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Small Entity Compliance Guide

Service Rules for the 698-806 MHz Band —
Revision of the Commission's Rules Concerning Public Safety Spectrum Requirements —
Declaratory Ruling on Reporting Requirements under the Commission's Anti-Collusion Rule —

DA-08-1108

700 MHz Report and Order and 700 MHz Second Report and Order

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; WT Docket No. 96-86; WT Docket No. 07-166

This Guide is prepared in accordance with the requirements of Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. It is intended to help small entities—small businesses, small organizations (non-profits), and small governmental jurisdictions—comply with the new rules adopted in the above-referenced FCC rulemaking docket(s). This Guide is not intended to replace the rules and, therefore, final authority rests solely with the rules. Although we have attempted to cover all parts of the rules that might be especially important to small entities, the coverage may not be exhaustive. This Guide may, perhaps, not apply in a particular situation based upon the circumstances, and the FCC retains the discretion to adopt approaches on a case-by-case basis that may differ from this Guide, where appropriate. Any decisions regarding a particular small entity will be based on the statute and regulations.

In any civil or administrative action against a small entity for a violation of rules, the content of the Small Entity Compliance Guide may be considered as evidence of the reasonableness or appropriateness of proposed fines, penalties or damages. Interested parties are free to file comments regarding this Guide and the appropriateness of its application to a particular situation; the FCC will consider whether the recommendations or interpretations in the Guide are appropriate in that situation. The FCC may decide to revise this Guide without public notice to reflect changes in the FCC's approach to implementing a rule, or to clarify or update the text of the Guide. Direct your comments and recommendations, or calls for further assistance, to the FCC's Consumer Center:

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I. OBJECTIVES OF THE PROCEEDING

In the *700 MHz Report and Order*, released on April 27, 2007 (FCC 07-72) and the *700 MHz Second Report and Order*, released on August 10, 2007 (FCC 07-132), the Federal Communications Commission (Commission or FCC) established rules governing wireless licenses in the 698-806 MHz Band (the “700 MHz Band”). This spectrum corresponds to TV Channels 52-69, and is currently occupied by television broadcasters. It is being made available for wireless services, including public safety and commercial services, as a result of the digital television (“DTV”) transition. In passing the Digital Television Transition and Public Safety Act of 2005 (“DTV Act”), Congress accelerated the DTV transition by providing a date certain, February 17, 2009, for the end of the transition. The Commission adopted rules regarding access to 700 MHz Band spectrum and the provision of service, as well as opportunities for broadband service for public safety users.

As an initial matter, we note that Section 213 of the Consolidated Appropriations Act of 2000 exempts the rules the Commission revised regarding the 746-806 MHz Band (which is a significant portion of the 700 MHz Band) from the requirements of the Regulatory Flexibility Act of 1980, and thus from Section 212 of the Small Business Regulatory Enforcement Fairness Act of 1996. We nevertheless believe that it will serve the public interest to provide guidance regarding these rules in accordance with the requirements of Section 212.

In the *700 MHz Report and Order*, the Commission resolved key issues presented in the 700 MHz Commercial Services and the 700 MHz Guard Bands proceedings. With regard to the 700 MHz Commercial Services proceeding, the Commission took the following actions:

- Adopted a mix of geographic license area sizes for the commercial services, including Cellular Market Areas (CMAs), Economic Areas (EAs), and Regional Economic Areas (REAGs).
- Determined that existing competitive bidding rules do not require modification for purposes of an auction of commercial 700 MHz Band licenses.

- Eliminated the rules that permit comparative hearings for license renewal and clarified the requirements and procedures of the renewal process for 700 MHz Band licensees.
- Shifted the termination date for initial license terms from January 15, 2015, to February 17, 2019, thus giving licensees an initial term not to exceed ten years after the end of the DTV transition.
- Generally adopted a power spectral density (PSD) model, with certain limitations, to provide greater operational flexibility to licensees operating at wider bandwidths, and provided higher radiated power levels for certain 700 MHz Band licensees operating in rural areas.
- Determined that it should continue to allow a 50 kW ERP level for base station operations for already auctioned licenses and for unpaired spectrum in the “Lower 700 MHz Band” (TV Channels 52-59) but concluded that it should modify such power limits for paired spectrum in that Band to match the limits adopted for the “Upper 700 MHz Band” (TV Channels 60-69) to facilitate mobile service on that paired spectrum.
- Modified its 911/E911 rules to remove the service- and band-specific limitations on the applicability of those requirements by ensuring that these rules apply to all commercial mobile radio services (CMRS), no matter what spectrum is employed, to the extent that a service meets the scope requirements in our current rules.
- Generally found that all digital CMRS providers, including providers in the 700 MHz, Advanced Wireless Services (AWS), and the Broadband Radio Service/Educational Broadband Service (BRS/EBS) bands, along with manufacturers of handsets capable of providing such services, should be subject to hearing aid compatibility requirements to the extent that a service satisfies the scope provision in the Commission’s current rules.

With regard to the 700 MHz Guard Bands proceeding, the Commission adopted the following measures to encourage the most effective and efficient use of the spectrum designated as guard bands in the 700 MHz Band (“Guard Bands spectrum”):

- Replaced the current “band manager” leasing regime with the spectrum leasing policies and rules adopted in the Secondary Markets proceeding to provide Guard Band licensees and spectrum users additional flexibility to enter into spectrum leasing agreements
- Eliminated restrictions that prevented Guard Band licensees from using their spectrum as a wireless service provider and restricted their ability to lease to affiliates.

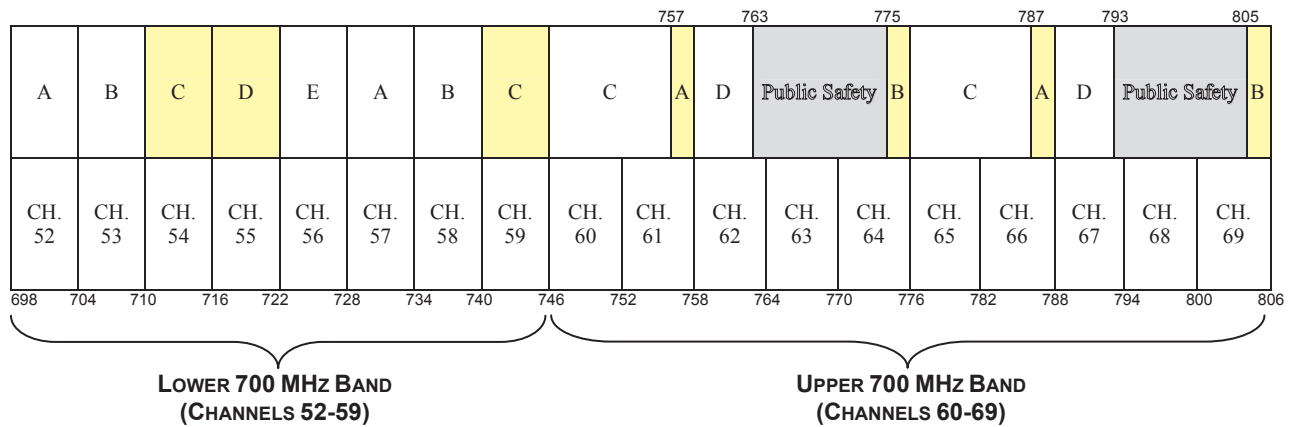
In the *700 MHz Second Report and Order*, the Commission further modified its service rules. Consistent with the Commission’s goals of promoting commercial access to 700 MHz Band spectrum and the development of a nationwide interoperable broadband network for public safety users, the Commission took the following actions in the *700 MHz Second Report and Order*:

- Revised the band plan for both the commercial and the public safety spectrum and adopted related service rules.
- Designated a spectrum block in the upper portions of the commercial spectrum for a commercial licensee that will be part of a public/private partnership (the “700 MHz Public/Private Partnership”) with a national public safety broadband licensee for the public safety broadband spectrum, in a reconfigured 700 MHz Public Safety Band, to promote the development of nationwide interoperable broadband services for public safety users.

- Changed the location of the existing 700 MHz Guard Band licenses, provided for a 1-megahertz shift of the other commercial spectrum blocks in the Upper 700 MHz Band and the 700 MHz Public Safety Band, and reduced the size of the Guard Band B Block to make 2 additional megahertz of commercial spectrum available for auction.

The revised band plan for the commercial services in the 700 MHz Band, including sizes and locations of the geographic service areas and spectrum blocks, is illustrated below.

FIGURE 1: REVISED 700 MHz BAND PLAN FOR COMMERCIAL SERVICES



Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	EA	176
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	CMA	734*
D	716-722	6 MHz	unpaired	EAG	6*
E	722-728	6 MHz	unpaired	EA	176
C	746-757, 776-787	22 MHz	2 x 11 MHz	REAG	12
D	758-763, 788-793	10 MHz	2 x 5 MHz	Nationwide	1**
A	757-758, 787-788	2 MHz	2 x 1 MHz	MEA	52***
B	775-776, 805-806	2 MHz	2 x 1 MHz	MEA	52***

*Blocks have been auctioned.

**Block is associated with the 700 MHz Public/Private Partnership.

***Guard Bands blocks have been auctioned, but are being relocated.

This band plan provides a balanced mix of geographic service area licenses and spectrum block sizes for the 62 megahertz of commercial spectrum to be auctioned. The Commission will auction:

- Two 12-megahertz spectrum blocks (paired 6-megahertz blocks), one licensed by Cellular Market Areas (CMAs) and one by Economic Areas (EAs);
- One 22-megahertz spectrum block (paired 11-megahertz blocks) by Regional Economic Area Groupings (REAGs);
- One 6-megahertz unpaired spectrum block by EAs;
- The Commission designated one 10-megahertz spectrum block (paired 5-megahertz blocks), the Upper 700 MHz Band D Block, to be licensed on a nationwide basis and used as part of the 700

MHz Public/Private Partnership entered between this commercial licensee and the licensee that will be assigned the public safety broadband spectrum (the “Public Safety Broadband License”).

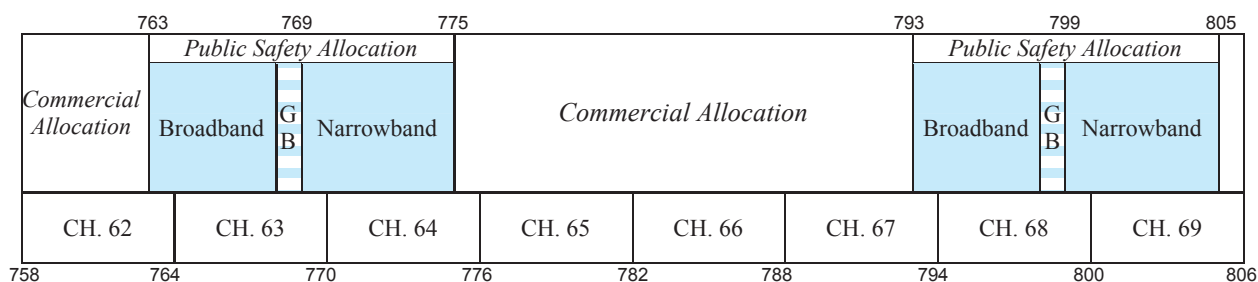
In addition to revising the band plan, the Commission adopted stringent performance requirements for the commercial licenses in the 700 MHz Band that will be auctioned. These rules will require licensees to meet both interim and end-of-term construction benchmarks. CMA and EA licensees are required to provide service sufficient to cover 35 percent of the geographic area of their license authorization no later than February 17, 2013, and 70 percent of the geographic area of their license authorization by the end of the license term, and REAG licensees must provide service sufficient to cover 40 percent of the population in each EA of their license area no later than February 17, 2013, and 75 percent of the population in each EA of their license area by the end of the license term. For licensees that fail to meet the applicable interim benchmark, the license term is reduced by two years. Licensees that fail to meet the end-of-term benchmark will be subject to a “keep what you use” rule, which will make unused spectrum available to other potential users.

The Commission took other actions:

- Determined that for the commercial Upper 700 MHz Band C Block, licensees will be required to allow customers, device manufacturers, third-party application developers, and others to use devices and applications of their choice, subject to certain conditions.
- Concluded that anonymous bidding procedures, which withhold from public release until after the auction closes any information that may indicate specific applicants' interests in the auction, including their license selections and bidding activity, will promote competition for 700 MHz licenses regardless of any pre-auction measurement of likely competition in the auction.
- Clarified by declaratory ruling the continuing nature of the obligation to report communications that are prohibited by the Commission’s Part 1 competitive bidding anti-collusion rule.
- Concluded that using package bidding solely with respect to the licenses in the Upper 700 MHz Band C Block (and not with respect to licenses in the other 700 MHz Band spectrum blocks) will assist bidders that are seeking to create a nationwide footprint without disadvantaging parties that wish to bid on individual licenses comprising the nationwide footprint.
- Found that block-specific aggregate reserve prices should be established for the auction of licenses for 700 MHz Band spectrum. If the block-specific aggregate reserve is met, all licenses in the block will be assigned based on the auction results. If it is not, the Commission provided for a prompt auction of alternative, less restrictive licenses for the A, B, C, and E Blocks, subject to the same applicable reserves.
- Delegated to the Wireless Bureau the authority to propose, establish and implement detailed final auction procedures to implement these conclusions.
- Made several changes to the 700 MHz Guard Bands spectrum. With one exception, all existing Guard Bands A and B Block licensees have agreed to voluntarily “repack” their licenses into a reconfigured Guard Band A Block. All license modifications are consensual, except the relocation of one Guard Band A Block license held by PTPMS II Communications, L.L.C., and the downward shifting by 1 megahertz of its two Guard Band B Block licenses.
- Afforded all Guard Band A Block licensees the same technical rules that apply to the adjacent commercial spectrum, including less restrictive out-of-band emissions limits and frequency coordination requirements, and the ability to deploy cellular architectures.

- Relocated and reduced the Guard Band B Block from 4 to 2 megahertz, which will provide an additional 2 megahertz of commercial spectrum for auction, with the exception of PTPMS II’s two B Block licenses.
- Shifted the 700 MHz Public Safety Band 1 megahertz and reconfigured this band to provide for public safety broadband. Specifically, redesignated the public safety wideband spectrum for broadband use and consolidated the existing narrowband channels to the upper half of the public safety spectrum while designating the lower half for nationwide interoperable broadband communications. The revised band plan is illustrated below.

FIGURE 2: REVISED 700 MHz BAND PLAN FOR PUBLIC SAFETY SERVICES



The revised band plan for the 700 MHz Public Safety Band consists of a 10-megahertz block (paired 5-megahertz blocks) allocated for broadband communications at the bottom of the band (763-768/793-798 MHz), a 2-megahertz internal guard band block (paired 1-megahertz blocks) (768-769/798-799 MHz), and a 12-megahertz block (paired 6-megahertz blocks) allocated for narrowband communications at the top of the band (769-775/799-805 MHz).

- Revised the licensing scheme for public safety users within the band. To effectuate the consolidation of the narrowband channels to the top of the public safety band, a timeframe for transitioning existing narrowband operations was established. Transition of these operations must be completed no later than the DTV transition date. The Upper 700 MHz Band D Block licensee must pay the costs of reconfiguring the public safety spectrum.
- Addressed certain technical criteria related to power levels and the establishment of a broadband standard with a nationwide level of interoperability.
- Created a single nationwide license for the public safety broadband spectrum and specified the criteria, selection process, and responsibilities of the Public Safety Broadband Licensee.
- Provided for the establishment of the 700 MHz Public/Private Partnership between the commercial D Block licensee and the Public Safety Broadband Licensee in the Upper 700 MHz Band, to enable the construction of a nationwide, interoperable broadband public safety network. The terms of the 700 MHz Public/Private Partnership will be governed both by Commission rules and by a Network Sharing Agreement (NSA), which is to be negotiated by the winning bidder for the D Block license and the Public Safety Broadband Licensee. The Commission identified certain network specifications to be incorporated into the NSA, mandated certain terms, and established build-out requirements.
- Elaborated on key components of the 700 MHz Public/Private Partnership, including the preemptible, secondary access that the Upper 700 MHz Band D Block licensee has to the public safety broadband spectrum, and the priority access that the Public Safety Broadband Licensee has, on an emergency basis, to the commercial D Block broadband spectrum.

