

BELLSOUTH CORPORATION
NUCENTRIX BROADBAND NETWORKS, INC.
SPRINT CORPORATION
WORLD COM, INC.
WIRELESS COMMUNICATIONS ASSOCIATION INTERNATIONAL, INC.

August 29, 2002

Hon. Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems -- ET Docket No. 00-258*

Amendment of Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Band -- IB Docket No. 01-185

Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service -- ET Docket No. 95-18

Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels -- WT Docket No. 02-55

Dear Chairman Powell:

On July 11, 2002, BellSouth Corporation, Nucentrix Broadband Networks, Inc., Sprint Corporation, WorldCom, Inc. and the Wireless Communications Association International, Inc. (the "Joint Parties") submitted a compromise proposal (the "MDS Industry Compromise") that, if adopted, would result in the relocation of MDS channels 1 and 2/2A from 2150-2162 MHz to 1910-1916/1990-1996 MHz, thereby clearing the way for the Commission to designate and auction the 1710-1755 MHz and at least 45 MHz of the 2110-2170 MHz band for third generation mobile services ("3G").¹ In an August 9, 2002 *ex parte* letter filed in ET Docket No. 00-258, Nextel Communications, Inc. ("Nextel") opposed the MDS Industry Compromise because it conflicts with a proposal Nextel filed two days earlier in WT Docket No. 02-55, under

¹ See Letter from BellSouth Corporation, *et al.* to Michael K. Powell, Chairman, Federal Communications Commission, ET Docket No. 00-258 (filed July 11, 2002). The full text of the Joint Parties' proposal, titled "A Compromise Solution for Relocating MDS From 2150-2162 MHz," was attached to that letter and is hereinafter referred to as the "MDS Industry Compromise." The MDS Industry Compromise has already received substantial support from MDS licensees not affiliated with the Joint Parties. See Comments of DCT Los Angeles, L.L.C., ET Docket No. 00-258 (filed Aug. 8, 2002); Comments of Ad Hoc MDS Alliance, ET Docket No. 00-258 (filed Aug. 8, 2002).

which Nextel would be given 1910-1915/1990-1995 MHz on a nationwide basis as a *quid pro quo* for implementing and partially funding its proposal to address the interference Nextel's operations are causing public safety users in the 800 MHz band.² As demonstrated below, Nextel's opposition to the MDS Industry Compromise is meritless and should be rejected in short order. Whereas the MDS Industry Compromise is the only viable solution to the thorny problems raised by relocating MDS from 2150-2162 MHz to clear the band for 3G, the channel swap proposed by Nextel is in no way essential to curing the problem of interference to public safety operations at 800 MHz.

Allowing Nextel To Swap Its Hodgepodge Of 700 MHz And 900 MHz Licenses For A 1.9 GHz Nationwide License Is Unnecessary To Cure Interference To Public Safety

The genesis of Nextel's opposition to the MDS Industry Compromise can be traced to Nextel's November, 2001 White Paper that proposed to ameliorate the interference public safety users were suffering as a result of Nextel's operations.³ The technical details of Nextel's White Paper are a matter of public record and need not be reiterated in their entirety here. Most important, Nextel proposed to realign the 800 MHz band to create a contiguous 20 MHz block of spectrum for public safety communications and a separate contiguous 16 MHz block of spectrum for cellularized digital SMR networks.⁴ To facilitate that result, Nextel proposed to contribute 2 MHz of its 800 MHz spectrum towards realignment of the band.⁵ In addition, Nextel proposed to require incumbent Business Radio and Industrial/Land Transportation ("B/ILT") and "high-site" (*i.e.*, non-cellularized) SMR systems in the 800 MHz band to either (1) accept secondary status in the public safety block or (2) relocate at their own expense to spectrum in the 700 MHz and 900 MHz bands.⁶ Nextel offered to make available 4 MHz of its 700 MHz "guard band" spectrum and 4 MHz of its 900 MHz SMR spectrum for B/ILT and "high-site" SMR licensees who elected to relocate, thus bringing its total proposed spectrum "contribution" to 10 MHz. Nextel conditioned that contribution (and its commitment to partially fund the realignment of the 800 MHz band) on, *inter alia*, the Commission's agreement to reallocate 10 MHz of paired

