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Battle in Congress over Wireless Broadband Shifts Dramatically with New Senate Sponsors

By Daniel Kanter

THE BATTLE OVER THE FUTURE OF A NATIONAL PUBlic safety wireless broadband network took a sharp turn on July 21, as Sens. John McCain (R-AZ) and Joe Lieberman (I-CT) introduced a bill that would require the Federal Communications Commission (FCC) to allocate the so-called D Block of spectrum to public safety agencies.

At the same time, Sen. Jay Rockefeller (D-WV), who serves as chairman of the Senate Commerce Committee-the panel with

jurisdiction over broadband issues—announced that he too will introduce his own bill to provide an additional 10 MHz of spectrum to emergency response agencies.

For police and other public safety officials, winning the support of two conservative Senators and the Democratic chairman of the key Senate committee was seen as a dramatic change in the political dynamics of the issue.

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Senators Speak Out on D Block and Public Safety

"The *Public Safety Spectrum and Wireless Innovation Act* will provide public safety with an additional 10 megahertz of spectrum to support a national, interoperable wireless broadband network that will help protect people and keep them from harm. This spectrum allocation will provide those who wear the shield with the resources they need to do their jobs. But more than that, by providing authority for incentive auctions, this legislation will offer a revenue stream to assist public safety with the construction and development of their network. The American people deserve to have the best and most innovative uses of wireless networks anywhere. And they deserve to know that our first responders have access to the airwaves they need when tragedy strikes. I am proud to say my legislation will do just that."

- Senate Commerce Committee Chairman Jay Rockefeller (D-WV)

"It's time to put first responders first. This is a once-in-a-lifetime opportunity to build a coast-to-coast communications network for our nation's first responders that is secure, robust and resilient. Today, public safety communicates on slices of scattered spectrum that prevents interoperable communications among departments and cannot support large data transmissions. Securing the D Block for public safety will allow us to build an interoperable network for emergency communications that could prevent the kinds of communication meltdowns we had during 9-11 and Hurricane Katrina."

- Sen. Joe Lieberman (I-CT)

"As we approach the nine-year commemoration of the horrific events on September 11th and the five-year remembrance of the devastating tragedy of Hurricane Katrina, it is disgraceful that police of-ficers, sheriffs and firefighters still don't have a nationwide interoperable communications system. Our legislation provides the spectrum and funding to first responders, while being fiscally responsible and ensuring local control and conscientious governance."







- Sen. John McCain (R-AZ)

On PERF's Agenda This Summer: CEDs, the Economy, and Policing Major Events

FOR A LOT OF PEOPLE, SUMMER IS A TIME OF TAKING things a little bit easy and enjoying a slower pace at work. Here in Washington, rush-hour traffic is much thinner during the summer months, so a lot of people must be on vacation.

Of course, for police departments, there isn't any slowdown during the summer months; on the contrary, many departments need to work especially hard to prevent the spikes in violent crime that tend to come when the weather gets hot.

Here at PERF, for one reason or another, summer tends to be a busy time. I'd like to bring you up to date on a few of the items on our agenda for the coming weeks.

First, we're putting the final touches on our plans for a meeting next week in Philadelphia, in which we will update our guidelines on the use of Conducted Energy Devices (CEDs), such as Tasers[™]. Many of you will be in Philly to help us on this important project. It has become increasingly clear over the last year or two that CED policies are one of the most complicated issues facing police chiefs. PERF developed a strong set of guidelines on the use of CEDs back in 2005, but since then, there have been several major developments that led us to the conclusion that an updating of our CED guidelines is overdue.

First, while CEDs have proven their usefulness in reducing injuries to suspects and officers, according to a PERF/NIJ study, the deaths in proximity to CED use continue to cause concern. Second, last year, Taser International issued a new training bulletin changing their recommendations about where officers should aim the weapons on the subject's body, which raises troubling questions. Finally, last December a federal appeals court in California ruled that the use of a CED against an unarmed man who did not pose an active threat constituted excessive force, and the court refused to give the police officer legal immunity for use of the CED.

So our challenge is to update our guidelines to help police agencies take advantage of the unique features of CEDs as a lesslethal weapon, while ensuring that officers use them only when necessary.

