

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

In the Matter of)
)
Auction Alternatives for Accessing) WT Docket No. 24-72
Unassigned Auction Inventory Spectrum)

To: Chief, Wireless Telecommunications Bureau

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA”) shares the concern of the Federal Communications Commission (“FCC”) about the lapse of its auction authority. Spectrum auctions have been an effective, efficient means of assigning significant amounts of wireless spectrum for commercial use that avoid the problem of mutual exclusivity. EWA supports the efforts of the FCC and others that seek restoration of that authority as promptly as possible. In its absence, the Wireless Telecommunications Bureau (“WTB”) requests comments on how its existing regulatory tools could be used to allow access to unassigned, auctionable spectrum so it can be deployed to serve the public interest while avoiding instances of mutual exclusivity.¹ The Public Notice identifies several such bands where spectrum either was not acquired at auction or was returned to the FCC after the fact (“Inventory Spectrum”). It classifies them as bands capable of supporting broadband services and as those that support narrowband services.²

The Public Notice suggests several approaches for consideration as auction alternatives: dynamic spectrum sharing, non-exclusive site-based licensing, leasing spectrum

¹ *Wireless Telecommunications Bureau Seeks Comment on Ways to Facilitate Access to Currently Unassigned Auction Inventory Spectrum for Wireless Radio Services in Light of the Ongoing Lapse of Auction Authority*, Public Notice, WT Docket No. 24-72, DA 24-215 (rel. Mar. 7, 2024) (“Public Notice”).

² *Id.* at 7.

inventory licenses, and special temporary authority (“STA”). The Comments filed in this proceeding may offer useful recommendations as to these and other means for allowing access to broadband spectrum. EWA submits that applications for narrowband/wideband Inventory Spectrum, specifically services authorized under 47 C.F.R. §§ 22.503 (VHF/UHF Paging), 90.601 *et seq.* (SMR), 90.701 *et seq.* (220 MHz), 80.475 *et seq.* (AMTS), 95.1901 *et seq.* (218-219 MHz), and any other bands deemed appropriate by the FCC, could be coordinated on an exclusive, county-defined basis by current FCC-certified Frequency Advisory Committees (“FACs”)³ with decades of experience in and with proven processes for handling such requests while avoiding mutual exclusivity. For the reasons discussed below, EWA recommends that the approach proposed herein be used for these services even after the FCC’s auction authority is restored.

The migration of many users from conventional to trunked systems and from analog to digital technology has made exclusive spectrum assignments as important for narrowband/wideband systems as they are for commercial broadband operations. Even “site-based” licensing in the Part 90 services often is based on contour analyses defining protected service areas, effectively creating exclusive channel assignments.⁴ Such applications are processed routinely on a first-in-time basis, with FACs exchanging information about proposed channel assignments to resolve what would otherwise be situations of mutual exclusivity before applications are submitted to the FCC.

The challenge is processing requests in response to the opening of a filing window when multiple applications for the same spectrum in the same geographic area are expected, a situation without a natural “first-in-time” queue that typically triggers mutual exclusivity. This

³ See <https://www.fcc.gov/wireless/bureau-divisions/mobility-division/industrial-business/industrial-business-licensing>; <https://www.fcc.gov/public-safety-licensing>; <https://www.fcc.gov/general/public-safety-frequency-coordinators>.

⁴ See, e.g., 47 C.F.R. § 90.187.

situation has arisen several times in recent years in Part 90 spectrum, and the FACs, with the approval of the WTB, have adopted a process for addressing it. In summary, they utilize a neutral third party as a “host” for applications submitted by individual FACs no earlier than a specific deadline, which host assigns them a queue ranking in time-stamp order. The applications then are processed by the submitting FAC and filed with the FCC in that time-stamp order to the extent spectrum consistent with the application is available.⁵ The FACs agree in advance on several parameters such as the number of channels assignable to an application and the number of applications an entity may submit within a defined area. This system was used for the processing of Part 90 “central station” channels,⁶ for 470-512 MHz (“T-Band”) channels after the T-Band freeze was lifted,⁷ and for post-rebanding 800 MHz Sprint-Vacated, Expansion Band, and Guard Band channels.⁸ All participating FACs followed the agreed-upon procedures. The FCC was not required to resolve any instances of mutual exclusivity or other disputes. Spectrum was made available to qualified applicants and placed into productive use expeditiously.

EWA recommends that the same process be used to assign Inventory Spectrum from the bands/service identified above and other spectrum identified by the FCC. It would promote prompt and efficient spectrum utilization and, in the FCC’s words, “ensure a level playing field, prevent harmful interference, and promote co-existence among spectrum users.”⁹ To simplify the licensing process and make the spectrum attractive for the business, industrial,

⁵ See, e.g., <https://wirelesscouncil.org/wp-content/uploads/2021/07/800-MHz-EB-GB-Amended-MOA-executed-060420.pdf>.

