

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

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

**COMMENTS
OF THE
ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS-
INTERNATIONAL, INC. (APCO)**

**IN RESPONSE TO
THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

November 3, 2008

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SUMMARY

The Association of Public Safety Communications Officials-International, Inc. (“APCO”) continues to support the FCC’s proposal to use the D Block auction to create a public/private partnership with a national public safety broadband licensee. That partnership can then deploy a nationwide, interoperable broadband network that is shared with commercial users, but is designed, built, and operated to satisfy public safety requirements.

APCO supports most of the Commission’s proposed rules for the new D Block auction, which once again attempt to find a balance between attracting bidders and addressing critical public safety requirements. However, in certain critical respects, the Commission’s proposals tip the balance too far in favor of commercial concerns, undermining the potential for the broadband network to serve the needs of state and local public safety agencies. Therefore, APCO recommends important modifications to the proposed technical, performance, and operational requirements for the shared network.

APCO supports the proposed modifications to the Public Safety Broadband Licensee (“PSBL”). Those and other changes are essential for state and local public safety agencies to have the necessary confidence that the PSBL will be an effective representative of their needs and concerns.

APCO opposes the specific monthly user fees proposed by the Commission, and also urges that the proposed reserve price for the D Block auction be substantially reduced.

The proposed cap for narrowband relocation appears to be too low, and should be increased to reflect more accurate cost estimates.

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THIRD FURTHER NOTICE OF PROPOSED RULEMAKING**

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s *Third Further Notice of Proposed Rulemaking*, FCC 08-230 (released September 25, 2008) (“*3d FNPRM*”), in the above-captioned proceedings.

APCO is the nation’s oldest and largest public safety communications organization. Founded in 1935, APCO has nearly 16,000 members, most of whom are state or local government employees who design, manage, and operate public safety communications systems for police, fire, emergency medical, forestry conservation, highway maintenance, disaster relief, and other public safety agencies. APCO previously submitted comments in response to the *Second Further Notice of Proposed Rulemaking* and in all prior stages of this and related proceedings concerning the 700 MHz public safety spectrum. Throughout this process, APCO

has reached out to its diverse membership and to other public safety entities with the goal of forging positions that will best serve the critical needs of public safety agencies across the nation.

INTRODUCTION

APCO commends the Commission for its continued support of a public/private partnership model for deploying a national public safety broadband network. As APCO has explained at length in prior comments and statements in the record,¹ a national broadband network would ensure that all public safety agencies, regardless of their size, location, expertise, or financial resources, would have the same opportunities to take advantage of the new world of broadband communications. Absent a national network, only those few agencies with substantial resources and expertise will be able to provide their first responders with state-of-the-art broadband communications. The result would be islands of robust, and probably incompatible, public safety broadband networks, surrounded by vast unserved areas.

The prior D Block auction failed in large part due to the lack of specificity in the obligations that the D Block licensee would be assuming. Thus, we are pleased that the Commission has proposed significant details in that regard. However, as explained below, we are concerned that some elements of the Commission's proposal could undermine its goal of creating a national public safety broadband network. The Commission must not sacrifice public safety requirements in the interest of holding a successful auction. Little will be gained if the end result is a shared network designed primarily for commercial use, with coverage and reliability that provides little or no improvement over that which is offered on competing commercial systems. We are also concerned that the *3d FNPRM* goes too far when it effectively

¹ See Comments of APCO at 6 (June 20, 2008), Reply Comments of APCO at 3 (July 7, 2008), Testimony of Robert M. Gurss, APCO Director of Legal & Government Affairs (July 30, 2008).

excludes public safety from involvement in the shared network operations, especially with regard to service restoration and emergency management of network resources.

Public safety is providing half of the spectrum for the shared network, and is largely foregoing the opportunity to build permanent, local public safety broadband systems on its public safety spectrum. Thus, the Commission must ensure that the result is a superior network that meets public safety requirements to the maximum extent feasible.

