

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

In the Matter of)
)
Amendment of the Schedule of Application Fees) MD Docket No. 20-270
Set Forth in Sections 1.1102 through 1.1109 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 Notice of Proposed Rulemaking in this proceeding.¹ EWA is pleased that Congress has given the FCC an opportunity to update its application fee schedule that has been set in stone for more than thirty years. It agrees that the current schedule is both incomplete in that some services cannot be charged a filing fee and is also overly complex. Moreover, given the enormous improvements in data processing since the original schedule was adopted, there undoubtedly have been efficiency gains in the application review and processing functions that should be reflected in the fees applicants are charged. EWA supports the Commission’s proposals to modify the fee schedule and is not requesting changes to the proposed fees. However, it wishes to understand how certain matters were considered in the FCC’s analyses so the Alliance can assure its members that the new fees are appropriate.

¹ *Amendment of the Schedule of Application Fees Set Forth in Sections 1.1102 through 1.1109 of the Commission’s Rules*, MD Docket No. 20-270, Notice of Proposed Rulemaking, 85 FR 65566 (Oct. 15, 2020) (“NPRM”).

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. In addition to its representational activities, EWA (through its predecessor organizations) has long been an FCC-certified Frequency Advisory Committee (“FAC”) charged with the responsibility of coordinating thousands of applications each year prior to their submission to the FCC. It also provides application preparation services to parties seeking FCC licenses. The great majority of applications in which it is involved are regulated under Part 90 of the FCC rules, although it also assists in applications that fall under Parts 5, 22 and 101. As such, EWA has in-depth familiarity with the tasks involved in preparing and reviewing both site-based and geographic-based wireless applications.

II. THE WIRELESS SERVICES INCLUDE A SIGNIFICANT VARIETY OF SYSTEMS THAT WILL BE TREATED AS COMPARABLE FOR APPLICATION FEE PURPOSES UNDER THE PROPOSED STREAMLINED APPROACH

The NPRM has the laudable purpose of reducing the number of application fees for various services and purposes from 450 to 167.² It describes the undoubtedly laborious process undertaken by the Commission in calculating its proposed fees. It explains that it developed its cost-based data by estimating the direct labor costs for processing a particular type of application by multiplying (1) the estimated number of hours needed for each processing task up to a defined supervisory level; (2) the estimated labor cost per hour for the person performing each task; (3)

² NPRM at ¶ 10.

estimating the probability that the task needed to be performed; and (4) summing each of these calculations.³

EWA has no reason to question the accuracy of each element in these analyses and could not in any event since it does not have access to the FCC's underlying data. It assumes the Commission completed its calculations correctly and then averaged the costs for the variety of application types to develop the fees for both site-based and geographic-based Wireless License filings.⁴ The Alliance understands that cost-averaging is the only rational way to establish filing fees; there will always be some element of subsidization and free-riding when large numbers of not entirely identical filings are involved. What is not clear is whether the FCC, in its effort to streamline the schedule, took into consideration the very wide differences in the universe of wireless applications and, if not, whether it has significantly amplified the subsidization/free-rider issue.

A. Site-based Licenses

Systems licensed under Part 90 of the FCC rules run the gamut from multi-frequency, multi-site systems seeking exclusivity and governed by complicated licensing requirements such as the eligibility criteria for particular 800 MHz frequencies to mobile-only systems requesting shared VHF/UHF itinerant frequencies throughout areas of operation such as counties, states, or even the entire nation. Under the current fee schedule, all feeable Part 90 licenses have a \$70 filing fee with the simple, mobile-only systems presumably subsidizing the processing of more complex systems.⁵

³ NPRM at ¶ 11.

⁴ The Alliance has no comments on the fees proposed for Personal wireless licenses.

⁵ Public safety applications are not assessed a filing fee with the costs of processing those applications spread among other applicants.

By consolidating all wireless services into only three categories, site-based, geographic-based, and personal, the cost-averaging for site-based licenses now presumably includes, for example, applications for Part 101 microwave systems that often involve multiple paths and frequencies and that currently pay \$305 per application, Part 87 Aviation systems that pay \$140, and Part 74 Broadcast Auxiliary systems that pay \$170. That may explain why the fee for Part 90 applications, including mobile-only systems requiring almost no review, is proposed to increase from \$70 to \$190.

In EWA's opinion, the dollar amount itself is not the issue. FCC filing fees generally are only a fraction of the cost of purchasing the equipment for and then installing and maintaining the wireless system represented by the FCC license. However, the Alliance will be asked by its customers to explain why their filing fee has almost tripled, so it would be helpful for the Commission to explain in more detail the public interest basis for this streamlining approach in the order it adopts in this proceeding. EWA also wonders whether the increased filing fees can be expected to support a reduction in application processing time for new and modified Part 90 licenses, which remains at an average of 45 to 60 days.

