

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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Amendment of Part 90 of the Commission's) PR Docket 93-61
Rules to Adopt Regulation for Automatic)
Vehicle Monitoring Systems)

To: The Commission

**COMMENTS OF APCO
IN RESPONSE TO PETITION OF HENNEPIN COUNTY
FOR PARTIAL RECONSIDERATION**

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following comments in response to the Petition of Hennepin County ("Hennepin") for Partial Reconsideration of the Commission's Second Report and Order in the above-captioned proceeding, FCC 98-157, released July 14, 1998.

APCO is the nation's oldest and largest public safety communications organization. Most of its 13,000 individual members are state or local government officials involved in the management, design, and/or operation of police, fire, emergency medical, local government, highway maintenance, forestry conservation, disaster relief, and other public safety communications systems. APCO is certified by the Commission under Part 90 as a frequency coordinator for public safety radio channels.

Hennepin desires to use Location Monitoring System ("LMS") technology to enhance its police, fire, EMS and critical communications operations to protect the safety of life, health, and property. However, Hennepin is unable to secure LMS frequencies because the Commission, in the Second Report and Order in this proceeding, has not set

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aside LMS spectrum for public safety and has determined that all mutually exclusive applications for LMS frequencies will be subject to auction. In its Petition, Hennepin argues that the Commission has misinterpreted its auction authority under the Communications Act and, in particular, has failed to account for the “public safety services” exemption from auctions, as set forth in new Section 309(j)(2) of the Act, as amended by Section 3002 of the Balanced Budget Act of 1997. APCO supports the Hennepin petition for partial reconsideration.

APCO has long argued that one of the consequences of spectrum auctions is that it excludes public safety users from large blocks of spectrum, thus thwarting the development of critical public safety communications technology. One response to this problem has been for the FCC to allocate spectrum solely for public safety use, an area of activity in which there has been some recent advances, but where much more needs to be done.¹ While allocating spectrum for exclusive public safety use is absolutely necessary, it is not enough. By itself, that approach “pigeon-holes” public safety users into specific frequency bands and could prevent them from utilizing technologies that are only available in non-public safety frequencies. There will always be some technologies that have important public safety applications, but cannot operate in dedicated public safety bands because of frequency congestion, propagation characteristics, equipment availability, or bandwidth and channel requirements. Thus, the Commission must set aside frequencies for public safety whenever it allocates spectrum for new technologies that have a potential

¹ The Public Safety Wireless Advisory Committee (“PSWAC”) determined that public safety would need (1) 2.5 MHz for interoperability purposes immediately, (2) approximately 25 MHz in the “short-term”, and (3) 70 MHz of additional spectrum by 2010. Only the second recommendation has been addressed, and the spectrum allocated (in the 764-806 MHz band) is encumbered by television broadcasters in many metropolitan areas until at least 2006.

public safety use, especially where the Commission anticipates that licenses will be assigned through an action process.

The Commission recognized in the Second Report and Order, at ¶4, that LMS technology “is used for example, by trucking companies to track individual vehicles, by municipalities to pinpoint the location of their buses, and by private entrepreneurs developing subscriber based services for recovery of stolen vehicles.” It is not difficult to imagine similar public safety operations, such as those proposed by Hennepin County (e.g., tracking police, fire, and EMS vehicles). While public safety may not be the principal use of LMS, and while the majority of public safety agencies may have no need for LMS licenses, the Commission cannot ignore the fact that there are obviously some significant opportunities for public safety LMS operations. The most appropriate action, therefore, would be to set aside some portion of the LMS spectrum for assignment to public safety agencies, outside of the auction process.²

The alternative is contrary to public policy and, in any event, a procedural nightmare. What happens if the Commission allocates spectrum for a new technology (such as LMS), determines that the spectrum should be assigned through auction, but fails to allocate or otherwise set-aside spectrum for exclusive public safety use? If the rules for the band are set up to provide for mutually exclusive applications, there will be auctions to decide who obtains licenses. Yet, the 1997 amendments to Section 309(c) make clear that certain “public safety” entities are exempt from auctions. What is the Commission to do if

² For example, in deciding to auction Public Coast Station Spectrum, the Commission recently set aside certain channels for public safety land mobile use. Third Report and Order and Memorandum Opinion and Order in PR Docket No. 92-257, FCC 98-151 (released July 9, 1998), at ¶31.

Hennepin or some other exempt entity files a *bona fide* application for LMS which is mutually exclusive with a non-exempt applicant?

The Commission's response cannot be simply to exclude Hennepin and other "public safety" entities from seeking LMS licenses, as that would undermine critical public safety communications capability for no valid regulatory purpose other than to create a smoother licensing process. Rather, the Commission must either revisit the allocation and set aside some frequencies for public safety, or it must establish some mechanism other than an auction to ensure that Hennepin and similarly situated "exempt entities" have an opportunity to obtain LMS licenses.

CONCLUSION

For the reasons set forth above, APCO supports the Hennepin County petition for partial reconsideration.

Respectfully submitted,

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

By:


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

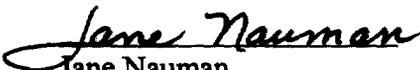
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CERTIFICATE OF SERVICE

I, Jane Nauman, hereby certify that a copy of the foregoing "Comments of APCO" was served this 11th day of September, 1998, by first class mail, postage prepaid, to the following individual at the address listed below:

Kelly Cameron, Esq.
Powell, Goldstein, Frazer & Murphy, LLP
1001 Pennsylvania Ave., NW
Suite 600
Washington, D.C. 20004


Jane Nauman