

BEFORE THE  
**Federal Communications Commission**  
WASHINGTON, D.C. 20554

**In the Matter of** )  
 )  
**Amendment of Part 90 of the Commission's** ) **WT Docket No. 05-62**  
**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** )

**To: The Commission**

**REPLY COMMENTS OF SOUTHERNLINC WIRELESS**

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless ("SouthernLINC Wireless"), through its undersigned counsel, respectfully submits these Reply Comments in response to the *Notice of Proposed Rulemaking* in the above-captioned matter,<sup>1</sup> pursuant to Section 1.415 of the Federal Communications Commission's ("FCC") rules.<sup>2</sup>

**I. BACKGROUND**

In the initial comment round, SouthernLINC Wireless expressed its support for the FCC's efforts to increase the flexibility of the 900 MHz Business and Industrial/Land Transportation ("B/ILT") spectrum. Specifically, SouthernLINC Wireless recommended (1) the auction of the 900 MHz B/ILT channels by Basic Economic Area ("Economic Area" or "EA"), rather than by Major Economic Area ("MEA"); (2) the adoption of a band plan consisting of nineteen blocks of ten contiguous channels each and one block of nine contiguous channels; (3) a ten-year

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<sup>1</sup> In re 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, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 20 FCC Rcd 3814 (2005) [hereinafter *NPRM*].

<sup>2</sup> 47 C.F.R. § 1.415 (2004).

substantial service requirement; (4) the determination of an incumbent's "originally licensed" 40 dBuV/m contour from its exact licensed parameters; and (5) the resolution of the pending applications filed by ACI 900, Inc. prior to any auction.

In these Reply Comments, SouthernLINC Wireless supplements its earlier filing by identifying a consensus among commenters in support of the Economic Area as the geographic service area. SouthernLINC Wireless also clarifies the rationale for defining an incumbent licensee's existing service area by its originally licensed 40 dBuV/m field strength contour. In addition, SouthernLINC Wireless urges the FCC not to apply the 800 MHz interference abatement procedures to the 900 MHz band. SouthernLINC Wireless further recommends that the FCC decline to require geographic area licensees to notify incumbent, site-based licensees before constructing a station. Finally, SouthernLINC Wireless opposes the introduction of digital paging for Public Safety entities in an auctioned, interleaved 900 MHz band.

## **II. THE FCC SHOULD AUCTION THE 900 MHZ B/ILT SPECTRUM ON AN ECONOMIC AREA BASIS**

Many commenters joined SouthernLINC Wireless in recommending the Economic Area as the appropriate size for the geographic service area.<sup>3</sup> The use of the Economic Area would improve access to 900 MHz B/ILT channels, ensure the efficient use of spectrum, and enhance service to rural areas, without prejudicing nationwide entities.

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<sup>3</sup> *E.g.*, Joint Comments of Association of American Railroads, American Petroleum Institute, MRFAC, Inc., National Association of Manufacturers, and United Telecom Council, WT Docket No. 05-62, 26-28 (May 18, 2005) [hereinafter *Joint Parties Comments*]; Comments of MA-COM, Inc., WT Docket No. 05-62, 5-6 (May 18, 2005) [hereinafter *MA-COM Comments*]; Comments of Florida Power & Light Company, WT Docket No. 05-62, 3-4 (May 18, 2005) [hereinafter *Florida Power & Light Comments*]; Comments of Electrocom, Inc., WT Docket No. 05-62, 6-7 (May 18, 2005) [hereinafter *Electrocom Comments*].

Commenters agreed that Economic Area licensing would improve access to 900 MHz B/ILT channels for all entities and ensure the efficient use of that spectrum. MA-COM and Florida Power & Light asserted that incumbent licensees would have a better chance of obtaining Economic Area licenses because they are closer in size to their site-based licenses.<sup>4</sup> Florida Power & Light explained that "[t]he problem with larger areas is that applicants are forced to obtain much larger land areas than they need, and much of the spectrum remains unused in portions of the market that are not part of their area of interest."<sup>5</sup> The Joint Parties added that "most likely participants are small businesses that do not have a meaningful ability to bid successfully in an auction of large geographic areas such as MEAs."<sup>6</sup> Electrocom believes that "offering licenses in small geographic areas is the only means by which the Commission can provide new competitive opportunities to medium and small businesses."<sup>7</sup>

Electrocom and the Joint Parties concurred with SouthernLINC Wireless that an Economic Area licensing approach would increase the likelihood of service to rural and underserved areas. "If the licensee grants an MEA license, the licensee will likely be able to meet its build-out requirement by providing service to only the urban portions of the area and may never serve the rural area."<sup>8</sup> The Joint Parties also noted that "it is questionable whether

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<sup>4</sup> *MA-COM Comments* at 6; *Florida Power & Light Comments* at 3-4.

