

**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
)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010)	WT Docket No. 96-86
)	

**Reply Comments of the
Public Safety Spectrum Trust Corporation**

**Public Safety Spectrum Trust Corporation
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November 12, 2008

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The Public Safety Spectrum Trust Corporation (“PSST”) hereby submits these reply comments in the above-referenced proceeding.¹ The record makes clear that there is broad support for the Public/Private Partnership as the best means of achieving the goal of a nationwide interoperable broadband wireless network for public safety entities. The PSST believes that most of the proposals in the Federal Communications Commission’s (“FCC” or “Commission”) *Third Further Notice of Proposed Rulemaking* (“Third FNPRM”), with some modifications, will result in a successful D Block auction. Commenters agree with many of the positions expressed by the PSST. Accordingly, the PSST urges the Commission to adopt rules consistent with the proposals below. The PSST has also incorporated some of these proposals into the draft Term

¹ In the Matter of Service Rules for the 678-746, 747-767 and 777-792 MHz Bands, *Third Further Notice of Proposed Rulemaking*, WT Docket No. 06-150, 73 FR 57,750 (2008) (“Third FNPRM”).

Sheet the Commission provided for the Network Service Agreement (“NSA”) to be negotiated between the D Block licensee and Public Safety Broadband Licensee (“PSBL”), as described below.

I. THE RECORD REFLECTS STRONG SUPPORT FOR THE D BLOCK AUCTION AND THE PUBLIC/PRIVATE PARTNERSHIP

A. Commenters Express Strong Support for a Single Nationwide License as the Best Means of Constructing a Nationwide Interoperable Network, and for the Proposed Regional Licenses as an Acceptable Alternative.

The PSST and other commenters have continued to express a very strong preference that the D Block spectrum be awarded to a single entity as a 10 MHz nationwide license.² As the Commission has recognized, licensing the D Block on a nationwide basis can help to achieve myriad goals, including ensuring interoperability, cost-effectiveness, spectral efficiency, and flexibility.³ However, recognizing that some commenters believe a nationwide license will not attract bids,⁴ the PSST supports the regional license approach, provided that the Commission ensures adequate resources to deal with the increased burdens of this approach on the PSBL. To minimize these burdens, the FCC should adopt the proposal advanced by United States Cellular Corporation (“USCC”) and supported by other commenters, which would require D Block

² The Public Safety Spectrum Trust Corporation Comments, WT Docket No. 06-150, 38 (filed June 20, 2008) (“PSST Second FNPRM Comments”); The Public Safety Spectrum Trust Corporation Reply Comments, WT Docket No. 06-150, 11 (filed July 7, 2008) (“PSST Second FNPRM Reply Comments”); *see also* Comments of the Association of Public-Safety Communications Officials-International, WT Docket No 06-150, 40 (filed June 20, 2008); Comments of the Association of Public-Safety Communications Officials-International, WT Docket No. 06-150, 6-7 (filed Nov. 3, 2008) (“APCO Third FNPRM Comments”); IMSA et al. Comments, WT Docket No. 06-150, 12 (filed June 20, 2008); NATOA, *et al.*, Comments, WT Docket No. 06-150, 10 (filed June 20, 2008); NATOA, *et al.*, Comments, WT Docket No. 06-150, 6 (filed Nov. 3, 2008).

³ Third FNPRM at ¶¶ 65-66.

⁴ Comments of AT&T Inc., WT Docket No. 06-150, 10-14 (filed Nov. 3, 2008) (“AT&T Third FNPRM Comments”); Comments of Bright House Networks, WT Docket No. 06-150, 10-12 (filed Nov. 3, 2008) (“Bright House Third FNPRM Comments”); Comments of Leap Wireless International, Inc., WT Docket No. 06-150, 3 (filed Nov. 3, 2008) (“Leap Third FNPRM Comments”). Additionally, some commenters urge the Commission to postpone the auction while the credit markets remain in turmoil. Leap Third FNPRM Comments at 16; Comments of MetroPCS Communications, Inc., WT Docket No. 06-150, 13 (filed Nov. 3, 2008) (“MetroPCS Third FNPRM Comments”).

winners to participate in a National Committee of Licensees.⁵ Also, the PSST and other commenters support the Commission’s proposal that the PSBL administer a Request for Proposal (“RFP”) process for remaining unauctioned Public Safety Regions,⁶ so long as PSST resources are taken into account in performing this as well as other important functions.

B. The Commission Should Continue to Reject Proposals by Large Cities and Local Authorities to Construct Individual Networks as a Substitute for the Public/Private Partnership.

Commenters in this proceeding continue to support the Commission’s tentative conclusion to require that the D Block license be subject to a Public/Private Partnership condition for the purpose of constructing a Shared Wireless Broadband Network (“SWBN”).⁷ A small minority, however, argues that the Commission should abandon this approach, and instead provide individual public safety entities direct access to the spectrum so they may construct their own separate networks.⁸ Notably, this minority consists of a few large local and state authorities. The Commission has recognized that local and regional efforts to construct public safety

⁵ Comments of United States Cellular Corporation, WT Docket No. 06-150, 33-36 (filed Nov. 3, 2008) (“USCC Third FNPRM Comments”); APCO Third FNPRM Comments at 19; Joint Comments of the American Ass’n of State Highway and Trans. Officials, the Congressional Fire Services Inst., the Forestry Conservation Communications Ass’n, the Int’l Ass’n of Fire Chiefs and the Int’l Municipal Signal Ass’n, WT Docket No. 06-150, 18-20 (filed Nov. 3, 2008) (“Joint Public Safety Third FNPRM Comments”); Response of Regional Planning Committee Twenty, WT Docket No. 06-150, 13-15 (filed Nov. 3, 2008) (“Region 20 Comments”).

⁶ Comments of the Nat’l Ass’n of Telecommunications Officers and Advisors, the Nat’l Ass’n of Counties, and the Nat’l League of Cities, WT Docket No. 06-150, 7 (filed Nov. 3, 2008) (“NATOA Third FNPRM Comments”).

⁷ See e.g., USCC Third FNPRM Comments at 2-3; APCO Third FNPRM Comments at 6-7; Tennessee Public Safety 700 MHz Regional Planning Committee, Region 39, WT Docket No. 06-150, 1-2 (filed Nov. 3, 2008) (“Tennessee RPC Third FNPRM Comments”); NATOA Third FNPRM Comments at 6; Joint Public Safety Third FNPRM Comments at 5.

⁸ Opening Comments of the City and County of San Francisco, California, and the City of Oakland, California, WT Docket No. 06-150, 17-18 (filed Nov. 3, 2008) (“SF/Oakland Third FNPRM Comments”); Comments of the New York City Police Department, WT Docket No. 06-150, 6 (filed Nov. 3, 2008) (“NYCPD Third FNPRM Comments”); Comments of the King County Regional Communications Board and the City of Seattle, WT Docket No. 06-150, 10-11 (filed Nov. 3, 2008) (“King County RCB/Seattle Third FNPRM Comments”); Comments of the Michigan Department of Information Technology, Communications Division, representing the Michigan Public Safety Communications System, WT Docket No. 06-150, 2 (filed Nov. 3, 2008); Letter from Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation to Hon. Kevin J. Martin, Chairman, FCC (filed Oct. 29, 2008) (“Joint Cities Letter”).

networks will “[leave] most of the country’s public safety community without wireless broadband for the foreseeable future.”⁹ Indeed, smaller cities, towns and rural areas will not be served at all by this proposal. Consequently, if this proposal is adopted the network would not have the nationwide interoperability that the Commission seeks to achieve. The Commission has wisely rejected these proposals and should continue to do so.

a. In the Current Economic Climate, Few Communities, if Any, Will Have the Resources Necessary to Construct Individual Networks.

As the Commission noted, a primary obstacle to constructing a nationwide interoperable public safety network (and the reason it established the Public/Private Partnership approach in the first place) is that most individual public safety agencies will lack funding for construction of individual broadband networks.¹⁰ This problem has been exacerbated by the current economic downturn, as even the large cities and localities are faced with massive budget shortfalls.¹¹

One of the most vocal proponents of this approach is the New York City Police Department. Although the New York City Police Department urges the Commission to allow localities to license, own, and operate their own individual networks,¹² it is difficult to see how the City of New York would be able to finance the construction and operation of an additional network, given that its current network cost New York taxpayers \$500 million over a five-year period.¹³ Recent announcements by the Mayor of New York suggest that budget cuts could

⁹ Third FNPRM at 21.

¹⁰ *Id.* at ¶ 44. The FCC has also recognized that permitting locality-by-locality broadband deployment would perpetuate the balkanization of public safety systems that exists today and is an obstacle to anything approximating nationwide interoperability.

¹¹ Indeed, it is no longer just the smaller cities and rural areas that will lack resources necessary to finance network build-out – every one of the large cities that support a “direct licensing” approach in this proceeding is having to reduce spending drastically to make up for reduced tax revenues and the difficulty of obtaining short term financing to meet their existing obligations, not to mention the additional burden of broadband network construction.

¹² NYCPD Comments at 13.

¹³ *High Tech Help For FDNY & NYPD*, New York Post (Feb. 6, 2008), available at http://www.nypost.com/seven/02262008/news/regionalnews/high_tech_help_for_fdny__nypd_99291.htm; William

prevent the NYPD from acting on the proposal it advocates. For example, the Mayor of New York recently announced budget cuts so severe that even the Police Department's headcount will be reduced by 1,000, and the Police Academy class planned for January 2009 will be cancelled.¹⁴

Similarly, the Cities of San Francisco and Oakland, California, urge the Commission to “establish a regional licensing process for those public safety entities that both request a license and can demonstrate the capability to build and operate such a network,”¹⁵ but they point out that they would need “access to the spectrum and funding” to do so.¹⁶ King County and the City of Seattle recommend that the FCC permit “qualified public safety agencies” to bid on spectrum (through their local governments) before accepting bids from commercial entities, conceding that “many local governments do not have the resources to built [*sic*] a network themselves however many can contribute resources.”¹⁷ All of these municipalities are currently experiencing financial difficulties that would severely constrain their ability to fund public safety network build-out, or its ongoing operation.¹⁸ Given the dire economic conditions most localities and State governments are currently facing, it is clear that the Public/Private Partnership provides the

Welsh, *Communications Network Would be Largest Citywide Mobile Network in U.S.*, Washington Technology (Jan. 24, 2005), available at http://www.washingtontechnology.com/print/20_2/25417-1.html?topic=statelocal.

¹⁴ Sewell Chan, *Bloomberg Announces Layoffs and Tax Increase*, NY Times (Nov. 05, 2008), see also Jason Grant, *Bloomberg Will Order More Budget Cuts*, NY Times (Nov. 4, 2008); David W. Chen, *Mayor Cancels Rebates for Homeowners*, NY Times (Nov. 6, 2008).

¹⁵ SF/Oakland Comments at 17.

¹⁶ *Id.* at 3.

¹⁷ King County RCB/Seattle Third FNPRM Comments at 9.

¹⁸ See, e.g., Bobby White, *California Cities Cut Police Budgets*, The Wall Street Journal (Oct. 31, 2008); Alan Wang, *Oakland Mayor makes painful cuts* (Sept. 30, 2008), available at <http://abclocal.go.com/kgo/story?section=news/local&id=642323&pt=print>; Susan Sward, *Newsome likes police study, but cash is tight*, SFGate.com (Nov. 3, 2008), available at <http://www.sfgate.com/cgi-bin/article.cgi?f=/c/a/2008/11/02/MNGR13S21K.DTL&type=printable>; Keith Ervin, *King County to lay off up to 255 workers*, Seattle Times (Oct. 14, 2008); Steve Shay, *King County Sheriff's office plans to cut 79 jobs*, West Seattle Herald (Nov. 4, 2008); Deirdre Gregg, *Seattle faces \$18M budget gap for '09, '10*, Puget Sound Business Journal (Nov. 5, 2008); Noelene Clark, *Officials: King County budget cuts "seriously jeopardize" criminal-justice system*, The Seattle Times (Oct. 21, 2008).

best (and possibly the only) means for achieving a nationwide interoperable broadband network for public safety.

b. The SWBN Can Achieve Commercial Viability and Still Meet the Requirements of Public Safety First Responders.

