

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of)	
)	
American Electric Power Service Corporation)	FCC File No. 0007352620
Request for Waiver Regarding 800 MHz Frequencies)	
Reserved for Public Safety Licensees)	

REPLY COMMENTS OF APCO

The Association of Public-Safety Communications Officials-International, Inc. (APCO) hereby submits the following reply comments in response to the Commission’s Public Notice concerning the above-captioned proceeding.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 26,000 members, primarily consisting of state and local government employees who manage and operate public safety communications systems – including 9-1-1 Public Safety Answering Points (PSAPs), radio networks, and information technology – for law enforcement, fire, emergency medical, and other public safety agencies. APCO appears regularly before the Commission on a wide range of public safety communications issues and is the largest FCC-certified frequency coordinator for Part 90 Public Safety Pool channels.

American Electric Power Service Corporation (AEP) requests waiver of sections 90.617 and 90.621 of the Commission’s rules to license seven Business/Industrial/Land Transportation (B/ILT) Category channels in Sugarcreek, Ohio. AEP seeks waiver of section 90.617 because the requested

¹ Wireless Telecommunications Bureau Seeks Comment on American Electric Power Service Corporation Request for Waiver Regarding 800 MHz Frequencies Reserved for Public Safety Licensees, *Public Notice*, File No. 0007352620, DA 16-1073 (rel. Sept. 22, 2016).

channels are available exclusively for licensing to public safety eligible entities until February 10, 2018, three years after the channels were made available for licensing.²

AEP's application is defective and must be dismissed because its frequency coordinator, Enterprise Wireless Alliance (EWA), failed to obtain concurrence from APCO and the other applicable certified coordinators, as required by section 90.175.

Even if the Commission were to nonetheless consider AEP's waiver request on the merits, it must deny the waiver request because AEP fails to satisfy the Commission's waiver criteria under section 1.925.

I. AEP's Application is Defective and Must be Dismissed

The channels AEP seeks to obtain are available exclusively for licensing to public safety eligible entities until February 9, 2018. By seeking to apply to use these channels for B/ILT purposes, AEP is required under section 90.175 to obtain concurrence from other applicable certified coordinators – in this case, public safety coordinators. APCO did not receive a request for concurrence for this application and understands that no other public safety coordinators did either.³ Accordingly, AEP's application must be dismissed for failing to comply with section 90.175.

II. AEP Fails to Meet the Commission's Waiver Criteria

Even if AEP's application was not defective, the Commission should deny its waiver request. Under the first prong of section 1.925(b)(3), the Commission may grant a request for waiver if it is shown that: "The underlying purpose of the rule(s) would not be served or would be frustrated by

² See 47 CFR § 90.617(g)(1); Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions and the Availability of Additional Sprint Vacated Channels, *Public Notice*, 29 FCC Rcd 16290, 16294-95 (PSHSB/WTB 2014). AEP seeks waiver of section 90.621 because the proposed operations are short-spaced to Sprint vacated licenses. APCO's Reply Comments are limited to the waiver request of section 90.617.

³ APCO also does not believe EWA provided the notification to APCO required under the vacated spectrum MOU. See Letter from William Brownlow, Chairman, Public Safety Communications Council, to David L Furth, Acting Chief, Public Safety and Homeland Security Bureau (dated June 19, 2009) (attaching Vacated Spectrum Memorandum of Agreement).

application to the instant case, and that a grant of the requested waiver would be in the public interest.” The underlying purpose for the rule granting public safety a 3-year exclusivity period is to accommodate the generally slow budgetary process of public safety agencies.⁴ The budgetary problems facing public safety agencies have not changed, and thus, the underlying purpose for this rule continues to be very important to public safety agencies. Granting the waiver would negate this protection to the detriment of public safety.

Further, the public interest favors denial of the waiver request. The primary mission of public safety eligibles is to protect and save lives and property, with first responders often putting their own lives at risk. Public safety eligibles must have access to spectrum free from harmful interference and sufficient time to license additional channels to carry out their missions. The policies and rules behind the exclusive opportunity afforded to public safety eligibles as vacated spectrum becomes available support these public interest objectives.

AEP also fails to satisfy the second prong of section 1.925(b)(3): “In view of unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.” AEP has failed to demonstrate that its situation is unique or unusual, or that application of the rules would be inequitable. In its very brief justification, AEP is indistinguishable from any other users seeking additional spectrum. AEP simply states it needs more spectrum without describing anything unique or unusual about its situation, as the waiver criteria require. As noted above, the Commission established the exclusivity window to accommodate public safety’s unique needs for obtaining additional spectrum. Thus, by also simply stating that public safety had not yet applied for frequencies in the area, AEP proves

⁴ Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, para 152 (“We believe providing these windows of limited eligibility meets our spectrum management goals by accommodating the generally slow budgetary process of public safety agencies and the express needs of CII licensees, before making the spectrum generally available to other 800 MHz non-cellular licensees, i.e. B/ILT and non-cellular SMR licensees.”).

nothing, and makes no case in support of its requested waiver relief. Preserving public safety's ability to acquire additional spectrum is in the public interest.⁵

Respectfully submitted,

APCO INTERNATIONAL

By: /s/

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November 8, 2016

⁵ In its Comments, EWA concedes that public safety applicants would not be precluded from applying for frequencies that AEP requests. EWA Comments at 2. AEP does not otherwise add any further justification in support of the waiver request. And while the subject matter of this proceeding is specific to the particular application and waiver request submitted by AEP, EWA attempts to argue in favor of a general rulemaking change to the exclusivity period afforded by the Commission to public safety. The Bureau should reject EWA's arguments as out of scope and irrelevant to this particular application and waiver matter.



