

**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)	DA 04-3013
of 900 MHz Band Freeze Notice)	
)	

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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Summary

In the Notice of Proposed Rulemaking (“*NPRM*”) in this proceeding, the Commission tentatively concluded that it should permit flexible use of the unlicensed channels that have been allocated to the Business and Industrial Land Transportation (B/ILT) Pools in the 900 MHz band, and that it should auction this 900 MHz “white space.” The Commission appropriately placed the burden of proof on parties opposing these pro-competitive tentative conclusions.

Various private radio parties filed comments opposing the Commission’s proposals and arguing that the Commission should continue to give B/ILT licensees exclusive, free access to 900 MHz spectrum. These parties, however, offer no legal, policy, or factual basis to justify this request. Their claim that a set aside is needed to meet their future spectrum needs rings hollow given that this spectrum has lain fallow for nearly twenty years. There is no public interest rationale for continuing to set aside free 900 MHz spectrum for B/ILT licensees, a policy that amounts to a government subsidy of for-profit enterprises at a significant cost to the American taxpayer. These businesses should pay for spectrum or spectrum-based services, just as they pay for any other resource or input necessary to a for-profit operation. The Commission has previously permitted 900 MHz B/ILT licensees to convert or assign their licenses to commercial operations. The Commission should now take the next logical step and assign initial licenses for 900 MHz white space by auction and permit flexible use of these channels.

The Commission should also reject proposals to impose unwarranted interference requirements on commercial licensees in the 900 MHz band. As the Commission has recognized, there are no public safety licensees in the 900 MHz band, and B/ILT

licensees have the resources to construct and maintain more interference-resistant systems. Consistent with its proposals in the *NPRM*, the Commission should establish technical rules that are consistent with its flexible-use, market-based approach for licensing 900 MHz white space. Best Practices and private, marketplace solutions among licensees are the best means of managing the risk of interference in the 900 MHz band.

The private radio industry's set-aside and interference arguments are fundamentally at odds with the Commission decision in the 800 MHz Public Safety proceeding and the position the utility industry took in that proceeding. In the 800 MHz proceeding, the Consensus Parties, including Nextel, proposed that Nextel surrender all of its current 900 MHz channels and that B/ILT and other high-site licensees be given free access to these channels. This proposal would have greatly increased the amount of 900 MHz spectrum available to B/ILT licensees and obviously would have eliminated any possibility of interference between Nextel and private radio licensees in that band. The utility industry, however, opposed this proposal, and the Commission ultimately rejected it.

Given these conclusions, it would be arbitrary and inequitable for the Commission now to accept B/ILT industry arguments for a set aside that would limit the ability of commercial licensees, including Nextel, to acquire 900 MHz channels that have gone unused for years. It would similarly be arbitrary and inequitable for the Commission to impose on Nextel the interference protection requirements proposed by B/ILT parties in this proceeding when some of those same parties, and the Commission, declined the opportunity to replace the current interleaved CMRS – B/ILT 900 MHz with a band that would have been almost exclusively licensed to B/ILT and other high-site licensees.

The Commission was correct in proposing licensing rules that will expedite the efficient use of 900 MHz channels that have gone unlicensed for far too long. It should adopt the tentative conclusions set forth in the *NPRM* and auction off 900 MHz white space as soon as possible.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. (“Nextel”) hereby replies to the comments filed in response to the Notice of Proposed Rulemaking (“*NPRM*”) in the above-captioned proceeding.¹ Nextel strongly supports the Commission’s proposal to permit flexible use of unlicensed spectrum currently allocated to the Business and Industrial Land Transportation (B/ILT) pools in the 900 MHz band and to assign licenses for this “white space” by auction.

