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In the Matter of:	)	
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Examination of Exclusivity and Frequency Assignments Policies of the Private Land Mobile Services	)	PR Docket No. 92-235

To: Chief, Wireless Telecommunications Bureau

EMEGENCY PETITION FOR CLARIFICATION

The Association of Public-Safety Communications Officials-International ("APCO") hereby requests immediate clarification of the Commission's Public Notice, DA 97-2006, released September 23, 1997. Specifically, in announcing that applications for 12.5 kHz "offset" channel in the 470-512 MHz band will be accepted on October 17, 1997, the Commission's Public Notice does not make clear that, pursuant to Section 90.311(a) of its Rules, only public safety entities may file applications for 12.5 kHz channels offset to channels already assigned to public safety users.

APCO is the nation's oldest and largest public safety communications organization, with over 13,000 members involved in the management and operation of police, fire, emergency medical, local government, forestry conservation, highway maintenance, disaster relief and other public safety communications systems. APCO is a certified frequency coordinator for the Part 90 Public Safety channels, including the 470-512 MHz band.

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I. INTRODUCTION AND SUMMARY

The portions of the 470-512 MHz band licensed to land mobile use in eleven major "urbanized areas"[1] are heavily used for critical police, fire, emergency medical and other public safety services. When the 470-512 MHz band was first allocated for land mobile use it was segregated into a Public Safety Pool, Industrial Pools, and Land Transportation Pools, reflecting each of the Part 90 radio services.[2] In 1977, the Commission created a General Access Pool in the band consisting of any channels that had not been assigned to a specific user during the six-year period that the band had been available for land mobile use.[3]

As part of the 1977 Report and Order, the Commission stated in what became Section 90.311 of its rules that the availability of a channel in the General Access Pool would depend upon "whether that channel is presently assigned to users in one of the several service pools." A channel would be in the General Access Pool (and thus available to otherwise ineligible users) only if it is unassigned or subsequently becomes unassigned.[4] The Commission further stated that it "would guard against assigning frequencies to applicants so as to give rise to ...problems" that occur due to "inherent incompatibilities in the manner in which some users might employ their respective facilities."[5]

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[1] The channels are available in Los Angeles, New York, Chicago, Philadelphia, Pittsburgh, San Francisco, Washington, Dallas/Fort Worth, Houston, Boston and Miami. See 47 C.F.R. §90.301 et seq.

[2] Land Mobile-UHF TV Channel Sharing, 30 FCC 2d 221 (1971).

[3] Land Mobile Channels, 64 FCC 2d 825 (1977).

[4] See 64 FCC 2d at 844.

[5] 64 FCC 2d at 828.

In this "spectrum refarming" proceeding, PR Docket 92-235, the Commission adopted a narrowband channel plan for the 470-512 MHz band allowing for the assignment of 12.5 kHz channels "offset" (or "interleaved") from current 25 kHz channels.[6] In discussing its refarming plan for UHF frequencies below 512 MHz, the Commission stated that

> In cases where an existing channel is shared by two or more radio services, the interleaved channels will be shared among those same services. Where an existing channel is assigned to a single radio service, the interleaved channels will be allocated to only that radio service.

First Report and Order, 10 FCC Rcd at 10109 (emphasis added). The Commission clearly indicated that the creation of an interleaved channel did not alter the status of the interleaved channel from that of the original channel.

As part of its Second Report and Order in this proceeding, the Commission consolidated many of the Part 90 service categories for frequencies below 470 MHz.[7] While the Commission restated in the Second Report and Order that all 470-512 MHz channels were potentially part of the General Access Pool, it also reiterated in its modification of Section 90.311(a) that "[c]hannel availability in the General Access Pool in any of the urbanized areas...depends on whether that channel is presently assigned" to one of the specified categories of users, including public safety. The rule further states that where a channel is so assigned, "subsequent authorizations will only be granted to users from the same category."

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[6] Report and Order and Further Notice of Proposed Rulemaking in PR Docket No. 92-235, 10 FCC Rcd 10076 (1995) ("First Report and Order").

[7] Second Report and Order in PR Docket 90-235, FCC 97-61 (released March 12, 1997) ("Second Report and Order").

In the Public Notice, released on September 23, 1997, the Commission announced that applications for 12.5 kHz "offset" channels in the 470-512 MHz band will be accepted as of October 17, 1997. In highlighting relevant regulatory requirements, the Public Notice refers to Section 90.311(a)(1) of the Commission's rules, and states that:

> Once a channel in an "urbanized area" is assigned to a user in one of the categories specified in section 90.311 of the Rules, subsequent authorizations on such channel in that urbanized area will be granted only to the same category of users.

Public Safety is "one of the categories specified in section 90.311." Thus, once a channel is assigned to a public safety user, it cannot be subsequently assigned to a non-public safety user in the same urbanized area.

