

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

In the Matter of)
)
Amendment of Part 90 of the Commission’s Rules)
To Provide for Flexible Use of the 896-901 MHz) WT Docket No. 05-62
and 935-940 MHz Band Allotted to the Business)
and Industrial Land Transportation Pool)
)
Improving Public Safety Communications in the) WT Docket No. 02-55
800 MHz Band on Certain Part 90)
)
Consolidating the 800 MHz and 900 MHz)
Industrial/Land Transportation and Business Pool)
Channels)

To: The Commission

**JOINT REQUEST FOR CLARIFICATION
OR,
IN THE ALTERNATIVE,
FOR LIMITED RECONSIDERATION
FILED BY
ENTERPRISE WIRELESS ALLIANCE
AND
SPRINT NEXTEL CORPORATION**

The Enterprise Wireless Alliance (“EWA” or “Alliance”) and Sprint Nextel Corporation (“Nextel”) (EWA and Nextel, together, “Petitioners” or the “Parties”) jointly request clarification of one aspect of the Federal Communications Commission (“FCC” or “Commission”) Report and Order in the above-entitled proceeding.¹ If the FCC determines that this issue cannot be addressed through clarification, then Petitioners request limited reconsideration of the *R&O* to the extent detailed herein.

¹ *Report and Order*, WT Docket No. 05-62, 23 FCC Rcd 15856 (Oct. 22, 2008) (“*R&O*”).

I. BACKGROUND

In this proceeding, the Commission has sought to balance several important policy considerations. The 900 MHz channels under consideration were allocated for use by entities eligible to hold Business and Industrial/Land Transportation (“B/ILT”) licenses. This allocation, in the FCC’s words, “represents one of the few remaining opportunities for such licensees to obtain much-needed spectrum.”² The FCC acknowledged “the vital communications role that 900 MHz B/ILT spectrum plays in enabling traditional B/ILT licensees to safeguard our nation’s critical infrastructure industries”³ and further noted that, “Such licensees must ensure that they have access to communications pathways to meet the essential communications needs of such varied and critical industries as utilities, land transportation, manufacturers/industry, and petro-chemical.”⁴

However, the FCC also had identified the 900 MHz B/ILT spectrum, which is eligible to be converted from private internal to commercial use once authorized,⁵ as “green space” that might be needed by Nextel as a location to which it could temporarily obtain additional spectrum capacity to support its 800 MHz iDEN® subscribers during the 800 MHz band reconfiguration process.⁶ On September 17, 2004, the Commission released a Public Notice announcing a freeze on applications for new 900 MHz licenses to preserve this “green space,” which the FCC thought otherwise might be consumed by applicants for new 900 MHz B/ILT systems.⁷ The Commission subsequently proposed to abandon the frequency- and site-specific regulatory scheme applicable to the 900 MHz B/ILT spectrum and instead adopt a geographic area/channel block licensing

² *R&O* at ¶ 12.

³ *Id.* at ¶ 13.

⁴ *Id.*

⁵ See 47 C.F.R. § 90.621(f).

⁶ See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *et al.*, Report and Order, 19 FCC Rcd 14969 (2004).

⁷ See “Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band,” *Public Notice*, 19 FCC Rcd 18277 (2004) (“Freeze Public Notice”).

approach, with future licenses to be awarded by competitive bidding.⁸ The FCC's proposal was in very large part intended to facilitate Nextel's access to this spectrum as one way to accommodate the 800 MHz reconfiguration process.

The 900 MHz B/ILT allocation has been frozen for more than four years, and this proceeding has been outstanding for almost as long. EWA opposed both the freeze and the FCC's proposal to convert this spectrum to a geographic-based allocation that would be awarded by auction in the future.⁹ Nonetheless, the Alliance appreciated the importance of taking all reasonable measures in support of the 800 MHz reconfiguration process. Thus, in the interim, the Parties have cooperated in identifying 900 MHz B/ILT channels that could be authorized to Nextel under Special Temporary Authority ("STA") in geographic areas where it required additional spectrum capacity. This arrangement has enabled Nextel to secure needed "green space" as it and the public safety community continue to work through the very complex process of migrating public safety systems within the 800 MHz band to minimize the potential for future interference.