American Association of State Highway and Transportation Officials
Association of Public-Safety Communications Officials, International
Forestry Conservation Communications Association
International Municipal Signal Association

122 Baltimore Street, Gettysburg, Pennsylvania 17325

June 19, 2009

Mr. David L. Furth, Acting Chief
Public Safety and Homeland Security Bureau
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Via: Electronic Mail

Dear Mr. Furth:

The PSCC in conjunction with the Enterprise Wireless Association, PCIA - The Wireless Infrastructure Association, and the Utilities Telecommunications Council has resolved the issues and concerns which arose over earlier versions of the Memorandum of Agreement for processing vacated spectrum applications. As a result, we offer the enclosed.

Each of the seven FACs desiring to participate in accepting and processing applications for vacated spectrum have reviewed the comments provided and believe this satisfies the concerns raised over the technical parameters to be followed. The Memorandum remains structured to allow other FACs that may desire to participate in processing vacated spectrum applications the opportunity to ratify the agreement.

As a group we sincerely appreciate the Commission's forbearance in allowing us the necessary time to forge this revised agreement. Should the Commission have any additional questions or require further clarification please do not hesitate to contact me.

Sincerely,

A handwritten signature in black ink, appearing to read "William Brownlow", is written over a light blue horizontal line.

William Brownlow, Chairman
Public Safety Communications Council

Enclosure: Vacated Spectrum Memorandum of Agreement

Copies: Farokh Latif, APCO
Mark Crosby, EWA
Michael Hutton, FCCA
Richard Kinsman, IMSA
Connie Durscak, PCIA
Jill Lyon, UTC

Memorandum of Agreement

This Memorandum of Agreement ("MoA") is entered into by and among the undersigned parties as of the latest date at signatures below. The purpose of this MoA is to set forth the agreed application notification and mutual exclusivity resolution procedures for 800 MHz spectrum ("Spectrum") vacated by Sprint/Nextel Communications in the wake of the Federal Communications Commission's ("FCC" "Commission") mandated rebanding efforts.

As all of the frequency applicants are public safety entities, frequency advisory committees ("FACs") desire to create a process that minimizes mutually exclusive situations and ensures that all public safety entities receive needed frequencies to the extent possible. All frequency coordinators hereby agree to the following procedures to govern future spectrum application notifications.

1. The procedures announced by the FCC in Public Notice DA 08-2810 (http://hraunfoss.fcc.gov/edocs_public/attachmatch/DA-08-2810A1.pdf) shall govern all applications for vacated spectrum unless so modified by further Public Notice.
2. The following changes and clarifications to the initial procedure shall be implemented, effective of the date of this agreement:

NOTIFICATION:

Applications from Vacated Spectrum must be notified to all eligible coordinators a minimum of five business days before filing with the FCC. All notified applications will be listed in a generally distributed email no later than 11:59 p.m. Eastern Time on the day of notification, so that electronic receipt may be verified the following morning. Filing of Vacated Spectrum applications to the FCC may not occur before close of business of the sixth business day (federal holidays are not counted as a business day), counting from the day of notification. If the FCC specifies a longer period in a Public Notice, that period controls the FCC filing date.

STATUS CHANGES:

Each application must be manually placed in "notify queue" status individually, not batch-filed. The status change will produce a date/time stamp that will be shared via the Z1 record with all participating 800 MHz Vacated Spectrum Coordinators.

APPLICATION REQUIREMENTS:

A complete application for 800 MHz Vacated Spectrum consists of:

- Completed FCC Form 601 meeting all ULS requirements;
- Attachments as needed to show proposed contour remains within vacated Sprint/Nextel EA; passing DHAAT studies against incumbent licensees and notified vacated spectrum applications pending before coordinators and FCC; Letters of

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Concurrence meeting 90.621(b)(5) requirements; Coordinator Certification Statement

- Attachments must be maintained for 60 days after license grant

Incomplete applications must be refiled and will not be afforded protection of requested frequencies.

DETERMINATION OF ORDER OF PRECEDENCE:

Procedure:

Date/time stamp submitted in the Z1 record determines the order of priority of applications in the event a mutually exclusive situation arises. A mutually exclusive situation arises when two or more applications are submitted on the same day for the same channel and are for overlapping geographic areas. Given that all applicants for this Vacated Spectrum are public safety agencies, all coordinators will endeavor to work together to resolve these issues in a manner that is beneficial to all involved public safety applicants. To accomplish this in a routine and predictable manner, the following procedure shall apply unless there are other mutually acceptable agreements by all of the other coordinators directly involved in resolving mutually exclusive conflicts.

