

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

In the Matter of)
)
Amendment of FCC Rule Sections 90.35(b)(1)-(3))
And 90.175(b) to Eliminate Concurrence) RM _____
Requirements For Designated)
Frequencies and Promote Increased)
Use of Part 90 Spectrum)

To: The Commission

**PETITION FOR RULEMAKING
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA”), pursuant to Section 1.401 of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, respectfully requests that the Commission initiate a rulemaking proceeding to modify Rule Sections 90.35(b)(1)-(3) and Rule Section 90.175(b), as shown on Attachment A. The proposed changes would eliminate what have become unnecessary economic and administratively burdensome requirements for frequency coordinators to secure concurrence on the frequencies specified. Changes in technology and enhanced spectrum analytical processes in use today by FCC-certified Frequency Advisory Committees (“FACs”) have demonstrated those frequencies can be coordinated and utilized safely by all Part 90 Industrial/Business (“I/B”) eligible entities without inter-coordinator concurrence.¹ The rule changes proposed would advance the more than 20-year-old objectives of Part 90 radio service consolidation as it would “achieve more

¹ EWA is not proposing any changes to the coordination requirements applicable to Public Safety spectrum.

efficient and flexible spectrum use.”² Eliminating the concurrence requirement for applicants in the I/B category would “reduce administrative and financial burdens on applicants”³ with minimal, if any, impact on the availability of spectrum for the entities eligible for additional protection. The Part 90 pool consolidation in PR Docket No. 92-235 and other actions taken by the FCC in the intervening decades have borne out the FCC’s expectation that eliminating the Part 90 individual I/B radio service allocations would promote “the use of advanced technologies, such as ‘trunking’”⁴ and provide appropriate protection for all licensees through technological choices and engineering analyses rather than rigidly classified frequency assignments that artificially reduce spectrum access and undermine efficiency objectives.

I. BACKGROUND

The Commission recognized in 1995 that 20 Private Land Mobile Radio (“PLMR”) services, each with its designated frequency assignments and frequency coordinator, would not serve the PLMR community’s needs into the future.⁵ It determined that consolidation of those 20 service groups on the bands below 800 MHz would “provide for more efficient allocation of the increased capacity created by the introduction of more efficient technology.”⁶ It therefore adopted rules in 1997 to effect that consolidation with certain caveats.⁷

The FCC created two eligibility Pools: one Public Safety and one I/B. It also addressed frequency coordination issues in the I/B Pool. The FCC acknowledged that it previously had

² *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, PR Docket No. 92-235, Second Report and Order at ¶ 8 (1997) (“2nd R&O”).

³ *Id.* at ¶ 19.

⁴ *Id.* at ¶ 18.

⁵ *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, PR Docket No. 92-235, Report and Order and Further Notice of Proposed Rulemaking, 10 FCC Rcd 10076 (1995) (“R&O”).

⁶ *Id.* at 10081.

⁷ *See* 2nd R&O.

required the FAC for each radio service to be representative of users in that service. It explained that its decision to allow all I/B FACs to coordinate throughout the broader Pool, with the limitations described below, was not a rejection of that concept. Instead, it was a recognition that within each Pool “**systems are virtually identical and user needs are similar.**”⁸ It concluded that “any of the recognized in-pool frequency coordinators, with their extensive experience and technical expertise in engineering systems and selecting frequencies, possess the ability to provide frequency coordination recommendations.”⁹

Nonetheless, representative of users in the prior Railroad, Power, and Petroleum radio services argued their systems were tools that sometimes were used to respond to emergencies that otherwise might impact the public and that interruptions in their communications could not be tolerated.¹⁰ In response, the FCC determined that applications for frequencies that had been allocated exclusively to those services could not be coordinated by other than the originally certified FAC unless the coordinating FAC obtained concurrence from that certified FAC.¹¹ In 1999, in response to a Petition for Reconsideration filed by API, this provision was modified to include frequencies shared between any of those three services and another radio service.¹² The American Automobile Association (“AAA”) also sought reconsideration and argued its emergency road services involved safety-related considerations comparable to those of the three

⁸ *Id.* at ¶ 34 (emphasis added).

