



COALITION FOR EMERGENCY RESPONSE AND CRITICAL INFRASTRUCTURE

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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
45 L Street NE
Washington, DC 20554

**Re: *Ex Parte Letter* – Amendment of Part 90 of the Commission’s Rules,
WP Docket No. 07-100**

The Coalition for Emergency Response and Critical Infrastructure (CERCI) fully supports the Commission’s commitment to the “locally controlled, public safety nature” of the 4.9 GHz band.¹ CERCI is a broad-based, growing coalition determined to maximize the benefits of the band by truly serving locally identified public-safety needs, while enabling more intensive use of the band, where possible, through leasing to compatible critical-infrastructure industry (CII) operations.

To this end, CERCI recommends that the Commission:

- (1) Ensure local public-safety control of the band, with local decision making about how the 4.9 GHz band can best meet a jurisdiction’s current and future needs, and enable local public-safety systems to meet those needs;
- (2) Support local decision making about leasing to compatible CII entities by adopting the “Model 2” leasing framework in the *2023 4.9 GHz FNPRM*;² and
- (3) Reject nationwide FirstNet licensing for the 4.9 GHz band, which would reduce “local control” to merely allowing local public-safety officials to choose between quality-of-service levels offered by a national network provider, rather than having actual ownership and control of these critical networks.

¹ See *Amendment of Part 90 of the Commission’s Rules*, Seventh Report and Order and Ninth Further Notice of Proposed Rulemaking, FCC 23-3 ¶ 1 (rel. Jan. 18, 2023) (“*2023 4.9 GHz Order*” or “*2023 4.9 GHz FNPRM*”).

² See *2023 4.9 GHz FNPRM* ¶ 97 (allowing public safety licensees to lease directly to non-public safety entities provided those leases are coordinated and approved by the Band Manager).

These positions are supported by multiple notable public-safety, CII, and commercial stakeholders, and as a result CERCIs membership continues to grow. In recent weeks, the California State Sheriffs' Association (CSSA), the National Association of Women Law Enforcement Executives (NAWLEE), the Industry Council for Emergency Response Technologies (iCERT), and the National Rural Electric Cooperative Association (NRECA) joined CERCI.³ The CSSA represents California's fifty-eight elected sheriffs, emphasizing community safety and law enforcement excellence. NAWLEE is an organization administered by law-enforcement practitioners for women executives and those who aspire to be executives in law enforcement. iCERT is an association focused exclusively on emergency response technologies and related equipment, systems, and services. NRECA is the national service organization that represents America's electric cooperatives that works to keep electricity safe, reliable, and affordable. These organizations, and others, are committed to local control of the 4.9 GHz band.

I. The Commission Should Ensure Meaningful Local Public-Safety Control of the 4.9 GHz Band with Local Public-Safety Systems that Will Best Serve Local Priorities.

In the Introduction to the *2023 4.9 GHz Order*, the Commission set forth its first principles for the 4.9 GHz band, chief among them “robust locally controlled public-safety operations.”⁴ As the Commission considers the future of the 4.9 GHz band, it should affirm that state and local public-safety licensees – both current and future – have the right to build, own, and operate locally implemented public-safety systems to meet local needs. These needs are best understood by local first-responders who provide 24x7 protection for their communities.

In contrast, the PSSA has asked the Commission to grant FirstNet a nationwide license in the 4.9 GHz band, to be operated exclusively by one national carrier. PSSA leaders assert that nationwide FirstNet deployment would give local first responders “the ultimate control over the network” in terms of ability to direct FirstNet communications capabilities at an incident.⁵ The PSSA also says that “to maintain local control by public safety,” the FirstNet network has an “uplift” feature that allows local public-safety authorities to choose whether FirstNet's Extended Primary users, including utilities, schools, and hospitals, “should be elevated to a higher priority based on the needs at a particular incident.”⁶

CERCI members do not view the PSSA's vision of local public-safety choice among

³ CERCI membership includes: Major Cities Chiefs Association; National Sheriffs' Association; National Association of Women Law Enforcement Executives; California State Sheriffs' Association; Industry Council for Emergency Response Technologies; Edison Electric Institute; National Rural Electric Cooperative Association; T-Mobile; Verizon; UScellular; and Competitive Carriers Association.

⁴ *2023 4.9 GHz Order* ¶ 2.

⁵ Paul Kirby, *PSSA Reiterates Call for FirstNet to Get 4.9 GHz Band License*, TR Daily (Jan. 19, 2024) (quoting Jeff Johnson, PSSA leader).

⁶ Letter from Jeffrey D. Johnson, Exec. Dir., Western Chiefs Association, on behalf of PSSA, to Marlene H. Dortch, Sec'y, FCC, WP Docket No. 07-100, at 3 (Dec. 6, 2023).

predetermined options available on a nationwide network – decided at the national level – as actual local control. Requiring local jurisdictions to subscribe to a nationwide network, operated exclusively by a commercial carrier, to access and use the 4.9 GHz band is *not* local control. And it is not the right answer for the 4.9 GHz band given how state and local public-safety agencies put the band to use today.

