



Federal Communications Commission
Washington, D.C. 20554

June 27, 2011

James B. Goldstein
12502 Sunrise Valley Drive
Reston, VA 20196

Re: Sprint Nextel's Request for Waiver of Section 90.209 of the Commission's Rules to
Permit the Operation of Broadband CDMA Technology in the 817-824/862-869 MHz
Band

Dear Mr. Goldstein:

This letter addresses Nextel License Holdings 1, Inc.'s ("Sprint Nextel") request to modify a waiver grant permitting equipment with bandwidths greater than the 25 kHz limit specified in Section 90.209 of the Commission's Rules.¹ As explained below, we grant the waiver request to the extent described below.

Sprint Nextel seeks to deploy CDMA equipment with a nominal operating bandwidth of approximately 1.25 MHz with respect to licenses WPLM660² and WPLM661³ in the Enhanced Specialized Mobile Radio Band portion of the 800 MHz band, which would exceed Section 90.209's 25 kHz bandwidth limitation.⁴ Sprint argues the bandwidth limitation is a remnant of a past licensing paradigm and that the Commission did not intend to leave this restriction in place. In support of the waiver request, Sprint Nextel maintains that the Commission has indicated on several occasions that 800 MHz SMR licensees on contiguous channel blocks have the flexibility to deploy larger bandwidth technologies. First, Sprint Nextel argues that, in a 1988 amendment to Part 90 of the Commission's Rules, the Commission expressed that its rules provided sufficient flexibility for SMR licensees authorized on contiguous spectrum to use non-standard bandwidths.⁵ Next, Sprint Nextel contends that in 1995, the Commission modified its rules to license 20, 60 and 120 contiguous channel 800 MHz SMR spectrum blocks on a wide-area basis to allow utilization of broadband technologies, including CDMA, unavailable on non-contiguous channels.⁶ Finally, Sprint Nextel draws attention to how the Commission,

¹ See Sprint Nextel's original Waiver Request for license WPLM661, ULS file number 0004643006, and license WPLM660, ULS file number 0004683386 (Waiver Request). See also, Sprint Nextel's Request for Modification of Waiver, ULS file number 0004779945 for WPLM661 and 0004779952 for WPLM660 (Modification Request).

² The WPLM660 license, issued to Nextel License Holdings 1, authorizes operation in Basic Economic Area (BEA) 040 (Atlanta, GA-AL-NC) on frequencies 816.5-818/861.5-863 MHz.

³ The WPLM661 license, issued to Nextel License Holdings 1, authorizes operation in Basic Economic Area (BEA) 040 (Atlanta, GA-AL-NC) on frequencies 818-824/863-869 MHz.

⁴ 47 C.F.R. § 90.209.

⁵ See Amendment of Part 90, Subparts M and S, of the Commission's Rules, *Report and Order*, PR Docket No. 86-404, 3 FCC Rcd 1838 at ¶ 89 (1988).

⁶ See Implementation of Sections 3(n) and 332 of the Communications Act; Implementation of Section 309 (j) of the Communications Act – Competitive Bidding; *First Report and Order*, *Eighth Report*, and *Second Further Notice of Proposed Rule Making*, PR Docket No. 93-144, GN Docket No. 93-252, PP Docket No. 253, 11 FCC Rcd 1463 at ¶ 14, 37 (1995).

in 2004, modified rule section 90.645 to continue allowing non-standard channel bandwidths for the non-cellular portion of the 800 MHz band, while, according to Sprint Nextel, inexplicably failing to also modify the rules for larger spectrum blocks above 816-824/861-869 MHz.⁷

We also note that Sprint Nextel has undertaken to impose “extremely tight out-of-band emissions (OOBE) filtering requirements on [its] base station vendors for frequencies below 861 MHz and aggressive OOBE roll-off requirements between 861-862 MHz” and has acknowledged its strict responsibility for compliance with Section 90.673 of the Commission’s rules.⁸

A waiver may be granted, pursuant to section 1.925 of the Commission’s Rules, if the petitioner establishes that: 1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that grant of the waiver would be in the public interest; or 2) where the petitioner establishes unique or unusual factual circumstances, that application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.⁹