Other parties similarly supported the Commission’s proposals. SouthernLINC Wireless (“SouthernLINC”) filed comments supporting “increased flexibility for the 900 MHz B/ILT spectrum” and agreeing “with the FCC’s tentative conclusion to auction this

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*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, 20 FCC Rcd 3814 (2005).

spectrum on a geographic-area basis.”² In addition, the National Public Safety Telecommunications Council (“NPSTC”) “applaud[ed] the efforts of the Commission as we believe the desired goals of this proceeding of providing service to the public consistently and expeditiously, allowing the marketplace to respond to consumer demand, and allowing for flexible use of the spectrum will greatly aid in ... facilitating band reconfiguration under way at 800 MHz.”³

A number of private radio parties, however, filed comments seeking to prolong the set aside of at least some 900 MHz channels for B/ILT use and urging the Commission to adopt unwarranted interference protection requirements. The Commission should reject these arguments. They are inconsistent with the market-oriented policies proposed in the *NPRM* to maximize the efficient use of 900 MHz white space and facilitate 800 MHz band reconfiguration.

I. THE COMMISSION SHOULD REJECT ARGUMENTS FOR THE CONTINUATION OF A PRIVATE RADIO SET ASIDE

A number of parties representing B/ILT licensees disagree with the Commission’s tentative conclusion to license 900 MHz white space in accordance with pro-competitive, flexible use policies.⁴ These parties advocate the continuation of artificial regulatory restrictions that would set aside some portion – ranging from 20% to 50% – of the remaining unlicensed B/ILT channels for exclusive B/ILT use, with these channels to be

² Comments of SouthernLINC at 13. (Unless otherwise indicated, all filings referenced herein were filed in WT Docket No. 05-62 on May 18, 2005.)

³ Comments of NPSTC at 2-3 (May 17, 2005).

⁴ See, e.g., See, e.g., Joint Comments of the Association of American Railroads, *et al.* (“Joint Parties”) at 21-25; Comments of Florida Power & Light Company at 4-7; Comments of PCIA at 2-3.

doled out for free based on the current site-specific licensing scheme rather than through an open auction. As explained below, there is no merit to these set-aside arguments.

A. There is No Basis to Continue Setting Aside Unlicensed 900 MHz Channels That Have Gone Unused for Nearly Twenty Years

Parties seeking continuation of a 900 MHz B/ILT set aside claim that a set aside is necessary to permit incumbent B/ILT licensees to expand and to permit new B/ILT licensees to acquire spectrum. This claim, however, is belied by the fact that the 900 MHz white space has lain fallow for years. The Commission allocated these channels for B/ILT use in 1986. Nearly twenty years later, they are still unlicensed. B/ILT licensees have had more than enough time over the past two decades to apply for the vacant B/ILT channels in the 900 MHz band. B/ILT licensees offer no data to back up their claims that they need a set aside of up to 50% of the remaining unlicensed 900 MHz B/ILT channels, *i.e.*, 99 channels.

Arguments by the B/ILT industry that it needs additional spectrum are also contradicted by the apparent underutilization of B/ILT channels that have already been licensed. One set-aside proponent concedes as much in recommending that the Commission “initiate an amnesty period during which licensees who are not utilizing their channels may return them for cancellation without penalty,” and that the Commission then conduct an audit to identify and “reclaim the underutilized channels.”⁵ If the private radio industry believes such measures are necessary to ensure full utilization of existing licensed B/ILT channels, surely there is no justification for a set aside of the remaining unlicensed channels.

⁵ Comments of Florida Power & Light at 8.

Prolonging the outmoded B/ILT set aside would only exacerbate the opportunity costs resulting from denying other licensees the opportunity to use unlicensed spectrum to meet the exploding consumer demand for wireless services. In tentatively concluding that this spectrum should be auctioned for flexible use, the Commission recognized that the time has come to maximize the use of 900 MHz white space by making it available for flexible use through an auction. As described in Section I.C below, auctions are the fairest and fastest way for the Commission to license spectrum.

