

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

In the Matter of	)	
	)	
Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees	)	WT Docket No. 12-64
	)	
Request for Declaratory Ruling that the Commission's Rules Authorize Greater than 25 kHz Bandwidth Operations in the 817-824/862-869 MHz Band	)	WT Docket No. 11-110
	)	

**OPPOSITION TO PETITION FOR RECONSIDERATION**

**SPRINT NEXTEL CORPORATION**

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September 17, 2012

**TABLE OF CONTENTS**

SUMMARY ..... i

I. ORANGE COUNTY’S FAILURE TO PARTICIPATE IN THIS  
PROCEEDING BARS ITS PETITION FOR RECONSIDERATION .....3

II. ORANGE COUNTY’S RECONSIDERATION ISSUES WERE FULLY  
ADDRESSED IN THIS PROCEEDING.....5

III. CONCLUSION.....12

## SUMMARY

Orange County's Petition for Reconsideration is procedurally deficient and should not be granted. First, Orange County failed to participate in this rulemaking proceeding by raising its concerns in timely filed comments. Second, its concerns on reconsideration are repetitious as the Commission explicitly considered and rejected these same issues during the proceeding and Orange County provides no valid reason justifying reconsideration. Orange County's one "new" technical issue is in fact not new at all and can be addressed through existing Commission rules, regulations and procedures, which Orange County has inexplicably failed to do.

The Commission's *800 MHz Broadband Report and Order* conditions, together with the other comprehensive mandatory technical rules that will continue to apply to 800 MHz ESMR and Cellular Band licensees, should ensure continued interference protection for public safety licensees in the 800 MHz band. All 800 MHz ESMR and Cellular licensees – regardless of the technology they deploy or technical conditions they operate under – are obligated and will remain obligated under Section 90.673 of the Commission's Rules to abate unacceptable interference caused knowingly or unknowingly, directly or indirectly, to any 800 MHz public safety licensee, so long as the public safety licensee's own operations are consistent therewith. This strict responsibility to protect 800 MHz public safety licensees from interference is not lessened or affected in any way by the Commission's decision herein permitting wideband operations in the 800 MHz ESMR channels.

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**OPPOSITION TO PETITION FOR RECONSIDERATION**

Pursuant to Section 1.429(f) of the Federal Communications Commission's ("Commission") Rules,<sup>1</sup> Sprint Nextel Corporation ("Sprint Nextel") files this opposition to the Orange County, CA ("Orange County") Petition for Reconsideration<sup>2</sup> of the *Report and Order*<sup>3</sup> in this proceeding.

The Commission unanimously adopted the *Broadband Report and Order* on a comprehensive record based on both a Wireless Telecommunications Bureau ("Wireless

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<sup>1</sup> 47 C.F.R. § 1.429(f).

<sup>2</sup> See Petition for Reconsideration and Informal Interference Complaint Regarding AT&T Mobility and Sprint Nextel, filed by Orange County Sheriff's Department, WT Docket No. 12-64 (July 9, 2012) ("Orange County Petition").

<sup>3</sup> See *Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-Based 800 MHz Specialized Mobile Radio Licensees*, Report and Order, 27 FCC Rcd 6489 (2012) ("800 MHz Broadband Report and Order").

Bureau”) *Public Notice* comment cycle last year,<sup>4</sup> and a comment cycle this year in response to a *Notice of Proposed Rulemaking*.<sup>5</sup> The Commission received overwhelming support for modifying its rules to provide greater flexibility for 800 MHz Enhanced Specialized Mobile Radio (“ESMR”) licensees desiring to deploy modern, wider-bandwidth technologies while continuing to protect from interference non-ESMR and public safety operations in the 800 MHz band.