<sup>5</sup> *Florida Power & Light Comments* at 3; *see Joint Parties Comments* at 27.

<sup>6</sup> *Joint Parties Comments* at 27; *see Florida Power & Light Comments* at 3-4 (observing that "larger areas limit the ability of incumbent to participate in geographic area licensing because incumbents may not have the budgets to obtain coverage beyond the areas where they need to have service").

<sup>7</sup> *Electrocom Comments* at 6.

<sup>8</sup> *Id.* at 7.

[the use of the MEA] promoted the provision of service in more rural areas that have few communications alternatives."<sup>9</sup>

Commenters further agreed with SouthernLINC Wireless that the licensing of 900 MHz B/ILT spectrum by Economic Area would not prejudice nationwide entities.<sup>10</sup> In its initial Comments, SouthernLINC Wireless noted that the use of Economic Areas would avoid the uncertainty and transaction costs of post-auction partitioning, while permitting nationwide licensees to aggregate channel blocks and service areas.<sup>11</sup> Florida Power & Light stated that "[t]o the extent that EAs are too small for certain applicants, they can obtain multiple contiguous EAs in the auction."<sup>12</sup> While Electrocom asserted that larger entities "need only demonstrate by its bidding that it values each BEA more highly than the other bidders,"<sup>13</sup> the Joint Parties argued that "Nextel's great success in all 800 MHz auctions . . . is clear evidence that use of BEAs is not a deterrent to its participation."<sup>14</sup> By contrast, Florida Power & Light observed that the licensing of 900 MHz B/ILT Pool spectrum by MEA could prejudice small and regional providers because "past experience shows only limited use of the partitioning option."<sup>15</sup>

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<sup>9</sup> *Joint Parties Comments* at 26.

<sup>10</sup> *Florida Power & Light Comments* at 4; *Joint Parties Comments* at 27-28, *Electrocom Comments* at 7.

<sup>11</sup> Comments of SouthernLINC Wireless, WT Docket No. 05-62, 5 (May 18, 2005).

<sup>12</sup> *Florida Power & Light Comments* at 4; see *Joint Parties Comments* at 27 (noting that Economic Area licensing would not "deny[] entities with larger geographic ambitions the right to assemble multiple BEAs into whatever geographic coverage is required").

<sup>13</sup> *Electrocom Comments* at 7.

<sup>14</sup> *Joint Parties Comments* at 27-28.

<sup>15</sup> *Florida Power & Light Comments* at 4.

### III. THE FCC SHOULD DETERMINE AN INCUMBENT'S "ORIGINALLY LICENSED" SERVICE CONTOUR FROM ITS LICENSED PARAMETERS

SouthernLINC Wireless continues to support the FCC's proposal "to define the existing service area of an incumbent B/ILT system by its originally-licensed 40 dBuV/m field strength contour."<sup>16</sup> Because the use of any other standard would create logistical problems and could potentially undermine the integrity of the auction process, the FCC should not adopt the recommendations that it permit incumbents to add sites or otherwise modify their licenses within their 22 dBuV/m contours and calculate the contour using the maximum permissible effective radiated power ("ERP") for the site.<sup>17</sup>

The use of the 22 dBuV/m contour and maximum permissible ERP would create logistical problems for geographic area licensees. Although commenters observed that the FCC already uses the 22 dBuV/m contour for the 800 MHz band,<sup>18</sup> 800 MHz licensees have experienced difficulty with this standard because it conflicts with the 40 dBuV/m interference protection requirement for individual transmitter sites. Because an incumbent could add or modify sites within its larger 22 dBuV/m contour, the smaller, protected 40 dBuV/m contours within that 22 dBuV/m contour could shift or expand over time. This shifting interference protection requirement is particularly troublesome because incumbent licensees would not have to notify the FCC or geographic area licensees of any additional or modified sites as long as they fall within the 22 dBuV/m contour, meaning that the geographic area licensee may have

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<sup>16</sup> *NPRM*, 20 FCC Rcd 3814 ¶ 36.

