

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

July 8, 2005

In the Matter of	)	
	)	P. R. Docket 91-258
The State Of Ohio	)	
Modification for license	)	FCC File Number
WPQF782 to add	)	000210606
NPSPAC Frequency	)	

To: Public Safety and Critical Infrastructure Branch  
Wireless Telecommunications Bureau

REPLY COMMENTS OF THE STATE OF OHIO AND REGION 33 800 MHZ.  
PLANNING COMMITTEE REGARDING THE ABOVE CAPTIONED MATTER  
JOINTLY FILED BY THE CITY OF BROOKLYN, OHIO AND COUNTY OF  
MEDINA, OHIO

INTRODUCTION

The State of Ohio (hereafter, the State) and the Region 33 800 MHz Planning Committee (Committee) and it's Chairman (Chairman) respectfully request the Federal Communications Commission (the Commission) consider these Reply Comments concerning the above captioned matter, filed by the City of Brooklyn, Ohio (Brooklyn) and Medina County, Ohio (Joint Petitioners or Petitioners) and dated May 27, 2005. It is suspected that there is an error in the document date since it was entered into the ECFS on June 27, 2005.

As in the original Comments, the State will follow the format of the Petitioners to allow for ease of tracking comments.

In both the original Petition and their Reply, the Petitioners request that the Commission set aside its granting of the application to modify station WPQF782, which is held by the State. This license is part of a wide area public safety communications system already in place, operated by the State and serving numerous Police, Fire, EMS and other governmental agencies in and around Cuyahoga and Medina Counties as well as throughout Ohio.

They seek this 'set aside' primarily for two reasons. Number one, the Petitioners feel that the State, by having one of its own employees serving as Chairman of the Region 33 Committee is "incestuous" and Number two, they imply they (at least Brooklyn) are part of a regional consortium of communities in southwest Cuyahoga County hoping to construct a multi-agency system, based on the City

of Parma's existing 800 MHz system; and suggest the State thwarted those efforts by improperly applying for frequencies which were designated in the Regional Plan for State agency (Turnpike) use, but Brooklyn thought should be theirs.

In reply to their first reason, the State suggests the Chairman would likely work for someone, be it a state, county or municipal entity or other Part 90 eligible user. A review of the FCC's 800 MHz. website reveals that of the 55 Regional Chairs, one is vacant, four did not show any agency affiliation, 26 were county or local government employees and 24 were state employees. If government employment equates 'incest', it is clearly not limited to Ohio.

As regards Number two, no such southwest regional system plans have ever been made known to the Committee, which should be one of the first steps of any 800 MHz. regional system planning effort.

The only regional plans the Committee knew about in this area was involving jointly the City of Cleveland and Cuyahoga County as a whole. The State and Chairman have been informed that a Request for Proposal (RFP) is to be released the week of July 3, 2005 by the Cuyahoga County Commissioners for a new multi-site countywide system encompassing all public safety agencies in the county, including Brooklyn and Parma. Agencies in Cuyahoga County already hold licenses on an aggregate of at least forty-eight (48) 800 MHz. frequency pairs, which is understood to be in excess of what will be needed.

As stated in the State's Initial Comments, if the Commission considers the actions of the Committee worthy of investigation, they will receive the full cooperation of both the Committee and the State. The State does not feel it or the Chairman acted "incestuously" or improperly in its actions.

Regarding the Petitioners assertion that "The Committee Is Illusory And The Chairman's Actions Are Highly Questionable": the Petitioners claim their application was stalled by the Committee. This is not true.

On or about Dec. 9, 2004, IMSA's agent, Mr. Ali Shahnami, was advised by Ms. Jeannie Benfaida of the Commission who the current Chairman was and also that one of Brooklyn's exhibits (a letter from the previous Chairman) was defective and needed to be re-written using different terminology. No evidence of this ever being done has been submitted to date. In fact, this original letter is believed to be one of the exhibits included in the original Petition but is, for all intents and purposes, unreadable. Also about Dec. 9, 2004, Mr. Shahnami e-mailed the Chairman with the Brooklyn application and the comment Don Flahan (the previous Chairman) had approved the requested frequencies but since he had retired, Mr. Shahnami needed the current Chairman "to bless them."

