

**A Failure to Communicate:
A Stocktake of Government Inaction to Address
Communications Interoperability Failures
Following Hurricane Katrina**



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The First Response Coalition (FRC), an organization formed to educate the public about the need for increased funding for first responders, undertook this review to evaluate the status of policy proposals designed to help solve the first responder interoperable communications problem. Following the devastation of Hurricane Katrina and the widespread attention that first responder communications failures received, policymakers at all levels of government publicly and forcefully vowed to take action on critical communications interoperability issues. But the rhetoric has gone unfulfilled. The 9/11 Public Discourse Project, made up of members of the 9/11 Commission, gave “F” grades for emergency communications preparedness. Congress has still not enacted major interoperability legislation, though the first bill (spectrum allocation from the digital television transition) is close to passage. This paper explores the various policy initiatives introduced to address the interoperability problems highlighted by Katrina and calls on Congress to enact real interoperability solutions now for first responders.

In the weeks following Hurricanes Katrina and Wilma public safety communications interoperability became a household catch phrase. No longer relegated to Congressional committee rooms and think tank issue papers, first responder communications interoperability broke into the mainstream on national news broadcasts and newspapers across the country. Media reports showcased how local, state, and federal public safety departments could not coordinate their hurricane and emergency responses because their communications networks were outdated and incompatible, the same problems that were first brought to prominence after 9/11. Policymakers at all levels of government bemoaned the communications systems failures and vowed to address these communications gaps quickly and decisively.

Four months have now passed since Katrina devastated New Orleans; unfortunately, interoperability is no longer in the headlines. Yet the issue remains critical to the public safety community and the people they protect in times of major emergencies. In its December 5, 2005 report, the 9/11 Public Discourse Project, formerly known as the 9/11 Commission, issued mostly failing marks to policymakers on critical issues facing the nation’s emergency preparedness, including key issues surrounding interoperability. “It is scandalous that police and firefighters in large cities still cannot communicate reliably in a major crisis,” Thomas Kean former chair of the 9/11 Commission, said at the December 5, 2005 launch of the report card.¹

In this paper, the First Response Coalition (FRC) examines the range of proposals introduced in Congress and elsewhere to address the interoperability problem in the wake of Katrina. The FRC is interested in exploring what progress has been made to move the nation’s first responder communications system towards a seamless, reliable and effective network. As was seen after 9/11, policymakers offered the right words for improving interoperability, but the execution was lacking and first responders continue to suffer with insufficient communications.

At the time of this paper’s release, the House of Representatives and the Senate had agreed on legislative language to allocate spectrum from the digital television (DTV) transition to first responders, but the proposal has yet been enacted into law. While this incremental step is a positive move forward, it delays the spectrum transfer until 2009, a full 8 years following 9/11. This delay is indicative of the lack of focused commitment by policymakers to the needs of first responders.

The FRC offers this report as a call to action to policymakers to finally live up to the promises made to our nation’s heroic first responders. Hurricane Katrina is only the most recent example

¹ Remarks by Chairman Thomas H. Kean and Vice Chair Lee H. Hamilton, Final Report of the 9/11 Public Discourse Project, December 5, 2005. http://www.9-11pdp.org/press/2005-12-05_statement.pdf

of the need for a national interoperability strategy and the FRC is urging Congress to provide the necessary resources for public safety departments across the country.

Congress Slow to Address Key Interoperability Needs

In the weeks that followed the hurricanes, Congress focused on interoperability issues in direct response to the problems witnessed in the Gulf Coast region. On September 29, 2005 the House Energy and Commerce Committee held a major hearing on interoperability featuring experts from the Federal Communications Commission, Department of Homeland Security, communications industry, and first responders. The Senate Commerce Committee held similar sessions. Committee members and witnesses identified key problems and discussed the efforts needed to respond. Following these hearings, new and existing legislative proposals were prominently debated in Congress and elsewhere, with hopes that solutions were close to becoming reality. The legislation focused squarely on two issues fundamental to interoperability: funding and spectrum availability.

