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June 11, 2008

*VIA ELECTRONIC FILING*

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington, DC 20554

Re: WT Docket No. 02-55

Dear Ms. Dortch:

The Commission should reject the arguments set forth in the letter filed by Spectrum Acquisitions, Inc. (SAI) in this proceeding on May 30, 2008.<sup>1</sup> SAI's letter distorts the record and in no way undermines the strong showing Sprint Nextel Corporation (Sprint Nextel) has made in seeking a waiver to provide it continued access to the 806-809/851-854 MHz band (Channels 1-120) until National Public Safety Planning Advisory Committee (NPSPAC) licensees are ready to retune their systems.<sup>2</sup>

SAI's letter is defective in numerous respects. As an initial matter, SAI fails to explain why it has any legitimate interest in this proceeding, let alone how it would be harmed by the grant of Sprint Nextel's waiver request. SAI has never previously participated in this proceeding, does not hold any 800 MHz licenses or licenses in any other band, and will not be affected by 800 MHz rebanding. SAI therefore has no standing to oppose Sprint Nextel's waiver request.<sup>3</sup> SAI's lack of standing alone warrants dismissal of its opposition.

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<sup>1</sup> Letter from Richard Cracraft, Spectrum Acquisitions, Inc., to Marlene Dortch, Secretary, FCC, WT Docket No. 02-55 (May 29, 2008, filed May 30, 2008) (SAI Letter).

<sup>2</sup> Letter from Lawrence R. Krevor, Sprint Nextel, to Marlene Dortch, Secretary, FCC, WT Docket No. 02-55 (May 1, 2008).

<sup>3</sup> To have standing to oppose Sprint Nextel's waiver request, a party must allege sufficient facts to show that it would suffer a "direct injury" if the Commission granted this request. *See, e.g., Applications of Hispanic Information and Telecommunications Network, Inc.*, Memorandum Opinion and Order, 18 FCC Rcd 23872, ¶ 19 (WTB 2003) (*HITN Order*); *Applications of Alaska Native Wireless, L.L.C.*, Order, 18 FCC Rcd 11640, ¶ 10 (2003) (*Alaska Native Wireless Order*); *Disposition of Down Payment and Pending Applications By Certain Winning Bidders in Auction No. 35*, Order and Order on Reconsideration, 17 FCC Rcd 23354, ¶ 19 (2002) (*Auction 35 Order*) (waiver proceeding); *Mobile Radio New England Request for Rule Waiver*, Memorandum Opinion and Order, 8 FCC Rcd 348, ¶ 2 (1993) (waiver proceeding). To establish a direct injury, the harm to the party must be "both certain and great; it

Aside from its lack of standing, SAI misrepresents the record and the Commission's 800 MHz reconfiguration process. For example, SAI distorts the Commission's orders in suggesting that vacant 900 MHz channels alone will provide Sprint Nextel sufficient "green space" during the transition to the new band plan.<sup>4</sup> SAI quotes the Commission's orders in a highly misleading, selective fashion, simply ignoring the Commission's statement in *Supplemental Order* that "Nextel . . . would meet a portion of [its] subscriber demand by retaining [its] Channel 1-120 facilities while the band is being reconfigured. Only as a last step in the process would former Channels 1-120 become available for use by the NPSPAC licensees and their facilities retuned to these channels."<sup>5</sup> In the *Third MO&O*, the Commission further recognized Sprint Nextel's need for sufficient 800 MHz channels during the transition by expressly contemplating that Sprint Nextel would file a waiver request for continued access to Channels 1-120 in the event NPSPAC licensees did not complete the relocation of their systems by June 26, 2008.<sup>6</sup>

Contrary to SAI's specious arguments, Sprint Nextel's waiver request will not harm public safety licensees and in no way represents an effort to "amend its rebanding obligations."<sup>7</sup> No public safety licensee has opposed Sprint Nextel's request, and SAI certainly cannot speak for the public safety community. Sprint Nextel has done everything in its control to expedite 800 MHz band reconfiguration, but, with a majority of NPSPAC licensees having filed requests to waive the June 26, 2008 reconfiguration deadline, it is certain that these public safety licensees require more time to complete 800 MHz reconfiguration. Granting Sprint Nextel's request will not increase the risk of interference to public safety systems, nor will it delay rebanding. Consistent with the Commission's requirements and its current practice of retuning public safety licensees, Sprint Nextel will vacate the corresponding Channel 1-120 channels upon 60 days notice that a NPSPAC licensee is ready to relocate.

SAI's letter completely disregards the impact on Sprint Nextel's customers if Sprint Nextel does not have access to sufficient channels below 817/862 MHz during the transition. Sprint Nextel supported its waiver request with particularized facts, including a declaration, showing that a waiver is necessary to help avoid serious disruption to its customers, including

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must be actual and not theoretical." *Wisconsin Gas Co. v. FERC*, 758 F.2d 669, 674 (D.C. Cir. 1985) (*per curiam*). In addition, the party must demonstrate a causal link between the claimed injury and a grant of the proposed waiver by demonstrating that the injury can be traced to such grant and the injury would be prevented or redressed by the relief requested. *HITN Order* ¶ 19; *Alaska Native Wireless Order* ¶ 10; *Auction 35 Order* ¶ 19.

<sup>4</sup> SAI Letter at 2-3.

<sup>5</sup> *Improving Public Safety Communications in the 800 MHz Band*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120, ¶ 52 (2004) (*Supplemental Order*).

<sup>6</sup> *Improving Public Safety Communications in the 800 MHz Band*, Third Memorandum Opinion and Order, 22 FCC Rcd 17209, ¶ 27 (2007) (*Third MO&O*).

<sup>7</sup> SAI Letter at 7.

Marlene H. Dortch

June 11, 2008

Page 3

millions of public sector customers. This showing establishes grounds for a waiver in each situation where a public safety licensee continues to operate in the old NPSPAC band beyond June 26, 2008. SAI's suggestion that Sprint Nextel file a separate waiver request for each such situation would be a pointless exercise and waste Commission resources.

SAI has provided no basis for challenging Sprint Nextel's waiver request. The Commission should dismiss SAI's May 29 letter, and expeditiously grant Sprint Nextel's request.

Sincerely,

/s/ Regina M. Keeney  
Regina M. Keeney

cc: David Furth

## Certificate of Service

I hereby certify that on this 11th day of June, 2008, I caused the foregoing letter of Regina M. Keeney to be sent by first class, postage-paid mail to:

Richard Cracroft  
Spectrum Acquisitions, Inc.  
9150 East Del Camino  
Suite 114  
Scottsdale, Arizona 85258

/s/ Ruth E. Holder  
Ruth E. Holder