

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

In the Matter of)	
)	
A National Broadband Plan for Our Future)	GN Docket No. 09-51
)	
Fostering Innovation and Investment in the)	GN Docket No. 09-157
Wireless Communications Market)	
)	
Inquiry Concerning the Deployment of)	GN Docket No. 09-47
Advanced Telecommunications Capability)	
to All Americans in a Reasonable and)	
Timely Fashion, and Possible Steps to)	
Accelerate Such Deployment Pursuant to)	
Section 706 of the Telecommunications)	
Act of 1996, as Amended by the)	
Broadband Data Improvement Act)	
)	
In the Matter of Amendment of the)	WT Docket No. 06-49
Commission's Part 90 Rules in the)	
904-909.75 and 919.75-928 MHz Bands)	

COMMENTS OF PCS PARTNERS, L.P. – NBP PUBLIC NOTICE #6

PCS Partners, L.P. (“PCS Partners”), by its attorneys, hereby responds to the Public Notice in the above-referenced proceeding¹ seeking comment on spectrum for broadband.

PCS Partners presently holds Commission licenses to operate in the broadband Personal Communications Services, the Wireless Telecommunications Services (700 MHz band), and the Multilateration Location and Monitoring Service (“M-LMS”) (902-928 MHz band). All of these licenses were acquired through the Commission’s competitive auction processes. As a result, PCS Partners, a privately owned very small business, and its principal have substantial experience in spectrum-based businesses.

¹ Public Notice, Comment Sought on Spectrum for Broadband, NBP Public Notice #6, DA 09-2100 (Sept. 23, 2009) (“NBP PN #6”).

Moving Spectrum Allocations Toward Their Highest and Best Use: M-LMS

NBP PN #6 asks a series of questions regarding the “highest and best use” of currently licensed spectrum, including whether some spectrum bands are or are not being used efficiently and productively in the public interest.² PCS Partners urges the Commission to remove unnecessary regulatory impediments to enhancing the highest and best uses of M-LMS spectrum by applying the FCC’s successful flexible use rules and policies for the M-LMS spectrum.

As a general matter, PCS Partners believes that the Commission’s market-based spectrum policies, including spectrum auctions and flexible use rules, promote innovation and investment and thereby lead to the highest and best commercial use of spectrum. Nearly ten years ago, then-Chairman Kennard noted that “[t]he FCC's market-based auctions program has been a driving force in spurring competition” in wireless communications.³ Chairman Kennard cited statistics that depicted an industry still very much in its early stages of development, noting that between 1993 and 2000 the number of wireless phones in the U.S. increased from 15 million to 80 million.⁴

Today, of course, wireless penetration has reached levels unforeseen a decade ago. More than 270 million Americans utilize devices, services, and applications for wireless communications,⁵ primarily on spectrum that has been allocated by auction or other market-based mechanisms. It is evident that the entities who acquired licenses at auction, both large and

² See NBP PN #6 at 6 (Questions 4.b, 4.c).

³ News Release, “FCC Chairman Delivers Report Card on the New FCC to Congress; Kennard Outlines 'Faster, Flatter and More Functional' Agency for the Broadband Internet Age,” 2000 FCC LEXIS 1406 (March 21, 2000).

⁴ *Id.*

⁵ See GN Docket No. 09-51, Comments of CTIA—The Wireless Association®, June 8, 2009, at 4-5.

small, have placed a substantial value on the acquired spectrum, not simply in the amounts they were willing to pay to acquire usage rights, but also in their willingness to invest in the infrastructure and other technology necessary to bring to market innovative and market-driven services.

