Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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

REPLY COMMENTS OF M2M SPECTRUM NETWORKS, LLC

I. INTRODUCTION AND SUMMARY

M2M Spectrum Networks, LLC ("M2M") hereby responds to the comments received by the Commission in response to its Petition for Rulemaking ("Petition") to amend the Commission's rules to allow for Specialized Mobile Radio ("SMR") services over 896-901/935-940 MHz ("900 MHz") Business/Industrial Land Transportation ("B/ILT") Pool channels.

The proposed rule will properly implement the Commission's flexible use policies to ensure that the efficient use of the spectrum is maximized. The current policy is both less flexible and more flexible than it should be (it does not permit new applicants to provide any commercial services, yet it permits holders of modified and transferred licenses to serve everyone, not only businesses and industries that are B/ILT eligible). Any new rules in the band should eliminate that disconnect. In doing so, the proposed rule will rationalize eligibility requirements that have been abused. M2M agrees with commenters who believe scarcity, maintaining the use of the band for B/ILT use and preventing speculation are real concerns. And the proposed rule will allow the Commission to better address these issues than the current eligibility requirement. It will also do so without automatically handing substantial additional spectrum to one licensee and favoring it over all others as the rulemaking petition filed by Pacific

DataVision ("PDV") and the Enterprise Wireless Alliance ("EWA") ("EWA/PDV Petition") would do.[1] While there are many problems with the EWA/PDV Petition, compatibility between the two petitions is not one of them, which means there is no justification for holding up the Petition until the many problems with EWA/PDV Petition can be addressed.

II. M2M WILL SERVE THE PUBLIC INTEREST BY FULLY IMPLEMENTING THE COMMISSION'S FLEXIBLE USE POLICIES AND RATIONALIZING THE ELIGIBILITY REQUIREMENTS

The rule proposed by M2M would effectuate the flexibility to provide commercial services sought by the Commission in 2004[2] while articulating for the first time an important limit to that flexibility: the rule recommended by M2M would permit SMR use of the band but only when the customers are businesses that would themselves be eligible in the B/ILT pool.

Commenters support the M2M approach. PCIA indicates that "the proposed rulemaking is consistent with the Commission's longstanding flexible use policies, which promote wireless innovation, investment and efficient spectrum use."[3] The effect of this flexible use policy here, in PCIA's words, will be to "create opportunities for new and existing service providers to introduce new, valuable niche services."[4] PCIA notes that, with the proposed rule, "a B/ILT licensee may choose to provide specialized services to business users on a Commercial Mobile Radio Service ("CMRS") basis that are not offered by providers with greater license

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[1] *See* Enterprise Wireless Alliance and Pacific DataVision, Inc., Petition for Rulemaking, RM-11738 (Dec. 8, 2014) ("EWA/PDV Petition").

[2] Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969, 15127 ¶ 335 (2004) (concluding that additional flexibility in the 800 MHz band allowed businesses to better fulfill their communication needs in that band and adding flexibility in the 900 MHz B/ILT band would have a similar effect).

[3] PCIA Comments at 3.

[4] *Id.*

bandwidths."[5] This will permit certain cost-effective, machine-to-machine applications that make targeted use of the narrowband channels of the 900 MHz B/ILT band.[6]

In addition, as PCIA notes, because licensees will not be limited to only internal use, a single service provider could use the same license to serve the needs of multiple businesses."[7] According to NextEra Energy, the enhanced efficiencies from serving multiple businesses with a single license under the proposed rule will provide current licensees "the opportunity to increase the services they operate and lower the cost of operating these systems."[8] The present licensing regime has been unsuccessful in reaping the benefits of flexibility, but also circumscribing it. Under the Commission's current rules, new applicants can only use the channels for private, internal use while existing licensees can freely provide SMR service to the public either through modification or assignment. The restrictions to which the initial licenses are subject are thus too strict; by contrast, the rules to which modified or transferred licenses are subject are too lenient.

