

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Petition for Waiver to Deploy 700 MHz) PS Docket Nos. 06-229
Public Safety Broadband Networks)
)
)

COMMENTS OF NEW EA DBA FLOW MOBILE

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TABLE OF CONTENTS

I. INTRODUCTION.....3

II. FLOW MOBILE AND NORTH DAKOTA PETITIONS.....7

III. FLOW MOBILE’S 4G LIKE TECHNOLOGY IS OPEN AND INTEROPERABLE.....8

A. CLARIFYING THE TECHNOLOGY.....8

B. LTE IS STILL IN THE DEVELOPMENT PHASE.....10

**IV. THE COMMISSION’S RULES SHOULD REQUIRE INTEROPERABILITY WHILE
REMAINING TECHNOLOGY NEUTRAL.....11**

**V. FLOW MOBILE AND NORTH DAKOTA’S PETITIONS COMPLY WITH THE
COMMISSION’S RULES.....13**

VI. USE OF NARROW BAND SPECTRUM.....17

**VII. FLOW MOBILE IS NOT ASKING THE COMMISSION TO ALLOW COMMERCIAL USE
OF THE PSBL UNDER ITS WAIVER PETITION.....17**

VIII. REALLOCATING BLOCK TO PUBLIC SAFETY.....18

IX. VERIZON 3G NETWORK AS AN INTERM SOLUTION.....19

X. RIPENESS.....19

XI. CONCLUSION.....20

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I. INTRODUCTION

New EA, dba Flow Mobile (“Flow Mobile”) submits these reply comments in response to the Commission’s Public Notice seeking comments on requests for waivers to deploy 700 MHz public safety broadband systems.¹ Flow Mobile reiterates its support for waivers to build out mobile broadband systems in the 700 MHz band, especially our request and the request of the State of North Dakota (“the waivers”).² Given the delay and uncertainty of when the 763-768/793-798 MHz band spectrum licensed to the Public Safety Broadband Licensee (PSBL) and the D Block (758-763/788-793

¹ 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”).

² State of New Jersey Petition, PS Docket No. 06-229 (filed Apr. 3, 2009) (New Jersey Petition); City of Boston Amended Request for Waiver, PS Docket No. 06-229 (filed May 28, 2009) (Boston Amended Petition); City and County of San Francisco, City of Oakland, City of San Jose Request for Waiver, PS Docket No. 06-229 (filed May 28, 2009) (Bay Area Amended Petition); City of New York Petition for Waiver, PS Docket No. 06-229 (filed June 8, 2009) (New York City Petition); District of Columbia Request for Waiver, PS Docket No. 06-229 (filed June 26, 2009) (DC Petition); New York State Request for Waiver, PS Docket No. 06-229 (filed June 30, 2009) (NYS Petition); New EA, Inc. dba Flow Mobile Request for Waiver, PS Docket No. 06-229 (filed July 7, 2009) (Flow Mobile Petition); City of Chesapeake, Virginia, Request for Waiver, PS Docket No. 06-229 (filed July 8, 2009) (Chesapeake Petition); City of San Antonio, Texas, Petition for Expedited Waiver, PS Docket No. 06-229 (filed July 10, 2009) (San Antonio Petition); State of New Mexico, Petition for Expedited Waiver, PS Docket No. 06-229 (filed July 10, 2009) (New Mexico Petition); Petition for Waiver of the City of Charlotte, North Carolina, PS Docket No. 06-229 (filed Aug 4, 2009) (Charlotte Petition); Petition for Expedited Waiver of the Iowa Public Safety Broadband Coalition, PS Docket No. 06-229 (filed Aug. 7, 2009) (Iowa Petition) (including the Counties of Blackhawk, Buchanan, Dubuque, Grundy, Johnson, Marshall, and Scott and the City of Cedar Rapids); State of North Dakota, Petition for Expedited Waiver, PS Docket No. 06-229 (filed August 18, 2009) (North Dakota Petition); (collectively, the “Petitioners”).

MHz) will be available for a nationwide build out of a public safety network, the Commission should grant the waivers to advance this important public safety initiative.

