

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

In the Matter of)	
)	
Amendment of Part 90 of the Commission's Rules to Improve Access to Private Land Mobile Radio Spectrum)	WP Docket No. 16-261
)	
Land Mobile Communications Council Petition for Rulemaking Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies)	RM-11719
)	
Petition for Rulemaking Regarding Conditional Licensing Authority Above 470 MHz)	RM-11722
)	

To: The Commission

**COMMENTS
OF THE
LAND MOBILE COMMUNICATIONS COUNCIL**

Respectfully submitted,

/s/

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November 22, 2016

The Land Mobile Communications Council (“LMCC”), in accordance with Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) rules, respectfully submits its comments in response to the above-identified Notice of Proposed Rulemaking.¹ The NPRM addresses a number of matters whereby the FCC intends to improve access to Private Land Mobile Radio (“PLMR”) spectrum licensed under Part 90 of the FCC Rules, some of which were brought to the FCC’s attention by the LMCC or its members, while others were initiated by the Commission on its own motion. The LMCC supports many of the Commission’s proposals, but urges it to revisit certain areas where further improvements are warranted.

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 public safety, business, industrial, transportation and private commercial radio users, as well as a diverse group 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”)
- International Association of Fire Chiefs (“IAFC”)

¹ In the Matter of Amendment of Part 90 of the Commission’s Rules to Improve Access to Private Land Mobile Radio Spectrum, WP Docket No. 16-261, *Notice of Proposed Rulemaking*, 31 FCC Rcd 9431 (2015) (“NPRM”).

- International Municipal Signal Association (“IMSA”)
- MRFAC, Inc. (“MRFAC”)
- National Association of State Foresters (“NASF”)
- Telecommunications Industry Association (“TIA”)
- Utilities Technology Council (“UTC”)
- Wireless Infrastructure Association (“WIA”)

These organizations, individually and collectively, work with their members and with the FCC in an effort to maximize the use of the limited spectrum resources available to PLMR users.

II PROPOSALS FOR IMPROVED PLMR ACCESS

PLMR spectrum is used to support the communications activities of a vast array of America’s governmental and business entities. It is used by organizations as large as UPS, Ford Motor and multi-state utilities, and as small as local retail establishments to manage their businesses more efficiently, effectively and safely. It is critical to the well-being of our emergency responders and to the operations of all governmental entities. It is used to provide localized fleet dispatch for users whose primary requirement is for one-to-many communications. PLMR spectrum is an often unrecognized and under-appreciated, but absolutely essential, element in the day-to-day activities of this nation which promotes the growth of the economy and protects the public’s safety. For that reason, the LMCC greatly appreciates the FCC’s efforts in the NPRM to facilitate access to new sources of PLMR spectrum for entities that invest in and operate PLMR communication systems.

A. Section 90.35 – Industrial/Business Pool

1. 90.35(b)(3)

As explained in the NPRM, the FCC mandated that Part 90 PLMR licensees operating in the 150-174 MHz and 421-470 MHz bands convert to narrowband operations. This created new opportunities to utilize heretofore unassigned land mobile spectrum near the edges of the

Part 90 bands without impinging on the operations of adjacent spectrum assigned to other radio services.² Because many Part 90 licensees have deployed systems with bandwidths of only 4 kHz or 7 kHz, their operations on spectrum between services in these bands will not cause interference to other users.

The FCC has already granted waivers to individual licensees to use certain channels that meet these criteria³ but has denied other requests.⁴ Similarly, the NPRM proposes to amend the Industrial/Business (“I/B”) Pool frequency table to add certain channels but has raised concerns about others. For example, it notes that the use of channels such as 451/6.003125, 451/6.009375 and 451/6.015625 MHz could preclude the use of 451/6.00625 and 451/6.0125 MHz in an area.⁵

The LMCC appreciates the thorough and thoughtful analysis in the NPRM as to the potential impact of including certain channels in the I/B Pool. However, the LMCC believes that these issues are best addressed in the frequency coordination process. In some areas, it might be preferable to have two 6 kHz channels rather than one 8 kHz channel. For other purposes in other areas, the reverse might be true depending on the operational requirements of potential users.

