

**Before the
Federal Communications Commission
Washington, D.C. 20554**

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

**Reply Comments of
United States Cellular Corporation
on Third Further Notice of Proposed Rulemaking**

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CELLULAR CORPORATION

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SUMMARY

Many parties agree with United States Cellular Corporation (“USCC”) that the FCC’s tentative conclusions in the Third Further Notice are close to providing the framework for a successful auction of the D Block spectrum, negotiation of a Network Sharing Agreement (“NSA”), deployment of advanced shared broadband networks with nationwide interoperability, and offering of valuable services to public safety and commercial users. The FCC should adopt reasonable refinements to its proposals and move forward with the re-auction of the D Block licenses for the shared wireless broadband network.

There is widespread support for most of the key tentative conclusions in the Notice and for the refinements described in USCC’s comments. Auctioning area licenses is attractive to many commercial wireless service providers, representatives of public safety agencies and equipment suppliers. The auction rules should not favor a nationwide bidder or impose detrimental complexity. Coverage requirements should vary with the population density of a license area, provide build-out benchmarks during the fifteen-year license term, and use satellite services for some locations. Public safety agencies and commercial parties agree that the FCC should establish rate principles in rules for certain offerings to public safety users, with specific prices developed and updated through the NSA. Area licensees should form a national committee and provide a national platform for public safety applications, with real-time links to the PSBL. As for technical requirements, carriers and equipment suppliers agree that licensees should not have to bear costs of interoperability with other networks, and that application-specific data rates specified in the rules should be design objectives to be addressed in the NSA. Also, several parties support raising the proposed spectrum lease fee to make it adequate to support public safety’s negotiation of the NSA and other responsibilities.

These reply comments discuss the following points: (1) re-auctioning the D Block under the shared network model offers the best prospect for a nationwide, interoperable broadband network meeting the needs of public safety users; (2) the FCC's tentative conclusions on coverage, hardening and satellite service strike a reasonable balance; (3) simultaneous auctions based on the two 4G technologies is a technology-neutral solution that provides bidders with a mechanism for certainty on the common air interface; (4) the proposed \$750 million threshold for aggregate minimum opening bids is reasonable; information on relocation costs should be refined and used to adjust the minimum bid for some areas; (5) additional service assurance measures, such as a requirement of bankruptcy remote entities, performance bonds or letters of credit, would impose costs that would deter bidders; (6) early build-outs by public safety agencies should supplement the shared network and not be allowed to impose inefficiencies and additional costs on D Block licensees; (7) for matters not addressed in the rules or term sheet, the dispute resolution mechanism should provide commercially reasonable results; and (8) the scope of public safety users should be limited to support the delivery of public safety services and commercial viability of the licensees.

With reasonable refinements to the tentative conclusions in the Notice, the FCC will be positioned to bring to fruition the long-awaited, much-needed shared wireless broadband network to the benefit of public safety and commercial users.

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Introduction

United States Cellular Corporation (“USCC”) is pleased to see widespread support for the FCC’s tentative conclusions on re-auctioning the 700 MHz D Block, developing the shared wireless broadband network, and providing services to public safety and commercial users. USCC’s comments described several refinements to the proposals in the Third Further Notice; many other parties agreed with these suggestions. The comments also contain some additional helpful revisions. The FCC should adopt revised rules and move forward with the auction.

These reply comments have two sections. Section I briefly describes the strong support for many key tentative conclusions and for the refinements recommended by USCC. Generally, these points were unopposed in the comments. Section II discusses in more detail eight points raised by some parties and presents USCC’s recommendations. The FCC should reject radical changes to its tentative conclusions, but adopt certain refinements to its proposed rules.

I. Widespread Support for Key Tentative Conclusions

The comments show widespread support for many of the key tentative conclusions stated in the Notice and for the refinements suggested by USCC. This section briefly reflects these points that the FCC should adopt as rules.

A. Benefits of Auctioning Area Licenses. Many comments filed by various parties -- including national, regional and local representatives of public safety,¹ wireless carriers/operators (both large and small),² and suppliers/equipment manufacturers with expertise in public safety networks³ -- supported auctioning area licenses. These parties agreed with the FCC and USCC that a regional licensing approach offers advantages of increasing the likelihood of selling the licenses through greater participation of smaller entities; increasing the responsiveness to local public safety needs; increasing the speed of network deployment; developing best practices in network design and deployments, operations and service offerings; and decreasing the risks from failure of any operator. Almost all of these parties agreed that the proposed use of 58 Public Safety Regions (“PSRs”) strikes a reasonable balance as to the number and coverage of area licenses. Compared to nationwide or mega-regional licenses, the 58 PSRs are sized to make the coverage requirements commercially reasonable for more potential bidders.⁴

¹ PSST Comments at 4; APCO Comments at 7-9; Joint Public Safety Commenters Comments at 7; NPSTC Comments at 6-8; Regional Planning Committee Twenty Comments at 12-14; Letter from Kentucky Wireless Interoperability Executive Committee at 1; City of Philadelphia Comments at 3-4; TeleCommUnity at 8-9.