Finally, APCO is pleased that the Commission has proposed important modifications to the Public Safety Broadband Licensee (“PSBL”) to promote its ability to be an effective and efficient representative of public safety interests. We remain concerned that some major state/local government entities continue to express little confidence in the ability of the PSST and its agent/advisor to represent their interests. The Commission must take steps to restore faith in the PSBL, and empower the PSBL to fulfill its responsibilities to the entire public safety community.²

A. The Public/Private Partnership

As noted above and in our prior submissions, APCO continues to support the public/private partnership model as the only viable path towards a national, interoperable broadband public safety network. While some public safety agencies might otherwise be able to deploy their own broadband networks, and some might even be able to forge local partnerships with commercial entities, the vast majority of public safety agencies are likely to be left in the cold absent a national network. Such a national network approach will relieve local agencies of the extraordinary cost of constructing and maintaining their own broadband infrastructure. It is

² APCO’s Comments will follow the organization and headings of the *3d FNPRM*.

also the most effective means of providing seamless, spectrum-efficient interoperability using state-of-the-art technology platforms.

However, public safety use of the national network will depend upon how it is designed, built, operated, priced, and maintained. Thus, as further discussed below, the success of the public/private partnership requires that the Commission take further steps to ensure that the shared network will in fact provide the necessary levels of coverage, reliability, and capability to meet public safety needs, and do so at an affordable cost.

B. Service Rules for D Block

1. Geographic areas.

The Commission proposes a three-part auction, with the result being either (i) a national licensee that selects its own technology platform, (ii) 58 Public Safety Region (PSR) licenses using LTE as a technology platform, or (iii) 58 PSR licenses using WiMAX as a technology platform. APCO continues to have a strong preference for a national licensee as that would eliminate concerns about interoperability and diminish the potential that large areas will remain unserved indefinitely. It would also greatly facilitate a viable working relationship with the PSBL.

However, if the Commission believes a regional D Block licensing alternative is necessary to attract bidders, its PSR-based proposal appears to be a reasonable approach that could still result in a national, interoperable public safety broadband network. We would oppose using geographic areas smaller than PSRs for the auction as that could increase the potential for large areas of the nation to be excluded from the national network.

In the absence of a national bidder, the sale of PSRs covering just 50% of the nation's population would be sufficient for the auction to be deemed a success under the Commission's proposal. That could be as few as eleven of the most populated PSRs. We recognize that a second failed auction must be avoided, but the 50% "bar" appears to be too low. APCO suggests that the Commission consider either a higher percentage requirement, or perhaps a two-part test that involves both a percentage of population and a minimum number of PSRs. Another option would be to continue to drop the minimum bids once 50% of population is covered, but still require a higher percentage of population to deem the auction a success. How the Commission addresses the unsold PSRs will also be a critical factor in determining the real "success" of the overall goal of creating a national public safety broadband network. Thus, we could accept a 50% threshold if there are sufficient mechanisms to create incentives for the remainder of the PSRs to be included in the national broadband network.

The PSRs would consist of the 55 current public safety regions, plus the Gulf of Mexico, Guam and Northern Mariana Islands, and American Samoa. This is a good starting point. However, the regions were established for different purposes and have inconsistent borders. Some follow state boundaries, some are subsets of states, and some cover areas that cross state lines (in the Northeast, Mid-Atlantic, and Chicago metropolitan areas).³ This creates a potential that one portion of a state could be in a PSR that is sold in auction, while an adjoining PSR covering portions of the same state is not (or is sold to a different licensee). That would hamper the deployment of state-wide broadband operations and potentially diminish the value of the network to state government agencies. Therefore, we suggest that the Commission consider either grouping together the PSRs serving a single state, or requiring that if a PSR serving a

³ Divided states include New York, New Jersey, Pennsylvania, Virginia, Wisconsin, Illinois, Indiana, Texas, and California.

portion of a state is sold, a successful auction would require that all PSRs serving that state are sold.

