

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

In the Matter of)
) WP Docket No. 07-100
Amendment of Part 90 of the Commission's Rules)

To: The Commission

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules, submits these comments in response to the Seventh Further Notice of Proposed Rulemaking in this proceeding.¹ The Commission’s decisions in the simultaneously adopted Sixth Report and Order in the proceeding² set a new course for the 4.9 GHz band, one with the potential to fulfill the FCC’s objective of making more intensive use of this spectrum. The FCC concluded in the R&O that restricting eligibility in the band to public safety operations for the past 17 years has resulted in high equipment costs and limited equipment availability, leading to underutilization except in certain metropolitan areas.³ Under rules adopted in the R&O, a single entity in each state will be designated as the State Lessor and issued a 4.9 GHz license with the right to use the spectrum for its own public safety or other governmental operations and/or enter into leasing arrangements with critical infrastructure and other enterprise entities, with commercial service

¹ *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Seventh Further Notice of Proposed Rulemaking, 85 FR 76505 (Nov. 30, 2020) (“FNPRM”).

² *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Report and Order, 85 FR 76469 (Nov. 30, 2020) (“R&O”).

³ R&O at ¶ 1.

providers, or with any party eligible under the FCC’s Secondary Market rules.⁴ As stated in the R&O, “The rule changes we adopt here will reverse the effects of the 4.9 GHz band’s antiquated licensing framework that have led to its underuse.”⁵

The FNPRM proposes an additional option for the State Lessors that will be charged with managing use of the band. While that licensee could oversee all 4.9 GHz operations, both non-public safety and public safety, it instead could choose a State Band Manager to be responsible for coordinating operations among grandfathered public safety licensees and new 4.9 GHz lessees, which lessees could be public safety or other entities under the newly granted permissive lease authority. The FNPRM raises a series of questions about the State Band Manager concept and also questions whether the FCC should evaluate the success of the leasing model adopted in the R&O. Specifically, it questions whether the Commission should monitor leasing activities or take additional steps to facilitate it.⁶

The state licensing, plus lease, approach adopted in the R&O is novel. It will require states to take on spectrum management and leasing duties for which some have little or no experience, and perhaps limited interest. While there are parties with expertise available to help guide them, this is not an undertaking that will proceed smoothly and at the same pace in all states, whether or not a State Band Manager also is involved. As discussed below, EWA believes that FCC oversight of the process generally, thereby ensuring that it is managed fairly and effectively within the states, and specifically measuring the level of lease activity will be essential in achieving the public interest objective of ensuring robust utilization of this band.

⁴ 47 C.F.R. § 1.9001 *et seq.*

⁵ R&O at ¶ 2.

⁶ FNPRM at ¶ 57.

I. INTRODUCTION

EWA is a national trade association representing business enterprises, wireless sales and service providers, hardware and software system vendors, and technology manufacturers. The Alliance also represents a significant number of commercial service providers that offer primarily two-way dispatch communications for business and governmental customers.

Like the rest of the telecommunications world, the Alliance's members appreciate the functionality and advanced capabilities available with broadband technology. Some will enjoy those benefits as customers of commercial broadband networks, but others have operational or coverage requirements that are not addressed on consumer-oriented commercial systems. They are eager to deploy private LTE networks designed to meet their particular needs, for example utilizing 900 MHz spectrum for wider-area coverage and CBRS for greater capacity in more confined facilities such as plants and refineries.

EWA has long advised that this 50 MHz of spectrum could support more intensive usage by expanding eligibility beyond public safety operations. Seven years ago, it participated in development of the National Public Safety Telecommunications Council ("NPSTC") 4.9 GHz Plan on which the Commission requested comment.⁷ That plan would have permitted access to some portion of the 4.9 GHz band by entities that qualified as critical infrastructure under the FCC's definition,⁸ although the Alliance advocated even broader eligibility for business entities.

Sharing has become the rule, not the exception, in numerous bands. As long as the technical and operational regulations establish appropriate levels of protection for current and

⁷ Public Safety and Homeland Security Bureau Seeks Comment on National Public Safety Telecommunications Council's 4.9 GHz National Plan Recommendations Final Report, *Public Notice*, WP Docket No. 07-100, PS Docket No. 06-229, WT Docket No. 06-150, DA 13-2096 (rel. Oct. 30, 2013).

⁸ See 47 C.F.R. § 90.7.

future users, sharing maximizes utilization of increasingly scarce spectrum. Thus, EWA welcomes this innovative approach to opening the 4.9 GHz band to all interested EWA members.⁹

II. THE BAND MANAGER MODEL IS TESTED AND MAY BE USEFUL FOR STATES WITH GRANDFATHERED PUBLIC SAFETY SYSTEMS

The R&O grants the State Lessor and its lessees effectively unlimited latitude in the use of 4.9 GHz spectrum in each jurisdiction:

To increase flexibility and encourage more efficient use of the 4.9 GHz band, lessees of 4.9 GHz band spectrum will not be subject to the requirement that they use the spectrum in support of public safety and may engage in flexible use fixed or mobile operations.¹⁰

Nonetheless, in recognition of public safety incumbents operating in certain areas and in anticipation of future public safety deployments, the FNPRM asks whether State Lessors should be permitted, on a voluntary basis, to assign responsibility for overseeing and coordinating public safety operations in the band to a State Band Manager. That entity could be the State Lessor itself or another party and seemingly would also hold a statewide license.¹¹ In addition to managing public safety usage, the FCC also suggests that entity could be responsible for preventing interference between public safety and non-public safety entities.

