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

In the Matter of	)	
	)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in The 700 MHz Band	)	PS Docket No. 06-229
	)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State And Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86

COMMENTS OF THE NATIONAL ASSOCIATION OF TELECOMMUNICATIONS OFFICERS AND ADVISORS

I. INTRODUCTION

The National Association of Telecommunications Officers and Advisors ("NATOA") submits these comments in response to the Ninth Notice of Proposed Rulemaking (the "Ninth NPRM"), released December 20, 2006, in the above-captioned proceeding.

NATOA's membership includes local government officials and staff members from across the nation whose responsibility is to develop and administer cable franchising and telecommunications policy for the nation's local governments.

In the Ninth NPRM, the Commission proposes a plan for a comprehensive, nationwide, broadband, interoperable public safety network in the 700 MHz band. While contributing to the ongoing debate on how to best achieve universal public safety

interoperability, the Commission's proposed plan has many shortcomings, not the least of which is that many of the provisions exceed the statutory authority of the Commission.[1]

Further, it is presumptuous of the Commission to take on the role of policy-maker and propose a national public safety broadband plan. The Commission is a regulatory body, charged with the execution and enforcement of the provisions of the Communications Act. The National Telecommunications and Information Administration ("NTIA") is charged with establishing and issuing policy regarding allocations and regulations governing the federal spectrum.

But more importantly, the Commission's plan excludes local communities in the decision-making process. Without local government input, it is highly unlikely a national public safety broadband system would meet state, local and regional first responder needs. It is simply beyond dispute that no single national licensee could ever master the knowledge needed to coordinate and meet all the goals and expectations of every public safety agency in the country.

While our nation has been conspicuously slow in developing a national broadband policy – which would necessarily include a public safety component – it is not the Commission's role to do so. Yet, as recent history so amply demonstrates, the lack of statutory authority appears to have little effect on the Commission.

The Commission asserts that its proposal is "consistent with national priorities focusing on homeland security and broadband and our commitment to ensure that emergency first responders have access to reliable and interoperable communications."

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[1] Comments of RCC Consultants, Inc., on the Ninth Notice of Proposed Rulemaking and the Proposal of the Federal Communications Commission for the Implementation of a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, filed in PS Docket No. 06-229 and WT Docket No. 96-86, February 15, 2007 at 10.

In reality, the plan puts our nation's first responders in the back seat, taken for a ride by private commercial interests. Accordingly, we file these comments with the Commission to register our opposition to the Ninth NPRM.

II. INTEROPERABILITY

It is important to emphasize – from the outset – that NATOA favors the goal of achieving nationwide interoperability for our first responders. Our Policy Platform Statement supports "the development of effective local information infrastructures" and asserts that "local governments must have the ability to require that voice, video, and data communication networks provide sufficient spectrum and resources to meet local community needs, to ensure the public's safety and convenience, and provide important and critical communication services." As a representative of local governments, NATOA is in the unique position of knowing firsthand how important telecommunications services are to our police, fire, and other emergency response personnel. We recognize how vital it is that our first responders – from any jurisdiction – have the ability to communicate with one another during times of man-made or natural disasters, such as 9/11 and Hurricane Katina. Make no mistake about it, local governments have an important role to play in this discussion, especially when one considers the fact that the overwhelming number of first responders are local employees. In fact, it is estimated that approximately 80% of all first responders work for local agencies.[2]

It is important to focus on what the Commission's plan purports to do, namely, to help insure that our "emergency first responders have access to reliable and interoperable communications." What is so curious about the Commission's proposal is that it makes a

[2] Testimony of David Billstrom, CEO and Chairman, National Interop, Inc., before the United States Senate Commerce, Science & Transportation Committee, February 8, 2007. http://commerce.senate.gov/public/_files/BillstromCommerceWrittenStmt20070208.pdf

leap of faith in declaring that a new, nationwide broadband system will solve the problems of public safety interoperability without so much as discussing what the fundamental reasons for the problem are in the first place. Interoperability is "the ability of public safety personnel to communicate by radio with staff from other agencies, on demand and in real time."[3] How can we seriously discuss the Commission's plan without first addressing the fact that our first responders from one jurisdiction cannot talk with those from a neighboring community in times of an emergency?

