
**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 TELECOMMUNITY, THE UNITED STATES CONFERENCE
OF MAYORS AND THE CITY OF LOS ANGELES, CALIFORNIA**

EXECUTIVE SUMMARY

Commenters¹ file these reply comments to call to the Commission's attention the number of parties that agree that the Third Further Notice of Proposed Rulemaking represents a marked improvement to the program outlined in the Second Further Notice of Proposed Rulemaking, but that further action on the D-Block should be delayed until:

- The Commission's definition of eligible users is clarified to preserve the greatest possible discretion at the local level on who is a permitted user of the network;
- The Commission's loadstar for action is enhanced public safety, not dollars and cents.

¹ TeleCommUnity is an alliance of local governments, and their associations, which seeks to refocus attention in Washington on the principles of federalism and comity for local government interests in telecommunications. TeleCommUnity is proud to be joined by the United States Conference of Mayors and the City of Los Angeles in these reply comments.

- The Commission adopts a regional approach to licenses and engages experts to determine whether WiMAX, LTE, or another technology best meets public safety needs; and
- The Commission creates a model that permits the direct allocation of spectrum to communities that agree to build out a system that both meets national interoperability standards and meets or exceeds the timeframes outlined in the Commission's proposal for coverage levels.

In addition, Commenters seek to share with the Commission the attached Resolution of the Los Angeles City Council. The Resolution shows that this issue is not solely the domain of the public safety community. Instead, it is an issue of interest to all local elected officials.

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I. INTRODUCTION

TeleCommUnity has filed comments and reply comments in the Second² and Third Further Notice of Proposed Rulemaking³ because of the importance of this issue and the need for a 700 MHz broadband public safety network. In this round, TeleCommUnity is proud to be joined by the United States Conference of Mayors⁴ and the City of Los Angeles to emphasize that such a network is of vital importance to local governments for at least two reasons:

² *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al*, Second Further Notice of Proposed Rulemaking, WT Docket No. 06-150, PS Docket No. 06-229, released May 14, 2008 (“2FNPRM”).

³ *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al*, Third Further Notice of Proposed Rulemaking, WT Docket No. 06-150, PS Docket No. 06-229, released September 25, 2008 (“3FNPRM”).

⁴ The United States Conference of Mayors is the national association of the chief executives of the nation’s cities with populations of thirty thousand or more.

1. The network has the potential to assist communities meet their emergency communications and response needs; and
2. The network can be truly beneficial to the nation if it results in a seamless network that attracts the largest number of public entities.

Commenters were pleased that a large number of parties agreed with our assessment that the 3FNPRM represents a marked improvement to the program outlined in the 2FNPRM. Moreover, Commenters were pleased at the number of parties that felt Commission action on the auction should be delayed until:

- The Commission clarifies the definition of eligible users to preserve the greatest possible discretion at the local level to determine who is a permitted user of the network;
- The Commission's loadstar for action is enhanced public safety, not dollars and cents.
- The Commission adopts a regional approach to licenses and engages experts to determine whether WiMAX, LTE, or another technology best meets public safety needs; and
- The Commission creates a model to permit the direct allocation of spectrum to communities that agree to build out a system that meets national interoperability standards and meets or exceeds the timeframes outlined in the proposal for coverage levels mandated by the Commission.

Between the deadline for the filing of comments in this matter and this filing, the City Council of the City of Los Angeles met to review the Commission's D-Block proposal and adopted a Motion attached hereto as Appendix A. The conclusions of the Los Angeles Motion are incorporated throughout this filing. In addition, the Motion reveals an important lesson: This issue is not solely the domain of the uniform public safety community. Instead, it is important to all local elected officials.

II. SUPPORT FOR A NATIONAL NETWORK IS BROAD, BUT SHOULD NOT BE MISREAD AS SUPPORT FOR A NATIONAL LICENSE OR EVEN A PUBLIC PRIVATE PARTNERSHIP.