² AT&T Comments at 10-14; USCC Comments at 2-5; Leap Comments at 2-5; Cellular South Comments at 3-4; NTCH Comments at 6; Bright House Comments at 11. See also interest expressed in Broadpoint Comments at 5-6; Cavalier Wireless Comments at 3.

³ Northrop Grumman Comments at 3-4; Tyco Comments at 6; Motorola Comments at 5-6; Ericsson Comments at 2; WiMAX Forum Comments at 4-5; Intel Comments at 1.

⁴ APCO Comments at 7; Cellular South Comments at 4 (“[T]he participants that bid on regional licenses are specifically bidding for those licenses because they have a desire to operate in

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B. Auction Rules Should Give Area Bidders a Fair Opportunity. The auction rules for the D Block spectrum should not unduly favor a nationwide bidder over bidders on the 58 PSR licenses. As USCC discussed in its comments, the proposed triggers for reducing the minimum opening bids should be relaxed, and package bidding or anonymous bidding should be avoided because they would deter bidders by unnecessarily complicating the auction.⁵ Along these lines, Leap and Bright House described the advantages of only offering area licenses without a nationwide license alternative; Leap also opposed the rejection of area bidders if there is a nationwide bid and any unsold area license, and warned of the dangers of package bidding.⁶ Similarly, AT&T continued to favor regional licenses over a national license, opposed anonymous bidding because it would discourage potential bidders, and expressed concern about rules favoring a bid on a nationwide license over aggregate bids on regional licenses.⁷

C. Coverage Requirements Should Vary With Population Density, Phase-In and Use Satellite Coverage in Some Locations. The Notice proposed coverage requirements varying with the population density of a license area, applying these area-specific standards to a nationwide licensee, requiring interim build-out benchmarks, and relying on satellite coverage for some locations.⁸ USCC, APCO, NPSTC, PSST and New EA⁹ all supported this framework with a few

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those areas.... In an auction as important as this one with the fate of the public safety broadband networks on the line, it is imperative that bidders have a genuine interest in the areas on which they are bidding.”).

⁵ USCC Comments at 18-23.

⁶ Leap Comments at 3-5; Bright House Comments at 10-13.

⁷ AT&T Comments at 32-33.

⁸ Notice at paras. 149, 155.

⁹ USCC Comments at 6-8; APCO Comments at 16; NPSTC Comments at 12; PSST Comments at 17-18; New EA Comments at 4-5. While population density is not a perfect basis for

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suggested modifications (discussed in Section II.B below), primarily regarding the specific standards and benchmarks chosen.

D. For a Service Offering to Public Safety Users, Rules Should Establish Rate Principles, With the NSA Reflecting Conforming, Negotiated Prices. USCC agreed with the FCC's desire to address a clear standard for a reasonable "base rate" offering to public safety users, but argued that the FCC's rules should establish rate principles, not a specific "one size fits all" price, especially in light of advances in service features and other changes in the wireless marketplace.¹⁰ A range of other parties (including representatives of public safety users) likewise concluded that the specific prices for public safety user service plans and add-ons would be better left to negotiation in the NSA. Comments from the PSST, APCO, NPSTC, the Joint Public Safety Commenters, Northrop Grumman, AT&T, Motorola and TIA¹¹ expressed support for the rate-principles approach.

For the "base rate," USCC recommended principles in the rules providing for a uniform nationwide rate; the rate should be discounted off of standard retail commercial rates for similar services available from the D Block licensees or other carriers, with a discount comparable to that in the most similar GSA contracts at that time; the rate would cover

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coverage requirements in every location, it avoids the complexities, disputes and costs of a hypothetical system reflecting "jurisdictional geography." New York City Police Department Comments at 10. The FCC should reject NATOA's suggestion to impose higher coverage requirements when the winning bidder has existing infrastructure in an area. NATOA Comments at 5. The degree of overlap and usefulness of existing infrastructure would be complexities in formulating standards, and existing carriers should not confront burdens which would deter them from bidding.

¹⁰ USCC Comments at 27-30.

¹¹ PSST Comments at 27-38; APCO Comments at 22-24; NPSTC Comments at 25-28; Northrop Grumman Comments at 4-5; Joint Public Safety Commenters Comments at 31; AT&T Comments at 26; Motorola Comments at 16-17; TIA Comments at 12.

terrestrial-only services; and the rate could be benchmarked every four years. The rate principles should allow the NSA prices to reflect reasonable adjustments for unique service features offered to public safety users through the shared network.

E. National Platform for Public Safety Applications and National Committee of Licensees. The Notice requested comments on USCC’s proposals of a national platform supporting public safety applications and a national committee of area licensees.

