



**DRAFT MINUTES
Special Meeting of
Bay Area UASI Program
Approval Authority**

Friday, July 8, 2011 - 9:00 a.m.
Alameda County Sheriff's Office OES
4985 Broder Blvd.
Dublin, CA

ROLL CALL

Anne Kronenberg, Approval Authority Chair, called the meeting to order at 9:05 a.m. All members were present. Ken Gordon attended the meeting on behalf of Renee Domingo and Jim Brown attended on behalf of Scott Frizzie.

Craig Dziedzic, Interim General Manager was in attendance.

**BAY AREA REGIONAL INTEROPERABLE COMMUNICATIONS SYSTEM (BayRICS)
GENERAL PUBLIC COMMENT**

Emily Harrison thanked everyone for attending the meeting and stated that she represented a group that is moving forward on some of the work that needs to be handed to the JPA group once it has been set up. They have not been appointed. There is a lot of work that has to be done in a short amount of time.

Jim Bouziane, Deputy Chief of Fire Services for the City of Sunnyvale, gave an overview of the Regional Interoperability Vision:

- Regional interoperability is talking about first responders, Fire, Law, EMS, and others working in this environment for radio, data, and voice. This technology will allow for the Bay Area to operate across those disciplines and to communicate in the event of big emergencies as well as for use everyday.
- Interoperability initiatives have been underway for over a decade however 9/11 highlighted important aspects of interoperability; there are some significant challenges for multiple agencies and multiple regions across the United States.
- The Bay Area region has spent \$52 million and accomplished significant things however the Bay Area has unique needs for secure and mission-critical secure communications.
- The BayRICS JPA is 10-Bay Area counties coming together to advance regional interoperability. Joint collaborative focused effort to move this mission forward.
- Funding is coming from the American Recovery and Reinvestment Act '09 and the Broadband Technology Opportunities Program (BTOP); this is a pilot to test the viability, validity, and veracity of a nationwide public safety wireless broadband network.
- This project is a private, managed network for public safety with leading-edge technology. This network will be scalable to include other networks in the nationwide system for interoperability and will offer unique devices for first responders. There is a public access piece for underserved and not served anchor communities such as libraries.



- Some of the challenges are the sustainability (participation) and the magnitude of the project as well as the local, state, and federal guidelines.

Barry Fraser, Interoperability Project Manager for the San Francisco Department of Emergency Management gave an overview on BayWEB:

- BayWEB is a regional interoperable data network for public safety use.
- To create this network spectrum, funding, regional partnership, support and cooperation is needed.
- In 1997 Congress passed legislation that reorganized radio frequency spectrum in which analog frequencies was converted to digital transmissions which freed up large portions of 700 Megahertz (MHz) band for wireless uses.
- A portion of this spectrum was to be used for commercial purposes and the other part for public safety purposes; all spectrum was to be used for wireless broadband communications.
- Congress and the FCC allocated a 10 MHz “block” of 700 MHz spectrum dedicated for public safety use and restricted for specific uses that the FCC and Congress defined related to public safety emergency response.
- The FCC designated the Public Safety Spectrum Trust (PSST) as the Public Safety Broadband Licensee (PSBL) for the entire United States, which gave them the license to use the public safety spectrum in the 700 MHz range.
- “D Block” was another 10 MHz block of spectrum, which was actually designated for commercial use. However the FCC developed an idea to combine the 10 MHz of D Block with the 10 MHz of public safety spectrum and auction the D Block spectrum to a commercial entity with the provision that the commercial entity build a nationwide public safety network. This network would be used for commercial purposes on a day to day basis but in the event of an emergency (local, regional or national) public safety would get priority over the network and be able to take over the spectrum for their emergency response.
- This public-private partnership had a lot of opposition and eventually the D Block auction failed because no commercial entity was willing to participate in this. However, local jurisdictions including Oakland, San Francisco, and San Jose applied for a waiver from the FCC to use the public spectrum directly and received the waiver. The PSST has the license for the 10 MHz but has entered into a lease agreement with the Bay Area to use the spectrum directly to build their regional network.
- There are a limited number of regions in the country that were given these waivers. This is looked at as a pilot project involving new applications and new users this is of benefit to the Bay Area as they will have say in how the rest of the network will look for the rest of the country.
- Initially the D Block Auction public private partnership plan was for the commercial licensee to pay for the network build out, however when the auction failed the funding went away.
- Congress as part of the American Recovery and Reinvestment Act (ARRA) took a portion of the billions of dollars and put the money towards the Broadband Technology Opportunities Program (BTOP) which was primarily designed to provide broadband service and tools to underserved populations. There was also a public safety component to BTOP that allowed several entities to go forward and get grant money under BTOP specifically to build out a 700 MHz network.