- Provided several safeguards relating to the 700 MHz Public/Private Partnership, including rules governing the establishment, execution, and application of the NSA, to ensure timely completion of the NSA negotiations and account for disputes that may arise during the negotiations and following execution, as well as a framework to govern ongoing operations and account for the contingency of breaches of obligations under the NSA by either party. This framework involves the imposition of certain structural and other requirements on the D Block licensee and the network intended to protect public safety broadband service.
- Provided means for public safety entities to (1) obtain an earlier build-out of broadband networks than provided for in the NSA, (2) build their own broadband networks in areas not included in the NSA, and (3) conduct wideband operations via a limited and conditioned waiver process.

II. 700 MHz REPORT AND ORDER: REGULATIONS AND POLICIES THAT THE COMMISSION ADOPTED OR MODIFIED, INCLUDING COMPLIANCE REQUIREMENTS

A. 700 MHz Commercial Services

1. Facilitating Access to Spectrum and Provision of Service to Consumers

a. Mix of Geographic Service Area Sizes

The Commission determined that it would replace the unassigned Economic Area Groupings (EAGs) sized license areas, with a mix of geographic licensing areas consisting of Cellular Market Areas (CMAs), Economic Areas (EAs), and Regional Economic Area Groupings (REAGs). For the EAs, REAGs, and CMAs, the Commission will separately license the Gulf of Mexico with each of the following license divisions: EA licensing area 176; REAG licensing area 12; and MSA licensing area 306. The Commission adopts: (i) the same definition of EAs set forth in Section 27.6(h) of the rules, currently applicable for AWS-1 spectrum, for EA licenses in the 700 MHz Commercial Services Band; (ii) the same definition of REAGs set forth in Section 27.6(h) of the rules, currently applicable for AWS-1 spectrum, for REAG licenses; and (iii) the same definition of MSA/RSAs set forth in Section 27.6(c), currently applicable to the C Block of the Lower 700 MHz Band, for CMAs. As the Commission has done in licensing other Part 27 services, the Gulf of Mexico service area is comprised of the water area of the Gulf of Mexico starting 12 nautical miles from the U.S. Gulf coast and extending outward

2. Additional Rules for Licensees

a. Criteria for Renewal

The FCC clarified that all licensees in the 700 MHz Commercial Services Band seeking renewal of their authorizations at the end of their license term must file a renewal application in accordance with the provisions of § 1.949 of the FCC's rules. Consistent with existing rules, as part of this renewal requirement licensees must demonstrate in their applications that they have provided substantial service during their past license term, which is defined as service that is sound, favorable, and substantially above a level of mediocre service that just might minimally warrant renewal. This requirement is distinct from performance requirements. Substantial service in the renewal context, as opposed to coverage benchmarks established for the performance requirement context, encompasses FCC consideration of a variety of factors including the level and quality of service, whether service was ever interrupted or discontinued, whether service has been provided to rural areas, and any other factors associated with a licensee's level of service to the public. Accordingly, a licensee that meets the applicable performance requirements might nevertheless fail to meet the substantial service standard at renewal. Licensees must

demonstrate at renewal that they have substantially complied with all applicable FCC rules, policies, and the Communications Act of 1934, as amended, including any applicable performance requirements.

Under the revised § 27.14 of the FCC's rules, the FCC also eliminated the filing of competing applications to requests for renewal of these 700 MHz licenses. Under the revised § 27.14, the FCC adopted a process by which 700 MHz Commercial Services Band licenses revert to the FCC for re-auction if a license is not renewed.

b. License Terms

The FCC revised its rules to provide that initial authorizations for the 700 MHz Commercial Services Band will have a term not to exceed 10 years from February 17, 2009, which is the firm deadline for the DTV transition. Subsequent renewals will be for terms not to exceed 10 years. This revised license term will apply to all licenses in the 700 MHz Commercial Services Band. However, because § 307(c)(1) of the Communications Act provides that a license for operating a broadcast station shall not be granted for a term that exceeds 8 years, the FCC retained the current provision that a part 27 licensee commencing broadcast services will be required to seek renewal of its license for such services at the termination of the eight-year term following commencement of such operations. The FCC did not revise the license term for Guard Band licensees because such revisions fall beyond the scope of the 700 MHz Commercial Services proceeding. The FCC extended the revised license term to both the already auctioned and unauctioned licenses in the 700 MHz Commercial Services Band.

c. Power Limits for Lower 700 MHz Band and Upper 700 MHz Commercial Services Band Base Stations

The FCC modified its power limit rules for the Lower 700 MHz Band and the Upper 700 MHz Commercial Services Band in a number of ways. First, the FCC implemented a PSD model for defining power limits for base stations operating in the entire 700 MHz Commercial Services Band. The current power limit rules do not specify a bandwidth over which a licensee's power is to be limited, and could be construed to mean that the power limit applies on a "per emission" basis. Because some licensees may only transmit one emission within their given bandwidth, while others using technologies with narrower emissions might employ multiple emissions over that bandwidth, construing the power limit to apply on a "per emission" basis could allow licensees employing multiple emissions to transmit more total energy in their authorized spectrum blocks than licensees with only one emission in their spectrum blocks. To better accommodate all technologies, the FCC clarified that the maximum allowable power levels in the 700 MHz Commercial Services Band are to be defined on a "per megahertz of spectrum bandwidth" basis, rather than on a "per emission" basis. This clarification will enable higher power signals from wider band technologies, but will not result in a decrease in the total power currently allowed in the band from narrower band technologies. Given this clarification, the FCC also adopted additional measures to protect against any possible increased risk of interference, especially to 700 MHz public safety users.

Specifically, the FCC allowed 700 MHz Commercial Services Band licensees employing bandwidths greater than 1 megahertz to meet a base station power limit of 1 kW/MHz ERP (*i.e.*, no more than 1 kW ERP in any 1 megahertz band segment). Licensees operating with bandwidths of less than one megahertz will, however, continue to be permitted to operate at power levels up to 1 kW ERP over their bandwidth. Thus, for example, a licensee transmitting a signal with a bandwidth of 5 megahertz could employ a power level of 5 kW ERP over the 5 megahertz bandwidth, with each 1 megahertz band segment within the 5 megahertz bandwidth being limited to 1 kW ERP; and a licensee transmitting a signal with a bandwidth of 200 kilohertz could employ a power level of 1 kW ERP over the 200 kilohertz bandwidth.

In response to proposals by parties seeking greater power limits for rural area operations, the FCC permitted power levels of up to 2 kW/MHz ERP in rural areas, and consistent with its decision above, the FCC allowed rural licensees operating with bandwidths less than one megahertz to operate at power levels up to 2 kW ERP over their bandwidth. In implementing this decision, the FCC defined rural areas, consistent with the *Rural Report and Order*, as those counties in the U.S. having a population of fewer than 100 people per square mile, based on the most recently available population statistics from the Bureau of the Census. The FCC required any 700 MHz Commercial Services Band licensee seeking to operate a base station under our rules permitting power levels greater than 1 kW ERP in rural areas to coordinate in advance with all non-public safety 700 MHz licensees authorized to operate within 75 miles of the station and with all 700 MHz Regional Planning Committees that have jurisdiction within 75 miles of the station.

Licensees in the Lower 700 MHz Band are allowed to use up to 50 kW ERP if they do not produce signals exceeding a power flux density (PFD) of 3 mW/m^2 on the ground within 1 kilometer of the station. A number of commenters expressed views on the appropriateness of the current, maximum 50 kW ERP capability for Lower 700 MHz Band operations. Considering these comments, the FCC made certain modifications to the power limit rules in the Lower 700 MHz Band. Specifically, the FCC retained the ability of incumbent C and D Block licensees to employ power levels up to 50 kW ERP. In addition, because the FCC believed that unpaired blocks are conducive to the provision of broadcast-type operations, it permitted licensees operating in any unpaired block(s) in the Lower 700 MHz Band to operate at a power level of 50 kW ERP as well. However, because the FCC believed that paired blocks are generally more conducive to the provision of mobile services, it did not extend to new licensees operating in any Lower 700 MHz Band paired blocks the ability to operate at 50 kW ERP. In reaching this decision, the FCC concluded that it would not be appropriate to reduce the power limits of incumbent Lower 700 MHz Band licensees, who acquired their spectrum with the expectation that they would be able to employ 50 kW ERP transmissions in the band.

The FCC clarified that the 50 kW ERP limit for the current C and D Blocks, and any additional unpaired block(s) in the Lower 700 MHz Band, is a cap on the average total power of all emissions within the full authorized spectrum of the blocks. For example, a single incumbent C or D Block base station with an emission bandwidth of 1 megahertz could transmit with the full 50 kW ERP, but no other emissions would be permitted in the remaining 5 megahertz of the block. This limit would also apply to the cumulative emissions of both licensees if a 6 megahertz incumbent or unauctioned unpaired block is disaggregated.

To mitigate the potential for harmful interference to adjacent channel operations, the FCC required the following. For Lower 700 MHz Band licensees, if operating with a bandwidth of 1 megahertz or less and a transmitting power greater than 1 kW ERP non-rural or 2 kW ERP rural, or if operating with a bandwidth of more than 1 megahertz and a PSD greater than 1 kW/MHz ERP non-rural or 2 kW/MHz ERP rural, then that licensee must comply with the 3 mW/m^2 PFD limit. Thus, for example, a non-rural licensee transmitting an 8 kW ERP signal in a 5-megahertz bandwidth or a rural licensee transmitting a 4 kW ERP signal in a 1.25 megahertz bandwidth would have to satisfy the 3 mW/m^2 PFD limit. However, a licensee transmitting an 800 watt ERP signal in a 200 kilohertz bandwidth or a 4 kW ERP signal in a 5-megahertz bandwidth, or a rural licensee transmitting an 8 kW ERP signal in a 5-megahertz bandwidth, would not have to meet the PFD limit. Because the FCC wished to remain especially vigilant regarding the potential for interference to public safety operations, it imposed the following additional requirement on Commercial Services licensees operating in the Upper 700 MHz Band. Specifically, all Upper 700 MHz Commercial Services Band licensees, both rural and non-rural, transmitting signals at a power levels greater than 1 kW ERP, irrespective of bandwidth, must satisfy the 3 mW/m^2 PFD limit. Thus, for

example, an Upper 700 MHz Commercial Services Band licensee transmitting a 4 kW ERP signal in a 5-megahertz bandwidth would have to meet the PFD limit.

d. Power Limit Issues in WT Docket No. 03-264

The FCC employed PSD for defining power limits in the 700 MHz Band. The FCC also adopted the use of “average,” rather than “peak” power in measuring power levels. Although the use of “average” power will effectively result in an increase in 700 MHz Band power levels for non-constant envelope technologies, such as CDMA and WCDMA, the “average” measurement approach is a more accurate measure of the interference potential for these technologies.

For purposes of clarifying the use of the “average power” measurement technique, the FCC made the following determinations. First, the FCC concluded that the technique shall be made during a period of continuous transmission and be based on a measurement using a 1 megahertz resolution bandwidth. Second, the FCC restricted the peak-to-average (“PAR”) ratio of the radiated signal to 13 dB. Limiting the PAR to 13 dB strikes a balance between enabling licensees to use modulation schemes with high PARs (such as OFDM) and protecting other licensees from high PAR transmissions. Parties seeking to employ the “average power” measurement technique should consult with the FCC Laboratory for guidance on the appropriate averaging method for the particular technology they plan to use.

e. Other Technical Issues

The FCC, required Upper 700 MHz Commercial Services Band licensees and 700 MHz public safety entities, upon request from the other, to exchange information about their stations and systems. The FCC adopted this requirement in order to limit the potential for IM interference to 700 MHz public safety mobile and portable devices from the transmissions of Upper 700 MHz Commercial Service Band base stations.

f. 911/E911 Requirements

The FCC concluded that § 20.18(a) should be amended to apply 911/E911 requirements to all commercial mobile radio services (CMRS), including services licensed in the 700 MHz Commercial Services Band and the AWS-1 bands, to the same extent as they apply to wireless services currently listed in the scope provision of § 20.18. Thus, CMRS providers must comply with the 911/E911 requirements solely to the extent that they “[offer] real-time, two way switched voice service that is interconnected with the public switched network and utilize an in-network-switching facility which enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls” (hereinafter, the “§ 20.18(a) criteria”). The FCC, however, decided to continue to exclude MSS from § 20.18 in conformity with the Commission’s decision in the *E911 Scope Order*.

g. Hearing Aid-Compatible Wireless Handsets

For reasons similar to those discussed in the E911 section above, the FCC determined that all digital CMRS providers, including providers of such services in the 700 MHz Commercial Services Band and the AWS-1 and BRS/EBS bands, should be subject to hearing aid compatibility requirements under § 20.19 to the extent they offer real-time, two-way switched voice or data service that is interconnected with the public switched network and utilizes an in-network switching facility that enables the provider to reuse frequencies and accomplish seamless hand-offs of subscriber calls. In addition, manufacturers of wireless handsets that are capable of providing such service also should be made subject to the applicable requirements of § 20.19. However, the existence of an established, applicable technical standard is a statutory requirement for imposing hearing aid compatibility requirements. Because no such standard

currently exists for any services beyond the broadband PCS, Cellular, and certain SMR bands, the FCC could not impose hearing aid compatibility requirements on additional services. The FCC did commit to bringing all digital CMRS within the scope of the § 20.19 requirements as appropriate technical standards are developed, and the Commission took steps to promote the development of these technical standards, as discussed below. In particular, the FCC established a specific timetable for the development of the necessary technical standards for those new services that have governing service rules in place. The FCC amended the rule to reflect these determinations.

The FCC decided to continue to monitor progress to make sure that the adoption of such standards proceeds in a timely manner. If no standards have been adopted within 24 months, the FCC will consider alternative means to implement compatibility requirements, including whether to develop new metrics for compliance entirely and/or whether to extend the C63.19-2006 standard for the 800 MHz Band into the 700 MHz Commercial Services Band, as HIA suggests. The FCC did not establish a schedule for future action regarding bands other than the current § 27.1(b) bands because it does not appear to be possible to develop compatibility standards in the absence of service rules.

B. 700 MHz Guard Bands

The FCC replaced the Guard Band Manager regime in favor of the spectrum leasing policies and rules adopted in the Secondary Markets proceeding, and removed certain use and eligibility restrictions regarding licensee operations and leasing to affiliates to encourage the most effective and efficient use of the Guard Bands spectrum. While the FCC sought to provide licensees and spectrum lessees with greater latitude and remove regulatory barriers where possible, it retains the existing Guard Band Manager coordination requirements.

a. Adoption of Secondary Markets Leasing Rules

To provide maximum flexibility, Guard Band licensees now have the option of entering into both spectrum manager leasing and *de facto* transfer leasing arrangements. The FCC emphasized, however, that by affording 700 MHz Guard Band licensees greater flexibility, particularly in the *de facto* transfer leasing context, it is not minimizing in any way the requirement that these licensees must ensure that adjacent public safety operations are protected from harmful interference. Protection of 700 MHz public safety operations from interference remains the primary goal of the Commission's policies relating to the 700 MHz Guard Bands.

Although the FCC recognized that the additional flexibility afforded by the *de facto* transfer spectrum leasing option transfers the primary responsibility for ensuring interference protection to the spectrum lessee, the FCC concluded that public safety users will still be protected from interference under the Secondary Markets spectrum leasing rules. Under this option, 700 MHz Guard Band licensees continue to retain some responsibility for operations encompassed under their license authorizations, and may be held responsible in cases of ongoing violation or other egregious lessee behavior for which licensees have, or should have, knowledge. More importantly, although the FCC expects Guard Band licensees to continue to exercise some oversight of its lessees, the Commission retained direct authority to pursue remedies against lessees under § 503(b) of the Act. Spectrum lessees, whether under a spectrum manager leasing arrangement or a *de facto* transfer leasing arrangement, must strictly comply with the technical restrictions of the band, and must expressly agree to comply with all applicable Commission rules as a condition of the spectrum leasing arrangement. Regardless of whether the licensee or spectrum lessee holds primary responsibility for compliance with FCC rules, the FCC maintained the ability to take direct and swift action to enforce compliance with its rules.

b. Use and Operational Flexibility

In addition to providing licensees and other spectrum users additional flexibility provided under our general Secondary Markets spectrum leasing rules, the FCC concluded that other changes to the 700 MHz Guard Bands rules should be made to promote more efficient and effective use of this spectrum.

