

WRITTEN TESTIMONY OF
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Good morning Chairman Markey, Ranking Member Stearns and distinguished Members of the Subcommittee. My name is Morgan O'Brien. I am the Chairman of Cyren Call Communications Corporation. Prior to forming Cyren Call, I held various senior management positions with Nextel Communications, Inc., a company I co-founded in 1987. I served most recently as Vice Chairman of Nextel prior to its merger with Sprint Corporation. I have been a consistent advocate for providing first responders with the mobile communications tools and solutions they require, given their mission-critical responsibilities, and so also have been a staunch supporter of bringing next generation wireless broadband communications technology to the public safety community.

Cyren Call Communications Corporation was founded in 2006. It currently serves as the advisor to the Public Safety Spectrum Trust Corporation (PSST) – Cyren Call's sole client and the focus of substantially all of its daily activities. Cyren Call is led and staffed by a small group of veterans of the wireless industry and the public safety communications community. Cyren Call is dedicated to assisting the PSST in the creation of a nationwide, wireless broadband network that will be designed and operated to satisfy the criteria required to make it suitable to carry public safety communications.

Let me be frank. There is one and only one reason that Cyren Call was created: the failure by federal, state and local governments to provide adequate, ongoing financing that would enable the public safety community to build, operate and upgrade such a network itself. The nation should consider itself fortunate that – unlike other issues we face – this is one that money **can** solve. But that is no solace to first responders who were unable to communicate with one another during the tragic events of 9-11 and, shockingly, seven years later, repeatedly encounter this same lack of seamless interoperability. It is of no use to them that money would solve this problem when that money is not forthcoming.

Two years ago, in the face of persistent inaction by government at all levels to provide the funding needed to finance a state-of-the-art, interoperable, nationwide, broadband network designed to public safety specifications, including the funding needed to maintain and refresh, that network, Cyren Call proposed an alternative approach. Cyren Call, unlike some other parties that have expressed opinions on how to address this critical and worsening communications crisis, simply could not maintain the fiction that if public safety just waits long enough, the Federal Government or Bill Gates or the Tooth Fairy will provide the multi-billions of dollars needed for a communications network that is critical to national security and to the day-to-day safety of our emergency responders and the public they serve.

Therefore, Cyren Call proposed the creation of a public safety/commercial partnership and the construction and operation of a shared broadband wireless network in our April 27, 2006 filing with the Federal Communications Commission. We proposed setting aside 30 MHz of 700 MHz spectrum for that purpose, and subsequently proposed legislation to constitute an entity similar to the PSST to hold the nationwide license for the spectrum. The FCC itself, after notice

and comment, embraced certain elements of this approach in its Second Report and Order, including creation of a nationwide public safety broadband spectrum licensee and the concept of entering into a public safety/commercial partnership structure to join the public safety spectrum with commercial spectrum so that the combined spectrum could be deployed in a single, shared network for commercial and public safety users alike. The commercial D Block spectrum was designated by the FCC for inclusion in that shared network.

We at Cyren Call were very disappointed that the initial D Block spectrum auction did not produce a winning bidder. The public safety community, through the PSST, still stands ready to make 10 MHz of its own broadband spectrum available for the construction and operation of the contemplated shared commercial/public safety network. As the advisor to the PSST, Cyren Call will work diligently to assist the PSST in its efforts to facilitate a successful re-auction of the D Block. Following the successful conclusion of a D Block re-auction, Cyren Call would expect to continue to advise and assist the PSST in the negotiation of a Network Sharing Agreement (NSA) that will strike an appropriate balance between the needs of the public safety community on the one hand, and the needs of the commercial users that are needed to establish and maintain a viable network on the other.

With me on this panel is Chief Harlin McEwen, the Chairman and Chief Executive Officer of the PSST. His written testimony provides a thorough analysis of the issues before this Subcommittee. I share and support the views expressed in his statement. However, I would like to address a few additional items for the Subcommittee's benefit.

