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

In the Matter of	)	
	)	
Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands	)	WT Docket No. 12-357

COMMENTS OF SPRINT NEXTEL CORPORATION

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SUMMARY

Sprint Nextel Corporation ("Sprint") strongly supports the Commission's efforts to begin implementation of the Congressional directive in the Middle Class Tax Relief and Job Creation Act of 2012 ("Spectrum Act") to grant new licenses for the H Block through a system of competitive bidding.

The H Block represents the only spectrum cleared of incumbents and ready for immediate auction, licensing, and deployment, rapidly providing additional spectrum to bolster the speed, capacity, and ubiquity of mobile broadband networks. The public interest benefits of auctioning this valuable spectrum have been recognized for over a decade, since the Commission first identified this spectrum for commercial use. With limited additional spectrum available in the coming years, the public interest benefits of a swift H Block auction have only grown. Auctioning the H Block will promote competition, allow carriers to respond to the growing demand for mobile data services, expand roaming opportunities, and provide a valuable extension to the adjacent Personal Communications Services ("PCS") band occupied by all four nationwide providers as well as a myriad of rural and regional operators.

Assigning H Block licenses through auction should not be hampered by any perceived interference risk to the PCS band. The Commission has correctly concluded that the potential for harmful interference between the 1915-1920 MHz H Block uplink and PCS operations located at 1930-1995 MHz can be addressed through appropriate technical rules and conventional mitigation measures, and should not prevent licensees from putting this spectrum to its highest and best use. Recent testing conducted by Sprint and an independent third party confirms that advances in device technology have significantly reduced the potential for harmful interference and eliminated the need for strict H Block technical standards to protect PCS licensees from

interference. The Commission should therefore adopt its proposal to auction and license the entire H Block.

Sprint also strongly supports the Commission's related H Block band plan and the incorporation of existing Advanced Wireless Services ("AWS") rules, which are largely similar to PCS rules, to govern H Block operations. The adoption of H Block licensing and operating rules consistent with current regulations would facilitate the development of PCS base stations and devices that can also operate in the H Block, and also facilitate harmonized operations in the event that an adjacent PCS licensee obtains an H Block license at auction and seeks to operate across the AWS and PCS bands. Similarly, harmonized operating rules would help facilitate roaming in the event an H Block licensee seeks to roam on PCS spectrum.

In addition, Sprint firmly supports the Commission's proposals requiring future H Block licensees to pay their *pro rata* share of expenses previously incurred by UTAM, Inc. ("UTAM") and Sprint in relocating former incumbents from the H Block to make this spectrum available for AWS operations. Requiring winning auction bidders to meet their reimbursement obligations through clear and effective payment mechanisms is fully consistent with the Commission's long-standing principles adopted in the *Emerging Technologies Proceeding* and its progeny, and will ensure such principles remain effective and viable for future rebanding initiatives. Certain additional safeguards, such as express license conditions requiring that reimbursements be accomplished pursuant to the Commission's proposals, will ensure that the outstanding reimbursement obligations are fulfilled in a timely manner, and that the auctioned spectrum will be developed as efficiently and expeditiously as possible.

TABLE OF CONTENTS

Before the
FEDERAL COMMUNICATIONS COMMISSION
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In the Matter of	)	
	)	
Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands	)	WT Docket No. 12-357

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I. INTRODUCTION

Sprint respectfully submits these comments in response to the Notice of Proposed Rulemaking ("NPRM") in the above-captioned proceeding.[1] Auction of the H Block for commercial use marks an important step towards meeting the National Broadband Plan's recommendation to allocate additional spectrum for wireless broadband and will foster innovation, competition, consumer choice, and job creation.[2] Sprint therefore supports the Commission's proposals to auction and assign the H Block uplink spectrum located at 1915-1920 MHz paired with the downlink spectrum located at 1995-2000 MHz for commercial flexible use. The H Block represents the last natural expansion band for PCS and existing PCS licensees can incorporate this spectrum into their operations to offer additional capacity and expanded mobile services to consumers.[3] Indeed, the Spectrum Act directs the Commission to

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1 *Service Rules for the Advanced Wireless Services H Block—Implementing Section 6401 of the Middle Class Tax Relief and Job Creation Act of 2012 Related to the 1915-1920 MHz and 1995-2000 MHz Bands*, WT Docket No. 12-357, Notice of Proposed Rulemaking, FCC 12-152 (rel. Dec. 17, 2012) ("NPRM").

