



**VIA ELECTRONIC DELIVERY** (April 13, 2009)

Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

**Re: GN Docket No. 09-40; Comments Regarding the Commission's Consultative Role  
in the Broadband Provisions of the Recovery Act  
PS Docket No. 06-229, WT Docket Nos. 06-150 and 96-86**

Dear Ms. Dortch:

The Public Safety Spectrum Trust ("PSST") submits this letter in response to the Public Notice seeking comment on the Commission's consultative role regarding the broadband provisions of the American Recovery and Reinvestment Act of 2009 ("ARRA") and the Broadband Technology Opportunities Program ("BTOP").<sup>1</sup>

As discussed below and in the attached Comments filed with the National Telecommunications and Information Administration ("NTIA") and the Rural Utilities Service,<sup>2</sup> NTIA should coordinate closely with the Commission to ensure that all BTOP funds used to address the needs of public safety users advance, rather than hinder, the Commission's preference for nationwide interoperability, uniform technical standards, and sustainable funding through a shared wireless broadband network. The Commission should also encourage NTIA to ensure that any non-discrimination and network interconnection obligations imposed on grantees do not conflict with these goals.

<sup>1</sup> *Comment Procedures Established Regarding the Commission's Consultative Role in the Broadband Provisions of the Recovery Act*, GN Docket No. 09-40, Public Notice, DA 09-668 (rel. Mar. 24, 2009); *see also* American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, 123 Stat. 115 (2009) ("ARRA").

<sup>2</sup> Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 47 10716 (Mar. 12, 2009).

We ask that this letter and the attached Comments be included in the record in this proceeding.

Respectfully submitted,

/s/ Harlin R. McEwen

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The PSST hereby submits these Comments in response to the Joint Request for Information from the National Telecommunications and Information Administration (“NTIA”) and the Rural Utilities Service (“RUS”)<sup>2</sup> seeking comment on, among other things, how NTIA should establish and administer the Broadband Technology Opportunities Program (“BTOP”) under the American Recovery and Reinvestment Act of 2009 (“ARRA”).<sup>3</sup>

The ARRA sets forth five purposes for the BTOP, including to “improve access to, and use, of broadband service by public safety agencies.”<sup>4</sup> As discussed below, BTOP funds used to address the needs of public safety users should continue to advance, rather than hinder, the FCC’s preference for nationwide interoperability, uniform technical standards, and sustainable funding through a shared wireless broadband network. In addition, NTIA should ensure that it provides adequate funding and coordinates with the FCC for public safety projects under the BTOP. Given its mission and expertise, the PSST is an ideal candidate for a BTOP grant to further the ARRA’s goal of improving public safety access to broadband, and will coordinate with the FCC in preparing a possible grant application.

#### **I. The FCC Has Prioritized Public Safety Broadband Access through a Shared Wireless Broadband Network**

To facilitate the deployment of a nationwide, interoperable broadband network for public safety users in the 700 MHz band, the FCC developed a Public/Private Partnership between the Upper 700 MHz D Block Licensee and the Public Safety Broadband Licensee (“PSBL”). Under the Partnership, the D Block Licensee is required to work with the PSBL and use the spectrum associated with both licenses (a total of 20 MHz of spectrum) to construct and operate a nationwide Shared Wireless Broadband Network (“SWBN”) that would be shared by commercial

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<sup>2</sup> Joint Request for Information and Notice of Public Meetings, 74 Fed. Reg. 47 10716 (Mar. 12, 2009).

<sup>3</sup> Pub. L. No. 111-5, 123 Stat 115 (2009).

<sup>4</sup> Joint Request at 10717.

and public safety users.<sup>5</sup> Thus, under the FCC’s framework, the SWBN would provide public safety users with nationwide broadband access and interoperability; nationally coordinated technical standards and operating requirements; and a reliable, sustainable source of funding and infrastructure deployment. NTIA should ensure that any BTOP grants affecting public safety users are consistent with the FCC’s framework for the SWBN.

The PSST was formed in June 2007 for the express purpose of seeking designation from the FCC as the PSBL. Consistent with the FCC’s rules, the PSST is a non-profit corporation, and the organizations that have appointed representatives to the PSST Board of Directors represent an appropriately broad range of public safety organizations. The FCC designated the PSST as the PSBL in November 2007.

Since becoming the PSBL, the PSST has worked extensively and continuously with the public safety community, carriers, equipment vendors, and other parties to promote and advance the FCC’s public safety goals and meet the urgent need for improved, interoperable broadband communications among the nation’s emergency first responders. Moreover, PSST has remained committed to ensuring that broadband services are accessible to public safety users in all jurisdictions, not just large metropolitan areas. To the extent BTOP funds are used to address the needs of public safety users, NTIA should ensure that such funds continue to advance, rather than hinder, the FCC’s preference for nationwide interoperability, uniform technical standards, and sustainable funding.