Currently, there are countless state and local 4.9 GHz public-safety systems serving locally identified needs and priorities across the country. Public-safety needs vary on a jurisdiction-by-jurisdiction basis, and locally controlled public-safety systems must therefore be tailor-made to best fit the needs of each jurisdiction. For example:

- New Hampshire and Maine are nearing completion of an intelligent transportation system (ITS) utilizing 4.9 GHz spectrum for a point-to-multipoint system within both states and across their common border at Interstate 95. The system is used, in part, to monitor and control ITS dynamic message signs, warning beacons, and lane use guidance signs for part-time use of the highway shoulder.⁷
- The California Department of Transportation (Caltrans) is the owner and operator of California’s approximately 15,000-mile Highway System. Caltrans uses the 4.9 GHz band for autonomous/connected vehicle communications. Caltrans also uses the 4.9 GHz band for backhaul connectivity that enables ITS to manage highway traffic congestion and incidents and for traffic cameras, ramp meters, changeable message signs and highway advisory radios.⁸
- The Tennessee Department of Transportation uses the 4.9 GHz band for a link that connects the Nashville TMC Motorola dispatch consoles to the Tennessee Advanced Communications Network, the State’s trunked radio network.⁹
- The San Francisco Bay Area Rapid Transit District (BART) provides public transit services in five counties within the San Francisco Bay Area and uses the 4.9 GHz band for public-safety purposes. BART is currently in the process of using the 4.9 GHz band to implement both fixed and mobile advanced communications-based train control services (CBTC) throughout its existing geographic license area.¹⁰
- The Metropolitan Transportation Authority (MTA) currently uses the 4.9 GHz band in New York for public-safety purposes in its subway and bus systems.¹¹ In

⁷ See Letter from Julian Gehman, Gehman Law PLLC, counsel to AASHTO, to Marlene H. Dortch, Sec’y, FCC, WP Docket No. 07-100, at 2 (Jan. 23, 2024) (“*AASHTO Ex Parte*”).

⁸ See Comments of the State of California Department of Transportation, WP Docket No. 07-100, at 4 (Nov. 23, 2021).

⁹ See *AASHTO Ex Parte* at 2.

¹⁰ Comments of the San Francisco Bay Area Rapid Transit District, WP Docket No. 07-100, at 1-2 (Mar. 30, 2023).

¹¹ See Letter from Rebecca Kagan Sternhell, Deputy Dir., NYC Office of Federal Affs., representing the City of New York, to Marlene Dortch, Sec’y, FCC, WP Docket No. 07-100, at 1 (June 18, 2019); *see also* Comments of the City of New York, WP Docket No. 07-100, at 2 (July 5, 2018) (“2018 NYC

addition, to ensure the safe operation of its subway system (i.e., to prevent collision and derailment caused by overspeed or improper switch operation), MTA uses a CBTC system, and after an exhaustive internal technical review and selection process, MTA determined that the 4.9 GHz band is the only viable solution for its CBTC program.¹²

- The New York State Division of Homeland Security and Emergency Services (DHSES) uses both fixed and deployable links in the 4.9 GHz band for voice and data backhaul. Deployable links are used to support public-safety at New York State events, such as the New York State Fair and the Baseball Hall of Fame Induction at Cooperstown.¹³

These are just a small sample of the mission critical, locally implemented, and locally controlled public-safety systems and networks operating in the 4.9 GHz band in jurisdictions throughout the United States.

II. CERCII Supports Public-Safety Leasing of 4.9 GHz Spectrum to Compatible, Non-Interfering CII Operations.

CII users have a compatible mission with public-safety and a record of coexistence with public-safety licensees in other spectrum bands. These communications services are dedicated to supporting the safe, reliable and efficient delivery of essential electric, gas and water services to the public at large and to protecting the safety of field crews during routine maintenance and emergency restoration. In addition, without the essential services that utilities and other CII provide, police, fire and rescue could not do their jobs, or at the very least, their operations would be seriously compromised. The communications services provided by utilities and CII are not made commercially available to the public.

As an example, electric companies operate extensive private networks to strengthen the grid and transition to cleaner energy, and securing sufficient spectrum is crucial for electric companies. The 4.9 GHz band could be used by electric companies under leasing agreements with public-safety entities such as local fire and police departments and state transportation agencies. Such access is compatible with public-safety because electric companies build and operate their communications systems for similar missions.

Electric companies operate very closely with public-safety systems in vital support for their communities, including sharing of information during emergencies and natural disasters. Response and restoration actions are frequently contingent on the restoration of power. Electric

Comments”).

¹² See Reply Comments of the Metropolitan Transportation Authority, WP Docket No. 07-100, at 2-3 (May 15, 2023); see also Letter from Greg Kunkle, Keller & Heckman LLP, counsel to Metropolitan Transportation Authority, to Marlene H. Dortch, Sec’y, FCC, WP Docket No. 07-100 at 1 (June 29, 2023).

