

In the Matter of)
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Review of the Commission's Rules Governing the) WT Docket No. 17-200
896-901/935-940 MHz Band)
To: The Commission

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules, is pleased to submit its reply comments in this proceeding.¹ As one of the original proponents of a realignment of the Part 90 896-901/935-940 MHz band (“900 MHz Band”) to create a private broadband opportunity for industrial users more than four years ago,² EWA is pleased that much of the Business/Industrial/Land Transportation (“B/ILT”) community – 900 MHz incumbents, other users, vendors, and consultants – agree that a 900 MHz broadband option would be extremely valuable. The FCC will need to select the optimal process for achieving that objective based on the record in this proceeding, but there are a number of areas where broad consensus already has been achieved.

First, as recommended in the Alliance’s Comments, the Commission should confirm that the entities with a need for private broadband networks extends beyond the electric utility industry and beyond those categories of users defined as engaged in Critical Infrastructure Industry (“CII”) service pursuant to FCC Rule Section 90.7. For example, United Parcel Service, Inc., which stated

² See *Wireless Telecommunications Bureau Seeks Comment on Enterprise Wireless Alliance and Pacific DataVision, Inc. (now Anterix) Petition for Rulemaking Regarding Realignment of 900 MHz Spectrum*, RM-11738, Public Notice, 29 FCC Rcd 14424 (WTB MD 2014) (“EWA/PDV Petition”).

that it operates by most measures the tenth largest airline in the world and supports a 900 MHz broadband option, is not classified as CII. This exclusion is not because the company falls outside the passenger airline definition. Rather, airlines as a category are not classified as CII, while not-for-profit auto emergency services are. This delineation is neither sensible nor in the public interest. As stated in its Comments, EWA urges the FCC to use the Department of Homeland Security (“DHS”) CII definition for purposes of defining the entities eligible to operate in the proposed 900 MHz broadband segment. EWA also supports the recommendation of several parties that post-realignment only B/ILT entities should be eligible to apply for channels in the narrowband segments. Such entities should be permitted to convert their licenses to commercial SMR status after a suitable period, perhaps one year after certifying construction, although the Alliance does not anticipate that many will elect to do so or will assign their channels to a commercial provider for that purpose.

Second, virtually all commenters recommended that the rules provide for the initial clearing of a 3/3 megahertz broadband allocation, not the entire 5/5 megahertz band. There may be counties where there are so few incumbents that a 5/5 megahertz channel could be created, and the rules should provide for that possibility, but such authorizations should be considered on a case-by-case basis.³

Third, the record supports beginning the transition process on a voluntary basis. As recommended in the EWA/PDV Petition, there should be a period of time during which incumbents in the 900 MHz broadband segment are free to negotiate for whatever consideration from or arrangement with the prospective broadband licensee best satisfies the incumbent’s

³ By definition, a county that has few incumbents on B/ILT channels, and in some cases also has unlicensed Specialized Mobile Radio (“SMR”) geographic channels, is one where the FCC holds that unlicensed spectrum in its inventory. EWA urges the FCC to allow the 900 MHz spectrum it holds to be placed into productive use in all counties, irrespective of the level of incumbency, either as part of the 3/3 megahertz broadband segment or as spectrum to which incumbents can be moved.

interests.⁴ But, as many parties and the NPRM itself recognize, voluntary negotiations must be succeeded by a backstop mandatory process at some reasonable point. That is the only way to avoid the otherwise inevitable hold-out situation with its ability to thwart the Commission's conclusion regarding the optimal use of this spectrum. EWA agrees with the proposal in the NPRM to exclude from any mandatory relocation arrangement systems defined by the FCC as particularly complex because of their large number of inter-related sites. By contrast, where it is clear that comparable facilities can be provided with minimal, manageable disruption and at the expense of the prospective broadband licensee, incumbents should not be permitted to extract extraordinary consideration for their cooperation or prevent realignment by just saying no.

