

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of	}	
	}	
Improving Public Safety	}	WT Docket No. 02-55
Communications in the 800 MHz Band	}	
	}	
Relinquishment by Sprint Nextel of	}	
Channels in the Interleaved, Expansion and	}	
Guard Bands	}	

**OPPOSITION TO  
REQUEST FOR WAIVER**

Preferred Spectrum Investments, LLC (“PSI”), Michael D. Judy, its President and a Management Committee Member, fifteen of its other Class B members attached hereto as Exhibit A hereto, Ken Fry and certain other former 800 MHz Specialized Mobile Radio General Category licensees attached hereto as Exhibit B (collectively referred to herein as the “Opponents”) pursuant to Section 1.45 of the Commission’s rules, 47 C.F.R. § 1.45 (2010), submits this **OPPOSITION** to the Request for Waiver filed by Sprint Nextel Corporation (“Sprint”) on February 11, 2011, regarding its obligations to relinquish certain spectrum within the 800 MHz Private Land Mobile Radio Band’s Interleaved Channels or Band by March 31, 2011.<sup>1</sup>

As discussed below, the Request for Waiver must be denied, and the Commission must take strong action against Sprint for its continued failure to fulfill its obligations. The FCC has repeatedly provided Sprint more than sufficient time to meet its obligations to clear spectrum for future licensing to third-parties. Sprint’s current obligation to relinquish the Interleaved Band spectrum (809-815 MHz/854-860 MHz) arise from the 2008 Order that established a

---

<sup>1</sup> See *Letter from Lawrence R. Krevor and James B. Goldstein, Sprint Nextel Corporation, to Marlene H. Dortch, FCC, WT Docket No. 02-55 (filed Feb. 11, 2011) (“Sprint Request”)*.

phased transition for the 800 MHz spectrum.<sup>2</sup> In the 2008 Order, the Commission established a March 31, 2010, deadline for the relinquishment of the Interleaved Band spectrum.

Subsequently, on January 27, 2010, Sprint sought to further modify its obligations, proposing to vacate the March 31, 2010, deadline altogether. The Public Safety and Homeland Security Bureau (the “Bureau”) rejected Sprint’s efforts to completely abandoned its obligations set forth in the 2008 Order, but granted yet another extension of the deadline to relinquish the spectrum, this time until March 31, 2011.<sup>3</sup>

Now, one year later, Sprint is seeking a further postponement of its obligations to relinquish the Interleaved Band spectrum until March 31, 2012, for nine NPSPAC regions.<sup>4</sup> In its request, Sprint continues to justify an extension of the relinquishment of the Interleaved Band spectrum on the economic harm it will face through the disruption of service to its network and customers.<sup>5</sup>

Simply put, the Commission must tell Sprint that enough is enough, deny the Sprint Request, and order the spectrum relinquishment within sixty (60) days. Unspecified concerns about the impact of the relinquishment of the Interleaved Band spectrum on Sprint’s network has provided the justification in each of its prior extension requests.<sup>6</sup> However, these vague statements regarding the theoretical impact on Sprint’s network and its customers should not take weight over the substantial public interest benefits arising from finally requiring that Sprint relinquishing the Interleaved Band spectrum for future use by interested parties.

---

<sup>2</sup> *Improving Public Safety Communications in the 800 MHz Band, Relinquishment By Sprint Nextel of Channels in the Interleaved, Expansion, and Guard Bands*, Order, 23 FCC Rcd 15,966 (Oct. 30, 2008) (“2008 Order”).

<sup>3</sup> *Improving Public Safety Communications in the 800 MHz Band, Relinquishment By Sprint Nextel of Channels in the Interleaved, Expansion, and Guard Bands*, Order, 25 FCC Rcd 3270 (PSHSB 2010) (“2010 Order”).

<sup>4</sup> *Sprint Request*, pg. 2. The nine regions are: Alabama (Region 1); Northern California (Region 6); New York Metro (Region 8); Florida (Region 9); Louisiana (Region 18); Maryland, Washington, DC, Northern Virginia (Region 20); Dallas, TX (Region 40); Houston, TX (Region 51) and Chicago Metro (Region 54).

<sup>5</sup> *See Sprint Request*, pg. 5.

<sup>6</sup> *Id.*, *See also 2010 Order*, 25 FCC Rcd at 3272, nt. 20. *See also 2008 Order*, ¶ 13.

Sprint has known that the spectrum would need to be relinquished for many years, and it apparently made a business decision to not take into account the effect that relinquishing the spectrum would have on its network. To the extent that the Commission and the Bureau has enabled this behavior to continue by repeatedly declining to find that Sprint had failed in its obligations and/or impose forfeitures for failing to meet important benchmark dates,<sup>7</sup> it is not surprising that Sprint would elect to file yet another waiver request rather than meet its obligations to the Commission and the public.