In its *Second Report and Order*,⁵ the FCC adopted rules for the establishment of a public/private partnership (“the 700 MHz Public/Private Partnership”) in the upper portions of the 698-806 MHz band. Almost every party that has filed in response to the 2FNPRM and the 3FNPRM supports a national interoperable public safety network, and most continue to support a public-private partnership as the most likely vehicle to serve public safety and homeland security needs. *See, e.g.*, APCO⁶ at 5 (“a national broadband network would ensure that all public safety agencies, regardless of their size, location, expertise, or financial resources, would have the same opportunities to take advantage of the new world of broadband communications.”); Cellular South⁷ at 1 (“The 700 MHz D Block and Public Safety spectrum is the last and best opportunity to establish a nationwide interoperable public safety network for America’s first responders to use in times of emergency.”), and the PSST⁸ at ii (“...a public/private partnership condition on the D Block remains the best option to achieve nationwide build-out of an interoperable broadband network for public safety entities, given the current absence of legislative appropriations for this purpose and the limited funding available to the public safety sector.”).

But the Commission must take note of the increasing number of parties which, while supportive of a nationwide interoperable public safety network, question the efficacy of a public

⁵ *See In re Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, et al, Second Report and Order, 22 FCC Rcd. 15289 (2007) (“*Second Report and Order*”) recon. pending.

⁶ Comments of the APCO, filed November 3, 2008 (“APCO”).

⁷ Comments of Cellular South, filed November 3, 2008 (“Cellular South”).

⁸ Comments of the Public Safety Spectrum Trust Corporation, filed November 3, 2008 (“PSST”).

private partnership. *See, e.g.,* NYPD⁹ at 5 (“We believe that the concept of nationwide interoperability is an absolute necessity. However, New York City public safety agencies have no intention of paying subscriber fees to access a nationwide public/private broadband network when a municipal broadband data network is currently available.”).¹⁰

Commenters agree with Motorola’s assessment that achieving a public safety interoperable national network, “one that both satisfies the economic realities of a commercially viable system and adequately provides for the needs of public safety—will not become a reality absent government funding.”¹¹ Because of that, we hope the Commission will heed San Francisco’s advice that the Commission “postpone the D Block auction until more workable rules can be established.”¹²

III. THE COMMISSION SHOULD EMBRACE A REGIONAL APPROACH

In each of its filings in this proceeding, TeleCommUnity has urged the Commission to consider a regional approach to the grant of D-Block licenses.¹³ We were very pleased to see the 3FNPRM’s establishment of a single national broadband air interface with an avenue for regional licenses. 3FNPRM at ¶3. Buoyed by the support and insight of others such as the New

⁹ Comments of the New York City Police Department, filed November 3, 2008 (“NYPD”).

¹⁰ *See also* Comments of Philadelphia and San Francisco/Oakland. The PSST states at 4 that it “believes that the FCC’s proposed regional approach should be adopted as a possible alternative to a single nationwide license, provided certain safeguards are implemented.”

¹¹ Comments of Motorola, filed November 3, 2008 (“Motorola”) at ii.

¹² Comments of The City and County of San Francisco, California and the City of Oakland, California filed November 3, 2008 (“San Francisco”) at 18.

¹³ In ¶ 3 of the 2FNPRM, the FCC asked for comment on “... whether to license the D Block and public safety broadband spectrum on a nationwide or adopt a regional geographic service area basis...” TeleCommUnity and others strongly supported an examination of the potential benefits of a regional distribution of licenses. This suggestion is incorporated in the 3FNPRM at ¶ 4. TeleCommUnity is cited in the order for the concept that some local governments wanted a regional approach to be considered. TeleCommUnity support was also referenced by Commission Tate in her statement accompanying release of the 3FNPRM.

York Police Department ,¹⁴ Commenters now ask the Commission to reject a national license and pursue a model of regionally auctioned licenses that permit direct allocation of spectrum to local agencies that meet specific criteria.¹⁵

A. The Commission Must Address the Requests of an Increasing Number of Local Governments for a Direct Allocation of D-Block Spectrum.