To the extent B/ILT licensees believe they need additional 900 MHz spectrum, they will be able to participate in a white space auction, just like any other interested party. Although Nextel supported the use of Major Economic Areas in licensing 900 MHz white space, Nextel is amenable to the Commission instead using Basic Economic Areas (“BEA”). A number of B/ILT parties urged the Commission to use BEAs, asserting that these smaller license areas correspond more closely to the service areas used by B/ILT licensees.⁶ Moreover, B/ILT licensees that do not acquire 900 MHz white space in the auction may obtain spectrum rights from auction winners through assignments of disaggregated or partitioned spectrum or lease arrangements,⁷ and may still purchase site-specific licenses from existing incumbents.

⁶ See, e.g., Comments of Joint Parties at 27; Comments of Electrocom at 6-7; Comments of Florida Power and Light at 3-4.

⁷ The Commission has amended its rules to facilitate the leasing of spectrum rights. *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 20604 (2003); Erratum, 18 FCC Rcd 24817 (2003); Second Report and Order, Order on Reconsideration, and Second Further Notice of Proposed Rulemaking, 19 FCC Rcd 17503 (2004).

In addition, B/ILT licensees will continue to enjoy access to alternative spectrum bands to meet their purported future bandwidth needs. B/ILT licensees have been given access to a substantial amount of spectrum in the 150-174 and 421-470 MHz bands and in the 470-512 MHz band in a number of markets. B/ILT licensees may also lease channels from 700 MHz Guard Band managers. The Commission specifically contemplated that this 6 MHz of spectrum would be made “available to end users for private internal use.”⁸ Moreover, Critical Infrastructure Industry (“CII”) and other B/ILT licensees will have access to 2.5 MHz of additional 800 MHz channels Nextel will be surrendering as part of the Commission’s 800 MHz reconfiguration plan.⁹ CII licensees successfully lobbied the Commission to reduce the public safety exclusivity period for this spectrum from five to three years, thus giving them faster access to these extra channels.¹⁰

⁸ *Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission’s Rules*, Second Report and Order, 15 FCC Rcd 5299, ¶ 58 (2000). Although 700 MHz Guard Band spectrum is currently encumbered by broadcast television stations in a number of markets pending their transition to digital television, Congress is currently considering legislation that would expedite this transition and the clearing of incumbents from these channels. Anne Veigle and Paul Gluckman, “DTV Bill Would Set 2008 Hard Transition, Newly Released Draft Says,” *Communications Daily*, May 23, 2005, at 1-2.

⁹ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶ 152 (2004) (“800 MHz R&O”).

¹⁰ *Id.* n.412. This spectrum will be reserved for public safety licensees for the first three years. CII licensees will have exclusive access to such channels along with public safety licensees for the subsequent two years, and other B/ILT licensees will be eligible to apply for them thereafter. *Id.* ¶ 152.

B. A B/ILT Set Aside Cannot Be Squared With the Commission’s Decision to Permit B/ILT Licensees to Convert and Assign Their Licenses to CMRS Operations

In the *800 MHz R&O* (§ 337), the Commission amended its rules to permit 900 MHz B/ILT licensees to initiate Commercial Mobile Radio Service (“CMRS”) operations or to assign their authorizations to others for CMRS use. In the *NPRM* in this proceeding, the Commission tentatively concludes that its should take the next logical step by eliminating B/ILT set asides in the initial licensing of 900 MHz white space and opening up this valuable spectrum for all interested bidders in an FCC auction. As Nextel explained in its comments, extending market-oriented spectrum management policies to the initial licensing of 900 MHz white space will expedite the efficient use of this spectrum, deter speculation and spectrum warehousing, and recover for the U.S. Treasury the value of these channels.¹¹

Parties arguing for a continued B/ILT set aside, however, want to have their cake and eat it too. They urge the Commission to give B/ILT licensees free, exclusive access to 900 MHz channels in the initial licensing of this spectrum, but then permit these licensees immediately to convert the channels to CMRS use or sell the channels to CMRS operators.¹² Even these parties recognize the inherent conflict between maintaining a B/ILT set aside in the context of initial licensing, yet subsequently allowing licenses to be converted or assigned for CMRS use. In response, they proposed a hodge-podge of

¹¹ Nextel Comments at 6-7, 8.

