addition, as with the RCA proposal, the proposal by the Vermont Department of Public Service ***et al.*** would apply a "keep what you use" standard to reclaim unused spectrum at the end of the license term.[458]

212. Discussion. Given the numerous and competing arguments offered by commenters, and considering the importance of rules that promote access to spectrum and the provision of service, we seek further comment on the performance requirements for the 700 MHz Commercial Services licensees. **As** the basis for our consideration, we propose to use a modified version of RCA's recommendation, which combines performance requirements based on geographic benchmarks and a "keep what you use" rule. Specifically, we propose that each licensee provide coverage of 25 percent of the geographic area of the license within three years of the grant of the initial license, 50 percent of this area within five years, and 75 percent of the area within eight years. We seek comment on this proposal, including its advantages and disadvantages. To the extent commenters believe these proposed benchmarks should be higher or lower, we request that they provide information that would corroborate the benefits of their proposed benchmarks and the costs and benefits of alternative approaches. Comments should address whether these specific geographic benchmarks would promote access to spectrum and the provision of service.

213. We also propose to consider the relevant service area to exclude all government land. Under this approach, a licensee with a geographic service area that includes land owned or leased by government would he able to meet the build-out benchmarks by employing a signal level that **is** sufficient to provide service to the relevant percentages of land in the service area that is not owned or leased by government.[459] If a licensee employs a signal level that provides coverage to land that is owned or leased by government, we seek comment on whether the licensee could count this land area and coverage as part of its service area for purposes of measuring compliance with the performance benchmark. Similarly, we seek comment on whether we should adopt a "keep what you use" standard that also excludes those portions of the licensed areas that encompass land owned or leased by government. In particular, we ask how a "keep what you use" rule that excluded government land would be applied in areas, such as Alaska, in which vast portions of the state or region include such land.

214. We also seek comment on the potential consequences for licensees that fail **to** meet the interim requirements to cover a minimum percentage of the geographic area **of** their license area. For example, licensees that fail to meet these benchmarks could have the length of their license term reduced. Alternatively, licensees that fail to meet the benchmarks could have their license area reduced under a proportionate "keep what you use" approach, as proposed by RCA.[460] Under this alternative, the reduction of the license area would be sufficient to create a resulting license area in which the area currently covered meets the relevant interim benchmark. For example, if a licensee employs a signal level sufficient to provide service to only 20 percent of the geographic area by the three-year benchmark, the licensee would be required to return a portion of the licensee's unserved area to the Commission, so that the covered area equals at least 25 percent of the remaining portion of the license area. A similar process would be used if a licensee fails to meet the five- and eight-year benchmarks.

215. We also seek comment on how we might apply a "keep what you use" rule to this proposal. In particular, we ask whether the Commission should apply such a standard **to** all of the licensees for the unauctioned 700 MHz Band Commercial Services or only to those licensees that fail to meet their geographic benchmarks. For example, the Commission could apply the "keep what you use" rule at the end of the license term, regardless of the level of construction by the licensee. Alternatively,

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[458] *See* Vermont Department of Public Service, ***et ol.*** Comments in WT Docket No. **06-150** at 5-8.

[459] ***See*** Letter from David L. Nace, counsel for Cellular South Licenses, Inc., to Chairman Kevin Martin and Commissioners Michael Copps, Jonathan Adelstein, Deborah Taylor Tate, and Robert McDowell, FCC, *Ex* ***Porte*** in WT Docket No. **06-IS0** (filed Apr. **23, 2007)** at Attachment.

[460] ***See.*** *e.g.*, RCA Comments in WT Docket No. **06-IS0** at **8-10;** RCA Reply Comments in WT Docket No. **06-150** at 4-7

licensees that fail to meet the 75 percent geographic area coverage requirement could be subject to a "keep what you use" rule applied either at the 8-year benchmark or at the end of the license term, while licensees that meet the E-year benchmark could be exempt from a "keep what you use" rule.

216. In addition, we ask commenters to address the process by which the Commission should reclaim unused spectrum under a "keep what you use" rule, and specifically, how such spectrum should be made available to new users. For example, we seek comment on whether parties that hold licenses for other spectrum in the same geographic area should be eligible to acquire the unused spectrum of another licensee after the Commission reclaims this spectrum and makes it available via competitive bidding. Similarly, we seek comment on whether the initial licensee should be eligible to bid on spectrum that it previously held as part of its original license. For both these alternatives, we ask that commenters address how a particular policy would help promote service to the unserved area and whether there would be a risk of negative effects, such as a loss of potential competition.

217. We also propose to apply our performance requirements on an EA and CMA basis only. Under such an approach, licensees with REAGs would be required to employ a signal level sufficient to provide adequate service to at least 25 percent of the geographic area of each EA in its license area within three years, 50 percent of the geographic area of each of these EAs within five years, and 75 percent of the geographic area of each of these EAs within eight years. REAG licensees that fail to meet the interim requirement in any EA within their license areas would lose a portion of the geographic area of that EA, such that the coverage of the remaining portion of the EA would be sufficient to meet the relevant benchmark.

218. We propose that licensees demonstrate their compliance with benchmarks by filing maps and other supporting documents with the Commission.[461] Would such information be sufficient to provide the Commission with easily identified areas, which could be reclaimed and reassigned via competitive bidding under a "keep what you use" approach? We also ask for comment on whether the Commission should reclaim the spectrum in unused areas in pre-defined units, such as counties. Those commenters that recommend a county-based "keep what you use" standard also should provide recommendations on how the Commission should apply this standard in the event a licensee serves only a small portion of a county, such as a highway or an area that is adjacent to a county that has more coverage by the licensee. We seek comment on these alternatives.

219. In addition, assuming licensees with REAGs are required to meet the performance requirements on an EA basis, we propose that these licensees would have to demonstrate coverage for each EA within their license area. Licenses based on EAs or CMAs would have to demonstrate coverage for their respective geographic license areas.

220. Finally, we seek comment on any other proposal that would similarly apply build-out requirements to these licensees more stringent than the substantial service standard applied under our current rules, and on how such proposals could be implemented. For example, should we use population rather than geographic benchmarks?

d. Incumbent Eligibility

221. We also seek comment on the proposal presented by Media Access Project and the Ad Hoc Public Interest Spectrum Coalition (PISC) to encourage the entry of new competitors by excluding incumbent local exchange camers (ILECs), incumbent cable operators, and large wireless camers from

[461] When the Commission adopted a benchmark approach for Personal Communications Service (PCS), it stated: "Licensees must file maps and other supporting documents showing compliance with the respective construction requirements within the appropriate five- and ten-year benchmarks of the date of their initial licenses." *See* C.F.R § 24.203(c).

eligibility for licenses in the 700 MHz Band.[462] In the alternative, PISC suggests that these incumbents only be eligible for licenses in the 700 MHz band through structurally separate affiliates, which it contends would make it possible to detect whether the incumbent receives more favorable treatment than unaffiliated providers.[463] We also seek comment on whether we should encourage the entry of new broadband competitors through lesser restrictions on eligibility for obtaining new licenses, both at auction and in the secondary market. More particularly, we seek comment on whether only parties not affiliated with existing wireline broadband service providers, including both **DSL** and cable providers, should be eligible to hold one or more blocks of the Upper 700 MHz C Block spectrum. Alternatively, should we restrict eligibility for such licenses to panies not affiliated with in-region wireline broadband service providers? Finally, as an alternative to limiting the parties eligible for new licenses in the 700 MHz Band, we seek comment on whether parties unaffiliated with incumbent wireline broadband service providers should receive a bidding credit on licenses in one or more block of the Upper 700 MHz spectrum. We also seek comment on how such new entrant bidding credits should be coordinated with existing bidding credits for small businesses, *i.e.*, should new entrant credits be cumulative or exclusive of small business bidding credits.

2. **700 MHz** Guard Bands

a. Band Plan Proposals

222. Background. Although the Guard Bands occupy a relatively small portion of the 700 MHz Band, changes to the Guard Bands—in terms of location or allocation of the spectrum—potentially implicate the entire Upper 700 MHz band plan. A shift in location or other change to the Guard Bands could impact the neighboring **24** megahertz public safety allocation and the forthcoming auction of the "recovered analog spectrum" that is subject to the statutory deadline established by Congress. In addition, because the Guard Bands are strategically located as interference buffers between commercial operations and public safety narrowband channels, modifications to the Guard Bands could potentially have **an** effect on the interference environment within the Upper 700 MHz Band.

223. In the 700 *MHz* ***Guard Bunds Notice,*** the Commission sought comment regarding the BOP, a proposal filed by a consortium including most of the existing Guard Band Managers.[464] According to the BOP, the existing A Block would be eliminated and the existing **A** Block licensees

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[462] ***See Ex Parte*** Comments of the ***Ad Hoc*** Public Interest Spectrum Coalition, PS Docket No. 06-229and WT Docket Nos. 06-150, 05-211, 96-86, at 9, 18-19 (filed Apr. 3,2007) ("PISC Apr. 3 ***Ex Parte*** Comments in **PS** Docket No. 06-229 and WT Docket Nos. 06-150, 05-211, 96-86"). PISC suggests a prohibition on such incumbents gaining access to the 700 MHz band either by auction or through secondary market transactions. In the alternative, PISC proposes that such restrictions apply to the E Block proposed by Frontline. ***See id.*** PISC is made up of the Consumer Federal of America, Consumers Union, Free Press, Media Access Project, New America Foundation, and Public Knowledge.

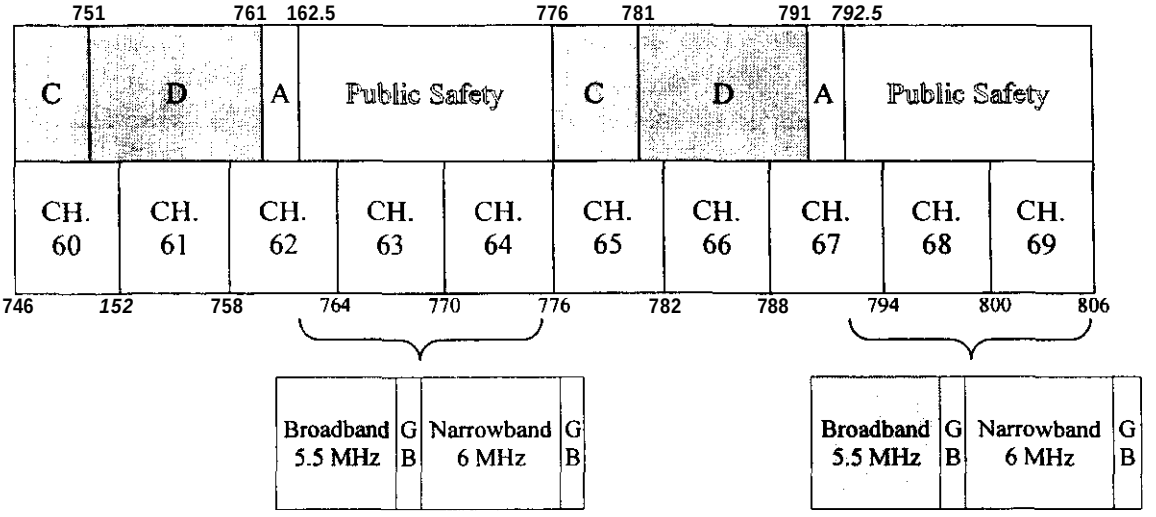
[463] ***See id.*** ai **9**-10.

[464] *See 700 MHz* ***Guard Bands Notice,*** 21 FCC Rcd at 10430-35 ¶¶ 40-48. We note that the BOP was first filed in the 700 *MHz* ***Public Safety Eighth Notice.*** Comments of Access Spectrum, L.L.C., Columbia Capital III, LLC, Intel Corporation and Pegasus Communications Corporation Comments in WT Docket No. 96-86 (filed lune 6,2006). For the purposes of this ***Report and Order*** and ***Further Notice*** of ***Proposed Rule Making,*** the Guard Band Managers associated with the BOP **will** be referred to as the "BOP proponents." We note that the BOP proponents expanded upon their public safety and Guard Bands proposal by arguing in the 700 *MHz* ***Commercial Services*** proceeding that the remaining, unauctioned spectrum in the Upper 700 MHz Band consisting of the C and D Blocks should be reconfigured from their current 5- and IO-megahertz allocations, respectively, into **two** spectrum blocks of 5.5 megahertz and one of 4 megahertz that would be adjacent to their proposed new 1.5-megahertz A Block. We also note that additional proposals have been filed – such as the proposal by the Coalition **for** 4G in America – that incorporate aspects of the BOP that would reconfigure the Guard Bands, while at the same time proposing reconfiguration of the C and D Blocks. ***See*** Letter from Ruth Milkman, counsel to Access Spectrum, LLC to Marlene H. Dortch, Secretary, FCC in ***Ex Parte*** in WT Docket No. 06-169 (filed Mar. 6,2007).

would be relocated to a modified B Block that the BOP proponents have renamed the new **A** Block. Of the current 2 megahertz paired of B Block spectrum, 0.5 megahertz paired would be added to the adjacent public safety allocation. The remaining 1.5 megahertz paired would be designated the new **A** Block, and the l megahertz paired of current **A** Block spectrum would be added to the public safety allocation. These changes would increase the total allocation of public safety spectrum in the 700 MHz Band from 24 to 27 megahertz and increase the total amount of spectrum held by the current **A** Block licensees from 2 megahertz to 3 megahertz.

