

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

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and)	WT Docket No. 06-150
777-792 MHz Bands)	
)	
Implementing a Nationwide, Broadband,)	PS Docket No. 06-229
Interoperable Public Safety Network in the)	
700 MHz Band)	

REPLY COMMENTS OF AT&T INC.

AT&T INC.
Paul K. Mancini
Gary L. Phillips
Michael P. Goggin
1120 20th Street, NW
Washington, DC 20036
(202) 457-2054

Its Attorneys

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AT&T Inc., on behalf of AT&T Mobility LLC and its wholly-owned and controlled wireless affiliates (collectively “AT&T”), hereby submits these reply comments on the Commission’s *Second Further Notice of Proposed Rulemaking* (“*Second Further Notice*”) in the above-referenced proceeding.¹

I. INTRODUCTION AND SUMMARY

As detailed in its initial comments,² AT&T believes that a carefully-designed Public/Private Partnership that operates in the Upper 700 MHz D Block (758-763/788-793 MHz) (“D Block”) and the public safety broadband spectrum (763-768/793-798 MHz) provides the best path to developing a nationwide interoperable broadband communications network for state and local public safety users, while also offering potentially valuable business opportunities for commercial partners. Commenters recognize that a single, nationwide Public Safety Broadband

¹ See *Service Rules for the 698-746, 747-762 and 777-792 Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, WT Docket No. 06-150, PS Docket No. 06-229, FCC 08-128 (2008) (“*Second Further Notice*”).

² All comments referenced herein were filed on June 20, 2008, in WT Docket No. 06-150 and PS Docket No. 06-229, unless noted otherwise.

Licensee (“PSBL”) will provide unity and leadership in its representation of state and local public safety agencies and will facilitate critical interoperability and efficiency goals.

Commercial partners, in turn, will bring invaluable resources and experience to the venture, and will potentially leverage existing networks and services, technical assets and spectrum resources to significantly expedite and reduce the costs of deployment.

The record in this proceeding, however, underscores that, in the wake of the failed D Block auction, the benefits of a shared network may be best pursued through a competitive Request for Proposal (“RFP”) process. Many commenters also agree with AT&T that the Commission should enable the participation of commercial entities on a regional basis – whether through regional RFPs or regional licensing if the D Block is reaucted – instead of through the issuance of a single, commercial D Block license. Additionally, the record in this proceeding makes clear that eligibility restrictions on auction participation and mandatory wholesale and open access business models are not supported by law or sound public policy, and could very likely compromise the viability of the interoperable public safety broadband network.

Commenters also largely agree that the Commission must clarify the key requirements for the shared network and for the Public/Private Partnership, including the non-profit status of the Public Safety Broadband Licensee (“PSBL”), operational control standards, network technology selection, and payment structures. Regardless of whether the Commission adopts an RFP mechanism or pursues a reauction, a successful Public/Private Partnership that is able to attract commercial partners will require the clarification of these matters. Finally, the Commission should reject Sprint Nextel’s bidding credit proposal, which would enable bidders for the D Block spectrum to eviscerate the public safety network and communications standards by paying additional money at auction.

II. THE RECORD IN THIS PROCEEDING UNDERSCORES THAT THE COMMISSION SHOULD CONSIDER WHETHER AN RFP ALTERNATIVE WILL BEST ACHIEVE THE GOALS OF THE PUBLIC/PRIVATE PARTNERSHIP.

The record in this proceeding demonstrates that the Commission must critically examine whether non-auction alternatives provide a better path to a successful Public/Private Partnership than a reauction of the spectrum. Indeed, several commenters agree with AT&T that the Commission should fully consider mandating the use of an RFP-type process to better foster the Public/Private Partnership.

A diverse selection of commenters – including public safety groups, wireless industry participants, and individual commenters well-versed in communications law and policy – question whether a simple reauction of the spectrum, even with clarifications, will ensure the success of the Public/Private Partnership.³ The International Association of Fire Fighters and New York City Police Department, for example, are “unconvinced” that the existing Public/Private Partnership model will “adequately address current shortcomings in public safety communications” and specifically question whether the existing Partnership sufficiently addresses the “inevitable tension between corporate profits and public safety.”⁴ Motorola asserts that “minor tweaks of the service or auction rules will [not] be sufficient to find the necessary

³ See, e.g., Comments of AT&T Inc. at 5-7 (“AT&T Comments”); Comments of Coverage Co. at 5-12 (“Coverage Co. Comments”); Comments of the Florida Region 9, Regional Planning Committee at 3-4 (“Florida RPC Comments”); Comments of the International Association of Fire Fighters at 5-8 (“IAFF Comments”); Comments of the King County, Washington Regional Communications Board at 2 (“King County Comments”); Comments of Motorola, Inc. at 5-6 (“Motorola Comments”); Comments of the New York City Police Department at 5-7 (filed June 19, 2008) (“NYPD Comments”); Comments of Sandro Brusco, Giuseppe Lopomo, and Leslie M. Marx at 4-5 (filed May 19, 2008) (“Sandro Brusco et al. Comments”); Comments of Stagg Newman at 3-7 (“Newman Comments”); Comments of Televate, LLC at 3-6 (“Televate Comments”); Comments of Verizon Wireless at 16-21 (“Verizon Wireless Comments”).

