

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

In the Matter of)
)
Petition for Rulemaking to Make Unused) WT Docket No. 09-217
Narrowband PCS Channels in the 900 MHz)
Band Available for Public Safety Use)

COMMENTS OF USA MOBILITY, INC.

USA Mobility, Inc. submits these comments in response to the Petition for Rulemaking filed by the National Public Safety Telecommunications Council (“NPSTC”) on September 25, 2009, and placed on public notice on December 3, 2009. In the Petition, NPSTC asks the Commission to “conduct an audit of 900 MHz Narrowband PCS spectrum, recover unused or lightly used channels, and make channels available for public safety use to enable cost-effective alerting services needed by public safety entities.”¹ However, NPSTC fails to establish any need for such measures, as it ignores the effective solutions provided by commercial paging carriers, including customized services that USA Mobility offers nationwide to meet the needs of public safety users. In fact, by undermining commercial alternatives, NPSTC’s Petition would eventually harm the public safety community whose interests it seeks to advance. NPSTC’s request to revoke licenses that were purchased at auction and subsequently built out in compliance with Commission rules also would create significant legal and policy problems, all of which the Petition entirely fails to address. The Commission therefore should take no further action in response to the Petition.

¹ Petition at 1.

BACKGROUND

USA Mobility is the nation's leading provider of paging services, offering traditional one-way and advanced two-way messaging services over its nationwide networks. USA Mobility's customers primarily consist of hospitals and other health care institutions; local, state, and federal government agencies; and a wide variety of large and small businesses.

Contrary to the implicit premise underlying the Petition, paging carriers such as USA Mobility provide robust and cost-effective communications solutions to their customers—including public safety users. And to the extent that the needs of public safety users cannot be met through its standard commercial offerings, USA Mobility offers customized solutions including private campus-based networks that provide enhanced performance and reliability. For example, USA Mobility's recently introduced I-LAND™ offering consists of a campus-based two-way messaging network, which enables public safety users to deliver pages with minimal latency and extensive in-building coverage, as well as to roam onto the company's wide-area network when traveling outside the local area.² USA Mobility has installed and supported such private networks at the request of public safety agencies, hospitals, power plants, and others with similar mission-critical needs. In fact, many medical “code team” professionals rely on such campus systems to ensure reliable, near real-time text messaging in life and death situations.

Such private networks appear to be precisely what NPSTC aims to support through its petition. Thus, NPSTC seeks to initiate a proceeding with the apparent goal of seizing paging frequencies licensed to commercial carriers to create the very same public safety benefits that USA Mobility *already* offers using that spectrum. There are far better uses of the

² See News Release: *USA Mobility Introduces I-LAND™, A Campus-Based Private Messaging Solution* (Nov. 5, 2009), available at www.usamobility.com.

Commission's limited resources than to reinvent the wheel, even apart from the serious legal questions such an undertaking would entail.

DISCUSSION

I. THE NPSTC PETITION IGNORES THE SUBSTANTIAL BENEFITS OF COMMERCIAL PAGING SERVICES AND WOULD THREATEN TO UNDERMINE THE PUBLIC SAFETY GOALS IT SEEKS TO ADVANCE

USA Mobility wholeheartedly agrees with NPSTC that two-way paging systems offer key advantages for public safety communications, including unmatched reliability, redundancy, and affordability.³ However, there is no basis for NPSTC's categorical assertion that *commercial* paging services "do not provide the coverage, reliability and application software features needed by public safety agencies."⁴ In fact, USA Mobility's strong track record of service to public safety agencies belies NPSTC's blanket claims. Granting the Petition would risk undercutting those existing benefits without any countervailing benefits.

A. USA Mobility Already Offers Services That Are Ideally Suited to Public Safety Communications.

Notwithstanding the unsupported assumptions underlying the Petition, USA Mobility's paging services have played a vital role in supporting emergency responders and continue to do so today. For example, during Hurricane Katrina and the terrorist attacks of September 11, 2001, when cell phones and land lines were inoperable, USA Mobility's paging services frequently offered the only means for emergency responders to communicate with one another. Consequently, the Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks (the "Katrina Panel") recognized that USA Mobility's paging systems in the New Orleans area were more reliable than other forms of communications

³ Petition at 4-6.

⁴ Petition at 7.

because, among other things, “paging systems utilize satellite networks, rather than terrestrial systems, for backbone infrastructure.”⁵

NPSTC overlooks this history, and it improperly discounts the important advantages that commercial paging carriers can deliver, including that:

