

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of)
)
Houston Texas Public Safety Plan) Gen. Docket 91-199
(Region 51))

ORDER

Adopted: June 18, 1996

Released: June 21, 1996

By the Deputy Chief, Office of Engineering and Technology and the Chief, Private Wireless Division, Wireless Telecommunications Bureau:

1. *Introduction.* By letter dated February 26, 1996, the Chairman of the Region 51 Regional Review Committee representing Houston, Texas, submitted an amendment to the Region 51 Public Safety Radio Plan (Plan).¹ This Plan was developed in response to a Congressional directive² to establish guidelines for use of the spectrum and to set forth guidelines to be followed in allotting spectrum to meet the mobile communications requirements of the public safety and special emergency entities operating in the region. The regional public safety planning committee of Region 51 developed its regional plan, tailored to their own particular communications needs. Now, by amendment, the Regional Review Committee seeks to reallocate frequencies in several pools in order to address concerns

¹ The Plan was accepted by the Commission on September 25, 1991, pursuant to delegated authority. See Houston Area Public Safety Plan, PR Docket No. 91-199, 6 FCC Rcd 5751 (1991).

² See Development and Implementation of a Public Safety National Plan and Amendment of Part 90 to Establish Service Rules and Technical Standards for Use of the 821-824/866-869 MHz Bands by the Public Safety Services, GEN Docket No. 87-112, *Report and Order*, 3 FCC Rcd 905 (1987).

regarding the lack of available spectrum.³ Specifically, the amendment requests that nineteen channels currently reserved for statewide use and nine channels currently reserved for Regional Mobile Data Terminal (MDT) use be transferred to the general pool because these channels are unused. After the transfer, these channels would be available to satisfy spectrum requirements of Texas counties.⁴

2. *Comments.* On March 12, 1996, the proposed amendment was placed on Public Notice to provide interested parties an opportunity to file comments.⁵ Comments were received from a variety of spectrum users, including individuals and various government agencies, within the boundaries of Region 51.⁶ Several comments oppose the proposed amendment.⁷ For example, Gilbert argues that the Commission should reject the amendment to transfer statewide frequencies to the general access public safety pool, as it will impact significantly future plans for statewide communications systems.⁸ Gilbert states that while the Texas Department of Criminal Justice does not have a system ready to go on the air, one is in the planning stages, which will need access to the frequencies at issue.⁹ TDOT urges the Commission to reject the amendment because the transfer and loss of these frequencies to general access use would undermine the goal of state agency interoperability in Texas.¹⁰ Moreover, TDOT states that it intends to build a system on these frequencies during the next 10 years, if it can gain administrative approval and funding from the state legislature.

³ According to the letter filed by the Chairman of the Regional Review Committee in conjunction with the amendment, the amendment received unanimous approval by all voting members of the Region 51 Review Committee. See Letter to Federal Communications Commission from Mr. Ronald J. Gillory, Chairman, Region 51 National Public Safety Plan Regional Review Committee, dated February 26, 1996.

⁴ The plan is to make these frequencies available for use by Harris County.

⁵ See *Public Notice, DA 96-345.*

⁶ See, e.g., Comments of Paul Gilbert of the Texas Department of Criminal Justice Radio Communications (Gilbert), Texas Department of Transportation Radio Operations Branch (TDOT), and Ronald J. Gillory, Chairman of Region 51 (Chairman), and Kenneth Yoder (Yoder). Reply comments were filed by Harris County.

⁷ See, e.g., Gilbert Comments, TDOT Comments, and Yoder Comments.

⁸ Comments of Gilbert at 1.

⁹ *Id.*

¹⁰ TDOT Comments at 2.

3. In addition, Yoder asserts several grounds for opposition of the proposed amendment and requests that the Commission not modify the Region 51 plan.¹¹ Yoder maintains that the proposed amendment is not a minor change, as set forth by the Regional Review Committee, but a major change to the Region 51 plan, as it would have an adverse effect upon several other regions in Texas.¹² In addition, Yoder objects to the Regional Review Committee's characterization that the proposed amendment received unanimous approval by the Regional Review Committee. In fact, Yoder states that the Regional Review Committee failed to provide adequate notice to all those in the Committee regarding the filing of the amendment to transfer unused statewide channels and that the proposal failed to gain full support, as some state agencies still will require the use of these channels.¹³ Additionally, Yoder asserts that there are several frequencies, other than those proposed for use, which can be reallocated or resorted and used to meet the requirements of Region 51 presently.¹⁴

4. In reply, Harris County states that similar reallocation of channels in other regions had not been treated as major amendments of their Plans.¹⁵ Harris County also indicates that the resort of frequencies Yoder requested has been completed and shows that frequencies are not available to satisfy Harris County's application.¹⁶ Further, Harris County states that it has been unable to find any single state agency that has a plan for statewide radio

