

**BEFORE THE  
FEDERAL COMMUNICATIONS COMMISSION  
WASHINGTON, D.C. 20554**

In the Matter of	)	
	)	
Liberty Communications, Inc.	)	WT Docket No. 02-55
And Sprint Nextel Corporation	)	
	)	
Mediation No. TAM-50034	)	
	)	

**REPLY TO OPPOSITION TO APPLICATION FOR REVIEW**

Liberty Communications, Inc. (“Liberty”) hereby replies to the Opposition filed by Nextel Communications, Inc. (“Nextel”) on August 16, 2010 in the above-captioned proceeding, in which Liberty seeks review by the full Commission of the order released by the Public Safety and Homeland Security Bureau (the “Bureau”) on July 16, 2010 (the “*Bureau Order*”). As explained below, Nextel’s Opposition fails to refute the arguments raised in the Application for Review filed by Liberty on July 30, 2010, or demonstrate that the *Bureau Order* is consistent with the Commission policies underlying the 800 MHz reconfiguration. That being the case, Liberty renews its request that the Commission vacate the *Bureau Order*, and order Nextel and the 800 MHz Transition Administrator either to: (i) provide Liberty with viable replacement channels, with sufficient frequency separation to function effectively with Liberty’s existing equipment; or (ii) replace Liberty’s network equipment so that it will function effectively with the channels assigned—with Nextel bearing the associated costs.

As Liberty established in its Application for Review, the *Bureau Order* improperly denies Liberty the “comparable facilities” to which it is entitled under the Commission’s *800 MHz Orders*, and instead leaves Liberty—precisely the type of small business that the

Commission sought to protect through those orders—in a far worse position than it was in prior to the 800 MHz reconfiguration. Liberty now has inferior channel capacity, inferior signaling capability, baud rate and access time, inferior geographic coverage, and higher operating costs. These adverse consequences are the direct result of the replacement channels provided by Nextel, which have insufficient frequency separation with respect to other channels *used by Liberty's own system*. In other words, Liberty's system, as reconfigured by Nextel, suffers from fundamental and fatal design defects; the system simply does not work.

Astoundingly, Nextel claims that the ability of Liberty's system to function, *even in the absence of any external interference whatsoever*, is “irrelevant for the purposes of any Commission licensing or comparability analysis,” and that “[a]ny operational problem or interference Liberty may be experiencing has a cause that does not implicate reconfiguration or create an obligation on Nextel to provide Liberty with new system equipment.”<sup>1</sup> Yet, the Commission established the “comparable facilities” standard precisely to ensure that the 800 MHz reconfiguration does not cripple the operations of incumbent licensees—and particularly small businesses—which is exactly what has happened to Liberty in this case. Thus, if the “comparable facilities” standard means anything, it means that a reconfigured system must be capable of operating *in the absence of any outside interference*.

Unsurprisingly, Nextel attempts to shift focus away from its underlying obligation to ensure that Liberty's post-reconfiguration system is functional, and instead observes that the Commission's rules do not recognize an “entitlement to some recognized degree of adjacent channel spacing.”<sup>2</sup> The fact that there is no *explicit* spacing requirement proves nothing, though; the Commission's rules do not purport to identify every technical factor impacting the

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<sup>1</sup> Nextel Opposition at 6.

<sup>2</sup> *Id.*

“comparability” of replacement channels. Instead, the Commission’s rules establish a more general “comparable facilities” standard requiring, above all else, that replacement facilities be capable of sustaining viable operations. As Liberty noted in its Application for Review, the Bureau itself has interpreted the “comparable facilities” standard to require Nextel to ensure that where a licensee is compelled to operate on channels with reduced frequency separation, that licensee is provided with equipment capable of making efficient and effective use of those channels.<sup>3</sup> Liberty is entitled to that relief here to ensure that it enjoys comparable system functionality.

Nextel also claims that its obligations have been met because Liberty’s post-reconfiguration system is entitled to the same level of interference protection as its pre-reconfiguration system under the Commission’s rules, since adjacent channel interference is not “recognized” by the Commission’s rules.<sup>4</sup> But Nextel’s analysis—and the discussion from the *Bureau Order* that Nextel cites—misses the point. Liberty is not asserting that it is entitled to a higher level of interference protection than that to which it is entitled under the Commission’s rules, which mediate the relationship between *different* licensees; indeed, Liberty recognizes that under those rules other parties *could* operate on adjacent channels and cause interference into Liberty’s operations.<sup>5</sup> Rather, Liberty is claiming only that it is entitled to a system that is at least capable of functioning, particularly *in the absence of any interference from other parties*. Liberty’s reconfigured system does not and cannot function, and that is the crux of the problem.

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<sup>3</sup> *Improving Public Safety Communications in the 800 MHz Band, New 800 MHz Band Plan for U.S.-Canada Border Regions*, Second Report and Order, 23 FCC Rcd 7605, at ¶ 19 (2008).

<sup>4</sup> Nextel Opposition at 8.

<sup>5</sup> Critically, though, Liberty could coordinate with such licensees to mitigate the potential for such interference. Here, Liberty has been saddled with a flawed system configuration that *guarantees* the inability of its system to function.

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Liberty's Application for Review demonstrated that the *Bureau Order* incorrectly interpreted and applied Commission policy, thereby denying Liberty the "comparable facilities" to which it is entitled. Nothing in Nextel's Opposition alters that conclusion, or justifies the fact that, in this case, the Bureau has allowed the reconfiguration process to deprive a small business of its very ability to provide viable service and, as a result, continue as a going concern. This result should be anathema to the Commission in light of the policies expressed in the *800 MHz Orders*. Accordingly, the Commission should act to redress this wrong, and ensure that smaller operators continue to be protected from the vicissitudes caused by the 800 MHz rebanding.

Respectfully submitted,

/s/ Jim Forsman  
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August 30, 2010

**CERTIFICATE OF SERVICE**

I, Jarrett S. Taubman, certify that on this 30<sup>th</sup> day of August, 2010, I served a true and correct copy of the foregoing Reply to Opposition to Application for Review on the following via first-class mail, postage prepaid:

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