

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

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission’s Rules	)	WT Docket No. 05-62
To Provide for Flexible Use of the 896-901 MHz	)	
and 935-940 MHz Band Allotted to the Business	)	
and Industrial Land Transportation Pool	)	
	)	
Improving Public Safety Communications in the	)	WT Docket No. 02-55
800 MHz Band	)	
	)	
Consolidating the 800 MHz and 900 MHz	)	
Industrial/Land Transportation and Business Pool	)	
Channels	)	

**ORDER ON RECONSIDERATION**

**Adopted: June 21, 2013**

**Released: June 25, 2013**

By the Commission:

**I. INTRODUCTION**

1. In this *Order on Reconsideration*, we grant in accordance with the terms set forth herein the unopposed joint request for clarification or limited reconsideration filed by the Enterprise Wireless Alliance (EWA) and Sprint Nextel Corporation (Sprint Nextel) (collectively, “Petitioners”)<sup>1</sup> with respect to one aspect of the *Report and Order* in this proceeding.<sup>2</sup> Specifically, we modify the freeze on new authorizations in the Business and Industrial Land Transportation (B/ILT) Pool in the 896-901 MHz/935-940 MHz band (900 MHz B/ILT Band) to allow a qualified entity to file an application for a new authorization in any given National Public Safety Planning Advisory Committee (NPSPAC) region before Sprint Nextel’s 800 MHz rebanding efforts are complete in that region, provided such application is accompanied by a letter of concurrence from Sprint Nextel to ensure that the authorization will not adversely affect its rebanding efforts. Thus, our action today will allow qualified applicants to gain access to 900 MHz B/ILT spectrum without unnecessary delay, thereby promoting spectrum efficiency by allowing access to spectrum that may otherwise be unused during the 800 MHz rebanding process.

**II. BACKGROUND**

2. The 900 MHz B/ILT Pool channels are licensed for the private internal communication needs of site-by-site licensees engaged in a variety of endeavors, from commercial (*e.g.*, land transportation, manufacturing, energy) to non-commercial (*e.g.*, clerical, educational, philanthropic,

<sup>1</sup> See Joint Request for Clarification or, In the Alternative, For Limited Reconsideration Filed by Enterprise Wireless Alliance and Sprint Nextel Corporation (filed Dec. 17, 2008) (Petition). The Petition was timely filed pursuant to section 1.429(d) of the Commission’s rules. See 47 C.F.R. § 1.429(d); 73 Fed. Reg. 67794-01 (Nov. 17, 2008).

<sup>2</sup> Amendment of Part 90 of the Commission’s Rules To Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket No. 05-62; Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55; Consolidating the 800 MHz and 900 MHz Industrial/Land Transportation and Business Pool Channels, *Report and Order*, 23 FCC Rcd 15856 (2008) (*Report and Order*).

medical).<sup>3</sup> As we have previously recognized, these licensees use their B/ILT communications facilities to ensure safety of operations, protect their plants, and enable the cost-effective production of goods and services offered to the public.<sup>4</sup>

3. In 2004, shortly after the Commission launched its 800 MHz rebanding initiative through the *800 MHz R&O*,<sup>5</sup> the Wireless Telecommunications Bureau (Bureau) issued a Public Notice freezing acceptance of applications for new 900 MHz B/ILT licenses until further notice (a freeze that has remained in place continuously since then).<sup>6</sup> The *800 MHz R&O*, designed to resolve interference between the interleaved commercial wireless and public safety services occupying the 800 MHz band by consolidating the licensees of each service to different portions of the band, implicated the adjacent 900 MHz band in two ways. First, the Commission chose the 900 MHz band as a temporary home for Sprint Nextel's 800 MHz band commercial operations,<sup>7</sup> to create "green space" that would facilitate the exchange of spectral locations in the 800 MHz band between Sprint Nextel and public safety licensees. Second, the Commission permitted 900 MHz B/ILT licensees to initiate commercial operations on their licensed spectrum or to assign their authorizations to others for commercial use.<sup>8</sup> This new possibility for commercial operations precipitated the filing of a large number of applications for 900 MHz B/ILT authorizations, which, in turn, prompted the Bureau to impose the freeze in order to preserve the use of the 900 MHz band as a temporary location for Sprint Nextel's displaced 800 MHz operations until 800 MHz rebanding is complete.<sup>9</sup> The Bureau, however, advised that prospective applicants might have recourse via the Commission's waiver provisions to request an exception to the freeze.<sup>10</sup>

4. In 2005, the Commission affirmed the freeze, in light of the fundamental changes it was proposing in the service areas and channel blocks for future licenses in the 900 MHz B/ILT service.<sup>11</sup> In 2008, however, the Commission declined to adopt the proposed changes and found that a wholesale

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<sup>3</sup> See 47 C.F.R. §§ 90.31, 90.33, 90.35, 90.603. Applications for frequencies in the B/ILT Category 900 MHz Band Pools are coordinated by frequency coordinators certified in the B/ILT Pools. See *id.* § 90.35. Subsequent to grant of a 900 MHz B/ILT license, a licensee may apply to modify the license to permit commercial operation on the license or to assign the license to another entity for commercial use. See *id.* § 90.621(f).

