

January 29, 2007

Via Electronic Filing

The Honorable Kevin J. Martin
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

Re: WT Docket Nos. 96-86, 06-150 and 06-169
Written Ex Parte

Dear Chairman Martin:

Access Spectrum, LLC (“Access Spectrum”) and Pegasus Communications Corporation (“Pegasus”) have proposed the Broadband Optimization Plan (“BOP”) and the Commercial 700 MHz Plan in the above-referenced dockets. The BOP and the Commercial 700 MHz Plan outline a set of changes to the Commission’s rules in order to optimize the Upper 700 MHz for both public safety and commercial operations, including broadband capabilities. These changes can be adopted in a timely fashion in order to meet the statutory deadlines of the Digital Television Transition and Public Safety Act.¹ In order to maximize broadband opportunities for both Public Safety and commercial operations, the BOP must be adopted *before*, or at the very least *simultaneously with*, the commercial rules.

There is widespread support for the BOP among Public Safety and commercial interests² and virtually no opposition. The records in each of these proceedings³ have been complete for

¹ Digital Television Transition and Public Safety Act of 2005, Title III (§§ 3001-3013) of the Deficit Reduction Act of 2005, Pub. L. No. 109-171, 120 Stat. 4 (2006).

² See, e.g., *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the Commission’s Rules; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State, and Local Public Safety Communications Requirements Through the Year 2010*, WT Docket Nos. 06-169 & 96-86, Comments of APCO International (Oct. 23, 2006); Comments of Motorola, Inc. (Oct. 23, 2006); Reply Comments of National Public Safety Telecommunications Council (Nov. 13, 2006); Reply Comments of Northrop Grumman Information Technology, Inc. (Nov. 13, 2006); see also Letter to Kevin J. Martin, FCC Chairman, from Marjorie J. Dickman and David M. Horne, Intel Corporation, WT Docket Nos. 06-150 & 06-169 (Dec. 18, 2006); Letter to Kevin J. Martin, FCC Chairman, from the Chairpersons of 700 MHz Regional Planning Committees for Regions 24, 4, 5, 7, 8, 9, 10, 11, 13, 14, 17, 26, 30, 32, 33, 35, 39, 45, 54, and 55, WT Docket Nos. 96-86, 06-150, 06-169 & PS Docket No. 06-229 (Jan. 24, 2007).

³ *The Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, Eighth Notice of Proposed Rulemaking, 21 FCC Rcd 3668 (2006); *Former Nextel Communications, Inc. Upper 700 MHz Guard Band Licenses and Revisions to Part 27 of the*

some time now and the matters considered therein are ripe for decision. Indeed, the Second Report of the 700 MHz Technical Working Group, which was filed last week, resolves a limited set of technical matters related to the BOP and completes the only BOP-related issue that remained pending, thereby clearing the way for its swift adoption.⁴ In addition, by liberating public safety's non-narrowband allocation, the BOP is not only consistent with the *9th Public Safety NPRM*, which seeks to promote public-private partnerships as a means of ensuring that public safety broadband infrastructure can be funded, but the BOP also enables full consideration of options to promote those partnerships.⁵ Moreover, the BOP establishes the foundation for the 700 MHz Commercial Plan that we proposed but is also consistent with every other commercial plan that has been proposed (including the status quo).

Irrespective of what the Commission decides with respect to the commercial allocation, the order in which the Commission proceeds is of critical importance: although the BOP does not change the size of the commercial allocation in the Upper 700 MHz band, it does shift the Upper 700 MHz C and D blocks by 1 MHz. Further, the knowledge that the BOP will be implemented, creating 33 MHz of fully functional commercial spectrum, is critical to the ability of commercial entities to consider the full range of alternatives with respect to the commercial allocation. Therefore, it is our strong recommendation that the BOP be implemented prior to adoption of commercial rules for the Upper 700 MHz. If the Commission were to adopt commercial rules in advance of the adoption of the BOP, it would essentially eliminate the possibility of enacting the BOP and would thereby deprive the public safety community of significant benefits, including increased spectrum for robust wireless broadband capabilities, the ability to leverage commercial technological advancements for public safety use and the opportunity for public safety to lower network construction and operation costs through public/private partnerships.

Regardless of what the Commission determines are the optimal commercial rules, adoption of the BOP indisputably would serve the public interest. Moreover, any further delay unnecessarily increases the cost of adoption as additional public safety systems are deployed. Consequently, the undersigned strongly urge the Commission to adopt the BOP as quickly as possible and before adoption of commercial rules for the Upper 700 MHz band.

Commission's Rules; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010, Notice of Proposed Rulemaking, 21 FCC Rcd 10413 (2006).

⁴ See Second Report of the 700 MHz Technical Working Group, transmitted by letter from Ruth Milkman, Counsel to Access Spectrum, LLC, and Kathleen Wallman, Adviser to Pegasus Communications Corp., WT Docket Nos. 96-86 & 06-169 (Jan. 26, 2007).

⁵ *Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band; Development of Operational, Technical and Spectrum Requirements for Meeting Federal, State and Local Public Safety Communications Requirements Through the Year 2010*, PS Docket No. 06-229; WT Docket No. 96-86, Ninth Notice of Proposed Rulemaking, 21 FCC Rcd 14837, ¶ 31, n.30 (2006) ("*9th Public Safety NPRM*").

Pursuant to the Commission's rules, this letter is being submitted for inclusion in the public record in the above-referenced proceedings.

Sincerely,

/s/ Michael I. Gottdenker
Michael I. Gottdenker
Chairman and CEO
Access Spectrum, LLC
2 Bethesda Metro Center
Bethesda, MD 20814-6319

Ruth Milkman
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street NW, Suite 802
Washington, DC 20006
(202) 777-7700
Counsel to Access Spectrum, LLC

/s/ Marshall W. Pagon
Marshall W. Pagon
Chairman and CEO
Pegasus Communications Corporation
225 City Avenue, Suite 200
Bala Cynwyd, PA 19004

Kathleen Wallman
Wallman Consulting, LLC
9332 Ramey Lane
Great Falls, VA 22066
(202) 641-5387
*Adviser to Pegasus Communications
Corporation*

cc: Catherine Bohigian
John Branscome
Fred Campbell
Jeff Cohen
Paul D'Ari
Angela Giancarlo
Aaron Goldberger
Cathleen Massey
Kenneth Moran
Roger Noel
Barry Ohlson
James Schlichting
Dana Shaffer
Michael Wilhelm