Orange County failed to participate in either the *Public Notice* process or the instant *Broadband NPRM*; it gives no valid reason for waiting to raise its concerns at this late date, as required by Section 1.429 of the Commission’s Rules, and therefore lacks standing to seek reconsideration of the Commission’s decision. Further, Orange County’s generalized concerns were fully addressed by the Commission in both the *Broadband NPRM* and the *800 MHz Broadband Report and Order* and the County raises no new technical evidence, facts or legal arguments that warrant the Commission entertaining a petition for reconsideration, much less modifying its well-supported and well-reasoned findings.<sup>6</sup>

Orange County’s petition expresses concern about an ongoing interference complaint involving AT&T, but this concern provides no basis for reconsidering the *800 MHz Broadband Report and Order*. First, this situation existed well before the Commission issued the *Broadband NPRM* yet Orange County did not file comments in response to the *Broadband NPRM* raising this or any other issue. Second, Orange County has failed to explain why

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<sup>4</sup> See *Wireless Telecommunications Bureau Seeks Comment on Petition from Sprint Nextel to Allow Wideband Operations in the 800 MHz Enhanced Specialized Mobile Radio Service Bands*, Public Notice, 26 FCC Rcd 9428 (2011) (“*Public Notice*”).

<sup>5</sup> See *Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees*, Notice of Proposed Rulemaking, 27 FCC Rcd 2742 (2012) (“*Broadband NPRM*”).

<sup>6</sup> See 47 C.F.R. § 1.429.

interference caused by AT&T is relevant to Sprint Nextel's deployment of systems that will use different technologies and operational parameters. Third, Orange County has failed to avail itself of the Commission's well-established procedures for resolving commercial – public safety interference at 800 MHz.<sup>7</sup> Orange County's failure to follow the Commission's procedures to address apparent interference from AT&T's Cellular A Band GSM network provides neither a procedural nor a substantive basis for reconsideration herein. As the Commission detailed in the *800 MHz Broadband Report and Order*, interference from commercial carriers should be addressed under the Commission's existing rules and enforcement procedures. For each of these reasons, the Orange County Petition should be dismissed.<sup>8</sup>

**I. ORANGE COUNTY'S FAILURE TO PARTICIPATE IN THIS PROCEEDING BARS ITS PETITION FOR RECONSIDERATION**

Orange County did not participate by filing comments or any other filing in response to the *Broadband NPRM*. It waited until after the Commission issued the *800 MHz Broadband Report and Order* to file a petition for reconsideration. Section 1.429(b) of the Commission's rules allows a party to seek reconsideration or raise new issues in a reconsideration petition in very limited circumstances:

A petition for reconsideration which relies on facts which have not previously been presented to the Commission will be granted only under the following circumstances:

- (1) The facts relied on relate to events which have occurred or circumstances which have changed since the last opportunity to present them to the Commission;
- (2) The facts relied on were unknown to petitioner until after his last opportunity to present them to the Commission, and he could not through

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<sup>7</sup> See 47 C.F.R. §§ 90.673-90.674.

<sup>8</sup> In the event the Commission grants reconsideration, Orange County's Petition should be denied on its merits, as discussed more fully below.

the exercise of ordinary diligence have learned of the facts in question prior to such opportunity; or

(3) The Commission determines that consideration of the facts relied on is required in the public interest.<sup>9</sup>

Orange County has not and cannot make any of the required showings to warrant the Commission entertaining its Petition. Indeed, Orange County does not even address the requirements set forth in section 1.429(b). Reconsideration via the instant petition would reward Orange County for its failure to participate in the Commission's rulemaking process.

Twenty parties, including a number of public safety interests, filed comments and reply comments in response to the *Broadband NPRM*. After reviewing this extensive record, and providing an opportunity to make *ex parte* presentations under the rules, the Commission issued a well-reasoned decision that addressed all the relevant issues raised by the Commission and the parties. Orange County did not participate in this process and has made no showing under Section 1.429 that warrants it having an opportunity to do so now.

Section 1.429(b) of the Commission's Rules is designed to make effective use of scarce Commission resources, protect the integrity of Commission rulemakings and to allow licensees and other parties to rely on the finality of Commission decisions so they can move forward in deploying new technologies and conducting their business affairs with certainty.<sup>10</sup> Orange

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<sup>9</sup> 47 C.F.R. § 1.429(b).

