

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Reallocation of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use	)	RM No. 11348
	)	
Assignment of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) To the Public Safety Broadband Trust for Deployment of a Shared Public Safety/ Commercial Next Generation Wireless Network	)	
	)	

**REPLY TO OPPOSITIONS TO PETITION FOR RECONSIDERATION**

The National Public Safety Telecommunications Council (NPSTC) submits this Reply to the Oppositions to the Petition for Reconsideration of Cyren Call Communications, Inc. (Cyren Call)<sup>1</sup> addressing the Commission’s dismissal of its Petition for Rulemaking. The objections were filed by CTIA, the Wireless Association, the Consumer Electronics Association and AT&T.

Cyren Call proposes that 30 MHz of spectrum yet to be auctioned in the 700 MHz band be committed to public safety communications for a nationwide interoperable broadband network. A Public Safety Broadband Trust (“PSBT”) would be established to administer these channels and provide funding to build the network and pay the Treasury

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<sup>1</sup> Petition of Cyren Call Communications Corporation for Reconsideration, RM 11348 (filed December 4, 2006); *Petition for Reconsideration of Action in Rulemaking Proceeding*, Public Notice, Report No. 2805 (rel. February 2, 2007) 72 Fed Reg. 9335 (March 1, 2007)

for the value of the spectrum. Private entities would lease the spectrum in a shared government/commercial environment.

The Commission dismissed Cyren Call's Petition on November 3, 2006. The Order stated that the spectrum is scheduled for auction under sections 337(a) and 309(j)(15)(C)(v) of the Communications Act of 1934, as amended and that the Commission had no authority to proceed.<sup>2</sup>

NPSTC is an emphatic advocate for the PSBT proposed by Cyren Call.<sup>3</sup> Dismissing its Petition was improvident. It precludes any discussion of additional spectrum for public safety. It halts an examination the Commission should be pursuing-providing public safety a nationwide broadband network in a shared public commercial environment. Virtually all of the over 1370 comments favor the Petition and demonstrate the challenges facing public safety communications. The comments reflect a commitment to work toward a viable structure that will serve government and commercial services. Yet the Commission rejects it. NPSTC urges the Commission to reinstate the Petition and make all the PSBT proposals and issues part of its deliberations addressing the pending proceedings in the 700 MHz band.

Oppositions to the Petition for Reconsideration assert that the statutory directive to auction 30 MHz in the 700 MHz band precludes consideration. They also state that the PSBT proposal and many of its elements are captured by the Commission's pending 700 MHz proceeding, particularly the Ninth Notice of Proposed Rulemaking (Ninth NPRM)

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<sup>2</sup> In the Matter of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) from Commercial Use and Assignment of 30 MHz of 700 MHz Spectrum (747-762/777-792 MHz) to the Public Safety Broadband Trust for Deployment of a Shared Public Safety Commercial Next Generation Wireless Network, *Order*, RM No. 11348, DA 06-2278 (November 3, 2006).

<sup>3</sup> NPSTC Comments (November 29, 2006) and Reply Comments (December 14, 2006).

examining its public safety segment. The position of those opposing Cyren Call is that there should be no discussion of the 30 MHz being accessible by public safety agencies. In precluding debate, no viable public private network is possible. The detailed proposals presented by Cyren Call are integral to any meaningful analysis whose objective is to assist public safety communications.

By examining the PSBT the Commission violates no law; the PSBT advocates that spectrum be committed to public safety. It pursues an analysis of the challenges and possible solutions. What the Commission would be doing is scrutinizing the needs of public safety and how those needs can be structured with compatible commercial services. The Commission's comment and deliberative process is neither so rigid nor confined to cut off debate of the possible. The dismissal of the Cyren Call petition does just that.

The Ninth NPRM itself shows that the Commission can examine alternatives seemingly restricted by law, even if the record developed leads to and culminates in the legislative process. The Ninth NPRM proposes commercial service operations in the segment of the 700 MHz band that the Congress and Commission specifically reserved for public safety. The proposal appears as a contradiction only in the context of the Commission's dismissal of the Cyren Call petition. It is a legitimate inquiry seeking to promote analysis and debate.

The Cyren Call proposal presents a reality of public safety and commercial sectors that the Ninth NPRM lacks. Its comprehension of the technical and economic factors pervading both sectors contributes to the crucial debate at stake- whether public safety should be provided additional 700 MHz spectrum. Congress' reliance on

Commission proceedings and that it has frequently enacted legislation that clarify if not determine issues in pending matters is well established.<sup>4</sup>

The Petition engages directly the spectrum needs of public safety and the interests who assert that present allocations are adequate,<sup>5</sup> a matter the Commission should address not dismiss. The dismissal precludes any meaningful discussion of the spectrum needed for a viable economic and technical shared broadband network. The short changed debate will lead to confined and restricted decisions.

NPSTC believes that no viable nationwide public safety broadband network can emerge without additional 700 MHz spectrum. We recognize the legitimate expectations of interests seeking to purchase and use the 700 MHz. These expectations, regarding timing and substance, should not preclude a serious examination by the Commission of the requirements of public safety communications. A Commission determination that public safety receive no additional 700 MHz spectrum should not be made by default.

In dismissing the Cyren Call Petition the Commission leaves adrift a fundamental path to improve public safety communications that will promote coexistence across services. The full expanse of the PSBT deserves to be considered and not the scaled down and bifurcated proposal of the Ninth NPRM with its tenuous connection to economic viability and interference protection. All of these issues are engaged by the details of PSBT proposal. NPSTC urges the Commission to reinstate the Petition and conduct an

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<sup>4</sup> See Section 3(27)(C)(definition of mobile services), Section 309(L) (application of competitive bidding to comparative licensing cases), Section 334 (Limitation of Revision of Equal Employment Opportunity Regulations), Section 336(6)(B)(Class A TV Licenses). All references are to the Communications Act of 1934, as amended.

<sup>5</sup> *Setting the Record Straight: A Critique of Criterion Economics' "Improving Public Safety Communications: An Analysis of Alternative Approaches"* prepared by Cyren Call Communications Corporation (March 7, 2007).

examination of public safety's roles in the remaining 700 MHz band. The opportunity to make real improvements should not be forfeited.

Respectfully submitted,

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