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VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington, DC 20554

Re: WT Docket No. 02-55
PETITION FOR RELIEF – EXPEDITED ACTION REQUESTED

Dear Ms. Dortch:

In its *Third MO&O* in this proceeding, the Federal Communications Commission (the “Commission”) required Sprint Nextel Corporation (“Sprint Nextel”) to vacate its remaining interleaved, expansion band, and guard band 800 MHz channels below 817/862 MHz in non-border regions by June 26, 2008.¹ The Commission took this action: (1) to assure that replacement channels would be cleared and ready for public safety use as public safety licensees retune their systems out of the current National Public Safety Planning Advisory Committee (“NPSPAC”) channel block; and (2) to begin to make returned channels available for licensing to public safety systems.

Since the Commission issued the *Third MO&O* in September 2007, however, more than 60 percent of all non-border region NPSPAC public safety licensees have advised the Commission that they will not be able to meet the June 26, 2008 deadline for completing band reconfiguration and have requested waivers of the deadline.² Although Sprint Nextel and 800 MHz incumbent licensees have made considerable progress in reconfiguring the 800 MHz band,³ these waiver requests evidence that the majority of non-border public safety licensees need more time to complete 800 MHz band reconfiguration; *i.e.*, they are not ready to retune off their

¹ *Improving Public Safety Communications in the 800 MHz Band*, Third Memorandum Opinion and Order, 22 FCC Rcd 17209, ¶ 28 (2007) (“*Third MO&O*”), *aff’d*, *Sprint Nextel Corp. v. FCC*, No. 07-1416, 2008 U.S. App. LEXIS 9526 (May 2, 2008). The Commission also required Sprint Nextel to clear Channels 1-120 by June 26, 2008. *Id.* ¶ 25. Sprint Nextel has previously sought a waiver of this requirement. Letter from Lawrence R. Krevor, Sprint Nextel, to Marlene Dortch, Secretary, FCC, WT Docket No. 02-55 (May 1, 2008).

² More than 550 of the approximately 900 non-border area NPSPAC licensees have sought waivers of the Commission’s June 26, 2008 deadline for completing 800 MHz band reconfiguration. *See* 800 MHz Transition Administrator, “List of Requests for Waiver of June 26, 2008 Deadline,” *available at*: <http://www.800ta.org/content/documents/waiver_requests.asp> (viewed June 12, 2008).

³ *See e.g.*, Letter from Lawrence R. Krevor, Sprint Nextel, to David Furth, Public Safety and Homeland Security Bureau, WT Docket No. 02-55 (June 2, 2008).

current channels, thereby blocking Sprint Nextel from retuning its operations to the new 14 MHz Enhanced Specialized Mobile Radio (“ESMR”) 800 MHz channel block.

On June 17, 2008, the Commission acted on these waiver requests.⁴ In light of the requests and the Commission’s actions, Sprint Nextel respectfully requests that the Commission authorize it to clear its interleaved, guard band, and expansion band channels (809-817/854-862 MHz) in stages based on the region-by-region progress made by public safety licensees in retuning their systems to the new NPSPAC block. By clearing these additional channels in stages, Sprint Nextel can support public safety’s need for new channels while at the same time avoiding the disruption to its customers that would result if it were required to surrender all of its 809-817/854-862 MHz channels in “flash-cut” fashion on June 26, 2008.⁵ To the extent necessary, Sprint Nextel requests a waiver to carry out the staged transition discussed herein.

Sprint Nextel would strongly prefer that all NPSPAC licensees complete reconfiguration by June 26, 2008. Sprint Nextel is prepared to retune all of its 800 MHz operations to the ESMR block replacement channels as soon as NPSPAC incumbents vacate them. The reality, however, is that retuning nearly one thousand NPSPAC licensees has proven to be more complex than anticipated and continues to challenge the resources of vendors, consultants, engineering companies and public safety agencies.⁶ Despite the continuing good faith efforts of Sprint Nextel and nearly all incumbent licensees, more than 60 percent of non-border NPSPAC licensees have had to file waiver requests seeking more time to finish retuning their systems.

