

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

In the Matter of)	
)	
Improving Public Safety Communications)	
In the 800 MHz Band)	WT Docket 02-55
)	
Illinois Public Safety Agency Network Request)	
For Supplemental Waiver of July 31, 2012)	
Deadline for Completion of Rebanding)	

To: Public Safety and Homeland Security Bureau

OPPOSITION OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. (“Nextel”), a wholly owned subsidiary of Sprint Nextel Corporation, hereby opposes the Request for Supplemental Waiver of July 31, 2012 Deadline for Completion of Rebanding submitted by the Illinois Public Safety Agency Network (“IPSAN”) on March 8, 2013 (“Request”).¹ For the reasons set forth below, the Bureau should reject IPSAN’s request for a continuing waiver until October 30, 2013. Instead, the Bureau should establish a hard deadline of June 30, 2013 for completion of IPSAN’s reconfiguration, direct IPSAN to submit bi-monthly status reports to the Bureau that provide specific information on progress made, and order that any further shortfalls in programming radios or other delays risk a conclusion by the Bureau that IPSAN must reband at its own expense.

¹ See Request for Supplemental Waiver of July 31, 2012 Deadline for Completion of Rebanding submitted by the Illinois Public Safety Agency Network (“IPSAN”) on March 8, 2013. While labeled with WT Docket 02-55, the IPSAN request was not apparently not filed in WT Docket 02-55. It also does not appear that IPSAN filed its extension request in the ULS to its lead call sign for 800 MHz band reconfiguration (WPKG583) where some, but not all of its extension requests were previously associated. In an abundance of caution, Nextel is filing this Opposition both in the ULS and in WT Docket 02-55 through the ECFS.

As the Bureau is well aware, IPSAN's progress in reconfiguring its system has been halting, at best. IPSAN presented its reconfiguration cost estimate to Nextel on September 8, 2009, more than three and a half years ago. The parties engaged in extensive negotiations and ultimately entered mediation, which included the submission of Proposed Resolution Memoranda and the issuance of a Recommended Resolution addressing a single unresolved issue. On March 23, 2011, nearly two years ago, the Bureau released a Memorandum Opinion and Order directing the parties to meet with the TA Mediator within ten business days to "conclude a Frequency Reconfiguration Agreement consistent" with the Bureau Order.² Rather than comply with that order, IPSAN announced its intention to reevaluate its cost estimate, and eventually delivered a substantially revised proposal that did not reflect the results of the parties' extensive negotiations and agreements, and substituted a new vendor, Advanced Technology Consulting ("ATC"), for the originally proposed primary vendor, Motorola. On July 29, 2011, the Bureau issued an Order rejecting IPSAN's proffered justification of its refusal to move forward with an agreement as "sophistry," ordering IPSAN to enter into an FRA, and holding in abeyance a ruling on "whether or not IPSAN has, to date, breached its obligation of utmost good faith in rebanding negotiations when it disregarded the directives" of the Bureau's previous order.³ While the Bureau declined to hold IPSAN to the rebanding schedule originally proposed by Motorola, it nevertheless established a one-year deadline of July 31, 2012 for the completion

² *Illinois Public Safety Agency Network and Nextel Communications, Inc.*, Memorandum Opinion and Order, 26 FCC Rcd 4061, ¶ 33 (PSHSB 2011).

³ *Illinois Public Safety Agency Network and Nextel Communications, Inc.*, Order, 26 FCC Rcd 10668, ¶¶ 1, 21 (PSHSB 2011).

of IPSAN’s reconfiguration.⁴ IPSAN proved unable to meet that deadline, and requested a substantial extension of time, until April 15, 2013, to complete reconfiguration.⁵ Now, IPSAN asks the Bureau to countenance yet another delay of more than six months beyond this already-extended implementation deadline.

IPSAN originally claimed to have 4,009 subscriber units. The project schedule proposed by Motorola (the vendor with whom IPSAN refused to work), would have required 130 business days, or approximately six months, to complete the first touch of IPSAN’s subscriber units. This represents a pace of approximately 30 subscriber units per day. At this point, IPSAN has been working on its first touch for approximately 18 months. Yet, according to IPSAN, only 2500 subscriber units have been rebanded – a pace of slightly over six units per day.

The following table, based on data IPSAN has reported to the TA, illustrates the glacial pace of progress in reconfiguring IPSAN’s subscriber units:

<u>IPSAN MDT monthly progress reporting</u>				
Month	Total MDT Rebanded	Monthly Quantity of MDT Rebanded	% MDT Rebanded	% Improvement from Prior month
June 2012	1447	47	36%	1%
July 2012	1526	79	38%	2%
August 2012	1683	157	42%	4%
September 2012	1904	221	47%	6%
October 2012	1904	0	47%	0

⁴ *Id.* at ¶ 26.

⁵ IPSAN’s 2012 request for additional time was not served on Nextel and was acted on by the Bureau prior to Nextel being made aware of the extension request which Nextel would have opposed. The Bureau, without specific discussion of IPSAN issued an extension on August 9, 2012. *Improving Public Safety Communications in the 800 MHz Band; Supplemental Requests for Waiver of the June 26, 2008 Rebanding Deadline*, WT Docket No. 02-55, Order, DA 12-1303 (PSHSB rel. August 9, 2012).

