316, 324, 331, 332, 333, 336, 337, 403, 503, and 610, and Section 102 of the Communications Assistance for Law Enforcement Act, 18 U.S.C. § 1001, this SECOND REPORT AND ORDER in WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket No. 06-169, PS Docket No. 06-229, and WT Docket No. 96-86 is ADOPTED, and that Part 2, 27, and 90 of the Commission's rules, 47 C.F.R. Parts 2, 27, and 90, are AMENDED as set forth in Appendix B. This SECOND REPORT AND ORDER shall become effective 60 days after publication in the Federal Register subject to OMB approval for new information collection requirements.

557. IT IS FURTHER ORDERED THAT, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. § 5(c), the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau ARE GRANTED DELEGATED AUTHORITY to implement the policies set forth in this SECOND REPORT AND ORDER and the rules, as revised, set forth in Appendix B hereto.

558. IT IS ORDERED that, pursuant to Sections 4(i), 309, and 316(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, 316(a), the 700 MHz Guard Band A Block licenses of Access 700, LLC, Pegasus Guard Band, LLC, and Dominion 700, Inc. ARE MODIFIED, as specified in Appendix D, upon the effective date of this SECOND REPORT AND ORDER.[1148]

559. IT IS ORDERED that, pursuant to Sections 4(i), 309, and 316(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, 316(a), Access 700 Holdings, LLC, Pegasus Guard Band, LLC, and Radiofone Nationwide PCS, LLC shall surrender their 700 MHz Guard Band B Block licenses to the Commission no later than 5 days from the effective date of this SECOND REPORT AND ORDER.[1149]

560. IT IS ORDERED that, pursuant to Sections 4(i), and 309(f) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309(f), Access 700, LLC is granted special temporary authority for a period of 180 days, upon the effective date of this SECOND REPORT AND ORDER, for frequencies 746.000-747.000 and 776.000-777.000 MHz in Major Economic Areas 20, 26, 32, 37, 44, and 52. The Wireless Telecommunications Bureau is delegated authority to issue such authorizations and to resolve any request for an extension of such authorizations as specified in this SECOND REPORT AND ORDER.

561. IT IS ORDERED that, pursuant to Sections 4(i), 309, and 316(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, 316(a) and Section 1.87 of the Commission's rules, 47 C.F.R. § 1.87, the 700 MHz Guard Band A Block license for Station WPRV447, licensed to PTPMS II Communications, L.L.C., WILL BE MODIFIED by changing the authorized frequencies from 746.000-747.000 and 776.000-777.000 MHz, to 757.000-758.000 and 787.000-788.000 MHz.

562. IT IS ORDERED that, pursuant to Sections 4(i), 309, and 316(a) of the Communications Act, as amended, 47 U.S.C. §§ 154(i), 309, 316(a) and Section 1.87 of the Commission's rules, 47 C.F.R. § 1.87, the 700 MHz Guard Band B Block licenses for Stations WPRV448 and WPRV449, licensed to PTPMS II Communications, L.L.C., WILL BE MODIFIED by changing the authorized frequencies from 762.000-764.000 and 792.000-794.000 MHz, to 761.000-763.000 and 791.000-793.000 MHz.

563. IT IS ORDERED that, pursuant to Sections 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 309, 316, the modifications of Stations WPRV447, WPRV448, and

[1148] Each licensee has waived its right to contest such license modifications under Section 316 of the Act. *See* Access Spectrum/Pegasus July 6, 2007 *Ex Parte;* Access Spectrum/Pegasus July 13, 2007 *Ex Parte*; Access Spectrum/Pegasus July 26, 2007 *Ex Parte*.

[1149] Each licensee has agreed to surrender its 700 MHz Guard Band B Block licenses to the Commission. *See* Access Spectrum/Pegasus July 13, 2007 *Ex Parte*; Access Spectrum/Pegasus July 26, 2007 *Ex Parte*.

WPRV449, licensed to PTPMS II Communications, L.L.C., specified in paragraphs 561 and 562, *supra*, shall become final and effective 30 days from the effective date of this SECOND REPORT AND ORDER if no protests are filed within that period. The Wireless Telecommunications Bureau is delegated authority to resolve any such protests that may arise and to modify such licenses as specified in this SECOND REPORT AND ORDER.

564. IT IS ORDERED, pursuant to Sections 1 and 4(i) of the Communications Act, as amended, 47 U.S.C. §§ 151, 154(i), that on the effective date of this SECOND REPORT AND ORDER, all 700 MHz Band public safety licensees, whether holding individual narrowband authorizations or operating pursuant to a State License, SHALL PROVIDE the total number of narrowband mobile and portable handsets and narrowband base stations in operation in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69, as of 30 days after the date of adoption of this SECOND REPORT AND ORDER, along with the related information specified herein.

565. IT IS FURTHER ORDERED that the Wireless Telecommunications Bureau SHALL SEND a copy of this SECOND REPORT AND ORDER, by certified mail, return receipt requested, to Alfred Angelo, President, PTPMS II Communications, L.L.C., 340 North Avenue East, Cranford, New Jersey 07016, and James H. Barker, Esq., 1001 Pennsylvania Avenue, N.W. Suite 1300, Washington, DC 20004-2505.

566. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this SECOND REPORT AND ORDER, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

567. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of this SECOND REPORT AND ORDER in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch

Marlene H. Dortch
Secretary

APPENDIX A

Comments and Reply Comments

List of Comments and Reply Comments
In the 700 MHz Further Notice
(WT Docket Nos. 06-150, 06-169, 03-264, 96-86, and PS Docket 06-229)

This is a list of parties who filed comments and reply comments within the designated comment periods in the proceeding. This list does not include approximately 250,000 individual citizens who filed brief comments both during and after the formal comment periods. Of these 250,000 comments, approximately 225,000 were compiled and filed as reply comments by MoveOn.org Civic Action. Approximately 25,000 others were filed as "Email Comments" to the Commission. The complete record in this proceeding is available in the Electronic Comment Filing System located at http://www.fcc.gov/cgb/ecfs/.

Comments

700 MHz Independents (Central Wisconsin Communications, LLC D/B/A Solarus, Chariton Valley Communication Corporation, Inc., Ct Cube, L.P. D/B/A West Central Wireless, Grand River Communications, Inc., Home Telephone Company, Horry Telephone Cooperative, Inc., Interstate Enterprises, Ltd., Kanokla Telephone Association, Inc., Palmetto Rural Telephone Cooperative, Inc., Siskiyou Telephone Company, And Southern Iowa 700, L.L.C) ("700 MHz Independents")
Access Spectrum LLC, Dominion 700 Inc., Harbor Guardband LLC, and Pegasus Communications Corp. ("Access Spectrum/Pegasus")
Ad Hoc Public Interest Spectrum Coalition (Consumer Federation of America, Consumers Union, Educause, Free Press, Media Access Project, New America Foundation, Public Knowledge, U.S. Public Interest Research Group) ("PISC")
Alcatel-Lucent ("Alcatel-Lucent")
Allcomm Technologies, Inc. ("Allcomm")
Alltel Corporation ("Alltel")
Aloha Partners, LP ("Aloha")
American Petroleum Institute ("API")
Arcadian Networks, Inc. ("Arcadian")
Association of Public-Safety Communications Officials-International, Inc. ("APCO")
AT&T Inc. ("AT&T")
Blooston Rural Carriers ("Blooston")
Cellular South Licenses, Inc. ("Cellular South")
Centennial Communications Corp. ("Centennial")
Center for Democracy & Technology ("CDT")
City of Albuquerque ("Albuquerque")
City of Fort Lauderdale, Florida ("Fort Lauderdale")
City of Independence, Missouri ("City of Independence")
City of Joplin ("Joplin")
City of New York ("New York, NY")
City of Philadelphia ("Philadelphia")
City of Tacoma, WA ("Tacoma, WA")
Communications Service Inc. ("Communications Service Inc.")
Computer & Communications Industry Association ("CCIA")
Council Tree Communications, Inc. ("Council Tree")
Counties of Foxcomm; Wisconsin Counties of Brown, Outgamie, Calumet and Winnebago ("Wisconsin