Band Manager Status. The FCC has now revised its rules to permit licensees to operate as wireless service providers. To the extent that a licensee chooses to provide service, the FCC required that the licensee update their license information if they plan to switch their regulatory status, and the FCC noted that licensees will be responsible for meeting all other obligations relating to their change in status.

Restrictions on Leasing to Affiliates. Similarly, the FCC concluded that it is in the public interest to remove the current restriction precluding any licensee from leasing more than 49.9 percent of its licensed spectrum to affiliates.

Coordination Requirement. The FCC did not change the coordination requirements for Guard Band licensees currently contained in § 27.601(d)(1) of its rules. Given that the FCC adopted the Secondary Markets spectrum leasing rules for the Guard Band service, the FCC clarified how these coordination requirements will work in the context of spectrum leasing arrangements. To the extent a licensee enters into a spectrum manager lease arrangement, it retains *de facto* control of the spectrum and primary responsibility for ensuring compliance with the rules. Accordingly, for this type of spectrum leasing arrangement, the licensee is required to carry out these coordination responsibilities. If, however, a licensee enters into a *de facto* transfer leasing arrangement, the coordination and notification tasks set forth in § 27.601 of the FCC's rules (as well as other responsibilities associated with *de facto* control) are, upon FCC approval, transferred from the licensee to the spectrum lessee. In this latter type of arrangement, the FCC noted that although the spectrum lessee becomes primarily responsible for complying with the required frequency coordination responsibilities under the license authorization, the FCC will continue to hold licensees responsible for the failure of a spectrum lessee to comply with the FCC's frequency coordination requirements.

III. 700 MHz SECOND REPORT AND ORDER: REGULATIONS AND POLICIES THAT THE COMMISSION ADOPTED OR MODIFIED, INCLUDING COMPLIANCE REQUIREMENTS

A. Commercial 700 MHz Band, Including 700 MHz Guard Bands

1. Band Plan

The Commission adopted a revised band plan that provides for auctioning a total of 62 megahertz of spectrum – 30 megahertz in the Lower 700 MHz Band and 32 megahertz in the Upper 700 MHz Band – in the 700 MHz Band auction and designated one 10-megahertz block (paired 5-megahertz blocks) of this commercial spectrum, adjacent to the Public Safety spectrum, to be used as part of the 700 MHz Public/Private Partnership. With regard to the size of geographic service areas and size of the spectrum blocks of the licenses to be auctioned, the Commission adopted a mix of geographic area sizes, comprised of CMAs, EAs, and REAGs, and including one 22-megahertz block (paired 11-megahertz blocks).

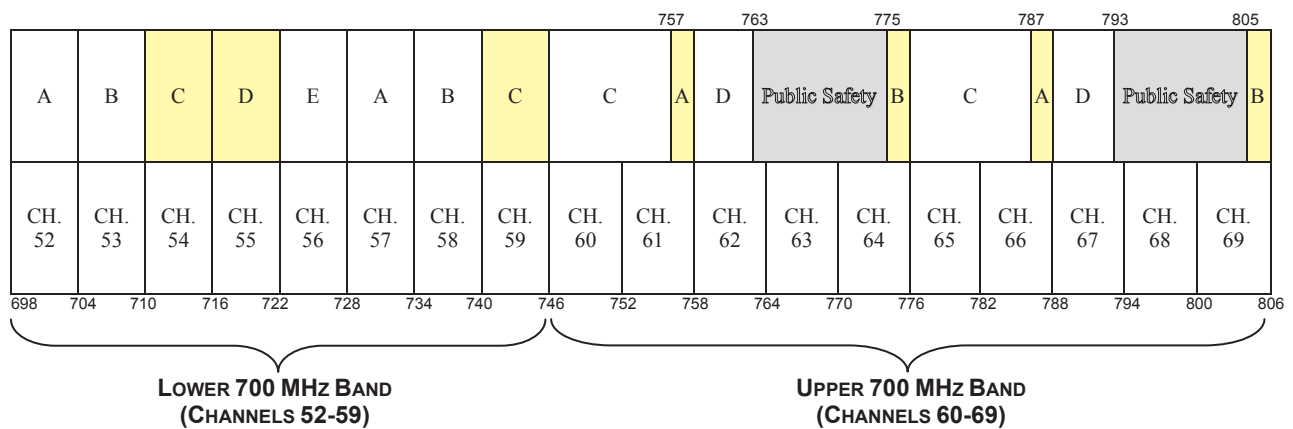
a. Commercial Spectrum (Excluding Guard Bands Spectrum)

In the *700 MHz Report and Order*, the Commission determined that a balanced mix of geographic service area licenses – CMAs, EAs, and REAGs – would be appropriate for the commercial 700 MHz Band licenses that will be auctioned. In the *Second Report and Order*, the Commission reaffirmed that

determination for all of this commercial spectrum except for that associated with the 10-megahertz commercial license (comprised of paired 5-megahertz blocks), which will be auctioned on a nationwide basis for use as part of the 700 MHz Public/Private Partnership with the Public Safety Broadband Licensee. The Commission further determined that a mix of spectrum block sizes, including one large 22-megahertz block (comprised of paired 11-megahertz blocks), is appropriate for the 700 MHz Band licenses that remain to be auctioned.

The Commission will license three commercial blocks of paired spectrum – one 12-megahertz block (paired 6-megahertz blocks) on a CMA basis, one 12-megahertz block (paired 6-megahertz blocks) on an EA basis, and one 22-megahertz block (paired 11-megahertz blocks) on an REAG basis – as well as one 6-megahertz block of unpaired spectrum on an EA basis. The following figure shows this new band plan:

FIGURE 3: REVISED 700 MHz BAND PLAN FOR COMMERCIAL SERVICES



Block	Frequencies	Bandwidth	Pairing	Area Type	Licenses
A	698-704, 728-734	12 MHz	2 x 6 MHz	EA	176
B	704-710, 734-740	12 MHz	2 x 6 MHz	CMA	734
C	710-716, 740-746	12 MHz	2 x 6 MHz	CMA	734*
D	716-722	6 MHz	unpaired	EAG	6*
E	722-728	6 MHz	unpaired	EA	176
C	746-757, 776-787	22 MHz	2 x 11 MHz	REAG	12
D	758-763, 788-793	10 MHz	2 x 5 MHz	Nationwide	1**
A	757-758, 787-788	2 MHz	2 x 1 MHz	MEA	52***
B	775-776, 805-806	2 MHz	2 x 1 MHz	MEA	52***

*Blocks have been auctioned.

**Block is associated with the 700 MHz Public/Private Partnership.

***Guard Bands blocks have been auctioned, but are being relocated.

With respect to the mix of geographic service area licenses under the revised band plan for the 70 megahertz of commercial spectrum in the 700 MHz Band that is neither Guard Band spectrum nor spectrum designated for the Public/Private Partnership, a total of 24 megahertz will be provided on a CMA basis (including 12 megahertz already auctioned), 18 megahertz on an EA basis, and 28 megahertz on an REAG/EAG basis (including 6 megahertz already auctioned on an EAG basis, which are large licensed areas similar to REAGs).

CMA in a 12-Megahertz Spectrum Block (Paired 6-Megahertz Blocks) in the Lower 700 MHz Band B Block. The Commission will license one additional spectrum block in the 700 MHz Band on a CMA

basis, to be located in the B Block of the Lower 700 MHz Band immediately adjacent to the existing CMA-based licenses.

REAGs in a 22-Megahertz Spectrum Block (Paired 11-Megahertz Blocks) in the Upper 700 MHz Band C Block. The Commission concluded that a 22-megahertz block of paired spectrum should be located in the C Block in the Upper 700 MHz Band and licensed on a REAG basis.

EAs in a 12-Megahertz Spectrum Block (Paired 6-Megahertz Blocks) in the Lower 700 MHz Band A Block. The Commission adopted EAs as the geographic service area for licenses in Block A of the Lower 700 MHz Band, making 176 licenses available in this block.

EAs in a 6-Megahertz Unpaired Spectrum Block in the Lower 700 MHz Band E Block. The Commission adopted EAs for the unpaired 6-megahertz E Block of the Lower 700 MHz Band.

b. Guard Bands Spectrum

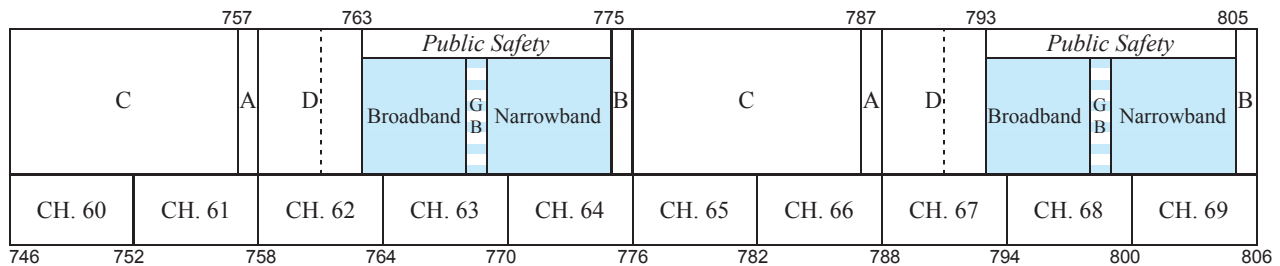
The Commission determined that with the reconfiguration of the 700 MHz Public Safety Band, the Guard Band B Block will no longer be necessary as a guard band between the non-Guard Bands commercial spectrum, and the public safety broadband spectrum. However, a reconfigured 1-megahertz B Block remains necessary as a guard band between the public safety narrowband channels and the upper half of the paired C Block. To enable a more efficient, shared interoperable broadband network, the FCC located the Guard Band A Block between the Upper 700 MHz Band C and D Blocks, shifting the public safety broadband allocation downward by 1 megahertz and placing it adjacent to the commercial D Block that will be used for the 700 MHz Public/Private Partnership. This new band plan addresses potential public safety narrowband interoperability issues in border areas, and frees up 2 megahertz of Guard Band B Block spectrum nationwide (except for PTPMS II's two grandfathered MEAs) to be included in the auction of commercial spectrum.

(i) Revisions to Upper 700 MHz Band Plan for Guard Bands

The Commission adopted the July 6, 2007 Guard Bands Proposal, which is based on the agreement of all Guard Band licensees except PTPMS II, whose two Guard Band B Block licenses the Commission grandfathered, and whose one Guard Band A Block license the Commission repacked into the reconfigured Guard Band A Block. The Commission concluded that the existing Guard Band B Block is no longer needed as a guard band to protect the adjacent 700 MHz public safety users, and to the extent possible, should be consolidated with the remaining commercial spectrum for more efficient and effective use.

The figure below depicts the revised Upper 700 MHz Band Plan.

FIGURE 4: REVISED UPPER 700 MHz BAND PLAN INCLUDING GUARD BANDS



Funding for Public Safety Reconfiguration. As the result of these changes to the band plan, the Upper 700 MHz D Block now is immediately adjacent to the 700 MHz public safety broadband spectrum. The D Block licensee must pay the costs of consolidating the 700 MHz public safety narrowband channels to the upper half of the 700 MHz Public Safety Band.

License Modifications. Pursuant to Section 316 of the Act (*See* 47 U.S.C. § 316(a)(1)), the Commission determined that the public interest, convenience, and necessity will be served by relocating all existing Guard Band A Block licenses to the reconfigured Guard Band A Block located at 757-758 MHz and 787-788 MHz. With the exception of PTPMS II, which holds one A Block license and two B Block licenses, the license modifications are consensual. The lower portion of the reconfigured commercial Guard Band B Block at 775-776 MHz will provide a necessary guard band between public safety narrowband communications and adjacent commercial services. The Commission will specify appropriate uses of this spectrum, and the related portion of the B Block at 805-806 MHz, at a future date.

Spectrum Use Agreements. Pursuant to Section 309(f) of the Act (47 U.S.C. § 309(f)) the Commission granted Access Spectrum 180-day special temporary authorizations for MEAs 20, 26, 32, 37, 44, and 52 for the current Guard Band A Block (746-747 MHz, 776-777 MHz). The Commission expects Access Spectrum to make a concerted effort to relocate all systems during the 180-day period, including the CII system in MEA 20. In the event that Access Spectrum cannot complete the transition of the CII system during the 180-day period, it may seek an appropriate extension of the STA upon a proper showing. Because the Commission modified the Guard Band A Block MEA licenses held by Access Spectrum, Pegasus, and Dominion upon the effective date of the *700 MHz Second Report and Order*, the six STA grants to Access Spectrum will be granted upon the effective date (October 23, 2007) as well.

PTPMS II. To ensure that critical interoperable public safety communications are uniform throughout the continental United States, The Commission modified PTPMS II’s Guard Band A Block license in Buffalo (MEA 003), pursuant to Sections 316, 303, 301, and 4(i) of the Act (47 U.S.C §§ 316, 303, 301, 154(i)), to operate in the same geographic area but in the reconfigured A Block at 757-758 MHz and 787-788 MHz. It also modified PTPMS II’s B Block licenses in Des Moines – Quad Cities (MEA 021) and El Paso – Albuquerque (MEA 039) by shifting them down by 1 megahertz, so that PTPMS II is authorized to operate at 761-763 MHz and 791-793 MHz.

As a result of these foregoing modifications, the new nationwide Upper 700 MHz Band D Block license, at 758-763 MHz and 788-793 MHz, will be authorized in Des Moines – Quad Cities (MEA 021) and El Paso – Albuquerque (MEA 039) on a secondary basis to PTPMS II. As such, the D Block licensee may not cause interference to primary operations of PTPMS II or claim protection from harmful interference from any operations of PTPMS II in those MEAs. The D Block licensee must cease operations on the spectrum assigned to PTPMS II in these two markets if it poses an interference problem to PTPMS II.

If PTPMS II, or a successor or an assign of PTPMS II, elects to cancel either of its grandfathered licenses, or if either license cancels automatically, or is terminated by the Commission, then the licensed geographic area will revert, without further action by the Commission, to the D Block licensee. This reversionary interest will include the right to operate under the technical rules consistent with those that apply to the remainder of the D Block license. The Commission afforded PTPMS II's Guard Band A Block license the modified (less stringent) technical rules that were adopted for all other Guard Band A Block licenses.

2. Service Rules

a. Commercial Services (Excluding Guard Bands and Upper 700 MHz D Block)

(i) Performance Requirements

The Commission replaced the current “substantial service” requirements for the 700 MHz Band licenses that have not been auctioned with significantly more stringent performance requirements. These include the use of interim and end-of-term benchmarks, with geographic area benchmarks for licenses based on CMAs and EAs, and population benchmarks for licenses based on REAGs. Licensees must meet the interim requirement within four years of the end of the DTV transition (*i.e.*, February 17, 2013). Failure to meet the interim requirement will result in a two-year reduction in license term (as adopted in the *700 MHz Second Report and Order*, the length of original license term is ten years from the date of the DTV transition), as well as possible enforcement action, including forfeitures. The Commission also reserved the right for those that fail to meet their interim benchmarks to impose a proportional reduction in the size of the licensed area. Licensees that fail to meet the end-of-term benchmarks will be subject to a “keep-what-you-use” rule, under which the licensee will lose its authorization for unserved portions of its license area, which will be returned to the Commission for reassignment. Licensees that fail to meet their respective performance requirements may also be subject to potential enforcement action, including possible forfeitures or cancellation of license. The Commission also imposed certain reporting requirements intended to help the Commission monitor buildout progress during the license term. The Commission did not envision granting waivers or extensions of construction periods except where unavoidable circumstances beyond the licensee's control delay construction.

Specific Performance Requirements for CMA and EA Licenses. The Commission concluded that, for licenses based on CMAs and EAs, licensees must provide signal coverage and offer service to (1) at least 35 percent of the geographic area of each of their license authorizations within four years of the end of the DTV transition, and (2) at least 70 percent of the geographic area of each of their license authorizations by the end of the license term.

