

August 20, 2001

DA 01-1941

Robert M. Gurss  
Shook, Hardy, & Bacon, L.L.P.  
600 14<sup>th</sup> Street, N. W., Suite No. 800  
Washington, D. C. 20005

Re: Request for Clarification

Dear Mr. Gurss:

This letter responds to the Request for Clarification filed by the Association of Public-Safety Communications Officials-International, Inc. ("APCO").<sup>1</sup> APCO seeks clarification of the rules adopted in the *Upper 700 MHz Second Report and Order* regarding frequency coordination for the 700 MHz Guard Bands and adjacent public safety bands.<sup>2</sup> In response to APCO's Request for Clarification, the Personal Communications Industry Association, Inc.<sup>3</sup> ("PCIA") and the Industrial Telecommunications Association<sup>4</sup> ("ITA") submitted comments, and APCO filed reply comments.<sup>5</sup> For the reasons set forth below, we deny the relief APCO seeks in its Request for Clarification.

The 746-806 MHz band has historically been used exclusively by television stations (Channels 60 through 69).<sup>6</sup> Pursuant to statutory mandates enacted in the Balanced Budget Act of 1997, the

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<sup>1</sup> See Request for Clarification filed by the Association of Public-Safety Communications Official-International, Inc. ("APCO") on March 23, 2000 ("Request for Clarification"). APCO is an association of entities involved in the management and operation of state and local public safety communications systems, and is one of the Commission-certified frequency coordinators for the public safety services.

<sup>2</sup> See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Second Report and Order*, 15 FCC Rcd 5299 (2000) ("*Upper 700 MHz Second Report and Order*").

<sup>3</sup> See Partial Opposition of Personal Communications Industry Association, Inc., filed June 1, 2000.

<sup>4</sup> See Comments of the Industrial Telecommunications Association, Inc. filed June 1, 2000.

<sup>5</sup> See Reply Comments of APCO Regarding Request for Clarification, filed June 14, 2000.

<sup>6</sup> Incumbent television broadcasters are permitted by statute to continue operations in this band until their markets are converted to digital television. See 47 U.S.C. § 337(e). See *Advanced Television Systems and Their Impact Upon Existing Television Broadcast Service*, MM Docket No. 87-268, *Reconsideration of Fifth Report and Order*, 13 FCC Rcd 6860, 6887 (1998). Additional background on the spectrum allocation decisions that were made in response to the directives of the Balanced Budget Act of 1997 may be found in the *Report and Order* in ET Docket No. 97-157. See *Reallocation of Television Channels 60-69, the 746-806 MHz Band*, ET Docket No. 97-157, *Report and Order*, 12 FCC Rcd. 22,953, 22,953-55 (1998) ("*Reallocation Report and Order*"). More information on the Commission's licensing regime for public safety may be found in WT Docket No. 96-86. See *The Development of Operational, Technical and Spectrum Requirements For Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the Year 2010*, WT Docket No. 96-86, *First Report and Order and Third Notice of Proposed Rule Making*, 14 FCC Rcd 152 (1998), *Second Memorandum Opinion and Order*, 15 FCC Rcd. 16844 (2000), *Third Memorandum Opinion and Order and Third Report and Order*, 15

Commission reallocated 24 megahertz of this spectrum for public safety use and 36 megahertz of this spectrum for commercial use.<sup>7</sup> In the *Upper 700 MHz First Report and Order*, the Commission established Guard Bands at the extremities of the 700 MHz commercial use bands to insulate the adjacent 700 MHz public safety bands from harmful interference, while providing for effective and valuable use of the Guard Band spectrum.<sup>8</sup>

In the *Upper 700 MHz Second Report and Order*, the Commission adopted technical, operational, and licensing requirements for the Guard Bands.<sup>9</sup> The Commission determined that the Guard Bands would be licensed to a new class of commercial user called a Guard Band Manager.<sup>10</sup> The Commission further determined that Guard Band Managers would be engaged solely in the business of leasing for value spectrum to third parties on a for-profit basis.<sup>11</sup> Under the Commission's rules, Guard Band Managers will be granted licenses under which they will allow others to construct and operate stations at any available site within the licensed area and on any channel for which the Guard Band Managers are licensed.<sup>12</sup> The Commission concluded that auctioning spectrum to Guard Band Managers should enable parties to take advantage of the efficiencies of site-by-site licensing, more readily acquire spectrum for varied uses, and streamline the Commission's spectrum management responsibilities.<sup>13</sup>

In the *700 MHz Second Report and Order*, the Commission emphasized that one of the most important responsibilities of the Guard Band Manager is to ensure that operations on the Guard Band spectrum do not interfere with public safety.<sup>14</sup> To minimize the potential for harmful interference to public safety operations immediately adjacent to the 700 MHz Guard Band frequencies, the Commission adopted frequency coordination requirements for Guard Band Managers.<sup>15</sup> Specifically, under Section 27.601(d) of the Commission's rules, Guard Band Managers are required to notify Commission-recognized public safety frequency coordinators of certain proposed operating parameters of any site to be

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FCC Rcd. 19844 (2000), *Fourth Report and Order and Fifth Notice of Proposed Rulemaking*, 16 FCC Rcd. 2020, (2000).

