

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of )  
)  
Amendment of the Commission’s Rules to ) RM- \_\_\_\_\_  
Allow for Specialized Mobile Radio )  
Services Over 900 MHz )  
Business/Industrial Land Transportation )  
Frequencies )  
)

To: The Commission

**PETITION FOR RULEMAKING OF  
M2M SPECTRUM NETWORKS, LLC**

**I. INTRODUCTION AND SUMMARY**

Pursuant to Section 1.401 of the Commission’s Rules,<sup>1</sup> M2M Spectrum Networks, LLC, (“M2M”) petitions the Commission to initiate a rulemaking proceeding to allow for licensees for 896-901/935-940 MHz (“900 MHz”) Business/Industrial Land Transportation (“B/ILT”) Pool channels to provide service to third-party B/ILT eligibles from the start, subject to the requirement of serving only such eligibles rather than the general public.

This rule is necessary to effectuate the flexibility to provide third-party services that the Commission meant to introduce to the band in 2004, but also husband that flexibility to serve the needs of businesses. It would also eliminate what seems to have evolved into a cottage industry of licensees getting away with disregard for the current rule’s limitation by making inadequate disclosures or simply by pretending it does not exist. It will thus mitigate prospectively the disparate treatment imposed on those who are candid and forthright with the Commission. In

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<sup>1</sup> 47 C.F.R. § 1.401.

addition, by allowing new networks the opportunity to provide services to others, the Commission will encourage innovation and enhance spectral efficiency.

On the other side of the ledger, M2M's proposal will not create channel scarcity for businesses: M2M's proposed draft rule maintains respect for the ends for which the 900 MHz B/ILT channels are meant to be used—business use of the channels for their communication needs. The approach requested here is also superior to that reflected in the Petition for Rulemaking filed by the Enterprise Wireless Alliance and Pacific DataVision, Inc. (“EWA/PDV Petition”)<sup>2</sup> because that latter proposal would not limit use of the “converted” channels to businesses, would require a massive reconfiguration process, and would redound primarily to the benefit of just one licensee.

## **II. THE COMMISSION'S VISION TO PROVIDE FLEXIBILITY IN THE 900 MHZ BAND CANNOT BE FULLY REALIZED WITHOUT THE REQUESTED RULE CHANGE**

In 2004, the Commission decided to increase “operational flexibility” in the 900 B/ILT MHz band.<sup>3</sup> The Commission had already liberalized access to the 800 MHz band.<sup>4</sup> In reviewing that experience, the Commission observed “no speculative runs” on that spectrum, and it found that its existing rules provide the “necessary safeguards” against trafficking in the spectrum.<sup>5</sup> The Commission concluded that the additional flexibility in the 800 MHz band

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<sup>2</sup> See Enterprise Wireless Alliance and Pacific DataVision, Inc., Petition for Rulemaking, RM-11738 (Dec. 8, 2014) (“EWA/PDV Petition”).

<sup>3</sup> 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, 15127 ¶ 335 (2004) (“800 MHz Report and Order”).

<sup>4</sup> Implementation of Sections 309(j) & 337 of the Communications Act of 1934 As Amended, *Report and Order and Further Notice of Proposed Rule Making*, 15 FCC Rcd. 22709, 22760 ¶ 109 (2000) (“Implementation of Sections 309(j) & 337 Report and Order”).

<sup>5</sup> 800 MHz Report and Order, 19 FCC Rcd. at 15127, ¶ 337 & n.770.

allowed businesses to better fulfill their communication needs in that band and adding flexibility in the 900 MHz B/ILT band would have a similar effect.<sup>6</sup>

To effectuate that flexibility for the 900 MHz band, too, the Commission amended its rules so that a 900 MHz B/ILT licensee could provide Specialized Mobile Radio (“SMR”) service upon a modification, transfer, or assignment of the license.<sup>7</sup> But the Commission, without explanation, did not take the logical next step to give full and consistent effect to this flexibility. It did not change the rule precluding third-party, for-profit use by licensees from the start.<sup>8</sup> As a result, a licensee may not initially provide SMR services or any for-profit service to others in the 900 MHz B/ILT band. Section 90.617(c) explicitly states that “[SMR] systems will not be authorized on these frequencies.”<sup>9</sup> And the rules also provide that the “provision of for-profit service to third parties constitutes SMR service.”<sup>10</sup> Absent a waiver, this may not only preclude the use of the spectrum by a new licensee to provide services to the public at large; it may also preclude third-party service to the much narrower circle of Part 90 eligibles themselves—the businesses whose interests Part 90 was meant to ensure.

