

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

In the Matter of )  
 )  
Implementing a Nationwide, )  
Broadband, Interoperable Public ) PS Docket No. 06-229  
Safety Network in the 700 MHz )  
Band )

**REPLY COMMENTS OF APCO  
REGARDING  
PETITIONS FOR WAIVER TO DEPLOY 700 MHz BROADBAND NETWORKS**

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following reply to comments in response to the Commission’s *Public Notice*, DA 09-1819 (August 14, 2009), in the above-captioned proceeding regarding pending petitions for waiver to deploy 700 MHz broadband systems.<sup>1</sup> The following reply will address some of the key issues raised by other parties in their comments.

**Timing**

Most parties agreed with APCO that the Commission could address the waivers prior to adopting new rules, provided that procedures are in place for the Commission and/or the Public Safety Broadband Licensee (PSBL) to ensure that such deployments will be interoperable and otherwise compatible with the national network and have a likelihood of being deployed.

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<sup>1</sup> APCO filed its initial comments on September 22, 2009. Most of the other initial comments were filed on or about October 16, 2009.

APCO disagrees with those who suggest that that FCC defer any action on the petitions,<sup>2</sup> though early adoption of FCC rules could render that issue moot.

### **Authority to Operate**

Several parties, including APCO, suggested that the Commission authorize the PSBL to lease spectrum capacity to state/local government entities to deploy systems such as those requested in the waiver petitions. Some also suggest that guidelines regarding interoperability and other network requirements should be addressed in the spectrum leases, rather than case-specific Commission waivers or other actions. APCO agrees with that lease-oriented approach, though the Commission should adopt basic guidelines and requirements for the PSBL to follow in its lease negotiations. Commission approval of leases would also be appropriate, assuming that could be accomplished in a timely manner.

### **Existing Early Buildout Rules**

Most parties agreed with APCO that the existing rules will need to be waived and ultimately amended, as the current rules contemplate systems deployed in areas where the national network may be slow to develop, and include mandatory release of spectrum and transfer of the local “network” once the national network reaches the relevant geographic area.<sup>3</sup>

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<sup>2</sup> See, e.g., Comments of Sprint Nextel.

<sup>3</sup> 47 C.F.R. §90.1430.

## **Narrowband Operations**

Parties who addressed this issue also agreed that existing 700 MHz narrowband licensees must not be forced to relocate to other channels without guaranteed payment for the cost of that relocation.<sup>4</sup>

## **Sufficiency of Pleading**

APCO's comments identified several types of information that should be included in petitioners' request to deploy 700 MHz broadband systems in the public safety spectrum. While most parties agreed, several suggest that there is no need for additional information to be submitted to the FCC. Rather, they suggest that the relevant issues be addressed in the lease with the PSBL.<sup>5</sup> APCO does not object to that approach, though it recommends that the Commission specify the relevant issues that the PSBL must address in the lease and the information that should be submitted to the PSBL for its consideration. While local deployments should be allowed, they could create a risk of incompatible radio systems, roaming disputes, and diminished opportunities for national network partnerships. Therefore, deployments should be limited to those situations where local entities have the resources and wherewithal to deploy, and have agreed to do so in a manner that will promote the goal of a nationwide interoperable broadband network.

## **Interoperability**

Nearly all of the comments support LTE as the broadband technology standard, and most suggest that the FCC defer to the PSBL to make that determination. Not surprisingly, the

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<sup>4</sup> See Comments of State of Michigan.

<sup>5</sup> See, e.g., Comments of City of San Antonio, Comments of Cities of San Francisco, San Jose and Oakland.

WiMax Forum disagrees, and urges the Commission to go slow and give consideration to alternatives to LTE, such as WiMax. The public safety community has spoken, and has unanimously endorsed LTE, which is also the technology standard selected by other 700 MHz broadband licensees. That fact alone will help drive down costs and spur innovation for equipment that can be used across the 700 MHz spectrum. AT&T notes in its comments that it is in discussions with its equipment vendors to include the public safety portion of the band in its LTE devices, which would also facilitate future spectrum sharing (if permitted by relevant law).

### **Mutually Exclusive Waivers**

Parties addressing this issue generally agreed with the need for coordination among potentially mutually exclusive local deployments, with the direction and oversight of the PSBL and the FCC. APCO does not support suggestions that the PSBL lease spectrum only to states, which would then grant authorizations to localities.<sup>6</sup> Most states have neither the desire nor the resources to manage the broadband spectrum use within their boundaries. That should not deter large cities and counties within those states that are able to deploy systems.

APCO supports the recommendation of Pinellas County, Florida, that entities obtaining spectrum leases should be required to offer service to all public safety entities within the lessee's area of jurisdiction. Thus, if a state or county obtains a lease, it must be prepared to offer services to smaller jurisdictions within its borders.

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<sup>6</sup> See, e.g., Comments of State of Connecticut and Comments of State of New York.

## **Enforcement**

Several parties suggest that enforcement of local deployment obligations should be within the purview of the PSBL, not the FCC. APCO agrees to the extent that the obligations in question are defined in the spectrum lease agreements. However, the ability of the PSBL to enforce obligations needs to be fully supported by the Commission.

## **Permissible Users**

Most parties recognize current limitations of Section 337(f)(1) regarding public safety use of the 700 MHz channels. However, Flow Mobile suggests that the authorization of a government entity is sufficient to make it eligible to operate in the public safety portion of the band. That interpretation appears to overlook the requirement under Section 337(f)(1)(A) that “the sole or principal purpose [of a public safety service] is to protect the safety of life, health, or property.” That requirement applies when the provider is a state or local government, *and* when it is a nongovernment organization authorized by a government entity:

(f)(1) Public Safety Services – The term ‘public safety services’ means services –

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided-

(i) by State or local government entities; or

(ii) by nongovernmental organizations that are authorized by a governmental entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.

## **Flow Mobile and North Dakota Petitions**

APCO continues to agree with the vast majority of parties who oppose the Flow Mobile and North Dakota Petitions due to concerns with its apparent technology choice, intended commercial use under current law, and proposed use of narrowband channels for broadband.

## **Other Issues**

APCO strongly supports the comments of Pinellas County, Florida, which emphasize that broadband networks will not be a substitute for narrowband land mobile systems anytime soon.

NENA's comments takes issue with concerns that APCO had expressed regarding one particular element of NENA's 700 MHz proposal: that the PSST's license to the 10 MHz of public safety broadband spectrum be returned to the FCC and auctioned along with the D block. That would appear to leave public safety as a customer of a commercial grade network (albeit with priority access and a discounted rate under NENA's proposal), which led to the concerns in APCO's comments that commercial systems are unlikely to provide mission critical service due to limitations in coverage, reliability, access and control.<sup>7</sup> APCO did not purport to address other elements of NENA's proposal, many of which are generally consistent with APCO's views.

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<sup>7</sup> NENA appears to pose a question in its comments as to whether APCO believes that state and local deployments should be required to meet public safety network requirements. The answer is that public safety licensees and lessee's can generally make their own determination regarding the requirements for their own systems. The only exception would be to ensure interoperability and consistency with a national network approach.

## CONCLUSION

Therefore, the Commission should proceed to allow the national public safety broadband licensee to authorize local, state, and regional deployments consistent with conditions discussed above and in APCO's initial comments.

Respectfully submitted,

/s/

Richard A. Mirgon, President  
APCO INTERNATIONAL  
Government Affairs Office  
1426 Prince Street  
Alexandria, VA 22314

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