

November 20, 2003

Jeffrey E. Rummel
202/715-8479
rummelj@arentfox.com

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary
445-12th Street, S.W.
Washington, D.C. 20554

RE: Notice of Ex Parte Presentations
WT Docket 99-87

Meetings on November 19, 2003; and
Submission on November 20, 2003 of “Request for Immediate Commission Action on
the Pending Stay Requests of APCO and the Association of American Railroads”

Dear Ms. Dortch:

On behalf of the Private Wireless Mining Coalition (“Coalition”), and in accordance with Section 1.1206(b) of the Commission’s Rules, 47 C.F.R. §1.1206(b), undersigned counsel hereby submits the instant notice of *ex parte* presentations.

Specifically, on November 19, 2003, undersigned counsel met with Barry Ohlson, Legal Advisor to Commissioner Jonathan S. Adelstein, and Jennifer Manner, Senior Counsel to Commissioner Kathleen Q. Abernathy, to discuss issues consistent with the Coalition’s “Petition for Reconsideration” of the Second Report and Order and Second Further Notice of Proposed Rule Making (FCC 03-34) (“Second R&O”) in the above-referenced proceeding.

In addition, the Coalition reiterated its support of a stay of the Commission’s rules that – as currently adopted – will prohibit non-public safety licensees from filing new and expansion 25 kHz applications as of January 13, 2004. PWMC supports the Petitions For Stay filed in this proceeding by the Association of American Railroads (“AAR”) and the Association of Public Safety Communications Officials-International, Inc. (“APCO”). In the above-described meetings, the Coalition explained that immediate Commission action on the stay requests of APCO and AAR is urgently required for numerous reasons, including the fact that Coalition Members have just been advised that ITA and PCIA have established deadlines of December 12, 2003 and December 19, 2003, respectively, for the submission of new and expansion 25 kHz applications for coordination. Accordingly, unless a stay is granted, the Coalition Members, and presumably thousands of other licensees operating in the bands affected by the Second R&O, will effectively be subject even earlier to the Commission’s interim licensing restrictions, even though (as shown in the Coalition’s filings in this proceeding), such near-term deadlines will create tremendous safety risks, operational disruption and financial loss.

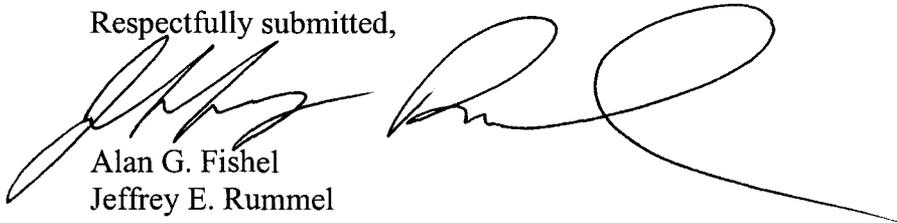
Ms. Marlene H. Dortch, Secretary
November 20, 2003
Page 2

Finally, this letter also serves to transmit the attached "Request for Immediate Commission Action on the Pending Stay Requests of APCO and the Association of American Railroads" for electronic filing with the Commission.

This letter and the attached submission are being electronically filed with the Commission. Courtesy copies are also being delivered by fax to Mr. Ohlson and Ms. Manner.

Please do not hesitate to contact the undersigned with any questions that may arise with respect to this filing.

Respectfully submitted,

Handwritten signatures of Alan G. Fishel and Jeffrey E. Rummel. The signature of Alan G. Fishel is on the left, and the signature of Jeffrey E. Rummel is on the right, extending further to the right.

Alan G. Fishel
Jeffrey E. Rummel

Attorneys for the Private Wireless Mining Coalition

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

In the Matter of)	
)	
Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended)	WT Docket No. 99-87
)	
Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies)	RM-9332
)	

**REQUEST FOR IMMEDIATE COMMISSION ACTION
ON THE PENDING STAY REQUESTS OF APCO
AND THE ASSOCIATION OF AMERICAN RAILROADS**

The Private Wireless Mining Coalition (the “Coalition”), by its attorneys, respectfully requests that the Commission immediately act on the pending stay requests (“Stay Requests”) filed by the Association of Public Safety Communications Officials-International, Inc. (“APCO”) and the Association of American Railroads (“AAR”) in the above-captioned proceeding.

