



UNITED TELECOM COUNCIL

*The Telecommunications and Information
Technology Association for Utilities, Energy,
And Other Critical Infrastructure Companies*

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September 23, 2004

Michael Wilhelm, Chief
Public Safety and Critical Infrastructure Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 Twelfth Street, SW, 4th Floor
Washington, DC 20554

**Re: 900 MHz Application Freeze (DA 04-3013)
Improving Public Safety Communications in the 800 MHz Band
(WT Docket No. 02-55)**

Dear Mr. Wilhelm,

By this letter, the United Telecom Council (UTC) requests that the Public Safety and Critical Infrastructure Division (PSCID) reconsider its decision to impose an immediate freeze on applications in the 896-901 MHz/935-940 MHz private land mobile (PLMR) frequency band.¹ The application freeze, if continued for any significant length of time, poses hardships for critical infrastructure (CI) licensees, many of which rely on this frequency band for private, internal mission-critical communications. Further, UTC is concerned by the stated rationale for the freeze.

The PLMR community had no notice that activity in this important frequency band was about to be halted. CI entities have lengthy budget and planning cycles, often of three years or more. The freeze on "new licenses" thus halts long-planned and much-needed expansions of existing communications systems into new areas, such as adding new sites to provide communications coverage where electrical and gas infrastructure has been extended to provide basic services to consumers and businesses in growth areas. Many utilities and other CI entities also are in a multi-year process of upgrading their communications systems to more advanced technology, and some of these systems are planned for the 900 MHz band, which while smaller, is in some areas less congested than 800 MHz PLMR frequencies. Unless the freeze is ended quickly, CI personnel are threatened with significant exposure to loss of communications, a basic safety

¹ *Public Notice*, "Wireless Telecommunications Bureau Freezes Applications in the 900 MHz Band," DA 04-3013, released September 17, 2004 ("PN", "the Notice").

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tool in highly hazardous working conditions. Such concerns increase in the event of any natural or manmade emergency, such as recent hurricanes in Florida and along the Gulf Coast.²

UTC also is concerned that the freeze was imposed based on the rationale provided in the PN. The Bureau notes the filing of “[a]n exceptionally large number of applications” for 900 MHz authorizations since the release of the 800 MHz *Report and Order*.³ It freezes the 900 MHz band based on concern that “additional such filings may compromise Nextel’s ability to obtain the necessary ‘green space’ to house some of its systems while the 800 MHz band is reconfigured.”⁴ However, nowhere does the PN mention that the large number of applications referenced was filed by ACI 900, Inc. a wholly owned subsidiary of Nextel itself. UTC has conducted a search of the licensing database for the 900 MHz PLMR band, and no other unusual activity is apparent. It seems odd, at best, that an important private wireless frequency band should be frozen to protect an entity that is the only cause for the concern expressed.

The 800 MHz R&O does not discuss Nextel’s possible need for “green space” beyond its own existing 900 MHz holdings. In the decision, the Commission declines to accept the carrier’s return of its many 900 MHz SMR licenses because “Nextel likely will need to use this spectrum to accommodate subscriber demand during 800 MHz band reconfiguration; and, possibly thereafter.”⁵ Moreover, current rules make Nextel ineligible for new licenses in the 900 MHz Business and Industrial/Land Transportation pools to serve subscribers.⁶ Wholly owned subsidiary ACI 900 claims in its more than 500 initial applications that it will provide private, internal service. However, UTC must agree with those parties questioning whether the carrier actually plans to construct a separate, private communications system for what would have to be hundreds of thousands of employees -- at facilities across the country -- in order to meet eligibility and loading rules.⁷ Beyond these problems, the applications must be deemed defective due to their request for several times the limit on the number of frequencies that may be licensed at one time.⁸ They also do not contain any indication that they are meant for

² Further, such emergencies impact more than local personnel. The Bureau should be aware that hundreds of utility personnel from areas including Texas, New Jersey and Michigan have been among those in hurricane-hit areas of the U.S. for several weeks, working to restore power through the series of storms.

³ Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, FCC 04-168, WT Docket 02-55 (released August 6, 2004)(“800 MHz R&O”).

⁴ PN at 1-2.

⁵ 800 MHz R&O at ¶ 207.

⁶ *See*, 47 C.F.R. § 90.617.

⁷ *See, e.g.*, “Informal Opposition of Verizon Wireless” to various applications for 900 MHz PLMR frequencies submitted by ACI 900, Inc., filed September 14, 2004. UTC generally agrees with the points made in Verizon’s filing, but clarifies here that UTC’s notice referred to a current figure of nearly 61,000 frequencies, rather than pairs.

⁸ *See*, 47 C.F.R. §90.623(a) and 47 C.F.R. § 90.627(a). For example, application File No. 0001845961 requests 182 frequencies – each with three different emission designators – in Baker, CA.

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temporary, "green space" use; grants would award ACI 900 full, ten-year licenses, assuming they could construct the requested facilities within one year and load them properly.⁹

As the Bureau is aware, PLMR licensees are expected to apply for only what they need, when they need it. In the current situation, licensees for which the Business and I/LT pools were designed are unable to do this, while one entity threatens to remove a huge percentage of remaining spectrum from use. UTC urges the Bureau to examine ACI 900's applications very closely and to reconsider the freeze on 900 MHz activity.

Pursuant to Section 1.1206 of the Commission's Rules, a copy of this letter is being filed electronically in connection with both proceedings referenced above.

Respectfully submitted,

UNITED TELECOM COUNCIL

By: 

CC: Marlene Dortch, Secretary
Robin Cohen, ACI 900, Inc.

⁹ UTC also is concerned that ACI 900 filed hundreds of amendment applications the day before the freeze was announced, lending credence to claims that Nextel had prior notice not provided to stakeholders such as frequency coordinators.