

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

In the Matter of)	
)	
SPECTRUM NETWORKS GROUP, LLC)	WT Docket No. 14-100
)	
Applications and Waiver Request to Allow It to)	
Provide Private, Internal Machine-To-Machine)	
Communications to Businesses on 900 MHz)	
Business/Industrial/Land Transportation Channels)	

MEMORANDUM OPINION AND ORDER

Adopted: December 5, 2018

Released: December 10, 2018

By the Commission:

I. INTRODUCTION

1. This *Memorandum Opinion and Order* addresses an Application for Review¹ of a decision by the Wireless Telecommunications Bureau’s Mobility Division (Division) that denied the request of Spectrum Networks Group, LLC, (SNG) for a waiver permitting it to operate Specialized Mobile Radio (SMR) systems on 896-901/935-940 MHz (900 MHz) Business/Industrial/Land Transportation (B/ILT) channels.² For the reasons stated below, we deny the Application for Review.

II. BACKGROUND

2. The 900 MHz band consists of 10-channel blocks that alternate between SMR blocks that are geographically licensed and B/ILT blocks in which channels are assigned on a site-by-site basis.³ Section 90.617(c) of the Commission’s rules provides that SMR systems will not be authorized by initial licenses for 900 MHz B/ILT channels.⁴ 900 MHz B/ILT licensees may, however, convert their licenses to commercial authorizations and/or assign their licenses to SMR entities.⁵

¹ Spectrum Networks Group, LLC, Application for Review (filed May 13, 2015) (AFR).

² *Spectrum Networks Group, LLC*, Order, 30 FCC Rcd 3509 (WTB MD 2015) (*Waiver Order*).

³ See 47 CFR §§ 90.613, 90.617(c), (f).

⁴ See 47 CFR § 90.617(c). SMR systems are defined as those “in which licensees provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz bands on a commercial basis.” 47 CFR § 90.7.

⁵ See 47 CFR § 90.621(f). In 2004, the Commission ordered rebanding of the 806-824/851-869 MHz band (800 MHz band) to resolve interference between commercial systems—primarily SMR systems operated by Nextel Communications, Inc. (Nextel)—and public safety systems in the band. See *Improving Public Safety Communications in the 800 MHz Band, et al.*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, 14972, para. 2 (2004). In order to provide regulatory flexibility for Nextel to shift some of its operations to the 900 MHz band to create “green space” to facilitate 800 MHz rebanding, the Commission amended its rules to allow 900 MHz B/ILT licensees to convert or assign their authorizations for commercial use. See *id.* at 15127-28, paras. 335-37. In 2008, however, the Commission reaffirmed its commitment to “traditional B/ILT” operations by rejecting a proposal to amend the rules to permit any fixed or mobile service on 900 MHz B/ILT channels. *Amendment of Part 90 of the Commission’s Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Band Allotted to the Business and Industrial Land Transportation Pool*, Report and Order, 23 FCC Rcd 15856, 15863-64, paras. 12-13 (2008) (*2008 900 MHz Report and Order*).

3. In 2013 and 2014, SNG filed 110 applications seeking a total of more than two thousand 900 MHz B/ILT Pool channels at various locations across the country.⁶ SNG requested a waiver of section 90.617(c), stating that it intended to build a network using 900 MHz B/ILT channels to provide communications services to businesses for their private, internal, machine-to-machine communications needs.⁷ The Division sought comment on the waiver request.⁸ Prospective users of SNG's proposed network, and partners in its design and construction, supported the waiver request.⁹ Private land mobile radio interests opposed the request on the grounds that 900 MHz B/ILT spectrum should not be assigned to for-profit operations because B/ILT users (particularly critical infrastructure entities) need these channels to expand capacity and/or coverage.¹⁰

4. In 2015, the Division denied the waiver request and dismissed the applications.¹¹ It concluded that grant of the waiver request would undermine the purpose of section 90.617(c), which is "to 'establish[] a clear demarcation between our spectrum allocation for SMR and other Part 90 services and eliminate[] the risk of SMR encroachment on non-auctionable PMRS [Private Mobile Radio Service] spectrum.'"¹² The Division also found that SNG had not established any unique or unusual circumstances warranting a waiver.¹³ Finally, the Division concluded, given the volume of channels requested and SNG's intention to seek additional channels in the future, that grant of the request could have a significant effect on the nature of the 900 MHz B/ILT band and that SNG's proposal would be more properly presented in the context of a rulemaking proceeding.¹⁴

5. In its Application for Review, SNG argued primarily that the Division treated it differently from similarly situated parties and penalized it for being candid about its contemplated operations.¹⁵ SNG then filed a Petition for Orders to Show Cause challenging the eligibility of seventeen 900 MHz licensees to hold B/ILT licenses that were granted after SNG filed its applications, asserting that those licenses were being used to provide for-profit service to third parties in violation of the B/ILT

⁶ The application file numbers are listed in the caption of the *Waiver Order*. See *Waiver Order*, 30 FCC Rcd at 3509.

