Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In the Matter of Improving Public Safety Communications in the 800 MHz Band. New 800 MHz Band Plan for U.S. – Canada Border Region	)))))))	WT Docket No. 02-55

OPPOSITION TO
PETITION FOR CLARIFICATION

Respectfully submitted,

THE STATE OF MICHIGAN

/s/

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The State of Michigan (sometimes hereinafter the "State") respectfully submits its Opposition to the Petition for Clarification ("Petition") filed by Sprint Nextel Corporation ("Sprint Nextel") in the above-entitled proceeding with respect to the Petition's position on the Region 3 Border Area ("Border Region 3") public safety spectrum allocation.[1] The Petition requests "clarification" that the Federal Communication Commission ("FCC" or "Commission") intended to allocate eight (8) channels for public safety use above 815.75/860.75 MHz in Canadian Border Region 3 only if those channels are needed for the purpose of accommodating public safety incumbents being retuned from lower portions of the 800 MHz band. Petition at 4. It urges the Commission to amend the Table of Assignments adopted by the Public Safety and Homeland Security Bureau ("PSHSB") in the Canadian Border Order to reflect that the allocation is conditional and presumes that those channels are intended to be reserved for use by Nextel and other non-public safety entities after the 800 MHz reconfiguration process is completed if not occupied by rebanded public safety entities. Petition at 3.

As described in its earlier-filed Comments in this proceeding, the State of Michigan is the largest license holder of 800 MHz public safety spectrum in Canadian Border Regions 3 and 4. Its statewide Michigan Public Safety Communications System ("MPSCS") supports the communications requirements of more than a thousand governmental entities operating in excess of 40,000 radios over a 57,000 square mile area. It is one of the most extensive interoperable 800 MHz public safety networks in the nation and has a compelling interest in the availability of 800 MHz spectrum for use by public safety entities in this area.

The State of Michigan opposes the Petition. First, the suggestion that this allocation was not intended by the FCC to be available for public safety purposes on a permanent basis is

[1] Improving Public Safety Communications in the 800 MHz Band: New 800 MHz Band Plan for U.S. – Canada Border Regions, *Second Report and Order,* WT Docket No. 02-55, 23 FCC Rcd 7605 (rel. May 9, 2008) ("Canadian Border Order").

inconsistent with the express language of the Further Notice of Proposed Rulemaking in which the Commission first proposed the allocation.[2] Second, even if the FCC had not clearly intended that the eight (8) channels in question be allocated exclusively for public safety operations, which it did, the public interest nonetheless would favor the FCC's allocation plan since it recognizes the accommodation of public safety communications needs as the highest priority in the revised 800 MHz band plan.

The Commission's purpose in providing this allocation for public safety systems in Border Region 3 was explained unambiguously in the FNPRM:

> In order to ensure that the new band plan contains the same number of non-NPSPAC public safety channels as the old band plan, we will need to add a small block of public safety channels above 815.75/860.75 MHz, and relocate some public safety licensees to these channels.[3]

That proposal, and the subsequent adoption of a band plan that is consistent with it, recognize that it is a primary obligation of the FCC to promote the safety and welfare of the public by ensuring, to the best of its ability, that public safety entities have access to sufficient spectrum to support their requirements.[4] The decision to provide for this small non-NPSPAC public safety allocation above 860.7500 MHz was in direct response to the comments of public safety entities that had advised the Commission that nine (9) additional channels were needed to maintain post-rebanding public safety spectrum comparability.[5] The PSHSB reduced this allocation to only eight (8) channels in the FNPRM and the subsequent Canadian Border Order, but recognized that this additional spectrum was needed to meet ongoing public safety needs.

The Commission has been particularly vigilant in addressing this paramount obligation in

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[2] Improving Public Safety Communications in the 800 MHz Band, *Further Notice of Proposed Rulemaking,* WT Docket No. 02-55, 22 FCC Rcd 19266 ("2007) ("FNPRM").
[3] *Id.* at ¶ 13.
[4] 47 U.S.C. § 151.
[5] *See Ex Parte* Letter from Paul Mayer, Region 33 Regional Planning Committee Chair; Sean O'Hara, Region 30, 55, and 8 Regional Planning Committee Member; David Cook, Region 30 Regional Planning Committee Chair; and Captain Joseph Grube, Region 55 Regional Planning Committee Chair (July 27, 2007).

the context of the 800 MHz reconfiguration proceeding, a proceeding that, at its core, is intended to improve public safety communications in this band, a precept that is reflected in the very title of this rulemaking. Achieving that goal has been the FCC's guiding principle in each phase of this complex and sometimes contentious matter. It has required a careful balancing of the reasonable requirements of all interested parties. That task has been made somewhat easier, but still not simple, by the fact that Nextel, the primary spectrum stakeholder in the band, was also the major proponent of the reconfiguration process, a process that includes an award to Nextel of a 10 MHz replacement allocation at 1.9 GHz. For this reason, the Commission has made clear that, in the end, if any incumbent's spectrum claim must give way to the requirements of other users in the band, it is Nextel that must step aside to ensure that all other needs are met. This stakeholder prioritization is particularly critical in the Border Regions where spectrum availability is limited by comparison with the rest of the nation, but where public safety requirements, including national interoperability requirements, are in no way diminished.

