Written Statement of

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on behalf of the

ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS-INTERNATIONAL (APCO)

and the

NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS COUNCIL (NPSTC)

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Hearing on

"The 700 MHz Auction: Public Safety and Competition Issues"

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Thank you Chairman Inouye, Vice Chairman Stevens, and members of the Committee for this opportunity to appear before you today on behalf of the Association of Public-Safety Communications Officials-International (APCO) and the National Public Safety Telecommunications Council (NPSTC).

My name is Wanda McCarley and I am the Operations and Training Manager for Tarrant County 9-1-1 District in Fort Worth, Texas. I am currently the President of APCO and also serve on the NPSTC Governing Board. APCO works very closely with the International Association of Chiefs of Police (IACP) and the International Association of Fire Chiefs (IAFC), both of which are also members of NPSTC, and I speak on their behalf today as well.

APCO was established in 1935 and today it is the nation's oldest and largest public safety communications organization, representing its 16,000 members who manage and operate

communications systems and facilities for police, fire, emergency medical and other state and local government public safety agencies. APCO's mission is to be a member driven association of communications professionals that provides leadership; influences public safety communications decisions of government and industry; promotes professional development; and, fosters the development and use of technology for the benefit of the public.

The National Public Safety Telecommunications Council (NPSTC) was formed ten years ago to serve both as a resource and advocate for public safety organizations in the United States on matters relating to public safety telecommunications. NPSTC is a federation of public safety organizations dedicated to encouraging and facilitating, through its collective voice, the implementation of the Public Safety Wireless Advisory Committee (PSWAC) and the 700 MHz Public Safety National Coordination Committee (NCC) recommendations. NPSTC explores technologies and public policy involving public safety agencies, analyzes the ramifications of particular issues, and submits comments to governmental bodies with the objective of furthering public safety communications worldwide. NPSTC serves as a standing forum for the exchange of ideas and information for effective public safety telecommunications. The following 14 organizations participate in NPSTC:

American Association of State Highway and Transportation Officials
American Radio Relay League
American Red Cross
Association of Fish and Wildlife Agencies
Association of Public-Safety Communications Officials-International
Forestry Conservation Communications Association
International Association of Chiefs of Police
International Association of Emergency Managers
International Association of Fire Chiefs
International Municipal Signal Association

National Association of State Chief Information Officers
National Association of State Emergency Medical Services Officials
National Association of State Foresters
National Association of State Telecommunications Directors

Several federal agencies are liaison members of NPSTC. These include the Department of Agriculture, Department of Homeland Security (SAFECOM Program and the Federal Emergency Management Agency), Department of Commerce (National Telecommunications and Information Administration), Department of the Interior, and the Department of Justice (National Institute of Justice, CommTech Program).

Public safety agencies throughout the nation have long had a critical need for additional spectrum to alleviate radio system congestion, to provide first responders with new communications tools, and to promote improved interoperability. Responding to some of those needs, Congress passed legislation ten years ago to clear the 700 MHz band of TV broadcasters and to allocate 24 MHz of that spectrum for public safety, with the remaining spectrum designated for auction. The FCC has already established initial rules for the 700 MHz public safety spectrum, allocating half of the 24 MHz for narrowband voice channels (some of which are already in use), and the remainder for data and reserve channels.[1] However, in much of the nation use of the spectrum is blocked by incumbent TV stations until February 17, 2009.

This allocation of 24 MHz of public safety spectrum was based upon needs identified over ten years ago. However, even then, the Public Safety Wireless Advisory Committee had estimated that public safety would require an additional 70 MHz by the year 2010. The reality of course, is that public safety's spectrum needs have grown faster than anyone had anticipated,

[1] The current rules limit the data channels to "wideband,"(*i.e.*, channels of up to 150 kHz). A pending proposal would allow those data channels and the reserve channels to be consolidated to form "broadband" channels (i.e., channels of at least 1.25 MHz).

driven in part by 9/11 and the nation's refocusing on public safety and homeland security requirements.

