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
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 No. 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

COMMENTS OF THE CITY OF NEW YORK

The City of New York submits these comments in response to the Commission's *Further Notice of Proposed Rulemaking* (*Further Notice*) relating to the rules for the

commercial and public safety segments in the 700 MHz band.[1] In the *Further Notice*, the Commission states its intention to eliminate the wideband channels in the public safety segment, and allow only broadband operations that would be managed by a national public safety licensee. It also requests comment on a proposal of Frontline Wireless, LLC's (Frontline) to designate a 10 megahertz "E Block" in the commercial segment of 700 MHz.[2]

Frontline proposes that the E Block licensee deploy a nationwide, interoperable broadband network on both the E Block and the newly created public safety broadband segment. Frontline's recommendation parallels the Commission's national public safety licensee proposal, set forth in detail in its *Ninth Notice of Proposed Rulemaking*.[3] The E Block licensee would enter into an agreement with the national public safety licensee to allow commercial access to the already allocated 700 MHz public safety segment on a secondary basis. The E Block licensee and the national public safety licensee would also determine the degree to which public safety may have "emergency" access to the E Block.

The challenges the *Further Notice* presents commence with not recognizing that a one-size-fits-all concept is counter to effective public safety communications. An important instrument in structuring spectrum resources to meet local needs has been the

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[1] The *Further Notice* addresses WT Docket No. 06-150, CC Docket No. 94-102, WT Docket No. 01-309, WT Docket No. 03-264, WT Docket 06-169, PS Docket 06-229 and WT Docket No. 96-86, FCC 07-72 (April 27, 2007).

[2] Comments of Frontline Wireless, LLC, PS Docket No. 06-229 and WT Docket No. 96-86 (filed Feb. 26, 2007), Reply Comments of Frontline Wireless, LLC, PS Docket No. 06-229 and WT Docket No. 96-86 (filed Mar. 12, 2007), Comments of Frontline Wireless, LLC, WT Docket No. 06-150 (filed Mar. 6, 2007).

[3] [3] Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band and In the Matter of the 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 96-86, FCC 06-181 (December 20, 2006).

regional planning committee process previously established by the Commission, which the *Further Notice* ignores. Another serious challenge is the authority of commercial interests to operate in the 700 MHz segment that Congress committed exclusively to public safety communications. Eliminating the 700 MHz wideband channels and mandating broadband ignores that licensees, including New York City, relied on current rules to modernize networks, now to their detriment. More broadly, the *Further Notice*, in eliminating the historic private network model that has promoted the mission critical standards associated with emergency response communications, presents no alternative to preserve these standards.

New York City Public Safety Communications

New York City has a growing population of more than 8 million residents. Its emergency 911 system received approximately 11 million calls for service in 2006 and dispatched police, fire and medical responders to over 6.4 million 911 calls. To this end, New York City maintains extensive equipment, infrastructure and spectrum resources to support emergency service communications. New York City's capital investment and operating expenses involve hundreds of millions of dollars. Its planning, investment and operations have been pursued in reliance on the existing Commission rules. New York City participates in several region-wide initiatives involving communications, including the Region 8 Planning Committee that coordinates use of 700 MHz and 800 MHz channels.

In 2006, the City announced its intention to deploy a citywide mobile wireless network also known as the New York City Wireless Network (NYCWiN). NYCWiN is a broadband wireless data network designed to support the City's public safety agencies by enabling a wealth of mobile and fixed applications, including real-time video, rapid

database lookup and the exchange of rich graphical information. NYCWiN will provide critical, real-time information to the City's first responders where and when they need it. This enables faster decision-making, improved public safety, and rapid, highly-coordinated emergency response. The benefits of this next-generation network are most evident in its wide range of planned applications, which include the use of wireless broadband data devices and automatic vehicle location technology, with additional applications that can be developed to meet each public safety agency's unique needs.