II. THE PROPOSAL

As a result of the enactment of the Digital Television Transition and Public Safety Act ("DTV Act"), public safety entities will gain access to an additional 24 MHz of spectrum in the 700 MHz band. The 700 MHz band is attractive to public safety entities in that it can function over long distances and penetrate structures. Even the Commission recognizes the "instrumental role" that the 700 MHz band can play in meeting the "unique communications needs of public safety."[4]

The Commission's plan proposes to allocate 12MHz from wideband to broadband use and put control of this spectrum – on a nationwide basis – into the hands of a third-party licensee. The licensee would be permitted to use the assigned spectrum to provide public safety entities with voluntary access to a public safety broadband service on a fee-for-service basis. The licensee would also be permitted to provide "unconditionally preemptible" access to this spectrum to commercial service providers on a secondary

[3] Public Safety and Wireless Communications Interoperability, prepared by the Public Safety Wireless Network (PSWN) program, www.pswn.gov.
[4] Order in Matter of Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use, RM No. 11348, adopted and released November 3, 2006.

basis. Furthermore, the licensee would have the right to operate on a secondary basis on the narrowband public safety spectrum in the 700 MHz band.

The proposal seeks to achieve a number of objectives, including: 1) increased use of broadband and services; 2) nationwide interoperability; 3) adequate funding; 4) efficient use of spectrum; 5) robustness; and 6) flexible modern architecture.

Clearly these are important objectives. And there is no question that problems exist with the current system of allocating public safety spectrum. But the Commission's plan is flawed in a number of ways, including the provision that puts control of the public safety broadband system into private hands.

Single National Public Safety Licensee

The Commission believes that giving control over a centralized, national public safety broadband system to a single licensee is the answer to achieving universal interoperability. The licensee would be responsible for the design and implementation of the system, build-out and maintenance of the system, and coordination of use by local, state, and federal public safety agencies. Unfortunately, the plan fails to acknowledge the many problems and unknowns inherent in such a scheme.

For example, it is suggested that the licensee have "experience with public safety frequency coordination, not-for-profit status, and the ability to directly represent all public safety interests." But the licensee would also have to have extensive financial management skills and the confidence of Wall Street in order to attract private investment to construct a multi-billion dollar communications infrastructure. The licensee would have to be able to attract and hire experts in a number of fields to ensure the system's vitality in an ever-changing technological environment. Quite simply, the challenges

faced by a single national public safety licensee would be daunting and finding a qualified candidate would be difficult.

It is also ironic that, after years of publicly stating that a lack of competition in the marketplace delays deployment of advanced telecommunications services, the Commission now advocates the establishment of a nationwide public safety broadband monopoly. Under such a regime, there would simply be no incentive to provide prompt, efficient service to all areas of the nation.

Along with advocating such a monopolistic approach, the Commission goes farther, taking it upon itself to "call the shots" as far as the operational aspects of the system are concerned. The Commission lacks the expertise to manage such a system. By casting itself in this role, the Commission is once again second –guessing the experience and knowledge of local agencies that have a solid background in build-out, interoperability, and system redundancy.

But beyond the difficulties in finding a suitable licensee, the very concept of putting local licensing control of public safety spectrum into the hands of a third party will simply not sit well with public safety advocates. Indeed, this concept has been questioned by Harlin McEwen, Chairman of the Communications & Technology Committee of the International Association of Chiefs of Police.[5]

[5] Testimony of Harlin R. McEwen, Chairman, Communicatyions & Technology Committee, International Association of Chiefs of Police (IACP), before the United States Senate Commerce, Science & Transportation Committee, February 8, 2007. http://commerce.senate.gov/public/_files/Testimony_HarlinMcEwen_ChiefsofPolice_SenateTestimonyWrittenMcEwen020807.pdf

Funding Options

It is anticipated that the national public safety licensee would charge fees for its services, which would permit build-out and maintenance of the system and would provide incentives for the "efficient and fair use" of the spectrum.

Yet this aspect of the plan fails to recognize three fundamental flaws with this financing concept: 1) it assumes that public safety entities nationwide would be willing to give up their existing – and expensive – networks to pay for the use of an untested system; 2) it assumes that commercial operators would invest in the construction of such a network which would be subject to "unconditional preemption;" and 3) it assumes that public consumers would subscribe to a broadband service that would be subject to "unconditional preemption."

