

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

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

**COMMENTS OF  
THE PUBLIC SAFETY SPECTRUM TRUST CORPORATION**

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**I. INTRODUCTION AND SUMMARY**

The Public Safety Spectrum Trust Corporation (“PSST”) hereby submits its Comments in response to the Federal Communications Commission’s (“FCC” or “Commission”) August 14, 2009 Public Notice (“*Notice*”) in the above-referenced proceeding.<sup>1</sup> In the *Notice*, the Commission seeks comment on thirteen waiver petitions (“Petitions”) filed by entities seeking authority to deploy local or regional public safety broadband systems using spectrum currently licensed to the PSST (collectively, the “Petitioners”).<sup>2</sup>

The PSST applauds the Commission’s continued efforts to support the development and deployment of a nationwide, interoperable, wireless broadband network for public safety. Any review of major crises such as 9-11 or Hurricane Katrina shows how much the personal efforts and effectiveness of our nation’s first responders – police, firefighters, emergency medical personnel, and others – are diminished or undermined when the communications infrastructure

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<sup>1</sup> *Public Safety and Homeland Security Bureau Seeks Comment on Petitions for Waiver to Deploy 700 MHz Public Safety Broadband Networks*, PS Docket No. 06-229, Public Notice, DA 09-1819 (rel. Aug. 14, 2009) (“*Notice*”).

<sup>2</sup> *Id.*

that supports their life-saving efforts does not meet their mission-critical needs. Although establishing and building out the nationwide network will be a significant challenge, policymakers must continue their efforts to meet our national security and public safety communications needs.<sup>3</sup>

As discussed below, the PSST supports the Petitioners' goal of deploying local and regional wireless broadband networks before or during the construction of the nationwide network. All such deployment, however, must be consistent with statutory requirements and the principal goal of a nationwide, interoperable network. Therefore, the FCC should facilitate broadband deployment for public safety and grant the early buildout waiver requests filed by local, state, and regional public safety Petitioners – subject to conditions designed to ensure that those networks advance the Commission's public safety and nationwide interoperability goals.

In particular, the FCC should:

- Address the Petitions as soon as possible and not wait until the broader 700 MHz D Block rulemaking proceeding is complete;
- Maintain the nationwide license framework for the Public Safety Broadband License (“PSBL”) spectrum and permit Petitioners to enter into spectrum leases with the PSST;
- Ensure that any relief establishes or maintains a reliable funding mechanism for the PSST in its role as the nationwide Public Safety Broadband Licensee;
- Modify its early buildout rules as needed to grant the Petitions and not require that Petitioners transfer their proposed systems to the nationwide network;
- Make Petitioners responsible for relocating incumbent narrowband users in their proposed network service areas *before* they begin deploying broadband systems;
- Require Petitioners to ensure and certify that their proposed local or regional networks are fully interoperable with the future nationwide network and incorporate a uniform technology, nationally coordinated technical standards and operating requirements, and network sharing and roaming functionality;

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<sup>3</sup> Written Testimony of Chief Harlin R. McEwen, Chairman, Public Safety Spectrum Trust Corporation and Chairman, Communications & Technology Committee, International Association of Chiefs of Police, before the United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications, Technology and the Internet, 3 (Sept. 24, 2009).

- Seek additional information from the Petitioners (*e.g.*, detailed technical information regarding their proposed networks and evidence of funding to support the network deployment) and take steps to avoid mutual exclusivity among Petitions;
- Ensure that all deployments are consistent with Section 337’s restrictions and that all conditions of relief are enforced vigilantly;
- Require New EA, Inc. dba Flow Mobile (“Flow Mobile”) and the State of North Dakota (“North Dakota”) to address the current substantial deficiencies in their Petitions; and
- Support ongoing public safety efforts to develop a nationwide, interoperable, wireless broadband network.

## **II. PUBLIC SAFETY ORGANIZATIONS ARE WORKING TOGETHER TO FACILITATE A NATIONWIDE, INTEROPERABLE WIRELESS BROADBAND NETWORK**

The public safety community continues to work together to facilitate a nationwide, interoperable wireless broadband network. As part of these collaborative efforts, public safety representatives have been discussing the administrative, technical, and logistical issues associated with the early buildout proposals reflected in the Petitions. Importantly, they have been working to reconcile the Petitions with plans for the future nationwide broadband network to ensure that public safety’s critical nationwide interoperability goals remain unimpaired and to reduce the number of outstanding issues for the Commission to resolve.

As one example of public safety’s continued efforts, the National Public Safety Telecommunications Council (“NPSTC”) formed a 700 MHz Broadband Task Force (“BBTF”) to develop the minimum recommendations necessary to facilitate roaming and interoperability among Petitioners’ networks and the future nationwide network. The BBTF’s current recommendations include suggested terms and conditions for the Petitioners’ spectrum use, roaming provisions, and required interoperability elements, among other things.