Interoperability funding proposals have largely originated in the Senate where two initiatives – one defeated, one still alive – were introduced. Senator Debbie Stabenow (D-MI) introduced language on September 13, 2005 that would allocate \$5 billion in federal government grants to strengthen communications among first responders. Sen. Stabenow's language in the 2006 appropriations bill was to be part of a 3 year, \$15 billion plan to fund interoperability projects. The \$5 billion proposal failed despite broad agreement on its intent.²

Just a week later, the Senate Homeland Security and Governmental Affairs committee passed S. 1725, the Assure Emergency and Interoperability Communications Act for First Responders Act of 2005. This bill would authorize the Department of Homeland Security to disburse \$3.3 billion in state interoperability grants over 5 years. In addition, the measure would create an office of Emergency Communications, Interoperability and Compatibility within the Department of Homeland Security. The office would be the central organizing point for federal research and development to solve technological and policy issues that have slowed the government's progress on interoperability. The bill passed out of committee, but no indications have been made when a vote by the full Senate will take place.

Spectrum availability is the second piece of the interoperability puzzle. Policymakers have promised first responders that a portion of the public airwaves will be dedicated for interoperable communications. This stands in contrast to the patchwork of frequencies that are in use for these purposes today. The dedicated spectrum will become available when television broadcasters move from analog to digital transmission and return spectrum in the 700 megahertz (MHz) band. Ongoing debate regarding the DTV legislation has first responders on hold as planning for interoperable networks is dependent on these frequencies and must wait until the transition is set in law.

Both houses are grappling with the DTV legislation that has been a "priority" since the beginning of the year. House Energy & Commerce Committee Chairman Joe Barton (R-TX) said, "For years, our first responders have had to make do with antiquated radio equipment while waiting for the airwaves they were promised. Our digital-television transition bill will make it easier for these public servants to catch criminals, fight fires and save lives."³

² "Senate Rejects First Responder Plan," Technology Daily, September 14, 2005

³ "Spectrum Policy Gets "F" in Preparedness," Broadcasting & Cable, December 5, 2005

Senator John McCain (R-AZ) echoed Barton's thoughts during the debate in the Senate on DTV legislation October 20th, "We all found out on 9/11, and during [Hurricane] Katrina that the failure of first responders to be able to communicate with each other had a devastating impact."⁴

Following Katrina, policymakers have renewed their urgency to pass DTV legislation. There is near unanimous agreement that a portion of the spectrum being freed up by the legislation should go to help solve the interoperability issue. However, other issues such as set-top box subsidies and TV manufacturing timelines have slowed progress on Capitol Hill and further delayed providing help to first responders.

In April 2005, Representatives Jane Harman (D-CA) and Curt Weldon (R-PA) introduced H.R. 1646 – the HERO Act – which would set a transition date of December 31, 2006 for the return of the 700 MHz spectrum dedicated to first responders, with the remaining frequencies to be transitioned at a later date. This approach has succumbed to a single hard-date transition for all the analog spectrum favored by broadcasters and other industry players. Reps. Weldon and Harman reissued their plea to pass the HERO Act in a December 14, 2005 letter to House Speaker Dennis Hastert (R-IL). The letter urged Speaker Hastert "to force some television broadcasters to relinquish their spectrum immediately to emergency responders."⁵ Harman said in an interview that she would support amending her language to the budget reconciliation bill.⁶

House Energy and Commerce Committee Chairman Joe Barton (R-TX) marshaled his DTV bill through the committee this fall with a hard date of December 31, 2008 for a complete spectrum transition. The bill as originally passed through the House included a provision for \$500 million in interoperability funding.

In the Senate, Senator John McCain (R-AZ) has been a champion for first responders on the DTV issue. "Here we are, nine months into the first session [of Congress], and Congress has yet to take up any legislation," on first responder issues, McCain said on the Senate floor September 13th, two weeks following Katrina.⁷ In November, he introduced an amendment to the Senate DTV legislation that that would move the transition date up from a 2009 deadline to April 7, 2008. Senator McCain added that the lack of interoperability during the hurricane relief efforts led him to change his position on the transition date and he now supports an earlier transition so that first responders have access to the airwaves. McCain's amendment ultimately failed.⁸

As the legislative wrangling over a date certain for the DTV transition continued, the 9/11 panel cited the proposed 2009 transition date as "too distant given the urgency of the threat."⁹ Unfortunately, the Senate finally passed DTV legislation that mandates a transition date of April 2009. The bill also contains a provision for \$1 billion for interoperability grants generated by auctioning of the commercial portions of analog spectrum.¹⁰

⁴ "Senate Panel OK's '09 Deadline for Digital TV Transition," Technology Daily, October 20, 2005

⁵ "Legislators Push Bill to Force Broadcasters to Give Up Spectrum," Technology Daily, December 14, 2005