⁴ IAFF Comments at 1-2; *see also* NYPD Comments at 2-3.

balance between a commercially viable network and a public safety network. Instead, more radical changes are necessary or we risk further delay in getting critical services to public safety.”⁵ Verizon Wireless, while expressing support for a Public/Private Partnership, states that the existing D Block auction approach “is fundamentally flawed” because the “cost of building such a network far exceeds the value of the spectrum that public safety would contribute, and the amount of revenue that might be generated from the network from both public safety and commercial users is impossible to predict under the framework adopted by the Commission.”⁶

These commenters agree with AT&T that a comprehensive review and significant overhaul of the existing Public/Private Partnership is needed to ensure the approach will meet public safety’s needs, while providing a viable business venture for the commercial partner(s). To this end, AT&T and several other commenters suggest an RFP-type process as potentially a better approach to achieving a successful Public/Private Partnership than reauctioning the spectrum under slightly modified terms.⁷ As AT&T detailed in its initial comments, under its

⁵ Motorola Comments at 5 (stating that the existing Partnership – without any supplemental funding from Congress – “leave[s] the FCC in a Catch 22 situation – it could lower the requirements for the D-Block licensee(s) to be able to build a commercially viable network but miss the target of a public safety network, or it could require the deployment of a public safety network, but miss the target of a network that can be built and is competitive and self sustaining from a cost perspective”).

⁶ Verizon Wireless Comments at 3.

⁷ See, e.g., AT&T Comments at 5-7 (supporting an RFP process for developing the Public/Private Partnership); Comments of the National Association of Telecommunications Officers and Advisors, The National Association of Counties, The National League of Cities, and the U.S. Conference of Mayors at 22 (“NATO et al. Comments”) (supporting a Public/Private Partnership created through an open RFP process); Teleate Comments at 5-6 (supporting a Public/Private Partnership created through a hybrid RFP/auction process); Verizon Wireless Comments at 19 (supporting an RFP process for developing the Public/Private Partnership); see also NENA Comments at 5 (stating that if a re-auction is not successful, the Commission should not revert the D Block to commercial use, but instead, should consider alternative approaches such as an RFP-type process); Comments of the 700 MHz Regional Planning Committee, Region

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proposed RFP approach the Commission would issue a license for the Upper 700 MHz D Block spectrum to the PSBL. The PSBL would, in turn, lease the D Block spectrum on a regional basis to commercial entities selected through an RFP process who would incur the costs of the network buildout. The RFP issued by the PSBL would outline the technical specifications and functionalities for the network, as well as the rights and responsibilities of the PSBL and the commercial partners.⁸ Interested commercial entities would respond to the RFP with proposals that explain how they would satisfy these requirements, and the PSBL would select commercial partners by evaluating which proposals track most closely the Commission's and the RFP's standards.⁹

As AT&T and other commenters explain in their initial comments, an RFP process for selecting the commercial partners for the Public/Private Partnership is straightforward and captures the benefits found in traditional RFP mechanisms.¹⁰ An RFP process will “help ensure that all parties share a level playing field” and that the rights and responsibilities for the PSBL and commercial partners are clearly established prior to contracting.¹¹ An RFP mechanism also

6 at 3 (“Region 6 RPC Comments”) (proposing that the Commission could consider relaxing the mandated technical requirements, “if necessary through a negotiation process with the highest rated bidder of a Request for Proposal process”).

⁸ AT&T believes that commercial entities should be responsible for network build-out and operation of the public/private network, but in turn, could access the PSBL's 700 MHz public safety broadband spectrum for commercial use under the terms outlined in the RFP.

⁹ Specifically, the PSBL would compare the RFP proposals based upon the proposed functionality and deployment plans for the network, the value of services to be provided to public safety, and the commercial entity's experience and resources.

¹⁰ *See, e.g.*, AT&T Comments at 5-7; NATOA et al. Comments at 22; Televate Comments at 5-6; Verizon Wireless Comments at 19-20.

¹¹ NATOA et al. Comments at 22.

provides “public safety the fundamental latitude to satisfy their wireless broadband operational needs” by controlling the design of the RFP.¹² And unlike an auction, an RFP mechanism empowers the PSBL to select commercial partners that will most effectively design and build out a successful shared network. Indeed, “the RFP process allows for the considered evaluation of potential partners on a range of criteria to increase the chances the partnership will succeed” instead of “forc[ing] the government into a long-term arrangement with an unacceptable partner that just happens to be the highest bidder.”¹³ Moreover, RFPs are already proven to be a “highly effective means of bringing together the public and private sector to build and operate public safety communications systems.”¹⁴ New York City, Washington D.C., and the federal government – in crafting the federal Integrated Wireless Network – all successfully used a competitive RFP mechanism to select a private partner to build a customized public safety communications system.¹⁵

AT&T recognizes that legislative action likely will be necessary to implement an RFP approach as Congress would need to eliminate the provision in Section 337(a)(2) of the Communications Act that requires the Commission to allocate the D Block for commercial purposes and to issue licenses using competitive bidding procedures. AT&T believes, however, that the benefits of the RFP approach are sufficient to warrant the legislative effort. Ultimately, AT&T believes this process offers the best path to achieving the goals of the Public/Private

¹² Televate Comments at 5-6

¹³ Verizon Wireless Comments at 19-20.

