

**STAMP & RETURN**

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

In the Matter of )  
 )  
Interim Eligibility Criteria for the 800 MHz )  
Expansion Band (860-861/815-816 MHz) )  
and Guard Band (861-862/816-817 MHz) )

WT Docket No. Accepted/Filed

MAR 27 2014

To: The Commission

FCC Office of the Secretary

**PETITION FOR RULEMAKING  
OF THE  
LAND MOBILE COMMUNICATIONS COUNCIL**

The Land Mobile Communications Council ("LMCC"), pursuant to Section 1.411 of the Federal Communications Commission ("FCC" or "Commission") rules and regulations, respectfully requests the Commission to initiate a rulemaking proceeding to revise FCC Rule Section 90.617 governing eligibility for frequencies in the 800 MHz Expansion Band (860-861/815-816 MHz) ("EB") and Guard Band (861-862/816-817 MHz) ("GB") (collectively "EB/GB"). Specifically, the LMCC requests that the rule be modified to allow 800 MHz incumbent licensees in a market a six-month period in which to apply for available EB/GB frequencies before making them generally available to applicants for new 800 systems. Providing a time-limited opportunity for 800 MHz incumbents to expand the capabilities of existing systems by adding frequencies and/or sites will maximize the efficient use of this spectrum to meet public safety, critical infrastructure, business enterprise, and commercial service needs, without foreclosing opportunities for new entrants.

## **INTRODUCTION**

The LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. The LMCC acts with the consensus, and on behalf of the vast majority of public safety, business, industrial, transportation and private commercial radio users, as well as a diversity of land mobile service providers and equipment manufacturers. Membership includes the following organizations:

- American Association of State Highway and Transportation Officials (“AASHTO”)
- American Automobile Association (“AAA”)
- American Petroleum Institute (“API”)
- Association of American Railroads (“AAR”)
- Association of Public-Safety Communications Officials-International, Inc. (“APCO”)
- Aviation Spectrum Resources, Inc. (“ASRI”)
- Central Station Alarm Association (“CSAA”)
- Energy Telecommunications and Electrical Association (“ENTELEC”)
- Enterprise Wireless Alliance (“EWA”)
- Forest Industries Telecommunications (“FIT”)
- Forestry-Conservation Communications Association (“FCCA”)
- Intelligent Transportation Society of America, Inc. (“ITSA”)
- International Association of Fire Chiefs (“IAFC”)
- International Municipal Signal Association (“IMSA”)
- MRFAC, Inc. (“MRFAC”)

- National Association of State Foresters (“NASF”)
- PCIA – The Wireless Infrastructure Association (“PCIA”)
- Telecommunications Industry Association (“TIA”)
- Utilities Telecom Council (“UTC”)

## **I. BACKGROUND**

The 800 MHz band, including the channels designated as EB/GB, has offered the Private Land Mobile Radio (“PLMR”) user community an allocation well-suited for the deployment of more advanced technologies. The spectrum efficiencies of trunking for PLMR use were first introduced in the 800 MHz band because, unlike the below 800 MHz PLMR allocations, the 800 MHz rules provided for exclusive channel assignments at distances that obviated the need for co-channel monitoring. More recently, a number of vendors have developed digital products for this user community, all of which operate most effectively on exclusive channels and some of which are not capable of monitoring, and thus require exclusive use channels. The features and functionalities that digital systems offer are well-recognized and highly useful, or even essential, for many PLMR entities. The 800 MHz migration from analog to digital technology already is underway and will only accelerate as system capacity is further increased through access to expansion frequencies.

Although an essential band, the availability of expansion 800 MHz channels in urbanized areas where digital trunked systems are most urgently needed has been severely limited in recent years. The complex process involved in rebanding 800 MHz systems has taken substantially longer than originally anticipated.<sup>1</sup> While the rebanding rules have made some spectrum below 861 MHz vacated by Sprint Corporation (“Sprint”) available for Public Safety applicants on a

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<sup>1</sup> See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004).

rolling basis, including in major metro areas,<sup>2</sup> other PLMR entities have had little or no opportunity to secure additional channels, except in the least populated areas of the country. There is pent-up demand for expansion capacity from Industrial/Business (“I/B”) and Specialized Mobile Radio (“SMR”) licensees, as well as Public Safety entities, that can and should be addressed when EB/GB channels are released.

## **II. ADOPTION OF A TIME-LIMITED OPPORTUNITY FOR EXPANSION OF INCUMBENT 800 MHz SYSTEMS WOULD SERVE THE PUBLIC INTEREST**

The current 800 MHz band plan was established in 2004, when the Commission adopted rules governing the relocation of multiple 800 MHz licensees. The relocation was needed to address ongoing interference problems between certain Public Safety users, particularly those operating in the NPSPAC portion of the band (then 821-824/866-869 MHz), and adjacent cellular systems, primarily the iDEN network operated by Sprint (then Nextel Corporation).<sup>3</sup> One element of the revised band plan was creation of the EB and the GB. Public Safety licensees were permitted, but not required, to relocate out of the EB, which thereafter was reserved for I/B and SMR systems, except that Public Safety licensees electing to remain in the EB are allowed to expand geographically on the EB channels they retained. Eligibility for the GB includes I/B, non-cellular SMR, and Public Safety applicants.

