

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

In the Matter of)	
)	
Service Rules for 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Amendment of Part 90 of the Commission's Rules)	WP Docket No. 07-100

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SUMMARY

The goal of establishing an interoperable communications system for emergency responders will not be easy to achieve. Past efforts have foundered on administrative complexities. Although the Commission's recent efforts are a significant first step toward encouraging the construction and deployment of the public safety broadband network ("PSBN"), many administrative challenges of the overall effort still need to be addressed.

Indeed, although the Commission acknowledges the need to develop "a uniform, nationwide architectural framework [to] promote a comprehensive understanding of interoperability and the steps that must be taken to achieve that objective," NPRM ¶ 17, the NPRM does not fully address the administrative challenges inherent in constructing and operating the PSBN—an unprecedented initiative that will be larger in its technical scope, more expensive to build and operate, and more complicated to coordinate than any project ever attempted by the public safety community. These comments address the critical importance of establishing appropriate governance mechanisms from the outset to ensure the successful development of the PSBN.

First and foremost in the minds of many is the need for coordination among all of the disparate federal, state, and local stakeholders that have different, and potentially conflicting, needs and priorities for the PSBN. And as Congress and the President consider ways to direct public funding to the construction of the PSBN, and to facilitate commercial involvement in the effort, the Commission's task of establishing the PSBN becomes even more complex. For example, if Congress determines that public-private partnerships should be permitted and encouraged for some build-out of the PSBN—as the National Broadband Plan recommends—the Commission necessarily will need to establish a governance mechanism to regulate such

arrangements, so that the ultimate goal of the network—nationwide interoperability—is not compromised. Such arrangements also raise new and as-yet unconsidered tax issues that must be addressed before public-private partnerships are likely to develop in any material way. Perhaps most significantly, the use of taxpayer funds will necessitate the creation of robust oversight and compliance mechanisms to prevent and detect waste, fraud, and abuse. Congress and individual states likely will require such mechanisms and are likely to impose audit, tracking, and reporting obligations with which the operator of the PSBN—whether the Commission, the Public Safety Broadband Licensee (“PSBL”), or some other entity—must comply.

Each of these considerations demonstrates the need for creating an organized, well-defined, and efficient governance framework through which progress can be achieved toward the Commission’s goal of establishing a nationwide, interoperable wireless PSBN. And yet the significant administrative challenges described above exceed the current resources and capabilities of the Emergency Response Interoperability Center (“ERIC”), its Technical Advisory Committee (“TAC”) or Public Safety Advisory Committee (“PSAC”), or the PSBL—each of which is largely comprised of professional public safety officials and industry stakeholders with significant obligations elsewhere. In addition, entities such as the ERIC and the PSBL do not operate under a corporate structure, which is commonly seen in the administration of large, complex federal programs. Moreover, while the public safety community is well suited to identify specific technical and operational objectives for a wireless broadband network, these organizations are unlikely to have experience administering an undertaking as large and complex as the PSBN. Thus, it is impractical to expect that these groups also could provide the administrative resources and impartial oversight necessary to ensure the efficient and transparent deployment and operation of the PSBN.

Accordingly, the Commission should create a robust governance structure—separate and apart from the public safety and industry groups that will eventually construct, operate, and use the PSBN—through which the needs and concerns of individual organizations and stakeholders can be communicated, assessed, and addressed without losing momentum and forward progress toward establishing the PSBN. Indeed, Deloitte believes that such governance will be critical to serving the public interest and meeting the expectations of Congress and the President that the PSBN will be launched and operational in a timely, efficient, and cost-effective manner.

To achieve effective governance, Deloitte further contends that the substantive and administrative responsibilities of establishing the PSBN should be segregated by appointing an entity that would be responsible for the execution of the policies and priorities adopted by the Commission or the governing bod(ies) of the network. Indeed, an administrator would mitigate the challenges associated with the creation of the PSBN by tackling and coordinating the ministerial tasks required by the initiative and freeing up the Commission, ERIC, TAC, PSAC, and PSBL to focus on the more significant and substantive job of designing, constructing, and operating public safety’s first nationwide, interoperable wireless broadband network.

TABLE OF CONTENTS

SUMMARY i

TABLE OF CONTENTS..... iv

BACKGROUND3

DISCUSSION.....5

I. A NUMBER OF SERIOUS IMPLEMENTATION AND OPERATIONAL CHALLENGES CURRENTLY THREATEN THE COMMISSION’S EFFORTS TO ESTABLISH THE PSBN.....7

 A. The Commission’s Efforts to Date Are a Significant First Step Toward Realizing the PSBN.7

 B. The PSBN Will Be Complex To Create and Burdensome To Manage.....11

 1. Coordinating federal, state, and local stakeholders13

 2. Facilitating and overseeing partnerships with commercial service providers and equipment vendors15

 3. Addressing the complex tax implications associated with the PSBN.....17

 4. Preventing and detecting waste, fraud, and abuse18

 5. Fulfilling audit, tracking, and reporting requirements20

 6. Managing the network from a “global” administrative perspective22

II. AN ORGANIZED GOVERNANCE STRUCTURE IS NEEDED TO ADDRESS THE CHALLENGES FACING THE PSBN25

III. THE COMMISSION SHOULD APPOINT AN ADMINISTRATOR FOR THE PSBN.....30

CONCLUSION.....35

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COMMENTS OF DELOITTE

Deloitte¹ hereby submits these comments in response to the Commission’s Third Report and Order and Fourth Further Notice of Proposed Rulemaking issued in the above-captioned proceedings.² Deloitte commends the Commission for its continued commitment to the development and deployment of a nationwide, interoperable public safety broadband network (“PSBN”). Deloitte has witnessed firsthand—and been an active participant in—the Commission’s efforts to overcome challenges standing in the way of ensuring that first responders have the advanced communications capabilities necessary to ensure the safety and

¹ “Deloitte” is used in these comments to refer collectively to Deloitte Consulting LLP, Deloitte & Touche LLP, Deloitte Financial Advisory Services LLP, and Deloitte Tax LLP, each of which is a separate subsidiary of Deloitte LLP. A more detailed description of the legal structure of Deloitte LLP and its subsidiaries may be found on its website. See <http://www.deloitte.com/us/about>.

² *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; Amendment of Part 90 of the Commission’s Rules*, Third Report and Order and Fourth Further Notice of Proposed Rulemaking, WT Docket No. 06-150, PS Docket No. 06-229, WP Docket No. 07-100 (rel. Jan. 26, 2011) (“NPRM”).

security of our citizens. Deloitte remains dedicated to working cooperatively with the Commission to achieve the goals underlying the NPRM.

The goal of establishing an interoperable communications system for emergency responders is a priority of federal, state, and local regulators. It will not be easy to achieve. In a report to Congress following Hurricane Katrina, it was determined that “[o]ver 90 percent of the nation’s public safety wireless infrastructure is financed, owned, operated, and maintained by more than 60,000 individual local jurisdictions, police, fire and emergency medical services that serve the public.”³ More recently, the National Broadband Plan recognized, “[p]ast efforts to create a public safety narrowband interoperable voice network have failed” and “[d]ata suggest that many public safety radio systems lack *basic interoperability*” even today.⁴ Moreover, the Commission’s efforts to encourage the construction and deployment of a seamless wireless broadband network for first responders have yet to bear fruit.⁵ The National Broadband Plan thus advanced several specific recommendations, including the creation of an “administrative system” that would address several of the PSBN’s fundamental challenges.⁶

While the NPRM outlines several proposals that are important to the construction and eventual operation of the PSBN, Deloitte believes that the governance and administrative structures ultimately developed for the PSBN will be the most critical elements of its success. Deloitte urges the Commission to develop a well-defined and organized governance structure to support its current efforts to design and deploy the wireless network. In addition, the

³ The Select Bipartisan Committee to Investigate the Preparation for and Response to Hurricane Katrina, *A FAILURE OF INITIATIVE* (Report 109-377, Feb. 15, 2006), at 174 (“HURRICANE KATRINA REPORT”).

