



**FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

June 28, 2004

In Reply Refer to:
RM-10432
DA-04-1904

James J. Flyzik
Federal Law Enforcement Wireless Users Group
c/o Deputy Assistant Secretary and Chief Information Officer
U.S. Department of the Treasury
Washington, D.C. 20220

Dear Mr. Flyzik:

The Wireless Telecommunications Bureau has before it a Petition for Rulemaking (Petition)¹ filed by the Federal Law Enforcement Wireless Users Group (FLEWUG) on December 7, 2001.² In the Petition, FLEWUG asks the Commission to amend its rules to establish: (1) an "Incident Command System" (ICS) response protocol;³ (2) a new streamlined system to license non-Federal public safety agencies on designated Federal interoperability spectrum;⁴ (3) receiver standards;⁵ and (4) a common standard for interoperability channels.⁶ By this letter, we deny FLEWUG's Petition.⁷ However, as explained more fully below, while the

¹ Petition for Rulemaking, RM-10432 (filed Dec. 7, 2001) (Petition).

² On April 30, 2002, the Petition was placed on public notice by the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center. Public Notice, Report No. 2549 (Apr. 30, 2002). In response, five sets of comments were filed: Arizona Department of Public Safety Comments (Arizona Comments), Association of Public-Safety Communications Officials-International, Inc. Comments (APCO Comments), Motorola, Inc. Comments (Motorola Comments), Private Radio Station Section of the Wireless Communications Division of the Telecommunications Industry Association Comments (TIA Comments), and Public Safety Wireless Network Program Executive Committee Comments (PSWN Comments).

³ Petition at iv, 6-9.

⁴ *Id.* at iii-iv, 5-6.

⁵ *Id.* at iv-v, 11-13.

⁶ *Id.* at iv, 10-11.

⁷ We note, as an initial matter, that the issues discussed in the Petition appear to concern recommendations on public safety spectrum needs initially made by the Public Safety Wireless Advisory Committee (PSWAC) in 1996. *See* Petition at 4. PSWAC was established in 1994 by the Commission and the National Telecommunications and Information Administration (NTIA) to study and offer recommendations on public safety spectrum needs. *See* Development of Operational, Technical, and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communication Requirements Through the

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Petition contains proposals not appropriate, at this juncture, for commencing a new rulemaking proceeding, there are a number of policy initiatives wherein the Commission has addressed, or is currently evaluating, the substance of FLEWUG's request.

FLEWUG is composed of law enforcement and public safety officials from numerous federal government agencies.⁸ It was established in 1994 as a joint initiative by the U.S. Department of Justice and the U.S. Department of the Treasury to provide the law enforcement community and the public safety community with a land mobile radio/wireless telecommunications system that serves their joint interests.⁹

Incident Command System Protocol. FLEWUG proposes that the Commission require that public safety agencies use an ICS to control communications at emergency scenes.¹⁰ However, the Petition does not set forth the text or substance of any proposed Commission rule change or amendment, as required by the Commission's rules governing petitions for rulemaking.¹¹ Without concrete proposals regarding the definition and implementation of an ICS, and based on the record before us, we believe it would be imprudent to pursue this matter further at this time. Moreover, based on the reasons set forth below, we have concerns that a proceeding on such a proposal would repeat efforts obligated to be undertaken by other governmental agencies, and that it would involve issues already examined by the Public Safety National Coordination Committee (NCC).

First, we are concerned that a rulemaking proceeding on ICS protocol would be repetitive of, and potentially counterproductive to, other ongoing federal efforts, since both Congress and the President have clearly indicated that responsibility for ICS protocol rests with the Secretary of the Department of Homeland Security (Secretary).¹² Specifically, the Secretary bears the responsibility of building a "comprehensive national incident management system with Federal, State, and local government personnel."¹³ Additionally, we note that the general subject matter of FLEWUG's proposal, involving issues of health, safety and welfare, in other contexts has been viewed historically as within the domain of non-Federal regional authorities. Consequently, the resources and expertise to handle such issues has resided with such authorities as, for example, fire, police and emergency medical service agencies.¹⁴

Year 2010, WT Docket No. 96-86, *Notice of Proposed Rule Making*, 11 FCC Rcd 12460 ¶ 2 (1996) (NPRM).