⁷ See Request of Spectrum Networks Group, LLC for Waiver at 1-2 (filed Mar. 14, 2014) (Request) (on file in the Commission's Universal Licensing System under, e.g., FCC File No. 0006201203). SNG argued that a waiver was warranted because its proposed network would provide machine-to-machine services on channels no wider than needed, using fallow B/ILT channels solely for B/ILT purposes without diverting them from the B/ILT Pool. See Request at 4; see also Letter from Pantelis Michalopoulos and Christopher Bjornson, Counsel to Spectrum Networks Group, to Marlene H. Dortch, Secretary, FCC (Apr. 8, 2014) (on file in the Commission's Universal Licensing System under, e.g., FCC File No. 0005974432).

⁸ See *Wireless Telecommunications Bureau Seeks Comment on Spectrum Networks Group LLC Applications and Waiver Request to Allow It to Provide Private, Internal Machine-to-Machine Communications to Businesses on 900 MHz Business/Industrial/Land Transportation Channels*, Public Notice, 29 FCC Rcd 8238 (WTB MD 2014).

⁹ See *Waiver Order*, 30 FCC Rcd at 3511-12, para. 4 (describing the record in response to SNG's waiver requests).

¹⁰ See *id.* at 3512, para. 12 (describing the record in response to SNG's waiver requests).

¹¹ See *id.* at 3515, para. 14.

¹² *Id.* at 3513-14, para. 8 (quoting *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Band*, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, 11 FCC Rcd 1463, 1537, para. 141 (1995)).

¹³ *Id.* at 3514, para. 9. It noted that SNG's proposed services could be provided on other spectrum, and it found that a waiver was not warranted to avoid the cost of acquiring spectrum at auction or in the secondary market. *Id.*

¹⁴ *Id.* at 3514, para. 10.

¹⁵ See AFR at 6-16. SNG also argues that the *Waiver Order* contravened Commission precedent and reached a number of erroneous factual findings. *Id.* at 16-22.

rules.¹⁶ Subsequently, SNG's subsidiary, M2M Spectrum Networks, LLC (M2M), filed a petition for rulemaking seeking to allow initial use of 900 MHz B/ILT channels by non-B/ILT licensees for the provision of commercial service to B/ILT eligibles.¹⁷

6. In 2016, the Division denied the Petition for Orders to Show Cause.¹⁸ It found that the petition was largely based on speculation, conjecture, and incomplete facts, and that the petition was contradicted by important information provided by the various licensees.¹⁹ In 2017, the Commission released a *Notice of Inquiry* to examine whether any rule changes may be appropriate to increase access to spectrum, improve spectrum efficiency, and expand flexibility in the 900 MHz band, and to better serve users' current and future communications needs.²⁰ It sought comment on several ideas, including amending part 90 to permit use of 900 MHz B/ILT channels as suggested by M2M.²¹

III. DISCUSSION

7. We will grant an application for review only if the staff's decision: (1) conflicts with statute, regulation, case precedent, or established Commission policy; (2) involves a question of law or policy that has not been previously resolved by the Commission; (3) involves precedent or policy that should be overturned or revised; (4) makes an erroneous finding as to an important or material question of fact; or (5) commits a prejudicial procedural error.²² For the reasons set forth below, we deny the Application for Review.

8. SNG's primary argument is that the Division treated it differently from other applicants for 900 MHz B/ILT channels.²³ In denying the Petition for Orders to Show Cause, the Division closely reviewed the licenses identified by SNG and concluded that SNG had not demonstrated that those licenses were granted improperly.²⁴ Based upon our review of the record and licenses at issue, we similarly find no basis for SNG's allegation of differential treatment.

9. Next, SNG argues that the denial of its waiver request contravenes Commission policy because part 90 already permits the use of 900 MHz B/ILT channels to provide commercial service to third parties under certain circumstances.²⁵ It states that "the only difference" between its proposal and the rule permitting 900 MHz B/ILT licensees to convert their licenses to commercial authorizations and/or assign their licenses to SMR entities "is one of form, not one of substance."²⁶ We disagree. The Commission in 2008 rejected a proposal to permit any fixed or mobile service to get new 900 MHz B/ILT

¹⁶ Petition of Spectrum Networks Group, LLC, for Orders to Show Cause (filed June 26, 2015) (on file in the Commission's Universal Licensing System under, e.g., Call Sign WQUI888).

¹⁷ Petition for Rulemaking of M2M Spectrum Networks, LLC, RM-11755 (filed June 29, 2015).

¹⁸ *Spectrum Networks Group, LLC*, Order, 31 FCC Rcd 8902, 8907, para. 16 (WTB MD 2016) (*Show Cause Order*). SNG did not seek reconsideration or review of that decision.

