



**Association of Public-Safety Communications Officials-International
International Association of Chiefs of Police
International Association of Fire Chiefs
National Sheriffs' Association**

TO: National Telecommunications and Information Administration

DATE: March 17, 2004

**RE: United States Spectrum Management Policy For the 21st Century
Docket No. 040127027-4027-01**

We hereby submit the following comments in response to the *Notice of Inquiry* (“*NOI*”), 69 Fed. Reg. 4923 (February 2, 2004), issued by the National Telecommunications and Information Administration (“NTIA”) in the above-captioned matter.

Pursuant to an Executive Memorandum,¹ NTIA is seeking comments on a wide range of issues related to radio spectrum management in the United States. Our comments will be limited to those issues raised in the *NOI* that have the most direct impact on state and local government public safety radio communications.

The “first objective” in the Executive Memorandum for which comments are sought is to “facilitate a modernized and improved spectrum management system.” The *NOI* notes that spectrum management in the United States is bifurcated between NTIA, which manages Federal Government spectrum, and the Federal Communications Commission (“FCC” or “Commission”), which manages all non-Federal Government spectrum, including spectrum licensed to state and local governments. The *NOI* seeks comments as to benefits and risks of creating a more centralized spectrum management system.

We are greatly concerned with the concept of consolidated spectrum management, especially if it involves shifting state and local government spectrum management from the FCC to NTIA or another Executive Branch agency. Attached hereto is a document dated October 10, 2003 describing the basis of that concern, and the strong objection of major public safety organizations to any such consolidation.

¹ Presidential Memorandum on Spectrum Policy for the 21st Century, 69 Fed. Reg. 1568 (Jan. 9, 2004).

The *NOI* also seeks comments regarding the frequency coordination process used by the FCC for many frequency allocations, including most non-Federal public safety spectrum. We believe that frequency coordination has been highly successful in allotting scarce channels in an efficient manner, while protecting critical public safety operations from dangerous interference. Frequency coordination could be improved, however, through standardized procedures, databases, and interference protection criteria among frequency coordinators. Expanded coordination is also needed across adjacent frequency allocations where interference is possible (*e.g.*, commercial and public safety allocations within the same frequency bands).

Of particular relevance to state and local governments, the *NOI* seeks comments regarding barriers to interoperability. The issues related to interoperability have been well-documented before NTIA and a wide variety of other forums within the past several years.² In each case, major impediments to improved interoperability have been identified as the lack of sufficient spectrum for common use within a particular region, insufficient funding to acquire interoperable equipment, inadequate planning for use of existing resources, and a lack of standards for certain procedures and equipment. The SAFECOM Program in the Department of Homeland Security is also working on this issue.

We urge NTIA to help in efforts to resolve these issues. In particular, we ask that NTIA and the Administration support legislation to clear valuable spectrum in the 700 MHz band (TV channels 60-69) for nationwide public safety use. In 1997, Congress required the FCC to allocate 24 MHz of that spectrum for state and local government public safety. While some or all of that spectrum is available in some parts of the country, it remains blocked by television stations in most of the nation's largest metropolitan areas. Current law allows those television stations to remain on the air until December 31, 2006, or until 85% of households in their market have access to digital television (DTV). We have joined in supporting legislation to establish a firm date to make that spectrum available, and urge the Administration to join that effort.³

The 700 MHz band will be especially helpful in addressing interoperability. First, it is adjacent to the 800 MHz band, where many wide-area, multi-agency radio systems already operate. Second, the 700 MHz band will provide critically needed capacity to build new interoperable radio systems that include agencies from a variety of disciplines and jurisdictions. Third, the FCC rules for the 700 MHz public safety band include an exclusive designation of 2.6 MHz for interoperability, and a requirement that all equipment used in the band comply with an interoperability standard for use on those channels. The rules also permit Federal Government use of 700 MHz systems licensed to state or local governments, furthering the goal of interoperability among all levels of government.

The *NOI* also seeks comments regarding methods to achieve more efficient spectrum utilization. One important step would be to adopt more robust and

² See, *e.g.*, National Task Force on Interoperability.