2 Connecting America: The National Broadband Plan, Recommendation 5.8, at 84-85 (2010).

3 *See* Reply Comments of Sprint Nextel Corporation, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 3-4 (filed June 1, 2012) ("Sprint AWS-4 Reply Comments"); Comments of Sprint Nextel Corporation, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 3-4 (filed May 17, 2012) ("Sprint AWS-4

auction and license the H Block for commercial use unless such spectrum cannot be used without causing harmful interference to licensed PCS operations,[4] which Sprint believes is no longer a significant concern.

II. APPROPRIATE TECHNICAL STANDARDS SHOULD ADEQUATELY PROTECT ADJACENT OPERATIONS FROM HARMFUL INTERFERENCE AND PERMIT AUCTIONING OF H BLOCK SPECTRUM

Sprint generally supports the Commission's proposed technical standards related to H Block uplink and downlink operations.[5] The Commission has stated that the technical standards adopted for the H Block should permit flexible use while "effectively protecting operations in adjacent bands from harmful interference."[6] The Commission has also indicated that the H Block technical standards would not "stand as an impediment to the provision of Broadband PCS-type services in the band."[7] This rulemaking presents an excellent opportunity to achieve both of these goals by adopting reasonable technical standards that ensure the viability of the H

Comments"); Comments of RCA - The Competitive Carriers Association, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 12-13 (filed May 17, 2012); Comments of United States Cellular Corporation, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 4 (filed May 17, 2012); *see also Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, Report and Order and Order of Proposed Modification, FCC 12-151, ¶ 66 (rel. Dec. 17, 2012) ("AWS-4 Order") (valuing the paired H Block spectrum at $2-3 billion).

[4] Middle Class Tax Relief and Job Creation Act of 2012, Pub. L. No. 112-96, § 6401, 125 Stat. 156, 222-23 (2012) ("Spectrum Act"); *see* Sprint AWS-4 Reply Comments, at 4; Sprint AWS-4 Comments, at 3; Comments of United States Cellular Corporation, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 3-7 (filed May 17, 2012); Comments of RCA – The Competitive Carriers Association, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 12 (filed May 17, 2012); Comments of T-Mobile USA, Inc., WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 25 (filed May 17, 2012); Comments of UTAM, Inc., WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 5 (filed May 18, 2012).

[5] NPRM, at ¶¶ 33-54.

[6] *Service Rules for Advanced Wireless Services in the 2000-2020 MHz and 2180-2200 MHz Bands*, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, Notice of Proposed Rulemaking and Notice of Inquiry, 27 FCC Rcd. 3561, ¶ 34 (2012) ("AWS-4 NPRM").

[7] *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands; Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket Nos. 04-356 and 02-353, Notice of Proposed Rulemaking, 19 FCC Rcd. 19263, ¶ 16 (2004) ("2004 AWS NPRM").

Block for commercial use while providing adequate interference protections to adjacent PCS and AWS-4 licensees.

A. H Block Downlink Operations Pose No Risk of Harmful Interference to Adjacent PCS or AWS-4 Licensees Under Reasonable Technical Standards

No party has presented technical data or analysis indicating that H Block *downlink* operations would cause harmful interference to PCS operations below 1995 MHz, and nothing in the record indicates that H Block downlink operations should be subject to technical standards more restrictive than those applicable to PCS or AWS licensees.[8] To the contrary, H Block downlink transmissions will be similar to existing PCS downlink transmissions and should be governed by similar technical standards.[9] The proposed technical standards are nearly identical to the existing rules governing PCS operations such as Sprint's G Block, and would allow adjacent PCS licensees to readily incorporate this spectrum into existing services.[10]

Sprint supports the proposed base station power limits, license area boundary requirements, and limitations on mobile operations in the downlink band. The Commission has consistently determined that adopting standard power limits of 1640 watts/MHz for non-rural areas and 3280 watts/MHz for rural areas provides adequate protections for PCS licensees.[11] Similarly, applying a license area boundary limit of 47 dBμV/m consistent with prior proceedings can enable future H Block licensees to deploy facilities in boundary areas without the delays associated with significant pre-coordination efforts while protecting adjacent licensees

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[8] NPRM, at ¶¶ 19, 34. While not bearing on the Commission's decision in this proceeding to auction the H Block, any interference concerns with respect to the 1995-2000 MHz H Block downlink band have already been addressed in the Commission's AWS-4 proceeding. *See* AWS-4 Order, at ¶ 72.