⁶ 47 C.F.R. § 90.35(c)(63).

⁷ See Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Modify Suspensions of Acceptance and Processing of Certain Part 22 and Part 90 Applications for 470-512 MHz (T-Band) Spectrum, *Public Notice*, DA 21-83 (rel. Jan. 19, 2021).

⁸ See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Post-Rebanding Availability for Licensing of Additional Sprint-Vacated, Expansion Band, and Guard Band Channels in the 800 MHz Band, WT Docket No. 02-55, *Public Notice*, DA 21-706 (rel. June 16, 2021).

⁹ Public Notice at ¶ 13.

governmental, and small commercial systems for which narrowband/wideband channels are well-suited, EWA recommends that the geographic licensing scheme in each band be modified to provide for assignment by county with the same adjacent market protection criterion as is in place today. There would be no impact on co-channel or adjacent channel systems. Similarly, adoption of this approach would have no impact on the FCC's Mobile Spectrum Holdings policies, as these bands are not included in those analyses but would incentivize investment in and use of this long-vacant spectrum.

In fact, allowing FACs to manage the assignment of this spectrum in this well-tested process promises the most expeditious use of this spectrum and should be retained when the FCC's auction authority has been reinstated. There are multiple bands where auctions will remain the most efficient way to allocate spectrum resources. This is particularly the case with mid-band and high-band allocations where broadband licenses are issued and where commercial deployment has been delayed in the absence of auction authority. The narrowband/wideband allocations, comparable to allocations where FACs have long managed the frequency recommendation process, are not likely to be high on the FCC's auction priority list once that authority has been reinstated. The most recent auction of inventoried spectrum in any of the bands proposed herein was more than a decade ago in Auction #95 for VHF/UHF paging spectrum. The Inventory Spectrum in other bands has been unavailable since 2003 and 2007. If it is ever to be placed into productive use, that is much more likely to occur in a WTB-approved, FAC-implemented process that has worked efficiently for comparable spectrum in similar situations.

The Public Notice does not seek comment on the economic implications to the U.S. Treasury of assigning Inventory Spectrum other than through auctions. A review of the revenue generated in the past from auctions of the narrowband/wideband spectrum in this

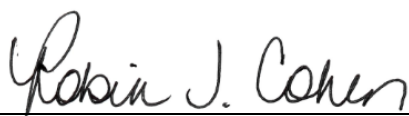
proposal suggests that the impact would be nominal. That revenue was never significant even when the auctioned licenses covered major population areas, which is not likely to be the case for the Inventory Spectrum. However, the FCC may want to consider what regulatory and/or processing fees would be appropriate should the approach proposed herein be adopted.

The attached Memorandum of Agreement, subject to modifications deemed appropriate by the FCC, could be used to determine which FACs wish to participate in the processing of Inventory Spectrum consistent with the queueing process agreed to by the FACs.

EWA looks forward to working with the FCC and with other FACs in making this long dormant Inventory Spectrum available to qualified applicants.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

By: 
Robin J. Cohen
President/CEO
13221 Woodland Park Road
Suite 410
Herndon, Virginia 20171
(703) 528-5115

Counsel:

Elizabeth R. Sachs
Lukas, LaFuria, Lantor & Sachs, LLP
8350 Broad Street
Suite 1450
Tysons, VA 22102
(703) 584-8678

April 8, 2024

ATTACHMENT

MEMORANDUM OF UNDERSTANDING

MEMORANDUM OF UNDERSTANDING

Between

The United States Government

The Federal Communications Commission

And

Certified Frequency Advisory Committee

REGARDING FREQUENCY RECOMMENDATIONS FOR UNASSIGNED AUCTIONABLE SPECTRUM

1. PARTIES.

This Memorandum of Understanding (MOU or Agreement) constitutes a written agreement between the Federal Communications Commission (FCC) and the undersigned FCC-certified Frequency Advisory Committee (FAC) to facilitate the licensing and utilization of unassigned auctionable spectrum inventory (“Inventory Spectrum”) held by the FCC, authorized under 47 C.F.R. §§ 22.503, 90.701 *et seq.*, 80.475 *et seq.*, 95.1901 *et seq.*, and any other bands deemed appropriate by the FCC.

2. AUTHORITY.

This Agreement is authorized under the provisions of 47 C.F.R. §§ 0.131(m) and 0.331, which delegate authority to the Chief, Wireless Telecommunications Bureau to enter into written agreements certifying frequency coordinators and to engage in oversight of coordinator actions and practices.

