

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

In the Matter of)	
)	
Service Rules for the 698-746, 747-762 and 777-792 MHz Bands)	WT Docket No. 06-150
)	
Implementing a Nationwide, Broadband, Interoperable Public Safety Network in the 700 MHz Band)	PS Docket No. 06-229
)	

REPLY COMMENTS OF SPRINT NEXTEL CORPORATION

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Summary

Sprint Nextel submits these reply comments with the hope that they will serve the interests of the public safety community as well as the public in general by offering a useful perspective on the record generated to this point. The creation of national, interoperable public safety broadband services unquestionably has the potential to provide tremendous benefits both to public safety users as well as the citizens they serve. In pursuing its vision of a nationwide, truly interoperable network, the Commission has devoted substantial time and effort to the development of a record upon which it could conclude a thoughtful, fair, open and fact-based rulemaking proceeding.

Review of the comments filed regarding the pending waivers shows there are unanswered questions concerning the actual scope of the waiver requests, including questions that speak directly to the Petitioners' joint and individual ability to maintain the critical commitment to nationwide interoperability. In the interest of ensuring that public safety agencies will have access to the nationwide, interoperable broadband networks that will allow them to extend their current capabilities and to promote their vital mission, the Commission must obtain answers to these questions before it can reasonably take action on these requests. A different approach risks sacrificing future interoperability, flexibility, and access to the best available technologies and services for public safety agencies.

As the Commission considers the appropriate means to collect further information concerning the proposed deployments, it should take a measured and careful approach and should not prejudice the outcome of its overall public safety broadband rulemaking proceeding by precipitous action here. Orderly resolution of the Commission's rulemaking proceeding, and the development of a coherent plan for assuring that public safety agencies have access to robust,

reliable, interoperable broadband capabilities, will better serve the public interest than would an *ad hoc* approach.

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I. INTRODUCTION

Sprint Nextel Corporation (“Sprint Nextel”) files its reply comments in this proceeding concerning the thirteen petitions filed by various entities (“Petitioners”) seeking waiver of the Commission’s national public safety spectrum rules.¹

As stated in its Comments in this proceeding, Sprint Nextel has a longstanding and successful history of supporting public safety communications by providing wired and wireless

¹ Public Safety and Homeland Security Bureau Seeks Comment on Petitions for Waiver to Deploy 700 MHz Public Safety Broadband Networks, *Public Notice*, PS Docket No. 06-229, DA 09-1819 (Aug. 14, 2009) (“*Notice*”). Since the release of the *Notice*, the Iowa Public Safety Broadband Coalition has withdrawn its request for waiver. See Letter from Matthew J. Plache to James Arden Barnett, Jr., Chief, Public Safety and Homeland Security Bureau, PS Docket No. 06-229 (Oct. 15, 2009). Also since the release of the *Notice*, three additional Petitioners have filed requests for waiver seeking early deployment of 700 MHz broadband systems. See Iowa Statewide Interoperable Communications System Board Request for Waiver, PS Docket No. 06-229 (Oct. 15, 2009); County of Maui, County of Hawaii, County of Kauai, City and County of Honolulu and State of Hawaii Request for Waiver, PS Docket No. 06-229 (Aug. 19, 2009); Request by the Los Angeles Regional Interoperable Communications System (LA-RICS) and Its Members for Waiver, PS Docket No. 06-229 (Nov. 16, 2009).

communications services, applications and devices that reinforce the ability of public safety first responders and supporting personnel to carry out their missions. Sprint Nextel hopes these reply comments will serve the interests of the public safety community as well as the public in general by offering a useful perspective on the record generated to this point and ensuring that public safety agencies will have access to the nationwide, interoperable broadband networks that will allow them to extend their current capabilities and to promote their vital mission.

The comments evidence broad consensus that the waiver requests should not be granted either immediately or unconditionally. In its initial comments, Sprint Nextel stated that granting the waiver requests would unavoidably prejudice the Commission's ongoing public safety broadband rulemaking in Docket No. 06-150. The commenters' broad consensus in favor of requiring the applicants to provide additional information is consistent with Sprint Nextel's position and could help to identify whether any of the waiver requests can be granted without prejudicing the ongoing rulemaking proceeding. To permit the Commission to address the waiver requests consistent with the outcome of the public safety broadband rulemaking proceeding, the Commission should hold the waiver requests in abeyance pending the outcome of that proceeding.

