

Promoting Homeland Security Through Communications

**Computer Law Association
Remarks of FCC Commissioner Kathleen Q. Abernathy
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As prepared for delivery.**

Thank you for inviting me to join you today. More than seven months have now passed since the terrorist attack on our country — and though we have begun to heal — the challenges presented by the events of September 11 across the government and private sector continue to be immense, novel, and complex. They have forced us to look at our public policy in new ways and focus our energies in new directions. And as you all know, the impact has been felt all over the globe — as governments re-orient themselves to respond to this new threat at home and abroad — and as foreign policy making is refocused.

Perhaps no single event has so dramatically and unexpectedly altered the entire context and focus of the public policy debate. Given this change, I thought I would take this opportunity to discuss some of the FCC's Homeland Security initiatives.

First, it's important to recognize that the Commission does not work alone in a vacuum and as an independent agency we are subject to the constraints imposed by the Act. We also work with congressional leaders to ensure that the FCC fulfills its homeland security responsibilities and with our colleagues in the Administration — in the Office of Homeland Security, the Critical Infrastructure Protection Board, NTIA, the Department of Justice, the FBI, and the Departments of Defense, Energy and Transportation.

We do face some difficult policy issues in the coming months regarding homeland security. To help tackle these issues and to lend some uniformity and consistency to the decision making process, the Chairman named his Chief of Staff, Marsha MacBride, to lead the Commission's Homeland Security Initiative efforts. Marsha's task force serves as a liaison to the Executive Branch and as the public face of the FCC's homeland security efforts.

I. WIRELINE ISSUES

Let me begin by describing the FCC's longstanding approach to ensuring the continued operation of the wireline telephone networks during times of crisis. One key principle has always been *redundancy*. Whether a portion of the telephone network is taken out by a terrorist attack or the kinds of things we used to worry about — ice storms, earthquakes, and other natural disasters — the goal has always been to have redundant circuits in place so that an isolated outage does not take down the entire network. Similarly the Commission has also encouraged network *diversity*. In the wake of the attacks, wireless and satellite communications moved to fill the gap left by the disrupted wireline network. Going forward we will need to emphasize, particularly for government and public safety licensees, the need for multiple communications paths in times of crisis and the need for interoperability of these paths.

To promote these goals, the FCC established the Network Reliability Council, which later became the Network Reliability and Interoperability Council, or NRIC. NRIC brought together key industry personnel, who developed standards and best practices based on the principles of redundancy and the interoperability of networks. NRIC has been reconstituted and reinvigorated in the wake of September 11, and it is considering whether broadband data networks, in addition to the traditional public switched telephone network, could benefit from increased emphasis on security redundancy and diversity. The Internet proved to be a vital communications lifeline during the events of September 11, and we should ensure that it continues to serve an important role in our homeland security efforts.

It's worth emphasizing that our focus on homeland security on the wireline side is not limited to the efforts of NRIC. In fact, homeland security has become a consideration in many proceedings where we previously wouldn't have given it a second thought.

For example, a key justification for the NPRM we adopted yesterday concerning the universal service support mechanism for rural health care providers was the need to ensure the interconnectedness of rural clinics and the availability of telemedicine in the event of a bioterrorism incident. Even though the Commission authorized up to \$400 million per year to provide discounts on telecom services for rural health clinics, the funding has been vastly underutilized — USAC disbursed only \$13 million for the first three years of the program *combined*. Our new NPRM asks about ways to make it easier for rural health clinics to qualify for funding. It also seeks comment on expanding the list of services eligible for support to include information services in addition to telecommunications services. For example, we have asked whether a rural health clinic might receive universal service support for Internet access over a DSL line or a fractional T-1 to improve access to databases and experts at universities and large hospitals.

In the same vein, our *Wireline Broadband NPRM*, which seeks comment on the appropriate statutory classification and regulatory framework for wireline broadband services such as DSL, asks about how our rules would affect network reliability concerns. In particular, we have asked commenters about the costs and benefits of authorizing NRIC to make technical interconnectivity and interoperability recommendations for wireline broadband Internet access service.