It should come as no surprise to the Commission that Commenters, a collection of local governments and their national associations, agree with the growing number of local government parties that question if anything less than a direct allocation of spectrum meets the Congressional direction in Section 332 (a)(2) of the Act.¹⁶ In addition, Commenters believe that the

¹⁴ NYPD at 6 (“We believe that the needs of Public Safety can best be served by adapting the rules for the 700 MHz Public Safety spectrum to allow regional or local public safety entities to be licensed.”). *See also* APCO at 7 (“[The Commission’s] PSR-based proposal appears to be a reasonable approach that could still result in a national, interoperable public safety broadband network.”); Comments of Bright House, filed November 3, 2008 at 10 (Commission should license on a regional not national basis.); Comments of LEAP filed November 3, 2008 at 3. (“Leap ... enthusiastically supports this proposal...[as]... the benefits of regional licensing so clearly outweigh a nationwide licensee that the Commission should altogether eliminate the nationwide licensing option.”); San Francisco at 17 (“The Commission should establish a regional licensing process for those public safety entities that both request a license and can demonstrate the capability to build and operate such a network.”); Comments of the City of Philadelphia filed November 3, 2008 at 3 (noting that “the advantages of regional responsiveness would only be realized should the spectrum be awarded on a regional basis”).

¹⁵ Commenters do recognize that there continue to be advocates for a single national license. *See, e.g.*, Comments of the National Public Safety Telecommunications Council filed November 3 (“NPSTC”) at 6 (“NPSTC, as most public safety organizations, believes that the single, nationwide license approach is the better path as it presents the most cost effective means to design and deploy a broadband network that achieves the dual goals of interoperability and connectivity across geographic regions on a nationwide basis.”).

¹⁶ *See, e.g.*, Letter of Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation filed October 31, 2008 at ¶ 1 (“In sharing the spectrum that was allocated to public safety with the proposed D-block bidders in a manner that is heavily weighted against public safety, and by reducing the auction reserve from \$1.3 billion to \$750 million while also lowering the performance/coverage requirements of the system, you are designing a system that fails to serve the critical performance needs of public safety. It is arguable that the new proposed rules so diminish what public safety would receive that they violate congressional authorization of the allocation of 24 MHz of spectrum to “public safety services” (under section 337(a)(2) of the Communications Act)).

Commission should craft a model that permits local governments that are in the process of building out their local broadband public safety networks to continue to do so, so long as they build the network to meet the national standards. *See, e.g.*, Comments of Baton Rouge,¹⁷ NYPD,¹⁸ Philadelphia,¹⁹ San Francisco,²⁰ as well as the District of Columbia in prior filings.

B. Local Communities Should Be Empowered To Build Out Networks and Either Recover The Costs of Such Networks or Retain Ownership of the Facilities.

Commenters oppose the Commission’s tentative conclusion (¶¶ 294-304), supported by parties such as LEAP at 12, that a local entity such as the District of Columbia should not be able to build out its own network on the public safety broadband spectrum and require compensation from any D block licensee for that infrastructure. LEAP claims such a proposal should be rejected as “...early build out threatens the commercial viability of the D block ... [and]...creates perverse incentives for early builders to construct a gold-plated network...” *Id.*

¹⁷ *See* Letter of Baton Rouge Mayor –President Melvin L. “Kip” Holden to the Commission, filed November 5, 2008 (“Baton Rouge”).

¹⁸ “A better approach would be to allow major cities or other jurisdictions to deploy private broadband networks on the public safety spectrum provided that they adopt the same technology as other regional public safety broadband networks and establish roaming agreements. Such an approach would ensure nationwide interoperability and preserve local control for jurisdictions willing to build such networks.” NYPD at 7.

¹⁹ “We urge the Commission to go one step further, and impose on the successful bidder or bidders an obligation to cooperate with regional groups like 700 MHz Regional Planning Committees. As envisioned by the Commission, the advantages of regional responsiveness would only be realized should the spectrum be awarded on a regional basis.” Philadelphia at 3.

²⁰ “The Undersigned Cities urge the Commission to establish regional “carve outs” for the 700 MHz public safety spectrum, which is currently licensed to the PSBL. The Commission should establish a regional licensing process for those public safety entities that both request a license and can demonstrate the capability to build and operate such a network. To ensure interoperability, the Commission should specify an underlying network interface technology and radio access technology. This would ensure regionally owned and controlled networks have the ability to interconnect with neighboring networks.” San Francisco at 17.

