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
	)	
Harris County, Texas Further Supplemental Request for Waiver of June 26, 2008 Deadline for Completion of Rebanding WPKL474	)	TA Waiver Reference No. 1144

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 Further Supplemental Request for Waiver of the June 26, 2008 Deadline for Completion of 800 MHz Rebanding submitted by Harris County, Texas ("Harris" or the "County") on April 15, 2013 ("Request"). For the reasons set forth below, it is apparent that the Bureau either should reject the County's request for a continuing waiver until December 30, 2013 as unjustified, or direct the County promptly to sign its Incumbent Clearing Notice ("ICN"), to confirm that it has ceased operational use of pre-rebanding frequencies. The Bureau's intervention in this case is required.

By way of background, Harris executed a Frequency Reconfiguration Agreement ("FRA") with Nextel governing the terms of its reconfiguration in December of 2007. According to Harris' own representations in its latest waiver Request, the County completed the reconfiguration of its network infrastructure on January 10, 2012, and the first touch of its

subscriber units on November 23, 2012.[1] Thus, for some time now the County's infrastructure, as well as its entire subscriber fleet, have been reprogrammed and are operating on the new, post-reconfiguration frequencies. In fact, the Request states that Harris has been operating on its new frequencies since January 27, 2012, and the County ceased operations on its old frequencies on the same date.[2] The only reconfiguration step remaining is the completion of the ongoing second touch, during which the County's non-functional pre-reconfiguration frequencies are removed from the County's radio units.

Notwithstanding the fact that Harris has ceased operations on the pre-rebanding frequencies, Harris will not sign the paperwork required formally to acknowledge that status. As Harris is the only public safety licensee in Region 51 that has not submitted its ICN, Harris County is the sole licensee preventing a declaration that Region 51 has been cleared. There is no apparent reason, and Harris has presented none either in the Request or to Nextel directly, why the County will not sign its ICN and allow the frequency clearing process in that Region to be formally deemed complete.

The Bureau repeatedly has stressed the importance of completing reconfiguration in a timely manner. In particular, the Bureau has determined that licensees seeking additional time to complete reconfiguration beyond April 15, 2013, must "detail the licensee's progress to date and

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[1] Harris County, Texas Further Supplemental Request for Waiver of the June 26, 2008 Deadline for the Completion of 800 MHz Rebanding, WT Docket No. 02-55, Waiver Request Information Form at 4 (April 15, 2013) ("Request").

[2] *Id.*

propose milestone dates for each major rebanding step...that has not yet been completed."[3] There is no question that Harris' reconfiguration has already been subject to substantial, and ongoing, delays.[4] Despite these significant delays, Harris provides the Bureau with no detailed information that could conceivably justify an additional extension of the waiver. The County's two-page waiver request essentially says nothing more than that the County has a large number of subscriber units and that it needs more time to reach them all to complete the second touch.

The second touch does not implicate the ICN in any way Nextel can understand. Even if the County had submitted sufficient detailed information to justify a further waiver, nothing in the Request explains why Harris, despite repeated requests from Nextel, has refused to sign and provide its frequency clearing notice to Nextel. The County's explanation to Nextel has been that it does not want to sign and provide the frequency clearing notice until the second touch is complete. This is a non-sequitur; it is not a credible answer.

First, and most critically, *Harris is no longer using its old frequencies*, and according to its own representation, it has not been using these frequencies since January 27, 2012, nearly *one and a half years ago*. To the extent Harris County had any lingering concerns about regional interoperability that might theoretically have affected its ability to sign an ICN, that is simply no

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[3] *Improving Public Safety Communications in the 800 MHz Band, Supplemental Requests for Waiver of June 26, 2008 Rebanding Deadline for Non-Border Regions and March 19, 2012 Rebanding Deadline for Puerto Rico*, Order, 27 FCC Rcd 9237, ¶ 5 (PSHSB 2012).

[4] A December, 2010 amendment to the County's FRA estimated that retuning the County's infrastructure would require a total of 1,198 days. Reckoning from the December, 2007 execution date, Harris' network infrastructure should have been reconfigured by April, 2011. Once the infrastructure was retuned to operate on the new, post-rebanding frequencies, the ICN should have been signed by Harris and submitted to Nextel. The FRA amendment further estimated that an additional 510 days would be required for system acceptance. While there is no real need to wait until after system acceptance to submit the ICN, that estimate would have had Harris completing system acceptance in September, 2012.

longer an issue. All first touches are complete throughout Region 51, and all pre-rebanding frequencies have been removed from public safety licensees' infrastructure throughout the Region. In seeking to have Harris County sign its ICN, Nextel is merely asking the County to confirm what it has already represented to the Bureau – namely, that Harris is no longer using its old frequencies. This ratification of an obvious fact will allow Nextel and the Bureau to consider Region 51 cleared.[5]

Second, the fact that the second touch has not yet been completed cannot justify the County's inaction on its frequency clearing acknowledgement. Typically, reconfiguring licensees submit their ICNs as soon as their infrastructure is retuned and the old frequencies are removed – a logical approach, because the ICN simply certifies that the licensee has vacated its old frequencies. Further, of course, the Bureau has already determined that "the Commission did not regard the post-rebanding removal of old channels as a necessary component of the rebanding process in all cases," and that including the removal of pre-rebanding channels in the reconfiguration process "will lengthen the time required to complete rebanding."[6] Plainly, in this case, the second touch is delaying the completion of reconfiguration in the Region. In any event, Harris represented in its Request, submitted on April 15, that its second touch project was 80 percent complete. Harris is likely significantly further along at this point – meaning that, even if the need to remove the old frequencies from the County's radio units could somehow justify the

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[5] In fact, given that the Request represents that Harris vacated its old frequencies on January 27, 2012, Nextel respectfully submits that Nextel and the Bureau should consider the frequencies, and thus the Region, cleared.

[6] *City of Boston, Massachusetts and Sprint Nextel*, Order, 22 FCC Rcd 2361, ¶ 11 (PSHSB 2007).

County's inaction on executing the ICN, which it does not, the majority of the County's units have already had those frequencies removed.

Harris is the last remaining licensee in Region 51 yet to certify that it has cleared its pre-rebanding frequencies. There is no basis for the County's inaction because: (1) Harris completed the reconfiguration of its infrastructure last year and it is operating the new, post-rebanding frequencies; (2) Harris has represented to the Commission that it has vacated operations on its pre-rebanding frequencies; and (3) Harris has no Regional interoperability partners still operating on the old frequencies which could theoretically affect the timing of an ICN execution. In short, there is no reason for Harris to delay signing its ICN. Because what ultimately matters is confirming that the Region has been cleared, the Bureau cannot evaluate the County's waiver Request without resolving this important issue.

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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CERTIFICATE OF SERVICE

I hereby certify that on this 17th day of June, 2013, a true copy of the foregoing Opposition was served electronically upon:

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