

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

In the Matter of)
)
Amendment of Part 90 of the) WP Docket No. 07-100
Commission’s Rules)

To: The Commission

JOINT REPLY COMMENTS

The undersigned parties (“Parties”) appreciate the extension of time for filing comments and reply comments in this proceeding granted by the Federal Communications Commission (“FCC”).¹ The additional time allowed participating parties to develop thoughtful recommendations for how best to achieve the FCC’s objectives of maintaining public safety primacy at 4.9 GHz by adopting a “comprehensive and coordinated nationwide approach,” respectful of its locally controlled nature, while also promoting appropriately intensive use of this band.² In response to several Comments, the Parties, which collectively represent a significant number of public safety and enterprise entities, including those classified as Critical Infrastructure Industry (“CII”), recommend the following approach, an approach that should significantly accelerate the time by which the FCC’s desired licensing and leasing in the 4.9 GHz band can be implemented.

¹ *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Order, DA 23-257 (Mar. 24, 2023).

² *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking, FCC 23-3 at ¶ 1 (rel. Jan. 18, 2023) (“7th R&O;” “9th FNPRM”); *see also* *Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Erratum (rel. Feb. 22, 2023).

The FCC Should Designate the Four FCC-Certified Public Safety Frequency Advisory Committees Collectively as the 4.9 GHz Nationwide Band Manager.

The Parties, along with a majority of commenters, endorsed the proposed nationwide approach to the band by vesting centralizing management in a national band manager. They suggested procedures for choosing the selection committee that, in turn, would select the band manager. The Parties recommended that the selection committee be comprised of public safety, CII and enterprise entities and that interested parties submit requests to be appointed to that committee, which requests would be considered by the Public Safety and Homeland Security Bureau and the Wireless Telecommunications Bureau (“Bureaus”). Upon being designated by the Bureaus, participants on the Selection Committee would prepare a Request for Proposal (“RFP”) to fulfill the band manager role. Responses to the RFP would be evaluated by the Selection Committee and a choice made, subject to final approval by the Bureaus.

The Parties submit that the multi-step process outlined would unnecessarily slow progress toward the FCC’s goals for the 4.9 GHz band, even if each step were not delayed by the challenges and appeals that almost invariably are triggered in such a process. It would not surprise the Parties and should not surprise the FCC if, under the best of circumstances, it took several years to finalize the national band manager selection. And only at that point would that entity begin developing a band plan and frequency coordination procedures for maximizing use of this band as envisioned in the 7th R&O and in the 9th FNPRM, procedures that would be implemented at an even more distant date. Instead, for the reasons below and as recommended in multiple Comments, the Bureaus should designate the multi-decade FCC-certified and vetted public safety Frequency Advisory Committees (“FACs”) to fill the role of national band manager, with appropriate deadlines for establishing how they will perform that function and for adopting a band plan and coordination procedures for licensing and leasing in the band. Two of

those entities, Forestry Conservation Communications Association (“FCCA”) and International Municipal Signal Association (“IMSA”), are signatories to this filing. A third, American Association of State Highway and Transportation Officials (“AASHTO”) filed Comments and a Petition for Reconsideration that urge the FCC to designate the public safety FACs as the band manager. The fourth public safety FAC, APCO International (“APCO”), has not expressly volunteered for band manager responsibility, but its Comments confirm its belief that it and other FACs are amply qualified for that function. Appointing the four public safety FACs collectively as the national band manager would greatly accelerate progress toward the FCC’s goals by eliminating all the interim steps toward that selection and would be unlikely to trigger objections, since they so clearly satisfy all the band manager criteria.³

Recent FCC decisions and Comments in this proceeding highlight two essential factors that should inform the FCC’s decisions on this issue. First, however deficient the current licensing process is in identifying existing public safety use of the band, that usage does exist and is not uniform across the nation. Whatever band plan the national band manager develops must respect and protect existing operations. Some entities will embrace 5G technology, the need for which has been described by the Metropolitan Transportation Authority (“MTA”) in its recent *ex parte* filing.⁴ Others may choose to maintain and/or expand their existing facilities, with the possibility of migration to more advanced technology in the future.⁵

There are no entities more experienced in working with local public safety users, in understanding their current and future requirements, than the four public safety FACs that have done so for many decades. They have the established relationships with and confidence of the public safety community that the FCC deemed essential criteria for a 4.9 GHz band manager, as

³ See 7th R&O at ¶¶ 22-29; see also 9th FNPRM at ¶¶ 73-74.