II. THERE IS BROAD CONSENSUS THAT THE PETITIONERS SHOULD BE AFFORDED THE OPPORTUNITY TO SUPPLEMENT THEIR PETITIONS.

In the initial round of comments, a broad consensus emerged for the Petitioners to supplement their requests for waiver to provide the Commission additional information that might allow an objective and meaningful evaluation of the Petitioners' buildout plans and operational intentions. Some commenters explicitly asserted that the Commission should allow the Petitioners to supplement their filings with additional information that the Commission

should specify.² Others suggested that the Commission conditionally “grant” the waivers, but in many cases the proposed conditions implicitly require the Petitioners to provide additional information before the Commission could approve the waiver requests or the proposed conditions require the establishment of technical requirements prior to deployment.³

² See, e.g., Comments of APCO on Petitions for Waiver to Deploy 700 MHz Broadband Networks, PS Docket No. 06-229 at 8 (September 22, 2009) (“After receiving comments and reply comments in response to the *Public Notice*, the Commission should identify the factors that it will consider in addressing the petitions, and provide an opportunity for entities to supplement their requests”) (“APCO Comments”); Comments of the Public Safety Spectrum Trust Corporation, PS Docket No. 06-229 at 15 (Oct. 16, 2009) (“The FCC should require the Petitioners to provide supplemental information regarding their proposed networks before acting on the Petitions”) (“PSST Comments”); Comments of NENA, PS Docket No. 06-229 at 6 (Oct. 16, 2009) (“It is certain that more details will be needed from some, if not all, petitioners, before waivers can be granted as a result of suggestions in response to this *Notice*”) (“NENA Comments”); Comments of United States Cellular Corporation, PS Docket No. 06-229 at 5 (Oct. 16, 2009) (“The Commission should identify the factors that it will consider in addressing these proposals, should provide an opportunity for entities to supplement their proposals....”) (“USCC Comments”); Comments of Harris Corporation, PS Docket NO. 06-229 at 6 (Oct. 16, 2009) (“Prior to granting a waiver to operate in the 700 MHz public safety broadband spectrum, the Commission should require that the applicant demonstrate that the proposed system will not cause interference with surrounding narrowband systems”) (“Harris Comments”).

³ See, e.g., Comments of Motorola, Inc., PS Docket No. 06-229 at 10 (Oct. 16, 2009) (“The applicant must indicate that it has funding in place, or a plan to acquire such funding, to commence and complete construction of the regional broadband network within a defined time frame”) (“Motorola Comments”); Comments of the Telecommunications Industry Association, PS Docket No. 06-229 at 3 (Oct. 15, 2009) (“TIA supports the Public Safety Waivers, provided that such waivers are conditioned upon meeting network build-out and implementation requirements that will ensure compatibility with a nationwide interoperable public safety network”); Comments of Ericsson Inc., PS Docket No. 06-229 at 5, n. 12 (Oct. 16, 2009) (“In this respect, Ericsson agrees with APCO, which stated in Congressional testimony that ‘[t]he FCC should grant waivers – or other relief – to allow local, state and regional broadband systems, *where funding is available*, to be deployed by public safety entities in the 700 MHz band pursuant to authority from the national public safety broadband licensee”), citation omitted (“Ericsson Comments”); Comments of Verizon Wireless, PS Docket No. 06-229 at 9 (Oct. 16, 2009) (“In other words, whether granting waivers or setting new rules, the FCC should set a basic national framework that establishes parameters to ensure national interoperability and require compliance with those standards”) (“Verizon Comments”); Comments of NTCH, Inc., PS Docket No. 06-229 at 2 (Oct. 9, 2009) (“In other words, these petitions can only be granted if standards, including a decision on the air interface and 4G technology, are adopted now which
(continued...)”) (“NTCH Comments”).

Eliciting additional information of the type proposed by many commenters represents sound public policy – both for the broader interests of the public safety community and the specific interests of the various Petitioners. Rendering judgment on Petitioners’ proposals would either lead to improper grant without complete or sufficient information to support the waiver request, or unnecessary denial without affording the Petitioners an opportunity to provide additional information that might allow the Commission to consider the requests on their merits.

A. The Petitioners Should Provide Supplemental Information Crystallizing Their Technical Proposals.

Several commenters recommend that, prior to taking action on the waivers, the Commission direct the Petitioners to supplement their requests with additional technical information that provides more complete details about their proposed deployments.⁴ Requiring additional technical information is prudent, particularly given the overwhelming agreement by most commenters on the critical importance of preserving the goal of a nationwide, interoperable broadband public safety network. The comments largely agree that any waiver must be based on a demonstration that the deploying party has a plan to achieve long-term interoperability.⁵

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will eventually apply to all public safety entities once the public safety licensing situation is finalized”).

⁴ See, e.g., APCO Comments at 8 (“Supplements could also be used to provide more substantial details regarding the proposed local, state and regional deployments”); PSST Comments at 15 (“First, it should require Petitioners to submit detailed technical information regarding their proposed networks”).

