

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

In the Matter of)	
)	
Amendment of Part 90 of the Commission's Rules)	WP Docket No. 07-100
)	
Implementing a Nationwide, Broadband Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	

To: The Commission

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its comments in the above-entitled proceeding.¹ The Commission has requested comments on various rule changes that might promote more intensive use of the 4.9 GHz band. In particular, the FCC is seeking input on coordination and licensing procedures best suited to the band, on the possibility of expanding eligibility for this spectrum, and on the impact of the 2012 Spectrum Act² on broadband uses of this spectrum by public safety entities.

EWA supports the FCC’s efforts to consider means for enhancing utilization of this spectrum, and urges the Commission to do so without compromising the current dedication of the band for non-commercial operations. While the Alliance appreciates the FCC’s efforts to support commercial broadband use, it is not always sound public policy to require third-party,

¹ Amendment of Part 90 of the Commission’s Rules, *Fourth Report and Order and Fifth Further Notice of Proposed Rulemaking*, WP Docket No. 07-100, 27 FCC Rcd 6577 (2012) (“FNPRM”).

² Pub. L. No. 112-96, 126 Stat. 156 (2012) (“Spectrum Act”).

for-profit providers and entities who utilize spectrum to address internal communications needs to compete against each other for spectrum. In this instance, with the rule changes recommended herein, EWA is confident that there will be more than sufficient demand by those with internal communications requirements to make properly intensive use of the 4.9 GHz band.

I. INTRODUCTION

EWA is a national trade association representing many business enterprises, wireless sales and service providers, hardware and software system vendors and technology manufacturers. These firms represented by the Alliance range from small businesses to leading national Fortune 500 organizations, including those that are engaged in transportation, petrochemical, manufacturing, retail, utility, construction and other critical national industries. EWA is also an FCC-certified frequency advisory committee that will in 2012 processes in excess of 15,000 frequency selection and license preparation transactions annually. Both as the representative of its members and as an experienced spectrum manager, the Alliance has a substantial interest in the outcome of this proceeding.

The Commission has been unflagging in its efforts to promote broadband deployment by both commercial service providers and public safety entities. It has made broadband spectrum available for each of those licensee categories and has adopted rules intended to facilitate its utilization. The 4.9 GHz public safety allocation is an early example of the FCC's commitment to this policy and is a valuable contribution to the public safety spectrum inventory. The band is well-suited for its intended purpose, primarily incident scene management, and has been deployed for that purpose by a number of public safety entities around the nation in both fixed and mobile configurations.

Nonetheless, in the FNPRM, the Commission has concluded that development of this band has not met FCC expectations and has “fallen short of its potential.”³ The FCC proposes various remedies for this lack of robust deployment, including alternative coordination/licensing requirements and expanded eligibility. EWA supports both Commission approaches to the extent detailed herein.

II. EXPANDED ELIGIBILITY

While the FNPRM first explores the coordination/licensing issues in the band, EWA suggests that it would be preferable to determine what categories of entities will be eligible to use the spectrum before addressing the licensing requirements. Understandably, a number of the suggestions for modified coordination and licensing rules have presumed that the band would be used only by public safety licensees. If that were to change, as the Alliance believes it should, the optimal approach might be different.

Specifically, the FNPRM questions whether eligibility should be broadened to permit commercial use on a secondary basis and/or use by critical infrastructure industry (“CII”) entities, presumably on a co-equal basis with public safety licensees. EWA represents a significant number of commercial service providers. Its members also include CII entities and other private internal system operators whose use of spectrum is consistent with the public interest considerations underlying the CII categorization and whose utilization also could co-exist compatibly with public safety operations. While the Alliance gave substantial consideration to supporting commercial as well as private user eligibility, ultimately it concluded that allowing third-party commercial operations, even exclusively for backhaul purposes, could too easily compromise the availability of the band for public safety and other non-commercial purposes. On balance, and in light of the significant steps already taken by the FCC to expand

³ *Id.* at ¶ 17.

broadband spectrum options for commercial operators, EWA recommends against extending their eligibility into this band.⁴

By contrast, non-public, safety, private entities have not been allocated any broadband spectrum, and there is a history of compatible co-existence between them and public safety in most Part 90 bands. Such users have defined areas of operation not necessarily focused on population centers, often conducted in a campus-type environment that can be coordinated with public safety usage. Therefore, EWA recommends that eligibility for 4.9 GHz spectrum not be expanded beyond private internal use as defined in the Part 90 rules.

The Alliance proposes that the 4.9 GHz band be made available for all private internal systems – those that are used to meet internal communications requirements only and that are not used to provide service to third parties on a for-profit basis. This would include systems beyond those the FCC historically has classified as CII. At a minimum, however, EWA urges the FCC to revisit its current interpretation of entities that properly can be identified as CII to ensure that this categorization is consistent with the public interest.