² See Letter from Regina M. Keeney, Counsel for Nextel Communications, Inc., to the Federal Communications Commission, ET Docket No. 00-258 (Aug. 9, 2002). The Nextel Letter cross-references Nextel's August 7, 2002 reply comments in WT Docket No. 02-55, which include a more detailed discussion of Nextel's opposition to the MDS Industry Compromise. See Reply Comments of Nextel Communications, Inc., WT Docket No. 02-55, at 49-51 (filed Aug. 7, 2002) [the "Nextel Reply Comments"].

³ See "Promoting Public Safety Communications – Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio – Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs," Nextel Communications, Inc. (November 21, 2001) [the "Nextel White Paper"].

⁴ *Id.* at 7.

⁵ *Id.*

⁶ *Id.* at 29 n.44 and 41 n.54.

spectrum at 2020-2025/2170-2175 MHz from the Mobile Satellite Service (“MSS”) to terrestrial CMRS service and award that spectrum exclusively to Nextel on a nationwide basis.⁷

Reaction to the Nextel White Paper was, to say the least, not favorable.⁸ Indeed, the Commission itself observed that “[i]t is not intuitively obvious” that Nextel’s realignment proposal would significantly reduce intermodulation interference, which Nextel itself had declared to be most frequent type of CMRS-public safety interference in the 800 MHz band.⁹ More importantly for present purposes, the Commission also expressed considerable skepticism about Nextel’s offer to swap its 700 MHz and 900 MHz spectrum for 10 MHz of paired, nationwide spectrum, questioning whether such a swap would, in fact, facilitate relocation of B/ILT and “high site” SMR facilities out of the 800 MHz band:

In connection with the feasibility of the Nextel relocation proposal, we note that the 700 MHz Guard Band Block B spectrum to which Nextel proposes to relocate displaced 800 MHz licensees is heavily encumbered by incumbent television stations [and] equipment for use in this band is not yet available. We also note that Nextel does not hold Guard Band Block B spectrum in nine of the fifty-two Major Economic Areas (MEA). Nextel also proposes that relocating 800 conventional SMR, Business and Industrial/Land Transportation licensees could use spectrum held by Nextel in the 900 MHz band. However, as with the 700 MHz band, Nextel does not hold 900 MHz spectrum nationwide.¹⁰

⁷ *Id.* at 8, 53-54.

⁸ *See, e.g.*, Comments of the American Electric Power Company, WT Docket No. 02-55 (filed May 6, 2002) [the “AEP Comments”]; Comments of AT&T Wireless Services, Inc., WT Docket No. 02-55 (filed May 6, 2002); Comments of AVR, Inc., WT Docket No. 02-55 (May 6, 2002); Comments of the City of Baltimore, Maryland, WT Docket No. 02-55 (filed May 6, 2002); Comments of Boeing Co., WT Docket No. 02-55 (filed May 6, 2002); Comments of Boone Electric Cooperative, WT Docket No. 02-55 (filed May 6, 2002); Comments of C&M Communications, WT Docket No. 02-55 (filed May 6, 2002) [the “C&M Comments”]; Comments of Codington-Clark Electric Cooperative, WT Docket No. 02-55 (filed May 3, 2002); Comments of the Cellular Telecommunications & Internet Association, WT Docket No. 02-55 (filed May 6, 2002); Comments of Cingular Wireless and ALLTEL Communications, WT Docket No. 02-55 (filed May 6, 2002) [the “Cingular/ALLTEL Comments”]; Comments of Duke Energy Corporation, WT Docket No. 02-55 (filed May 6, 2002); Comments of FedEx, WT Docket No. 02-55 (filed May 6, 2002); Comments of Fresno Mobile Radio, Inc., WT Docket No. 02-55 (filed May 3, 2002); Comments of Harmer Communications, WT Docket No. 02-55 (filed May 3, 2002); Comments of Verizon Wireless, WT Docket No. 02-55 (filed May 6, 2002). *See also infra* at n.11 and the comments cited therein.