<sup>4</sup> See *Report and Order*, 23 FCC Rcd at 15864 ¶ 13.

<sup>5</sup> See *Improving Public Safety Communications in the 800 MHz Band, et al.*, WT Docket No. 02-55, *et al.*, *Report and Order*, 19 FCC Rcd 14969 (2004) (*800 MHz R&O*); *Improving Public Safety Communications in the 800 MHz Band, et al.*, WT Docket No. 02-55, *et al.*, *Supplemental Report and Order on Reconsideration*, 19 FCC Rcd 25120 (2004) (*800 MHz Supplemental R&O*).

<sup>6</sup> See *Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band, Public Notice*, 19 FCC Rcd 18277 (WTB 2004) (*Freeze Public Notice*).

<sup>7</sup> Sprint Nextel, the primary proponent of the rebanding initiative, held most of the 800 MHz band commercial wireless licenses.

<sup>8</sup> *800 MHz R&O*, 19 FCC Rcd at 15127-28 ¶ 337. In the context of 800 MHz rebanding, the Commission took several other steps with respect to B/ILT licensees. First, the B/ILT licensees in the 800 MHz band were subject to relocation to the portion of the band that the Commission had designated for services with which B/ILT service was technically compatible (*i.e.*, non-cellular, high site services like public safety). See, *e.g.*, *id.* at 14973 nn. 9-10 and 15050-52 ¶¶ 150-52. Second, the Commission combined the Pools for the 800 and 900 MHz Business and Industrial/Land Transportation Services into one consolidated B/ILT Pool subject to the same basic requirements and with access to the same spectrum. *Id.* at 15126 ¶ 334.

<sup>9</sup> See *Freeze Public Notice*, 19 FCC Rcd at 18277-78.

<sup>10</sup> See *id.* at 18278 n.7 (citing 47 C.F.R. § 1.925).

<sup>11</sup> Amendment of Part 90 of the Commission's Rules To Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool, WT Docket No. 05-62; *Oppositions and Petitions for Reconsideration of the 900 MHz Band Freeze Notice*, DA 04-3013, *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, 20 FCC Rcd 3814, 3836 ¶ 66 (2005).

freeze on applications for new 900 MHz B/ILT authorizations was no longer necessary.<sup>12</sup> The Commission lifted the freeze in each NPSPAC region six months after rebanding was completed in that particular NPSPAC region,<sup>13</sup> concluding that such an approach best balanced the demands for 900 MHz B/ILT spectrum, including the ongoing needs of Sprint Nextel for access to this spectrum to support its rebanding efforts.<sup>14</sup> The Commission noted that it had granted special temporary authorizations (STAs) to Sprint Nextel to operate temporarily on 900 MHz B/ILT spectrum in more than 100 markets in order to provide “green space” in the 800 MHz band to relocate 800 MHz incumbents during the reconfiguration of this band,<sup>15</sup> and expressed concern that immediately lifting the 900 MHz B/ILT application freeze in its entirety could jeopardize Sprint Nextel’s 800 MHz rebanding efforts.<sup>16</sup>

5. The pending Petition filed by EWA and Sprint Nextel asserts that the conditions for lifting the freeze are unnecessary to protect Sprint Nextel’s rebanding activities and its ability to use 900 MHz B/ILT spectrum pursuant to an STA.<sup>17</sup> Petitioners note, for example, that in some NPSPAC regions Sprint Nextel does not need additional 900 MHz B/ILT spectrum to meet its 800 MHz rebanding obligations (*e.g.*, Alaska, Idaho, North Dakota), and that in other regions Sprint Nextel needs 900 MHz spectrum only in a limited geographic area within a typical statewide NPSPAC region (*e.g.*, Atlanta, but not all of Georgia; and Louisville, but not all of Kentucky).<sup>18</sup> Petitioners are concerned the *Report and Order*’s current requirements for lifting the freeze preclude, for the foreseeable future, valuable use of 900 MHz B/ILT spectrum by otherwise-qualified applicants, even in areas where Sprint Nextel does not need additional spectrum.<sup>19</sup>

6. In response to the Petition, the Commission received comments from Motorola, Inc. (Motorola) and the National Association of Manufacturers & MRFAC, Inc. (NAM/MRFAC). While both commenters support the Petition, NAM/MRFAC seeks additional clarification that, were the Commission to grant the relief sought by the Petitioners, it would apply before as well as after completion of rebanding in a given region, provided that the applicant has Sprint Nextel’s concurrence.<sup>20</sup>

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<sup>12</sup> See *Report and Order*, 23 FCC Rcd at 15865 ¶ 27.