While some of the waiver requests seek relatively short extensions to complete system retunes, many others seek additional time just to complete pre-retuning activities including the planning, statements of work and cost estimates which become the basis for negotiating FRAs

⁴ *Improving Public Safety Communications In The 800 MHz Band Request For Interim Waiver Of The June 26, 2008 Rebanding Deadline - Wave 1 Public Safety Regions*, Order, DA 08-1427 (2008), *Improving Public Safety Communications In The 800 MHz Band Request For Interim Waiver Of The June 26, 2008 Rebanding Deadline - Wave 1 Public Safety Regions*, Order, DA 08-1428 (2008), *Improving Public Safety Communications In The 800 MHz Band Request For Interim Waiver Of The June 26, 2008 Rebanding Deadline - Wave 2 Public Safety Regions*, Order, DA 08-1429 (2008), *Improving Public Safety Communications In The 800 MHz Band Request For Interim Waiver Of The June 26, 2008 Rebanding Deadline - Wave 2 Public Safety Regions*, Order, DA 08-1430 (2008), *Improving Public Safety Communications In The 800 MHz Band Request For Interim Waiver Of The June 26, 2008 Rebanding Deadline - Wave 3 Public Safety Regions*, Order, DA 08-1431 (2008), *Improving Public Safety Communications In The 800 MHz Band Request For Interim Waiver Of The June 26, 2008 Rebanding Deadline - Wave 3 Public Safety Regions*, Order, DA 08-1432 (2008), *Improving Public Safety Communications In The 800 MHz Band Request For Interim Waiver Of The June 26, 2008 Rebanding Deadline - Wave 4 Public Safety Regions (Non-Border)*, Order, DA 08-1433 (2008), *Improving Public Safety Communications In The 800 MHz Band Request For Interim Waiver Of The June 26, 2008 Rebanding Deadline - Wave 4 Public Safety Regions (Non-Border)*, Order, DA 08-1434 (2008).

⁵ On May 1, 2008, Sprint Nextel filed a request for waiver of the Commission’s requirement that it vacate its channels in the new NPSPAC channel block (channels 1-120; 806-809/851-854 MHz) to the extent that the Commission grants public safety licensees extensions of time to retune to those channels. *See supra*, note 1. Accordingly, this letter pertains only to the interleaved, expansion band and guard band channels.

⁶ Once Sprint Nextel executes a Frequency Reconfiguration Agreement (“FRA”) with a public safety incumbent, Sprint Nextel has little control over the time required to physically implement a licensee’s retuning. Retuning implementation is largely determined by the licensee and its contractors.

with Sprint Nextel. After executing an FRA, these incumbents will still need to retune their systems; those with large, regional or statewide public safety networks with thousands of users will typically not be completed in 2008 and some are seeking extensions well into 2009 and beyond.⁷ Thus, Commission grant of the public safety waiver requests will unavoidably delay – likely for years in some NPSPAC regions -- Sprint Nextel’s full access to the 14 MHz ESMR channel block it was promised in the *800 MHz R&O* in exchange for funding and implementing 800 MHz reconfiguration. Sprint Nextel will have to shoulder well beyond June 26, 2008 the administrative, network and implementation burdens and uncertainties of accommodating hundreds of channel swaps as public safety agencies eventually reach readiness to complete their retunes.

Sprint Nextel recognizes the difficulties encountered by many public safety agencies in completing their retuning activities. Sprint Nextel will meet its 800 MHz reconfiguration obligations beyond June 26, 2008 despite the extended burdens described above and the indeterminate delay in many regions for Sprint Nextel having access to the new ESMR channel block. Given the fact that hundreds of licensees need more time to complete their relocations, however, Sprint Nextel requests that the Commission readjust the requirements set forth in the *Third MO&O* to ensure a fair and reasonable balance in expediting band reconfiguration, providing public safety additional channels, and avoiding disruption to Sprint Nextel’s customers during the transition to the final band plan. The relief sought here will provide phased availability of numerous new channels for public safety use while assuring that Sprint Nextel can serve its customers with minimal disruption during the additional time requested by public safety licensees to carry out 800 MHz reconfiguration.

