

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
)	
Second Periodic Review of the)	MB Docket No. 03-15
Commission's Rules and Policies)	
Affecting the Conversion)	RM 9832
To Digital Television)	
)	
Public Interest Obligations of TV)	MM Docket No. 99-360
Broadcast Licensees)	
)	
Children's Television Obligations of)	MM Docket No. 00-167
Digital Television Broadcasters)	
)	
Standardized and Enhanced Disclosure)	MM Docket No. 00-168
Requirements for Television Broadcast)	
Licensee Public Interest Obligations)	

COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. ("APCO") hereby submits the following comments in response to the Commission's *Notice of Proposed Rulemaking*, FCC 03-8 (released January 27, 2003) ("*NPRM*"), in the above-captioned proceeding.

APCO is the nation's oldest and largest public safety communications organization. Most of APCO's over 16,000 members are state or local government personnel involved in the management and operation of communications systems for police, fire, EMS, and other public safety agencies. APCO has been deeply involved in legislative and regulatory proceedings to allocate additional radio spectrum for public safety use. This includes proceedings regarding the re-allocation, use and availability of

the 746-776/796-806 MHz band (TV channels 63, 64, 68, and 69) for public safety radio services.

The *NPRM* addresses a series of rules and rule interpretations regarding the transition to digital television (DTV). These issues are of grave importance to public safety, as valuable public safety radio spectrum is blocked in much of the nation pending the end of the DTV transition. Thus, while APCO does not herein address each of the specific details in the *NPRM*, we urge that the FCC make all of its decisions in this proceeding with the needs of our nation's public safety and homeland security personnel firmly in mind.

For example, every possible step must be taken to encourage television stations in the Upper 700 MHz Band to vacate that spectrum as quickly as possible. In particular, rules implementing Section 309(j)(14)(B) of the Communications Act must be narrowly tailored so as to prevent unnecessary delays in the return of Upper 700 MHz Band spectrum for public safety and other new services. Rules protecting incumbent television stations from interference must also be narrowly drawn so as to avoid creating unnecessary zones of protection, which would limit the availability of the spectrum for public safety use.

The need for additional public safety spectrum is well-documented,¹ and the focus of an unusually direct and specific statutory requirement in Section 337(a)(1) of the Communications Act, as amended.² There Congress required the Commission to

¹ See Final Report, Public Safety Wireless Advisory Committee (PSWAC), September 11, 1996.

² 47 U.S.C. §337(a)(1); see also Section 1 of the Communications Act of 1934, creating the FCC for the purpose of "promoting safety of life and property through wire and radio communication." 47 U.S.C. §151.

allocate 24 MHz of radio spectrum from the 746-806 MHz band for public safety radio services. The Commission subsequently reallocated TV channels 63, 64, 68, and 69 for public safety and established rules for the assignment and use of that spectrum.³ The public safety community has been working hard to facilitate effective and efficient use of that 700 MHz spectrum through interoperability standards and procedures, and regional planning efforts throughout the country. However, in most major metropolitan areas, use of this spectrum is severely limited or, in many cases, blocked completely by incumbent television stations on channels 63, 64, 68, 69, and/or adjacent channels 62, 65, and 67.

Public safety needs access to this spectrum now, so every effort must be made to limit broadcast operations to the extent permitted under existing law. Many public safety agencies in urban areas and elsewhere face dangerous congestion on their current radio systems, which is compounded by new Homeland Security responsibilities that place additional demands on their operations. Additional spectrum is also needed to accommodate new communications tools, such as mobile data networks. Finally, the 700 MHz spectrum will help to alleviate the lack of interoperability among public safety personnel in the field, a growing and increasingly dangerous problem.

All too often police officers, fire fighters and other public safety personnel from various jurisdictions find that they cannot communicate when responding to an emergency. The new 700 MHz band public safety spectrum will greatly improve interoperability in several respects. First, operations within the band will be fully interoperable, due to the Commission's designation of interoperability channels and a

³ *Report and Order in ET Docket 97-157*, 12 FCC Rcd 22953 (1998).

digital interoperability equipment standard.⁴ Second, the 700 MHz band is immediately adjacent to, and compatible with, the 800 MHz band, which already contains a substantial portion of the nation's public safety communications infrastructure. Third, the new spectrum capacity in the 700 MHz band will facilitate the development of new wide area, multi-jurisdictional and multi-agency radio systems, creating seamless interoperability for all users such systems.

However, in much of the nation, the extent to which these important public benefits can be realized will depend upon the degree of interference protection that must be afforded incumbent broadcast stations, and how soon public safety users will have unfettered access to the band. While Section 337(d) of the Communications Act requires that incumbent 700 MHz band broadcast stations be protected from interference during the DTV transition, the Commission also has a duty to ensure that only actual operations are protected and only to the extent absolutely necessary. In essence, the smaller the protected contour of the television station, the greater the area in which public safety operations can be initiated without waiting for the end of the DTV transition (which could be far into the future under current law).

While APCO and others continue to urge that Congress establish December 31, 2006, as a firm date for clearing broadcast stations from the Upper 700 MHz Band, Section 309(j)(14)(B) currently permits incumbent stations to remain on the air until specified DTV market penetration levels have been reached. Absent changes in the current law, the Commission's rules implementing Section 309(j)(14)(B) must, therefore be as narrowly drawn as possible. Broadcasters must not be permitted to rely upon

⁴ See, 47 C.F.R. §§90.547 and 90.548.

overly broad or vague regulatory definitions to stretch out their occupation of spectrum that is desperately needed for new public safety radio communications.

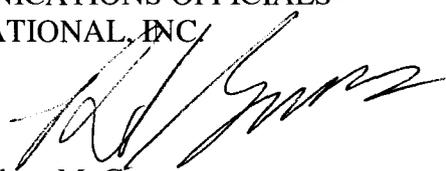
CONCLUSION

For the reasons set forth above, the Commission must adopt rules in this proceeding that will maximize spectrum availability for public safety communications.

Respectfully submitted,

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

By:



Robert M. Gurss
SHOOK, HARDY & BACON, LLP
600 14TH Street, NW, Suite 800
Washington, DC 20005
(202) 662-4856

April 21, 2003