224. To permit broadband deployment in the new **A** Block without causing interference to public safety narrowband operations, the BOP proposes that the public safety narrowband voice channels be consolidated to the upper portion of the 700 MHz Public Safety block, and public safety broadband channels be located next to the new **A Block.**[465] The BOP assumes that the new **A** Block licensees are likely to deploy compatible broadband operations in their adjacent allocations, minimizing the potential for interference between commercial and public safety operations.[466]

FIGURE 11 – BROADBAND OPTIMIZATION PLAN



225. Further, the BOP proposes that licenses for the new **A** Block would be assigned through a private negotiation among existing Guard Band licensees who would determine how the markets would be distributed, based on total MHz-pops of Guard Bands spectrum currently held by a particular licensee, rather than through competitive bidding of the new **A Block.**[467] This negotiation would include an

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[465] See, *e.g.,* Letter from Ruth Milkman, counsel to Access Spectrum, LLC to Marlene H. Dortch, Secretary, FCC, Ex Parte in WT Docket No. 06-169 (filed Mar. 6,2007) ("Access Spectrum/Pegasus Mar. 6,2007 ***Ex Parte***").

[466] Further, consolidating the public safety narrowband channels, according to the BOP, reduces the amount of spectrum separating—and thus protecting—the public safety broadband and narrowband channels from each other, and thus frees up additional spectrum for public safety **use. As** a provision of the BOP, public safely entities would be responsible for ensuring interference protection within their **own** public safety allocation, and the internal guard band within the public safety block separating public safety broadband and public safety narrowband operations would be scalable depending upon the level of protection that applicable public safety entities deem necessary. Another internal guard band that would exist under the BOP at the top of the paired public safety block and which could be used by the public safety community has raised interference concerns among some commenters with regard to the adjacent C Block.

[467] Access Spectrum/Pegasus Comments in WT Docket No. 06-169 at 19.

assignment through private negotiation of any of the B Block licenses returned from Nextel and currently within the Commission's auction inventory.[468] Any licenses unclaimed through the private negotiation would be available for auction.

226. Other parties also submitted band plan proposals to the Commission. The 700 *MHz* Guard *Bands Notice* sought comment on a proposal submitted by Motorola, Inc. (Motorola) and the United Telecommunications Council (UTC),[469] which requested that the Commission reallocate part of the returned B Block spectrum to critical infrastructure industries communications (CII) in support of interoperability with public safety entities.[470] Motorola subsequently proposed that within the framework **of** the BOP, 1 megahertz of spectrum could be allocated to CII.[471] Another commenter, Ericsson Inc., supports the BOP's reconfiguration of the 700 MHz Public Safety Band to the extent that it proposes to consolidate public safety narrowband channels at the upper half of the block allocated to public safety, and designate five megahertz of spectrum next to the B Block for broadband use.[472] Unlike the BOP, however, Encsson's proposal recommends that the Commission reallocate the entire B Block for exclusive public safety use.[473] Another commenter, Alcatel-Lucent, originally endorsed a 6 + 6 reconfiguration of the public safety allocation, but subsequently revised its proposal to also provide for a reallocation of the B Block Guard Band spectrum to public safety.[474]

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[468] *id.*

[469] Motorola, Inc. and United Telecom Council, ***Spectrum Toward Next Generation Critical Infrastructure*** (filed April **27,2006)** ("CII Proposal"). In an initial filing, Motorola proposed that the B Block be reallocated for both Federal government and critical infrastructure interoperability. Subsequently, Motorola revised its proposal to include only a reallocation for critical infrastructure industries, and not the Federal government. See Letter from Steve B. Sharkey, Motorola, Inc., to Marlene H. Donch, Secretary, FCC, WT Docket Nos. **96-86** and **06-169** at **4-5** (filed Dec. **9,2005).**

[470] ***id*** Subsequently, CII proponents have clarified that this allocation would remain commercial spectrum but assert that they would not be subject to competitive bidding due to the exemption in Section 309(j) of the Communications Act for "public safety radio services" of CII entities to the extent that they provide essential public services and maintain infrastructures that can prevent or respond to disasters or crises. See, *e.g.*, Comments of the Critical Infrastructure Communications Coalition Comments in WT Docket **Nos. 06-169** and **96-86** at **8-10** (filed Oct. **23, 2006)** ("CICC Comments"), citing Implementation of Sections 309(j) and **337** of the Communications Act of **1934,** As Amended, WT Docket No. **99-87, *Report and Order,*** 15 FCC Rcd **22709,22747 ¶ 77 (2000).**

[471] Specifically, Motorola proposes that the upper internal guard band in the paired public safety block be reallocated to CII. Motorola Comments in WT Docket No. **06-169** at 16-17. CII advocates maintain support for the original CII proposal, but also support, as an alternative, Motorola's subsequent recommendation to allocate for CII use the BOP's upper internal guard band in the public safety block. ***See*** CICC Comments in WT Docket No. **06-169** at **10.**

[472] See Ericsson Inc. Comments in WT Docket **06-169** at 5 (filed Oct. **23,2006)** ("Ericsson Comments"); Ericsson Inc. Reply Comments in WT Docket **06-196** at **1-2** (filed Nov. **13, 2006)** ("Ericsson Reply Comments"); Letter from Elisabeth H. Ross, Counsel to Ericsson, to Marlene H. Dortch, Secretary, FCC, ***Ex Parte*** in WT Docket Nos. **06-169** (filed Mar. **21, 2007)** ("Ericsson Mar. **21, 2007** *Ex Parte*").

[473] Ericsson Comments in WT Docket No. 06-169 at **13.** Ericsson also recommends placing a 2-megahem internal guard band between public safety broadband and narrowband channels, and a 1-megahertz internal guard band at the top of the public safety band to ensure that public safety operations are protected from interference from adjacent users. Ericsson Comments in WT Docket No. **06-169** at 10-11; Ericsson Mar. **21,2007** Ex ***Parte*** in WT Docket No. 06-169 at 5.

[474] Lucent Reply Comments in WT Docket 06-169 (filed November **6, 2006)** at **1-3** ("Lucent Reply Comments"). The original Alcatel-Lucent **"6 + 6"** proposal divides the public safety spectrum into six megahertz each of broadband and narrowband, with a I-megahertz broadband channel as an internal guard band). In an April **6,2007** filing, Alcatel-Lucent proposed another band plan that consolidates the public safety narrowband channels at the top of the public safety band, and repurposes the wideband channels for "multimedia" use. The proposal also reallocates 1 megahertz paired of the B Block Guard Band as an internal public safety guard band, and the remaining 1 megahertz paired of the B Block Guard Band as a guard band between D Block and the public safety (continued....)

227. Discussion. We tentatively conclude that we should not adopt the BOP, or other proposals to the extent that they propose a reallocation of commercial spectrum for public safety use, or the reassignment of spectrum outside of the competitive bidding process. We believe that Congress's express instructions regarding our allocation of commercial and public safety spectrum in the 700 MHz Band statutorily prohibit the Commission from reallocating the spectrum at this time, and we therefore cannot reallocate commercial spectrum for public safety use as proposed by the BOP and Ericsson plans. Similarly, we believe we are required to use a competitive bidding process to assign the spectrum that has been allocated for commercial use pursuant to these statutory instructions, and therefore must also deny the BOP and the CII proposals on this basis. Even if we possessed legal authority to adopt the BOP and CII proposals, we believe these proposals are not in the public interest because they would assign additional spectrum to current licensees without competitive bidding. We are also concerned that the BOP could result in interference between 700 MHz Band public safety and commercial operations.

228. ***Legal authority.*** In Section 337(a) of the Act, Congress mandated that the Commission allocate "spectrum between 746 MHz and 806 MHz, inclusive" (*i.e.*, the Upper 700 MHz Band) by designating 24 megahertz of the spectrum "for public safety services" and 36 megahertz of the spectrum "for commercial use to be assigned by competitive bidding pursuant to section 309(j)."[475] As directed by Congress, the Commission allocated 24 megahertz of this spectrum for public safety use at 764-776 MHz and 794-806 MHz and 36 megahertz of this spectrum for commercial use at 746-764 MHz and 776-794 MHz.[476] The 36 megahertz of Upper 700 MHz Band spectrum allocated for commercial use included the Guard Bands.[477] Notably, in deciding whether or not to allow commercial operations inside the Guard Bands, which primarily were designed to protect public safety operations, the Commission concluded that it was constrained by Congress' clear mandate to allocate, and thus auction, a full 36 megahertz of commercial spectrum in the Upper 700 MHz Band.[478] If the Commission had decided to prohibit commercial operations inside the Guard Bands, it would have fallen 6 megahertz short of fulfilling the explicit allocation requirement in Section 337(a).[479]

(Continued from previous page)
"multimedia" block. *See* Letter from Michael McMenamin, Alcatel-Lucent, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* in WT Docket Nos. 06-169 (tiled Apr. 6, 2007)("Alcatel-Lucent Apr. 6, 2007 *Ex Parte*").

[475] 47 U.S.C. § 337(a), as enacted by the Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997). Section 337(a) provides in pertinent part:

> (a) . . . the Commission shall allocate the electromagnetic spectrum between 746 megahertz and 806 megahertz, inclusive, as follows:
>
> (1) 24 megahertz of that spectrum for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General; and
>
> (2) 36 megahertz of that spectrum for commercial use to be assigned by competitive bidding pursuant to Section 309(j).

Congress also established a deadline of January 1, 1998 for this allocation, as well as a deadline of September 30, 1998 for assignment of the public safety licenses. *See* 47 U.S.C. § 337(b). On December 31, 1997, the Commission released an Order fulfilling Congress' allocation directive. *See* Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953, 22962 ¶ 17 (1998).

[476] Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953 (1997).

[477] The commercial portion at 746-764 MHz and 776-794 MHz includes the two blocks of paired Guard Bands spectrum at 746-747 MHz and 776-777 MHz, and 762-764 MHz and 792-794 MHz.

[478] *See Upper 700 MHz Second Report and Order*, 15 FCC Rcd at 5316-18 ¶¶ 36-40

[479] *See id.*

229. According to the BOP proponents, once spectrum allocated to commercial use pursuant to Section 337(a) has been auctioned once, the Commission has satisfied its allocation obligations under Section 337, and thus can reallocate the spechum for public safety use pursuant to its broad spectrum management authority.[480] As support for this interpretation of Section 337(a), the BOP proponents note that the Commission has similarly re-designated commercial spectrum to public safety use in the 800 MHz Band.[481] The BOP proponents assert that "[s]imilar public policy considerations and the exercise of the same statutory authority support allocation of the Upper 700 MHz [Band] B Block to public safety use consistent with the [BOP]."[482] Ericsson does not offer a legal argument in support of its proposed reallocation of the B Block from commercial to public safety use.

