

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20054**

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	
Amendment of Part 90 of the Commission’s Rules)	WP Docket No. 07-100
To: The Commission		

**COMMENTS
OF THE
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), pursuant to Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.¹ The 4th *FNPRM* is the most recent action in the Commission’s efforts to craft rules governing a nationwide, broadband, interoperable public safety network at 700 MHz (“Network”). In this phase of the proceeding, the FCC is investigating the technical rules that will define the Network, roaming between public safety broadband networks, Federal use of the Network, matters related to interoperability and the question of eligibility to utilize the Network. While resolution of all of these matters will be essential to Network deployment and operation, EWA’s comments will address only the last issue – interpretation of the statutory definition of eligibility to operate on the Network. For the

¹Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band, WT Docket No. 06-150, PS Docket No. 06-229, WP Docket No. 07-100, *Third Report and Order and Fourth Further Notice of Proposed Rulemaking*, 26 FCC Rcd 733 (rel. Jan. 26, 2011) (“4th *FNPRM*”).

reasons described below, the Alliance recommends that the FCC adopt rules that allow public safety licensees and lessees of 700 MHz broadband spectrum to determine which entities should be permitted to share the spectrum in furtherance of the legislative directive that it be used to protect the safety of life, health and property.

EWA is a national trade association representing many business enterprises, wireless sales and service providers, hardware and software system vendors and technology manufacturers. The Alliance's business enterprise members include utilities and other entities that are classified by the FCC as Critical Infrastructure ("CI"). Many of EWA's members either sell equipment or provide other services to public safety organizations. Because the 4th FNPRM considers which of these public safety and CI users are eligible to operate on the Network, the Alliance has a significant interest in the outcome of the proceeding.

EWA appreciates that the Commission's consideration of this issue is bound by the statutory requirements of Section 337 of the Communications Act.² The statute states that the spectrum is to be used to provide public safety services, which it defines as services "the sole of principal purpose of which is to protect the safety of life, health or property."³ It further specifies that these services must be provided by a governmental entity or by a non-governmental entity that has been authorized by a governmental entity that itself provides public safety services. Finally, the statute states that services on this spectrum may not be made available commercially to the public.

Clearly Congress intended to ensure that public safety retained control over its 700 MHz spectrum so that the protection of the personal safety and property of the public would always remain the highest priority use. However, in the absence of a contrary indication in the

² 47 U.S.C. § 337.

³ 47 U.S.C. § 337(f)(1)(A).

legislative history, the Alliance believes it also is reasonable to assume that Congress did not intend to so restrict public safety as to deprive it of the ability to share the spectrum as necessary and appropriate in support of those services. In EWA's opinion, state, county, and governmental entities are well-qualified to determine both whether the delivery of statutorily defined public safety services will be improved by allowing non-emergency responders to share the use of the Network and how to prioritize communications among all permitted users. Further, the Alliance believes that this flexibility should extend not only to all governmental use,⁴ but also to shared use with utilities and other CI entities whose assistance can be critical during emergency situations.

There is nothing in the history of public safety communications to suggest that 700 MHz licensees or lessees of the Network will be other than highly protective of this spectrum, rigorously cautious about which entities it permits to utilize it, and public safety-centric when establishing priority of usage. Over the past decades, public safety licensees have allowed others to program public safety frequencies in their radios when public safety identified a need to communicate with those entities in carrying out governmental responsibilities. With the advent of multi-frequency trunked systems, public safety, public service and other users with shared or overlapping responsibilities have achieved much needed interoperability and thereby improved their ability to serve the public. In all instances, participation has been at the discretion of the governmental licensee, and prioritization on the network has remained under its control. To the best of the Alliance's knowledge, in no instance has this shared use resulted in misuse of public safety spectrum, and it certainly has not involved the provision of commercial service to the public.

⁴ See The City of Charlotte, North Carolina, Request for Declaratory Ruling, PS Docket No. 06-229 (filed Mar. 7, 2011).

The Alliance believes that the same will be true if the Commission adopts a reasonably flexible interpretation of Congressional intent in allocating this 700 MHz spectrum for the provision of public safety services. Surely Congress wished to provide the public safety community with the communications tools needed to fulfill its obligations into the future, including enhanced interoperability as deemed necessary by public safety itself. EWA respectfully urges the Commission to interpret Section 337 of the Act in such a way as to allow public safety discretion to identify users who should have access to the Network, subject to public safety determinations regarding priority usage and other provisions to ensure that the delivery of public safety services, as defined by Congress, remains the primary use of the Network.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

By: _____ /s/

Mark E. Crosby
President/CEO
8484 Westpark Drive, Suite 630
McLean, Virginia 22102
(703) 528-5115

Counsel:

Elizabeth R. Sachs
Lukas, Nace, Gutierrez & Sachs, LLP
8300 Greensboro Drive, Ste. 1200
McLean, VA 22102
(703) 584-8678

April 11, 2011