Flow Mobile supports a public-private partnership approach which indeed may be the only financially feasible way for many public safety users in rural states to access a mobile broadband network. Thus, we once again urge the Commission to move quickly and make the D Block available for licenses to pair with the PSBL spectrum, creating a joint use network that can be deployed as soon as the spectrum is made available. Meanwhile, as the Commission contemplates the best course of action for the D Block, it should open the PSBL spectrum for public safety use for jurisdictions that are ready to deploy interoperable mobile broadband systems. Such an undertaking is a much-needed course of action to enable first responders to provide essential public safety services to Americans.

Flow Mobile appreciates the comments filed by the Public Safety Spectrum Trust (PSST) and agrees completely that the Commission should address the waiver petitions without delay and not wait until the 700 MHz D Block rulemaking is resolved. Flow Mobile also agrees with the ten specific actions the PSST is requesting of the Commission regarding the waiver requests, with two clarifications.

First, Flow Mobile agrees that any public safety network deployed through the waiver requests must be “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.”³ However, it is important that a “uniform technology” does not mean that only one technology standard can be used for public safety service in 700 MHz.⁴ While Flow Mobile understands that the PSST has endorsed a particular standard as its preferred technology, Long Term Evolution (“LTE”), the Commission should not endorse one technology in its rules or allow for a circumstance to emerge where one technology is the de facto only technology allowed to serve public safety in the 700

³ PSST Comments at 2.

⁴ Id. at 2, 16-17.

MHz band. The LTE technology is still in development and may not be available for deployment for a couple of years. Commission rules should allow for open standards to co-exist with LTE or other proprietary standards. Flow Mobile seeks to use a proven technology standard, Wi-Fi, which is also the most interoperable standing in the world today. Thus, the Commission's rules should require interoperability and require all public safety 700 MHz systems to be interoperable without dictating a particular technology standard. Such a precedent would be crippling to the wireless industry and there is no reason to impose an impossible requirement on the Petitioners.

Flow Mobile believes that it is sufficient for the Commission to require interoperability as a condition of using public safety spectrum but not interpret this requirement to dictate one particular technology standard. Finally, the Flow Mobile technology will foster open access and will allow public safety and other users the benefits of access to lower cost devices and interoperable services. We do not think it will benefit public safety users to deny open access in 700 MHz, and the Commission can adequately address interoperability without dictating one particular technology standard.

Second, Flow Mobile contends that its petition and that of the State of North Dakota do comply with Section 337 and that these petitions are not deficient. Flow Mobile has deployed test networks in North Dakota using its technology and these tests have demonstrated its technology provides a more than adequate solution for public safety. Flow Mobile testing with its 700 MHz base stations in that same area is utilizing the same technology standard and our testing has demonstrated that we can achieve greater throughput and signal propagation using the same technology standard in 700 MHz.

Flow Mobile is pleased that the PSST has offered us an opportunity to fully brief the PSST on the technical details of our technology solution and performance of our existing network and how it is meeting the needs of public safety by providing the only mobile broadband service in the markets where we serve. The PSST has presented Flow Mobile with a list of technical issues regarding the Flow

Mobile solution and we have prepared detailed responses to these issues. We attach that document to this filing since it addresses many issues raised by commenters in this proceeding.⁵

In addition, Flow Mobile agrees that the best approach with respect to the waiver requests is to allow the PSST to enter into spectrum leases with entities granted relief from the Commission. Flow Mobile also agrees with the PSST that public safety systems deployed under a waiver should be designed to allow for national roaming. In doing so, the Commission should empower the PSST to ensure that roaming will occur and require all networks to coordinate with the PSST to ensure that roaming can occur between the networks.

Finally, the PSST asserted that our service “appear[s] inconsistent with the Commission’s nationwide interoperability goals” without offering any specifics to back this claim.⁶ If the presumption of the PSST assertion is that we are inconsistent because we are not offer LTE technology, then this is a false assumption since the Commission has not determined that only one proprietary standard will be permissible to serve public safety in the 700 MHz band. While the PSST is certainly free to establish a technology preference, arguments against other technologies based on proven open standards such as the Wi-Fi protocol because they are not the preferred technology standard should not be accepted by the Commission. Flow Mobile believes that the Commission, both in its rules and with respect to how it authorizes the PSST to manage the PSBL, should allow for open standards and open access in the 700 MHz band.

