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BEFORE THE FEDERAL COMMUNICATIONS COMMISSION
BROOKLYN BOROUGH HALL
July 30, 2008

I want to thank the Commission for inviting me to testify here this morning on a
subject that is critical to our public safety and national security: interoperability.
The challenge of communicating effectively during a crisis is one I have both
experienced, as Chief Counsel to Governor Whitman and Attorney General in New
Jersey, and studied, as Senior Counsel to the 9/11 Commission and as an Adjunct
Professor of National Security Law at Rutgers University.

I will never forget the helpless feeling on 9/11 of having to resort to messenger relays
because the New Jersey State Police radio antenna went down with the Twin
Towers. Nor will I forget the sometimes heart-rending accounts of first responders
in New York City and at the Pentagon as they described the difficulties they faced
that morning in communicating within and across departments and across channels.
Those experiences informed the recommendations made by the 9/11 Commission,
and they will inform the views I will present this morning.

In addressing the needs of the emergency response community in a post-9/11 world,
the Commission recommended: "Public safety organizations, chief administrative
officers, state emergency management agencies, and the Department of Homeland
Security should develop a regional focus within the emergency responder
community …." Critical to the development of that regional focus would be the
improvement of crisis communications capacity. The Commission stated: "The
inability to communicate was a critical element at the World Trade Center,
Pentagon, and Somerset County, Pennsylvania crash sites, where multiple agencies
and jurisdictions responded. The occurrence of this problem at three very different
sites is strong evidence that compatible and adequate communications among public
safety organizations at the local, state, and federal levels remains an important
problem."

Critical to solving the communications problem, and thus to helping to develop a
regional emergency response focus, the Commission believed, was the dedication of
increased bandwidth for public safety purposes. Accordingly, the Commission
strongly recommended that "Congress should support pending legislation which
provides for the expedited and increased assignment of radio spectrum for public
safety purposes."

A year after the Commission disbanded, its successor organization, the 9/11 Public
Discourse Project, noted that the President had signed legislation in January 2006
"reallocating analog broadcast spectrum, including the provision of additional

bandwidth for public safety purposes." The PDP also noted, however, that "the transfer of broadcast spectrum to first responders does not take place until February 2009." The PDP's recommendation was that "[f]irst responders should not have to wait three more years …. Congress should mandate the reallocation of broadcast spectrum for public safety purposes by January 1, 2007, or the earliest possible date."

Although this recommendation was not followed, I quote it to underscore the urgency with which the Commission and successor PDP felt this issue should be treated. As this Commission deliberates over what approach to take after the failure of the D-Block auction, we are now more than halfway through 2008, approaching the seventh anniversary of the September 11 attacks. At this late date, a critical consideration in deciding the particular approach that should be adopted by the FCC must be the amount of time it will take to reallocate the bandwidth effectively.

In addition to timing, I believe that this Commission should be guided in its deliberations over how to reallocate the D-Block by two other critical factors: 1) the way in which emergencies are actually experienced; and 2) the progress that has been made on a regional basis in addressing interoperability issues.

As a nation, the emergencies we have experienced over the past several years have varied widely in source and scope, from natural disasters such as Hurricane Katrina to terrorist attacks such as occurred on 9/11. These very different emergencies required differently scaled responses, varying from local departments in individual cities to multi-jurisdictional task forces in multiple states. Incident command structures, first responder deployments, the number of civilians affected, the response times, and virtually every significant facet of the response has varied with each emergency.

Our different emergencies have, however, shared a few common elements. As the 9/11 Commission pointed out, the occurrence of common elements in very different kinds of emergencies allows us to extract some general lessons about emergencies.

Those lessons should guide us in our emergency planning. Emergencies should be planned for not based on considerations of bureaucratic hierarchy but based on how emergencies are actually lived. Decision making authority should be reposed in those who, experience shows us, will likely have to make decisions. Accordingly, the D-Block bandwidth should be allocated, and the interoperable communication systems should be structured, according to what we know is likely to occur during an emergency.

When we look at the major emergencies of recent years – principally 9/11 and Katrina, but also Hurricanes like Isabelle and Floyd, and cases like the DC sniper – three common elements stand out. First, for purposes of responding to them, emergencies are, at least in the first instance, local and regional, before they are

national. They are, in other words, lived from the bottom up, not from the top down. For this reason, the 9/11 Commission strongly recommended that a regional, as opposed to a primarily national, focus to emergency planning be adopted. Second, communications between the bottom and the top within departments, and across agencies, will become strained and unreliable, and may fail entirely. Third, because we have tended to plan to respond in a hierarchical, top-down manner – TOPOFF, after all, stands for "Top Officials" -- when communications fail during an emergency, people are forced to make decisions that they are neither trained nor otherwise equipped to make.

These common elements suggest an approach to reallocating bandwidth that builds interoperability from the ground up, rather than from the top down. In other words, because emergencies are lived at the local and regional levels in the first instance, it is critical that interoperability be assured at those levels first. As reflected in the submissions of New York, Washington, and other cities, substantial progress has been and can be made at those levels in the near-term. Allocation of D-Block bandwidth to these efforts will accelerate their progress.

There is nothing wrong, per se, with the goal of nationwide interoperability. The way that emergencies actually happen, however, suggests that the best way to achieve interoperability nationwide is by first building it locally and regionally, and then interconnecting the regional interoperable networks.

There is also nothing inherently incompatible, in my view, between a regionally focused approach and the notion of a public-private partnership. In fact, such an approach would comport with the structure of the telecommunications industry, with differing companies offering varying regional strengths and presences. The reality, in some circumstances, of opposing incentives – the reluctance, for instance, of a private company to service remote areas critical to public safety – could be addressed by establishing the partnerships based on the public utility model, where universal service is mandated but a modest return on investment is assured.

Perhaps most important, by building on the efforts to achieve interoperability at the local and regional levels that have already taken place, as evidenced in the submissions to this Commission, a regional approach can accomplish the desired improvement in crisis communications with the urgency that the 9/11 Commission thought was appropriate.

Thank you for your time and attention.