<sup>10</sup> See, e.g., *Amendment of the Commission's Rules Regarding Maritime Automatic Identification Systems*, Memorandum Opinion and Order, 26 FCC Rcd 8122, ¶ 13 (2011) ("We see no reason to depart from the Commission's well-established policy of not considering matters that are first raised on reconsideration, absent extenuating circumstances. This policy serves the same goals of procedural regularity, administrative efficiency, and fundamental fairness that underlie Section 405 of the Communications Act of 1934, as amended, and the notice-and-comment rulemaking requirements of the Administrative Procedure Act (APA).") (footnotes omitted).

County's Petition ignores Section 1.429's requirements and the important public interest considerations it protects, and should therefore be dismissed on these grounds alone.<sup>11</sup>

## II. ORANGE COUNTY'S RECONSIDERATION ISSUES WERE FULLY ADDRESSED IN THIS PROCEEDING

In addition to its procedural insufficiency, Orange County's Petition raises no issues that were not fully addressed in the Commission's *Broadband NPRM* and *800 MHz Broadband Report and Order*.<sup>12</sup> Orange County generally contends that wider bandwidth technologies should not be permitted in the 800 MHz band in the U.S. – Mexico border area until 800 MHz band reconfiguration is complete.<sup>13</sup> It also alleges that the Commission's advance notice requirements of these deployments are inadequate.<sup>14</sup> Both issues were directly raised in the

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<sup>11</sup> See, e.g., *Facilitating Opportunities for Flexible, Efficient, and Reliable Spectrum Use Employing Cognitive Radio Technologies*, Second Memorandum Opinion and Order, 25 FCC Rcd 587, ¶ 10 (2010) (dismissing a petition for reconsideration "as procedurally defective" when petitioner failed to respond to an issue raised earlier in the proceeding, did not explain why it failed to do so, and did not even claim that any of the three conditions of section 1.429(b) were met); *Unlicensed Operation in the TV Broadcast Bands*, Third Memorandum Opinion and Order, 27 FCC Rcd 3692, ¶ 45 (2012) (finding an independent basis for dismissing a petition for reconsideration when petitioner failed to participate in the proceeding before filing its petition).

<sup>12</sup> See 47 C.F.R. § 1.429(1)(3) (delegating authority to Commission staff to dismiss reconsideration petitions that "rely on arguments that have been fully considered and rejected by the Commission within the same proceeding"); *Amendment of Certain of the Commission's Part I Rules*, Report and Order, 26 FCC Rcd 1594, ¶ 27 (2011) (policy considerations do not require the Commission to consider petitions that "merely repeat arguments the Commission previously has rejected"). See also *Numbering Resource Optimization*, Fourth Order on Reconsideration, 22 FCC Rcd 8047, ¶ 11 (2007) ("The Commission does not grant reconsideration for the purpose of allowing a petitioner to reiterate arguments already presented."); *Improving Public Safety Communications in the 800 MHz Band*, Third Report and Order, 25 FCC Rcd 4443, ¶ 15 (PSHSB 2010) ("It is well established that the Commission does not grant reconsideration for the purpose of allowing a petitioner to reargue matters already presented, considered, and disposed of by the Commission. Otherwise, the Commission 'would be involved in a never-ending process of review that would frustrate the Commission's ability to conduct its business in an orderly fashion.'") (footnotes omitted).

<sup>13</sup> Orange County Petition at 4.

<sup>14</sup> *Id.* at 12.

*Broadband NPRM*, discussed in multiple comments and, based on this record, fully addressed and properly decided.

The Commission's *Broadband NPRM* proposed that an ESMR operator seeking to deploy wider bandwidth technologies be permitted to do so only in the ESMR sub-band of 862-866 MHz (the exclusive ESMR-use channels predominately licensed to Sprint Nextel and containing no public safety channels or licensees) until 800 MHz band reconfiguration is completed in the affected NPSPAC Region;<sup>15</sup> under this condition, an ESMR operator may not deploy wideband technologies in the adjacent 866-869 MHz sub-band until all public safety licensees in the region are retuned to their new channel assignments. Once that retuning is completed, an ESMR operator could then operate wider bandwidth technologies across the entire ESMR band (862-869 MHz).<sup>16</sup> The Commission found that eliminating the previous Part 90 channel spacing and bandwidth limitations would serve the public interest by allowing licensees to deploy more advanced wireless technologies to consumers' benefit while at the same time continuing to minimize the risk of interference to 800 MHz public safety licensees.<sup>17</sup>