⁵ Attachment 1.

⁶ PSST Comments at 21.

II. FLOW MOBILE AND NORTH DAKOTA PETITIONS

Flow Mobile would like to clarify the record and explain that the Flow Mobile petition is distinct from the North Dakota petition. Flow Mobile submitted a waiver request on July 7, 2009. Subsequently on July 17, 2009, the State of North Dakota Emergency Communications Services filed a similar request for a waiver, citing the Flow Mobile technology as a solution that is viable and one that the State could consider for immediate deployment. The State of North Dakota filed an amended petition on August 18, 2009 after several National Cooperative Telecommunications Association (NCTA) members frivolously threatened litigation against the State for mentioning Flow Mobile in its filing. The State of North Dakota subsequently withdrew its original petition on September 1, 2009. The amended petition removed the reference to Flow Mobile but maintained the position that a waiver is needed for the State to deploy a mobile broadband public safety network. The State's petition and the Flow Mobile petition are still pending before the Commission.

As discussed in the first round of comments, Flow Mobile maintains that it does indeed qualify and would be eligible to build and operate a public safety network in North Dakota should the Commission grant the Flow Mobile waiver request.⁷ In addition, Flow Mobile stated that the Commission does not need to grant both its petition and the petition of the State of North Dakota. Should the Commission decide to grant the State's petition, Flow Mobile would withdraw its petition.

The North Dakota Rural Telecom Coalition (RTC) has urged the Commission to "discount" the letters of support by the North Dakota and South Dakota chapters of the National Emergency Number Association (NENA).⁸ RTC has no standing to urge the dismissal of NENA and APCO professionals on who dedicate themselves to protect the public. RTC's dismissal of the views of North Dakota public

⁷ Flow Mobile Petition.

⁸ RTC Comments at 7.

safety officials stems from the claim that North Dakota has not convened a meeting of the 700 MHz Regional Planning Commission but the RTC fails to understand and point out that the decision to convene such a meeting has nothing to do with one's status to petition the Commission. Further, the responsibility to convene such a meeting rests with state officials and is irrelevant to this waiver proceeding.

Flow Mobile argues that the Commission should give some deference to those closest to the situation in North Dakota as to what their needs are and how such needs should be met through a broadband communications system. Flow Mobile has invested much time and energy to educate North Dakota first responders and public safety officials and work with them to ensure that its network addresses their needs to protect the public. The debate over the waiver requests should not lose sight of the most important aspect: what do the men and women on the front lines need to protect public safety and do their jobs? Their views should be considered the most important of all and not be dismissed. The Commission should take seriously the needs and requests of local public safety officials who know best how to protect their communities.

III. FLOW MOBILE'S 4G LIKE TECHNOLOGY CAN AND WILL INTEROPERATE WITH LTE

A. CLARIFYING THE TECHNOLOGY

Flow Mobile welcomes the opportunity to clarify the meaning of the term "4G- Like." Presently, no international standard for 4G exists so anyone claiming to offer 4G is misrepresenting its service. Until the International Telecommunications Union (ITU) develops an agreed upon standard for what is 4G, it is misleading to promote a service as "4G." Thus, Flow Mobile uses the term "4G-like" as to not falsely advertise the nature of the service being offered. In fact, the quality of service and

throughput on the Flow Mobile network exceeds the data speeds that Verizon and others claim will be available over LTE.