3. PURPOSE.

The purpose of this Agreement is to designate FACs to provide eligible entities with access to Inventory Spectrum in bands previously auctioned for use in wireless systems. Pursuant to this MOU, the participating FACs will develop a process to allow Inventory Spectrum to be assigned in an equitable manner without mutual exclusivity, and to be utilized efficiently and in accordance with all applicable FCC rules, regulations, and policies. This Agreement defines the scope, terms, conditions, and requirements of the authority delegated to the FACs. Because the FCC will retain oversight over the spectrum recommendation activities described herein and because all determinations regarding any required issuance, modification, or termination of an FCC license will be made by the FCC, the delegation of these activities is fully compliant with the “private nondelegation doctrine.” *Boerschig*, 872 F.3 at 707.

4. FCC RESPONSIBILITIES.

- a. The FCC shall announce what segments of Inventory Spectrum are available for recommendation by the undersigned FAC for use by eligible entities.
- b. The FCC shall work collaboratively with FACs to identify application processes that promote expeditious access to Inventory Spectrum.
- c. The FCC shall maintain an updated database of available Inventory Spectrum.
- e. The execution of this MOU shall be announced by Public Notice acting pursuant to 47 C.F.R. §§ 0.131(m) and 0.331. Such action does not foreclose the FCC from certifying additional FACs as it deems to be in the public interest.

5. CERTIFIED FREQUENCY ADVISORY COMMITTEE RESPONSIBILITIES.

- a. FACs shall make Inventory Spectrum access services available to all parties on a first-come, first-served, and non-discriminatory basis.
- b. FACs shall not use the Inventory Spectrum database for any purpose not specifically authorized by this Agreement.
- c. All applications and lease agreements submitted to the FCC for Inventory Spectrum shall be complete, accurate, and in compliance with all applicable FCC rules and regulations. Should a FAC receive an application for which it cannot provide a frequency, it shall notify the applicant of the reason for the denial.
- d. In cooperation with the Wireless Telecommunications and Enforcement Bureaus, FACs shall assist with post-licensing interference conflict resolution.
- e. Fees charged to process applications or lease agreements to secure access to Inventory Spectrum must be reasonable and non-discriminatory and reflect only the actual costs associated therewith. FACs shall publish their fee schedules and shall provide any other information relating to an investigation of the reasonableness of fees to the FCC upon request.
- f. FACs shall maintain a primary point-of-contact for purposes of responding to FCC licensing staff inquiries regarding frequency recommendations to facilitate the processing of such applications by the FCC. FACs shall cooperate with one another to resolve any frequency recommendations and licensing discrepancies prior to submission of applications to the FCC.
- g. FACs shall acknowledge that they have read the foregoing and agree to comply with the terms set forth above and with all other applicable rules and policies of

the FCC, and all amendments and changes thereto that may be adopted during the term of this Agreement, including, but not limited to, any changes in the Inventory Spectrum.

6. POINTS OF CONTACT.

For purposes of this Agreement, the point of contact for the FCC is the Wireless Telecommunications Bureau, Mobility Division, 202-418-0620; and the point of contact for the FAC is the signatory below.

7. LIMITATION ON ASSIGNMENT OR TRANSFER.

This Agreement may not be assigned or transferred without the prior written approval of the FCC. In addition, the FAC agrees to report to the FCC, within ten (10) days of their occurrence, any matters, including, but not limited to, a filing for bankruptcy or any legal or administrative proceeding, that could reasonably be expected to impair its ability to perform the duties authorized under this Agreement.

8. SEVERABILITY.

Nothing in this Agreement is intended to conflict with the current regulations or directives of the FCC or to otherwise conflict with current law. If a provision of this Agreement is inconsistent with such authority, that provision shall be invalid, but all remaining terms and conditions of this Agreement shall remain in full force and effect. In addition, in the event a court of competent jurisdiction negates any of the provisions of the Agreement, all remaining terms and conditions of this Agreement shall remain in full force and effect.

9. MODIFICATIONS.

This Agreement constitutes the entire agreement of the parties. No changes in its terms or conditions shall be effective unless approved in writing by all parties, except for those changes associated with rule amendments or decisions adopted by the FCC. Changes to this Agreement that result from the rule amendments will be effective on the same date that the rule amendments are effective.

10. TERMINATION.

The term of this Agreement shall be three (3) years from the date that the Agreement is executed by the parties thereto. The Agreement shall renew automatically for additional three-year terms, unless terminated pursuant to this section or by mutual agreement of the parties. The Agreement will terminate automatically by the FCC or the FAC one hundred eighty (180) calendar days after written notification by the terminating party to the other party.

11. EFFECTIVE DATE.

In accordance with the foregoing, the parties have executed this Agreement. The terms of this Agreement will become effective on the date of the last signature subscribed below.

**FEDERAL COMMUNICATIONS
COMMISSION**

FREQUENCY ADVISORY COMMITTEE

By: _____
Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau
Washington, DC 20554

By: _____
FAC Name

Date: _____

Date: _____