The Commission's *Broadband NPRM* also proposed an advance notice requirement by which public safety operators in a NPSPAC region and 70 miles adjacent to the NPSPAC Region

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<sup>15</sup> *Broadband NPRM* ¶ 13. In the Southeastern United States the ESMR sub-band where broadband operations are permissible prior to completion of 800 MHz band reconfiguration is 858.5 – 866 MHz, reflecting a larger ESMR band segment. Licensees may operate 800 MHz high density cellular systems in the band segment 813.5-824/858.5-869 MHz only in the counties listed in Section 90.614(c) of the Commission's rules. *See* 47 C.F.R. §§ 90.7, 90.614(c). In the rest of the United States and its territories, except the Canada and Mexico border areas, licensees may operate 800 MHz high density cellular systems in the 817-824/862-869 MHz band segment. *See id.* §§ 90.7, 90.614(a)-(b), 90.619.

<sup>16</sup> *Broadband NPRM* ¶ 13.

<sup>17</sup> *Id.* (“[P]rotection of public safety licensees in the 800 MHz band is essential and [we] do not intend to take any action that might negatively affect the progress made through the 800 MHz reconfiguration process.”).

would be notified by a wideband ESMR operator at least 30 days prior to it deploying wideband technologies, thereby alerting the public safety operators to the changed radio frequency environment as an additional safeguard in the unlikely event of any new interference.<sup>18</sup>

The *Broadband NPRM* found that “[t]hese conditions appear to balance the need to protect 800 MHz public safety licensees from any possible increased interference, while enabling 800 MHz SMR licensees to efficiently utilize their spectrum to provide more advanced wireless services.”<sup>19</sup> The Commission specifically sought comment on the proposed conditions, and required commenters to provide data to explain any interference issues they claimed may arise.<sup>20</sup> In particular, the Commission stated that Sprint Nextel had provided a “thorough” explanation of why CDMA operation in the ESMR band would not cause any greater interference to public safety licensees than its existing iDEN® operations.<sup>21</sup> Therefore, the Commission directed commenters to specifically address Sprint Nextel’s analysis and provide technical justifications for any counter-proposals.<sup>22</sup>

Commenters supported the Commission proposals and agreed with the Commission’s balancing of interests.<sup>23</sup> APCO, the nation’s oldest and largest public safety communications

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<sup>18</sup> *Id.* ¶ 14.

<sup>19</sup> *Id.*

<sup>20</sup> *Id.* ¶ 15.

<sup>21</sup> *Id.* ¶ 15 n.47.

<sup>22</sup> *Id.*

<sup>23</sup> 800 MHz *Broadband Report and Order* ¶ 9. *See* Comments of Motorola Solutions, Inc. at 4 (“Because the proposals in the Notice will afford greater flexibility of use to 800 MHz ESMR licensees while also providing appropriate protections to public safety operations, MSI supports those proposals.”); Comments of Telecommunications Industry Association at 4 (supporting proposals and stating that “[t]he conditions placed on EA-based licensees’ ability to exceed the channel spacing requirements are appropriate and fair to ensure the ability of public safety licensees to continue to provide reliable service.”); Comments of SouthernLINC Wireless at 11 (“the conditions proposed by the Commission will be more than sufficient to ensure

organization, supported the proposals in the *Broadband NPRM*, including the Commission’s proposal to permit wideband operations even in regions in which 800 MHz rebanding was not complete.<sup>24</sup> APCO found that the *de facto* buffer of at least 1 MHz at the upper and lower edges of the ESMR band “should be adequate to protect public safety from any additional interference potential that might be posed by CDMA operation in the ESMR spectrum.”<sup>25</sup> In addition to Sprint Nextel, other commenters noted that there was little to no risk of interference from changing the bandwidth requirements or authorizing operations in the 800 MHz ESMR band during rebanding.<sup>26</sup>

In the *800 MHz Broadband Report and Order*, the Commission adopted the proposals in the *Broadband NPRM* with little modification. Based on the record, it modified the authorized bandwidth rules to permit any ESMR operator to operate wider band technologies in the 862-866 MHz portion of the band during rebanding, including in the U.S. – Mexico border areas,<sup>27</sup> and in the entire 862-869 MHz band post-reconfiguration.<sup>28</sup> It specifically found that permitting EA-

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continued interference protection for 800 MHz public safety licensees). (Unless otherwise indicated, all comments cited herein were filed in WT Docket No. 12-64 on April 13, 2012.)