“Currently, our high-speed wireless network, which powers our Mobile Broadband Internet applications, is based on Evolution Data Optimized (EV-DO) Revision A technology. Our 3G technology offers typical download speeds of 600 Kbps-1.4 Mbps while our 4G technology is expected to deliver average user throughputs of approximately 7-12 Mbps on the downlink and approximately 3-5 Mbps on the uplink², coupled with dramatic improvements to data latency.”⁹

Flow Mobile’s existing 2.4 GHz networks offer throughputs of 6-21 mbps. Based on the successful testing results of the 700 MHz base stations, Flow Mobile anticipates throughputs of 16 mbps with an uplink and downlink configuration in Flow Mobile’s 700 MHz networks. Flow Mobile seeks to use a proven technology standard, Wi-Fi, which is also one of the most ubiquitous, interoperable standards in the world today. This standard can co-exist with LTE – much like Wi-Fi co-exists and is interoperable with CDMA, GSM and other current standards. The Wi-Fi protocol is the most interoperable standard in the world today and should be allowed to exist with LTE in 700 MHz.

The RTC concludes that Flow Mobile technology is “flawed” and “not compatible with the 700 MHz Long Term Evolution (LTE)” while maintaining that it has limited technical information on Flow Mobile’s system.¹⁰ Flow Mobile has provided detailed information on its technology and business plan to North Dakota public safety agencies. The agencies and independent contractors hired by the state have thoroughly studied the plans and have concluded that Flow Mobile offers a unique and viable

⁹ RTC Comments at 5-6.

¹⁰ RTC Comments at 3.

solution to address North Dakota public safety needs. The viability of the plan and technology has been verified by independent assessments.¹¹ Flow Mobile has briefed the Commission staff on several occasions on its plan and will provide the Commission with as much information as the Commission needs to make its determination. Further, the assertion that a technology is “flawed” because it is presumed to be incompatible with another technology has no merit and such a claim should be dismissed by the Commission. The necessary requirement is interoperability, and multiple technologies can be interoperable. Further, although the LTE technology remains in development, the Flow Mobile system is proven and operating today in another frequency band and has been successfully tested in the 700 MHz band.

B. LTE IS STILL IN THE DEVELOPMENT PHASE

While numerous commenters urge the Commission to adopt LTE as the de facto technology standard for 700 MHz public safety networks, they fail to acknowledge that the LTE standard is still in development and may not be ready for deployment for years.¹² AT&T, Verizon Wireless, T-Mobile and several technology companies “emphasized that their profile for LTE voice and SMS is not a final product but is merely an outline that will be handed over to industry standards forums for review, with the hope that final standards for the protocols will be developed within the next few years.”¹³ While Verizon plans to offer LTE data-only services in 2010, the standards for “LTE-based voice and SMS

¹¹ David Kaun and Wendy Chretien. State of North Dakota Broadband Solutions Review. October 12, 2009 at 13-23. Available at: <http://fjallfoss.fcc.gov/ecfs2/document/view?id=7020142139>

¹² 700 MHz Public Safety Broadband Task Force Report and Recommendations, NPSTC. Sep. 4, 2009, at 22, 51. (“NPSTC Report”). See Attachment 3.

¹³ Brad Reed. “AT&T, Verizon others boost 4G networks.” [NETwORLD World](http://www.thestandard.com/news/2009/11/04/t-verizon-others-boost-4gnetworks). Nov. 4, 2009. Available at: <http://www.thestandard.com/news/2009/11/04/t-verizon-others-boost-4gnetworks>

services have yet to be finalized for commercial use.” AT&T and T-Mobile are not planning to deploy LTE until 2011.¹⁴

Unlike LTE, Flow Mobile’s technology is ready for deployment and use immediately. Attached is the report submitted to NPSTC which shows how Flow Mobile’s approach will be interoperable with LTE or any other future standard.¹⁵

IV. THE COMMISSION’S RULES SHOULD REQUIRE INTEROPERABILITY WHILE REMAINING TECHNOLOGY NEUTRAL

The Commission’s rules should require interoperability and require all public safety 700 MHz systems to be interoperable without dictating a particular technology standard. Flow Mobile agrees with Verizon that the Commission can best ensure interoperability by conditioning waivers “on adherence to a national framework of standards and basic operational requirements.”¹⁶ However, Flow Mobile disagrees that the waivers should be conditioned on the use of LTE. The Commission should not endorse a single standard, such as LTE. Operators in the 700 MHz should be permitted to use the best technology solution possible, but be required to ensure interoperability with other systems. Requiring demonstration of compatibility with a standard that does not yet exist – an assertion made by a number of commenters – would impose an impossible requirement on all Petitioners. Such a precedent would be crippling to the wireless industry if applied in the future. The Commission should not require waiver petitioners to demonstrate such an absurd possibility.