<sup>7</sup> See Section 337(a) of the Communications Act, 47 U.S.C. § 337(a), as added by § 3004 of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

<sup>8</sup> The Guard Bands consist of paired one MHz sub-bands at 746-747 and 776-777 MHz and two paired two MHz sub-bands at 762-764 and 792-794 MHz. See Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *First Report and Order*, 15 FCC Rcd 476, 48991 ¶¶ 30-34 (2000) ("*Upper 700 MHz First Report and Order*").

<sup>9</sup> Our decision on these issues was delayed after a large number of *ex parte* filings addressing technical and operational standards for the Guard Bands were submitted immediately preceding the adoption of the *700 MHz First Report and Order*. In response to those filings, the Commission chose to seek additional comment and deferred its decisions on the technical, operational, and licensing requirements in order to allow all interested parties to address these issues. See *700 MHz Second Report and Order*, 15 FCC Rcd at 5302-03 ¶ 5.

<sup>10</sup> 15 FCC Rcd at 5311-13 ¶¶ 26-28.

<sup>11</sup> *Id.* at ¶ 27.

<sup>12</sup> See 47 C.F.R. § 27.601 *et seq.*

<sup>13</sup> See 15 FCC Rcd at 5313-14, ¶ 31.

<sup>14</sup> See 15 FCC Rcd at 5313, ¶ 30.

<sup>15</sup> See 47 C.F.R. § 27.601(d). See also 15 FCC Rcd. at 5314-16, ¶¶ 14-24, 33-35.

constructed in the Guard Band Managers' license areas.<sup>16</sup> This notification applies to the coordination of both new stations and station modifications. At a minimum, the notification must include frequency or frequencies coordinated, antenna height, antenna location, type of emission, effective radiated power, a description of the service area, date of coordination and user name or a description of the type of operation.<sup>17</sup> Such notification must be made within one business day after a Guard Band Manager has coordinated a station.<sup>18</sup> To allow the public safety community and other Guard Band Managers time to evaluate coordination, entities coordinated by a Guard Band Manager must wait at least ten business days after notification before beginning operations.<sup>19</sup> Additionally, Guard Band Managers are instructed to cooperate with one another and the public safety community in the selection of frequencies.<sup>20</sup> In the event of harmful interference, Guard Band Managers are expected to cooperate to resolve the problem by mutually satisfactory arrangements. If such efforts fail, the Commission may impose restrictions on the operations of any of the parties involved.<sup>21</sup>

In its Request for Clarification, APCO contends that the frequency coordination requirements in Section 27.601(d) do not provide sufficient interference protection to public safety users.<sup>22</sup> APCO argues that the rule does not adequately define the obligations of Guard Band Managers in the event of an objection to a proposed operation by a public safety coordinator.<sup>23</sup> APCO maintains that notification of a proposed Guard Band operation is not sufficient to avoid harmful interference and insists that public safety coordinators be permitted to object to such operations where there is a legitimate concern about interference.<sup>24</sup> APCO requests that Guard Band Managers be required to hold the subject Guard Band operation in abeyance pending mutually satisfactory resolution of the public safety coordinator's objection.<sup>25</sup> APCO also believes that coordination must be designed to avoid potential interference with both actual public safety facilities and with future public safety facilities proposed in applications or Regional Plans.<sup>26</sup> Accordingly, APCO requests that we clarify Section 27.601(d) to specify that if a public safety coordinator informs a Guard Band Manager within the ten day notification period of a potential interference with a current or planned public safety operation, the Guard Band Manager must defer use of the subject frequencies until it and the coordinator reach a mutually satisfactory resolution.<sup>27</sup> Under APCO's proposal, if the public safety coordinator and Guard Band Manager are unable to reach an

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<sup>16</sup> *Id.*

<sup>17</sup> *See* 47 C.F.R. at § 27.601(d)(2).

<sup>18</sup> *Id.* at § 27.601(d)(1). *see also* 15 FCC Rcd. at 5315, ¶ 35.

<sup>19</sup> *See* 15 FCC Rcd. at 5315, ¶ 35.

<sup>20</sup> *See* 15 FCC Rcd. at 5315, ¶ 35.

<sup>21</sup> *See* 47 C.F.R. at § 27.606.

<sup>22</sup> *See* Request for Clarification at 2.

<sup>23</sup> *Id.*

<sup>24</sup> *See* Request for Clarification at 3.

<sup>25</sup> *Id.* at 4.

<sup>26</sup> *See* APCO Reply Comments at 4-5.

