

**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 on Certain Part 90)	
)	
Consolidating the 800 MHz and 900 MHz)	
Industrial/Land Transportation and Business Pool)	
Channels)	
_____)	

To: The Commission

**COMMENTS ON JOINT REQUEST FOR CLARIFICATION
OR, IN THE ALTERNATIVE, FOR LIMITED
RECONSIDERATION FILED BY ENTERPRISE
WIRELESS ALLIANCE AND SPRINT NEXTEL CORPORATION**

The National Association of Manufacturers and MRFAC, Inc. ("NAM/MRFAC"), by their counsel, hereby submit comments on the "Joint Request for Clarification Or, In the Alternative, for Limited Reconsideration filed by Enterprise Wireless Alliance and Sprint Nextel Corporation" (the "Joint Request") in this proceeding.

Background

As the Commission's records reflect, NAM/MRFAC, together with United Telecom Council, Association of American Railroads, and American Petroleum Institute, filed Joint Comments in this pleading urging retention of 900 MHz Business, Industrial, and Land Transportation ("B/ILT") channels for site-specific licensing, as well as the adoption of rules

designed to avoid a repetition at 900 MHz of the kind of interference suffered at 800 MHz.

NAM/MRFAC were accordingly much gratified with the Commission's acknowledgement of:

“. . . the vital communications role that 900 MHz B/ILT spectrum plays in enabling traditional B/ILT licensees to safeguard our nation's critical infrastructure industries. Such licensees must ensure that they have access to communications pathways to meet the essential communications needs of such varied and critical industries as utilities, land transportation, manufacturers/industry, and petro-chemical. . . . The 900 MHz B/ILT spectrum is also used by a range of licensees in a variety of ways to facilitate their efficient operations, to enable the cost-effective production of goods and services offered to the public, and to promote the safety of employees. Because of the nature of their operations, 900 MHz B/ILT incumbents demand substantial control over their own communications systems, and require greater certainty for their vital communications needs than some commercial carriers are currently willing to provide. Commenters have pointed out that, in some locations, commercial service offerings simply are not available to meet their needs. Where commercial service is available, in times of crisis and emergency, the public switched telephone network (PSTN) and commercial wireless services in an affected area can become overloaded and unreliable.”¹

The *Report and Order* does much to validate the long-held NAM/MRFAC view that Commission protection of spectrum for private, internal use radio systems is vital to the manufacturers of the United States, and their ability to compete even more effectively in the global marketplace -- an abiding concern, but one especially pertinent during this economic downturn.

The *Report and Order* also addressed the freeze on the filing of 900 MHz applications. The Commission adopted the freeze in order to ensure that green space would be available to accommodate Sprint Nextel subscribers via special temporary authority (“STA”) during 800 MHz rebanding. In the *Report and Order* the Commission determined that the freeze should be

¹ *Report and Order* in WT Docket No. 05-62, 23 FCC Rcd 15856 (2008), at para. 13.

lifted on a NPSPAC-region-by-NPSPAC-region basis, i.e. “six months after rebanding is complete in [a] particular NPSPAC region.”²

The Joint Request urges the Commission to take a more targeted approach to the green space issue. In particular, the filers urge that the Commission allow the filing of 900 MHz B/ILT applications earlier than six months before the completion of rebanding in a NPSPAC region with a letter of concurrence from Sprint Nextel. The Joint Request observes that there are a number of areas where Sprint Nextel has not needed 900 MHz green space and, hence, has not requested an STA. In still other areas, it anticipates no need for an STA. These are areas and spectrum which would unnecessarily lie fallow for an extended period of time under the current policy.

NAM/MRFAC endorse the approach proposed in the Joint Petition. It affords manufacturers and other industrial users which rely on private, internal use radio systems earlier access to 900 MHz spectrum resources. This is of particular concern inasmuch as the freeze is now into its fifth year. During this time, manufacturers along with other private radio eligibles have been precluded from seeking additional 900 MHz resources where, for example, they have opened new plants. The Joint Request’s solution thus represents a refinement and re-balancing of the critical goal of completing rebanding, while at the same time furthering the bedrock principle of maximizing utilization of the spectrum resource.

NAM/MRFAC also concur with the view that this clarification need not undermine the Commission’s concern about possible speculative applications at 900 MHz. NAM/MRFAC are confident that the frequency advisory committees certified for 900 MHz coordination will be

² *Id.* at para 27.

alert for signs of any such abuse, and appropriately communicate with the Commission where there are indications of same.

Finally, there is one point where clarification might be in order. The Joint Request urges that the Commission clarify, or if need be, reconsider the *Report and Order* so as to “permit the acceptance and processing of 900 MHz B/ILT applications prior to six months after rebanding has been completed in a NPSPAC region, provided that the application is accompanied by a letter of concurrence from Nextel.”³ While not explicitly stated, the relief sought would not appear to be limited to applications filed during the interval between the completion of rebanding in a region and before the end of the six-month waiting period, but would also apply to applications filed prior to the completion of rebanding in a given region as well. This would be consistent with the fact that applications for new or modified 800 MHz facilities can be filed once the negotiation period for specific groups of licensees ends.⁴ If a freeze can be lifted for 800 MHz applications which are the direct subject of rebanding, there would seem no reason why it could not also be lifted for ancillary spectrum (900 MHz) with a letter of concurrence from Sprint. The Commission may wish to be specific on this point in its order.

³ Joint Request at 5-6.

⁴ See Public Notice, DA 05-1340, 20 FCC Rcd 8905 (WTB 2005).

Conclusion

Accordingly, NAM/MRFAC urge a grant of the relief sought in the Joint Request, together with a clarification of the point raised herein.

Respectfully submitted,

THE NATIONAL ASSOCIATION
OF MANUFACTURERS

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March 27, 2009


CERTIFICATE OF SERVICE

I, Stephanie M. Lemke, hereby certify that I have caused the attached Comments On Joint Request For Clarification Or, In The Alternative, For Limited Reconsideration Filed By Enterprise Wireless Alliance And Sprint Nextel Corporation to be deposited in the U.S. Mail, first-class postage prepaid, this 27th day of March 2009, addressed as follows:

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**Federal Communications Commission**

The FCC Acknowledges Receipt of Comments From ...
The National Association of Manufacturers & MRFAC, Inc.
...and Thank You for Your Comments

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