



**Sprint Nextel**  
2001 Edmund Halley Drive  
Reston, VA 20191

January 8, 2006

BY ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary  
Federal Communications Commission  
The Portals  
445 Twelfth Street, S.W.  
Washington, D.C. 20554

Re: Opposition to Supplement to Petition for Reconsideration  
WT Docket 03-66

Dear Ms. Dortch:

Sprint Nextel opposes the late-filed proposal of NY3G Partnership to alter the Commission's Part 27 rules. In a self-styled "Supplement to Petition for Reconsideration," NY3G demands that the Commission amend section 27.1216 of its rules "to permit adjacent co-channel BRS and EBS licensees to exchange or transfer service area territory between one another in order to facilitate intersystem coordination of co-channel operations or to reduce or mitigate the harmful effects of co-channel interference."<sup>1</sup>

Putting aside the procedural irregularity of NY3G's "supplement," NY3G's proposal warrants no further consideration from the Commission.<sup>2</sup> NY3G's proposed rule change to permit spectrum exchanges between BRS and EBS licensees is entirely unnecessary because these types of transactions can already be accomplished under the Commission's existing rules and policies if the parties agree. The Commission quite rationally has approved secondary-market arrangements that make spectrum assignments in the 2.5 GHz band more sensible.<sup>3</sup> Indeed, even NY3G concedes that

<sup>1</sup> NY3G Partnership, Supplement to Petition for Reconsideration, WT Docket No. 03-66 (Dec. 11, 2006) (NY3G Supplement).

<sup>2</sup> Section 1.429(d) of the Commission's rules provides that "No supplement to a petition for reconsideration filed after expiration of the 30 day period will be considered, except upon leave granted pursuant to a separate pleading stating the grounds for acceptance of the supplement." 47 C.F.R. § 1.429(d). NY3G's filing comes far more than 30 days after the deadline for petitions for reconsideration; moreover, NY3G failed to seek leave to file its "supplement" and, in any case, offers no compelling reason for the Commission to grant authority to supplement the petitioner's original pleading.

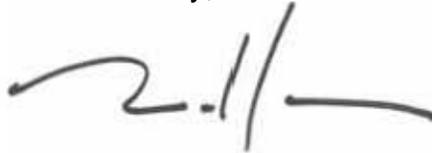
<sup>3</sup> See, e.g., *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Order on Reconsideration and Fifth Memorandum Opinion and Order, and Third Memorandum Opinion and Order and Order and Second Report and Order, 21 FCC Rcd 5606, ¶ 122 (2006) ("Although the Commission retained the eligibility restrictions in the *BRS/EBS R&O*, those restrictions do not prohibit licensees from swapping channels to effectuate the transition.").

that it “could negotiate without such a rule” change.<sup>4</sup> If NY3G nevertheless believes that any Commission rule actually prohibits some form of reasonable settlement between it and its counterpart licensee in the New York region, NY3G could simply seek a waiver of the specific rule provisions involved.

With no obvious regulatory impediment to its envisioned transaction, NY3G’s belated supplement appears primarily designed to upend the October 17, 2006 deadline that the Commission established for parties to settle E and F group co-channel disputes.<sup>5</sup> If NY3G’s proposed rule change were adopted, NY3G and any other non-settled overlapping E and F group licenses might use the rule change as an opportunity to re-open the seemingly endless discussions to resolve E and F group co-channel disputes. Attempts to prolong the already considerable period of uncertainty over the geographic footprint of these licensees will only serve to complicate transitions to the new 2.5 GHz bandplan and hamstring 2.5 GHz wireless broadband deployment.

In sum, NY3G’s proposal is unnecessary. The proposal appears principally designed as pretext for revisiting the October 17, 2006 dispute-resolution deadline the Commission previously established. The Commission should reject NY3G’s belated “supplement” as procedurally and substantively flawed.

Sincerely,

A handwritten signature in black ink, appearing to read 'T. Hanbury', with a stylized flourish at the end.

Trey Hanbury  
Director, Government Affairs  
Sprint Nextel Corporation

<sup>4</sup> See NY3G Supplement at 2 n.2.

<sup>5</sup> *BRS-EBS Reconsideration Order*, 21 FCC Rcd at ¶ 350 (“To encourage a voluntary settlement of this issue between the affected parties, we will establish a ninety-day mandatory negotiation period where both the BRS and EBS licenses have an explicit duty to work to accommodate each other’s communications requirements. If, at the end of ninety days the parties cannot reach a mutual agreement, the Commission then will split the football on its own accord. As NY3G indicated, the affected co-channel licensees have had two decades to negotiate a solution to this problem. Because the issues are not new to the effected parties, we believe that a ninety-day period is appropriate.”).