The most important item I wish to emphasize is that the approach adopted by the FCC, the creation of a public safety/commercial partnership model for the construction and operation

of this new public safety broadband network, is a sound one. We are here today only because the auction of roughly half of the spectrum that was intended to be deployed in the contemplated shared network failed to attract a bid at or above the minimum reserve price set for the auction. That does not mean that the concept of a public safety/commercial partnership, or a sharing of spectrum and other network resources between commercial and public safety users, is flawed. In the absence of the massive government financial support required to deploy, operate and upgrade a nationwide, interoperable, broadband public safety-grade wireless network – one that stays current with the very rapid pace of technological innovation in our industry – the only viable alternative identified to date is through a public sector/commercial partnership structure.

Two years ago, Cyren Call challenged both government and industry to come up with a better solution, not just platitudes about the importance of public safety communications and wishful thinking about possible future funding from unidentified sources, but one with an economic model capable of working in the real world. None has emerged. Unless and until a better, realistically available route is identified to obtain the needed spectrum and funding for a nationwide, public safety-grade broadband network, we need to concentrate on facilitating the successful launch of the existing proposal for a shared network.

As you know, the public safety community worked tirelessly to make the D Block auction a success story. The PSST in particular undertook significant efforts, beginning even before it was formally granted the public safety broadband spectrum license by the FCC, to stimulate interest in the D Block auction and in the unique opportunity it presented to an existing or potential commercial wireless network operator. (No one will be surprised to learn that there are costs associated with this work. Taxicabs, hotels, law firms and others do not provide

services to the PSST gratis, and no telephone or electric company has volunteered to support the PSST's mission by providing free service. To date, and only out of necessity, the PSST's funding has been provided by Cyren Call. Whatever other actions come out of this hearing, I urge Congress to find an alternative, interim funding source for the PSST so that it may continue to fulfill the important tasks imposed upon it by the FCC rules.) Nevertheless, the auction failed to generate a bid on the D Block that met the reserve price established by the FCC on the basis of its allocation of the budgetary goals contained in the Deficit Reduction Act of 2005.

However disappointed we all are at the lack of a satisfactory outcome in the initial auction round, as Chief McEwen has emphasized, now is the time to redouble our efforts to make certain that this second chance winds up delivering the public safety communications capabilities our first responders and the public both deserve. We are trying to build something new here. Indeed, an important additional benefit to be provided by this network – one that we cannot afford to ignore – is the delivery of improved broadband communications capabilities in rural areas. This is a critical national public policy objective that, as yet, has not been realized for the very same reason that we do not have a state-of-the-art, nationwide public safety communications network – lack of funding. The shared broadband network to be deployed on both D Block and public safety spectrum will have coverage well beyond the typical commercial-only network, as specified in the FCC rules. This enhanced rural coverage will bring new educational, medical and economic opportunities to our citizens in rural America.

Thus, we cannot and should not be deterred by the fact that the last auction did not succeed according to its terms. As Glenn Bischoff, Editor of Mobile Radio Technology magazine, recently wrote in an article entitled “Some Needed Perspective”: “The journey to a

nationwide interoperable broadband wireless communications network for first responders will be a marathon, not a sprint, and it will occur over an obstacle course, not smooth pavement. It won't be easy, nor will it be quick. Nothing worthwhile ever is. The project is in its earliest stages. Give it time – and give the PSST and Cyren Call a chance.”

So what can we do to give this vital project the best chance possible? Cyren Call intends to work with the PSST to provide input to the FCC as it goes through its careful process of establishing appropriate new rules for the re-auction of the D Block. Many people have speculated about why the initial D Block auction did not succeed. In his written testimony, Chief McEwen has referred to several factors that may have provided economic disincentives to actual or potential bidders – including the level at which the reserve price was set for the D Block spectrum, and the possible forfeiture penalty in the event NSA negotiations fail. Many people felt that these factors posed an unreasonable risk to the bidders. I defer to his excellent treatment of those points and suggest that members of Congress and the FCC may want to include those items in their review process as the rules for the D Block re-auction are being formulated.