⁹ *Improving Public Safety Communications in the 800 MHz Band*, 17 FCC Rcd 4873, 4888 (2002) [the “Nextel /800 MHz NPRM”]; Nextel White Paper at 20. Ironically, even Nextel’s primary equipment supplier, Motorola, has chosen not to lend its support to Nextel’s proposal. Instead, Motorola has proffered its own rebanding proposal, which does not require the award of any spectrum to Nextel outside the 700, 800 or 900 MHz bands. *See Reply Comments of Motorola, Inc.*, WT Docket No. 02-98, at 6-19 (filed Aug. 7, 2002) (the “Motorola Reply Comments”).

¹⁰ *Nextel/800 MHz NPRM*, 17 FCC Rcd at 4899 (internal citations omitted).

The Commission's concerns were echoed and expanded upon by a wide variety of commenters in response to the *Nextel/800 MHz NPRM*. The following excerpt from the comments filed by the American Public Transportation Association exemplifies the reaction of B/ILT licensees to Nextel's proposal:

The financial impact of requiring transit agencies to switch frequencies to a band outside 800 MHz could be substantial. The radio equipment currently used by 800 MHz licensees is incompatible for use on the 900 MHz band. Indeed, many transit agencies use costly sophisticated communications systems, such as computer aided dispatch and automatic vehicle location systems, that rely on use of the 800 MHz band. One mid-sized transit agency estimates the dollar value of band relocation to exceed \$10 million, while another estimates it would cost it \$14 million to \$40 million. More than 50 large agencies would be affected by the proposals and face these costs, which do not include indirect costs such as impacts to operations, increased risk, and loss of customer good will. . . .

Further, the proposed alternative band of 900 MHz has different performance characteristics, which may require additional radio sites. In certain locations, agencies would need two 900 MHz channels for each current 800 MHz channel to support the data requirements of transit applications now prevalent in the industry. This characteristic could translate into a significant increase in associated capital costs and ongoing support and maintenance requirements.

The proposed 700 MHz alternative is also unacceptable because there are currently no Transportation Management System (TrMS) software implementations using that band. In our view it would be unwise and inappropriate to expose public transit agencies and their 14 million daily riders to the risk and uncertainty associated with this unfamiliar and uncharted territory.¹¹

To quell the overwhelming opposition to its proposal, on August 7, 2002 Nextel submitted a revised proposal to the Commission during the reply comment phase of WT Docket

¹¹ Comments of the American Public Transportation Association, WT Docket No. 02-55, at 2 (filed May 6, 2002). *See also, e.g.*, Comments of the Ad Hoc Wireless Alliance, WT Docket No. 02-55, at 4-5 (filed May 6, 2002); AEPC Comments at 7-9; Comments of AVR, Inc., WT Docket No. 02-55, at 2-3 (filed May 6, 2002); Comments of Bosshard Radio Service, WT Docket No. 02-55, at 2-3 (filed May 6, 2002); C&M Comments at 5-6; Comments of Carolina Power and Light Company and TXU Business Services, WT Docket No. 02-33, at 15-17 (filed May 6, 2002); Comments of Cinergy Corporation, WT Docket No. 02-33, at 45-49 (filed May 6, 2002); Comments of Delmarva Power & Light Company and Atlantic City Electric Company, WT Docket No. 02-55, at 35-39 (filed May 6, 2002); Comments of the Holy Cross Electric Association, Inc., WT Docket No. 02-55, at 3-4 (filed May 3, 2002); Comments of Metropolitan Transit Authority of Harris County, TX, WT Docket No. 02-55, at 3-4 (filed May 3, 2002); Comments of Pinnacle West Capital Corporation, WT Docket No. 02-55, at 20 (filed May 7, 2002); Comments of Professional Communications, WT Docket No. 02-55, at 1 (filed May 7, 2002); Comments of SCANA Corporation, WT Docket No. 02-55, at 22 (filed May 6, 2002); Comments of Skitronics, LLC, WT Docket No. 02-55, at 5-9 (filed May 6, 2002); Comments of Southwest Louisiana Electric Membership Corporation, WT Docket No. 02-55, at 4 (filed May 9, 2002).