⁴ Omnibus Broadband Initiative, *CONNECTING AMERICA: THE NATIONAL BROADBAND PLAN*, at 315 (emphasis added) (“NATIONAL BROADBAND PLAN”).

⁵ *Id.* at 315.

⁶ *Id.* at 315-16.

Commission should consider appointing an administrator to support the governance structure of the PSBN to ensure that the complex, day-to-day activities necessary to support tracking, monitoring, and reporting for the network are carried out in an organized, timely, and efficient fashion.

BACKGROUND

Deloitte provides a broad range of consulting, management, advisory, and planning services to meet the unique needs of its clients. As a firm that has served public and private sector clients for over 150 years and currently has over 42,000 professionals in the United States, Deloitte possesses a unique collection of expertise that is particularly relevant to the Commission's efforts to develop, implement, and oversee the PSBN. In particular, Deloitte brings to bear a range of professional administrative capabilities that encompass audit, consulting, financial advisory, risk management, and tax services.

Deloitte has developed extensive industry expertise and many trusted relationships as a result of its support of federal, state, and local efforts to deploy new telecommunications capabilities and its work with commercial entities in the telecommunications field. Deloitte brings technical knowledge of and experience with commercial mobile radio services and public safety communications systems, as well as knowledge of the Commission's policies and rules. In addition, Deloitte professionals include former/retired military, first responders, and federal executives. Moreover, Deloitte understands the challenges involved not only in the administration of large federal programs, but also in the coordination needed following large-scale incidents. For example, Deloitte has gained unique insight into such activities through its support to the Special Inspectors General for Afghanistan and Iraq, the Troubled Asset Relief Program ("TARP"), the California Earthquake Authority, and the Department of Housing and

Urban Development's administration of Gulf Coast disaster recovery funds following Hurricane Katrina. These efforts provide Deloitte with a deep appreciation for the need to establish administrative processes and controls to promote inter-agency coordination, ensure effective monitoring and program management, and minimize the potential for waste, fraud, and abuse. Deloitte also serves as Program Director to the Transition Administrator as part of the Commission's ongoing effort to reconfigure the 800 MHz spectrum band. In this role, Deloitte initiated regional planning sessions to build consensus among and coordinate the affected licensees and other parties to the reconfiguration. Deloitte also assisted in the development of the staged transition plan pursuant to guidance set forth in the Commission's order establishing the Transition Administrator.⁷ Deloitte now is responsible for overseeing compliance with the plan. Deloitte is subject to the oversight of, and is directly accountable to, the Commission.⁸ Beyond these experiences, Deloitte has invested considerable time and resources compiling research and writing books that focus on public sector reform and tackling large government programs.⁹

Based on its experiences overseeing large federal programs, supporting incident response, and its commitment to public sector governance, Deloitte believes it is qualified to comment on the Commission's efforts to develop a workable, sustainable framework for the PSBN. Deloitte

⁷ See *Improving Public Safety Communication in the 800 MHz Band*, Report & Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 ¶¶ 190-201 (2004), as amended by Erratum, 19 FCC Rcd 19651 (2004), Second Erratum, 19 FCC Rcd 19651 (2004), Third Erratum, 19 FCC Rcd 21818 (2004).

⁸ *Id.* ¶ 191.

⁹ See, e.g., William D. Eggers & John O'Leary, *If We Can Put a Man on the Moon ... Getting Big Things Done in Government* (2009); *States of Transition: Tackling Government's Toughest Policy and Management Challenges* (William D. Eggers & Robert N. Campbell III ed., 2006); William D. Eggers, Robert N. Campbell III & Tiffany Dovey Fishman, *Letting Go of the Status Quo: A Playbook for Transforming State Government* (2010).

therefore welcomes this opportunity to share its perspective on overcoming the administrative, structural, technical, and operational challenges that will ensure the Commission’s vision of a truly interoperable nationwide PSBN becomes a reality.

DISCUSSION

The damage and destruction that often accompanies large-scale emergency situations, whether natural disasters or events brought about by man, are best mitigated by a coordinated incident response that requires significant interaction across a broad range of federal, state, and local agencies and public safety officials. Prominent examples of such emergency situations include the terrorist attacks of September 11, 2001 and Hurricane Katrina. Unfortunately, the emergency response to these incidents—despite the heroic acts of the first responders—has come to symbolize what is currently lacking in our nation’s public safety communications systems.

For example, during and immediately following the tragic events of Hurricane Katrina and 9/11, local and state public safety agencies worked alongside their federal counterparts, but largely *without* the ability to communicate effectively with one another. Precious time inevitably was lost, and miscommunications occurred, as state and local first responders attempted to establish command and control and relay instructions via telephone or face-to-face communications using on-site responders, some of whom had access to emergency radio signals.¹⁰ Public safety officials of neighboring communities who offered assistance faced the additional challenge and delay caused by varying frequency assignments or incompatible

¹⁰ See, e.g., HURRICANE KATRINA REPORT at 167; see *id.* at 173 (explaining lack of communication among FEMA, local first responders, and National Guard commanders in Louisiana and Mississippi in the rescue efforts following Hurricane Katrina); *id.* at 175 (quoting Col. Terry Ebbert, New Orleans Director of Homeland Security and Public Safety, who stated, “There was no voice radio contact with surrounding parishes or state and federal agencies. Lives were put at risk.”).

equipment, thus creating the need to establish communications in the first instance.¹¹ In the alternative, some chose to take the additional risk of entering the emergency situations without a reliable link to their colleagues in the field or critical resources stationed at the perimeter.¹² In such circumstances, or in areas where public safety radio communications were inconsistent, personal mobile telephones were used to fill gaps left by the absence of an interoperable system.¹³

Following the events of 9/11 and Hurricane Katrina, the federal government identified a clear need to establish a nationwide, interoperable network on which all emergency responders could communicate during, or in the aftermath of, another large-scale catastrophic event. The crucial role of the states and the National Guard in disaster response was acknowledged, as well as the need to coordinate efforts at all levels of government to minimize the negative, deadly impact of such tragedies on our citizenry.¹⁴

¹¹ See, e.g., HURRICANE KATRINA REPORT at 174.

¹² See, e.g., The National Commission on Terrorist Attacks Upon the United States, THE 9/11 COMMISSION REPORT (2004), at 303 (“THE 9/11 COMMISSION REPORT”) (recounting rescue efforts of plainclothes NYPD officers who entered the North Tower to assist rescue and evacuation efforts “without radios or protective gear”); *id.* at 305 (“Many of the [PAPD] officers who responded to this command post lacked suitable protective equipment to enter the complex.”); *id.* at 307 (citing reasons that firefighters at the North Tower on 9/11 did not receive the order to evacuate following the collapse of the South Tower); *id.* at 322-23.

¹³ See, e.g., HURRICANE KATRINA REPORT at 168 (stating that many first responders throughout the Gulf Coast “had only their mobile (cellular) phones available” in the aftermath of Hurricane Katrina). See also THE 9/11 COMMISSION REPORT at 303 (stating that three plainclothes NYPD officers “used office phones to call their superiors” while assisting evacuation efforts at the North Tower).

¹⁴ See, e.g., HURRICANE KATRINA REPORT at 178 (stating that “[d]isasters start and end at the local level” and that “[m]odern day National Guard units should not have to rely upon runners to relay messages[,] [g]overnors should be able to communicate with their generals[,] [p]olice commanders should be able to communicate with their officers in the street”). See also THE 9/11 COMMISSION REPORT at 319-23.

In particular, state governors assume the primary responsibility for overseeing command and control operations following a natural disaster or other event requiring a significant public safety response for their state. As part of the initial response to such an emergency situation, first responders, ranging from local police and fire crews, state police, and National Guard forces, often will be deployed long before federal assets can be made available in the state. A governor overseeing this process thus must rely heavily on interoperable communications systems—among state emergency management officials, his or her Chief Information Officer (“CIO”), and the National Guard—to ensure that responding personnel and equipment are deployed appropriately to all affected areas. In addition, a state’s public safety or National Guard forces may also be called upon to coordinate communications across state lines when large-scale incidents occur and one state’s resources become overwhelmed, thereby creating a need for cross-border mobile communications systems.

