

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20054**

In the Matter of	)	
	)	
State of Indiana	)	WT Docket No. 02-55
and	)	
Sprint Nextel Corporation	)	
	)	
Mediation No. TAM-50047	)	

To: Chief, Public Safety and Homeland Security Bureau

**COMMENTS OF THE  
ENTERPRISE WIRELESS ALLIANCE**

The Enterprise Wireless Alliance (“EWA” or “Alliance”), in accordance with Section 1.106(g) of the Federal Communications Commission (“FCC” or “Commission”) rules and regulations, respectfully submits its Comments on the Petition for Reconsideration (“Petition”) filed by the State of Indiana (“State”) in the above-entitled proceeding. EWA is submitting these Comments reluctantly. The dispute between the State and the FCC’s Public Safety and Homeland Security Bureau (“Bureau”) with regard to the costs to be paid by Sprint Nextel Corporation (“Nextel”) in conjunction with the rebanding of the State’s 800 MHz system normally would be of no concern to EWA. However, the Petition’s erroneous and gratuitous criticism of the Alliance and its qualifications compel this response.<sup>1</sup>

EWA became involved in this matter because it responded to a phone request from Bill Jenkins of Nextel for a quotation for certain defined rebanding-related licensing tasks. It is not uncommon for the Alliance to receive requests such as this by phone, and EWA responded with

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<sup>1</sup> Although the State chose to make EWA and its qualifications a central focus of the Petition, it failed to serve the Alliance with a copy of the filing, a common courtesy that EWA would have expected from the State’s counsel.

the one page letter to Robin Cohen of Nextel included in Attachment 1 to the Petition (“Nextel Quotation”). The quotation could not be clearer or more specific with regard to the tasks the Alliance would perform and the associated charge for each call sign for those particular tasks. EWA still stands behind that quote: it would have provided those services at that cost for the State and for any other licensee with a similar volume of rebanding applications.<sup>2</sup>

EWA now understands that its quotation was relied upon by both Nextel and the Bureau in the above-identified proceeding. In apparent response to the Bureau’s Memorandum Opinion and Order,<sup>3</sup> the State’s counsel sent EWA a letter dated February 3, 2011 that requested a new quote for the State, but for a different set of application-related tasks than those included in the original June 22, 2010 quotation (“Schwaninger Request”). The Schwaninger Request also is included in Attachment 1 to the Petition.<sup>4</sup> EWA responded by letter dated February 8, 2011, which response is included as Attachment 2 to the Petition (“Schwaninger Quotation”).

In its response, the Alliance clarified that its original quote remained valid for the services defined and stated, with one exception, that it would provide a quotation for the additional tasks identified by the State’s counsel. The Schwaninger Quotation also stated that EWA first wanted confirmation from EMR Consulting, Inc. (“EMR”) that EWA’s fees for performing the additional services would be paid within the Alliance’s normal invoicing cycle and without regard to whether the State was reimbursed for these additional costs by Nextel.

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<sup>2</sup> The Petition’s claim that this pricing was somehow related to Nextel being a member of EWA’s Board is both offensive and laughable. The Alliance has 37 Board members, including enterprise business companies, commercial service providers licensed in all the Part 90 bands, and equipment vendors. It hardly would be economically prudent to discount its fees for all Board members or politically wise to do so only for a single member of the Board. The Nextel Quotation was not “discriminatory pricing” or a “most favored nation” deal for Nextel (Petition at n. 10). It was a “not to exceed” quotation based on a large volume of rebanding applications, and would be the price quoted to any party with a comparable project.

<sup>3</sup> In the Matter of State of Indiana, *Memorandum Opinion and Order*, WT Docket No. 02-55, DA 11-191 (rel. Feb. 2, 2011).

<sup>4</sup> Confusingly, the Nextel Quotation and Schwaninger Request both are included in Attachment 1 to the Petition.