230. We recognize the unique communications needs of public safety entities and the instrumental role that spechum in the 700 MHz Band can play in meeting those communications needs. To that end, we remain committed to ensuring effective and efficient communications between first responders as evidenced by the other actions and tentative conclusions we make today in this ***Further Notice.*** It appears, however, that the reallocation of commercial spectrum to public safety contemplated by the various Guard Bands proposals – in particular, the BOP, the Ericsson plan, and the revised Alcatel-Lucent plan – would be inconsistent with Section 337. If the proponents of reallocation are correct, and Section 337(a) does not establish a permanent legislative bar on reallocating the Upper 700 MHz Band, we nevertheless believe that it would be contrary to Congress' intent in enacting Section 337 to consider modifying the commercial and public safety allocations in the band at this time, before the licensees have had a meaningful opportunity to use unencumbered spectrum as initially envisioned (an opportunity that is unlikely to be fully available before the end of the DTV transition in 2009).[483] Absent further legislation, and given that we have not yet reached several fundamental milestones envisioned by Congress in the DTV transition, reallocation of spectrum in the Upper 700 MHz Band at this time would appear to be inconsistent with Section 337.[484]

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[480] Letter from Ruth Milkman, counsel to Access Spectrum, LLC and Kathleen Wallman, adviser to Pegasus Communications Corporation, to Marlene H. Dortch, Secretary, FCC, ***Ex Parte*** in WT Docket Nos. 06-169 and 96-86 at 2-4, citing 47 U.S.C. §§ 154(i) and 303(r) (filed Dec. 12, 2006) ("Access Spectrum/Pegasus Legal Authority ***Ex Parte"***); Access Spectrum, LLC and Pegasus Communications Corporation Reply Comments in WT Docket No. 06-169 at 20-21.

[481] ***Id.*** at 5, citing Improving Public Safety Communications in the 800 MHz Band, Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels, Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems, Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service, Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service, Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service, WT Docket 02-55, ET Docket Nos. 00-258 and 95-18, RM-9498, RM-10024, ***Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order,*** 19 FCC Rcd 14969, 15080 ¶ 209 (2004) (***"800 MHz Report and Order").***

[482] Access Spectrum/Pegasus Legal Authority ***Ex Parte*** in WT Docket No. 06-169 at 5.

[483] If, in contrast, these proponents' reading of Section 337 is incorrect, and the statutory language in fact requires the Commission to maintain the specified 24/36 megahertz allocations in perpetuity (barring future legislative action), the result would be the same: the statute would prohibit us from altering these allocations at this time.

[484] *Cf.* Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use, Assignment of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) to the Public Safety Broadband Trust for Deployment of a Shared Public Safety/ Commercial Next Generation Wireless Network, RM No. 11348, ***Order,*** DA 06-2278 (rel. Nov. 3, 2006) (finding Cyren Call petition inconsistent with auction requirement of Sections 337(a) and 309(j)(15)(C)(v) and that the Commission lacks authority to take further action).

231. We also believe that we cannot reassign licenses in the manner proposed by the BOP and the CII proponents. In accordance with Section 337's mandate that commercial spectrum in the 700 MHz Band be assigned by competitive bidding, the Commission established in the ***Upper 700 MHz Second Report and Order*** a licensing framework providing that mutually exclusive applications in this band would be subject to competitive bidding pursuant to Section 309(j) of the Act.[485] This licensing scheme resulted in two auctions of the Guard Band licenses.[486]

232. The BOP proponents seek a reassignment of a total of 1 megahertz from the **B** Block to the current A Block licensees without competitive bidding.[487] They argue that they should be given this spechum because it would "create conditions conducive to public safety/commercial broadband partnerships."[488] They also contend that granting them this additional spectrum would result in more efficient and effective use of the spectrum because it would allow the A Block licensees to provide broadband services, which are not possible in the paired 1 megahertz spectrum blocks that they currently hold.[489] The CII proponents also seek to be awarded the B Block licenses without being subjected to competitive bidding. While offering that this spectrum would remain allocated as commercial spectrum, they maintain that the exemption to competitive bidding set out in Section 309(j) of the Commission's rules for "public safety radio services" would apply to the extent that **CII** provide essential public services and maintain infrastructures that can prevent or respond to disasters or crises.[490]

233. Even assuming agreement with the BOP proponents' reasoning for assigning additional spectrum to the current A Block licensees: it appears that we lack legal authority to assign them additional commercial spectrum in the Upper 700 MHz Band absent competitive bidding, because any such action would be inconsistent with the auction requirements in Sections 337(a). We also believe that awarding the commercial bands to CII outside of the competitive bidding process would be inconsistent with Section 337(a).[491] As noted above, Section 337(a)(2) prescribes competitive bidding as the method of assigning commercial spectrum in the Upper 700 MHz Band.[492] For the same reasons that we cannot reallocate the band at this time, we cannot alter the method of assignment at this time.

234. In addition, if we do not have the statutory authority at this time to assign additional Upper 700 MHz Band spectrum to public safety, the "public safety radio services'' exception to Section

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[485] ***Upper 700 MHz Second Report and Order,*** 15 FCC Rcd at 5311 ¶ 27 n.60. The Balanced Budget Act of 1997 required that the Commission **use** competitive bidding to assign licenses in the 36 megahertz of spectrum within the 746-806 MHz band. ***See*** 47 U.S.C. § 337(a)(2), as added by § 3004 of the Balanced Budget Act of 1997. Therefore, the Commission determined to assign Guard Band Manager licenses using competitive bidding, as required by Section 337(a)(2).

[486] ***See*** 700 MHz Guard Bands Auction Closes: Winning Bidders Announced, Report No. AUC-33-H (Auction No. 33), ***Public Notice***, 15 FCC Rcd 18026 (WTB 2000); 700 MHz Guard Bands Auction Closes: Winning Bidders Announced, Report No. AUC-38-F (Auction No. 38), ***Public Notice,*** 16 FCC Rcd 4590 (WTB 2001).

[487] Access Spectrum/Pegasus Comments in WT Docket No. 06-169 filed October 10 (originally June 6) at 4-5.

[488] ***Id.*** at 10

[489] Access Spectrum/ Pegasus Comments in WT Docket No. 06-169 filed October 23 at 7.

[490] ***See, e.g.,*** CICC Comments in WT Docket No. 06-169 at 8-10

[491] We acknowledge that under certain circumstances spectrum allocated to CII is not required to be assigned by competitive bidding, due the exception in Section 309(j)(2)(A) for commercial spectrum used for certain "public safety radio services." However, in this case Section 337 of the Act specifically mandates that the 36 megahertz of spectrum in the Upper 700 MHz Band must be assigned by competitive bidding, and **thus we** cannot adopt the CII proposals to the extent that they request allocations not subject to competitive bidding. We note, however, that **CII** entities **will** be eligible to participate in future auctions for spectrum in the 700 MHz Band.

[492] 47 U.S.C. § 337(a)(2)

309(j) of the Communications Act would be inapplicable.[493] Finally, with respect to the BOP proponents' comparisons of their proposal to the re-banding of the 800 MHz Band, we observe that our initiatives in that band did not implicate the Section 337 requirements under discussion here. Thus, the BOP proponents' reliance on the fact that the 800 MHz re-banding initiatives "withstood judicial scrutiny" is irrelevant.[494]

235. *Public Policy Considerations.* Even assuming we have the legal authority to assign additional spectrum to the current A Block licensees without competitive bidding, we believe that the BOP proposal for assigning licenses outside the competitive bidding process would not serve the public interest. **As** noted above, the BOP proponents argue that giving them additional spectrum will allow them to provide broadband services and create opportunities for public safety/commercial broadband partnerships and that such action is consistent with the Commission's reasoning in the 800 MHz proceeding. Although the A Block licensees' desire to provide broadband services is laudable, that desire appears insufficient to justify giving those licensees spectrum that otherwise would be assigned by auction. Congress and the Commission have determined that using competitive bidding mechanisms for assigning spectrum licenses offers significant public interest benefits.[495] For example, the competitive bidding process ensures that spectrum licenses are assigned to those who place the highest value on the resource and will be suited to put the licenses to their most efficient use.[496] Moreover, the Commission has recognized that the public interest is generally served by an auctions process that is open to a variety of applicants.[497] In addition, we believe it is likely that there will be substantial interest in the returned B Block spectrum by potential applicants other than the A Block licensees.

236. The BOP proponents' reliance on our actions in the 800 MHz Band appears misplaced. Although the Commission found that certain license modifications at issue in that proceeding were in the public interest, the 800 MHz rebanding involved ongoing public safety and commercial operations experiencing "intractable" interference problems that were impairing public safety operations.[498] These problems were the result of a "fundamentally incompatible mix" of communications systems operating in a heavily interleaved band pursuant to technical rules that had been developed over several decades.[499] By contrast, the BOP proponents are not seeking to remedy an ongoing interference problem between validly licensed and operational public safety and commercial entities that developed over time.

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[493] ***Id.*** § 309(j)(2) ("The competitive bidding authority granted by this subsection shall not apply to licenses or construction permits issued by the Commission– (A) for public safety radio services, including private internal radio services used by State and local governments and non-government entities and including emergency road services provided by not-for-profit organizations, that – (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public[.]").

[494] Access Spectrum/Pegasus Legal Authority ***Ex Parte*** in WT Docket No. 06-169 at 5, citing ***Mobile Relay Assocs. v. FCC,*** 457 F.3d 1 (D.C. Cir. 2006). We note that in ***Mobile Relay,*** the reallocation of commercial spectrum to public safety spectrum was not discussed and was not at issue.

[495] ***See*** Budget Reconciliation Act, P.O. 103-66, Legislative History, House Report No. 103-111 (1993) ("competitive bidding system…will encourage innovative ideas, and give proper incentive to spur a new wave of products and services that will **keep** the United States in a competitive position"). ***See generally*** Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, ***Second Report and Order,*** 9 FCC Rcd 2348 (1994) ***("Competitive Bidding Report and Order").***

[496] ***See Competitive Bidding Report and Order,*** 9 FCC Rcd at 2360-2361 ¶¶ 70-71

[491] ***implementation of Section 309(j) of the Communications Act, Competitive Bidding,*** 9 FCC Rcd 2941, 2943 ¶ ***8.***

[498] 800 ***MHz Order,*** 19 FCC Rcd at 15012 ¶ 68

[499] ***Id.*** at 14972 ¶ **2,** 14990-93 ¶¶ 36-39

237. Further, in the ***Air-Ground Order***,[500] we rejected an incumbent licensee's assertion that it should he afforded exclusive rights to use its existing spectrum on a more flexible basis that would allow it to provide broadband. In that order, we removed a limitation requiring voice and slow speed data service in the **800** MHz air-ground band and provided new licensees the flexibility to offer broadband services to aircraft of any **type,** and to serve any or all aviation markets. We reasoned that affording an incumbent licensee exclusive use with such increased flexibility would provide it with a substantial windfall, and concluded that permitting competing applications for licenses in that band would better serve the public interest. We believe our action in the ***Air-Ground Order*** supports a conclusion that adoption of the BOP would not be in the public interest, as the BOP proposes that incumbent licensees be afforded, without the prospect of competing applications, additional bandwidth beyond its existing spectrum assignment in addition to enhanced technical flexibility to provide broadband service.

238. We seek comment on these public policy concerns and any similar policy concerns, including our assessment that license assignment by auction is preferable to license assignment by private negotiation or other non-auction methods.

239. In addition to the above public policy concerns, we note that adoption of the BOP could also raise potential interference issues. The Commission created service rules for the Guard Bands that correspond to the specific environment of the existing Upper **700** MHz Band. As noted above, the primary purpose of the Guard Bands was to create a buffer between commercial and public safety operations, which would serve to reduce potential interference. Further, the Commission provided for licensees to offer new services in the Guard Bands, subject to strict technical and operational rules to prevent harmful interference to public safety operations in the adjacent bands.

240. Verizon Wireless argues in an *ex parte* that several aspects of the BOP are too indeterminate to assess the risk for interference between public safety and commercial operations. Verizon notes that under the BOP, the I-megahertz internal public safety guard band located at **775-776** MHz would be adjacent to the C Block and the internal public safety guard band at 805-806 MHz would be adjacent to the 806–809 MHz public safety narrowband channels, and that these guard bands would be within the control of, and allocated to, public safety.[501] The BOP proposes that the same technical rules that apply to the existing **A** Block would apply to operations inside this intemal guard band?" Verizon is concerned that public safety operations deployed in the internal guard band at **775-776** MHz would receive interference from operations in the adjacent C Block. According to Verizon, the C Block licensee would be compelled to correct this interference by dedicating part of its own spectrum as an internal guard band, and limiting usefulness of this spectrum for commercial operations.[503] NPSTC confirms that public safety could deploy operations in the internal guard bands. NPSTC acknowledges that the "guard band status" of this paired 1-megahertz buffer "tempers the full capacity/value [that the] channel otherwise has but [it] still has operational capabilities."[504]

241. We seek comment on the potential interference concerns Verizon raises, including the possibility that operations in the proposed internal public safety guard band could be undertaken by public

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[500] Amendment of Part **22 of** the Commission's Rules to Benefit the Consumers of Air-Ground Telecommunications Services, ***Report and Order and Notice of Proposed Rulemaking,*** **20** FCC Rcd **4403,4438 ¶ 74 (2005)** ***(Air-Ground Order).***

[501] Letter from Donald ***C.*** Brittingham, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, ***Ex Porte*** in WT Docket No. 06-169 (filed Feb. **15,2007)** ("Verizon Feb. **15,2007** ***Ex Porte").***

[502] Access Spectrum/Pegasus Reply Comments in WT Docket No. 06-169 at 7-9

[503] Verizon ***Ex Parte*** in WT Docket No. 06-169 at 13

[504] Letter from Vincent R. Stile, Chair, National Public Safety Telecommunications Council, to Marlene H. Dortch, Secretary, FCC, ***Ex Parte*** in WT Docket No. 06-169, 96-86 at **2** (filed Feb. **23,2007)** ("NPSTC Feb. **23,2007** ***Ex Parte***"). NPSTC adds that it "is also confident that public safety can manage the guard hand effectively." *Id.*

safety licensees. We also seek comment on the possibility that a C Block licensee might have to limit emissions at the lower portion of its authorized spectrum block in some manner, which could limit its ability to fully utilize its block and thereby limit service offerings.