- Motorola was one of the applicants that submitted a BTOP application and was awarded a \$50.6 million grant under BTOP and agreed to provide a \$21.9 million match.
- There were five other jurisdictions that also received a BTOP grant and the Bay Area is communicating with them and the other waiver recipients to share information as early builders.
- The BTOP grant also includes a separate network, a public access system, which will not be restricted for public safety use and will be available for use by middle mile anchor institutions such as schools, libraries, and government entities separate from public safety uses. This will be a completely separate network which will not be using the same frequencies or radio facilities but used for public purposes especially for underserved institutions and rural areas.
- There are specific limitations in Federal law and the FCC that restricts the use of the public safety network to first responders and law enforcement which doesn't apply to the public access network.
- Regional partnership is needed to build this network in the form of cooperation and donations of resources. The BayRICS Joint Powers Authority (JPA) is being set up in record time and hopefully at their first meeting they will confirm the Technical Advisory Group (TAG) and the Build, Own, Operate and Maintain (BOOM) negotiations team and ratify their work.
- TAG has been instrumental in providing expertise in getting things going for the JPA. Motorola will build, own, and maintain this system for a certain number of years and at some point will hand this off to the Authority to continue operations and the BOOM negotiations team has been helping to get the agreement together as the BTOP Grant has a short timeframe – the project has to be substantially complete in July 2012, with 2/3 of the money spent and completely finished in July 2013.
- BayLOOP is a regional point to point microwave system developed essentially to use for backhaul, connecting radio sites to the core. The Authority will oversee BayWEB and BayLOOP.
- Local support is needed; sites will be needed region-wide to place radios for the system, local agency staff time is needed, fiber is needed for backhaul, and users will be needed to operate on the network.

Dave Kozicki, Deputy with the Alameda County Sheriff's Office discussed the JPA governance structure:

- Emily Harrison, Deputy County Executive, Director on the JPA
- Rich Lucia, Undersheriff with Alameda County, Director on the JPA
- Anne Kronenberg, City of San Francisco, Director on the JPA
- Michelle McGurk, City of San Jose – Mayor Reed's Office, Director on the JPA
- Bert Hildebrand, Santa Clara Communications, Director on the JPA
- Greg Suhr, San Francisco Chief of Police, Director on the JPA
- Lyn Tomioka, Commander, San Francisco Police, Alternate on the JPA
- Dennis Houghtelling, Commander of the Alameda County Sheriff's Office, Alternate on the JPA
- Barry Fraser, San Francisco, Alternate on the JPA
- Justin Riedel, Sonoma County, Alternate on the JPA
- Dennis Smiley, Sonoma County, Director on the JPA



Dave Kozicki discussed the following:

