Standing Committee on Highways Proposed Policy Resolution (PPR-AM08)  
Special Committee on Wireless Technology and Communication  
Title: Use of 700 MHz Radio Frequencies

WHEREAS, On September 25, 2008, the Federal Communications Commission (FCC) adopted and released a Notice of Further Proposed Rulemaking regarding the 700 MHz radio spectrum and published in the Federal Register October 3, 2008; and

WHEREAS, The FCC proposes restricting eligibility to the Broadband voice, data, and video network (the Public Safety Broadband Network [PSBN]) that will be created “to entities that provide ‘public safety services,’ as defined in Section 337 of the [Telecommunications] Act [of 1934 as amended]; and

WHEREAS, The FCC has repeatedly defined “public safety service providers” as law enforcement, local fire service agencies, and emergency medical services. All other eligible entities, including the departments of transportation, are classified by the current Commission members as State or local government entities or nongovernmental organizations that do not provide for the safety of life, health or property; and

WHEREAS, Using this definition, the Commission has concluded no other governmental organizations provide “public safety services;” and

WHEREAS, Section 337(f) (1) of the Telecommunications act defines “public safety services” as follows:

(f) Definitions – For purposes of this section:  
(1) Public Safety Services – The term “public safety services” means services –  
(A) the sole or principal purpose of which is to protect the safety of life, health, or property;  
(B) that are provided -  
   (i) by State or local government entities; or  
   (ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and  
(C) that are not made commercially available to the public by the provider; and

WHEREAS, The American Association of State Highway and Transportations Officials strongly believes all governmental agencies provide for the protection of life, health, or property. State Departments of Transportation and their employees, equipment, and expertise along with their contract employees are required for the protection of life, health, and property in the preparation for an emergency response and in the recovery from a disaster. State Departments of Transportation may assume a minor role in an emergency response, however without their assistance police, fire, and emergency medical units would not be able to respond; and

WHEREAS, The FCC has rightly concluded that while “entities, such as utility companies, may play an important role on occasion supporting public safety entities to carry out their mission of protecting the safety of life, health, or property, this role is ancillary to the entities’ principal purposes, such as providing electricity”; and

WHEREAS, The Commission has extended this prohibition on access even further by stating “Because CII [Critical Infrastructure Industry] entities would not be eligible to access the 700 MHz public safety spectrum under Section 337, they also would not be eligible to gain access to this spectrum through the Public Safety Broadband Licensee”; and
WHEREAS, “Even if authorized by a governmental entity pursuant to Section 337(f) (1) (B) (ii) of the Act, since the sole or principal purpose of the communications of CII entities are not to protect the safety of life, health, or property, granting such access to otherwise ineligible CII entities through a bona fide eligible entity merely bypasses the separate requirement contained in Section 337(f) (1) (A) of the Act”; and

WHEREAS, The strict interpretation of Section 337 (f) (1) (A) used by the Commission prohibits a State Department of Transportation from authorizing public safety broadband network access to towing and recovery units involved in quick clearance, privately funded safety patrols, contract snow and ice removal, and mass transit service providers used in the preparation, response, and recovery phases of any incident as required for incidents involving the safety of life, health, or property; and

WHEREAS, If the state DOTs, their employees, and their essential contractors are classified as critical infrastructure or a critical infrastructure industry at some point by the Commission, there will be no direct communication allowed on these frequencies with police, fire, or EMS units and state DOT communications on these frequencies may be either curtailed or severely restricted should an emergency be declared. Thus, the State Departments of Transportation may be severely limited in their ability to respond to a disaster; and

WHEREAS, This impact is even more severe when viewed in the “all hazards” context of prepare, respond, and recover. An on-scene incident commander or an emergency operations center will not be able to direct critical infrastructure units to the point of need, and it is possible that police or fire departments within the DOT may not be able to communicate directly with their parent organizations or incident management centers; and now therefore be it

RESOLVED, That in the sense of this meeting the AASHTO Board of Directors requests the FCC revise their interpretation of Section 337 of the Communications Act of 1934 as amended, or a revision to the Communications Act of 1934 as amended be enacted to classify State Departments of Transportation as protectors of life, health or property as per Section 337 (f)(1)(A); and further be it

RESOLVED, That the revision allows the Public Safety Broadband Licensee, a non-governmental agency, the ability to authorize critical infrastructure industry users access to the public safety broadband network on a case-by-case basis.