242. ***Access Spectrum/Pegasus Alternative* Proposal.** Acknowledging potential legal concerns with the BOP, especially with respect to the proposed reallocation of spectrum from commercial use to public safety services, Access Spectrum/Pegasus have submitted an alternative proposal to the Commission for modification of the Guard Bands in the Upper ***700*** MHz Band, which is discussed in detail above.[505] In addition to our discussion of this proposal above, we note our tentative conclusion above that Section 337 and the public interest weigh against awarding 700 MHz spectrum outside of the competitive bidding process at this time. We also note, however, that Access Spectrum/Pegasus do not seek any additional spectrum in their alternative proposal, but instead seek to have the Commission modify their 1 megahertz paired A Block license to specify operations in a new 1 megahertz paired A Block license at different frequencies. We seek comment on whether the alternative proposal sufficiently addresses Section **337** and public interest concerns regarding the assignment of spectrum outside of the competitive bidding process. We also seek comment on whether the licensed geographic areas in the new A Block should be the same as in the current A Block.

b. Other Guard Band Issues

243. We seek further, limited comment here on what the Commission should do if it decides to leave the existing Guard Bands substantially intact. For example, assuming we modify the public safety allocation, the B Block's role as a critical juncture between adjacent commercial and public safety broadband spectrum would potentially be enhanced. After a reconfiguration **of** the public safety allocation, the B Block would rest between large commercial and public safety spectrum blocks, both **of** which are well-suited for broadband communications. In that context, we could provide incumbent B Block licensees, as well as future licensees via auction, greater technical and operational flexibility than currently exists by revising our rules regarding restrictions on cellular architectures, and mandating low-site, low-power system architectures. Such initiatives could afford B Block licensees the previously unavailable potential to offer compatible broadband services within their paired 2 megahertz of spectrum, thereby creating additional opportunities for efficient and effective use of the spectrum. These opportunities could include entering into public/private partnerships with the adjacent public safety broadband operator(s), partnering with other commercial licensees to deploy commercial broadband systems, and attracting a broader pool of potential leasing partners interested in deploying broadband.

244. Because the Commission is committed to resolving the issues raised in this ***Further Notice*** on an expedited basis, we note that if we were to retain the existing band plan, we could simultaneously require B Block licensees to deploy low-site, low-power system architectures, and permit them to deploy cellular systems.[506] At the same time, we would likely request detailed comment on these and any additional prospects for enhancing the utility of the B Block in order to augment the record developed in response to the ***Guard Bands Notice.*** We seek comment on these ideas, specifically whether the low-site, low-power system architecture requirement, together with removal of the restriction on cellular architectures, is a positive step toward enhancing the B Block should we ultimately decide not to adopt any proposal to eliminate or substantially modify the Guard Band B Block.

245. We also seek comment on whether the Commission should make changes to the **A** Block Guard Bands spectrum under the current band plan. For example, we seek comment on whether the

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[505] ***See*** Letter from Ruth Milkman, counsel to Access Spectrum, LLC and Kathleen Wallman, adviser to Pegasus Communications Corporation, to Marlene H. Dortch, Secretary, FCC, ***Ex Parte*** in WT Docket Nos. 06-169, 06-150 and 96-86 (filed Apr. 18,2007)(Access Spectrum/Pegasus Apr. 18, 2007 Ex ***Parte).***

[506] We sought comment on these issues in the 700 ***MHz Guard Bands Notice. See 700 MHz Guard Bands Notice,*** **21** FCC Rcd at 10424-29 ¶¶ 25-35.

technical flexibility we might allow for the B Block would also be possible in the A Block. Are low-site, low-power system architectures technically feasible for the upper Guard Bands A Block immediately adjacent to the Public Safety spectrum allocation? If not, would it nevertheless be useful to provide such flexibility for the lower Guard Bands A Block? With the lower A Block's proximity to both the Lower 700 MHz C Block and the Upper 700 MHz C Block, certain technical modifications might improve compatibilities in the band. We also seek comment on whether, similar to our discussion above for the Guard Bands B Block, there would be a public interest benefit to allowing the current A Block licensees to include their spectrum in the auction inventory in a "two-sided" auction.[507]

3. Competitive Bidding Procedures

246. We seek comment on whether we should use limited information (or "anonymous bidding") procedures in the upcoming auction of new 700 MHz licenses, in order to deter anticompetitive behavior that may be facilitated by the release of information on bidder interests and identities. Current competitive bidding rules permit withholding information on bidder interests and identities prior to the close of bidding. Accordingly, the Commission can make a final decision regarding the procedures for the auction as part of the regular pre-auction process. We seek comment here in light of the potential importance of this band with respect to competition in broadband services and in order to assess whether the use of anonymous bidding should be a factor in determining the final band plan for new 700 MHz licenses.

247. In prior auctions, the Commission has adopted procedures, contingent on pre-auction assessments of likely competition in the auction, for withholding public release until the close of the auction of: (1) bidders' license selections on their short form applications and the amount of their upfront payments; and (2) the identities of bidders placing bids.[508] In the context of those prior auctions, the Commission noted that there may be potential harms as well as benefits from publicly revealing all information during the auction process.[509] In this proceeding, the Ad Hoc Public Interest Spectrum Coalition asserts that anonymous bidding for new 700 MHz licenses is critical to promoting competitive entry in wireless broadband?" In contrast, United States Cellular Corporation contends that smaller auction participants need information about larger entities' bids during the auction and that smaller auction participants may encounter difficulties with financing, if the Commission withholds the information during the auction.[511]

248. We seek comment on the balance of potential harms and potential benefits from releasing information on bidder identities and interests during the auction of new 700 MHz licenses. In recent

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[507] *See supra* Section IV.B.1.a.

[508] *See, e.g.,* Auction of 1.4 GHz Band Licenses, Scheduled for February 7, 2007, Notice and Filing Requirements, Minimum Opening Bids, Upfront Payments and Other Procedures for Auction No. 69, *Public Notice,* 21 FCC Rcd 12393, ¶¶ 4-6 (2006); Auction of Advanced Wireless Services Licenses Scheduled for June 29, 2006, Notice and Filing Requirement, Minimum Opening Bids, Upfront Payment and Other Procedures for Auction No. 66, *Public Notice,* 21 FCC Rcd 4562, ¶¶ 140-157 (2006) *("Auction No. 66 Procedures Public Notice").*

[509] *See Auction No. 66 Procedures Public Notice* at ¶¶ 140-157.

[510] PISC Apr. 3 *Ex Parte* Comments in PS Docket No. 06-229 and WT Docket Nos. 06-150, 05-211, 96-86 at 13; Letter from Harold Feld, counsel to Media Access Project, to Marlene H. Dortch, Secretary, FCC, *Ex Parte* in WT Docket No. 06-150 (filed Apr. 19, 2007) (contending that accompanying Affidavit of Dr. Gregory Rose demonstrates that the open auction structure of Auction No. 66 permitted incumbents to engage in retaliatory bidding).

[511] Letter from George Y. Wheeler, counsel to United States Cellular Corp., to Marlene H. Dortch, Secretary, FCC, *Ex Parte* in WT Docket Nos. 06-150, 06-169, 96-86, 05-265, and 00-139, and PS Docket No. 06-229 (filed Mar. 27, 2007) ("U.S. Cellular Mar. 27 *Ex Parte* in WT Docket Nos. 06-150, 06-169, 96-86, 05-265, and 00-139, and PS Docket No. 06-229") at 7.

auctions where the Commission has considered withholding information about bidder identities and interests during the auction, the Commission has assessed likely competition in the auction and determined that, given the anticipated level of competition, the benefits of releasing the information outweighed the potential harms. However, if the potential harms of releasing the information are substantial enough, or the potential benefits of releasing the information so slight, it may be appropriate to withhold the information regardless of the likely level of competition. For this auction, we seek comment on whether the potential to use new 700 MHz licenses to create alternatives to existing broadband networks increases the benefits from anonymous bidding by making it harder for existing providers to identify and impede the efforts of potential new entrants to win. Does the lack of readily available technologies for use in the band, relative to existing broadband networks in other bands, reduce the potential benefit of using bidders' identities to guess what technologies will be deployed? Given the potential harms and benefits from releasing information on bidder identities and interests during the auction of new 700 MHz licenses, should the Commission make its decision regarding the release of the information contingent on an assessment of likely competition? If so, should the Commission change how it makes its pre-auction assessment of likely competition?

249. We also seek comment on whether the potential use of anonymous bidding should be a factor in determining the final band plan. Would a band plan with a greater number of small licenses be more or less appropriate if bidders are able to bid anonymously for those licenses? Commenters should make clear what factors support their position on anonymous bidding, how these factors apply to this auction, and the extent to which these factors may depend upon the final band plan adopted. Commenters should address whether their views are dependent on whether the Commission conditions the implementation of such limits on a measure of the anticipated competitiveness of the auction, such as the eligibility ratio or a modified version of the eligibility ratio.

4. 700 MHz Public Safety Spectrum

250. We tentatively conclude to redesignate the public safety wideband spectrum for broadband use consistent with a nationwide interoperability standard, and to prohibit wideband operations on a going forward basis.[512] Further, should we adopt this broadband approach, we tentatively conclude that we should consolidate the existing narrowband allocations to the upper half of the 700 MHz Public Safety Band, and locate broadband communications in the lower half of this band. In addition, we tentatively conclude that we should establish an internal guard band between the narrowband and broadband allocations. We also seek comment on a limited number of issues relating to use of the 700 MHz public safety spectrum, should we reallocate the wideband spectrum to broadband use.

a. Broadband

251. The current distribution of channels in the 700 MHz Public Safety Band includes a mix of narrowband, wideband general use, wideband interoperability and wideband reserve channels.[513] In

[512] Within the context of the 700 MHz public safety band plan, "wideband refers to 50 kHz systems that may utilize a bandwidth no more than 150 kHz. See 47 C.F.R. § 90.531(c) and (d)(2). To the extent a public safety entity has constructed, deployed, and is currently operating, as of the release date of this Report and Order, a wideband system pursuant to a grant of Special Temporary Authority (STA), and has reason to continue such operations beyond the current term of the STA, we will work with such entity to extend such authority.

[513] *See* 47 C.F.R. § 90.531. Wideband general use refers to 50 kHz channels managed by Regional Planning Committees (RPCs) to meet regional and local needs. The Commission has issued no licenses for regular authorizations for wideband general use channels. Our licensing records reflect, however, that there are two grants of special temporary authority (STA) licensed on the wideband general use channels. Wideband interoperability channels also are channelized at 50 kHz. Wideband reserve spectrum is not channelized and refers to 700 MHz spectrum that the Commission had set aside for future public safety use. The wideband interoperability and reserve channels have not been available for licensing. We refer to the wideband general use, wideband interoperability, and wideband reserve channels collectively as "wideband."

the *700 MHz Public Safety Eighth Notice,* the Commission sought comment on revisions proposed by the National Public Safety Telecommunications Council (NPSTC), Motorola, and Lucent to the band plan.[514] All of the proposals contemplated aggregating the wideband general use channels, wideband interoperability channels, and wideband reserve spectrum to form a broadband segment. The Commission also sought comment on ways in which public safety entities could use the 700 MHz public safety spectrum for broadband applications, and on measures that should be taken to promote broadband interoperability.[515]

252. In response to the *700 MHz Public Safety Eighth Notice,* the overwhelming majority of public safety entities support some form of a broadband allocation in the existing 700 MHz Public Safety block.[516] NPSTC and APCO recognize that "broadband would enable real-time, full motion video from any location to any other location; live video from an emergency scene to a command center; downloading building diagrams and blueprints to firefighters in the field; uploading and downloading of mug shots and AMBER Alert photos for police officers in the field; mapping/location-based services; digital image transfers; large file transfers; and bioterrorism detection and response information."[517] NPSTC notes that public safety communications needs, once limited to voice communications, are now expanding rapidly to encompass new broadband applications.[518] In addition, while not discounting the continued need for narrowband voice and data, NF'STC contends there is an imperative need for a 700 MHz nationwide, interoperable public safety broadband network and that the 700 MHz public safety spectrum is especially suitable for that purpose.[519]

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[514] *See 700 MHz Public Safety Eighth Notice,* 21 FCC Rcd at 3676-79 ¶¶ 14-22.

