

Before the  
**FEDERAL COMMUNICATIONS COMMISSION**  
Washington, D.C. 20554

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In the Matter of )  
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The Development of Operational, Technical, and )  
Spectrum Requirements for Meeting Federal, State ) WT Docket No. 96-86  
and Local Public Safety Agency Communications )  
Requirements Through the Year 2010 )

To: The Commission

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**REPLY COMMENTS OF APCO**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), hereby submits the following reply to comments filed in response to the Commission's Notice of Proposed Rulemaking in the above-captioned proceeding.

This docket now includes dozens of extensive comments filed by state and local governments, public safety organizations, equipment vendors, and other interested parties, as well as 700 pages of Public Safety Wireless Advisory Committee ("PSWAC") documents. The record, therefore, is complete, and leads to the inescapable conclusion that the FCC must act decisively and immediately to allocate additional radio spectrum for public safety.

The Commission cannot afford to delay any further. Spectrum is increasingly scarce and, unfortunately, is now viewed by some as a commodity that the federal government can simply auction to the highest bidder, with little or no consideration as to whether the spectrum will be used in the public interest. Therefore, unless the Commission acts now to respond to critical public safety spectrum needs, police, fire,

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emergency medical, disaster relief and other emergency agencies will be left without adequate communications capability to protect the safety of life and property.

Most of the comments filed in this proceeding strongly support the findings and recommendations of PSWAC, and are in general agreement with APCO's initial comments.<sup>1</sup> Therefore, these reply comments will be brief and will focus only on specific issues raised by other parties.

On interoperability issues, a few parties took issue with PSWAC's recommended public safety definitions. APCO continues to believe that those definitions are appropriate and give necessary priority to those radio operations that are most critical to public safety. In particular, the definitions distinguish between governmental and non-governmental activities that involve safety, with the latter classified as "public service" rather than "public safety." Such "public service" communications systems used for railroads, utilities, and certain industrial facilities often have an important safety component, and should be given priority over other purely commercial communications services. Yet, public service entities are still businesses, in most cases with profit as their principal goal. Government agencies, by contrast, are charged by the citizens of their jurisdiction to protect their lives and property. Such government activities are truly "public safety" and demand the highest priority.

The Industrial Telecommunications Association ("ITA") notes that "public safety" frequencies are occasionally used for public works operations such as lawn sprinkler control. However, as ITA acknowledges, that is certainly the rare exception, not the rule.

Moreover, even where a public safety channel may be used for such operations on a day-to-day basis, the frequency in question is usually available for rapid conversion to critical emergency communications use in the event of a major emergency. Therefore, the seemingly routine, non-emergency use of the frequency is actually an efficient use of emergency spectrum that might otherwise be left vacant most of the time.

Several parties, including APCO, suggested that the Commission create reasonable incentives for public safety agencies to migrate to trunked, shared use systems. However, as APCO explained, under no circumstances should agencies be penalized for maintaining conventional radio systems. There are legitimate technical, operational, and feasibility reasons why some local governments must maintain conventional systems. Ericsson, however, goes a step further in its comments and suggests that conventional systems become “secondary” users. That would be a “death penalty” for most public safety systems, which cannot tolerate secondary status and the risk of interference to critical emergency communications. The threat of secondary status is simply too strong of an incentive.

The Federal Law Enforcement Wireless Users Group (“FLEWUG”) has suggested that all public safety radio spectrum, including state and local frequency assignments be subject to common control by NTIA. FLEWUG believes that common control of federal, state, and local public safety spectrum would facilitate better spectrum planning and frequency sharing. While APCO share’s FLEWUG’s desire for more coordinated

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<sup>1</sup> APCO also refers the Commission to its comments in the digital television proceeding (MM Docket 87-268), which address the need to reallocate certain broadcast television channels for public safety use.

spectrum planning, we do not support shifting all licensing and spectrum management to NTIA at this time.

State and local government licensees are currently entitled to important due process rights before the FCC. The Commission cannot modify or revoke a license without proper notice and hearing rights. Furthermore, all Commission decisions regarding public safety spectrum are open, on the record, and subject to the Administrative Procedures Act. It is unclear how these important procedural rights could be preserved under NTIA, which has no experience in issuing licenses or authorizations to non-federal entities.

Some state and local governments have also expressed concern that an Executive Branch agency might favor federal public safety agencies over state and local agencies in spectrum management decisions. Federal public safety activities are very important and deserve special treatment by whatever agency is governing the radio spectrum. However, the overwhelming majority of basic law enforcement, fire protection, emergency medical response, and other public safety services are provided to the public through state and local governments, not the federal government. Yet, will an Executive Branch agency be able to balance the relative needs of those state and local government agencies with other Executive Branch agencies? Perhaps, but a better solution may be to maintain state and local government spectrum management within an independent regulatory agency.

While APCO does not support shifting all public safety spectrum management to NTIA, it does agree that greater cooperation is needed between the FCC and NTIA, and between federal, state, and local public safety agencies. The PSWAC process was a good first step in that direction. There may also be a basis for studying some long term

restructuring of spectrum management, perhaps including the creation of a new, hybrid independent governmental entity to govern all public safety spectrum.

A number of comments were filed supporting Project 25, and urging that the Commission not adopt any rules or policies that would undermine a user driven standards process such as Project 25. We note in particular the comments of the Telecommunications Industry Association (“TIA”), which details the relationship between TIA and Project 25 and the extent to which it has been a fair and reasonable process open to all. The record demonstrates that Project 25 has been a success as it has opened the door for more, not less, competition in the public safety radio market. In particular, companies such as Transcrypt, Daniels, Stanilite, Relm, E.F. Johnson, and others are now in a better position to compete in the public safety market, giving Motorola and Ericsson new competition and providing users with greater choices.

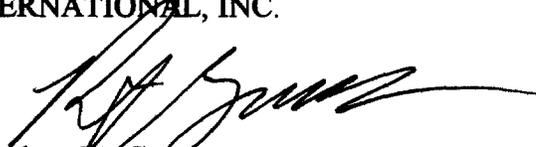
Most of the other issues raised by various parties in their initial comments merely reiterate APCO’s prior positions and/or the PSWAC findings and conclusions. APCO urges the Commission to study those documents carefully, including the PSWAC

subcommittee reports, and to move with all deliberate speed to address public safety spectrum needs.

Respectfully submitted,

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