

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

In the Matter of )
)
Metropolitan Transit Authority of Harris County, ) FCC File No. 0000725954
Texas, Request For Modification of Private Land )
Mobile Radio Station KRX666 and )
)
Nextel of Texas, Inc., Request for Waiver of )
Intercategory Sharing Freeze in the 806-821/851- )
866 MHz Bands and Section 90.617 of the )
Commission's Rules )

ORDER

Adopted: July 6, 2005

Released: July 7, 2005

By the Chief, Public Safety and Critical Infrastructure Division, Wireless Telecommunications Bureau:

1. Introduction. In this Order we address an application filed by Metropolitan Transit Authority of Harris County, Texas (Metro), seeking authorization to modify Metro's Station KRX666, Houston, Texas, and an accompanying request for waiver of the Commission's Rules filed by Nextel of Texas, Inc. (Nextel). Specifically, Metro wishes to exchange its ten current channels located in the "Upper 200" segment of the 800 MHz band in the Houston area for ten channels licensed to Nextel in the band segment immediately below the Upper 200 segment. In order to effectuate this voluntary relocation agreement Nextel seeks a waiver of the Commission's eligibility rules to permit Metro, an Industrial/Land Transportation (I/LT) eligible, to use one Specialized Mobile Radio (SMR) frequency: 858.6875 MHz. Nextel also proposes to assign to Metro five Business channels and four I/LT channels that are currently "short-spaced" to co-channel licensees. For the reasons discussed below, we grant the Nextel waiver request and order the processing of Metro's application for modification of license.

2. Discussion. At the time Metro filed its modification application, it would not have been permitted to use Business channels or SMR channels because the Wireless Telecommunications Bureau (WTB) had imposed a freeze on "intercategory sharing" in April 1995, and because the Commission eliminated intercategory sharing of SMR channels altogether in December of that year. However, on

1 Metro, which manages Houston's public transportation system, filed the above-captioned application to modify its license for Industrial/Land Transportation (I/LT) Station KRX666, Houston, Texas. See FCC File No. 0000725954 (filed Jan. 8, 2002, amended Feb. 28, 2005).

2 See Letter from James Wheaton, Compliance Manager, Request for Waiver, to Licensing and Technical Analysis Branch at 3 (Nov. 19, 2001) (Waiver Request) accompanying FCC File No. 0000725954 (filed Jan. 8, 2002). Nextel of Texas, Inc. is a wholly-owned subsidiary of Nextel Communications, Inc. (collectively, Nextel).

3 The subject channels are 856.3875 MHz, 857.3875 MHz, 858.3875 MHz, 859.3975 MHz, 860.3875 MHz, 856.9125 MHz, 857.9125 MHz, 858.9125 MHz and 859.9125 MHz.

4 See Intercategory Sharing of Private Mobile Radio Frequencies in the 806/821/851-866 MHz Bands, Order, 10 FCC Rcd 7350 (WTB 1995); 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, 1536-37 ¶¶ 138-142 (1995) (800 MHz SMR Report and Order).

July 8, 2004, the Commission consolidated the Business and I/LT categories.<sup>5</sup> Now, an applicant eligible for use of Business channels may apply for I/LT channels and vice-versa. Thus Metro is eligible to use both the five Nextel Business channels and the four Nextel I/LT channels requested in Metro's application for modification of license. Therefore, that portion of the waiver request seeking leave for Metro to use Business category channels is moot. The only remaining waiver necessary to effect the parties' channel exchange is a waiver of Section 90.617(d)<sup>6</sup> of the Commission's Rules to permit Metro to use the SMR channel.

3. We may grant a waiver of a Commission rule (a) when the underlying purpose of the rule would not be served by application to the instant case and a grant of the waiver is in the public interest, or (b) when in view of the unique or unusual circumstances of the case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>7</sup>

4. We find that the underlying purpose of Section 90.617(d) of the Commission's rules would not be served by strict application of the rule here. Section 90.617(d) specifically states that the channels listed in that subsection are available only to applicants in the SMR category. The waiver sought by Nextel would enable it to use SMR spectrum to relocate an I/LT operator. When the Commission adopted Section 90.617(d) of the Rules, it sought to avoid a potential scarcity of radio frequencies for Public Land Mobile Radio (PLMR) use by stopping the then prevailing practice of incorporating Business and I/LT channels into SMR systems.<sup>8</sup> However, in the instant channel exchange, a PLMR licensee gains access to a channel in the SMR category – and not vice-versa. Thus, a waiver of Section 90.617(d) of the Commission's rules does not undermine the underlying purpose of the prohibition against intercategory sharing.<sup>9</sup>

5. Additionally, we find that the public interest would be served by the channel exchange because it is consistent with the purpose of the relocation provisions of the *800 MHz SMR Report and Order*. When the Commission established Economic Area (EA) licensing for SMR service in the 800 MHz band, it authorized licensees that had obtained EA licenses in the Upper 200 band segment to relocate incumbent site-based licensees operating there to channels lower in the band, subject to certain requirements. Recently, we granted a waiver of Section 90.617(d) to Occidental Permian, Ltd., an I/LT eligible, and Nextel Communications, Inc. approving a voluntary swap of upper 200 channels.<sup>10</sup> The common element in that case and the instant case is that, in both circumstances, an I/LT licensee is being licensed on an SMR channel pursuant to a voluntary relocation agreement.

