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BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 02-55
Ex Parte Presentation

Dear Ms. Dortch:

In a letter filed within this proceeding from Nextel Communications, Inc. (“Nextel”) dated May 16, 2003, Nextel addressed an earlier letter submitted by Motorola, Inc. regarding possible solutions for mitigating interference between low-site cellularized operations, like those employed by Nextel in its operations, and public safety operations within the 800 MHz band. This correspondence is provided, through counsel, by Small Business in Telecommunications (SBT) in response to Nextel’s letter and is respectfully provided for the purpose of assuring that the Commission is provided a complete and balanced view of the issues addressed within this matter.

Source and Frequency of Subject Interference: Nextel challenges Motorola’s premises regarding the extent of the problem addressed by the rule making and cites Nextel’s own records to demonstrate that the level of interference suffered by public safety (and presumably other 800 MHz licensees) is increasing and provides evidence that nearly three times as many public safety entities are experiencing problems than that number suggested by Motorola. Additionally, Nextel suggests that the number of reported interference problems will likely increase in the future at an increasing rate.

What Nextel does not address, however, is the cause of the interference and the manner by which such problems are increasing. The problems of interference to public safety and other 800 MHz operations are due to Nextel’s continued construction of interfering sites. In what must be viewed as an incredible position, Nextel’s letter argues, in essence, that since it is aware of its ongoing and continuous violation of Section 301 of the Act and the identity of its victims produced thereby, its data is more reliable than Motorola’s. Moreover, Nextel’s argument is, in

effect, that since the agency has done nothing to curtail Nextel's continuous creation of interference by operation of facilities which place energy on channels and within bands in which Nextel holds no authority to operate, Nextel has, with increasing impunity, continued unlawfully its practice and, thus, greater numbers and severity of incidents of interference are occurring. If this irony is lost on the agency, it is not lost upon the industry.

Nextel's reference at page 2 of its letter to its operations as "lawful" is not responsive to the many comments filed within this proceeding which have demonstrated with great clarity that Nextel's wilful creation of interference via production of out of band emissions (OOBE) and intermodulation products (IM) cannot be deemed lawful in accord with any rational reading of Title 47 or the Commission's rules. Motorola's showing that Nextel could unilaterally take steps to mitigate the harm created by its operations evinces further the wilfulness by which Nextel has acted to construct facilities without regard to the level of harm which it has or will cause to adversely affected operators.

In contrast to Nextel's desire for accommodation of its recalcitrant business model by urging an expensive, unfunded, and unlawful rebanding of the 800 MHz band, other CMRS operators are willing to accept their individual responsibility to take all steps necessary to avoid and resolve quickly interference arising from their operations. Among the interfering CMRS operators, only Nextel has supported rebanding as a means of shifting the burden of resolution from the interfering parties to the victims of that same interference.

Boosting Public Safety Signal Strength: Motorola's attempt to address directly the issue of increasing the reliability of public safety operations via creating more robust systems is an intelligent approach to one facet of the problem. What is not clear, however, is the logic or motivation behind Nextel's response which accurately points out that the alleged "consensus" plan does not address this element of the matter. SBT respectfully points out that the alleged consensus plan does not address many aspects of funding, and that the lawfully unsupported funding mechanism is directed only at the cost of changing channels among licensees. The plan provides little, if any, monies for all required resulting costs that would be imposed upon public safety entities if the consensus plan were to be adopted. And, as clearly articulated in numerous comments, the funding mechanism proposed would likely be exhausted prior to completion of rebanding, with disastrous results.

In what one might view as a logically unusual position, Nextel's earlier comments have touched directly on the issue of signal strength at receivers employed by public safety. Nextel has noted the need for more robust public safety systems to assist in avoiding interference and it faults insufficient design of public safety systems as one of the reasons for the subject interference. Yet, despite Nextel's admission of the materiality of better integrated system design that can deliver greater energy to affected receivers, Nextel's proposed rebanding method fails entirely to address this need. Accordingly, Motorola's letter recognizes the benefits of boosting signal strength as an appropriate step toward resolution. Nextel admits that such activity would be quite beneficial. And yet, Nextel continues to note that its proposal would not fund this necessary activity. In sum, Nextel is admitting and focusing on a deficiency within its own proposal.

