

January 6, 2004

## Update on FCC Proceedings Affecting Business and Industrial Radio

The Federal Communications Commission (FCC) has underway two proceedings of importance for business and industrial clients of Duane Morris. These proceedings involve the FCC's continuing effort to "re-farm" private land mobile radio bands, and the proceeding which looks toward resolving the interference caused by Nextel and other cellular carriers in the 800 MHz band. This Advisory provides an update on developments in these proceedings.

### Background

American business and industry makes intensive use of private radio systems for a wide variety of functions essential to productivity and safety. These include, for example, emergency medical communications, just-in-time delivery of parts and supplies, materials handling on the factory floor, and emergency repair and restoration for critical infrastructure like electric and gas lines.

There are more than one million private mobile radio systems licensed by the FCC and approximately 12 million transmitters. The capital investment represented by these systems is in excess of \$25 billion.

### Re-Farming

More than 10 years ago, the FCC determined that it needed to take action in response to increasing congestion in the private mobile bands below 512 MHz. After years of controversy, the agency ultimately adopted rules which would facilitate a transition from the 25 kHz channels widely used today, to 12.5 kHz and, ultimately, 6.25 kHz. In so doing, the FCC determined that it would be able to greatly increase the efficiency with which the private land mobile bands are used.

Initially, the agency stopped short of ordering private radio users to convert their systems to narrowband. However, the method chosen by the FCC to achieve narrowbanding (essentially, requiring equipment manufacturers to meet tighter specifications in order to secure FCC approval for their equipment) has not achieved the desired result (i.e., increased spectrum efficiency).

In February 2003, the FCC tried a different tack: It mandated that business and industrial users deploy 12.5 kHz equipment no later than January 1, 2013, and it determined that it would no longer accept applications for new wideband (25 kHz) systems and certain modifications to existing systems, after January 13, 2004.

Numerous petitions for reconsideration of the narrowbanding Order have been filed. The FCC recently stayed certain aspects of its Order pending resolution of those petitions (i.e., those aspects precluding acceptance of applications after January 13, 2004). It is unclear at this point what the rules will ultimately look like. What is not unclear, however, is that some form of mandatory conversion will almost certainly emerge from the rulemaking next year. And, when it does, it will behoove business and industrial clients to carefully consider their narrowbanding strategy, including, possibly, the pros and cons of early conversion.

## 800 MHz

If “re-farming” looks to achieve more intensive use of private radio spectrum, the FCC’s ongoing 800 MHz proceeding looks to solve a different problem – interference to police, fire, business and industrial radio systems chiefly caused by Nextel.

This proceeding began two years ago with an effort by Nextel to rearrange spectrum assignments so as to consolidate public safety users in one part of the 800 MHz band, while Nextel would vacate that portion of the band for more valuable spectrum. Business and industrial users electing to remain on their existing assignments would have been relegated to secondary status; otherwise, they were expected to migrate to another band at their own expense. This re-shuffling of frequency assignments has come to be known as “re-banding.”

Nextel has formed a coalition with certain public safety and business/industrial associations called the “Consensus Parties,” and formulated a new plan. The new plan would still involve re-banding for many industrial and business users, albeit not as many as with the original proposal. In addition, it would preclude the use of cellular technology below 861 MHz where many business and industrial systems reside today. Nextel proposes that, in return for vacating its assignments in the lower 800 MHz band and certain other spectrum holdings, it be awarded spectrum in the 1.9 GHz band.

Other interest groups led by the cellular carriers and critical infrastructure companies such as electric utilities, have vigorously opposed the “Consensus Party” plan. They have argued that technical solutions should be applied when and where interference manifests itself, rather than resorting to the re-banding of several thousand users. They also have observed that Nextel stands to gain a \$6.5 billion windfall in the form of much improved spectrum in the event the FCC accepts its plan.

At present, the FCC is struggling with the most basic issues affecting the competing plans: Whether to mandate re-banding and, if so, how to implement it. Earlier suggestions that the FCC might have the proceeding resolved by year’s end have proved illusory; more likely is a decision on at least some aspects of the controversy by the second quarter next year.

### For Additional Information

Duane Morris is privileged to provide representation to business and industrial users in these proceedings. Clients with questions about the implications of the proceedings should contact Ken Keane in the Washington, D.C. office at 202.776.5243 or the lawyer in the firm with whom you are regularly in contact.