It also would be prudent for the FCC to consider whether the scope of this undertaking, particularly in light of the current capital market crunch, suggests that the optimal D Block partner might be a consortium rather than a single entity. Andy Seybold, a well-known commentator on the wireless world, recommended in a recent column that a group comprised of a network management company, one or more wireless carriers with expansive geographic coverage, rural operators such as those represented within the NRTC and the Rural Cellular Association, and equipment vendors represented the ideal combination of resources and expertise to ensure a successful public safety/commercial partnership with the PSST. He noted that the

relatively abbreviated period prior to the 700 MHz auction and the FCC's anti-collusion rules throughout the auction process made it impossible for potential consortium participants to come together. Cyren Call recognizes that current FCC rules permit auction participation by such a group. However, in light of the important public policy implications of this shared public safety/commercial network, it may be appropriate to consider rules that favor such an applicant.

Of course, this concept does not in any way suggest that the D Block be sub-divided into smaller geographic licenses. The very core of this broadband public safety network is that it will be nationwide in coverage with a single technology platform. Anything less would be contrary to the compelling record in the FCC's rulemaking proceeding and the Commission's findings based on that record.

Another matter that will require serious consideration in developing the optimal environment for a successful re-auction is the results of the recent 700 MHz auction. The post-auction spectrum landscape reflects increased holdings for both Verizon and AT&T, by far the two largest providers of mobile wireless services today. This is not a criticism of these companies' auction success; by their nature, auctions put assets in the hands of those that place the highest economic value on them and, therefore, favor those with the greatest economic resources. But the results of the 700 MHz auction raise two critical issues that cannot be ignored.

The Commission should consider whether the public interest would be served by re-auction rules that favor parties without substantial 700 MHz holdings. Certain members of Congress and of this Subcommittee have indicated a deep-felt desire to promote greater

competition in the delivery of broadband services. Smaller and more rural providers have expressed dismay that the recent 700 MHz auction did not result in meaningful opportunities for their successful participation. While auctions are designed to be applicant-blind, the FCC's touchstone is the public interest standard set out in the Communications Act, a standard that includes robust competition as one of its elements. Thus, without prejudging what the outcome should be, it is apparent that the FCC will need to consider these issues in its deliberations.

This evaluation is particularly important in the context of a D Block re-auction. On the one hand, there are significant potential advantages to public safety if it partners with an established wireless operator with already deployed infrastructure. Dollars that do not have to be devoted to building cell sites instead could be used to meet other requirements of this shared public safety/commercial network, such as extended coverage and improved site hardening. Having helped create Nextel as the third competitor in what had been a duopoly cellular industry, I am well aware of the challenges that await a new entrant in a concentrated marketplace. That potential benefit to public safety of a partnership with a nationwide 700 MHz incumbent cannot be discounted in the FCC's analysis.

However, neither the PSST, nor the FCC, nor this Subcommittee should ignore the fact that both Verizon and AT&T already elected **not** to participate in a partnership with public safety by choosing not to submit D Block bids in the previous 700 MHz auction. This apparent disinterest in assuming that role creates a conundrum for public safety. Some potential D Block bidders have indicated that they are unwilling to invest the time and resources in developing a business plan for this partnership for fear of being only a "stalking horse" for these two

companies, companies that have the financial resources to outbid all other applicants if they choose to do so. But if other bidders are deterred on that basis, and there is no competitive challenger incentivizing Verizon and AT&T to participate, we may be left with a repeat of the first D Block auction.

We all know that there are hurdles that need to be overcome to make this shared network a reality. There is no accepted template or term set for creating public safety/commercial partnership arrangements of this type in the wireless world. While it may not be possible to eliminate all uncertainties, the PSST and Cyren Call will work with the FCC itself to fashion auction rules that are flexible enough to allow us to resolve them appropriately. As stated in Chief McEwen's testimony, the PSST is committed to working with potential bidders to address questions about public safety expectations and all reasonable propositions that will facilitate an equitable public safety/commercial partnership, consistent with the operational requirements of public safety networks. The auction is a one-time event. The Network Sharing Agreement sets the framework for a public safety network that will last years. Getting that done right has to be our overriding priority.

Thank you for the opportunity to appear before you. I would be happy to answer any questions you may have.