

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

In the Matter of)	
)	
Amendment of Parts 22 and 90 of the)	WT Docket No.
Commission's Rules to Reallocate Certain 150)	
MHz Public Mobile Radio Service Frequencies)	
to the Public Safety Radio Services)	

To: The Commission

PETITION FOR RULE MAKING

Icom America, Inc. ("Icom"), through counsel and pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. §1.401, hereby respectfully requests that the Commission amend Sections 22.531, 22.561 and 90.20 of its Rules to reallocate certain 150 MHz Public Mobile Radio Service frequencies to the Public Safety Radio Services. In support thereof, the following is shown:

I. BACKGROUND

A. Icom America

Icom America's parent company, Icom, Inc., was founded in 1954 by Tokuzo Inoue in Osaka, Japan. Icom, Inc. is a publicly held Japanese corporation; its stock is traded on the Tokyo and Osaka Stock Exchange. Icom, Inc. began as an engineering and manufacturing company in the business of designing, engineering, and manufacturing highly advanced, compact solid-state radio equipment for use in the Amateur radio industry. The company's product line has since expanded to include communications equipment and products based in the Marine, Avionics and Land Mobile industries.

Icom Inc. has sales offices and branch offices all over the world including Australia, Germany, France, United Kingdom, Spain, Canada and of course the U.S. Icom America is Icom Inc.'s largest subsidiary company and is the U.S. distributor for Icom, Inc. products. Icom America was incorporated in October of 1979 and has continued to gain market share in each of its five major divisions: Land Mobile, Amateur, Aviation, Marine and Receivers.

Land Mobile:

Icom joined the land mobile industry approximately nine years ago. This equipment is used in such areas as fire, public safety activities, as well as security, construction and farming communication. Icom currently supplies the radio system used by the U.S. Army for inter-squad communication known as the Soldier Intercom System. Icom produces a complete line of portables, mobiles and repeaters, both trunked and conventional. Icom is also bringing VHF digital P25 radios to the market this fall.

Amateur:

Icom is one of three companies who dominate the worldwide amateur radio market. Currently, Icom enjoys a significant market share position in the amateur business, both worldwide and in the U.S. Icom makes amateur radio products for use in long and short-range communications. Icom also makes advanced technology products allowing worldwide communication relayed through space satellites owned by amateur organizations and manufactures a series of short-wave receivers used for hobby, industrial and government applications.

Aviation:

Icom has introduced aircraft handheld, mobile and base radios for use onboard and in field aviation use. These radios are used as primary ground communication as well as ground to air and

backup aircraft communication equipment. Icom introduced the first navigation handheld, which also provides navigation information and direction location information. Icom has a current market share in the 50% range.

Marine:

Icom has successfully introduced a series of communications equipment for use in the marine industry. Icom's equipment includes long range, ship-to-shore, side band transceivers for worldwide communications from shipboard operations as well as short range VHF communications equipment. In addition, Icom has produced a series of highly advanced, very compact, handheld transceivers for use in communication on marine vessels as well as between marine vessels and shore-to marine applications. While Icom enjoys significant market share in the industry (top three position), Icom has also won numerous awards for its marine VHF handheld radios as decided and voted by the marine dealers Independent Dealer Association - NMEA. This is a highly prestigious award and reflects the industry's confidence in Icom handheld technology and quality.

Receivers:

Icom's communication receivers range from a small, pocketsize handheld to top-of-the-line super wide range receivers like the IC-R9000L. Icom also developed the unique receiver in a box (PCR1000) which turns a personal computer into a receiver. Icom continues to develop and manufacture receivers using new and innovative technology.

B. The Public Safety Radio Services

The Public Safety Radio Services are a vital part of the nation's efforts to ensure the safety and security of our nation. As security has become an increasingly important and difficult task, as funding for additional personnel becomes increasingly scarce, and as the need to protect geographic

areas once thought to be rural becomes more important, the need for spectrum devoted to public safety has become vital.

The Commission has attempted to satiate the need for public safety spectrum by allocating new public safety spectrum in the 700 MHz and 4.9 GHz bands. In addition, the Commission is looking at allocating additional 800 MHz spectrum to the Public Safety Radio Services in its consideration of methodologies to reduce interference in the band in WT Docket No. 02-55.