NPSTC “recommends the Commission proceed with caution on any waiver request that envisions a new broadband deployment with technology other than LTE” and argues that “new

¹⁴ Id.

¹⁵ NPSTC Report.

¹⁶ Verizon Wireless Comments at 7.

broadband regional systems would be best implemented by deploying LTE from the outset.”¹⁷ While LTE may be preferred by the NPSTC, the major national carriers, and the PSST, adoption of this one standard is not necessary to ensure interoperability and roaming.¹⁸ The Commission should not base any decision on an assertion that assumes one particular technology standard is paramount when the Commission has not imposed such a requirement.

The Commission has not mandated a particular technology for 700 MHz and it should not consider endorsing one particular proprietary standard. In fact, the Commission has long attempted to regulate in a technologically neutral manner and this practice should continue. The Commission recognized the need for technology neutrality in the 700 MHz proceeding and offered potential licensees three alternatives, including a single license for service nationwide with the technology platform to be determined by the licensee.¹⁹ Commissioner Michael Copps has stated that “part of government’s job is to implement policies so that multiple broadband platforms can develop—again, without picking winners and losers.”²⁰ Chairman Julius Genachowski has said that “removing obstacles to robust and ubiquitous 4G networks” is one of the Commission’s key priorities in mobile broadband.²¹ Further, Chairman Genachowski has indicated his intent to impose “open access” requirements on wireless networks and lock in a single proprietary standard in 700 MHz – either through a Commission rule or

¹⁷ NPSTC Comments at 6.

¹⁸ PSST Endorses LTE as the Preferred Technology Standard for the Nationwide 700 MHz Public Safety Wireless Broadband Network. Press Release. July 24, 2009. Available at: <http://www.psst.org/documents/PSSTPress072409.pdf>

¹⁹ Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band, PS Docket 06-229, *Third Further Notice of Proposed Rulemaking*, Rel. Sept. 25, 2008, at ¶4.

²⁰ Remarks of Commissioner Michael J. Copps, OECD Conference on the Future Digital Economy. Rome, Italy. Jan. 30, 2006.

²¹ Prepared Remarks of Chairman Julius Genachowski. “America’s Mobile Broadband Future.” International CTIA Wireless I.T. & Entertainment. Oct. 7, 2009

accepting the arguments of NPSTC and others that assume adoption of their preferred standard.²² Such requirements would undermine the potentials of innovation and freedom that stimulate competition and provide better service to the end user. It would be inappropriate and detrimental for the Commission to abandon a technologically neutral approach and either endorse only one particular standard or allow a circumstance where non-federal organizations or companies can dictate a de facto standard by urging the Commission to deny service deployment by alternative standards. Flow Mobile believes that the Commission should allow for open standards and open access in the 700 MHz band and not prohibit the use of a proven standard – such as the Wi-Fi protocol – while endorsing a new standard – such as LTE – that is still in development.

V. FLOW MOBILE AND NORTH DAKOTA’S PETITIONS COMPLY WITH THE COMMISSION’S RULES TO GRANT A WAIVER REQUEST

Section 1.3 of the Commission’s rules allows the Commission to waive its rules upon a showing of good cause. Under Section 1.925(b)(3), a petitioner for a waiver must demonstrate either that i) the underlying purpose of the rule(s) would not be served or would be frustrated by application to the present case, and that a grant of the waiver would be in the public interest; or ii) in view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.

Under the first test, the waiver request should be granted if: (a) denying Flow Mobile the use of the broadband spectrum would not serve the underlying purposes of the Commission's plan, and (b) granting the waiver would be in the public interest. The waiver request easily meets both requirements.