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<sup>5</sup> See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Second Report and Order, 22 FCC Rcd 15289 ¶ 386 (2007) (“Second R&O”). The FCC has not yet licensed the D Block spectrum. Although the FCC offered the spectrum in 2008 as part of Auction 73, no bidders placed bids equal to or greater than the reserve price established for the D Block. The ultimate disposition of the D Block spectrum remains open and is subject to a pending FCC proceeding. See *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, Third Further Notice of Proposed Rulemaking, 23 FCC Rcd 14301 (2008) (“3d FNPRM”).

## **II. Improving Public Safety Access to and Use of Broadband Services is One of the Five Core Purposes of the BTOP Grant Program, and NTIA Should Ensure Adequate Funding and Coordination for Public Safety Projects**

The ARRA sets forth five purposes for the BTOP, including to “improve access to, and use, of broadband service by public safety agencies.”<sup>6</sup> In the Joint Request, NTIA seeks comment on at least four issues that bear on the implementation of this goal. First, NTIA asks whether a certain percentage of grant funds should be apportioned to each of the five stated BTOP purposes. Second, NTIA asks whether applicants should be encouraged to address more than one purpose in grant applications. Third, NTIA seeks comment on how the BTOP should leverage or respond to the other broadband-related portions of the ARRA.<sup>7</sup> Fourth, NTIA asks how it should define the nondiscrimination and network interconnection obligations that will be contractual conditions of BTOP grants.<sup>8</sup> As discussed below, NTIA should, consistent with the goals set forth in the ARRA, ensure adequate funding and interagency coordination to advance public safety-related broadband projects.

*Apportioning of Funds.* NTIA should dedicate at least 20 percent of BTOP funds to “improve access to, and use, of broadband service by public safety agencies.” By making it one of five core goals for the program, Congress recognized the critical need for public safety agencies to access and use broadband services to provide critical, life-saving assistance throughout the country. NTIA similarly should recognize the value of public safety services and designate no less than one-fifth of the BTOP funds to further Congress’s public safety goals. Moreover, there remains a critical need for nationwide broadband interoperability among public safety users (as recognized by the FCC), and NTIA can facilitate public safety broadband solutions designed to address this

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<sup>6</sup> Joint Request at 10717.

<sup>7</sup> *Id.*

<sup>8</sup> *Id.* at 10719.

need by making every effort to ensure that sufficient funds – at least 20 percent of BTOP funds – are distributed for public safety purposes.

*Multi-Purpose Applications.* To maximize the potential for BTOP funds to advance public safety broadband opportunities, NTIA should encourage applicants to address multiple BTOP purposes in their grant applications. As one option, NTIA could give such applications additional “points” under a scoring system, compared to applications that address only one BTOP purpose. In addition, NTIA should encourage applicants to assist public safety users with broadband access and customized features wherever possible. For example, applicants proposing new broadband services in unserved and underserved areas should be encouraged to provide service to public safety entities in those areas. These public safety entities often face the most challenging obstacles to broadband deployment, including extraordinarily limited funding and expansive terrain. By encouraging applicants to support public safety broadband access and use whenever possible, NTIA can promote Congress’s economic recovery, broadband deployment, and public safety goals simultaneously.

*Leveraging Grant Funding.* NTIA should also incentivize BTOP applicants to leverage BTOP grant money with other federal and state grant and loan programs. Leveraging allows NTIA to stretch limited BTOP funds farther and may encourage applicants to develop and deploy broadband services that address the needs of multiple user groups, including healthcare, education, utility, and public safety users. NTIA could, for example, give leveraged applications additional points under a scoring system or could require that a certain number of grants be contingent on some form of leveraging. The FCC recognized the value of leveraging when it established the public private partnership for the 700 MHz D Block and public safety broadband spectrum, and NTIA should encourage similar partnerships and funding frameworks when considering BTOP applications.

*Non-discrimination and Interconnection.* In order for public safety agencies to be able to take advantage of broadband networks supported with BTOP funds, NTIA will need to be careful in how it applies the non-discrimination and network interconnection obligations which Section 6001(j) of the ARRA requires NTIA to develop, in consultation with the FCC. Without the appropriate clarification, these obligations could have unintended consequences, such as preventing the prioritization of emergency communications or preventing the establishment of interoperable public safety networks.

