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

To: The Commission

REPLY COMMENTS OF MOBILE RELAY ASSOCIATES, LLC

Mobile Relay Associates, LLC ("MRA"), by its attorneys and pursuant to Section 1.419 of the Commission's Rules, hereby submits its Reply Comments in response to the *Notice of Proposed Rulemaking*, FCC 16-110, released August 18, 2016 ("*NPRM*"), and published in the *Federal Register* on September 23, 2016. *See* 81 *Fed. Reg.* 65597. The *NPRM* represents an effort by the Commission to relieve the continuing congestion in the Part 90 Private Mobile Radio Services ("PMRS"), and to carry out the Commission's statutory mandate to make efficient use of the nation's airwaves.

MRA continues to support incumbent priority for a six-month window at 800 MHz, the extension of conditional licensing to the bands above 470 MHz, and the editorial correction of Section 90.307 of the Rules to reflect the move from analog broadcast television to digital broadcast television, all as discussed in MRA's Comments filed previously herein. However, these Reply Comments are limited to a response to three commenters, Enterprise Wireless

Alliance ("EWA"), the Land Mobile Communications Council ("LMCC"), and the State of Florida ("Florida"). Specifically, MRA addresses the EWA suggestion regarding third-party verification of construction, and the LMCC and Florida positions regarding whether conditional licensing should be secondary and whether it should continue for longer than six months if the application cannot be processed within six months.

MRA and Its Interest in This Proceeding

As discussed at greater length in its Comments, MRA is one of the longest-established and largest privately-held PMRS licensees in the United States, serving tens of thousands of Part 90 eligibles across the country. Relevant for these Reply Comments, MRA not only manages and/or owns a large number of its base station locations, but MRA does its base station construction using in-house personnel.

DISCUSSION

I. Conditional Permits Should Be Secondary and Limited to Six Months

In its Comments herein, MRA provided detail respecting a large number of instances where the conditional licensing approach in the bands below 470 MHz had been abused, had knocked incumbent licensees off the air for over a year at a time, and how, due to its severe and increasing budget constraints, the Enforcement Bureau has proved completely inadequate to redress the problem. MRA provided call signs, file numbers and references to decisions.

However, in the LMCC Comments, p.7, LMCC says that "it is not persuaded that also imposing a secondary condition on those authorizations is necessary." LMCC blithely suggests the Enforcement Bureau can handle the "rare" cases of abuse, without citing to any basis, either for its claim of rarity, or its suggestion that the Enforcement Bureau is adequate to provide relief for injured incumbent licensees. Florida says, Florida Comments, p.2, that it opposes the MRA

position concerning secondary status for Public Safety conditional licensees. Florida points out that as to 800 MHz Public Safety applications, they must first be coordinated by the appropriate Regional Planning Committee ("RPC"), and therefore are less likely than other Part 90 applications to be defectively coordinated. Although the Florida Comments are ambiguous, Florida appears to be against secondary status for *all* Part 90 applications, not just those of Public Safety 800 MHz applicants who have been subjected to the RPC process pre-filing.[1]

LMCC (and Florida, if it really is insisting upon primary status for *all* Part 90 applicants, not just Public Safety at 800 MHz) is mistaken. Instances of defective coordination or fraudulent applications (*e.g.*, filing for shared spectrum but then installing equipment incapable of monitoring and which transmits 24/7 by design pursuant to conditional license) are not rare. The Enforcement Bureau is inadequate to protect incumbent licensees from being *de facto* revoked for over a year at a time.

Importantly, the Enforcement Bureau can only, after a lengthy proceeding subject to multiple levels of appeal and reconsideration, impose a monetary penalty. The Enforcement Bureau has no power to order a "primary" licensee to cease operating in accordance with its "conditional" license, so the Enforcement Bureau has no power to provide an injured incumbent with immediate relief. And long-term, the Enforcement Bureau has no mechanism to remedy the damage to the incumbent that is knocked off the air by an improper conditional licensee; the Bureau has no power to award damages to an injured incumbent that had to cease operating due to massive harmful interference.

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[1] Both LMCC and Florida supported expansion of the concept of conditional licensing, including (in the case of LMCC) to various spectrum bands excluded by the *NPRM*. MRA supports LMCC and Florida on that question; there is no rational basis for differentiating between the spectrum above or below 470 MHz for purposes of conditional licensing.

As MRA demonstrated with reference to specific file numbers and call signs, MRA Comments, pp. 10-12, severe problems respecting conditional licensing are not rare, and not solvable by relying upon the Enforcement Bureau. That is especially so with respect to non-Public Safety Part 90, as the Enforcement Bureau now must utilize its limited resources solely to protect incumbent Public Safety licensees. Because the Enforcement Bureau lacks adequate resources, non-Public Safety licensees must fend for themselves.[2]

II. There Is No Downside to Conditional Licensees Being Secondary

As MRA explained in its Comments, pp. 12-13, there is no risk or downside whatsoever to classifying conditional permits as secondary or limiting their duration to six months. As the Commission notes, Part 90 applications are subject to pre-filing frequency coordination. Where, as in most cases, the coordination has no mistakes, *ipso facto*, there will be no harmful interference to incumbents, and the entity operating with a "secondary" authorization pursuant to Section 90.159 will operate exactly the same as it would if it were "primary", because no incumbent will complain. Since there would be no constraints upon the entity operating pursuant to Section 90.159, there is no detriment to the public interest.

