

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Amendment of Part 90 of the Commission's Rules)	WT Docket No. 05-62
To Provide for Flexible Use of the 896-901 MHz)	
And 935-941 MHz Bands Allocated to the Business)	
And Industrial Land Transportation Pool)	

To: The Commission

REPLY COMMENTS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (Blooston), on behalf of its clients listed in Attachment A hereto who utilize spectrum in the 900 MHz Business and Industrial Land Transportation (B/ILT) Pool, hereby submits its reply comments in the captioned proceeding, pursuant to Section 1.415(c) of the Commission's Rules.

As indicated in its comments, Blooston opposes the Commission's proposal to subject the B/ILT Pool to geographic market area licensing, since licensing in this manner will likely cause the proliferation of cellularized commercial systems at the expense of continued licensing of critical infrastructure, industrial and land transportation systems. Blooston is concerned that the proliferation of these cellularized commercial systems on B/ILT frequencies could result in harmful interference to incumbent 900 MHz critical infrastructure industries (CII) and B/ILT licensees, much like that which has occurred in the 800 MHz band. Likewise, if this spectrum is auctioned, there will be no 900 MHz channels available for CII and B/ILT licensees to expand existing systems or

otherwise license new systems to accommodate future changes in their communications needs. If the Commission nonetheless proceeds with its proposal to auction this spectrum, Blooston urges the Commission to take steps to protect CII and B/ILT systems from the potential for harmful interference from these cellularized commercial systems, and to set aside spectrum for continued licensing on a site-by-site basis, since most CII and B/ILT systems are licensed for specific geographic areas based on their activities. The Commission has already authorized numerous spectrum bands on a market area basis to provide commercial wireless services. 900 MHz CII and B/ILT licenses should be allowed to operate and expand their systems without having to compete with commercial service providers for scarce spectrum.

Blooston has reviewed the docket in this proceeding and is concerned with two particular comments. The first is a proposal of the National Public Safety Telecommunications Council (NPSTC) that the Commission allocate a portion of the Business and Industrial/Land Transportation Pool to public safety for digital paging. Second, Blooston remains concerned that cellularized operations in the 900 MHz band could cause harmful interference to incumbent CII and B/ILT operations even though Nextel Communications, Inc. states that it has received no reports of any such interference from incumbent CII or B/ILT licensees to date.

I. NPSTC's Request for Spectrum is Beyond the Scope of this Rulemaking and Not Appropriate for the B/ILT Band.

NPSTC has requested that the Commission allocate a portion of the 900 MHz Business and Industrial Land Transportation Pool to public safety for the provision of digital paging. (NPSTC Comments at p. 3). Blooston understands the importance of public safety communications and the need for public safety entities to have dedicated means of communications in times of emergency that operate outside the service offerings provided by commercial carriers. Nonetheless, NPSTC's request to reallocate spectrum in the 900 MHz B/ILT Pool is beyond the scope of the current rule making proceeding, and should not be considered by the Commission.

In the event that the Commission decides to consider NPSTC's request nonetheless, Blooston urges the Commission not to make the requested reallocation of spectrum for paging. The reasons are two fold: First, the 900 MHz Business and Industrial Land Transportation Pool is the only remaining portion of spectrum where CII and B/ILT licensees can obtain site-based exclusive use frequencies for essential radio operations, and the Commission's proposal to auction this spectrum to commercial licensees will only exacerbate future shortages of spectrum for dedicated CII and B/ILT systems; and second, vacant paging spectrum exists (in the VHF, UHF and 929/931 MHz paging bands) which could be licensed to public safety entities on a site-by-site basis in accordance with the procedures set forth in Section 337(c) of the Communications Act of 1934, as amended (the Act). Section 337(c) provides that the

Commission must waive any rules necessary to authorize entities providing public safety services to operate on unassigned non-public safety channels if the five specific findings are met:

- public safety spectrum is not immediately available;
- the proposed use will not cause harmful interference to protected spectrum users;
- public safety use of the unassigned frequencies is consistent with public safety spectrum allocations in the geographic area;
- the unassigned frequencies have been allocated for non-public safety use for more than two years; and
- grant of the application is consistent with the public interest.

