

**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

Comments of the City Of New York

I. Introduction

The City Of New York respectfully submits these comments in response to the Commission's Public Notice, DA 09-1819, dated August 14, 2009, regarding the pending petitions for waivers seeking to deploy local or regional 700MHz. broadband public safety networks prior to the deployment of the nationwide network. The City appreciates the Commission affording us this opportunity to express our views regarding this critical and timely issue.

New York City, with a population exceeding eight million citizens, is among the most densely populated areas of the nation. The City's five boroughs comprise approximately 300 square miles of land, and are bordered by 600 miles of shoreline. The skyscraper canyons of Manhattan and of downtown Brooklyn combined with the suburban areas of Staten Island, eastern Queens and the Rockaways and the surrounding waterways present a varied and challenging radio frequency environment for effective wireless

communications. The massive transportation infrastructure for highway, rail, subways, airports and harbors heighten this challenging communications landscape.

II. Background

In April 2007, the Commission issued a Report and Order and Further Notice Of Proposed Rulemaking re-designating the 700 MHz. public safety wide band spectrum to broadband spectrum and linking this spectrum to the winner of the D Block auction, with the provision that the D block auction winner enter into a Public Private partnership and construct a nationwide shared commercial / public safety broadband network to public safety reliability and availability standards.

In January 2008 The Commission conducted an auction of 700 MHz. spectrum. Although the overall financial goal of the auction was met, bidding for the D Block fell far short of meeting the minimum reserve price

III. Summary

The City of New York supports the assignment of the D Block to public safety rather than being re-auctioned. The City of New York supports the timely construction and deployment of a nationwide 700 MHz. public safety broadband network licensed to a single entity, the PSBL. However we realize that a nationwide deployment may take years. In the meantime, several petitioners have filed waiver requests with the Commission seeking permission to construct early public safety 700 MHz. broadband networks. Wireless networks typically originate in urban areas and spread to rural areas

over time. It is therefore not be surprising that New York City and several other large urban areas filed waiver requests. However, it is encouraging that some rural jurisdictions also filed waiver requests. The groundswell of interest displayed by public safety entities from both urban and rural areas eager to deploy early 700MHz. broadband networks challenges the assumption that rural areas will be unable to form public private partnerships to fund their network deployments. Apparently, some already have.

The City of New York supports the choice of LTE as the technology platform of choice and urges the Commission to expeditiously grant waiver requests that meet LTE technical roaming and interoperability standards adapted by the 3GPP and endorsed by the PSBL. Many of these standards are discussed in the NPSTC 700 MHz. Public Safety Broadband Task Force Report and Recommendations. Since LTE is a new technology additional standards are in the process of being developed and have not been endorsed by the Third Generation Partnership Project (3GPP). As recommended by the NPSTC 700MHz. Broadband Taskforce, an advisory group should be established to monitor the progress of additional standard development and recommend the adoption of these standards by the PSBL when appropriate. Entities granted waivers to deploy networks in advance of the nationwide network should be required to participate in this process.¹

IV. Responses to Questions Posed in the Public Notice

The following section is our response to answers posed by the Commission in Appendix A to the Public Notice

¹ See NPSTC 700MHz. BBTF Report and Recommendations Section 6, p10.

1.) Timing

A proper response to this issue requires knowledge of the Commission's timetable in completing their rulemaking process. Absent this knowledge, we support issuing waivers to qualified applicants prior to a formal rulemaking if the rulemaking process will take longer than one year. A longer delay may cause momentum to be lost and Grant funding application deadlines to expire. The Commission should act upon these petitions quickly since early network deployments will serve as a model and a test bed for the nationwide network. Lessons learned on a smaller scale will save time and financial resources when the nationwide network is ultimately deployed. Those who are willing and able to deploy early should be encouraged to proceed sooner rather than later if their application meets all of the Commission's requirements.

2.) Authority To Operate

The Commission should either directly license the waiver recipients or permit the PSBL to grant "sublicense" authorizations or "spectrum leases" to waiver recipients. If the Commission decides that sublicenses or spectrum leases are appropriate, they should grant a locality the authority to construct, operate and maintain a 700 MHz. broadband network prior to the eventual deployment of a national network. The City of New York would prefer direct licensing, but would be amenable to a "sub-license" or long term "spectrum lease" if that is the most legally appropriate mechanism to accomplish the same goal. We defer to the Commission's legal council to make that judgment. If sublicensing or spectrum leases are the approved mechanism, we agree that a single nationwide entity, the PSBL, should continue to hold either the "primary license" or

“spectrum lease” and that early networks should be built to standards developed in concert with the PSBL.

Regarding the technical architecture of the network, we believe that much work is already underway and many of the preliminary decisions have been made. We maintain, however, that if a regional or local entity builds a network that it remain the property of the local entity and remain under its operational control after the nationwide network is deployed.

