

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of:)
)
Transition Process For 700 MHz Public) PS Docket No. 12-94
Safety Broadband Waiver Recipients)

COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s *Public Notice*, FCC 12-94 (released April 6, 2012) (“*PN*”), in the above-captioned proceeding.

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 manage and operate communications systems for police, fire, emergency medical, forestry conservation, highway maintenance, disaster relief and other public safety agencies.

In this Public Notice, the Federal Communications Commission’s Public Safety and Homeland Security Bureau has asked a series of questions relating to the transition of certain incumbents, most notably the broadband waiver recipients,¹ on the portion of 700 MHz spectrum to be assigned to FirstNet, the independent authority to be formed within the National Telecommunications and Information Administration (NTIA)² at the Department of Commerce to oversee the establishment of a nationwide public safety broadband network under H.R. 3630;

¹ See Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06-229, *Order*, 25 FCC Rcd 5145 (2010) (*Waiver Order*); Requests for Waiver of Various Petitioners to Allow the Establishment of 700 MHz Interoperable Public Safety Wireless Broadband Networks, PS Docket 06- 229, *Order*, 26 FCC Rcd 6783 (PSHSB 2011) (*Texas Waiver Order*).

² See §6204(a).

Middle Class Tax Relief and Job Creation Act of 2012 (“*Spectrum Act*”).³ While APCO believes the aforementioned legislation delegates the ultimate decision on the disposition of these waiver recipients to FirstNet, APCO encourages the Commission to replace existing waiver authorizations with special temporary authorizations (STAs) such that FirstNet may review the progress of each jurisdiction when deciding whether to execute new spectrum leases with these jurisdictions.

Congress vested FirstNet with broad powers and responsibilities,⁴ not the least of which are to effectively manage the seven billion dollar network construction fund,⁵ and ensure the deployment of an advanced wireless broadband network for public safety with a nationwide level of interoperability.⁶ FirstNet has sole authority, control and discretion over the public safety broadband spectrum.⁷ The legislation thus makes clear that decisions concerning the disposition of existing waiver recipients will rest solely with FirstNet immediately upon becoming the licensee.

The section of the Spectrum Act entitled “Single Public Safety Wireless Network Licensee,”⁸ directs the FCC to “take all actions necessary to facilitate th[is] transition,”⁹ The language directs the agency to exercise such administrative and ministerial actions in the interim as necessary to unwind the existing regulatory scheme concerning the waivers so that FirstNet receives a license for the spectrum free and clear of any and all obligations. The legislation also contemplates that the FCC assign the new public safety broadband license to FirstNet as soon as FirstNet is established.

³ Pub. L. No. 112-96, 126 Stat. 156 (2012).

⁴ See generally §6206.

⁵ See §6206(e)(2)(A).

⁶ See §6206(b)(1).

⁷ See §6201(a).

⁸ See generally §6201.

⁹ See §6201(c).

Once FirstNet is the licensee of the 20 megahertz of public safety broadband spectrum, the FCC's existing waiver grants, conditions, interoperability requirements and showings, as well as the spectrum leases with the PSST, are no longer controlling or valid. Therefore, the decisions concerning the use of this spectrum, including whether to permit spectrum leases, rest exclusively with FirstNet. This includes deciding whether, and under what conditions, FirstNet may choose to lease its spectrum for purposes of early build-outs. At that point, the FCC's waiver regime is no longer operative.

Accordingly, and consistent with the legislation, the FCC should take the following steps:

1. Grant the public safety broadband license to FirstNet as soon as FirstNet is established.
2. Immediately deny pending waiver requests.
3. Prior to granting the public safety broadband license to FirstNet, replace all prior waiver authorizations with STAs of a duration extending sixty days after FirstNet receives the public safety broadband license.¹⁰

APCO supports the issuance of STAs in recognition of the substantial efforts of a number of the early build jurisdictions in deploying advanced broadband communications networks. The experience gained from these deployments may prove helpful to FirstNet in accomplishing the objectives of the public safety legislation. STAs will ensure uninterrupted operating authority until FirstNet makes its own determinations as to new spectrum leases. As the FCC licensee of the public safety broadband spectrum at that point, it will solely be up to the discretion of FirstNet whether to lease its spectrum, including with any conditions it deems necessary.

¹⁰ In this regard, APCO notes that the BTOP program in particular represents a separate, complementary legislative purpose to the public safety legislation, such that the Commission could serve both Congressional purposes in granting STAs to these jurisdictions.

CONCLUSION

Consistent with APCO's recommendations set forth above, the Commission should grant the public safety broadband license to FirstNet as soon as it is established. Further, the Commission should replace all waiver authorizations with special temporary authorizations. In this way, the Commission can allow uninterrupted operating authority for early build jurisdictions while affording FirstNet an adequate opportunity to determine whether to extend new spectrum leases to these jurisdictions.

Respectfully submitted,

ASSOCIATION OF PUBLIC-SAFETY
COMMUNICATIONS OFFICIALS
INTERNATIONAL, INC.

By: /s/
 Gregg Riddle
 President

1426 Prince Street
Alexandria, VA 22314
571-312-4400

April 20, 2012