

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules	)	WT Docket No. 06-169
	)	
Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010	)	WT Docket No. 96-86
	)	

**REPLY COMMENTS OF THE UNITED TELECOM COUNCIL**

The United Telecom Council ("UTC") hereby submits the following reply comments in the above-referenced rulemaking.<sup>1</sup> UTC supports the comments of the Critical Infrastructure Communications Council to designate the returned Nextel 700 MHz spectrum for critical infrastructure industries (CII) use, which would protect public safety from interference from commercial 700 MHz systems, would be consistent with the Balanced Budget Act of 1997<sup>2</sup> and would not require changes to the FCC rules or enabling law. By contrast, the Broadband Optimization Plan ("BOP") is premised upon changes to the rules and would require additional legislation, which would take precious time given the statutory deadline to auction the commercial 700 MHz spectrum by January 28, 2008.

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<sup>1</sup> *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission's Rules*, Notice of Proposed Rulemaking, WT Docket No. 06-169, 2006 WL 2595221 (released Sept. 8, 2006)(hereinafter "NPRM").

<sup>2</sup> Hereinafter "BBA 97"

There are less intrusive means of promoting spectrum efficiency in the 700 MHz public safety bands, as proposed by Motorola. As such, UTC urges the Commission to allocate a portion of the guard band spectrum for use by CII entities whatever its final decision concerning the configuration of this frequency band.

**A. Designating the Guard Bands for CII Use Would Serve the Public Interest by Protecting Public Safety from Interference and Promoting CII Reliability and Homeland Security.**

Comments on the record universally recognize that the fundamental purpose of the guard bands is to protect public safety from interference, and no one has questioned whether the existing rules will do that. Although Access Spectrum and Pegasus suggest alternative rules to protect public safety that would serve their own purposes, no one from public safety has wholeheartedly supported these alternatives. NPSTC has offered only conditional support, while other public safety entities have expressed outright opposition to taking risks with the interference protections in the existing rules.<sup>3</sup> Motorola explicitly opposes any changes to these rules at this time.<sup>4</sup> Similarly, CTIA calls for further study before making any drastic changes.<sup>5</sup>

UTC concurs that the only sure way to protect public safety is to follow the existing rules. Of all the different proposals for the guard band spectrum, only

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<sup>3</sup> Comments of the National Public Safety Telecommunications Council at 10 (filed Oct. 23, 2006)(offering conditional support for the BOP)(hereinafter "Comments of NPSTC"). See also Comments of Prince George's County, Maryland, Office of Homeland Security at 5-11 (filed Nov. 7, 2006); and Comments of Stafford County, Virginia Sheriff's Department at 4-7 (filed Nov. 7, 2006)(opposing rebanding in the 700 MHz spectrum).

<sup>4</sup> Comments of Motorola at 15 (filed Oct. 23, 2006).

<sup>5</sup> Comments of CTIA-The Wireless Association at 4 (filed Oct. 23, 2006)(hereinafter "Comments of CTIA").

the proposal by UTC/Motorola could be implemented under the existing rules.

Designating the returned Nextel 700 MHz spectrum for CII entities would not entail any rebanding or changes to the interference protection rules.

Alternatively, the modified proposal by Motorola to designate a revised guard band for use by CII entities is still better than eliminating the guard bands altogether, as Access Spectrum/Pegasus proposes. As Motorola explains, if the guard bands are eliminated, a significant amount of adjacent public safety spectrum will be subject to interference and could not be effectively used by public safety licensees.<sup>6</sup> As such, Motorola supports designating the spectrum for CII entities to serve as a buffer between the public safety and commercial 700 MHz bands.<sup>7</sup> Public Safety Region 24 also supports Motorola's plan to designate the 1 MHz guard band for CII entities.<sup>8</sup>

Region 24 echoed the comments of the CICC, explaining that more public interest benefits run with designating the guard band spectrum for CII entities.<sup>9</sup> It noted that “[r]ecent events such as Hurricane Katrina have showed that radio systems implemented and operated by the Critical Infrastructure community are characteristically more durable and robust than commercial wireless systems and the ability for public safety to realize cost savings in the joint implementation of 700 MHz voice systems is substantial.”<sup>10</sup> As the CICC also emphasized, Region 24 concluded that “[p]romoting mission critical communications between public

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<sup>6</sup> Comments of Motorola at 13.

<sup>7</sup> *Id.* at 14-17.