¹⁴ *Id.* at 19.

¹⁵ *See id.* at 20.

Partnership because it is well established and effective, and ensures that all parties enter into the partnership with clearly defined roles and a common goal.

III. COMMENTERS AGREE THAT THE PUBLIC/PRIVATE PARTNERSHIP IS BEST PURSUED ON A REGIONAL BASIS RATHER THAN THROUGH THE ISSUANCE OF A SINGLE NATIONWIDE D BLOCK LICENSE.

Many commenters agree with AT&T that, instead of issuing a single, nationwide D Block license, the Commission should enable the participation of commercial entities on a regional basis – whether through regional RFPs or regional licensing¹⁶ if the D Block is reauctioned.¹⁷ As discussed below, regional spectrum leasing or licensing will benefit all parties involved in the Public/Private Partnership, including state and local public safety users, the PSBL, and commercial partners. While some commenters express concern that regional licensing or leasing may hinder interoperability, AT&T believes that this issue can be effectively addressed if network requirements and capabilities are established up-front. In turn, regionalization under a national technical standard will expedite system deployment throughout the country.

A large number of commenters agree with AT&T that participation on a regional basis will provide significant benefits that are not achievable under the single, nationwide commercial

¹⁶ In its comments, AT&T recommended that “the Commission should issue D Block licenses in smaller geographic regions, such as CMAs, EAs, REAGs or the 700 MHz Regional Planning Committee areas.” AT&T Comments at 24.

¹⁷ *See, e.g.*, AT&T Comments at 24-25; Coverage Co. Comments at 5; Motorola Comments at 15-17; Comments of NTCH, Inc. at 14 (“NTCH Comments”); Comments of Space Data Corporation at 12-13 (“Space Data Corporation Comments”); Comments of the United States Cellular Corporation at 4-15 (“USCC Comments”); Verizon Wireless Comments at 25; *see also* Newman Comments at 6-7 (suggesting that regional partnerships could be used to improve public safety communications coverage).

D Block licensee model.¹⁸ Regional leasing or licensing will ensure that commercial partners “focus on the differing needs and priorities of each area’s public safety agencies.”¹⁹ Smaller lease or license areas also will provide for “greater local flexibility in choosing interoperability solutions that reflect particular needs” and will allow for local and regional build-out and training to be conducted in cooperation with and in response to the needs of local public safety groups.²⁰ Regional partnerships also “will allow public safety agencies to benchmark, identify and promote best practices” that have been successful in other regions of the country.²¹ Moreover, removing these local planning activities from the PSBL’s workload will enable the PSBL to concentrate on its critical duties as the umbrella-organization for state and local public safety agencies.²²

Commenters also explain how regional participation will promote greater commercial interest and commercial viability, as well as rapid network build-out. Indeed, a “regional approach would help mitigate risks” and make more achievable the aggressive build-out

¹⁸ See, e.g., AT&T Comments at 24-25; Coverage Co. Comments at 5; Motorola Comments at 15-17; NTCH Comments at 14; Space Data Corporation Comments at 12; USCC Comments at 4-15; Verizon Wireless Comments at 25.

¹⁹ USCC Comments at 9.

²⁰ Verizon Wireless Comments at 30.

²¹ USCC Comments at 11.

²² See AT&T Comments at 25 (explaining that the PSBL will set national standards, administer access to the network for individual public safety agencies, coordinate frequency usage, assess usage fees, drive economies of scale for public safety user equipment and applications, and oversee regional decisions to ensure interoperability and spectrum efficiency on a national basis); *see also* Motorola Comments at 17.

requirements sought by public safety.²³ As a result, participation will be more attractive to both small and large commercial entities. Moreover, regionalization will enable carriers to acquire leases or licenses in specific areas of the country where they can leverage their existing network infrastructure and spectrum resources. This will not only facilitate considerable cost savings, but also encourage simultaneous and rapid network construction throughout the country.²⁴ In addition, if the Commission utilizes regional lease or license areas, such as the 700 MHz Regional Planning Committee (“RPC”) areas, the Public/Private Partnership will be able to take advantage of the organizational structure already in place among the RPCs. Specifically, the RPCs will facilitate interoperability and coordination between adjacent regions and public safety agencies, while ensuring that local public safety users have a voice in the design and functionality of the services offered over the network.²⁵

AT&T acknowledges that some commenters are concerned that regional licensing or regional RFPs could hinder interoperability.²⁶ However, AT&T and other commenters believe that establishing appropriate network requirements and capabilities up-front can enable interoperability solutions, even if the network is built by multiple commercial entities on a

²³ Motorola Comments at 17; *see also* AT&T Comments at 24-25; Verizon Wireless Comments at 29.

