

**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)	
)	

REPLY TO SPRINT NEXTEL CORPORATION

Smartcomm, L.L.C. (“Smartcomm”) hereby responds to Sprint Nextel Corporation’s (“Sprint”) Reply to Oppositions of its request for waiver of the Commission’s ruling that it vacate all of its 800 MHz Interleaved Band spectrum under 815/860 MHz, regardless of the state of reconfiguration.¹ Rather than responding to the demonstration of the deficiencies in its request, Sprint attempts to confuse the issues by repeating its previous attack on Smartcomm’s standing, no matter that the Commission has already rejected Sprint’s position and found that Smartcomm has standing in the proceeding, and overtures of sympathy for public safety concerns, but they appear hollow in light of the troubling failure to meet a successive series of deadlines. The Commission no longer should allow Sprint to divert its attention from Sprint’s failure to meet its obligation to vacate all its non-border area 800 MHz Interleaved Band

¹ See Reply to Oppositions to Sprint Nextel Corporation’s Request for Wavier, WT Docket 02-55 (Mar. 1, 2011) (“Sprint Reply”).

spectrum under 815/860 MHz and should deny its request as an improper request for reconsideration of the FCC's *Vacated Spectrum Order*.²

I. SMARTCOMM HAS STANDING

Smartcomm's standing is a matter of record in this proceeding.³ As Sprint well knows, the Commission decided this issue just weeks ago in this notice and comment rulemaking proceeding where standing is held by an "interested person."⁴ Moreover, Smartcomm meets the even higher standard suggested by Sprint.⁵ Even if the Commission chooses not to accept the Smartcomm Opposition as a formal pleading, the filing is still relevant as an informal comment. The Smartcomm Opposition meets all the requirements of Section 1.41 of the Commission rules by providing the facts it relied upon, the relief sought, and Smartcomm's interest in the proceeding.⁶ The Commission has accepted filings as informal Comments in similar circumstances in this proceeding even when the filing party did not specifically request for it to do so.⁷ The FCC should accept and seriously consider the Smartcomm Opposition as it relates to the public interest.

² Improving Public Safety Communications in the 800 MHz Band – Relinquishment By Sprint Nextel of Channels in the Interleaved, Expansion, and Guard Bands, WT Docket No. 02-55, *Order*, FCC 08-253 (rel. Oct. 20, 2008) ("*Vacated Spectrum Order*").

³ Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, *Memorandum and Order*, DA 11-197 ¶¶ 6-8 (rel. Feb. 7, 2011).

⁴ *Id.* ¶ 8.

⁵ See Smartcomm Opposition, WT Docket 02-55, 5-6 (Feb. 22, 2011) ("Smartcomm Opposition").

⁶ See 47 C.F.R. § 1.41.

⁷ See, e.g. Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, DA 08-1444 ¶ 9 (rel. June 19, 2008) (allowing an opposition to be considered as an informal objection despite a lack of standing). Smartcomm, on the other hand, specifically makes the request.

II. SPRINT'S WAIVER REQUEST IS EFFECTIVELY AN IMPROPER RECONSIDERATION REQUEST

Sprint's successive requests for the Commission to extend the deadline for vacating the Interleaved Band spectrum should be treated as it effectively is: a long time barred petition for reconsideration of the Commission's prior decision in the guise of a string of waiver requests. Sprint asked the Commission to allow Sprint to remain in the band without a hard deadline.⁸ While it extended the initial June 26, 2008 deadline, the Commission said "no" to Sprint's request and ordered Sprint to vacate the frequency even if the reconfiguration was incomplete by March 31, 2010.⁹ But, multiple deadline waivers after, Sprint would violate that decision by essentially not submitting itself to any deadline. Sprint again has sought to replace the deadline for it to fulfill its obligations. With its present waiver request, Sprint asks the Commission to lengthen its original deadline by a total of 48 months of extensions, which is much longer than the original 36-month timeline the Commission set for the completion of reconfiguration in the *800 MHz Band Order*.¹⁰

III. SPRINT SHOULD BE HELD ACCOUNTABLE

Sprint asserts it is blameless for the reconfiguration delay, because it "cannot compel a public safety licensee to perform its planning work more quickly, negotiate agreements with Sprint Nextel or its vendors without delay, or perform the series of tasks necessary to complete each individual 800 MHz retune."¹¹ Sprint for its part, claims it "has no incentive to delay 800

⁸ See Letter from Lawrence R. Krevor, Sprint, to Marlene Dortch, FCC, WT Docket No. 02-55, Petition for Relief at 4-5 (June 17, 2008).

⁹ *Vacated Spectrum Order* ¶ 15.

¹⁰ See *id.* ¶ 11 (requiring that Sprint complete the band reconfiguration process within 36 months of release of a Public Notice announcing the start date of reconfiguration in the first NPSPAC region).

¹¹ Sprint Reply at 7.

