

**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 BRIGHT HOUSE NETWORKS

Bright House Networks (“BHN”) by its attorneys and pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”)^{1/} hereby submits its reply to comments filed in response to the Commission’s inquiry into the appropriate rules for the band 758-763/788-793 MHz (the so-called 700 MHz “D Block”).^{2/}

In its comments, BHN urged the Commission to (1) impose upon D Block licensees a mandatory, comprehensive automatic roaming obligation for all services that they offer; (2) reiterate that roaming rates must be reasonable and nondiscriminatory, and give some clarity as to what would be considered unreasonable or discriminatory pricing; and (3) license the D Block on a regional, rather than national, basis. These three actions will provide the Commission with powerful, easily implemented tools to encourage commercial entry into the D Block, which will in turn ensure that a private partner is available to fund the 700 MHz Public/Private Partnership

^{1/} 47 C.F.R. § 1.415.

^{2/} *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 and PS Docket No. 06-229, FCC 08-230 (rel. September 25, 2008) (“*Third FNPRM*”).

on which the Commission is relying to construct and operate the first nationwide, interoperable public safety network.

The record makes clear that access to reasonable roaming agreements for both the commercial and public safety portions of D Block traffic is essential to attract a commercial wireless partner to the 700 MHz Public/Private Partnership and to ensure seamless service for all D Block customers. Further, the comments, from all perspectives—public safety and the wireless industry generally—overwhelmingly support a regional approach to licensing the D Block. The record shows that regional licensing will benefit the public by providing better, and more locally-focused service for public safety, more competition among wireless providers and greater revenues for the Treasury.

I. THE RECORD IS CLEAR THAT COMMERCIAL WIRELESS CARRIERS WILL BE ATTRACTED TO THE D BLOCK ONLY IF THE COMMISSION ENSURES COMMERCIALY REASONABLE ACCESS TO ROAMING

As BHN described in its comments,^{3/} one very powerful but easily implemented way to encourage commercial wireless carriers to bid on D Block licenses and build out public safety networks is to ensure that D Block licensees enjoy mandatory automatic roaming on all D Block networks on reasonable terms for all services with no degradation in service by the host carrier. This simple clarification of roaming rights and obligations for D Block licensees will greatly increase commercial interest in participating in the Public/Private Partnership, particularly by new entrants that may bid on only a limited number of regional licenses, with no corresponding need for appropriation of public funds to subsidize construction.

^{3/} Comments of Bright House Networks, WT Docket No. 06-150 and PS Docket No. 06-229, at 3-8 (filed Nov. 3, 2008) (“BHN Comments”).

BHN also noted the importance of the Commission clarifying how it will assess whether roaming rates are “reasonable and nondiscriminatory.”^{4/} As BHN demonstrated, a simple requirement that D Block licensees make roaming available to other carriers on reasonable and nondiscriminatory terms and conditions, similar to the obligation that already exists in the rules, would be insufficient to serve the Commission’s goal of encouraging commercial entry and thereby facilitating build-out of a nationwide public safety network. To attract commercial wireless carriers to the 700 MHz Public/Private Partnership, the Commission must provide greater clarity to potential D Block entrants regarding how it will enforce its rules for this critical component of wireless service. BHN suggested using the host carrier’s retail yield for like services as a benchmark for determining reasonability.^{5/}

Because the Commission must attract commercial bidders to the D Block if it is to realize its goal of a public/private partnership, it should give substantial weight to the comments submitted by commercial carriers, entities that the FCC is hoping will provide hundreds of millions of dollars to purchase licenses and build the networks. Like BHN, Cellular South made it clear that the Commission must include a *commercial* roaming requirement for D Block licensees, not just a public safety roaming requirement. Otherwise, Cellular South notes that the Commission will have foregone one of the greatest incentives for commercial licensees to participate in the auction.^{6/} It stated that “the Commission does a disservice to consumers by creating an interoperable network that specifically does not extend to commercial users.”^{7/}

United States Cellular likewise demonstrated, in order to foster a successful D Block

^{4/} See *id.* at 8-10.

