

**BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554**

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

**COMMENTS OF THE
EDISON ELECTRIC INSTITUTE**

I. Introduction

The Edison Electric Institute ("EEI"), on behalf of its member electric utilities, hereby submits the following comments in support of the Federal Communications Commission's ("FCC" or "Commission") initiative in its Fifth Further Notice of Proposed Rulemaking¹ to explore issues related to improving spectrum efficiency and encouraging greater use of the 4940–4990 MHz (4.9 GHz) band for public safety broadband communications by expanding to critical infrastructure industry (“CII”) entities, including electric utilities, eligibility to use this band on a primary basis.

EEI is an association of United States investor-owned electric utilities and industry associates worldwide. Its U.S. members serve almost 95 percent of all customers served by the shareholder-owned segment of the U.S. industry, about 70 percent of all electricity customers,

¹ See FCC, Fifth Further Notice of Proposed Rulemaking, WP Docket No. 07-100; PS Docket No. 06-229; WT Docket No. 06-150 (June 13, 2012) ("*FNPRM*"). The FCC, in an October 15, 2012 *Federal Register* notice, reopened the comment and reply dates for its proposed rule, “to allow the First Responder Network Authority, a newly formed independent authority within the National Telecommunications and Information Administration, sufficient time to file comments.” 77 Fed. Reg. 62,480 (Oct. 15, 2012). The FCC’s notice designated a November 1, 2012 date for comments on the *FNPRM*, with reply comments due November 30, 2012.

and generate about 70 percent of the electricity delivered in the U.S. EEI frequently represents its U.S. members before Federal agencies, courts and Congress in matters of common concern, and has filed comments before the Commission in various proceedings affecting the interests of its members.

EEI's members make extensive use of communications as providers of critical utility services, both as owners and operators of private communications systems, and as end-users of commercial communications networks. They are in fact among this nation's largest users of communications networks and services and, as recognized in the National Broadband Plan, have a growing need for spectrum in order to carry out their core mission of safely and reliably delivering electric service to most, if not all, of the nation's residential and business consumers.² Consequently, electric utilities have a strong interest in broad, efficient use of the 4.9 GHz band by utilities and other CII entities, which will go far to ensure reliability and efficiency of utility communications, particularly during and in the immediate aftermath of emergency situations, when communications may be disrupted.

EEI supports the FCC's efforts in its FNPRM to explore avenues for more efficient, increased use of the 4.9 GHz band and, in particular, supports an approach which expands eligibility to use the 4.9 GHz band to CII entities, including electric utilities, on a primary basis. As discussed below, this approach is essential to meeting electric utilities' communications needs and achieving substantial benefits for utility customers and the public at large, in furtherance of the public interest. Further, such expanded eligibility will go far to increase use of the 4.9 GHz band and to promote improved spectrum efficiency without adversely impacting

² See Fed. Commc'ns Comm'n, *Connecting America: The National Broadband Plan* 253 (2010), available at <http://www.broadband.gov/download-plan> ("National Broadband Plan").

public safety operations. Utility and CII access to the 4.9 GHz band on a primary basis, too, is consistent with the goals of the Spectrum Act to expand access to spectrum by broadening the definition of public safety entities to include emergency response providers.³ In furtherance of its position on primary access to the 4.9 GHz spectrum, EEI supports comments submitted by the Utilities Telecom Council (“UTC”) today in this proceeding and, in particular, EEI supports UTC’s position regarding expanded eligibility in the 4.9 GHz band for utilities and other CII entities to be licensed on a primary basis.⁴

At the very least, the FCC should take steps to expand to CII entities, including utilities, eligibility to use the 4.9 GHz band on a secondary basis provided, however, that utilities and public safety entities be given flexibility to develop methods to ensure such usage of this band will benefit the public at large and will satisfy electric utilities’ mandate to serve the public interest and to provide widely-relied-on critical services. To this end, the FCC should avoid developing rules governing any “shutdown feature” under such secondary arrangements which would ensure public safety entities priority access to this band. Such provisions instead should be subject to negotiation between the parties to those agreements.

II. The FCC Should Expand to Electric Utilities and Other CII Entities Eligibility to Use the 4.9 GHz Band on a Primary Basis.

In its FNPRM, the FCC asks whether “[CII] entities, including utility companies, should be eligible to hold 4.9 GHz licenses on a primary basis, thus removing the requirement for a sharing agreement.”⁵ EEI firmly supports an approach which would enable electric utilities and

³ See e.g. Middle Class Tax Relief and Job Creation Act of 2012 § 6208, Pub. L. No. 112-96, 126 Stat. 156 (2012) (“Spectrum Act”).

⁴ See Comments of the Utilities Telecom Council, WP Docket No. 07-100, PS Docket No. 06-229, WT Docket No. 06-150 (Nov. 1, 2012).

⁵ FNPRM, P 43 (internal citations omitted).

other CII entities to be eligible to hold licenses to use the 4.9 GHz band on a primary basis, and EEI urges the FCC to take steps to ensure eligibility of CII entities, including electric utilities, to hold such usage licenses on a primary basis.

Easing restrictions on use of the 4.9 GHz spectrum by permitting CII entities such as electric utilities access on a primary basis is essential to ensure utilities are able to make use of this band to meet their communications needs and, in turn, to carry out their core mission of safely and reliably delivering critical utility services at all times, in both ongoing and emergency situations. It is well recognized that, as CII entities, electric utilities' use of spectrum for communications fundamentally is for the protection of life and property – whether to control or monitor their generation, transmission and distribution systems so as to maintain and deliver reliable power, or to coordinate restoration or determine when and where outages have occurred. Use of the 4.9 GHz band on a primary basis, then, will aid utilities in their mandate to serve the public interest and to provide critical services relied on by most, if not all, of the nation's government agencies, military bases, public safety and emergency health care services, as well as business and residential users.