The cities' main criticism of the Public/Private Partnership approach as described in the Third FNPRM is that the standards and build-out requirements have been diluted to such a degree that the resultant network will not serve public safety's needs.¹⁹ They also argue that the SWBN will be too expensive for public safety agencies.²⁰

There are several measures the Commission can take to ensure that the Public/Private Partnership fosters the construction of a network that meets the needs of public safety, and achieves a cost-effective solution for *all* local authorities, not just those located in the handful of large urban centers that are seeking authority to build their own systems. The Commission can address these issues by adopting the PSST's proposals (*e.g.*, to reduce the proposed minimum opening bid price, modify the proposed coverage and build-out requirements, and ensure immediate local public safety involvement in emergency events) as set forth in greater detail herein. Above all, these issues can be addressed by empowering the PSST to advocate effectively for the public safety agencies it represents during NSA negotiations and in its ongoing role as the PSBL. Finally, although the cities claim that the PSST is "conflicted by private sector ownership," this is patently incorrect.²¹ In fact, the charge is not only false, it is impossible. The PSST has never had any ownership interests at all, much less any private ones,

¹⁹ King County RCB/Seattle Third FNPRM Comments at 2; NYCPD Third FNPRM Comments at 9-11; SF/Oakland Third FNPRM Comments at 3-4; Joint Cities Letter at 2.

²⁰ King County RCB/Seattle Third FNPRM Comments at 4, NYCPD Third FNPRM Comments at 7; SF/Oakland Third FNPRM Comments at 3.

²¹ Joint Cities Letter at 2.

because the PSST has never had the authority to issue capital stock²² and therefore has never had ownership shares. The FCC has mandated such non-equity status when requiring the PSBL “have no authority to issue capital stock or equity.”²³ Moreover, each of the fifteen public safety organizations on the PSST’s Board of Directors – all entities specifically selected by the FCC – is a nonprofit entity without any “private sector ownership.”

II. THE COMMISSION SHOULD ENSURE ADEQUATE AUTHORITY AND FUNDING TO ENABLE THE PUBLIC SAFETY BROADBAND LICENSEE TO CARRY OUT ITS MISSION

A. The Commission Should Empower the PSST in its Role as a Licensee so it may Effectively Represent the Interests of Public Safety.

Many commenters agree with the PSST that the Commission did not achieve the optimal balance in its assignment of operational responsibilities between the D Block licensee(s) and the PSBL with respect to managing and monitoring the network.²⁴ The PSST continues to believe that, in order to administer public safety users’ access to the SWBN effectively, it requires active oversight of emergency communications deployed over the public safety spectrum.²⁵ Commenters echo this concern.²⁶ Such oversight is necessary to implement priority access to the SWBN correctly while emergencies transpire in real time.²⁷ Limiting the PSST’s role simply to

²² See Seventh Article in PSST Articles of Incorporation filed upon its incorporation June 7, 2007 and found on the PSST’s website (www.psst.org).

²³ See 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, Second Report and Order, 22 FCC Rcd 15289 ¶ 375 (2007) (“Second R&O”).

²⁴ See, e.g., PSST Third FNPRM Comments at 9-16; APCO Third FNPRM Comments at 18; Joint Public Safety Third FNPRM Comments at 17-18; Comments of the National Public Safety Telecommunications Council, WT Docket No. 06-150 at 19-20 (filed Nov. 3, 2008) (“NPSTC Third FNPRM Comments”).

²⁵ PSST Third FNPRM Comments at 10.

²⁶ *Id.* at 13; APCO Third FNPRM Comments at 18 (limiting the PSST’s role to receiving monthly status reports goes too far and prevents it from fulfilling its obligations); Joint Public Safety Third FNPRM Comments at 17-18; SF/Oakland Third FNPRM Comments at 10-11; King County RCB/Seattle Third FNPRM Comments at 14.

²⁷ PSST Third FNPRM Comments at 11, 14; APCO Third FNPRM Comments at 18 (“[T]he PSBL does need to have some form of *real-time* participation in monitoring the network.”); NPSTC Third FNPRM Comments at 19-20.

establishing “priority access, service levels, and related requirements within the NSA process”²⁸ severely hampers the PSST’s ability to discharge its responsibilities as an FCC licensee.²⁹ The Commission should address this concern by providing the PSBL with greater authority in its proposed rules (as described in the PSST’s previous comments) and should make clear that this authority must be reflected in the NSA.³⁰

B. The Record Reflects Broad Concern that the Commission’s PSBL Funding Proposal Is Inadequate.

There is little support in the record for the Commission’s proposal to cap the PSBL’s funding at \$5 million. Numerous commenters – public safety groups, as well as wireless carriers and vendors – note that the cap does not accurately reflect the expenses that have been and will be incurred in administering access to the public safety spectrum.³¹ Indeed, several commenters note that the Commission offers no explanation as to the sufficiency of the funding it proposes.³² Instead, as Motorola suggests “it would be more appropriate for the Commission to seek input from the PSBL regarding the resources needed to accomplish its mission and base the amount on that input” to “prevent any significant budget shortfall or surpluses.”³³ The PSST, supported by commenter USCC, encourages the Commission to increase the PSBL’s funding to \$10 million

²⁸ Third FNPRM at ¶ 198.

²⁹ PSST Third FNPRM Comments at 12-13; Joint Public Safety Third FNPRM Comments at 18. *See also* 47 C.F.R. § 1.9010(b)(1).

³⁰ PSST Third FNPRM Comments at 9-16. The PSST provides detailed suggestions on modifications to the NSA Term Sheet in Section III of these Reply Comments.

³¹ *Id.* at 31; AT&T Third FNPRM Comments at 26-27; Joint Public Safety Third FNPRM Comments at 30; Motorola Third FNPRM Comments at 15; NPSTC Third FNPRM Comments at 19; Regional Planning Committee 20 Third FNPRM Comments at 22-23; USCC Third FNPRM Comments at 36.

³² Motorola Third FNPRM Comments at 15; Regional Planning Committee 20 Third FNPRM Comments at 22 (explaining that \$5 million may be unreasonably low if the PSST has to negotiate 58 NSAs); AT&T Third FNPRM Comments at 26.

³³ Motorola Third FNPRM Comments at 15; *see also* NPSTC Third FNPRM Comments at 19; APCO Third FNPRM Comments at 22.

per year – an amount it believes necessary to carry out its mission.³⁴ The PSST believes that any remaining uncertainty about the appropriateness of this figure is fully addressed by its suggestion that the FCC revisit the annual payment amount at the end of three years to determine whether it should be adjusted downward,³⁵ as well as by the PSST’s concurrence in the FCC’s intention to exercise direct oversight over the PSST’s budget.³⁶

C. The Commission Should Carefully Consider the Effects its Proposed Changes to PSBL Governance May Have on NSA Negotiations.

As the PSST explained in its Comments, it has already adopted several of the internal governance measures the Commission has proposed.³⁷ The Commission should ensure that it does not inadvertently skew NSA negotiations in favor of the D Block licensee by adopting rules that would disrupt continuity of leadership at this critical juncture.³⁸ Commenters acknowledge that the PSST’s “current Executive Committee members, all of whom have rich public safety backgrounds, have spent hundreds of hours on the development of the PSST and the Public/Private Partnership. They have gained invaluable new knowledge along the way and to lose the benefit of their experience is not in the public interest.”³⁹ The PSST accordingly urges the Commission to allow the current Executive Committee to continue through its term in order to leverage this knowledge on behalf of its constituents – the public safety users – in its NSA negotiations with the D Block auction winner(s). The PSST does not object to term limits for its

³⁴ PSST Third FNPRM Comments at 31; USSC Third FNPRM Comments at 36. As it indicated in its Comments in this proceeding, the PSST has conducted an analysis to arrive at this figure and is willing to address this subject further in a confidential submission to the Commission. PSST Third FNPRM Comments at 31 n.75.

³⁵ *Id.* at 33.

³⁶ Second R&O at ¶ 377.

³⁷ PSST Third FNPRM Comments at 34.

³⁸ *Id.* at 37; *see also* Joint Public Safety Third FNPRM Comments at 35 (stating that there is a significant benefit in retaining the current Executive Committee members because they possess the most relevant knowledge with respect to the issues).

³⁹ Regional Planning Committee 20 Third FNPRM Comments at 26.

Executive Committee members after the NSA negotiations are complete, nor does it object to more stringent conflict of interest requirements, or the separation of the Chairman and Chief Executive Officer (“CEO”) positions once the PSST is funded and can hire a CEO.⁴⁰

D. Many Commenters Urge the Commission to Increase Proposed Funding for Narrowband Relocation.

The record demonstrates that the Commission’s proposal to increase the reimbursement cap for narrowband relocation to \$27 million still falls short of adequately compensating the public safety agencies for relocating their systems.⁴¹ While some commenters suggest that the Commission eliminate the cap altogether,⁴² others agree that the Commission should consider individual agencies’ expenses when establishing a budget for narrowband relocation.⁴³ After contacting and working with eligible public safety users and the primary vendors to discern public safety users’ respective relocation costs, the PSST has estimated that funding needed to complete narrowband relocation, as presently required, could cost as much as \$74 million.⁴⁴ Other commenters have also analyzed the funds required to carry out narrowband relocation and have determined that \$27 million is inadequate.⁴⁵ The PSST and other commenters recommend

⁴⁰ PSST Third FNPRM Comments at 34-40.

⁴¹ APCO Third FNPRM Comments at 25-26; Comments of the Commonwealth of Virginia, WT Docket No. 06-150, 10 (filed Nov. 3, 2008) (“Commonwealth of Virginia Third FNPRM Comments”); Joint Public Safety Third FNPRM Comments at 38; Motorola Third FNPRM Comments at 18-20; NPSTC Third FNPRM Comments at 34; Pierce Transit Third FNPRM Comments at 5-8; PSST Third FNPRM Comments at 41; TIA Third FNPRM Comments at 9-11. In particular, many commenters are in agreement that this cap does not account for the substantial cost of replacing vehicular repeaters, which were built to agency specifications, which cannot be retuned cost effectively, and which make up a large percentage of the 700 MHz narrowband radios currently in use, as well as numerous other variables. APCO Third FNPRM Comments at 25-26; NPSTC Third FNPRM Comments at 34; Pierce Transit Third FNPRM at 5; PSST Third FNPRM at 41.

⁴² Commonwealth of Virginia Third FNPRM Comments at 10; TIA Third FNPRM Comments at 9.

⁴³ See NPSTC Third FNPRM Comments at 34; TIA Third FNPRM Comments at 13; Pierce Transit Third FNPRM Comments at 6-7.

⁴⁴ PSST Third FNPRM Comments at 41; see also Joint Public Safety Third FNPRM Comments at 38.

⁴⁵ Commonwealth of Virginia Third FNPRM Comments at 10 (determining that the relocation of Virginia’s system would cost \$14.26 million alone, so the Commission should increase the cap to \$40 million at a minimum); Pierce Transit Third FNPRM Comments at 5 (estimating that its relocation costs will be 75% higher than the amount allocated to the Washington region in the Third Further Notice).

that the Commission accept the need to either raise the cap on reimbursement for narrowband relocation efforts, or to provide some other mechanism for the substantial cost of replacing vehicle repeaters.⁴⁶

The PSST also believes that the proposed minimum opening bid of \$750 million could be reduced by an amount sufficient to cover narrowband relocation costs (either in total or above the \$27 million cap proposed by the Commission) in an attempt to neutralize the impact of such increased narrowband relocation funding on D Block bidders.⁴⁷ This approach provides the Commission with an opportunity to link the relocation costs with the assumption of these funding obligations and offset the minimum opening bid accordingly. Because bidders are likely to consider the long-term cost of acquiring the license, not just the auction price, this approach helps provide bidders with more certainty regarding projected costs before participating in the auction.