³ We also support efforts to increase the public safety spectrum allocation in the 700 MHz band to accommodate broadband mobile communications systems.

sophisticated methods for measuring potential interference, so as to allow greater sharing of existing spectrum resources. For example, many of the interference criteria and measurement tools used by the FCC are outdated, and provide imprecise images of spectrum use that fail to take terrain and other factors into consideration.

We also believe that there is potential for far more spectrum sharing across the Federal/Non-Federal public safety divide. There are portions of the country where certain Federal frequency allocations are not used extensively, and where that spectrum could be invaluable in addressing state and local government needs. Of particular note is the VHF High Band and UHF Band which include both Federal and non-Federal public safety operations. In the VHF High Band, access to additional channels could greatly enhance communications capability and spectrum efficiency in many areas of the country (especially large, western states where 700/800 MHz may not be cost-effective for wide area operation due to its propagation characteristics.). Access to additional VHF channels could relieve congestion, and facilitate channel pairing to allow for deployment of spectrum-efficient trunking technology.

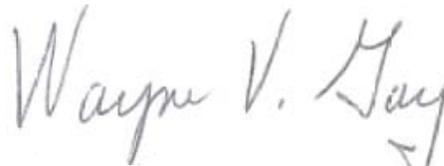
The *NOI* also seeks comments regarding cognitive radio technologies, which are also the subject of an FCC proceeding. We acknowledge the long-term potential benefits of such technologies. However, because failure of such technologies in the field could interfere with critical public safety communications, they must not be authorized until such time as the technologies are fully developed with successful operational records in other frequency bands.

We reiterate our opposition to Executive Branch jurisdiction over state and local government public safety spectrum, but urge greater cooperation between NTIA and the FCC to help solve critical public safety communications needs.

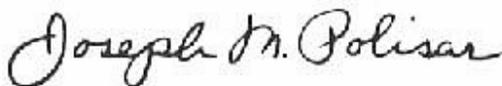
Thank you for your time and consideration of this matter.



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STATEMENT OF
ASSOCIATION OF PUBLIC-SAFETY COMMUNICATIONS OFFICIALS-
INTERNATIONAL, INC.
INTERNATIONAL ASSOCIATION OF FIRE CHIEFS, INC. and INTERNATIONAL
MUNICIPAL SIGNAL ASSOCIATION
INTERNATIONAL ASSOCIATION OF CHIEFS OF POLICE
MAJOR CITIES CHIEFS ASSOCIATION
NATIONAL SHERIFFS' ASSOCIATION
MAJOR COUNTY SHERIFFS' ASSOCIATION
NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS COUNCIL

October 10, 2003

**ALLOCATION AND MANAGEMENT OF RADIO SPECTRUM FOR STATE AND
LOCAL GOVERNMENT PUBLIC SAFETY COMMUNICATIONS**

The Communications Act of 1934 provides that all non-Federal Government use of the radio spectrum is to be allocated and managed by the Federal Communications Commission (“FCC” or “Commission”), an independent regulatory agency. This includes spectrum licensed to commercial entities, as well the spectrum licensed to state and local governments for their police, fire, EMS and other public safety communications operations. Federal Government spectrum use is managed by the National Telecommunications and Information Administration (“NTIA”), within the Department of Commerce. We believe that this important, fundamental distinction should be maintained, though we also suggest that greater cooperation and coordination between the FCC and NTIA is necessary to promote more efficient and effective public safety use of the radio spectrum. The FCC should also raise public safety to higher level of importance within its organizational structure.

Maintain FCC/NTIA Jurisdiction

Some have suggested that jurisdiction over state and local public safety spectrum should be shifted to NTIA or another Executive Branch entity. The apparent goal of such move would be to combine under one agency the management of all “public safety” spectrum, including spectrum used by state and local public safety, and by Federal entities such as the Federal Bureau of Investigation, the Department of Treasury, the Department of Defense, and the Department of Homeland Security. We believe that such a fundamental shift would be harmful to state and local government public safety agencies, and would not promote better spectrum efficiency or efficacy.

