

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554**

In the Matter of)
)
Interim Eligibility Criteria for the 800 MHz) WT Docket No. _____
Expansion Band (860-861/815-816 MHz)) RM-11719
and Guard Band (861-862/816-817 MHz))

To: The Federal Communications Commission

**NETMOBY, INC. REPLY COMMENTS AGAINST PETITION FOR RULEMAKING
OF THE LAND MOBILE COMMUNICATIONS COUNCIL**

NetMoby, Inc. (“NetMoby”), hereby respectfully submits its REPLY COMMENTS regarding the Petition for Rulemaking filed by the Land Mobile Communications Council (“LMCC”) in the above-captioned proceeding.^{1 2} NetMoby has reviewed the comments in support of LMCC³ and asks that the Federal Communications Commission (“Commission” or “FCC”) reject these comments because they offer no additional arguments or justification past the unsupported original Petition arguments contained within the LMCC Petition.

Conversely, salient arguments opposing the LMCC Petition were made by 34 commenters. Those in overwhelming opposition to the LMCC comments were 87.2% compared to merely 12.8% in favor of what amounts to LMCC’s “new entrant barrier” proposal.

¹ FCC Public Notice DA 14-545, Released: April 24, 2014.

² Land Mobile Communications Council, Petition for Rulemaking Regarding Interim Eligibility for the 800 MHz Expansion Band (860-861 MHz/815-816 MHz) and Guard Band (861-862 MHz/816-817 MHz) (filed March 27, 2014) (“Petition”).

³ Utilities Telecom Council; Telecommunications Industry Association; the National Association of Manufacturers; and Enterprise Wireless Alliance.

In the order of latest to earliest Comments received by the Commission, following are NetMoby Reply Comments.

UTC Submitted Flaw Declarations That A 6-Month Priority Access
Period In Which Incumbents Can Exclusively Apply For
EB/GB Is In The Public Interest Because Pent
Up Demand For The Channels Would Be Relieved

UTC contends that granting a 6-month priority period for incumbents “would provide incentives for them to act quickly once the channels are released.” NetMoby replies that this gives absolutely no weight to the argument of justifying giving UTC constituents preferential treatment over new entrants. UTC asserts that the ten year licensing freeze has impacted their incumbent members and that because a high number of applications will likely be filed, and that this justifies the FCC’s establishment of entry barriers and priority channel assignments for incumbents. NetMoby replies that if this was such an impact on UTC incumbent members, they would have filed in the initial round for EB/GB spectrum. They failed to do so; therefore the Commission has all the proof it needs to clearly see that UTC allegations are totally without merit, otherwise UTC incumbent members would have applied for available spectrum en masse. UTC states that incumbent licensees “have suffered loss of customers and productivity as a result of the lack of available released EB/GB channels.” NetMoby replies that UTC has submitted no proof for these assertions here or anywhere else in its comments. New entrants have suffered way more because they have custody of far less FCC-issued EB/GB frequencies than the incumbents do; and new entrant services will also address safety and preclusion of catastrophic events via sensor thresholds and auto-reporting of breaches of such thresholds. UTC argues that a 6-month period would cause more

spectral efficiency because “incumbents are interested in using digital trunking technologies.” NetMoby replies that Both UTC and LMCC argue that the digital trunked radio systems their incumbent members will roll out will be more spectrally efficient, yet fail to mention any of the hundreds of digital trunked radio problems plaguing incumbent operators around the country. For instance, exactly 12 months before the LMCC Petition filing date, in the March 24, 2013 edition of the “**Omaha World-Herald**,” it was reported that Nebraska state troopers are the latest group to report that their digital radio problems are too risky and put Omaha law enforcement officers at risk. Also, in the July 6, 2013 issue of “Technology in Government” it was reported that “Detroit, Michigan is the latest city to receive national news media attention for the failure of its P25 digital trunked radio system. The system failed during the 4th of July holiday weekend creating havoc for first responders. Please let this be a reminder that highly centralized, computer-dependent digital trunked radio systems are vulnerable to failure. Failure of large public safety systems such as this can cripple the ability of first responders to deliver basic emergency services including police, fire and emergency medical responses.” And again during the Washington DC Navy Yard shooting where on September 20, 2013, WUSA-TV9 reported that the trunked radio system failed and caused more loss of life. NetMoby contends that the spectral efficiency of trunked radio is still under scrutiny by dozens of first responder organizations around the country and that the argument that LMCC constituent systems and incumbent 800 MHz systems, whether digital or analog, are not more efficient or spectrally efficient than IP digital radios that NetMoby would specify for its clients or itself in any future applications it may provide engineering consulting services for or apply for itself. Our systems will

be far more spectrally efficient and less prone to outright failure when functionality during wireless transactions is most crucial.

