

**Before the  
Federal Communications Commission  
Washington, DC 20554**

In the Matter of: )  
 )  
Amendment to Commission Rules Concerning ) RM-11750  
Adjudication of Spectrum Interference )  
Disputes )

**COMMENTS OF  
THE NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS COUNCIL**

The National Public Safety Telecommunications Council (NPSTC) submits these Comments in response to the Commission’s Public Notice in the above-captioned proceeding.<sup>1</sup> The Samuelson-Glushko Technology Law & Policy Clinic at the University of Colorado Law School and Pierre de Vries request that the Commission initiate a rulemaking proceeding which would establish an option for licensees to file an interference complaint directly with the Commission’s Administrative Law Judges, who would then decide resolution of the interference dispute. The petitioner claims its proposed process is fact-based, transparent and timely.

NPSTC fully supports the goal of a fact-based, transparent and timely process for interference resolution. However, NPSTC does not view the process proposed in this petition to be of any significant benefit in resolving interference to public safety or possibly to other categories of licensees as well. The proposal seems to ignore the fact that actually resolving interference is largely a technical matter. If pursued, the proposal to implement an

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<sup>1</sup> Consumer & Governmental Affairs Bureau Reference Information Center Petition for Rulemaking, RM-11750, Amendment to Commission Rules Concerning Adjudication of Spectrum Interference Disputes, Report No. 3023, released June 11, 2015.

Administrative Law Judge process would do nothing to increase the technical resources available but could cause parties to incur unnecessary legal costs. It is not clear how the proposed process would necessarily be any more fact-based, transparent and timely than current options for interference resolution.

### **The National Public Safety Telecommunications Council**

The National Public Safety Telecommunications Council is a federation of public safety organizations whose mission is to improve public safety communications and interoperability through collaborative leadership. NPSTC pursues the role of resource and advocate for public safety organizations in the United States on matters relating to public safety telecommunications. NPSTC has promoted implementation of the Public Safety Wireless Advisory Committee (PSWAC) and the 700 MHz Public Safety National Coordination Committee (NCC) recommendations. NPSTC explores technologies and public policy involving public safety telecommunications, analyzes the ramifications of particular issues and submits comments to governmental bodies with the objective of furthering public safety telecommunications worldwide. NPSTC serves as a standing forum for the exchange of ideas and information for effective public safety telecommunications.

The following 16 organizations participate in NPSTC:

- American Association of State Highway and Transportation Officials
- American Radio Relay League
- Association of Fish and Wildlife Agencies
- Association of Public-Safety Communications Officials-International
- Forestry Conservation Communications Association
- International Association of Chiefs of Police
- International Association of Emergency Managers
- International Association of Fire Chiefs
- International Municipal Signal Association
- National Association of State Chief Information Officers
- National Association of State Emergency Medical Services Officials

National Association of State Foresters  
National Association of State Technology Directors  
National Council of Statewide Interoperability Coordinators  
National Emergency Number Association  
National Sheriffs' Association

Several federal agencies are liaison members of NPSTC. These include the Department of Homeland Security (the Federal Emergency Management Agency, the Office of Emergency Communications, the Office for Interoperability and Compatibility, and the SAFECOM Program); Department of Commerce (National Telecommunications and Information Administration); Department of the Interior; and the Department of Justice (National Institute of Justice, CommTech Program). In addition, Public Safety Europe is also a liaison member. NPSTC has relationships with associate members, the Canadian Interoperability Technology Interest Group (CITIG) and the Utilities Telecom Council (UTC), and affiliate members: the Alliance for Telecommunications Industry Solutions (ATIS), Open Mobile Alliance (OMA), Telecommunications Industry Association (TIA), and TETRA Critical Communications Association (TCCA).

### **Background**

On May 8, 2015, the Samuelson-Glushko Technology Law & Policy Clinic at the University of Colorado Law School and Pierre de Vries (petitioner) submitted a Petition for Rulemaking concerning spectrum interference dispute resolution. The petitioner requests the Commission initiate a rulemaking proceeding which would establish an option for a private party to file a spectrum interference complaint against another party directly with the Commission's Office of Administrative Law Judges (ALJs) for adjudication and a decision.

In making this request, the petitioner indicates that under current rules, parties may file interference complaints with the Commission’s Enforcement Bureau but because of limited resources the Bureau “must be selective about whether, when and how to address complaints.”<sup>2</sup> The petitioner further asserts that the process results in decisions by the Bureau “that are not fact-based, transparent, and timely...”<sup>3</sup> The petitioner indicates the Commission has the discretion to send interference disputes to the Office of Administrative Law Judges for adjudication, but notes there is no direct way for parties to bring a case to the ALJs. The petitioner describes its proposed process as fact-based, transparent and timely. The petition states that the scope of the proposed rules is limited and the ALJ option would not be appropriate in all cases.

### **NPSTC Comments**

NPSTC fully supports fact-based, transparent and expeditious resolution of interference, especially if the interference is negatively impacting public safety communications. However, NPSTC does not view the proposed process to be of any significant benefit in resolving interference to public safety or possibly to other categories of licensees as well. Each interference case is different. Actually resolving interference requires technical skill and experience, not merely another legal process. These comments provide NPSTC’s observations on the petition for rulemaking.

It is unclear whether the petitioner intends for its proposed process to be applied in cases of interference to public safety entities. More importantly, regardless of intention, the question arises who would be exempt from being affected by the proposed approach. While the petition

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<sup>2</sup> Petition at page 4.

