Federal Communications Commission
Washington, D.C. 20554

March 14, 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 for a waiver of 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 a 1.27 MHz wide CDMA channel with respect to license WPLM661[2] in the Enhanced Specialized Mobile Radio Band portion of the 800 MHz band, which would exceed Section 90.209's 25 kHz bandwidth limitation.[3] 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.[4] 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.[5] Finally, Sprint Nextel draws attention to how the Commission, 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.[6]

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[1] *See* ULS file number 0004643006.

[2] 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.

[3] 47 C.F.R. § 90.209.

[4] *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).

[5] *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).

[6] *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.

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.[7]

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.[8]

Based on the unusual factual circumstances described by Sprint Nextel, we find that a waiver is warranted in this case because application of the rule would prevent CDMA operation, limit consumer choice, and thus be contrary to the public interest. Therefore, we waive the bandwidth restriction of Section 90.209 to permit Sprint Nextel to use transmitters with an authorized bandwidth of 1.27 MHz or less with respect to license WPLM661. With this waiver, equipment manufacturers are permitted to manufacture transmitters for 1.27 MHz CDMA operation in the 800 MHz band. 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 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.

[7] *See* 47 C.F.R. § 90.673.

[8] 47 C.F.R. § 1.925.

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.[9]

Sincerely,

Roger S. Noel
Chief, Mobility Division
Wireless Telecommunications Bureau

[9] 47 U.S.C. §§ 154(i); 303(r); 47 C.F.R. §§ 0.331, 1.925.