

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

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

**JOINT REPLY COMMENTS OF THE AMERICAN ASSOCIATION OF STATE
HIGHWAY AND TRANSPORTATION OFFICIALS, THE CONGRESSIONAL FIRE
SERVICES INSTITUTE, THE FORESTRY CONSERVATION COMMUNICATIONS
ASSOCIATION, THE INTERNATIONAL ASSOCIATION OF FIRE CHIEFS AND THE
INTERNATIONAL MUNICIPAL SIGNAL ASSOCIATION**

The American Association of State Highway and Transportation Officials (“AASHTO”), the Congressional Fire Services Institute (“CFSI”), the Forestry Conservation Communications Association (“FCCA”), the International Association of Fire Chiefs (“IAFC”) and the International Municipal Signal Association (“IMSA,” and collectively, the “Joint Public Safety Commenters,” or “JPSC”), pursuant to Section 1.415 of the rules and regulations of the Federal Communications Commission (“FCC” or “Commission”)^{1/} and the invitation extended by the FCC in its *Third Further Notice of Proposed Rulemaking* in the above-referenced proceeding,^{2/} hereby submits its reply comments in response to the initial comments of others regarding the 700 MHz spectrum designated for use in a public/private partnership.

^{1/} 47 C.F.R. § 1.415.

^{2/} *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, Third Further Notice of Proposed Rulemaking, WT Docket No. 06-150 and PS Docket No. 06-229, FCC 08-230 (rel. Sept. 25, 2008) (“*Third Further Notice*”).

The JPSC's initial comments addressed many issues raised by the *Third Further Notice*. Virtually all of those matters were also addressed by other parties. However, the JPSC restricts these Reply Comments to those issues of greatest importance to it.

A. The Commission Should Not Micromanage the Operations of the PSBL

The JPSC demonstrated that there is no basis for the Commission to impose the many rules proposed in the *Third Further Notice* on the operations of the Public Safety Broadband Licensee ("PSBL"). As the JPSC demonstrated, the level of detail at which the Commission proposes to regulate the PSBL is unprecedented and unwarranted.

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") disagrees. It states, among other things, that the FCC should regulate the governance of the PSBL because "important elements of the public safety community continue to feel left out of the process and remain unconvinced that the PSBL in its current form will respond to their needs."^{3/} APCO fails to identify any "important elements" of the public safety community that have been left out of the process. Nor does it provide any rationale for believing that the PSBL will not meet the needs of these unidentified entities. The PSBL, created by the FCC, is broadly representative of the public safety community. APCO fails to demonstrate why the PSBL is not now, and will not be in the future, responsive to the needs of all elements of the public safety community.

APCO also supports the FCC's proposal regarding "the other organizational changes described in the *3d FNPRM* regarding the board of directors, officers and elections."^{4/} The JPSC continues to strongly disagree. There is no basis anywhere in the record for APCO's position or

^{3/} Comments of the Association of Public-Safety Communications Officials-International, Inc. (APCO), WT Docket No. 06-150 and PS Docket No. 06-229, at 24 (filed Nov. 3, 2008) ("APCO Comments").

^{4/} *Id.* at 25.

the FCC's proposal. The Public Safety Spectrum Trust ("PSST") has already been licensed as the PSBL by the FCC which found (as it must every time it issues a license) that the grant of such authorization was in the public interest. As the FCC was aware at the time it issued a license to the PSST, the licensee is governed by the laws of the District of Columbia as a not-for-profit corporation organized under its regulations. The FCC did not object to operation of the PSST under these laws at the time it granted the license and the record is completely devoid of any reason why the FCC should object to the management of the PSST under those laws now. Because of the complete absence of any record evidence of why the FCC should impose obligations on the PSST that the City Council of the District of Columbia has declined to impose, the Commission should not adopt any of its proposed governance rules on the PSBL.

The sole basis of the FCC's most onerous governance proposal -- that the PSBL must elect a new executive committee and that none of the new executive committee members be hold-overs from their previous positions^{5/} -- appears to be APCO's complaint that the PSBL "over-relied" on the PSBL executive committee.^{6/} APCO's complaint is unfounded and undocumented. Even if there was any merit to APCO's charges, the FCC fails to explain why (1) changing the individuals in the positions of Chairman, Vice Chairman and Secretary/Treasurer will remedy the perceived defect in the PSBL; and (2) the same result will not occur with a new executive committee. This proposed change to the PSBL structure, like all of the FCC's proposed rules regarding PSBL governance, presumes that the PSBL is unable to govern itself and that the PSBL has no internal mechanism to address the "over-reliance" which APCO alleges exists. The facts are contrary. Such mechanisms exist; if PSBL members are

^{5/} *Third Further Notice* ¶ 412.