²⁴ *See* AT&T Comments at 24; *see also* Motorola Comments at 16-17.

²⁵ RPCs enable the “participation of local agencies within the parameters of the Commission’s rules and policies to determine how best to deliver wireless communications.” Comments of the National Public Safety Telecommunications Council, WT Docket 96-86, at 4 (filed June 5, 2005).

²⁶ *See* Comments of the Public Safety Spectrum Trust Corporation at 38-39 (“PSST Comments”).

regional basis.²⁷ Moreover, as described above, regional partnerships offer unique benefits – not achievable with a national license – that may actually lead to a nationwide interoperable network much more quickly and cost-effectively than a single national partnership.

IV. ELIGIBILITY RESTRICTIONS ON AUCTION PARTICIPATION AND WHOLESALE AND OPEN ACCESS REQUIREMENTS ARE NOT SUPPORTED BY LAW OR SOUND PUBLIC POLICY.

Given the importance and complexity of the Public/Private Partnership, the Commission should refrain from adopting any rules or policies that will exclude or deter valuable commercial participation in the Public/Private Partnership. Some commenters, seeking to limit the participation of competitors, urge the Commission to exclude incumbent wireless providers and others from a D Block reauction or RFP process.²⁸ Additionally, a small number of other commenters ask that the Commission mandate wholesale and open access business models.²⁹ However, as the record indicates, there is no basis in law or policy for adopting any of these proposals. In fact, as the Commission explained in the *Second Report and Order* and the *Second Further Notice*, adoption of these proposals could compromise the viability of the interoperable public safety broadband network.

²⁷ See AT&T Comments at 24; *see also* NYPD Comments at 10 (explaining that “[n]ational interoperability can be achieved by linking the regional networks IP based backhaul networks, creating a ‘network of networks’, which may include a combination of public safety and commercial networks”); Comments of the City and County of San Francisco at 9 (explaining that the “City is confident that local control and national interoperability are not mutually exclusive” and that “[m]ultiple technical models already exist that would allow both local control and national interoperability”); USCC Comments at 13-14 (dispelling concerns about regional partnerships).

²⁸ See Comments of Council Tree Communications, Inc. at 14-16 (“Council Tree Comments”); Comments of Leap Wireless International, Inc. at 4 (“Leap Wireless Comments”).

²⁹ See Comments of the Public Interest Spectrum Coalition at 7-9 (“PISC Comments”); *see generally* Comments of Google Inc. at 10 (“Google Comments”).

As an initial matter, the Commission has already addressed and rejected requests to impose eligibility restrictions on 700 MHz auction participation – finding that competitive problems do not exist in the broadband marketplace that would justify such restrictions. Specifically, in adopting service rules prior to the 700 MHz auction, the Commission expressed doubts that “large wireless carriers would be able to behave in an anticompetitive manner as a result of any potential acquisition of 700 MHz spectrum.”³⁰ There has been no change in circumstances since the *Second Report and Order* that would warrant altering these conclusions.³¹

Commenters agree with these conclusions and explain that barring the participation of incumbent wireless providers here “would be an unfortunate mistake” given the importance and complexity of the public/private network and the huge task that the commercial partner(s) would be undertaking.³² As commenters recognize, existing carriers already possess the most expertise

³⁰ See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Section 68.4(a) of the Commission’s Rules Governing Hearing Aid-Compatible Telephones; Biennial Regulatory Review – Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services; Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010; Declaratory Ruling on Reporting Requirement under the Commission’s Part 1 Anti-Collusion Rule*, Second Report and Order, 22 FCC Rcd 15289, ¶ 256 (2007) (“*Second Report and Order*”).

³¹ In fact, in the *Second Further Notice*, the Commission noted that “[s]ince our prior determination, Auction 73 has only increased the number of potential providers of broadband service.” *Second Further Notice*, ¶ 155.

³² Comments of the International Municipal Signal Association, International Association of Fire Chiefs, Inc., Congressional Fire Services Institute, and Forestry Conservation Communications Association at 14 (“International Municipal Signal Association et al. Comments”); see also Comments of the Association of Public-Safety Communications Officials-International, Inc. at 38-39 (“APCO Comments”); Comments of the Consumer Electronics
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in building out large scale broadband wireless networks.³³ Further, existing carriers generally are well-established entities with the financial wherewithal to construct a nationwide broadband network. Existing carriers also can leverage their existing networks and services, technical assets, and spectrum resources to develop the interoperable network as quickly and efficiently as possible.³⁴ For these reasons, it would be contrary to the public interest to bar such entities from participating. These points are not lost on leading public safety groups, who explain that it is not in the public interest to “impose restrictions on auction participation that are unrelated to the goal of developing a national public safety broadband network.”³⁵ Given the substantial expense and difficulty involved in building the network and the lack of interest expressed in the initial D Block auction, existing carriers – which are best positioned to rapidly and effectively construct the network – should not be excluded from participating in the Public/Private Partnership.

