

Before the
Federal Communications Commission
Washington, DC 20554

In the Matter of)
)
Improving Public Safety Communications in) WT Docket No. 02-55
the 800 MHz Band)

To: The Commission

COMMENTS

Cingular Wireless LLC (“Cingular”) hereby submits its comments in response to certain *ex parte* filings concerning the Commission’s 800 MHz Order,¹ in accordance with the Commission’s October 22, 2004 Public Notice.² Cingular’s comments are very limited in scope and are directed to selected points in filings by Nextel and CTIA.

I. CREDITS IN THE FINANCIAL RECONCILIATION PROCESS

Cingular opposes Nextel’s request for “credit in the financial reconciliation process” for its costs incurred in “adding base stations necessary to maintain its existing network capacity during the band reconfiguration transition process.”³ What Nextel is requesting is not a

¹ *Improving Public Safety Communications in the 800 MHz Band*, WT Docket 02-55 *et al.*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 F.C.C.R. 14969 (2004) (800 MHz Order), published, 69 Fed. Reg. 67823 (Nov. 22, 2004).

² Public Notice, *Commission Seeks Comment on Ex Parte Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding*, WT Docket 02-55, FCC 04-253 (Oct. 22, 2004), published, 69 Fed. Reg. 67880 (Nov. 22, 2004).

³ Letter dated September 16, 2004 from Regina M. Keeney, counsel for Nextel, to Marlene H. Dortch (“Nextel September 16 Letter”), at 2-3; *see also* Letter dated September 21, 2004 from Regina M. Keeney, counsel for Nextel, to Marlene H. Dortch (“Nextel September 21 Letter”), Attachment I at 8, *Nextel’s Retuning Costs* (“Nextel will need to add base stations to replace 800 MHz capacity lost as a consequence of band reconfiguration process . . . Clarify that Nextel should receive credit for these costs, which are integral to achieving 800 MHz reconfiguration”).

“clarification” but, rather, the very “undue windfall” that the Commission said Nextel should “not realize.”⁴ The Commission said that Nextel would receive credit for the funds spent “to reconfigure its own systems in the 800 MHz band.”⁵ It provided its understanding of these creditable expenses as follows:

Nextel identifies two categories of costs associated with relocation of its own operations in the reconfigured 800 MHz band. First, . . . Nextel will install improved filters for all of its 800 MHz base station transmitters to achieve a sharper OOB roll-off. Nextel . . . has revised its projected filter costs to \$407 million. Second, to implement band reconfiguration, Nextel will need to relocate its own operations to new channels. In some instances, this will require Nextel equipment to be retuned more than once in order to provide a seamless transition for other licensees. Nextel estimates the cost at \$400 million.⁶

There are just two categories of Nextel costs that the Commission considered to be creditable: filter costs and retuning costs. The use of the word “retuning” indicates that the Commission was led to believe by Nextel that all that was involved was changing the frequency of existing facilities. There is no indication that the Commission intended to allow Nextel to get credit for the deployment of additional sites.

By Nextel’s own admission, its “retuning costs” involve only three things: (a) “swapping out channel 1-120 incumbents to Nextel’s current assignments in channels 121-400”; (b) “relocating from channels 1-120 . . . to the then-vacated . . . channels at 821-824/866-869 MHz”; and (c) “retun[ing] its network so that it is no longer operating in the 806-817/851-862 MHz band post-realignment.”⁷ There is no mention in any of the Nextel materials of constructing new

⁴ 800 MHz Order at ¶ 329.

⁵ 800 MHz Order at ¶ 330.

⁶ 800 MHz Order at ¶ 301.

⁷ Letter dated July 27, 2004 from Regina M. Keeney, counsel for Nextel, to Marlene H. Dortch (“Nextel July 27 Letter”) at 2. Even though the Commission’s 800 MHz Order was adopted on July 8, 2004, it cites the Nextel July 27 Letter as its basis for the \$400 million in Nextel “retuning costs.” 800 MHz Order at ¶ 301 n.712.

sites; only of “retuning” facilities to different frequencies within the 800 MHz band. If new facilities would be needed to maintain Nextel’s capacity during this process and Nextel wanted the FCC to credit its cost of constructing those facilities, Nextel could have and should have disclosed that fact before the Commission reached its decision. It did not. Accordingly, the Commission has decided to credit Nextel for the cost of retuning — and not of new sites. No “clarification” can change that.

The Commission relied on Nextel’s claim that its “retuning” costs would not exceed \$400 million. It is noteworthy that Nextel does not claim that its new site construction, together with its retuning of existing sites, will fall within that estimate. Under no circumstances should the Commission grant Nextel a credit for the cost of constructing new sites as part of its “retuning” process. Nextel’s expansion should not be funded by the American taxpayer. Nextel had the burden of justifying the imposition of such a burden on taxpayers and had the full opportunity to do so, but it has not made the case.