After reviewing the application, on or about Dec. 20, 2004, the Chairman sent Mr. Shahnamani an e-mail with a request for additional information, as required by the Plan. This document was included in the State's original Comments. As noted in the original Comments, the Chairman has no record of ever receiving a reply supplying the requested information. In addition, the current Chairman had known the previous Chairman for over thirty years and the idea he would assign frequencies designated in the Plan for the Turnpike, the agency he used to work for, to another agency, is incredulous.

The Committee, through its Chairman, informed the Petitioner's agents, both Mr. Shahnamani and Mr. Alan Close that two of the three frequencies requested were designated in the Plan for the Turnpike and therefore not available to Brooklyn. Mr. Shahnamani had been told during a telephone conversation (date not logged but is thought to be around the Dec. 20<sup>th</sup> date). and Mr. Close in an e-mail on Feb. 25, 2005, at which time he was informed also that the request for additional information had not been received by the Committee; therefore it had no idea what Brooklyn was attempting to accomplish. As noted in the State's earlier Comments, the Chairman was not aware of Mr. Close's involvement prior to this.

In his March 2, 2005 e-mail to Mr. Shahnamani, Mr. Close states he found the answer he received from the Chairman "to be unacceptable". He further states "He [referring again to the Chairman] isn't allowed to "reserve" frequencies for a customer who may in the future want to "absorb" the channels". This statement begs the question; what was he trying to do? He represented a client with no known published plan and unknown implementation funding, seeking frequencies *designated in the Plan* for another specific agency. The State operates an existing system and was offering services to local agencies usable now. One error was found in the State's Comments, however. It referred to the Greater Cleveland Regional Transit Police, who want to participate on the system, as the seventh largest police agency in the state. They are, in fact, the sixth largest. The State apologizes for this error. If another error has occurred, it was in the choice of the word 'absorb' used by the Chairman in his e-mail of Feb. 25<sup>th</sup>, not in the interpretation of the Plan.

The Petitioners continue to use the term "coordinate" in its various tenses when referring to Plan frequencies. The State and Chairman maintain there is seldom if ever any "coordination" involved as it typically pertains to RF engineering. The Chairman in fact merely "manages" the FCC approved Region 33 channel assignment plan. The Petitioners also claim that, by the Commissions granting of WPQF782, they were prevented effective intra and interagency communications. The fact is, by the Commissions granting of WPQF782, interagency interoperability and command and control capability in the subject area was instead enhanced.

The Petitioners assert that the Committee is an "illusion". As stated in the original Comment, if there was conflict involved, the Committee would have been

called to meet. It was, and still is, the contention of the Chairman that Brooklyn was applying for frequencies clearly designated in the Plan for another agency (Turnpike) therefore there was no need to summon the Committee. It is true that the Committee “has not met for years”. There has not been the need, since there apparently has not been any truly conflicting applications, certainly none since the present Chairman assumed the duties of Plan Manager in April, 2004.

The Petitioners further state “It is beyond doubt that the Bureau and the Commission never intended to reside authority for a NPSPAC regional committee’s actions within a single individual. However, as stated in the Comments, the Committee only meets in the form of the APCO Ohio Chapter Executive Board. There is no mention of the frequency when this Executive Board has met or any minutes pertaining to these meetings.”

The Chairman would ask two questions of the Petitioners regarding this statement: What then is the role of the Chairman of any Committee if not to administer the intent of the Committee absent their full attendance; and how did the Petitioners determine there was no mention of this matter in the Minutes of the APCO Chapter Executive Board?

The Petitioners seemingly feel that because the Region 33 Chairman is a State employee, this causes the system to be one-sided or unfair. As noted earlier, nearly half of all Regional Committee Chairpersons nationwide are, in fact, state employees. One must also remember that all these positions, be it Regional Chairperson or APCO Local Advisor, are staffed by volunteers. We don’t have to do this, but someone does. The Commission doesn’t have the staff, as it has openly stated.

The next point made by the Petitioners is to attempt to show bias by the Chairman, regarding different equipment manufacturers. In actuality, this statement was presented as a fact, rather than a preference. The Chairman knows of no 800 MHz. trunked public safety user in Cuyahoga County using EDACS technology other than the City of Parma. And, as stated in the Comments, many of those users (but not Parma) are already participating on the State system. A fact is a fact.

The next statement: “In effect, the State via the Chairman is not only directing to its own use nearly all available channels, but is further attempting to impose on local governments its selection of equipment providers” smacks of slander and/or libel and may be subject to further legal review.

