

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

In the Matter of)
)
Interim Eligibility Criteria for the 800 MHz) RM-11719
Expansion Band (860-861/815-816 MHz))
and Guard Band (861-862/816-817 MHz))

To: The Commission

**REPLY COMMENTS
OF THE
LAND MOBILE COMMUNICATIONS COUNCIL**

The Land Mobile Communications Council (“LMCC”), pursuant to Section 1.415 of the Federal Communications Commission (“FCC” or “Commission”) Rules, 47 C.F.R. § 1.415, hereby respectfully submits its Reply Comments in the above-captioned proceeding.¹ As discussed below, the record confirms that the public interest would be served by adoption of the interim eligibility rule change proposed by the LMCC for the 800 MHz Expansion Band and Guard Band (“EB/GB”).²

I BACKGROUND

The LMCC represents all categories of business enterprise, critical infrastructure, public safety, and commercial operators of systems licensed under Part 90 of the FCC rules. Each

¹ Wireless Telecommunications Bureau and Public Safety and Homeland Security Bureau Seek Comment on Petition for Rulemaking Filed by Land Mobile Communications Council Regarding Interim Eligibility for 800 MHz Expansion Band and Guard Band Frequencies, *Public Notice*, RM-11719, DA 14-545 (rel. Apr. 24, 2014) (“Public Notice”).

² Land Mobile Communications Council, Petition for Rulemaking Regarding Interim Eligibility for the 800 MHz Expansion Band (860-861/815-816 MHz) and Guard Band (861-862/816-817 MHz) (filed March 27, 2014) (“Petition”). As the FCC is aware, in certain parts of the country, including the area around Atlanta, GA in which SouthernLINC operates and the Canadian and Mexican Border Regions, the frequencies designated as EB/GB may be different from those assigned in the rest of the nation or the bands may not be available at all.

member organization has as its members entities that hold FCC licenses used to support their activities, whether private internal or commercial. In deciding to file the Petition, the LMCC had to weigh the interests of incumbent 800 MHz licensees that have had limited or no ability to expand existing systems for a number of years, and those members who wish to secure 800 MHz channels in markets in which they do not currently operate.

For example, the facilities of businesses represented by organizations such as the National Association of Manufacturers and MRFAC, Inc. (“NAM/MRFAC”) and the American Petroleum Institute (“API”) are not static: Plants are opened and closed based on a variety of factors, including labor conditions in an area, changes in state and local tax policies, the availability of skilled workers, proximity to expanded transportation hubs and other reasons. Because of economies of scale in areas such as equipment purchasing, inventory control, and training of personnel, it can be advantageous for all facilities to operate in the same portion of the spectrum using common, fungible equipment.

The LMCC recognizes that adoption of the rule proposed in the Petition would impose interim restrictions on the ability of these licensees to secure 800 MHz spectrum outside of the markets where they currently operate 800 MHz systems. Nonetheless, for the reasons detailed in the Petition, the LMCC concluded that the broader public interest would be served by allowing incumbent licensees to increase their spectrum efficiency by expanding 800 MHz capacity before making channels available for new entrants, whether those entities are operating private internal or commercial systems and irrespective of 800 MHz licenses they might hold in other markets. None of the Comments opposing the Petition support a different conclusion.

II NO PERSUASIVE ARGUMENTS HAVE BEEN SUBMITTED IN OPPOSITION TO THE PETITION

It is neither uncommon nor inappropriate for parties with a significant vested interest in the outcome of a proceeding to encourage the submission of comments by others sharing their view. However, in determining how to weigh such filings, the Commission is well-advised to consider not only the substance of the arguments, but also the basis for their submission. In this case, it is not necessary for the FCC to speculate about the striking similarity, often the identical wording, of the opposing comments, since one party filed a copy of the “Instructions for Filing Comments Against the LMCC Petition” (“Instructions”) in addition to his comments. The Instructions offered a Chinese menu of five positions that might be taken, as well as strategic advice about the timing of filing that perhaps was influenced by the upcoming 70th anniversary of D-Day.