^{5/} *Id.* at 9-10.

^{6/} Comments of Cellular South, Inc., WT Docket No. 06-150 and PS Docket No. 06-229, at 4-5 (filed Nov. 3, 2008) (“Cellular South Comments”).

^{7/} *Id.* at 5.

public/private partnership, the Commission should ensure that reasonable roaming arrangements—not just public safety roaming, but commercial roaming as well—are available to D Block licensees.^{8/}

The Commission’s recent decision approving Verizon’s acquisition of Alltel underscores the importance the FCC affords to roaming. There, the FCC imposed a series of conditions on Verizon designed to ensure that small carriers with whom Alltel had roaming agreements continued to enjoy the benefits of those agreements.^{9/} As Chairman Martin noted, the conditions imposed on Verizon “provides added certainty to small and rural carriers.”^{10/} Having recognized the importance of roaming to small and rural carriers, the Commission should ensure that roaming is available on a commercial basis for D Block licensees for all the services they offer. As BHN noted in its comments, merely stating that a roaming obligation exists is insufficient. The Commission must provide some definition of when it will consider roaming to be available on terms that are reasonable and non-discriminatory.

In the Verizon/Alltel Order, the FCC reiterated that it is considering in a separate proceeding whether to impose automatic roaming obligations to non-interconnected services or features (and, therefore, it declined to impose such an obligation on Verizon as part of the Verizon/Alltel Order).^{11/} BHN has urged the Commission to extend an automatic roaming obligation for *all services* to D Block licensees. The FCC must take an approach here that is

^{8/} Comments of United States Cellular Corporation on Third Further Notice of Proposed Rulemaking, WT Docket No. 06-150 and PS Docket No. 06-229, at 30 (filed Nov. 3, 2008) (“United States Cellular Comments”).

^{9/} *Applications of Cellco Partnership d/b/a Verizon Wireless and Atlantis Holdings LLC For Consent to Transfer Control of Licenses, Authorizations, and Spectrum Manager and De Facto Transfer Leasing Arrangements*, Memorandum Opinion and Order and Declaratory Ruling, FCC 08-258, ¶ 178 (Rel. November 10, 2008).

^{10/} *Id.* at 122

^{11/} *Id.* ¶ 180

different from its decision in the Verizon/Alltel decision for several reasons. First, the Commission has explicitly recognized that a variety of services will be supported by the public/private broadband network. This is not an incumbent, traditionally voice-centric service on which the FCC would impose a roaming requirement. There is no reason to require automatic roaming for one of the services provided by the network and not others. Second, public safety entities who operate out-of-region (*i.e.*, who roam) will be able to use all the functionality of their devices wherever they operate. Because the network will be designed to support public safety roaming, commercial customers should enjoy these same benefits. Finally, the FCC should take all reasonable measures to ensure that the D Block is attractive to potential bidders. One way to ensure that the D Block is attractive is to clarify that there is a roaming obligation that covers all services offered and to provide guidance as to how the FCC will assess whether roaming is being offered on a reasonable and non-discriminatory basis.

II. THE RECORD IS CLEAR THAT THE COMMISSION SHOULD LICENSE THE D BLOCK ON A REGIONAL BASIS

BHN's comments described how regional, as opposed to national, licensing will ensure greater responsiveness to local public safety needs; how it will ensure stability and continuity for public safety entities; how it will take advantage of one of the last opportunities that the Commission will have to foster new wireless entry; and how it will result in increased revenues for the Treasury.^{12/}

The record reflects broad agreement that the D Block should be licensed on a regional, rather than a national, basis. State and local public safety entities favor licensing on a regional

^{12/} See BHN Comments at 10-13.

