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Re: Notice of *Ex Parte*, WT Docket No. 21-282

On June 30, the undersigned, along with Farokh Latif, Mark Reddish, and Alison Venable of APCO International, met virtually with staff from the Wireless Telecommunications Bureau (WTB) and the Public Safety and Homeland Security Bureau (full list below).

We discussed the WTB Mobility Division Order released June 21, 2022,¹ and APCO's *Ex Parte* Letter filed June 7, 2022,² concerning the above-captioned proceeding.

We noted that the Order does not fully and correctly address APCO's positions as expressed in its June 7 *Ex Parte*. This includes APCO's general position that when it comes to new or modified services proposed in or near incumbent public safety bands, the needs of incumbent public safety operations require special attention.

Specifically, APCO addressed the following topics:

Grant Conditions

The Bureau should bolster the conditions of the waiver concerning Gogo BA's responsibility to detect, identify, and resolve interference to public safety operations. Specifically, APCO had proposed that Gogo BA contact licensees via email and telephonically, and notify the relevant 800 MHz regional planning committee and all FCC-certified public safety frequency coordinators, clearly describing operations, timing, and appropriate contact information.³ The Order instead requires notification by "email and certified mail (or telephonically, if preferred over certified mail)" and does not address contacting the regional planning committee and public safety

¹ 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.) ("*Order*").

² *Ex Parte* of APCO International, WT Docket No. 21-282 (filed June 7, 2022) ("APCO *Ex Parte*").

³ *Id.* at 2.

coordinators.⁴ 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 BA's preference or public safety licensees'.) Further, regional planning committees and public safety coordinators play important roles in managing public safety spectrum use and should be notified as well.

We also addressed the Order's acceptance of Gogo BA's arguments against employing a signal identifier, and the utility of Gogo BA's offer to provide public safety licensees with spectrum analyzers. As the spectrum environment becomes more complex, companies proposing new or modified operations that can adversely affect incumbent public safety licensees should be required to take any and all steps to ensure that they do 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. Thus, signal identifiers can play an important role in enhancing opportunities to identify and eliminate sources of interference. Further, if interference occurs to public safety communications, public safety agencies should not have to devote resources to employing spectrum analyzers on behalf of Gogo BA. As the APCO Ex Parte stated, "the rules require, [and] it is the responsibility of service providers like Gogo BA, not the victim public safety licensees, to 'perform a timely analysis of the interference to identify the possible source.'"⁵

Interference Analysis

The Bureau should perform a thorough, independent analysis of the interference potential of Gogo's proposed operations. In this regard, we do not agree with the Order's implication that APCO or public safety licensees should have to "demonstrate[] that harmful interference will likely occur,"⁶ or that interference is unlikely because Gogo BA's operations would be limited to 260 base stations with around 80% located in remote or rural areas.⁷ The burden to demonstrate that harmful interference will not occur rests with Gogo BA, and should be verified by the Bureau. The potential 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.

Testing in Advance

The Order rightly requires Gogo BA to conduct field testing before authorizing full operations.⁸ However, APCO did not offer, and does not agree, to be a party to this testing. APCO instead asked that Gogo BA conduct a trial in coordination with public safety licensees to evaluate the risk of interference and efficacy of mitigation procedures.⁹

Rulemaking is More Appropriate

The Gogo BA request should be addressed through a Commission rulemaking proceeding rather than by waiver. As the Order notes, Gogo BA is the sole licensee in the air to ground radio service.¹⁰ Thus, granting relief on a waiver basis to Gogo BA is effectively changing the rules for the entire air to ground service. We also inquired of the interplay between the Division's Order granting waiver relief and its concurrent requirement that Gogo

⁴ *Order* at para. 6, 14.

⁵ APCO Ex Parte at 2 (citing 47 CFR § 90.674(b)).

⁶ *See, Order* at para. 13.

⁷ *See, id.* at para. 11.

⁸ *Id.* at paras. 6, 14.

⁹ *See, APCO Ex Parte* at 3.

¹⁰ *Order* at para. 2.

BA 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 over this spectrum.”¹¹ Specifically, we asked how the Division could grant a waiver conditioned on the filing of a Petition for Rulemaking, and thus presume that the outcome of the rulemaking would be consistent with the grant.

Criteria for Waiver Relief Not Met

APCO reiterated the point from its Ex Parte that, even if proceeding by waiver rather than by rulemaking is appropriate, Gogo BA did not demonstrate that a waiver was warranted.¹² Gogo BA’s waiver request indicated that its current system has been sufficient, and sought waiver based on unsubstantiated claims that the new system will satisfy unspecified market needs at an unspecified future date.¹³ This is inadequate information for a public interest analysis, let alone a conclusion that the requirements for a waiver have been satisfied. We noted that business purposes alone are not sufficient justification, particularly when evaluating whether granting the waiver would be in the public interest. Further, we offered that the Order did not take into account, and therefore did not balance, the potential impacts and harms to incumbent public safety operations.

In sum, we appreciated the opportunity to explain our positions.

Sincerely,

APCO INTERNATIONAL

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¹¹ *Id.* at para. 14.

¹² APCO Ex Parte at 3, n.11.

¹³ Request for Waiver of Gogo Business Aviation LLC, WT Docket No. 21-282, at 3 (filed May 26, 2021).