

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

In the Matter of)	
)	
Nextel Communications Inc. and Pacific Wireless Technologies, Inc.)	
)	
Request for Assignment of Licenses)	WT Docket <u>01-192</u>
)	
Nextel Communications and Chadmoore Wireless Group, Inc.)	
)	
Request for Assignment of Licenses)	WT Docket 01-193

RECEIVED
OCT - 4 2001
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

REPLY COMMENTS OF NEXTEL COMMUNITIES

The Cities of Philadelphia, Pennsylvania; Phoenix, Arizona; and Scottsdale, Arizona; together with Queen Anne’s County, Maryland (“Nextel Communities”), joined by the National Association of Telecommunications Officers and Advisors (“NATOA”),¹ hereby reply to the oppositions of Nextel Communications Inc. (“Nextel”), Chadmoore Wireless Group (“Chadmoore”) and Pacific Wireless Technologies (“PWT”) to the Comments of Nextel Communities filed September 13, 2001 in the captioned proceedings.

Preliminarily, the issue of standing raised directly or implicitly by all three opponents is not implicated here. PWT is simply wrong to classify the Comments of the Nextel Communities as a “Petition to Deny.” And Nextel errs (at 3, n.8) in citing Section 1.939 of the Rules. Here is what we asked the Commission to do:

[T]he Nextel Communities urge the Commission to condition any approval of the Nextel applications for assignment on Nextel’s filing, by a prompt and certain date, of a plan for the feasible segregation of public safety frequencies from commercial channels

¹ NATOA is participating in support of its members Philadelphia, Phoenix and Scottsdale.

No. of Copies rec'd 0121
List ABCDE

at 800 MHz which includes proposals for covering the costs of any needed public safety licensee relocations or network and equipment changes.

Absent some other explanation, we assume PWT attempted to classify our Comments as if we required “standing” to file them.² But the relief we are seeking cannot be wedged into such a category.³

Nor can our Comments fairly be called – in the words of Nextel and Chadmoore – a cause of delay or a misuse of this assignment proceeding. The speed with which Nextel addresses our proposed condition is in its own hands. We have asked for a “prompt and certain date” for the filing of a channel segregation plan. We have not further specified that date, nor have we called for a deadline on the completion of any proceeding such a filing may engender.

We recognize, with Chadmoore, that an FCC rulemaking will be needed for any frequency reallocations or reassignments to implement channel segregation. We also submit, however, that the “public interest” is the legal touchstone for the Commission’s approval of radio license assignments such as those requested here, 47 U.S.C. §310(d), and that the agency’s power to impose conditions on the assignments, in furtherance of the public interest, is beyond dispute. 47 U.S.C. §308(b). As demonstrated by our Comments, there is a manifest and larger public interest, running beyond the commercial interest in any regional use of these licenses, in a

² Section 309(d) of the Communications Act, 47 U.S.C. §309(d), implemented in pertinent FCC rules at 47 C.F.R. §1.939, limits the filing of petitions to deny to “any party in interest,” a term of art which essentially equates to a person with standing in the judicial sense. RADIOFONE NATIONWIDE PCS, L.L.C. and HARBOR WIRELESS L.L.C., 16 FCC Rcd 792 (2001), ¶2.

³ The opponents state generally that Philadelphia and Queen Anne’s County have not demonstrated harm or the potential for harm. For good reason, they omit Phoenix and Scottsdale, whose grievances are amply shown. Philadelphia has reason to be concerned with Nextel’s acquisition of Chadmoore frequencies in Atlantic City and Trenton, New Jersey, which are within the predicted interference contours of the City’s 800 MHz system. 47 C.F.R. §90.621. And Queen Anne’s County’s experience is summarized in the attached Exhibit 1.

permanent remedy for the intolerable interference to public safety communications at 800 MHz chiefly attributed to Nextel. That permanent remedy, we submit, could be launched by the filing of a plan duly subjected to public comment, from which new rules would emerge.