Yet LMCC Petition supporters lay claim to greater spectral efficiency for incumbent operators who propose to employ digital trunking technology that repeatedly have been reported to place emergency responders at risk. On the grounds of just pure inaccuracies, the Commission must reject that spectral efficiency be a reason to favor the LMCC Petition and the comments of LMCC supporters, such as UTC, asserting the same. NetMoby asserts that digital IP wireless networks are more spectrally efficient, more commonplace and solidly interoperable as opposed to the P25 standard that to this day continues to require a hodge-podge of gateways to merge analog and digital trunking systems together. Moreover, the only interoperability standards set forth by the FCC for first responder systems is within the 700 MHz band; not the 800 SMR or 800 EB/GB bands. Far greater spectral efficiency would be rendered by new entrants planning Internet-connectable Cloud-based services with higher levels of standardization which results in higher levels of data throughput with the added advantage of using less bandwidth.

UTC echoes the LMCC Petition by insinuating that other licensees will not construct or operate. NetMoby replies that, akin to LMCC, no evidence of this baseless allegation is offered. UTC suggests that incumbents, unlike the rest of eligible and qualified applicants, should not have any restriction on the number of channels they pursue getting licensed for. NetMoby replies that current loading rules were established so that scarce spectrum resources are not warehoused by entities that want to hoard them for

“later use.” The FCC should not relax their spectrum issuance standards and should stand its ground based on current reasonable rules that address this under Part 90.

Telecommunications Industry Association

TIA rubber-stamped its “support for LMCC” touting that it represents 500 participating companies. Worthy of mention is that almost none of the 500 members of TIA commented on the LMCC Petition (except for those member associations that commented on RM-11719).

National Association of Manufacturers and MrFAC, Inc.

NAM and MRFAC wholly support the LMCC petition on the same grounds argued in the Petition, namely, the claim that 800 MHz incumbents “have been precluded from acquiring any new channels due to re-banding.” NAM fails to mention that new entrants have no frequencies and suggests that their incumbent constituents are more deserving. They suggest that incumbents have a “serious spectrum requirement” and attempt to diminish the “serious spectrum requirement” of new entrants who will bring emerging and more spectrally efficient technologies to the forefront with digital all-IP networks that leverage Cloud connectivity, Big Data, analytics and the latest in supervisory control of machines and electro-mechanical things which often play a key role in safety, emergency response and public convenience. Under the Technology Policy web page of NAM⁴, the organization states, under the sub-heading “5.01a. Telecommunications” that:

⁴ <http://www.nam.org/Issues/Official-Policy-Positions/Tax-Technology-Domestic-Economic-Policy/TTDEP-05-Technology-Policy.aspx>

Fostering an environment where manufacturers and consumers alike can obtain the services and content they want, when they want it and regardless of medium, is of primary concern. To achieve this goal, policymakers should:

- Remove barriers to entry that prevent service providers from offering broadband information services to homes and businesses. [Emphasis added by NetMoby]
- Eliminate or limit regulations that have the potential to dampen private industry's incentive to invest in broadband technology. [Emphasis added by NetMoby]
- Rely on enforceable industry practices that promote transparency and enhance choices in the marketplace for consumers and business. [Emphasis added by NetMoby]
- Adopt a federal framework and ensure fair, technology-neutral competition for all providers. [Emphasis added by NetMoby].

NetMoby replies that NAM reverses its corporate fairness doctrine in favor of supporting a rulemaking that discriminates against new entrants who wish to roll out new innovative digital services that enhance competition and cause a safer environment and a more connected world. A few weeks ago, when manufacturing plant emission reductions were all over the news, one of the web pages of NAM had a big banner that stated “No New Government Rules” so that smog reduction measures would not have to be implemented by their plant manufacturing constituents, yet now, NAM and MRFAC advocate changing the already established rules under 90.617 in order to favor incumbents and keep new entrants out. NAM cannot have it both ways and the Commission should carefully weigh the sincerity of NAM’s support for the inequitable treatment LMCC is pushing for.