[515] *id.* at 3675-76 ¶ 13, 3683-84 ¶ 33.

[516] *See, e.g.*, NPSTC Comments in WT Docket No. 96-86 at 1; APCO Comments in WT Docket No. 96-86 at 2; State of California Comments in WT Docket No. 96-86 at 1; California Highway Patrol Comments in WT Docket No. 96-86 at 1; City and County of Denver Comments in WT Docket No. 96-86 at 1; State of Hawaii Comments in WT Docket No. 96-86 at 1; International Association of Fire Chiefs Comments in WT Docket No. 96-86 at 1; International Association of Chiefs of Police, Major Cities Chiefs Association, National Sheriffs Association, Major Cities Sheriffs Association Joint Reply Comments in WT Docket No. 96-86 at 1; National Association of Regional Planning Committees Comments in WT Docket No. 96-86 at 1; Region 12 Reply Comments in WT Docket No. 96-86 at 1; Region 24 Comments in WT Docket No. 96-86 at 1; Region 26 Comments in WT Docket No. 96-86 at 1; Region 39 Comments in WT Docket No. 96-86 at 1; Region 40 Comments in WT Docket No. 96-86 at 1; Region 45 Comments in WT Docket No. 96-86 at 1; Region 49 Comments in WT Docket No. 96-86 at 1.

[517] *See* NPSTC and APCO Joint Comments in WT Docket No. 05-157 at 6.

[518] *See* NPSTC Comments in RM-I 1348 at 4 (Nov. 29,2006). *See also The Present and Future of Public Safety Communications: Hearing Before the Senate Comm. on Commerce, Science & Transportation,* 109th Cong. 2-3, (2007) (statement of Mr. Harhn R. McEwen, Chairman, Communications and Technology Committee, International Association of Chiefs of Police) (McEwen Testimony) (the benefits from a nationwide broadband network include broadband data services (such as text messaging, photos, diagrams, and streaming video) not currently available in existing public safety land mobile systems). Although these comments and testimony are related to a proposal by Cyren Call, which the Public Safety and Homeland Security Bureau found the Commission lacked statutory authority to implement, *see* Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use, RM No. 11348, *Order,* DA 06-2278 (PSHSB 2006), the comments submitted in that proceeding and related testimony before Congress are relevant to our decision to implement a broadband allocation here because they reflect the public safety community's support for deployment of a nationwide interoperable broadband network in the 700 MHz Band.

[519] *See* NPSTC Comments in RM-11348 at 4, IO. *See also* McEwen Testimony at 2 ("The implementation of a nationwide public safety broadband network can also be the beginning of the end to the problem of public safety interoperability");Region 24 Reply Comments in WT Docket No. 96-86 at 5 (broadband is the most effective means to ensuring interoperable public safety communications); NPSTC Comments in WT Docket No. 96-86 at 14-15; Lucent Comments in WT Docket No. 96-86 at 7-8.

253. Based on this significant support in the record, we tentatively conclude that providing broadband spectrum for advanced public safety communications would best serve our goal of enabling first responders to protect safety of life, health and property. While some commenters argue that the Commission should continue to allow public safety entities the flexibility to deploy either wideband or broadband applications,[520] we tentatively conclude that providing such flexibility could hinder efforts to deploy a nationwide, interoperable broadband network by perpetuating a balkanization of public safety spectrum licenses, networks, and technology deployment. Further, only through use of broadband networks could public safety leverage advanced commercial technologies and infrastructure to reduce costs and speed deployment, and enable the potential for priority access to commercial networks during emergencies. Accordingly, we believe that only broadband applications consistent with a nationwide interoperability standard should be deployed in the current wideband allocation of the 700 MHz Band. We thus tentatively conclude to reallocate spectrum previously designated for wideband use for broadband use only, and prohibit wideband operations on a going forward basis. We seek comment on these tentative conclusions.[521]

b. Band Plan Issues

254. As noted above, in the 700 *MHz* ***Public Safety EighfhNofice,*** the Commission sought comment on proposals to aggregate the public safety wideband channels to form a broadband segment. The Commission solicited alternative proposals, but tentatively concluded overall not to alter the locations of the narrowband channels.

255. In the 700 *MHz* ***Guard Bands Notice,*** we sought comment on the BOP which, aside from its Guard Bands components, proposes a reconfiguration of the band plan for the 700 MHz Public Safety spectrum where the narrowband channels are consolidated to the upper half of the block, and the lower half of the block is dedicated to broadband operations. In the 700 *MHz* ***Guard Bands Notice,*** we tentatively concluded that any proposal such as the BOP involving a relocation of the narrowband voice channels must address (1) the source of funds to reprogram already-deployed 700 MHz Band public safety radios, and **(2)** coordination of the proposal with co-channel TV broadcasters in Canada and Mexico at border areas.[522]

256. In response to the ***700 MHz Public Safety EighfhNotice*** and the ***700 MHz Guard Bands Notice,*** commenters generally support a reconfiguration of the 700 MHz Public Safety Band.[523] The BOP proponents assert that such reconfiguration reduces the amount of spectrum consumed **for** separating—and thus protecting—the public safety broadband and narrowband channels from each other, and thus frees up additional spectrum for public safety use resulting in a potential contiguous 5-megahertz block of broadband spectrum.[524] The WiMAX Forum adds that a 5-megahertz channel size enables a fuller range of applications, and facilitates partnerships between public safety broadband operations and 4G commercial broadband technologies, which also are based on **5** megahertz spectrum blocks.[525] Alcatel-

[520] *See, e.g.*, NPSTC Comments in WT Docket No. 96-86 at 1-2; APCO Comments in **WT** Docket No. 96-86 at 2

[521] Because we make these tentative conclusions, we defer consideration of the questions raised in the 700 *MHz* ***Public Safety Eighth Notice*** regarding adoption of a wideband interoperability standard. The 700 ***MHz Public Safety Eighth Notice*** sought to refresh the record on whether to retain the wideband segment and adopt ***SAM*** as a wideband data interoperability standard, as recommended by the National Coordination Committee (NCC). ***See*** 700 ***MHz Public Safety Eighth Notice,*** 21 FCC Rcd at 3683-3684 ¶ 33.

[522] *See 700 MHz Guard* ***Bunds Notice,*** 21 FCC Rcd at 10433-34 ¶ 46

[523] ***See. e.g.***, Region 24 Comments in WT Docket No. 96-86 at 2; Region 26 Comments in WT Docket No. 96-86 at 1; Region 39 Comments in WT Docket No. 96-86 at 1.

[524] **See** Access Spectrum/Pegasus Comments in WT Docket No. 96-86 at 3-5

[525] WiMAX Forum Reply Comments in WT Docket No. 96-86 at 1-2.

Lucent states that consolidation of the narrowband channels would lower the risk of intermodulation distortion in narrowband receivers.[526]

Public Safety Allocation			Commercial Allocation			Public Safety Allocation		
Broadband	GB	Narrowband				Broadband		Narrowband
CH. 63		CH. 64	CH. 65	CH.66	CH. 67	CH. 68		CH. 69

Broadband Channel(s)
Narrowband Channels

257. Having tentatively concluded that only broadband applications consistent with a nationwide interoperability standard may be deployed in the current wideband allocation for public safety in the 700 MHz Band, we seek to take further steps to optimize the band plan for this spectrum, essentially building upon the public safety-related proposals in the BOP and the record developed pursuant to the 700 *MHz* Guard ***Bands Notice*** and ***700 MHz Public Safety Eighth Notice.*** Specifically, we tentatively conclude that, assuming we decide to adopt this broadband approach, we will consolidate the existing narrowband allocations to the upper half of the 700 MHz Public Safety block, and will designate the lower half of the block for broadband operations. Additionally, we tentatively conclude that we will adopt a 1 megahertz internal guard band at the top of the resulting broadband allocation to buffer it from the narrowband allocation and thus prevent interference.

258. In addition, we seek comment on whether we should revise the OOBE limit required for Upper 700 MHz Commercial Services Band base stations to protect public safety operations in the band if we adopt the tentative conclusions discussed above. In particular, we seek comment on the proposal by Access Spectrum ***et al.*** that, in these circumstances, we should replace the existing limit of 76 + 10log P applicable to emissions into the 700 MHz Public Safety spectmm with the 43 + 10logP OOBE standard that protects commercial services in the 700 MHz Band.[527]

259. We also seek comment on a limited number of related questions regarding: (1) whether to allow limited use of the internal guard band in areas along the Canadian border to the extent that Canadian broadcasters cause interference to the relocated narrowband channels; (2) whether to adopt a transition plan, and what that plan should be; and (3) whether and how such transition should be funded.

260. ***Temporary Use of Internal Guard Band in International Border Areas.*** The ***700 MHz*** Guard ***Bands Notice*** observed that a reconfiguration of the band plan for the 700 MHz Public Safety spectrum may result in the relocated narrowband channels being blocked by existing Canadian TV

[526] ***See*** Alcatel-Lucent Mar. 21 Ex ***Parte*** in WT Docket No. 06-169 at 6; see ***also*** Lucent Reply Comments in WT Docket No. 06-169 at 2-3.

[527] See Access Spectrum *et al.* Comments in WT Docket No. **06-150** at 33-34 and Appendix B at 13-14

broadcasters in border areas.[528] Although the Canadian government has agreed to clear broadcasters from TV channels 63 and 68, there is no such agreement for TV channels 64 and 69.[529] Because we have tentatively concluded here that we will consolidate the public safety narrowband channels onto TV channels 64 and 69, they are subject to interference from Canadian broadcast operations throughout the duration of Canada's transition to DTV. We note that one virtue of the BOP is its differing approach to a reconfiguration of the band plan for 700 MHz Public Safety spectrum, where its shift in the spectral location of the block dedicated to public safety results in an overlap of 1 megahertz of the 6-megahertz paired narrowband channels with TV channels 63 and 68, which Canada has already agreed to clear.[530] The BOP did not provide any corresponding detail with respect to areas along the Mexican border.

261. Because we tentatively conclude that we cannot adopt the BOP as discussed earlier, and thus its overlap feature would not be available to mitigate channel conflicts in the Canadian and Mexican border areas, we seek comment on whether to temporarily allow, in border areas, narrowband voice communications within the public safety internal guard band that we have tentatively concluded will be required to protect the narrowband channels from the broadband channels.[531]

262. ***Transition Issues.*** Given our tentative conclusion to permit only broadband applications consistent with a nationwide interoperability standard in the channels presently allocated for wideband, and to reconfigure the 700 MHz Public Safety band plan, we also must address how best to migrate existing narrowband operations on channels 63 and 68 to channels 64 and 69. Our licensing database shows that there are 38 narrowband licenses on channels 63 and 68 that would be subject to relocation. In addition, all 50 states, Puerto Rico, the U.S. Virgin Islands and the District of Columbia were granted State Licenses, which authorize use of certain narrowband channels on TV channels 63, 64, 68 and 69.[532] No licenses appear to have been issued for wideband General Use channels.[533] The wideband interoperability channels and the reserve spectrum have not been available for licensing. Some RPCs voice concerns that consolidating the narrowband channels will disrupt planning.[534] On the other hand, the record suggests that the costs and inconveniences of consolidating the narrowband channels are minor compared to the relative potential for accommodating future technologies.[535]

263. We seek comment on how to implement reconfiguration of the 700 MHz public safety narrowband channels with minimum disruption to incumbent operations. Given the relatively small

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[528] *See* 700 *MHz Guard Bands Notice,* 21 FCC Rcd at 10433 ¶ 45.

