

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

In the Matter of )  
 )  
Implementing a Nationwide, ) PS Docket No. 06-229  
Broadband, Interoperable Public )  
Safety Network in the 700 MHz )  
Band )

**COMMENTS OF THE**  
**NATIONAL TELECOMMUNICATIONS AND INFORMATION ADMINISTRATION**

As the President’s principal adviser on communications policies, the National Telecommunications and Information Administration (NTIA) respectfully submits these comments on behalf of the Executive Branch.<sup>1</sup> NTIA here addresses the potential implementation of various petitions for waiver pending before the Commission proposing to deploy 700 MHz public safety broadband networks, without regard to the merits of the waivers themselves or ongoing regulatory proceedings in the 700 MHz band.<sup>2</sup> As a threshold matter, the Administration believes that the Commission should first resolve the open policy questions

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<sup>1</sup> NTIA is the Executive Branch agency principally responsible for the development of communications policies pertaining to the Nation’s economic and technological advancement and to the regulation of the communications industry, for the coordination of the communications activities of the Executive Branch, and for the effective presentation of the views of the Executive Branch to the Commission. *See* 47 U.S.C. § 902 (b)(2). In formulating these comments, NTIA also incorporated input from the Interdepartment Radio Advisory Committee (IRAC) and other Executive Branch entities.

<sup>2</sup> Public Notice, *Public Safety and Homeland Security Bureau Seeks Comment on Petitions for Waiver to Deploy 700 MHz Public Safety Broadband Networks*, DA 09-1819, 24 F.C.C. Rcd. 10814 (2009).

raised in this docket before deciding these petitions.<sup>3</sup> This would ensure that the Commission's rulings and the petitioners' actions implementing them were made in the appropriate context and capable of integration into a nationwide communications capability.

If the Commission nevertheless decides to act on the waiver requests, it should explicitly reaffirm the existing rule that the Public Safety Broadband Licensee (PSBL) has discretion to approve Federal agency use of public safety broadband channels.<sup>4</sup> Federal agencies help ensure the Nation's safety every day. They partner with state, local, and tribal public safety and law enforcement, stand ready to intervene in the case of extraordinary disasters, and fulfill unmet public safety needs in carrying out their primary duties. All agencies providing public safety services – state, local, tribal, and Federal – will benefit from access to an interoperable broadband capability. The Commission should condition any waivers granted on compliance with the existing rule permitting the PSBL to approve Federal use. In addition, to ensure a truly interoperable communications capability, the Commission should require that any waivers granted comply with the technology standard approved by the PSBL.<sup>5</sup>

In weighing the needs of the public safety community for broadband services, the Commission must keep in mind the Federal contribution to our Nation's public safety response capabilities. Federal agencies support and partner with state, local, and tribal agencies. The Department of Homeland Security (DHS), in its oversight of customs and immigration,

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<sup>3</sup> *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands; Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, Third Further Notice of Proposed Rulemaking, 23 F.C.C. Rcd. 14301(2008) (Third Further Notice); Second Further Notice of Proposed Rulemaking, 23 F.C.C. Rcd. 8047 (2008).

<sup>4</sup> 47 C.F.R. § 2.103(c).

<sup>5</sup> *See generally*, Comments of APCO on Petitions for Waiver to Deploy 700 MHz Broadband Networks, at 6 (Sept. 22, 2009).

safeguards our Nation's ports of entry and border regions.<sup>6</sup> On our coasts and inland waterways, the United States Coast Guard (USCG) engages daily in rescue, emergency, and enforcement operations. The Department of Justice (DOJ) supports widespread public safety and law enforcement efforts. The Department of Defense (DOD) runs hospital emergency rooms, law enforcement units, and fire departments on military installations throughout the country. These agencies continually interoperate with their state, local, and tribal counterparts.<sup>7</sup>

Federal agencies increasingly participate in cross-jurisdictional mutual aid agreements; task force planning; and information, infrastructure, and system sharing.<sup>8</sup> Federal, state, and local agencies have all collaborated to secure major events including the Republican and Democratic National Conventions, the Super Bowl, and the World Series.

When requested, DOD provides relief, along with DHS, in disasters like Hurricanes Katrina and Rita and other declared emergencies.<sup>9</sup> Such catastrophic incidents would otherwise overwhelm local responders. Moreover, broadband partnerships would provide additional capabilities, including video applications, for all responders during such incidents.

