

Francisco-Oakland Bay Area as being in one of the eleven areas where T-Band spectrum has been allocated by the Commission.

The NPSTC Report (National Public Safety Telecommunications Council) has been prior submitted into the record of this proceeding and includes extensive data and analysis responding to many of the questions posed in the *Public Notice*. NAPCO fully supports the findings and recommendations in the NPSTC Report and provides the following additional comments.

Portions of the T-Band were made available for public safety and other land mobile users over 40 years ago to alleviate severe spectrum shortages in 11 major metropolitan areas (New York, Los Angeles, Chicago, Boston, Philadelphia, Washington, Miami, Houston, Dallas, Pittsburgh, and San Francisco).² Today, the T-Band provides radio communications for some of the nation's largest police and fire departments and is critical to the protection of tens of millions of people. There are nearly 300,000 public safety mobile and portable radios and over 3,000 transmitter sites using T-Band frequencies.³

In the San Francisco-Oakland Bay Area the Counties of Marin and San Mateo have established communications systems providing life and property protection for all of its governmental functions with similar systems established to serve the cities within those counties. The Golden Gate Bridge Highway and Transportation District currently operates in the T-Band spectrum, but is relocating to 700/800 MHz spectrum finding insufficient frequencies in which to expand its system. In the City and County of San

² *Second Report & Order*, Docket No. 18261, 30 FCC 2d 221 (1971). T-Band frequencies are also allocated for land mobile use in Detroit and Cleveland, but cannot be utilized in those areas due to Canadian border restrictions.

³ NPSTC Report at 11.

Francisco, T-Band frequencies are extensively used by its Municipal Transit Agency. Across the bay, the Alameda-Contra Costa Transit District and the Bay Area Rapid Transit District utilize this spectrum in addition to 800 MHz systems having found insufficient frequencies in the T-Band to accommodate their expansion. These large transit districts utilize T-Band frequencies not only for transit operations, but to provide law enforcement and fire suppression activities within their jurisdictions. Within the County of Santa Clara, the Police & Fire departments of the Town of Los Gatos, Cities of Campbell, Sunnyvale, Palo Alto, Los Altos, Mt View, and the Valley Transportation Authority are all using the T-Band for operations with extensive systems. A Santa Clara County-wide law-enforcement interoperability system is also in use, but hampered by the unavailability of additional T-Band frequencies. They are just now exploring the employment of 700 MHz for this purpose. In the County of Alameda the cities of Hayward, Newark and Fremont have maturing systems serving all city functions and are hampered by the unavailability of frequencies in T-Band in which to expand. The application freeze is prohibiting their implementation of an interoperability system that has been planned for over two years.

Forcing these public safety users to vacate the T-Band will be extraordinarily disruptive and expensive, and could endanger the safety of life and property during a transition. As discussed in the NPSTC Report, there is not adequate replacement spectrum available in at least five of the eleven relevant metropolitan areas,⁴ with only

⁴ New York, Los Angeles, Chicago, Boston and Philadelphia.

marginal amounts available in three additional areas.⁵ Should all incumbent users be required to relocate to 700/800 MHz spectrum there will be no frequencies available for future expansion of their individual systems. The NPSTC Report also explains that it will be many years before the future 700 MHz national public safety broadband network will be able to accommodate current mission-critical voice communications.⁶ Therefore, assuming that there are no changes to Section 6103, the Commission needs to implement the statute in a manner that minimizes disruption to essential public safety communications services.

Section 6103 provides that revenue from the eventual auction of the T-Band will be made available through grants to offset the costs incurred by public safety agencies in relocating to other frequency bands. Several questions in the *Public Notice* relate to the cost recovery issue, including whether the Commission “should assume that the compensation regime would provide for recovery of the cost of retuning or replacing equipment acquired since the enactment of Section 6103.” NAPCO urges that the Commission allow cost recovery for those expenses. A public safety licensee faced with the need to deploy new equipment or systems in the T-Band, notwithstanding the passage of Section 6103, is doing so because of a critical public safety requirement. Such licensees are likely to have no reasonable alternative to the T-Band because of the need to maintain interoperability with existing operations (either in the T-Band itself or the adjacent 450 and 460 MHz bands) and/or of the lack of available spectrum capacity in other public safety frequency bands. Therefore, preventing reimbursement for post-Section 6103 deployments will do little more than penalize public safety

⁵ Washington, San Francisco and Pittsburgh.

