

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

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

COMMENTS OF NENA

I. INTRODUCTION AND SUMMARY

The National Emergency Number Association (“NENA”) hereby responds to the above-captioned proceeding opened by the Federal Communications Commission’s (“FCC” or “Commission”) on August 14, 2009.¹ In the *Notice*, the Public Safety and Homeland Security Bureau seeks comment on thirteen waiver petitions filed by entities (collectively, the “Petitioners”) who wish to deploy public safety wireless broadband systems on a local or regional basis utilizing spectrum currently licensed to the Public Safety Spectrum Trust (“PSST”). The *Notice* seeks comment on several aspects of the requested waivers and invites comments to refresh the record on various questions raised in the *700 MHz Third Further Notice*² implicated by the waiver requests. NENA appreciates the Commission’s desire to assess the full range of alternatives for addressing the waiver requests, while also avoiding the prejudgment of pending issues in the Commission’s rulemaking concerning the D Block and the establishment of a nation-wide wireless public safety broadband network.

NENA commends the FCC for its continued emphasis on public safety broadband needs

¹ *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*”).

² *Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, 23 FCC Rcd 14301 (2008) (“*700 MHz Third Further Notice*”).

in the context of the D block proceeding and the National Broadband Plan. Hundreds of millions of 9-1-1 calls are made every year by citizens who are increasingly utilizing innovative forms of voice, video and data services. Yet, today, many 9-1-1/emergency communication centers remain primarily limited to voice-only communications. In the near future, broadband-enabled 9-1-1/emergency communications centers will be pushing and pulling information not only from the 9-1-1 caller, but also from other external data sources and sharing that information with other agencies and responders in the field. The ability to move data from the 9-1-1/emergency communication center to individual mobile responders is of critical importance to NENA. Therefore, establishing a nation-wide wireless public safety broadband network, enabling the services and applications made possible by broadband, and ensuring that funding is available for all emergency response organizations to access broadband (in all forms), is essential.

In an August 12, 2009 letter to Chairman Genachowski³ and in testimony before the House Energy and Commerce Committee, Subcommittee on Communications, Technology, and the Internet, on September 24, 2009⁴, NENA made clear that its fundamental objectives in this discussion are to ensure that:

- a public safety wireless broadband network, or network of networks, is built nation-wide;
- all public safety agencies in all areas of the country have priority access to the network at affordable rates and on favorable terms;
- a known and recurring revenue source is available to pay for public safety access to and use of (hardware, software, applications, training) the broadband network;

³ Letter to Julius Genachowski, Chairman, Federal Communications Commission, from NENA CEO Brian Fontes, (August 12, 2009); available at <http://www.nena.org/sites/default/files/D%20Block%20Alternative%20Proposal%20letter%208-12.pdf>.

⁴ Written Testimony of Brian Fontes, National Emergency Number Association, before the House of Representatives, Committee on Energy and Commerce, Subcommittee on Communications, Technology, and the Internet (September 24, 2009); available at http://www.nena.org/sites/default/files/Brian%20Fontes%20Testimony%209.24.09_0.pdf.

- public safety is able to benefit from the substantial research and development of the commercial wireless industry; and
- sufficient oversight and enforcement of agreed upon requirements for the nation-wide system is ensured.

As the Commission addresses the important near-term considerations of any state or local waiver requests, NENA encourages the Commission to consider these objectives as it works toward the establishment of a nation-wide system. Any decisions the Commission makes today need to be made with an eye towards the end goal and must not in any way limit the FCC's potential policymaking options in the future.

For any petitioner to receive a waiver, at a minimum, the following conditions should be met:

- commitment to integrate its local or regional network into the national framework and adhere to all of the specifications required by the FCC in its final rules;
- commitment to ensure interoperability between other local or regional systems and to allow roaming by all authorized entities;
- commitment to use a common air interface standard identified by the Commission or the PSST (*e.g.* Long Term Evolution or LTE) for the nation-wide system, including a commitment to update its systems to current versions of the standard as may be necessary;
- demonstration that initial funding is currently available, and that the jurisdiction is committed to making long-term funding available, to build, operate, maintain and ensure access to the broadband network.

