



August 30, 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:

On August 13, 2021, the National Public Safety Telecommunications Council (“NPSTC”) submitted a letter statement in this proceeding (“NPSTC Letter”) in which it again urged the FCC to consider NPSTC’s 2013 National Plan Recommendations for the 4.9 GHz band.¹ and subsequent Comments it has filed in this proceeding.² Its primary recommendation is, and since 2013 has been, to open two 5 MHz channels in the band to critical infrastructure industry (“CII”) entities immediately and allow CII access to the entire band after three years. As stated in its recent letter:

NPSTC believes that Part 90 internal CII usage on a managed basis would be more compatible with public safety at 4.9 GHz than opening the band to commercial wireless and general public use, as the rules in the Sixth Report and Order would allow. Shared CII usage also would support the safety and internal operations of the nation’s utilities, petrochemical facilities and transportation networks that increasingly are subject to cyber attacks.³

¹ 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 (“NPSTC National Plan”).

² NPSTC Letter at 1.

³ *Id.* at 3.

The Enterprise Wireless Alliance (“EWA”) has argued in favor of CII access to the 4.9 GHz band since the Commission began considering changes to the rules governing this spectrum, the agency having concluded as long ago as 2012 that utilization “has fallen short of its potential.”⁴ EWA has repeatedly emphasized CII’s need for access to licensed broadband spectrum and its ability to share compatibly with public safety given the similarities of their operations. It therefore supports NPSTC’s confirmation that sharing with CII not only is possible, but would serve the public interest.

However, as suggested in its May 28, 2021 *ex parte* letter in this proceeding, the entire band should be opened for CII use immediately, since the rationale for the three-year waiting period recommended by NPSTC in 2013 is no longer valid. It was intended to allow public safety users a “head start” to build out whatever facilities they needed before CII would be allowed access to the entire band. In fact, public safety had exclusive access to the entire 4.9 GHz band for an additional seven, not just three, years before the FCC adopted a freeze on the band in 2020.⁵ Indeed, it has been almost two decades since the FCC adopted licensing and service rules for this 50 megahertz of public safety spectrum.⁶ No additional head start should be required.

The NPSTC Letter supports allowing CII usage on “a managed basis.” EWA believes that all spectrum should be managed to maximize its efficient utilization. Historically, that has been accomplished in the Part 90 licensed services by FCC rules defining the assignment and use of spectrum, rules that are applied by FCC-certified Frequency Advisory Committees (“FACs”) such as EWA and many members of NPSTC. As noted in previous EWA Comments in this proceeding, as long as all FACs, those representing public safety and CII entities, apply the technical and other criteria adopted by the FCC for the 4.9 GHz band, the operations of all licensees will receive appropriate access to the band and protection from interference.⁷

Finally, as EWA has recommended in the past⁸ and consistent with the reasoning supporting CII access in the NPSTC National Plan, at least for purposes of this proceeding, the CII definition in Rule Section 90.7 should be expanded to include certain entities that are identified in the Department of Homeland Security (“DHS”) national plan: Partnering for Critical Infrastructure Security and Resilience.⁹ DHS included the following

⁴ *Amendment of Part 90 of the Commission’s Rules*, Fourth Report and Order and Fifth Further Notice of Proposed Rulemaking, WP Docket No. 07-100, 27 FCC Rcd 6577 at ¶ 17 (2012).

⁵ 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).

⁶ See 4.9 GHz Band Transferred from Federal Government Use, *Memorandum Opinion and Order and Third Report and Order*, WT Docket No. 00-32, 18 FCC Rcd 9152 (2003).

⁷ See EWA Comments filed July 6, 2018 at 7-8.

⁸ *Id.* at 6-7.

⁹ See U.S. Department of Homeland Security, *NIPP 2013: Partnering for Critical Infrastructure Security and Resilience*. Available at: <https://www.dhs.gov/sites/default/files/publications/national-infrastructure-protection-plan-2013-508.pdf> (July 7, 2017).

industries as part of the Critical Infrastructure Section in addition to governmental and emergency services:

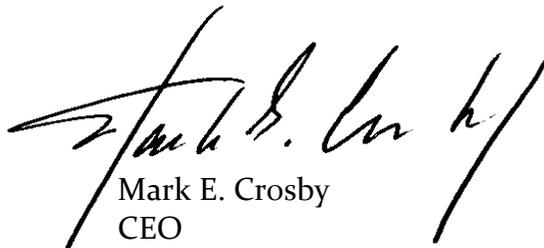
- Chemical
- Critical Manufacturing
- Information Technology
- Nuclear Reactors, Materials & Waste
- Food and Agriculture
- Defense Industrial Base
- Energy
- Healthcare and Public Health
- Financial Services
- Water and Wastewater Systems
- Transportation Systems

Public safety coexists successfully with these types of entities in many bands pursuant to appropriate frequency assignment policies and can do so in the 4.9 GHz band.

EWA believes the 4.9 GHz band can play a significant role in CII access to high-capacity, private broadband networks designed to their specific requirements that are far less susceptible to cyber security and other outside threats. EWA urges the Commission to adopt rules as soon as possible that will at last allow this band to reach its full potential.

Sincerely,

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