⁶ "Legislators Push Bill to Force Broadcasters to Give Up Spectrum," Technology Daily, December 14, 2005

⁷ "Stabenow, Biden Push Emergency Communications Funding," Communications Daily, September 14, 2005

⁸ "Senate OKs DTV Bill Without Major Changes," Congress Daily, November 3, 2005

⁹ "Spectrum Policy Gets 'F' in Preparedness," Broadcasting & Cable, December 5, 2005

¹⁰ "DTV Hostage to Conference Battle over Budget," Communications Daily, November 28, 2005

However, rather than marrying the Senate bill with the Barton bill in the House, the DTV legislation has been wrapped into the massive budget reconciliation package due to the fact that funds from auction of the freed-up analog airwaves will go into the U.S. Treasury. The budget bill, with its myriad issues, is still pending today and has kept Congress in an unusually long session into the holiday season. Both Stevens and Barton believe their respective bills can be reconciled, however, differing provisions dealing with interoperable equipment funding (\$500 million in the House vs. \$1 billion in the Senate) remain unresolved.¹¹

House and Senate conferees did settle on a DTV spectrum transition date of February 17, 2009. The House has approved the reconciled version while the Senate had not taken the measure up at time of this report's release.¹² Aside from the DTV bill, the momentum from the September hearings and the sense of urgency created by the hurricanes did not translate into concrete policy action on interoperability by Congress.

FCC, Agencies Bureaucratic Ways Slow Progress

FCC Chairman Kevin Martin testified September 22nd before the Senate Commerce cMmittee and submitted similar written testimony to the Telecom Subcommittee in the House panel on September 29th detailing his agency's efforts following Katrina. In specific testimony and comments made regarding the emergency communications failures, Chairman Martin announced the formation of an independent expert panel composed of public safety and communications industry representatives tasked to improve network reliability and public safety communications in times of crisis. He also announced his intention to create a new Public Safety/Homeland Security Bureau at the FCC, charged to develop policies and rules to promote effective and reliable communications for public safety, national security and disaster management.¹³

On November 28th, Chairman Martin named Nancy J. Victory, a former Administrator of the National Telecommunications and Information Administration, to head the expert panel looking into public safety communications. Yet, no other members have been announced nor has an agenda of the panel's activities been released. Similarly, no new announcements have been made as to the creation of the Bureau of Public Safety/Homeland Security.

Elsewhere in the federal government, the Department of Homeland Security continues to issue grants for interoperability at the regional and local level and work on national interoperability issues through the Office of Interoperability and Compatibility and SAFECOM. The National Institute of Standards and Technology (NIST) is working with the industry to create standards across the nation for compatibility in communications equipment, focusing on the so-called Project 25 interface standards. Presently, there is only one usable standard that has been developed. In his September 29th, 2005 testimony before the Senate, NIST's Dereck Orr, program manager for public safety communications, suggested that progress towards consensus on these standards is 12-18 months away.¹⁴

¹¹ "DTV Hostage to Conference Battle over Budget," Communications Daily, November 28, 2005

¹² "House Passes Compromise Digital TV Plan," Reuters, December 19, 2005

¹³ Written testimony 9/22/05 and 9/29/05, www.fcc.gov

¹⁴ "Emergency Interoperability Creates More Flap on the Hill," Telecom Policy Reports, October 3, 2005

Inaction Leaves First Responder Communications Vulnerable

If one can find a silver lining in the Katrina storm cloud, it is the fact that this natural disaster re-awakened policymakers to the critical needs of interoperable communications. All the right things were said. But, similar commitments to first responders were made following the 9/11 tragedy that initially brought failure of the emergency communications system to the nation's attention. Four years later, the same failures occurred.

Many hurdles still remain. A national strategy for seamless, interoperable communications among first responders and the necessary equipment, infrastructure and funding are still out of reach. As the 9/11 Commission members rightly pointed out, policymakers are failing first responders. This failure is unacceptable, today more so than ever.

The First Response Coalition appreciates the attention that interoperability received, but believes that the cycle of hand-wringing following major disasters must end. The United States cannot keep talking about interoperability every time there are national examples of public safety communications failures. The pending DTV bill is a positive step, but the time is now for policymakers to take more action. The FRC will continue to press Congress to pass comprehensive interoperability legislation that provides funding, spectrum, and other necessary resources. There can be no more empty promises.