

WT 12-82

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

FILED/ACCEPTED

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Federal Communications Commission  
Office of the Secretary

In the Matter of )  
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Requests for Waiver of Section 90.209 of )  
the Commission's Rules to Permit the )  
Operation of Broadband CDMA )  
Technology in the 817 - 824/862 - 869 )  
MHz Band. )

To: Chief, Mobility Division, Wireless Telecommunications Bureau

**REQUEST FOR RULE WAIVER**

Pursuant to Section 1.925 of the Federal Communications Commission's (the "Commission")<sup>1</sup> Rules, Sprint Nextel Corporation ("Sprint Nextel"), on behalf of its wholly-owned licensing subsidiaries, hereby respectfully requests waiver of the legacy 25 kHz bandwidth limitation in Section 90.209 of the Commission's rules for eleven Basic Economic Areas ("EAs"). Sprint Nextel desires to deploy a 1.30 MHz wide CDMA channel wholly-contained in the 817 - 821 MHz/862 - 866 MHz portion of the 800 MHz Enhanced Specialized Mobile Radio ("ESMR") band (817 - 824 MHz/862 - 869 MHz) in the areas covered by the EA licenses listed in Attachment A.

The requested waiver would permit Sprint Nextel to provide more advanced broadband data and voice services to more customers than it currently is capable of providing on its 2G 800 MHz iDEN Network. Accordingly, such relief is consistent with the public interest and the Commission's goal of promoting widespread competitive wireless broadband services to all Americans.

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<sup>1</sup> 47 C.F.R. § 1.925.

## Background

On June 3, 2011, Sprint Nextel filed a Petition for Declaratory Ruling requesting that the Commission clarify the apparent inconsistency between Sections 90.691 and 90.209 of the Commission's rules regarding permissible bandwidths in the 800 MHz band. In the alternative, Sprint Nextel requested that the Commission initiate a rulemaking to revise Section 90.209 of the Commission's Rules to expressly authorize ESMR band EA licensees to deploy technologies using bandwidths greater than 25 kHz on their contiguous spectrum assignments. Shortly thereafter, the Wireless Telecommunications Bureau solicited public comment on Sprint Nextel's Petition.<sup>2</sup> On March 9, 2012, the Commission adopted a Notice of Proposed Rulemaking consistent with Sprint Nextel's Petition proposing to eliminate the legacy channel spacing and bandwidth limits currently set forth in Section 90.209(b)(5) for EA-based operations in the ESMR band, subject to certain conditions.<sup>3</sup>

In the NPRM, the Commission noted that it has granted waivers of Section 90.209 of the rules and Special Temporary Authority ("STAs") to permit Sprint to initiate 800 MHz CDMA testing and operations in certain markets, subject to conditions intended to assure that public safety systems in the 800 MHz band not experience an increased risk of

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<sup>2</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, 26 FCC Rcd 9428 (2011).

<sup>3</sup> In the Matter of Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees, Notice of Proposed Rulemaking ("NPRM"), \_\_\_ FCC Rcd \_\_\_, WT Docket No. 12-64 (Released March 9, 2012).

interference.<sup>4</sup> Consistent therewith, Sprint respectfully submits this waiver request to deploy 800 MHz broadband services in the EAs listed in Attachment A.

### Waiver Request

Under Section 1.925(b)(3) of its rules, the Commission may grant a request for waiver if the applicant demonstrates that: (i) the underlying purpose of the rule would not be served or would be frustrated by its application to the instant case, and that the grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances, application of the rule(s) would be inequitable, unduly burdensome, or contrary to the public interest, or the applicant has no reasonable alternative.<sup>5</sup> In this case, the requested relief is fully warranted under either prong of the waiver standard.

