

WRITTEN TESTIMONY OF

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PUBLIC SAFETY SPECTRUM TRUST

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Committee on Homeland Security
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Interoperability in the Next Administration:
Assessing the Derailed 700 MHz D-block Public Safety Spectrum Auction

Thank you, Chairman Cuellar, Ranking Member Dent and distinguished Members of the Subcommittee for the opportunity to appear before you today.

My name is John Contestabile. I appear before you today as a member of the Board of Directors of the Public Safety Spectrum Trust Corporation (PSST) and representing Chief Harlin McEwen who is the Chairman of the Board of Directors and who had a scheduling conflict with this hearing. I serve on the Board as a representative of the National Governors Association.

I currently serve on a number of national committees including Vice Chair of the American Association of State Highway and Transportation Officials (AASHTO) Security Committee, the Transportation Research Board's Security Oversight Panel, the Department of Homeland Security's SAFECOM Interoperable Communications Advisory Committee, and I chair the Maryland State Interoperability Executive Committee (SIEC) Working Group, which developed the Maryland statewide plan for public safety voice and data communications.

The Public Safety Spectrum Trust Corporation is a non-profit corporation that was formed in June 2007 and consists of a Board of Directors representing fifteen national public safety organizations.

In November 2007, the PSST was awarded the nationwide 700 MHz Public Safety Broadband License (PSBL) by the Federal Communications Commission (FCC). The license is for the 10 MHz of radio spectrum in the 700 MHz band that has been allocated by the FCC for public safety broadband purposes and is intended to be one half of the spectrum that will be used to develop a shared commercial/public safety network. The other half of the spectrum will come from the 700 MHz D Block. The mission of the PSST is to represent the interests of the local, state and federal public safety community. I and the other members of the PSST Board of Directors take this duty very seriously, and I appear today on behalf of not only the PSST, but also the public safety community we serve.

Advances in broadband telecommunications can give emergency responders the ability to do such things as monitor vital signs of firefighters on-site, monitor patients' vital signs on their way to emergency rooms, get criminals off the street with real-time fingerprint scanning and stream video on demand to emergency personnel and command centers from fixed traffic monitoring cameras and mobile cameras in emergency vehicles at the scene of incidents. These are only a few of the almost limitless number of innovative applications that can help public safety officials protect our lives and property and increase their personal safety. At the same time, these new capabilities can permit

interoperability among first responders that we do not have today and will ensure that we never have to repeat the terrible communications deficiencies that we faced in events like 9/11 and Hurricane Katrina.

We sit before you almost seven years to the day of one of the most tragic events on American soil: September 11, 2001. Following that event there was significant rhetoric about the failures of public safety communications systems and the need to improve them throughout the country. While there may have been small pockets of improvement in limited areas throughout the country, most of the rhetoric has not resulted in action. Today, there is still no comprehensive, next-generation, wireless public safety solution that improves public safety communications nationwide.

I am sure each of you can appreciate why having a secure, wireless, national public safety broadband network is so important. We applaud the willingness of the FCC to adopt this innovative approach in seeking a solution that does not require federal or local government funding and we strongly support the creation of this network. Any review of major crises such as 9/11 or Hurricane Katrina shows how much the personal efforts and effectiveness of our nation's first responders – police, firefighters, emergency medical personnel, and others - are diminished or undermined when the communications infrastructure that supports our efforts fails or is insufficient for the needs of the public safety professionals. Just like consumers, public safety can benefit from wireless broadband technology, but we also need a network that is hardened to withstand catastrophes, that has power support for individual communications sites, satellite back-up and other important features so that it will be available and reliable in a crisis. And it must be available wherever we ask our first responders to go. We also need a network that uses one common technology standard so the dozens of separate groups making up our nation's first responders in any area at any given time can communicate with each other. Establishing and building out the public safety broadband network will be a significant challenge, but it is one that very much needs to be done to meet our national security and public safety needs for years to come.

The PSST commends the City of New York for putting together the essential ingredients that have permitted it to deploy an advanced broadband network. If New York's access to funding could be replicated throughout the rest of the country, we would be facing a much less challenging future. Unfortunately broadband funding is lacking for almost all other local and state jurisdictions and history has proven that it will take a national effort to create nationwide seamless interoperability. We also know that an approach other than reliance on public financing is the only way to ensure sufficient, sustainable funding for a nationwide, broadband public safety-grade network and to keep it refreshed and

continually updated. Indeed, the public safety broadband network will be an important tool in rural America just as it will be in major metropolitan areas.

Fortunately, the FCC has proposed an innovative model - a public safety/commercial partnership between the D Block licensee and the PSST serving as the Public Safety Broadband Licensee, that will join the interests of business and public safety. This partnership will permit emergency responders in metropolitan, suburban and rural areas to take full advantage of current and future telecommunications discoveries that otherwise would be limited to commercial applications. It will mean that, finally, we will have the communications capabilities and interoperability needed to protect our communities no matter the scale of the disaster.

