

July 21, 2023

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street, N.E.
Washington, D.C. 20554

Re: WP Docket No. 07-100¹
***Ex Parte* Letter**

Dear Ms. Dortch:

The undersigned parties (“Parties”) represent public safety, critical infrastructure, and enterprise entities that share the Federal Communications Commission (“FCC”) goal of accelerating more intensive utilization of this valuable spectrum through secondary lease opportunities while maintaining the primacy of public safety operations. Their filings in this stage of this multi-decade proceeding support the FCC’s decision to vest centralized management of the 4.9 GHz band in a national band manager.² For the reasons detailed below, they strongly oppose awarding the FirstNet Authority (“FirstNet”) a nationwide 4.9 GHz license³ and the right to select the 4.9 GHz band manager as urged by the Public Safety Spectrum Alliance (“PSSA”),⁴ an organization labelled by some as a proxy for FirstNet and, by extension, for AT&T.

The Parties have recommended designation of the four FCC-certified public safety Frequency Advisory Committees (“PS FACs”) to serve as the national band manager. The PS FACs satisfy all criteria specified by the FCC: They have established relationships with and the confidence of the public safety community; they are fully familiar with the FCC rules and leasing processes, with the development of band plans, and with the FCC’s Universal Licensing System that will need to be populated with technical data under newly adopted rules; they have decades of experience in coordinating new and modified fixed and mobile public safety systems

¹ *Amendment of Part 90 of the Commission’s Rules*, Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking, WT Docket No. 07-100. FCC 23-3 (2023) (7th R&O).

² *See Ex Parte* Notices filed Aug. 25, 2022, and Oct. 27, 2022; Extension Request filed Mar. 1, 2023; Comments filed Apr. 13, 2023; Response to AASHTO Petition for Reconsideration filed May 15, 2023.

³ The FCC sought comment on issuing a national 4.9 GHz license in the previous stage of this proceeding (*Amendment of Part 90 of the Commission’s Rules*, WP Docket No. 07-100, Order on Reconsideration and Eighth Further Notice of Proposed Rulemaking, 36 FCC Rcd 15032 (2021)) but elected not to pursue that approach in the 7th R&O despite support from the PSSA: “Today we adopt rules that create a comprehensive and coordinated nationwide approach to the 4.9 GHz band, centralizing management in a single Band Manager, while retaining local control over operations conducted by individual public safety licensees.” 7th R&O at ¶ 16. Reversing that course would require yet another Further Notice of Proposed Rulemaking in this already lengthy proceeding.

⁴ *See, e.g.*, PSSA *Ex Parte* Notification filed July 13, 2023.

while protecting incumbent operations; they have established procedures for coordinating public safety systems collaboratively. All PS FACs participate in the Public Safety Communications Council (“PSCC”) that develops protocols for coordinating public safety systems and could form the foundation for the national band manager entity.

As explained in prior filings, this approach would eliminate the multi-step process whereby the FCC first would need to choose among parties seeking to serve on the national band manager Selection Committee, which Committee then would need to develop and publish a Request for Proposal or similar document to which parties seeking that role would need to respond, after which the Selection Committee would review the proposals and make its recommendation, which choice would be subject to final approval by the FCC. This is likely to be a multi-year undertaking even if not delayed by the challenges and appeals that must be expected at each stage. While no selection process can be immunized against challenges, designation of the PS FACs is unlikely to trigger substantive opposition because of their well-established, well-tested qualifications in each facet of the national band manager responsibilities. It is difficult to conceive of a substantive basis for challenging their ability to fulfill all functions of that role.

That is not the case with the PSSA’s proposal. A number of parties already have recorded their opposition to that approach. The concerns voiced are multiple.

Some believe that ceding control of this band to FirstNet, and thereby allowing its integration into the broadband network operated by AT&T, would be incompatible with myriad current and future non-broadband public safety operations. FirstNet has made that intention abundantly clear:

...as we look to further advance and evolve the network to continuously meet the operational needs of first responders and other public safety personnel across the country, the FirstNet Authority sees the 4.9 GHz spectrum as a potential avenue to provide enhanced broadband communications services, features, and capabilities—including 5G services—for public safety.⁵

Even if required to support non-broadband activities, FirstNet has no experience in coordinating non-broadband public safety systems and would need to engage a third party, likely some or all of these same PS FACs, to perform that function, thereby adding cost that will be borne by the American public whose taxes fund public safety operations.