In accordance with rebanding rules and policies, access to EB/GB frequencies is not immediate, but is triggered by completion of defined levels of rebanding in a particular NPSPAC region. EB channels become available when the Public Safety and Homeland Security Bureau (“PSHSB”) and the Wireless Telecommunications Bureau (“WTB”) (collectively “Bureaus”)

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<sup>2</sup> See, e.g., Public Safety and Homeland Security Bureau Announces Application and Licensing Procedures for Channels Relinquished by Sprint Nextel Corporation in the 809-809.5/854-854.5 MHz Band, *Public Notice*, 23 FCC Rcd 18343 (PSHSB 2008).

<sup>3</sup> See n. 1 *supra*. The 800 MHz band plan described herein is not applicable to certain counties around Atlanta, GA served by both Sprint and SouthernLINC or in the U.S.-Canadian and U.S.-Mexican border regions.

jointly release a Public Notice announcing 90% of channels in the original NPSPAC band are clear. GB channels become available when the Bureaus release a Public Notice upon the clearing of 100% of NPSPAC channels in a region.

It now is almost 10 years since this band plan was adopted. Because rebanding has proven more complicated and time-consuming than originally anticipated, to date, the FCC has made EB/GB channels available in only 11 NPSPAC regions, generally the more rural, least populated areas in the nation.<sup>4</sup> In the meantime, 800 MHz licensees in more urbanized areas, in particular I/B and SMR licensees that have not had access to Sprint-vacated spectrum, have become increasingly capacity constrained.

Many of these licensees were required to undertake the disruptive process of rebanding their systems based on the FCC's "minimum necessary cost" standard for completing that work. They were prohibited from deriving any economic benefit from the rebanding process beyond covering incurred, documented costs. For commercial SMR systems, this disruption inevitably resulted in some loss of customers who elected to avoid the inconvenience of rebanding their radios by moving to an alternative system. I/B licensees lost productivity as their facilities were rebanded. Yet they, as well as non-rebanded 800 MHz licensees, have not yet had an opportunity to acquire EB/GB spectrum to expand their systems in the very markets where additional capacity is most urgently needed.

The LMCC recognizes that the timing of making the EB/GB channels available in urban markets is outside the control of the FCC. They cannot be released until the NPSPAC channels have been cleared. However, the FCC can, and the LMCC believes, should modify its rules to

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<sup>4</sup> See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions, *Public Notice*, 27 FCC Rcd 14775 (PSHSB/WTB 2012).

provide a six-month opportunity for incumbent licensees to acquire the released channels to expand existing systems before accepting applications from new entities in the market.<sup>5</sup>

This time-limited provision would serve several important policies. For example, it would take advantage of the multiplier effect in trunked technology, whereby additional channels produce a geometric rather than arithmetic increase in available capacity. These capacity enhancements are most urgently needed in congested urban areas, the very markets where there has been no available 800 MHz spectrum for more than a decade. It also would act as a powerful incentive for existing licensees to invest in digital technology, assuming it meets their operational requirements. The fixed costs of any technology upgrade are more easily justified when they can be allocated among a larger number of channels. Moreover, existing licensees that already have deployed facilities and demonstrated a commitment to utilizing 800 MHz spectrum in a given market are unlikely to acquire spectrum for other than operational purposes. They can be expected to put additional channels into service promptly and pose little risk of failing to construct. Finally, it would recognize that incumbent 800 MHz licensees in major urban markets have waited substantially longer than originally expected to access any expansion spectrum. Fundamental notions of equity suggest that they should have the first opportunity to do so once this spectrum becomes available.<sup>6</sup>

It should be noted that the LMCC is not suggesting that EB/GB spectrum be available only to expand existing systems in a market. After some reasonable period, and the LMCC

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<sup>5</sup> This approach would mirror the 900 MHz freeze the FCC adopted and then recently lifted. The freeze did not apply to modifications of existing facilities or to assignments and transfers of control. *See* Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC Rcd 18277 at n. 8 (WTB 2004).

<sup>6</sup> Resolution of mutually exclusive 800 MHz EB/GB applications submitted by incumbent licensees will be governed by a Memorandum of Agreement (“EB/GB MOA”) that has already been drafted and will be executed by all FCC-certified frequency advisory committees with an interest in processing requests for EB/GB frequencies. After the six-month period has expired, the resolution of mutually exclusive applications from all parties will be governed by the same EB/GB MOA.

suggests six months, if channels remain available they should not be held in reserve for incumbents, but should be available for any qualified applicant.<sup>7</sup>

### III. CONCLUSION

The PLMR user community represented by the members of the LMCC is eager to secure access to EB/GB spectrum, particularly in the heavily congested urban markets. However, for the reasons detailed above, the LMCC respectfully suggests that these frequencies will produce the greatest spectrum efficiency improvements if incumbent licensees in each market are afforded a limited period in which to expand existing systems. The LMCC urges the FCC to initiate a rulemaking proceeding as promptly as possible to effectuate this proposed change.

Respectfully submitted,

/s/ *Donald Vasek*

President  
Land Mobile Communications Council

March 27, 2014

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<sup>7</sup> This approach is similar to the FCC's decision to restrict access to Sprint-vacated 800 MHz spectrum, first, to Public Safety entities for three years and, thereafter, to Public Safety and Critical Infrastructure users for another two years, before allowing other 800 MHz eligible applicants to request that spectrum. *See* 47 C.F.R. § 90.617(h).