

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Certain Wireless Service Interruptions) GN Docket No. 12-52
)
) DA 12-311
)

**COMMENTS OF THE AMERICAN ASSOCIATION OF STATE HIGHWAY AND
TRANSPORTATION OFFICIALS
SPECIAL COMMITTEE ON WIRELESS COMMUNICATIONS TECHNOLOGY**

The American Association of State Highway and Transportation Officials' Special Committee on Wireless Communications Technology (SCOWCoT) presents these comments in response to the Commission's *Public Notice* examining certain wireless service disruptions.¹ The *Public Notice* addresses concerns related to intentional interruptions by government agencies to ensure public safety of wireless services used by the public.

The American Association of State Highway and Transportation Officials (AASHTO) is a nonprofit, nonpartisan association representing highway and transportation departments in the 50 states, the District of Columbia, and Puerto Rico. It represents all five transportation modes: air, highways, public transportation, rail, and water. Its primary goal is to foster the development, operation and maintenance of an integrated national transportation system. AASHTO and the Special Committee on Wireless Communications Technology (SCOWCoT) work to educate the public and decision makers about the critical role that transportation and transportation's use of wireless spectrum plays in securing a good quality of life and sound

¹ Commission Seeks Comment on Certain Wireless Service Disruptions, *Public Notice*, DA 12-311, GN Docket No. 12-52 (March 1, 2012).

economy. In this regard, serving as the Voice of Transportation in spectrum issues, AASHTO comprehends and promotes effective and efficient wireless communications as an important element of transportation infrastructure, particularly for the emergency response and operations responsibilities of its members. It is the National Frequency Coordinator for the Highway Maintenance frequencies in the Public Safety Radio Service.

The Public Notice

The *Public Notice* relates to a decision by officials of Bay Area Rapid Transit (BART) to interrupt wireless service on parts of the BART system. The circumstances surround protests addressing the killing of an individual by a BART police officer. Prior to a protest on August 11, 2011, BART relates it obtained credible information of planned lawless activity and concluded that the safety of the BART system would be compromised. It determined that there was a serious and imminent threat. Noting concern for passenger safety, BART officials decided to interrupt temporarily cell phone service on portions of its private distributed antenna system. BART acknowledges that the interruption temporarily prevented cellular communications for many BART passengers and their families while in selected BART stations and tunnels.²

The Commission seeks comment on other incidents where a wireless carrier interrupted its service for a limited time period at the request of a government agency or had its service interrupted by a government agency exercising lawful control over network facilities. It asks for relevant legal and policy guidance applicable to these events. The *Public Notice* inquires about past practices and precedents, the bases for interrupting wireless service, the risks accompanying

² Press Release, BAY AREA RAPID TRANSIT, *Statement on temporary wireless service interruption in select BART stations on Aug. 11*, (Aug. 12, 2011), available at <http://www.bart.gov/news/articles/2011/news20110812.aspx>;

an interruption, the scope of any interruption and the authority and legal constraints of such action.

The Need for a Balanced Examination

AASHTO believes that a reasoned discussion addressing this subject should entail the values associated with reliable wireless service and public safety. It should comprehend the environments where incidents may unfold. AASHTO presents no case for unfettered discretion to interrupt wireless service. The reality however is that modern technology can be directed to efforts whose purpose is criminal or terror. The inquiry is not one of simply choosing uninterrupted service or public safety. Comprehending the legitimacy behind both perspectives is vital. Advocacy unwilling to engage both values leaves no room for reasoned exchange or meaningful guidance.

In examining this issue and promoting public discussion, balance must resonate. Reliable wireless service is important; it should be the norm. Preserving the availability and openness of communications networks must be at the forefront. Yet communication technologies must promote the protection of the public; emergency services must be able to fulfill their responsibilities. Service interruptions should be well grounded in substance and process.³

The Commission's examination should engage the range of responsibilities and institutions involved, private and public, civilian and military. It should build on work already performed, such as the President's National Security Telecommunications Advisory Committee (NSTAC) 2006 letter. The letter's summary addresses recommendations evolving from the 2005 decision to shutdown cellular service in the Lincoln, Holland, Queens and Brooklyn Battery Tunnels in New York City following the London Underground bombing on that day.

