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

In the Matter of	)	
	)	
Amendment of Certain Part 90 Subpart S	)	RM-11978
800 MHz Rules (809-816/854-861 MHz)	)	
To Promote More Efficient Use of Spectrum	)	
Within That Band Segment	)	

To: Chief, Wireless Telecommunications Bureau

REPLY COMMENTS
OF
ENTERPRISE WIRELESS ALLIANCE

The Enterprise Wireless Alliance ("EWA") submitted the above-identified Petition for Rulemaking[1] on October 26, 2022, almost fifty years after the Federal Communications Commission ("FCC") reallocated the 806-816/851-861 MHz band ("800 MHz Band") for private land mobile radio ("PLMR") use.[2] Years later the FCC subdivided that band into pools ("Pools") of spectrum designated for use by applicants with defined eligibility as well as one pool classified as General Category available for all qualified Part 90 800 MHz applicants.[3]

The PLMR landscape, like all telecommunications landscapes, has changed dramatically since the early 1980s when the Pools were created. There have been significant advances in technology that allow for greatly improved spectral efficiency and interference protection as well

[1] Petition for Rulemaking of the Enterprise Wireless Alliance, Amendment of Certain Part 90 Subpart S 800 MHz Rules (809-816/854-861 MHz) to Promote More Efficient Use of Spectrum Within That Band, RM-11978 (filed Oct. 26, 2022, refiled Feb. 27, 2024) ("Petition").
[2] *See* Petition n. 2 noting the different 800 MHz band plan in the southeastern U.S.
[3] *See* Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-821/851-866 MHz Band and to Adopt Rules and Regulations Which Govern Their Use, PR Docket No. 79-191, Second Report and Order, 90 FCC 2d 1281 (1982).

as allocations or reallocations of other bands that offer different opportunities for meeting PLMR needs.[4]

The 800 MHz Pools that continue to form the basis of channel assignments in the 800 MHz Band do not reflect those changes. In fact, they ignore the single seismic event – 800 MHz rebanding[5] – that so scrambled the types of users on any given 800 MHz frequency as to make all frequencies indistinguishable on that basis. Ignoring the Pools was essential to achieving the FCC's objectives in that proceeding and worked in that context because the rules for all user categories are identical. Channels in the 800 MHz Band are fungible. However, as explained in the Petition, one presumably unintended and highly regrettable outcome of this random assignment of replacement channels is that site-based incumbents assigned geographic SMR frequencies now are subject to FCC Rule Section 90.693. They are not permitted to expand their system contours even if doing so would have no impact on other licensees.[6]

It is those facts that prompted EWA to submit the Petition that would allow the PLMR community, including public safety licensees, to derive productive use of unassigned frequencies in the portion of the 800 MHz Band at issue without burdening applicants and the FCC staff with unnecessary showings. Contrary to the Comments filed by public safety entities, primarily the Association of Public-Safety Communications Officials, International ("APCO"), the changes proposed would not compromise public safety communications or deny them access to the spectrum needed to fulfill their obligations. The concerns expressed about other classes of entities, "for-profit" businesses and commercial SMR operators, using their purported endless financial

[4] As noted in the Petition, one advantage of eliminating the Pool designations would be elimination of the need for waivers every time a public safety entity like the State of Michigan and a utility in the State find it advantageous to share infrastructure and frequencies. *See* Petition at p. 7.
[5] *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 15969 (2004).
[6] Petition at 9-10; n. 22.

resources to license, construct, and operate 800 MHz channels for what APCO seems to believe are lesser or even improper purposes, and thereby potentially deprive a public safety entity of an 800 MHz channel it might decide it needs in 2025 or 2030 or 2050, are wildly overblown and inconsistent with the real world in which PLMR licensees exist, including public safety licensees.

1) The FCC Has Taken Appropriate Action to Address Public Safety Spectrum Needs; Technology Advances Will Also Have a Role.

At the outset, EWA does not dispute that public safety entities need spectrum to provide vital services for the American public. The FCC clearly recognizes this and has been highly responsive to public safety spectrum needs. It has allocated exclusive narrowband public safety spectrum in the 30-75 MHz,[7] 150-170 MHz,[8] 450-470 MHz,[9] 470-512 MHz,[10] 700 MHz[11] and 800 MHz bands,[12] the latter including the 3/3 megahertz of NPSPAC spectrum at 806-809/851-854 MHz, essentially the entire band from 809-815/854-860 MHz across the country by virtue of multi-year public safety rights to so-called "Sprint-vacated" spectrum,[13] and the public safety Pool under discussion in this proceeding. As directed by Congress, the FCC allocated 10 MHz of 700 MHz broadband spectrum nationwide to public safety, which is licensed to FirstNet.[14] Public safety also has enjoyed the exclusive rights to 50 MHz of broadband spectrum in the 4.9 GHz band for more than 20 years.[15] It cannot credibly be argued that public safety, by any fair measure, is spectrum deprived.

