

(d) Sufficient capacity to meet the needs of public safety.

(e) Security and encryption consistent with state-of-the-art technologies.

(f) A mechanism to automatically prioritize public safety communications over commercial uses on a real-time basis consistent with the requirements of § 27.1307.

(g) Operational capabilities consistent with features and requirements that are typical of current and evolving state-of-the-art public safety systems.

(h) Operational control of the network by the Public Safety Broadband Licensee to the extent necessary to ensure that public safety requirements are met.

§ 27.1307 Spectrum use in the network.

(a) *Spectrum use.* The shared wireless broadband network developed by the 700 MHz Public/Private Partnership will operate using spectrum associated with the Upper 700 MHz D Block license in the 758–763 MHz and 788–793 MHz bands and the Public Safety Broadband License in the adjacent 763–768 MHz and 793–798 MHz bands.

(b) *Access to spectrum in the 758–763 MHz and 788–793 MHz bands.* The Upper 700 MHz D Block licensee shall lease the spectrum rights associated with the Upper 700 MHz D Block license to the Operating Company, pursuant to the Commission's spectrum leasing rules. The spectrum leasing arrangement shall be a long-term *de facto* transfer leasing arrangement for the entire remaining term of the Upper 700 MHz D Block license. If the Upper 700 MHz D Block license is renewed, the parties will be required to renew this spectrum leasing arrangement as well.

(c) *Access to spectrum in the 763–768 MHz and 793–798 MHz bands.* The Public Safety Broadband Licensee, which holds the Public Safety Broadband License pursuant to part 90 rules, must lease the spectrum usage rights associated with this license, pursuant to a spectrum manager leasing arrangement set forth in part 1 subpart X, to the Upper 700 MHz D Block licensee and the Operating Company for the entire remaining term of the Public Safety Broadband License to effectuate the

700 MHz Public/Private Partnership. The Upper 700 MHz D Block licensee and the Operating Company are the only entities that are eligible to lease the spectrum usage rights associated with the Public Safety Broadband License to operate on the 763–768 and 793–798 MHz bands. If the Upper 700 MHz D Block license is cancelled, this spectrum leasing arrangement will automatically terminate.

(d) *Commercial operations in the 763–768 MHz and 793–798 MHz bands.* Commercial operations in the 763–768 MHz and 793–798 MHz bands through the spectrum manager leasing arrangement shall not cause harmful interference to primary users (*i.e.*, public safety users) and cannot claim protection from harmful interference from the primary public safety operations in the 763–768 MHz and 793–798 MHz bands. The network providing commercial operations in the 763–768 MHz and 793–798 MHz bands through the spectrum manager leasing arrangement must be designed to automatically assign priority to public safety users, to the exclusion and/or immediate preemption of any commercial use on a dynamic, real-time priority basis, and to guarantee that public safety users suffer no harmful interference or interruption or degradation of service due to commercial operations in the 763–768 MHz and 793–798 MHz bands.

§ 27.1308 Organization and structure of the 700 MHz public/private partnership.

(a) The Upper 700 MHz D Block licensee, the Network Assets Holder and such other related entities as the Commission may require or allow shall be formed by the winning bidder of the Upper 700 MHz D Block license. The Upper 700 MHz D Block licensee, the Network Assets Holder, and related entities as the Commission may require or allow must be Special Purpose Bankruptcy Remote Entities formed to hold the license, to hold the shared network assets, or for such other purpose as the Commission may require or allow. The winning bidder of the Upper 700 MHz D Block license shall also form the Operating Company, which must also be a Special Purpose Bankruptcy Remote Entity. Upon issuance of the

Federal Communications Commission

§27.1315

Upper 700 MHz D Block license, the winning bidder will assign all of its rights and obligations under the NSA to the Upper 700 MHz D Block licensee, Network Assets Holder, the Operating Company, and any other related entities that the Commission may require or allow.

(b) The Upper 700 MHz D Block licensee and other related entities as the Commission may require or allow shall have the obligation to build out the Shared Wireless Broadband Network, as provided for in the NSA or otherwise as authorized by the Commission.

§27.1310 Network sharing agreement.

The relationship between the Upper 700 MHz D Block licensee, the Public Safety Broadband Licensee, and related entities as the Commission may require or allow will be governed by the Network Sharing Agreement (NSA) and such other separate agreements as the Commission may require or allow that are negotiated and entered into between the parties. The NSA must, at a minimum, include the following terms:

(a) All of the substantive rights and obligations of the parties relating to the NSA, as established by the Commission concerning the 700 MHz Public/Private Partnership.

(b) Network specifications that comply with §27.1305.

(c) The definition of “emergency” for purposes of emergency priority access.

(d) All service fees to be imposed for services to public safety, including fees for normal network service and fees for priority access to the D Block spectrum in an emergency.

(e) A detailed build-out schedule consistent with §27.1327, including coverage of major highways and interstates, as well as incorporated communities with a population in excess of 3,000.

(f) The right of the Public Safety Broadband Licensee to determine and approve the specifications of public safety equipment used on the network and the right to purchase its own subscriber equipment from any vendor it chooses, to the extent such specifications and equipment are consistent with reasonable network control requirements established in the NSA.

(g) The Upper 700 MHz D Block licensee must offer at least one handset suitable for public safety use that includes a seamlessly integrated satellite solution pursuant to the terms, conditions, and timeframes set forth in the NSA.

(h) Any major modification of the terms of the NSA, related agreements or documents, or such other agreements as the Commission may require or allow must be submitted to the Commission for prior approval. All other modifications must be submitted to the Chiefs of the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau for prior approval.

(i) The NSA shall require, in a separate agreement, the granting of an irrevocable and assignable right of first refusal to purchase the network assets if and whenever such assets are otherwise to be sold and an irrevocable and assignable option in favor of the Public Safety Broadband Licensee to purchase the network and all network assets if and whenever the Upper 700 MHz D Block license is cancelled or terminated, by reason of default or for any other reason, for a consideration equivalent to the fair market value of the tangible and intangible assets sold. This right and option shall be senior to, and have priority over, any other right, claim, or interest in or to the network or the network assets. The NSA shall also include a fair market valuation methodology to determine the fair market value of the shared wireless broadband network assets.

(j) The NSA must have a term, not to exceed 10 years from February 17, 2009, that coincides with the terms of the Upper 700 MHz D Block license and the Public Safety Broadband License.

§27.1315 Establishment, execution, and application of the network sharing agreement.

The following requirements and processes relate to the establishment, execution, and application of the NSA:

(a) *Approval of NSA as pre-condition for granting the Upper 700 MHz D Block License.* The Commission shall not grant the Upper 700 MHz D Block license until the winning bidder for the