

## FEDERAL COMMUNICATIONS COMMISSION

### 47 CFR Parts 0, 1, 2, 27, and 90

[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; FCC No. 07–132]

#### Service Rules for the 698–806 MHz Band, Revision of the Commission's Rules Regarding Public Safety Spectrum Requirements, and a Declaratory Ruling on Reporting Requirement under the Commission's Anti-Collusion Rule

**AGENCY:** Federal Communications Commission.

**ACTION:** Final rule.

**SUMMARY:** In this document, the Federal Communications Commission (FCC) adopts final rules governing wireless licenses in the 698–806 MHz Band (*i.e.*, the 700 MHz Band). This spectrum is currently occupied by television broadcasters and is being made available for wireless services, including public safety and commercial services, as a result of the digital television (“DTV”) transition.

**DATES:** Effective October 23, 2007, except for the amendments to §§ 27.14, 27.15, 27.50, and 90.176 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

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**SUPPLEMENTARY INFORMATION:** This is a summary of the Commission's 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; FCC No. 07–132, adopted July 31, 2007 and released August 10, 2007. The full text of the Second Report and Order is available for public inspection on the Commission's Internet site at <http://www.fcc.gov>. It is also available for inspection and copying during regular business hours in the FCC Reference Center (Room CY–A257),

445 12th Street, SW., Washington, DC 20554. The full text of this document also may be purchased from the Commission's duplication contractor, Best Copy and Printing Inc., Portals II, 445 12th St., SW., Room CY–B402, Washington, DC 20554; telephone (202) 488–5300; fax (202) 488–5563; e-mail [FCC@BCPIWEB.COM](mailto:FCC@BCPIWEB.COM).

#### Synopsis

In this Second Report and Order, the Commission establishes rules governing wireless licenses in the 698–806 MHz Band (herein, the “700 MHz Band”). This spectrum currently is occupied by television broadcasters in TV Channels 52–69. 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.<sup>1</sup> The Commission has been considering rules related to the use of this spectrum in three ongoing proceedings: (1) The 700 MHz Commercial Services proceeding, 71 FR 48506 (2006),<sup>2</sup> (2) the 700 MHz Guard Bands proceeding, 71 FR 57455,<sup>3</sup> and (3) the 700 MHz Public Safety proceeding, 72 FR 1201 (2007); 71 FR 17786 (2006).<sup>4</sup> Recognizing the

<sup>1</sup> See Deficit Reduction Act of 2005, Pub. L. 109–171, 120 Stat. 4 (2006) (“DRA”). Title III of the DRA is the DTV Act.

<sup>2</sup> See Service Rules for the 698–749, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission's rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems and Section 68.4(a) of the Commission's rules Governing Hearing Aid-Compatible Telephones, CC Docket No. 94–102, WT Docket No. 01–309, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, 71 FR 48506 (2006) (700 MHz Commercial Services NPRM).

<sup>3</sup> See Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06–169 and 96–86, *Notice of Proposed Rule Making*, 71 FR 57455 (2006) (700 MHz Guard Bands NPRM).

<sup>4</sup> See Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, PS Docket No. 06–229, WT Docket No. 96–86, *Ninth Notice of Proposed Rulemaking*, 72 FR 1201 (2007) (2006) (700 MHz Public Safety Ninth NPRM); Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, *Eighth Notice of Proposed Rulemaking*, 71 FR 17786 (2006) (700 MHz Public Safety Eighth NPRM).

interrelationship of these proceedings, the Commission recently combined these proceedings and in April 2007 issued a single Report and Order and Further Notice of Proposed Rulemaking (the 700 MHz Report and Order, 72 FR 27688 (2007), and 700 MHz Further/NPRM, FR 24238 (2007), respectively) addressing all three proceedings.<sup>5</sup> Accordingly, the Commission addresses the rules regarding access to 700 MHz Band spectrum and the provision of service across the country, as well as opportunities for broadband service for Public Safety users in this Second Report and Order.

#### I. Discussion

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

##### 1. Band Plan

##### a. Commercial Spectrum (Excluding Guard Bands Spectrum)

1. 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. The Commission reaffirms 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 determines 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.

<sup>5</sup> Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission's rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Section 68.4(a) of the Commission's rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03–264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's rules, WT Docket No. 06–169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06–229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007) (700 MHz Report and Order and 700 MHz Further NPRM, respectively).

2. The Commission will license three commercial blocks of paired spectrum—one 12-megahertz block (comprised of paired 6-megahertz blocks) licensed on a CMA basis, one 12-megahertz block (comprised of paired 6-megahertz blocks) on an EA basis, and one 22-megahertz block (comprised of paired 11-megahertz blocks) on a REAG basis—as well as one 6-megahertz block of unpaired spectrum on an EA basis. First, the Commission will license one additional 12-Megahertz Spectrum Block (comprised of paired 6-Megahertz blocks) 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. Second, the Commission will license a 22-megahertz block (comprised of paired 11-Megahertz blocks) on a REAG basis located in the C Block in the Upper 700 MHz Band. Third, the Commission will license a 12-Megahertz block (comprised of paired 6-megahertz blocks) on an EA basis located in Block A of the Lower 700 MHz Band. Finally, the Commission adopts EAs for the unpaired 6-megahertz E Block of the Lower 700 MHz Band.

#### b. Guard Bands Spectrum

3. The Commission adopts a revised band plan for the 700 MHz Guard Bands spectrum and the Upper 700 MHz Band, which includes features of Cyren Call's additional band plan proposal and the July 6, 2007 Guard Bands Proposal. Additionally, the Commission determines that it lacks legal authority to adopt the Broadband Optimization Plan (BOP), Critical Infrastructure Industries (CII), or the Ericsson proposals because they propose a reallocation of commercial spectrum to public safety, and assignment of commercial licenses from the Commission's auction inventory without competitive bidding. The Commission also rejects the most recent Ericsson band plan proposal, as well as the Access Spectrum/Pegasus Alternative Proposal and the Cyren Call proposals to the extent they are inconsistent with the Commission's actions in this Second Report and Order.

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

4. The Commission adopts the July 6, 2007 Guard Bands Proposal 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 repacks into the reconfigured Guard Band A Block. The

Commission concludes 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 Commission finds that the public interest is best served by adoption of features of the Cyren Call and July 6, 2007 proposals because it removes the "repacked" Guard Band A Block from the critical juncture between the Upper 700 MHz D Block and the public safety broadband spectrum, which together will be used as the foundation for the 700 MHz Public/Private Partnership.

5. *Funding for Public Safety Reconfiguration.* The Commission finds that the proximity of the public safety broadband spectrum to the adjacent D block will provide significant benefits to the D Block licensee. Accordingly, the Commission concludes that 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.

6. *License Modifications.* The Commission finds that the public interest, convenience, and necessity will be served by relocating all existing Guard Band A 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 that the Commission effects today are consensual.

7. These license modifications are consistent with Sections 337 and 309 of the Act, because the 4 megahertz of remaining Guard Bands spectrum remains commercial spectrum subject to auction. Specifically, the 2 megahertz from 746–747 MHz and 776–777 MHz will be added to, and auctioned as part of, the Upper 700 MHz Band C Block in the forthcoming 700 MHz Band auction. 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 be able to determine other potential uses of this spectrum, and the related portion of the B Block at 805–806 MHz, at a future date.

8. *Spectrum Use Agreements.* Pursuant to Section 309(f) of the Act, the Commission hereby grants 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). 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 modifies (repack and relocate) the Guard Band A Block MEA licenses held by Access Spectrum, Pegasus, and Dominion upon the effective date of this Second Report and Order, the six STA grants to Access Spectrum will be granted upon the effective date as well.

9. *PTPMS II.* To ensure that critical interoperable public safety communications are uniform throughout the continental United States, the Commission hereby modifies PTPMS II's Guard Band A Block license in Buffalo (MEA 003), pursuant to Sections 316, 301, 303, and 4(i) of the Act, to operate in the same geographic area but in the reconfigured A Block at 757–758 MHz and 787–788 MHz. The Commission also modifies 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. These modifications should not burden PTPMS II because it does not have any operations associated with the three licenses.

10. As a result of the 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. In the event that 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 D Block technical rules.

11. Further, the Commission grandfathers PTPMS II's two B Block licenses without any renewal expectancy, and does not extend the term of its licenses as the Commission has for the reconfigured Guard Band A Block licenses. The Commission will

afford PTPMS II's Guard Band A Block license the modified (less stringent) technical rules that the Commission adopts below for all other Guard Band A Block licenses.

12. Accordingly, pursuant to Section 316 of the Act and Section 1.87 of the Commission's rules, PTPMS II has 30 days from the effective date of this Second Report and Order to protest the foregoing license modifications. Additionally, as stated in their July 6, 2007 *Ex Parte*, the other Guard Bands licensees have waived their protest rights.

(b) Broadband Optimization Plan (BOP), Critical Infrastructure Industries (CII) and Ericsson Proposals

13. For the reasons discussed in the 700 MHz *Further NPRM*, the Commission denies the BOP and CII proposals. Further, the Commission concludes that the additional Ericsson band plan proposal is not in the public interest.

## 2. Service Rules

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

### (i) Performance Requirements

14. In order to better promote access to spectrum and the provision of service, especially in rural areas, the Commission replaces the current "substantial service" requirements for the 700 MHz Band licenses that have not been auctioned with significantly more stringent performance requirements. These requirements include the use of interim and end-of-term benchmarks, with geographic area benchmarks for CMA and EA licenses, and population benchmarks for REAG licenses. 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 well as possible enforcement action, including forfeitures. The Commission also reserves the right to impose a proportional reduction in the size of the license area of a licensee that fails to meet its interim benchmarks. 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. They may also be subject to potential enforcement action, including possible forfeitures or cancellation of license. The Commission also imposes certain

reporting requirements intended to help the Commission monitor build-out progress during the license term. The Commission expects that licensees will take these construction requirements seriously and proceed toward providing service with utmost diligence. As such, the Commission does not envision granting waivers or extensions of construction periods except where unavoidable circumstances beyond the licensee's control delay construction.

15. *Specific Performance Requirements for CMA and EA Licenses.* The Commission concludes 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 their license within four years of the end of the DTV transition, and (2) at least 70 percent of the geographic area of their license at the end of the license term. In determining the relevant geographic area, the Commission concludes 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, from ten to eight 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 the "keep-what-you-use" rules described below.

16. 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.

17. *Specific Performance Requirements for REAG Licenses.* The Commission concludes that, for licenses based on REAGs, licensees must provide signal coverage and offer service to: (1) At least 40 percent of the population of the license area within four years, and (2) at least 75 percent of the population of the license area by the end of the license term. Licensees must use the most recently available U.S. Census Data at the time of measurement to meet these population based build-out requirements.

18. In addition, for licenses based on REAGs, the Commission will apply its performance requirements on an EA basis. Accordingly, to meet their benchmarks, REAG licensees must provide signal coverage and offer service to at least 40 percent of the population in each EA in its license area within four years and 75 percent of the population of each of these EAs at the end of the license term. 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, from ten to eight 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 the "keep-what-you-use" regime described below.

19. *Reporting Requirements.* In connection with the performance requirements adopted in this Second Report and Order, the Commission adopts an interim reporting requirement that will obligate 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. All licensees will file the first of these reports at the end of the second year following the end of the DTV Transition, *i.e.*, February 17, 2011. Licensees that do not meet their interim benchmarks will file their second report following the sixth year after the end of the DTV Transition, *i.e.*, February 17, 2015, while licensees that do meet their interim benchmarks will have until the end of the seventh year to file, *i.e.*, 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.

20. *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 the Commission's performance requirements or, if they have not met the Commission's performance requirements, they must file a description and certification of the areas for which they are providing service. The information contained in the licensee's construction notification must include electronic coverage maps and other supporting documentation. The Commission recognizes that demonstrations of coverage may vary across licensees. Accordingly, the Commission delegates 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. The Commission recognizes that coverage determinations may need to be made on a case-by-case basis so as to account for the potentially wide variety of services and technologies that may be offered in the band.

21. The electronic coverage maps must clearly and accurately depict the boundaries of each EA or CMA in the licensee's service territory, and the areas where the licensee is providing signal coverage and offering service. If the licensee's signal does not provide service to the entire EA or CMA, the map must clearly and accurately display the boundaries of the area or areas within each EA or CMA not being served.

22. In addition to filing electronic coverage maps, each licensee must file supporting documentation certifying the type of service it is providing for each EA or CMA within its license service territory and the type of technology it is utilizing to provide this service for each EA or CMA in its service territory. The supporting documentation also must provide the assumptions used by the licensee to create the coverage maps, including the propagation model and the signal strength necessary to provide service with the licensee's technology.

23. 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, the licensee will be deemed to have met the Commission's construction build-out requirement.

24. Under the Commission's "keep-what-you-use" rule, 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 in which the licensee is not providing service, and those unserved areas will become available for reassignment by the Commission. The Commission will update its 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.

25. For purposes of reassigning these licenses, the Wireless Bureau is 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, the licensee that failed to serve the area may not file an application to regain the license authorization for that area. 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.

26. 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.

27. A licensee obtaining spectrum that was lost through the Commission's "keep-what-you-use" rule 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.

28. Under the Commission's "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 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 square 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 and lease these areas. The licensee also will have the opportunity to expand its service into the unused parts of its original license area.

(ii) Partitioning and Disaggregation

29. *Partitioning.* Under the Commission's modifications of the Section 27.15(d) rules relating to geographic partitioning of new 700 MHz Commercial Services licenses, the Commission establishes two options for partitioners and partitionees with regard to the newly adopted performance requirements discussed above.

30. Under 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 four-year and end-of-term construction benchmarks for the entire geographic

license area. If the parties fail to meet the four-year benchmark, they will each have their license term reduced by two years. If the parties meet the end-of-term construction benchmarks, they will retain the ability to continue to build out the unserved portion of their license areas. Parties that fail to meet the end-of-term benchmarks will be subject to a “keep-what-you-use” rule, under which they will each lose their authorization for unserved portions of their license areas, which will automatically cancel and return to the Commission for reassignment.

31. Under 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. If the partitioner or partitionee fails to meet the four-year build-out requirement for its respective partitioned service area, then its license term will be reduced by two years. If the parties meet the end-of-term construction benchmarks, they will retain the ability to continue to build out the unserved portion of their license areas. Parties that fail to meet the end-of-term benchmarks will be subject to a “keep-what-you-use” rule, under which they will lose their authorization for unserved portions of their license areas, which will automatically cancel and return to the Commission for reassignment.

32. *Disaggregation.* With regard to the rules relating to disaggregation of new 700 MHz Commercial Services Band licenses, the Commission modifies Section 27.15(d) to provide that the disaggregator, disaggregatee, or both the disaggregator and disaggregatee working together, can meet the four-year and end-of-term construction benchmarks for the entire geographic license area. If either of the parties meets the four-year build-out requirement, then this requirement is considered to be satisfied for both parties. If neither of the parties meets the four-year build-out requirement, then each of their license terms will be reduced by two years. Similarly, if either of the parties meets the end-of-term build-out requirement, then this requirement is considered to be satisfied for both parties and they will retain the ability to continue to build out the unserved portion of their license areas. However, parties that fail to meet the end-of-term benchmarks will be subject to an automatic “keep-what-you-use” rule, under which they will lose their authorization for unserved portions of their license areas, which will automatically cancel and return to the Commission for reassignment.

(iii) Open Platforms for Devices and Applications

33. The Commission determines that for one commercial spectrum block in the 700 MHz Band—the Upper 700 MHz Band C Block (700 MHz C Block)—the Commission 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, 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), as described further below. The Commission concludes, however, 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 openness requirements, such as wholesale or interconnection requirements, for the 700 MHz C Block.

34. *Scope of 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 emphasizes 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.

35. *Reasonable network requirements permitted.* The Commission emphasizes that it is not requiring 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. For example, providers are free to choose their air interface technology, and to deny service to devices or applications that cannot operate on the same technology, and may 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. Standards to ensure that network performance will not be significantly degraded would also be appropriate.

36. The Commission does not specify a particular process for 700 MHz C Block licensees to develop reasonable network management and openness standards, but the Commission requires certain minimum steps to ensure that device manufacturers and application developers have the ability to design products for this spectrum in a timely manner. Specifically, a 700 MHz 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 provider has a relationship to design products for the provider’s network). The 700 MHz C Block licensee must also provide to potential customers notice of the customers’ rights to request the attachment of a device or application to the licensee’s network, and notice of the licensee’s process for customers to make such requests, including the relevant network criteria. These network standards are expected to be non-proprietary, such that the standards 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. Providers must also 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.

37. The Commission encourages the development of industry-wide standards by an appropriate standards-setting body at the earliest possible date.

38. *Other regulatory requirements continue.* The requirement to provide an open platform for devices and applications the Commission is imposing shall not override wireless service providers' obligations to ensure that their networks and devices comply with applicable regulatory requirements (e.g., power and emission limits, E911, CALEA, etc.). For example, with respect to E911, if a network provider accepts a non-carrier device or application and if the device or application subsequently causes a violation of the Commission's rules, the Commission will apply the same third-party liability provisions as in the wireline context.

39. The Commission finds that a wireless carrier's obligations under its hearing aid compatibility rule, section 20.19 of the Commission's rules, are not affected by the openness obligations for 700 MHz C Block licensees. Under the Commission's rules, the extent of a carrier's compliance with the hearing aid compatibility obligations is not affected by handsets that connect to its network but it does not itself "offer" to its subscribers. Thus, the need to comply with section 20.19 of the Commission's rules would not justify a provider's refusal to connect a device. Further, the Commission declines 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.

40. *Enforcement processes.* The Commission intends to vigorously enforce the requirement to provide an open platform for devices and applications adopted for 700 MHz C Block licensees. The Commission will take appropriate enforcement action where necessary pursuant to the remedies available under its statutory authority, including forfeitures, license revocations, and cease-and-desist orders. A person or entity who believes a 700 MHz C Block licensee's refusal to attach a proposed device or application is a violation of the open platform rules adopted may file a complaint pursuant to the Commission's enforcement rules,

including the Commission's formal and informal complaint processes, where applicable. The Commission sets 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 requirements adopted, 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 commits 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

41. In response to Google's first request, the Commission affirms that nothing in the Commission's rules generally prohibits 700 MHz licensees from using dynamic spectrum management practices. In response to Google's second suggestion, the Commission declines to mandate the use of dynamic spectrum management practices for 700 MHz Band licensees.

42. The Commission concludes 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. Of course, to the extent any licensee believes that the specific spectrum management mechanisms that Google proposes is appropriate or preferable, it is free to choose to utilize these mechanisms, consistent with the Commission's guidance above.

(v) Protection of 700 MHz Public Safety Operations

43. The Commission shall continue to require Upper 700 MHz Band C Block licensees to meet the  $76 + 10 \log P$  and  $65 + 10 \log P$  out-of-band emission (OOBE) limits with respect to the public safety bands. However, the Commission will not require the Upper 700 MHz

Band D Block licensee to meet OOBE limits with respect to the public safety broadband spectrum.

44. The D Block licensee will still, however, be required to satisfy the  $76$  and  $65 + 10 \log P$  OOBE limits with respect to the narrowband portion of the public safety spectrum. Additionally, the Commission shall not require 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, as discussed above, the D Block licensee and Public Safety Broadband Licensee will be sharing the same infrastructure.

(vi) Licensee Eligibility

45. The Commission declines 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

46. 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 concludes that it is no longer necessary to apply the adjacent channel power (ACP) emissions criteria to the A Block. Instead, the Commission will apply OOBE limits, 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 finds that heightened OOBE criteria should continue to apply 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.

47. *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.

48. *Removal of the 746–747 MHz A Block Guard Band.* The Commission finds 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

49. The Commission finds that it would not be prudent to make any changes that would introduce the possibility of increased interference to adjacent public safety operations. Any future operations in the Guard Band B Block will continue to be bound by the Commission's existing Guard Bands technical rules requiring frequency coordination and prohibiting the use of cellular system architectures. These continued technical restrictions on the B Block can be fully taken into account as the Commission considers future uses for the block. The Commission will, however, create 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 + 10log P dB per 6.25 kHz for base stations, and 65 + 10log P dB per 6.25 kHz for mobile units.

(iii) Treatment of PTPMS II Licenses

50. To ensure interoperability in border areas with Canada, the Commission is modifying the PTPMS II licenses by relocating its Guard Band A Block license to 757–758 MHz and 787–788 MHz along with the “repacked” Guard Band A Block licenses, and by shifting its Guard Band B Block licenses down 1 megahertz to 761–763 MHz and 791–793 MHz. Although PTPMS II has elected to remain under the existing terms of its licenses, the Commission concludes that, for purposes of regulatory parity, the Commission should apply to the PTPMS II A Block licenses the same technical rules that will apply to the reconfigured A Block licenses. The Commission also concludes that the existing B Block technical rules continue to apply to PTPMS II's B Block licenses given their adjacency with public safety spectrum.

(iv) License Terms

51. The license terms for the A Block licenses, including the PTPMS II A Block licenses, shall extend to 10 years after the end of the DTV transition, through February 17, 2019, and

subsequent license terms will be 10 years. However, the Commission will retain the existing license terms for the grandfathered PTPMS II B Block licenses, rather than extending them to match the other commercial licensees. Furthermore, the Commission does not provide a renewal expectancy to the PTPMS II B Block licenses, the terms of which will expire in 2015.

3. Auctions-Related Issues

a. Anonymous Bidding

52. The Commission concludes that the public interest will be served if the upcoming auction of new 700 MHz Band licenses for which service rules are established today is conducted using anonymous bidding procedures. The Commission further concludes that implementation of anonymous bidding procedures during the upcoming auction of new 700 MHz Band licenses should not be contingent on a pre-auction measurement of likely competition based on an eligibility ratio. The Commission has delegated to the Wireless Bureau authority to establish auction procedures based on comment solicited shortly prior to the auction. Consistent with that authority, the Commission delegates to the Wireless Bureau the discretion to adopt specific procedures implementing these conclusions, taking into account the further record developed during our standard pre-auction process for establishing auction procedures and the possibility that alternative licenses may be offered at auction as described below.

53. Additionally, the Commission concludes that the record regarding the available 700 MHz Band licenses and the Commission's recent experience with anonymous bidding in other auctions indicate that the Commission's statutory mandates under Section 309(j)(3) of the Act would be better served by adopting anonymous bidding procedures for the upcoming auction of 700 MHz Band licenses. 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 Commission further concludes that the implementation of anonymous bidding procedures in the upcoming auction of new 700 MHz Band licenses should not be contingent on the likely level of auction competition indicated by pre-auction bidder eligibility. Accordingly, the Commission directs the Wireless

Bureau to propose and seek comment on detailed anonymous bidding procedures for the upcoming 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

54. To further its policy of preventing collusive behavior in Commission auctions, the Commission clarifies by declaratory ruling and 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.

55. 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 extending 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 emphasizes 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

56. The Commission concludes 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 directs 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. More specifically, the Wireless Bureau should propose an auction design that includes package bidding for the C Block licenses to facilitate the entry of a new nationwide competitor, without causing undue difficulty for bidders that are not interested in a nationwide license. The Wireless Bureau should also explore the use of package bidding for any blocks subject to re-auction in the event that a reserve price is not met.

57. The Wireless Bureau, consistent with its delegated authority and pre-auction process, may revise its proposal prior to implementation in the auction. In order to facilitate compliance with the statutory deadlines applicable to the auction of 700 MHz Band licenses, the Wireless Bureau has delegated authority to conduct an auction without package bidding for the Upper 700 MHz Band C Block licenses in the event that currently unforeseen difficulties make it impracticable to implement package bidding for the C Block consistent with the goals the Commission has articulated here. Finally, consistent with its conclusions today, the Commission directs 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

58. The Commission concludes that it is not necessary 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

59. The Commission concludes 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. 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 addition, the view of Congress as to the value of this spectrum, as reflected by the Congressional mandates for proceeds from the auction, should be given appropriate consideration.

60. In the event that licenses are not assigned because the applicable block-specific aggregate reserve is not met, the Commission provides 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.

61. *Block-Specific Aggregate Reserve Price.* The Commission concludes 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 upcoming auction. 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 upcoming auction. 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 the Commission's review of long-form license applications.

62. The Commission also concludes that it is appropriate to assess interest in licenses in this context on a block-by-block basis. The Commission directs 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. 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. More specifically, the Wireless Bureau should consider the following factors when setting the block-specific aggregate reserves. 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's value. Based solely on geographic area and spectrum block size, AWS-1 auction results might suggest a D Block reserve of \$1.7 billion. However, in light of the D Block license conditions essential to the public safety purpose of the public/private partnership, it might be appropriate to expect the D Block licensee to contribute only about 75 percent to 80 percent of such an amount, or about \$1.33 billion. In addition, when determining relative valuation of other blocks, the Wireless Bureau should consider the relative valuation of differing blocks in the recent auction of AWS-1 licenses.

