

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Service Rules for the 746-764 and)	WT Docket No. 99-168
776-794 MHz Bands, and)	
Revisions to Part 27 of the Commission's)	
Rules (Television Channels 60-69))	
)	
Reallocation and Service Rules for the)	GN Docket No. 01-74
698-746 MHz Spectrum Band)	
(Television Channels 52-59))	
)	
Improving Public Safety Communications)	WT Docket No. 02-55
in the 800 MHz Band)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel") hereby submits these comments regarding the Application for Review filed by the Cellular Telecommunications & Internet Association ("CTIA") in the above-captioned proceedings.¹ Nextel takes no position on CTIA's request to delay the auction of licenses in the Upper and Lower 700 MHz bands *per se*. Nextel, however, opposes CTIA's suggestion that the 700 MHz band

¹ Service Rules for the 746-764 and 776-794 MHz Bands, and the Revisions to Part 27 of the Commission's Rules (Television Channels 60-69); Reallocation and Service Rules for the 698-746 MHz Spectrum Band (Television Channels 52-59); Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 99-168, GN Docket No. 01-74, WT Docket No. 02-55, *Application for Review of the Cellular Telecommunications & Internet Association*, filed April 24, 2002 (hereinafter "*CTIA Application*" or "*Application*").

is a viable option for the Commission to consider in its *Public Safety Rulemaking*.² The 700 MHz band would be a sub-optimal, significantly delayed solution to the interference problems that have arisen in the 800 MHz band and the spectrum shortage faced by the public safety community that the Commission urgently seeks to address.

I. The CTIA Application

The *CTIA Application* seeks delay of the 700 MHz auctions (Auction Nos. 31 and 44), pointing out that incumbent broadcasters would have to be cleared before the spectrum would be useable. CTIA cites the needs of prospective bidders to “obtain greater certainty and clarity regarding the realistic measures that will be required to clear the band of incumbents prior to the auctions, and a better sense as to when those measures could be successfully implemented.”³

CTIA further contends in its *Application* that the introduction of a bill in Congress provides additional grounds for the Commission to delay the 700 MHz auctions.⁴ As introduced, that bill includes a finding that there are interference problems in the 800 MHz band, especially for public safety, and that one option being considered for the 800 MHz band would involve the 700 MHz band.⁵

The Commission should reject any suggestion that the 700 MHz band is a viable option for resolving the interference and spectrum shortage problems that are affecting

² Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Notice of Proposed Rulemaking*, 17 FCC Rcd 4873 (2002) (hereinafter “*Public Safety NPRM*” or “*Public Safety Rulemaking*”).

³ *CTIA Application* at 2.

⁴ *Id.* at 4.

⁵ *Id.* at 5, referring to the Auction Reform Act of 2002, H. R. 4560, at Sec. 2(4).

public safety. As set forth below, the 700 MHz band provides no viable solution to these pressing issues, which are the subject of the *Public Safety Rulemaking*.

II. The 700 MHz Band Is Not a Viable Option for Addressing Public Safety’s Urgent Spectrum Needs.

Public safety users today face unprecedented demand for their services, and their spectrum needs are urgent.⁶ Public safety users in the 800 MHz band are receiving interference from commercial mobile radio service (“CMRS”) operators and face a significant shortfall of spectrum. As the Commission stated in the *Public Safety NPRM*, “CMRS interference to public safety systems presents a sufficiently serious problem that a solution must be found.”⁷ Public safety’s spectrum shortfall has been demonstrated to the Commission in the past⁸ and has only grown more severe in the wake of recent, new demands on first responders and other public safety users.⁹

⁶ See, e.g., Statement of Glen Nash, President, Association of Public-Safety Communications Officials-International, Inc. (APCO), Before the United States Senate Commerce, Science and Transportation Committee, Communications Subcommittee (March 6, 2002) (hereinafter “*Statement of Glen Nash*”), available at: <http://www.apco911.org/gov/docs/nash_3-6-2002.htm>.

⁷ *Public Safety NPRM* at ¶ 16.

⁸ See “Final Report of the Public Safety Wireless Advisory Committee to the Federal Communications Commission, Reed E. Hundt, Chairman and the National Telecommunications and Information Administration, Larry Irving Assistant Secretary of Commerce for Communications and Information” (Sept. 11, 1996) (advising the FCC of the critical need to allocate 97.5 MHz of additional spectrum to public safety to meet current and future needs through the year 2010; Public Safety Wireless Network (PSWN) Report, “Public Safety Radio Frequency Spectrum: Highlighting Current and Future Needs” (Jan. 2000) (FCC needs to allocate 73.5 MHz of additional public safety spectrum); *Petition for Rule Making by the Public Safety Wireless Network to Promote Allocation of Spectrum for Public Safety Agencies and Other Matters to Address Communications Needs Through 2010*, RM 96-86, at iv (Sept. 14, 2001) (emphasizing the need for 71 MHz of additional public safety spectrum).