This dual regime (yes to SMR, even to the public, for modified, transferred, or assigned licenses; no to SMR, even when limited to Part 90 eligibles, for new licenses) has had an odd result. To a large extent, the limit on SMR use of initial licenses has apparently been honored in the breach. Today, many 900 MHz B/ILT licensees appear to provide for-profit service to third parties from the start despite never requesting authority to do so in an assignment or modification

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<sup>6</sup> *Id.* ¶ 335-37.

<sup>7</sup> 47 C.F.R. § 90.621(f).

<sup>8</sup> *See* 47 C.F.R. § 90.617(c).

<sup>9</sup> *Id.*

<sup>10</sup> *See* 47 C.F.R. § 90.7.

application and never requesting a waiver.<sup>11</sup> M2M’s parent company, Spectrum Networks Group, LLC (“SNG”), has identified no fewer than 19 licensees who do not appear to use, or intend to use, their B/ILT licenses for private internal communications.<sup>12</sup> These 19 licensees, which may be only the tip of the iceberg, have apparently obtained their licenses either by not being forthright in their application, or by admitting their intent to provide service to others but hoping nobody notices.

In stark contrast, SNG has been penalized for not following either of these paths. SNG has acknowledged the rule and requested its waiver. The result? A denial, and an unacceptably disparate treatment compared to the myriad applicants who did not request a waiver, got away with it, and are now licensees.

Specifically, SNG and M2M are developing a nationwide, licensed, machine-to-machine network that could take advantage of narrowband channels such as those in the 900 MHz B/ILT band to provide services solely to business customers. SNG applied for 900 MHz B/ILT band channels across the country. These licenses would have formed the backbone of M2M’s network and allowed it to begin providing services to a range of business customers. But SNG’s applications were dismissed by the Bureau in an *Order* reasoning that “the contemplated provision of for-profit service to third parties constitutes SMR service, and SNG cannot avoid the effect of Section 90.617(c) by narrowing the scope of customers it intends to serve.”<sup>13</sup> The

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<sup>11</sup> See Spectrum Networks Group, LLC, Petition for Orders to Show Cause, at 7-17 (June 26, 2015).

<sup>12</sup> *Id.* at 2.

<sup>13</sup> Spectrum Networks Group, LLC, Applications and Waiver Request to Allow It to Provide Private, Internal Machine-To-Machine Communications to Businesses on 900 MHz Business/Industrial/Land Transportation Channels, WT Docket No. 14-100, *Order*, DA 15-439, ¶ 5 (rel. Apr. 13, 2015).

*Order* further rejected SNG’s request for a waiver, finding “that because SNG seeks to blur the demarcation between B/ILT and SMR spectrum, and obtain spectrum that is set aside for traditional B/ILT operations, grant of the waiver request would undermine the purpose of Section 90.617.”<sup>14</sup> SNG and M2M disagree with the Bureau’s *Order* and recently filed an Application for Review asking the Commission to overturn the *Order*.<sup>15</sup> But, in addition to reversing the Bureau, the Commission should also proceed to eliminate a rule that both does not make sense in light of the treatment of modified or transferred licenses, and seems to have led to the submission of incomplete or deceptive applications.<sup>16</sup>

### **III. THE REQUESTED RULE CHANGE WOULD REALIZE THE COMMISSION’S VISION FOR ADDITIONAL FLEXIBILITY AND WILL SERVE THE PUBLIC INTEREST**

The proposal will increase flexibility without endangering the availability of spectrum to businesses. This increased flexibility will increase spectral efficiency in at least three ways. First, M2M’s proposal would put fallow spectrum to use, immediately increasing its efficiency. Second, the rules proposed by M2M will ensure that each channel is used to the greatest extent practicable. Instead of issuing a license to each individual business user, a service provider could use the same license to serve the needs of multiple businesses. A single business licensee, on the other hand, would only use its license for its own internal needs and nobody else’s. Third, by using narrowband channels, M2M and other new service providers will be able to serve a

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<sup>14</sup> *Id.* ¶ 8.