Another major project that PERF is undertaking, as part of our Critical Issues in Policing series supported by Motorola, addresses an issue affecting almost every police agency in the nation today—the impact of the weak economy. Nearly every day, we see news media stories about another police department making layoffs or being forced to cut back on services. You may recall that we conducted a survey on this in January 2009, when the economic crisis was just beginning to hit police departments hard. Since then, the situation has worsened, and PERF constantly is getting inquiries from the news media, asking if we have updated that information from 18 months ago. This tells us that nobody other than PERF has been collecting nationwide data on this subject. So PERF is in the midst of conducting a new survey of our members to obtain detailed data on how budget cuts are impacting police departments. And we will be convening a summit of police executives in September to explore these issues.

We need to make the case that the budget crisis in policing is more than an individual city-by-city issue, that it is a national issue that deserves national attention from Congress and the White House. And we want to help police executives share information with each other about strategies and tactics for minimizing the impact of resource cuts.

In another Critical Issues project, PERF will be focusing on the policing of major events, such as national political conventions, sporting events like the Super Bowl, international economic summits, and other events that can draw massive crowds and sometimes protests. Chief Bill Blair faced this issue last month with the G20 Summit in Toronto. These types of events are considerable undertakings for law enforcement. Even events that are entirely peaceful pose logistical challenges. And when some of the people in a crowd become violent or destructive, it can be extremely difficult for police departments to find the right balance between maintaining order and avoiding sweeping up innocent bystanders in the process. Finally, when you overlay these issues with the threat of terrorism and with police budget cuts that leave departments short-handed, the challenges multiply. For events that are designated National Special Security Events by the Department of Homeland Security, local police may need to coordinate with or report to federal law enforcement agencies.

So PERF will be bringing together police executives who have planned and carried out recent major events, and we will also be looking for chiefs who have future major events to plan for. We will work with these local and federal officials to identify the key issues and to develop recommendations that can be applied to any city facing such a challenge, and we'll issue a national publication to share this information.

I'd like to thank all of our members who have been helpful in completing the surveys that PERF has sent you this summer on

the CED and economy projects. I know that many police agencies are short-staffed and that it can be time-consuming to complete our surveys. But I believe that the information you give us helps us to "tell your story," and that all police agencies benefit when we share information. I appreciate the support you give to PERF year-in and year-out, and look forward to meeting with many of you on these three upcoming projects. IIII



Chuck Wexler, PERF Executive Director E-mail: cwexler@policeforum.org

House Passes Bill Requiring Collective Bargaining For State and Local Police, Fire, and EMS Workers

LOCAL POLICE CHIEFS AND SHERIFFS HAVE BEEN contacting their Senators in recent weeks to express opposition to legislation requiring state and local governments to give police officers the right to bargain collectively.

Meanwhile, organizations representing rank-and-file officers, including the National Association of Police Organizations (NAPO) and the National Fraternal Order of Police (FOP), have been working to win passage of such legislation.

Similar bills have been considered by Congress for more than a decade, but law enforcement organizations on both sides of the issue indicated that passage this year is a real possibility or threat, depending on the point of view.

At issue is H.R. 413, the Public Safety Employer-Employee Cooperation Act of 2009, sponsored by Rep. Dale Kildee (D-WI). The bill would authorize the Federal Labor Relations Authority (FLRA) to determine which states do not provide certain specified collective bargaining rights to police officers, firefighters, and emergency medical services personnel. In those states, the FLRA would then issue regulations establishing those rights.

In testimony earlier this year, NAPO estimated that approximately 20 states do not provide full collective bargaining rights to public safety employees. H.R. 413 would require bargaining over hours, wages, and terms and conditions of employment, but would not allow public safety officers to go on strike.

NAPO DECLARES VICTORY AFTER HOUSE VOTE

In late May, Senate Majority Leader Harry Reid was expected to offer the legislation as an amendment to a disaster relief bill, but a point of order was raised against it, on the grounds that adding the collective bargaining measure would violate a rule against attaching substantive new legislation to a spending bill.