<sup>24</sup> See Comments of APCO at 2. APCO also recommended adoption of the 30-day notification provisions proposed in the *Broadband NPRM*.

<sup>25</sup> See Comments of APCO at 3.

<sup>26</sup> See Comments of Motorola Solutions, Inc. at 3; Comments of SouthernLINC Wireless at 3; Comments of Telecommunications Industry Association at 3; and Comments of RCA at 3.

<sup>27</sup> *800 MHz Broadband Report and Order* ¶ 17 (“EA-based 800 MHz SMR licensees will still be obligated to meet all other technical requirements under Part 90, including co-channel separation distances, further protecting 800 MHz public safety licensees operating in the Mexico border area. We find that the notice requirement adopted herein is sufficient to provide additional protection to all 800 MHz public safety licensees from any harmful interference caused by wideband EA-based 800 MHz SMR operations, and find no reason to modify the notice requirement for 800 MHz public safety operations in the Mexico border area.”).

<sup>28</sup> *Id.* ¶ 8.

based 800 MHz SMR licensees to operate with wider channel bandwidths would not increase the risk of interference with public safety licensees. The Commission slightly modified its original notice proposal, adding a requirement that an ESMR operator include in its advance notice the intended initial date of wider bandwidth operations.<sup>29</sup>

Orange County's Petition attempts to re-litigate these exact findings but provides no new information or rationale for overturning the Commission's well-founded findings or conclusions. In fact, Orange County's generalized claim that the Commission's original *800 MHz Report and Order* and the "spirit"<sup>30</sup> of that Order and "did not contemplate" broadband technology prior to the completion of band reconfiguration is factually wrong.<sup>31</sup> The *800 MHz Report and Order* demonstrated that the Commission was well aware that commercial operations would not remain static during rebanding but would continue to expand in and adjacent to the 800 MHz band, thereby providing the primary reason for the two-step process of increased interim interference

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<sup>29</sup> *Id.* ¶ 15. ("In the event that an 800 MHz public safety licensee experiences harmful interference subsequent to receiving the required notice from an EA-based 800 MHz SMR licensee, the public safety licensee can more quickly identify or eliminate EA-based 800 MHz SMR operations as the source of the interference.").

One commenter suggested that an ESMR operator provide advance notice on a per-site basis of the exact location, ERP and antenna height of each cell site at which wideband technology will be operated. Reply Comments of Concepts to Operations at 2 (April 23, 2012). The Commission considered and rejected this proposal as burdensome and unnecessary to assist public safety in monitoring its networks for any increase in interference. *Id.* ¶ 19. Sections 90.675 and 22.973 of the Commission's rules already provide that, upon request, an ESMR or Cellular Band licensee must provide location, ERP, antenna height and spectrum usage to a public safety jurisdiction as part of an information exchange. 47 C.F.R. §§ 22.973, 90.675. Since this rule was originally adopted in the *800 MHz Report and Order*, Sprint Nextel has provided such information on an ongoing basis to public safety jurisdictions requesting it. Pursuant to this rule, Sprint Nextel would not object to providing such information to Orange County upon request when it finalizes its wideband deployment plans in that area.

<sup>30</sup> Orange County Petition at 3.

