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March 26, 2007

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Mr. Michael Bopp
Associate Director, General Government Programs
Office of Management and Budget
Eisenhower Executive Office Building
Room 262
Washington, DC 20503

Dear Mr. Bopp:

In the Deficit Reduction Act of 2005, Pub. L. No. 109-171, Congress directed the Department of Commerce's National Telecommunications and Information Administration (NTIA) to establish and implement a \$1 billion grant program for public safety interoperable communications. The Call Home Act of 2006, Pub. L. No. 109-459, requires the NTIA to award those funds by no later than September 30, 2007, subject to the receipt of qualified applications, as determined by NTIA. The Public Safety Interoperable Communications (PSIC) program allows NTIA to advance significantly the state of interoperability for public safety agencies. Importantly, the statutes provide NTIA with the opportunity to utilize its expertise to bring about creative, innovative, and timely solutions to improve the state of interoperability for first responders.

The text, intent, and purpose of these statutes provide NTIA with wide latitude to use these funds in a manner that advances interoperability beyond the status quo throughout the United States and its territories.

The Congress appropriately established control of the PSIC program within NTIA as it is the Executive Branch expert on telecommunications and spectrum management relating to use of its 700 MHz allocation for public safety. In authorizing the establishment of NTIA, Congress found that there was a critical need for competent and effective telecommunications and information expertise at the national level and within the Executive Branch. Because telecommunications and information services are vital to the public welfare, including national security, and because technological advances in the telecommunications and information fields were occurring rapidly, Congress directed that

NTIA would be the Agency principally responsible for advising the President on telecommunications and information policies. 47 U.S.C. §§ 901-902. Congress has directed that, in fulfillment of its duties, NTIA should pursue policies that foster national safety and security, promote the full and efficient use of telecommunications resources, and further scientific knowledge about telecommunications and information. Congress has also directed NTIA to pursue policies that foster full and efficient use of the Federal Government's use of the spectrum. Congress gave NTIA broad authority to pursue these policy goals. 47 U.S.C. § 901. Specifically, Congress gave NTIA authority to:

- (1) coordinate Federal telecommunications assistance to State and local governments;
- (2) provide for the coordination of the telecommunications activities of the Executive Branch, including the formulation of policies and standards for interoperability, security, and emergency readiness;
- (3) research, evaluate, and analyze the many aspects of telecommunications, both nationally and internationally, in pursuit of these goals; and
- (4) work with both the National Security Council and the Office of Science and Technology Policy with respect to emergency functions, the national communications system, and telecommunications planning functions.

Congress also gave NTIA broad authority for the effective and efficient management of spectrum on behalf of the Federal Government. In managing the spectrum, Congress directed that NTIA pay particular attention to the Federal Government's use of the spectrum as it relates to its role in protecting public safety and national defense. See, e.g., 47 U.S.C. § 922. Experience in performing these duties and pursuing these goals uniquely situates NTIA to fulfill the purposes of the PSIC program.

Recent press reports and statements by various officials may have resulted in confusion about the respective roles of NTIA and Department of Homeland Security (DHS) in this program. Perhaps that confusion arises from Congress's attempt in the passage of this legislation to lessen the burdens on applicants under this program. Specifically, Congress clarified that NTIA, in designing and administering the PSIC program, should do so in a fashion consistent with existing grant programs at the Department of Homeland Security, as well as with State and Federal interoperability efforts, to reduce administrative burdens on the public safety community. Congress also acknowledges that there is a diverse array of technological and engineering solutions that enable interoperable communications systems. Conference Report on S. 1932 – Deficit Reduction Act of 2005 (House of Representatives December 18, 2005) pp. 12691-12692.

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Achieving efficiencies in the application process is laudable, especially in light of the current demands on the public safety communities. Lessons learned from the DHS programs offer a proper starting place for NTIA as it researches and analyzes the current status of our Nation's interoperability efforts. As it designs the PSIC program, NTIA should strive to utilize existing applications and forms in order to reduce the administrative burdens on public safety entities. It should also carefully analyze existing DHS grant guidelines to determine what gaps exist and what improvements need to be made going forward.

It is important to recognize, however, that consultations and attention to administrative efficiencies do not serve as legislative limitations on what NTIA may do in designing and implementing this program. Had Congress so intended, it could have simply designated the funds to DHS to use in existing grant programs. Congress expressly chose not to do. Thus, Congress expects NTIA, as the "executive branch agency principally responsible for advising the president on telecommunications and information policies," to establish the PSIC program in keeping with its statutory directive to foster "national safety and security" through the "full and efficient use of telecommunications resources" in a manner that encourages the most beneficial uses of these funds and in the promotion of the public interest. 47 U.S.C. §§ 901-902.


We also note that NTIA determined that the Economies Act allows it to sign a memorandum of understanding (MOU) with DHS to provide ministerial assistance with NTIA's \$1 billion dollar PSIC program. Under the Economies Act, an agency may contract with another government agency in order to take advantage of the economies of scale presented by the second agency. In its Economies Act analysis, NTIA has determined that DHS, rather than some other outside consultant or contractor, is able to efficiently perform the ministerial duties associated with the PSIC awards. NTIA's MOU also recognizes that NTIA is in charge of implementing this program and may utilize existing structures within DHS to expedite the ministerial aspects of the program. A contract between NTIA and DHS, however, does not and cannot arrogate DHS's role to a status beyond the consultative role called for under the explicit language of the Deficit Reduction Act of 2005 and the Call Home Act of 2006. Any such attempt would be misguided and in contradiction to the legislation, which places ultimate responsibility for the program solely with NTIA.

In summary, NTIA is authorized to establish a program that will be forward-looking and innovative in its approach to a problem that has persisted for too long. NTIA, as the President's chief source of telecommunications expertise, should seize this opportunity to improve upon the current state of affairs. Our Nation's first responders need and deserve the best solutions to interoperability that NTIA can create and implement. We look forward to NTIA's successful completion of its duties under these

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statutes so that the benefits of interoperability can be delivered to our Nation's first responders.


Sincerely,




John D. Dingell
Chairman



Joe Barton
Ranking Member



Edward J. Markey
Chairman
Subcommittee on Telecommunications
and the Internet



Fred Upton
Ranking Member
Subcommittee on Telecommunications
and the Internet