In determining the relevant geographic area, the Commission concluded that, in applying geographic benchmarks, the Commission should not generally consider the relevant area of service to include government lands. CMA or EA licensees that fail to meet the interim requirement within their license areas will have their license terms reduced by two years, thus requiring these licensees to meet the end-of-term benchmark at an accelerated schedule. For those CMAs or EAs in which the end-of-term performance requirements have not been met, the unused portion of the license will terminate automatically without Commission action and will become available for reassignment by the Commission subject to “keep-what-you-use” rules.

To the extent the licensee employs a signal level and provides service to land that is owned or leased by government, the licensee may count this land area and coverage as part of its service area for purposes of measuring compliance with the build-out benchmark, but it also must add the covered government land to the total geographic area used for measurement purposes. This approach ensures that licensees receive credit for land that they cover and give them flexibility to meet the Commission's benchmarks through a combination of covering government and non-government land, given that in certain cases government lands may be a high traffic area or include a significant portion of the population in a license area.

Specific Performance Requirements for REAG Licenses. The Commission concluded that, for licenses based on REAGs, licensees must provide signal coverage and offer service to: (1) at least 40 percent of the population of each EA comprising the REAG license area within four years of the end of the DTV transition, and (2) at least 75 percent of the population of each EA comprising the REAG license area by the end of the license term. Licensees should use population based on the most recently available U.S. Census Data.

REAG licensees that fail to meet the interim requirement in any EA within their license areas will have their license term for the entire REAG reduced by two years, thus requiring these licensees to meet the end-of-term benchmark at an accelerated schedule. In applying the end-of-term coverage requirement to REAG licensees, the Commission will evaluate the licensee's coverage on an EA-by-EA basis. For those EAs in which the end-of-term performance requirements have not been met, the unused portion of the license will terminate automatically without Commission action and will become available for reassignment by the Commission subject to "keep-what-you-use" rules.

Reporting Requirements. The Commission adopted a reporting requirement that will require licensees to provide the Commission with information concerning the status of their efforts to meet the performance requirements and the manner in which their spectrum is being utilized. In addition, this information will be useful to monitor whether further assessment of the rules or other actions are necessary in the event spectrum is being stockpiled or warehoused, or if it is otherwise not being made available despite existing demand.

For licensees that meet their interim benchmarks, these reports will be filed at the end of the second and seventh years following the end of the DTV Transition, *i.e.*, February 17, 2011 and February 17, 2016. For licensees that do not meet their interim benchmarks and have their license terms reduced, the second report will be filed at the end of the sixth year following the end of the DTV Transition, *i.e.*, February 17, 2015.

The information to be reported will include: 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 in which those services are available.

Procedures for Implementation. Licensees must demonstrate compliance with the Commission's interim and end-of-term construction benchmarks by filing a construction notification with the Commission within 15 days of the relevant benchmark certifying that they have met performance requirements or, if they have not met performance requirements, they must file a description and certification of the areas for which they are providing service. (*See* 47 C.F.R. § 1.946(d)).

The information contained in the licensee's construction notification must include:

- Electronic coverage maps and other supporting documentation (47 C.F.R. § 24.203(c)). The construction notification, including the coverage maps and supporting documents, must be truthful and accurate and must not omit material information that is necessary for the Commission to make a determination of compliance with its performance requirements. (*See, e.g.*, 47 C.F.R. § 1.17). The Commission delegated to the Wireless Bureau the responsibility for establishing the specifications for filing maps and other documents (*e.g.*, file format and appropriate data) needed to determine a licensee’s geographic coverage area.

When the licensee files its construction notification, including its coverage maps and supporting documentation, the public will be given an opportunity to review and comment on the construction notification, including the maps provided by the licensee and the technical assumptions used to create the maps. After examining the notification and public comments, Commission staff will make a final determination as to what areas within EAs and CMAs are, and are not, deemed “served.” If the Commission determines that a licensee meets the applicable interim benchmark, it will not have its license term reduced by two years. Likewise, if the Commission determines that a licensee meets its applicable end of term benchmark requirement, it will be deemed to have met its construction build-out requirement.

Under “keep-what-you-use” rules, if a licensee fails to meet its end of term benchmark, its authorization to operate will terminate automatically without Commission action for those geographic areas of its license authorization in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. The Commission will update the Universal Licensing System records to reflect those geographic areas for which the licensee retains authority to operate, as well as those geographic areas that will be made available for reassignment.

For purposes of reassigning these licenses, the Wireless Bureau has delegated authority to announce by public notice that these licenses 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 lost their license authorizations for the areas that they did not serve 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 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.

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 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 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. Any applications that are mutually exclusive under the performance requirements adopted in the *700 MHz Second Report and Order*, as well as certain other pleadings, will be subject to Section 1.935 of the rules (47 C.F.R. § 1.935). Under that rule, parties that have filed applications that are mutually exclusive with one or more other applications must request Commission approval to dismiss or withdraw the applications. Parties are required to submit any written agreement related to the dismissal or withdrawal as well as affidavits certifying that no money or other consideration in excess of certain “legitimate and prudent expenses” has or will be exchanged in return for withdrawing or dismissing the applications.

A licensee obtaining spectrum that was lost through “keep-what-you-use” rules will have one year from the date it is issued a license to complete its construction and provide signal coverage and offer service to the entire new license area. If the licensee fails to meet this construction requirement, its license will automatically cancel without Commission action and it will not be eligible to apply to provide service to this area on the same frequencies at any future date.

Under “keep-what-you-use” rules, the Commission will determine whether an area is unserved by applying a *de minimis* standard similar to that applied to the cellular service, which provides that 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). Areas smaller than this will not be deemed unserved by the Commission, because auctioning and licensing smaller areas to new licensees could result in harmful interference to incumbent licensees. Accordingly, unserved areas that are smaller than 130 kilometers will continue to be a part of the licensee’s license area. In those geographic areas that the Commission deems as served, the licensee will retain its exclusive spectrum rights, including the ability to transfer control of the license and assign the license and lease spectrum in these areas. The licensee also will have the opportunity to expand its service into the unused parts of its original license area.

The Commission will enforce performance requirements to make unserved areas available to new entrants and all other Commission rules, including those related to protecting licensees against interference and limiting strategic behavior.

Other Issues. The Commission declined to adopt the proposal that would allow third parties to access the unused portions of a licensee’s spectrum on a non-interfering basis.

(ii) Partitioning and Disaggregation

Partitioning. The Commission established two options for partitioners and partitionees with regard to the commercial 700 MHz licenses that have not yet been auctioned.

The first option: The partitioner and partitionee must each certify to the Commission that they will share responsibility for meeting the performance requirements for the entire original geographic license area. Under this option, the partitioner, partitionee, or both the partitioner and partitionee working together, can meet the interim and end-of-term construction benchmarks for the entire geographic license area.

The second option: The partitioner and partitionee must each certify that it will independently meet the applicable performance requirements for its respective partitioned service area. Partitioners and partitionees are subject to the same construction requirements as a licensee that does not partition its license.

Disaggregation. The Commission modified Section 27.15(d) to provide that either the disaggregator, or disaggregatee, can meet the interim and end-of-term construction benchmarks for the entire geographic license area. Disaggregators and disaggregatees that disaggregate spectrum are subject to the same construction requirements as a licensee that does not disaggregate its license.

(iii) Open Platforms for Devices and Applications

The Commission determined that for one commercial spectrum block in the 700 MHz Band – the Upper 700 MHz Band C Block – it will require licensees to allow customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choice, subject

to certain conditions. It was concluded that it would not serve the public interest to mandate, at this time, requirements for open platforms for devices and applications for all unauctioned commercial 700 MHz spectrum, or to impose broader requirements, such as wholesale or interconnection requirements, for the C Block.

The Commission will require only C Block licensees to allow customers, device manufacturers, third-party application developers, and others to use or develop the devices and applications of their choosing in C Block networks, so long as they meet all applicable regulatory requirements and comply with reasonable conditions related to management of the wireless network (*i.e.*, do not cause harm to the network). Specifically, a C Block licensee may not block, degrade, or interfere with the ability of end users to download and utilize applications of their choosing on the licensee's C Block network, subject to reasonable network management. The Commission anticipates that wireless service providers will address this requirement by developing reasonable standards, including through participation in standards setting organizations. Finally, the Commission did not impose additional requirements on the C Block, including wholesale and interconnection requirements.

Scope of the requirement for open platforms for devices and applications. 700 MHz C Block licensees subject to this requirement will not be allowed to disable features or functionality in handsets, such as “locking” handsets to prevent their transfer from one system to another, where such action is not related to reasonable network management and protection, or compliance with applicable regulatory requirements. In addition, 700 MHz C Block licensees may not establish network standards that block Wi-Fi access, MP3 playback ringtone capability, or other services that compete with wireless service providers' own offerings. Standards for third-party applications or devices that are more stringent than those used by the provider itself would likewise be prohibited. In addition, 700 MHz C Block licensees cannot exclude applications or devices solely on the basis that such applications or devices would unreasonably increase bandwidth demands. The Commission emphasized that 700 MHz C Block licensees may not impose any discriminatory charges (one-time or recurring) or conditions on customers who seek to use devices or applications outside of those provided by the licensee. Further, 700 MHz C Block licensees may not deny access to a customer's device solely because that device makes use of other wireless spectrum bands, such as cellular or PCS spectrum. However, in accepting a multi-band device on its network, a 700 MHz C Block licensee is not required to extend the requirement for open platforms for devices and applications to other spectrum bands on which the provider operates.

The Commission did not require wireless service providers to allow the unrestricted use of *any* devices or applications on their networks. Wireless service providers may continue to use their own certification standards and processes to approve use of devices and applications on their networks so long as those standards are confined to reasonable network management. Wireless providers have legitimate technical reasons to restrict particular non-carrier devices and applications on their networks, specifically to ensure the safety and integrity of their networks. In particular, it is reasonable for wireless service providers to maintain network control features that permit dynamic management of network operations, including the management of devices operating on the network, and to restrict use of the network to devices compatible with these network control features.

C Block licensee must publish standards no later than the time at which it makes such standards available to any preferred vendors (*i.e.*, vendors with whom the provider has a relationship to design products for the provider's network). C Block licensee must 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. It is expected that any standards adopted by a C Block licensee will be non-proprietary, such that they would

be open to any third party vendors and that the standards applied to third parties will be no more restrictive than those applied to the provider's preferred vendors. In addition to publishing any applicable standards, providers must establish a reasonable process for expeditiously reviewing requests from manufacturers, application developers and consumers to employ devices and applications on their networks. If a provider denies such a request, it must offer a specific explanation and an opportunity for amendment of the request to accommodate the provider's concerns. Finally, the Commission will ensure the sufficient openness of any network management practices and selected technical standards in the event the approach outlined above proves unsatisfactory.

The Commission encouraged the industry, in its development of fourth generation (4G) air interface standards, to include within those standards reasonable network management criteria relating to devices and applications.

Application of other regulatory requirements. The Commission declined to alter its hearing aid compatibility obligations to specifically impose an obligation on 700 MHz C Block licensees to ensure the hearing aid compatibility of handsets that are connected to the network but not offered by the provider. The Commission determined that a wireless service provider's obligations under hearing aid compatibility rule, Section 20.19, are not affected by the imposed obligations. Because equipment manufacturers have an independent obligation to satisfy the Commission's hearing aid compatibility rules (47 C.F.R. § 20.19(c)(1)), a wireless service provider may not refuse to connect a handset on the grounds that it is not hearing aid-compatible. Under the Commission's rules, the extent of a wireless service provider's compliance with such obligations is not affected by handsets that connect to its network but that the provider does not itself "offer" to its subscribers.

Enforcement processes. The Commission intends to vigorously enforce the requirement adopted in this order. A person or entity who believes that the C Block licensee's refusal to attach a proposed device or application is a violation of the Commission's rules adopted in the *700 MHz Second Report and Order* may file a complaint pursuant to the Commission's existing enforcement rules, including the Commission's formal and informal complaint processes, where applicable. The Commission will take appropriate enforcement action where necessary pursuant to the remedies available under statutory authority as appropriate, including forfeitures (*See* 47 U.S.C. § 503), license revocations (*See* 47 U.S.C. § 312(a)), and cease-and-desist orders (*See* 47 U.S.C. § 312(b)).

The Commission set forth certain presumptions for these complaints. Specifically, once a complainant sets forth a *prima facie* case that the 700 MHz C Block licensee has refused to attach a device or application in violation of the open platform adopted requirements, 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. Further, where the 700 MHz C Block licensee bases its network restrictions on industry-wide consensus standards, the restrictions are afforded a presumption of reasonableness. The Commission committed to rule on any complaints filed within 180 days of receipt of such complaints. Interested parties also may file a petition for declaratory ruling where a particular practice has broad market impact. Through review of complaints and other relevant information, the Commission will monitor the ability of consumers, device manufacturers, and application developers to use or develop devices and applications for 700 MHz C Block networks.

(iv) Use of Dynamic Spectrum Management Techniques

The Commission declined to mandate the use of dynamic spectrum management practices for 700 MHz Band licensees and also concluded that licensees should retain significant flexibility with regard to the

precise mechanisms they utilize when it comes to managing spectrum access to the network and among users. Mandating any particular dynamic spectrum management mechanism on a licensee may impose unanticipated or unnecessarily burdensome requirements on a particular licensee, including requirements for the network, and the devices deployed on it, that may not be consistent or appropriate for that licensee's business model. Of course, to the extent any licensee believes that the specific spectrum management mechanisms that Google proposed is appropriate or preferable, it is free to choose to utilize these mechanisms, consistent with the Commission's guidance.

(v) Protection of 700 MHz Public Safety Operations

The Commission shall continue to require Upper 700 MHz Band C Block licensees to meet the $76 + 10 \log P$ and $65 + 10 \log P$ OOB limits with respect to the public safety bands. The Commission will not require the Upper 700 MHz Band D Block licensee, however, to meet OOB limits with respect to the public safety broadband spectrum. This conclusion has been reached because the D Block licensee, through the 700 MHz Public/Private Partnership, will operate on adjacent spectrum and use the same infrastructure as the public safety broadband licensee, and meeting OOB was a measure designed to protect public safety operations from interference from unaffiliated commercial systems. The D Block licensee will still, however, be required to satisfy the 76 and $65 + 10 \log P$ OOB limits with respect to the narrowband portion of the public safety spectrum. Finally, it is not required that the D Block licensee and Public Safety Broadband Licensee to coordinate with one another to address potential overload interference, even though such licensees will be authorized on adjacent spectrum, because under the public/private partnership, the D Block licensee and Public Safety Broadband Licensee will be sharing the same infrastructure.

(vi) Licensee Eligibility

The Commission declined to impose eligibility restrictions for the licenses in the 700 MHz Band. Given the number of actual wireless providers and potential broadband competitors, it is unlikely that incumbent local exchange carriers (ILECs), cable providers, or large wireless carriers would be able to behave in an anticompetitive manner as a result of any potential acquisition of 700 MHz spectrum.

b. 700 MHz Guard Bands

(i) Treatment of Reconfigured A Block

Because the reconfigured Guard Band A Block will now be located at 757-758/787-788 MHz between the Upper 700 MHz Band C and D Blocks, and will no longer be adjacent to public safety narrowband spectrum, the Commission concluded that it is no longer necessary to apply the adjacent channel power (ACP) emissions criteria set forth in Section 27.53(d) of the rules to the A Block. Instead, OOB limits will be applied, which are consistent with emission limits applicable to the C Block. Thus, A Block licensees are required to attenuate out-of-band by at least $43 + 10 \log P$ dB. Further, the Commission will continue to apply heightened out-of-band emissions criteria in order to provide adequate protection to public safety. Therefore A Block transmitter power must be attenuated to at least $76 + 10 \log P$ dB, in a 6.25 kilohertz bandwidth for base stations at 763 MHz, and $65 + 10 \log P$ dB for mobile units at 793 MHz.

Frequency Coordination and the Cellular Architecture Prohibition. The Commission will no longer apply sections 27.601(d) and 27.2(b) (requiring guard band users to employ frequency coordination procedures in cooperation with 700 MHz public safety coordinators, and prohibiting the use of cellular architectures in the Guard Bands) to reconfigured A Block licenses.