¹² Comments of Joint Parties at 23 (“Licensees that qualify for the reserved channels still would be permitted to convert their authorizations to commercial status”).

conflicting, command-and-control regulations to try to deter the speculation and warehousing that is likely to arise.¹³

Artificial restrictions on the initial licensing of 900 MHz white space would beget yet more artificial, burdensome restrictions on the use of these channels. Such restrictions are difficult to implement and enforce, creating loopholes for licensees to game the B/ILT set aside and speculate in 900 MHz white space spectrum. The end result is the enrichment of B/ILT set-aside recipients at the expense of the U.S. Treasury and delays in the productive use of this scarce spectrum. More fundamentally, by recognizing that a set aside will lead to speculation in the secondary market, these parties are effectively recognizing that a set aside would hinder the ability to put the spectrum to its most valued use. After all, there would be no incentive to warehouse or speculate in B/ILT set-aside channels if the secondary market for these channels did not place a higher value on them for alternative uses.

The Commission correctly recognized in the *800 MHz R&O* that permitting B/ILT licensees to convert or assign their channels for CMRS use promoted the public interest by permitting the marketplace to maximize the efficient use of this spectrum. This same reasoning applies with equal strength to the initial licensing of these channels.

¹³ See, e.g., *id.* at 24-25 (supporting elimination of loading requirements, but adoption of restrictions on how many set-aside channels a licensee could apply for at any one time); UPS Comments at 7 (supporting elimination of loading requirements and a limitation on the number of channels applicants may initially request, but urging the FCC to craft a rule to allow applicants to request additional channels based on need); Comments of Florida Power and Light at 7-8 (urging FCC to retain loading requirements). Some parties urge the Commission to impose a holding period before B/ILT channels could be converted or assigned for CMRS use. See, e.g., Comments of Blooston Law Firm, on behalf of Automobile Club of Southern California, *et al.* at 6. The Commission, however, has already rejected the use of holding periods for 900 MHz spectrum in the *800 MHz R&O* (¶ 337). Moreover, holding periods impose artificial restrictions on the efficient use of the spectrum and would frustrate the Commission's objective of facilitating 800 MHz band reconfiguration.

Licensing 900 MHz white space for flexible use via an auction would recover the value of this spectrum for the American taxpayer and obviate the need to adopt burdensome, often ineffective rules to deter speculation and warehousing.

C. Flexible Use and Auctions Serve the Public Interest

Parties arguing for the continuation of a B/ILT set aside at 900 MHz want to turn the clock back to a time when the Commission parceled out the use of spectrum based on artificial eligibility restrictions. This process was often driven by the need to placate special interest groups that marshaled the most effective lobbying tactics and resources, rather than promoting the most efficient use of the spectrum to benefit the public. As Nextel described in its initial comments, in recent years the Commission has replaced this command-and-control regime with market-oriented policies that rely on flexibility and competition to ensure that spectrum allocations promote the public interest.¹⁴ The Commission's proposal to auction 900 MHz white space for flexible use is consistent with these market-oriented policies and would expedite the use of this fallow spectrum for the benefit of the public.

Nextel has shown in a previously-submitted White Paper prepared by Dr. Gregory L. Rosston that “[a]uctions are the fastest, fairest and most efficient way to make initial license assignments.”¹⁵ Reliance on market forces via auctions has advanced deployment of wireless services to the public.¹⁶ PCIA stated in its comments in this proceeding that “[a]uctions . . . provide an incentive to bidders to deploy service expeditiously. The

¹⁴ Nextel Comments at 9-10.

¹⁵ Reply Comments of Nextel, WT Docket No. 99-87 (Sept. 30, 1999), attaching Declaration of Gregory L. Rosston (“Rosston White Paper”) at 2, 16.