- There are 19 seats on the JPA, most are counties. The City and County of San Francisco has two seats and the four hubs (North, South, West, and East) are represented as well.
- In order to join the JPA, an executed agreement is needed with a payment of \$24,500 in an annual fee to join.
- Alameda County, the State of California, Contra Costa County, the East Bay hub, the City and County of San Francisco, City of San Jose, San Mateo County, Santa Clara County and Sonoma County have all joined the JPA; there are currently 10 members in which the JPA document requires.
- Outreach is being done to Santa Cruz County, Napa County, and Solano County to see if they are interested in joining the JPA. If a county doesn't join it doesn't mean that a system won't go there. There is an opportunity to build out the system in some of these locations through 1) using state sites (the State is a member of the JPA), coverage won't be as robust but the JPA can consider building out the sites in these areas; 2) through the formation of a hub; 3) in the future a way to join will be through paying \$5,000 to participate in the JPA as a community or special district but the jurisdiction will not have a vote.
- Many jurisdictions require a taxpayer ID number in order to issue a check. There have been some discussions around financials and taxpayer ID. After the first meeting, the JPA will get a taxpayer ID number and will be able to do business.
- The first meeting of the JPA is scheduled for August 8th and important work will need to be accomplished. There are a number of tasks that will need to be completed including an election of officers and the ratification of committees and reports. There is one seat for an at-large member. Mr. Kozicki will have discussions with getting BART on board as this project needs access to fiber. Additional tasks include the BayWEB site MOU, Bylaws, professional and legal staff, website development and the Brown Act compliance as well as calendar future meetings.
- The JPA will have to consider the BayLOOP Management and the BayWEB System funding plan.

Emily Harrison, Deputy County Executive commended Dave Kozicki for his hard work with the BOOM team. This system will come up because of the what the Bay Area brings to the table in the form of assets, expertise, staff and vision.

Ms. Harrison represents Santa Clara County on the BOOM Negotiation Team and introduced the rest of the team:

- Mark Anderson (Santa Clara County)
- Jenny Lam (Santa Clara County)
- Michelle McGurk (San Jose)
- James Bouziane (Sunnyvale)
- Michelle Geddes (San Francisco)
- Barry Fraser (San Francisco)
- Steve Dupre (San Mateo County)
- Chris Flatmoe (San Mateo County)
- Ahsan Baig (City of Oakland)
- David Kozicki (Alameda County)



- Dennis Houghtelling (Alameda County)
- Dennis Smiley (Sonoma County)

Ms. Harrison discussed the following challenges and issue areas:

- There is no time; the major challenge is the schedule. The grant application submitted to the federal government was done in such a short period of time that everyone who should have been involved wasn't involved. What has been found is that the conditions described in the grants weren't necessarily accurate such as the 193 sites described as being "shovel ready", in which in many instances was not the case. It will take millions of dollars to make these sites ready.
- The system described at being 56,000 users ,reality shows that there may be between 6,000 – 7,000 public safety members currently and this can change based on if the definition of a public safety user changes or if the system expands
- The biggest challenge is that users have contracts with commercial providers.
- D-Block uncertainties exist and the Bay Area doesn't know how these funds will be handled.
- Backhaul – there is a meeting with BART management to encourage them to participate on the JPA
- Public access system – how it will be maintained and handled.
- Working with Motorola on the issue areas: business and economic issues, service legal agreements, and the post-build out operations and maintenance processes.
- Business and Economic issues include site remediation costs, financial sustainability (number of users, device costs, and roaming), and the public access system.

Ahsan Baig, Manager of Information Systems, with the City of Oakland discussed technical/service levels requirements:

- The Technical Advisory Group (TAG) has been working for some time discussing broadband, P25, interoperability, and fleetmapping.
- Broadband is the future; everyone is talking about broadband. There is a difference between narrowband and broadband. Narrowband is small frequency dedicated to communicate. Broadband is a major chunk of spectrum available to be used for higher needs applications such as data, images, real time video etc.
- Mobility is becoming essential from an officer to a Chief. This capability is needed for better response, decision making and analysis.
- Right now every jurisdiction has its own dedicated narrowband channels to build their own systems to communicate and provide services. The broadband system is a regional system which means shared spectrum, shared resources, shared backhaul, and shared funding. The master site will also be shared which is bringing in an important change in public safety.
- Public safety has been working together on a local and regional level but also working with national organizations such as the International Association of Chiefs of Police (IACP), International Association of Fire Chiefs (IAFC), and the Association of Public-Safety Communications Officials.
- The decision was made to take advantage of something that is commercially available. Long Term Evolution (LTE) was selected for the broadband public safety. It took some time to convince the FCC, but they included LTE as the platform for public safety.