E. The Commission Can Address the Funding Issues Raised by Commenters by Lowering the Minimum Opening Bid Amount.

As discussed above, many commenters have expressed concern with the adequacy of funding the Commission has proposed for the PSST. Some commenters have also indicated that the proposed minimum opening bid of \$750 million is too high.⁴⁸ The PSST believes that the Commission can easily address both of these issues (in addition to the narrowband relocation funding shortfall) by further reducing its minimum opening bid amount by a figure that would

⁴⁶ PSST Third FNPRM Comments at 41; Joint Public Safety Third FNPRM Comments at 38; NPSTC Third FNPRM Comments at 34.

⁴⁷ In its comments, the PSST recommended that the minimum opening bid amount be reduced by \$75 million. PSST Third FNPRM Comments at 41. The PSST provided narrowband relocation cost estimates in an appendix attached to its comments in this proceeding. PSST Third FNPRM Comments at Appendix B. If calculated on a regional license basis, reductions in opening bids should correspond with narrowband relocation costs in the same region instead of on a *pro rata* basis across all regions regardless of narrowband relocation costs.

⁴⁸ APCO Third FNPRM Comments at 19; Region 20 Third FNPRM Comments at 16-17; Ericsson Third FNPRM Comments at 4.

cover the proposed increase in the PSST’s annual operating expenses (to \$10 million), and a complete discharge of past PSST expenses (\$10 million).⁴⁹ This approach would allow the Commission to address the PSBL’s funding needs in the context of the price to be paid at auction for the D Block license(s).

This approach would provide the necessary certainty to prospective bidders. The same rationale applies as explained above for narrowband relocation funding – bidders are likely to consider the full cost of acquiring the license, not just the price to be paid at auction. If the reduction in the minimum opening bid price is linked to assumption of the PSBL funding obligations, there should be fewer concerns raised about the amount of these obligations because they are being offset by the minimum opening bid price reduction.

III. THE COMMISSION SHOULD ADOPT OPERATIONAL AND TECHNICAL REQUIREMENTS FOR THE SWBN THAT WILL REDUCE THE SCOPE OF ISSUES TO BE NEGOTIATED IN THE NSA.

A. The PSST Must be Allowed to Activate an Expeditious Triggering Mechanism And Ensure the Effectiveness of the SWBN in the Event of an Emergency.

The PSST continues to believe that the Commission should permit the PSBL to utilize an expeditious triggering mechanism to ensure priority public safety access immediately at the outset of a significant disaster or emergency, prior to any federal or state declarations or orders.⁵⁰ As other commenters noted, the FCC’s proposed triggering mechanism is “unrealistic,”⁵¹ as well as “burdensome and time-consuming.”⁵² Emergencies require an immediate public safety response, and the PSBL must have an expeditious means of providing public safety users access

⁴⁹ The PSST is willing to address this subject further in a confidential submission. PSST Third FNPRM Comments at 31 n.75. The PSST would also support a greater reduction of the minimum opening bid amount in an amount equal to the present value of funding for the PSST to cover operating expenses for future years.

⁵⁰ PSST Comments at 22-24 at Appendix A.

⁵¹ Joint Public Safety Commenters at 9.

⁵² SF/Oakland Third FNPRM Comments at 8.

to the D Block network capacity in those instances when such access is necessary and consistent with FCC requirements.⁵³ Local public safety agencies must be authorized to make priority access decisions quickly and efficiently, without waiting for external events such as federal or state declarations or other approvals. The Commission should ensure that the PSBL may activate priority access for local public safety users following consultation with the designated government officials so that emergencies can be addressed on-site, quickly and effectively.

B. The Record Supports the PSST’s Proposal for Modification of the Proposed Build-Out Benchmarks.

Commenters agree with the PSST that the FCC’s proposed build-out requirements are too lenient to ensure adequate coverage for public safety.⁵⁴ To promote sufficient build-out by the D Block licensee(s), several commenters encourage the FCC to adopt the requirements that the PSST proposed.⁵⁵ The PSST’s modified build-out proposal has broad support from commenters and addresses some of the major issues presented in the record concerning the cost of covering low-density areas. By establishing a more modest build-out requirement for areas with fewer than ten persons per square mile, the PSST’s proposal addresses concerns raised by potential bidders, including AT&T, that the FCC’s proposal is not “economically viable in low population density areas.”⁵⁶ Indeed, this was the PSST’s primary consideration in its proposal for new low-

⁵³ As the Joint Public Safety Commenters stated, “[b]y the time a President or a governor declares a state of emergency, the need for four megahertz of increased communications capacity has likely already existed for hours or days,” and “with few exceptions, such declarations are generally made after an event, not in anticipation of one.” Joint Public Safety Commenters at 10; *see also* NPSTC Comments at 21-24.

⁵⁴ The NRPC argued that FCC’s proposed build-out requirements “are too low and, in many cases, require a degree of wireless coverage that is less than what is today commercially available.” NRPC Comments at 17. Tyco also opposes the Commission’s tentative conclusions, noting that “[a] broadband network that is not public safety grade would provide scant advantage over currently available commercial wireless broadband networks.” Comments of Tyco Electronics, WT Docket No. 06-150 (filed Nov. 3, 2008) at 4-5.

⁵⁵ PSST Third FNPRM Comments at 16-19. *See also* APCO Third FNPRM Comments at 16-17; Joint Public Safety Commenters at 16; NPSTC Third FNPRM Comments at 12.

⁵⁶ AT&T Third FNPRM Comments at 25-26.

density, Category D requirements.⁵⁷ The PSST’s proposal represents the best compromise to address cost concerns of potential D Block bidders, and to ensure that the SWBN serves the needs of public safety.

C. The Commission Should Specify a Discount Rate to Address Concerns Regarding a Fixed Rate.

The Commission’s tentative conclusion that a fixed rate of \$48.50 per user, per month for public safety users would be reasonable⁵⁸ found almost no support in the record.⁵⁹ Some commenters determined that this rate would be an enormous disincentive for participation by the local authorities the network is intended to serve.⁶⁰ Other commenters noted that pricing should be determined on regional basis because costs are likely to vary,⁶¹ and that a fixed rate would not allow public safety entities to realize benefits of downward pricing trends once network adoption becomes widespread.⁶² Commenters also criticized the proposed rate as “arbitrary” and noted that the public safety network will incorporate specialized standards not comparable to those reflected in ordinary commercial rates.⁶³

In the absence of any immediate consensus on this issue, the PSST urges the Commission to adopt the PSST proposal. Other commenters also supported the idea of a discount rather than

⁵⁷ PSST Third FNPRM Comments at 18 (stating “imposing unrealistic requirements on markets with extremely low population densities likely would have the perverse effect of deterring auction interest...”).

⁵⁸ Third FNPRM at ¶ 392.

⁵⁹ Leap Wireless stated it did not object to the proposed \$48.50 fee, but suggested that the Commission should clarify how the rate would be calculated on a going-forward basis and what input the D Block licensee(s) would have in that calculation. Leap Third FNPRM Comments at 10. AT&T also notes that fixing rates undermines the commercial viability of the project. AT&T Third FNPRM Comments at iv.

⁶⁰ Tyco Third FNPRM Comments at 3-4; Northrup Grumman Third FNPRM Comments at 4-5; Joint Public Safety Third FNPRM Comments at 31.

⁶¹ AT&T Third FNPRM Comments at 26-27; Region 20 Third FNPRM Comments at 24.

⁶² NATOA Third FNPRM Comments at 13-14.

⁶³ AT&T Third FNPRM Comments at 26; USCC Third FNPRM Comments at 27-29; Motorola Third FNPRM Comments at 16-17; PSO and CIO Task Force Third FNPRM Comments at 1; Seybold Third FNPRM Comments at 12; see also King County RCB/Seattle Third FNPRM Comments at 5 (arguing that it would be able to provide services at a considerably lower rate if it were to construct its own network); NYCPD Third FNPRM Comments at 5 (criticizing the \$48.50 proposed rate based on its projected expenses).

a fixed rate.⁶⁴ The implementation of a fixed discount from commercial rates, rather than a fixed rate, addresses concerns voiced by some commenters that widespread adoption will produce a downward pricing trend that must be incorporated into the rate. It also addresses concerns raised by carriers that the rate should be reflective of usage and the carriers' costs of providing service. The PSST fixed percentage discount from commercial rates achieves the best compromise among these varied interests.

D. The Commission Should Implement Measures to Ensure that the SWBN Serves Public Safety Needs.

Many commenters noted that the Commission must modify certain proposals to ensure that the SWBN will serve the needs of public safety. In particular, commenters highlighted serious concerns with the FCC's tentative conclusion that Critical Infrastructure Industry ("CII") entities would only be able to access the SWBN as commercial customers. The record reflects broad support by industry and public safety groups alike that the Commission find some means of permitting CII entities priority access to the SWBN.⁶⁵

As the PSST discussed in its previous comments, CII entities often perform essential public safety functions in the event of a natural disaster or emergency.⁶⁶ For example, it is essential that power crews respond immediately to remedy a major outage, and for road clearing companies to respond immediately to clear an area devastated by a hurricane or tornado. As several commenters have noted, interoperable communications among CII entities and public safety users is essential to protect lives and property in the event of an emergency or natural

⁶⁴ APCO Third FNPRM Comments at 22-23; USCC Third FNPRM Comments at 29 (advocating the adoption of rate principles rather than rate levels).

⁶⁵ APCO Third FNPRM Comments at 21; Joint Public Safety Third FNPRM Comments at 22-27; NATOA Third FNPRM Comments at 12-13; Tennessee RPC Third FNPRM Comments at 18-19. Even those local governments that advocate direct licensing of local authorities agree that the Commission should do more to permit CII entities access to the public safety network. *See* King County RCB/Seattle Third FNPRM Comments at 16.

⁶⁶ PSST Third FNPRM Comments at 25; *see also* PSST Second FNPRM Comments at 19-20.

disaster.⁶⁷ Therefore, the PSST urges the Commission, at a minimum, to provide an incentive in the form of a discount from commercial pricing (a smaller discount than the one for public safety customers, and without all of the other benefits of the NSA) to encourage the voluntary enrollment of CII entities. Once CII entities are SWBN users, the PSST should have the maximum authority permitted by the law (however the existing law is interpreted and however it may be amended in the future) to integrate communications with essential CII entities into an emergency response team.⁶⁸

Commenters also pointed out that in order to serve the needs of public safety, the Commission should mandate that the SWBN applications and software are interoperable in addition to mandating a common air interface and compatible hardware.⁶⁹ The PSST agrees with these commenters that the Commission should adopt measures to ensure that the nationwide network achieves true interoperability if the D Block is comprised of regional licensees. In particular, it supports the “National Platform” approach advocated by USCC.⁷⁰ This solution allows area networks to interconnect to a single set of dedicated servers to provide the most critical functions, a core public safety network, including authentication, authorization, user groups for push-to-talk and multimedia messaging, priority access, etc.⁷¹ Because USCC’s proposal promotes continuity of service for the most critical needs of public safety, the PSST urges the Commission to require regional D Block licensees to operate within the National Platform framework.

⁶⁷ See, e.g., Joint Public Safety Third FNPRM Comments at 25; NATOA Third FNPRM Comments at 12-13; King County RCB/Seattle Third FNPRM Comments at 3.

⁶⁸ PSST Third FNPRM Comments at 26.

⁶⁹ USCC Third FNPRM Comments at 11-13; SF/Oakland Third FNPRM Comments at 14-15; GeoCommand, Inc. Third FNPRM Comments at 3-7.

⁷⁰ USCC Third FNPRM Comments at 11-13.

⁷¹ *Id.* at 12.

Many commenters criticized the Commission’s early build-out rules and proposals.⁷² While the PSST supported the Commission’s existing rules, it notes that several commenters suggested that requiring the D Block licensee to compensate public safety authorities for early local build-out would be a deterrent to prospective bidders.⁷³ To address this concern, the PSST supports the USCC proposals. Specifically, USCC proposes that the D Block licensee compensate local public safety authorities’ early build-out based on the D Block licensee’s avoided incremental cost of construction. This avoids many of the disincentives that might be created if the Commission were to adopt a “commercially reasonable” standard, as urged by Alcatel-Lucent.⁷⁴ The PSST therefore urges the Commission to adopt the proposal advocated by USCC because it encourages early local build-out and provides a fair compensation mechanism.