This need was particularly apparent in the immediate aftermath of the terrorist attacks on September 11, 2001 and Hurricane Katrina, due to the devastating effects, in multiple states, of those events. Deloitte therefore asks the Commission to consider establishing a framework that accounts for the distinct roles of state governors, CIOs, and the National Guard and that would ensure that all first responders—numbering as many as 3 million nationwide—have access to a reliable, interoperable network to facilitate consistent, failsafe communications in times of crisis.

I. A NUMBER OF SERIOUS IMPLEMENTATION AND OPERATIONAL CHALLENGES CURRENTLY THREATEN THE COMMISSION’S EFFORTS TO ESTABLISH THE PSBN

A. The Commission’s Efforts to Date Are a Significant First Step Toward Realizing the PSBN.

Recognizing the ultimate challenge of creating the PSBN, but, more fundamentally, that “the lack of a nationwide interoperable public safety network hamper[s] rescue efforts and the

overall effectiveness of public safety operations,”¹⁵ President Obama recently called for an investment of \$10.7 billion to develop and deploy the network.¹⁶ The President’s announcement, which was one component of his State of the Union address earlier this year, placed new emphasis on addressing a pervasive vulnerability in the country’s homeland security, as identified by the 9/11 Commission,¹⁷ and fulfilling the goals first set by Congress in 2005 when it allocated the 700 MHz spectrum to public safety in the Digital Television Transition and Public Safety Act (“DTV Act”).¹⁸

Since passage of the DTV Act, the Commission has undertaken considerable and sustained efforts to create a framework through which the PSBN could be developed and implemented. First, the Commission established a band plan and service rules to govern licenses issued in the 700 MHz band, in anticipation of that spectrum becoming available following the DTV transition in early 2009.¹⁹ As part of this effort, the Commission determined that “centralizing the responsibilities for implementing a broadband network across the entire

¹⁵ NPRM ¶ 1.

¹⁶ Press Release, The White House, Office of the Press Secretary, President Obama Details Plan to Win the Future through Expanded Wireless Access (Feb. 10, 2011), <http://www.whitehouse.gov/the-press-office/2011/02/10/president-obama-details-plan-win-future-through-expanded-wireless-access>.

¹⁷ See THE 9/11 COMMISSION REPORT, at 321-23 (2004) (finding a “lack of communication and coordination among responding agencies” following the terrorist attacks of 9/11 at the World Trade Center and, identifying, specifically, several radio communication challenges experienced during the emergency response to the attacks); *id.* at 319 (stating that “the response operations [to the terrorist attacks on the World Trade Center on September 11, 2001] lacked the kind of integrated communications and unified command contemplated” by a directive from Mayor Giuliani); see also *id.* at 292-93 (noting the New York/New Jersey Port Authority Police Department’s lack of “interoperable radio frequencies” at the time of the September 11, 2001 attacks).

¹⁸ See Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006) (“DRA”). Title III of the DRA is the DTV Act.

¹⁹ *Service Rules for the 698-746, 747-762 and 777-792 MHz Bands et al.*, Second Report and Order, 22 FCC Rcd 15289 (2007).

country” should be accomplished under “a single nationwide geographic area license” to be issued to a single licensee.²⁰ This licensee, the Public Safety Broadband Licensee (“PSBL”) would then work in partnership with a nationwide 10 MHz commercial licensee adjacent to the 700 MHz spectrum dedicated for public safety—in the D Block—to be identified at a subsequent auction.²¹ The Commission’s initial plan thus envisioned that the goal of the PSBN would be realized through a public-private partnership.

The Commission named the Public Safety Spectrum Trust (“PSST”) in 2007 as the PSBL and issued it a 10-year license.²² Unfortunately, the only party to bid for the commercial D-Block license did not meet the applicable reserve price for that license and thus did not win the license.²³ Despite this setback and uncertainty as to available funding to construct and operate the PSBN and the future of the commercial D-Block license, the Commission pressed ahead to maintain forward progress, recently establishing the Emergency Response Interoperability Center (“ERIC”) pursuant to the recommendation of the National Broadband Plan and tasking the organization “with ensuring that the 700 MHz public safety broadband wireless network will be fully operable and interoperable on a nationwide basis, both day-to-day as well as during

²⁰ *Id.* ¶¶ 369-70.

²¹ *Id.* ¶¶ 386-87.

²² *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, Order, PS Docket No. 06-229, FCC 07-199 (rel. Nov. 19, 2007) (“*PSBL Order*”).

²³ *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 FCC Rcd 14301 ¶ 30 (2008).

times of emergency.”²⁴ The ERIC now operates within the Public Safety and Homeland Security Bureau.

Pursuant to its delegated authority,²⁵ the Public Safety and Homeland Security Bureau established the ERIC Technical Advisory Committee (“TAC”) to assist the ERIC in carrying out its mission of establishing a technical and operational framework that will ensure nationwide operability and interoperability in the deployment and operation of a 700 MHz public safety broadband wireless network.²⁶ The TAC is “comprised of nineteen state and local public safety officials with network engineering, network technical operations and network governance knowledge and expertise that make recommendations regarding the development of policies and rules concerning the technical aspects of interoperability, governance, authentication, encryption, national gateway functions and interfaces and national standards for a common set of public safety applications.”²⁷

Most recently, the Commission exercised its authority under the Federal Advisory Committee Act (“FACA”) to establish the Public Safety Advisory Committee (“PSAC”) within the ERIC.²⁸ The PSAC, whose members were announced earlier this year, will provide recommendations to assist the Commission and ERIC in implementing technical and operational

²⁴ *Establishment of an Emergency Response Interoperability Center*, Order, GN Docket No. 09-51, PS Docket No. 06-229, FCC 10-67, ¶ 1 (rel. Apr. 23, 2010) (“*ERIC Order*”) (citing the NATIONAL BROADBAND PLAN at 317).

²⁵ 47 C.F.R. § 0.192(b).

²⁶ See Public Notice, *Public Safety and Homeland Security Bureau Requests Applications and Nominations for Membership on the Emergency Response Interoperability Center Technical Advisory Committee*, DA 10-745 (rel. Apr. 29, 2010).

²⁷ See Emergency Response Interoperability Center (ERIC) Information Sheet, available at http://fcc.gov/pshs/docs/ERIC_Info_Sheet_09072010.pdf.

²⁸ See Federal Advisory Committee Act; Emergency Response Interoperability Center Public Safety Advisory Committee, 75 Fed. Reg. 43164 (July 23, 2010) (“*PSAC Notice*”) (announcing the Commission’s intent to establish the PSAC).

requirements and standards to ensure the interoperability of the PSBN, among other significant responsibilities.²⁹

B. The PSBN Will Be Complex To Create and Burdensome To Manage.

Despite these substantial efforts to advance the goal of establishing the PSBN, the Commission has not yet fully addressed the challenges inherent in creating such a large-scale network. Indeed, a nationwide, interoperable communications network that links thousands of independent public safety organizations has never been undertaken before. Establishing the PSBN thus is an unprecedented initiative that will be larger in its technical scope, more expensive to build and operate, and more complicated to coordinate than any project ever attempted by the public safety community.

The experience of creating other large, complex federal programs demonstrates the critical need for building appropriate mechanisms to ensure effective coordination, compliance, and transparency for all affected stakeholders. For example, in 1971, Congress enacted the Postal Reorganization Act to impose reforms that would enable the U.S. Postal Service (“USPS”) to respond to competition and operate more efficiently, pursuant to the direction of the eleven-member Board of Governors and the independent Postal Rate Commission, which provides administrative and other support services to the Board of Governors.³⁰ Congress utilized a similar organizational structure to oversee the allocation of federal funding to public

²⁹ Public Notice, *FCC Announces Membership of the Emergency Response Interoperability Center Public Safety Advisory Committee*, DA 11-196 (rel. Feb. 2, 2011).

