

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

In the Matter of)
)
Arizona Public Service Company) WT Docket No. 17-168
Request for Waiver of)
800 MHz Licensing Freeze)

To: Chief, Wireless Telecommunications Bureau

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.45 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its response to the Public Notice seeking comment on the Waiver Request (“Waiver Request”) filed by the Arizona Public Service Company (“APSC” or “Company”).¹ The Waiver Request seeks an exemption from the 800 MHz licensing freeze² that applies to National Public Safety Planning Advisory Committee (“NPSPAC”) regions along the Mexican border where rebanding has not yet been completed.³ It states that APSC intends to deploy a new statewide, digital, Project 25 (“P25”) radio system. Although the current APSC system also operates at 800 MHz, the Company has explained that it needs to deploy two new channels at its existing sites and three channels at new sites, so that it will be able to cut over seamlessly from its existing system once the new system is operating.

¹ Wireless Telecommunications Bureau Seeks Comment on Arizona Public Service Company Request for Waiver of 800 MHz Licensing Freeze for Proposed Statewide Trunked Radio System, *Public Notice*, WT Docket No. 17-168, DA 17-590 (rel. June 16, 2017) (“Public Notice”).

² See Public Safety and Homeland Security Bureau Extends 800 MHz Application Freeze along Border with Mexico, *Public Notice*, 32 FCC Rcd 1817 (PSHSB 2017).

³ The Waiver Request is an attachment to multiple pending APSC applications; *see, e.g.*, File No. 0007518243.

Because APSC is seeking new channels at each of its sites, by definition, they are subject to the 800 MHz licensing freeze. The Public Notice requests comment both on the request that the licensing freeze be waived so that the Company may license 800 MHz Business/Industrial/Land Transportation (“B/ILT”)⁴ channels that would be available but for the freeze and on APSC’s request for frequencies in the 800 MHz Expansion Band (“EB”). The Public Notice explains that EB channels do not become available until the required rebanding completion level has been reached in a NPSPAC region and that the Public Safety and Homeland Security Bureau (“PSHSB”) recently determined that it would not make EB channels available, even in regions where rebanding has been completed, because of the pendency of a rulemaking proceeding in which the FCC was considering whether to afford priority for EB channels to incumbent licensees.⁵

I THE WAIVER REQUEST

Completing the 800 MHz reconfiguration process in the Mexican Border Regions has been a slow process. Substantial progress has been made recently, but it still may be a considerable time before the Commission is able to lift the freeze that was imposed more than 10 years ago.⁶ During this period, the current 800 MHz system operated by APSC is described in the Waiver Request as having reached its end-of-life and is no longer supported by its vendor. APSC, the State of Arizona’s largest electric service company, intends to replace it with a state-of-the-art P25, Phase II network that it believes will better serve its operating requirements and improve its delivery of critical electric power to the citizens of Arizona.

⁴ This spectrum is referred to in the Waiver Request as Industrial/Business (“I/B”).

⁵ Public Notice at 2, citing Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Reconfiguration in Certain NPSPAC Regions and the Availability of Additional Sprint Vacated Channels, *Public Notice*, 31 FCC Rcd 12891, 12896-97 (PSHSB/WTB 2016).

⁶ See Wireless Telecommunications Bureau Announces That 800 MHz Band Reconfiguration for Non-NPSPAC Channels Will Commence July 3, 2006, in the NPSPAC Regions Assigned to Wave 4, *Public Notice*, 21 FCC Rcd 6267 (WTB June 2, 2006).

The Waiver Request states that APSC analyzed B/ILT channel availability in its search for usable spectrum and identified two new 800 MHz channels for each of its sites.⁷ It explains that it will re-use channels for which it already is licensed at sites where more than two channels are needed.⁸ Thus, at new sites, only the first two channels will be new, while the third or fourth channels, as required, will be ones for which the Company already is authorized.⁹ Finally, APSC represents that after system acceptance of its new network, frequencies found not to be needed will be canceled and made available for other licensees.¹⁰ Since its replacement system will utilize more efficient digital technology, thereby doubling the number of communications paths, the Alliance anticipates that APSC will be able to return a substantial percentage of its currently assigned spectrum.

Although not mentioned in the Waiver Request, the Public Notice explains that while some of the channels requested are from the below-860 MHz /ILT Pool, others are EB channels assigned for B/ILT use. Both require waivers of the licensing freeze, but the latter also are the subject of an ongoing rulemaking proceeding as indicated in the Public Notice.

