

# APCO REPORTS



## ASSOCIATED PUBLIC-SAFETY COMMUNICATIONS OFFICERS, INC.

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**CONGRESS ADOPTS RESOLUTION FOR NATIONAL TELECOMMUNICATORS WEEK:** After a dedicated letter-writing campaign by APCO members and a round of last-minute phone calls to Senators following a visit to Capitol Hill by APCO President Ronnie Rand and others, more than enough Senators signed on as co-sponsors of the Senate Joint Resolution to designate the week April 12-18, 1992, as National Public Safety Telecommunicators Week. The resolution was reported out of the Senate Judiciary Committee and sent to the floor of the Senate where it was adopted on February 27. The House Joint Resolution had been adopted earlier.

At this writing the resolution had been sent to the White House for the President's signature. Senator Strom Thurmond and Representative Constance A. Morella, the two primary Republican co-sponsors of the resolution, are contacting the White House to request a signing ceremony.

The entire Senate Judiciary Committee, led by Senator Joseph Biden, its Chairman, supported the resolution. APCO members in many states persuaded both Senators to sign on as co-sponsors. Scores of phone calls from members at the last minute pushed the resolution through. President Ronnie Rand, President-Elect John S. Powell, Acting Executive Director Charles V. Stuckey and APCO's Congressional representative, Lewis M. Helm, were in Washington, D.C. the week of February 10 promoting the resolution. President-Elect Powell's former assistant, John Bentivoglio, a Judiciary Committee staff member, managed the campaign for adoption of the resolution.

President Rand said a great deal of energy and effort by a number of people resulted in the success. "Although many members put forth extraordinary effort," Rand said, "I would be remiss if I did not thank some members for their efforts above and beyond the call of duty. Lin D. Ford, T.G. Mieure, Lynn Diebold, Carroll White and Spence Leafdale have worked this campaign to the tune of countless hours. Past Presidents Sam Gargaro and George Murray, our current Board of Officers and both our Public Affairs Committee and Operations Committee have made this project a priority. The bottom line of the success of the effort to obtain a week of recognition for telecommunicators rests with you, the individuals in this organization who made the effort to pass it. If you, as an individual member, contacted your legislative delegation by letter, phone, fax or personally, part of the credit is yours. Take pride in your effort."

**APCO SEEKS CLARIFICATION, RECONSIDERATION IN FINDER'S PREFERENCE:** APCO has filed a petition with the Federal Communications Commission seeking partial reconsideration and clarification in the establishment of a finder's preference (PR Docket No. 90-481).

The Commission established the finder's preference in a Report and Order (56 Fed. Reg. 65857) on December 19, 1991, for processing private land mobile radio applications. Pursuant to this new licensing policy, an entity which informs the Commission that an existing licensee is in violation of certain Commission rules will receive a preference over other applicants if and when the frequency

in question becomes available for re-licensing. APCO filed comments in response to the Commission's Notice of Proposed Rulemaking opposing application of a finder's preference to frequencies for which public safety users are eligible.

The following is the text of APCO's petition: The Commission's Report and Order made two important exceptions to the finder's preference, consistent with APCO's comments. First, in the 800 MHz Public Safety Category Pool, non-public safety entities will not be permitted to use a finder's preference to obtain frequencies occupied by public safety entities. APCO strongly supports this exception as it is an important recognition of the inherent danger of allowing commercial users to displace critical public safety communications operations.

The other exception is equally important, but requires minor clarification. The Commission concluded that the finder's preference will not apply to the frequencies subject to the National Plan for Public Safety (821-824/866-869 MHz) or to "other public safety frequencies that may be included in a particular Regional Plan." (Report and Order at ¶38, n.68).

**CRITICAL ROLE OF REGIONAL PLANNING:** This exception recognizes the critical role of the regional planning process in establishing priorities for public safety frequencies. The Regional Plans assign points to each applicant based on its relative need for additional frequencies for the protection of life and property, and other factors related to efficient spectrum utilization. A queue of applicants is then created based on the points assigned to each. Allowing a "finder" to jump to the front of the line would "circumvent" this process as the "finder" may not be the entity in the greatest need of public safety radio frequencies.