The State of Michigan applauds the FCC's carefully crafted band plan for Border Region 3, an area that includes Detroit, one of the largest and most densely populated urban areas in the Canadian Border Regions. That plan recognizes the spectrum inefficiency that would result from inter-mingling 12.5 kHz NPSPAC facilities with non-NPSPAC public safety incumbents operating on 25 kHz bandwidth channels, as well as the need to maintain a common band plan for NPSPAC allocations within and outside the Border Regions, as two critical components of public safety interoperability. For those reasons, the FCC has directed the Transition Administrator ("TA") responsible for overseeing the 800 MHz reconfiguration process to (i) relocate all non-public safety entities currently licensed in the 806-809/851-854 MHz band to U.S. primary spectrum above the lowest block of Canadian primary spectrum; (ii) relocate as

many non-NPSPAC public safety entities as possible from this "new" NPSPAC allocation at 806-809/851-854 MHz to the lowest available U.S. primary channels above 854 MHz where they may continue operating on 25 kHz spaced channels; and (iii) if insufficient spectrum is available above 854 MHz to accommodate all such non-NPSPAC public safety entities, to provide them with 12.5 kHz-spaced channels in the "new" NPSPAC allocation. [6]

The State believes that the PSHSB adopted the right approach for Border Region 3, indeed the only minimally acceptable approach that would fulfill the FCC's obligation to ensure post-reconfiguration comparability for 800 MHz incumbents, in particular, public safety entities. But the State of Michigan does not underestimate the complexities that will arise during the reconfiguration process itself even under this superior band plan. It is not yet known which non-NPSPAC public safety entities currently operating in the 806-809/851-854 MHz band will migrate to replacement frequencies in the upper portion of the band and which entities instead will convert from 25 kHz to 12.5 kHz facilities and remain in the 1-120 channels.[7] Given the intensively packed (and repacked) NPSPAC Region 21 regional band plan, it is clear that any deviation from that plan to accommodate non-NPSPAC licensees that remain in the 806-809/851-854 MHz band could seriously jeopardize the smooth migration of the NPSPAC allocation from the top of the band to the bottom. One key factor that will drive that process will be the ease of finding suitable replacement channels in a higher portion of the 800 MHz band. Each channel that is made available for public safety use outside of the "new" NPSPAC allocation, including the eight (8) under consideration here, will play a significant role in facilitating the relocation of non-NPSPAC licensees from that part of the band.

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[6] Canadian Border Order at ¶ 11.

[7] *Id.* The FCC even has provided an opportunity for non-NPSPAC licensees to seek waivers from the applicable NPSPAC Regional Planning Committee to continue utilizing 25 kHz bandwidth facilities in the "new" NPSPAC band.

For this reason, it is imperative that the FCC reaffirm its decision to allocate these eight (8) channels for public safety use on a permanent basis. Moreover, the "clarification" recommended by Nextel would present the further complication of potentially inter-mingling public safety and ESMR systems on these channels in the same general area if some are needed to accommodate immediate public safety rebanding requirements at specific locations while others are not. Unlike the less than optimal, but still manageable, situation described by Nextel wherein public safety licensees on these channels would have a lesser spectral separation from Nextel's ESMR operation than might be desired,[8] the approach recommended in the Petition would recreate the same spectrum environment that the 800 MHz reconfiguration process is intended to eliminate. The far better band plan is the one adopted by the PSHSB in the Canadian Border Order wherein the eight (8) channels at issue have been assigned permanently for public safety use in Border Region 3.

For the reasons detailed herein, the State of Michigan urges the Commission to reject Nextel's request to reverse a critical aspect of the Border Region 3 band plan through the purported clarification of a provision that is unambiguous as adopted and entirely consistent with the public interest.

[8] Petition at 4. The FCC has adopted rules that specify the protection to which incumbents such as the State are entitled when operating in the 800 MHz band. *See* 47 C.F.R. § 90.674.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, Chartered, hereby certify that I have, on this 11th day of September 2008, caused to be mailed, postage pre-paid, a copy of the foregoing Opposition to Petition for Clarification to the following:

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