

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of )  
 )  
Request for Declaratory Ruling That the ) WT Docket No. 11-110  
Commission’s Rules Authorize Greater )  
Than 25 kHz Bandwidth Operations in )  
the 800 MHz ESMR Band )  
 )

To: Chief, Wireless Telecommunications Bureau

**REPLY COMMENTS OF SOUTHERNLINC WIRELESS**

Southern Communications Services, Inc. d/b/a SouthernLINC Wireless (“SouthernLINC Wireless”) hereby submits its reply comments in support of the Petition for Declaratory Ruling (“Petition”) filed on June 3, 2011, by Sprint Nextel Corporation (“Sprint Nextel”) to allow larger than 25 kHz bandwidth operations in the 800 MHz Enhanced Specialized Mobile Radio Service (“ESMR”) band.<sup>1</sup>

SouthernLINC Wireless again urges the Commission to grant the Petition and declare that licensees in the ESMR band may deploy and operate technologies that require greater than 25 kHz bandwidth on the 800 MHz spectrum authorized by their Economic Area (“EA”) licenses. Virtually every commenter in this proceeding either agrees or acknowledges that such operations are authorized and contemplated by Section 90.691 of the Commission’s Rules.

---

<sup>1</sup> / “Wireless Telecommunications Bureau Seeks Comment on Petition From Sprint Nextel to Allow Wideband Operations In 800 MHz Enhanced Specialized Mobile Radio Service Bands, WT Docket No. 11-110, Public Notice, DA 11-1152 (rel. June 30, 2011) (“Public Notice”).

Thus, the only question before the Commission concerns the proper interpretation of Section 90.209 of the Commission's Rules.

Specifically, the Commission is being asked to clarify whether the "standard" bandwidth authorizations in Section 90.209 prohibit the type of operations authorized by Section 90.691 (thus rendering Section 90.691 superfluous) or whether – as SouthernLINC Wireless submits – the plain language of Section 90.209 provides for exceptions to these "standard" bandwidth authorizations in accordance with other, more specific provisions of the Commission's Rules.

SouthernLINC Wireless submits that grant of the requested declaratory ruling is the appropriate means for the Commission to address the issue identified in the Petition. From a procedural standpoint, the Petition seeks clarification regarding the interpretation of a general provision in the Commission's Part 90 Rules, not the revision of the rule itself. Furthermore, the interpretation requested in the Petition would not result in any shift in Commission policy, but would rather serve to confirm a well-known policy direction that the Commission first established over twenty years ago and has followed to this day, and which the Commission has in fact codified in various provisions of its Part 90 Rules, including those for EA licensees in the ESMR band. Finally, the purpose of the clarification requested in the Petition is to permit licensees to operate with certainty in conformance with a specific rule properly adopted by the Commission following full notice and comment.

For these reasons, it is appropriate as a matter of both policy and procedure for the Commission to grant the requested declaratory ruling rather than subject the deployment of advanced mobile wireless broadband technologies to the substantial delay that would result from the initiation of a separate rulemaking proceeding that is both legally and procedurally unnecessary.

**I. THE COMMISSION MAY APPROPRIATELY DECIDE THIS ISSUE THROUGH GRANT OF THE REQUESTED DECLARATORY RULING**

Sprint Nextel’s Petition requests that the Commission issue a declaratory ruling clarifying that the general language in Section 90.209 of its Rules, which provides for a 25 kHz channel spacing and an authorized bandwidth of 20 kHz for the 809-824/854-869 MHz frequency bands,<sup>2</sup> does not prevent an EA licensee in the 800 MHz ESMR band from utilizing wider channel bandwidths on its contiguous channels pursuant to the specific provisions of Section 90.691 of the Commission’s Rules, which permit such operations so long as the “outer” channels included in the EA license comply with the rule’s specific out-of-band emissions requirements.<sup>3</sup>

SouthernLINC Wireless submits that the most appropriate means for the Commission to address the issue raised in the Petition is through grant of the requested declaratory ruling, which requires only that the Commission interpret its rules to clarify the relationship between the general provisions of Section 90.209 and the more specific provisions of Section 90.691.

