

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

In the Matter of)
)
Amendment of Part 90 of the Commission’s) WP Docket No. 07-100
Rules)

To: The Commission

**REPLY COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA”) appreciates the efforts of the Federal Communications Commission (“FCC”) and other parties in this proceeding¹ to craft rules that will ensure the 4.9 GHz band serves the public interest, including the public’s interest in maximizing use of limited spectrum resources. Comments in this proceeding reflect significant agreement on a number of essential issues:

- Increased utilization of the 4.9 GHz band is possible and would benefit all qualified users, including Public Safety, by expanding equipment options and lowering equipment cost.
- Current Public Safety operations are entitled to protection on an exclusive basis² and Public Safety entities will remain a dominant presence in the band as they expand existing systems and deploy new facilities.
- Critical Infrastructure Industry (“CII”) entities have a history of compatible or complementary use of spectrum with Public Safety.³
- It is essential to maintain accurate data about where and how this spectrum is used both to prevent potential interference and to identify areas where additional facilities may be deployed.

¹ *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Eighth Further Notice of Proposed Rulemaking, 86 FR 59934 (Oct. 29, 2021) (“FNPRM”).

² EWA assumes that Public Safety licensees with co-channel operations in overlapping service areas will determine how best to resolve any exclusivity issues.

³ EWA has explained in previous filings why it believes the more expansive DHS definition of CII should be used in this proceeding, rather than the very narrow definition in 47 C.F.R. § 90.7.

- The current licensing scheme should be abandoned in favor of issuing exclusive use licenses for defined geographic areas and on specific channels within the 4.9 GHz band. Incumbent Public Safety users should be given a reasonable opportunity to secure these licenses before any additional use is authorized.
- Allowing commercial use of this spectrum on any basis, licensed or unlicensed, would jeopardize the FCC's public interest goals, and no national or regional commercial provider has evidenced interest in this band.

As discussed below, EWA believes these commonly held positions provide a framework for an updated 4.9 GHz regulatory approach that will address the FCC's "consistent goal throughout this proceeding: increasing the use of and investment in the 4.9 GHz band."⁴

I. ALLOWING NON-PUBLIC SAFETY ACCESS TO 4.9 GHz SPECTRUM CAN AND SHOULD BE ACCOMPLISHED WITHOUT JEOPARDIZING EXISTING PUBLIC SAFETY OPERATIONS OR COMPROMISING FUTURE PUBLIC SAFETY USE.

The FCC has repeatedly determined that it would be in the public interest to promote increased use of this band while facilitating robust Public Safety access. To that end, in addition to discussing options for fostering greater Public Safety use, the FNPRM seeks comment on a variety of models for allowing non-Public Safety access, including several shared access models.

First, EWA shares the concerns of the Public Safety community about expanding eligibility to commercial service providers. It has done so throughout the course of this proceeding, even though its members include a substantial number of private carriers that provide dispatch service to governmental and Public Safety users. There was no obvious way to distinguish their usage from that of consumer-oriented commercial systems whose requirements are not compatible with Public Safety (or CII) usage, which likely is why no national or even regional carrier has indicated an intention to apply for this spectrum should it be made available for them. Entry by licensed commercial systems also is linked to competitive bidding, a process

⁴ FNPRM at ¶ 18.

from which Public Safety applicants are exempt.⁵ It is not clear how licenses would be awarded if commercial entry were authorized.

Like the great majority of Public Safety commenters, EWA opposes the recommendation of the Public Safety Spectrum Alliance that FirstNet take over control of the 4.9 GHz band. As the FCC itself has noted, that proposal raises significant legal and policy issues. Not least of those are the extent to which AT&T would assume significant control of this spectrum without the oversight normally applicable to FCC licensees and the fact that the spectrum would no longer be subject to the FCC's jurisdiction except in the most limited sense.⁶ In EWA's opinion, it also would require yet another Further Notice as nothing in this FNPRM suggests that the nationwide band manager might be under the jurisdiction of the National Telecommunications and Information Administration, part of the Department of Commerce, rather than the FCC.

Certain shared access models on which the FCC has requested comment, such as use of a Spectrum Access System ("SAS") or similar approach, also should be rejected. These models involve shared use of the same spectrum in the same geographic area, with access controlled by a central source that relies on data collected from license information to determine who is permitted to transmit on the spectrum at any moment in time. While those models may hold promise for protecting the operations of incumbent fixed facilities, experience with them remains limited and they are not without issue. Overlaying them in a dynamic spectrum environment that includes both mobile and fixed operations carries far too great a risk that interference will result, however inadvertently. This concern was identified by the court in remanding the FCC's 6 GHz decision for further consideration of the issue raised by the National Association of Broadcasters about SAS-like protection of itinerant news gathering operations.⁷

⁵ 47 C.F.R. § 1.2102(b)(1).

⁶ See 47 C.F.R. § 90.19.

⁷ AT&T Services, Inc. v. Federal Communications Commission, No. 20-1190 (D.C. Cir. 2021).

Preventing interference would be problematic and resolving it would be even more challenging, particularly if the use were by unlicensed devices. There are no protocols in force that will serve to identify, mitigate, and resolve instances of harmful interference, other than the possibility that a device may switch to an alternative commercial band. That may be acceptable when consumers are the primary targeted users, but not for bands occupied by those with critical responsibilities for the public's well-being. There is nothing in the multi-decade record in this proceeding suggesting that sharing along those lines is needed or appropriate. EWA recommends against pursuing that type of approach.

