

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

In the Matter of	)	
	)	
Improving Spectrum Efficiency Through Flexible	)	WT Docket No. 12-64
Channel Spacing and Bandwidth Utilization for	)	
Economic Area-based 800 MHz Specialized	)	
Mobile Radio Licensees	)	
	)	
Request for Declaratory Ruling that the	)	WT Docket No. 11-110
Commission's Rules Authorize Greater than 25	)	
kHz Bandwidth Operations in the 817-824/862-	)	
869 MHz Band	)	

**NOTICE OF PROPOSED RULEMAKING**

**Adopted: March 7, 2012**

**Released: March 9, 2012**

**Comment Date: [15 days after date of publication in the Federal Register]**

**Reply Comment Date: [25 days after date of publication in the Federal Register]**

By the Commission:

**I. INTRODUCTION**

1. In an effort to reduce barriers to innovation and investment in new technologies and to promote greater spectrum efficiency, we propose to eliminate a legacy channel spacing and bandwidth limitation for Economic Area market (EA)-based<sup>1</sup> 800 MHz Specialized Mobile Radio (SMR) licensees in the 813.5-824/858.5-869 MHz band.<sup>2</sup> Subject to certain protections to safeguard 800 MHz public safety licensees, elimination of the legacy channel spacing and bandwidth limitation should provide greater flexibility to EA-based 800 MHz SMR licensees to deploy competitive wireless services over contiguous channels.

**II. BACKGROUND**

2. In 1995, the Commission established a new licensing framework for 800 MHz SMR and designated 10 megahertz of contiguous spectrum in the 800 MHz band for EA-based licensing.<sup>3</sup> In doing

<sup>1</sup> 47 C.F.R. §§ 90.7, 90.681.

<sup>2</sup> Licensees may operate 800 MHz high density cellular systems in the band segment 813.5-824/858.5-869 MHz in the counties listed in 47 C.F.R. § 90.614(c) (the Expanded SMR band). *See* 47 C.F.R. §§ 90.7, 90.614(c); *see also infra* note 17. In the rest of the United States and its territories, except the Canada and Mexico border areas, licensees may operate 800 MHz high density cellular systems in the 817-824/862-869 MHz band segment. *See* 47 C.F.R. §§ 90.7, 90.614(a)-(b), 90.619; *see also infra* note 17.

<sup>3</sup> Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band; Implementation of Sections 3(n) and 322 of the Communications Act; Regulatory Treatment of Mobile Services; Implementation of Section 309(j) of the Communications Act – Competitive Bidding, PR Docket No. 93-144, RM-8117, RM-8030, RM-8029, GN Docket No. 93-252, PP Docket No. 92-253, *First Report* (continued...)

so, the Commission transitioned the 800 MHz SMR service from a site-by-site licensing process that required licensees to seek prior authorization to add or modify individual frequency channels and transmitter sites to a geographic-based licensing mechanism that provides licensees with the flexibility to add transmitters or modify operations within their licensed market and licensed spectrum as market conditions dictate.<sup>4</sup>

3. The Commission determined that wide-area licensing would “give licensees the flexibility to use technologies that can operate on either contiguous or non-contiguous spectrum”<sup>5</sup> and that large spectrum blocks were necessary for “broadband technologies such as CDMA and GSM.”<sup>6</sup> With wide-area licenses, the Commission believed licensees would be able to “compete effectively with other CMRS providers, such as cellular and broadband PCS systems.”<sup>7</sup> Further, the Commission stated its intent in the Executive Summary of the *800 MHz SMR First Report and Order* that EA-based licensees would have “full discretion over channelization of available spectrum within the block.”<sup>8</sup> The Commission also adopted an out-of-band emission requirement that applies to the outer channels of the spectrum block and to spectrum adjacent to interior channels used by incumbents.<sup>9</sup>

4. While the Commission may have intended to provide EA-based 800 MHz SMR licensees discretion over channelization within the channel block, it left unchanged an existing channelization scheme and bandwidth limitation in its rules for the relevant portion of the 800 MHz band.<sup>10</sup> Section 90.209 of the Commission’s rules establishes channel spacing and authorized bandwidths for particular frequencies, unless specified elsewhere.<sup>11</sup> Under Section 90.209, frequencies in 809-824/854-869 MHz are limited to 25 kHz channels with an authorized bandwidth of 20 kHz.<sup>12</sup>

5. In 2004, the Commission initiated a process to reconfigure the 800 MHz band to “address the [then] ongoing and growing problem of interference to public safety communications in the 800 MHz band.”<sup>13</sup> The interference problem was caused “by a fundamentally incompatible mix of two types of

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*and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking*, 11 FCC Rcd 1463, 1479, 1483, ¶¶ 1, 13, 23 (1995) (*800 MHz SMR First Report and Order*).

<sup>4</sup> *Id.* at 1474-76, 1479-80, ¶¶ 4-8, 13-14.

<sup>5</sup> *Id.* at 1479-80, ¶ 14.

<sup>6</sup> *Id.* at 1489, ¶ 37.

<sup>7</sup> *Id.* at 1479, ¶ 13.

<sup>8</sup> *Id.* at 1469, ¶ 3.