Specifically, the Coalition requests that the Commission immediately grant the Stay Requests, thereby staying the effectiveness of the interim licensing restrictions (“Interim Restrictions”) adopted in the Commission’s *Second Report and Order*¹ which are scheduled to take effect on January 13, 2004, and which will, unless stayed, prohibit the filing as of that date of New 25 kHz Applications and Expansion 25 kHz Applications for facilities in the 150-174 MHz and 421-512 MHz bands (the “Affected Bands”).²

¹ “Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies”, Second Report and Order And Second Further Notice Of Proposed Rule Making, WT Docket No. 99-87, RM-9332, FCC 03-34 (rel. February 25, 2003) (“Second Report and Order”).

² The term “New 25 kHz Application” is defined herein as an application requesting Commission authority to operate a new station on the Affected Bands utilizing channels with a bandwidth exceeding 11.25 kHz. The term “Expansion 25 kHz Application” will be defined as an application requesting Commission authority to modify an existing station on the Affected Bands utilizing channels with a bandwidth exceeding 11.25 kHz so that - if approved - the subject station’s existing authorized interference contour would be increased. Collectively, New 25 kHz

Without immediate Commission action on the Stay Requests, the Interim Restrictions will become effective very shortly despite the fact that there remain pending before the Commission numerous Petitions For Reconsideration which have been filed with respect to the *Second Report and Order* (the “Pending Petitions for Reconsideration”), many of which raise strong arguments against the interim restrictions. There is no question that there is substantial regulatory uncertainty as a result of the number, breadth and scope of the Pending Petitions for Reconsideration. There is also no question, as discussed below, that 25 kHz licensees, including the Coalition Members,³ will incur tremendous prejudice if there is any further delay in granting the Stay Requests, which were filed several months ago. Accordingly, the Coalition strongly supports APCO’s and AAR’s requests for a stay of the Interim Restrictions that would permit all licensees in the Affected Bands to continue to file New 25 kHz Applications and Expansion 25 kHz Applications, until at least such time as the Commission issues an order resolving each of the Pending Petitions For Reconsideration.⁴

Applications and Expansion 25 kHz Applications will be referred to as “New/Expansion 25 kHz Applications”.

³ The Coalition is comprised of the following mining company members (“Members”): (i) Phelps Dodge Corporation and its various North American mining subsidiaries; (ii) Barrick Goldstrike Mines Inc.; (iii) BHP Billiton, New Mexico Coal; and (iv) affiliates (collectively, the “NAC Affiliates”) of the North American Coal Corporation (“NAC”) - the Coteau Properties Company, the Falkrik Mining Company, Red River Mining Company, the Sabine Mining Company and the North American Coal Florida Dragline Operations. The NAC Affiliates, the newest Members of the Coalition, hold licenses in the Affected Bands that authorize the operation of more than 500 units (including base stations, repeaters, mobiles and portables). NAC engages in the surface mining of lignite coal as fuel for power generators. NAC operates six surface lignite coal mines in North Dakota, Texas, Louisiana, and Mississippi. NAC also provides dragline mining services for a limerock quarry in Florida. The Coteau Properties Company Freedom Mine in Beulah, North Dakota is the largest lignite mine in the United States in deliveries.

⁴ As the Commission is aware, in the Coalition’s “Petition for Reconsideration” filed August 18, 2003 (“Coalition Petition”) and the Coalition’s “Opposition to the Petition for Reconsideration of the American Mobile Telecommunications Association, et al.” filed September 25, 2003 (“Coalition Opposition”), the Coalition demonstrated that (i) for rural area systems, there are no compelling public interest benefits supporting the Commission’s Interim Restrictions; (ii) for rural area systems, imposing the Interim Restrictions will create safety and environmental risks and unnecessarily and substantially disrupt company operations; and (iii) imposing the Interim

In their Stay Requests, APCO and AAR have demonstrated, in accordance with Commission requirements, that permitting the Interim Restrictions to take effect on January 13, 2004, is contrary to the public interest because such action will present substantial interoperability problems for many licensees in the Affected Bands, which may force such licensees to attempt to undergo premature, dangerous and accelerated conversions of their 25 kHz systems to 12.5 kHz technology which, in turn, could have potentially devastating consequences to the safety of life and property, as well as the operations of both public safety entities and private sector companies that rely almost exclusively on private land mobile radio service (“PLMRS”) systems for safety-related and other critical communications. The Stay Requests further demonstrated that, in light of the fact that numerous Petitions For Reconsideration have been filed with respect to the *Second Report and Order*, and that such Pending Petitions for Reconsideration challenge the appropriateness of many aspects of the Commission’s ruling, and particularly the Interim Restrictions, any stay granted by the Commission should permit all licensees in the Affected Bands to continue to file New 25 kHz Applications and Expansion 25 kHz Applications until such time as the Commission has ruled upon each of the Pending Petitions for Reconsideration.