⁹ See, e.g., *Statement of Glen Nash*.

Some have suggested that the Commission address these problems by relocating 800 MHz band public safety licensees to the 700 MHz band.¹⁰ This is not a viable option and provides no basis for delaying the 700 MHz auctions. There are over 100 incumbent broadcast television stations operating in the upper 700 MHz band alone, and, as described below, these stations likely will continue to operate on this spectrum for years to come. This obviously prevents public safety systems from operating on this spectrum, and creates great uncertainty about when this band will be available for non-broadcast use. Indeed, the *CTIA Application* highlights the encumbrances and uncertainties that prospective commercial wireless operators face regarding the 700 MHz band.¹¹ There is no reason that the uncertainty and delay associated with use of the 700 MHz band that CTIA details should be any more tolerable for the public safety community than it is for CTIA and its members. In fact, the proposed “700 MHz option” for public safety would impose degrees of uncertainty and delay that far exceed what commercial entities presently find unacceptable.

¹⁰ See, e.g., Letter to Chairman Michael K. Powell from Brian Fontes, Vice President, Federal Relations, Cingular Wireless LLC, WT Docket No. 99-168 (April 18, 2002); Letter to Chairman Michael K. Powell from the Coalition for Constructive Public Safety Interference Solutions, WT Docket No. 99-168 (April 26, 2002).

¹¹ CTIA points out the significant encumbrances of the 700 MHz band. See *CTIA Application* at 2 (noting that uncertainties about these bands may continue for some time); *id.* at 2 (noting “uncertainty over when or how the incumbent broadcasters might be convinced to leave the band”); *id.* at 6 (noting that time is needed to resolve existing uncertainty about “when and how this spectrum will be cleared”); and *id.* at 3 (arguing that “manufacturers will not focus on developing equipment for this band until the timing of availability of the spectrum is clarified.”)

III. The “700 MHz Option” Would Require Several Changes to the Law and Several Commission Rulemaking Proceedings.

The “700 MHz option” would require Congress to reverse a number of significant legislative actions it has taken in recent years. This “option” would also depend on the Commission initiating and completing several complex rulemaking proceedings. These statutory changes and Commission proceedings present tremendous, time-consuming hurdles to using the 700 MHz band for public safety. The outcome of these legislative and administrative proceedings cannot be predicted, given the ever-increasing and varied demands for spectrum and the conflicting constituencies involved.

A. Reallocation

Congress has expressly directed the Commission to allocate 36 MHz of spectrum in the upper 700 MHz band “for commercial use.”¹² Before this spectrum could be allocated for public safety use, Congress would have to amend the law to re-designate this band as public safety spectrum. Additionally, the Commission would have to conduct a rulemaking proceeding to reallocate this spectrum and establish service rules.

B. Assignment Methodology

Congress specifically designated 36 MHz of spectrum in the upper 700 MHz band “to be assigned by competitive bidding.”¹³ Therefore, before public safety could use these channels, Congress would need to amend the law to permit assignment by some means other than competitive bidding. The Commission would then have to conduct a rulemaking to determine how the newly-allocated spectrum would be assigned.

¹² See 47 U.S.C. § 337(a)(2), as added by Section 3004 of the Balanced Budget Act of 1997, Pub. L. No. 105-33, 111 Stat. 251 (1997).

¹³ See *id.*

C. Redirect and Appropriate Auction Proceeds

The “700 MHz option” also depends upon earmarking auction proceeds to help pay for the relocation costs that public safety users would incur in relocating to the 700 MHz band. By statute, however, spectrum auction proceeds must be deposited directly in the U.S. Treasury.¹⁴ Congress would therefore be required to amend this statutory provision before auction proceeds could be spent on compensating public safety users for their relocation costs. Further, the Commission would have to conduct a rulemaking to determine the specific terms of this compensation, including, for example, which types of equipment would be covered, the timing of the compensation, what recourse relocating public safety users would have if the auction proceeds were insufficient to cover the costs of relocating, and many other details. Additionally, before public safety users could be compensated for their relocation costs, Congress would have to pass appropriations legislation specifically directing the expenditure of funds for this purpose.

D. Amend Broadcasters’ Digital Television Transition Schedule

To clear broadcasters from the spectrum, Congress would also have to amend the digital television (“DTV”) transition schedule it adopted in 1997.¹⁵ Under that statutory schedule, analog broadcast television stations, including those operating in the 700 MHz band (Channels 60-69) are permitted to continue operations until their markets are converted to DTV, which is not scheduled to occur until December 31, 2006 at the earliest.¹⁶ By statute, the Commission must extend this date in certain circumstances,

¹⁴ See 47 U.S.C. § 309(j)(8).

