

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

In the Matter of )  
 )  
OPTIONS FOR 470-512 MHz SPECTRUM ) PS Docket 13-42  
 )

**COMMENTS OF APCO INTERNATIONAL**

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) hereby submits the following comments in response to the Commission’s *Public Notice*, DA 13-187 (February 11, 2013), in the above-captioned proceeding concerning implementation of the Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012 (the “Act”) as it applies to the 470-512 MHz band (the “T-Band”).<sup>1</sup>

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. APCO is the largest FCC-certified frequency coordinator for Public Safety Pool frequencies and appears regularly before the Commission on a wide range of public safety communications issues.

APCO is a member of the National Public Safety Telecommunications Council (“NPSTC”) and participated in the development of its recent comprehensive report on the T-

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<sup>1</sup> As explained in the *Public Notice* (footnotes omitted):

Section 6103 provides that, not later than nine years after the date of enactment, the Commission shall (1) “reallocate the spectrum in the 470-512 MHz band ... currently used by public safety eligibles,” and (2) “begin a system of competitive bidding under Section 309(j) of the Communications Act of 1934 (47 U.S.C. 309(j)) to grant new initial licenses for use of the spectrum.” It provides that “relocation of public safety entities from the T-Band Spectrum” shall be completed not later than two years after completion of the system of competitive bidding, and that proceeds from the auction of T-Band spectrum “shall be available to the Assistant Secretary [of Commerce for Communications and Information] to make grants in such sums as necessary to cover relocation costs for the relocation of public safety entities from the T-Band spectrum.”

Band (“NPSTC Report”).<sup>2</sup> The NPSTC Report is being submitted into the record of this proceeding and includes extensive data and analysis responding to many of the questions posed in the *Public Notice*. APCO 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).<sup>3</sup> 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.<sup>4</sup>

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. As discussed in the NPSTC Report, there is not adequate replacement spectrum available in at least five of the eleven relevant metropolitan areas,<sup>5</sup> with only marginal amounts available in three additional areas.<sup>6</sup> 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

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<sup>2</sup> National Public Safety Telecommunications Council, *T-Band Report* (Mar. 15, 2013). A copy can be found at: [http://www.npstc.org/download.jsp?tableId=37&column=217&id=2678&file=T\\_Band\\_Report\\_20130315.pdf](http://www.npstc.org/download.jsp?tableId=37&column=217&id=2678&file=T_Band_Report_20130315.pdf)

<sup>3</sup> *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.

<sup>4</sup> NPSTC Report at 11.

<sup>5</sup> New York, Los Angeles, Chicago, Boston and Philadelphia.

<sup>6</sup> Washington, San Francisco and Pittsburgh.

communications.<sup>7</sup> 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.”<sup>8</sup> APCO 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 MHz band) 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 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.

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<sup>7</sup> NPSTC Report at 31.

<sup>8</sup> *Public Notice* at 3.

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.<sup>9</sup> However, it is unclear at present whether such an approach is feasible, desirable, or within the Commission's discretion under Section 6103.

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.<sup>10</sup> Absent Section

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<sup>9</sup> 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.

<sup>10</sup>It may be appropriate, however, for the Commission to consider whether a T-Band licensee had pre-Section 6103 enactment plans to migrate out of the band (*e.g.*, whether it had obtained licenses for replacement frequencies and initiated system design or deployment in other bands prior to enactment).

6103, such licensees would likely upgrade “in place” to maintain interoperability, reduce costs<sup>11</sup> and allow for a gradual equipment replacement.

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.”<sup>12</sup> 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 metropolitan areas. Nevertheless, it is not clear what incentives could be adopted to encourage consolidation, which is often 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 would include operations on Part 90 channels licensed for business 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.

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<sup>11</sup> Moving to higher frequency bands, such as 700 MHz or 800 MHz, often involves adding a significant number of transmitter sites to maintain comparable coverage.

<sup>12</sup> *Public Notice* at 3. While APCO does not comment herein on matters concerning the non-public safety users of the T-Band (addressed at pages 3-4 of the *Public Notice*), we would generally support approaches that might ultimately lead to greater auction revenue and, therefore, more funding to offset the cost of relocating public safety licensees in the T-Band under Section 6103.

Finally, we 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. Section 6103 does not require that public safety licensees vacate the band until 2023 and, as discussed above, most will have no place to move even then. 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.<sup>13</sup>

Lifting the freeze is also unlikely to have any significant impact on relocation funding. As addressed in the NPSTC Report, there will not be anywhere close to sufficient auction revenue<sup>14</sup> to pay the total cost of relocating existing T-Band operations.<sup>15</sup> Therefore, allowing additional use of the T-Band will be inconsequential as there will not, in any event, be sufficient auction revenue available.

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<sup>13</sup> 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.

<sup>14</sup> NPSTC Report at 59-62.

<sup>15</sup> NPSTC Report at 34-58.

## CONCLUSION

Therefore, for the reasons set forth above and in the NPSTC Report, the Commission should not take actions that add to the already difficult circumstances imposed on T-Band licensees by Section 6103.

Respectfully submitted,

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