### **DISCUSSION**

The Opponents have a substantial interest in the final resolution of this proceeding. They are poised to apply for available spectrum within the Expansion Band and Guard Band upon Sprint's completion of the 800 MHz rebanding process in the nine NPSPAC Regions with respect to which Sprint is seeking an indefinite extension of its deadline to vacate the Interleaved Channels and within the Interleaved Band for non-Public Safety category channels vacated by licensees other than and Sprint, upon the expiration of the subsequent exclusive period of licensing the spectrum to public safety entities and critical infrastructure industries.<sup>8</sup> Since they must wait for both occasions to occur prior to its efforts to apply for licenses to provide CMRS services on the spectrum in question, any further delay by Sprint to meet its obligations to relinquish the Interleaved Band spectrum directly and adversely impacts them.

---

<sup>7</sup> See *2008 Order*, ¶ 16 (declining to determine Sprint's culpability and deferring possible enforcement action). See also *2010 Order*, ¶ 15 ("we make no finding regarding the degree to which Sprint's inability to vacate channels by prior deadlines is due to factors within or beyond Sprint's control, and defer consideration of such issues to a later date.")

<sup>8</sup> See *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14,969 (2004) ("*2004 Order*").

The Opponents also intend to purchase SMR and Business and Industrial and Land/Transportation operating systems and licenses within the Interleaved Channels within the nine NPSPAC Regions with respect to which Sprint is seeking an indefinite extension of its deadline to vacate its licenses within the Interleaved Band.

Therefore, they have standing to oppose the Sprint Request.<sup>9</sup>

As discussed above, Sprint has previously requested an extension of the deadline to relinquish spectrum in the Interleaved Band on several occasions. First, it failed to meet the deadline set forth in the 2005 *800 MHz Supplemental Order*.<sup>10</sup> As a result, the Commission granted an extension until June 26, 2008.<sup>11</sup> When it was clear that Sprint would not meet its obligations by that date, the Commission granted a further extension in the 2008 Order until March 31, 2010. Rather than meeting that deadline, and relinquish the Interleaved Band spectrum by March 31, 2010, Sprint sought instead to eliminate the deadline by which it must relinquish the spectrum. The Bureau declined to grant such sweeping relief, and instead, in the 2010 Order, gave Sprint twelve more months to meet its deadline.

It is critical for the Commission to remember that, as a trade-off for the restructuring of the 800 MHz band, Sprint obtained spectrum valued at \$4.86 billion.<sup>12</sup> Rather than waiting to grant that spectrum to Sprint until it actually completed its obligations in the 800 MHz band, the Commission granted spectrum in the 900 MHz and 1900 MHz bands with the understanding that Sprint would complete its responsibilities in a timely manner.

Thus, it is in this context that one must evaluate the Sprint Request. The only justification provided by Sprint for not relinquishing its spectrum is the potential negative

---

<sup>9</sup> See *FCC v. Sanders Brothers*, 309 U.S. 470, 477 (1940) (finding that potential competitors have standing in light of their “sufficient interest” in the proceeding).

<sup>10</sup> *Improving Public Safety Communications in the 800 MHz Band*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd. 2513, 2515 ¶ 53 (2005).

<sup>11</sup> *Improving Public Safety Communications in the 800 MHz Band*, Third Memorandum Opinion and Order, 22 FCC 17,209 (2007).

<sup>12</sup> See *2004 Order*, at ¶247.

impact that such action would have on its network and customers. However, Sprint failed to provide any information to substantiate its claim. Moreover, Sprint can hardly claim that it was not aware that it must comply with the March 31, 2011 deadline, and should not be permitted to repeatedly use the “negative impact” card each and every time it does not want to relinquish spectrum as required by the Commission’s orders.

Finally, this “negative impact” justification flatly fails the Commission’s strict standard for considering waivers of its rules.<sup>13</sup> In particular, Sprint argues that “there is no reasonable alternative to granting the instant waiver.”<sup>14</sup> However, the entirely reasonable alternative would have been for Sprint to use the past seven years to expedite the construction of its network on spectrum that was not encumbered by public safety and other incumbent licensees. Instead, it has sought, at every turn, to avoid its responsibilities to relinquish any spectrum. In turn, the Commission and its delegates have enabled Sprint to pursue this approach by repeatedly granting extensions, and deferring the imposition of any meaningful penalties on Sprint. The end result of a kabuki-style dance in which Sprint’s only obligation is to prepare and submit requests for waivers of the Commission’s rules and past orders, and the Commission grants the waiver requests without seeking sufficient information to support the further delay of the 800 MHz re-banding process.

### **CONCLUSION**

As such, while Sprint might find itself in an unenviable position, the position is one of its own making, and one Sprint has specifically undertaken solely to satisfy to its own pecuniary interests. While Sprint has been a major participant in this proceeding, there are other parties that are directly impacted by Sprint’s lethargic efforts, and Commission must take into account these other parties when considering the instant request.

---

<sup>13</sup> See 47 C.F.R. §1.925 (2010).

<sup>14</sup> *Sprint Request*, pg. 6.

Therefore, the Opponents strongly urge the Commission to deny the waiver, and require the relinquishment of the subject spectrum within sixty (60) days of the March 31, 2011 deadline. The public has a strong interest, above and beyond Sprint's pecuniary interest, in implementing future uses of the Interleaved Band spectrum, and the Commission's primary goal must be to meet the public interest.

