

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

In the Matter of)
)
Flathead County, MT) File No. 0005696877
Request to Utilize Eight VHF)
Industrial/Business Pool Frequencies)

To: Chief, Public Safety and Homeland Security Bureau

**REPLY COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”) submits the following Reply to the December 3, 2013 Response (“Response”) from Flathead County, Montana (“County”) to EWA’s initial Comments in the above-identified matter. The Alliance’s Comments were filed in response to the Federal Communications Commission (“FCC” or “Commission”) Public Notice seeking comment on the County’s November 1, 2012 Waiver Request (“Waiver Request”) to use eight Industrial/Business (“I/B”) Pool frequencies to address coverage deficiencies in its VHF radio system in northwest Montana.¹

EWA raised the following issues in its Comments:

- 1) According to the County, it needed the additional sites and the I/B frequencies because its transition to a digital P25 system had resulted in reduced coverage and significant multipath problems. The Alliance expressed concern about the implications of those problems generally as the public safety community is being actively encouraged to migrate to this technology.

¹ Public Safety and Homeland Security Bureau Seeks Comment on Application and Waiver Request Filed by Flathead County, Montana for 150 MHz Industrial/Business Frequencies, *Public Notice*, File No. 0005696877, DA 13-2092 (rel. Oct. 30, 2013) (“Public Notice”).

- 2) EWA noted that a shortage of VHF Public Safety spectrum in one of the least populated areas of the country raises a question about Public Safety frequency coordination standards and whether they follow the applicable FCC's rules, including those in Sections 90.173 and 90.187.
- 3) The Alliance sought further information about the County's efforts to overcome Industry Canada objections to the County's use of certain VHF Public Safety frequencies.
- 4) EWA questioned if the County had thoroughly considered whether any or all of the approximately twenty (20) VHF frequencies for which its various entities are licensed could be reallocated for use in the digital network, as those frequencies appear to be used by the same entities that have been identified as now operating on the P25 network.
- 5) The Alliance challenged the accuracy of the concurrence letter from AAA, an FCC-certified I/B Pool frequency coordinator, stating that the I/B frequencies requested were properly coordinated. EWA's analysis indicated that the County's proposed use of frequencies 157.680 MHz and 159.7425 MHz with MO8 status would not provide adequate protection to licenses held under call signs WNDL238, WPEQ706, and WQIJ561, pursuant to the FCC's directive for MO8 contour calculations in its letter dated March 19, 2008.

The Response, while lengthy and undoubtedly sincere, fails to address these issues either at all or with meaningful specificity. It emphasizes that the County's trunked, digital P25 system will allow a number of County, local, state, and Federal users to share frequencies in a spectrally efficient manner, an objective EWA wholeheartedly applauds. The Alliance's concerns have nothing to do with the County's efforts to improve its communications capability, but rather with the fact that these improvements seemingly require more – not less – spectrum and, in this instance, almost exclusively waived I/B frequencies. In light of the exceedingly generous allocations made available to Public Safety entities over the past decades, allocations to which I/B entities have no access, it is not in the public interest also to allow unlimited use of I/B frequencies, when primary Public Safety spectrum does not suit the preference of a particular applicant.

Based on the available ULS information, it appears that the instant application, an application requesting exclusively I/B frequencies, will form the core of the County's trunked P25 system. The application references no associated call signs, and the County holds only two other permanent YW authorizations, each for a single frequency at a single site. If this information is complete, that is, if there are no other entities holding licenses that form part of this system, and assuming the County has properly modified to YW status all authorizations that will operate in digital trunked mode, then the County intends to deploy a new VHF digital P25 system that is almost entirely dependent upon waiver relief.² While the Response states that "the County has already released several analog frequencies to the trunking systems,"³ and "Flathead County has turned over many channels to the area trunking system,"⁴ those statements are not reflected in the ULS database.⁵ Rather, it appears that the system will use I/B frequencies almost exclusively.

The reality of this migration to what is supposed to be a more spectrally efficient use is highlighted in the Response. First, the County's system does not appear to make more spectrally efficient use of Public Safety spectrum at all, but only of I/B spectrum. Further, it is ironic that I/B frequencies are needed, because the County cannot utilize high-site, high-power transmitters in its P25 system, but instead must operate within strict height/power constraints that limit its coverage area, yet those constraints apparently do not permit any greater re-use of Public Safety frequencies. As stated in the Response, "Efforts are made to reuse frequencies, but again,

² Indeed, it appears that the County may already have deployed a portion of the system on I/B frequencies pursuant to STA call sign WQRL916.

³ Response at 3.

