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

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
	)	
Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies	)	RM-11719
	)	
Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz	)	RM-11722

REPLY COMMENTS OF THE WIRELESS INFRASTRUCTURE ASSOCIATION

The Wireless Infrastructure Association ("WIA")[1] respectfully submits these reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") *Notice of Proposed Rulemaking* ("*NPRM*") in the above-captioned proceeding.[2] As a certified nationwide Part 90 frequency coordinator since 1986, WIA supports efforts to improve access to 800 MHz Expansion Band ("EB") and Guard Band ("GB") channels through open access policies that will maximize use of this spectrum for the benefit of the public. Accordingly, the

[1] WIA, formerly PCIA – The Wireless Infrastructure Association, is the principal organization representing companies that build, design, own and manage telecommunications facilities throughout the world. WIA's over 230 members include carriers, infrastructure providers, and professional services firms.

[2] *Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum et al.*, Notice of Proposed Rulemaking, 31 FCC Rcd 9431 (2016) ("*NPRM*").

Commission should decline to adopt proposals to give incumbent operators priority access to available EB or GB channels, which could bar new entrants and deter innovation.

DISCUSSION

WIA strongly supports the Commission's objective of "bringing about more efficient use of the PLMR frequencies in order to alleviate congestion in . . . crowded spectrum."[3] WIA likewise applauds the Commission's ongoing efforts to promote policies that encourage new innovations, investments, and business models in the 800 MHz band. These objectives require a regulatory paradigm that fosters open and fair competition among providers who are ready, willing, and able to put the 800 MHz spectrum to its most efficient and innovative use.

WIA disagrees, however, with the Land Mobile Communications Council's ("LMCC") proposal to create a six-month window during which the Commission would permit incumbent 800 MHz licensees in a market to acquire EB and GB channels to expand existing systems, before the Commission accepts applications from new entrants.[4] Providing open access to all eligible and viable entities has always been a successful path to product and service innovations.[5] There is no reason for the Commission to stray from that principle here.[6] While WIA appreciates the Commission's attempt to find an appropriate middle ground on this issue, competition is disserved by awarding spectrum in a manner that favors one group over another.

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[3] *Id.* at 9432.

[4] *Id.* at 9441; *see also* Letter from D. Zachary Champ, PCIA – The Wireless Infrastructure Association, RM-11719 and RM-11755 (Jan. 14, 2016).

[5] *See also* Comments of M2M Spectrum Networks, LLC, WP Docket No. 16-261, at 4-5 (Nov. 22, 2016) ("M2M Comments").

[6] *See NPRM*, 31 FCC Rcd at 9441 (stating that "commenters are split" over LMCC's proposal, and that most commenters oppose it).

The Commission appears to have recognized as much by tentatively concluding that LMCC's proposal is not appropriate with respect to EB Specialized Mobile Radio ("SMR") channels.[7] The Commission observed that "SMR licensees compete for customers in the commercial wireless marketplace," that "both incumbents and new licensees have similar economic interests to utilize the spectrum in a timely manner," and, therefore, incumbents should not be given priority over new entrants for EB SMR channels.[8] WIA agrees. Indeed, most prospective applicants for SMR channels in regions where EB/GB spectrum has not yet been made available oppose giving priority to incumbent operators, which would effectively bar new entrants, and particularly small businesses, in areas of high spectrum demand.[9] As the Commission has long recognized, it should not be in a position of picking winners and losers.[10]

Conversely, it appears that the Commission has tentatively concluded that LMCC's proposal to provide an incumbent preference for access to EB Business/Industrial/Land Transportation ("B/ILT") Pool channels should be adopted. The rationale for this is not entirely clear. For example, the Commission notes that SMR licensees compete for commercial wireless customers but B/ILT licensees do not.[11] As LMCC itself points out, however, "[a]ll businesses

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[7] *Id.* at 9442.

[8] *Id.*

[9] *See, e.g.*, Comments of Absalom Gonzales Inc., WP Docket No. 16-261 (Oct. 17, 2016); Comments of Sanford Health, WP Docket No. 16-261 (Oct. 10, 2016); Comments of ubiquia LLC, WP Docket No. 16-261 (Oct. 12, 2016); Comments of At Home Health Equipment, WP Docket No. 16-216 (Oct. 18, 2016).

[10] *See, e.g.*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, Memorandum Opinion and Order and Notice of Proposed Rulemaking, 13 FCC Rcd 24011, 24014 (1998) ("The role of the Commission is not to pick winners or losers. . . but rather to ensure that the marketplace is conducive to investment, innovation, and meeting the needs of consumers.").

