

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)	WC Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network)	PS Docket No. 06-229
In the 700 MHz Band)	

REPLY COMMENTS OF THE CITY OF PHILADELPHIA

The City of Philadelphia (“City”) respectfully submits these comments in reply to comments submitted to the Commission in response to the Third Further Notice of Proposed Rulemaking (“Third FNPRM”) released on September 25, 2008, in the above-captioned proceeding.

I. DISCUSSION

A. The Commission Should Retain the Option of Licensing the Public Safety Spectrum on a Regional Basis.

We note that there continues to be widespread skepticism regarding the feasibility of relying upon a public/private partnership to deploy a nationwide interoperable network capable of meeting the requirements of public safety users.¹ In our Comment submitted in response to the Second Further Notice of Proposed Rulemaking in this proceeding (“Second FNPRM”), we

¹ See, e.g., Comments of Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation, submitted October 29, 2008 (“Public Safety Officials Comments”); Opening Comments of the City and County of San Francisco, California and the City of Oakland, California, submitted November 3, 2008 (“San Francisco Comments”); Response of Regional Planning Committee Twenty, submitted November 3, 2008 (“Region 20 Comments”); Comments of the New York City Police Department, submitted November 3, 2008 (“NYPD Comments”).

urged the Commission not to mandate use of the Shared Wireless Broadband Network (“SWBN”), and to preserve the ability of local governments to build networks using the 700 MHz spectrum. We are encouraged that the Commission has tentatively concluded that subscription to the SWBN will not be mandatory. We join TeleCommUnity, the Cities of San Francisco and Oakland, and other commenters in urging the Commission to go further and adopt rules permitting local governments to use the 700 MHz spectrum to develop wireless broadband networks independently of the proposed public/private partnership, provided such networks meet defined standards of interoperability.

We share with San Francisco and others several concerns related to the lack of local control over the SWBN. As currently proposed, local governments have little to no opportunity to participate in the network design, establish service levels, set user eligibility standards, or determine what constitutes an emergency for the purpose of obtaining priority access to the commercial allotment of the shared 700 MHz spectrum. Elsewhere in this proceeding we have urged the Commission to permit the participation of local governments in negotiation of the Network Sharing Agreement (“NSA”) and in the design of the SWBN and the policies governing its use. As San Francisco notes, these measures, even if granted, may be insufficient to allay the concerns of public safety agencies who believe that operational control of the network is essential to performing their mission. Accordingly, some option for direct regional allocation of the 700 MHz public safety spectrum must be preserved.

While the Commission acknowledges that some jurisdictions already have facilities operating in the 700 MHz public safety spectrum, and has further proposed accommodations for those jurisdictions that wish to construct networks prior to the deployment of the SWBN (the operation of which would be transferred to the D Block licensee), the Commission has thus far

declined to acknowledge the need to permit local governments to develop and operate independently their own wireless broadband networks in the spectrum reserved by Congress for public safety use. We join San Francisco, NYPD, and the Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation in urging the Commission to provide for the direct allocation of spectrum to local governments who choose to construct and operate their own wireless broadband networks in the 700 MHz spectrum and who can demonstrate the capacity to do so.²

We agree with TeleCommUnity that the goal of interoperability can be preserved by establishing air interface standards and coordinating the development and approval of applications and devices to be used on the network.³ We further agree with TeleCommUnity that a single nationwide license appears to limit the Commission's ability to accommodate the needs of local governments who would elect to construct and operate their own networks if permitted to do so. Thus, while licensing the D Block spectrum on a regional basis is not by itself sufficient to ensure that local and regional groups have, in the words of Region 20, "a seat at the table"⁴, it appears to be a necessary condition of preserving the Commission's ability to license the public safety spectrum on a local or regional basis in cases where local governments choose to develop and operate their own networks. Accordingly, we ask that the Commission forgo the auction of a single nationwide license for the D Block spectrum in favor of regional licenses, or, in the alternative, set forth a process by which local governments may obtain direct allocations of 700 MHz spectrum notwithstanding the grant of a nationwide license to the D Block auction winner. As TeleCommUnity points out, there is no need to offer the licenses on both a regional and national basis, as any bidder interested in establishing a national network may do so by simply

² San Francisco Comments at 9; NYPD Comments at 6; Public Safety Officials Comments at 1.

³ TeleCommUnity Comments at 12.

⁴ Region 20 Comments at 13.

bidding on a package containing licenses in each of the 58 proposed regions.⁵ While this would pose a small administrative burden on potential nationwide bidders, it would ensure that the Commission retains flexibility to license the public safety spectrum however it sees fit.

B. The Public Safety Broadband Licensee Should Include Representation by Local Governments.

We join NATOA in reiterating the recommendation that the board of the Public Safety Spectrum Trust (“PSST”) be expanded to include one or more organizations representing the interests of local governments.⁶ Philadelphia advocated for the inclusion of local government representatives in comments submitted in response to the Second FNPRM, and while we acknowledge the Commission’s efforts to address other governance issues related to the PSST’s role as the Public Safety Broadband Licensee, we remain concerned about the complete lack of local government representation in the PSST. We endorse NATOA’s proposal to expand the PSST with the inclusion of at least one national group representing the interests of local governments.

II. CONCLUSION

The record in this proceeding reflects an emerging consensus that many major municipalities would choose to opt out of the proposed SWBN and to construct their own networks, based on standards that ensure interoperability, if given the option of doing so. Because development of a SWBN through a public/private partnership is but one means of obtaining a nationwide interoperable broadband network, there is no reason to preclude municipalities who choose to construct their own networks from doing so, provided they agree to follow standards designed to ensure interoperability. We urge the Commission to retain the

⁵ TeleCommUnity Comments at 12-13.

⁶ Comments of the National Association of Telecommunications Officers and Advisors, the National Association of Counties, and the National League of Cities at 8-9.

option of licensing the public safety spectrum to those local governments that have the resources to develop their own networks in the 700 MHz spectrum. Furthermore, because a nationwide license for the D Block that is premised upon shared use of the “blended” public safety and commercial spectrum would appear to limit the options for independent use of the public safety spectrum, we urge the Commission to clarify how a nationwide D Block license can be reconciled with direct allocation of the public safety spectrum to local governments who choose to build their own networks. Finally, we urge the Commission to expand the membership of the PSST to ensure that the concerns of local governments are represented by the PSBL.

Dated: November 12, 2008

Respectfully submitted,

THE CITY OF PHILADELPHIA

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