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Re: Notice of *Ex Parte* Letter, WT Docket No. 21-282

The Association of Public-Safety Communications Officials International, Inc., (APCO)¹ submits this ex parte letter to raise concerns regarding Gogo Business Aviation LLC's ("Gogo BA") request to waive section 22.867 of the Commission's rules.² The record that has developed since the Waiver Request was filed illustrates why incumbent public safety operations require special attention when new operations are proposed that may introduce additional sources of harmful interference. The issues arising from Gogo BA's proposed operations would be better considered through a rulemaking proceeding than a waiver. In order to proceed with a waiver in lieu of a rulemaking, the Bureau must be certain that Gogo BA's proposed operations will not pose an increased threat of harmful interference to public safety incumbents. To that end, the Bureau should perform a thorough analysis of the interference potential of Gogo BA's proposed operations, require improvements to Gogo BA's proposed conditions for mitigating and resolving interference, and require Gogo BA to conduct field testing before authorizing full operations.

The National Public Safety Telecommunications Council (NPSTC) has been right to continually raise concerns with the prospect of interference caused by Gogo BA's proposed operations. In response to Gogo BA's waiver request, NPSTC proposed several conditions to ensure public safety incumbents are protected from interference.³ Gogo BA offered several alternatives. While APCO acknowledges Gogo BA's efforts to respond to NPSTC's concerns, Gogo BA's proposals are

¹ Founded in 1935, APCO is the nation's oldest and largest organization of public safety communications professionals. APCO is a non-profit association with over 36,000 members, primarily consisting of state and local government employees who manage and operate public safety communications systems – including 9-1-1 Emergency Communications Centers (ECCs), emergency operations centers, radio networks, and information technology – for law enforcement, fire, emergency medical, and other public safety agencies.

² Request for Waiver of Gogo Business Aviation LLC, WT Docket No. 21-282 (filed May 26, 2021) ("Waiver Request").

³ Ex Parte of the National Public Safety Telecommunications Council, WT Docket No. 21-282 at 4 (filed Dec. 14, 2021) (NPSTC Dec. 14, 2021 Ex Parte").

inadequate for public safety licensees and raise concern as to the mechanisms to identify and mitigate interference caused by its operations.

First, Gogo BA proposes that at least ten days prior to the new operations, it will email public safety licensees with information about the new system's deployment and how to resolve interference complaints with Gogo BA.⁴ APCO is concerned that emails from Gogo BA will not be effective for providing public safety licensees with adequate notice of the potential for interference and the specific procedures for working with Gogo BA. Such emails could be screened or misinterpreted as spam or non-urgent messages. A more effective process would require that Gogo BA contact the licensees via email *and* telephonically, and notify the relevant 800 MHz regional planning committee and all FCC-certified public safety frequency coordinators, clearly describing operations, timing, and appropriate contact information.

Second, Gogo BA has failed to justify its alternative to NPSTC's proposal that Gogo BA's transmissions include a signal identifier so that public safety entities can identify whether Gogo BA is the cause of any interference.⁵ Gogo BA proposes that public safety licensees would be loaned a spectrum analyzer and follow Gogo BA's instructions for identifying interference, arguing that identifying Gogo BA as the source of interference is more readily achievable by using a spectrum analyzer.⁶ However, the record lacks sufficient technical information to demonstrate that transmitting a signal identifier would be ineffective or present such an imposition that the burden should instead shift to public safety agencies to obtain a spectrum analyzer from Gogo BA and follow the steps specified by Gogo BA for identifying its signal. If interference can be eliminated more quickly and with less burden on public safety licensees by including a signal identifier, a signal identifier should be required.

Third, NPSTC proposed that Gogo BA address reports of interference immediately, take all necessary steps to resolve the interference to the satisfaction of the public safety licensee reporting the interference, and immediately vacate operation in the channel(s) causing interference until the solution is agreed to by the public safety licensee.⁷ Relying on the Commission's existing rules for protecting public safety operations in the 851-854 MHz band, Gogo BA rejected these conditions claiming they "would prove duplicative and create greater uncertainty both for Gogo BA and for public safety operators in the 851-854 MHz band."⁸ However, it's unclear how the requirements for interference notification and remediation in the Commission's rules align with Gogo BA's other proposed conditions. For example, how do the Section 22.879(b) and 90.674(b) requirements that entities such as Gogo BA that receive an interference complaint perform an analysis to identify the possible source fit with Gogo BA's expectation that public safety licensees request a spectrum analyzer and follow Gogo BA's instructions for identifying the source of interference? Furthermore, as the rules require, it is the responsibility of service providers like Gogo BA, not the victim public safety licensees, to "perform a timely analysis of the interference to identify the possible source."⁹ As a general matter, public safety agencies do not have the resources to detect and identify a new source of interference. Nor should it be the responsibility of an incumbent public safety licensee to devote resources to solve interference problems caused by new operations.

⁴ Ex Parte of Gogo Business Aviation, LLC, WT Docket No. 21-282 at 1-2 (filed Apr. 28, 2022).

⁵ NPSTC Dec. 14, 2021 Ex Parte.

⁶ Ex Parte of Gogo Business Aviation, LLC, WT Docket No. 21-282 at 3 (Jan. 20, 2022) ("Gogo BA Jan. 20, 2022 Ex Parte").

⁷ NPSTC Dec. 14, 2021 Ex Parte.

⁸ Gogo BA Jan. 20, 2022 Ex Parte at 4.

⁹ 47 CFR Section 90.674(b).

Fourth, the evolving proposals call into question the assurances Gogo BA initially offered that it will not cause interference to public safety systems. In its waiver request, Gogo BA asserted that its new operations would not present any risk of harmful interference.¹⁰ Gogo BA's subsequent filings, which generally relate to how Gogo BA will address interference arising from its operations, seem to contradict that assumption. Fundamentally, the record lacks consensus of the risk of interference to public safety communications and the efficacy of measures to mitigate those risks. The Bureau should conduct an independent technical review of Gogo BA's proposal.

Given the potential for interference to public safety communications, uncertainty regarding the conditions being negotiated subsequent to Gogo BA's waiver request, and the failure of Gogo BA to demonstrate that a waiver is warranted,¹¹ Gogo BA's request would be better addressed through a notice of proposed rulemaking. This would allow the Commission to develop a more detailed record, fully examine the potential interference to public safety operations, and achieve consensus on appropriate measures for addressing interference. If the Commission does not agree that a rulemaking is appropriate, then it should only move forward with Gogo BA's request by adopting effective mitigation measures as outlined above, conducting an independent technical evaluation, and granting a limited waiver conditioned on Gogo BA conducting a trial in coordination with public safety licensees to evaluate the risk of interference and efficacy of mitigation procedures.

Respectfully submitted,

APCO INTERNATIONAL

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¹⁰ Waiver Request.

¹¹ Among other reasons, Gogo BA failed to demonstrate that grant of the waiver is in the public interest. Gogo BA states that its current system "has been sufficient to meet existing market demand," and that the waiver would serve the needs of a new system designed to meet anticipated demands. Waiver Request at 3. Unsubstantiated claims that the system will satisfy unspecified market needs at an unspecified future date cannot satisfy the burden to demonstrate that the waiver is in the public interest.