

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

In the Matter of	)	
	)	
Amendment of Certain Part 90 Subpart S	)	RM-11978
800 MHz Rules (809-816/854-861 MHz)	)	
To Promote More Efficient Use of Spectrum	)	
Within that Band Segment	)	

**OPPOSITION OF APCO INTERNATIONAL**

The Association of Public-Safety Communications Officials, International (APCO)<sup>1</sup> offers these comments in opposition to the Petition for Rulemaking submitted by the Enterprise Wireless Alliance (EWA).<sup>2</sup> EWA asks the Commission to initiate a rulemaking proceeding modifying Part 90 Subpart S rules to eliminate the provisions assigning frequencies within the 809-816/854-861 MHz portion of the band to specific “pools” of eligible entities.<sup>3</sup> EWA also asks the Commission to terminate the rule reserving Sprint-vacated spectrum for use by certain classes of entities.<sup>4</sup> APCO urges the Commission to deny the petition.<sup>5</sup>

As explained below, the Commission’s rules that ensure that public safety has its own pool for assigning frequencies in the 809-816/854-861 MHz band have been critical to meeting public safety’s needs and remain in the public interest. Initiating a rulemaking to further explore

---

<sup>1</sup> 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 40,000 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.

<sup>2</sup> Petition for Rulemaking of the Enterprise Wireless Alliance, Amendment of Certain Part 90 Subpart S 800 MHz Rules (809-816/854-861 MHz) to Promote More Efficient Use of Spectrum Within That Band, RM-11978 (filed Oct. 26, 2022, refiled Feb. 27, 2024) (“EWA Petition”).

<sup>3</sup> *Id.* at 1.

<sup>4</sup> *Id.* at 1-2.

<sup>5</sup> APCO’s opposition is focused on Section II of the petition. APCO might be supportive of EWA’s argument in Section III, which calls for releasing the Sprint-vacated spectrum, but that should be resubmitted as a new and separate petition.

this proposal would not change this reality and would not represent the best use of the Commission's resources.

I. Retaining a Separate Pool for Public Safety Spectrum Serves the Public Interest.

EWA is wrong to claim that retaining the pool allocations is unnecessary and contrary to sound spectrum management.<sup>6</sup> The Commission established pools for categories of like users to ensure that all classes of private land mobile eligibles will have an opportunity to maximize their operations and have the time necessary to apply for and implement their systems.<sup>7</sup> The fact that the Commission has not revisited its decision or phased out this framework is a testament to the public interest benefits it serves by ensuring public safety entities are able to obtain sufficient spectrum for their lifesaving missions.

Public safety entities are uniquely situated and require a dedicated pool of spectrum to ensure they are able to meet their spectrum needs. Spectrum is an essential tool public safety entities use to carry out their lifesaving missions. Emergency responders depend on spectrum to protect the public and property, and to call for help when their own lives are in danger. No other category of spectrum users relies on spectrum in this same way.

Public safety's spectrum needs are driven by factors that cannot be predicted and that shift over long periods of time. For example, growing populations that occur over decades-long timeframes can require additional sites and channels to achieve expanded capacity and/or coverage, which can have unique implications for public safety entities, such as first responders' requirements for reliable in-building coverage. When the nature of threats to the public changes, be it terrorism, cyber attack, or other risks, public safety agencies must adapt, including by

---

<sup>6</sup> EWA Petition at 4.

<sup>7</sup> See Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-821/851-866 MHz Band and to Adopt Rules and Regulations Which Govern Their Use, PR Docket No. 79-191, *Second Report and Order*, 90 FCC 2d 1281, at para. 49 (1982).

modifying their communications networks to meet new challenges. Public safety agencies must have the flexibility to access 800 MHz spectrum as emerging threats dictate.

Public safety entities are also distinct from all other users with regard to the financial resources at their disposal. Public safety communications networks are paid for with public funds. Agencies often face unpredictable and lengthy processes – subject to months- or years-long cycles – to obtain funding before beginning a months- or years-long process to procure and implement communications systems. Once deployed, public safety agencies are expected to keep such systems in place for many years if not several decades. These constraints and long timelines dictate how and when public safety agencies acquire additional spectrum. To put these timelines in perspective, some public safety LMR systems placed in service when the category pools were first created have not yet reached their end of life and remain operational today. Thus, to say that “all user categories have had ample time to apply for and implement 800 MHz systems”<sup>8</sup> oversimplifies reality and ignores the unique needs and circumstances of public safety agencies. Meeting public safety’s communication needs requires a long-term, ongoing commitment.

In contrast, non-public safety pool categories such as for-profit business radio and SMR have larger financial resources and the ability to act much more quickly. They use spectrum to carry out their profit-driven businesses and, particularly for SMR, consider spectrum as a commodity that has market value for sale to the highest bidders. They are driven not just to serve their business needs but also to extract value from their spectrum holdings in the marketplace. They thus have both the means and incentives to rapidly acquire spectrum.

---

<sup>8</sup> EWA Petition at 4.

Without the protection of category pools, public safety agencies will be forced to compete directly against the better-resourced and faster-moving for-profit entities, vastly increasing the likelihood that when public safety entities need spectrum, it's already occupied.