[9] Sprint AWS-4 Comments, at 9-10. Comments of Nextel Communications, WT Docket Nos. 04-356 and 02-353, at 11 (filed Dec. 8, 2004).

[10] *See* 47 C.F.R. §§ 24.232, 24.236, 24.238.

[11] 2004 AWS NPRM, at ¶ 110; *Service Rules for Advanced Wireless Services in the 2155-2175 MHz Band; Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz Bands*, WT Docket Nos. 07-195 and 04-356, Further Notice of Proposed Rulemaking, 23 FCC Rcd. 9859, ¶ 3 (2008).

from co-channel interference at their borders.[12] Prohibiting mobile transmissions in the H Block downlink also avoids mobile-to-mobile interference to PCS licensees or the need for out-of-band emissions ("OOBE") limits more restrictive than the $43 + 10 \log_{10}(P)$ dB standard currently applicable to PCS operations.[13]

Sprint does not, however, support the Commission's proposed H Block downlink OOBE attenuation requirement of $70 + 10 \log_{10}(P)$ dB above 2005 MHz. The current Commission rules for PCS and other services only require $43 + 10 \log_{10}(P)$ dB attenuation in the 2005-2020 MHz band, and the Commission has provided no justification for imposing such a strict limit on the H Block.[14] Indeed, OOBE emissions from existing PCS base stations and Broadcast Auxiliary Service ("BAS") base and mobile stations, which operate on both sides of the 2005-2020 MHz band, may well mask any impact that such a strict H Block requirement would have in increasing protection to AWS-4 base station receivers.

Sprint proposes that the Commission instead adopt a $60 + 10 \log_{10}(P)$ dB attenuation requirement from 2005-2020 MHz. While this protection level is well above the normal Commission base station OOBE requirement, it would be consistent with the protection level agreed within the 3rd Generation Partnership Project ("3GPP") for base station emissions from Band 25 (which includes the PCS G Block at 1990-1995 MHz) into Band 23 (the AWS-4 band at 2000-2020 MHz).[15] Sprint's existing G Block base stations have been able to meet this requirement, although at a cost to Sprint. The Commission's proposal for $70 + 10 \log_{10}(P)$ dB

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12 NPRM, at ¶ 39 (citing 47 C.F.R. §§ 24.236, 27.55(a)(1)).

13 *Id.* at ¶ 37; 2004 AWS NPRM, at ¶ 93. In its recent AWS-4 proceeding, the Commission established H Block service rules that, in combination with the standard PCS OOBE limit, will ensure that the adjacent AWS-4 uplink spectrum and H Block downlink spectrum can be put to their highest and best use to the benefit of mobile consumers. AWS-4 Order, at ¶ 72. No additional consideration of that decision is necessary here.

14 *See, e.g.*, 47 C.F.R. § 24.238(a).

15 In both cases, the $60 + 10 \log_{10}(P)$ dB attenuation requirement applies five megahertz from the edge of the block in which the base station is transmitting. *See* Table 6.6.4.3.1-1 of 3GPP TS 36.104, v10.8.0 (2012-11).

attenuation would significantly increase the cost to deploy H Block base stations, which could stifle the interest of parties to participate in the H Block auction without providing any substantive improvement in interference.

B. H Block Uplink Operations Are Unlikely to Cause Harmful Interference to Adjacent PCS Licensees, and Any Such Risk Can Be Mitigated by a Combination of Reasonable Technical Standards and Advances in Device Technology

Sprint concurs with the Commission's conclusion that it should be possible to license the H Block uplink for flexible use without causing harmful interference to adjacent PCS operations through the adoption of reasonable technical standards.[16] The Commission correctly concludes that use of the 1915-1920 MHz H Block uplink for mobile transmit/base receive would be compatible with PCS operations located below the uplink at 1850-1915 MHz,[17] and there is no need to apply technical standards more restrictive than those established for AWS and PCS stations to adequately protect PCS operations below 1915 MHz.[18] Sprint and other parties have discussed in prior H Block proceedings the potential for harmful interference between the H Block uplink and PCS downlink operations located above the uplink at 1930-1995 MHz due to the susceptibility of certain legacy PCS devices to H Block uplink transmissions.[19] Recent

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16 NPRM, at ¶ 20.

17 *Id.* at ¶ 40.