MHz band reconfiguration and would retune every remaining licensee today were they ready to do so.”¹² But its assertions are not sufficient to justify an extension for a number of reasons. Sprint is not blameless in the reconfiguration delay. Indeed, it is arguably the major contributor to them.¹³ First of all, the possibility that some blame for the delay belong to public safety licensees does not mean that all of the blame belongs to them exclusively, and that none should be placed at Sprint’s door. Second, Sprint does not explain what has changed since it submitted itself to the original 2008 deadline; at a minimum, even if Sprint were otherwise blameless this would be a forecasting failure on its part. As the Commission has noted, it has allowed Sprint to prepare for and mitigate the potential spectrum shortfalls “by providing Sprint access to 900 MHz spectrum and crediting Sprint for the cost of constructing additional cell sites to increase its network capacity.”¹⁴ Thus, Sprint’s failure to prepare itself over the years appears partly due to its own mismanagement, rather than a lack of spectrum. Third, and most importantly, Sprint’s incentives are not a reliable safeguard precisely because the successive extensions have attenuated them: if Sprint believes that it will be able to still have the band so long as the reconfiguration is not complete, its incentive appears to be to prolong reconfiguration, not to expedite it. Fourth, finally, the allocation of blame cannot be proven by Sprint’s theoretical

¹² *Id.*

¹³ Letter from Association of Public-Safety Communications Officials – International, Inc. (“APCO”) et al., to Kevin Martin, FCC, WT Docket No. 02-55, at 1 (dated May 9, 2007) (pointing to Sprint as a “root cause” of “the hundreds of protracted negotiations between Sprint Nextel and public safety licensees regarding the cost of planning for and implementing the rebanding of their 800 MHz radio systems.”); *see* Letter from APCO, the International Association of Chiefs of Police (“IACP”) and the International Association of Fire Chiefs (“IAFC”), to Marlene H. Dortch, FCC, WT Docket No. 02-55, at 1 (dated Feb. 25, 2011) (“Public Safety Letter”) (expressing frustration over the delay).

¹⁴ *See* Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Order*, DA 08-253 ¶ 28 (rel. Oct. 30, 2008); Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Third Memorandum Opinion and Order*, 22 FCC Rcd. 17209, 17217 ¶ 28 (2007) (*800 MHz 3rd MO&O*).

assertions but rather would demand a rigorous fact-finding process. The purpose of the deadline is to obviate that process and to give Sprint the incentive that Sprint says it has. Sprint should be held to its obligation to vacate the band.

Regardless of fault, the extensions have caused serious public safety injury.¹⁵ Although Sprint implies that its waiver request would be consistent with past Bureau actions,¹⁶ this is only true to the extent that the Commission has granted Sprint's past requests for waiver. Otherwise, the Commission has expressed the necessity for deadlines that would spur Sprint to expeditiously finish reconfiguration.¹⁷ By granting Sprint's request, the Commission would be nullifying that objective. Sprint is not even willing to commit itself that it promises that it would not request a fifth extension, making Sprint's request neither "narrow" nor "limited."¹⁸

Public safety authorities have expressed concern that the regions in which Sprint has not cleared the spectrum include not only three entire states, but also a number of major metropolitan areas, such as New York, Chicago, Dallas, Houston, Baltimore, Washington, D.C., San Francisco, Miami, Orlando, Tampa, and New Orleans.¹⁹ This problem will only become more serious for as long as it takes Sprint to finally vacate that spectrum as promised, potentially harming millions of people. One reason the FCC imposed a deadline was to "provide public safety with certainty regarding when such spectrum will become available to meet public safety

¹⁵ See Public Safety Letter at 1 (lamenting the pent-up demand for additional public safety spectrum); see also Letter from APCO, IACP, and IAFC, to Marlene H. Dortch, FCC, WT Docket No. 02-55, at 2 (dated Feb. 3, 2010) (explaining that most of the public safety agencies waiting for new interleaved channels have no viable alternatives).

¹⁶ Sprint Reply at 1.

¹⁷ Improving Public Safety Communications in the 800 MHz Band, WT Docket 02-55, Order, DA 10-576 ¶ 13 (rel. Mar. 31, 2010). (*Third Extension Spectrum Order*).

¹⁸ See generally *id.*

¹⁹ Public Safety Letter at 1.

demand...”²⁰ The only certainty that the Commission would be providing by granting Sprint’s request is the certainty that Sprint will continue to delay the public safety need for spectrum.

IV. CONCLUSION

Sprint does not properly address or justify its inaction; explain how its request is procedurally proper and not an untimely reconsideration petition; or how its request will serve the public interest in the major metropolitan areas in which it has yet to vacate the spectrum. Granting Sprint yet another extension would disserve the public interest and would be procedurally infirm. The request should therefore be rejected or, in the alternative, granted only for a limited period of weeks and subject to strict conditions that will be unwaveringly enforced.

Respectfully submitted,

/s/

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²⁰ *Third Extension Spectrum Order* ¶ 13.