[529] *See* Letter from Ruth Milkman, Counsel for Access Spectrum, LLC and Kathleen Wallman, Adviser to Pegasus Communications Corp., to Marlene H. Dortch, Secretary, FCC, *Ex Parte* in WT Docket No. 06-169 (filed Oct. 23, 2006) ("700MHz Technical Working Group Report") at 9-10.

[530] *Id*

[531] We note that the result of this option would be a corresponding loss of 1 megahertz of available spectrum for broadband communications, since a 1-megahertz internal guard band would still be necessary to protect the shifted narrowband channels from public safety broadband operations. However, we are seeking comment on whether to allow the public safety broadband operator(s) to utilize their full 5-megahertz broadband allocation by gaining a temporary easement into the adjacent D Block spectrum proposed above. *See supra* Section IV.B.1.a.

[532] The Commission designated 2.4 megahertz of spectrum all narrowband channels, for statewide, geographic-area licenses, and 2.4 megahertz for nationwide use.

[533] Our licensing records reflect that there are two grants of special temporary authority (STA) licensed on the wideband base and mobile channels.

[534] *See* Region 12 Reply Comments in WT Docket No. 96-86 at 1-2 (stating that the costs and disruption of agency activity, as well as the amount of time and effort required to put the plan into effect, would make reallocating the narrowband frequencies prohibitively expensive).

[535] *See* Region 24 Comments in WT Docket No. 96-86 at 15; Region 39 Comments in WT Docket No. 96-86 at 1 (now is the best time to consider new ideas as very little has been put into effect).

number of incumbents that would be affected, we seck comment on whether relocation procedures adopted in other contexts may apply here.[536] We also seek comment on the appropriate timing of relocating narrowband operations. How quickly should the narrowband channel consolidation be completed, in view of the February 17,2009 date by which incumbent broadcasters are to be cleared from the 700 MHz Band? Further, how does the existence of broadcast incumbents prior to the DTV transition impact timing? Commenters also should address any special situations in border areas adjacent to Canada and Mexico, as more fully addressed below.

264. ***Funding Issues.*** Primary to the issue of how a relocation **of** public safety narrowband would occur is the determination of the costs of the relocation and how (or from whom) the costs will be covered. In order to estimate the hue costs associated with relocation as accurately as possible, we seek up-to-date infoxmation regarding how many narrowband radios are currently deployed and how many are actively being used.[537] Based on those estimates, we ask commenters to quantify the costs that would be involved with consolidating the narrowband channels and relocating existing deployments. We also seek comment on how these costs should be funded, if we should not adopt the tentative conclusion above to impose the funding requirement on the D Block licensees.[538] Given the significant benefits of reconfiguration, and that the number of entities impacted and expected cost of reconfiguration should be relatively minor (especially in comparison to, *e.g.*, the 800 MHz Band reconfiguration),[539] it is also appropriate to consider, among other options, whether public safety should pay for its own relocation costs. The Commission has on occasion required incumbents to fund their own relocations.[540]

265. We recognize that the public safety community's ability to fund the reconfiguration may be limited.[541] In this regard, however, some commenters have suggested that a portion of the **$1** billion Public Safety Interoperable Communications Grant Program may be used to defray the expense of relocating public safety.[542] We seek comment on the potential availability of monies from this fund for paying the costs **of** narrowband consolidation. We also seek comment on whether there are other potential funding sources from existing grant programs. Finally, we seek comment on whether we should require the nationwide licensee of the commercial Upper 700 MHz spectrum block proposed by Frontline

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[536] ***See*** Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, ***First Report and Order and Third Notice of Proposed Rulemaking,*** 7 FCC Rcd **6886,** 6888 ¶ 14 (1992) (relocation of fixed microwave incumbents for Emerging Technology services); Improving Public Safety Communications in the 800 MHz Band, et al., ***Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order,*** WT Docket No. **02-55,** 19 FCC Rcd 14969 (2004) (relocation of public safety licensees operating to comparable facilities to facilitate 800 MHz **band** reconfiguration).

[537] In a recent ***Ex Parte*** presentation, Motorola estimates that 750,000-800,000 dual 700/800 MHz radios have been deployed, but Motorola does not provide an estimate on the number of such radios that have already been programmed to operate at 700 MHz. ***See*** Motorola Mar. 6,2007 ***Ex Parte*** at 8.

[538] We note that although Access Spectrum and Pegasus proposed to assume the entire cost of reconfiguration, conditioned on adoption of the BOP, we have tentatively concluded that we cannot adopt the BOP.

[539] ***800 MHz Report and Order,*** 19 FCC Rcd at 15064 para. 179 (the Consensus Parties estimated the cost for reconfiguring the 800 MHz Band at $850 million).

[540] ***See*** Amendment of the Commission's Rules Relative to the Licensing of Microwave Radio Stations Used to Relay Television Signals to Community Antenna Television Systems, ***First Report and Order and Further Notice of Proposed Rulemaking,*** Docket No. 15586, 1 FCC 2d 897.911 (1965).

[541] **See.** *e.g.*, NPSTC Comments in WT Docket 96-86 at 7-8 ; APCO Comments in WT Docket 96-86 at 3-4; Region **24** Comments in WT Docket **96-86** at 17.

[542] ***See,*** *e.g.*, Northrop Reply Comments in WT Docket 96-86 at **3.** Section **3006** of the DTV Act created the Public Safety Interoperable Communications Grant Program to assist public safety entities in the acquisition of, deployment of, and training for the use of interoperable communications that utilize or enable interoperability with 700 MHz public safety communications **systems.** ***See*** Pub. L. No. 109-171, 120 Stat. 4 (2006), § 3006(a).

to fund the reconfiguration. Similarly, if we auction Guard Bands B Block licenses, including those returned from Nextel, should we require the auction winners to fund the reconfiguration costs, given the implicit benefits to the B Block of the reconfiguration?[543] To the extent that the Commission determines that it is in the public interest to license a nationwide public safety broadband licensee pursuant to the ***Public** Safety Ninth Notice*, should the nationwide licensee be assigned responsibility for funding the reconfiguration?

c. Power Limits for Public Safety Broadband

266. In the Report and Order, above, we modify our power limit rules for the Upper and Lower 700 MHz Commercial Services Band by implementing a PSD model for defining power limits, permitting increased power in rural areas, and permitting radiated power levels to be measured on an average, rather than peak, basis. **As** discussed above, this action will permit higher power and increased flexibility for 700 MHz Commercial Services Band licensees implementing wider band technologies, with certain measures in place to protect against any possible increased interference, especially to 700 MHz public safety users.

267. We also tentatively conclude to permit only broadband applications in the 700 MHz Public Safety Band consistent with a nationwide interoperability standard in the channels presently allocated for wideband. We seek comment on whether it is appropriate to provide the same flexibility to 700 MHz Public Safety broadband operations as that afforded 700 MHz Commercial Services Band licensees by implementing a PSD model for defining power limits, permitting increased power in rural areas, and permitting measurement of power levels on an average, versus peak, basis. We also seek comment on whether the technical restrictions adopted today for the 700 MHz Commercial Services Band with respect to interference protection, if applied to public safety broadband spectrum, will protect adjacent band operations.

5. Frontline's Proposal

268. In this section we seek comment on Frontline's proposal that the Commission alter the upper portion of the Upper 700 MHz Commercial Services Band to designate a 10 megahertz "E Block" for a commercial licensee and to impose specific conditions on that licensee requiring it to construct and operate a nationwide, interoperable broadband network **for** sharing with a national public safety licensee providing broadband service in the lower portion of the 700 MHz Public Safety spectrum.[544] Comment also is sought on service rules proposed by Frontline.

269. Backmound. Frontline has submitted filings with the Commission regarding its proposed "Public Safety Broadband Deployment Plan" for 700 MHz spectrum.[545] These filings, which propose

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[543] These benefits would include the potential of public/private partnerships due to compatible system architectures between the **B** Block and the reconfigured Public Safety block, and the potential for the Commission to ease the existing interference protection rules (including the cellular architecture restriction) that apply to the **B** Block that initially were created to protect the formerly adjacent Public Safety narrowband channels.

[544] *See **generally*** Frontline Comments in PS Docket No. 06-229; Frontline Mar. 6 Comments in WT Docket **No.** 06-150; Frontline Reply Comments in PS Docket No. 06-229; Frontline March 12 ***Ex Parte*** in WT Docket **Nos.** 96-86 and 06-150 and PS Docket No. 06-229; Frontline Mar. 26 ***Ex Parte*** in WT Docket **Nos.** 06-150 and 06-169 and PS Docket No. 06-229; Section II.E., ***supra.***

[545] Frontline Comments in PS Docket No. 06-229; Frontline Reply Comments in PS Docket No. 06-229; Frontline Mar. 6 Comments in WT Docket No. 06-150; Frontline Mar. 26 ***Ex Porte*** in WT Docket **Nos.** 06-150 and 06-169 and PS Docket No. 06-229. ***See** also* Frontline March 7 ***Ex Parte*** in WT Docket **Nos.** 96-86 and 06-150 and PS Docket No. 06-229; Frontline March 12 ***Ex Parte*** in WT Docket Nos. 96-86 and 06-150 and PS Docket No. 06-229; Frontline March 16 ***Ex Parte*** in WT Docket **Nos.** 96-86 and 06-150 and PS Docket No. 06-229; Frontline Mar. 19 ***Ex Parte*** in WT Docket Nos. 96-86 and 06-150 and PS Docket No. 06-229; Frontline Mar. 22 ***Ex Parte*** in WT Docket **Nos.** 96-86 and 06-150 and PS Docket No. 06-229.

various conditions on 10 megahertz of the commercial 700 MHz spectrum that we are required to auction, also are related to issues in the 700 MHz Guard Bands proceeding and the 700 MHz Public Safety proceeding.[546]

270. In the 700 *MHz* ***Commercial Services*** *Notice*, we requested comment on possible changes to the existing service rules and band plan for non-guard-band commercial spectrum that is being reclaimed by the Commission in connection with the DTV transition.[547] Among other matters, Frontline seeks a revision of the band plan that would divide the existing 20-megahertz D Block **of** the Upper 700 MHz Band to create a new paired **5** megahertz "E Block" (10 megahertz total).

271. In the 700 *MHz* ***Guard Bands*** *Notice*, we sought comment on possible changes to the existing service rules and band plan for the six megahertz of Guard Bands spectrum licensed to protect the operations in the adjacent 700 MHz Public Safety spectrum.[548] Specifically relevant to Frontline, which supports the BOP,[549] is our tentative conclusion in this Further Notice that we cannot adopt the BOP due to a lack of statutory authority and because, in any event, adoption of the BOP would not be in the public interest.[550]

272. ***Frontline's Proposal.*** Frontline proposes that the Commission alter the upper portion of the band plan and service rules in the ***700 MHz Commercial Services*** *Notice* in order to auction a single nationwide IO-megahertz license (a new **"E** Block") near the 700 MHz Public Safety spectrum that would be subject to specific conditions. The "E Block" would consist of the paired 757-762 MHz and 787-792 MHz frequencies, which currently comprises the upper half of the 20-megahertz D Block of the Upper 700 MHz Band.[551] **As** discussed in more detail below, the new paired **"E** Block" licensee would construct and operate a common infrastructure to support a broadband public safety network as well as its own commercial broadband network.[552]

273. Frontline's proposal **is** premised on the Commission adopting a number of measures the Commission has proposed, including: (a) designating 12 megahertz of the 700 MHz Public Safety spectrum from wideband to broadband use; (b) positioning that 12 megahertz of broadband public safety at the bottom of the public safety allocation in the 700 MHz Band; and (c) assigning this spectrum nationwide to a single national public safety broadband licensee.[553]

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[546] ***See*** 700 *MHz* ***Guard Bands Notice;*** 700 *MHz* ***Public Safety Ninth Notice; 700 MHz Public Safety Eighth Notice.***

[547] *See* 700 *MHz* ***Commercial Services Notice,*** 21 FCC Rcd at 9346-48 ¶¶ 1-2. This ***Notice*** sought comment **on** 78 megahertz of non-guard-band commercial wireless licenses (in the 698-746,747-762, and 777-792 MHz bands), including the 60 megahertz that the Commission is required to auction pursuant to the DTV Act. Comment was sought on rules which include those concerning the sue of service areas and spectrum blocks, performance requirements, access **to** spectrum in the secondary market, renewal, length ***of*** license term, power limits and related requirements, and 911/E911 and hearing aid-compatible handsets. ***Id.*** at 9362-90 ¶¶ 28-106.

[548] The 700 MHz Guard Bands consist of the **A** Block, comprised of paired I-megahertz blocks (746-747,776-777 MHz), and Guard Band B Block, comprised of paired 2-megahertz blocks (762-764,792-794MHz).