APCO supports the Commission's general auction approach regarding technology platforms, which properly ensures national interoperability if there are multiple D Block licensees. However, as discussed below, we are concerned that neither of the two identified 4G technologies, LTE and WiMAX, are currently ready for deployment. Therefore, the Commission should consider allowing fully compatible predecessor technologies (*e.g.*, EV-DO Rev A for LTE) to be deployed pending the availability of the more mature 4G platforms.

2. Shared Network Requirements

a. Spectrum Use Issues

APCO supports the Commission's proposal that 50% of the capacity of the combined public safety/D Block network be subject to unrestricted public safety use, and that such capacity would be available for commercial use only on a secondary, preemptible basis. However, the proposed rule implementing this approach appears to require clarification. Proposed Section 27.1307(d), states that 50% of the capacity must be "assigned to public safety users." The rule should instead indicate that the PSBL has the right to assign up to 50% of the capacity for unrestricted public safety use. If actual public safety "assignment" to particular agencies in a specific area accounts for less than 50% of capacity in the normal course, those (and potential other) agencies must still be allowed to ramp up to the 50% level without invoking any of the "emergency" provisions that apply to the commercial "half" of the network's capacity.

The Commission also proposes very specific guidelines regarding the "emergency" circumstances during which public safety would also be able to obtain priority access to

additional capacity (*i.e.*, more than 50% of total capacity). We support that approach, though further modification and clarification is necessary, as discussed below and in the separate comments of the PSST and NPSTC.

APCO generally agrees with the Commission’s proposed approach to allowing public safety emergency access to network resources as specified at paragraphs 86 and 87 in the 3rd FNPRM. However, in footnote 187 the Commission clarifies that “to be clear, by ‘priority access,’ we mean that the public safety user would be assigned the next available channel over a commercial user—*i.e.*, the public safety user would be placed at the top of the queue—and would not preempt a commercial call in progress.” This footnote provides a critical foundation for how priority access functionality will be executed in times of crisis. Unfortunately this definition is more relevant to the concept of a circuit-switched “voice call” as opposed to packet-switched data transfer capabilities.

In practice, the concepts of “top of the queue” and “channel” are much more complex – especially if both the commercial and public safety users are utilizing the constrained capacity resources for data transfer. APCO suggests that the Commission instead clarify that site capacity for all areas affected revert to the predefined capacity partitions within some set time period from the time that the emergency incident has been formally declared. This time period could be as short as a second, and certainly no longer than ten seconds. There should be few if any issues with ruthless preemption of any commercial “calls” since the commercial data usage could be scaled back almost instantaneously to compensate for any voice calls in progress.

Even though APCO generally agrees with the Commissions proposed approach to allowing public safety emergency access to network resources, we are concerned that both WiMAX and LTE utilize a somewhat similar Service Class/Flow approach to managing QoS;

leaving many of the details of packet scheduling up to the service providers. This approach may be well-suited to simple commercial service level agreement-based services, but may be significantly challenged when trying to manage a complex priority schema such as would be necessary in a blended spectrum network carrying multiple levels of public safety communications. Furthermore, with an expected frequency reuse of one, the packet scheduling would need to be coordinated over multiple sites simultaneously – a very computationally intensive task when maintained over long periods of time (such as during a crisis situation). It was partially because of these reasons that APCO’s earlier comments attempted to propose a simpler approach to priority and preemption.

Because of these concerns with the QoS approach used and the possible packet scheduling issues, it may be very difficult for LTE or WiMAX to provide all of the complex priority partitions required for this network – at least not on fully-blended spectrum resources. If it does prove impossible to provide the necessary prioritization functionality, then it may be necessary to split the jointly-deployed spectrum into separate channels of 5 MHz (or less) in order to provide enough capacity management flexibility. If this were to occur, then LTE technology may not provide significantly improved performance over HSPA; and the resulting WiMAX bandwidth profile may be one that would be widely deployed. Therefore we *strongly encourage* the Commission to verify that the proposed technologies and networks can and will support these complex capacity partition capabilities.

