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

In the Matter of	)	
Improving Public Safety Communications In the 800 MHz Band	)	WT Docket No. 02-55
Consolidating the 800 and 900 MHz Industrial/ Land Transportation and Business Pool Channels	)	
Amendment of Part 2 of the Commission's Rules To Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Services	)	ET Docket No. 00-258
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service	)	RM-9498
Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service	)	RM-10024
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by The Mobile Satellite Service	)	ET Docket No. 95-18

OPPOSITION TO SPRINT NEXTEL CORPORATION PETITION FOR RECONSIDERATION

Preferred Communication Systems, Inc. ("Preferred" or the "Company"), by and through the undersigned counsel and pursuant to Section 1.429 of the Commission's Rules,[1] hereby respectfully submits its Opposition to the Petition For Reconsideration ("Opposition") filed by Sprint Nextel Corporation ("Nextel") with respect to the Commission's Memorandum Opinion and Order, dated October 5, 2005, FCC 05-174, 20 FCC Rcd 16015 ("*Recon Order*") in this proceeding

[1] 47 C.F.R. § 1.429.

("Petition")[2]. Preferred urges the Commission promptly to deny the Petition, wherein Nextel asks the Commission to reinstate provisions previously adopted in the *Rebanding Orders*[3] which unfairly discriminated against 800 MHz Economic Area ("EA") Specialized Mobile Radio ("SMR") licensees like Preferred to the advantage of Nextel and its affiliates. Such a reversal of field would take a rebanding regime that, in Preferred's view, remains unfair and discriminatory, and reinsert restrictions that the Commission justifiably modified. In further support of its Opposition, Preferred respectfully sets forth the following.

PREFERRED'S STANDING

Preferred holds 800 MHz EA SMR licenses ("EA Licenses") that encompass a total population of approximately 29.4 million people in the District of Columbia and parts of California, Oregon, Virginia, West Virginia, Maryland, Pennsylvania, Kentucky, Ohio, North Carolina, Puerto Rico and the U.S. Virgin Islands ("Preferred Markets"). Preferred paid the FCC approximately $31.7 million for its EA Licenses and has expended additional millions on equipment and site acquisition. In addition, Preferred holds certain additional authorizations licensed under Part 90 the Commission's Rules for specific locations (the "Site Licenses"). These Site Licenses are located primarily in Puerto Rico and the U.S. Virgin Islands. Nineteen (19) of these Site Licenses fall within the EA License (FF Frequency Block) awarded to Nextel in the Puerto Rico EA and largely encumber that authorization. As permitted under the *Rebanding Orders*, including the *Recon Order*, Preferred has elected to move both its EA and Site Licenses to the ESMR band established by the *Rebanding Orders*. Therefore, Preferred will be directly affected by the Commission's decision on the

[2] The instant Opposition is timely filed. 47 C.F.R. § 1.429(f). The Commission's public notice listing the Petition was published in the Federal Register on March 8, 2006 and provides that oppositions must be filed by March 23, 2006. 71 Fed. Reg. 11,658 (Mar. 8, 2006).

[3] *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, released October 29, 2004 ("*Initial Report and Order*"), *Supplement and Reconsideration*, 19 FCC Rcd 25120 (2004) (the "*Supplemental Order*"), *Memorandum Opinion and Order on Reconsideration*, FCC 05-174, released October 5, 2005, *Erratum*, DA 05-3061, released November 25, 2005 ("*Recon Order*") (collectively the "*Rebanding Orders*").

Petition. Finally, since the inception of this proceeding, Preferred has been an active participant herein, making numerous substantive filings. Therefore, Preferred clearly has standing to file this Opposition.