^{6/} APCO Comments at 24-25.

unsatisfied with the PSBL's operations or leadership, they have the authority to change both on their own.

APCO also supports the substitution of the National Regional Planning Council ("NRPC") for the National Emergency Management Association ("NEMA") on the PSBL.^{7/} The JPSC disagrees. First, the FCC states that NEMA should be replaced because "its initially appointed representative has consistently failed to attend board meetings and the organization has not otherwise materially participated in PSBL board activities."^{8/} While the JPSC certainly does not sanction such lack of participation, the record does not suggest that the FCC ever made clear to NEMA or anyone the standard under which it would consider proposing the replacement of entities represented on the PSBL board. It is a fundamental violation of due process for the Commission to strip an organization of its board position without prior notice of the consequences of lack of participation.

More importantly, the FCC should not usurp the authority of the PSBL licensee by determining when members should be removed. Instead, the PSBL should be free to determine when board members should be removed, consistent with its own governing documents. The Commission should delegate to the Chief of the Public Safety and Homeland Security Bureau the authority to designate, in consultation with the PSBL, another entity, if appropriate, for any member removed from the PSBL pursuant to the PSBL's governance documents.

In the event that the Commission decides that NEMA should no longer be on the PSBL board, it is not clear that NRPC should. Unlike virtually all members of the PSBL, the NRPC has no direct role in incident management (unlike, for example, NEMA). Members of the PSBL

^{7/} *Id.*

^{8/} *Third Further Notice* ¶ 408.

should be representative of entities that will actually use the public/private network for communications related to incident management.

In its comments, the JPSC noted that the FCC failed to address, in the proposed level of payment from the D Block licensee to the PSBL, the debt that the PSBL has already incurred in the performance of its critical pre-operation functions and the debt that it will continue to incur in the performance of those functions. Cyren Call, the PSBL's adviser, echoed the JPSC's concerns and asked the Commission "how it intends to facilitate the retirement of the PSBL's outstanding debt obligations."^{9/} Cyren Call asks that the FCC confirm that it has "neither proposed nor precluded any particular approach to resolving this issue [of the PSBL's debt] . . ."^{10/} The JPSC asks the FCC to go further. The Commission should affirmatively require that the D Block licensee immediately retire the outstanding PSBL debt and any debt incurred between now and the issuance of the D Block license.

As the JPSC and others have noted, the proposed \$5 million annual payment from the D Block licensee to the PSBL is insufficient, particularly in the first several years of the public/private network's design and implementation.^{11/} However, regardless of the level of

^{9/} Letter from Morgan E. O'Brien, Chairman of the Board, Cyren Call Communications Corporation, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, at 2 (Oct. 31, 2008). There appear to be misconceptions regarding Cyren Call's financial relationship with the PSBL. Cyren Call holds no "equity" in the PSBL (indeed, no entity can hold what is generally considered an "equity" position in a not-for-profit corporation). The PSBL is obligated to pay Cyren Call for its services and for the expenditures that Cyren Call has undertaken on behalf of the PSBL.

^{10/} *Id.*

^{11/} *See, e.g.,* Response of Regional Planning Committee Twenty ("Region 20"), WT Docket No. 06-150 and PS Docket No. 06-229, at 22 (filed Nov. 3, 2008) (stating that "it is wrong to place an arbitrary cap on the potential payments to the [PSBL]"); Comments of the National Public Safety Telecommunications Council, WT Docket No. 06-150 and PS Docket No. 06-229, at 19 (filed Nov. 3, 2008) ("An underfunded PSBL will accrue significant detriment to public safety interests and disrupt considerably its ability to promote access by all public safety users."); Comments of the Public Safety Spectrum Trust Corporation, WT Docket Nos. 06-150 and 96-86

annual payment, the D Block licensee should also be required to make a lump-sum repayment of the then outstanding debt of the PSBL, in addition to the annual payment to the PSBL. If the FCC fails to take this step, the PSBL will be unable to represent to any entity lending it funds, or any vendor to which it is indebted, that it will be repaid in due course.