E. The Commission Should Provide Additional Detail in the NSA Term Sheet on Compliance and Other Important Matters.

The PSST has reviewed the proposed NSA Term Sheet attached as Appendix E to the Third FNPRM, and believes it should be modified to add several further points to reduce uncertainty for prospective bidders on the D Block license(s). Many of these points go to the core of the PSBL’s authority as licensee and as an equal partner in the Public/Private Partnership.

The NSA Term Sheet lacks any provisions empowering the PSBL to monitor compliance with the NSA, including access to information needed to perform this task, or any remedies in the event that any non-compliance with terms of the NSA does occur. The Commission must incorporate into the Term Sheet the ability of the PSBL to conduct its NSA compliance

⁷² USCC Third FNPRM Comments at 25-26; Joint Public Safety Third FNPRM Comments at 21-22; Region 20 Third FNPRM Comments at 18-20; King County RCB/Seattle Third FNPRM Comments at 14-15; Motorola Third FNPRM Comments at 11-12;

⁷³ USCC Third FNPRM Comments at 25; Joint Public Safety Third FNPRM Comments at 21-22; Leap Third FNPRM Comments at 12.

⁷⁴ Alcatel-Lucent Third FNPRM Comments at 9-10.

monitoring function and to refer non-compliance issues to the Commission for appropriate and immediate action.⁷⁵ A critical part of this function is having access to the data needed to verify and report on compliance. As the PSST has argued, the ability to read periodic reports of the D Block licensee falls far short of the authority needed to enforce the NSA and is not consistent with the control function of a licensee.⁷⁶ Similarly, the NSA Term Sheet must also include a provision for Service Level Agreements (“SLAs”), reporting of compliance with those SLAs, and development of a process for identifying and correcting SLA shortfalls. Commenters have been calling for the Commission to provide a clear method for dispute resolution during the NSA negotiation process,⁷⁷ but there also must be a clear method for correction of problems once the NSA is in place and network deployment and operation commences.

The NSA Term Sheet also lacks any explicit mechanism for giving public safety entities the benefits of relevant NSA terms (*i.e.*, pricing, SLAs). Many of the matters covered by the NSA are intended for the benefit of the individual public safety users, and the PSST believes that these terms should automatically be incorporated into the service contracts public safety entities will have with the D Block licensee(s). These users must be able to object if the benefits contemplated in the NSA are not made available to them by the D Block licensee(s) and should not be barred from redress by the absence of such terms from their individual agreements.

The NSA Term Sheet should reflect that the NSA is intended to be more than a static implementation of FCC rules promulgated at the beginning of the network sharing arrangements.

⁷⁵ *Id.* at 14.

⁷⁶ PSST Third FNPRM Comments at 12-16. As the PSST has noted, wireless carriers already permit customers to have effective real-time network monitoring capability, and the D Block operator(s) should be required to make such service available to the PSBL as the licensee. *Id.* at 14 n.39.

⁷⁷ AT&T Third FNPRM Comments at 17 (“[T]o the extent that the FCC pursues its current proposal that provides for post-auction NSA negotiation, the Commission must adopt a clear method for dispute resolution during the negotiation of the NSA.”).

The NSA must include some provision to govern post-NSA activities, including such matters as the establishment of a joint program with the D Block license(s) for standards development and a mechanism for technology upgrades and future amendments to the NSA to reflect changes.⁷⁸ If the D Block licensee(s) is going to have the clear dispute resolution process some commenters are requesting, the NSA must explicitly provide that the Commission retains authority to resolve issues that develop after completion of the NSA, not just in its negotiation.

Finally, the PSST believes the NSA Term Sheet should be modified in accordance with these views and the proposals articulated in the PSST's previous comments in this proceeding. The PSST has attached to its Reply Comments a proposed revision of the draft NSA Term Sheet.⁷⁹

IV. CONCLUSION

Many commenters representing the wireless industry, equipment manufacturers, and the public safety community have expressed strong support for the Public/Private Partnership to address long-term public safety communications needs. The PSST continues to believe that the Public/Private Partnership is the only realistic hope for the construction and deployment of a nationwide interoperable public safety network. The Commission can achieve this goal by

⁷⁸ AT&T proposed a similar mechanism in this proceeding. *Id.* at 17.

⁷⁹ Appendix A, attached. The PSST has: (i) incorporated requirements for site hardening and designation of critical network sites; (ii) clarified that the PSBL is to maintain exclusive control over priority use by public safety users, including determination of when to allow emergency access in consultation with relevant government authorities; (iii) included a provision that requires D Block licensee(s) to use commercially reasonable efforts to enable the PSBL to manage priority access by CII entities during emergencies; (iv) incorporated revised build-out requirements recommended by the PSST; (v) included a term requiring a National Committee of Licenses if multiple regional licenses are granted; (vi) incorporated a term to discount pricing 20% from standard commercial rates; (vii) added a provision for quarterly reporting by the PSBL on NSA compliance, including access to information needed to prepare such reports; (viii) clarified that the PSBL is to have an active, real-time role in incident management for the benefit of public safety; (ix) provided for development of a distinct public safety core network with its own Home Location Register; (x) included a requirement that satellite devices be offered within a specific time-frame and for at least one laptop modem device, PDA and traditional voice device to be satellite capable; (xi) incorporated funding provisions consistent with the PSST's proposals.

adopting rules consistent with the recommendations expressed herein and by revising the NSA
Term Sheet accordingly.

Respectfully submitted,

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Appendix A

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APPENDIX E

NSA Term Sheet

Draft Network Sharing Agreement (NSA) Term Sheet Public/Private Partnership

The following terms are to be incorporated into all Network Sharing Agreements ("NSA") between each D Block licensee and the Public Safety Broadband Licensee ("PSBL"), to effectuate the 700 MHz public/private partnership.

Term of Agreement

- The term of the Network Sharing Agreement is 15 years. Extension of the term of the NSA or amendments to any of the major terms must be submitted to the Federal Communications Commission for approval.

Spectrum Use

- The D Block licensee(s) must provide public safety users with primary access to 10 megahertz of spectrum capacity at all times.

During Emergencies

- The D Block licensee must provide public safety users immediate emergency access to the D Block commercial capacity only in the event of an "emergency," which is defined as follows:
 - •The declaration of a state of emergency by the President or a state governor.
 - •The issuance of an evacuation order by the President or a state governor impacting areas of significant scope.
 - •The issuance by the National Weather Service of a hurricane or flood warning likely to impact a significant area.
 - •The occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics.
 - •The occurrence of manmade disasters or acts of terrorism of a substantial nature.
 - •The occurrence of power outages of significant duration and scope.
 - •The elevation of the national threat level to either orange or red for any portion of the United States, or the elevation of the threat level in the airline sector or any portion thereof, to red.
- The D Block licensee(s) must provide public safety users priority access to, but not preemptive use of, up to 40 percent of the commercial D Block spectrum capacity (*i.e.*, 2 megahertz in each of the uplink and downlink blocks), assuming the full public safety broadband block spectrum capacity is

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being used, for an aggregate total of 14 megahertz of overall network capacity in the following circumstances: the President or a state governor declares a state of emergency; the President or a state governor issues an evacuation order impacting areas of significant scope; or the national or airline sector threat is set to red. In these circumstances, the D Block licensee(s) must assign the next available channel to the requesting public safety user over a commercial user—*i.e.*, the public safety user would be placed at the top of the queue—and would not preempt a commercial call in progress. The right to priority access must be limited to the time and geographic scope of the “emergency.”

- The D Block licensee(s) must provide priority access to, but not preemptive use of, up to 20 percent of the commercial spectrum capacity (*i.e.*, 1 megahertz in each of the uplink and downlink blocks) in the following circumstances: the issuance by the National Weather Service of a hurricane or flood warning likely to impact a significant area; the occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics; the occurrence of manmade disasters or acts of terrorism of a substantial nature; the occurrence of power outages of significant duration and scope; or the elevation of the national threat level to orange for any portion of the United States. The right to priority access must be limited to the time and geographic scope of the “emergency.”
- To trigger priority access, the PSBL must request, on behalf of the impacted public safety agencies, that the D Block licensee provide such access. Priority access requests initiated by the PSBL will cover a 24-hour time period, will be initiated immediately upon the D Block licensee’s receipt of the priority access request, and must be reinitiated by the PSBL for each 24-hour time period thereafter for which ~~that~~ the priority access is required.
- In the event that the D Block licensee and the PSBL do not agree that an emergency has taken place, the PSBL ~~may ask the Defense Commissioner to resolve the dispute~~ will be entitled to make this determination following consultation with the appropriate individual in the federal, state, municipal or other government, as designated by the applicable administration from time to time (or if no such individual is designated, as determined by the PSBL in good faith) absent clear guidance from such individual to the contrary.
- The PSBL will formalize processes for seeking responses from local public safety agencies and quickly granting them access to additional capacity as emergency events are unfolding. The D Block licensee will enable the PSBL to manage priority access by local public safety agencies, with any disagreement between the D Block licensee and the PSBL as to the continuing activation of local public safety resources to be resolved as part of the re-initiation process referred to above.
- The D Block licensee will use all commercially reasonable efforts to enable the PSBL to manage priority access by Critical Infrastructure Industry (“CII”) entities during “emergencies.” The PSBL will be permitted to integrate communications with essential CII entities into an emergency response team.

Performance Requirements

- The D Block licensee(s) are is required to provide appropriate signal coverage, penetration and throughput, and offer service to at least 40 percent of the population in each ~~PSR~~ public service region (“PSR”) by the end of the fourth year, ~~and 75 percent by the end of the seventh year,~~ and 90 percent by the end of the tenth year. The D Block licensee(s) will be required to meet the following final benchmarks 15 years after the issuance of ~~their~~ its license(s):

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- ~~•~~ PSRs with a population density less than ~~100~~10 people per square mile, the D Block licensee(s) will be required to provide appropriate signal coverage, penetration and throughput, and offer service to at least ~~90~~75 percent of the population by the end of the fifteenth year;
- ~~•~~ PSRs with a population density equal to or greater than ~~100~~10 people per square mile and less than ~~500~~100 people per square mile, the D Block licensee(s) will be required to provide appropriate signal coverage, penetration and throughput, and offer service to at least 94 percent of the population by the end of the fifteenth year; ~~and~~
- PSRs with a population density equal to or greater than 100 people per square mile and less than 300 people per square mile, the D Block licensee will be required to provide appropriate signal coverage, penetration and throughput, and offer service to at least 96 percent of the population by the end of the fifteenth year; and
- ~~•~~ ~~PSRs with a population density equal to or greater than 500~~PSRs with a population density equal to or greater than 300 people per square mile, the ~~licensee(s) will be required to provide signal coverage~~D Block licensee will be required to provide appropriate signal coverage, penetration and throughput and offer service to at least 98 percent of the population by the end of the fifteenth year.
- The build-out requirements are summarized below:

<u>Density Category</u>	<u>Population Density (people/sq mi)</u>	<u>Year 4</u>	<u>Year 7</u>	<u>Year 10</u>	<u>Year 15</u>
<u>A</u>	<u>>300</u>	<u>40%</u>	<u>75%</u>	<u>90%</u>	<u>98%</u>
<u>B</u>	<u>100-300</u>	<u>40%</u>	<u>75%</u>	<u>90%</u>	<u>96%</u>
<u>C</u>	<u>10-99</u>	<u>40%</u>	<u>75%</u>	<u>90%</u>	<u>94%</u>
<u>D</u>	<u>≤10</u>	<u>30%</u>	<u>55%</u>	<u>70%</u>	<u>75%</u>

- These population coverage and performance requirements must be met on a PSR basis, ~~and licensees.~~ The D Block licensee(s) will have to use the most recently available U.S. Census county boundary data at the time of measurement to meet the requirements. ~~coverage requirements.~~ The D Block licensee(s) will submit its population coverage measurements to the Commission for final verification and determination as to whether a particular coverage requirement has been met.
- The NSA will specify the method of calculating coverage (for example, that coverage calculations will also be measured at 75 mph+ vehicular speed).
- To the extent that the D Block licensee chooses to provide terrestrial commercial services to population levels in excess of the relevant benchmarks, or provide other enhanced performance

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features beyond the levels otherwise required by the NSA, the D Block licensee must make the same level of coverage and service performance available to public safety entities.

