

**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
	)	
	)	

**REPLY COMMENTS OF THE NATIONAL ASSOCIATION  
OF TELECOMMUNICATIONS OFFICERS AND ADVISORS,  
THE NATIONAL ASSOCIATION OF COUNTIES,  
THE NATIONAL LEAGUE OF CITIES, AND  
THE U.S. CONFERENCE OF MAYORS  
IN RESPONSE TO THE SECOND FURTHER  
NOTICE OF PROPOSED RULEMAKING**

Libby Beaty  
NATOA  
1800 Diagonal Road, Suite 495  
Alexandria, VA 22314  
(703) 519-8035

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## **I. INTRODUCTION**

The National Association of Telecommunications Officers and Advisors (“NATOA”), the National Association of Counties (“NACo”), the National League of Cities (“NLC”), and the U.S. Conference of Mayors (“USCM”) (collectively, “Commenters”) submit these Reply Comments in response to comments filed in response to the Second Further Notice of Proposed Rulemaking (“Second FNPRM”), released May 14, 2008, in the above-captioned proceeding.

NATOA’s membership includes local government officials and staff members from across the nation whose responsibility is to develop and administer communications policy and the provision of such services for the nation’s local governments.

NACo is the only national organization that represents county governments in the United States. It serves as a national advocate for counties; acts as a liaison with other levels of government; and provides legislative, research, technical and public affairs assistance to its members.

NLC is the nation’s oldest and largest organization devoted to strengthening and promoting cities as centers of opportunity, leadership and governance. NLC is a resource and advocate for more than 1,600 member cities and the 49 state municipal leagues, representing 19,000 cities and towns and more than 218 million Americans.

USCM is the official nonpartisan organization of the nation’s 1,183 U.S. cities with populations of 30,000 or more. Its mission is to promote effective national urban/suburban policy, strengthen federal-city relationships and ensure that federal policy meets urban needs.

As an initial matter, Commenters are concerned that 15 days, inclusive of a federal holiday weekend, is simply insufficient time to give adequate consideration to all of the comments filed thus far in this proceeding, and to those which were late filed and/or notices of

ex parte communications occurring after the comment due date. Due to the short time frame for filing reply comments, the introduction of additional related docketed items by the Commission,<sup>1</sup> and the limited resources of the Commenters, we respectfully request opportunity to amend these Reply Comments upon our further reflection and review of the volume of works that have been deposited with the Commission in the short comment period.

We also note that while this subject matter is of the utmost importance to the uniformed and non-uniformed public safety personnel affected by the actions contemplated herein, their direct representation has been extremely limited at the comment phase of this proceeding.<sup>2</sup> Further, as pointed out in our initial comments, the local elected officials that control the budget and decision-making authority over participation in the contemplated network have not been represented except through the remarks of Commenters. Representation of locally elected officials and their respective associations is, we believe, critical to success of the nationwide, broadband, interoperable public safety network in the 700 MHz band.

## **II. CLARIFICATION AND REVISIONS TO THE PUBLIC/PRIVATE PARTNERSHIP**

### **A. Local Input and Local Involvement is Critical to Success of the National Wireless Broadband Public Safety Network**

It is clear from most of the comments filed in the proceeding that the industry understands and acknowledges that local governments have a significant role to play in

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<sup>1</sup> In the Matter of Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands, WT Docket No. 07-195, WT Docket 04-356, Further Notice of Proposed Rulemaking, Adopted and Released June 20, 2008. We also note that this related item has an extremely short comment and reply comment period of 14 and 21 days respectively. Our concern is that the Commission take the time necessary based on a full and complete record in all related dockets, and not rush to action in a manner that will not serve the public interest.

<sup>2</sup> We applaud the involvement and comments of the New York City Police Department, the King County Regional Communications Board, the Ada County Sheriff's Office, the City and County of San Francisco, the City of Philadelphia, the District of Columbia, the City of Independence, MO Police Department, Prince George's County, MD, and others who represent the actual employees of our first responders and those local government employers of our nation's first responders in their respective communities.

this arena.<sup>3</sup> As has been stated time and again, all emergencies are, at least initially, local in nature. Local government participants are generally concerned about the lack of understanding of their role, and the lack of acknowledgement of such by the comments of the Public Safety Broadband Licensee (“PSBL”). We commend to the Commission the comments filed by local public safety officials; and express our concern that many of the comments filed by the Public Safety Spectrum Trust (“PSST”) and its Board members appear to ignore or at least fail to acknowledge the importance of the involvement of those whom they are charged to serve.<sup>4</sup> We hope that this docket will provide further opportunity to improve upon the structure of, and representation on, the PSST or any successor created as a result of the Commission’s future actions.

