

May 28, 2021

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
45 L Street, N.E.  
Washington, D.C. 20554

**Re: WP Docket No. 07-100**  
***Ex Parte* Letter**

Dear Ms. Dortch:

The Enterprise Wireless Alliance (“EWA”) has been an active participant in this proceeding since its inception. Its position has been consistent: Entities classified as Critical Infrastructure Industry (“CII”) under FCC Rule Section 90.7<sup>1</sup> should be allowed access to the 4.9 GHz band on a primary, co-equal basis with public safety users. Expanding eligibility for this spectrum would address two issues that have prompted the FCC to conclude that 4.9 GHz rule changes are required. First, the FCC has determined that the band remains significantly underutilized after almost two decades of exclusive public safety eligibility. Second, one of the reasons for underutilization appears to be that public safety does not represent a large enough user base to drive the development of cost-effective equipment. Because this result is not consistent with the FCC’s obligation to ensure that the spectrum it regulates serves the public interest, EWA welcomes regulatory changes that promise more robust utilization.

That objective can be accomplished by expanding 4.9 GHz eligibility to include CII users. Access to licensed broadband spectrum has become increasingly critical for CII entities.

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<sup>1</sup> EWA believes the FCC’s definition of CII should be expanded to more closely align with that of the Department of Homeland Security: <https://www.dhs.gov/sites/default/files/publications/national-infrastructure-protection-plan-2013-508.pdf> (July 7, 2017). However, it has accepted the use of the current definition for purposes of this proceeding.

The organizations that deliver these vital services to the American public require secure, reliable, robust systems utilizing state-of-the-art broadband technology. While commercial systems are appropriate for certain of their applications and narrowband systems continue to address other requirements, recent events have highlighted their need for private broadband networks, networks that are not tied to the internet. No system can be entirely immune from the possibility of being hacked, but the recent Colonial Pipeline situation and the many other cybersecurity incidents in recent years have shone a bright light on the vulnerability of systems that can be accessed through the internet.

The record already supports primary CII access to this band. The FCC's decision to assign 4.9 GHz spectrum management responsibility to the states and to authorize leasing of the spectrum would provide one avenue whereby CII and other eligible entities might secure operating rights.<sup>2</sup> However, the recently adopted stay of that decision will provide an opportunity for the Commission to consider other approaches that might yield appropriate usage of the band.<sup>3</sup> In doing so, EWA urges the Commission to recall that the National Public Safety Telecommunications Council ("NPSTC") had endorsed CII access to two 5 MHz channels on a shared, co-primary basis with public safety agencies years ago in its proposed National Plan for the band.<sup>4</sup> It also recommended that CII entities be allowed to license other 4.9 GHz channels after notice to potentially interested public safety entities as a "short-term measure to allow public safety access to the band on a priority basis, so public safety is not excluded from the band due to lead time issues or long funding timeframes."<sup>5</sup> Because that measure was intended to be short-term, NPSTC stated that it should end three years after adoption of its plan for the band, after which public safety and CII "will have equal access to the band."<sup>6</sup> Although NPSTC's plan was not adopted by the FCC, public safety has retained exclusive rights to this spectrum from 2013 through the fall of 2020, when the FCC adopted a 4.9 GHz freeze on new and certain modification applications – more than twice the three years NPSTC thought adequate to provide public safety with an additional head start in the band.<sup>7</sup>

Cybersecurity concerns have become paramount for CII providers as the risk of data breaches, whether to extract a ransom or for even more nefarious purposes that can affect the lives of many Americans, has become increasingly apparent. Allowing CII primary access to the 4.9 GHz band would provide these users with a spectrum tool to support high-capacity broadband requirements free from the internet. EWA urges the

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<sup>2</sup> *Amendment of Part 90 of the Commission's Rules*, Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking, WP Docket No. 07-100, 36 FCC Rcd 1958 (2020).

<sup>3</sup> *Amendment of Part 90 of the Commission's Rules*, Order, WP Docket No. 07-100, FCC 21-66 (rel. May 27, 2021).

<sup>4</sup> See 4.9 GHz National Plan Recommendations, Final Report, filed by National Public Safety Telecommunications Council in a letter from Ralph A. Haller, Chair, NPSTC, to Marlene H. Dortch, Secretary, Federal Communications Commission, dated October 24, 2013, at 10-11.

<sup>5</sup> *Id.* at 11.

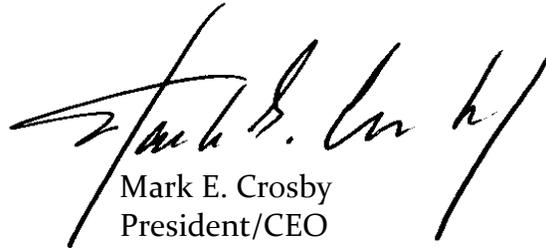
<sup>6</sup> *Id.*

<sup>7</sup> Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce Temporary Filing Freeze on the Acceptance and Processing of Certain Part 90 Applications for the 4940-4990 MHz Band, *Public Notice*, WP Docket No. 07-100, 35 FCC Rcd 9522 (2020).

Commission to ensure that the final rules in this proceeding ensure that opportunity for this essential category of wireless users.

Sincerely,

**ENTERPRISE WIRELESS ALLIANCE**

A handwritten signature in black ink, appearing to read "Mark E. Crosby". The signature is fluid and cursive, with a large initial "M" and a long, sweeping underline.

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<b>Attorney/Author Name(s)</b>	Mark E. Crosby
<b>Primary Contact Email</b>	mark.crosby@enterprisewireless.org
<b>Type of Filing</b>	NOTICE OF EXPARTE
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