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September 9, 2013

VIA E-MAIL: David.Turetsky@fcc.gov

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

VIA E-MAIL: Ruth.Milkman@fcc.gov

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

Re: Public Safety Access to Industrial/Business Spectrum

Dear Mr. Turetsky and Ms. Milkman:

This responds to the Public Safety Communications Council (PSCC) letter dated August 13, 2013¹, submitted in response to the Enterprise Wireless Alliance (EWA) letter dated July 26, 2013². In its letter, EWA sought guidance from the FCC regarding the standard for EWA, and perhaps for all Industrial/Business (I/B) frequency advisory committees (FACs), when evaluating waiver requests from public safety (PS) FACs seeking concurrence to recommend I/B frequencies below 470 MHz for use by PS applicants. Specifically, EWA noted that FCC Rule Section 90.187 stating that only trunked systems are eligible for exclusive frequencies applies equally to PS and I/B applicants, as does Rule Section 90.173(a), which states that frequencies generally are assigned on a shared basis. Consistent with these FCC rules, EWA asked the FCC to confirm that (i) PS applications for conventional channels do not qualify for waivers to use I/B spectrum, but should be coordinated for the “best available” shared PS frequency; and (ii) PS applications for trunked systems do not qualify for waivers to use I/B spectrum, unless it can be demonstrated that all potentially available PS frequencies have been assigned on an exclusive basis in accordance with Rule Section 90.187.

¹ See Letter from William K. Brownlow, Chair, Public Safety Communications Council, to Mr. David Turetsky, Chief, Public Safety & Homeland Security Bureau, and Ms. Ruth Milkman, Chief, Wireless Telecommunications Bureau, dated August 13, 2013 (PSCC Letter).

² See Letter from Mark E. Crosby, President/CEO, Enterprise Wireless Alliance to Mr. David Turetsky, Chief, Public Safety and Homeland Security Bureau, and Ms. Ruth Milkman, Chief, Wireless Telecommunications Bureau, dated July 26, 2013 (EWA Letter).

The PSCC Letter objects to EWA's request claiming that EWA is "asking the Commission to impose new restrictions on requests for rule waivers from public safety entities seeking to obtain licenses in the I/B Pool."³ It argues that doing so would ignore the FCC's decision to establish separate spectrum pools for PS and I/B licensees in light of the differences between these user categories.⁴ It asserts, contrary to Rule Section 90.173,⁵ that, "In many cases even the most appropriate frequency is unusable for public safety communications because of the substantial potential for harmful interference, either to the applicant's proposed operations or to an existing licensed facility."⁶

In fact, with all due respect to the PS FACs whose expertise and commitment to their PS constituents is beyond question, their coordination policy of treating all PS frequency assignments as exclusive, in EWA's opinion, is not consistent with the FCC rules and cannot, on its own, justify waiver relief to access I/B pool frequencies. The FCC reached the same conclusion in disposing of a dispute between two PS entities, stating that, "...the Commission's rules do not provide 'first-in-time preference' to current users of shared [PS] channels."⁷ In that decision, the FCC affirmatively disagreed with what has become a standard PS FAC policy of requiring letters of concurrence from co-channel licensees before assigning frequencies on a shared basis.⁸ Thus, it is not EWA, but the FCC rules themselves, that, in PSCC's terms, "impose a brick wall in front of waiver applicants seeking I/B channels for conventional (non-trunked) public safety radio operations in 'shared' VHF and UHF spectrum."⁹

Moreover, it is difficult to reconcile the PSCC's desire to coordinate even conventional PS systems on I/B channels with its position that the FCC was correct in establishing separate spectrum pools for each user category. These two distinct pools were created to avoid precisely the situation that occurs when PS licensees are assigned shared I/B frequencies: If not today, then tomorrow, an I/B system will be co-channel with a PS system. If the PSCC agrees that "competing demands for and use of spectrum from entities with a different mission and less critical set of needs ... could place an unacceptable strain on the integrity of public safety spectrum use,"¹⁰ then it should address that potential concern by assigning PS applicants to the best available shared PS frequency.

PSCC-imposed frequency coordination policies premised on the erroneous assumption that all PS entities are entitled to exclusive use channels should not be used to enable the

³ PSCC Letter at 1.

⁴ See *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307 (1997) (2nd R&O).

⁵ "Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements." 47 C.F.R. § 90.173(b).

⁶ PSCC Letter at 2.

⁷ In the Matter of Application of County of Allegany, *Order*, DA 13-1419 (PSSB rel. June 21, 2013) at ¶ 18.

⁸ *Id.*

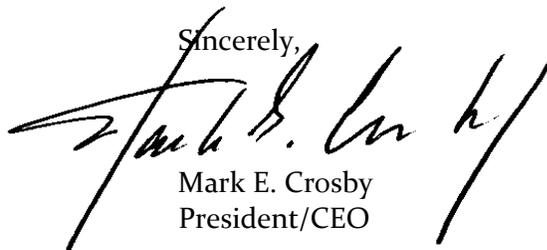
⁹ PSCC Letter at 3. EWA is uncertain what the PSCC intended by placing quotation marks around the word "shared" in this statement. The rules are clear and were affirmed in the recent Allegany Order cited above. If the PSCC believes even conventional PS systems should be afforded exclusive use of channels, whether operating on PS or I/B spectrum, it must seek a change in the FCC rules.

¹⁰ 2nd R&O at ¶ 16.

harvesting of I/B spectrum by PS FACs.¹¹ If shared channel operations, whether for conventional or decentralized/hybrid trunked systems, are determined to be potentially intolerable due to the opportunity for harmful interference,¹² then those applicants should seek spectrum from the various bands that have been allocated since 1997 for PS use only where channel exclusivity is the norm. If even the most appropriate PS frequency “is not “*acceptable* for a particular applicant’s critical emergency communications,”¹³ those applicants should be advised to deploy in bands set aside for non-shared PS operations. If, however, the FCC supports the PSCC’s notion that I/B spectrum should serve as a ready spectrum reserve for PS operations, then perhaps the 1997 decision to separate PS from I/B spectrum was in error and the two pools should be combined.

EWA again requests that the FCC affirm the standards for PS waiver access to I/B spectrum set out in the EWA Letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Mark E. Crosby". The signature is fluid and cursive, with a long horizontal stroke at the end.

Mark E. Crosby
President/CEO

cc: William K. Brownlow, PSCC (via e-mail)
David Furth, PSHSB (via e-mail)
Roger Noel, WTB (via e-mail)
Scot Stone, WTB (via e-mail)
Michael Wilhelm, PSHSB (via e-mail)

¹¹ EWA is actively engaged in facilitating the use of advanced digital trunked systems in the 150-470 MHz bands. These technologies promote spectrum efficiency, but also can be problematic in shared channel environments where many incumbent systems are using analog systems. However, the I/B user community has not had the luxury of new spectrum allocations for three decades. Consequently, it must invest in advanced digital technologies to maximize the use of its dwindling spectrum resources.

¹² Harmful interference is defined as follows in the Part 90 rules: “For the purposes of resolving conflicts between stations operating under this part, any emission, radiation, or induction which specifically degrades, obstructs, or interrupts the service provided by such stations.” 47 C.F.R. § 90.7.

¹³ Of course, not all entities that qualify for PS Pool spectrum are engaged in critical emergency responder operations. Some certainly are, but others use their systems to conduct non-emergency, day-to-day operations similar to those conducted by I/B licensees.