⁴ MTA *ex parte* notice (filed May 3, 2023).

⁵ AASHTO Comments at 6.

well as knowledge of FCC rules and familiarity with the Universal Licensing System (“ULS”).⁶ Their expertise will assist incumbents with populating the ULS with technical data regarding existing usage in a more accelerated manner. They bring long-standing experience in coordinating new and modified public safety systems in already populated spectrum while protecting the operations of existing entities. The 7th R&O states that the band manager will be required to provide for frequency coordination in this band.⁷ The public safety FACs already perform that function and have established procedures for coordinating systems collaboratively in support of the public safety community. There is no entity or group of entities better qualified to fulfill the role of 4.9 GHz national band manager.

Second, it is telling that no national or regional commercial carrier or organization representing such operators has filed comments indicating an interest in leasing 4.9 GHz spectrum under the conditions, including public safety protections, adopted by the FCC.⁸ The entities most likely to do so are the CII and other enterprise users represented by the undersigned organizations: American Petroleum Institute (“API”), Enterprise Wireless Alliance (“EWA”), and Utilities Technology Council (“UTC”). These organizations have determined that their multi-decade experience with and confidence in the public safety FACs provides the necessary assurance that their members will have fair opportunities to lease 4.9 GHz spectrum under prescribed conditions if those FACs are designed as the national band manager. They also urge

⁶ 9th FNPRM at ¶¶ 73-74.

⁷ 7th R&O at ¶¶ 36-43.

⁸ Wireless Internet Service Providers Association (“WISPA”) has stated that traditional leasing arrangements would not be viable and only a dynamic spectrum access model might make this spectrum of interest to its commercial members, and then only with circumscribed public safety preemption and interference protection rights. And, of course, the First Responder Network Authority (“FirstNet”), abetted by the Public Safety Spectrum Alliance (“PSSA”), seeks to add this spectrum to AT&T’s network without going through a lease process at all.

the FCC to allow their direct licensing of this spectrum when no public safety need is identified as proposed in the Joint Comments.⁹

The interest of these types of entities in working with public safety to maximize the use of the band is confirmed by the filings of, among others, Edison Electric Institute (“EEI”), Energy Telecommunications and Electrical Association (“ENTELEC”), Florida Power & Light Company (“FPL”), and Motorola Solutions, Inc. (“MSI”). These CII and enterprise users coexist compatibly with public safety operations in multiple bands, sometimes on a co-channel basis, because all endorse the frequency coordination rules and processes that govern channel assignments, rules and processes that protect the operations and investments of all users. It is their usage that will support greater investment in the band and thereby expand 4.9 GHz equipment options at more affordable price points.

It again has been suggested that the FCC impose a dynamic spectrum sharing model on this band,¹⁰ but the FCC properly rejected that model in the 7th R&O:

Finally, we decline to adopt a more active form of frequency coordination for public safety operations in the 4.9 GHz band, such as the automated frequency coordination in the 6 GHz band¹¹² or the spectrum access system that facilitates dynamic spectrum sharing in the Citizens Broadband Radio Service (CBRS).¹¹³ Given our adoption of a new Band Manager to coordinate access to the band, we find that the public interest is best served by adopting the part 90 frequency coordination framework, described above, which requires no modification of or replacement to equipment currently in use in the band and which grants to the Band Manager flexibility in working with licensees and lessees to maximize the efficient use of this spectrum.¹¹

⁹ AASHTO opposes allowing any non-public safety operations until it can be determined that it would not inhibit *ad hoc* public safety use of the band for emergency purposes. Since it is not clear how future *ad hoc* emergency needs could ever be identified, the Parties suggest that the public safety FACs, as band manager, will work to address such situations in a spectrally reasonable and responsible fashion.

¹⁰ See Comments of WISPA and Federated Wireless, Inc.

¹¹ 7th R&O at ¶ 43.

Conclusion

The Parties encourage the FCC to streamline what otherwise will be a multi-step and multi-year process for selecting a band manager by designating the four public safety FACs to assume that role. They satisfy every criterion the FCC identified as essential for the national band manager and can be expected to fulfill its responsibilities effectively and neutrally. Adopting this approach will accelerate the time by which the FCC's objective can be achieved; a balanced approach to the band that will "spur innovation and drive down costs, enabling more efficient use of this important mid-band spectrum."¹²

Respectfully submitted,

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¹² 7th R&O at ¶ 16.