The Commission's plan is premised on the assumption that the network would be the primary public safety broadband system used by entities nationwide. But jurisdictions across the country have invested millions of taxpayer dollars to build their own public safety networks and will not willingly abandon them. Furthermore, according to a recent SAFECOM survey, nearly one-half of the public safety entity respondents reported that they were planning to replace their primary wireless systems within a 2- to 5-year timeframe, and another quarter were planning to do so within 6 to 10 years.[6] Because the proposed national public safety broadband system would take years to build (the proposal is striking in its silence on the issue of a construction schedule), it is easily conceivable that roughly 75% of all public safety entities would have existing primary communications systems by the time the new national system was up and operational.

[6] SAFECOM 2006 National Interoperability Baseline Survey, p. 44. http://www.safecomprogram.gov/NR/rdonlyres/40E2381C-5D30-4C9C-AB81-9CBC2A478028/0/2006NationalInteroperabilityBaselineSurvey.pdf

Local jurisdictions would be loath to abandon their own networks. As a result, it is reasonable to project that only a small number of the nation's public safety entities would subscribe to the new system. This is hardly the nationwide use of the system that the Commission's plan envisions. With the prospect of a large majority of the nation's public safety entities foregoing use of the new system, fees on other public safety users – and private consumers – would necessarily have to be raised in order to meet operating costs. But with these increased costs, many smaller, economically challenged communities would be priced out of the market.

Even Morgan O'Brien, Chairman of Cyren Call Communications, a proponent of a somewhat similar nationwide, wireless broadband network for joint public safety and commercial use, has stated that one of the greatest challenges facing such a system would be "balancing public safety coverage requirement with the implacable economic realities of network costs." He goes on to state that "[t]here is no viable business case for a shared 12 MHz nationwide broadband network."[7]

Furthermore, the question that must be answered is whether commercial interests will be willing and able to put money into a public safety broadband system – with its unique construction requirements and added costs – where they may, at any time, be "bumped" to make room for public safety uses. And who is going to play gatekeeper and kick these commercial users off during times of emergencies? Will cessation of service be immediate? What happens if the commercial user fails to cease service?

[7] Testimony of Morgan O'Brien, Chairman, Cyren Call Communications, before the Senate Commerce, Science & Transportation Committee, February 8, 2007. http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=1813&Witness_ID=6484

Finally, the plan fails to take into account the risk that the average broadband consumer would subscribe to a new service where it is a given fact that service may, at any time, be "unconditional preempted." Perhaps the only reason a consumer would subscribe to such a service would be cost. But based upon the above discussion, it appears unlikely the cost of such a service would be less – or even comparable – to other competing services.

Build-out Requirements

It is ironic that the Commission's plan calls for build-out requirements after publicly chastising local communities for pursuing reasonable build-out requirements of new video service providers. But in any event, it is somewhat comforting to see that the Commission recognizes that build-out requirements are simply a must in order to achieve nationwide deployment of broadband, especially in rural and under-developed areas of the country. However, the Commission's plan is sorely lacking in detail on how it will require build-out. Perhaps the Commission already realizes that full build-out is doomed when a plan such as this is so dependent upon private investment and the industry's mantra of "return on investment."

Morgan O'Brien stated, "[M]ore than twenty-five years of commercial wireless deployment has also made it clear that no business case has emerged to induce commercial carriers to build out their networks beyond areas of relative population density . . . . Yet, the individuals in those communities still require police, fire, emergency medical and other vital governmental services."[8] How will the single licensee ensure build-out to all areas of the country? How will the Commission oversee such a requirement? And what, if anything, would the Commission do in the event the licensee

[8] *Id.*

fails to live up to this requirement? Revoke the license? Merely fine the licensee for its failure to follow through with one of the most important aspects of the proposed plan? Can the public safety community trust the Commission to enforce build-out requirements when it has so often stated that private financial interests outweigh a local community's right to require service to all its residents?

Secondary Use of Public Safety Spectrum in the 700 MHz Band

This aspect of the Commission's plan would put control of all 24 MHz of public safety spectrum in the 700 MHz band into the hands of a third-party licensee. Such a proposal is totally unacceptable and unless and until a national public safety broadband network is up and running, it is premature and inappropriate to even discuss the potential of secondary operations in the other 12 MHz of public safety spectrum. Furthermore, the proposal fails to discuss the real danger of interference that secondary use may cause. Any potential benefits from the secondary use of this spectrum is clearly outweighed by the risks such use would pose to public safety communications.

