



**September 2009**

## **700 MHz Public Safety Band Still In State of Flux**

*Robert Gurs*  
*gurs@fhhlaw.com*  
*703-812-0468*

The FCC continues to struggle with how to address the 700 MHz public safety broadband spectrum. Congress long ago mandated an allocation of 24 MHz of spectrum in that band for public safety, most of which has been designated for narrowband voice systems licensed to state and local governments. However, 10 MHz of that spectrum has been designated for a national public safety broadband network and assigned to a national licensee, the Public Safety Spectrum Trust (PSST). Current FCC rules provide for the adjacent “D Block” of commercial spectrum to be auctioned, and for the winner to enter into a network sharing agreement with the PSST. The result would have been a shared, public-private network spanning 20 MHz and built to meet public safety requirements, but serving both commercial and public safety customers.

However, the first attempt to auction the D Block failed last year, in part due to worsening economic conditions, but primarily due to the uncertainty surrounding the obligations that would be imposed on the auction winner. That failure, and delays resulting from the long post-election transition at the FCC, have left the door open for other options to surface.

The most immediate issue now facing the FCC is how to address the dozen or so petitions for waiver filed by cities, states, and some regional consortia seeking to construct their own broadband networks in spectrum licensed to the PSST. On August 14, 2009, the Commission released a Public Notice seeking comments on the petitions, and included a detailed set of questions. Responses are due by October 16.

One of the Commission’s biggest concerns is how to ensure interoperability among these various local systems and the yet-to-be-defined national public safety broadband network. All of the major public safety organizations have endorsed LTE as the technology standard for broadband communications, though that leaves open the question of whether the FCC itself should mandate the standard, or defer to the PSST or some other body to make that determination. Beyond LTE, there are a host of other technical

and operational issues that need to be resolved to ensure interoperability.

Other questions raised in the Public Notice include: the timing of the waivers relative to the ongoing proceeding to determine whether and how to re-auction the D Block; what type of authority would be given to local entities vis a vis the PSST; how to reconcile overlapping waiver requests from cities and states; and what types of entities should be allowed to use the public safety broadband systems.

Concurrent with this discussion is a movement by many public safety organizations to urge Congress to reallocate the D Block for public safety, thus creating a 20 MHz block. Public-private partnerships are still likely to be needed to construct and operate the systems, but the license would be in the PSST's hands.

Absent legislation, it will be up to the FCC to decide how to address public safety broadband requirements in conjunction with a D Block auction. Many alternatives are reportedly on the table, including: a new auction with more defined obligations; an unrestricted D Block auction with an expectation that the PSST would seek private partners through requests for proposals; breaking up the national public safety license into smaller pieces; and even a proposal to give back the public safety spectrum in exchange for lower cost service on commercial networks.

In any event, the next six months are likely to be critical for state and local governments, wireless carriers, service providers, equipment manufacturers, consultants, and others with a direct or indirect interest in the deployment of broadband spectrum in the U.S.