II. RESPONSE TO ISSUES RAISED IN THE *NOTICE*

NENA does not take a position on the merits of any individual waiver petition or whether waivers should be granted in general. However, we offer these comments to guide the Commission's action if a decision to issue waivers is granted. NENA encourages the Commission to weigh carefully the impact on granting these waivers, and potentially additional waivers, on its ability to issue rules that will result in a nation-wide public safety broadband network that is available to all public safety agencies.

Timing

It is currently unclear as to when the Commission will issue final rules on the D Block and the establishment of a nation-wide public safety wireless broadband network. However, that determination is a relevant factor in considering if and when to grant waivers for early buildout utilizing spectrum allocated for public safety broadband services. If the Commission intends to issue final rules for the nation-wide system in the near future (*i.e.* before the release of the National Broadband Plan), it may want to consider addressing the issues raised in the waiver petitions in its final rules. This is particularly the case given the fact that petitioners will likely be asked to supplement the record with additional information before being granted a waiver⁵, a fact that will lengthen the process. On the other hand, if it is uncertain when the Commission will release final rules, then more weight should be given to promptly addressing the waiver petitions.

Authority to Operate

NENA will not specifically address the legal authority of the PSST to grant a sublicense or to enable long-term *de facto* leasing arrangements. This legal issue has been addressed by APCO⁶ and will be addressed by the PSST in its comments. However, if the Commission concludes that sufficient authority exists for the type of arrangements described by APCO and the petitioners, NENA believes that is very important for the FCC to provide significant oversight over the agreements between the PSST and individual entities seeking access to spectrum under the control of the PSST. FCC oversight is essential for a transparent and consistent process and to ensure strict adherence to all waiver conditions. It will also be

⁵ 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 at 9 (filed September 24, 2009)(“APCO Comments”).

⁶ APCO Comments at 5-6.

important for the FCC to learn from the technical and operational experiences of the early buildout process to inform its broader policymaking efforts.

If the PSST is to derive fees from any leasing arrangements, the Commission should make clear that any such fees may only be used to support activities directly related to the deployment and utilization of public safety wireless broadband networks. Additionally, the Commission should make clear that if a waiver is granted and at any time the jurisdiction seeks to “leverage” its public safety spectrum by entering into an agreement with a commercial partner (*e.g.* to lease excess capacity to a commercial carrier) any revenues derived from such “leveraging” must only be used for public safety 700 MHz broadband services. No entity receiving a waiver should be permitted to leverage its public safety spectrum to derive revenues that are used for unrelated non-public safety broadband purposes.

Early Buildout Rules

The current rules anticipated a successful D Block auction and cannot be applied to the pending petitions. A waiver of the current rules is required. This section of the *Notice* also asks how the Commission should address any costs that might be incurred by the integration of early local/regional networks into a future national public safety broadband network and whether relief should be conditioned on interoperability with future national or regional networks, including any associated costs that may be incurred. At this point, these integration costs, and whose responsibility it is to pay the costs, remain unknown. Virtually all of the waiver requests indicate that they will integrate into the nation-wide network, but funding for this integration is not clearly identified, nor are the costs of such integration known. This is an important issue and there is insufficient information in the waiver requests on the subject of these costs.

Petitioners claiming that they intend to integrate their local or regional network into the

nation-wide network without really knowing what that entails prior to the issuance of final rules by the FCC should give the Commission pause. This relates to the timing issue discussed above. If the Commission is prepared to issue final rules soon, then it may want to delay granting any waivers in the very near future and address the issues raised by the petitioners, including integration costs, in the final rules. Whatever the Commission ultimately decides on this topic, it must ensure that public safety organizations that do not participate in early buildout do not in any way end up paying for the decisions of those few entities that choose to buildout early. In short, the issue of expected integration costs and responsibility for paying such costs needs to be more fully vetted.

Sufficiency of the Pleadings

After reviewing comments and reply comments in response to this *Notice*, the Commission must determine if additional information is needed from the petitioners. It is certain that more details will be needed from some, if not all, petitioners, before waivers can be granted as a result of suggestions in response to this *Notice*. The most important issue is funding. Petitioners should be required to demonstrate that they have funds currently available and presently allocated for the purpose of deploying a public safety broadband network. At a minimum, the budgeting authority for the jurisdiction in question must put in writing its commitment to make funds available through the budget process. The commitment must ensure funds will be in place for initial and recurring costs and that such funds will be sufficient to pay for the entire network coverage area for which a waiver is being sought.