<sup>3</sup> Petition at page 5.

states that the proposed ALJ option is limited in scope and would not be appropriate in all cases, the description that follows seems to leave few if any parties which are under the Commission's jurisdiction out of reach of the proposed process. In addressing the scope, the petition states:

Parties eligible to file claims would include licensees, unlicensed operators who believe they have rights of protection against harmful interference, and representative groups such as trade associations. Defendants could include licensed and unlicensed operators of radio systems, operators of incidental radiators, and equipment manufacturers, distributors, and vendors.<sup>4</sup>

Public safety entities are Commission licensees. Therefore, under the petitioner's description of scope, it appears public safety entities might be included under parties who file claims when interference is received or involuntarily be classed as a "defendant" in the process if another party claims interference from a public safety facility.

NPSTC believes the proposal fails to consider that actual interference prevention and resolution is largely a technical matter. As spectrum becomes more crowded and more heavily used, the Commission increasingly will need to rely on greater technical steps to prevent interference from the outset. When interference does occur, knowledgeable technical experts are needed to help resolve the problem.

The Commission is already short on technical resources. Furthermore, the Chairman's office set forth proposals several months ago to reduce the number of field offices and field staff. Concerns expressed by public safety, the broadcast community, the commercial wireless industry and Congress resulted in a revised proposal that is less drastic in its cuts, however, the technical resources are still being reduced.

The petitioner's proposal creates no new technical resources. Instead, it would simply "reposition the deck chairs" and reassign some unspecified number of engineering personnel

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<sup>4</sup> Petition at page 10.

from current bureaus and offices to be technical advisor(s) to the Office of the ALJ. Further, implementing a “fact-based, transparent and timely” process as proposed in the petition is likely to require funding to hire additional ALJs. Unless the overall Commission budget is increased, that requirement could in-turn reduce funds for technical resources in the Commission even further.

In addition to increased internal Commission costs, NPSTC believes the petitioner’s proposal would also cause parties to incur unnecessary legal costs that might otherwise be better spent on actually resolving the interference. In describing how ALJs operate, the petitioner states:

The Commission’s current rules are comprehensive as to how ALJs must conduct adjudications. The rules are similar to traditional court procedures, which are meant to protect the interests of parties and ensure that a decision is based on the law and the facts before the judge: a formal complaint is filed, discovery is conducted, parties argue their side of the case, and the ALJ issues a decision.<sup>5</sup>

It appears that under the petitioner’s proposal, practically any private party could submit an interference complaint to an ALJ. Both complainants and “defendants” as referred to by the petitioner most certainly would need legal counsel to represent them and argue their respective side of the case. NPSTC cannot imagine parties being involved in such an adjudicatory proceeding without the use of significant legal counsel. Also, following the ALJ’s decision, a party may file a petition for review by the Commission. In short, the proposal does not appear to be a low cost option. Also, it is not apparent how the information presented would inherently be any more “fact-based” than information provided today in interference cases under the existing processes.

Minimizing the risk of interference from the outset or resolving interference after the fact both require the direct involvement of knowledgeable technical personnel. There is nothing

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<sup>5</sup> Petition at page 6.

apparent in the petitioner’s proposal that would speed any of the technical analysis, decisions or solutions required. To the extent the petitioner calls for defined deadlines by which an ALJ would need to decide on an interference dispute, it is not apparent why a similar deadline approach could not be used with existing Commission processes and/or staff outside the Office of the ALJ. Wherever such deadlines are applied, it does not change the fact that sufficient and knowledgeable technical resources are needed to support whatever legal process and timeline the Commission chooses to use for interference resolution.

Interestingly, the petitioner states:

We explored but rejected the possibility of defining categories of disputes that would be automatically routed to an ALJ. We determined that *it would be too difficult to determine the standards that would be used to evaluate the cases*. Furthermore, an option-based approach will allow parties to make the most appropriate decision for their circumstances.<sup>6</sup> [emphasis added]

The petitioner states the new process it proposes would be fact-based, transparent and timely. However, if it is too difficult to determine what standards would be used even to categorize cases, what basis would be used to decide a resolution to the interference dispute? Furthermore, it appears that only one party in the dispute, i.e., the complainant, would choose the process option. Once a licensee were to submit its complaint, the “defendant” appears to have no option not to enter into the ALJ process, incurring significant time and legal costs.

As addressed above, actual interference resolution requires knowledgeable and experienced technical resources, not additional legal processes. One size does not fit all and the specific technical solutions required vary across different bands, different types of systems and different interference mechanisms. Simply ramping up the legal process would not necessarily

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<sup>6</sup> Petition at page 10.

lead to better and faster interference resolution.

**Conclusion**

NPSTC appreciates the opportunity to provide its views on the Petition for Rulemaking regarding spectrum interference dispute resolution developed at the University of Colorado Law School. NPSTC fully supports fact-based and expeditious resolution of interference, especially if the interference is negatively impacting public safety communications. However, NPSTC does not view the proposed process to be of any significant benefit in resolving interference to public safety or possibly to other categories of licensees as well.

Actual interference resolution requires knowledgeable and experienced technical resources, not additional legal processes. Specific technical solutions must be tailored to the spectrum bands, types of systems and interference mechanism(s) involved. It is not apparent how the proposal by the petitioner to ramp up the legal process would actually lead to better and faster interference resolution.

Ralph A. Haller, Chairman



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