

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

In the Matter of)	
)	
Petitions For Waiver To Deploy)	PS Docket No. 06-229
700 MHz Public Safety Broadband)	
Networks)	

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

Respectfully submitted,

THE STATE OF NEW MEXICO

**By, Marlin Mackey, Secretary
Department of Information Technology**

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SUMMARY

The Commission has broad latitude to interpret Section 337, with the primary goal of achieving a national interoperable public safety broadband system. In setting up the D Block/Public Safety shared network scenario, the Commission sought to promote funding of the network. Funding the network is also a major public policy concern in the Commission's May 2010 *Waiver Order*, is a critical issue faced by waiver recipients, and must be taken into account in the Commission's interpretation of Section 337.

The State of New Mexico ("SONM"), an authorized early builder, urges the Commission to adopt a regulatory regime under Section 337 allowing 700 MHz public safety waiver recipients to partner with electric utilities and other CII infrastructure entities in order to promote funding and build out of portions of the 700 MHz public safety network as envisioned by the Commission in its May 2010 *Waiver Order*.

Specifically, to facilitate build out of the public safety network, the Commission should allow public safety waiver recipients to enter into partnering agreements with utilities and other CII entities under which a CII entity's communications of a *public safety* nature—i.e., communications to protect the safety of life, health or property—could be carried on a *limited priority* basis over the public safety 700 MHz network, with other general or non-public safety communications of the CII entity being carried on a *secondary* basis. Such partnering agreements or "MOUs" for shared usage should detail the parties' funding obligations, usage rights and priority of service under various circumstances and levels and types of emergencies, in accordance with the overarching goal of building a national public safety network. The Commission can accomplish this under existing law and policy using its broad powers to interpret Section 337.

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The State New Mexico (SONM), an authorized early builder waiver recipient on 700 MHz public safety spectrum,¹ hereby submits these comments in response to the Commission’s September 15, 2010 Public Notice (DA 10-1748) wherein the Public Safety and Homeland Security Bureau requests comments on petitions for waiver filed by various additional public safety entities seeking authority to deploy public safety broadband systems on a local or regional basis in the 700 MHz public safety spectrum. In these comments, SONM addresses the Bureau’s question about eligibility under Section 337.

I. THE COMMISSION SHOULD ALLOW WAIVER RECIPIENTS TO ENTER PARTNERING AGREEMENTS WITH UTILITY AND OTHER CII ENTITIES TO HELP BUILD OUT AND MAINTAIN THE NETWORK.

The Commission observes in its recent 700 MHz waiver Public Notice, “several of the petitions include signatories such as investor-owned utilities or other entities whose

¹ See Requests for Waiver of Various Petitions to Allow the Establishment of 700 MHz Interoperability Public Safety Wireless Broadband Networks, PS Docket No. 06-229, *Order*, 25 FCC Rcd 5145 (2010) (“*Waiver Order*”).

eligibility is not readily apparent” and the Commission asks how to deal with the eligibility issue under Section 337 of the Communications Act.² In order to facilitate build out of the 700 MHz public safety network the Commission should allow public safety waiver recipients to enter into partnering agreements with utilities and other critical infrastructure entities (“CII” entities) under which a CII entity’s communications of a *public safety* nature—i.e., communications to protect the safety of life, health or property³—could be carried on a limited priority basis over the public safety 700 MHz network, with other general or non-public safety communications of the CII entity being carried on a secondary basis.

Allowing use of this nature is particularly important for some waiver recipients to open funding opportunities between waiver recipients and CII entities in jurisdictions where there is an interest in partnering on this spectrum to help with the build out of the network. Relegating electric utilities and other CII entities to purely secondary use for all of their communications will likely not be sufficient to make this a workable funding option. Without some assurance of priority status for their critical public safety-related communications, it is unlikely that these CII entities would agree to fund build out of the network.

While this approach may not be an option for all waiver recipients, clearly it may be viable for some early builders and should be allowed. Many CII entities, including electric utilities, have a need for a hardened public safety grade network similar to that needed by public safety entities, as opposed to the type of service available on a

² Public Notice at pg. 2.

³ 47 U.S.C. Section 337 (f) (1).

commercial grade network. Indeed, public safety entities and CII entities often work closely together in responding to weather incidents, natural disasters, and other emergency situations.

