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July 26, 2013

Mr. David S. Turetsky, Chief  
Public Safety and Homeland Security Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Ms. Ruth Milkman, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W.  
Washington, D.C. 20554

Re: Public Safety Access to Industrial/Business Spectrum

Dear Mr. Turetsky and Ms. Milkman:

As you know, there is a limited supply of Part 90 spectrum below 470 MHz for use by public safety ("PS") and Industrial/Business ("I/B") entities. This is true even after implementation earlier this year of the FCC's narrowband mandate. Although PS has been allocated a very substantial amount of narrowband and broadband 700 MHz spectrum as well as primary access to all Sprint Nextel-vacated 800 MHz spectrum, the number of PS requests for waivers to use I/B frequencies below 470 MHz prompts EWA to seek FCC guidance regarding the appropriate standard for EWA, an I/B frequency advisory committee ("FAC"), to use when evaluating such requests.

Applicants for PS frequencies allocated under FCC Rule Section 90.20 and for I/B frequencies allocated under Rule Section 90.35, with limited exceptions, are required to secure frequency coordination from a FAC pursuant to Rule Section 90.175, which does not differentiate between PS and IB applicants. FACs are directed to "recommend the most appropriate frequency"<sup>1</sup> from the spectrum pool for which the applicant is eligible. Importantly, Rule Section 90.173(a), which also applies to both PS and I/B spectrum, states that, "Except as otherwise specifically provided in this part, frequencies assigned to land mobile stations are available on a shared basis only and will not be assigned for the exclusive use of any licensee."<sup>2</sup> While Part 90 Subparts L (470-512 MHz), R (700 MHz), S (800/900 MHz), and T (220 MHz) for

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<sup>1</sup> 47 C.F.R. § 90.175(a).

<sup>2</sup> 47 C.F.R. § 90.173(a).

the most part are designed for exclusive channel assignments, frequencies in the bands below 470 MHz have been assigned for a half-century on a shared basis except as described below.

Rule Section 90.187 details the standards by which applicants for frequencies below 470 MHz may be coordinated for exclusive use of particular frequencies and, again, does not distinguish between PS and I/B entities. That rule specifies that only trunked systems qualify for channel exclusivity and defines the contour analysis FACs are required to use to determine when an exclusive use channel can be assigned.<sup>3</sup> Conversely, however, the FCC does not require that all trunked channels below 470 MHz be exclusive, but permits the use of both exclusive and shared frequencies.<sup>4</sup> Systems comprised of exclusive channels (FB8) are classified as centralized trunked systems. Those using non-exclusive channels (FB2 or FB6) are classified as decentralized trunked systems. Those using a combination of the two are labeled hybrid trunked systems. Because exclusive channels are so difficult to obtain, particularly in populated markets, many I/B trunked systems are hybrid, using some shared channels that are required to comply with the monitoring requirements of Rule Sections 90.187(b) and 90.403(e).

PS waiver requests to use I/B frequencies often rely on a determination that no PS frequencies are available, which determination is based on PS FAC procedures that go beyond FCC requirements. Specifically, applicants are required to obtain letters of concurrence from co-channel and adjacent channel licensees, even in instances when the applicant does not qualify for trunked FB8 status and/or the incumbent licensee is not authorized for trunked FB8 status. This requirement effectively seeks to treat all incumbent and proposed systems as entitled to channel exclusivity. Not surprisingly, such letters can be exceedingly difficult to obtain. This operates as a deterrent to PS applicants who then seek I/B frequencies where coordination is based on the FCC's rules as described above.

The Commission recently addressed this issue in the context of a dispute between two PS entities. The FCC concluded that "...the Commission's rules do not provide 'first-in-time preference' to current users of shared channels."<sup>5</sup> It stated specifically, "Further, we emphasize that Allegany County is not required to obtain EMTA's concurrence [to seek FCC authority to operate on a frequency shared with EMTA]."<sup>6</sup>

Because the FCC rules governing shared use and trunking are identical for PS and I/B licensees, EWA requests the FCC to confirm that EWA may follow the standards below in considering PS waiver requests for use of below-470 MHz I/B frequencies:

- 1) PS applications for non-trunked systems do not qualify for waivers to access I/B channels, but should be coordinated for the most appropriate shared PS frequency. This not only is consistent with the FCC rules, but promotes optimal PS communications by having entities with more similar operational characteristics share with one another. Thus, a contour overlap between non-exclusive facilities is

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<sup>3</sup> All FACs are members of the Land Mobile Communications Council ("LMCC") and under its auspices have executed a Memorandum of Understanding agreeing to use the Adjacent Channel Contour Values table filed by LMCC on June 14, 2012 in WP Docket No. 07-100 for purposes of evaluating adjacent channel impact on the certification of exclusive use frequencies under Rule Section 90.187.

<sup>4</sup> See 47 C.F.R. § 90.7.

<sup>5</sup> In the Matter of Application of County of Allegany, *Order*, DA 13-1419 (PSHSB rel. June 21, 2013) at ¶ 18.

<sup>6</sup> *Id.* at ¶ 20.

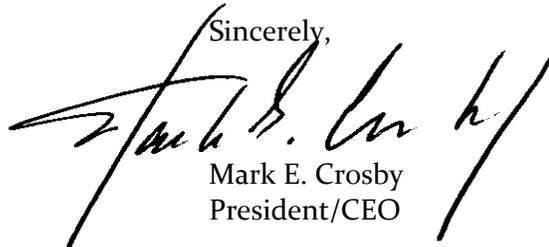
not justification for a waiver and does not constitute “impermissible interference,” but simply obligates both PS entities to follow the sharing requirements applicable to all Part 90 frequencies below 470 MHz.

- 2) PS applications for trunked systems do not qualify for waivers to access I/B channels unless it has been demonstrated that all potentially available PS frequencies already have achieved exclusive FB8 status so that there are no assignable, shared PS frequencies.<sup>7</sup> If non-exclusive PS frequencies are available, PS applicants, like I/B applicants, may be required to deploy hybrid or even decentralized trunked systems. PS entities with operational requirements that dictate the deployment of centralized trunked systems may be advised to seek frequencies from PS allocations such as 700 MHz and 800 MHz, where channel exclusivity is routinely available or to acquire spectrum from auctioned bands.

EWA appreciates that radio communications are essential for PS emergency responders. It is for just this reason that the FCC has allocated spectrum in multiple bands to meet their needs. However, not all entities that qualify for PS frequencies are first responders. PS eligibility covers a broad range of activities including governmental services that are important, but not necessarily more essential for the public or time sensitive than numerous non-PS services. County road crews need to repave highways, but it is at least as critical that pipelines are able to transport the fuel that powers their vehicles. Public and private utilities and public and private transportation providers provide equivalent service, have comparable communications needs, and should have comparable rights to radio spectrum.

The Commission has allocated spectrum below 470 MHz for both PS and I/B users, subject to a common set of rules governing channel exclusivity. EWA has no objection to PS FACs adopting more protective standards when the impact is confined to PS frequencies. However, coordination standards that go beyond the rules established by the FCC cannot be used as justifications for PS incursions into the I/B below-470 MHz frequency pool.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Crosby".

Mark E. Crosby  
President/CEO

cc: David Furth, PSHSB  
Michael Wilhelm, PSHSB  
Roger Noel, WTB  
Scot Stone, WTB

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<sup>7</sup> PS applicants seeking to expand multi-site simulcast systems below 470 MHz may qualify for a waiver to use I/B frequencies even if shared PS frequencies are available, since shared use is not possible on a simulcast system.