<sup>9</sup> *Id.* at 1519, ¶ 101; 47 C.F.R. § 90.691.

<sup>10</sup> *See* 47 C.F.R. § 90.209(b)(5).

<sup>11</sup> *Id.*

<sup>12</sup> *Id.* The channelization scheme and bandwidth authorization originated from a 1978 decision in which the Commission deemed that analog frequency modulated emissions below 947 MHz had an authorized bandwidth of 20 kHz with frequency deviation of 5 kHz. *Private Land Mobile Radio Services, Report and Order*, 69 FCC 2d 1612 (1978); 43 Fed. Reg. 54788, 64838-39 (Nov. 22, 1978).

<sup>13</sup> Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels; Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below the 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems; Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service; Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service; Amendment of Section 2.106 of the Commission’s Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service; WT

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communications systems: cellular-architecture multi cell systems . . . and high-site non-cellular systems.”<sup>14</sup> In the short term, the Commission implemented technical standards that defined unacceptable interference in 800 MHz, while also reconfiguring the band to separate commercial wireless systems from public safety systems on a separate track.<sup>15</sup> Under the reconfiguration plan, SMR and other cellular-system operators including Sprint Nextel Corp. (Sprint Nextel) were required to vacate the 806-817/851-862 MHz band and relocate to the 817-824/862-869 MHz band.<sup>16</sup>

6. Sprint Nextel holds the majority of the EA-based 800 MHz SMR licenses (commonly referred to as Enhanced SMR or ESMR)<sup>17</sup> and reported as of June 2011 that it held or will soon hold “14 [megahertz] of geographically licensed contiguous 800 MHz channels across much of the nation.”<sup>18</sup> Sprint Nextel has used its licenses at 817-824/862-869 MHz primarily for its iDEN operations, which it describes as “a 2G technology that uses non-contiguous channels to provide cellular, messaging and push-to-talk services.”<sup>19</sup>

7. In December 2010, Sprint Nextel announced that it was transitioning its existing operations off of some of its EA-based 800 MHz licenses in order to incorporate the spectrum into its CDMA network,<sup>20</sup> which it claims requires contiguous spectrum and “occupies a 1.25 [megahertz] bandwidth.”<sup>21</sup> However, under the channelization scheme and bandwidth limitation in Section 90.209 of the Commission’s rules, Sprint Nextel is unable to aggregate the channels in its EA-based 800 MHz SMR licenses to provide CDMA.<sup>22</sup>

8. In June 2011, Sprint Nextel filed a petition for declaratory ruling asking the Commission to “clarify and declare that its rules permit larger than 25 kHz bandwidth operations in the [ESMR] portion of the 800 MHz band.”<sup>23</sup> Sprint Nextel requested in the alternative that the Commission issue a

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Docket No. 02-55, ET Docket No. 00-258, RM-9498, RM-10024, ET Docket No. 95-18, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 14972, ¶ 2 (2004) (*800 MHz Reconfiguration Report and Order*).

<sup>14</sup> *Id.*

<sup>15</sup> *See id.* at 14976-78, ¶¶ 8-12.

<sup>16</sup> *Id.* at 14984, ¶ 23. In part as compensation for the 800 MHz reconfiguration plan, Sprint Nextel was granted two paired five megahertz blocks in the 1.9 GHz band. *Id.* at 14988, ¶ 33.

<sup>17</sup> Enhanced SMR and ESMR are terms coined by Sprint Nextel to describe SMR systems that use cellular architecture, *i.e.*, systems that use multiple, interconnected, multi-channel transmit/receive cells and employ frequency reuse to serve a larger number of subscribers than is possible using non-cellular technology. *See id.* at 14972 n.6.

<sup>18</sup> Request for Declaratory Ruling That The Commission’s Rules Authorize Greater Than 25 kHz Bandwidth Operations in the 817-824/862-869 MHz Band, *Petition for Declaratory Ruling of Sprint Nextel Corp.*, WT Docket No. 11-110, at 3 (filed June 3, 2011) (Sprint Nextel Petition).

<sup>19</sup> *Id.* at 3.

<sup>20</sup> *Id.* (citing Sprint Announces Network Vision – A Cutting-Edge Network Evolution Plan with Network Partners Alcatel-Lucent, Ericsson and Samsung, Press Release, Dec. 6, 2010, *available at* <http://newsroom.sprint.com/news/sprint-announces-network-vision-network-evolution-plan.htm>).

<sup>21</sup> Sprint Nextel Petition at 4 n.7. Sprint Nextel states in its reply comments that “CDMA technology requires access to approximately 1.5 MHz of contiguous 800 MHz spectrum.” Sprint Nextel Reply Comments at 5.

<sup>22</sup> *See* Sprint Nextel Petition at 3-4.

