

**BEFORE THE**  
**Federal Communications Commission**  
**WASHINGTON, D. C. 20554**

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**FEB 15 1996**

In the Matter of	)	<b>FEDERAL COMMUNICATIONS COMMISSION</b>
	)	<b>OFFICE OF SECRETARY</b>
Amendment of Part 90 of the	)	PR Docket No. 93-144
Commission's Rules to Facilitate	)	RM-8117, RM-8030
Future Development of SMR Systems	)	RM-8029
	)	
Implementation of Sections 3(n)	)	
and 322 of the Communications Act	)	GN Docket No. 93-252
Regulatory Treatment of Mobile	)	
Services	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	
800 MHz SMR	)	

To: The Commission:

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**PETITION FOR RECONSIDERATION OF FIRST REPORT AND ORDER**  
**AND**  
**COMMENTS IN RESPONSE TO**  
**SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby (a) seeks reconsideration of that portion of the Commission's First Report and Order, FCC 95-501 (released December 15, 1995), which reallocates the 800 MHz General Category band for SMR service; and (b) submits the following comments in response to the Second Further Notice of Proposed Rulemaking in this proceeding regarding the treatment of incumbent public safety licensees in the General Category.

APCO, founded in 1935, is the nation's oldest and largest public safety communications organization, with over 12,000 members involved in the management and operation of police, fire, emergency medical, forestry-conservation, highway maintenance, disaster relief, and other public safety communications facilities. APCO is the FCC-certified frequency coordinator for the Part 90 Police and Local Government Radio Services, and for all Public Safety Pool channels. APCO is also one of three authorized coordinators for the 800 MHz General Category channels.

APCO previously examined the FCC's license database and determined that there were nearly 300,000 public safety radio units licensed on General Category channels to over 450 State and local government public safety agencies.<sup>1/</sup> These General Category channels are used for basic emergency communications systems for police, fire, emergency medical and other agencies. In most cases, public safety agencies use General Category frequencies because no channels are available in either the 800 MHz Public Safety Category or the 821 MHz National Public Safety Plan channels.

#### **I. PETITION FOR RECONSIDERATION**

The Commission, in the First Report and Order, reallocated the General Category for SMRs only, and will no

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<sup>1/</sup> Comments of APCO in PR Docket NO. 93-144 (Jan. 5, 1995), at 3.

longer accept applications from non-SMRs for General Category frequencies. APCO strongly opposes this reallocation as it closes off an important source of radio spectrum for public safety agencies. The Commission is well-aware of the serious spectrum shortages facing public safety agencies, especially in and near metropolitan areas. The Public Safety Advisory Committee ("PSWAC") is actively attempting to quantify those spectrum shortages and will soon be recommending specific frequency bands for reallocation to public safety. Thus, it is at best ironic, and at worse hypocritical, for the Commission to be reducing the radio spectrum available for public safety use.

The impact of the Commission's reallocation is particularly hard on those public safety agencies with existing systems operating on General Category frequencies. Many of these agencies will need additional channel capacity in the near future to accommodate growing demands on their operations. Yet, in most metropolitan areas (and many rural areas), the 800 MHz Public Safety Category channels are already fully occupied.<sup>2/</sup> Indeed, that is why many public safety agencies ended up on the General Category. Nor are 821 MHz National Public Safety Plan channels available in

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<sup>2/</sup> In 1994, APCO submitted an analysis to the Commission demonstrating that all 70 channels in the Public Safety Category are licensed within a 70-mile radius of the geographic center of all but two of the 20 largest cities in the nation.

most areas of the country. Even if the 821 MHz channels were free, special National Public Safety Plan operating requirements require different equipment than used in the General Category.<sup>3/</sup> Therefore, the 821 MHz band, even if available, would not a be viable option for expansion of current General Category systems.

The only rationale stated by the Commission for its reallocation of the General Category is its desire to accommodate the perceived spectrum requirements of wide-area SMRs, and to adopt a spectrum allocation scheme that will accommodate auctions. Even assuming that those are reasonable goals, the Commission's first priority must be to meet the spectrum requirements of agencies that protect the safety of life and property. 47 U.S.C. §151. The Commission appears to be ignoring the basic principal that

radio services which are necessary for the safety of life and property deserve more consideration in allocating spectrum than those services which are more in the nature of convenience or luxury.

S.Rep. No. 191, 97th Cong., 2d Sess. 14 (1981), reprinted in [1982] U.S. Code Cong. & Ad.News 2237, 2250.

APCO urges the Commission to continue to allow public safety agencies access to the General Category frequencies.

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<sup>3/</sup> Equipment used in the 821 MHz National Public Safety Plan channels must have special stability and filtering capability to allow use of adjacent 12.5 kHz channels, as required in the Regional Plans. Most of the equipment commonly used in the General Category channels lack these expensive features.

At minimum, existing public safety licensees should be permitted to obtain additional channels for necessary expansion of current communications systems.

**II. COMMENTS IN RESPONSE TO SECOND FURTHER NOTICE OF PROPOSED RULEMAKING**

A. Public Safety Incumbents Must Not Be Forced to Relocate

The Commission's First Report and Order does not require incumbent General Category licensees to relocate to other frequency bands. The Commission notes in the Second Further Notice, at ¶315, that

we believe that there are no equitable means of relocating incumbents to alternative channels, and that there are no identifiable alternative channels to accommodate all such incumbents.

