

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Improving Public Safety Communications)
in the 800 MHz Band)
)
Consolidating the 900 MHz Industrial/Land)
Transportation and Business Pool Channels)
_____)

WT Docket No. 02-55

REPLY COMMENTS OF EAST BAY MUNICIPAL UTILITY DISTRICT

Veronica Y. Fauntleroy, Esq.
Office of General Counsel
East Bay Municipal Utility District
375 Eleventh Street
Oakland, CA 94607-4240

Curtis T. White, Esq.
Law Offices of Curtis T. White, PC
4201 Connecticut Ave., NW
Suite 402
Washington, DC 20008-1158

Its Attorneys

May 5, 2002

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)	
)	
Improving Public Safety Communications)	
in the 800 MHz Band)	
)	WT Docket No. 02-55
Consolidating the 900 MHz Industrial/Land)	
Transportation and Business Pool Channels)	
_____)	

REPLY COMMENTS OF EAST BAY MUNICIPAL UTILITY DISTRICT

East Bay Municipal Utility District (interchangeably “EBMUD” or “District”), through counsel, and pursuant to Section 1.415 of the Commission’s rules, 47 C.F.R. §1.415, hereby files its Reply Comments in the above-captioned proceeding.

1. The Interest of EBMUD In 800 MHz Facilities

As summarized in its Initial Comments, the District is a publicly owned utility with a long history of efficiently managing its water resources and supplies. Created by law,¹ EBMUD is statutorily obligated to provide potable water to its 1.3 million customers located throughout its 325 sq. mile service area. It is governed by its seven member Board of Directors, all of whom are elected by customers (voters) in the EBMUD service area.

EBMUD also noted it owns and operates an extensive communications network, which is an integral part of its water operations network, including 800 MHz facilities. It relies greatly upon all of its FCC licensed facilities in the discharge of its statutory duties.

¹ *E.g.*, Public Utilities Code § 11501 *et seq.*

2. EBMUD's Internal Audit of 800 MHz Facilities

In its Initial Comments, the District further noted it was in the process of conducting an internal audit of its 800 MHz facilities and, once completed, would share relevant information yielded from that assessment in the Reply phase of this proceeding. It is now pleased to do so.

As with other water utilities, EMUBD uses wireless telecom infrastructure to process both voice and data information critical to its operations. This includes, among others, multiple address systems (MAS), Private Operational-Fixed Microwave Service (POFS)² and 800 MHz licenses.

EBMUD holds eight conventional licenses in the 800 MHz band, which permit operation on multiple frequencies in the general category pool.³ The importance of these licenses and facilities to EBMUD's operations is evidenced by the fact that it has constructed more than 33 base and repeater facilities to hand-off 800 MHz traffic, which currently supports more than 500 mobile units now operating 24/7 on the District's 800 MHz network.

The District's 800 MHz system ties in directly with its microwave grid, which is comprised of 13 separately licensed microwave sites located throughout the District's service area. At present, the microwave network transmits in the 2, 6 and 23 GHz bands, however, transmissions are expected to shift to the 6, 11 and 23 GHz bands once

² See Attachment A (Microwave Diagram).

³ See Attachment B (Internal Audit Data).

EBMUD completes a planned microwave upgrade project.⁴

The District's 800 MHz system is a "voting" system⁵, with 800 MHz repeaters located at five (of the 13) microwave sites.⁶ As configured, these repeaters are interfaced with the District's microwave grid and are essential to the operational capability and integrity of the 800 MHz system. More specifically, the 800 MHz repeaters (and resulting traffic) converge at a central control point and, subject to end routing, traffic is transited via microwave to other sites within the EBMUD service area or back to EBMUD Headquarters in Oakland, CA.⁷

As is the case with the District's MAS spectrum and its microwave grid, loading is increasingly problematic for its 800 MHz facilities, and it is difficult to add any significant number of new users without causing a further downturn in overall system efficiency.⁸

⁴ In July, 2000, the District's Board of Directors announced its approval of a planned \$4.5 million microwave upgrade. While the project has encountered some delays, the District has undertaken a number of necessary steps, including frequency coordination for the contemplated spectrum consistent with FCC rules and procedure.

⁵ The Voting System channelizes each repeater – in this instance four of the five repeaters have three voting systems (with each encompassing channels 1 – 3), which enhance redundancy and interoperability of the system.

⁶ Attachment A.

⁷ *Id.*

⁸ Although there are plans to overhaul its entire OpNet system, the present 800 MHz network is based on an analog (open-mike) system that, under the circumstances, does not permit significant new loading without increasing the problem of stand-by (wait/talk) time – a manifestly undesirable consequence in an emergency situation.

3. The FCC Must Safeguard The Interests of CII Providers

The District has been an active participant in numerous FCC proceedings involving critical infrastructure (CII) service providers. In all instances – particularly in view of its public governance requirements – EBMUD has emphasized that any contemplated rules or procedures must, minimally, recognize that:

- (i) CII providers deliver services that are essential to the national defense, economic prosperity and quality of life;
- (ii) Decisions involving licenses should seek to maximize flexibility while, at the same time, avoid unnecessary or duplicative cost(s);
- (iii) All CII providers require lead times that permit forward looking planning, especially those – such as EBMUD – which are publicly governed and otherwise subject to the public planning and budgetary processes;
- (iv) Incumbent licensees should be accorded every protection, and not saddled with unnecessary or irreconcilable costs; and
- (v) Every effort should be taken to avoid disrupting critical operations or creating undue harm.