<sup>23</sup> *Id.* at 1. Prior to Sprint Nextel’s filing the petition, and subsequently while the petition has been pending, the Commission has granted waivers and special temporary authorizations to allow Sprint Nextel to deploy and test

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notice of proposed rulemaking “to revise Section 90.209 to the extent necessary to expressly authorize ESMR band EA licensees to deploy technologies using bandwidths greater than 25 kHz on their contiguous spectrum assignments.”<sup>24</sup> Sprint Nextel argues that the Commission never intended for the 25 kHz channel spacing and 20 kHz bandwidth limitation to apply to geographically licensed 800 MHz SMR spectrum and that such application will frustrate the Commission’s intent of providing flexibility to EA-based 800 MHz SMR licensees.<sup>25</sup> Sprint Nextel also contends that the bandwidth limitation in Section 90.209 and the out-of-band emission requirement in Section 90.691 of the Commission’s rules are apparently inconsistent and in conflict.<sup>26</sup> The Wireless Telecommunications Bureau released a *Public Notice* seeking comment on Sprint Nextel’s petition in June 2011.<sup>27</sup>

9. Several commenters in response to the *Public Notice* support Sprint Nextel’s request.<sup>28</sup> SouthernLINC Wireless and Southern Company urge the Commission to also eliminate the bandwidth limitation and channel spacing in Section 90.209 for the “expanded” SMR band in the southeastern United States, a request that Sprint Nextel supports.<sup>29</sup> The Association of Public-Safety Communications Officials-International, Inc. (APCO) and the National Public Safety Telecommunications Council (NPSTC) do not object to Sprint Nextel’s request on the condition that certain steps are taken to avoid interference with 800 MHz public safety licensees.<sup>30</sup> While AT&T generally supports efforts to “provide flexibility to exclusive geographic area licensees of commercial mobile services,”<sup>31</sup> it and Motorola

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CDMA in several markets on its EA-based 800 MHz SMR licenses. *See* Sprint Nextel Call Signs WPLM660, WPLM661, WQNX442, WQNX443, WQNX444, WQOQ770, WQOQ771, WQOQ772, and WQOU823. The Commission imposed several conditions on all of these waivers and special temporary authorizations to ensure that the wider-band operations do not increase the interference potential to 800 MHz public safety licensees. For example, the waivers and authorizations are conditioned on Sprint Nextel providing notice to certain 800 MHz public safety licensees prior to activating CMDA sites pursuant to the waiver or STA, and reaffirm that Sprint Nextel must comply with the Commission’s rules prohibiting unacceptable interference to non-cellular 800 MHz licensees. *See id.*

<sup>24</sup> Sprint Nextel Petition at 1 n.1.

<sup>25</sup> *Id.* at 6.

<sup>26</sup> *Id.* at 3-4; Sprint Nextel Reply Comments at 6. Sprint Nextel argues there is an apparent inconsistency or incongruity between the channel spacing and bandwidth limitation in Section 90.209 and the out-of-band emission requirements of Section 90.691, which Sprint Nextel interprets as “permit[ting] wider bandwidth operations on contiguous channel EA licenses.” Sprint Nextel Petition at 3-4; *see also* Sprint Nextel Reply Comments at 6. As described *infra*, Section 90.691 establishes out-of-band emission requirements that apply to the outside channels of a spectrum block in order to protect operations outside of the licensee’s spectrum; it is not a separate bandwidth authorization. *See infra* note 39.

<sup>27</sup> Wireless Telecommunications Bureau Seeks Comment on Petition From Sprint Nextel to Allow Wideband Operations in 800 MHz Enhanced Specialized Mobile Radio Service Bands, WT Docket No. 11-110, *Public Notice*, 26 FCC Rcd 9428 (2011).

<sup>28</sup> *See* Enterprise Wireless Alliance (EWA) Comments at 3-4; Smartcomm, LLC, License Acquisitions, LLC, Caribe Spectrum Holdings, Inc., Preferred Spectrum Investments, LLC, and Concepts To Operations, Inc. (Mobile Broadband Coalition) Comments at 2; Southern Communications Services, Inc. (SouthernLINC Wireless) Comments at 3-4; Southern Company Services, Inc. (Southern Company) Reply Comments at 3.

<sup>29</sup> SouthernLINC Wireless Comments at 4-5; Southern Company Reply Comments at 3 n.2; Sprint Nextel Petition at 6 n.12; Sprint Nextel Reply Comments at 5. The expanded SMR band includes 813.5-824/858.5-869 MHz. *See supra* note 2.

<sup>30</sup> APCO Comments at 2; NPSTC Comments at 4-7; *see also* William Carter, Chairperson, Region 54 700 MHz Regional Planning Committee Comments at 1 (supporting APCO’s comments). The conditions suggested by APCO and NPSTC are explained in greater detail below. *See infra* ¶¶ 13, 15.

<sup>31</sup> AT&T Comments at 2.

