



May 6, 2020

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 - 12th Street, S.W.
Washington, D.C. 20554

Ex Parte

Re: Written Ex Parte Presentation, WT Docket No. 17-200

Dear Ms. Dortch:

The Utilities Technology Council (“UTC”) and the Edison Electric Institute (“EEI”) are providing the following written ex parte presentation in the above-referenced proceeding in accordance with Section 1.1206 of the Commission’s Rules.

UTC and EEI respectfully request that the Commission provide for rules in its Report and Order to limit the use of the broadband segment exclusively for communications by or for entities who would be eligible for licensing under Section 90.603 of the Commission’s Rules.¹ This requirement will help to preserve the broadband segment of the 900 MHz band for use by utilities and other business, industrial and land transportation (“B/ILT”) entities, as well as other entities eligible under Part 90 of the Commission’s rules. Without this provision in the rules, licenses in the 900 MHz broadband spectrum could be converted to commercial wireless common carrier service to the public at large, thus leaving B/ILT Part 90 eligible entities, especially utilities and other critical infrastructure industries (“CII”) without access to spectrum that they need to ensure highly reliable, available and secure communications for their business operations.

Specifically, the Part 27 rules for the broadband segment in the Commission’s draft Report and Order do not currently include eligibility requirements with regard to the types of entities that would be eligible to use the spectrum, nor are there provisions for permissible communications in this segment of the band. The Commission’s draft Report and Order only requires an applicant for a broadband license to: (1) hold 50% of the total licensed 900 MHz spectrum (whether Specialized Mobile Radio or B/ILT) in the relevant county; and (2) hold spectrum in the broadband segment or reach an agreement to clear through acquisition or relocation of, or demonstrate how it will provide interference protection to, covered incumbent licensees collectively holding licenses in the broadband segment for at least 90% of the site-channels in the county and within 70 miles of the county boundary.² Moreover, the Commission’s draft Report and Order does not include any conditions on potential new licenses that would require the broadband licensee to provide priority access to utilities and other CII, as was initially proposed in the petition for rulemaking that led to this proceeding and reiterated in comments by the petitioners in this proceeding.³ Therefore, it is foreseeable and entirely likely that a broadband licensee

¹ See 47 CFR § 90.603.

² See Review of the Commission’s Rules Governing the 896-901/935-940 MHz Band, draft Report and Order, Order of Proposed Modification, and Orders, FCC-CIRC2005-01, WT Docket No. 17-200 (rel. Apr. 22, 2020) at ¶53 (“draft Report and Order”).

³ See Petition for Rulemaking of the Enterprise Wireless Alliance and Pacific DataVision, Inc., RM-11738 at ii-iii (filed Nov. 17, 2014), available at <https://ecfsapi.fcc.gov/file/60001008215.pdf> (EWA/PDV Petition). See also Ex Parte Comments, Proposed 900 MHz PEBB Allocation Rules at 12-13 (filed May 3, 2015), available at <https://ecfsapi.fcc.gov/file/60001046308.pdf> (proposing amendments to the FCC’s Part 90 rules including priority

could offer commercial wireless common carrier services to the public using the 900 MHz broadband segment, which would as a practical matter prevent the spectrum from being used by utilities and other CII.

There is a simple way to address this issue: the Commission should simply incorporate by reference Section 90.603 into the new subpart P of the Part 27 rules for the broadband segment of the band.⁴ Incorporating Section 90.603 into the new subpart P of the Part 27 rules for the broadband segment of the band would ensure that the spectrum is preserved for use by and for Part 90 eligible entities. An applicant would still specify in its application if it is requesting authorization to provide common carrier, non-common carrier, private internal communications or broadcast services, or a combination thereof,⁵ as long as the spectrum is provided only for use by and for Part 90 eligible entities. This will support the Commission's public policy goals in this proceeding for making broadband spectrum available for use by B/ILT entities. As UTC, EEI and many other parties have explained in numerous Commission proceedings, there is an increasing shortage of available spectrum for use by utilities and CII for private land mobile radio services under Part 90 of the rules. Moreover, these same entities have an increasing need for broadband spectrum that is suitable to support higher capacity for their mission critical voice and data communications. Therefore, UTC and EEI urge the Commission to provide sufficient safeguards to ensure that the broadband segment of the 900 MHz band is preserved for use by and for utilities and CII, as well as other Part 90 B/ILT entities.

Thank you for your help in this matter. If there are any questions concerning this matter, please let us know.

Respectfully,
/s/ Brett Kilbourne
Vice President Policy and General Counsel
Utilities Technology Council
Brett.kilbourne@utc.org
(202)833-6807

/s/ Aryeh Fishman
Associate General Counsel, Reg. Legal Affairs
Edison Electric Institute
AFishman@eei.org
(202) 508-5023

access for CII entities by PEBB licensees); Reply Comments of PDV Wireless, Inc. dba Anterix in WT Docket No. 17-200 at 6 (filed July 2, 2019)(stating that “Anterix initiated this proceeding precisely because the more than decade-long effort to secure licensed broadband spectrum exclusively for utility and other CII entities had not produced the desired allocation.”); Further Comments of Enterprise Wireless Alliance and PdvWireless, Inc. in WT Docket No. 17-200 at 2 (filed May 1, 2018)(stating “This conviction prompted EWA/PDV to file the Petition for Rulemaking recommending creation of a Private Enterprise Broadband (“PEBB”) license, an authorization that would be dedicated to addressing the requirements of PE/CII entities whose broadband needs are not met on consumer-oriented commercial networks.”)

⁴ 47 CFR §90.603. This provision in the rules limits eligibility to an entity that is “(a) [a]ny person eligible for licensing under subparts B, C, D, or E of Part 90 of the Commission’s Rules; (b) [a]ny person proposing to provide communications service to any person eligible for licensing under subparts B or C of this part on a not-for-profit, cost-shared basis; or (c) [a]ny person eligible under [Part 90] and proposing to provide on a commercial basis base station ancillary facilities as a Specialized Mobile Radio Service System operator, for the use of individuals, federal government agencies and persons eligible for licensing under subparts B or C of [Part 90].”

⁵ See 47 CFR § 27.10(b).