Regarding the national platform, USCC described the proposed centralized configuration for public safety applications and the benefits of this design.¹² Along these lines, Northrop Grumman commented that “succeeding with such a network-of-networks approach of regional D Block licensees forming a national commercial/public safety network will require a strong central network core for public safety, providing the necessary platform for interoperable public safety applications, as well as access control, security, prioritization, and QoS and network monitoring for public safety users.”¹³ Likewise, Ericsson emphasized the need to provide application-level interoperability for public safety users.¹⁴ Similarly, the PSST agreed that a regional approach will “necessitate the development of a distinct public safety core network with its own Home Location Register (“HLR”) that contains the relevant information for all public safety users nationwide.”¹⁵ Regional Planning Committee Twenty also endorsed

¹² USCC Comments at 11-13.

¹³ Northrop Grumman Comments at 3.

¹⁴ Ericsson Comments at 3 (“public safety users require application-level interoperability, which will allow users from diverse agencies to function together and leverage the capabilities of an integrated public safety network in emergencies”).

¹⁵ PSST Comments at 15.

the idea, noting that “the importance of security access cannot be overemphasized.”¹⁶ No party opposed the national platform network solution.

Similarly, USCC described the proposed rules for a national committee of area licensees; the PSST and other public safety representatives¹⁷ supported this post-auction organization. No party opposed the structure or general roles of this organization.

F. Technical Requirements Should Not Force D Block Licensees to Bear Interoperability Costs for Other Networks and Should State Design Objectives. USCC agreed with the FCC’s tentative conclusion that “public safety users shall bear the costs of the bridges and gateways, including installation and maintenance costs.”¹⁸ As a refinement, USCC concurs with TIA’s suggestion to clarify 47 C.F.R. §27.1305 to state that D Block licensees should not be *required* to bear the costs of interoperability for legacy networks, but they are not prohibited in doing so if that is the agreement through the NSA negotiations.¹⁹ USCC also agrees with Leap’s request that the FCC clarify that installation and maintenance costs of the necessary bridges and gateways “include the costs of integration and testing, and further, that the D Block licensee will not bear any increased costs beyond those necessary for gateway-based access to the network.”²⁰

¹⁶ Regional Planning Committee Twenty Comments at 9.

¹⁷ PSST Comments at 5-7; Regional Planning Committee Twenty Comments at 12-14; Joint Public Safety Commenters Comments at 18.

¹⁸ Notice at para. 114.

¹⁹ TIA Comments at 13.

²⁰ Leap Comments at 13.

TIA agreed with USCC that the FCC should clarify the technical rules as stating design objectives, with the specifications for specific services and applications to be negotiated in the NSA.²¹

G. Spectrum Lease Fee Should Be Adequate to Support Public Safety's Negotiation of the NSA and Other Responsibilities. The Notice proposes to rely on the PSST to fulfill limited, albeit critical, responsibilities, including negotiating and administering the NSA, approving (in consultation with the D Block licensees) public safety equipment and applications, monitoring (real time) the public safety services, and managing certain databases used by D Block licensees in providing applications to public safety users.²² USCC and other parties supported these PSST roles.²³ To provide PSST with adequate funding for the success of the shared network, USCC proposed raising the annual spectrum lease fee from \$5 million to \$10 million.²⁴ PSST as well as other representatives of public safety²⁵ support increasing this annual funding, and no party opposed this change. As described in Section II.G below, USCC agrees with the PSST's proposal for a non-refundable payment of \$2 million allocated across the winning bidders to support the PSST's negotiation of the NSA.

II. FCC Should Reject Proposed Radical Changes to its Tentative Conclusions

This section discusses eight issues raised in the comments and provides USCC's recommendations on each issue. Some parties repeated positions they took in the last round of

²¹ TIA Comments at 14-15.

²² Notice at paras. 175, 196, 310.

²³ Ericsson Comments at 13-14; Motorola Comments at 15-16; PSST Comments at 9-16.

²⁴ USCC Comments at 36.

²⁵ PSST Comments at 31; NPSTC Comments at 19 (an "underfunded PSBL will accrue significant detriment to public safety interests"); Joint Public Safety Commenters Comments at 30; Regional Planning Committee Twenty Comments at 22-23.

comments for radical changes from the tentative conclusions in the Notice for re-auction of the spectrum, deployment and operation of the shared networks, and provision of services. These proposals, already considered and correctly denied by the FCC, should again fail as ineffective alternatives to the FCC's tentative conclusions. On the other hand, USCC supports certain refinements to the proposed rules to adjust minimum opening bids for narrowband relocation costs and on dispute resolution procedures.

A. Superiority of the Auction Approach. Senior public safety experts and major public safety representatives urge the FCC to proceed with re-auctioning the D Block. In a letter to Chairman Martin dated November 3, 2008, the Chair (Hon. Thomas H. Kean) and Vice Chair (Hon. Lee H. Hamilton) of The 9/11 Commission state: "We believe the FCC can and should take steps to facilitate collective action by interested wireless industry members to assure a successful auction outcome for public safety purposes."²⁶ From the public safety users' perspective, APCO (the nation's oldest and largest public safety communications organization) observed: "Absent a national network, only those few agencies with substantial resources and expertise will be able to provide their first responders with state-of-the-art broadband communications. The result would be islands of robust, and probably incompatible, public safety broadband networks, surrounded by vast unserved areas."²⁷ Similarly, the County of Los Angeles "supports the Commission's proposal to rely upon the D Block auction and a public-private partnership model for the deployment of a national public safety broadband

²⁶ Letter to Chairman Kevin Martin from Hon. Thomas H. Kean and Lee H. Hamilton, filed in WT Dkt. No. 06-150 (Nov. 3, 2008).