⁹ In its Petition for Reconsideration of the R&O (“PFR”) filed on December 29, 2020, APCO International states that it “is evident from the record, public safety entities are generally not opposed to sharing the band with non-public safety users.” PFR at 7. It cites to ¶ 14 in the R&O in support of that statement. While EWA would welcome that position from APCO and other public safety representatives, the cited ¶ 14 references comments urging broader eligibility from such non-public safety parties as Southern Company, Nokia, California Internet, L.P. DBA GeoLinks, WISPA, V-COMM, and Federated Wireless. The paragraph referenced by APCO goes on to state that public safety representatives urged the FCC to ensure continued access to the band by current and future public safety entities and cites to APCO’s Comments. APCO’s position is described succinctly in the Table of Contents in those Comments: III.E. states “Limit Communications by CII Entities to the Protection of Life, Safety and Property on a Secondary, Preemptible Basis.” EWA does not view that as a ringing endorsement for meaningful shared use of the band.

¹⁰ R&O at ¶ 30.

¹¹ ¶ 54 in the FNPRM refers to a “State Band Manager’s license.”

EWA believes the FCC is correct to leave up to each state the decision as to whether a State Band Manager would further facilitate more intensive use of the band while also playing a useful role in interference-avoidance. Different states undoubtedly will reach different conclusions, presumably influenced, among other factors, by the level of 4.9 GHz public safety incumbency and anticipated future use within each state. While the Band Manager approach worked reasonably well in certain bands, it has been replaced, for the most part, by spectrum leasing arrangements.¹² Re-introducing it for 4.9 GHz public safety facilities would eliminate whatever time and cost would otherwise be involved in having those entities secure FCC approval of what nonetheless are effectively lease arrangements. EWA has no objection to the FCC creating this option, provided the Commission continues to exercise its statutory obligation to ensure that the spectrum under its control serves the public interest as discussed below.

III. THE FCC SHOULD MAINTAIN AN ACTIVE ROLE IN OVERSEEING BOTH STATE LESSOR AND STATE BAND MANAGER ACTIVITIES

In adopting a new regulatory structure for the 4.9 GHz band, the FCC stated that “The rule changes we adopt here will reverse the effects of the 4.9 GHz band’s antiquated licensing framework that have led to its underuse.”¹³ EWA agrees this novel approach has that potential, but submits that its fulfillment cannot be confirmed without a basis on which future utilization can be measured. It is to be hoped that states will embrace the opportunity to derive revenue by leasing this valuable asset to a wide variety of entities, some of which may be mission critical public safety users, but also to businesses that otherwise contribute to the state’s economy. In light of the very significant negative impact the COVID-19 pandemic has had on state and local tax revenue, spectrum leasing could play a valuable role in helping to fill that gap. Although

¹² FNPRM at ¶¶ 52-3.

¹³ R&O at ¶ 2.

some, perhaps many, states do not currently have the internal capabilities to manage a spectrum leasing program, they undoubtedly can establish such programs, and there are multiple resources with significant expertise on which they can call should that be necessary.

The FNPRM asks whether the Commission should monitor leasing activities undertaken by the State Lessor and, when applicable, the State Band Manager.¹⁴ EWA strongly believes that continued FCC oversight will be required. Virtually all FCC licenses come with an obligation to place the spectrum into operation within a defined period and to a prescribed level of utilization. Those metrics enable the FCC to determine whether the spectrum is being used to serve the public interest and, if not, rules that allow its recovery and reassignment. No such provisions are included in the new 4.9 GHz rules. It would theoretically be possible for a State Lessor to take no steps toward making this band available for use by any eligible entity and yet retain control of the spectrum indefinitely. One or more states could elect to limit access to public safety use and thereby not address the basis for the fundamental finding in the R&O that a restrictive eligibility criterion has left this band underutilized for more than 15 years. It is to be hoped that states will embrace this marketplace opportunity with the Commission's increased usage goal in mind. However, if the Commission finds that the voluntary leasing framework has not reached a reasonable level of success, it should move quickly to adopt build-out requirements or take other steps that allow it to recover spectrum within some reasonable timeframe.

¹⁴ FNPRM at ¶ 57.

IV. CONCLUSION

EWA agrees that the potential of the 4.9 GHz band has not been realized. While it previously had recommended that this spectrum be made available to enterprise entities but not commercial service providers, the most critical issue at this point is to broaden eligibility beyond exclusively public safety. Assigning spectrum leasing rights to the states, with the possibility of relying on State Band Managers to coordinate public safety operations, creates possibilities that do not exist today for EWA members and others in need of mid-band broadband spectrum. For that reason, EWA supports the FNPRM, with the understanding that the FCC will monitor leasing activity to ensure that the spectrum is being utilized in support of the public interest.

Respectfully submitted,

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