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Before the  
**Federal Communications Commission**  
Washington DC

In the Matter of )  
 )  
Improving Public Safety Communications )  
In the 800 MHz Band ) WT Docket No. 02-55  
 )  
Consolidating the 900 MHz Industrial/Land )  
Transportation and Business Pool Channels)

To: the Commission

**Comments of the  
United Telecom Council, the National Rural Electric Cooperative  
Association and the American Water Works Association  
on the Public Notice**

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The United Telecom Council (UTC), the National Rural Electric Cooperative Association (NRECA) and the American Water Works Association (AWWA) (collectively, "Critical Infrastructure," or "CI Commenters") appreciate this opportunity to offer their comments on numerous *ex parte* filings in this controversial proceeding since the release of the Commission's *Report and Order*.<sup>1</sup> The CI Commenters' members are critical infrastructure providers that rely heavily on 800 MHz private wireless systems to ensure the safety of their personnel, who make possible the continued safe and reliable provision or restoration of electric, gas and water service to homes and businesses across the Nation. These entities operate most of the largest non-commercial systems in the 800 MHz band, as well as many smaller systems, and will be impacted nationwide by any Commission decision to modify its earlier determinations in this matter.

On August 6, 2004, the Commission issued the text of the R&O discussed herein, adopted on July 8. On November 22, 2004, the R&O was published in the Federal Register; thus, the normal period for formally seeking reconsideration is now underway. However, in a series of *ex parte* meetings and filings with the Commission during the interim period, Nextel Communications, Inc. (Nextel) asked the Commission for several major substantive changes to the obligations imposed on it by the FCC's decision. In response to the many requests for

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<sup>1</sup> Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order*, WT Docket No. 02-55, 19 FCC Rcd 14,969 (2004)("the R&O").

modifications to its new rules, the Commission issued the instant *Public Notice* on October 22, 2004, seeking comment on issues including the mechanics of the relocation process, valuation of spectrum to be returned to the Commission by Nextel and interference issues.<sup>2</sup>

The CI Commenters have been active in all phases of this long and complex proceeding, and UTC commented briefly on issues raised in *ex parte* filings jointly with the Edison Electric Institute just before the Notice was released.<sup>3</sup> These associations take this opportunity to repeat or present their positions in greater detail.

As the Commission is painfully aware after three years of examining the 800 MHz private land mobile radio (PLMR) frequency band, this is not a piece of spectrum for which simple answers are generally effective. After some 30 years of licensing and several regulatory frameworks, neat pools of frequencies hosting controlled user types simply do not exist. The Commission waded through complex rules, dozens of proposals and mountains of filings to come to the plan set forth in the R&O. We urge the FCC to be extremely careful in considering changes that could benefit one party while harming others significantly.

#### **I. Any Interim Interference Protection Standards Must Be Applied Equitably.**

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<sup>2</sup> "Commission Seeks Comment on *Ex Parte* Presentations and Extends Certain Deadlines Regarding the 800 MHz Public Safety Interference Proceeding," FCC 04-253, released October 22, 2004 (the "PN," the "Notice").

<sup>3</sup> See, Letter from Jill Lyon, UTC, and Edward Comer, EEI, to Michael Powell, Chairman, FCC (filed October 20, 2004).

In several *ex parte* filings, Nextel has argued that the interference protection standards afforded incumbent 800 MHz licensees in the R&O are “not practicable in the current interleaved 800 MHz band.”<sup>4</sup> Nextel asks the Commission to institute a new, Transition Period Interference Protection Standard during the rebanding process in each NPSPAC region. The proposed standard would provide:

- Full interference protection for *public safety* systems meeting a -85/-88 dBm signal strength threshold;
- Modified interference protection for *public safety* systems operating at a signal strength between -85/-88 dBm and -101/-104 dBm;
- Interference *mitigation* measures for non-Public Safety systems as set forth in the Best Practices Guide, provided they meet -101/-104 dBm signal strength thresholds.<sup>5</sup>

The FCC should reject Nextel's proposed Transition Period Interference Protection Standard. Over the course of this proceeding, the FCC reviewed numerous submissions, investigated possible solutions to the interference problem, and determined that Public Safety, Critical Infrastructure, and other licensees require the protections afforded in the R&O *immediately*. Based on this record, the FCC should not acquiesce to Nextel's proposal to delay the effective date of the new interference abatement rules.

If the FCC were to adopt an interim interference protection standard, the CI Commenters oppose strongly any interference protection standard that discriminates among licensee types. Nextel does not specify how it plans to determine which are Public Safety systems, and given the makeup of the 800

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<sup>4</sup> Letter from Lawrence R. Krevor, Nextel, to Marlene H. Dortch, Secretary (filed September 28, 2004), attachment at 1.

<sup>5</sup> *Id.* At 2-4 (emphasis added).

MHz band, this is a major problem. As has been demonstrated repeatedly during this proceeding, it is not possible to protect public safety operations – Nextel’s apparent goal in differentiating among user types – merely by looking to licensees on designated Public Safety frequencies. Public Safety personnel use 800 MHz radios on systems licensed to critical infrastructure entities, Specialized Mobile Radio (SMR) providers, CMRS providers such as Southern LINC and on Business or Industrial/Land Transportation frequencies, and these communications are no less critical because of the class of license on which they operate to provide their public safety functions. Protection of public safety communications thus requires an equitable standard for all licensee types.

Moreover, the Commission in the R&O and in past rulemaking has wisely refrained from such discrimination on general principle, and this policy should not be changed. Protection from interference is the primary goal of the 800 MHz undertaking, and no one argues that Public Safety communications must be reliable to protect the lives and safety of personnel. Critical infrastructure personnel and all other PLMR users also deserve reliable and safe communications. The long-standing protection rules for this band – based on geographic separation alone – along with the new rules included in the R&O, protect that right. FCC spectrum policy, in which technical rules are established for wireless *services*, not classes of users within a service, should not be overturned here. Technical rules, including interference protection standards, must be user-neutral.

The CI Commenters note that public safety associations have offered their approval of Nextel's proposed interim interference protection standards for their systems.<sup>6</sup> Therefore, the CI Commenters also would offer their approval of this standard, *so long as the interference protection measures for public safety systems also were applied to all other incumbent licensees in the 800 MHz PLMR band*. Should the Commission decide that a discriminating standard was appropriate, the CI Commenters urge that critical infrastructure, at least, be included with Public Safety due to the similarity of our communications to protect the safety of life and property.

**II. The FCC Should Retain the Financial Arrangements Set Forth in the Report and Order.**

Nextel asks the Commission to clarify that it may negotiate directly with incumbents and move forward with retuning agreements unless either party asks the Transition Administrator to act as intermediary.<sup>7</sup> The CI Commenters do not object to this: Nextel clearly has extensive knowledge of the 800 MHz band landscape, and for the Transition Administrator actively to oversee each of the hundreds of necessary transactions would make it impossible to meet the tight deadlines established in the R&O for completion of retuning.

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<sup>6</sup> See, Letter from Robert M. Gurss, Esq., Counsel to Association of Public-Safety Communications Officials—International, Inc. to Michael Powell, chairman, FCC (filed October 5, 2004).

<sup>7</sup> See, e.g., Letter from Regina M. Keeney, Esq., Counsel to Nextel Communications, Inc. to Marlene H. Dortch, Secretary, FCC, (filed September 21, 2004), attachment at 5 ("September 21 Nextel letter").

The CI Commenters are concerned, however, that both parties to each negotiation have an equitable bargaining position. Therefore, The CI Commenters oppose Nextel's recommendation that the FCC permit the \$2.5 billion letter of credit to be used as "stand-by" funding, rather than as the primary source of retuning payments, and allow Nextel to offer direct payment of retuning costs.<sup>8</sup> The CI Commenters believe that the FCC did well by creating a source of, and process for, payment removed from the parties to each negotiation, thus removing the huge negotiating advantage of payment from Nextel's arsenal. To relegate the letter of credit to a stand-by source of funding permits Nextel to gain concessions from licensees in retuning agreements – which generally will not be reviewed by the Transition Administrator – by promising faster, direct payment of some amount lower than their true costs. While the CI Commenters do not fault Nextel for taking advantage of a superior negotiating position, the Council urges the Commission to maintain as much fairness as possible in the hundreds of transactions to take place over coming months.<sup>9</sup> 800 MHz licensees *must* move, and must do so in accord with the Transition Administrator's schedule for their regions. As a result, they also will incur costs – for some utilities, in the tens of millions of dollars – to do so. The resulting money, time, and

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<sup>8</sup> *Id.* At 10. UTC suggests that, should an incumbent licensee *wish* to receive direct payment from Nextel, it should request a waiver of this right from the Commission, subject to review by the Transition Administrator.

<sup>9</sup> UTC is aware of negotiations already underway between Nextel and incumbents in which the carrier is offering spectrum incentives in exchange for agreement by the incumbent to pay its own relocation costs.

manpower resource burdens place them at a negotiating disadvantage that only can be overcome by FCC-ordained processes that protect them. With no individual oversight of these transactions, unfair additional bargaining advantages should not be made available to the entity that, in every case, already possesses the superior bargaining position.

III. **Revised Valuation of Nextel's Existing Spectrum Should Not Change Its Obligation to Fund All Relocations.**

In several presentations to the Commission, Nextel has provided detailed figures concerning the amount and valuation of the spectrum it will be returning to the Commission as a consequence of the 800 MHz/1.9 GHz decision.<sup>10</sup> Nextel claims that, using the same methodology as the FCC, but with "accurate pops and granular licensing data," it should receive a credit of \$2.059 billion for the returned 800 MHz spectrum, rather than the \$1.6 billion stated in the R&O.<sup>11</sup>

The CI Commenters are not in a position to review Nextel's claims concerning its spectrum holdings, and will not comment on the merit of one valuation over another. The CI Commenters also are confident that the FCC will continue to require the carrier to fund the retuning of all incumbents in the 800 MHz and 1.9 GHz bands as set forth in the R&O. However, in an abundance of caution, we stress that, whatever the value of Nextel's returned spectrum, that figure – changed or not - must not reduce Nextel's

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<sup>10</sup> See, e.g., September 21 Nextel letter attachment.

<sup>11</sup> *Id.*, attachment at 9.

responsibility to fund relocation fully. The \$4.8 billion provided in the R&O must remain the *minimum* amount of Nextel's indebtedness, whatever value of returned spectrum is added to the costs of retuning.

**Wherefore, the premises considered,** The CI Commenters urge the Commission to act in accordance with the positions taken herein.