[11] *NPRM*, 31 FCC Rcd at 9442.

compete for customers in their respective marketplaces."[12] Hence, regardless of whether they are incumbents or new entrants, B/ILT licensees have the same economic incentives as SMR licensees to utilize spectrum as quickly and efficiently as possible. And, new entrants are just as prepared (if not more so) to introduce innovative products and services to the marketplace.[13] Assertions to the contrary are speculative at best.[14]

At a minimum, the Commission should not give incumbent 800 MHz licensees the benefit of a six-month window within which to obtain EB or GB channels for expansion purposes. LMCC's proposal has been a matter of record for well over two years, and thus incumbent 800 MHz licensees have long been on notice that the opportunity to obtain EB or GB channels may be on the horizon. If incumbents are not prepared to take advantage of that opportunity, it follows that they have no urgent need for EB or GB channels. Indeed, incumbents refrained from applying for new spectrum during the previous 800 MHz EB/GB release. A

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[12] Comments of the Land Mobile Communications Council, WP Docket No. 16-261, at 10 (Nov. 22, 2016) ("LMCC Comments").

[13] *See, e.g.*, Comments of ABN Health, WP Docket No. 16-261 (Oct. 13, 2016); Comments of Maetrics, LLC, WP Docket No. 16-261 (Oct. 11, 2016); Comments of Ice Realty LLC, WP Docket No. 16-261 (Oct. 11, 2016).

[14] *See, e.g.*, LMCC Comments at 9. The Commission states that "[i]ncumbent 800 MHz licensees already have deployed facilities and demonstrated a commitment to utilizing the band in a given market and are unlikely to acquire spectrum for other than operational purposes and can be expected to put additional channels into service promptly to meet existing operational needs." *NPRM*, 31 FCC Rcd 9441-2. Others agree that the Commission's rationale is flawed. *See* M2M Comments at 7 (stating that the Commission's assertion is "contradicted by the evidence of low and inefficient use – or total disuse – of the spectrum in question by the incumbents who would gain the preference. These inefficiencies are themselves partly due to the antiquated systems that some of them have deployed. . . The exclusive window would send the wrong signal by encouraging continued use of such inefficient systems, not the opposite.").

thirty-day, "first come, first served" window thus should give truly interested incumbents sufficient time and incentive to file any required applications.[15]

In addition, the Commission asks whether EB channels should be made available to Public Safety licensees that elect to remain in the Expansion Band.[16] While WIA recognizes the need to preserve and enhance public safety services, the FCC should recognize that the public safety community has had exclusive access to existing and newly available interleaved channels in a number of the largest markets for some time. "Critical infrastructure eligibles" have had similar access, albeit over a shorter period.[17] There are enterprises that, although not public safety or critical infrastructure providers, have a valid need for the type of flexibility afforded by 800 MHz spectrum, and they should be given a full and fair opportunity to obtain it.[18]

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[15] The Commission asks whether a six-month window should be afforded to public safety licensees that elect to remain in the Expansion Band. *Id.* Here again, WIA believes that a shorter, "first come, first served" window is more likely to prompt immediate action by those who truly need EB channels. The challenges, however, of financing public safety networks may warrant a window longer than what WIA has proposed here.

[16] *Id.* at 9441.

[17] *See Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969,14973 n. 11 (2004) ("Examples of CII licensees include 800 MHz systems that provide private internal radio services used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, such as the American Automobile Association (AAA)").

[18] It is ironic that one of the primary supporters of the LMCC proposal, Enterprise Wireless Alliance ("EWA"), previously has questioned whether spectrum set-asides serve the public interest. *See* M2M Comments at 8. Specifically, EWA recently suggested that "it may be an appropriate time for the FCC to examine the extent to which public safety entities have taken advantage of their three-year exclusive right to Sprint-vacated spectrum. It should re-evaluate whether a three-year spectrum reservation still is justified in light of technology advances, the need for spectrum efficiencies, and the spectrum shortages that exist for other deserving classes of private land mobile licensees." Comments of Enterprise Wireless Alliance, FCC File No. 0007352620, at 3 (Oct. 24, 2016). These issues, *i.e.*, technological obsolescence, spectrum efficiencies and the demand for spectrum by others, should also inform the Commission's judgment as to whether the spectrum reservation proposed by LMCC will serve the public interest.

CONCLUSION

The Commission should remain charted on its pro-competition course and resist any attempt to establish a preferential licensing scheme for the benefit of 800 MHz incumbents. LMCC's proposed set-aside would hamper the Commission's efforts to promote efficiency, innovation, and competition at a time when demand for spectrum has never been greater. The Commission's spectrum policy (and the success thereof) dictates that the Commission make the EB and GB channels equally available to new entrants and incumbents alike.

Respectfully submitted,

/s/ D. Zachary Champ
D. Zachary Champ
Director, Government Affairs

D. Van Fleet Bloys
Senior Government Affairs Counsel

Sade Oshinubi
Government Affairs Counsel

Wireless Infrastructure Association
500 Montgomery Street, Suite 500
Alexandria, VA 22314
(703) 739-0300

December 22, 2016