

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

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In the Matter of)
)
Amendment of Section 2.106)
of the Commission's Rules) ET Docket No. 95-18
to Allocate Spectrum at)
2 GHz for Use by the)
Mobile-Satellite Service)

To: The Commission

COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. ("APCO"), by its attorneys, hereby submits the following Comments in response to the Further Notice of Proposed Rulemaking ("FNPRM"), portion of the First Report and Order, FCC 97-93, released March 14, 1997, in the above-captioned proceeding.

I. INTRODUCTION AND BACKGROUND

APCO, founded in 1935, is the nation's oldest and largest public safety communications organization, with over 12,000 members involved in all aspects of the management and operation of police, fire, emergency medical, forestry conservation, highway maintenance, local government, emergency management, and other public safety communications facilities. Many of these public safety systems include critical microwave communications links in the 2130-2150/2180-2200 MHz band, which provide the "backbone" for wide-area mobile radio communications systems. The Commission

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previously determined that there were over 4,000 microwave facilities licensed to public safety agencies in 2130-2150/2180-2200 MHz band (more than twice the number of public safety facilities as are in the 1850-1990 MHz “PCS” band).¹

The Commission, in ET Docket 92-9, reallocated the 1850-1990/2110-2200 MHz (2 GHz) bands for new emerging telecommunications technologies. Emerging Technologies, First Report and Order and Third Notice of Proposed Rulemaking, 7 FCC Rcd 6886 at ¶ 21 (“ET First Report and Order”). However, because the bands contain large numbers of incumbent microwave facilities, the Commission’s rules require that licensees of new technologies in the 2 GHz bands must compensate incumbents for the cost of relocating to other frequencies. The compensation for relocation is to be determined through a negotiation process with specified voluntary and mandatory negotiation periods. 47 C.F.R. §101.69 - §101.81 (1996). This process has been in effect for three years with regard to the Personal Communications Service (“PCS”) band (1850-1990 MHz), and has led to the expeditious clearing of incumbent microwave facilities throughout the nation.

In the First Report and Order in this proceeding, the Commission reallocated the 2165-2200 MHz bands for Mobile Satellite Services (“MSS”) and reconfirmed that it would apply the same relocation reimbursement principles to fixed service microwave incumbents in the MSS band as it had applied in the 1850-1990 MHz band. First Report

¹ FCC Office of Engineering & Technology, “Creating New Technology Bands for Emerging Technologies” (January 1992). The number of current public safety facilities is probably less than 4,000 due to attrition and certain system-wide replacements of microwave networks containing both 1850-1990 MHz and 2110-2200 MHz links. In addition, new microwave licenses are no longer being granted on a primary basis in the 2 GHz bands. Nevertheless, there are still large numbers of public safety incumbents in the band, often operating on relatively new microwave equipment.

and Order at ¶ 32. The Commission also decided to permit sharing on 2130-2150/ 2180-2200 MHz frequencies by fixed services (“FS”) incumbents and MSS licensees where it is possible without either licensee causing harmful or disruptive interference to the other. Id. at ¶ 42. APCO generally supports the Commission’s decisions in the First Report and Order and, therefore, has submitted an Opposition to the Petition for Partial Reconsideration recently filed by the MSS Coalition.² These comments will address the narrower questions raised by the Commission in the FNPRM, i.e., whether any changes to the relocation rules are necessary in the context of MSS.

II. THE COMMISSION MUST REQUIRE MSS LICENSEES TO REIMBURSE PUBLIC SAFETY FIXED SERVICES LICENSEES FOR RELOCATION AS SET FORTH IN ET DOCKET 92-9.

The Commission has determined in the First Report and Order that where sharing is not possible, an MSS licensee must pay the costs of relocation for FS licensees on the 2130-2150/2180-2200 MHz bands. APCO fully supports this conclusion. The public interest requires that any emerging MSS licensees that requires public safety agencies to move off their current 2 GHz frequencies must pay the relocation costs for those public safety incumbents. The Commission has already made this decision with respect to PCS licensees, and there is no justification whatsoever for changing that decision in the case of emerging MSS licensees.