18 *Id.*

19 *Id.* at ¶¶ 2, 41; *see* Comments of Sprint Nextel Corporation, WT Docket Nos. 04-356 and 07-195, ET Docket No. 10-142, 3-4 (filed July 8, 2011) ("H Block uplink operations at 1915-1920 MHz would pose a serious interference threat to G Block transmissions and other PCS operations."); *see also* Comments of T-Mobile USA, Inc., WT Docket Nos. 04-356 and 07-195, ET Docket No. 10-142, at 11 (filed July 8, 2011); Reply Comments of Sprint Nextel Corporation, WT Docket No. 04-356, at 2-8 (filed Aug. 11, 2008); Comments of Ericsson Inc. and Sony Ericsson Mobile Communications (USA) Inc., WT Docket Nos. 04-356 and 07-195, at 12-13 (filed July 25, 2008); Comments of CTIA – The Wireless Association®, WT Docket Nos. 04-356 and 02-353, at ii (filed Dec. 8, 2004); Comments of QUALCOMM Inc., WT Docket No. 04-356, at 2 (filed Dec. 8, 2004). Sprint notes that UPCS licensees located adjacent to the H Block uplink are not entitled to protection from licensed services under the Commission's rules. 47 C.F.R. § 15.5. Consequently, these comments focus on the potential for harmful interference between H Block uplink operations and adjacent PCS operations.

testing and analysis indicate this potential for interference is now entirely manageable and poses no genuine obstacle to auction of the entire H Block.

Sprint submits that technical advances since 2005 have substantially improved the ability of PCS devices to operate in the presence of an H Block mobile signal. Recent measurements conducted by Sprint and V-COMM of a variety of PCS devices indicate that intermodulation interference, which was the major concern for PCS devices in 2004-2005, is no longer a significant interference threat to today's PCS devices.[20] In addition, testing indicates that the potential for receiver blocking in today's PCS devices has decreased since 2004-2005 to a point where blocking interference is unlikely.[21] As a result, Sprint now believes that the Commission can ensure adequate protection of PCS devices by adopting a uniform mobile device limit of 25 dBm EIRP across the H Block uplink (1915-1920 MHz).[22] Sprint is still reviewing test data related to the impact of H Block device OOBE into the 1930-2000 MHz band, and expects to make a recommendation on an appropriate OOBE limit in the near future.

As the test results will confirm, the potential for harmful interference between H Block uplink and PCS downlink operations only exists when certain "worst case" conditions are

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[20] V-COMM LLC is a third-party laboratory and engineering consulting firm with significant experience in system design, operations, testing, and interference evaluations with commercial wireless technologies, and participated in the H Block measurement program in 2004-2005, as well as many other FCC proceedings and interference investigations. While Sprint has received and reviewed test results that warrant these recommendations, the detailed test report describing the test methodology and results is not complete. We recognize that other PCS licensees and the Commission will want to review that test report before determining whether they concur with its recommendations. We intend to file the test report in the near future.

[21] Sprint, Verizon, and Nextel proposed in 2005 to limit device power to 6 dBm for transmissions at 1917-1920 MHz and 30 dBm for transmissions at 1915-1917 MHz. These limits were proposed based on 2004-2005 measurements related to both intermodulation interference and receiver blocking. *See* Joint Reply Comments of Sprint Corporation, Verizon Wireless and Nextel Communications, WT Docket Nos. 04-356 and 02-353, at 2-3 (filed Feb. 8, 2005).

[22] This power level is consistent with the standards adopted by 3GPP for LTE User Equipment operating in the PCS and AWS bands. *See* Table 6.2.2-1 of 3GPP TS 36.101 V11.2.0 (2012-09). Sprint supports the FCC's proposal to limit the power of fixed H Block transmitters to 1 watt EIRP.

present.[23] These worst case interference conditions occur in the rare situation where an H Block mobile transmitter is operating near maximum power and a PCS mobile receiver is trying to receive a weak signal.[24] At the same time, the mobile receiver must also be within a few meters from the mobile transmitter and in line-of-sight conditions.[25] Sprint concurs with the Commission's conclusion that the chances of each of these worst case interference conditions being present simultaneously are very unlikely and can be "further mitigated by normal network management practices such as handoff and power management."[26] The very low possibility of this worst case scenario, combined with V-COMM's testing results (which were done on a worse-case basis), make a compelling showing that the H Block uplink can be licensed for commercial use without causing harmful interference to PCS operations.[27]

Sprint recognizes that the H Block device power limit it is proposing is more restrictive than what is currently permitted for other PCS devices. At the same time, however, Sprint believes that existing PCS devices already largely comply with this requirement. As such, application of Sprint's proposed H Block uplink power limit and other technical standards also would spur deployment in the event that an adjacent PCS licensee successfully bids for H Block spectrum.[28] The public interest benefits associated with auctioning the H Block are greatly

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23 NPRM, at ¶ 41.