As the NPRM describes, the Commission's intent, going back to at least 1995, is to provide 800 MHz EA SMR licensees the flexibility to deploy advanced broadband technologies, such as CDMA, on wide-area contiguous channel blocks and thus better compete with other CMRS licensees.<sup>6</sup> The continued application of the standard 25 kHz channel bandwidth limitations contained in Section 90.209 of the rules would frustrate

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<sup>4</sup> NPRM at footnote 23.

<sup>5</sup> See 47 C.F.R. §1.925; *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969).

<sup>6</sup> NPRM at paragraph 3. (“The Commission determined that wide-area licensing would ‘give licensees the flexibility to use technologies that can operate on either contiguous or non-contiguous spectrum’ and that large spectrum blocks were necessary for ‘broadband technologies such as CDMA and GSM.’ With wide-area licenses, the Commission believed licensees would be able to ‘compete effectively with other CMRS providers, such as cellular and broadband PCS systems.’ Further, the Commission stated its intent in the Executive Summary of the 800 MHz SMR First Report and Order that EA-based licensees would have ‘full discretion over channelization of available spectrum within the block.’” [footnotes omitted]).

the very purpose of the Commission's actions in numerous rulemakings to create wide-area SMR licensing and contiguous channel blocks to encourage competition and the availability of more diverse and innovative wireless communications services.

As a result of technology advances, and the data-centric demands customers place on wireless networks, Sprint Nextel has begun to transition from iDEN technology (which uses 25 kHz channels and does not require contiguous spectrum) to CDMA (which uses a 1.30 MHz channel and requires a contiguous spectrum block). The public interest is served by the improved coverage, increased capacity and increased broadband data speeds for Sprint Nextel's current and future subscribers in the 800 MHz ESMR band made possible by broadband deployment.

The NPRM articulated the many public interest benefits of revising Section 90.209 in proposing a differentiated approach for deploying broadband technologies in regions: (1) where 800 MHz Reconfiguration is complete; and (2) where the 800 MHz Reconfiguration transition is in progress.<sup>7</sup> The Commission recognized these public interest benefits and used the same approach in the waivers and STAs it has already granted permitting Sprint Nextel to initiate 800 MHz CDMA testing and operations in various regions. Accordingly, Sprint Nextel respectfully requests comparable ability to implement 800 MHz broadband in the EAs listed in Attachment A.

Finally, as noted in the NPRM, Sprint Nextel has provided the Commission with a conclusive demonstration that its CDMA network architecture reduces the risk of interference to 800 MHz public safety communications as compared to existing iDEN

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<sup>7</sup> NPRM at ¶ 13.

operations.<sup>8</sup> Thus, granting the subject waivers provides additional interference protection for public safety and other non-cellular incumbents in the 800 MHz band.<sup>9</sup>

**Conclusion**

For the reasons discussed above, Sprint Nextel respectfully requests that the Mobility Division waive Section 90.209 of the rules to permit Sprint Nextel to deploy 800 MHz broadband CDMA technology in the areas covered by the EA licenses in the attached list.

Respectfully submitted,

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<sup>8</sup> NPRM at footnote 47.

<sup>9</sup> Sprint Nextel has imposed extremely tight out-of-band emissions (“OOBE”) filtering requirements on base station vendors for frequencies below 861 MHz and aggressive roll-off requirements between 861-862 MHz. Sprint Nextel has repeatedly demonstrated that it takes seriously its responsibility to avoid causing unacceptable interference to public safety and other non-cellular operations in the 800 MHz band. Sprint Nextel also acknowledges its strict responsibility, pursuant to Section 90.673 of the Commission’s rules, to mitigate any unacceptable interference (defined in Section 90.672 of the rules) that occurs during the remainder of the 800 MHz band reconfiguration transition or after reconfiguration is completed.