³ Statement of FCC Chairman Genachowski, December 1, 2011.
http://hraunfoss.fcc.gov/edocs_public/attachmatch/DOC-311310A1.pdf

NSTAC's summary reflects a balance. It references operating procedures to be followed for a shutdown and restoration of commercial and private wireless networks during a national crisis. The protocol designates a focal point for coordinating actions leading to and following termination of service, within a localized area, such as a tunnel or bridge, and or an entire metropolitan area. It also references officials designated to make the decision and the substantive inquiries regarding interrupting and restarting service.⁴

AASHTO suggests that protocols for local incidents be examined. There are several reasons. As an incident evolves, it is frequently unclear until much later what the source and motivation is. In this respect, the NTSAC protocol may be invoked. Even if it is not, the danger and harm to the public can be just as severe. Additionally, local authorities are most likely the first to confront and have responsibility for an incident.

More broadly, a protocol that flows from a reasoned exchange is more likely to delineate circumstances where interruptions should be considered and where not. The inquiry is whether there is a credible threat of imminent harm and whether interrupting service is a reasoned response to protect the public. The objective is being able to discern both what a service interruption can reasonably be envisioned to accomplish in preventing or dissipating the danger and the ramifications to the public in shutting down service. A protocol can bring clarity as to those infrequent circumstances that suggest a service disruption as an alternative. A protocol will also profile accountability and responsibility. It will contribute to public understanding of the interests at stake.

⁴ See National Security Telecommunications Advisory Committee, 2009-2010 NSTAC ISSUE REVIEW 155 (2010), available at [http://www.ncs.gov/nstac/reports/2009%20-%202010%20Issue%20Review%20\(FINAL\).pdf](http://www.ncs.gov/nstac/reports/2009%20-%202010%20Issue%20Review%20(FINAL).pdf) (summarizing the protocol).

Transportation infrastructure is particularly vulnerable. Terrorist attacks on mass transit and commuter rail facilities in Moscow, Madrid, London, and Mumbai, and the death, injury and disruption caused, highlight the susceptibility of transport facilities.⁵ In each of the Madrid, London, Moscow and Mumbai incidents, wireless telecommunications assisted the terrorists. Information indicates that cell phones were used to coordinate and detonate the 2004 Madrid bombings. The bombs detonated onboard London Underground trains went off within fifty seconds of each other. The Mumbai terrorists located targets using GPS; their wireless devices coordinated their resistance to Indian security services. Each of these circumstances rose to become a national incident, yet local agencies were the first to respond.

The potential harm to innocent victims emanating from calamities in tunnels can only be underscored by review of two incidents in Europe and one in Korea. In 1999, a fire in the Mont-Blanc tunnel, the main Alpine link between France and Italy, claimed 39 lives and disrupted commerce between the nations. In 2001, a fire in the St. Gotthard tunnel in Switzerland killed at least 10 people and temperatures were estimated to have reached over 1,800 degrees Fahrenheit.⁶ In February, 2003, a mentally ill person ignited a fire in a subway car at the Daegu (Taegu) Station resulting in the death of 192 people with injuries to another 148.⁷ These incidents

⁵ The attack on the rail lines leading to Madrid's Atocha Station occurred on March 11, 2004; the attack on London Underground trains and a surface bus occurred on July 7, 2005; the attack on Moscow Lubyanka and Kultury Metro Stations occurred on March 29, 2010, the attack on Mumbai's Chhatrapati Shivaji Terminus commenced on July 11, 2006. Each attack resulted in dozens of deaths and injuries. See Transportation Security: Additional Actions Could Strengthen the Security of Intermodal Transportation Facilities, *General Accountability Office (May 27, 2010) at page 1.*

⁶ <http://www.time.com/time/world/article/0,8599,181246,00.html>
<http://www.guardian.co.uk/world/2001/oct/25/jonhenley>

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<http://www.mace.manchester.ac.uk/project/research/structures/strucfire/CaseStudy/HistoricFires/InfrastructuralFires/default.htm>

highlight the dangerous potential ramifications. Those responsible for public safety in tunnel environments, including BART decision makers, must be sensitive to and prepared for such.