See Seven Public Safety Agencies in the New York Metropolitan Area, Order 33 CR 405, para. 11 (2004). Thus, the public safety community already has a mechanism to obtain paging channels; and the Commission can take official notice of the fact that the paging industry is in decline, and many licensees have surrendered their paging spectrum.

In particular, the need for using 900 MHz B/ILT Pool spectrum for digital paging should be limited, inasmuch as the Commission has currently allocated 129 exclusive use channels for paging (of which 49 are in the 929/931 MHz paging bands).¹ As a result of the Commission's recently completed construction and operational audit of site-based licenses in the Paging and Radiotelephone Service, many of these paging licenses were returned to the Commission for cancellation, since the stations were no longer constructed and in operation.² Moreover, with the upcoming build out deadlines for the

¹ This figure does not include the 929 and 931 MHz nationwide paging channels which are not currently available for further licensing.

² See Public Notice entitled: "Wireless Telecommunications Bureau Confirms Certain Licenses in the Paging and Radiotelephone Service and Certain Licenses Operating on

geographic paging licenses won at Auctions 26, 40 and 48, many of the geographic licenses for the 929 and 931 MHz channels will automatically cancel due to non-construction. Moreover, many paging market area licenses went unsold at the three previous paging auctions (Auctions 26, 40 and 48). It is respectfully submitted that public safety entities should exhaust these opportunities for paging spectrum first, especially since these paging channels are unpaired, and more suitable for paging than the B/ILT paired channels. If a public safety entity is still unable to find suitable spectrum elsewhere for its proposed internal digital paging operation, it can apply to utilize spectrum in the 900 MHz B/ILT Pool channels through the Section 337(c) process. However, an outright reallocation of this spectrum is not appropriate at this time.

II. Nextel's Assertions Regarding Interference Protection are Premature and Inaccurate.

In response to the Commission's proposal as to whether it should adopt interference abatement procedures in the 900 MHz band that are similar to those recently adopted for the 800 MHz band, Nextel claims that such protections (beyond voluntary "Best Practices" and a "commitment by 900 MHz CMRS licensees to cooperative case-by-case interference mitigation") are unnecessary. (Nextel Comments at p. 16). Nextel's justification is based on the assertion that it has received no complaints of interference arising out of its 900 MHz ESMR operations from incumbent CII or B/ILT licensees

(Comments at 17) and the erroneous belief that CII and B/ILT licensees are in a better financial position to construct more robust, interference resistant systems than public safety entities which must rely on tax payer funding and limited budgets.

Blooston does not dispute Nextel's claims that it has not received any complaints to date arising out of the operation of its 900 MHz EMSR transmitters. However, as discussed in this docket, the interference from cellularized 800 MHz transmitters did not become apparent until the cellularized systems became ubiquitous. (See e.g., Joint Comments Association of American Railroads, American Petroleum Institute, MRFAC, Inc., National Association of Manufacturers and United Telecom Council at 14-15). Currently, in the 900 MHz Business and Industrial/Land Transportation Pool, the vast majority of transmitters are non-cellularized systems, so that the concentration of cellularized operations is not yet present, and their interference potential has not yet manifested itself.

Nextel's comments seem to suggest that large CII users and industrial corporations, which rely on radio as a core-tool in the provision of their service or manufacturing activity, do not have budgetary constraints in the design of their radio systems. This assertion cannot be further from the truth. Most large corporations, which are publicly-traded, are beholden to their shareholders to ensure profitability. As a result, expenditures are closely monitored and large capital outlays cannot be made without budgetary approval. Many large companies, which operate from multiple site locations, utilize local budgets to cover operating expenses. As a result, the local plant has a limited budget within which it must operate. Moreover, many 900 MHz licensees are smaller

companies, or are not-for-profit entities (such as automobile clubs), or are critical infrastructure entities whose budgets have already been stretched to the breaking point by homeland security and other costs.

III. Conclusion

For the foregoing reasons, the Commission should not allocate any portion of the 900 MHz Business and Industrial Land Transportation Pool for digital paging services. Likewise, because CII and B/ILT licensees do not have unlimited financial resources, the Commission should adopt interference protection standards that are similar to those recently adopted for the 800 MHz band.

Respectfully submitted,

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Attachment A

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