However, internal procedural rules are not as strict in the House as they are in the Senate. On July 1, the House of Representatives approved the Kildee bill as part of an appropriations bill to provide funding for the wars in Iraq and Afghanistan. NAPO declared victory, saying that House leaders "endorsed our belief that the best way to pass this vital legislation was as part of a larger, must-pass legislative package."

Once again, though, the Senate declined to add the collective bargaining measure to its version of the war funding bill on the ground that it would improperly "legislate on an appropriations bill."

Nevertheless, Senator Reid reportedly is determined to attach the collective bargaining bill to some vehicle before the

end of the year, so opponents of the measure are calling for vigilance.

ISSUE GENERATES HOT DEBATE IN CHARLESTON, WEST VIRGINIA

The legislation has received some attention outside of Washington. In Charleston, W.Va., Mayor Danny Jones and members of the city council expressed anger about House approval of the measure, saying that the federal government is moving to take over local officials' job of managing city finances—at a time when those finances are under a good deal of strain.

City Council President Tom Lane noted that because H.R. 413 does not allow for strikes, it contains language providing for "mediation, arbitration, or comparable procedures" to resolve disputes. Lane said that that means that a non-elected person, who could not be held accountable by the city's voters, would make budget decisions for the city.

"I don't care what it is; I don't care if it's how to pick up the trash—I don't want them telling us how to do it," said Councilwoman Cheryle Hall, according to the *Charleston Daily Mail*. "If our citizens don't like how we act as council members, they can vote us out."

"What they do [in Congress] is not real," Mayor Jones said. "It's not something they have to deal with every day. They should come down here and watch us, because what we do is real. When [we] walk through the shopping mall, we find out how close it is when people come up to us and complain."

Jones noted that the FBI does not have collective bargaining with its employees—a situation that would not be changed by H.R. 413. "If it's good for law enforcement, then why isn't it good for the FBI?" he asked.

Many police chiefs and sheriffs have expressed concern about the legislation, warning that it would create a "one size fits all" straightjacket on law enforcement agencies, ignoring individual police agencies' needs and approaches to labor-management relations, and restricting police executives' authority to set policies and impose accountability.

FURTHER INFORMATION AND SENATE CONTACTS

The full text of H.R. 413 can be found here: http://thomas.loc. gov/cgi-bin/query/z?c111:H.R.413:.

You can contact your Senators by calling the main Capitol switchboard at (202) 224-3121. If you prefer to phone your Senators' offices directly, their information can be found here: http://www.senate.gov/general/contact_information/senators_ cfm.

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For example, Donny Jackson, an independent trade press reporter covering the issue, wrote that the Senators' announcements "represent a significant shift regarding the D Block on Capitol Hill, where public safety's efforts secure the D Block appear to be gathering momentum."

A key factor is that both the Lieberman/McCain bill and the planned legislation from Senator Rockefeller provide funding mechanisms for building the public safety broadband network. The Lieberman/McCain bill would establish a new federal grant

program to help build a public safety broadband network, to be funded with up to \$5.5 billion in revenue from auctioning other blocks of spectrum to commercial interests.

Furthermore, the Lieberman/McCain Bill would establish a second \$5.5-billion grant program for the maintenance and operation of a public safety broadband system.

(The legislation does not specify certain details of the grant programs, such as whether the grants would be awarded to states, to localities, or directly to public safety agencies. The Secretary of the Treasury would issue rules answering those questions.)

Senator Rockefeller also promised that his bill "will offer a revenue stream to assist public safety with the construction and development of their network."

Thus, the Senate legislation tends to rebut the FCC's claim that its plan was the best way for public safety agencies to obtain funding for a broadband network. The FCC's point man on the issue, Admiral James

CLOCKWISE, FROM TOP LEFT: Admiral James Barnett (chief of the FCC's Public Safety and Homeland Security Bureau), Deputy Chief Chuck Dowd (New York City Police Department), Representative Yvette Clarke (D-NY), and Representative Peter King (R-NY).