Enterprise Wireless Association

EWA special interest organization also lobbies for adoption of the LMCC Petition and contends that incumbent members operate trunked 800 MHz systems in areas where expansion capacity is scarce. NetMoby replies that non-first responder EWA members and 800 MHz incumbents should not be treated with any more priority than a new entrant. NetMoby further replies on this point that first responder entities that are EWA lobby members are in the process of receiving a new FirstNet high speed, interoperable system for their exclusive use that is costing taxpayers \$8 Billion. The Commission must take this into consideration since it allocated 20 MHz of precious spectrum for this much needed first responder system which supplements, in a gargantuan way, the existing SMR networks such responders have in place already.

EWA asserts that its members are business enterprises, critical infrastructure and commercial SMR licensees that are “eager to add capacity to their facilities.” NetMoby replies that so too are new entrants “eager to add capacity” and are even more eager to be afforded a fair chance to compete for spectrum as seemingly encouraged dozens of times within the Telecommunications Act of 1996. The Federal government sets up checks and balances to ensure rules are complied with and that limited resources, such as coal, natural gas and the electromagnetic spectrum, is not tilted unfairly. Despite the foregoing, EWA “recommends against reserving a pre-determined amount of spectrum for new entrants” and further suggests that “The requirement to certify construction of deployed frequencies also limits over-reaching” and therefore it would be justified by the FCC to rescind this requirement thus effectively eliminating the requirement for incumbents to fully use what they have before extending their hands out for spectrum

they have not adequately and mathematically demonstrated as being needed.

Moreover, NetMoby believes that the Commission has no rules that suggest that new entrants are valued as less worthy than the constituents of large member organizations like EWA. While intensive lobbying efforts on the part of organizations like EWA work to eliminate “the little guys” so that all spectrum issuances will inure to the benefit of more wealthy organizations, there are no promotional efforts on its web site or elsewhere that indicate its advocacy for women-owned, minority and veteran new entrants.

LMCC Nor LMCC Supporters Have Defined What An “Incumbent”
Is, Therefore, The Commission Must Deny the
LMCC Petition Without Revisiting This Matter Any Further

Neither within the Petition nor in any Comments has there been a proposed definition of what an Incumbent 800 MHz operator is and what exactly is being proposed here. This is critical. Without this logical restriction, LMCC’s Petition could mean that an Incumbent in Kalamazoo would have priority application rights over all new entrants for 6 months when such Kalamazoo incumbent wants to apply for, say, Raleigh-Durham, North Carolina, a thousand miles away. This would be grossly unfair and would surely lead to illegal warehousing of frequencies. The Petition is therefore incomplete from a definition perspective and the Commission’s duty is not to guess at what Petitioners seek. The fundamental argument of this Petition is whether an “incumbent” operator should receive preferred treatment. Without a clear definition by LMCC on what an “incumbent” is and what geographic area (local or anywhere nationally) they are proposing such incumbents receive a 6 month application priority for, the Commission is not able to rule on this matter, thus the Petition should be denied on that basis alone so

that new wireless services can be introduced the public without further delay. Additionally, NetMoby invites the Commission to clarify whether our assumption is accurate that a new entrant that was awarded an EB/GB license in the first round is instantly anointed with the “incumbent crown” upon completion of their construction within 12 months and having at least one associated mobile⁵ station connected.⁶

CONCLUSION

For the foregoing reasons, NetMoby vehemently disagrees with LMCC Petition supporters that incumbent 800 MHz operators should receive preferential treatment by the Commission through its granting to such incumbents a six month application period in which to apply for 800 MHz EB/GB frequencies before new applications are accepted by the Commission. Even a 6 day, 6 hour or any exclusive period should be rejected. Moreover, new 800 MHz EB/GB entrants with more spectrally efficient IP-based digital technology should not be trumped by 35 year old technology run by incumbents that after three decades still have interoperability and other technical and spectrum efficiency issues.

If the Commission is concerned about speculative applications, it should adopt the “Recommendations” to stiffen application requirements outlined by NetMoby in its previously filed RM-11719 Comments.

⁵ NetMoby is assuming that since some applications will communicate wirelessly with fixed stations, that the term “mobile” would be substitutable with “fixed station” to satisfy the construction completion criteria outlined under the rules cited in footnote 6, *infra*. The rules should be clarified in this regard.

⁶ See §§ 90.155(a) & (c), 90.633(c) & (d)

Therefore, for all the foregoing reasons, NetMoby, again, respectfully requests that the Commission DENY the LMCC Petition.

Respectfully Submitted,

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