

May 1, 2008

VIA ELECTRONIC FILING

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street SW, Room TW-A325
Washington, DC 20554

Re: WT Docket No. 02-55
WAIVER – EXPEDITED ACTION REQUESTED

Dear Ms. Dortch:

Over 500 public safety licensees have sought waivers of the Commission's June 26, 2008 deadline for completing 800 MHz band reconfiguration, and additional waiver requests may soon be filed.¹ Consistent with the Commission's *Third MO&O* in this proceeding,² Sprint Nextel Corporation ("Sprint Nextel") respectfully requests a waiver to provide it continued access to the 806-809/851-854 MHz band ("Channels 1-120") until National Public Safety Planning Advisory Committee ("NPSPAC") licensees are ready to retune their systems. When a NPSPAC licensee is ready to retune its network infrastructure out of the 821-824/866-869 MHz band (the "ESMR Block"), Sprint Nextel will vacate the corresponding Channel 1-120 channels upon 60-days notice. Granting Sprint Nextel's waiver request will reduce service disruptions to Sprint Nextel's customers, including many public sector customers, ensure that needed spectrum does not unnecessarily lie fallow, and minimize disruption for all affected 800 MHz retunees.

Sprint Nextel and 800 MHz incumbent licensees have made considerable progress in reconfiguring the 800 MHz band.³ The above-referenced waiver requests demonstrate, however, that hundreds of public safety licensees will need more time to complete 800 MHz band

¹ See 800 MHz Transition Administrator, "List of Requests for Waiver of June 26, 2008 Deadline," available at: <http://www.800ta.org/content/documents/waiver_requests.asp> (viewed May 1, 2008).

² *Improving Public Safety Communications in the 800 MHz Band*, Third Memorandum Opinion and Order, 22 FCC Rcd 17209, ¶ 27 (2007) ("*Third MO&O*"). Sprint Nextel has sought judicial review of the Commission's decision in the *Third MO&O* requiring Sprint Nextel to vacate its Channel 1-120 and interleaved channels by June 26, 2008 regardless of whether public safety licensees are ready to retune their systems by that date. In filing this waiver request, Sprint Nextel in no way waives its right to challenge the *Third MO&O*.

³ See Letter from Lawrence R. Krevor, Sprint Nextel, to David Furth, Public Safety and Homeland Security Bureau, WT Docket No. 02-55 (April 1, 2008) ("Sprint Nextel April Report").

reconfiguration. The Commission's 800 MHz Transition Administrator ("TA") has stated that "a significant number, and possibly a majority, of NPSPAC licensees will not have completed their reconfigurations" by June 26, 2008.⁴ The TA's projection has been confirmed as more than half of all Phase II non-border area public safety licensees are requesting waiver extensions of the current June 26, 2008 deadline. Many of the waiver requests seek significant additional time to complete retuning their systems; some seek additional time to complete pre-retuning activities such as the planning upon which to develop cost estimates and statements of work which in turn are the basis for negotiating Frequency Reconfiguration Agreements ("FRA") with Sprint Nextel. Public safety licensees seeking additional time to complete their planning work and negotiate an FRA typically will be unable to complete 800 MHz reconfiguration anytime soon.

Sprint Nextel would prefer that all NPSPAC licensees complete reconfiguration by June 26, 2008 so that Sprint Nextel could retune by that date all of its 800 MHz operations to its replacement channels in the ESMR block. Completing reconfiguration by the Commission's current deadline would provide Sprint Nextel full access to the 800 MHz spectrum rights it received under the *800 MHz R&O* in exchange for its very substantial contributions to implementing the Commission's reconfiguration mandate. It also would bring to an end the significant network burdens and uncertainties Sprint Nextel has faced during the transition as it accommodates thousands of channel swaps across the country. Retuning hundreds of public safety licensees, however, has proven to be far more complex than initially anticipated and continues to challenge the resources of vendors, consultants, engineering companies and public safety agencies. Despite the good faith efforts of both Sprint Nextel and incumbent licensees, the fact is that a majority of NPSPAC licensees have found it necessary to file waiver requests seeking more time to finish retuning their systems.⁵

