

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C 20554

FILED/ACCEPTED

NOV 25 2008

Federal Communications Commission
Office of the Secretary

In the Matter of)
)
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)

WT Docket No. 06-150

PS Docket No. 06-229

COMMENTS OF THE

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

Meredith Attwell Baker
Acting Assistant Secretary for
Communications and Information

Kathy D. Smith
Chief Counsel

Karl B. Nebbia
Associate Administrator
Office of Spectrum Management

Eric Stark
Associate Administrator
Office of Policy Analysis and Development

Edward M. Davison
Deputy Associate Administrator
for Domestic Spectrum Management
Office of Spectrum Management

November 25, 2008

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C 20554

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

COMMENTS OF THE

NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION

As the President's principal adviser on telecommunications policies, the National Telecommunications and Information Administration (NTIA), respectfully submits these comments on behalf of the Executive Branch.¹ These comments respond to the *Third Further Notice of Proposed Rulemaking* in the above-referenced proceeding.²

In establishing the Spectrum Policy Initiative, the President directed the establishment of a U.S. spectrum policy that fosters economic growth, ensures our national and homeland security, maintains U.S. global leadership in communications technology development and services, and satisfies other vital U.S. needs in areas such as public safety, scientific research,

¹ NTIA is the Executive Branch agency principally responsible for the development of telecommunications policies pertaining to the Nation's economic and technological advancement and to the regulation of the telecommunications industry, for the coordination of the telecommunications activities of the Executive Branch, and for the effective presentation of the views of the Executive Branch to the Commission. 47 U.S.C. § 902 (b)(2).

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, FCC 08-230, (rel. Sept. 25, 2008), 73 Fed. Reg. 57750 (Oct. 3, 2008), 2008 FCC LEXIS 7137 ("Third Further Notice").

Federal transportation infrastructure, and law enforcement.³ Several of these spectrum management goals relate directly to this proceeding. The Administration commends the Commission for proposing to clarify the approach mandated for the 700 MHz “D Block” to achieve public safety benefits on commercially reasonable terms.⁴ The Administration looks forward to working further with the Commission to realize the potential benefits of successful management of these frequencies.

The Administration believes that if the Commission opts to maintain the public/private partnership in the upper portions of the 698-806 MHz band (including the 700 MHz D Block), the Commission should seek to ensure the commercial viability of public safety service rules. In addition, the Commission should adhere to the tentative conclusion made in the *Third Further Notice* that reaffirms the existing rule that the Public Safety Broadband Licensee (PSBL) has discretion to approve Federal agency use of public safety broadband channels.⁵ If the Commission proceeds with a second auction of the D Block under the public/private mandate, the Administration offers these comments to address the interests of Federal agency spectrum users.

Federal agencies help ensure the Nation’s safety every day, whether carrying out their primary duties, partnering with state and local public safety and law enforcement, or standing

³ Memorandum for the Heads of Executive Departments and Agencies, *Spectrum Policy for the 21st Century*, 69 Fed. Reg. 1569 (Jan. 9, 2004), 39 WEEKLY COMP. PRES. DOC. 726 (May 29, 2003), available at <http://www.whitehouse.gov/news/releases/2003/06/20030605-4.html>; Presidential Determination: Memorandum for the Heads of Executive Departments and Agencies, *Improving Spectrum Management for the 21st Century*, 40 WEEKLY COMP. PRES. DOC. 2875 (Nov. 30, 2004), available at <http://www.whitehouse.gov/news/releases/2004/11/20041130-8.html>.

⁴ The Commission allocated the lower half of the 700 MHz band, 763-768 MHz and 793-798 MHz, for public safety broadband communications, and the adjacent D Block (758-763 MHz and 788-793 MHz) for commercial uses. The Commission designated a nationwide licensee for the public safety portion (hereinafter “Public Safety Licensee”). The Commission required the winning bidder of the D Block auction to enter into a public/private partnership with the Public Safety Licensee and to construct and operate a nationwide network shared by both commercial and public safety users. The D Block auction did not meet its reserve price. *Third Further Notice*, *supra* note 2, at ¶¶ 17-19.

⁵ *Third Further Notice*, *supra* note 2, at ¶¶ 328-332. See also 47 C.F.R. § 2.103(c).

ready to intervene in the case of extraordinary disasters. All agencies providing public safety services – state, local and Federal – stand to benefit from access to an interoperable broadband capability to fulfill their missions now and in the future.

In weighing the needs of the public safety community for broadband services, the Commission must keep in mind the Federal contribution to our Nation’s public safety response capabilities. Federal agencies shoulder a number of public safety roles. They support and partner with local, state, and tribal agencies. They increasingly participate in cross-jurisdictional mutual aid agreements; task force planning; and information, infrastructure and system sharing.⁶ These arrangements not only promote efficient spectrum management, they also address the compelling need for seamless communications and interoperability among first responders and other emergency personnel. As the *Federal Strategic Spectrum Plan* documents, these public safety activities are now expanding into broadband applications.⁷ Systems that share spectrum resources among all levels of government greatly increase interoperable communications and provide operational and cost-effective solutions for broadband connectivity. This is particularly critical in emergencies requiring cross-jurisdictional responses. NTIA believes that the goals of the public safety community would be furthered by considering partnerships involving all levels of government.⁸

⁶ See, e.g., Interoperability Montana Project, <http://interop.mt.gov/>; Alaska Land Mobile Radio, <http://www.ak-prepared.com/almr/>; WYOLink, <http://wyolink.state.wy.us/>.

⁷ Department of Commerce, *Spectrum Management for the 21st Century, President’s Spectrum Policy Initiative, Federal Strategic Spectrum Plan* (Mar. 2008) at 4, B137-139, B-143. available at <http://www.ntia.doc.gov/reports/2008/FederalStrategicSpectrumPlan2008.pdf>.