For a public servant like me, who has been focused on improving emergency responder communications and preparing for disasters, I am convinced this partnership promises to deliver the network and communication capabilities the public safety community has long needed. But this kind of network requires a serious commitment from both a public and private partner if it is to be financed, built, operated, maintained and upgraded over time. Both sides - public safety and commercial - must be flexible as we embark together on this entirely new, historic undertaking.

The recent comments filed at the FCC on the D Block from companies like U.S. Cellular, Ericsson, Sprint Nextel and others are a very promising sign that those who know what is needed to make a wireless network commercially viable believe that the D Block/PSST partnership can succeed. They have proposed some intriguing concepts that deserve further investigation by the FCC. These ideas recognize that our old model for building public safety systems, individually and relying on government funding, will not work for a network of this scale and ambition. The PSST will continue to work with them and with others who have a genuine commitment to the public safety/commercial partnership in exploring creative approaches to this challenging, but absolutely essential, endeavor.

The PSST is working very closely with the organizations that come under the umbrella of the National Public Safety Telecommunications Council and others to take a hard look at public safety requirements. A broadband network that doesn't go beyond what is available commercially today, in terms of coverage, capability, and reliability, would be a poor use of public safety's 10 MHz of broadband spectrum. On the other hand, we understand that we need to weigh our vision of an ideal network against the ultimate reality test - that there may be no nationwide interoperable broadband network unless commercial and public safety interests come into alignment. The technical standards the PSST

proposed in its last FCC filing represented our best thinking at that time, but we remain open to discussing the right balance of technical, operational and, indeed, economic elements for public safety and for commercial users.

The FCC, the PSST and others who are committed to the success of this partnership have the dedication and the knowledge to make it work. What we do not have is the luxury of time. The D Block spectrum and the FCC's vision of a public safety/ commercial Partnership that delivers mobile interoperable broadband communications for public safety users – and also brings increased broadband capabilities to commercial users throughout the country - is the right idea at the right time. We cannot come this close and let slip away what is a once in a lifetime opportunity to address the communications requirements of the nation's emergency responders.

We were disappointed that the D Block did not attract a winning bid in the 700 MHz auction concluded earlier this year. We had hoped by this time to have concluded the negotiation of a Network Sharing Agreement (NSA) with the winning D Block bidder and be embarking on the network deployment. Instead, we find ourselves in the midst of working towards a re-auction of the D Block spectrum, trying to find the approach that will enable the auction to be successful and also preserve requirements that will result in a network designed to deliver genuinely needed up-to-date, affordable and interoperable broadband communications capabilities to our country's first responders. The PSST has been working with the FCC as the FCC develops the rules for a follow-on D Block auction which will result in a winning bidder and furthermore meet the critical communications needs of the public safety community. The PSST intends to take advantage of the opportunity offered by the new auction to continue to make information available, to engage in a dialogue with interested bidders, and to make sure its goals are consistent with the public policy objectives of the Congress and the FCC.

We cannot let this re-auction fail. If it does, then the individual federal, state and/or local government agencies will be the only remaining source of the substantial funding needed to construct and operate a modern, dedicated, nationwide broadband communications network for public safety use. In today's economic climate, that would likely pose overwhelming challenges and no doubt result in balkanization of first responder communications capabilities around the country. I respectfully ask the members of this Subcommittee to help us ensure that failure is not an option in a D Block re-auction.

As you may know, the 700 MHz auction far exceeded expectations in terms of revenue raised, netting nearly \$20 billion for the Treasury, well

above the \$10.2 billion revenue target reflected in the Deficit Reduction Act of 2005. That performance should set to rest concerns regarding the possible undesirable budgetary impacts that could be associated with setting aside spectrum to craft a solution for public safety's critical communications needs.

We in the public safety community have come a long way in the last year – with the help of many of you here in Congress and of the FCC – to be in a position to play a constructive role in crafting a viable solution to our long-standing mobile communications problems. In June 2007, the Public Safety Spectrum Trust was formed and now holds the Public Safety Broadband License. The Trust has accomplished a lot without any government funding and we have embraced the concept of sharing the use of spectrum, and sharing a network, with a commercial provider, with the understanding as set forth in the FCC's order that public safety portions of the network will be under public safety's control.

The FCC's Second Report and Order assigns important tasks to the PSST as the public safety broadband licensee to ensure that the needs of first responders are met. These tasks include working with the D block auction winner(s) to develop and construct a seamless network that meets public safety's critical communications needs, both at the outset, over the entire term of the license, and into the future. For example, the FCC specifically assigned the PSBL responsibility to approve, in consultation with the commercial operator(s), equipment and applications used by public safety entities on the shared network. Public safety's needs, and technology available to meet those needs, will not remain static. There will be a continuing need for input from the public safety community with regard to network upgrades being implemented by the commercial operator(s) (as all commercial operators know, networks must be continually maintained and upgraded). We see the PSST in an ongoing role as the public safety ambassador and united voice in these matters.

There is also a very important role to be played with respect to the public safety community itself, to educate first responders and assist them in making the transition from the old reliance on voice-only communications to the broadband future. There are hundreds of public safety organizations around the country, and many have a strong need for support by someone who understands public safety and can explain how and why to embrace this new network. Additional FCC-assigned responsibilities include oversight and implementation of the relocation of narrowband public safety operations and reviewing requests for wideband waivers.

