



Federal Communications Commission
Washington, D.C. 20554

September 24, 2003

DA 03-2940

Mr. Michael W. Grady
Vice President, Technology, Engineering and Quality and
Sector Chief Technical Officer
Northrop Grumman Information Technology
4805 Stonecroft Boulevard
Chantilly, Virginia 20151-3822

Re: Petition for Rulemaking Proposing Reallocation of Additional Spectrum For Public Safety Uses

Dear Mr. Grady:

This letter responds to the petition for rulemaking that you filed on behalf of Northrop Grumman Information Technology ("Northrop") on April 21, 2003.¹ This Petition seeks a reallocation of 10 megahertz of "additional broadband spectrum" for public safety services on frequencies below 3 GHz, preferably from the 700 MHz band.² Northrop's Petition specifically identifies the Upper 700 MHz band segments located at 747-752 and 777-782 MHz for possible use by first responders.³ For the reasons described below, we dismiss Northrop's Petition without prejudice.

In its Petition, Northrop recognizes that the Commission allocated 24 megahertz of Upper 700 MHz band spectrum for public safety use in 1997, but says that this spectrum has already been set aside for other public safety uses, and the channelization of the band by the Commission precludes the use of advanced broadband wireless applications.⁴ The Petition also claims that reallocation of additional spectrum would help resolve public safety interoperability problems.

We find Northrop's Petition does not warrant consideration by the Commission.⁵ Congress mandated the Commission to reallocate "spectrum between 746 megahertz and 806 megahertz, inclusive."⁶ This mandate required the Commission to reallocate 24 megahertz of the spectrum "for public safety services" and 36 megahertz of the spectrum "for commercial use to be assigned by

¹ Petition for Rulemaking of Northrop Grumman Information Technology, filed April 21, 2003 ("Petition").

² Petition at ii, 1.

³ See Petition at ii, 12. The "Upper 700 MHz band" is the 60 megahertz of spectrum at 746-806 MHz, which is currently used by TV stations (Channels 60-69). The "Lower 700 MHz band" is the sub-adjacent 48 megahertz segment (698-746 MHz) that is currently used for TV Channel 52-59 operations.

⁴ See *id.* at 9-12.

⁵ See 47 C.F.R. § 1.401(e) ("Petitions [for rulemaking] which are moot, premature, repetitive, frivolous, or which plainly do not warrant consideration by the Commission may be denied or dismissed without prejudice to the petitioner.").

⁶ 47 U.S.C. § 337(a), as enacted by the Balanced Budget Act of 1997, Pub. L. No. 105-33, Title III, 111 Stat. 251 (1997).

competitive bidding.”⁷ As Northrop acknowledges in its Petition, the 747-752 and 777-782 MHz band segments are part of the 36 megahertz of spectrum that the Commission reallocated “for commercial use to be assigned by competitive bidding” pursuant to Section 337(a) of the Communications Act of 1934, as amended (“the Act”).⁸ We cannot grant the request for reallocation of additional Upper 700 MHz spectrum as it is inconsistent with Section 337(a) of the Act. Northrop itself acknowledges this statutory impediment.⁹

Moreover, to the extent that Northrop is seeking a reallocation of Lower 700 MHz band spectrum, we find that this request would be inconsistent with Commission decisions on the Lower 700 MHz band.¹⁰ Northrop suggests that a reallocation of additional spectrum for broadband use would resolve public safety interoperability issues.¹¹ Northrop’s Petition does not, however, acknowledge that, pursuant to Section 337(a)(1) of the Act, the Commission followed the Act’s statutory directive, by designating 24 megahertz of the Upper 700 MHz band for public safety use.¹² Additionally, the Commission reserved approximately ten percent of the 24 megahertz of 700 MHz public safety spectrum for interoperability use.¹³ There are 64 paired narrowband (6.25 kHz) voice and data interoperability channels and 36 wideband (50 kHz) data interoperability channels.¹⁴ Northrop’s proposed system is fundamentally inconsistent with the 700 MHz public safety band channelization established by the Commission. Thus, to that extent, the Northrop Petition constitutes an untimely petition for reconsideration of the Commission orders establishing 700 MHz public safety band channelization and technical and service rules.¹⁵ Northrop fails to explain why it believes that the 700 MHz interoperability channels established by the Commission cannot accommodate public safety’s requirements for voice and data interoperability.

