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BEFORE THE

**Federal Communications Commission**  
WASHINGTON, D. C. 20554  
COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

In the Matter of )  
 )  
Replacement of Part 90 by )  
Part 88 to Revise the Private ) PR Docket 92-235  
Land Mobile Radio Services and )  
Modify the Policies Governing )  
Them )

To: The Commission

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**PETITION FOR RECONSIDERATION AND CLARIFICATION**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), pursuant to Section 1.429 of the Commission's rules, 47 C.F.R. §1.429, hereby petitions the Commission to reconsider and clarify certain portions of its Report and Order, FCC 95-255 (released June 23, 1995), in the above-captioned proceeding.

APCO generally supports the Commission's "spectrum refarming" decision in the Report and Order as it will encourage greater spectrum efficiency without causing unnecessary disruption to public safety communications systems. The Commission wisely took steps to ensure that there will be viable equipment options for the many public safety agencies that need to implement a two-step transition to narrowband equipment. The Commission's plan also permits federal, state, and local government public safety agencies to implement 12.5 kHz digital radio equipment compliant with

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interoperability standards being adopted by Project 25. In contrast, some of the alternative plans that had been discussed prior to the Report and Order could have undermined that interoperability effort.

There are, however, several areas of the Commission's Report and Order that require reconsideration and/or clarification.<sup>1/</sup> The most important of these is the need for a requirement that urban area public safety systems convert to 12.5 kHz equipment by a date certain to retain primary status, and clarification to give public safety frequency coordinators greater authority concerning transmitter power and antenna heights.

#### I. Transition Plan

APCO, along with representatives of nearly every other Part 90 radio service, had submitted a "consensus plan" to the Commission regarding the transition to narrowband equipment and operation for both the UHF and VHF bands.<sup>2/</sup> The plan included specific dates by which land mobile radio licensees would be required to convert to narrower band equipment, with longer time periods allowed for radio

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<sup>1/</sup> The Land Mobile Communications Council ("LMCC"), of which APCO is a member, is also filing a Petition for Reconsideration and Clarification on related issues.

<sup>2/</sup> Letter to William F. Caton in PR Docket 92-235, (January 13, 1995). A modified version of the consensus plan, with revised time periods, was later submitted by various members of the user coalition, including APCO (see, e.g., Letter to William Caton from APCO (June 1, 1995)).

systems operating outside metropolitan areas. Also part of the plan were type-acceptance rules to encourage manufacturers to develop narrower band equipment.

Some of the key concepts of the consensus plan, such as type-acceptance requirements, were adopted as part of the Commission's Report and Order. However, the Commission did not adopt any requirements that users convert to narrowband equipment by certain specified dates. Instead, the Commission's approach appears to anticipate that a combination of equipment availability (governed in part by type-acceptance requirements) and certain "marketplace incentives" discussed in the Further Notice of Proposed Rulemaking will lead users to convert from wideband to narrowband equipment.

APCO believes that all land mobile radio users should be encouraged to make a graceful transition to more efficient equipment and technology. Public safety and other users are facing severe spectrum congestion, especially in metropolitan areas, and cannot afford to have a few licensees block the benefits of refarming indefinitely. That being said, APCO does not believe that the proposals being considered by the Commission in the Further Notice are appropriate incentives for public safety users. Thus, the Commission should reconsider its decision not to adopt specific deadlines for at least some public safety users to transition from current 25/30 kHz operation.

The Commission suggests in the Further Notice that it grant exclusivity to those who convert to narrowband equipment, and/or that it impose spectrum fees based on channel bandwidth as an incentive. As APCO will explain in its comments responding to the Further Notice, most public safety users already operate in an exclusive (or quasi-exclusive) channel environment. The critical nature of most public safety communications is such that users must have a large degree of channel exclusivity to prevent harmful interference and to ensure channel availability in times of emergency. Thus, APCO and other public safety frequency coordinators strive to coordinate sufficient channel spacing to prevent interference from occurring.<sup>3/</sup> Exclusivity, therefore, is already a practical reality for most public safety users, and would not provide any significant additional incentives to implement more spectrum efficient technology.

Nor are spectrum fees an appropriate incentive for public safety users. The Commission proposes in the Further Notice to exempt public safety users from spectrum fees, and APCO strongly supports that proposal. Imposing any spectrum user fees on public safety agencies would be tantamount to the federal government imposing a tax on state and local governments in exchange for the use of a public resource

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<sup>3/</sup> Maintaining such interference protection is becoming increasingly difficult in many parts of the country because of the lack of adequate spectrum.

(the radio spectrum). Aside from being contrary to the public interest, such a fee would violate basic constitutional requirements of comity between the federal government and the states. Fees would also be an unfair burden on government agencies that rely on taxpayer funds to provide core public safety services.