Removal of the 746-747 MHz A Block Guard Band. The Commission found that it is unnecessary to retain the A Block Guard Band at 746-747 MHz to shield Upper 700 MHz Band C Block operations from interference from high power operations allowed in the Lower 700 MHz Band C Block.

(ii) Treatment of Reconfigured B Block

Because all existing Guard Band A and B Block licensees, with the exception of grandfathered PTPMS II licenses, are voluntarily repacking their spectrum into a new A Block, the reconfigured B Block allocation will be vacant. Any future operations in the Guard Band B Block will continue to be bound by existing Guard Bands technical rules requiring frequency coordination and prohibiting the use of cellular system architectures. However, the Commission created additional flexibility by providing operations in the reconfigured B Block the option of employing either the existing ACP limits set forth in Section 27.53(d) of the Commission's rules, or the same OOB limits used by other commercial licensees to protect public safety, *i.e.* $76 + 10\log P$ dB per 6.25 kHz for base stations, and $65 + 10\log P$ dB per 6.25 kHz for mobile units.

(iii) Treatment of PTPMS II Licenses

To ensure interoperability in border areas with Canada, the Commission modified the PTPMS II licenses by relocating its Guard Band A Block license to 757-758 MHz and 787-788 MHz with the "repacked" Guard Band A Block licenses, and by shifting its two Guard Band B Block licenses down 1 megahertz to 761-763 MHz and 791-793 MHz. The Commission concluded that it will apply to the PTPMS II A Block the same technical rules that will apply to the reconfigured A Block licenses. The Commission concluded that the existing B Block technical rules will continue to apply to PTPMS II's B Block licenses given their adjacency with public safety spectrum.

(iv) License Terms

The license terms for the A Block licenses, including the PTPMS II A Block license, were extended to 10 years after the end of the DTV transition, through February 17, 2019, and subsequent renewal terms will be 10 years. The Commission retained the existing license terms for the two grandfathered PTPMS II B Block licenses.

3. Auctions-Related Issues

a. Anonymous Bidding

The Commission concluded that the record regarding the available 700 MHz Band licenses and recent experience with anonymous bidding in other auctions indicate that the Commission's statutory mandates under Section 309(j)(3) of the Communications Act would better be served by adopting anonymous bidding procedures for the auction of 700 MHz Band licenses. Implementing anonymous bidding procedures will reduce the potential for anti-competitive bidding behavior, including bidding activity that aims to prevent the entry of new competitors. Such procedures should withhold from public release until after the auction closes any information that may indicate specific applicants' interests in the auction, including information such as their license selections and the identities of bidders placing bids or taking other bidding-related actions, such as withdrawals. The implementation of anonymous bidding procedures in the auction of new 700 MHz Band licenses should not be contingent on the likely level of auction competition indicated by pre-auction bidder eligibility. The Commission has delegated to the Wireless Bureau authority to establish auction procedures based on comment solicited shortly prior to the auction (47 C.F.R. §§ 0.131, 0.331). Accordingly, the Commission directed the Wireless Bureau to propose and seek comment on detailed anonymous bidding procedures for the auction of the 700 MHz

Band licenses consistent with these conclusions, including how anonymous bidding would impact a potential re-auction of one or more spectrum blocks if the reserve prices for the individual blocks are not met, and any additional continuation or alteration to the anonymous bidding rules necessary to preserve the integrity of the subsequent auction.

b. Declaratory Ruling on Anti-Collusion Rule Reporting Requirement

To further its policy of preventing collusive behavior in Commission auctions, the Commission clarified by declaratory ruling and a conforming textual edit the obligation that applicants in Commission auctions have to report any communications of bids or bidding strategies that are prohibited by Section 1.2105(c)(1) of the Commission's rules. Pursuant to Section 1.2105(c)(6), any applicant that makes or receives such a communication shall report such communication in writing to the Commission immediately, and in no case later than five business days after the communication occurs. As noted in the Commission's Order adopting Section 1.2105(c)(6), the Commission cannot "take on the impossible task of screening all applicant communications" and, therefore, "the responsibility for identifying potentially unauthorized communications [must fall] on auction applicants." The reports provided by applicants are essential to the Commission's ability to enforce its rule. Absent such reports, parties might find it easy to evade enforcement for extended periods of time, and possibly altogether.

Accordingly, the reporting requirement "obligate[s] parties to notify the Commission of communications that appear to violate the anti-collusion rule and to allow the Commission to determine whether a violation has occurred." Consistent with this purpose, applicants have a continuous obligation to make such reports and that obligation extends beyond the five business days after the communication occurs. This declaratory ruling, and the conforming modification of Section 1.2105(c)(6) of the Commission's rules, expressly states the continuing nature of this obligation. The Commission can and will enforce the obligation so long as it remains unfulfilled. The Commission emphasized the continuing nature of the duty to report to preclude any attempt to evade the obligation by waiting out the expiration of the statute of limitations applicable for the enforcement of forfeitures and to reinforce the Commission's ability to detect collusion, which is critical to the Commission's ability to enforce and thereby discourage collusive behavior in Commission auctions.

c. Package Bidding

The Commission concluded that package bidding with respect to licenses in the Upper 700 MHz Band C Block would serve the public interest by reducing the exposure problem that might otherwise inhibit bidders seeking to create a nationwide footprint. Accordingly, the Commission directed the Wireless Bureau, pursuant to its delegated authority and pre-auction process, to propose and implement detailed package bidding procedures for the auction of the Upper 700 MHz Band C Block licenses, taking into account the goals the Commission has articulated for package bidding and the concerns raised in this record (47 C.F.R. §§ 0.131, 0.331). The Commission also directed the Wireless Bureau to adopt procedures for the auction of licenses in other blocks of 700 MHz Band spectrum without the use of package bidding.

d. "New Entrant" Bidding Credit

The Commission concluded that it does not need to compound the discounts already offered to small new entrants by existing designated entity bidding credits, or to offer large, nationwide new entrants significant discounts on their bids.

e. Reserve Prices

The Commission concluded that it should provide for separate aggregate reserve prices for each block of licenses to promote the Commission's statutory objective of recovering for the public a portion of the value of the public spectrum resource (47 U.S.C. § 309(j)(3)(C)). If the auction results for the licenses in any block satisfy the aggregate reserve for that block, all licenses in the block will be assigned based on the auction results, subject to completion of the licensing process, including review of applicants' qualifications. The separate aggregate reserve prices should, taken together, reflect current assessments of the potential market value of this spectrum based on various factors including, but not limited to, the characteristics of this band and the value of other recently auctioned licenses, such as licenses for Advanced Wireless Services.

In the event that licenses are not assigned because the applicable block-specific aggregate reserve is not met, the Commission provided for a prompt auction of alternative, less restrictive licenses for the A, B, C and E Blocks, subject to the same applicable reserves. The Commission's rules also provide for the possibility of re-offering the D Block license in a subsequent auction.

Block-Specific Aggregate Reserve Prices. The Commission concluded that the public interest requires a separate aggregate reserve price for each block of the 700 MHz Band licenses subject to competitive bidding in the auction. Block-specific aggregate reserve prices will facilitate licensing specific blocks based on block-specific auction results. If the aggregate reserve is met for any block, all licenses in that block that receive winning bids will be eligible for licensing subject to the completion of review of long-form license applications. The reserve prices will be in addition to, and separate and apart from, any minimum opening bid amounts that may be established for purposes of the auction.

The Commission directed the Wireless Bureau to adopt and publicly disclose block-specific aggregate reserve prices, pursuant to its existing delegated authority and its regular pre-auction process, consistent with the Commission's conclusions. The Commission noted that under procedures typical of Commission auctions, a bidder would be able to raise its own provisionally winning bid(s) to attempt to satisfy the reserve price for licenses in any spectrum block. Given the Commission's intent that the reserve prices should maximize the possibility of recovering an appropriate portion of the value of the public spectrum resource while enabling licensing as promptly as possible, the Wireless Bureau should establish the particular amounts of the block-specific aggregate reserves by taking into account a conservative estimate of market value based on auction results for AWS-1 spectrum licenses. The detailed rules regarding the D Block license, the D Block licensee's required construction of a network to be shared by public safety service users, and the resulting limitations on the flexibility of the D Block licensee, should be given substantial weight in assessing the D Block license's value.

Contingent Subsequent Auction of Alternative Licenses. Given the highly useful nature of the underlying spectrum, there is a strong public interest in promptly assigning all 700 MHz Band licenses for recovered analog spectrum. In the event that an applicable block-specific aggregate reserve price is not met when licenses for a block are first offered, the Commission established a process to enable the assignment of alternative licenses as soon as possible. Specifically, the Commission will offer the more flexible, less conditioned licenses described below in the A, B, C, and E Blocks as soon as possible after the first auction. This will address the possibilities that license conditions adopted in the *700 MHz Second Report and Order* significantly reduce values bidders ascribe to those licenses and/or have unanticipated negative consequences. Given the unique character of the D Block license conditions, the Commission left open the possibilities of reevaluating those conditions or of promptly offering that license again in a subsequent auction, in the event the D Block-specific reserve is not met.

The auction of alternative licenses shall be subject to the same applicable reserve prices as the initial auction of licenses. The Wireless Bureau has delegated authority, however, to determine the appropriate means of reapportioning the reserve associated with the C Block in light of the Commission's determination to split the block into two should a re-auction occur. This assures both that any initial and subsequent auctions will be as similar as possible (other than with respect to particular license terms) and also that the final assignment of the licenses will be based only on which licenses are able to serve the statutory goal of recovering a portion of the value of the public spectrum resource fixed in advance of the auction. The Commission anticipates that the reserve price for the C Block would be approximately \$4.6 billion.

Performance Requirements for Alternative Licenses. The Commission concluded that a failure of the auction results for the A, B, and E Block licenses to satisfy the applicable block-specific aggregate reserve should result in a prompt offering of alternative licenses for the relevant block(s) that are subject to performance requirements with the population benchmark regime adopted for the C Block licenses.

Changes to Alternative C Block Licenses. The Commission concluded that in the event that auction results for conditioned Upper 700 MHz C Block licenses do not satisfy the aggregate reserve price for the C Block licenses, the Commission will offer as soon as possible licenses for the C Block without the open platform conditions. In that event, the Commission also will modify the C Block band plan by reconfiguring the bandwidth of the licenses and creating two paired blocks of 6 and 5 megahertz each, the C1 and C2 Blocks. The Commission will license the C1 Block based on EAs and the C2 Block based on REAGs.

D Block License. The Commission concluded that it should not alter the conditions adopted in the *700 MHz Second Report and Order* for the D Block license based solely on auction results. The Commission believed that a D Block-specific aggregate reserve of approximately \$1.33 billion is appropriate given the Commission's goal of enabling the recovery of a portion of the value of the spectrum while also permitting licensing to proceed as quickly as possible. If, however, the D Block-specific aggregate reserve is not met, the Commission concluded that it will leave open the possibility of re-offering the license on the same terms in a subsequent auction, as well as the possibility of re-evaluating all or some of the applicable license conditions.

Contingent Auction Procedures. The Commission directed the Wireless Bureau to adopt for the auction of 700 MHz Band licenses, consistent with its delegated authority and pursuant to its routine pre-auction process, procedures that will enable a prompt subsequent auction of alternative licenses for any block in the event that the relevant block-specific aggregate reserve price is not met. This order's provisions with respect to the procedures for the initial auction, including with respect to anonymous and package bidding, will continue to apply in any subsequent auction. Furthermore, the same applicable reserve prices for each block of licenses shall apply in both the initial and subsequent auctions, recognizing that the Wireless Bureau will be required to determine how to allocate the block-specific reserve price for the C Block upon reauction under the split block plan. The Commission directed the Wireless Bureau, consistent with its delegated authority to adopt procedures that will comply with the *700 MHz Second Report and Order* and preserve the integrity of any necessary reauction.

The Commission directed the Wireless Bureau to establish procedures that limit qualified bidders in a subsequent auction of alternative licenses to those bidders that qualify to bid in the auction offering 700 MHz Band licenses in all of these blocks. In addition, because licenses for the same spectrum will be offered in both auctions, and the auctions will take place relatively close in time, the Commission

concluded that the purpose of the Commission's anti-collusion rule requires that the provisions of that rule continue to apply until the down payment deadline for the subsequent auction. To assure that bidders will have sufficient bidding eligibility to pursue various bidding strategies, the Commission directed the Wireless Bureau to propose and adopt procedures that give applicants an opportunity to obtain bidding eligibility specifically for the alternative licenses, in addition to the initial licenses.

The Commission also directed the Wireless Bureau to consider what procedures may be appropriate to deter bidders from actions that might thwart the assignment of licenses in either auction.

f. Statutory Deposit Deadline

The Commission concluded that the statute requires the deposit of payments made by successful bidders towards their respective winning bids for licenses for recovered analog spectrum as of the June 30, 2008, deposit deadline, even if that date occurs before conclusion of the licensing process. Because the Commission's rules provide for the collection of all the required payments from winning bidders before completing the licensing process (*See* 47 C.F.R. § 1.2109), the June 30, 2008, statutory deadline for depositing auction proceeds does not conflict with or otherwise affect any of the Commission's regulatory provisions that might extend final licensing beyond June 30, 2008.

B. 700 MHz Public Safety Spectrum

1. Band Plan

The Commission has adopted a revised band plan for the 700 MHz Public Safety Band by: designating the lower five-megahertz paired (ten megahertz total) segment of the 700 MHz Public Safety Band for broadband communications; consolidating the public safety narrowband operations in the upper paired 6-megahertz blocks (twelve megahertz total) of the 700 MHz Public Safety Band; adopting a one-megahertz paired guard band (768-769/798-799 MHz) between the broadband and narrowband segments; and concluding that narrowband operations presently in channels 63 and 68 (and the upper one megahertz of channels 64 and 69) must be cleared no later than the DTV transition date.

The Upper 700 MHz Band D Block licensee must pay the costs associated with relocating public safety narrowband operations to the consolidated channels, in recognition of the significant benefits that will accrue to the D Block licensee. To facilitate the relocation, every 700 MHz Band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, must provide the following information: (1) the total number of narrowband mobile and portable handsets in operation in channels 63 and 68, and the upper one megahertz of channels 64 and 69, (2) the total number of narrowband base stations serving these handsets in operation, (3) contact information for each identified set of handsets and base stations, as appropriate, (4) the areas of operation of the mobile and portable units (such as defined by the jurisdictional boundaries of the relevant public safety departments), and (5) the location, in latitude and longitude, of the base stations, all as of August 30, 2007. The Commission provided that this information must be filed with the Commission by **October 23, 2007** and must include a certification, signed by an authorized party, stating that the information provided therein is true, complete, correct, and made in good faith. The Public Safety and Homeland Security Bureau issued a public notice on August 16, 2007 announcing the deadline for this certification requirement.

The Commission prohibited authorization, whether pursuant to individual license or State License, of any new narrowband operations in channels 63 and 68, or in the upper one megahertz of channels 64 and 69, as of August 30, 2007. Any equipment deployed in these frequencies subsequent to August 30, 2007 will be ineligible for relocation funding. All Regional Planning Committees with approved plans or plans on

file must submit amended plans consistent with the decisions in the *700 MHz Second Report and Order* by **November 23, 2007**.

2. Public Safety Broadband Licensee

The Commission concluded that the public interest is best served by establishing a single nationwide Public Safety Broadband License for the 700 MHz public safety broadband spectrum. The Commission will thus assign this license to a single Public Safety Broadband Licensee that will be responsible for implementing the 700 MHz public safety nationwide interoperable broadband network. This network will serve to provide public safety entities access to new broadband technologies across the country. Further, the Upper 700 MHz D Block Licensee will gain access to the 700 MHz public safety broadband spectrum on a secondary preemptible basis through a spectrum leasing arrangement with the Public Safety Broadband Licensee.

C. 700 MHz Public/Private Partnership

The Commission designated the D Block in the Upper 700 MHz Band for use with the 700 MHz Public/Private Partnership and it provided substantive and procedural safeguards applicable to this public/private partnership to address public safety concerns.

