

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

In the Matter of )  
 )  
Expansion of Conditional Licensing Authority ) RM-11722  
Under FCC Rule Section 90.159 to Part 90 )  
Bands: 470-512 MHz, 800 MHz and 900 MHz )

To: The Commission

**COMMENTS IN SUPPORT OF PETITION FOR RULEMAKING**

Blooston, Mordkofsky, Dickens, Duffy & Prendergast, LLP, on behalf of its clients, who are Part 90 licensees and prospective licensees in the 470-512 MHz, 800 MHz and 900 MHz private land mobile bands (“BloostonLaw”) hereby submits, pursuant to Section 1.405 of the Commission’s Rules, comments in support of the Land Mobile Communications Council’s (“LMCC’s) captioned Petition for Rulemaking, to expand the scope of the conditional licensing authority, under Section 90.159 of the Commission’s Rules, to include spectrum in the 470-512 MHz (T-Band), 800 MHz and 900 MHz private land mobile bands. LMCC’s proposal warrants the issuance of a Notice of Proposed Rulemaking (“NPRM”). The Commission should include in the proposed expansion of conditional temporary authority both industrial and public safety applicants for spectrum in the T-Band and the 800/900 MHz bands.

**Statement of Interest**

The interested BloostonLaw clients are a large urban area public utility, a *Fortune* 500 company and a combination of industrial, local government and public safety users

who rely on Part 90 private land mobile spectrum below 470 MHz, between 470 and 512 MHz and in the 800 MHz and 900 MHz bands, to meet critical internal communications needs. BloostonLaw clients utilize this spectrum for in-plant communications as well as dispatch, security and safety operations on small and large campuses and in the field, where alternative communications may not be readily available. Additionally, BloostonLaw clients rely on these frequency bands for the dispatch of emergency road services, while local government and ambulance service clients rely on this spectrum to dispatch first responders in the event of a catastrophe or other emergency circumstances involving the safety and protection of life and property.

## **Discussion**

The Commission adopted its current conditional licensing mechanism in 1989 for the frequency bands below 470 MHz as a way to provide provisional operating authority to certain private land mobile applicants during the pendency of their applications for regular authority. This was done so that it would not be necessary for applicants to go through the time, expense and delays of having to submit requests for Special Temporary Authority (“STA”); and the Commission could thereby avoid having to utilize scarce personnel resources to process such STA requests. But, at the time, the Commission limited the scope of Rule Section 90.159 to spectrum below 470 MHz believing that conditional temporary authority should be limited to applications that had been the subject of frequency coordination and were “routine and virtually never challenged.”<sup>1</sup>

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<sup>1</sup> Amendment of Part 90 of the Commission’s Rules to Implement Conditional Authorization Procedure for Proposed Private Land Mobile Radio Service Stations, *Report and Order*, PR Docket No. 88-567, 4 FCC Rcd 8280 (1989).

The Commission noted that with respect to the frequency bands above 470 MHz, “there [were] additional non-coordination related issues that require[d] Commission review . . . such as a demonstrated need for a requested mobile capacity that warrants exclusive use of a frequency.”<sup>2</sup> Nonetheless, the Commission acknowledged that while it had concerns regarding the exclusive use spectrum above 470 MHz, it might consider including this spectrum at a later date as it gained experience with its conditional temporary authorization regulatory scheme.<sup>3</sup>

In the interim, 25 years have elapsed and the FCC has just recently, on a temporary basis, extended its conditional temporary authorization regulatory process to include industrial applications for spectrum in the 470-512 MHz and the 800/900 MHz bands without adverse consequence.<sup>4</sup> Based upon this experience, BloostonLaw believes the time is ripe to make the change permanent and to expand it to all applicants in the private land mobile bands. The availability of conditional temporary authority allows licensees to speed the implementation of urgent and otherwise needed communications capabilities with little downside.

It is noted that over the past 25 years, there have been significant regulatory changes in the Part 90 services. With respect to frequencies below 470 MHz, the Commission has amended Rule Section 90.187 in order to permit the use of shared channels without having to monitor for other licensees, provided certain conditions are met. Additionally, the Commission has eliminated several rules that required

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<sup>2</sup> *Id.* at para 25.

<sup>3</sup> *Id.*

<sup>4</sup> Enterprise Wireless Alliance, *Order*, 28 FCC Rcd 13910 (WTB 2013); Enterprise Wireless Alliance, *Order*, 28 FCC Rcd 17103 (WTB 2013).

individualized processing of applications in the 800/900 MHz bands, including loading requirements for additional channels in certain circumstances. To the extent that justification is required for additional channels, it is now based upon the number of mobile units licensed rather than evaluation of a written justification for additional capacity. Additionally, unlike the UHF channels below 470 MHz which can require detailed co-channel and adjacent channel contour analyses, Rule Section 90.621 provides that the 800/900 MHz frequency bands will be assigned on the basis of a fixed distance between co-channel transmitters. As a result, the previous detailed individualized processing for applications above 470 MHz is now the exception rather than the rule.

It is further noted that the Commission's temporary waiver to apply the conditional temporary authorization mechanism to licensees in the 470-512 MHz and 800/900 MHz bands was limited to applicants in the industrial frequency pools. BloostonLaw believe that this relief should be extended to the public safety pool frequencies as well. Much like the industrial business pool, the public safety channels are also subject to frequency coordination prior to the filing of an application with the Commission. In fact, the coordination process is arguably more stringent for public safety applicants since certain frequency proposals must also be approved by regional spectrum committees before the application is submitted to the Frequency Advisory Committee for frequency coordination.

## **Conclusion**

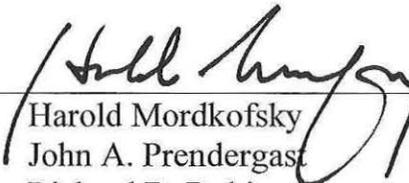
For the foregoing reasons, BloostonLaw supports the LMCC petition for rulemaking and urges the Commission to adopt an NPRM that proposes a modification of

Section 90.159 of the Commission's Rules, to include the following frequency bands:  
470-512 MHz and 800/900 MHz, as well as to make conditional temporary  
authorizations available to public safety and local government applicants as well.

Respectfully submitted,

**Blooston, Mordkofsky, Dickens,  
Duffy and Prendergast, LLP**

By:

  
Harold Mordkofsky  
John A. Prendergast  
Richard D. Rubino

Blooston, Mordkofsky, Dickens,  
Duffy & Prendergast, LLP  
2120 L Street, NW  
Washington, DC 20037  
Tel. (202) 659-0830

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**CERTIFICATE OF SERVICE**

I, Harold Mordkofsky, hereby certify that on this 23<sup>rd</sup> day of July, 2014, I mailed, postage prepaid, a copy of the foregoing Comments in Support of Petition for Rulemaking to the following:

Donald Vasek, President  
Land Mobile Communications Council  
2121 Cooperative Way, Ste. 225  
Herndon, VA 20171

  
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Harold Mordkofsky