Barnett, repeatedly has made this argument. In March, at a broadband meeting that PERF convened, Admiral Barnett told police chiefs in attendance, "Public safety could miss this brief once-ina-lifetime opportunity afforded by the delivery of the FCC's national broadband plan, not get the funding, and not get the D Block. Public safety must change its message, and that must come within days, if not hours. ... If you don't have the money right now, you're going to miss the technological end of it because the 4G networks are poised to take off."

Even before the three Senators announced their support for assigning the D Block to public safety, the issue had been heating up in Washington for months. Both the FCC and a coalition of public safety agencies had released papers arguing their positions, and had been debating the issue everywhere from public radio to the halls of Congress.

SUMMARY OF WHAT IS AT ISSUE

Following is a brief summary of the key points of the debate:

An effective wireless broadband network will allow police, fire, and EMS officials to make use of a wide variety of broadband communications applications, including high-resolution two-

way video conferencing, video

monitoring and surveillance,

high-speed data exchange, biometrics, and telemedicine, on

their own networks. (Currently,

public safety organizations must

use commercial vendors for

cations function at a mission-

critical level, both day-to-day

and in the event of a system-

broadband network must be

given access to a sufficiently

large block of radio spectrum

has been allotted 10 MHz in the

700 MHz band for the buildout of the public safety broad-

band network. However, most

public safety communications experts believe that 10 MHz will

not provide sufficient capacity

for mission-critical broadband

applications, especially during

Immediately adjacent to the public safety spectrum is an addi-

major disasters or events requiring

a complex public safety response

tional 10 MHz, known as the D

by multiple agencies.

To ensure that these appli-

catastrophe,

Currently, public safety

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Block, which is currently unused. The D Block would be uniquely valuable to public safety: because it is immediately adjacent to the existing public safety block, devices could easily be designed to work across both sets of frequencies. A block of frequencies on any other band of spectrum would create interoperability problems.

The FCC currently is under Congressional mandate to auction the D Block to the highest commercial bidder, and the Commission has endorsed this policy in its National Broadband Plan. The FCC plans to use proceeds from the auction to finance the build-out of the broadband network.

However, most public safety communications experts believe that the D Block, instead of being sold for commercial use, should be added to the existing public safety allocation, thereby doubling the spectrum capacity of the future public safety broadband network.

DUELING 'WHITE PAPERS'

The City of New York, drawing on its experience designing and implementing a city wireless network, endorsed this position in a white paper in February entitled "700 MHz Broadband Public Safety Applications and Spectrum Requirements." The paper cautioned that 10 MHz alone would not be sufficient for day-to-day operations within the near future, and would "fall considerably short" of the required bandwidth in the event of a disaster, such as a terrorist attack.

Public safety advocates have been mobilizing to raise awareness of the need for the D Block. Many of the nation's leading police, fire, and EMS associations have formed a coalition called the Public Safety Alliance (PSA) to convince Congress to allocate the D Block to public safety. The Public Safety Alliance also has garnered the official support of major state and local government associations, including the National Governors Association, the National League of Cities, and the United States Conference of Mayors.

In April, legislation was introduced in the House of Representatives to cancel the auction of the D Block and require the FCC to assign it to public safety. H.R. 5081, the "Broadband for First Responders Act of 2010," was introduced by Representatives Peter King (R-NY) and Yvette Clarke (D-NY), and has gathered 57 cosponsors.

In June, the Public Safety Alliance launched an advertising campaign designed to gain support for the legislation and raise awareness about this issue on Capitol Hill.

That same month, the FCC released a white paper of its own, entitled "The Public Safety Nationwide Interoperable Network: A New Model for Capacity, Performance, and Cost." The FCC paper argued that 10 MHz of spectrum will be ample for public safety use as long as enough radio towers are built and placed properly to support the broadband network. The FCC also claimed that any additional capacity needs—for example, during an emergency—could be met through "priority roaming" arrangements made with the commercial vendors who operate broadband networks throughout the 700 MHz band of spectrum. This would allow public safety to use commercial networks when their own systems become overwhelmed, the FCC indicated.