²⁷ APCO Comments at 5.

network.... [T]his is the most viable means of providing state-of-the-art broadband capability to as many public safety users as possible.’’²⁸

On the other hand, representatives of several large municipal public safety agencies and some other public safety users requested that local public safety agencies be given complete control over the selection of D Block operators, technical standards, deployment of networks, public safety usage fees (if any), and all other aspects of developing and operating wireless networks in this 20 MHz of spectrum.²⁹ Although these entities continue to present their proposals as supporting the goal of rapidly deploying a nationwide, interoperable, broadband network of networks useful for public safety, their plans would severely risk attainment of that goal for most of the nation.

Advocates of a radical departure from the tentative conclusions in the Notice envision a process that would delay the use of valuable spectrum for important public safety as well as commercial applications -- legislation would be required to abandon the successes of competitive bidding for spectrum; local decisions affecting thousands of public safety agencies (almost all lacking the resources of the filers) would have to be made; the opportunity for coordination at the national level would be severely compromised; no mechanism would exist to ensure nationwide coverage and interoperability; and there would be far higher coordination costs in locally-controlled selection of operators, negotiation of service agreements, deployment of networks and provision of services. Many experts on public safety networks agree that the

²⁸ County of Los Angeles Reply Comments at 1. See also Letter from Kentucky Wireless Interoperability Executive Committee at 1 (supporting D Block reaaction, with reallocation to public safety for unsold licenses).

²⁹ See Letter from Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation; San Francisco and Oakland Comments at 5; Letter from Miami-Dade County; Michigan Department of Information Technology Comments; King County Regional Communications Board Comments at 3-5; New York City Police Department Comments at 12-13.

auction of licenses for a shared network is a far superior course of action towards improving public safety communications services.³⁰

Moreover, proponents of local decision-making authority wrongly attack the FCC's tentative conclusions -- the shared network would provide far greater service reliability/availability and support more public safety applications than commercial networks in all but a couple of existing or planned public safety networks; area licensees of the D Block would be obligated to take on heavy burdens to support public safety users, and would have strong incentives to satisfy additional needs of local public safety users; and public safety users would benefit from the economies of a shared network in speed of deployment, coverage, service capabilities and rates. For example, the Notice states that the highest level of population coverage required of any other commercial 700 MHz licensee is 75%, and existing commercial systems cover only about 90% of the nation's population.³¹ Also, as AT&T observed, the

³⁰ NPSTC Comments at 5 (“NPSTC supports strongly the Commission’s proposal that the D Block licensee of 10 MHz of spectrum in the 700 MHz enter into a public/private partnership with the Public Safety Broadband Licensee (PSBL), holding the adjoining 10 MHz in the 700 MHz band.”); Northrop Grumman Comments at 2-3 (“We strongly support the Commission’s vision of fostering interoperable broadband wireless services nationwide meeting the needs of public safety, harnessing the technological advances of the wireless marketplace at costs that leverage commercial economies of scale. . . . In re-auctioning the D Block, Northrop Grumman supports the Commission’s proposal to offer regional licenses as an alternative to one nationwide license.”); Ericsson Comments at 1 (“Ericsson continues to believe that the public-private partnership approach provides the best opportunity for the successful establishment of the broadband safety network.”); Ryan Hallahan Comments at 4 (“A single nationwide public safety wireless network has the potential to solve many of the problems facing public safety wireless communications. Given the options available to the FCC, a public-private partnership remains the most promising way to achieve this goal.”); Tyco at 6 (supports the proposal to auction regional licenses; “In the event that a nationwide public safety-grade D-Block network is not viable, Tyco Electronics believes that a regional approach driven by common guidelines and formed around existing RPCs may provide the most flexible solution for public safety.”).

³¹ Notice at para. 151.

proposed requirements for critical sites “go beyond hardening a commercial network” and could cost millions of dollars per site.³²

The Notice considered and rejected an RFP approach to awarding the D Block licenses advocated by some parties.³³ AT&T has provided additional details on this approach, including that its preferred model requires legislative amendment to Section 337 of the Communications Act, and that it envisions multi-stage interactions involving the FCC, PSBL and regional public safety agencies in formulating RFPs and determining winners.³⁴ None of these details make the RFP approach appear better -- it would be less effective in attracting commercial bidders, more likely to be stalled by legislation and litigation, and, due to among other things higher coordination costs, less likely to result in the timely deployment of an interoperable network of networks covering all regions. For the reasons presented by USCC and other parties in response to the Second Further Notice, the FCC correctly determined that re-auctioning the D Block is superior to an RFP approach. The FCC should reaffirm this finding.