¹⁶ Rosston White Paper at 8.

intensive use of capital to secure spectrum through an auction mechanism should drive winning bidders to deploy a viable spectrum-based telecommunications service as quickly as possible to optimize their potential for a return on investment.”¹⁷ Auctions permit each interested bidder the opportunity to demonstrate the relative value it hopes to create by outbidding others.¹⁸ As Dr. Rosston has observed, the “service provider that would *best* serve the public interest would be the one whose services are *most* valuable.”¹⁹

A number of B/ILT parties argue that their internal communications systems help them respond to health and safety emergencies and promote Homeland Security.²⁰ Nextel does not dispute that some B/ILT licensees, such as utility companies, use their 900 MHz licenses to support health and security functions. But this does not require the continuation of a B/ILT set aside at 900 MHz. Many B/ILT licensees use their communications to serve their for-profit operations, and the large majority of these operations are unrelated to any public safety function. There is no public interest rationale for continuing to set aside free 900 MHz spectrum for B/ILT licensees, a policy that amounts to a government subsidy of the for-profit enterprises of these licensees at a significant cost to the American taxpayer. These businesses should pay for spectrum or

¹⁷ Comments of PCIA at 2.

¹⁸ Rosston White Paper at 19-20.

¹⁹ *Id.* at 19.

²⁰ *See, e.g.*, Comments of Public Service Electric and Gas Co., *et al.* (“PSE&G”) at 4-6; Comments of Joint Parties at 4-12; Comments of Florida Power & Light Company at 2.

spectrum-based services, just as they pay for any other resource or input necessary to a for-profit operation.

It is no answer to say, as some have argued, that B/ILT operators would be outbid by commercial licensees in a 900 MHz white space auction because they do not provide commercial service or because they have special needs.²¹ As Dr. Rosston has pointed out, having special needs is not unique to spectrum. For example, some businesses require electricity service that has backup sources, but the government does not give them the backup source for free.²² Moreover, the “idea that a company cannot compete at auction for a scarce resource because they do not provide service to subscribers is plainly wrong.”²³ The private radio user will bid the highest at an auction if it values its proposed internal use of the spectrum more highly than the value assigned to the spectrum by the commercial operator. This proved to be the case in the 220 MHz auction where, as Dr. Rosston has reported, “applicants intending to use licenses for internal or non-interconnected uses ... won at auction.”²⁴

To the extent a commercial provider ends up bidding more than a B/ILT user for a license, it would simply be a reflection of the fact that the CMRS licensee is better able to put the spectrum to a more efficient and highly valued use. Far from supporting an argument for a set aside, this potential outcome provides evidence in favor of the

²¹ See, e.g., Comments of PCIA at 4.

²² Rosston White Paper at 20-21.

²³ *Id.* at 20.

²⁴ *Id.*

Commission's proposed 900 MHz white space auction. Particularly here, where this spectrum has lain fallow for decades, a white space auction serves the public interest.

II. THE COMMISSION SHOULD REJECT PROPOSALS TO IMPOSE UNWARRANTED INTERFERENCE PROTECTION REQUIREMENTS ON 900 MHz CMRS LICENSEES

A number of private radio parties raised concerns about the potential for interference between B/ILT and CMRS licensees in the 900 MHz band. These parties argued that the Commission should impose interference protection requirements on CMRS licensees, including the same interference abatement obligations the Commission has established for the reconfigured 800 MHz band.²⁵ The Commission should reject these arguments. These parties ignore critical distinctions between the 800 MHz and 900 MHz bands and seek to impose burdensome solutions to a problem that does not exist.

