

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

In the Matter of	)	
	)	WP Docket No. 07-100
Amendment of Part 90 of the Commission’s Rules	)	FCC 20-137
	)	

**PETITION FOR STAY**

1. The Public Safety Technology Alliance (“PSSA” or “Petitioner”), through counsel, hereby submits this Request for Stay (“Stay Request”) of the Commission’s 6<sup>th</sup> Report and Order in the above captioned proceeding (“Order”) to amend Part 90 of the Commission’s Rules regarding use of the 4.9 GHz spectrum band, as released on October 2, 2020, and published in the Federal Register on November 30, 2020.<sup>1</sup>
2. Petitioner is concurrently filing a Petition for Reconsideration (“Petition”) of the Order and hereby incorporates by reference the arguments made therein in this Stay Request
3. While this Petition is pending, it is critical that the Commission stay implementation of the administrative rule changes in the Order in order to avoid irreparable harm to the members of PSSA and current and prospective public safety users of the 4.9 GHz Band<sup>2</sup>. Such a stay should remain in effect until final resolution of the Petition and the time is passed until appeals involving the Petition and Order are no longer subject to continuing or further appeal, whether administrative or judicial, or the time has passed for rescission on the Commission’s own motion following expiration of all opportunities for further appeal.
4. Grant of such a stay would serve the public interest in affording administrative certainty and administrative efficiency while avoiding the irreparable harm that would result if the rule changes are permitted to go into effect.

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<sup>1</sup> 85 FR 230

<sup>2</sup> 4940-4990 MHz spectrum band (“4.9 GHz Band”)

5. To obtain a stay, a movant must show that: (1) it is likely to prevail on the merits; (2) it will suffer irreparable harm absent a stay; (3) other interested parties will not be substantially harmed; and (4) the public interest favors granting a stay. All four factors are met here.

6. As noted in the Petition, Petitioner feels strongly that there has been a prima facie violation of the APA in the Commission's failure to disclose and vet its ultimate rule change sufficient to enable the required public comment under the APA, which according to the legislative history of the APA requires greater public coordination in matters pertaining to protection of the public, which is the case in the instant matter. Similarly, the Commission failed to fully and adequately address the "significant comments" in the record, including those set forth by Petitioner, also required under the APA. Both deficiencies we believe would constitute reversible error.

7. Clearly if the Order is permitted to go into effect prior to a final and full determination about the rules, procedures and safeguards necessary to appropriately manage the 4.9 GHz Band and protect public safety, irreparable harm will be suffered by the public safety community, which is currently significantly reliant on the 4.9 GHz Band for mission critical operations in a number of key parts of the nation. Once the spectrum is permitted to be used for commercial and other purposes without ensuring fully prioritized and interoperable access by public safety, and/or the states are permitted to lease the spectrum, and, in particular, if any non-public safety entities begin to use such spectrum, the damage will already have been done, and public safety will effectively lose its ability to fully rely on this spectrum on a mission critical basis.<sup>3</sup> As noted in the Petition, there are no guarantees

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<sup>3</sup> While the effectiveness of § 90.1217 is currently delayed pending approval by the Office of Management and Budget, a stay of such section would nonetheless be appropriate as such approval could be provided at any time, creating potential for irreparable harm.

that any state will reserve any use of the spectrum for public safety, ensure priority use by public safety, or take necessary steps to avoid potential interference. In addition, if any of the foregoing actions are taken by a given state, there is no requirement that any other state enact such requirements, effectively ensuring a disconnected patchwork of regulations throughout the United States – a situation that cannot be relied upon by public safety for its mission critical communications needs, particularly at or across borders or in the case of multi-jurisdictional emergencies. Once the spectrum is effectively licensed to the states and ultimately leased to third parties, it will be nearly impossible to claw it back for reallocation.

8. The current regulatory regime has been in place for 18 years, and the current proceeding for more than two years. Any delays in implementing the Commission’s new rules will have no adverse impact on any third party. Given the Commission had failed to communicate its rule on a proposed basis before adopting the Order, no state, commercial entity, or other third party had the opportunity to take any steps in preparation of the decision or to have incurred any form of monetary or other harm if this proceeding were to continue in order to get to a more equitable and effective result.

9. Finally, there can be no doubt that when dealing with matters of public safety, ensuring a complete record and review of all reasonable positions in order to achieve the best possible result and to ensure administrative certainty is in the public interest. Indeed, if the Order were to go into effect, as noted above, there could be an immediate and material impact on public safety communications, and thus the effectiveness of the services provided to the communities they serve. This is particularly the case in light of the record-setting wildfire and hurricane seasons we have seen this year, as well as the social unrest as a result of the recent election cycle and various cultural and social protests and initiatives. Now is simply not the time to strip public safety of a critical resource and tool to help keep our

country safe.

10. For the all the reasons stated, the Commission should grant the stay requested for the reasons listed, as it would serve the public interest.

Respectfully submitted,

PUBLIC SAFETY SPECTRUM ALLIANCE

/s/ Chief Jeffrey D. Johnson (Ret.)

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December 29, 2020