basis, because such a licensing scheme better supports regional public safety efforts.^{13/} Regional Planning Committee 20 expressed its strong support for a regional license allocation because it will allow local public safety to play a role in the management of the network.^{14/} According to Northrop Grumman, regional licensing advances the needs of public safety by focusing efforts locally, where build-out efforts can be most effectively directed, and by mitigating the risk of failure by a single nationwide licensee.^{15/} Wireless RERC likewise shows how regional licensing will encourage faster deployment to rural areas, will ensure that public safety needs are tailored more locally, and will facilitate the development of a nationwide interoperable public safety network.^{16/} Cellular South noted that regional licensing increases the likelihood that local licensees with stronger ties to local public safety needs will bid and win. As Cellular South demonstrated, regional licensing will ensure that the winning bidder is actually interested in serving the licensed area, which may not be true for all areas covered by a single national licensee.^{17/}

^{13/} See, e.g., Comments of the New York City Police Department, WT Docket No. 06-150 and PS Docket No. 06-229, at 6 (filed Nov. 3, 2008); Opening Comments of the City and County of San Francisco, California and the City of Oakland, California in Response to the Third Further Notice of Proposed Rulemaking, WT Docket No. 06-150 and PS Docket No. 06-229, at 17-18 (filed Nov. 3, 2008).

^{14/} Third Further Notice of Proposed Rulemaking Response of Regional Planning Committee Twenty, WT Docket No. 06-150 and PS Docket No. 06-229, at 12, 27 (filed Nov. 3, 2008).

^{15/} Comments of Northrop Grumman Information Technology, Inc., WT Docket No. 06-150 and PS Docket No. 06-229, at 3-4 (filed Nov. 3, 2008).

^{16/} Comments of Rehabilitation Engineering Research Center for Wireless Technologies (Wireless RERC), WT Docket No. 06-150 and PS Docket No. 06-229, at 3 (filed Nov. 3, 2008).

^{17/} Cellular South Comments at 3-4.

Other advantages of regional licensing identified by commenters include expanding bidding competition by attracting more bidders than national licensing;^{18/} promoting innovation across services and increasing the likelihood of rapid nationwide coverage;^{19/} and securing more revenue for the Treasury.^{20/} Regional licensing avoids having to rely on one commercial entity to support the nation's public safety network, which amounts to "placing all of the public's eggs in one basket."^{21/} And in any case, regional licensing does not foreclose the possibility of a single licensee acquiring licenses covering a larger area or the entire nation.^{22/}

While AT&T supports a different approach to regionally-based licensing,^{23/} its proposal would derail the D Block auction process and delay licensing the D Block and the beginning build out of a nationwide, interoperable public safety network for years pending further legislative approval or, in its alternative proposal, the Commission designing and implementing a new allocation process that abandons the auction format. There is no need for such drastic measures when BHN and others have identified powerful, easily implemented tools to encourage commercial entry into the D Block, which will in turn ensure that a viable private partner is available to fund the 700 MHz Public/Private Partnership.

^{18/} See, e.g., United States Cellular at 4-5; Cellular South Comments at 3-4; Comments of Leap Wireless International, Inc., WT Docket No. 06-150 and PS Docket No. 06-229, at 3-4 (filed Nov. 3, 2008) ("Leap Comments").

^{19/} See, e.g., United States Cellular at 4-5; Leap Comments at 3-4.

^{20/} See, e.g., Cellular South Comments at 3-4.

^{21/} Leap Comments at 4.

^{22/} United States Cellular at 4-5.

^{23/} Comments of AT&T Inc., WT Docket No. 06-150 and PS Docket No. 06-229 (filed Nov. 3, 2008) ("AT&T Comments").

III. CONCLUSION

The record now before the Commission makes clear that access to reasonable roaming agreements for both the commercial portion and the public safety portion of D Block traffic is essential to attract a commercial wireless partner to the 700 MHz Public/Private Partnership and to ensure seamless service for all D Block customers. Further, the comments filed in this proceeding from all perspectives overwhelmingly support a regional approach to licensing the D Block. The Commission should, while facilitating the build out of a nationwide, interoperable, robust public safety network funded by private enterprise, take this opportunity to foster new wireless entry.

Respectfully submitted,

BRIGHT HOUSE NETWORKS

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