The Commission has already emphasized one important distinction between the 800 and 900 MHz bands: unlike the 800 MHz Land Mobile Radio band, there are no public safety licensees operating at 900 MHz. In the *800 MHz R&O* (¶ 336), the Commission stated that it has “less concern about unacceptable interference resulting from ... 900 MHz ESMR use because there are no public safety channels allocated in the 900 MHz band.” The Commission has further recognized that CII licensees “generally have greater access to funds sufficient to improve signal strength than public safety entities which operate on an appropriated funds basis.”²⁶ Unlike public safety licensees,

²⁵ See, e.g., Comments of Joint Parties at 12-21; Comments of the Association of American Railroads (“AAR”) at 10-19; Comments of Florida Power & Light at 9-11; Comments of Aeronautical Radio at 5-7.

²⁶ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120, ¶ 43 (2004) (“*Supplemental Order*”).

CII and other B/ILT licensees have the ability to pass on to their customers the cost of constructing robust communications systems, and in fact include some of the largest corporations in the country. It strains credulity for private radio parties to equate budget-constrained public safety systems with the internal communications systems of Fortune 500 companies.

B/ILT licensees have the resources *and the responsibility* to construct and maintain interference-resistant radio communications systems. The Commission has recognized that managing the risk of interference among licensees involves more than simply focusing on transmitter parameters. Rather, "[i]n many cases, the effects of RF interference can be mitigated or eliminated through attention to receiver hardware design and signal processing software."²⁷ As the Commission has stated, "more robust receiver performance would help to facilitate more flexible use of the spectrum" and promote spectrum efficiency in response to "dramatic increases in the overall demand for spectrum based services, rapid technical advances in radio systems, ... and the need for increased access to the limited supply of spectrum."²⁸ B/ILT licensees should consequently be expected to deploy systems capable of sharing spectrum with CMRS licensees at 900 MHz.²⁹

The suggestion by some B/ILT licensees that the Commission apply the 800 MHz *post-reconfiguration* interference abatement rules to the non-reconfigured 900 MHz band

²⁷ *Interference Immunity Performance Specifications for Radio Receivers*, Notice of Inquiry, 18 FCC Rcd 6039, ¶ 10 (2003).

²⁸ *Id.* ¶¶ 6, 10.

²⁹ Nextel began deploying 900 MHz spectrum in its iDEN® network in 2002 and has deployed numerous sites to date. Notwithstanding this rapid and significant level of CMRS deployment, there have been no significant interference issues in the band.

is consequently unnecessary and ignores the substantial differences between the two bands. It also ignores the fact that the 800 MHz interference abatement rules were not designed for an interleaved channel environment, which the 900 MHz band will remain. The Commission recognized this in the context of its 800 MHz reconfiguration decision, stating that “the thresholds established in the *800 MHz R&O* could impose substantial operational restrictions on ESMR carriers operating in the interleaved channels prior to completion of band reconfiguration.”³⁰ There is no justification for imposing such burdens on CMRS licensees in the absence of a proven interference problem and in a band that has no public safety licensees.

AAR argued in its comments that CMRS licensees such as Nextel should be subject to onerous interference protection obligations because it is the “newcomer” to the band.³¹ That is often not true. Nextel acquired most of its 900 MHz band licenses in 1996, earlier than many current 900 MHz B/ILT incumbents were licensed. Under a “last-in-fixes-it” approach, these B/ILT incumbents, not Nextel, would be held responsible for remedying an interference problem. In any event, the last-in-fixes-it approach provides no answer to the policy questions before the Commission in this proceeding. The Commission has applied a “last-in fixes it” analysis in certain adjudicatory cases involving the obligations of particular licensees under established technical rules. This rulemaking proceeding, however, seeks to define those technical rules in the first place based on sound spectrum management principles. Under these

³⁰ *Supplemental Order* ¶ 38. To avoid imposing undue burdens on CMRS licensees while still affording protection to public safety licensees against the serious interference problem at 800 MHz, the Commission established interim protection standards pending the completion of 800 MHz band reconfiguration. *Id.* ¶¶ 39, 42.

³¹ *See, e.g.*, Comments of AAR at 16.

principles, the Commission should adopt rules that promote the efficient use of the spectrum, rather than arbitrarily impose requirements slanted in favor of the licensee that happens to be the incumbent.

