

WRITTEN TESTIMONY OF

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HOW TO DRAMATICALLY IMPROVE PUBLIC SAFETY COMMUNICATIONS
THE D BLOCK SOLUTION

A Viable Path to a Shared Broadband Network for Public Safety and Commercial Users

Thank you, Chairman Markey, Ranking Member Stearns and distinguished Members of the Committee for the opportunity to appear before you today.

My name is Harlin McEwen. I have dedicated nearly 50 years of my life to public safety, most of that in law enforcement. I am the retired Police Chief for the City of Ithaca, New York, and am also retired as a Deputy Assistant Director of the Federal Bureau of Investigation in Washington, DC. I serve as Chairman of the Communications and Technology Committee of the International Association of Chiefs of Police (IACP), a position I have held for almost 30 years.

Most recently, I am honored to have been elected to be Chairman, and also to serve as the interim Chief Executive Officer, of the Public Safety Spectrum Trust Corporation (PSST), a non-profit corporation formed under the laws of the District of Columbia. The principal purpose of the PSST is to serve as licensee for the 700 MHz nationwide Public Safety Broadband License (PSBL), which was granted to the PSST by the Federal Communications Commission (FCC) on November 19, 2007. The PSBL 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 so-called D Block. The PSST is a non-profit organization whose mission is to serve the local, state and federal public safety community. I and the other members of the Board of Directors of the PSST take this duty very seriously, and I appear today on behalf of not only the PSST, but also the public safety community we serve.

First, I am sure each of you knows why having a national public safety broadband network is so important, and we applaud the efforts of the FCC to support the creation of this network. Any review of major crises such as 911 or 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. Like all users, we need to move to 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. 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 can communicate with each other. This requires that the public safety community, whether local, regional or national, be on the same frequency, using the same network. 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 the years to come.

We were deeply disappointed that the D Block did not attract a winning bid in the recently concluded 700 MHz auction. We had hoped by this time to be in the midst of the negotiation of a Network Sharing Agreement (NSA) with the winning D Block bidder. 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 plans to work with the FCC as the FCC develops the rules for a follow-on D Block auction that will result in a winning bidder and also 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 Congress and the FCC.

We cannot let this 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 fiscal climate, that would likely pose insurmountable challenges. I respectfully ask the members of this Committee to help us ensure that failure is not an option in a D Block re-auction.

As you well know, the recent 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 past few years – with the help of the FCC and many of you here in Congress – to be in a position to play a constructive role in crafting a viable solution to our long-standing mobile communications problems. 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 winner to develop and construct a network that meets public safety's critical communications needs, both at the outset, over the entire term of the license, which currently is for ten years, and into the future. 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 (as every commercial operator knows, a network must be continually maintained and upgraded). We see the PSST in a continuing role as the public safety representative in these matters.

There is also a very important role to be played with respect to the public safety community itself, to educate public safety users and assist them in making the transition from the old reliance on mobile 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. 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 and planned to be devoted by the PSST to develop this priority system and adopt procedures dedicated to it being used effectively and appropriately by public safety.

Now, in fact these responsibilities were not matched by an equally clear and appropriate source of funding to assure their successful accomplishment. The FCC order did not provide funding for the non-profit entity selected by it to serve as the Public Safety Broadband Licensee. There is no allocation in existing law – nor in pending legislation – 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. There is also a requirement in the FCC order that the PSST pay for the relocation of the narrowband channels that resulted from a shuffling of the 700 MHz spectrum. Our estimate of this cost is well in excess of the \$10M required by the FCC's order to be covered by the D Block Winner.

In the total absence of conventional funding alternatives, the PSST has made the suggestion that the commercial D block operator, which will be using for its own commercial purposes and profit a significant portion of the spectrum allocated to public safety, be the principal source of that support. 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 had candid conversations with a number of representatives of potential D Block bidders well prior to the start of the auction concerning its intention to have a lease payment for the use of the public safety spectrum. The PSST discussed its need to identify a source of funding for its activities, the activities that required funding, why a spectrum lease payment was an appropriate mechanism to employ, and why we could not yet state with certainty the exact amount of the payment -- in the original draft of its Bidder Information Document (BID), which was publicly posted on the PSST's web site on November 15, 2007, well in advance of the auction.

It is important for this Committee to appreciate that the PSST's BID document was developed in response to the specific requests made in FCC-filed comments by potential D Block bidders that they needed to have a reasonable idea of what the PSST was likely to propose in the NSA following the auction. Unlike any other FCC auction, the FCC envisioned here that many of the terms of the partnership between

the commercial D block operator and the public safety licensee would be set by a post-auction negotiation. The PSST responded to those requests, involving many of the requesting parties in that effort. The PSST reached out to potential D Block bidders to solicit their comments throughout this process, which was conducted with abbreviated timetables required by the deadlines for the commencement of the 700 MHz auction. The BID document included the PSST's thoughts on many topics relevant to the network sharing arrangement, of which a lease payment was only one, and we believe from responses from the potential D Block bidders that the BID document was generally well received.

We understand that the uncertainty of what the final arrangement will look like has been one of the concerns raised for the failure of the D block auction, and the PSST is committed to work with the FCC and potential D Block bidders to reduce the level of uncertainty. We tried to do that in the limited time that was available prior to the start of the quiet period on December 3rd, and it is one of our most important action items that we plan to undertake in the context of the new auction. We plan to talk with potential bidders and the FCC and be as forthcoming and flexible as we can to ensure that this new auction is successful.

One other item we would like to clarify. At no time during this process did the PSST ever express a preference for any particular type of D Block winner or commercial business plan – incumbent or new entrant, wholesale or retail, open access or operator controlled access. We were opposed to any limitations on participation in the auction that might deprive public safety of the opportunity to partner with any entity that could best construct and operate a nationwide broadband network capable of meeting public safety's legitimate mission critical communications needs. We do understand that a public/private partnership structure and the shared broadband network must meet the basic needs of both its commercial and its public safety constituencies, or it will work for neither of them.

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 FCC Commissioners and Members of Congress that we need to modify the D Block auction rules 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/private partnership, shared network approach 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 the possible forfeiture of the down payment amount if no mutually acceptable NSA is entered into, 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.

- (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 this second auction not fail,

- (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 do not have 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 FCC, of members of this Committee and of Congress for their support of the public safety broadband network and the public/private partnership approach. We solicit your help and support in transforming Chairman Martin's statement before this Committee in last year's oversight hearings into an accurate prediction of the future: "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." In those same hearings, Commissioner 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 Committee 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.