- Commercial providers like USA Mobility operate existing paging networks with broad coverage. For example, USA Mobility’s network includes thousands of transmitters, as well as dedicated satellite capacity, and can be adapted to provide additional coverage or services at relatively modest cost. In contrast, private paging systems would need to be built from scratch, at considerable and unnecessary cost to taxpayers.
- Commercial paging systems like USA Mobility’s rely on satellite networks and thus are particularly dependable in emergency situations. In contrast, private paging systems rely exclusively on terrestrial backhaul facilities, which, as the Katrina Panel found, are much more vulnerable to outages.
- Commercial providers like USA Mobility can flexibly deploy transmitters in a manner tailored to evolving customer needs. In contrast, private systems are far less able to allocate system resources flexibly, particularly among different local and regional systems.
- Commercial paging systems like USA Mobility’s can incorporate the same advanced features touted in the NPSTC Petition, and typically can do so at lower cost. For example, and contrary to NPSTC’s suggestion, USA Mobility’s campus systems can include a message-delivery acknowledgement feature; indeed, that feature is inherent in the same ReFLEX protocol that NPSTC proposes for private systems.
- Commercial providers like USA Mobility have a large workforce made up of skilled and experienced operational personnel. In particular, USA Mobility has extensive experience working with first responders, medical personnel, and government officials, which collectively make up a majority of its customer base. Even apart from the costs and difficulties inherent in building a new paging

⁵ The Katrina Panel also has recognized that commercial paging services are “inherently redundant”; “penetrate buildings very well, thus providing an added level of reliability”; benefit “from having a long battery life”; and are “equipped to provide broadcast messaging.” Independent Panel Reviewing the Impact of Hurricane Katrina on Communications Networks, *Report and Recommendations to the Federal Communications Commission*, EB Docket No. 06-119, at 10, 24 (June 12, 2006) (“*Katrina Panel Report*”).

network, state and local public safety agencies cannot readily duplicate the human capital possessed by the commercial paging industry.

- Commercial paging services like USA Mobility's offer the benefits of interconnectivity among many communications platforms and providers. USA Mobility's interconnected network ensures that public safety personnel can use their devices when they travel away from their place of work and are able to communicate with officials elsewhere in the state or with federal personnel. In contrast, private networks that are not interconnected to a national paging network and other communications platforms lack these important capabilities.

For these and other reasons, public safety users rely on USA Mobility's services for a wide range of mission-critical functions. Local emergency responders and a FEMA official submitted testimonials after Hurricane Katrina indicating that USA Mobility's services provided a vital lifeline.⁶ USA Mobility's paging services likewise garnered praise in the aftermath of 9/11.⁷ USA Mobility's broad base of satisfied government customers belies any assertion that commercial paging systems do not offer a viable platform for emergency communications.

Moreover, as described above, USA Mobility offers customized solutions to customers, including public safety agencies, that require enhanced performance and reliability. Indeed, USA Mobility *already* can and does use its existing spectrum to deploy the kinds of private networks that NPSTC seeks to foster. In particular, USA Mobility's I-LAND™ offering enables public safety agencies to achieve whatever level of performance they could obtain through a purely private network built at comparable or greater expense with public funds. USA

⁶ See Comments of USA Mobility, EB Docket No. 06-119, at 11 (filed Aug. 7, 2006); Katrina Report at 24.

⁷ See, e.g., Peter Kapsales, *Wireless Messaging for Homeland Security: Using Narrowband PCS for Improved Communications During Emergencies*, 1 (Mar. 2004), available at www.homelanddefense.org/journal/Articles/Kapsales.html (noting that, based on the exemplary performance during 9/11, commercial two-way paging services "should be considered a primary or backup system to improve real-time communication among emergency personnel during critical periods when voice communication is not practical or fails.").

Mobility's customized campus systems are designed, installed, and maintained using the same architecture as USA Mobility's wide-area networks to ensure reliability and broad coverage. And they are fully integrated into each customer's monitoring and management systems. There is simply no reason to believe that reclaiming spectrum from experienced commercial operators to enable inexperienced government officials to duplicate the same functionalities would advance the public interest.

NPSTC further overlooks the common-sense proposition that, if it were correct that "a significant portion" of narrowband PCS spectrum "is unused and lies fallow today,"⁸ commercial providers would have even more powerful incentives to use that spectrum to provide robust and innovative services to public safety users at attractive rates. Commercial providers plainly have no incentive to hoard spectrum where there is unmet demand from public safety users. Thus, the obvious solution to the supposed problem identified by NPSTC is for public safety users to avail themselves of existing spectrum resources by contracting with commercial providers that offer appropriate solutions. There is no cause to revoke licenses purchased at auction at considerable expense based simply on NPSTC's apparent preference to have government agencies control the spectrum directly.

B. Grant of the NPSTC Petition Would Threaten To Harm the Public Safety Users NPSTC Seeks To Benefit.

In addition to its failure to acknowledge the wide range of commercial paging solutions available in the marketplace today, the NPSTC Petition ignores the counterproductive effects that would likely flow from granting the requested relief. A viable commercial paging

⁸ Petition at 3.

industry is critical to maintaining paging as an effective emergency communications tool, yet the Petition would needlessly threaten that beneficial relationship.

In particular, granting the NPSTC Petition would diminish the stability and certainty that are necessary for commercial paging providers to attract and maintain sufficient capital to adapt and modernize existing network infrastructure. By casting doubt on the very validity of paging licenses, grant of the Petition could deal a serious blow to an already beleaguered paging industry. In turn, paging carriers such as USA Mobility would be less equipped to deploy advanced two-way messaging solutions of the sort desired by public safety users. In this way, granting the petition could be self-defeating for those public safety customers that would prefer to purchase a turn-key solution from a company such as USA Mobility to obtaining their own spectrum and building a private system from scratch.