As a final note, APCO again reiterates that there remains a huge undertaking ahead with respect to generating a suite of complex priority rules for managing user, application, and situational prioritization between different services, jurisdictions, and events. We feel that these efforts should be undertaken as soon as practicable and should either be initiated as a FCC task

force, and interact with or through an existing group such as FEMA has done with the National Incident Management System (NIMS). Although the PSST should be a participant in these activities, they should not be the party responsible for their completion.

b. Technical Requirements

APCO agrees with the Commission that the network should utilize standardized commercial technologies, and that the entire network should be based upon either WiMAX or LTE technology platforms. APCO also feels that the market-driven approach taken to ensure technology compatibility and consistency for nationwide operations and/or roaming is a reasonable one.

APCO is concerned that there may be timing issues; where the lack of widespread availability of these technologies might delay the deployment of the network, hindering public safety access to these critical capabilities. The widespread deployment of these 4G technologies (WiMAX or LTE) on the shared network should be harmonized with the roll-out of these same technologies within the commercial sector to ensure economic viability. Unfortunately, even 3G technologies have not been fully realized on a national basis. This creates a dilemma; how do we get public safety access to broadband access immediately when WiMAX/LTE may not be ready to roll out for several years. APCO is not sure how best to deal with these issues, but is concerned that the winning bidder may utilize the delay in technology availability as an avenue to petition for a delay in the coverage mandates, license terms, etc.

Therefore, it may be necessary to allow the winning bidder to leverage existing networks and technology to put public safety immediately on a 3G track (such as UMTS, HSPA, or cdma2000 EVDO), with an evolution to the 4G technologies as they roll out on a national and/or

global scale. If this approach is deemed reasonable, then care must be taken to (1) ensure that mass market multimode handsets are available at all times that support both the 3G and 4G technologies, and (2), the network will always be able to support the legacy (*i.e.*, 3G) operations to allow for a graceful technology transition. These are not new concepts; they parallel how our national wireless carriers are able to transition to their next generation technologies while seamlessly serving their diverse and constantly mobile subscriber base.

Interoperability

APCO supports the requirement that the D Block licensee(s) publish IP specifications for bridges and gateways to be provided by public safety agencies wishing to link their non-700 MHz systems to the broadband network for interoperability purposes. However, we oppose the Commission's proposal that there be a monthly per user fee of \$7.50 for such access.⁴ Instead, there should only be a gateway/bridge access charge as it will be difficult for agencies to determine which specific users need interoperability access to the network and how often that access will be required.⁵

Availability, Robustness, Hardening

The Commission proposes that the network be built to a minimum of 99.6% reliability, but that the D Block licensee(s) must use "commercially reasonable efforts" to achieve 99.9%. We would obviously prefer the higher standard, but recognize the potential difficulties of reaching that level in a national network. If the Commission adopts the "commercially reasonable efforts" standard for the higher level of reliability, it should require the D Block

⁴ If a "per user" fee is adopted, the Commission needs to clarify whether that applies to individuals or devices.

⁵ The Commission should also make clear that public safety agencies are not required to link their land mobile radio systems to the broadband network, though we agree that such interoperability should be encouraged.

licensee(s) to demonstrate to the Commission's satisfaction why achieving 99.9% is not commercially reasonable.

We disagree with the Commission's proposal that "the methods of measurement are to be defined in the Network Sharing Agreement."⁶ The coverage and reliability/availability specifications are by far (1) the most important specification for ensuring service delivery to the users, and (2) the most significant cost drivers of the system. These requirements mean little in the absence of definition as to how they will be verified or tested (*e.g.*, methods of measurement).

When defining how the system reliability will be assessed and/or tested, it is entirely appropriate to consider functional aspects of system performance such as redundancies achieved through high levels of site overlap in the determination of overall system reliability availability. However, sites and network components that cover large geographic areas will need to be weighted accordingly in the overall assessment of system reliability. In other words, the computation of network reliability should consider what percentage of the network capacity is available -- weighted by average traffic load, as well as by what percentage of the network is available -- weighted by the areas served. If this type of approach is not taken, then there is reduced incentive for the commercial partner to maintain high availability of remote sites that serve limited average traffic loads, yet serve a critical need in times of emergency.