Counties")
County of Lake - Ohio ("Lake, Ohio")
CTIA - The Wireless Association ("CTIA")
Cyren Call Communications Corporation ("Cyren Call")
Dataradio Inc. ("Dataradio")
Dekalb County Board of Education ("Dekalb Dept of Ed")
Department of Emergency Management, City/County of San Francisco ("San Francisco Department of Emergency Management")
Dobson Communications Corporation ("Dobson")
Embarq, CenturyTel, and Citizens/Frontier (Mid-Size ILECs) ("Embarq")
Enterprise Wireless Alliance ("Enterprise")
Ericsson Inc ("Ericsson")
ETMC EMS ("ETMC EMS")
Fargo (North Dakota) Metropolitan Statistical Area Police, Fire and EMT Agencies ("Fargo MSA Police")
Frontier Communications ("Frontier")
Frontline Wireless LLC ("Frontline")
GEOCommand, Inc. ("GEOCommand")
Google Inc. ("Google")
Grundy County Emergency Telephone System Board ("Grundy Co ETS")
Hampton Roads Interoperable Communications Advisory Committee ("Hampton Roads Interop")
Hawaii Fire Chiefs ("Fire Fighters Hawaii")
Horizon Telcom, Inc. ("Horizon")
Idaho Fire Chiefs Association ("Fire Fighters Idaho")
Jefferson County, Alabama ("Jefferson County, AL")
Johnson County KS ("Johnson County, KS")
L-3 Communications Corporation ("L-3")
Lake County Sheriff's Department ("Lake County Sheriff")
Leap Wireless International, Inc. ("Leap")
Louisiana Statewide Interoperability Executive Committee ("Louisiana Interoperability")
M/A-COM, Inc. ("M/A-COM")
Madison County Communication District ("MCCD")
Massachusetts Chiefs of Police Association ("Police Chiefs Mass")
McBride Spectrum Partners, LLC ("McBride")
MetroPCS Communications, Inc. ("MetroPCS")
Michael Gallagher & Larry Irving ("Gallagher & Irving")
Mid-America Regional Council ("Mid-America Regional Council")
Mike Jeffres, Chair Region 26 Nebraska 700 MHz RPC ("Region 26 (Nebraska)")
Minnesota Region 22 700 MHz Public Safety Regional Planning Committee ("Region 22")
Missouri State Highway Patrol Communications Division ("Missouri Hwy Patrol")
Mobile Satellite Ventures Subsidiary LLC ("MSV")
Montana State Fire Chiefs Association ("Fire Fighters Montana")
Motorola, Inc. ("Motorola")
Mower County, Minnesota Office of the Sheriff ("Mower County Sheriff")
Nassau County (NY) Fire/Rescue Services ("Nassau County")
National Association of EMS Physicians ("EMS Physicians")
National Cable & Telecommunications Association ("NCTA")
National Emergency Number Association ("NENA")
National Public Safety Telecommunications Council ("NPSTC")
National Rural Electric Cooperative Association ("NRECA")
National Telecommunications Cooperative Association ("NTCA")

National Volunteer Fire Council ("NVFC")
NATOA, NACO, USCM and NLC ("NATOA")
Nevada (Region 27) 700 MHz Regional Planning Committee ("Region 27 (Nevada)")
Northrop Grumman Information Technology, Inc. ("Northrop Grumman")
Office of Advocacy, U.S. Small Business Administration ("SBA")
Office of the Hennepin County Sheriff ("Hennepin County Sheriff")
Ohio Region 33 700 MHz. Planning Committee ("Region 33 (Ohio)")
Ohio Statewide Interoperability Executive Committee ("Ohio Interoperability Council")
Orange County Sheriff's Department ("Orange County Sheriff")
Oregon Fire Chiefs Association ("Fire Fighters Oregon")
Police Executive Research Forum ("Police Executive Research Forum")
Professional Fire Fighters of Massachusetts ("Fire Fighters Mass")
PTPMS II Communications, L.L.C. ("PTPMS")
Public Utility District #1 of Snohomish County ("Snohomish PUD")
QUALCOMM Incorporated ("Qualcomm")
Radiofone Nationwide PCS, L.L.C. ("RadioFone")
RCC Consultants, Inc. ("RCC")
Region 9 Florida, Regional Planning Committee ("Region 9 (Florida)")
Region 10 (Georgia) 700 MHz Public Safety Regional Planning Committee ("Region 10 (Georgia)")
Region 13 (Illinois) 700 MHz Public Safety Regional Planning Committee ("Region 13 (Illinois)")
Region 14 700 MHz Regional Planning Committee ("Region 14 (Indiana)")
Region 16 (Kansas) Regional Planning Committee ("Region 16 (Kansas)")
Region 40 Regional Planning Committee ("Region 40 (Texas North)")
Region 43 Regional Planning Committee ("Region 43 (Washington)")
Rehabilitation Engineering Research Center for Wireless Technology ("Rehabilitation Engineering")
Rick Neathery ("Neathery")
Rural Cellular Association ("RCA")
Rural Telecommunications Group, Inc. ("RTG")
San Diego County - Imperial County, CA Regional Communications System ("San Diego Regional System")
Satellite Industry Association ("SIA")
Scott D. Reiter ("Reiter")
Sharp Communication, Inc. ("Sharp")
Sherburne County Emergency Services ("Sherburne County")
SpectrumCo LLC ("SpectrumCo")
Sprint Nextel Corporation ("Sprint Nextel")
State of California ("California")
State of Hawaii, Department of Accounting and General Services ("Hawaii")
State of Ohio MARCS Program ("Ohio MARCS")
Telecommunications Industry Association ("TIA")
Texas Statewide Interoperability Executive Committee ("Texas Interoperability")
The Coalition for 4G in America (Access Spectrum LLC, The DIRECTV Group, Inc., EchoStar Satellite, L.L.C., Google, Inc., Intel Corporation, Skype Communications S.A.R.L., YAHOO! Inc. ("4G Coalition")
The Wireless Internet Service Provider Association ("WISPA")
Union Telephone Company ("Union")
United States Cellular Corporation ("U.S. Cellular")
Vanu, Inc. ("Vanu")
Verizon Wireless ("Verizon")
Virginia Fire Chiefs Association ("Fire Fighters Virginia")
Western Fire Chiefs Association - President Jeff Johnson ("Fire Fighters Western")

