

BEFORE THE

Federal Communications Commission

WASHINGTON, D. C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of)
)
Amendment to the Commission's) WT Docket No. 95-157
Rules Regarding a Plan for)
Sharing the Costs of Microwave)
Relocation)

To: The Commission

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**COMMENTS OF APCO
IN RESPONSE TO
FURTHER NOTICE OF PROPOSED RULEMAKING**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), by its attorneys, hereby submits the following comments in response to the Commission's Further Notice of Proposed Rulemaking ("Further Notice") included with its First Report and Order, FCC 96-196 (released April 30, 1996), in the above-captioned proceeding.

APCO is the nation's oldest and largest public safety communications organization, with over 12,000 worldwide members involved in the management and operation of police, fire, emergency medical, forestry-conservation, highway maintenance, disaster relief, and other public safety communications facilities. Many of these are state and local government 2 GHz microwave facilities that provide the backbone for critical public safety mobile radio communications systems. APCO filed comments and reply comments in the first stage of this proceeding, as well as other related proceedings regarding the 2 GHz microwave bands.

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The Commission's First Report and Order in this proceeding adopted several significant modifications to the microwave relocation rules. However, with few exceptions, the Commission wisely rejected those proposals which would have caused significant harm to public safety and other microwave incumbents. In particular, the Commission did not alter the voluntary negotiation period or impose arbitrary restrictions on relocation agreements reached during either the voluntary or mandatory periods.^{1/}

However, the Commission now seeks comments in the Further Notice as to whether it should shorten the voluntary negotiation period from three years to two years for public safety incumbents in the C, D, E, and F frequency blocks.^{2/} APCO strongly opposes this suggested modification.^{3/} As Chairman Reed Hundt wisely cautions in his separate statement:

In considering whether to shorten the period for voluntary negotiations for the C, D, E and F blocks, we should be mindful of the fact that the 2 GHz microwave bands support communications of incumbent police, fire and emergency medical

^{1/} APCO remains deeply concerned about the ten-year sunset proposal and the limitations imposed on involuntary relocation (i.e., after the mandatory period expires).

^{2/} Similarly, non-public safety incumbents in those frequency blocks would have only a one-year voluntary negotiation period, followed by a two-year mandatory period, the opposite of the current arrangement.

^{3/} The Commission also proposes that incumbents who clear microwave paths voluntarily should be entitled to reimbursement through cost-sharing. APCO supports that proposal, though it expects that few, if any, public safety incumbents would have the available resources to clear microwave paths on their own.

licensees, as well as public utilities and others that provide essential services to the public. It is critical that these licensees be able to rely on established rules and that the relocation process not cause disruption or harm to their communications services.

Chairman Hundt's concerns are well-placed. Microwave relocation negotiations are an unwelcome strain on public safety agencies' scarce time and resources and pose a potential for disruption to vital emergency communications operations. Because of the sensitive nature of those operations, public safety agencies are compelled to devote considerable technical and operational expertise to the relocation process to prevent disruptions. They cannot simply trust the PCS licensees to do it right.

The relocation process often requires that public safety agencies prepare detailed studies of their current microwave operations and future requirements, retain knowledgeable technical consultants and legal assistance, engage in sometimes protracted negotiations, design "cutover" plans, obtain necessary approvals from their governing bodies, oversee installation and testing, and train staff as to the new system operation. This cannot be accomplished overnight. The three-year voluntary negotiation period mitigates the strain of this process as it gives public safety agencies some limited flexibility as to when to devote their time and resources to microwave relocation.

Nevertheless, if the A and B block negotiations are a guide, most public safety agencies will be willing to begin

negotiations fairly soon after being contacted by the C, D, E, and or F block licensees, and many systems will be relocated relatively early in the voluntary period.^{4/} Some public safety incumbents, however, will require the flexibility of a three-year period to balance microwave relocation and other matters demanding their attention. Mandating that public safety agencies begin and complete the process within just two years would push some agencies to choose between redirecting scarce time and resources at an inopportune time, or to accept whatever the PCS licensee offers, hoping that it will not result in a dangerous disruption of their communications system.^{5/}

The Commission wisely decided in the First Report and Order not to modify the voluntary periods for the A and B block licensees, in part because those PCS licensees were well-aware of the microwave relocation rules when they placed their bids in the A and B block auctions last year. That same rationale should apply to at least the C block as

^{4/} A large, but undetermined, number of public safety incumbents have already vacated their A and B block facilities, just one year into the voluntary period.