However, the Commission's statement in the Public Notice does not explain what is meant by a "channel in an 'urbanized' area." If "channel" in that context means only a new 12.5 kHz channel, and does not include a current 25 kHz channel, then the Public Notice could be interpreted as allowing any entity to apply for any 12.5 kHz offset channel, even if the existing channels to which the "new" channel is offset are assigned to public safety users in the same urbanized area. Such an interpretation, however, would be completely inconsistent with the Commission's express statement in the First Report and Order that "[w]here an existing channel is assigned to a single radio service, the interleaved channels will be allocated to only that radio service." 10 FCC Rcd at 10109. The correct interpretation is that the term "channel in an 'urbanized' area" refers to current 25 kHz channels, and that if such a channel is currently assigned to a public safety user, subsequent authorizations, including authorizations for 12.5 kHz channels offset to such a 25 kHz channel, will be granted only to public safety users.

This confused situation caused the Public Notice must be clarified at once to ensure a fair and orderly licensing process. Without a clarification, entrepreneurs and other non-public safety entities will inevitably rush in and attempt to obtain assignments for all of the 12.5 channels in the 470-512 MHz band, including those offset to current public safety channels. That will prevent public safety from realizing the benefits of spectrum refarming and undermine the Commission's goal of providing additional radio spectrum for public safety agencies. In addition, the presence of incompatible non-public safety users on channels offset to current public safety channels will pose a threat to public safety operations, notwithstanding coordination and interference guidelines. Therefore, the Commission must immediately clarify its Public Notice or, if necessary, modify Section 90.311, to limit access to such 12.5 kHz offset channels to public safety.

The General Access Pool in the 470-512 MHz band was originally created to allow more flexible use of channels that had remained unassigned despite ample opportunity for applications to be filed in the six-year period from 1971 (when the band was first available for land mobile use) to 1977.[8] In contrast, the "new" 12.5 kHz channels are being made available for the very first time on October 17, 1997. These channels have not been lying fallow as a result of narrow eligibility requirements. To the contrary, public safety users are anxiously awaiting the availability of these new channels to help alleviate congestion. Therefore, there is no reason to immediately place all "new" 12.5 kHz offset channels into the General Access Pool. Public Safety users must have the first opportunity to apply for the 12.5 kHz channels interleaved with current public safety channels.

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[8] Land Mobile Channels, 64 FCC 2d at 826.

II. ACCESS TO 12.5 kHz OFFSET CHANNELS IS CRITICAL FOR PUBLIC SAFETY COMMUNICATIONS IN MAJOR METROPOLITAN AREAS.

The need for additional public safety channels, especially in major metropolitan areas, is fully documented in the Report of the Public Safety Wireless Advisory Committee, and has been recognized by the Commission in this and other recent proceedings.[9] Indeed, one of the principal goals of refarming, and the purpose of APCO's extensive involvement in this proceeding, has been to provide some degree of spectrum relief within the VHF and UHF frequency bands below 512 MHz that provide for the vast majority of current public safety communications.[10] Refarming of the 470-512 MHz band is particularly important to public safety, first because it is used in some of the major metropolitan areas with the most severe spectrum shortages, and second because the band is likely to yield more immediate channel relief than other frequency bands subject to refarming. Therefore, public safety entities are gravely concerned that the benefits of refarming in the 470-512 MHz band could be lost forever because of a possible misinterpretation of Section 90.311 and the Commission's recent Public Notice.

History has demonstrated that when a group of channels initially becomes available on a first-come, first-served basis without any eligibility restrictions, public safety is often the loser. Business entities with greater resources and far less need for bureaucratic

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[9] While the Commission, in ET Docket 97-157, is in the process of allocating 24 MHz of spectrum for public safety in the 746-806 MHz band (TV channels 60-69), much of that spectrum will not be available for assignment to public safety agencies until the end of the transition to digital television, especially in many of the nation's largest metropolitan areas where channels 60-69 are occupied by analog television stations (or will be occupied by DTV stations). These include most of the urbanized areas where the 470-512 MHz band is used for public safety.

[10] See, e.g., paragraphs 25 and 28 of the First Report and Order, 10 FCC Rcd at 10092-94, where the Commission indicates that its core decision regarding a channel plan was based in large part on the needs of public safety.

approvals nearly always react faster and file applications ahead of slower moving public safety entities.[11] APCO and others raised this concern in 1977 when the Commission first created the 470-512 MHz General Access Pool. Then, the Commission responded that most of the Public Safety Pool channels had already been assigned, reducing substantially the possibility that Public Safety Pool channels would be made available in the General Access Pool.[12] The same cannot be said of the 12.5 kHz channels, however, which are being made available for the very first time and could be lost before public safety users have an adequate opportunity to obtain assignments.[13]