⁹ *Id.*

¹⁰ Other I/B industries can present compelling public interest, security, and safety considerations such as airlines, critical manufacturing, and food production. The FCC had not assigned discrete frequencies for their usage when the original radio services were created, so they were not considered when these super-protection criteria were adopted. Also, with the growth of regional and national commercial wireless networks, some smaller I/B licensees that may have been a concern originally have migrated to those solutions for a variety of reasons including greater coverage, reduced equipment investment costs, and enhanced communication capabilities.

¹¹ The then certified FACs were Affiliated American Railroads (“AAR”) (now Association of American Railroads), UTC, the Telecommunications Association (“UTC”) (now Utilities Technology Council), and the American Petroleum Institute (“API”).

¹² *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services*, PR Docket No. 92-235, Second Memorandum Opinion and Order, 14 FCC Rcd 8642 (1999) (“2nd MO&O”).

services that had been granted protective coordination authority. The FCC agreed and extended those rights to frequencies that had been assigned for coordination by AAA.

More than two decades later, these decisions remain embedded in FCC Rule Sections 90.35 and 90.175. The former identifies hundreds of VHF and UHF frequencies that require coordination by or concurrence from a specific FAC. Concurrence is required even if the applicant satisfies the eligibility criteria for the spectrum but has chosen a different FAC to coordinate its application consistent with the FCC's intention to promote competition in the coordination process that it believed would "result in lower coordination costs and better service to the public,"¹³ and would "reduce the time it takes to obtain a coordination."¹⁴ Contrary to the Commission's purpose, satisfying this concurrence requirement in reality adds time to the coordination and licensing process as well as increases costs, since there are fees associated with all concurrence requests with no countervailing public interest benefit.

II. THESE FREQUENCY-SPECIFIC REQUIREMENTS ARE NO LONGER NECESSARY OR APPROPRIATE IN THE CHANGED PLMR SPECTRUM ENVIRONMENT

The FCC was correct when it stated in 1997 that I/B "systems are "virtually identical and user needs are similar."¹⁵ In the 25 years since these rules were adopted, that conclusion remains valid but much else has changed. Commercial wireless systems are now ubiquitous and are used for certain applications by virtually every entity eligible under the FCC's Part 90 rules. This development has enabled I/B entities to focus on private internal systems devoted to the use cases that need to be addressed on systems designed by and under the control of the private entity. Moreover, in 1999, the PLMR community had just begun to evolve from reliance on conventional analog systems operating on shared frequencies below 800 MHz to today's trunked

¹³ 2nd R&O at 40.

¹⁴ *Id.*

¹⁵ *See* n. 8 *supra*.

digital technology that is most efficient when utilizing frequencies with protected service contours.¹⁶ When all frequencies were assigned on a shared, party-line basis and systems were analog, there may have been some well-intended logic in attempting to group like-type users on common frequencies, but that objective provides significantly less value in today's private wireless spectrum environment.

The expectation that pool consolidation would promote deployment of more efficient trunked technology is evident throughout that proceeding. While the FCC and the PLMR industry in 1997 had not yet resolved all issues involved in implementing trunked systems on frequencies that heretofore had been assigned on a shared basis, the objective was clear: "Trunked systems will allow PLMR licensees to construct systems which are more efficient than conventional systems, thereby allowing licensees to use fewer channels to provide the same communications capability."¹⁷ The FCC also determined that the trunking provisions it did adopt, "provide licensees with maximum flexibility in the operation of their systems while assuring that the use of centralized trunking will not detrimentally impact the operation of another licensee's system."¹⁸

Many PLMR users below 800 MHz have migrated to trunked digital technology as anticipated by the FCC and for just the reasons it expected. It provides greater spectral efficiency, thereby requiring fewer channels to support an entity's communications requirements, while also allowing the creation of multiple, flexible talk groups that further enhance operational efficiency. Centralized and hybrid trunking systems are attractive investments for I/B entities that seek to minimize disruptions to their communication systems, thereby promoting business

¹⁶ See 47. C.F.R. § 90.187. Trunked technology was already widely used on 800/900 MHz frequencies where channel exclusivity was the norm from the outset.