63. *Subsequent Auction of Alternative Licenses.* The Commission recognizes that it is possible that the auction results may not satisfy one or more of the block-specific reserves. In that event, the Commission establishes a process to enable the assignment of alternative licenses for the A, B, C, and E Blocks of the 700 MHz Band as soon as possible in order to promote the speedy deployment of services utilizing 700 MHz Band spectrum. Under the Commission's rules, the license for the D Block may also be re-offered in a subsequent auction..

64. The Commission also establishes a process to enable the assignment of alternative licenses as soon as possible in the event that the relevant block-specific aggregate reserve price is not met when those licenses are first offered. 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. Given the unique character of the D Block license conditions, the Commission leaves 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.



65. The Commission also provides that 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 blocks 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. Therefore, the Commission anticipates that the reserve price for the C Block would be approximately \$4.6 billion.

66. *Performance Requirements for Alternative Licenses.* The Commission concludes 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 the Commission has adopted for the C Block licenses.

67. *Changes to Alternative C Block Licenses.* The Commission concludes 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, the Commission will offer as soon as possible licenses for the C Block without the open platform conditions. The Commission will also modify the C Block band plan. The Commission will reconfigure the bandwidth of the licenses to create two paired blocks of 6 and 5 megahertz each, which the Commission will label the C1 and C2 Blocks. Further, the Commission will license the C1 Block based on EAs and the C2 Block based on REAGs.

68. *D Block License.* The Commission concludes that it should not alter the conditions it has adopted today for the D Block license based solely on auction results. The Commission believes 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 concludes that it should 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.

69. *Auction Procedures.* The Commission directs 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 reaction under the split block plan. The Commission directs the Wireless Bureau, consistent with its delegated authority to adopt procedures that will comply with this order and preserve the integrity of any necessary re-auction.

70. The Commission directs 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 upcoming auction offering 700 MHz Band licenses in all of these blocks. Additionally, the Commission finds that the applicable "down payment deadline" for purposes of the Commission's anti-collusion rule shall be the "down payment deadline" established for the subsequent auction. 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 concludes 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 directs 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.

71. The Wireless Bureau also should consider any additional procedures within its delegated authority that may enhance the effectiveness of the

Commission's auction of 700 MHz Band licenses in either the initial or subsequent auction. In this regard, the Commission directs 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

72. The Commission will deposit payments made by successful bidders towards their respective winning bids for their licenses—including upfront payments, deposits, and final payments held on deposit pending the completion of licensing—as of the deposit deadline, June 30, 2008, even in instances where the licensing process for those licenses has not yet been completed.

#### B. 700 MHz Public Safety Spectrum

73. *700 MHz Public Safety Spectrum.* The Commission adopts a revised band plan for the 700 MHz Public Safety Band. The Commission designates the lower five-megahertz paired (ten megahertz total) segment of the 700 MHz Public Safety Band for broadband communications. The Commission consolidates the public safety narrowband operations in the upper paired 6-megahertz blocks (twelve megahertz total) of the 700 MHz Public Safety Band. The Commission adopts a one-megahertz paired guard band (768–769/798–799 MHz) between the broadband and narrowband segments. The Commission further concludes that in order to maximize the benefits of the 700 MHz Public/Private Partnership to deploy a nationwide, interoperable broadband communications network, 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.

74. The Commission requires the Upper 700 MHz Band D Block licensee to 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, the Commission requires every 700 MHz Band public safety licensee, whether holding individual narrowband authorizations or operating pursuant to a State License, to 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. 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 will issue a public notice in advance of the effective date announcing the deadline for this certification requirement.

75. The Commission prohibits 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. The Commission cautions that any equipment deployed in these frequencies subsequent to August 30, 2007 will be ineligible for relocation funding.

76. The Commission requires all Regional Planning Committees with approved plans or plans on file to submit amended plans consistent with the decisions herein by November 23, 2007.

77. *Public Safety Broadband Licensee.* The Commission concludes 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 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 Commission provides that 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.

78. The Commission adopts its proposal to license the 700 MHz public safety broadband spectrum as a 10-megahertz block (comprised of paired, 5-megahertz blocks) under a nationwide geographic area license, and the Commission will assign this license to the Public Safety Broadband Licensee. The Commission establishes a variety of eligibility criteria for this entity and sets out a variety of responsibilities,

including negotiating the Network Sharing Agreement with the winning bidder of the Upper 700 MHz Band D Block license. The Commission delegates authority to the Chief of the PSHSB to issue a public notice within thirty days of the release of this Second Report and Order soliciting applications for the Public Safety Broadband Licensee. The public notice shall specify the baseline criteria the Commission establishes herein, and describe the procedures and other requirements for submitting applications. The Commission will select the Public Safety Broadband Licensee and grant to it the Public Safety Broadband License consistent with the requirements and considerations set forth herein.

#### 700 MHz Public/Private Partnership

##### 1. Adoption of the 700 MHz Public/Private Partnership

79. The Commission designates 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 the Commission adopts a number of conditions, requirements, and procedures to safeguard services to public safety entities and address concerns about the success of the partnership, as discussed more fully below.

##### 2. Essential Components of Public/Private Partnership

###### a. Shared Wireless Broadband Network

80. 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 adopts certain network requirements. The public/private partnership network will serve as the nation's public safety wireless broadband network infrastructure, so it must meet the requirements of a public safety communications network. Accordingly, the Commission requires 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 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 controls of the network by the Public Safety Broadband Licensee to the extent necessary to ensure public safety requirements are met.

- 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.

- A requirement, as explained more fully herein, 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.

81. 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. By allowing the parties to determine specific details, including the technologies that will be used, subject to approval by the Commission, the Commission provides them with flexibility to evaluate the cost and performance of all available solutions while ensuring that the shared wireless broadband network has all the capabilities and attributes needed for a public safety broadband network.

#### b. Spectrum Use

82. The Commission permits the Public Safety Broadband Licensee to provide access on a secondary and preemptible basis to this spectrum, pursuant to the spectrum lease specified herein, 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 also places 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.

83. In addition, the Commission concludes that Section 337(a)(1) does not prohibit the Public Safety Broadband Licensee from entering into the lease for commercial operations, on a limited and preemptible basis as specified herein, of spectrum that is allocated for public safety services. Further, the Commission finds that Section 337(a)(2), which directs the Commission to allocate 36 megahertz "for commercial use," does not prohibit the Commission from requiring the D Block licensee to provide public safety users with priority access to D Block license spectrum in an emergency. Priority service, although provided to public safety, will still be commercial, and will not appreciably impair the D Block licensee's ability to provide commercial services to other parties.

84. *Commercial Operations in Public Safety Spectrum on a Secondary Basis.* The Commission permits 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 this Second Report and Order. Thus, under the 700 MHz Public/Private Partnership framework adopted here, 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.

85. The Commission will require that this spectrum leasing arrangement take the form of a long-term spectrum manager leasing arrangement for the full term of the license. By limiting the D Block licensee's secondary use of the Public Safety Broadband Licensee's spectrum to leased access under a spectrum manager leasing arrangement, subject to the conditions the Commission is placing on the nature of that access, the Commission thus ensures that the Public Safety Broadband Licensee has the regulatory means (and obligation) to preserve the fundamental public safety function of the band. Moreover, the Public Safety Broadband Licensee's ultimate control over the D Block licensee's use of this band, coupled with the operational flexibility accorded the D Block licensee under a spectrum manager leasing arrangement, should provide an appropriate balance between commercial and public safety operations in the public safety broadband spectrum. Specifically, the spectrum manager leasing arrangement permits the D Block licensee to construct a network to serve its business needs, yet preserves the network infrastructure required for primary public safety use in the Public Safety Broadband Licensee's band.

86. As further conditions on the spectrum leasing arrangement authorized here, 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.

87. *Priority Public Safety Access to Commercial Spectrum During Emergencies.* As part of its responsibilities in managing the shared wireless broadband network, the Commission requires 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). In determining what constitutes an emergency, the Commission agrees with Frontline that the definition of an "emergency" for this purpose should be left to negotiation between the parties. The Commission requires the parties to define "emergency" for purposes of priority access to D Block license spectrum as part of the NSA.

88. The Commission recognizes that 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 delegates authority to the Defense Commissioner to decide these requests and amends Section 0.181 of the Commission's rules to reflect this new duty.

89. 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 requires 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, including, for example, encouraging the

use of devices that can access spectrum other than the D Block. 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 will not be subject to interruption of ongoing calls by public safety users and will have priority over all other commercial uses.

90. *Secondary Markets Rules.* In permitting the Public Safety Broadband Licensee to enter into this spectrum leasing arrangement subject to the conditions set out in this order, the Commission waives 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

91. The Commission adopts 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 concludes that the build-out requirements being imposed will ensure that public safety needs are met.

92. In order to ensure that less populous areas are not neglected in the D Block licensee's build-out efforts, the Commission adopts certain additional measures to encourage coverage in those areas. Accordingly, the Commission requires that the D Block licensee meet the Commission's initial population benchmarks based on a build-out schedule specified in the NSA consistent with the public safety needs. The Commission also requires 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.

93. The Commission's three population-based construction benchmarks will take effect beginning on February 17, 2009. This is the statutorily imposed DTV transition date

and is the same date that build-out obligations for the other unlicensed commercial 700 MHz Band licensees will 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. Use of this date provides regulatory parity and it recognizes that the DTV transition will not be completed until this date. The Commission notes that 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.

94. The Commission will apply the three population-based construction benchmarks over the nationwide D Block license area. Accordingly, 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. Moreover, the Commission requires that the network and signal levels employed to meet these benchmarks be adequate for public safety use, as defined in the Shared Wireless Broadband Network subsection herein and further defined by the NSA, and that the services made available be appropriate for public safety entities in those areas. In particular, the Commission requires 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, as suggested by APCO, IACP and IAFC. In addition, to the extent that the D Block licensee chooses to provide commercial services to population levels in excess of the relevant benchmarks, the D Block licensee will be required to make the same level of service available to public safety entities.

95. 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. 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, unlike the other commercial licenses and because of the nature of the partnership established herein, 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

96. The Commission establishes 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 also requires all the parties to negotiate in good faith and finds that many of the details of their agreement are appropriately left to them to negotiate and reach agreement on (subject to ultimate Commission approval of the NSA). In the discussion that follows, certain elements that the Commission requires the parties to address in the NSA are enumerated.

97. *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 this 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

requires the parties to submit an executed NSA within 10 business days of the Commission's approval of the agreement, and if the parties fail to submit the NSA, the Commission will deny granting the D Block license until the NSA is submitted.

98. *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 elsewhere in this 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. The Commission finds it appropriate to ensure that consideration of whether to renew the D Block license and whether to renew or modify the NSA whose performance is a condition of that license should occur at the same time.

99. *Service Fees.* The Commission finds 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 Commission finds that the parties should be left to 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 also encourages 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.

100. The Commission also expects that fees will be such that public safety entities are able to afford the services that they require for their public safety functions, and that the terms will best serve the public interest goals established in this Second Report and Order regarding the public/private partnership. Should it prove necessary, the Commission has established various remedies to resolve disputes over NSA terms, and the Commission can exercise one of these options to ensure that fees charged are reasonable.

101. *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 that the Commission has established for the D Block licensee elsewhere in this 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 the Commission has 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 requires the D Block licensee to meet the Commission's initial population benchmarks by not exclusively concentrating on building out high population areas. In this regard, the Commission agrees with public safety commenters to the extent that the Commission requires 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 requires an estimated cost for each specified area of the build-out, which will assist the Commission in efforts to ensure that the build-out schedule is achieved.

102. *Modifications to the NSA.* The Commission obligates the parties to act in good faith in all dealings with each other and to abide by the terms of the agreement. 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

103. Consistent with the decision made for other commercial licensees in the *700 MHz Report and Order*, the Commission decides that a term not to exceed 10 years from February 17, 2009, should be used for initial authorization in the D Block license. The D Block license would be auctioned as a single, nationwide license to provide for commercial service in the "D Block," and to build and operate a joint broadband public safety and

commercial network for public safety use.

104. 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. Given these detailed license renewal requirements, the Commission declines to impose a separate substantial service showing.

105. 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 finds 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

106. The Commission requires that the D Block licensee make available to public safety users at least one handset that includes a seamlessly integrated satellite solution. The Commission does not require that this handset use any specific technology, only that it be 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 does not, however, require that the D Block licensee incorporate support for satellite communications into the infrastructure of the shared terrestrial network.

107. The Commission expects that the D Block licensee, satellite companies, and handset manufacturers will take steps to facilitate the development of handsets with seamlessly integrated satellite solutions. However, the Commission does not establish an immediate obligation upon the D Block licensee to make satellite-capable handsets available. Rather, the Commission will require 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.

108. The Commission declines to mandate the incorporation of support for satellite communications by the D Block licensee into the infrastructure of the shared network. The Commission believes that the D Block licensee and the Public Safety Broadband Licensee will be in the best position to determine whether and when satellite support within the terrestrial infrastructure is appropriate, and by what method it should be implemented, such as by negotiating a side-agreement with existing satellite service providers to use their excess capacity for public safety communications.

#### g. Local Public Safety Build-Out and Operation

109. The Commission concludes 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 Commission also concludes, however, that 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 permits public safety entities to construct local broadband networks in the 700 MHz public safety spectrum in two limited circumstances subject to conditions specified below. The Commission further concludes that public safety entities should have a limited right to build out wideband networks, again with conditions and restrictions.

110. *Rights to Early Build-out in Areas with a Build-out Commitment.* First, 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.

111. The Commission authorizes 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.

112. 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.

113. The Commission points 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.

114. 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.

115. The Commission notes 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. The NCR consists of eighteen jurisdictions: The District of Columbia, Montgomery and Prince Georges Counties of Maryland, and the cities of Gaithersburg, Rockville, Takoma Park, Bowie, College Park, and Greenbelt; Arlington, Fairfax, Loudon and Prince William Counties of Virginia, and the cities of Alexandria, Falls Church, Town of Leesburg, Manassas, and Manassas Park. Although NCR cannot now obtain a license, as such license will be held by the Public Safety Broadband Licensee, nothing herein 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.

116. The Commission advises 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 herein 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 herein for public safety entities electing to exercise their right to early build out.

117. The Spectrum Coalition would have the Commission give local public safety entities, including NCR, the ability to "opt-out" of the national, interoperable broadband network, yet operate individual systems in the 700 MHz Band. The Commission flatly rejects such arguments; local public safety entities do not have to participate

in the nationwide network, but they may not “opt-out” in favor of using the 700 MHz broadband spectrum for individual networks. As a general matter, as we have discussed above, there are numerous benefits to having a single Public Safety Broadband Licensee.

118. *Rights to Build Out and Operate In Areas without a Build-out Commitment.* The Commission acknowledges that, even under the stringent population-based build-out requirements that the Commission is adopting, 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, under the policies and procedures discussed below, the Commission provides that 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.

119. 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.

The Commission also notes that, as an alternative in such cases, the public safety entity would be able to complete early build-out under the procedures discussed above.

120. 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. The Commission will not permit such arrangements to take the form of long-term *de facto* transfer spectrum leasing arrangements. The Commission believes that 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. As a result, the Commission finds it essential that, as provided under the spectrum manager leasing rules and as distinguished from the long-term *de facto* transfer leasing arrangement, the Public Safety Broadband Licensee 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 this Second Report and Order.

121. 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.

122. The Commission emphasizes 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.

123. *Conditions for Waiver to Allow Limited and Temporary Wideband Operations.* The Commission prohibits wideband operations in the public safety allocation of the 700 MHz Band, subject to the limited exceptions set forth herein. The Commission will require public safety entities seeking to deploy wideband systems to satisfy the following conditions and restrictions.

124. 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 the Commission adopts herein, *i.e.*, one that permits only broadband or narrowband operations. In the interests of ensuring the integrity of the public/private partnership for construction of a nationwide broadband, interoperable network, the Commission finds it necessary to consider requests to deploy wideband only in a waiver context. Requests for waiver to conduct wideband operations must be



accompanied by an application for authorization.

125. 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 encourages 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.

126. Third, except as discussed below, the Commission will restrict grants of waiver to the deployment of a wideband system in the consolidated narrowband spectrum or the internal public safety guard band. The Commission must limit any wideband operations in this manner in order to ensure the full preservation of the broadband segment. The Commission also believes 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 encourages 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.

127. If there are instances where spectrum in the narrowband segment or internal guard band is unavailable for wideband operations, the Commission will permit submission of request for waiver to operate in the upper 1.25 megahertz of the broadband allocation. The Commission emphasizes, however, that applicants seeking waiver relief to deploy wideband networks in the public safety broadband spectrum face a very high hurdle. As a threshold requirement, 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.

128. Notwithstanding anything herein to the contrary, 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. In addition, consistent with the waiver discussion herein, 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 shall 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. In order to ensure that the Commission's goals for the deployment of the nationwide broadband network are met, 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.

129. 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, in light of the waiver process described above, the Commission finds it unnecessary 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

130. The Commission specifically conditions 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.

131. *Approval of NSA as Pre-Condition for Granting the D Block license.* Because the terms of the NSA are critical to the success of the partnership, 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.

132. The Commission recognizes 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 does not prohibit 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 requires that any such build-out occur only with the approval of the Public Safety Broadband Licensee. Similar to service rules for other spectrum licenses, 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.

133. *Timeframe for Negotiation.* The Commission requires 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 or the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later, and the Commission further requires the parties to 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.

134. *Requirement of Good Faith.* The Commission requires the parties to negotiate in good faith the specific terms of the NSA pursuant to the conditions, requirements, and guidance established in this Second Report and Order. The Commission also requires the parties 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 herein, 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; its wholly owned subsidiary; 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.

135. *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 requires 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. The Commission does not intend, however that the staff 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 reserves the right to require the parties to meet with Commission staff to discuss their negotiations or reports at any time during the negotiation process.

136. If the Commission determines that parties are unlikely to reach an agreement or 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 this Second Report and Order, without waiting for the six-month negotiation period to fully elapse.

137. *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 delegates authority to the Chiefs of PSHSB and WTB to take certain actions jointly in the public interest to adjudicate the dispute. As appropriate, 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. 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), 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.

138. The Commission believes that it would be inappropriate to have issues regarding the use of public safety spectrum resolved by a private party and precludes that option as a remedy. The Commission finds, however, that

the Commission should not at this time preclude the option of disputes being adjudicated by the Commission. Rather, providing the Commission with discretion to choose from a range of remedies will enable the Commission to choose the most appropriate option in the context of the specific concerns raised by the parties.

139. *Licensing Rules and Procedures Applicable to the D Block license.* Except as provided herein, 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. For example, the down payment requirement, the obligation of the winning bidder for the D Block license to file a "long form" license application, and the consequences of a default prior to grant of the license will be in accordance with Sections 1.2104, 1.2105, 1.2106, 1.2107, and 1.2109 of the Commission's rules.

140. If the long form application is denied, the procedures under Section 1.2109 of the Commission's rules will generally apply. The Commission 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 clarifies that if the winning bidder for the D Block license fails to comply with the procedures the Commission establishes 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.

141. *Process for Final Approval.* The Commission will review and approve the NSA. To facilitate our 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 its 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

142. *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 requires the winning bidder for the D Block license to form separate special purpose entities, which will be bankruptcy remote, to hold the D Block license and the network assets, respectively. The Commission also requires 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. To ensure that these requirements have been met, 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. Finally, it shall be a condition of the D Block license and the Public Safety Broadband License that all special purpose entities and any leasing or other commercial agreements created to implement the public/private partnership will be subject to the Act 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.

143. The D Block licensee and other entities authorized and required in this 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.

144. In connection with establishing the bankruptcy remote special purpose entities required hereunder, the Commission requires 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.

145. *Prohibition on Discontinuance of Public Safety Operations.* The Commission prohibits 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. Further, 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.

146. *Failure to Comply with the NSA or the Commission's Rules.* The Commission establishes rules to address how the Commission will remedy failures by either the D Block licensee or the Public Safety Broadband Licensee to comply with the NSA or the Commission's rules. First, with regard to the D Block licensee, the Commission has conditioned the D Block license on compliance with the NSA. 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.

147. In the event that the Commission determines that the D Block license must be cancelled consistent with the Act and the requirements herein, 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.

148. 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 a 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.

149. The Commission provides that, 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. This decision shall take into account, among other factors, any exercise by the new licensee of its right to purchase the network assets.

150. With regard to the Public Safety Broadband Licensee, 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 this Second Report and Order, to an extent giving rise to license cancellation, the Commission delegates 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.

151. *Resolution of Disputes after Grant of the D Block license.* The Commission finds that the Commission should assume primary responsibility and jurisdiction for adjudicating intractable disputes that arise once the parties are operating pursuant to the terms of the NSA. While the Commission strongly encourages the parties to first attempt to resolve any disagreements themselves through voluntary means, 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 emphasizes that these shall be the exclusive remedies for claims seeking the interpretation of the NSA in the first instance. 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.

152. In the event the Commission decides to adjudicate the issues, the Commission provides that the Commission will have full authority to interpret not only the Commission's rules but all of the provisions of the NSA. The Commission further provides that, if the Commission finds a material breach of the NSA, it may apply any

remedy or enforcement mechanism within its authority. 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. Finally, the Commission establishes that, 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.

153. *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, which public safety entities (e.g., police, fire departments) are using the broadband network in each area of operation; what types of applications (e.g., voice, data, video) are in use in each area of operation to the extent known; and the number of declared emergencies in each area of operation. The Commission anticipates that this information will be readily available from the billing systems used for the shared network, and reserve 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. In this regard, the Commission delegates 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. The Commission delegates to the Wireless Bureau the authority to adopt filing rules and procedures not inconsistent with this Second Report and Order to facilitate these reporting obligations.

## 4. Other Issues

## a. Bidding Credits

154. In order to encourage the widest range of potentially qualified applicants to participate in bidding for the D Block license, the Commission will provide eligible bidders for the D Block license with the existing 15 and 25 percent bidding credits, as the credits may be necessary to create incentives for investors to provide innovative small businesses with the capital necessary to compete for the D Block license at auction. Pursuant to the Commission's 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

155. The Commission decides to prohibit geographic partitioning and spectrum disaggregation for the D Block licensee. The Public Safety Broadband Licensee is also prohibited from partitioning and disaggregation. The Commission recognizes that the Commission's existing Secondary Markets rules governing transfers and assignments would be applicable to the D Block licensee, providing further flexibility to the licensee. Thus, the D Block licensee would be permitted to assign or transfer its licensee subject to the Commission review and prior approval.

## c. Commercial Service Issues

## (i) Wholesale and Open Access Proposals

156. The Commission declines to restrict the D Block licensee to operating exclusively on a "wholesale" or "open access" basis. Instead, the Commission provides the D Block licensee with flexibility to provide wholesale or retail services or other types of access to its network that comply with the Commission's rules and the NSA.

## (ii) Roaming Proposal

157. The Commission concludes that it should defer to the broader context of the pending roaming proceeding the determination of whether there are public interest benefits in also requiring automatic roaming to be provided by other commercial licensees. The Commission will therefore not at this time impose any special roaming requirements on the D Block licensee.

## (iii) Applicability of CALEA, E911, and Other Requirements

158. The Commission declines to categorically exempt services offered by the D Block licensee from E911, CALEA, and other regulatory requirements. Instead, the Commission clarifies that E911, CALEA, and other regulatory requirements will apply to services provided using Public/Private Partnership spectrum to the extent and only to the extent that these requirements apply to similar services provided elsewhere in the 700 MHz Band. The Commission has only recently concluded that the E911 requirements established in Section 20.18 of the Commission's rules will apply to all commercial mobile radio services, including such services throughout the 700 MHz Band, that meet the functional criteria in Section 20.18(a), and the Commission sees no reason to revisit that decision. The Commission defers any further examination of regulatory applicability to a more concrete and particular context, *e.g.*, if service providers seek clarification regarding the applicability of a specific regulatory requirement to their specific service.

159. The Commission also notes that, even though the D Block license for spectrum in the "D Block" band will be issued pursuant to Part 27 of the Commission's rules, the licensee will be required to comply with other rule parts, which are applicable to the other commercial 700 MHz bands, unless otherwise stated in this Second Report and Order. Some of these rule parts will be applicable by virtue of the fact that they apply to all licensees and others will apply depending on the type of services the D Block licensee provides.

**II. Procedural Matters***A. Regulatory Flexibility Act*

160. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>6</sup> an Initial Regulatory Flexibility Analysis (IRFA) was included in the *700 MHz Further Notice*<sup>7</sup> in WT Docket No.

<sup>6</sup> See 5 U.S.C. 603. The RFA, *see* 5 U.S.C. 601–612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. 104–121, Title II, 110 Stat. 857 (1996).

<sup>7</sup> See Service Rules for the 698–746, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03–264, Former Nextel Communications, Inc. Upper 700

06–150, WT Docket No. 01–309; WT Docket No. 06–169, WT Docket No. 03–264, CC Docket No. 94–102, PS Docket No. 06–229, and WT Docket No. 96–86.<sup>8</sup> The Commission sought written public comment on the proposals in these dockets, including comment on the IRFA. This Final Regulatory Flexibility Analysis (FRFA) conforms to the RFA.<sup>9</sup>

161. Although Section 213 of the Consolidated Appropriations Act of 2000 provides that the RFA shall not apply to the rules and competitive bidding procedures for frequencies in the 746–806 MHz Band,<sup>10</sup> the Commission believes that it would serve the public interest to analyze the possible significant economic impact of the proposed policy and rule changes in this band on small entities. Accordingly, this FRFA contains an analysis of this

MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, WT Docket No. 06–169, Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06–229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, *Report and Order and Further Notice of Proposed Rulemaking*, 22 FCC Rcd 8064 (2007) (*700 MHz Report and Order and 700 MHz Further NPRM*, respectively).