24 *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, Including Third Generation Wireless Systems*, ET Docket No. 00-258, Sixth Report and Order, Third Memorandum Opinion and Order and Fifth Memorandum Opinion and Order, 19 FCC Rcd. 20720, ¶ 22 (2004) ("AWS Sixth Report and Order").

25 NPRM, at ¶ 41.

26 *Id.* (citing AWS Sixth Report and Order, at ¶¶ 23-26).

27 *See, e.g.*, Sprint AWS-4 Reply Comments, at 4; Sprint AWS-4 Comments, at 3; Comments of United States Cellular Corporation, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 3-7 (filed May 17, 2012); Comments of RCA – The Competitive Carriers Association, WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 12 (filed May 17, 2012); Comments of T-Mobile USA, Inc., WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 25 (filed May 17, 2012); Comments of UTAM, Inc., WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 5 (filed May 18, 2012).

28 NPRM, at ¶ 54.

magnified in the event such spectrum is utilized as additional PCS spectrum.[29] Adjacent PCS licensees will likely find H Block spectrum attractive to deploy a wider channel bandwidth operating across both blocks.[30] However, the adoption of significantly stricter power or OOBE limits for the H Block uplink may result in the application of different technical standards to the bands, potentially creating operational challenges that reduce the utility of this combined spectrum.[31] The Commission should therefore grant flexibility to a service provider that establishes unified operations across adjacent bands to harmonize emission limits between its adjacent PCS and H Block licenses, so long as it does not adversely affect the operations of adjacent licensees.[32] This flexibility will encourage adjacent PCS licensees to bid on H Block spectrum, knowing that harmonious operation is possible.

III. SPRINT SUPPORTS THE H BLOCK BAND PLAN AND THE APPLICATION OF EXISTING AWS LICENSING AND OPERATING RULES TO H BLOCK OPERATIONS

Sprint supports the adoption of the proposed H Block band plan that will license the H Block as paired five megahertz blocks, with base station operations prohibited in the H Block sub-band at 1915-1920 MHz.[33] The Commission correctly concluded that this band plan "would allow for the introduction of high-value services, and was otherwise preferable to the other options that had been put forth."[34] The limitation on base station operations in the 1915-1920 MHz sub-band also reduces the potential for harmful interference to PCS operations.[35]

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29 AWS-4 Order, at ¶ 66.

30 NPRM, at ¶ 54.

31 *Id.*

32 *Id*.

33 NPRM, at ¶¶ 22-31.

34 AWS Sixth Report and Order, at ¶ 41.

35 2004 AWS NPRM, at ¶¶ 106-08.

Sprint generally supports the proposed application of existing AWS regulations set forth in Part 27 of the Commission's rules to H Block operations, including those governing ownership restrictions, secondary market transactions, and license terms and renewal.[36] Applying AWS regulations to H Block operations is consistent with Commission precedent.[37] For example, geographical area licensing would be consistent with the Commission's current rules governing AWS, broadband PCS, commercial 700 MHz, and AWS-4 operations,[38] and provides licensees with substantial flexibility to respond to market demand.[39] Sprint has substantial experience with Economic Area licensing procedures, which apply to both its 800 MHz and PCS G Block licenses, and permit the efficient aggregation of spectrum to achieve economies of scale.[40]

As noted above, the adoption of H Block licensing and operating rules consistent with existing AWS regulations – which are generally similar to PCS regulations – would spur deployment in the event that an adjacent PCS licensee successfully bids for H Block spectrum.[41] Applying consistent rules across the PCS and AWS H Block spectrum will permit adjacent PCS licensees to incorporate H Block spectrum into their existing operations, providing more

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[36] NPRM, at ¶¶ 26-31, 69-101. Sprint does not, however, support the reduction or elimination of an H Block licensee's performance requirements if operator-to-operator agreements are reached with AWS-4 licensees ("fallowing agreements"), due to concerns that it would create incentives for potential bidders to underutilize the H Block downlink band. *See* NPRM, at ¶ 84. There is no public interest rationale for potentially keeping the H Block spectrum from productive use given the increasing demand for wireless capacity and the spectrum shortage. *See* NPRM, at ¶ 1 (stating that auction and licensing of the H Block is necessary to "keep[] pace with the skyrocketing demand for mobile service.").