The Commission took the following actions:

- Established requirements regarding the nature of the shared wireless broadband network and the respective rights and obligations of the D Block licensee and the Public Safety Broadband Licensee regarding their partnership and the network.
- Adopted rules governing the establishment and execution, prior to the award of the D Block license, of the NSA between the Public Safety Broadband Licensee and the winning bidder of the D Block to facilitate shared use of the network and the spectrum over which it operates.
- Placed certain other conditions on the D Block license to protect services to the public safety community and facilitate the success of the 700 MHz Public/Private Partnership, including requirements relating to the organization and structure of the partnership, reporting requirements, and a prohibition on the discontinuance of public safety operations.
- Addressed other issues, including bidding credits, license term and renewal, partitioning and disaggregation, license assignment and transfer, wholesale, open access, and roaming proposals, and the applicability of certain regulatory requirements to the D Block licensee.

1. Adoption of the 700 MHz Public/Private Partnership

The Commission designated the D Block in the Upper 700 MHz Band to be licensed to a commercial entity on a nationwide basis for the purpose of entering into the 700 MHz Public/Private Partnership with the Public Safety Broadband Licensee and adopted a number of conditions, requirements, and procedures to safeguard services to public safety entities and addressed concerns about the success of the partnership.

2. Essential Components of Public/Private Partnership

a. Shared Wireless Broadband Network

In order to have a successful public/private partnership with a shared nationwide interoperable broadband network infrastructure that meets the needs of public safety, the Commission required that the network incorporate, at a minimum, the following:

- Specifications for a broadband technology platform that provides mobile voice, video, and data capability that is seamlessly interoperable across agencies, jurisdictions, and geographic areas. The platform should also include current and evolving state-of-the-art technologies reasonably made available in the commercial marketplace with features beneficial to the public safety community (e.g., increased bandwidth).
- Sufficient signal coverage to ensure reliable operation throughout the service area consistent with typical public safety communications systems (*i.e.*, 99.7 percent or better reliability).
- Sufficient robustness to meet the reliability and performance requirements of public safety. To meet this standard, network specifications must include features such as hardening of transmission facilities and antenna towers to withstand harsh weather and disaster conditions, and backup power sufficient to maintain operations for an extended period of time.
- Sufficient capacity to meet the needs of public safety, particularly during emergency and disaster situations, so that public safety applications are not degraded (*i.e.*, increased blockage rates and/or transmission times or reduced data speeds) during periods of heavy usage. In considering this requirement, the Commission expects the network to employ spectrum efficient techniques, such as frequency reuse and sectorized or adaptive antennas.
- Security and encryption consistent with state-of-the-art technologies.
- A mechanism to automatically prioritize public safety communications over commercial uses on a real-time basis and to assign the highest priority to communications involving safety of life and property and homeland security consistent with the requirements adopted in this *700 MHz Second Report and Order*.
- Operational capabilities consistent with features and requirements specified by the Public Safety Broadband Licensee that are typical of current and evolving state-of-the-art public safety systems (such as connection to the PSTN, push-to-talk, one-to-one and one-to-many communications, etc.).
- Operational control of the network by the Public Safety Broadband Licensee to the extent necessary to ensure public safety requirements are met.
- A requirement that the Upper 700 MHz D Block licensee make available to the Public Safety Broadband Licensee at least one handset that would be suitable for public safety use and include an integrated satellite solution capable of operating both on the 700 MHz public safety spectrum and on satellite frequencies.

The Public Safety Broadband Licensee shall have the right to determine and approve the specifications of public safety equipment that is used on the network, and the right to purchase its own subscriber equipment from any vendor it chooses, to the extent such specifications and equipment are consistent with reasonable network control requirements established in the NSA. These requirements are to be implemented by the parties through the NSA, which will also include the detailed specifications of the network that the D Block licensee will construct.

b. Spectrum Use

The Commission permitted the Public Safety Broadband Licensee to provide access on a secondary and preemptible basis to this spectrum, pursuant to the spectrum lease specified in the *700 MHz Second Report and Order*, for the purpose of enabling commercial operations within the band devoted to primary public safety broadband use. The Upper 700 MHz D Block licensee will gain access to this public safety

broadband spectrum by means of a spectrum leasing arrangement with the Public Safety Broadband Licensee. The Commission placed additional conditions regarding the use of the D Block spectrum, including a requirement that the D Block licensee provide the Public Safety Broadband Licensee with priority access to the D Block license spectrum during emergencies.

Commercial Operations in Public Safety Spectrum on a Secondary Basis. The Commission permitted the leasing of the Upper 700 MHz Band spectrum currently allocated for public safety services to commercial providers on a secondary, unconditionally preemptible basis. The Public Safety Broadband Licensee will be required to lease the public safety spectrum for use by the D Block licensee on a secondary basis pursuant to the requirements set forth in the NSA and established in the *700 MHz Second Report and Order*. The Commission also required that this spectrum be subleased from the D Block licensee to the Operating Company through a spectrum subleasing arrangement under the Commission's rules. References in this order to the Public Safety Broadband Licensee's spectrum manager leasing arrangement with the D Block licensee also include reference, where appropriate, to this spectrum subleasing arrangement. Thus, under the 700 MHz Public/Private Partnership framework that the Commission adopted, the D Block licensee will be obligated to construct a broadband network capable of operating on the public safety broadband spectrum for the benefit of the Public Safety Broadband Licensee, and the Public Safety Broadband Licensee will be obligated to permit secondary commercial operations on the public safety broadband spectrum pursuant to the spectrum leasing arrangement.

The Commission required that this spectrum leasing arrangement take the form of a long-term spectrum manager leasing arrangement for the full term of the license (*See* 47 C.F.R. §§ 1.9010, 1.9020). This type of leasing arrangement enables a licensee to accord its spectrum lessee a significant degree of operational autonomy without relinquishing *de facto* control over the licensed spectrum. At the same time, the spectrum lessee remains ultimately responsible for ensuring that the spectrum is used in a manner that complies with the applicable regulatory and statutory requirements.

As further conditions on the spectrum leasing arrangement, the D Block licensee's commercial operations in the public safety spectrum must not cause interference to primary users (*i.e.*, public safety users) and must accept interference from primary users at all times. To help ensure that commercial secondary use complies with these limitations, in the public safety broadband spectrum the Commission will require that the network be designed so as to automatically assign priority to public safety users, to the exclusion and/or immediate preemption of any commercial use on a dynamic, real-time priority basis, and that network specifications are sufficient to guarantee that public safety users suffer no harmful interference or interruption or degradation of service due to commercial operations in the public safety broadband spectrum.

Priority Public Safety Access to Commercial Spectrum During Emergencies. As part of its responsibilities in managing the shared wireless broadband network, the Commission required the D Block licensee to provide the Public Safety Broadband Licensee with priority access, during emergencies, to the spectrum associated with the D Block license (in addition to the 700 MHz public safety broadband spectrum). The Commission required the parties to define "emergency" for purposes of priority access to D Block license spectrum as part of the NSA.

There may be occasions when the parties are unable to agree that an emergency situation requires priority access to the D Block license spectrum, especially in circumstances that do not clearly fall within the definition of "emergency" negotiated by the parties in the NSA. On these occasions, the Public Safety Broadband Licensee may request that the Commission declare, on an expedited basis, that particular circumstances warrant emergency priority access. In order to facilitate this process and ensure a prompt

response, the Commission delegated authority to the Defense Commissioner to decide these requests and amended Section 0.181 of the Commission's Rules to reflect this new duty.

Under emergency conditions, all public safety entities in the affected area will have real-time access, as needed, to all D Block license spectrum on a priority basis over commercial traffic and will preempt ongoing commercial traffic to the extent necessary. In this regard, the Commission required the D Block licensee to provide appropriate warnings to its commercial customers about the potential interruption of their service during emergencies due to preemption by public safety users. The NSA should address how the D Block licensee will satisfy this obligation. The NSA must also recognize that emergency 911 calls from commercial users also play a critical role in safeguarding public safety and should be accorded some level of priority, which may be lower priority than public safety communications but may not be subject to interruption of ongoing calls by public safety users and must have priority over all other commercial uses.

Secondary Markets Rules. In permitting the Public Safety Broadband Licensee to enter into the spectrum leasing arrangement subject to the conditions set out in the *700 MHz Second Report and Order*, the Commission waived the spectrum leasing policies and rules insofar as they prohibit public safety licensees from entering into spectrum leasing arrangements for commercial operations.

c. Performance Requirements

The Commission adopted specific performance requirements that include three population-based build-out benchmarks that cover the nationwide D Block license area. Specifically, the Commission will require the D Block licensee to provide signal coverage and offer service to at least **75 percent** of the population of the nationwide D Block license area **by the end of the fourth year**, **95 percent** of the population of the nationwide license area **by the end of the seventh year**, and **99.3 percent** of the population of the nationwide license area **by the end of the tenth year**. To meet these requirements, the D Block licensee must use the most recently available U.S. Census Data.

The Commission required that the D Block licensee meet initial population benchmarks based on a build-out schedule specified in the NSA consistent with the public safety needs. The Commission also required the D Block licensee to offer at least one handset suitable for public safety use that includes an integrated satellite solution pursuant to the terms, conditions, and timeframes set forth in the NSA. These additional requirements will facilitate coverage to rural and zero population areas if the public safety users need such coverage.

February 17, 2009 is the statutorily imposed DTV transition date and is the same date that build-out obligations for the other unauctioned commercial 700 MHz Band licensees begin to take effect. Thus, the Commission's four, seven, and ten year construction benchmarks for the D Block licensee will be calculated as starting from February 17, 2009. The D Block licensee may begin constructing its system prior to February 17, 2009, and may begin operating its system prior to that date so long as it provides appropriate interference protection to incumbent co-channel and adjacent channel broadcasters. Such interference protection will be provided through compliance with the provisions of Section 27.60 of the Commission's rules. Furthermore, certain B Block licensees will continue to be authorized to operate in the 762-764 and 792-794 MHz bands, which overlap portions of the 758-763 and 788-793 MHz D blocks. The D Block licensee will therefore be required to provide appropriate co-channel protection to those B Block licensees by limiting its base station field strength signal levels to no greater than 40 dBu at the B Block licensees' geographic borders. The D Block licensee must employ a signal level sufficient to provide adequate service to the relevant percentage of the population over the nationwide D Block license

area. The Commission required as a mandatory provision of the NSA that the D Block licensee and Public Safety Broadband Licensee negotiate inclusion into the build-out schedule coverage of major highways and interstates, as well as incorporated communities with a population in excess of 3,000. In certain limited circumstances, the Commission will permit the D Block licensee to modify these population-based construction benchmarks where the D Block licensee and the Public Safety Broadband Licensee reach agreement and the full Commission gives its prior approval for a modification.

As with other commercial 700 MHz Band licensees, the D Block licensee will be required to demonstrate compliance with the Commission's adopted benchmarks by filing with the Commission within 15 days of passage of the relevant benchmarks a construction notification comprised of maps and other supporting documents certifying that they have met the Commission's performance requirements (*See* 47 C.F.R. § 1.946(d)). The construction notification, including the coverage maps and supporting documents, must be truthful and accurate and not omit material information that is necessary for the Commission to make a determination of compliance with the Commission's performance requirements. However, the D Block licensee will not be subject to a "keep-what-you-use" rule. Rather, the Commission will strictly enforce these build-out requirements and, if the D Block licensee fails to meet a construction benchmark, the Commission may cancel its license, depending on the circumstances.

d. Network Sharing Agreement (NSA) and Mandatory Provisions

The Commission established that the relationship between the Public Safety Broadband Licensee and the D Block licensee will be governed by the Network Sharing Agreement (NSA) to be negotiated by the parties and such other separate agreements as the Commission may require or allow, and the Commission provides that compliance with the terms of the NSA shall be a regulatory condition of the D Block license. Breach of this licensing condition may, at the determination of the Commission, result in remedies including, but not limited to, cancellation and subsequent award of the license. The Commission required all the parties to negotiate in good faith, required the parties to incorporate the rights and responsibilities governing the Public/Private Partnership and required the NSA to include or address certain additional terms and subjects. These terms and subjects, together with the rules in the *700 MHz Second Report and Order*, will ensure that the Public/Private Partnership serves the public interest.

Rights and Obligations Under the Public/Private Partnership. The NSA must incorporate all of the substantive rights and obligations of the parties that the Commission has established in the *700 MHz Second Report and Order* that are relevant to the Public/Private Partnership. Once the NSA is approved by the Commission and executed by the parties, assuming all other licensing requirements are met, the Commission will grant the D Block license to the winning bidder and compliance with the terms and conditions of the NSA will be license conditions for both the D Block license and the Public Safety Broadband License. The Commission required the parties to submit an executed NSA within 10 business days of the Commission's approval of the agreement. The D Block license will not be granted until such submission.

Term of Agreement. The NSA must have a term not to exceed 10 years from February 17, 2009, which coincides with the term of the D Block license established in the *700 MHz Second Report and Order*. At the conclusion of the initial, and subsequent, term of the agreement, the NSA may be renewed along with the D Block license, subject to Commission approval.

Service Fees. The Commission found that all service fees for public safety service should be specified in the NSA, including any applicable fees for normal network service and fees for priority access to the D Block in an emergency. The parties should negotiate reasonable rates in good faith, taking into account

all appropriate factors, including but not limited to the public/private nature of the partnership. The Commission expects, however, that the parties will negotiate a fee structure for priority access to the D Block in an emergency that will protect public safety users from incurring unforeseen (and unbudgeted) payment obligations in the event that a serious emergency necessitates preemption for a sustained period. The Commission encouraged the parties to negotiate a fee agreement that incorporates financial incentives for the commercial licensee based on the number of public safety entities and localities that subscribe to the service.

Detailed Build-Out Schedule. The NSA must include a detailed build-out schedule that is consistent with the mandatory national build-out and performance benchmarks established for the D Block licensee in the *700 MHz Second Report and Order*. The Commission expects the NSA to identify the specific areas of the country that will be built out by each of the construction deadlines that have been established. Because the Commission must ensure that smaller towns and rural areas are not neglected in the D Block licensee's build-out efforts, the Commission will require the D Block licensee to meet initial population benchmarks by not exclusively concentrating on building out high population areas. The Commission will require the parties to include in the NSA 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. The Commission also required an estimated cost for each specified area of the build-out, to ensure that the build-out schedule is achieved.

Modifications to the NSA. The NSA must specify that any major modifications to the terms of the NSA, related agreements or documents, or such other agreements as the Commission may require or allow, require not only the agreement of the parties, but also prior Commission approval. All other modifications require prior approval by the Chiefs of the Wireless Bureau and the Public Safety and Homeland Security Bureau on delegated authority.

e. License Term and Renewal Expectancy for the Public/Private Partnership

The Commission decided that a term not to exceed 10 years from February 17, 2009, should be used for initial authorization in the D Block license. At the end of the 10 year term, the D Block licensee will be allowed to apply for license renewal, although its renewal will be subject to its success in meeting the material requirements set forth in the NSA as well as all other license conditions, including meeting the performance benchmark requirements. Because the initial NSA term will expire at the same time, the D Block licensee must also file a renewed or modified NSA for Commission approval at the time of its license renewal application.

The material requirements set forth in the NSA are conditions of the D Block license, including the network build-out schedule and satisfaction of the agreed-upon public safety specifications regarding the network construction and operations, in order to obtain a renewal of the license. Regarding the D Block license renewal application, the Commission found the material requirements in the NSA to be those requirements that are the "essence" of the agreement between the parties, including but not limited to the build-out schedule for the public safety network and other provisions that serve the fundamental purpose of the NSA, as well as any time limits on the performance of those provisions.

f. Public Safety Satellite Support

The Commission required that the D Block licensee make available to public safety users at least one handset that includes a seamlessly integrated satellite solution and it is capable of operating both on the 700 MHz public safety spectrum and on the satellite frequency bands and/or systems of the satellite service providers with which the Public Safety Broadband Licensee has contracted for satellite service. The Commission did not, however, establish an immediate obligation upon the D Block licensee to make satellite-capable handsets available. Rather, it required the D Block licensee to begin offering at least one handset suitable for public safety use that includes a seamlessly integrated satellite solution pursuant to the terms, conditions, and timeframes set forth in the NSA.

g. Local Public Safety Build-out and Operation

The Commission concluded that no public safety entity will be required to use the 700 MHz public safety broadband network, and that any participation in the 700 MHz nationwide public safety network by individual public safety entities will be entirely voluntary. The Upper 700 MHz Band D Block licensee should have the exclusive right to build and operate the shared wireless broadband network using the 700 MHz public safety broadband spectrum, except that the Commission permitted public safety entities to construct local broadband networks in the 700 MHz public safety spectrum in two limited circumstances subject to conditions. Also, the public safety entities should have a limited right to build out wideband networks, again with conditions and restrictions. These three limited circumstances are described below.

