

**Before the
Federal Communications Commission
Washington, DC 20554**

In the Matter of:)
)
Amendment of Part 90 of the Commission's) WP Docket No. 07-100
Rules (4.9 GHz))
)

**PETITION FOR RECONSIDERATION BY
THE NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS COUNCIL**

The National Public Safety Telecommunications Council (NPSTC) submits this Petition for Reconsideration of decisions adopted in the Sixth Report and Order in the above captioned proceeding regarding the 4.9 GHz band.¹

¹ *Sixth Report and Order and Seventh Further Notice of Proposed Rulemaking*, WP Docket No. 07-100, released October 2, 2020.

I. The National Public Safety Telecommunications Council

The National Public Safety Telecommunications Council is a federation of public safety organizations whose mission is to improve public safety communications and interoperability through collaborative leadership. NPSTC pursues the role of being a resource and providing advocacy for public safety organizations in the United States on matters relating to public safety telecommunications. NPSTC has promoted implementation of the Public Safety Wireless Advisory Committee (PSWAC) and the 700 MHz Public Safety National Coordination Committee (NCC) recommendations. NPSTC explores technologies and public policy involving public safety telecommunications, analyzes the ramifications of particular issues and submits comments to governmental bodies with the objective of furthering public safety telecommunications worldwide. NPSTC serves as a standing forum for the exchange of ideas and information for effective public safety telecommunications.

The following 16 organizations serve on NPSTC's Governing Board:²

- American Association of State Highway and Transportation Officials
- American Radio Relay League
- Association of Fish and Wildlife Agencies
- Association of Public-Safety Communications Officials-International
- Forestry Conservation Communications Association
- International Association of Chiefs of Police
- International Association of Emergency Managers
- International Association of Fire Chiefs
- International Municipal Signal Association
- National Association of State Chief Information Officers
- National Association of State Emergency Medical Services Officials
- National Association of State Foresters
- National Association of State Technology Directors
- National Council of Statewide Interoperability Coordinators
- National Emergency Number Association
- National Sheriffs' Association

² This petition represents the views of the NPSTC Governing Board member organizations.

Several federal agencies are liaison members of NPSTC. These include the Department of Homeland Security (the Federal Emergency Management Agency, the Emergency Communications Division, the Office for Interoperability and Compatibility, and the SAFECOM Program); Department of Commerce (National Telecommunications and Information Administration); Department of the Interior; and the Department of Justice (National Institute of Justice, Communications Technology Program). Also, Public Safety Europe is a liaison member. NPSTC has a relationship with associate member, the Utilities Technology Council (UTC), and with the following affiliate members: The Alliance for Telecommunications Industry Solutions (ATIS), Open Mobile Alliance (OMA), Telecommunications Industry Association (TIA), TETRA Critical Communications Association (TCCA), Project 25 Technology Interest Group (PTIG), the Government Wireless Technology & Communications Association (GWTCA), and the Safer Buildings Coalition (SBC).

II. NPSTC Petition for Reconsideration

1. Introduction:

The decisions made in the Sixth Report and Order (R&O) place the management of the 4.9 GHz band with each state and opens the band to potential usage by all user classes, some of which could be incompatible with incumbent operations.³ The new usage being allowed at the discretion of states is far outside of public safety, including commercial mobile operations, with no priority for public safety. In a companion separate document, the Commission also issued a 4.9 GHz band freeze on licensing.⁴ While the Commission grandfathered incumbents' licensed systems and allows

³ In these comments, references to "states" is meant to include states, the District of Columbia, U.S. territories and recognized tribal nations to the extent they are or plan to be users of 4.9 GHz.

⁴*Public Notice:* Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce Temporary Filing Freeze on the Acceptance and Processing of Certain Part 90 Applications for the 4940-4990 MHz

renewal of those licenses, local and most state public safety licensees no longer have the benefit of applying for new licenses or modifying existing fixed licenses with additional sites and/or spectrum to meet operational requirements. Decisions in the Sixth R&O guarantee a long delay in public safety agencies' options to modify 4.9 GHz systems as needed.

NPSTC has no quarrel with the states. In fact, several of the organizations that serve on the NPSTC Governing Board are organizations of state-based entities. However, NPSTC believes the Commission's actions in the Sixth R&O and associated licensing freeze suffer from several categories of fatal flaws, as addressed in the following sections.