**B. Makeup of the Public Safety Broadband Licensee**

Based on a number of comments in the proceeding, and specifically those filed by both APCO and NENA as current members of the PSST, as well as many filed by local government and industry, it is clear that at present there is a lack of trust in the current

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<sup>3</sup> See generally Comments of Alcatel-Lucent, *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; (filed June 20, 2008) ; AT&T Inc., *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; (filed June 20, 2008); Qualcomm Incorporated, *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; (filed June 20, 2008); Motorola Inc., *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; (filed June 20, 2008); United States Cellular Corporation., *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; (filed June 20, 2008); and Verizon Wireless, *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 (filed June 20, 2008).

<sup>4</sup> See comments filed on behalf of the District of Columbia, King County Regional Communications Board, the New York City Police Department, Pierce County Public Transportation Benefit Area Corporation, City of Philadelphia, PA; City and County of San Francisco, CA; Ada County Sheriff’s Office, ID; Prince George’s County, MD;

makeup and governance structure of the PSBL and its relationship with its various advisors.<sup>5</sup> As pointed out in our original comments, the very officials who are responsible for the budget and involvement of their communities are currently excluded from representation on the PSST.<sup>6</sup> In order to ensure the future success and sustainability of the license held on behalf of local governments' public safety spectrum, we believe that the Commission may need to take certain steps to improve the current status of the PSST or any successor which it may choose to name.

**C. For Success, Actual and/or Perception of Conflicts Must be Addressed, Not Ignored**

Because the PSBL will be the holder of a license for spectrum owned by the American people and designated by Congress for local public safety needs, Commenters believe that the Commission, at a minimum, must address the lack of trust in and the perceived conflict of interest inherent in the current structure and governance of the PSBL. The Commission needs to take appropriate steps now to ensure that the PSBL is completely beyond reproach (and perceived as such) so that all concerned parties can have confidence in its ability to represent the public safety community. Specifically, Commenters suggest to the Commission the following points:

- The PSBL must be independent of potentially self-interested advisors and commercial interests. Commercial entities have different priorities and obligations than do public safety entities. Under the law, regardless of how the license and/or contracts are written, commercial entities' first obligation is to their

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<sup>5</sup> See Comments of International Association of Fire Fighters, *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; (filed June 20, 2008),

<sup>6</sup> See Comments of The National Association of Telecommunications Officers and Advisors, The National Association of Counties, The National League of Cities, and the U.S. Conference of Mayors, *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; (filed June 20, 2008) at 2

shareholders—not to public safety. Considering that it is a commercial provider who will be building out the network and will have access to public safety spectrum, there is already real risk of commercial interests dominating and compromising the network. The PSBL must therefore be a trustworthy and honest representative that is entirely independent of commercial interests in order for public safety to rely on in its representation.

- The D Block licensee cannot be presumed to represent public safety; by their very nature, commercial and public safety interests do not coincide. As is their mission, commercial license-holders will seek to minimize expenditures on the network and maximize commercial revenues.
- Local governments will be justifiably reluctant to use a network that they think represents primarily commercial interests and for which they cannot (rightly or wrongly) trust the entity charged with representing public safety.
- The PSBL’s meetings and operations must be fully transparent and open to give the Commission, Congress, state and local officials, first responders, and the American public confidence and assurance that commercial interests are not negatively impacting the purpose of the licensee.
- Significant lease payments from the D Block licensee to the PSBL amounts to the PSBL profiting from the spectrum, either from the lack of use by public safety or from public safety’s payments to the D Block holder for services, which would then enrich the PSBL. This paradigm creates perverse incentives for the PSBL to discourage rather than encourage public safety use, as the spectrum would be more valuable to the D Block licensee and the revenue to the PSBL presumably that much higher in the event that the public safety spectrum is little used by public safety and available for commercial use. In any event, the PSBL would see revenues either from public safety use or lack of use and it is therefore imperative that the PSBL represent the best interests of public safety and localities, not of itself or its advisors.
- Absent adequate representation of locally elected officials, the PSBL will encounter significant difficulty gaining the trust of local elected officials and the public safety officials on the ground within our communities.

- As another matter of concern, the PSBL will have to deal with security and spyware/sabotage issues on behalf of public safety and those who will rely on this network. These issues did not exist in the past because earlier generations of technology were far simpler (for example, they utilized simple radios, not software-based radios and networks that can be easily compromised through hidden coding) and the United States was not as reliant on foreign-developed and manufactured equipment and software. To address these issues without conflict, or perception of conflict, the PSBL must be beyond reproach and have no possible commercial agenda (such as to benefit certain products or manufacturers).<sup>7</sup>

We believe that the Commission addressing these matters now rather than later will facilitate development of trust in the representation and leadership of the PSBL-- either in the form of the PSST or in another iteration that may evolve as a result of this proceeding.