---

[7] 47 C.F.R. § 90.20.
[8] *Ibid*.
[9] *Ibid*.
[10] 47 C.F.R. § 90.311.
[11] 47 C.F.R. § 90.521 *et seq*.
[12] 47 C.F.R. 90.601 *et seq*.
[13] APCO's Comments state it might be supportive of changes in the Sprint-vacated rules but only in a different proceeding. APCO Comments at n. 5. It offers no reason why this Pool of 800 MHz spectrum needs separate, presumably delayed, treatment although it must be noted that the public safety reservation has expired nationwide except in the Mexican Border Region including the FCC-imposed buffer region ("MBR"), so delayed action would have no impact on public safety's exclusive access to these channels.
[14] 47 C.F.R. § 90.19.
[15] 47 C.F.R. § 90.1201 *et seq*. The FCC has repeatedly characterized this band as "underutilized" by public safety.

The issue is whether it is prudent spectrum management to reserve spectrum, even public safety spectrum, indefinitely for the possibility that an applicant might someday want to place it into use. EWA appreciates that public safety entities have a longer approval and funding process than most (but not all) other PLMR entities, but if almost 50 years is not enough time to decide to utilize 800 MHz channels, how much time is needed?

This type of reservation suggests that APCO does not expect the public safety community to adopt technology improvements that are likely to change their spectrum needs over time. The PLMR industry has gone from 100 kHz bandwidth channels to 50 kHz, to 25 kHz, to 12.5 kHz, to 7 kHz and 4 kHz with each technology migration increasing communications paths and thereby expanding system capacities in the same amount of spectrum. It has migrated from conventional to trunked systems and from analog to digital technology, which has not only improved spectrum efficiency but has effectively insulated systems from co-channel or adjacent channel interference, thereby making it unnecessary to group like users on the same channels as evidenced by today's co-existence on all 800 MHz Pool channels. The future unquestionably will mean increased use of broadband, rather than narrowband or wideband technology. While the public safety community may move more slowly than other PLMR industry segments for a variety of reasons, they are not immune from these industry-wide advances, nor should they be.[16]

That public safety does not appear to have an immediate or even relatively near-term need for all the 800 MHz spectrum available to it [17] is evidenced by the availability for other entities of Sprint-vacated channels (spectrum reserved for public safety in addition to its Pool allocation)

[16] EWA appreciates that public safety activities are taxpayer-funded, including the taxpayers that contributed $7B to the creation of FirstNet's National Public Safety Broadband Network. But it must remind public safety that the "for-profit" businesses that APCO fears will somehow take public safety frequencies to support what it implies are less worthy purposes, are the same entities that pay the taxes and that pay employees who pay the taxes that fund those public safety activities. It could be described accurately as a virtuous circle.

[17] Public safety can request up to five years to construct any 800 MHz channels it acquires since it qualifies for extended implementation under Rule Section 90.629. That five-year period can be extended by waiver for good cause.

after the public safety reservation period expired.[18] The fact that prospective users such as utilities and petroleum production entities had to wait years for channels no public safety entity needed is unfortunate, is contrary to the FCC's spectrum management objectives, and should be a cautionary tale if such a set-aside is ever requested in the future.

For example, a major chemical company has searched for 800 MHz channels to expand its manufacturing facility in a major market for two years. The only remaining spectrum in the market is in the Sprint-vacated pool. Although this market is many hundreds of miles from Mexico, it nevertheless is governed for Sprint-vacated purposes by the inaptly named MBR regulations, which apply to all of California, New Mexico, and Arizona, a large part of Texas, and even extends north into portions of Nevada, Utah, and Colorado.

Public safety entities have had exclusive access to that spectrum for almost three years, yet 52 channels remain available, but not accessible to this entity, at its site. Despite the hazardous nature of its operations, this company does not qualify as CII under the FCC's definition.[19] Thus, it will not be able to secure any of those channels for its expansion purposes until the summer of 2026, if the channels remain available. This cannot be the outcome intended by the FCC when it adopted the rules governing Sprint-vacated spectrum.

Fortunately, this is a self-correcting situation since it now applies only to the MBR. Critical infrastructure entities now only need to wait a few more months until the three-year public safety

[18] As explained in the Petition and noted in the Comments filed by Forest Industries Telecommunications ("FIT"), through errors in the FCC's database, what was authorized as a three-year public safety reservation period was extended multiple times in multiple geographic areas, giving public safety entities exclusive access for up to a decade in some instances. *See* Dec. 31, 2019, Letter from David Smith, President, and Mark E. Crosby, Secretary/Treasurer, Land Mobile Communications Council to Michael Wilhelm, Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau and Roger Noel, Chief, Mobility Division, Wireless Telecommunications Bureau, WT Docket No. 02-55.

[19] 47 C.F.R. § 90.7.

reservation expires. The rest of the PLMR user community, including the chemical manufacturer, will suffer the consequences of an uneven spectrum playing field for another two years.

2) The Concerns Raised by Public Safety are Without Merit and Could be Addressed Without Pool Allocations.

