

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

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

**To: Chief, Public Safety and
Homeland Security Bureau**

REPLY

Preferred Spectrum Investments, LLC, 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”), by and through their attorney, and pursuant to Section 1.45(c) of the Commission’s rules,¹ submits this **REPLY** to Sprint Nextel Corporation’s (“Sprint”) Reply filed on March 1, 2011 (“Sprint Reply”). The Opponents submitted its Opposition on February 22, 2011 (“Opposition”) requesting that the Commission deny Sprint’s Request for Waiver, filed on February 11, 2011 (“Waiver Request”), and demonstrated that a third extension of Sprint’s obligations to relinquish portions of the 800 MHz spectrum was not in the public interest.

In response, Sprint sought to have the Public Safety and Homeland Security Bureau (the “Bureau”) dismiss the Opposition. In particular, Sprint stated that the Opponents did not serve a copy of their Opposition to Sprint as required under the Commission’s rules. In addition, Sprint argued that the Opponents did not have standing to submit the Opposition. Finally,

¹ See 47 C.F.R. §1.47(c)(2010).

Sprint stated that it was not to blame for delay in the 800 MHz reconfiguration, and that the attention should be “redirected to the 800 MHz incumbent licensees.”²

As discussed herein, the Opposition should not be dismissed, and the Waiver Request must be denied. First, Sprint is simply incorrect that the Opposition should be dismissed on procedural grounds. The Opponents did serve Sprint with a copy of its Opposition, through the mail, as required by Section 1.47(d) of the Commission’s rules. Moreover, since Sprint filed its Waiver Request relating to an order in a notice-and-comment rulemaking proceeding, Sprint cannot claim that the Opponents did not have standing to submit the Opposition. The Commission recently rejected a similar argument by Sprint in a related proceeding, and Sprint should be admonished for raising the same failed argument in the instant matter.

Second, and more significantly, the Waiver Request should be dismissed because Sprint failed to provide any additional evidence that the requested action, namely the Commission changing the deadline by which Sprint relinquishes spectrum, is in the public interest. Sprint spent considerable time shifting the blame to incumbent public safety licensees for the delay in the 800 MHz reconfiguration, but it did not provide any specific evidence in support of its request to waiver to delay the relinquishment of the spectrum in the nine NPSPAC regions. While it may be true that the incumbent public safety licensees have not completed the retuning of their equipment, the relinquishment of the Interleaved Band spectrum can and should still proceed so that this spectrum can be repurposed in the near future.

DISCUSSION

1. Sprint was Served a Copy of the Opponent’s Opposition.

Sprint initially argued that it was not served with a copy of the Opposition. Sprint does acknowledge that the Opposition was filed on “the due date for a timely opposition”, so the only procedural basis raised for the Opposition’s dismissal is that it was not served on Sprint.

² *Sprint Reply*, pg. 7.

However, attached as Exhibit C is a Certificate of Service indicating that the Opposition was mailed to Sprint. As provided therein, the Opposition was mailed to Sprint at the address listed on the Request for Waiver, and was placed into the mail on February 23, 2011. Thus, service was completed by the mailing of the Opposition with the United States Postal Service.³

Furthermore, the Commission permits the submission of proof of service at any time, so long as the party being served will not suffer prejudice.⁴ Sprint was clearly aware of the filing of the Opposition since it addressed the specific facts set forth in the Opposition in its reply. Moreover, Sprint did not even attempt to claim that it was prejudiced in any way by the fact that the envelope containing the Opposition apparently was not delivered by Sprint's mail clerk to the signatories of the Request for Waiver.

Therefore, in light of the submission of the certificate of service attached hereto as Exhibit C, and, in the absence of any claim of prejudice by Sprint for the failure to receive the hardcopy of the Opposition, the Commission must reject Sprint's request to dismiss the Opposition pursuant to Section 1.47 of the Commission's rules.