OOBE Filtering Solutions: SBT disagrees with the underlying premise of Nextel's further comment that even if signal strength were boosted, the result would be ineffective for the purpose of resolving interference caused by CMRS operations' OOBE. Nextel suggests that filtering solutions should only be imposed on interfering CMRS operations if such solutions were proven to be entirely effective under all circumstances. This position is contrary to law and rule. A licensee has an obligation under the agency's existing rules to take reasonable steps to *avoid* the creation of interference. There is no concurrently existing condition on that obligation that states that licensees have no such obligation until and unless it is shown beyond a doubt that such actions will be 100% effective. Nextel's premise further avoids discussion of the legal status of OOBE. If such emissions create interference, such emissions are unlawful. Accordingly, Nextel argues that it should not be made to employ filtering for the purpose of meeting its legal obligations unless it is first proven that such use will, standing alone, bring its operations into compliance.

As has been well documented within this proceeding, Nextel's insistence on using hybrid combiners has exacerbated unilaterally and unnecessarily the level of OOBE from its systems. Commenters, including the Private Wireless Coalition, have noted the adverse effect that Nextel's equipment choice has had in making the radio environment unduly hostile for other 800 MHz operations. The Commission is well aware of the problems which can arise when operators choose unwisely a method of operation that does not take into consideration the right of licensed operators to enjoy quietly their authorized use of the radio spectrum, e.g. linear amplifiers. The creation of known and unhealthy levels of risk of harmful interference has been consistently discouraged by the agency. Yet, Nextel's letter attempts to turn decades of law and policy on its head, stating that Nextel is under no obligation to avoid harmful interference and its attendant harm to licensed operations, including public safety, until and unless the proposed method of avoidance is shown to be entirely effective to Nextel's unilateral satisfaction. Nextel's comments skirt close to its donning the mantle of the agency's legislative/judicial mandate to decide what logical and appropriate obligations Nextel will or will not accept in meeting the problems of its own making.

Site By Site Resolution: Nextel argues against Motorola's approach that would encourage cooperation among public safety entities and CMRS operators to anticipate and avoid the creation of harmful interference in specific locations. In what is an embarrassing lack of personal responsibility, Nextel states that Motorola's approach, "[puts] at risk the lives and safety of our nation's first responders." Nextel letter at page 2. All evidence provided in this proceeding, including that information offered by Nextel, demonstrates clearly that Nextel's operation of low-site cellularized systems, employing hybrid combiners, and without any coordination effort with other licensees, has resulted in numerous incidents of harmful interference. Nextel's business model relies on its uncoordinated use of the radio spectrum, resulting in IM and OOBE produced with impunity, which use is (i) increasing, (ii) resulting in additional incidents of harmful interference, and (iii) is a known and demonstrated source of risk to lives of public safety personnel. Nextel's assault on Motorola's proposal is beyond disingenuous. It is wholly irresponsible.

Placing aside the irresponsible and unwarranted comment of Nextel discussed above, Nextel's premise again attempts to dodge the issue of Nextel's obligation as a Commission

licensee. Nextel is obliged to take actions to avoid interference. One would logically assume that such actions would include an attempt to predict to the extent reasonably possible the risk of interference and to take reasonable steps to avoid the creation of that interference. Nextel's comment suggests that not only is Nextel wholly unwilling to take reasonable steps to mitigate interference through proven, reasonable methods such as abandoning its use of hybrid combiners, but Nextel is even unwilling to anticipate or to cooperate in discerning where interference may arise. Instead, Nextel suggests a continuation of its present methods of construction and operation which is, in essence, "turn it on and deal with public safety complaints if and when they arise." This cavalier attitude toward both its obligations as a Commission licensee and its obligations to avoid interference to public safety and other operations demonstrates fully the wilful nature of Nextel's actions which are taken without any concern for any injured licensee.

The Extent of the Problem: The record within this proceeding demonstrates that nearly all analog operations are at risk of harmful interference from low-site, cellularized operations by CMRS licensees and that many have already suffered problems. Insofar as Nextel's comments reiterate this known fact, there can be no argument. However, Nextel's self-serving hand-wringing does not address the source of the problem. The source of the problem is the chosen and unilateral designs of the systems employed by interfering operators. And, in Nextel's case, the refusal to meet statutory and equitable obligations to avoid and correct interference as it occurs. Nextel's proposal is to foist the burden of its obligations onto innocent analog operators, funding only a small portion of the cost of rebanding, and thus, enjoying the fruits of its plan at a steeply discounted cost.

