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March 4, 2015

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: *Ex Parte* Letter  
County of Flathead, MT  
Station Call Sign WQVH356; FCC File No. 0005696877

Dear Ms. Dortch:

The Public Safety and Homeland Security Bureau (“Bureau”) issued an Order<sup>1</sup> on February 10, 2015, granting the above-identified application and associated waiver request (“Waiver”) from Flathead County, Montana (“County”). In granting the application, the Bureau rejected as unpersuasive the issues raised in filings submitted by the Enterprise Wireless Alliance (“EWA” or “Alliance”) in response to the Bureau’s request for input with regard to the Waiver.<sup>2</sup>

EWA does not seek reconsideration of the Order. This matter already has taken considerable time to reach resolution, and the Alliance recognizes that the County wishes to have certainty regarding its spectrum inventory. However, because of the precedential nature of the Bureau’s action, involving issues that are substantially broader than the County’s application, the Alliance is compelled to address certain matters presented in the Order.

First, EWA’s filings did not challenge the virtues of digital VHF Project 25 (P25) technology.<sup>3</sup> It did suggest that those virtues should be weighed against its spectral requirements as described by the County. VHF often is the band of choice for rural governmental users, so the coverage limitations and multipath issues raised in the Waiver are likely to be experienced in other non-urban areas. If there are insufficient VHF public safety channels for the additional sites needed to address coverage deficiencies in one of the least populated counties in one of the most sparsely populated states, public safety waiver requests to

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<sup>1</sup> In the Matter of County of Flathead, Montana, Request for Waiver Section 90.35(a) of the Commission’s Rules, *Order*, DA 15-188 (PSHSB 2015) (“Order”).

<sup>2</sup> See Public Safety and Homeland Security Bureau Seeks Comment on Application and Waiver Filed by Flathead County, Montana for 150 MHz Industrial/Business Frequencies, *Public Notice*, 28 FCC Rcd 14848 (PSHSB 2013).

<sup>3</sup> Order at ¶ 7.

access Industrial/Business (“I/B”) channels likely will increase as this technology continues to be deployed.

Second, EWA did not argue that the County should be required to deploy 700 or 800 MHz facilities, even though the State’s digital P25 system uses VHF channels.<sup>4</sup> It supports increased interoperability among public safety entities. The Alliance did question whether it was in the public interest to reserve exclusively for public safety substantial 700 and 800 MHz allocations in areas such as the County, indeed the State, where use of that spectrum has been disclaimed in favor of systems in lower bands. It would seem that the Federal Communications Commission (“FCC”) might consider expanding eligibility for those bands in such areas so that spectrum does not remain fallow.

Third, with regard to the Order’s statement that EWA failed to show public safety frequencies were available for the County’s use, the Alliance submits that such a showing is not possible beyond the information submitted in EWA’s filings.<sup>5</sup> Public safety applications are not coordinated in accordance with the rules set out in Section 90.187. Shared use of frequencies is limited almost exclusively to frequencies that are designated for interoperability as noted in the County’s filings. Otherwise, frequencies are re-used only at very substantial distances that go well beyond what is required to prevent the contour overlap defined in Section 90.187. Channel exclusivity is the norm and is granted on an ad hoc basis that is not susceptible to third-party review.<sup>6</sup> Indeed the County apparently found it easier to secure concurrence from co-channel I/B entities<sup>7</sup> to re-use frequencies on a non-interfering basis at distances closer than the FCC rules permit than from other public safety licensees.<sup>8</sup>

Finally, EWA had questioned whether the size of the County’s population appeared proportionate with the 250 mobiles identified in its application. The Order concluded that 250 units is not unreasonable for a system that serves the various entities identified by the County as users.<sup>9</sup>

It is not clear how the mobile count on the application at issue correlates with the number of mobiles identified on the County’s other VHF authorizations, since the cumulative total would be substantial.<sup>10</sup> However, the more critical issue is the identity of the entities using

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<sup>4</sup> *Id.* at ¶ 10.

<sup>5</sup> *Id.* at ¶ 7.

<sup>6</sup> The Order does not describe the analysis used by the Bureau to validate the coordinator’s determination that no suitable public safety VHF channels were available for the County’s use. Order at ¶ 10.

<sup>7</sup> See Concurrence Letters from Roy Handley Transportation, Inc. and Kenneth Scott. In fact, as was noted by EWA, the AAA coordination of the County’s application was invalid as to frequency 157.680 MHz. Fortunately for the County, these two licensees were willing to grant co-channel concurrence to address AAA’s faulty coordination once the Alliance had raised this issue.

<sup>8</sup> Whether the FCC would require the County to desist in its use of this frequency, should either concurring I/B licensee claim interference, could depend on what public safety impact the County might assert in response.

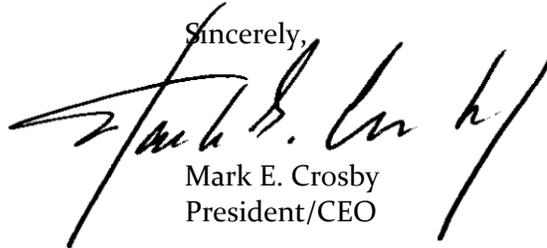
<sup>9</sup> Order at ¶ 6.

<sup>10</sup> The County itself may not be entirely clear on its spectrum holdings or mobile count, since the list of its VHF licenses attached as Exhibit C to its December 20, 2013 Response omits at least two call signs: WQPW735 and WNLF848. The first was identified by the County as an associated call sign to the license

the County's system and its spectrum. A substantial number are Federal government agencies that are not eligible to hold licenses for, or therefore to operate as users on, frequencies allocated to the Public Safety Pool under Section 90.20. While it may be convenient and even in the public interest to promote interoperability between state and local and Federal entities, those arrangements must comply with the FCC rules. Moreover, to the extent that Federal usage requires the County - and other public safety licensees - to increase capacity on their systems, that additional capacity should come from the contribution of Federal government spectrum and not from I/B frequencies that are intended to meet the needs of an entirely different category of users.

Thank you for your consideration of these issues.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Crosby". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark E. Crosby  
President/CEO

cc: David G. Simpson, Rear Admiral, USN (Ret.), Chief, PSHSB (via e-mail)  
Roger C. Sherman, Chief, WTB (via e-mail)  
Lawrence E. Strickling, Assistant Secretary for Communications and  
Information, NTIA (via e-mail)  
Jack A. Spillman, Flathead County (via e-mail)

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granted pursuant to the Order. The second is an associated call sign to WNPJ289, which itself is another associated call sign to the recently granted license.