State and local government public safety radio communication is currently subject to the FCC’s jurisdiction. As an independent regulatory agency, the FCC has no vested interest in any of the entities subject to its jurisdiction. Thus, the FCC commissioners and staff are free to make policy decisions based solely upon the Commission’s interpretation and implementation of its enabling statute, the Communications Act of 1934, as amended, and related legislative directives. A principal purpose of that legislation is to promote “the safety of life and property through the use of wire and radio communication.”

Federal government spectrum use is currently managed by NTIA, itself part of the Executive Branch. Thus, NTIA has an inherent, vested interest in meeting the communications requirements of Federal agencies under the common control of the President. We do not believe that NTIA (or any other Executive Branch agency) should also have control over the allocation and management of spectrum licensed to and used by state and local governments. Despite good intentions, such an Executive Branch spectrum manager would have a built-in conflict of interest, and would be expected to give preference to the needs of the Executive Branch, potentially to the detriment of state and local government entities.

The FCC provides numerous formal and informal opportunities for public participation in its decision-making process. Over the years, the public safety community has been able to develop good working relationships with commissioners and staff, providing them with critical information regarding the actual operating conditions and needs of public safety communications. The public also has open access to a broad range of data and information regarding non-Federal spectrum allocation and use. Similar dialogue and access to information is difficult if not impossible with NTIA, insofar as much of its spectrum management involves classified information. For example, we have urged that the Department of Defense provide additional spectrum sharing opportunities in certain frequency bands for public safety agencies in portions of the U.S. that do not have extensive military facilities. That effort has been stymied by the unwillingness of the DOD to release classified information regarding its current and future spectrum utilization.

We also do not believe that NTIA is equipped to handle the massive task of issuing, maintaining, and enforcing the tens of thousands of licenses held by state and local governments. The FCC has developed an efficient automated licensing system for both public and private licensees. The FCC also has license enforcement mechanisms in place, including skilled field office personnel, to enforce rules and prevent harmful and disruptive interference to licensed operations. Moving that entire licensing and enforcement structure to NTIA or another Executive Branch agency would be enormously disruptive, inefficient, and unnecessary.

FCC licensing of public safety (and similar private wireless) licensees is built upon decades of regulation and administrative law decisions. That historical record has great value and helps to define the rights and obligations of public safety licensees and the Commission. It is unclear as to whether and how this regulatory foundation could be maintained if jurisdiction for state and local government public safety is moved to the Executive Branch.

Most state and local government public safety systems currently operate in frequency bands with mixed allocation of public safety and non-public safety channels. Thus, while specific channels may be designated for public safety, adjacent channels may be licensed to business, industrial, or commercial wireless licensees. The FCC maintains jurisdiction over all of those entities and frequency allocations, and thus is uniquely suited to develop and enforce interference protection criteria. Furthermore, many public safety agencies operate on channels that are open for use by a broad range of public and private licenses (e.g., land mobile operations in 470-512 MHz and 806-809/851-854 MHz, and nearly all point-to-point microwave

operations). These mixed frequency allocations and assignments would be difficult to administer if the FCC lost its jurisdiction over state and local government licensees.

Therefore, for the reasons discussed above, we strongly urge that the FCC continue to have primary responsibility for allocating and managing radio spectrum for state and local government public safety agencies.

Need for Improvement

While we do not support major changes in jurisdictional responsibility, we do believe that much greater cooperation is needed between NTIA and the FCC, especially as it relates to public safety communications. Cooperation is needed to promote interoperable emergency communications across local, state, and federal jurisdictional boundaries. Improved inter-agency coordination could also lead to more efficient spectrum utilization. While state and local government public safety spectrum use is different in many respects from Federal government use, the similarities are significant, especially as to the critical nature of the communications. That suggests a potential for far more “sharing” of spectrum across jurisdictional boundaries.

The FCC should also place a higher organizational priority on public safety issues, with high level officials given primary responsibility for coordinating issues related public safety. The Commission should also establish a task force on public safety, drawing from all relevant offices and bureaus, with appropriate participation by representatives of the public safety community.

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