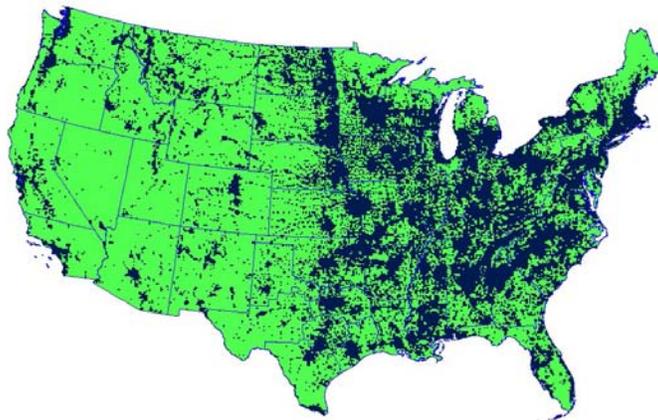


Figure 3: 15-year build out with each PSR built to 95 percent population in each PSR

Furthermore, the Commission’s tentative conclusion that a D Block licensee cannot use non-terrestrial technologies to help satisfy its population-based build out requirements is inconsistent with the other measures proposed in the *700 MHz Third NPRM* to provide the D Block licensees with the flexibility to use innovative technologies and solutions. For example, the Commission proposes to allow D Block licensees to use non-terrestrial technologies in the limited case of extending coverage to major highways and interstates and communities with populations in excess of 3000 when such build out is beyond the Commission’s population-based build out requirements.¹⁵ Although the *700 MHz Third NPRM* proposes specific hardening requirements for critical cell sites, the Commission also proposes to allow a D Block licensee and public safety licensee to agree on other methods to improve network resiliency.¹⁶ The Commission similarly should ensure that D Block licensees have the flexibility to use innovative and cost-effective non-terrestrial technologies to satisfy their population-based build out requirements if the D Block licensee meets all of the Commission’s other service criteria.

B. The 700 MHz rules should not prohibit a D Block licensee from using non-traditional technologies.

The *700 MHz Third NPRM* specifically asks whether any of the Commission’s existing 700 MHz rules regarding “terrestrial base stations or land stations may need to be clarified or modified to be applicable to non-terrestrial technologies that perform the same functions of terrestrial base stations.”¹⁷ The Commission should ensure that its rules provide the D Block licensee and public safety broadband licensee with the flexibility to use a myriad of innovative solutions, including wide area technologies, to construct the Shared Network.

¹⁵ See *700 MHz Third NPRM*, ¶ 155.

¹⁶ See *id.* at ¶ 119.

¹⁷ *Id.* at ¶ 155.

For example, the existing 700 MHz rules set forth certain power limits based upon the antenna height of a base station.¹⁸ The 700 MHz rules also define a “base station” as a “land station... not intended to be used while in motion.”¹⁹ Although certain wide area technologies may not be land-based like traditional terrestrial towers and will operate while in motion (including Space Data’s SkySite platforms), they perform the same functions as conventional fixed base stations. Moreover, the development of non-terrestrial technologies is advancing rapidly and will continue to do so over the next 15 years.²⁰ For example, microcircuits will continue to decrease in size and power demands, batteries will deliver more capacity, and various propulsion technologies will be created. These advancements will make non-terrestrial technologies more efficient and suitable for running more wireless applications, and could well become commonplace in 15 years.

Accordingly, the 700 MHz technical rules should be modified to apply to non-terrestrial technologies that perform the same functions of terrestrial base stations.²¹ Specifically, the FCC should: (1) amend the definition of “base station” in Section 27.4 of the rules to include “alternative technologies that perform the same functions as land stations,” and (2) provide that any technical requirements in Sections 27.50 – 27.70 of the rules that apply to base stations,

¹⁸ See 47 C.F.R. § 27.50.

¹⁹ *Id.* § 27.4 (definitions for “base station” and “land station”).