APCO and other public safety commenters such as the California Public Radio Association ("CPRA") apparently have the mistaken belief that business and SMR entities operate outside the normal laws of rational business decision-making and constraints. Public safety users must secure governmental approval to invest in spectrum resources. Business entities of all categories have to account for their purchases, including spectrum and the equipment needed to construct and therefore retain their licenses. They typically require shareholder or other owner consent, or approval by a lending entity. That decision is based on hard facts such as whether the investment is supported by rational economic analyses.

It is incorrect at best, and at worst misleading to state that business licensees "are driven not just to serve their business needs but also to extract value from their spectrum holdings in the marketplace"[20] and that this motivation would drive them to acquire all available public safety spectrum even if not needed for legitimate operational purposes. While some businesses sometimes sell their operations including their spectrum, and some may sell spectrum itself, the vast majority acquire licenses and build systems that serve the public in every imaginable way. They operate airports, manufacture computer chips, transport goods and people, and fulfill a critical role in the day-to-day operation of the country. Unlike public safety entities, only a very small percentage of business licensees qualify for extended implementation status. They are required to assume all the costs involved in putting spectrum on the air within a limited construction period or lose the spectrum in which APCO believes they have speculated, a foolish

[20] APCO Comments at 3.

economic gamble. EWA is surprised that with its decades of experience APCO does not recognize the role these licensees play in the economic well-being of the nation but has elected to denigrate them as second-class spectrum citizens.

This characterization of non-public safety entities is not even consistent with today's PLMR licensing environment. It is not clear where APCO and others think this speculative frenzy might occur, since 800 MHz Pool spectrum has been licensed for decades in all major markets where spectrum typically has inherent value. The only meaningful exception is Sprint-vacated spectrum to which only public safety has had access for years. If the FCC were to share APCO's concern about the threat of a land rush, that could be addressed by limiting the number of channels assignable to SMR licensees in an area as suggested by FIT or by limiting the number of channels that may be certified for an incumbent SMR seeking to expand system capacity. Requests for additional channels would be subject to stringent verification of the operational status of the applicant's existing facilities in the area by the frequency advisory committee from which coordination is sought, a policy that should be applied not only to SMRs, but to public safety and business licensees as well.

Further, EWA wishes to allay the fears of CPRA members that reclassifying this 800 MHz spectrum as General Category would have an adverse impact on intra-public safety concurrence agreements. Public safety licensees would continue to have the right to short-space one another and to refuse short-spacing by non-public safety entities as they wish. EWA also is uncertain what "protection" CPRA members fear losing without a dedicated 800 MHz public safety pool. In fact, the rules governing co-channel and adjacent channel assignments would continue to govern all non-consensual licensing. The protections in place today will remain unaffected.

EWA clearly acknowledges that inter-category sharing provides some opportunity for some applicants to secure out-of-pool channels, but the process is time-consuming, requires duplicative channel availability analyses to confirm claims of channel shortages in various Pools and, of course, incurs additional costs. APCO's argument appears to be that those costs and delays are reasonable because they act as a deterrent that preserves vacant public safety channels for some potential future public safety applicant. EWA fails to see the benefit of such an approach that minimizes effective spectrum management without advancing the public interest.

Finally, and contrary to APCO's description,[21] the B/ILT user that sought a single public safety channel to expand its system "opted to settle" for its in-pool frequency because the Wireless Telecommunications Bureau ("WTB") took the position that an in-pool frequency at approximately one-third the power level of the rest of the system meant that the applicant's pool frequencies had not been depleted. On that basis, it did not qualify for inter-category sharing. WTB takes the same position with regard to combiner spacing limitations. Whether or not those positions are reasonable, they prevent business licensees from accessing frequencies that meet their technical requirements even when usable public safety frequencies remain unused. EWA understands that the Public Safety and Homeland Security Bureau ("PSHSB") takes a more liberal view of these technical issues, thereby creating an unequal playing field when inter-category sharing is involved. Whatever the FCC chooses to do with the Petition, that inequality should be corrected.

[21] APCO Comments at 5.

CONCLUSION

After 40 years of 800 MHz availability, APCO and the CPRA should recognize that the Petition will actually expand public safety's 800 MHz spectrum opportunities rather than reducing access. The rules in place today governing access to the 800 MHz Band deserve an overhaul to promote spectrum efficiency and access equity. EWA urges the FCC to adopt a Notice of Proposed Rulemaking consistent with the recommendations and the rules detailed in the Petition.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

By: Robin J. Cohen

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

May 21, 2024

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 21st day of May, 2024 caused to forwarded by first-class mail, postage prepaid, a copy of the foregoing Reply Comments to the following:

Mark S. Reddish
Senior Counsel
APCO International
1426 Prince Street
Alexandria, VA 22314

Terri Nelson
President
The California Public Radio Association
3410 La Sierra Ave., Ste. #F1185
Riverside, CA 92503

David Smith
Executive VP
Forest Industries Telecommunications
1565 Oak St.
Eugene, OR 97401

/s/ Linda J. Evans