<sup>13</sup> A map showing the NPSPAC regions is available at <http://www.nrpc.us/regionalPlanning.jsp>. Retuning of 800 MHz band public safety equipment is being conducted on a region-by-region basis; the sequence of region reconfiguration completion, as determined by the 800 MHz Transition Administrator, depends on, *inter alia*, the degree of reported interference, population, border-region status, and impact on adjacent regions. To date, 11 of the 55 NPSPAC regions have completed reconfiguration. Public Safety and Homeland Security Bureau and Wireless Telecommunications Bureau Announce the Completion of 800 MHz Band Reconfiguration in Certain NPSPAC Regions, WT Docket No. 02-55, *Public Notice*, 27 FCC Rcd 14775, 14775 ¶ 1 (2012) (*Rebanding Public Notice*).

<sup>14</sup> See *Report and Order*, 23 FCC Rcd at 15865 ¶¶ 27-28.

<sup>15</sup> See *id.* at 15860 ¶ 14 and n.65.

<sup>16</sup> The Commission also noted that there may be situations in which an applicant seeks a 900 MHz B/ILT authorization for spectrum in a NPSPAC region where the freeze has been lifted that could extend the applicant’s service contour into an adjacent NPSPAC region where the freeze has not been lifted. In such a case, the applicant may file a waiver request to allow its coverage to extend into the NPSPAC region in which the freeze remains in effect, provided the overlapping coverage area is limited and would not disrupt Nextel’s rebanding efforts in the region.

<sup>17</sup> Petition at 4.

<sup>18</sup> *Id.* at 4-5.

<sup>19</sup> *Id.* at 5.

<sup>20</sup> National Association of Manufacturers and MRFAC, Inc. Comments on Joint Request for Clarification or, in the Alternative, for Limited Reconsideration Filed by Enterprise Wireless Alliance and Sprint Nextel Corporation at 4 (filed Mar. 27, 2009).

### III. MODIFICATION OF THE CONDITIONS FOR LIFTING THE 900 MHz B/ILT FREEZE, ON A PER APPLICATION BASIS, IN A GIVEN NPSPAC REGION

7. The Commission's objective in establishing a six-month "waiting period" before an applicant could seek a new authorization for spectrum in the 900 MHz B/ILT band in a particular NPSPAC region was to ensure that Sprint Nextel could remain operating in that band, under STA, with sufficient time to seek and acquire new spectrum on which to operate after the expiration of any of its 900 MHz B/ILT authorizations.<sup>21</sup> The Commission believed that giving Sprint Nextel six months after rebanding in a given NPSPAC region in which to move operations would preserve the integrity of the rebanding process critical to the Commission's objectives of minimizing harmful interference to public safety entities operating in the 800 MHz band.<sup>22</sup>

8. We are persuaded by the Petitioners' argument that linking the lifting of the freeze to Sprint Nextel's concurrence – rather than to the completion of rebanding in a given NPSPAC region – is a more appropriately tailored approach for protecting the integrity of the rebanding process. We find that implementing this change will maximize effective use of this spectrum by permitting the initiation of new B/ILT service without unnecessary delay. While we originally found that the delay was necessary as a component of the flexibility that Sprint Nextel required in order to fulfill its rebanding obligations, we find that with Sprint Nextel's concurrence, the delay is no longer necessary. In addition, as noted above, since the Commission launched its rebanding initiative in 2004, rebanding has only recently been completed in 11 out of 55 NPSPAC regions.<sup>23</sup> Further, during this time, the Commission received 29 requests for waiver of the freeze.<sup>24</sup> The Petitioners' requested relief would likely supplant the need for such filings and the associated paperwork burdens and adjudication costs. Accordingly, we conclude that the public interest would be best served by lifting the freeze in NPSPAC regions that are still undergoing the rebanding process, or that are still within the six-month period after completion thereof, for any application for new 900 MHz B/ILT service that includes written concurrence from Sprint Nextel.<sup>25</sup> Thus, as NAM/MRFAC urges, we clarify that our relief extends regardless of the status of rebanding in a particular NPSPAC region, so long as the application includes such concurrence.

9. In all other respects, we retain the policy adopted in the *Report and Order* that the freeze will be lifted in a NPSPAC region six months after rebanding is complete in that particular NPSPAC region.<sup>26</sup> Our action today does not affect any of the other conditions of lifting the freeze noted in the *Report and Order*.<sup>27</sup>

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<sup>21</sup> See *Report and Order*, 23 FCC Rcd at 15872 ¶ 28.