Therefore, since most public safety users already have some form of exclusive channel use, and in light of the need to exclude state and local governments from spectrum fees, other mechanisms are necessary to ensure that public safety users in spectrum congested areas move gradually to narrower band equipment.

APCO reiterates its support for the following transition schedule for public safety radio services:

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|-----------------|--|
| January 1, 1997 | All <u>new</u> systems <sup>4/</sup> must operate at no more than 12.5 kHz bandwidth to attain primary status. |
| January 1, 2005 | All urban systems <sup>5/</sup> must operate at no more than 12.5 kHz bandwidth to retain primary status.      |

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<sup>4/</sup> A "new system" is one which is not functionally integrated with an earlier-installed land mobile system. To be considered an "existing system" facilities must be in operation prior to the relevant deadline or must be functionally integrated with such a system. For example, a new repeater site which will be used to extend coverage of an existing system and will relay traffic of mobiles currently operating with an existing system would not be considered a "new system."

<sup>5/</sup> "Urban systems" are those located within 100 miles of the top 60 urban areas listed in Section 90.741.

This ten year transition plan had been proposed in APCO's initial Comments<sup>6/</sup> and was included in the modified land mobile user consensus plan.<sup>7/</sup> This schedule would help to relieve some of the most serious metropolitan area spectrum congestion within a reasonable time period, while allowing users a normal period of amortization for current equipment.

APCO does not believe that it is necessary at this time to identify a specific date for the transition to 6.25 kHz. Rather, the Commission should monitor developments in the marketplace, the impact of its type-acceptance requirements, and efforts to establish 6.25 kHz interoperable equipment standards. Depending upon those developments, the Commission could then revisit the issue to determine if additional firm deadlines are needed.

## II. Power/Height Limits

Another important element of the Commission's Report and Order was the adoption of "safe harbor" tables for transmitter power and height levels. Report and Order at ¶67-73. While APCO supports the basic elements of this new requirement, it notes that the rules are based on an assumption that licensees wish to reach the largest possible

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<sup>6/</sup> Comments of APCO (May 28, 1993), at 13-18.

<sup>7/</sup> APCO is not advocating that non-public safety radio services be subject to this or any other mandatory transition schedule.

land area and population. Public safety agencies, in contrast, have defined areas of jurisdiction over which they must have interference-free coverage. At the same time, public safety agencies have no need in most circumstances to extend their communications coverage beyond that area of jurisdiction.

Therefore, APCO supports provisions that require frequency coordinator review and support for applications with power and/or height limits that exceed the safe harbor levels.<sup>1/</sup> The Commission needs to clarify, however, that public safety frequency coordinators also have express authority to limit applicants to the parameters necessary to provide an adequate signal up to their jurisdictional boundaries.<sup>2/</sup> Otherwise, some applicants may request parameters that fit within the arbitrary "safe harbor" but are still far higher than necessary and, as a result, prevent reuse of that channel by other public safety agencies.

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<sup>1/</sup> APCO is concerned however, that nearly every application in mountainous regions of the country will require special showings under the Commission's policy. Therefore, APCO would support efforts to streamline that process, at least for applications in certain defined areas. One such approach would be to grant coordinators greater discretion in recommending applications.

<sup>2/</sup> Comments of APCO (May 28, 1993), at 29-32.

### III. Additional Clarifications

The following additional clarifications to the Report and Order and new Part 90 rules are also necessary:

- a. Fixed operational use in the 450-470 MHz bands is a common use on the 12.5 kHz offset channels on a 2 watt, secondary basis. It is also permitted under certain circumstances at higher power on the primary 450 MHz channels. APCO believes there is still a significant need for fixed operational use in this band, particularly in rural areas where there are no wire lines and line of sight paths may not exist. Due to otherwise light usage in certain rural areas, this type of operation can sometimes be accommodated on a secondary basis without adverse effect, provided it is subject to the strict oversight of the frequency coordinator on a site-by-site basis. The FCC should clarify whether such use will still be permitted for new stations on the former 25 kHz and 12.5 kHz channels on a primary basis.
- b. It is unclear why certain 450 MHz channels in the Base and Mobile portion of the blocks are classified as Mobile only, with the limitation that "no new systems will be authorized after August 16, 1995." The FCC needs to clarify its intent, and explain whether "mobile only" is classified as a "system."
- c. The FCC should clarify whether 6 kHz authorized bandwidth applies to channels identified in Section 90.267(b). If so, those channels would not be suitable to use for fixed operations to interconnect to equipment using wider channels.

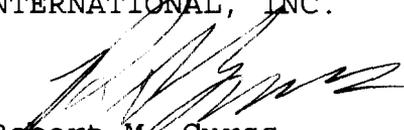
CONCLUSION

APCO requests that the Commission reconsider and clarify its Report and Order in the manner described above.

Respectfully submitted,

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COMMUNICATIONS OFFICERS-  
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