¹⁷ 2nd R&O at 57.

¹⁸ *Id.* at 59.

competitiveness, operational efficiencies, and employee safety. These often are entities that also have high security needs and value the protection digital offers from third-party monitoring. Centralized trunked systems are coordinated in accordance with the provisions of Rule Section 90.187. Irrespective of user eligibility or coordinating FAC, they are protected from co-channel and adjacent channel interference in accordance with the contour overlap criteria in that rule.

There still are frequencies licensed on a “shared” basis, meaning they do not qualify for the contour protection of Rule Section 90.187. But frequency coordination on shared frequencies has moved well beyond maximizing co-channel mileage separations and minimizing licensed mobiles, the latter being a notoriously imprecise criterion for evaluating frequency utilization. EWA’s VHF and UHF coordination protocols automatically run contour calculations for co-channel and adjacent channel systems for all applications it processes whether the request is for a conventional or trunked system. This is needed to ensure that it does not coordinate an application that fails to comply with Rule Section 90.187, an obligation of all FACs.¹⁹ This also enables EWA to assess the best available shared channel based on factors such as no spectrum overlap utilizing the contour regulations within FCC Rule Section 90.187 and minimizing the cumulative overlap of co-channel incumbent interfering contours over the applicant’s predicted service contour. Of course, in the first instance, the applicant is made aware that as a shared system, additional co-channel licensees may be added in the future. In sum, EWA has already completed a detailed analysis of shared compatibility that ensures appropriate levels of protection for both incumbent and proposed systems. Yet the current rules then require it to request and its applicant to pay for concurrence from the designated FAC, which presumably

¹⁹ EWA’s analysis for conventional and trunked system applications is identical. Should the analysis identify a channel(s) that is eligible for an “FB8” exclusive use designation, but that will be used in a conventional system, the channel(s) is still certified but is designated as FB2 or FB6.

performs a redundant analysis with the same result.²⁰ As long as EWA's customer is willing to pay the fee, concurrence is provided. Since the analyses are based on virtually identical predicted propagation models, results do not vary by any measurable amount.

In light of the number of "ineligible" licensees on these channels, EWA can only conclude that decades of experience have demonstrated to all FACs that frequencies can be shared by licensees with different eligibility because, as the FCC recognized decades ago, I/B systems are "virtually identical and user needs are similar."²¹ In fact, there is significant licensing of "protected" frequencies by entities with eligibility other than the categories considered by the FCC 25 years ago. Since Rule Section 90.175 requires concurrence based on the frequency, not the licensee, FACs such as EWA are required to request concurrence when the "protected" entity is engaged in activities entirely different than those on which the need for protection was based.

In the case of auto emergency, most eligible entities do not appear to require protection beyond that applicable to all shared frequencies. The great majority of actual auto emergency licenses do not reflect a need for more advanced technologies for which additional protection is required. In fact, a random sampling of auto emergency frequencies in a few markets reveals that the great majority of licensees, in some cases all licensees, are not engaged in roadside assistance at all but in a wide variety of business activities (see Attachment B). Concurrence does not appear to be based on an assessment of the need to protect auto emergency communications from disruption. The consequence of having to protect this spectrum when incumbents are not themselves automobile emergency licensees is that applicants must pay for access to frequencies that otherwise might not support any usage at all. If the FCC retains the

²⁰ FACs rely predominantly on R6602 contour evaluations in the bands below 470 MHz. Assuming the data entered into the R6602 algorithm is identical, the results will be identical as well.

