

December 12, 2005

Paul C. Besozzi  
(202) 457-5292  
pbsozzi@pattonboggs.com

**BY ELECTRONIC FILING**

Ms. Marlene H. Dortch  
Secretary  
Federal Communications Commission  
445 12th Street, S.W.  
Washington, D.C. 20554

**Re: Ex Parte Submission – WT Docket No. 02-55 – Sprint Nextel December 1, 2005  
Status of 800 MHz Band Reconfiguration Filing**

Dear Ms. Dortch:

Preferred Communication Systems, Inc. (“Preferred”) hereby responds to the referenced ex parte filing, dated December 1, 2005, made by Sprint Nextel (“Nextel Filing”). Preferred is an 800 MHz Economic Area (“EA”) licensee that has been and continues to be directly affected by the Commission’s *Rebanding Orders*.<sup>1</sup> It has been an active participant in this docket since its inception.

Preferred generally supports a number of the conclusions reflected in the Nextel Filing. Rebanding is an “unprecedented undertaking” and the “regulatory environment and processes necessary to implement ...[rebanding] have been continuously changing.” Indeed, the Commission’s rules are still subject to potentially further change as a result of the ongoing Commission proceeding and already pending Court appeals of both the *Initial Report and Order* and *Supplemental Order*.<sup>2</sup>

---

<sup>1</sup>*In the Matter of Improving Public Safety Communications in the 800 MHz Band, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd. 14969 (2004), as amended by *Erratum*, released September 10, 2004, *Erratum*, DA 04-3208, 19 FCC Rcd. 19651 and *Erratum*, DA 04-3459, 19 FCC Rcd. 21818, released October 29, 2004, *appeal pending* (“*Initial Report and Order*”); *Supplemental Order and Order On Reconsideration*, 19 FCC Rcd. 25120 (2004), *appeal pending* (“*Supplemental Order*”); *Memorandum Opinion and Order*, FCC 05-174, 20 FCC Rcd. 16015, released October 5, 2005, as amended by *Erratum*, DA 05-3061, released November 25, 2005 (“*Reconsideration Order*”) (collectively, “*Rebanding Orders*”).

<sup>2</sup>As Nextel notes the *Reconsideration Order* has yet to be published in the Federal Register, a prerequisite to the revisions contained therein going into effect. The current pending broad-based court challenge is currently scheduled for oral argument on February 3, 2006, less than 2 months from now. See *Mobile Relay Associates et al. v. F.C.C. et al.*,

Ms. Marlene H. Dortch  
December 12, 2005  
Page 2

Preferred also concurs with Nextel that these ongoing changes have made the finalization of Wave 1 of the rebanding process particularly challenging, separate and apart from the ambitious size and sheer number of the licenses involved in that initial Wave. Indeed, some of the negotiation work already completed may have to be redone as a result of the *Reconsideration Order*. This development in and of itself could affect the terms of as yet-to-be-completed negotiations like Preferred's. Therefore, Preferred agrees that these reasons warrant the readjustment of the Wave 1 start date advocated by the Nextel Filing.

Preferred is not alone in supporting the delay requested by Nextel. The Safety and Frequency Equity Competition Coalition filed a similar request with the Commission on November 14, 2005. According to trade press reports, the Enterprise Wireless Alliance, an association representing a number of 800 MHz operators, concurs that more time is required. See attached. In addition, Coastal SMR Network, LLC, in a November 14, 2005 filing, outlined the impact of the ongoing evolution and lack of finality of the Commission's rules.

Respectfully submitted,

Preferred Communication Systems, Inc.

By:   
Paul C. Besozzi

cc: Charles M. Austin

---

Case No. 04-1413, (D.C. Cir. filed December 6, 2004). The publication of the *Reconsideration Order* could bring more such challenges.

## Major Public Safety Groups Ask FCC to Reject Sprint Nextel's Request for 800 MHz Rebanding Delay

1,540 words

15 December 2005

### Telecommunications Reports

English

© Copyright 2005. Aspen Publishers. All Rights Reserved.

Six major public safety groups have asked the FCC to reject Sprint Nextel Corp.'s request that the agency adjust the start date of the 800 megahertz rebanding transition in the wake of an order the Commission released in October that provided additional relocation flexibility to economic area (EA) and enhanced specialized mobile radio (ESMR) licensees.

More than five months after the **800 MHz** band rebanding process began, Sprint Nextel asked the Commission in a Dec. 1 filing to delay the beginning of the transition until 60 days after the October order is published in the Federal Register.

"The Commission should move quickly to reject this suggestion, as the mere possibility of an extension of time creates uncertainty and further delay," the public safety groups said in a Dec. 6 letter to Catherine W. Seidel, acting chief of the FCC's Wireless Telecommunications Bureau. "We oppose the Sprint Nextel recommendation as it would cause at least a seven month delay in band reconfiguration and disrupt the entire process established by the Commission and the Transition Administrator [TA]. Band reconfiguration must be kept on a tight schedule to eliminate dangerous interference to public safety systems as quickly as possible."

The groups acknowledged that the transition "has moved slower than anticipated," and they noted they have been particularly concerned "regarding the very slow pace of approvals for Requests for Planning Funding [RPF], an essential first step for most public safety licensees. However, pushing out the implementation dates by seven months or more is not the answer. Rather, Sprint Nextel and the Transition Administrator, with oversight from the FCC, need to work hard to clear bottlenecks in the process."

The groups added: "While we oppose a blanket time extension at this point, we urge that public safety agencies not be prejudiced in any way by delays that are beyond their control. For example, delays in approval of Requests for Planning Funding should not limit the time available for public safety agencies to plan, negotiate, or implement reconfiguration agreements."

Submitting the letter in WT docket 02-55 were the Association of Public-Safety Communications Officials-International, the International Association of Chiefs of Police, the International Association of Fire Chiefs, the Major Cities Chiefs Association, the Major Counties Sheriffs Association, and the National Sheriffs Association.

#### Sprint Nextel Defends Efforts

In its filing, Sprint Nextel defended its efforts to reach agreements with licensees in the wake of a quarterly report filed last month by the TA. In its report, the TA said that there would be "a significant number of incomplete agreements" by the time the mandatory negotiation period ends Dec. 26 for the first wave of relocations. The first wave of the transition began June 27, and the second wave began Oct. 3. The third wave begins Jan. 3, 2006. The transition is slated to end in June 2008.

In its filing, Sprint Nextel said that the FCC order released in October "has created further uncertainty" to the rebanding process by providing "substantial new rights" to EA and ESMR licensees that want to relocate to the ESMR or guard bands. "These changes impact every ongoing negotiation with EA and ESMR licensees, and will likely expand the number of EA licensees who may seek to retune their facilities, thereby creating more retuning transactions to be undertaken," Sprint Nextel said. "In addition, the Commission may have even unintentionally impacted signed FRAs [frequency retuning agreements] with non-EA, non-ESMR licensees."

"It just puts a little bit more time in the process," Lawrence Krevor, Sprint Nextel's vice president-government affairs/spectrum, told TR of the requested delay. He stressed, however, that his company wouldn't slow down its efforts to reach agreements with licensees. He said it's "not surprising" that a number of parties have failed to reach agreements in light of the fact that the first wave was "a little front-loaded" with "some of the most complex areas, most congested areas" due to be rebanded first. "The last six months have been a learning cycle for everybody," he said, adding that the carrier

felt the transition schedule should have started out with easier systems.

TA officials said they would have no immediate comment on Sprint Nextel's request.

#### Others Say Delay 'Makes Sense'

Elizabeth Sachs, regulatory counsel for the Enterprise Wireless Alliance and an attorney for two carriers that had sought waivers of the ESMR election criteria, said the delay "makes good sense." "I think that the schedule that was set up is ambitious," she said. "This is a pretty mammoth undertaking to get up and running." She said the first wave of relocations would naturally take longer because stakeholders are still becoming familiar with the process.

Mark Crosby, president and chief executive officer of the Enterprise Wireless Alliance, agreed and said he wasn't surprised at Sprint Nextel's request. "There's been a lot of moving parts that weren't finished when Wave 1 kicked off," he said. "When has anything of this scope and magnitude ever been attempted before?"

According to last month's TA report, as of Sept. 30, about 20% of licensees in the first wave and about 12% of licensees among all four planned waves had signed FRAs with Sprint Nextel (TR, Dec. 1). At the FCC's request, the TA said it was being more proactive to ensure as many licensees as possible have signed FRAs.

Some sources have criticized the progress made by Sprint Nextel, saying that a number of the licensees to be relocated early in the process have involved relatively small systems. Some public safety officials also have complained about the difficulty agencies have had in getting planning funding from Sprint Nextel.

But Mr. Crosby said he believes such criticism is unfair, noting that a successful FRA can involve numerous parties, including Sprint Nextel, the incumbent operator, the TA, the FCC, and multiple equipment manufacturers.

"I don't think it's fair necessarily to point fingers at any one party," he added. He also said that most stakeholders agreed that the three-year transition approved by the FCC "was an aggressive timetable."

In its filing, Sprint Nextel defended its actions.

"Sprint Nextel is doing everything within its control to make the **800 MHz** band reconfiguration progress as quickly and efficiently as possible," the carrier said. "At the same time, however, there are a number of outside factors which impact Sprint Nextel's ability to unilaterally control band reconfiguration and perform this unprecedented undertaking within the time periods established by the TA."

As of Dec. 1, Sprint Nextel said that more than a third of licensees across the four waves had signed FRAs, as had 43% of Wave 1 licensees. It said another 21% of Wave 1 licensees were completing agreements. It also said that about 60% of business and industrial and land transportation and SMR Wave 1 licensees have signed FRAs, while another 15% "have reached agreement with Sprint Nextel on all principal retuning terms of their prospective FRAs." By Dec. 26, Sprint Nextel estimated that more than 80% of Wave 1 licensees will have signed FRAs or agreed to "all material terms of a prospective FRA."

In addition to the changes that have occurred as a result of the FCC's October order, Sprint Nextel complained about changing policies from the TA. "For example, the TA has issued at least twenty forms, directives, policy changes, or pronouncements since April 2005, all of which have affected ongoing negotiations with incumbent licensees," the carrier said.

It also said that some licensees have been less than willing to negotiate, either because they are competitors, oppose the transition, or have been busy with more pressing concerns.

Sprint Nextel called on the Commission to exercise greater oversight over the TA, noting it reviews each FRA, facilitates delayed transactions, and arbitrates disputes. "This level of both pervasive oversight and substantive decision-making vested in one entity is unprecedented in a Commission-mandated retune of incumbent licensees," Sprint Nextel said. It said that "imbuing the TA with these multifaceted and potentially inconsistent responsibilities requires the Commission to be more actively involved in overseeing the fairness and efficiency of the **800 MHz** reconfiguration process."

Sprint Nextel, however, commended the TA for releasing a template that licensees can use for RPFs, saying it will likely speed up the process. In its filing, it updated the Commission on the status of planning funding awards. It said it has received 45 RPFs, at least 10 of which were filed prematurely. Of the other 35, 14 are being finalized. Two requests have been approved by the TA. The remaining requests "do not contain the detail required" to secure approval from the TA, the carrier said.

The carrier said that it has been negotiating since August with the TA and Motorola, Inc., "to resolve inadequacies in at least 17 essentially identical RPFs (except for the amount of funding sought) in which Motorola would carry out the planning functions." Sprint Nextel said most of those requests didn't say what the funding would be used for, and some submissions exceeded the total retuning costs.

-Paul Kirby, pkirby@tr.com

Document TELR000020051208e1cf0000g