Enterprise Wireless Alliance

2121 Cooperative Way, Suite 225
Herndon, Virginia 20171

17750 Creamery Road, Suite 10B
Emmitsburg, Maryland 21727

800.482.8282
www.EnterpriseWireless.org

February 18, 2014

VIA HAND DELIVERY AND ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: Reply to Opposition to Petition for Reconsideration
CCD 900 Communications, LLC
Call Sign: WQTE752
FCC File No 0005965963

Dear Ms. Dortch:

The Enterprise Wireless Alliance ("EWA"), in accordance with Section 1.106(h) of the Federal Communications Commission ("FCC" or "Commission") rules, respectfully submits this Reply to the February 10, 2014 Opposition ("Opposition") filed by CCD 900 Communications, LLC ("CCD 900" or "Company"). The Opposition was submitted in response to EWA's Petition for Reconsideration ("Petition") requesting the FCC to reconsider and set-aside its grant of the above-identified authorization to CCD and dismiss the associated application for failure to comply with FCC Rule Section 90.617(c). As detailed below, the Opposition relies on misunderstandings and/or misstatements of all relevant FCC rules.[1] Nothing in that document supports CCD 900's claim that it is eligible to acquire 900 MHz Industrial/Business ("I/B") pool frequencies for the purpose of providing service to other entities, even if only to entities that themselves are eligible for 900 MHz I/B spectrum.

The Company claims that the EWA Petition is procedurally defective, because EWA failed to file a Petition to Deny the CCD 900 application while it was still pending. This is the Company's first misstatement of the FCC's rules. Rule Section 1.939(a), the rule governing the filing of Petitions to Deny Wireless Radio Service applications such as CCD 900's, states the following:

> Any party in interest may file with the Commission a petition to deny any application listed in a Public Notice as accepted for filing, whether as filed

[1] These multiple misstatements or misinterpretations of the FCC rules perhaps can be attributed to the fact that the Company elected to proceed *pro se*, as evidenced by the signatories to the Opposition, rather than engaging experienced FCC counsel.

> originally or upon major amendment as defined in §1.929 of this part (emphasis added).

The application at issue herein was not "listed in a Public Notice as accepted for filing" because it selected "non-common carrier" as its regulatory status in response to Question #41 on its Form 601. This can be confirmed by reviewing the ULS History for the application. No such applications appear on the weekly FCC Accepted for Filing Public Notices. Indeed, the Commission has repeatedly reminded parties that Petitions to Deny do <u>not</u> lie against such applications, although requests for Commission action may be filed pursuant to Rule Section 1.41. [2]

The Company's claim that EWA has no interest affected by grant of its application also is incorrect. EWA was certified by the FCC to recommend appropriate frequencies for various categories of licensees in multiple bands, including the 900 MHz I/B pool of frequencies. It also represents the interests of its I/B–qualified members at the FCC. To the extent applications are granted that are not eligible for those frequencies under the FCC's rules, the pool of available frequencies for EWA's members is diminished. This would be the case even if the instant application were the only one at issue. It is not. As the Opposition seems to acknowledge, EWA has filed Informal Oppositions under Section 1.41 against multiple still-pending applications that are effectively identical to the one at issue herein and, therefore, are equally ineligible to be granted.[3]

CCD 900's substantive arguments in favor of its eligibility for the I/B frequencies in question are equally unavailing. The Opposition includes a lengthy recitation of what the Company contends is support for its claim that applicants may acquire 900 MHz I/B frequencies for the purpose of providing for-profit communications service to private, internal licensees, as long as they promise not to serve individuals or Federal Government users. That is incorrect. FCC Rule Section 90.179 governs the shared use of Part 90 frequencies. Subsection (f) could not be clearer and states the following:

> <u>Above 800 MHz, shared use on a for-profit private carrier basis is permitted only by SMR</u>, Private Carrier Paging, LMS, and DSRCS licensees (emphasis added).

---

[2] *See, e.g.*, S&L Teen Hospital Shuttle, *Memorandum Opinion and Order*, 16 FCC Rcd 8153, 8155 ¶5 & n.14 (2001); *see also* Licenses of National Science Network and Technology, Inc., *Memorandum Opinion and Order*, 18 FCC Rcd 99870 at n. 18 (2003) ("In fact, MRA could not have filed a petition to deny against NSTN's applications, because private land mobile radio applications are not subject to the formal procedures associated with petitions to deny as set forth in Section 1.939 of the Commission's Rules, 47 CFR §1.939. Rather, objections to such applications are governed by the Commission's informal request rules set forth in Section 1.41, 47 CFR §1.41").

[3] EWA assumes that the Company meant to reference EWA in n. 1 in the Opposition when CCD 900 stated, "NTCH also filed informal oppositions against a number of applications filed by several different entities, including CCD 900." EWA cannot find any indication in the FCC's records that NTCH has taken an interest in these applications.