FCC Rule Section 90.7 provides the following definition of CII:

State, local government and non-government entities, including utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, providing private internal radio services provided these private internal radio services are used to protect safety of life, health, or property; and are not made commercially available to the public.⁵

Clearly this definition need not remain static; the examples are illustrative, not delimiting. While EWA does not challenge the categories of entities that are included, there is no obvious basis for including, for example, railroads and pipelines, but not entities providing air transportation, bus

⁴ See, e.g., Amendment of Part 27 of the Commission's Rules to Govern the Operation of Wireless Communications Services in the 2.3 GHz Band, WT Docket No. 07-293, *Order on Reconsideration*, FCC 12-130 (rel. Oct. 17, 2012).

⁵ 47 C.F.R. § 90.7.

service, trucking and package transport, heavy construction, agricultural, manufacturing of a variety of goods critical to the health, safety, and property of the American public, and similar services. Each of these types of enterprises maintains facilities at which they could make productive, intensive use of 4.9 GHz spectrum for the same types of activities for which the band is used by public safety entities. They should be afforded primary eligibility in this band.

III. COORDINATION/LICENSING RULES

The FNPRM requests comment on a number of alternatives for coordinating facilities in the 4.9 GHz band. At present, the rules require only that licensees “cooperate in the selection and use of channels in order to reduce interference and make the most effective use of the authorized facilities.”⁶ While there is no indication that interference has been an issue under the current rules, the FNPRM seems to suggest that this entirely self-policing approach may have had a chilling effect on use of the band due to concern about the adequacy of protection for primary users. Of course, should the number and variety of licensees in the band increase as recommended by EWA, appropriate interference protection mechanisms will become even more necessary.

In an earlier stage of this proceeding, the Commission queried whether Part 101-type coordination procedures should be adopted for primary fixed stations providing point-to-point and point-to-multipoint communications.⁷ That possible approach seemingly has been abandoned by the FCC because of objections raised by several parties regarding the cost and complexity it would add to the use of this spectrum. The opponents argued that unlike systems in the traditional point-to-point microwave bands, the 4.9 GHz band supports a broad range of system types and applications making the microwave model inappropriate.

⁶ 47 C.F.R. § 90.1209(b).

⁷ See 47 C.F.R. § 101.103.

While the Alliance does not necessarily share that opinion regarding the unwieldy nature of microwave coordination as applied to this band, it accepts the FCC's conclusion with one exception. If the FCC determines to make this spectrum available for backhaul purposes, whether by the First Responder Network Authority ("FirstNet"), the expanded eligibility class recommended by EWA, or by public safety directly, that use would be enhanced, not impeded, by a coordination approach similar to the Part 101 rules.⁸ The Alliance believes this alternative would be superior to a licensed regimen based entirely on registration rather than defined protection criteria, an approach that most closely mirrors the entirely unlicensed microwave bands available today. While such facilities may be acceptable in a non-critical, consumer-oriented environment, they would not provide the grade of service levels appropriate for public safety or enterprise users for whom communications facilities are essential to safety and/or the efficient operation of their businesses. For these applications, unlicensed spectrum is a refuge of last resort, used only when there is no alternative or until the frequencies become saturated and, ultimately, unusable.

With regard to other uses of the band, EWA agrees that a more detailed database of system information will benefit both existing and prospective users by enabling new entrants to make responsible frequencies choices. If eligibility for the band is expanded as recommended above,⁹ the Alliance questions whether the 700 MHz Regional Planning Councils ("RPC"s) or the Computer-Assisted Pre-Coordination Resource and Database ("CAPRAD") should form the foundation of the coordination/registration process. Both the RPCs and CAPRAD are volunteer organizations. While their commitment to their responsibilities is admirable, it simply is not

⁸ In this regard, the Alliance agrees with the FCC that usage specific licensing would facilitate coordination in lieu of the current licensing structure, whereby all classes of operations are authorized pursuant to a single 4.9 GHz license. FNPRM at ¶44.

⁹ Expanding eligibility beyond public safety entities seemingly would preclude the jurisdictional licensing approach outlined by the Commission. FNPRM at ¶ 45.

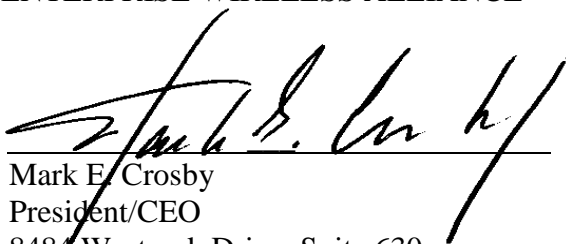
realistic to expect them to carry out additional functions within a timeframe that will support the FCC's objective of making more intensive use of this band. The responsibility for developing and maintaining a 4.9 GHz database should be awarded to one or more organizations that can demonstrate the necessary qualifications to assist eligible entities to access this spectrum while supporting the efficient use of this critical spectrum.¹⁰

IV. CONCLUSION

The 4.9 GHz band represents a valuable public resource that, like all spectrum, must be made available for use by the maximum number and variety of users that can be accommodated consistent with sound spectrum management principles. EWA supports the FCC's efforts to promote more robust use of this band and asks that it adopt rules consistent with the recommendations herein.

Respectfully submitted,

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November 1, 2012

¹⁰ See Unlicensed Operation in the TV Broadcast Bands, ET Docket No. 04-186, Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band, ET Docket No. 02-380, *Order*, 26 FCC Rcd 554 (OET 2011).