<sup>8</sup> See Service Rules for the 698–749746, 747–762 and 777–792 MHz Bands, WT Docket No. 06–150, Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, CC Docket No. 94–102, and Section 68.4(a) of the Commission's Rules Governing Hearing Aid-Compatible Telephones, WT Docket No. 01–309, *Notice of Proposed Rule Making, Fourth Further Notice of Proposed Rule Making, and Second Further Notice of Proposed Rule Making*, 21 FCC Rcd 9345, 9394 (2006) ("*700 MHz Commercial Services Notice*"); Former Nextel Communications, Inc. 01–309, Biennial Regulatory Review—Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, WT Docket 03–264, Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket Nos. 06–169 and 96–86, *Notice of Proposed Rule Making*, 21 FCC Rcd 10413, 10440 (2006) ("*700 MHz Guard Bands Notice*"); Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, PS Docket No. 06–229, Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, WT Docket No. 96–86, *Ninth Report and Order and Further Notice of Proposed Rule Making*, 22 FCC Rcd 14837, 14853 (2006) ("*8064 (2007) 700 MHz Public Safety Ninth Report and Order and 700 MHz Further NPRM*", respectively).

<sup>9</sup> See 5 U.S.C. 604.

<sup>10</sup> In particular, this exemption extends to the requirements imposed by Chapter 6 of Title 5, United States Code, Section 3 of the Small Business Act (15 U.S.C. 632) and Sections 3507 and 3512 of Title 44, United States Code. Consolidated Appropriations Act 2000, Pub. L. 106–113, 113 Stat. 2502, Appendix E, Sec. 213(a)(4)(A)–(B); *see* 145 Cong. Rec. H12493–94 (Nov. 17, 1999); 47 U.S.C.A. 337 note at Sec. 213(a)(4)(A)–(B).

impact in connection with all spectrum that falls within the scope of this *Second Report and Order*, including spectrum in the 746–806 MHz Band.

1. Need for, and Objectives of, the Rules

162. In the *Second Report and Order*, the Commission takes a number of steps to facilitate access to spectrum and the provision of service to consumers, especially those in rural areas, and to simplify and clarify our rules related to the commercial 700 MHz spectrum. It designates 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 (hereinafter, the Public Safety Broadband Licensee). The Commission reconfigures the 700 MHz Public Safety Band, to promote the development of nationwide interoperable broadband services for public safety users. The Commission also changes the location of the existing 700 MHz Guard Band licenses, provides for a one megahertz shift of the other commercial spectrum blocks in the Upper 700 MHz Band and the 700 MHz Public Safety Band, and reduces the size of the Guard Band B Block to make two additional megahertz of commercial spectrum available for auction.

163. The 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 determined that it will auction two 12-megahertz spectrum blocks (comprised of 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); and one 6-megahertz unpaired spectrum block by EAs. It also designates 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 between this commercial licensee and the Public Safety Broadband Licensee that will be assigned the public safety broadband spectrum.

164. In addition, the Commission replaces the current “substantial service” requirements for 700 MHz Band commercial licenses that have not been auctioned with significantly more stringent performance requirements, and makes unserved areas available to

third parties who wish to provide service to these areas. By adopting these more rigorous requirements, the Commission ensures that the 700 MHz Commercial Services licensees put the spectrum to use throughout the course of their license terms and serve the majority of users in their license areas. Additionally, for one commercial spectrum block in the 700 MHz Band—the Upper 700 MHz C Block (700 MHz C Block)—the Commission imposes requirements on those licensees to provide open platforms for devices and applications, and concludes that it would not serve the public interest at this time to mandate broader openness requirements.

165. The *Second Report and Order* also revises the 700 MHz band plan with respect to the Upper 700 MHz Guard Bands, such that all existing A Block licenses relocate to a reconfigured A Block between the C and D Blocks, pursuant to an agreement between all but one of the Guard Bands licensees. As part of this agreement, the existing B Block licenses are relinquished, and the B Block is reconfigured from 4 to 2 megahertz and located immediately above the public safety narrowband spectrum. The reconfigured B Block serves as a guard band to protect the public safety narrowband channels, and remains empty as a commercial allocation at this time. With respect to the Guard Bands licensee that did not participate in the agreement, its one A Block license and two B Block licenses are grandfathered, with minor modifications to facilitate the overall revised band plan. In addition to these band plan issues with respect to the Guard Bands, the *Second Report and Order* also revises the service rules with respect to the reconfigured A Block, bringing it largely into parity with the adjacent Commercial Services spectrum given the new spectral location and its relationship to the rest of the band including the public safety spectrum.

166. Further, the *Second Report and Order* seeks to achieve broadband communications capabilities consistent with a nationwide interoperability standard for public safety. The Commission expects that modern public safety services will increasingly depend on the advanced communications capabilities afforded by wireless broadband technologies, which should enable first responders to perform their vital safety-of-life and other critical roles. The *Second Report and Order* re-designates the wideband spectrum to broadband use consistent with a nationwide interoperability standard, and prohibits wideband operations on a going forward basis in the newly

designated broadband spectrum. The *Second Report and Order* also consolidates the narrowband spectrum to the top of the Public Safety Band, locates the broadband spectrum at the bottom of the Public Safety Band, and divides these segments with an internal guard band. This reconfiguration reduces the amount of spectrum necessary to separate and protect the public safety broadband and narrowband allocations, and facilitates partnerships between public safety broadband operations and adjacent commercial broadband technologies, thereby optimizing the 700 MHz public safety band plan. Finally, in order to promote the rapid deployment of a nationwide, interoperable broadband public safety network, the *Second Report and Order* creates a single nationwide geographic area Public Safety Broadband License which will be administered by a single Public Safety Broadband Licensee.

167. With regard to auctions-related issues, the Commission decides to utilize anonymous bidding to enhance the effectiveness of the auction of 700 MHz licenses, as well as allow package bidding for the Upper 700 MHz Band C Block, and decides not to grant a “new entrant” bidding credit for the 700 MHz Band licenses. The Commission also declines to impose eligibility restrictions for the licenses in the 700 MHz Band. Finally, the Commission will offer bidding credits in the D Block, as described fully below.

2. Summary of Significant Issues Raised by Public Comments in Response to the IRFA

168. No comments specifically addressed the IRFAs from any of the respective proceedings. We have nonetheless addressed small entity issues found in comments in this FRFA.

3. *Description and Estimate of the Number of Small Entities to Which the Rules Will Apply*

169. The RFA directs agencies to provide a description of, and, where feasible, an estimate of, the number of small entities that may be affected by the proposed rules, if adopted.<sup>11</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>12</sup> In addition, the term “small business” has the same meaning as the term “small business concern”

<sup>11</sup> 5 U.S.C. 604(a)(3).

<sup>12</sup> 5 U.S.C. 601(6).

under the Small Business Act.<sup>13</sup> A “small business concern” is one which: (1) Is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).<sup>14</sup>

170. *Small Businesses.* Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.<sup>15</sup>

171. *Small Organizations.* Nationwide, there are approximately 1.6 million small organizations.<sup>16</sup>

172. *Governmental Entities.* The term “small governmental jurisdiction” is defined as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”<sup>17</sup> As of 2002, there were approximately 87,525 governmental jurisdictions in the United States.<sup>18</sup> This number includes 38,967 county governments, municipalities, and townships, of which 37,373 (approximately 95.9%) have populations of fewer than 50,000, and of which 1,594 have populations of 50,000 or more. Thus, we estimate the number of small governmental jurisdictions overall to be 85,931 or fewer.

173. *Wireless Service Providers.* The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”<sup>19</sup> and “Cellular and Other Wireless Telecommunications.”<sup>20</sup> Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.<sup>21</sup> Of this total, 804 firms had

employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.<sup>22</sup> Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.<sup>23</sup> Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.<sup>24</sup> Thus, under this second category and size standard, the majority of firms can, again, be considered small.

174. When identifying small entities that could be affected by the Commission’s new rules, this FRFA provides information describing auctions results, including the number of small entities that were winning bidders. However, the number of winning bidders that qualify as small businesses at the close of an auction does not necessarily reflect the total number of small entities currently in a particular service. The Commission does not generally require that licensees later provide business size information, except in the context of an assignment or transfer of control application where unjust enrichment issues are implicated.

175. *700 MHz Guard Band Licenses.* The Commission previously adopted size standards for “small businesses” and “very small businesses” for purposes of determining their eligibility for special provisions such as bidding credits and installment payments.<sup>25</sup> A small business in this service is an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>26</sup> Additionally, a “very small business” is an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>27</sup> SBA approval of these

definitions is not required.<sup>28</sup> An auction of 52 Major Economic Area (MEA) licenses commenced on September 6, 2000, and closed on September 21, 2000.<sup>29</sup> Of the 104 licenses auctioned, 96 licenses were sold to nine bidders. Five of these bidders were small businesses that won a total of 26 licenses. A second auction of 700 MHz Guard Band licenses commenced on February 13, 2001, and closed on February 21, 2001. All eight of the licenses auctioned were sold to three bidders. One of these bidders was a small business that won a total of two licenses.<sup>30</sup>

176. *Upper 700 MHz Band Licenses.* The Commission released a *Report and Order* authorizing service in the Upper 700 MHz band.<sup>31</sup> An auction for these licenses, previously scheduled for January 13, 2003, was postponed.<sup>32</sup>

177. *Lower 700 MHz Band Licenses.* The Commission adopted criteria for defining three groups of small businesses for purposes of determining their eligibility for special provisions such as bidding credits.<sup>33</sup> The Commission has defined a small business as an entity that, together with its affiliates and controlling principals, has average gross revenues not exceeding \$40 million for the preceding three years.<sup>34</sup> A very small business is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$15 million for the preceding three years.<sup>35</sup> Additionally, the Lower 700 MHz Band has a third category of small business status that may be claimed for Metropolitan/Rural Service Area (MSA/RSA) licenses. The third category is entrepreneur, which is defined as an entity that, together with its affiliates and controlling principals, has average gross revenues that are not more than \$3 million for the preceding

<sup>13</sup> 5 U.S.C. 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. 632). Pursuant to 5 U.S.C. 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the *Federal Register*.”

<sup>14</sup> 15 U.S.C. 632.

<sup>15</sup> See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

<sup>16</sup> Independent Sector, *The New Nonprofit Almanac & Desk Reference* (2002).

<sup>17</sup> 5 U.S.C. 601(5).

<sup>18</sup> U.S. Census Bureau, *Statistical Abstract of the United States: 2006*, Section 8, pages 272–273, Tables 415 and 417.

<sup>19</sup> 13 CFR 121.201, NAICS code 517211.

<sup>20</sup> 13 CFR 121.201, NAICS code 517212.

<sup>21</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

<sup>22</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>23</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

<sup>24</sup> *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

<sup>25</sup> See Service Rules for the 746–764 MHz Bands, and Revisions to Part 27 of the Commission’s rules, *Second Report and Order*, 15 FCC Rcd 5299 (2000).

<sup>26</sup> *Id.* at 5343 para. 108.

<sup>27</sup> *Id.*

<sup>28</sup> *Id.* at 5343 para. 108 n.246 (for the 746–764 MHz and 776–704 MHz bands, the Commission is exempt from 15 U.S.C. 632, which requires Federal agencies to obtain SBA approval before adopting small business size standards).

<sup>29</sup> See “700 MHz Guard Bands Auction Closes: Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 18026 (2000).

<sup>30</sup> See “700 MHz Guard Bands Auctions Closes: Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 4590 (WTB 2001).

<sup>31</sup> Service Rules for the 746–764 and 776–794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules, *Second Memorandum Opinion and Order*, 16 FCC Rcd 1239 (2001).

<sup>32</sup> See “Auction of Licenses for 747–762 and 777–792 MHz Bands (Auction No. 31) Is Rescheduled,” *Public Notice*, 16 FCC Rcd 13079 (WTB 2003).

<sup>33</sup> See Reallocation and Service Rules for the 698–746 MHz Spectrum Band (Television Channels 52–59), *Report and Order*, 17 FCC Rcd 1022 (2002).

<sup>34</sup> *Id.* at 1087–88 para. 172.

<sup>35</sup> *Id.*



three years.<sup>36</sup> The SBA has approved these small size standards.<sup>37</sup> An auction of 740 licenses (one license in each of the 734 MSAs/RSAs and one license in each of the six Economic Area Groupings (EAGs)) commenced on August 27, 2002, and closed on September 18, 2002. Of the 740 licenses available for auction, 484 licenses were sold to 102 winning bidders. Seventy-two of the winning bidders claimed small business, very small business or entrepreneur status and won a total of 329 licenses.<sup>38</sup> A second auction commenced on May 28, 2003, and closed on June 13, 2003, and included 256 licenses: 5 EAG licenses and 476 CMA licenses.<sup>39</sup> Seventeen winning bidders claimed small or very small business status and won sixty licenses, and nine winning bidders claimed entrepreneur status and won 154 licenses.<sup>40</sup>

178. *Public Safety Radio Licensees.* As a general matter, public safety radio licensees include police, fire, local government, forestry conservation, highway maintenance, and emergency medical services.<sup>41</sup> The SBA rules contain a small business size standard for cellular and other wireless telecommunications companies that encompasses business entities engaged in wireless communications employing

<sup>36</sup> *Id.* at 1088 para. 173.

<sup>37</sup> See Letter to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission, from Aida Alvarez, Administrator, SBA, dated August 10, 1999.

<sup>38</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 17 FCC Rcd 17272 (WTB 2002).

<sup>39</sup> See "Lower 700 MHz Band Auction Closes," *Public Notice*, 18 FCC Rcd 11873 (WTB 2003).

<sup>40</sup> *Id.*

<sup>41</sup> See subparts A and B of Part 90 of the Commission's Rules, 47 CFR 90.1-90.22. Police licensees include 26,608 licensees that serve state, county, and municipal enforcement through telephony (voice), teletype (code), and teletype and facsimile (printed material). Fire licensees include 22,677 licensees comprised of private volunteer or professional fire companies, as well as units under governmental control. Public Safety Radio Pool licensees also include 40,512 licensees that are state, county, or municipal entities that use radio for official purposes. There are also 7,325 forestry service licensees comprised of licensees from state departments of conservation and private forest organizations that set up communications networks among fire lookout towers and ground crews. The 9,480 state and local governments are highway maintenance licensees that provide emergency and routine communications to aid other public safety services to keep main roads safe for vehicular traffic. Emergency medical licensees (1,460) use these channels for emergency medical service communications related to the delivery of emergency medical treatment. Another 19,478 licensees include medical services, rescue organizations, veterinarians, persons with disabilities, disaster relief organizations, school buses, beach patrols, establishments in isolated areas, communications standby facilities, and emergency repair of public communications facilities.

no more than 1,500 persons.<sup>42</sup> According to Census Bureau data for 2002, in this category there were 8,863 firms that operated for the entire year.<sup>43</sup> Of this total, 401 firms had 100 or more employees, and the remainder had fewer than 100 employees.<sup>44</sup> With respect to local governments, in particular, since many governmental entities as well as private businesses comprise the licensees for these services, we include under public safety services the number of government entities affected.

179. *Wireless Communications Equipment Manufacturers: Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing.* While these entities are merely indirectly affected the Commission's actions, the Commission describes them to achieve a fuller record. The Census Bureau defines this category as follows: "This industry comprises establishments primarily engaged in manufacturing radio and television broadcast and wireless communications equipment. Examples of products made by these establishments are: Transmitting and receiving antennas, cable television equipment, GPS equipment, pagers, cellular phones, mobile communications equipment, and radio and television studio and broadcasting equipment."<sup>45</sup> The SBA has developed a small business size standard for Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing, which is: All such firms having 750 or fewer employees.<sup>46</sup> According to Census Bureau data for 2002, there were a total of 1,041 establishments in this category that operated for the entire year.<sup>47</sup> Of this

<sup>42</sup> See 13 CFR 121.201 (NAICS code 517212); U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Employment Size of Establishments for the United States: 2002," Table 2, NAICS code 517212.

<sup>43</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Employment Size of Establishments for the United States: 2002," Table 2, NAICS code 517212.

<sup>44</sup> *Id.*

<sup>45</sup> U.S. Census Bureau, 2002 NAICS Definitions, "334220 Radio and Television Broadcasting and Wireless Communications Equipment Manufacturing"; <http://www.census.gov/epcd/naics02/def/NDEF334.HTM#N3342>.

<sup>46</sup> 13 CFR 121.201, NAICS code 334220.

<sup>47</sup> U.S. Census Bureau, American FactFinder, 2002 Economic Census, Industry Series, Industry Statistics by Employment Size, NAICS code 334220 (released May 26, 2005); <http://factfinder.census.gov>. The number of "establishments" is a less helpful indicator of small business prevalence in this context than would be the number of "firms" or "companies," because the latter take into account the concept of common ownership or control. Any single physical location for an entity is an establishment, even though that

total, 1,010 had employment of less than 500, and an additional 13 had employment of 500 to 999.<sup>48</sup> Thus, under this size standard, the majority of firms can be considered small.

180. *Software Publishers.* While these entities are merely indirectly affected by our action, we are describing them to achieve a fuller record. These companies may design, develop or publish software and may provide other support services to software purchasers, such as providing documentation or assisting in installation. The companies may also design software to meet the needs of specific users.<sup>49</sup> The SBA has developed a small business size standard of \$23 million or less in average annual receipts for the category of Software Publishers.<sup>50</sup> For Software Publishers, Census Bureau data for 2002 indicate that there were 6,155 firms in the category that operated for the entire year.<sup>51</sup> Of these, 7,633 had annual receipts of under \$10 million, and an additional 403 firms had receipts of between \$10 million and \$24,999,999. For providers of Custom Computer Programming Services, the Census Bureau data indicate that there were 32,269 firms that operated for the entire year.<sup>52</sup> Of these, 31,416 had annual receipts of under \$10 million, and an additional 565 firms had receipts of between \$10 million and \$24,999,999. Consequently, we estimate that the majority of the firms in this category are small entities that may be affected by our action.

#### 4. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities

181. The projected reporting, recordkeeping, and other compliance requirements resulting from the *Second Report and Order* will apply to all entities in the same manner. The Commission believes that applying the same rules equally to all entities in this

location may be owned by a different establishment. Thus, the numbers given may reflect inflated numbers of businesses in this category, including the numbers of small businesses. In this category, the Census breaks-out data for firms or companies only to give the total number of such entities for 2002, which was 929.

<sup>48</sup> *Id.* An additional 18 establishments had employment of 1,000 or more.

<sup>49</sup> See U.S. Census Bureau, "2002 NAICS Definitions: 511210 Software Publishers"; <http://www.census.gov/epcd/naics02/def/NDEF511.HTM>.

<sup>50</sup> 13 CFR 121.201, NAICS code 511210.

<sup>51</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 511210 (issued Nov. 2005).

<sup>52</sup> U.S. Census Bureau, 2002 Economic Census, Subject Series: Professional, Scientific, and Technical Services, "Establishment and Firm Size (Including Legal Form of Organization)," Table 4, NAICS code 541511 (issued Nov. 2005).

context promotes fairness. The Commission does not believe that the costs and/or administrative burdens associated with the rules will unduly burden small entities. The revisions the Commission adopts should benefit small entities by giving them more information, more flexibility, and more options for gaining access to valuable wireless spectrum.

182. *Performance Requirements.* In this *Second Report and Order*, the Commission replaces the current “substantial service” requirements for the 700 MHz Band commercial 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. Failure to meet the interim requirement will result in a two-year reduction in license term, as well as possible enforcement action, including forfeitures. 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 automatically returned to the Commission for reassignment.

183. 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 passage of the relevant benchmark certifying that they have met our performance requirements. However, if they have not met the Commission’s performance requirements, they must file a description and certification of the areas for which they are providing service. The information contained in the licensee’s construction notification must include electronic coverage maps and other supporting documentation. The electronic coverage maps must clearly and accurately depict the boundaries of each EA or CMA in the licensee’s service territory, and the areas where the licensee’s signal strength is sufficient to provide service to users. In addition to filing electronic coverage maps, each licensee must file supporting documentation certifying the type of service it is providing for each EA or CMA within its license service territory.

184. *Guard Band Issues.* The *Second Report and Order* relocates the A Block away from the public safety narrowband

spectrum with respect to the upper half of the original paired A Block. Accordingly, the reconfigured A Block no longer serves as a guard band to protect the public safety spectrum from commercial operations. The existing frequency coordination requirement, which was created to protect public safety operations from Guard Bands operations, is therefore eliminated with respect to the reconfigured A Block.

185. *Open Platforms for Devices and Applications.* In this *Second Report and Order*, the Commission adopts a requirement for the 700 MHz C Block licensees to provide open platforms for devices and applications. 700 MHz C Block licensees must allow customers, device manufacturers, third-party application developers and others to use or develop the devices and applications of their choosing on the 700 MHz C Block network so long as they meet all applicable regulatory requirements and comply with reasonable conditions related to the management of the wireless network. The Commission does not, at this time, specify a particular process for wireless service providers to develop reasonable network management and openness standards, including through participation in standards setting organizations. The Commission expects licensees to publish their standards once adopted, which 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.

186. The Commission also requires 700 MHz C Block licensees to 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. In addition, 700 MHz C Block licensees are required to establish a reasonable process for expeditiously reviewing and processing requests to employ devices and applications on the licensee’s network and offer a specific explanation for denial of any such request, and an opportunity for amendment of the request to accommodate the provider’s concerns.

187. The Commission also provides for its existing complaint procedures to be invoked if a violation of this requirement occurs. 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 requirement or has otherwise violated the rule, the 700

MHz C Block 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. The Commission commits to rule on these complaints within 180 days.

188. *Public Safety Broadband.* The *Second Report and Order* re-designates the wideband spectrum to broadband use consistent with a nationwide interoperability standard, and prohibits wideband operations on a going forward basis. The Commission will only grant limited exceptions to this rule through a waiver process. As a result of the decision to prohibit wideband operations outside of this waiver process, Regional Planning Committee plans already approved or on file with the Commission will require amendment. The *Second Report and Order* also consolidates the narrowband channels to the top of the public safety band, locates the broadband spectrum at the bottom of the public safety band, divides these segments with an internal guard band, and creates a single Public Safety Broadband License/Licensee to promote the rapid deployment of a nationwide, interoperable broadband public safety network. The relocation of public safety narrowband operations in the consolidated channels will entail some additional reporting, recordkeeping and compliance efforts by existing public safety entities with regard to the number and location of their affected narrowband handsets and base stations. The *Second Report and Order* does not otherwise propose any additional reporting, recordkeeping or other compliance requirements.

##### 5. Steps Taken To Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

189. The RFA requires an agency to describe in the IRFA any significant alternatives that it has considered in reaching its proposed approach, which may include (among others) the following four alternatives: (1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>53</sup> The Commission hereby incorporates by reference the discussion in the *Second Report and*

<sup>53</sup> 5 U.S.C. 603(c).

Order of our consideration of the impact on small entities of the rules the Commission adopts here.

190. *Band Plan Issues.* The *Second Report and Order* revises the 700 MHz band plan for the commercial services and public safety services in a manner that will improve the opportunity of small entities to obtain valuable wireless spectrum by providing smaller licensing areas that better meet the needs of small entities. The Commission's goals for the 700 MHz Band are to promote dissemination of licenses among a wide variety of applicants, including small entities, accommodate the competing need for both large and small licensing areas, meet the various needs expressed by potential entrants seeking access to spectrum and incumbents seeking additional spectrum, and provide for large spectrum blocks that can facilitate broadband deployment in the band. To achieve these goals the revised plan provides for two 12-megahertz spectrum blocks (comprised of paired 6-megahertz blocks), one licensed by CMAs and one by EAs; one 22-megahertz spectrum block (paired 11-megahertz blocks) by REAGs; and one 6-megahertz unpaired spectrum block by EAs. The revision also designates one 10-megahertz spectrum block (paired 5-megahertz blocks), the Upper 700 MHz D Block, to be licensed on a nationwide basis and used as part of the 700 MHz Public/Private Partnership.

191. Providing for an additional 700 MHz Band spectrum block licensed on a CMA basis (the B Block) will increase the opportunity of small entities to obtain smaller license areas that meet their needs while avoiding the transaction costs associated with obtaining access to spectrum in the secondary market, costs that are incurred when these small providers must arrange the terms by which another licensee grants access to its spectrum by means of partitioning, disaggregation, or spectrum leasing.

192. In addition, the Commission adopts EAs as the geographic service area for licenses in Block A of the Lower 700 MHz Band, making 176 licenses available in this block. The Commission also adopts EAs for the unpaired 6-megahertz E block of the Lower 700 MHz Band which further enhances the mix of geographic sizes for licenses in the band. These decisions will also create opportunities for small entities to acquire licenses for small geographic service areas in the Lower 700 MHz Band.

