

**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 Systems)	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

REPLY TO OPPOSITION OF SPRINT NEXTEL CORPORATION

Mohave County Board of Supervisors (the "County"), by its counsel, hereby replies to the Opposition of Sprint Nextel Corporation ("Sprint Nextel" or "Respondent"). As discussed below, the Opposition fails to adequately answer, or even come to grips with, key issues raised in the County's Petition for Clarification or Reconsideration. That Petition and the others dealing with this matter should be granted.

BACKGROUND

On January 27, 2006, the County sought clarification that the *Memorandum Opinion and Order* (the “*October Order*”), FCC 05-1784, released in this proceeding on October 5, 2005, was not intended to revise the determination made in the *Report and Order* that Nextel should reimburse the costs of relocation for all 2 GHz Broadcast Auxiliary Service (“BAS”) licensees.¹ In the alternative, the County urged the Commission to reconsider the *October Order*.

The County noted that, under Sprint Nextel’s interpretation of the Order, 2 GHz licensees like the County, which had held BAS licensees long before the Commission ever determined to re-channel the band, would be treated worse than 2 GHz operators issued equally secondary licenses with full knowledge that they would be bumped in order to comply with the new band plan. The County further observed that the failure to confirm that the licensees of the relay stations at issue here were eligible for reimbursement threatened to terminate the sole means of delivering over-the-air television news and information -- including public safety announcements -- to remote communities in Mohave County; and adversely affect a rapid transition to the new BAS band plan, both of which were stated goals for 2 GHz rebanding.

If, despite the above, clarification or reconsideration were not forthcoming, the County urged that it be given a waiver to allow reimbursement of the approximate \$353,000 in rebanding costs for these stations. In this regard, the County noted that it had relied upon numerous representations and presentations by Nextel to the effect that it (Nextel) would reimburse its costs and those of the other Phoenix licensees.

¹ *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order* in WT Docket No. 02-55 *et al* (FCC 04-168), 19 FCC Rcd 14969 (2004) (hereinafter cited as the “*800 MHz Report and Order*”).

The County is pleased to note the strong support registered for its position. Petitions for Clarification or Reconsideration have been filed by Fox Television Stations, Inc., KTVK, Inc., Meredith Corp., Multimedia Holdings Corp., and Scripps Howard Broadcasting Co., all licensees of Phoenix television stations. Support has been registered by the Association of Maximum Service Television, Inc. (“MSTV”) -- one of the three parties which filed the request which led to the *October Order*. And support has been provided by the Arizona Broadcasters Association (“ABA”), among others.

For example, MSTV observed that, in the *800 MHz Report and Order* which approved the Nextel/MSTV/NAB 2 GHz rebanding reimbursement plan, the Commission confirmed that “all” 2 GHz BAS facilities were to be relocated to the new band plan, the sole exception being BAS operators licensed after June 2000.² This prompted MSTV, Nextel, and NAB to file their June 20, 2005 request for clarification which the Commission granted in the *October Order*, saying that it would “allow Nextel to claim credit for the costs to relocate secondary BAS incumbents licensed before November 22, 2004.”³ MSTV went on to note that failure to include translator relay stations like the County’s within the ambit of reimbursement credit for Nextel, even though they are secondary, “will harm principally rural, unserved and underserved communities which rely on these ‘secondary’ translator relay stations for access to local television services, including local news, weather and emergency information.”⁴

² MSTV Petition for Clarification filed January 27, 2006 at 3 quoting from *800 MHz Report and Order*, 19 FCC Rcd at 15096, para. 252.

³ *Id.* at 4 quoting from *October Order*, 20 FCC Rcd 16015, para. 107.

⁴ *Id.* at 5.

Similarly, in expressing its “strong support” for the County, the ABA remarked upon the “critical importance of the Mohave Board’s translators to the continued protection of lives and properties in Arizona.”⁵ The ABA went on to cite specific examples, such as the translator system’s delivery of emergency information to tens of thousands of residents and first responders in the County concerning the epidemic of wildfires that has struck the State (a region entering its 11th year of drought): “Only through the use of these television translators can the public be certain that safety and informational alerts reach all of the underserved residents of Arizona.”⁶

Particularly noteworthy is the March 22 letter from U.S. Senators John McCain and Jon Kyl to Chairman Martin. After reciting the history of the proceeding, the Senators stressed:

We believe it is in the public interest to ensure both the uninterrupted delivery of national and statewide news and information including public safety information to citizens in the County, a remote area, and the continuation of the relocation efforts without delay. Accordingly, we urge you and your fellow Commissioners to consider all options as you evaluate the Petition.

⁵ Comments in Support of Petition for Clarification or Reconsideration, filed March 22, 2006, at 2.

⁶ *Id.* at 3. Comments in support have also been filed by Oregon Public Broadcasting and by Dutchess Community College.

DISCUSSION

The Sprint Nextel Opposition argues simply that Commission precedent does not contemplate reimbursement for secondary BAS licensees, that no one took issue with this previously, and that the *October Order* was limited to relief for post-June 2000 secondary licensees.⁷

These arguments overlook the fact that the 2 GHz plan Nextel itself proffered, and which the Commission approved, contemplated reimbursement for “all” BAS licensees.⁸ It overlooks the fact that the *800 MHz Report and Order’s* approval was not premised on the notion that 2 GHz rebanding was to be a strict copy of *Emerging Technologies* policies.⁹ And it overlooks the fact that the Commission’s own Orders led numerous parties -- including Sprint Nextel itself -- to conclude that pre-June 2000 BAS licensees were entitled to reimbursement.¹⁰ In that light, the Petitioners understandably read the *October Order* to have expanded the reimbursement of secondary licensees -- as Nextel, MSTV and NAB had expressly requested -- in order to expedite rebanding and avoid disruption in the delivery of broadcast programming such as news and information.

