

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

In the Matter of)
)
)
Sprint Nextel)
2001 Edmund Halley Drive)
Reston, VA 20191)
)
and)
)
County of Hinds, Mississippi)
c/o Precious T. Martin, Sr.)
Precious Martin, Sr. & Associates, PLLC)
P.O. Box 373)
Jackson, MS 39205)
)
Call Signs)
WPTW613, WPUC336 and WQDR518)

WT Docket No. 02-55
Mediation No. TAM-50047

Attention: Marlene H. Dortch, Secretary

OPPOSITION TO PETITION FOR *DE NOVO* REVIEW

Nextel Communications, Inc. (Nextel), a wholly owned subsidiary of Sprint Nextel Corporation, hereby opposes the Petition for *De Novo* Review (“Petition”) submitted by Hinds County, Mississippi (“Hinds” or “the County”) in the above-referenced matter.¹ For the reasons set forth below, the Commission should dismiss the County’s request for review.

I. INTRODUCTION

This matter was referred to the Public Safety and Homeland Security Bureau (“the Bureau”) for review by a Recommended Resolution following mediation between Hinds and

¹ Petition for *De Novo* Review of Hinds County, Mississippi, WT Docket No. 02-55 (Sep. 17, 2010) (“Petition”).

Nextel concerning a change order request (the “Change Notice”) submitted under the terms of the Frequency Reconfiguration Agreement (“FRA”) governing the reconfiguration of Hinds’ 800 MHz system. The underlying facts were never in dispute, and the Commission’s orders concerning the change notice process plainly controlled the outcome of the mediation.²

Nevertheless, Hinds directed its vendor, Motorola to stop work on the County’s reconfiguration project pending the resolution of this dispute. On August 23, 2010, the Bureau issued a Memorandum Opinion and Order resolving the issues presented for review.³ On September 7, 2010, the Transition Administrator’s (TA’s) Mediator issued an order closing the mediation and instructing the County to complete its reconfiguration. On September 17, 2010, Hinds filed its Petition seeking *de novo* review of the Bureau’s Hinds Order.⁴

II. THE PETITION IS UNTIMELY AND SHOULD BE DISMISSED.

Hinds requests *de novo* review of the Hinds Order pursuant to Section 90.677(d)(1) of the Commission’s rules.⁵ Under that Section, a party wishing to appeal a Bureau decision may file a

² The County’s change notice sought recovery of costs that were plainly foreseeable. The Commission has established that change notices are appropriate to allow licensees to recover costs that are the result of “unanticipated changes in cost, scope, or schedule that occur during implementation or in the case of an emergency,” but “that it is not reasonable for licensees to use the change notice process to attempt to re-negotiate their agreements after the fact based on issues that should have been or actually were raised earlier.” Improving Public Safety Communications in the 800 MHz Band, *Fourth Memorandum Opinion and Order*, 23 FCC Rcd 18513, ¶ 31 (2008).

³ County of Hinds, Mississippi and Sprint Nextel Corporation, *Memorandum Opinion and Order*, WT Docket No. 02-55, DA 10-1589 (rel. Aug. 23, 2010) (“Hinds Order”).

⁴ Neither Nextel nor its counsel were served with a copy of the Petition and, as a result, Nextel only became aware of the Petition after it appeared in the Commission’s Electronic Comment Filing System on September 23, 2010.

⁵ Petition at 1, citing 47 C.F.R. § 90.677(d)(1).

petition for *de novo* review within ten days of the effective date of the decision, whereupon the matter will be set for an evidentiary hearing before an Administrative Law Judge.⁶

As described above, the Hinds Order was released on August 23, 2010, and was effective upon release.⁷ Pursuant to Commission's rules, then, a petition for *de novo* review should have been submitted no later than September 2, 2010. Hinds submitted the Petition on September 17, 15 days after it was due. The Petition was therefore not timely filed, and Hinds has apparently not submitted any associated request for waiver of the Commission's rules in this regard. The Commission should dismiss the Petition as untimely, and reject the request to set this matter for hearing, for this reason alone.

Moreover, as the period for filing an application for review of the Hinds Order by the full Commission has also expired,⁸ Hinds has no remaining avenue for review or appeal of the Hinds Order. Further, as a practical matter, because the material facts in this matter were never seriously in dispute, and because the controlling legal standard is plain and not subject to dispute, there is no basis for a different decision on review. At this point, the County's reconfiguration project has been stalled for more than a year and a half while the County pursued a change notice that is unequivocally barred by the Commission's orders. The Commission should reject the Petition and direct Hinds to allow the completion of the reconfiguration of the County's system.

⁶ 47 C.F.R. § 90.677(d)(1).

⁷ 47 C.F.R. § 1.102(b)(1).

⁸ Pursuant to Section 1.115(d), applications for review must be filed within 30 days. 47 C.F.R. § 1.115(d). An application for review of the Hinds Order was thus due by September 22, 2010. Further, applications for review must state the questions presented for review as well as specify with particularity the factors which warrant Commission review. 47 C.F.R. § 1.115(a) – (b). Thus, the Petition is defective even if it were to be treated as an application for review.

III. CONCLUSION

For the foregoing reasons, the Commission should dismiss the Petition and reject the request to set an evidentiary hearing for *de novo* review of the Hinds Order.

The undersigned attests that the statements and representations made in this Opposition are true and accurate to the best of his or her knowledge.

NEXTEL COMMUNICATIONS, INC.

By:



Laura H. Phillips
Patrick R. McFadden
Drinker Biddle & Reath LLP
1500 K Street, N.W. Suite 1100
Washington, DC 20005-1209
Laura.Phillips@dbr.com
Patrick.McFadden@dbr.com
202-842-8800
202-842-8465/66 (fax)

September 27, 2010

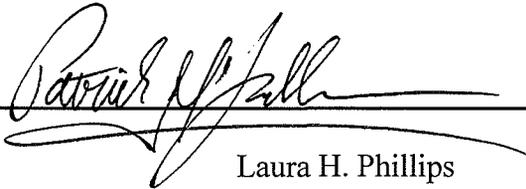
CERTIFICATE OF SERVICE

I hereby certify that on this 27th day of September, 2010, a true copy of the foregoing Opposition was served electronically upon:

PSHSB800@fcc.gov

And by via first class, postage paid United States Mail upon:

**Precious T. Martin, Sr.
Precious Martin, Sr. & Associates, PLLC
P.O. Box 373
Jackson, Mississippi 39205-0370**

A handwritten signature in black ink, appearing to read "Patrick R. McFadden", is written over a horizontal line. The signature is fluid and cursive.

Laura H. Phillips
Patrick R. McFadden
Drinker Biddle & Reath LLP
1500 K Street, N.W. Suite 1100
Washington, DC 20005-1209
Laura.Phillips@dbr.com
Patrick.McFadden@dbr.com
202-842-8800
202-842-8465/66 (fax)