We support San Francisco’s suggestion, at 18, that this challenge “...can be resolved by simply allowing local agencies to retain ownership and control of the assets they have installed and paid for, while requiring local agencies to negotiate a spectrum sharing agreement with the D Block Licensee to share the 700 MHz spectrum.”

Commenters believe comments such as LEAP’s are the root of most public safety organization’s concerns with the D-Block proposal: public safety. Public safety, not the commercial viability of the D-Block, must be the loadstar for Commission action.

IV. THE COMMISSION SHOULD NOT LIMIT THE ABILITY OF ALL LOCAL GOVERNMENT DEPARTMENTS TO USE THE SERVICES OF THE PUBLIC SAFETY NETWORK.

In the 2FNPRM, the Commission asked whether “under Section 337 of the Communications Act of 1934 . . . and Section 90.523 of the Commission’s rules, only entities that are providing public safety services, as defined in the Act, are eligible to use the public safety spectrum portion of the shared network established under the 700 MHz Public/Private Partnership.” 2FNPRM, ¶ 2 (footnotes omitted).²¹ In the 3FNPRM, the Commission redefines, modifies, and clarifies those entities that will be eligible to use the Shared Wireless Broadband Network. (¶¶ 322-331.)

TeleCommUnity shares the concerns of other parties that the Commission may inadvertently limit the ability of necessary public safety personnel to employ the network. For example, APCO, citing the exclusion of Critical Infrastructure Industry users, states that they are “... concerned that an overly narrow interpretation of eligibility could exclude some critical governmental services” (*Id.* at 21), Philadelphia “...urge[s] the Commission to clarify that in the event of a disagreement between the D Block licensee and the entity requesting emergency

²¹ See also ¶¶ 21, 30-34.

access, the D Block licensee is obligated to provide emergency access until such time that the dispute can be resolved.” (*Id.* at 5), and Region 20²² believes that eligibility should be : “broadbased and inclusive of both traditional first responders as well as public service critical infrastructure support organizations including transportation, private aid organizations, and others contemplated in the Commission’s rules for 700 MHz narrowband voice use.” *Id.* at 28.

TeleCommUnity reiterates that while Section 337 limits the use of the spectrum to public safety services, Congress was most expansive in its definition of what constitutes such a service. Section 337 (f)(1)(A) permits any governmental use which has the “sole or principal purpose . . . to protect the safety of life, health, or property.”²³ The Communications Act and FCC rules allow governmental and approved non-governmental uses of public safety spectrum beyond the immediate demands of responding to and resolving emergencies.

V. THE COMMISSION’S PRICING SCHEMES WILL DRIVE MANY COMMUNITIES FROM ANY POTENTIAL PARTNERSHIP.

The Commission proposes to permit a D-Block licensee to charge a flat monthly fee of \$48.50 for every public safety user for a four year period and requests comments on its pricing proposal (§§ 390-395.) TeleCommUnity did not address this issue in our comments as we were awaiting feedback from our members on the impact of the proposal.

TeleCommUnity adopts the position of many in the public safety community who assert this rate is unworkable in urban areas. In support of their opposition, the public safety parties

²² Comments of The Regional Planning Committee Twenty (“Region 20”), filed November 3, 2008.

²³ 47 U.S.C. § 337. Subsection (f)(1)(B)(ii) also provides that non governmental organizations (think volunteer fire department) may use the spectrum with the government’s approval while Subsection (f)(1)(C) bans the services from being “made commercially available to the public by the provider.”

assert the Commission lacks a commercial basis for its proposed pricing,²⁴ and offer insights into what this rate will cost their community in the aggregate.²⁵ Regardless of the rationale, the results are the same: many major metropolitan areas “will find that building, owning, and operating . . . [their own] . . . network will be more cost effective and will better serve their constituents.”²⁶

TeleCommUnity agrees with APCO that “the rate must be low enough to attract substantial public safety participation . . . [and one means to achieve such participation] . . . is to require the D block licensee to offer rates at a specified discount from commercial rates and that at no time should any customer ever receive a rate lower than what is offered to public safety.”²⁷

²⁴ See, e.g., APCO at 22-23, JPSC at iv, NPSC at 27. NPSC describes the pricing rate as “...an inflexible standard that will neither recoup the costs and rate of return for the D Block licensee nor attract public safety users.”