No. 02-55.¹² Among other things, Nextel proposed to eliminate the requirement that incumbent B/ILT and high-site SMR licensees choose between secondary status in the 800 MHz public safety block and relocating at their own expense to co-primary status in Nextel's 700 MHz and/or 900 MHz band spectrum. Instead, Nextel's revised plan would permit incumbent B/ILT and high-site SMR licensees to remain in the 800 MHz band on a co-primary basis. Nextel proposed that the 4 MHz of spectrum in the 700 MHz guard band it had offered to contribute now would be redesignated for public safety use. And, ignoring the overwhelming evidence in the record that Nextel's spectrum in the 900 MHz band would be unsuitable for 800 MHz B/ILT and high-site SMR licensees,¹³ Nextel reiterated its proposal to contribute 4 MHz of spectrum in the 900 MHz band for 800 MHz B/ILT and high-site SMR licensees who wished to relocate on a voluntary basis. Surprisingly, however, Nextel abandoned its request for 2020-2025/2170-2175 MHz as substitute spectrum and requested instead that it be awarded a nationwide license for 1910-1915 MHz/1990-1995 MHz. Thus, Nextel created the pending conflict with the MDS Industry Compromise that had been filed approximately one month earlier.¹⁴

Significantly, Nextel does not dispute that a relocation of MDS from the 2150-2162 MHz band is necessary to facilitate the auctioning of additional spectrum for 3G. Nor does Nextel dispute the Joint Parties' demonstration in the MDS Industry Compromise that the relocation spectrum other parties have proposed in ET Docket No. 00-258 for MDS channels 1 and 2/2A is unsuitable for MDS.¹⁵ Instead, with no discussion of the implications of its proposal on the Commission's 3G docket or the agency's objectives therein, Nextel contends that the Commission "correctly placed a high priority on addressing the pressing public safety issues

¹² See Nextel Reply Comments at 19-35. As of the reply comment deadline in WT Docket No. 02-55 (August 7), fifteen parties had co-signed Nextel's revised proposal. See Reply Comments of Aeronautical Radio, Inc. *et al.*, WT Docket No 02-55 (filed Aug. 7, 2002) [the "Joint Nextel/800 MHz Reply Comments"]. It should be noted, however, that each of those signatories stands to benefit substantially from adoption of Nextel's proposal and not one has any interest in whether 45 MHz in the 2110-2170 MHz band is made available for 3G services. One can reasonably presume that those supporting Nextel's proposal would be equally supportive if the proposal called for Nextel to receive any other spectrum in exchange for its contribution, or no spectrum at all.

¹³ See *supra* note 11.

¹⁴ The eleventh-hour nature of Nextel's proposal is highlighted by the fact that as early as the *Further Notice of Proposed Rulemaking* in ET Docket No. 00-258, the Commission had specifically solicited comment regarding the possibility of using the 1910-1930 MHz and/or 1990-2025 MHz bands as relocation spectrum for existing MDS licensees displaced from 2.1 GHz spectrum to be reallocated for paired 3G use. See *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, 16 FCC Rcd 16043, 16048, 16055 (2001) ["Advanced Services FNPRM"]. As is discussed in detail in the MDS Industry Compromise, several parties specifically suggested in response to the *Advanced Service FNPRM* that the 1910-1930 MHz unlicensed PCS band and the 1990-2025 MHz Mobile Satellite Service band could be relocation spectrum reallocated for displaced 2150-2162 MHz MDS licensees. See MDS Industry Compromise at 9-12. Yet, Nextel never commented on any of those proposals.