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<sup>6</sup> Ports of entry - where it is lawful to enter the country - may be located in the interior, as well as at the borders.

<sup>7</sup> DOJ, for example, runs the High-Risk Metropolitan Interoperability Project: 25 Cities Project, which brings together key stakeholders from all levels of government in 25 urban areas that are likely targets of attack. "High-Risk Metropolitan Areas Interoperability Project: The 25 Cities Project" (May 25, 2005), available at [http://www.cops.usdoj.gov/files/RIC/Publications/wirelesscomm\\_ritter.pdf](http://www.cops.usdoj.gov/files/RIC/Publications/wirelesscomm_ritter.pdf). DOJ also participates in the National Major Gang Task Force. "National Major Gang Task Force," available at <http://www.nmgtf.org/leadership>.

<sup>8</sup> See, e.g., Interoperability Montana Project, <http://interop.mt.gov/>; Alaska Land Mobile Radio, <http://www.ak-prepared.com/almr/>; WYOLink, <http://wyolink.state.wy.us/>.

<sup>9</sup> See generally, "The Federal Response to Hurricane Katrina: Lessons Learned" at 42-43 (Feb. 2006), available at <http://www.whitehouse.gov/reports/katrina-lessons-learned.pdf>; DOD Directive No. 3025 (Feb. 1, 1997) (military assistance to civil authorities for civil disturbances, acts of terrorism, disasters); Robert T. Stafford Disaster Relief and Emergency Assistance Act, 42 U.S.C. §§ 5121-5207 (Stafford Act) (Presidential authority to issue major disaster declarations authorizing Federal aid to states); <http://www.fema.gov/about/index.shtm> (Federal Emergency Management Agency of Department of Homeland Security principally administers Stafford Act and maintains the National Response Framework (comprehensive, coordinated approach to a domestic incident involving responders of all jurisdictional levels)).

Federal agencies shoulder a number of public safety roles which will continue in a broadband environment.<sup>10</sup> As state, local, and tribal systems adopt broadband capabilities, their Federal counterparts must be able to do the same. The goals of the public safety community can only be met through partnerships involving all levels of government.<sup>11</sup> The public safety broadband spectrum at 700 MHz presents a unique opportunity for a nationwide network in which all levels of government interoperate. Federal agencies' support for local and state emergency response, disaster relief, and law enforcement operations extends throughout the continental United States and its possessions. The Department of Energy (DOE) for example, operates power plants, nuclear detection facilities, and other systems in the full range of population environments, from extremely remote areas to major cities. DOE's access to the network would improve interoperability and mutual aid response.

To the extent state, local, and tribal partners do not build out broadband capacity in critical, hard-to-serve border regions, remote territories, or other regions where there is a coverage gap, Federal agencies may be willing to deploy. Thus, Federal participation might contribute infrastructure to help complete a national public safety broadband network. Such arrangements not only promote efficient spectrum management, they also address the compelling need for seamless public safety communications and interoperability.<sup>12</sup>

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<sup>10</sup> Department of Commerce, *Federal Strategic Spectrum Plan* (Mar. 2008), at 4, B137-139, B-143, available at <http://www.ntia.doc.gov/reports/2008/FederalStrategicSpectrumPlan2008.pdf> (increasing Federal broadband requirements).

<sup>11</sup> Department of Commerce, *A Public Safety Sharing Demonstration*, (June 2007), at xiv, available at <http://www.ntia.doc.gov/reports/2007/NTIAWARNReport.htm>.

<sup>12</sup>*Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, Ninth Notice of Proposed Rulemaking, 21 FCC Rcd. 14837 (2006) (“Joint use of a common infrastructure by federal, state and local public safety agencies also could facilitate interoperability and coordination between those sectors.”)

The existing rule permits the PSBL flexibility to establish broad-reaching agreements, as well as leasing arrangements and other forms of sharing, with Federal agencies.<sup>13</sup> The Commission has wisely recognized that the PSBL needs the discretion to facilitate use by its Federal partners, while retaining the ability to hold the public safety broadband license.<sup>14</sup> In deciding the waiver petitions, the Commission must clarify that this rule continues to apply.<sup>15</sup>

While meaningful Federal participation in a public safety broadband network requires that any jurisdiction granted a waiver adhere to the existing rule, local, state and tribal jurisdictions should have some flexibility to tailor access by local responders to the emergency they are confronting. Different emergency situations present different threats to public safety, including some which involve transportation services or infrastructure.<sup>16</sup> Several petitions, for example, envision granting broadband access to transportation agencies.<sup>17</sup> Local and regional

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<sup>13</sup> Third Further Notice, *supra*, note 3, 14407-08, ¶¶ 331-32; *see generally*, 47 C.F.R. §§ 1.9030 (d)(2); 1.9048; 90.20 (h) (leasing rules).