Rights to Early Build-out in Areas with a Build-out Commitment. In an area where the D Block licensee has, in the NSA, committed to build out by a certain date, but where a public safety entity wishes a more immediate build-out, the public safety entity may, with the pre-approval of the Public Safety Broadband Licensee, have the network constructed in that area at the public safety entity's own expense. The network must be capable of operating on the shared, interoperable broadband network that operates on both the D Block licensee's commercial block and the public safety 700 MHz broadband spectrum, and must meet all of the same requirements and specifications as the shared network required under the NSA.

The Commission authorized two options for implementing the early build-out of an area of the broadband network at the discretion of the public safety entity.

Under the ***first option***, the public safety entity (or the Public Safety Broadband Licensee acting on its behalf) may construct the network in that area. Upon construction, it must transfer the network to the D Block licensee, which shall integrate that network into the shared national broadband network constructed pursuant to the NSA.

Under the ***second option***, the public safety entity may require the D Block licensee to construct the network in that area earlier than scheduled, but the public safety entity must provide all funds necessary for the early construction of the network, including any and all additional resource and personnel costs. As with the first option, upon construction, the D Block licensee will operate and manage the network as an integrated part of the larger shared national broadband network.

In either case, the Public Safety Broadband Licensee, the D Block licensee, and the public safety entity must, prior to any construction, negotiate an amendment to the NSA regarding this part of the network, specifying ownership rights, fees, and other terms, which may be distinct from the analogous terms governing the shared national broadband network. Absent agreement to the contrary, the amendment

must provide that by a date no later than the build-out date specified for that area in the NSA, the D Block licensee will receive full ownership rights and will in turn compensate the public safety entity (or the Public Safety Broadband Licensee, where appropriate) for the construction of the network. The right to compensation for the build-out shall be limited, again absent agreement to the contrary, to the cost that would have been incurred had the D Block licensee constructed the network itself in accordance with the original terms and specifications of the NSA. Thus, while the public safety entity may construct a more expensive network, the D Block licensee will only be responsible for the costs of a network comparable to what it would have constructed in accordance with the original terms of the NSA, and any costs attributable solely to advancing the date of construction will not be compensable.

The Commission pointed out that early build-out in this scenario is a right to construct only. Operations may not commence on the network until the network is transferred to the D Block licensee. Operations on early build-out networks would then be conducted under the authority of the Public Safety Broadband Licensee's license, in the same manner as any network operations that occur following construction by the D Block licensee under the build-out schedule contained in the NSA. Starting on the date of compensation for build-out, or on the build-out due date of the NSA if there is no specified date of compensation, the D Block licensee may include the early build-out for purposes of determining whether it has met its national build-out benchmarks and the build-out requirements of the NSA.

The Commission noted that the National Capital Region (NCR) has commenced construction and operation of a broadband network in the 700 MHz Band pursuant to an experimental license and has been granted a waiver in anticipation of its application for a license to operate such system. Although NCR cannot now obtain a license, as such license will be held by the Public Safety Broadband Licensee, nothing should be construed as preventing or limiting NCR's ability to continue to operate the broadband network they have built within the 700 MHz broadband allocation (subject to NCR properly obtaining a grant of a request for Special Temporary Authority for such continued operation) until such time as the NCR network is integrated into the nationwide, interoperable broadband network in accordance with the build-out plan set forth in the NSA.

The Commission advised the Public Safety Broadband Licensee to consult NCR in negotiating the build-out date for the nationwide, interoperable network, as the build-out plan in the NSA should allow NCR a reasonable time to make any modifications necessary to incorporate its network into the nationwide, interoperable broadband network by the date set forth in the NSA for build out of the portion of the nationwide, interoperable broadband network in the NCR. NCR will, of course, be expected to comply with the requirements set forth for public safety entities exercising the right to early build out, and NCR shall be entitled to the same rights and compensation as set forth for public safety entities electing to exercise their right to early build out.

Rights to Build Out and Operate In Areas without a Build-out Commitment. The Commission acknowledged that, even under the stringent population-based build-out requirements that were adopted, there will be areas of the nation in which the NSA does not require the D Block licensee to build out the shared broadband network. In such areas, a public safety entity may build out and operate a separate, exclusive network in the 700 MHz public safety broadband spectrum at any time, provided the public safety entity has received the approval of the Public Safety Broadband Licensee and operates its independent network pursuant to a spectrum leasing arrangement into which the public safety entity has entered with the Public Safety Broadband Licensee.

Under this option, the public safety entity need not obtain any agreement with the D Block licensee. The Public Safety Broadband Licensee must, however, provide the D Block licensee with notice of the

public safety entity's intent to construct in that area within 30 days of receipt of a request from a public safety entity wishing to exercise this option, and shall inform the D Block licensee of the public safety entity's anticipated build-out date(s). This affords the D Block licensee the opportunity, in conjunction with the Public Safety Broadband Licensee, to reconsider whether the NSA should be revised to include a commitment to build out the area that the public safety entity has identified. Further, if within 30 days of receiving such notice the D Block licensee certifies in writing to the Public Safety Broadband Licensee that it will build out the shared network in the area, within a reasonable time of the anticipated build-out date(s), as determined by the Public Safety Broadband Licensee, then the public safety entity shall not have the option of building out and operating its own separate exclusive network in the area. Under this circumstance, the D Block licensee, working with the Public Safety Broadband Licensee, must then adopt an appropriate amendment to the NSA, and such commitment would become enforceable against the D Block licensee as part of its build-out requirements.

If the public safety entity pursues this option to build out a separate network, the Public Safety Broadband Licensee and public safety entity, as its spectrum lessee, must file a spectrum leasing arrangement with the Commission prior to the public safety entity commencing any operations. The Commission will require that the spectrum leasing arrangement take the form of a spectrum manager leasing arrangement under the Commission's spectrum leasing rules (47 C.F.R. § 1.9020). The Commission did not permit such arrangements to take the form of long-term *de facto* transfer spectrum leasing arrangements. It is necessary that the Public Safety Broadband Licensee retain not only *de jure* control of all of the spectrum associated with the Public Safety Broadband Licensee, even in areas not scheduled for build-out, but also *de facto* control of the spectrum leased for use by public safety entities. The Public Safety Broadband Licensee must maintain actual oversight and working knowledge of its spectrum lessees' activities in order to ensure compliance with all requirements of the Communications Act, the Commission's rules, and the obligations set forth in the *700 MHz Second Report and Order* (see 47 C.F.R. §§ 1.9010-1.9030).

In addition to compliance with the Commission's spectrum leasing requirements, the public safety spectrum lessee must ensure that ***the following conditions are met***: (1) the network must provide broadband operations; (2) the network must be fully interoperable with the shared national broadband network required by the NSA; (3) the network must be available for use by any public safety agency in the area; and (4) the network must satisfy any other terms or conditions required by the Public Safety Broadband Licensee. These conditions specifically must be included in the spectrum manager lease agreement entered between the Public Safety Broadband Licensee and the public safety entity. Consistent with Section 90.551 of the Commission's rules, which contains the general 700 MHz public safety spectrum construction requirements, the lease agreement between the parties must specify that the public safety entity must construct and place into operation its network within one year of the effective date of the spectrum manager leasing arrangement, and if not, then the Public Safety Broadband Licensee will terminate the spectrum leasing arrangement pursuant to the Commission's rules. The separate network need not, however, meet the other specifications of the D Block licensee's shared national network. In particular, absent agreement of the public safety entity, the Public Safety Broadband Licensee, and the D Block licensee, the separate network may not operate using any spectrum associated with the D Block license. Finally, as required by the Commission's spectrum leasing rules, the Public Safety Broadband Licensee must notify the Commission of the spectrum manager leasing arrangement as part of the Commission's spectrum manager lease notification procedures. The notice must identify the public safety entity leasing the spectrum and the particular areas of spectrum leased as part of this build-out option.

The Commission emphasized that under no conditions may a public safety entity construct a network using 700 MHz public safety broadband spectrum in an area absent the approval of the Public Safety Broadband Licensee. Nothing in this determination should be construed, however, to prohibit the Public

Safety Broadband Licensee from being responsive to requests from localities to opt out and provide separate network services pursuant to a spectrum lease approved by the Public Safety Broadband Licensee and the Commission.

Conditions for Waiver to Allow Limited and Temporary Wideband Operations. The Commission prohibited wideband operations in the public safety allocation of the 700 MHz Band, subject to the limited exceptions. The Commission required public safety entities seeking to deploy wideband systems to satisfy the following conditions and restrictions:

First, wideband operations in the 700 MHz public safety spectrum will be permitted only upon grant of a properly supported request for waiver of the requirement to conform to the band plan adopted in the *700 MHz Second Report and Order, i.e.*, one that permits only broadband or narrowband operations (*see* 47 C.F.R. § 1.9250). Requests for waiver to conduct wideband operations must be accompanied by an application for authorization.

Second, any petition for waiver must be accompanied by a letter from the Public Safety Broadband Licensee, confirming that the proposed wideband deployment is not inconsistent with the broadband deployment plan for the affected or adjacent service areas. The Commission encouraged public safety entities seeking such waivers to cooperate with the Public Safety Broadband Licensee to reach agreement on the conditions, if any, to be placed on any wideband deployment, including the appropriate plan for transition to the nationwide broadband, interoperable network. All requests for waiver must include any agreed-upon conditions and transition plan.

Third, the Commission restricted grants of waiver to the deployment of a wideband system in the consolidated narrowband spectrum or the internal public safety guard band. The Commission believed that the regional planning committees will continue to serve an important role in overseeing and crafting appropriate spectrum use; to that end, petitions for waiver in the narrowband spectrum must also include a letter from the appropriate regional planning committee or state licensee confirming that the proposed wideband deployment will not disrupt any regional or state planning efforts that are underway. The Commission encouraged the Public Safety Broadband Licensee to coordinate with the applicable regional planning committee or state licensee when these entities are asked to consider any wideband deployment in the narrowband portion of the public safety spectrum, to ensure proper coordination with existing and pending narrowband applications.

If there are instances where spectrum in the narrowband segment or internal guard band is unavailable for wideband operations, the Commission permitted submission of request for waiver to operate in the upper 1.25 megahertz of the broadband allocation. The Commission will consider requests for waiver to conduct wideband operations in the broadband allocation only upon submission of a substantially supported, detailed technical showing demonstrating why there is insufficient spectrum in the narrowband allocation or internal guard band to support the desired wideband operations. As with requests to conduct wideband operations in the narrowband segment or internal guard band, any request for waiver to conduct wideband operations in the upper 1.25 megahertz of the broadband allocation must be accompanied by a letter from the Public Safety Broadband Licensee confirming that the proposed wideband deployment is not inconsistent with the broadband deployment plan for the affected or adjacent service areas, and all requests for waiver must reflect any conditions and transition plan agreed upon by the petitioner and the Public Safety Broadband Licensee. The public safety entity seeking to establish wideband operations in the broadband segment must have first issued a request for proposal (RFP) that permitted interested parties to submit broadband proposals that are technically consistent with the Public Safety Broadband Licensee network. Finally, the wideband applicant must include with its waiver request proof that

responses to the RFP proposing a broadband network were more costly, provided less coverage as measured by throughput at the network edge, or were otherwise inferior to the accepted wideband proposal.

The Commission will not entertain any request for waiver seeking to permit wideband operations in the broadband segment in areas scheduled for broadband deployment within the first three years of the build-out plan for the national public safety broadband network. The Commission will not grant any waiver request for any wideband deployment in the broadband segment that does not include a detailed plan, accompanied by attestation, specifying how and by what date the wideband applicant will integrate its proposed wideband system into the national broadband network. The Commission will condition any waiver relief for wideband operations in the broadband segment upon acceptance of the applicant's integration plan. As a further condition of any wideband operations proposed in the broadband segment, the Commission will require all devices operating on the wideband system to be designed such that they also must be interoperable with the nationwide, broadband network. The authority granted for any wideband operations in the broadband segment will expire automatically upon the D Block licensee's initiation of service in areas where wideband has been deployed. Further, any Grandfathered Wideband STA operations or wideband authority granted by waiver in the public safety segment of the 700 MHz Band shall be secondary to primary narrowband or broadband applications, as applicable. Finally, as a condition of the grant of waiver allowing deployment of a wideband system in the broadband segment, a public safety entity must certify in its application and waiver request its acknowledgement that it may not seek reimbursement for any costs involved in converting the wideband system to the national broadband network upon completion of the broadband network in the subject area.

License terms for wideband operations granted under waiver – whether they are in the narrowband, internal guard band, or broadband segments of the 700 MHz public safety spectrum – will be limited to no more than five years, and may be granted for less time depending on the particular circumstances presented. The Commission must receive requests for renewal of the license granted pursuant to waiver request not less than 180 days prior to expiration of the license. Renewal requests must include a showing that continued operation of the wideband system is in the public interest. Renewal requests for wideband operations in the broadband segment also must be accompanied by a letter from the Public Safety Broadband Licensee confirming that continuing wideband operations are not inconsistent with the broadband deployment plan for the affected or adjacent service areas. The license term for any renewal of waiver will not exceed three years and a wideband waiver licensee may only receive a single extension. Any renewal of a wideband authorization shall continue to be on a secondary basis only to primary narrowband or broadband applications, as applicable. Finally, the Commission concluded that it was not necessary to adopt any particular wideband interoperability standard.

3. Safeguards Relating to the Public/Private Partnership

a. Rules for Establishment, Execution and Application of the NSA

The Commission specifically conditioned the D Block license on the following requirements to ensure the establishment and execution of the NSA in a timely manner while safeguarding the public interest.

Approval of NSA as Pre-Condition for Granting the D Block license. The D Block license will not be issued until the Commission has approved the NSA and following such approval, the parties execute the NSA and file an executed copy with the Commission. The Commission recognized that the D Block licensee will be subject to an aggressive build-out schedule, and an applicant for the license may wish to commence certain initial construction activities prior to the grant of an authorization. The Commission has not prohibited the winning bidder of the D Block license from engaging in network build-out during

the NSA negotiation period and prior to grant of the license, but to ensure that such build-out does not frustrate the interests of public safety or preempt the negotiations regarding the appropriate build-out schedule, the Commission required that any such build-out occur only with the approval of the Public Safety Broadband Licensee.

As is the case under the service rules for other spectrum licenses (47 C.F.R. § 22.143), such construction is conducted at the sole risk of the applicant, is subject to the Commission's authority to provide notification to stop such build-out, and cannot result in commercial operation unless and until the Commission has granted the D Block license.

Timeframe for Negotiation. The Commission required the parties to commence negotiations on the terms of the NSA on the date that the winning bidder of the D Block license files its long form application (*See* 47 C.F.R. §§ 1.2107-1.2109) or on the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later, and the parties must conclude negotiations not later than six months after the commencement date. As soon as the parties have reached an agreement on all the terms of the NSA, but not later than five days after the six month period for negotiation has expired, they must submit for Commission approval the NSA together with all agreements and other documents referred to in the NSA, including the agreement reached on the broadband technology standard. The Commission will act on the NSA within 60 days of receipt. If the parties have not reached agreement on all terms of the NSA by the end of the six-month period, they must notify the Commission not later than five days after the expiration of the six-month period of the terms agreed upon, the nature of the remaining issues and each party's position on each issue (whether in the form of final best offers, or a characterization of the parties jointly on the positions of the parties and reason for impasse), whether additional negotiation is likely to produce an agreement, and, if so, a proposed deadline for completing the agreement.

Requirement of Good Faith. The Commission required the parties to negotiate in good faith the specific terms of the NSA pursuant to the conditions, requirements, and guidance established in the *700 MHz Second Report and Order*. The parties were also required to act in good faith in the performance of the NSA. To provide additional assurance that negotiations are proceeding in good faith, and except as explicitly set forth in the *700 MHz Second Report and Order*, the Commission will oversee the negotiation of the NSA, and will play an active role in the resolution of any disputes among the relevant parties (including the winning bidder for the D Block; the D Block licensee; the Operating Company; the Network Assets Holder; and the Public Safety Broadband Licensee), both resulting from the negotiations and once the parties are operating under the terms of the NSA.

