

May 20, 2024

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, D.C. 20554

Re: WP Docket No. 07-100
***Ex Parte* Letter**

Dear Ms. Dortch:

The undersigned parties (“Parties”) representing public safety, critical infrastructure, and enterprise entities have been active participants in this proceeding. They share the Federal Communications Commission (“FCC”) goal of accelerating more intensive utilization of this valuable spectrum. They supported the FCC’s decision to appoint a national band manager, consistent with the vision articulated in the most recent Report and Order:

We believe that a nationwide Band Manager will be able to effectively protect the interests of incumbent public safety users by establishing consistent, nationwide rules governing use of the band and providing new opportunities for non-public safety access to the band. We also believe this approach will spur innovation and drive down costs while ensuring full protection for authorized public safety operations. Crucially, the Band Manager will ensure that local governments can continue to use the band to suit their unique spectrum needs, while promoting the most efficient use of spectrum and creating a consistent and clear band framework nationwide.¹

The most recent version of the Public Safety Spectrum Alliance (“PSSA”) proposal for this band turns that FCC decision on its head.² The band manager, whose preferred qualifications the PSSA has chosen to enumerate, would be directed to enter into a spectrum sharing arrangement with the First Responder Network Authority (“FirstNet”), whose current 700 MHz spectrum has been subsumed into the nationwide commercial AT&T network and made available for consumer use. The result would be the same for the 4.9 GHz band. Having recommended effectively unlimited commercial use of the band by AT&T customers, it shows unmitigated audacity for the PSSA now to argue the FCC should reverse itself and disallow limited lease arrangements with

¹ *Amendment of Part 90 of the Commission’s Rules*, Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking, WP Docket No. 07-100, 4.9 G FCC 23-3 at ¶ 20 (2023) (7th R&O) (footnotes omitted).

² See April 23, 2024 Letter to Chairwoman Rosenworcel from Chief Jeffrey D. Johnson, Public Safety Spectrum Alliance, WP Docket No. 07-100 (“PSSA April 23 Letter”). This letter clearly was in response to the April 15, 2024 legal analysis filed by the Coalition for Emergency Response and Critical Infrastructure (“CERCI”). See Letter to Marlene H. Dortch from Kenneth Corey, CERCI Chairman and Roger C. Sherman, CERCI Policy Advisor, WP Docket No. 07-100 in which CERCI documented why the FCC did not have authority to issue a nationwide 4.9 GHz license to FirstNet (“CERCI April 15 Letter”).

critical infrastructure entities that share certain mission-critical responsibilities with public safety, “[t]o avoid overcomplicating the existing spectrum environment...”³

The Parties fully endorse the legal analyses supporting both the CERC I April 15 Letter and the more recent CERC I filing explaining why the PSSA’s suggestion that the FCC is free to do indirectly what it cannot do directly is equally legally infirm.⁴ A failure to consider these two filings would produce an outcome antithetical to the FCC’s objectives in this proceeding. It would risk embroiling the 4.9 GHz band in an ongoing legal dispute, thereby perpetuating the underutilization of this spectrum that prompted the FCC to initiate this proceeding.

The Parties recommend designation of the four FCC-certified public safety frequency advisory committees⁵ as a single band manager. The Parties continue to believe that would be an eminently viable and expedient approach for implementing the rules adopted by the FCC. We are prepared to work with all parties that endorse those FCC rules and that wish to preserve local public safety control of this spectrum pursuant to a fair and transparent management structure.

Respectfully submitted,

/s/ Jim Tymon
Jim Tymon
Executive Director
American Association of State Highway
and Transportation Officials

/s/ Suzanne Lemieux
Suzanne Lemieux
Director, Operations Security &
Emergency Response Policy
American Petroleum Institute

/s/ Robin J. Cohen
Robin J. Cohen
President/CEO
Enterprise Wireless Alliance

/s/ Ralph Haller
Ralph Haller
Executive Director
Forestry Conservation Communications Association

³ See PSSA April 23 Letter at 4.

⁴ See May 10, 2024 Letter to Marlene H. Dortch from Kenneth Corey, CERC I Chairman and Roger C. Sherman, CERC I Policy Advisor, WP Docket No. 07-100.

⁵ American Association of State Highway and Transportation Officials; Association of Public Safety Communications Officials, International; Forestry Conservation Communications Association; and International Municipal Signal Association.

/s/ Wendy Jeffres
Wendy Jeffres
National Frequency Coordinator
International Municipal Signal Association

/s/ Jonathan Thompson
Jonathan Thompson
Executive Director and CEO
National Sheriffs' Association

/s/ Brett Kilbourne
Brett Kilbourne
Senior Vice President Policy and
General Counsel
Utilities Technology Council

cc: (via email)

Chairwoman Rosenworcel
Commissioner Brendan Carr
Commissioner Geoffrey Starks
Commissioner Nathan Simington
Commissioner Anna M. Gomez
Joel Taubenblatt
Tom Eng
John Evanoff
David Furth
Brian Marenco
Renee Roland
Jon Markman
Susan Mort
Roger Noel