In light of this fact, and to reduce the disruption to Sprint Nextel's customers, the Commission should permit Sprint Nextel to continue operating on Channels 1-120 until NPSPAC licensees are ready to retune their systems. In its *Third Memorandum Opinion and Order* in this proceeding, the Commission stated that:

in the event that we grant any NPSPAC licensee a waiver allowing it to relocate to the new NPSPAC band after June 26, 2008, we will allow Sprint to petition to remain temporarily on the Channel 1-120 channels that it would otherwise have to vacate to accommodate the NPSPAC system. In any such petition, Sprint must demonstrate that public safety will not be adversely affected by the extension, that it has no reasonable alternative, and that the extension is otherwise in the public interest.⁶

⁴ 800 MHz Transition Administrator Quarterly Progress Report for Quarter Ended Dec. 31, 2007, WT Docket No. 02-55, at 2 (Feb. 29, 2008).

⁵ Sprint Nextel notes that after it executes an FRA with a public safety incumbent, it has little control over the time required to physically implement a licensee's retuning. Once an FRA is in place, retuning implementation is largely determined by the licensee and its contractors.

⁶ *Third MO&O* ¶ 27.

Sprint Nextel's waiver request satisfies each of these criteria. No public safety licensee will be harmed in any way from the requested waiver. Sprint Nextel remains committed to providing replacement channels to public safety licensees within 60 days of being notified that the licensee is ready to retune its system. Allowing Sprint Nextel continued access to Channel 1-120 channels consequently will not delay 800 MHz rebanding in any way.⁷

There is no reasonable alternative to granting the instant request. Sprint Nextel needs 800 MHz channels to serve its 20 million iDEN® customers, including approximately three million public sector, federal, state, and local government agencies, medical personnel and utilities. In its initial orders in this proceeding, the Commission recognized Sprint Nextel's need to maintain sufficient spectrum capacity during the 800 MHz band transition by permitting Sprint Nextel access to Channels 1-120 until NPSPAC licensees are ready to retune and also providing Sprint Nextel continued access to the interleaved channel block until retuning is completed in the region.⁸ If Sprint Nextel is required to vacate all of its Channels 1-120 and interleaved channels before it gains access to its replacement channels in the old NPSPAC band, it will suffer a serious channel shortfall in its network which will materially degrade service to its iDEN® customers. The harm to Sprint Nextel's customers is detailed in a declaration of Robert Azzi, Sprint Nextel's Senior Vice President, Field Engineering & Operations, which Sprint Nextel is submitting in conjunction with this waiver request.⁹

Granting a waiver to give Sprint Nextel continued access to Channels 1-120 will reduce the disruption to Sprint Nextel's customers if the Commission permits NPSPAC licensees to continue operating beyond June 26, 2008 on Sprint Nextel's replacement channels in the ESMR block. Relocating Sprint Nextel facilities to the 900 MHz band or constructing additional cell sites are not viable alternatives to granting this waiver request. Moreover, there are not enough 900 MHz channels available to make up for the shortfall Sprint Nextel will suffer at 800 MHz.

Granting the instant waiver request will thus serve the public interest by helping reduce service disruptions to Sprint Nextel's 20 million iDEN® customers. Sprint Nextel customers

⁷ Sprint Nextel is well ahead of public safety licensees in making 1-120 channels available for them to retune their networks. Sprint Nextel April Report at 2, Figure 4. The 60-day rule ensures that having access to its assigned 1-120 replacement channels will never delay a public safety incumbent that is otherwise ready to retune its network infrastructure.

⁸ *Improving Public Safety Communications in the 800 MHz Band*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120, ¶ 52 (2004) (“*Supplemental Order*”) (stating that Sprint Nextel will “meet a portion of [its] subscriber demand by retaining [its] Channel 1-120 facilities while the band is being reconfigured”); *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶ 198 (2004) (“*800 MHz R&O*”) (setting forth series of coordinated channel swaps between Sprint Nextel and 800 MHz incumbents and providing Sprint Nextel access to Channels 1-120 and the interleaved band during band reconfiguration).

