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ONE HUNDRED TENTH CONGRESS

# Congress of the United States

## House of Representatives

COMMITTEE ON OVERSIGHT AND GOVERNMENT REFORM

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November 30, 2007

The Honorable Kevin J. Martin  
Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, SW  
Washington, DC 20554

Dear Chairman Martin:

I am writing in regard to the Federal Communications Commission's (FCC) July 31, 2007, order adopting rules to foster the creation of a "nationwide, interoperable broadband public safety communications network."<sup>1</sup> Specifically, I would appreciate your assistance in obtaining additional details about the relationship between the Public Safety Spectrum Trust Corporation (PSST) and the for-profit companies that are serving it as advisors.

The Commission conditioned the grant of the Public Safety Broadband License (PSBL) on several factors designed to ensure that the PSST "focuses exclusively on the broadband needs of public safety entities."<sup>2</sup> It is my understanding, however, that commercial parties are now serving as "advisors" to the PSST.<sup>3</sup> The relationship between the PSST and these advisors raises questions about the role for-profit entities might have in developing the terms and conditions of the Network Sharing Agreement (NSA) and influencing decisions about the design, construction, and operation of the public safety communications network. It is notable, for example, that

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<sup>1</sup> Federal Communications Commission, Second Report & Order, *In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands, et al.*, WT Docket No. 06-150 et al., (July 31, 2007).

<sup>2</sup> Federal Communications Commission, Order, *In the Matter Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band*, PS Docket No. 06-229, ¶ 3 (Nov. 19, 2007).

<sup>3</sup> See, e.g., Cyren Call, *Cyren Call Announces Team to Assist Public Safety* (Oct. 11, 2007) (online at [www.cyrencall.com](http://www.cyrencall.com)).

bidders seeking to offer comments about the PSST's Bidder Information Document are directed to contact an official at Cyren Call, one of the private advisors, rather than a PSST official.<sup>4</sup>

I have no reason to believe that the PSST or its private advisors are engaged in improper conduct or self-dealing. Moreover, I am encouraged that the PSST is acting quickly to provide critical information to potential bidders about its expectations for the shared public safety-commercial network. But I do believe greater transparency about the PSST's relationships with outside parties can help protect the public's interest in this valuable spectrum as well as provide potential investors and bidders with material information.

To assist the Committee on Oversight and Government Reform with its review of this matter, I request answers to the following questions and production of related documents by December 21, 2007:

1. What is the nature of the relationship between the PSST, Cyren Call, and any other nongovernmental entities representing the PSST, working with the PSST, or working on behalf of the PSST?
  - a. Is there an executed contract between the PSST and any nongovernmental entities?
  - b. Have these agreements been shared with FCC staff?
  - c. Is the PSST compensating any nongovernmental entities for services? If so, how are these nongovernmental entities being compensated?
  - d. Please provide all documents relating to the relationship between the PSST, Cyren Call, and all other nongovernmental entities representing the PSST, working with the PSST, or working on behalf of the PSST.
2. Has any nongovernmental entity or associated individual contributed funds, materials, or services to the PSST to assist with operational or administrative expenses?
  - a. If so, identify (i) which entities or associated individuals have contributed funds, materials, or services to the PSST, (ii) in what amount, and (iii) the date of such contributions.

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<sup>4</sup> See Public Safety Spectrum Trust, *Public Safety Spectrum Trust Releases Bidder Information Document* (Nov. 15, 2007) (online at [www.psst.org](http://www.psst.org)).