The Commission made clear that the exception applies at least to frequencies in the 821-824/866-869 MHz and other frequencies which are "covered by a Regional Public Safety Plan." However, APCO requests that the Commission also clarify that this exception includes all frequencies assigned through a Regional Plan, even if those frequencies are not specifically identified in the written Plan for that Region.

This clarification is necessary to address those Regional Plans which expressly apply to channels vacated as a result of the migration to 821-824/866-869 MHz. Regional Planning Committees in those situations establish queues of applicants requesting vacated channels based on the same priorities used in assigning the 821-824/866-869 MHz channels.

The applicant with the greatest need goes to the top of the list. However, because the specific frequencies to be vacated are not known when the Regional Plans are drafted and submitted to the Commission for approval, the vacated frequencies are not actually listed in the Plans. Nevertheless, these vacated channels must not be subject to finder's preference for the same reasons that apply to other frequencies included in Regional Plans.

APCO requests, therefore, that the Commission amend its new Section 90.173(k) to clarify that frequencies "encompassed" by any Regional Plan not be limited to frequencies actually listed in the written Plan. Rather, any frequency which is or becomes subject to assignment through a Regional Plan (such as vacated channels) should be exempt from finder's preference.

APCO also requests that the Commission reconsider its Report and Order to address the role of APCO's Local Frequency Advisors as potential "finders." Local Frequency Advisors are the core of APCO's frequency coordination process. They have a unique knowledge of local conditions and needs, and play an important role in the creation and management of state and regional plans. As a result, the Local Frequency Advisors are in an ideal position to "find" licensed frequencies which are underutilized or unbuilt. While a Local Frequency Advisor will have no personal need for the "found"

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frequency, he (or she) is likely to have established a queue of potential users who need that frequency for their public safety operations.

APCO requests that the Commission amend its new finder's preference policy to provide that if an APCO certified Local Frequency Advisor "finds" a channel subject to the finder's preference (whether or not the channel is part of a Regional Plan), that the Commission assign the channel to the entity recommended by the Local Frequency Advisor (assuming, of course, that all other Commission requirements are met).

This process already operates in an informal manner, but should be "codified" to insure that it is not undermined by the new finder's preference policy. The result will be more efficient use of public safety spectrum, and further protection of an existing coordination process that insures that applicants in greatest need of radio frequencies for public safety operations receive priority in frequency assignments.

**LEGAL CONSIDERATIONS OF THE AMERICANS WITH DISABILITIES ACT:** Much has been written about the technical problems surrounding implementation of the Americans with Disabilities Act (ADA) and its impact on 9-1-1 services. Robert M. Gursz of Wilkes, Artis, Hedrick & Lane, APCO's counsel, wrote the following on the legal issues related to the ADA and other problems (such as the use of central TDD translation facilities) and the likelihood of regulatory relief.

The ADA was passed in 1990 and creates a broad range of protections for the disabled that will impact both private business and governmental entities. The Act imposes obligations related to building access, employment opportunities, communications and other activities. Title II of the Act applies to "public entities," which is defined in Section 201 to include "State and local government" and "any department, agency, special purpose district, or other instrumentality of a State or States or local government." The Act itself, contrary to common belief, does not mention 9-1-1 or telephone emergency services. Rather, Title II of the Act broadly requires that no disabled person be "excluded from participation in or be denied the benefits of the services, programs, or activities of a public entity, or be subjected to discrimination by any such entity."

However, the legislative history of the Act indicates a clear intent that telephone emergency services must be equipped with technology that gives (disabled individuals) direct access to emergency services. For the present, this would require that local emergency systems provide a direct telephone line for individuals who rely on telecommunications devices for the deaf (the Baudot format) and computer modems (the ASCII format) to make telephone calls. *House Conf. Report No. 101-596, at p. 67 (emphasis added).*

Interestingly, another piece of the legislative history, a key report from the House Education and Labor Committee, suggests that the requirement can be satisfied by "installation of a TDD or compatible ASCII or Baudot computer modems . . ." *House Report No. 101-485(II), at p. 85 (emphasis added).*