B. The Commission Should Not Deviate from its Proposed Licensing Approach

The Commission has proposed that the PSBL continue to hold the license for the public safety broadband spectrum and that one or more entities be licensed for the D Block spectrum to partner with the PSBL to build and manage a public/private broadband network.^{12/} Certain entities argue that the FCC should simply license the D Block spectrum to public safety entities.^{13/} Those entities fail to appreciate that the D Block is not now, nor has it ever been, public safety spectrum.^{14/} The FCC has wisely created a scheme under which spectrum otherwise designated for commercial use, may be used in connection with public safety spectrum. However, absent Congressional intervention, the FCC has no authority to do anything but auction the D Block to entities that wish to use it for commercial purposes.

and PS Docket No. 06-229, at iv (filed Nov. 3, 2008) (asserting that the \$5 million annual cap should be raised to \$10 million).

^{12/} *Third Further Notice* ¶ 2.

^{13/} *See, e.g.*, Comments of the New York City Police Department, WT Docket No. 06-150 and PS Docket No. 06-229, at 6 (filed Nov. 3, 2008) (“NYPD Comments”); Comments of TeleCommUnity, WT Docket No. 06-150 and PS Docket No. 06-229, at 13 (filed Nov. 3, 2008); Comments of the King County Regional Communications Board (KC-RCB) and the City of Seattle, WT Docket No. 06-150 and PS Docket No. 06-229 (filed Nov. 3, 2008); Comments of Miami-Dade County, WT Docket No. 06-150 and PS Docket No. 06-229, at 1 (filed Oct. 28, 2008); Letter from Public Safety Officials and CIO Task Force on Wireless Spectrum Allocation, to The Honorable Kevin J. Martin, Chairman, Federal Communications Commission, at 2 (Oct. 29, 2008) (“Public Safety Officials Letter”).

^{14/} *See id.*; *see also* Comments of the City of Philadelphia, WT Docket No. 06-150 and PS Docket No. 06-229, at 2-3 (filed Nov. 3, 2008) (arguing that the FCC must impose an obligation on the D Block licensee(s) to obtain approval from regional public safety entities regarding the design and operation of the network).

The JPSC strongly disagrees with those entities which suggest that the FCC should seek Congressional approval to simply license the D Block spectrum to public safety agencies on a regional basis.^{15/} Those entities also generally suggest that once the D Block is freed for use by public safety entities directly, those public safety entities should be permitted to construct networks on a regional basis consisting of D Block and public safety broadband spectrum.^{16/} These proposals are deeply flawed. First, there is no guarantee that Congress will approve any plan that converts commercial spectrum to public safety use and foregoes -- in the middle of the most significant financial crisis in decades -- Federal government revenue that could otherwise be generated by conducting an auction of the D Block spectrum. There is certainly no guarantee that Congress would consider this matter quickly (if at all), potentially further delaying the construction and operation of a broadband public safety network.

Second, and most importantly, absent a public/private partnership, there is no funding available to construct a nationwide, public safety broadband network. Certain municipalities and states may be fortunate enough to have the funds to construct such a network;^{17/} most do not. The Commission should not sacrifice the fate of smaller and less-well funded jurisdictions based on the relative wealth of several larger jurisdictions. Allowing these entities to construct a 700 MHz network using D Block and public safety spectrum will also defeat the FCC's principal goal in licensing 700 MHz spectrum to public safety entities -- to create an *interoperable*,

^{15/} *See id.*

^{16/} *See, e.g.,* Public Safety Officials Letter at 1-2 (arguing that the license to the public safety broadband spectrum should not be assigned to the PSST and the Commission should not auction the D Block, and instead, the FCC should “return the public safety spectrum to those charged with protecting the safety of our constituents”).

^{17/} *See, e.g.,* NYPD Comments at 5.

nationwide network.^{18/} As it said in its initial comments, the JPSC does not object to individual, well-funded, public safety entities proceeding to construct a regional portion of the nationwide public safety broadband network in advance of the D Block licensee. However, such construction and operation must occur only with the consent of the PSBL and a commitment that the constructed system will be compatible with the remainder of the public/private broadband network and that it will be taken out of operation if it is not. Individual public safety entities cannot proceed in the absence of these guidelines.

C. Conclusion

The American Association of State Highway and Transportation Officials, the Congressional Fire Services Institute, the Forestry Conservation Communications Association, the International Association of Fire Chiefs, and the International Municipal Signal Association hereby submit the foregoing reply comments and ask the FCC to act in accordance with the views expressed herein.

^{18/} *Third Further Notice* ¶ 1.

Respectfully submitted,

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