⁸ See <http://www.ntia.doc.gov/osmhome/wici/slides050900/tsld003.htm>.

⁹ See Memorandum of Understanding [MOU] Between the Department of Justice and the Department of Treasury, April 20, 1994.

¹⁰ Petition at 6. PSWN believes that the Commission should incorporate the ICS into its rules stressing the critical role regional planning committees play in establishing ICS communications plans. PSWN Comments at 3.

¹¹ 47 C.F.R. § 1.401(c). See also 47 C.F.R. § 1.407.

¹² 107 Pub. L. 296; 116 Stat. 2135, § 502(5). See also Homeland Security Presidential Directive/HSPD-5 (rel. Feb. 28, 2003).

¹³ *Id.*

¹⁴ APCO recognizes that this proposal may be beyond the Commission's normal area of expertise and jurisdiction. APCO Comments at 2. TIA also questions whether the Commission's rules are the appropriate venue for dictating such operational procedures that are usually implemented at the local level. TIA Comments at 3.

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Second, we note that the NCC already examined the ICS concept,¹⁵ and only urged the Commission to “voice support” for ICS development by publicly encouraging state and local agencies to develop ICS protocol.¹⁶ The NCC approach permits non-Federal regional public safety entities to modify their approaches as needed. Moreover, the voluntary nature of the approach is similar to and consistent with the Commission’s treatment of State Interoperability Executive Committees (SIECs): each state has been encouraged, but not required, to form a SIEC to administer 700 MHz band spectrum designated for interoperability.¹⁷ This NCC approach is also consistent with the Commission’s determination, at least within the context of the 700 MHz band, that states were poised to administer interoperability channels effectively without Commission micromanagement of them.¹⁸ In view of these factors, we believe that a separate rulemaking proceeding on ICS rules is not warranted at this time.¹⁹

Licensing. FLEWUG suggests that the Commission, in cooperation with the National Telecommunications and Information Administration (NTIA), establish a streamlined system to license non-Federal agencies on designated Federal interoperable spectrum.²⁰ The Commission’s rules already allow non-Federal entities to use Federal spectrum in circumstances where such use is required for coordination of Federal and non-Federal activities.²¹ To the extent that FLEWUG’s suggestion contemplates such non-Federal entity use, we find the proposal unnecessary. Further, we note that the authority to determine whether non-Federal entities can use Federal spectrum resides with the NTIA, not the Commission.²² Only after the NTIA determines that a non-Federal operation of Federal frequencies conforms to conditions previously agreed upon by the Commission and the NTIA, does the Commission release the details of the authorized use via Public Notice.²³ Thus, to the extent FLEWUG’s suggestion contemplates a use not already

¹⁵ See Letter from Kathleen M.H. Wallman, Chair, NCC, to Michael K. Powell, Chairman, FCC (dated Nov. 12, 2002) (*Nov. NCC Letter*).

¹⁶ *Id.*, ¶¶ 1, 6.

¹⁷ Interoperability channels are specified in Section 90.531 of the Commission’s rules. 47 C.F.R. § 90.531. Entities desiring a license to operate on the Interoperability channels enter into an MOU with the relevant SIEC, and the SIEC is charged with enforcement of the MOU’s terms, with final authority vested with the Commission. See Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communication Requirements Through the Year 2010, WT Docket No. 96-86, *Fourth Report and Order and Fifth Notice of Proposed Rule Making*, 16 FCC Rcd 2020, 2022, 2025-26 ¶¶ 2, 12, 13 (2001) (*Fourth R&O*).

¹⁸ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, WT Docket No. 96-86, *Second Memorandum Opinion and Order*, 15 FCC Rcd 16844, 16880-16883 ¶¶ 79-84 (2000).

¹⁹ Further, we agree with TIA, which questions whether Commission rules are the appropriate venue for dictating operational procedures that are normally implemented at the local level. TIA Comments at 3.