This dichotomy has been a recipe for lawlessness. Applicants have been able to evade B/ILT eligibility requirements by making inadequate disclosures or simply by pretending they do not exist. Today, many 900 MHz B/ILT licensees appear to provide for-profit service to third parties despite never requesting authority to do so in an assignment or modification application.[9] They have apparently obtained their licenses either by not being forthright in their application, or by admitting their intended service to others but hoping nobody notices. Even EWA, the

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[5] *Id.* at 3-4.

[6] *Id.* at 4.

[7] *Id.* at 9.

[8] NextEra Energy Comments, RM-11738, at 8 (July 14, 2015).

[9] M2M's parent company, SNG, has identified at least 19 licensees who appear to be using their 900 MHz B/ILT licenses in such a manner. *See* Spectrum Networks Group, LLC, Petition for Orders to Show Cause, at 7-17 (June 26, 2015).

frequency coordinator responsible for coordinating and submitting some of the most egregious examples of evasion and speculation, now believes that "the FCC should take appropriate action to rectify any such instances."[10] PCIA charitably notes that this "discordant licensing regime …. has caused confusion in the industry."[11] The proposed rule will put an end to this evasion and speculation by solving the two problems of too little and too much flexibility and eliminating the disconnect.

III. THE PROPOSED RULE BETTER ADDRESSES THE CONCERNS RAISED BY COMMENTERS THAN THE CURRENT RULES

Concerns have been raised by parties such as the Lower Colorado River Authority ("LCRA"), the American Petroleum Institute ("API"), and the Utilities Telecom Council ("UTC") regarding scarcity in the 900 MHz B/ILT band, including for Critical Infrastructure Industries ("CII"); preserving the band for business use; and speculation. M2M understands these concerns. The proposed rule is designed to see the 900 MHz B/ILT spectrum put to its most efficient use, especially for CII entities. The proposed rule preserves the band for business use. And the proposed rule does its part to check speculation.

But the "discordant licensing regime" described by PCIA actually results in all three of these public interest harms.[12] As for the scarcity concern raised by LCRA and UTC,[13] it is one that UTC says its members are "already experiencing."[14] In part, this is because providers like M2M cannot serve others so each business has to get its own license.[15] The proposed rule would

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[10] EWA Comments at 7.

[11] PCIA Comments at 2.

[12] *See id.*

[13] *See* LCRA Comments at 3-7; UTC Comments at 3-4.

[14] UTC Comments at 3.

effectively permit many businesses to share a license through a single service provider instead of each needing to obtain its own.

M2M agrees with API that the band should be preserved to help businesses with their communications needs. As mentioned, under the proposed rule, the band would only be used to serve Part 90 eligibles, thus eliminating the loophole that allows the channels to be effectively transferred out of the B/ILT pool and used for Commercial Mobile Radio Service ("CMRS") and other services targeting individuals rather than business.[16]

As for API's speculation concern,[17] it unfortunately appears to be going on today. Companies with no apparent need for, or capability to use, the channels, such as Scramjet Development and 5G Properties, are applying for the last channels in large markets, including San Francisco and New York.[18] While the purpose behind such strategic filings is not clear, speculation is a possibility. By limiting commercial use of the spectrum to business end users, the proposed rules would take away the incentive to buy licenses for the purposes of flipping them. M2M also advocates for, and is committed to, strict buildout requirements and transferability limits so that the channels are only licensed by those that intend to use them as part of a real network.

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[15] PCIA Comments at 9.

[16] EWA asserts that the loophole should be maintained. *See* EWA Comments at 7. M2M does not oppose grandfathering an exception for those licensees who have already made the appropriate modification to their licenses, but it believes the dedicated business use of the band serves the public interest. EWA also notes that the current rules permit converted spectrum to serve the needs of public safety and even federal government entities and suggests the proposed rule change be modified to continue to permit this usage. *Id.* M2M agrees that this is an appropriate modification to the proposed rule.

[17] *See* API Comments at 5.

