



800 MHz Rebanding May Begin by June 2005

As reported in prior issues of this newsletter, the Federal Communications Commission adopted a decision last July in its high-profile and often contentious proceeding to resolve public safety system interference problems in the 800 MHz land mobile band. As a long-term solution, the decision calls for the reconfiguration of the 800 MHz band to separate “non-cellularized” systems from systems that use cellular-type technologies. Under the FCC’s rebanding plan, existing licensees on former General Category Channels 1-120 and those in the public safety “NPSAC” band (as well as some others) will be required to relocate their systems to alternative channels in the 800 MHz band. Nextel Communications, Inc. will be responsible for the payment of all necessary rebanding costs.

The administrative and financial aspects of the band reconfiguration process are to be overseen by an independent Transition Administrator (TA). In October 2004, the Commission’s staff approved the “BearingPoint Team” as the 800 MHz TA. Complying with the first of its major requirements, the BearingPoint Team submitted a proposed Regional Prioritization Plan (Plan) to the Commission on January 31, 2005.

The Plan details when reconfiguration will commence in each geographic region of the country. In essence, the Plan clusters the various “NPSAC” regions (or parts thereof) into four separate “waves” with distinct relocation start dates. The first wave consists of regions having the highest number of

incidents of interference (per capita) and the largest populations. It includes (among other areas) Northern California, Colorado, parts of the mid-west, and the North Atlantic region. The second wave includes many of the midwestern and northern states, as well as some parts of the south (e.g., Louisiana, Oklahoma, and parts of Texas). The third wave consists of the southeastern states, which are subject to a somewhat different rebanding plan than is the rest of the country. The fourth wave consists of regions that are densely licensed along the Canadian and Mexican borders.

The Plan recommends the following staggered start dates for the reconfiguration process in each wave: Wave 1 – June 27, 2005; Wave 2 – October 3, 2005; and Wave 3 – January 3, 2006. Band reconfiguration cannot begin in Wave 4 until the United States

executes new treaties with Canada and Mexico to allow implementation of new border band plans. In each wave, relocations from Channels 1-120 will precede relocations from the NPSAC public safety band. The TA’s timetable for each wave incorporates a 3-month voluntary negotiation period (beginning at the wave’s designated start date), followed by a 3-month mandatory negotiation period. The Plan envisions that reconfiguration will be completed in all regions (with the possible exception of the border regions) by June 27, 2008.

We expect that the Commission will approve the TA’s Plan with few or no revisions. Thus, it is likely that Wave 1 licensees on Channels 1-120 will be contacted by Nextel by late June or soon thereafter to initiate voluntary negotiations.

Compact Disc Available on BPL Web Conference

Last December, Keller and Heckman LLP sponsored a Web Conference, entitled “The FCC’s BPL Order . . . and Beyond.” The 90-minute presentation allowed for interactive participation between Keller and Heckman LLP attorneys and the firm’s utility clients and others interested in Broadband over Power Line. Topics included all aspects of the FCC’s recent BPL Order, as well as Pole Attachment, Antitrust, Access, Easement and other technical and legal issues not covered by the decision.

An audio copy of the BPL Web Conference is now available free of charge on compact disc. If you would like a copy, please contact Jack Richards (202-434-4210), Doug Jarrett (202-434-4180) or Tom Magee (202-434-4128).

For more than 40 years, Keller and Heckman LLP has represented electric utilities, oil and gas companies, commercial wireless radio operators, common carriers, satellite service providers, equipment manufacturers and a host of other clients before the Federal Communications Commission. On behalf of our telecommunications clients, we file applications for radio station authorizations, participate in rulemaking proceedings, request rule waivers, provide engineering support, structure business and transactional arrangements (including telecommunications system acquisitions and divestitures), prepare communications asset valuations and otherwise offer a broad range of assistance related to FCC requirements. For further information regarding our telecommunications capabilities, please visit our website at www.khlaw.com or contact one of our partners listed below.

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FCC to Reauction MAS Spectrum

The Federal Communications Commission has announced that it will commence an auction of Multiple Address System (MAS) licenses on **April 26, 2005**. Many companies in the power, petroleum and security industries (among others) rely heavily on MAS facilities to meet various internal alarm, control, and monitoring requirements.

For sale at the FCC's upcoming auction will be 4226 MAS licenses in the 928/959 MHz and 932/941 MHz bands that went unsold at a prior MAS spectrum auction held by the FCC in November 2001. Licenses will be offered, where available, in 176 Economic Areas located throughout the United States and its territories. Each license block to be auctioned consists of a 25 kHz channel pair (2 x 12.5 kHz). MAS license winners will be able to use their spectrum for the provision of terrestrial fixed or mobile services on either a private or commercial basis. However, auction winners will be required to protect any existing incumbent licensees from harmful interference.

Entities that wish to participate in the auction must file a short-form (FCC Form 175) application by 6:00 pm ET on **March 4, 2005**. Applicants also must submit an upfront payment (by wire transfer) by 6:00 pm ET on **April 1, 2005**. For the vast majority of MAS licenses being auctioned, the amount of the upfront payment (and minimum opening bid) will be \$1,000.

