Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of 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	WT Docket No. 05-62
Oppositions and Petitions for Reconsideration of 900 MHz Band Freeze Notice	DA 04-3013

COMMENTS OF UNITED PARCEL SERVICE

United Parcel Service, Inc. (UPS) submits these comments in response to the Commission's *Notice of Proposed Rulemaking* in the above-captioned proceeding.[1] As further discussed below, UPS urges the FCC to ensure that incumbent operations in the 896-901/935-940 MHz (900 MHz) band are not adversely affected by Commission efforts to increase the flexible use of this spectrum.

I. Introduction and Background.

UPS is the world's largest package delivery company, employing more than 384,000 people worldwide (328,000 in the U.S.) and delivering more than 14 million packages and documents daily. UPS operates from more than 2700 facilities in 120

[1] 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, WT Docket No. 05-62, 70 Fed. Reg. 13143 (2005) (*Notice*).

countries with a delivery fleet of 88,000 vehicles and 267 jet aircraft, which gives it the 9th largest air fleet in the world. The company offers service to more than 200 countries and territories, including every address in the United States. Nearly 8 million customers rely on UPS for pickup and delivery of their important packages and documents each day.

The 900 MHz band has 199 channel pairs that are now allotted for the private internal communications needs of business, industrial and land transportation (B/ILT) entities. Although the Commission now allows commercial wireless services to be conducted on these channels,[2] commercial mobile radio service (CMRS) applicants have not been permitted to apply directly for these channels. The channels have been available for licensing since the late 1980s and are well utilized in the major metropolitan areas. In lower tier markets and rural areas, however, large numbers of channels remain unlicensed.

UPS is currently licensed to operate multi-channel trunked radio systems on the 900 MHz B/ILT channels at the following key hub facilities: Louisville, Kentucky; Chicago, Illinois; Memphis, Tennessee; Rockford, Illinois and Columbia, South Carolina. With an initial hardware investment exceeding $10 million, these systems provide mission-critical push-to-talk voice communications. UPS relies on these systems to support reliable, time-critical communications related to employee health and safety, hazardous materials response, aircraft fueling, aircraft deicing, aircraft weight and balance, severe weather notification (*e.g.*, "ramp bans", when employees are evacuated

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[2] *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order*, 19 FCC Rcd 14,969 (2004) (*800 MHz R&O*).

from aircraft ramp areas when lightning is present), plant maintenance, U.S. Customs compliance, internal security, site escorts for police and fire services, and numerous other business functions. UPS has been studying the possibility of deploying various "next generation" and other advanced technologies in the 900 MHz band in order to meet additional business needs although these options are now complicated by the adoption of the FCC's "freeze" on the acceptance of new applications for these channels as well as their potential repurposing in this instant proceeding.[3]

In the *Notice*, the Commission essentially proposes to remove the initial licensing restrictions associated with the B/ILT channels and to instead allow "any use" that is consistent with the band's fixed and mobile allocations.[4] The remaining spectrum would be licensed using a geographic licensing scheme and spectrum auctions.[5] The Commission would grandfather incumbent users at their present locations but any future modifications to those facilities would need to ensure that the existing coverage contours were not extended.[6]

The 900 MHz facilities operated by UPS are integral to the efficient operation of its package delivery business. As such, UPS is directly affected by FCC proposals that would restrict its access to the band and impede its ability to expand existing operations. Therefore, UPS has been an active participant in the development of the comments jointly submitted today by the Association of American Railroads, American

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[3] *See* Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, *Public Notice*, 19 FCC Rcd 18,277 (2004).

[4] *Notice* at ¶1.

[5] *Id.*

[6] *Id.* at ¶36.

Petroleum Institute, MRFAC, National Association of Manufacturers, and United Telecommunications Council (Joint Comments) and strongly supports the recommendations contained therein.

As fully discussed in the Joint Comments, UPS believes that the retention of at least some portion of the existing B/ILT channels for continued site-specific licensing is imperative for the continued accommodation of mission critical communications systems. In addition, UPS strongly urges the FCC to adopt additional interference protection standards for incumbent operations to help mitigate the inevitable interference that will be caused by the proliferation of commercial cellular systems in the 900 MHz band. Finally, UPS agrees with the Joint Comments that grandfathered facilities should have greater flexibility to modify and add new facilities in the post-auction environment and supports the establishment of the 22 dbµV/m interference contour as the appropriate criteria for managing that flexibility in accordance with Section 90.693(b) of the Commission's rules. If adopted, these changes would better balance the needs of incumbents and new commercial entrants into the band.

These matters are further discussed in the Joint Comments. UPS submits these comments to provide further clarification on the direct impact that the Commission's proposals would have on its communications systems.

II. Adoption of the FCC's Proposals Would Harm UPS's 900 MHz Operations.

For UPS, the elimination of site-specific licensing most likely means that it will not be able to add channel capacity to its existing 900 MHz trunked facilities. UPS does not require wide-area geographic communications capabilities to manage its operations at key hub facilities; requiring it to purchase spectrum rights that far exceed its needs is

grossly inefficient. Furthermore, spectrum disaggregation is a commercial activity that falls far outside UPS's core business. UPS has no interest in developing the expertise required to manage the redistribution of the excess spectrum capacity that it would necessarily acquire if it participated in spectrum auctions. Finally, there is little assurance that commercial geographic area licensees would be willing to lease or disaggregate spectrum to UPS, especially in the major markets. UPS cannot rely solely on uncertain secondary markets to acquire spectrum for mission critical communications systems.