Solutions Inc. urge the Commission to adopt a rulemaking to explore any possible technical issues that may arise from wider-bandwidth operations in EA-licensed 800 MHz SMR spectrum.<sup>32</sup>

### III. DISCUSSION

10. In this *Notice of Proposed Rulemaking (Notice)*, we propose to grant EA-based 800 MHz SMR licensees the flexibility to deploy CDMA or other wireless technologies that operate on greater than 25 kHz channels with greater than 20 kHz bandwidth.<sup>33</sup> We do not, however, find any controversy or uncertainty regarding Section 90.209 or Section 90.691 of the Commission's rules that can be resolved or clarified through a declaratory ruling. We therefore initiate this *Notice* and propose to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in Section 90.209,<sup>34</sup> subject to two conditions we propose to protect against any potential for increased interference with 800 MHz public safety licensees.<sup>35</sup>

11. The Commission is authorized to issue declaratory rulings to terminate controversies or remove uncertainty.<sup>36</sup> While it has broad discretion in deciding whether to exercise such authority,<sup>37</sup> the Commission will generally decline to issue such a ruling when there appears to be no significant controversy or uncertainty.<sup>38</sup> Here, the record does not demonstrate any such controversy or uncertainty regarding the application of Section 90.209 to EA-based 800 MHz SMR licensees or the relationship between Section 90.209 and Section 90.691. Section 90.209 is clear on its face that the channel spacings and authorized bandwidth for the listed frequencies, which include the frequencies assigned to EA-based 800 MHz SMR licenses, apply "unless specified elsewhere."<sup>39</sup> A different bandwidth authorization for this band is not listed elsewhere in the Commission's rules, including in Section 90.691.<sup>40</sup> The out-of-band emission requirement in Section 90.691 is intended to protect against adjacent channel interference, which is unnecessary for sequential channels licensed as a block and has no bearing on whether a spectrum block can be channelized or have a bandwidth limitation.<sup>41</sup>

12. In lieu of a declaratory ruling, through the instant *Notice*, we propose to eliminate the channel spacing and bandwidth limitation in Section 90.209 of the Commission's rules for EA-based 800 MHz SMR licenses in the frequencies 813.5-824/858.5-869 MHz, subject to two proposed conditions

<sup>32</sup> *Id.* at 2-3; Motorola Solutions Inc. Comments at 2.

<sup>33</sup> See Sprint Nextel Petition at 4-6; EWA Comments at 3-4.

<sup>34</sup> See Appendix A.

<sup>35</sup> We grant Sprint Nextel's petition to the extent Sprint Nextel seeks a rulemaking consistent with the proposals herein; it is denied in all other respects.

<sup>36</sup> 5 U.S.C. § 554(e); 47 C.F.R. § 1.2.

<sup>37</sup> See *Yale Broadcasting Co. v. FCC*, 478 F.2d 594, 602 (D.C. Cir. 1973).

<sup>38</sup> See, e.g., *Shaw Communications, Inc. Application for a New FM Translator Station, Berlin, New Hampshire, Memorandum Opinion and Order*, 24 FCC Rcd 5852 (2008).

<sup>39</sup> 47 C.F.R. § 90.209(b)(5).

<sup>40</sup> A decision to not require a licensee to protect its own channels from interference within the same spectrum block does not constitute a bandwidth authorization. See *800 MHz SMR First Report and Order*, 11 FCC Rcd at 1518, ¶ 97. Further, as some commenters point out, in instances when the Commission has established different bandwidth limitations for frequencies listed in Section 90.209, the Commission has done so explicitly. See *Southern Company Reply Comments* at 4; *SouthernLINC Wireless Reply Comments* at 6. See, e.g., 47 C.F.R. § 90.733(d) ("[L]icensees may combine any number of their authorized, contiguous channels . . . to form channels wider than 5 kHz.").

<sup>41</sup> See *800 MHz SMR First Report and Order*, 11 FCC Rcd at 1518-19, ¶¶ 97-101.

outlined below. The record suggests that eliminating these limitations may serve the public interest by allowing licensees to deploy more advanced wireless technologies, to consumers' benefit,<sup>42</sup> while continuing to ensure such operations do not increase interference to 800 MHz public safety licensees through the conditions proposed below. As set forth below, we seek comment on this proposal and on the type and magnitude of any accompanying costs or benefits.

13. We recognize that protection of public safety licensees in the 800 MHz band is essential and do not intend to take any actions that might negatively effect the progress made through the 800 MHz reconfiguration process. APCO and NPSTC assert that in order to protect against interference with 800 MHz public safety licensees, operations using greater than 25 kHz bandwidth should only be allowed in National Public Safety Planning Advisory Committee (NPSPAC) regions where public safety reconfiguration is complete.<sup>43</sup> Accordingly, we propose to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in Section 90.209 in the 813.5-824/858.5-869 MHz band<sup>44</sup> in NPSPAC regions where all 800 MHz public safety licensees in the region have completed band reconfiguration. Further, in NPSPAC regions where reconfiguration is incomplete, we propose to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation only in the 813.5-821/858.5-866 MHz band.<sup>45</sup> Upon all 800 MHz public safety licensees in a region completing band reconfiguration, EA-based 800 MHz SMR licensees in the 821-824/866-869 MHz band would then be allowed to exceed the channel spacing and bandwidth limitation.

14. Additionally, we propose to require all EA-based 800 MHz SMR licensees to provide at least 30 days written notice to public safety licensees with base stations in the NPSPAC region where an EA-based 800 MHz SMR licensee intends to exceed the channel spacing and bandwidth limitation and to public safety licensees with base stations within 113 kilometers (70 miles) of the affected NPSPAC region border.<sup>46</sup> These conditions appear to balance the need to protect 800 MHz public safety licensees from any possible increased interference, while enabling 800 MHz SMR licensees to efficiently utilize their spectrum to provide more advanced wireless services. We seek comment on these proposed conditions, including with respect to any costs that these conditions might impose.