193. *Frequency Coordination and the Guard Bands.* The service area definition for the Upper 700 MHz Guard

Bands is the MEA, which is a smaller license area and therefore can provide greater opportunities for small entrants than larger service area definitions such as the REAG. Accordingly, among the licensed Guard Bands and the lessees currently using their spectrum, there may be a significant number of small entities. Additionally, continued operations in the Guard Bands A Block may continue to involve a significant number of small entities through Secondary Markets arrangements. Since the *Second Report and Order* removes the requirement for all A Block operations to be frequency coordinated with public safety entities, any small entity engaged in ownership of, or operations on, the A Block will find the frequency coordination burden lifted to their significant benefit.

194. *Performance Requirements.* In this *Second Report and Order*, the Commission adopts stringent performance requirements for the 700 MHz Commercial Services licenses in order to promote the provision of innovative services to consumers throughout the license areas, including in rural areas. With regard to geographic-based benchmarks for licenses based on CMAs and EAs, the Commission seeks to promote service across as much of the geographic area of the country as is practicable. Parties that seek to acquire licenses based on CMAs and EAs may be small and rural providers that are less likely to provide regional or nationwide service, but they nonetheless play an important role in bringing new services to consumers in many of these more rural areas.

195. The use of small license areas such as CMAs will create opportunities for small and rural businesses and will foster the deployment of competitive wireless broadband services in rural areas. Because the Commission adopts smaller geographic license areas such as CMAs to facilitate the provision of service, including broadband, in rural areas, it also adopts performance requirements that are designed to ensure that service is offered to consumers in these areas. Because of the 700 MHz band's excellent propagation characteristics and suitability for delivering advanced wireless services to rural areas, the Commission establishes benchmarks that require build-out to a significant portion of the geographic area in those markets. In addition, the performance requirements adopted here will discourage larger entities from purchasing spectrum for the purpose of warehousing it and thus may provide small entities with a greater chance of obtaining valuable spectrum.

196. In the *Second Report and Order*, the Commission adopts population-based benchmarks for REAG licensees with large geographic areas in order to facilitate the deployment of advanced services on a nationwide or regional basis. Because of the significant capital investment and logistical challenges associated with building a regional or nationwide system without existing infrastructure, population benchmarks, rather than geographic benchmarks, will best allow a potential new entrant to achieve the economies of scale needed for a viable business model, while also ensuring that a majority of the population in a given region may have access to these services. Moreover, the performance requirements adopted here will discourage larger entities from purchasing spectrum for the purpose of warehousing it and thus may provide small entities with a greater chance of obtaining valuable spectrum.

197. Additionally, the "keep-what-you-use" rule is pro-competitive and provides another method for smaller license areas to be made available to small businesses, thus promoting access to spectrum and the provision of service, especially in rural areas. This rule ensures that spectrum covering areas that are not adequately built out is returned to the Commission and others are given an opportunity to acquire licenses for this spectrum. Because the license areas returned to the Commission under the "keep-what-you-use" rule are likely to be smaller in nature, this rule will provide small entities with an additional opportunity to obtain valuable wireless spectrum.

198. Although the Commission recognizes that the performance and reporting requirements for the 700 MHz Commercial Services licenses places burdens on both large and small businesses alike, these requirements will further several important policy objectives including taking advantage of the excellent propagation characteristics of the spectrum in the 700 MHz Band enabling broader coverage at lower costs, promoting the provision of innovative services to consumers throughout the license areas, including rural areas, and allowing large license areas to be served at lower infrastructure costs. Moreover, the inclusion of interim benchmark reporting requirements ensures that licensees provide service to consumers as early as possible. Because of the importance of these requirements, we do not believe that they should be applied on a differential basis to large and small business. Neither do we believe that such requirements will impose an unacceptable burden on small entities.

199. *License Terms.* The *Second Report and Order* extends the license terms of all the existing A Block licensees, given the changed circumstances of the band plan and service rules, as the licensees are relocated to the reconfigured A Block. This license term extension will benefit any Guard Bands licensees, and any lessees currently using their spectrum, that may be small entities as they will have more flexibility in the use of their spectrum with a longer period of time within which to make use of the spectrum.

200. *Partitioning and Disaggregation.* In this *Second Report and Order*, the Commission concludes that Section 27.15(d) of its rules regarding partitioning and disaggregation should be amended to clarify how the performance obligations will apply to the partitioning and disaggregation of the 700 MHz Commercial Services licenses that remain to be auctioned. These modifications seek to continue to provide flexibility to licensees and third parties to enter into partitioning and disaggregation arrangements that will facilitate the provision of new services to consumers, including consumers in unserved and underserved areas.

201. Under the modifications of the Section 27.15(d) rule relating to geographic partitioning of new 700 MHz Commercial Services licenses, the Commission establishes two options for partitioners and partitionees with regard to the newly adopted performance requirements. Under 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 geographic license area. If the parties meet the end-of-term construction benchmarks, they will retain the ability to continue to build out the unserved portion of their license areas. Parties that fail to meet the end-of-term benchmarks will be subject to a “keep-what-you-use” rule, under which they will lose their authorization for unserved portions of their license areas, which will automatically cancel and return to the Commission for reassignment. This option enables parties to share the cost of meeting the stricter build-out benchmarks as required by the Commission under its new performance requirements, while ensuring that build-out will occur over the original license area to the same extent as it would have occurred had the licensee never partitioned the license. Under 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. If the partitioner or partitionee fails to meet the four-year build-out requirement for its respective area, then its license term will be reduced by two years. If the parties meet the end-of-term construction benchmarks, they will retain the ability to continue to build out the unserved portion of their license areas. Parties that fail to meet the end-of-term benchmarks will be subject to an automatic “keep-what-you-use” rule, under which they will lose their authorization for unserved portions of their license areas, which will automatically cancel and return to the Commission for reassignment. This option provides a way for partitioners and partitionees to ensure that their licenses will not be affected by the other party’s conduct with regard to meeting the applicable performance requirements.

202. Under the modifications of the Section 27.15(d) rule relating to disaggregation of new 700 MHz Commercial Services band licenses, the Commission provides that the disaggregator, disaggregate, or both the disaggregator and disaggregate working together, can meet the four-year and end-of-term construction benchmarks for the entire geographic license area. If either party meets the performance requirement, then the requirement will be satisfied for both parties. If neither party meets the four-year build-out requirement, then each of their license terms will be reduced by two years. If either of the parties meets the end-of-term build-out requirement, then this requirement is considered to be satisfied for both parties. Those parties that meet the end-of-term construction benchmarks will retain the ability to continue to build out the unserved portion of their license areas. Parties that fail to meet the end-of-term benchmarks will be subject to an automatic “keep-what-you-use” rule, under which they will lose their authorization for unserved portions of their license areas, which will automatically cancel and return to the Commission for reassignment.

203. Partitioning and disaggregation allow smaller or newly-formed entities to enter the market for the first time, because they will be able to negotiate for portions of original licenses at costs that are proportionately less than the entire license. Moreover, these modifications provide the opportunity for small businesses to enter into partitioning and disaggregation agreements that would enable them to share the cost of meeting the more stringent performance

requirements for the unauctioned commercial 700 MHz Band spectrum.

204. *Open Platforms for Devices and Applications.* In order to promote innovation in the 700 MHz Band from the outset, the Commission is imposing certain conditions on the 700 MHz C Block to provide open platforms for devices and applications. The C Block—a large 22-megahertz block (comprised of paired 11-megahertz blocks)—is of sufficient size and scope to provide an environment conducive for the development and deployment of 4G services designed to compete with other broadband alternatives, and to provide an opportunity for innovators and entrepreneurs to develop equipment and applications that require substantial bandwidth to realize their full potential. The requirements should also provide sufficient potential market penetration to attract investment and achieve economies of scale in the equipment marketplace. In addition, we believe that the open platform requirement for devices and applications will provide additional opportunities for small entities to participate in the device and application market, since such a requirement will make it easier for customers, device manufacturers, third-party application developers, and others to use or develop devices and applications made by small entities on the network of the C Block licensee.

205. In adopting this requirement for the 700 MHz C Block, the Commission has taken a targeted, focused approach to achieve benefits to consumers. In particular, the Commission declines to impose additional openness requirements on the 700 MHz C Block, including wholesale and interconnection requirements. In addition, the Commission declines at this time to impose the requirement to provide open platforms for devices and applications or other openness obligations broadly in the 700 MHz Band, or in other spectrum bands.

206. *Licensee Eligibility.* The Commission declines to impose eligibility restrictions for the licenses in the 700 MHz band. The record does not demonstrate that open eligibility is likely to result in substantial competitive harm in the provision of broadband services. There are numerous actual and potential broadband service providers, and currently, consumers can obtain broadband service from wireline providers, cable companies, satellite, and wireless providers. Given this number of providers, it is unlikely that incumbent local exchange carriers, 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. Furthermore, there are potential competitive benefits to not imposing eligibility requirements. First, allowing incumbents to hold 700 MHz band licenses will provide opportunities for these carriers to extend service into rural and hard-to-serve areas, which is a major goal the Commission seeks to achieve. Also, an incumbent service provider may already be a rural provider and to limit their eligibility would be contrary to the Commission's goals. We also do not believe that imposing eligibility restrictions for licenses in the 700 MHz band is necessary to provide small entities with the opportunity to obtain such licenses. As discussed above, among other things, the smaller licensing areas made available here will increase opportunities for small entities.

207. *Anonymous Bidding.* In response to its request for comments on whether to use anonymous bidding (or "limited information") procedures in the auction of the new 700 MHz band licenses, the Commission received comments both in support of and in opposition to such procedures. One of the supporters is a small licensee who argued that anonymous bidding would bring about a more level playing field between large and small bidders.<sup>54</sup> The Commission further concludes that the many uncertainties regarding the technologies that will be used in the 700 MHz band will result in the potential anti-competitive use of detailed information regarding bidding outweighing the benefit to some bidders of having such information.

208. The Commission further concludes that anonymous bidding should be employed even if the pre-auction eligibility ratio indicates that competition in the auction will be significant. Even in an auction with many competitors individual bidders could still use retaliatory bidding unilaterally to block the market, and it is important to avoid that from occurring especially given that the 700 MHz auction is going to offer multiple, substitutable blocks of licenses for sale, with prices relatively high, and the outcome having possible significant effects on post-auction market structure.

209. The Commission does not believe that anonymous bidding will have a detrimental effect on small entities. First, as discussed in Section III.A.3.a of the Second Report and Order, the potential benefit to bidders, such as small entities, of knowing the identity of other parties placing bids for particular licenses appears likely to be

less in this auction than in past Commission auctions, in light of the early stage of development with respect to new services in these frequencies. Second, because bidding information can be used by incumbents to deter or exclude new entrants, we believe that anonymous bidding will increase the opportunities for new entrants, including small entities, to obtain licenses.

210. *Package Bidding.* Commenters are divided on the issue of package bidding for the upcoming auction of the 700 MHz band spectrum. While some commenters support package bidding because they feel it is essential for a new entrant seeking to aggregate licenses and offer service nationwide,<sup>55</sup> there are other commenters who feel that package bidding will disadvantage bidders not bidding on packages, which are more likely to be small entities.<sup>56</sup>

211. The Commission concludes that package bidding, with respect to 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. Absent package bidding, the exposure problem creates an opportunity for competitors to block a would-be package bidder without actually competing for all the licenses in the package.<sup>57</sup>

212. Minimizing the exposure problem, by implementing package bidding, should facilitate the entry of applicants whose business plans require the economies of scale that only can be obtained with nationwide operation. The Commission further concludes that package bidding solely with respect to licenses for the Upper 700 MHz Band C Block provides sufficient opportunities to bid with minimal risk of an exposure problem. However, we limit package bidding to the C Block so that bidders, including small entities, who are unwilling or unable to compete against package bids will not be deterred from participating in the auction. The variety of blocks and licenses that are not subjected to package bidding will provide any such bidders, including small entities, with a wide array of opportunities.

<sup>55</sup> See, e.g., Google 700 MHz Further NPRM Comments at 7-8.

<sup>56</sup> See Aloha 700 MHz Further Notice Comments at 7-8; Blooston 700 MHz Further Notice Comments at 10; Cellular South 700 MHz Further Notice Comments at 16; Leap 700 MHz Further Notice Comments at 9; MetroPCS 700 MHz Further Notice Comments at 22; RCA 700 MHz Further Notice Comments at 18; RTG 700 MHz Further Notice Comments at 16.

<sup>57</sup> Frontline 700 MHz Further Notice Comments, Exhibit 1 at 22-23.

213. *"New Entrant" Bidding Credit.* The possibility of granting "new entrant" bidding credits attracted far less comment than other issues relating to the auction of the 700 MHz licenses, and those parties that did respond were divided on the issue. The Commission concludes that a "new entrant" bidding credit for the 700 MHz Band licenses is not needed to facilitate the entry of new service providers. The Commission already offers substantial bidding credits to small entities, many of which may be new entrants in the spectrum services market, and we therefore do not believe that there is a need for an additional "new entrant" bidding credit. In addition, the availability of multiple licenses in each and every market with varied geographic sizes, coupled with the large number of licenses should offer new ventures, including small entities, a variety of opportunities to provide service.

214. *Bidding Credits for the 700 MHz Public/Private Partnership.* A number of small entities have proposed, in their comments, that the Commission should offer designated entities bidding credits with regards to the license that has been proposed by Frontline.<sup>58</sup> In brief, these commenters maintain that bidding credits will help potential applicants overcome efforts by incumbents to prevent others from winning newly available licenses.

215. The Commission concludes that it should provide applicants that are eligible to be licensed as designated entities with bidding credits in the auction of the D Block license, consistent with the Commission's prior decision regarding bidding credits for 700 MHz band licenses and our current designated entities rules. This decision will improve the opportunity for small entities to successfully bid for the D Block license.

216. *Public Safety Broadband.* The *Second Report and Order* reallocates the wideband spectrum to broadband use consistent with a nationwide interoperability standard, and prohibits wideband operations within the newly designated broadband spectrum on a going forward basis. The public safety community expressed broad support for a broadband allocation to enable advanced communications capabilities. The availability of a contiguous block of broadband spectrum, subject to a nationwide interoperability standard, enables partnerships with commercial licensees in adjacent broadband

<sup>58</sup> See, e.g., McBride Spectrum Partners, LLC 700 MHz Further Notice Comments at 4-8; Blooston Rural Carriers 700 MHz Further NPRM Comments at 7; Council Tree Communications, Inc. 700 MHz Further Notice Reply Comments at 5-7.

<sup>54</sup> See McBride 700 MHz Further NPRM Comments at 11.

spectrum. As a result, the band plan ultimately enables public safety entities to utilize the 700 MHz band spectrum in a more cost-effective and spectrally efficient manner to address their homeland security and emergency response roles. In particular, the Commission believes that the interoperable broadband network will be of benefit to smaller governmental entities that would otherwise be unlikely to have the resources to construct such a network. Because the Commission does not anticipate that this reallocation will impose additional economic burdens on public safety, and is in fact designed to reduce economic burdens on public safety, the Commission has taken steps to minimize any adverse impact of the rule changes.

217. The *Second Report and Order* also consolidates the narrowband spectrum to the top of the public safety band and locates the broadband spectrum at the bottom of the public safety band, in light of the potentially significant benefits such reconfiguration will afford the public safety community. The alternative would have been to retain the existing band plan. The *Further NPRM* sought comment on how to implement reconfiguration of the narrowband channels with minimum disruption to incumbent operations. The *Second Report and Order* accommodates public safety operations in the border areas with Canada and Mexico, and defrays the costs of relocation by providing that such costs will be covered by the D Block Licensee. This defrayal of costs should be of particular benefit to small governmental entities, which are less likely to have the resources to fund such a relocation on their own. The Commission expects that the number of entities impacted and the expected reconfiguration cost should be relatively minor. In order to receive reimbursement for the transition costs, however, affected public safety entities are required to provide information regarding the narrowband radios and base stations that they have deployed. We do not believe that such a reporting requirement will place an unacceptable burden on small governmental entities.

#### 6. Report to Congress

218. The Commission will send a copy of the *Second Report and Order*, including this FRFA, in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act.<sup>59</sup> In addition, the Commission will send a

copy of the *Second Report and Order*, including this FRFA, to the Chief Counsel for Advocacy of the SBA. A copy of the *Second Report and Order* and FRFA (or summaries thereof) will also be published in the **Federal Register**.<sup>60</sup>

#### B. Paperwork Reduction Act of 1995

219. The Second Report and Order contains new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104–13. It will be submitted to the Office of Management and Budget (OMB) for review under Section 3507(d) of the PRA. OMB, the general public, and other Federal agencies are invited to comment on the new information collection requirements contained in this proceeding. Comments should address the following: (a) Whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information shall have practical utility; (b) the accuracy of the Commission's burden estimates; (c) ways to enhance the quality, utility, and clarity of the information collected; and (d) ways to minimize the burden of the collection of information on respondents, including the use of automated collection techniques or other forms of information technology. In addition, the Commission notes that pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107–198, *see* 44 U.S.C. 3506(c)(4), the Commission previously sought specific comment on how the Commission might “further reduce the information collection burden for small business concerns with fewer than 25 employees.” In this present document, the Commission has assessed the potential effects of the various policy changes with regard to information collection burdens on small business concerns, and finds that there are no results specific to businesses with fewer than 25 employees. In addition, the Commission has described impacts that might affect small businesses, which includes most businesses with fewer than 25 employees, in the FRFA in Appendix C, *infra*. The Commission notes, however, that Section 213 of the Consolidated Appropriations Act 2000 provides that rules governing frequencies in the 36 megahertz of the spectrum in the 746–806 MHz Band allocated for commercial use become effective immediately upon publication in the **Federal Register** without regard to certain sections of the Paperwork

Reduction Act. The Commission is therefore not inviting comment on any information collections that concern those frequencies. The Commission also notes that it is seeking emergency processing under the Paperwork Reduction Act for the information collection requiring 700 MHz Band public safety licensees, whether holding individual narrowband authorizations or operating pursuant to a State License, to provide the total number of narrowband mobile and portable handsets and narrowband base stations in operation in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69, as of August 30, 2007, along with the related information specified herein. Public and agency comments related to this request are due August 31, 2007.

#### III. Ordering Clauses

220. Accordingly, *it is ordered* that pursuant to Sections 1, 4(i), 5, 7, 10, 201, 202, 208, 214, 215, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 229, 251(e)(3), 301, 303, 307, 308, 309, 310, 311, 312, 316, 324, 331, 332, 333, 336, 337, 403, 503, and 610, of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 155, 157, 160, 201, 202, 208, 214, 215, 222(d)(4)(A)–(C), 222(f), 222(g), 222(h)(1)(A), 222(h)(4)–(5), 251(e)(3), 229, 301, 303, 307, 308, 309, 310, 311, 312, 316, 324, 331, 332, 333, 336, 337, 403, 503, and 610, and Section 102 of the Communications Assistance for Law Enforcement Act, 18 U.S.C. 1001, this *Second Report and Order* in WT Docket No. 06–150, CC Docket No. 94–102, WT Docket No. 01–309, WT Docket No. 03–264, WT Docket No. 06–169, PS Docket No. 06–229, and WT Docket No. 96–86 is *adopted*, and that Part 2, 27, and 90 of the Commission's rules, 47 CFR Parts 2, 27, and 90, are *amended* as set forth in Appendix B. This *Second Report and Order* shall become effective October 23, 2007, except for the amendments to §§ 27.14, 27.15, 27.50, and 90.176 which contain information collection requirements that have not been approved by the Office of Management and Budget (OMB). The Commission will publish a document in the **Federal Register** announcing the effective date.

221. *It is further ordered that*, pursuant to Section 5(c) of the Communications Act of 1934, as amended, 47 U.S.C. 5(c), the Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau *are granted delegated authority* to implement the policies set forth in this *Second Report and Order* and the rules, as revised, set forth in Appendix B hereto.

<sup>59</sup> *See* 5 U.S.C. 801(a)(1)(A).

<sup>60</sup> *See* 5 U.S.C. 604(b).

222. *It is ordered* that, pursuant to Sections 4(i), 309, and 316(a) of the Communications Act, as amended, 47 U.S.C. 154(i), 309, 316(a), the 700 MHz Guard Band A Block licenses of Access 700, LLC, Pegasus Guard Band, LLC, and Dominion 700, Inc. *are modified*, as specified in Appendix D, upon the effective date of this *Second Report and Order*.

223. *It is ordered* that, pursuant to Sections 4(i), 309, and 316(a) of the Communications Act, as amended, 47 U.S.C. 154(i), 309, 316(a), Access 700 Holdings, LLC, Pegasus Guard Band, LLC, and Radiofone Nationwide PCS, LLC shall surrender their 700 MHz Guard Band B Block licenses to the Commission no later than 5 days from the effective date of this *Second Report and Order*.

224. *It is ordered* that, pursuant to Sections 4(i), and 309(f) of the Communications Act, as amended, 47 U.S.C. 154(i), 309(f), Access 700, LLC is granted special temporary authority for a period of 180 days, upon the effective date of this *Second Report and Order*, for frequencies 746.000–747.000 and 776.000–777.000 MHz in Major Economic Areas 20, 26, 32, 37, 44, and 52. The Wireless Telecommunications Bureau is delegated authority to issue such authorizations and to resolve any request for an extension of such authorizations as specified in this *Second Report and Order*.

225. *It is ordered* that, pursuant to Sections 4(i), 309, and 316(a) of the Communications Act, as amended, 47 U.S.C. 154(i), 309, 316(a) and Section 1.87 of the Commission's rules, 47 CFR 1.87, the 700 MHz Guard Band A Block license for Station WPRV447, licensed to PTPMS II Communications, L.L.C., *will be modified* by changing the authorized frequencies from 746.000–747.000 and 776.000–777.000 MHz, to 757.000–758.000 and 787.000–788.000 MHz.

226. *It is ordered* that, pursuant to Sections 4(i), 309, and 316(a) of the Communications Act, as amended, 47 U.S.C. 154(i), 309, 316(a) and Section 1.87 of the Commission's rules, 47 CFR 1.87, the 700 MHz Guard Band B Block licenses for Stations WPRV448 and WPRV449, licensed to PTPMS II Communications, L.L.C., *will be modified* by changing the authorized frequencies from 762.000–764.000 and 792.000–794.000 MHz, to 761.000–763.000 and 791.000–793.000 MHz.

227. *It is ordered* that, pursuant to Sections 309 and 316 of the Communications Act of 1934, as amended, 47 U.S.C. 309, 316, the modifications of Stations WPRV447, WPRV448, and WPRV449, licensed to

PTPMS II Communications, L.L.C., specified in paragraphs 167 and 168, *supra*, shall become final and effective 30 days from the effective date of this *Second Report and Order* if no protests are filed within that period. The Wireless Telecommunications Bureau is delegated authority to resolve any such protests that may arise and to modify such licenses as specified in this *Second Report and Order*.

228. *It is ordered*, pursuant to Sections 1 and 4(i) of the Communications Act, as amended, 47 U.S.C. 151, 154(i), that by October 23, 2007, all 700 MHz Band public safety licensees, whether holding individual narrowband authorizations or operating pursuant to a State License, *shall provide* the total number of narrowband mobile and portable handsets and narrowband base stations in operation in channels 63 and 68, and the upper 1 megahertz of channels 64 and 69, as of August 30, 2007, along with the related information specified herein.

229. *It is further ordered* that the Wireless Telecommunications Bureau *shall send* a copy of this *Second Report and Order*, by certified mail, return receipt requested, to Alfred Angelo, President, PTPMS II Communications, L.L.C., 340 North Avenue East, Cranford, New Jersey 07016, and James H. Barker, Esq., 1001 Pennsylvania Avenue, NW., Suite 1300, Washington, DC 20004–2505.

230. *It is further ordered* that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, *shall send* a copy of this *Second Report and Order*, including the Final Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

231. *It is further ordered* that the Commission *shall send* a copy of this *Second Report and Order* in a report to be sent to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. 801(a)(1)(A).

#### List of Subjects

##### 47 CFR Part 0

Organization and functions (Government agencies), Privacy, Reporting and recordkeeping requirements.

##### 47 CFR Part 1

Administrative practice and procedure, Communications common carriers, Penalties, Radio, Reporting and recordkeeping requirements, Satellites, Telecommunications, Television.

##### 47 CFR Part 2

Communications equipment, Disaster assistance, Radio, Reporting and recordkeeping requirements, Telecommunications, Television.

##### 47 CFR Part 27

Communications common carriers, Radio, Wireless radio services.

##### 47 CFR Part 90

Civil defense, Common carriers, Emergency medical services, Radio, Reporting and recordkeeping requirements.

Federal Communications Commission.