The ARRA requires that, at a minimum, grant recipients be required to abide by the principles contained in the FCC's 2005 Internet Policy Statement. The Policy Statement established that, subject to "reasonable network management" needs, consumers are entitled to:

- access the lawful Internet content of their choice;
- run applications and use services of their choice, subject to the needs of law enforcement;
- connect their choice of legal devices that do not harm the network; and
- have competition among network providers, application and service providers, and content providers.<sup>9</sup>

Moreover, the ARRA gives NTIA authority to formulate requirements that go beyond these principles and which could, for example, prohibit discrimination in the treatment of traffic associated with certain users or applications.

As discussed above, the FCC has emphasized the important need for *interoperability* in public safety communications. By definition, an interoperable network is one in which there are specifications with regard to the type of equipment and technologies that can be used, which may limit public safety users to a set of authorized devices.<sup>10</sup> Moreover, a public safety network may

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<sup>9</sup> *Inquiry Concerning High-Speed Access to the Internet Over Cable and Other Facilities*, Policy Statement, 20 FCC Rcd 14986 (2005) at ¶ 4 ("Internet Policy Statement").

<sup>10</sup> In effect, the use of non-interoperable devices would "harm" a public safety network because it would eliminate a major functionality of that network – the ability of public safety personnel from different jurisdictions to communicate with one another.

find it desirable to prohibit certain applications or to limit the ability of non-public safety users to interconnect with the network. In cases of a primarily commercial network that is shared by public safety agencies in emergencies (such as the existing plan for the D Block), there is an obvious public interest in having the emergency communications prioritized over the commercial traffic, despite the fact that doing so will temporarily “discriminate” against the commercial user.

In order to prevent any unintended consequences, NTIA should clarify that the Policy Statement principles, as well as any additional non-discrimination or interconnection obligations established by NTIA, will not apply to networks used by public safety agencies (whether public safety-dedicated or commercial shared networks), to the extent necessary to ensure an efficient operation of public safety communications and prioritization of emergency traffic.<sup>11</sup> Blindly applying the FCC’s Policy Statement principles and related obligations to networks serving the public safety community would be contrary the statutory goal of improving “access to, and use of, broadband service by public safety agencies.”

*Interagency Coordination.* Given the FCC’s goals in the D Block and related proceedings, NTIA and the FCC must coordinate closely to ensure that public safety grant applicants (or applicants seeking to serve public safety agencies) meet the overarching goals of establishing nationwide interoperability and broadband access for all public safety users, as well as uniform national standards (network technology, reliability, functionality, security, etc.) and long-term sustainability. The PSST has already invested a substantial amount of resources in considering the appropriate standards for a public safety network, as part of preparations for negotiating a Network Sharing Agreement that was intended to be negotiated and entered into with the Auction 73 D Block auction winner, had that auction been successful. The PSST is available to provide

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<sup>11</sup> Such a clarification would not be inconsistent with intent behind the Policy Statement’s principles, which were drafted to protect the rights of “consumers,” a term that is not typically used to include public safety users.

additional advice and more technical guidance on these issues at NTIA's request. Given that its membership consists of 15 public safety organizations, the PSST is well qualified to serve in this capacity.

### **III. PSST Would Be an Ideal Candidate for a BTOP Grant to Further the Statutory Goal of Improving Public Safety Access to Broadband, But Will Coordinate with the FCC Prior to Filing Any Application**

As a non-profit corporation, the PSST is an eligible grant applicant under the ARRA.<sup>12</sup> As an entity whose membership consists of over a dozen national public safety associations, whose sole purpose is to facilitate the public safety Shared Wireless Broadband Network, and which holds 10 MHz of nationwide public safety spectrum, the PSST is particularly well suited, in partnership with one or more other entities, to deploy BTOP grant funds in furtherance of the ARRA's goal of improving "access to, and use of, broadband service by public safety agencies." As the PSBL, the PSST is, of course, subject to regulation by the FCC. While the PSST does not interpret existing FCC rules to present any prohibition on the PSST's potential participation in the BTOP program, the PSST also recognizes that, in a Third Further Notice of Proposed Rulemaking issued in September 2008, the FCC proposed modifications to many of the rules governing the PSBL. In concept, the FCC spoke favorably of government funding for the PSBL, although it noted that no such funds had been appropriated by Congress,<sup>13</sup> and it obviously could not have anticipated the ARRA at that time. Given that modifications to the FCC's rules are still under consideration, the PSST plans to work closely with the FCC to ensure that there are no regulatory impediments to its participation in the BTOP program. After consultation with the FCC, the PSST

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<sup>12</sup> ARRA § 6001(e)(1)(B)(ii).

