

APCO REPORTS



ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS INTERNATIONAL, INC.

2040 S. Ridgewood Ave., South Daytona, Florida 32119-8437 U.S.A.

(904) 322-2500 • Fax (904) 322-2501 • (800) 949-APCO

Volume 10 •• 1994 •• Number 6

Reply to FCC On 2 GHz Comments

Public Safety Microwave Committee, APCO, FCCA, Los Angeles County Seek Reconsideration of Order

The Public Safety Microwave Committee (PSMC), the County of Los Angeles, APCO and the Forestry-Conservation Communications Association (FCCA) have replied to pleadings filed in response to their petition seeking reconsideration of the Commission's Memorandum Opinion and Order (MO&O) in the 2 GHz matter.

As demonstrated in the petition for reconsideration, the Commission's abrupt decision to require public safety agencies to vacate their 2 GHz microwave facilities will lead to the unnecessary and serious disruption of vital emergency communications operations. This complete reversal of policy at the last minute is contrary to express and unusually specific legislative intent, lacks an adequate basis in the record and is blatantly inconsistent with the Commission's actions in the pioneer's preference proceeding.

The petition was opposed by American Mobile Satellite Corp. (AMSC), Cox Enterprises, Inc. (Cox), the Personal Communications Industry Association (PCIA) and UTAM, Inc. Notably, while these parties may be pleased with the Commission's last-minute unexpected repeal of the public safety exemption on its own motion, neither they nor any other prospective PCS provider had ever considered it necessary to request such action.

The reply to the comments makes several points:

1. The opposing parties have failed to reconcile the Commission's action with express Congressional intent to the contrary.
2. The opposing parties have failed to identify record evidence sufficient to justify the Commission's abrupt change in policy.

3. The opposing parties are at a loss to reconcile the MO&O with the PCS pioneer's preference decision.

4. The Commission overstates and places undue reliance on the needs of unlicensed PCS providers.

For all the reasons cited in the petition and in the reply comments, the Commission must reinstate the public safety exemption from forced relocation out of the 2 GHz microwave bands. The reply comments were submitted on July 13 in the matter of Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies (ET Docket No. 92-9).

1. The Opposing Parties Failed to Reconcile the Commission's Action With Express Congressional Intent to the Contrary.

Cox attempts to rescue the Commission from its failure even to attempt to reconcile its decision with the Bumpers/Hollings Amendments of 1992 exempting public safety licensees from forced relocation by suggesting that the grant of a longer transition period, together with cost reimbursement for public safety users, will somehow satisfy Congressional concerns. This overlooks the key fact that the original bill offered by Senator Hollings (prior to the Bumpers Amendment) also included provisions requiring that new users of the 2 GHz band pay relocation expenses and provide new microwave facilities "at least as reliable" as those being replaced. The Senate concluded that those protections, which included an eight-year transition period, were insufficient for public safety licensees.

Therefore, the Senate adopted unanimously Senator Bumpers' "perfecting" amendment to exclude State and local government licensees from any mandatory relocation. Ironically, the five-year transition period that Cox touts as consistent with Congressional intent would actually provide less protection than the eight-year transition plan that the Senate rejected as insufficient for public safety users. As Senator Bumpers explained, this "would respect the priority of public safety users of the spectrum, as provided by law."

Cox's remaining response on this point is to emphasize that the Bumpers/Hollings Amendment was never enacted into law. This completely ignores that the Amendment was far more than another bill dropped in the "hopper." The Amendment, after being approved by the full Senate without objection, was withdrawn in the Conference Committee only because the FCC adopted rules in the First Report and Order and Third Notice of Proposed Rulemaking, incorporating the essential provisions of the Amendment.

Perhaps to counter the impact of the Bumpers/Hollings

Amendment, Cox argues that Congressional objectives in authorizing spectrum auctions would be better served if all 2 GHz incumbent microwave operations could be relocated. In essence, Cox is suggesting that the Commission should take any step necessary to maximize revenues from spectrum auctions, even if that means evicting incumbent public safety licensees! Nothing could be further from long-standing Congressional intent and the basic provisions of the Communications Act that require the FCC to allocate spectrum in a manner that promotes the "safety of life and property."

2. The Opposing Parties Failed to Identify Record Evidence Sufficient to Justify The Commission's Abrupt Change in Policy.

Attempting to shore up the Commission's decision, Cox, PCIA and AMSC point to the same few previously filed comments. However, this old record "evidence" is clearly insufficient to support the Commission's radical reversal of its prior decision to exempt public safety licensees from forced relocation.

Significantly, neither the Commission nor any other party had ever suggested before that this information compiled by Cox, APC and other parties justified a complete elimination of the public safety exemption. Rather, the information regarding incumbent licensees had been offered in support of either wider PCS bandwidths, shorter transition periods, or a narrower definition of exempt entities.