- In addition to the required population benchmarks, D Block licensee~~(s)~~ must provide service to major highways, interstates, and incorporated communities with populations greater than 3,000 no later than the end of the D Block license term. To the extent that coverage of major highways, interstates and incorporated communities with populations in excess of 3,000 requires the D Block licensee to extend coverage beyond what is required to meet its population benchmarks, coverage can be provided through non-terrestrial means, such as MSS or other such technologies.
- The D Block licensee and the Public Safety Broadband Licensee must reach agreement on a detailed build-out schedule that is consistent with the performance benchmarks. The build-out schedule must identify the specific areas of the country that will be built out and the extent to which interstates within the D Block licensee's service area will be covered by each of the performance deadlines. The D Block licensee may determine, in consultation with the Public Safety Broadband Licensee, which particular areas of the country will be built out by each performance deadline.
- The D Block licensee and PSBL will jointly agree upon the designation of up to 50 percent of the total nationwide network sites as "critical" for purposes of site hardening, with a deployment schedule and allocation of those sites among the PSRs as reasonably agreed by the parties (in the case of the deployment schedule) or as reasonably determined by the PSBL (in the case of site allocation). Sites designated as "critical" will have battery backup power of 8 hours and generators with a 5-7 day fuel supply. Redundant backhaul capacity may also be required to satisfy network availability standards at "critical" site locations.
- Each build-out milestone must pass appropriate acceptance testing procedures and requirements before an applicable build-out benchmark is deemed to have been met. The acceptance testing procedures will be established with input and review by the Commission. The D Block licensee and the PSBL will collaborate throughout the acceptance testing process, through monitoring and oversight by the PSBL and associated reporting and updates by the D Block Licensee, as to whether a build-out deficiency exists, the D Block licensee must notify the PSBL if it is reasonably likely that a particular build-out milestone may not be met. The D Block licensee and the PSBL will work together in good faith to develop and implement recommendations for corrective actions as may be reasonable and/or appropriate under the circumstances.
- The D Block licensee may modify its population-based construction benchmarks where the D Block licensee and the Public Safety Broadband Licensee reach agreement and the Commission gives its prior approval for a modification. No increase in the performance requirements will be permitted unless it is acceptable to the D Block licensee, and no decrease in the performance requirements will be permitted unless it is acceptable to the PSBL and the Commission.
- For the D Block licensee for the Gulf of Mexico, the population-based benchmarks shall be inapplicable, and the D Block licensee for the Gulf of Mexico and the Public Safety Broadband Licensee may flexibly negotiate a coverage and service plan for public safety use for that region as needed.

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National Committee of Licensees

- Each D Block licensee will be required to participate in a National Committee of Licensees (“NCL”), which would fulfill the following functions:
 - Serve as a single point of contact for Commission, PSBL and public safety agencies on national issues.
 - Develop the D Block licensee’s recommendations for any Commission rule changes.
 - Negotiate a template of the NSA with the PSBL, and any subsequent modifications to the NSA template.
 - Arrange for support services for operations requiring inter-carrier coordination.
 - Work in conjunction with existing standards bodies and clearing houses.
- For purposes of negotiating the NSA, the NCL will consist of five representatives of the D Block licensees, elected by those licensees within 15 days after completion of the D Block auction on the basis of one vote for each Public Safety Region cast by the D Block licensee for such Public Safety Region, with any decision to be made by the NCL decided by a majority of such representatives.
- The D Block licensees will determine (as set forth in the NSA) the details of how the NCL would function following completion of the NSA, subject to the reasonable approval of the PSBL.

Role and Responsibilities of the D Block Licensee

- The D Block licensee has exclusive responsibility for all traditional network service provider operations, including customer acquisition, network monitoring and management, operational support and billing systems, and customer care, in connection with services provided to public safety users.
- The D Block licensee is subject to monthly ~~network usage~~ reporting requirements that will enable monitoring of its operations by the Commission and the PSBL.
- The D Block Licensee will allow the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment used on the network. The public safety subscribers will have right to purchase their own subscriber ~~equipments~~equipment and applications from any vendor they choose, to the extent such specifications, ~~equipments~~equipment, and applications are consistent with reasonable network management requirements and compatible with the network.
- If the D Block licensee chooses to adopt a wholesale-only model with respect to the D Block spectrum, it must ensure, ~~though~~through arrangements such as the creation of a subsidiary or by contracting with a third party, that retail service will be provided to public safety entities that complies with the Commission’s regulatory requirements. ~~This arrangement, and requirements set forth under this NSA Term Sheet. The appropriate coverage and performance requirements~~ to provide service to public safety ~~should~~shall be made part of the NSA.

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Role and Responsibilities of the Public Safety Broadband Licensee

The Public Safety Broadband Licensee's assigned duties will be as follows:

- General administration of access to the 763-768 MHz and 793-798 MHz bands by individual public safety entities, as facilitated through the establishment of priority access, service levels and related requirements negotiated into the NSA, approving public safety applications and end user devices, and related frequency coordination duties.
- Regular interaction with and promotion of the needs of the public safety entities with respect to accessing and use of the national public safety broadband network, within the technical and operational confines of the NSA.
- Interfacing with equipment vendors on its own or in partnership with the D Block licensee, as appropriate, to achieve and pass on the benefits of economies of scale concerning network and subscriber equipment and applications.
- Sole authority, which cannot be waived in the NSA, to approve, in consultation with the D Block licensee, equipment and applications **that are proposed** for use by public safety entities on the public safety broadband network.
- Responsibility to establish a means to authorize and authenticate public safety users. The Public Safety Broadband Licensee may accomplish this by establishing its own system that would accomplish these functions or defining parameters that are compatible with commercial technology and can be easily implemented by the D Block Licensee.
- Responsibility to facilitate negotiations between the D Block license winner and local and state entities to build out local and state-owned lands.
- **Maintain exclusive control over priority use by public safety users.**
- Coordination of stations operating on 700 MHz public safety broadband spectrum with 700 MHz public safety narrowband stations, including management of the internal public safety guard band.
- Oversight and implementation of the relocation of narrowband public safety operations in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69.
- Exercise of sole discretion, pursuant to Section 2.103 of the Commission's rules, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use subject to the terms and conditions of the NSA.
- Responsibility for reviewing and approving requests for early construction and operation of local public safety broadband networks on the 700 MHz public safety broadband spectrum in areas with and without a preexisting build-out commitment in the NSA, pursuant to the procedures and requirements outlined for such waivers as described in 47 C.F.R. § 90.1430.
- Responsibility for reviewing and approving requests for waiver submitted by public safety entities to conduct wideband operations pursuant to the procedures and restrictions in connection with such waivers as described in 47 C.F.R. § 90.1432.

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Public Safety Network Service Fees.

- ~~▪ The NSA must include a schedule of fees for public safety access to broadband network services.~~
- Public safety users of the D Block public safety spectrum will be charged a base rate of \$[-.] per user per month, that reflects a 20% discount from the standard commercial rates for the same or comparable service offerings.
- CII users, which will be considered commercial customers of the D Block licensee(s), will receive a % discount from the standard commercial rates for the same or comparable service offerings.
- ~~The initial fixed rates in the NSA will sunset at the end of the fourth year of the D Block licensee's license term. After the sunset, applicable rates will be negotiated based on fee schedules developed by the General Services Administration for government users of the commercial spectrum. An interoperability fee would be negotiated as part of the NSA, to be less than \$7.50.~~

Roaming Arrangement

- Each regional D Block licensee must provide public safety users of all other 700 MHz public safety regional networks with the ability to roam on its network.
- The NSA should further specify the relevant terms and conditions under which roaming will be provided.

Dispute Resolution Process.

- The Commission may resolve any impasse between the parties to the NSA, including, should the Commission find it in the public interest, requiring the parties to accept specified terms resolving the dispute. The Commission's resolution will be final and implemented by the parties in the timeframe(s) specified by the Commission.
- In resolving any disputes between a winning D Block bidder and the PSBL with respect to the terms of the NSA, the Commission will use its discretion to determine how best to take into account the winning D Block bidder's business plan, as well as the requirements of public safety users, when mandating a resolution.

Safeguards for Protection of Public Safety Service

- The D Block licensee must provide to the Public Safety Broadband Licensee monthly network usage statistics. These reports will be in the format reasonably requested by the PSBL and must include detailed information on performance against service levels, network availability, network coverage, network performance, trouble escalation and resolution, customer care and complaints with respect to public safety users, customer churn with respect to public safety users and any other information reasonably requested by the Commission or the PSBL. The D Block licensee also must promptly notify the PSBL of network downtime affecting public safety users, and must give the PSBL reasonable advance notice of any maintenance activities and other performance impacting events and activities

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that are reasonably expected to cause network downtime having the potential to affect public safety users.

- The D Block licensee may not discontinue service to public safety entities without the Commission's prior approval.
- The parties must jointly file quarterly reports with the Commission. These reports must be certified by a duly authorized officer of the D Block licensee, and must include detailed information on the areas where broadband service is being deployed and has been deployed, how the specific requirements of public safety are being met, ~~audited financial statements,~~ which public safety entities (e.g., police, fire, departments) are using the broadband network in each area of operation; what types of applications (e.g., voice, data, video) are in use in each area of operation to the extent known; and the number of declared emergencies in each area of operation.
- These quarterly documents also must incorporate, as a separate section, a report by the PSBL on compliance with the NSA, the Communications Act and the Commission's rules and policies, including whether the PSBL agrees with the conclusions of the D Block licensee(s) regarding such compliance and whether in the opinion of the PSBL the needs of public safety are being met by the SWBN. The PSBL will also report on the scope of its review and whether the D Block licensee has provided the information and network access requested by the PSBL in connection with preparation of its report.
- In order to enable the PSBL to prepare the section of each quarterly joint report on compliance with the NSA, the Communications Act and the Commission's rules and policies, the D Block licensee must provide to the PSBL on an ongoing basis access to network data as may be reasonably required by the PSBL. The PSBL also will be entitled to inspect and monitor network operations on an ongoing (but non-interference) basis, and the D Block licensee will cooperate in good faith and make readily available such information and data as may be reasonably requested by the PSBL in connection with such inspections. The D Block licensee must provide access to the source data for any and all reports provided to the PSBL and the Commission.
- Prior to the issuance of each quarterly report, designated senior executives of the D Block licensee and PSBL will meet to discuss compliance with the NSA, the Communications Act and the Commission's rules and policies, progress against the build-out schedule, adequacy of reporting, any issues regarding scope of the PSBL's access to information for its compliance reports, incident management, whether the needs of public safety are being met by the SWBN, other issues of importance to public safety and other matters reasonably requested by either the D Block licensee or the PSBL. The Commission will be invited to have members of its staff attend and participate in the quarterly senior executives meetings.
- The parties will develop and include in the NSA mechanisms for monitoring adherence and conformance to specified service quality and performance standards, including (i) creation of Service Level Agreements ("SLA") and an associate key performance indicator ("KPI") definition, metrics and reporting, (ii) SLA conformance oversight and management, and (iii) SLA violation and shortfall identification, notification, and correction.
- The D Block licensee and the Public Safety Broadband Licensee will develop and implement a process for the PSBL to have a meaningful role in public safety access to and use of the SWBN, particularly during emergencies but also in ensuring that ordinary public safety

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concerns are addressed. This will include the PSBL having an opportunity to assist with incident management and with implementation of public safety related aspects of the SWBN on an ongoing basis. This is expected to include input by the PSBL into communications management during emergencies and an active role for the PSBL in managing emergency communications, particularly where the public safety spectrum is being deployed.