The BBTF submitted its final report to the PSST in late September.<sup>4</sup> The PSST supports the efforts of the BBTF, and the PSST's Strategic Planning Committee is currently reviewing the report. The PSST plans to complete its internal review during the fourth quarter of 2009, and then submit comments and recommendations to the FCC.

Most public safety entities also continue to believe that the PSBL spectrum alone cannot satisfy public safety's broadband requirements.<sup>5</sup> In 1996, the Public Safety Wireless Advisory Committee released a report finding that public safety needed 97.5 MHz of new spectrum allocations by 2010 (including 25 MHz by 2001) to meet essential needs, including for interoperability and access to advanced broadband technologies.<sup>6</sup> Only 24 MHz of spectrum has been reallocated to public safety since that time, with 12 MHz designated for narrowband operations, and little of this spectrum has been available until the June 2009 DTV transition.

The demand for additional spectrum has grown considerably since 1996, and public safety needs access to the full 10x10 MHz from both the PSBL and the D Block spectrum to ensure that critical, life-saving wireless broadband services are available during a crisis. Indeed, the FCC recognized this when it required the D Block licensee to give public safety priority access to the D Block spectrum during emergencies as part of the public/private partnership.<sup>7</sup>

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<sup>4</sup> The PSST received the final report on September 23.

<sup>5</sup> See, e.g., Comments of the Association of Public-Safety Communications Officials-International, Inc. ("APCO") on Petitions for Waiver to Deploy 700 MHz Broadband Networks, PS Docket No. 06-229, 4 (filed Sept. 22, 2009) ("APCO Comments") (stating that "many believe [20 MHz] is necessary for a successful nationwide broadband deployment").

<sup>6</sup> See Final Report of the Public Safety Wireless Advisory Committee (Sept. 11, 1996), available at [http://www.ntia.doc.gov/osmhome/pubsafe/pswac\\_al.pdf](http://www.ntia.doc.gov/osmhome/pubsafe/pswac_al.pdf); see also Letter from Harlin R. McEwen, Chairman, Communications & Technology Committee, International Association of Chiefs of Police, to Julius Genachowski, Chairman, Federal Communications Commission, PS Docket No. 06-229, Attachment at 2 (filed Oct. 12, 2009).

<sup>7</sup> *Service Rules for the 678-746, 747-767 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 ¶ 428 (2007) ("*Second Report and Order*") (stating that the priority access "is intended to ensure that public safety entities have sufficient bandwidth for their emergency communication needs");

Bandwidth-intensive 4G applications, including optical recognitions systems, streaming video, collaboration and dispatch tools, and high-resolution schematic rendering, require a full 20 MHz of contiguous spectrum.<sup>8</sup>

Public safety also will need more than the 5x5 MHz of broadband spectrum available through the PSBL to meet the daily needs of public safety agencies in densely populated metropolitan areas and to meet the needs of public safety agencies in rural and other non-metropolitan areas during large-scale incidents like Hurricane Katrina. The larger number of public safety users accessing the spectrum on a day-to-day basis in metropolitan areas, combined with more frequent incidents involving public safety, will require additional spectrum capacity. Large-scale incidents, regardless of whether they occur in metropolitan or rural areas, will also spark capacity surges beyond what the PSBL spectrum alone can accommodate. As AT&T states, “[w]ithout 20 MHz of broadband spectrum, the network congestion caused by the more advanced services and applications may foreclose some public safety users from accessing the network, thereby impacting interoperability and potentially stranding roaming first responders.”<sup>9</sup> Moreover, because public safety cannot predict the timing of the next large-scale incident,

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*see also* Report to Congress on the Study to Assess the Short-Term and Long-Term Needs for Allocations of Additional Portions of the Electromagnetic Spectrum for Federal, State, and Local Emergency Response Providers, WT Docket No. 05-157 at 27-32 ¶¶ 78 (Dec. 16, 2005) (summarizing numerous comments favoring additional 700 MHz spectrum allocations – in addition to the current 24 MHz public safety allocation – to meet public safety’s broadband and interoperability needs).

<sup>8</sup> *See* Letter from Jim Bugel, Assistant Vice President, Public Safety and Homeland Security, AT&T Services, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, PS Docket No. 06-229, 4 (filed July 31, 2009) (stating that “anything less than a full 20 MHz of contiguous spectrum simply will not be cost effective and will not allow implementation of the 4G applications required by public safety”) (“AT&T *Ex Parte*”); *see also* Written Statement of Stacey Black, Assistant Vice President – Market Development, AT&T, before the United States House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications, Technology and the Internet, 3 (Sept. 24, 2009).

