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

In the Matter of	)	
	)	
Implementation of Section 309(j) and 337 of the Communications Act of 1934 As Amended	)	
	)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies	)	WT Docket No. 99-87
	)	
Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz	)	

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To: The Commission

REPLY COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following reply to comments filed in response to the Commission's Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding, FCC 99-52, released March 25, 1999.

Introduction

Nearly 100 comments have been filed in this proceeding addressing a wide range of issues raised in the NPRM. As the representative of state and local government public safety agencies, APCO is foremost concerned with ensuring the availability of radio spectrum for those agencies to effectively perform their jobs. APCO, therefore, will limit its reply comments to issues that directly impact public safety agencies.

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Many of the comments reflect the confusion in terminology highlighted in our original comments. State and local government agencies such as police, fire, and emergency medical services are charged by the public with the task of protecting the safety of life, health, and property. Only these entities should be described by the Commission as "public safety." The Commission should avoid the use of that term to describe the much broader class of "auction-exempt" entities under Section 309(j)(2). While all auction-exempt entities may provide at least some safety-related functions, many are not "public safety" radio service providers, as that term is traditionally defined. Therefore, Congress' desire to exclude certain radio services from auctions should not be used as an excuse to dilute eligibility requirements in spectrum normally reserved for state and local government emergency agencies.

As discussed below, APCO urges the Commission not to permit commercialization of the public safety radio services, as several commenters have suggested. Commercialization of the public safety frequencies would contravene public policy and threaten the effective operation of critical public safety communications. APCO agrees with commenters who support the creation of a third pool for auction-exempt entities that are not currently eligible for "public safety spectrum."

I. ELIGIBILITY FOR "PUBLIC SAFETY RADIO SPECTRUM" SHOULD BE LIMITED IN MOST INSTANCES TO STATE AND LOCAL GOVERNMENT PUBLIC SAFETY RADIO SERVICE PROVIDERS.

APCO strongly supports limiting eligibility for spectrum in the public safety radio services to traditional public safety entities (generally state and local governments) that protect the safety of life and property. As discussed in APCO's initial comments and

below, other "auction exempt" entities should be assigned frequencies in a separate "third pool."

Small Business in Telecommunications ("SBT") suggests in its comments, however, that the FCC should expand eligibility for licensing in the public safety frequencies. While not entirely clear from its comments, it appears that SBT is proposing that the Commission expand eligibility even in the Public Safety Pool to permit use by Business and Industrial eligibles that intend to employ spectrum primarily for public safety-type operations.[1] APCO would strongly oppose such a proposal as it would add congestion in already overused public safety spectrum and, moreover, would create the potential for serious interference problems due to the inherent differences between government and non-government users of the spectrum.

The Commission must continue to recognize that there is a fundamental difference between (a) government entities such as police, fire, and emergency medical services, and (b) business entities that have communications operations with some safety attributes. There are inherent and substantial distinctions between their goals and underlying purposes, their available resources, their organizational constraints, their tolerance for interference, their reliability and security requirements, their coverage needs, their permanency, and their frequency coordination requirements. Government public safety entities have as their first priority the saving of lives, not profit. Government public safety entities are supported by taxpayers, and exist indefinitely as a matter of law to protect the public welfare. Government public safety entities are constrained by limited resources and

[1] *See* Comments of Small Business in Telecommunications, p. 4.

must work within layers of funding approval that make it difficult, if not impossible to "compete" for spectrum with non-government entities. Government public safety entities have zero tolerance for interference, requirements for ubiquitous signal coverage and, increasingly, the need for encryption to protect officer safety and the integrity of law enforcement activities. These unique factors demand special treatment, and segregation from other, non-governmental operations, safety-related or otherwise.

II. THE COMMISSION SHOULD NOT PERMIT COMMERCIALIZATION OF THE PUBLIC SAFETY RADIO SERVICES SPECTRUM.

As stated in its initial comments, APCO strongly opposes permitting commercial entities to hold licenses in the Public Safety Pool.[2] True public safety radio service entities operate to ensure the protection and security of the public, while most commercial entities seek radio spectrum with the expectation of realizing a profit. Due to the varying goals and incentives of public safety and commercial entities, APCO objects to permitting a scarce resource, such as public safety radio spectrum, to fall in the hands of commercial entities.

One party suggests that the FCC should permit non-government entities intending to provide public safety radio service on a contract basis to be authorized to apply for auction-exempt spectrum on the same basis as their underlying customers.[3] To the extent that the commenter is suggesting that these non-governmental entities should be eligible for spectrum in either the Business/Industrial Pool or a third pool that the Commission may create, APCO takes no position.[4] However, APCO would strongly oppose expanding

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[2] *See* Comments of APCO, p. 6-7.

[3] *See* Comments of CellNet Data Systems, Inc., p. 13.