It cannot escape the agency's notice that the interference problem has become rooted in business models that attempt to address increasing minutes of usage (MOU) of cellular subscribers via the construction of inherently dangerous low-site operations. Therefore, in an effort to capture subscribers, Nextel has moved toward low-site installations to enhance frequency reuse and, thus, system capacity. To capture these revenues in a manner which is specifically designed to keep costs low, Nextel employs hybrid combiners that necessarily create greater OOBE. Thus, the material cause of the interference problem is corporate greed and indifference. To attempt to "spin" greed into patriotism via its references to first responders reduces Nextel's position from one of merely being consistently at odds with Section 301 of the Act, to one of repugnant profiteer. By Nextel's distorted logic, the agency is asked to focus on the symptom of the problem and ignore the actual cause, i.e. Nextel's continuing use of low-site operations without regard to the rights of other licensees, including public safety entities, and Nextel's disregard for its basic obligations as a Commission licensee to avoid and resolve interference.

Rebanding: Nextel continues to tout its rebanding proposal throughout the remainder of its letter, stating that no other plan can succeed without rebanding the 800 MHz spectrum. This claim is belied by logic and the application of statute. Of course the interference problem can be resolved without rebanding. However, such resolution requires Nextel to change its method of operation without obtaining an unearned windfall pursuant to its upheaval of the rights and operations of adversely affected, innocent analog operators. It further requires Nextel to accept the obvious conclusion of law: operation of equipment must be restricted to that spectrum upon which the operator is authorized to transmit. All other energy, particularly energy which causes

harmful interference to legitimate licensed operations, is necessarily violative of Nextel's statutory obligations and, therefore, requires Nextel to take immediate remedial action that is not dependent on the resources of or accommodation by non-interfering operators whose systems are victims of that same interference. Demanding such unwarranted accommodation in the form of a rule making does not result in a waiver or reduction in Nextel's obligation to take immediate remedial action and to avoid further the creation of harmful interference via the production of unauthorized transmissions in violation of Section 301 of the Act. That Nextel has done little to recognize or move into compliance with its obligations as a Commission licensee is evinced in its poorly premised arguments within its letter. And absent Nextel demonstrating reasonable efforts toward compliance with its obligations, the agency will continue to be burdened by Nextel's unfounded suppositions regarding its ability to resolve that interference it has, in large measure, created.

Fortunately, Nextel does not serve as the only example of cellularized 800 MHz operations. The Commission may look also to the example of Southern Linc which operates a fully integrated, wide area, digital 800 MHz system from numerous sites across a large geographic area. Southern Linc's experience and example demonstrates clearly and unambiguously that if Nextel desired, its system could be constructed and maintained in a manner that is commercially viable and fully compliant with law. All of Nextel's claims to the contrary within its letter are, thus, rendered more than suspect. They are patently false.

SBT will not repeat its well articulated objections to rebanding at 800 MHz, which objections are shared with the majority of commenting parties. SBT and UTC and numerous members of CTIA have each shown that the rebanding proposal forwarded by Nextel is unworkable, speculative, without recognizable funding, and contrary to law and equity. SBT has joined with others to forward the Balanced Approach which provides a concrete, comprehensive methodology of interference avoidance and correction and which emphasizes the existing obligation of CMRS licensees to resolve interference problems without burdening the victims of that interference.

SBT hereby encourages the Commission to continue to explore technical solutions to the interference problem created by operations of low-site cellularized systems, which technical solutions are within the agency's statutory mandate while not contrary to the Commission's obligations under the Regulatory Flexibility Act. Accordingly, SBT encourages the agency to accept and consider the efforts of commenting parties, like Motorola, which are attempting to

guide the Commission toward a resolution that is both technically and legally appropriate and which does not result in undeserved benefits to a single, recalcitrant licensee.

Very truly yours,
/s/ Robert H. Schwaninger, Jr.
Robert H. Schwaninger, Jr.
General Counsel for
Small Business in Telecommunications

Cc: Robert S. Foosaner