By contrast, the leasing of excess capacity by licensees with exclusive spectrum rights has none of those risks and is an option already available to Public Safety licensees operating on Part 90 spectrum and to most other wireless licensees.⁸ These voluntary arrangements are defined by contractual rights and allow a licensee to determine under what conditions it will permit another entity access to its spectrum. Priority and preemption are not an issue since the parties determine those rights as part of the lease arrangement. To the extent a 4.9 GHz Public Safety licensee determines that it can allow non-Public Safety use without compromising its own operations, for example by a CII entity such as a utility, that use should be encouraged.⁹

II. WELL-TESTED PART 90 AND PART 101 COORDINATION PROCESSES WILL ALLOW CII ENTITIES TO UTILIZE SPECTRUM IN AREAS WHERE PUBLIC SAFETY HAS NOT SOUGHT LICENSES.

The record is clear that the original, entirely shared 4.9 GHz licensing approach must be replaced. Prudent spectrum management that promotes intensive, but interference-free, utilization requires precise information about what spectrum is being used where and by whom.

⁸ 47 C.F.R. § 1.9005.

⁹ The Association of Public-Safety Communications Officials-International, Inc. (“APCO”) opposes what it describes as “expanded leasing options” in this band. *See* APCO Comments at 7-8 (filed Nov. 29, 2021). EWA, on the other hand, would not expect a 4.9 GHz Public Safety licensee to prioritize the monetization of licensed spectrum over fulfilling its Public Safety responsibilities.

While there are unlicensed, fully shared bands, that is not spectrum on which Public Safety, CII or other entities rely to deploy wireless capabilities that are critical to the public they serve. These include not only Public Safety and public service systems, but facilities that produce and deliver the goods and services on which the public depends.

EWA believes the first step in revamping the 4.9 GHz band is adoption of rules for licensing systems on an exclusive basis.¹⁰ That will allow Public Safety entities to obtain authorizations for their existing operations and thereby identify areas where 4.9 GHz spectrum remains unused. Once the 4.9 GHz spectrum landscape is known, Public Safety and CII entities can determine where and on what channels they wish to deploy additional systems.

Contrary to the suggestion in the FNPRM, this type of exclusive use licensing does not involve competitive bidding. The Part 90 and Part 101 services have a multi-decade history of assigning frequencies on an exclusive basis to a wide variety of users pursuant to technical parameters designed to prevent interference. Licensees do not share channels in the same geographic area on an overlay party-line-type basis. They can be assigned the same channels in adjacent markets at distances and with limits on power, antenna height, antenna directionality, and other elements that enable channel re-use. Application for these systems are reviewed first by qualified frequency coordinators, and instances of potential mutual exclusivity are resolved on a first-in-time basis before the applications are filed with the FCC.¹¹ This process is well known to licensees and vendors and has worked effectively for decades. EWA is unaware of any documented instances of interference between Public Safety and non-Public Safety entities that have been assigned frequencies in accordance with these frequency coordination procedures.

¹⁰ FNPRM at ¶ 79-80.

¹¹ Because the rules determine where channels can be assigned, there is no reason to limit frequency coordination in this band to Public Safety coordinators. As long as the rules are followed, Public Safety spectrum rights will be protected.

The Part 90 800 MHz band is an excellent example. Public Safety, CII, and other qualified entities all are eligible for frequencies in several subsegments of the band on a co-equal basis. FCC-certified frequency coordinators, including EWA and several Public Safety organizations, recommend frequencies based on the first-in-time principle and share that information with one another prior to submitting applications to the FCC. As long as all frequency coordinators and licensees adhere to the FCC criteria, the process promotes intensive use of the spectrum without compromising Public Safety operations.

There should be no objection to sharing the 4.9 GHz band on this basis unless the Public Safety community believes spectrum should remain unused indefinitely in case the unborn applicant might emerge at some future date. This spectrum has been allocated exclusively for Public Safety use for almost two decades, and the FCC has repeatedly concluded that more intensive use could and should be made of it. Implementing an established frequency coordination process with expanded eligibility for CII entities would not jeopardize Public Safety's control of 4.9 GHz spectrum - where a Public Safety entity is the licensee. Absent a voluntary lease arrangement, priority and preemption would not be an issue as Public Safety would retain exclusive rights to the spectrum - where a Public Safety entity is the licensee. It would allow CII entities use of this band in other geographic areas, areas where Public Safety has not sought licenses over this extended period of exclusive eligibility.

The National Public Safety Telecommunications Council has long supported allowing CII entities access to 4.9 GHz spectrum under appropriate provisions, including channel exclusivity and prior frequency coordination. APCO also has stated that it is not opposed to a sharing approach that guarantees priority and preemption over other users.¹² The coordinated model described herein provides that guarantee and has allowed Public Safety, CII and other

¹² APCO Comments at 7. Of course, a Public Safety entity could not claim priority or preemptive rights over a non-Public Safety entity that holds an exclusive license for a particular frequency(s) in an authorized service area.

enterprise users to share bands such as 800 MHz without compromising Public Safety operations.

III. CONCLUSION

The FCC has a lengthy and well-developed record on which to craft new rules for the 4.9 GHz band. EWA urges it to do so consistent with the comments above as promptly as possible.

Respectfully submitted,

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