**A. There Is No Conflict or Inconsistency Between the General Provisions of Section 90.209 and the Specific Provisions of Section 90.691**

SouthernLINC Wireless submits that Section 90.209 of the Commission’s Rules should be interpreted and properly understood as a general provision of Part 90 that does not nullify – and indeed explicitly provides an exception for – the more specific provisions of Subpart S of Part 90 (“Policies Governing the Licensing and Use of EA-Based SMR Systems in the 809-824/851-869 MHz Band”), including the specific provisions of Section 90.691.

As stated in its title, Subpart I of Part 90 establishes *general* technical standards for Part 90 services.<sup>4</sup> The 25 kHz bandwidth limitation that is the subject of this Petition is set forth in a

---

<sup>2</sup> / 47 C.F.R. § 90.209(b)(5).

<sup>3</sup> / 47 C.F.R. § 90.691.

<sup>4</sup> / 47 C.F.R. Part 90, Subpart I – General Technical Standards.

table in Section 90.209(b)(5) of Subpart I under the heading “Standard Channel Spacing/Bandwidth.” The use of the word “standard” in the table heading is significant, in that it indicates that there may be exceptions to these designated channel spacings and bandwidths in other provisions of the Commission’s Rules. This interpretation is indeed confirmed by the plain language of Section 90.209(b)(5) itself, which states that the “channel spacings and bandwidths that will be authorized” in certain bands are as designated in this table “[u]nless specified elsewhere.” Thus, properly read, Section 90.209(b)(5) expressly acknowledges and provides for exceptions to the “standard” authorized bandwidths in accordance with more specific rules, such as those set forth in Subpart S of Part 90 for EA-based systems in the 800 MHz ESMR band. Accordingly, there is no actual conflict or inconsistency between the standard bandwidth specifications of Section 90.209 and the combining of contiguous channels into larger bandwidths pursuant to Section 90.691.

Because a proper interpretation of Section 90.209 demonstrates that there is no conflict or inconsistency between these rule provisions, there is no need for any revision or modification to Section 90.209 or any other provision of the Commission’s Part 90 Rules and thus no need for the Commission to initiate a rulemaking proceeding on this issue as some commenters have suggested.<sup>5</sup> Rather, the appropriate resolution of the question raised by the Petition is simply a matter of interpreting the as-written rule to clarify that the specific provisions of Section 90.691 permitting larger bandwidths (subject to the rule’s out-of-band emissions limitations) supersede the general provision of Part 90.209 regarding standard bandwidths. This approach is consistent with the well-established interpretive rule that “the specific governs the general”<sup>6</sup> and

---

<sup>5</sup> / See Comments of AT&T; Comments of Motorola at 2.

<sup>6</sup> / *Morales v. Trans World Airlines, Inc.*, 504 U.S. 374, 384-385 (1992); See also *Morton v. Mancari*, 417 U.S. 535, 550-551 (1974) (“Where there is no clear intention otherwise, a specific

furthermore prevents Section 90.691 from being rendered superfluous by an inappropriately strict reading of Section 90.209. This approach is also well within the Commission's authority to interpret its own regulations.<sup>7</sup>

**B. The Requested Clarification is Consistent with Commission Policy and Precedent**

The grant of the requested declaratory ruling is also appropriate in this case because the clarification requested in the Petition would not result in any change or revision to Commission policy. To the contrary, the requested clarification would serve to both confirm and advance the Commission's long-standing policy of providing wireless licensees sufficient flexibility to encourage the deployment of new technologies and the efficient use of spectrum. The Commission established this policy over twenty years ago and has applied it throughout the wireless services to this very day.<sup>8</sup>

Moreover, the requested clarification is consistent with established Commission precedent in other Part 90 bands. For example, under Section 90.645(h) of the Commission's Rules, "Up to 10 contiguous 896-901/935-940 MHz band channels ... may be combined for

---

statute will not be controlled or nullified by a general one, regardless of the priority of enactment."); *In re Colo. Springs Symphony Orchestra Ass'n*, 308 B.R. 508 (Bankr. D. Colo. 2004) ("Where an amendment to the Code that addresses a specific issue appears to be in conflict with an earlier enactment, which is in more general terms, the specific must take precedence over the general.").

<sup>7</sup> / See, e.g., *Talk America, Inc., v. Michigan Bell Tel. Co.*, 564 U.S. \_\_\_\_ (June 9, 2011), slip op. at 7 – 8 (citing *Auer v. Robbins*, 519 U.S. 452 (1997)).