**Marlene H. Dortch,**  
*Secretary.*

#### Final Rules

■ For the reasons discussed in the preamble, the Federal Communications Commission amends 47 CFR parts 0, 1, 2, 27 and 90 as follows:

#### PART 0—COMMISSION ORGANIZATION

■ 1. The authority citation for part 0 continues to read as follows:

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

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

##### § 0.181 The Defense Commissioner.

\* \* \* \* \*

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

#### PART 1—PRACTICE AND PROCEDURE

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

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

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

##### § 1.946 Construction and coverage requirements.

\* \* \* \* \*

(c) *Termination of authorizations.* If a licensee fails to commence service or operations by the expiration of its construction period or to meet its coverage or substantial service obligations by the expiration of its coverage period, its authorization terminates automatically (in whole or in part as set forth in the service rules),



without specific Commission action, on the date the construction or coverage period expires.

\* \* \* \* \*

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

**§ 1.955 Terminations of authorizations.**

(a) \* \* \*

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

\* \* \* \* \*

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

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

\* \* \* \* \*

(c) \* \* \*

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

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

**§ 1.9005 Included services.**

\* \* \* \* \*

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

**PART 2—FREQUENCY ALLOCATIONS AND RADIO TREATY MATTERS; GENERAL RULES AND REGULATIONS**

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

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

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

**§ 2.103 Federal use of non-Federal frequencies.**

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

\* \* \* \* \*

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

\* \* \* \* \*

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

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

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

**PART 27—MISCELLANEOUS WIRELESS COMMUNICATIONS SERVICES**

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

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

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

\* \* \* \* \*

**§ 27.1 Basis and purpose.**

(b) \* \* \*

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

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

**§ 27.2 Permissible communications.**

\* \* \* \* \*

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

base station, to enable frequencies to be reused at relatively short distances.

\* \* \* \* \*

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

**§ 27.4 Terms and definitions.**

*700 MHz Public/Private Partnership.* The public/private partnership established for the development and operation of a nationwide, shared interoperable wireless broadband network operating on the 758–763 MHz and 788–793 MHz bands and the 763–768 MHz and 793–798 MHz bands in accordance with the Commission's rules.

\* \* \* \* \*

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

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

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

\* \* \* \* \*

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

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

\* \* \* \* \*

*Shared Wireless Broadband Network.* Wireless broadband network associated

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

*Special Purpose Bankruptcy Remote Entity.* A “special purpose entity” is a legal entity created for a special limited purpose, in this context primarily to hold the Upper 700 MHz D Block license or the network assets, or to conduct the construction or operation of the shared wireless broadband network associated with the 700 MHz Public/Private Partnership. A special purpose entity is “bankruptcy remote” if that entity is unlikely to become insolvent as a result of its own activities, is adequately insulated from the consequences of a related party’s insolvency, and contains certain characteristics which enhance the likelihood that it will not become the subject of an insolvency proceeding.

\* \* \* \* \*

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

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

\* \* \* \* \*

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

**§ 27.5 Frequencies.**

\* \* \* \* \*

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

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

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

(3) Two paired channels of 11 megahertz each are available for

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

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

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

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

\* \* \* \* \*

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

**§ 27.6 Service Areas.**

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

\* \* \* \* \*

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

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

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

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

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

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

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

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

(2) Service areas for Block B in the 704–710 MHz and 734–740 MHz bands and Block C in the 710–716 MHz and 740–746 MHz bands are based on cellular markets comprising Metropolitan Statistical Areas (MSAs) and Rural Service Areas (RSAs) as defined by Public Notice Report No. CL–92–40 “Common Carrier Public Mobile Services Information, Cellular MSA/RSA Markets and Counties,” dated January 24, 1992, DA 92–109, 7 FCC Rcd 742 (1992), with the following modifications:

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

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

(3) Service areas for Block D in the 716–722 MHz band are based on

Economic Area Groupings (EAGs) as defined by the Federal Communications Commission. See 62 FR 15978 (April 3, 1997) extended with the Gulf of Mexico. See also paragraphs (a)(1) and (a)(2) of this section and 62 FR 9636 (March 3, 1997), in which the Commission created

an additional four economic area-like areas for a total of 176. Maps of the EAGs and the **Federal Register** notice that established the 172 Economic Areas (EAs) are available for public inspection and copying at the Reference Center, Room CY A-257, 445 12th St., SW.,

Washington, DC 20554. These maps and data are also available on the FCC Web site at <http://www.fcc.gov/oet/info/maps/areas/>.

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

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

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

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

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

\* \* \* \* \*

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

\* \* \* \* \*

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

**§ 27.11 Initial authorization.**

\* \* \* \* \*

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

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

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

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

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

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

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

(d) *698-746 MHz band.* Initial authorizations for the 698-746 MHz

band shall be for 6 or 12 megahertz of spectrum in accordance with § 27.5(c).

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

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

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

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

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

\* \* \* \* \*

■ 17. Section 27.13 is amended by revising the paragraph heading and the first and second sentence in paragraph (b) to read as follows:

**§ 27.13 License period.**

\* \* \* \* \*

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

\* \* \* \* \*

§ 27.14 [Amended]

■ 18. Amend § 27.14 as follows:

- a. Revise paragraph (a).
- b. Remove paragraph (f).
- c. Redesignate paragraph (e) as paragraph (f).
- d. Add new paragraphs (e), (g), (h), (i), (j), (k), (l), (m), and (n).

§ 27.14 Construction requirements; criteria for renewal.

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

\* \* \* \* \*

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

\* \* \* \* \*

(g) WCS licensees holding EA authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, cellular market authorizations for Block B in the 704–710 MHz and 734–740 MHz bands, and EA authorizations for Block E in the 722–728 MHz band, if the results of the first auction in which licenses for such authorizations are offered satisfy the reserve price for the applicable block, shall provide signal coverage and offer service over at least 35 percent of the geographic area of each of their license authorizations no later than February 17, 2013 (or within four years of initial license grant if the initial authorization in a market is granted after February 17, 2009), and shall provide such service over at least 70 percent of the geographic area of each of these authorizations by the end of the license term. In applying these

geographic benchmarks, licensees are not required to include land owned or administered by government as a part of the relevant service area. Licensees may count covered government land for purposes of meeting their geographic construction benchmark, but are required to add the covered government land to the total geographic area used for measurement purposes. Licensees are required to include those populated lands held by tribal governments and those held by the Federal Government in trust or for the benefit of a recognized tribe.

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

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

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

(h) WCS licensees holding authorizations for Block C in the 746–

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

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

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

(i) WCS licensees holding EA authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, cellular market authorizations for Block B in the 704–710 MHz and 734–740 MHz bands, and EA authorizations for Block E in the 722–728 MHz band, if the results of the first auction in which licenses for such authorizations in Blocks A, B, and E are offered do not

satisfy the reserve price for the applicable block, as well as EA authorizations for Block C1 in the 746–752 MHz and 776–782 MHz bands and REAG authorizations for Block C2 in the 752–757 MHz and 782–787 MHz bands, are subject to the following:

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

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

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

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

reassignment pursuant to the following procedures:

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

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

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

(k) WCS licensees with authorizations in the spectrum blocks enumerated in paragraphs (g), (h), or (i), of this section, including any licensee that obtained its license pursuant to the procedures set forth in paragraph (j) of this section, shall demonstrate compliance with performance requirements by filing a construction notification with the

Commission, within 15 days of the expiration of the relevant benchmark, in accordance with the provisions set forth in § 1.946(d) of this chapter. The licensee must certify whether it has met the relevant performance requirement. All licensees must file a description and certification of the areas for which they are providing service. The construction notifications must include electronic coverage maps, supporting technical documentation and any other information as the Wireless Telecommunications Bureau may prescribe by public notice.

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

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

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

population of the nationwide license area within ten years.

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

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

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

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

(ii) Electronic coverage maps and supporting technical documentation providing the assumptions used by the licensee to create the coverage maps, including the propagation model and

the signal strength necessary to provide service.

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

#### § 27.15 [Amended]

■ 19. Amend § 27.15 by revising paragraph (d) to read as follows:

#### § 27.15 Geographic partitioning and spectrum disaggregation.

\* \* \* \* \*

(d) *Compliance with construction requirements*—(1) *Partitioning*. (i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, Blocks C, C1, and C2 in the 746–757 MHz and 776–787 MHz bands, and Block D in the 758–763 MHz and 788–793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the partitioner and partitionee each certifies that it will independently satisfy the substantial service requirement for its respective partitioned area. If a licensee subsequently fails to meet its substantial service requirement, its license will be subject to automatic cancellation without further Commission action. Under the section option, the partitioner certifies that it has met or will meet the substantial service requirement for the entire, pre-partitioned geographic service area. If the partitioner subsequently fails to meet its substantial service requirement, only its license will be subject to automatic cancellation without further Commission action.

(ii) For WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, and Blocks C, C1, and C2 in the 746–757 MHz and 776–787 MHz bands, the following rules apply for purposes of implementing the construction requirements set forth in § 27.14. Parties to partitioning agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first

option, the partitioner and partitionee each certifies that they will collectively share responsibility for meeting the construction requirement for the entire pre-partition geographic license area. If the partitioner and partitionee collectively fail to meet the construction requirement, then both the partitioner and partitionee will be subject to the consequences enumerated in § 27.14(g) and (h) for this failure. Under the second option, the partitioner and partitionee each certifies that it will independently meet the construction requirement for its respective partitioned license area. If the partitioner or partitionee fails to meet the construction requirement for its respective partitioned license area, then the consequences for this failure shall be those enumerated in § 27.14(g) and (h).

(2) *Disaggregation*. (i) Except for WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, and Blocks C, C1, and C2 in the 746–757 MHz and 776–787 MHz bands, and Block D in the 758–763 MHz and 788–793 MHz bands, the following rules apply to WCS and AWS licensees holding authorizations for purposes of implementing the construction requirements set forth in § 27.14. Parties to disaggregation agreements have two options for satisfying the construction requirements set forth in § 27.14. Under the first option, the disaggregator and disaggregatee each certifies that it will share responsibility for meeting the substantial service requirement for the geographic service area. If the parties choose this option and either party subsequently fails to satisfy its substantial service responsibility, both parties' licenses will be subject to forfeiture without further Commission action. Under the second option, both parties certify either that the disaggregator or the disaggregatee will meet the substantial service requirement for the geographic service area. If the parties choose this option, and the party responsible subsequently fails to meet the substantial service requirement, only that party's license will be subject to forfeiture without further Commission action.

(ii) For WCS licensees holding authorizations for Block A in the 698–704 MHz and 728–734 MHz bands, Block B in the 704–710 MHz and 734–740 MHz bands, Block E in the 722–728 MHz band, and Blocks C, C1, and C2 in the 746–757 MHz and 776–787 MHz bands, the following rules apply for purposes of implementing the

construction requirements set forth in § 27.14. If either the disaggregator or the disaggregatee meets the construction requirements set forth in § 27.14, then these requirements will be considered to be satisfied for both parties. If neither the disaggregator nor the disaggregatee meets the construction requirements, then both parties will be subject to the consequences enumerated in § 27.14(g) and (h) for this failure.

■ 20. Add § 27.16 to subpart B to read as follows:

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

(a) *Applicability.* This section shall apply only to the authorizations for Block C in the 746–757 and 776–787 MHz bands assigned and only if the results of the first auction in which licenses for such authorizations are offered satisfied the applicable reserve price.

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

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

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

(c) *Technical standards.* For purposes of paragraph (b)(1) of this section:

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

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

(3) A licensee shall publish its technical standards, which shall be non-proprietary, no later than the time at which it makes such standards available to any preferred vendors, so that the standards are readily available to customers, equipment manufacturers,

application developers, and other parties interested in using or developing products for use on a licensee's networks.

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

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

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

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

■ 21. Section 27.50 is amended by revising paragraphs (b)(1) through (b)(12), (c)(5), (c)(7), (c)(8), (c)(11), and by revising tables 1, 2, 3, and 4 at the end of the section.

**§ 27.50 Power and antenna height limits.**

\* \* \* \* \*

(b) \* \* \*

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

ERP in accordance with Table 1 of this section.

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

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

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

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

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

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



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

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

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

(8) Licensees authorized to transmit in the 746–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands and intending to operate a base or fixed station at a power level permitted under the provisions of paragraph (b)(6) of this section must provide advanced notice of such operation to the Commission and to licensees authorized in their area of operation. Licensees who must be notified are all licensees authorized to operate in the 763–775 MHz and 793–805 MHz bands under part 90 of this chapter within 75 km of the base or fixed station and all regional planning committees, as identified in § 90.527 of this chapter, with jurisdiction within 75 km of the base or fixed station.

Notifications must provide the location and operating parameters of the base or fixed station, including the station’s ERP, antenna coordinates, antenna height above ground, and vertical antenna pattern, and such notifications must be provided at least 90 days prior to the commencement of station operation.

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

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

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

emission in question over the full bandwidth of the channel.

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

(c) \* \* \*

(5) Licensees seeking to operate a fixed or base station located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal at an ERP greater than 1000 watts must:

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

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

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

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

\* \* \* \* \*

(11) Licensees may employ equipment operating in compliance with either the

measurement techniques described in paragraph (b)(11) of this section or a Commission-approved average power technique. In both instances, equipment employed must be authorized in accordance with the provisions of § 27.51.

\* \* \* \* \*

TABLE 1 TO § 27.50.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 757–758 AND 775–776 MHz BANDS AND FOR BASE AND FIXED STATIONS IN THE 698–757 MHz, 758–763 MHz, 776–787 MHz AND 788–793 MHz BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH OF 1 MHz OR LESS

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500) .....	65
Above 1220 (4000) To 1372 (4500) .....	70
Above 1067 (3500) To 1220 (4000) .....	75
Above 915 (3000) To 1067 (3500) .....	100
Above 763 (2500) To 915 (3000) .....	140
Above 610 (2000) To 763 (2500) .....	200
Above 458 (1500) To 610 (2000) .....	350
Above 305 (1000) To 458 (1500) .....	600
Up to 305 (1000) .....	1000

TABLE 2 TO § 27.50.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–757 MHz, 758–763 MHz, 776–787 MHz AND 788–793 MHz BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH OF 1 MHz OR LESS

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500) .....	130
Above 1220 (4000) To 1372 (4500) .....	140
Above 1067 (3500) To 1220 (4000) .....	150
Above 915 (3000) To 1067 (3500) .....	200
Above 763 (2500) To 915 (3000) .....	280
Above 610 (2000) To 763 (2500) .....	400
Above 458 (1500) To 610 (2000) .....	700
Above 305 (1000) To 458 (1500) .....	1200

TABLE 2 TO § 27.50.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–757 MHz, 758–763 MHz, 776–787 MHz AND 788–793 MHz BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH OF 1 MHz OR LESS—Continued

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Up to 305 (1000)	2000

TABLE 3 TO § 27.50.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–757 MHz, 758–763 MHz, 776–787 MHz AND 788–793 MHz BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH GREATER THAN 1 MHz

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

TABLE 4 TO § 27.50.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–757 MHz, 758–763 MHz, 776–787 MHz AND 788–793 MHz BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH GREATER THAN 1 MHz

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150
Above 915 (3000) To 1067 (3500)	200

TABLE 4 TO § 27.50.—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 698–757 MHz, 758–763 MHz, 776–787 MHz AND 788–793 MHz BANDS TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH GREATER THAN 1 MHz—Continued

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 763 (2500) To 915 (3000)	280
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

- 22. Amend § 27.53 as follows:
- a. Revise paragraph (c) introductory text and paragraphs (c)(1) through (c)(4).
- b. Redesignate paragraphs (d) through (m) as paragraphs (e) through (n).
- c. Add new paragraph (d).
- d. Revise newly redesignated paragraph (e) introductory text.
- e. Redesignate newly redesignated paragraphs (e)(1) through (e)(4) as paragraphs (e)(6) through (e)(9).
- f. Add new paragraphs (e)(1) through (e)(5).
- g. Revise newly redesignated paragraph (f).

**§ 27.53 Emission limits.**

\* \* \* \* \*

(c) For operations in the 746–758 MHz band and the 776–788 MHz band, the power of any emission outside the licensee’s frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

- (1) On any frequency outside the 746–758 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least  $43 + 10 \log(P)$  dB;
- (2) On any frequency outside the 776–788 MHz band, the power of any emission shall be attenuated outside the band below the transmitter power (P) by at least  $43 + 10 \log(P)$  dB;
- (3) On all frequencies between 763–775 MHz and 793–805 MHz, by a factor not less than  $76 + 10 \log(P)$  dB in a 6.25 kHz band segment, for base and fixed stations;
- (4) On all frequencies between 763–775 MHz and 793–805 MHz, by a factor not less than  $65 + 10 \log(P)$  dB in a 6.25

kHz band segment, for mobile and portable stations;

\* \* \* \* \*

(d) For operations in the 758–763 MHz and 788–793 MHz bands, the power of any emission outside the licensee’s frequency bands of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

- (1) On all frequencies between 769–775 MHz and 799–805 MHz, by a factor not less than  $76 + 10 \log(P)$  dB in a 6.25 kHz band segment, for base and fixed stations;
- (2) On all frequencies between 769–775 MHz and 799–805 MHz, by a factor not less than  $65 + 10 \log(P)$  dB in a 6.25 kHz band segment, for mobile and portable stations;

(3) On any frequency between 775–788 MHz, above 805 MHz, and below 758 MHz, by at least  $43 + 10 \log(P)$  dB;

(4) Compliance with the provisions of paragraphs (d)(1) and (d)(2) of this section is based on the use of measurement instrumentation such that the reading taken with any resolution bandwidth setting should be adjusted to indicate spectral energy in a 6.25 kHz segment;

(5) Compliance with the provisions of paragraph (d)(3) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the frequency block, a resolution bandwidth of at least 30 kHz may be employed.

(e) For operations in the 775–776 MHz and 805–806 MHz bands, transmitters must comply with either paragraphs (e)(1) to (e)(5) of this section or the ACP emission limitations set forth in paragraphs (e)(6) to (e)(9) of this section.

(1) On all frequencies between 763–775 MHz and 793–805 MHz, the power of any emission outside the licensee’s frequency bands of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by a factor not less than  $76 + 10 \log(P)$  dB in a 6.25 kHz band segment, for base and fixed stations;

(2) On all frequencies between 763–775 MHz and 793–805 MHz, the power of any emission outside the licensee’s frequency bands of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by a factor not less than  $65 + 10 \log(P)$  dB in a 6.25 kHz band segment, for mobile and portable stations;

(3) On any frequency outside the 775–776 MHz and 805–806 MHz bands, the power of any emission shall be attenuated outside the band below the transmitter power (P) within the licensed band(s) of operation, measured in watts, by at least 43 + 10 log (P) dB;

(4) Compliance with the provisions of paragraphs (e)(1) and (e)(2) of this section is based on the use of measurement instrumentation such that the reading taken with any resolution bandwidth setting should be adjusted to indicate spectral energy in a 6.25 kHz segment;

(5) Compliance with the provisions of paragraph (e)(3) of this section is based on the use of measurement instrumentation employing a resolution bandwidth of 100 kHz or greater. However, in the 100 kHz bands immediately outside and adjacent to the frequency block, a resolution bandwidth of at least 30 kHz may be employed.

(f) For operations in the 746–763 MHz, 775–793 MHz, and 805–806 MHz bands, emissions in the band 1559–1610 MHz shall be limited to –70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and –80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

■ 23. Section 27.55 is amended by revising the section heading and paragraphs (a)(2) and (c) to read as follows:

**§ 27.55 Power strength limits.**

(a) 698–758 and 775–787 MHz bands: 40 dBµV/m.

(c) *Power flux density limit for stations operating in the 746–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands.* For base and fixed stations operating in the 746–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands in accordance with the provisions of § 27.50(b)(6), the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1 km from the base of the antenna mounting structure.

■ 24. Section 27.57 is amended by revising paragraph (b) to read as follows:

**§ 27.57 International coordination.**

(b) Operation in the 698–763 MHz, 775–793 MHz, and 805–806 MHz bands is subject to international agreements between Mexico and Canada. Unless otherwise modified by international treaty, licenses must not cause interference to, and must accept harmful interference from, television broadcast operations in Mexico and Canada.

■ 25. Section 27.60 is revised to read as follows:

**§ 27.60 TV/DTV interference protection criteria.**

Base, fixed, control, and mobile transmitters in the 698–763 MHz, 775–793 MHz, and 805–806 MHz frequency bands must be operated only in accordance with the rules in this section to reduce the potential for interference to public reception of the signals of existing TV and DTV broadcast stations transmitting on TV Channels 51 through 68.

(a) *D/U ratios.* Licensees must choose site locations that are a sufficient distance from co-channel and adjacent channel TV and DTV stations, and/or must use reduced transmitting power or transmitting antenna height such that the following minimum desired signal-to-undesired signal ratios (D/U ratios) are met.

(1) The minimum D/U ratio for co-channel stations is:

(i) 40 dB at the hypothetical Grade B contour (64 dBµV/m) (88.5 kilometers (55 miles)) of the TV station;

(ii) For transmitters operating in the 698–746 MHz frequency band, 23 dB at the equivalent Grade B contour (41 dBµV/m) (88.5 kilometers (55 miles)) of the DTV station; or

(iii) For transmitters operating in the 746–763 MHz, 775–793 MHz, and 805–806 MHz frequency bands, 17 dB at the equivalent Grade B contour (41 dBµV/m) (88.5 kilometers (55 miles)) of the DTV station.

(2) The minimum D/U ratio for adjacent channel stations is 0 dB at the hypothetical Grade B contour (64 dBµV/m) (88.5 kilometers (55 miles)) of the TV station or –23 dB at the equivalent Grade B contour (41 dBµV/m) (88.5 kilometers (55 miles)) of the DTV station.

(b) *TV stations and calculation of contours.* The methods used to calculate TV contours and antenna heights above average terrain are given in §§ 73.683 and 73.684 of this chapter. Tables to determine the necessary minimum distance from the 698–763 MHz, 775–793 MHz, and 805–806 MHz station to

the TV/DTV station, assuming that the TV/DTV station has a hypothetical or equivalent Grade B contour of 88.5 kilometers (55 miles), are located in § 90.309 of this chapter and labeled as Tables B, D, and E. Values between those given in the tables may be determined by linear interpolation. Distances for station parameters greater than those indicated in the tables should be calculated in accordance with the required D/U ratios, as provided in paragraph (a) of this section. The locations of existing and proposed TV/DTV stations during the period of transition from analog to digital TV service are given in part 73 of this chapter and in the final proceedings of MM Docket No. 87–268.

(1) Licensees of stations operating within the ERP and HAAT limits of § 27.50 must select one of four methods to meet the TV/DTV protection requirements, subject to Commission approval:

(i) Utilize the geographic separation specified in Tables B, D, and E of § 90.309 of this chapter, as appropriate;

(ii) When station parameters are greater than those indicated in the tables, calculate geographic separation in accordance with the required D/U ratios, as provided in paragraph (a) of this section;

(iii) Submit an engineering study justifying the proposed separations based on the parameters of the land mobile station and the parameters, including authorized and/or applied for facilities, of the TV/DTV station(s) it is trying to protect; or,

(iv) Obtain written concurrence from the applicable TV/DTV station(s). If this method is chosen, a copy of the agreement must be submitted with the application.

(2) The following is the method for geographic separations. (i) Base and fixed stations that operate in the 746–763 MHz, 775–787 MHz, and 788–793 MHz bands having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to co-channel and adjacent channel TV/DTV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. Base and fixed stations that operate in the 698–746 MHz band having an antenna height (HAAT) less than 152 m. (500 ft.) shall afford protection to adjacent channel DTV stations in accordance with the values specified in Table E in § 90.309 of this chapter, shall afford protection to co-channel DTV stations by providing 23 dB protection to such stations'

equivalent Grade B contour (41 dB $\mu$ V/m), and shall afford protection to co-channel and adjacent channel TV stations in accordance with the values specified in Table B (co-channel frequencies based on 40 dB protection) and Table E (adjacent channel frequencies based on 0 dB protection) in § 90.309 of this chapter. For base and fixed stations having an antenna height (HAAT) between 152–914 meters (500–3,000 ft.) the effective radiated power must be reduced below 1 kilowatt in accordance with the values shown in the power reduction graph in Figure B in § 90.309 of this chapter. For heights of more than 152 m. (500 ft.) above average terrain, the distance to the radio path horizon will be calculated assuming smooth earth. If the distance so determined equals or exceeds the distance to the hypothetical or equivalent Grade B contour of a co-channel TV/DTV station (*i.e.*, it exceeds the distance from the appropriate Table in § 90.309 of this chapter to the relevant TV/DTV station), an authorization will not be granted unless it can be shown in an engineering study (*see* paragraph (b)(1)(iii) of this section) that actual terrain considerations are such as to provide the desired protection at the actual Grade B contour (64 dB $\mu$ V/m for TV and 41 dB $\mu$ V/m for DTV stations) or unless the effective radiated power will be further reduced so that, assuming free space attenuation, the desired protection at the actual Grade B contour (64 dB $\mu$ V/m for TV and 41 dB $\mu$ V/m coverage contour for DTV stations) will be achieved. Directions for calculating powers, heights, and reduction curves are listed in § 90.309 of this chapter for land mobile stations. Directions for calculating coverage contours are listed in § 73.683 through 73.685 of this chapter for TV stations and in § 73.625 of this chapter for DTV stations.