<sup>9</sup> AT&T *Ex Parte* at 5.

having access to both the D Block and the PSBL spectrum will ensure that sudden capacity needs are met.

In addition, public safety's bandwidth requirements will only increase as new broadband applications and services are deployed. As with any new service offering, the PSST expects that public safety users will gradually adopt advanced broadband services and applications after they are made available (whether through local, state, and regional networks or as part of the nationwide network deployment). As more public safety entities begin accessing the interoperable network, technology vendors will have greater incentives to supply new bandwidth-intensive applications customized for public safety use, further encouraging additional public safety entities to use broadband services. Absent access to both the PSBL and the D Block spectrum, public safety will face severe bandwidth congestion as additional services are deployed and adopted by more and more users.

Combining the D Block and the PSBL spectrum is also more cost-effective and will provide operational efficiencies for public safety. For example, it will limit the number of separate frequency bands that must be supported, reducing equipment and device costs. It also will avoid the need to build two separate networks (or rely on two separate channels) to accommodate public safety's 20 MHz bandwidth needs.<sup>10</sup>

To provide the necessary 10x10 MHz bandwidth for advanced broadband services, the public safety community has proposed legislation to reallocate the D Block to public safety, and the PSST recently endorsed this effort.<sup>11</sup> The D Block should be assigned to the Public Safety

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<sup>10</sup> *Id.* at 4-5 and at Attachment, page 4.

<sup>11</sup> See "Public Safety Spectrum Trust Holds Quarterly Board Meeting," PSST Press Release (rel. Sept. 10, 2009) ("[T]he PSST adopted a position to support efforts by a number of major national public safety organizations to urge Congress to enact legislation to direct the Federal Communications Commission to

Broadband Licensee as a nationwide license, to be paired with the PSBL. This reallocation will help ensure that public safety entities across the country are well-equipped to respond to incidents large and small.<sup>12</sup> In fact, Attorney General Eric Holder recently indicated his support for reallocating the D Block to public safety.<sup>13</sup> Likewise, the PSST asks the Commission to support public safety's efforts to develop a nationwide, interoperable, wireless broadband network.

To the extent the FCC grants the Petitions, the reallocated D Block can be added to the spectrum authorized under the waivers. In addition, the PSST agrees with APCO that any new legislation should authorize the Public Safety Broadband Licensee (and any authorized PSBL spectrum lessees) to enter into public/private partnerships, including partnerships with commercial or other entities that do not meet Section 337's current requirement that public safety services be provided by "State or local government entities" or "by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services."<sup>14</sup> In the absence of direct funding for broadband network deployment, these partnerships can provide vital financial support, deployment resources, and many other benefits to public safety, particularly in small communities and rural areas.

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allocate the 700 MHz D Block Spectrum to the national Public Safety Broadband Licensee"); *see also* APCO Comments at 12-13.

<sup>12</sup> APCO Comments at 12-13.

<sup>13</sup> Remarks of Attorney General Eric Holder, Annual Conference of the International Association of Chiefs of Police, Denver, CO (Oct. 5, 2009).

<sup>14</sup> *See* APCO Comments at 12-13; *see also* 47 U.S.C. § 337(f)(1)(B).

### **III. THE COMMISSION SHOULD ACCELERATE PUBLIC SAFETY BROADBAND DEPLOYMENT BY GRANTING THE WAIVER REQUESTS FILED BY LOCAL, STATE, AND REGIONAL PUBLIC SAFETY ENTITIES, SUBJECT TO CERTAIN CONDITIONS**

While public safety's efforts to develop a nationwide network continue, the FCC should accelerate public safety broadband deployment and grant the early buildout waiver requests filed by local, state, and regional public safety entities after addressing the issues discussed below.

#### **A. Timing**

The Commission should address the Petitions expeditiously to facilitate life-saving broadband deployment. Importantly, it should not wait until it completes the pending 700 MHz D Block rulemaking proceeding or the National Broadband Plan before acting on the Petitions.<sup>15</sup> Ideally, the Commission would resolve both the D Block proceeding and the Petitions as quickly as possible and include provisions for a nationwide, interoperable, broadband wireless network in the National Broadband Plan. To the extent the Commission requires more time to reach a decision in the D Block proceeding, however, it should not similarly delay granting the Petitions to bring broadband services to public safety. Some of the Petitioners have explained that their proposed local or regional systems can only be built and funded if the Commission acts within a specified window of time (generally tied to the particular Petitioner's budgeting process, broadband stimulus funding opportunities, or other ongoing public safety deployments).<sup>16</sup> Given

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<sup>15</sup> The Commission also should not wait for legislative action regarding the possible reallocation of the D Block to public safety before acting on the Petitions.