The Justice Department is charged with enforcing Title II and has adopted regulations which went into effect on January 26, 1992. The rules are reprinted in the July 26, 1991, issue of the Federal Register (58 Fed. Reg. 35694). Of particular importance to 9-1-1 facilities is Section 35.162, which requires that "telephone emergency services, including 9-1-1 services, shall provide direct access to individuals who use TDDs and computer modems." *(emphasis added).*

The technical problem with this rule, as described in prior APCO BULLETIN articles, is that a computer modem sending a message using the standard ASCII format will not transmit until it hears

an answer tone (such as that received when one fax machine calls another), and will disconnect if no tone is received within a specified time. However, a 9-1-1 service cannot provide an answer tone for all incoming calls as it would cause non-disabled callers to hang up in the belief that they had reached the wrong number. Yet, the ADA regulations clearly prohibit the use of separate phone numbers for the disabled (e.g., a separate modem number). One number (usually 9-1-1) must be available to all callers.

**JUSTICE DEPARTMENT INTENDS TO ISSUE CLARIFICATION:** Fortunately, the Justice Department has indicated through informal discussions that it intends to issue a clarification of its regulations which would relieve 9-1-1 services of the need to install ASCII modems on their 9-1-1 lines, at least until such time as the answer tone problem is resolved through technical advancements. This is the result of numerous letters to the Justice Department from 9-1-1 services and their representatives in Congress identifying the inherent problem with the existing regulation.

There would appear to be an ample legal (as well as technical) basis for such a clarification. The Justice Department stated in its order adopting the new regulations that public entities "are allowed the flexibility to determine what is the appropriate technology for their particular needs." The statutory language itself is also quite broad, suggesting that the Department has discretion to revise its rule. While the legislative history states in some places that both TDD and ASCII modems must be available, other portions of the legislative history seem to allow for either TDDs or modems. Conflicting legislative history, combined with the absence of statutory language, generally supports an exercise of discretion by the agency implementing the statute.

Finally, Section 35.164 provides that a public entity need not "take any action that it can demonstrate would result in a fundamental alteration of the nature of a service, program or activity or in undue financial and administrative burdens." This provision should only be used with great care and after consultation with counsel as it can be an invitation to litigation. Furthermore, the Justice Department indicated that Section 35.164 would "rarely" be applied to telephone emergency services. Nevertheless, if necessary, a case could probably be made that current technology is such that using an ASCII modem on a 9-1-1 telephone line would "fundamentally alter the nature of" a 9-1-1 service.

Therefore, it would appear that 9-1-1 services will not be expected to install inherently incompatible ASCII modem equipment on their 9-1-1 lines, at least for now. However, since the disabled community is apparently moving away from TDDs and toward ASCII modem technology, the focus of attention should be on solving the compatibility problem as soon as possible.

**CAN TDD CALLS BE TRANSFERRED FOR 'TRANSLATION'?** Another issue which has arisen under the ADA is whether a 9-1-1 service may transfer TDD calls to a central location for "translation." Many 9-1-1 operations, especially in sparsely populated areas, rarely receive a TDD call and, therefore, are unfamiliar with the "jargon" of TDD transmissions. Some jurisdictions have responded by pooling their resources to establish central facilities to which TDD calls from multiple jurisdictions are immediately transferred for translation by experts in TDD communication. Significantly, the 9-1-1 telecommunicator stays on the line while the call is being "translated," reducing the time delay.

It is unclear whether such translation services meet the Justice Department's requirement that 9-1-1 services provide "direct access" for the disabled. In its Order establishing the new rules, the Department stated that "access through a third party or through a relay service would not satisfy the requirement for direct access." The Department has been asked to provide formal written clarification on the use of translation services. Informal discussions with the Department, however,

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indicate that use of a translation service might be deemed permissible if it does not cause significant delays in response time. However, this is still an area of uncertainty.

Further questions have been raised as to which telephone lines are subject to the new rules. Section 35.161 of the rules requires all public utilities (including non-emergency operations) to have the capability to communicate with individuals with impaired hearing or speech with "TDDs or equally effective telecommunications systems." Note that, unlike the rule applying to telephone emergency services, Section 35.161 does not require "direct access" and does not specify modem capability.