Of greater concern, there is the danger that Nextel may leverage its requested “clarification” into a right for a credit (*i.e.*, taxpayer subsidy) for its costs of transitioning to the 1.9 GHz G Block. Due to the well-known RF propagation differences between 800 MHz and 1.9 GHz, Nextel may in fact need to use a larger number of sites when it transitions to the G Block — to maintain coverage, rather than capacity. Nextel did not request, and the Commission did not grant, credit for Nextel’s cost of building out a new 1.9 GHz network; Nextel only asked for⁸ and received⁹ credit for its cost of transitioning to the band above 817/862 MHz as part of the 800 MHz realignment process. The only 1.9 GHz costs for which Nextel sought, and the

⁸ Nextel July 27 Letter at 2.

⁹ 800 MHz Order at ¶¶ 301-02.

Commission granted credit were the costs of clearing the 1.9 GHz spectrum, and not for constructing a new network in that band.¹⁰

If the Commission were to grant Nextel's request, a substantial portion of Nextel's build-out, both at 800 MHz and, later, at 1.9 GHz, would be funded by the American taxpayer. Moreover, the size of this subsidy would be entirely within the discretion and control of Nextel. How would the Commission decide whether a given site build-out is in fact necessary for *maintaining capacity*, instead of for providing *improved coverage or service quality*? The Commission has recognized that how demand can be accommodated with a given quantity of spectrum involves tradeoffs among coverage, capacity, and quality.¹¹ Allowing Nextel to get financial credit for constructing new sites would amount to a subsidy for improving its service. As noted above, Nextel has failed to justify why taxpayers should bear the costs of its improvements. Nextel should not be allowed to use taxpayer dollars pay for any improvement in its service. The "retuning" credit should be limited to the cost of retuning transmitters and receivers within the 800 MHz band.

Nextel's request for credit — and thus for U.S. taxpayer support — for its construction of new facilities as part of its "retuning" raises an additional equitable issue: Who will pay for system changes required of 800 MHz cellular licensees that are necessary to facilitate the public safety objectives of the *800 MHz Order*? Should a cellular carrier be required to lower its transmitter power due to interference to public safety operations, and as a result it becomes necessary to construct an additional base station to maintain capacity and service quality, how does the cellular carrier obtain the same kind of financial credit or reimbursement that Nextel

¹⁰ See Nextel July 21 Letter, Att. at 1 (costs of "Clearing the Replacement 1.9 GHz Spectrum" include "Pro rate UTAM reimbursement" and "Relocating all BAS licensees"); *800 MHz Order* at ¶¶ 303-04.

¹¹ See, e.g., *AT&T Wireless Services, Inc. and Cingular Wireless Corporation*, FCC 04-255, ¶ 215 (Oct. 26, 2004).

receives? It would be arbitrary and capricious for the Commission to provide Nextel with financial credit for network modifications needed to maintain capacity while denying its competitors similar compensation for comparable modifications. In addition, the FCC would be granting Nextel a competitive advantage over carriers who get no such subsidy by allowing it to use its process and the taxpayer subsidy.

II. VALUATION OF NEXTEL'S SPECTRUM

Nextel claims that the Commission's *800 MHz Order* underestimates its population coverage and, as a result, undervalues its current spectrum. Nextel therefore requests that the Commission revise the credit to Nextel for its spectrum contribution upward by \$452 million.¹² The Commission should deny Nextel's attempt to increase its credit.

It is unclear how Nextel determined where particular channels are available and usable. For example, it appears that Nextel used a single set of standardized figures representing its "typical" antenna height and effective radiated power at every site, for every channel, to determine which channels are available,¹³ regardless of the actual height and power employed at a given site, facts that are, or should be, readily available to Nextel. Nextel then determined the usability of a given channel based on whether its 22 dBu contour fits within its existing footprint¹⁴ — but does not say how this contour was derived. And Nextel did *not* apply border area restrictions in determining channel availability and usability.¹⁵

Even if its criticism of the Commission's estimate of Nextel's population coverage were supported by its latest estimates, however, Nextel is too late. Nextel has known for some time that the Commission would be placing a value on Nextel's spectrum based on its coverage. As a

¹² See, e.g., Nextel September 16 Letter at 3; Nextel September 21 Letter, Att. I at 9, Att. II at 1-4.

¹³ See Nextel September 21 Letter, Att. II at 4.

¹⁴ See Nextel September 21 Letter, Att. II at 4.

¹⁵ See Nextel September 21 Letter, Att. II at 4.

result, it was incumbent on Nextel to make its best estimates, fully supported by facts and figures, of such coverage available to the Commission *before* a decision was reached. The fact that Nextel held this data back until the Commission had reached a valuation gives rise to the appearance that Nextel is simply using the figures as a negotiating tactic in bargaining for a larger financial settlement. The Commission should not revise its valuation under such circumstances.