- The D Block licensees (if there are regional winners) and the Public Safety Broadband Licensee will work together and collaborate in good faith for the development of a distinct public safety core network with its own Home Location Register (“HLR”) that contains the relevant information for all public safety users nationwide. The PSBL will have an appropriate oversight role in its ongoing utilization, including having the authority to create a public safety priority access user list to organize levels of access to the SWBN (based on input from local and regional public safety agencies) and to implement it at a national level.
- The terms and conditions of the NSA applicable to individual user contracts (including pricing, SLAs, etc.) shall serve as the minimum contractual standard for access to the network by a public safety user, and may not be overridden by the terms of agreements between individual public safety users and the D Block licensee. The D Block licensee may offer more favorable terms than those contained in the NSA, including terms more favorable taken as a whole, but the burden will be on the D Block licensee to show that a specific benefit was given to the public safety user (for example, a lower price) in return for a deviation from NSA requirements (for example, less favorable SLAs).

Funding of the PSBL Through the D Block Licensee

- The Public Safety Broadband Licensee must annually create and submit for FCC approval a budget for its administrative and operational expenses. The Public Safety Broadband Licensee also must have an annual audit conducted by an external, independent auditor. The proposed annual budget to be submitted by the Public Safety Broadband Licensee will provide the Commission with an ability to ensure that the Public Safety Broadband Licensee is acting in a fiscally responsible manner and not engaging in activities that exceed the scope of its prescribed roles and responsibilities.
- The Public Safety Broadband Licensee must submit a full financial accounting to the Commission on a quarterly basis.
- The D Block licensee must make an annual payment to the Public Safety Broadband Licensee of, the sum total of \$510 million per year in the aggregate in consideration for the D Block licensee’s leased access on a secondary basis to the public safety broadband spectrum.
 - In the event that the D Block spectrum is licensed on a regional basis, the Commission will specify after the close of the auction the annual payments required for each license won at auction, such that the total \$510 million in annual payments to the Public Safety Broadband Licensee is apportioned on a per region basis, based upon total ~~pop~~population per region.
- Upon approval of the NSA by the FCC, the D Block licensee will make a one-time payment to the Public Safety Broadband Licensee of up to \$10 million in consideration for the D Block licensee’s leased access on a secondary basis to the public safety broadband spectrum.

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- o In the event that the D Block spectrum is licensed on a regional basis, the Commission will specify after the close of the auction the one-time payments required for each license won at auction, such that the total \$10 million payment to the Public Safety Broadband Licensee is apportioned on a per region basis, based upon total population per region.
- The annual payment funds will be placed into an escrow account managed by an unaffiliated third party, such as a major commercial financial institution, for the benefit of the Public Safety Broadband Licensee. The Public Safety Broadband Licensee must seek approval of its selected escrow account manager from the Chief, PSHSB. The Public Safety Broadband Licensee can draw funds on this account to cover its annual operating and administrative expenses in a manner consistent with its submitted annual budget for that fiscal year. The entirety of the Public Safety Broadband Licensee's annual operating budget shall be based on these annual payments.
- To the extent that the Public Safety Broadband Licensee's actual operating expenses for a given fiscal year turn out to be less than its proposed budget, such that there are excess funds left over at the end of that fiscal year from the annual payment(s) made by the D Block licensee(s) at the beginning of that year, those excess funds may be applied towards the Public Safety Broadband Licensee's funding of administrative or operational expenses for the following fiscal year, or to fund secondary activities, such as the purchase of equipment for the benefit of individual public safety agencies.
- The Commission will revisit the amount of the annual payment at the end of 3 years to determine whether the amount should be adjusted based on the experience of the first 3 years with Commission-approved budgets.
- The one-time payment funds will be placed into an escrow account managed by an unaffiliated third party, such as a major commercial financial institution, for the benefit of the Public Safety Broadband Licensee. The Public Safety Broadband Licensee must seek approval of its selected escrow account manager from the Chief, PSHSB. The Public Safety Broadband Licensee will submit a request to draw funds from this account to cover amounts needed to discharge its payment obligations to third parties which accumulated prior to completion of the NSA and commencement of the funding of the Public Safety Broadband Licensee's operating expenses from the first year's annual budget (excluding any advances made prior to completion of the NSA).
- To the extent that the Public Safety Broadband Licensee's accumulated pre-NSA expenses turn out to be less than the one-time payment, such that there are excess funds left over, those excess funds may be applied towards the Public Safety Broadband Licensee's funding of any costs associated with conducting Requests for Proposal for Public Safety Regions for which licenses were not awarded in the D Block auction and NSA negotiations for those Public Safety Regions.
- The Public Safety Broadband Licensee is not permitted to:—(i) charge a separate lease fee to the D Block licensee(s) for their use of the public safety broadband spectrum or (ii) obtain loans or financing from any other sources. However, the Public Safety Broadband Licensee may engage in charitable or other fundraising activities consistent with its status as a non-profit organization, including the seeking of governmental grants from federal, state, municipal or other government agencies.

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Technical Requirements

▪ **Interoperability:**

- The network or networks are required to use the same air interface and provide voice, video, and data capabilities that are interoperable across agencies, jurisdictions, and geographic areas. Interoperable means that the technology, equipment, applications, and frequencies employed will allow all participating public safety entities, whether on the same network or different regional 700 MHz public safety broadband networks, to communicate with one another without any adjustments or re-tuning of equipment or applications.
- All networks are required to support seamless roaming of public safety users from other networks.
- The D Block licensee will provide interoperability reports in a form to be agreed upon, and as may updated and modified from time to time upon mutual agreement of the parties. Interoperability improvement will be regularly discussed during the quarterly senior executive meetings.

▪ Satellite Support:

- ~~Satellite Support:~~ The D Block licensee(s) must also ensure the availability to public safety users in their area at least one ~~handset with an integrated~~ satellite ~~solution~~ capable laptop modem device, PDA, and traditional voice device.
 - The D Block licensee(s) must ensure that the devices are offered within 3 years from D Block license grant or 2 years after chip sets are available.
 - The D Block licensee(s) must ensure that the devices are updated routinely, consistent with normal commercial wireless device enhancement schedules.
- **Greater Technical Requirements Can Be Purchased:** If a particular public safety agency wishes, for example, greater capabilities than required by the Commission's rules or this NSA, the Public Safety Broadband Licensee may negotiate on its behalf for such improvements, provided the public safety agency ~~provides the requisite financing~~ is willing to pay any charge therefore agreed with the D Block licensee.

Upgrades and Amendments After Entry into the NSA

- The technology utilized by the D Block licensee will evolve and be upgraded based on commercial wireless upgrade timeframes. The D Block licensee will work together in good faith on an ongoing basis with the PSBL to develop and implement technology upgrades, and the PSBL will provide regular reports to the Commission detailing the PSBL's reasonable views as to the development and implementation of technology and upgrades in light of industry standards and practices. Future upgrades should be backward compatible, allowing for appropriate transition periods so that devices purchased by public safety users do not become obsolete.

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- To the extent that the D Block licensee chooses to develop and implement technology upgrades, the D Block licensee must make the same level of technology upgrades available to public safety entities for equivalent charges, less the 20% public safety user discount.
- The D Block licensee and the PSBL will establish a joint program to identify public safety user requirements affecting the network technology road map and support the appropriate standards development organizations process to make those requirements part of subsequent technology releases.
- The D Block licensee and the PSBL will engage in periodic discussions, upon the occurrence of the events listed below and otherwise not less frequently than annually, and in connection with such discussions will seek to implement amendments to modifications to the NSA to reflect the following: (i) corrections and improvements to the NSA to resolve interpretation issues, (ii) new rules and regulations, (iii) changes to the network that have been implemented or agreed to be implemented with approval of the Commission including technology upgrades, (iv) material changes to how the D Block licensee operates the network that has the result of undermining provisions of the NSA intended for the benefit of the PSBL or public safety users, and (v) matters agreed between the D Block licensee and the PSBL. The Commission may resolve any impasse between the parties in connection with any such modifications to the NSA, including, should the Commission find it in the public interest, requiring the parties to accept specified terms resolving the dispute, and otherwise in accordance with the dispute resolution provisions described above.

Termination and Remedies

- If the D Block licensee fails to meet any performance requirement, the PSBL will refer the matter to the Commission for an appropriate remedy. Remedies for failure to meet a particular performance requirement may include, without limitation, any or all of the following, as determined by the Commission in accordance with the rules and regulations promulgated under the Communications Act: (i) a requirement to develop and implement a corrective action plan to be supervised by the PSBL or the Commission, (ii) a monetary remedy, such as a Commission imposed fine or forfeiture, (iii) subject to such rules and regulations, a termination or non-renewal of the D Block license and of the NSA with required provision of transition assistance to a successor licensee, and (iv) other remedies as determined by the Commission.
- The NSA may be terminated prior to the expiration of the 15 year term in connection with the D Block licensee's (i) failure to comply with the D Block license and/or applicable Commission rules or regulations; (ii) material and uncured breach(es) of any of the terms, conditions, representations, warranties and/or covenants contained within the NSA; and/or (iv) voluntary or involuntary bankruptcy, insolvency, dissolution, assignment for the benefit of creditors or any similar or preceding event calling into question the financial stability and well-being of the D Block licensee.
- Upon expiration or early termination of the D Block license and/or the NSA, the D Block licensee will provide reasonable transition assistance to any successor licensee. The D Block licensee will ensure minimal disruption to public safety users, and will cooperate in good faith with the PSBL, successor licensee, and affected public safety users to plan and implement a smooth and orderly service migration.

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APPENDIX E

NSA Term Sheet

Draft Network Sharing Agreement (NSA) Term Sheet **Public/Private Partnership**

The following terms are to be incorporated into all Network Sharing Agreements (“NSA”) between each D Block licensee and the Public Safety Broadband Licensee (“PSBL”), to effectuate the 700 MHz public/private partnership.

Term of Agreement

- The term of the Network Sharing Agreement is 15 years. Extension of the term of the NSA or amendments to any of the major terms must be submitted to the Federal Communications Commission for approval.

Spectrum Use

- The D Block licensee(s) must provide public safety users with primary access to 10 megahertz of spectrum capacity at all times.

During Emergencies

- The D Block licensee must provide public safety users immediate emergency access to the D Block commercial capacity only in the event of an “emergency,” which is defined as follows:
 - The declaration of a state of emergency by the President or a state governor.
 - The issuance of an evacuation order by the President or a state governor impacting areas of significant scope.
 - The issuance by the National Weather Service of a hurricane or flood warning likely to impact a significant area.
 - The occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics.
 - The occurrence of manmade disasters or acts of terrorism of a substantial nature.
 - The occurrence of power outages of significant duration and scope.
 - The elevation of the national threat level to either orange or red for any portion of the United States, or the elevation of the threat level in the airline sector or any portion thereof, to red.
- The D Block licensee(s) must provide public safety users priority access to, but not preemptive use of, up to 40 percent of the commercial D Block spectrum capacity (*i.e.*, 2 megahertz in each of the uplink and downlink blocks), assuming the full public safety broadband block spectrum

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capacity is being used, for an aggregate total of 14 megahertz of overall network capacity in the following circumstances: the President or a state governor declares a state of emergency; the President or a state governor issues an evacuation order impacting areas of significant scope; or the national or airline sector threat is set to red. In these circumstances, the D Block licensee(s) must assign the next available channel to the requesting public safety user over a commercial user—*i.e.*, the public safety user would be placed at the top of the queue—and would not preempt a commercial call in progress. The right to priority access must be limited to the time and geographic scope of the “emergency.”