The Commission has proposed a market-based, flexible-use approach for licensing 900 MHz white space. Nextel urges the Commission to keep this approach in mind in establishing technical rules governing this spectrum. The interference abatement rules adopted in the 800 MHz proceeding were in response to long-standing, widespread interference to public safety communications systems. These unique factors are not present in the 900 MHz proceeding. The potential for CMRS – B/ILT interference in the 900 MHz band is best addressed through voluntary Best Practices and cooperation among licensees – not unilateral obligations on one type of licensee to fix any problem experienced by the other licensee.

Nextel is amenable, consistent with PCIA’s suggestion,³² to meeting with interested industry parties to discuss Best Practices and other appropriate interference protections based on industry consensus. Such Best Practices could include voluntary channel swaps between CMRS and B/ILT licensees that could create greater spectral separation between cellular and non-cellular systems should interference problems arise in a particular market. It bears noting that such private, marketplace solutions would be facilitated by an auction of 900 MHz white space, as it would give the auction winner more channels (and important licensing flexibility) to accommodate such swaps.

Following an auction of 900 MHz white space, the Commission can monitor interference issues and intervene in the event problems arise and industry-led efforts

³² PCIA Comments at 8.

prove unworkable. Indeed, the Commission embraced this very approach just last summer in its decision permitting 900 MHz B/ILT licensees to convert or assign their licenses to CMRS use.³³

III. THE B/ILT INDUSTRY'S SET ASIDE AND INTERFERENCE ARGUMENTS ARE CONTRADICTED BY THE COMMISSION'S 800 MHz DECISION AND UTILITY INDUSTRY ARGUMENTS IN THAT PROCEEDING

In the Commission's 800 MHz Public Safety proceeding, the Consensus Parties, including Nextel, proposed that Nextel surrender all of its existing 900 MHz SMR licenses, and that the Commission make this spectrum available to 800 MHz B/ILT licensees who elected to relocate to the 900 MHz band. As an incentive, B/ILT licensees would have received replacement channels on a "two for one" basis, *i.e.*, each 800 MHz licensee that relocated to the 900 MHz band would have received rights to twice the spectrum it occupied in the 800 MHz band. This would have cleared additional 800 MHz channels for public safety in the reconfigured 800 MHz band and also provided B/ILT and other high-site licensees with virtually exclusive access to the entire 896-901/935-940 MHz band, providing them more spectrum in this band and eliminating any possibility of interference between commercial and private radio licensees.

The utility industry opposed the Consensus Party proposal. For example, UTC and the Edison Electric Institute characterized it as "unattractive," stating that "comparable equipment variety and quality is not available for the 900 MHz band."³⁴

The Commission ultimately rejected the proposal, concluding that

³³ 800 MHz R&O ¶¶ 336-337.

³⁴ Comments of UTC and the Edison Electric Institute, WT Docket No. 02-55, at 12-13 (Feb. 10, 2003).

We are not persuaded that Nextel's abandoning service to the public in the 900 MHz band in order to provide non-cellular SMR and B/ILT licensees with 900 MHz spectrum for which there is no demonstrated need is in the public interest. We are further dissuaded from accepting Nextel's proffer of relinquishment of its 900 MHz spectrum rights because Nextel likely will need to use this spectrum to accommodate subscriber demand during 800 MHz band reconfiguration; and, possibly, thereafter.³⁵

Instead of adopting the Consensus Parties' 900 MHz proposal, which, as noted above, would have cleared additional 800 MHz channels for public safety, the Commission adopted a Nextel offer to surrender an additional 2 MHz of its 800 MHz spectrum, making this spectrum available exclusively for public safety licensees for three years, but also for CII and other B/ILT licensees in subsequent years.³⁶

