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FEDERAL COMMUNICATIONS COMMISSION

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
Request for Comment on)
Issues Addressing Spectrum Policies)

ET Docket No. 02-135
DA 02-1311

COMMENTS OF

BERGEN COUNTY, NEW JERSEY

Bergen County, New Jersey (Bergen County) through its Police Department and counsel, submits these Comments in response to the request for public comment by the Spectrum Task Force relating to the Commission's Spectrum Policies as set for in the Public Notice of June 6, 2002, DA 02-1311.

SUMMARY

In its review of the Commission's spectrum policies, Bergen County urges the Task Force to make clear that market oriented policies are but one and the not sole element in carrying out its statutory responsibilities. The Commission should recognize that there are particular sectors, public safety being one, and specific circumstances, where the value of the spectrum is realized more expeditiously and efficiently by clear decisions that are forcefully enforced rather than an equivocation that market forces will some day adequately meet the objective. In managing the spectrum for local, county and state governments, the most critical challenge is the lack of adequate spectrum for operational communications. The Commission should make this goal its foremost priority. Bergen County urges the Commission to instill in its administration of the spectrum a comprehension of the character of local government and the resource and

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operational constraints public safety agencies confront. Consistent with the Homeland Security priorities of the Nation, the Commission should commit additional resources to augment the dedicated individuals of its staff responsible for public safety communications.

Bergen County, New Jersey

Bergen County is New Jersey's largest county. The County operates radio systems on low band, high band UHF T band and a mobile data system on 800 MHz. Its systems operate in the highly congested New York metropolitan area where there is not adequate spectrum for public safety or commercial operations.

Responding to the September 11, 2001 attack, Bergen County commenced a substantial capital project to modernize its communications systems to provide all county agencies the ability to communicate with one another. With corporate headquarters, major transportation facilities, a major sports venue (Giants Stadium, Continental Airlines Arena and the Meadowlands Racetrack) and industrial plants all located in the County, emergency service response to its residential and commuter population presents substantial challenges. These responsibilities have faced significant increased demands since September 11, 2001. The ability to provide response, rescue, recovery or other emergency assistance remains severely challenged because of inadequate quality spectrum. While the County's capital project will improve the ability of the County to communicate dependably from person to person, the lack of quality spectrum tempers significantly its potential.

The County's law enforcement activities encompass broad operations from assisting citizens in need to undercover operations. The County's cross roads location, large population and significant commuter presence impose significant daily challenges to its law enforcement and public safety responsibilities. The Bergen County Police Department provides the complete

range of law enforcement and public safety services; with specialized units ranging from bomb detection to hazardous materials to a canine unit. It is one of the few law enforcement agencies in the State with such comprehensive capability to respond to the range of emergency circumstances throughout the region

Market Oriented Policies Should Not Be The Sole or Dominant Element of Managing the Spectrum

Much of the Public Notice addresses market-oriented allocation and assignment policies. The Public Notice embraces a perspective that market oriented policies foster more flexible use of the radio spectrum so that it may be put to its best and highest value use. Bergen County urges the Commission to integrate a similarly important premise into its administration of the radio spectrum—there are a range of national policy objectives, such as public safety, that simply cannot be accomplished through a market direction. Moreover, it is not a matter of delineating commercial and public safety services; competing interests converge in spectrum matters all too quickly, and fundamental principles, such as national defense or public safety, should be clear.

Section 1 of the Communications Act of 1934, as amended, states explicitly that the Commission’s responsibility to regulate the broadcast spectrum is grounded on ensuring the “..national defense, ...and promoting the safety of life and property...” The Commission has made clear that it will pursue a flexible regulatory framework to meet vital current and public safety communications needs. This basic precept is reflected in proceedings addressing public safety needs¹ and other services the Commission regulates.² It is vital during this era where the

¹ *In the Matter of the Development of Operational Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Agency Communication Requirements through the Year 2010*, First Report and Order and Third Notice of Proposed Rulemaking, WT Docket 96-98, 14 FCC Rcd 152, 154 (1998).

² *In the Matter of Advanced Television Systems and Their Impact upon Existing Television Broadcast Service*, Sixth Report and Order, MM Docket 87-268 , FCC 97-115 (April 21, 1997) at para 164..

war on terrorism and the concurrent need for homeland security are a heightened national priority that the Commission's policies and resources parallel this priority.