⁹ Sprint Nextel is submitting Mr. Azzi's declaration with a request for confidentiality given the sensitive commercial information it contains.

include employees of the Department of Homeland Security, members of the United States Secret Service, and police and fire departments across the country. A number of these public safety agencies have warned the Commission that requiring Sprint Nextel to vacate Channels 1-120 and the interleaved band prematurely would “degrade Sprint Nextel’s network,” which in turn may “cripple some Public Safety systems” that rely on Sprint Nextel’s iDEN® network.¹⁰ The Fraternal Order of Police, a public safety organization representing over 325,000 police officers across the country, has stated that “[r]equiring Sprint Nextel to give up channels *en masse* on an arbitrary date does nothing to advance public safety retuning readiness; on the contrary, it would needlessly disrupt the Sprint Nextel iDEN service many public safety personnel and agencies rely upon to support their missions.”¹¹ The Commission should instead “ensur[e] that Sprint Nextel has sufficient capacity to serve the communication needs of [its public safety customers] during the rebanding process.”¹² Providing Sprint Nextel with concurrent waivers to those granted to public safety incumbents to remain on the 1-120 channels will help to achieve that objective.¹³

Forcing Sprint Nextel to relinquish Channels 1-120 before NPSPAC licensees are ready to relocate will frustrate the underlying purpose of the Commission’s 800 MHz reconfiguration plan. It will not make reconfiguration go any faster, will cause spectrum to lie fallow, and will unnecessarily disrupt Sprint Nextel’s service to its customers contrary to the Commission’s clearly-stated objective of minimizing disruption to all incumbents during the reconfiguration transition.¹⁴

Sprint Nextel also requests that its waiver authority to continue operating on Channels 1-120 be automatically extended to the extent a NPSPAC licensee files subsequent waiver request(s) and is granted additional time to complete its retuning, or in the event a NPSPAC licensee fails to comply with an extended deadline. Finally, Sprint Nextel requests a waiver to continue operating in Channels 1-120 where the Commission has waived the June 26, 2008

¹⁰ Comments of the City of Kansas City, MO, the City of Dublin, OH, the City of Worthington, OH, Seminole County, FL, and Orange County, FL, WT Docket No. 02-55, at 8-9 (Jan. 7, 2008) (“Public Safety Comments”).

¹¹ Brief for *Amicus Curiae* Fraternal Order of Police in Support of Petitioner and Reversal, No. 07-1458, at 3 (D.C. Cir. Dec. 26, 2007).

¹² Public Safety Comments at 3.

¹³ Although grant of the instant waiver request will reduce the negative impact on Sprint Nextel’s network, it will by no means eliminate the disruption to Sprint Nextel’s customers from the requirement that Sprint Nextel vacate the interleaved channels by June 26, 2008 even where Sprint Nextel has not received its ESMR block replacement channels.

¹⁴ 800 MHz R&O ¶ 2 (describing one of the “paramount goals” of the Commission’s 800 MHz reconfiguration plan as ensuring that the plan is “equitable and imposes minimum disruption to the activities of all 800 MHz band users”).

Sprint Nextel Corporation
Waiver Request – Expedited Action Requested
WT Docket No. 02-55
May 1, 2008
Page 5

deadline for certain NPSPAC licensees because of interference issues related to Channel 69 broadcast operations.¹⁵

In conclusion, unique factors have made it difficult for many public safety licensees to complete 800 MHz reconfiguration by June 26, 2008. It would be inequitable and unduly burdensome to extend the retuning deadlines for these licensees and thereby delay Sprint Nextel's access to its replacement channels in the ESMR band, while at the same time denying Sprint Nextel access to the channels below 817/862 MHz that it needs to serve its customers. Grant of a waiver is fully justified in these circumstances.

Respectfully submitted,

SPRINT NEXTEL CORPORATION

/s/ Lawrence R. Krevor

Lawrence R. Krevor

Vice President – Spectrum

James B. Goldstein

Director, Spectrum Reconfiguration

cc: David Furth
800 MHz Transition Administrator

¹⁵ The Commission granted these licensees a waiver extending their retuning deadlines to March 1, 2009. *Third MO&O* ¶¶ 35-47.