

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

In the Matter of)
)
Partitioning, Disaggregation, and) WT Docket No. 19-38
Leasing of Spectrum)

To: The Commission

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC”) rules, respectfully submits its Comments in the above-entitled proceeding.¹ The NPRM is intended to further the Congressional goals of diversifying access to spectrum and promoting service to rural areas as described in the Mobile Now Act.² As described by the FCC, the rules proposed in the NPRM are designed to “create new opportunities for small carriers and Tribal nations to get access to spectrum, and...result in greater competition and expanded wireless deployment in rural areas, bringing more advanced wireless service including 5G to underserved communities.”³

EWA supports these Congressional and FCC objectives. Now that the great majority of spectrum is assigned based on competitive bidding, typically in spectrum blocks that are large both in geographic coverage and in bandwidth, it has become exceedingly difficult for smaller carriers and private enterprise entities to acquire the spectrum needed for their operations. With few exceptions, they are not able to compete successfully in auctions against the large wireless

¹ *Partitioning, Disaggregation, and Leasing of Spectrum*, Further Notice of Proposed Rulemaking, WT Docket No. 19-38, 86 FR 74024(2021) (“NPRM”).

² Consolidated Appropriations Act, Pub. L. No. 115-141, Division (P) (RAY BAUM’S Act of 2018), Title VI (MOBILE NOW Act) §601 *et. seq.* (2018).

³ NPRM at ¶ 1.

entities that have come to dominate the competitive bidding process. Any steps the FCC takes to democratize access to spectrum and shift the current regulatory emphasis on the provision of service to consumers in more populated areas will advance the public interest.

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.

These businesses are the cornerstone of the American economy. They are responsible for delivering electricity, water, oil and gas, and all other essential services. They build roads, bridges, airports, refineries, and every other imaginable facility needed to support the American economic engine. They design, manufacture, and deliver innumerable goods to other businesses and to consumers. These activities undoubtedly will accelerate and thereby require increased communications capability as a result of Federal funding made available in the 2021 infrastructure legislation.⁴ The American economy cannot function without a private enterprise marketplace that has access to the tools, including telecommunications tools, that enable it to operate efficiently in this country and compete effectively throughout the world.

II. ENHANCED PARTITIONING, DISAGGREGATION, AND SPECTRUM LEASING RULES ARE NEEDED TO PROMOTE MEANINGFUL ACCESS TO SPECTRUM FOR EWA MEMBERS AND OTHER ENTITIES.

The current processes for partitioning, disaggregation, and leasing of spectrum works efficiently. It is administratively simple to partition, disaggregate, and lease geography and/or bandwidth. The rules governing these opportunities also are effective – as far as they go. The

⁴ Infrastructure Investment and Jobs Act, Pub. L. No. 117-58 (2021).

problem identified in the MOBILE NOW Act and in this proceeding is that the FCC rules provide no incentive for licensees to make unused spectrum available to third parties as long as the failure to do so does not jeopardize retention of their spectrum rights. Licensees that meet the build-out requirement, typically by deploying in areas of concentrated population, are under no obligation to and likely have no economic motivation to sell or lease unused spectrum to unrelated entities for use in more outlying areas. This includes EWA members, both smaller commercial providers and enterprise entities that seek spectrum for private, internal use. Many operate in parts of the country where there is a more limited consumer market, making it less attractive for large commercial providers.

The Enhanced Competition Incentive Program (“ECIP”) proposed in this proceeding is a concrete step toward promoting greater access to spectrum, particularly for smaller carriers, rural carriers, and Tribal Nations. It includes three important elements as incentives for eligible transactions: license term extensions, construction extensions, and alternate construction benchmarks for rural-focused transactions. The NPRM sets out detailed criteria defining how to qualify for these incentives and seeks input on measures that will be needed to ensure that the qualifying commitments are met.

EWA supports the ECIP and encourages qualifying entities to take advantage of those incentives if it is adopted. Whether they are sufficient to support transactions that otherwise would not occur based on economic and business considerations remains to be seen, but the FCC has developed a reasonable approach utilizing the tools at its disposal.