<sup>16</sup> See, e.g., Amended Request for Waiver, Request by the City of Boston for Waiver of the Commission's Rules to Deploy a 700 MHz Public Safety Interoperable Broadband Network That Can Be Integrated into the Public-Private Partnership, PS Docket No. 06-229, 6-8 (filed Dec. 11, 2008; amended request filed May 28, 2009) ("Amended Boston Petition"); Amended Request for Waiver, Request by the City and County of San Francisco, City of Oakland and City of San Jose for Waiver of the Commission's Rules to Allow Establishment of a 700 MHz Interoperable Mobile Public Safety Broadband Network, PS Docket No. 06-229, 7-8 (filed Mar. 24, 2009; amended request filed May 27, 2009) ("Amended Bay Area Cities Petition").

that funding has been one of the primary obstacles to the construction of the nationwide network, the Commission should not let these available resources go untapped.

Although the proposed broadband deployments using the PSBL spectrum, in advance of the nationwide network deployment, raise some questions regarding issues that may later be addressed in the Commission's pending rulemaking, the Commission can grant the waiver requests without precluding its resolution of those issues. All waiver relief should be without prejudice to and conditioned on compliance with the Commission's subsequent decisions in the D Block rulemaking, among other issues discussed below, including full interoperability with the nationwide network.

#### **B. Authority to Operate**

As the *Notice* recognizes, the spectrum that the Petitioners have requested to use for their early deployments is already licensed on a nationwide basis to the PSST.<sup>17</sup> The FCC should maintain this license framework and the nationwide administrative and oversight role already established for the PSST.<sup>18</sup> Consistent with this approach and contrary to the requests of certain Petitioners,<sup>19</sup> the FCC should not provide separate licenses or "sublicenses" to localities, regions, or states. Instead, it should provide more limited relief to enable the Petitioners to build-out their local, regional, or state systems expeditiously, subject to PSST approval and compliance with the Commission's other rules. In its Request for Waiver, for example, the City of Boston states that it "will obtain the approval of the Public Safety Broadband Licensee for any early deployment

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<sup>17</sup> *Notice* at 6.

<sup>18</sup> Reply Comments of the Public Safety Spectrum Trust Corporation, GN Docket No. 09-51, 6 (filed July 21, 2009) ("PSST Broadband Plan Reply Comments").

<sup>19</sup> *See, e.g.*, Petition for Waiver, Request by the City of New York for Waiver of the Commission's Rules to Deploy a Public Safety Interoperable Broadband Network in the 700 MHz Band, PS Docket No. 06-229, 12-13 (filed June 8, 2009); Amended Bay Area Cities Petition at 6.

undertaken under the waiver.”<sup>20</sup> The PSST supports this approach for ensuring that the Commission’s public safety goals remain intact, and any relief should similarly require the Petitioners to coordinate with and obtain approval from the PSST before deploying systems that use the PSBL-allocated spectrum.

Instead of issuing new licenses or sublicenses to the Petitioners, the FCC should authorize the PSST to enter into spectrum leases with local, state, and regional public safety entities that filed early deployment Petitions and other public safety entities that may seek similar relief from the Commission in the future. Although some of the Petitioners seek sublicenses, the Commission already has an existing spectrum leasing regulatory framework in place under its secondary markets regime and should apply that framework to the proposed broadband deployments.<sup>21</sup> Under this approach, the PSST could lease all or a portion of the PSBL spectrum in a particular area to the Petitioners or other local, state, or regional public safety groups that want to deploy wireless broadband networks using the PSBL spectrum, subject to the terms and conditions of any waiver relief granted in this proceeding and FCC approval of the lease. The PSST encourages the FCC to provide flexibility as to the type of spectrum lease (*i.e.*, spectrum manager or *de facto* transfer) that may be used for the proposed broadband deployments. As shown by the varied proposals in the Petitions, each local, state, or regional public safety group has unique deployment needs, and certain proposals may be better suited to a spectrum manager lease, while others may be more appropriate under a *de facto* transfer lease.

In addition, as APCO suggests, the spectrum leases will need to include reliable financial support for (at a minimum) some of the PSST’s operating expenses, whether through “non-

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<sup>20</sup> Amended Boston Petition at 12.

<sup>21</sup> *See* 47 C.F.R. § 1.9001 *et seq.*

profit” fees or some other mechanism.<sup>22</sup> The Petitioners and their individual public safety users benefit from the PSST’s past, current, and future efforts regarding coordinated early buildout and the development of the nationwide network, and they should contribute funding to cover an appropriate portion of the expenses incurred by the PSST for those activities. Because the PSST is a non-profit corporation, these costs would be limited to legitimate expenses incurred to support the activities of the PSST in coordinating early buildout and managing the nationwide network. The PSST understands that local or state governments cannot sign up for unknown costs, and it supports a mechanism for the PSST and waiver grantees to negotiate their respective portion of the expenses up front in the spectrum lease agreements.