We are likely to consider homeland security in many other contexts in which the issue has never come up before.

II. Media Issues

The Commission recently created The Media Security and Reliability Council (MSRC)-- a federal advisory committee that will study and report on preventative and restorative best practices designed to ensure the security and reliability of broadcast and multichannel video programming distribution facilities. September 11th brought home to us the importance of broadcast stations and other media in providing an invaluable source of news and information to Americans, particularly during a time of crisis. The Council's membership will be comprised of senior representatives of mass media companies, cable television and satellite service providers,

trade associations, public safety representatives, manufacturers and other related entities. MSRC was created to give its members the opportunity to provide recommendations to their industries and the FCC. It is hoped that once implemented, these efforts will assure optimal reliability, robustness and security of broadcast and MVPD facilities. I look forward to working with the Council to ensure our media communications links are similarly secure in times of crisis.

III. WIRELESS ISSUES

Before I get into the details of our wireless policy issues, I want to give some background on the scope of the Commission's authority in this area. We have jurisdiction over non-federal government spectrum *only*. Nancy Victory – whom you heard from yesterday -- and her excellent staff at NTIA coordinate spectrum issues on the federal government's side of this equation. And the FCC has and will continue to work closely with NTIA in the policy development process. With that context let me now address some of the wireless homeland security issues facing the FCC.

There are really two types of spectrum relevant to homeland security: First, spectrum dedicated to public safety, and second, commercial spectrum used by critical personnel. We are likely to see activity on both fronts — and both are important.

With regard to Public Safety Spectrum — I want to touch on three issues (1) the vital need for interoperability among users of public safety spectrum, (2) the importance of a public safety allocation that will allow for broadband data applications and (3) Interference Issues in the 800 MHz band.

Perhaps nothing is more important in times of cataclysmic events than the ability of various public safety entities to speak to one another to ensure a coordinated response. At a recent meeting of the Public Safety National Coordination Council in New York that focused on the lessons learned from September 11, it became evident there is a critical need to quickly get interoperability spectrum into use. Although the heroes of September 11 made the system work — by cobbling together an effective communications infrastructure — they should not have to do that again.

The FCC has a vital mission to complete — to get the congressionally mandated 24 MHz of public safety spectrum from the television channel 60-69 band into productive use. Only one thing stands in the way of this spectrum being used by public safety: the incumbent broadcasters — who have a statutory right to remain in the band until 2006 or when HDTV achieves an 85% penetration level — whichever is later. Faced with this obstruction and absent a statutory change, the Commission has crafted rules that facilitate private commercial transactions between commercial wireless providers (who will eventually occupy 30 MHz of this band) and the broadcasters -- thus enticing the broadcasters to leave the band early. Public safety would benefit because the band is cleared of broadcasters at no cost to them. The wireless providers benefit because they can use the commercial allocation in this band sooner to provide their services. The broadcasters benefit through the additional resources provided that should ease the costs of the digital transition. Although I understand the concerns raised about broadcasters ability to “sell” these rights, I continue to believe that based on our existing statutory authority a

policy that promotes voluntary commercial transactions to clear this band is the best approach. We simply cannot further delay the availability of this band to public safety. Therefore, based on these factors, and absent a statutory change, I believe it is responsible for the FCC to move forward with the auction of this band before the end of the year.

I want to note one other important aspect of the so-called 60-69 band — its role internationally. The issues of interoperability are not limited to domestic operations. These issues have also arisen in international forums — in this case, through the International Telecommunications Union. By gaining some global consistency in spectrum planning — manufacturers can gain the scale and scope necessary to provide innovative and lower cost communication technologies to public safety operators and the operators will be able to communicate with one another in times of crisis. The idea of globally identified public safety bands is on the agenda for the 2003 World Radio Conference in Caracas Venezuela. If the WRC is to designate international public safety bands, I believe it is essential that the 60-69 band be at least one of the bands. Manufacturers for American licensees should have the market scale and scope necessary to develop and maintain equipment that performs at a high level and American public safety entities should be able to communicate with their international brethren on this band. As international terrorism threats continue to cross all traditional borders the notion of some internationally identified interoperability bands holds increasing appeal.