Wirefree Partners III, LLC ("Wirefree Partners")
Wireless Communications Association International, Inc. ("WCA")
Wisconsin State Patrol ("Wisconsin State Patrol")
York County, SC ("York County, SC")

Reply Comments

Access Spectrum, Dominion 700, Harbor Guardband, and Pegasus Communications ("Access Spectrum/Pegasus")
Alcatel-Lucent ("Alcatel")
Aloha Partners, L.P. ("Aloha")
Arcadian Networks ("Arcadian")
Association of Public-Safety Communications Officials-International, Inc. ("APCO")
AT&T Inc. ("AT&T")
Barat Wireless, L.P. and Carroll Wireless, L.P. ("Barat")
Cellular South Licenses, Inc. ("Cellular South")
City of El Paso/Yvonne Bonnie V. Guinn ("El Paso")
Council Tree Communications, Inc. ("Council Tree")
CTIA - The Wireless Association ("CTIA")
Cyren Call Communications Corporation ("Cyren Call")
Dobson Communications Corporation ("Dobson")
Fire Fighters Association District of Columbia ("Fire Fighters DC")
Frontline Wireless LLC ("Frontline")
Hawaii Fire Fighters Association ("Fire Fighters Hawaii")
L-3 Communications Corporation ("L-3")
Leap Wireless International, Inc. ("Leap")
Lisa K. Thompson - Arlington County, VA ("Arlington County, VA")
M/A-COM, Inc. ("M/A-COM")
Maryland Fire Chiefs Association ("Fire Fighters Maryland")
MetroPCS Communications, Inc. ("MetroPCS")
Metropolitan Emergency Services Board ("Metropolitan Emergency Services Board")
Michigan Professional Firefighters Union ("Fire Fighters Michigan")
Missouri State Highway Patrol ("Missouri Hwy ")
Mobile Satellite Ventures Subsidiary LLC ("MSV")
Montana State Fire Chiefs' Association ("Fire Fighters Montana")
Motorola, Inc. ("Motorola")
MoveOn.org Civic Action ("MoveOn")
MoveOn.Org/40 Technology & Civic Leaders ("MoveOn with 40 tech")
National Emergency Number Association ("NENA")
National Public Safety Telecommunications Council ("NPSTC")
National Telecommunications Cooperative Association ("NTCA")
NATOA, NACO, NLC, USCM ("NATOA")
Northrop Grumman Information Technology, Inc ("Northrup Grumman")
NYS Professional Fire Fighters Assoc. ("Fire Fighters NY")
Office of the Chief Technology Officer -- District of Columbia ("DC Govt")
Oregon State Fire Fighters Council ("Fire Fighters Oregon")
Professional Fire Fighters of Georgia ("Fire Fighters Georgia")
Professional Fire Fighters of Idaho ("Fire Fighters Idaho")
Professional Firefighters Union of Indiana, Inc. ("Fire Fighters Indiana")
Puerto Rico Telephone Company, Inc. ("Puerto Rico Tel")
QUALCOMM Incorporated ("Qualcomm")

RCC Consultants, Inc., et al ("RCC")
Rural Cellular Association ("RCA")
Rural Telecommunications Group, Inc. ("RTG")
State of California ("California")
Stelera Wireless, LLC ("Stelera")
TCA, Inc. ("TCA")
Tennessee Professional Firefighters Association ("Fire Fighters Tenn")
Texas State Association of Firefighters ("Fire Fighters Texas")
The Blooston Rural Carriers ("Blooston")
The Greater Boston Police Council ("Police Boston")
The Spectrum Coalition for Public Safety ("SCPS")
The Wireless Internet Service Providers Association ("WISPA")
T-Mobile USA, Inc. ("T-Mobile")
Union Telephone Company ("Union")
United States Cellular Corporation ("USCC")
USA Broadband, LLC ("USA Broadband")
Verizon Wireless ("Verizon Wireless")
Vermont Department of Public Service, Vermont Public Service Board, Vermont Office of the Chief Information Officer, North Dakota Public Service Commission, Nebraska Public Service Commission, ConnectME Authority, Maine Office of the Chief Information Officer ("Vermont Department of Public Safety, *et al.*")
Washington State Council of Fire Fighters ("Fire Fighters Washington")

Comments and Reply Comments to Google Public Notice

List of Comments and Reply Comments
In the 700 MHz Commercial Services and Guard Band Proceedings
(WT Docket No. 06-150 and WT Docket No. 06-169)

Comments

AT&T Inc. ("AT&T")
Computer & Communications Industry Association ("CCIA")
CTIA - The Wireless Association ("CTIA")
Frontline Wireless LLC ("Frontline")
MetroPCS Communications, Inc. ("MetroPCS")
National Public Safety Telecommunications Council ("NPSTC")
QUALCOMM Incorporated ("Qualcomm")
Rural Telecommunications Group, Inc. ("RTG")
Vanu, Inc. ("Vanu")
Verizon Wireless ("Verizon Wireless")

Reply Comments

MetroPCS Communications, Inc. ("MetroPCS")
National Emergency Number Association ("NENA")
QUALCOMM Incorporated ("Qualcomm")

APPENDIX B

Final Rules

Parts 0, 1, 2, 27 and 90 of Title 47 of the Code of Federal Regulations are amended as follows:

1. *The authority citation for Part 0 continues to read as follows:*

   AUTHORITY: Secs. 5, 48 Stat. 1068, as amended; 47 U.S.C. 155.

2. Section 0.181 is amended by adding a new paragraph (k) to read as follows:

   § 0.181 The Defense Commissioner.

   * * * * *

   (k) To decide, in response to a request by the Public Safety Broadband Licensee whether circumstances warrant emergency priority access by first responder public safety entities to the Upper 700 MHz D Block license spectrum.

3. The authority citation for Part 1 continues to read as follows:

   AUTHORITY: 15 U.S.C. 79 *et seq.*; 47 U.S.C. 151, 154(i), 154(j), 155, 157, 225, 303(r), and 309.

4. Section 1.9005 is amended by revising paragraph (k) to read as follows:

   § 1.9005 Included services.

   * * * * *

   (k) The Wireless Communications Service in the 746 – 763 MHz, 775 – 793 MHz, and 805 – 806 MHz bands (part 27 of this chapter);

   * * * * *

5. Section 1.946 is amended by revising paragraph (c) to read as follows:

   § 1.946 Construction and coverage requirements.

   * * * * *

   (c) *Termination of authorizations.* If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules), without specific Commission action, on the date the construction or coverage period expires.

   * * * * *

6. Section 1.955 is amended by revising paragraph (a)(2) to read as follows:

§ 1.955 Terminations of authorizations.

(a) * * *

(1) * * *

(2) *Failure to meet construction or coverage requirements.* Authorizations automatically terminate (in whole or in part as set forth in the service rules), without specific Commission action, if the licensee fails to meet applicable construction or coverage requirements. *See* § 1.946(c) of this part.

* * * * *

7. Section 1.2105 is amended by revising paragraph (c)(6) to read as follows:

§ 1.2105 Bidding application and certification procedures; prohibition of collusion.

* * * * *

(c) * * *

(6) Any applicant that makes or receives a communication of bids or bidding strategies prohibited under paragraph (c)(1) of this section shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. An applicant's obligation to make such a report continues until the report has been made. Such reports shall be filed with the Office of the Secretary, and a copy shall be sent to the Chief of the Auctions and Spectrum Access Division, Wireless Telecommunications Bureau.