The Commission specifies that up to 35% of the network sites may be designated as "critical" and subject to specific backup power requirements. The Commission also proposes that the D Block licensee(s) must use "commercially reasonable efforts" to treat at least 50% of sites as "critical."

⁶ 3rd FNPRM at ¶117.

We urge the Commission to require that at least 50% of sites be designated as critical to ensure that public safety communications are not likely to be disrupted when needed the most, *e.g.*, following a major storm, earthquake or other disaster that could cause substantial network outages if sites are not properly hardened. In any event, the percentage requirement should apply within *each* PSR, especially if licenses are granted on a PSR basis.⁷ Some PSRs may require *less* than 50% of sites to be hardened, but the realities of the auction will presumably require that bidders understand upfront that *no more* than 50% of the sites in the PSRs subject to their bids will require hardening.

As noted above, the FCC should specify requirements that represent a significant improvement over that which is available in commercial networks. The network specifications must be sufficient to provide a high level of coverage and reliability to meet public safety requirements in most circumstances. However, any requirements adopted by the FCC will be somewhat arbitrary, and may not meet the specific needs of public safety agencies in particular areas. For example, agencies in areas prone to hurricanes or earthquakes may require that virtually all sites (not just 50%) be hardened.

Therefore, assuming that the D Block licensee has met or exceeded its obligations under FCC rules and the network sharing agreement (NSA), local agencies should be able to require network enhancements beyond those levels, provided they are prepared to pay the additional costs. Such incremental costs, while not insignificant, would certainly be less than the cost of building out local networks from scratch. Care must be taken however, that this local option not become a substitute for requiring the D Block licensee to meet minimum technical requirements deemed sufficient to meet most public safety needs.

⁷ If the Commission chooses to designate a higher percentage subject to a “commercial reasonable standard,” the D Block licensee(s) should be required to demonstrate to the Commission’s satisfaction why the higher standard cannot be reached. Self-certification would be insufficient.

3. Performance Requirements

The Commission proposes that the D Block licensee(s) provide coverage to 40% of the population in each PSR by year 4, 75% of population in each PSR by year 10, and 90-98% of population in each PSR by year 15, depending upon the population density of the PSR. The Commission indicates that the 4-year and 10-year benchmarks are identical to requirements imposed on the commercial C Block licensee. These benchmarks are too low.

We recognize that the coverage requirements must be achievable and commercially viable to attract bidders to the D block auction. However, the goal of the public/private partnership model has always been to construct a national broadband network that is better than commercial offerings, with the realistic expectation that it would probably have less coverage and reliability than current public safety systems typically require. Arguably, the requirements set prior to the first D Block auction were too aggressive, but the latest proposal swings the pendulum too far in the opposite direction.

Therefore, we recommend adoption of the following population coverage requirements, which we understand are also being proposed by the PSST in its separate comments:

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

These proposed requirements provide a critical additional benchmark at year seven, raise the ten-year requirement for most PSRs to 90%, increase the coverage requirements for year fifteen, and add a new level for areas with population density of less than 10 persons per square

mile. These are not onerous requirements as some commercial networks already exceed 90% population coverage.

APCO is also concerned that over-reliance on population coverage requirements could diminish the value of the shared network for states, large counties, and other jurisdictions that include a combination of urban, suburban, and rural areas, all of which require radio communications coverage. For example, a law enforcement agency or fire department that is the principal first responder throughout a county is unlikely to make substantial use of a broadband network that covers only a small geographic portion of that county. Therefore, the Commission should reiterate that the PSBL has the authority to negotiate provisions in the NSA that will facilitate complete coverage over a public safety agency's jurisdiction wherever feasible.