<sup>17</sup> Comments of United Parcel Service, WT Docket No. 05-62, 4 (May 18, 2005); Comments of South Carolina Public Service Authority, WT Docket No. 05-62, 4-5 (May 18, 2005) [hereinafter *South Carolina PSA Comments*]; *Joint Parties Comments* at 30-31.

<sup>18</sup> *South Carolina PSA Comments* at 4; *Joint Parties Comments* at 31.

inadequate information regarding the scope of the protected 40 dBuV/m contours at any given time.

The use of the 22 dBuV/m contour and maximum permissible ERP could also potentially undermine the integrity of the auction process for the 900 MHz B/ILT spectrum. Although an auction participant could place a bid on a 900 MHz license in reliance on acquiring a certain service area, the incumbent licensee could subsequently add or modify sites that reduce the area in which the geographic area licensee may operate its system.

The FCC should instead calculate an incumbent's 40 dBuV/m service contour using the ERP and the composite height of the antenna above average terrain listed on the license. As Nextel mentioned in its Comments, the 40 dBuV/m contour would reflect an incumbent's existing service area.<sup>19</sup> Because the incumbent licensee's authority to add or modify sites would be consistent with the interference protection requirement, this definition would minimize confusion and provide certainty regarding the protected contour.<sup>20</sup> This interpretation would also maximize the white space available at auction.<sup>21</sup>

#### **IV. THE FCC SHOULD NOT APPLY THE 800 MHZ INTERFERENCE ABATEMENT PROCEDURES TO THE 900 MHZ BAND**

The FCC should not adopt interference abatement procedures for the 900 MHz band that mirror those adopted for the 800 MHz band. While some commenters recommended the same or

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<sup>19</sup> Comments of Nextel Communications, Inc., WT Docket No. 05-62, 15 (May 18, 2005).

<sup>20</sup> *Id.*

<sup>21</sup> *Id.*

similar procedures for both bands,<sup>22</sup> those procedures designed for the newly reconfigured 800 MHz band would not translate to the 900 MHz band.

Significantly, the FCC designed the new 800 MHz interference abatement rules for a post-reconfiguration environment in which cellular and non-cellular licensees will be spectrally separated. By contrast, the 900 MHz band consists of interleaved Specialized Mobile Radio and B/ILT licensees. As an incumbent licensee in the 900 MHz band, SouthernLINC Wireless is sympathetic to the need to protect existing operations but believes that the 800 MHz rules will not provide the optimal solution for the 900 MHz band.

The FCC has also concluded that 900 MHz ESMR systems pose less of an interference risk than their 800 MHz counterparts. In a recent *Report and Order*, the FCC stated that 900 MHz ESMR licensees deserve an opportunity to design interference-resistant systems before becoming subject to burdensome, and perhaps unnecessary, interference abatement requirements. The FCC stated that it has "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."<sup>23</sup> The FCC also noted that "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."<sup>24</sup> Thus, the FCC should affirm its decision to refrain from adopting stringent

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<sup>22</sup> Comments of Kenwood USA Corporation, WT Docket No. 05-62, 3-4 (May 18, 2005) [hereinafter *Kenwood Comments*]; *South Carolina PSA Comments* at 7; *Joint Parties Comments* at 15.

<sup>23</sup> In re Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order*, *Fifth Report and Order*, *Fourth Memorandum Opinion and Order*, and *Order*, 19 FCC Rcd 14969, 15127 ¶ 336 (2004) [hereinafter *800 MHz Report and Order*].

<sup>24</sup> *Id.*

interference abatement standards until "it appear[s] that the interference environment in the 900 MHz band is becoming unfavorable."<sup>25</sup>

## **V. GEOGRAPHIC AREA LICENSEES SHOULD NOT HAVE TO NOTIFY INCUMBENTS OF PROPOSED TRANSMITTER LOCATIONS**

The FCC should decline to require geographic area licensees to notify incumbent, site-based licensees before constructing a station. Although some commenters requested a prior notification requirement,<sup>26</sup> these requests would impose severe administrative burdens and are distinguishable from the prior notification requirement for the 800 MHz band.

