

**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
)	
)	

**REPLY COMMENTS OF THE
EDISON ELECTRIC INSTITUTE**

I. Introduction

The Edison Electric Institute ("EEI"),¹ on behalf of its member electric utilities, hereby submits these reply comments in response to the Federal Communications Commission's ("FCC" or "Commission") initiative in its Fifth Further Notice of Proposed Rulemaking² 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.

¹ 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, 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.

² 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.

As discussed in EEI's initial comments in this proceeding,³ EEI's members make extensive use of communications as providers of critical utility services, and 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. Electric utilities are among this nation's largest users of communications networks and services – both as owners and operators of private communications systems, and as end-users of commercial networks – and 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.⁴

For these reasons, EEI strongly supports broad, efficient use of the 4.9 GHz band by utilities and other CII entities, and urges FCC to pursue a path forward which expands eligibility to use the 4.9 GHz band to CII entities, including electric utilities, on a primary basis. Explained by EEI in its initial comments, expanded access to this band by electric utilities on a primary basis will help achieve important benefits for utility customers and the public at large, and will go far to improve spectrum efficiency and use of the 4.9 GHz band.

In furtherance of its support for expanded eligibility in the 4.9 GHz band for utilities and other CII entities to be licensed on a primary basis, EEI notes as follows, as discussed below:

- There is a general consensus among commenters in this proceeding that electric utilities, as CII entities, should be permitted to access and use the 4.9 GHz band on a primary basis. In light of utilities' demonstrated need for spectrum, the FCC should move quickly to expand eligibility for utilities and other CII entities to access the 4.9 GHz band on a primary basis.

³ EEI November 1, 2012 Comments ("EEI Initial Comments").

⁴ See Fed. Comm'n's Comm'n, *Connecting America: The National Broadband Plan* 253 (2010), available at <http://www.broadband.gov/download-plan> ("National Broadband Plan").

- Granting electric utilities the right to access the 4.9 GHz band on a primary basis is the only avenue to address issues of uncertainty, which have frustrated utilities' efforts to enter into partnerships with public safety entities to use this band on a secondary basis.
- There is no need for the FCC to limit electric utilities' access to, and use of the 4.9 GHz band, even in times of emergency, and adoption of a "shutdown feature" by the Commission would be counterproductive. Rather, such issues are best addressed through coordination between electric utilities and public safety entities.

II. Stakeholder Consensus Favors Expanding to Electric Utilities and Other CII Entities Eligibility to Use the 4.9 GHz Band on a Primary Basis, and Supports Prompt Commission Action Towards this Objective.

There is general consensus among the commenters in this proceeding that electric utilities, as CII entities, should have access to, and use of, the 4.9 GHz band on a primary basis.⁵ EEI firmly agrees with these sentiments and, as discussed in some detail in EEI's initial comments, supports an approach by the Commission which expands eligibility to use the 4.9 GHz band to CII entities, including electric utilities, on a primary basis. Such access is vital not only to meeting electric utilities' communications needs, but also achieving substantial benefits for utility customers and the public at large, in furtherance of the public interest. Expanded eligibility of the 4.9 GHz band to utilities on a primary basis, too, will promote improved spectrum efficiency in a manner which naturally aligns with the interests of public safety operations.

As explained by commenters in this proceeding, expanding eligibility for CII entities, such as electric utilities, under the Commission's rules will promote efficient and effective use of the 4.9 GHz band,⁶ and will help to address the communications needs of utilities, consistent

⁵ See, e.g., the following comments: Utilities Telecom Council ("UTC") at 1; Wyoming Public Safety Communications Commission – Spectrum Working Group at 1; Great River Energy at 3; American Petroleum Institute, Energy Telecommunications and Electrical Association and National Rural Electric Cooperative Association ("Energy Commenters") at 4; Southern Company Services Inc. at 7.