Despite the Commission's valiant efforts, the wide-spread implementation of public safety radio systems at 700 MHz and 4.9 GHz are many years away. Further, radio systems in these bands require new equipment, not compatible with existing equipment already utilized by public safety agencies.

Many public safety radio systems, particularly those in rural areas, utilize spectrum in the 150 MHz band. According to a 2002 report by the Commission, there is 3.6 MHz of spectrum utilized by public safety in the band, with 73% of all law enforcement entities and 65-70% of all firefighting and EMS agencies operating systems in the 100-300 MHz band.¹ However, as many entities try to add capacity to their existing systems, or create systems that operate over a wide area for numerous jurisdictions, there usually is insufficient spectrum available, even in the most rural areas, to create a sufficient system. Similar shortages exist for public safety licensees which UHF systems.

Where appropriate, individual agencies have sought to add channel capacity to their systems by seeking waivers of the Commission's Rules to assign unused television spectrum or Part 22

¹ *Alternative Frequencies for Use by Public Safety Systems, Response to Title XVII, Section 1705 of the National Defense Authorization Act for FY2001*, released January 23, 2002.

channels.² Such waivers are generally filed pursuant to Section 337(c)(1) of the Communications Act, which provides public safety entities with a statutory means of obtaining a waiver of the Commission's Rules to the extent necessary to permit use of unassigned frequencies for the provision of public safety services. Other agencies have purchased Part 22 spectrum from common carrier licensees, and obtained waivers to convert that spectrum to public safety use.³

In PR Docket No. 92-235, the Commission sought to increase the availability of spectrum in the 150 MHz and 450 MHz bands by “refarming” the spectrum, creating additional spectrum via narrowbanding.⁴ Unfortunately, the Commission’s methodology of encouraging narrowbanding through the equipment certification process did not achieve the desired results. Therefore, in WT Docket No. 99-87, the Commission has adopted rules to mandate narrowbanding by licensees in the two bands.⁵ However, mandatory narrowbanding is not scheduled for the 150 MHz band for public safety licensees until 2018. Therefore, relief in this band from narrowbanding will not happen soon.

Further, any potential spectrum gains in the 150 MHz band from narrowbanding will be significantly reduced by two factors. First, the lack of paired spectrum in the band means that the utilization of 12.5 kHz bandwidth equipment on frequencies spaced 7.5 kHz apart will still be difficult to coordinate, with a mixture of adjacent frequencies used for repeater and mobile units

² Nassau County Police Department, 17 FCC Rcd 14252 (PSPWD 2002); County Of Burlington, New Jersey, 15 FCC Rcd 16569 (WTB 2000).

³ See, for example, FCC File No. 0001343164.

⁴ *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Report and Order and Further Notice of Proposed Rule Making, PR Docket No. 92-235, 10 FCC Rcd 10076 (1995).

⁵ *Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies*, Second Report and Order and Second Further Notice of Proposed Rule Making, WT Docket No. 99-87, 18 FCC Rcd 3034 (2003).

making channel assignments haphazard at best. Second, product development in telecommunications is focused on broadband applications, not narrowband, and therefore it can be expected that full featured narrowband equipment that will meet the current and future needs of public safety will be limited.

C. The 150 MHz Part 22 Channels

In the 150 MHz band, there are eighteen (18) paired and four (4) unpaired frequencies allocated to the Part 22 Public Mobile Radio Services pursuant to 47 C.F.R. §22.531 and §22.561. These channels have historically been utilized for paging operation, and prior to the wide-spread growth of cellular telephone operation, for the provision of IMTS radio service.

The recent changes in the paging industry have resulted in a dramatic change in the utilization of these frequencies. Specifically, many of these 150 MHz paging frequencies now lay fallow, with previous licensees no longer licensed, or removing their operation from the channels.