To our proposal that “a larger initiative is necessary to mitigate and resolve this ongoing interference issue:”

Nextel agrees and is actively working with public safety leadership, equipment vendors and other experts to develop and complete this plan. (Consolidated Opposition, 6)

Nextel believes, however, that “conditioning Nextel’s acquisition of the spectrum at issue, or requiring a date certain for such a filing” is not necessary. *Id.* We respectfully disagree. The experience of our Commenters, and the wider set of problems from other communities reported in Exhibit A to our Comments, command a sense of urgency in addressing the issues.⁴

We appreciate the collaboration of interested parties launched in April by “Project 39” of the Association of Public-Safety Communications Officials, International, Inc. (“APCO”). We respectfully suggest, however, that a timeline of 18 months to “have long-term solutions identified and where possible tested”⁵ does not reflect that sense of urgency. It cannot be comforting to local public safety systems where short-term solutions have not worked -- or

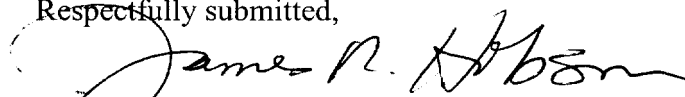
⁴ This is not at all like the case Nextel cites in its Consolidated Opposition (8, n.15), where a competing wireless carrier sought to advance its particular commercial interests through a condition on another Nextel assignment application. Plainly, the remedy we propose does address the harm claimed.

⁵ The APCO web site is www.apcointl.org, and contains a link to Project 39. The quote is from Project 39’s statement of goals.

where problems persist, with or without cooperation of the parties -- to contemplate that Project 39 might not recommend a solution for their problems (much less, resolve them) until 2003.⁶

For the reasons discussed above, we repeat our request that the Commission condition any grant of these assignment applications on Nextel's filing, by a prompt and certain date, of a plan for the feasible segregation of public safety frequencies from commercial channels at 800 MHz which includes proposals for covering the costs of any needed public safety licensee relocations or network and equipment changes.

Respectfully submitted,



James R. Hobson
Gerard Lederer
Miller & Van Eaton, P.L.L.C.
Suite 1000
1155 Connecticut Avenue N.W.
Washington DC 20036-4320
(202) 785-0600

Attorneys for Nextel Communities

October 4, 2001

2927601\JRH00389.DOC

⁶ In the words of Carder Hunt, Chief Information Officer of the City of Scottsdale: "Public safety radio communications are the single most important tool available to officers in the field. In that split second when a routine traffic stop becomes a deadly confrontation, it is the officer's radio that provides the critical link for assistance."

STATEMENT OF PHILMONT M. TAYLOR
DIRECTOR
QUEEN ANNE'S COUNTY DEPARTMENT OF EMERGENCY SERVICES

October 3, 2001

We first encountered this problem in March, 2001, although we had not determined that Nextel was, in fact, the cause. In QAC, there is a rather large outlet shopping center located in the vicinity of the Route 50/Route 301 "split". It's an area prone to auto accidents and burglaries. There were several reports from field units complaining that they could not hear Dispatch. Since we were still in the implementation phase of our contract with Motorola, we asked them to investigate.

The result of this was the determination that yes, there was a Nextel site located on a water tower at the outlets. At that point, our Motorola engineer began a series of meetings/conversations with Nextel (late spring-early summer) to a.) determine the degree to which Nextel interfered with our system, and b.) derive a plan to resolve present/mitigate future interference issues. Nextel's engineer even attended some of our local progress meetings with Motorola.

To date, and to their credit, Nextel has "cleaned up" much of the "dirty ring" around their site. They have even re-shuffled their frequencies. My concern, however, is when looking downstream, given Nextel's build-out philosophy and the mushiness of the Best Practices Guide that merely says "...you guys just work it out...", I see myself confronting this issue again, many times over. The intermodulation studies that were completed today are rendered useless tomorrow when Nextel "shifts on the fly", and we have a whole different batch of frequencies being radiated out of that site. Then we're back to square one, again.

I, personally, would like to see a more thorough-going resolution, rather than have to spend additional time and resources slapping band aids on a problem that begs a cure.

Certificate of Service

The foregoing Reply Comments of Nextel Communities were mailed October 4, 2001 to:

Russell H. Fox
Mintz, Levin
701 Pennsylvania Ave. N.W.
Suite 900
Washington, D.C. 20004-2608

Robert S. Foosaner
Nextel Communications
2001 Edmund Halley Dr.
Reston, VA 20191

Rick D. Rhodes
Chadmoore Wireless Group
2875 East Patrick Lane
Suite G
Las Vegas, NV 89120



Willette A. Hill