The use of the spectrum would, in jurisdictions electing to pursue this option, be governed by a memorandum of understanding (MOU) entered between the public safety waiver recipient and the partnering CII entity that sets forth funding obligations and usage priorities, enumerating each party's usage rights and priority of service under various circumstances and levels and types of emergency. It is anticipated that the parties would work in consultation with ERIC and the PSST in establishing terms for the MOU and shared use arrangement in order to maintain a nationally coordinated framework for public safety prioritization and thereby protect the nationwide public safety interoperability goals. It is unlikely that a "one-size-fits-all" standard MOU would be feasible for all such arrangements; accordingly, in developing MOU terms, waiver recipients and respective CII entities should have latitude to establish funding, usage and priority terms best suited to their respective jurisdictional operating and build out needs, while working within the nationally established prioritization framework.⁴ As set forth below, shared use along these lines is consistent with Section 337 (f) (1) as well as with the Commission's public policy determinations regarding this spectrum.

II. SECTION 337 MUST BE CONSIDERED IN LIGHT OF CHANGED CIRCUMSTANCES.

In September 2008 the Commission made a *tentative* conclusion in the *Third FNPRM* that only non-government entities whose sole or principal purpose is to protect

⁴ It is further anticipated that build outs by waiver recipients pursuant to MOUs would continue to be subject to future rules and Commission decisions regarding the public safety broadband spectrum.

the safety of life, health or property could use the 700 MHz public safety spectrum.⁵ Such an interpretation of Section 337, if adopted into final rules, would have the effect of excluding non-government owned electric utilities and other CII entities from the spectrum since communications by many such entities can serve either a public safety purpose or a general purpose depending on the circumstances. As discussed in more detail below, the factual circumstances underlying the proposed interpretation and the public policy analysis articulated in the *Third FNRPM* have not materialized. In fact, the landscape has significantly changed.

Most significantly, as the Commission observed in its *Waiver Order*, the D Block auction was not successful and the envisioned partnership between public safety and a D Block winner did not materialize. As a result, public safety waiver recipients must be allowed, “to take advantage of [other] available or potential funding.”⁶ Accordingly, in addressing the pending and future waivers, the Commission should establish a regulatory regime under Section 337 that will facilitate partnering between public safety waiver recipients and CII entities and allow waiver recipients to take advantage of viable funding opportunities from CII entities, including electric utilities, in order to build out and operate the public safety 700 MHz broadband network.

⁵ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, Implementing a Nationwide, Broadband, Interoperable, Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, *Third Further Notice of Proposed Rulemaking*, 23 FCC Rcd 14301 at ¶¶ 325-326 (2008) (“*Third FNRPM*”).

⁶ *Waiver Order* at ¶14.

III. FUNDING OPPORTUNITIES FOR BUILDING OUT THE PUBLIC SAFETY BROADBAND NETWORK ARE LIMITED AND ACCORDINGLY THE COMMISSION SHOULD FACILITATE THIS OPPORTUNITY.

The need to obtain funding for the public safety network build out was the cornerstone of the Commission’s decision in the *Second Report and Order* to establish a public-private partnership between public safety and a D Block winner and to require the D Block winner to build out the shared network for use by public safety.⁷ The well-publicized failure of the D Block auction left the public safety network unfunded and un-built. Recently, in its National Broadband Plan (“NBP”) submitted to Congress, the FCC recognized that “[t]here are many possible reasons for this failure.”⁸ To help resolve the causes for the failure, the NBP suggests that any commercial D Block licensee should *not* be required to enter into a partnership with the Public Safety Broadband Licensee to build out a shared network, stating, “The FCC should overcome past challenges by encouraging, though not requiring, incentive-based partnerships to ensure success.”⁹ Accordingly, the prospect of eventually securing funding for build out of the public safety network through a successful commercial D Block auction is at best uncertain.

The Commission recognized the need for obtaining funding to pay for network build out as a primary public policy concern in its decision several months ago granting waivers to 20 early builders, including SONM. Allowing waiver applicants to take advantage of funding opportunities was a major factor not only in the Commission’s

⁷ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15 at ¶13 and ¶416 (2007).

⁸ National Broadband Plan at pg. 315.