⁴ *Id.*

⁵ In fact, at other points in the Response, the County acknowledges that retention of its legacy analog systems is "policy." *Id.* Whose policy and with what rationale is not explained, although EWA would agree that it appears to be the general policy of Public Safety licensees not to relinquish the spectrum assigned to "legacy" systems when they deploy new ones. The Response also states that the approximately twenty (20) analog frequencies are being retained for unspecified legacy analog and also in the event the trunked system should fail.

problems arise when coordination is attempted.”⁶ If frequency re-use is not enhanced, one must question the purpose of the height/power limitations, since they appear to create a “worst case” situation in which more frequencies are needed to provide comparable coverage.

With regard to the issues raised in EWA’s Comments, the Response does not address any of them directly, with the possible exception of (4) although, as noted above, the response is not supported by the ULS database. As for issue (1), the Response defends the migration to P25 technology, despite the problems it generated for the County’s own deployment, problems it claims can be addressed only by accessing I/B spectrum. The Response provides no specific information in response to issue (2), but notes only that, despite limited P25 coverage contours, it has been unable to secure concurrence to use other Public Safety frequencies. The Response does not address whether the coordination analysis was conducted in accordance with FCC Rule Section 90.187, or any other details about how available Public Safety frequencies were identified as available or unavailable for assignment.⁷ The Response also does not provide any information in response to issue (3) regarding efforts made by the County to overcome objections from Industry Canada, objections faced by I/B applicants as well, and sometimes surmounted with perseverance and appropriate technical showings. The Response ignores issue (5) regarding the inaccuracies in AAA’s concurrence letter.

The broader issue raised by this waiver request is the most troubling. The FCC in recent decades has allocated substantial spectrum for Public Safety use. These entities have been granted spectrum at 700 MHz, where there is both a broadband and a narrowband allocation, and

⁶ *Id.*

⁷ The Alliance must correct the County’s statement that “A trunked system has no means to monitor co-channel signaling....” Response at 2. Many trunked systems do include monitoring capability on all but a limited number of control channels, and numerous I/B licensees successfully utilize such systems to achieve improved efficiencies and enhanced features. Public Safety licensees may choose not to deploy trunked systems with that capability, but they most certainly are available.

at 800 MHz where, in addition to interleaved Public Safety pool frequencies and the NPSPAC allocation, all Sprint-vacated spectrum is reserved for Public Safety use for its first three years of availability. Yet the County and other Public Safety entities around the country have disclaimed interest in these “higher bands” and instead elect to remain in VHF. Thus, although it appears that twenty-eight (28) 700 MHz narrowband frequencies have been set aside for the County’s use, they will allow that spectrum to lie fallow in favor of trying to secure waivers for I/B frequencies in VHF.

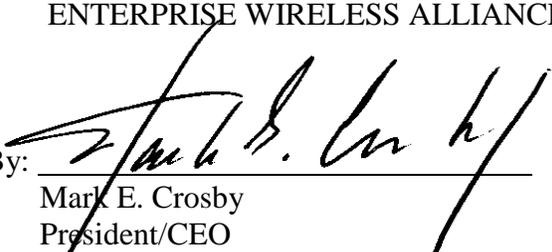
EWA understands why Public Safety entities might prefer to remain in the lower bands, particularly in certain geographic areas such as Flathead County. The propagation characteristics of higher bands means that more sites and equipment are needed, leading to higher costs. However, the Alliance must correct the County’s misapprehension that I/B licensees invariably have the financial capability to operate in higher bands, assuming spectrum is available. In fact, their economic constraints, if anything, are greater than those of Public Safety entities, since I/B licensees cannot secure public funding for their communications systems through taxes or grants.⁸ They must earn it through the operation of their business activities.

Persistent incursions into lower band I/B spectrum by Public Safety applicants lead to even greater inequities in the overall Part 90 band plan, a plan that already heavily favors Public Safety users. Further, nationwide reservations of spectrum for Public Safety serve the public interest only if Public Safety eligibles actually intend to use them – in some reasonably foreseeable timeframe. If entities such as the County have no interest in their 700 MHz allocations or in the Sprint-vacated 800 MHz spectrum reserved for them, that spectrum should be made available for I/B entities. For the reasons detailed above, EWA urges the Commission

⁸ Response at 4.

to investigate the issues raised in the Alliance's Comments and summarized herein before taking any action on the County's Waiver Request.

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December 13, 2013

CERTIFICATE OF SERVICE

I, Linda J. Evans, with the law firm of Lukas, Nace Gutierrez and Sachs, LLP, hereby certify that I have, on this 13th day of December 2013, caused to be forwarded via electronic mail the foregoing Reply Comments to the following:

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