DOCKET FILE COPY ORIGINAL

ORIGINAL

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

In the Matter of	)	
	)	WT Docket No. _____
Expansion of Conditional Licensing Authority	)	
Under FCC Rule Section 90.159 to Part 90 Bands:	)	
470-512 MHz, 800 MHz and 900 MHz	)	

Accepted/Filed

MAY 15 2014

FCC Office of the Secretary

To: The Commission

PETITION FOR RULEMAKING
OF THE
LAND MOBILE COMMUNICATIONS COUNCIL

The Land Mobile Communications Council ("LMCC"), pursuant to Section 1.411 of the Federal Communications Commission ("FCC" or "Commission") rules and regulations, respectfully requests that the Commission initiate a rulemaking proceeding to revise FCC Rule Section 90.159 and extend conditional licensing authority to applicants for Part 90 site-based licenses in the 470-512 MHz ("T-Band") (Subpart L)[1] and 800/900 MHz (Subpart S) bands. For the reasons described below, expanding the scope of this provision will provide greater flexibility for applicants and earlier deployment of spectrum without compromising the quality of service available in T-Band or in the 800/900 MHz bands.

I. INTRODUCTION

The LMCC is a non-profit association of organizations representing virtually all users of land mobile radio systems, providers of land mobile services, and manufacturers of land mobile radio equipment. The LMCC acts with the consensus, and on behalf of the vast majority of

[1] The LMCC recognizes that the FCC is considering "repurposing" the Part 90 T-Band spectrum in response to Section 6103 of the Middle Class Tax Relief and Job Creation Act of 2012 (Pub. L. No. 112-96, 126 Stat. 156). *See* Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Options for 470-512 MHz (T-Band) Spectrum, *Public Notice*, PS Docket No. 13-42, 28 FCC Rcd 1130 (rel. Feb. 11, 2013). In the interim, however, since the outcome of that proceeding is not certain, the LMCC recommends that T-Band be included in whatever action is taken in the instant proceeding.

No. of Copies rec'd 0+12
List ABCDE
WTB 14-9

public safety, business, industrial, transportation and private commercial radio users, as well as a diversity of land mobile service providers and equipment manufacturers. Membership includes the following organizations:

- American Association of State Highway and Transportation Officials ("AASHTO")
- American Automobile Association ("AAA")
- American Petroleum Institute ("API")
- Association of American Railroads ("AAR")
- Association of Public-Safety Communications Officials-International, Inc. ("APCO")
- Aviation Spectrum Resources, Inc. ("ASRI")
- Central Station Alarm Association ("CSAA")
- Energy Telecommunications and Electrical Association ("ENTELEC")
- Enterprise Wireless Alliance ("EWA")
- Forest Industries Telecommunications ("FIT")
- Forestry-Conservation Communications Association ("FCCA")
- Intelligent Transportation Society of America, Inc. ("ITSA")
- International Association of Fire Chiefs ("IAFC")
- International Municipal Signal Association ("IMSA")
- MRFAC, Inc. ("MRFAC")
- National Association of State Foresters ("NASF")
- PCIA – The Wireless Infrastructure Association ("PCIA")
- Telecommunications Industry Association ("TIA")
- Utilities Telecom Council ("UTC")

II. BACKGROUND

Conditional licensing allows applicants to place facilities into operation while the applications for their systems are pending at the FCC provided the applications satisfy certain conditions.[2] Applicants whose systems qualify for conditional licensing are able to meet pressing communications requirements without burdening themselves or the Commission by having to seek Special Temporary Authority ("STA"). Those with less urgent needs are able to schedule a system deployment best-suited to their operations, irrespective of the FCC's processing time. Conditional licensing has been available in the bands below 470 MHz for 25 years. It has proven to be a useful option for many applicants and, to the LMCC's knowledge, has not resulted in meaningful licensing disputes.

Conditional licensing works effectively because it is available only for applications that are accompanied by evidence of frequency coordination. The Frequency Advisory Committees ("FACs") that comprise the membership of the LMCC are responsible for ensuring that their frequency recommendations are consistent with the FCC rules and take into account existing licensees and earlier-filed applicants. This pre-filing coordination process is at the heart of most Part 90 licensing activity and acts as a check against the possibility of incompatible frequency recommendations. Conditional licensing would not be possible if it were not for the work performed by and the coordination among FACs.

[2] Conditional licensing is not available for applications that require Canadian approval, for those involving antenna structures that require, but have not yet secured, FAA and FCC approval, for those involving waiver requests, or for those with a potential environmental impact or that do not adequately protect the quiet zones and radio receiving facilities specified in 47 C.F.R. §1.924.

The Commission expanded conditional licensing authority to include all qualified applications in the bands below 470 MHz in 1989.[3] At that time it considered, but rejected, a proposal to make this licensing option available to applicants for stations operating in the bands above 470 MHz, stating as follows:

> In reaching this conclusion we emphasize that the capacity of coordinators to provide quality coordination recommendations, although important, is not a determining factor in deciding whether to expand conditional licensing where frequencies are exclusively assigned....[A] fundamental prerequisite...is that the applications subject to this procedure must be routine and virtually never challenged. In the 470-512 MHz and 800-900 MHz bands, however, there are additional non-coordination related issues that require Commission review....such as a demonstrated need for a requested mobile capacity that warrants exclusive use of a frequency....[4]

The Commission stated that it wished to be conservative in instances where exclusive authorizations were concerned but expressly noted that, "We may consider expanding this concept in the future as we gain experience in its application."[5]

III. CHANGES IN PART 90 LICENSING RULES AND RECENT EXPERIENCE WARRANT EXPANSION OF CONDITIONAL AUTHORIZATIONS TO THE BANDS ABOVE 470 MHz.

