

**FHH Telecom Law**  
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**Public Safety License**  
**NOT a 700 MHz**  
**Public Safety License?**

*By Donald J. Evans*  
*evans@fhhlaw.com*  
*703-812-0430*

The FCC recently took a fresh and untested approach to licensing the new 700 MHz public safety band which will be vacated by broadcasters no later than 2009. As veteran watchers of this band know, Congress has mandated that 24 MHz of the UHF band now being cleared of broadcasters be allocated for public safety services. The FCC complied by devising a combination of narrowband, wideband and reserve allocations which would be open only to public safety entities in the 764-776/794-806 band. Now, however, in a Ninth Notice of Proposed Rulemaking, the FCC has proposed a radical departure from the usual licensing scheme.

What the Commission has in mind is to allocate 12 of the original 24 MHz to broadband uses (now defined as at least 1 MHz of spectrum). This reflects the perception that broadband communications capacity is of growing importance to the public safety community. The novel element, however, is that the spectrum would be licensed to a nationwide, non-profit, non-commercial entity. This would ensure nationwide compatibility of the network. Individual public safety entities would pay fees to the national entity for usage of the network. At the same time, commercial entities would be allowed to use the spectrum on an unconditionally preemptible basis for a fee. This commercial usage would help to offset the costs to the public safety community of supporting the network.

While the Commission should be credited with a willingness to consider new licensing structures, there are some key elements of the plan which remain unresolved. Is this proposed usage consistent with the legal mandate that the spectrum be used “solely or principally” for public safety services? How would the non-profit nationwide licensee raise the funds to construct a billion-dollar national system, particularly with no commercial involvement? Is 12 MHz of broadband enough for public safety? Will there be any “excess capacity” to lay off to commercial users and, if so, will they be willing to take it on an “unconditionally preemptible” basis? On what basis will multiple competing commercial carriers be able to use whatever excess capacity there is?

Initial comments are due at the FCC on February 28. These may help to sort out whether this is a viable plan in its current form or whether some other public safety/commercial carrier partnership might better facilitate a rapid deployment of 700 MHz spectrum to the benefit of both.