Proposals should also provide sufficient detail on the technical specifications and system applications and services of the planned network, including details on how such a network will be integrated into the nation-wide network at a later date. NENA agrees with APCO that there

should be evidence of “an actual plan to deploy, personnel and systems in place to manage the deployment, a vendor selection process, and an estimated deployment schedule,” as well as “substantial support from the public safety agencies in the geographic region to be served by the proposed system.”⁷

Interoperability

Requiring that petitioners commit to making their networks interoperable with all other 700 MHz public safety wireless broadband networks is essential. To that end, NENA was impressed with the significant work and recent recommendations on interoperability and roaming made by the National Public Safety Telecommunications Council’s (“NPSTC”) 700 MHz Public Safety Broadband Task Force and believes the report should be included in the record of this proceeding.⁸ To ensure interoperability, the FCC should require a commitment to those applications that are essential to interoperability and roaming.⁹

In the *Notice* the Commission reiterated a tentative determination from the *700 MHz Third Further Notice* stating that, “rely[ing] solely on local and state entities to build their own networks in the 700 MHz public safety broadband spectrum” was not feasible, and that by allowing such localized build out, “we will again end up with balkanized networks incapable of even minimum interoperability.”¹⁰ NENA continues to share these concerns, but the release of the NPSTC 700 MHz Public Safety Broadband Task Force Report and Recommendations on interoperability and roaming should limit the potential for non-interoperable systems.¹¹

⁷ APCO Comments at 9.

⁸ National Public Safety Telecommunications System, 700 MHz Public Safety Broadband Task Force Report and Recommendations (September 4, 2009); available at http://www.npstc.org/documents/700_MHz_BBTF_Final_Report_0090904_v1_1.pdf.

⁹ *See, e.g.*, NPSTC 700 MHz Broadband Task Force Report and Recommendations and APCO Comments at 10.

¹⁰ *700 MHz Third Further Notice*, 23 FCC Rcd at 14321 ¶ 54.

¹¹ APCO also recently announced that it intends to develop standards for 700 MHz broadband networks building off of the NPSTC 700 MHz Broadband Task Force recommendations. *See APCO Announces Intent To Develop Standards For Build Out Of 700 MHz Broadband Network*, Press Release (October 14, 2009); available at

However, while the NPSTC report is a good foundational document, and while the PSST is currently reviewing its recommendations for future applicability, the report is a non-enforceable document. To the extent that concerns over further balkanization of non-interoperable public safety systems are reduced by this report and related efforts, it must be recognized that the importance of this report depends on the actual implementation of its recommendations. Therefore, NENA reiterates the critical importance of stringent oversight of the early deployment process by the FCC, working with the PSST and individual public safety entities.

NENA has not taken, and does not here take, a position on the ideal number of regional networks that should be permitted (assuming there is not a single D Block licensee), but it is important to recognize the number of licensees (or sub-licensees to the PSST) will potentially impact interoperability. While agreed upon national interoperability and roaming requirements will help ensure interoperable systems, as more local and regional networks are deployed there is an increasing likelihood of some non-interoperable networks. A large number of local and regional networks increases the difficulty of overseeing the entire nation-wide system and makes nation-wide interoperability a challenge, even with national interoperability recommendations. This again underscores the critical need for FCC oversight, working with the PSST and individual public safety entities.

Finally, requiring all entities to commit to deploying a common technology standard (*e.g.* LTE), and requiring such public safety entities to continually operate on the most current version of the standard, is also essential.

Mutually Exclusive Waivers

http://www.apointl.org/new/news/standards_700mhz.php. This effort also has the potential to limit concerns of islands of non-interoperable balkanized public safety broadband networks.

Where there are overlapping areas covered by separate waivers (*e.g.* New York State and New York City), the Commission should require a demonstration of coordination and a specific plan of how the entities propose to work together before a waiver is granted. As stated above, NENA has not taken a position on the ideal number or size of local, regional or state networks that should be permitted. However, the issue does impact the likelihood of success of a nationwide interoperable broadband network. On the one hand, limiting the number of regional networks to 50 states plus the territories would reduce overall complexity of the process and potentially increases the likelihood of interoperability between public safety broadband networks. On the other hand, funding for state-wide public safety broadband networks is not readily available in most states, particularly in the current economic environment. Regardless of the size of the regions receiving a waiver, the key is for the Commission to require a demonstration of coordination and a specific plan outlining how the entities propose to work together before a waiver is granted.