An important consideration in pursuing this fundamental is that optimal spectrum use, use of the spectrum that best serves the interests of the United States, does not solely flow from market oriented policies. Bergen County disagrees with what appears to be the premise of the Public Notice that market oriented policies are the fundamental paradigm upon which the Commission should carry out its responsibilities. Bergen County reiterates that there are any number of objectives, much less fundamentals of the Communications Act, which will not be achieved by awaiting a market solution. These objectives must parallel the import the Commission gives market oriented solutions. As addressed below, the most critical is providing to local, county and state agencies adequate spectrum.

Effective Administration of the Spectrum Requires the Commission to Recognize the Severe Scarcity of Public Safety Spectrum Resources, the Character of Local Government, and the Particular Challenges Faced

The Public Notice recognizes the increasing demands for public safety communications. It seeks mechanism that will ensure the availability of dependable, interoperable and cost efficient radio-based and other communications for public safety. The Public Notice asserts that many special needs for communications capacity are highly variable but generally low in average traffic level and suggests that the Commission should consider implementing novel sharing mechanisms to respond to this need. The Public Notice also inquires how the amount of spectrum for public safety services should be determined.

Public Safety's Spectrum Requirements

There is a substantial record quantifying public safety's spectrum requirements.

In 1995, the Commission established the Public Safety Wireless Advisory Committee

(PSWAC) and instructed it to detail and recommend the spectrum requirements of public safety. On September 11, 1996, the PSWAC filed a detailed report setting forth those requirements, which recommended an immediate 2.5 MHz, 25 MHz within 5 years, and an additional 70 MHz over the next 15 years.³ The Commission should accept and implement the PSWAC recommendations addressing the spectrum requirements of public safety agencies without further delay.

There are undoubtedly uses and services which the Commission characterizes as special needs for communications capacity, and may reflect circumstances that are variable in time and location and are low in average traffic level. But such circumstances are not the major challenge of public safety, nor should it rise to a Commission priority. The reality is that in all metropolitan areas in the United States, there is a critical shortage of spectrum for normal operational voice and data communications. Responding to this demand must be the primary objective of the Commission, for until and unless this foundation is established, the range of advanced technologies and special uses cannot start to evolve. Bergen County urges the Commission to direct its efforts to this goal. To the degree there are special use needs for sharing agreements, Bergen County urges the Commission to commit such protocols and requirements to the public safety agencies charged with the responsibility to respond.

For any element of public safety communications to be effective, it must be integrated into the daily operations of an agency's system. For any capability to be actually used, whether in routine or emergency management circumstances, the capability must be part of

³ See Letter of Philip L. Verveer, Chairman Public Safety Wireless Advisory Committee, to the Honorable Reed Hundt, Chairman, Federal Communications Commission and The Honorable Larry Irving, Assistant Secretary and Administrator, National Telecommunications and Information Administration, Department of Commerce, dated September 11, 1996, as set forth in the record of the Commission's proceeding *In the Matter of The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010*, WT Docket 96-86.

facilities that are available at all times so that public safety agencies and officers can pursue the “train as you fight” principle, which has its foundation in the military. If public safety users are not familiar with the capabilities of the communications system, if the capabilities are not used on a daily basis, the facility will be under utilized or subject to confusion and misuse in an emergency environment. While there may be need for special licensing priority for coordinated large area systems that encompass interoperability as a significant element, there must first be day to day capability and operational practice at the foundation of any protocol.

Bergen County urges the Commission to pursue a comprehensive spectrum resource initiative that encompasses all public safety. The objective must be to remedy the reality that no major metropolitan area has adequate quality spectrum for public safety communication technologies. The range of locations of public safety frequencies and the commercial demand for this spectrum presents an intractable clash that neither good intentions nor the laws of physics will resolve. From this fundamental clash results not only interference but the lack of equipment and technology choice that pervades the public safety sector.

Relocating public safety to a contiguous band of spectrum must emerge as the Commission’s goal. Specifically, the potential presented by the now delayed auctions of fertile spectrum at 700-800 MHz, combined with those frequencies already allocated to public safety in the band, is an opportunity that if let pass, will not return. The Commission should present to the Congress a proposal that relocates public safety to this band and a means to pay for it. The proposal should draw on the Commission’s market direction by placing those frequencies occupied by public safety at 800 MHz, 400 MHz, and 500 MHz up for competitive bid and

directing the revenues to the costs of relocating public safety. The proposed Department of Homeland Security, which will have broad responsibility and funding authority in the area of first responder communications, should have a major role in coordinating and fostering a relocation framework that encompasses the Nation's priorities. Significantly, the Commission has, in another proceeding linked the revenues from auctioning recovered public safety spectrum to relocating public safety agencies to new spectrum, its embrace of such a funding structure is commendable and crucial.⁴

The Character of Local Government

Bergen County urges the Commission to be guided by the historic and enduring qualities of local government in the United States which pervasively effect how public safety communications are conducted throughout the country. The vast number of public safety agencies as well as the individual number of communications systems relates directly to the foundation of local government in the United States. The country's democratic fabric encompasses discrete, and frequently small, local government units capable of responding immediately to the community's citizens. Local government is responsible for core public safety operations.