II APSC HAS SATISFIED THE SECTION 1.925 WAIVER STANDARD

The factors that have delayed completion of 800 MHz rebanding in the Mexican Border Regions may have been unavoidable, since the process is significantly dependent on the actions of another country and its licensees, neither of which are within the FCC's control. Similarly, however, the obsolescence of the APSC system during this extended period was not within its

⁷ Waiver Request at 4. As described, APSC used an 800 MHz channel availability matrix "in conjunction with established preclusion criteria and network design requirements" and "performed a Carrier-to-Interference analysis for each of its sites to establish a channel re-use 'policy.'" *Id.* While APSC is free to develop design criteria for its internal purposes, EWA assumes the Company recognizes that future third-party co-channel assignments will be made in accordance with FCC Rule Section 90.621(b), irrespective of APSC's preferred preclusion criteria or carrier-to-interference standard.

⁸ *Id.* at 8.

⁹ *Id.* at 9.

¹⁰ *Id.*

control. Application of the licensing freeze would be unduly burdensome and contrary to the public interest under these unique circumstances. While APSC has described three scenarios for deployment of its new system,¹¹ the only reasonable, practical approach is the one for which waiver relief is sought. Moreover, the purpose of the licensing freeze is to create a stable spectrum environment and ensure that adequate replacement channels are available to permit the reconfiguration of all systems in an area. This purpose seemingly will not be disturbed by grant of a waiver, as the 800 MHz Transition Administrator (“TA”) has provided APSC with a letter stating that, “the TA concurs with the issuance of this authorization and does not foresee any impact on 800 MHz Band Reconfiguration resulting from grant of the application.”¹²

EWA also supports a waiver to allow APSC to license B/ILT EB channels. In the Alliance’s opinion, the Company’s situation is unique, and there is no realistic alternative to its spectrum requirements. As it has committed to returning currently licensed channels for assignment to other entities once its new, more efficient system has been fully deployed and its capacity requirements satisfied, there should be minimal impact on the amount of I/B spectrum available for future users. In fact, it is precisely because of entities like APSC that EWA has strongly supported time-limited incumbent priority access to EB channels. The Commission itself has proposed incumbent priority access to B/ILT EB channels.¹³ The Alliance has recommended broader incumbent relief, but certainly agrees that B/ILT entities should be awarded priority access to all EB spectrum.

¹¹ *Id.* at 8.

¹² The TA letter was signed nine months ago, but EWA assumes it still is accurate. It also assumes, but has not confirmed, that the letter accompanies each APSC application and thereby provides assurance that no requested channel would impact reconfiguration efforts.

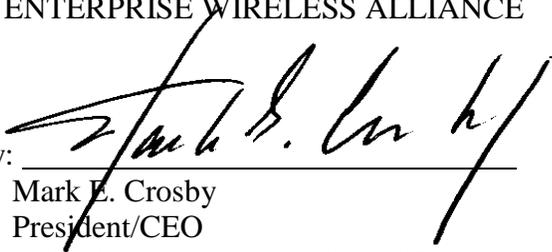
¹³ “...we propose to provide a window for incumbent 800 MHz licensees in the market to acquire or expand coverage and improve their quality of service on EB B/ILT Pool channels before accepting applications from new entrants.” In the Matter of Amendment of Part 90 of the Commission’s Rules to Improve Access to Private Land Mobile Radio Spectrum, *Notice of Proposed Rulemaking*, WP Docket No. 16-261, 31 FCC Rcd 9431 at ¶ 31 (2016).

There can be no question that APSC provides an essential public service, has a demonstrable need for 800 MHz channels to fulfill its responsibilities, and will put the spectrum into productive use within a timeline approved by the FCC. Under these circumstances, and assuming the FCC is satisfied that there are not sufficient non-EB channels to address APSC's requirements, the Alliance recommends grant of APSC's request.

For these reasons, EWA urges the FCC to proceed promptly in granting the waiver relief requested by the Company.

Respectfully submitted,

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July 31, 2017

CERTIFICATE OF SERVICE

I, Linda J. Evans, with the law firm of Lukas, LaFuria, Gutierrez & Sachs, LLP, hereby certify that I have, on this 31st day of July 2017, caused to be forwarded via electronic mail the foregoing Comments to the following:

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