III. INTERFERENCE ABATEMENT

Nextel argues that the interference abatement measures that the Commission adopted should be applicable only *after* realignment, instead of sixty days after Federal Register publication (*i.e.*, on January 21, 2005). Cingular agrees with Nextel that there does not appear to be any basis for applying the interference abatement criteria in the *800 MHz Order* now, instead of at the end of the transition period.

Cingular has no comment on the technical details of Nextel's proposed transition period standards. Nevertheless, there is one issue that needs to be addressed during this transition period. Specifically, the initial burden of addressing interference issues should be on Nextel alone, rather than jointly on Nextel and cellular band carriers as the *800 MHz Order* requires.¹⁶ The record of this proceeding plainly demonstrates that Nextel, rather than cellular band carriers, has been the cause of interference in the vast majority of cases. Nextel's spectrum usage, interleaved with that of public safety, business, and other private radio licensees, is the principal cause of interference in the vast majority of cases. Indeed, that is the very reason why the Commission has decided to reconfigure the 800 MHz band.

Given the odds that Nextel is the most significant source of interference in any given case, it would be reasonable to require that Nextel, in the first instance, be required to address

¹⁶ See *800 MHz Order* at ¶¶ 130-36.

interference complaints alone, rather than jointly with cellular licensees. If Nextel demonstrates that cellular operators are contributing to the interference complained of, or constitute the sole source for such interference, either directly or through intermodulation between cellular and Nextel signals, then the cellular licensees should be required to address the issue.

This approach is particularly justified during the period when Nextel will be retuning its facilities in several stages. Instances of interference during this transition period are overwhelmingly likely to involve Nextel as a significant source, and should be resolvable without the need to involve cellular licensees at all. After the transition has been completed in a given region, and Nextel's operations have been fully separated from public safety spectrum, however, the approach called for in the *800 MHz Order*, with Nextel and cellular licensees being jointly responsible for addressing interference complaints, may be justifiable.

This approach would save time and minimize expenses for public safety entities, Nextel, and cellular carriers, in responding to cases of reported interference where, in the vast majority of instances, the cellular carrier is not likely to be a contributor to the interference. Given that Nextel will be radically reconfiguring its spectrum usage multiple times during the transition period, the number of interference complaints during the transition period could be significantly greater than is the case today. Under these circumstances, there is no justification for requiring cellular operators to respond to every single complaint within 48 hours. During the transition period the initial burden of responding to such complaints should be borne by Nextel. If Nextel determines that another licensee is responsible in whole or in part, that licensee would then be required to respond.

Moreover, if the interference to a public safety entity is caused by intermodulation between Nextel's transmissions on temporary frequencies with another carrier's preexisting operations, the other carrier should not be held responsible, given that Nextel's new frequency

usage is the instigating factor behind the interference. In such cases, Nextel, and not the other carrier, should bear the responsibility to retune as needed to reduce the interference below the applicable threshold.

IV. CTIA'S PROPOSED CLARIFICATIONS OF THE INTERFERENCE RESOLUTION PROCEDURES

CTIA has proposed a number of clarifications of the interference resolution procedures in new Sections 22.972 and 90.674 of the Rules. One of the clarifications it requests is that non-cellular 800 MHz licensees submitting an interference notification be required to supply relevant system information including “(i) receiver make and model number; (ii) minimum measured input signal power; and (iii) verification whether the affected receivers meet the minimum performance requirements identified in sections 22.970(b) and 90.672.”¹⁷ Cingular supports this request. Further, Cingular believes that additional clarification is needed – that non-cellular 800 MHz licensees submitting an interference notification should be required to provide the coordinates (latitude and longitude) of the interference. Having this information concerning the victim system will permit cellular and ESMR licensees to proceed quickly with an assessment of the nature and scope of the interference.

CTIA has also asked the Commission to clarify its good faith coordination requirement, which requires non-cellular 800 MHz licensees to cooperate with ESMR and cellular licensees in the analysis of interference. CTIA asks that the Commission make clear that if a non-cellular licensee does not provide the necessary assistance in a timely manner, the cellular and ESMR carriers “are not held to the 48- or 96-hour corrective action requirement.”¹⁸ Cingular agrees with this suggestion. CTIA’s proposal merely makes explicit what the Commission has implied

¹⁷ Letter dated October 13, 2004 from Chris Guttman-McCabe, counsel for CTIA–The Wireless Association, to Marlene H. Dortch (“CTIA Letter”), at 2.

¹⁸ CTIA Letter at 2.

by its requirement that non-cellular licensees “exhibit the utmost cooperation with the ESMR and cellular telephone representatives, including, without limitation, the obligation to timely meet appointments and provide whatever technical assistance is appropriate under the circumstances.”¹⁹ Cellular and ESMR licensees cannot be expected to comply with very short deadlines for responding to interference notifications if the complaining licensee does not cooperate fully by meeting appointments and providing necessary technical assistance.

CONCLUSION

For the foregoing reasons, the Commission should clarify its *800 MHz Order* in the ways stated above.

Respectfully submitted,

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December 2, 2004

¹⁹ *800 MHz Order* at ¶ 138.