



COALITION FOR EMERGENCY RESPONSE AND CRITICAL INFRASTRUCTURE

July 3, 2024

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

Dear Ms. Dortch:

Pursuant to Section 1.1208 of the Federal Communications Commission’s (“Commission”) Rules,¹ the Coalition for Emergency Response and Critical Infrastructure (“CERCI”) submits this summary of oral presentations made at a meeting it requested with the Commission. On July 1, 2024, representatives of CERCI, met with representatives of the Commission’s Office of General Counsel² to discuss legal concerns with the Public Safety Spectrum Alliance’s (“PSSA”) proposal that the Commission assign the 4.9 GHz band to the First Responder Network Authority (“FNA”).³

At the meeting, CERCI’s representatives explained, as it has in its written submissions,⁴ that the legal merits of the PSSA’s plan are not a close call: The Commission clearly lacks authority to assign the 4.9 GHz band to FNA, and FNA clearly lacks authority to receive it. The analysis begins and ends with the statute. FNA’s enabling act established a narrow, one-time carve-out to the established division of authority between the National Telecommunications and

¹ 47 C.F.R. § 1.1208; *see also* 47 C.F.R. § 1.1206.

² Representatives of CERCI included Jessica Ring Amunson, Elizabeth Deutsch, and Trey Hanbury of Jenner & Block LLP. Roger Sherman of Quadra Partners was present in his capacity as CERCI Policy Advisor. Representatives of the Commission included Anjali Singh, Douglas Klein, Paul Powell, Deborah Broderson, and Chin Yoo.

³ *See generally Ex Parte* Letter from Chief Jeffrey D. Johnson (Ret.), Public Safety Spectrum Alliance, to the Honorable Jessica Rosenworcel, Chairwoman, FCC, WP Docket No. 07-100 (Apr. 23, 2024); *Ex Parte* Letter from Chief Jeffrey D. Johnson (Ret.), Public Safety Spectrum Alliance, to the Honorable Jessica Rosenworcel, Chairwoman, FCC, WP Docket No. 07-100 (May 24, 2024).

⁴ *See generally Ex Parte* Letter from Kenneth Corey, NYPD Chief of Dept. (Ret.), CERCI Chairman, and Roger C. Sherman, CERCI Policy Advisor, the Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (Apr. 15, 2024); *Ex Parte* Letter from Kenneth Corey, NYPD Chief of Dept. (Ret.), CERCI Chairman, and Roger C. Sherman, CERCI Policy Advisor, the Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (May 10, 2024); *Ex Parte* Letter from Kenneth Corey, NYPD Chief of Dept. (Ret.), CERCI Chairman, and Roger C. Sherman, CERCI Policy Advisor, the Coalition for Emergency Response and Critical Infrastructure, to Marlene H. Dortch, Secretary, FCC, WP Docket No. 07-100 (June 6, 2024).

Information Administration (“NTIA”) (which oversees Federal spectrum use) and the Commission (which oversees non-Federal spectrum use), directing the Commission to assign the 700 MHz band—and only the 700 MHz band—to FNA.⁵ And the statute likewise authorizes FNA to hold and operate “the *single* public safety wireless license” over the 700 MHz band.⁶ No other statutory provision provides the Commission or FNA with the authority needed to accomplish the proposed assignment. Any contrary reading would violate the major questions and nondelegation doctrines.

CERCI’s representatives added that PSSA’s more recent proposal that the Commission effect this unlawful assignment indirectly through a forced sharing agreement with a Band Manager does not solve the problem. For one, courts will be extremely skeptical of an attempt to circumvent the highly reticulated statutory scheme by laundering the illegal spectrum assignment through a sham Band Manager. For another, while Section 2.103(b) of the Commission’s rules allows an incumbent licensee to enter into a *voluntary* sharing agreement with a Federal entity,⁷ any arrangement *requiring* licensees to do so would amount to assignment by fiat, which is prohibited.

CERCI’s representatives also discussed concerns with FNA’s constitutional structure, particularly the appointment of its Board of Directors and self-funding mechanism, as well as serious policy concerns with encroaching on incumbent licensees’ spectrum access. State and local public safety organizations have strong reliance interests in the current allocation because their broadband systems depend on incremental buildouts in response to annual budget allocations. Eliminating the state and local public safety allocation would not only strand existing state and local 4.9 GHz band infrastructure investments, but also upend state and local deployment plans and collaborations with critical infrastructure industries.

Should any questions arise concerning this submission, please contact me.

Sincerely,

The Coalition for Emergency Response and Critical Infrastructure (CERCI)

/s/ Roger C. Sherman

Kenneth Corey
NYPD Chief of Dept. (Ret.)
CERCI Chairman

Roger C. Sherman
CERCI Policy Advisor

cc: Meeting Attendees

⁵ See 47 U.S.C. § 1421.

⁶ See *id.* § 1426(b)(1) (emphasis added); *id.* § 1421.

⁷ See 47 C.F.R. § 2.103(b).