²² Statement of Chairman Julius Genachowski. Preserving the Open Internet Broadband Industry Practices. GN Docket No. 09-191. WC Docket No. 07-52. *Notice of Proposed Rulemaking*. Released Oct. 22, 2009

First, denying Flow Mobile's waiver would not serve the underlying purposes of the Commission. When the Public Safety and Homeland Security Bureau was first created, "one of the Commission's strategic goals is to ensure that public safety, health, defense, and emergency personnel, as well as all consumers in need, have reliable communications during emergencies and crises."²³ The Commission fully understands its objectives and as a result, is carefully weighing its options for the D Block. However, the Commission is still trying to find a way to promote the notion of a public-private partnership model. While the Commission deliberates, first responders continue to wait for much-needed and essential interoperable emergency communications. As a result, the citizens of North Dakota suffer.

Flow Mobile has taken positive steps to meet the Commission's goals of providing twenty-first century emergency communications to the people of North Dakota. Flow Mobile deployed test networks in North Dakota under a Special Temporary Authorization (STA) from the Commission, which demonstrated a highly robust and resilient solution for public safety. This past summer, a massive tornado hit the town of Dickinson, North Dakota where Flow Mobile's broadband network operates. Local law enforcement used the Flow Mobile technology to monitor the tornado, enabling retrieval of critically important data that assisted in evacuation efforts where about fifty homes were leveled. The Flow Mobile network provided local law enforcement broadband connectivity with seamless handoff between base stations in this life-threatening situation. The testing in this area demonstrates that Flow Mobile can achieve greater throughput and signal propagation in 700 MHz spectrum. Flow Mobile is pleased that the PSST has offered the company an opportunity to fully brief the PSST on the technical details of the technology solution, performance of the existing network, and how it is meeting the needs of public safety.

²³ Establishment of the Public Safety and Homeland Security Bureau And Other Organizational Changes. *Order*. FCC 06-35. Released Sept. 25, 2006.

In light of this success, the RTC challenges the Flow Mobile network that is deployed in Dickinson, North Dakota as well as the success of testing the 700 MHz equipment. RTC members have little knowledge of Flow Mobile's existing network and the results of its tests. Flow Mobile has briefed Commission staff on the results of its successful testing. These tests illustrate the timeliness and urgency of the waiver request.²⁴ Failure to grant the waiver would prohibit North Dakota residents from receiving reliable and effective public safety communications services, thereby failing to meet the Commission's objectives of licensing, facilitating, restoring and recovering communications services used by the citizens of the United States, including first responders, before, during and after emergencies.²⁵

The Commission is also in the process of developing a National Broadband Plan, which will include a public safety element, but this report will not be released until February 2010. By the time the report is released, the Commission will need to determine how to operationally put the plan into practice. Emergency responders do not have another year to wait. Flow Mobile is committed to working with the State of North Dakota to provide these essential services to the people of North Dakota now not at some undetermined date in the future.

The second test requires a showing that failure to grant the waiver will frustrate the public interest. Failure to grant the waiver request translates into more time that the public safety community and citizens of North Dakota have to wait for a statewide national public safety broadband network while a viable option lays before them. North Dakota, one of the most rural states in the country, faces some of the most significant challenges to deploy mobile broadband and emergency communications

²⁴ See Attachment 4.

²⁵ See Public Safety Bureau Mission at <http://www.fcc.gov/pshs/>

services. One of the Administration's goals is to connect people and break down barriers regardless of geographical location. Regulatory delay and uncertainty frustrates North Dakota residents when a viable option exists but is held at bay by federal restrictions. Citizens and first responders now have an opportunity to receive robust and reliable emergency communications services. Granting Flow Mobile's waiver helps to advance the Commission's goal to promote broadband access to underserved areas.

Finally, the PSST comments provided no argument why the Flow Mobile petition does not comply with the Commission's rules. As stated in the first round of comments, Flow Mobile is not disqualified under the Commission's rules. Neither the statute nor Commission rules exclude the possibility of a commercial entity from eligibility to offer public safety communications in the 700 MHz band, including the spectrum licensed to the PSST. In the Commission's *700 MHz First Report and Order*, the Commission rejected APCO's position that commercial entities were ineligible under Section 337.²⁶ The Commission concluded that "entities are not disqualified, per se, by their commercial status" and that "that commercial providers of public safety services are not barred, per se; thus, these entities could be eligible for NGO licensing under particular circumstances but only in connection with providing public safety services that they do not make commercially available to the public."²⁷ Further, the Commission has not "attempt[ed] to delineate every type of nongovernmental organization [NGO] that would be eligible, because there are countless variations on how NGO use might present itself among states and localities nationwide. The certification from one of the company's licensees provides a reasonable measure of confidence that the NGO has received authorization from a governmental entity that is appropriate under the circumstances."²⁸

²⁶ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rulemaking* (1998) (*First Report and Order*).