⁷ Opposition at 8-10.

⁸ See MSTV Petition at 3, quoting from Joint Proposed BAS Relocation Plan filed in this proceeding on May 3, 2004 at 1-2; *800 MHz Report and Order, supra*, at paras 251-252. See also *id.* at note 144 defining BAS as including TV translator relay stations.

⁹ As MSTV has noted, the *Report and Order* was careful not to straight-jacket Sprint Nextel to directly follow *Emerging Technologies* principles. *Id.* at 5 note 19.

¹⁰ See June 20, 2005 joint request filed in this Docket by Nextel, MSTV and NAB which, after noting that reimbursement was already allowed for BAS licensees authorized “pursuant to initial applications filed prior to June 27, 2000 [as were the County’s],” requested confirmation that “all BAS operators” licensed after that date and prior to November 22, 2004 were also entitled to reimbursement (emphasis in original).

Sprint Nextel footnotes quietly that “[p]rior to the release of the MO&O, [it] initially indicated to TV translator and LPTV licensees that it intended to fund their BAS relocation costs.”¹¹ But this is not the half of it. The fact is that Sprint Nextel led a charge for Arizona broadcasters designed to get the Phoenix area re-banded in a hurry, all premised on representations that it would pay rebanding costs. Nextel initiated numerous meetings and telephone conferences with the County and Phoenix broadcasters regarding the terms and conditions for rebanding. It stressed throughout the importance of moving quickly to complete rebanding. In light of this history, Sprint Nextel should not now be heard to claim that reimbursement based on the *800 MHz Report and Order* was not allowed, and that the Petitions should be denied.

But still, says Respondent, the *October Order* changed all this. But this argument ignores the record. It also fails to address, much less answer, other central points in the County’s Petition. These include the fact that Sprint Nextel’s interpretation of the Order would treat similarly-situated parties in dissimilar fashion contrary to the teachings of the D.C. Circuit in *Melody Music*.¹² And they include the fact that its interpretation risks the very harms that the Commission has sought to avoid in 2 GHz rebanding, namely disruption to television news and information, and delays in completing rebanding. Here too the interpretation produces a conflict

¹¹ *Id.* at 10 note 28.

¹² *Melody Music, Inc. v. FCC*, 345 F.2d 730, 732-733 (D.C. Cir. 1965).

with principles of reasoned decision-making as articulated in *Greater Boston et al.*¹³ The lack of answer to these points underscores the strength of the County's Petition.¹⁴

CONCLUSION

Accordingly, for the reasons stated in its Petition, in the Petitions of the other commenting parties, and herein, the County's Petition should be granted for compelling reasons of law and policy.

Respectfully submitted,

MOHAVE COUNTY
BOARD OF SUPERVISORS



William K. Keane

Duane Morris LLP
1667 K Street, N.W., Suite 700
Washington, DC 20006
Phone: (202) 776-5243
Fax: (202) 776-7801
Email: kkeane@duanemorris.com

Its Counsel

April 5, 2006

¹³ *Greater Boston Television Corporation v. FCC*, 444 F.2d 841, 850-852 (D.C. Cir. 1970). See County Petition at 11-12 for further discussion.

¹⁴ The Opposition likewise does not address the County's alternative request for waiver.

CERTIFICATE OF SERVICE

I, William K. Keane, hereby certify that I have caused the attached Reply to Opposition of Sprint Nextel Corporation to be deposited in the U.S. Mail, first-class postage prepaid, this 5th day of April 2006, addressed as follows:

Robert S. Foosaner
Senior Vice President and
Chief Regulatory Officer
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191

Lawrence R. Krevor
Vice President – Spectrum
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191

James B. Goldstein
Director – Spectrum Reconfiguration
Sprint Nextel Corporation
2001 Edmund Halley Drive
Reston, VA 20191

Julius Knapp
Deputy Chief
Office of Engineering & Technology
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Jamison Prime
Office of Engineering & Technology
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

Heather O. Dixon
Office of Chairman Martin
Federal Communications Commission
445 12th Street SW
Washington, D.C. 20554

John M. Burgett
Wiley Rein & Fielding LLP
Attorney for KTVK, Inc. and Meredith Corporation
1776 K Street, N.W.
Washington, DC 20006

David L. Donovan
President
Association for Maximum Service Television, Inc.
P.O. Box 9897
4100 Wisconsin Avenue, N.W.
Washington, DC 20016

David M. Giles
Associate General Counsel
Scripps Howard Broadcasting Company
312 Walnut Street, Suite 2800
Cincinnati, OH 45202

Molly Pauker
Vice President – Corporate & Legal Affairs
Fox Television Stations, Inc.
5151 Wisconsin Avenue, N.W.
Washington, DC 20016

Marnie K. Sarver
Wiley Rein & Fielding LLP
Attorney for Multimedia Holdings Corporation
1776 K Street, N.W.
Washington, DC 20006

Steven C. Schaffer
Schwartz, Woods & Miller
Attorney for Dutchess Community College and
Oregon Public Broadcasting
1233 20th Street, N.W.
Washington, DC 20036

Peter Tannenwald
Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Avenue N.W.
Suite 200
Washington, D.C. 20036-3101



William K. Keane