We also suggest that the Commission take into consideration substantial seasonal variations in population that are not reflected in Census data. Many sparsely populated areas become overrun with tourists and recreational users during peak vacation seasons, which greatly increases demands on public safety communications during those time periods. Thus, the PSBL and D Block licensee(s) must have the discretion to make adjustments in coverage requirements to ensure adequate service when and where it is needed the most.⁸

Finally, some local agencies may need coverage beyond that which is required by the FCC and the NSA. There should be flexibility to allow a local public safety agency, first to work with the PSBL to include the unserved area, and second, if necessary, to fund itself the additional site and include it in the network. Again, as with technical requirements, such a local option must not substitute for meaningful coverage requirements that, standing alone, are sufficient to address most public safety needs.

⁸ We recognize that marketplace forces may lead to coverage of some of the areas that have significant and extended seasonal population variations. However, many areas see expedient population increases over a short period of time (10-60 days) that may not, standing alone, justify commercial system deployment

4. Roles and Responsibilities of D Block Licensee

The Commission proposes that the D Block licensee have the exclusive responsibility for all traditional network service provider operations, and that the PSBL's role in network operations be limited largely to receiving monthly status reports. This goes too far in limiting the PSBL, and would prevent it from fulfilling its obligation as a licensee and, more importantly, as a representative of the public safety community. Note, that we are not advocating anything even remotely similar to a MVNO role, a model that all parties have rejected. However, the PSBL does need to have some form of *real-time* participation and monitoring of the network to ensure that that network will meet public safety requirements, especially during emergency and network outage situations. The PSBL also needs the ability to ensure service restoration rates and problem resolution procedures that are sufficient to meet public safety standards of care, not just commercial standards of care.

Those state and local public safety agencies that remain skeptical of the public/private partnership model often express concerns that a commercial provider will not provide the same levels of service as a network owned and operated by public safety. That skepticism is understandable, and must be addressed by the Commission if the public/private partnership is to be a success. Thus, we urge that the FCC allow appropriate procedures to be included in the NSA to provide adequate PSBL oversight of the shared network's operations, at least as it relates the use of public safety spectrum resources.

5. Roles and Responsibilities of PSBL

These issues are addressed above.

6. Post Auction Process for Establishing NSA

We generally support the Commission's proposals in this regard. In particular, there should be a process to facilitate a single NSA negotiation if there are multiple D block licensees.

7. Auction Issues

As noted above, we are concerned that the Commission may have set the bar too low by defining an auction "successful" if it leads to the sale of PSRs covering just 50% of the nation's population. APCO supports allowing package bidding, as that should diminish the potential for isolated PSRs to remain unsold.

To the extent that there are unsold PSRs despite drastically reduced minimum bids, we agree that the PSBL should assume the responsibility of identifying potential commercial partners for those PSRs. This is a subject that may require further examination depending upon the outcome of the auction.

We oppose the proposed reserve price of \$750 million. There is no rational basis for that specific amount, which could deter bidders and do little more than enrich the Treasury while diminishing the funds available for the D block licensee to build out the network to meet public safety requirements.⁹ Furthermore, the current financial crises suggests that it will be extremely difficult for potential bidders to raise cash, making it all the more important that the Commission eliminate unnecessary barriers to entry.

⁹ While some minimum bid may be necessary to ensure the seriousness of bidders, the FCC's proposed protections for public safety (such as letters of credit and performance bonds) offset the potential that licenses will be granted to unqualified bidders.

8. Safeguards for Public Safety

APCO supports the Commission's proposal regarding financial protections, including a letter of credit requirement and performance bond. Such requirements are especially important if PSR licenses are sold at "fire-sale" prices to entities with limited financial resources.

9. Local Build-out options

APCO continues to support rules that allow local agencies to construct broadband systems in the 700 MHz band pursuant to authority from the PSBL (which remains the licensee for all of the public safety spectrum). Such build-outs must be on the same technology platform, using the same air interface as the national network, and must be integrated into the national network when the D Block licensee enters the relevant market.

