

UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

SPRINT NEXTEL CORPORATION)
)
 Appellant,)
)
 v.) Docket No. _____
)
 FEDERAL COMMUNICATIONS)
 COMMISSION and THE UNITED STATES)
 OF AMERICA)
)
 Appellees.)
 _____)

DECLARATION OF MARK E. CROSBY

I, Mark E. Crosby, do hereby, under penalty of perjury, declare and state as follows:

1. My name is Mark E. Crosby and I serve as the President and Chief Executive Officer of the Enterprise Wireless Alliance (EWA).

2. EWA is a national trade association representing more than 1,200 business enterprises, wireless sales and service providers, hardware and software system vendors and technology manufacturers. These firms represented by EWA range from small businesses to leading national Fortune 500 organizations, including those that are engaged in transportation, petrochemical, manufacturing, retail, utility, construction and other critical national industries. EWA is also a Federal Communications Commission (FCC) certified frequency advisory committee that processes in excess of 7,000 frequency selection and licensing transactions annually, including activities associated

with the 800 MHz and 900 MHz bands allocated for use by EWA members and commercial entities.

3. EWA, and its predecessor associations, have been active participants in the Federal Communications Commission's ("FCC") 800 MHz proceeding and played a leadership role in the development of the 800 MHz rebanding plan adopted by the FCC. EWA strongly supports that plan which is intended to eliminate interference to public safety and private wireless systems and provide much-needed additional spectrum for public safety communications.

4. While EWA believes that the 800 MHz band reconfiguration should proceed as quickly as possible, it is equally, if not more, important that realignment proceed prudently and in a responsible manner. Reconfiguration must not unnecessarily disrupt important communications activities of public safety, business enterprise and commercial entities.

5. Appellant, Sprint Nextel Corporation ("Sprint Nextel") provides wireless communications services that are tailored specifically to the unique communications needs of private wireless communications. Its cellular, push-to-talk and two-way mobile iDEN network is designed to meet business, as well as consumer, requirements. A significant number of EWA's member organizations across the country are Sprint Nextel customers and rely on Sprint Nextel's network for primary or back-up mobile communications service while performing their business activities that contribute to America's welfare and public safety interests.

6. We understand that the FCC's recent Third Memorandum Opinion and Order will require Sprint Nextel to surrender many of its current 800 MHz channels

before replacement channels become available – even if public safety licensees are not yet ready to move their operations to the channels vacated by Sprint Nextel. Directing Sprint Nextel to vacate its 800 MHz spectrum holdings below 862 MHz on an inflexible deadline, rather than as part of a coordinated migration of systems within the band, will serve to unnecessarily disrupt Sprint Nextel’s iDEN network by significantly reducing its available capacity. That, in turn, will disrupt the operations of the many public safety, business enterprise and commercial wireless users who rely on Sprint Nextel’s IDEN communications services for critical, as well as day-to-day, activities. To the extent that the Third Memorandum Opinion and Order will impede communications, potentially resulting in dangerous and life-threatening consequences for first responders, business enterprise users and the communities they serve, the result would be contrary to the FCC’s objective in adopting an 800 MHz reconfiguration plan. Indeed, EWA is at a loss to understand what public policy objective would be served by that requirement.

7. To the extent that the FCC’s intention is to ensure the availability of 800 MHz spectrum for public safety licensees as they wish to retune their systems within the band, the FCC already has addressed that objective in the Third Memorandum Opinion and Order by requiring Sprint Nextel to make channels available for use by retuning public safety systems with sixty days notice. This provision assures that the necessary spectrum will be cleared and available whenever an 800 MHz public safety incumbent is ready to retune its network. This more targeted approach appears to EWA to be preferable to one that requires Sprint Nextel to surrender channels *en masse* on an arbitrary date, irrespective of public safety’s readiness to use the vacated spectrum.

8. The Third Memorandum Opinion and Order will have another serious impact on EWA members. Many of those members rely upon the 900 MHz spectrum band for two-way, private internal communications system solutions. Sprint Nextel also uses the 900 MHz band in its iDEN network to support its customer base. As a result of the 800 MHz band reconfiguration, Sprint Nextel has been acquiring 900 MHz spectrum to help provide replacement spectrum capacity to the iDEN network. It has done so, primarily, by securing 900 MHz spectrum rights directly from the FCC in the form of Special Temporary Authority (“STAs”) on a carefully targeted market-by-market basis. These STAs are valid for six month renewable terms and are subject to strict interference protection rules.

9. EWA has been advised that, in order to offset the Third Memorandum Opinion and Order’s impact on its available spectrum capacity, Sprint Nextel believes it will need to secure significant additional 900 MHz spectrum, including in markets in which Sprint Nextel otherwise would not have had a need for 900 MHz capacity. While EWA has not opposed Sprint Nextel acquiring 900 MHz spectrum to attempt to meet spectrum needs in certain markets that arose because of the 800 MHz reconfiguration process, Sprint Nextel’s use of that spectrum has a direct impact on EWA members who otherwise might wish to acquire it for deployment of private internal systems. EWA is greatly concerned that, unless Sprint Nextel can retain its 800 MHz spectrum past June 28, 2008, until the 800 MHz band reconfiguration is fully completed, consistent, of course, with the spectrum requirements of individual public safety incumbents, Sprint Nextel will not relinquish its 900 MHz spectrum. In fact, Sprint Nextel likely will expand its 900 MHz spectrum holdings, thereby increasing the amount of 900 MHz

spectrum that will remain unavailable to EWA members for purposes that serve the American public.

10. By expediting Sprint Nextel's appeal and overturning the Third Memorandum Opinion and Order before June 2008, this Court can mitigate or even eliminate the disruption to Sprint Nextel's network and its consequent, adverse effect on public safety and business enterprise communications, while still assuring that 800 MHz incumbents have the channels needed to retune their networks in an timely manner. For these reasons, we urge this Court to grant Sprint Nextel's motion to expedite.

/s/ Mark E. Crosby
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Executed on: October 30, 2007