³⁰ See U.S. Government Accountability Office, *USPS NEEDS TO CLEARLY COMMUNICATE HOW POSTAL SERVICES MAY BE AFFECTED BY ITS RETAIL OPTIMIZATION PLANS* (GAO-04-803, July 13, 2004), <http://www.gao.gov/new.items/d04803.pdf>; see also 39 U.S.C. § 101 *et seq.*

broadcasting organizations through the Corporation for Public Broadcasting³¹ and other large and complex federal programs, such as Fannie Mae³² and Amtrak.³³ The issues associated with establishing large federal programs only underscore the need for a clear framework for the PSBN to achieve the transparency, consistency, and accountability desired by the American public, the Congress, and the Commission.

Indeed, first and foremost in the minds of many is the need for coordination among all of the disparate federal, state, and local stakeholders that have different, and potentially conflicting, needs and priorities. Creation and governance of a network serving all of these stakeholders presents unique challenges. But as Congress and the President consider ways to direct public funding to the construction of the PSBN, and to facilitate commercial involvement in the effort, the Commission's task of establishing the PSBN becomes even more complex. For example, if Congress determines that public-private partnerships should be permitted and encouraged for some build-out of the PSBN—as the National Broadband Plan recommends³⁴—the Commission necessarily will need to establish a governance mechanism to regulate such arrangements, so that the ultimate goal of the PSBN—nationwide interoperability—is not compromised. Such arrangements may also raise new and as-yet unconsidered tax issues that must be addressed before public-private partnerships are likely to develop in a material way. Perhaps most significantly, the use of taxpayer funds will necessitate the creation of robust oversight and compliance mechanisms to detect and prevent waste, fraud, and abuse. Congress and individual

³¹ See 47 U.S.C. § 396.

³² See 12 U.S.C. §§ 1716-1723d.

³³ 45 U.S.C. §501 *et seq.*; 49 U.S.C. § 24101 *et seq.*

³⁴ NATIONAL BROADBAND PLAN at 315.

states may require such mechanisms and are likely to impose audit, tracking, and reporting obligations with which the program must comply.

As demonstrated in more detail below, these considerations bring the tremendous administrative task associated with the construction, deployment, and operation of the PSBN into sharper focus. The tasks associated with tracking, monitoring, and reporting on the first nationwide, interoperable wireless public safety network loom even larger. Accordingly, as serious work gets underway by the leaders identified by the Commission to establish the PSBN—including the ERIC, TAC, PSAC, and the PSBL—the Commission should consider governance mechanisms to effectively and efficiently manage these and other administrative issues associated with the PSBN. Indeed, addressing these administrative issues now will be critical to the future success of the planned network.

- 1. Coordinating federal, state, and local stakeholders**

It is difficult to overstate the need for coordination among relevant stakeholders to ensure that the Commission’s goal of establishing a nationwide interoperable PSBN is realized. The need exists now—at the PSBN’s nascent developmental stages—and will only grow as the network is deployed and becomes operational. Achieving such coordination is no simple task. Indeed, the public safety community is large and diverse, ranging from high-level federal and state agencies, bureaus, departments, and individuals—including governors, attorneys general, CIOs, and public safety officials—each with a broad base of experience developing programs to be implemented on a large scale, to county, city, and other local entities and officials—such as mayors, town managers, and police and fire chiefs—whose breadth of experience and knowledge in many cases may be geographically smaller but includes specific knowledge of emergency response on the ground. Private sector stakeholders also are numerous and include equipment

manufacturers, developers, and engineers, as well as commercial network operators and non-governmental public safety organizations.

The specific roles of these key entities and individuals in emergency response and their dependency on a nationwide PSBN must be considered. Coordination—both during build-out and following deployment of the network—of the disparate needs of all stakeholders will be essential to the success of the program. During the network build-out, state and other CIOs likely will have the critical obligation of interacting with commercial entities to incorporate advanced Long-Term Evolution (“LTE”) technologies, another key challenge that is discussed in more detail below. Further, it will be imperative during network construction to provide a vehicle for local public safety agencies, governors, state agencies, the National Guard, and federal agencies to clearly convey information regarding the status of the PSBN build-out, network operational status, dollars expended in support of the network, and other key information in the event of a natural or other disaster.

The objectives, priorities, and needs of these different groups necessarily will vary and, at times, conflict at different points throughout the process of building and operating the PSBN. For example, federal concerns may conflict with state and local considerations on some matters; the goals of public safety leaders may vary from those held by participating industry officials; and rural leaders may share views that differ from those of their urban counterparts.

In particular, in rural communities, since the number and requirements of emergency responders is lower, they may not fully utilize the available spectrum. This presents an opportunity for making excess spectrum available to other public services in rural localities, as well as schools, hospitals, and libraries and federal entities, such as Veterans Administration

hospitals.³⁵ Further, during a public safety incident, public utilities and other non-governmental entities that provide critical infrastructure are likely to play a vital role in supporting the efforts of emergency responders. Consistent with Congress’s vision for the PSBN, the Commission should consider establishing a framework that accounts for the role of these critical infrastructure industries and their potential to promote additional spectrum efficiencies.

Deloitte strongly believes that the key to achieving a truly nationwide, interoperable PSBN demands an understanding of these fundamental coordination challenges, and putting in place appropriate governance structures to address them. Likewise, Deloitte is convinced that failure to consider and plan for these issues at the outset will severely hamper the construction, deployment, and subsequent operation of the PSBN. Lack of appropriate coordination also will limit the insight and transparency that the Commission, the Congress, and the Administration expect to have for such a large undertaking.

2. Facilitating and overseeing partnerships with commercial service providers and equipment vendors

Private sector investment is responsible for constructing much of the broadband infrastructure—including the wireless broadband networks—currently in use today. Existing wireless technology would not exist but for the significant financial commitments made by private businesses. Likewise, future technological innovation in the wireless sector, including the continued evolution of LTE technology for the PSBN, is dependent on the research and

³⁵ Concurrent with the NPRM, the Commission also is seeking comment on a petition for declaratory ruling filed by the City of Charlotte, North Carolina, which seeks clarification regarding the appropriate scope of activities to be supported by 700 MHz spectrum and, in particular, that the spectrum may be used by other government personnel to support public service activities in addition to police, fire, and EMS services. *See* Public Notice, *Public Safety and Homeland Security Bureau Seeks Comment on Petition for Declaratory Ruling Asking to Clarify the Scope of Section 337 Regarding Use by State or Local Government Entities of the 700 MHz Public Safety Broadband Spectrum*, DA 11-537 (rel. Mar. 22, 2011).

development investments of these entities, driven primarily by commercial applications. A primary lesson learned from the unsuccessful mandatory public/private partnership in the 700 MHz band is that, as Chairman Genachowski stated, “The private sector simply is not going to build a nationwide, state-of-the-art interoperable broadband network for public safety on its own dime.”³⁶

Achieving the goals of the PSBN therefore requires that public and private entities share incentives to develop and deploy the network. Acknowledging this need, the National Broadband Plan called for an overall governance structure that facilitates public sector “opportunit[ies] to enter flexible spectrum-sharing partnerships with commercial partners.”³⁷ In particular, the Plan viewed such partnerships as a way “to lower the costs of building the network” while simultaneously “encourag[ing] its evolution.”³⁸ Deloitte applauds the efforts in the NPRM to invite comment from all interested parties regarding the appropriate architectural framework for the PSBN. Such an open dialogue is critical to ensuring that the public and private sectors move forward together for the benefit of the PSBN.

At the same time, public-private partnerships between the public safety community and private network operators or equipment vendors must be subject to appropriate oversight to ensure that the overarching objective of achieving nationwide interoperability is achieved. Without proper oversight, private agreements between vendors and certain first responder groups could elevate the interests of some stakeholders above this goal, presenting the risk of an organization having an unfair advantage over others. To take one example, members of

³⁶ W. David Gardner, *FCC Wants Broadband Public Safety Network*, INFORMATION WEEK GOVERNMENT (Feb. 25, 2010), <http://www.informationweek.com/news/government/mobile/showArticle.jhtml?articleID=223100742>.