As the PSST has explained previously, only through a nationwide licensing framework can the Commission ensure that the public safety community’s need for nationwide interoperability remains addressed for the long term.<sup>23</sup> Although the FCC can prescribe a series of initial technical standards and operating requirements for the Petitioners (and other public safety entities that may seek similar relief in the future), interoperability issues will arise in the future as mobile technologies and the needs of public safety users continue to evolve. A nationwide licensee can coordinate with local, state, and regional public safety groups to address these issues and any potential conflicts expeditiously and collaborate on ongoing improvements necessary to the nationwide network. In addition, compared to numerous regional, statewide, or local licensees, a nationwide licensee provides a central point of contact for addressing other network issues, such as resolving interference and notifying users of any network outages. It can also serve as a central point of contact between public safety users and the FCC, minimizing the administrative burden on the Commission with respect to monitoring public safety users and

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<sup>22</sup> APCO Comments at 6.

<sup>23</sup> PSST Broadband Plan Reply Comments at 6-8.

ensuring compliance with the Commission’s rules. As the Commission stated in the *Second Report and Order* when it established the nationwide PSBL:

[C]reating a single nationwide geographic area license offers greater flexibility and eases the administrative burden on both the public safety community and the Commission. We find that centralizing the responsibilities for implementing a broadband network across the entire country under a nationwide geographic area license, assigned to a single entity, best serves the objectives discussed in the *700 MHz Public Safety Ninth Notice*, including the goals of achieving a nationwide level of interoperability and a public safety network that is robust, cost effective, spectrally efficient, and based on a flexible, IP-based, modern architecture. These goals would be very difficult, if not impossible, to achieve under regional, state, or local level spectrum planning approaches.<sup>24</sup>

As discussed below, the interoperability benefits from a nationwide license framework will also serve better the needs of public safety users in small communities and in rural areas. As APCO stated, “absent a national network approach, only those agencies with sufficient resources and expertise will be able to deploy broadband, and there is no assurance that systems will be interoperable . . . .”<sup>25</sup> In addition to the interoperability benefits, the nationwide license framework provides protection against multiple “islands of incompatibility” across public safety jurisdictions. For example, a nationwide licensee can leverage its administrative and technical expertise on behalf of public safety entities that have limited resources, such as entities in small communities and in rural areas, to ensure that they obtain the same quality and range of services that are available to public safety users with more resources.

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<sup>24</sup> *Second Report and Order* ¶¶ 369-70 (stating also that “a single Public Safety Broadband Licensee can achieve significant bargaining and purchasing power in acquiring equipment and services needed for the nationwide broadband system, and thus be able to obtain economies of scale with respect to network and radio equipment not unlike nationwide CMRS systems,” and noting that a nationwide licensee could “increase spectrum efficiency as compared to multiple, specialized public safety network ‘silos’ overlapping in the same area and using incompatible frequencies and technologies”).

<sup>25</sup> Comments of the Association of Public-Safety Communications Officials-International, Inc., GN Docket No. 09-51, 5-6 (filed June 8, 2009) (“APCO Broadband Plan Comments”).

### C. Existing Early Buildout Rules

The Commission should waive or modify its existing early buildout rules and other 700 MHz public/private partnership rules as needed to grant the Petitions, subject to the conditions outlined in these Comments. The PSST has previously expressed support for the FCC's rules regarding early build-out of local and regional 700 MHz broadband networks by public safety entities, noting that the existing rules "provide an appropriate safety valve for public safety licensees that wish to accelerate broadband deployment in their community" without undermining the development of a nationwide interoperable network."<sup>26</sup> The Commission's existing early build-out rules, however, contemplate a successful D Block auction bidder and subsequent network sharing agreement negotiations.<sup>27</sup> Because these events have yet to occur, the existing rules alone are insufficient to allow public safety groups to deploy life-saving systems on the PSBL spectrum now and should be waived or modified.

For example, the FCC's current rules require certain early builders to transfer their local, state, or regional network to the nationwide network.<sup>28</sup> Many of the Petitions contemplate systems that would be funded, built, and owned by the local, state, or regional entities permanently. To encourage this investment and to facilitate the proposed deployments, the Commission should waive this requirement. This approach is workable, with appropriate adjustments to the Commission's rules, under any of the scenarios currently being discussed for the 700 MHz D Block.

The FCC should also waive the requirement in Sections 27.1307(c) and 90.1407(b) that the PSST (as the Public Safety Broadband Licensee) "must lease the spectrum usage rights"

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<sup>26</sup> Comments of the Public Safety Spectrum Trust Corporation, PS Docket No. 06-229, 30 (Nov. 3, 2008); PSST Broadband Plan Reply Comments at 4-5.