* * * * *

8. The authority citation for Part 2 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 302a, 303, and 336, unless otherwise noted.

9. Section 2.103 is amended by revising paragraphs (a) and (b) and adding a new paragraph (c) to read as follows:

§ 2.103 Federal use of non-Federal frequencies.

(a) Federal stations may be authorized to use non-Federal frequencies in the bands above 25 MHz (except the 763-775 MHz and 793-805 MHz public safety bands) if the Commission finds that such use is necessary for coordination of Federal and non-Federal activities: Provided, however, that:

* * * * *

(b) Federal stations may be authorized to use channels in the 769-775 MHz, 799-805 MHz and 4940-4990 MHz public safety bands with non-Federal entities if the Commission finds such use necessary; where:

* * * * *

(c) Federal stations may be authorized to use channels in the 763-768 MHz and 793-798 MHz public safety bands with non-Federal entities where:

(1) The Federal entity obtains the prior approval of the Public Safety Broadband Licensee (and such approval granted by the Public Safety Broadband Licensee is consistent with the terms and conditions of the Network Sharing Agreement under Section 90.1406); and

(2) Federal operation is in accordance with the Commission's Rules governing operation of this band and conforms to any conditions agreed upon by the Commission and NTIA.

10. The authority citation for Part 27 continues to read as follows:

AUTHORITY: 47 U.S.C. 154, 301, 302, 303, 307, 309, 332, 336, and 337 unless otherwise noted.

11. Section 27.1 is amended by revising paragraph (b)(2) to read as follows:

§ 27.1 Basis and purpose.

* * * * *

(b) * * *

(2) 746–763 MHz, 775–793 MHz, and 805-806 MHz.

* * * * *

12. Section 27.2 is amended by revising paragraph (b) to read as follows:

§ 27.2 Permissible communications.

* * * * *

(b) *775–776 MHz and 805-806 MHz bands.* Operators in the 775–776 MHz and 805–806 MHz bands may not employ a cellular system architecture. A cellular system architecture is defined, for purposes of this part, as one that consists of many small areas or cells (segmented from a larger geographic service area), each of which uses its own base station, to enable frequencies to be reused at relatively short distances.

* * * * *

13. Section 27.4 is amended by adding the following definitions in alphabetical order to read as follows:

§ 27.4 Terms and definitions

* * * * *

700 MHz Public/Private Partnership. The public/private partnership established for the development and operation of a nationwide, shared interoperable wireless broadband network

operating on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands in accordance with the Commission's rules.

* * * * *

Network Assets Holder. The Network Assets Holder is a Special Purpose Bankruptcy Remote Entity that is formed to hold the assets of the shared wireless broadband network associated with the 700 MHz Public/Private Partnership, in accordance with the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission's rules.

* * * * *

Network Sharing Agreement (NSA). An agreement entered into between the winning bidder, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and any other related entities that the Commission may require or allow regarding the shared wireless broadband network associated with the 700 MHz Public/Private Partnership that will operate on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands.

* * * * *

Operating Company. The Operating Company is a Special Purpose Bankruptcy Remote Entity that is formed to build and operate the shared wireless broadband network associated with the 700 MHz Public/Private Partnership, in accordance with the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission's rules.

* * * * *

Public Safety Broadband License. The Public Safety Broadband License authorizes public safety broadband services in the 763-768 MHz and 793-798 MHz bands.

* * * * *

Public Safety Broadband Licensee. The licensee of the Public Safety Broadband License in the 763-768 MHz and 793-798 MHz bands.

* * * * *

Shared Wireless Broadband Network. Wireless broadband network associated with the 700 MHz Band Public/Private Partnership that operates on the 758-763 MHz and 788-793 MHz bands and the 763-768 MHz and 793-798 MHz bands pursuant to the terms of the Network Sharing Agreement, such other agreements as the Commission may require or allow, and the Commission's rules.

* * * * *

Special Purpose Bankruptcy Remote Entity. A "special purpose entity" is a legal entity created for a special limited purpose, in this context primarily to hold the Upper 700 MHz D Block license or the network assets, or to conduct the construction or operation of the shared wireless broadband network associated with the 700 MHz Public/Private Partnership. A special purpose entity is "bankruptcy remote" if that entity is unlikely to become insolvent as a result of its own activities, is

adequately insulated from the consequences of a related party's insolvency, and contains certain characteristics which enhance the likelihood that it will not become the subject of an insolvency proceeding.

* * * * *

Upper 700 MHz D Block license. The Upper 700 MHz D Block license is the nationwide license associated with the 758-763 MHz and 788-793 MHz bands.

* * * * *

Upper 700 MHz D Block licensee. The Special Purpose Bankruptcy Remote Entity to which the Upper 700 MHz D Block license must be transferred upon execution of the Network Sharing Agreement. References herein to the rights and obligations of the Upper 700 MHz D Block licensee include the exercise or discharge of such rights or obligations, respectively, by related entities as are provided for in the NSA or otherwise as authorized by the Commission.

* * * * *

14. Section 27.5 is amended by revising paragraph (b) to read as follows:

§ 27.5 Frequencies.

* * * * *

(b) *746–763 MHz, 775–793 MHz, and 805-806 MHz bands.* The following frequencies are available for licensing pursuant to this part in the 746-763 MHz, 775-793 MHz, and 805-806 MHz bands:

(1) Two paired channels of 1 megahertz each are available for assignment in Block A in the 757-758 MHz and 787-788 MHz bands.

(2) Two paired channels of 1 megahertz each are available for assignment in Block B in the 775-776 MHz and 805-806 MHz bands.

(3) Two paired channels of 11 megahertz each are available for assignment in Block C in the 746-757 MHz and 776-787 MHz bands. In the event that no licenses for two channels in this Block C are assigned based on the results of the first auction in which such licenses were offered because the auction results do not satisfy the applicable reserve price, the spectrum in the 746-757 MHz and 776-787 MHz bands will instead be made available for assignment at a subsequent auction as follows:

(i) Two paired channels of 6 megahertz each available for assignment in Block C1 in the 746-752 MHz and 776-782 MHz bands.

(ii) Two paired channels of 5 megahertz each available for assignment in Block C2 in the 752-757 MHz and 782-787 MHz bands.

(4) Two paired channels of 5 megahertz each are available for assignment in Block D in the 758-763 MHz and 788-793 MHz bands.

* * * * *

15. Section 27.6 is amended by revising paragraphs (a), (b), (c), and (e) to read as follows:

§ 27.6 Service Areas.

(a) WCS service areas include Economic Areas (EAs), Major Economic Areas (MEAs), Regional Economic Area Groupings (REAGs), cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs), and a nationwide area. MEAs and REAGs are defined in the Table immediately following paragraph (a)(1) of this section. Both MEAs and REAGs are based on the U.S. Department of Commerce's EAs. See 60 FR 13114 (March 10, 1995). In addition, the Commission shall separately license Guam and the Northern Mariana Islands, Puerto Rico and the United States Virgin Islands, American Samoa, and the Gulf of Mexico, which have been assigned Commission-created EA numbers 173–176, respectively. The nationwide area is composed of the contiguous 48 states, Alaska, Hawaii, the Gulf of Mexico, and the U.S. territories. Maps of the EAs, MEAs, MSAs, RSAs, and REAGs and the Federal Register Notice that established the 172 EAs are available for public inspection and copying at the Reference Information Center, Consumer and Governmental Affairs Bureau, Federal Communications Commission, 445 12th Street, SW, Washington, DC 20554. * * *

* * * * *

(b) *746–763 MHz, 775–793 MHz, and 805-806 MHz bands.* WCS service areas for the 746-763 MHz, 775-793 MHz, and 805-806 MHz bands are as follows.