(ii) Control, fixed, and mobile stations (including portables) that operate in the 787–788 MHz and 805–806 MHz bands and control and mobile stations (including portables) that operate in the 698–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands are limited in height and power and therefore shall afford protection to co-channel and adjacent channel TV/DTV stations in the following manner:

(A) For control, fixed, and mobile stations (including portables) that operate in the 787–788 MHz and 805–806 MHz bands and control and mobile stations (including portables) that operate in the 746–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands, co-channel protection shall be afforded in accordance with the values

specified in Table D (co-channel frequencies based on 40 dB protection for TV stations and 17 dB for DTV stations) in § 90.309 of this chapter.

(B) For control and mobile stations (including portables) that operate in the 698–746 MHz band, co-channel protection shall be afforded to TV stations in accordance with the values specified in Table D (co-channel frequencies based on 40 dB protection) and to DTV stations by providing 23 dB protection to such stations' equivalent Grade B contour (41 dB $\mu$ V/m).

(C) For control, fixed, and mobile stations (including portables) that operate in the 787–788 MHz and 805–806 MHz bands and control and mobile stations (including portables) that operate in the 698–757 MHz, 758–763 MHz, 776–787 MHz, and 788–793 MHz bands, adjacent channel protection shall be afforded by providing a minimum distance of 8 kilometers (5 miles) from all adjacent channel TV/DTV station hypothetical or equivalent Grade B contours (adjacent channel frequencies based on 0 dB protection for TV stations and –23 dB for DTV stations).

(D) Since control, fixed, and mobile stations may affect different TV/DTV stations than the associated base or fixed station, particular care must be taken by applicants/licensees to ensure that all appropriate TV/DTV stations are considered (*e.g.*, a base station may be operating within TV Channel 62 and the mobiles within TV Channel 67, in which case TV Channels 61, 62, 63, 66, 67 and 68 must be protected). Control, fixed, and mobile stations shall keep a minimum distance of 96.5 kilometers (60 miles) from all adjacent channel TV/DTV stations. Since mobiles and portables are able to move and communicate with each other, licensees must determine the areas where the mobiles can and cannot roam in order to protect the TV/DTV stations.

**Note to § 27.60:** The 88.5 km (55mi) Grade B service contour (64 dB $\mu$ V/m) is based on a hypothetical TV station operating at an effective radiated power of one megawatt, a transmitting antenna height above average terrain of 610 meters (2000 feet) and the Commission's R-6602 F(50,50) curves. *See* § 73.699 of this chapter. Maximum facilities for TV stations operating in the UHF band are 5 megawatts effective radiated power at an antenna HAAT of 610 meters (2,000 feet). *See* § 73.614 of this chapter. The equivalent contour for DTV stations is based on a 41 dB $\mu$ V/m signal strength and the distance to the F(50,90) curve. *See* § 73.625 of this chapter.

■ 26. Section 27.70 is amended by revising paragraph (a) introductory text and paragraphs (b)(1) and (b)(2) to read as follows:

#### § 27.70 Information exchange.

(a) *Prior notification.* Public safety licensees authorized to operate in the 763–775 MHz and 793–805 MHz bands may notify any licensee authorized to operate in the 746–757, 758–763, 776–787, or 788–793 MHz bands that they wish to receive prior notification of the activation or modification of the licensee's base or fixed stations in their area. Thereafter, the 746–757, 758–763, 776–787, or 788–793 MHz band licensee must provide the following information to the public safety licensee at least 10 business days before a new base or fixed station is activated or an existing base or fixed station is modified:

\* \* \* \* \*

(b) \* \* \*

(1) Allow a public safety licensee to advise the 746–757, 758–763, 776–787, or 788–793 MHz band licensee whether it believes a proposed base or fixed station will generate unacceptable interference;

(2) Permit 746–757, 758–763, 776–787, and 788–793 MHz band licensees to make voluntary changes in base or fixed station parameters when a public safety licensee alerts them to possible interference; and,

\* \* \* \* \*

■ 27. Section 27.303 (a) is amended by revising paragraph (a) introductory text to read as follows:

#### § 27.303 Upper 700 MHz commercial and public safety coordination zone.

(a) *General.* CMRS operators are required, prior to commencing operations on fixed or base station transmitters on the 776–787 MHz and 788–793 MHz bands that are located within 500 meters of existing or planned public safety base station receivers, to submit a description of their proposed facility to a Commission-approved public safety coordinator.

\* \* \* \* \*

■ 28. Section 27.501 is revised to read as follows:

#### § 27.501 746–763 MHz, 775–793 MHz, and 805–806 MHz bands subject to competitive bidding.

Mutually exclusive initial applications for licenses in the 746–763 MHz, 775–793 MHz, and 805–806 MHz bands are subject to competitive bidding. The general competitive bidding procedures set forth in part 1, subpart Q of this chapter will apply unless otherwise provided in this subpart.

■ 29. Section 27.601 is amended by revising paragraph (c)(1) introductory text to read as follows:

**§ 27.601 Authority and coordination requirements.**

\* \* \* \* \*

(c) \* \* \*

(1) A Guard Band licensee, or a spectrum lessee operating at 775–776 MHz and 805–806 MHz pursuant to a spectrum lease arrangement under §§ 1.9030 and 1.9035 of this chapter, must notify Commission-recognized public safety frequency coordinators for the 700 MHz Public Safety band and adjacent-area Guard Band licensees within one business day after the licensee or the spectrum lessee has:

\* \* \* \* \*

■ 30. Add subpart N to part 27 as follows:

**Subpart N—700 MHz Public/Private Partnership**

Sec.

- 27.1301 Purpose and scope.
- 27.1303 Upper 700 MHz D Block license conditions.
- 27.1305 Shared wireless broadband network.
- 27.1307 Spectrum use in the network.
- 27.1308 Organization and structure of the 700 MHz public/private partnership.
- 27.1310 Network sharing agreement.
- 27.1315 Establishment, execution, and application of the network sharing agreement.
- 27.1320 Failure to comply with the NSA or the Commission's rules.
- 27.1325 Resolution of disputes after grant of the upper 700 MHz D block license.
- 27.1327 Construction requirements; criteria for renewal.
- 27.1330 Local public safety build-out and operation.
- 27.1333 Geographic partitioning, spectrum disaggregation, license assignment, and transfer.
- 27.1335 Prohibition on discontinuance of public safety operations.
- 27.1340 Reporting obligations.

**§ 27.1301 Purpose and scope.**

The purpose of this subpart, in conjunction with subpart AA of part 90, is to establish rules and procedures relating to the 700 MHz Public/Private Partnership entered between the winning bidder for the Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and other related entities as the Commission may require or allow. Pursuant to this partnership, the Upper 700 MHz D Block licensee and the Operating Company will be responsible for constructing and operating a nationwide, shared interoperable wireless broadband network used to provide a commercial service and a broadband network service for public safety entities. The shared network

assets will be held by the Network Assets Holder and the Shared Wireless Broadband Network will operate on both the commercial spectrum licensed to the Upper 700 MHz D Block licensee and the public safety broadband spectrum licensed to the Public Safety Broadband Licensee. This subpart of the part 27 rules sets forth specific provisions relating to the Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee, and other related entities as the Commission may require or allow with respect to the 700 MHz Public/Private Partnership. Subpart AA of the part 90 rules sets forth related provisions applicable to the Public Safety Broadband Licensee and the Public Safety Broadband Licensee with respect to the 700 MHz Public/Private Partnership.

**§ 27.1303 Upper 700 MHz D Block license conditions.**

(a) The winning bidder at auction of the license for Block D in the 758–763 MHz and 788–793 MHz bands will be granted the Upper 700 MHz D Block license only after this winning bidder has entered, with the Public Safety Broadband Licensee and other related entities as the Commission may require or allow, into the Network Sharing Agreement (NSA) that has been approved by the Commission, has executed such other agreements as the Commission may require or allow, and has met all other necessary conditions pertaining to the award of this license.

(b) The Upper 700 MHz D Block licensee shall comply with all of the applicable requirements set forth in this part and subpart, including the construction requirements set forth in § 27.14, and shall comply with the terms of the NSA and such other agreements as the Commission may require or allow.

(c) The Upper 700 MHz D Block licensee shall have the exclusive right to build and operate the shared wireless broadband network, except as set forth in §§ 20.1330 and 90.1430 of this chapter.

(d) The Upper 700 MHz D Block licensee must not discontinue, reduce, or impair service to public safety users unless and until, pursuant to Commission procedures, it has obtained prior authorization from the Commission.

(e) The Upper 700 MHz D Block licensee must provide the Public Safety Broadband Licensee with priority access during emergencies, as specified in the NSA.

(f) These conditions and requirements will apply to any related entities that the Commission may require or allow,

as provided for in the NSA or otherwise as authorized by the Commission.

**§ 27.1305 Shared wireless broadband network.**

The Shared Wireless Broadband Network developed by the 700 MHz Public/Private Partnership must be designed to meet requirements associated with a nationwide, public safety broadband network. At a minimum, the network must incorporate the following features:

(a) Design for operation over a broadband technology platform that provides mobile voice, video, and data capability that is seamlessly interoperable across public safety local and state agencies, jurisdictions, and geographic areas, and that includes current and evolving state-of-the-art technologies reasonably made available in the commercial marketplace with features beneficial to the public safety community.

(b) Sufficient signal coverage to ensure reliable operation throughout the service area consistent with typical public safety communications systems.

(c) Sufficient robustness to meet the reliability and performance requirements of public safety.

(d) Sufficient capacity to meet the needs of public safety.

(e) Security and encryption consistent with state-of-the-art technologies.

(f) A mechanism to automatically prioritize public safety communications over commercial uses on a real-time basis consistent with the requirements of § 27.1307.

(g) Operational capabilities consistent with features and requirements that are typical of current and evolving state-of-the-art public safety systems.

(h) Operational control of the network by the Public Safety Broadband Licensee to the extent necessary to ensure that public safety requirements are met.

**§ 27.1307 Spectrum use in the network.**

(a) *Spectrum use.* The shared wireless broadband network developed by the 700 MHz Public/Private Partnership will operate using spectrum associated with the Upper 700 MHz D Block license in the 758–763 MHz and 788–793 MHz bands and the Public Safety Broadband Licensee in the adjacent 763–768 MHz and 793–798 MHz bands.

(b) *Access to spectrum in the 758–763 MHz and 788–793 MHz bands.* The Upper 700 MHz D Block licensee shall lease the spectrum rights associated with the Upper 700 MHz D Block license to the Operating Company, pursuant to the Commission's spectrum leasing rules. The spectrum leasing

arrangement shall be a long-term *de facto* transfer leasing arrangement for the entire remaining term of the Upper 700 MHz D Block license. If the Upper 700 MHz D Block license is renewed, the parties will be required to renew this spectrum leasing arrangement as well.

(c) *Access to spectrum in the 763–768 MHz and 793–798 MHz bands.* The Public Safety Broadband Licensee, which holds the Public Safety Broadband License pursuant to part 90 rules, must lease the spectrum usage rights associated with this license, pursuant to a spectrum manager leasing arrangement set forth in part 1 subpart X, to the Upper 700 MHz D Block licensee and the Operating Company for the entire remaining term of the Public Safety Broadband License to effectuate the 700 MHz Public/Private Partnership. The Upper 700 MHz D Block licensee and the Operating Company are the only entities that are eligible to lease the spectrum usage rights associated with the Public Safety Broadband License to operate on the 763–768 and 793–798 MHz bands. If the Upper 700 MHz D Block license is cancelled, this spectrum leasing arrangement will automatically terminate.

(d) *Commercial operations in the 763–768 MHz and 793–798 MHz bands.* Commercial operations in the 763–768 MHz and 793–798 MHz bands through the spectrum manager leasing arrangement shall not cause harmful interference to primary users (*i.e.*, public safety users) and cannot claim protection from harmful interference from the primary public safety operations in the 763–768 MHz and 793–798 MHz bands. The network providing commercial operations in the 763–768 MHz and 793–798 MHz bands through the spectrum manager leasing arrangement must be designed 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 to guarantee that public safety users suffer no harmful interference or interruption or degradation of service due to commercial operations in the 763–768 MHz and 793–798 MHz bands.

**§ 27.1308 Organization and structure of the 700 MHz public/private partnership.**

(a) The Upper 700 MHz D Block licensee, the Network Assets Holder and such other related entities as the Commission may require or allow shall be formed by the winning bidder of the Upper 700 MHz D Block license. The Upper 700 MHz D Block licensee, the Network Assets Holder, and related

entities as the Commission may require or allow must be Special Purpose Bankruptcy Remote Entities formed to hold the license, to hold the shared network assets, or for such other purpose as the Commission may require or allow. The winning bidder of the Upper 700 MHz D Block license shall also form the Operating Company, which must also be a Special Purpose Bankruptcy Remote Entity. Upon issuance of the Upper 700 MHz D Block license, the winning bidder will assign all of its rights and obligations under the NSA to the Upper 700 MHz D Block licensee, Network Assets Holder, the Operating Company, and any other related entities that the Commission may require or allow.

(b) The Upper 700 MHz D Block licensee and other related entities as the Commission may require or allow shall have the obligation to build out the Shared Wireless Broadband Network, as provided for in the NSA or otherwise as authorized by the Commission.

**§ 27.1310 Network sharing agreement.**

The relationship between the Upper 700 MHz D Block licensee, the Public Safety Broadband Licensee, and related entities as the Commission may require or allow will be governed by the Network Sharing Agreement (NSA) and such other separate agreements as the Commission may require or allow that are negotiated and entered into between the parties. The NSA must, at a minimum, include the following terms:

(a) All of the substantive rights and obligations of the parties relating to the NSA, as established by the Commission concerning the 700 MHz Public/Private Partnership.

(b) Network specifications that comply with § 27.1305.

(c) The definition of “emergency” for purposes of emergency priority access.

(d) All service fees to be imposed for services to public safety, including fees for normal network service and fees for priority access to the D Block spectrum in an emergency.

(e) A detailed build-out schedule consistent with § 27.1327, including coverage of major highways and interstates, as well as incorporated communities with a population in excess of 3,000.

(f) The right of the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment 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.

(g) The Upper 700 MHz D Block licensee must offer 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.

(h) Any major modification of the terms of the NSA, related agreements or documents, or such other agreements as the Commission may require or allow must be submitted to the Commission for prior approval. All other modifications must be submitted to the Chiefs of the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau for prior approval.

(i) The NSA shall require, in a separate agreement, the granting of an irrevocable and assignable right of first refusal to purchase the network assets if and whenever such assets are otherwise to be sold and an irrevocable and assignable option in favor of the Public Safety Broadband Licensee to purchase the network and all network assets if and whenever the Upper 700 MHz 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 of the tangible and intangible assets sold. This right and option shall be senior to, and have priority over, any other right, claim, or interest in or to the network or the network assets. The NSA shall also include a fair market valuation methodology to determine the fair market value of the shared wireless broadband network assets.

(j) The NSA must have a term, not to exceed 10 years from February 17, 2009, that coincides with the terms of the Upper 700 MHz D Block license and the Public Safety Broadband License.

**§ 27.1315 Establishment, execution, and application of the network sharing agreement.**

The following requirements and processes relate to the establishment, execution, and application of the NSA:

(a) *Approval of NSA as pre-condition for granting the Upper 700 MHz D Block License.* The Commission shall not grant the Upper 700 MHz D Block license until the winning bidder for the Upper 700 MHz D Block license has negotiated the NSA and such other agreements as the Commission may require or allow with the Public Safety Broadband Licensee, and the NSA and related agreements or documents have been approved by the Commission and executed by the required parties. Parties to the NSA must also include the Upper

700 MHz D Block licensee, the Network Assets Holder, and the Operating Company, as these entities are defined in § 27.4.

(b) *Requirement of negotiation.*

Negotiation of an NSA between the winning bidder for the Upper 700 MHz D Block license and the Public Safety Broadband Licensee must commence by the date the winning bidder files its long form application or the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later, and must conclude within six months of that date. Parties to this negotiation are required to negotiate in good faith. Two members of the Commission staff, one from the Wireless Telecommunications Bureau and one from the Public Safety and Homeland Security Bureau, shall be present at all stages of the negotiation as neutral observers.

(c) *Reporting requirements.* The winning bidder for the Upper 700 MHz D Block license must file a report with the Commission within 10 business days of the commencement of the negotiation 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. Beginning three months from the triggering of the six-month negotiation period, the winning bidder for the Upper 700 MHz 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 must include descriptions of all material issues that the parties have yet to resolve.

(d) *Submission of final agreement.* As soon as the parties have reached an agreement on all the terms of the NSA, related agreements or documents, and such other agreements as the Commission may require or allow, but not later than five business days after the six-month period for negotiation has expired, they must submit the NSA together with all agreements and related documents referenced in the NSA, for review and approval by the full Commission. The Commission will act on the NSA within 60 days of receipt. The Commission may approve the NSA in its entirety, approve with modifications, or require the parties to address additional terms or re-draft existing terms within a specified timeframe. After the NSA is approved,

the parties must execute the NSA and such other agreements as the Commission may require or allow, and submit executed copies to the Commission within 10 business days of approval.

(e) *Submission of disputed issues.* If the parties have not reached agreement on all terms of the NSA and related agreements by the end of the six-month period, they must notify the Commission not later than five business days after the expiration of the six-month period of the terms on which they have agreed, the nature of the remaining issues, each party's position on each issue, whether additional negotiation is likely to produce an agreement, and, if so, a proposed deadline for reaching agreement on the NSA. Authority is delegated jointly to the Chiefs of the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau to resolve any remaining disputes.

(f) *Resolution of disputes.* Actions to resolve disputes may include, but are not limited to:

- (1) Granting additional time for negotiation;
- (2) Issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with the 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 Upper 700 MHz D Block license.

(g) *Default by winning bidder for Upper 700 MHz D Block license.* If the winning bidder for the Upper 700 MHz D Block fails to comply with negotiation or dispute resolution requirements or fails to execute a Commission-approved NSA, its long form application will be denied. If the long form application of the winning bidder of the Upper 700 MHz D Block license is denied for any reason, including as a consequence of an action taken pursuant to paragraphs (e) and (f) of this section, it will be deemed to have defaulted under § 1.2109(c) of this chapter, and will be liable for the default payment specified in § 1.2104(g) of this chapter.

**§ 27.1320 Failure to comply with the NSA or the Commission's rules.**

(a) Failure to comply with the Commission's rules or the terms of the NSA may warrant cancelling the Upper 700 MHz D Block license and awarding it to a new licensee. In the event the Upper 700 MHz D Block license is cancelled, the Commission shall issue an order cancelling the license and

announcing the process for awarding rights to the spectrum to a new licensee. Pending the award to a new licensee, the Commission shall issue the Operating Company a special temporary authority to prevent interruption of services provided over the Shared Wireless Broadband Network. The Operating Company must continue to provide both commercial service and services to public safety during the transition. Upon grant of a new license, the Commission shall establish the terms and timing under which the special temporary authorization shall be cancelled and the new Upper 700 MHz D Block licensee assumes the construction and operation of the network.

(b) If the Commission cancels or terminates the Upper 700 MHz D Block license, a fair market valuation of the shared wireless broadband network assets shall be performed immediately, pursuant to the fair market valuation methodology set forth in the NSA. In the event that the Upper 700 MHz D Block license is awarded to a new entity, the Public Safety Broadband Licensee's option to purchase the network and all network assets if and whenever the Upper 700 MHz D Block license is cancelled or terminated and its right of first refusal to purchase the network assets if and whenever such assets are otherwise to be sold shall be assigned to the new Upper 700 MHz D Block licensee and the new Network Assets Holder.

**§ 27.1325 Resolution of disputes after grant of the upper 700 MHz D block license.**

(a) The Upper 700 MHz D Block licensee, the Operating Company, the Network Assets Holder and the Public Safety Broadband Licensee may at any time bring a complaint to the Commission based on a claim that another party to the NSA 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 also may at any time, on its own motion, determine to address any material breach or interpret any NSA term or provision.

(b) The Commission shall have primary responsibility and jurisdiction for adjudicating disputes that arise following execution of the NSA. The Commission may, however, require the parties to first seek a settlement to the dispute or authorize the parties to resolve the dispute through litigation or other means. Breach of license terms, the NSA, or the Commission's rules may result in cancellation of the Upper 700 MHz D Block license, the Public Safety Broadband License, or both.



(c) The Chiefs of the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau are delegated joint responsibility for adjudicating disputes.

**§ 27.1327 Construction requirements; criteria for renewal.**

(a) The Upper 700 MHz D Block licensee shall comply with the applicable construction requirements of § 27.14.

(b) The Upper 700 MHz D Block licensee shall comply with the applicable procedures and criteria for license renewal of § 27.14.

**§ 27.1330 Local public safety build-out and operation.**

(a) The Upper 700 MHz D Block licensee and the Operating Company through its lease arrangements shall, except in the two limited circumstances set forth herein, have the exclusive right to build and operate the Shared Wireless Broadband Network.

(b) *Rights to early build-out in areas with a build-out commitment.* In an area where the Upper 700 MHz D Block licensee has committed, in the NSA, to build out by a certain date, a public safety entity may, with the pre-approval of the Public Safety Broadband Licensee and subject to the requirements set forth herein, construct a broadband network in that area at its own expense so long as the network is capable of operating on the Shared Wireless Broadband Network and meets all the requirements and specifications of the network required under the NSA.

(1) *Options for early build-out in areas with a build-out commitment.* In order to obtain authorization to construct a broadband network as set forth in paragraph (b) of this section, the requesting public safety entity must agree to one of the following:

(i) To, on its own, or through the Public Safety Broadband Licensee acting on its behalf, construct the network at its own expense, and upon completion of construction transfer the network to the Upper 700 MHz D Block licensee, which shall then integrate that network into the Shared Wireless Broadband Network constructed pursuant to the NSA; or

(ii) To, in agreement with the Upper 700 MHz D Block licensee, provide all funds necessary for the Upper 700 MHz D Block licensee to complete the early construction of the network, including any and all additional resource and personnel costs, allowing the Upper 700 MHz D Block licensee at all times to own, operate, and manage the network as an integrated part of the Shared Wireless Broadband Network.

(2) *Negotiation of amendment to NSA.* Under either early build out option set forth in paragraph (b)(1) of this section, the Public Safety Broadband Licensee, the Upper 700 MHz 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 Wireless Broadband Network, and such amendment must be approved by the Commission.

(i) Such amendment must provide the terms under which the Upper 700 MHz D Block licensee shall receive full ownership rights and shall compensate the public safety entity (or the Public Safety Broadband Licensee, where appropriate) for the construction of the network; and shall, absent agreement to the contrary, provide for such transfer and compensation to occur prior to the scheduled build out date for such network in the NSA.

(ii) Any right to compensation from the Upper 700 MHz D Block licensee related to such early build-out shall be limited to the cost that would have been incurred had the Upper 700 MHz D Block licensee constructed the network itself in accordance with the original terms and specifications of the NSA, as reasonably determined by the parties and negotiated as part of the NSA amendment required in paragraph (b)(2) of this section. Such costs shall not include costs attributable solely to advancing the date of construction or otherwise expediting the construction process.

(3) *Operations.* The public safety entity may not commence operations on the network until ownership of the network has been transferred to the Upper 700 MHz D Block licensee. Further, no operations shall be allowed except those authorized and conducted pursuant to the authority of the Public Safety Broadband Licensee.

(4) *Attribution of early build-out to national benchmarks.* Upon completion of construction, transfer of ownership to the Upper 700 MHz D Block licensee, and compensation as required herein, if applicable, the Upper 700 MHz D Block licensee may include the network constructed pursuant to the early build-out provisions herein for purposes of determining whether it has met its national build-out benchmarks and the build-out requirements of the NSA.

(5) *Rights to build out and operate in areas without a build-out commitment.* In areas for which the NSA does not require the Upper 700 MHz D Block licensee to build out the Shared

Wireless Broadband Network, 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 written 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.

(i) Such leasing arrangement shall not require the approval or consent of the Upper 700 MHz D Block licensee; however, the Public Safety Broadband Licensee must provide the Upper 700 MHz 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 seeking to exercise this option, and shall inform the Upper 700 MHz D Block licensee of the public safety entity's anticipated build-out date(s).

(ii) Should the Upper 700 MHz D Block licensee, within 30 calendar days from receipt of notice of the public safety entity's intent to construct in that area, certify 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, the Public Safety Broadband Licensee shall not allow the public safety entity to build and operate its own separate exclusive network in that area, provided that the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee execute an amendment to the NSA indicating the Upper 700 MHz D Block licensee's commitment to build the network in that area. Such commitment shall become enforceable against the Upper 700 MHz D Block licensee as part of its overall build-out requirements.