2. Public Safety Licensees' Rights Are Impacted, Contrary to Commission Claims

The Commission claims that its decision has not modified the rights of incumbent public safety licensees. In the Sixth R&O, the Commission states the following:

We clarify that today's adoption of the Sixth Report and Order does not modify the rights of an incumbent 4.9 GHz band licensee other than a licensee selected to be a State Lessor. An incumbent is a 4.9 GHz licensee with an active license as reflected in ULS as of the adoption of the Freeze Public Notice, or a 4.9 GHz licensee granted an authorization pursuant to a waiver of, or modification of, the freeze. An incumbent licensee, whether a public safety agency or a nongovernmental organization, may continue to operate existing system(s) or make additional deployments pursuant to the terms of its license, consistent with our rules and the *Freeze Public Notice*.⁵

The claim that the decision does not modify incumbent 4.9 GHz licensees' rights is legalistic double-speak. Prior to issuance of the Freeze Notice that accompanied the Report and Order, local and state public safety agencies had the right to apply for and obtain licenses for 4.9 GHz facilities to meet their respective operational requirements. That right evaporated upon issuance of the Freeze Notice and accompanying Sixth Report and Order, with the exception of the rights of the ONE state

Band, WP Docket No. 07-100, Released September 8, 2020.

⁵ Sixth R&O at paragraph 34.

lessor organization in each state. Whether those rights were cancelled specifically by the Sixth R&O or by the accompanying Freeze Notice is irrelevant. The fact remains that local public safety agency incumbents can no longer modify their respective licenses for additional sites or additional spectrum in the band. Further, an agency that did not hold a license but needs a new authorization can no longer apply and be granted a 4.9 GHz license. While not classed as an incumbent, such an agency has lost the option it previously had to apply for a new license with a reasonable expectation the license would be granted. The Commission's statement cited above is disingenuous at best as public safety agencies clearly have lost rights they had prior to the Freeze Notice and Sixth R&O.

The consolation prize under which a locality might lease spectrum capacity from its parent state carries no real certainty that the locality will be able to meet its needs under the new approach. Under the FCC's decision, each state that is not on the 911 fee diversion list has the option to designate a single 4.9 GHz statewide licensee as the State Lessor that can lease out its licensed 4.9 GHz spectrum. The Commission advises that under the new rules, there is "...no restriction on the type of entity to which a state can lease or the type of services that the lessee can provide."⁶

Also, the Commission failed to provide any priority for public safety, so a state that so chooses can lease all the capacity to a commercial carrier. In her dissenting statement, Commissioner Rosenworcel advised that the decision "... is a slapdash effort to try to foster use of this spectrum by giving states the right to divert public safety communications in exchange for revenue."

Incumbent system expansion through a lease with the state also awaits the time it will take states to establish this new and uncharted approach, a process that NPSTC believes will take multiple months. Such incumbent system expansion also likely awaits Commission decisions that will follow-

⁶ Sixth R&O at paragraph 3.

up the Seventh Further NPRM, i.e., decisions that could take a year or more. Therefore, public safety incumbent systems are locked into place with no immediate provisions for expansion.

3. The Commission's Decisions are Based on Insufficient Notice

The Sixth R&O is supposedly a follow-up to the Sixth Further NPRM. In that Sixth FNPRM, the Commission set forth “Leasing” as one of four options discussed.⁷ However, nowhere in that discussion did the Commission address the potentially negative impact to local public safety agencies that the Sixth R&O causes. In fact, the discussion of options in the Sixth Further NPRM is premised on the following:

“Our goal is to ensure that public safety continues to have priority in the band while opening up the band to additional uses that will facilitate increased usage, including more prominent mobile use, and encourage a more robust market for equipment and greater innovation, while protecting primary users from harmful interference.”⁸

Instead, in the Sixth Report and Order, the Commission decided that states can lease out the 4.9 GHz spectrum, including leases for commercial 5G broadband operations, with no protection or priority criteria specified for existing or expanded public safety operations. While grandfathered in name, actual protection of incumbent local and state public safety systems is not specified and appears to be based on whatever decision the State Lessors wish to make as they implement this new approach. 4.9 GHz public safety systems need to be protected against interference and signal degradation. Whether intentional or not, the Commission's actions through its freeze and its R&O decisions place roadblocks to public safety usage, all the while claiming that the reason for these actions is too little public safety usage in the band.