<sup>8</sup> Comments of Region 24 (Missouri) 700 MHz Regional Planning Committee at 4 (filed October 23, 2006)(hereinafter “Comments of Region 24”).

<sup>9</sup> *Compare* Comments of the CICC at 3-6; and Comments of Region 24 at 4-6).

<sup>10</sup> *Id.*

service and public safety entities can be beneficial for both entities and provide necessary interoperability between users during mission critical incidents.”<sup>11</sup>

Finally, Region 24 recognized that “while the commercial wireless industry’s main concern is return on investment (ROI) in recovering the cost of implementing systems as quick as possible, the critical infrastructure industry has historically recognized that system development and meeting its user needs are its main focus and as these needs are more in line with the public safety mission, partnerships between Public Safety and Critical Infrastructure may provide more benefit than any similar arrangements between public safety and the commercial wireless industry.”<sup>12</sup>

Congress also recognized that CII supports public safety, and for that reason it included CII entities among those public safety radio services that it exempted from spectrum auctions. Although Congress sought to promote access to spectrum for CII in the BBA 97, the Commission has yet to designate any spectrum for exclusive use by CII entities. This proceeding represents an opportunity for the Commission to take a first step towards carrying out Congress’s intent by designating a portion of the guard band spectrum for CII use, exclusively – and in such a way that will promote coordination among diverse members of the emergency response community that otherwise could not take place.

Moreover, designating this spectrum for CII would promote electric service reliability and Homeland Security. As the CICC explained, CII entities are under

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<sup>11</sup> *Id.*  
<sup>12</sup> *Id.*

increasing consumer, state regulatory and homeland security demands, and communications systems are becoming increasingly important to meet those demands.<sup>13</sup> CII entities need spectrum that is designated for critical infrastructure because the spectrum they use now is subject to increasing congestion and interference, generally from incompatible users. More shared spectrum is not the answer, nor is it practical to access public safety spectrum on a conditional basis.<sup>14</sup> CII entities must have spectrum on which they can depend, “24/7.” Access to this minimal amount will actually encourage investment in systems that will promote reliability and Homeland Security, without harming any other party.

**B. No Rule Changes or Additional Legislation Would be Necessary.**

Access Spectrum/Pegasus expressed concerns about creating new rules to protect CII from interference from commercial systems.<sup>15</sup> This is all smoke, designed to distract and detract from UTC/Motorola’s proposal. As Motorola explained, “CII users under this proposal would not receive protection in excess of what the current guard band licensees receive and would have the same obligations with respect to protection of public safety.”<sup>16</sup> Motorola also explained that “because CII users would operate under the same technical rules as the current licensees, there would be no negative impact with respect to use of the C and D block commercial spectrum.”<sup>17</sup> By these reply comments, UTC hopes that

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<sup>13</sup> Comments of CICC at 3-4.

<sup>14</sup> *But see*, Comments of the Enterprise Wireless Association at 5 (filed Oct. 23, 2006).

<sup>15</sup> Comments of Access Spectrum, LLC and Pegasus Communications Corporation at 11, n. 12.

<sup>16</sup> Comments of Motorola at 16-17.

<sup>17</sup> *Id.* at 17.

this issue has been laid to rest. CI entities are not asking for special treatment. Instead as the CICC stated, “the beauty of designating this spectrum for critical infrastructure entities is its simplicity.”<sup>18</sup>

Unlike other proposals on the table, the UTC/Motorola proposal would require no new rules or additional legislation. This is an important consideration, particularly in light of the impending statutory deadline to auction the remaining commercial 700 MHz spectrum by January 28, 2008. UTC agrees with CTIA that the Commission should avoid a “protracted proceeding that could impact the auction timing and statutory deadlines or create uncertainty for auction participants.”<sup>19</sup> As the UTC/Motorola proposal would not require any new rules or laws, the Commission should designate a portion of the guard band spectrum for CII use under the existing technical rules.

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<sup>18</sup> Comments of CICC at 8.

<sup>19</sup> Comments of CTIA at 3.

## **CONCLUSION**

**WHEREFORE, THE PREMISES CONSIDERED**, UTC urges the Commission to designate guard band spectrum for use by CII entities consistent with the positions expressed in these reply comments. Doing so will promote the public interest in protecting public safety from interference, as well as promote critical infrastructure reliability, security and interoperability with public safety, consistent with congressional intent and overriding public policies.

Respectfully submitted,

**United Telecom Council**

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