TIME FOR DEGREE OF FCC FINALITY

The Commission has been considering an 800 MHz rebanding regime since late 2001.[4] It has now issued three substantive orders shaping, reshaping and then, in the *Recon Order*, further reshaping its 800 MHz rebanding rules. Each ruling has been detailed and analytical, based on many comments and *ex parte* communications, including a countless number by Nextel and its affiliates. The rebanding process started in June of last year. As that process continues to move forward, it is time, at least from the Commission perspective[5], to stop the target from moving and fix a degree of certainty for those who are subject to its requirements. Indeed, last December, Nextel itself cited the Commission's ongoing revisions and changes as a basis for a request to restart the process, now that the rules were seemingly set. Yet now it wants to change them again, in fundamental ways, to its own advantage of course. Enough is enough. Pending the outcome of Court review, which itself may have an impact on how the rebanding process ultimately is implemented, the Commission should not further substantively revise the rules pursuant to Nextel's Petition, particularly since what Nextel seeks is to restore a number of the decided inequities of the rebanding regime at least partially addressed in the *Recon Order*. For this overall reason and this reason alone, the Commission should promptly deny the Petition.

RESTORATION OF "VALUE FOR VALUE" IS NOT GROUNDS FOR RECONSIDERATION

Nextel asserts that the *Recon Order* has now disturbed the delicate "value for value" equation that was part and parcel of the rules reflected in the *Initial Report and Order* and *Supplemental Order*. To

[4] *See Initial Report and Order*, at ¶ 61.

[5] Of course, there are currently a number of petitions for review of the *Rebanding Orders* now pending in the United States Court of Appeals for the District of Columbia Circuit.

restore that equilibrium, Nextel claims that the Commission needs to "take back" the relatively modest additional rights regarding access to the ESMR band now afforded to holders of EA and associated Site Licenses (like Preferred) by the *Recon Order*. But such a 180-degree turn about would only serve to restore the inequality that the Commission attempted to at least partially redress in the *Recon Order*. Of course, that is of little consequence and concern to Nextel.

Preferred's position in this proceeding has long been and remains that there never has been an appropriate "value-for-value" equation for the spectrum returned and received by Nextel. The deal struck by the Commission and Nextel flaunted the requirements of the Communications Act regarding regulatory parity and the auctioning of spectrum, as well as other Federal statutes.[6] So in Preferred's view, there is no value-for-value equation to be restored. If anything, the Commission's decisions in the *Recon Order* may move the rebanding rules more toward competitive equilibrium. But the fact remains that even with the rights bestowed in *Recon Order*, Preferred and other similarly-situated EA licensees still receive greatly reduced spectrum rights in the ESMR band from what they acquired at auction, while Nextel generally gets EA-wide 1-for-1 authorizations when it relocates. Dramatic discrimination remains. Going backward will only again make it worse.[7]

Nextel claims the Recon Order is "unfair and arbitrary" because it fails to explain why the Commission departs from the "value-for-value" approach. Yet to the extent that there has been any such departure, Nextel supports its request for reversal with a series of broad assertions, and does not detail how and in what degree the substantial spectrum it will receive is in fact devalued and to what degree the equation is now out of balance. Nextel fails to point out with any specificity how the Commission in terms of spectrum or license rights or dollars paid is now shortchanging Nextel.

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[6] *See generally* Petition For Reconsideration of Preferred Communication Systems, Inc. and Silver Palm Communications, Inc., filed in this proceeding on December 22, 2004 ("*Preferred Recon Petition*").

[7] Preferred has not been alone in pointing out the inherently discriminatory elements of the Nextel proposals, particularly as they related to access to the ESMR portion of the revised 800 MHz band. Unfortunately, many of these remain part of the existing rebanding scheme. *See Ex Parte* Presentation of Southern Communications Services d/b/a Southern LINC, dated June 23, 2004, filed in this proceeding.

Nextel's generalities do not support reconsideration and restoration of the restrictive ESMR criteria that the Commission properly adjusted in the *Recon Order*. It merely seeks to prevent and suppress other EA licensees from being able to even attempt to compete with its services. The Commission had ample opportunity in the *Recon Order* to consider the alleged impact of its rule adjustments on the "valuation" issue, but did not deem it necessary to do so.[8] That decision should not be changed based on the Petition.

PRO RATA MECHANISM ONLY ADVANTAGES NEXTEL

Nextel's Petition concedes, as does the *Recon Order* itself, that there will be a shortage of spectrum to accommodate those licensees entitled to move to the ESMR band. Nextel asks that the Commission extend to all markets the relief granted in the SouthernLINC markets that helped ensure that both Nextel and SouthernLINC "can replicate their existing channel capacity." In other cases, as Nextel notes, where the parties cannot reach agreement, the rebanding rules currently require a *pro rata* distribution of the available channels. Nextel would have this *pro rata* mechanism extended to the ESMR band in all other markets. Unfortunately, in those markets it would not be a stopgap mechanism, but the norm, further diminishing the spectrum that Preferred paid millions to the Commission to obtain.[9]

Preferred has steadfastly opposed the application of a *pro rata* channel allocation mechanism as generally to the advantage of Nextel and the disadvantage of its potential competitors like Preferred. Preferred has previously listed specific examples of how this mechanism works to Nextel's advantage.[10] Preferred opposes the perpetuation and extension of this inequitable system to

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[8] The *Recon Order* spent a number of pages addressing the valuation of the spectrum issues. *See Recon Order*, at pp. 42-49.

[9] Preferred outlined in its *Recon Petition* why this was the case and that were the alternatives.

[10] *See Preferred Recon Petition*, at pp. 23-26.

other markets. Nextel describes it as an "equitable reconfiguration process." Preferred has demonstrated that it is not. Therefore, the Commission should deny the Petition to expand it.

NEXTEL SHOULD NOT BE PERMITTED TO SET ITS OWN COMPLIANCE SCHEDULE

As part of reconsideration Nextel asks the Commission to allow Nextel, not the Transition Administrator ("TA") or the Commission, to determine, in Nextel's sole discretion, in which twenty NPSPAC regions it will complete the Stage I retuning process by the 18 month deadline established by the *Rebanding Orders*. It complains that the Commission should grant Nextel this unilateral discretion to avoid "unreasonable burdens" and "imbalance."

The Commission in effect turned down this request when it rejected Nextel's effort to restart the rebanding schedule.[11] At the same time, the Commission reminded the TA that it had the authority to adjust the schedule where needed.[12] Granting Nextel's Petition in this regard now would have the effect of modifying, indeed scrapping, the schedule proposed and, after the opportunity for comment, adopted by the TA and attempted to be followed since the rebanding process started. Instead, Nextel would pick and choose presumably the "easy" regions to address and in effect "back load" the process that it now complains is front loaded.

Nextel had the opportunity as part of both the *Initial Report and Order* and *Supplemental Order*, to contest and seek to modify the timing obligations for rebanding and the process for meeting them. Nextel was intimately involved in the TA selection process and the set up of the TA. Now, because it doesn't like the results to date, it wants, in effect, to become its own TA for purposes of setting the schedule. It has failed to articulate sound reasons for the Commission to so dramatically revise the rebanding process at this stage.

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[11] *See* Letter from Catherine W. Seidel, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission to Lawrence R. Krevor, Vice President-Spectrum, Sprint Nextel, DA-06-200, dated January 31, 2006.

[12] *See* Letter from Catherine Seidel, Acting Chief, Wireless Telecommunications Bureau, Federal Communications Commission, to Robert B. Kelly, Esq, 800 MHz Transition Administrator, LLC, DA 06-201, dated January 31, 2006.

CONCLUSION

For all the foregoing reasons, Preferred respectfully requests the Commission deny the Petition.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I, Tina M. Cruikshank, a Secretary with the law firm of Patton Boggs LLP, hereby certify that copies of the foregoing "Opposition To Sprint Nextel Corporation Petition For Reconsideration" were served this 23rd day of March 2006, by United States First Class Mail, postage prepaid on the following parties:

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