[4] APCO takes no position on this issue because it does not directly impact true public safety entities. However, it is worth noting that while Section 309 creates a broad class of radio services that are exempt

access to the Public Safety Pool to include commercial entities that obtain auction-exempt status by virtue of their contractual relationships.

III. THE CREATION OF A THIRD POOL WILL BENEFIT ALL PARTIES.

APCO continues to support the creation of a third pool and believes that the employment of such a pool will best serve the needs of both public safety agencies and other auction-exempt entities, such as utilities and emergency road services. The third pool should be comprised of entities that are auction-exempt under Section 309(j)(2)(A), but are not eligible for licenses in existing public safety radio services.

The need for the Commission to create a third pool resonates throughout the comments of various organizations filing on behalf of electric, water, and gas utilities, emergency road services, and public safety service providers.[5] The American Automobile Association, for example, states that if the Commission should decide to move to auctions, a "more formal separation of quasi-public safety entities may be necessary" and the creation of a third pool would better protect the vital services of both the quasi-public safety services and the Public Safety Pool.[6] Furthermore, The Critical Infrastructure Industries notes that "by establishing [a] new pool, the FCC could safeguard channels used

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from auction, it is unclear whether the statute grants the Commission the authority to accord the same exempt status to any third party provider that renders "public safety" over its own network on a commercial basis.

[5] *See, e.g.,* Comments filed by International Association of Fire Chiefs, Inc., and International Municipal Signal Association; American Water Works Association; American Automobile Association; Critical Infrastructure Industries; American Petroleum Institute; and Central Station Alarm Association.

[6] *See* Comments of The American Automobile Association, p. 8-9.

to protect the nation's critical infrastructure while not affecting the established Public Safety Pool of frequencies."[7]

As discussed herein and in APCO's initial comments, our principal concern is with the potential dilution of the Public Safety Pool, whether through licensing of non-governmental "auction exempt" entities, commercial providers offering services to auction-exempt entities, or by the non-safety operations of otherwise auction-exempt entities. From APCO's perspective, the best method to protect "real" public safety systems from such intrusions is to create a separate pool.

IV. OTHER ISSUES

American Water Works Association ("AWWA") proposes authorizing "critical infrastructure agencies" to operate in public safety radio service spectrum on a "secondary" basis.[8] To support its argument, AWWA refers to shared systems in which public utilities operate on a lower priority "secondary" basis along with public safety agencies. However, a shared common communications system is entirely different from separate licensing of distinct public safety and non-public safety systems on a primary/secondary basis. On a shared common system, real time priority can be established in times of emergency, as there is a single control point and clearly defined guidelines for operation. AWWA appears to propose however, that critical infrastructure industries operate their own separate systems on public safety spectrum, albeit on a secondary basis. The problem is that interference from such separate, secondary users cannot always be predicted or identified

[7] *See* Joint Comments of The Critical Infrastructure Industries, p. 18.

[8] *See* Comments of American Water Works Association, p. 7.

soon enough to avoid dangerous disruption to emergency operations. Thus, secondary licensing as proposed by AWWA is unacceptable.

The Personal Communications Industry Association, Inc. ("PCIA"), in its initial comments, recommends that the Commission permit inter-category sharing of Business and Industrial/Land Transportation Pool frequencies by all classes of eligible users, including public safety.[9] PCIA also supports permitting sharing only with regard to existing licenses on the already assigned spectrum.[10] Inter-category sharing as proposed by PCIA would improve spectrum efficiency without depletion of the Public Safety Pool. Thus, APCO supports the PCIA proposal, but would strongly oppose allowing Business, Industrial/ Land Transportation, and SMR users to have access to the Public Safety Pool for the reasons discussed above.

As stated in its initial comments, APCO urges the Commission not to undermine the express Congressional intent of Section 337(c) of the Communications Act, wherein the Commission is required to grant applications of public safety entities for unused frequencies under certain specified conditions.[11] The International Association of Fire Chiefs, Inc. ("IAFC"), and the International Municipal Signal Association ("IMSA"), in their initial joint comments, also echo this sentiment. They note that Section 337(c) reflects Congress' intent that "frequencies which have not been used within the intended service for a reasonable period of time should not be preserved for possible future use in comparison to satisfying pressing public safety needs for channel access, and that the

[9] *See* Comments of The Personal Communications Industry Association, Inc., p. 20-23.

[10] *Id.* at 23.

[11] *See* APCO Comments, p. 9.

channels also should not be preserved for future auction potential where there are current public safety requirements which are unfulfilled."[12] APCO agrees.

CONCLUSION

APCO urges the Commission to adopt rules implementing Sections 309(j) and 337(c) of the Communications Act in a manner to protects and promotes the needs of state and local government public safety agencies, consistent with APCO's comments and reply comments in this proceeding.

Respectfully submitted,
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[12] *See* Comments of International Association of Fire Chiefs, Inc., and the International Municipal Signal Association, p. 6.