

**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 777-792 MHz Bands |) | WT Docket No. 06-150 |
| |) | |
| Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band |) | PS Docket No. 06-229 |
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REPLY COMMENTS OF VERIZON WIRELESS

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REPLY COMMENTS OF VERIZON WIRELESS

I. INTRODUCTION AND SUMMARY

The comments submitted in response to the Third Further Notice of Proposed Rulemaking (“Third FNPRM”) demonstrate that the Commission’s modified version of the D Block concept is not a workable plan for achieving the public safety goals of this proceeding. In the wake of the initial failed D Block auction, the Commission proposes to make its D Block rules more commercially attractive by, among other things, scaling back the coverage and other technical requirements for the network. Despite the Commission’s diligent efforts to craft a plan that addresses public safety’s critical needs, however, virtually all public safety commenters argue that the resulting plan is not adequate. While a few, primarily the Public Safety Spectrum Trust (“PSST”) and its board members, suggest that the plan might still work with some modifications, many others – notably including large cities such as New York – have made clear that they view the entire D Block concept as fundamentally flawed and do not intend to participate in the Commission’s plan. At the same time, the record suggests that the proposals in

the Third FNPRM will not make the D Block sufficiently attractive to prospective bidders so as to ensure – or even make likely – a successful auction.

As a result, Verizon Wireless urges the Commission to pursue a new public-private partnership approach modeled after the suggestion of New York and other large cities that public safety entities have direct control of the spectrum on a regional basis. Such an approach is the best way forward for the Commission, as it would break the logjam that is inherent in any top-down, one-size-fits-all solution: instead of limiting the utility of the network by adopting lower performance and coverage specifications to attract commercial partners for public safety, the Commission should give public safety entities the authority to make such determinations on their own, subject to whatever standards are required to develop a nationally interoperable network-of-networks. Such authority would empower public safety authorities to decide on the coverage and performance specifications best tailored to the characteristics and needs of their jurisdictions, rather than force the Commission to set them nationally through this rulemaking. Further, such an approach would be consistent with the locally driven system-of-systems approach adopted by the Department of Homeland Security as a “core strategy” of its comprehensive National Emergency Communications Plan (“NECP”) that was released on July 31, 2008.

New York’s proposal reflects four key principles that Verizon Wireless believes have emerged from this proceeding and should be advanced in any Commission action. First, the combined 20 MHz of D Block and public safety broadband spectrum should be reallocated to public safety. Second, it should be licensed to public safety entities on a regional basis. Third, regional public safety licensees should be required to support interoperability through whatever technical standards and IP-based solutions are necessary for the creation of a nationwide network-of-networks. Fourth and finally, the regional public safety licensees should be able to

select their commercial partner or partners using a “request for proposal” (“RFP”) or similar competitive approach that best meets their individual needs.

Accordingly, Verizon Wireless believes that the Commission should use its existing authority to allocate the 10 MHz of public safety broadband spectrum directly to public safety agencies, and that it should seek clearer Congressional authorization to do the same for the D Block. While the Commission currently has waiver authority under 47 U.S.C. § 337(c) to allocate unassigned commercial spectrum to public safety applicants, whether that authority is legally sufficient to give the Commission power to allocate the D Block to public safety entities in every region at this time is uncertain. Verizon Wireless therefore respectfully suggests that the Commission seek express statutory authorization from Congress to allocate the D Block directly to public safety.

II. THE “D BLOCK LITE” APPROACH PROPOSED IN THE THIRD FNPRM REMAINS FLAWED.

The fundamental goal of this proceeding has been, and must remain, meeting the communications needs of public safety. At the same time, as the failure of the first D Block auction demonstrates, a successful approach to meeting those needs must be commercially viable, or else public safety will be left with no network at all. Recognizing that the initial D Block rules had been marked both by significant uncertainty and technical requirements that rendered construction of a shared network economically impracticable, the Commission in the Third FNPRM proposes to better define and scale back the technical requirements for a shared wireless broadband network so that they are closer to those that characterize existing commercial-grade networks. As the comments in response illustrate, the Commission’s attempt to mediate between public safety goals and commercial viability has not succeeded. No carriers have stepped forward to indicate that they would be likely to bid under the revised rules. And,

more importantly, virtually every public safety commenter has stated that the Commission's proposed approach will not serve its needs.