<sup>8</sup> / See, e.g., *Amendment of Part 101 of the Commission's Rules to Facilitate the Use of Microwave for Wireless Backhaul and Other Uses*, WT Docket No. 10-153, Report and Order, Further Notice of Proposed Rulemaking, and Memorandum Opinion and Order, FCC 11-120 (rel. Aug. 9, 2011) (amending Part 101 of the Commission's Rules and proposing further amendments "to increase flexibility in the use of microwave services licensed under our Part 101 rules.").

systems requiring more than the normal single channel bandwidth.”<sup>9</sup> The same rule further states that “licensees may trade channels amongst themselves in order to obtain contiguous frequencies.”<sup>10</sup> As the Commission noted in a *Report and Order* adopted 25 years ago, this would “provide increased flexibility to employ spectrum efficient digital systems.”<sup>11</sup> However, when Section 90.645(h) was adopted, the Commission did not find it necessary to revise Section 90.209(b)(5), which still states that the standard authorized bandwidth for the 896-901/935-940 MHz band is 13.6 kHz.

In addition, the Commission amended Section 90.733(d) of its rules more than a decade ago to permit licensees in the 220-222 MHz band to “combine any number of their authorized, contiguous channels (including channels derived from multiple authorizations) to form channels wider than 5 kHz.”<sup>12</sup> As with Rule 90.691 for the 800 MHz ESMR band, the specific rules for the 220-222 MHz band state that, with respect to contiguous channels, the applicable emission limits “must be met only at the outermost edges of the contiguous channels.”<sup>13</sup> Again, however, when the amended rules for the 220-222 MHz band were adopted, the Commission did not find it necessary to revise Section 90.209(b)(5), which still states that the standard authorized bandwidth for the 220-222 MHz band is 4 kHz.

---

<sup>9</sup> / 47 C.F.R. § 90.645(h).

<sup>10</sup> / *Id.*

<sup>11</sup> / *Amendment of Parts 2 and 22 of the Commission’s Rules Relative to Cellular Communications Systems*, GEN Docket No. 84-1231, Report and Order, 2 FCC Rcd 1825, 1835 (1986).

<sup>12</sup> / 47 C.F.R. § 90.733(d); *Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, Third Report and Order and Fifth Notice of Proposed Rulemaking, 12 FCC Rcd 10943, 10991-93 (1997).

<sup>13</sup> / 47 C.F.R. § 90.733(e).

Thus, as demonstrated above, the grant of a declaratory ruling clarifying that the “standard” bandwidth provisions of Section 90.209 do not prevent an EA licensee in the 800 MHz ESMR band from using wider bandwidth channels pursuant to Section 90.691 would be consistent with long-standing Commission policy and with established Commission precedent for services in other bands subject to the general technical standards of Section 90.209.

**C. Section 90.691 Was Properly Adopted with Full Public Notice and Comment**

Finally, SouthernLINC emphasizes that the underlying purpose of the Petition is to provide certainty to EA-based 800 MHz ESMR licensees that they may in fact operate as permitted and as intended pursuant to a specific rule that was properly adopted by the Commission with full notice and comment.

As described in the Petition,<sup>14</sup> Section 90.691 was adopted by the Commission in 1995 as part of its *800 MHz SMR Report and Order*, in which the Commission made clear its intent to make contiguous spectrum available for “wide-area SMR systems” in order to “permit[] use of spread spectrum and other broadband technologies that are available to other CMRS providers but unavailable to systems operating on non-contiguous spectrum.”<sup>15</sup> As the Commission explained:

[W]e believe that contiguous spectrum is an essential component of the wide-area licensing proposal we adopt today because it will give licensees the flexibility to use technologies that can operate on either contiguous or non-contiguous spectrum. Significantly, licensees’ technological options are considerably more limited under a predefined channelization plan.<sup>16</sup>

---

<sup>14</sup> / Petition at 5 – 6; *See also* Comments of the Enterprise Wireless Alliance at 3 – 4.

<sup>15</sup> / *Amendment of Part 90 of the Commission’s Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463, 1476 (1995) (“*800 MHz SMR Report and Order*”) ¶ 9.

<sup>16</sup> / *800 MHz SMR Report and Order*, 11 FCC Rcd at 1479 ¶ 14.