A suggestion to award any unsold licenses to local public safety entities³⁵ should likewise be rejected. As discussed in the next section, USCC believes that the proposed rules with refinements will yield bids on all licenses. If some licenses fail to attract bids, the FCC should analyze potential revisions to certain requirements within the framework of the public / private partnership for the shared network. Awarding unsold licenses to local public safety entities will not result in a nationwide, interoperable network.

³² AT&T Comments at 22-23.

³³ Notice at paras. 51-58.

³⁴ AT&T Comments at 8.

³⁵ Motorola Comments at 8-9.

The Notice reflects considerable progress in addressing the problems previously encountered in licensing the D Block under the model of the shared wireless broadband network. The FCC should continue with that model and proceed to re-auction the D Block on the regional basis proposed.

B. FCC's Tentative Conclusions on Coverage, Hardening and Satellite Service Strike a Reasonable Balance. The Notice addressed population coverage with proposals on deployment benchmarks for all areas (40% of population at four years and 75% at 10 years), three tiers of requirements for deployment at 15 years based on population density (98%, 94% and 90%), and flexibility in serving other locations by non-terrestrial networks after satisfying these requirements and using commercially reasonable efforts to provide terrestrial network coverage. This framework strikes a reasonable balance in making the terrestrial network available without imposing financial burdens that would deter potential bidders.

The PSST and some other public safety representatives proposed tweaks to this framework.³⁶ Most of these suggestions would increase the financial burdens on D Block licensees, and are not supported by any facts or analysis. These suggestions also focus too much on rules of national application. The coverage requirements that really matter will be region-specific provisions in the NSA negotiated between public safety representatives and winning bidders in the context of the floors in the FCC rules, the obligation to use commercially reasonable efforts for additional coverage, and the typical financial incentives to meet demands of potential users.

In contrast, these parties suggest decreasing the coverage requirements for the least dense regions, again without supporting facts or analysis. USCC believes that the area

³⁶ PSST Comments at 16-19; APCO Comments at 16-17; NPSTC Comments at 12-13.

licenses, together with density-based tiers for final coverage and a mechanism to lower minimum opening bids on unsold licenses, should attract bidders to all licenses. Each area has substantial coverage from existing wireless systems; area licenses even in low-density locations should be attractive to operators of existing wireless systems in the areas, and those infrastructures could be leveraged to deploy the shared network. The FCC should re-auction the licenses with a minimum coverage of 90%.

Regarding hardening requirements, the Notice proposes a floor of 35% critical sites in each region, with the D Block licensee required to use commercially reasonable efforts to designate 50% of sites as critical in each region.³⁷ USCC supports this tentative conclusion. As TIA notes, the 35% floor in the rules allows for the negotiation of higher commitments in the NSA to address the needs of specific regions.³⁸ Those negotiations which are sensitive to the needs of specific regions, not rules of national application, should address the characteristics of hardening -- which may vary from a tower on the Gulf Coast to a rooftop in a New England city. Also, NSA negotiations, not a national rule, can better address alternative solutions to network reliability, such as mobile generators and cell sites, which may be more cost effective than increasing the number of sites with battery power and fixed generators. As AT&T explained, “meeting the proposed hardening requirement at sites in dense urban areas is much more expensive and could cost millions of dollars per site.”³⁹

Other parties present a range of suggestions on hardening, from giving the PSST discretion in allocating to specific regions a nationwide requirement of 50% critical sites, to

³⁷ Notice at para. 117.

³⁸ TIA Comments at 11.

³⁹ AT&T Comments at 23.

requiring as many as 75% of sites to be hardened, to dropping the hardening requirement to 10% of sites.⁴⁰ The FCC should not deter potential bidders with great uncertainty about the hardening requirements in a particular region or excessive costs.

Two issues on satellite capabilities were addressed in the comments. Regarding user devices with terrestrial and satellite modes, USCC recommended requiring D Block licensees to use good faith efforts to facilitate non-terrestrial services for public safety users. These good faith efforts would involve development and publication of technical standards for use of the shared network via a dual mode user device, and offering access to a platform to support public safety applications. However, D Block licensees should not have to bear any costs in designing or making available user devices that include a satellite mode.⁴¹ Along with TIA, Ericsson and Motorola, USCC supported the tentative conclusion in the Notice that users would choose whether to procure devices with these capabilities.⁴²

On the other hand, some parties urged that all devices include satellite capabilities, or at minimum at least one laptop modem, PDA and traditional voice device be satellite compatible.⁴³ Devices with terrestrial-only capabilities are likely to be less costly, in part because of the global market for such devices using the LTE or WiMAX technology. Users should be able to choose, reflecting their specific uses and budget, whether to avoid the higher

⁴⁰ PSST Comments at 20-21; Regional Planning Committee Twenty Comments at 7-8; Leap Comments at 10-11.

⁴¹ USCC Comments at 7.

⁴² Notice at para. 310; TIA Comments at 15-18; Ericsson Comments at 13-14; Motorola Comments at 12.

