

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

In the Matter of)
)
Gogo Business Aviation LLC Request for) WT Docket No. 21-282
Waiver of 47 CFR 22.857 Applicable to)
849-851 MHz and 894-896 MHz Bands)

PETITION FOR RECONSIDERATION OF APCO INTERNATIONAL

Pursuant to Section 1.106 of the Commission’s rules,¹ the Association of Public-Safety Communications Officials (APCO) International² seeks reconsideration of the Waiver Order adopted by the Chief, Mobility Division, Wireless Telecommunications Bureau in the above captioned proceeding.³ The Waiver Order grants, with certain conditions, the request of Gogo Business Aviation LLC (Gogo) to alter the power measurement technique for air-to-ground (A/G) operations in the 849-851 MHz and 894-896 MHz bands. In doing so, the Bureau did not fully and correctly address APCO’s positions, as raised in the record,⁴ regarding concerns of interference to incumbent public safety operations. APCO has been working collaboratively with the Wireless Telecommunications Bureau and the Public Safety and Homeland Security Bureau to address APCO’s concerns.⁵ However, as of this writing, outstanding issues remain. Therefore, to preserve APCO’s rights and timely comply with the Commission’s rules, APCO submits this Petition for Reconsideration of the Waiver Order.

¹ 47 C.F.R. § 1.106.

² 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.

³ Gogo Business Aviation LLC Request for Waiver of 47 CFR 22.857 Applicable to 849-851 MHz and 894-896 MHz Bands, WT Docket No. 21-282, *Order*, DA 22-657 (rel. June 21, 2022, Mobility Div.) (“Waiver Order”).

⁴ Ex Parte of APCO International, WT Docket No. 21-282 (filed June 7, 2022) (“APCO Ex Parte”).

⁵ See Ex Parte of APCO International, WT Docket No. 21-282 (filed July 5, 2022).

I. The Waiver Conditions Do Not Fully and Accurately Address Gogo's Responsibility to Detect, Identify, and Resolve Interference.

Gogo's proposal for modified operations can adversely affect incumbent public safety licensees. Accordingly, Gogo should be required to take all steps to ensure that it does not add to the effects of ghost interference or an increased noise floor, as it becomes increasingly difficult for public safety licensees (and Enforcement Bureau personnel, as the case may be) to identify interfering sources. Therefore, the Bureau should bolster the conditions in the Waiver Order concerning Gogo's responsibility to detect, identify, and resolve interference to public safety operations and correct the condition requiring testing in coordination with public safety agencies.

The Waiver Order requires Gogo to contact licensees in the 851-854 MHz band that are within a 10-mile radius of each Gogo base station by "email and certified mail (or telephonically, if preferred over certified mail)" of the date that Gogo intends to deploy its new system, the contact information for Gogo and the web address for submitting interference complaints, and Gogo's commitment to loan a spectrum analyzer with accompanying instructions.⁶ Consistent with APCO's prior advocacy,⁷ certified mail would not be especially helpful, and contact by telephone should be required, not an option. (It is also unclear whether the accommodation for a preference for telephonic contact over certified mail is meant to apply to Gogo's preference or public safety licensees'.) Further, the Waiver Order should also require that Gogo contact the relevant 800 MHz regional planning committees and all FCC-certified public safety frequency coordinators, as APCO had initially proposed,⁸ as these entities play important roles in managing public safety spectrum use and should be notified as well.

Additionally, the Waiver Order rejects APCO's request that Gogo employ a signal

⁶ Waiver Order at para. 14.

⁷ APCO Ex Parte at 2.

⁸ *Id.*

identifier and instead implements a condition that Gogo supply public safety licensees with spectrum analyzers.⁹ If interference occurs to public safety communications, public safety agencies should not have to devote resources to employing spectrum analyzers on behalf of Gogo. As APCO previously stated, “the rules require, [and] it is the responsibility of service providers like Gogo, not the victim public safety licensees, to ‘perform a timely analysis of the interference to identify the possible source.’”¹⁰

Finally, while the Waiver Order rightly requires Gogo to conduct field testing before authorizing full operations,¹¹ APCO did not offer, and does not agree, to be a party to this testing. APCO had asked that Gogo conduct a trial in coordination with public safety licensees to evaluate the risk of interference and efficacy of the proposed mitigation procedures.¹²

II. The Waiver Order Does Not Adequately Consider Interference Concerns Raised in the Record.

The Waiver Order generally accepts assertions from Gogo that its proposed operations will not cause interference to public safety licensees and states that the Division “[does] not believe that NPSTC, Motorola, or APCO have sufficiently demonstrated that harmful interference will likely occur.”¹³ It is not, however, the responsibility of incumbent public safety agencies to prove a likelihood of interference when new or modified operations are proposed. Instead, the burden to demonstrate that harmful interference will not occur rests with Gogo and should be verified by the Bureau.

The Waiver Order also implies that interference is not likely because Gogo’s operations would be limited to 260 base stations with around 80% located in remote areas.¹⁴ The potential

⁹ Waiver Order at paras. 13, 14.

¹⁰ APCO Ex Parte at 2.

¹¹ Waiver Order at paras. 6, 14.

¹² *See*, APCO Ex Parte at 3.

¹³ Waiver Order at para. 13.

¹⁴ *Id.* at para. 11.

threat to public safety operations from 260 base stations should not be easily dismissed, even in rural areas, where the agencies may have no alternate means of communicating. The Bureau should perform a thorough, independent analysis of the interference potential of Gogo's proposed operations.

III. The Criteria for Waiver Relief are Not Met and a Rulemaking is Necessary.

Gogo failed to demonstrate that grant of the waiver is in the public interest. Gogo seeks a waiver based on unsubstantiated claims that the new system will satisfy unspecified market needs at an unspecified future date.¹⁵ This is inadequate information for a public interest analysis, let alone a conclusion that the requirements for a waiver have been satisfied. Business purposes alone are not sufficient justification, particularly when evaluating whether granting the waiver would be in the public interest. Further, the Waiver Order did not take into account, and therefore did not balance, the potential impacts and harms to incumbent public safety operations.

Even if Gogo had met the requirements for waiver relief, given the potential for interference to public safety communications, Gogo's request would be better addressed through a Notice of Proposed Rulemaking. As the Waiver Order notes, Gogo is the sole licensee in the A/G radio service.¹⁶ Thus, granting relief on a waiver basis to Gogo is effectively changing the rules for the entire A/G radio service. Therefore, a Notice of Proposed Rulemaking is necessary. 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. The Waiver Order's condition requiring Gogo to file a Petition for Rulemaking "seeking rule changes that would permit more flexible use of the band" and requesting "any and all rule changes that may be necessary for Gogo's services to be provided

¹⁵ Request for Waiver of Gogo Business Aviation LLC, WT Docket No. 21-282, at 3 (filed May 26, 2021).

¹⁶ Waiver Order at para. 2.

over this spectrum”¹⁷ is inconsistent with permitting operations immediately that could harm public safety communications and conflict with future Commission rules.

Therefore, APCO requests that the Bureau issue an Order on Reconsideration in accordance with the issues raised above.

Respectfully submitted,

APCO INTERNATIONAL

By:

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

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

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

July 22, 2022

¹⁷ *Id.* at para. 14.