Efforts to implement the network are fully engaged currently. The network will use spectrum in the 2.5 GHz band. NYCWiN will be an IP-based network, enabling fully interoperable data communications. Essential information will be shared instantaneously among multiple City agencies. The City will work through its existing interoperable communications relationships with its partners in state, federal and regional public safety agencies to ensure access to the NYCWiN. New York City's decision to build the NYCWiN around the 2.5 GHz band relied on the Commission's rules, specifically that the public safety segment of the 700 MHz band was committed to narrowband and wideband operations.

Public Safety's Historic Mission Critical Standards Must Be Upheld to Ensure Effective Emergency Response

There are crucial differences among metropolitan areas and between urban, suburban and rural regions. The differences range in topography, requirements and resources. These differences translate into varied deployment, operations and maintenance activities with regard to communications networks. Imposing a national public safety licensee's determination will limit how effectively spectrum resources can respond to local needs. Without a mechanism for local agencies to meaningfully

participate in decisions, the accountability and commitment by local agencies in these decisions will be diluted.

The *Further Notice* ignores the important contributions of the regional planning committees (RPC) in the 700 MHz band. Region 8 is an example of how varied jurisdictions[4] work effectively to best use spectrum resources. Local participation will remain important in broadband deployment, particularly with regard to interoperability. The RPCs can contribute much to this effort. Region 8 has had a crucial role in region-wide interoperability planning and implementation, demonstrating that the role should be preserved in broadband.

In addressing interoperability, the *Further Notice* profiles the benefits that will result from a nationwide all broadband network. Yet broadband data network interoperability, unlike the land mobile environment where spectrum location remains significant, can be readily achieved among public safety entities using different technologies and spectrum bands. The data transmitted over such networks can be shared via a nationwide public-safety-grade data backbone. This factor means that more capacity can be committed to local operations.

The proposal to allow private interests access to the 700 MHz public safety segment on a secondary basis is contrary to the law and raises undue litigation risk. In Section 337(a) of the Communications Act of 1934, Congress mandated that the Commission allocate "spectrum between 746 MHz and 806 MHz, inclusive" (*i.e.*, the

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[4] Region 8 consists of Bronx, Kings, Nassau, New York, Orange, Putnam, Queens, Richmond, Rockland, Suffolk, Sullivan, Ulster, Dutchess, and Westchester counties in New York; and Bergen, Essex, Hudson, Morris, Passaic, Sussex, Union, Warren, Middlesex, Somerset, Hunterdon, Mercer, and Monmouth counties in New Jersey.

Upper 700 MHz Band) by designating 24 megahertz of the spectrum "for public safety services" and 36 megahertz of the spectrum "for commercial use to be assigned by competitive bidding pursuant to section 309(j)."[5] The Commission allocated 24 megahertz of this spectrum for public safety use at 764-776 MHz and 794-806 MHz and 36 megahertz of this spectrum for commercial use at 746-764 MHz and 776-794 MHz.[6] The statutory definition of "public safety services" precludes the sharing of the spectrum allocated to public safety with commercial interests.[7]

Indeed, this seems to be reiterated by the Commission's determination in the *Further Notice* that commercial spectrum in the 700 MHz could not be committed to public safety as proposed by guard band licensees. Guard band licensees had proposed to relocate their channels to align them more effectively with other commercial spectrum in

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[5] 47 U.S.C. § 337(a), as enacted by the Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997). Section 337(a) provides in pertinent part:

> (a) . . . the Commission shall allocate the electromagnetic spectrum between 746 megahertz and 806 megahertz, inclusive, as follows:
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> (1) 24 megahertz of that spectrum for public safety services according to the terms and conditions established by the Commission, in consultation with the Secretary of Commerce and the Attorney General; and
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> (2) 36 megahertz of that spectrum for commercial use to be assigned by competitive bidding pursuant to Section 309(j).

Congress also established a deadline of January 1, 1998 for this allocation, as well as a deadline of September 30, 1998 for assignment of the public safety licenses. *See* 47 U.S.C. § 337(b). On December 31, 1997, the Commission released an Order meeting Congress' allocation directive. *See* Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953, 22962 ¶ 17 (1998).