That these filings were orchestrated by the inter-related Smartcomm, LLC (“Smartcomm”), Spectrum Network Group, LLC (“SNG”), M2M Spectrum Networks, LLC (“M2M”), Spectrum Acquisition Group, LLC (“SAG”) and National Frequency Coordination, LLC (“NFC”) enterprise (“Smartcomm Enterprise”) with their overlapping ownerships is clear. The Prosperity Group and the Innovative Group both selected #2 from the argument menu, and both were represented by Smartcomm in their application filing dispute with Janus Spectrum, LLC (“Janus”). Air Apparent Associates, LLC (“Air Apparent”), which also was represented by Smartcomm in that dispute, includes arguments #2, #3, and #5 from the menu. It is reasonable to assume that all of the parties that submitted these cookie cutter comments are affiliated with the Smartcomm Enterprise. Some appear to have secured EB/GB licenses already in the NPSPAC regions where this spectrum has been made available. Others may have applications

queued up for future filing windows, but seemingly have no current interest in the disposition of the EB/GB spectrum. To the extent that their filings track the positions in the Instructions menu, the LMCC must correct certain misinformation in them.

Specifically, many of the cookie cutter filings and the more extensive submissions from Air Apparent, Choice Communication, LLC, and M2M Spectrum Networks, LLC claim that the LMCC proposal will diminish competition, contrary to the FCC's goal of promoting competition for the benefit of the consumer public. In fact, a review of the FCC's ULS database, including in spectrum scarce urban markets, confirms that the great majority of 800 MHz incumbents are not commercial service providers against which these individuals and companies seemingly expect to compete.³ Rather, the vast majority are licensees of private, internal systems including the following familiar names: Anheuser Busch, Exxon, American Electric Company, ARINC, Chrysler, Consolidated Edison, Fed Ex, and First Student, as well as smaller, more local businesses. These companies rely on wireless communications to provide services that are vital in promoting American business efficiency and public safety. Allowing them a limited opportunity to expand their 800 MHz systems before accepting applications from nascent commercial providers will not compromise the Commission's commitment to enhanced competition, but will address the communications needs of American industry and public safety.

Many of the commenting parties also used argument #2 in the Instructions in which they were urged to complain that the Petition is intended to help LMCC members that "missed

³ As discussed below, most of these comments and the Instructions describe the service to be provided as "high quality data" offerings using "emerging information technologies" to provide service to "commercial, consumer and government entities." See Instructions. Since 800 MHz SMR licensees typically focus on the provision of digital or analog voice services, it is not clear that these offerings would be considered substitutable or, therefore, competitive.

the boat” by not filing for EB/GB frequencies in the 11 NPSPAC regions in which they were made available. Of course, the absence of such filings proves quite a different point. Incumbent 800 MHz licensees, both private internal and commercial, did not file for that spectrum, because they had no business plans to deploy facilities in those areas. They could have, but did not, request frequencies in some of the most under-populated areas of the country, because they do not have a need for spectrum in those markets. Their interest, and the only interest at issue in the Petition, is the need to add capacity to existing systems in existing markets. On the other hand, some LMCC member organizations and Sprint Corporation have been contacted by entities that were awarded those EB/GB licensees seeking help in selling their frequencies to wireless carriers that they mistakenly understood would want to purchase them. What they will do with those frequencies when a lucrative sale is not an option remains to be seen.

With respect to argument #3, the LMCC can only hope that veterans, minorities, and small businesses generally are not being targeted by those selling applications for handfuls of narrowband channels, claiming that securing such licenses will enable them to “offer emerging information technologies to commercial, consumer and government entities.” That type of “get rich quick” promotion is all too familiar from the early days of the cellular and SMR industries, and the only people who got rich from them were the individuals selling the applications. The LMCC welcomes participation by veterans, minorities, or anyone with a solid understanding of the increasingly complex and resource-intensive wireless communications business and the wherewithal to build and operate the facilities it licenses. Those being urged

to purchase 800 MHz EB/GB applications as investment opportunities would be well-advised to first invest in due diligence about what they are buying.

Argument #4 was repeated by a number of parties opposing the Petition who believe that Public Safety should not have even limited priority access to any 800 MHz EB/GB frequencies because, according to the Instructions, first responders, through FirstNet, have been given access to “700 MHz LTE technology which has been dubbed as more sophisticated than all existing first responder telecommunications technologies, e.g. 800 trunking.” Of course, this paean to LTE neglects to mention or fails to understand that it does not yet support mission-critical voice capability, the most vital functionality for all emergency responders. Until LTE provides that level of voice capability in addition to its current data applications, Public Safety entities will need to maintain Land Mobile Radio systems for that purpose.