2. The Opponents have the Requisite Standing to File the Opposition.

Sprint next argued that the Opponents did not have standing to file the Opposition. In particular, Sprint argues that the Opponent's interest in the Interleaved, Expansion, or Guard Band spectrum upon the relinquishment of the spectrum by Sprint, does not confer standing to submit the Opposition.

Ironically, Sprint makes this argument less than one month after the Commission specifically stated that the Opponents may participate in this rulemaking proceeding.⁵ In so far as Sprint's Request for Waiver was submitted in WT Docket 02-55, and sought the adjustment

³ See 47 C.F.R. § 1.47(f)(2010) ("Service by mail is complete upon mailing.").

⁴ See 47 C.F.R. § 1.47(g)(2010) ("The Commission may allow the proof to be amended or supplied at any time, unless to do so would result in material prejudice to a party.").

⁵ *Improving Public Safety Communications in the 800 MHz Band, New 800 MHz Band Plan for Puerto Rico and the U.S. Virgin Islands*, Memorandum Opinion and Order, DA 11-197, ¶8 (PSHSB 2011).

of deadlines originally established by an order in the rulemaking proceeding,⁶ it is inconceivable that Sprint would now claim, just three weeks after being told otherwise, that the parties interested in the outcome of this rulemaking proceeding did not have standing to submit the Opposition. Whether the Opponents' interest is "tenuous" or not, the Bureau has specifically found that the Opponents have an interest in the outcome of WT Docket 02-55,⁷ and thus, certainly have standing to object to a request to modify the deadlines imposed by the Commission in that very same rulemaking proceeding.

Moreover, the cases cited by Sprint addressing the Opponent's reference to *Sanders Bros.*, 309 U.S. 470 (1940), do not support its arguments. In particular, while Sprint cites the recent rejection of a petition for declaratory relief, that decision turned on the fact that it was determined that the petitioner was actually seeking reconsideration of an earlier decision, and that the petitioner was not a party to that earlier proceeding.⁸ The other cases cited by Sprint fail in similar order.

As noted above, the Bureau has already confirmed that the Opponents are interested parties in this notice-and-comment proceeding, and thus, Sprint's reliance on license-specific adjudications is misplaced. The instant proceeding relates to deadlines established in a notice-and-comment proceeding in which the Opponents have been found to have a cognizable interest. Therefore, the Opponents clearly had standing to submit the Opposition.

3. Sprint Failed to Provide any Specific Information in Support of Waiver.

While Sprint expends considerable effort to argue that the Waiver Request was "narrowly tailored", it did not provide any evidence that the grant of the Waiver Request would

⁶ *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), as modified by, *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).

⁷ *Id.*

⁸ *Improving Public Safety Communications in the 800 MHz Band*, Order, nt. 15, DA 11-337, released on Feb. 24, 2011 (PSHSB 2011).

serve the public interest. In fact, the grant of the Waiver Request would directly undermine the purpose of imposing the deadline in the first place,⁹ namely the relicensing of the spectrum for public safety and other uses.

Sprint carried forward its tepid effort to substantiate the basis for granting its Waiver Request in its Reply. While Sprint referenced the delay by certain public safety licensees to finalize their reconfiguration plans,¹⁰ it did not provide any direct evidence of the harm that the relinquishment of the spectrum in question would have on its operations. Despite the fact the Opponents repeatedly raised this very point in its Opposition, the only effort made by Sprint to address this point in response was a footnote noting that the Commission had previously granted extensions based on Sprint's claims of network disruption.¹¹

Clearly, then, Sprint was aware of the possibility of network disruption in 2008 when seeking its first waiver, and then again in 2010 when it sought to further delay its obligations imposed by the Commission in Docket 02-55. Despite this awareness of the potential for network disruption, and the impact the potential disruption may have on its customers, apparently Sprint did not take steps to ameliorate the potential problem over the intervening years.