²¹ See n. 8 *supra*.

current rules, rules adopted more than two decades ago in a very different spectrum environment that EWA believes are no longer necessary, at a minimum they should be clarified so they do not extend to licensees beyond those in the user categories the FCC elected to protect at that time.

The fact that concurrence typically is granted is not a basis for retaining the current rules. Decades of experience may have demonstrated to those reviewing concurrence requests that frequencies can be shared and that rejection would violate Rule Section 90.175(b)(2), which specifies that denial is appropriate “only when a grant of the underlying application would have a demonstrable, material, adverse effect on safety.”²² EWA would be pleased to provide the original FACs for these frequencies with specific notification when filing such an application and, of course, would work with them if a showing is made that its use, in fact, would have that type of adverse effect on safety. It might also advise applicants against deploying their systems based on conditional authority under Rule Section 90.159(b). However, given the history of concurrences granted, it appears likely that showings of material, adverse effects on safety would be the rarest of exceptions. Instead of all applicants having to pay a fee to access these frequencies, EWA and other coordinators would take responsibility for resolving any issues on a case-by-case basis as they do routinely in other instances when a coordination is questioned for some legitimate reason. In fact, the resolution of post-licensing conflicts was and remains an FCC mandate for Commission-certified FACs.²³

²² See 47 C.F.R. § 90.175(b).

²³ We anticipate that all FACs will continue to protect high-power voice frequencies assigned for use by central station entities in FCC Rule Sections 90.35(c)(63)-(66) using the same non-overlapping contour analysis described above that complies with the National Wireless Communications Council’s Consensus Protocol. However, the requirement that TMA conduct an identical analysis and subsequently issue a concurrence following payment of a processing fee should not be a requirement to secure access to an assignable channel. Additionally, EWA has never found a low-power central station frequency to be the best available for shared use given the large number of low-power frequencies available for I/B applicants.

The VHF frequencies reserved for coordination by AAR present a unique situation. Freight railroads collectively require nationwide, interoperable communications. They also have atypical operating requirements that are not necessarily suited for trunked operations in the bands below 800 MHz. Therefore, although certain of their applications involve safety issues that require interference protection, their system configurations do not qualify as trunked, so their frequencies do not have contour protection under Rule Section 90.187. Given these considerations, the FCC may conclude that VHF railroad frequencies should remain identified for coordination by AAR and thereby retain the current protection pursuant to the rule changes proposed in Attachment A.²⁴

III. CONCLUSION

The purpose of PR Docket No. 92-235 was the encouragement of more efficient use of PLMR spectrum through a variety of means, including Pool consolidation to facilitate trunking and competitive coordination. A concurrence requirement may have made sense decades ago but is no longer needed. Instead, it denies equal access to spectrum to licensees whose communications requirements are identical to those in the protected eligibility categories and equally important to the nation, such as those identified as “critical” by the Department of Homeland Security²⁵ without providing any public benefit.

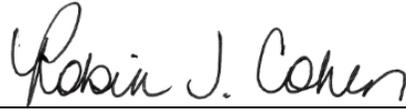
²⁴ AAR has advised that concurrence for use of their UHF frequencies is granted routinely. On that basis, EWA recommends retaining protection criteria for VHF frequencies only.

²⁵ See U.S. Department of Homeland Security. *NIPP 2013: Partnering for Critical Infrastructure Security and Resilience*. Available at: www.cisa.gov/topics/critical-infrastructure-security-and-resilience/critical-infrastructure-sectors (July 7, 2017).

For the reasons described herein, EWA requests that the FCC initiate a rulemaking proceeding to modify Rule Sections 90.35(b)(1)-(3) and 90.175(b) as recommended herein.

Respectfully submitted,

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March 23, 2023

ATTACHMENT A

90.35(b) *Industrial/Business Pool frequencies.*

The following table indicates frequencies available for assignment to Industrial/Business Pool stations, together with the class of station(s) to which they are normally assigned, and the specific assignment limitations which are explained in [paragraph \(b\)](#) of this section.