Is there Enough Spectrum?

More spectrum won't help when first responders are unable to talk to one another.[9] The Commission's plan argues that of 12 MHz of spectrum in the 700 MHz band is sufficient to build a nationwide, public safety broadband network. And some agree with the assessment. Speaking as President of CTIA, Steve Largent testified before the Senate Committee on Commerce, Science & Transportation that "the current interoperability challenges faced by first responders is not based on a lack of spectrum" and that "the 24 MHz of 700 MHz spectrum that already is allocated to public safety

[9] Asa Hutchinson, Communications disconnect, The Washington Times, Sept. 28, 2005.

more than sufficient to meet the date rates and bandwidth requirements for an interoperable broadband service."[10]

But others disagree, contending that the Commission's proposal falls short in terms of spectrum. "The public safety community also has stated already that even the 12 MHz of contiguous public safety spectrum at 700 MHz proposed by the FCC for a nationwide broadband network is entirely inadequate for that purpose. They have determined that it would not provide enough capacity to accommodate all governmental broadband usage, much less provide excess capacity that would attract commercial partners."[11] It has been argued that no less than 30 MHz would be sufficient to support such a system.[12]

So who's correct? That question has not yet been answered. But common sense dictates that it had better be answered before we even begin discussing a proposal such as that put forward by the Commission.

IV. CONCLUSION

SAFECOM recently summed up the problem of public safety interoperability quite succinctly when it wrote that it is a "complex issue."[13] Interoperability is simply not an issue of spectrum use. Many questions must be asked and answered before we start down the road of what type of national broadband system is best. Without first understanding what the problem is – and the extent of that problem – it is much too early

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[10] Testimony of the Honorable Steve Largent, President and CEO, CTIA – The Wireless Association, before the Senate Committee on Commerce, Science & Transportation, February 8, 2007. http://commerce.senate.gov/public/_files/Testimony_SteveLargent_CTIA_02082007Largent.pdf

[11] Testimony of Morgan O'Brien, Chairman, Cyren Call Communications, Senate Committee on Commerce, Science and Transportation, February 8, 2007.

[12] *Id.*

[13] SAFECOM 2006 National Interoperability Baseline Survey, p. 44.

to be discussing a nationwide public safety broadband plan. There isn't even a national broadband policy in place!

The Commission is not, and should not be, proposing a nationwide, one-size-fits-all public safety broadband system without first understanding what the problem is and how best to solve it. The Commission is acting without all the facts and assumes for purposes of its proposal that all current systems are unsatisfactory. Once again, like it did with the video franchising proceeding, the Commission is weighing in on an issue that it does not fully understand, where it lacks the authority and factual basis upon which to act, and where it is deaf to the concerns and suggestions of local agencies.

Is a single nationwide public safety broadband system the answer? What about the possible use of IP radios that allow various pieces of equipment to interconnect with each other? Perhaps an interoperability solution might not be that difficult to obtain. Chairman Martin recently stated, "[T]echnology is available now that could provide a temporary solution to the need for more interoperability. By adding IP-based technologies to existing public safety network equipment (a so-called "IP patch") and deploying portable IP-based network equipment where necessary, public safety officials would achieve functional, if not full, interoperability. If Congress made sufficient funds available now, such functional interoperability for public safety communications systems could be available in selected areas in the near term and throughout most of the nation within four years."[14]

[14] Testimony of the Honorable Kevin Martin, FCC Chairman, before the Senate Commerce, Science & Transportation Committee, February 1, 2007. http://commerce.senate.gov/public/index.cfm?FuseAction=Hearings.Testimony&Hearing_ID=1809&Witness_ID=1951

Clearly, the Commission's plan is open for further discussion, comment and revision. But as proposed, the plan fails to make a reasoned argument that such a network could achieve the unified support of public safety entities across the country. The plan omits local agency input, would be too open to commercial influences, and fails to address redundant and back-up technologies.

NATOA appreciates the opportunity to share its views with the Commission on this issue. As we work toward solving the problem of interoperability, NATOA remains committed to its policy of ensuring that local governments continue to have the voice, video, and data communication networks they require to meet local community needs, to ensure the public's safety and convenience, and provide important and critical communication services.

Respectfully submitted,

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