After the FCC released its white paper, a chorus of dissenters emerged to challenge its assumptions and conclusions. Andrew Seybold, a leading expert on wireless technology, wrote that the FCC's paper was "based on faulty logic." After extensive review of the data, he concluded, "It is clear to me that if public safety only has access to 10 MHz of broadband spectrum, it

Advertisements from the United States Conference of Mayors (TOP) and the Public Safety Alliance (BOTTOM) advocating that Congress assign D block to public safety.

will exceed the capacity of its system every day handling normal responses." He also accused the FCC of tailoring the results of the white paper to justify its plan of auctioning the D Block.

The Public Safety Alliance released a rebuttal in early July >> continued on page 7



PERF Membership: A Critical Need for All Law Enforcement Executives

By Billy Grogan Chief of Police, Dunwoody, Ga.

AS LAW ENFORCEMENT EXECUTIVES TODAY, WE ARE challenged in ways that were unimaginable just a few short years ago. Homeland security, budget cuts, intelligence-led policing, illegal immigration, technology, social media in law enforcement, police legitimacy, and spikes in crime are the realities of our day. This minefield is especially difficult to maneuver through for police executives from smaller agencies. The Police Executive Research Forum is an organization that can help any leader avoid the pitfalls of leading a police organization effectively.

PERF was established in 1977 and is dedicated to improving policing and advancing professionalism through research and involvement in public policy debate. Since its beginning, PERF has demonstrated its commitment to best practices, leadership development, and research crucial to law enforcement. Although many members of PERF come from larger agencies, law enforcement executives from smaller agencies can benefit equally. There are two primary benefits for any law enforcement executive, regardless of the size of the department, to having a membership in PERF.

The first benefit is access to information. PERF does an excellent job of getting information out to its members using a number of different formats. On a daily basis, PERF sends out, by email, the Daily Clips. Each day's Clips are a valuable snapshot of what is happening in policing across the country. It would take an inordinate amount of time to collect this information yourself. Instead, PERF compiles all of the information and delivers it conveniently to your inbox every day.

The information gathered in the Daily Clips represents a cross-section of law enforcement activity from across the country. The Clips include articles about successful programs, new reports on policing issues, challenges for law enforcement executives, and general information about crime. On any given day, you might find information about a police chief in trouble, a police chief getting out of trouble, or a police chief succeeding, all of which is crucial to the success of any professional police executive in any organization.

On a monthly basis, PERF publishes *Subject to Debate*, a newsletter containing topics of interest to law enforcement executives. Each issue, delivered to members by email as well as snail mail, is full of information police executives need to make informed decisions in today's policing environment.

PERF holds a conference each year in the spring, covering relevant topics of great interest to law enforcement executives. Almost all of the sessions are delivered in a panel discussion format with top practitioners from across the country.

Periodically, PERF brings together law enforcement leaders from across the country to discuss highly charged topics of great concern to all law enforcement. Some of the recent topics include violent crime in America, police agencies' need for wireless broadband communication systems, local enforcement of immigration



Chief Billy Grogan

laws, gun-related crime, and gang problems. The information gleaned from these summits is put together in publications that all members receive.

In addition, PERF partners with the Bureau of Justice Assistance, the Office of Community Oriented Policing Services, and the National Institute of Justice on research projects of importance to law enforcement executives. The results of the research are published ubers of PERF

and made available to all members of PERF.

The second benefit of PERF membership is access to people, especially to leading police executives from across the United States. The annual PERF conference is the best opportunity to interact with this select group of leaders. Many of these leaders serve as experts in the sessions offered at the conference. Their presentations, as well as the give and take during the question and answer portion of the presentations, offer insight into their thinking on many critical issues of interest to all law enforcement executives.

Additionally, at each conference, a four-hour "Town Hall Meeting" is held, where a range of important and timely law enforcement topics are discussed. PERF actually solicits ideas for topics from its membership prior to the conference. Once a particular discussion starts, any member may provide input from their perspective or their agency to the entire group. This is a time of give and take; a time of listening and speaking; a time of learning and teaching.

In some cases, the discussion may center on a particular incident at a particular agency that has been in the news and is familiar to everyone. It is an exceptional opportunity for any law enforcement executive to hear the details directly from the agency head and hear how the agency head is handling that event.