²⁷ *Id.* at ¶ 72.

²⁸ *Id.*

VI. USE OF NARROWBAND SPECTRUM

NPSTC expressed opposition to the use of 700 MHz narrowband spectrum for broadband use – which is part of the Flow Mobile and State of North Dakota’s request in their respective waiver petitions. Flow Mobile does not believe that the Commission needs to grant relief for both the PSBL spectrum and the narrowband spectrum. Both spectrum bands are fallow and will remain fallow for the foreseeable future until the Commission will free the spectrum for use. To our knowledge, Flow Mobile is the only entity that has proposed a mobile broadband solution to address the needs of the North Dakota public safety community and can provide such service throughout the 700 MHz band. Ten megahertz of spectrum is sufficient for Flow Mobile’s technology to provide sufficient access and bandwidth for North Dakota public safety users. As the potential operator for a mobile broadband public safety network in North Dakota, Flow Mobile maintains that access to the fallow narrowband spectrum would not be necessary should the Commission make the PSBL spectrum available to either Flow Mobile or the State of North Dakota.

VII. FLOW MOBILE IS NOT ASKING THE COMMISSION TO ALLOW COMMERCIAL USE OF THE PSBL UNDER ITS WAIVER PETITION

Flow Mobile has licensed 700 MHz spectrum in North Dakota it intends to use for commercial services. If required, Flow Mobile’s network can ensure that the spectrum subject to the waiver request would only be used for public safety purposes pursuant to the users and purposes identified by North Dakota public safety agencies. Flow Mobile can ensure that no commercial services will be offered with this specific spectrum and that all commercial service offered to the public would be used on commercial spectrum.

NTCA suggests that Flow Mobile would offer commercial service with the public safety spectrum. This is not the case, unless the Commission was to allow joint public safety and commercial use in the spectrum licensed to the PSBL, then Flow Mobile would consider it. Flow Mobile continues to urge the Commission to license the D Block so spectrum would be paired with the PSBL spectrum, allowing for joint use of the entire 20 MHz band. However, if either the North Dakota or Flow Mobile petition is granted in advance of a D Block resolution, Flow Mobile understands that the Commission may restrict the use of the public safety spectrum for only public safety purposes. Such an outcome would then require that no commercial service could be offered with the public safety spectrum, resulting in Flow Mobile and/or the State of North Dakota's compliance with that requirement. Until resolution of the D Block, Flow Mobile would use only commercial spectrum for commercial services and would only use the public safety spectrum for public safety purposes, unless otherwise permitted by the Commission. Flow Mobile has not and is not asking the Commission to allow for commercial use of the PSBL under its wavier petition. Thus, the claim by NTCA that granting the Flow Mobile or State of North Dakota petitions would create an "unfair competitive situation" is moot.

VIII. REALLOCATING D BLOCK TO PUBLIC SAFETY

In addition, NPSTC expressed its support for the reallocation of the D Block to public safety.²⁹ While Flow Mobile is not expressing an opinion on potential legislation, Flow Mobile believes that the Commission has an obligation to make its determinations on existing statutory requirements. It would not be in the public interest for the Commission to either make a determination or forestall decisions based on speculation that Congress may change the statute. Flow Mobile is concerned about endless delay that will prevent the deployment of a national public safety broadband network. This spectrum

²⁹ NPSTC Comments at 1.

was allocated to public safety and the commercial sector 12 years ago. After all this time, the public safety community remains divided on how to reallocate the D Block.³⁰ Flow Mobile is concerned about both approaches because it could result in an extended delay in Congress. We urge the Commission to act without delay to implement existing statutory obligations.