EWA sent the response to EMR c/o the State's counsel and copied Bill Jenkins of Nextel as the original party requesting a quotation for this matter. The Schwaninger Request had explained that "the State wishes to assure Sprint Nextel that the scope of services quoted by EWA includes the provision of each of the above services." Since EWA's response clearly indicated that the original quotation was for only a subset of the tasks requested by the State, providing Nextel with a copy of the Schwaninger Quotation did no more than exactly what the State's counsel said was the State's intention: it advised Nextel that there was a discrepancy between the licensing tasks requested by Nextel and the tasks for which the State had requested a quotation. That was the last the Alliance heard of the matter until it was provided with a copy of the instant Petition by Nextel.

EWA takes no position with regard to whether all of the licensing tasks included in the Schwaninger Request are reimbursable rebanding costs or whether EMR's estimated cost for performing those tasks is reasonable, prudent or necessary. It will leave that determination to the FCC. And had the Petition relied on the one relevant fact that is true – it is not an apples-to-apples comparison between the EWA and EMR quotes because the tasks included in them are different – the Alliance would have considered itself well out of the matter.

EWA has no idea why the State's counsel instead apparently concluded that it was strategically critical for the State to challenge the Alliance's qualifications to prepare rebanding applications in seeking reconsideration of the MO&O. It is possible that this bombastic approach was intended to deflect attention from other issues, perhaps including the scope of tasks in the EMR proposal.<sup>5</sup> Whatever the purpose, the hyperbolic and largely inaccurate

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<sup>5</sup> The statement in the Petition that "Nor was the State inclined earlier to point out EWA's obvious failings for understandable reasons related to public decorum" is perhaps the most ludicrous in all of this overwrought pleading. Apparently counsel has persuaded the State to overcome its previous delicate sensibilities and launch this puzzlingly

statements about EWA in the Petition and in the February 15, 2011 letter from David C. Smith, Executive Director, Integrated Public Safety Commission, State of Indiana to EMR included as Attachment 3 to the Petition (“Smith Letter”), demand a response.

The Alliance will not waste its time or the FCC’s in addressing each and every misstatement in the Petition and the Smith Letter. The facts are as follows:

- EWA’s response to the Schwaninger Request did not “admit” anything. (Petition at 6) The Nextel Quotation was responsive to the Nextel request. By asking EWA to provide a quote for a different set of tasks, surely the State’s counsel understood that the EWA response also would be different.<sup>6</sup>
- The preparation of the Nextel Quotation did not require the Alliance to “familiarize itself with the State’s license data” (Petition at 6) because the specific tasks EWA committed to perform were not license data-specific. The per-call sign quotation would not change irrespective of that data. There was no “failure to consider the need of applications” (Petition at 6) beyond those for which the quote was provided, and not including in the Nextel Quotation tasks for which no quote was sought is certainly not evidence that EWA is “unfamiliar with the rebanding process.” (Petition at 6)
- The Schwaninger Quotation prepared by EWA did not “request[s] payment for a quote” (Smith letter at 3; *see also* Petition at n. 9),<sup>7</sup> a misreading of EWA’s response that is so contrary to its plain language that it cannot be credited. Rather, EWA required assurance that it would be paid for its work by EMR, irrespective of whether the State was reimbursed for these costs by Nextel. Since licensing costs already were in dispute, EWA was specifically unwilling to provide services for EMR “without recourse” in the event the costs were disallowed by the FCC.

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unnecessary and ineffective fusillade to prove what is not in dispute: the EWA and EMR quotes cannot properly be compared since they involve different tasks.

<sup>6</sup> The Petition claims that the EWA quote was “bogus” (Petition at n. 15) because it did not consider the cost of working on the State’s STAs. Of course, that claim is ridiculous even in a pleading that makes repeated misstatements in an attempt to support its position. The quote was for certain work. The fact that the State wants additional work done, work outside of the scope of the initial request, does not render the original quotation “bogus.” It simply makes it inapplicable.

<sup>7</sup> EWA assumes that Mr. Smith relied entirely on the State’s counsel and perhaps EMR in signing a letter that includes any number of inaccurate statements about what tasks the Alliance did and did not agree to perform, first, in the Nextel Quotation and, then, in the Schwaninger Quotation. The letter merely parrots the numerous misstatements and misleading conclusions about the Alliance’s qualifications that permeate the Petition. The claim that EWA has a conflict of interest in preparing rebanding applications because Nextel is one member of the Alliance’s Board of Directors is entirely without basis and is a claim that the State would have been well advised to have investigated independently before including it in its letter.