Finally, priority communications for public safety – expressed in the concept adopted by the FCC of preemption of spectrum on the network

when public safety needs require it – has to be implemented in an effective and responsible manner by an organization rooted in public safety. No priority system of the type envisioned by the FCC order exists today, and a lot of effort is being devoted by the PSST to develop this priority system and adopt procedures dedicated to it being used effectively and appropriately by public safety.

To meet these responsibilities, the Public Safety Broadband Licensee needs a clear and appropriate source of funding. The FCC order did not identify funding for the non-profit entity selected by it to serve as the Public Safety Broadband Licensee. There is no allocation in existing law for the funding to meet the PSST's needs. Although many core public safety organizations have contributed the time and knowledge of their executives and managers to assist the PSST, those organizations are challenged to meet their own budgetary needs, and cannot provide meaningful financial support to the PSST.

In the total absence of conventional funding alternatives, the PSST has made the suggestion that the commercial D block operator(s), which will be using for its/their own commercial purposes and profit a significant portion of the spectrum allocated to public safety, be the primary source of that support by making a lease payment to the PSST for the spectrum it will be leasing from the PSST. The FCC order envisions that the use of public safety spectrum by the commercial D block operator will be under a lease, and we have suggested that there be a lease payment, as there would be for any lease, that is reflective of the value of the public safety spectrum the commercial D block operator will be using. The PSST is concerned by recent media reports that the FCC plans to cap funding for the PSST at \$5 million per year in the forthcoming proposed rules. As we have repeatedly pointed out, since it was organized, the PSST has been hampered with a lack of funding. While the PSST does not object to the FCC considering a cap, we believe it is premature to determine the amount of the cap until it is known how many private partners we may face following the auction and to more fully understand the complexity of the role of the PSST and the tasks before it.

We also understand that it is our role in the process to be the advocate for the needs of the public safety community. Public safety users need broader network coverage than is commercially available and they need "higher than commercial" levels of network reliability, survivability and redundancy. All of these things cost money that a commercial wireless operator would just as soon not spend, and it is the reason these things are not available to the public safety community today. Striking that right balance is the challenge we are faced with today.

So where do we go from here? We agree with the conclusions expressed by many Members of Congress and FCC Commissioners that the D Block auction rules need to be modified in ways that should produce a successful re-auction. We are grateful that the position of the FCC and Congress recognizes public safety's needs for a modern, nationwide, interoperable communications solution as in the best interests of our nation, and a step that is long overdue. We continue to support the FCC's conclusion that a public safety/commercial partnership, shared network approach, in the absence of significant federal funding, presents the best near term potential solution.

Certain aspects of the rules that were applicable to the D Block have been cited as possible reasons for the absence of a satisfactory auction outcome. Among them was the possible forfeiture of the down payment amount if no mutually acceptable Network Sharing Agreement (NSA) is reached, the perception that the D Block's reserve price was set too high, and the claim that the PSST's intention to seek an annual spectrum lease payment drove potential bidders away. Let me be clear on these issues:

- (1) The PSST supports the elimination of a forfeiture penalty absent an FCC finding of bad faith. We did not seek a penalty to tip the negotiating balance in our favor and we have no desire to create undue risk for D block bidders.
- (2) With regard to the reserve price, the PSST believes the focus should be on making long-term mission critical communications capabilities available to members of the public safety community nationwide. We realize that the public safety objective needs to be balanced with charging a fair price for the D block spectrum, but we strongly support a mechanism for ensuring that the next auction does not fail, and that whatever reserve price is established for the D Block should reflect that most important public interest objective.
- (3) Now, it is a fact that the PSST needs a source of funding to fulfill its responsibilities. Any source of funding – so long as the amounts are adequate, committed and available on a timely basis – will do, whether federal grant, lease payment or otherwise. What is not acceptable is that we are not provided the resources to discharge our responsibilities to the public safety community. Indeed, the PSST would welcome a federal grant that would assist us in conducting the important work we are doing on behalf of the public safety community and the citizens we serve.

In conclusion, we in the public safety community wish to applaud the efforts of the members of this Subcommittee and of the Congress and of the FCC Commissioners and staff for their support of the public safety broadband network and the public safety/commercial partnership approach. We solicit your help and support in transforming FCC Chairman Kevin Martin's statement "My [D Block] proposal will help the Commission ensure that public safety keeps pace with the advances in communications and gives first responders the broadband capabilities they need to protect safety of life and property of the American public," into a reality. Commissioner Michael Copps echoed Chairman Martin's policy sentiments on this topic, supplying the sense of urgency as well: "The challenge is to make sure that this network **actually works for public safety**. To me, this means it is **built to public safety standards** and that its effectiveness cannot be curtailed by commercial decisions. ... **We cannot – we simply cannot – fail.**"

We look forward to working with this Subcommittee to make the public safety broadband network a reality in the near future. You can count on us for flexibility, focus on solutions and dedication to our one goal – an effective broadband communications network available to meet the needs of public safety in providing critical first responder services to our nation.