With respect to the M-LMS spectrum bands (904-909.75 and 919.75-928 MHz), however, outdated service rules that do not reflect the Commission's market-based broadband policies are thwarting M-LMS licensees' desire to introduce new spectrum-efficient services. In 2006, the Commission, recognizing the constraints imposed by its rules governing the licensing and use of M-LMS frequencies, issued a Notice of Proposed Rulemaking⁶ to re-examine those rules and to explore whether new approaches could produce more efficient use in the public interest.⁷

The record established in response to the *M-LMS NPRM* provides a basis for the Commission to find that removing outmoded service restrictions on M-LMS will result in more efficient and effective use of the M-LMS bands, while permitting unlicensed and licensed operations to co-exist.⁸ As the FCC noted when it adopted the *M-LMS NPRM*, since 1995, when M-LMS service rules were first established, and continuing from the initial auction of LMS licenses in 1999, "there has been very limited development of M-LMS service."⁹ That

⁶ *In the Matter of Amendment of the Commission's Part 90 Rules in the 904-909.75 and 919.75-928 MHz Bands*, WT Docket No. 06-49, Notice of Proposed Rulemaking, 17 FCC Rcd. 15658 (2006) ("*M-LMS NPRM*").

⁷ *Id.*, ¶1.

⁸ See WT Docket No. 06-49, Reply Comments of PCS Partners, L.P. (June 30, 2006); Reply Comments of Progeny LMS, LLC (June 30, 2006); Comments of Progeny LMS, LLC, (May 30, 2006); Comments of FCR, Inc. (May 30, 2006); Comments of Helen Wong-Armijo (May 30, 2006).

⁹ *Id.*

determination remains true today. Consequently, PCS Partners believes the public interest in maximizing the efficient use of spectrum would be served by promptly amending the M-LMS rules.

Specifically, as supported in the record¹⁰ and consistent with its desire to introduce new forward-looking spectrum policies in the M-LMS bands, the Commission should amend its rules to allow for the development and deployment of new and innovative services, including broadband services, by M-LMS licensees, by (1) eliminating restrictions on the type and content of messages that can be carried by M-LMS systems, (2) eliminating the “primary operations” restriction that permits M-LMS licensees to provide non-vehicular location services only if an LMS system’s “primary operations” involve the provision of vehicle location services; (3) eliminating restrictions on real-time interconnection with the public switched telephone network; (4) eliminating the spectrum aggregation restriction for M-LMS licensees, and (5) eliminating the M-LMS field-testing condition. These changes will result in more efficient, market-driven use of spectrum that today is not fully utilized due to outdated technological constraints.¹¹

The Commission’s longstanding spectrum policies, including its flexible use policy, have facilitated the evolution of wireless services by removing out-of-date and service-limiting spectrum use restrictions, while protecting primary spectrum users from interference from secondary and tertiary users. The Commission’s willingness to adopt flexible use rules has been a key driver of innovation and access to spectrum. In its National Broadband Plan, the FCC should affirm the conclusions reached by the Spectrum Policy Task Force, which stated:

¹⁰ See WT Docket No. 06-49, Reply Comments of PCS Partners, L.P. (June 30, 2006); Reply Comments of Progeny LMS, LLC (June 30, 2006).

¹¹ For example, allowing aggregation of M-LMS spectrum would facilitate the reduction of interference of M-LMS systems to Part 15 devices by allowing interference avoidance techniques to operate over a larger bandwidth.

As a general proposition, flexibility in spectrum regulation is critical to improving access to spectrum. In this context, “flexibility” means granting both licensed users and unlicensed device operators the maximum possible autonomy to determine the highest valued use of their spectrum, subject only to those rules that are necessary to afford reasonable opportunities for access by other spectrum users and to prevent or limit interference among multiple spectrum uses. Flexibility enables spectrum users to make fundamental choices about how they will use spectrum ... taking into account market factors such as consumer demand, availability of technology, and competition. By leaving these choices to the spectrum user, this approach tends to lead to efficient and highly-valued spectrum uses.¹²

To effectuate these policies, the Commission often has revised its rules to enable spectrum licensees to provide new and innovative services.¹³ PCS Partners encourages the Commission to do so here, by supporting flexible and efficient use of M-LMS spectrum.

Respectfully submitted,

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¹² Spectrum Policy Task Force, ET Docket No. 02-135, Report (Nov. 2002). *See also In the Matter of Service Rules for the 698-746, 747-762 and 777-792 MHz Bands*, WT Docket No. 06-150, Second Report and Order, 22 FCC Rcd. 15289, ¶242 (2007) (adoption of flexible use policies intended to remove regulatory impediments and enable more efficient spectrum use).

¹³ *See, e.g., Principles for the Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millenium*, Policy Statement, 14 FCC Rcd. 19869 (1999).