

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

In the Matter of	)	
	)	
Assessment and Collection of Regulatory Fees for Fiscal Year 2008	)	MD Docket No. 08-65
	)	RM No.-11312
	)	
Amendment of Parts 1, 21, 73, 74, and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands	)	WT Docket No. 03-66
	)	

To: The Commission

**REPLY COMMENTS  
OF THE  
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or the “Alliance”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, respectfully submits its reply comments in the above-entitled proceeding.<sup>1</sup> This proceeding represents the Commission’s annual proposal review of the regulatory fees it imposes on each category of licensee that is subject to regulatory fee payment obligations. For the reasons described below, EWA questions the FCC’s proposed increase in Private Land Mobile Radio Service (“PLMRS”) regulatory fees as inconsistent with the resources devoted to this licensee category. Absent Commission justification for the proposed change, EWA urges the FCC to modify its proposal to maintain, or preferably even reduce, the annual PLMRS regulatory fee.

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<sup>1</sup> See In The Matter of Assessment and Collection of Regulatory and Collection of Regulatory Fees for Fiscal Year 2008; Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands, MD Docket No. 08-65; RM No. 11312; WT Docket No. 03-66, Notice of Proposed Rulemaking and Order, FCC 08-126 (May 8, 2008) (“NPR”).

## **I. INTRODUCTION**

EWA represents a broad alliance of business enterprise users, service providers, radio dealers and technology manufacturers, many of which have hold licenses in the Part 90 radio services. While many of these members also utilize spectrum regulated under other FCC rules, both licensed and unlicensed, the spectrum authorized under Part 90 typically represents the core of their communications facilities. For this reason, EWA and its members are impacted significantly by the FCC's proposal to increase the annual PLMRS regulatory fee.

## **II. DISCUSSION**

Since 1993, the Commission has been directed by Congress to collect from the constituents an annual regulatory fee intended to recover costs incurred by the FCC in regulating the affected categories of communications users.<sup>2</sup> Specifically, the regulatory fees are designed to recoup costs associated with FCC enforcement, policy and rulemaking, user information and international activities.<sup>3</sup> To effectuate this Congressional directive,<sup>3</sup> the Commission each year analyzes the regulatory activities it anticipates conducting over the upcoming 12 months with respect to each user class, estimates the number of users within the class and, thereby, calculates the annual regulatory fee to be imposed on each. For example, in 2006, the Commission reaffirmed a \$20 annual, per license regulatory fee for PLMRS Part 90 licensees with exclusive use of their authorized spectrum and a \$10 annual, per license regulatory fee for licensees whose frequencies were authorized on a shared use basis.

The instant NPR now proposes to increase these fees in 2008 to \$40 for exclusive use licenses and \$20 for shared use licenses.<sup>4</sup> An applicant must pay the total regulatory fee for 10 years at the time of application, which increases the total fees paid in FY 2008 to \$400 and \$200,

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<sup>2</sup> 47 U.S.C. §159(a).

<sup>3</sup> NPR at ¶ 1.

<sup>4</sup> NPR at Attachment C.

respectively. This represents a more than 60% increase for the former category and a 50% increase for the latter in two years. Proposed increases of this magnitude presumably are justified either by evidence of substantial increases in the FCC's regulatory work associated with this licensee category or by an extraordinary decrease in the number of licenses within these categories over which the regulatory costs may be spread. However, the NPR is effectively silent on the basis of its proposed PLMRS regulatory fees. In fact, the only specific information provided with respect to this user category (other than the proposed fee increase) is found in Attachment A, governing the required initial regulatory flexibility analysis that provides the 1994 estimate of the number of PLMR licensees operating on bands below 512 MHz, and Attachment B in which the Commission acknowledges that its estimates of the payment unit estimates, that is, the number of potential payment triggering applications for all land mobile including PLMRS, come from Wireless Telecommunication Bureau projections. EWA cannot derive from the NPR on what basis the FCC believes these increased fees are warranted. Surely, however, the higher fees cannot be predicated on anticipated increased regulatory costs. EWA supports the comments of PCIA-The Wireless Infrastructure Association ("PCIA") that states the burden on PLMRS licensees has become too large in proportion to their size, given that there are 74% fewer PLMRS licensees in 2008 than there were in 2005.<sup>5</sup>

Moreover, the fees typically are associated with PLMRS applications for VHF, UHF, 470-512, 800 and 900 MHz frequencies.<sup>6</sup> Prior to 2006, these services were regulated within the Public Safety and Critical Infrastructure Division ("PSCID") of the FCC's Wireless

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<sup>5</sup> See PCIA Comments at 3.

<sup>6</sup> Actually, it is only a subsection of PLMRS users that pay regulatory fees, since public safety licensees are exempt from this payment obligation. Further, given licensing "freezes" within the 900 MHz band, it reasonably can be anticipated that there will be little regulatory activity, if any, in this band for PLMRS licensees. Moreover, the 470-512 MHz band is available in only 11 markets in the country and is saturated with licensees. Therefore, this band does not generate a significant level of regulatory activity.