- b. Please provide all documents relating to the contribution of funds, materials, or services by nongovernmental entities or associated individuals to the PSST.
3. Has any nongovernmental entity or associated individual working with the PSST contributed funds, materials, or services to any PSST board member organization?
  - a. If so, identify (i) which entities or associated individuals have contributed funds, materials, or services, (ii) to which PSST board member organization, (iii) in what amount, and (iv) the date of such contributions.
  - b. Please provide all documents relating to the contribution of funds, materials, or services by nongovernmental entities or associated individuals to any PSST board member organization.
4. Has any nongovernmental entity or associated individual working with the PSST compensated any individual representative to the PSST board for consulting or other services?
  - a. If so, identify (i) which entities or associated individuals made such payments, (ii) to which individual PSST representative, (iii) in what amount, and (iv) the date of such payments.
  - b. Please provide all documents relating to the compensation of individual representatives to the PSST board by nongovernmental entities or associated individuals working with the PSST.
5. Has any nongovernmental entity or associated individual working with the PSST compensated any individual who is employed by an entity that sits on the PSST Board?
  - a. If so, identify (i) which entities or associated individuals made such payments, (ii) to which individual, (iii) in what amount, and (iv) the date of such payments.
  - b. Please provide all documents relating to nongovernmental entities or associated individuals compensating individuals employed by entities that sit on the PSST Board.
6. How does the FCC plan to oversee PSST management and financial operations?
  - a. Does the Commission plan to require the PSST to disclose information concerning relationships with nongovernmental entities?

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- b. Will the Commission require bidders or associated individuals to disclose all payments made to the PSST, its board members, and any individuals associated with PSST board members?
- c. What other disclosures, if any, will be required of the PSST and bidders?
- d. How does the Commission define "control" of the Public Safety Broadband License?

The Committee on Oversight and Government Reform is the principal oversight committee in the House of Representatives and has broad oversight jurisdiction as set forth in House Rule X. An attachment to this letter provides additional information on how to respond to the Committee's requests.

If you have any questions about this request, please have a member of your staff contact Roger Sherman or David Leviss of the committee staff at 202-225-5051. Thank you for your attention to this matter.

Sincerely,



Henry A. Waxman  
Chairman

cc: Tom Davis  
Ranking Minority Member

Michael J. Copps  
FCC Commissioner

Jonathan S. Adelstein  
FCC Commissioner

Deborah Taylor Tate  
FCC Commissioner

Robert M. McDowell  
FCC Commissioner

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### Responding to Oversight Committee Document Requests

In responding to the document request from the Committee on Oversight and Government Reform, please apply the instructions and definitions set forth below.

#### Instructions

1. In complying with the request, you should produce all responsive documents in your possession, custody, or control.
2. Documents responsive to the request should not be destroyed, modified, removed, transferred, or otherwise made inaccessible to the Committee.
3. In the event that any entity, organization, or individual denoted in the request has been, or is currently, known by any other name than that herein denoted, the request should be read also to include them under that alternative identification.
4. Each document produced should be produced in a form that renders the document capable of being copied.
5. When you produce documents, you should identify the paragraph or clause in the Committee's request to which the documents respond.
6. Documents produced in response to this request should be produced together with copies of file labels, dividers, or identifying markers with which they were associated when this request was issued. To the extent that documents were not stored with file labels, dividers, or identifying markers, they should be organized into separate folders by subject matter prior to production.
7. Each folder and box should be numbered, and a description of the contents of each folder and box, including the paragraph or clause of the request to which the documents are responsive, should be provided in an accompanying index.
8. It is not a proper basis to refuse to produce a document that any other person or entity also possesses a nonidentical or identical copy of the same document.

9. If any of the requested information is available in machine-readable or electronic form (such as on a computer server, hard drive, CD, DVD, memory stick, or computer backup tape), you should consult with Committee staff to determine the appropriate format in which to produce the information.
10. The Committee accepts electronic documents in lieu of paper productions. Documents produced in electronic format should be organized, identified, and indexed electronically in a manner comparable to the organizational structure called for in (6) and (7) above. Electronic document productions should be prepared according to the following standards:
  - (a) The production should consist of single page TIF files accompanied by a Concordance-format load file, an Opticon reference file, and a file defining the fields and character lengths of the load file.
  - (b) Document numbers in the load file should match document Bates numbers and TIF file names.
  - (c) If the production is completed through a series of multiple partial productions, field names and file order in all load files should match.
11. In the event that a responsive document is withheld on any basis, you should provide the following information concerning the document: (a) the reason the document is not being produced; (b) the type of document; (c) the general subject matter; (d) the date, author, and addressee; and (e) the relationship of the author and addressee to each other.
12. If any document responsive to this request was, but no longer is, in your possession, custody, or control, you should identify the document (stating its date, author, subject and recipient(s)) and explain the circumstances by which the document ceased to be in your possession, custody, or control.
13. If a date or other descriptive detail set forth in this request referring to a document is inaccurate, but the actual date or other descriptive detail is known to you or is otherwise apparent from the context of the request, you should produce all documents which would be responsive as if the date or other descriptive detail were correct.
14. This request is continuing in nature and applies to any newly discovered document. Any document not produced because it has not been located or discovered by the return date should be produced immediately upon location or discovery subsequent thereto.
15. All documents should be bates-stamped sequentially and produced sequentially. In the cover letter, you should include a total page count for the entire production, including both hard copy and electronic documents.