One of the greatest challenges faced by PLMR licensees in the VHF and UHF bands is finding exclusive channels that facilitate the deployment of more efficient and feature-rich

² The FCC originally imposed this obligation on licensees in the 470-512 MHz band, but subsequently waived the requirement in light of its statutory obligation to auction public safety spectrum in this band. See Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, 126 Stat. 156 (“Spectrum Act”); see also Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended, *Order*, WT Docket No. 99-87, 27 FCC Rcd 4213 (2012).

³ See e.g., Mobile Relay Associates, *Order*, WT Docket No. 13-212, 29 FCC Rcd 660 (WTB MD 2014); see also Mobile Relay Associates, *Order*, WT Docket No. 14-34, 29 FCC Rcd 7292 (WTB MD 2014).

⁴ See e.g., J-Comm Corporation, *Order*, DA 16-966, 31 FCC Rcd 9522 (rel. Aug. 26, 2016).

⁵ NPRM at ¶ 7.

digital systems. Because the channels under consideration in the NPRM currently are unassigned, except where authorized by waiver, most would be available as exclusive FB8 assignments, provided, of course, that they satisfy the requirements of FCC Rule Section 90.187. The LMCC urges the FCC to include all of the candidate channels identified in the NPRM in the I/B Pool, as it is confident that all applications will be evaluated in accordance with appropriate coordination requirements and that channels will not be recommended if there is a possibility of causing interference to other users or services.

2. 90.35(c)(63)

The FCC has proposed to modify the rules governing UHF channels that are designated for use by licensees operating central station alarm monitoring systems. The NPRM states that the Commission's review of the Universal Licensing System database suggests that the eight nationwide channels (four 12.5 kHz and four upper adjacent 6.25 kHz) and the twelve additional channels available for this purpose in 88 urbanized areas (six 12.5 kHz and six upper adjacent 6.25 kHz) are underutilized.⁶ The Commission has proposed removing the use limitation in urbanized areas where the channels are not currently in use and asks whether further changes to make these channels more broadly available would be in the public interest.

The Central Station Alarm Association ("CSAA") represents the communications needs of this industry and is a long-standing member of the LMCC. The LMCC intends to work closely with CSAA to determine what rule changes might be appropriate based on current and anticipated alarm reporting services. The LMCC expects to provide further input on this issue in its Reply Comments.

⁶ NPRM at ¶ 12.

B. Section 90.159 – Temporary and Conditional Permits⁷

The LMCC in 2014 urged the FCC to amend Section 90.159 of the Commission’s rules and extend conditional licensing authority to site-based applicants in the 470-512 MHz (“T-Band”) and 800/900 MHz bands.⁸ Under Section 90.159, with enumerated exceptions, applicants for new stations in specified bands are permitted to begin operating under conditional authority for up to 180 days, once an application has been certified by a frequency advisory committee (“FAC”) and has been on file with the FCC for ten business days. The LMCC Conditional Licensing Petition explained that the contour-based coordination procedures for VHF and UHF bands where conditional licensing already is approved, have become more complex than the relatively straight-forward distance calculations generally used in coordinating T-Band and 800/900 MHz applications where this option is not allowed. It noted that no problems were experienced when the FCC granted a waiver to allow conditional licensing in these bands during a period of atypically lengthy processing times due to the volume of applications received in response to the January 1, 2013 narrowband deadline.⁹

The NPRM tentatively concludes that expanding conditional licensing authority to the 800/900 MHz bands would allow earlier deployment of spectrum and greater licensee flexibility. The LMCC agrees, although it questions why this conclusion is limited to I/B and Public Safety entities in those bands.¹⁰ In addition to the Specialized Mobile Radio (“SMR”) Pool spectrum in the interleaved portion of the 800 MHz band (809-815/854-860 MHz), the majority of channels in the 800 MHz Expansion Band are in the SMR Pool. Channels in the 800 MHz

⁷ AAR, TIA, and UTC abstained from voting on this issue.

⁸ Petition for Rulemaking of the Land Mobile Communications Council, RM-11722 (filed May 15, 2014) (“LMCC Conditional Licensing Petition”).

⁹ See Enterprise Wireless Alliance, *Order*, 28 FCC Rcd 13910 (WTB MD 2013); Enterprise Wireless Alliance, *Order*, 28 FCC Rcd 17103 (WTB MD 2013).

¹⁰ NPRM at ¶ 18.