This creates the issue of how to treat a public safety agency telephone line intended for non-emergency calls, but which occasionally receives emergency calls. Neither the Department of Justice regulations nor the ADA statute provides much guidance on this question. In general, however, a telephone line which is expressly designated and used only for non-emergency calls probably does not have to meet the more stringent provision of Section 35.162. On the other hand, if a nominally non-emergency line regularly receives emergency calls, and if those calls are handled on that line rather than referred to 9-1-1 or other emergency number, then it could be argued that it must comply with Section 35.162. This too is an area needing further clarification by the Justice Department.

**UPDATE ON 2 GHz MICROWAVE ALLOCATIONS:** As previously reported, Public Safety recently won a significant battle in its efforts to prevent forced relocation of public safety use of 2 GHz microwave systems. The FCC proposed the creation of a spectrum reserve in the 1850-2200 MHz band for new technologies. Note that this is only a proposal and is subject to major modification before final adoption.

Under the proposal, existing state and local government microwave licensees in the band will not be required to vacate their channels. However, commercial microwave licensees in the 2 GHz band will eventually become "secondary" users and could be forced to relocate without compensation.

All microwave licensees (including commercial users until they become secondary) will have the option of "selling" their 2 GHz frequencies to new users and using the funds to move to higher microwave bands where that is feasible. The full text of the FCC's Notice of Proposed Rulemaking had not been released as of this writing in early February. Further details from the Notice will be discussed in future APCO Reports.

While APCO and other public safety groups will strongly support the special exemption for state and local government microwave users, the proposal still raises some concerns which will need to be addressed in the rulemaking proceeding. In particular, new or expanded state and local government microwave facilities would not be afforded the same protection from dislocation as existing microwave systems. Public safety groups are also concerned that existing users receive adequate protection from adjacent and co-channel interference caused by new mobile radio users in the band.

**ONE SENATOR GIVES PUBLIC SAFETY FULL SUPPORT AGAINST AUCTIONS:** President Don Pfohl of the Arizona Chapter of APCO wrote to his U.S. Senator concerning the Emerging Telecommunications Act of 1991 and mentioning his and APCO's opposition to spectrum auctioning. The following is the reply Senator Dennis DeConcini (D-Arizona) sent to Pfohl:

"Thanks for taking time to share your thoughts with me. I apologize for the delay in my response. I appreciate knowing your concerns about S. 218, the Emerging Telecommunications Technologies Act of 1991 which has been reported out of the Senate Commerce Committee. The full Senate is

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scheduled to consider this legislation sometime in 1992. I understand that your present support for S. 218 is contingent upon no language being added which would require the auctioning of radio frequency spectrum by the Federal Communications Commission which could, in your opinion, obstruct public safety entities from securing access to future, additional radio frequencies. I have concerns about some aspects of this bill, but certainly agree that public safety groups must be assured access to new frequencies without having to compete with private companies. You may be sure that I would oppose any amendment offered to S. 218 which would jeopardize the spectrum available to such groups."

APCO's position is that public safety cannot afford to compete with commercial interests in an auction of spectrum. Public safety needs new frequencies to provide essential emergency services without having to "buy" frequencies, which would severely impact state and local government budgets.

**APCO EXECUTIVE DIRECTOR ROBERT E. TALL RETIRES:** APCO Executive Director Robert E. Tall, also the founding editor of APCO Reports, retired March 16. The following is his final Station Log column reprinted from the APCO BULLETIN:

This Station Log will be my last column to the APCO membership as Executive Director of the Association. By mutual agreement with the APCO Board of Officers, I will be retiring from that position effective March 16, 1992, having reached normal retirement age.

My tenure as Executive Director of the Association since March 1, 1984, has been fast-paced, exciting and gratifying. We have seen some changes, brought about by an environment that required change as well as a dynamic membership that wanted change.

During the past eight years, we have grown from about 3,000 dues-paying members to more than 9,000.

We have added APCO Chapters in Canada and the Caribbean. We have become a world influence and are nearing the establishment of overseas APCO affiliates.

Our annual budget has gone from several hundred thousand dollars to more than 10 times that level.