¹⁵ Nextel does, albeit half-heartedly, suggest that the MDS relocation problem could be solved simply by moving MDS channel 1 to the other side of MDS channels 2/2A, *i.e.*, from 2150-2156 MHz to 2162-2168 MHz. Nextel Reply Comments at 51. As discussed *infra*, Nextel's suggestion is not feasible for a number of reasons.

raised in [WT Docket No. 02-58],” that its revised proposal “provides a comprehensive means for doing so,” and that the award of the 1910-1915/1990-1995 MHz bands to Nextel is “an integral part” of that plan.¹⁶

Of course, while the Commission has appropriately accorded a high priority to resolving the interference Nextel is causing to public safety operations, it has never framed the debate in the manner suggested by Nextel. Indeed, the Commission has emphasized that the issue of whether Nextel should be awarded replacement spectrum must be evaluated in accordance with its overriding spectrum policies for *all* wireless services.¹⁷ And, when the competing proposals for use of the 1.9 GHz band are considered, it becomes clear that the award of the 1910-1915/1990-1995 MHz bands to Nextel is a poor public interest choice, especially when compared to the MDS Industry Compromise. While the award of 1910-1915/1990-1995 MHz to Nextel may be “integral” to Nextel’s strategy of tying its willingness to ameliorate the interference it causes public safety to the swap of a hodgepodge of inferior spectrum for a single, nationwide pairing of superior spectrum, the spectrum exchange Nextel proposes is in no way necessary for the Commission to resolve the public safety interference problem. To the contrary, inclusion of the miscellaneous 700 MHz and 900 MHz licenses Nextel proposes to swap for a nationwide license for 1910-1915/1990-1995 MHz will have no cognizable effect on resolving the interference Nextel causes to public safety.

Specifically, Nextel’s proposed surrender of its 4 MHz of guard band spectrum at 700 MHz will have no immediate effect on mitigating interference to public safety because, as the Commission and numerous commenting parties in WT Docket No. 02-55 have recognized: (1) the spectrum is burdened by encumbrances that render it unusable for public safety purposes for the foreseeable future; (2) no equipment is available for land mobile operations in that band; and (3) Nextel does not hold the spectrum nationwide.¹⁸ Similarly, Nextel’s proposed surrender of some 900 MHz spectrum is not essential to the mitigation of interference because (1) Nextel does not hold the spectrum nationwide; and (2) under Nextel’s revised plan, B/ILT and high-site

¹⁶ Nextel Reply Comments at 49-50.

¹⁷ See *Nextel/800 MHz NPRM*, 17 FCC Rcd at 4904.

¹⁸ See *supra* notes 10 and 11. See also Motorola Reply Comments at 17-18 (“Of course, any reliance on the 700 MHz band to enable public safety communications is moot until the FCC, in cooperation with Congress and the NTIA, reestablishes a regulatory framework that enables the prompt clearing of this band within the next few years and by 2006 at the latest. Under the current plan, this spectrum could remain occupied – and unusable by public safety in most populated areas of the country – probably until the 2010-2015 time frame.”); Joint Nextel/800 MHz Reply Comments at 25 n. 69 (“Public safety use of the 700 Guard Band spectrum will, of course, be subject to TV station incumbency and will be limited by interference potential from adjacent 700 MHz CMRS operations, absent a legislative change to the 700 MHz allocations.”); Comments of Nextel Communications, Inc., WT Docket No. 99-168 *et al.*, at 4 (filed May 3, 2002) (“There are over 100 incumbent broadcast television stations operating in the upper 700 MHz band alone, and . . . these stations will likely continue to operate on this spectrum for years to come. This obviously prevents public safety systems from operating on this spectrum, and creates great uncertainty about when this band will be available for non-broadcast use.”).