4. Wholesale Rebanding Is An Onerous Burden To EBMUD

As a publicly chartered utility, EBMUD operates pursuant to and in accordance with the Public Utilities Code of California. Its proceedings, deliberations and determinations are appropriately and fully subject to applicable sunshine laws and public review. However, because of lead times necessary to move projects from initial approval to final completion, actions that reverse or modify prior Board approvals are subjected to a two-prong test, namely: (a) is (are) such action(s) absolutely necessary, and (ii) what effect will such action(s) have on time-sensitive projects and overall costs.

As noted, *supra*, the District has two major activities currently underway that relate to its OpNet system, both of which have been for years in the planning and development stages, viz: the upgrade of its OpNet System and its \$4.5 million microwave upgrade. While neither has been completed – and both are proceeding at a pace slower than originally intended – considerable work, resources and costs have been poured into the projects. As further explained, the 800 MHz system is a critical part of both systems, and it is unclear to EBMUD how wholesale band realignment will either accelerate its efforts or avoid duplicative costs. In contradistinction, EBMUD believes Commission endorsement of such a proposal could cause it immeasurable harm and, quite probably, require it to return to the starting point for critical projects that have been underway now for a number of years.

For the Commission to make such a drastic determination, EBMUD submits, there should be some compelling reason related to public health and safety or, minimally, the proposal should represent the best or only viable option for accomplishing the goal of abating interference to public safety operations. The record does not support any of these premises.

5. The Record Does Not Support A Determination For Wholesale Band Realignment

The Commission should be commended for appropriately addressing the twin questions of (i) interference to public safety entities,⁹ and (ii) the most effective means for alleviating this ever-escalating problem. The Nextel proposal has been posited as one

⁹ Of course, Part 90 licensees have been formally included under the public safety classification since the Commission broadened its procedural definition pursuant to Congressional directives contained in the

approach to solving the interference problem with public safety operations. In general, Nextel requests the Commission: (i) assign it additional and contiguous spectrum in the 2 GHz band; (ii) remove Business and Industrial/Land Transportation from the 800 MHz band; (iii) realign the 800 MHz channel plan; (iv) reallocate additional spectrum to public safety licensees; and (iv) require all non-public safety users in the 800 MHz band to reimburse costs associated with the relocation of public safety licensees, which would include licensees that do not contribute to interference problems experienced by public safety operations.¹⁰

The record shows numerous parties oppose various aspects of the proposal, and EBMUD takes this opportunity to align itself with some of the recommendations offered in connection with such oppositions. They include recommendations for the Commission to:

A. Emphasize the need for licensees to adhere to the *Best Practices Guide*, especially since principles and procedures outlined therein have been shown to be effective in addressing many interference problems on a case-by-case basis.¹¹

B. Recognize the rebanding proposal is highly disruptive and not justified on the record;¹²

1997 Balanced Budget Act. See Balanced Budget Act of 1997, Pub. L. No. 105-33, Sec. 3004(a) *Allocation and Assignment of New Public Safety Licenses and Commercial Licenses*.

¹⁰ See *NPRM*, WT Docket No. 02-55 at ¶¶ 23 – 32.

¹¹ E.g., *Avoiding Interference Between Public Safety Wireless Communications Systems and Commercial Wireless Communications at 800 MHz – A Best Practices Guide*, December 2000. See also Comments of Consumers Energy Company at p. 6.

¹² E.g., Comments of Access Spectrum, LLC at 3-4; American Water Works Association at p. 5; Exelon at pp. 3-4 and Duke Energy Corporation at pp. 4-5.

C. Emphasize the availability and use of market-based solutions to handle such matters as receiver overload, intermodulation and out-of-band band emissions,¹³

D. Promote the use of flexible options presently permitted under the rules, such as channel swaps.¹⁴

E. Recognize that the recommendations set out under A through D, above, are regarded as interim in nature,¹⁵ and that the Commission must ultimately develop a long term solution. Some commenters suggest the solution may lie in band relocation that does not involve the 900 MHz band - such as the 700 MHz band,¹⁶ That, in turn, has prompted arguments that such an approach is not permissible under long-standing judicial precedent, and will require protracted adjudicatory proceedings.¹⁷ Whatever the outcome, and to the extent the Commission undertakes any modified rebanding proposal, EBMUD urges that the already overcrowded 900 MHz band be excluded from any such consideration.

¹³ *E.g.*, Comments of United Telecom Council at pp. 14-20.

¹⁴ *Id* at 21.

¹⁵ *E.g.*, Comments of Cinergy at pp. 24-31.

¹⁶ *See* Comments of Private Wireless Coalition which notes, in pertinent parts, that the 700 MHz band may be appropriate for fashioning a long term solution to the problem of interference with public safety operations.

¹⁷ *See* Comments of Carolina Power and Light Company and TXU Business Services, citing the seminal telecom licensing cases of *United States v. Storer Broadcasting* and *Ashbacker v. U.S.* in support of their argument that a mandatory migration proposal (such as the one proposed) will, minimally, trigger adjudicatory proceedings, citing in support thereof Section 316 of the Communications Act. Comments at pp. 11-14.

CERTIFICATE OF SERVICE

I, Amy Garland, hereby certify that true copies of the foregoing REPLY COMMENTS OF EAST BAY MUNICIPAL UTILITY DISTRICT, were filed electronically this 5th day of June, 2002, and forwarded, via First Class U.S. Mail, postage prepaid, to the following:

Michael J. Wilhelm, Esq.
Public Safety and Private Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Qualex International
Portals II
445 12th Street, SW
Room CY-B402
Washington, DC 20554

/s/
Amy Garland