¹¹ Yoder, an employee of the State of Texas, also serves as the State of Texas Local Frequency Advisor for the Association of Public-safety Communications Officers International, Inc. (APCO). In correspondence from APCO Headquarters Office, however, the Commission was advised that the official APCO position on any regulatory and/or technical matter before the Commission resides with the APCO Headquarters Office only, of which Yoder is not the official representative. See Letter to Ms. Kathryn Hosford, Public Safety Liaison Officer, Federal Communications Commission from Mr. Alireza Shahnam, APCO Automated Frequency Coordination, Inc., dated April 4, 1996. Thus, Yoder's comment represents the views of an employee of the State of Texas, and is not APCO's position.

¹² Yoder Comments at 1.

¹³ Yoder Comments at 1-2.

¹⁴ Yoder Comments at 1. Yoder argues that other 821 MHz channels allocated to other Texas counties could be used instead of using the allocated statewide channels.

¹⁵ Reply Comments of Harris County at 1-2, referring to the Region 40 Plan for the Dallas-Fort Worth area, in which several statewide channels were reallocated and classified as a minor amendment to the Region 40 Plan.

¹⁶ *Id.*

communications.¹⁷ The Region 51 Chairman, in his comments, also questions the need to retain statewide channels for extended periods, without use, as the Region 51 Plan requires that applicants furnish a detailed buildout schedule. He contends that it is not the intent of the Region 51 Plan to allow spectrum to be reserved for indefinite or long periods of time and failure of an applicant to timely implement any proposed project will result in loss of spectrum and its return to the general pools.¹⁸ However, he asserts that several public safety agencies have funding for the development of shared wide area communications systems and have made application for spectrum assignments. In addition, he states these agencies have expressed willingness to cooperate with other entities requiring future communications capabilities. He argues that the proposed modification to the Region 51 Plan will allow the implementation of these spectrum efficient public safety systems that directly impact the local cities and counties.¹⁹ Further, the Region 51 Chairman maintains that the Regional Review Committee did consider Yoder's objection to the proposal in its Region 51 Committee meeting held on February 21, 1996. Notwithstanding Yoder's position, there was unanimous approval for the amendment.

5. *Discussion.* We have reviewed the proposed amendment to the Region 51 Plan and the comments on the proposed amendment, and decline to reject or table it. The parties opposing the amendment are requesting that we conduct an independent review of the arguments presented to the Regional Review Committee and either overturn or delay its decision. They also request, in essence, that we allow state users up to ten more years to utilize these channels. The record shows, however, that state users have been unable to secure appropriations from the state legislature to use these channels. We regard claims of future use contingent on funding as speculative.

6. In the *Report and Order* establishing the National Public Safety Planning process, the Commission stated that one of its primary objectives was to promote efficient use of public safety spectrum.²⁰ In adopting the National Planning approach, the Commission sought to provide the regions with as much autonomy as possible to develop plans that meet their differing communications needs.²¹ It also found that regional planning committees should allow local authorities to address the unique spectrum allocation requirements of public safety while providing sufficient flexibility for regional planners to develop efficient and effective

¹⁷ Reply Comments of Harris County at 2.

¹⁸ Comments of Chairman, Region 51 Regional Review Committee at 3. He notes that there are no applications for use from any state of Texas, agency pending.

¹⁹ Comments of Chairman, Region 51 Regional Review Committee at 3.

²⁰ *Report and Order*, 3 FCC Rcd 905, 913 (1987).

²¹ *Id.* at 906.

solutions to local public safety problems.²² We will not, therefore, conduct *de novo* reviews or overturn decisions made by regional coordinating committees unless commenters show the committee has not complied with the requirements set forth in the *Report and Order*,²³ or that amendments to a Regional plan have resulted in elimination of an element that we found should be included.²⁴ In this case, the Regional Review Committee of Region 51 weighed the arguments now before us, and it approved those modifications it judged necessary to satisfy new operational requirements. We conclude that approving this amendment is consistent with the *Report and Order* because, based on the decision of the Region 51 Regional Review Committee, it furthers the interests of the eligible public safety entities within the Region.

7. Accordingly, IT IS ORDERED that the Public Safety Radio Plan for Region 51 IS AMENDED, as set forth in the Region's letter of February 26, 1996. This amendment is effective immediately.

8. For further information, contact William T. Cross at (202) 418-0680.

FEDERAL COMMUNICATIONS COMMISSION



Bruce A. Franca

Deputy Chief, Office of Engineering and Technology



Robert H. McNamara

Chief, Private Wireless Division

²² *Id.* at 905.

²³ The *Report and Order* established a mechanism for modifying a regional plan. See *Report and Order*, 3 FCC Rcd 905, 911 (1987).

²⁴ *Id.* at 911.