For example, Cox now points to its Comments filed on January 13, 1993, in response to the First Report and Order and Third Notice of Proposed Rulemaking. Those Comments included a Comsearch study of the degree to which the 2 GHz bands in San Diego are encumbered by "public safety" microwave paths. The Comsearch analysis was completed prior to the Third Report and Order, in which the Commission narrowed the definition of exempt entities. Therefore, Comsearch may have overstated the impact of grandfathered "public safety" licensees in the San Diego market. However, neither then nor at any time prior to the MO&O did Cox or any other party argue that this information demanded repeal of the public safety exemption.

Indeed, after the San Diego study was submitted, the Commission adopted the Third Report and Order, reaffirming the need to exempt most public safety entities. Cox supported that decision, notwithstanding its study of the San Diego market, explaining that the Commission's "decision recognizes that microwave incumbents providing services that directly and predominantly protect lives and property cannot risk any possibility of service disruption or inconvenience." According to Cox,

the "balance struck by the Commission is equitable, necessary and will benefit ultimately both emerging technology service providers and microwave incumbents."

Several opposing parties also refer to APC's "Report on Spectrum Availability for Personal Communications Services Sharing the 1850-1990 MHz Band with Private Operational Fixed Microwave Service" (submitted to the Commission on November 20, 1992). However, they fail to note that the APC study analyzed all microwave paths together, with no attempt to distinguish between exempt and non-exempt licensees.

The point of the APC Report was to demonstrate that spectrum was available for immediate PCS implementation with the use of frequency-agile technology, rather than analyze the purported need to relocate all microwave licensees from the band. Indeed, APC has never asked the Commission to eliminate the public safety exemption.

Several parties also cite a statement by Comsearch submitted during the Commission's April 7 hearing in the PCS docket. Comsearch stated the advantages of larger spectrum blocks which "will allow for interference avoidance," and noted that in "order to achieve FCC-mandated coverage requirements, many microwave paths need to be relocated." However, Comsearch did not state that all microwave licensees must relocate. Subsequently, the Commission modified the PCS channel plan to create more large spectrum blocks, further reducing the need to relocate microwave users.

If the evidence now cited by Cox had not previously prompted it or other prospective PCS providers to call for the repeal of the public safety exemption (and they are the ones with the most to gain from such action), then how can such evidence now possibly justify the Commission's deciding on its own that its only alternative is to repeal the exemption? Certainly, the Commission must do more than simply cite the pre-existing record, which presumably it had carefully evaluated in reaching a radically different conclusion.

Rather, an abrupt change of this magnitude must be supported by a reliable and detailed engineering and economic analysis of the complex technical considerations involved and the impact on public safety microwave incumbents -- an analysis which carefully balances these considerations against the disruption of relocation. The record is completely devoid of such information and technical analysis.

3. Opposing Parties at a Loss to Reconcile MO&O With PCS Pioneer's Preference.

As noted in the Petition, the most glaring inconsistency in the Commission's action is its statement that spectrum sharing "will not be possible," even though the Commis-

sion granted extraordinarily valuable pioneer's preferences to APC and Omnipoint for developing technologies to do just that.

Not surprisingly, the opposing parties barely attempt to explain this inconsistency. The most they can muster is a footnote offered by Cox arguing that this is the wrong docket to challenge the validity of the pioneer's preferences.

Cox completely misses the point. Petitioners neither support nor oppose the pioneer's preference grants. Rather, Petitioners argue that the FCC, having made the pioneer's grants on the basis of APC's and Omnipoint's development of spectrum sharing technologies, cannot now simply turn its back and say that all public safety microwave facilities must be relocated because sharing "is not possible."

APC's only response to the Petition is a brief one-paragraph letter which appears to suggest that the value of its sharing technology is only to promote the immediate initiation of PCS. This interim consideration, however, was not the sole basis of the award of immensely valuable pioneer preferences to APC and Omnipoint. To the contrary, the Commission relied upon both interim and long-term considerations, finding that APC's technology would result in a "shared fixed and mobile services environment."

Nothing in the pioneer's preference decision or in this docket would suggest that the APC and Omnipoint technologies cannot permit long-term spectrum sharing. If the Commission now believes otherwise, it must do more than simply state a bare conclusion. It must dissect the sharing methodologies and explain in detail why they do not permit critical public safety microwave paths to remain on 2 GHz bands indefinitely.