Perhaps most significantly, a group of officials representing Boston, Cook County, Illinois (including the City of Chicago), Denver, the City and State of New York, San Francisco, San Jose, and Seattle have made clear in an ex parte filing that they "find the proposed rules for the D-Block auction to be unworkable for large municipalities," noting in particular that by "lowering the performance/coverage requirements of the system, you are designing a system that fails to serve the critical performance needs of public safety."^{1/} Instead, these officials state that "[o]ne size does not fit all, when it comes to the broadband wireless needs and geographic differences of our varied municipalities. Therefore, the only model that can work is to build and operate locally-controlled public safety networks that are tied together on the basis of interoperable national standards."^{2/} Similar concerns appear in the comments to the Commission's Third FNPRM. The cities of San Francisco and Oakland, for example, take the position that "the Commission's plan ultimately succeeds only in 'lowering the bar' to make this proposal more attractive to commercial bidders. In so doing, the Commission has further reduced confidence of the public safety community that the proposed network will ever be useful for public safety needs or reliable in times of disaster."^{3/} As a result, they make clear that they have no intention of participating in the D Block plan. Similarly, TeleCommUnity, a group of over 150 municipalities including Detroit, Dallas, and Tucson, questions the proposed auction approach and urges the Commission to consider proposals that would permit direct allocation of

^{1/} Ex Parte of Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation at 1 (Oct. 29, 2008).

^{2/} *Id.*

^{3/} Comments of the City and County of San Francisco and the City of Oakland at 3.

spectrum to public safety.^{4/} And representatives of Philadelphia, Miami, Michigan, and the Regional Planning Committee for DC, Virginia, and Maryland express similar skepticism toward the D Block approach, while seeking a greater degree of local control over the network's deployment and operation.^{5/}

Against the backdrop of such widespread disagreement among public safety commenters, a top-down, one-size-fits-all approach is unlikely to garner sufficient support to succeed. Indeed, police chiefs from 35 major cities recently adopted a resolution calling for the postponement of any D Block spectrum re-auction until agreement can be reached within the public safety community on how best to use the spectrum.^{6/} As Charles Dowd, deputy chief of the New York City Police Department, which joined the resolution, noted, "There is so much disagreement as to what should happen with this spectrum that the auction shouldn't be held until public-safety consensus is reached."^{7/} Uncertainty and confusion over the D Block has resulted in an environment in which any reauction is unlikely to succeed until stakeholders can reach some agreement on the best means to meet the needs of public safety. Ultimately, trying to thread the needle between public safety requirements and commercial viability by designing detailed technical and other requirements on a national basis may well be a futile task. Such an approach

^{4/} Comments of TeleCommUnity at 2.

^{5/} See, e.g., Comments of Regional Planning Committee 20 at 3 (stating that it is "skeptical that the 3rd Further Notice will create a 'nationwide' broadband network that meets the needs of public safety"); Comments of the City of Philadelphia at 1-3 (Commission should adopt a regional approach with involvement of Regional Planning Committees); Comments of Miami-Dade County at 1 (Commission should reissue spectrum to local government); Comments of Michigan Dept. of Information Technology at 1 (D Block proposal is "fatally flawed").

^{6/} See Glenn Bischoff, *Major city police chiefs say 'no'—for now—to 700 MHz network*, Urgent Communications (Nov. 11, 2008), available at: http://urgentcomm.com/policy_and_law/news/700mhz-d-block-postponement-1111/index.html.

^{7/} *Id.*

would require the Commission to adopt a least-common-denominator set of public safety requirements in the hope of attracting one or more bidders, but in doing so would result in a network that does not fully satisfy public safety's needs.

III. THE REMAINING 700 MHZ SPECTRUM SHOULD BE LICENSED DIRECTLY TO PUBLIC SAFETY ENTITIES ON A REGIONAL BASIS.

The Commission should instead follow the course laid out by public safety commenters from major urban centers across the country and allocate the combined 20 MHz of D Block and public safety broadband spectrum directly to public safety on a regional basis. As these commenters explain, the needs of local public safety agencies are varied and a uniform national approach will not meet their individual needs. Direct allocation to regional public safety entities will enable each region to adopt its own best solution based on factors such as geography, population distribution, public safety capacity needs, and existing commercial deployment. The regional entity can then select a private partner best suited to meet its needs using a competitive selection process such as an RFP. At the same time, the Commission can still achieve the goal of interoperability by requiring adherence to technical standards and IP-based solutions, so as to create a nationwide network-of-networks.^{8/}