⁴³ PSST Comments at 28-29; Satellite Industry Association Comments at 9; Mobile Satellite Ventures Comments at 1-2; Rural Telecommunications Association Comments at 2-3; Pembroke Pines Fire Department Comments at 1.

costs of dual-mode devices. While the licensees' good faith efforts should not be limited to a single type of device, licensees should not have to bear costs for one or multiple satellite-capable devices. Nor should licensees be responsible for the availability of such devices at a certain time.

Another satellite issue involves the availability of satellite but not terrestrial services at some locations after a licensee meets its population coverage requirements.⁴⁴ The Notice again strikes the right balance in recognizing that potential bidders would be deterred if they had to deploy terrestrial networks for all towns of 3,000 population and highways. Public safety users could negotiate through the NSA for terrestrial coverage of specific locations in the context of the possible adequacy of integrated satellite services as well as the availability of other public safety networks that would interconnect with the shared network through a gateway or bridge.

C. Simultaneous Auctions Based on the Two 4G Technologies Are the Best Technology-Neutral Solution. The Notice correctly recognizes that an interoperable network of networks providing advanced public safety applications requires a common air interface, and that potential bidders on area licenses require certainty on the technology they would have to deploy. In light of the emergence of two 4G technologies, the FCC proposes a market mechanism for bidders on area licenses to select their common air interface – two simultaneous alternative auctions of the area licenses specified by the two different technologies, with the high aggregate bids winning. While this mechanism leads to complexities in re-auctioning the D Block

⁴⁴ PSST Comments at 19.

licenses,⁴⁵ it also allows the FCC to take a technology-neutral approach. USCC, APCO and Intel support the FCC's proposal on this mechanism.⁴⁶

No party disputes that LTE and WiMAX will offer far greater capabilities than current technologies, or that market leaders have announced plans to deploy LTE in 700 MHz spectrum. In fact, New York City filed with the FCC a description of its proposal to implement a multi-sites network using LTE to support advanced public safety applications in 700 MHz starting in early 2009.⁴⁷ On the other hand, Qualcomm argued that EV-DO and HSPA are currently adequate for the technical standards applicable to the shared network, and that the FCC should auction the licenses in a way that would allow the winning bidders to deploy these technologies.⁴⁸ Furthermore, the CDMA Development Group supported widening consideration to additional technologies, such as CMDA2000.⁴⁹ This position suggests three possibilities, each untenable.

Perhaps Qualcomm and CDMA Development Group believe that bidders would be willing to engage in an auction without technology specifications in which the winners subsequently make joint technology decisions. As USCC argued in response to the Second Further Notice and the FCC tentatively concluded in the Notice, such uncertainty would strongly deter potential bidders.⁵⁰ There is no evidence in the record of potential bidders on area licenses willing to take this technology risk.

⁴⁵ AT&T Comments at 31-33; Motorola Comments at 6.

⁴⁶ USCC Comments at 21; APCO Comments at 9; Intel Comments at 1.

⁴⁷ Letter from the City of New York, DoITT (Sept. 30, 2008) (attached presentation).

⁴⁸ Qualcomm Comments at 8-12.

⁴⁹ CDMA Development Group Comments at 3.

⁵⁰ Notice at para. 245.

Next, Qualcomm and CDMA Development Group may be suggesting that individual licensees be allowed to choose to deploy EV-DO, HSPA or CDMA2000 instead of a 4G technology. If this suggestion presupposes that networks using different air interfaces could be interconnected via gateways or bridges, USCC's concern is that the lack of a common air interface would compromise quality of service and the ability to consistently support advanced public safety-tailored applications across regions. If the suggestion instead is that the incompatibility of networks could be addressed by having user devices integrate all of these technologies, USCC's concern is that this would greatly increase the costs of the devices and perhaps also compromise performance, to the detriment of users as well as service providers. Ericsson also believes that expanding the auction in this fashion would "undermine the goals of this proceeding."⁵¹

Finally, USCC believes that due to the additional layers of uncertainty, it would be completely unmanageable to conduct four or five simultaneous auctions based on the four or five alternative technologies.

The FCC should move forward with the proposal for simultaneously conducting alternative auctions of area licenses specified by the LTE and WiMAX technologies. D Block licensees would have the option, but not be required, to deploy compatibility with one or more 3G technologies through network or user-device capabilities.

D. Adjust the \$750 Million Minimum Opening Bids for Narrowband Relocation Costs. USCC's comments supported the FCC's proposal of \$750 million in aggregate minimum opening bids. This amount appears to strike a balance of several interests – attract bidders based on a financially viable opportunity; focus on requirements to meet the needs of public safety

⁵¹ Ericsson Comments at 8.

users rather than auction revenues; deter potential bidders that are not qualified or serious about building and operating the shared network; and provide some revenues to the U.S. Treasury. Cellular South also supported this proposal.⁵² To increase the likelihood that all licenses will attract bidders, USCC recommended that the FCC relax its proposed triggers for reducing the minimum opening bids.⁵³

On the other hand, several public safety representatives and equipment suppliers argued for reducing or eliminating minimum opening bids and any reserve price in order to maximize the likelihood of selling all licenses.⁵⁴ While the focus on the shared network over auction revenues is correct, USCC believes that the FCC's proposal is workable and will help ensure that winning bidders perform in providing the shared network.