**Attachment A**

**Basic Economic Areas Sprint Nextel Requests Waiver of  
Section 90.209 of the Commission's Rules to Deploy Broadband Technology**

WPOH308	NEXTEL OF TEXAS, INC.	BEA130	Austin-San Marcos, TX
WPOH309	NEXTEL OF TEXAS, INC.	BEA130	Austin-San Marcos, TX
WPOI366	NEXTEL WIP LICENSE CORP.	BEA130	Austin-San Marcos, TX
WPOI367	NEXTEL WIP LICENSE CORP.	BEA130	Austin-San Marcos, TX
WPQT222	NEXTEL WIP EXPANSION TWO, CORP.	BEA130	Austin-San Marcos, TX
WPQT238	NEXTEL WIP EXPANSION TWO, CORP.	BEA130	Austin-San Marcos, TX
WPOH311	NEXTEL OF TEXAS, INC.	BEA131	Houston-Galveston-Brazoria, TX
WPOH312	NEXTEL OF TEXAS, INC.	BEA131	Houston-Galveston-Brazoria, TX
WPOI369	NEXTEL WIP LICENSE CORP.	BEA131	Houston-Galveston-Brazoria, TX
WPOI370	NEXTEL WIP LICENSE CORP.	BEA131	Houston-Galveston-Brazoria, TX
WPOH208	NEXTEL LICENSE HOLDINGS 4, INC.	BEA093	Joplin, MO-KS-OK
WPOH209	NEXTEL LICENSE HOLDINGS 4, INC.	BEA093	Joplin, MO-KS-OK
WPOH225	NEXTEL LICENSE HOLDINGS 4, INC.	BEA099	Kansas City, MO-KS
WPOH226	NEXTEL LICENSE HOLDINGS 4, INC.	BEA099	Kansas City, MO-KS
WPLM636	NEXTEL LICENSE HOLDINGS 1, INC.	BEA031	Miami-Fort Lauderdale, FL
WPLM637	NEXTEL LICENSE HOLDINGS 1, INC.	BEA031	Miami-Fort Lauderdale, FL
WPLM579	NEXTEL COMMUNICATIONS OF THE MID ATLANTIC, INC.	BEA012	Philadelphia-Wilmington-Atlantic City
WPLM580	NEXTEL COMMUNICATIONS OF THE MID ATLANTIC, INC.	BEA012	Philadelphia-Wilmington-Atlantic City
WPOI319	NEXTEL WIP LICENSE CORP.	BEA012	Philadelphia-Wilmington-Atlantic City
WPOI320	NEXTEL WIP LICENSE CORP.	BEA012	Philadelphia-Wilmington-Atlantic City
WPOH320	NEXTEL OF TEXAS, INC.	BEA134	San Antonio, TX
WPOH321	NEXTEL OF TEXAS, INC.	BEA134	San Antonio, TX
WPOK475	NEXTEL WIP EXPANSION CORP.	BEA134	San Antonio, TX
WPOK476	NEXTEL WIP EXPANSION CORP.	BEA134	San Antonio, TX
WPOH393	NEXTEL OF CALIFORNIA, INC.	BEA163	San Francisco-Oakland-San Jose
WPOH394	NEXTEL OF CALIFORNIA, INC.	BEA163	San Francisco-Oakland-San Jose
WPOH290	NEXTEL LICENSE HOLDINGS 4, INC.	BEA123	Topeka, KS
WPOH291	NEXTEL LICENSE HOLDINGS 4, INC.	BEA123	Topeka, KS
WPOH293	NEXTEL LICENSE HOLDINGS 4, INC.	BEA124	Tulsa, OK-KS
WPOH294	NEXTEL LICENSE HOLDINGS 4, INC.	BEA124	Tulsa, OK-KS
WPOH287	NEXTEL LICENSE HOLDINGS 4, INC.	BEA122	Wichita, KS-OK
WPOH288	NEXTEL LICENSE HOLDINGS 4, INC.	BEA122	Wichita, KS-OK
WPQT233	NEXTEL WIP EXPANSION TWO, CORP.	BEA122	Wichita, KS-OK
WPQT234	NEXTEL WIP EXPANSION TWO, CORP.	BEA122	Wichita, KS-OK