(1) Unless otherwise specified, frequencies in the Industrial/Business pool may be coordinated by any frequency coordinator certified in the Industrial/Business Pool.

(2) The VHF frequencies with an LR symbol in the Coordinator column of the frequency table in [paragraph \(b\)\(3\)](#) of this section may only be coordinated by the Railroad Coordinator, unless that coordinator provides prior written consent to the application of another frequency coordinator.

(3) *Frequencies ******

90.175 *Frequency coordinator requirements.*

Except for applications listed in [paragraph \(j\)](#) of this section, each application for a new frequency assignment, for a change in existing facilities as listed in [§ 90.135\(a\)](#), or for operation at temporary locations in accordance with [§ 90.137](#) must include a showing of frequency coordination as set forth further.

(a) Frequency coordinators may request, and applicants are required to provide, all appropriate technical information, system requirements, and justification for requested station parameters when such information is necessary to identify and recommend the most appropriate frequency. Additionally, applicants bear the burden of proceeding and the burden of proof in requesting the Commission to overturn a coordinator's recommendation.

(b) *For frequencies between 25 and 470 MHz.*

(1) In instances in which a frequency coordinator determines that an applicant's requested frequency or the most appropriate frequency is one designated for coordination or concurrence by a specific frequency coordinator as specified in [§ 90.20\(c\)\(3\)](#) or [§ 90.35\(b\)](#), that frequency coordinator may forward the application directly to the appropriate frequency coordinator. A frequency coordinator may only forward an application as specified above if consent is received from the applicant.

(2) For any application for mobile repeater station operations on frequencies denoted by both [§ 90.20\(d\)\(90\)](#) and [\(92\)](#), or by both [§ 90.35\(c\)\(93\)](#) and [\(95\)](#) the frequency coordinator responsible for the application must determine and disclose to the applicant the call signs and the service areas of all active co-channel incumbent remote control and telemetry stations inside the applicant's proposed area of operation by adding a special condition to the application, except when the applicant has obtained written concurrence from an affected incumbent licensee, or when the applicant and the incumbent licensee are the same entity.