15. We encourage commenters to explain any interference issues they claim may arise—even with conditions—with specificity, including any relevant data supporting such claims.<sup>47</sup> We also

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<sup>42</sup> Sprint Nextel asserts that allowing it to provide CDMA on its EA-licensed 800 MHz SMR spectrum will result in “improved coverage, increased capacity and increased broadband data speeds for Sprint Nextel’s current and future subscribers.” Sprint Nextel Petition at 3.

<sup>43</sup> APCO Comments at 2; NPSTC Comments at 4.

<sup>44</sup> The band segment 813.5-817/858.5-862 is available for SMR operations only in the Southeastern United States. *See supra* note 2.

<sup>45</sup> Public safety users are being relocated from 821-824/866-869 MHz to the new band of 806-809/851-854 MHz. Sprint Nextel asserts that it will not—and cannot—deploy CDMA in the “old” public safety band until the public safety users in the NPSPAC region have moved to the “new” band. Sprint Nextel Reply Comments at 5, 7.

<sup>46</sup> We note that under conditions imposed on some of its 800 MHz licenses, Sprint Nextel must provide 60 days notice to every NPSPAC licensee in the affected NPSPAC Region prior to initiating operations in the 821-824/866-869 MHz band. *See* Letter from David L. Furth, Associate Bureau Chief, Public Safety and Homeland Security Bureau, FCC, and Joel D. Taubenblatt, Acting Deputy Chief, Wireless Telecommunications Bureau, FCC, to Lawrence R. Krevor, Vice President – Spectrum, Sprint Nextel Corp., and James B. Goldstein, Director, Spectrum Reconfiguration, Sprint Nextel Corp., WT Docket No. 02-55, DA 08-1074, at 3-5 (May 6, 2008).

<sup>47</sup> Sprint Nextel includes in its reply comments a thorough explanation of why it believes CDMA operation in the geographically-licensed 800 MHz SMR band will not cause any greater interference to 800 MHz public safety licensees than its iDEN operations. Sprint Nextel Reply Comments at 8-9, Exhibits A, B. Commenters that suggest

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encourage commenters to describe in detail and to justify fully any modification to these or additional conditions they argue may be necessary to protect 800 MHz public safety licensees from increased interference. For example, NPSTC suggests that the Commission should impose a one megahertz guard band at 820-821/865-866 MHz between EA-based 800 MHz SMR operations that exceed the channel spacing and bandwidth limitation and public safety operations where band reconfiguration is incomplete.<sup>48</sup> Similarly, APCO suggests that EA-based 800 MHz SMR licensees that exceed the channel spacing and bandwidth limitation “maintain a minimum of 1.0 MHz separation from any public safety operation in the upper portion of the interleaved band (*i.e.*, above 860 MHz) in the service area of the . . . cellular site.”<sup>49</sup> APCO also suggests that EA-based 800 MHz SMR operations that exceed the channel spacing and bandwidth limitation and are near a public safety system in a NPSPAC region where reconfiguration is incomplete must protect public safety operations “both on-channel and on the 12.5 kHz offset to the 5 dBu.”<sup>50</sup> We seek comment on these suggested conditions, as well as any other proposals. Commenters should include technical justifications for why additional or alternative conditions may be necessary, and should identify any costs that additional or alternative conditions might impose.

#### IV. PROCEDURAL MATTERS

##### A. *Ex Parte* Rules

16. The proceeding this *Notice* initiates shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s *ex parte* rules.<sup>51</sup> Persons making *ex parte* presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the *ex parte* presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during *ex parte* meetings are deemed to be written *ex parte* presentations and must be filed consistent with rule 1.1206(b). In proceedings governed by rule 1.49(f) or for which the Commission has made available a method of electronic filing, written *ex parte* presentations and memoranda summarizing oral *ex parte* presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s *ex parte* rules.

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that interference issues may arise, even taking into account the conditions described herein, should specifically reference and address Sprint Nextel’s reply comment analysis.

<sup>48</sup> NPSTC Comments at 6-7. In Sprint Nextel’s reply comments it argues that its CDMA deployment in NPSPAC regions “prior to completing 800 MHz reconfiguration in a Region will inherently provide a one megahertz guard band from any remaining adjacent public safety operations in the old NPSPAC band.” Sprint Nextel Reply Comments at 7-8.

<sup>49</sup> APCO Comments at 2.

<sup>50</sup> *Id.*

<sup>51</sup> 47 C.F.R. §§ 1.1200 *et seq.*

## B. Filing Requirements

17. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. Comments may be filed using the Commission's Electronic Comment Filing System (ECFS). See *Electronic Filing of Documents in Rulemaking Proceedings*, 63 FR 24121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://fjallfoss.fcc.gov/ecfs2/>.
- Paper Filers: Parties that choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12<sup>th</sup> St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12<sup>th</sup> Street, SW, Washington DC 20554.