⁷ *Id.*

⁸ Petition at 15; *see also* Reallocation of Television Channels 60-69, the 746-806 MHz Band, *Report and Order*, 12 FCC Rcd 22953 (1998).

⁹ Petition at 15.

¹⁰ The Commission has completed rulemaking proceedings to reallocate the Lower 700 MHz band and has established service rules for new services in that band. *See* Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Report and Order*, 17 FCC Rcd 1022 (2002); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59), *Memorandum Opinion and Order*, 17 FCC Rcd 11613 (2002). Pursuant to statutory directive, the Commission has also conducted two auctions in which it offered licenses in the C and D blocks of the Lower 700 MHz band. *See also* Auction Reform Act of 2002, Pub. L. No. 107-195, 116 Stat. 715 (directing Commission to conduct initial Lower 700 MHz C and D block auction).

¹¹ *See* Petition at 12-14.

¹² We have found no indication in the record of the proceedings that established the band plan and technical and operational requirements for the use of the 700 MHz public safety bands that Northrop participated in any of them.

¹³ The Commission also has designated channels in other public safety bands for interoperability, including the VHF spectrum at 156-162 MHz and the 4.9 GHz band. *See* Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, *Third Memorandum Opinion and Order*, 15 FCC Rcd 19844 (2000); The 4.9 GHz Band Transferred from Federal Government Use, *Second Report and Order and Further Notice of Proposed Rule Making*, 17 FCC Rcd 3955 (2002).

¹⁴ The narrowband channels may be aggregated to form 12.5 kHz or 25 kHz channels, and the 50 kHz wideband channels may be aggregated to form 100 or 150 kHz-wide channels. *See* 47 C.F.R. § 90.531(d).

¹⁵ Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Agency Communications Requirements Through the Year 2010, *First Report and Order and Third Notice of Proposed Rule Making*, 14 FCC Rcd 152 (1998). *See also* 47 C.F.R. § 1.429(d) (deadline for filing of petition for reconsideration in rulemaking proceedings).

Finally, while Northrop's request could be read to request any 10 megahertz portion of spectrum below 3 GHz, Northrop has not identified any specific alternative frequencies beyond those discussed above. We note that the Commission has taken recent steps to allocate more spectrum for public safety uses. Recently, in response to requests by public safety entities, the Commission set aside 50 megahertz of spectrum at 4.9 GHz for public safety broadband uses, with the adoption of service rules in April, 2003.¹⁶

In short, Northrop has presented no persuasive evidence in its Petition to warrant its consideration. While we dismiss this Petition, we do not intend to minimize the important communications needs of public safety entities. We recognize that it is imperative that the Commission ensure efficient and effective communications between first responders. We also note that, other than broadcaster incumbency protections in certain markets, no FCC rules prohibit Northrop or any other entity that acquires spectrum in the non-public safety 700 MHz band through recent or upcoming licensing proceedings (or on the secondary market) from serving first responders with the type of broadband applications described in Northrop's Petition. Indeed, we would expect that this spectrum would be available for such applications sooner than under the Petition's proposal, which would require substantial and uncertain legislative and regulatory steps. Finally, to the extent that Northrop identifies specific public safety frequencies that could support its proposed systems, we note that our action is taken without prejudice to advancing a specific proposal to adjust the rules for such bands.

Accordingly, pursuant to Section 1.401(e) of the Commission's rules, the Petition for Rulemaking submitted by Northrop Grumman Information Technology on April 21, 2003, is hereby dismissed without prejudice. This action is taken pursuant to authority delegated by Sections 0.331 of the Commission's rules, 47 C.F.R. §§ 0.331.

Sincerely,

John B. Muleta, Chief
Wireless Telecommunications Bureau

Edmond J. Thomas, Chief
Office of Engineering and Technology

¹⁶ See The 4.9 GHz Band Transferred from Federal Government Use, *Memorandum Opinion and Order and Third Report and Order*, 18 FCC Rcd 9152 (2003), *recon. pending*.