Adjustments to a few minimum opening bids may be necessary to address high costs for narrowband relocations in those areas. Several parties commented that these costs will be substantial in some areas, far in excess of the national average.⁵⁵ Clearly, relocation needs must be addressed and these costs should not erect a barrier to attracting bids to each PSR. The FCC should refine its estimates of these costs for each PSR. For PSRs with high costs of narrowband relocations, the FCC should offset this cost burden by reducing the minimum opening bids. Adjusting the minimum opening bid for these areas would help attract serious

⁵² Cellular South Comments at 2-3.

⁵³ USCC Comments at 17.

⁵⁴ PSST Comments at 4-5; NPSTC Comments at 6; APCO Comments at 19; Regional Planning Committee Twenty Comments at 16-17; TIA Comments at 5-7; Ericsson Comments at 4-6.

⁵⁵ Commonwealth of Virginia Comments at 9-10; PSST Comments at 41; TIA Comments at 10-11; APCO Comments at 25-26; Pierce Transit Comments at 5-7; Motorola Comments at 19.

bidders. The aggregate of adjusted minimum opening bids would likely be around \$700 million, preserving the balance struck in the FCC's proposal.

E. Additional Service Assurance Measures Would Deter Bidders. USCC's comments expressed concerns about the inefficiencies, deterrent effect to potential bidders and unnecessary costs of the rule requiring licensees to use bankruptcy-remote entities, especially for network assets and operations.⁵⁶ As described in USCC's comments, there are several other methods of service assurance and strong financial incentives for licensees that are more than adequate.

Along these lines, USCC opposes loading unnecessary costs on D Block licensees through performance bonds and letters of credit.⁵⁷ Retaining minimum opening bids preserves a level of financial qualification as well as a financial penalty for failure to meet license conditions. The NSA could provide additional, commercially-typical performance incentives, such as reduced charges for public safety services, credits or other financial adjustments for failing to satisfy service levels or late delivery of coverage to a location. In the weakened credit markets, it is clear that performance bonds or letters of credit would be very costly, and perhaps not available to many serious potential D Block licensees. This costly proposal would deter potential bidders and threaten the nationwide deployment of the shared network.

F. Early Build Outs Should Be Allowed But Not Be Detrimental to the Shared Networks. USCC supported the FCC's tentative conclusion that public safety agencies should be allowed to engage in early builds of networks meeting certain technical requirements, with D Block licensees able to use the spectrum as planned and acquire such networks at the avoided

⁵⁶ USCC Comments at 30-33.

⁵⁷ TIA Comments at 7-9; Regional Planning Committee Twenty Comments at 17-18.

cost for the shared networks.⁵⁸ As PSST concluded: “[The current rules] provide an appropriate safety valve for public safety licensees that wish to accelerate broadband deployment in their community and that have the financial ability to do so, without undermining the fundamental purpose of the SWBN: the development of a nationwide interoperable network.”⁵⁹ Similarly, Ericsson urged the FCC to clarify that, once the auction has determined the 4G technology for the shared network, “local public safety entities engaging in early deployment must use that technology if they wish to be compensated for their facilities.”⁶⁰ Other comments ranged from strong opposition to early builds⁶¹ to encouraging early builds without adequate technological and financial measures to protect against imposing inefficiencies or additional costs on the shared networks.⁶²

Early builds in this spectrum should be allowed if they supplement the shared networks and do not detract from the willingness of potential bidders to acquire licenses or raise the costs to users of the shared networks. Potential bidders should be able to develop valuations of licenses based on their costs of deploying and operating a shared network that satisfies the requirements in the FCC rules and the NSA. An open-ended obligation to pay for the costs incurred in early-build networks would undermine this business-planning process. Moreover, early build networks may have assets that are simply not useful to the D Block licensees, such as towers in locations served by other towers owned or leased by the licensees. Requiring the D

⁵⁸ USCC Comments at 24-26.

⁵⁹ PSST Comments at 30.

⁶⁰ Ericsson Comments at 7.

⁶¹ Leap Comments at 12-13 (noting potential perverse incentives from compensating for such networks, especially compensation for actual costs incurred).

⁶² Alcatel-Lucent Comments at 9-12; Motorola Comments at 10; Regional Planning Committee Twenty Comments at 19; Northrop Grumman Comments at 6-7.

Block licensees to pay for the cost incurred by the early builders would lead to excess cost burdens on users and inefficiencies. Similarly, a potential requirement of compensation for the “market value” of the assets acquired is vague and could be excessive; the only relevant market value is as an incremental benefit to the shared network. A cost reimbursement or vague valuation standard would deter potential bidders.