In non-border regions Sprint Nextel proposes to clear the 809-817/854-862 MHz band in stages beginning in the lower part of the band as NPSPAC reconfiguration progresses in each region. This staged clearing of channels would proceed on a region-by-region basis to take into account variations in reconfiguration progress across different regions. A region-by-region approach would recognize the realities of system-by-system retuning and would reflect the TA’s ongoing regional planning process, which should be expanded to include follow-up planning meetings to facilitate reconfiguration in each region. Progress in retuning systems in a region will lead directly to Sprint Nextel vacating additional channels in that region that can be used for both new 800 MHz public safety systems and incumbent system expansion. A “one-size fits all” nationwide channel clearing plan would ignore the individual retuning complexities and challenges in some regions and unnecessarily delay the channel clearing process in regions where public safety licensees are completing retuning faster than others.

Thus, in the first stage of the proposed channel clearing process, Sprint Nextel would clear for use by public safety licensees the twenty 25 kHz 800 MHz interleaved channels from

⁷ For example, the following licensees operating State-wide systems have all requested extensions of time to first complete their planning and provide cost estimates to Sprint Nextel and negotiating FRAs prior to beginning implementation activities: Arkansas (August 2008), Kansas (November 2008), New Mexico (October 2008), North Carolina (December 2008), South Carolina (January 2009) and Tennessee (September 2009). Other large regional public safety licensees have signed FRAs but estimate completing retuning in 2009 and beyond, including the City of Arlington, TX/Ft. Worth (April 2011), Virginia Beach, VA regional licensees (December 2009), Utah (May 2009) and the Portland, OR area (March 2009)

854.000 – 854.500 MHz in every non-border NPSPAC Region on 60-days notice that a public safety licensee is ready to commence service on those channels. Public safety agencies could apply to the Commission for these channels anywhere in a Region they are available under the Commission’s Part 90 frequency coordination and licensing requirements. The precise number of new channels available for any individual public safety applicant will of course vary given the licensing variables inherent in the Commission’s Part 90 frequency coordination, site-based licensing process including, but not limited to, the coordinates of the proposed transmitter site(s), proposed transmit height and power, co-channel incumbency created by the assignment of channels in the 809-817/854-862 MHz band to other public safety and non-Sprint Nextel licensees, and the feasibility of short-spacing agreements and local terrain features.⁸

Sprint Nextel will clear an increasing number of channels for public safety licensing as retuning progresses in each region according to the benchmarks described in the following table:

REGION-BY-REGION BENCHMARKS	CHANNELS CLEARED BY SPRINT NEXTEL WITHIN 60 DAYS NOTICE
June 26, 2008 or Commission start date	809.0-809.5/854.0-854.5 (20 total channels)
NPSPAC relocation 25% completed ⁹	809.5-810.5/854.5-855.5 (40 total channels)
NPSPAC relocation 50% completed	810.5-812.0/855.5-857.0 (60 total channels)
NPSPAC relocation 75% completed	812.0-814.0/857.0-859.0 (80 total channels)
NPSPAC relocation 90% completed	814.0-816.0/859.0-861.0 (80 total channels)
NPSPAC relocation 100% completed	All channels below 817/862 MHz (including 40 channels at 816.0-817.0/861.0-862.0 MHz) cleared by Sprint Nextel within 60 days of 100% completion of NPSPAC relocation in a region

Within each of the first five stages, Sprint Nextel would make the channels available to public safety licensees within 60 days of notice that they are licensed for and ready to commence

⁸ *Improving Public Safety Communications in the 800 MHz Band*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120, ¶¶ 57-59 (2004) (“*Supplemental Order*”) (describing licensing and frequency coordination process for public safety licensees seeking channels vacated by Sprint Nextel). In addition, the Commission’s reconfiguration band plan in the southeastern U.S. extends the ESMR channel block to 858.500 MHz to accommodate Southern LINC. Accordingly, only Sprint Nextel’s interleaved channels in the southeast below 858.500 MHz will be available for relicensing to public safety use consistent with the process set forth above.