Respectfully submitted,

**PREFERRED SPECTRUM  
INVESTMENTS, LLC.<sup>15</sup>**

By: Michael D. Judy  
Michael D. Judy, President  
3131 E. Camelback Rd.  
Suite 450  
Phoenix, Arizona 85016  
Phone: 602-808-1030  
Fax: 602-224-1099

---

<sup>15</sup> Pursuant to Section 1.52 of the Commission's rules, the undersigned verifies that he has read the instant Opposition, and to the best of his knowledge, information, and belief there is good ground to support it; and that it is not interposed for delay.

**EXHIBIT A**

Allen, Linda (Robert Allen Trust)  
2475 El Sereno Way  
Vista, CA 92083

Aull, Kenneth E. & Alison D.  
21 Harvest Lane  
Hockessin, DE 19707

Downs, Carole Lynn  
3712 E. Highland Avenue  
Phoenix, AZ 85018

Fry, Kenneth & Lia R. Gutierrez  
P.O. Box 5244  
Kendall Park, NJ 08824

Huckins, Marilyn  
8895 Towne Centre Dr. #105-130  
San Diego, CA 92122

Jones, Lee  
8 Lakeshore Circle  
Lake St. Louis, MO 63367

Judy, Michael D.  
5874 Nees Avenue  
Clovis, CA 93611

R. J. Leedy JTWROS  
PO Box 39593  
Los Angeles, CA 90039-0593

Pelton, Alan D. & Kathryn A.  
P.O. Box 1975  
Ramona, CA 92065

AMLAW Pure Trust Organization  
Dr. Neil Alan Scott  
PO Box 2029  
Oceanside, CA 92051

Sterling Trust Co., Custodian FBO: Michael  
A. Scott A/C 101441  
819 Riviera Drive  
Mansfield, TX 76063

Talcott, John G. III & Dorothea J.  
48 Main Street  
Talcottville, CT 6066

Talcott - John G. Jr.  
44 Talcott Pines Road  
Plymouth, MA 2360

Thayer, Richard & Mary  
2034 Alessandro Trail  
Vista, CA 92084

Tucker, Paul P.  
4004 Old Crain Highway  
Upper Marlboro, MD 20772

Wells, Lyle L.  
1751 West Bowling Street  
Anaheim, CA 92804

**EXHIBIT B**

Acura Plus, Inc.  
Adams, Benjamin  
Balaban, Edward G.  
Berberena, Angel  
Biderman, Ben & Barbara  
Bishop, Gloria K.  
Budrow, Fred  
Byrd, Herman J.  
Chieco, Kathleen  
Chinuge, David  
Clark, Glenn E.  
Cullar, Thomas M.  
Davis, Max  
Derdiger, Ira G.  
Dorigo, Andrea E.  
Driscoll, Paul  
Estate of Donald Garges  
Fischer, Walter B.  
Fisher, John H.  
Flaherty, Kathleen M.  
Freeland, Charles L.  
Gemini International, Inc.  
Goen, Rayburne W.  
Gunning, Diane D.  
Gutierrez, Lia/Fry, Ken W.  
Hall, Raney  
Hamblin, Mark S.  
Hedrich, Diane H.  
Hill, Virgil L.  
Hinkamp, William  
Hond, Barry J.A.  
Hudson, Mark  
Hurd, Louis & Eurene  
Huseby, Cedric L.  
Jackler, Raymond  
Johnson, Curtis M.  
Jones, Lee A.  
Jones, Lee A.  
Jones, Lee A.  
Judy, Michael D.  
Kadis, Marc J.  
Kadis, Marc J.  
Kadis, Marc J.  
Kerr, James R.  
Kinley, Roberta  
Lakos, Anne  
Lakos, Theodore M.  
Lohman, Dennis M.  
Lohman, Dennis M.  
Lohman, Robert B.  
Lothery, Melvin L.  
Madill, Robert F.  
Massengale, Curt L.  
McCain, Nira  
McCoy, James T.  
Merin Realty, Inc. Profit Sharing Trust  
Mitchell, Gary E.  
Nelson, James O.  
Neugent-Ott, Sally  
Newberry, Billy  
Pchan, Lampanh  
Pishnet, Philip J.  
Pratt, David  
Quinlan, Ann V.  
Ramsey, Ivan D.  
Rector, David W.  
Reghi, Nicholas L.  
Royer, Michael C.  
Runge, Lenora  
Schneider, Frank E.  
Schultz, John A.  
Sheldon, Gwyneth A.  
Sheldon, Gwyneth A.  
Shenton, Robert  
Snyder, Albert L.  
St. John, Dennis  
Strong, Mark W.  
Sweet, Jesse  
Tooker, Peter H./Ward, ?  
Trueblood, David W.  
Tucker, Paul  
Turner, Barbara L.  
Von Hagen, Steven F.  
Warlow, Ronald  
West, Joseph P. Jr.  
Willard, Wallace W.  
Wojcik, John F.