[6] Reallocation of Television Channels 60-69, the 746-806 MHz Band, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd 22953 (1997).

[7] "Public safety services" are defined as services:

"(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided -- (i) by State or local government entities; or (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) ***that are not made commercially available to the public by the provider***. 47 U.S.C. § 337 (f)(1) (emphasis added).

the band and recommended additional channels for public safety as part of the relocation.[8]

A primary objective in separate public safety and commercial interest allocations is to protect either service from interfering with the other. The *Further Notice* does not adequately address the legal authority to convert what is now designated as public safety spectrum into shared public/private spectrum. This legal uncertainty opens the door to future litigation and, therefore, further delay in public safety's ability to make full use of this valuable spectrum as envisioned by Congress.

Absent from the *Further Notice* is a mechanism to ensure that the important attributes of mission critical networks are preserved. Public safety's historic private network model has ensured that the infrastructure and equipment standards associated with mission critical emergency response are upheld. These elements include capacity, coverage, system restoration, reliability and security. Networks must reflect diversity and redundancy, and be subject to testing and field experience. There can be no experimentation in the public safety sector. Mission critical standards include how infrastructure is maintained, how it is secured and who has physical access to it. The private network model ensures public safety control over these important attributes, as does licensing discrete channels to each agency.

Under the proposal, any 700 MHz shared spectrum will be dominated by commercial interests, where deployment and maintenance will be evaluated based on a return on investment rather than the effectiveness of emergency response. The *Further Notice* proposes no parameters to uphold mission critical standards or ensure access by all agencies. Agencies will have no recognizable right, such as a license, to protect their

[8] *Further Notice* at paragraphs 228-235

interests and adherence to these standards. That disputes between public safety and commercial interests be resolved by binding arbitration and not by the Commission consistent with the Communications Act will dilute these standards even further.

Lacking mission critical standards, with private interests dominating and the absence of local participation through the regional planning committees, the value of the spectrum currently allocated to public safety is greatly diminished. There is no direction that mission critical standards will continue to resonate or that broadband access will be measurably more affordable. There is a danger that public safety will be forced to use networks that will not meet their needs or are too expensive for daily operations.

Against this background of profound proposed changes – elimination of the wideband channels, establishment of a national public safety licensee, and implementation of the Frontline proposal - is the fact that regional bodies and local agencies have expended significant time and money based on current rules that have been in place for years. Agencies relied on these rules to plan improvements to their networks. New York and other cities across the country are already moving to test and procure mobile broadband networks for emergency responders.[9] Changing these rules will have a negative effect.

An important factor in New York City's decision to deploy a broadband network at 2.5 gHz was the availability of the wideband channel and the lack of broadband in 700 MHz. The *Further Notice,* in not recognizing how critical decisions were made based on the current band plan, is unable to balance its purported benefits against the detriment accruing to agencies such as New York City's emergency services. It leaves no

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[9] Comments of the City of New York, In the Matter of Spectrum Needs of Emergency Response Providers, WT Docket No. 05-157 at page 9 (April 28, 2005).

possibility of continued wideband even for a transition period and provides no path for agencies that pursued broadband alternatives. While New York City's intention would be to migrate to the 700 MHz band, uncertainty regarding available capacity, lack of control by local agencies and absence of mission critical standards present significant challenges to accessing the spectrum.

Conclusion

The City recognizes that the Commission could merely allocate for commercial use the remaining 60 MHz of spectrum in the 700 MHz band and make no provision to improve public safety. This would ignore the extreme challenges public safety communications face. Any proposal to increase the spectrum or resources available to public safety must, however, recognize the importance of local participation and cannot in any way diminish its control over the 24 MHz of spectrum given to it by Congress for exclusive use. Mission critical standards and access must govern any scheme.

Respectfully submitted,

City of New York

By; John E. Logan

John E. Logan
Special Counsel to the Department of
Information Technology and
Telecommunications
City of New York
1050 Connecticut Avenue, NW
Tenth Floor
Washington, D.C. 20036
202.772.1981

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