

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

In the Matter of)	
)	WT Docket No. 05-62
Amendment of Part 90 of the Commission's)	
Rules to Provide for Flexible Use of the)	
896-901 MHz and 935-940 MHz Bands)	
Allotted to the Business and Industrial Land)	
Transportation Pool)	
)	
Oppositions and Petitions for Reconsideration of)	DA 04-3013
900 MHz Band Freeze Notice)	
)	

Marlene H. Dortch, Secretary
Federal Communications Commission
Office of the Secretary

Attention: The Commission

COMMENTS

Electrocom, Inc. (Electrocom), by its attorney, hereby files its Comments in the above captioned matter. In support of its position, Electrocom shows the following.

Electrocom's Interest

Electrocom operates a 10 channel SMR-Trunked 900 MHz band system in the New Orleans-Baton Rouge MTA and a 10 channel SMR-Trunked 900 MHz band system in the New Orleans DFA. Electrocom provides 900 MHz band SMR service to a variety of end users whose activities are essential to the maintenance of public health and safety. For example, Electrocom provides service to emergency ambulance operators which rush to the immediate protection of the safety of life. Electrocom provides service to numerous security guard services who form the first line of defense against threats to the safety of life and property and who reduce the protective

burdens of police and fire agencies. Electrocom provides temporary service to multiple users during the annual Mardi Gras and JazzFest to allow the users to manage the exceptionally large crowds. Electrocom could provide more examples, but it should be clear that any interference to Electrocom's very small business 900 MHz band system will present exactly as much danger to the safety of life and property as Nextel's interference to an 800 MHz band Public Safety system.

Electrocom desires to increase the amount of spectrum on which it can provide competitive service. Accordingly, Electrocom intends to bid in the proposed auction, provided that the rules which the Commission adopts make participation possible for a very small business.

Background

The Commission has proposed to amend its Part 90 Rules to facilitate the more flexible use of the 199 channels allocated to the Business and Industrial Land Transportation Pools in the 896-901 MHz and 935-940 MHz bands. The Commission has proposed to license the remaining spectrum using a geographic area licensing scheme.

Electrocom participated in WT Docket No. 02-55 and expressed its concerns about the potential for interference to high site analog systems from the potential operation of low-site, always-on Enhanced SMR base stations. Electrocom presented graphic evidence that a digital, low-site, always-on ESMR station provides a greater interference potential to other spectrum users

than does a high-site analog station. While the Commission did not respond directly to Electrocom's comments, the Commission did state that it had

less concern about unacceptable interference resulting from such 900 MHz ESMR use because there are no public safety channels allocated in the 900 MHz band. Moreover, because there currently is no extensive ESMR use of the 900 MHz band, ESMR licensees designing systems "from the ground up" in the 900 MHz band will be better able to take interference abatement into account when designing their systems. However, we will not hesitate to act should it appear that the interference environment in the 900 MHz band is becoming unfavorable,"

Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order (the 800 MHz Order) in WT Docket No. 02-55 at para. 336 (FCC 04-168 Released August 6, 2004). Electrocom recognizes that the Commission's first obligation is to protect public safety radio systems from harmful interference, however Electrocom trusts that the Commission was not indicating that it had no regard for whether 900 MHz SMR, Business and Industrial Land Transportation licensees would suffer interference from ESMR operations in the 900 MHz band.¹ The interference protection of sections 90.173(b) and 90.403(e) of the Commission's Rules, 47 C.F.R. §§90.173(b) & 90.403(e), is not limited to public safety and critical infrastructure industry licensees. All licensees are entitled to the Commission's protection from interference, including, especially CMRS competitors of geographic area licensees. Herein, Electrocom suggests appropriate mechanisms for preventing and relieving any interference caused to 900 MHz analog systems from the operation of 900 MHz ESMR systems.

¹ By its instant Comments, Electrocom is not requesting reconsideration of the 800 MHz Order.

Essential Facts Have Changed

In its 800 MHz Order, the Commission stated that “Nextel will have to shift some of its operations from the 800 MHz band to 900 MHz in order to provide the “green space” necessary to effect reconfiguration of the 800 MHz band,” 800 MHz Order at para. 335. As one of the predicates for its proposed actions in its Notice of Proposed Rulemaking and Memorandum Opinion and Order (NPRM) in the instant matter (FCC 05-31 Released February 16, 2005), the Commission affirmed its belief that “to provide the ‘green space’ necessary to effect reconfiguration of the 800 MHz band, some operations may need to shift from the 800 MHz to 900 MHz band,” NPRM at para. 8. There has, however, been a substantial change of fact which calls into question the premises for and the need for the proposed geographic area licensing scheme.

