

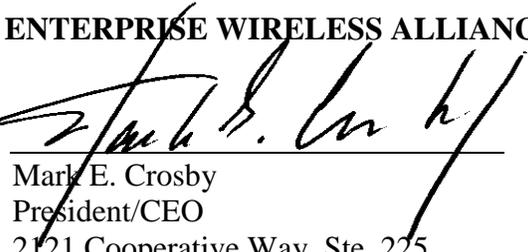
**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum	)	WP Docket No. 16-261
	)	
	)	
Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies	)	RM-11719
	)	
	)	
Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz	)	RM-11722
	)	

To: The Commission

**REPLY COMMENTS  
OF THE  
ENTERPRISE WIRELESS ALLIANCE**

**ENTERPRISE WIRELESS ALLIANCE**

By: 

Mark E. Crosby  
President/CEO  
2121 Cooperative Way, Ste. 225  
Herndon, VA 20171  
(703) 528-5115  
[mark.crosby@enterprisewireless.org](mailto:mark.crosby@enterprisewireless.org)

Counsel:

Elizabeth R. Sachs  
Lukas, Nace, Gutierrez & Sachs, LLP  
8300 Greensboro Drive, Ste. 1200  
McLean, VA 22102  
(703) 584-8678  
[lsachs@fcclaw.com](mailto:lsachs@fcclaw.com)

December 22, 2016

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.415(a) of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its Reply Comments in response to the above-identified Notice of Proposed Rulemaking.<sup>1</sup> The record in this proceeding shows substantial support for the Commission’s proposals to expand access to private land mobile radio (“PLMR”) spectrum by organizations that have represented PLMR Part 90 users for many decades, as well as PLMR licensees themselves. Many of the commenting parties, including EWA, are trade associations that also are certified by the FCC as Frequency Advisory Committees (“FACs”). FACs have extensive experience in working with PLMR entities in addressing their spectrum requirements, in coordinating with one another in the recommendation of PLMR frequencies, and in representing the interests of their members and of the PLMR community generally in FCC proceedings.

Neither the composition of the PLMR community nor the membership of these organizations is static. This segment of the telecommunications marketplace is enriched by the entry of parties who have discovered the business efficiency enhancements that PLMR systems can provide. EWA welcomes new members every month, both those operating private, internal systems and those providing commercial dispatch service to business and governmental users. One of its primary functions is working with long-standing and new members in trying to identify PLMR spectrum solutions that meet their individual operating requirements while maximizing the use of the limited spectrum available to the PLMR user community generally. It is that objective that guides the Alliance’s position in this and all FCC-related matters

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<sup>1</sup> Amendment of Part 90 of the Commission’s Rules to Improve Access to Private Land Mobile Radio Spectrum, *Notice of Proposed Rulemaking*, WP Docket No. 16-261, 31 FCC Rcd 9431 (rel. Aug. 18, 2016) (“NPRM”).

## I COMMENTS

### A. General

The Alliance is a member of the Land Mobile Communications Council (“LMCC”) and has participated actively in its discussions regarding the matters raised in this proceeding. EWA supports the consensus LMCC positions detailed in the LMCC Comments and Reply Comments. It urges the Commission to allocate to Part 90 all of the UHF channels identified in the NPRM between PLMR and BAS spectrum, as well as between PLMR and GMRS allocations, subject to coordination procedures. This will allow vacant capacity to be placed into productive use while still protecting the rights of adjacent licensees and services. EWA appreciates the effort made by the Central Station Alarm Association (“CSAA”) and the LMCC in crafting the proposal included in the LMCC Reply Comments for permitting more intensive use of the UHF channels designated for use by the central station alarm companies represented by the CSAA and endorses the approach recommended. It agrees with virtually all commenting parties that conditional licensing should be expanded to all bands, including the 470-512 MHz band (“T-Band”) and the 700 MHz narrowband public safety allocation. EWA also supports codifying the use of signal boosters as set out in the waiver previously granted to the Association of American Railroads.