3.) Existing Early Buildout Rules

Circumstances have changed significantly since the existing early buildout rules were proposed, therefore the Commission should waive the existing rules and grant conditional waivers. Among these conditions should be a requirement that networks built in advance of the nationwide network ultimately be integrated into a nationwide network, but not be subsumed into the national network. Rather, early deployed local networks should remain semi-autonomous, retaining ownership and control of their networks while being fully interoperable with the nationwide network and subject to any existing and future technical requirements established for the nationwide network by the PSBL. The conditions of the waivers can be included as an integral part of a future rulemaking.

4.) Narrowband Operations

Relocation costs for 700 MHz. narrowband licensees should be borne by the 700 MHz. broadband network owners deploying 700 MHz. broadband networks on the public Safety and D Block within the same geography; whether these network owners are public entities, private entities or public private partnerships.

5.) Sufficiency Of Pleading

The Commission should apply the same standards as it applies to other waiver petitions. If additional information is required, the Commission should inform the petitioner and establish a reasonable time period for the petitioner to respond. Early network deployments should be encouraged, as their experience will provide data crucial for the national network deployment. Significant additional requirements should not be imposed as they would only serve to delay the deployment of these early networks.

6.) Interoperability

Since LTE has been endorsed as the technology of choice for the 700MHz. public safety nationwide broadband network by NPSTC, APCO, NENA, the PSBL and a consensus of public safety organizations represented by the Major Cities Chiefs Association. The adoption of a single technology, LTE will ensure interoperability among the early networks and the nationwide network once deployed. To further this goal, the Commission should mandate that all network deployments comply with LTE standards. Provisions for roaming, including the use a third party clearinghouse to facilitate nationwide roaming between noncontiguous networks, and priority access for public

safety users, should be mandated as a condition of any waivers granted. Many of these issues are discussed in the NPSTC 700MHz. Public Safety Broadband Task Force Report and Recommendations.²

7.) Mutually Exclusive Waivers

The Commission should require entities applying for waivers covering the same geography to present a plan detailing a mechanism to achieve seamless network operation transparent to the user, in overlap areas. Alternatively, petitioners may choose to amend their petitions to eliminate any overlap areas. Since wireless networks traditionally originate in urban areas and spread to more rural areas over time, we do not believe that the Commission should limit waivers to States or other large geographic regions.

8.) Enforcement

Common rules should be established to the greatest extent possible; however unique network requirements set forth in a Petitioner's waiver request should be taken into account. Therefore, the Commission should consider rule modifications designed to accommodate unique circumstances identified in the Petitioner's filing.

9.) Permissible Users

An overwhelming majority of public safety organizations have called for the D Block to be reallocated to public safety. Public private partnerships will likely be required to financially support the network in most areas. Since the spectrum blocks are adjacent, spectrum aggregation is a logical network design choice to improve capacity and

² See 700MHz. Public Safety Broadband Task Force Report and Recommendations Appendix D, p31-36

spectrum efficiency. To that end, the statute defining permissible use (Section 337, f) should be amended to permit public private partnerships, and to allow both public safety and commercial users access to both the D Block and the Public Safety broadband spectrum, while maintaining public safety priority access across the entire spectrum.

10.) Flow Mobile and North Dakota Petitions

The City Of New York supports innovative approaches to form public private partnerships. We also believe that local jurisdictions are the best judges of their requirements. However the petitions filed by Flow Mobile and North Dakota do not specify a technology standard. As previously stated, our position is that the Commission mandate LTE as the technology standard for the 700 MHz. public safety broadband networks. Also as previously stated, North Dakota can either be directly licensed by the Commission or a “sublicense” or “spectrum lease” may be issued to North Dakota by the PSBL provided that they comply with standards established for both the nationwide network and other early deployed local networks.

We are in favor of local decision making and network control. Although the City of New York believes that mission critical voice over LTE will be technically available within three to five years, we nevertheless object to the proposed use of the 700 MHz. narrowband channels in North Dakota’s proposed broadband network. The 700 MHz. narrowband channels should be preserved in tact nationwide since they are an integral part of public safety mission critical voice networks in many jurisdictions and will remain

so for the foreseeable future. In particular, we strongly oppose the incorporation of 700 MHz. narrowband *interoperability* channels in any 700MHz. broadband network design.

V. Conclusion

The Commission should evaluate all filed waiver requests, grant those in compliance with the Commissions established standards, and seek additional information from those applicants that fall short. The Commission should adapt the recommendations of the NPSTC 700 MHz. Broadband Taskforce regarding technology platform and interoperability. The Commission should support a change in statute to permit commercial users on both the D Block and the Public Safety 700 MHz. Broadband spectrum. The Commission should consider innovative public private partnerships but mandate that they comply with the technology and interoperability standards established for the nationwide network. The Commission should not permit broadband operations on 700 MHz. narrowband channels, particularly the 700Mhz. narrowband interoperability channels.

Respectfully Submitted,

/s/_____

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