<sup>27</sup> See 47 C.F.R. §§ 27.1330(b); 90.1430(b).

<sup>28</sup> See *id.*

associated with the PSBL to the D Block licensee and the Operating Company as needed to accommodate the Petitions.<sup>29</sup> Those rules state that “[t]he Upper 700 MHz D Block licensee and the Operating Company are the only entities that are eligible to lease the spectrum usage rights associated with the Public Safety Broadband License to operate on the 763–768 and 793–798 MHz bands.”<sup>30</sup> In addition, the FCC should waive the requirement in Sections 27.1330(b)(5) and 90.1430(b)(5) that certain early builders enter into a spectrum manager lease with the PSST.<sup>31</sup> As discussed above, the FCC should provide Petitioners and other entities that may seek similar relief flexibility as to the specific lease type they may use for their proposed networks.

Finally, the Commission should grant such additional waiver relief as may be needed to allow the PSST and the Petitioners to coordinate the proposed broadband deployments, and it should require local builders to ensure that their networks are – and remain – fully interoperable with the future nationwide network.

#### **D. Narrowband Operations**

The Petitioners should be responsible for relocating incumbent narrowband users in their proposed network service areas *before* they begin deploying broadband systems. The PSST agrees with APCO that existing 700 MHz narrowband licensees must not be forced to relocate to other channels without being compensated for relocation expenses.<sup>32</sup> Thus, any waiver relief should include a mechanism for addressing the relocation and related expenses of any existing

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<sup>29</sup> *Id.* §§ 27.1307(c); 90.1407(b).

<sup>30</sup> *Id.*

<sup>31</sup> *Id.* §§ 27.1330(b)(5); 90.1430(b)(5). The same subsections also require those early builders to construct and place into operation their networks within one year of the effective date of the spectrum manager lease. *Id.* The Commission should waive or modify this requirement as needed to facilitate the Petitioners’ proposed deployment schedules.

<sup>32</sup> APCO comments at 7.

narrowband voice systems. To the extent Petitioners pay for relocating any existing users, however, they should be allowed to seek reimbursement (*e.g.*, from the eventual D Block licensee(s) if the D Block is reauctioned under the FCC’s current rules, or through future public/private partnerships if they are later authorized).

#### **E. Sufficiency of Pleading**

The FCC should require the Petitioners to provide supplemental information regarding their proposed networks before acting on the Petitions. First, it should require Petitioners to submit detailed technical information regarding their proposed networks, including technology specifications, features, applications and services.<sup>33</sup> It should also require Petitioners to submit evidence of funding to support the entire local network deployment, including funding for any applicable narrowband relocation.<sup>34</sup> In addition, the PSST agrees with APCO that Petitioners should provide “evidence that there is an actual plan to deploy, personnel and systems in place to manage the deployment, a vendor selection process, and an estimated deployment schedule,” along with “documentation of substantial support from the public safety agencies in the geographic region to be served by the proposed system”<sup>35</sup> Finally, the Petitioners should detail the specific steps that they will take to ensure interoperability with the nationwide network.

The FCC should request that the information be provided on an expedited basis and should similarly review the submissions as quickly as possible. Moreover, if the FCC grants a Petition, that Petitioner should at a minimum be required to submit regular reports to the PSST

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<sup>33</sup> *Id.* at 9.

<sup>34</sup> *Id.*

<sup>35</sup> *Id.* The FCC should provide a reasonable amount of time for the Petitioners to build out their networks. In addition, it should allow Petitioners to develop trial systems as needed before full deployment.

and the Commission regarding its deployment status and compliance with the build-out timeline and network information previously submitted.<sup>36</sup>

## **F. Interoperability**

Any relief provided to the Petitioners should continue to advance, not hinder, the FCC’s nationwide interoperability goal. Nationwide interoperability is a fundamental goal of the Commission’s public safety broadband framework,<sup>37</sup> and the PSST supports continued efforts to facilitate nationwide broadband interoperability for public safety users. As the FCC itself emphasized, “[t]he successful creation of a nationwide interoperable broadband network meeting the needs of public safety will be of enormous value to the public . . . .”<sup>38</sup> It will also lead to “wider deployment, lower costs, better interoperability, and greater efficiency” rather than a series of small, balkanized networks.<sup>39</sup> A network with nationwide interoperability ensures that public safety entities in all jurisdictions – not just urban or affluent areas – have access to life-saving broadband services and applications. In addition, a nationwide broadband network could link together existing, incompatible Land Mobile Radio Service (“LMRS”) narrowband voice systems and increase communications and database interoperability across jurisdictions.<sup>40</sup>

As a condition of any waiver grant, the FCC should require the Petitioners to ensure and certify that their proposed local or regional networks are fully interoperable with the future nationwide public safety broadband network and incorporate a uniform technology, nationally coordinated technical standards and operating requirements (including critical priority access

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<sup>36</sup> *See id.*

<sup>37</sup> *Service Rules for the 678-746, 747-767 and 777-792 MHz Bands*, Second Further Notice of Proposed Rulemaking, 23 FCC Rcd 8047 ¶ 1 (2008).