²⁰ Petition at iii, 5-6. APCO and Arizona believe it is appropriate that NTIA and the Commission establish a national process to streamline access of qualified entities. See APCO Comments at 2; Arizona Comments at 2.

²¹ See 47 C.F.R. §§ 2.102(c) and 90.173(c).

²² NTIA is responsible for the licensing of radio frequencies to federal public safety agencies. See 47 U.S.C. § 901(c). The Commission is responsible for licensing radio frequencies to non-federal public safety agencies. See 47 U.S.C. §§ 151, 301, 303.

²³ NTIA “has specified forty (40) Federal Government frequencies that can be used by non-Federal government public safety entities . . . for communications involving coordination and cooperation with

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permissible under the Commission rules, further discussion between the Commission and the NTIA, rather than a rulemaking proceeding, would be the appropriate action to take at this point in time. We agree that the ability of public safety entities to communicate with each other on the same channel would provide certain benefits to those entities.²⁴ Therefore, we intend to discuss FLEWUG's proposal in greater detail with the NTIA during our interagency meetings held pursuant to a Memorandum of Understanding (MOU) between the Commission and the NTIA.²⁵

Receiver Standards. FLEWUG also requests that the Commission adopt stringent receiver performance standards for sensitivity, selectivity, dynamic range and durability characteristics for receiver equipment operation on spectrum below 512 MHz.²⁶ However, FLEWUG does not set forth the text or substance of any proposed rule change or amendment. Moreover, an inquiry already is underway to examine the overall spectrum policy that includes the matters of interference avoidance measures and receiver performance requirements.²⁷ We learned from the 700 MHz public safety proceeding²⁸ that, although receiver standards may be possible when a particular technology is mandated -- for example the TIA-102 "Project 25" technology required for the 700 MHz narrowband voice interoperability channels -- it yet remains undetermined whether a meaningful "universal" technology-independent receiver standard could be developed that would apply to conventional analog FM receivers and receivers operating on systems that employ differing digital technologies, for example, Frequency Division Multiple Access (FDMA), Time Division Multiple Access (TDMA), and Code Division Multiple Access (CDMA).

Moreover, in the *800 MHz NPRM*,²⁹ the Commission asked whether receiver standards are necessary to avoid interference to public safety communications in the 800 MHz band. The issue of receiver standards for the 800 MHz band will be addressed in the final action in the *800 MHz Proceeding*, as the Commission examines whether receivers are one of the factors

Federal Government agencies"; however the frequencies may not be used to meet the "day-to-day communications needs of non-Federal Government public safety entities." Public Notice, Report No. DA 01-1621 (July 13, 2001).

²⁴ Petition at 5-6. PSWN agrees with FLEWUG's recommendation that the FCC and NTIA develop an MOU to govern their interagency relationship. See PSWN Comments at 2.

²⁵ Memorandum of Understanding Between the Federal Communications Commission and the National Telecommunications and Information Administration, executed by Michael K. Powell, Chairman, FCC, and Nancy J. Victory, Assistant Secretary for Communications and Information, Department of Commerce (Jan. 31, 2003). In this MOU, the Commission and the NTIA agreed, *inter alia*, to participate in joint spectrum planning and to "meet regularly to exchange information of mutual interest" on subjects of "future spectrum requirements for public and private uses, including State and local government public safety agencies...." *Id.* at 2.

²⁶ Petition at 11-13. FLEWUG does not specify which receiver standards should be proposed for adoption. Furthermore, we are unaware of any industry standard for equipment operating below 512 MHz. APCO and PSWN agree with FLEWUG that the Commission should adopt receiver standards. See APCO Comments at 3; PSWN Comments at 5.

²⁷ See Interference Immunity Performance Specifications for Radio Receivers, ET Docket No. 03-65, Review of the Commission's Rules and Policies Affecting the Conversion to Digital Television, MM Docket No. 00-39, *Notice of Inquiry*, 18 FCC Rcd 6039 (2003).