People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to [fcc504@fcc.gov](mailto:fcc504@fcc.gov) or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

## C. Initial Regulatory Flexibility Analysis

18. As required by the Regulatory Flexibility Act of 1980 (RFA),<sup>52</sup> the Commission has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities of the policies and rules proposed in the *Notice*. The analysis is found in Appendix B. We request written public comment on the analysis. Comments must be filed in accordance with the same deadlines as comments filed in response to the *Notice* and must have a separate and distinct heading designating them as responses to the IRFA. The Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, will send a copy of this *Notice*, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.

## D. Initial Paperwork Reduction Act Analysis

19. This document contains proposed new or modified information collection requirements. The Commission, as part of its continuing effort to reduce paperwork burdens, invites the general public and the Office of Management and Budget (OMB) to comment on the information collection

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<sup>52</sup> See 5 U.S.C. § 603.

requirements contained in this document, as required by the Paperwork Reduction Act of 1995, Public Law 104-13. In addition, pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4), we seek specific comment on how we might further reduce the information collection burden for small business concerns with fewer than 25 employees.

## V. ORDERING CLAUSES

20. Accordingly, IT IS ORDERED, that pursuant to the authority contained in Sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302, 303, 307, and 308, this Notice of Proposed Rulemaking IS ADOPTED.

21. IT IS FURTHER ORDERED that pursuant to Sections 1, 2, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 303 and Section 1.2 of the Commission's rules, 47 C.F.R. § 1.2, the Petition for Declaratory Ruling filed on June 3, 2011 by Sprint Nextel Corp. IS DENIED.

22. IT IS FURTHER ORDERED that, pursuant to Sections 1, 2, 4(i), 4(j), 301, and 303 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 303, and Section 1.407 of the Commission's Rules, 47 C.F.R. § 1.407, the Petition for Rulemaking in the alternative filed on June 3, 2011 by Sprint Nextel Corp. IS GRANTED.

23. IT IS FURTHER ORDERED that the Commission's Consumer & Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this Notice of Proposed Rulemaking, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

Marlene H. Dortch  
Secretary

## APPENDIX A

## Proposed Rules

The Federal Communications Commission proposes to amend Part 90 of Title 47 of the Code of Federal Regulations (CFR) as set forth below:

## PART 90—Private Land Mobile Radio Service

1. The authority citation for Part 90 continues to read as follows:

AUTHORITY: Sections 4(i), 11, 303(g), 303(r), and 332(c)(7) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 161, 303(g), 303(r), 332(c)(7).

2. Section 90.209 is amended by adding paragraph (b)(7) as follows:

§ 90.209 Bandwidth limitations.

\* \* \* \* \*

(b) \* \* \*

(1) \* \* \*

(7) Economic Area (EA)-based licensees in frequencies 813.5-824/858.5-869 may exceed the standard channel spacing and authorized bandwidth listed in paragraph (b)(5) of this section in any National Public Safety Planning Advisory Committee Region when all 800 MHz public safety licensees in the Region have completed band reconfiguration. In any National Public Safety Planning Advisory Committee Region where the band reconfiguration is incomplete, EA-based licensees in frequencies 813.5-821/858.5-866 MHz may exceed the standard channel spacing and authorized bandwidth listed in paragraph (b)(5) of this section. Upon all 800 MHz public safety licensees in a region completing band reconfiguration, EA-based 800 MHz SMR licensees in the 821-824/866-869 MHz band would also be allowed to exceed the channel spacing and authorized bandwidth. Licensees authorized to exceed the standard channel spacing and authorized bandwidth under this paragraph must provide at least 30 days written notice prior to initiating service in the bands listed herein to every 800 MHz public safety licensee with a base station in the affected National Public Safety Planning Advisory Committee Region, and every 800 MHz public safety licensee within 113 kilometers (70 miles) of the affected Region.

**APPENDIX B****Initial Regulatory Flexibility Analysis**

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),<sup>1</sup> the Commission has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this *Notice*. Written comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the *Notice*. The Commission will send a copy of the *Notice*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).<sup>2</sup> In addition, the *Notice* and IRFA (or summaries thereof) will be published in the Federal Register.<sup>3</sup>

**A. Need for, and Objectives of, the Proposed Rules**

2. The proposed rules eliminate a legacy channel spacing and bandwidth limitation governing Economic Area (EA)-based 800 MHz specialized mobile radio (SMR) licensees. These proposed rules provide the licensees with the flexibility to deploy competitive wireless services, while also continuing to protect 800 MHz public safety licensees from any potential interference.

3. The proposed rules allow EA-based 800 MHz SMR licensees in the 813.5-824/858.5-869 MHz band to exceed the channel spacing and bandwidth limits in Section 90.209 of the Commission's rules, subject to two conditions. We propose to allow EA-based 800 MHz SMR licensees to exceed the channel spacing and bandwidth limitation in the 813.5-824/858.5-869 MHz band in National Public Safety Planning Advisory Committee (NPSPAC) regions where 800 MHz reconfiguration is complete. In NPSPAC regions where 800 MHz reconfiguration is incomplete, we propose to allow EA-based 800 MHz licensees to exceed the channel spacing and bandwidth limitation only in the 813.5-821/858.5-866 MHz band. Upon all 800 MHz public safety licensees in a region completing band reconfiguration, EA-based 800 MHz SMR licensees in the 821-824/866-869 MHz band would also be allowed to exceed the channel spacing and bandwidth limitation. We also propose to require EA-based 800 MHz SMR licensees to provide 30 days written notice to 800 MHz public safety licensees with base stations in the NPSPAC region where an EA-based 800 MHz SMR licensee intends to exceed the channel spacing and bandwidth limitation, and to public safety licensees with base stations within 113 kilometers (70 miles) of the affected NPSPAC region border.