³⁷ NATIONAL BROADBAND PLAN at 315-16.

³⁸ *Id.* at 315.

Congress recently expressed concern that 700 MHz spectrum dedicated to public safety could go unused or be reallocated to commercial purposes in rural areas while the spectrum needs of urban areas go unmet.³⁹ Deloitte believes that the key to success for the PSBN will be striking the right balance between facilitating public-private partnerships with mutual incentives for investment and innovation, on the one hand, and mandating a common architecture and interoperability standards to ensure that the public interest goals of the PSBN are met, on the other. Establishing strong governance structures and procedures from the outset can make the critical difference in achieving the desired balance of interests as the PSBN develops.

3. Addressing the complex tax implications associated with the PSBN

In the event that *private* commercial entities are permitted to become involved in the design, construction, and operation of a *public* wireless network, there will be a need to monitor their investment and use for tax-related purposes. Federal, state, and local governments' interest in utilizing private commercial assets would present an opportunity to leverage certain federal tax benefits as a means of enticing private sector participation in the project and thereby reducing the capital needed to construct the PSBN. For example, specific tax benefits could be made available by utilizing the core network services of a commercial carrier through secondary auctions, roaming, and other mechanisms. Indeed, business entities likely would seek out such tax incentives and credits as a condition of their involvement, and these arrangements typically would be made *in advance* of any work performed or investment made. Constructing and operating the PSBN will involve a long-term effort that offers the potential not only for a licensee to establish a contractual relationship with commercial carriers surrounding core

³⁹ See Lucy Warren, *House and Senate Support for D-Block Strengthens*, COMMUNICATIONS DAILY, at 4-6 (Mar. 31, 2011) (reporting on questions directed to public safety officials regarding the potential for excess spectrum if the D Block is reallocated to public safety use).

network services and roaming, but also for both entities to leverage tax benefits associated with this arrangement. As a result, it is appropriate for the authorities to begin considering such tax implications now.

While tax policy is within the purview of the Congress, it also is appropriate for the Commission and other authorities to consider potential tax *disincentives* that would discourage private commercial involvement in the design, construction, operation, and maintenance of the PSBN. For example, if allowed to participate in the construction of the PSBN, will businesses be required to report their monthly or quarterly use of any portion of the network? What are the regulatory incentives for businesses in addressing their costs and revenues? The potential financial ramifications of operating or using the PSBN will influence the decision of a business to be part of this effort. It is therefore important for the Commission to have the necessary tools at its disposal to understand and address such tax implications, so that private investment has appropriate incentives to contribute toward the success of the PSBN.

4. Preventing and detecting waste, fraud, and abuse

The PSBN is a high-profile undertaking that will require a funding commitment in the billions of dollars. As noted above, President Obama has proposed an initial \$10.7 billion investment of taxpayer funding.⁴⁰ State and local governments also may be required to commit their own funding to ensure that the network is launched. Establishing a mechanism to prevent and detect waste, fraud, and abuse therefore is appropriate to ensure that funding is efficiently spent and that public support for the creation of the PSBN continues.⁴¹

⁴⁰ See n.16, *supra*.

⁴¹ See, e.g., American Recovery and Reinvestment Act of 2009, Pub. L. No. 111-5, § 6001(d)(4) (2009); see also National Telecommunications and Information Administration, Broadband Technology Opportunities Program (BTOP) Quarterly Program Status Report, at 2-4 (Feb. 2011) (explaining the efforts of the National

The initial development and implementation vision for the PSBN may involve hundreds of smaller development and build-out projects. Each individual project likely will involve a number of stakeholders—ranging from the public safety organizations that will benefit from the network, and the state and local officials who will oversee construction, to equipment vendors, wireless broadband network operators, and private contractors that will carry out the actual construction. Network testing also must take place locally to ensure high-quality communications capability in a particular community. While the ERIC, TAC, PSAC, and/or PSBL may be involved and provide oversight or guidance to these projects, the vast majority of PSBN-associated construction will be carried out by local individuals and contractors.

The need to approach PSBN construction in this way necessarily creates a heightened risk that precious, finite monetary resources could be targeted by individuals or groups looking for personal financial gain, particularly in these initial phases. Indeed, the Association of Certified Fraud Examiners has reported that more than five percent of an organization’s revenue typically is lost to occupational fraud.⁴² In a large program like the PSBN, which involves a significant population of many individual organizations, there is a clear need to have a proactive framework to prevent and detect waste, fraud, and abuse. An even greater risk exists that inefficient management—despite good intentions—could squander taxpayer dollars during the initial construction and implementation phases of the PSBN project.

Under either scenario, the potential for waste, fraud, and abuse arises from a lack of independent monitoring and oversight. Further, inefficient decision-making presents the risks of

Telecommunications and Information Administration (“NTIA”) to fulfill its “responsibility to protect taxpayer investment” in the BTOP program by “mitigat[ing] waste, fraud, and abuse; ensur[ing] compliance with award conditions; and monitor[ing] each project’s progress toward its timely completion”).

⁴² Association of Certified Fraud Examiners, REPORT TO THE NATIONS ON OCCUPATIONAL FRAUD AND ABUSE, at 4, 8 (Sept. 2010), <http://www.acfe.com/rtn/rtn-2010.pdf>.

wasting taxpayer funds; diminishing the credibility of, and support for, the PSBN program; and reducing the performance of the network to sub-optimal levels. Establishing preventative, detective, and investigative protocols to deliver detailed monitoring and oversight is imperative to the success of the program. Moreover, in today’s political environment, where creating a network like the PSBN is an exception to the general rule of budget cutting and deficit reduction, and where most in Congress envision eventual budget neutrality for the PSBN, mechanisms to prevent and detect wasteful or fraudulent spending become all the more critical to ensuring that the PSBN does not lose momentum or public support prior to its creation. Key stakeholders, including Congress and the Government Accountability Office (“GAO”), will require sufficient transparency and good governance controls (such as appropriate monitoring systems) to mitigate waste, fraud, and abuse.

5. Fulfilling audit, tracking, and reporting requirements

As discussed above, constructing and managing the PSBN will require a significant capital investment that will flow from multiple funding streams at the federal, state, and local levels. The PSBN will certainly be a long-term, dynamic effort. As such, in addition to focusing attention on initial capital expenditures associated with the construction of the PSBN, the NPRM acknowledges that it also is important to address investments that will support operational aspects following the eventual deployment of the network, such as system refresh requirements and operations and maintenance activities.⁴³ At the federal level alone, funding for the build out of the PSBN may come from several different sources, including the proceeds of the Commission’s incentive auctions of certain broadcast spectrum assets; direct BTOP or Broadband Initiative Program (“BIP”) grants from NTIA and the Rural Utilities Service (“RUS”)

⁴³ See NPRM ¶ 117.

within the Department of Agriculture, respectively; other federal grant resources; low-interest federal loans; and/or stimulus funding, to name just a few. Similar myriad sources of funding exist at all levels of state, regional, and local government as well. In addition, it is highly likely that some sources of funding will arise from interactions with commercial carriers—through secondary auctions, roaming, and other vehicles.