- LTE is a global phenomenon that will benefit public safety and the cost will be significantly reduced and will be readily available with a lot of functions.
- Motorola is our partner that is providing the solution; we are buying services, a technology solution.
- The FCC has provided the standards and requirements in the Service Level Agreement (SLA). The TAG is looking at the coverage, capacity, and the performance.
- Based on what was put into the grant, Motorola is building a system based on 50,000 users with 12,000 concurrent users at any given time.
- BOOM challenges include mission critical voice on LTE, operations and local control enforcement because of multiple jurisdictions usage and human capital in terms the responsibility of maintaining the system later.

Emily Harrison stated that it is important to realize that many things are trying to be done at the same time however the BTOP grant timelines are real. The Bay Area keeps in contact with the other grant and waiver recipients. Governance will continue to be a challenge, especially with the timelines, while setting up the JPA. There is hope that during the BOOM negotiations meetings at the end of the month that there will be some clarity in regards to an agreement with Motorola regarding this project. San Francisco, Oakland, and San Jose are still working with the FCC to resolve spectrum waiver issues. Ms. Harrison stated that there is a lot of information posted at www.bayweb.org.

Public Comment

Gary, Napa County, inquired about if negotiations included what Motorola is identifying as their long term costs to maintain the system during the time they are responsible versus the user fees. He also asked about the model for long-term liability for the maintenance of the system once it is turned over from Motorola as well as if Motorola asked for a minimum revenue as part of the negotiations.

Emily Harrison explained that this was a part of the negotiations, once the JPA is formed then this will be discussed. The entrance fee of \$24, 500 will provide administrative support to the JPA and will not have any part in the project so the JPA will have to find a way to maintain and sustain the system. Ms. Harrison stated that the long-term costs are dependent on the number of users to the system which will help the financial stability; so it is unknown at this time. She explained that as part of the negotiations it is always preferable for a minimum to be requested but this is new for the Bay Area and Motorola so this is uncertain.

A member of the public from Hayward stated that his governing body has concern as a member of EBRCS regarding local entities fiduciary responsibility relating to the system being “refreshed”. He has not found any assurance that if they enter in they will never have fiduciary responsibility in the future with the BayRICS build out.

Michelle McGurk stated that she was actively involved in crafting the JPA documents. She stated that there is language that states that the JPA Board of Directors could not put in place any financial obligations for the local government agencies, for the members, in any way without going back to that member and getting the approval from that body. It was important to the San Jose City Council and the Mayor of San Jose that this protection was in place against future obligations.



Chief Chris Moore, San Jose Police Department discussed:

- In history, public safety has always been given what has been left over, but now with broadband the decision is how do you bring critical infrastructure, public safety and local government together.
- The goal is to build out a nationwide public safety broadband wireless network.
- Last year sponsors were secured in Congress for a bill that reallocated the D Block to public safety, offset \$3.5 billion in the budget with the President's support.
- Spectrum and money is needed for the build out and governance is needed to run it. The estimated cost to build out the network is roughly \$8 - \$10 billion. Instead of building all sites by scratch across the nation, the idea is to use existing infrastructure such as towers from the Bay Area to Tennessee.
- The White House is on Board; Senators have pushed through a senate bill which needs to get to the Senate floor. Chief Moore has been talking to various house members, who are not in favor of this effort; but it is the public safety associations' job to push this message with them.
- The Public Safety Alliance is the group that has been leading this effort is a consensus group comprised of the International Association Chiefs of Police, National Sheriff's Association, the Major County Sheriff's, the Major City Police Chiefs, the International Association of Fire Chiefs, the National Emergency Management Association, and APCO International. All of these organizations have come together to fund this effort.
- Chief Moore pointed out that progress has been made over the last 20 months however Congress is really focused on deficit reduction. People view this effort as a give to public safety but it is not a gift to public safety but an investment. This is the last recommendation of the 9/11 Commission. Speaker Pelosi has been very helpful in getting the message out that that this is a public safety issue not a Democrat vs. Republican issue.
- Chief Moore stated that jurisdictions can encourage the California delegation, especially Anna Eshoo, Jerry McNerny, Senator Boxer, and Senator Feinstein, as well as the other legislators with letters and phone calls. The efforts of the Bay Area have helped.