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[2] A recent example is the case of Acumen Communications, call sign WQJF635, operating on 151.58 MHz in Los Angeles, even though that channel was not licensed to WQJF635. (MRA was and is licensed for the spectrally-overlapping channel 151.5875 MHz under call sign WQGW503, for a base station plus 500 mobile units. MRA's WQGW503 facility had been knocked off the air by Acumen.)

Although MRA had been complaining in writing for many months to the Enforcement Bureau about Acumen knocking WQGW503 off the air, the Bureau took no action whatsoever against Acumen until Acumen's operation began interfering with the US Coast Guard in addition to MRA. *See Acumen Communications*, 30 FCC Rcd 6472 (Enf. Bur., 2015), a decision where the monetary penalty was based solely upon the harm to the Coast Guard, and where the harm to MRA was not even mentioned, notwithstanding MRA's written complaints on the subject.

This example is *in addition* to the numerous examples cited by MRA in its Comments herein.

Conversely, where, as is sometimes the case, there is a defective frequency coordination or a fraudulent application (ostensibly seeking to share the channel with the incumbent, but with non-monitoring equipment which transmits 24/7 installed instead), under the current rule the incumbent licensee has its incumbent license *de facto* revoked – without any notice or opportunity to be heard!

Balancing the pros and cons, we have: without conditional licensing being secondary, incumbent licensees have been and will continue to be knocked completely off the air for a year or longer; vs. secondary status has no adverse effect on conditional licensees (since when coordination is proper and the licensee operates as set forth in that coordination, secondary licensing results in the applicant operating the same as if it were primary). Patently, mandating secondary status for conditional licensees best serves the public interest.

Significantly, neither LMCC nor Florida disputes the absence of harm to conditional licensees if they are secondary to incumbents until granted. Although "secondary", conditional licensees still receive the same protection against later-coordinated applications as would any incumbent licensee. The only difference between a "secondary" conditional licensee and an incumbent licensee is that in the event of harmful interference, it is the conditional licensee which must adjust (or shut down if that is the only way to eliminate the harmful interference); requiring the conditional licensee to be secondary in that circumstance is the minimum basic fairness that an incumbent licensee deserves.

For the same reasons, it makes no sense to allow conditional licensing where there is a protest/informal objection. Also, if the coordination is proper, the application almost certainly will be processed and granted within six months from filing. If the Commission is unable, after the passage of six months, to determine that an application is grantable, that is a loud and clear

signal that something is very wrong and that conditional licensing is inappropriate in that instance.

In summary, the Commission should expand conditional licensing to the bands above 470 MHz, but should provide that conditional licensing (both below and above 470 MHz) is: a) secondary to incumbent operations; b) rescinded if there is a protest/informal objection from an incumbent licensee alleging harmful interference or defective coordination; and c) limited to six months' duration, with the applicant to shut down if its application cannot be processed by the end of six months.

III. Third-Party Verification Should Not Be Required to Certify Construction, Where There Is No Third-Party Site Lessor or Installer

In its Comments, EWA discusses an apparent problem with certain entities that have contracted (usually with application mills) for "turnkey" construction and management making false certification of construction of Part 90 facilities. As part of EWA's proposed solution to this issue, the EWA Comments, p.7, say (emphasis added):

> EWA recommends that licensees be required to file a construction notification with the FCC six months after license grant that includes an affidavit, sworn under penalty of perjury, from the site owner or manager verifying that the system has been constructed at the site in substantial conformance with the license. ***If the facility is constructed at the licensee's own facility, the verification should come from the third party that installed the system.***

As noted, MRA controls many of its base station locations, and uses in-house personnel to install new base stations. There is no way MRA could ever obtain a "third party" verification, as it never employs a third party. MRA therefore opposes the EWA proposal, to the limited extent of requiring a third-party verification where the licensee itself is the site owner/manager and also the installer. In cases where, as with MRA, the licensee employs no third parties, either

as site lessor or installer, the licensee should be able to self-certify (under penalty of perjury, as EWA suggests).

CONCLUSION

Conditional licenses which exist pursuant to Section 90.159 of the Rules must be secondary to incumbent licensee operations during the pendency of the new entrant's application, and must be limited to six months' duration. Defective frequency coordinations and fraudulent construction of non-monitoring equipment under conditional license authority on a shared channel take place with regularity; MRA alone has been victimized over a dozen times. And once such a defective coordination occurs, it takes the Commission *years* to correct the situation. (Section 90.159 should include all Part 90 spectrum above 470 MHz.)

When a defectively-coordinated applicant launches, it knocks the incumbent licensee off the air, the same as if the Commission had revoked the incumbent's license – except that the incumbent has been *de facto* revoked with no notice, no opportunity to be heard first, and no reason for the *de facto* revocation.

Conversely, there is no downside whatsoever to having conditional licensees in secondary status. Where the frequency coordination was not defective, there will be no harmful interference to incumbent licensees, and the conditional licensee can operate freely under the parameters of its pending application, exactly the same as if it were "primary."

For the same reason, conditional licensing must be limited to six months' duration, and if the application cannot be granted within six months, the applicant must shut down and await the processing of its application. Because if an application is not grantable, it means there is something seriously out of kilter, and conditional licensing is inappropriate.

Finally, if the Commission decides to follow the EWA suggestion of having a six-month construction period instead of twelve months, and to require a verification from either the licensee's site lessor or its equipment installer, the Commission should not require such verification to be from a third party where, as when MRA constructs, there is no third party. For licensees such as MRA that control their own base station locations and install their equipment using in-house personnel, self-verification should suffice.

Respectfully submitted,
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