Our nation's first responders will need further spectrum resources to accommodate the ever growing demand for expanded voice, data, video and other "broadband" communications capability. We have also come to recognize that our country needs a national broadband network that is built to public safety specifications, is controlled by public safety entities, and accommodates local variations to address first responder agency requirements. Such a network will allow for more efficient use of scarce spectrum resources, facilitate national standards, reduce costs for state and local governments, and most importantly, promote nationwide interoperability on a state-of-the-art communications system.

The Federal Communications Commission (FCC) now has before it a one-time opportunity to provide for such a public safety broadband network through its consideration of the 700 MHz auction rules.[2] The public safety community has strongly urged the Commission to use this opportunity to establish the foundation for a public-private partnership that would deploy a fully interoperable, nationwide public safety broadband network. Specifically, we have urged the FCC to impose conditions on the auction of 10 MHz of spectrum to ensure that the auction winner will build a broadband network serving both the 10 MHz of auctioned spectrum and a portion of the public safety spectrum (the 12 MHz currently allocated for data and reserve channels). This "shared" network would provide public safety access to additional spectrum resources when needed, and will also facilitate more efficient use of the public safety spectrum.

Our support for such a public-private partnership flows from our realization that there is simply no other viable method to pay for a national broadband network that will meet public

[2] *See Further Notice of Proposed Rulemaking in WT Docket Nos. 06-150, 06-169, 96-86, and PS Docket No. 06-229*, FCC 07-72 (released Apr. 27, 2007).

safety requirements. Some local agencies may have special access to the resources necessary to build a local or regional public safety broadband network of their own, as is being done here in Washington and in New York City. However, most agencies around the country will not have similar funding available to build their own broadband networks, and there is no way to pool funds beyond state or regional systems. The result will be widely dispersed networks covering mainly resource-rich jurisdictions, built to different standards on different portions of the radio spectrum, and with little or no interoperability.

A national broadband network, in contrast, could provide for nationwide interoperability, substantial cost efficiencies, and more effective and efficient use of scarce radio spectrum. We believe that such a network can and must be designed to provide these benefits while also accommodating the varying needs and resources of local agencies. The biggest challenge, however, is to identify viable sources of funding.

There are few potential funding options for a national public safety broadband network, most of which are simply unrealistic. One option that has been suggested is for the federal government to provide the tens of billions of dollars necessary to build a national network to serve state and local first responder agencies. While we would obviously welcome such federal funding, we know how difficult that would be to achieve in the current budgetary environment. Such highly speculative and uncertain funding should not deter the FCC from taking advantage of this one-time opportunity to address our needs through its auction rules.

Others have suggested that public safety agencies simply rely upon commercial networks to provide their broadband communications capability. However, commercial grade networks are not usually built to public safety specifications. Commercial networks will usually focus on densely populated areas, leaving out areas that public safety agencies need to reach. Commercial

networks are also typically designed with higher potential outage rates than public safety can usually tolerate. Nor are commercial systems designed in most cases to withstand natural disasters to the same degree as a public safety systems. Public safety agencies also need substantial on-demand access to network capacity and user-specific functionalities (such as "one-to-one" and "one-to-many" communications) that are difficult to meet on a commercial network. Moreover, the critical nature of public safety communications is such that agencies are reluctant to place too much dependence on a commercial enterprise that could terminate operations or reduce service quality at any time.

The only viable option to fund a national public safety broadband network is to form a public-private partnership whereby spectrum resources can be shared among commercial and public safety users, but on a network that meets the requirements of first responder agencies and retains public safety control over public safety spectrum.

This concept of a public-private partnership was introduced last year in a legislative proposal from Cyren Call Communications. While we would still welcome legislation to implement some form of that proposal (as it provided for direct public safety licensing of significant spectrum resources), we are now focusing on more limited proposals that are before the FCC and within its authority to implement.

The FCC first addressed the potential for a public-private partnership last year in its Ninth Notice of Proposed Rulemaking in Docket 96-86 ("9th NPRM") in which it proposed that a portion of the 700 MHz band spectrum already allocated for public safety be assigned to a single national public safety licensee. Until now, all public safety radio systems have been built pursuant to licenses issued directly to state or local governments. The Commission explained in the 9th NPRM that a national licensee (which would be a non-profit entity representing the

interests of public safety agencies) would be necessary for the successful development of a national public safety broadband network.

