

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

In the Matter of)
)
Amendment of Part 90 of the Commission’s) WP Docket No. 07-100
Rules)

REPLY COMMENTS OF APCO INTERNATIONAL

The Association of Public-Safety Communications Officials (APCO) International, Inc.,¹ submits these reply comments to assist the Commission’s efforts to develop a framework for the 4.9 GHz band that will meet public safety’s needs. As the Commission affirmed, “the primary purpose of this band is to host public safety communications.”² Here, APCO responds to proposals that would violate that principle and in some cases fail to adhere to decisions the Commission has already made. As explained below: 1) public safety’s preemption rights must not be limited; 2) public safety users must be fully protected; 3) the band manager’s responsibilities should not be divided among multiple entities; and 4) public safety licensees should not be paid to forego use of the band or expected to pay for using it.

I. Public Safety’s Preemption Rights Must Not be Limited

Multiple commenters seek to limit public safety users’ preemption rights, by carving out scenarios in which public safety use should not preempt non-public safety use,³ imposing

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 39,000 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 Amendment of Part 90 of the Commission’s Rules, WP Docket No. 07-100, *Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking*, FCC 23-3 at para. 129 (2023) (“Order & FNPRM”).

³ See Comments of Utilities Technology Council, WP Docket No. 07-100, at 11-12 (filed Apr. 13, 2023) (suggesting that the Commission limit the types of public safety licensees who may request preemption and arguing that “there are certain non-public safety operations that should not be subject to preemption, and preemption should be limited to the extent necessary, in terms of channels, geographic area and duration.”); Comments of Federated Wireless, Inc., WP Docket No. 07-100, at 5 (filed Apr. 13, 2023) (“Federated Wireless Comments”) (“[P]ublic safety users

impractical procedural burdens on public safety users,⁴ or even granting non-public safety users co-primary status.⁵ As APCO explained in its comments, public safety’s primary status must not be curtailed,⁶ and preemption must be reliable and immediate by default.⁷ In rare situations, public safety operations in 4.9 GHz might involve sufficient warning to make manual preemption requests viable, such as unique equipment deployments for an anticipated weather event, but this is the exception to the rule.⁸ Limiting public safety users’ preemption rights would violate the Commission’s decision to allow non-public safety users to operate in the band “only on a secondary basis.”⁹

II. Public Safety Users Must be Fully Protected

Several commenters offer proposals to increase use of the band without detailing an effective approach to protecting incumbent public safety users from harmful interference.¹⁰ While integrating the 4.9 GHz band into a single network would enable priority and preemption of 4.9 GHz devices within that network, it’s unclear how such an approach would protect current and future public safety use of the band. Similarly, a spectrum access system such as the automated frequency coordination system envisioned for the 6 GHz band – which the Commission declined to adopt as a blanket solution in the Order¹¹ – is not a panacea. The AFC model has not been demonstrated as effective for preventing interference to fixed operations, and

should have the authority to preempt non-public safety users only in the event of life-threatening or national emergencies or when permitted to do so by order of the President or other designated federal entity.”).

⁴ See Comments of WISPA, WP Docket No. 07-100, at 15 (filed Apr. 13, 2023) (suggesting that preemption requests include a demonstrated technical conflict with the non-public safety operations).

⁵ Comments of Edison Electric Institute, WP Docket No. 07-100, at 9 (filed Apr. 13, 2023).

⁶ Comments of APCO International, WP Docket No. 07-100, at 15 (filed Apr. 13, 2023) (“APCO Comments”).

⁷ *Id.* at 16.

⁸ *Id.*

⁹ Order at para. 52.

¹⁰ See, e.g., Comments of Public Safety Spectrum Alliance, WP Docket No. 07-100, at 5 (filed Apr. 13, 2023) (arguing that 4.9 GHz should be integrated into a single, nationwide core to manage priority and preemption, but without detailing how incumbent and future public safety licensees could be protected unless existing equipment and devices are replaced and centrally managed).

¹¹ Order at para. 43.

mobile operations substantially complicate interference prevention whether the users are public safety, non-public safety, or both. APCO again cautions the Commission against prescribing a one-size-fits-all approach to ensuring public safety users remain free from interference from non-public safety users.¹² Rather, the Commission must ensure that the band manager has the authority and flexibility to determine the appropriate mechanism(s) (which may include an AFC-like system, network-based preemption, and other solutions) for protecting public safety communications based on the nature of public safety and non-public safety use.

III. The Band Manager’s Responsibilities Should Not be Divided Among Multiple Entities

Several commenters express support for a multi-stakeholder approach to providing the band manager’s functions.¹³ The Commission must reject these approaches. The Commission has already decided to “centraliz[e] management in a single Band Manager”¹⁴ and “assign the frequency coordination function solely to the Band Manager.”¹⁵ Dividing the band manager’s responsibilities among multiple organizations or designating a multi-stakeholder entity to serve as band manager would increase the likelihood of conflicts of interest and reduce the band manager’s ability to act quickly, efficiently, and decisively. This would result in higher costs for the band manager without offering a clear opportunity to improve the band manager’s service to public safety users or its ability to drive innovation and use of the band.

¹² APCO Comments at 15.

¹³ See, e.g. Joint Comments of American Petroleum Institute, National Sheriffs’ Association et al., WP Docket No. 07-100, at 5-6 (filed Apr. 13, 2023) (referencing Joint *Ex Parte* Letter of American Petroleum Institute, National Sheriffs’ Association et al., WP Docket No. 07-100, at 2 (filed Aug. 25, 2022) (proposing to form a not-for-profit under direction of representatives of the signatory entities)); see also Comments of American Association of State Highway and Transportation Officials, WP Docket No. 07-100, at 1-2 (filed Apr. 10, 2023) (recommending that the four public safety frequency coordinators provide the band manager functions).

¹⁴ Order at para. 16.

¹⁵ *Id.* at para. 38.

IV. Public Safety Licensees Should Not be Paid to Reduce Use of the Band or Expected to Pay for Using It

Commenters have not resolved questions regarding how to manage revenue from leases, an issue with critical implications for avoiding incentives to infringe upon public safety use and the viability of the band manager framework.¹⁶ APCO remains particularly concerned with any approach that entails compensating licensees for leasing their spectrum to non-public safety users. Permitting licensees to monetize their spectrum would create financial incentives for public safety agencies or state or local governments holding the license to prioritize commercial use over public safety use. This would create a fragmented approach that would undermine the Commission's goal to create a consistent, nationwide framework for the 4.9 GHz band.

Finally, the Commission should reject proposals that would require public safety licensees to *pay* to use 4.9 GHz.¹⁷ This was not contemplated in the FNPRM. Requiring public safety entities to pay to license spectrum would represent a dramatic shift in spectrum policy and set a dangerous precedent for public safety communications.

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

¹⁶ See APCO Comments at 6-7, 20-21.

¹⁷ See Federated Wireless Comments at 17 (“[T]he Band Manager should be partially compensated via a mechanism that includes payments made by both public safety licensees and non-public safety lessees”).

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

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