With the commitment of public funding also comes the obligation to track each dollar and account for its use. Indeed, although such details have not yet been worked out, there is no question that Congress and the President, not to mention state and local officials, will expect that the Commission provide comprehensive progress reports as construction for the PSBN gets underway. Meeting these expectations will necessitate the installation of appropriate audit, tracking, and reporting requirements. Deloitte thus believes comprehensive financial controls—such as specific monitoring and reporting rules pertaining to contract spending, performance management, compliance, and fraud detection—with the capability to take in, process, and synthesize the level of information, will be required to demonstrate to federal, state, and local leaders that public funds are being used in an authorized manner. Such reporting also can confer a secondary benefit of helping to document the impact of public funding.⁴⁴

Moreover, even after the *commitment* to provide funding to the PSBN is made—which is no small task—the money will not automatically begin to flow. The actual *collection* of such funds from their sources, their *designation* to particular projects, and ultimately, their *disbursement*, also will require significant organization. Faulty license evaluation and analysis,

⁴⁴ Consolidating the audit, tracking and reporting functionality of the PSBN into a single structure also would help to ensure that such responsibilities are not duplicated by other federal agencies or at the state and local levels. See U.S. Government Accountability Office, OPPORTUNITIES TO REDUCE POTENTIAL DUPLICATION IN GOVERNMENT PROGRAMS, SAVE TAX DOLLARS, AND ENHANCE REVENUE (GAO-11-318SP, March 1, 2011), <http://www.gao.gov/new.items/d11318sp.pdf>.

poor asset management provisions, and/or improper valuation of assets for transaction purposes could result in overpayment or funding gaps as well as increased scrutiny from stakeholders (e.g., Congress). In addition, misaligned license and asset provisions (e.g., asset management, technical data rights) could result in significant loss of network control for stakeholders. Without appropriate planning for and mitigation of these risks, construction and deployment of the PSBN could be delayed from the onset. In addition, ongoing operation and maintenance of the PSBN also could be hindered.

6. Managing the network from a “global” administrative perspective

Finally, providing accurate and timely reports to Congress, the President, and other public stakeholders necessitates an effective approach to program management. Legislative proposals related to the PSBN are expected to include extensive reporting requirements that must be strictly adhered to. Program management includes not just monitoring individual build-out projects proceeding simultaneously for purposes of identifying any waste, fraud, and abuse and/or compiling quarterly or annual progress reports. Indeed, effective program management also involves establishing a framework through which such progress is actually made and requires, among other skills, the ability to: (1) coordinate, track, and enforce program schedules, many of which will proceed in parallel; (2) develop systems to foster communication among stakeholders, process documentation, and identify divergent policy positions and decisions so as to eliminate or mitigate issues that could slow or otherwise delay the PSBN construction process; and (3) assess progress of implementation against the overall plan in order to make corrections and, where appropriate, convey of time-sensitive program-related information and to key stakeholders. Program management activities must also strike a balance between the different needs of stakeholders in rural and urban areas, including establishing a robust plan for prioritizing and deploying funds for the PSBN.

Program management controls were used for BTOP grants awarded through NTIA. In particular, as a condition of receiving BTOP funding, recipients were required to: (i) demonstrate a feasible build-out plan; (ii) advance one or more of BTOP’s five statutory purposes; (iii) provide matching funds of at least 20 percent toward total eligible project costs; (iv) document that the project would not be implemented during the grant period but for a federal grant; and (v) demonstrate that the budget is reasonable.⁴⁵

Similar controls are needed for the PSBN, as incomplete program management would limit overall stakeholder visibility into and control over the implementation of the PSBN, thus prompting renewed concern regarding the issues discussed above, including that waste, fraud, and abuse could occur *and* that the audit, tracking, and reporting requirements could be ineffective. Some specific risks posed by a lack of “global” administrative oversight include:

- Missed milestones for constructing and implementing the PSBN;
- Lack of early detection of work slippage issues;
- Disjointed or inappropriately timed progress schedules;
- Inability to identify and address construction material supply concerns;
- Ineffective allocation of staffing;
- Lack of open communication channels between decision makers and those making overall policy decisions and setting global standards; and
- Lack of oversight to identify and correct misconceptions or miscommunications regarding specific program implementation details or objectives.

⁴⁵ See Notice of Funds Availability and Solicitation of Applications for NTIA’s BTOP, 75 Fed. Reg. 3,792, 3,800-01 (Jan. 22, 2010); Notice of Funds Availability and Solicitation of Applications for RUS’s BIP and NTIA’s BTOP, 74 Fed. Reg. 33,104, 33,107-08, 33,110-12 (July 9, 2009).

To demonstrate the impacts of the challenges discussed above, the Commission need look no further than those communities who applied for and received waivers to begin early deployment of broadband networks in the 700 MHz public safety band.⁴⁶ The Commission granted waivers to 21 jurisdictions,⁴⁷ seven of which have begun—*independently*—to deploy LTE systems.⁴⁸ In other words, each jurisdiction is generally acting *on its own*, under the conditions of its waiver (and, where applicable, grants) to initiate procurements, negotiate and implement interoperability plans, establish certification and compliance testing protocols, and otherwise proceed towards establishing a local public safety broadband network. These waiver recipients are responsible for adhering to the interoperability regulations, technical standards, license requirements and grant conditions adopted by the ERIC.⁴⁹ However, although the possibility of creating a “network of networks” among these waiver jurisdictions has been discussed, none have collaborated to realize administrative synergies or reduce the collective burden of their efforts.

These challenges that exist on the local level will only be magnified on the national level. Without an appropriate structure to track, monitor, and report on the construction and operation of the “global” network, establishing a nationwide interoperable PSBN could proceed in much the same ad hoc fashion, creating opportunities for delay, needless duplication of effort, wasted taxpayer funding, and, ultimately, a degraded network that fails to reach its full potential for nationwide interoperability.

⁴⁶ See *Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks*, Order, 25 FCC Rcd 5145 (2010) (“700 MHz Waiver Order”).

⁴⁷ *Id.* at App. A.

⁴⁸ MISSIONCRITICAL COMMUNICATIONS, *Broadband Waiver Status*, March 2011 (Vol. 26, No. 3), at 46.

⁴⁹ *700 MHz Waiver Order*, 25 FCC Rcd 5145 ¶ 36.

II. AN ORGANIZED GOVERNANCE STRUCTURE IS NEEDED TO ADDRESS THE CHALLENGES FACING THE PSBN

Deloitte anticipates that the effort to establish a truly nationwide, interoperable PSBN will require significant administrative support to, as discussed above: (1) coordinate a disparate stakeholder population at the federal, state, and local levels; (2) foster partnerships with commercial service providers and public safety equipment vendors and monitoring those relationships to advance the goals of the PSBN; (3) assist with tax planning at the federal, state, and local levels; (4) establish mechanisms to prevent and detect waste, fraud, and abuse; (5) develop appropriate audit, tracking, and reporting tools to facilitate Commission/Congressional oversight and ensure budget neutrality and overall fiscal responsibility; and (6) conduct program management at the network level.

Deloitte therefore recommends that the Commission establish a governance structure for the network to navigate these challenges and mitigate the risk to the success of the PSBN posed by any failure to address them. The unprecedented size and scope envisioned for the nationwide interoperable PSBN will require such a governance structure that is well-defined to effectively establish administrative procedures, identify and address issues that threaten progress, and quickly respond to the needs of all PSBN stakeholders and, eventually, users.

The concept of governance for public safety communications is not new, and in fact has been emphasized by the Commission. The National Broadband Plan recognized the need for “an administrative system [to] ensure that users of the public safety broadband spectrum have the capacity and service they require for their network and can leverage commercial technologies to capture economies of scale and scope.”⁵⁰ The Plan thus recommended, in addition to creating the ERIC to facilitate the development of overall policies and technical standards for the PSBN,

⁵⁰ NATIONAL BROADBAND PLAN at 314.

that the organization also fulfill a number of more ministerial roles, including “[c]oordinat[ing] the interoperability framework of regulations, license requirements, grant conditions and technical standards with other entities” and “work[ing] with DHS and the public safety community to ensure that the public safety broadband network and public safety narrowband wireless networks can communicate with one another seamlessly.”⁵¹ In addition, the Plan suggested establishing a long-term funding mechanism for the ongoing operation and maintenance costs associated with the PSBN and that funding disbursements be overseen, audited, and supported by the Commission.⁵²

Despite the Commission’s steps to create the ERIC, TAC, PSAC, and PSBL and make progress in establishing a nationwide, interoperable PSBN, Deloitte submits that establishing the PSBN will require a range of complex administrative, tracking, monitoring, and reporting functions that are not included in the responsibilities of these advisory entities. Indeed, the significant implementation and operational challenges described at length above necessitate the creation of a governance framework that is beyond the resources and capabilities of the ERIC, TAC, PSAC, and PSBL—each of which is largely comprised of professional public safety officials and industry stakeholders with significant obligations elsewhere, and none of which was designed to operate in a full-time, day-to-day capacity.⁵³ While the public safety community is well suited to identify specific technical and operational objectives for the PSBN, these organizations are unlikely to have experience administering an undertaking as large and complex as the PSBN. Commensurate with the expertise and interests of their members, the ERIC, TAC,

⁵¹ *Id.* at 317.