⁹ *Id.*

decision to grant the waivers, but also in the timing of the decision. The Commission observed, “Action now will provide Petitioners with a degree of certainty, allowing them to take advantage of funding opportunities and leverage existing deployment plans that may be time sensitive.”¹⁰ The Commission observed further that its decision, “will also allow Petitioners to take advantage of available or potential funding, either through grants or planned budgetary expenditures, as well as to take advantage of economics of scale....”¹¹

One of the funding opportunities that waiver recipients were able to pursue as a result of the timing of the Commission’s Waiver Order was Broadband Technology Opportunities Program (BTOP) grant money from NTIA. In response to the Commission’s Waiver Order, the NTIA re-opened its Round II BTOP grant filing window solely to enable the waiver recipients to apply for available funds.¹² Unfortunately, only seven of the 20 waiver recipients succeeded in obtaining BTOP grants to help pay for network build out, and there is no additional funding available from that source.¹³

Another possible opportunity for funding exists in the form of potential legislative action. The FCC itself has proposed that Congress should authorize \$6-12 billion to pay for building and operating the network. Also, in legislation recently introduced in

¹⁰ Waiver Order at ¶10.

¹¹ Id. at ¶14.

¹² 75 Fed. Reg. 27984 (May 19, 2010).

¹³ While SONM received a BTOP grant of \$38 million, it still needs funding for constructing the network in many rural portions of the State, including border areas.

Congress there are mechanisms proposed to help with funding the network.¹⁴ As the Commission is well aware, the public safety community is urging Congress to reallocate the D Block to the public safety community and to implement a funding mechanism. These legislative changes however remain uncertain and far from ripe. There is no certainty in the near term with regard to public funding of the public safety network or as to whether there will be a commercial D Block licensee.¹⁵

Given the uncertainty of available funding, the Commission should establish a working regulatory regime for early builders that provides waiver recipients flexibility in pursuing viable funding sources, including the option to partner with utilities and other CII entities as a source for funding. It is critical to the success of build out efforts that such pragmatic approaches be facilitated. There does not appear to be any “one-size-fits-all” solution to the funding question, and while partnering with CII entities may not be a viable option in all parts of the country, in some places, particularly in rural areas as well as in some cities where the economics of system build out may be particularly challenging, it certainly will be, as evidenced by the fact that several of the waivers included in the recent Public Notice include CII entities as signatories. Moreover, allowing waiver recipients to pursue this funding option should not preclude any other funding sources or avenues that may be established by rule or legislation, but rather will complement any future developments.

¹⁴ See, e.g., S. 3756, 111 Cong. 2D Session, recently introduced by Senator Jay Rockefeller.

¹⁵ SONM concurs with and supports the efforts to re-assign the D Block for public safety service.

IV. PUBLIC SAFETY ENTITIES AND CII ENTITIES HAVE SIMILAR SERVICE NEEDS.

It is well recognized that CII entities have similar communications service needs to those required by public safety entities. Both require a hardened public safety grade network providing reliable ubiquitous coverage that will not fail during weather emergencies and natural or man-made disasters. As the Commission recognized in the National Broadband Plan:

The wide-area network requirements of utilities are very similar to those of public safety agencies. Both require near universal coverage and a resilient and redundant network, especially during emergencies. In a natural disaster or terrorist attack, clearing downed power lines, fixing natural gas leaks and getting power back to hospitals, transportation hubs, water treatment plants and homes are fundamental to protecting lives and property. Once deployed, a smarter grid and broadband-connected utility crews will greatly enhance the effectiveness of these activities.¹⁶

The Commission acknowledged in the *Third FNRPM* that while utilities do not as “entities” have as their sole or principal purpose protecting the safety of life, health or property, they certainly “play an important role” in protecting public safety.¹⁷ Thus, utilities and other CII entities have two types of communications needs: there are the general communications that facilitate day-to-day operations of a non-public safety nature; and there are also the *public safety* type communications related to utilities’ role in supporting critical public safety concerns. This latter type of communications fall squarely within the definition of “Public Safety Services” set forth in Section 337 (f) (1) (A) as they are communications, “the sole or principal purpose of which are to protect the

¹⁶ National Broadband Plan at pgs. 270-271.