[37] Comments of Sprint Nextel Corporation, WT Docket No. 04-356, at 22-23 (filed July 25, 2008).

[38] *See Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Report and Order, 18 FCC Rcd. 25162, ¶ 30 (2003); 47 C.F.R. §§ 24.202, 27.6(b),(h); *see also* AWS-4 Order, at ¶ 48.

[39] *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, WT Docket No. 02-353, Report and Order, 18 FCC Rcd. 25162, ¶ 31 (2003).

[40] 47 C.F.R. § 24.229(c); NPRM, at ¶ 29.

[41] NPRM, at ¶ 54.

capacity, increased roaming, and enhanced service for consumers.[42] The Commission should therefore apply existing AWS licensing and operating rules to H Block operations, but clarify the requirements that would apply if a licensee operates a wider channel signal that covers both the G Block – which would be subject to Part 24 Broadband PCS rules – and the H Block as proposed in the NPRM.[43]

IV. THE COMMISSION'S COST-SHARING REQUIREMENTS SERVE THE PUBLIC INTEREST BY PROVIDING EXPLICIT NOTICE TO AUCTION BIDDERS AND WINNERS OF THEIR ABSOLUTE OBLIGATION TO REIMBURSE ENTITIES THAT CLEARED THE H BLOCK OF BAS INCUMBENTS

Since the early 1990s, the Commission's *Emerging Technologies* policies[44] have promoted competition, created jobs, and brought innovation and choice to consumers by encouraging the efficient and expeditious clearance of spectrum and the introduction of advanced wireless services.[45] Those policies have *consistently mandated* that early entrants to a band allocated for new services be reimbursed for a *pro rata* share of their band clearing costs from later beneficiaries of those efforts, as a key aspect of the Commission's cost-sharing requirements is that "licensees that ultimately benefit from the spectrum cleared by the first

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[42] Sprint AWS-4 Comments, at 3-4; Comments of Sprint Nextel Corporation, WT Docket No. 04-356, at 22-23 (filed July 25, 2008).

[43] NPRM, at ¶ 54.

[44] *See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies,* ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rulemaking , 7 FCC Rcd. 6886 (1992); Second Report and Order, 8 FCC Rcd. 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589 (1993); Memorandum Opinion and Order, 9 FCC Rcd. 1943 (1994); Second Memorandum Opinion and Order, 9 FCC Rcd. 7797 (1994), *aff'd Ass'n of Pub. Safety Commc'ns Officials-Int'l, Inc. v. FCC*, 76 F.3d 395 (D.C. Cir. 1996) (collectively, the "*Emerging Technologies Proceeding*").

[45] *See* Sprint AWS-4 Reply Comments, at 11-13; Sprint AWS-4 Comments, at 12-18; Comments of UTAM, Inc., WT Docket Nos. 12-70 and 04-356, ET Docket No. 10-142, at 2 (filed May 18, 2012); Comments of Sprint Nextel Corporation, WT Docket Nos. 07-195 and 04-356, ET Docket No. 10-142, at 5-10 (filed July 8, 2011); Comments of Sprint Nextel Corporation, WT Docket No. 04-356, at 19-24 (filed July 25, 2008); *see also Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service,* ET Docket No. 95-18, Third Report and Order and Third Memorandum Opinion and Order, 18 FCC Rcd 26338, ¶¶ 7-10 (2003) (noting that the spectrum allocation was intended to follow principles embodied in the *Emerging Technologies Proceeding*).

entrant shall bear the cost of *reimbursing* the first entrant for the accrual of that benefit."[46] This policy ensures that subsequent band entrants do not act as "free riders" on the early band entrant's efforts.[47]

In addition, clear reimbursement rules also provide new band entrants with notice of the cost-sharing amount owed by prospective licensees as they prepare their strategy for bidding for licenses in the cleared spectrum.[48] The *Emerging Technologies* principles remain "a fundamental part of the Commission's past efforts to unlock value and promote investment through the relocation process,"[49] and have been successfully applied to recent band clearings, including the Commission's AWS-4 proceeding.[50] It is therefore entirely appropriate that the Commission continue to apply and reinforce those principles here.