The Metropolitan Transportation Authority (“MTA”) has stated that “proposals to incorporate the band into the Nationwide Public Safety Broadband Network [the “NPSBN”

⁵ FirstNet Comments at 2 (filed Apr. 13, 2023).

licensed to FirstNet]...would be incompatible with MTA’s proposed use of the band for CBTC [Communications Based Train Control].”⁶ The San Francisco Bay Area Rapid Transit District (“BART”) also utilizes 4.9 GHz spectrum for CBTC purposes and has the same concern: “BART opposes efforts to shift control of uses of public safety spectrum away from public safety entities to control by commercial service providers with incompatible systems, whether FirstNet or other nationwide providers.”⁷

The issues raised by the Major Cities Chiefs Association (“MCCA”) are broader. It states:

Some stakeholders have proposed giving the FirstNet Authority (FirstNet) a nationwide license and allowing it to operate the 4.9 GHz band. The MCCA believes this may be detrimental to the local public safety systems currently utilizing this band. In fact, it is the MCCA’s understanding that FirstNet’s presence could drive these local public safety systems from the 4.9 GHz band. This would harm existing public safety licensees and is not in the public interest. The 4.9 GHz band is and must remain, a local public safety band.⁸

The MCCA goes on to note the following:

The MCCA strongly supports FirstNet’s original mission and will continue to work tirelessly to ensure its success. However, both the Government Accountability Office and Department of Commerce Inspector General have identified concerns with oversight, transparency, and accountability related to FirstNet’s operations.⁹

The Industry Council for Emergency Response Technologies (“iCERT”) has a similar concern:

iCERT believes that integration of the 4.9 GHz band into public safety broadband networks, if incompatible with local public safety uses of the band, could undermine existing public safety applications in the band as well as the development of innovative public safety and critical infrastructure applications in the future. While 5G will undoubtedly provide benefits to public safety, we caution the FCC in jumping to the conclusion that integrating the 4.9 GHz spectrum into public safety broadband networks should be the primary goal of this proceeding.¹⁰

The opposition of the American Association of State Highway and Transportation Officials (“AASHTO”) is more direct:

⁶ MTA *Ex Parte* notice at 1 (filed June 30, 2023).

⁷ BART Reply Comments at 2 (filed May 15, 2023).

⁸ MCCA Reply Comments at 1 (filed May 15, 2023).

⁹ *Ibid.*

¹⁰ iCERT Reply Comments at 5 (filed May 11, 2023).

PSSA bills itself as “an alliance amongst the nation’s leading public safety officials and associations . . .” However, PSSA apparently does not actually represent any particular public safety entity. Instead, PSSA appears to represent the corporate interests of FirstNet and AT&T.¹¹

In addition to these operational and policy issues, parties have raised questions about the legality of the PSSA’s proposal. FirstNet is an independent authority within the National Telecommunications and Information Administration, a Federal agency, and is not eligible as a Part 90 FCC licensee.¹² Verizon asserts, “The Commission must reject FirstNet’s request that the Commission grant it access to the 4.9 GHz band for the NPSBN under its current license....”¹³ It states, “...there is nothing to indicate that it was Congress’ intent for FirstNet to access additional spectrum whenever it sees an opportunity to expand the reach of the NPSBN.”¹⁴ T-Mobile USA, Inc. (“T-Mobile”) states squarely, “As an initial matter, the Commission lacks authority to simply license the spectrum to FirstNet. To the contrary, when the Commission first issued FirstNet’s 700 MHz license, it did so pursuant to explicit Congressional directive. That authority is decidedly absent here, and FirstNet provides no evidence suggesting otherwise.”¹⁵

Awarding a nationwide 4.9 GHz license to FirstNet, as proposed by the PSSA, will invite challenges from multiple parties asserting these and perhaps other bases for opposition and further delay the FCC’s goal of accelerating more intensive primary public safety use of the band and lease opportunities for other qualified entities. The FCC should reject the arguments of the PSSA and FirstNet and designate the four PS FACs as the 4.9 GHz national band manager.

Respectfully submitted,

Suzanne Lemieux
Director, Operations Security &
Emergency Response Policy
American Petroleum Institute

Robin J. Cohen
President/CEO
Enterprise Wireless Alliance

¹¹ AASHTO Comments at 4 (filed Apr, 10, 2023).

¹² 47 U.S.C. 90.1(b).

¹³ Verizon Reply Comments at 12 (filed May 15, 2023).

¹⁴ *Id.* at 15.

¹⁵ T-Mobile Reply Comments at 10-11 (filed May 15, 2023).

Ralph Haller
Executive Director
Forestry Conservation Communications Association

Wendy Jeffres
National Frequency Coordinator
International Municipal Signal Association

Jonathan Thompson
Executive Director and CEO
National Sheriffs' Association

Brett Kilbourne
Senior Vice President Policy and
General Counsel
Utilities Technology Council

cc:

Tom Eng
John Evanoff
David Furth
Brian Marengo
Renee Roland
Jon Markman
Susan Mort
Roger Noel