⁵² *See id.* at 319 (discussing administration of a grant program to support the PSBN).

⁵³ Indeed, the large membership of the PSAC, for example, which includes representation of more than 50 entities, does not lend itself to more than an advisory role.

PSAC, and PSBL were established to serve the more substantive roles of setting technical standards and overall policies that will guide the design and construction of the PSBN.⁵⁴ Thus, it is impractical to expect that these groups also could provide the administrative resources and impartial oversight necessary to ensure the efficient and transparent deployment and operation of the PSBN, either at its inception or in its future capacity.

Moreover, creating a robust governance structure will be critical to meeting the expectations of Congress and the Administration that public funding for the PSBN will be used in a transparent and appropriate manner and will achieve the goal of creating a nationwide interoperable network for the protection of all citizens. When presented with a similarly complex and time-consuming endeavor involving the public safety community—in particular, the deployment of next generation 911 capabilities throughout the nation—the National Broadband Plan recognized the significant implementation challenges facing the Commission and the fundamental need for centralized governance and oversight.⁵⁵ For example, the Plan documented a “lack of coordinated funding” as one “significant roadblock for NG911 deployment” in addition to the problem of “Tribal, state, and local use of 911 funds for purposes other than 911.”⁵⁶

The National Broadband Plan thus recommended that Congress “consider establishing a federal legal and regulatory framework for development of NG911 and the transition from legacy 911 to NG911 networks” and that authority be given to the FCC to implement next

⁵⁴ See generally *PSAC Notice*; *ERIC Order*; *PSBL Order*.

⁵⁵ See NATIONAL BROADBAND PLAN at 325-27; see also *Framework for Next Generation 911 Deployment*, Notice of Inquiry, PS Docket No. 10-255, FCC 10-200, ¶¶ 83-86 (rel. Dec. 21, 2010) (“*NextGen 911 NOI*”).

⁵⁶ NATIONAL BROADBAND PLAN at 325-26.

generation 911 priorities.⁵⁷ The Commission recently sought guidance on how to establish such a governance structure in order to promote its substantive policy goals and the mandate of Congress.⁵⁸ Bridging the gap between the capabilities of modern networks and devices and today's 911 system requires significant coordination and collaboration between public safety and the commercial sector, a challenge that also is inherent to the establishment of the PSBN. Indeed, the specific problems identified in the National Broadband Plan to demonstrate the need for a unified federal legal and regulatory framework—specifically, a “lack of coordinated funding” and the misallocation of 911 funds to other uses—also exist for the PSBN.

In recognition of the fact that a lack of governance can negatively impact overall performance of a government initiative, it is common for large federal programs to be established with defined governance and oversight mechanisms. A recent GAO report stressed that “[e]ffective governance, accountability, and internal control are key to maintaining public trust and credibility” for publicly funded federal programs.⁵⁹ Another GAO study determined, with respect to one federal program, that an improved governance structure was needed to implement clear “policies, procedures, and mechanisms to improve accountability and oversight,” because “lack of formal guidelines to articulate [] administrative responsibilities”

⁵⁷ *Id.* at 326 (stating that “[t]he legislation should recognize existing state authority over 911 services but require states to remove regulatory roadblocks to NG911 development,” and “give the FCC the authority to implement the NG911 federal regulatory framework, eliminate outdated 911 regulations at the federal level and preempt inconsistent state regulations”).

⁵⁸ See *NextGen 911 NOI ¶¶* 85-86.

⁵⁹ U.S. Government Accountability Office, *LEGAL SERVICES CORPORATION: IMPROVEMENTS NEEDED IN CONTROLS OVER GRANT AWARDS AND GRANTEE PROGRAM EFFECTIVENESS*, at 24 (GAO-10-540, June 11, 2010), <http://www.oig.lsc.gov/gov/GAO-10-540.pdf> (assessing efforts made by the Legal Services Corporation to address weaknesses in its governance structure).

among stakeholders leads “to confusion and inefficiencies.”⁶⁰ These and other similar concerns led the Department of Commerce, relying in part on NTIA’s authority to provide for the “coordination of the telecommunications activities of the executive branch,”⁶¹ to transfer administration of the Internet domain name assignment and registration system to a private, independent entity—the Internet Corporation for Assigned Names and Numbers (“ICANN”)—to ensure the stability of the Internet as it evolved into a global commercial space.⁶²

Accordingly, the Commission could create a governance structure—separate and apart from the public safety and industry stakeholders that will eventually construct, operate, and use the PSBN—through which the needs and concerns of individual groups and individuals can be communicated, assessed, and addressed within the appropriate context of achieving nationwide interoperability for all first responders. Establishing a clear governance framework to track, monitor, and report on the day-to-day development and operation of the PSBN is a critical component of achieving the proper balance between public and private sector stakeholders.

⁶⁰ See U.S. Government Accountability Office, PENSION BENEFIT GUARANTY CORPORATION: GOVERNANCE STRUCTURE NEEDS IMPROVEMENTS TO ENSURE POLICY DIRECTION AND OVERSIGHT, at 4, 23 (GAO-07-808, July 6, 2007), <http://www.gao.gov/new.items/d07808.pdf>.

⁶¹ 47 U.S.C. § 902(b)(2)(H).

⁶² See Letter of Robert P. Murphy, General Counsel, U.S. General Accounting Office, to The Honorable Judd Gregg, Chairman, Subcommittee on Commerce, Justice, State, and the Judiciary to the Committee on Appropriations, U.S. Senate, *et al.*, at 6-9 (July 7, 2000), available at <http://www.legistorm.com/showFile/L2xzX3Njb3JlL2dhby9wZGYvMjAwMjAwMC83/ful31352.pdf> (tracing the history of the Internet’s domain name assignment and registration system and its eventual privatization in ICANN pursuant to the recommendations of federal government stakeholders, including the Clinton administration’s report on e-commerce, “A Framework for Global Electronic Commerce”).

III. THE COMMISSION SHOULD APPOINT AN ADMINISTRATOR FOR THE PSBN

To achieve effective governance, Deloitte contends that the substantive and administrative responsibilities of establishing and operating the PSBN should be segregated by appointing an entity that would be responsible for the execution of the policies and priorities adopted by the Commission or the governing bod(ies) of the PSBN. Commission precedent provides support for such division of responsibility. Indeed, Commission precedent provides a number of successful models of neutral administrators that could be emulated in the PSBN context and which are consistent with, and would complement, the management structure already in place for the network. As with other administrators of this type, Deloitte envisions an independent ministerial role, not a policy-making role, for this entity.

An administrator would mitigate the administrative challenges associated with the PSBN initiative by tackling and coordinating the ministerial tasks inherent to such a large effort. For example, this entity would facilitate appropriate interaction between and among the Commission, other federal agencies, state governors and CIOs, and local public safety agencies. To be effective, the administrator also would need to possess a technical knowledge of and experience with commercial mobile radio services and public safety communications systems, as well as familiarity with the FCC's policies and rules. But the administrator would not be responsible for physical network construction or operation, nor would it replace local involvement or ownership. Rather, the administrator's role would be limited to the governance role of tracking, monitoring, and reporting that would give the Congress and the President confidence that taxpayer funding is being used effectively and efficiently and that the goals it sets for the PSBN will be met. Some of the specific responsibilities that would be assigned to an administrator include:

- Stakeholder outreach and education

- Federal, state, local, and tribal inter-government coordination
- Finance operations and controls
- Program management
- Regulatory and risk management
- Fraud prevention and forensics
- Treasury and cash management
- Audit services
- Monitoring and reporting
- Litigation and dispute support
- Asset valuation services
- Technology and information management
- Tax planning and coordination

A primary example of such an administrator is in the Commission's ongoing 800 MHz reconfiguration. In particular, the 800 MHz Transition Administrator worked with the Commission and relevant stakeholders to develop a transition plan for the 800 MHz band and now administers that plan. The Transition Administrator acts as a neutral body between 800 MHz license holders and commercial wireless service providers to ensure that the staged transition process the Commission has developed is appropriately implemented. In addition, the Transition Administrator oversees the use of funds that finance the reconfiguration of the band.