With respect to the instant proceeding, UTAM successfully cleared the 1910-1930 MHz band, and Sprint successfully completed the BAS transition for the entire 1990-2025 MHz band.[51] Those efforts have significantly advanced the public interest and the goals of the Spectrum Act by clearing the spectrum for flexible use. As a result, under the *Emerging Technologies* policies, UTAM and Sprint are owed and entitled to reimbursement of *pro rata* amounts for their clearance efforts, in the amount of $12,629,857 to UTAM, and $94,875,516 to

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46 *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, ET Docket Nos. 00-258 and 95-18, Fifth Report and Order, Eleventh Report and Order, Sixth Report and Order, and Declaratory Ruling, 25 FCC Rcd. 13874, ¶ 21 (2010) (emphasis added) ("2010 Declaratory Ruling"); *see* AWS-4 Order, at ¶ 289 ("These procedures allow the operators that have relocated incumbents to be reimbursed a portion of their relocation expenses from new entrants that benefit from the spectrum clearance.").

47 *See Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation*, WT Docket No. 95-157, First Report and Order and Further Notice of Proposed Rulemaking, 11 FCC Rcd. 8825, ¶ 7 (1996).

48 NPRM, at ¶¶ 58, 64.

49 2010 Declaratory Ruling, at ¶ 2.

50 *See* AWS-4 Order, at ¶¶ 289-316; *see also* 47 C.F.R. § 22.602(j) (concerning the 2110-2130 MHz and 2160-2180 MHz bands); 47 C.F.R. § 101.79(a)(1) (concerning the 2110–2150 MHz and 2160–2175 MHz bands and the 2175-2180 MHz bands).

51 NPRM, at ¶¶ 55, 62.

Sprint.[52] Timely and complete fulfillment of these outstanding reimbursement obligations by successful H Block auction bidders should close the books on these successful relocation efforts, and guarantee that the Commission's policies remain clear and effective in future spectrum clearance initiatives.

Sprint applauds the Commission's proposals in this proceeding to clarify and streamline the pending reimbursement process.[53] As the Commission is aware, Sprint had to overcome unwarranted and improper attempts by other 2 GHz new entrants, including in litigation and bankruptcy proceedings, to avoid their regulatory obligations to reimburse Sprint for its band clearing efforts in the BAS transition. Although the Commission steadfastly defended its *Emerging Technologies* policies, those disputes were wasteful of both the Commission and Sprint's time and resources and left Sprint less than fully reimbursed for its band clearing efforts. The Commission's actions in this proceeding are a wise and constructive effort to eliminate such uncertainties and delays, and should ensure that owed reimbursements will be made promptly and in full by new licensees that benefit from Sprint and UTAM's band clearing successes. The Commission should adopt its proposed cost-sharing conditions and requirements for future H Block licensees, along with safeguards to ensure that winning bidders cannot delay, minimize, or utilize other tactics to avoid their reimbursement obligations, as discussed further below.

A. The Commission's Proposals Provide All Bidders with Full Notice of Their Prospective Reimbursement Obligations and Should Ensure Compliance with the Commission's Directives

As a threshold matter, Sprint agrees with the Commission that it is important to provide potential H Block licensees "with reasonable certainty as to the range of the reimbursement

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[52] *Id.* at ¶¶ 58 n.113, 64 n. 121.

[53] *Id.* at ¶¶ 55-68.

obligation associated with each license under various auction outcomes."[54] The Commission's carefully crafted proposals achieve that goal. Sprint and UTAM have already completed their relocation efforts and the amounts owed by future H Block licensees have been established with certainty.[55] Prospective bidders can therefore fairly and accurately calculate their anticipated *pro rata* reimbursement obligations before participating in an auction, and the public circulation of these requirements and specific reimbursement amounts should ensure that no auction winner is under any illusion that it does not have to pay the required reimbursement.

The Commission has made several related proposals to ensure that UTAM and Sprint are reimbursed both fully and promptly[56] To further guard against the possibility that a successful H Block auction bidder might later attempt to avoid its known reimbursement obligations, Sprint recommends that the Commission also adopt additional safeguards in the form of conditions to the issuance of the license. The Commission has proposed that the reimbursement payment will be due within thirty days of the grant of the long form application to the new entrant.[57] Sprint supports this proposal, and respectfully requests that the actual issuance of the license *not occur until after the applicable reimbursement payments have been made*. As the Commission has already determined that these long-standing reimbursement obligations and a 30-day payment period would not unduly burden winning bidders, further formalizing those requirements should not create any additional concerns.[58] This approach will ensure that *Emerging Technologies*

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54 *Id.* at ¶ 64.