^{8/} *Interoperability in the Next Administration – Assessing the Derailed 700 MHz D Block Public Safety Spectrum Auction: Hearing Before the House Subcomm. on Emergency Communications, Preparedness, and Response, 109th Cong. 3-4 (Sept. 16, 2008) (Joint Statement for the Record of Dr. David Boyd, Division Head, Command, Control and Interoperability Division, and Chris Essid, Director, Office of Emergency Communications, Dep't of Homeland Security) (“Ultimately, emergency responders operating on a system of systems will be able to respond to an incident anywhere in the Nation, using their own equipment, on any communications system, and on dedicated public safety spectrum as needed and authorized.”).*

An approach under which the Commission allocated the full 20 MHz of spectrum directly to public safety agencies on a regional basis, subject to national standards that would ensure nationwide interoperability, would offer a range of benefits:

First, direct regional licensing would provide the local control that many public safety commenters advocate. As the City of Philadelphia has explained in its comments in this proceeding, “local governments [should] have a meaningful opportunity to participate in both the design of the proposed shared wireless broadband network and the development of the policies governing its operation,”^{9/} because, among other things, “local and regional control over public safety communications . . . is necessary to support effective emergency management.”^{10/} The needs and resources of each jurisdiction are different, and no national body – whether the Commission or the PSST – can hope to design a better communications system for local users than what local agencies would design for themselves. Compromise in network design is inevitable, but what may be a luxury to one jurisdiction may be essential to the next. For example, as TeleCommUnity points out, public safety’s needs are more likely to be satisfied if experts were retained to determine the best technology for its broadband network, rather than having that done through auction.^{11/} The terms of any compromise should be decided by local authorities, not the Commission or the PSST. Allocating the spectrum directly to public safety entities will give them the authority and the responsibility to do so.

^{9/} City of Philadelphia Comments at 2.

^{10/} City of Philadelphia Comments to Second FNPRM at 2-4; *see also* Comments of San Francisco and Oakland at 4 (objecting to “the Commission’s tentative conclusion . . . that local agencies would have no voice in network design and implementation setting service levels, determining who may use the system or what circumstances rise to the level of an ‘emergency.’”); Comments of the New York City Police Department at 7; Comments of the Michigan Dept of Information Technology at 2; City of Baton Rouge Comments at 1.

^{11/} TeleCommUnity Comments at 12-13.

Second, allowing public safety agencies to enter into regional partnerships would maximize the potential for success because the partnerships could be tailored to the circumstances of each region, including its particular public safety needs, whether the region is predominantly rural, urban, or some mix, and the current state of commercial deployment of wireless facilities.^{12/} For example, public safety capacity needs in some high-density areas may be significant – perhaps requiring use of all the network capacity – while the capacity needs elsewhere might be more able to accommodate a shared network. Moreover, such an approach will encourage participation by commercial carriers best positioned to serve that region’s needs, opening the door to leveraging the assets and infrastructure of multiple commercial partners that are unwilling or unable to undertake build-out on a national scale or outside of their core regions.

Third, direct public safety licensing would support build-out of an interoperable 700 MHz network on a schedule dictated by public safety needs. With the “green space” of new spectrum, local agencies could develop integrated voice/data solutions that take full advantage of 700 MHz capabilities now rather than proceed on parallel tracks that maintain narrowband LMR systems for voice and use 700 MHz systems only for data. Indeed, some jurisdictions have

^{12/} See Third Further Notice of Proposed Rulemaking, *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Dkt. No. 06-150, PS Dkt. No. 06-229, FCC No. 08-230 ¶ 71 (rel. Sept. 25, 2008) (recognizing that each area may have “unique local needs” and that a solution should take account of “regional differences in terrain and public safety needs in determining how to set up and operate the system, which could be more cost effective in certain respects and better suited to regional needs than a one-size fits-all system”).

already begun to implement such integrated networks, and others have plans on the books that only require the spectrum to begin construction.^{13/}

Finally, such an approach would not undermine efforts to achieve national interoperability. Provided that national standards are in place, interoperability can be achieved by linking regional networks together to create a national system of systems or network of networks.^{14/} Indeed DHS has adopted such an approach as the “core strategy” behind the National Emergency Communications Plan that it released on July 31, 2008. That plan adopts a locally driven, system-of-systems approach for achieving nationwide interoperability in public safety communications:

