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Before the  
Federal Communications Commission  
Washington, D.C. 20554

In the Matter of

Request for Declaratory Ruling That The )  
Commission's Rules Authorize Greater )  
Than 25 kHz Bandwidth Operations In )  
The 817-824/862-869 MHz Band. )

FILED/ACCEPTED

JUN 30 2011

Federal Communications Commission  
Office of the Secretary

To: Chief, Mobility Division, Wireless Telecommunications Bureau

**PETITION FOR DECLARATORY RULING**

Pursuant to Section 1.2 of the Federal Communications Commission's (the "FCC" or "Commission") Rules, Sprint Nextel Corporation ("Sprint Nextel"), on behalf of its 800 MHz licensing subsidiaries, requests that the Commission clarify and declare that its rules permit larger than 25 kHz bandwidth operations in the 800 MHz Enhanced Specialized Mobile Radio ("ESMR") portion of the 800 MHz band (817 - 824 MHz/862 - 869 MHz).<sup>1</sup>

**Background**

Starting with its reallocation from TV broadcast spectrum in the 1970's, the Commission initially licensed the 800 MHz Land Mobile Radio band in small, non-contiguous **25 kHz** channel segments on a site-by-site basis, or in site-licensed 5, 10, 15 or 20-channel non-contiguous 25 kHz channel groups for public safety, private carrier or Specialized Mobile Radio ("SMR") operations. In contrast, the FCC allocated **20 MHz**

<sup>1</sup> In the alternative, Sprint Nextel respectfully requests that this Petition be treated as a Petition for Rulemaking and that the Commission expeditiously issue a Notice of Proposed Rulemaking to revise Section 90.209 to the extent necessary to expressly authorize ESMR band EA licensees to deploy technologies using bandwidths greater than 25 kHz on their contiguous spectrum assignments.

of contiguous spectrum on a geographic-area basis for the Cellular A and Cellular B Blocks. In the mid-1990s, the Commission recognized the need to introduce competition into the wireless industry and, upon obtaining Congressional authorization under the Omnibus Budget Reconciliation Act of 1993 ("OBRA 93"), auctioned 10 – 30 MHz spectrum blocks, again on a geographic-area basis, to Personal Communications Service ("PCS") licenses in the mid-1990s.

OBRA 93 also directed the Commission to create regulatory parity among commercial licensees in the 800 MHz, cellular and PCS spectrum allocations.<sup>2</sup> Accordingly, the FCC re-licensed portions of the 800 MHz land mobile band on a geographic-area basis (Economic Area or "EA" licenses) similar to the geographic area licenses it assigned to cellular and PCS licensees. Sprint Nextel bid for and was awarded hundreds of 800 MHz EA licenses, some of which included the right to relocate incumbent site-by-site licensees from the ESMR band thereby creating contiguous spectrum. With these EA licenses, and as a result of the ongoing 800 MHz

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<sup>2</sup> In the *Third Report and Order* in GN Docket No. 93-252, implementing Section 332 of the Communications Act, the Commission established the Commercial Mobile Radio Service ("CMRS") and adopted rules that would ensure regulatory parity among similar commercial mobile radio services. See Implementation of Sections 3(n) and 332 of the Communications Act; Regulatory Treatment of Mobile Services Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Amendment of Parts 2 and 90 of the Commission's Rules To Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool, *Third Report and Order*, GN Docket No 93-252, PR Docket No. 93-144, PR Docket No. 89-553, 9 FCC Rcd 7988 at ¶¶ 94-103 (1994).

Reconfiguration Proceeding,<sup>3</sup> Sprint Nextel holds or will soon hold 14 MHz of geographically-licensed contiguous 800 MHz channels across much of the nation.

In December 2010, as a result of technology advances, increased data-centric customer service requirements, and its re-licensing on contiguous 800 MHz spectrum assignments, Sprint Nextel announced plans to transition some of its 800 MHz spectrum iDEN® operations (a 2G technology that uses non-contiguous channels to provide cellular, messaging and push-to-talk services) into its existing 1.9 GHz 3G CDMA network.<sup>4</sup> CDMA, in contrast to iDEN®, requires contiguous spectrum, which Sprint Nextel now has at 800 MHz. Incorporating 800 MHz spectrum – with its excellent propagation and in-building penetration characteristics – into Sprint’s 3G CDMA network will result in improved coverage, increased capacity and increased broadband data speeds for Sprint Nextel’s current and future subscribers.

Thus, the purpose of this Petition is to request that the Commission clarify an apparent incongruity between Section 90.209 of the Commission’s Rules, which appears

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<sup>3</sup> Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004) (*800 MHz R&O*).

<sup>4</sup> Sprint Announces Network Vision – A Cutting-Edge Network Evolution Plan with Network Partners Alcatel-Lucent, Ericsson and Samsung, Press Release dated December 6, 2010 at <http://newsroom.sprint.com/news/sprint-announces-network-vision-network-evolution-plan.htm>. See also Sprint Nextel’s network Vision Information Center at [http://newsroom.sprint.com/press\\_kits.cfm?presskit\\_id=19](http://newsroom.sprint.com/press_kits.cfm?presskit_id=19).

to restrict carriers to using no larger than a 25 kHz bandwidth at 800 MHz,<sup>5</sup> and the more narrowly-focused provision in Subpart S of Part 90, Section 90.691 of the Commission's rules, which permits wider bandwidth operations on contiguous channel EA licenses, so long as such operations conform to the Commission's out-of-band emission requirements.<sup>6</sup> Sprint Nextel respectfully submits that the Commission's intent, as expressed first more than 15 years ago when it implemented OBRA 93, was to authorize licensees to deploy then-developing wide band technologies, such as CDMA, on EA contiguous block licenses.<sup>7</sup> Eliminating the 25 kHz bandwidth limitation for contiguous channel EA licensees provides them with the same flexibility and technological neutrality enjoyed by other CMRS licensees, consistent with Congress' OBRA 93 regulatory parity directive.