Fourth, while incumbents should be free to bargain for more than comparable facilities during the voluntary exchange process,⁵ any subsequent mandatory realignment, whether pursuant to the NPRM's proposed success threshold or an overlay auction,⁶ still must include the right to comparable facilities and the payment of all associated costs. That is the minimum to which all incumbents in the broadband segment must be entitled. The rules also must provide appropriate criteria for addressing and resolving any interference that might arise between narrowband and broadband systems. The Alliance believes that the proposed rules it recommended jointly with PDV in 2015 established technical standards that would avoid such instances, as well as provisions to address situations where interference nonetheless is alleged.⁷ The technical rules proposed in

⁴ The NPRM proposes a strict 1:1 channel exchange standard such that incumbents cannot receive more 900 MHz channels than they currently hold. This limitation is designed to limit the amount of spectrum contributed to this process by the FCC. NPRM at ¶ 36. EWA wonders why inventoried spectrum is viewed as other than spectrum already allocated and assigned to the Part 90 Private Land Mobile Radio ("PLMR") user community for private systems. Allowing these entities access to additional channels in a transition exchange rather than going through the traditional frequency coordination and assignment process would serve the public interest by putting this spectrum into productive use, subject to FCC build-out requirements.

⁵ In EWA's opinion, that should include a greater than 1:1 channel exchange for the reason discussed in n. 4.

⁶ EWA explained in its Comments why it does not believe that an overlay auction is the right vehicle for realigning the 900 MHz Band.

⁷ See *Wireless Telecommunications Bureau Seeks Comment on Supplement to Enterprise Wireless Alliance and Pacific DataVision, Inc. Petition for Rulemaking Regarding Realignment of 900 MHz Spectrum*, Public Notice, 30 FCC Red 4763 (WTB MD 2015).

the NPRM track those recommended for the most part and should be extremely effective in preventing instances of interference. Nonetheless, EWA encourages the FCC to include procedures like those recommended by EWA/PDV in their proposed Rule Section 90.1421, Interference Protection Rights, in addition to the proposed requirement in the NPRM that narrowband systems in the broadband segment remain entitled to standard Rule Section 90.621 co-channel protection when outside a county in which broadband has been implemented.

Finally, EWA wishes to address Comments submitted by JVCKENWOOD USA Corporation (“JVCKENWOOD”) regarding EWA’s position on the current 900 MHz freeze and, more generally, that company’s description of how freezes have impacted utilization of the 900 MHz Band. A review of the history of this band may be helpful.

As a general matter, EWA accepts spectrum freezes of limited duration as a necessary evil once the Commission has recommended wholesale changes in a band such as 900 MHz where licenses are available on a first-come, first-served basis at a *de minimis* cost. Allowing continued open entry is an invitation to speculation by parties hoping to be paid off to relinquish licenses acquired for no legitimate purpose.

JVCKENWOOD is correct that the FCC has frozen the 900 MHz band twice, first in 2004 and again in 2018. The Alliance disagrees however that the initial freeze denied the band a “reasonable chance to mature as a narrowband allocation.”⁸ At the time of that freeze, the 900 MHz band had been available for B/ILT site-based licenses for almost 20 years. The spectrum landscape already looked very much as it does today, with the great majority of channels assigned in major markets and little or no deployment outside those areas. Moreover, the 2004 freeze was structured to allow incumbents substantial flexibility in growing their systems. They were

⁸ JVCKENWOOD Comments at 5.

permitted to add and relocate both channels and sites as long as the proposed changes were part of an existing system. Many licensees availed themselves of those opportunities.

Thus, the band was not “effectively frozen to applicants” generally.⁹ The freeze did prevent entities from establishing new systems outside their current market areas except by acquiring an existing license – that they then could expand with additional channels and sites if spectrum was available. Further, once the freeze was lifted, the requirement to obtain consent from Sprint/Nextel to establish new systems or make other changes, while unnecessary in EWA’s opinion, did not inhibit additional use of the band. Securing consent was simply a matter of requesting it. To the best of EWA’s knowledge, consent was never denied, and a number of B/ILT entities acquired 900 MHz spectrum with that concurrence.