6. The public interest is further served because the relocation is consistent with the *800 MHz Public Safety Interference* proceeding. Under the rules developed in that proceeding, the lower portion of the 800 MHz band segment (806-815 MHz/851-860 MHz) is generally reserved for licensees employing "high-site" non-cellular systems.<sup>11</sup> Cellular architecture systems, such as Nextel's, which are

<sup>5</sup> See *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15126 ¶ 334 n.762 (2004) (*800 MHz Public Safety Order*).

<sup>6</sup> 47 C.F.R. § 90.617(d).

<sup>7</sup> See 47 C.F.R. § 1.925.

<sup>8</sup> *800 MHz SMR Report and Order*, 11 FCC Rcd at 1537 ¶ 141.

<sup>9</sup> See *American Medical Response, Inc., Order on Reconsideration*, 15 FCC Rcd 25587, 25590, 25591-92 ¶¶ 8, 11 (WTB PSPWD 2000).

<sup>10</sup> See *Occidental Permian, Ltd., Order*, 20 FCC Rcd 4045 (WTB PSCID 2005).

<sup>11</sup> See *800 MHz Public Safety Order*, 19 FCC Rcd at 14977 ¶ 11.

incompatible with high-site non-cellular systems from an interference standpoint may no longer operate in the lower portion of the 800 MHz spectrum, subject to certain exceptions not relevant here. Consequently, Nextel's waiver request to permit the channel exchange with Metro – to the extent it relocates Metro's high-site facilities to the lower part of the 800 MHz band – is consistent with both the relocation provisions of the *800 MHz SMR Report and Order* and the *800 MHz Public Safety Order's* prohibition against operation of certain cellular architecture systems in the lower portion of the 800 MHz band.

7. Even after the proposed channel exchange, Nextel will have other systems in the Houston area that will continue to operate on the 858.6875 MHz SMR channel, *supra*, at least until the 800 MHz band is reconfigured pursuant to the *800 MHz Public Safety Order*.<sup>12</sup> However, Nextel has agreed to accept any interference that Metro might cause Nextel when Metro relocates to the SMR Channel and to resolve any interference that Nextel might cause to Metro on the channel.

8. *B/ILT Channels.* Allowing Metro to operate on the B/ILT channels currently licensed to Nextel on a short-spaced basis is consistent with the Commission's short-spacing rules. Section 90.621(b) of the Commission's rules requires that co-channel licensees maintain a distance separation of 70 miles unless they meet certain criteria necessary to avoid interference resulting from a reduced spacing.<sup>13</sup> If Metro relocates to Nextel's B/ILT channels, as proposed, Metro's base station also will be short-spaced to certain other licensees in the Houston area. However, Nextel has been operating these channels on a short-spaced basis pursuant to letters of concurrence from the affected co-channel licensees, as permitted by Section 90.621(b)(5)<sup>14</sup> of the Commission's rules, and the short-spacing has been "grandfathered," *i.e.* a successor licensee, such as Metro, may use the short-spaced channels under the same conditions as Nextel. However, Metro's proposed base station is not in the exact location as Nextel's current base station, although the two are within a mile of one another.

9. Notwithstanding the difference in location, the operating parameters of Metro's proposed station are such that there will be no increase in interference to the short-spaced co-channel stations. Specifically, the 22 dBu/V interference contour of the B/ILT channels in Metro's proposed base station will extend no further than the 22 dBu/V interference contour of the existing Nextel base station on those channels. Metro also proposes to operate a secondary base station on these same frequencies and within the existing 22 dBu/V interference contour. Because secondary stations may not cause interference to, and must accept interference from, co-channel stations,<sup>15</sup> authorizing Metro to operate the secondary base station will not cause interference to existing co-channel users.

10. *Decision.* Metro and Nextel have justified a channel exchange that will allow Metro to continue to provide communications services to a municipal transportation agency with no increase in interference to existing licensees or other adverse effect. We therefore grant the Nextel waiver request and direct that Metro's application for modification of license be processed.

## I. ORDERING CLAUSES

11. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), and Sections 1.925, 90.617 and 90.621 of the Commission's Rules, 47 C.F.R. §§ 1.925, 90.617, and 90.621, the request for waiver filed by Nextel of Texas, Inc. on

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<sup>12</sup> *See id.*

<sup>13</sup> 47 C.F.R. § 90.621(b)(4).

<sup>14</sup> 47 C.F.R. § 90.621(b)(5).

<sup>15</sup> *See* 47 C.F.R. § 90.7.

behalf of the Metropolitan Transit Authority of Harris County for Station KRX666 IS GRANTED, and application FCC File No. 0000725954 filed on January 8, 2002, as amended, SHALL BE PROCESSED consistent with this *Order*.

12. This action is taken under delegated authority pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

Michael J. Wilhelm  
Chief, Public Safety and Private Wireless Division  
Wireless Telecommunications Bureau