III. PRIVATE ENTERPRISE ENTITIES SHOULD NOT BE SUBJECT TO POPULATION-BASED CONSTRUCTION REQUIREMENTS.

The NPRM acknowledges that “providing alternatives to construction requirements to a wide range of stakeholders can incentivize acquisition of licenses by entities that will deploy

innovative spectrum use models and reach underserved areas.”⁵ EWA agrees and, in particular, urges the FCC to adopt a different standard for private enterprise entities. These companies, described in the Introduction, are responsible for most of the economic activity in this nation. They rely on private wireless networks to address specific, often rigidly defined, operational requirements at facilities that may be in areas or have restrictions that make commercial service not a viable option. Increasingly heightened cybersecurity concerns have made their need for standalone networks with no connection to the Internet even more vital.

As their need for advanced wireless capabilities continues to increase, their access to spectrum to address that need, especially broadband spectrum, remains extremely limited. Spectrum typically is awarded by competitive bidding in geographic packages that do not necessarily conform to their coverage requirements and includes population-centric build-out requirements designed for commercial operations. These entities need to deploy spectrum at facilities that often are removed from population centers because of the work that is performed there. Activities such as manufacturing, mining, farming, and refining typically are not located in urbanized areas. Enterprise entities with an interest in acquiring spectrum at auction or even in the secondary market face the reality that their coverage does not align with the FCC’s typical, population-based build-out criteria.

The purpose of build-out requirements is to ensure that spectrum is used to serve the public interest. When enterprise entities acquire spectrum by purchasing it at auction, in the secondary market, or by lease, they do so to enhance the efficiency, effectiveness, and/or safety of operations that produce goods and services on which the public relies. It is difficult to imagine how that use could be considered other than demonstrably in the public interest. In EWA’s opinion, confirmation that the spectrum has been placed into productive use, irrespective

⁵ NPRM at ¶ 52.

of the geography or population it covers, should constitute a safe harbor for purposes of satisfying a build-out requirement.

IV. THE SPECTRUM LEASING OPTION SHOULD BE EXTENDED TO EXCLUSIVE PART 90 VHF AND UHF LICENSES.

The NPRM explains that spectrum leasing was authorized in 2003 with the expectation that it would further the public interest by allowing additional spectrum users to provide services to meet evolving public requirements. EWA fully supports the lease concept and agrees that it facilitates relatively prompt access to spectrum under terms determined by the marketplace. It has proven to be a highly useful regulatory tool.

Virtually all wireless services are authorized to enter into lease arrangements under FCC Rule Section 1.9005. The one striking omission is licensees that have achieved exclusivity on Part 90 Business and Industrial/Land Transportation channels below 470 MHz.⁶ It is not clear why this licensee category was omitted from lease authority (while Part 90 public safety licensees with exclusivity are permitted)⁷ and licensees with exclusivity on channels in the 470-512 MHz band are included. Both acquire exclusive rights to their assigned spectrum under the criteria in FCC Rule Section 90.187. Both are assigned identical radio service designations in ULS so that it is not possible to distinguish a VHF (150-174 MHz) or UHF (450-470 MHz) license from a license in the 470-512 MHz band without looking at the channels authorized. Holders of exclusive Part 90 VHF and UHF channels have the same incentives to lease their channels as do licensees in the 470-512 MHz band and in the many other bands in which spectrum leasing is permitted. While outside the scope of this proceeding, EWA urges the FCC to correct this seemingly inadvertent omission at its earliest opportunity.

⁶ See 47 C.F.R. § 1.9005(y).

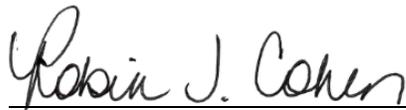
⁷ See 47 C.F.R. § 1.9005(t).

V. CONCLUSION.

This FCC effort to enhance competition and promote small and rural carrier and Tribal Nation access to spectrum through ECIP is to be commended and is a reasonable first step. The incentives proposed by the FCC may facilitate greater use of unused spectrum in rural areas, and additional incentives may need to be instituted in the future depending on the success of this initial effort. The FCC's interest in considering alternatives to its carrier-centric build-out criteria is both appropriate and encouraging. EWA urges the FCC to adopt rules in this proceeding promptly and consistent with the recommendations herein.

Respectfully submitted,

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