- The D Block licensee(s) must provide priority access to, but not preemptive use of, up to 20 percent of the commercial spectrum capacity (*i.e.*, 1 megahertz in each of the uplink and downlink blocks) in the following circumstances: the issuance by the National Weather Service of a hurricane or flood warning likely to impact a significant area; the occurrence of other major natural disasters, such as tornado strikes, tsunamis, earthquakes, or pandemics; the occurrence of manmade disasters or acts of terrorism of a substantial nature; the occurrence of power outages of significant duration and scope; or the elevation of the national threat level to orange for any portion of the United States. The right to priority access must be limited to the time and geographic scope of the “emergency.”
- To trigger priority access, the PSBL must request, on behalf of the impacted public safety agencies, that the D Block licensee provide such access. Priority access requests initiated by the PSBL will cover a 24-hour time period, will be initiated immediately upon the D Block licensee’s receipt of the priority access request, and must be reinitiated by the PSBL for each 24-hour time period thereafter for which the priority access is required.
- In the event that the D Block licensee and the PSBL do not agree that an emergency has taken place, the PSBL will be entitled to make this determination following consultation with the appropriate individual in the federal, state, municipal or other government, as designated by the applicable administration from time to time (or if no such individual is designated, as determined by the PSBL in good faith) absent clear guidance from such individual to the contrary.
- The PSBL will formalize processes for seeking responses from local public safety agencies and quickly granting them access to additional capacity as emergency events are unfolding. The D Block licensee will enable the PSBL to manage priority access by local public safety agencies, with any disagreement between the D Block licensee and the PSBL as to the continuing activation of local public safety resources to be resolved as part of the re-initiation process referred to above.
- The D Block licensee will use all commercially reasonable efforts to enable the PSBL to manage priority access by Critical Infrastructure Industry (“CII”) entities during “emergencies.” The PSBL will be permitted to integrate communications with essential CII entities into an emergency response team.

Performance Requirements

- The D Block licensee is required to provide appropriate signal coverage, penetration and throughput, and offer service to at least 40 percent of the population in each public service region (“PSR”) by the end of the fourth year, 75 percent by the end of the seventh year, and 90 percent by the end of the tenth year. The D Block licensee will be required to meet the following final benchmarks 15 years after the issuance of its license(s):

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- PSRs with a population density less than 10 people per square mile, the D Block licensee will be required to provide appropriate signal coverage, penetration and throughput, and offer service to at least 75 percent of the population by the end of the fifteenth year;
- PSRs with a population density equal to or greater than 10 people per square mile and less than 100 people per square mile, the D Block licensee will be required to provide appropriate signal coverage, penetration and throughput, and offer service to at least 94 percent of the population by the end of the fifteenth year;
- PSRs with a population density equal to or greater than 100 people per square mile and less than 300 people per square mile, the D Block licensee will be required to provide appropriate signal coverage, penetration and throughput, and offer service to at least 96 percent of the population by the end of the fifteenth year; and
- PSRs with a population density equal to or greater than 300 people per square mile, the D Block licensee will be required to provide appropriate signal coverage, penetration and throughput and offer service to at least 98 percent of the population by the end of the fifteenth year
- The build-out requirements are summarized below:

Density Category	Population Density (people/ sq mi)	Year 4	Year 7	Year 10	Year 15
A	>300	40%	75%	90%	98%
B	100-300	40%	75%	90%	96%
C	10-99	40%	75%	90%	94%
D	<10	30%	55%	70%	75%

- These population coverage and performance requirements must be met on a PSR basis. The D Block licensee(s) will have to use the most recently available county boundary data at the time of measurement to meet the coverage requirements. The D Block licensee(s) will submit its population coverage measurements to the Commission for final verification and determination as to whether a particular coverage requirement has been met.
- The NSA will specify the method of calculating coverage (for example, that coverage calculations will also be measured at 75 mph+ vehicular speed).
- To the extent that the D Block licensee chooses to provide terrestrial commercial services to population levels in excess of the relevant benchmarks, or provide other enhanced performance features beyond the levels otherwise required by the NSA, the D Block licensee must make the same level of coverage and service performance available to public safety entities.

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- In addition to the required population benchmarks, D Block licensee must provide service to major highways, interstates, and incorporated communities with populations greater than 3,000 no later than the end of the D Block license term. To the extent that coverage of major highways, interstates and incorporated communities with populations in excess of 3,000 requires the D Block licensee to extend coverage beyond what is required to meet its population benchmarks, coverage can be provided through non-terrestrial means, such as MSS or other such technologies.
- The D Block licensee and the Public Safety Broadband Licensee must reach agreement on a detailed build-out schedule that is consistent with the performance benchmarks. The build-out schedule must identify the specific areas of the country that will be built out and the extent to which interstates within the D Block licensee's service area will be covered by each of the performance deadlines. The D Block licensee may determine, in consultation with the Public Safety Broadband Licensee, which particular areas of the country will be built out by each performance deadline.
- The D Block licensee and PSBL will jointly agree upon the designation of up to 50 percent of the total nationwide network sites as "critical" for purposes of site hardening, with a deployment schedule and allocation of those sites among the PSRs as reasonably agreed by the parties (in the case of the deployment schedule) or as reasonably determined by the PSBL (in the case of site allocation). Sites designated as "critical" will have battery backup power of 8 hours and generators with a 5-7 day fuel supply. Redundant backhaul capacity may also be required to satisfy network availability standards at "critical" site locations.
- Each build-out milestone must pass appropriate acceptance testing procedures and requirements before an applicable build-out benchmark is deemed to have been met. The acceptance testing procedures will be established with input and review by the Commission. The D Block licensee and the PSBL will collaborate throughout the acceptance testing process, through monitoring and oversight by the PSBL and associated reporting and updates by the D Block Licensee, as to whether a build-out deficiency exists, the D Block licensee must notify the PSBL if it is reasonably likely that a particular build-out milestone may not be met. The D Block licensee and the PSBL will work together in good faith to develop and implement recommendations for corrective actions as may be reasonable and/or appropriate under the circumstances.
- The D Block licensee may modify its population-based construction benchmarks where the D Block licensee and the Public Safety Broadband Licensee reach agreement and the Commission gives its prior approval for a modification. No increase in the performance requirements will be permitted unless it is acceptable to the D Block licensee, and no decrease in the performance requirements will be permitted unless it is acceptable to the PSBL and the Commission.
- For the D Block licensee for the Gulf of Mexico, the population-based benchmarks shall be inapplicable, and the D Block licensee for the Gulf of Mexico and the Public Safety Broadband Licensee may flexibly negotiate a coverage and service plan for public safety use for that region as needed.

National Committee of Licensees

- Each D Block licensee will be required to participate in a National Committee of Licensees ("NCL"), which would fulfill the following functions:

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- Serve as a single point of contact for Commission, PSBL and public safety agencies on national issues.
 - Develop the D Block licensee's recommendations for any Commission rule changes.
 - Negotiate a template of the NSA with the PSBL, and any subsequent modifications to the NSA template.
 - Arrange for support services for operations requiring inter-carrier coordination.
 - Work in conjunction with existing standards bodies and clearing houses.
- For purposes of negotiating the NSA, the NCL will consist of five representatives of the D Block licensees, elected by those licensees within 15 days after completion of the D Block auction on the basis of one vote for each Public Safety Region cast by the D Block licensee for such Public Safety Region, with any decision to be made by the NCL decided by a majority of such representatives.
 - The D Block licensees will determine (as set forth in the NSA) the details of how the NCL would function following completion of the NSA, subject to the reasonable approval of the PSBL.

Role and Responsibilities of the D Block Licensee

- The D Block licensee has exclusive responsibility for all traditional network service provider operations, including customer acquisition, network monitoring and management, operational support and billing systems, and customer care, in connection with services provided to public safety users.
- The D Block licensee is subject to monthly reporting requirements that will enable monitoring of its operations by the Commission and the PSBL.
- The D Block Licensee will allow the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment used on the network. The public safety subscribers will have right to purchase their own subscriber equipment and applications from any vendor they choose, to the extent such specifications, equipment, and applications are consistent with reasonable network management requirements and compatible with the network.
- If the D Block licensee chooses to adopt a wholesale-only model with respect to the D Block spectrum, it must ensure, through arrangements such as the creation of a subsidiary or by contracting with a third party, that retail service will be provided to public safety entities that complies with the Commission's regulatory requirements, and requirements set forth under this NSA Term Sheet. The appropriate coverage and performance requirements to provide service to public safety shall be made part of the NSA.

Role and Responsibilities of the Public Safety Broadband Licensee

The Public Safety Broadband Licensee's assigned duties will be as follows:

- General administration of access to the 763-768 MHz and 793-798 MHz bands by individual public safety entities, as facilitated through the establishment of priority access, service levels and

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related requirements negotiated into the NSA, approving public safety applications and end user devices, and related frequency coordination duties.

- Regular interaction with and promotion of the needs of the public safety entities with respect to accessing and use of the national public safety broadband network, within the technical and operational confines of the NSA.
- Interfacing with equipment vendors on its own or in partnership with the D Block licensee, as appropriate, to achieve and pass on the benefits of economies of scale concerning network and subscriber equipment and applications.
- Sole authority, which cannot be waived in the NSA, to approve, in consultation with the D Block licensee, equipment and applications that are proposed for use by public safety entities on the public safety broadband network.
- Responsibility to establish a means to authorize and authenticate public safety users. The Public Safety Broadband Licensee may accomplish this by establishing its own system that would accomplish these functions or defining parameters that are compatible with commercial technology and can be easily implemented by the D Block Licensee.
- Responsibility to facilitate negotiations between the D Block license winner and local and state entities to build out local and state-owned lands.
- Maintain exclusive control over priority use by public safety users.
- Coordination of stations operating on 700 MHz public safety broadband spectrum with 700 MHz public safety narrowband stations, including management of the internal public safety guard band.
- Oversight and implementation of the relocation of narrowband public safety operations in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69.
- Exercise of sole discretion, pursuant to Section 2.103 of the Commission's rules, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use subject to the terms and conditions of the NSA.
- Responsibility for reviewing and approving requests for early construction and operation of local public safety broadband networks on the 700 MHz public safety broadband spectrum in areas with and without a preexisting build-out commitment in the NSA, pursuant to the procedures and requirements outlined for such waivers as described in 47 C.F.R. § 90.1430.
- Responsibility for reviewing and approving requests for waiver submitted by public safety entities to conduct wideband operations pursuant to the procedures and restrictions in connection with such waivers as described in 47 C.F.R. § 90.1432.

Public Safety Network Service Fees.

- Public safety users of the D Block public safety spectrum will be charged a base rate that reflects a 20% discount from the standard commercial rates for the same or comparable service offerings.

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- CII users, which will be considered commercial customers of the D Block licensee(s), will receive a ___% discount from the standard commercial rates for the same or comparable service offerings.
- An interoperability fee would be negotiated as part of the NSA, to be less than \$7.50.

Roaming Arrangement

- Each regional D Block licensee must provide public safety users of all other 700 MHz public safety regional networks with the ability to roam on its network.
- The NSA should further specify the relevant terms and conditions under which roaming will be provided.

Dispute Resolution Process.

- The Commission may resolve any impasse between the parties to the NSA, including, should the Commission find it in the public interest, requiring the parties to accept specified terms resolving the dispute. The Commission's resolution will be final and implemented by the parties in the timeframe(s) specified by the Commission.
- In resolving any disputes between a winning D Block bidder and the PSBL with respect to the terms of the NSA, the Commission will use its discretion to determine how best to take into account the winning D Block bidder's business plan, as well as the requirements of public safety users, when mandating a resolution.

Safeguards for Protection of Public Safety Service

- The D Block licensee must provide to the Public Safety Broadband Licensee monthly network usage statistics. These reports will be in the format reasonably requested by the PSBL and must include detailed information on performance against service levels, network availability, network coverage, network performance, trouble escalation and resolution, customer care and complaints with respect to public safety users, customer churn with respect to public safety users and any other information reasonably requested by the Commission or the PSBL. The D Block licensee also must promptly notify the PSBL of network downtime affecting public safety users, and must give the PSBL reasonable advance notice of any maintenance activities and other performance impacting events and activities that are reasonably expected to cause network downtime having the potential to affect public safety users.
- The D Block licensee may not discontinue service to public safety entities without the Commission's prior approval.
- The parties must jointly file quarterly reports with the Commission. These reports must be certified by a duly authorized officer of the D Block licensee, and must include detailed information on the areas where broadband service is being deployed and has been deployed, how the specific requirements of public safety are being met, which public safety entities (e.g., police, fire, departments) are using the broadband network in each area of operation, what types of applications (e.g., voice, data, video) are in use in each area of operation to the extent known, and the number of declared emergencies in each area of operation.