There are challenges inherent to transportation infrastructure for both the large and small incident. In transportation facilities, whether, rail, bridge, or highway, potential danger escalates quickly. A disruption in a subway tunnel or station will often quickly overcrowd station platforms, creating risk of passenger injury and delaying emergency response. Trains must be halted, delaying emergency response. Passenger evacuation from trains or stations similarly presents hazards and risk. In bridge and tunnel environments, disruptions also delay emergency response as vehicle and individual evacuation and access is constrained.

Rail and subway facilities are particularly challenged. Unlike airports where passengers board aircraft in single file, trains, subways and buses, and their terminals and stations, are designed for multiple points of access and egress allowing the maximum amount of movement in the shortest period of time. The typical Washington Metro 6 car train has 18 doors that open for passengers at every station allowing hundreds of passengers to board or depart the train in just a few seconds. A typical large body aircraft will require over 30 minutes to accommodate the same number of passengers. In an emergency incident, transportation agencies comprehend how the environment can accentuate the potential danger and harm.

In this regard, agencies focus significant resources on passenger safety and security. Protocols are established for a range of incidents. There is coordination among officers from federal, state, local, rail and transit police agencies. This effort involves activities such as heightened station and right-of-way patrols, increased security presence onboard trains, recognition, response, and prevention techniques and procedures, explosives detection, random

passenger bag inspections, close circuit television and counter-surveillance.⁸ In all these areas, a balance is struck between individual access and protecting the public and the facilities. A protocol addressing citizens communicating freely in a secure environment can emerge to preserve these values.

The Commission notes its own authority under Title II of the Communications Act and inquires of possible action it could pursue to address wireless interruptions.⁹ The *Public Notice* also references agreements between wireless carriers and transportation agencies where the terms and conditions address service interruptions. Private agreements between the property owner agency and carriers involve the agency's management of its property, including its internal communications system. These circumstances engage not only the breadth of Title II-- the complex questions of whether the Commission's authority extends to such-- but should the Commission preempt and dictate these private agreements. Both areas fall within the broader question of whether service interruptions should be prohibited under any circumstance or whether protocols can balance the need for reliable service and public safety. AASHTO recommends examining the latter as the better path.

The value of reliable wireless service to the public is well recognized. Beyond its access to summon emergency response and being located, is inquiring of family and others of their well being. It is a significant facet of the economy. At the same time, the era reflects that there are those who use modern technology to facilitate crime and terror. The Commission should

⁸ Southeastern Pennsylvania Transportation Authority. SEPTA Safety and Security, [http://www.septa.org/safety/Operation Rail Safe](http://www.septa.org/safety/Operation%20Rail%20Safe), Amtrak Police Department, http://police.amtrak.com/index.php?option=com_content&view=article&id=82&Itemid=67, Port Authority of New York and New Jersey Safety and Security <http://www.panynj.gov/path/security.html>

⁹ *Public Notice*, DA 12-311, GN Docket No. 12-52 (March 1, 2012) at page 5.

recognize that circumstances may present a credible threat to the public where interrupting wireless service, when balanced against the disruption to the public, may be a reasoned alternative to consider. Developing substantive guidance and processes to examine the circumstances is a worthy endeavor to pursue.

Respectfully submitted,

A handwritten signature in black ink that reads "William A. Brown". The signature is written in a cursive style with a long, sweeping tail on the letter "n".

William A. Brown, Chairman

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