

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

In the Matter of )  
 )  
Washington County, OR ) File No. 0007375570  
Request to Utilize Two 800 MHz )  
Business/Industrial/Land Transportation )  
Pool Frequencies )

To: Chief, Public Safety and Homeland Security Bureau

**COMMENTS  
OF THE  
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.45 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its response to the Public Notice seeking comment on the Waiver Request (“Waiver Request”) filed by Washington County, Oregon (“County”) to use two 800 MHz Business/Industrial/Land Transportation (“B/ILT”) Pool frequencies at one site in its upgraded P25 countywide system.<sup>1</sup> The County states that it has been unsuccessful in identifying the necessary number of assignable 800 MHz Public Safety channels at the site in question.<sup>2</sup> The County currently is licensed for 11 channels at this location. It is proposing to add six channels, including two from the B/ILT Pool pursuant to a waiver of FCC Rule Section 90.617(b). EWA offers the following comments on the County’s Waiver Request.

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<sup>1</sup> Public Safety and Homeland Security Bureau Seeks Comment on Application and Waiver Request Filed by Washington County Consolidated Communications Agency to License Two 800 MHz Business/Industrial/Land Transportation Pool Channels, *Public Notice*, File No. 0007375570, DA 17-513 (rel. May 25, 2017) (“Public Notice”).

<sup>2</sup> The initial application has been amended to replace 857.6875 MHz with 858.1375 MHz for which no waiver or third-party concurrence is needed.

## **I The Waiver Request**

The Waiver Request describes in detail the very extensive analog system the County operates today and its plan to upgrade to a digital, simulcast Project 25 (P25) system that will include both simulcast and Astro Site Repeater (“ASR”) sites. Although upgrading from single-path analog to more efficient multi-path digital technology, the County states that it will need to expand from its current 71 800 MHz channels to a total of 140 channels and more than double its number of sites. The Waiver Request does not suggest that the increase in sites and doubling of channels is needed to support a larger anticipated number of subscribers, but rather to provide better in-building school coverage, plus expansion to certain rural recreational areas. The County also intends to take advantage of P25 encryption and location technologies.

The Waiver Request does not explain why six additional channels are needed at the Gales Peak site in question, other than stating that it intends to install a six-channel ASR site that would be connected to the P25 Master Site. In support of its Waiver Request for authority to deploy B/ILT channels at this location, the Waiver Request states that all 800 MHz Public Safety channels, including National Public Safety Planning Advisory Committee (“NPSPAC”) channels, already are assigned in the Portland Metro area. It explains that channel availability, presumably for NPSPAC spectrum, is calculated based on a 25 dBu adjacent channel interference contour analysis, which will be modified to a 60 dBu contour analysis once all users in the area have migrated to P25 technology. The Waiver Request states that this change is expected to free up approximately 100 additional NPSPAC channels at some future date.

## II Part 90 Pool Allocations

The FCC has established pools of channels, defined by eligibility, for users that operate on Part 90 spectrum. Low band, VHF and UHF channels are subdivided into the Public Safety (“PS”) Radio Pool<sup>3</sup> and the Industrial/Business Radio Pool.<sup>4</sup> In the 470-512 MHz band (“T-Band”), channels are assigned by eligibility in accordance with Rule Section 90.311. Channels in the 800 MHz and 900 MHz bands also are designated for use based on eligibility.<sup>5</sup> The Commission has made provisions in T-Band and 800 MHz for a subset of channels that are available to all Part 90 entities on a first-come, first-served basis. At 800 MHz, this spectrum is designated as General Category (“GC”).<sup>6</sup>

These pools were created to ensure that all types of users eligible to operate on Part 90 Private Land Mobile Radio (“PLMR”) spectrum have a reasonable opportunity to secure the channels needed to conduct their activities efficiently and reliably. Public Safety entities have been the exclusive beneficiaries of Commission PLMR spectrum allocation decisions in recent decades. In addition to their low band, VHF, UHF, T-Band, and 800 MHz channels, they have been awarded both narrowband and broadband 700 MHz spectrum.<sup>7</sup> They also have exclusive access to all 800 MHz spectrum below 862 MHz that is relinquished by Sprint Corporation (“Sprint-vacated spectrum”) for the first three years after it is made available and shared access with applicants that qualify as Critical Infrastructure Industry (“CII”) entities for two years thereafter.<sup>8</sup> Thus, Public Safety entities have access to substantially more PLMR spectrum below 900 MHz than do other users.

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<sup>3</sup> 47 C.F.R. § 90.15 *et seq.*

<sup>4</sup> 47 C.F.R. § 90.35 *et seq.* For simplicity, this spectrum will be referred to hereinafter as B/ILT, the appellation used at 800/900 MHz for this user category, rather than the I/B label used below 470 MHz.

<sup>5</sup> 47 C.F.R. §§ 90.615, 90.617 and 90.619.

<sup>6</sup> 47 C.F.R. § 90.615.

<sup>7</sup> 47 C.F.R. §§ 90.19 and 90.521 *et seq.*

<sup>8</sup> 47 C.F.R. § 90.617(g).