⁶ NPSTC Report at 31.

agencies for attempting to maintain the effectiveness and interoperability of critical communications systems used by first responders. For similar reasons, licensees should not be required to demonstrate that post-enactment deployments have not increased their potential relocation costs. Calculating such a variable would, in any event, be exceedingly difficult and arbitrary. In the question of reimbursement, we would also point out that due to the unavailability of public safety allocations to satisfy Marin County, they had to “purchase” frequencies from commercial licensees to expand their safety systems. Those costs should also be considered for reimbursement should Marin be required to abandon their T-Band systems and relocate to other spectrum when such can be identified.

The *Public Notice* includes several questions related to voluntary migration by T-Band licensees prior to the relocation mandated by Section 6103. The primary difficulty with this issue, as discussed in the NPSTC Report, is that there is no place for most current T-Band licensees to migrate. Even where alternative spectrum does exist, there is no obvious incentive that could be implemented to encourage voluntary relocation. However, any incentives that might be devised should be positive incentives, as opposed to additional disincentives to remain in the T-Band. An example of a possible incentive would be an approach similar to what occurred with the relocation of 2 GHz microwave licensees. In that situation, auction winners entered into direct negotiations with incumbents to facilitate earlier relocation.⁷ However, it is unclear whether such an approach is feasible, desirable, or within the Commission’s discretion under Section 6103.

⁷ There were no limits on those payments (unlike the 800 MHz rebanding process), so auction winners could pay more than actual relocation costs to encourage licensees to vacate the 2 GHz band earlier.

Regardless of any incentives that might be adopted, there are some licensees who might be able to migrate earlier. For example, a licensee with an aging T-Band system in one of the smaller metropolitan areas in which some replacement spectrum is available (or a small licensee in a large market in which there are limited frequencies available in other bands) may decide to migrate to an alternative band rather than deploying a new system in the T-Band. However, in such cases, the migration out of T-Band likely would not have occurred but for the enactment of Section 6103 and, therefore, the licensees should be entitled to cost recovery.

The Commission also seeks comment as to whether “consolidating adjacent T-Band public safety systems into larger regional systems” would “enable them to use replacement spectrum more efficiently or reduce relocation costs.” Presumably the *Public Notice* is referring to potential consolidation into alternative frequency bands, such as 700 MHz or 800 MHz trunked systems. Again, this assumes that frequencies are available in those bands to accommodate T-Band licensees. Even with the efficiency gains of such a migration, there would still need to be more spectrum than is currently available in the largest T-Band markets. Nevertheless, it is not clear what incentives could be adopted to encourage consolidation, which is already a desirable approach for new systems due to reduced cost, more efficient operations, and enhanced interoperability. However, consolidated systems are difficult to plan and require significant cooperation among participating agencies. The one incentive that might be effective, therefore, would be funding to facilitate the necessary planning and coordination.

As the Commission notes, there are state and local government licensees operating on non-public safety frequencies in the T-Band. This includes operations on Part 90 channels allocated for business/industrial use as well as licenses on former Part 22 paging channels or television channels granted by waiver. If such T-Band use is subject to mandatory relocation, then the licensees should clearly be entitled to cost reimbursement under the statute.

Finally, we strongly urge the Commission to lift the current freeze on T-Band applications as it is creating major disruption to public safety systems. Licensees are unable to plan or deploy even minor system enhancements to improve coverage that may be critical to public safety operations in areas newly added to their city or county through political process. Section 6103 does not require that public safety licensees vacate the band until 2023 and, as discussed above, most will have even fewer places to move at that time. Licensees should not be forced to “get by” with existing operations for another ten years despite public safety operational needs that require radio system additions or modifications. Those concerns, not the theoretical increase in potential relocation costs, should be the Commission’s primary concern. While the Commission has indicated that it would consider waivers of the freeze, that option provides little or no meaningful relief due to the typically long wait for action even on relatively simple, unopposed waiver requests.⁸

Lifting the freeze is also unlikely to have any meaningful impact on relocation funding. As addressed in the NPSTC Report, there will not be anywhere close to

⁸ See Somerset County, NJ, *Order*, DA 13-613 (Apr. 4, 2013), addressing a T-Band freeze waiver request submitted eleven (11) months earlier, on May 2, 2012.

sufficient auction revenue⁹ to pay the total cost of relocating existing T-Band operations.¹⁰ Therefore, allowing additional use of the T-Band will be inconsequential as there will not, in any event, be sufficient auction revenue available. It is apparent that auction proceeds will be a minor source of funding for relocation and that the majority of costs will be borne by the U. S. Treasury. This is shown within the NPSTC Report where the magnitude of relocation costs are evaluated.

In conclusion, we respectfully request that the Federal Communications Commission rescind its application freeze in the T-Band and petition Congress to revisit this entire matter.

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⁹ NPSTC Report at 59-62.

¹⁰ NPSTC Report at 34-58.