SMR licensees are not required to move to the 900 MHz band to retain co-primary status.¹⁹ Indeed, any suggestion by Nextel that its proposed spectrum swap is essential to resolving interference to public safety users in the 800 MHz band is undermined by the record in WT Docket No. 02-55 -- the Commission has before it a number of different proposals (including the one the Commission itself advanced in the *Nextel/800 MHz NPRM*) which offer the Commission alternatives for addressing the interference problem without requiring the Commission to award spectrum in the 1.9 GHz band to Nextel.²⁰

Grant To Nextel Of A Nationwide License For 1910-1915/1990-1995 MHz Would Throw The 3G Allocation Process Into Disarray.

As the Joint Parties made clear in the MDS Industry Compromise, the MDS industry has a strong preference for remaining at 2150-2162 MHz, particularly given that there is no comparable spectrum to which MDS can be relocated.²¹ Nonetheless, the Joint Parties recognized that the Commission may desire to relocate MDS channels 1 and 2/2A to accommodate an auction of spectrum in the 1.7 and 2.1 GHz bands, and proposed the MDS Industry Compromise to clear a path for that auction. A grant of the Nextel proposal would preclude implementation of the MDS Industry Compromise and, for all intents and purposes, preclude the Commission from allocating even 45 MHz of contiguous spectrum in the 2110-2170 MHz band for 3G.

The arguments advanced by Nextel against the MDS Industry Compromise are devoid of merit. No doubt recognizing the fundamental flaws in its own proposal, Nextel's August 9, 2002 *ex parte* letter would have the Commission conclude that MDS channels 1 and 2/2A should not be relocated to the 1910-1916/1990-1996 MHz bands as contemplated by the MDS Industry Compromise because such action "would require significant rule changes that would essentially change MDS Channels 1 and 2 from fixed to mobile services."²² What Nextel ignores is that the

¹⁹ See *supra* note 11. The \$500 million that Nextel is willing to contribute towards relocation costs will only be available to public safety licensees, and Nextel otherwise does not indicate that it is committing to pay B/ILT and high-site SMR relocation costs. See Nextel Reply Comments at 9.

²⁰ See, e.g., *Nextel/800 MHz NPRM*, 17 FCC Rcd at 4885-86 (discussing rebanding plan proposed by the National Association of Manufacturers) and at 4887-8 (discussing Commission's rebanding proposal); Comments of the District of Columbia Office of Chief Technology, WT Docket No. 02-55, at 6-11 (filed May 6, 2002); Comments of the Maryland Department of Budget and Management, Office of Information and Technology, WT Docket No. 02-55; at 5-13 (filed May 6, 2002); Comments of TRW/Ohio MARCS Program Office, WT Docket No. 02-55, at 5-8 (filed May 6, 2002); Comments of M/A Com, Inc., WT Docket No. 02-55, at 10-16 (filed May 6, 2002); Motorola Reply Comments at 6-19. Furthermore, as even Nextel concedes, there are a variety of other remedial measures at the Commission's disposal that do not involve realigning the 800 MHz band and that could be implemented in the near-term. See, e.g., Nextel White Paper at 31-37 (recommending upgrading of public safety receivers, additional CMRS base station filtering, and stronger public safety signal strength); *Nextel/800 MHz NPRM*, 17 FCC Rcd at 4912-15, Cingular/ALLTEL Comments at 16-19; Reply Comments of the Cellular Telecommunications and Internet Association, WT Docket No. 02-55, at 8-12 (filed Aug. 7, 2002); Motorola Reply Comments at 19-21.

²¹ See MDS Industry Compromise at 1.