This auction may present an excellent opportunity for traditional MAS users and others to obtain much-needed spectrum at a reasonable price. At the FCC's prior MAS auction, numerous licenses were purchased for their minimum required bid amount of \$1,000, and it is likely that many licenses again will be available for this amount (or only slightly more) at the upcoming reauction of this spectrum.

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FCC Revises Narrowband Migration Schedule

The Federal Communications Commission has revised its mandatory “narrowband migration” schedule for Industrial/Business and Public Safety licensees operating in the 150-174 MHz and 421-512 MHz Private Land Mobile Radio Service (PLMRS) bands. As part of this revised timetable, the FCC included a “spectrum equivalency standard” that permits licensees to use equipment operating with a channel bandwidth of more than 12.5 kHz, but still complies with the “narrowband” requirements (i.e., the equipment is capable of operating with the narrowband equivalent of one channel per 12.5 kHz of channel bandwidth (voice) or 4800 bits per second per 6.25 kHz (data)).

By way of background, the FCC established the final “narrowband migration” dates and interim deadlines for the PLMRS bands below 512 MHz in February 2003. The agency intended for these deadlines to accelerate the transition to narrowband (i.e., 12.5 kHz) technology from the existing wideband (i.e., 25 kHz) systems employed by many PLMRS licensees today. More than a dozen parties filed Petitions for Reconsideration of the migration schedule. Largely in response to these petitions, the Commission released a decision in December 2004 in which the agency

adopted a revised timetable for the mandatory migration to narrowband technology.

The revised mandatory narrowband migration deadlines are as follows:

January 1, 2013

- ◆ **Final Migration Deadline:** As of January 1, 2013, licensees are required to migrate to 12.5 kHz technology, or a technology that meets the spectrum equivalency standard.

January 1, 2011

- ◆ **Interim Deadline for Narrowband Migration:** After January 1, 2011, the FCC will no longer accept applications for new operations using 25 kHz channels unless the proposed system meets the spectrum equivalency standard. Applications for modification of a license that request authority to expand the permitted contour of an existing 25 kHz station will not be accepted after January 1, 2011 unless the modified system meets the spectrum equivalency standard.
- ◆ **Interim Deadline for Equipment Manufacture/Importation:** The FCC will permit the manufacture or importation of equipment

capable of operating on a channel bandwidth of 25 kHz until January 1, 2011.

Equipment Certification Deadline Stayed. The FCC’s narrowbanding rules also place restrictions on the certification of new equipment in the PLMRS bands. As of 1997, the agency will only certify equipment for use in the PLMRS bands if the device has a 12.5 kHz channel bandwidth capability. The rules further require that, as of January 1, 2005, the FCC is only to certify PLMRS equipment that is capable of operating with a channel width of 6.25 kHz (the “2005 Certification Requirement”).

Several equipment manufacturers recently filed petitions requesting that the FCC defer the 2005 Certification Requirement. These manufacturers believe that, rather than fostering narrowband migration, the 2005 Certification Requirement will have the unintended effect of hampering interoperability due to the lack, at this time, of an industry standard for 6.25 kHz equipment. (A standard is not expected to be finalized until at least mid-2005). The FCC is seeking comment on the manufacturers’ request for deferral. Pending resolution of the request, the Commission has stayed the 2005 Certification Requirement.

Chairman Powell to Depart FCC

On January 21, 2005, Federal Communications Commission Chairman Michael Powell announced his plans to step down in early March. Powell joined the Commission in 1998 and was appointed Chairman in 2001. His term was not due to expire until 2007. During his tenure, Powell was an advocate of, among other things, Broadband Over Power Lines technologies, Voice Over Internet Protocol services, “secondary markets” in

spectrum, and other new communications technologies.

Among the possible reported replacements for Powell are current FCC Commissioner Kevin Martin, a former Commissioner of the Texas Public Utility Commission, the Chairman of the Federal Energy Regulatory Commission, and the head of the U.S. Department of Commerce National Telecommunications and Information

Administration. It is expected that the new Chairman will continue to pursue many of the same policies and goals that have been advanced by Chairman Powell during his tenure.

On the heels of Powell’s announcement, the planned departures of John Rogovin, FCC General Counsel, and Kenneth Ferree, Chief of the FCC’s Media Bureau, also were announced.

Focus on WiMAX

One of the most talked about developments for next-generation wireless broadband deployment is a technology commonly referred to as WiMAX.

WiMAX, short for Worldwide Interoperability for Microwave Access, is a wireless standard developed by a working group of the Institute of Electrical and Electronics Engineers (IEEE). The standards developed by the IEEE form the foundation for nearly all data communications systems and apply to coaxial, copper and fiber optic cables.

As with any other spectrum based technology, successful WiMAX deployment will depend largely upon the availability and suitability of spectrum resources. For entities providing wireless communications services, two sources of spectrum are available: 1) licensed spectrum; and 2) unlicensed spectrum.