Anne Kronenberg thanked Chief Moore for his informative briefing. She thanked everyone for attending the meeting and stated that counties who have not yet joined the JPA should consider it. The first meeting of the JPA is scheduled for August 8th in Dublin.

BROWN ACT TRAINING

San Francisco Deputy City Attorney's Katie Porter and Paul Zarefsky gave an overview on the Brown Act:

- The intent of the Brown Act is to ensure that the actions of a public body is taken and conducted openly.
- The three basic principles of open government: legislative bodies operate in public meetings, legislative bodies must provide notice of their meetings, and the public has the right to attend and participate in meetings.
- A Legislative Body is the governing body of a local agency or other local body created by state or federal statute; a body of a local agency created by formal action of a legislative body.
- A committee of a legislative body whether permanent or temporary, decision-making or advisory, is a legislative body.



- A committee that has a regular meeting schedule is a Brown Act body.
- The Approval Authority has always complied with the Brown Act. The JPA agreement states that the body will comply with the Brown Act.
- A meeting occurs when the majority of the members (seats) are together at the same time and place to hear, discuss, deliberate or act on an item within the body's jurisdiction such as formal meetings, retreats, and site tours.
- Unlawful meetings are pre-meetings and post-meetings because the majority of the body is discussing substantive matters without the public; seriatim meetings are not necessarily when the body is meeting at the same time or same location. Seriatim meetings occur often by phone, fax, e-mail, and human intermediaries where a conversation has occurred between various members of the board without the public being aware. Substantive e-mail exchanges between the majority of the body are unlawful seriatim meetings; e-mails can become a part of public record. One way to avoid a seriatim meeting is to use the Commission Secretary as an intermediary to distribute all information to everybody.
- Text messaging among the majority dealing with substantive subject matter of the body is unlawful; text messages pose a risk of possibly needed to be disclosed under the public records act if one or more board member is texting during a public meeting.
- Some exceptions to the Brown Act are individual communications with another person (nonmember). The majority of the body can attend a professional conference, local meeting, or social, recreational, ceremonial event not sponsored by or for the body as long as they are not discussing any business of the body.
- There are two types of meetings, regular meetings, special meetings and emergency meetings (in the event of a disaster, war, etc. Regular meetings have a regular schedule and must have notice of the meeting posted at least 72 hours before the meeting, this is a local requirement. The law is not completely clear on whether the 72 hours excludes weekends, however the notice has to be physically available 24/hours a day. Special meetings tend to be meetings that generally deal with one topic and require at least 24 hours notice before the meeting.
- The basic requirements of the Brown Act are that the notice has to be posted in a freely accessible location. It is recommended for the Approval Authority that the notices be posted on the UASI website, departmental office, meeting room (if feasible), and at each Approval Authority member's jurisdiction, consistent with local requirements or practices. The JPA will be a standalone legal entity and will eventually have a meeting location and website.
- There is a provision in the Brown Act that states that a member of the public or press can request that the legislative body send to them the agenda on a regular basis (e-mail or U.S. mail; this standing request is supposed to be renewed every January.
- There should be a brief general description for each agenda item that will be covered and local law states that action or discussion is designated for each item. If the item is an action item, the proposed action should be specified.
- The Brown Act talks about a sufficient description is needed for each agenda item which must communicate to the public what the agenda item is about, taking into consideration the audience, level of average intelligence, average level education and some level of interest in the subject matter. Acronyms should be spelled out.
- If an agenda doesn't have an item on it, the basic rule is that it can't be discussed. The order of items on an agenda can be changed.



- Questionable descriptions for agenda items are “new business”, “General Managers Report” and “Report on activities and recommendations” from Advisory Group or Subcommittee unless it specifies the items to be discussed; otherwise these descriptions are too general and don’t give enough information.
- Some exceptions to the agenda requirement is if a member makes a brief announcement or request to agendize future items, provides direction to staff, and gives limited follow-up to general public comment.

Shelly Nelson asked for clarification regarding a committee being able to discuss a subject pertinent to the group and the task at hand but isn’t on the agenda.

