

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

In the Matter of)
)
North Carolina State Highway Patrol) File No. 0010444325
Waiver Request to License two 800 MHz)
Specialized Mobile Radio Pool Channels)

To: Chief, Public Safety and Homeland Security Bureau

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA”), in accordance with Section 1.45 of the Federal Communications Commission (“FCC”) rules, respectfully submits its comments in response to the Public Notice seeking comment on the March 6, 2023, Waiver Request (“Waiver Request”) filed by the North Carolina State Highway Patrol (“NCSHP”) for the use of two 800 MHz Specialized Mobile Radio (“SMR”) channels.¹ The Waiver Request states the channels are needed to supplement the current limited coverage in Surry County, Virginia and would be added to the seven channels licensed to the NCSHP at a site in Galax, Virginia under call sign WQTA407. The application is accompanied by certifications from APCO dated March 6, 2023, and August 18, 2023. The first APCO letter states, “...there are no other 851-860 MHz public safety or vacated spectrum frequencies that can be assigned because they or the interstitials fail short spacing.” The second APCO letter states, “...there are no business channels that can be

¹ *Public Safety and Homeland Security Bureau Seeks Comment on a Request for Waiver Filed by the North Carolina State Highway Patrol Seeking to License a Specialized Mobile Radio Pool Channel*, Public Notice, DA 23-766 (rel. Aug. 28, 2023). The Public Notice heading references a single Specialized Mobile Radio (“SMR”) channel, but the text clarifies that two SMR channels are requested.

assigned because they or the interstitials fail short spacing, and they do not meet the applicant's legacy system requirements.”

EWA does not oppose the NCSHP's Waiver Request or question its coverage requirements. It fully supports use of available 800 MHz channels by all qualified applicants as demonstrated by its filings in response to other requests from Public Safety entities seeking waivers to access SMR channels.² Because it believes such use should not require either the applicant or the FCC to devote resources to preparing or reviewing waiver requests, EWA filed a Petition for Rulemaking on October 26, 2022, in which it recommended that the FCC eliminate what have become unnecessary and outdated Pool designations of channels between 809-817/854-862 MHz and instead classify that band segment as General Category, available to all eligible applicants.³ Adoption of rule changes consistent with that Petition would have obviated the need for the NCSHP to demonstrate that there are no Public Safety frequencies available for its use, the standard for waiver relief under the current rules.

However, as long as such showings are required to support waivers, EWA reviews the accompanying certifications as to the lack of assignable Public Safety channels to confirm that it agrees with the findings. It did so in this instance and identified several National Public Safety Planning Advisory Committee (“NPSPAC”) channels and two Business/Industrial/Land Transportation (“B/ILT”) channels that appeared available under FCC Rule Section 90.621 that defines co-channel and adjacent channel protection criteria.

EWA understands that NPSPAC channels are not necessarily assigned in accordance with that rule but follow the dictates of regional plans that are not easily accessible or

² See, e.g., EWA filings on Waiver Requests from Augusta Richmond County Consolidated Government (File No. 0009221672) and Herriman Police Department (File No. 0010184781).

³ “800 MHz Petition.” EWA also specified that the proposed elimination of the pool allocations should only be applicable to 809-813.5/854-858.5 MHz in the southeastern United States and Atlanta, Georgia areas, as defined in FCC Rule Section 90.617.

reviewable. This makes verifying the availability of individual NPSPAC channels exceedingly difficult. When EWA contacted APCO about the B/ILT channels, it was advised that they were rejected by the NCSHP because they did not meet its combiner spacing criteria.

Although EWA does not object to grant of the NCSHP waiver request, the supporting documentation raises certain issues. Both APCO certifications state there are no available channels that do not require waiver because “they or the interstitials fail short spacing.” This may be correct for the seemingly assignable NPSPAC channels. For the reasons described above, EWA cannot confirm the statement and is unsure whether the FCC can or does make that verification. The letter addressing the B/ILT channels adds the statement that all Business channels “do not meet the applicant’s legacy system requirements.” In fact, the B/ILT channels identified by EWA do not fail short-spacing.⁴ EWA assumes that the NCSHP “legacy system requirements” that disqualify that channel is an oblique way of saying it does not meet the combiner specifications.

While the Public Safety and Homeland Security Bureau (“PSHSB”) may accept technical considerations as justification for a waiver, the Wireless Telecommunications Bureau (“WTB”) does not. It rejected Florida Power and Light Company’s waiver request for use of a Public Safety channel, with concurrence from a Public Safety coordinator, because the available B/ILT and General Category channels did not “meet its technical specifications (i.e. ERP and antenna height).”⁵ The Notice of Return stated that FCC Rule Section 90.621(e) “does not provide for exceptions due to equipment and/or technical limitations.”⁶ The applicant was advised to amend its application, which it did by significantly reducing the ERP of the requested trunked channel.

⁴ One of the B/ILT channels is available at a reduced ERP and the second channel is clear of incumbents for 113 kilometers.

⁵ See EWA Inter-Category Sharing Certification, File No. 0009969013.

⁶ Notice of Return, Reference Number: 7225002; File No. 0009969013.

Since all 800 MHz applicants, including Public Safety applicants, are subject to FCC Rule Section 90.621, EWA recommends that PSHSB and WTB come to an agreement about whether technical criteria are a valid basis for justifying waiver relief for an out-of-pool assignment. That determination should not vary depending on the eligibility of the applicant. EWA also urges the FCC to adopt the rule changes proposed in EWA's 800 MHz Petition, an action that would promote maximum spectrum utilization and do away with the unnecessary and costly resources devoted to these 800 MHz waiver requests.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

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September 7, 2023

CERTIFICATE OF SERVICE

I, Linda J. Evans, with the law firm of Lukas, LaFuria, Lantor and Sachs, LLP, hereby certify that I have on this 7th day of September, 2023, caused to be forwarded via electronic mail the foregoing Comments to the following:

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/s/ Linda J. Evans