In any event, we are certain that a “top-down” attitude will fail to win the confidence of the first responder community, and the local governments that employ most of them. Rather, strong separations and protections for the public interest the licensee is charged with protecting are a necessity to the long term success of the desired network.<sup>8</sup>

### **III. Rules Governing the 700 MHz Public/Private Partnership**

#### **A. Narrowband Relocation**

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<sup>7</sup> See generally Comments of NTCH, Inc.; *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; (filed June 20, 2008). While not going so far as to agree with or endorse the comments of NTCH, we do appreciate the issue having been raised and being discussed in this item.

<sup>8</sup> “To address the inevitable tension between corporate profits and public safety, any public-private partnership must be subject to independent, strict and vigorous oversight to assure that public safety remains the priority and that public safety agencies are well-served.” Comments of International Association of Fire Fighters, *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; (filed June 20, 2008) at 2.

We are appreciative of the number of comments filed that reiterate to the Commission that the cap must be removed for the relocation expenses of those who will by necessity have to be moved. The cost of the relocation must be borne by the D Block licensee, and the timing for accomplishing this task must be more attuned to the timing under which the D Block licensee will be able to make use of the spectrum. Otherwise, the spectrum may be left fallow during a build phase when it could otherwise be used by local public safety officials.

**B. Geographic Area and Other Rules and Conditions**

We are concerned that several parties, including the PSST and its members as well as some industry commenters, appear willing to sacrifice the most rural areas of the nation with respect to network buildout.<sup>9</sup> It is the rural areas that do not have alternatives available today, and have little likelihood of attracting providers, that make buildout within these areas so important. We remain concerned that the rural areas of the nation will be left without appropriate representation by the PSBL or support for long-term rural needs pertaining to public safety. Such would be a disservice to the vision and mission underlying all the Commission's efforts to develop a nation-wide network.

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<sup>9</sup> Comments of Public Safety Spectrum Trust Corporation, *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 (filed June 20, 2008) at 34-35; Comments of APCO, *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; (filed June 20, 2008) at 30; Comments of AT&T Inc., *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; (filed June 20, 2008) at 15; Comments of Coverage Co., *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; (filed June 20, 2008) at 2; Comments of Northrop Grumman Information Technology, Inc., *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; (filed June 20, 2008) at 5.

We do not believe that the D Block should at this time be split into two or more commercial blocks or divided regionally. Although we appreciate and agree with much of what certain Commenters are attempting to achieve with such proposals, including more regional and local control and involvement, we also believe that the public/private partnership model may not be sustained if the commercial side is broken into too many separate elements without a single head. The specter of Hydra on the commercial side, exerting all of its resources against an underfunded and restricted PSBL, does not strike us as the right balance of power. Rather, we believe that the commercial interests that are interested in establishing some form of partnership to address the use of spectrum in urban/rural and/or regional areas should be encouraged to form such partnership amongst themselves prior to any bidding. Such an outcome would provide a single D Block licensee comprised of those who are willing to serve the entire country. The statement by Coverage Co. that it would seek to present a single face to the public safety community, and the PSST or its successor, implies that it and perhaps others could work these matters out amongst themselves and present that single face before the auction.<sup>10</sup>

**C. D Block Commercial Roaming in an Emergency**

Provided the equipment has the capability to operate with the spectrum and technology selected for a public-private partnership network, all service providers must provide the capability for commercial non-public safety users to roam to their network in the event of an emergency, when some or all of the capacity in a public-private network is prioritized or preempted by public safety use.

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<sup>10</sup> Comments of Coverage Co., *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; (filed June 20, 2008) at 11.

One of the enduring difficulties of the public-private partnership is how to treat non-public safety users in an emergency. Non-public safety users will want to use their devices in an emergency to communicate with others and to obtain emergency information from the Internet. Media outlets and bystanders will want to have access to a wireless data network in the vicinity of an actual incident. Moreover, customers will be justifiably concerned about subscribing to a data service if that service may be limited or preempted in their moment of greatest need. In order for a service provider to operate in that spectrum, it needs to understand how to serve customers in the event of an emergency.

All other compatible broadband data providers should be required to allow and facilitate roaming of non-public safety users to their network in the event of an emergency. Service providers must share information and coordinate as necessary for the roaming to work. This obligation is comparable to the Order of the Commission adopted in August 2007 stating that automatic roaming is a common carrier obligation for CMRS carriers.<sup>11</sup> The obligation will share the responsibilities of holding commercial licenses more widely, reduce the risk to the private partner, provide a means for the customers of the private partner to obtain critical services, and make customers of the private partner more confident in the service.

