

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

**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 comments in response to the Public Notice seeking comment on the November 1, 2012 Waiver Request (“Waiver Request”) filed by Flathead County, Montana (“County”) to use eight Industrial/Business (“I/B”) Pool frequencies to address coverage deficiencies in its VHF radio system in northwest Montana.¹ The County states that a waiver to use I/B frequencies is needed, because it has been unsuccessful in identifying any available VHF Public Safety pool frequencies for which it can secure approval from Industry Canada. Many EWA members operate in proximity to the Canadian border, so the Alliance appreciates the challenges faced by applicants seeking Industry Canada consent for VHF and UHF frequencies.² Nonetheless, this request raises a number of issues that should be addressed before waiver relief can be considered.

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 The Canadian region adjacent to this part of Montana appears to be as or even more sparsely populated than the County. EWA is familiar with the frustrating process of receiving repeated Harmful Interference Anticipated (“HIA”) responses from Canada, seemingly an automatic response to virtually any request. It is not clear from the Waiver Request whether the County has attempted to provide Industry Canada with the technical showing that can

As an initial matter, it is troubling that the transition from an analog to digital P25 network has been identified by the County as causing both the “loss of coverage and severe multipath problems”³ that dictate the need for these additional sites and, therefore, the I/B frequencies. The public safety community has been actively encouraged to migrate to P25 technology. If the County’s experience is representative of the impact of doing so, then the FCC should consider carefully the impact of this initiative on available spectrum resources, at least in the VHF band.

The relief requested also raises a fundamental question about Public Safety frequency assignment standards. Flathead County has a population of less than 91,000. Only six percent (6%) of its land mass is developed; the remainder is classified as national or state forest land, corporate timber land, agricultural land, or simply wilderness. The entire State of Montana has a population of just over 1,000,000. Even recognizing the impact of Canadian clearance on spectrum availability, it is extraordinary that there are no assignable VHF Public Safety frequencies in one of the more rural counties in the nation.⁴ The reason is highlighted in its letter dated August 28, 2013 in which the County stated that “shared use of VHF channels in Public Safety... would lead to catastrophic issues....”⁵

In a perfect world of unlimited spectrum resources, all users – governmental entities, airlines, utilities, commercial service providers - would have exclusive use of all their channels. Since that is not possible, the FCC’s Part 90 rules provide clear guidance about channel re-use and sharing requirements. While EWA does not dispute that certain Public Safety functions

be used to overcome an HIA or whether it has requested on air testing to disprove concerns about potential interference.

³ Waiver Request at 1.

⁴ It would have been expected that the FCC’s narrowband mandate would have increased the spectrum supply in areas such as Montana. Apparently the impact was not sufficient to obviate the filing of the Waiver Request.

⁵ County letter dated August 28, 2013.

warrant exclusive channel assignments, not all governmental activities demand that level of frequency availability. It also is of concern that even in such a lightly populated area, governmental entities do not appear to be able to devise reasonable approaches for cooperating in the re-use or shared use of frequencies.

For example, in a letter dated March 18, 2013 signed by Jack Spillman, APCO Montana Frequency Advisor, and filed in support of the Waiver Request,⁶ Mr. Spillman explained that the County's system is part of the State of Montana P25 digital trunked system. Yet that same letter states that the State - and others - all denied requests from the County for Letters of Concurrence ("LOCs") to re-use frequencies assigned to those entities. Mr. Spillman, speaking as a County employee in the August 28, 2013 letter, responded to questions from the FCC by stating that 10 VHF frequencies that might appear to be clear are not available because they are used in the statewide mutual aid system. While the State may be free to designate as many frequencies as it chooses for this purpose, when doing so does not prevent qualified entities from securing Public Safety frequencies for other than mutual aid needs, it is reasonable for the FCC to consider whether this designation within the State justifies the waiver relief sought by the County.

EWA also wonders whether the County has given sufficient consideration to redeploying its own supply of VHF frequencies for use at its additional sites. The FCC's ULS records reflect 20 discrete VHF frequencies assigned to the County; two discrete VHF frequencies assigned for EMS in the County; one discrete VHF frequency for Health Services; and six discrete VHF frequencies assigned to the County Sheriff's Department. While it is not possible to determine for what purpose each of the County's VHF frequencies is being used, the Waiver Request states that, "All of the Public Safety in the area uses this [digital P25] system, including the Sheriff's

⁶ Mr. Spillman is also the Radio System Administrator for the County and was the signatory on the Waiver Request and on the August 28, 2013 letter referenced above.

Office, 3 Police Departments, Fire and Rescue, County Roads, Local Fire, Fish, Wildlife and Parks....”⁷ Most of the County’s existing VHF licenses are designated as conventional and so clearly are not part of the digital P25 system. Some of the authorizations specify County Sheriff’s Department, EMS Services, or Health Services, all of which would appear to be using the trunked system according to the Waiver Request. Has it been determined whether the frequencies assigned under those call signs, as well as others without a clearly defined use, are still needed as stand-alone systems in light of the statement above? Further, the instant application requests authority for 250 mobile units. How many additional County employees, employees beyond those that the County says are using the digital P25 system, require two-way radio communications to provide services for a population of only 91,000 and is there a reason that they are not migrating to the P25 system?⁸

Finally, the Public Notice notes that the Waiver Request includes a concurrence letter from AAA, an FCC-certified I/B Pool frequency coordinator, stating that the I/B frequencies requested were properly coordinated. EWA disagrees. The Alliance conducted its own analysis and determined that the County’s proposed use of frequencies 157.680 MHz and 159.7425 MHz with MO8 status does 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.

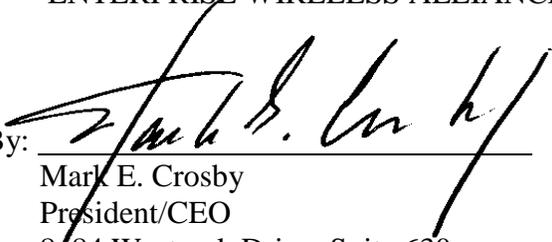
The difficulties in securing spectrum in proximity to the Canadian border are well known to all Part 90 licensees that operate in those areas. They are real and frustrating. However, the Waiver Request raises issues about the protection criteria that were used to determine Public Safety frequency availability for the sites in question, including the potential use of the County’s

⁷ Waiver Request at 1.

⁸ The cumulative number of Public Safety radios on the granted and requested County licenses exceeds 3,000, or one for every 30 citizens in the County.

own VHF frequency supply, about the effort made to secure Industry Canada approval, and about the AAA concurrence letter that require further investigation before any waiver relief should be granted.

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November 27, 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 27th day of November 2013, caused to be forwarded via electronic mail the foregoing Comments to the following:

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/s/ Linda J. Evans