JVCKENWOOD’s characterization of EWA’s position on freezing the 900 MHz band in anticipation of the proposed broadband realignment is troublesome, both with regard to the timing and scope of a freeze. The EWA/PDV Petition did “suggest at the same time that there was a need to re-freeze the band for new applications to prevent exploitation...by means of opportunistic, speculative licensing.”¹⁰ Specifically, it stated the following:

...the Petitioners urge the FCC **to be prepared to reinstitute a freeze on the licensing of 900 MHz Band B/ILT frequencies should it observe an unusual increase in applications for this spectrum. In particular, the Commission should be alert to applications from parties whose eligibility for the channels requested is questionable.** EWA, and it believes other FCC-certified Frequency Advisory Committees, would be pleased to assist the Commission in this effort to prevent purely speculative applicants with no legitimate basis for eligibility from acquiring 900 MHz spectrum in the hope that they will be paid to relinquish it. While no licensing freeze should be adopted without a compelling public interest justification, the FCC is familiar with the unfortunate fact that a proposed band realignment sometimes results in an influx of such applications to the detriment of qualified users with a legitimate need for the spectrum in question, as well as to the realignment itself.¹¹

⁹ *Id.*

¹⁰ *Id.* at 6.

¹¹ EWA/PDV Petition at iii (emphasis added).

EWA assumes that JVCKENWOOD shares the Alliance’s concern that speculative applications, ones that do not present a legitimate need for spectrum or an intention to purchase equipment and construct systems, nonetheless might be granted.

Even then, however, EWA did not recommend adoption of a freeze at that time, but stated specifically that no freeze should be implemented unless and until the FCC had determined to propose a band realignment:

...the Petitioners recommend that the FCC adopt a freeze on the licensing of 900 MHz Band B/ILT frequencies **no later than such time as it adopts a Notice of Proposed Rulemaking** in which it proposes specific modifications to the 900 MHz Band rules consistent with the instant proposal.¹²

It went on to urge a limited freeze, consistent with the earlier FCC action:

...the Petitioners recommend that the FCC first **reinstitute the previous, relatively incumbent-friendly freeze on 900 MHz B/ILT spectrum**. They do not make this recommendation lightly as it unquestionably will impact the use of these frequencies by at least some members of AAR, API, EWA, and UTC. However, the Petitioners are persuaded that the impact will be tolerable and outweighed by the benefit of protecting the spectrum from speculative parties. **That freeze recognized the interests of incumbents that already had invested in operational systems. It permitted not only the assignment of licenses, but also the “modification of existing facilities.” Thus, licensees that needed to relocate stations or add frequencies were permitted to do so. This allowed them to respond to normal marketplace requirements without being inhibited by the freeze.**¹³

There is no support for the argument that this 2014 recommendation discouraged incumbents or new entrants from filing applications for available 900 MHz channels during the almost four years between that filing and the adoption of the 2018 freeze.

The suggestion that EWA thereafter “advocated aggressively” for a freeze that would have a “chilling effect” on the 900 MHz Band is not accurate.¹⁴ Indeed, as recognized by Southern Company Services, Inc.¹⁵ and others, after the FCC adopted what EWA considered an overly-

¹² *Id.* at 20 (emphasis added).

¹³ *Id.* at 21 (emphasis added) (citations omitted).

¹⁴ JVCKENWOOD Comments at 6

¹⁵ Southern Company Services, Inc. Comments at 7.

restrictive freeze in 2018, the Alliance supported the Utilities Technology Council request that the Wireless Telecommunications Bureau reconsider aspects of that decision.¹⁶ The Alliance recommended that the freeze be modified to allow existing system to relocate and/or add both sites and frequencies, even if doing so increased the spectral landscape.¹⁷ Its position on this issue has not changed.

A realignment of the 900 MHz Band has been under consideration by the FCC for almost four years. The record is extensive. EWA urges the Commission to proceed expeditiously to adopt rules that allow for both broadband and narrowband systems in the 900 MHz Band, consistent with the recommendations herein.

Respectfully submitted,

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¹⁶ See EWA Reply to Petition for Clarification and/or Reconsideration, WT Docket No. 17-200 (filed Oct. 25, 2018).

¹⁷ *Id.* at 2.