

**FEDERAL COMMUNICATIONS COMMISSION**

1270 Fairfield Road  
Gettysburg, PA 17325-7245  
Telephone (717) 338-2646  
Facsimile (717) 338-2696

April 27, 2001

**In Reply Refer to:**  
PS&PWD-LTAB-656

Robert M. Gurss  
Shook, Hardy & Bacon LLP  
600 14<sup>th</sup> Street, NW #800  
Washington, DC 20005

Martin W. Bercovici  
Keller and Heckmen, LLP  
1001 G Street, NW  
Suite 500 West  
Washington, DC 20001

William Hopstetter, President  
c/o Ohio Dept. of Natural Resources  
1894 Fountain Squire Court, 2<sup>nd</sup> Floor  
Columbus, OH 43224

John Horsley, Executive Director  
AASHTO  
444 N. Capitol St., NW  
Suite 249  
Washington, DC 20001

Dear Public Safety Coordinators:

This responds to the April 20, 2001 waiver request regarding electronic filing filed by APCO Intl., Inc. (APCO) and the April 20, 2001 extension of the effective date of the "unified dismissal policy" filed jointly by APCO, The International Association of Fire Chiefs, Inc and International Municipal Signal Association (IAFC/IMSA), the Forestry Conservation Communications Association (FCCA) and the American Association of State Highway and Transportation Officials (AASHTO) (hereinafter "Public Safety Coordinators"). APCO has filed a request for waiver of Section 1.913(b) of the Commission's Rules, 47 C.F.R. § 1.913(b), to extend the Universal Licensing System (ULS) mandatory deadline for electronically filing Land Mobile Phase II applications requiring frequency coordination for 90 days. The Public Safety Coordinators have requested that the Commission extend for 90 days the effective date of the "unified dismissal policy" for Land Mobile Phase II Services. For the reasons described below, we are granting a 90-day extension of the mandatory electronic filing deadline to APCO and a 90-day extension of the effective date of the "unified dismissal policy" for all Phase II services until July 25, 2001, in order not to disrupt licensing of critical public safety systems.

Section 1.913 requires that applications submitted by a frequency coordinator on behalf of an applicant be filed electronically effective July 1, 1999, or six months after the Commission begins use of ULS to process applications in a particular radio service, whichever is later. The Commission also announced in its April 29, 1999, Public Notice entitled "Wireless Telecommunications Bureau Postpones Effective Date of Unified Dismissal Policy for Applications in the Wireless Services" that the Bureau would delay implementation of the "unified dismissal policy" for a service until six months after conversion of that service to ULS. The Commission

began use of ULS for the Land Mobile Phase II radio services on October 24, 2000. As a result, mandatory electronic filing and implementation of the strict “unified dismissal policy” went into effect for the Public Safety Radio Services on March 25, 2001. Note that individual applicants are not subject to mandatory electronic filing, but are subject to the Bureau’s “unified dismissal policy”.

A request for a rule waiver in the Wireless Telecommunications Services may be granted if it is shown that (a) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (b) in view of unique or unusual factual circumstances of the instant case, application of the rule would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative. *See* 47 C.F.R. § 1.925(b)(3). For the reasons stated below, we find that the Public Safety Coordinators have justified the requested waivers of the rules.

In the request for waiver of the mandatory electronic filing deadline, APCO indicates that due to the many challenges faced during the conversion of Public Safety Land Mobile services to ULS, it does not feel it is prepared to commit to the electronic filing of all its applications. APCO states that the Conversion to ULS involved many challenging issues of which Electronic Batch Filing (EBF) is only one component. APCO represents that it had to modify its internal functions to handle the new data structure, and many resources needed to be dedicated to internal operational requirements in order to maintain the integrity of the coordination process. Final EBF testing was held off until this process was complete. With this process complete, APCO has been diligently testing EBF and has received approval of EBF for applications for new stations with approval of modifications and amendments anticipated within the next two weeks.

On March 6, 2001, the Wireless Telecommunications Bureau issued a Public Notice setting forth the standards by which it would consider whether requests to delay the implementation of mandatory electronic filing in the Land Mobile Radio Services meet the Commission’s waiver standard.<sup>1</sup> Specifically, the Bureau stated that request for waiver must include: (1) an explanation as to why the coordinator needs an extension of the mandatory deadline; (2) a description of the steps the coordinator is taking to achieve electronic filing; and (3) a timeline of when the coordinator expects to begin filing his or her applications electronically. APCO has provided this information, which allows us to conclude that unique or unusual circumstances exist that make application of the rules contrary to the public interest.<sup>2</sup> Specifically, strict application of Section 1.913(b) could prevent APCO from filing applications and has the potential to jeopardize the timely processing of many Phase II Land Mobile Radio Service applications and delay or deny the provision of vital services. Similarly, strict application of the “unified dismissal policy” could result in dismissal of applications filed by applicants through the Public Safety Coordinators in good faith. Therefore, we find that APCO and the Land Mobile Coordinators have met the waiver standard, and that good cause exists to temporarily waive the rule and extend the effective date of the dismissal policy. Accordingly, Section 1.913 is waived to permit APCO to continue manual filing of applications involving the Land Mobile Phase II radio services until July 25, 2001. In addition, we waive Section 1.913(b) of the Commission’s Rules insofar as it applies to any manually submitted Land Mobile Phase II radio service applications filed by APCO between April 25, 2001, and the date of this letter which have not otherwise been acted on by the Wireless Telecommunications Bureau.

We note that this waiver does not extend the mandatory electronic filing deadline for frequency coordinators other than APCO. Further, this waiver does not extend the deadline for mandatory use of FCC Forms 601 and 603 for any party.

In their request for extension of the effective date of the “unified dismissal policy,” the Public Safety Coordinators claim that implementation of that policy may lead to serious and dangerous consequences for many public safety agencies. They estimate that at the present time 50% of all applications filed by coordinators are returned. Under

---

<sup>1</sup> March 6 PN

<sup>2</sup> see 47 cfr §1.925(b)(3)

the “unified dismissal policy” most of these applications would be dismissed which may cause public safety entities to lose authority to operate critical systems. The Public Safety Coordinators request that the Commission extend the effective date until that return rate is reduced. More time is required to allow coordinators to educate applicants regarding ULS filing requirements, to proceed further with EBF testing and to clear its own application backlog.

Under these circumstances, we agree with the Public Safety Coordinators that a waiver would be in the public interest and would not be inconsistent with the underlying purposes of the unified dismissal policy. In this instance, strict application of Section 1.913(b) and the “unified dismissal policy” could result in dismissal of applications filed by applicants through the Public Safety Coordinators in good faith. Therefore, we find good cause to temporarily waive the rule and extend the effective date of the dismissal policy to provide coordinators additional time to educate applicants regarding ULS filing requirements, to proceed further with EBF testing and to clear its own application backlog. The Bureau will therefore extend the effective date of the “unified dismissal policy” until July 25, 2001.

This action is taken pursuant to the authority delegated in sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

Sincerely,

Mary M. Shultz  
Chief, Licensing and Technical Analysis Branch  
Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau