

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

In the Matter of)	
)	
County of Genesee, New York)	WT Docket No. 02-55
)	Mediation No. TAM-43102
and)	
)	
Sprint Nextel Corp.)	

To: Adm. James Arden Barnett, Jr.
Chief, Public Safety & Homeland Security Bureau

MOTION FOR LEAVE TO INTERVENE

Oakland County, Michigan (“Oakland”), through counsel and pursuant to Section 1.106(b)(1) of the Commission’s Rules, 47 C.F.R. §1.106(b)(1), hereby respectfully requests leave to intervene in the above-captioned proceeding. In support thereof, the following is shown:

I. BACKGROUND

Oakland County operates an 800 MHz Harris OpenSky trunked radio system for its Public Safety communications. OpenSky is a TDMA technology, offering the Oakland integrated voice and data service and up to four (4) talkpaths per channel. The system is networked and is deployed at 37 sites incorporating 44 Public Safety 800 MHz channels and is designed to provide coverage into buildings. Also included in the County’s network architecture are several 700 MHz OpenSky cell sites to fill in coverage between 800 MHz high sites. Lastly, the County employs vehicular repeaters operating on four (4) frequencies separate from the trunked infrastructure to cover those areas needing coverage enhancement, or for the creation of ad-hoc networks to accommodate field tactical situations. The County’s network serves 100 public safety agencies located in Oakland (including fire, police and public safety departments and hospitals) and over 5,000 subscriber units.

The Commission released a Memorandum Opinion and Order (“*MO&O*”) issued by the Deputy Chief, Policy and Licensing Division, Public Safety and Homeland Security Bureau, on September 9, 2011 in the above-captioned proceeding.¹ That decision finds that it is appropriate in the Canadian Border Area for a public safety licensee to be assigned frequencies as part of 800 MHz rebanding which are within 1 MHz of Nextel’s cellularized operations. At this time, the TA has assigned three channels (862.6125, 862.7375 and 862.7625 MHz) to Oakland County that are within 1 MHz of the first projected frequency for Nextel’s ESMR operations (projected by the TA to be 863.0625 MHz), two of which are within .5 MHz of Nextel’s projected ESMR operations.

¹ DA 11-1521, released September 9, 2011.

II. MOTION FOR LEAVE TO INTERVENE

As Oakland County's TA-assigned frequencies are within 1 MHz of Nextel's proposed cellularized operations, the *MO&O* has a direct impact on Oakland County. The impact is not speculative. Rather, the *MO&O* makes a decision on a matter of law, i.e. whether an 800 MHz public safety licensee in the Canadian Border Area can be assigned frequencies by the Transition Administrator which are less than 1 MHz from Nextel's proposed operations. With regard to this point, there is no factual distinction between Oakland County and Genesee County's systems: (1) both operate on 800 MHz spectrum in the Canadian Border Area; (2) both are public safety eligible licensees; and (3) both have been assigned channels by the 800 MHz Transition Administrator which are less than 1 MHz distant from Nextel's proposed operations. Thus, Oakland County meets the "aggrieved/adversely affected" test for standing.² The Commission has a long history of granting intervention requests when a third party is adversely impacted by a Commission decision.³

The mediation process established by the TA Mediator, and blessed by the Commission, provides that the mediation process is confidential.⁴ Thus, Oakland was not afforded an opportunity to participate in earlier stages of this proceeding, despite the huge impact this decision will have on Oakland's system.⁵ On this basis, Oakland believes that it satisfies the Commission's standards set forth in Section 1.106 for intervention by Oakland County.

² *Aspen FM, Inc., Memorandum Opinion and Order*, 10 CR 451 (1997).

³ *RCN Telecom Services of California, Inc. d/b/a RCN of California, Order on Reconsideration*, DA 00-1213, (Cable Ser. Bur.) released June 5, 2000; *Applications of Caloosa Television Corporation to Convert Low Power Television Station*, DA 04-3197, released October 6, 2004; *Midwest Bell Communications*, DA 00-1353 (PSPWD), released June 19, 2000; *Pacific Broadcasting of Missouri, LLC*, 32 CR 774 (2004).

⁴ See, the Transition Administrator's Alternative Dispute Resolution Plan at pages 3-4. http://800ta.org/content/resources/ADR_Plan.pdf

⁵ 47 C.F.R. §1.106(b)(1).

WHEREFORE, the premises considered, it is respectfully requested that the Commission act in accordance with the views presented herein and GRANT Oakland County's Motion for Leave to Intervene.

Respectfully submitted,

OAKLAND COUNTY, MICHIGAN

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It's Attorney

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Date: October 11, 2011

CERTIFICATE OF SERVICE

I hereby certify that on this 11th day of October, 2011, a true copy of the foregoing Motion For Leave To Intervene was served by electronic mail upon:

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