⁸ Department of Commerce, *Spectrum Management for the 21st Century, President’s Spectrum Policy Initiative, A Public Safety Sharing Demonstration*, (June 2007) at xiv, available at <http://www.ntia.doc.gov/reports/2007/NTIAWARNReport.htm>.

Federal agencies principally use Federally allocated spectrum to support their missions. Nevertheless, Federal agencies' public safety obligations, the paramount importance of interoperability, and the benefits of broadband capability at all jurisdictional levels may require Federal access to a national public safety broadband network during some emergencies.⁹ Local, state and tribal public safety organizations recognize this, and a number have filed comments in support of Federal access.¹⁰ Federal access to the public safety broadband network under the envisioned public/private partnership should not be limited to coordination of Federal and non-Federal activities, but should also include access in furtherance of Federal agencies' missions during emergencies.¹¹

Federal agencies can also serve as "local" first responders in their own right. For example, the Department of Defense (DOD) operates over four thousand military installations in the United States and its territories. In this capacity, DOD runs military base hospital emergency rooms, law enforcement units and fire departments. A number of other Federal agencies also operate facilities of various geographic sizes where they provide their own law enforcement, fire protection, and medical services. These Federal facilities and military installations frequently interoperate with and support neighboring state, local and tribal emergency services.

⁹ As the Commission recognized early on in this proceeding, "[j]oint use of a common infrastructure by federal, state and local public safety agencies also could facilitate interoperability and coordination between those sectors." *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*, Ninth Notice of Proposed Rulemaking, PS Docket No. 06-229; WT Docket No. 96-86, FCC 06-181, 21 FCC Red 14837 (2006).

¹⁰ See generally, *Third Further Notice*, *supra* note 2, at ¶¶ 328-330 (indicating that most parties oppose limiting Federal agency use of public safety broadband spectrum to Federal-non-Federal coordination).

¹¹ Nor should access be limited to Federal "public safety agency" use as language in the *Third Further Notice* suggests. *Third Further Notice*, *supra* note 2, at ¶ 332. A Federal agency such as the Department of Agriculture (USDA) might not be classified as a "public safety agency." Still, USDA's Forest Service responds to wildfires and other emergencies where broadband connectivity could provide critical support to public safety activities.

In times of national crisis, Federal agencies take on overarching responsibilities. A catastrophic event, such as Hurricane Katrina, often requires exceptional responses. At such time, upon request by a state, Federal agencies deploy extraordinary resources to assist them.¹² Federal access to a national public safety broadband network is essential to ensuring true nationwide interoperability and coordinated emergency relief in the years ahead.

The Commission's initial D-Block service rules appropriately give the PSBL discretion to allow Federal agencies access to public safety spectrum.¹³ Under these existing rules, adopted by the Commission last year, the PSBL decides whether to grant Federal agency access to the public safety broadband network, consistent with the partnership's Network Sharing Agreement and any conditions mutually agreed by NTIA and the Commission.¹⁴ This arrangement strikes the appropriate balance. It calibrates the PSBL's need to manage its spectrum and maintain an economically viable partnership, including, as appropriate, charges for Federal access and the compatible Federal agency need for access. If the Commission retains the public/private partnership, it should retain this rule.¹⁵

¹² See generally "The Federal Response to Hurricane Katrina: Lessons Learned" at 42-43 (Feb. 2006), available at <http://www.whitehouse.gov/reports/katrina-lessons-learned.pdf>; DOD Directive No. 3025 (Feb. 1, 1997) (military assistance to civil authorities for civil disturbances, acts of terrorism, disasters); Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 ("Stafford Act") (Presidential authority to issue major disaster declarations authorizing Federal aid to states); <http://www.fema.gov/about/index.shtm> (Federal Emergency Management Agency of Department of Homeland Security principally administers Stafford Act and maintains the National Response Framework (comprehensive, coordinated approach to a domestic incident involving responders of all jurisdictional levels)).

¹³ 47 C.F.R. § 2.103 (c).

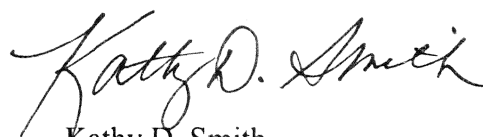
¹⁴ *Id.*

¹⁵ Should the Commission decide to meet public safety's broadband requirements by means other than the Public/Private Partnership, the Administration asks that the Commission keep the facts underpinning this pleading in mind. First, Federal agencies tasked with missions of protection and security are an integral part of the national public safety response. Second, their role requires the cutting-edge emergency response and other tools a broadband network affords. Finally, subject to the approval of their state and local counterparts, the Federal agencies should be able as necessary to access national interoperable public safety broadband infrastructure.

Moreover, the Commission should interpret this rule, as the *Third Further Notice* suggests, to permit the PBSL to establish broad-reaching agreements with Federal agencies. Such agreements would obviate the need for case-by-case determinations and streamline Federal and non-Federal public safety coordination.¹⁶

In conclusion, if the Commission proceeds under a public/private partnership model, the Commission should adhere to the existing rule allowing the PSBL to determine whether a Federal agency may access public safety broadband spectrum, consistent with the partnership agreement.

Respectfully submitted,



Kathy D. Smith
Chief Counsel

Meredith Attwell Baker
Acting Assistant Secretary for
Communications and Information

Karl B. Nebbia
Associate Administrator
Office of Spectrum Management

Eric Stark
Associate Administrator
Office of Policy Analysis and Development

Edward M. Davison
Deputy Associate Administrator
for Domestic Spectrum Management
Office of Spectrum Management

November 25, 2008

¹⁶ *Third Further Notice*, *supra* note 2, at ¶ 330.