



**Judge Louis J. Freeh, Former Director
Federal Bureau of Investigation**

July 24, 2007

Chief Derek Poarch
Public Safety & Homeland Security Bureau
Federal Communications Commission
445 12th St., SW
Washington, DC 20554

Re: Benefits of a Wholesale Only Requirement for Public Safety:
WT Docket Nos. 96-86, 06-150; PS Docket No. 06-229

Dear Chief Poarch:

As we explained in our meeting yesterday, a wholesale only requirement on the commercial entity that wins the spectrum adjacent to public safety (presumably the D Block) benefits public safety in profound ways. Based on my study and long-term understanding of building and operating a successful public safety communications network, I firmly believe that a wholesale only requirement will serve public safety's best interest.

- *What is a wholesale only requirement?* It means that the D Block winner is obligated to i) build and operate the towers, radios, backhaul, routers and related equipment to provide network capacity to Public Safety and other users, ii) offer that network capacity that it has built to public safety and companies that have end users. Note that the D Block winner could *not* sell the spectrum; it is required to build and operate the network, and can sell *capacity* on the network that it has built and operates.
- *Wholesale only requirement aligns business interests with public safety objectives.* Public safety has made clear it intends to purchase wholesale services from the D Block winner. If the D Block winner has a retail operation, then it will have powerful business incentives to make sure that wholesale offering is priced high, to discourage use by its competitors. Why? Because Section 202 of the Communications Act prohibits a carrier from discriminatory pricing. So whatever price the D Block winner gives to public safety, it must give the same price to a competitor. If the D Block winner was in the wholesale business only, it would offer reasonable prices since it wants competitors and public safety to succeed. It is a simple law of nature that a D Block winner in the retail business wants competitors to fail. As a result of these factors, a D Block winner with a retail business has every business *and legal incentive* to price the service to public safety as high as possible. That is a bad deal for public safety. By contrast, a wholesale only requirement makes sure that the public safety users will succeed.

- *Wholesale requirement raises no technical issues.* As filings by Northrop Grumman, IP Wireless, and others have demonstrated, the network will have the same security features, the same authentication process, the same preemption, the same prioritization whether the capacity is offered on a retail or wholesale or open access model.
- *Wholesale requirement helps ensure local control and flexibility.* A wholesale requirement would allow multiple service providers and system integrators to build the specific end-to-end services and applications needed by public safety at the local and state-wide level if that is consistent with the desires of the national licensee. In that way, local control and local flexibility can be combined with nationwide operability.

This wholesale-only requirement will ensure that the needs of public safety and commercial users are met.

Sincerely,

/s/ Louis J. Freeh

Louis J. Freeh

cc: Chairman Kevin J. Martin
 Commissioner Jonathan S. Adelstein
 Commissioner Michael J. Copps
 Commissioner Robert M. McDowell
 Commissioner Deborah Taylor Tate
 Daniel Gonzalez
 Erika Olsen
 Renee Crittendon
 Bruce Gottlieb
 Angela Giancarlo
 Aaron Goldberger