⁵ See, e.g., Comments of the National Public Safety Telecommunications Council, PS Docket No. 06-229 at 3 (Oct. 16, 2009) (“NPSTC supports grants of waivers to deploy broadband networks in public safety broadband spectrum, subject to conditions to ensure interoperability...”); (“NPSTC Comments”); Comments of City of Arlington, Texas – Communications Services, PS Docket No. 06-229 at 2 (“We agree with APCO that these deployments should be subject to conditions that ensure interoperability with a national public safety broadband network, as well as other regionally implemented broadband systems”)

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Supplemental information concerning the technical details of the proposed deployments would allow the Commission to better gauge the technical viability of these proposals with respect to future nationwide interoperability for public safety broadband services.

This is particularly true given the comments suggesting that Long Term Evolution (“LTE”), the technology platform specified by virtually all of the Petitioners as the one they seek to deploy, is still evolving and devices are simply not available.⁶ Preserving the vision of a truly nationwide, interoperable public safety broadband network requires the Commission to exercise caution in unleashing any initial deployments so that they do not have the unintended consequence of committing public safety agencies to a technological standard that subsequently creates avoidable interoperability difficulties.

In fact, the experience of one of the Petitioners highlights the very reason why a careful approach to evaluating the technical proposals is warranted. The District of Columbia describes its own experience with an early broadband deployment, noting that, “Having adopted EVDO, for which no 700 MHz market has developed, the District is particularly wary of the risks to

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(“Arlington Comments”); NENA Comments at 3 (for any petitioner to receive a waiver, at a minimum the petitioner should demonstrate a “commitment to integrate its local or regional network into the national framework and adhere to the specifications required by the FCC in its final rules”); PSST Comments at 15 (“Finally, the Petitioners should detail the specific steps that they will take to ensure interoperability with the nationwide network”).

⁶ See USCC Comments at 4 (“Also it appears that the band class 14 compliant devices needed for public safety systems to operate on PSBL spectrum using LTE technologies might not be available in useful quantities for two to three years”); Comments of New EA, Inc. dba Flow Mobile, PS Docket No. 06-229 at 4 (Oct. 15, 2009) (“Conditioning relief on the assurance of interoperability may not be possible since some major carriers and national public safety organizations have indicated that their preference is a specific standard, LTE, which is still in development.”)

early builders selecting a technology that is not adopted as the national standard.”⁷ Although the District does not specify how it will convert its system to LTE, it is certainly reasonable to expect the District will have to significantly retool its existing network to make this transition.⁸ The District’s experience and the comments underscore the need for caution in granting any waivers.⁹

While the Petitions generally acknowledge the need for integrated national interoperability, they provide little detail as to how interoperability with an eventual nationwide shared wireless network or networks will be created or maintained. Long-term interoperability is critical and is a particular concern where, as here, Petitioners will have to make decisions about their local deployment based on hundreds of assumptions about the wireless application mix, the expected traffic demands, the application performance requirements, the maximum cell size, the minimum data throughput rate and other elements of a nationwide public safety broadband system. How an individual jurisdiction answers these questions may ultimately prove inconsistent, if not incompatible, with a nationwide public safety network that is still under

⁷ District of Columbia Request for Waiver, PS Docket No. 06-229 at 12 (June 26, 2009).

⁸ *Id.* at 11-12 (“In time, it is the District’s hope to migrate the network to a technology for which a broad market develops in the Upper 700 MHz band, thus enabling the network to benefit from the accompanying economies of scale and thereby achieve the levels of penetration and sustainability initially envisioned...Accordingly, the District has been investigating a possible migration path from the RWBN’s current EVDO technology to LTE.”)

⁹ Sprint Nextel notes that an “all networks” approach to providing wireless broadband services to public safety communicators, as described in its response to National Broadband Plan Public Notice No. 8, would preserve the value of the District’s current broadband technology path without sacrificing interoperability with other public safety broadband communications networks. *See* Comments of Sprint Nextel Corporation, NBP Public Notice No. 8, DA 09-2133, (filed Nov. 12, 2009). Adopting an all networks solution, rather than endorsing a single broadband technology, competitor, or band, would render the waiver process unnecessary and enable public safety agencies to move forward with broadband deployments immediately without jeopardizing interoperability of local, state and regional public safety systems.

consideration. Granting waivers where a Petitioner has not provided sufficient technical detail to demonstrate a clear path to long-term interoperability, as APCO has observed, risks creating a balkanized series of incompatible systems.

As other commenters have suggested, the Commission should provide the Petitioners with an opportunity to supplement their waiver filings with additional technical detail sufficient to allow the Commission to determine whether those proposals will ultimately be consistent with the goal of a nationwide interoperable public safety services. While they ultimately may be found sufficient, the comments demonstrate that the public interest is best served by having that assurance prior to making waiver grants.

B. The Commission Should Allow the Petitioners to Demonstrate They Have a Viable Plan for Deployment, Including Available Funding.