⁹ NPSPAC rebanding would be deemed to be “completed” in the stages described above when Sprint Nextel has full use throughout a NPSPAC Region of 25%, 50%, 75%, 90% or 100 %, respectively, of the 120 full 25 kHz channels vacated by public safety licensees at 821-824/866-869 MHz.

service on the new channels, *i.e.*, the licensee (1) has received authorization from the Commission to operate on the channels at its proposed site; (2) has constructed the base station(s) and related infrastructure necessary to operate on the new channel(s); (3) has deployed mobile units or handsets capable of operating on the new channels for the majority of its regular users; and (4) intends to commence regular operations on the new channels in 60 days. Upon receiving a 60-day notice, Sprint Nextel will (within 60 days) terminate its operations on the channel(s) within the geographic area necessary to assure the licensee interference-free operations on the channel(s) consistent with its license.

Permitting implementation of the staged channel clearing process described above satisfies each of the Commission's waiver criteria. The Commission may grant a waiver request where:

- (i) The underlying purpose of the rule(s) would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest, or
- (ii) In view of the unique or unusual factual circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.¹⁰

Granting the instant request will better serve the Commission's public interest objectives and will avoid imposing inequitable, unnecessary burdens on Sprint Nextel and its customers. Sprint Nextel needs a sufficient number of 800 MHz channels to serve its nearly 16 million iDEN® subscribers (excluding users of Power Source (CDMA/iDEN®) handsets), including an estimated 2.5 million public sector users (federal, state, and local government agencies, medical personnel and utilities). In its initial orders in this proceeding, the Commission recognized Sprint Nextel's need to maintain sufficient spectrum capacity during the 800 MHz band transition by permitting Sprint Nextel access to Channels 1-120 until NPSPAC licensees are ready to retune and also providing Sprint Nextel continued access to the interleaved channel block until retuning is completed in the region.¹¹ If Sprint Nextel is required to vacate all of its interleaved, expansion band, and guard band channels before it gains access to its replacement channels in the new ESMR band, it will suffer a serious channel shortfall in its network which will jeopardize service to its iDEN® customers. The harm to Sprint Nextel's customers is detailed in a declaration of Robert Azzi, Sprint Nextel's Senior Vice President, Field Engineering & Operations, which Sprint Nextel has previously filed with the Commission.¹²

¹⁰ 47 C.F.R. § 1.925(b)(3).

¹¹ See *Supplemental Order* ¶ 52 (stating that Sprint Nextel will "meet a portion of [its] subscriber demand by retaining [its] Channel 1-120 facilities while the band is being reconfigured"); *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969, ¶ 198 (2004) ("*800 MHz R&O*") (setting forth series of coordinated channel swaps between Sprint Nextel and 800 MHz incumbents and providing Sprint Nextel access to Channels 1-120 and the interleaved band during band reconfiguration).

¹² Sprint Nextel submitted Mr. Azzi's declaration in conjunction with its Channels 1-120 waiver request, *see supra*, note 1, and requested confidential treatment for the declaration given the sensitive commercial information it contains.

Authorizing a staged channel clearing process for the 809-817/854-862 MHz band will minimize the disruption to Sprint Nextel's customers that would otherwise result if the Commission permits NPSPAC licensees to continue operating beyond June 26, 2008 on Sprint Nextel's replacement channels in the ESMR block. There is no reasonable alternative to granting the relief requested. Relocating Sprint Nextel facilities to the 900 MHz band, constructing additional cell sites, or only granting a waiver to allow Sprint Nextel continued access to Channels 1-120 are not viable alternatives to granting this waiver request. There are not enough 900 MHz channels available to make up for the channel-based capacity shortfall Sprint Nextel will suffer at 800 MHz. Moreover, there will be delays between the time Sprint Nextel vacates its Channel 1-120 channels and the time it will have access to the corresponding ESMR band replacement channels due to the complexities of NPSPAC retuning and the need to avoid disrupting public safety communications during the transition. This makes Sprint Nextel's continued access to the 809-817/854-862 MHz band critical during the transition.