¹⁹ *Id.*

²⁰ *See Review of the Commission's Rules Governing the 896-901/935-940 MHz Band; Realignment of the 896-901/935-940 MHz Band to Create a Private Enterprise Broadband Allocation; Amendment of the Commission's Rules to Allow for Specialized Mobile Radio Services Over 900 MHz Business/Industrial Land Transportation Frequencies*, Notice of Inquiry, 32 FCC Rcd 6421, 6421, para. 1 (2017).

²¹ *See id.* at 6427-28, 6428-29, paras. 15-16, 19-20.

²² 47 CFR § 1.115(b)(2).

²³ *See* AFR at 6-16.

²⁴ *See Show Cause Order*, 31 FCC Rcd at 8904-07, paras. 5-14.

²⁵ AFR at 16-20.

²⁶ *See id.* at 18.

channels, which would have accommodated SNG's proposed operations.²⁷ Instead, the Commission reaffirmed that the spectrum should be kept available for current and future "traditional B/ILT" operations, *i.e.*, eligible licensees controlling and operating their own systems to address their own private, internal communications needs.²⁸ Whatever the tension between the policy of increasing flexibility for incumbent B/ILT licensees and reserving unused channels for traditional B/ILT operations, the appropriate venue for resolving it is a new Commission rulemaking, not a Bureau-level waiver. Thus the Division correctly concluded that SNG's proposal to use new B/ILT channels for SMR service conflicted with Commission precedent and the underlying purpose of the 900 MHz B/ILT rules.²⁹

10. In addition, SNG asserts that the Division made several erroneous findings about an important or material question of fact, particularly regarding the public interest benefits of the proposal.³⁰ We conclude that the Division made no material errors. SNG argues that the Division did not afford sufficient weight to the public benefits of putting fallow spectrum to use and filling a market niche for low-cost machine-to-machine applications.³¹ We note, however, assuming *arguendo* that these benefits would have followed from grant of the request, that an argument that a waiver would serve the public interest is not sufficient grounds for granting a waiver under section 1.925(b)(3) of the Commission's rules,³² unless the applicant also shows that application of the rule would not serve its underlying purpose or that unique or unusual circumstances are involved.³³ SNG made neither showing. In addition, even if the Division incorrectly found that SNG requested the last available channel or channels in four rather than three of certain key markets, or that it misstated the number of additional channels beyond the initial 2,000 that SNG sought permission to request in the future,³⁴ the Division correctly concluded that that grant of SNG's request could alter the nature of the 900 MHz B/ILT band and would therefore be more properly presented in a rulemaking proceeding.³⁵

11. Finally, we note that no commenter to the *Notice of Inquiry*, not even M2M, favored M2M's proposal to permit initial use of 900 MHz B/ILT channels by non-B/ILT licensees.³⁶ Thus, grant of SNG's waiver request would not only conflict with the underlying purpose of the 900 MHz B/ILT rules, but also would have altered the spectral landscape through the waiver process in ways that ultimately were not supported in the broader record developed in response to the *Notice of Inquiry*.

IV. ORDERING CLAUSE

12. IT IS ORDERED that, pursuant to sections 4(i), 5(c), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 155(c), 303(r), and section 1.115 of the Commission's

²⁷ See *2008 900 MHz Report and Order*, 23 FCC Rcd at 15863-64, paras. 12-13.

²⁸ See *id.* The Commission stated that it would "be particularly vigilant in assessing an applicant's basic minimum qualifications to hold a 900 MHz B/ILT license," in order to preserve that availability. *Id.* at 15873, para. 31.

²⁹ See *Waiver Order*, 30 FCC Rcd at 3513-14, para. 8.

³⁰ See AFR at 20-22.

³¹ See *id.* at 20-21.

³² 47 CFR § 1.925(b)(3).

³³ See, e.g., *Requests for Waiver of Section 1.2109(b) of the Commission's Rules and Request for Discretionary Implementation of Section 1.2109(b) of the Commission's Rules*, Memorandum Opinion and Order, 22 FCC Rcd 3969, 3974, para. 13 (WTB ASAD 2007); *Maritime Communications/Land Mobile LLC*, Order, 21 FCC Rcd 13735, 13740, para. 8 n.34 (WTB MD 2006), *recon. denied*, Order on Reconsideration, 22 FCC Rcd 4780 (WTB MD 2007), *review denied*, Order on Reconsideration and Memorandum Opinion and Order, 31 FCC Rcd 13729 (2016).

³⁴ See *id.* at 21-22.

³⁵ See, e.g., *Nextel Communications, Inc.*, Order, 14 FCC Rcd 11678, 11691-92, para. 31 (WTB 1999); see also *Waiver Order*, 30 FCC Rcd at 3514, para. 10.

³⁶ See M2M Spectrum Networks, LLC Comments, WT Docket No. 17-200, at 2-3.

rules, 47 CFR § 1.115, the Application for Review filed by Spectrum Networks Group, LLC, on May 13, 2015, IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch
Secretary