IX. VERIZON 3G NETWORK AS AN INTERIM SOLUTION

The RTC comments also suggested that the Verizon 3G network could provide an interim solution for the state of North Dakota.³¹ The problem is that a true statewide network does not exist and neither Verizon nor its local incumbent partners have produced a plan that would ensure such a network will be constructed and meet the needs of North Dakota public safety. A study commissioned by CTIA – The Wireless Association estimated that it would cost about \$528 million to fill in the coverage gaps in North Dakota to create a statewide 3G network.³² Flow Mobile’s solution is to build and operate a 4G-like network that is not an interim solution as inaccurately described by some commenters. Rather, the Flow Mobile solution is a proven technology and will be an interoperable system for less than one-tenth the costs of existing 3G technologies. Again, the RTC members have no plan and thus their claims that a 3G network is a viable option is not supported with any evidence that they or anyone else will successfully deploy a state wide network. Further, RTC contends that Verizon “is implementing LTE nationwide (including North Dakota) on an expedited schedule.” Neither Flow Mobile nor the State of North Dakota is aware of any such plans. In fact, when RTC members were presented with an opportunity to present such a plan, they failed to do so.

³⁰ NENA Letter to Chairman Julius Genachoswki. WT Docket No. 06-150. PS Docket No. 06-229. Received Aug. 12, 2009. Attachment 5.

³¹ RTC Comments at 9.

³² Roger Etner. “The Increasingly Important Impact of Wireless Broadband Technology and Services on the U.S. Economy.” A Study for CTIA-The Wireless Association®. 2008 at 4. See Attachment 6.

X. RIPENESS

The RTC challenges the ripeness of the Flow Mobile and State of North Dakota requests on the grounds that “North Dakota must undertake legally required contraction and appropriations process.”³³ If the Commission applied this standard to all waiver requests, no waiver request would be ripe for Commission approval. As noted in the comments filed by NPSTC, “most petitioners have also emphasized the need for fast Commission action the waivers to start the process....As with a number of Commission’s processes, many of the steps public safety agencies will need to take to implement broadband systems are controlled by provisions of law.” Both Flow Mobile and the State of North Dakota fully understand that once the Commission grants a waiver to either entity, the State will follow its normal procurement process. Other jurisdictions seeking waiver will have to follow similar local and state procedures. If the RTC had any solution of its own to offer, they should welcome this opportunity for they will have equal opportunity to offer their plan and compete to offer service. The fact that the RTC has no plan and therefore is only attempting to prevent the State of North Dakota from proceeding through a competitive procurement process should not be considered a valid reason for the Commission to reject the waiver request.

Further, additional letters of support from the North Dakota Chiefs of Police, North Dakota Fire Chiefs Association, and North Dakota League of Cities should be taken seriously by the Commission as well.³⁴

XI. CONCLUSION

Flow Mobile urges the Commission to reject the market obstruction arguments of those who only seek to block the State of North Dakota from implementing a mobile broadband solution for public

³³ RTC Comments at 4.

³⁴ ND League of Cities, ND Police Chief’s Association and the ND Fire Chief’s Association

safety that would be interoperable with a nationwide public safety network. For a true nationwide network to emerge, the Commission should allow for technical flexibility and not endorse one particular proprietary standard. Rather, the Commission should embrace innovation as a means to ensure that the diverse needs of the public safety community can be met in deploying a true nationwide public safety network. The Commission's endorsement or de facto endorsement by accepting the arguments that the only technology acceptable in 700 MHz must be LTE would kill innovation and deny the public safety community and other consumers with the benefits of options and competition.

For many rural states, frustrations mount as spectrum lays fallow and indecision – or deliberate market protection – prevents deployment of viable mobile broadband solutions for public safety. Much of the 700 MHz band spectrum remains fallow and rests in the control of the Commission, waiting to be freed up for use. While the Commission continues to contemplate ultimate resolution of the PSBL spectrum and the D Block, granting waivers to use the fallow PSBL is in the public interest and the Commission should act without delay in granting such waivers.

Respectfully submitted,

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