²⁸ See *NPRM*, 11 FCC Rcd at 12483 ¶ 68. See also *Fourth R&O*, 16 FCC Rcd at 2053 ¶ 94.

²⁹ See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Notice of Proposed Rule Making*, 17 FCC Rcd 4873, 4875-76 ¶ 4 (*800 MHz NPRM*).

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contributing to public safety interference.³⁰ We therefore believe an additional rulemaking proceeding addressing this matter would be redundant and is neither warranted nor in the public interest under these circumstances.

Interoperability Standard. FLEWUG recommends that the Commission adopt a baseline interoperability standard for public safety spectrum below 512 MHz.³¹ With the exception of the Project 25 standard for a portion of the 700 MHz band (namely the narrowband interoperability channels),³² Project 25 has been a voluntary standard that state and local agencies may, but are not required to, use for their equipment procurements. Moreover, to date, the Commission has designated only eleven channels for interoperability spectrum below 512 MHz.

If FLEWUG's proposal contemplates that a larger number of frequencies below 512 MHz should be designated for interoperability, it is not clear how spectrum for such purpose could be obtained, particularly given that this portion of the spectrum is already severely congested.³³ Furthermore, even if there were a significant number of available channels in the bands below 512 MHz, it is not clear whether it would be feasible or desirable for an interoperability standard to be the driving principle governing public safety operations in these bands given that the spectrum is heavily occupied by embedded systems.

The NCC examined interoperability issues through its Interoperability Subcommittee, which completed study of this matter and made recommendations.³⁴ The recommendations include, among others, requiring all digital systems operating on VHF and UHF channels to conform to Project 25; and requiring all VHF and UHF radios to employ a standard CTCSS tone when operating on interoperability channels. The Commission currently intends to review these suggestions in a rulemaking proceeding, when it evaluates the NCC's wideband interoperability data standard. In view of this future undertaking, we do not believe it would be in the public interest to initiate a separate rulemaking proceeding on FLEWUG's interoperability proposal.

For the reasons discussed above, we therefore deny FLEWUG's Petition. FLEWUG's proposals either do not describe rule changes or amendments to the Commission's rules, are not sufficiently justified under the circumstances presented, or otherwise do not demonstrate that they would be in the public interest. However, we assure interested parties that the Commission has a continuing commitment to the development of rules and policies that will aid the non-Federal public safety entities in meeting their requirements for spectrum, promoting efficient use of the

³⁰ Both Motorola and TIA submit that receiver characteristics represent only one factor that can cause interference and cautions the Commission against assuming that imposing receiver standards on public safety equipment is the primary solution to interference. *See* Motorola Comments at 10; TIA Comments at 5.

³¹ Petition at 9-10. All the commenters support this proposal. *See* APCO Comments at 2; Arizona Comments at 3; Motorola Comments at 4; PSWN Comments at 4; TIA Comments at 4-5.

³² *Fourth R&O*, 16 FCC Rcd at 2020 ¶ 2.

³³ *See* Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, Response to Title II of the Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2001, Public Law 106-553, U.S. Dept. of Commerce, NTIA (Jan. 2002), at xviii, xix, 3-19, 4-6, 4-7, 5-7, 5-9, 6-2; *See also* FCC Staff Report on NTIA's Study of Current and Future Spectrum Use by the Energy, Water and Railroad Industries, Submitted Pursuant to Public Law No. 106-533, FCC (July 30, 2002), at 13, 16-17.

³⁴ *See Nov. NCC Letter*, *supra* note 16. *See also* Letter from Kathleen M.H. Wallman, Chair to Michael K. Powell, Chairman, FCC (dated July 25, 2003).

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spectrum, and achieving interoperability and seamless communications between and among cooperating organizations.

Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934 as amended, 47 U.S.C. § 154(i), and Section 1.407 of the Commission's Rules, 47 C.F.R. § 1.407, the Petition for Rulemaking filed by the Federal Law Enforcement Wireless Users Group on December 7, 2001 IS DENIED.

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

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Cathy Seidel
Deputy Chief, Wireless Telecommunications Bureau