<sup>15</sup> *See* Spectrum Networks Group, LLC, Application for Review, WT Docket No. 14-100 (May 13, 2015).

<sup>16</sup> Nor should the Commission be deterred by the auction provision of 47 U.S.C. § 309(j). Among other things, that provision does not apply except in cases of mutual exclusivity. In addition, if it were to apply to this proposal, it would apply no less (and perhaps more) to the additional spectrum requested for PDV in the EWA/PDV Petition.

valuable niche not served by providers with wider bandwidth. Not all applications require high bandwidths. Forcing distributed, relatively low bandwidth networks, such as the machine-to-machine communications that M2M will be deploying, to use broadband networks mismatches the user's need and its spectrum. Thus, the M2M Petition will open up a low-cost alternative.

In addition, the M2M Petition best protects the intended use of the band to serve the needs of businesses.<sup>17</sup> These needs include security and alarm monitoring; electric power, water, gas, and waste utilities, including Smart Grid systems; fleet vehicle dispatch; location and route optimization; vending and other machine monitoring systems; gas, oil, and mining operations, including pipelines and tankers; connected car and smart road solutions; and a range of other potential uses. But the modification/transfer exception of Section 90.621(f) has undermined this purpose by allowing full SMR use after a transfer or modification, including CMRS service to individuals.<sup>18</sup> M2M proposes to only allow for-profit use of the 900 MHz B/ILT band to Part 90 eligibles. In other words, the M2M Petition not only would not violate the spirit of the rules—it would actually bring the rules back into line with their original intent. The result is a win-win. The intended purpose of the band—business use—is protected. And the flexibility needed for potential service providers to be able to offer businesses innovative and cost-effective services is expanded.

#### **IV. THE PROPOSED CHANGE BY M2M IS SUPERIOR TO THE EWA/PDV PETITION**

The approach proposed by the M2M Petition will also avoid the problems that M2M and others have noted with respect to the EWA/PDV Petition. The M2M Petition will not create scarcity in the 900 MHz B/ILT band; the EWA/PDV Petition will take out of circulation

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<sup>17</sup> See 47 C.F.R. § 90.617(c).

<sup>18</sup> See 47 C.F.R. § 90.621(f).

approximately an additional 226 million MHz/POPS of 900 MHz B/ILT spectrum.<sup>19</sup> The M2M Petition does not require a costly and complicated spectrum reconfiguration; the EWA/PDV Petition would require it.<sup>20</sup> And any service provider can take advantage of the additional flexibility of M2M's proposed rule change, while only PDV will benefit from the EWA/PDV Petition.

## V. CONCLUSION

M2M's proposal would require only a relatively minor change, but it would have large and positive consequences for the public interest. The Commission should therefore initiate a rulemaking proceeding to allow for SMR services provided by all licensees to B/ILT eligibles on 900 MHz B/ILT Pool channels.

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Respectfully submitted,

/s/

Pantelis Michalopoulos  
Christopher Bjornson  
**STEPTOE & JOHNSON LLP**  
1330 Connecticut Avenue, N.W.  
Washington, DC 20036  
(202) 429-3000

*Counsel to M2M Spectrum Networks, LLC*

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<sup>19</sup> See M2M Spectrum Networks, LLC, Comments, RM-11738, at 3-4 (June. 29, 2015).

<sup>20</sup> See *id.* at 5.

## ATTACHMENT

### Draft Rules

Paragraph (c) of 47 CFR 90.617 should be amended as follows:

(c) The channels listed in Table 3 are available to applicants eligible in the Industrial/Business Pool of subpart C of this part, ~~but exclude Special Mobilized Radio Systems as defined in § 90.603(e).~~ These frequencies are available in non-border areas. Specialized Mobile Radio (SMR) systems will ~~not~~ only be authorized on these frequencies where the customer is a business that would itself be eligible in the Industrial/Business Pool of subpart C of this part. These channels are available for intercategory sharing as indicated in § 90.621(e).