²² Nextel Reply Comments at 50.

Commission already has afforded such flexibility to MDS licensees in the 2.5 GHz band,²³ and already has proposed in ET Docket No. 00-258 to afford the same flexibility to MDS licensees at 2.1 GHz.²⁴ Moreover, Nextel overlooks a critical component of the MDS Industry Compromise - the willingness of MDS licensees to operate MDS channels 1 and 2/2A at 1910-1916/1990-1996 MHz pursuant to the Commission's existing Part 24 technical rules for broadband PCS, rather than the more flexible Part 21 rules.²⁵ In other words, contrary to what Nextel suggests in its Reply Comments, the Commission will not be required to construct an entirely new regulatory scheme to successfully relocate MDS channels 1 and 2/2A in accordance with the MDS Industry Compromise.²⁶ Indeed, while WCA disputes Nextel's implication that the complexity of drafting new rules should deter the Commission from making the best public interest choice, it is worth noting that the relocation of MDS channels 1 and 2/2A to the 1.9 GHz band can be implemented with significantly fewer rule changes than the convoluted plan Nextel has advanced for mitigating the interference it causes public safety operations.

Finally, the Commission should reject Nextel's suggestion that the Commission simply leave MDS channel 2 at 2156-2162 MHz and relocate MDS channel 1 to the 2162-2168 MHz band, resulting in MDS occupying the 2156-2168 MHz band. Although not discussed in detail, Nextel appears to assume that only the 2110-2155 MHz band should be reallocated for 3G and that so long as there is no direct overlap between the 3G allocation and the MDS allocation, such an approach would be acceptable. Those assumptions, however, are misplaced.

At the outset, it is certainly not a foregone conclusion that the Commission will only reallocate 2110-2155 MHz for 3G services. To the contrary, many in the mobile industry have proposed in response to the recent *NTIA Report* that the Commission reallocate the entire 2110-2170 MHz band – which Nextel's approach would preclude.²⁷ In addition, as WCA has made

²³ *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, 16 FCC Rcd 17222 (2001).

²⁴ *Advanced Service FNPRM*, 16 FCC Rcd at 16601.

²⁵ *See, e.g.*, MDS Industry Compromise at 3, 4, 14.

²⁶ In addition, the MDS Industry Compromise provides the Commission with a very specific roadmap for designing relocation procedures and a cost reimbursement model that will facilitate the fastest possible relocation of MDS channels 1 and 2/2A to 1910-1916/1990-1996 MHz. *See* MDS Industry Compromise, Appendix A. By contrast, Nextel's revised proposal provides no such clarity and does not even ensure that Nextel's proposed realignment of the 800 MHz band will be fully funded. *See, e.g.*, Nextel Reply Comments at 9.

²⁷ *See, e.g.*, Comments of the Cellular Telecommunications & Industry Association, ET Docket No. 00-258, at 5 (filed Aug. 8, 2002); Comments of Motorola, Inc., ET Docket No. 00-258, at 5 (filed Aug. 8, 2002); Comments of the Telecommunications Industry Association, ET Docket No. 00-258, at 3 (filed Aug. 8, 2002). Nextel contends that the Commission need not be concerned about this, on the theory that the *NTIA Report* "recommended that only 45 MHz of spectrum in the 2.1 GHz band, rather than 60 MHz, be reallocated to 3G." Nextel Reply Comments at 50. In fact, it is the Commission, not NTIA, which has been assigned the responsibility of studying the viability of the 2110-2170 MHz band for 3G, and the Commission is currently considering in ET Docket No. 00-258 whether and under what conditions it should allocate the entire 2110-2170 MHz band for that purpose. *See* "An Assessment

clear on other occasions, the prospect of relocating existing MDS subscribers from one band to another band that overlaps the initial band raises a host of problematic transitional issues, none of which Nextel has even begun to address.²⁸

