

DRAFT PROPOSED TERM SHEET  
FOR AGREEMENT BETWEEN LOCAL BUILDER  
AND PUBLIC SAFETY BROADBAND LICENSEE

**NOTE:** This is a Term Sheet describing the proposed key points of a future Agreement between Local Builder and the Public Safety Broadband Licensee (PSBL); it is not an effort to establish contractual language, but rather to describe the intent of parties on key issues. Though it refers to “this Agreement,” it is not an Agreement in and of itself, but rather a description of terms that may be included in the future, contemplated Agreement. This Term Sheet refers throughout to the requirements developed by the NPSTC 700 MHz Broadband Task Force (BBTF) it should be understood that when an Agreement is ultimately developed and agreed to by the Local Builder and the PSBL, some version of those requirements will have been presented by NPSTC to the PSBL, and the PSBL will have endorsed some version of those requirements. Accordingly, the Agreement will refer to such requirements by a different name, such as “Interoperability Requirements,” “Technical Requirements,” or other agreed-upon terminology.

**1. Agreement.**

- a. This Agreement is contingent upon FCC granting waivers for Early Build-Out and providing any authority needed by the PSBL to enter into such an Agreement for the Local Builder use of the PSBL spectrum. It is also contingent upon requirements imposed by the FCC. The term “Local Builder” refers to any eligible public safety agency or group thereof, whether local, regional, or statewide in nature, that obtains authority by rule or waiver to deploy their own 700 MHz broadband public safety system. Such local system would be constructed as a local portion of the national 700 MHz public safety broadband network.
- b. PSBL permits Local Builder to use within Local Builder’s geographic area the 700 MHz public safety broadband allocation for which the PSBL holds the FCC license. The Local Builder may use up to but no more than the full amount of spectrum covered by the PSBL license. Broadband may not be deployed in the guard band segment of the PSBL’s licensed spectrum.

- c. PSBL allows Local Builder to exercise PSBL's rights and obligations under the FCC license to the extent permitted under the legal framework adopted for this Agreement (e.g. Secondary Market *de facto* transfer of control or Spectrum Manager framework—TBD). This allowance would be subject to any rights or authority the PSBL would be required to maintain as the licensee. The guiding principle for this allowance is that the Local Builder would, as much as possible under FCC rules and subject to the Task Force Recommendations, take on the rights and obligations of the PSBL license in the Local Builder's geographic area.
- d. To ensure a nationally interoperable network, the PSBL also agrees that any portion(s) of the national network that it causes to be built will also be built in compliance with the Task Force Recommendations, to the extent those Recommendations are endorsed and/or allowed by the FCC.
- e. Local Builder agrees to use the spectrum to build and operate a local portion of the national public safety broadband network within its geographic area consistent with FCC rules and the minimum technical, operational, and governance requirements developed by the NPSTC BBTF ("Task Force Recommendations"), to be attached to this Agreement.
  - i. Local Builder and PSBL agree that local portions of the national network in PSBL spectrum under this Agreement may be used by any eligible users as defined by the FCC, pursuant to prioritization determined by the Local Builder.
  - ii. There is no security instrument (such as a letter of credit) associated with this Agreement for the use of the spectrum; Local Builder's consideration for use of the spectrum is agreeing that it will comply with the Task Force Recommendations.
  - iii. Local Builder agrees to meet reasonable Build-Out schedule as defined by the FCC in waiver grants. In exchange, Local Builder receives under this Agreement (see "Term") the use of the spectrum for as long as the PSBL holds the national license.
  - iv. Local Builder and PSBL recognize the need to establish a mechanism for considering and adopting future requirements to ensure and improve national interoperability. Such a mechanism will not allow PSBL unilaterally to impose such requirements upon

Local Builder; likewise, adoption of future requirements may not require consensus among the PSBL and all Local Builders. Local Builder and PSBL agree to work in good faith to establish and participate in such a mechanism.