<sup>14</sup> Thus, while 47 U.S.C. § 337 (f)(1) pertains to the entities entitled to hold a license, 47 C.F.R. § 2.103 (c) pertains to Federal agency use of spectrum, a more limited authorization.

<sup>15</sup> The language in the Boston and City of New York petitions appears problematic in this regard. City of Boston Amended Request for Waiver (May 28, 2009) at 8, *erratum* (June 19, 2009); City of New York Petition for Waiver (June 8, 2009) at 8 (omitting any reference to 47 C.F.R. § 2.103(c)). Federal agencies maintain public safety-related operations in these cities. They communicate with their local public safety counterparts on a continual basis. Particularly in such high-profile cities, all levels of public safety response—local, state, and Federal—will need to interoperate in public safety broadband spectrum.

<sup>16</sup> In 2005 terrorists bombed London subways, killing 79 and injuring 700 persons. Glenn Frankel, “London Subway Blasts Almost Simultaneous, Investigators Conclude,” *Wash. Post* (July 10, 2005), *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2005/07/09/AR2005070901248.html>. This summer, a subway accident in Washington, D.C. killed nine and injured 70. Lena H. Sun & Lyndsey Layton, “Red Line Train Operator Used Brakes in Failed Bid to Stop Six-Car Train,” *Wash. Post* (June 24, 2009) *available at* <http://www.washingtonpost.com/wp-dyn/content/article/2009/06/23/AR2009062300653.html>.

<sup>17</sup> *See, e.g.*, Amended Request for Waiver of the City and County of San Francisco, the City of Oakland, and the City of San Jose (“Bay Area Cities”) (Mar. 24, 2009) at 6; Request for Waiver from the State of Hawaii (Aug. 13, 2009) at 4. *Cf.* Request for Waiver, District of Columbia (June 26, 2009) at 9 (pilot program in which D.C. Department of Transportation, Federal agencies, D.C. fire and EMS and several other agencies participate). In many instances it is the state departments of transportation that own and operate the telecommunications infrastructure supporting police, fire, and emergency services personnel.

jurisdictions and the local incident commanders under their authority are well positioned to determine whether access to transportation or other critical infrastructure professionals should be afforded in particular circumstances. Subject to PSBL approval, petitioners should be permitted the flexibility to permit non-traditional responders such as transportation personnel to access broadband capability where the emergency response so requires.

Nationwide interoperability so critical in acute, multi-jurisdictional emergencies requires that agencies use compatible technologies. Public safety agencies must be able to “roam” seamlessly across jurisdictional boundaries or across the country to assist sister agency disaster or other relief efforts. These needs necessitate uniform national technical standards and the compliance of any local or regional system with these standards. Moreover, nationwide uniformity would allow systems to be interchangeable, create economies of scale that would lower equipment costs, and increase opportunities for new application development. If the Commission decides to move forward with waivers, it therefore should condition them on conformity to the technology standards the PSBL approves.<sup>18</sup>

In conclusion, the Administration believes that the Commission should first resolve the open policy questions raised in this docket before deciding the waiver petitions. If the Commission grants any petitions for waiver to deploy 700 MHz public safety broadband networks prior to the final resolution of the 700 MHz D Block and public safety broadband allocations, the Commission should require petitioners: to (1) adhere to the existing rule allowing the PSBL the flexibility to permit Federal public safety use, and (2) comply with any technology

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<sup>18</sup> Representatives from local, state, and Federal jurisdictions, for example, have participated in the 700 MHz Broadband Task Force. This Task Force recently issued a report containing certain technical recommendations. National Public Safety Telecommunications Council, “700 MHz Public Safety Broadband Task Force Report and Recommendations,” *available at* [http://www.npstc.org/documents/700\\_MHz\\_BBTF\\_Final\\_Report\\_0090904\\_v1\\_1.pdf](http://www.npstc.org/documents/700_MHz_BBTF_Final_Report_0090904_v1_1.pdf).

standards the PSBL may adopt.

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