Instead, Sprint has repeatedly relied upon the expectation that the Commission will continue to grant waivers with minimal investigation and supporting information. In the absence of any specific harm, however, Sprint has failed to carry the burden of demonstrating that the grant of a waiver under Section 1.925 of the Commission's rules is in the public interest in the instant proceeding.

⁹ 47 C.F.R. §1.925(b)(3)(2010).

¹⁰ *Sprint Reply*, pg. 7

¹¹ *Sprint Reply*, nt. 24.

CONCLUSION

It is clear that the Interleaved Band relinquishment deadline adopted by the Commission was intended to expedite the relicensing of this spectrum, initially for public safety purposes, and then licensing for other users. In fact, Sprint has acknowledged that the Commission has started to license this spectrum in markets where Sprint has complied with its obligations.

In the instant matter, however, Sprint has had two separate bites at the apple to provide detailed information as to how the imposition of the relinquishment deadline in the remaining nine NPSPAC Regions would undermine the purpose of the deadline, or cause unreasonable harm to Sprint, and it has failed to do so. Instead, it has shifted the blame for the reconfiguring delay onto the public safety licensees, and has failed to provide any information to support its claim that network disruptions would occur if it complied with its obligations.

As a result, Sprint Nextel Corporation has failed to satisfy the waiver standards set forth in Section 1.925 of the Commission's rules, and its Request for Waiver must be denied.

Respectfully submitted,

**PREFERRED SPECTRUM
INVESTMENTS, LLC, et. al.**¹²

By: 

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March 8, 2011

¹² The parties are listed in Exhibits A and B.

EXHIBIT A

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Wells, Lyle L.
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EXHIBIT B

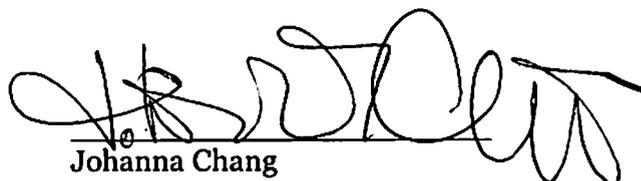
Acura Plus, Inc.
Adams, Benjamin
Balaban, Edward G.
Berberena, Angel
Biderman, Ben & Barbara
Bishop, Gloria K.
Budrow, Fred
Byrd, Herman J.
Chieco, Kathleen
Chinuge, David
Clark, Glenn E.
Cullar, Thomas M.
Davis, Max
Derdiger, Ira G.
Dorigo, Andrea E.
Driscoll, Paul
Estate of Donald Garges
Fischer, Walter 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.

EXHIBIT C

Certificate of Service

I, Johanna Chang, hereby certify that, on February 23, 2011, I caused a copy of the "Opposition to Request For Waiver" to be served via U.S. mail, postage prepaid to the following persons:

Lawrence R. Krevor
James B. Goldstein
Sprint Nextel Corporation
12502 Sunrise Valley Drive
Reston, Virginia 20196



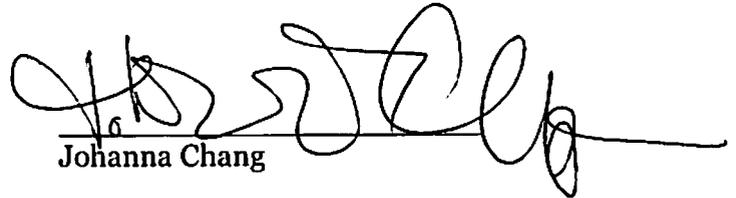
Johanna Chang

* indicates delivery by hand

Certificate of Service

I, Johanna Chang, hereby certify that, on March 8, 2011, I caused a copy of the "Reply" to be served via U.S. mail, postage prepaid to the following persons:

Lawrence R. Krevor
James B. Goldstein
Sprint Nextel Corporation
12502 Sunrise Valley Drive
Reston, Virginia 20196


Johanna Chang

* indicates delivery by hand