Mr. Zarefsky explained that during general public, which can cover any part of the subject matter of the jurisdiction of the body, the public is allowed to comment on any topic. However, the body is not allowed to have an extensive discussion about that topic if it was not agendized.

Dave Kozicki asked for clarification regarding internal committee meetings and if reports were a part of the Brown Act.

Mr. Zarefsky stated that a department head can create a committee, under the Brown Act, as this is a single person and not a legislative body; however if the Board of Supervisors’ creates a committee this is covered by the Brown Act. Reports are not subject to the Brown Act unless it is agendized as a typical item on the agenda.

Ms. Nelson asked for clarification regarding an ad hoc committee.

Paul Zarefsky explained that a committee of a body comprised of less than a quorum created to address an issue is a narrow exception of when this committee does not have to follow the Brown Act.

Mr. Zarefsky continued his overview of the Brown Act:

- Rights of the public include: notice of meetings; the right to attend meetings (anyone can attend, must be accessible to disabled persons, no precondition to attend, and the sign-in sheet is optional); to record meetings unless the body makes a reasonable finding that the activity would disrupt the meeting; to receive agenda materials at least 72 hours before the meeting and to comment at meetings on each agenda item before consideration has been concluded as well as during general public comment on any matter within the body’s jurisdiction not on an item on the agenda.
- General public comment is not required at a special meeting. General public comment can be scheduled for any time in the meeting. San Francisco local ordinance states that three minutes is allotted to speak on an item; the Brown Act doesn’t expand. Members may not discuss or respond substantively to general public comment.
- The rights of the speaker are that the speaker can remain anonymous, has the freedom to criticize the legislative body, members, and staff, and has equal time.
- Limits on Public Comment: reasonable limit on total public comment time on an item, no right of the speaker to speak off-topic, no right of the speaker or the public to disrupt the meeting, and no right of a speaker to a response from the legislative body or its members even if a question is posed.



- Texting during a meeting is discouraged as members of the public may suspect that members of the body is getting instructions from somebody on how to vote; it creates distrust as the public may perceive that the text message is related.
- The Brown Act states that a body can have a closed session if the subject is related to personnel matters, security, and instruction to a real estate negotiator.
- Requirements before a closed session, public comment must be allowed before the body goes into closed session. The body doesn't have to formally decide to go into closed session as long as it has been agendized beforehand. If the body wants the item to be open it is the body's decision even if it was agendized as a closed session item.
- During closed session the body must stay on topic, if you go off topic then the Brown Act has been violated and attendance needs to be limited to the body and anyone in government (expert) that can aid in the discussion.
- Requirements after the closed session include notice of certain final actions. Closed sessions aren't confidential unless the body determines that the discussion and materials are confidential.
- If there is action taken in violation of the Brown Act, intent to deprive the public of information it is entitled, is a crime. Certain Brown Act violations can result in the action taken by the body, when the Brown Act was violated, to be voided by the Court and will need to be done over. The prevailing plaintiff may get their attorneys' fees and costs paid.

A member of the public inquired about the sanctions to an employee that was involved in a closed session performance evaluation.

Katie Porter explained that the employee, who is the subject of a performance evaluation, does not need to be present in the closed session. It was unclear as to if that employee would be required to keep the information confidential.

A member of the public asked if the JPA set up a committee to advise them on technical issues would that committee be subject to the Brown Act if they are just brainstorming ideas, which would be difficult to capture on an agenda.

Paul Zarefsky explained that any committee that the JPA forms is subject to the Brown Act. Ways to avoid this is for the body to designate one member (not a body) a task, it is left up to that one member to decide who else to talk to. As long as a majority of the parent body is not involved in the discussions and meetings it is not a violation of the Brown Act.

A member of the public inquired if contract negotiations could be held in closed session.

Mr. Zarefsky stated that there is no general closed session provision for instructing a contract negotiator, it is best to leave this up to a department head.

Anne Kronenberg thanked Katie Porter and Paul Zarefsky for their time and presentation as it was very informative.

ADJOURNMENT

The meeting was adjourned at 12:24 p.m.