### B. Subpart S – 800 MHz Expansion Band (EB) and Guard Band (GB)<sup>2</sup> Licensing

In its Comments in this proceeding, the Alliance reiterated its support for time-limited incumbent priority access to all of this critical spectrum as requested in the LMCC Petition for Rulemaking.<sup>3</sup> The LMCC is confirming that consensus position in its Reply Comments. It strongly favors its own Petition over the limited, and in some markets non-existent, incumbent priority access proposed in the NPRM. The much longer than anticipated 800 MHz rebanding process has

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<sup>2</sup> As noted in EWA’s Comments, any rules related to this spectrum need to respect the unique 800 MHz band plan in a defined area around Atlanta, Georgia that does not provide for a GB. *See* FCC Rule Section 90.617.

<sup>3</sup> Petition for Rulemaking of the Land Mobile Communications Council, RM-11719 (filed Mar. 27, 2014) (“LMCC EB/GB Petition”).

significantly limited the availability of 800 MHz channels for incumbent system expansion. For all the reasons described in the LMCC EB/GB Petition, allowing incumbents an opportunity to increase the capacity of their existing systems is sound spectrum policy, as it will best ensure prompt deployment of whatever channels are assigned for their use.

In furtherance of optimal spectrum utilization, EWA recommended in its Comments the following modifications to the rules governing newly assigned EB/GB channels, whether awarded during the preference period to an incumbent or thereafter to a new licensee:

- All licensees should be required to deploy digital systems, preferably trunked, that use either 12.5 kHz bandwidth technology or technology with 12.5 kHz spectral equivalency or better. Given the state of technology, this spectrum should not be made available for legacy analog systems.
- All licensees should be subject to an accelerated six-month construction deadline. Non-Specialized Mobile Radio (“SMR”) licensees that meet the FCC’s requirements are free to request Extended Implementation under Rule Section 90.629.
- All licensees should be required to support their construction certification claims with an affidavit, sworn under penalty of perjury, from the site owner or manager verifying that the system has been constructed at the site in substantial conformance with the license. If the facility is constructed at the licensee’s own facility, the verification should come from the third party that installed the system.

The need to replace unverified self-certification of construction with third-party confirmation has been made abundantly clear in the licensing of EB/GB spectrum in already released regions. EWA has received a number of calls from these new SMR licensees asking why no large carrier has contacted them about acquiring their spectrum.<sup>4</sup> After having been disabused of the expectation that Sprint or Verizon or some such entity would purchase their license, it becomes clear that these licensees have no understanding of their construction obligations or whether they have been met. Whatever construction certification is filed on their behalf, often seemingly is submitted without their knowledge and/or without any conscious understanding of its significance

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<sup>4</sup> It has been advised by Sprint and other experienced PLMR licensees that they also have received these calls.

by the licensee. They generally are unaware, not only that the certification has been submitted, but that it is their statement made under penalty of perjury to a Federal agency.

In other instances, after having the validity of its construction certification of certain stations challenged, one licensee failed to refute the allegations and allowed the license to be canceled.<sup>5</sup> Another, whose claimed private, internal use has been questioned by the FCC, also has elected not to certify construction of SMR licenses for EB/GB and/or interleaved SMR spectrum and already has allowed licenses to be canceled pursuant to the FCC's Termination Pending ("TP") process<sup>6</sup> while other licenses are in TP status.<sup>7</sup> While this spectrum eventually may become available to licensees with a genuine need for it, this corruption of the licensing process results in at least a temporary period during which it is not in productive use. The better solution would be to put applicants on notice that third party construction verification will be required, thereby hopefully discouraging those without a serious intention to actually place the station in operation.

The LMCC Reply Comments also express concern that the Memorandum of Agreement ("MOA") establishing procedures for exchanging EB/GB application information among FACs to avoid submission to the FCC of mutually exclusive applications might not produce the required fair and transparent outcome. A substantially similar MOA has worked effectively in processing applications for 800 MHz Sprint-vacated spectrum, in large part because the number of applicants eligible to file on the first day of channel availability is limited and many are incumbents with an incentive to compromise in resolving instances of mutual exclusivity. That environment effectively would be replicated if incumbents were allowed time-limited priority access to all EB/GB spectrum. Conversely, without an incumbent preference, it is reasonable to assume that the number of applicants encouraged to file for SMR licenses as investment opportunities in markets such as New

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<sup>5</sup> See, e.g., station WQUX291.