This approach grants emergency response agencies the flexibility to select equipment that best meets their unique technical requirements and budget constraints. It also allows systems operated by different emergency response agencies to communicate, regardless of their manufacturer. The long-term strategy aims at building a system of systems so that separate agencies can join together using interface standards, compatible procedures, and training exercises

^{13/} See New York City Police Department Comments at 5-6 (describing the New York City Wireless Network, or NYCWiN, which is scheduled to be fully deployed by the end of 2008); see also Comments of the District of Columbia to Second FNPRM at 7-8 (describing the National Capital Region’s Regional Wireless Broadband Network, or RWBN, which currently covers 80-95% of the District – but noting that the regulatory uncertainty created by the pursuit of nationwide public/private partnership threatens the network’s continued existence); Comments of the City and County of San Francisco to Second FNPRM at 3 (describing the San Francisco Bay Area Regional Interoperable Communications System, or BayRICS, and noting that governance and funding mechanisms are already in place, but that broadband spectrum is needed).

^{14/} Internet protocol (IP)-based technologies enable different networks to be integrated together, providing interoperability across multiple platforms. In August, Verizon introduced a new service that uses IP-based technology to enable police, fire, and other public safety personnel to communicate directly – even if they are using incompatible communications systems. See *Verizon Business Launches IP-Based Service to Link Public Safety Communications Networks During Emergencies*, available at <http://newscenter.verizon.com/press-releases/verizon/2008/verizon-business-launches.html>. These same technologies can be used to link together different broadband networks.

without having to discard major investments in their existing systems.^{15/}

At a hearing before the House Subcommittee on Emergency Communications, Preparedness, and Response, DHS witnesses noted the shortage in spectrum available to first responders and concluded that “[t]he additional spectrum in the 700 MHz band is essential to the emergency response community’s requirements and helps to satisfy this shortfall.”^{16/} Licensing the spectrum directly to public safety agencies is the best way to solve this problem and for the Commission to ensure that its efforts in this important rulemaking fit into the overall plan that DHS has developed for the country.

The Commission also should couple direct allocation to regional public safety entities with a competitive selection process such as an RFP. An auction requires public safety to commit to a single model, specify the key details before the auction, and then partner with the highest bidder. In contrast, an RFP approach would allow public safety to consider a range of alternatives, evaluate them on a broad range of selection criteria, and then partner with the provider that has the most attractive overall proposal. The advantages of an RFP process only increase under a regional “network-of-networks” approach, as public safety would have the

^{15/} *Interoperability in the Next Administration – Assessing the Derailed 700 MHz D Block Public Safety Spectrum Auction: Hearing Before the House Subcomm. on Emergency Communications, Preparedness, and Response*, 109th Cong. 3-4 (Sept. 16, 2008) (Joint Statement for the Record of Dr. David Boyd, Division Head, Command, Control and Interoperability Division, and Chris Essid, Director, Office of Emergency Communications, Dep’t of Homeland Security); *see also* Dep’t of Homeland Security, National Emergency Communications Plan, at ES-2 (July 2008) (“There is no simple solution, or ‘silver bullet,’ for solving emergency communications challenges, and consequently DHS’ approach to the NECP involves making improvements at all levels of government, in technology, coordination and governance, planning, usage, and training and exercises. This approach also recognizes that communications operability is a critical building block for interoperability; emergency response officials must first establish reliable communications within their own agency before they can interoperate with neighboring jurisdictions and other agencies.”).

^{16/} *Interoperability in the Next Administration*, Joint Statement for the Record of Dr. Boyd & Mr. Essid at 7.

benefit of a greater number of proposals to consider, and prospective partners could tailor their proposals to the specific circumstances of each region.

IV. TO THE EXTENT THE COMMISSION’S AUTHORITY TO ALLOCATE THE SPECTRUM DIRECTLY TO PUBLIC SAFETY ENTITIES IS UNCERTAIN, IT SHOULD SEEK CLEARER AUTHORIZATION FROM CONGRESS.

In order to implement an approach similar to that advocated by public safety commenters from the large cities, the Commission would have to reallocate both the 10 MHz of public safety spectrum and the D Block to regional public safety entities. Although the Commission likely has the authority to take that step with respect to the public safety spectrum, its authority to do so with the D Block is uncertain, and the Commission should seek clearer authority from Congress.