¹³ See Comments of New York State Division of Homeland Security and Emergency Services, WP Docket No. 07-100, at 1-2 (Jan. 14, 2021).

companies are often part of federal, state, and local emergency management teams. Leasing arrangements to access the 4.9 GHz spectrum band with public safety would make more effective use of this spectrum, with significant benefits of public-safety and the public interest.

Utilities and public safety have successfully partnered to deploy statewide systems. For example, in Colorado, Illinois, Nebraska, Nevada, Ohio, Pennsylvania and South Carolina, they have been able to compatibly share spectrum in the 800 MHz band and in bands below 512 MHz. There is no reason to believe that utilities and CII could not compatibly share spectrum with public safety in the 4.9 GHz band as well. As the Commission has recognized, utilities and public safety have similar communications needs and design their networks to be highly reliable and resilient.¹⁴ Moreover, utilities and CII would be interested primarily in rural areas, where there should be ample spectrum available for sharing. The Commission should allow utilities and CII to negotiate the terms and conditions of their leasing arrangements with public safety entities.

The Commission’s proposed Model 2 leasing framework allows local public-safety to maintain control and continue to operate their own systems, while considering compatible lease options. As the Commission states, “[u]nder Model 2, public safety licensees would be permitted to lease directly to non-public safety entities so long as those leases are coordinated through and approved by the Band Manager.”¹⁵ While the Band Manager would ensure coordination and no harmful interference, the public-safety licensees would maintain decision-making authority with regard to whether to lease their licensed spectrum and to whom – decisions that would be ceded to the Band Manager under Model 1.¹⁶

The Commission should adopt the Model 2 leasing framework, as it is the only approach that maintains true local control of this vital public-safety band while enabling CII opportunities in the band.

¹⁴ See National Broadband Plan, Federal Communications Commission, at 252 (March 27, 2010), <https://transition.fcc.gov/national-broadband-plan/national-broadband-plan.pdf> (stating that “[t]he wide-area network requirements of utilities are very similar to those of public safety agencies” as “[b]oth require near universal coverage and a resilient and redundant network, especially during emergencies”).

¹⁵ 2023 4.9 GHz FNPRM ¶ 97.

¹⁶ Under the proposed Model 1 framework, the Band Manager would lease spectrum access rights from public-safety licensees and then sub-lease access to that spectrum to its choice of non-public-safety entities. See *id.* ¶¶ 95-96.

III. A Nationwide FirstNet License Would Stifle Local Public-Safety System Opportunities in the Band

While the PSSA seeks a nationwide FirstNet license¹⁷ and “the integration of the 4.9 GHz Public Safety Band with the Nationwide Public Safety Broadband Network (NPSBN),”¹⁸ such action would thwart locally implemented and controlled public-safety systems in the band like the ones identified above. As the California Office of Emergency Services (Cal OES) recently noted, a FirstNet nationwide license would only “create[] potential for interference with existing and planned uses by the state and local public safety community.”¹⁹

In fact, the PSSA’s proposal will not protect incumbent public-safety systems from FirstNet operations in the band. The PSSA asserts that FirstNet’s network will “includ[e] application of a unified priority and ruthless preemption scheme across both the 4.9 GHz Band and Band 14, so as to ensure seamless and automated public-safety priority for mission critical operations in mid-[]and low-band spectrum.”²⁰ But these are “in-network” measures for operations on AT&T’s FirstNet network. This framework would not protect standalone state and local public-safety systems operating in the 4.9 GHz band.

PSSA is clearly focused on moving all users to the FirstNet network and not allowing for standalone systems. The way forward in the 4.9 GHz band is by enabling locally controlled public-safety systems to meet locally identified needs, not by forcing public-safety users and CII users to subscribe to FirstNet and rely solely on the FirstNet network. CERCI’s proposal would not only allow for local public-safety systems to evolve, but for local CII to do so as well.

* * *

¹⁷ PSSA’s request for a nationwide licensee in the 4.9 GHz band is an untimely petition for reconsideration. CERCI is supporting the Commission’s work to date and the process going forward, not trying to relitigate decisions already made. *See* Letter from Coalition for Emergency Response and Critical Infrastructure, to Marlene Dortch, Sec’y, FCC, WP Docket No. 07-100, at 1 (Nov. 16, 2023).

¹⁸ Reply Comments of the Public Safety Spectrum Alliance, WP Docket No. 07-100, at 3 (May 14, 2023).

¹⁹ *See* Letter from Budge Currier, California Office of Emergency Services, to Marlene H. Dortch, Sec’y, FCC, WP Docket No. 07-100, at 1 (Jan. 16, 2024).

²⁰ Comments of the Public Safety Spectrum Alliance, WP Docket No. 07-100, at 5 (Apr. 12, 2023).

We urge the Commission to prioritize protecting local public-safety control of the 4.9 GHz band to ensure that the public-safety needs of each local jurisdiction are met. The Commission should enable local public-safety systems and support local decision making about leasing to compatible CII entities by adopting the “Model 2” leasing framework. Finally, simply giving a nationwide license to FirstNet and integrating the 4.9 GHz band with the NPSBN will not work for all players. We urge the Commission to recognize these issues as it selects a leasing model and decides on other open issues in this proceeding.

Sincerely,

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