Enforcement

Non-adherence to waiver conditions could have a significantly negative impact on the goal of establishing an interoperable nation-wide broadband network. It is critical that the FCC provide sufficient oversight over the process. Failure to meet required conditions should be met with an appropriate FCC response based on the importance of the individual requirement and severity of the violation. For example, if an entity fails to have sufficient funds to build a network, the Commission should rescind the waiver. If an entity fails to comply with a technical or interoperability requirement, the entity should be given an opportunity to correct the non-compliance. However, if a remedy is not provided in a reasonable time-frame, the Commission should consider rescinding the waiver. Adherence to all waiver conditions is essential,

particularly in light of the commitment to integrate local/regional broadband networks into the nation-wide network. Any violations of waiver conditions have the potential to negatively impact the viability of an interoperable nation-wide public safety broadband network. Therefore, failure to comply with all requirements should not be treated lightly.

APCO Comments on NENA Proposal

In its September 22 response to this *Notice*, APCO offered comments on, “the suggestion from NENA that the current public safety broadband spectrum be auctioned and that, in return, public safety users receive lower cost access to commercial networks.”¹² Characterizing NENA’s position as limited to the quoted text above is simply inaccurate and needs to be corrected. As stated in a letter to Chairman Genachowski on August 12, 2009, NENA believes a successful D Block auction resulting on a public/private partnership is still possible as originally envisioned with necessary modifications.

NENA also presented an alternative option that would combine the 10 MHz allocated for public safety broadband use with the adjacent D Block 10 MHz, thus creating a 20 MHz block to be auctioned to a commercial entity or entities. Under the proposal, in exchange for reallocating the public safety broadband spectrum, NENA proposed the following: half of the auction revenue be placed into a public safety broadband trust as a down payment on public safety access to and use of the network (a trust to which additional and, ideally, recurring funds could be added); public safety would be granted access to the full 20 MHz commercial block and on a priority basis when needed; public safety would have to be assured of discounted rates to access the network; and public safety would need to have guaranteed access to a renewable source of funding to access and utilize the network. Public safety also would benefit from build out requirements as part of the license requirements, in addition to benefiting from commercial

¹² APCO Comments at 3.

research and development in technology. Absent each of these requirements, NENA would not support reallocating the public safety broadband spectrum.

In essence, this would be an exchange of 10 MHz of public safety spectrum for something of equal or greater value – a nation-wide broadband network built and paid for by commercial partners with guaranteed access at lowered rates and priority access for public safety and with a requirement that a long-term funding source is identified. The proposal is not to have public safety merely rely on a commercial network as APCO implies. Nor has NENA said that under our proposal areas that do have sufficient near and long-term resources to deploy their own public safety broadband networks should not receive appropriate consideration.

In criticizing NENA's proposal and describing the inability of commercial networks to meet public safety requirements, APCO stated that, "[p]ublic safety systems must also be extremely reliable with little or no expected outage times, include redundancy wherever feasible, be built to withstand natural disasters, and continue to operate during extended power outages." It is unclear from these comments, in the context of this *Notice* seeking comments on waiver petitions, if these characteristics are meant to be suggested waiver conditions or if they were mentioned simply to demonstrate why public safety cannot rely on commercial systems. A clarification as to whether APCO believes waivers should be conditioned on ensuring such characteristics might be useful.

III. CONCLUSION

For the foregoing reasons, if the Commission grants the requested waivers, it should require adherence to the conditions herein described. The Commission should also ensure that the FCC's potential policymaking options in the future are in no way compromised by allowing early buildout. The FCC must remain focused on the ultimate goal of a nation-wide wireless

public safety broadband network available to all public safety agencies. The Commission cannot lose sight of the fact that the original D Block public/private partnership (and NENA's recent alternative proposal) was designed to address the significant funding challenges faced by public safety. Therefore, while allowing early buildout in some areas may be feasible, it must not compromise the Commission's ability to issue future rules that address the funding challenges faced by the vast majority of jurisdictions in America.

Respectfully submitted,

NENA

By ___/s/ _____

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October 16, 2009

Certificate of Service

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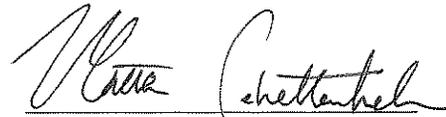
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