PERF also offers other opportunities for law enforcement leaders that are available to both members and non-members as well. Every fall, PERF hosts a second town hall meeting in connection with the IACP conference, similar to the one held at PERF's annual meeting. All law enforcement executives and managers are invited to attend. PERF also hosts the Senior Management Institute for Police (SMIP) at Boston University each summer. This training provides senior police executives intensive training in the latest management concepts and practices used in business and government and is available to both members and non-members.

I understand that some people think of PERF mainly as an organization of police executives from larger agencies, and that some see distinctions between big-city policing versus small cities. But >> continued on page **7** entitled "House of Cards: FCC's Capacity White Paper Built on Assumptions and Conjecture." The publication faulted the FCC for not consulting with experienced public safety communications officials in making its report, thereby developing its models "without meaningful input from the public safety community." The PSA also noted that constructing the cell towers to FCC specifications would not be feasible, as it would require an enormous financial investment and would likely run afoul of local and federal zoning and environmental regulations.

DEBATING THE ISSUES IN CONGRESS AND THE NEWS MEDIA

In addition to advancing their views through competing publications, FCC representatives and public safety advocates have met in person to debate the D Block issue in multiple venues this summer. On June 17, a subcommittee of the House Committee on Energy and Commerce held a hearing considering draft legislation that would turn the FCC plan into law and auction the D Block. The hearing featured witnesses on both sides of the issue who made their cases to the subcommittee members.

Admiral Barnett, who serves as chief of the FCC's Public Safety and Homeland Security Bureau, presented his case for the FCC plan, drawing heavily on the FCC's white paper.

Deputy Chief Chuck Dowd of the New York City Police Department offered the public safety perspective to the Congressional panel. He argued that 10 MHz would not be sufficient, especially during emergencies. He pointed out that commercial wireless networks have often failed public safety agencies in times of crisis, so the FCC's plan for police agencies to roam over such networks during emergencies is not a workable solution to a lack of capacity.

On July 6, Chief Dowd and Admiral Barnett took to the airwaves and debated the future of the D Block on public radio in Washington, D.C. Barnett repeated the claims of the FCC white paper, arguing that with "the right cellular architecture," 10 MHz will offer plenty of capacity for a public safety wireless broadband network. Dowd disagreed, and argued that commercial vendors' desire for more spectrum should not supersede national security.

"The need to protect the public and to keep this country safe

trumps the commercial need," Dowd said. Dowd also repeated his warning that commercial networks cannot be relied upon for extra capacity during emergencies: "Every experience that we've had [has demonstrated] that commercial networks cannot support us in those situations and cannot give us the priority we need."

Police chiefs who support allocation of the D Block to public safety should urge their representatives to support H.R. 5081, the "Broadband for First Responders Act of 2010," and should ask their Senators to support S. 3625, the "First Responders Protection Act of 2010," introduced by Senators McCain and Lieberman, and/or the forthcoming bill by Senator Rockefeller.

You can contact your representative by calling the main Capitol switchboard at (202) 224-3121. If you prefer to phone your Representative's office directly, an index of House members' websites can be found here: http://www.house.gov/house/ MemberWWW by State.shtml. Senators' information can be found here: http://www.senate.gov/general/contact_information/ senators_cfm.cfm.

The text of H.R. 5081 can be seen here: http://thomas.loc. gov/cgi-bin/query/z?c111:H.R.5081: and the text of S. 3625 can be seen here: http://mccain.senate.gov/public/index.cfm?FuseAction= Files.View&FileStore id=8451fe91-6b71-470d-8e6b-704120 a648b2. TIT

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I consider this a non-issue. PERF's conferences, research projects, training opportunities and collaborations keep all of us-from big agencies, small agencies, and everyone in between-on the cutting edge of what is important to law enforcement executives.

Chief Grogan became the first chief of police for the new city of Dunwoody, Ga. in December 2008. Previously, he served as deputy chief in Marietta, Ga., where he began his policing career in 1981. He co-created the award-winning Marietta Strategically Targeting Areas with Resources (M-STAR) community policing program in Marietta, and has been a leader in many community projects, such as Special Olympics Georgia. He also has been involved in international law enforcement exchange programs. TIT

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