(iii) If the Upper 700 MHz D Block licensee does not exercise its option to commit to build out the network in the requested area within 30 calendar days of receipt of notice of the public safety entity's intent to construct in such area, the Public Safety Broadband Licensee and the public safety entity may proceed with a spectrum leasing arrangement, which must be filed with the Commission prior to the public safety entity commencing any operations. The spectrum leasing arrangement must take the form of a spectrum manager leasing arrangement under the rules specified in § 1.9020 of this chapter, and incorporate the following conditions:

(A) The network must provide broadband operations;

(B) The network must be fully interoperable with the Shared Wireless Broadband Network;

(C) The network must be available for use by any public safety entity in the area;

(D) The network must satisfy any other terms or conditions required by the Public Safety Broadband Licensee; and

(E) 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. If the public safety entity fails to place the network into operation within one year, the Public Safety Broadband Licensee shall terminate the spectrum leasing arrangement pursuant to § 1.9020(h)(3) of this chapter. The public safety entity may also seek extended implementation authority from the Commission pursuant to the requirements of § 90.629 of this chapter.

(6) Except as set forth herein, the separate network is not required to meet the other specifications of the Shared Wireless Broadband Network. Absent agreement of the public safety entity, the Public Safety Broadband Licensee, and the Upper 700 MHz D Block licensee, the separate network may not operate using any spectrum associated with the Upper 700 MHz D Block license.

(7) The Public Safety Broadband Licensee must file with the Commission any spectrum manager leasing arrangement as specified in § 1.9020(e) of this chapter; such filing shall identify the public safety entity leasing the spectrum, the particular areas of spectrum leased as part of this build-out option, and the specific network infrastructure and equipment deployed on such leased spectrum.

**§ 27.1333 Geographic partitioning, spectrum disaggregation, license assignment and transfer.**

(a) The 700 MHz Upper D Block license may not be partitioned or disaggregated.

(b) The 700 MHz Upper D Block licensee will be permitted to assign or transfer its license subject to Commission review and prior approval. The Upper 700 MHz D Block license assignment or transfer applications are precluded from overnight processing.

**§ 27.1335 Prohibition on discontinuance of public safety operations.**

The Upper 700 MHz D Block licensee, the Operating Company and the Network Assets Holder are prohibited 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 public safety entity or entities in question or with the pre-approval of the Commission. The Upper 700 MHz D Block licensee shall 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.

**§ 27.1340 Reporting obligations.**

(a) The Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee shall jointly file quarterly reports with the Commission. These reports shall include audited financial statements, how the specific requirements of public safety are being met, detailed information on the areas where broadband service has been deployed, which public safety entities are using the broadband network in each area of operation, what types of applications are in use in each area of operation, and the number of declared emergencies in each area of operation.

(b) The Upper 700 MHz D Block licensee and Public Safety Broadband Licensee have joint responsibility to register the base station locations with the Commission, providing basic technical information, including geographic location.

**PART 90—PRIVATE LAND MOBILE RADIO SERVICES**

■ 31. The authority citation for part 90 continues to read as follows:

**Authority:** Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), and 332(c)(7).

■ 32. Section 90.5 is amended by revising paragraphs (k), (l), and (m), and adding paragraph (n) to read as follows:

**§ 90.5 Other applicable rule parts.**

(k) Part 27 contains rules relating to miscellaneous wireless communications services.

(l) Part 51 contains rules relating to interconnection.

(m) Part 68 contains technical standards for connection of private land mobile radio equipment to the public switched telephone network.

(n) Part 101 governs the operation of fixed microwave services.

■ 33. Section 90.7 is amended by adding the following definitions in alphabetical order to read as follows:

**§ 90.7 Definitions.**

*700 MHz Public/Private Partnership.* The public/private partnership established for the development and

operation of a nationwide, shared interoperable wireless broadband network operating on the 758–763 MHz and 788–793 MHz bands and the 763–768 MHz and 793–798 MHz bands in accordance with the Commission’s rules.

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

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

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

*Public Safety Broadband License.* The Public Safety Broadband License authorizes public safety broadband services in the 763–768 MHz and 793–798 MHz bands on a primary basis.

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

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

*Special Purpose Bankruptcy Remote Entity.* A “special purpose entity” is a legal entity created for a special limited purpose, in this context primarily to hold the Upper 700 MHz D Block license or the network assets, or to conduct the construction or operation of the Shared Wireless Broadband Network associated with the 700 MHz Public/Private Partnership. A special purpose entity is “bankruptcy remote” if that entity is unlikely to become insolvent as a result of its own activities, is adequately insulated from the consequences of a related party’s insolvency, and contains certain characteristics which enhance the likelihood that it will not become the subject of an insolvency proceeding.

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

*Upper 700 MHz D Block licensee.* The Special Purpose Bankruptcy Remote

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

\* \* \* \* \*

■ 34. Section 90.18 is added to read as follows:

**§ 90.18 Public Safety 700 MHz Nationwide Broadband Network.**

The 763–768/793–798 MHz band is dedicated to a broadband public safety communications system with a nationwide level of interoperability. A nationwide license for this spectrum is held by a single entity, the Public Safety Broadband Licensee, which must enter into the 700 MHz Public/Private Partnership with the licensee of the

adjacent Upper 700 MHz D Block license, pursuant to a Network Sharing Agreement and such other agreements as the Commission may require. The specific provisions relating to the 700 MHz Public/Private Partnership are set forth in subpart AA of this part and subpart N of part 27. The Public Safety 700 MHz Nationwide Broadband Network is established in the Second Report and Order in PS Docket No. 06–229.

■ 35. Section 90.20 is amended by revising the entries for “470 to 512” and “763 to 775; “806 to 817” by removing the entry for “764 to 776”; and by adding entries for “763 to 775” and “793 to 805” in the frequency or band table in paragraph (c)(3) and by revising paragraph (d)(77) is to read as follows:

**§ 90.20 Public Safety Pool.**

\* \* \* \* \*

(c) \* \* \*

(3) *Frequencies.*

**PUBLIC SAFETY POOL FREQUENCY TABLE**

Frequency or band	Class of station(s)	Limitations	Coordinator
470 to 512	Base or mobile	68	
763 to 775	Base, mobile	77	PX
793 to 805	Mobile	77	PX
806 to 817	do	69	

(d) \* \* \*  
(77) Subpart R of this part contains rules for assignment of channels in the 763–775 MHz and 793–805 MHz bands.

■ 36. Section 90.155 is amended by revising paragraph (a) to read as follows:

**§ 90.155 Time in which station must be placed in operation.**

(a) All stations authorized under this part, except as provided in §§ 90.528, 90.529, 90.629, 90.631(f), 90.665, 90.685, and 90.1209, must be placed in operation within twelve (12) months from the date of grant or the authorization cancels automatically and must be returned to the Commission.

■ 37. Section 90.175 is amended by revising the paragraph heading in paragraph (e), revising paragraphs (j) (10), through (j)(11) and (12) and adding paragraph (j)(18) to read as follows:

**§ 90.175 Frequency coordination requirements.**

\* \* \* \* \*

(e) *For frequencies between 470–512 MHz, 769–775/799–805 MHz, 806–824/851–869 MHz and 896–901/935–940 MHz:*

\* \* \* \* \*

(j) \* \* \*

(10) Applications for mobile stations operating in the 470–512 MHz band, 799–805 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis in the proposed area of operation.

(11) Applications for add-on base stations in multiple licensed systems operating in the 470–512 MHz, 769–775 MHz band, or above 800 MHz if the frequency pair is assigned to a single system on an exclusive basis.

(12) Applications for control stations operating below 470 MHz, 769–775/799–805 MHz, or above 800 MHz and meeting the requirements of § 90.119(b).

\* \* \* \* \*

(18) Applications for base, mobile, or control stations in the 763–768 MHz and 793–798 MHz bands.

■ 38. Section 90.176 is amended by revising the section heading and

revising the heading to paragraph (c) to read as follows:

**§ 90.176 Coordinator notification requirements on frequencies below 512 MHz or at 769–775/799–805 MHz.**

\* \* \* \* \*

(c) *Frequencies in the 769–775/799–805 MHz band.*

\* \* \* \* \*

■ 39. Section 90.179 is amended by revising paragraph (g) to read as follows:

**§ 90.179 Shared use of radio stations.**

\* \* \* \* \*

(g) Notwithstanding paragraph (a) of this section, licensees authorized to operate radio systems on Public Safety Pool frequencies designated in § 90.20 may share their facilities with Federal Government entities on a non-profit, cost-shared basis. Such a sharing arrangement is subject to the provisions of paragraphs (b), (d), and (e) of this section, and § 2.103(c) concerning approval of the Public Safety Broadband Licensee for Federal operations in the 763–768 MHz and 793–798 MHz bands. State governments authorized to operate

radio systems under § 90.529 may share the use of their systems (for public safety services not made commercially available to the public) with any entity that would be eligible for licensing under § 90.523 and Federal Government entities.

\* \* \* \* \*

■ 40. Section 90.205 is amended by redesignating paragraphs (j) through (r) as paragraphs (k) through (s) by adding new paragraph (j), and revising newly redesignated paragraph (k) to read as follows:

§ 90.205 Power and antenna height limits.

\* \* \* \* \*

(j) 763–775 MHz and 793–805 MHz. Power and height limitations are specified in §§ 90.541 and 90.542. (k) 806–824 MHz, 851–869 MHz, 896–901 MHz and 935–940 MHz. Power and height limitations are specified in § 90.635

\* \* \* \* \*

■ 41. Part 90 is amended by revising the heading to subpart R as follows:

Subpart R—Regulations Governing the Licensing and Use of Frequencies in the 763–775 and 793–805 MHz Bands

■ 42. Section 90.521 is amended by revising the first sentence to read as follows:

§ 90.521 Scope.

This subpart sets forth the regulations governing the licensing and operations of all systems operating in the 763–775 MHz and 793–805 MHz frequency bands. \* \* \*

\* \* \* \* \*

■ 43. Section 90.523 is amended by revising the introductory text and adding paragraph (e) to read as follows:

§ 90.523 Eligibility.

This section implements the definition of public safety services contained in 47 U.S.C. 337(f)(1). The following are eligible to hold Commission authorizations for systems operating in the 763–775 MHz and 793–805 MHz frequency bands:

\* \* \* \* \*

(e) The minimum eligibility requirements for the Public Safety Broadband Licensee in the 763–768 MHz and 793–798 MHz bands are as follows:

- (1) No commercial interest may be held in the Public Safety Broadband Licensee, and no commercial interest may participate in the management of the Public Safety Broadband Licensee; (2) The Public Safety Broadband Licensee must be a non-profit organization;

(3) The Public Safety Broadband Licensee must be as broadly representative of the public safety radio user community as possible; and

(4) The Public Safety Broadband Licensee must be in receipt of written certifications from no less than ten geographically diverse state and local governmental entities (the authorizing entities), with at least one certification from a state government entity and one from a local government entity, verifying that—

- (i) They have authorized the Public Safety Broadband Licensee to use spectrum at 763–768 MHz and 793–798 MHz to provide the authorizing entities with public safety services; and (ii) The authorizing entities’ primary mission is the provision of public safety services.

■ 44. Revise § 90.525 to read as follows:

§ 90.525 Administration of interoperability channels.

(a) States are responsible for administration of the Interoperability channels in the 769–775 MHz and 799–805 MHz frequency bands. Base and control stations must be licensed individually. A public safety entity meeting the requirements of § 90.523 may operate mobile or portable units on the Interoperability channels in the 769–775 MHz and 799–805 MHz frequency bands without a specific authorization from the Commission provided it holds a part 90 license. All persons operating mobile or portable units under this authority are responsible for compliance with part 90 of these rules and other applicable federal laws.

(b) License applications for Interoperability channels in the 769–775 MHz and 799–805 MHz frequency bands must be approved by a state-level agency or organization responsible for administering state emergency communications. States may hold the licenses for Interoperability channels or approve other qualified entities to hold such licenses. States may delegate the approval process for interoperability channels to another entity, such as regional planning committees.

■ 45. Add § 90.528 to subpart R to read as follows:

§ 90.528 Public Safety Broadband License.

(a) The 763–768/793–798 MHz bands are allocated on a nationwide basis for public safety broadband operations and licensed to a single Public Safety Broadband Licensee. The 768–769/798–799 MHz bands also are licensed to the Public Safety Broadband Licensees as guard bands. The license area of the Public Safety Broadband License

consists of the contiguous 48 states, Alaska, Hawaii, Gulf of Mexico, and the U.S. territories.

(b) The Public Safety Broadband License authorizes construction and operation of base stations anywhere within the area authorized by the license, except as follows:

- (1) A station is required to be individually licensed if: (i) International agreements require coordination; (ii) Submission of an environmental assessment is required under § 1.1307 of this chapter; or (iii) The station would affect areas identified in § 1.924 of this chapter.

(2) Any antenna structure that requires notification to the Federal Aviation Administration (FAA) must be registered with the Commission prior to construction under § 17.4 of this chapter.

(c) Mobile and portable devices may operate without individual license under the authority of the Public Safety Broadband License.

(d) The term of the Public Safety Broadband License shall not exceed ten years from February 17, 2009. The Public Safety Broadband Licensee is entitled to a renewal expectancy barring violations of law, rules or policy warranting denial of renewal.

(e) The Public Safety Broadband License may not be partitioned or disaggregated.

(f) The Public Safety Broadband Licensee may not voluntarily assign or transfer control of the Public Safety Broadband License.

(g) Quarterly reporting of financial and operational information. The Public Safety Broadband Licensee shall submit, on a quarterly basis, a full financial accounting to the Commission, in a format to be set forth in the Network Sharing Agreement, and as approved by the Commission. Such quarterly financial reports shall be filed with the Commission, with a copy to the Chiefs of the Wireless Telecommunications and the Public Safety and Homeland Security Bureaus.

■ 46. Amend § 90.531 as follows:

- a. Revise the introductory text to the section. b. Revise paragraph (a), (b) introductory text, and the table that follows. c. Remove and reserve paragraphs (c) and (d)(2). d. Revise paragraph (e). e. Add paragraphs (f) and (g).

§ 90.531 Band plan.

This section sets forth the band plan for the 763–775 MHz and 793–805 MHz public safety bands.

(a) *Base and mobile use.* The 763–775 MHz band may be used for base, mobile or fixed (repeater) transmissions. The 793–805 MHz band may be used only for mobile or fixed (control) transmissions.

(b) *Narrowband segments.* There are two band segments that are designated for use with narrowband emissions. Each of these narrowband segments is divided into 960 channels having a channel size of 6.25 kHz as follows:

Frequency range	Channel Nos.
769–775 MHz .....	1–960
799–805 MHz .....	961–1920

\* \* \* \* \*

(f) *Internal guard band.* The internal guard band (768–769/798–799 MHz) is reserved.

(g) *Broadband.* The 763–768 MHz and 793–798 MHz bands are allocated for broadband communications pursuant to the Public Safety Broadband License.

■ 47. Section 90.533 is amended by revising the introductory text and paragraphs (a) and (c) to read as follows:

**§ 90.533 Transmitting sites near the U.S./Canada or U.S./Mexico border.**

This section applies to each license to operate one or more public safety transmitters in the 763–775 MHz and 793–805 MHz bands, at a location or locations North of Line A (*see* § 90.7) or within 120 kilometers (75 miles) of the U.S.-Mexico border, until such time as agreements between the government of the United States and the government of Canada or the government of the United States and the government of Mexico, as applicable, become effective governing border area non-broadcast use of these bands. Public safety licenses are granted subject to the following conditions:

(a) Public safety transmitters operating in the 763–775 MHz and 793–805 MHz bands must conform to the limitations on interference to Canadian television stations contained in agreement(s) between the United States and Canada for use of television channels in the border area.

\* \* \* \* \*

(c) Conditions may be added during the term of the license, if required by the terms of international agreements between the government of the United States and the government of Canada or the government of the United States and the government of Mexico, as applicable, regarding non-broadcast use of the 763–775 MHz and 793–805 MHz bands.

■ 48. Section 90.535 is amended by revising the introductory text and paragraph (a) to read as follows:

**§ 90.535 Modulation and spectrum usage efficiency requirements.**

Transmitters designed to operate in 769–775 MHz and 799–805 MHz frequency bands must meet the following modulation standards:

(a) All transmitters in the 769–775 MHz and 799–805 MHz frequency bands must use digital modulation. Mobile and portable transmitters may have analog modulation capability only as a secondary mode in addition to its primary digital mode. Mobile and portable transmitters that only operate on the low power channels designated in §§ 90.531(b)(3), 90.531(b)(4), are exempt from this digital modulation requirement.

\* \* \* \* \*

■ 49. Section 90.537 is amended by revising paragraph (a) to read as follows:

**§ 90.537 Trunking requirement.**

(a) *General use channels.* All systems using six or more narrowband channels in the 769–775 MHz and 799–805 MHz frequency bands must be trunked systems, except for those described in paragraph (b) of this section.

\* \* \* \* \*

■ 50. Section 90.539 is amended by revising the introductory text to read as follows:

**§ 90.539 Frequency stability.**

Transmitters designed to operate in 769–775 MHz and 799–805 MHz frequency bands must meet the frequency stability requirements in this section.

\* \* \* \* \*

■ 51. Section 90.541 is amended by revising the introductory text to read as follows:

**§ 90.541 Transmitting power limits.**

The transmitting power of base, mobile, portable and control stations operating in the 769–775 MHz and 799–805 MHz frequency bands must not exceed the maximum limits in this section, and must also comply with any applicable effective radiated power limits in § 90.545.

\* \* \* \* \*

■ 52. Add § 90.542 to subpart R to read as follows:

**§ 90.542 Broadband transmitting power limits.**

(a) The following power limits apply to the 763–768/793–798 MHz band:

(1) Fixed and base stations transmitting a signal in the 763–768 MHz band with an emission bandwidth of 1 MHz or less must not exceed an ERP of 1000 watts and an antenna height of 305 m HAAT, except that

antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts ERP in accordance with Table 1 of this section.

(2) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 763–768 MHz band with an emission bandwidth of 1 MHz or less must not exceed an ERP of 2000 watts and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts ERP in accordance with Table 2 of this section.

(3) Fixed and base stations transmitting a signal in the 763–768 MHz band with an emission bandwidth greater than 1 MHz must not exceed an ERP of 1000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 1000 watts/MHz ERP in accordance with Table 3 of this section.

(4) Fixed and base stations located in a county with population density of 100 or fewer persons per square mile, based upon the most recently available population statistics from the Bureau of the Census, and transmitting a signal in the 763–768 MHz band with an emission bandwidth greater than 1 MHz must not exceed an ERP of 2000 watts/MHz and an antenna height of 305 m HAAT, except that antenna heights greater than 305 m HAAT are permitted if power levels are reduced below 2000 watts/MHz ERP in accordance with Table 4 of this section.

(5) Licensees of fixed or base stations transmitting a signal in the 763–768 MHz band at an ERP greater than 1000 watts must comply with the provisions set forth in paragraph (b) of this section.

(6) Control stations and mobile stations transmitting in the 763–768 MHz band and the 793–798 MHz band are limited to 30 watts ERP.

(7) Portable stations (hand-held devices) transmitting in the 763–768 MHz band and the 793–798 MHz band are limited to 3 watts ERP.

(8) For transmissions in the 763–768 MHz and 793–798 MHz bands, licensees may employ equipment operating in compliance with either of the following measurement techniques:

(i) The maximum composite transmit power shall be measured over any interval of continuous transmission using instrumentation calibrated in terms of RMS-equivalent voltage. The measurement results shall be properly adjusted for any instrument limitations,

such as detector response times, limited resolution bandwidth capability when compared to the emission bandwidth, etc., so as to obtain a true maximum composite measurement for the emission in question over the full bandwidth of the channel.

(ii) A Commission-approved average power technique.

TABLE 1 TO § 90.542(A).—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 763–768 MHz BAND TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH OF 1 MHz OR LESS

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

TABLE 2 TO § 90.542(A).—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 763–768 MHz BAND TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH OF 1 MHz OR LESS

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) (watts)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150
Above 915 (3000) To 1067 (3500)	200
Above 763 (2500) To 915 (3000)	280
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

TABLE 3 TO § 90.542(A).—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 763–768 MHz BAND TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH GREATER THAN 1 MHz

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 1372 (4500)	65
Above 1220 (4000) To 1372 (4500)	70
Above 1067 (3500) To 1220 (4000)	75
Above 915 (3000) To 1067 (3500)	100
Above 763 (2500) To 915 (3000)	140
Above 610 (2000) To 763 (2500)	200
Above 458 (1500) To 610 (2000)	350
Above 305 (1000) To 458 (1500)	600
Up to 305 (1000)	1000

TABLE 4 TO § 90.542(A).—PERMISSIBLE POWER AND ANTENNA HEIGHTS FOR BASE AND FIXED STATIONS IN THE 763–768 MHz BAND TRANSMITTING A SIGNAL WITH AN EMISSION BANDWIDTH GREATER THAN 1 MHz

Antenna height (AAT) in meters (feet)	Effective radiated power (ERP) per MHz (watts/MHz)
Above 1372 (4500)	130
Above 1220 (4000) To 1372 (4500)	140
Above 1067 (3500) To 1220 (4000)	150
Above 915 (3000) To 1067 (3500)	200
Above 763 (2500) To 915 (3000)	280
Above 610 (2000) To 763 (2500)	400
Above 458 (1500) To 610 (2000)	700
Above 305 (1000) To 458 (1500)	1200
Up to 305 (1000)	2000

(b) For base and fixed stations operating in the 763–768 MHz band in accordance with the provisions of paragraph (a)(5) of this section, the power flux density that would be produced by such stations through a combination of antenna height and vertical gain pattern must not exceed 3000 microwatts per square meter on the ground over the area extending to 1

km from the base of the antenna mounting structure.

- 53. Amended § 90.543 as follows:
  - a. Revise the introductory text.
  - b. Amend paragraph (a) by removing the tables titled “150 kHz Mobile Transmitter ACP Requirements” and “150 kHz Base Transmitter ACP Requirements”.
  - c. Revise paragraph (b)(1).
  - d. Redesignate paragraphs (e) and (f) as paragraphs (f) and (g).
  - e. Add a new paragraph (e).
  - f. Revise newly redesignated paragraphs (f) and (g).

**§ 90.543 Emission limitations.**

Transmitters designed to operate in 769–775 MHz and 799–805 MHz frequency bands must meet the emission limitations in paragraphs (a) through (d) of this section. Transmitters operating in 763–768 MHz and 793–798 MHz bands must meet the emission limitations in (e) of this section.

\* \* \* \* \*

(b) \* \* \*  
 (1) *Setting reference level.* Set transmitter to maximum output power. Using a spectrum analyzer capable of ACP measurements, set the measurement bandwidth to the channel size. For example, for a 6.25 kHz transmitter set the measurement bandwidth to 6.25 kHz. Set the frequency offset of the measurement bandwidth to zero and adjust the center frequency of the instrument to the assigned center frequency to measure the average power level of the transmitter. Record this power level in dBm as the “reference power level.”

\* \* \* \* \*

(e) For operations in the 763–768 MHz and the 793–798 MHz bands, the power of any emission outside the licensee’s frequency band(s) of operation shall be attenuated below the transmitter power (P) within the licensed band(s) of operation, measured in watts, in accordance with the following:

(1) On all frequencies between 769–775 MHz and 799–805 MHz, by a factor not less than  $76 + 10 \log (P)$  dB in a 6.25 kHz band segment, for base and fixed stations.

(2) On all frequencies between 769–775 MHz and 799–805 MHz, by a factor not less than  $65 + 10 \log (P)$  dB in a 6.25 kHz band segment, for mobile and portable stations.

(3) Compliance with the provisions of paragraphs (e)(1) and (2) of this section is based on the use of measurement instrumentation such that the reading taken with any resolution bandwidth setting should be adjusted to indicate spectral energy in a 6.25 kHz segment.

(f) For operations in the 763–775 MHz and 793–805 MHz bands, all emissions including harmonics in the band 1559–1610 MHz shall be limited to -70 dBW/MHz equivalent isotropically radiated power (EIRP) for wideband signals, and -80 dBW EIRP for discrete emissions of less than 700 Hz bandwidth. For the purpose of equipment authorization, a transmitter shall be tested with an antenna that is representative of the type that will be used with the equipment in normal operation.

(g) When an emission outside of the authorized bandwidth causes harmful interference, the Commission may, at its discretion, require greater attenuation than specified in this section.

■ 54. Section 90.547 is amended by revising paragraph (a) introductory text to read as follows:

**§ 90.547 Narrowband interoperability channel capability requirement.**

(a) Except as noted in this section, mobile and portable transmitters operating on narrowband channels in the 769–775 MHz and 799–805 MHz frequency bands must be capable of operating on all of the designated nationwide narrowband Interoperability channels pursuant to the standards specified in this part.

\* \* \* \* \*

■ 55. Section 90.548 is amended by revising paragraph (a) introductory text to read as follows:

**§ 90.548 Interoperability technical standards.**

(a) Transmitters operating on those narrowband channels in the 769–775 and 799–805 MHz band designated for interoperability (*see* § 90.531) shall conform to the following technical standards:

\* \* \* \* \*

■ 56. Section 90.551 is revised to read as follows:

**§ 90.551 Construction requirements.**

Each station authorized under this subpart to operate in the 769–775 MHz and 799–805 MHz frequency bands must be constructed and placed into operation within 12 months from the date of grant of the authorization, except for State channels. However, licensees may request a longer construction period, up to but not exceeding 5 years, pursuant to § 90.155(b). State channels are subject to the build-out requirements in § 90.529.

