

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

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket No. 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 RECONSIDERATION OF SOUTHERN LINC

Pursuant to Section 1.429 of the Commission's rules,¹ Southern Communications Services, Inc. d/b/a Southern LINC (Southern LINC) hereby petitions the Federal Communications Commission (FCC) for reconsideration of the *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order* in the 800 MHz Public Safety

¹ 47 C.F.R. § 1.429 (2003).

Interference proceeding (*800 MHz Report and Order*).² This petition addresses a very limited and isolated issue necessitating only targeted relief. In the *800 MHz Report and Order*, the FCC established an expanded ESMR band in the Southeast to accommodate the operations of Southern LINC and Nextel.³ Although the expanded ESMR band will provide adequate relief in most areas of the Southeast, the FCC should modify the rules applicable to the Expansion Band to address the scarcity of channels in the Atlanta area.⁴

I. INTRODUCTION

In the *800 MHz Report and Order*, the FCC stated that "[t]he Expansion Band in [the Southeast] shall extend from 812.5-813.5 MHz/857.5-858.5 MHz."⁵ The FCC expanded the new ESMR band in the Southeast after recognizing that "there are an inadequate number of channels in the 816-824 MHz/862-869 MHz band segment to replicate channel capacity of both Southern LINC and Nextel."⁶ When the FCC expanded the new ESMR band in the Southeast, it also shifted the Expansion Band from 814-815 MHz/859-860 MHz to 812.5-813.5 MHz/857.5-858.5

² In re Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels; WT Docket No. 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) [hereinafter *800 MHz Report and Order*].

³ The FCC defines the Southeast in section 90.614(c) of its amended rules, as well as in Appendix G of the *800 MHz Report and Order*.

⁴ Southern LINC initially raised this issue in an *ex parte* letter to the FCC on October 8, 2004, Letter from Christine M. Gill, McDermott Will & Emery LLP, to Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, Federal Communications Commission (Oct. 8, 2004), and reiterated its arguments in response to the FCC's recent *Public Notice*. Comments of Southern LINC, In re Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55 (Dec. 2, 2004); see Commission Seeks Comment on *Ex Parte* Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding, WT Docket No. 02-55, *Order*, 19 FCC Rcd 21492 (2004). This petition for reconsideration merely preserves Southern LINC's rights should the FCC not resolve this Expansion Band issue in a timely manner.

⁵ *800 MHz Report and Order*, 19 FCC Rcd at 15058 ¶ 166.

⁶ *Id.* at 15057 ¶ 164.

MHz.⁷ Although the *800 MHz Report & Order* permits Southern LINC and Nextel to recommend an equitable channel distribution for the Southeast for all 800 MHz licensees that need to be relocated,⁸ Public Safety licensees in the Southeast also retain the right to relocate out of the Expansion Band and to avoid forced relocation into the Expansion Band.⁹

II. THE FCC SHOULD ELIMINATE THE EXPANSION BAND IN ATLANTA

The FCC should modify the rules applicable to the Expansion Band in Atlanta, Georgia, to address a limited problem. While the adopted rules will allow Public Safety licensees to relocate out of the Expansion Band and to avoid forced relocation into the Expansion Band, these rules could create a channel shortage in the Atlanta area because of the unique situation in the Southeastern United States. Elimination of these rules within a 70-mile radius of the center of Atlanta¹⁰ will effectively address this problem. Making this limited rule change will not have a detrimental effect on incumbents because Public Safety licensees will still receive the same level of interference protection, and incumbent licensees will be accommodated.¹¹

If Public Safety licensees must be relocated out of the 857.5-858.5 MHz Expansion Band in the Southeast, the FCC's band plan will result in a channel shortage in the Atlanta area. As explained in Southern LINC's *ex parte* presentation, a number of Public Safety systems currently operate at 857.5-858.5 MHz in Atlanta.¹² If these systems are moved out of this one megahertz

⁷ *Id.* 15058 ¶ 166.

⁸ *Id.*

⁹ *Id.* at 15053 ¶ 154.

¹⁰ The center of Atlanta is defined as geographic coordinates N33-44-55; W084-23-17.

¹¹ Southern LINC and Nextel require further clarification of the parameters of the Expansion Band in connection with their agreement on rebanding in the Southeast. *800 MHz Report and Order*, 19 FCC Rcd at 15057-15059 ¶ 164-169.

¹² Letter from Christine M. Gill, McDermott Will & Emery LLP, to Michael J. Wilhelm, Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau, Federal Communications Commission 2-3 (Oct. 8, 2004).

band to the interleaved channels, it will theoretically free up channels to move other non-Public Safety systems to the 857.5-858.5 MHz range. Unfortunately, the system demographics of Atlanta are unique. Over 85 percent of the incumbent systems to be relocated are Public Safety, and there are only a few non-Public Safety systems that could be moved to the Expansion Band channels. Consequently, a one-for-one swap that moves Public Safety incumbents out of the Expansion Band and non-Public Safety incumbents into the Expansion Band is not possible.

Unless Public Safety licensees continue to operate in the Expansion Band in Atlanta, relocation of all these incumbent licensees is not feasible. If the Expansion Band rules remain in place in the Atlanta area, these channels presumably will be vacated by Public Safety and will remain vacant. At the same time, this exodus will force a shortage of channels for Public Safety below 858.5 MHz.

The elimination of the Expansion Band in the Atlanta area would not harm Public Safety or other incumbent licensees. Interference mitigation rules would remain in place for Public Safety systems located in the former Expansion Band (857.5-858.5 MHz) and would provide these licensees with the same level of interference protection as they would receive below 857.5 MHz.¹³

Altogether, Southern LINC believes the elimination of the Expansion Band in the Atlanta area would serve the public interest. The absence of the restriction on Public Safety systems operating at 857.5-858.5 MHz in the Atlanta area is a very limited adjustment that would allow the FCC to satisfy the spectrum needs of all incumbents, without forcing any licensee to accept only a pro rata share of its existing spectrum. Since no diminution in interference protection for Public Safety Systems should result, the Commission should make this limited adjustment to the

¹³ "All licensees operating in the band segment 806-813.5 MHz/851-858.5 MHz shall be afforded the same protection against unacceptable interference" *800 MHz Report and Order*, 19 FCC Rcd 14969 ¶ 166.

Expansion Band. The rule change would also permit the continuation at full capacity of Southern LINC's and Nextel's operations, which serve not only hundreds of thousands of commercial subscribers, but also thousands of Public Safety entities.

Thus, the FCC should amend paragraph 166 of the *800 MHz Report and Order* to state that "The Expansion Band in this area shall extend from 812.5-813.5 MHz/857.5-858.5 MHz, except within a 70-mile radius of the center of Atlanta. Within this radius, the Expansion Band shall not exist. The center of Atlanta is defined as geographic coordinates N33-44-55, W84-23-17."

WHEREFORE, THE PREMISES CONSIDERED, Southern LINC respectfully requests that the FCC reconsider the *800 MHz Report and Order* and eliminate the Expansion Band within a 70-mile radius of the center of Atlanta.

Respectfully submitted,



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Dated: December 22, 2004