We previously expressed significant reservations about the 9th NPRM proposal. While the national licensee would have the benefit of national spectrum resources, it would not have access to the initial funding necessary to deploy a national broadband network. Unlike traditional public safety licensees at the state and local level, this national licensee would lack the ability to raise funds through taxes or municipal bonds. Nor would the spectrum resources available to the national licensee be sufficient to attract a commercial partner, as the amount of spectrum allocated for public safety alone could not support both public safety's own needs and a viable commercial network, especially since any commercial use would necessarily be subject to ruthless preemption.

Some have suggested that the national public safety licensee could simply issue a request for proposals (RFP) seeking a private partner to construct a public safety grade network on public safety spectrum. What happens, however, if nobody responds? In fact, that is a likely result as few commercial entities would have the ability or incentive to build a nationwide system with the coverage, reliability, functionality and security that public safety requires. In any event, how would the national public safety licensee pay for such a network?

It was with these fundamental constraints in mind that we have considered the innovative "conditional auction" approach that Frontline Wireless has proposed. This approach assumes that a block of spectrum will be auctioned with specific conditions, including a requirement that, subject to a "network sharing agreement" with a national public safety licensee, the auction winner will construct a broadband network that incorporates the public safety broadband spectrum and is built to satisfy public safety requirements. Through the national public safety

licensee, the network will be available for public safety use on a priority basis. While some commercial use of the public safety spectrum may be allowed, it would be on a "secondary" basis subject to unconditional preemption. Importantly, the auctioned spectrum will also be available for public safety use when currently allocated public safety spectrum is insufficient.

APCO and NPSTC have filed comments with the FCC explaining their support for a conditional auction approach, and specifying provisions necessary to ensure that public safety remains firmly in control of its own spectrum. A vital element of the conditional auction approach is a network sharing agreement between the auction winner and the national public safety licensee. We have urged that the agreement must be negotiated prior to the issuance of the license to the auction winner, and that public safety must not be forced into an unacceptable network sharing with a party selected solely by auction. The agreement must also address issues related to the design and functionality of the network, limitations on commercial access to public safety spectrum, terms and conditions of public safety access to commercial spectrum, protections in the event of business failure by the auction block licensee, and assurances that local public safety agency variations can be accommodated. To the extent possible, some of these issues should be address in the FCC's rules.

Many national and local public safety organizations and agencies have indicated their support for a conditional auction approach and a national public safety broadband network. Some have raised concerns about certain aspects of the proposal, in particular whether local agencies will be able to deploy their own data communications systems (there are no changes proposed for the state/local licensing of "narrowband" voice systems). We share those underlying concerns and have therefore recommended a band plan and procedures to protect local autonomy, especially for deployment of "wideband" public safety data systems in areas

where the national broadband network may be slow to deploy. We have also been adamant that public safety representatives must have the final word when it comes to the design, deployment, and management of the national public safety broadband network. We have no interest in simply allowing a commercial entity to take over our public safety spectrum.

Finally, because the FCC is necessarily moving at a vigorous pace, we have joined with other national public safety organizations to initiate the formation of a legal entity that could serve as the national public safety licensee if the FCC proceeds in that direction Our goal is to ensure that the national licensee will represent the interests of our nation's first responder agencies. Thus, the entity now under formation is be a non-profit corporation, known as the Public Safety Spectrum Trust Corporation, and will be led by a board of directors consisting of individuals selected by the nation's leading public safety organizations, each of which has extensive knowledge regarding public safety radios systems and spectrum management. There would also be an advisory committee consisting of a broad range of organizations that also have an interest in the form and direction of a national broadband public safety network. Thus, if the FCC adopts a conditional auction process that requires a national public safety licensee, the Public Safety Spectrum Trust Corporation would be positioned to serve in that capacity.

Mr. Chairman, in conclusion, we believe that the FCC should adopt a conditional auction approach that requires the auction winner to build a broadband network that serves both public safety and commercial users, and is designed, built, and maintained to meet public safety requirements. I thank you again for the opportunity to appear before you today.