The *3d FNPRM* seeks comment on a proposal that the Commission amend its rules to enable local public safety agencies to use the public safety allocation to deploy broadband public safety systems as soon as practicable and, in a few cases, before the completion of the D Block re-auction and the final selection of the interim air interface. The Commission must take steps to ensure such potential deviations from a national plan are limited to those areas where both the PSBL and the local public safety agencies can come to an acceptable agreement on the initial scope of the project, its anticipated life-cycle, the technology platform to be used for both the system as proposed, and the interoperability between the proposed nationwide public safety network, and, finally, what criteria will be used to trigger both the initial installation and its subsequent wavier. Tightly coupled to the rules governing the initial installation must be the criteria that will trigger that replacement of that network with a D Block compatible network.

APCO has strongly promoted and supported a nationwide public safety broadband network. However, we are also sensitive to the unique needs of a few major metropolitan areas. Accordingly, we recommend the Commission give the PSBL the authority to deal with these issues on a case-by-case basis, but with clearly defined guidelines that provide all concerned the ability to achieve their short- and long-term objectives of both the local public safety agency and the PSBL, while concurrently protecting the viability of a national network and the investment of the successful D Block provider(s). Inherent in this process must be a clearly defined process for waivers and an appeals process should the PSBL, and the local public safety agency, be unable to resolve differences or if the D Block Licensee finds the terms untenable.

C. “Public Safety Issues”

1. Eligible Users

The Commission concludes that Critical Infrastructure Industry (CII) users are not eligible to gain access to the 700 MHz band through the PSBL. While APCO recognizes the statutory limitations regarding 700 MHz public safety spectrum eligibility, there should be a mechanism for the PSBL to coordinate interoperability with CII entities during emergency situations.¹⁰ We are also concerned that an overly narrow interpretation of eligibility could exclude some critical governmental services.

¹⁰ Much of the Commission’s discussion of CII eligibility appears to be a reaction to prior proposals that the PSBL act as a MVNO and that CII entities be among its “customers.” However, all parties have now rejected the MVNO model, and most recognize that there needs to be some viable form of interoperability between CII and public safety users of the shared network.

2. PSBL Issues

a. Non-profit issues

APCO's prior comments raised a number of issues regarding the operations of the PSBL, and we greatly appreciate the Commission's responses to those concerns. We support the Commission's proposed conflict of interest provisions for the PSBL, including prohibitions on funding by contractors. Such changes are essential to restore confidence in the PSBL. We also support a cap on the PSBL's annual funding, though we do not have sufficient information to determine if the proposed cap of \$5 million per year will be sufficient to satisfy the PSBL's obligations. The Commission should require the PSBL to submit a detailed budget (which should include the hiring of a CEO), and if that budget provides sufficient justification for a higher annual payment, that should be approved.

As noted, we agree with a prohibition on the PSBL borrowing funds from its contractors and agents. However, we do not believe that it is necessary to prohibit the PSBL from borrowing funds from independent institutions, so long as there are no equity investments or potential conflicts of interest. Loans over a specified dollar amount should be subject to Commission approval. Of course, bank loans may be difficult to obtain (especially in the current credit environment), but there is no compelling reason to prohibit such financial assistance (*e.g.*, to cover pre-auction expenses or as a "bridge loan" at the end of a fiscal year).

b. fees

The Commission proposes a flat monthly fee of \$48.50 for public safety users of the network. However, there is no substantial basis for that specific fee, which was derived from current fees paid by a relatively small number of public safety entities for access to existing

commercial broadband networks. A better approach is to require the D block licensee to offer rates at a specified discount from commercial rates and that at no time should any customer ever receive a rate lower than what is offered to public safety. Critically, the rate must be low enough to attract substantial public safety participation.

APCO has long advocated that D block licensee must provide public safety with some tangible benefit in exchange for the D block licensee's access to spectrum licensed to the PSBL. While the spectrum is subject to preemption, it nevertheless provides valuable additional capacity for the D block licensee, which would otherwise be limited to just 10 MHz of spectrum. We acknowledge that the D block licensee must pay to build the shared network, but most of those costs would be incurred in any event just to deploy the D Block spectrum. Only the incremental costs of meeting public safety requirements are arguably relevant.