¹⁵ 47 U.S.C. § 309(j)(14).

¹⁶ *Id.*

including the lack of significant penetration of digital television service within a market.¹⁷ The Congressional Budget Office has found it likely that the Commission will need to extend the December 31, 2006 deadline by a considerable number of years.¹⁸ Indeed, most broadcast stations have already missed the FCC's deadline to begin broadcasting in DTV.¹⁹

IV. Public Safety Equipment is Not Available for 700 MHz and Continued Uncertainty Will Chill Development of 800 MHz Equipment.

Because there is so much uncertainty about when 700 MHz spectrum will be cleared and available for new uses, equipment has not been developed for the 700 MHz band. CTIA notes in its *Application* that manufacturers are unlikely to begin to develop equipment in the near future for the 700 MHz band.²⁰ It is impractical, therefore, to regard 700 MHz as a viable option for public safety users, who cannot relocate to a new band without a supply of available equipment.

Further, after years of planning, a number of states are now installing statewide 800 MHz public safety systems.²¹ Until the Commission rejects the notion that public safety users could be relocated to the 700 MHz band from the 800 MHz band, those

¹⁷ *Id.*

¹⁸ See *Completing the Transition to Digital Television*, Congressional Budget Office, at Summary (September 1999). ("It now appears likely that the transition will extend beyond 2006 in most markets, with its ultimate end uncertain.")

¹⁹ See *Many Broadcasters Will Not Meet May 2002 Digital Television Deadline*, Report to the Ranking Minority Member, Subcommittee on Telecommunications and the Internet, Committee on Energy and Commerce, House of Representatives, United States General Accounting Office, at 4 (Apr. 2002).

²⁰ *CTIA Application* at 3.

²¹ For example, the states of Florida, Michigan, Ohio and Pennsylvania are all deploying statewide public-safety communications systems.

states face potentially stranded investment and significant uncertainty about whether to deploy their critically-needed 800 MHz systems. Until it rejects the “700 MHz option” for public safety, the Commission also risks the likelihood that manufacturers, wary of more uncertainty regarding spectrum reallocation, will be reluctant to make the investments necessary to develop new equipment, even for the 800 MHz band. In short, delaying the 700 MHz auctions to explore relocating 800 MHz public safety systems to 700 MHz may “freeze” both the deployment of new 800 MHz public safety systems and the continued development and sales of 800 MHz public safety equipment.

V. The Commission Has Ample Authority to Resolve Public Safety Spectrum Needs Expeditiously Without Relocating Public Safety Systems to the 700 MHz Band.

The Commission stated in the *Public Safety NPRM* that it “intend[s] to move swiftly to achieve [the] objective” of “improving the spectrum environment for public safety operations in the 800 MHz Band.”²² The Commission has ample existing statutory authority to achieve this objective in a manner that does not involve relocating public safety licensees to the 700 MHz band.

In particular, the Commission has before it Nextel’s *White Paper* proposal to resolve public safety’s pressing spectrum needs.²³ If adopted, that proposal would correct the basic causes of CMRS – public safety interference and address public safety’s urgent spectrum needs by establishing a realignment plan that allocates additional 800 MHz

²² *Public Safety NPRM* at ¶ 3.

²³ Promoting Public Safety Communications – Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio – Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs (Nov. 21, 2001) (“*White Paper*”).

spectrum to public safety and assigns replacement spectrum to affected 800 MHz incumbents. The *White Paper* proposal can be adopted promptly and requires no statutory changes. It would allow public safety to retune within the 800 MHz band and avoid far more costly relocation by public safety to the 700 MHz band. It would also permit first responders and other public safety parties to take advantage of the fact that public safety communications equipment is readily available for operation at 800 MHz. Expanding the amount of exclusive, contiguous public safety spectrum at 800 MHz is a far more effective and efficient long-term plan than establishing additional public safety spectrum in another band and relocating the entire public safety community. No other spectrum bands are as well suited as the 800 MHz band to satisfy public safety's critical communications needs quickly.

The Commission should not create more delay and uncertainty by casting any favorable light on a purported 700 MHz solution that would require multiple statutory changes. It is unrealistic to expect Congress to take all of the highly controversial steps that the 700 MHz proposal would require, especially when there are far superior alternatives wholly within the Commission's spectrum management authority.

VI. Conclusion

In light of the public safety priorities recognized by the Commission, the "700 MHz option" is so impractical from both a cost and time perspective, and promises so

little in the way of a solution to public safety's needs, that it warrants no further consideration as a basis for delaying the 700 MHz auctions.

Respectfully submitted,

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I, Denise Owusu, do hereby certify that on this 3rd day of May, 2002, I served copies of the foregoing Comments of Nextel via mail upon the following.

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