

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
	)	
To: The Commission	)	

**SAFE COMPETITION COALITION**  
**REPLY TO OPPOSITION**

The Safety and Frequency Equity Competition Coalition ("SAFE"), pursuant to Section 1.429(g) of the Commission's Rules, 47 C.F.R. § 1.429(g), by its attorney, hereby replies to the Opposition of Sprint Nextel Corporation ("Sprint Nextel") in the above-referenced proceeding. The Sprint Nextel Opposition apparently was filed in response to several Petitions for Reconsideration in this proceeding. Curiously, it responds to a seemingly non-existent

Petition for Reconsideration filed by individual parties, collectively named by Sprint Nextel as “the Coastal Petitioners.” In fact, the record of this proceeding does not include any such petition at this stage of the proceeding. The parties named by Sprint Nextel as the Coastal Petitioners, are in fact members of SAFE. They did not file separately, or collectively as individual parties, any Petition for Reconsideration on January 27, 2006. Their representative association, SAFE, filed a Petition for Partial Reconsideration and Clarification (the “SAFE Petition”). Therefore, the Sprint Nextel Opposition either should be stricken from the record as unresponsive to any actual Petition, or should be treated as responsive to the SAFE Petition.

Avoidance of any reference to the *SAFE Competition Coalition*, certainly would serve Sprint Nextel’s advocacy objective. Sprint Nextel’s Opposition (and Petition for Reconsideration) completely ignores the issues of competition in this proceeding.

Understandably, the avoidance of *competition* is at the heart of Sprint Nextel’s participation at this stage of the rulemaking proceeding, as it was from the beginning.<sup>1</sup> All that appears to matter to Sprint Nextel in this proceeding is the amount of spectrum that it can acquire and hoard at its competitors’ peril.

Contrary to the characterization in Sprint Nextel’s Opposition, the SAFE Petition seeks certain minor adjustments in the transition plan to restore fully the appropriate competitive balance in the treatment of SAFE’s members in the 800 MHz transition plan. The only apparent difference between SAFE’s members and other licensees eligible to relocate in the ESMR band with complete spectrum rights (clean EA’s in the ESMR band segment regardless of encumbrances at the time of relocation, and full credit for site-specific licenses) is the state of their operations as of November 22, 2004. While SAFE members had not yet constructed their

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<sup>1</sup> See e.g., the covert, arbitrary and capricious harm to Nextel’s small, independent regional competitors, such as SAFE’s members, in the consensus plan.

ESMR systems by that date, the record in this proceeding is clear – they fully intended to construct ESMR systems when they participated and purchased EA licenses in FCC Auctions 34 and 36. Incrementally, the Commission has granted SAFE members' eligibility for relocation of their licenses in the ESMR band. The *Supplemental Order*<sup>2</sup> granted eligibility to their EA licenses, and the *MO&O*<sup>3</sup> granted conditional eligibility to their site-specific licenses by treating their communications systems as a whole.

Now that SAFE members' eligibility for relocation of their entire, integrated communications systems in the ESMR band segment has been established, all that remains of the initial inequity is the disparity in the specific amount of spectrum credit they receive for their EA and site-specific licenses. The Petition simply makes the point that SAFE members should be treated the same as other eligible licensees. After all, the Commission's goal is comparability. What is comparable for one eligible licensee should not differ from what is comparable for another eligible licensee. There is no rational reason why licenses held by SAFE's competitors (for ESMR systems constructed as of November 22, 2004) are entitled to a higher spectrum credit than the licenses held by SAFE's members.

SAFE's members seek to relocate their systems as a whole to the ESMR band segment and end up in a position comparable to the one they occupied before the transition. Before the transition, SAFE's members were free to remove encumbrances from their EA licenses through negotiations with other licensees that encumbered their EAs. After EA licensees relocate to the ESMR band, there will no longer be any similar expansion opportunities

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<sup>2</sup> *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 (2004).

<sup>3</sup> *Memorandum Opinion and Order*, WT Docket No. 02-55, FCC 05-174, released Oct. 5, 2005, as corrected by *Erratum*, released Nov. 25, 2005, DA-3061.

-- what is granted in the transition is fixed and final. The Commission appears to have recognized this fact in its treatment of other licensees.

It is not enough that Sprint Nextel would seek to reverse the Commission's decision establishing their expanded eligibility for relocation in the ESMR band segment. Sprint Nextel has even opposed a reasonable clarification sought by SAFE's members on further reconsideration regarding the reimbursement of reasonable transactional costs for site-specific licenses. It is extremely hard to imagine that Sprint Nextel's financial interests in this issue drive its opposition to the clarification sought by SAFE. Its motive is simply to impose the highest costs possible on its small, independent, regional competitors in the transition.

Under the amended transition plan, SAFE's members are paying one-hundred percent of their equipment costs in the relocation. They receive absolutely no credit for the cost of abandoning their investment in existing equipment, which cannot be used under the current rules in the ESMR band segment. It is entirely reasonable that they would seek to be made whole for their transactional costs during this costly transition. Indeed, that appeared to be the Commission's intention in the *Supplemental Order*. An ambiguity appeared in the *MO&O*, which prompted SAFE's request for clarification.

Accordingly, for the reasons set forth in the SAFE Petition, the SAFE Opposition to the Sprint Nextel Petition for Reconsideration, and in this Reply to Opposition, SAFE respectfully requests that the Commission: (1) eliminate the "unencumbered white space" limitation, which unfairly restricts the amount of spectrum credit afforded SAFE's members for the EA licenses relocated to the ESMR band; (2) treat SAFE's members the same as SouthernLINC, Sprint Nextel, Airpeak and Airtel, regarding the amount of spectrum credit afforded for their EA licenses that are relocated to the ESMR band; and (3) provide SAFE's

members with the same opportunity as Airpeak and Airtel to avoid the reduced spectrum credit of a 40 dBuV/m standard by making a waiver showing to receive an EA-wide license in the ESMR band for site-specific licenses that cover at least fifty percent of the population within the EA. The Sprint Nextel Petition should be denied and the SAFE Petition should be granted with the requested clarification.

Respectfully submitted,

SAFETY AND FREQUENCY EQUITY  
COMPETITION COALITION ("SAFE")

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April 3, 2006

## CERTIFICATE OF SERVICE

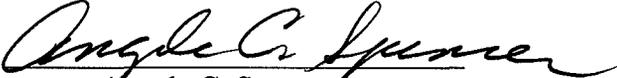
I, Angela C. Spencer, do hereby certify that on this 3<sup>rd</sup> day of April, 2006, a copy of the foregoing "SAFE Competition Coalition Reply to Opposition" was served by first class United States mail, postage prepaid, addressed to:

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