Several comments also suggest that the Petitioners should be afforded an opportunity to demonstrate that they have a viable plan for deploying broadband networks in the event their requests for waiver are granted. APCO, for example, suggested that entities seeking waivers for early deployment of 700 MHz broadband systems should be required to provide “evidence that there is an actual plan to deploy, personnel and systems in place to manage the deployment, a vendor selection process, and an estimated deployment schedule.”¹⁰ A number of comments agreed with this proposition.¹¹ Sprint Nextel agrees, too. The Commission should require the Petitioners to demonstrate that, if the Commission were to allow early deployments, those early

¹⁰ APCO Comments at 9.

¹¹ *See, e.g.*, Verizon Comments at 9 (“In general, Verizon Wireless supports the basic principle that waivers should be granted only where the Commission is convinced that the applicant has an actual plan for how to put the spectrum to use in a timely manner”; PSST Comments at 15 (“In addition, the PSST agrees with APCO that Petitioners should provide ‘evidence that there is an actual plan to deploy, personnel and systems in place to manage the deployment, a vendor selection process, and an estimated deployment schedule.’”)

deployments would actually take place. *Indeed, absent such a demonstration, it is not at all obvious why there is a compelling need to rush ahead with waivers rather than allow the Commission to conclude its pending rulemaking proceeding.*

As part of a demonstration that the Petitioners have an actual plan in place for a viable deployment, a number of commenters have asserted that the Commission should require a demonstration that funding will be available to complete deployment. The estimated costs of deploying a national broadband network serving public safety agencies are at least several billion dollars, with operational costs in the hundreds of millions, at a minimum, annually.¹² According to APCO, “In particular, the Commission should require entities seeking to deploy early 700 MHz systems to provide evidence that there is sufficient funding available to support all aspects of the deployment.”¹³ Other comments reflect broad support for such a requirement, which could only help to ensure that any waivers the Commission might ultimately choose to grant would result in actual deployments.¹⁴ As one commenter observed, granting waivers in cases

¹² Ericsson Comments at 6, n. 13 (“Ericsson estimates the needed funding for a nationwide network to be in the range of \$9 to 12 billion, not including categories such as back office IT and handset devices. The approximate operational cost of just the network will be on the order of \$300 to 400 million per year, which also does not include factors such as customer care, IT and handset devices.”); *see also* AT&T Comments at 19, citing Letter from John T. Scott III, Verizon Wireless, to Marlene H. Dortch, Secretary, FCC, PS Docket No. 06-229 (April 4, 2007) (“Indeed, it has been estimated that a nationwide network deployed using a leveraged network model would have an initial cost of \$13 billion and a 10-year total cost of \$35 billion....”)

¹³ APCO Comments at 9.

¹⁴ *See, e.g.*, NENA Comments at 3 (for any petitioner to receive a waiver, at a minimum there should be a “demonstration that initial funding is currently available and that the jurisdiction is committed to making long-term funding available to build, operate, maintain and ensure access to the broadband network”); PSST Comments at 3 (Commission should seek additional information from Petitioners, including “evidence of funding to support the network deployment”); Verizon Comments at 9 (“entities seeking to deploy early 700 MHz systems should be required to demonstrate that they have adequate funding and a sufficient commitment

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where timely deployment is uncertain risks tying up spectrum that will remain fallow – the public interest is not served by such an outcome.¹⁵ Given that the likely costs of deployment and operation will be substantial, with estimates of total ten-year costs in the tens of billions of dollars, some form of reasonable assurance of funding is warranted and would be consistent with the public interest.¹⁶

The question of the availability of funding and the advisability of action becomes only more acute because grant of the waivers could diminish the financial value of the public-private partnership models currently under consideration in the 700 MHz rulemaking proceeding. Separating the areas that are likely to be the most easily and cost-effectively deployed with new broadband infrastructure from those areas that are much more costly and time consuming to serve with broadband – though no less important to a comprehensive public safety data network – will diminish the value that any private sector participant might place on the entire public-private partnership.

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from the affected public safety entities in the geographic area, as well as the systems in place to select vendors and manage deployment”); Motorola Comments at 10 (“The applicant must indicate that it has funding in place, or a plan to acquire such funding, to commence and complete construction of the regional broadband network within a defined time frame”) Ericsson Comments at 5 (“However, it will only achieve this objective if the waiver petitioners either have secured or have concrete plans to secure adequate funding for their regional network plans, premised on a commitment to nationwide interoperability and, ultimately, integration into a nationwide network”).

¹⁵ Verizon Comments at 8 (“In addition to the basic technical requirements needed to ensure roaming and interoperability, the Commission should also take steps that state or local implementation occurs in a timely way so that the spectrum does not remain fallow once it has been licensed or sublicensed to state or local entities.”)