55 *Id.* at ¶¶ 58, 64.

56 *See, e.g.*, *id.* at ¶ 65 (proposing that Sprint receive full reimbursement after the first auction, and noting that even in the event of unlikely scenarios, Sprint be reimbursed "as soon as possible").

57 *Id.* at ¶¶ 61, 67.

58 *Id.* at ¶ 67.

policies are not susceptible to abuse or delay, and that any new entrant's attempt to be a "free rider" will not be rewarded.

B. Sprint Supports the Proposed Cost-Sharing Formulas

Sprint also supports the Commission's specific proposed formulas for ensuring reimbursement to UTAM and Sprint. The formula proposed for H Block downlink reimbursements properly apportions the reimbursement costs associated with any unsold H Block licenses among the winning bidders of H Block licenses in the first auction.[59] In addition, Sprint supports the Commission's proposal limiting the ability of winning licensees in the first H Block auction to seek reimbursement from licensees in subsequent auctions, in order to ensure that the reimbursement obligations are dealt with as part of the first auction.[60] The Commission correctly anticipates that this limitation should avoid excessive recordkeeping obligations and prevent recurring disputes among future H Block licensees in the event that that the initial auction awards most of the licenses.[61]

C. The Ten-Year Sunset Date Is Reasonable If Combined with Sprint's Requested Additional Reimbursement Safeguards

The Commission has proposed that the cost-sharing obligations owed by successful H Block bidders to Sprint will sunset ten years after the first H Block license is issued in the band.[62] Under the Commission's rules, cost-sharing obligations typically sunset ten years after

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59 *Id.* at ¶ 65.

60 *Id.*

61 *Id.* In addition, Sprint supports the Commission's proposals that, in the unlikely event that licenses covering less than 40 percent of the United States population are awarded in the first auction, the winning bidders in both the first auction and any subsequent auction must still timely pay their *pro rata* reimbursement shares. *Id.* That proposal should meet the Commission's goal of seeing Sprint timely reimbursed while not placing undue burdens on winning bidders.

62 *Id.* at ¶ 68. As the Commission makes this statement as part of its discussion of the 1995-2000 MHz band, it appears that the sunset period with respect to Sprint's reimbursement would commence upon issuance of the first license in the H Block downlink. To avoid any uncertainty or ambiguity as to whether a license first issued in the H Block uplink might somehow trigger the sunset period with respect to the H Block downlink, Sprint respectfully

the first license is issued in the cleared band.[63] The Commission is correct that applying this standard sunset period to H Block downlink licensees will not impose any burden on them, as H Block licenses have yet to be auctioned or granted, and interested bidders are already on notice as to their reimbursement obligations.[64] When combined with the Commission's proposals to ensure timely and full reimbursement and the additional safeguards requested by Sprint, the proposed ten-year sunset will provide ample time for the Commission's H Block auction process to run its course and ensure that UTAM's and Sprint's reimbursement rights are not cut off by an artificial administrative deadline that is wholly outside the control of the parties that cleared the H Block spectrum.

V. CONCLUSION

For the forgoing reasons, the Commission should take action and implement its proposals to auction and license the H Block for commercial flexible use as efficiently and expeditiously as possible. The adoption of reasonable technical standards should adequately protect adjacent PCS operations from harmful interference and permit auctioning of the entire H Block under the Spectrum Act. Applying H Block licensing and operational rules based on existing AWS regulations will allow adjacent licensees to readily incorporate such spectrum into existing operations and facilitate harmonious operations across bands. In addition, establishing clear and effective reimbursement mechanisms for future H Block licensees will ensure that Sprint and UTAM are fully compensated for their prior band clearing efforts and provide prospective H Block auction bidders with full notice of their cost-sharing obligations.

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requests that the Commission clarify this proposal to make certain that Sprint's reimbursement sunset period is tied to the issuance of the first license in the H Block downlink.

63 *See, e.g.,* 47 C.F.R. § 101.79(a)(1)-(a)(2).

64 NPRM, at ¶ 68.

Respectfully submitted,

__/s/_____

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