

**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

**REPLY COMMENTS OF THE STATE OF NEW MEXICO  
ON  
PETITIONS FOR WAIVER TO DEPLOY 700 MHz BROADBAND NETWORKS**

The State of New Mexico (“SONM”) hereby submits the following reply comments in the above-captioned proceeding regarding the petitions for waiver filed by various entities seeking authority to deploy public safety broadband systems on a local, state or regional basis in the 700 MHz public safety spectrum.<sup>1</sup>

SONM is among the petitioners, and seeks authority to operate a statewide public safety system within the State of New Mexico as part of the interoperable national broadband public safety network. As the Commission is aware, many rural regions of New Mexico are sparsely populated with commercial providers facing significant economic challenges in serving these areas. Without New Mexico’s involvement in the statewide buildout, it is likely that many parts of the State will be among the last to be built out as part of the national 700 MHz public safety broadband network. Indeed, absent State involvement, some rural portions of New Mexico may never be fully constructed.

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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, *Public Notice*, PS Docket No. 06-229, DA 09-1819 (August 14, 2009) (“Public Notice”).

As demonstrated by the comments in this proceeding there is overwhelming support for the Commission to allow for the early buildout of portions of the interoperable national broadband public safety network. Based on this record, the Commission should grant SONM authority to move forward with the deployment of the New Mexico portion of the interoperable national broadband public safety network in accordance with a negotiated long-term lease between SONM and the Public Safety Spectrum Trust (“PSST”), the national broadband licensee. While the general items of a lease should be established by the Commission in this proceeding, the PSST and the petitioners, including SONM, should be allowed to freely negotiate the ultimate terms of the lease subject to final FCC approval.

**THE RECORD SUPPORTS EARLY BUILDOUT OF PORTIONS OF THE INTEROPERABLE NATIONWIDE BROADBAND 700 MHZ NETWORK.**

There is overwhelming support from a wide group of commenters, including public safety interest groups, commercial operators and manufacturers, to allow portions of the nationwide interoperable network to be built out by early builders. Most notably, the PSST, the national licensee, “supports the Petitioners’ goal of deploying local and regional wireless broadband networks before or during the construction of the nationwide network.”<sup>2</sup> APCO also agrees with the adoption of FCC policies to promote the “dual deployment of local systems and a national network for the benefit of all public safety agencies.”<sup>3</sup> Motorola states, “Commission approval of these requests would be consistent with its statutory obligations, and, therefore, serve the public interest.”<sup>4</sup>

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<sup>2</sup> PSST comments, at p.2.

<sup>3</sup> APCO comments, at p.3.

<sup>4</sup> Motorola comments, at p. 3.

Many of the comments also support a system that will allow for public-private partnerships in the deployment of local, state and regional systems. For example, Verizon supports regional network deployment that will “facilitate public-private partnerships that leverage commercial infrastructure.”<sup>5</sup> Likewise, AT&T proposes that the Commission “adopt a ‘leveraged network’ approach ... that allows public safety to utilize commercial network resources and management to provide public safety with broadband communications capabilities.”<sup>6</sup>

SONM urges the Commission to adopt policies promoting the public-private partnership model as an option for early builders. While the use of public funding may be necessary in some geographic areas, partnerships with commercial entities will provide local, state and regional operators with the greatest opportunities for deployment in many cases. Indeed, it is likely that many buildouts will use a combination of public funding and public-private partnerships.

**THE COMMISSION SHOULD ALLOW THE WAIVER PETITIONERS AND THE PSST TO NEGOTIATE LONG-TERM LEASE AGREEMENTS, SUBJECT TO FINAL COMMISSION APPROVAL.**

All of the comments supporting the early builders’ petitions recognize that the Commission must establish some conditions on the buildouts to ensure these local, state and regional systems are interoperable with the nationwide broadband network. NPSTC supports granting the waivers “subject to conditions to ensure interoperability and to agreements between regional entities and the PSBL.”<sup>7</sup> The Telecommunications Industry

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<sup>5</sup> Verizon comments, at p. 2.

<sup>6</sup> AT&T comments, at p. 4.

<sup>7</sup> NPSTC comments, at p. 3.