While APCO presents a proposal to have soft partitions between the public safety and commercial spectrum until a particular level of demand is met, which demand would then result in a hard partition between public and commercial users, we are concerned that such an approach would itself provide too much basis for disagreement and fails to account for the value of the use of the partnership in so far as under certain circumstances the public safety users would not have means of accessing any of the commercial spectrum. The stipulation that such use could only be

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<sup>11</sup> In the Matter of Reexamination of Roaming Obligations of Commercial Mobile Radio Service Providers, Report and Order and Further Notice of Proposed Rulemaking, WT Docket 05-265, Adopted August 7, 2007, Released August 16, 2007.

mandated by Presidential Order or other governmental control already in existence ignores the fact that under prior emergencies, the President has never issued an order activating the emergency broadcast system, and that by the time a governor issues an order to seize control over commercial property through the national guard or other enforcement agency, precious time and the ability to save lives and property will likely have already been lost.<sup>12</sup>

**D. Use of Satellite Technology**

For reasons previously stated in our initial comments and its technical appendix, we do not believe that satellite is an acceptable substitute under most circumstances.<sup>13</sup> Certainly the use of satellite is appropriate as a back up and for limited applicability when other systems fail, but it should not be used to reduce buildout obligations because the cost of the technology leaves those areas without appropriate means of achieving their public safety needs in a manner comparable to their larger, more urban peers.

**E. Access to Public Rights-of-Way**

Comments throughout the item refer to “public safety rights-of-way,” apparently assuming that public safety entities always control the rights-of-way to which they affix their equipment. In fact these are often *public* rights-of-way that are managed and controlled by a range of controlling governmental entities – the public works department, transportation department, planning department, or other departments of government which report to the same elected body as do the public safety departments. Similarly,

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<sup>12</sup> We also note that APCOs plan does not account for the border areas of the country that are limited in their use of spectrum due to the need to share such with Canada and Mexico. See Comments of The National Association of Telecommunications Officers and Advisors, The National Association of Counties, The National League of Cities, and the U.S. Conference of Mayors, *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; (filed June 20, 2008) at 8.

<sup>13</sup> *Infra* at 18-19

state rights-of-way are often used for public safety purposes by state-controlled agencies. Such entities must also be consulted and considered in the complex quest to achieve the best use of property and the appropriate controls by the owners thereof.

We do agree however, that to the extent that local governments choose to participate in the public/private partnership and use of the network, they may be in a position to use their streamlined processes to facilitate the mutual deployment needs of the public safety community and the commercial partner(s). Such efforts would likely be most successful if local governments are provided the requested representation on the PSBL, and are full participants in the development of any such mutual access plan.<sup>14</sup>

As previously pointed out however, mandatory access to public-rights-of-way may place the network equipment at a security risk that defeats the purpose of its special placement—and compromises the security of the facility and its existing equipment. As a result, any incentives to encourage collocation and mutual use of facilities must acknowledge that, in the event the network is granted use of any public right-of-way by a locality, the commercial entity may not have full access to the facilities and full control over the equipment, absent appropriate supervision or controls acceptable to the public entities that control those facilities.<sup>15</sup> Further, we do not believe that the Commission has or should attempt to exercise authority over public property, where clearly the public interest is represented and best served by those who are responsible to both the public safety personnel they employ and those who live within their communities.

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<sup>14</sup> *Infra* at 7

<sup>15</sup> See Comments of Google Inc., *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 (filed June 20, 2008) at 12-13.. We appreciate the willingness to come up with mutually acceptable solutions to the issue of access, including funding incentives, but would seek to ensure that such access cannot be mandated by rule or coerced through manipulation of funding sources.

#### **IV. CONCLUSION**

Commenters again encourage the Commission to provide appropriate representation on the PSBL board, and to actively involve the selected representatives in aiding the Commission in its efforts to achieve a nationwide public safety broadband network. We also ask that the Commission take a rational approach to the inter-related dockets that it has opened, and that it provide the interested parties with sufficient time to educate, inform and obtain advice from their own constituencies. The result will, we believe, provide a stronger and better outcome for the benefit of our public safety community, which is the underlying purpose of all of these endeavors. Let us not lose sight of the goal that our public safety community and those of us whom they serve, need and deserve the best and the most robust nationwide, broadband, interoperable public safety network that this great nation can provide.

Respectfully submitted,

Libby Beaty  
NATOA  
1800 Diagonal Road, Suite 495  
Alexandria, VA 22314  
(703) 519-8035  
June 7, 2008