Therefore, the D block licensee should either pay a substantial lease payment to the PSBL (which could then be used to subsidize local usage rates), or it must provide reduced fees to public safety users. The FCC's proposed fee of \$48.50 does not appear to achieve that goal, especially when combined with the relatively small annual lease payment proposed as a means of covering the PSBL's operating cost (raising the lease payment as proposed by the PSBL would still fall far short). Rather than mandating a specific monthly fee, the Commission should consider requiring that the D Block licensee charge a fee not to exceed a specified percentage discount from commercial rates on the network.¹¹ We believe that at least a 20% discount should be offered.

The Commission should also make clear that different fee structures for public safety users are permitted. For example, some agencies may be unable to afford the monthly fee and/or

¹¹ The rule implementing such a discount will need to be drafted carefully to capture the various rate structures that a commercial provider may offer.

do not anticipate heavy broadband network use. For those subscribers, a smaller monthly fee, perhaps with a usage rate would be more appropriate. Some agencies may also be positioned to “trade” access to certain of their telecommunications assets (*e.g.*, tower sites or microwave backbone) that could be used by the shared broadband network in exchange for reduced monthly service fees. The Commission should make clear that such arrangements are permitted, and should be encouraged.

c. Other Essential Components

APCO supports most of the FCC’s proposed changes to the PSBL’s articles of incorporation and bylaws, many of which directly respond to concerns APCO raised in its prior comments. However, the Commission did not adopt our recommendation that it modify the PSBL board composition to add greater expertise, experience and diversity. APCO continues to urge that the Commission identify appropriate steps to ensure that the PSBL’s governance and management has the expertise, experience, and diversity necessary for its successful representation of public safety interests. We also note that important elements of the public safety community continue to feel left out of the process and remain unconvinced that the PSBL in its current form will respond to their needs. Additional steps may be necessary to address those concerns so that the PSBL and the public/private partnership have the broadest support possible from public safety agencies.

APCO supports the substitution of the National Regional Planning Council for the National Emergency Management Association for the reasons set forth in the *3d FNPRM*. We

also greatly appreciate the Commission's direction that organizations represented on the PSBL board have an opportunity to provide timely input into the PSBL's decision-making process.¹²

APCO strongly agrees with the requirement that the PSBL separate the positions of Chairman and CEO. The PSBL needs professional, full-time management from an employee directly responsible to the Board. The substantial day-to-day operations of the PSBL should not fall on the shoulders of the elected Chairman. Thus, we recommend that the Commission require the PSBL to retain a CEO as soon as possible and, in any event, no later than 60 days following completion of the auction. APCO also supports the other organizational changes described in the *3d FNPRM* regarding the board of directors, officers and elections.

The Commission seeks comments on the option of assigning the 700 MHz public safety spectrum to regional licensees rather than to the PSBL. APCO opposes this option. There are no existing entities at the regional level capable of assuming the role of licensee. The regional planning committees are valuable assets, but are little more than small unincorporated committees of volunteers who have full time jobs in public safety agencies. They have no staff or funding, and some rarely meet. Nor are state governments appropriate license holders, in part because the PSRs do not always follow state boundaries. State governments also have different goals and requirements than local public safety agencies, which is why the FCC has generally granted licenses to both states and local governments.

3. Narrowband Relocation

APCO agrees with those comments to be filed by other parties that argue that the Commission's proposed cap of \$27 million is still too low. In particular, the cap does not appear

¹² *3d FNPRM* at ¶410.

to take into consideration the cost of replacing vehicle repeaters, which constitute a substantial percentage of the 700 MHz narrowband radios currently in use. We understand that the PSST and others will be submitting information supporting a much higher cap.

CONCLUSION

The Commission should proceed to adopt rules to promote a national public safety broadband network, consistent with the comments set forth above.

Respectfully submitted,

/s/

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