

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

In the Matter of)
)
Amendment of the Commission’s Rules to Allow) RM-11755
for Specialized Mobile Radio Services Over 900 MHz)
Business/Industrial/Land Transportation Frequencies)

To: Chief, Wireless Telecommunications Bureau

**COMMENTS
OF
PACIFIC DATAVISION, INC.**

Pacific DataVision, Inc. (“PDV” or the “Company”), in accordance with Section 1.405 of the Federal Communications Commission (“FCC” or “Commission”) rules, submits the following comments in response to the Public Notice¹ seeking input on the June 26, 2015 Petition for Rulemaking (“Petition”) filed by M2M Spectrum Networks, LLC (“M2M”).² The Petition proposes a rule change to allow the licensing of 900 MHz Business/Industrial/Land Transportation (“B/ILT”) channels by commercial Specialized Mobile Radio (“SMR”) service providers with the proviso that service be provided only to B/ILT-eligible entities. The Petition was filed after the FCC denied the waiver request filed by M2M’s parent company, Spectrum Networks Group, LLC (“SNG”), in which SNG proposed to use 900 B/ILT spectrum to deploy a nationwide wireless network offering machine-to-machine, Internet of Things applications to business entities,³ the same offering described in the Petition as justification for the requested rule change.

¹ Wireless Telecommunications Bureau Seeks Comment on M2M Spectrum Networks Petition for Rulemaking to Allow Specialized Mobile Radio Services Over 900 MHz Business/Industrial Land Transportation Frequencies, RM-11755, *Public Notice*, DA 15-944 (rel. Aug. 21, 2015) (“Public Notice”).

² Petition for Rulemaking of M2M Spectrum Networks, LLC, filed June 26, 2015.

³ In the Matter of Spectrum Networks Group, LLC, WT Docket No. 14-100, *Order*, 30 FCC Rcd 3509 (2015).

The Public Notice asks parties to comment on (i) whether it is desirable to use this spectrum to provide for-profit service to B/ILT entities, presumably including, but not limited to, the service outlined in the Petition; (ii) the effect the proposed rule change would have on 900 MHz B/ILT spectrum availability for private, internal systems; (iii) the extent to which for-profit service already is being offered on these channels, contrary to the Section 90.617 prohibition; and (iv) whether the M2M Petition is compatible with the Private Enterprise Broadband 900 MHz band realignment proposal (“PEBB Proposal”)⁴ submitted jointly by PDV and the Enterprise Wireless Alliance (“EWA”).⁵

The Company has a substantial interest in the Part 90 900 MHz band. It is the largest nationwide holder of 900 MHz spectrum through its acquisition from Sprint Corporation (“Sprint”) of the great majority of geographic SMR licenses that were bought at auction from the FCC and of Sprint’s B/ILT channels that were purchased from incumbent B/ILT licensees and then converted to SMR status pursuant to Rule Section 90.621(f). It also is the co-proponent with EWA of the PEBB Proposal to realign the band and create a 240-channel broadband PEBB authorization in each Major Trading Area (“MTA”) consisting of 200 auctioned, geographic SMR channels and 40 B/ILT channels. As proposed by EWA/PDV, the PEBB licensee would provide build-to-suit broadband facilities for private enterprise users, including critical infrastructure industry (“CII”) entities, with priority access available for the latter. While there undoubtedly is a continued need for 900 MHz narrowband land mobile systems, broadband technology clearly represents the future of wireless telecommunications. EWA/PDV proposed this band realignment to provide a

⁴ See Wireless Telecommunications Bureau Seeks Comment on Enterprise Wireless Alliance and Pacific DataVision, Inc. Petition for Rulemaking Regarding Realignment of 900 MHz Spectrum, *Public Notice*, RM-11738, 29 FCC Rcd 14424 (WTB MD 2014); Wireless Telecommunications Bureau Seeks Comment on Supplement to Enterprise Wireless Alliance and Pacific DataVision, Inc. Petition for Rulemaking Regarding Realignment of 900 MHz Spectrum, *Public Notice*, RM-11738, 30 FCC Rcd 4763 (WTB MD 2015).