- EMR, not EWA, was the engineering consultant contracted by the State to analyze whether the rebanding frequencies provided by the Transition Administrator would provide post-rebanding comparability. Therefore, EWA properly declined to “provide all adjacent and cochannel analyses to assure the State will not suffer any degradation of operation following rebanding.” (Schwaninger Request) EWA instead agreed to provide EMR and the State with a list of co-channel and adjacent channel licensees that would enable EMR to perform the analyses for which it presumably was being paid.
- The Petition claims that EWA is not qualified to prepare 800 MHz rebanding applications because its “experience is primarily in a shared spectrum environment” and the State has “investigated EWA and found no evidence that EWA has ever prepared and filed with the Commission an application to authorize a public safety radio facility.” (Petition at 8) Of course, this ignores the fact that many non-public safety entities have been rebanded pursuant to an application process identical to that which the State will follow.<sup>8</sup> In fact, however, EWA routinely prepares applications for both exclusive and shared channels in all Part 90 bands, including almost 1,000 applications annually for public safety entities that then are then filed with the Commission by a certified public safety frequency coordinator. EWA would have been pleased to share that information with the State had the question been raised.

In fact, however, the number of regular Part 90 applications that EWA prepares, whether for shared or exclusive channels and whether for public safety or other Part 90 eligible entities, is irrelevant. As described in the Petition itself, the rebanding applications for which the Nextel Quotation was requested are strictly circumscribed in what actions can be taken. The first application adds the replacement frequencies; the second removes the original frequencies by deletion or assignment. (Petition at 3) Contrary to the Petition, there is no “engineering or interagency cooperation” or involvement by the Regional Planning Committees (Petition at n. 9) in the preparation of a rebanding application and no frequency coordination is required.<sup>9</sup> Contrary to the Smith Letter, the preparation of a rebanding application does not involve a determination as to whether “the replacement channels would be properly engineered.” (Smith Letter at 3) If the State needs someone to prepare 800 MHz applications that involve such matters, then they clearly are not the rebanding applications for which Nextel requested a quote.

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<sup>8</sup> The author of the Smith Letter apparently had forgotten the many business, industrial and commercial 800 MHz systems that have been rebanded when it discounted EWA’s representation of business and industrial licensees in the condescending, but once again inaccurate, statement that, “With all due respect to EWA, the State does not deem that experience directly relevant to the rebanding project.” (Smith Letter at 2)

<sup>9</sup> The Petition’s claim that “such studies are required for RPC approval and coordination with adjacent states’ use of channels” (Petition at n. 7) suggests that the real issue in this matter is not rebanding applications *per se*, but other applications the State intends to file for its 800 MHz system. Rebanding applications themselves require no RPC approval or inter-state coordination process.

- The Smith Letter includes the following statement: “Also disturbing is that the State’s research suggests that EWA would not, in fact, perform the services it offers and would, rather, subcontract the tasks to yet another concern” (Smith Letter at 2). That statement, unlike those cited above that are patently incorrect, is simply incomprehensible. EWA has no idea what tasks the State thinks would be subcontracted (or why it necessarily would be a problem if that were the case) and can only conclude that, once again, the State has been misinformed by its counsel and/or EMR.

EWA was asked for quotes by both Nextel and the State’s counsel. It responded to both promptly and fairly. The Alliance is essentially indifferent as to the outcome of this matter, although it must profess some curiosity about why the State chose as its primary strategy an attempted vilification of the Alliance’s entirely neutral role through a litany of transparently inaccurate and misleading statements in the Petition. However, having gone through the wearisome exercise of exposing the numerous misstatements in the Petition, absent a directive to the contrary from the FCC, the Alliance expects to have no further involvement in this matter.

Respectfully submitted,

ENTERPRISE WIRELESS ALLIANCE

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February 28, 2011

**CERTIFICATE OF SERVICE**

I, Linda J. Evans, secretary of Lukas, Nace, Gutierrez & Sachs, LLP hereby certify that the foregoing COMMENTS OF THE ENTERPRISE WIRELESS ALLIANCE were served on this 28th day of February 2011, by e-mail, to the following:

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\_\_\_\_\_/s/  
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