Applicants cannot self-select out of the SMR category by claiming that they will restrict the scope of entities that will be served on their system. Section 90.179(f) provides only one option for the provision of for-profit service above 800 MHz – classification as an SMR, which disqualifies the Company from eligibility for I/B frequencies pursuant to Section 90.617(c).

CCD 900 may disagree with the Commission's decision to so limit eligibility for these frequencies. It may argue that allowing multiple I/B entities to acquire their own licenses and engage a single company to manage their systems, while forbidding the management company from holding the license to provide the same communications service to those same entities, "would defy logic and incorporate a distinction without a difference into the Commission's rules,"[4] but that criticism does not change the rule.[5]

The Company also is incorrect in its apparent argument that prior FCC action on seemingly similar applications requires it to grant CCD 900's request. The fact that the FCC may have made the same error in granting other applications for 900 MHz I/B frequencies with eligibility statements similar to the Company's is of no import. A failure to follow its own rules in prior situations does not obligate the FCC to ignore those rules in the future. EWA will leave to the FCC what, if any, action it should take with regard to those licenses, authorization that are long-since "final" in terms of the FCC's procedural rules. In this instance, however, the FCC has the right, and EWA would suggest the obligation, to set-aside a grant that clearly is not in compliance with applicable FCC rules.

CCD 900's final misstatement of the FCC rules is its claim that even if it were an SMR, it would be eligible for I/B frequencies under the inter-category sharing rules in 90.617(c), since no SMR frequencies are available for assignment. But, Rule Section 90.617(c) does not provide for inter-category sharing between 900 MHz SMR and I/B applicants, only between what had been separate pools of 900 MHz Business and Industrial frequencies.[6] Indeed, in 1990, the FCC expressly determined <u>not</u> to permit 900 MHz inter-category access to I/B frequencies by SMR applicants.[7] Thus, inter-category sharing does not offer an opportunity for an applicant seeking to provide a commercial service to acquire 900 MHz I/B frequencies for that purpose.

---

[4] Opposition at 5.

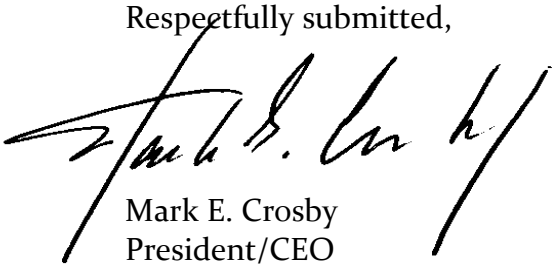
[5] Whether a management company can provide identical service to licensees, as is permitted to a private carrier below 800 MHz or an SMR above 800 MHz, will depend on whether the FCC is satisfied that the licensees in the management relationship retain control of their operations, a question of fact to be determined on a case-by-case basis.

[6] These pools were combined into a single I/B pool in 2004. In the Matter of Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 at n. 762 (2004).

[7] *See* In the Matter of Trunking in the Private Land Mobile Radio Services, PR Docket No. 87-2135, *Report and Order*, 5 FCC Rcd 4016 at ¶ 64 (1990).

The Commission's rules are clear. CCD 900 does not satisfy the FCC requirements for acquiring 900 MHz I/B frequencies. Its grant should be set aside and its application dismissed.

Respectfully submitted,



Mark E. Crosby
President/CEO
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

February 18, 2014

CERTIFICATE OF SERVICE

I, Linda J. Evans, hereby certify that I have, on this 18th day of February 2014, caused to be forwarded via electronic mail and first-class mail, postage prepaid, the foregoing letter to the following:

CCD 900 Communications, LLC
121 Shipmaster Dr.
Brigantine, NJ 08203
Attn: Dr. Daniel Ciechanowski
ciechanows@aol.com

Spectrum Networks Group, LLP
3131 E. Camelback Rd., Ste. 450
Phoenix, AZ 85016
Attn: License Services
licensing@specnetgroup.com

/s/ Linda J. Evans

Federal Communications Commission

Non-docketed Pleadings

Non-docketed Pleadings

Confirmation

Thank you for your submission. Please make a note of your confirmation number: **15938**.

The following information was submitted with this Pleading:

Type of Pleading

Reply

Dates

Entered Date: 02/18/2014

Filer Information

Crosby, Mark E
Enterprise Wireless Alliance
2121 Cooperative Way, Ste. 225
Herndon, VA 20171
(800)482-8282

Contact Information

Sachs, Elizabeth R Esq
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Dr., Ste. 1200
McLean, VA 22102
(703)584-8663
lsachs@fcclaw.com

File Number(s)/Call Sign(s)

0005965963 File Number
WQTE752 Call Sign

Attachment(s)

02/18/2014 Pleading EWA Reply to Opposition to Petition for Reconsideration EWA Reply to Opp to Pet for Recon WQTE752 900 MHz I-B Licen

▸Submit Another Pleading

▸Return to ULS

FCC | Wireless | ULS | CORES | Paying Fees

Help | Tech Support

Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Phone: 1-877-480-3201
TTY: 1-717-338-2824
Submit Help Request