

June 3, 2024

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, NE
Washington, DC 20554

RE: *Ex Parte* Letter – Amendment of Part 90 of the Commission’s Rules
WP Docket No. 07-100

The Coalition for Emergency Response and Critical Infrastructure (CERCI)¹, the American Association of State Highway and Transportation Officials (AASHTO), and the 4.9 GHz Coalition² collectively represent the great majority of parties whose communications interests will be affected by the decisions of the Federal Communications Commission (FCC) regarding the future of the 4.9 GHz band. Because the record in this proceeding is extensive, these parties wish to make explicitly clear their agreement on the core issues that will determine whether public safety remains in control of this spectrum and how its more intensive, but still public safety-centric use, can be promoted, as well as their opposition to the licensing, leasing, or other controlling use of this spectrum by the First Responder Network Authority (FirstNet).³

It has been almost 18 months since the FCC adopted its decision to designate a nationwide Band Manager with three primary responsibilities: (1) frequency coordination; (2) incentivizing the use of the latest commercially available technologies, including 5G; and (3) facilitating limited secondary non-public safety use.⁴ In the meantime, a freeze on new licensees remains in place, contrary to the FCC’s objectives and the increasingly urgent desire of public safety and compatible critical infrastructure industry (CII) entities to use it in support of their obligations to promote and protect public safety. The parties urge the FCC to move promptly in designating the national Band Manager and in adopting rules consistent with the principles below:

¹ CERCI membership includes: Major Cities Chiefs Association; National Sheriffs’ Association; National Association of Women Law Enforcement Executives; California State Sheriffs’ Association; Industry Council for Emergency Response Technologies; Edison Electric Institute; National Rural Electric Cooperative Association; T-Mobile; Verizon; US Cellular; and Competitive Carriers Association.

² The 4.9 GHz Coalition membership includes: American Petroleum Institute; Enterprise Wireless Alliance; Forestry Conservation Communications Association; International Municipal Signal Association; National Sheriffs’ Association; and Utilities Technology Council.

³ These positions have been endorsed generally, in filings submitted in this proceeding by, among others: Southwest Border Sheriffs’ Coalition and Texas Border Sheriff’s Coalition (Apr 25, 2024); Industry Council for Emergency Response Technologies (Mar. 14, 2024); California Office of Emergency Services (Jan. 12, 2024); Metropolitan Transportation Authority (June 30, 2023); Motorola Solutions, Inc. (Apr. 13, 2024); Florida Power & Light Company (May 15, 2023); San Francisco Bay Area Rapid Transit District (May 15, 2023); Government Wireless Technology & Communications Association (May 15, 2023); State of Maryland Department of Information Technology (May 15, 2023); Dodge County and City of Fremont, Nebraska (May 24, 2024), and Oregon Department of Emergency Management (May 31, 2024).

⁴ See *Amendment of Part 90 of the Commission’s Rules, Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking*, WP 07-100, 38 FCC Rcd 704 at ¶¶ 23-30 (2023) (“Order”).

- A national band plan that accommodates local public safety decision making remains the bedrock of public safety frequency coordination. This model has worked effectively in meeting current and future public safety requirements for decades in multiple spectrum bands. Designating the four public safety frequency advisory committees – AASHTO, APCO, FCCA, and IMSA – to undertake this responsibility collectively would be fully consistent with the qualifications the FCC considers essential in fulfilling the national Band Manager role. Their frequency coordination expertise and deep-rooted relationship with the public safety community have been proven over time and cannot credibly be questioned.
- The FCC’s decision to allow the leasing of available capacity to compatible users will maintain the requisite local public safety control if accomplished by adoption of the proposed Model 2 leasing framework. The CII entities that are members of these two coalitions are evidence of CII’s interest in working with local public safety entities in lease arrangements that promote more intensive use of the band while preserving public safety priority and preemption rights.
- The wholesale licensing or leasing of this band to FirstNet and, therefore, to AT&T for integration into its commercial, consumer-focused network (or an arrangement that accomplishes the same end under a thinly veiled “shared use” nomenclature), would be antithetical to the FCC’s locally controlled public safety primacy commitment. The highly dubious legality of such an arrangement⁵ could result in litigation that would leave this band in its current frozen state for the foreseeable future. This outcome would be contrary to the FCC’s effort to promote its more intensive and more technically advanced utilization and would continue to deny public safety entities access to the only broadband spectrum in which their local decision making retains a primary status.

Sincerely,

/s/ Lawrence Dwyer
American Association of State Highway
And Transportation Officials (“AASHTO”)

/s/ Roger Sherman
The Coalition for Emergency Response and
Critical Infrastructure (“CERCI”)

/s/ Kenneth Corey
NYPD Chief of Dept. (Ret.)
CERCI Chairman

⁵ See CERCI Letters to Marlene H. Dortch, FCC WP Docket No. 07-100 (Apr. 15, 2024; May 10, 2024).

4.9 GHz Coalition

/s/ Suzanne Lemieux
American Petroleum Institute

/s/ Robin Cohen
Enterprise Wireless Alliance

/s/ Ralph Haller
Forestry Conservation Communications
Association

/s/ Wendy Jeffries
International Municipal Signal Association

/s/ Jonathan Thompson
National Sheriffs' Association

/s/ Brett Kilbourne
Utilities Technology Council