It is against this background that emergency response on both a large and small scale basis is provided. Local law enforcement and other public safety agencies have the initial and are generally the only responsible agencies that react and provide response to an incident. The effort to enhance the underpinning of each agency's communications capability must comprehend the character of how emergency response is provided throughout the United States and that each depends upon its own systems.

⁴ In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, FCC 02-81 (release March 15, 2001).

The breadth of the responsibilities combined the number of local governments, is not an efficient format from an economic or commercial perspective. What is paramount is the value of having a government close to and responsive to the citizen. The disparity between agencies with adequate resources and those with extremely limited funding is wide.

When an environment of extremely limited resources and the difficulty of pursuing any substantial capital investment, both of which depend upon tax dollars, is added to the public safety sector, the Commission is met with unique challenges in an area where it has plenary authority to regulate a fundamental resource of local government. The frequency channels the Commission administers and assigns are vital to the operations of each agency. The traditional arms length regulator/licensee model will not serve the public interest. In formulating its policies and rules, Bergen County urges the Commission to pursue initiatives that comprehend the character of the myriad of public agencies in the following regard:

Spectrum Efficiency

The Commission's initiatives to move users to more efficient use of the spectrum is an important element to bring the value of the spectrum to more Americans. Yet the Commission should recognize that the general direction of commercial entities to consolidate in order to gain efficiencies in spectrum use, as reflected by the evolution of the cellular phone industry, is not prevalent in the government sector and is generally resisted. The Commission's general policy toward fostering such efficiencies must be tempered with regard to spectrum use by local governments. There may be some basis for shared radio systems in the future, but the primacy of local government and the control of its radio systems is a circumstance the Commission cannot or should not attempt to change. The Commission's policies and

implementing actions must recognize and accommodate the inefficiencies of local government structure and the important values they represent, and not impose rules and regulations premised on a commercial market oriented premise.

Resource Constraints

The greatest challenge of the public safety sector is the lack of resources to fund operational and capital projects. This circumstance manifest in several ways.

The first is complying with the Commission's various licensing and procedural requirements. The introduction of electronic data base presents a more efficient and accessible data base. For the small public safety agency however, it has moved substantial work to the licensee, work that presents a challenge where none was before. At its most fundamental level the small agency compares former Form 574, which was one page, to Form 601, which presents a multi layered format. A typical example is found in the fire Services, which are dominated in most parts of the country by volunteer companies, who have no experience much less knowledge of the FCC's forms and requirements. The Commission's policies and operations should comprehend that substantial number of agencies fall within this category.

The direction the Commission should pursue is not to retreat from its efforts to modernize it licensing process. These efforts have resulted in tangible progress to licensees in general. Instead, it should expand the resources and responsibility of it Public Safety and Private Radio Division in the Wireless Telecommunications Bureau. It should build on its knowledge of public safety operations and bring its expertise to those agencies without institutional knowledge of the FCC and assist them in fulfilling the regulatory requirements. The Commission should distinguish further its commercial licensees from its

government/public safety licensees. It should pursue a more emphatic policy that, while preserving its core regulatory responsibility, will provide greater assistance to public agencies, particularly smaller ones, in licensing and renewal matters. The effort should extend to circumstances involving failure to renew timely and meeting the Commission's waiver requirements. It should involve providing resources to 800 MHz and 700 MHz Committees, which the Commission relies on extensively. Such initiatives will provide a more tangible and productive assistance to public safety than much broader policy initiatives.

Another critical area where resource constraints have an enormous effect, and where the Commission comprehension and flexibility is crucial, is the severe limitations municipalities face in funding capital projects. Beyond the extreme competition within a local government for capital funds is a bonding procedure that limits approval of monies to an annual process, and only where there is a tangible and substantive project presented. The municipal bonding process does not commit funding to potential projects that are conditioned on a regulatory or licensing process.