The FCC recently acknowledged that a prior notification requirement imposes a severe burden on geographic and incumbent licensees alike and declined to impose such an obligation without strict limitations.<sup>27</sup> Specifically, the FCC stated that a prior notification requirement obliges licensees to "produc[e] and receiv[e] unnecessary paperwork" and could require licensees "to furnish information to large numbers of licensees, especially in urban areas."<sup>28</sup> The FCC further noted that the imposition of such a requirement could violate its obligations under the Paperwork Reduction Act.<sup>29</sup> Even if a prior notification requirement were not unlawful, these burdens would limit the flexibility associated with geographic area authorizations, contrary to the

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<sup>25</sup> *Id.*

<sup>26</sup> *Kenwood Comments* at 3; *South Carolina PSA Comments* at 7; *Joint Parties Comments* at 19; Comments of Public Service Electric and Gas Company, PSEG Power, LLC, PSEG Energy Resources & Trade LLC and PSEG Services Corporation, WT Docket No. 05-62, 14-15 (May 18, 2005) [hereinafter *PSEG Comments*]. Although the PSEG Companies also asked the FCC to require geographic area licensees to perform an engineering evaluation and conduct a potential interference analysis prior to constructing a station, *PSEG Comments* at 14, SouthernLINC Wireless routinely takes these actions to minimize any likelihood of harmful interference.

<sup>27</sup> *800 MHz Report and Order*, 19 FCC Rcd at 15038 ¶ 124.

<sup>28</sup> *Id.*

<sup>29</sup> *Id.*

goals of this proceeding, by increasing the cost to deploy a system and delaying responses to market demand.<sup>30</sup>

Although the FCC adopted a prior notification requirement for the 800 MHz band,<sup>31</sup> that requirement is distinguishable from the requests for a similar requirement at 900 MHz. The FCC strictly limited the applicability of the 800 MHz requirement to certain situations and noted that the requirement derived its justification from the frequent occurrences of interference in that band.<sup>32</sup> None of the factors relevant to the 800 MHz requirement apply to the specific requests set forth by the commenters, or to the 900 MHz band generally.

Finally, a prior notification requirement would also disclose commercially sensitive information. Although the FCC has previously suggested that licensees could enter into non-disclosure agreements to protect proprietary information,<sup>33</sup> the negotiation of such an agreement with each potentially affected licensee is time consuming and otherwise impracticable.

## **VI. THE FCC SHOULD NOT INTRODUCE DIGITAL PAGING FOR PUBLIC SAFETY ENTITIES IN THE 900 MHZ BAND**

The FCC should also decline "to allocate channels within the B/ILT pool in the 900 MHz band to public safety for digital paging."<sup>34</sup> Although SouthernLINC Wireless agrees that the public interest would benefit from allowing the marketplace to respond to consumer demands,

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<sup>30</sup> *NPRM*, 20 FCC Rcd 3814 ¶ 18. The FCC stated that "[g]eographic area licensing will maximize flexibility and permit new and innovative technologies to rapidly develop in these bands." *Id.* The FCC further stated that "[g]eographic area or wide-area licensing also allows a licensee substantial flexibility to respond to market demand, which results in significant improvements in spectrum utilization." *Id.*

<sup>31</sup> *800 MHz Report and Order*, 19 FCC Rcd at 15038 ¶ 124.

<sup>32</sup> *Id.*

<sup>33</sup> *Id.* at 15039 ¶ 127.

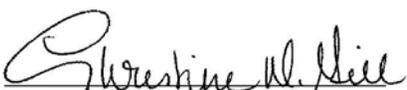
<sup>34</sup> Comments of National Public Safety Telecommunications Council, WT Docket No. 05-62, 3 (May 17, 2005).

permitting flexible use, and licensing on a geographic area basis,<sup>35</sup> the licensing of Public Safety entities on interleaved channels in an auctioned band would not be advisable given the experience of Public Safety licensees operating on an interleaved basis with commercial systems at 800 MHz.

**WHEREFORE, THE PREMISES CONSIDERED**, SouthernLINC Wireless respectfully requests that the FCC consider these Reply Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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<sup>35</sup> *Id.* at 2-3.