The need to limit access to certain frequencies to public safety entities is well-established, and has not been diminished in light of the Commission's desire for more flexible licensing of spectrum. For example, in establishing the new Public Safety Pool for frequencies below 470 MHz, the Commission stated in paragraph 16 of the Second Report and Order that

> Our reasons for establishing a separate public safety pool stem from the fact that a majority of the communications required by the public safety community are used to protect life and property and because public safety operations can affect the lives of hundreds, thousands, or even tens of thousands of people. We recognize that competing demands for and use of spectrum from entities with a different mission and less critical set of needs than this community could place an unacceptable strain on the integrity of public safety spectrum use. We can limit such a strain by creating a separate pool limited to public safety communications. Moreover, this approach is consistent with our goal to foster a regulatory environment in which agencies involved in the protection of life and property have

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[11] E.g., APCO has received unconfirmed reports that at least one business entity is preparing to file applications for nearly every 12.5 kHz offset channel in the 470-512 MHz band.

[12] Land Mobile Channels, 64 FCC 2d 825, 828 (1977).

[13] APCO notes, however, that in certain of the urbanized areas, some of the offset channels are already occupied by full power 25 kHz operation as a result of waivers.

the communications resources they need to carry out their mission and an opportunity to select from a wide range of advanced wireless communications.

Congress has also recognized the need for separate public safety spectrum, as evidenced by its recent requirement that the FCC allocate an additional 24 MHz of spectrum in the 746-806 MHz band for exclusive use of public safety services.[14] For the very same reasons, the Commission must ensure that public safety continues to have access to frequencies in the 470-512 MHz band, including more efficient 12.5 kHz channels. These frequencies are the "core" of public safety radio communications in most of the urbanized areas at issue, which are also the areas that face the most severe shortage of public safety spectrum overall. To deprive public safety agencies in those areas of additional channels as a result of refarming would be contrary to the underlying goals of this proceeding, and of long-standing goals of the Commission and Congress to give priority to the spectrum requirements of public safety.

II. THE COMMISSION MUST ENSURE CONSISTENT USE OF RADIO FREQUENCIES WITHIN THE SAME AREAS.

The Commission has shown a clear intent under section 90.311(a)(1) to maintain a consistency of frequency use in the 470-512 MHz band. The modified Section 90.311(a)(1) which becomes effective October 17, 1997 (the same date the 470-512 MHz filing freeze will be lifted), provides as follows:

> (1) Channel availability in the General Access Pool in any of the urbanized areas referred to in the table depends on whether that channel is presently assigned to one of the following categories of users:

[14] H.R. Conf. Rep. No. 1037, 105th Cong., 1st Sess. 17 (1997).

(i) Public Safety (as defined in Section 90.20(a)); . . .

(2) If assigned, subsequent authorizations will only be granted to users from the same category.[15]

The fact that "subsequent authorizations will only be granted to users from the same category" clearly illustrates the Commission's continuing intent that users from different categories should not be authorized on the same frequency. Indeed, when the Commission first adopted the General Access Pool and the original version of 90.311 it stated:

> Channel assignments must be shared, of course; but, as in the practice now, we would guard against assigning frequencies to applicants so as to give rise to the kinds of problems [operating conflicts due to inherent incompatibilities] mentioned. In this regard, as we have mentioned, we plan to license channels at the low end of the band to eligibles in the Public Safety Services and license those at the high end to eligibles in the Industrial and Land Transportation Radio Service; and through this approach and by careful screening, we will avoid conflicts of the type mentioned.

64 FCC 2d at 828.

This consistency of use has always been important, notwithstanding coordination guidelines that are necessarily based on theoretical estimates and cannot guarantee that interference will not occur. Indeed, some measurable level of interference between co-channel users often occurs despite interference guidelines, especially to and from mobile units that roam beyond the intended area of service of a base station and operate at power levels higher than a typical public safety portable radio. The coordination guidelines do not protect against such

[15] See Second Report and Order, In re: Replacement of Part 90 by Part 88 to Revise PLMRS, PR Docket No. 92-235, FCC 97-61, March 12, 1997.

mobile interference, especially in areas with significant variations in terrain (such as San Francisco, Los Angeles, and Pittsburgh) where 470-512 MHz mobiles could operate at relatively high elevations.

When co-channel public safety users experience interference problems or other conflicts, they can be easily resolved in most cases as both users have common goals and long-standing working relationships. Such conflict resolution is far more difficult, however, between a public safety agency and a business entity which has entirely different motives, funding, and modes of operation. That is yet another reason why in this and other proceedings the Commission has maintained separate pools of spectrum for exclusive public safety use. That approach could be severely undermined, however, if the Commission does not clarify its Public Notice to ensure that 12.5 kHz channels offset to current public safety channels are available only to public safety users.

CONCLUSION

Therefore, the Commission should issue a clarification for the reasons discussed above.

Respectfully submitted,

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