At least two Commission circumstances are relevant in this regard. The Commission's dedication of spectrum in 700 MHz spectrum that will be available upon the relocation of television broadcasters is an important commitment and reflects the Commission's fidelity to public safety interests. Yet, the circumstances surrounding the relocation, even if the purported 2006 date could be met, presents an intractable block to municipal agencies. Unless the frequency resource is available and useable, no government agency will undertake any effort to pursue a capital project to use the spectrum. The result is not only that 700 MHz provides no relief for public safety, it will be several years after it is actually available before municipal governments will be able to commence the process to build out the spectrum.

Additionally, in those areas, whether the licensing process or where an agency request a waiver under the law or the Commission's rules to use particular frequencies, the Commission's process needs to comprehend and parallel such efforts. A substantial capital project, such as a new radio system, will not commence until there is some indication that the underlying resource, frequency channels, will be available to the agency. The Commission's processes, including waiver applications, which require public notice and opportunity for comment and opportunity, must at least attempt to parallel these needs of local agencies, as delay, which is so often the curse of private sector, is just as deadly to public agency needs.

The Commission Has the Ability to Enhance Its Important and Tangible Contribution to Public Safety Communications

In recommending that the Commission expand its operational assistance to public safety agencies as well as to pursue initiatives that provide more spectrum, Bergen County is cognizant that the Commission operates under resource constraints. In an environment where interests regulated by an agency rarely recommend that the agency seek more resources to carry out its responsibilities, Bergen County recommends that it should be a major part of the Commission's homeland security initiatives. Adequate funding is a vital part of assisting local, county and state public agencies in their responsibilities.

The Commission is an institution of dedicated, competent individuals who take seriously its public trust responsibilities. The quandary is that there are not enough of such individuals, and the result is that the qualities these individuals possess are severely tempered by the lack of adequate resources. No component of the Commission is a better example than those assigned to public safety matters, both in licensing responsibilities at Gettysburg and at headquarters in Washington. Without additional resources, the important and diligent efforts of these individuals will not be able to comport with their own standards.

The challenge is already present. Comparison of waiver and similar issues on public safety matters versus commercial matters across the Commission will likely indicate a disparity. Bergen County itself has been subject to a protracted dispute involving a critical radio frequency channel, the delay in resolution has had a detrimental effect beyond the substantial resources committed to defending its interests.⁵

The danger of another attack and the need to improve the Nation's readiness gives ample premise for additional Commission resources with regard to public safety. Homeland Security is the foundation of the Administration's policy and the cornerstone of the President's fiscal year 2003 Budget request. Enormous resources are committed to improving public safety communications.⁶ The Congress is exploring numerous initiatives to improve communications capability across all levels of government. The Commission's responsibilities in public safety require parallel commitment of resources to implement these priorities.

Bergen County's own experience affirms the extent of the responsibility and the challenge presented. On September 11, 2001, as part of the emergency response, Bergen County Police officers were deployed to the George Washington Bridge and surrounding roadways because of the threat to this critical infrastructure and the tragic deaths of Port Authority officers at the World Trade Center. That deployment lasted for three months. During that time period not only was there no ability to speak to other public safety agencies without a special infrastructure, but Bergen County's own frequencies were inadequate to communicate on a secure basis, with more than one incident of a response being intercepted and the operation potentially compromised. The subsequent bomb and anthrax scare incidents

⁵ *In the Matter of Greco Cousins Concrete Corp.*, File No. D069976.

⁶ *The Budget Message of the President- The Budget for Fiscal Year 2003- Protecting the Homeland*, February 4, 2002 at 17.

across the country were replicated in Bergen County and the inability to communicate with area hospitals and other public safety agencies to coordinate response and more vitally, to share known information, was detrimental to carrying out these vital public safety responsibilities.

Bergen County recommends that the Spectrum Policy Task Force raise the goal of its responsibility to outline a broad based initiative responding to the demands of Homeland Security. The September 11, 2001 attack demonstrated the strength and vulnerabilities of the Nation's public safety infrastructure. At the foundation is a critical need to improve public safety communications at the federal, state, and local level. The Spectrum Task Force should embrace this goal as a crucial priority of the Commission.

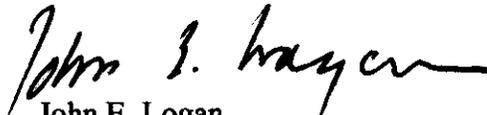
CONCLUSION

Bergen County comprehends the depth of the challenge it presents to the Commission. It sincerely believes, based on its own hard experience, that to do otherwise will miss the opportunity that presents itself at a time when the Nation's security is so severely challenged.

Respectfully Submitted,

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CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing Comment was served on this July 8, 2002, by first-class, postage prepaid, upon each of the following persons:

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