Similarly, the Commission acknowledged the need for a neutral administrator in the analogous context of the North American Numbering Plan ("NANP"), the "basic numbering scheme that permits interoperable telecommunications service within the United States, Canada,

Bermuda, and most of the Caribbean.”⁶³ Administration of the NANP, like the PSBN, involved complex and politically sensitive coordination issues. In the case of the NANP, the Commission was concerned that it adopt an implementation model that would encourage other countries to join the NANP.⁶⁴ The Commission also was concerned that the NANP remain viable so as not to jeopardize the interoperable telecommunications systems of North America.

Following AT&T’s divestiture and the advent of competition in the voice industry, particularly wireless competition, the Commission determined that the continued success of the NANP would require a numbering policy that is “fair and competitively neutral.”⁶⁵ Accordingly, the Commission (as it already has done to establish the PSAC within the ERIC), established the North American Numbering Council (“NANC”) pursuant to its FACA authority, to advise the Commission on ways “to foster efficient and impartial number administration as telecommunications competition emerges” to ensure that the NANP would remain viable and the continued interoperability of North America’s telephone systems.⁶⁶

The Commission thus determined that the NANC—like the ERIC, TAC, PSAC, and the PSBL—would be composed of members “drawn from all segments of the industry” as well as “other interested parties from the United States and other NANP member countries.”⁶⁷ At the outset, the Commission adopted broad principles to govern the operations of the NANC and its

⁶³ *Administration of the North American Numbering Plan*, Report and Order, 11 FCC Rcd 2588 ¶ 3 (1995) (“*NANP Report and Order*”).

⁶⁴ *See id.* ¶ 32.

⁶⁵ *Id.*

⁶⁶ *See Administration of the North American Numbering Plan; Toll Free Service Access Codes*, Third Report and Order and Third Report and Order, 12 FCC Rcd 23040 ¶ 14 (1997).

⁶⁷ *Id.* ¶ 12.

eventual operations.⁶⁸ The Commission then adopted a new governance structure for the NANP whereby the NANC would act as “an industry policy board or oversight committee [to] develop policy and, at least, initially resolve disputes, while the NANP Administrator would maintain administrative number databases and process applications for numbers,” in addition to fulfilling other ministerial functions.⁶⁹ The Commission ultimately decided that such distribution of responsibilities would serve the public interest by “permit[ting] fair and efficient overall administration of numbering resources, foster an integrated approach to numbering administration across NANP member countries, and enable this Commission and regulatory bodies of other nations to ensure that domestic numbering administration is effective, while leveraging the expertise and innovation of industry.”⁷⁰

Finally, perhaps the most visible administrative body to operate under the Commission’s authority is USAC, the permanent administrator of the federal universal service programs (the “USF”).⁷¹ USAC, its CEO, and the committees making up USAC’s Board of Directors are responsible for administering, managing, and overseeing the USF mechanisms,⁷² including “billing contributors, collecting contributions,” and “disbursing ... support funds.”⁷³ In addition, USAC must fulfill a number of other ministerial obligations, including compiling quarterly and annual reports with the Commission,⁷⁴ maintaining the accounts of the USF,⁷⁵ developing

⁶⁸ *NANP Report and Order*, 11 FCC Rcd 2588 ¶ 15.

⁶⁹ *See id.* ¶¶ 24-25.

⁷⁰ *Id.* ¶ 26.

⁷¹ 47 C.F.R. § 54.701.

⁷² *See id.* §§ 54.702, 54.704-705.

⁷³ *Id.* § 54.702(b).

⁷⁴ *Id.* §§ 54.702(g)-(h).

⁷⁵ *Id.* § 54.702(n).

“applications and associated instructions” for each funding mechanism,⁷⁶ administering the application process,⁷⁷ calculating support levels,⁷⁸ and performing audits of USF beneficiaries,⁷⁹ among other tasks. Consistent with Deloitte’s recommendation for a neutral administrator of the PSBN, USAC “may not make policy, interpret unclear provisions of the statute or rules, or interpret the intent of Congress,” but instead must “seek guidance from the Commission.”⁸⁰

There do not appear to be any barriers to the Commission’s adopting a similar approach to governance in the case of the PSBN. Indeed, as the examples above demonstrate, the successful implementation of complex governmental programs, such as the 800 MHz reconfiguration and the NANP, has depended on a clear organizational structure that recognized and accommodated the need for an independent administrative structure. Moreover, a number of unsuccessful self-administered programs caution against such an approach.⁸¹

Accordingly, Deloitte recommends that the Commission adopt a governance framework for the PSBN that includes the appointment of an administrator to serve the critical functions

⁷⁶ *Id.* §§ 54.705(a)(ii), (b)(ii), (c)(ii).

⁷⁷ *Id.* §§ 54.705(a)(iii), (b)(iii), (c)(iii).

⁷⁸ *Id.* § 54.705(b)(iv).

⁷⁹ *Id.* §§ 54.705(a)(x), (b)(viii), (c)(iv).

⁸⁰ *Id.* § 54.702(c).

⁸¹ *See, e.g.*, U.S. Government Accountability Office, DEFENSE ACQUISITIONS: RESTRUCTURED JTRS PROGRAM REDUCES RISK, BUT SIGNIFICANT CHALLENGES REMAIN (GAO-06-955, September 11, 2006), <http://www.gao.gov/new.items/d06955.pdf> (discussing the U.S. Department of Defense’s experience developing the Joint Tactical Radio System, which, over the course of ten years, required numerous restructurings and management reorganizations to construct a radio that met specifications, at an average cost of approximately \$37,700 per radio); FDIC Banking Review, *Politics and Policy: The Creation of the Resolution Trust Corporation* (2005 Vol. 17, No. 2), <http://www.fdic.gov/bank/analytical/banking/2005jul/article2.pdf> (documenting the administrative and political pitfalls of the Resolution Trust Corporation, which was formed in the aftermath of the S&L crisis of the late 1980s, including “[t]he notion of an impossibly small RTC overseen by an Oversight Board that consisted of high officials whose main responsibilities lay elsewhere was impracticable”).

identified above. As the discussion above clearly demonstrates, the devil of the PSBN will be in the details. To the extent the Commission intends to rely more heavily on the ERIC, TAC, PSAC, PSBL, and their commercial partners to establish the PSBN, the need for an administrator to track, monitor, and report on the PSBN's build-out and subsequent operation becomes even more pronounced.

CONCLUSION

The myriad ways that individuals, families, businesses, and communities utilize broadband connectivity to stay connected to the world around them today barely were imagined a decade ago. Such connectivity has permeated nearly every facet of our society—including education, health care, commerce, entertainment, and social interaction—and yet our nation's local, state, and federal first responders lack a common communications system that would enable them to communicate with one another in the event of an emergency. Indeed, as one county sheriff from Iowa recently commented to members of Congress, “Kids today have better communication than the first responders do.”⁸² The Commission now has the tremendous opportunity—and significant obligation—to remedy this problem by launching a nationwide, interoperable public safety broadband network. But there are significant implementation and operation challenges standing in the way that necessitate a governance framework to administer, track, and monitor the PSBN initiative as progress is made on its development and construction. For the reasons set forth herein, Deloitte urges the Commission to establish such a governance framework and to appoint an administrator to help guide this unprecedented public safety initiative to foreseeable and sustainable success.

⁸² Lucy Warren, *House and Senate Support for D-Block Strengthens*, COMMUNICATIONS DAILY (Mar. 31, 2011), at 4-6 (quoting Story County, Iowa Sheriff Paul Fitzgerald, who also serves as Vice President of the National Sheriffs' Association).

Respectfully submitted,

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- /s/ -

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