Additionally, the record does not support the importation of any wholesale or open access operational requirements into the business models of commercial participants in the Public/Private Partnership. As a threshold matter, the Commission already concluded in the

Association at 5 (“CEA Comments”); Comments of CTIA—The Wireless Association at 10 (“CTIA Comments”); Motorola Comments at 17-18; NATOA et al. Comments at 21; Comments of Qualcomm Incorporated at 11 (“Qualcomm Comments”); Verizon Wireless Comments at 22.

³³ See, e.g., International Municipal Signal Association et al. Comments at 14; Motorola Comments at 17-18 (stating that “[p]otentially eliminating bidders with the existing resources and infrastructure to be in a position to absorb the required investment costs and offer the expertise to make the Public/Private Partnership a success serves no purpose toward the primary goal of deploying a viable public safety broadband network”).

³⁴ Verizon Wireless Comments at 22 (explaining that “[l]arge carriers already provide nationwide or near-nationwide service to commercial users, and their infrastructure can serve as the base footprint for most of the areas in which public safety users require service”).

³⁵ APCO Comments at 38-39; see also International Municipal Signal Association et al. Comments at 14; NATOA et al. Comments at 21 (stating that “we do not believe the Commission should impose any restrictions on eligibility to bid on the D Block license”).

Second Report and Order that “it would not serve the goals of the Public/Private Partnership to impose special wholesale or open-access requirements (*e.g.*, device, application, or network access conditions) on the D Block licensee specifically.”³⁶ The Commission further explained that “giving the D Block licensee the flexibility to choose the commercial service it will provide based on its determination of market needs should improve the viability of the 700 MHz Public/Private Partnership and serve the interests of public safety.”³⁷ Circumstances have not changed to alter these conclusions, and commenters continue to believe that mandating an untested wholesale or open access business model could delay, or possibly derail, the development of the Partnership and the shared network.³⁸ The few commenters that ask the Commission to mandate wholesale or open access commercial business models inappropriately interject extraneous policy issues into a proceeding that should focus exclusively on designing the most viable Public/Private Partnership.³⁹ These proposals, which will invariably deter

³⁶ *Second Report and Order*, ¶ 545. Additionally, as AT&T previously explained, the imposition of wholesale or open access conditions violates the Commission’s flexible use approach, which has proved the efficiency of market forces in producing the best technologies and business practices. *See* AT&T Comments at 18.

³⁷ *Second Report and Order*, ¶ 545.

³⁸ AT&T Comments at 18; Comments of Ericsson Inc. at 35 (“Ericsson Comments”) (explaining that because of the “cost of developing the [shared network], and the many uncertainties facing the D Block licensee, Ericsson does not believe the public interest would be served by *requiring* the D Block licensee to follow a spectrum leasing or wholesale approach. Such limitations on the business plan of the D Block licensee would make bidding less attractive to many potential bidders.”).

³⁹ *See* PISC Comments at 7-9; *see generally* Google Comments at 10.

potential commercial partners with valuable resources and expertise from participating, should be explicitly rejected.⁴⁰

V. COMMENTERS AGREE THAT THE COMMISSION MUST CLARIFY THE KEY LOGISTICAL, OPERATIONAL, AND FUNCTIONAL REQUIREMENTS FOR THE PUBLIC SAFETY NETWORK AND FOR THE PUBLIC/PRIVATE PARTNERSHIP.

As detailed above, AT&T continues to believe that an RFP process is the best method for achieving the goals of the interoperable wireless broadband network. However, regardless of whether the Commission chooses to implement an RFP process or move forward with a reauction of the D Block license,⁴¹ the record in this proceeding makes clear that certain aspects of the Public/Private Partnership and the network requirements must be clarified in order to give commercial entities the requisite certainty about their investment and performance obligations to feel comfortable participating in the Partnership.⁴² In its opening comments, AT&T explained

⁴⁰ Similarly, the Commission should reject the proposal offered by the Society of Broadcast Engineers (“SBE”) to set aside 758.0 MHz to 758.05 MHz and 792.95 MHz to 793.0 MHz for use by Emergency Alert Systems (“EAS”). *See* Comments of the Society of Broadcast Engineers, Inc. at 7 (filed June 18, 2008) (“SBE Comments”). The FCC has considered proposals for the use of the 700 MHz band since 1999. At this stage of the proceeding, the SBE proposal is woefully late and procedurally defective. If SBE should desire to pursue this matter, it should file a petition for rulemaking and, in AT&T’s view, suggest spectrum that does not reduce the capacity or complicate the network deployment of the Public/Private Partnership network.

