

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Assessment and Collection of Regulatory	)	MD Docket No. 17-134
Fees for Fiscal Year 2017	)	

**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, provides the following Comments in the above-entitled proceeding.<sup>1</sup> The NPRM seeks comments regarding the FCC’s proposed regulatory fees for Fiscal Year (FY) 2017.

EWA represents a broad alliance of business enterprise users, service providers, radio dealers and technology manufacturers, many of which hold Private Land Mobile Radio (“PLMR”) service licenses in the Part 90 radio services. Most of these licenses are classified as PLMRS (Exclusive Use) or PLMRS (Shared use) in the Commission’s regulatory fee schedule. Both categories are “multi-year” licenses, meaning that they are assessed an annual regulatory fee, but the entire fee for the 10-year license term is paid upfront when an application for a new license or a license renewal is filed.<sup>2</sup> Many of these entities also hold microwave licenses regulated under Part 101 and authorizations that are classified as CMRS Messaging (Paging) Services authorized under Part 22. The former also are “multi-year” licenses, while the latter

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<sup>1</sup> *Notice of Proposed Rulemaking*, MD Docket No. 17-134, 32 FCC Rcd 4526 (2017) (“NPRM”).

<sup>2</sup> Entities whose applications are dismissed and licensees that cancel their licenses or assign their spectrum to an existing licensee during that 10-year term do not receive a refund for the balance of their multi-year regulatory fee payment.

pay on an annual basis. As the NPRM raises issues about the regulatory fees that should be assessed for both “multi-year” and CMRS Messaging (Paging) Services licensees, EWA is pleased to offer the following recommendations.

**A De Minimis Threshold/Multi-Year Wireless Licenses**

The NPRM has requested comment on raising the *de minimis* regulatory fee threshold from \$500 to \$1,000.<sup>3</sup> The Alliance supports that proposal as consistent with the Commission’s overall effort to ensure the cost effectiveness of its regulations. The NPRM explains that the agency’s own operational costs for processing and collecting fees below that amount, in addition to the administrative burden on licensees that incur regulatory fees of less than \$1,000, may well outweigh the benefit of collecting those small payments. EWA believes the FCC’s cost analysis is correct and recommends increasing the *de minimis* threshold to the proposed \$1,000.

In considering this change, the NPRM also asks whether that threshold should apply to multi-year licenses.<sup>4</sup> Of course, that is the minimum exemption that should be available for purposes of regulatory equity for the reasons discussed below. However, in practical terms, the Alliance questions whether it would be possible to implement that change.

PLMR applicants are assessed a per-application (license/call sign) multi-year regulatory fee. The number of individual applications these entities need to file is not necessarily a matter of choice. FCC-defined licensing requirements and the implacable restrictions of its Universal Licensing System (“ULS”) electronic filing system dictate how many licenses are required and, thus, how many regulatory fees must be paid. One defining ULS limitation is that only six fixed locations may be requested in an application. A seventh or thirteenth or nineteenth location requires a separate application(s), each with its own 10-year regulatory fee. Entities seeking

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<sup>3</sup> NPRM at ¶ 31.

<sup>4</sup> *Id.* at ¶ 32.

some trunked and some conventional operations must file for them on separate applications, triggering multiple regulatory fees. While the fees are not large individually, \$100 per application for PLMRS (Shared use) and \$250 for PLMRS (Exclusive use), some applicants must file for tens, hundreds, or even thousands of such licenses so the aggregate regulatory fee can be very substantial.

EWA believes this cost burden should be revisited, but there are significant challenges. First, as recognized in the NPRM, these licenses are applied for initially, and then renewed, at multiple points throughout a year and often over multiple years.<sup>5</sup> Availing oneself of the threshold would require a method for the FCC to maintain a running tally of the regulatory fees paid during any year. In EWA's opinion, it also would require reverting to an annual rather than multi-year payment process since, otherwise, even a PLMR (Exclusive use) system requiring only five applications would exceed the \$1,000 threshold if the upfront \$250 per application regulatory fee continued to apply.<sup>6</sup>

These matters could be addressed as they are regulatory decisions. The greater challenge would be implementing them. Today, ULS is programmed to generate a Form 159 that specifies the application processing and regulatory fees that must be paid within 10 days of filing a Form 601 for a PLMR initial license or renewal. No application is processed until ULS has confirmed that its self-generated fee calculation has been paid on a timely basis.

As the Alliance understands the process, establishing a regulatory fee threshold for PLMRS applications would require the FCC to decouple the regulatory fee calculation from ULS. That may be possible, but EWA's experience with Commission efforts to modify ULS is

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<sup>5</sup> *Id.*

<sup>6</sup> Given the very significant variations among PLMR licenses (*e.g.*, private internal v. commercial, voice v. data, analog v. digital, wideband v. narrowband, full-power v. low power, exclusive v. shared), the Alliance recommends against assessing regulatory fees based on the specifics of the system being operated.

that they are extraordinarily difficult and time-consuming. In fact, filing the Form 601 has become extremely difficult and a high-level security concern for ULS users' internal company assets because of outdated, unsupported Java software required for Form 601 functionality. The FCC has advised this problem will not be corrected due to budget constraints in the near term, if ever. In fact, it may not be possible to renovate existing ULS capabilities. If the Commission is not able to address that situation, which routinely requires parties to attempt middle-of-the-night Form 601 filings when competition for the outdated system is less intense and, even then, often requires multiple attempts because the system locks and times out, it does not appear realistic to expect a ULS adjustment to the regulatory fee payment process in any reasonable timeframe. If that adjustment is not possible, EWA sees no way to apply the *de minimis* threshold exemption to "multi-year" licenses. Instead, as explained below, it recommends that the Commission eliminate both PLMR regulatory fee categories entirely.