¹⁷ *Third FNRPM* at ¶324.

safety of life, health or property.”¹⁸ Responding to gas leaks, power outages, chemical spills and other such emergency situations, whether in the context of a storm, natural disaster or terrorist attack, are examples of such public safety-related activities. In fact, police and fire first responders often work closely with CII entities during emergency response and crisis situations. Thus, in a fire, flood or hostage situation first responders will coordinate with utilities to address potential hazards from electric, gas and water lines. Further, when thousands of homes are left without power as a result of a severe winter storm, restoring service is very much a public safety priority.¹⁹ It is because of these public safety-related communications needs of CII entities that it is critical for utilities to have access to a public safety grade communications network.

As noted above, the opportunity for utilities and other CII entities to obtain access to a public safety grade system that would have arisen under the envisioned public safety/D Block shared use network is unlikely to come to fruition. Moreover, it is well established that standard commercial grade networks are not constructed to provide the robustness, reliability, prioritization and ubiquity of coverage needed for public safety type services.²⁰ Accordingly, allowing utilities and other CII entities to access public safety spectrum through agreements with waiver recipients in accordance with Section

¹⁸ 47 U.S.C. § 337 (f) (1) (A).

¹⁹ In such situations commercial grade networks are insufficiently reliable as they are not built to hardened, public safety standards and are subject to greater rates of failure or they may become overloaded with commercial traffic.

²⁰ NYPD Deputy Chief Chuck Dowd recently stated: “We have never in our experience been able to convince any of the commercial carriers to give us the kind of prioritization on their networks that we need. It simply hasn’t been the case, and we have no expectation that they would do it. Whenever there is a failure of our communications networks, it almost invariably is tracked back to the commercial components of it.” *Subject to Debate*, Police Executive Research Forum, Vol. 24, No. 3 (March 2010), pg. 4.

337 (f) (1) (B) (i) and (ii) in jurisdictions where such shared use may be viable is in the public interest, particularly as it will help to fund the build out of the public safety network.²¹

V. SECTION 337 (f) (1) AND THE COMMISSION’S ORDERS SUPPORT THE SHARED USE SCENARIO DISCUSSED HEREIN.

In broad outline, SONM supports allowing waiver recipients to enter into agreements for shared use with utilities as follows:

- The utility/CII entity would help to fund build out and maintenance of the network.
- The CII entity’s communications of a general nature, i.e., its non-public safety related communications, would be carried on the network on a secondary basis, subject to preemption by the public safety entity.
- The utility’s communications of a public safety nature would receive limited priority status on the public safety network.
- The parties would enter an MOU that sets forth the funding obligations and usage rights of the parties, including usage rights in emergency situations.²²

This approach is similar to the Commission’s proposal in the National Broadband Plan, wherein the Commission asserted, “Jurisdictions that are licensees or lessees of the public safety 700 MHz broadband spectrum should be allowed to enter into agreements with utilities on uses and priorities.”²³ Although the National Broadband Plan suggests that statutory changes should be implemented to accommodate the shared use between utilities and public safety, as discussed below, such changes are not necessary to allowing this proposed shared use. Under existing law and policy the Commission should allow

²¹ 47 U.S.C. § 337 (f) (1) (B) (i) and (ii).

²² As noted above, it is anticipated that the parties would work in consultation with ERIC and the PSST in establishing terms for the MOU and shared use arrangement.

²³ National Broadband Plan at pg. 271.

utility and other CII entities access to the 700 MHz public safety spectrum on a preemptible secondary basis for everyday communications needs such as meter reading and on a primary basis for emergency public safety communications necessary for the protection of life, health and property.

A. Secondary, Preemptible use by utilities is allowable in accordance with the Commission's public interest determinations in the *Second Report and Order*.

As the Commission has recognized, it has broad discretion in establishing usage and eligibility requirements for the 700 MHz public safety spectrum so that the needs of public safety for a national interoperable broadband network will be met.²⁴ In adopting rules to promote a shared use network between a D Block winner and public safety, the Commission determined it to be in the public interest to allow commercial operations on a secondary preemptible basis on the public safety spectrum as a means to secure financing for the construction of a nationwide, interoperable public safety broadband network.²⁵ As discussed above, the expectation that there might eventually be a D Block winner that will construct the contemplated shared use public safety grade network has become uncertain. Nonetheless, the Commission's public interest analysis that would have allowed purely commercial communications to be carried on a secondary basis over the public safety spectrum applies with equal force in the context of a shared use network as proposed herein.