November 2012	2158	254	54%	6%
December 2012	2237	79	56%	2%
January 2013	2312	75	58%	2%
February 2013	2446	134	61%	3%
March 2013	2566	120	64%	3%

At this point, it should be beyond dispute that IPSAN’s refusal to work with Motorola and its insistence on using another vendor have *significantly* delayed reconfiguration.

Notwithstanding IPSAN’s claim in its latest waiver that it will continue to work “to get through this rebanding with all of the efficiency that can be provided despite the considerable challenges faced,” IPSAN’s reconfiguration has moved forward at an unacceptably slow rate that should not qualify IPSAN to seek more time to do more slow work.⁶ IPSAN plainly has failed to meet its basic rebanding obligations. Moreover, a litany of vague claims of delays and challenges fail to warrant any further significant extension of IPSAN’s rebanding implementation timeline.

This is particularly the case given the already-tortured history of the project and IPSAN’s conduct to date. As Commissioner Pai observed: “It is bad enough that the Illinois Public Safety Agency Network (IPSAN) failed to comply with the order issued by the Public Safety and Homeland Security Bureau on March 23, 2011. Even worse is IPSAN’s request to be reimbursed for the costs it incurred during its attempt to evade its legal obligations, which represents an abuse of the Commission’s processes and runs afoul of the ‘chutzpah doctrine.’”⁷ Illustrating that IPSAN has learned nothing about its obligations through this process, IPSAN’s

⁶ Request at 4.

⁷ *Illinois Public Safety Agency Network and Nextel Communications, Inc.*, Memorandum Opinion and Order, 27 FCC Rcd 11459, 11468 (2012) (Statement of Commissioner Ajit Pai) (citations omitted).

latest waiver takes the Bureau itself to task for providing an insufficient amount of time for IPSAN's rebanding.⁸

There simply should be no further excuses and no further delays. The situation calls for strict Bureau oversight, with significant safeguards to ensure IPSAN's accountability. First, the Bureau should establish a firm deadline of June 30, 2013, not subject to waiver, for the completion of IPSAN's reconfiguration. Any costs incurred past that date should not be subject to reimbursement by Nextel, thus making concrete for IPSAN the notion that the agency must work harder to meet rebanding deadlines or suffer the consequences. The delays in completion of this project are exclusively due to IPSAN's unreasonable refusal to follow the Bureau's original order and IPSAN's insistence on submitting an entirely new proposal using a different reconfiguration vendor – conduct that plainly warrants a finding that IPSAN unreasonably delayed its rebanding and acted in bad faith and thus should be subject to the penalties the Commission has established for such conduct. Second, the Bureau should direct IPSAN to submit bimonthly status reports providing information to the Bureau with quantifiable details on IPSAN's progress in reconfiguration and an updated target date for completion of the project.⁹

⁸ According to IPSAN, the Bureau's second order in this matter "did not change the deadline for completion of rebanding despite the passage of time following the *Memorandum Opinion and Order* referenced above. Accordingly, nearly five months had passed between the release of the decision creating the deadline and the parties' entrance into an FRA to allow rebanding to commence." Request at 2, n. 4. Remarkably, then, IPSAN blames the Bureau for not further extending the deadline for completion of IPSAN's reconfiguration despite the fact that the five month delay IPSAN cites was entirely the product of IPSAN's failure to comply with the Bureau's order in the first instance due to IPSAN's insistence on selecting a new vendor for reconfiguration.

⁹ Nextel should be copied on these reports. Notwithstanding IPSAN's claim that it is cooperating with Nextel in good faith, IPSAN did not even bother to provide Nextel with a courtesy copy of the Request so that Nextel could compare it to what Nextel knows of the situation. In addition, IPSAN's counsel has specifically requested that Sprint not be allowed to
(continued...)

Leaving the project up to IPSAN, without Bureau oversight, risks potentially years of additional time and expense that can be spared.

IPSAN's unjustified delays are having an adverse impact on the overall 800 MHz band reconfiguration program. At least three, and likely more, public safety jurisdictions are dependent upon IPSAN completing its long-delayed radio reprogramming so that they will complete their retunes. As a result, the entire Region is in a holding pattern waiting for IPSAN with no indication that they will be capable of meeting their stated timeline. Nextel respectfully requests direct oversight by the Bureau and IPSAN's strict adherence to a Bureau established deadline on this long-delayed retune.

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participate in monthly rebanding status calls between the TA and IPSAN. Nextel does not understand how Nextel's participation in these calls would be anything but beneficial to the process.

The undersigned attests that the statements and representations made in this Opposition are true and accurate to the best of his or her knowledge.

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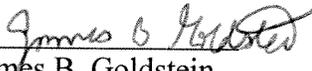
March 20, 2013

CERTIFICATE OF SERVICE

I hereby certify that on this 20th day of March, 2013, a true copy of the foregoing Statement of Position was served electronically upon:

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