In the United States, we have had unparalleled regulatory and legislative successes. These have included FCC certification for, and the launching of the public safety community's largest centralized frequency coordination operation, while preserving the all-important input of local knowledge and expertise in the process.

We have won the allocation of new, exclusive public safety spectrum sufficient to meet public safety's needs for some time to come in all but the most heavily populated areas of the United States. And we have the planning in place to provide frequency relief in those metropolitan areas.

We have acquired our own Headquarters Office facilities to house a staff that has grown from five employees to more than 30.

We have fostered the development and spread of Enhanced 9-1-1 emergency telephone number systems throughout North America.

We have created The APCO Institute and are busily turning out graduates of our courses trained to

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meet the challenges of getting rapid emergency response forces to the citizens when and where they are needed. In the process, we have coined the title Telecommunicator, imbued it with dignity and recognition, and raised the prestige of those who hold the title to an unprecedented, professional level.

We have entered into a number of difficult political confrontations, and have come out on top far more often than not.

We supported the establishment of, and have carefully nurtured, the Congressionally mandated National Public Safety Communications Plan, the first such experiment in spectrum management in which the operational differences of the diverse political divisions of the country are being analyzed and accommodated at the local level.

We have joined with representatives of other Federal, State and Local Governments to set standards for a new generation of digital mobile communications equipment, as interoperable and affordable as possible, and have lent our name to this soon-to-be-realized achievement.

We have insulated the State and Local Governments of the United States from the payment of millions of dollars of "fees" or charges of one kind or another which other applicants for, or users of, the radio spectrum must pay or are being threatened with.

We have strengthened and improved our Annual Conferences in many ways, as evidenced by a four- or five-fold increase in exhibits and attendance.

We rescued a failing BULLETIN and turned it, and other publications, into the envy of other communications industry publishers. We have greatly strengthened the finances of many of our Chapters.

The Executive Director did not do all of these things, of course. We did them, and many, many more, together. With employees who caught the fire of the APCO spirit; with our Chapter and Committee leaders and members; with many dedicated members who served on our Boards of Officers and our Executive Councils over the years; with energetic members with varying interests from a dozen public safety disciplines in thousands of jurisdictions; and with regulatory and legislative representatives who heard our calls for help and responded so well.

I am honored to have served with you all, and am grateful for the opportunity to have done so.

I have been an APCO member for almost 40 years and do not plan to stray very far from the public safety communications field as I turn to new assignments and challenges in the future.

My deepest thanks to all of you. I am only as far away as your telephone.

**NATIONAL PUBLIC SAFETY PLANNING MOVES AHEAD:** Twenty-six Regional Plans have been accepted by the FCC, three plans are under FCC staff review, and 16 regions are drafting their plans. There still remains seven regions which have not yet convened a committee to begin planning.

Regions still unconvened include: Region 2, Alaska; Region 37, South Carolina; Region 38, South Dakota; Region 44, West Virginia; Region 47, Puerto Rico; Region 48 Virgin Islands. Under staff review are Region 53, Texas; Region 55, New York; and Region 31, North Carolina.

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Regions drafting their plans include: Region 4, Arkansas; Region 11, Hawaii; Region 12, Idaho; Region 15, Iowa; Region 17, Kentucky; Region 22, Minnesota; Region 24, Missouri; Region 27, Nevada; Region 29, New Mexico; Region 32, North Dakota; Region 34, Oklahoma; Region 35, Oregon; Region 36, Pennsylvania; Region 39, Tennessee; Region 45, Wisconsin; Region 49, Texas; Region 50, Texas; and Region 10, Georgia.

The plans for all the remaining regions have been accepted.

**APCO 1992 REGIONAL CONFERENCES**

• *April 12 - 15 • North Central • St. Charles, Illinois*  
 At the Pheasant Run Resort and Conference Center  
 (Convenient to Chicago's O'Hare International Airport)  
**For Information**, Call Conference Chairman T.G. Mieure, 708-244-1132  
 Exhibits Chairman Lou Schoenfeld, 312-744-8568

• *May 17 - 20 • East Coast • Lancaster, Pennsylvania*  
 At the Lancaster Host Resort  
**For Information**, Call Conference Chairman James Giannini, 215-631-6500

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