The Commission was correct in its decision to leave open the possibility of extending conditional authorizations to other bands, should experience demonstrate that doing so would be consistent with the public interest. Changes in the below-470 MHz Part 90 rules and recent experience with conditional licensing in higher bands on a waiver basis both support the permanent rule change requested herein.

At the time the FCC authorized conditional licensing for below-470 MHz applications, systems in the affected bands all were licensed entirely on a shared basis. There was no concept

---

[3] Amendment of Part 90 of the Commission's Rules to Implement a Conditional Authorization Procedure for Proposed Private Land Mobile Radio Service Stations, *Report and Order*, PR Docket No. 88-567, 4 FCC Rcd 8280 (1989).
[4] *Id.* at ¶ 25.
[5] *Id.*

of an exclusive or protected service area in the FCC rules. While the lack of exclusivity did not prevent challenges to applications in those bands entirely, coordination and processing both were relatively simple and challenges were exceedingly rare.

There still are relatively few challenges to Part 90 applications in all bands, an exceedingly small percentage of the applications submitted. However, modifications to FCC Rule Section 90.187 since 1989 include a process whereby applicants for frequencies below 512 MHz may be exempted from the monitoring requirement applicable to shared frequencies, based on a detailed co-channel and adjacent channel contour analysis of potentially affected licensees. This analysis is well-defined and in that sense "routine," but it is more technically complex than FCC Rule Section 90.621, which establishes that 800 and 900 MHz frequencies will be assigned "solely on the basis of fixed distance separation criteria"[6] between co-channel transmitters. Adjacent channel systems are not taken into consideration. Thus, over time, the rules governing Part 90 frequency assignments below 470 MHz, rules that require the calculation of multiple contours, have become more technically challenging than the routine mileage separations used to assign frequencies in the 800/900 MHz band.

Moreover, during this 25-year period, the FCC has eliminated a number of rules applicable to 800/900 MHz systems that had required individualized FCC review of those applications. Loading requirements have been eliminated for many system types, and the justification of additional frequencies, when required, is based on the number of subscriber units proposed for the system, rather than any narrative explanation of capacity needs. These remaining requirements arguably require less direct Commission oversight than, for example, the channel limits standard set out in Rule Section 90.187(g). Thus, in the opinion of the LMCC, the rules governing frequency assignments in the bands below 470 MHz no longer provide a

[6] 47 C.F.R. § 90.621(b).

justification for distinguishing between below- and above-470 MHz for purposes of authorizing conditional licensing.

This assessment has been tested recently. On September 26, 2013, with a Wireless Telecommunications Bureau ("WTB") average application processing time that exceeded six months, the FCC responded to a request from the Enterprise Wireless Alliance and waived Rule Section 90.159 until December 31, 2013 while the WTB application backlog was addressed.[7] The waiver permitted WTB applicants for T-Band and 800/900 MHz frequencies to utilize conditional licensing authority, provided they met all other conditions in that rule. This waiver was extended until June 30, 2014, when the processing time at the end of 2013 still exceeded four months.[8]

By the time the WTB conditional licensing waiver expires, the industry and the Commission will have had more than eight months of experience with allowing applicants above 470 MHz to deploy systems based on this temporary license authority. To the best of the LMCC's knowledge, the waiver has not triggered an increase in the number of application challenges filed or otherwise caused any expansion in the FCC's workload. In fact, it arguably has reduced the FCC's application work by eliminating the need for what otherwise likely would have been a sharp increase in the number of STAs requested. Although the LMCC does not expect processing time for either WTB or PSHSB applications to reach the levels seen in late 2013/early 2014 in the future, this experiment has demonstrated that conditional licensing authority can be expanded to the bands above 470 MHz safely and with considerable benefit to Part 90 applicants. In light of the success of this waiver authority, the LMCC requests that the

[7] Enterprise Wireless Alliance, *Order*, 28 FCC Rcd 13910 (WTB MD 2013).
[8] Enterprise Wireless Alliance, *Order*, 28 FCC Rcd 17103 (WTB MD 2013). Since then, the WTB processing staff in Gettysburg, with the assistance of Public Safety and Homeland Security Bureau ("PSHSB") staff, have reduced the average WTB application processing time to less than two months.

waiver be extended until such time as the FCC acts on the instant Petition. Further, the waiver should be expanded to include above-470 MHz applications processed by the PSHSB, as well as those handled by the WTB.

IV. CONCLUSION

The FCC's conditional licensing rules allow applicants whose filings satisfy the requirements of Rule Section 90.159 the right to initiate operations promptly after their applications have been coordinated and submitted to the FCC. These facilities then are used to meet critical public safety, public service, critical infrastructure, business enterprise, and commercial communications requirements. Over the decades since that rule was adopted, the regulations governing Part 90 frequencies below and above 470 MHz have become more similar, such that distinguishing between them for purposes of this rule serves no public interest objective. The LMCC urges the FCC to initiate a rulemaking proceeding to extend the conditional licensing rules to WTB and PSHSB applications above 470 MHz, subject to the same conditions that govern this rule section today, as promptly as possible.

Respectfully submitted,

/s/ Donald Vasek

President
Land Mobile Communications Council
2121 Cooperative Way, Ste. 225
Herndon, VA 20171
Phone: (703) 528-5115

May 15, 2014