No PLMR pool allocation is perfectly aligned with the needs of various categories of users in any particular area. The Commission’s waiver process is the safety valve that allows applicants with demonstrated spectrum requirements to seek channels from a Pool for which they are not eligible upon a demonstration that there are no assignable channels in their primary Pool.<sup>9</sup> This cross-Pool waiver opportunity is available to all Part 90 entities, but historically has been a one-way street.<sup>10</sup> A number of waivers have been requested to permit Public Safety use of B/ILT channels upon showings that no Public Safety channels were available. These “no availability” showings often were based on Public Safety coordination standards that are more protective than provided for in the FCC rules. When the Alliance identified PS channels that could be assigned under applicable FCC regulations or when the need for additional spectrum, in EWA’s opinion, had not been adequately demonstrated, it opposed the waiver requests.<sup>11</sup> When EWA’s analysis confirmed that no Public Safety spectrum was available and the request was justified, the Alliance did not challenge the request.<sup>12</sup>

Conversely, Public Safety representatives have successfully denied B/ILT applicant access to PS spectrum except when a Public Safety entity chooses to share its spectrum for interoperability purposes.<sup>13</sup> As discussed below, an even-handed spectrum access approach is a policy that should be supported by every association representing PLMR interests, as it would ensure that all PLMR entities are able to secure the spectrum they need when defined allocations

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<sup>9</sup> The FCC rules previously authorized inter-category sharing between 800 MHz Public Safety and B/ILT applicants. That provision has been frozen since 1995. *See Inter-Category Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz Bands*, Order, 10 FCC Rcd 7350 (WTB 1995).

<sup>10</sup> A number of Public Safety entities have been granted waivers to use B/ILT channels (see n. 11 below), but the Alliance is unable to identify any instance where a waiver has been granted for B/ILT user access to PS Pool spectrum.

<sup>11</sup> *See e.g.*, Shelby County, AL, call sign WQOT500; Weld County, CO, call sign WQUB704; Flathead County, MT, call sign WQVH356.

<sup>12</sup> *See e.g.*, *Public Safety and Homeland Security Bureau Seeks Comment on Application and Waiver Request Filed by North Carolina State Highway Patrol to License an 800 MHz B/ILT Pool Channel*, Public Notice, 31 FCC Rcd 13191 (PSHSB 2016).

<sup>13</sup> *See e.g.*, State of Michigan, Order, DA 17-511 (rel. May 25, 2017).

eventually result in unintentional spectrum superfluity for some users and spectrum shortages for others.

### **III Public Safety Spectrum Available to the County**

EWA is committed to promoting the efficient use of all available spectrum. It does not support the indefinite reservation of channels for the “unborn applicant,” irrespective of the eligibility category in which they qualify. Given the limited amount of PLMR spectrum available, if an applicant can demonstrate a genuine need for additional capacity based on efficient utilization, including by investing in more advanced technology, and a reasonable level of channel usage, fallow spectrum should be made available for its use.

EWA commends the County for its plan to invest in a digital upgrade to its system, although it is curious why a technology that doubles the number of talk paths per channel still will require twice the number of channels in the system, a virtual tripling of system capacity. The Alliance also appreciates the fact that the County is reusing some channels for which it is licensed elsewhere in its system, prudent spectrum management that should be followed by all licensees. If it could be shown that six additional channels were needed at the Gales Peak site, and if it were the case that the two B/ILT channels were the only way to address that requirement, EWA would not object to grant of the Waiver Request.

However, the Alliance’s research indicates that other alternatives appear to be available. For example, 84 12.5 kHz NPSPAC channels are assignable at this location in accordance with the FCC rules.<sup>14</sup> EWA can only assume that the County has rejected them because they do not meet the 20 dBu adjacent channel interference contour analysis adopted by Region 35 and referenced in the Waiver Request. It is troubling that a site only approximately 25 miles from the center of Portland would have this many “unusable” NPSPAC channels. One can only

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<sup>14</sup> 47 C.F.R. § 90.621(b).

wonder how many other 12.5 kHz NPSPAC channels remain unassigned throughout the country because of Public Safety's self-imposed protection standards.

The Alliance also has identified two Sprint-vacated General Category ("GC") channels, 854.2375 and 854.6125 MHz, that would be assignable at the Gales Peak location with a "No Objection" letter from Sprint. Sprint provided just such a letter for the early access SMR channel the County had requested that subsequently was replaced with a Sprint-vacated channel that became available.<sup>15</sup> As explained in the Sprint No Objection letter, Sprint has stopped using its 800 MHz frequencies below 862 MHz, so Sprint's concurrence would be expected.