Another important piece in the public safety dedicated spectrum puzzle is a spectrum allocation that would permit public safety entities to transmit broadband data — particularly for first responders at the emergency scene. I recently visited Motorola Headquarters in Schaumburg IL and saw first hand the important potential applications of such a broadband solution. The Commission has now allocated 50 MHz in the 4.9 GHz band for public safety applications. In light of this need and our overall spectrum policy, I strongly support moving promptly with service rules that will allow this band to be put to use.

Finally the 800 MHz band — There are serious interference issues between public safety and commercial wireless operations in the 800 MHz bands. This is because, years ago, the Commission crafted a band plan at 800 MHz that interspersed public safety wireless licensees with private and commercial wireless operations — and subsequently situated cellular licensees in adjacent bands. Although well intentioned and rational at the time, it is not working well today — public safety operations are — at times -- jeopardized by interference, particularly when operating in close proximity to commercial base stations. So we have a problem that needs to be solved.

Recently, the Commission released an NPRM to address these issues. The Notice focused on a series of proposals we had received from the private sector — particularly Nextel and MRFAC — in an effort to develop a band plan that minimizes interference concerns. It is my hope that the FCC can promptly review the record in that docket and wrap up a Report and Order. In doing so, I believe the Commission must mitigate the interference issues and provide certainty to the parties about their spectrum allocation. Any decision to relocate incumbents will need to be sensitive to the costs incurred in such a process. In addition, I hope that we may be able to find some additional channels for interoperability in this band as well.

In addition to spectrum dedicated to public safety users, we must also examine what the FCC should do to facilitate the use of commercial spectrum in times of crisis. Two issues have come to the fore in this area — priority access and ultrawideband.

Priority access refers to the ability of government officials to gain priority over commercial mobile users in times of national crisis. The Commission has had these rules on its books for a while – but the service is voluntary – and prior to September 11 no one had volunteered to provide it. However, the Commission recently granted a petition filed by Voicestream to waive one portion of our Priority Access Rules to allow it to move forward with provision of this service. I supported that decision. However, I believe we may need to take another look at our Priority Access rules post-September 11 to ensure those old rules are adaptable to our current reality. These are difficult issues — how does priority access interact with E911? And other spectrum management issues? For now, I believe the carriers and the government users are still “feeling their way” a bit in determining the best approach to priority access. The FCC should stand ready to facilitate such access once the nature of the need crystallizes.

Finally, Ultrawideband. I think it is very important for the Commission to look at how new commercial technologies can be facilitated that may provide significant additional capabilities for the public safety community. For example, I am very interested in providing enhanced flexibility to public safety users of ultrawideband devices. This technology may well be able to save lives in the real world — by tracking firefighters during a fire – or other applications. We need to balance the important public policy concerns raised by potential interference with the public interest benefits to public safety that could be derived from its use. The Commission has rendered an initial decision on the extremely complicated technical issues surrounding ultrawideband — and I look forward to the periodic review that the Commission has expressed a desire to pursue in order to maximize the availability of this new technology while still protecting other uses from interference.

There is no set of issues that are more significant at today’s FCC than homeland security. Chairman Powell, my colleagues, and I are deeply committed to giving prompt well-informed policy responses to these difficult public policy questions. And although the questions are vexing, I think we all recognize that the stakes have never been higher —

As part of this process, we are asking for and would welcome your suggestions and advice on Homeland Security Public Safety and Critical Infrastructure Issues. You can contact our Homeland security task force at Homeland@fcc.gov or contact my site on the FCC’s website – fcc.gov.

Thanks again for this opportunity.