(1) Service areas for Block A in the 757-758 MHz and 787-788 MHz bands and Block B in the 775-776 MHz and 805-806 MHz bands are based on Major Economic Areas (MEAs), as defined in paragraphs (a)(1) and (a)(2) of this section.

(2) Service areas for Block C in the 746-757 MHz and 776-787 MHz bands are based on Regional Economic Area Groupings (REAGs) as defined by paragraph (a) of this section. In the event that no licenses with respect to service areas for Block C in the 746-757 MHz and 776-787 MHz bands are assigned based on the results of the first auction in which such licenses are offered because the auction results do not satisfy the applicable reserve price, then service areas for the spectrum at 746-757 MHz and 776-787 MHz will instead be available for assignment as follows:

(i) Service areas for Block C1 in the 746-752 MHz and 776-782 MHz bands are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

(ii) Service areas for Block C2 in the 752-757 MHz and 782-787 MHz bands are based on Regional Economic Area Groupings (REAGs) as defined by paragraph (a) of this section.

(3) Service area for Block D in the 758-763 MHz and 788-793 MHz bands is a nationwide area as defined in paragraph (a)(1) of this section.

(c) *698–746 MHz band.* WCS service areas for the 698-746 MHz band are as follows.

(1) Service areas for Block A in the 698-704 MHz and 728-734 MHz bands and Block E in the 722-728 MHz band are based on Economic Areas (EAs) as defined in paragraph (a) of this section.

(2) Service areas for Block B in the 704-710 MHz and 734-740 MHz bands and Block C in the 710-716 MHz and 740-746 MHz bands are based on cellular markets comprising Metropolitan

Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by Public Notice Report No. CL–92–40 "Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties," dated January 24, 1992, DA 92–109, 7 FCC Rcd 742 (1992), with the following *modifications:*

(i) The service areas of cellular markets that border the U.S. coastline of the Gulf of Mexico extend 12 nautical miles from the U.S. Gulf coastline.

(ii) The service area of cellular market 306 that comprises the water area of the Gulf of Mexico extends from 12 nautical miles off the U.S. Gulf coast outward into the Gulf.

(3) Service areas for Block D in the 716-722 MHz band are based on Economic Area Groupings (EAGs) as defined by the Federal Communications Commission. See 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico. See also paragraphs (a)(1) and (a)(2) of this section and 62 FR 9636 (March 3, 1997), in which the Commission created an additional four economic area-like areas for a total of 176. Maps of the EAGs and the Federal Register Notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the Reference Center, Room CY A-257, 445 12th St., S.W., Washington, DC 20554. These maps and data are also available on the FCC website at www.fcc.gov/oet/info/maps/areas/.

(i) There are 6 EAGs, which are composed of multiple EAs as defined in the table below:

Economic Area Groupings	Name	Economic Areas
EAG001	Northeast	1-11, 54
EAG002	Mid-Atlantic	12-26, 41, 42, 44-53, 70
EAG003	Southeast	27-40, 43, 69, 71-86, 88-90, 95, 96, 174, 176(part)
EAG004	Great Lakes	55-68, 97, 100-109
EAG005	Central/Mountain	87, 91-94, 98, 99, 110-146, 148, 149, 152, 154-159, 176(part)
EAG006	Pacific	147, 150, 151, 153, 160-173, 175

Note 1 to paragraph (c)(3)(i): Economic Area Groupings are defined by the Federal Communications Commission; see 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico.

Note 2 to paragraph (c)(3)(i): Economic Areas are defined by the Regional Economic Analysis Division, Bureau of Economic Analysis, U.S. Department of Commerce February 1995 and extended by the Federal Communications Commission, see 62 FR 9636 (March 3, 1997).

(ii) For purposes of paragraph (c)(3)(i) of this section, EA 176 (the Gulf of Mexico) will be divided between EAG003 (the Southeast EAG) and EAG005 (the Central/Mountain EAG) in accordance with the configuration of the Eastern/ Central and Western Planning Area established by the Mineral Management Services Bureau of the Department of the Interior (MMS). That portion of EA 176 contained in the Eastern and Central Planning Areas as defined by MMS will be included in EAG003; that portion of EA 176 contained in the Western Planning Area as defined by MMS will be included in EAG005. Maps of these areas may be found on the MMS website. www.gomr.mms.gov/homepg/offshore/offshore.html.

* * * * *

(e) *The paired 1392–1395 and 1432–1435 MHz bands.* Service areas for the paired 1392–1395 and 1432–1435 MHz bands are as follows. Service areas for Block A in the 1392–1393.5 MHz and 1432–1433.5 MHz bands and Block B in the 1393.5–1395 MHz and 1433.5–1435 MHz bands are based on Economic Area Groupings (EAGs) as defined in paragraph (c)(3) of this section.

* * * * *

16. Section 27.11 is amended by revising paragraphs (c) and (d) to read as follows:

§ 27.11 Initial authorization.

* * * * *

(c) *746–763 MHz, 775–793 MHz, and 805-806 MHz bands.* Initial authorizations for the 746–763 MHz, 775–793 MHz, and 805-806 MHz bands shall be for paired channels of 1, 5, 6, or 11 megahertz of spectrum in accordance with §27.5(b).

(1) Authorizations for Block A, consisting of two paired channels of 1 megahertz each, will be based on those geographic areas specified in §27.6(b)(1).

(2) Authorizations for Block B, consisting of two paired channels of 1 megahertz each, will be based on those geographic areas specified in §27.6(b)(1).

(3) Authorizations for Block C, consisting of two paired channels of 11 megahertz each, will be based on those geographic areas specified in §27.6(b)(2). In the event that no licenses granting authorizations for Block C, consisting of two paired channels of 11 megahertz each, are assigned based on the results of the first auction in which such licenses are offered because the auction results do not satisfy the applicable reserve price, then the authorizations for the spectrum in the 746-757 MHz and 776-787 MHz bands will instead be as follows:

(i) Authorizations for Block C1, consisting of two paired channels of 6 megahertz each in the 746-752 MHz and 776-782 MHz bands, will be based on those geographic areas specified in §27.6(b)(2)(i).

(ii) Authorizations for Block C2, consisting of two paired channels of 5 megahertz each in the 752-757 MHz and 782-787 MHz bands, will be based on those geographic areas specified in §27.6(b)(2)(ii).

(4) The authorization for Block D, consisting of two paired channels of 5 megahertz each, will be based on the geographic area specified in §27.6(b)(3).

(d) *698–746 MHz band.* Initial authorizations for the 698–746 MHz band shall be for 6 or 12 megahertz of spectrum in accordance with §27.5(c).

(1) Authorizations for Block A, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in §27.6(c)(1).