The Commission's 800 MHz decision, and the position the utility industry took in that proceeding, are fundamentally at odds with utility industry arguments in the instant proceeding; *i.e.*, that CII must have access to additional 900 MHz spectrum and that B/ILT licensees will suffer serious interference from Nextel's 900 MHz systems. It would be arbitrary and inequitable for the Commission now to accept these arguments when less than a year ago it concluded that *Nextel*, not the B/ILT industry, is likely to need access to additional 900 MHz channels to facilitate 800 MHz band reconfiguration. It would similarly be arbitrary and inequitable for the Commission to impose on Nextel the interference protection requirements proposed by B/ILT parties when some of those same parties, and the Commission, declined the opportunity to replace the current interleaved CMRS – B/ILT 900 MHz with a band that would have been almost exclusively licensed to B/ILT and other high-site licensees.

³⁵ 800 MHz R&O ¶ 207.

³⁶ *Id.* ¶ 152; Letter from Robert S. Foosaner, Nextel, to Marlene Dortch, FCC Secretary, WT Docket No. 02-55 (June 9, 2005).

The B/ILT parties essentially want to subject Nextel to a regulatory triple whammy: First, Nextel is required to surrender valuable 800 MHz spectrum rights and undergo a burdensome network transition as it implements the Commission's 800 MHz reconfiguration decision. Second, Nextel would be denied the opportunity to bid for additional 900 MHz channels the Commission found it would need as the result of the reconfiguration process. Third, Nextel's existing 900 MHz operations would be burdened by interference abatement requirements designed for a non-interleaved channel environment – even though the Commission's 800 MHz decision specifically contemplated that the 900 MHz band would be continued to be interleaved. The Commission should not countenance such an unfair and irrational outcome in this proceeding.

IV. OTHER ISSUES

A. AAR's Six Licensed Frequency Pairs Should be Excluded from the 900 MHz White Space Auction

The Association of American Railroads ("AAR") holds a license (call sign WPSF894) for six channel pairs (Channel Nos. 71, 75, 79, 151, 155, and 159) in a geographic area defined by a 140-mile wide swath that tracks all of the railroad rights-of-way in the United States. This license supports the railroad industry's Advanced Train Control System. Nextel agrees with AAR that the Commission should not include these six channel pairs in its proposed 900 MHz white space auction.³⁷ Given the ubiquity of rail lines in the country, there are very few populated areas that would fall outside of WPSF894's licensed area, and auctioning such areas would provide little practical benefit.

³⁷ AAR Comments at 9-10.

Nextel, however, opposes AAR's request that the Commission impose more stringent interference requirements on 900 MHz band CMRS licensees, including AAR's proposals to impose strict emissions limits for CMRS licensees or that adjacent-channel CMRS base stations be located no closer than four miles from predetermined railroad rights-of-way. For the reasons described in Section II above, such requirements are unnecessary and unduly burdensome.

B. Incumbent B/ILT Licensees Should Only Be Protected Within Their 40 dBuV/m Field Strength Contour

Some commenters urge the Commission to permit B/ILT licensees to expand their protected service areas.³⁸ Nextel, however, agrees with SouthernLINC that the Commission should adopt its proposal to define the existing service area of an incumbent B/ILT system by its originally-licensed 40 dBuV/m field strength contour.³⁹ This would be consistent with the Commission's 800 MHz rules. To the extent B/ILT licensees require an expansion of their spectrum, they should be required to acquire additional spectrum rights in the FCC auction or in the secondary market, just like any other licensee.

V. CONCLUSION

Nextel urges the Commission to reject arguments in favor of a continued B/ILT set aside in the 900 MHz band, as well the request by some parties to impose unnecessary interference protection requirements on 900 MHz CMRS operations. The Commission

³⁸ See BellSouth Comments at 6; M/A-COM Comments at 10.

³⁹ SouthernLINC Comments at 11.

should move expeditiously to adopt its flexible use, pro-competitive tentative conclusions in this proceeding and auction off the 900 MHz white space as soon as possible.

Respectfully submitted,

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