

**Before the  
Federal Communications Commission  
Washington, D. C. 20554**

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	WT Docket 02-55
	)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels	)	
	)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258
	)	
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service	)	RM-9498
	)	
Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service	)	RM-10024
	)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service	)	ET Docket No. 95-18
	)	

To: The Commission

**PETITION FOR CLARIFICATION AND RECONSIDERATION**

Pursuant to Section 1.106 of the Commission's Rules, Consolidated Edison Company of New York, Inc. ("ConEd"), by its attorney, hereby requests clarification of two aspects of the Commission's *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order* ("R&O") in these proceedings<sup>1</sup> and reconsideration of one aspect of the R&O.

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<sup>1</sup> FCC 04-168, rel. Aug. 6, 2004, 69 FR 67823, Nov. 22, 2004.

## **Preliminary Statement**

ConEd is a public utility that provides electric, gas and steam utility service. Electric service is provided to customers in all of New York City (except a small portion of Queens) and most of Westchester County. Gas service is provided to Manhattan, the Bronx, part of Queens and most of Westchester County. Steam service is provided in Manhattan, from the Battery at the southern end of Manhattan north to 96<sup>th</sup> Street. Customers of each of these services combine to total more than 3 million. ConEd provides its utility services through more than 120,000 combined underground cable miles and overhead wire lines, 4,000 miles of gas mains, 360,000 gas services and 100 miles of steam mains and services.

To help conduct its operations in a safe and efficient manner, ConEd has constructed a 23 cell-site iDEN digital wireless communication system operating in the 800 MHz, which has dual-NAM capability. Of the 23 sites, five fall into the *800 MHz Cellular System* category, as defined in Section 90.7 of the Commission's Rules, as modified by the R&O.<sup>2</sup> ConEd's iDEN system is used for internal (non-CMRS) communications exclusively, including voice communications and short messaging services. Its dual-NAM capability allows those mobile units that have been activated on Nextel's ESMR system to communicate over that system as well when out of range of ConEd's system. ConEd has invested more than \$25 million in its iDEN system which includes approximately 3,300 mobile units operating throughout its 660-square mile service territory. In addition to the iDEN system, ConEd also has a license for an itinerant conventional

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<sup>2</sup> R&O, at Appendix C.

800 MHz system. Accordingly, ConEd qualifies under the *Critical Infrastructure Industry* (CII) definition, as specified in the new Section 90.7 of the Commission's Rules.<sup>3</sup>

ConEd's communications systems allow its field crews to respond to and investigate problems that occur in a safe and efficient manner. Without its communications systems, ConEd's ability to conduct its utility operations would be severely impaired. Thus, ConEd's employees perform work that is critical to the well being of New York City's residents, government and businesses. ConEd dispatches roughly 8,000 personnel into the field each day to perform work that can be dangerous to employees and the public if communications are impeded or compromised by harmful interference. The availability of reliable, interference-free communications is accordingly essential to the ability of ConEd's field personnel to perform their critical work in a safe and efficient manner.

While ConEd believes that the Commission has done a commendable job in crafting rules and procedures that have the promise of largely resolving the interference problems that currently plague the 800 MHz band, there are several details of the R&O, as they relate to ConEd's operations, that require clarification or reconsideration. These are set out below.

#### **I. Itinerant Operations on 800 MHz Channels**

ConEd is licensed for itinerant operations on the channel 853/808.4375 MHz under call sign WNLK821. This channel falls within spectrum that will become part of the new home for the National Public Safety Advisory Committee (NPSPAC) allocation.<sup>4</sup> ConEd uses this channel for emergency operations to restore service to its customers. The system is set up and operated on a temporary basis, as needed. Although licensed for up to 100 watts output power for repeater use and 35 watts output power for mobile use, in actual operation ConEd generally uses a low

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<sup>3</sup> *Id.*

power portable unit installed on a service vehicle as a repeater for communications with and between up to 100 portable units at the job site. Operation in this manner during emergencies reduces the likelihood of harmful interference to ConEd's own operations and those of other licensees.

Although Commission regulations do not specifically designate any of the 800 MHz channels for itinerant operations, it is ConEd's understanding that the Commission had an informal agreement with the frequency coordinators that licensees demonstrating a need for itinerant operations in the 800 MHz band would be licensed on one of two channels. Such assignments have generally been made on a non-interference basis to site-based systems operating on the same channel.

ConEd is aware that it will be required to relocate its current itinerant frequency because of redesignation of its itinerant channel as one of the new NPSPAC channels. However, the Commission's R&O is silent on whether itinerant operations will continue to be supported and which alternate frequencies may be used for this purpose. Accordingly, ConEd seeks clarification and confirmation that when its itinerant system is migrated to an alternate channel, it will be allowed to continue operating its station on an itinerant basis. ConEd's itinerant operations will continue to play a vital role in its overall communications system design because of the critical need for service restorers to maintain reliable communications during hazardous operations where regularly licensed stations are unsuitable for the task for one reason or another. Itinerant service licensees should not be penalized because of the required frequency relocations.

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<sup>4</sup> R&O, at paras. 22 and 151.