The Coalition’s filings in this proceeding support the relief requested in the Stay Requests. The Coalition has demonstrated that not only is it unsafe, impracticable and extremely

Restrictions of rural area systems will unnecessarily cause 25 kHz licensees such as the Coalition Members tremendous economic harm. See Coalition Petition, p. 3-21; Coalition Opposition, p.2-13. In light of the issues unique to rural area systems in this proceeding, if the Commission is not willing to grant the stay with respect to all 25 kHz licensees, the Coalition would support a more a limited stay of the Interim Restrictions that would permit rural area licensees in the Affected Bands to continue to file New 25 kHz Applications (including applications associated with existing 25 kHz systems as well as applications for new, independent 25 kHz systems) and Expansion 25 kHz Applications, until at least such time as the Commission issues an order resolving the Pending Petitions for Reconsideration.

disruptive to operations to attempt to perform such massive conversions within the compressed timeframe effectively required by the Interim Restrictions, such conversions should not be compelled at all prior to the ultimate conversion date of January 1, 2013 in rural areas, where commercial wireless coverage is often poor or non-existent and where spectrum congestion concerns are not significant. Yet, without immediate Commission action on the Stay Requests, all 25 kHz licensees, including the Coalition Members, are being effectively forced to begin immediately allocating substantial economic and human resources for the purpose of attempting, in an extraordinarily accelerated timeframe, to develop and implement a conversion plan that simply cannot be safely and practicably developed and implemented in any short period of time, let alone the timeframe currently mandated. Moreover, if licensees are required to face such unnecessary and significantly exacerbated risks and expenditures, such efforts and expenditures will displace other projects and priorities of such licensees that are key to their day-to-day operations and economic success in these difficult economic times. Finally, unless a stay is implemented immediately, the resources of the Commission and the frequency coordinators will be substantially burdened by the filing of thousands (and perhaps tens of thousands) of applications in the next month by 25 kHz licensees who are unsure as to whether the Interim Restrictions will become effective on January 13, 2004.

With each day that passes without Commission action on the Stay Requests, the above problems are exacerbated and the prejudice to the PLMRS user community grows. In fact, the Coalition Members have just been advised that ITA and PCIA have established deadlines of December 12, 2003 and December 19, 2003, respectively (“Coordination Filing Deadlines”), for the submission of New/Expansion 25 kHz Applications for coordination. Accordingly, the Coalition Members, and presumably thousands of other licensees operating in the Affected Bands, effectively are being given an even earlier deadline, but as previously stated and as

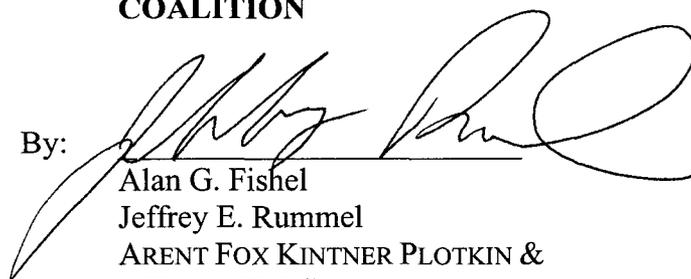
clearly shown in the Coalition's filings in this proceeding, deadlines in the near future with respect to this matter will create tremendous safety risks, operational disruption and financial loss.

Accordingly, the Coalition respectfully reiterates its request that the Commission immediately grant the Stay Requests of APCO and AAR and impose a stay of the Interim Restrictions that would permit all licensees in the Affected Bands to continue to file New 25 kHz Applications and Expansion 25 kHz Applications, until at least such time as the Commission issues an order resolving the Pending Petitions for Reconsideration.

Respectfully submitted,

**THE PRIVATE WIRELESS MINING
COALITION**

By:



Alan G. Fishel
Jeffrey E. Rummel
ARENT FOX KINTNER PLOTKIN &
KAHN, PLLC
1050 Connecticut Avenue, N.W.
Washington, D.C. 20036-5339
(202) 857-6450

Its Attorneys

Dated: November 20, 2003