[549] Frontline Comments **in PS** Docket No. 06-229 at 20-21

[550] ***See supra*** Section IV.B.2.

[551] ***See*** Frontline Mar. 26 ***Ex Parte*** in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229, Attachment (proposing revisions to rules to designate frequencies).

[552] ***See*** Frontline Comments in **PS** Docket No. 06-229 at 5-6, 17, 19-20, 24; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 7, 8, 10-12; Frontline **Reply** Comments in PS Docket No. 06-229 at 3-4; see ***also*** Frontline Mar. 26 ***Ex Parte*** in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229, Attachment (proposed rules relating to Frontline proposal, including the Network Sharing Agreement).

[553] Frontline's proposal also would be premised on the adoption **of** additional matters being addressed in the ***700 MHz Public Service Eighth Notice*** and 700 *MHz* ***Public Safety Ninth Notice.*** These include permitting the public (continued....)

274. With respect to the newly created "E Block," Frontline proposes imposing the following obligations, among others, on this nationwide licensee:

- The "E Block" licensee would be required to construct a common, interoperable network infrastructure that can be used by both the public safety broadband network and the "E Block" licensee's commercial network.[554] The details of the network would be specified in a Network Sharing Agreement negotiated by the "E Block" licensee and the National Public Safety Licensee.[555]
- The "E Block" licensee would be required to meet the following build-out benchmarks: provide coverage to 75 percent of the United States population within four years of the 700 MHz "auction clearing date"; provide coverage to 95 percent of the United States population within seven years; and provide coverage to 98 percent of the United States population within 10 years. As regards Alaska, the licensee would be required to provide coverage to all Alaskan cities of 10,000 or more within four years of the 700 MHz auction clearing date.[556]
- The "E Block' licensee would be responsible for managing and operating the public safety broadband network, and would be permitted to collect a reasonable network management fee. This fee, and the terms and conditions governing the "E Block" licensee's management of the network, would be specified in the Network Sharing Agreement.[557]
- The "E Block" licensee would be required to provide priority access to public safety broadband operations during times of emergency. These requirements would be specified in the Network Sharing Agreement.[558]

275. Frontline also sets forth several additional elements as part of its proposal. The term of the "E Block" license would be for 15 years, and would be subject to a renewal expectancy upon the

(Continued from previous page)
safety licensee to provide unconditionally preemptible access to its assigned spectrum to commercial service providers on a secondary basis, and facilitating the shared use of commercial mobile radio service (CMRS) infrastructure for the efficient provision of public safety broadband service. ***See*** 700 ***MHz Public Safety Ninth Notice,*** 21 FCC Rcd at 14838¶ 4.

[554] ***See*** Frontline Comments in PS Docket No. 06-229 at 5-6, 17, 19-20, 24; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 7, 8, 10-12; Frontline Reply Comments in PS Docket No. 06-229 at 3-4; ***see also*** Frontline Mar. 26 ***Ex Parte*** in WT Docket **Nos.** 06-150 and 06-169 and PS Docket No. 06-229, Attachment (proposed **rules** relating to Frontline proposal, including the Network Sharing Agreement).

[555] ***See*** Frontline Mar. 26 ***Ex Parte*** in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229 at 3-7 & Attachment (proposed 47 C.F.R. § 27.4). Frontline's proposed rules would require that the "E Block" licensee "enter into good faith negotiations with the national public safety broadband licensee" regarding the Network Sharing Agreement, and, as part of that obligation, would require that the "E Block" Licensee "consult with the Public Safety Licensee on the design, construction, and operation of the shared network.. .." Frontline Mar. 26 *Ex* ***Parte*** in WT Docket **Nos.** 06-150 and 06-169 and PS Docket No. 06-229, Attachment at 5.

[556] *Id.* Attachment at 3-4 (proposed 47 C.F.R. § 27.14). Under Frontline's original proposal, the build-out benchmarks were: 25 percent geographic coverage of the continental United States within four years of license grant; 50 percent geographic coverage of the continental United States within seven years of license grant; and 75 percent geographic coverage of the continental United States within ten years of license grant. **See** Frontline Comments in PS Docket No. 06-229 at 24-25. Frontline's current proposal provides that "auction clearing date" for purposes of the construction requirements "refers to the Analog Spectrum Recovery Firm Deadline provided for in Section 3002 of the Deficit Reduction Act of 2005." ***See*** Frontline Mar. 26 ***Ex Parte*** in WT Docket **Nos.** 06-150 and 06-169 and PS Docket No. 06-229, Attachment at **3-4** (proposed 47 C.F.R. § 27.14).

[557] Frontline Comments in PS Docket No. 06-229 at 27-28.

[558] *Id.* at 28-29; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 14-15; Frontline Mar. 26 *Ex* ***Parte*** in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229 at 4.

completion of "substantial service."[559] It also states that participation by public safety would be purely voluntary, and that public safety would remain free to build its own network in the 700 MHz spectrum.[560] In addition, Frontline proposes that the "E Block" licensee should be required to operate as a wholesale provider with respect to commercial use of the "E Block" spectrum. Similarly, referencing a Petition recently filed by Skype Communications, Frontline proposes that the "E Block" licensee be required to provide open access to its network, allowing the attachment of any device to the network and permitting users to access services and content provided by unaffiliated parties. As proposed, this requirement would apply not only to the "E Block" license, but to all other licenses owned **or** controlled by the "E Block" licensee.[561] Similarly, Frontline recommends that the "E Block" licensee be required to offer roaming to any provider with customers utilizing devices compatible with the "E Block" network, and that such obligation be extended to all spectrum holdings of the "E Block" licensee.[562] Frontline supports the BOP, which would, among other things, eliminate the current Guard Band B Block and allocate additional spectrum to public safety, but also indicates that its proposal for the commercial 700 MHz Band is not dependent on any Commission action regarding the Guard Band B Block.[563]

276. Several parties have filed in response to the Frontline proposal.[564] For example, Media Access Project supports Frontline's proposal as being in the public interest, argues that it would ensure that public safety has access to needed spectrum in an efficient manner, and claims that a national license would provide affordable spectrum access.[565] CTIA requests that Frontline's proposal be dismissed, arguing, among other matters, that it is prohibited by Section 337 of the Communications Act.[566] MetroPCS opposes Frontline's proposal on several grounds, including that it is disruptive to the current

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[559] Frontline Mar. 6 Comments in WT Docket No. 06-150 at 19-20; Frontline Mar. 26 ***Ex Parte*** in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229, Attachment (proposed 47 C.F.R. $27.13).

[560] Frontline Mar. 26 ***Ex Parte*** in WT Docket **Nos.** 06-150 and 06-169 and PS Docket No. 06-229 at **5.**

[561] ***See*** Frontline Comments in PS Docket No. 06-229 at 29-30 (referring to **a** petition by Skype Communications requesting that the Commission apply Carterphone principles to wireless networks. ***See*** Skype Communications, S.A.R.L. Petition to Confirm a Consumer's Right lo **Use** Internet Communications Software and Attach Devices to Wireless Networks (filed Feb. 20,2007)); Frontline Mar. Frontline Mar. 26 ***Ex Parte*** in WT Docket **Nos.** 06-150 and 06-169 and PS Docket No. 06-229, Attachment (proposed rules).

[562] ***See*** Frontline Comments in PS Docket No. 06-229 at 18, 23; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 21.

[563] ***See*** Frontline Comments in PS Docket No. 06-229 at 20-21; Frontline Mar. 6 Comments in WT Docket **No.** 06-150 at 11, n.13; Frontline March 16 ***Ex Parte*** in WT Docket Nos. 96-86 and 06-150 and PS Docket No. 06-229, Attachment at 3-4. ***See also*** Frontline Mar. 26 ***Ex Parte*** in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229, Attachment (proposed 47 C.F.R. § 27.5, which maintains existing frequencies for Guard Band blocks).

[564] ***See*** Reply Comments of MetroPCS Communications, Inc., PS Docket No. 06-229, WT Docket No. 96-86 (filed Mar. 12,2007) ("MetroPCS Reply Comments in PS Docket No. 06-229 and WT Docket No. 96-86"); Reply Comments of the National Public Safety Telecommunications Council ("NPSTC"), Docket No. 06-229, WT Docket No. 96-86 (filed Mar. 12,2007) ("NPSTC Reply Comments in PS Docket No. 06-229 and WT Docket No. 96-86"); Letter from Harold Feld, Senior Vice President, Media Access Project, to Marlene H. Dortch, Secretary, FCC, ***Ex Parte*** in WT Docket Nos. 05-211 and 06-150 **and** PS Docket No. 06-229 (filed Mar. 22,2007) ("Media Access Project Mar. 22 ***Ex Parte*** in WT Docket Nos. 05-211 and 06-150 and PS Docket No. 06-229"); Response **of** MetroPCS Communications, Inc. to Untimely "Comments" of Frontline Wireless, LLC, WT Docket **No.** 06-150, CC Docket No. 94-102, WT Docket No. 01-309 (filed Mar. 26,2007) ("MetroPCS Response in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309"); U.S. Cellular Mar. 27 ***Ex Parte*** in WT Docket Nos. 06-150, 06-169, 96-86, 05-265, and 00-139, and PS Docket No. 06-229.

[565] ***See*** Media Access Project Mar. 22 ***Ex Parte*** in WT Docket Nos. 05-211 and 06-150 and PS Docket **No.** 06-229 at 1.

[5b6] ***See*** Letter from Steve Largent, President and CEO, CTIA, to Chairman Kevin Martin, FCC, ***Ex Parte*** in WT Docket No. 06-150 (filed Apr. 5,2007) ("CTIA Apr. 5 ***Ex Parte*** in WT Docket No. 06-150") at 2-3.

process for adopting rules for the 700 MHz Band, contains proposed "poison pill" rules that will make the spectrum unattractive to potential bidders, has wholesale operating restrictions that require unwarranted change to the current DE rules, potentially subjects public safety users to a provider that could exact unregulated user fees, and subjects public safety users to a potentially uncertain public/private partnership arrangement.[567] NPSTC states that Frontline's proposal should receive close examination, and expresses concern with leaving to the competitive bidding process the choice of an operator of a nationwide public service broadband network.[568] United States Cellular opposes adoption of Frontline's proposal, arguing, among other matters, that the proposal would "all but eliminate" competitive bidding for the spectrum and would restrict spectrum use.[569] The *Ad Hoc* Public Interest Spectrum Coalition supports Frontline's proposal to make the "E Block' available on an open access basis and requests that the Commission go further, making at least three of the 700 MHz commercial licenses (or **30** megahertz of spectrum) available on such a basis.[570]

277. Discussion. We seek comment on Frontline's proposed "Public Safety Broadband Deployment Plan," its likely effects on both the commercial and public safety users in the 700 MHz Band, and whether it would be in the public interest for the Commission to adopt such a proposal, or alternatives to achieve the same or similar public interest goals. We also seek comment on whether, and to what extent, the Commission should: (a) adopt certain, but not all, elements of the Frontline proposal; (b) modify any elements of the proposal, adopt any additional requirements, or adopt any alternative requirements to achieve the same or similar public interest goals; and (c) consider alternative approaches to encourage public-private partnerships for sharing spectrum between public safety users and commercial licensees in the 700 MHz Band.

278. We also seek comment on the extent to which adoption of the Frontline, or similar, proposal should have an impact on our decisions regarding the Guard Bands. Under Frontline's proposal, Guard Band **B** Block would be located between the new **"E** Block" and the public safety spectrum. We seek comment on whether the Guard Band B Block should be integrated with a new block of spectrum to be made available in the Upper 700 MHz Band for purposes of implementing the Frontline Plan or similar proposal.

279. Similarly, we seek comment here on the extent to which adoption of the Frontline, or similar, proposal should affect our decisions regarding the remainder of the commercial spectrum blocks in the Upper 700 MHz Band that we are required to auction. We ask that comments address Frontline's proposal in the context of our proposals expressed in this Further Notice regarding the size of spectrum blocks and geographic service areas, including a comparison of Frontline's proposal that the 757-762 MHz and 787-792 MHz spectrum be designated for the new "E Block." If the Commission adopted the Frontline proposal, the amount of spectrum to be auctioned for commercial services pursuant to flexible service and technical rules in the Upper and Lower 700 MHz Band would decrease by ten megahertz, from *60* to 50 megahertz.

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[567] *See* MetroPCS Response in WT Docket No. 06-150, CC Docket No. 94-102, and WT Docket No. 01-309 at 1.