4. We believe these proposed rules will reduce barriers to innovation and investment and allow EA-based 800 MHz SMR licensees to deploy competitive wireless services, to consumers' benefit.

**B. Legal Basis**

5. The legal basis for any action that may be taken pursuant to the NPRM is contained in Sections 1, 2, 4(i), 4(j), 301, 302, 303, 307, and 308 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 151, 152, 154(i), 154(j), 301, 302, 303, 307, and 308.

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<sup>1</sup> See 5 U.S.C. § 603. 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>2</sup> See 5 U.S.C. § 603(a).

<sup>3</sup> See *id.*

### C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

6. The RFA directs agencies to provide a description of, and where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.<sup>4</sup> The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”<sup>5</sup> In addition, the term “small business” has the same meaning as the term “small-business concern” under the Small Business Act.<sup>6</sup> A small-business concern” is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.<sup>7</sup>

7. *Small Businesses.* Nationwide, there are a total of approximately 27.5 million small businesses, according to the SBA.<sup>8</sup>

8. *Wireless Telecommunications Carriers (except Satellite).* Since 2007, the SBA has recognized wireless firms within this new, broad, economic census category.<sup>9</sup> Prior to that time, such firms were within the now-superseded categories of Paging and Cellular and Other Wireless Telecommunications.<sup>10</sup> Under the present and prior categories, the SBA has deemed a wireless business to be small if it has 1,500 or fewer employees.<sup>11</sup> For this category, census data for 2007 show that there were 1,383 firms that operated for the entire year.<sup>12</sup> Of this total, 1,368 firms had 999 or fewer employees, and 15 had 1,000 employees or more.<sup>13</sup> Similarly, according to Commission data, 413 carriers reported that they were engaged in the provision of wireless telephony, including cellular service, Personal Communications Service (PCS), and Specialized Mobile Radio (SMR) Telephony services.<sup>14</sup> Of these, an estimated 261 have 1,500 or fewer employees, and 152 have more than 1,500 employees.<sup>15</sup> Consequently, the Commission estimates that approximately half or more of these firms can be

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<sup>4</sup> See 5 U.S.C. § 603(b)(3).

<sup>5</sup> See 5 U.S.C. § 601(6).

<sup>6</sup> See 5 U.S.C. § 601(3) (incorporating by reference the definition of “small-business concern” in the Small Business Act, 15 U.S.C. § 632). Pursuant to 5 U.S.C. § 601(3), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.”

<sup>7</sup> See 15 U.S.C. § 632.

<sup>8</sup> See SBA, Office of Advocacy, “Frequently Asked Questions,” <http://www.sba.gov/advo/stats/sbfaq.pdf> (accessed Dec. 2010).

<sup>9</sup> See 13 C.F.R. § 121.201, NAICS code 517210.

<sup>10</sup> U.S. Census Bureau, 2002 NAICS Definitions, “517211 Paging”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>; U.S. Census Bureau, 2002 NAICS Definitions, “517212 Cellular and Other Wireless Telecommunications”; <http://www.census.gov/epcd/naics02/def/NDEF517.HTM>.

<sup>11</sup> 13 C.F.R. § 121.201, NAICS code 517210. The now-superseded, pre-2007 C.F.R. citations were 13 C.F.R. § 121.201, NAICS codes 517211 and 517212 (referring to the 2002 NAICS).

<sup>12</sup> U.S. Census Bureau, Subject Series: Information, Table 5, “Establishment and Firm Size: Employment Size of Firms for the United States: 2007 NAICS Code 517210” (issued Nov. 2010).

<sup>13</sup> *Id.* Available census data do not provide a more precise estimate of the number of firms that have 1,500 or fewer employees; the largest category provided is for firms with “100 employees or more.”

<sup>14</sup> See *Trends in Telephone Service* at Table 5.3.

<sup>15</sup> See *id.*

considered small. Thus, using available data, we estimate that the majority of wireless firms can be considered small.

