

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
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**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

suites 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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