¹⁶ Again, an alternative such as Sprint Nextel’s proposed “all-networks” approach would address the funding obstacles by enabling public safety agencies to obtain commercial 4G broadband services without sacrificing nationwide broadband interoperability, interoperability with legacy private networks or with commercial voice networks.

Furthermore, some commenters have described the potential virtues of a “network of networks” approach, asserting that deployment of regional networks may be more efficient and cost effective than a national network.¹⁷ Yet commenters in the Commission’s 700 MHz rulemaking proceeding previously suggested that larger geographic license service areas for commercial 700 MHz spectrum would produce greater economies of scale and allow for more efficient deployment.¹⁸ The Commission should carefully weigh these contradictory suggestions in evaluating the merits of allowing isolated but geographically-significant early deployments. If such deployments undermine the potential value of a public-private partnership and sacrifice potential economies of scale, they risk slowing the eventual deployment of a public safety broadband network that provides truly nationwide service.

C. The Commission Should Allow the Petitioners to Clarify the Form of Operating Authority They Seek and the Vehicle for Obtaining That Authority.

Some commenters noted that the “sublicense” concept mentioned in the majority of the Petitions is problematic as a regulatory matter. APCO, for example, observed that the Public Safety Spectrum Trust (PSST) currently holds the nationwide license for public safety broadband spectrum, and that while some Petitioners refer to the authority they seek, “as a ‘sublicense,’ a ‘spectrum lease’ may be a more appropriate term under current regulations.”¹⁹ Similarly, the

¹⁷ AT&T Comments at 5-7; Verizon Comments at 5-6.

¹⁸ *See* Comments of Cingular Wireless LLC, WT Docket No. 06-150 at 7 (Oct. 5, 2006) (“Retention of the existing band plan would avoid [unproductive regulatory and transactional costs associated with aggregating spectrum] yet would allow licensees to take advantage of broader economies of scale...”); Comments of Verizon Wireless, WT Docket No. 06-150 at 5 (Sept. 29, 2006) (“The efficiencies and economies of scale resulting from expanding a carrier’s footprint have driven mobile carriers toward assembling either regional or national service areas”).

¹⁹ APCO Comments at 5.

PSST argued that, “Although some of the Petitioners seek sublicenses, the Commission already has an existing spectrum leasing regulatory framework in place under its secondary markets regime and should apply that framework to the proposed broadband deployments.”²⁰

As part of the supplement to their waiver requests, the Petitioners should clarify the nature of the operating authority they actually are seeking and identify its practical day-to-day implications. As APCO and the PSST have noted, the PSST holds a license for operation on the 700 MHz public safety broadband spectrum. Pursuant to Section 310(d) of the Communications Act, the PSST may not assign or transfer its license without Commission approval.²¹ Thus, if Petitioners seek to have the PSST partition or disaggregate its license and assign or transfer part of that license to the Petitioners, they should first get the PSST to agree to their arrangement and prepare and file the necessary applications for Commission review to allow for public input on the terms and conditions under which the PSST would license or transfer the spectrum to local, state, or regional authorities.

If, on the other hand, the Petitioners seek to proceed under a spectrum lease with the PSST, they should clarify that intention and provide additional detail about the nature of the lease they seek, including the term, consideration, exclusivity arrangements, scope of use, use requirements, dispute resolution, liability considerations, renewal rights, and other provisions. The Commission’s rules provide two general categories of spectrum lease. Under a spectrum

²⁰ PSST Comments at 10. *See also id.* at 9 (“As the *Notice* recognizes, the spectrum that the Petitioners have requested to use for their early deployments is already licensed on a nationwide basis to the PSST. The FCC should maintain this license framework and the nationwide administrative and oversight role already established for the PSST. Consistent with this approach and contrary to the requests of certain Petitioners, the FCC should not provide separate licenses or ‘sublicenses’ to localities, regions, or states.”)

²¹ 47 U.S.C. § 310(d).

manager lease, the licensee retains *de facto* control of the license and remains primarily responsible for ensuring the lessee's compliance with the FCC's policies and rules.²² To maintain *de facto* control, a licensee must, through contractual provisions, oversight and enforcement, ensure the lessee's compliance with the rules.²³ The licensee must also maintain a working knowledge about the lessee's activities and must be able to inspect the lessee's operations.²⁴ Under a *de facto* transfer lease, the licensee retains *de jure* control over the license while *de facto* control is transferred to the lessee.²⁵ The licensee remains responsible for its own compliance with FCC rules, as well as all lessee violations or egregious behavior of which the licensee has or should have had knowledge.

