

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

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
IN RESPONSE TO
THIRD NOTICE OF PROPOSED RULEMAKING**

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to portions of the *Third Notice of Proposed Rulemaking (“Third NPRM”)*, FCC 98-309 (released November 25, 1998), in the above-captioned proceeding which address the relocation of fixed service microwave licensees in the 2110-2150/2165-2200 MHz bands.¹

APCO is the nation’s oldest and largest public safety communications organization, with over 13,000 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

¹ *Third NPRM* at ¶¶ 47-51.

links in the 2130-2150/2180-2200 MHz band, which provide the “backbone” for wide-area mobile radio communications systems. The Commission 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).

The Commission has reaffirmed in the *Memorandum Opinion and Order* that the microwave relocation rules adopted in ET Docket 92-9 apply to the 2110-2150/2165-2200 MHz bands. However, in the *Third NPRM*, the Commission again seeks comments regarding possible changes in the sunset provisions and the voluntary and mandatory negotiation periods as those provisions apply to the 2.1 GHz bands. APCO has already addressed many of these issues in its Comments in response to the *Further Notice of Proposed Rulemaking* (released March 14, 1997),² in this proceeding, but will reiterate its positions below.

APCO continues to oppose any application of a sunset provision to public safety microwave incumbents. Aside from the significant costs imposed upon incumbents (and taxpayers in the case of state and local government licensees), a sunset could leave critical public safety communications systems without ANY microwave replacement facilities. Alternative microwave bands are becoming increasingly congested due to expanded use, the relocation of 2 GHz licensees, and the constant pressure from co-primary satellite services that threaten future spectrum availability for the 6, 11, and 18 GHz bands. Fiber optic connections may provide alternatives for a few 2 GHz incumbents, but much higher

² See *Comments of APCO* (filed June 23, 1997).

costs, reduced reliability, and the logistical problems of reaching remote locations (*e.g.*, mountaintop radio sites) will render fiber completely impractical for most current public safety microwave incumbents. The danger of a sunset provision, therefore, is that vital public safety communications may be forced to give up their 2 GHz microwave facilities, with no place else to go.

If the Commission nevertheless imposes a sunset provision, it must take into consideration the extremely long life spans of 2 GHz microwave equipment, which can be as long as 30 years.³ The proposed ten year sunset is much too short and would force many microwave incumbents to replace equipment long before such replacement would otherwise be necessary. Finally, should there be a sunset period, it should begin no sooner than the beginning of the voluntary negotiation period.

APCO strongly supports the Commission's proposal to adopt the same voluntary/mandatory negotiation periods as currently apply to public safety incumbents in the PCS bands. Microwave relocation is often an extremely time consuming and disruptive process requiring the use of scarce resources to ensure that public safety communications are maintained and that taxpayers are not forced to absorb any of the direct or indirect relocation expenses. Thus, the three-year voluntary/two-year mandatory period is essential to provide public safety agencies an adequate opportunity to

³ 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."). 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").

negotiate, plan, and implement microwave relocation in a manner that minimizes disruption to their operations and to essential emergency communications systems.

The Commission should mandate that the voluntary negotiation period for MSS relocation 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 must have the benefit of the full five-year minimum negotiation period.

CONCLUSION

For the reasons discussed above, the Commission should not impose a sunset period on microwave relocation obligations in the 2.1 GHz band, and should adopt the same basic public safety microwave relocation negotiation periods as apply in the current PCS rules.

Respectfully submitted,

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