Granting this relief will thus serve the public interest by helping reduce service disruptions to Sprint Nextel's nearly 16 million iDEN® subscribers. Sprint Nextel customers include employees of the Department of Homeland Security, members of the United States Secret Service, and police and fire departments across the country. A number of these public safety agencies have advised the Commission that they rely heavily on Sprint Nextel's iDEN® network.¹³ The Fraternal Order of Police, a public safety organization representing over 325,000 police officers across the country, has stated that “[r]equiring Sprint Nextel to give up channels *en masse* on an arbitrary date does nothing to advance public safety retuning readiness; on the contrary, it would needlessly disrupt the Sprint Nextel iDEN service many public safety personnel and agencies rely upon to support their missions.”¹⁴ The Commission should instead “ensur[e] that Sprint Nextel has sufficient capacity to serve the communication needs of [its public safety customers] during the rebanding process.”¹⁵ The State of New York has expressed its support for a “coordinated retune process” and stated that “Sprint Nextel should be permitted to automatically remain on its channels past June 2008 if licensees have not indicated their need for those channels to complete their retune by that date. This would allow Sprint Nextel and public safety the flexibility to prudently complete rebanding with minimal disruption for all

¹³ Comments of the City of Kansas City, MO, the City of Dublin, OH, the City of Worthington, OH, Seminole County, FL, and Orange County, FL, WT Docket No. 02-55, at 8-9 (Jan. 7, 2008) (“Public Safety Comments”) (requiring Sprint Nextel prematurely to vacate its channels below 817/862 MHz would “degrade Sprint Nextel’s network,” which in turn may “cripple some Public Safety systems” that rely on Sprint Nextel’s iDEN® network).

¹⁴ Brief for *Amicus Curiae* Fraternal Order of Police in Support of Petitioner and Reversal, No. 07-1458, at 3 (D.C. Cir. Dec. 26, 2007).

¹⁵ Public Safety Comments at 3.

parties.”¹⁶ Allowing Sprint Nextel to clear its interleaved, expansion band, and guard band channels in stages will help achieve that objective.¹⁷

At the same time, consistent with the Commission’s goals, the proposed staged channel clearing process will provide additional new channels to public safety agencies ready to use them *even before band reconfiguration is completed in non-border regions*. The number of additional public safety channels will increase as reconfiguration progresses and Sprint Nextel gains access to replacement channels in the ESMR band. Upon completion of band reconfiguration, Sprint Nextel will meet, and in most cases *exceed*, the Commission’s expectation in the *800 MHz R&O* that Sprint Nextel would surrender 4.5 MHz of 800 MHz channels for public safety licensing.¹⁸

In conclusion, unique factors have made it difficult for many public safety licensees to complete 800 MHz reconfiguration by June 26, 2008. It would be inequitable and unduly burdensome to extend the retuning deadlines for these licensees and thereby delay Sprint Nextel’s access to its replacement channels in the ESMR band, while at the same time denying Sprint Nextel access to the channels below 817/862 MHz that it needs to serve its customers. The proposed staged clearing process will better serve the Commission’s underlying objectives by avoiding serious disruption to all 800 MHz incumbents, including Sprint Nextel, while also providing additional channels to public safety agencies ready to use them before reconfiguration is completed. Grant of this request will in no way delay 800 MHz band reconfiguration, and Sprint Nextel will continue to abide by the Commission’s 800 MHz interim interference

¹⁶ Letter from Hanford C. Thomas, New York State Office for Technology, to David Furth, Wireless Telecommunications Bureau, WT Docket No. 02-55, at 2 (Jan. 2, 2008).

¹⁷ *800 MHz R&O* ¶ 2 (describing one of the “paramount goals” of the Commission’s 800 MHz reconfiguration plan as ensuring that the plan is “equitable and imposes minimum disruption to the activities of all 800 MHz band users”).

¹⁸ *800 MHz R&O* ¶ 11.

protection requirements. These safeguards have worked well in protecting public safety licensees against interference during the transition to the new band plan. Accordingly, grant of this relief, including a waiver, to the extent necessary, is fully justified in these circumstances.¹⁹

Respectfully submitted,

SPRINT NEXTEL CORPORATION

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¹⁹ See 47 C.F.R. § 1.925(b)(3); *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (“The agency’s discretion to proceed in difficult areas through general rules is intimately linked to the existence of a safety valve procedure for consideration of an application for exemption based on special circumstances.”).