If Petitioners seek to operate under either form of spectrum leasing arrangement, they must reach agreement with the PSST on the terms of a lease and notify the Commission in the case of a spectrum manager lease, or apply for Commission approval in the case of a *de facto* transfer lease. Some of the Petitioners appear to seek very broad authority to operate local or regional systems on the public safety spectrum, notwithstanding the PSST would continue to hold the license.²⁶ The Commission should direct the Petitioners to supplement their filings to explain in more detail the nature of the authority to operate they seek and how they propose to acquire that authority under the Commission's statutory and regulatory framework consistent

²² 47 C.F.R. § 1.9020.

²³ *Id.* at § 1.9010.

²⁴ *Id.*

²⁵ *Id.* at § 1.9030.

²⁶ *See, e.g.*, City of New York Petition for Waiver, PS Docket No. 06-229 at 13 (June 8, 2009) (discussing an agreement “whereby the PSBL continues to hold the nationwide license but grants New York City and other early deployed networks the rights normally granted to the licensee in a ‘sub-license’ agreement”).

with PSST control of the license. The Petitioners should clarify the role they envision for the PSST in this scenario, as well as describing the controls that would be in place to ensure interoperability following several individual early deployments, and how and by whom those controls would be enforced.

III. THE COMMISSION SHOULD CONSIDER WHETHER GRANT OF THE WAIVERS WOULD PREJUDGE RESOLUTION OF THE COMMISSION'S 700 MHZ RULEMAKING PROCEEDING.

As discussed above, the comments that have been filed in this proceeding to date strongly suggest that the Commission will need to afford the Petitioners the opportunity to amend their requests for waiver to provide the necessary information that might form the basis for eventual Commission grant of those requests. As the Commission evaluates both the supplemental information it should require the Petitioners to submit, and the timeframe for the submission of that supplemental information, it should weigh the potential for prejudging the ongoing rulemaking proceeding for the 700 MHz band, and whether grants at this time might preclude full and fair consideration of a national plan for public safety.

The Commission repeatedly has sought comment on how best to structure the Upper 700 MHz band to ensure reliable, interoperable broadband data communications for public safety. The hallmark of this process is to establish a comprehensive, national plan for public safety data communications. And the need for a national plan has grown out of the Commission's longstanding desire to leverage the inherent value of 700 MHz spectrum resources in exchange for broadband data services that benefit public safety operators throughout the country, especially those public safety operators that may lack the financial resources to build their own regional public safety communications infrastructure.

Responding to the Commission's repeated calls for comment on the national public safety plan for 700 MHz, more than 10,000 commenters have submitted their opinions on various proposals to develop a plan for public safety broadband operations. Dozens of proposals have been submitted, including, for example, proposals to: (1) re-auction the 700 MHz D Block under a public-private partnership framework with the PSST; (2) divest the PSST of the public safety spectrum license and develop local or regional 700 MHz licenses instead; and (3) auction both the 700 MHz D Block and the public-safety broadband spectrum with the proceeds going to support the construction or procurement of public safety broadband services. While far different in their particulars, animating each of the many 700 MHz public safety spectrum proposals is the desire for a cost-effective, interoperable broadband data communications system that provides the vast majority of public safety responders across the United States with a common, fail-safe data network in times of emergency and distress.

Sprint Nextel understands the frustration of a number of public safety agencies that are eager to be able to take advantage of the potential benefits from the deployment of a broadband data system. However, given the widespread consensus that there is a legitimate need for the Commission to seek further information before it can reasonably move forward with a fair and fact-based review of the waiver requests, it would be difficult as a legal and a policy matter not to put the question of how to evaluate the waiver requests in the context of the Commission's progress in its broader rulemaking proceeding. More than one commenter suggested that if the Commission intends to take steps to resolve the proceeding in the relatively near future, it may be prudent for the Commission to conclude its rulemaking first.²⁷ Such a course may better

²⁷ See NENA Comments at 4 ("If the Commission intends to issue final rules for the nation-wide system in the near future (*i.e.* before the release of the National Broadband Plan), it may want to
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serve the public interest by allowing the Commission to resolve the outstanding issues in its rulemaking proceeding in an orderly and thoughtful manner, rather than risking prejudging the outcome of that proceeding by granting ad hoc waivers.²⁸

This prioritization is all the more true because many comments highlight the view that public safety users will ultimately require access to a full 20 MHz of spectrum, including the D Block.²⁹ As many commenters note, reallocation of this spectrum likely could only occur through Congressional action. Because so much of the current framework for the successful deployment of a nationwide, interoperable public safety broadband network turns on the potential to leverage the D Block financially, the Commission should consider the risks of

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consider addressing the issues raised in the petitions in its final rules”); USCC Comments at 3 (“If the Commission intends to process the pending proposals for early builds on PSBL spectrum before the February 17 deadline for its Broadband Plan, USCC recommends that the Commission limit the types of deployments which it is prepared to approve to qualifying test-bed early builds in the PSBL band demonstrating LTE technologies”).

