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(Yet Another)
Public Safety Proposal
With A Private Trade-Off

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There seems to be no end of public spirited commercial enterprises who are offering to assist public safety entities in getting access to more spectrum – all they want in return is access to the spectrum themselves. After Cyren Call's failed attempt to get the FCC to set aside additional 700 MHz spectrum originally slated for auction, and M2Z's efforts to provide public safety uses in return for circumventing the auction process altogether in the 2 GHz band, a new player – Frontline Wireless – has stepped up to the plate with its own public safety-based proposal in reply to the Commission's ninth notice of proposed rulemaking on Public Safety in the 700 MHz band.

The Frontline proposal would set aside the E Block, adjacent to the public safety spectrum, for auction with certain conditions on the winning bidder's license. In return the licensee would have the exclusive right to use the excess capacity in the adjacent public safety spectrum. The conditions on the winning bidder would be that it:

Fund the construction of an interoperable and secure nationwide broadband network;

Allow Public Safety users priority access to the network;

Make capacity available on a wholesale basis;

Build the network according to “open access” principles; and

Enable roaming.

Frontline proposes to meet these conditions with a 4G, IP-based network. The roaming and open access *Carterfone* elements have been seen by some as a “poison pill” that would discourage large wireless incumbents from bidding on this block. These conditions would run with the license so that any future assignee would be bound by them. While these restrictions would discourage large incumbents from participating, they would, by keeping the ultimate price paid at auction low, encourage smaller ventures to bid on the license.

The Frontline proposal comes in response to the FCC's attempts to determine the best way to build out a public safety network in the 700 MHz band that will be surrendered by

broadcasters after the DTV transition. Specifically, Congress has mandated that 24 MHz of the spectrum be used for public safety purposes. The Commission accepted comments on how to best build out a broadband public safety network on 12 MHz of this block.

Frontline responded by seeking a national public-private partnership where the FCC would auction the commercial E Block (10 MHz of spectrum) adjacent to this 12 MHz of public safety spectrum on the condition that the winning bidder's build-out of the commercial network would support public safety use of the 12 MHz public safety block, subject to the conditions outlined by Frontline.

This plan averts some of the pitfalls associated with the Cyren Call or M2Z proposals by not requiring new legislation (Cyren Call) and not requiring waiver of the auction requirements found in 309(j) of the Communications Act (M2Z). However, Frontline's proposal was submitted as a late-filed *ex parte* comment – a highly unusual point in the rulemaking process at which to offer a radical new proposal. Observers anticipate that the FCC will seek some sort of further public comment on the proposal because not to do so might violate the requirements of administrative notice. However, because the FCC must begin its auction of the spectrum at issue no later than January, 2008, there is very little time for the agency to solicit comments, digest the comments, and develop a reasoned response.