MSS interests will undoubtedly argue once again that they are different from PCS, and therefore should be subject to different rules. However, from the incumbent’s

² See Opposition of APCO to Petition for Partial Reconsideration (filed June 19, 1997).

perspective, the identity of the new technology licensee forcing it to move is irrelevant.³

Whether the new user is PCS or MSS, a public safety incumbent still faces the same problem of being forced to relocate sensitive radio communications systems used for the protection of life and property. In either case, public safety incumbents need an extended implementation period to preserve an orderly transition and ample opportunity to negotiate fair relocation agreements that ensure that state-of-the-art replacement facilities will be installed and that taxpayers will not bear any of the expense. The current microwave relocation rules have addressed these public safety incumbent requirements in most cases when applied to PCS. There is no reason to change the rules merely because the identity of the party seeking relocation has changed.

A. THE COMMISSION MUST, AT A MINIMUM, PROVIDE PUBLIC SAFETY FS LICENSEES A NEGOTIATION PERIOD OF THE SAME LENGTH AS WAS APPLICABLE TO PCS RELOCATION.

The current rules provide for a three year voluntary negotiation period and a two year mandatory negotiation period for public safety FS incumbents. 47 C.F.R. §101.77, §§101.71 and 101.73. Because public safety agencies have a more difficult time committing the resources and personnel necessary to engage in microwave relocation negotiations, and to avoid disruption of critical public safety communications, the Commission in the Emerging Technologies proceeding provided public safety licensees an additional year for both negotiation periods over the time permitted to other FS licensees. Emerging Technologies, Memorandum Opinion and Order, 9 FCC Rcd 1943 at ¶¶ 36-41.

³ Thus, for example, the rights of incumbents *vis a vis* unlicensed PCS and the fundamentally different licensed PCS service are the same.

The Commission must, at a minimum, provide public safety FS licensees the same periods for voluntary and mandatory negotiations with MSS licensees as were applicable during PCS relocation.⁴ The problems faced by public safety agencies in the relocation of paths to make way for MSS will be no different than relocating paths for PCS.

B. THE VOLUNTARY RELOCATION NEGOTIATION PERIOD SHOULD BEGIN NO SOONER THAN THE TIME OF FINAL GRANT OF LICENSE TO AN MSS OPERATOR.

The Commission should mandate that the voluntary negotiation period for MSS relocation must begin no sooner than the date on which an MSS licensee receives its final grant of license. Prior that time, there is no MSS “licensee” ready to come to the table and negotiate a relocation agreement. However, because of the possibility that MSS sharing arrangements could put relocation negotiations on hold for an extended period, the voluntary period should not begin for any microwave path until the MSS licensee notifies the incumbent that it desires to begin the negotiation process. Otherwise, by the time that the MSS licensee is ready to negotiate, the voluntary period could have long passed, leaving only the relatively short mandatory period. All public safety incumbents should have the benefit of the full five-year minimum negotiation period.

⁴ If anything, the negotiation periods can and should be longer. The only reason that the PCS-related negotiation periods are as short as they are is to accommodate the perceived need for rapid PCS deployment. MSS, in contrast, will be rolled out over a much longer time period due to the need to construct and launch satellites even before the first customer signs up for service.

C. THE COMMISSION SHOULD ELIMINATE ANY ESTABLISHED SUNSET PERIOD FOR PUBLIC SAFETY FS LICENSES.

In the FNPRM the Commission proposes the same 10 year sunset period which it applied in the initial PCS relocation process for the conversion of remaining FS licenses in the 2130-2150/2180-2200 MHz bands to secondary status. See FNPRM at ¶77. APCO continues to oppose any sunset for public safety FS licensees.⁵ Many public safety microwave systems in the 2130-2150/2180-2200 MHz bands are relatively new, and some were built only a few years ago to provide infrastructure for new 800 MHz trunked wide area mobile systems. These licensees fully expect their systems to serve their critical needs for many more years after the end of the proposed sunset period.⁶ However, since the sunset period may well end many years before some MSS systems are fully operational and in need of clearing the 2180-2200 MHz band, those public safety users still in use after the sunset will be forced to relocate without any compensation.

In addition, there are substantial questions regarding whether there will even be spectrum available to public safety FS licensees who are forced to move their systems at the end of the sunset. Large portions of 6 GHz spectrum have been licensed to microwave incumbents forced to move during the PCS relocation process. New wide area mobile radio systems are also being installed at 800 MHz (and in the 24 MHz of spectrum

⁵ Should the Commission nevertheless maintain a sunset period, it should begin the period upon the final grant of MSS licenses.