²⁸ See Comments of the WiMAX Forum, PS Docket No. 06-229 at 3 (Oct. 16, 2009) (“Indeed, the Commission, in the public interest, wisely is not rushing to judgment – especially with respect to a standards decision that essentially would have the effect of being a de facto technology mandate, and thus creating a non-competitive environment that could harm public safety in the long-term (*i.e.*, lack of competition leads to higher cost, lower quality networks and devices). Rather, the FCC is appropriately undertaking a technology-neutral, fact-based, data gathering process whereby all interested parties will have the opportunity to comment.”)

²⁹ See, *e.g.*, PSST Comments at 4 (“Most public safety entities also continue to believe that the PSBL spectrum alone cannot satisfy public safety’s broadband requirements... The demand for additional spectrum has grown considerably since 1996, and public safety needs access to the full 10x10 MHz from both the PSBL and the D Block spectrum to ensure that critical, life-saving wireless broadband services are available during a crisis”); Comments of the Major Cities Chiefs Association, PS Docket No. 06-229 at 2 (Oct. 16, 2009) (“The Major Cities Chiefs Association supports the assignment of the D Block directly to public safety, and opposes a second auction.”); NPSTC Comments at 4 (“NPSTC strongly supports the reallocation of the D block to public safety and recognizes that some reasonable period of time will be needed for reallocation efforts to be conducted and completed”).

allowing early deployments while so many issues concerning the fate of the D Block remain outstanding.

IV. THE COMMENTS GENERALLY UNDERScore THE CRITICAL IMPORTANCE OF VOICE COMMUNICATIONS.

A number of commenters stressed that, while the potential benefits of a public safety broadband network will be immense, immediate and robust access to dedicated public service voice communications networks is of paramount importance for public safety users. Thus, for example, Motorola states that “the most critical application needed by first responders is voice communications, including group talk and direct unit-to-unit communications.”³⁰ Many other commenters made the same point in urging the Commission not to divert 700 MHz narrowband spectrum for public safety broadband use.³¹

³⁰ Motorola Comments at 8.

³¹ *See, e.g.*, Harris Comments at 6 (“The Commission must support and protect mission critical voice systems, which provide the majority of public safety communications and are critical during emergencies. While public safety broadband is evolving, voice communications are the life blood of public safety, with geographic coverage and reliability vastly superior to current public safety broadband. Although the benefits of public safety broadband will be enormous, deployment must not be completed at the detriment of mission critical voice operations”); Comments of the National Public Safety Telecommunications Council, PS Docket No. 06-229 at 5 (Oct. 16, 2009) (“it would likely be 10 to 15 years or more before most public safety entities would be in a position to seriously consider substituting broadband voice for today’s land mobile radio mission critical voice solutions”); Comments by City of Boston, PS Docket No. 06-229 at 9 (“Of significant concern to the Boston PD is an apparent growing misconception by some in Congress and the Commission that in two or three years wireless broadband will be an alternative to Land Mobile Radio mission critical voice systems. It appears that such a misconception is fueling the idea to divert much needed 700 MHz narrowband spectrum (769-775 MHz and 799-805 MHz) to public safety broadband networks, either on a mandated or optional basis”); Arlington Comments at 3 (“We urge the Commission to reject any proposed diversion of this much needed narrowband spectrum. In many TV encumbered areas of the country, public safety agencies have been waiting for over a decade to access this spectrum in order to implement 700 MHz mission critical voice systems or expand their spectrally congested 800 MHz voice systems into the 700 MHz band”).

Public safety advocates continue to emphasize the importance of existing and planned land mobile voice radio systems for public safety communications.³² They readily acknowledge that future public safety broadband data networks and devices will not offer voice capability for many years, and even then will not include the “one-to-many” and “talk around” capabilities essential to mission critical public safety communications. It will likely take a decade or more for public safety broadband networks to match the extensive geographic coverage, reliability and mission critical voice capabilities supported by existing land mobile systems before they can reasonably replace them.³³ Manufacturers similarly emphasize that, in the near term, broadband deployments using LTE technology will not be able to match the multiple levels of redundancy and reliability incorporated into traditional LMR systems, let alone offer “talk around” capability.³⁴ For the foreseeable future, it is unlikely that a broadband data network will be able to supply mission critical voice service.³⁵

³² The PSST very recently emphasized that: “Immediate mission critical voice capabilities are clearly the highest priority today for public safety users....” Letter from Chief Harlin R. McEwen, Chairman, Public Safety Spectrum Trust Corporation, to Jennifer A. Manner, Deputy Chief, Public Safety and Homeland Security Bureau, Federal Communications Commission, GN Docket No. 09-5, PS Docket No. 06-229, WT Docket Nos. 06-150 and 96-86 (Oct. 1, 2009).