The Alliance has facilitated these Nextel STA requests because many EWA members use the Nextel iDEN® network as one of their wireless communications tools. They, along with millions of other iDEN® subscribers, would have been adversely impacted had there been no 900 MHz safety valve for addressing temporary capacity constraints triggered by the 800 MHz rebanding process. The STA approach has proven an effective mechanism for meeting these time- and market-limited capacity requirements, consistent with the FCC's purpose in adopting the freeze.

⁸ See 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 the 900 MHz Band Freeze Notice, DA 04-3013, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 20 FCC Rcd 3814 (2005).

⁹ See Reply Comments of the Enterprise Wireless Alliance filed in WT Docket 05-62 (June 2, 2005).

II. PROPOSED FREEZE CLARIFICATION

The Parties are pleased that the Commission now has reached a decision in the instant proceeding and believe that the FCC has struck an appropriate balance in reconciling two important policy considerations. EWA endorses the FCC's decision to retain the current site-based regulatory structure for this spectrum and agrees fully with the Commission's acknowledgment of "the scarcity of frequencies dedicated solely to B/ILT licensees,"¹⁰ and its conclusion that its action "will both help ensure the communications viability of incumbent and prospective 900 MHz B/ILT licensees, and provide for the orderly modification and growth of their communications systems."¹¹ However, both Parties agree that "lifting the 900 MHz B/ILT application freeze in its entirety at this time could jeopardize Nextel's 800 MHz rebanding efforts."¹² It is clear that the 800 MHz reconfiguration process will not be completed for some time, and Nextel must be permitted to continue operating its granted STAs and to obtain additional STAs when needed for rebanding purposes until this effort has been completed. To that end, the FCC has determined that the nationwide freeze will remain in place and "will be lifted in a NPSPAC region six months after rebanding is complete in that particular NPSPAC region."¹³

The Petitioners do not disagree with the Commission's objective. However, they believe that the *R&O* is unnecessarily protective in this respect and that the freeze policy could be further refined without compromising Nextel's rebanding activities.¹⁴ There are some NPSPAC regions in which Nextel has no need for additional 900 MHz capacity to fulfill its 800 MHz

¹⁰ *R&O* at ¶ 1.

¹¹ *Id.*

¹² *Id.* at ¶ 28.

¹³ *Id.* at ¶ 27.

¹⁴ As indicated previously, the Petitioners believe that the freeze policy can be modified through clarification. If the FCC disagrees, then the Parties respectfully request that this filing be treated as a formal, but limited, request for reconsideration of this aspect of the *R&O*.

reconfiguration obligations, for example, Alaska (Region 2), Idaho (Region 12) and North Dakota (Region 32). In others, Nextel's requirements extend only to a defined geographic area within the typically statewide NPSPAC regions. For example, Nextel has obtained an STA for additional channels providing coverage in the Atlanta, Georgia market, but has no current need for these same channels in the southern portion of the state/region. Similarly, Nextel has obtained an STA for 900 MHz spectrum in Louisville, Kentucky, but nowhere else within the State of Kentucky. The approach adopted by the Commission would preclude any use of 900 MHz B/ILT spectrum by qualified B/ILT applicants even in areas where the spectrum is not required by Nextel, and would do so for an indeterminate amount of time since it is uncertain when the reconfiguration process will be completed in an NPSPAC region.¹⁵ The Parties have concluded that a more targeted freeze policy would permit B/ILT entities to access this spectrum in many areas of the country without in any way affecting Nextel's spectrum capacity requirements necessary to support band reconfiguration.