The Mobility Division of the Wireless Telecommunication Bureau granted Sprint Nextel’s original request to allow CDMA devices to operate in the Atlanta market with an authorized bandwidth of 1.27 MHz or less.¹⁰ However, Sprint Nextel contends that the specific language use in the letter granting its request would preclude the authorization of CDMA equipment designed for 1.25 MHz channels, but with bandwidths wider than 1.27 MHz.¹¹ Therefore, Sprint Nextel requests modification of the waiver to permit it to operate equipment on 1.25 MHz CDMA channels, with a nominal bandwidth of approximately 1.25 MHz to account for slight variability between different transmitters.

Based on the unusual factual circumstances described by Sprint Nextel, we find that this slight modification to the waiver is warranted. This nominal change does not impact the purpose of the original waiver grant and it would allow Sprint Nextel equipment flexibility as it explores CDMA operation in the ESMR bands. Therefore, we waive the bandwidth restriction of Section 90.209 to permit Sprint Nextel to use transmitters with an authorized bandwidth greater than 25 kHz with respect to licenses WPLM660 and WPLM661. However, Sprint Nextel still must maintain compliance with emission limits outside of its authorized channels consistent with section 90.691 of the rules.¹² With this waiver, equipment manufacturers are permitted to manufacture transmitters for 1.25 MHz channel CDMA operation in the 800 MHz band with a nominal operating bandwidth of approximately 1.25 MHz. Equipment manufacturers should include a copy of this letter in any application for equipment authorization for 800 MHz CDMA equipment. Further, this waiver is specifically conditioned on the following:

- Before activating 800 MHz CDMA sites pursuant to this waiver, Sprint Nextel shall provide 60-day advance notice to 800 MHz public safety licensees having base stations in the applicable NPSPAC Region – and to 800 MHz public safety licensees having base stations within 70 miles of the NPSPAC region border. The notice shall include the planned activation

⁷ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969 (2004); see also Section 90.645 revisions in Appendix C.

⁸ See 47 C.F.R. § 90.673.

⁹ 47 C.F.R. § 1.925.

¹⁰ See letter grant attached to ULS file number 0004683386.

¹¹ Modification Request at 2.

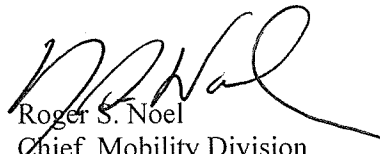
¹² 47 C.F.R. § 90.691.

date of the 800 MHz CDMA network. A copy of the notice shall be provided to (a) the regional coordinator of the 800 MHz NPSPAC region in which CDMA operation is to be initiated; and (b) to the regional coordinators of adjoining 800 MHz NPSPAC regions.

- The 800 MHz CDMA operations authorized by this waiver are subject to the interference protection and mitigation requirements established in the Commission's 800 MHz rebanding proceeding (WT Docket 02-55). Accordingly, Sprint Nextel shall strictly observe the requirements of Sections 90.672 *et seq.* of the Commission's rules prohibiting unacceptable interference to non-cellular 800 MHz licensees from 800 MHz cellular systems.
- Consistent with Section 90.691, CDMA operations shall protect any co-channel incumbent licensees in the BEA 040 (generally, any co-channel user within a 113 km radius) on any frequency used in the CDMA channel by the parameters specified by Sections 90.691(a)(1) and (a)(2). If there were no incumbent licensees within the area, the CDMA channel would simply have to provide protection on the "outer" channels of the authorized EA license spectrum.

Accordingly, IT IS ORDERED that, pursuant to section 4(i) and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. § 154(i), 303(r), and sections 0.331 and 1.925 of the Commission's rules, 47 C.F.R. §§ 0.331, 1.925, Sprint Nextel's waiver request IS GRANTED to the extent described above.¹³

Sincerely,


Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

¹³ 47 U.S.C. §§ 154(i); 303(r); 47 C.F.R. §§ 0.331, 1.925.