³³ The PSST notes that: “The reality of broadband coverage buildout, standards and equipment deployment, testing in the public safety environment, and follow-on procurement means it would likely be 10-15 years or more before most public safety entities would be in a position to seriously consider substituting broadband voice for today’s LMR mission critical voice solutions.” *Id.* at 4.

³⁴ *See* Letter from Steve B. Sharkey, Senior Director, Regulatory and Spectrum Policy, Motorola, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, WT Docket No. 06-150, PS Docket No. 06-229 (Oct. 28, 2009).

³⁵ *Id.*, Attachment at 7 (“Running voice as a data application does NOT provide mission critical coverage”) (emphasis in original).

As a result, most public safety agencies will have to rely on their existing land mobile public safety communications systems for many years, many of which are at 800 MHz. Indeed, some agencies are expanding or planning to expand their 800 MHz capacity and coverage as formerly “interleaved” 800 MHz channels are “freed-up” for reassignment as a collateral benefit of 800 MHz reconfiguration progress. The Commission should pause before taking any action that diverts attention from immediately securing safety-of-life communications that first responders currently use, including the expeditious reconfiguration of the 800 MHz band to reduce the potential for interference to mission critical public safety voice communications.

Additionally, several of the Petitioners have not completed retuning their 800 MHz public safety communications systems, as mandated by the Commission nearly four-and-a-half years ago, and funded by Sprint Nextel.³⁶ Given the critical continued importance of reliable mission-critical voice communications, the first communications priority of these Petitioners must be completing retuning their 800 MHz systems, thereby eliminating the risk of CMRS-to-public safety interference that can jeopardize the safety of their first responders and the communities they serve.³⁷ The Commission has “made it abundantly clear that we expect band

³⁶ The Commission’s 800 MHz Reconfiguration Decision requires Sprint Nextel to fund nearly all of the eligible, reasonable retuning costs of 800 MHz public safety incumbents. *800 MHz Report and Order* at ¶ 178. State and local government budget concerns have not been and are not a barrier to timely 800 MHz retuning progress.

³⁷ 800 MHz retuning requires each individual public safety incumbent to develop a cost estimate and statement of work (typically funded by Sprint Nextel) from which it negotiates a Frequency Reconfiguration Agreement (FRA) with Sprint Nextel. Once the parties execute an FRA, however, the incumbent is responsible for completing all rebanding work elements directly or through its consultants, contractors and vendors. After the FRA is signed, Sprint Nextel has essentially no control over the pace of a licensee’s rebanding progress.

reconfiguration to move forward expeditiously.”³⁸ Accordingly, separate and apart from the concern of prejudging the 700 MHz rulemaking, the Commission should not grant the subject waivers to Petitioners that have not yet completed 800 MHz reconfiguration, unless those Petitioners conclusively demonstrate that pursuing broadband deployment will not delay completing their 800 MHz reconfiguration responsibilities.

V. CONCLUSION

A national, interoperable public safety broadband network will eventually provide numerous and significant benefits to public safety users as well as citizens. The Commission can and should retain its commitment to a nationwide, truly interoperable network to allow the realization of these benefits. The Commission has devoted substantial time and effort to the development of a record upon which it could conclude a thoughtful, fair, open and fact-based rulemaking proceeding to preserve this vision.

Review of the comments filed in this matter suggests there are many unanswered questions concerning the actual scope of the waiver requests, including questions that speak directly to the ability to maintain the critical commitment to national public safety broadband interoperability. Before the Commission can reasonably take action on these requests, it must obtain answers to these questions to avoid sacrificing future interoperability, flexibility, and

³⁸ Improving Public Safety Communications in the 800 MHz Band, *Third Memorandum Opinion and Order*, 22 FCC Rcd 17209, ¶ 47 (2007); *see also* Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818, ¶ 8 (“one of the most critical of these goals is timely and efficient completion of the rebanding process, to ensure that the interference problem that threatens 800 MHz public safety systems is resolved as quickly and as comprehensively as possible”); *id.*, Joint Statement of Chairman Kevin J. Martin and Commissioners Michael J. Copps, Jonathan S. Adelstein, Deborah Taylor Tate and Robert M. McDowell (“More important is that rebanding proceed as quickly and effectively as possible. After all, expeditiously eliminating interference between commercial and public safety users is the goal that motivates all of us. And we sincerely hope that all parties will keep their eyes on that prize even as they work through the details of this complex process.”)

access to the best available technology and services in the name of immediate action. As the Commission considers the appropriate means to collect further information concerning the proposed deployments, it should take a measured and careful approach. Resolution of the Commission's rulemaking proceeding, and the development of a coherent plan for achieving public safety broadband interoperability, will better serve the public interest than an *ad hoc* approach based on waivers.

Respectfully submitted,

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