²⁴ Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, WT Docket No. 06-150, *Second Report and Order*, FCC 07-132, 22 FCC Rcd 15 at ¶419 (2007) (*Second Report and Order*).

²⁵ *Second Report and Order*, at ¶13 and ¶416.

Where funding to build out part of the network is provided by a utility or other CII entity, based on the public interest analysis set forth in the *Second Report and Order*, the CII entity’s general communications should be allowed to be carried on a secondary, preemptible basis over the public safety spectrum pursuant to agreement between the CII entity and a waiver recipient setting forth usage rights and the relationship between the parties. This fits squarely with the Commission’s public interest determinations under which funding of the network is a priority concern.

B. Limited priority use by CII entities for communications of a public safety nature is allowable under Section 337 (f) (1).

Section 337 (a) (1) of the Communications Act requires the Commission to allocate 24 megahertz of spectrum between 746 MHz and 806 MHz for “public safety services.”²⁶ Section 337 (f) (1) of the Act unequivocally states,

- (1) Public Safety Services—The term “public safety services” means services –
- (A) the sole or principal purpose of which is to protect the safety of life, health or property;
 - (B) that are provided –
 - (i) by State or local government entities; or
 - (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and
 - (C) that are not made commercially available to the public by the provider.²⁷

²⁶ 47 U.S.C. § 337 (a) (1).

²⁷ 47 U.S.C. § 337 (f).

Thus, it is clear from the plain language of the Act that public safety “services” that comport with the requirements of Section 337 (f) (1) are legally permissible on 700 MHz public safety spectrum.²⁸

Despite the plain language of the Act, the Commission proposed in the *Third FNRPM* to interpret Section 337 to limit use of the public safety spectrum on an “entity” basis in a way that would exclude utilities and many other CII entities from priority access to the spectrum. Rather than analyzing Section 337 based on type of communication *service* at issue—i.e., whether or not the “sole or principal purpose” of the communication service was “to protect the safety of life, health or property”—the Commission instead analyzed Section 337 based on whether or not the sole or principal purpose of the *entity* was “to protect the safety of life, health or property.”²⁹ Finding that utilities are not *entities* whose sole or principal purpose is to protect the safety of life, health or property, the Commission determined that they should be excluded entirely from priority access to the public safety spectrum.³⁰ In proposing this *entity*-based interpretation rather than a *services*-based interpretation, the Commission proposed to

²⁸ As noted above, a portion of communications by CII entities are related to the entity’s role in protecting the safety of life, health and property. Those communications clearly can be classified as “public safety services” as defined in Section 337 (f) (1). Under the plain language of the statute, they are allowable on the public safety spectrum pursuant to Section 337 (f) (1) (B) (i) in the case of government owned entities, and pursuant to Section 337 (f) (1) (B) (ii) in the case of non-government owned entities that are authorized by a public safety waiver recipient to use the spectrum. Accordingly, this category of communications can be allowed priority status on a waiver recipient’s network.

²⁹ *Third FNRPM* at ¶326.

³⁰ *Id.*

exclude not only the general communications of such entities, but also their public safety related communications from priority access to the public safety spectrum.

As noted, the Commission's proposed interpretation of Section 337 (f) (1) set forth in the *Third FNRPM* is not mandated on the face of the statute itself. The plain language of Section 337 (f) (1) is more compatible with a services-based interpretation, rather than an entity-based interpretation, since the statute speaks in terms of services. In fact, in an earlier proceeding establishing priority access rules for the public safety 700 MHz spectrum, the Commission found, in discussing the eligibility of non-governmental organizations (NGOs) under Section 337 (f) (1) (B) (ii), "the statute does not require *licensees* to have the sole or principal purpose of providing public safety services," but instead "mandates that this spectrum must be used for *services* whose sole or principal purpose is to protect the safety of life, health or property."³¹ Thus, the Commission itself previously recognized that the wording of Section 337 supports a services-based interpretation, as opposed to an entity based interpretation, in addressing NGO eligibility for priority access on the spectrum.