The Commission conducted two auctions for geographic “overlay” licenses in the 150 MHz band (as well as other Part 22 bands), in Auctions 40 and 48. In Auction 40, over 1750 economic area licenses for 150 MHz frequencies failed to generate a single bid, despite the fact that all but a few licenses had a minimum opening bid of five hundred dollars (\$500), three hundred fifty dollars (\$350) if the entity qualified for a very small bidding credit. Thus, licenses for the New York City Economic Area, Miami, Atlanta, Cincinnati, Detroit, Milwaukee, New Orleans, Denver, Seattle and others were not bid upon.

In Auction 48, the Commission re-auctioned those licenses for which no bids had been placed in Auction 40. At the completion of Auction 48, over 900 licenses for 150 MHz spectrum still had no bidders. Economic area licenses for paired channels which remained unsold after

Auction 48 include Cincinnati (11 channel pairs unsold), Indianapolis (6 pairs), Nashville (9 pairs), and Memphis (3 pairs), in addition to a host of smaller communities across the country.

II. PETITION FOR RULE MAKING

Icom requests that the Commission reallocate this unsold spectrum to the Public Safety Radio Services. In the two auctions held by the Commission, common carrier applicants have failed to acquire these licenses at a minuscule. This wealth of unused spectrum can significantly aid public safety entities which are clamoring to add capacity to their systems.

In addition to the sheer spectrum capacity, reallocation of this spectrum can also aid in the re-banding of the current Public Safety Radio Services frequencies in the 150 MHz band. Specifically, utilizing the “green space” of the reallocated Part 22 frequencies, it may be possible for existing users in the region to re-align their spectrum use in the band to permit the creation of natural channel pairing. Ultimately this will lead to greater spectrum efficiency on these channels. Thus, reassignment of the Part 22 spectrum can have a multiplier impact on public safety spectrum efficiency.

Icom is aware that there are remaining incumbent licensees on these Part 22 channels, as well as Auction 40 and 48 licensees which have only recently obtained their licenses and may not yet be operational. It is Icom’s recommendation that the Commission grandfather these existing operations indefinitely, and that licensees have unrestricted ability to assign their authorizations. Public safety frequency advisory committees should be required to provide interference protection to such licensees pursuant to existing Commission Rules. By protecting existing operations in this manner, existing paging operations may continue, and new uses intended by auction winners may proceed according to original plans. Icom recognizes that expansion of these systems onto new channels in

new geographic areas may not be possible as a result of the reallocation. However, entities did not take advantage of the opportunity when the Commission was virtually giving away the channels, and it is clear that there is little interest in them by common carrier entities.

Icom is also aware that individual public safety entities could continue to obtain waivers, where needed, for this spectrum. However, as the Commission has often recognized, waivers should be the exception, and should not eviscerate the rule.⁶ The need for additional public safety spectrum in the 150 MHz band is not a “special circumstance” warranting rule waivers,⁷ but rather a nationwide problem that can be aided with Commission action to reallocate spectrum apparently unwanted by non-public safety entities.

In addition, the current waiver process is extremely time consuming and expensive for public safety entities. There seems little need for public safety entities to repeatedly prove in each individual case that 150 MHz spectrum available to trunked use (particularly paired spectrum) is just not available virtually anywhere. Further, the delays inherent in the waiver process do little to aid public safety and the nation’s security.

⁶ WAIT Radio v. FCC, 418 F.2d 1153, 1157 (D.C. Cir. 1969).

⁷ Northeast Cellular Telephone Co., L.P. v. FCC, 897 F.2d 1164, 1166 (D.C. Cir. 1990).

III. CONCLUSION

The Commission has a unique opportunity to alleviate some of the spectrum congestion experienced by public safety licensees in the spectrum band which is utilized by over 70% of public safety entities, with channels that the Commission has been unable to give away to non-public safety entities. Reallocation of the spectrum can not only help alleviate congestion, but may also permit re-banding to create channel pairs on existing 150 MHz public safety spectrum by utilizing the new spectrum's "green space".

WHEREFORE, the premises considered, it is respectfully requested that the Commission amend Sections 22.531, 22.561 and 90.20 of its Rules to reallocate certain 150 MHz Public Mobile Radio Service frequencies to the Public Safety Radio Services.

Respectfully submitted,

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