<sup>13</sup> 3d FNPRM at ¶ 368 ("[W]e note that we have no control over Congressional disbursement of funds. Moreover, the use of auction revenues or Federal grants for the purpose of funding the PSBL would also require Congressional legislation.")

will file any appropriate waiver requests, to the extent needed, to facilitate potential partnering arrangements that could be useful in applying for BTOP funds.

The \$7.2 billion available for broadband projects in the ARRA is obviously inadequate to build even one nationwide broadband network or to otherwise bring broadband services to all unserved and underserved areas of the country. Perhaps due to this reality, NTIA has logically suggested a preference for grant applications that will serve as a “test-bed or proof of concept for sustainable, viable, and scalable projects.”<sup>14</sup> This approach will best be able to leverage the funds available, and would serve as an excellent model for one or more public safety projects. Given the PSST’s mission to facilitate the creation of a shared nationwide public/private wireless network that would be built to specialized standards appropriate for supporting safety-of-life uses, an initial proof of concept project on a relatively small scale would be a reasonable first-step, and would be an ideal project for BTOP funding. Such a project would allow for testing the mechanisms for sharing the network in real-life situations, as well as testing the network’s interoperability among public safety agencies and its conformance to the planned technical standards, before scaling the network up to nationwide coverage. The PSST is actively considering options for preparing a grant application along these lines, and would welcome further suggestions from other parties.

In addition to its role as a partner in the SWBN, the PSST is also responsible for additional broadband-enabling activities under the FCC’s rules. Specifically, in designating the lower half of the 700 MHz Public Safety band (763-768/793-798 MHz) for broadband communications and licensing the spectrum to the PSBL, the FCC consolidated existing narrowband allocations in the band to the upper half of the 700 MHz Public Safety band (769-775/799-805 MHz).<sup>15</sup> It required

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<sup>14</sup> Written Testimony of Mark Seifert, NTIA, before the Subcommittee on Communications, Technology and the Internet, House Energy and Commerce Committee (April 2, 2009) at 6.

<sup>15</sup> Second R&O at ¶ 322.

the eventual D Block licensee to pay the costs of relocating existing public safety narrowband radios out of TV channels 63 and 68 (at 764-767 MHz and 794-797 MHz), and the upper one megahertz of channels 64 and 69 (at 775-776 MHz and 805-806 MHz).<sup>16</sup> As part of this decision, the FCC tasked the PSST, as the PSBL, with oversight and implementation of the narrowband relocation.<sup>17</sup>

Clearing narrowband users from the 700 MHz Public Safety channels now designated for broadband use is a necessary first step to facilitating access to and use of the broadband spectrum. Although the FCC initially contemplated that the narrowband relocation would be funded by the D Block licensee, it has not yet successfully auctioned and licensed the D Block spectrum. As a result, the PSST has been left with significant narrowband relocation responsibilities – with costs estimated to be around \$80 million – and no funding with which to carry out those obligations. The PSST is also actively considering preparing a grant application for the 700 MHz narrowband relocation. Thus, NTIA should ensure that its BTOP application requirements do not foreclose applications for public safety “broadband-enabling” projects.<sup>18</sup>

In addition to its own possible application, the PSST anticipates that other public safety entities will apply for broadband stimulus funding. Keeping in mind the ARRA’s goal of improving public safety access to broadband services (and the recommendation above that at least 20% of BTOP funds be devoted to public safety), NTIA should give these applications every possible consideration, although it should evaluate whether each application is consistent with – or

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<sup>16</sup> *Id.* at ¶ 341.

<sup>17</sup> *See id.* at ¶ 383.

<sup>18</sup> If it were granted BTOP funds to complete the narrowband relocation, PSST would coordinate with the FCC and, to the extent necessary, seek a waiver of the FCC’s rules to conduct the relocation in the absence of one or more D Block licensee(s).

at least is not inconsistent with – the FCC’s overarching goal of facilitating the deployment of a nationwide, 700 MHz interoperable public safety broadband network.

## **Conclusion**

In order to fulfill the ARRA’s goal of improving access to broadband services by public safety agencies, the NTIA should ensure that it provides adequate funding – at least 20% of available funds – for public safety projects under the BTOP. It should coordinate with the FCC on such grants and should adopt the FCC’s goal of facilitating nationwide interoperability, uniform technical standards, and sustainable funding through a shared wireless broadband network. NTIA should also ensure that the non-discrimination and network interconnection obligations imposed on grantees do not conflict with these goals. Given its mission and expertise, the PSST is an ideal candidate for a BTOP grant to further the ARRA’s public safety goals, and will coordinate with the FCC in preparing a possible BTOP grant application.

Respectfully submitted,

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