

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

In the Matter of)	
)	
Waiver Request Filed by the San Francisco Bay Area)	File No. 0011761238
Rapid Transit District (BART) for Operation in the)	DA 26-145
4.9 GHz Band)	

REPLY COMMENTS OF APCO INTERNATIONAL

I. INTRODUCTION

The Association of Public-Safety Communications Officials, International (APCO),¹ submits these reply comments on the waiver request filed by the San Francisco Bay Area Rapid Transit District (BART) for operation in the 4.9 GHz band, in response to the Public Notice issued by the Federal Communications Commission’s Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau (collectively, Bureaus).² As an association with significant experience in public safety licensing, spectrum management, and frequency coordination, including in the 4.9 GHz band, APCO appreciates the opportunity to provide its perspective on BART’s waiver request. As discussed below, grant of BART’s waiver request would be inconsistent with the Commission’s decision to adopt a coordinated, nationwide approach to the 4.9 GHz band in order to ensure the 4.9 GHz band is “efficiently and intensely utilized.”³ Accordingly, APCO recommends that the Bureaus set this request aside pending assessment by the 4.9 GHz Band Manager, once selected, or – should the Bureaus

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 45,000 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 *Comment Requested on Waiver Request Filed by the San Francisco Bay Area Rapid Transit District (BART) for Operation in the 4.9 GHz Band*, ULS File No. 0011761238, Public Notice, DA 26-145 (rel. Feb. 12, 2026).

³ *See Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Eighth Report and Order, 39 FCC Rcd 12032 at para. 1 (2024) (“Eighth Report and Order”).

determine that immediate action is necessary in the public interest – offer BART more narrowly tailored relief consistent with a more granular, site-based licensing approach.

II. DISCUSSION

While APCO appreciates BART’s efforts to improve public safety with its Communications Based Train Control (CBTC) network, the requested relief is unnecessarily broad and inconsistent with the Commission’s current framework for the 4.9 GHz band. In seeking a waiver of the 4.9 GHz application freeze, BART seeks to deploy “wayside stations at 1,500 additional fixed locations along its transit route” with a “2 kilometer exclusion zone of operations adjacent to the transit routes.”⁴ In addition, BART seeks a waiver of section 90.1207(c) to permit “the future operation and modification” of these additional fixed locations “within BART’s geographic area of operation without additional future license filings.”⁵ In essence, BART is asking the Commission to untimely reconsider the framework it adopted in 2023’s *Seventh Report and Order* and preserve the very licensing framework that the Commission determined was a contributing factor to the band’s underutilization.⁶ In addition, BART’s proposed 2-kilometer exclusion zone asks the Commission to further depart from 4.9 GHz precedent. Pursuant to the Commission’s rules, the 4.9 GHz band is a shared-use band, and “no licensee has a right to exclusive use, or interference free, access to the band.”⁷

Granting BART greater protections than it had originally – and, indeed, greater protection and priority than that afforded all other 4.9 GHz licensees – would be inequitable and contrary to the public interest. Further, granting BART’s broad waiver request would introduce regulatory uncertainty with

⁴ San Francisco Bay Area Rapid Transit District Amendment to Request for Waiver, ULS File No. 0011761238 at 1 (filed Sep. 22, 2025) (“Waiver Amendment”).

⁵ 47 C.F.R. § 90.1207(c); San Francisco Bay Area Rapid Transit District Request for Waiver, ULS File No. 0011761238 at 1 (filed Jul. 8, 2025).

⁶ *See 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, 38 FCC Rcd 704 (2023) (adopting rules to establish a single, nationwide framework for the 4.9 GHz band, including requiring a nationwide Band Manager to, among other things, coordinate operations in the band); *see also id.* at para. 17 (noting the Commission’s intent behind adopting this framework was to “move the band away from being underutilized”).

⁷ 47 C.F.R. § 90.1209(a); Eighth Report and Order at para. 11 (citing 47 C.F.R. § 90.1209(a)).

respect to the Commission’s 4.9 GHz framework, inviting similar requests from other 4.9 GHz incumbents who may have planned projects that remain pending implementation of the new 4.9 GHz framework. Addressing such requests individually through the waiver process risks creating piecemeal rule changes and inconsistency across the band, frustrating the nationwide approach the Commission has adopted to promote efficient and effective use of the 4.9 GHz band. Introducing such uncertainty is particularly problematic now, at this nascent stage where the foundation to optimize use of the 4.9 GHz band, such as selection of the Band Manager, has yet to be established.

Recognizing, however, BART’s interests in “support[ing] its public safety and transit operations,”⁸ APCO would support consideration of more narrowly tailored relief that would allow BART to move forward with its CBTC system while remaining consistent with the Commission’s 4.9 GHz framework. For example, BART could supplement its request with more detailed, site-based technical information regarding its planned deployments, which would better align with the Commission’s transition to a site-based licensing framework and facilitate more effective coordination. Providing such granular data would allow for a clearer understanding of BART’s operational needs and potential interactions with other users in the band.

In addition, APCO would urge the Commission to refrain from adopting an exclusion zone. While BART justifies its request for an exclusion zone based on the potential for “dire public safety consequences” should there be interference to its operations,⁹ APCO notes that BART intentionally established its CBTC system using a shared spectrum band in the first instance, so the need to account for other incumbent uses is not a new circumstance. In fact, BART’s interference concerns would be best addressed through coordination with other incumbents in the area.¹⁰ The Band Manager’s primary responsibility will be to protect incumbents – including BART – from interference and would thus work

⁸ Waiver Amendment at 1.

⁹ *Id.* at 2.

¹⁰ Indeed, there are 139 incumbent licensees operating in the five counties included in BART’s request, underscoring the need for a coordinated, site-based approach rather than the broad, geographic relief BART seeks.

with BART to implement its operations in a manner consistent with shared use. Granting broad relief to BART at this time would preempt that process and potentially undermine both the broader coordination framework and BART's own interference protections.

III. CONCLUSION

In sum, the relief BART seeks through its waiver request is inconsistent with the Commission's framework for the 4.9 GHz band and risks undermining ongoing efforts to promote efficient, coordinated use of the spectrum. Instead, APCO urges the Commission to set aside consideration of BART's request for assessment by the Band Manager, once selected. Alternatively, the Commission could consider granting BART more narrowly tailored relief to proceed with its CBTC deployment while remaining consistent with the Commission's overarching policy objectives for the 4.9 GHz band.

Respectfully submitted,

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