<sup>27</sup> *See* Request for Clarification at 4.

agreement, either party could submit the dispute to the Commission for resolution.<sup>28</sup> APCO's proposal does not include any specific showings that the public safety coordinator must make in support of its objection.

PCIA and ITA submitted filings in response to APCO's Request for Clarification. In its submission, PCIA indicates that it is not opposed to a procedure that would allow public safety coordinators to object to a proposed Guard Band operation during the 10 day notification period before a licensee can begin operations, provided that such objections are: (1) filed immediately; (2) detailed; and (3) timely acted upon by the Commission.<sup>29</sup> According to PCIA, any such procedure should be established prior to the implementation of service.<sup>30</sup> PCIA does not, however, fully support APCO's Request because of a concern that public safety users might have an incentive to warehouse spectrum and impair users' ability to make beneficial use of the Guard Band spectrum.<sup>31</sup>

ITA agrees with APCO that further clarification of the Commission's notifications procedures may be necessary, but ITA supports industry-established notification standards. ITA states that Guard Band Managers and public safety frequency coordinators should work together to establish acceptable notification definitions and procedures but only after the auction has been completed and the Guard Band Managers are known.<sup>32</sup> ITA further suggests that the Commission monitor the development of a notification plan between the Guard Band Managers and all of the public safety frequency coordinators through periodic meetings and reporting criteria.<sup>33</sup>

We conclude that it is not necessary to impose the additional requirements on Guard Band Managers as recommended by APCO. We believe the notification requirements that are triggered when a Guard Band Manager coordinates a new station, modifies an existing station, or files an application for an individual station license, are sufficient to protect public safety operations from the potential for harmful interference from adjacent Guard Band operations.<sup>34</sup> Furthermore, when a public safety coordinator and a Guard Band Manager disagree over the potential for harmful interference, Section 27.601(d)(5) already provides that the Commission may impose restrictions on the operations of any of the parties involved.<sup>35</sup> In the *Upper 700 MHz Second Report and Order*, the Commission struck a balance between the need to minimize harmful interference and the obligation to facilitate rapid deployment of Guard Band operations.<sup>36</sup> We believe that the protections proposed by APCO<sup>37</sup> and supported by ITA,<sup>38</sup> while well-

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<sup>28</sup> *Id.*

<sup>29</sup> *See* PCIA Partial Opposition at 1-2.

<sup>30</sup> *See* Partial Opposition of Personal Communications Industry Association, at 1-2, (filed June 1, 2000) ("*PCIA Partial Opposition*").

<sup>31</sup> *Id.* at 2.

<sup>32</sup> *See* Comments of the Industrial Telecommunications Association, Inc., (filed June 1, 2000) ("*ITA Comments*").

<sup>33</sup> *Id.* at 3.

<sup>34</sup> *See* 47 CFR 27.601(d)(1).

<sup>35</sup> *See* 47 CFR 27.601(d)(5).

<sup>36</sup> *See 700 MHz Second Report and Order*, 15 FCC Rcd at 5315-16, ¶ 35.

<sup>37</sup> *See also* Reply Comments of APCO Regarding Request for Clarification, filed June 12, 2000, (APCO's Reply) at 2.

*Robert M. Gurs*  
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intentioned, lack the necessary balance to give all parties the incentive to negotiate disputes in good faith and in a timely manner. To adopt APCO's proposals would, in our judgement, remove most, if not all, of the incentive on the part of all parties to expeditiously and fairly resolve disputes. Given the interests of all parties in prompt resolution of any disputes, we do not believe it is necessary for the Commission to become involved in the adjudication of every dispute regarding potential interference.

PCIA asks that we impose a deadline on when the Commission will render a decision on a dispute between a public safety coordinator and a Guard Band Manager.<sup>39</sup> We decline to do so, preferring instead to give the parties latitude and incentive to resolve their own disputes, should any arise. If problems arise with this approach, we can revisit the matter in the future. We believe that this process should be given an opportunity to work before implementing any changes. Absent knowledge of the nature and complexity of a dispute, we do not think it appropriate to put a deadline on when the Commission might impose restrictions. Now that the Guard Band Manager licensees are known, public safety coordinators, frequency coordinators, and Guard Band Managers are free to begin discussions on how the notification process will work, including development of a process for dispute resolution, the sharing of data concerning frequency usage and an exchange of information on planned and future use of this spectrum.

We believe that the measures adopted by the Commission provide interested parties with the best opportunity and the strongest incentive to resolve disputes, both real and potential, in the most expeditious manner, without seeking further involvement by the Commission. If we find that these advance notification and coordination requirements are not working as intended, we will consider whether revisions are necessary.

We appreciate your comments on these matters.

Sincerely,

Kathleen O'Brien Ham, Deputy Bureau Chief  
Wireless Telecommunications Bureau

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<sup>38</sup> See ITA Comments at 3.

<sup>39</sup> See PCIA Partial Opposition at 2.