When the Commission issued the *Third FNRPM* in September 2008, it was still contemplating a shared use scenario under which a D Block winner would have built a public safety grade network utilizing both the public safety spectrum and the commercial D Block spectrum. Under this scenario, as the Commission observed in the *Third FNRPM*, because CII entities could "access the shared broadband network on a

³¹ In the matter of the Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010; Establishment of Rules and Requirements for Priority access Service, *First Report and Order*, 14 FCC Rcd 152, 181 (1998) (emphasis added).

commercial basis as customers of the D Block licensee(s),” they “would not need to access the network through the public safety broadband licensee or public safety users of the network.”³² Thus, the Commission’s interpretation of Section 337 in the *Third FNRPM* appears to have been based in part on its overriding policy intent to attract funding from a D Block winner: requiring CII entities to purchase services over the shared network from a D Block licensee would be a lucrative prospect to help to attract a D Block bidder, which in turn would help to ensure a successful build out of the public safety network.³³ Without the mandatory public safety conditions established under the *Second Report and Order*, D Block bidders do not need or warrant this extra financial incentive.³⁴

As noted above, the factual circumstances underpinning the Commission’s proposed interpretation of Section 337 (f) (1) set forth in the *Third FNRPM* have not materialized. More than two years have passed since the Commission issued the *Third FNRPM*, final rules still appear to be far away, and the funding of a public safety network by a D Block winner is very much in doubt. More recent statements in the National Broadband Plan suggest that the Commission is moving away from requiring a D Block winner to build a shared use public safety grade network. The failure of the shared use

³² *Third FNRPM* at ¶326.

³³ Verizon Wireless had expressed concerns about this very issue in its comments dated June 20, 2008 filed in response to the Second FNRPM, noting that an expanded definition of “public safety” that included CII users would have the effect of putting a D Block winner into competition for customers with the public safety broadband licensee’s chosen agent advisor. Comments of Verizon Wireless, PS 06-229, at pg. 35 (June 20, 2008).

³⁴ In fact, under such circumstances, the market could be better served if commercial networks have to compete with each other on a level playing field for CII business by meeting the needs of CII entities through providing better and more reliable service over robust ubiquitous networks.

public safety/D Block network not only leaves public safety without a current viable solution for building out the nationwide interoperable public safety broadband network, but also leaves utilities and other CII entities without the option of buying service on a shared use public safety grade network from a commercial D Block operator.

Accordingly, current circumstances warrant a different interpretation of Section 337 than that proposed in the *Third FNRPM*, one that would better recognize the very real distinction between the two categories of communications needs of CII entities—the general communications category on the one hand and the public safety communications category on the other hand—and would allow utilities and other CII entities limited priority access to the public safety spectrum on a *services* basis for their communications related to protecting the safety of life, health or property. Such an interpretation promotes the major public interest concern underlying the Commission’s May 2010 waiver order, as it will help to facilitate funding of the public safety network by opening the way for capital contributions from utilities and other CII entities.³⁵ Insofar as the earlier proposed interpretation was made in the context of a proposed rulemaking, it is not binding and therefore does not stand as an impediment. The entire waiver framework that the Commission has constructed to allow early public safety deployment (while the larger rulemaking issues remain pending) supports allowing CII entities to partner with waiver recipients to help ensure the success of early deployments.

The proposal set forth herein fits squarely with the services based language of Section 337 (f) (1) as it recognizes the distinction between the two types of

³⁵ Indeed this same concern—funding of the public safety network—was a major public policy consideration in the Commission’s decision to establish the shared use public safety/D Block network in the first place.

communications services utilized by utilities and allows only limited priority access for those communications related to protecting the safety of life, health or property, with all other general communications of the utility receiving secondary, preemptible status. The proposal also serves the fundamental public policy concern of the Commission in facilitating a means to help secure financial support for building out the 700 MHz public safety broadband network.

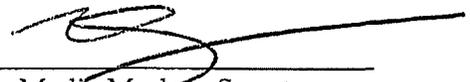
VI. CONCLUSION.

In view of the foregoing, in order to facilitate build out of the 700 MHz public safety network, the Commission should allow public safety waiver recipients to enter into partnering agreements with utilities and other CII entities under which a CII entity's communications of a *public safety* nature—i.e., communications to protect the safety of life, health or property³⁶—could be carried on a *limited priority* basis over the public safety 700 MHz network, with other general or non-public safety communications of the CII entity being carried on a *secondary* basis.

³⁶ 47 U.S.C. Section 337 (f) (1).

Respectfully Submitted,

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