As stated in the NPRM:

Regulatory fees are to "be derived by determining the full-time equivalent number of employees performing" these activities, "adjusted to take into account factors that are reasonably related to the benefits provided to the payer of the fee by the Commission's activities...."<sup>7</sup>

The NPRM asks whether there are other changes that would advance that objective of ensuring that regulatory fees are reasonably related to benefits received, and specifically queries whether there are "categories of regulatory fee payors that now have very little Commission oversight or regulation, apart from the application fee process."<sup>8</sup> The Alliance submits that PLMR regulatory fee payors, a category that excludes governmental entities seeking PLMR authorizations as they are exempt from any FCC fees, are just such a group of licensees.

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<sup>7</sup> NPRM at ¶ 2; citing 47 U.S.C. § 159(b)(1)(A).

<sup>8</sup> *Id.* at ¶ 33.

The NPRM estimates that the FCC will receive 16,000 PLMRS (Shared use) and 1,300 PLMRS (Exclusive use) applications in FY 2017.<sup>9</sup> The vast majority of applications for new authorizations will have undergone a pre-FCC frequency coordination process that generally ensures that the filings are complete and consistent with the FCC's frequency selection and other technical rules. While some applications require clarification or amendment, most are processed routinely and require no further regulatory oversight. The exceedingly small percentage of applications that require regulatory involvement beyond routine processing generally are either waiver requests, for which additional filing fees are assessed upfront, per application, based on the number of rules to be waived, or the extraordinarily rare contested PLMR application. Renewal applications, if anything, demand even less regulatory oversight as challenges to them are virtually non-existent.

The non-public safety PLMR user community requires scant regulatory oversight from a broader perspective as well. No new spectrum has been allocated for these entities for more than thirty (30) years.<sup>10</sup> In the past five years, EWA is aware of only five regulatory proceedings that are primarily PLMR-centric, and the interests of public safety users figure prominently in all but one.<sup>11</sup> As the FCC's wireless activities have focused increasingly on broadband matters, non-public safety PLMR licensees have not received any significant regulatory benefits that would

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<sup>9</sup> *Id.* at Appendix A.

<sup>10</sup> 900 MHz Reserve Band Allocations, GN Docket No. 84-1233, *Report and Order*, 2 FCC Rcd 1825 (1986).

<sup>11</sup> Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Options for 470-512 MHz (T-Band) Spectrum, PS Docket No. 13-42, *Public Notice*, 28 FCC Rcd 1130 (2013); In the Matter of Amendment of Sections 90.20(d)(34) and 90.265 of the Commission's Rules to Facilitate the Use of Vehicular Repeater Units, PS Docket No. 13-229, *Order and Notice of Proposed Rulemaking*, 28 FCC Rcd 13544 (2013); In the Matter of Creation of Interstitial 12.5 kHz Channels in the 800 MHz Band Between 809-817/854-862 MHz, WP Docket No. 15-32, *Notice of Proposed Rulemaking*, 30 FCC Rcd 1663 (2015); In the Matter of Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum, WP Docket No. 16-261, *Notice of Proposed Rulemaking*, 31 FCC Rcd 9431 (2015); Wireless Telecommunications Bureau Seeks Comment on Supplement to Enterprise Wireless Alliance and Pacific DataVision, Inc. Petition for Rulemaking Regarding Realignment of 900 MHz Spectrum, RM-11739, *Public Notice*, 30 FCC Rcd 4763 (2015). Only the second proceeding, PS Docket No. 13-229, has been finalized with a Commission decision.

justify the current regulatory fee structure. If a rational alternative could be found – and implemented in some reasonable timeframe – EWA likely would support it. If no alternative is devised or if it cannot be effectuated, then the Alliance recommends that both PLMRS fee categories be eliminated pursuant to Section 9(b)(3) of the Communications Act.

**B. CMRS Messaging (Paging) Services**

EWA agrees with the NPRM’s recommendation to eliminate this regulatory fee category entirely.<sup>12</sup> As explained in the NPRM, the \$168,000 expected to be collected in FY 2017 represents a very small fraction of the budget the FCC is required to self-fund.<sup>13</sup> According to the NPRM, the FCC collected \$4.25 million over the required regulatory fee target goal in FY 2016.<sup>14</sup> Assessing regulatory fees on the typically very small entrepreneurs whose licenses fall into this category likely would have no meaningful impact on the FCC’s ability to meet, or exceed, its target. The benefit to those entrepreneurs of being relieved of this regulatory burden outweighs the potential benefit of remitting this small amount to American taxpayers through the U.S. Treasury.

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<sup>12</sup> NPRM at ¶ 33.

<sup>13</sup> *Id.* at Appendix A.

<sup>14</sup> *Id.* at n. 1.

**C. Conclusion**

For the reasons discussed herein, EWA recommends that the FCC eliminate the three regulatory fee categories addressed above.

Respectfully submitted,

**ENTERPRISE WIRELESS ALLIANCE**

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June 22, 2017