²⁵ NYPD demonstrates that it would cost the City of New York \$35 million dollars a year for users’ fees (p.5) while San Francisco estimates that it would cost \$4.2 million dollars for it to purchase access. (p. 7)

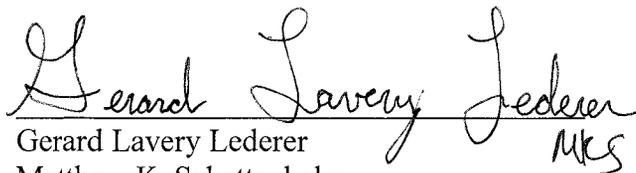
²⁶ San Francisco at 7-8.

²⁷ APCO at 23.

VI. CONCLUSION

For the reasons indicated above, the Commission should continue on its path of seeking a public/private partnership for a 700 MHz broadband public safety network plan, but not be so married to the idea as not to consider the alternative plans outlined in this proceeding.

Respectfully submitted,

A handwritten signature in cursive script that reads "Gerard Lavery Lederer". The signature is written in black ink and is positioned above a horizontal line. To the right of the signature, the initials "MKS" are written in a smaller, more stylized cursive.

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California

November 12, 2008

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SPECIAL

RESOLUTION

WHEREAS, any official position of the City of Los Angeles with respect to legislation, rules, regulations or policies proposed to or pending before a local, state or federal governmental body or agency must have first been adopted in the form of a Resolution by the City Council with the concurrence of the Mayor; and

WHEREAS, in August of 2007 the Federal Communications Commission (FCC) unveiled a proposal to create a public-private partnership to redeploy some of the spectrum returned to the government as a result of the Digital Television (DTV) conversion. The FCC's idea was that in exchange for a winning bid payment and a commitment to build out a shared network to support to create a nationwide, interoperable broadband public safety network, the commercial partner would receive the right to use the commercial and the public safety portion of the spectrum block when not in use by public safety. These plans came to a halt, however, when no bidder met the threshold price established by the FCC for the D-Block; and

WHEREAS, since the failed auction, Congress and the FCC have issued a series of proposals to achieve the goal of the shared network. The City has until November 12, 2008 to protect its interests to dedicate an irreplaceable block of spectrum dedicated for public safety purposes as outlined in the third such proposal. If the FCC issues an order that is unfavorable to the City's interests, the City may be forced to purchase such services at market rates in the future; and

WHEREAS, the Los Angeles Information Technology Agency (ITA) in conjunction with Miller Van Eaton, the City's contract law firm for FCC and related issues, has reviewed the Third Notice of Proposed Rulemaking and recommends filing comments before the November 12, 2008 deadline. Specifically, they recommend that the FCC:

- ▶ Clarify the definition of eligible users such that the City of Los Angeles retains the greatest possible discretion in determining users of the network;
- ▶ Adopt a regional approach to licenses and engage experts to determine the best technology platform with the primary goal of meeting public safety needs rather than focusing on the shared commercial of the spectrum; and
- ▶ Include the possibility of a direct allocation of the D-Block spectrum to communities that agree to build out a system consistent with national interoperable standards that meet or exceed the FCC's specified timeframes for coverage service levels.

NOW, THEREFORE, BE IT RESOLVED, with the concurrence of the Mayor, that by the adoption of this Resolution, the City of Los Angeles hereby includes in its Federal Legislative Program a position to request and urge the Federal Communications Commission to include the above-listed three points as part of its Third Notice of Proposed Rulemaking relative to the D-Block Spectrum; and

BE IT FURTHER RESOLVED that the Los Angeles Information Technology Agency be authorized to file comments consistent with the above described City position, with assistance from the Office of the City Attorney and Miller Van Eaton, to the Federal Communications Commission (FCC).

PRESENTED BY:

Tony Cardenas
 TONY CARDENAS
 Councilman, 6th District

SECONDED BY:

E.G.

November 5, 2008