

**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 C.F.R. § 22.867 Applicable to the )  
849-851 MHz and 894-896 MHz Bands )

**APCO INTERNATIONAL REPLY TO OPPOSITION TO PETITION FOR  
RECONSIDERATION**

The Association of Public-Safety Communications Officials (APCO) International, Inc.<sup>1</sup> offers the following reply to Gogo Business Aviation LLC’s (“Gogo BA”) Opposition<sup>2</sup> to APCO’s Petition for Reconsideration<sup>3</sup> in the above-captioned proceeding. The Opposition includes several concessions from Gogo BA, a positive development given that APCO’s Petition for Reconsideration was filed in an attempt to preserve options for resolving discussions with Commission staff and Gogo BA that were ongoing immediately prior to and after the Order conditionally granted the waiver request. APCO remains open to working with the Commission and Gogo BA to chart a constructive path forward consistent with addressing the unresolved issues described below.

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<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 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.

<sup>2</sup> Opposition of Gogo Business Aviation LLC to Petition for Reconsideration of APCO International, WT Docket No. 21-282 (filed Aug. 1, 2022) (“Opposition”).

<sup>3</sup> Petition for Reconsideration of APCO International, WT Docket No. 21-282 (filed July 22, 2022) (“APCO Petition”).

I. APCO Welcomes Additional Concessions from Gogo BA, but Substantive Issues with the Order Remain Unaddressed.

In the Opposition, Gogo BA offers several concessions in an attempt to address public safety concerns and preferences described in the Petition for Reconsideration.<sup>4</sup> APCO appreciates these offers and Gogo BA's efforts throughout this proceeding to engage public safety stakeholders in an open discussion of measures for mitigating the potential impacts of its new technology deployment. Nonetheless, broader issues with the Order must still be addressed.

The Opposition does not dispel APCO's concern that the Bureau lacked an adequate technical analysis of potential interference to public safety systems. To the contrary, the Opposition cites precedent that highlights the importance of technical analyses for reaching the conclusion that interference to public safety licensees is unlikely.<sup>5</sup> The Opposition points to situations in which waivers were granted for revised power limits as support for the Order granted here. Yet in those cases, the Bureau had received technical studies<sup>6</sup> examining the risk of interference to public safety operations and, in at least one case, the results of interference testing

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<sup>4</sup> Opposition at 9 (“[I]f APCO or others provide Gogo BA with contact information for the regional planning committees and public safety frequency coordinators, Gogo BA would provide notification to them as well.”); *id.* at 10 (“[I]f a public safety licensee would prefer to receive telephonic notification rather than certified mail, it may notify Gogo BA of that preference, and Gogo BA would abide by that request.”).

<sup>5</sup> *Id.* at 12. Gogo BA cites to four waiver requests the Bureau granted to permit AT&T to use the PSD model at various locations in Florida, Vermont, Missouri, and Kansas. In each of these cases the Bureau cites reliance on technical studies submitted in conjunction with the waiver requests as the basis for determining interference was unlikely. *See* Letter to Jeanine Poltronieri, Esq., and William Roughton, Jr., Esq., from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, WT Docket No. 13-202, DA 14-1419 at 5 (rel. Sept. 30, 2014) (“Florida Waiver”); Letter to Jeanine Poltronieri, Esq., and William Roughton, Jr., Esq., from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, WT Docket No. 14-107, DA 14-1418 at 5 (rel. Sept. 30, 2014); Letter to Robert Vitanza, Esq., from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, WT Docket No. 15-86, DA 15-1122 at 4 (rel. Oct. 2, 2015); Letter to Robert Vitanza, Esq., from Roger S. Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, WT Docket No. 15-130, DA 15-1482 at 4 (rel. Dec. 22, 2015).

<sup>6</sup> The technical studies provided analyzed how the requested change in network operations would impact public safety receivers, including operations in rural areas. In contrast, Gogo BA's rationale for concluding interference will not occur relies heavily on its relatively limited number of base stations and the fact that they are mostly located in rural areas.

conducted with public safety entities.<sup>7</sup> Here, the Bureau did not have a technical study or the results from real world testing to review. The Bureau must do more than rely on the assumptions of Gogo BA, which were largely based on inferences from the rules for other bands. The Opposition fails to explain why, to ensure that Gogo BA's new operations will not lead to harmful interference, it would be inappropriate for the Order to have relied upon a detailed technical analysis and results from real world testing.

APCO appreciates that Gogo BA's Opposition clearly states its willingness "to work with any public safety licensee operating within a 10-mile radius of a Gogo BA base station that expresses interest in participating in field testing."<sup>8</sup> This is a positive step toward addressing public safety concerns, as the Order requires Gogo BA to conduct field testing in advance of full deployment of its new technology,<sup>9</sup> but this does not cure the Order's error of conditioning this requirement upon APCO's request and participation.

In resolving the Petition for Reconsideration, the Bureau should clarify that Gogo BA must conduct field testing in advance of full deployment, in coordination with public safety licensees, and submit the results of such testing as well as the test plan utilized for further review by the public and approval by the Commission. The test plan should take into account public safety licensees' limited resources and potential difficulty providing technicians to engage in testing. Gogo BA should bear responsibility for any associated costs.

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<sup>7</sup> See Florida Waiver at 6 (referencing testing conducted pursuant to experimental special temporary authority, "We find it most persuasive in this case that AT&T and several public safety entities were able to conduct successful tests demonstrating a lack of interference to public safety systems. . .").

<sup>8</sup> Opposition at 10.

<sup>9</sup> 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 at paras. 6, 14 (rel. June 21, 2022, Mobility Div.).

II. The Opposition Fails to Justify Why a Rulemaking Would be Inappropriate to Meet its Needs.

The Opposition claims that a waiver is preferred to increase efficiency, but Gogo BA has not shown that undergoing a rulemaking would adversely impact its business operations. Indeed, it likely cannot as its waiver request conceded that its current systems were capable of meeting its needs, and the proposed change in operations was desired to meet an unspecified level of demand at an unspecified point in the future.<sup>10</sup> Here again, the allegedly similar waivers cited in the Opposition highlight the difference in the instant case. For AT&T, the four waiver requests were submitted after a rulemaking with public comment was under review. Fundamentally, and as Gogo BA seems to agree, it is the rulemaking process that would enable the Bureau to fully examine the potential interference to public safety operations.<sup>11</sup> The Commission's duty to evaluate the public interest cannot ignore impacts on public safety operations, and as a default, the balance should favor protecting public safety. For-profit licensees should expect to account for the time needed for rulemaking proceedings to fully examine the potential interference to public safety operations and be required to make a much stronger demonstration of the public interest when seeking to bypass a rulemaking via a waiver.

Respectfully submitted,

APCO INTERNATIONAL

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<sup>10</sup> See APCO Petition at 4 (citing Request for Waiver of Gogo Business Aviation LLC, WT Docket No. 21-282 at 3 (filed May 26, 2021) (explaining that Gogo's current operations "ha[ve] been sufficient to meet existing market demand," and that the waiver would serve the needs of a new system designed to meet anticipated demands)). Notably, the Opposition does not refute this point.

<sup>11</sup> Opposition at 13 (quoting APCO Petition at 4).

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August 5, 2022

CERTIFICATE OF SERVICE

I, Jeffrey Cohen, hereby certify that on this 5<sup>th</sup> day of August, 2022, a copy of the foregoing Reply to Opposition was served by electronic mail<sup>1</sup> on the following:

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<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). Counsel for Gogo Business Aviation LLC has agreed to service by electronic mail of this Reply.