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FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[WT Docket Nos. 05-62 and 02-55; FCC 13-85]

Improving Public Safety Communications in the 800 MHz Band

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: In this document, the Federal Communications Commission (Commission) modifies 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. This action will allow qualified applicants to gain access to 900 MHz B/ILT spectrum without unnecessary delay, and promote spectrum efficiency, by allowing access to spectrum that may otherwise be unused during the 800 MHz rebanding process.

DATES: Effective [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER].

FOR FURTHER INFORMATION CONTACT: Joyce Jones, Mobility Division, Wireless Telecommunications Bureau, joyce.jones@fcc.gov, (202) 418-1327, TTY (202) 418-7233.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order on Reconsideration, in WT Docket Nos. 05-62 and 02-55, FCC 13-85, adopted June 21, 2013, and released on June 24, 2013. The complete text of this document may be downloaded from the FCC web site (<http://www.fcc.gov>) at http://transition.fcc.gov/Daily_Releases/Daily_Business/2013/db0625/FCC-13-85A1.pdf. This document and all related Commission documents are also available for inspection and copying during normal business hours in the FCC Reference Center, 445 12th Street, SW, Washington, DC 20554. A copy of the complete text may also be purchased from the Commission's copy contractor, Best Copy and Printing, Inc., 445 12th Street, SW., Room CY-B402, Washington, DC 20554. Alternative

formats are available to persons with disabilities by sending an e-mail to FCC504@fcc.gov or by calling the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (TTY).

Synopsis of the Report and Order

1. In this document, the Commission grants, in accordance with the terms set forth in the Order on Reconsideration, the unopposed joint request for clarification or limited reconsideration filed by the Enterprise Wireless Alliance (EWA) and Sprint Nextel Corporation (Sprint Nextel) (collectively, “Petitioners”) with respect to one aspect of the Report and Order, 73 FR 67794, November 17, 2008, in this proceeding, 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.

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, medical). In 2004, the Commission launched its 800 MHz rebanding initiative through the 800 MHz R&O. See Report and Order (800 MHz R&O), 69 FR 67823, November 22, 2004; Supplemental Report and Order on Reconsideration (800 MHz Supplemental R&O), 70 FR 6758, February 8, 2005. Shortly thereafter, 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). See Public Notice, 19 FCC Rcd 18277 (2004).

3. 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. See Notice of Proposed Rulemaking and Memorandum Opinion and Order, 70 FR 13143, March 18, 2005.

4. In 2008, the Commission declined to adopt the proposed changes and found that a wholesale freeze on applications for new 900 MHz B/ILT authorizations was no longer necessary. The Commission lifted the freeze in each NPSPAC region six months after rebanding was completed in that particular NPSPAC region, 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. See Report and Order, 73 FR 67794, November 17, 2008.

5. Discussion. The Commission concludes 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. The Commission finds that implementing this change will maximize effective use of this spectrum by permitting the initiation of new B/ILT service without unnecessary delay. While the Commission originally found that the delay was necessary as a component of the flexibility that Sprint Nextel required in order to fulfill its rebanding obligations, it finds that with Sprint Nextel's concurrence, the delay is no longer necessary. In addition, since the Commission launched its rebanding initiative in 2004, rebanding has only recently been completed in 11 out of 55 NPSPAC regions. Further, during this time, the Commission received 29 requests for waiver of the freeze. The Petitioners' requested relief would likely supplant the need for such filings and the associated paperwork burdens and adjudication costs. Accordingly, the Commission concludes 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. Thus, the Commission clarifies that its relief extends regardless of the status of rebanding in a particular NPSPAC region, so long as the application includes such concurrence.

6. In all other respects, the Commission retains 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. The Commission's action does not affect any of the other conditions of lifting the freeze noted in the Report and Order.

I. PROCEDURAL MATTERS

A. Paperwork Reduction Act Analysis

7. The 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. Congressional Review Act

8. The Commission will 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).

C. Final Regulatory Flexibility Analysis

9. In the Report and Order, the Commission determined that the rules adopted there would not, under the Regulatory Flexibility Act of 1980, as amended (RFA),¹ have a "significant economic impact on a substantial number of small entities."² 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. See Report and Order, 73 FR 67794, November 17, 2008. We received no petitions for reconsideration of that Final Regulatory Flexibility

¹ 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. 104-121, Title II, 110 Stat. 857 (1996).

² 5 U.S.C. 605(b).

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.

II. ORDERING CLAUSES

10. 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, the Order on Reconsideration IS HEREBY ADOPTED. The Order on Reconsideration shall become effective **[INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE FEDERAL REGISTER]**.

11. 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).

12. 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.

13. 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.

[FR Doc. 2013-17058 Filed 07/16/2013 at 8:45 am; Publication Date: 07/17/2013]