⁶ See Opposition of the State of California to MSS Coalition Petition for Partial Reconsideration in ET Docket 95-18 (June 19, 1997) ("The State of California routinely operates its microwave radio equipment for 16-20 years. Thus, existing equipment would not be nearing the end of its useful life-cycle when MSS is deployed, rather it would be entering the prime of its life-cycle"). The State of California has 95 paths in the 2130-2150 and 2180-2200 MHz bands; See also Comments of Minnesota Department of Transportation in ET Docket 95-18 (May 6, 1996) ("30 year equipment life cycles are not uncommon for [2 GHz] systems").

in the 746-806 MHz expected to be reallocated for public safety use), which will require new fixed microwave frequencies for backbone infrastructure. Combined with existing microwave frequency congestion in many areas, these factors could create a situation whereby a public safety agency forced to move at its own expense at the end of the transition may have no place to go. All replacement bands may be full. The only alternative if any, will be to use less reliable lease facilities, expensive fiber options (except where earthquakes poses threats to underground fiber), or to make massive changes in the incumbent's overall communications network that could undermine public safety operations. For these reasons, the Commission should not impose a sunset.

D. THE AGE AND VALUE OF PUBLIC SAFETY FS INCUMBENT EQUIPMENT SHOULD NOT BE A FACTOR IN THE COMMISSION'S RULES.

In the FNPRM, the Commission requests comment whether its relocation rules should somehow consider "the age and value of FS equipment." NPRM at ¶80. APCO strongly urges the Commission not to adopt such a requirement. Public safety FS incumbents face the same substantial and unexpected replacement costs regardless of the age and value of their old equipment.⁷ Normally, an incumbent would gradually replace components on a microwave system and only rarely undergo a complete system replacement. In contrast, forced relocation to new frequencies requires an incumbent to make major expenditures all at one time and much sooner than would have been expected. Furthermore, the cost of moving to new frequencies is much higher in most instances than

⁷ Unlike some other incumbents, public safety agencies are tax-exempt and do not gain any tax benefits from depreciating existing equipment.

simply buying new radios without switching frequencies, as would normally occur.⁸

Therefore, consistent with the Commission's current rules, all relocation costs must be paid by the new emerging technology licensee, regardless of the age or value of the incumbent microwave facilities.

E. THE COMMISSION MUST ENSURE THAT THE RELOCATION OBLIGATION OF MSS LICENSEES APPLIES TO BOTH THE 2130-2150 AND 2180-2200 MHz PORTIONS OF AN INCUMBENT'S SYSTEM.

The Commission must require reimbursement for the relocation of public safety FS paths in both the 2130-2150 and the 2180-2200 MHz bands. The 2180-2200 MHz links utilize the 2130-2150 band for return paths and vice versa. At a minimum, it would be an engineering nightmare for any public safety FS incumbent to relocate one 2 GHz path to an entirely different frequency band, and then be forced to configure it with the remaining 2 GHz frequency.⁹ This is simply bad engineering practice - of the kind that the Commission has not historically engaged, and that no current licensee of a 2 GHz path would ever apply. Even assuming that construction of such a split microwave path could be accomplished, the added costs are likely to exceed the cost of simply moving both frequencies to the same replacement band. Thus, moving the 2130-2150 MHz frequency is a necessary and direct consequence of moving the 2180-2200 MHz frequency, and must be subject to reimbursement by the MSS licensee.

⁸See Opposition of State of California to MSS Petition for Reconsideration.

⁹ See Comments of the State of California filed concurrently in this proceeding. The State of California outlines a few of the substantial engineering problems associated with splitting paired channel paths.

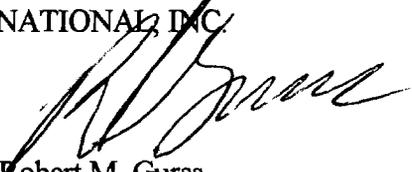
CONCLUSION

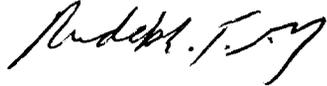
The Commission must require MSS licensees to pay the relocation costs of public safety FS incumbents who currently utilize the 2130-2150/2180-2200 MHz bands pursuant to the Commission's current rules, except as otherwise discussed above.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
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