Guard Band are available to all eligible entities, I/B, Public Safety and SMR, and not designated for any Pool. As proposed, Rule Section 90.159 would prohibit conditional licensing for SMRs in all of those bands although, under existing rules, applications for site-based SMR systems are coordinated and processed identically to those filed by I/B and Public Safety entities. There is no obvious reason, and the NPRM does not offer an explanation, why the FCC rules would permit conditional licensing for commercial service providers in the bands below 470 MHz, which they do, yet prohibit it for the same type of licensee in the bands above 470 MHz. The LMCC requests that the Commission modify its tentative conclusion or explain why commercial applicants should not be permitted to avail themselves of this flexibility.

The LMCC also disagrees with the decision not to extend the conditional licensing option to T-Band applicants, a decision that the NPRM ascribes to the Spectrum Act and the Commission's subsequent freeze on T-Band licensing.¹¹ The T-Band Freeze already severely circumscribes the applications that may be filed in this band. In the LMCC's opinion, permitting conditional licensing for the very limited number of permissible applications would not in any way compromise the FCC's obligations under the Spectrum Act or the T-Band Freeze. This option should be extended to T-Band applicants.

Additionally, although not requested by any party, the NPRM queries whether conditional licensing should be available to 700 MHz Public Safety narrowband applicants.¹² The LMCC agrees that it should and appreciates the Commission raising this point. The NPRM

¹¹ See "Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Suspend the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum," *Public Notice*, 27 FCC Rcd 4218 (WTB/PSHSB 2012); see also "Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Clarify Suspension of the Acceptance and Processing of Certain Part 22 and 90 Applications for 470-512 MHz (T-Band) Spectrum," *Public Notice*, 27 FCC Rcd 6087 (WTB/PSHSB 2012) (collectively "T-Band Freeze").

¹² NPRM at ¶ 19.

also asks parties to assess the costs and benefits of extending this flexibility to those channels. Having enjoyed conditional licensing in the VHF and UHF bands for many decades, and having tested its utility in the Part 90 bands above 470 MHz pursuant to the FCC's waiver without experiencing any problems, the LMCC is unaware of any costs 700 MHz narrowband applicants might incur by having access to this option and the benefits are well-known. The LMCC requests that conditional licensing be extended to 700 MHz Public Safety narrowband channels.

Finally, while the LMCC encourages the FCC to enforce strictly the provision limiting conditional licensing authority to 180 days, after which continued operation is a violation of the FCC rules, it is not persuaded that also imposing a secondary condition on those authorizations is necessary. Instances of interference from licensees operating under conditional authority or of a refusal to cease operations if the 180-day period has passed and no permanent license has been issued are rare, and should be handled by the FCC's Enforcement Bureau as any other rule violation.

C. Section 90.219 – Use of Signal Boosters/Section 90.261 – UHF Fixed Operations

The LMCC supports the Commission's proposal to amend the rules to codify the waiver relief previously granted to AAR, allowing the use of single-channel, Class A signal boosters with up to 30 watts ERP on frequencies from 452/457.90625 to 452/457.9625 MHz in areas where it otherwise is not possible to have reliable coverage from the front to the rear of trains.¹³

D. Subpart S – 800 MHz Expansion Band (EB) and Guard Band (GB) Licensing¹⁴

The 800 MHz band has been essential to the ongoing vitality of PLMR communications. It was the proving ground for the efficiencies of trunked PLMR systems, technology that is

¹³ See Association of American Railroads, *Order*, WT Docket No. 14-98, 29 FCC Rcd 13439 (WTB MD 2014).

¹⁴ APCO, IMSA, NASF, and TIA abstained from voting on this issue. AASHTO and WIA opposed the LMCC position.

challenging to deploy in lower PLMR bands where channel exclusivity is not easily obtained in many areas of the country. Because the 800 MHz EB/GB channels may prove to be the last blocks of exclusive spectrum assigned for use by the PLMR community, it is critical that they be deployed and operated in the most efficient fashion and in the public interest.