[18] *See* Spectrum Networks Group, Petition for Show Cause Orders at 11-13, 19-20.

IV. THE M2M PETITION IS SUPERIOR TO THE EWA/PDV PETITION AND SHOULD NOT BE HELD UP BY EWA/PFV'S INCOMPLETE PROPOSAL

In the Public Notice, the Bureau asked commenters to address whether the Petition is compatible with the EWA/PDV Petition.[19] Consistent with what M2M and its affiliate Spectrum Networks Group, LLC said during the pendency of its waiver requests, PDV has answered the question by indicating that the two proposals are compatible.[20]

But PDV and EWA suggest prerequisites to the adoption of M2M's proposed rule in an apparent attempt to slow it down. EWA suggests any eligibiltiy change be "premised on a determination that … there is no spectrum reasonably available to accommodate [the new users]."[21] This proposed standard should not apply here where the Petition would merely close an existing loophole and end the disparate treatment that is currently permitted by the existing rules and undermines the public interest. Nor would such a rule help EWA's partner PDV itself if it were applied to the EWA/PDV Petition. Under that standard, PDV would itself be foreclosed from additional spectrum since it already has access to substantial licensed 900 MHz spectrum. For its part, PDV suggests the Commission require a "consensus of the private user community" before moving forward.[22] Since PDV's partner EWA would likely never be part of such a consensus for the M2M Petition, the intent here may be for this proposed standard to serve as a poison pill. In fact, when compared to the EWA/PDV Petition, the M2M Petition is much closer to consensus. While the M2M Petition has elicited some comments expressing

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[19] FCC, Public Notice, RM-11755, 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, DA 15-944, at 2 (Aug. 21, 2015).

[20] PDV Comments at 3-4.

[21] EWA Comments at 5.

[22] PDV Comments at 4-5.

concerns, it enjoys support in the private user community.[23] On the other hand, the EWA/PDV Petition has only generated support from EWA, PDV and a vendor that will be supplying PDV. This is thin support when juxtaposed against the overwhelming opposition of the private user community.

PDV and EWA also try to suggest the Petition should be held up until after the EWA/PDV Petition is addressed.[24] Just like EWA's previous attempt to freeze 900 MHz applications, this is a self-serving attempt to limit other entities from obtaining licenses. The EWA/PDV Petition is nowhere near ready for action, especially in light of the numerous harmful interference concerns raised in that proceeding. For example, NextEra Energy has noted that "M2M's proposed modification … does not disrupt the landscape of systems operating today nor does it pose interference risks like the EWA/PDV proposal."[25] JVC KenwoodUSA concurs, noting that "the M2M plan should be evaluated thoroughly as an alternative to the incomplete proposal advanced" by EWA and PDV.[26] The M2M Petition should be addressed immediately because it fixes the disconnect that has arisen in the current licensing regime, maximizes spectral efficiency, alleviates scarcity, protects business use of the band, and checks speculation. The EWA/PDV Petition creates none of these benefits, but risks harmful interference to existing users.

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[23] *See* PCIA Comments; NextEra Energy Comments, RM-11738; JVC KenwoodUSA Comments, RM-11738 (July 14, 2015).

[24] EWA Comments at 5-6; PDV Comments at 4-5.

[25] NextEra Energy Comments, RM-11738, at 8.

[26] JVC KenwoodUSA Comments, RM-11738, at 7 & n.8.

V. CONCLUSION

M2M's proposal would require only a relatively minor change, but that change would have large and positive consequences for the public interest. Allowing initial for-profit service to businesses in the 900 MHz B/ILT band would help put the spectrum to more intensive use and encourage innovative machine-to-machine communications in the band. By revising the rules to limit SMR service to Part 90 eligibles, the Commission would also ensure that the purpose of the rules is protected, scarcity is prevented, and speculation deterred. The Commission should therefore initiate a proceeding to allow for initial SMR services to businesses on 900 MHz B/ILT Pool channels.

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Respectfully submitted,

/s/

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