

§ 90.1410 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 of this chapter.

(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 of this chapter, 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.

§ 90.1415 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 Public Safety Broadband Licensee must negotiate an NSA and such other agreements as the Commission may require or allow with the winning bidder for the Upper 700 MHz D Block license. The NSA and related agreements or documents must be approved by the Commission and then executed by the relevant 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 § 90.7.

(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