Before the

Federal Communications Commission

Washington, D.C. 20554

In the Matter of )

Review of the Commission’s Rules Governing the )

896-901/935-940 MHz Band ) WT Docket No. 17-200

Realignment of the 896-901/935-940 MHz Band to )

Create a Private Enterprise Broadband Allocation )

Amendment of the Commission’s Rules to Allow )

for Specialized Mobile Radio Services Over 900 )

MHz Business/Industrial Land Transportation )

Frequencies )

**Comments of Steven A. Zecola**

1. **Introduction and Summary**

Rather than viewing the 896-901/935-940 MHz band as a “small swath of spectrum”, the Commission should embrace this spectrum for what it can and should be, namely a national treasure.

For example, if this spectrum were bundled into a national license and the restrictions for narrowband usage and private carriage were removed, this spectrum would be worth billions of dollars. In turn, millions of end users would benefit from the services provided over these frequencies. In addition, existing communications customers would benefit from the added competition.

In contrast, this national resource is currently being used by only 500 licensees, mostly to serve their own needs on a spotty localized basis. This is a massive underutilization of the public’s airwaves. The Commission should move quickly to reverse this gross inefficiency.

Viewed in the light of maximizing consumer welfare based upon what consumers are actually consuming in the market, the Commission should recognize that configuring the 900 band as a national broadband license would create the most value for society.

The FCC could protect the equitable rights of the existing licensees by providing them a percentage ownership in the national license based upon the MHz-POPs that their licenses cover as a fraction of the MHz-POPs covered by all licensees in this band.

Finally, there should be no transfer restrictions on the national license once it is issued to enable the license to get into the hands of the company that will produce the most value for consumers.

1. **The Current Allocation Is Inefficient**

As the Commission explained in the NOI:

“This band was designated in 1986 for narrowband private land mobile radio (PLMR) communications by Business/Industrial/Land Transportation (B/ILT) licensees and Specialized Mobile Radio (SMR) providers…”

The assignment of this spectrum to B/ILT companies, by definition, restricts use by others. In 1980’s, spectrum was assigned by lotteries and comparative hearings so a direct allocation to B/ILT had some advantages. However, over the last 30 years, wireless market has changed dramatically. For example, spectrum has become exceedingly scarce with the blossoming of broadband mobile communications service. Moreover, the use of spectrum by B/ILT has declined relative to other uses so the original selection has proven to become more inefficient over time.

The story can be seen in the data. More specifically, before the Reply Comments are due in this proceeding, the Commission should issue a report showing the actual capacity utilization in the 900 bands versus other bands near 1 GHz by running its Spectrum Utilization Study Software (SUSS).

At the same time, the FCC should identify the heaviest end-user utilization of prime spectrum near 1 GHz to determine the highest valued use of that spectrum.

Even if the Commission finds there to be one or more “hot spots” in the 900 band, the licensees can procure the requisite services from third parties. In the case of a service requiring 99.9999% reliability for safety reasons, this reliability is available at an extra cost in the market by having physically redundant facilities. The current licensees are using free spectrum as a substitute for the more expensive alternatives available in the market, and thereby receiving a hidden subsidy from the public. There is no meaningful justification for this subsidy.

1. **There Should Be No Special Preference**

The FCC’s desire to determine the services to be offered on this spectrum based on various market studies is misguided. Market studies come in four flavors, namely focus groups, quantitative analysis, market trials and the actual use of a service in the marketplace. Of the four flavors, actual consumer behavior in the marketplace is – by far – the best indicator of consumer preference.

If the FCC were going to going to pick a particular industry or application for a spectrum preference, it should be the healthcare industry. Healthcare is the largest industry in the U.S., covering 17% of all expenditures. A national 10 MHz license dedicated to healthcare could potentially monitor the vital signs of every legal person in the United States and expedite treatment were appropriate. The possibilities for new innovative healthcare services on a national broadband spectrum allocation are boundless.

But the Commission’s quest to find the optimal application for this spectrum is foolhardy. First, the FCC has neither the skills nor the charter to perform such determinations. Second, even if the FCC could pick the “right” application to receive a preference, the optimal outcome would change over time.

Instead, the Commission should rely on the “invisible hand” of the marketplace to produce the best outcome for consumers once the spectrum is appropriately configured. Accordingly, the FCC should not perpetuate any special preferences in this band.

As a general matter, the FCC should observe the current end-user utilization of prime spectrum near 1 GHz to determine the highest valued use of that spectrum. After that, it should set the parameters of the spectrum in this proceeding according to that construct, and then let market forces prevail.

1. **The “Market” Has Voiced a Clear Preference for Broadband rather than Narrowband Communications**

The migration from narrowband to broadband by consumers in this country is truly remarkable when compared to virtually any transition in any other industry. The pace of this conversion is even greater overseas. By any measure available to the FCC to compare the two services, broadband dominates narrowband. Moreover, broadband networks have the capability to provide narrowband communications. Hence, all of the 5/5 spectrum in the 900 bands should be designated as broadband.

1. **Private Carriage is Needlessly Restrictive**

Private carriage puts operating restrictions on licensees in order to perpetuate discrimination and justify a spectrum allocation to the obliging group. However, there is no reason or need to perpetuate a special allocation to B/ILT so there is no need for the restriction of private carriage.

1. **Geographic Coverage**

The patch quilt of geographic allocations in the 900 band, particularly the site-by-site channel assignments, severely restricts the development of robust, widespread and highly-valued communications services.

If the FCC were to look at the spectrum assigned originally as CMAs, MTAs, BTAs, etc., the market has always put a higher value per MHz/POP on the ownership of a larger geographic footprint (all other things being equal). In fact, licensees spend years and years and substantial resources in an attempt to aggregate spectrum into a national footprint. In addition to being able to offer service to more people, the economies of scale from the broader geographic coverage enables the provision of more innovative services at a lower cost.

In order to maximize the benefits to consumers and to increase competition to the existing broadband competitors, the FCC should aggregate the 5/5 spectrum assignments into a national license.

1. **Equitable Rights in the Current Channel Assignments**

Voiding the authorizations of the current licensees would undoubtedly raise their ire and potentially subject the provision of service to long delays. Moreover, these licensees may ultimately succeed in Court in reversing the Commission’s order. Therefore, it behooves the Commission to recognize the equitable rights of the current licensees. To do so, the Commission could give each licensee a percentage ownership in the national license based upon the MHz-POPs that their licenses cover as a fraction of the MHz-POPs covered by all licensees in this band.

1. **Relocation**

To make way for the new service, the existing licensees should be given one year to clear the band and make alternative arrangements for meeting their communications requirements. There is no legal, economic or equitable requirement for these licensees to receive any further subsidies in order to complete this transition.

1. **License Transfer**

There should be no transfer restrictions on the national license once it is issued (other than that imposed by antitrust law) to ensure that the license gets into the hands of the company that will produce the most value for consumers.

Respectfully submitted,

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Steven A. Zecola

August 15, 2017