(2) Authorizations for Block B, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in §27.6(c)(2).

(3) Authorizations for Block C, consisting of two paired channels of 6 megahertz each, will be based on those geographic areas specified in §27.6(c)(2).

(4) Authorizations for Block D, consisting of an unpaired channel block of 6 megahertz, will be based on those geographic areas specified in §27.6(c)(3).

(5) Authorizations for Block E, consisting of an unpaired channel block of 6 megahertz, will be based on those geographic areas specified in §27.6(c)(1).

* * * * *

17. Section 27.13 is amended by revising paragraph (b) to read as follows:

§ 27.13 License Period.

* * * * *

(b) 698-763 MHz and 776-793 MHz bands. Initial authorizations for the 698-763 MHz and 776-793 MHz bands will extend for a term not to exceed ten years from February 17, 2009, except that initial authorizations for a Part 27 licensee that provides broadcast services, whether exclusively or in combination with other services, will not exceed eight years. Initial authorizations for the 775-776 MHz and 805-806 MHz bands shall not exceed January 1, 2015. * * *

18. Section 27.14 is amended by revising the title and paragraph (a), redesignating paragraph (e) as paragraph (f), and by adding new paragraphs (e), (g), (h), (i), (j), (k), (l), (m), (n) to read as follows:

§ 27.14 Construction requirements; Criteria for Renewal.

(a) AWS and WCS licensees, with the exception of WCS licensees holding authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, Block C in the 746-757 MHz and 776-787 MHz, and Block D in the 758-763 MHz and 788-793 MHz bands must, as a performance requirement, make a showing of "substantial service" in their license area within the prescribed license term set forth in § 27.13. "Substantial service is defined as service which is sound, favorable and substantially above a level of mediocre service which just might minimally warrant renewal. Failure by any licensee to meet this requirement will result in forfeiture of the license and the licensee will be ineligible to regain it.

* * * * *

(e) Comparative renewal proceedings do not apply to WCS licensees holding authorizations for the 698-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz bands. These licensees must file a renewal application in accordance with the provisions set forth in § 1.949, and must make a showing of substantial service, independent of its performance requirements, as a condition for renewal at the end of each license term.

* * * * *

(g) WCS licensees holding EA authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, cellular market authorizations for Block B in the 704-710 MHz and 734-740 MHz bands, and EA authorizations for Block E in the 722-728 MHz band, if the results of the first auction in

which licenses for such authorizations are offered satisfy the reserve price for the applicable block, shall provide signal coverage and offer service over at least 35 percent of the geographic area of each of their license authorizations no later than February 17, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after February 17, 2009), and shall provide such service over at least 70 percent of the geographic area of each of these authorizations by the end of the license term. In applying these geographic benchmarks, licensees are not required to include land owned or administered by government as a part of the relevant service area. Licensees may count covered government land for purposes of meeting their geographic construction benchmark, but are required to add the covered government land to the total geographic area used for measurement purposes. Licensees are required to include those populated lands held by tribal governments and those held by the Federal Government in trust or for the benefit of a recognized tribe.

(1) If an EA or CMA licensee holding an authorization in these particular blocks fails to provide signal coverage and offer service over at least 35 percent of the geographic area of its license authorization by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures. In addition, such an EA or CMA licensee may lose authority to operate in part of the remaining unserved areas of the license.

(2) If any such EA or CMA licensee fails to provide signal coverage and offer service to at least 70 percent of the geographic area of its license authorization by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. Such licensee may also be subject to enforcement action, including forfeitures. In addition, an EA or CMA licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may be subject to license termination. In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection.

(3) For licenses under paragraphs (g), (h), and (i), the geographic service area to be made available to new entrants must include a contiguous area of at least 130 square kilometers (50 square miles), and areas smaller than a contiguous area of at least 130 square kilometers (50 square miles) will not be deemed unserved.

(h) WCS licensees holding authorizations for Block C in the 746-757 MHz and 776-787 MHz bands shall provide signal coverage and offer service over at least 40 percent of the population in each EA comprising the REAG license area no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), and shall provide such service over at least 75 percent of the population of each of these EAs by the end of the license term. For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

(1) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 40 percent of the population in each EA comprising the REAG license area by no later than February 17, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after February 17, 2009), the term of the license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures. In addition, a licensee that provides signal coverage and offers service at a level that is below the interim benchmark may lose authority to operate in part of the remaining unserved areas of the license.

(2) If a licensee holding a Block C authorization fails to provide signal coverage and offer service over at least 75 percent of the population in any EA comprising the REAG license area by the end of the license term, for each such EA that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service. Such licensee may also be subject to enforcement action, including forfeitures. In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection. In addition, a REAG licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark within any EA may be subject to license termination within that EA.

(i) WCS licensees holding EA authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, cellular market authorizations for Block B in the 704-710 MHz and 734-740 MHz bands, and EA authorizations for Block E in the 722-728 MHz band, if the results of the first auction in which licenses for such authorizations in Blocks A, B, and E are offered do not satisfy the reserve price for the applicable block, as well as EA authorizations for Block C1 in the 746-752 MHz and 776-782 MHz bands and REAG authorizations for Block C2 in the 752-757 MHz and 782-787 MHz bands, are subject to the following:

(1) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 40 percent of the population in its license area by no later than February 17, 2013 (or within four years of initial license grant, if the initial authorization in a market is granted after February 17, 2009), the term of that license authorization will be reduced by two years and such licensee may be subject to enforcement action, including forfeitures. In addition, such licensee that provides signal coverage and offers service at a level that is below the interim benchmark may lose authority to operate in part of the remaining unserved areas of the license. For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

(2) If a licensee holding a cellular market area or EA authorization subject to this paragraph (i) fails to provide signal coverage and offer service over at least 75 percent of the population in its license area by the end of the license term, that licensee's authorization will terminate automatically without Commission action for those geographic portions of its license in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. Such licensee may also be subject to enforcement action, including forfeitures. In the event that a licensee's authority to operate in a license area terminates automatically without Commission action, such areas will become available for reassignment pursuant to the procedures in paragraph (j) of this subsection. In addition, such a licensee that provides signal coverage and offers service at a level that is below the end-of-term benchmark may be subject to license termination. For purposes of compliance with this requirement, licensees should determine population based on the most recently available U.S. Census Data.

(3) Licensee's holding an authorization in Block C2 will be subject to the requirements in paragraph (h) of this subsection.

(j) In the event that a licensee's authority to operate in a license area terminates automatically under subsections (g), (h), or (i) of this section, such areas will become available for reassignment pursuant to the following procedures:

(1) The Wireless Telecommunications Bureau is delegated authority to announce by public

notice that these license areas will be made available and establish a 30-day window during which third parties may file license applications to serve these areas. During this 30-day period, licensees that had their authority to operate terminate automatically for unserved areas may not file applications to provide service to these areas. Applications filed by third parties that propose areas overlapping with other applications will be deemed mutually exclusive, and will be resolved through an auction. The Wireless Telecommunications Bureau, by public notice, may specify a limited period before the filing of short-form applications (FCC Form 175) during which applicants may enter into a settlement to resolve their mutual exclusivity, subject to the provisions of § 1.935.