EWA strongly recommends that the County amend its application to request these two GC channels instead of the two B/ILT channels for which it seeks waiver relief. GC spectrum is available by FCC rule for all 800 MHz eligible entities, whether Public Safety or B/ILT. Since the County is eligible for those channels and since they are assignable at the Gales Peak site under the FCC co-channel rules, the Alliance submits that the County does not meet the fundamental criteria for waiver relief. The County has not demonstrated that the purpose of the prohibition against inter-category sharing would not be served or would be frustrated by having the County use GC instead of B/ILT channels; that the application of that prohibition would be inequitable, unduly burdensome or contrary to the public interest because of unusual facts in this instance; or that the County has no reasonable alternative.<sup>16</sup>

While these two GC channels are closer spaced with each other and with other channels being requested than are the B/ILT channels proposed by the County, the spacing is no closer than the 125 kHz routinely achievable in today's combiners. It should present no problem for the County to use these two GC channels to meet its requirements. If this channel configuration

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<sup>15</sup> See Sprint No Objection Letter appended to the County's application. See also n. 2 above.

<sup>16</sup> 47 C.F.R. § 1.925.

requires replacing an older combiner, that cost would not even be a rounding error in this \$135,000,000 system upgrade. If there are other reasons the County and APCO rejected these channels as not available, despite having secured Sprint's "No Objection" to early access to an identically situated SMR channel, that explanation needs to be examined before the FCC considers granting waiver relief.

#### **IV A Level Playing Field**

The County's application and Waiver Request are accompanied by an August 3, 2016 letter from APCO certifying that "there are no public safety or vacated spectrum frequencies that can be assigned at Location 3 [Gales Peak]." The letter goes on to state that after waiving the rules to allow the assignment of the two B/ILT channels to the County, "3 BILT channels (854.8125, 855.5375, 855.6125) remain available to business users in the area."<sup>17</sup>

One reason that this spectrum Pool is so depleted is because Public Safety entities already are licensed on a number of B/ILT channels. Of the frequencies on the list accompanying the APCO letter, Washington County already is licensed for five B/ILT channels and other Public Safety entities are licensed for another 15 channels. This is 20% of the 100-channel B/ILT Pool allocation in the Portland area. Retaining the two channels proposed for the County's use by APCO would double the available B/ILT spectrum supply.

EWA notes that APCO has exhibited a decidedly less accommodating position regarding cross-Pool access when PS channels are at issue. This is exemplified by its position in the proceeding involving a waiver request filed by American Electric Power Service Corporation ("AEP").<sup>18</sup> AEP, a CII eligible entity, was seeking early access to seven B/ILT channels that

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<sup>17</sup> One of these channels, 855.5375 MHz, has since been assigned, leaving only two B/ILT channels in that Pool.

<sup>18</sup> See Wireless Telecommunications Bureau Seeks Comment on American Electric Power Service Corporation Request for Waiver Regarding 800 MHz Frequencies Reserved for Public Safety Licensees, *Public Notice*, File No. 0007352620, DA 16-1073 (rel. Sept. 22, 2016).

were designated as Sprint-vacated and would remain reserved for Public Safety use exclusively for another 18 months. AEP explained that, like the County, its proposal involved the reuse within its existing contour of some of those channels. It also involved the reuse of other channels outside their current contours and the assignment of two new channels. The company noted that these channels had been available for more than 18 months without attracting an application from a Public Safety entity.

APCO opposed, and continues to oppose, the grant of AEP's waiver request. Its substantive objection rested on its position that the rule was intended to accommodate the "generally slow budgetary process of public safety agencies."<sup>19</sup> It has not modified its opposition despite a demonstration by EWA that there were **16 800 MHz PS Pool channels assignable at the proposed site and a number of additional Sprint-vacated channels** for use by any Public Safety entity with a need to operate in that area. In the Alliance's opinion, it is not sound spectrum management policy to reserve spectrum, not even Public Safety spectrum, in unlimited amounts on the possibility that an applicant might someday emerge after completing an exhaustive budgetary process, when the supply is ample and a compelling argument has been made for a cross-Pool waiver by an equally deserving applicant.

As noted above, if the two GC channels identified by EWA are not usable by the County for a sound reason that was not addressed in the Waiver Request, and if the County must have six additional channels at the Gales Peak site for a reason or reasons that also are not explained, then the Alliance would not object to grant of the Waiver Request. It is unfortunate that the Public Safety community remains obdurate in its unwillingness to allow long-fallow and seemingly unneeded PS spectrum to be used to meet the documented need of a recognized utility

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<sup>19</sup> See APCO Reply Comments filed Nov. 8, 2016 at 3.

providing critical services to the public. The Alliance notes that the record on the AEP waiver request has been closed for more than seven months, yet its application remains pending.

**V Conclusion**

For the reasons detailed herein, EWA recommends that the County first address the issues raised with regard to the availability of early access to the GC channels identified by the Alliance and its need for six additional channels at the Gales Peak location before the FCC acts on the instant Waiver Request.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

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CERTIFICATE OF SERVICE

I, Linda J. Evans, with the law firm of Lukas, LaFuria, Gutierrez & Sachs, LLP, hereby certify that I have, on this 9<sup>th</sup> day of June 2017, caused to be forwarded via electronic mail the foregoing Comments to the following:

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/s/ Linda J. Evans