B. Geographic-based Licenses

A geographic-based license also can cover a range of licenses – for example, a 40 kHz BEA Part 22 authorization, a 10 MHz county-wide Part 96 PAL license, or a 30 MHz MTA Part 24 authorization. While the bandwidth and geographic rights they authorize are not in any way comparable, the licenses typically are acquired through competitive bidding and the auction-related applications require similar information and, presumably, equivalent review by FCC staff.

There currently is no application fee for auction-related applications, as they were not included in the original fee schedule. The NPRM proposes a \$575 fee for the pre-auction short-form application and a \$2,600 fee for a post-auction long-form application. It also asks whether those two fees should be combined so that only winning bidders would pay and would have a total application processing fee of \$3,175.⁶

Adopting the proposed short-form application fee will have no impact on the broadband auctions that dominate the FCC's agenda, but may reduce participation in the auctions for narrowband or wideband spectrum, spectrum for which EWA's members are able to compete. The proposed \$575 is greater than the typical per license upfront payment required to participate in those auctions. The Alliance therefore recommends that the FCC consolidate those costs and impose a fee only on successful bidders that file long-form applications. EWA also urges the Commission to schedule an auction of recovered or never acquired narrowband licenses such as Part 22 paging, AMTS, and IVDS that could provide attractive options for entities that require other than broadband spectrum.

C. Waivers

The NPRM proposes to significantly increase the per waiver fee for both site-based (\$210 to \$380) and geographic-based (\$0 to \$380) applications. EWA considers this a very significant increase that again seemingly reflects considerable cross-subsidization in this highly streamlined approach. However, rather than question the proposed amount, the Alliance urges the FCC to focus attention on accelerating finalization of rule-making and other proceedings involving Part

⁶ NPRM at ¶¶ 38-9.

90 and other Private Land Mobile Radio (“PLMR”) systems where the failure to do so leaves applicants with no option but to request a rule waiver.⁷

For example, EWA petitioned the FCC in 2009 to create full-power 12.5 kHz bandwidth channels in the 800 MHz band, thereby making more intensive use of this spectrum.⁸ The Alliance recognizes that the 800 MHz rebanding process impacted the speed of FCC action, but the Commission did not adopt rules for this spectrum for another nine years.⁹ It took an additional two years for the FCC to resolve certain technical criteria related to these channels¹⁰ but it has now been six months and the Commission has not yet issued the Public Notice that will make this spectrum available. Entities needing these channels to support important industrial or other needs have no choice but to request a waiver.

Lengthy FCC licensing freezes also trigger waiver requests. The FCC imposed a freeze on 800 MHz applications in the Mexican Border Region (“MBR”), a freeze that affects areas as far from the Mexican border as Las Vegas, more than seven years ago.¹¹ Applicants requesting frequencies for which they are eligible still need to request waivers based on their distance from the border as part of their filings. There is no indication when that freeze will be lifted even for

⁷ Many applicants would endorse a larger fee if it meant speedier action on their waiver requests.

⁸ See Petition for Rulemaking of the Enterprise Wireless Alliance, RM-11572, filed April 29, 2009.

⁹ *Creation of Interstitial 12.5 Kiloherertz Channels in the 800 MHz Band Between 809-817/854-862 MHz; Amendment of Part 90 of the Commission’s Rules to Improve Access to Private Land Mobile Radio Spectrum; Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies; Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz*, Report and Order and Order, 33 FCC Rcd 10222 (2018) (*PLMR Report and Order*).

¹⁰ *Creation of Interstitial 12.5 Kiloherertz Channels in the 800 MHz Band Between 809-817/854-862 MHz*, Order on Reconsideration, 35 FCC Rcd 4940 (May 11, 2020).

¹¹ Public Safety and Homeland Security Bureau Announces that the 30-Month Transition Period for 800 MHz Band Reconfiguration in Regions Along the U.S.-Mexico Border Will Commence on August 23, 2013; Bureau Approves U.S.–Mexico Border Reconfiguration Timetable Submitted by the 800 MHz Transition Administrator and Establishes Application Freeze Dates, WT Docket No. 02-55, *Public Notice*, 28 FCC Rcd 12990 (PSHSB 2013).

locations remote from the border despite the fact that all but two 800 MHz systems in the MBR have completed the rebanding of their systems.¹²

The Commission imposed a very stringent freeze on Part 90 T-Band (470-512 MHz) spectrum more than eight years ago.¹³ The freeze was not mandated by the legislation requiring the FCC to begin a system of competitive bidding for this spectrum by February 22, 2021, but was a policy decision of the FCC.¹⁴ Licensees with compelling needs to relocate frequencies or sites that would result in an expansion of the current contour of the frequencies must request waivers, although those requests rarely are granted. Eight years later, it is evident that the FCC itself does not believe that the mandated auction of this spectrum should or will be held,¹⁵ yet the freeze remains intact. EWA's Reply Comments in that proceeding urge the Commission to lift the freeze immediately.¹⁶ As yet, no action has been taken.