## II. Grandfathering of Operation on SMR Channels

Three of the channels that ConEd uses in its system are part the current SMR pool, as specified in Section 90.617(d) of the Commission's Rules, at Table 4B. These channels are 856/811.5875, 857/812.5875 and 858/813.5875 MHz. Following rebanding, these channels will remain in the interleaved spectrum designated for SMR operations. FCC Rule Section 90.617(d), as revised by the R&O, provides that EA-based licensees (as defined in the new Rule Section 90.681) that operate non-cellular systems prior to the effective date of the R&O may choose to remain on these channels in the non-cellular portion of the 800 MHz band (as specified in Rule Section 90.614), and that these licensees may continue to operate non-cellular systems and will be grandfathered indefinitely.<sup>5</sup>

In ConEd's 800 MHz iDEN system, five of the 23 sites using these frequencies in a cellular architecture meet the *800 MHz Cellular System* definition, as specified in the new FCC Rule Section 90.7, based on antenna height.<sup>6</sup> ConEd acquired these channels prior to the FCC auctions of the 800 MHz spectrum and thus they do not fall into the category of EA-based licenses. While it would appear that these non-cellular incumbent SMR-channel licenses should be entitled to the same indefinite grandfathering as EA-based licenses, it is not clear from the R&O that this is so. Con Ed accordingly seeks clarification and confirmation that its operation on the three pairs of non-cellular SMR frequencies is grandfathered and that it will not be required to change frequency simply because it did not acquire the licenses in a spectrum auction.

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<sup>5</sup> R&O, at Appendix C.

<sup>6</sup> ConEd plans to apply for a waiver to retain its existing frequencies for these five locations. *See*, R&O, at para. 173.

### **III. Interference Protection for Mobiles and Portables**

In the R&O, the Commission decided that in order for non-cellular 800 MHz licensees to be entitled to full interference protection against unacceptable interference, they must use mobile and portable voice radios with performance that equals or exceeds the following performance standards:

- Voice units intended for mobile use: 75 dB intermodulation rejection ratio; 75 dB adjacent channel rejection ratio; -116 dBm reference sensitivity.
- Voice units intended for portable use: 70 dB intermodulation rejection ratio; 70 dB adjacent channel rejection ratio; -116 dBm reference sensitivity.<sup>7</sup>

Mobile and portable units that do not meet this standard will be entitled to a lower level of interference protection. The Commission's decision is stated to be based on manufacturers' technical filings, standard reference works and manufacturers' specification sheets for voice equipment.<sup>8</sup> Con Ed requests that the Commission reconsider this decision for the following reasons.

Con Ed has approximately 3,300 mobile/portable units in operation on its iDEN system that fall short of the above standards. When Con Ed purchased its iDEN system from Motorola, mobile/portable units meeting the above standards were not available, although mobiles and portables using other technologies were capable of meeting those standards. While ConEd can only speculate, it believes that the mobiles and portables that Motorola sold for use in iDEN systems were designed primarily for use in a non-interleaved spectrum environment thereby not requiring as strict interference rejection capabilities. In any event, Con Ed purchased the very

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<sup>7</sup> R&O, at para. 109.

<sup>8</sup> R&O, at para. 110.

best radios available at the time; and it has now established with Motorola that its existing mobiles and portables are not upgradeable to the new standards. Replacing these radios with new iDEN radios meeting the higher performance TIA Class A standard would cost upwards of \$6.6 million.

As ConEd has previously noted in its comments in these proceedings,<sup>9</sup> the TIA Class A standard as defined in ANSI/TIA-102.CAAB-A-2002 is a performance benchmark for the Project 25 air interface. The TIA standard itself is not applicable to ConEd's system because the channel access method and modulation techniques used in the iDEN system are significantly different than those of the P-25 system and there is no published equivalent for iDEN systems.

ConEd should be entitled, following rebanding, to the same level of protection from interference that it currently enjoys. It would be ironic indeed if the very process that the Commission has crafted to mitigate interference would actually result in less interference protection to ConEd, a CII licensee.

ConEd thus believes that its currently licensed and operating iDEN system should be entitled to full interference protection. If a licensee chooses to purchase and install radios after the effective date of the rules adopted in the R&O that do not meet the higher performance standards, then those licensees should expect a reduced level of interference protection. However, a licensee, such as ConEd, that purchased the best available radios for its particular type of operation should not now be penalized by *ex post facto* regulations. Accordingly, it is requested that the Commission allow ConEd and other similarly situated operators of iDEN systems to receive the same level of interference protection that other licensees using TIA Class A equipment enjoy. To do otherwise would compromise the availability of reliable,

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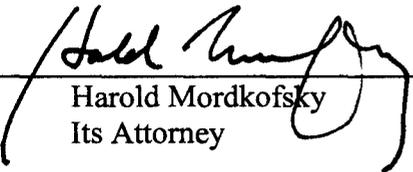
<sup>9</sup> See, *Comments of Consolidated Edison Company of New York, Inc.*, at 5-7 (Feb. 10, 2003).

interference-free communications to a CII licensee, such as ConEd, and thereby jeopardize its ability to provide utility service to its customers and protect the safety of its employees in doing so. Alternatively, the Commission should acknowledge that it will entertain requests for waiver of the newly adopted performance standards in circumstances as described herein.

Respectfully submitted,

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OF NEW YORK, INC.**

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