^{5/} Reducing the negotiation period for C, D, E, and F blocks might also have an unintended detrimental impact on ongoing negotiations with A and B block licensees. Most microwave incumbents operate multipath systems in several different PCS frequency blocks. Therefore, concerned that they may not have sufficient time to negotiate acceptable relocation agreements with C-F licensees, some incumbents might choose to drive harder bargains with the A and B licensees, hoping to negotiate system-wide replacements (relying on the recently adopted cost-sharing rules) rather than take their chances with the C-F block licenses.

well. The C block auctions are now complete. The winners and presumptive licensees entered into and completed the bidding process under the current relocation rules, knowing that they would face the microwave relocation process on essentially the same terms and conditions as had the A and B block licensees. In particular, they presumably anticipated that there would be a three-year voluntary negotiation period, followed by a two-year mandatory negotiations period for public safety licensees.^{5/}

Nor should the negotiation periods be modified for the benefit of D, E, and F block licensees, even though the auctions for those blocks have yet to begin. They too must be subject to the current voluntary and mandatory negotiation periods to prevent disruption to public safety communications operations, as discussed above.

There is no need to change the relocation rules just to stimulate PCS development in D, E, and F blocks. If anything, those PCS licensees will have a distinct advantage as many, if not most, of the microwave paths in their frequency blocks will have been relocated by the time they obtain their licenses. Most of the microwave paths in those blocks also impact A, B, or C blocks and/or are part of

^{5/} Interestingly, the knowledge that C block licensees would face a three-year voluntary negotiation period for public safety incumbents (and a two-year period for other incumbents) had no apparent impact on the size of the C block bids, which far exceeded the A and B block bids. Indeed, to some limited degree, the C block bidders' willingness to make such huge financial commitments may be due to a perception that the microwave relocation process has been working and will not cause substantial delays in their operations.

larger microwave networks, and therefore are likely to be cleared by the A, B, or C Block licensees in the near future, especially now that the Commission has adopted cost-sharing rules.

Some elements of the PCS industry will no doubt file comments in response to the Further Notice resurrecting their shop-worn and exaggerated claims that incumbents are abusing the current voluntary period. The reality, as discussed in APCO's prior comments in this proceeding, is to the contrary.^{2/} The relocation process is working, agreements are being negotiated voluntarily, and microwave paths are being relocated at a rapid pace throughout the country. Indeed, considering the voluntary nature of negotiations, the process is working better than might have been expected. Changing the rules now for any of the PCS frequency blocks would alter expectations and, more importantly, cause disruption and harm to public safety communications.

The Commission originally excluded public safety incumbents from any relocation requirement.^{3/} It then abruptly repealed the public safety exemption, and adopted a four-year voluntary negotiation period for public safety incumbents, followed by a one-year mandatory negotiation

^{2/} See Comments of APCO (filed Nov. 30, 1995), Reply Comments of APCO (filed Jan. 16, 1996).

^{3/} First Report and Order and Third Notice of Proposed Rulemaking in ET Docket 92-9, 7 FCC Rcd 6886 (1992).

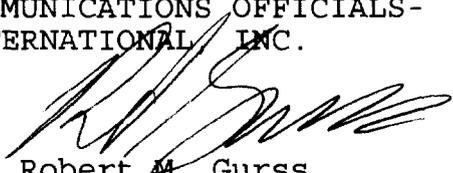
period.^{9/} Thereafter, the Commission once again diminished the protections afforded public safety incumbents by reducing the voluntary negotiation period to just three years (while increasing the mandatory period to two years).^{10/} Enough is enough. The Commission should leave the negotiation periods as they are and allow the relocation process to proceed in an orderly fashion that minimizes disruption to incumbents.

CONCLUSION

For the reasons discussed above, the Commission must not alter the voluntary and mandatory negotiation periods for public safety microwave incumbents.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
COMMUNICATIONS OFFICIALS-
INTERNATIONAL, INC.

By: 

Robert M. Gurss
WILKES, ARTIS, HEDRICK & LANE
1666 K Street, N.W. #1100
Washington, D.C. 20006
(202) 457-7329

Its Attorneys

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^{9/} Memorandum Opinion and Order in ET Docket 92-9, 9 FCC Rcd 1943, 1947-48 (1994).

^{10/} Second Memorandum Opinion and Order in ET Docket 92-9, 9 FCC Rcd 7797 (1994).