16. Two sets of documents should be delivered, one set to the majority staff and one set to the minority staff. The majority set should be delivered to the majority staff in Room 2157 of the Rayburn House Office Building, and the minority set should be delivered to the minority staff in Room B350A in the Rayburn House Office Building. You should consult with Committee staff regarding the method of delivery prior to sending any materials.
17. Upon completion of the document production, you should submit a written certification, signed by you or your counsel, stating that: (1) a diligent search has been completed of all documents in your possession, custody, or control which reasonably could contain responsive documents; and (2) all documents located during the search that are responsive have been produced to the Committee or identified in a privilege log provided to the Committee.

## Definitions

1. The term "document" means any written, recorded, or graphic matter of any nature whatsoever, regardless of how recorded, and whether original or copy, including, but not limited to, the following: memoranda, reports, expense reports, books, manuals, instructions, financial reports, working papers, records notes, letters, notices, confirmations, telegrams, receipts, appraisals, pamphlets, magazines, newspapers, prospectuses, interoffice and intra-office communications, electronic mail (email), contracts, cables, notations of any type of conversation, telephone calls, meetings or other communications, bulletins, printed matter, computer printouts, teletypes, invoices, transcripts, diaries, analyses, returns, summaries, minutes, bills, accounts, estimates, projections, comparisons, messages, correspondence, press releases, circulars, financial statements, reviews, opinions, offers, studies and investigations, questionnaires and surveys, and work sheets (and all drafts, preliminary versions, alterations, modifications, revisions, changes, and amendments of any of the foregoing, as well as any attachments or appendices thereto). The term also means any graphic or oral records or representations of any kind (including without limitation, photographs, charts, graphs, voice mails, microfiche, microfilm, videotape, recordings and motion pictures), electronic and mechanical records or representations of any kind (including, without limitation, tapes, cassettes, disks, computer server files, computer hard drive files, CDs, DVDs, memory sticks, and recordings), and other written, printed, typed, or other graphic or recorded matter of any kind or nature, however produced or reproduced, and whether preserved in writing, film, tape, disk, videotape or otherwise. A document bearing any notation not a part of the original text is to be considered a separate document. A draft or non-identical copy is a separate document within the meaning of this term.
2. The term "documents in your possession, custody, or control" means (a) documents that are in your possession, custody, or control, whether held by you or your past or present agents, employees, or representatives acting on your behalf; (b) documents that you have a legal right to obtain, that you have a right to copy, or to which you have access; and (c) documents that you have placed in the temporary possession, custody, or control of any third party.
3. The term "communication" means each manner or means of disclosure or exchange of information, regardless of means utilized, whether oral, electronic, by document or otherwise, and whether face-to-face, in a meeting, by telephone, mail, telexes, discussions, releases, personal delivery, or otherwise.
4. The terms "and" and "or" shall be construed broadly and either conjunctively or disjunctively to bring within the scope of the request any information which might otherwise be construed to be outside its scope. The singular includes plural number, and vice versa. The masculine includes the feminine and neuter genders.
5. The terms "person" or "persons" means natural persons, firms, partnerships, associations, corporations, subsidiaries, divisions, departments, joint ventures,

proprietorships, syndicates, or other legal, business or government entities, and all subsidiaries, affiliates, divisions, departments, branches, and other units thereof.

6. The terms "referring" or "relating," with respect to any given subject, means anything that constitutes, contains, embodies, reflects, identifies, states, refers to, deals with, or is in any manner whatsoever pertinent to that subject.