(2) Following this 30-day period, the original licensee and third parties can file license applications for remaining unserved areas where licenses have not been issued or for which there are no pending applications. If the original licensee or a third party files an application, that application will be placed on public notice for 30 days. If no mutually exclusive application is filed, the application will be granted, provided that a grant is found to be in the public interest. If a mutually exclusive application is filed, it will be resolved through an auction. The Wireless Telecommunications Bureau, by public notice, may specify a limited period before the filing of short-form applications (FCC Form 175) during which applicants may enter into a settlement to resolve their mutual exclusivity, subject to the provisions of § 1.935.

(3) The licensee will have one year from the date the new license is issued to complete its construction and provide signal coverage and offer service over 100 percent of the geographic area of the new license area. If the licensee fails to meet this construction requirement, its license will automatically terminate without Commission action and it will not be eligible to apply to provide service to this area at any future date.

(k) WCS licensees with authorizations in the spectrum blocks enumerated in paragraphs (g), (h), or (i), including any licensee that obtained its license pursuant to the procedures set forth in subsection (j) shall demonstrate compliance with performance requirements by filing a construction notification with the Commission, within 15 days of the expiration of the relevant benchmark, in accordance with the provisions set forth in § 1.946(d). The licensee must certify whether it has met the relevant performance requirement. All licensees must file a description and certification of the areas for which they are providing service. The construction notifications must include electronic coverage maps, supporting technical documentation and any other information as the Wireless Telecommunications Bureau may prescribe by Public Notice.

(l) WCS licensees with authorizations in the spectrum blocks enumerated in paragraphs (g), (h), or (i), excluding any licensee that obtained its license pursuant to the procedures set forth in subsection (j), shall file interim reports with the Commission that provide the Commission, at a minimum, with information concerning the status of their efforts to meet the performance requirements applicable to their authorizations in such spectrum blocks and the manner in which that spectrum is being utilized. The information to be reported will include the date the license term commenced, a description of the steps the licensee has taken toward meeting its construction obligations in a timely manner, including the technology or technologies and service(s) being provided, and the areas within their license areas in which those services are available. These licensees shall file their first interim report with the Commission no later than February 17, 2011 and no sooner than 30 days prior to this date. Licensees that meet their interim benchmarks shall file a second interim report with the Commission no later than February 17, 2016 and no sooner than 30 days prior to this date. Licensees that do not meet their interim benchmarks shall file their second interim report no later than on February 17, 2015 and no sooner than 30 days prior to this date.

(m) The WCS licensee holding the authorization for the D Block at 758-763 MHz and 788-793 MHz (the Upper 700 MHz D Block licensee) shall comply with the following construction requirements.

(1) The Upper 700 MHz D Block licensee shall provide a signal coverage and offer service over at least 75 percent of the population of the nationwide Upper 700 MHz D Block license area within four years from February 17, 2009, 95 percent of the population of the nationwide license area within seven years, and 99.3 percent of the population of the nationwide license area within ten years.

(2) The Upper 700 MHz D Block licensee may modify, to a limited degree, its population-based construction benchmarks with the agreement of the Public Safety Broadband Licensee and the prior approval of the Commission, where such a modification would better serve to meet commercial and public safety needs.

(3) The Upper 700 MHz D Block licensee shall meet the population benchmarks based on a performance schedule specified in the Network Sharing Agreement, taking into account performance pursuant to §27.1327 as appropriate under that rule, and using the most recently available U.S. Census Data. The network and signal levels employed to meet these benchmarks must be adequate for public safety use, as defined in the Network Sharing Agreement, and the services made available must include those appropriate for public safety entities that operate in those areas. The schedule shall include coverage for major highways and interstates, as well as such additional areas that are necessary to provide coverage for all incorporated communities with a population in excess of 3,000, unless the Public Safety Broadband Licensee and the D Block licensee jointly determine, in consultation with a relevant community, that such additional coverage will not provide significant public benefit.

(4) The Upper 700 MHz D Block licensee shall demonstrate compliance with performance requirements by filing a construction notification with the Commission within 15 days of the expiration of the relevant benchmark, in accordance with the provisions set forth in § 1.946(d). The licensee must certify whether it has met the relevant performance requirement and must file a description and certification of the areas for which it is providing service. The construction notifications must include the following:

(i) Certifications of the areas that were scheduled for construction and service by that date under the Network Sharing Agreement for which it is providing service, the type of service it is providing for each area, and the type of technology it is utilizing to provide this service.

(ii) Electronic coverage maps and supporting technical documentation providing the assumptions used by the licensee to create the coverage maps, including the propagation model and the signal strength necessary to provide service.

(n) At the end of its license term, the Upper 700 MHz D Block licensee must, in order to renew its license, make a showing of its success in meeting the material requirements set forth in the Network Sharing Agreement as well as all other license conditions, including the performance benchmark requirements set forth in § 27.14.

* * * * *

19. Section 27.15 is amended by revising and redesignating paragraphs (d)(1) and (d)(2) as (d)(1)(i) and (d)(2)(i), respectively; and adding new paragraphs (d)(1)(ii) and (d)(2)(ii), respectively, to read as follows:

§ 27.15 Geographic partitioning and spectrum disaggregation.

* * * * *

(d) Compliance with construction requirements.

(1) *Partitioning.*

(i) Except for WCS licensees holding authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, Blocks C, C1, and C2 in the 746-757 MHz and 776-787 MHz bands, and Block D in the 758-763 MHz and 788-793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in §27.14. * * *

(ii) For WCS licensees holding authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, and Blocks C, C1, and C2 in the 746-757 MHz and 776-787 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that they will collectively share responsibility for meeting the construction requirement for the entire pre-partition geographic license area. If the partitioner and partitionee collectively fail to meet the construction requirement, then both the partitioner and partitionee will be subject to the consequences enumerated in § 27.14(g)-(h) for this failure. Under the second option, the partitioner and partitionee each certifies that it will independently meet the construction requirement for its respective partitioned license area. If the partitioner or partitionee fails to meet the construction requirement for its respective partitioned license area, then the consequences for this failure shall be those enumerated in § 27.14(g)-(h).

(2) *Disaggregation.*

(i) Except for WCS licensees holding authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, and Blocks C, C1, and C2 in the 746-757 MHz and 776-787 MHz bands, and Block D in the 758-763 MHz and 788-793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations for purposes for purposes of implementing the construction requirements set forth in §27.14. * * *

(ii) For WCS licensees holding authorizations for Block A in the 698-704 MHz and 728-734 MHz bands, Block B in the 704-710 MHz and 734-740 MHz bands, Block E in the 722-728 MHz band, and Blocks C, C1, and C2 in the 746-757 MHz and 776-787 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. If either the disaggregator or the disaggregatee meets the construction requirements set forth in § 27.14, then these requirements will be considered to be satisfied for both parties. If neither the disaggregator nor the disaggregatee meets the construction requirements, then both parties will be subject to the consequences enumerated in § 27.14(g)-(h) for this failure.

20. Part 27 is amended by adding new Section 27.16 to read as follows:

§ 27.16 Network access requirements for Block C in the 746-757 and 776-787 MHz bands.

(a) *Applicability.* This section shall apply only to the authorizations for Block C in the 746-757

and 776-787 MHz bands assigned and only if the results of the first auction in which licenses for such authorizations are offered satisfied the applicable reserve price.