⁷ Sixth Further Notice of Proposed Rulemaking, WP Docket No. 07-100, released March 23, 2018, at paragraphs 74-79.

⁸ Sixth Further NPRM at paragraph 3.

In his dissent of the decision, Commissioner Starks noted “At a time when public safety organizations are stretched to the limit and their communications needs are increasing, the Commission is adopting with no notice and comment an approach that is not only unwanted but runs contrary to years of public safety spectrum policy.”

In addition, the Freeze Notice, which impacts public safety incumbents from expanding their systems as needed to meet operational requirements, was issued without notice and with no opportunity to comment. The Commission stated:

Imposition of the freeze is procedural and, therefore, not subject to the notice and comment and effective date requirements of the Administrative Procedure Act.² We find good cause for not delaying the effective date of the freeze pending publication of this Public Notice in the Federal Register, because delay would undermine the purpose of the freeze, which is to ensure that new applications do not compromise the Commission’s flexibility to modify the rules governing the band to the extent the public interest may warrant.⁹

The Commission’s primary stated rationale for its actions in this proceeding is that the band is underutilized. Therefore, it is unclear why a freeze is needed to avoid compromising the Commission’s flexibility. A freeze prevents expansion of public safety operations, exacerbating the root issue the Commission indicates it wants to address.

With absolutely no advance notice, the Sixth R&O prohibits a state from leasing out 4.9 GHz band spectrum if it was identified as diverting 911 fees in the Commission’s December 2019 Report. In doing so, the Commission stated:

We take this action, in conjunction with our more in depth consideration of this issue in the *Fee Diversion NOI*, as an affirmative step toward addressing this long standing problem and in recognition that states that have a history of appropriately using 911 fees are more likely to respect the rights of public safety incumbents in the 4.9 GHz band.¹⁰

⁹ 4.9 GHz Freeze Notice, page 1.

¹⁰ Sixth R&O at paragraph 24.

NPSTC is also concerned about states that divert 911 fees to other purposes. However, the fee diversion issue needs to be separated from 4.9 GHz spectrum policy. There was no advance opportunity to comment on connecting 4.9 GHz spectrum decisions to the 911 fee diversion issue. Given the decision in the Sixth R&O, the Commission has left all the localities that happen to be in states on the 911 fee diversion list with no option to meet their continued need for expanded 4.9 GHz systems. By linking 911 fee diversion with 4.9 GHz spectrum decisions, the Commission is penalizing numerous localities that may have absolutely no control over what their respective state does with 911 fees.

III. Conclusion

Contrary to claims in the Sixth Report and Order, the Commission has negatively impacted public safety incumbent rights in the 4.9 GHz band. The option public safety agencies previously enjoyed to modify licenses to meet expanded operational needs has evaporated under the Sixth R&O and associated license freeze. Incumbent system expansion must be through a lease with the state, which awaits the time it will take states to establish this new and uncharted approach. System expansion opportunities may also await Commission decisions that will follow-up the Seventh Further NPRM, i.e., decisions that could take a year or more. Therefore, public safety incumbent systems are locked into place with no immediate provisions for expansion.

Further, these decisions were made with insufficient notice or opportunity to comment on the specific approach adopted. The decision also fails to meet the goals stated in the previous Sixth FNPRM concerning public safety priority and protection from interference. The Commission has opened the band with essentially no restrictions on types of uses allowed, and no priority for public

safety. Also, while existing 4.9 GHz facilities are grandfathered, the Commission failed to address any specific interference protection.

NPSTC shares the Commission's concern with 911 fee diversion. However, connecting the fee diversion issue with spectrum policy at 4.9 GHz is unworkable. The prohibition against leasing for states on the 911 fee diversion list that the Commission established in its Sixth R&O penalizes numerous localities that have no say in whether their state diverts 911 fees.

The proposals presented to the Commission by NPSTC and its member organizations in previous comments in response to the Sixth Further NPRM provide solutions that suffer from none of the issues raised above. Rather, these solutions continue to provide needed spectrum for public safety, expand spectrum opportunities for critical infrastructure use, assure interference protection through frequency coordination and improved database base accuracy, and allow for specialized uses, such as, bomb robots and public safety unmanned aeronautical systems (UAS). The Commission should provide proper consideration of the prior comments advanced by NPSTC and its member organizations. Accordingly, NPSTC petitions the Commission to vacate the Sixth Report and Order, and accompanying Seventh Further Notice of Proposed Rulemaking.

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