⁶ See, e.g., Great River Energy Comments at 12; Motorola Solutions Comments at 2, 4.

with the recommendations in the National Broadband Plan.⁷ Expanded use, too, will go far to ensure utilities and CII entities have access to suitable spectrum for applications essential to provide their critical utility services to the public.⁸

EEI has discussed in some detail in its initial comments 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. Further, access to the 4.9 GHz band is essential to support utility responsibilities during emergencies – times when utilities work closely with public safety entities and first responders. Electric utilities rely on spectrum in these instances for emergency response – to ensure the safety and protection of consumers and electric utility service personnel, as well as for purposes of service restoration. Commenters in this proceeding generally agree, recognizing this need for spectrum, as well as commonalities between public safety entities and CII entities, such as electric utilities, who coordinate efforts during and in the immediate aftermath of major events, and who have shared interests in public safety.⁹

Given utilities' demonstrated need for access to the 4.9 GHz spectrum, and the benefits such access would realize for the public at large, the Commission should move quickly to expand to electric utilities eligibility to use this band on a primary basis.

⁷ *See, e.g.*, UTC Comments at 3-4.

⁸ *See, e.g.*, UTC Comments at 5-6.

⁹ *See, e.g.*, Energy Commenters at 4-7; Great River Energy Comments at 7-12; Southern Company Comments at 4-8; UTC Comments at 5-6.

III. Granting Electric Utilities a Right to Access the 4.9 GHz Band on a Primary Basis Will Address Uncertainties Which Have Frustrated Utilities' Efforts to Enter Into Partnerships to Use This Band on a Secondary Basis.

As commenters in this proceeding correctly note, strategic partnerships between public safety entities and entities such as electric utilities have not flourished in recent years, due in part to electric utilities' hesitation to enter into secondary partnerships which would permit government entities to unilaterally terminate at any time their sponsorship of utilities' use of spectrum. Arrangements to use spectrum on a secondary basis have created much uncertainty for utilities, who remain concerned that their infrastructure investments and their use of spectrum could be ended at any time, including in times of emergency, when these vital communications resources are most needed to ensure safe, reliable service.¹⁰

EEI agrees that these concerns have impeded otherwise natural, productive partnerships which would benefit the public and, along with other commenters, EEI believes that electric utilities and other CII entities would be hesitant to invest in the 4.9 GHz band if they were subject to secondary access.¹¹ For these reasons, urges the Commission to extend to CII entities, including electric utilities, a right to access the 4.9 GHz band on a primary basis, as a means of addressing these uncertainties, and as the best path forward for promoting meaningful public safety/utility partnerships. Permitting electric utilities to access this spectrum on a primary basis would create important incentives for utilities to explore possible public/private partnerships and other arrangements that would help promote the build-out of 4.9 GHz infrastructure, as well as more efficient use of this spectrum.¹²

¹⁰ See, e.g., Southern Company Comments at 3.

¹¹ See, e.g., UTC Comments at 9.

¹² See Southern Company Comments at 3.

IV. There Is No Need for the Commission to Limit Electric Utility Access to, and Use of, the 4.9 GHz Band, Even in Times of Emergency, and Adoption of Any “Shutdown Feature” Would Be Counterproductive.

As explained by EEI in its initial comments, and widely supported by commenters in this proceeding, electric utilities and public safety entities are natural partners, having a long track record of working closely together in the public interest at all times and particularly during emergency periods.¹³ It is in this manner that the interests of electric utilities and public safety entities 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. Given these shared objectives, permitting electric utilities a right to access the 4.9 GHz band on a primary basis will not adversely impact public safety use of the band or jeopardize the integrity of public safety operations. For these reasons, EEI sees no need for the Commission to limit electric utility access to, and use of, the 4.9 GHz band, even in times of emergency.

Further, commenters in this proceeding are correct to note that the adoption of any automatic “shutdown feature” in 4.9 GHz equipment would run contrary to the goal of encouraging interoperable networks, and would be counterproductive to expanded, efficient use of this band. Such a shutdown mechanism could cause serious disruption to critical communications, as well as damage to infrastructure if activated imprudently. In addition, use of this feature could limit use of the 4.9 GHz band to non-essential communications, thereby undermining efforts to allocate this spectrum for use in critical communications networks.¹⁴

As EEI explained in its initial comments, any feature or mechanism which enables priority access by public safety entities at certain times should be negotiated between the parties

¹³ See, e.g., King County, WA Comments at 3; Southern Company Comments at 8.

¹⁴ Southern Company Comments at 8.

to those agreements.¹⁵ 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.

V. Conclusion

Wherefore, for the foregoing reasons, EEI respectfully requests that the Commission consider these reply 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,

EDISON ELECTRIC INSTITUTE

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Dated: November 30, 2012

¹⁵ EEI Initial Comments at 7.