- v. Local Builder is responsible for the costs of building and operating the local portion of the network; unless otherwise specified in this Agreement or via subsequent agreement, the Local Builder has no financial obligation to the PSBL.

## **2. Scope of Spectrum Usage Rights.**

- a. Local Builder receives maximum usage rights permitted under FCC rules and this Agreement, including the attached Task Force Recommendations.

## **3. Term.**

- a. Starting from the effective date of this Agreement and continuing as long as the PSBL holds the national license, including any renewals or extensions of the PSBL's current license term

## **4. Termination.**

- a. Either party may terminate upon written notice if the other party breaches by following this process:
  - i. Written notice of noncompliance
  - ii. Up to 60 days to cure unless it is an issue that requires immediate attention
  - iii. Written notice of failure to cure and termination.

## **5. Durability of Local Builder Use of Spectrum**

- a. While Local Builder remains in compliance with FCC rules and Task Force Recommendations, PSBL may not terminate this Agreement or otherwise curtail Local Builder's use of the spectrum in order to effectuate a different network using the spectrum; if the PSBL begins to deploy a network in the 700 MHz public safety broadband allocation, either with a commercial partner or otherwise, it must not infringe upon the Local

Builder's use of the spectrum in the Local Builder's geographic area during the term of this Agreement.

- b. Should the D block be successfully auctioned, the network sharing agreement between the PSBL and the D Block winner(s) must respect the Local Builder's rights to the spectrum for the duration of this Agreement as long as the Local Builder meets FCC rules as well as the Task Force Recommendations of this Agreement. Local builder agrees to negotiate in good faith with applicable D Block winner, with input from the PSBL, to develop any mutually agreeable potential partnership between the D Block winner and the Local Builder, as operational needs dictate.
- c. In the event that the D Block is allocated to public safety and is included within the PSBL's license, the PSBL spectrum addressed in this Agreement includes the D Block as well as the current public safety allocation.

#### **6. Compliance with FCC Rules and Requirements of This Agreement.**

- a. PSBL may terminate this Agreement if Local Builder violates an FCC rule that, if the PSBL had committed such violation, would have been grounds for the FCC terminating the PSBL's license. Same notice and cure period applies as to Termination under item 4.
- b. PSBL also may terminate this Agreement if Local Builder does not comply with the Task Force Recommendations set forth in the Appendix. Same termination notice and cure period apply as in item 4.
- c. PSBL shall have the right to make scheduled inspections to ensure compliance with this Agreement, including the Task Force Recommendations.

#### **7. Representations and Warranties.**

- a. Local Builder is duly authorized to enter into this Agreement and meet its requirements.
- b. PSBL will keep the license from becoming encumbered, timely file for license renewal, and maintain license in good standing.

## **8. Regulatory Compliance.**

- a. Both parties will remain compliant with FCC rules and will notify each other if they become or expect to become non-compliant.
- b. The requirements for regulatory compliance will be dependent on the legal structure defined in the FCC's rules and/or waiver conditions, whether the structure be a secondary markets (*de facto* transfer of control) approach or a spectrum manager approach. To the extent the FCC requires any filings or information to be submitted by the Local Builder, Local Builder agrees to provide such filings or information to FCC on a timely basis after coordinating with the PSBL.
- c. The PSBL can rely upon Local Builders' operations in demonstrating compliance with any construction or substantial service requirements.

## **9. Indemnification.**

- a. To the extent relevant, both parties indemnify each other from third-party liability, except where loss arises from negligent or intentional acts or omissions.
- b. Boilerplate on Defense of Third Party Claims, No Consequential Damages, and Survival of Indemnification provisions.

## **10. Miscellaneous—basic boilerplate, including:**

- a. Severability—yes.
- b. Successors and Assigns—yes, Agreement may be assigned with consent of the Parties.
- c. Governing Law—leave it to the individual Local Builder, or make the default the home jurisdiction of the PSBL (DC).
- d. Specific Performance—yes, absolutely.

Appendix: Task Force Recommendations