By the same token, a healthy commercial paging sector is vital to the continuing availability of network equipment and paging devices. Indeed, USA Mobility's large volume of pager purchases makes it possible for public safety users to benefit from affordable pricing, given the economies of scale. If the Petition had the effect of displacing commercial providers such as USA Mobility, the equipment necessary to support private paging systems would become significantly more expensive, and potentially would no longer be available at all given the lower volumes associated with private paging systems.

II. THE NPSTC PETITION FAILS TO ACKNOWLEDGE OR ADDRESS SIGNIFICANT LEGAL ISSUES ASSOCIATED WITH THE REVOCATION OF LICENSES OBTAINED AT AUCTION

Even apart from the absence of any demonstrated need for relief, the NPSTC Petition fails to address the significant legal issues associated with the proposals it sets forth. While the Petition seeks to recover "unused or lightly used channels" from existing commercial paging service licensees, it wholly fails to explain the legal basis for doing so. In fact, it is far

from clear that the Commission may upset the settled expectations of licensed users in these circumstances.

Importantly, narrowband PCS licenses typically cover only a single paired channel. Thus, implementing NPSTC’s proposal to recover “unused or lightly used channels” would be tantamount to the revocation of affected licenses.⁹ While Section 312(a)(3) of the Communications Act, as amended, permits the Commission to revoke a license “for willful or repeated failure to operate substantially as set forth in the license,”¹⁰ the Commission’s rules recognize that a licensee’s operations are “substantially” in accord with its license where they are consistent with applicable technical parameters and satisfy applicable construction requirements.¹¹ There is no basis for revoking a license where these requirements have been satisfied, as in USA Mobility’s case.

NPSTC also fails to justify abandonment of the far less intrusive option of authorizing public safety users to operate private paging systems on *vacant* channels, on a case-by-case basis.¹² While such requests may or may not be justified, depending on the particular facts at issue, the key point is that Section 337(c) of the Act creates an explicit waiver mechanism through which public safety users may gain access to commercial spectrum where

⁹ Even if such “recovery” were viewed as a license modification—a difficult feat given that no meaningful spectrum resources would remain for the licensee’s use—there would be no public interest justification for such modification. *See* 47 U.S.C. § 316.

¹⁰ 47 U.S.C. § 312(a)(3).

¹¹ Section 24.103 of the Commission’s rules sets forth coverage requirements that must be satisfied by a narrowband PCS licensees, measured at five and ten years after the date of license grant. 47 C.F.R. § 24.103. Satisfaction of these requirements generally demonstrates “substantial” service.

¹² *See, e.g., City of Richmond, Virginia, for 900 MHz Channels to Operate a Regional Public Safety Two-Way Paging System in Henrico, Chesterfield, and Hanover Counties, Virginia and Request for Waiver Pursuant to Section 337(c) of the Communications Act of 1934, and Section 1.925 of the Commission’s Rules*, Order, 21 FCC Rcd 14384 (2006).

the channels at issue are *unassigned*.¹³ The existence of that waiver provision confirms that Congress did not envision a wholesale revocation of licensed commercial spectrum and its reassignment to public safety users. Indeed, because NPSTC’s Petition appears to envision such revocation without compensation to existing licensees—despite their acquisition of such licenses for considerable sums at auction and subsequent build-out of network facilities in full compliance with the Commission’s rules—the likely result of such action would be a taking of commercial providers’ property that violates the Fifth Amendment to the Constitution.¹⁴

Finally, pursuing NPSTC’s Petition would have adverse policy implications that could have far-reaching effects for spectrum policy generally. If the Commission were to signal its willingness to revoke licenses that parties paid substantial sums to obtain, and for which all build-out and other requirements have been met, future auction participants would have to think twice about participation and likely would discount future bids. Even apart from whether such revocations would be lawful, establishing a precedent that *post-hoc* conditions may be imposed on carriers’ continued ability to hold licenses purchased at auction would have a severe chilling effect that would diminish future auction proceeds and accordingly harm the public interest. Particularly in this context, where commercial paging carriers such as USA Mobility already offer a range of appropriate services (including fully customized private network solutions) for public safety communications, it would be unwise to pursue further such proposals.

¹³ 47 U.S.C. § 337(c).

¹⁴ See U.S. CONST. amend. V. At a minimum, if the Commission were to take licensed spectrum and reallocate that spectrum for public safety use, it would need to provide comparable spectrum, in other bands, to the affected licensees. See, e.g., *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969 (2004) (adopting rules to ensure both continuity of service and that relocating licensees receive “comparable facilities” on new frequency assignments).

CONCLUSION

For all the foregoing reasons, USA Mobility recommends that the Commission take no further action with respect to NPSTC's Petition.

Respectfully submitted,

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