Progress Reports During Negotiations. The winning bidder for the D Block license shall file an initial report within 10 days of the commencement of the negotiations period certifying that active and good faith negotiations have begun, providing the date on which they commenced, and providing a schedule of the initial dates on which the parties intend to meet for active negotiations, covering at a minimum the first 30-day period. The Commission required that two members of the Commission's staff, one from the Wireless Bureau, and one from the Public Safety and Homeland Security Bureau, be present at all stages of the negotiation of the NSA as neutral observers. However, the staff will not act as arbitrators. Disputes must still come to the Commission for resolution. Beginning three months from the triggering of the six-month negotiation period, the winning bidder for the D Block license and the Public Safety Broadband Licensee must jointly provide detailed reports, on a monthly basis and subject to a request for confidential treatment, on the progress of the negotiations throughout the remainder of the negotiations. These reports should include descriptions of all material issues that the parties have yet to resolve. The monthly reports will enable the Commission to identify any areas of significant disagreement between the winning bidder for the D Block license and the Public Safety Broadband Licensee. The Commission also

reserved the right to require the parties to meet with Commission staff to discuss their negotiations or reports at any time during the negotiation process.

The Commission intends to actively monitor and, if required, participate in the negotiation process. Such involvement may help to avoid intractable disputes and to produce an agreement consistent with the Commission's rules. If the Commission determines that parties are unlikely to reach an agreement or that they violate certain obligations (*e.g.*, good faith negotiation obligations), the Commission (or the Bureaus) may take, on its own motion, actions pertaining to dispute resolution before the NSA approval, described elsewhere in the *700 MHz Second Report and Order*, without waiting for the six-month negotiation period to fully elapse.

Resolution of Negotiation Disputes. Either upon notice of a dispute at the end of the six-month negotiation period, or on their own motion at any time, if the Chiefs of PSHSB and WTB determine that negotiations have reached a likely impasse, the Commission delegated authority to the Chiefs of PSHSB and WTB to take certain actions jointly in the public interest to adjudicate the dispute (47 U.S.C. § 155(c)(1)). These actions may include but are not limited to one or more of the following: (1) granting additional time for negotiation; (2) issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with their decision; (3) directing the parties to further brief the remaining issues in full for immediate Commission decision; and/or (4) immediate denial of the long-form application filed by the winning bidder for the D Block license. Remedies shall not, however, include ordering private third-party arbitration. The Commission concluded that it would be inappropriate to have issues regarding the use of public safety spectrum resolved by a private party and precluded that option as a remedy. In the event that the long-form application filed by the winning bidder for the D Block license is denied, the winning bidder for the D Block license will be deemed to have defaulted under Section 1.2109(c) of the Commission's rules, it will be liable for the default payment set forth in § 1.2104(g) (*see* 47 C.F.R. § 1.2104(g)), and the full Commission, at its discretion, shall decide whether to offer a new license for the spectrum to existing or new applicants, offer a new license to the other highest bidders (in descending order) at their final bids, or choose any other process within the Commission's statutory authority to reassign the license, in light of the public interest goals served by the Public/Private Partnership (*see, e.g.*, 47 C.F.R. § 1.2109).

Licensing Rules and Procedures Applicable to the D Block license. Except as provided in the *700 MHz Second Report and Order*, the Commission's competitive bidding rules applicable to other commercial licenses in the 700 MHz Bands will apply to the winning bidder for the Public/Private Partnership License, including the practices and procedures listed in Part 1 of the Commission's rules (*see, e.g.*, 47 C.F.R. §§ 1.2104 *et seq.*).

If the long form application is denied, the procedures under Section 1.2109 of the Commission's rules will generally apply. The Commission noted that it may complete review of the long form application and deny the application without regard to the NSA, if the application is deficient or the grant of the license would otherwise be inconsistent with the Commission's rules. The Commission further clarified that if the winning bidder for the D Block license failed to comply with the procedures established for negotiation or dispute resolution, fails to receive final Commission approval of an NSA, or fails to execute an approved NSA, (a) it shall be disqualified from holding the D Block license, (b) the license application will be denied, and (c) it will be deemed to have defaulted and will be subject to all payments and obligations under Section 1.2109 of the Commission's rules.

Process for Final Approval. The Commission will review and approve the NSA. To facilitate its review, the Commission may seek input from the parties, or invite public comment on the proposed NSA, subject

to redactions to protect a legitimate need for confidentiality. After conducting review, the Commission may approve the NSA in its entirety, approve it with modifications, or require the parties to address additional terms or re-draft existing terms within a specified timeframe. Following approval with or without modifications, the parties shall execute the NSA and submit a copy of the executed NSA to the Commission within 10 days of approval.

b. Ongoing Conditions for the Protection of Public Safety Service

Requirements Relating to Organization and Structure of the Public/Private Partnership. To support continued construction and operation of the shared wireless broadband network by reducing the risk that the D Block license or the network assets will be drawn into a bankruptcy proceeding, the Commission required:

- The winning bidder for the D Block license to form separate special purpose entities (a “special purpose entity” is a legal entity created for a special limited purpose, in this context primarily to hold the D Block license or the network assets, or to conduct the operation), which will be bankruptcy remote, to hold the D Block license and the network assets, respectively. 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.
- The winning bidder of the D Block licensee to form another vehicle that will also be a bankruptcy remote, special purpose entity (Operating Company). The D Block licensee will lease the spectrum rights associated with the D Block license to the Operating Company pursuant to the Commission’s spectrum leasing rules. The spectrum leasing arrangement will be for the entire term of the D Block license and will be renewable, provided that the Commission renews the underlying D Block license. These license transactions will occur following the granting of the D Block license and should follow existing Commission procedures applicable to such transactions. The Operating Company will also be leased secondary use rights associated with the primary license held by the Public Safety Broadband Licensee. If the Commission cancels the D Block license this spectrum lease arrangement will also be terminated.
- The D Block auction winner shall submit the proposed organizational structure to the Commission and demonstrate to the Commission’s satisfaction that each of the constituent entities is appropriately bankruptcy remote.
- The issuance of one or more legal opinion letters, at the cost of the winning bidder of the D Block license, from bankruptcy counsel chosen by the winning bidder of the D Block license and acceptable to the Commission, and such other parties as the Commission may designate, that clearly states, subject only to customary assumptions, limitations and qualifications that none of the winning bidder, the Operating Company, or any party to the NSA or other related agreements will be substantively consolidated with any entity. The scope of this opinion letter shall also cover such other opinions as the Commission may request. The opinion letter must contain detailed legal analysis of the basis of counsel’s opinion. A draft opinion letter must be submitted for review and approval by the Commission’s Office of General Counsel prior to issuance of the opinion. Bankruptcy counsel and, if applicable, counsel’s firm, must have a Martindale-Hubbell rating of “A/V” and must satisfy the Commission in all other respects.

The D Block license and the Public Safety Broadband License shall have a condition that all special purpose entities and any leasing or other commercial agreements created to implement the public/private partnership will be subject to the Communications Act of 1934, as amended, and the Commission's rules and regulations, and the parties to the NSA shall acknowledge such regulatory authority in a form acceptable to the Commission.

The D Block licensee and other entities authorized and required in the *700 MHz Second Report and Order* or the NSA will have the obligation to build out the nationwide, shared interoperable broadband network operating on the spectrum associated with the D Block license and the Public Safety Broadband License.

Prohibition on Discontinuance of Public Safety Operations. The Commission prohibited the D Block licensee from discontinuing or degrading the broadband network service provided to the Public Safety Broadband Licensee or to public safety entities unless either at the request of the entity or entities in question or it has first obtained the approval of the Commission. The D Block licensee must notify the affected public safety entity or entities and the Public Safety Broadband Licensee at least 30 days prior to any unrequested discontinuance or degradation of network service.

Failure to Comply with the NSA or the Commission's Rules. Failure to comply with the Commission's rules or the terms of the NSA may warrant cancelling the D Block license, depending on the circumstances, and awarding it to a new licensee. In particular, the full Commission will decide whether to cancel and reassign the D Block license in the event that the D Block licensee either cannot or will not fulfill the critical responsibilities that are being given to it. In the event that the Commission determines that the D Block license must be cancelled consistent with the Act and the requirements in the *700 MHz Second Report and Order*, an order shall be issued cancelling the license and announcing the process for awarding rights to the spectrum to a new licensee. However, pending the award to a new licensee, the Operating Company will be issued a special temporary authority (STA) to continue to provide both commercial and public safety service in the Public/Private Partnership spectrum.

To further ensure that services to public safety are not threatened by cancellation or otherwise, the NSA shall require, in a separate agreement, the granting of (a) an irrevocable and assignable right of first refusal if the network and network assets are otherwise to be sold; and (b) an irrevocable and assignable option in favor of the Public Safety Broadband Licensee to acquire the network and all network assets if and whenever the D Block license is cancelled or terminated, by reason of default or for any other reason, for a consideration equivalent to the fair market value (FMV) of the tangible and intangible assets sold. This option shall be senior to, and have priority over, any other right, claim, or interest in or to the network or the network assets. An event of default includes any default of the D Block licensee of a material obligation under the NSA, as determined by the Commission. Valuation will be performed pursuant to an FMV methodology to be agreed upon by the parties and set forth in the NSA. Valuation shall be performed immediately following the occurrence of a triggering event and completed within a reasonable time thereafter. The NSA must further provide that, in the event that the D Block license is awarded to a new entity, the Public Safety Broadband Licensee's right to purchase the network assets shall be reassigned to the new D Block licensee. Thereafter, the Public Safety Broadband Licensee's right to purchase shall be extinguished unless and until a new triggering event described above occurs, as the primary purpose of the right, to enable a smooth transition in the event of a default, would be achieved, and because maintaining the right might adversely impact the incentive of the new D Block licensee to invest in its network.

In the event that the D Block license is cancelled, the Commission may choose any process within the Commission's statutory authority to reassign the license, in light of the public interest goals served by the

Public/Private Partnership. Upon grant of a new license, the Commission, or the Bureaus acting on delegated authority, shall, in coordination with the former licensee and the new licensee, as well as the Public Safety Broadband Licensee, establish the terms and timing under which the temporary authorization shall be cancelled and the new D Block licensee assume the construction and operation of the network.

In the event that the Public Safety Broadband Licensee fails to adhere to the terms of the NSA, or comply with the Commission's rules or any requirements contained in the *700 MHz Second Report and Order*, to an extent giving rise to license cancellation, the Commission delegated authority to the Chiefs, PSHSB and WTB jointly to determine an appropriate remedy. The potential remedies include, but are not limited to, cancelling the license, assigning the license to another entity, directing the Public Safety Broadband Licensee to transfer the assignable option to purchase the assets at fair market value, ordering specific performance, or ordering removal and replacement of individual officers, directors or member organizations of the Public Safety Broadband Licensee. The potential remedies would be consistent with the unique role and responsibilities of the Public Safety Broadband Licensee and the importance of minimizing any disruptions to public safety broadband operations in the 700 MHz Band.

Resolution of Disputes after Grant of the D Block license. The Commission established that it should assume primary responsibility and jurisdiction for adjudicating intractable disputes that arise once the parties are operating pursuant to the terms of the NSA. The parties to the NSA may at any time bring a complaint based on a claim that the other party has deviated from the terms of the NSA, or a petition for a declaratory ruling to resolve the proper interpretation of an NSA term or provision. The Commission may, however, as an alternative to adjudicating the issues, require the parties to first seek a settlement to the dispute or authorize them to resolve the dispute through litigation or other means, particularly if the dispute is found to involve no significant public concerns, and the Commission will consider any request by the parties to authorize such means.

In the event the Commission decides to adjudicate the issues, the Commission will have full authority to interpret not only its rules but all of the provisions of the NSA. If the Commission finds a material breach of the NSA, it may apply any remedy or enforcement mechanism within its authority. In particular, insofar as the D Block license is conditioned for its entire license term upon the D Block licensee's compliance with the terms of the NSA, breach of this licensing condition may result in the cancellation of the license or other enforcement action (*See* 47 C.F.R. § 1.2109(c)). The Public Safety Broadband Licensee's breach of its license terms, the NSA, or the Commission's rules may also result in the cancellation of its license or other enforcement action. As with adjudication of disputes during the NSA negotiation process, the Chiefs of PSHSB and WTB are delegated joint responsibility for adjudicating any disputes that arise during performance of the NSA. Bureau level adjudications of NSA disputes must be completed within 45 days. The parties may seek review by the Commission of any bureau-level adjudication (47 C.F.R. § 1.115). If a breach of the NSA occurs but is not brought to the Commission for resolution, the Commission retains authority to apply all appropriate remedies on its own initiative at any time after the breach occurs.

Reporting Obligations. Once the NSA is approved by the Commission and executed by the parties, the parties must jointly file quarterly reports with the Commission.

These reports must include:

- Detailed information on the areas where broadband service has been deployed.

- How the specific requirements of public safety are being met.
- Audited financial statements (as part of these quarterly reports, the Commission may require financial information from the ultimate parent entity of the individual parties to the NSA).
- Which public safety entities (*e.g.*, police, fire departments) are using the broadband network in each area of operation. By providing the number of public safety entities that have chosen to receive service from the network, the reports will provide the Commission with an important indicator of the network's success in meeting public safety needs.
- What types of applications (*e.g.*, voice, data, video) are in use in each area of operation to the extent known.
- The number of declared emergencies in each area of operation.

The Commission anticipated that this information will be readily available from the billing systems used for the shared network, and it reserved the right to specify additional information that the quarterly reports must include at a later date.

The D Block licensee and Public Safety Broadband Licensee also have joint responsibility to register the base station locations with the Commission, providing basic technical information, including geographic location. Such registrations may be filed with a request for confidential treatment by the Commission.

The Commission delegated to the Wireless Bureau authority to adopt rules and procedures to implement this requirement, as well as authority to modify ULS to accept such filings and to issue a Public Notice describing any such modifications and relevant filing procedures and adopt filing rules and procedures not inconsistent with the *700 MHz Second Report and Order* to facilitate these reporting obligations.

4. Other Issues

a. Bidding Credits

The Commission provided eligible bidders for the D Block license with the existing 15 and 25 percent bidding credits (47 C.F.R. § 27.502). Pursuant to the existing small business size standards, eligible bidders with average attributable gross revenues for the last three years not exceeding \$15 million or \$40 million, respectively, may be eligible for bidding credits of 25 percent or 15 percent, respectively.

b. License Partitioning, Disaggregation, Assignment, and Transfer

The Commission decided to prohibit geographic partitioning and spectrum disaggregation for the D Block licensee and the Public Safety Broadband Licensee. However, the D Block licensee would be permitted to assign or transfer its license subject to the Commission review and prior approval.

IV. CONCLUDING NOTES CONCERNING SMALL ENTITIES

The projected reporting, recordkeeping, and other compliance requirements resulting from the *700 MHz Report and Order* and the *700 MHz Second Report and Order* will apply to all entities in the same manner. The Commission believed that applying the same rules equally to all entities in this context promotes fairness. The Commission did not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopted should benefit small entities by giving them more information, more flexibility, and more options for gaining

access to valuable wireless spectrum. Also as noted, eligible small entities will be provided bidding credits in the auction for the D Block, just as they will be with respect to all other 700 MHz Blocks.

For further details of the compliance requirements refer to the *700 MHz Report and Order* and the *700 MHz Second Report and Order*.

NOTE: As described on the cover page, small entities should refer to the pertinent rules or the two orders if additional or more elaborate guidance is needed. This plain-language compliance guide is intended to assist small entities, but should not be used as the sole source of information when making important business decisions.

V. WEBLINKS

700 MHz Report and Order, FCC 07-72, adopted April 25, 2007 and released April 27, 2007.

<http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-72A1.doc>

<http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-72A1.pdf>

<http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-72A1.txt>

700 MHz Second Report and Order, FCC 07-132, adopted July 31, 2007 and released August 10, 2007.

<http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-132A1.doc>

<http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-132A1.pdf>

<http://hraunfoss.fcc.gov/edocs_public/attachmatch/FCC-07-132A1.txt>