

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of:)	
)	
Petition for Rulemaking to Make Unused)	WT Docket No. 09-217
Narrowband PCS Channels in the 900 MHz)	
Band Available for Public Safety Use)	
)	

**REPLY COMMENTS OF
THE NATIONAL PUBLIC SAFETY TELECOMMUNICATIONS COUNCIL**

The National Public Safety Telecommunications Council (NPSTC) submits these Reply Comments recommending that the Commission move forward to conduct an audit of the 900 MHz Narrowband PCS spectrum, recover unused channels, and make channels available for public safety use to enable cost-effective alerting services needed by public safety entities.

The National Public Safety Telecommunications Council

The National Public Safety Telecommunications Council (NPSTC) is a federation of public safety organizations whose mission is to improve public safety communications and interoperability through collaborative leadership. NPSTC pursues the role of resource and advocate for public safety organizations in the United States on matters relating to public safety telecommunications. NPSTC has promoted implementation of the Public Safety Wireless Advisory Committee (PSWAC) and the 700 MHz Public Safety National Coordination Committee (NCC) recommendations. NPSTC explores technologies and public policy involving

public safety telecommunications, analyzes the ramifications of particular issues and submits comments to governmental bodies with the objective of furthering public safety telecommunications worldwide. NPSTC serves as a standing forum for the exchange of ideas and information for effective public safety telecommunications.

The following 15 organizations participate in NPSTC:

American Association of State Highway and Transportation Officials
American Radio Relay League
Association of Fish and Wildlife Agencies
Association of Public-Safety Communications Officials-International
Forestry Conservation Communications Association
International Association of Chiefs of Police
International Association of Emergency Managers
International Association of Fire Chiefs
International Municipal Signal Association
National Association of State Chief Information Officers
National Association of State Emergency Medical Services Officials
National Association of State Foresters
National Association of State Technology Directors
National Emergency Number Association
National Sheriffs' Association

Several federal agencies are liaison members of NPSTC. These include the Department of Homeland Security (the Federal Emergency Management Agency, the Office of Emergency Communications, the Office of Interoperability and Compatibility, and the SAFECOM Program); Department of Commerce (National Telecommunications and Information Administration); Department of the Interior; and the Department of Justice (National Institute of Justice, CommTech Program). NPSTC has liaison relationships with associate members, the Telecommunications Industry Association and the Canadian Interoperability Technology Interest Group.

NPSTC Reaffirms its Request

As noted in the NPSTC petition, the Commission opened the 900 MHz Narrowband PCS band, i.e., 901-902, 930-931 and 940-941 MHz approximately 15 years ago. At that time, the rules were designed to address the need for two-way paging and messaging that could provide the capability for short transmissions in both directions which enables transmission of an acknowledgement or other short response. The spectrum was originally established for commercial use to provide two-way paging to the mass market and was auctioned to the highest bidders. Soon after auction, deployment of two-way paging systems commenced. However, the mass market requirement for two-way paging has declined as consumers have increasingly relied on mobile phone service from cellular and PCS providers. This situation means there are likely to be a significant number of the NBPCS channels that are still licensed but actually unused.

Accordingly, in its petition NPSTC requested that the Commission conduct an audit to determine which channels are being used and which are not. NPSTC further requested that the Commission make approximately 5 channels from those found to be unused available to public safety to support 2 way paging and alerting communications for public safety personnel.

The comments in this proceeding from NBPCS license holders largely oppose any Commission audit to determine if the spectrum is being used. This is not surprising. For example, United Wireless Holdings, Inc. states that NPSTC has not provided sufficient justification for the Commission to disrupt the “expectations of licensees who are in compliance with the terms of their licenses and are facing one of the most difficult sales and financing markets in memory.”¹ United Wireless also advises that “Fundamental to the viability of the

¹ Comments of United Wireless Holdings, January 8, 2010, at page 5.

Commission’s spectrum auction processes for participants and potential sources of funding such as UWH, is the assurance that licenses acquired through the auction process will remain available for the “highest and best use” possible (within the constraints of the license use restrictions) at any time during the license term.”²

NPSTC is well aware of the state of the economy, as local and state government budgets are being impacted as well. The economic challenge is one of the reasons that public safety agencies would benefit from additional communications tools such as two-way paging to make their operations as efficient and effective as possible. The benefits of two-way paging and the need for public safety to be in control of the systems were addressed in NPSTC Petition for Rulemaking. In its comments, Monroe County, NY summarized the key issue:

...based on our own direct experience, we concur with the NPSTC position that two-way paging systems are extremely useful to public safety. However, we also agree that current spectrum policy makes it difficult-to-impossible for most agencies to make use of two-way paging. Although spectrum for these systems may be available to some agencies through waiver of rule, the 900MHz waiver process involves early commitment to unknown costs, an unknown outcome, and an unknown schedule. For the vast majority of state and local agencies, this type of uncertainty makes it impossible to even start the process of implementing a two-way paging system.³

NPSTC has no specific intent to target a particular NBPCS licensee. In fact, licensees who are using their spectrum have nothing to fear from the NPSTC petition. However, NPSTC does not believe that obtaining a license in an auction automatically bestows upon a licensee the determination that the spectrum involved remains available for its “highest and best use” if the spectrum is not being used. Nor do we believe it was the intent of Congress and the Commission in implementing auctions to provide licensees the means to keep spectrum out of use. Such a result would be counterproductive indeed, given all the accolades auctions have received for putting spectrum to its “highest and best use.”

² Comments of United Wireless Holdings, January 8, 2010, at page 2.

³ Comments of Monroe County, NY at pages 1 and 2.

Given the state of the NBPCS service overall in the market, NPSTC continues to believe there are a significant number of channels that are unused. Therefore, the NPSTC petition requested the Commission to conduct an audit to determine the presence of unused channels and to make a very small portion, approximately 5 channels, available to public safety, and we reiterate that request in these Reply Comments. Under this scenario, no channels in actual use would be taken from any licensee. Furthermore, NPSTC does not expect the Commission to take back channels from a licensee who has a legitimate program in place to migrate the channels to new and beneficial uses. However, in our view, having a licensee merely state that it needs additional time with little to no evidence that viable use of the spectrum is likely does not meet the intent of the rules.

NPSTC therefore urges the Commission to conduct an audit of the NBPCS spectrum and put unused spectrum to its "highest and best use" by making approximately 5 channels available to public safety for communications to help support the protection of life and property.

Respectfully submitted,



Ralph A. Haller, Chair
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