<sup>31</sup> *Id.* at 9.

protections during the transition to a comprehensive band realignment.<sup>32</sup> The Commission well understood that broadband technology was already in use adjacent to the 800 MHz band and that ESMR operators would seek to deploy advanced technologies.<sup>33</sup> The Commission’s *800 MHz Report and Order* provided continued flexibility for a broad range of commercial technologies and established rules to maximize the co-existence of commercial operations and public safety operations at 800 MHz – especially during band reconfiguration.<sup>34</sup> The Commission adopted

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<sup>32</sup> *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, 19 FCC Rcd 14969, ¶ 13 (2004) (“*800 MHz Report and Order*”) (“The public safety interference problem described in the *NPRM* is serious and will only increase in severity as private, public safety and commercial use of the 800 MHz band intensifies.”); *id.* (“Although many ESMR and cellular telephone licensees have been commendably cooperative in bearing the responsibility for identifying and promptly curing interference at their own expense, their ability to continue to do so effectively will become problematic as more intense use is made of 800 MHz band and cellular telephone spectrum.”); *id.* ¶ 14 (“While these measures have helped to alleviate interference in some instances, the record leads us to conclude that the interference problem will only intensify as cellular-architecture licensees make more intensive use of their spectrum and that voluntary measures alone will not stem the growth of unacceptable interference.”); *id.* ¶ 17 (“ESMR and cellular systems will continue to expand. This will increase congestion in the 800 MHz band as well as the attendant interference to public safety systems operating in the band.”).

<sup>33</sup> In an *ex parte* submission to the Commission during the deliberations over the 800 MHz rebanding proposal in WT Docket No. 02-55, Nextel described its already existing contiguous spectrum holdings in the 862-866 MHz portion of the 800 MHz band and its intention to deploy broadband technology in the 800 MHz band in the future. See Letter from Regina M. Keeney, Counsel to Nextel, to Michael J. Wilhelm, Federal Communications Commission, WT Docket No. 02-55, at 16-17 (Dec. 19, 2003). This *ex parte* submission was cited to by the Commission in another context in the *800 MHz Report and Order* ¶ 120 nn. 344-347.

<sup>34</sup> *800 MHz Report and Order* ¶ 103 (“We are persuaded by the record that our goals in this proceeding are best met by our bright-line test for interference protection entitlement, coupled with a standardized technical means of determining that entitlement and assigning the task of abating unacceptable interference to the parties best capable of doing so. ***This approach is, we believe, far preferable—for all concerned—to our attempting to micro manage the technology utilized by the ESMR and cellular industries.*** Thus, by eschewing imposition of across-the-board new technical standards on the industry, we avoid imposing that unnecessary expense and afford the ESMR and cellular licensees ***optimum flexibility to design and operate their systems in a manner that will optimize service to subscribers and avoid unacceptable interference to other users of the 800 MHz band.*** Thus, although we have discussed herein the technical means disclosed in the record to avoid unacceptable interference—especially those that come within the definition of Enhanced Best Practices—we reject as unnecessary, the recommendations of some parties for mandatory restrictions on all ESMR and cellular systems with respect to such

rigorous interference mitigation rules for all commercial carriers during and post-rebanding, as well as the comprehensive band realignment itself which would virtually eliminate interference in the 800 MHz band. The Commission also made clear that commercial carriers, not the Commission, would determine how to specifically resolve instances of interference.<sup>35</sup> Orange County’s contention that the *800 MHz Report and Order* did not permit ESMR deployments or technical changes to commercial networks is simply not true.

Moreover, an interference issue apparently involving AT&T and Orange County’s public safety communications systems provides no legal or policy basis for any reconsideration in this docket; that issue should be mitigated pursuant to the Commission’s rules and/or enforcement authority. The Orange County Petition makes it appear that its interference issue with AT&T is a recent one and that it somehow provides a compelling technical basis for prohibiting ESMR carriers from a broadband deployment in the exclusive ESMR channels adjacent to Orange County’s unretuned NPSPAC channel operations.

***The truth, while unfortunate, is that Orange County has experienced incidents of CMRS – public safety interference going back to the early 2000s.*** This is a direct result of the pre-reconfiguration plan 800 MHz band structure and the disparate deployments of cellularized

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parameters as maximum cell ERP, combiner technology, and specific antenna pattern characteristics.”) (emphasis added) (footnotes omitted).