Telecommunications Bureau (“WTB”) and included both Industrial/Business and Public Safety licensees. However, in 2006, the FCC created the Public Safety/Homeland Security Bureau (“PSHSB”) into which it moved all policy and licensing activities associated with public safety entities. Thereafter, the FCC eliminated the PSCID and moved the licensing and policy work associated with Industrial/Business Part 90 PLMRS users into the existing Mobility Division of the WTB, a division already charged with responsibility for cellular, PCS, paging and other mobile wireless services. Most of the PSCID staff was assigned to the new PSHSB, with only a relatively small number of persons redeployed within the Mobility Division with continued responsibility for non-public safety PLMRS activities.

Given the relative paucity of rulemaking activities associated with Industrial/Business Part 90 PLMRS licensees, EWA questions whether the proposed increase in regulatory fees is necessary. The FCC has not allocated additional spectrum for these users since the mid-1980s, and policy proceedings affecting this licensee category have been rare. Particularly by contrast with the regulatory efforts devoted to broadband Commercial Mobile Radio Service (“CMRS”), public safety and broadcast licensees, it is difficult to imagine that the Commission’s Part 90 Industrial/Business PLMRS rulemaking activities would warrant regulatory fee increases of more than 60% and of 50%, depending on whether the authorized frequencies are assigned on an exclusive or shared basis.

The Commission also must be mindful of the impact of increased regulatory fees that are assessed on a per license (call sign) basis, as they are in this instance, when the FCC’s regulatory framework for the services dictate that licensees often must acquire multiple individual authorizations. Part 90 PLMRS frequencies, almost without exception, are authorized on a site-specific basis. Each frequency must be licensed for each set of coordinates at which it is

proposed to be used, and the FCC rules limit a Part 90 authorization to no more than six fixed locations on each license. Couple these fees with the \$60 application fee that the Commission also imposes, and the fees represent a significant increase.

By contrast, services such as cellular and PCS wherein spectrum is assigned in blocks over relatively large geographic areas, and all frequencies may be utilized anywhere within the defined geographic area, are licensed all under a single call sign. Thus, a PLMRS entity using Part 90 frequencies at multiple locations may require tens or even hundreds of individual FCC licenses to provide the necessary licensing authority. While the FCC's Universal Licensing System has vastly improved the licensing process and has automated many functions previously performed by individuals, presumably thereby reducing the resources needed to manage the Part 90 PLMRS licensing work, ULS was not intended to reduce and has not reduced the number of individual authorizations needed by PLMRS users or the regulatory fees associated with those licenses.

In fact, there is a striking dissimilarity in the treatment of PLMRS and CMRS licensees with respect to regulatory fees. PLMRS licensees, for the most part, are operators of private, internal radio systems that use radios to support critical business, industrial, land transportation and other activities. These entities derive no direct economic benefit from their use of spectrum, but rather rely on it to improve the efficiencies of their primary operations. Thus, as their communications requirements increase, their costs increase as well and are not defrayed by an offsetting revenue stream. These costs include the additional regulatory fee obligations they incur when they must acquire additional licenses under the FCC's site-based licensing approach.

By contrast, CMRS regulatory fees are tied directly to increased revenue. The fee is calculated on a per-subscriber unit basis; the more subscribers the licensee serves, the greater its

regulatory fee obligations. However, those fee increases are offset by a commensurately greater revenue stream. While EWA does not challenge the methodology the FCC has adopted to assess CMRS regulatory fees, these dissimilar approaches may work to the disadvantage of the PLMRS user community.

### **III. CONCLUSION**

The Commission has proposed an unprecedented and unexplained increase in the 2008 regulatory fees for Industrial/Business PLMRS users. EWA is unaware of any regulatory work undertaken or to be undertaken by the FCC that would justify this level of increase. Unless and until the FCC has made available the data on which it based its proposal, it is not possible for the industry affected by these extraordinary fee increases to evaluate whether or not they have been assessed properly.

For these reasons, EWA requests that the FCC refrain from adopting its 2008 proposed Part 90 PLMRS regulatory fee increase until it has made public a detailed analysis in support of the new fees. The PLMRS industry, including but not limited to EWA and its members, should have an opportunity to review and potentially challenge the assumptions on which these fee increases of more than 60% and 50%, respectively, were based. In light of the reduced Commission staff with primary responsibility for Industrial/Business Part 90 PLMRS activities and the minimal rulemaking activity in respect to these services in recent years, EWA must question whether the FCC's calculations accurately represent the regulatory costs associated with this category of Commission user and requests, as PCIA has requested,<sup>7</sup> that the Commission consider decreasing or, at the very least, not increasing the Part 90 licensee fees.

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<sup>7</sup> See PCIA Comments at 4.

Respectfully submitted,

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June 6, 2008