Sprint Nextel's review of the Commission's 800 MHz licensing proceedings, from the regulatory parity provisions of OBRA 93 through the Commission's subsequent implementing rulemakings and current 800 MHz Reconfiguration program, indicates that Section 90.209 – initially adopted in 1982 – has not been updated to reflect subsequent

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<sup>5</sup> Section 90.209 of the Commission's rules provides that each *license issued to stations licensed under Part 90* include an emission designator representing the class of emission authorized and the specified necessary bandwidth, and *inter alia* sets forth the standard channel spacing and a 25 kHz per channel bandwidth in the 800 MHz band. Notwithstanding Section 90.209, however, *800 MHz EA licensees issued during the past 15 years have not included any provision specifying emission designators and/or channel bandwidths.*

<sup>6</sup> As noted above, Section 90.209 sets forth the general bandwidth requirements for all Part 90 services; Section 90.691 is included in Subpart S of Part 90 which applies, in pertinent part, only to the 806-824/851-869 Specialized Mobile Radio (SMR) channel subset of Part 90, and more specifically, only to the emission mask requirements for EA-Based SMR (and ESMR) licensees.

<sup>7</sup> CDMA requires contiguous spectrum and occupies a 1.25 MHz bandwidth.

800 MHz licensing decisions.<sup>8</sup> For example, in 1995 the Commission specified that 800 MHz EA SMR and ESMR licensees (on contiguous channel blocks) obtained by competitive bidding, have the inherent flexibility to deploy advanced technologies that require larger bandwidths, such as, for example, CDMA.<sup>9</sup> The Commission specifically noted that it expected broadband technologies, including CDMA, to be deployed on the 800 MHz contiguous block channels and adopted wide-area licensing through competitive bidding to encourage development of these technologies and to bring more diverse and innovative services to the public.<sup>10</sup> In the same *Upper-200 Licensing Order*, the Commission established EA Block licenses of sufficient spectral size and geographic area to permit licensees to effectively and efficiently use these then-newer technologies, and adopted out-of-band emission limitations for the outer channels of EA licenses

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<sup>8</sup> *In fact, in an earlier amendment of Part 90 of the Commission's Rules in 1988, the Commission noted that its rules at that time provided sufficient flexibility to allow SMR licensees authorized on contiguous spectrum to use non-standard bandwidths and modulation schemes without any prior Commission approval. "Non-standard" in this context appears to have referred to the emission designator and bandwidth specified on a license pursuant to Section 90.209. See Amendment of Part 90, Subparts M and S, of the Commission's Rules, Report and Order, PR Docket No. 86-404, 3 FCC Rcd 1838 at ¶ 89 (1988). The Commission's SMR and EA licensing rules and policies have only become more flexible since that time, as discussed further below.*

<sup>9</sup> *In the Upper-200 Licensing Order in 1995, the Commission modified its rules to license 20, 60 and 120 contiguous channel 800 MHz SMR spectrum blocks on a wide-area basis, thereby enabling SMR systems to use spread spectrum and other broadband technologies not possible on non-contiguous channels in order to better compete with other CMRS' providers. See Implementation of Sections 3(n) and 332 of the Communications Act; Implementation of Section 309(j) of the Communications Act - - Competitive Bidding; First Report and Order, Eight Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket No. 253, 11 FCC Rcd 1463 at ¶ 14 (1995) ("Upper-200 Licensing Order").*

<sup>10</sup> *Upper-200 Licensing Order at ¶ 37.*

because only those channels would have the potential to affect operations outside an EA licensee's authorized bandwidth.<sup>11</sup>

Notwithstanding the above history, nor the Commission's failure to place any emission designation or bandwidth constraint on any 800 MHz EA licenses, it appears that the Commission inadvertently did not update the general bandwidth provision of Section 90.209 to accord with Section 90.691 and its EA/ESMR licensing regime. Continued application of the standard 25 kHz channel bandwidth limitations contained in Section 90.209 of the rules would frustrate the very purpose of the Commission's actions creating wide-area SMR licensing and contiguous channel blocks to encourage competition and more diverse and innovative broadband services. Accordingly, Sprint Nextel respectfully requests, through the instant petition, that the Commission clarify and declare that Section 90.209 does not prevent Sprint Nextel or any other EA licensee in the ESMR band from deploying broadband technologies wider than 25 kHz on the 800 MHz spectrum authorized by EA licenses.<sup>12</sup>

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<sup>11</sup> *Upper-200 Licensing Order* at ¶ 101.

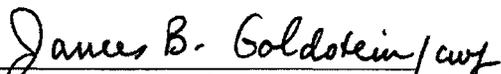
<sup>12</sup> Sprint Nextel supports this rule clarification applying also to the southeastern United States in the expanded ESMR band (813.5 - 824 MHz/858.5 - 869 MHz).

**Conclusion**

For the reasons discussed above, Sprint Nextel respectfully requests that the Commission clarify that its rules permit wider-than-25 kHz bandwidth operations in the 800 MHz ESMR portion of the 800 MHz band. Alternatively, the Commission should expeditiously modify Section 90.209 of its Rules, and any other Part 90 rule to the extent necessary to permit Sprint Nextel and any other ESMR band EA licensee to deploy broadband technology in the 800 MHz ESMR band using its EA licenses.

Respectfully submitted,

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