Because of its broad operating range, licensed and unlicensed spectrum options for WiMAX technology are extensive. Despite the wide range of spectrum options, industry leaders are focusing on three spectrum bands for deployment: 5 GHz; 3.5 GHz; and 2.5

GHz. Recent favorable developments at the Federal Communications Commission that may further strengthen the technology's spectrum options include the following:

- WiMAX may benefit from the Commission's strong belief that enhanced unlicensed spectrum use is necessary to achieve the agency's broadband deployment mandate. In the last two years alone, the Commission has initiated a number of proceedings to increase the spectrum available for unlicensed operations. Any increase in unlicensed spectrum resources is good news for WiMAX, since many of its standards operate favorably on broad spectrum ranges.
- In July 2004, the Commission adopted streamlined procedures for the processing of spectrum lease applications. The Commission's new procedures allow for prompt processing of transfer, assignment and leasing applications when the parties certify that the proposed transaction meets certain criteria.

- The Commission recently revised its rules to permit higher power limits in rural areas. The Commission believes that this rule change will benefit consumers by reducing the costs of infrastructure and otherwise making the provision of spectrum-based services more economical in rural areas, where spectrum interference and congestion concerns are not so pronounced.

Like any new technology, only time will tell whether WiMAX fulfills its promise. Certainly, the technology's broad range of spectrum options – both licensed and unlicensed – provides a favorable climate for equipment manufacturers and providers. Further, the Commission's efforts to enable access to underutilized spectrum through secondary markets may alleviate concerns regarding licensed operations.

New ULS Construction Notification Procedures to Take Effect in June

The Federal Communications Commission's Universal Licensing System (ULS) will have a new feature beginning in June 2005. The ULS software will have the capability to automatically identify stations for which Notifications of Construction or Requests for Extension of Time to Construct have not been filed. The agency will notify the licensee of the

unconstructed status of the station, and that license will then be included on a Public Notice announcing that the proper notifications have not been submitted to the Commission. Effective 30 days following the issuance of the Public Notice, the license will be converted from "Active" to "Terminated" status in the ULS database.

Licensees will have thirty (30) days from the release of the Public Notice to submit Petitions for Reconsideration to the agency for reinstatement of the license. After that date, the frequencies may be licensed to other parties. The former licensee may reapply for the frequencies if the channels have not been reassigned to other users.

Commission Adopts Rules for ESVs

The Federal Communications Commission has adopted licensing and service rules for Earth Stations on Board Vessels (ESVs) in the C-band (5925-6425 MHz/3700-4200 MHz) and the Ku-band (14.0-14.5 GHz/11.7-12.2 GHz).

The Commission's ESV Order adopts various measures to protect Fixed Service (FS) operations in the 6 GHz band from harmful interference from ESVs. Perhaps most importantly, stationary and in-motion ESV operators in the C-band will be required to coordinate their uplink frequency use with onshore and offshore FS stations in the 6 GHz band. Such coordination will be necessary whenever ESVs are within 200 km (approximately 125 miles) from the U.S. coastline or within 200 km from offshore installations, such as those located in the Gulf of Mexico.

The details of ESV coordinations must be filed with the Commission to be placed on Public Notice. Although individual ESVs may commence operation immediately upon release of the Public Notice, such operations must cease (pending resolution of the dispute) if any objections are received prior to the end of the 30-day comment period on the Public Notice. Once a C-band ESV operator has successfully completed the coordination and Public Notice processes, its operations will have co-primary status with other primary service licensees in the band. This means that subsequent entrants – including FS entities – will be required to coordinate their operations with pre-existing ESVs.

Other measures to protect 6 GHz FS operations from interference from ESVs and/or to preserve C-band spectrum for future FS growth include the following:

- Each ESV operator will be permitted to coordinate not more than 72 megahertz of spectrum in the lower 6 GHz band per coordination location, using at most two satellites, and all C-band ESV operators in a given coordination area will collectively be limited to 180 megahertz of coordinated spectrum.
- C-band ESV operators will be required to: (1) maintain vessel tracking data for one year; (2) supply the vessel tracking data to a frequency coordinator, FS operator, or the FCC within 24 hours upon request; and (3) maintain a "24/7" point of contact within the United States, to be posted on the FCC's web site.
- ESV networks must be capable of automatically shutting off ESV operations should the vessel travel outside of the coordinated area or drop below its coordinated speed while within the 200 km coordination distance.
- C-band ESVs only will be permitted on vessels weighing at least 300 gross tons.

The Commission's Order also adopts regulatory requirements for ESV operations in the Ku-band. Because Ku-band ESVs are less likely than C-band ESVs to cause harmful interference to incumbent operations, the FCC has adopted a less restrictive regulatory scheme for this band. The agency hopes that the absence of stringent requirements will encourage ESV operators to utilize the Ku-band wherever possible.

Most of the FCC's new ESV rules will take effect on March 2, 2005.

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