

## § 27.1310

## 47 CFR Ch. I (10–1–10 Edition)

### § 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 June 13, 2009, that coincides with the terms of the Upper 700 MHz D Block license and the Public Safety Broadband License.

[72 FR 48854, Aug. 24, 2007, as amended at 74 FR 8878, Feb. 27, 2009]

### § 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 Upper 700 MHz D Block license has negotiated the NSA and such other agreements as the Commission may require or allow with the Public Safety Broadband Licensee, and the NSA and related agreements or documents have been approved by the Commission and executed by the required parties. Parties to the NSA must also include the Upper 700 MHz D Block licensee, the Network Assets Holder, and the Operating Company, as these entities are defined in § 27.4.

(b) *Requirement of negotiation.* Negotiation of an NSA between the winning

bidder for the Upper 700 MHz D Block license and the Public Safety Broadband Licensee must commence by the date the winning bidder files its long form application or the date on which the Commission designates the Public Safety Broadband Licensee, whichever is later, and must conclude within six months of that date. Parties to this negotiation are required to negotiate in good faith. Two members of the Commission staff, one from the Wireless Telecommunications Bureau and one from the Public Safety and Homeland Security Bureau, shall be present at all stages of the negotiation as neutral observers.

(c) *Reporting requirements.* The winning bidder for the Upper 700 MHz D Block license must file a report with the Commission within 10 business days of the commencement of the negotiation period certifying that active and good faith negotiations have begun, providing the date on which they commenced, and providing a schedule of the initial dates on which the parties intend to meet for active negotiations, covering at a minimum the first 30-day period. Beginning three months from the triggering of the six-month negotiation period, the winning bidder for the Upper 700 MHz D Block license and the Public Safety Broadband Licensee must jointly provide detailed reports, on a monthly basis and subject to a request for confidential treatment, on the progress of the negotiations throughout the remainder of the negotiations. These reports must include descriptions of all material issues that the parties have yet to resolve.

(d) *Submission of final agreement.* As soon as the parties have reached an agreement on all the terms of the NSA, related agreements or documents, and such other agreements as the Commission may require or allow, but not later than five business days after the six-month period for negotiation has expired, they must submit the NSA together with all agreements and related documents referenced in the NSA, for review and approval by the full Commission. The Commission will act on the NSA within 60 days of receipt. The Commission may approve the NSA in its entirety, approve with modifica-

tions, or require the parties to address additional terms or re-draft existing terms within a specified timeframe. After the NSA is approved, the parties must execute the NSA and such other agreements as the Commission may require or allow, and submit executed copies to the Commission within 10 business days of approval.

(e) *Submission of disputed issues.* If the parties have not reached agreement on all terms of the NSA and related agreements by the end of the six-month period, they must notify the Commission not later than five business days after the expiration of the six-month period of the terms on which they have agreed, the nature of the remaining issues, each party's position on each issue, whether additional negotiation is likely to produce an agreement, and, if so, a proposed deadline for reaching agreement on the NSA. Authority is delegated jointly to the Chiefs of the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau to resolve any remaining disputes.

(f) *Resolution of disputes.* Actions to resolve disputes may include, but are not limited to:

(1) Granting additional time for negotiation;

(2) Issuing a decision on the disputed issues and requiring the submission of a draft agreement consistent with the decision;

(3) Directing the parties to further brief the remaining issues in full for immediate Commission decision; and/or

(4) Immediate denial of the long-form application filed by the winning bidder for the Upper 700 MHz D Block license.

(g) *Default by winning bidder for Upper 700 MHz D Block license.* If the winning bidder for the Upper 700 MHz D Block fails to comply with negotiation or dispute resolution requirements or fails to execute a Commission-approved NSA, its long form application will be denied. If the long form application of the winning bidder of the Upper 700 MHz D Block license is denied for any reason, including as a consequence of an action taken pursuant to paragraphs (e) and (f) of this section, it will be deemed to have defaulted under §1.2109(c) of this

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chapter, and will be liable for the default payment specified in § 1.2104(g) of this chapter.

**§ 27.1320 Failure to comply with the NSA or the Commission's rules.**

(a) Failure to comply with the Commission's rules or the terms of the NSA may warrant cancelling the Upper 700 MHz D Block license and awarding it to a new licensee. In the event the Upper 700 MHz D Block license is cancelled, the Commission shall issue an order cancelling the license and announcing the process for awarding rights to the spectrum to a new licensee. Pending the award to a new licensee, the Commission shall issue the Operating Company a special temporary authority to prevent interruption of services provided over the Shared Wireless Broadband Network. The Operating Company must continue to provide both commercial service and services to public safety during the transition. Upon grant of a new license, the Commission shall establish the terms and timing under which the special temporary authorization shall be cancelled and the new Upper 700 MHz D Block licensee assumes the construction and operation of the network.

(b) If the Commission cancels or terminates the Upper 700 MHz D Block license, a fair market valuation of the shared wireless broadband network assets shall be performed immediately, pursuant to the fair market valuation methodology set forth in the NSA. In the event that the Upper 700 MHz D Block license is awarded to a new entity, the Public Safety Broadband Licensee's option to purchase the network and all network assets if and whenever the Upper 700 MHz D Block license is cancelled or terminated and its right of first refusal to purchase the network assets if and whenever such assets are otherwise to be sold shall be assigned to the new Upper 700 MHz D Block licensee and the new Network Assets Holder.

**§ 27.1325 Resolution of disputes after grant of the upper 700 MHz D block license.**

(a) The Upper 700 MHz D Block licensee, the Operating Company, the Network Assets Holder and the Public

Safety Broadband Licensee may at any time bring a complaint to the Commission based on a claim that another party to the NSA has deviated from the terms of the NSA, or a petition for a declaratory ruling to resolve the proper interpretation of an NSA term or provision. The Commission also may at any time, on its own motion, determine to address any material breach or interpret any NSA term or provision.

(b) The Commission shall have primary responsibility and jurisdiction for adjudicating disputes that arise following execution of the NSA. The Commission may, however, require the parties to first seek a settlement to the dispute or authorize the parties to resolve the dispute through litigation or other means. Breach of license terms, the NSA, or the Commission's rules may result in cancellation of the Upper 700 MHz D Block license, the Public Safety Broadband License, or both.

(c) The Chiefs of the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau are delegated joint responsibility for adjudicating disputes.

**§ 27.1327 Construction requirements; criteria for renewal.**

(a) The Upper 700 MHz D Block licensee shall comply with the applicable construction requirements of § 27.14.

(b) The Upper 700 MHz D Block licensee shall comply with the applicable procedures and criteria for license renewal of § 27.14.

**§ 27.1330 Local public safety build-out and operation.**

(a) The Upper 700 MHz D Block licensee and the Operating Company through its lease arrangements shall, except in the two limited circumstances set forth herein, have the exclusive right to build and operate the Shared Wireless Broadband Network.

(b) *Rights to early build-out in areas with a build-out commitment.* In an area where the Upper 700 MHz D Block licensee has committed, in the NSA, to build out by a certain date, a public safety entity may, with the pre-approval of the Public Safety Broadband Licensee and subject to the requirements set forth herein, construct a broadband network in that area at its