<sup>35</sup> *800 MHz Report and Order* ¶ 20 (“The method of interference abatement we adopt herein leaves to the involved parties—and not the Commission—the choice of how best to ensure that their systems do not cause unacceptable interference. Thus, a given party may choose from a variety of methods encompassed in the Enhanced Best Practices in each area where interference occurs, including, but not limited to, modification of the cell that is the source of interference or technical improvements to the affected public safety system or other non-cellular 800 MHz systems (at the commercial operator’s expense.”); *see also id.* ¶ 104 (“In the final analysis, it is the question of whether unacceptable interference exists or not that is controlling here; not the specific means by which licensees abate it. The technical filings made in this proceeding convince us that licensees are the best stewards of interference abatement technology and are best capable of determining when and to what degree that technology must be applied.”).

networks and public safety deployments.<sup>36</sup> Orange County's Petition regarding interference is exactly why the Commission adopted the 800 MHz Reconfiguration Plan and why Sprint Nextel both advocated for it and has supported it faithfully for more than seven years. Transitioning Orange County to its 851-854 MHz replacement channels offers the definitive resolution of CMRS – public safety interference for Orange County and the County should move aggressively to retune its network as soon as the revised band plan for the U.S. – Mexican Border region is finalized.<sup>37</sup> The Commission's decision herein, permitting wideband operations in the exclusive ESMR channels 862-866 MHz – and not in the former NPSPAC public safety channels until all public safety licensees in a Region are retuned – will not increase Orange County's risk of CMRS – public safety interference.

### III. CONCLUSION

The Commission's *800 MHz Broadband Report and Order* conditions, together with the other comprehensive mandatory technical rules that will continue to apply to 800 MHz ESMR and Cellular A Band licensees, will ensure continued interference protection for public safety licensees in the 800 MHz band.<sup>38</sup> All 800 MHz ESMR and Cellular licensees, regardless of what technology they might deploy or what technical conditions they may operate under – are obligated and will remain obligated under Section 90.673 of the Commission's Rules to abate

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<sup>36</sup> See *800 MHz Report and Order* ¶ 2.

<sup>37</sup> Now that the United States has reached a comprehensive international treaty agreement with Mexico, 800 MHz band reconfiguration in the U.S. – Mexico border region is on a path towards initiation and completion. See Protocol Between the Department of State of the United States of America and the Secretariat of Communications and Transportation of the United Mexican States Concerning the Allotment, Assignment and Use of the 806-824/851-869 MHz and 896-901/935-940 MHz Bands for Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border (June 8, 2012) (Amended Protocol); see also *Improving Public Safety Communications in the 800 MHz Band; New 800 MHz Band Plan for U.S. – Mexico Sharing Zone*, WT Docket No. 02-55, Further Notice of Proposed Rulemaking, DA 12-1343 (rel. August 17, 2012).

<sup>38</sup> See *800 MHz Broadband Report and Order* ¶ 30.

unacceptable interference caused knowingly or unknowingly, directly or indirectly, to any 800 MHz public safety licensee. This strict responsibility to protect 800 MHz public safety licensees from interference is not be lessened in any way by the Commission's decision permitting wideband operation in the exclusive 800 MHz ESMR channels during the reconfiguration transition in the U.S. – Mexico border area.

Orange County's Petition is procedurally deficient and should not be granted. First, Orange County failed to participate in the rulemaking proceeding. Second, its concerns on reconsideration are repetitious as the Commission explicitly considered and rejected these same issues during the proceeding and Orange County provides no valid reason justifying reconsideration. Orange County's "new" technical issue is not new at all and can be addressed through existing Commission rules, regulations and procedures which Orange County has inexplicably failed to pursue.

Orange County's best long-term remedy against the risk of CMRS – public safety interference is to work with Sprint Nextel and the Commission to retune its system as rapidly as possible. The Commission should expeditiously dismiss Orange County's Petition for Reconsideration as procedurally deficient and substantively without merit.

Respectfully submitted,  
**SPRINT NEXTEL CORPORATION**

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September 17, 2012

## **Certificate of Service**

I hereby certify that on this 17th day of September, 2012, I caused true and correct copies of the foregoing Opposition to Petition for Reconsideration to be mailed by U.S. mail and by electronic mail to:

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