<sup>38</sup> *Service Rules for the 678-746, 747-767 and 777-792 MHz Bands*, Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 14301 ¶ 275 (2008).

<sup>39</sup> APCO Broadband Plan Comments at 5; *see also* APCO Comments at 2.

<sup>40</sup> *See* APCO Broadband Plan Comments at 3.

functionality), and network sharing and roaming functionality,<sup>41</sup> as approved by the PSST. To ensure ongoing interoperability as networks evolve, the Petitioners should also be required to meet such requirements as they are updated from time to time by the PSST through mandatory collaboration between the Petitioners and the PSST (*i.e.*, Petitioners will need to update their networks as standards for the nationwide network are updated).<sup>42</sup> With respect to a uniform technology, the PSST notes that all of the major national public safety organizations, including the PSST, have recently endorsed Long Term Evolution (“LTE”) technology as their choice for the nationwide network. With respect to roaming, any locally built, stand-alone systems must be designed to allow local users to roam nationally when outside the local network. In addition, systems must be designed to allow other (*i.e.*, non-local) users of the nationwide network to roam onto the system when in the local network area. Petitioners also should be required to offer broadband service to any eligible public safety entity requesting such service within a Petitioner’s system footprint.

Moreover, the Commission should ensure that the needs of public safety entities serving smaller communities and rural areas are met, and full interoperability can advance this objective.<sup>43</sup> Although cities, regions, and states with sufficient resources should be able to build out public safety broadband systems as expeditiously as possible, stand-alone public safety systems that leave islands of incompatibility within a nationwide broadband network are contrary

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<sup>41</sup> *See, e.g.*, PSST Broadband Plan Reply Comments at 5; APCO Comments at 9-10; APCO Broadband Plan Comments at 5-6 (supporting nationwide interoperability and roaming requirements); Comments of NENA (National Emergency Number Association), GN Docket No. 09-51, 8 (filed June 8, 2009) (supporting a national network with a single standard and technology platform).

<sup>42</sup> APCO Comments at 10 (stating that the FCC “should mandate that all deployment in the 700 MHz public safety spectrum comply with the technology standard approved by the national public safety broadband licensee, as updated or amended from time to time”). The Commission can enforce this requirement by conditioning any waiver relief on continued interoperability with the future nationwide network.

<sup>43</sup> PSST Broadband Plan Reply Comments at 6.

to the Commission’s public safety goals. In addition, authorizing incompatible networks may disfavor public safety entities with limited resources, including those in small communities and in rural areas, because those entities may not have access to the same technologies and equipment as those available in major metropolitan areas. As mentioned above, with a nationwide, interoperable network, all public safety entities will have access to the same quality and range of advanced wireless broadband services.

#### **G. Mutually Exclusive Waivers**

The FCC should require Petitioners and other parties that file mutually exclusive waiver requests (*i.e.*, requests for local, state, or regional systems that overlap with each other geographically) to coordinate with one another to resolve conflicts. It could also require the “overlapping” parties to file a joint request. As stated above, parties seeking waiver relief should be required to provide documentation of substantial support from public safety agencies that would be served by the proposed broadband system. If the Commission implements these procedures, it will be unnecessary to limit waivers to large geographic regions (such as states) and impose a blanket prohibition against Petitions to build out small localized systems.<sup>44</sup>

#### **H. Enforcement**

If the Commission grants some or all of the Petitions, it should ensure that early builders comply with all applicable waiver conditions, including those discussed herein, so that their systems do not undermine the FCC’s public safety and interoperability goals. The PSST also supports vigilant monitoring over the deployment and operation of Petitioners’ systems to ensure that Petitioners in fact carry through on their commitments to bring advanced broadband services

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<sup>44</sup> See also APCO Comments at 11 (stating that statewide deployments will be “far more expensive and difficult to deploy,” and that “most states will be inclined to defer to the national network to provide public safety broadband communications for most, if not all, of the public safety agencies within those states”).

to public safety users expeditiously. As noted above, the Commission should, at a minimum, require periodic reporting and compliance certifications from all Petitioners. In addition to the FCC's enforcement efforts, the PSST will have certain monitoring and oversight responsibilities in its role as spectrum lessor and can assist the Commission through these activities.