The 10 MHz of spectrum that is currently licensed to the PSST falls within the block of spectrum that Congress required the Commission to allocate “for public safety services” under Section 337(a)(1). Congress granted the Commission broad authority with respect to this block, subject only to the requirement that the Commission consult with the Attorney General and Secretary of Commerce in establishing the terms and conditions of the license.^{17/} Apart from the consultation requirement and the mandate that the spectrum be used “for public safety services,” Congress left the Commission with a great deal of discretion to exercise its statutory authority. Accordingly, the Commission already has the authority it needs to allocate this spectrum directly to public safety agencies on a regional basis.

The Commission’s authority to reallocate the D Block directly to public safety is less clear. Section 337(c) authorizes – indeed *requires* – the Commission to waive “any requirement” of the Communications Act to permit the use of unassigned frequencies for the provision of public safety services upon application of an entity seeking to provide such services,

^{17/} 47 U.S.C. § 337(a)(1).

so long as certain conditions are met. The Commission's waiver authority under Section 337(c) is arguably broad enough to support licensing the 10 MHz of D Block spectrum directly to public safety agencies on a regional basis. However, Section 337(c) contains specific requirements that may not be met in all circumstances here. At the least, there would be a cloud of uncertainty hanging over any decision to use the Commission's 337(c) authority to reallocate the D Block. As a result, the better course likely is for the Commission to obtain clear authorization from Congress to take such a step.

The legislative history of Section 337(c) indicates that Congress intended it to be a way for the Commission to put unused spectrum into the hands of public safety:

New section 337(c) requires the Commission to waive any provisions of the Communications Act or the Commission's rules (other than those relating to harmful interference) to the extent necessary to permit the use of unassigned frequencies available to the Commission for the provision of public safety services. The conferees recognize that, in heavily congested markets, sufficient spectrum may not be available between 746 and 806 MHz for public safety services. The intent of the conferees is that public safety agencies that demonstrate a need for spectrum are not denied the use of unassigned frequencies that have lain fallow for an extended period of time.^{18/}

The Commission has understood Section 337(c) to authorize even the reassignment of commercial spectrum to public safety:

[S]pectrum does not *per se* become unavailable to Section 337 applicants once we have initiated the competitive bidding process On the one hand, we do not believe that Congress intended for Section 337 applications to compromise or frustrate the competitive bidding process generally. On the other hand, there may be circumstances in which the public interest would warrant grant of a Section 337 request on spectrum that is subject to competitive bidding.^{19/}

^{18/} H.R. Conf. Rep. 105-217, 105th Cong., 579 (1997).

^{19/} Report and Order and Further Notice of Proposed Rule Making, *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 As Amended*, 15 FCC Rcd 22709 ¶ 133 (2000) ("*Implementation of Sections 309(j) and 337*").

Section 337(c) is, however, subject to certain conditions that would have to be met before the Commission could exercise its authority to allocate portions of the D Block to a regional public safety applicant. Whether several of those conditions would be satisfied here is unclear. For example, Section 337(c) applies only with respect to “unassigned frequencies.”^{20/} The spectrum is presently unassigned because Auction 73 failed to attract a winning bidder: unless the Commission acts, the spectrum will go fallow on February 19, 2009. There is Commission precedent for using Section 337(c) to reassign commercial spectrum to public safety in the wake of a failed auction.^{21/} However, whether a court would conclude the D Block is “unassigned” within the meaning of Section 337(c) is unclear. There is no shortage of commercial interest in the D Block; rather, the auction failed to attract a winning bidder because of the conditions imposed on the spectrum by the Commission and the PSST. The Commission would have no trouble auctioning the D Block on an unencumbered basis. In other words, the D Block is “unassigned” only because of the circumstances in which it was made available for auction, not because of a lack of commercial interest in the spectrum. Nor have the “frequencies . . . lain fallow for an extended period of time” as contemplated by Congress in granting the Commission its Section 337(c) authority.^{22/} Thus, to the extent that Section 337(c) is intended as a failsafe provision that permits public safety use of commercial spectrum that otherwise would go unused, that arguably does not accurately describe the status of the D Block.

^{20/} 47 U.S.C. § 337(c)(1).

^{21/} See, e.g., *In re State of Wyoming*, 23 FCC Rcd 9572 (2008) (granting waiver to use commercial spectrum unallocated in auction to build WyoLink, a statewide interoperable communications system designed to replace the state’s LMR systems with a trunked Project 25-compliant system); *In re Application of County of Sacramento*, 15 FCC Rcd 12600 ¶¶ 8, 14, 20 (2000) (granting waiver under 337(c) for frequencies for which no bids placed in auction).