9. *Specialized Mobile Radio.* The Commission awards small business bidding credits in auctions for Specialized Mobile Radio (“SMR”) geographic area licenses in the 800 MHz and 900 MHz bands to entities that had revenues of no more than \$15 million in each of the three previous calendar years.<sup>16</sup> The Commission awards very small business bidding credits to entities that had revenues of no more than \$3 million in each of the three previous calendar years.<sup>17</sup> The SBA has approved these small business size standards for the 800 MHz and 900 MHz SMR Services.<sup>18</sup> The Commission has held auctions for geographic area licenses in the 800 MHz and 900 MHz bands. The 900 MHz SMR auction was completed in 1996.<sup>19</sup> Sixty bidders claiming that they qualified as small businesses under the \$15 million size standard won 263 geographic area licenses in the 900 MHz SMR band.<sup>20</sup> The 800 MHz SMR auction for the upper 200 channels was conducted in 1997. Ten bidders claiming that they qualified as small businesses under the \$15 million size standard won 38 geographic area licenses for the upper 200 channels in the 800 MHz SMR band.<sup>21</sup> A second auction for the 800 MHz band was conducted in 2002 and included 23 BEA licenses. One bidder claiming small business status won five licenses.<sup>22</sup>

10. The auction of the 1,053 800 MHz SMR geographic area licenses for the General Category channels was conducted in 2000. Eleven bidders that won 108 geographic area licenses for the General Category channels in the 800 MHz SMR band qualified as small businesses under the \$15 million size standard.<sup>23</sup> In an auction completed in 2000, a total of 2,800 Economic Area licenses in the lower 80 channels of the 800 MHz SMR service were awarded.<sup>24</sup> Of the 22 winning bidders, 19 claimed small business status and won 129 licenses. Thus, combining all three auctions, 40 winning bidders for geographic licenses in the 800 MHz SMR band claimed status as small business.

11. In addition, there are numerous incumbent site-by-site SMR licensees and licensees with extended implementation authorizations in the 800 and 900 MHz bands. We do not know how many firms provide 800 MHz or 900 MHz geographic area SMR pursuant to extended implementation authorizations, nor how many of these providers have annual revenues of no more than \$15 million. One firm has over \$15 million in revenues. In addition, we do not know how many of these firms have 1,500 or fewer employees.<sup>25</sup> We assume, for purposes of this analysis, that all of the remaining existing

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<sup>16</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>17</sup> 47 C.F.R. §§ 90.810, 90.814(b), 90.912.

<sup>18</sup> See Letter from Aida Alvarez, Administrator, SBA, to Thomas Sugrue, Chief, Wireless Telecommunications Bureau, FCC (Aug. 10, 1999) (*Alvarez Letter 1999*).

<sup>19</sup> “FCC Announces Winning Bidders in the Auction of 1,020 Licenses to Provide 900 MHz SMR in Major Trading Areas: Down Payments due April 22, 1996, FCC Form 600s due April 29, 1996,” *Public Notice*, 11 FCC Rcd 18599 (WTB 1996).

<sup>20</sup> *Id.*

<sup>21</sup> See “Correction to Public Notice DA 96-586 ‘FCC Announces Winning Bidders in the Auction of 1020 Licenses to Provide 900 MHz SMR in Major Trading Areas,’” *Public Notice*, 11 FCC Rcd 18,637 (WTB 1996).

<sup>22</sup> See “Multi-Radio Service Auction Closes,” *Public Notice*, 17 FCC Rcd 1446 (WTB 2002).

<sup>23</sup> See “800 MHz Specialized Mobile Radio (SMR) Service General Category (851-854 MHz) and Upper Band (861-865 MHz) Auction Closes; Winning Bidders Announced,” *Public Notice*, 15 FCC Rcd 17162 (WTB 2000).

<sup>24</sup> See “800 MHz SMR Service Lower 80 Channels Auction Closes; Winning Bidders Announced,” *Public Notice*, 16 FCC Rcd 1736 (WTB 2000).

<sup>25</sup> See generally 13 C.F.R. § 121.201, NAICS code 517210.

extended implementation authorizations are held by small entities, as that small business size standard is approved by the SBA.

**D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements for Small Entities**

12. The proposed rules provide regulatory flexibility to all EA-based 800 MHz SMR licensees. The proposed rules would impose limited reporting or recordkeeping requirements to the extent an EA-based 800 MHz SMR licensee seeks to exceed the channel spacing and bandwidth limitation in Section 90.209 of the Commission's rules. In such cases, the licensee must provide 30 days advanced written notice to all public safety licensees with a base station in the affected NPSPAC region and within 113 kilometers (70 miles) of the border of the affected NPSPAC region. Otherwise, the proposed rules would impose only a small compliance burden.

**E. Steps Taken to Minimize the Significant Economic Impact on Small Entities, and Significant Alternatives Considered**

13. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.<sup>26</sup>

14. The *Notice* is deregulatory in nature and imposes only a minor compliance requirement on all affected entities, including small entities. In recognition of the resources available to small entities, and in the interest of simplified compliance obligations, the *Notice* does not mandate any specific form or manner in which entities must comply with the reporting requirement. Specifically, the *Notice* proposes to require EA-based 800 MHz SMR licensees to provide written notice to all public safety licensees with a base station in the affected NPSPAC region and within 113 kilometers (70 miles) of the border of the affected NPSPAC region if the licensee intends to exceed the channel spacing and bandwidth limitation. Licensees have the flexibility to provide written notice through whatever means the licensee chooses. We believe this notice is necessary to ensure that public safety licensees are aware of the operation and can actively monitor for any interference issues that may arise. While we strive to provide flexibility to small entities, because we believe that protection of public safety licensees is essential and in the public interest, we do not propose any exemption for small entities.

**F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules**

15. None.

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<sup>26</sup> See 5 U.S.C. § 603(c).