⁴¹ In discussing a reauction of the D-Block spectrum, MetroPCS argues that the timing should correspond with the auctions for the AWS-2 and AWS-3 spectrum. *See* Comments of MetroPCS Communications, Inc. at 25-26 (“MetroPCS Comments”). As a threshold matter, AT&T believes that an RFP process for selecting commercial partners is superior to an auction. However, if the Commission decides to reauction the D Block, AT&T sees no inherent benefit in delaying the D Block auction (or the auction of the AWS-2 and AWS-3 spectrum) so that these bands might be auctioned at the same time. Nevertheless, if these bands all happen to be ready for auction simultaneously and the Commission could realize efficiencies through a joint auction, AT&T would not object to a joint auction of these bands.

⁴² *See* Comments of Alcatel-Lucent at 2-3 (“Alcatel-Lucent Comments”); Ericsson Comments at 9-10; Google Comments at 5-7; Comments of Interisle Consulting Group at 5-6 (filed June 19, 2008) (“Interisle Comments”); Leap Wireless Comments at 9; Comments of

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that the Commission must clarify requirements for the nationwide interoperable network, including technology selection, network performance,⁴³ build-out benchmarks, and functionality.⁴⁴ AT&T also stressed that the Commission must more specifically delineate the scope of the roles and responsibilities of the PSBL and the commercial entities, as well as the contemplated service and access fees and mechanism for issue resolution.⁴⁵ A variety of industry members,⁴⁶ public safety groups,⁴⁷ and individual commenters⁴⁸ agree with AT&T that these areas require clarification. In particular, these commenters express significant interest in clarifications and modifications addressing the non-profit status of the PSBL, operational control standards, network technology selection, and payment structures.

Many commenters urge the Commission to clarify that the PSBL must be non-profit and that neither the PSBL nor its advisors may profiteer from the Public/Private Partnership.⁴⁹

Northrop-Grumman Information Technology, Inc. at 6 (“Northrop-Grumman Comments”); Comments of Professor Jon M. Peha at 4 (filed May 26, 2008) (“Peha Comments”); PSST Comments at 27; Newman Comments at 2-3; Verizon Wireless Comments at 4.

⁴³ To the extent the Commission wants to incorporate satellite services into the Public/Private Partnership – as requested by satellite service providers – the Commission should include a satellite requirement in the RFP and allow potential commercial partners to describe how they would incorporate satellite features into the shared network. *See* Comments of Mobile Satellite Ventures Subsidiary LLC at 14.

⁴⁴ *See* AT&T Comments at 9-16.

⁴⁵ *See id.* at 16-24.

⁴⁶ *See, e.g.,* Ericsson Comments at 9-10; Leap Wireless Comments at 9; NTCH Comments at 1-2; Verizon Wireless Comments at 5-6.

⁴⁷ *See, e.g.,* APCO Comments at 7; NPSTC Comments at 9; PSST Comments at 27.

⁴⁸ *See, e.g.,* Newman Comments at 2; Peha Comments at 4.

⁴⁹ *See* APCO Comments at 17; Comments of the City of Philadelphia at 4-5 (“City of Philadelphia Comments”); IAFF Comments at 3-4; NATOA et al. Comments at 14-15;
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Commenters also urge the Commission to declare that neither the PSBL nor its advisors may operate as an MVNO.⁵⁰ Public safety organizations and local governments, in particular, stress that the Commission must expressly limit the involvement of commercial entities in the PSBL in order to avoid the existence or appearance of conflicts of interest.⁵¹ APCO, for example, indicates that the debt relationship between the current PSBL and its advisor “creates at least a perception that the agent/advisor could exert undue influence” over the PSBL.⁵² Therefore, APCO proposes that the PSBL adopt “strict conflict of interest requirements that include prohibiting its advisors from engaging in business activities resulting from the advice provided to the PSBL.”⁵³ AT&T supports such a proposal. The record also demonstrates that allowing the PSBL or its advisors to operate as an MVNO or otherwise profiteer from the Partnership will likely raise the costs of services for public safety users, distract the PSBL from its duty as public

Comments of the National Regional Planning Council at 5 (“NRPC Comments”); Comments of the Region 33 (Ohio) 700 MHz Regional Planning Committee at 2 (“Ohio RPC Comments”); Comments of Telecommunity, Charlotte, N.C., Houston, TX, and Montgomery County, MD at 11-12 (“Telecommunity et al. Comments”).

⁵⁰ See APCO Comments at 34; AT&T Comments at 19; Verizon Wireless Comments at 34-36.

⁵¹ See, e.g., City of Philadelphia Comments at 5 (“We believe that it is in the public interest to avoid the conflicts of interest that may arise if commercial entities are permitted to assume a governance role in the PSBL, or are otherwise able to exert influence over the Licensee through a debt or equity holding.”); IAFF Comments at 3 (“Safeguards must be put in place to assure that the interests of for-profit entities do not come at the expense of public safety in this important endeavor.”).

⁵² APCO Comments at 17.

⁵³ *Id.*

safety's chief representative, and discourage commercial participation.⁵⁴ This clearly does not serve the public interest. Accordingly, AT&T supports the clarifications discussed above.