In the *Notice*, the Commission asks whether all conditions should be identical for each petitioner and whether continued relief for one Petitioner should be conditioned on compliance by all Petitioners receiving relief.<sup>45</sup> Although the PSST expects that certain conditions (*e.g.*, those related to interoperability and spectrum leasing) will be essentially the same for all Petitioners, certain Petitions may raise unique issues – particularly after detailed technical and financial information is submitted to the FCC. Thus, the Commission should retain flexibility to impose conditions that are tailored to individual Petitioners. In addition, it is unnecessary and impractical to condition relief for one Petitioner on compliance by all Petitioners receiving relief, particularly as more local, state, and regional systems are deployed on the PSBL spectrum. Instead, vigilant enforcement of the conditions is sufficient to maintain the integrity of the Commission's public safety and interoperability goals.

### **I. Permissible Users**

The PSBL spectrum is currently allocated for “public safety services” under Section 337 of the Communications Act, as amended.<sup>46</sup> Because the Commission cannot waive a statutory requirement, all of the Petitioner's proposed systems must be deployed consistent with Section 337. Although most Petitions propose system uses that appear consistent with Section 337, the Commission may need to seek additional information or require ongoing certifications from Petitioners regarding compliance with Section 337's permissible use restrictions. As discussed

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<sup>45</sup> *Notice* at 8.

<sup>46</sup> 47 U.S.C. § 337.

below, the Flow Mobile and North Dakota Petitions do not satisfy the requirements of Section 337.

**J. Flow Mobile and North Dakota Petitions**

The Flow Mobile and North Dakota Petitions raise substantial concerns under Section 337 and the Commission’s public safety and interoperability goals. Flow Mobile and North Dakota have already modified their original Petitions, but additional revisions must be made before the FCC grants waiver relief.

As an initial matter, the “commercial and residential services” Flow Mobile proposes<sup>47</sup> do not qualify as “public safety services” under Section 337.<sup>48</sup> In addition, Flow Mobile does not meet Section 337’s requirement that public safety services be provided by “State or local government entities” or “by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services.”<sup>49</sup>

Even if Flow Mobile (or North Dakota, acting on Flow Mobile’s behalf) fell within Section 337’s limitations, however, the current network proposal in both the Flow Mobile and North Dakota Petitions would undermine the FCC’s public safety and interoperability goals. The Flow Mobile and North Dakota Petitions contemplate providing broadband services on spectrum currently designated for public safety narrowband services. Such activities could pose interference concerns for narrowband systems in nearby regions. Also, as APCO notes, the Commission should be concerned about setting precedent that allows parties to “pave over”

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<sup>47</sup> Waiver – Expedited Action Requested, Request by New EA, Inc. dba Flow Mobile Request for Waiver of the Commission’s Rules to Deploy a 700 MHz Public Safety Interoperable Broadband Network That Can Be Integrated into the Public-Private Partnership, PS Docket No. 06-229, 5 (filed July 7, 2009) (“Flow Mobile Petition”).

<sup>48</sup> 47 U.S.C. § 337(f)(1).

<sup>49</sup> *Id.* § 337(f)(1)(B).

narrowband channels.<sup>50</sup> Thus, it should require North Dakota to modify its Petition to use only the broadband PSBL spectrum pending any availability of the D Block, which could also be added to the waiver at a later date if Congress takes action to reallocate the D Block to public safety.

The North Dakota and Flow Mobile proposals to deploy “4-G-like” networks<sup>51</sup> are vague and appear inconsistent with the Commission’s nationwide interoperability goals. As discussed above, the FCC should require Petitioners to ensure and certify that their proposed networks will be (and will remain) fully interoperable with the future nationwide public safety broadband network. Therefore, in addition to requiring North Dakota to modify its Petition to remove use of the narrowband spectrum, the FCC should require North Dakota to supplement its Petition to provide additional details regarding the proposed network’s interoperability potential.

#### **IV. CONCLUSION**

For the foregoing reasons, the PSST encourages the FCC to facilitate broadband deployment for public safety by granting the early buildout waiver requests filed by local, state, and regional public safety Petitioners. Such grants should be subject to the conditions discussed herein that are designed to ensure that those networks advance the Commission’s public safety and nationwide interoperability goals. In addition, the Commission should make sure that any relief provided to the Petitioners establishes or maintains a reliable funding mechanism for the PSST in its role as the nationwide Public Safety Broadband Licensee. Finally, the FCC should

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<sup>50</sup> APCO Comments at 14.

<sup>51</sup> Flow Mobile Petition at 2, 5, 8; Waiver – Expedited Action Requested, Request by the State of North Dakota for Waiver of the Commission’s Rules to Deploy a 700 MHz Public Safety Interoperable Broadband Network That Can Be Integrated into the Public-Private Partnership, PS Docket No. 06-229, 2, 4, 5 (filed Aug. 18, 2009).

support public safety's ongoing efforts to develop a nationwide, interoperable, wireless broadband network.

Respectfully submitted,



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