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- These quarterly documents also must incorporate, as a separate section, a report by the PSBL on compliance with the NSA, the Communications Act and the Commission's rules and policies, including whether the PSBL agrees with the conclusions of the D Block licensee(s) regarding such compliance and whether in the opinion of the PSBL the needs of public safety are being met by the SWBN. The PSBL will also report on the scope of its review and whether the D Block licensee has provided the information and network access requested by the PSBL in connection with preparation of its report.
- In order to enable the PSBL to prepare the section of each quarterly joint report on compliance with the NSA, the Communications Act and the Commission's rules and policies, the D Block licensee must provide to the PSBL on an ongoing basis access to network data as may be reasonably required by the PSBL. The PSBL also will be entitled to inspect and monitor network operations on an ongoing (but non-interference) basis, and the D Block licensee will cooperate in good faith and make readily available such information and data as may be reasonably requested by the PSBL in connection with such inspections. The D Block licensee must provide access to the source data for any and all reports provided to the PSBL and the Commission.
- Prior to the issuance of each quarterly report, designated senior executives of the D Block licensee and PSBL will meet to discuss compliance with the NSA, the Communications Act and the Commission's rules and policies, progress against the build-out schedule, adequacy of reporting, any issues regarding scope of the PSBL's access to information for its compliance reports, incident management, whether the needs of public safety are being met by the SWBN, other issues of importance to public safety and other matters reasonably requested by either the D Block licensee or the PSBL. The Commission will be invited to have members of its staff attend and participate in the quarterly senior executives meetings.
- The parties will develop and include in the NSA mechanisms for monitoring adherence and conformance to specified service quality and performance standards, including (i) creation of Service Level Agreements ("SLA") and an associate key performance indicator ("KPI") definition, metrics and reporting, (ii) SLA conformance oversight and management, and (iii) SLA violation and shortfall identification, notification, and correction.
- The D Block licensee and the Public Safety Broadband Licensee will develop and implement a process for the PSBL to have a meaningful role in public safety access to and use of the SWBN, particularly during emergencies but also in ensuring that ordinary public safety concerns are addressed. This will include the PSBL having an opportunity to assist with incident management and with implementation of public safety related aspects of the SWBN on an ongoing basis. This is expected to include input by the PSBL into communications management during emergencies and an active role for the PSBL in managing emergency communications, particularly where the public safety spectrum is being deployed.
- The D Block licensees (if there are regional winners) and the Public Safety Broadband Licensee will work together and collaborate in good faith for the development of a distinct public safety core network with its own Home Location Register ("HLR") that contains the relevant information for all public safety users nationwide. The PSBL will have an appropriate oversight role in its ongoing utilization, including having the authority to create a public safety priority access user list to organize levels of access to the SWBN (based on input from local and regional public safety agencies) and to implement it at a national level.

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- The terms and conditions of the NSA applicable to individual user contracts (including pricing, SLAs, etc.) shall serve as the minimum contractual standard for access to the network by a public safety user, and may not be overridden by the terms of agreements between individual public safety users and the D Block licensee. The D Block licensee may offer more favorable terms than those contained in the NSA, including terms more favorable taken as a whole, but the burden will be on the D Block licensee to show that a specific benefit was given to the public safety user (for example, a lower price) in return for a deviation from NSA requirements (for example, less favorable SLAs).

Funding of the PSBL Through the D Block Licensee

- The Public Safety Broadband Licensee must annually create and submit for FCC approval a budget for its administrative and operational expenses. The Public Safety Broadband Licensee also must have an annual audit conducted by an external, independent auditor. The proposed annual budget to be submitted by the Public Safety Broadband Licensee will provide the Commission with an ability to ensure that the Public Safety Broadband Licensee is acting in a fiscally responsible manner and not engaging in activities that exceed the scope of its prescribed roles and responsibilities.
- The Public Safety Broadband Licensee must submit a full financial accounting to the Commission on a quarterly basis.
- The D Block licensee must make an annual payment to the Public Safety Broadband Licensee of, the sum total of \$10 million per year in the aggregate in consideration for the D Block licensee's leased access on a secondary basis to the public safety broadband spectrum.
 - In the event that the D Block spectrum is licensed on a regional basis, the Commission will specify after the close of the auction the annual payments required for each license won at auction, such that the total \$10 million in annual payments to the Public Safety Broadband Licensee is apportioned on a per region basis, based upon total population per region.
- Upon approval of the NSA by the FCC, the D Block licensee will make a one-time payment to the Public Safety Broadband Licensee of up to \$10 million in consideration for the D Block licensee's leased access on a secondary basis to the public safety broadband spectrum.
 - In the event that the D Block spectrum is licensed on a regional basis, the Commission will specify after the close of the auction the one-time payments required for each license won at auction, such that the total \$10 million payment to the Public Safety Broadband Licensee is apportioned on a per region basis, based upon total population per region.
- The annual payment funds will be placed into an escrow account managed by an unaffiliated third party, such as a major commercial financial institution, for the benefit of the Public Safety Broadband Licensee. The Public Safety Broadband Licensee must seek approval of its selected escrow account manager from the Chief, PSHSB. The Public Safety Broadband Licensee can draw funds on this account to cover its annual operating and administrative expenses in a manner consistent with its submitted annual budget for that fiscal year. The entirety of the Public Safety Broadband Licensee's annual operating budget shall be based on these annual payments.

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- To the extent that the Public Safety Broadband Licensee's actual operating expenses for a given fiscal year turn out to be less than its proposed budget, such that there are excess funds left over at the end of that fiscal year from the annual payment(s) made by the D Block licensee(s) at the beginning of that year, those excess funds may be applied towards the Public Safety Broadband Licensee's funding of administrative or operational expenses for the following fiscal year, or to fund secondary activities, such as the purchase of equipment for the benefit of individual public safety agencies.
- The Commission will revisit the amount of the annual payment at the end of 3 years to determine whether the amount should be adjusted based on the experience of the first 3 years with Commission-approved budgets.
- The one-time payment funds will be placed into an escrow account managed by an unaffiliated third party, such as a major commercial financial institution, for the benefit of the Public Safety Broadband Licensee. The Public Safety Broadband Licensee must seek approval of its selected escrow account manager from the Chief, PSHSB. The Public Safety Broadband Licensee will submit a request to draw funds from this account to cover amounts needed to discharge its payment obligations to third parties which accumulated prior to completion of the NSA and commencement of the funding of the Public Safety Broadband Licensee's operating expenses from the first year's annual budget (excluding any advances made prior to completion of the NSA).
- To the extent that the Public Safety Broadband Licensee's accumulated pre-NSA expenses turn out to be less than the one-time payment, such that there are excess funds left over, those excess funds may be applied towards the Public Safety Broadband Licensee's funding of any costs associated with conducting Requests for Proposal for Public Safety Regions for which licenses were not awarded in the D Block auction and NSA negotiations for those Public Safety Regions.
- The Public Safety Broadband Licensee is not permitted to (i) charge a separate lease fee to the D Block licensee(s) for their use of the public safety broadband spectrum or (ii) obtain loans or financing from any other sources. However, the Public Safety Broadband Licensee may engage in charitable or other fundraising activities consistent with its status as a non-profit organization, including the seeking of governmental grants from federal, state, municipal or other government agencies.

Technical Requirements

- **Interoperability:**
 - The network or networks are required to use the same air interface and provide voice, video, and data capabilities that are interoperable across agencies, jurisdictions, and geographic areas. Interoperable means that the technology, equipment, applications, and frequencies employed will allow all participating public safety entities, whether on the same network or different regional 700 MHz public safety broadband networks, to communicate with one another without any adjustments or re-tuning of equipment or applications.
 - All networks are required to support seamless roaming of public safety users from other networks.

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- The D Block licensee will provide interoperability reports in a form to be agreed upon, and as may updated and modified from time to time upon mutual agreement of the parties. Interoperability improvement will be regularly discussed during the quarterly senior executive meetings.
- **Satellite Support:**
 - The D Block licensee(s) must also ensure the availability to public safety users in their area at least one satellite capable laptop modem device, PDA, and traditional voice device.
 - The D Block licensee(s) must ensure that the devices are offered within 3 years from D Block license grant or 2 years after chip sets are available.
 - The D Block licensee(s) must ensure that the devices are updated routinely, consistent with normal commercial wireless device enhancement schedules.
- **Greater Technical Requirements Can Be Purchased:** If a particular public safety agency wishes, for example, greater capabilities than required by the Commission's rules or this NSA, the Public Safety Broadband Licensee may negotiate on its behalf for such improvements, provided the public safety agency is willing to pay any charge therefore agreed with the D Block licensee.

Upgrades and Amendments After Entry into the NSA

- The technology utilized by the D Block licensee will evolve and be upgraded based on commercial wireless upgrade timeframes. The D Block licensee will work together in good faith on an ongoing basis with the PSBL to develop and implement technology upgrades, and the PSBL will provide regular reports to the Commission detailing the PSBL's reasonable views as to the development and implementation of technology and upgrades in light of industry standards and practices. Future upgrades should be backward compatible, allowing for appropriate transition periods so that devices purchased by public safety users do not become obsolete.
- To the extent that the D Block licensee chooses to develop and implement technology upgrades, the D Block licensee must make the same level of technology upgrades available to public safety entities for equivalent charges, less the 20% public safety user discount.
- The D Block licensee and the PSBL will establish a joint program to identify public safety user requirements affecting the network technology road map and support the appropriate standards development organizations process to make those requirements part of subsequent technology releases.
- The D Block licensee and the PSBL will engage in periodic discussions, upon the occurrence of the events listed below and otherwise not less frequently than annually, and in connection with such discussions will seek to implement amendments to modifications to the NSA to reflect the following: (i) corrections and improvements to the NSA to resolve interpretation issues, (ii) new rules and regulations, (iii) changes to the network that have been implemented or agreed to be implemented with approval of the Commission including technology upgrades, (iv) material changes to how the D Block licensee operates the network that has the result of undermining provisions of the NSA intended for the benefit of the PSBL or public safety users, and (v) matters

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agreed between the D Block licensee and the PSBL. The Commission may resolve any impasse between the parties in connection with any such modifications to the NSA, including, should the Commission find it in the public interest, requiring the parties to accept specified terms resolving the dispute, and otherwise in accordance with the dispute resolution provisions described above.

Termination and Remedies

- If the D Block licensee fails to meet any performance requirement, the PSBL will refer the matter to the Commission for an appropriate remedy. Remedies for failure to meet a particular performance requirement may include, without limitation, any or all of the following, as determined by the Commission in accordance with the rules and regulations promulgated under the Communications Act: (i) a requirement to develop and implement a corrective action plan to be supervised by the PSBL or the Commission; (ii) a monetary remedy, such as a Commission imposed fine or forfeiture; (iii) subject to such rules and regulations, a termination or non-renewal of the D Block license and of the NSA with required provision of transition assistance to a successor licensee; and (iv) other remedies as determined by the Commission.
- The NSA may be terminated prior to the expiration of the 15 year term in connection with the D Block licensee's (i) failure to comply with the D Block license and/or applicable Commission rules or regulations; (ii) material and uncured breach(es) of any of the terms, conditions, representations, warranties and/or covenants contained within the NSA; and/or (iv) voluntary or involuntary bankruptcy, insolvency, dissolution, assignment for the benefit of creditors or any similar or preceding event calling into question the financial stability and well-being of the D Block licensee.
- Upon expiration or early termination of the D Block license and/or the NSA, the D Block licensee will provide reasonable transition assistance to any successor licensee. The D Block licensee will ensure minimal disruption to public safety users, and will cooperate in good faith with the PSBL, successor licensee, and affected public safety users to plan and implement a smooth and orderly service migration.