<sup>6</sup> See, e.g., stations WQVW372, WQWE502 and WQWF617.

<sup>7</sup> See, e.g., stations WQWK550, WQWR875 and WQWJ517.

York, Los Angeles, Chicago, and Miami will be many multiples of the number that pursued SMR licenses in underpopulated areas of North Dakota and Wyoming. That volume of applications will severely test, and may break, an MOA process designed for much more limited applicant participation.

Not only the quantity, but the inter-relationship, of the great majority of SMR applications for EB/GB channels in the first, largely rural, markets released by the FCC raised questions within the LMCC. Its Reply Comments urged the Commission to examine those patterns carefully.

The Alliance shares those concerns. The NPRM states that comments filed in response to the Public Notice seeking input on the LMCC EB/GB Petition were divided and that “most commenters – generally prospective applicants for SMR channels in regions where EB/GB spectrum has not yet been made available – oppose the proposal.”<sup>8</sup> That is factually correct and this division was repeated in the Comments filed in this proceeding. Almost a dozen individual letters were submitted opposing any incumbent priority access. All of those letters, and likely many filed in opposition to the LMCC EB/GB Petition, were from entities with ties to M2M Spectrum Networks, LLC (“M2M”).<sup>9</sup> How many of those parties purchased costly EB/GB application packages from companies affiliated with M2M, whether SNG Networks Group, LLC (“SNG”) or Smartcomm, LLC, or others, is unknown. But that is only one of the many unknowns about this inter-related group of companies, the answers to which would better enable the FCC to assess the weight those supportive filings should be afforded. EWA does not doubt the sincerity of certain companies that appear to be working with M2M, but it nonetheless has questions about that company’s activities. Those questions include, but are not limited to, the following:

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<sup>8</sup> NPRM at ¶ 30.

<sup>9</sup> At least two of the supporting letters are effectively identical and must have been prepared for the parties that signed them. Soliciting support by drafting letters that will be filed by third parties is not an uncommon practice in FCC proceedings, but it should be considered when evaluating the significance of those comments.

- M2M states that it is operating its own network, using 800 MHz and other frequencies. What frequencies are being used under what call signs and how are these multiple bands integrated?
- Why does M2M need 800 MHz spectrum that is designated for base/mobile, primary voice operation for what appears to be its proposed non-voice, primarily fixed IoT application?
- What 800 MHz equipment are M2M's customers using? EWA has not been able to locate any FCC-certified 800 MHz IoT equipment.
- Assuming that the commenters who state that they are already using an M2M IoT solution are doing so, are they operating in the 902-928 MHz unlicensed band? That spectrum is well-suited for IoT applications. Why then does M2M also want 800 MHz spectrum – in addition to the 900 MHz primary voice, base/mobile spectrum for which its affiliate, SNG, has an Application for Review pending? The Application for Review seeks reversal of the Wireless Telecommunications Bureau's denial of SNG's waiver request to use 900 MHz spectrum to provide private, internal IoT service, a service seemingly identical to that proposed by M2M at 800 MHz.<sup>10</sup>

Answers to those questions will better enable the FCC to evaluate the significance of the comments filed by M2M supporters.

## **II CONCLUSION**

The Alliance, in cooperation with the LMCC, endorses the FCC's effort to promote access to PLMR spectrum, both by acting on the identified LMCC Petitions and by identifying other proposed actions on its own motion. EWA urges the Commission to proceed promptly in adopting the positions recommended by the LMCC and the additional proposals recommended herein.

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<sup>10</sup> Spectrum Networks Group, LLC, Application for Review, WT Docket No. 14-100 (May 13, 2015).

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1 Filing 2 Review 3 Confirmation

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<b>Primary Contact Email</b>	lsachs@fcclaw.com
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