In order to enable the use of advanced technologies, including broadband technologies, on contiguous SMR spectrum, the Commission adopted Section 90.691. As the Commission explained in adopting this rule:

We conclude that out-of-band emission rules should apply only to the “outer” channels included in an EA license and to spectrum adjacent to interior channels used by incumbents. We believe that these channels alone have the potential to affect operations outside of the EA licensee’s authorized bandwidth.<sup>17</sup>

As demonstrated above, Section 90.691 was adopted pursuant to public notice and comment, and the Commission’s order adopting this rule provided ample public notice and discussion of both the rule and its purpose. Accordingly, the purpose of the Petition is not to establish a new rule or policy, but rather to provide certainty to EA-based 800 MHz ESMR licensees that they may in fact operate as permitted and as intended pursuant to Section 90.691.

## **II. A RULEMAKING PROCEEDING ON THIS ISSUE IS UNNECESSARY AND INAPPROPRIATE**

As demonstrated above, it is appropriate as a matter of both policy and procedure for the Commission to resolve the issue raised in the Petition by granting the requested declaratory ruling. Nevertheless, certain commenters have urged the Commission to instead initiate a new rulemaking proceeding,<sup>18</sup> a measure which is both unnecessary and inappropriate.

In its comments, AT&T characterizes the Petition as a request to “revise” Section 90.209 and asserts that “changes to service rules in established and heavily used frequency bands, such as the 800 MHz frequency band, should be done in a way that ensures appropriate protection to and successful coexistence with adjacent services.”<sup>19</sup> As discussed above, however, the Petition

---

<sup>17</sup> / *Id.* at 1519-20 ¶ 101.

<sup>18</sup> / Comments of AT&T; Comments of Motorola.

<sup>19</sup> / Comments of AT&T at 2.

does not seek to revise or change Section 90.209 or any other service rule, but only to clarify that the exceptions contemplated in the plain language of Section 90.209 permit wider bandwidth operations in the 800 MHz ESMR band in accordance with the specific provisions of Section 90.691, consistent with established Commission policy and precedent.

AT&T further ignores the fact that the Commission already determined over 15 years ago that the emission requirements of Section 90.691 will ensure appropriate protection with adjacent services. As discussed above, when the Commission adopted Section 90.691 in 1995, it expressly concluded that out-of-band emission rules should apply only to the “outer” channels included in an EA license and to spectrum adjacent to interior channels used by incumbents because “these channels alone have the potential to affect operations outside of the EA licensee’s authorized bandwidth.”<sup>20</sup>

It is therefore unnecessary and inappropriate – as a matter of policy as well as procedure – for the Commission to initiate a new rulemaking that will substantially delay the deployment of competitive mobile wireless broadband services for US consumers, including those in rural areas, in order to consider concerns that the Commission has already considered and addressed in the context of a major rulemaking proceeding.<sup>21</sup>

---

<sup>20</sup> / *800 MHz SMR Report and Order*, 11 FCC Rcd at 1519-20 ¶ 101.

<sup>21</sup> / The record of PR Docket No. 93-144 demonstrates that AT&T and other parties had ample notice and opportunity to comment and participate, as well as ample opportunity to request reconsideration or clarification regarding any concerns they may have had as to the protection provided by Section 90.691 to adjacent channel licensees.

**WHEREFORE, THE PREMISES CONSIDERED**, SouthernLINC Wireless respectfully requests the Commission to take action in this docket consistent with the views expressed herein.

Respectfully submitted,

**SOUTHERNLINC WIRELESS**

/s/ Shirley S. Fujimoto

Shirley S. Fujimoto  
David D. Rines  
FISH & RICHARDSON, P.C.  
1425 K Street, N.W.  
11th Floor  
Washington, D.C. 20005  
T: 202.783.5070  
F: 202.783.2331

Michael D. Rosenthal  
Director of Legal and External Affairs  
SouthernLINC Wireless  
5555 Glenridge Connector, Suite 500  
Atlanta, GA 30342  
T: 678.443.1500

Its Attorneys

Holly Henderson  
External Affairs Manager  
SouthernLINC Wireless  
5555 Glenridge Connector, Suite 500  
Atlanta, GA 30342  
T: 678.443.1500

Dated: August 16, 2011