²⁰ The U.S. military already is using unmanned non-terrestrial platforms to extend coverage to U.S. troops deployed overseas. See, e.g., Northrop Grumman News Release, “Navy’s Global Hawk Maritime Demonstration Unmanned Aircraft Supports Northern California Firefighters During Navy Exercises,” July 22, 2008, available at http://www.irconnect.com/noc/press/pages/news_releases.html?d=146880 Furthermore, these types of unmanned platforms are being deployed to assist with some domestic public safety emergencies. See, e.g., Los Angeles Times, “Air Force Spy Plan to Fly Over Fire Zone,” October 26, 2007, available at <http://www.latimes.com/news/local/la-me-drone26oct26.0,4085077.story>.

²¹ The Commission previously applied the base station requirements in the narrowband PCS context to Space Data’s wide area technology. See *Petition for a Declaratory Ruling, a Clarification or, in the Alternative, a Waiver of Certain Narrowband Personal Communications Services (PCS) Rules as they Apply to a High-Altitude Balloon-Based Communications System*, 16 FCC Rcd 16421 (WTB 2001).

fixed stations, fixed towers or tower antennas similarly apply to non-traditional technologies that perform the same functions as base stations or towers. These amendments would ensure that a licensee can use innovative technologies to economically and efficiently build out the Shared Network while also restricting the licensee to the power limitations and other interference protection and network specification requirements set forth in the rules.²² The Commission's technology neutral rules have long been at the core of its competitive policies and the Commission should continue to maintain that commitment in the case of the Shared Network.

III. ADDITIONAL BIDDING CREDITS WOULD PROMOTE GREATER AND FASTER BUILD OUT OF THE SHARED NETWORK.

Space Data urges the Commission to offer bidding credits to stimulate participation in the D Block auction and promote construction of the Shared Network. Space Data continues generally to support Sprint Nextel Corporation's ("Sprint Nextel") proposal to offer bidding credits to facilitate build out.²³ In light of the Commission's proposed regional licensing regime and revised construction requirements, however, Sprint Nextel's suggested bidding credits for should be modified slightly.

As Space Data explained previously in this proceeding, additional bidding incentives would help offset the costs associated with building out the Shared Network to meet public safety standards. Space Data, an active and successful participant in the Commission's tribal land bidding credit program, has learned first hand that acquiring funding for spectrum requires a sound business plan and that bidding credits can be a deciding factor for investors. The availability of bidding credits is particularly important in rural areas where it is more costly to construct a network than in urban areas. If the D Block spectrum is allocated on a regional basis,

²² For example, Section 27.50 sets forth specific power limits for base station antennas above 1000 feet.

²³ See Space Data Reply Comments at 13.

bidding credits become even more critical to provide build out incentives because regions that are primarily rural will be more capital intensive to build out.²⁴

As Sprint Nextel suggested, a D Block licensee should receive bidding credits for committing to cover a higher percentage of the licensed area’s population. Based upon the new tiered build out requirements proposed in the *700 MHz Third NPRM*, Space Data suggests that the Commission award additional five percent bidding credits to licensees that build out their licensed areas beyond the third milestone by the end of the 15th year:

| Population Density of Region: | 90% | 94% | 98% | 99.30%²⁵ |
|--------------------------------------|------------|-------------------|--------------------|----------------------------|
| Less than 100 ppl./sq. mi.: | n/a | 5% bidding credit | 10% bidding credit | 15% bidding credit |
| Between 100 - 500 ppl./sq.mi.: | n/a | n/a | 5% bidding credit | 10% bidding credit |
| 500 ppl./sq.mi. or more: | n/a | n/a | n/a | 5% bidding credit |

The Commission also should offer incentives for expedited network build out.

Specifically, five percent bidding credits could be awarded when a licensee satisfies the requisite build out requirements ahead of the required build out milestones. For example, the table below shows how these bidding credits would be applied assuming a licensee provides expedited coverage to certain percentages of the population by the end of the fourth, 10th and 15th years:

²⁴ See *id.* Space Data agrees with Sprint Nextel that the Commission has authority to apply bidding credits to the 700 MHz D Block.