4. Commission Overstates and Places Undue Reliance on Needs of Unlicensed PCS Providers.

The Commission appeared to place particular reliance in the MO&O on the impact of exempt microwave licensees on the ability of unlicensed PCS to develop, an argument supported by UTAM in its response to the Petition. However, since the MO&O, the Commission has reduced the spectrum allocation for unlicensed PCS from 40 MHz to just 20 MHz, limiting it to the portion of the 2 GHz band with the fewest incumbent microwave paths. Thus, the unlicensed PCS problem so heavily relied upon in the MO&O has been reduced by more than half.

UTAM also cites information in various prior comments which support its newly alleged "fatal impact" of incumbent microwave paths on unlicensed PCS. This, if anything, raises more questions than it answers. If this old information showed that sharing was impossible, why didn't UTAM or any other unlicensed PCS supporter previously ask the FCC to force public safety microwave

licensees to relocate? What new information or analytical data has caused UTAM to change its position?

Similarly, for the Commission to step in on its own at the last minute, it must explain what new information and/or analytical data has caused it to reverse its prior decision to grandfather public safety licensees. At minimum, the Commission must analyze the degree to which unlicensed devices can be coordinated with microwave systems and whether there are alternative frequency bands that may be more appropriate for nomadic devices.

The Commission noted in the recent PCS order that it was committed to find additional spectrum for unlicensed PCS devices, "including those potential unlicensed uses that may not be accommodated readily in the initial 20 MHz allocation."

Finally, even assuming that there is a valid basis for requiring relocation of all microwave facilities in at least some of the unlicensed portion of the band, that, at most, applies to the relatively few microwave licensees in the 1910-1930 MHz band. Nothing in that argument supports the need to relocate facilities in the 120 MHz of spectrum allocated for licensed PCS.

Conclusion

For the reasons stated above and in the Petition for reconsideration, the Commission must reinstate the public safety exemption from forced relocation out of the 2 GHz microwave bands.

FCC Announces Organizational Changes

Commission Chairman Reed E. Hundt has announced the Commission's intention to make the following organizational changes:

- Create a Wireless Telecommunications Bureau.
- Create an International Bureau.
- Create an Office of Workplace Diversity.
- Create a Competition Division in the Office of General Counsel; and
- Move the Office of Small Business Activities out of the Office of Managing Director and have it report directly to the Commission.

"The two biggest organizational changes we propose ... are the creation of a Wireless Telecommunications Bureau and an International Bureau," Hundt said. "My initial sense that a Wireless Bureau was necessary was confirmed by ... (the) phenomenally successful spectrum auctions. A Bureau dedicated to the mission of wireless services will ensure that we remain on track with the licensing of PCS and with other emerging technologies. In addition, the issues facing the communications industry are almost never without interna-

tional implications. Our International Bureau will better meet the challenges ahead as the FCC continues its role in international telecommunications, working with the Department of State and NTIA in the promotion of the Global Information Infrastructure."

Rudy Baca, adviser to Commissioner James H. Quello, told the Washington Regulatory Panel audience at the APCO Conference & Exposition in Pittsburgh that the changes were prompted because of the changes that are occurring in the communications environment, the convergence of technologies, and that the Commission needed to be streamlined and reorganized a bit.

"One of the things that will affect you more than any other," he said, "is probably the incorporation of the Private Radio Bureau into a new Wireless Telecommunications Bureau. That may cause you some concern. I want to allay that concern by saying you will retain a very effective voice in that new bureau. Ralph Haller is going to be deputy chief of that bureau. As you've worked so well with Ralph in the past, he will continue to make sure that your concerns are run up through the bureaucracy to the right people who need to hear them."

That wireless bureau will also incorporate a lot of the cellular entities, the mobile entities, in what is known as CMRS: Commercial Mobile Radio Service, and what is left of the private services into a new wireless bureau. The remainder, strictly wireline services, will remain in common carrier."

"There's also the creation of a new international and satellite bureau. I see that you have international affiliates amongst your members. There are, as you know, very few purely domestic issues anymore. Almost everything the Commission does has international ramifications, particularly for public safety along our borders. Now that we're becoming one trading unit, in NAFTA and other ways, it is critically important that public safety entities on both sides of our borders be able to talk to each other, so that you all have equipment that is compatible, and that you can talk to each other so you can coordinate your efforts. That's particularly true in the case, as you all are well aware, probably, in New Mexico. Because they're having a nuclear storage facility that's being built there, they're going to have a lot of concerns with those vast-open spaces down there. In New Mexico, there's a lot of land. In Texas and Arizona there's a lot of land and very few people. But, when people need your services, they need them rapidly and efficiently, and to do that you need rapid and efficient communications services."

"The new wireless bureau chief is Regina Keeney. She's coming to us from the Hill. She's got an excellent background. She was trained at the Commission, actually, for better or for worse, I see a few of you smiling. So she knows the Commission, and she will be ready to move into that position quickly."