<sup>22</sup> *Id.*

<sup>23</sup> See *Rebanding Public Notice*, 27 FCC Rcd at 14775 ¶ 1.

<sup>24</sup> Of these 29 waiver requests, 19 were granted, 5 were denied, 2 were withdrawn, and 3 remain pending.

<sup>25</sup> Thus, in an instance in which an otherwise qualified 900 MHz B/ILT applicant proposes coverage that extends into an adjoining NPSPAC region where rebanding is not yet complete, such an application will be accepted if accompanied by written concurrence from Sprint Nextel as to the applicant's coverage in the adjoining NPSPAC region.

<sup>26</sup> See *Report and Order*, 23 FCC Rcd at 15872 ¶ 27.

<sup>27</sup> See *id.* at 15872-73 ¶¶ 29-31 (noting that the Wireless Telecommunications Bureau, in cooperation with the Public Safety and Homeland Security Bureau, will issue a public notice lifting the freeze within each NPSPAC region; noting the availability of a waiver when an applicant seeks spectrum in two adjacent NPSPAC regions and where only one of the regions has successfully rebanded; and reminding potential applicants that they need to be qualified to hold authorizations in the 900 MHz B/ILT band).

#### IV. CONCLUSION

10. In this *Order on Reconsideration*, we allow qualified applicants greater flexibility to resume filing initial license applications for 900 MHz B/ILT spectrum, under conditions that will preserve Sprint Nextel's ability to operate as needed on that spectrum in order to expeditiously fulfill its rebanding obligations in the 800 MHz band. We find that our action in this proceeding achieves a balance of competing interests that will better serve the needs of the public. We also conclude that our action promotes spectrum efficiency by putting available spectrum that would otherwise lay fallow for potentially extended periods of time into the hands of those that can make productive use of it now.

#### V. PROCEDURAL MATTERS

##### A. Paperwork Reduction Act of 1995 Analysis

11. This *Order on Reconsideration* does not contain new or modified information collection requirements subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any new or modified "information collection burden for small business concerns with fewer than 25 employees," pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. 3506(c)(4).

##### B. Final Regulatory Flexibility Analysis

12. In the *Report and Order*,<sup>28</sup> the Commission determined that the rules adopted there would not, under the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>29</sup> have a "significant economic impact on a substantial number of small entities."<sup>30</sup> The rules adopted generally inured to the benefit of small businesses, in that they minimized the expense of resolution of interference complaints and allowed all entities, including small businesses, to apply, once again, for unencumbered 900 MHz B/ILT spectrum.<sup>31</sup> We received no petitions for reconsideration of that Final Regulatory Flexibility determination. In this present *Order on Reconsideration*, the Commission promulgates no additional final rules, and our present action, therefore, does not alter our previous determination under the RFA.

##### C. Accessible Formats

13. Accessible formats of this *Order on Reconsideration* (Braille, large print, electronic files, audio format), are available to persons with disabilities by sending an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY). This *Order on Reconsideration* can also be downloaded at <http://www.fcc.gov>.

#### VI. ORDERING CLAUSES

14. Accordingly, IT IS ORDERED, pursuant to sections 1, 4(i), 303, 309, 316, 332, and 405 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 154(i), 303, 309, 316, 332, and 405, that this *Order on Reconsideration* IS HEREBY ADOPTED. The *Order on Reconsideration* shall become effective thirty days after publication in the Federal Register.

15. IT IS FURTHER ORDERED that the Commission SHALL SEND a copy of the *Order on Reconsideration* in a report to Congress and the Government Accountability Office pursuant to the Congressional Review Act, *see* 5 U.S.C. § 801(a)(1)(A).

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<sup>28</sup> *Id.* at 15879-83.

<sup>29</sup> The RFA, *see* 5 U.S.C. §§ 601-612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

<sup>30</sup> 5 U.S.C. § 605(b).

<sup>31</sup> *Report and Order*, 23 FCC Rcd at 15883.

16. IT IS FURTHER ORDERED that the Joint Request for Clarification or, in the Alternative, for Limited Reconsideration filed jointly by the Enterprise Wireless Alliance and Sprint Nextel Corporation on December 17, 2008, IS HEREBY GRANTED, under the conditions set forth in this *Order on Reconsideration*.

17. IT IS FURTHER ORDERED that the freeze placed on applications for new 900 MHz Business/Industrial Land Transportation licenses by *Public Notice*, September 17, 2004, IS HEREBY MODIFIED, under the conditions set forth in this *Order on Reconsideration*.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary