

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

Remington Arms Company, Inc.)
For Waiver of Sections 15 .245,)
15.247(b) and 15.247(e) of the Rules)
and Regulations) ET Docket No. 05-183

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

I. Introduction

Nextel Communications shares the concerns of commenters such as Cisco Systems, Inc., Alcatel, and Cellnet Technology, Inc. that Remington Arms Company’s proposed high-power, unlicensed, analog transmitter may cause harmful co-channel interference to other devices.¹ Remington’s waiver request also may cause harmful adjacent-band interference to various services, including the Specialized Mobile Radio (SMR) services used by some of the same public safety entities that Remington wants to serve. Despite these public interest harms, Remington nowhere explains why it cannot comply with the Commission’s rules. For these reasons, Nextel opposes Remington’s waiver request.

¹ Comments of Cisco Systems, Inc., ET Docket No. 05-183 (June 6, 2005) (Cisco Comments) (recommending denial of the waiver request due to the potential for interference and failure to meet the standard for waiver); Comments of Alcatel, ET Docket No. 05-183 (June 6, 2005) (Alcatel Comments) (opposing waiver request absent strict limitations on sales and distribution); Cellnet Technology, Inc., ET Docket No. 05-183 (June 6, 2005) (Cellnet Comments) (recommending the Commission impose a duty cycle requirement on Remington’s proposed device to mitigate the potential for harmful interference).

II. Discussion

Remington seeks a waiver of the Commission's rules to deploy an unlicensed device that is *one thousand times* more powerful than the Commission's rules allow.²

Remington also wants the Commission to treat its proposed analog transmitter as a digitally modulated system for purposes of section 15.247 of the Commission's rules.³

Remington justifies its waiver request by claiming that public safety entities may one day use its device in an emergency. Remington, however, fails to note that public safety entities also rely on services provided in the co-channel and adjacent-band spectrum that is susceptible to interference from the high-power, analog device that Remington hopes to sell.⁴

The Commission may waive its rules if the relief requested does not undermine the policy objective of the rule and otherwise serves the public interest.⁵ An applicant for waiver bears a heavy burden.⁶ Remington has not satisfied its burden, and its waiver request should be denied.

² Section 15.249 of the Commission's rules imposes a field strength limit of 50mV/m for fundamental signals in the 902-928 MHz and 2400-2483.5 MHz bands, measured at three meters separation. This limit equates to -1.3 dBm of transmit power, assuming 0 dBi antenna gain. 47 C.F.R. § 15.249. Remington asks the Commission to increase this limit to 1 watt (30 dBm). Because decibels are logarithmic measures of power, this increase represents a power level 1,000 times higher than permitted under the Commission's rules.

³ 47 C.F.R. § 15.247.

⁴ Nextel, for example, provides services to many public safety and governmental entities using 800 and 900 MHz SMR channels. As Cisco has noted, moreover, users of the 2.4 GHz band include not only commercial 802.11 hot spot service providers, such as Nextel and T-Mobile, but also public safety entities that use these frequencies for theater-wide broadband communications in response to emergencies. *Cisco Comments* at 3-6.

⁵ 47 C.F.R. § 1.925; *see also WAIT Radio v. FCC*, 418 F.2d 1153, 1159 (D.C. Cir. 1969), *cert. denied*, 409 U.S. 1027 (1972).

⁶ *WAIT Radio*, 418 F.2d at 1157.

As a preliminary matter, Remington has failed to explain *why* it cannot manufacture a similar device consistent with existing Part 15 rules. Manufacturers routinely meet the Part 15 standards, and Remington has offered no explanation for its failure to meet these relatively straightforward engineering requirements. The only statement Remington offers for its failure to meet the Part 15 requirements are that its “transmission plan . . . does not conform to the power limitation at §15.249(a) of the Commission's rules.”⁷ Under these circumstances, grant of the requested waiver is not warranted.

Even if Remington were to advance some previously undisclosed rationale as to why it could not meet the Part 15 rules, Nextel shares the concerns of Cisco and Cellnet that Remington’s proposed device could cause interference to some of the millions of consumer devices that are actually operating in compliance with the Commission’s Part 15 rules within the 900 MHz and 2.4 GHz unlicensed bands. When the Commission established the modern Part 15 rules it sought to “achieve more effective use of the radio frequency spectrum while providing additional technical and operational flexibility in the design, manufacture and use of non-licensed devices.”⁸ The Commission adopted relatively few restrictions on Part 15 operations, but it recognized that “uniformity among the technical standards for various non-licensed operations” would prove critical to its goal of establishing an effective regulatory regime for unlicensed devices.⁹ Grant of

⁷ *Remington Requested Waiver*, 05-183 at 2 (April 22, 2005).

⁸ *See Revision of Part 15 of the Rules Regarding the Operation of Radio Frequency Devices Without an Individual License*, 4 FCC Rcd. 3493, ¶ 1 (1989) (establishing the spread-spectrum bands at 900 MHz, 2.4 GHz, and 5 GHz).

⁹ *Id.* at ¶ 1; *see also id.* at ¶ 152 (explaining the need for uniformity on grounds that unlicensed rules in effect previously were “incrementally promulgated over the last 35 years [and had] result[ed] in device-specific regulations, inequities in technical standards

Remington's request would upend the principle of uniformity that underlies all Part 15 regulation. Far from furthering the rule for which it seeks a waiver, Remington's request would undermine the basis and the success of the modern Part 15 spectrum licensing regime. This result would disserve the public interest.

Grant of Remington's petition would also thwart the public interest in protecting communications against harmful adjacent-band interference. Remington's proposed high-power, analog device, which would operate in the 902-928 MHz band and the 2400-2483.5 MHz band, may cause harmful interference to adjacent-band operations in the 896-901 MHz and 935-940 MHz specialized mobile radio (SMR) bands and to portions of the 2496-2690 MHz band licensed to the broadband radio service (BRS) and educational broadband service (EBS). In the 900 MHz band, interference may prove especially damaging due to the Commission's extraordinary effort in the *800 MHz Reconfiguration Order* to resolve interference to public safety licensees. The Commission spent nearly three years evaluating interference in the 800 and 900 MHz band and then adopted a complex, \$4.86 billion strategy to limit the potential for interference to public safety operations.¹⁰ Under the 800 MHz rebanding decision, Nextel must shift some of its operations to its 900 MHz SMR frequencies. Interference-free access to this licensed spectrum represents an extremely important component of the solution necessary to complete the Commission's *800 MHz Reconfiguration Order* and

between devices with similar interference potentials, standards that may be too strict or that have become too lax, and regulations that appear to be confusing to the general public").

¹⁰ *Improving Public Safety Communications in the 800 MHz Band et. al*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004) (*800 MHz Reconfiguration Order*), *aff'd on recon.*, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120 (2004), *stay denied*, *Order*, 20 FCC Rcd 641 (2005) (denying motion for stay pending appellate review).

eliminate interference between commercial operators and public safety communications systems.

The Commission also recently adopted a comprehensive spectrum reorganization plan for the 2496-2690 MHz band after years of analysis.¹¹ Many licensees of that spectrum, including Nextel, have expressed concern that BRS Channel 1 at 2496-2502 MHz is susceptible to harmful interference from Industrial, Scientific and Medical (ISM) devices, which operate under fewer restrictions than Part 15 devices. To prevent interference from ISM devices, Nextel has proposed that the Commission require ISM operators follow rules similar to those under Part 15.¹² Permitting an unlicensed Part 15 device to operate in an analog mode at one thousand times the power of existing Part 15 devices would only make a bad situation worse.

¹¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165 (2004) (*BRS/EBS Realignment Order*); see also *Review of the Spectrum Sharing Plan Among Non-Geostationary Satellite Orbit Mobile Satellite Service Systems in the 1.6/2.4 GHz Bands, Amendment of Part 2 of the Commission's Rules*, Report and Order, Fourth Report and Order, and Further Notice of Proposed Rulemaking, 19 FCC Rcd 13356 (2004) (*MSS Sharing Order*).

¹² *Petition for Reconsideration of Nextel Communications, Inc.*, IB Docket No. 02-364 at 11 & n.31 (Sept. 8, 2004).

III. Conclusion

Remington has failed to meet its burden for grant of a waiver request to operate in excess of the Commission's Part 15 power limits and related rules. Accordingly, the Commission should deny Remington's waiver request.

Respectfully submitted,

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