In the event two or more applications contain mutually exclusive frequency requests, all applicants for affected channels will sequentially choose either one (1) of the mutually exclusive channels for which they applied or a channel from the unclaimed pool of Vacated Spectrum in order of date/time stamp priority until the earlier of such time as (i) all applicants have received the number of channels they requested and/or (ii) the unclaimed pool of Vacated Spectrum is exhausted. Requested channels that have been applied for that are not mutually exclusive will be excluded from this process. An applicant will be allowed to receive only the number of channels for which it originally applied.

The first-in-time FAC is responsible for organizing a conference call of affected parties and providing a conference bridge to resolve the mutually exclusive applications.

LIMITATION ON CHANNELS:

No applicant may apply for more than the number of channels per fixed site as noted in the Public Notice of 12/29/08. A single coordinator may not notify applications on behalf of differing applicants that are mutually exclusive to each other. Coordinators must resolve mutually exclusive situations among their applicants prior to applications being placed into Notify status.

OBJECTIONS:

It is the duty of the filing coordinator to ensure that its application is not mutually exclusive with a previously-filed application. The originating coordinator may also assert its applicant's rights in mutually exclusive situations. This should be performed promptly, as conflict resolution is expected to be accomplished within the five business day notification

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period. Objections may be made only by a coordinator with standing, i.e., one that has notified a competing mutually exclusive application in the subject market on that day. Any other post-notifications analysis of another coordinator's applications (for example, on behalf of Sprint-Nextel) rise only to the level of expressing a concern, and will not inhibit subsequent filing, as does an objection. The objecting coordinator is responsible for organizing a conference call of affected parties and providing a conference bridge.

Applications that have not received an objection by COB on the sixth business day would be acceptable for filing to ULS, depending upon the Public Notice dates.

Applications that change frequencies to overcome objections would require resubmission for the entire five-day notification period. Frequencies previously approved on the resubmitted application would remain approved and protected provided the technical parameters of those frequencies have not changed.

NOTIFICATION REPORT:

Each coordinator must forward a daily report via email, return receipt requested, of all vacated spectrum applications submitted to notification. The report must contain entity name, state, application ID, and comments (optional). Pertinent attachments may be sent separately via email or can be attached to the daily report or made available at a separate location. The report should be forwarded to the following PSCC contacts by 11:59 p.m. Eastern Time on the day of notification:

AASHTO: cindy@radiosoft.com

IMSA: richardk@freqcoor.org

FCCA: nfc@fcc-a-usa.org

APCO: concur@apco911.org

PCIA: coord@pcia.com

EWA: concur@enterprisewireless.org

FIT: license@landmobile.com

UTC: Klaus.Bender@utc.org

It is imperative that every participating 800 MHz Vacated Spectrum Coordinator review the daily notification email and verify that all 800 MHz Vacated Spectrum applications sent out for notification are received in their respective coordination systems. Prompt notification of the failure to receive applications must be made to the originating coordinator.

PROTECTION OF PREVIOUSLY FILED APPLICATIONS:

Coordinators will protect:

- 1) previously licensed or pending applications;
- 2) previously notified, but not yet filed, applications

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- 3) Mutually exclusive applicants filed on the same day for vacated spectrum based on §90.621(b)(4) ("DHAAT").

ENGINEERING SOLUTION PROCESSES:

Reduced HAAT, ERP or directional antennas may be used to qualify under DHAAT. Engineering solutions proposing either adjacent channel (12.5 kHz) operation with less than co-channel protection or terrain shielding will require waiver applications to accompany the filings.

Engineering solutions will be assumed to be valid when using the processes noted above. Applicants may use directional antennae or reduce ERP/AGL to resolve predicted overlap, or propose terrain shielding or other limitations (limits on mobile area of operation) to obtain a Letter of Concurrence.

FREQUENCY ADVISORY COMMITTEE CERTIFICATION:

In order to assure that all public safety applicants receive channels to the extent possible, and to minimize future coordination difficulties in this band, the undersigned, by their signatures, agree to abide by the above procedures.

Failure by any coordinator to abide by the prescribed notification agreement used by the remaining coordinators, as outlined in this document, may result in a filing to the FCC to dismiss all applications from that coordinator as defective on procedural grounds.

SIGNATURE PAGE FOLLOWS

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Memorandum of Agreement

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SIGNATURE PAGE**

**American Association of State Highway
and Transportation Officials ("AASHTO")**

Signed: _____
Title: _____
Date: _____

**Association of Public Safety
Communications Officials, International
("APCO")**

Signed: _____
Title: _____
Date: _____

Enterprise Wireless Alliance ("EWA")

Signed: _____
Title: _____
Date: _____

**Forestry Conservation Communications
Association ("FCCA")**

Signed: _____
Title: _____
Date: _____

**International Municipal Signal
Association ("IMSA")**

Signed: _____
Title: _____
Date: _____

**PCIA – The Wireless Infrastructure
Association ("PCIA")**

Signed: _____
Title: _____
Date: _____

Utilities Telecom Council ("UTC")

Signed: _____
Title: _____
Date: _____