Specifically, the Parties recommend that the FCC freeze policy permit the acceptance and processing of 900 MHz B/ILT applications prior to six months after rebanding has been

¹⁵ *Improving Public Safety Communications in the 800 MHz Band; Requests for Interim Waiver of the June 26, 2008 Rebanding Deadline – Wave 1 Public Safety Regions*, WT Docket No. 02-55, Order, DA 08-1427 (PSHSB rel. June 17, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Waiver of the June 26, 2008 Rebanding Deadline – Wave 1 Public Safety Regions*, WT Docket No. 02-55, Order, DA 08-1428 (PSHSB rel. June 17, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Interim Waiver of the June 26, 2008 Rebanding Deadline – Wave 2 Public Safety Regions*, WT Docket No. 02-55, Order, DA 08-1429 (PSHSB rel. June 17, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Waiver of the June 26, 2008 Rebanding Deadline – Wave 2 Public Safety Regions*, WT Docket No. 02-55, Order, DA 08-1430 (PSHSB rel. June 17, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Interim Waiver of the June 26, 2008 Rebanding Deadline – Wave 3 Public Safety Regions*, WT Docket No. 02-55, Order, DA 08-1431 (PSHSB rel. June 17, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Waiver of the June 26, 2008 Rebanding Deadline – Wave 3 Public Safety Regions*, WT Docket No. 02-55, Order, DA 08-1432 (PSHSB rel. June 17, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Interim Waiver of the June 26, 2008 Rebanding Deadline – Wave 4 Public Safety Regions (Non-Border)*, WT Docket No. 02-55, Order, DA 08-1433 (PSHSB rel. June 17, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Waiver of the June 26, 2008 Rebanding Deadline – Wave 4 Public Safety Regions (Non-Border)*, WT Docket No. 02-55, Order, DA 08-1434 (PSHSB rel. June 17, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Waiver of the June 26, 2008 Rebanding Deadline – National Capital Region*, WT Docket No. 02-55, Order, DA 08-1531 (PSHSB rel. June 30, 2008); *Improving Public Safety Communications in the 800 MHz Band; Requests for Waiver of the June 26, 2008 Rebanding Deadline*, WT Docket No. 02-55, Order, DA 08-1653 (PSHSB rel. July 14, 2008).

completed in a NPSPAC region, provided that the application is accompanied by a letter of concurrence from Nextel. This approach would permit Nextel to assure itself that a proposed system would not affect its use of 900 MHz channels being operated pursuant to one of its STAs,¹⁶ thereby addressing the Commission's concern that lifting the freeze earlier might compromise Nextel's rebanding efforts. Nextel is in the best position to determine whether any particular 900 MHz operation might have that effect and certainly would not concur with an application proposing such a system. Conversely, however, Nextel would have the obligation not to withhold concurrence unless it had a reasonable technical basis for doing so.¹⁷

The Parties have already begun to discuss the process by which Nextel's concurrence would be requested and are confident that they will reach agreement on a reasonable, minimally burdensome approach. That approach will take into account the Commission's caution that particular scrutiny be applied to prevent applicants without the qualifications to hold a 900 MHz B/ILT license from obtaining this scarce spectrum. While the FCC necessarily will be the final arbiter of an applicant's eligibility, the Parties agree that Nextel, EWA and all frequency advisory committees that are permitted to coordinate 900 MHz B/ILT channels should exercise particular vigilance in reviewing spectrum requests, consistent with the FCC's well-articulated standards for eligibility.¹⁸

¹⁶ Under this policy, Nextel would retain the capability of requesting additional or modifying its existing STAs if it determined that it needed additional spectrum capacity in conjunction with its 800 MHz rebanding activities. This is particularly true in the Canadian Border Regions where the reconfiguration is still in its early stages and the Mexican Border Region where rebanding has not yet begun. In the meantime, however, Nextel does not want to unnecessarily prevent qualified applicants from deploying in the 900 MHz band during 800 MHz band reconfiguration.

¹⁷ As with any FCC rule or policy, a party could request a waiver for the FCC to consider an application that did not have Nextel's concurrence. The FCC then would decide whether the request satisfied the Commission's standard for waiver relief.

¹⁸ See, e.g., In the Matter of ELF Realty Trust, *Order*, 23 FCC Rcd 15086 (2008).

III. CONCLUSION

The Commission's decision in this proceeding reflects its serious consideration of the issues raised and a reasonable balancing of competing policy interests. The Parties believe that the clarification to the freeze policy proposed herein will provide a further refinement to the FCC's balancing efforts and permit maximum utilization of this long-frozen spectrum without in any way jeopardizing the role it plays in enabling Nextel to meet its 800 MHz reconfiguration responsibilities.

Respectfully submitted,

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