II. The Pools Do Not Prevent Efficient Use of Spectrum.

Protecting public safety entities' access to spectrum by retaining the category pools does not interfere with the Commission's goal of efficient use of spectrum. Non-public safety applicants can access public safety pool channels, provided that reasonable criteria are met.

a. Inter-Category Sharing

As EWA notes, inter-category sharing is available upon a showing that the applicant's "in-pool" frequencies have been depleted.<sup>9</sup> By APCO's estimate, the number of requests for inter-category sharing is a very small percentage of the total applications for the 800 MHz channels. Thus, to the extent that dropping the category pools would provide flexibility that is beneficial, it'd likely be minimal.

EWA argues that inter-category sharing imposes significant burdens: costs for applicants and administrative resources of Commission staff.<sup>10</sup> However, the burdens are minimal relative to the benefits to the public interest.

EWA notes that applicants seeking inter-category sharing can incur costs of both in-pool and out-of-pool frequency coordinators to identify an appropriate frequency. EWA argues that the second coordinator's analysis adds no value.<sup>11</sup> APCO disagrees. It is not uncommon for a frequency coordinator to catch a mistake in another coordinator's analysis, including technical errors and overlooked in-pool channels. Identifying and remedying these mistakes before an

---

<sup>9</sup> *Id.* at 6.

<sup>10</sup> *See id.* at 1.

<sup>11</sup> *Id.* at 5-6.

application is presented to the Commission protects spectrum users and spares the Commission the inefficiency of needing to resolve problems later on. Additionally, frequency coordinators can offer reduced fees for inter-category reviews, as APCO does through an agreement with another coordinator. Thus, EWA overlooks the value and overstates the costs of the Commission's current framework.

b. Access through Waiver

In some cases, entities are able to access spectrum in other pools through waiver. EWA argues that modifying the Commission's rules would be preferable to relying on waiver relief.<sup>12</sup> However, EWA glosses over important aspects of the waiver process. The waiver process enables the Commission to balance the need to protect public safety with opportunities for increasing spectrum use. For example, waivers can be conditioned upon a showing that the parties agree to "prioritize public safety agency use in the event network capacity proves inadequate."<sup>13</sup>

In arguing that the waiver process is cost- and time-prohibitive, EWA cites an example of a B/ILT user that sought access to public safety frequencies even though the applicant's in-pool frequencies had not been depleted.<sup>14</sup> However, the fact that the applicant opted to settle for the in-pool frequency, albeit at reduced power, rather than seek a waiver suggests that the current framework did not, in fact, prevent the applicant from securing frequencies that met its needs. To the contrary, the current framework likely directed the B/ILT applicant to a more efficient yet adequate use of spectrum while preserving dedicated public safety channels for future access.

---

<sup>12</sup> *Id.* at 2.

<sup>13</sup> *See* State of Michigan and Detroit Edison, Request for Waiver of Section 90.179(a) of the Commission's Rules; State of Michigan and ITC Transmission, Request for Waiver of Section 90.179(a) of the Commission's Rules, *Order*, 27 FCC Rcd 214 at para. 11 (PSHSB 2012).

<sup>14</sup> *See* EWA Petition at 6.

Accordingly, APCO urges the Commission to deny the EWA Petition, particularly with regard to the request to modify Part 90 Subpart S rules to eliminate specific pools in 809-816/854-861 MHz. EWA's argument in Section III, which calls for releasing the Sprint-vacated spectrum, addresses a different set of issues that would be better addressed if refiled as a standalone petition for rulemaking.

Respectfully submitted,

APCO INTERNATIONAL

By:

Jeffrey S. Cohen  
Chief Counsel  
(571) 312-4400 ext. 7005  
[cohenj@apcointl.org](mailto:cohenj@apcointl.org)

Mark S. Reddish  
Senior Counsel  
(571) 312-4400 ext. 7011  
[reddishm@apcointl.org](mailto:reddishm@apcointl.org)

Alison P. Venable  
Government Relations Counsel  
(571) 312-4400 ext. 7004  
[venablea@apcointl.org](mailto:venablea@apcointl.org)

May 6, 2024

### **Certificate of Service**

I, Mark Reddish, Senior Counsel at the Association of Public-Safety Communications Officials, International, Inc., hereby certify that on this 6<sup>th</sup> day of May, 2024, a copy of the foregoing Opposition was served by electronic mail<sup>1</sup> on the following:

Robin J. Cohen  
President/CEO  
Enterprise Wireless Alliance  
13221 Woodland Park Road  
Ste. 410  
Herndon, VA 20171  
(703) 528-5115  
[Robin.Cohen@enterprisewireless.org](mailto:Robin.Cohen@enterprisewireless.org)

Elizabeth Sachs  
Lukas, LaFuria, Lantor & Sachs, LLP  
8350 Broad Street  
Ste. 1450  
Tysons, VA 22102  
(703) 584-8678  
[lsachs@fcclaw.com](mailto:lsachs@fcclaw.com)

Counsel to Enterprise Wireless Alliance

/s/  
Mark S. Reddish  
Senior Counsel  
APCO International  
1426 Prince Street  
Alexandria, VA 22314  
[reddishm@apcointl.org](mailto:reddishm@apcointl.org)

---

<sup>1</sup> Pursuant to Section 1.47(d) of the Commission's rules, the party to be served may agree to accept service in an alternative form. *See* 47 C.F.R. § 1.47(d). EWA and Counsel to EWA have agreed to service by electronic mail of this Opposition.