Various commenters also agree with AT&T that the Commission should clarify that commercial partners will have operational control over the entire network, subject only to discrete areas of PSBL operational authority specified by the Commission prior to an RFP process or a reauction.⁵⁵ These commenters agree that empowering commercial partners to leverage their experience, expertise, and human and financial resources in the day-to-day operational control of the entire network is necessary to ensure that the shared network meets public safety's high operational standards, while also guaranteeing that the network is commercially viable and attractive to potential commercial partners.⁵⁶ APCO, expressing this sentiment, explains that the PSBL should not duplicate the D Block licensee's core day-to-day operational and management functions.⁵⁷ Rather, the PSBL should "move towards a management structure that monitors D Block licensee contract performance and service

⁵⁴ See APCO Comments at 34; AT&T Comments at 19; Verizon Wireless Comments at 34-36.

⁵⁵ As AT&T previously explained, the Commission's statements that "primary operational control of the network is inherently the responsibility of the D Block licensee" and that the PSBL must have "operational control of the network to the extent necessary to ensure public safety requirements are met" have created confusion about who will have operational control of the proposed network. See AT&T Comments at 17; *Second Further Notice*, ¶ 124; *Second Rerpot and Order*, ¶ 405.

⁵⁶ See, e.g., APCO Comments at 34-37; AT&T Comments at 16-17; Ericsson Comments at 30; Leap Wireless Comments at 12.

⁵⁷ See APCO Comments at 34.

relations.”⁵⁸ APCO also lists a number of potential PSBL responsibilities with which AT&T generally agrees, including overseeing priority access.⁵⁹

Many commenters – including public safety and commercial entities – also agree that the Commission should adopt guidelines specifying that the joint network must be built with state-of-the-art, commercially available, standards-based technology, which will be hardened to meet public safety’s requirements.⁶⁰ These guidelines, however, should be sufficiently flexible to permit the use of existing commercial technology, where such components meet public safety’s capability requirements.⁶¹ As discussed by AT&T and other commenters, the use of commercially available technology can substantially increase the speed and decrease the cost of deployment of the network.⁶² It is also likely to significantly reduce the costs of end user devices for first responders. Moreover, by permitting the leveraging of existing commercial network

⁵⁸ *Id.* at 35.

⁵⁹ *See id.* at 35-37. AT&T also agrees with commenters that suggest that the priority access system should resemble the one currently in place for the voluntary provision of Wireless Priority Service, with the PSBL acting in a management and coordination role similar to the National Communications System. *See, e.g.,* Alcatel-Lucent Comments at 9-10; *see also* AT&T Comments at 13.

⁶⁰ *See* Ericsson Comments at 9-15; Interisle Comments at 11; Motorola Comments at 7; NATOA et al. Comments at 9 and Technical Report Attachment; Northrop Grumman Comments at 6-7; Qualcomm Comments at 8-10; Verizon Wireless Comments at 16-18; Comments of the Rehabilitation Engineering Research Center for Wireless Technologies at 7-8 (filed June 19, 2008) (“Wireless RERC Comments”).

⁶¹ Moreover, a variety of commenters – including public safety and commercial entities – assert that the D Block licensee should take the lead role in choosing the underlying technology of the network, in cooperation with the PSBL and according to minimum specifications set by the Commission. *See* Leap Wireless Comments at 12-13; NPSTC Comments at 39; NTCH Comments at 7; Ohio RPC Comments at 13-14; Comments of Wirefree Partners III, LLC at 14-15 (“Wirefree Comments”).

⁶² *See* AT&T Comments at 10; Ericsson Comments at 14-15; Verizon Wireless Comments at 16-18.

infrastructure, the shared public/private network will be able to be built out more efficiently, thus making participation in the Partnership more attractive to commercial entities.

While the Commission should specify the baseline requirements of the network, any technical parameters stipulated must be flexible enough to permit some technology choice by the commercial partner. At a minimum, the technical parameters stipulated should be IP-based and permit the use of LTE.⁶³ AT&T believes that LTE will be the best choice for the shared wireless broadband network because it will offer 4G data speeds, global economies of scale derived from user pools exceeding two billion, and compatibility with future networks.⁶⁴ Indeed, as AT&T indicated in its initial comments, AT&T and other carriers have committed to LTE technology as the basis for future upgrades to their wireless networks.⁶⁵ The Commission seems to appreciate the benefits of LTE as it acknowledged the promise of this technology at multiple points in the Technical Appendix of the *Second Further Notice*.⁶⁶

⁶³ While not directly criticizing the value of LTE technology for the Public/Private Partnership, Qualcomm argues that currently deployed and developing technologies like CDMA2000 and HSDPA also provide sufficient functionality for the public safety network and that the technical specifications should be flexible enough to allow for these technologies as well. *See* Qualcomm Comments at 9-10. AT&T takes no position on whether the standard should permit CDMA2000 and HSDPA, so long as it permits the use of LTE.

⁶⁴ *See* AT&T Comments at 10; *see also* Ericsson Comments 13-15 (detailing the various benefits LTE technology would provide to the Public/Private Partnership).

⁶⁵ *See* AT&T Comments at 10.