Association (“TIA”) supports the waivers provided they are conditioned on “meeting network buildout and implementation requirements that will ensure compatibility with a nationwide interoperable public safety network.”<sup>8</sup> The Satellite Industry Association (“SIA”) takes no position on the individual waivers but argues that public safety users operating “pursuant to ‘early build-out’ waivers should be required to obtain and deploy dual-mode satellite terrestrial devices when such devices become available.”<sup>9</sup>

As set forth in its initial comments, SONM continues to believe that the best way to facilitate the early buildout of portions of the network while ensuring that critical technical and operational conditions are met on a national basis is to authorize the PSST to negotiate and enter into long-term lease agreements with the waiver applicants. Under the present rules, the PSST is ultimately responsible for the deployment of the *entire* 700 MHz public safety spectrum (pursuant to agreement with the D block winner). As the designated national licensee for this critical 700 MHz spectrum the PSST should likewise be entrusted with safeguarding the early buildout process.

The existing rules entrust the PSST with the role of defining the technical parameters and operational requirements of the nationwide system, and with negotiating a Network Sharing Agreement with the D Block winner. In establishing an early buildout process, the Commission need not undermine the critical role of the PSST in overseeing the buildout of the national system and in protecting the interests of the system’s public safety users. Nor should the FCC needlessly delay the process by subjecting applicants to another round (or rounds) of filings as part of a Commission pre-approval and/or review proceeding with a view to having construction and operational details worked out

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<sup>8</sup> Telecommunications Industry Association, at p.3.

<sup>9</sup> Satellite Industry Association comments, at p.3.

between the Commission and the individual waiver applicants in a cumbersome and time consuming notice and comment proceeding. The PSST, as the Public Safety Broadband Licensee, already has been approved and tasked as the appropriate entity for resolving such issues. The early builders are, after all, merely building and operating local and/or regional portions of the national broadband network to be overseen by the PSST.

Accordingly, what is needed to allow the waivers to go forward is for the Commission to establish a framework whereby the PSST is authorized and directed to allow buildout of spectrum by local, regional and state entities on a long-term de facto transfer lease basis. In this proceeding, the Commission should establish basic guidelines to allow technical, operational and governance issues to be resolved by the PSST in cooperation with the early builders. With such guidelines in place, the specific details of the lease arrangements should be left to good faith negotiations between the PSST and the lessees, subject to final FCC approval of each lease. Additionally, the Commission should direct the PSST to establish an advisory group made up of the early builders, that will work with and advise the PSST on issues affecting all of the buildouts to allow the lease negotiations and ensuing deployments to proceed in an efficient and coordinated fashion.

The primary objective of the Commission in reviewing negotiated leases should be to ensure that the early buildouts will be fully interoperable with the national broadband network, including the capability for nationwide roaming. There is no “one-size-fits-all” solution or formula for the early builder applicants. Obviously the solution to be applied in a place such as New York City may be vastly different from what will be required to buildout a largely rural state such as New Mexico. Accordingly, the

Commission should allow maximum flexibility for builders to work out creative and pragmatic solutions for implementing their local and/or regional portions of the national network, including public/private partnerships. In support of such flexibility, the Commission's guidelines should also make clear that proof of existing funding cannot be demanded as a pre-condition to a lease. Rather, if necessary, all lessees should be given a reasonable amount of time to obtain funding as a condition of the lease.

In sum, SONM believes that this leasing process will allow deployment of the national broadband network to commence in the most-timely fashion possible, and urges the Commission to adopt this approach to all early deployment requests.

**THE STATE OF NEW MEXICO SUPPORTS EFFORTS TO REALLOCATE THE D BLOCK TO PUBLIC SAFETY USE.**

The State of New Mexico agrees with those commenters, including the PSST, APCO and NPSTC who note the need for additional 700 MHz public safety spectrum in the more densely populated parts of the country—which includes large urban areas like Albuquerque.<sup>10</sup> As noted by the PSST there is currently a legislative effort to reallocate the D block to public safety use and specifically for use by the PSST (which would include availability for leasing arrangements). SONM believes that such a reallocation is in the best interests of the public safety community and joins in asking the Commission to support the legislative proposal requesting reallocation of the D Block spectrum.

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<sup>10</sup> Comments of PSST, at pp 4-7; Comments of APCO at p 4 ; Comments of NPSTC at p. 4.

**CONCLUSION**

In view of the foregoing, SONM requests that the Commission grant a waiver of the 700 MHz rules to allow for the early construction and deployment of an interoperable 700 MHz public safety system in the State of New Mexico.

Respectfully Submitted,

STATE OF NEW MEXICO  
OFFICE OF THE GOVERNOR

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