[568] ***See*** NPSTC Reply Comments in PS Docket No. 06-229 and WT Docket No. 96-86 at 7.

[569] ***See*** U.S. Cellular Mar. 27 ***Ex Parte*** in WT Docket Nos. 06-150, 06-169, 96-86, 05-265, and 00-139, and PS Docket No. 06-229 at 2.

[570] ***See Ex Parte*** Comments of the ***Ad*** Hoc Public Interest Spectrum Coalition, tiled by Larry Blosser, counsel **to** Consumers **Union** and Free Press, PS Docket No. 06-229 and WT Docket Nos. 06-150, 05-211, 96-86 (filed Apr. ***5***, 2007) ("PISC Apr. ***5*** Blosser ***Ex Porte*** in **PS** Docket **No.** 06-229 and WT Docket Nos. 06-150, 05-211, 96-86"). ***See*** *also* PISC Apr. 3 ***Ex Porte*** Comments in PS Docket No. 06-229 and WT Docket **Nos.** 06-150, 05-211, 96-86; ***Ex Porte*** Comments **of** the ***Ad*** Hoc Public Interest Spectrum Coalition, filed by Gigi Sohn, counsel for Public Knowledge, PS Docket No. 06-229 and WT Docket Nos. 06-150, 05-211, 96-86 (filed Apr. 5,2007) ("PISC Apr. ***5*** **Sohn** ***Ex Parte*** **in** PS Docket No. 06-229 and WT Docket Nos. 06-150, 05-211, 96-86").

280. We seek comment as well on Frontline's view that there is no need to impose any CALEA, E911, or similar obligations on the "E Block" licensee because it believes that retail service providers using the "E Block" spectrum will already be subject to those requirements."[571] Should we adopt any specific requirements applicable to retail service providers or equipment manufacturers in regard to the "E Block?" For example, should some or all public safety equipment operating on an "E Block" built network be capable of accessing satellite communications (including handsets and other mobile or fixed receivers)? Should we require the "E Block" licensee to incorporate satellite-based technology into its network infrastructure?

281. ***Network Sharing Agreement.*** We note Frontline's view that the proposed "E Block" licensee and a potential national public safety licensee would have strong incentives to reach agreement on suitable terms for a lease and that the Commission should not attempt to adopt detailed rules to implement its proposal but should rely on a requirement that the "E Block" licensee negotiate in good faith."[572] Frontline proposes that the Commission should leave to the "Network Sharing Agreement" negotiations the definition of "emergency" for purposes of the requirement that the "E Block" licensee provide priority access to affected public safety broadband operations during emergencies.[573]

282. We tentatively conclude that, if we adopt Frontline's proposal or some similar proposal, we will need to impose conditions on the "E Block" license as well as the national public safety license to deal with the circumstance where the bidder winning the new "E Block" at auction and the national public safety licensee are unable to reach agreement on a Network Sharing Agreement. Successful negotiation of that agreement is a critical first step to achieving the benefits to public safety under the Frontline proposal. We are concerned that under certain circumstances the parties may not be able to reach agreement, which could result in a significant delay in implementation. To avoid this result, we tentatively conclude that the Commission would not grant a license to the bidder winning the "E Block' at auction until the winning bidder files a Network Sharing Agreement with the Commission for approval. We would also condition the national public safety license on the licensee submitting to binding arbitration in the event it cannot reach agreement with the "E Block" winner. If the winning bidder and the national public safety licensee are unable to reach agreement, they would be required to enter into binding arbitration to resolve outstanding issues.

283. We seek comment on this tentative conclusion, and whether imposing such conditions would be an incentive for the parties to reach a suitable and speedy resolution in order to avoid arbitration. If the parties are unable to reach an agreement and thus have to submit to binding arbitration, would this condition then facilitate the ability of the parties to reach such an agreement? We seek comment on whether any particular requirements should be adopted in connection with such conditions, including a requirement that the parties report to the Commission on the status of the negotiations. We also ask commenters to consider whether there are other conditions that should be placed on an "E Block" licensee to ensure that an agreement is reached quickly and in a manner that is satisfactory to public safety, or if there is additional oversight that the Commission should exercise. Should we require that an agreement to be reached by a certain date? Should the Commission require status reports or other periodic reporting from the "E Block" licensee? If we do not adopt a binding arbitration proposal, what should he the consequence for failing to reach agreement in a timely manner, or for otherwise failing to comply with the Network Sharing Agreement requirement? Should the Commission have authority to appoint board members to the governance of the "E Block" licensee?

284. *Bidding* ***Preferences.*** We also have serious concerns, based on Frontline's proposed requirements, about whether we should offer any bidding preferences, such as bidding credits, to

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[571] **See** Frontline Mar. **26 Ex** Parte **in** WT Docket **Nos.** 06-150 and **06-169** and PS Docket No. **06-229** at **8.**

[572] *Id.* at 4-5.

[573] ***Id.*** at 6.

applicants for the "E Block" license, based on their status as a **small** business, or designated entity. In authorizing the Commission to use competitive bidding, Congress mandated that the Commission "ensure that small businesses, rural telephone companies, and businesses owned by members of minority groups and women [sometimes referred to as "designated entities"] are given the opportunity to participate in the provision of spectrum-based services."[574] In addition, Section 309(j)(3)(B) of the Act provides that in establishing eligibility criteria and bidding methodologies, the Commission shall promote "economic opportunity and competition . . . by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses, rural telephone companies, and businesses owned by members of minority groups and women."[575] One of the means by which the Commission fulfills this mandate is through the award of bidding credits to small businesses. The Commission stated that it would define eligibility requirements **for** small businesses on a service-specific basis, taking into account the capital requirements and other characteristics of each particular service in establishing the appropriate threshold.[576] The Commission has also stated that, while it standardizes many auction rules, the Commission will continue a service-by-service approach when it comes to defining small businesses.[577]

285. The capital requirements for effective use of the proposed nationwide **"E Block"** license likely will be very high. In the past, the Commission has declined to adopt designated entity provisions for certain services, such as the direct broadcast satellite service and the digital audio radio service, which have extremely high implementation costs.[578] The Commission reached this conclusion in large part because it was unclear whether small businesses could attract the capital necessary to implement and provide a nationwide service.[579]

286. Our concerns regarding the capital needed to implement a nationwide service are especially acute in this instance because the "E Block" licensee would be responsible **for** constructing a robust network to meet the needs of critical public safety service providers – and the public – in times of emergency. The public interest would not appear to favor giving applicants a preference when bidding for the "E Block" license based on their limited financial resources, as we do when we offer bidding credits to small businesses, in these circumstances.

287. The proposed restriction on such a licensee's ability to provide spectrum-based services directly to the public is also of concern when considering whether to offer such benefits. The

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[574] 47 U.S.C. § 309(j)(4)(D).

[575] 47 U.S.C. § 309(j)(3)(B).

[576] Implementation of Section 309(j) of the Communications Act—Competitive Bidding, PP Docket No. 93-253, ***Second Memorandum Opinion and Order,*** 9 FCC Rcd 7245,7269 ¶ 145 (1994) ***(Competitive Bidding Second Memorandum Opinion and Order);*** 47 C.F.R. § 1.2110(c)(1).

[577] Amendment **of** Part 1 of the Commission's Rules – Competitive Bidding Procedures, WT Docket No. 97-82, ***Third Report and Order and Second Further Notice of Proposed Rule Making,*** 13 FCC Rcd 374,388 ¶ 18 (1997) ("Part 1 Third Report and Order"); 47 C.F.R. § 1.2110 (c)(1).

[578] Revision of Rules and Policies **for** the Direct Broadcast Satellite Service, IB Docket No. 95-168, PP Docket No. 93-253, ***Report and Order,*** 11 FCC Rcd 9712 (1995) ***(DBS Auction Order);*** Establishment of Rules and Policies for the Digital Audio Radio Satellite Service in the 2310-2360 MHz Band, IB Docket No. 95-91, ***Report and Order, Memorandum Opinion and Order and Further Notice of Proposed Rulemaking,*** 12 FCC Rcd 5754 (1997) ***(DARS Auction Order).***

[579] ***See DBS Auction Order,*** 11 FCC Rcd at 9799 ¶ 217; ***DARS Auction Order,*** 12 FCC Rcd at 5824-26 ¶¶ 174-176. We also note that the legislative history of the designated entity provisions of section 309(j) demonstrates that **Congress** did not necessarily intend the Commission to adopt special measures for designated entities in nationwide services. The House Report to the Omnibus Budget Reconciliation Act of 1993 states that "[t]he characteristics of some services are inherently national in scope, and are therefore ill-suited for **small** businesses." H.R. Rep. **No.** 103-111, 103rd Cong., 1st Sess., at 254.

Commission prohibits licensees from both receiving designated entity benefits and having wholesale agreements for more than fifty percent (50%) of the spectrum capacity of any license that they hold, which are defined as impermissible material relationships.[580] Frontline proposes that the "E Block" licensee should be required to operate only as a wholesale provider with respect to commercial use of the "E Block" license, *i.e.*, that it must have wholesale agreements for one hundred percent (100%) of its spectrum capacity. In the event that we offered bidding preferences with respect to such an "E Block" license, the existing rule plainly would preclude any licensee that is required to operate only as a wholesale provider from receiving designated entity benefits.

288. When it adopted the current impermissible material relationship rule, the Commission stated that it did so "to ensure that, in accordance with the intent of Congress, every recipient of our designated entity benefits is an entity that uses its licenses to directly provide facilities-based telecommunications services for the benefit of the public."[581] A party holding the "E Block" license, as proposed by Frontline's proposal, would not be directly providing facilities-based telecommunications services for the benefit of the public. For all these reasons, we have serious concerns about providing designated entity benefits for the "E Block" license proposed by Frontline, and we seek comment on this issue.

289. ***Other Issues.*** We seek comment on whether any service specific rules are needed to address what actions the Commission may or must take in the event that the "E Block" licensee encounters financial or other problems that prevent compliance with any of its obligations, regarding build-out or other duties. Frontline contends that the Commission's general rules regarding reclaiming and re-auctioning the spectrum are sufficient to address this possibility.[582] We seek comment on whether the particular obligations proposed for the "E Block" would make additional provisions in the public interest. For example, should there be some special process for public safety entities or others to challenge the "E Block" licensee's compliance with its public safety or wholesale obligations? Should the "E Block" license cancel automatically based on failure to comply with specified obligations? Should the Commission establish an unjust enrichment requirement to be paid in the event the Commission is unable to reclaim the license for any reason upon failure of the "E Block" licensee to comply with its obligations? If so, how should the amount of such a payment be calculated?[583] If the Commission were to reclaim the license, could it also hold any network infrastructure built by the licensee in trust for public safety to avoid interruption of service to first responders? Alternatively, should the Commission provide for a rebate of a portion of the net bid amount paid by the "E Block" licensee at auction upon satisfaction of the conditions of the license and, if so, what should be the amount of such rebate? What other enforcement mechanisms might be appropriate?

290. We also seek comment on Frontline's proposal that the "E Block" licensee be required to operate a wholesale network.[584] Frontline claims that this requirement would encompass freedom of

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[580] 47 C.F.R. 1.2110(b)(3)(iv)(A).

[581] Implementation of the Commercial Spectrum Enhancement Act and Modernization of the Commission's Competitive Bidding Rules and Procedures, ***Second Report and Order and Second Further Notice of Proposed Rule Making,*** 21 FCC Rcd 4753,4760 ¶15 (2006).

[582] Frontline Mar. 26 *Ex Parte* in WT Docket Nos. 06-IS0 and 06-169 and PS Docket No. 06-229 at 8.

[583] In this regard, we note that the Commission has collected unjust enrichment obligations, under its existing unjust enrichment rules in section 1.2111, from bankrupt licensees, even where the protections afforded by section 525 of the United States Bankruptcy Code prevented the automatic cancellation of the license for failure to render timely payment pursuant to the Commission's installment payment rules of section 1.2110(g)(iv). *See* 47 C.F.R. § 1.2111; 11 U.S.C. § 525; 47 C.F.R. § 1.2110(g)(iv).

[584] *See* Frontline Comments in PS Docket No. 06-229 at 29-31; Frontline Mar. 6 Comments in WT Docket No. 06-150 at 16-19. *See also* Frontline Mar. 26 *Ex Parte* in WT Docket Nos. 06-150 and 06-169 and PS Docket No. 06-229, Attachment (Frontline's proposed 47 C.F.R. § § 27.16, 27.51).