(b) *Use of devices and applications.* Licensees offering service on spectrum subject to this *section shall not deny, limit, or restrict the ability of their customers to use the devices and* applications of their choice on the licensee's C Block network, except:

(1) Insofar as such use would not be compliant with published technical standards reasonably necessary for the management or protection of the licensee's network, or

(2) As required to comply with statute or applicable government regulation.

(c) *Technical standards.* For purposes of subsection (b)(1):

(1) Standards shall include technical requirements reasonably necessary for third parties to access a licensee's network via devices or applications without causing objectionable interference to other spectrum users or jeopardizing network security. The potential for excessive bandwidth demand alone shall not constitute grounds for denying, limiting or restricting access to the network.

(2) To the extent a licensee relies on standards established by an independent standards-setting body which is open to participation by representatives of service providers, equipment manufacturers, application developers, consumer organizations, and other interested parties, the standards will carry a presumption of reasonableness.

(3) A licensee shall publish its technical standards, which shall be non-proprietary, no later than the time at which it makes such standards available to any preferred vendors, so that the standards are readily available to customers, equipment manufacturers, application developers, and other parties interested in using or developing products for use on a licensee's networks.

(d) *Access requests.*

(1) Licensees shall establish and publish clear and reasonable procedures for parties to seek approval to use devices or applications on the licensees' networks. A licensee must also provide to potential customers notice of the customers' rights to request the attachment of a device or application to the licensee's network, and notice of the licensee's process for customers to make such requests, including the relevant network criteria.

(2) If a licensee determines that a request for access would violate its technical standards or regulatory requirements, the licensee shall expeditiously provide a written response to the requester specifying the basis for denying access and providing an opportunity for the requester to modify its request to satisfy the licensee's concerns.

(e) *Handset locking prohibited.* No licensee may disable features on handsets it provides to customers, to the extent such features are compliant with the licensee's standards pursuant to §27.16(b), nor configure handsets it provides to prohibit use of such handsets on other providers' networks.

(f) *Burden of proof.* Once a complainant sets forth a *prima facie* case that the C Block licensee has refused to attach a device or application in violation of the requirements adopted in this section, the licensee shall have the burden of proof to demonstrate that it has adopted reasonable network standards and reasonably applied those standards in the complainant's case. Where the licensee bases

its network restrictions on industry-wide consensus standards, such restrictions would be presumed reasonable.

16. Section 27.50 is amended by revising paragraphs (b) and (c) and the tables at the end of the section to read as follows:

§ 27.50 Power and antenna height limits.

* * * * *

(b) * * *

(1) Fixed and base stations transmitting a signal in the 757-758 and 775-776 MHz bands must not exceed an effective radiated power (ERP) of 1000 watts and an antenna height of 305 m height above average terrain (HAAT), except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section.

(2) Fixed and base stations transmitting a signal in the 746-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz bands with an emission bandwidth of 1 MHz or less must not exceed an ERP of 1000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section.

(3) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 746-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz bands with an emission bandwidth of 1 MHz or less must not exceed an ERP of 2000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts ERP in accordance with Table 2 of this section.

(4) Fixed and base stations transmitting a signal in the 746-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz bands with an emission bandwidth greater than 1 MHz must not exceed an ERP of 1000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts/MHz ERP accordance with Table 3 of this section.

(5) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 746-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz bands with an emission bandwidth greater than 1 MHz must not exceed an ERP of 2000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts/MHz ERP in accordance with Table 4 of this section.

(6) Licensees of fixed or base stations transmitting a signal in the 746-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz bands at an ERP greater than 1000 watts must comply with the provisions set forth in paragraph (b)(8) and §27.55(c).

(7) Licensees seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population

statistics from the Bureau of the Census, and transmitting a signal in the 746-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz bands at an ERP greater than 1000 watts must:

(i) coordinate in advance with all licensees authorized to operate in the 698-763 MHz, 775-793, and 805-806 MHz bands within 120 kilometers (75 miles) of the base or fixed station;

(ii) coordinate in advance with all regional planning committees, as identified in §90.527 of this chapter, with jurisdiction within 120 kilometers (75 miles) of the base or fixed station.

(8) Licensees authorized to transmit in the 746-757 MHz, 758-763 MHz, 776-787 MHz, and 788-793 MHz bands and intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (b)(6) of this section must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized to operate in the 763-775 MHz and 793-805 MHz bands under Part 90 of this chapter within 75 km of the base or fixed station and all regional planning committees, as identified in §90.527 of this chapter, with jurisdiction within 75 km of the base or fixed station. Notifications must provide the location and operating parameters of the base or fixed station, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation.

(9) Control stations and mobile stations transmitting in the 746–757 MHz, 758-763 MHz, 776–793 MHz, and 805-806 MHz bands and fixed stations transmitting in the 787–788 MHz and 805-806 MHz bands are limited to 30 watts ERP.

(10) Portable stations (hand-held devices) transmitting in the 746–757 MHz, 758-763 MHz, 776–793 MHz, and 805-806 MHz bands are limited to 3 watts ERP.

(11) For transmissions in the 757-758, 775-776, 787-788, and 805-806 MHz bands, maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations, such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(12) For transmissions in the 746-757, 758-763, 776-787, and 788-793 MHz bands, licensees may employ equipment operating in compliance with either the measurement techniques described in paragraph (b)(11) or a Commission-approved average power technique. In both instances, equipment employed must be authorized in accordance with the provisions of 27.51.

(c) * * *

(1) * * *

(2) * * *

(3) * * *

(4) * * *

(5) Licensees seeking to operate a fixed or base station located in a county with population

density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal at an ERP greater than 1000 watts must:

(i) coordinate in advance with all licensees authorized to operate in the 698-763 MHz, 775-793, and 805-806 MHz bands within 120 kilometers (75 miles) of the base or fixed station;

(ii) coordinate in advance with all regional planning committees, as identified in §90.527 of this chapter, with jurisdiction within 120 kilometers (75 miles) of the base or fixed station.

(6) * * *

(7) A licensee authorized to operate in the 710-716, 716-722, or 740-746 MHz bands, or in any unpaired spectrum blocks within the 698-746 MHz band, may operate a fixed or base station at an ERP up to a total of 50 kW within its authorized, 6 MHz spectrum block if the licensee complies with the provisions of §27.55(b). The antenna height for such stations is limited only to the extent required to satisfy the requirements of §27.55(b).

(8) Licensees intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (c)(6) must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized under this part to operate on an adjacent spectrum block within 75 km of the base or fixed station. Notifications must provide the location and operating parameters of the base or fixed station, including the station's ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation.

* * * * *

(11) Licensees may employ equipment operating in compliance with either the measurement techniques described in paragraph (b)(11) or a Commission-approved average power technique. In both instances, equipment employed must be authorized in accordance with the provisions of 27.51.

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Table 1 - Permissible Power and Antenna Heights for Base and Fixed Stations in the 757-758 and 775-776 MHz Bands and for Base and Fixed Stations in the 698-757 MHz, 758-763 MHz, 776-787 MHz and 788-793 MHz Bands Transmitting a Signal with an Emission Bandwidth of 1 MHz or Less	
Antenna height (AAT) in meters (feet)	**Effective radiated power (ERP) (watts)**
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100