■ 57. Add subpart AA to part 90 as follows:

**Subpart AA—700 MHz Public/Private Partnership**

Sec.

- 90.1401 Purpose and scope.  
 90.1403 Public safety broadband license conditions.  
 90.1405 Shared wireless broadband network.  
 90.1407 Spectrum use in the network.  
 90.1408 Organization and structure of the 700 MHz public/private partnership.  
 90.1410 Network sharing agreement.  
 90.1415 Establishment, execution, and application of the network sharing agreement.  
 90.1420 Failure to comply with the NSA or the Commission's rules.  
 90.1425 Resolution of disputes after grant of the upper 700 MHz D block license.  
 90.1430 Local public safety build-out and operation.  
 90.1432 Conditions for waiver to allow limited and temporary wideband operation in the 700 MHz public safety spectrum.  
 90.1435 Prohibition on discontinuance of public safety operations.  
 90.1440 Reporting obligations.

**§ 90.1401 Purpose and scope.**

The purpose of this subpart, in conjunction with subpart N of part 27, is to establish rules and procedures relating to the 700 MHz Public/Private Partnership entered between the winning bidder for the Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee, the Network Assets Holder, the Operating Company, the Public Safety Broadband Licensee, and other related entities as the Commission may require or allow. Pursuant to this partnership, the Upper 700 MHz D Block licensee and the Operating Company will be responsible for constructing and operating a nationwide, shared interoperable wireless broadband network used to provide a commercial service and a broadband network service for public safety entities. The shared network assets will be held by the Network Assets Holder, and the Shared Wireless Broadband Network will operate on both the commercial spectrum licensed to the Upper 700 MHz D Block licensee and the public safety broadband spectrum licensed to the Public Safety Broadband Licensee. This subpart of the part 90 rules sets forth specific provisions relating to the Public Safety Broadband Licensee and the Public Safety Broadband Licensee with respect to the 700 MHz Public/Private Partnership. Subpart N of the part 27 rules sets forth related provisions applicable to the Upper 700 MHz D Block license, the Upper 700 MHz D Block licensee and other related entities as the Commission may require or

allow, with respect to the 700 MHz Public/Private Partnership.

**§ 90.1403 Public safety broadband license conditions.**

(a) The Public Safety Broadband Licensee shall comply with all of the applicable requirements set forth in this subpart and shall comply with the terms of the Network Sharing Agreement and such other agreements as the Commission may require or allow.

(b) The responsibilities of the Public Safety Broadband Licensee shall include the following:

(1) Negotiation of the NSA and such other agreements as the Commission may require or allow with the winning bidder at auction for the Upper 700 MHz D Block license, pursuant to the requirements set forth in § 90.1410.

(2) General administration of access to the 763–768 MHz and 793–798 MHz bands by individual public safety entities, including assessment of usage fees and related frequency coordination duties.

(3) Regular interaction with and promotion of the needs of the public safety entities with respect to access and use of the 763–768 MHz and 793–798 MHz bands, within the technical and operational confines of the NSA.

(4) Dealings with equipment vendors on its own or in partnership with the Upper 700 MHz D Block licensee, as appropriate, to achieve and pass on the benefits of economies of scale concerning network and subscriber equipment and applications.

(5) Sole authority, which cannot be waived in the NSA, to approve, in consultation with the Upper 700 MHz D Block licensee, equipment and applications for use by public safety entities on the public safety broadband network. State or local entities may seek review of a decision by the Public Safety Broadband Licensee not to permit certain equipment or applications, or particular specifications for equipment or applications, from the Chief, Public Safety and Homeland Security Bureau.

(6) Coordination of stations operating on 700 MHz public safety broadband spectrum with 700 MHz public safety narrowband stations, including management of the internal public safety guard band.

(7) Oversight and implementation of the relocation of narrowband public safety operations in television channels 63 and 68, and the upper one megahertz of channels 64 and 69.

(8) Exercise of sole discretion, pursuant to § 2.103 of this chapter, whether to permit Federal public safety agency use of the public safety broadband spectrum, with any such use



subject to the terms and conditions of the NSA.

(9) Review of requests for waiver submitted by public safety entities to conduct wideband operations pursuant to the procedures and restrictions in connection with such waivers as described in § 90.1432.

**§ 90.1405 Shared wireless broadband network.**

The Shared Wireless Broadband Network developed by the 700 MHz Public/Private Partnership must be designed to meet requirements associated with a nationwide, public safety broadband network. At a minimum, the network must incorporate the following features:

(a) Design for operation over a broadband technology platform that provides mobile voice, video, and data capability that is seamlessly interoperable across public safety local and state agencies, jurisdictions, and geographic areas, and which includes current and evolving state-of-the-art technologies reasonably made available in the commercial marketplace with features beneficial to the public safety community.

(b) Sufficient signal coverage to ensure reliable operation throughout the service area consistent with typical public safety communications systems.

(c) Sufficient robustness to meet the reliability and performance requirements of public safety.

(d) Sufficient capacity to meet the needs of public safety.

(e) Security and encryption consistent with state-of-the-art technologies.

(f) A mechanism to automatically prioritize public safety communications over commercial uses on a real-time basis consistent with the requirements of § 90.1407(c).

(g) Operational capabilities consistent with features and requirements that are typical of current and evolving state-of-the-art public safety systems.

(h) Operational control of the network by the Public Safety Broadband Licensee to the extent necessary to ensure that public safety requirements are met.

**§ 90.1407 Spectrum use in the network.**

(a) *Spectrum use.* The Shared Wireless Broadband Network will operate using spectrum associated with the Upper 700 MHz D Block license in the 758–763 MHz and 788–793 MHz bands and the Public Safety Broadband License in the adjacent 763–768 MHz and 793–798 MHz bands.

(b) *Access to spectrum in the 763–768 MHz and 793–798 MHz bands.* The Public Safety Broadband Licensee

which holds the Public Safety Broadband License, pursuant to part 90 rules, must lease the spectrum rights associated with this license, pursuant to a spectrum manager leasing arrangement set forth in part 1 subpart X, to the Upper 700 MHz D Block licensee and the Operating Company for the entire remaining term of the Public Safety Broadband License to effectuate the 700 MHz Public/Private Partnership. The Upper 700 MHz D Block licensee and the Operating Company, are the only entities that are eligible to lease the spectrum usage rights associated with the Public Safety Broadband License to operate on the 763–768 and 793–798 MHz bands. If the Upper 700 MHz D Block license is cancelled, this spectrum leasing arrangement will automatically terminate.

(c) *Commercial operations in the 763–768 MHz and 793–798 MHz bands.* Commercial operations in the 763–768 MHz and 793–798 MHz bands through the spectrum manager leasing arrangement shall not cause harmful interference to primary users (*i.e.*, public safety users) and cannot claim protection from harmful interference from the primary public safety operations in the 763–768 MHz and 793–798 MHz bands. The network providing commercial operations in the 763–768 MHz and 793–798 MHz bands through the spectrum manager leasing arrangement must be designed 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 to guarantee that public safety users suffer no harmful interference or interruption or degradation of service due to commercial operations in the 763–768 MHz and 793–798 MHz bands.

**§ 90.1408 Organization and structure of the 700 MHz public/private partnership.**

(a) The Upper 700 MHz D Block licensee and the Network Assets Holder and such other related entities as the Commission may require or allow shall be formed by the winning bidder of the Upper 700 MHz D Block license. The Upper 700 MHz D Block licensee, the Network Assets Holder, and related entities as the Commission may require or allow must be Special Purpose Bankruptcy Remote Entities formed to hold the license, to hold the shared network assets, or for such other purpose as the Commission may require or allow. The winning bidder of the Upper 700 MHz D Block license shall also form the Operating Company, which must also be a Special Purpose Bankruptcy Remote Entity. Upon

issuance of the Upper 700 MHz D Block license, the winning bidder will assign all of its rights and obligations under the NSA to the Upper 700 MHz D Block licensee, Network Assets Holder, the Operating Company, and any other related entities that the Commission may require or allow.

(b) The Upper 700 MHz D Block licensee and other related entities as the Commission may require or allow shall have the obligation to build out the Shared Wireless Broadband Network, as provided for in the NSA or otherwise as authorized by the Commission.

**§ 90.1410 Network sharing agreement.**

The relationship between the Upper 700 MHz D Block licensee, the Public Safety Broadband Licensee, and related entities as the Commission may require or allow will be governed by the Network Sharing Agreement (NSA) and such other separate agreements as the Commission may require or allow that are negotiated and entered into between the parties. The NSA must, at a minimum, include the following terms:

(a) All of the substantive rights and obligations of the parties relating to the NSA, as established by the Commission concerning the 700 MHz Public/Private Partnership.

(b) Network specifications that comply with § 27.1305 of this chapter.

(c) The definition of “emergency” for purposes of emergency priority access.

(d) All service fees to be imposed for services to public safety, including fees for normal network service and fees for priority access to the D Block spectrum in an emergency.

(e) A detailed build-out schedule consistent with § 27.1327 of this chapter, including coverage of major highways and interstates, as well as incorporated communities with a population in excess of 3,000.

(f) The right of the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment 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.

(g) The Upper 700 MHz D Block licensee must offer 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.

(h) Any major modification of the terms of the NSA, related agreements or documents, or such other agreements as

the Commission may require or allow must be submitted to the Commission for prior approval. All other modifications must be submitted to the Chiefs of the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau for prior approval.

(i) The NSA shall require, in a separate agreement, the granting of an irrevocable and assignable right of first refusal to purchase the network assets if and whenever such assets are otherwise to be sold and an irrevocable and assignable option in favor of the Public Safety Broadband Licensee to purchase the network and all network assets if and whenever the Upper 700 MHz 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 of the tangible and intangible assets sold. This right and option shall be senior to, and have priority over, any other right, claim, or interest in or to the network or the network assets. The NSA shall also include a fair market valuation methodology to determine the fair market value of the shared wireless broadband network assets.

(j) The NSA must have a term, not to exceed 10 years from February 17, 2009, that coincides with the terms of the Upper 700 MHz D Block license and the Public Safety Broadband License.

**§ 90.1415 Establishment, execution, and application of the network sharing agreement.**

The following requirements and processes relate to the establishment, execution, and application of the NSA:

(a) *Approval of NSA as pre-condition for granting the Upper 700 MHz D Block License.* The Public Safety Broadband Licensee must negotiate an NSA and such other agreements as the Commission may require or allow with the winning bidder for the Upper 700 MHz D Block license. The NSA and related agreements or documents must be approved by the Commission and then executed by the relevant parties. Parties to the NSA must also include the Upper 700 MHz D Block licensee, the Network Assets Holder, and the Operating Company, as these entities are defined in § 90.7.

(b) *Requirement of negotiation.* Negotiation of an NSA between the winning bidder for the Upper 700 MHz D Block license and the Public Safety Broadband Licensee must commence by the date the winning bidder files its long form application or the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later, and must conclude within six

months of that date. Parties to this negotiation are required to negotiate in good faith. Two members of the Commission staff, one from the Wireless Telecommunications Bureau and one from the Public Safety and Homeland Security Bureau, shall be present at all stages of the negotiation as neutral observers.

(c) *Reporting requirements.* Beginning three months from the triggering of the six-month negotiation period, the Public Safety Broadband Licensee and the winning bidder for the Upper 700 MHz D Block license 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 must include descriptions of all material issues that the parties have yet to resolve.

(d) *Submission of final agreement.* As soon as the parties have reached an agreement on all the terms of the NSA, related agreements or documents, and such other agreements as the Commission may require or allow but not later than five business days after the six-month period for negotiation has expired, they must submit the NSA together with all agreements and related documents referenced in the NSA, for review and approval by the full Commission. The Commission will act on the NSA within 60 days of receipt. The Commission may approve the NSA in its entirety, approve with modifications, or require the parties to address additional terms or re-draft existing terms within a specified timeframe. After the NSA is approved, the parties must execute the NSA and such other agreements as the Commission may require or allow and submit executed copies to the Commission within 10 business days of approval.

(e) *Submission of disputed issues.* If the parties have not reached agreement on all terms of the NSA and related agreements by the end of the six-month period, they must notify the Commission not later than five business days after the expiration of the six-month period of the terms on which they have agreed, the nature of the remaining issues, each party's position on each issue, whether additional negotiation is likely to produce an agreement, and, if so, a proposed deadline for reaching agreement on the NSA. Authority is delegated jointly to the Chiefs of the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau to resolve any remaining disputes.

(f) *Resolution of disputes.* Actions to resolve disputes may include, but are not limited to:

(1) Granting additional time for negotiation;

(2) Issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with the 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 Upper 700 MHz D Block license.

(g) *Default by winning bidder for Upper 700 MHz D Block license.* If the winning bidder for the Upper 700 MHz D Block fails to comply with negotiation or dispute resolution requirements or fails to execute a Commission-approved NSA, its long form application will be denied. If the long form application of the winning bidder of the Upper 700 MHz D Block license is denied for any reason, including as a consequence of an action taken pursuant to paragraphs (e) and (f) of this section, it will be deemed to have defaulted under § 1.2109(c) of this chapter and will be liable for the default payment specified in § 1.2104(g) of this chapter.

**§ 90.1420 Failure to comply with the NSA or the Commission's rules.**

(a) Failure to comply with the Commission's rules or the terms of the NSA may warrant cancelling the Public Safety Broadband License. The potential remedies also include, but are not limited to, assigning the license to another entity, directing the Public Safety Broadband Licensee to transfer the assignable right 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.

(b) If the Commission cancels or terminates the Upper 700 MHz D Block license, a fair market valuation of the shared wireless broadband network assets shall be performed immediately, pursuant to the fair market valuation methodology set forth in the NSA. In the event that the Upper 700 MHz D Block license is awarded to a new entity, the Public Safety Broadband Licensee's option to purchase the network and all network assets if and whenever the Upper 700 MHz D Block license is cancelled or terminated and its right of first refusal to purchase the network assets if and whenever such assets are otherwise to be sold shall be assigned to the new Upper 700 MHz D Block

licensee and the new Network Assets Holder.

**§ 90.1425 Resolution of disputes after grant of the upper 700 MHz D block license.**

(a) The Public Safety Broadband Licensee, the Operating Company, the Network Assets Holder, and the Upper 700 MHz D Block licensee may at any time bring a complaint to the Commission based on a claim that another party to the NSA 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 also may at any time, on its own motion, determine to address any material breach or interpret any NSA term or provision.

(b) The Commission shall have primary responsibility and jurisdiction for adjudicating disputes that arise following execution of the NSA. The Commission may, however, require the parties to first seek a settlement to the dispute or authorize the parties to resolve the dispute through litigation or other means. Breach of license terms, the NSA, or the Commission's rules may result in cancellation of the Public Safety Broadband License, the Upper 700 MHz D Block license, or both.

(c) The Chiefs of the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau are delegated joint responsibility for adjudicating disputes.

**§ 90.1430 Local public safety build-out and operation.**

(a) The Upper 700 MHz D Block licensee and the Operating Company through its lease arrangements shall, except in the two limited circumstances set forth herein, have the exclusive right to build and operate the Shared Wireless Broadband Network.

(b) *Rights to early build-out in areas with a build-out commitment.* In an area where the Upper 700 MHz D Block licensee has committed, in the NSA, to build out by a certain date, a public safety entity may, with the pre-approval of the Public Safety Broadband Licensee and subject to the requirements set forth herein, construct a broadband network in that area at its own expense so long as the network is capable of operating on the Shared Wireless Broadband Network and meets all the requirements and specifications of the network required under the NSA.

(1) *Options for early build-out in areas with a build-out commitment.* In order to obtain authorization to construct a broadband network as set forth in paragraph (b) of this section, the requesting public safety entity must agree to one of the following:

(i) To, on its own, or through the Public Safety Broadband Licensee acting on its behalf, construct the network at its own expense, and upon completion of construction, transfer the network to the Upper 700 MHz D Block licensee, which shall then integrate that network into the Shared Wireless Broadband Network constructed pursuant to the NSA; or

(ii) To, in agreement with the Upper 700 MHz D Block licensee, provide all funds necessary for the Upper 700 MHz D Block licensee to complete the early construction of the network, including any and all additional resource and personnel costs, allowing the Upper 700 MHz D Block licensee at all times to own, operate, and manage the network as an integrated part of the Shared Wireless Broadband Network.

(2) *Negotiation of amendment to NSA.* Under either early build out option set forth in paragraph (b)(1) of this section, the Public Safety Broadband Licensee, the Upper 700 MHz 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 Wireless Broadband Network, and such amendment must be approved by the Commission.

(i) Such amendment must provide the terms under which the Upper 700 MHz D Block licensee shall receive full ownership rights and shall compensate the public safety entity (or the Public Safety Broadband Licensee, where appropriate) for the construction of the network; and shall, absent agreement to the contrary, provide for such transfer and compensation to occur prior to the scheduled build out date for such network in the NSA.

(ii) Any right to compensation from the Upper 700 MHz D Block licensee related to such early build-out shall be limited to the cost that would have been incurred had the Upper 700 MHz D Block licensee constructed the network itself in accordance with the original terms and specifications of the NSA, as reasonably determined by the parties and negotiated as part of the required NSA amendment required in paragraph (b)(2) of this section. Such costs shall not include costs attributable solely to advancing the date of construction or otherwise expediting the construction process.

(3) *Operations.* The public safety entity may not commence operations on the network until ownership of the network has been transferred to the Upper 700 MHz D Block licensee.

Further, no operations shall be allowed except those authorized and conducted pursuant to the authority of the Public Safety Broadband Licensee.

(4) *Attribution of early build-out to national benchmarks.* Upon completion of construction, transfer of ownership to the Upper 700 MHz D Block licensee, and compensation as required herein, if applicable, the Upper 700 MHz D Block licensee may include the network constructed pursuant to the early build-out provisions herein for purposes of determining whether it has met its national build-out benchmarks and the build-out requirements of the NSA.

(5) *Rights to build out and operate in areas without a build-out commitment.* In areas for which the NSA does not require the Upper 700 MHz D Block licensee to build out the Shared Wireless Broadband Network, 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 written 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.

(i) Such leasing arrangement shall not require the approval or consent of the Upper 700 MHz D Block licensee; however, the Public Safety Broadband Licensee must provide the Upper 700 MHz 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 seeking to exercise this option, and shall inform the Upper 700 MHz D Block licensee of the public safety entity's anticipated build-out date(s).

(ii) Should the Upper 700 MHz D Block licensee, within 30 calendar days from receipt of notice of the public safety entity's intent to construct in that area, certify 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, the Public Safety Broadband Licensee shall not allow the public safety entity to build and operate its own separate exclusive network in that area, provided that the Upper 700 MHz D Block licensee and the Public Safety Broadband Licensee execute an amendment to the NSA indicating the Upper 700 MHz D Block licensee's commitment to build the network in that area. Such commitment shall become enforceable against the Upper

700 MHz D Block licensee as part of its overall build-out requirements.

(iii) If the Upper 700 MHz D Block licensee does not exercise its option to commit to build out the network in the requested area within 30 calendar days of receipt of notice of the public safety entity's intent to construct in such area, the Public Safety Broadband Licensee and the public safety entity may proceed with a spectrum leasing arrangement, which must be filed with and approved by the Commission prior to the public safety entity commencing any operations. The spectrum leasing arrangement must take the form of a spectrum manager leasing arrangement under the rules specified in § 1.9020 of this chapter, and incorporate the following conditions:

(A) The network must provide broadband operations;

(B) The network must be fully interoperable with the Shared Wireless Broadband Network;

(C) The network must be available for use by any public safety entity in the area;

(D) The network must satisfy any other terms or conditions required by the Public Safety Broadband Licensee; and

(E) 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. If the public safety entity fails to place the network into operation within one year, the Public Safety Broadband Licensee shall terminate the spectrum leasing arrangement pursuant to § 1.9020(h)(3) of this chapter. The public safety entity may also seek extended implementation authority from the Commission pursuant to the requirements of § 90.629.

(6) Except as set forth herein, the separate network is not required to meet the other specifications of the Shared Wireless Broadband Network. Absent agreement of the public safety entity, the Public Safety Broadband Licensee, and the Upper 700 MHz D Block licensee, the separate network may not operate using any spectrum associated with the Upper 700 MHz D Block license.

(7) The Public Safety Broadband Licensee must file with the Commission any spectrum manager leasing arrangement as specified in § 1.9020(e) of this chapter; such filing shall identify the public safety entity leasing the spectrum, the particular areas of spectrum leased as part of this build-out option, and the specific network infrastructure and equipment deployed on such leased spectrum.

**§ 90.1432 Conditions for waiver to allow limited and temporary wideband operations in the 700 MHz public safety spectrum.**

(a) *Wideband operations in the 700 MHz Public Safety spectrum.* Wideband operations are prohibited in the public safety allocation of the 700 MHz band public safety spectrum except where the Commission has granted a waiver pursuant to §§ 1.3 and 1.925 of this chapter and subject to the additional conditions and requirements specified in this section. Grants of waiver are restricted to the deployment of a wideband system in the consolidated narrowband portion or the internal public safety guard band portion of the public safety broadband spectrum. Where spectrum in the narrowband segment or internal guard band segment is unavailable for wideband operations, public safety entities may request a waiver to operate in the upper 1.25 megahertz of the public safety broadband spectrum.

(b) Any public safety entity seeking to conduct wideband operations within the public safety allocation must file a request for waiver that is accompanied by an application for authorization and includes the following information:

(1) 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

(2) A description of the conditions or transition requirements, if any, agreed to between the applicant and the Public Safety Broadband Licensee.

(c) *Additional requirement for wideband operations in the narrowband segment and Internal Guard Band.* If an applicant seeks permission to deploy wideband systems in the narrowband segment, its waiver request 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.

(d) *Additional requirements and conditions for wideband operations in the broadband segment.* Permission to conduct wideband operations in the broadband segment will be granted only where spectrum in the narrowband segment or the internal guard band is unavailable for wideband operations. In no event will permission be granted to conduct wideband operations in geographic areas scheduled for broadband deployment within the first three years of the build-out plan for the Shared Wireless Broadband Network.

(1) An applicant seeking permission to deploy wideband systems 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 Shared Wireless Broadband Network.

(2) A request for waiver that seeks permission to deploy wideband systems in the broadband segment must include the following information:

(i) A substantially supported, detailed technical showing demonstrating that insufficient spectrum in the narrowband segment or the internal guard band is available to support the desired wideband operations;

(ii) A showing that rejected responses to the required broadband network RFP were more costly, provided less coverage as measured by throughput at the network edge, or were otherwise inferior to the accepted wideband proposal; and

(iii) A detailed plan for integration of such wideband system into the Shared Wireless Broadband Network. This plan must specify how and by what date the wideband applicant will integrate its proposed wideband system into Shared Wireless Broadband Network and must include a certification that the public safety entity will not seek reimbursement for any costs involved in converting the wideband system to Shared Wireless Broadband Network upon completion of that network in the applicant's geographic area.

(3) Authority to conduct wideband operations in the broadband segment of the public safety spectrum will be subject to the following conditions:

(i) All devices operating on the wideband system must be designed to interoperate with Shared Wireless Broadband Network;

(ii) All waivers will expire automatically upon the Upper 700 MHz D Block licensee's initiation of service in the service area covered by such waiver.

(e) *Secondary status of wideband operations.* All wideband operations permitted under this section shall be secondary to the authorized narrowband or broadband applications, as applicable.

(f) *License terms for wideband operations.* Any secondary license to conduct wideband operations in the public safety spectrum shall have a term of no more than five years.

(g) *Renewal of wideband authorization.* Any request for renewal of an initial authorization to conduct wideband operations shall be filed not less than 180 days prior to expiration of the license. All renewal requests must include a showing that continued operation of the wideband system is in

the public interest and 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 a license granted under the waiver provisions herein shall not exceed three years. No more than one license renewal will be granted.

(h) *Grandfathered wideband STA operations.* Upon request, the Public Safety and Homeland Security Bureau may grant a public safety entity that has constructed, deployed, and was operating a wideband system as of July 31, 2007 pursuant to STA to extend the STA grant for periods of no more than 180 days until, but not later than, six months following the selection of the Public Safety Broadband Licensee.

**§ 90.1435 Prohibition on discontinuance of public safety operations.**

The Upper 700 MHz D Block licensee, the Operating Company, and the Network Assets Holder are prohibited 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 Upper 700 MHz D Block licensee shall 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.

**§ 90.1440 Reporting obligations.**

(a) The *Upper 700 MHz D Block* licensee and the Public Safety Broadband Licensee shall jointly file

quarterly reports with the Commission. These reports shall include audited financial statements, how the specific requirements of public safety are being met, detailed information on the areas where broadband service has been deployed, which public safety entities are using the broadband network in each area of operation, what types of applications are in use in each area of operation, and the number of declared emergencies in each area of operation.

(b) The Public Safety Broadband Licensee and the Upper 700 MHz D Block licensee have joint responsibility to register the base station locations with the Commission, providing basic technical information, including geographic location.

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