Sprint Corporation (Sprint) and Nextel Communications, Inc. (Nextel) have entered into an agreement to merge, with Sprint to acquire control of Nextel. Sprint and Nextel have filed applications for consent to transfer of control of Nextel to Sprint, Nextel Communications, Inc. and Sprint Corporation Seek FCC Consent to Transfer Control of Licenses and Authorizations (DA 05-502 Released February 28, 2005).

Before taking any action toward a geographic area licensing scheme which may no longer be needed, the Commission should first act expeditiously on Nextel’s transfer of control application. If the Commission consents to Nextel’s application, the Commission should then ascertain whether Sprint has sufficient spectrum capacity on its existing CMRS facilities to

accommodate Nextel end users who may need to be moved to facilitate Nextel's relocation within the 800 MHz band. If Sprint has sufficient spectrum capacity to accommodate Nextel end users who will need to be moved, then there will be no need for a 900 MHz band geographic area licensing system to provide green space to Nextel.

Sprint's PCS system operates on frequencies in the 1.9 GHz band which are not known to interfere with either the 800 MHz or the 900 MHz band. Accordingly, were Sprint/Nextel to relocate Nextel end users from the 800 MHz to Sprint's system rather than to the 900 MHz band, there would be no new potential for interference to the 900 MHz band. The Commission may be able to allow this new, happy confluence of circumstances to save it a great deal of work and to save incumbent licensees from a great deal of interference.

The Commission Should Require Prophylactic Procedures

The Commission requested comment on the interference protection which it should provide to incumbent operations, NPRM at para. 35. In its 800 MHz Order, the Commission established a simple prophylactic procedure to prevent new interference by ESMR systems. The Commission adopted rules which require ESMR operators to notify certain licensees ten business days before new cells are constructed or existing cells are modified. Those licensees have a reciprocal obligation to notify ESMR operators of changes to their systems. The Commission writes on a clean slate concerning interference between ESMR and analog 900 MHz systems. The Commission has a unique opportunity to take effective action to prevent interference in the band.

The Commission should adopt a rule in the instant proceeding which requires reciprocal notification of intentions by 900 MHz ESMR operators and incumbent licensees.

The Commission Should Require Best Practices

The Best Practices Guide (“Avoiding Interference Between Public Safety Wireless Communications Systems and Commercial Wireless Communications Systems at 800 MHz”, December 2000) provides a reasonable protocol for promptly and efficiently resolving complaints of interference caused by ESMR systems. The Commission should require the use of the Best Practices procedures to resolve any interference which may be caused to 900 MHz incumbents by ESMR systems.

Licenses Should be Granted by BEAs

The Commission requested comment on the size of geographic area which should be covered by a license. The Commission should grant licenses on the basis of Basic Economic Areas (BEAs).

Despite the Commission’s earnest efforts, the auction process to date has not resulted in the grant of a great many opportunities to small and very small businesses. In light of the Commission’s unhappy experience with installment payment plans, offering licenses in small geographic areas is the only means by which the Commission can provide new competitive opportunities to medium and small businesses.

Offering licenses for more affordable BEAs is likely to result in the most competitive bidding and will achieve the auction's goal of granting a license to the bidder who values it most highly. Not only can granting licenses for BEAs allow

small bidders and rural companies wishing smaller license areas to obtain them directly at auction rather than facing the uncertainty and transaction costs of working out post-auction partitioning agreements,

NPRM at para. 24, but granting licenses for BEAs will allow the United States Treasury to capture the full value of a license, rather than having an MEA licensee capture some of that value in a private transaction.

No bidder would be disadvantaged by the auctioning of licenses by BEAs. An applicant which desires to obtain authority over an area comprised of multiple BEAs need only demonstrate by its bidding that it values each BEA more highly than the other bidders.

Granting licenses by BEAs provides the greatest likelihood of new competitive service being provided to rural areas. If the Commission grants an MEA license, the licensee will likely be able to meet its build-out requirement by providing service to only the urban portion of the area and may never serve the rural area. If, however, a license covers a rural BEA, the licensee must provide service to that BEA. The Commission's concern expressed at paragraph 24 of the NPRM that some BEA licenses may go unsold can be met merely by setting the upfront payments and minimum bids at levels which are likely to attract bidders.

Conclusion

For all the foregoing reasons, Electrocom respectfully requests that the Commission provide a full measure of interference protection to incumbents and that the Commission grant licenses on the basis of BEAs.

Respectfully submitted,
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