⁶⁶ *See Second Further Notice*, at Appendix – “Possible Technical Framework for a 700 MHz Public/Private Partnership Shared Wireless Broadband Network”, Part II at 83 n. 253 (citing LTE as an example of an advanced next generation mobile network standard upon which the network could be based); *Id.*, Part IV at 87 (identifying data transfer rates consistent with state-of-the-art technology like LTE as a minimum throughput requirement of the Shared Wireless Broadband Network); *Id.* at 88 (identifying provision of “a number of QoS classes and performance objectives” such as those defined in LTE as a specific QoS requirement of the network).

Many commenters also agree that the Commission must promulgate guidelines that address the service fees commercial partners may charge local public safety users, as well as the spectrum usage fees the PSBL may charge commercial partners for access to the 700 MHz public safety broadband spectrum.⁶⁷ Potential commercial partners require such clarification in order to evaluate the financial prospects of this venture. If the Commission intends to restrict the type or amount of service fees a commercial partner may charge a local public safety user, the Commission must clearly explain this restriction prior to an RFP process or a reauction.⁶⁸ Likewise, because the construction and operation of the interoperable public safety network is a significant in-kind contribution by itself, potential commercial participants need to know prior to an RFP process or reauction if additional access fees will be required. If the Commission permits the PSBL to charge access fees, the Commission should ensure that such payments be negotiated – whether through the RFP process or in the NSA – using commercial practices for cost recovery for the PSBL.

⁶⁷ AT&T Comments at 19-20; Northrop Grumman Comments at 7-8 (explaining that in a “normal business context, potential ‘partners’ would work all such issues out in negotiation prior to committing by contract. The fault in the current framework is that this has been left up in the air until *after* the D Block bidder wins and thereby becomes committed. As we now see from the recent auction, that risk is commercially untenable.”); Peha Comments at 13 (explaining that “commercial providers need to understand their potential revenues”); Wireless RERC Comments at 12-13 (recommending “consideration of the proper balancing of public safety and commercial interests when establishing network service fees”).

⁶⁸ Similarly, the Commission should clarify whether all state and local public safety groups will be required to use the broadband services provided by the Public/Private Partnership, and if so, the fees that will be charged for these services. Because such a mandatory requirement would have a far-reaching impact on all public safety users and potential commercial partners, this clarification is needed in advance of an RFP process or reauction.

VI. THE COMMISSION SHOULD REJECT SPRINT NEXTEL’S PROPOSAL TO ALLOW BIDDERS TO “BUY DOWN” PUBLIC SAFETY’S REQUIREMENTS.

While AT&T believes that the Public/Private Partnership requires significant modifications in order to be successful, it opposes the bidding credit proposal offered by Sprint Nextel.⁶⁹ Sprint Nextel essentially proposes that the Commission lower the minimum network requirements established in Auction 73, but provide bidding credits for any auction participant that agrees to achieve the more demanding requirements set in the first D Block auction.⁷⁰ AT&T disagrees. If the Commission re-auctions the D Block spectrum, it should first establish the minimum level of performance needed to meet the needs of public safety. Allowing carriers to eviscerate these standards by paying additional money is contrary to the public interest. In other words, bidders for the D Block spectrum should not be able to buy their way out of the obligation to build a public safety grade network. For these reasons, AT&T urges the Commission to reject the bidding credit proposal submitted by Sprint Nextel.

VII. CONCLUSION

AT&T strongly supports the goals of the Public/Private Partnership, but believes that achieving them may require more than a reauction of the D Block license. Like other commenters, AT&T strongly urges the Commission to consider requiring the use of an RFP process to select the PSBL’s commercial partners. Further, AT&T and many other commenters believe that the public interest would be best served by having commercial entities participate on a regional basis, rather than through the issuance of a single, nationwide D Block license. The

⁶⁹ See Comments of Sprint Nextel Corporation at 13-17.

⁷⁰ Specifically, Sprint Nextel proposes bidding credits relating to the following network requirements and D Block licensee obligations: network build-out, public safety preemption, network reliability, narrowband relocation, and back-up power. See *id.* at 14-15.

record also supports an explicit rejection of eligibility restrictions on auction participation as well as of wholesale and open access service requirements. Additionally, commenters largely agree that the Commission must clarify the key requirements for the nationwide interoperable network and the Public/Private Partnership, including the non-profit status of the PSBL, operational control standards, network technology selection, and payment structures, regardless of whether the Commission adopts an RFP process or reauctions the spectrum. AT&T believes these modifications are necessary to ensure a successful Public/Private Partnership that will meet the critical communications needs of public safety. Finally, the Commission should reject Sprint Nextel's bidding credit proposal, which would enable bidders for the D Block spectrum to buy their way out of the obligation to build a public safety grade network.

Respectfully submitted,

AT&T INC.

By: /s/ Michael P. Goggin

Paul K. Mancini

Gary L. Phillips

Michael P. Goggin

1120 20th Street, NW

Washington, DC 20036

(202) 457-2054

Its Attorneys

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