^{22/} H.R. Conf. Rep. 105-217 at 579.

In addition, the Commission would have to make five specific findings before granting a waiver under Section 337(c), including that “no other spectrum allocated to public safety services is immediately available to satisfy the requested public safety service use.”^{23/} The Commission might be hard pressed to find that “no other spectrum” is immediately available, given the 10 MHz of public safety broadband spectrum that remains.^{24/} The Commission would have to find that the 10 MHz of spectrum currently licensed to the PSST was insufficient and that the D Block was needed; at the very least, this finding presents a potential obstacle, particularly in rural areas where the spectrum might go unused by public safety entities and instead be used for commercial services under a partnership or sublicensing arrangement with a commercial provider.

Finally, Section 337(c) requires that the waiver application be “seeking to provide public safety services.” That term is defined to include services

- (1) “the sole or principal purpose of which is to protect the safety of life, health, or property”;
- (2) “that are provided . . . by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services”; and
- (3) “that are not made commercially available to the public by the provider.”^{25/}

This definition would clearly be met in cases where the application sought to use the spectrum to serve public safety users directly. Although a court might disagree, under Commission

^{23/} 47 U.S.C. § 337(c)(1)(A).

^{24/} The Commission has explained: “We believe that the statutory language is clear in that it expressly requires that no other spectrum allocated to public safety services be available without any qualification. Thus, we believe that the statute requires that there be no unassigned public safety spectrum, or not enough for the proposed public safety use, in any band in the geographic area in which the Section 337 applicant seeks to provide public safety services.” *Implementation of Sections 309(j) and 337*, 15 FCC Rcd at ¶ 132.

^{25/} 47 U.S.C. § 337(f)(1).

precedent, this definition might also be satisfied under a framework in which a regional public safety entity sought to obtain the spectrum so as to license it to a commercial carrier for a mixed-use network where public safety users were given priority access. In that scenario, the “principal” purpose of the services sought by the applicant would be for the protection of life, health and property; the carrier would be a “nongovernmental organization” authorized by a governmental entity charged with protecting public safety; and the services provided to public safety users would not be commercially available to the public. To be sure, the carrier might also provide commercial service over the same network, but that would be a different service (e.g., it would not have priority access), and the statutory language does not seem to require that the spectrum be used *solely* to provide public safety services. Indeed, the Commission has already found that using the public safety broadband spectrum to provide both commercial and public safety services is consistent with the separate “public safety” mandate of Section 337(a)(1) because – as the Commission found – “the definition of ‘public safety services’ does not foreclose the secondary preemptible commercial use at issue here.”^{26/} The Commission could similarly reach the conclusion that mixed use of the spectrum also satisfies the “public safety” mandate of Section 337(f)(1).

^{26/} The Commission went on to explain:

The statute flexibly defines “public safety services” as services “the sole or *principal* purpose of which is to protect the safety of life, health, or property,”²⁶ which suggests that even the public safety licensee might engage in other uses of the spectrum. Authorizing secondary preemptible commercial operations does not impair or materially detract from that statutorily mandated “principal purpose.” Indeed, it furthers that purpose, as noted above, by making funds available for the construction of a nationwide broadband network that will greatly benefit public safety users.

Second Report and Order, *In re Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, 22 FCC Rcd 15289, ¶ 420 (2007); *see generally id.* ¶¶ 413, 419-25 (addressing the Commission’s ability to authorize a mixed-use network under Section 337(a)).

In sum, while the Commission could invoke Section 337(c) here to allocate the D Block directly to public safety, doing so would present several obstacles, particularly in light of Congress's explicit direction in Section 337(a)(2) to use this spectrum for commercial purposes. As a result, a cloud of uncertainty would remain over the D Block if the Commission were to proceed in this manner under current law. Given the critical public safety interests at stake, rather than proceeding with that overhanging cloud, the Commission should seek clearer authority from Congress.

CONCLUSION

Verizon Wireless recognizes the challenges facing the Commission in this proceeding as it considers the best means for providing public safety entities with the interoperable communications services they need. Verizon Wireless agrees with the positions of many of the public safety commenters from large cities that the preferred course would be to license the 700 MHz spectrum directly to public safety on a regional basis, and provide local jurisdictions with control over how the spectrum is used and how partnerships are formed. Accordingly, the Commission should take the steps necessary – including obtaining clearer authority from Congress – to implement that approach.

Respectfully submitted,

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