Yet, in the very same paragraph, the Commission asks

commenters to address how non-SMR licensees operating on the lower 80 and General Category channels should be treated. Should these licenses be relocated to non-SMR channels, and if so, under what circumstances and pursuant to what type of relocation plan?

It appears that the Commission intends to allow incumbent site-specific SMRs to remain in the General Category, but is considering the possibility of forcing public safety and other non-SMRs to relocate. This turns the Commission's statutory public safety obligation on its head. Commercial entities should be making room for public safety, not vice versa.

Furthermore, where does the Commission suggest that public safety incumbents go? All other 800 MHz public safety bands are fully occupied in and near most metropolitan areas. Nor are there any other "comparable" frequency bands available. Even if new public safety frequencies are allocated in the foreseeable future (as APCO has repeatedly urged), the purpose of such reallocation will be to accommodate public safety demand for additional spectrum, not for existing public safety operations displaced by commercial SMRs.

Considering the absence of replacement frequencies, perhaps the Commission is contemplating that incumbent non-SMR users of the General Category can be accommodated on commercial systems. However, few if any public safety communications requirements can be met by commercial services. Public safety users must maintain their own systems to provide adequate system reliability for their emergency operations and security for sensitive communications. In addition, commercial carriers will have little economic incentive to provide the ubiquitous wide-area coverage necessary for public safety systems. Finally, commercial systems cannot meet the peak demands of public safety systems that occur whenever there are major emergencies.<sup>4/</sup>

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<sup>4/</sup> APCO notes that many non-public safety users are also unable to rely on commercial systems.

A forced reallocation of public safety General Category licensees would be even worse than the forced relocation of public safety microwave systems in the 2 GHz band.<sup>5/</sup> There, at least, the Commission identified replacement frequencies for most of the current 2 GHz incumbents. No such replacements are available for General Category incumbents. There would also be unprecedented costs and system disruption associated with any requirement that cities and counties relocate entire 800 MHz mobile radio systems. Unlike microwave relocation, which requires replacement of just two "radios" for each microwave path, relocating a mobile system to new frequency bands requires replacement of hundreds (and in some cases, thousands) of mobile and portable radios, new base stations, and other major infrastructure modifications.

Finally, a very small minority of the General Category licenses are held by public safety agencies, and many areas of the country have no public safety systems on General Category channels. Allowing public safety incumbents to remain in the General Category, therefore, will not interfere with the Commission's overall policy regarding the 800 MHz band.

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<sup>5/</sup> ET Docket 92-9.

B. Incumbent Public Safety Licensees Should be Given Extended Implementation Authorizations

A few of the current public safety licensees in the General Category are still in the process of constructing and implementing their communications systems. The Commission has often recognized the need to allow public safety agencies an extended implementation (i.e. "Slow Growth") period due to the need for multiple levels government approval, complex and often slow funding mechanisms, and other factors that impede rapid deployment of public safety systems upon licensure. In contrast, commercial operators are in a position to quickly apply for and obtain channels and can construct and implement systems far more rapidly than public safety agencies.

No licensee, public safety or otherwise, should be permitted to warehouse frequencies without concrete plans to use those frequencies and without showing reasonable progress towards implementation. At the same time, public safety agencies must not be forced to relinquish channels prematurely. Therefore, reasonable extended implementation rules must continue to apply to public safety systems in the General Category.

C. The Commission Should Maintain the Freeze on 800 MHz Intercategory Sharing

On April 5, 1995, the Commission imposed a freeze on applications for intercategory sharing between the Public

Safety, Industrial/Land Transportation ("I/LT"), and Business Categories in the 800 MHz band.<sup>6/</sup> The freeze was necessary due to a flood of applications from SMRs in the I/LT and Business Categories, which, in turn, caused Business and I/LT users to seek Public Safety channels. SMRs are no longer eligible for intercategory sharing in the Business and I/LT Categories. However, the intercategory sharing freeze is still necessary, and should be made permanent, at least for the Public Safety Category.

The General Category is now closed to all non-SMR applicants, and the Commission is contemplating a requirement that incumbent non-SMRs relocate to other bands. These changes and proposed changes will cause even more Business and I/LT entities to seek Public Safety Category channels as a "safe harbor," further depleting what few channels are left.<sup>2/</sup> Therefore, a permanent bar on non-public safety applications in the Public Safety Category is necessary to ensure that channels will be available for current and future public safety use. In addition, the original problem which led to the freeze, depletion of Business and I/LT channels has not gone away.

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<sup>6/</sup> Order, DA 95-741 (released Apr. 5, 1995), 60 Fed. Reg. 20247 (1995), recon denied, Memorandum Opinion and Order, DA 95-1669 (released July 28, 1995).

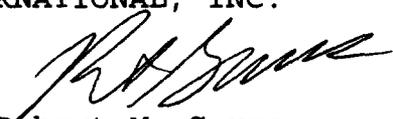
<sup>2/</sup> While Public Safety Pool channels are depleted in and near most metropolitan areas, some channels are available in a few less densely populated, but rapidly expanding, areas of the country.

**CONCLUSION**

For the reasons stated above, the Commission must continue to accept and grant public safety applications in the 800 MHz General Category band, and must not take any steps to displace current public safety users of that band.

Respectfully submitted,

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