The Commission itself has acknowledged the significance of utilities' communications, which it recognized as

[...] a critical tool for responding to emergencies that could impact hundreds or even thousands of people... Although the primary function of these organizations is not necessarily to provide safety services, the nature of their day-to-day operations provides little or no margin for error and in emergencies they can take on an almost quasi-public safety function. Any failure in their ability to communicate by radio could have severe consequences on the public welfare...utility companies need to possess the ability to coordinate critical activities during or following storms or other natural disasters that disrupt the delivery of vital services to the public such as provision of electric, gas, and water supplies.⁶

⁶ *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services*, PR Docket No. 92235, *Second Report and Order*, 12 FCC Rcd 143, 14329 (1997).

To be sure, access to adequate spectrum and, in particular, the 4.9 GHz band is essential to support utility responsibilities during emergencies when utility service crews in the field are working to maintain or restore electric service. In these instances, utilities work closely with public safety entities and first responders, and utility crews often act as initial first responders on the scene.⁷ Electric utilities rely on spectrum in this regard for purposes of emergency response – to ensure the safety and protection of consumers and electric utility service personnel, as well as for purposes of service restoration – to facilitate the natural recovery of infrastructure and to more effectively dispatch field crews. Utility efforts to improve their core infrastructure in this manner benefits the public through greater service reliability and network security, in turn better protecting the electric grid from cyber-attacks. These activities undoubtedly are for the purpose of protecting life and property and are in the public interest. Expanded eligibility to hold licenses to use the 4.9 GHz band on a primary basis, as contemplated by the FCC in its FNPRM, will go far to facilitate these activities and to benefit the public at large.

While the Commission at Paragraph 43 of its FNPRM notes that expanded eligibility would necessarily be “subject to protections to maintain the integrity of public safety operations,” it is important to recognize that such expanded eligibility for licenses in the 4.9 GHz band will not produce interference in this spectrum, nor will it adversely impact public safety use of the band or jeopardize the integrity of public safety operations. Electric utilities and public safety entities have a long track record of working closely together in the public interest at all times and particularly during emergency periods. As discussed above, utility crews act as first responders, in the field during and in the immediate aftermath of numerous types of events –

⁷ Electric utilities fall within the definition of "first responders" under Homeland Security *Presidential* Directive 8 because they "in the early stages of an incident are responsible for the protection and preservation of life, property, evidence, and the environment." Homeland Security Presidential Directive / HSPD-8 at <http://www.fas.org/irp/offdocs/nspd/hspd-8.html>.

natural and otherwise. It is in this manner that the interests of electric utilities and public safety entities often are aligned in times of emergency, and utilities' access on a primary basis to the 4.9 GHz band would serve to advance the collective interests of utilities and public safety entities. Electric utilities nonetheless are sensitive to the importance of coordinated use of the 4.9 GHz band at certain times and under certain conditions, and commit to engage with public safety entities to develop necessary coordination schemes.

Finally, extending use of the 4.9 GHz band to electric utilities on a primary basis is consistent with the Spectrum Act's objectives of expanding access to spectrum by broadening the definition of public safety entities to include emergency response providers, and is in line with the National Infrastructure Protection Plan⁸ and federal mandates promoting improved spectrum efficiencies. Such expanded eligibility to use the 4.9 GHz band will achieve levels of cost savings only obtainable through efficient joint-use of spectrum, and expanded eligibility on a primary basis would reduce burdens and delays at times faced by utilities by preventing the need for sharing agreements between utilities and public safety entities. This, in turn, will benefit utility customers and the public at large through improved efficiencies and resultant cost savings.

III. Alternatively, the FCC Should Extend Eligibility to Use the 4.9 GHz Band to Electric Utilities and other CII Entities on a Secondary Basis.

If the Commission does not see through to permitting CII entities, including electric utilities, to access the 4.9 GHz band on a primary basis, at a minimum electric utilities and other CII entities should be permitted to access the 4.9 GHz spectrum as secondary users of this band. In this respect, EEI agrees with the FCC's tentative conclusion at Paragraph 43 of its FNPRM

⁸ *National Infrastructure Protection Plan*, Department of Homeland Security (2009), available at http://www.dhs.gov/xLibrary/assets/NIPP_Plan.pdf.

that “expanding eligibility for commercial use on a secondary basis would benefit and reduce regulatory burdens on non-public safety entities by removing barriers to entry to use the 4.9 GHz band.” Allowing utilities and CII to use this band on a secondary basis would reduce costs and promote efficient use of spectrum.

EEI notes, however, that any shutdown feature or other mechanism which enables priority access by public safety entities should be negotiated between the parties to such secondary usage agreements. A “one-size-fits-all” approach to assuring priority access is neither feasible nor desirable, and EEI urges the Commission to avoid prescribing any such methodology which might frustrate or altogether inhibit utilities and public safety entities from reaching consensus on these issues through cooperation.

IV. Conclusion

Wherefore, for the foregoing reasons, EEI respectfully requests that the Commission consider these comments and ensure that any Commission action taken with respect to expanded eligibility to use the 4.9 GHz band is consistent with them.

Respectfully submitted,

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