Argument #5 is factually incorrect. The LMCC did not “contend[s] that new entrants who file applications for 800 MHz Expansion Band/Guard Band frequencies will not construct and operator (sic) their systems” as stated in the Instructions. It did say the FCC could have a very high confidence that incumbents who already are operating facilities will deploy whatever additional frequencies they obtain. New licensees are expected to obtain whatever technical and operational support they need to build the systems for which they obtained their authorizations and thereafter to operate them. The LMCC hopes that the individuals who filed these opposing comments and who presumably intend to submit EB/GB applications so that they can provide “emerging information technologies to commercial, consumer and government entities” are prepared to and able to fulfill their FCC obligations.

Finally, the LMCC must address certain statements or misstatements in the comments filed by M2M.⁴ First, M2M is wrong when it states that “[T]he 900 MHz freeze applied to incumbents and non-incumbents alike.”⁵ In fact, by its express terms, the 900 MHz freeze allowed incumbents to add channels and sites provided they were associated with an existing system in a market.⁶ The approach in the LMCC Petition is modeled after the policy adopted by the FCC on its own motion at 900 MHz, which recognized the public interest benefits of allowing incumbent expansion. The Commission’s licensing staff had no difficulty deciding whether applications satisfied that requirement at 900 MHz and should not be expected to encounter problems at 800 MHz. Moreover, contrary to statements by M2M and other parties, and as noted by Janus, the FCC historically awarded expansion preferences to incumbent 800 MHz systems by giving them priority status on the waiting lists for recovered frequencies that the FCC used to maintain.⁷ Thus, there is ample precedent for the time-limited preference proposed in the Petition.

M2M’s recommendation that the FCC consider adopting a 12.5 kHz channel band plan at 800 MHz⁸ suggests that the company is unaware of the 2009 Petition for Rulemaking filed by the Enterprise Wireless Alliance (“EWA”). EWA proposed the creation of full-power, interstitial

⁴ SNG has requested a waiver to enable its subsidiary, M2M, to deploy what SNG has described as a nationwide commercial data network using 900 MHz I/B frequencies for machine-to-machine communications exclusively for Industrial/Business (“I/B”) entities. *See, e.g.*, FCC File No. 0006203140. It has specifically disavowed any intention to serve consumers or Federal government users. M2M now states that it is eligible for EB/GB frequencies and intends to apply for and employ them as part of its machine to machine network. *See* M2M Comments at pp 1-2. The Commission may want to confirm that any EB/GB spectrum acquired by Smartcomm-related entities for what they claim will be an emerging information technology service available for commercial, consumer, and government entities is not actually intended for the M2M network, which SNG has volunteered will serve only I/B eligible entities.

⁵ M2M Comments at 7.

⁶ Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC Rcd 18277 at n. 8. (WTB 2004).

⁷ Comments of Janus Spectrum, LLC at 3.

⁸ M2M Comments at 6.

12.5 kHz frequencies between existing 25 kHz channels with separation standards that would protect the operations of incumbent 25 kHz systems. The FCC placed that Petition on Public Notice and it was supported by the LMCC, but no further action has been taken.⁹ Since M2M states that an offset plan would increase GB channel availability by 98% and EB by 53%, it must contemplate requiring all 800 MHz incumbents to migrate from 25 kHz to 12.5 kHz channels, a proposal the LMCC would be unable to support.

III CONCLUSION

The arguments opposing the LMCC Petition are largely incorrect and are outweighed by FCC precedent in which the Commission has recognized the public interest benefits, under appropriate conditions, of allowing incumbent 800 MHz systems to expand before making spectrum available to new entrants. The LMCC urges the FCC to initiate a rulemaking proceeding consistent with the Petition and to defer releasing any additional EB/GB channels until that proceeding has been completed.

Respectfully submitted,

/s/

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⁹ See Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Seek Comment on the Petition by Enterprise Wireless Alliance Requesting the creation of New, Full Power, Interstitial 12.5 kHz Channels in the 800 MHz Band, *Public Notice*, RM-11572, 24 FCC Rcd 12461 (2009).