²⁵ The proposed bidding credits were structured using the goal of 99.3 percent population coverage because some public safety entities continue to support this level of coverage.

Early Build Bidding Credit Table

| Population Density of Region: | Milestone | | |
|---------------------------------------|------------------|--------------|--------------|
| | 4 yr | 10 yr | 15 yr |
| Less than 100 ppl./sq. mi: | | | |
| <i>Minimum Build Out = No Credit</i> | 40% | 75% | 90% |
| One period early = 5% Credit | 75% | ← | 90% |
| One period early = 5% Credit | 40% | 90% | ← |
| Two periods early = 10% Credit | 75% | ← | 90% |
| Three periods early = 15% Credit | 90% | ← | ← |
| Between 100 to 500 ppl./sq.mi. | | | |
| <i>Minimum Build Out = No Credit</i> | 40% | 75% | 94% |
| One period early = 5% Credit | 75% | ← | 94% |
| One period early = 5% Credit | 40% | 94% | ← |
| Two periods early = 10% Credit | 75% | ← | 94% |
| Three periods early = 15% Credit | 94% | ← | ← |
| More than 500 ppl./sq.mi.: | | | |
| <i>Minimum Build Out = No Credit</i> | 40% | 75% | 98% |
| One period early = 5% Credit | 75% | ← | 98% |
| One period early = 5% Credit | 40% | 98% | ← |
| Two periods early = 10% Credit | 75% | ← | 98% |
| Three periods early = 15% Credit | 98% | ← | ← |

The bidding credits proposed above would help promote participation in the D Block auction and construction of the Shared Network.

IV. PACKAGE BIDDING FOR RURAL AREAS WOULD FACILITATE PARTICIPATION IN THE AUCTION.

Space Data supports the Commission’s tentative conclusion that it should direct the Wireless Telecommunications Bureau to consider specific procedures for package bidding with respect to auctioning regional D Block licenses.²⁶ The *700 MHz Third NPRM* correctly acknowledges that “some potential applicants may prefer to be able to place single bids covering

²⁶ *700 MHz Third NPRM*, ¶ 254.

geographic areas that are significantly larger than” each regional license.²⁷ Package bidding would provide potential bidders with additional flexibility to combine groups of licenses together that best suit their individual business needs. Without the benefit of this flexibility, potential bidders may otherwise choose to limit their participation, or not participate at all, in the auction.

For example, Space Data previously proposed that the Commission at least allow limited package bidding to allow bidders to group several of the large, least densely populated contiguous states (i.e., Idaho, Montana, Wyoming, North Dakota, South Dakota, Nebraska, Nevada, Utah, and Kansas) as one package of licenses.²⁸ As Space Data explained earlier in this proceeding, unique economic and strategic differences between urban and rural markets and service providers – particularly those utilizing wide area technologies that have larger service footprints than traditional terrestrial networks – could contribute to a viable business plan that focuses primarily on serving rural markets.²⁹ Using combinatorial bidding in this scenario would allow service providers to bid on a package of rural licenses without risking their ability to execute a business plan if they fail to win critical licenses in the region.

V. CONCLUSION.

Public safety and commercial users could significantly benefit by ensuring that innovative and novel technologies can be used to construct and operate the Shared Network. The Commission should ensure that the rules applicable to the 700 MHz D Block spectrum provide

²⁷ *Id.*

²⁸ *See* Letter from Gerald Knoblach, Space Data, to Marlene Dortch, FCC, WT Docket No. 06-150, PS Docket No. 06-229, at 2-3 (Sept. 17, 2008). These states are the least densely populated states in the continental United States (with the exception of New Mexico, which is not contiguous).

²⁹ *See* Space Data Comments at 12-16; Space Data Reply Comments at 3-9.

maximum flexibility to take advantage of such technologies, including Space Data's near space SkySite platforms.

Respectfully submitted,

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