The inability to add channel capacity to its existing networks is of great concern to UPS. Already, several of its systems are nearing capacity limits and this will undoubtedly increase as UPS continues to expand its business. In February, for example, UPS announced the construction of a new $82.5 million, 700,000-square-foot heavy freight facility at the existing Louisville location.[7] Only last week, UPS announced the construction of major new freight facilities at the existing Rockford and Columbia locations.[8] And in the past few days, UPS has announced a definitive agreement to acquire trucking company Overnite Corporation.[9] Unless UPS is able to expand its existing 900 MHz systems to accommodate the increased traffic created by this expansion, the lack of adequate channel capacity will result in increased "busies" on the

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[7] *See* UPS to Move Operations for Heavy Air Freight to Louisville, *Press Release*, available at http://pressroom.ups.com/pressreleases/archives/archive/0,1363,4528,00.html

[8] *See* UPS To Expand Air Freight Network, *Press Release*, available at http://ups.com/pressroom/corp/press_releases/press_release/0,1088,4561,00.html

[9] *See* UPS Adds Ground Freight Options By Acquiring Overnite Corp., *Press Release,* available at http://ups.com/pressroom/corp/press_releases/press_release/0,1088,4564,00.html

UPS systems that ultimately result in increased flight delays and other operational penalties that have a direct and serious financial impact on UPS.

UPS is also concerned about the likelihood of disruptions in its communications service caused by interference from cellular base station operations. As fully described in the Joint Comments, there is little doubt that the deployment of new cellular networks in the 900 MHz band will result in the same type of interference that the FCC and the industry has struggled to resolve in the 800 MHz band. UPS's air hub operations are vulnerable to this type of interference because airports are high priority locations for Nextel and other commercial cellular providers. This interference will result in increased busy signals and failed communications, which again will result in additional operational and financial impacts.

Finally, the *de facto* reallocation of these channels to commercial specialized mobile radio (SMR) use, with Nextel likely to acquire the lion's share of the channels for the deployment of its iDEN-based cellular system, will affect equipment availability for UPS and other B/ILT licensees. Under the FCC's proposals, most B/ILT licensees would be frozen at their existing channel capacity and coverage area with little opportunity to expand. Equipment manufacturers will see little business opportunity and likely will cease new product development for the 900 MHz private wireless market segment. That logical response from the manufacturers likely will deny UPS the opportunity to upgrade its technology for more advanced applications. Additionally, as manufacturers abandon the 900 MHz private wireless market, they are unlikely to maintain large inventories of existing products. Over time, this will severely hamper the ability of incumbents to maintain their systems and replace existing hardware.

III. The Commission Should Eliminate 900 MHz Loading Requirements.

The Joint Comments indicate that the coalition of private wireless associations support the FCC's tentative conclusion to remove the mobile loading requirements currently applicable to 900 MHz B/ILT applicants.[10] Those comments note that since the Commission has already provided incumbent B/ILT incumbents the ability to convert their authorizations to commercial status in accordance with the *800 MHz Report and Order*, and thereby become exempt from any loading requirement, retention of that rule is impractical.

The Joint Comments further note, however, that eliminating all loading requirements could lead to speculation in channels for the purpose of sale to a third party and therefore urge the Commission to limit the number of channels to 10 that any applicant could initially request. Once those 10 channels are constructed, the applicant should be permitted to apply for more channels.

UPS agrees with the recommendations of the Joint Comments. Applying loading standards to private wireless users but not commercial licensees on the same channels is a discriminating application of the policy that must be addressed. While UPS also supports imposing a limitation on the number of channels that applicants may initially request, it urges the FCC to craft the rule to allow applicants to request additional frequencies if they can justify those frequencies based on need. This would eliminate the burden of requesting waivers for the inevitable situations where certain applicants will have legitimate needs for more than 10 channels at initial licensing. The

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[10] *Notice* at ¶ 52.

justifications should be rigorously reviewed by the Commission and frequency advisory committees to ensure that they are based on legitimate needs.

IV. Conclusion.

Contrary to the Commission's stated belief, the proposals contained in the *Notice* do not strike a "fair and equitable balance" between the interests of incumbent B/ILT licensees and those seeking to provide geographic area service.[11] Rather, they offer little consideration to the needs of private wireless incumbents, many of which operate systems like UPS that protect life and property. If adopted, the Commission's initial proposals would leave incumbent systems "withering on the vine" until they are forced to seek another frequency band more hospitable to their operational requirements. The real problem, however, is that there is no place to go.

The Commission should support the continued operation of 900 MHz B/ILT systems by: 1) preserving a pool of channels that can continue to be accessed for site-specific uses by business and industrial applicants only; 2) providing adequate interference protection to incumbent systems to avoid a replication of the 800 MHz interference debacle; and 3) improving the grandfathering rights of incumbent operators to modify facilities even on channels assigned for geographic area licensees.

Respectfully Submitted,

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[11] *Notice* at ¶4.