ATTACHMENT B

Call Sign	Licensee Name	R/S	Frequency	Station Class	Tx City	Tx State
Auto Emergency:						
WPMB507	EAST LAKE COUNTRY CLUB	IG	452.5500	MO		GA
WPMB507	EAST LAKE COUNTRY CLUB	IG	452.6000	MO		GA
WQMB303	NORTHSIDE HOSPITAL FORSYTH SECURITY	IG	452.5500	FB2	CUMMING	GA
WQMB303	NORTHSIDE HOSPITAL FORSYTH SECURITY	IG	452.5500	MO	CUMMING	GA
WQQR957	Ohio Semitronics California, Inc.	IG	452.5500	MO	ATLANTA	GA
WQQX896	Vulcan Materials	IG	452.6000	MO	BALGROUN	GA
WQUE209	VALENTINE ENTERPRISES	IG	452.6000	MO	LAWRENCEVILLE	GA
WQUL770	WORLD CHANGERS CHURCH-NORCROSS	IG	452.6000	MO	NORCROSS	GA
WQYS358	KENCO	IG	452.5500	MO	UNION CITY	GA
WQYV299	EMORY UNIVERSITY HOSPITAL MIDTOWN	IG	452.6000	MO	ATLANTA	GA
WRDY551	GEORGIA BAPTIST MISSION BOARD	IG	452.6000	MO	DULUTH	GA
WREL250	PHILLIPS-VAN HEUSEN CORP	IG	452.6000	FB2	PALMETTO	GA
WREL250	PHILLIPS-VAN HEUSEN CORP	IG	452.6000	MO	PALMETTO	GA
WRJD936	NORFOLK SOUTHERN RAILWAY COMPANY	IG	452.5500	FB	ATLANTA	GA
WRJD936	NORFOLK SOUTHERN RAILWAY COMPANY	IG	452.5500	MO	ATLANTA	GA
WQQK342	ST LOUIS RAMS	IG	452.5500	MO	ST LOUIS	MO
WQQK342	ST LOUIS RAMS	IG	452.6000	MO	ST LOUIS	MO
WQTE364	CLOVIS UNIFIED SCHOOL DISTRICT	IG	452.5500	MO	FRESNO	CA
WQVF807	SILKE COMMUNICATIONS, INC	YG	452.6000	FB8	SAN ARDO	CA
WQVF807	SILKE COMMUNICATIONS, INC	YG	452.6000	FB8	SAN ARDO	CA
WQVF807	SILKE COMMUNICATIONS, INC	YG	452.6000	MO8	SAN ARDO	CA
WQWZ461	Pacific Gas and Electric Company	YG	452.5500	FB8	CARMEL VALLEY VILLAG	CA
WRUH360	SANGER DEL REY CEMETERY DISTRICT	IG	452.6000	FB2	SANGER	CA
WRUH360	SANGER DEL REY CEMETERY DISTRICT	IG	452.6000	MO	SANGER	CA
WRVD861	COMMUNITY TREE SERVICE, LLC	IG	452.6000	FB2	WATSONVILLE	CA
WRVD861	COMMUNITY TREE SERVICE, LLC	IG	452.6000	MO	WATSONVILLE	CA
Power:						
WPLK286	SHAMROCK FOODS	IG	451.2625	FB2	PHOENIX	AZ
WPLK286	SHAMROCK FOODS	IG	451.2625	MO	PHOENIX	AZ
WQDH897	CANYON STATE WIRELESS, INC.	YG	451.2625	FB8	TUCSON	AZ
WQDH897	CANYON STATE WIRELESS, INC.	YG	451.2625	MO8	TUCSON	AZ
WQFT320	COLORADO RIVER INDIAN TRIBES DBA BLUE	IG	451.2625	MO	PARKER	AZ
WQSV603	COM RENTS INC	YG	451.2625	FB6	SCOTTSDALE	AZ
WQSV603	COM RENTS INC	YG	451.2625	FB6	SCOTTSDALE	AZ
WQSV603	COM RENTS INC	YG	451.2625	FB6	SCOTTSDALE	AZ
WQSV603	COM RENTS INC	YG	451.2625	FB6	SCOTTSDALE	AZ
WQSV603	COM RENTS INC	YG	451.2625	MO6	SCOTTSDALE	AZ
WQSV603	COM RENTS INC	YG	451.2625	MO6	SCOTTSDALE	AZ
WQSV603	COM RENTS INC	YG	451.2625	MO6	SCOTTSDALE	AZ
WQSV603	COM RENTS INC	YG	451.2625	MO6	SCOTTSDALE	AZ
WQSV603	COM RENTS INC	YG	451.2625	MO6	SCOTTSDALE	AZ
WQHB446	WHITE CLOUD COMMUNICATIONS	YK	451.1375	FB8C	MOUNTAIN HOME	ID
WQKK862	INDEPENDENT MEAT COMPANY	IG	451.1375	FB2	TWIN FALLS	ID
WQKK862	INDEPENDENT MEAT COMPANY	IG	451.1375	MO	TWIN FALLS	ID
WQVQ860	NAMPA SCHOOL DISTRICT #131	IG	451.1375	FB2	NAMPA	ID
WQVQ860	NAMPA SCHOOL DISTRICT #131	IG	451.1375	MO	NAMPA	ID
WRVB775	CRAPO FARMS INC	IG	451.1375	FB2	Tetonia	ID
WRVB775	CRAPO FARMS INC	IG	451.1375	MO	Tetonia	ID
WSJ576	R & L COMMUNICATIONS	IG	451.1375	MO6	SODA SPRINGS	ID