Early builds should be undertaken by public safety agencies only if approved by the PSBL and only if they do not compromise an individual D Block licensee’s commitment, ability or cost to deploy a shared network. If a local public safety agency wants earlier coverage, it would negotiate with the D Block licensee and PSBL, and the local agency would hold the important right to deploy an early network. It would be required to coordinate with the D Block licensee regarding integration to the shared network. The negotiations would approach this coordination of plans in the context of the D Block licensee’s right and obligation to compensate the local public safety agency for the value that the network assets contribute to the shared network.

As a consequence of this coordination, the parties may agree to accelerate deployment of the shared network to satisfy the local agency’s needs. Pursuant to this framework, the public safety agencies would have important financial information in planning network coverage, where and how long to lease tower space for cell sites, what technologies to implement, etc. Each D Block licensee would be cost neutral between acquiring the assets of a separate public safety network versus expanding the shared network. This cost neutrality would reduce risk and uncertainty, thereby facilitating financial evaluation of potential bids on licenses and network planning.

G. Dispute Resolution Mechanism Should Provide Commercially Reasonable Results. USCC agrees with several recommendations in the comments to refine the FCC’s

proposals for dispute resolution in order to reduce the uncertainties and risks faced by potential bidders. Leap proposed that the FCC clarify that for any aspect of the network that is not explicitly encompassed by rules or requirements from the FCC prior to auction, commercially reasonable terms serve as the baseline standard in connection with facilities, equipment and services that the D Block licensee is expected to provide. Additionally, Leap urged that the additional payment in the case of default should not exceed 5% of the applicable bid, and disputes be resolved through commercial arbitration with an independent arbitrator. Addressing similar concerns, Northrop Grumman proposed limiting default payments by auction winners to cases involving a failure to negotiate the NSA in good faith, and eliminating binding adjudication for any NSA disputes.⁶³ Finally, USCC agrees with the PSST's proposal for a non-refundable payment of \$2 million allocated across the winning bidders to support the PSST's negotiation of the NSA; a winning bidder's portion of this payment could be credited against any default payment obligation it incurs.⁶⁴

H. The Scope of Public Safety Users Should be Limited. Finally, USCC supported the FCC's tentative conclusion, with some refinement, that priority access be limited to 70 percent of deployed shared network capacity under certain emergency conditions, and up to 60 percent of shared network capacity in other emergency conditions.⁶⁵ While not inconsistent with this proposal, the PSTT suggested that rules defining eligible public safety users allow "critical

⁶³ Leap Comments at 15-16; Northrop Grumman Comments at 5-6.

⁶⁴ PSST Comments at 7-8.

⁶⁵ USCC Comments at 14.

infrastructure industry” entities “some degree of priority access available to public safety users.”⁶⁶

USCC supports coordination of critical entities in the event of emergencies. Yet, the FCC should be careful in allowing any expansion of the scope of public safety users because of several concerns. First, the scope of users with priority access should not change the FCC’s proposal on capacity allocation; the PSBL must accommodate users given priority access without further reducing the availability of some capacity to meet the needs of commercial users during these conditions. Next, to the extent that providing priority access imposes costs on the D Block licensees (through development and support of the national platform for public safety applications and other services), rates for the critical entities should reflect these features. Finally, the scope of public safety users eligible for rate discounts should not expand. Potential bidders will analyze the ability of D Block licensees to earn revenues from commercial customers, including the critical entities identified by the PSST for some degree of priority access.

Conclusion

The proposed rules for the shared network must by necessity address many complex details of re-auctioning the D Block spectrum, negotiating the NSA, deploying networks with nationwide interoperability, and providing services to public safety as well as commercial users. The FCC’s tentative conclusions in the Notice are close to providing the framework for successes in all these dimensions. USCC’s comments and these reply comments recommend several refinements, but also urge the FCC to reject suggestions for radical changes to the tentative conclusions.

⁶⁶ PSST Comments at 25-27.

These reply comments have shown the widespread support for the key tentative conclusions and for the refinements proposed in USCC's comments. As for other suggested changes in comments filed by various parties, (1) re-auctioning the D Block under the shared network model offers the best prospect for a nationwide, interoperable broadband network meeting the needs of public safety users; (2) the FCC's tentative conclusions on coverage, hardening and satellite service strike a reasonable balance; (3) simultaneous auctions based on the two 4G technologies is a technology-neutral solution that provides bidders with a mechanism for certainty on the common air interface; (4) the proposed \$750 million threshold for aggregate minimum opening bids is reasonable; information on relocation costs should be refined and used to adjust the minimum bid for some areas; (5) additional service assurance measures, such as a requirement of bankruptcy remote entities, performance bonds or letters of credit, would impose costs that would deter bidders; (6) early build-outs by public safety agencies should supplement the shared network and not be allowed to impose inefficiencies and additional costs on D Block licensees; (7) for matters not addressed in the rules or term sheet, the dispute resolution mechanism should provide commercially reasonable results; and (8) the scope of public safety users should be limited to support the delivery of public safety services and commercial viability of the licensees.

Respectfully submitted,

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