The Petitioners next statement, “As the record clearly shows, the Brooklyn application was coordinated on or about April 23, 2004 by IMSA” is totally without merit. As has been noted several times previously, there is no ‘coordination’, per se, in the 866-869 MHz. portion of the spectrum since the frequencies in question are subject to an FCC pre-approved Regional Plan. If a time clock does exist at

all, it wouldn't start ticking until December 9, 2004, when Mr. Shahnami first made the Committee aware of the Brooklyn application. Any previous work by IMSA or its agents would be limited to completing the FCC Form 601 using applicant supplied information. The clock paused its ticking on Dec. 20, 2004 when the Chairman requested the additional information previously discussed, and since that information was never delivered, the clock never resumed.

The Petitioners complain the Chairman did nothing to assist them in completing its application because it was unknown what it really wanted to do. Its allegation that the Committee (Chairman) didn't inform them that additional information was needed is false. The Chairman did in fact inform the Petitioners agents twice (around Dec. 20, 2004 and Feb. 25, 2005) of the additional information needed. That those agents didn't inform the applicant is beyond the control of the Chairman.

The allegation the Chairman overstepped his authority by not granting Brooklyn use of Turnpike designated frequencies by suggesting "a non-interfering" basis is also without merit. If Brooklyn was to participate in the Parma system using the requested frequencies, their main transmitter site would be approximately 10 miles from the Turnpike site at Boston-Richfield and would most certainly interfere. To suggest otherwise indicates a total lack of knowledge of RF propagation issues.

In the next paragraph, the Petitioners berate the Chairman for not sharing with them the fact that the State might be in the planning process of applying for [state agency allocated] frequencies. Later in this same paragraph, they talk about violating the confidence of an applicant. As previously stated, Brooklyn was clearly not eligible for their requested frequencies, therefore no confidence was violated.

Further they state that, by the State gaining these frequencies, it would benefit "a single agency" where clearly the opposite is true. The State has shown that numerous Cuyahoga County local agencies would benefit with the added interoperability and command and control capability. It appears that the State itself would be the least benefited by this action.

In the next sentence the Petitioners again suggest that the Committee [Chairman] failed to seek the required additional needed information of the applicant. This has already been shown to be false, since the Chairman has shown he requested said information no less than twice of the applicant's agents. The fact the request was not transmitted to the applicant denotes a problem between the applicant and its agents, not the Committee, its Chairman or the State.

### Avenue of Resolution

The Commission, after reviewing all applicable submissions and documents should easily find that the State, the Committee and / or the Chairman did not act with impropriety in any matter surrounding the instant Petition.

Again in this caption, the Petitioners claim that no effort was made by the Chairman to suggest alternative frequencies. And again, since the requested additional information was never returned to the Committee [Chairman], offering suggestions while not knowing what the applicant was trying to do was impossible.

Most of the rest of this section deals with questions already asked and answered and will not be addressed further. One particular statement, however, will be addressed. The petitioners assert that "If the Committee, instead, remains recalcitrant and unwilling to cooperate with the Bureau in resolving this matter, the Bureau should set aside its grant of the modification of the license for station WPQF782 and accept applications filed by Petitioners acceptable for filing and eligible for grant." It is clearly obvious that the Committee, its Chairman and the State have bent over backward to answer the Petitioners questions and provide any and all requested information. How the Petitioners can make this statement defies belief.

### Public Interest Statement

The Commission itself does not need to be reminded that we live in a different world than existed in the early 1990's, when most regional plans, including Ohio's, were developed. A greater latitude must be given to plan administrators to fulfill the increasing role of homeland security required in today's world.

The state has never made a statement reflecting its excessive use of spectrum, and in fact is spectrum starved in several areas. The State is providing full interoperability and command and control capabilities to thousands of radios used by hundreds of local and State agencies throughout Ohio.

The State and the Chairman stand by the statement in the original Comments of “the greatest good for the greatest number”. The Committee, its Chairman and the State rest its case at the doorstep of the Commission and will willingly abide by whatever decision is reached in resolution of this matter.

For the State of Ohio, and  
Respectfully,

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## CERTIFICATE OF SERVICE

This is to attest to the fact that a copy of the Comments of the State of Ohio and the Chairman of the Region 33 800 MHz Planning Committee concerning PR Docket 91-258 was sent to, and with proof of delivery requested, via DHL Courier, on July 8, 2005.

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