⁵ Public Notice at 1-2.

broadband option for private enterprise users with coverage, reliability, security, hardening or priority access requirements that are not satisfied on commercial or unlicensed broadband systems and thereby to promote the more technologically advanced and efficient use of this existing allocation.

It could be argued that adoption of the rule change proposed by M2M would be advantageous for PDV and for the PEBB Proposal. As explained in the PEBB Proposal, the Company holds 40 or more converted B/ILT channels in many major markets, all of which were originally licensed by entities the FCC deemed eligible to hold B/ILT authorizations and subsequently were purchased and converted to SMR status by Sprint. PDV is prepared to enhance its spectrum position in certain areas through the acquisition and conversion of additional B/ILT channels under the current FCC rules. However, there are some markets where there are few or even no B/ILT licensees and, thus, no B/ILT channels available for acquisition. Because PDV is not eligible to apply for B/ILT channels directly, it cannot access this spectrum even though it is not currently being used to meet narrowband private enterprise needs.⁶

Adoption of the M2M rule change would address this situation by giving the Company direct eligibility to apply for B/ILT channels, subject to the use restriction proposed. However, PDV's very specific interest in acquiring B/ILT channels for inclusion in the PEBB allocation must be considered in light of the position of the private enterprise user community vis-à-vis the M2M Petition. The Company appreciates that these businesses have few allocations in which it is possible to secure exclusive frequencies. A rule change that would permit all unassigned 900 MHz B/ILT channels to be acquired by commercial entities would constitute a fundamental alteration of this sub-allocation. While no spectrum should remain underutilized in perpetuity, the FCC must

⁶ PDV has no knowledge of whether ineligible applicants acquired licenses for 900 MHz B/ILT channels either by misrepresenting their qualifications to the FCC or through an oversight in the FCC review process. Sprint did not file any such applications and PDV has not done so.

consider the projected need for these channels for future private internal operations versus the argument that this spectrum is uniquely suited for the nationwide machine-to-machine network described in the recently denied SNG waiver request and now in the Petition. In PDV's opinion, the views of private enterprise users and their representatives should carry considerable weight in that assessment.

If the Commission decides to take further action on the M2M Petition, it should do so either subsequent to further consideration of the PEBB Proposal in a Notice of Proposed Rulemaking or in conjunction with that rulemaking proceeding. In response to a question posed in the Public Notice, PDV does not consider the M2M Petition and the PEBB Proposal as necessarily incompatible. For example, the FCC could modify the eligibility for B/ILT channels below 937 MHz to permit direct SMR access. The Commission also could confirm that M2M is prepared to self-fund any non-coordination costs associated with a band realignment, a commitment made by its parent company, SNG, in seeking waiver relief.⁷

However, the sequencing of a band realignment and any eligibility rule change is critical. If the Commission were to accept SMR applications for B/ILT channels throughout the band before implementing the proposed PEBB realignment, it could trigger the filing of some purely speculative SMR applications submitted with the hope of extracting payment for realigning from the PEBB licensee. Even if M2M were to reaffirm SNG's self-funding commitment, that obligation would not necessarily apply to other SMR licensees. Any such applications could deprive private enterprise users of needed channels as they typically do not seek spectrum without a plan and budget for deploying it, the antithesis of speculative filings. Even limiting any eligibility change to B/ILT channels below 937 MHz could be detrimental if allowed prior to action on the

⁷ See Letter from Pantelis Michalopoulos and Christopher Bjornson, Counsel to Spectrum Networks Group, LLC, and M2M Spectrum Networks, LLC, to Marlene Dortch, FCC, WT Docket No. 14-100, at 7 (June 24, 2014).

PEBB Proposal. It would create the possibility that speculative SMR licensees could occupy channels that otherwise would be available for realignment in the hope of being paid to cancel their authorizations.

The Company takes no position on the desirability of modifying the rules governing eligibility for 900 MHz B/ILT channels below 937 MHz after the PEBB proposal has been implemented but supports whatever position is taken by a consensus of the private user community. However, for the reasons above it urges the Commission to act first on the pending PEBB Proposal, the only proposal for making available to private enterprise entities advanced broadband technology specifically tailored to their stringent requirements.

Respectfully submitted,
PACIFIC DATAVISION, INC.

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