

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

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

To: Chief, Wireless Telecommunications
Bureau

**PETITION FOR PARTIAL REINSTATEMENT OF APPLICATION FILING
FREEZE PENDING CLARIFICATION OR RULEMAKING**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby requests that the Commission (1) reinstate a freeze of limited duration on Commission acceptance of applications for certain 12.5 kHz channels in the 470-512 MHz band; (2) expedite consideration of APCO's Emergency Petition for Clarification, filed October 1, 1997 ("Emergency Petition"), in the above-captioned proceeding; and (3) either clarify its rules in the manner described in the Emergency Petition or promptly proceed to modify its rules to ensure that a portion of the 470-512 MHz land mobile 12.5 kHz frequencies are reserved for public safety use.

APCO's Emergency Petition requested a clarification of the Commission's Public Notice, DA 97-2006, released September 23, 1997, and suggested that the Commission must make clear that pursuant to Section 90.311(a) of its Rules, only public safety entities may file applications for 12.5 kHz channels interleaved between channels already assigned to public safety users. APCO explained that absent a clarification, non-public safety applicants would quickly apply for and obtain licenses for such 12.5 kHz channels,

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potentially blocking public safety access to additional channels in the 470-512 MHz band. APCO also urged that the presence of non-public safety users on these bands poses a danger of interference to critical existing public safety communications operations, notwithstanding coordination procedures.

On October 29, 1997, APCO submitted a letter to the Chief of the Public Safety and Private Wireless Division reporting that various frequency coordinators were not in agreement regarding guidelines and procedures for coordinating 470-512 MHz channels. APCO submitted a second letter to the Division Chief, dated October 31, 1997, with information regarding an application approved by another coordinator which demonstrated that the Commission cannot, in any event, rely upon coordination guidelines to ensure channel availability for public safety users or to prevent interference to existing public safety operations.¹

The potential for harm to current and future public safety interests exists so long as the Commission fails to act and applications continue to be accepted and granted. Therefore, APCO now requests that the Commission reinstate a freeze on certain 470-512 MHz applications pending a rule clarification or modification to ensure that public safety entities will continue to have reasonable opportunities to obtain the use of 12.5 kHz channels in the band, and that existing public safety users will be adequately protected from interference. Specifically, the Commission should freeze the acceptance or further

¹ The application, filed by a non-public safety entity, sought 12.5 kHz channels interleaved between channels assigned to public safety entities in the same urbanized area (Boston). Based on APCO's analysis, the use of the 12.5 kHz channels on one of the two sites requested would cause interference to public safety communications. While the other requested site did not indicate direct interference from the proposed base station, it did suggest that non-public safety entities would be able to obtain access to these channels notwithstanding coordination guidelines.

processing of applications for 12.5 kHz frequencies that are adjacent to or interleaved between frequencies currently assigned to public safety entities in the 470-512 MHz band.² Coordinators should be able to continue to receive and process such applications, but should withhold submission to the Commission.

APCO reluctantly seeks this freeze as many public safety entities are anxious to apply for and utilize the 12.5 kHz channels. Therefore, the Commission's freeze must be extremely brief and any proceedings or actions that need be completed prior to lifting the freeze must be conducted on an expedited basis. An extended or indefinite freeze is unacceptable.

As APCO has already explained to the Commission in its Emergency Petition and subsequent correspondence, there is a real danger that Commission inaction will cause public safety agencies in eleven of the nation's largest urbanized areas to lose access to 12.5 kHz channels in the 470-512 MHz band and experience interference to their existing systems. Urbanized areas across the country face a severe shortage of public safety spectrum, as recently documented by the Public Safety Wireless Advisory Committee (PSWAC). New 12.5 kHz channels in the 470-512 MHz band could provide limited relief in some of these areas, provided that the Commission's rules or interpretations thereof do not result in non-public safety entities monopolizing the "new" channels. Other alternatives, including soon to be reallocated 746-806 MHz frequencies, generally do not currently exist in these spectrum congested areas.³

² The freeze should not apply to 482-488 MHz (channel 16) in Los Angeles as those frequencies are allocated exclusively for public safety use.

³ As a result of the PSWAC report, and as mandated by Congress, the Commission recently proposed a reallocation for public safety services of 24 MHz of spectrum in the 746-806 MHz band. However, the

The Commission's rules must make clear, therefore, that certain frequencies in the 470-512 MHz band are reserved for public safety. The Commission has long recognized the need for specific pools of channels for public safety. Indeed, the Commission has stated in this proceeding 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 the communications resources they need to carry out their mission and an opportunity to select from a wide range of advanced wireless communications.

Second Report and Order in PR Docket 92-235 (released March 12, 1997), ¶16. The same public policy must apply to the 470-512 MHz band. Indeed, there had always been some form of a Public Safety Pool in the 470-512 MHz band, whether as part of the pools created in the original rules for the band, or by operation of Section 90.311 which maintained a de facto Public Safety Pool by limiting new licensees to the same category as existing co-channel facilities. While in theory the frequencies were placed in a General Category, the reality is that specific groups of channels remained reserved for public safety in each urbanized area. Thus, in creating new 12.5 kHz channels within those de facto pools of public safety frequencies, the Commission should ensure that the pools

specific channels proposed for reallocation are currently encumbered by television broadcast licensees (and proposed digital television allotments) in many areas, including all or portions of the eleven urbanized areas in which the 470-512 MHz band is used for public safety communications.

remain intact in the same fashion as other pools in other bands. As the Commission stated in discussing its refarming plan for UHF frequencies below 512 MHz:

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 in PR Docket 92-235, 10 FCC Rcd 10076, 10109 (1995).

CONCLUSION

Therefore, for the reasons discussed above and in APCO's Emergency Petition and related correspondence, APCO requests that the Commission reinstate a partial freeze of 12.5 kHz applications, expedite consideration of the Emergency Petition, and clarify or modify its rules to ensure spectrum availability for public safety and protect existing public safety operations.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
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