FCC Commissioner Quello Agrees With Restructuring; Personnel Changes Are Questioned

Senior Commissioner James H. Quello, who served as interim commissioner prior to Hundt's appointment, said "any reorganizational structure succeeds, fails or flounders with the people who staff it. In this regard, several new staffing positions have caused me some concern." However, he said, "I generally agree with the restructuring. I pledge my cooperation and urge all personnel to support the restructuring and to dedicate themselves to help the FCC meet the exciting future challenges of developing the multi-channel, multi-faceted, super-communications highway of the future."

He said he is concerned about the decision to move the incumbent chief of the Field Operations Bureau to head the Office of Engineering and Technology. "... under Dick Smith the Bureau not only did its job, but did its job with resourceful expertise. I therefore find it perplexing that, just as the Bureau is beginning to enjoy the benefits of increased funding ... he is being shifted from a Bureau that has performed so superbly and in which he has spent his entire FCC career. ... To me, Dick Smith personifies dedication and an outstanding degree of expertise in a delicate and highly specialized area of the Commission's operations."

"I have similar concerns about the reassignment of the incumbent chief of the Office of Engineering and Technology to a position within the Office of Plans and Policy. Dr. Tom Stanley has been outstanding in his service ... (he) has remarkable skill in making even the most complex technical proposition understandable to a non-engineer. We all are indebted to him for his contributions to the development of HDTV and PCS, which would not have developed as successfully without his leadership."

The mention of PCS raises another change that is to me the most ironic of all -- that of relegating the incumbent chief of the Private Radio Bureau (Ralph Haller) to a job as co-deputy in a new Wireless Telecommunications Bureau. Ralph Haller has nothing but my full admiration and thanks for his exhaustive efforts as chief of the consolidated FCC PCS Task Force in initiating and fine-tuning the rules governing not only the new PCS, but also, incredibly, writing the intricate rules governing our highly successful new spectrum auctions."

"During the course of the past year, Mr. Haller, who has served as bureau chief under four chairmen, not only played a major part in the inauguration of a new multi-billion-dollar PCS industry, but also played a major role in designing auctions which netted over \$800 million. One wonders what more he could have done to have retained his job or merit promotion."

"This is not to indicate that I harbor any doubts about the qualifications or abilities of the new chief of the Wireless Bureau, who performed brilliantly in crafting the complex cable legislation in the Senate. Rather, I am concerned about a process that gives short shrift to rewarding talented, creative incumbents for a job exceedingly well done. What effect will this have on overall morale?"

Quello said, "Finally, I am concerned that the incumbent chief of the Office of Small Business Activities is being shifted to the Field Operations Bureau. John Winston worked long hours and effectively in the interest of advancing the chance for small businessmen, minorities and women to advance in the ranks of telecommunications ownership. That is not an easy job. I hope he will bring his patented indefatigability and vast experience to his new job in FOB."

"These do not exhaust my concerns over the staffing plan, but they are emblematic of them," Quello said. "I am also concerned over the futures of seasoned career staffers deserving of advancement who will not find it. I'm afraid we will lose some of them. They are losses that, even with increased funds for more hiring, this Commission can ill afford to take."

'If It Ain't Broke, Don't Break It

"I would only say that a lifetime of management experience both in private industry and in this Commission have reinforced one management tenet in which I happen to fervently believe. If it ain't broke, don't break it. More specifically, I believe in appointing gifted people and letting them do what they do best."

"Several of the individuals at issue here have demonstrated what they do best over a period of years with outstanding ratings. At least by my judgment, not only was nothing broke, but they were performing exceptionally well. I think it a tribute to their talents that they will have the opportunity to show their excellence again as components of different teams. I simply would not have disrupted parts of the All-Star teams on which they now perform."

Call For Papers

61st APCO Conference & Exposition

August 13-17, 1995

Detroit, Michigan

Proposals for high-quality presentations are being accepted. The presentations should be of interest to public-safety personnel on topics such as:

- Management and Planning
- Telecommunicator Training
- 9-1-1
- Technology Systems

- Data
- CAD
- Information Systems

Presentations should be no longer than one hour in length. Each proposed presentation will be reviewed and a reply sent to the author.

Proposals must be submitted in writing
BEFORE JANUARY 1, 1995, to:

APCO Conference Program Coordinator
2040 S. Ridgewood Ave.
South Daytona, FL 32119-8437

The Conference Theme is:
"Communications in Motion"

Editor: Alan W. Chase • Assistant Editor: Rick Arndt

Production Coordinator: Kathy O'Connell • Assistants: Gwen Segren, Ray Barnes

APCO REPORTS
2040 S. Ridgewood Ave.
South Daytona, FL 32119-8437



*Serving
Public Safety Communications
Since 1935*

FIRST CLASS MAIL