

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

In the Matter of)	
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Petition for Declaratory Ruling to Clarify the Scope of Section 337)	DA 11-537
)	

**COMMENTS OF APCO
REGARDING THE CITY OF CHARLOTTE, NORTH CAROLINA
PETITION FOR DECLARATORY RULING**

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s *Public Notice*, DA 11-537 (released March 22, 2010), in the above-captioned proceeding regarding a Petition for Declaratory Ruling filed by the City of Charlotte, North Carolina, on March 7, 2011, seeking clarification that any state or local government entity is permitted to use 700 MHz public safety broadband spectrum.¹

Founded in 1935, APCO is the nation’s oldest and largest public safety communications organization. Most APCO members are state or local government employees who design, manage, and operate public safety communications systems for police, fire, emergency medical, forestry conservation, highway maintenance, disaster relief, and other public safety agencies. APCO is the largest FCC-certified coordinator for Public Safety Pool radio frequencies and

¹ APCO is separately filing comments today in response to the *Fourth Further Notice of Proposed Rulemaking* in this proceeding.

appears regularly before the Commission on a wide range of issues regarding public safety communications.

APCO fully supports the City of Charlotte Petition both as a matter of policy and as a proper legal interpretation. From a policy perspective, there is no question that all state and local government entities can play an important role in public safety activities. For example, public works employees plowing snow in the winter or repairing dangerous road conditions are improving public safety, even if they don't carry "guns and hoses." Major emergencies can also press into service virtually any public employee, all of whom, by definition, are public servants. For the FCC to attempt to discern which types of government agencies and which employees are more or less critical would be a hopeless and entirely unnecessary exercise. Thus, the Commission has defined "public safety" broadly to include all state and local government uses.

Broadband deployment provides additional reason for including all government activities as potential users of the 700 MHz spectrum. Building modern, broadband radio systems involves tremendous cost and logistical challenges. The only way to proceed for most jurisdictions is to include all of their government agencies in the network, thus spreading the cost, improving spectrum efficiency, and allowing for the sharing of physical resources. Such multi-user systems are also inherently interoperable, ensuring that all government personnel will be able to communicate seamlessly in times of emergency. Broadband technology also allows network use to be prioritized, ensuring that the most critical uses are pushed to the front of the queue, especially during major emergencies.

When Congress mandated the allocation of spectrum in the 700 MHz band for “public safety services,” it defined those services in Section 337(f)(1) of the Communication Act² as any service

“(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.”

To implement Section 337(f)(1), the Commission adopted Section 90.523 of its rules, which states that “Any territory, possession, state, city, county, town or similar governmental entity is eligible to hold authorizations in the 764-776 MHz and 794-806 MHz frequency bands.”³ This definition is nearly identical to Section 90.20(a) of the Commission’s rules,⁴ which establishes general eligibility for “Public Safety Pool” channels. The Commission did not impose any additional constraints on the uses of the 700 MHz spectrum by eligible government entities, other than to prevent the spectrum from being made commercially available to the public (also reflecting the statute).

APCO agrees with the City of Charlotte that there is nothing in Section 337, its legislative history, or the Commission’s own rules and policies to suggest that use of the public safety spectrum in the 700 MHz band should be limited to government personnel commonly considered “first responders” (police, fire, EMS, *etc.*). Nor is there anything to suggest that there should be more limited government use allowed on broadband spectrum than on narrowband spectrum. Rather, there is an entirely appropriate and necessary presumption in the

² 47 U.S.C. §337(f)(1).

³ 47 C.F.R. §90.523.

⁴ 47 C.F.R. §90.20(a).

statute and FCC rules that all state and local government entities are engaged in the protection of life, health, or property and should be permitted to utilize the 700 MHz public safety spectrum. To the extent that Charlotte and similarly situated entities with 700 MHz authorizations require a clarification, the Commission should issue the requested declaratory ruling as soon as possible.

Respectfully submitted,

/s/

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