



LAND MOBILE COMMUNICATIONS COUNCIL

July 6, 2011

The Honorable Julius Genachowski
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: ET Docket No. 10-235
ET Docket No. 10-237**

***Ex Parte* Presentation**

Dear Chairman Genachowski:

On behalf of the member organizations of the Land Mobile Communications Council (“LMCC”), a listing of which is attached, we are writing to express our concern with regard to language that has appeared in several Commission Orders that have granted enhanced geographic and spectrum access to public safety entities operating wireless communication systems within the 470-512 MHz band (“T-Band”). The specific language is as follows:

In concluding that granting the waiver relief to Marin, as conditioned herein, is consistent with the public interest, we also observe that the Commission has begun examining ways to repurpose TV bands, such as the 470-512 MHz band, for flexible use, including commercial mobile broadband¹ While, at this time, we conclude that granting Marin waiver relief will not compromise the Commission’s ability to act (and flexibility in acting) on the recommendations of the National Broadband Plan and related initiatives for repurposing part of the TV bands for flexible use, we note that our consideration of the public interest in analyzing waiver requests on a case-by-case basis requires that we carefully consider any action that would disrupt or hamper the Commission’s ability to identify and maximize the use of available spectrum. As the Commission takes steps to further broadband spectrum initiatives, it is likely that additional waiver requests for public safety use of spectrum currently allocated for the TV broadcast service will have different and more significant effects on Commission plans for this spectrum, and that it will accordingly become much more difficult to conclude that such waivers would, on the whole, serve the public interest. We therefore strongly urge public safety entities contemplating future waivers for TV and other non-public

¹ See Innovation in the Broadcast Television Bands: Allocations, Channel Sharing and Improvements to VHF, ET Docket No. 10-235, *Notice of Proposed Rulemaking*, 25 FCC Rcd 16498 (2010) (“TV Innovation NPRM”).

safety spectrum to consider use of the 700 MHz band to promote such goals as nationwide interoperability, consistent with the public interest.²

The Commission presumably felt the need to caution Marin County and other public safety entities³ with regard to the future availability of T-Band spectrum in light of a statement in the TV Innovation NPRM in which the Commission warned – in a footnote – that it “would address appropriate changes for the Private Land Mobile Service...in the event that we were to decide to recover spectrum now used by those services.”⁴

The LMCC supports many Commission spectrum and policy initiatives that may contribute to the implementation of the National Broadband Plan and is working cooperatively with the Commission toward that end. Nonetheless, it is our expectation that these initiatives can be accomplished without disrupting or hampering the operations of incumbent public safety, business/industrial and commercial licensees that are providing economic and mission critical benefits to the communities they serve and that rely on wireless communications to do so.

The LMCC noted in its comments in the FCC’s proceeding involving dynamic spectrum use technologies that, “...in its efforts to accommodate anticipated broadband needs, the Commission must not lose sight of very significant investments that have been made in non-broadband communications equipment and applications that are being used in the effective operation of public safety, critical infrastructure and other business activities.”⁵ There are over 30,000 T-Band public safety units in use in the Los Angeles, California market alone, along with units operated by business enterprise and commercial entities. There is substantial use of T-Band spectrum for mission critical and business enterprise purposes as well in the other 10 metropolitan areas in which this spectrum has been allocated for shared land mobile use for more than 40 years. This is intensively used and essential spectrum for this part of the wireless community. Any suggestion that it might be repurposed as part of the National Broadband Plan raises serious questions about the Commission’s priorities and its commitment to ensuring that public safety, critical infrastructure and business enterprise entities have adequate spectrum resources to conduct their operations, operations that are at least as essential to the public as is enhanced wireless broadband access.

As the LMCC stated in response to the footnote in the TV Innovation proceeding, “[T]here is no indication about whether the FCC is contemplating a mandatory relocation of these systems by subsequent broadband licensees, or, if so, which of the very limited and already highly congested Part 90 bands the FCC might consider ‘comparable’ for migration purposes. Unlike incumbent television broadcasters, there is no suggestion that this Part 90 spectrum recovery would be voluntary or result in any economic benefit to the incumbent.”⁶ The LMCC strongly

² In the Matter of County of Marin, California, *Order*, DA 11-834 (PSHSB, rel. May 4, 2011).

³ This same language was included in recent waiver grants issued to entities such as City of Bayonne, New Jersey, *Order*, DA 11-1084 (PSHSB, rel. June 21, 2011), Dallas County Schools, Texas, *Order*, DA 11-1086 (PSHSB, rel. June 21, 2011), Town of Ashland, Massachusetts, *Order*, DA 11-1083 (PSHSB, rel. June 21, 2011) and Township of Cinnaminson, New Jersey, *Order*, DA 11-1085 (PSHSB, rel. June 21, 2011).

⁴ TV Innovation NPRM at n. 33.

⁵ See Promoting More Efficient Use of Spectrum Through Dynamic Spectrum Use Technologies, ET Docket No. 10-237, *Notice of Inquiry*, 25 FCC Rcd 16632 (2010), Comments of the LMCC.

⁶ See TV Innovation NPRM, Comments of the LMCC.

disagrees that there should be any disruption of the public safety and other systems that operate on T-band spectrum so that it can be repurposed for broadband use. Should the Commission nonetheless pursue that possibility, it should be aware that it would require a relocation process like that underway at 800 MHz, a process that already has taken more than twice as long as originally contemplated by the FCC with no end date in sight.⁷

This letter is being filed electronically, in accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), for inclusion in the record in these proceedings.

We would be pleased to discuss these matters with you at your convenience.

Sincerely,

Douglas M. Aiken

Douglas M. Aiken
President

Enclosure

cc: Commissioner Michael J. Copps
Commissioner Robert M. McDowell
Commissioner Mignon Clyburn
James Arden Barnett, Jr., Bureau Chief,
Public Safety and Homeland Security Bureau
Rick Kaplan, Bureau Chief,
Wireless Telecommunications Bureau
LMCC Membership

⁷See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004).

LMCC MEMBERSHIP

American Association of State Highway and Transportation Officials (AASHTO)

American Automobile Association (AAA)

American Petroleum Institute (API)

Association of American Railroads (AAR)

Association of Fish and Wildlife Agencies (AFWA)

Association of Public-Safety Communications Officials-International, Inc. (APCO)

Aviation Spectrum Resources, Inc. (ASRI)

Central Station Alarm Association (CSAA)

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)