

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

In the Matter of)
)
Partitioning, Disaggregation, and) WT Docket No. 19-38
Leasing of Spectrum)

To: The Commission

**REPLY OF THE
NATIONAL WIRELESS COMMUNICATIONS COUNCIL**

The National Wireless Communications Council (“NWCC”) (previously the Land Mobile Communications Council (“LMCC”)), in accordance with Section 1.415(b) of the Federal Communications Commission (“FCC”) rules, hereby submits its Reply Comments in the above-entitled proceeding.¹ The record indicates that the Wireless Radio Services (“WRS”) industry generally supports the rules proposed in the NPRM as consistent with the Congressional goals of diversifying access to spectrum and promoting service to rural areas as described in the Mobile Now Act² and with the public interest. While various parties have suggested provisions they believe would further enhance the FCC’s proposed Enhanced Competition Incentive Program (“ECIP”), they agree that license term extensions, construction extensions, and alternate construction benchmarks for rural-focused transactions could promote greater access to spectrum by entities that often struggle to secure spectrum rights in areas and for uses that do not conform precisely with current FCC build-out and renewal requirements.

¹*Partitioning, Disaggregation, and Leasing of Spectrum*, Further Notice of Proposed Rulemaking, WT Docket No. 19-38, 86 FR 74024(2021) (“NPRM”).

²Consolidated Appropriations Act, Pub. L. No. 115-141, Division (P) (RAY BAUM’S Act of 2018), Title VI (MOBILE NOW Act) §601 et. seq. (2018).

The NWCC 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 NWCC 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”)
- Enterprise Wireless Alliance (“EWA”)
- Forest Industries Telecommunications (“FIT”)
- Forestry-Conservation Communications Association (“FCCA”)
- Government Wireless Technology & Communications Association (“GWTC”)
- International Association of Fire Chiefs (“IAFC”)
- International Municipal Signal Association (“IMSA”)
- MRFAC, Inc. (“MRFAC”)
- Telecommunications Industry Association (“TIA”)
- The Monitoring Association (“TMA”)
- Utilities Technology Council (“UTC”)
- Wireless Infrastructure Association (“WIA”)

The members of these organizations historically have used primarily licensed Parts 22 and 90 narrowband and wideband channels as well as Part 101 microwave spectrum to meet their communications needs, supplemented by commercial service for certain applications. They include entities providing critical public safety, public service, and essential industrial services to the American public, as well as providers of non-consumer-oriented commercial dispatch service. Increasingly, they have identified use cases that require private broadband facilities, so access to spectrum through acquisition or leasing has become even more important. For that reason, they support the ECIP proposal, but also urge the FCC to adopt build-out requirements suited for systems

that do not serve consumers. Further, they endorse the recommendation of the Enterprise Wireless Alliance that the FCC extend the spectrum leasing option to exclusive VHF and UHF Part 90 channels.³

The FCC acknowledged in the NPRM that alternatives to population-based performance requirements could promote interest in spectrum acquisitions and leasing by a wide range of stakeholders.⁴ Most commenting parties embraced this proposal. The Wireless Internet Service Providers Association (“WISPA”) recommended alternative showings on a system-wide basis rather than the current call sign-by-call sign evaluation.⁵ T-Mobile USA, Inc. (“T-Mobile”) suggested that alternative safe harbor waiver showings should be available for entities that do not serve the public.⁶ CTIA agreed that all WRS flexible use licensees should have the option of an alternative construction showing.⁷

The NWCC encourages the FCC to consider those proposals, but urges it, at a minimum, to adopt build-out requirements for private use systems that are unrelated to population or even geographic coverage. As explained in the EWA Comments, these entities acquire spectrum for the sole purpose of conducting their internal operations with greater safety, efficiency, and economy. They wish to purchase or lease no more bandwidth and geography than needed to address those operational requirements, but their acquisitions are dependent on what the market offers. Securing sufficient spectrum where it is needed sometimes requires them to purchase more bandwidth and geography than optimal. If they are able to sell or lease what they do not need they will do so, but that is not always an option depending on location and marketplace alternatives. They should not

³ EWA Comments filed Feb. 28, 2022 at 3-5 (“EWA Comments”).

⁴ NPRM at ¶ 52.

⁵ WISPA Comments filed Feb. 28, 2022 at 13-14.

⁶ T-Mobile Comments filed Feb. 28, 2022 at 8-9.

⁷ CTIA Comments filed Feb. 28, 2022 at 12.

be discouraged from pursuing the transactions that are available or penalized for covering no more geography than needed for their internal purposes. As stated by EWA:

When enterprise entities acquire spectrum by purchasing it at auction, in the secondary market, or by lease, they do so to enhance the efficiency, effectiveness, and/or safety of operations that produce goods and services on which the public relies. It is difficult to imagine how that use could be considered other than demonstrably in the public interest.⁸

The NWCC agrees. It urges the FCC to recognize the unique requirements and contributions of these licensees by adopting build-out requirements focused on deployment for private internal communications. Since their investment in spectrum is not based on an anticipated return from subscribers but on improvement in their internal operating capabilities, deployment of that spectrum, rather than the geography or population covered, should itself demonstrate that it is being used in furtherance of the public interest.

The NWCC also endorses the EWA request that the FCC extend spectrum leasing authority to Part 90 Business and Industrial/Land Transportation (“I/B”) channels below 470 MHz that have been authorized for exclusive use.⁹ There is no obvious reason why leasing is not permitted since exclusivity for this spectrum is determined based on FCC Rule Section 90.187, the same rule that governs exclusivity for Part 90 licenses in the 470-512 MHz band (“T-Band”) where leasing is authorized. ULS does not distinguish among licenses in the Part 90 VHF (150-174 MHz), UHF (450-470 MHz), and T-Band, all of which are assigned the same radio service designations, and leasing is permitting for Public Safety licensees in these same bands. Updating the rules to correct this omission should be done at the FCC’s earliest opportunity.

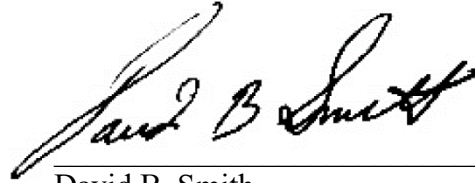
⁸ EWA Comments at 4.

⁹ *Id.* at 5.

For the reasons detailed herein, the NWCC urges the FCC to adopt rules consistent with the positions set out in these Reply Comments as expeditiously as possible.

Respectfully submitted,

**NATIONAL WIRELESS COMMUNICATIONS
COUNCIL**

A handwritten signature in black ink, reading "David B. Smith". The signature is written in a cursive style with a large, sweeping initial "D".

David B. Smith
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March 29, 2022