The Commission's focus on broadband and other major issues is perhaps understandable, but the resulting delays in action on matters related to PLMR spectrum and related issues should not penalize affected licensees doubly by also subjecting them to significantly greater waiver fees. The solution in EWA's opinion is not to reduce the proposed fees, but to ensure that adequate resources are devoted to PLMR-related matters so that fewer waivers are needed.

¹² See Status report on 800 MHz Band Reconfiguration filed by T-Mobile USA, Inc., WT Docket No. 02-55 (Nov. 3, 2020).

¹³ *Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum*, Public Notice, 27 FCC Rcd 4218, 4218-19 (WTB/PSHSB 2012). The Bureaus issued a further clarification of the suspension on June 7, 2012. *Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Clarify Suspension of the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum*, Public Notice, 27 FCC Rcd 6087, 6087-88 (WTB/PSHSB 2012).

¹⁴ Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6103, 126 Stat. 156, 205-206 (2012), (codified at 47 U.S.C. § 1413).

¹⁵ *Reallocation of 470-512 MHz (T-Band) Spectrum*, PS Docket No. 13-42, Notice of Proposed Rulemaking, 35 FCC Rcd 6896 (2020).

¹⁶ EWA Reply Comments, WP 13-42, filed Sept. 29, 2020.

Another way for the FCC to reduce somewhat the impact of all these significant filing fee increases would be to reduce the 2021 regulatory fees for site-based PLMRS licensees. These fees are collected in advance for the ten-year license term when applying for an initial license and at each license renewal. Reducing the regulatory fee will affect only a percentage of applications filed by these entities, many of which are the modifications required routinely in a site-based and frequency-based licensing environment. But such a reduction would be beneficial and, in EWA's opinion, can be justified by the FCC time and resources expended on regulatory matters affecting these licenses.

D. Construction Notifications

The NPRM proposes to impose filing fees on construction notifications, filings that currently are not feeable. The fee for site-based systems will be \$50 per call sign and \$290 for geographic-based licenses. EWA agrees that the notifications for geographic-based systems can involve review of coverage maps and other documentation such that the proposed fee appears reasonable. As acknowledged in the NPRM, the processing of site-based construction notifications is automated, and the FCC has no staff costs for data input or review.¹⁷ Virtually all are granted overnight, confirming that no staff activity is involved.

The NPRM proposes the fee to defray what it describes as "routine system maintenance required in ULS and for system monitoring."¹⁸ EWA members consider money devoted to ULS maintenance, monitoring or, even better, modernization a prudent investment. When ULS is slow or down entirely, it imposes costs on FCC constituents that rely on access to the database on a daily basis. When upgrades are made to ULS, FACs must expend funds to update the software in their automated frequency coordination and application processing capabilities to

¹⁷ NPRM at ¶ 20.

¹⁸ *Id.*

maintain compatibility. Nonetheless, anything the FCC can do to modernize the ULS would be appreciated.

E. Amendments

The NPRM asks whether the FCC should charge a fee for amendments to applications.¹⁹ EWA, which processes thousands of applications each year, recommends against imposing a fee in that situation. Applicants typically include FCC processing fees in their budgets for the proposed new or modified system. The predictability of those costs makes that possible. Imposing an additional, after-the-fact payment for certain applications would be confusing and disrupt a budgeting process that has worked well for FCC constituents for many decades.

Further, amendments may be required for a variety of reasons and, in some instances, the FCC returns applications for reasons that subsequently are determined to be incorrect. Yet correcting the matter still may require the applicant to file an “amendment” explaining why no amendment is needed. Adding a cost element assuredly would prompt applicants to challenge FCC returns in instances where today they accept the FCC’s reasoning, even if they do not agree with the Commission’s determination. If the FCC believes the costs related to amendments are so significant that they must be recovered, the Alliance believes a better approach would be to add some nominal amount to the initial filing fee using the same cost-averaging on which the FCC relies to develop its other fees. Otherwise the application amendment process may become problematic.

¹⁹ *Id.* at ¶ 49.

III. CONCLUSION

EWA accepts the proposed application fees but, as discussed above, requests the FCC to provide a more detailed policy explanation for its cost-averaging over the very broad range of wireless applications and, most critically, to act more expeditiously in resolving PLMR-related matters so that fewer waiver requests are needed to support wireless applications.

Respectfully submitted,

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November 16, 2020

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Law Firm(s)	Lukas, LaFuria, Gutierrez & Sachs, LLP
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