For this reason, the LMCC petitioned the Commission asking that 800 MHz band incumbents be given a six-month period in which to apply for EB/GB channels before this spectrum is made available to new entrants.¹⁵ The FCC invited comments on the LMCC EB/GB Petition and, as noted in the NPRM, the responses were split. Industry trade associations, many of which serve as PLMR FACs, entities that have represented the interests of Part 90 users for decades, supported the LMCC proposal. They did so recognizing that their members and other PLMR entities would not be eligible for spectrum outside their existing markets during that period. Nonetheless, they determined, on balance, that allowing initial access to incumbents, licensees that had invested in systems to provide either internal communications or third-party service, offered the greatest likelihood that this last remaining spectrum would be placed into productive and efficient use.

Prospective applicants for new SMR systems opposed the proposal.¹⁶ The NPRM states they argued that the proposal would bar entry for new small business entities in areas of greatest spectrum demand and disagreed that new entrants are less likely than incumbents to put spectrum into use efficiently and quickly.¹⁷

The NPRM describes its proposal as adopting the LMCC EB/GB Petition in part.¹⁸ The

¹⁵ Petition for Rulemaking of the Land Mobile Communications Council, RM-11719 (filed Mar 27, 2014) (“LMCC EB/GB Petition”).

¹⁶ NPRM at ¶ 30.

¹⁷ *Id.*

¹⁸ *Id.* at ¶ 31.

LMCC would respectfully argue that the part adopted is so small as to provide no meaningful response to the request. The 40 EB channels that already are significantly licensed in many markets are subdivided into 12 Business/Industrial/Land Transportation (“B/ILT”) and 28 SMR channels. The NPRM proposes to allow incumbent B/ILT licensees a window during which they may apply for available B/ILT channels. As shown on the chart below, several major markets have no unlicensed B/ILT EB frequencies and only two have as many as five channels; perhaps fewer by the time these rules are adopted and applications accepted.

<u>Market</u>	<u>Total EB Available</u>	<u>EB B/ILT Available</u>	<u>EB SMR Available</u>	<u>GB Available</u>
San Francisco	9	0	9	40
NYC	6	1	5	36
Miami	24	3	21	40
Chicago	18	3	15	40
Dallas	27	2	25	40
Los Angeles	14	4	10	34
Phoenix	13	5	8	40
Wash DC	7	4	3	40
Houston	13	0	13	36
Boston	28	5	23	40

The FCC is correct in its determination that “Incumbent 800 MHz licensees already have deployed facilities and demonstrated a commitment to utilizing the band in a given market and are unlikely to acquire spectrum for other than operational purposes and can be expected to put additional channels into service promptly to meet existing operational needs.”¹⁹ Unfortunately, the partial relief granted will not allow more than one or two B\ILT incumbents in a market – and in some cases none – to expand their systems with EB channels because there are none available. That is why access to the Guard Band, 40 largely unencumbered channels that are available for B/ILT, Public Safety and SMR entities, is the only vehicle for providing

¹⁹ Id. at ¶ 31.

meaningful incumbent relief.

As requested in the LMCC EB/GB Petition, the LMCC again urges the Commission to adopt a six-month window for all 800 MHz incumbents, whether B/ILT, Public Safety or SMR, to file for EB or GB channels. It disagrees with the FCC's conclusion that incumbent SMR systems should not have an expansion window because existing and new SMR licensees compete for wireless customers. All businesses compete for customers in their respective marketplaces. If FedEx is permitted to add capacity to an existing system for the reasons described above, while UPS, a proposed entrant to a market, must wait until incumbent capacity requirements are satisfied, why does the same reasoning not apply to SMR operators?

Moreover, upon reviewing EB/GB spectrum availability in various markets, the LMCC further recommends that the FCC lift the now 21-year old freeze on 800 MHz inter-category sharing in the EB adopted by the Wireless Telecommunications Bureau.²⁰ Rebanding has so jumbled the original 800 MHz Pool allocations that it is questionable whether retaining them serves a useful purpose, at least as between B/ILT and SMR entities. Lifting the freeze in the EB during the six-month window would be an appropriate first step toward revisiting this matter more broadly.

III CONCLUSION

The LMCC requests that the FCC adopt rules in this proceeding consistent with the positions detailed above.

²⁰ *Inter-Category Sharing of Private Land Mobile Radio Frequencies in the 806-821/851-866 MHz Bands*, Order, 10 FCC Rcd 7350 (WTB 1995). Because GB channels are available to all qualified Part 90 applicants, and not subdivided by user category, the freeze does not apply.

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