Last, and most importantly, even were the Commission to allocate only the 2110-2155 MHz band for 3G usage, the 1 MHz guardband Nextel would leave between 3G at 2110-2155 MHz and MDS at 2156-2168 MHz is grossly inadequate. As the Joint Parties individually and collectively have made clear in the MDS Industry Compromise, formal pleadings in ET Docket No. 00-258 and elsewhere, substantially more than a 1 MHz guardband will be required to protect 3G from interference by adjacent MDS operations, and *vice versa*.²⁹ Indeed, the March 30, 2001 report by the Commission's staff – Final Report, “Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems” (“Final Report”) – concludes that guard bands of up to 4 MHz will be needed to prevent interference between MDS and adjacent channel 3G systems.³⁰ In response to the Commission's *Public Notice* soliciting comments from the public on the Final Report, “FCC Releases Staff Final Report ‘Spectrum Study of 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems,’” Public Notice, DA 01-786 (rel. Mar. 30, 2001), WCA took issue with that conclusion, noting in pertinent part that somewhat larger guardbands might be required.³¹ WCA has been far from alone in suggesting that guardbands of 5 MHz or more are required between MDS stations operating under Part 21 rules and 3G stations.³²

Whether the correct guardband is 4 MHz or something more, the point is beyond peradventure – Nextel's proposal to leave just 1 MHz between MDS and 3G is wholly inadequate. Thus, even were the Commission to limit the 3G auction to the 2110-2155 MHz band, the MDS band could be no lower than approximately 2160-2172 MHz (and might have to be higher). Compounding the impact of the Nextel proposal on the MSS allocation, there will

of the Viability of Accommodating Advanced Mobile Wireless (3G) Systems in the 1710-1770 MHz and 2110-2170 MHz Bands,” National Telecommunications and Information Administration, at 5 n.7 (July 22, 2002).

²⁸ Specifically, because of the overlap between the 2150-2162 MHz and 2156-2168 MHz bands, an MDS broadband service provider might not be able to operate simultaneously in both bands for a transitional period during which customer premises equipment would be swapped out. *See* Reply Comments of The Wireless Communications Association International, Inc., ET Docket No. 00-258, at 33, n.88 (filed Mar. 9, 2001).

²⁹ *See, e.g.*, MDS Industry Compromise at 10, n.35; Comments of WorldCom, Inc., ET Docket No. 00-258, at 17-18 (filed Feb. 22, 2001).

³⁰ *See* FCC, Final Report, Spectrum Study of the 2500-2690 MHz Band: The Potential for Accommodating Third Generation Mobile Systems, at 47-52 (2001).

³¹ *See* Comments of The Wireless Communications Association International, Inc. on FCC Final Report, ET Docket No. 00-258, at 4-5 (filed April 16, 2001); Comments of Sprint Corporation, ET Docket No. 00-258, at 4-5 (filed April 16, 2001).

³² *See, e.g.*, Comments of Verizon Wireless, ET Docket No. 00-258, at 15 (filed Feb. 22, 2001); Comments of Cisco Systems, Inc., ET Docket No. 00-258, at 9-10 (filed Feb. 22, 2001).

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need to be a second guardband of identical size immediately above the MDS band if the MSS spectrum is made available for terrestrial operations (either by MSS licensees or others), as those terrestrial operations will apparently share relevant technical characteristics with 3G systems.³³

In sum, the MDS Industry Compromise presents the Commission with an opportunity to finally resolve the MDS relocation issue in a manner that the MDS industry can accept, while providing the additional spectrum the mobile industry desires without excessive cost or disruption of service to the public. The MDS Industry Compromise has been shown to be the *only* workable solution to clearing the 2150-2162 MHz band and allowing the auction of the 1.7/2.1 GHz bands for mobile 3G services. Acceptance of the Nextel proposal, which at best is just one of many ways the Commission can address the public safety interference problem, will unnecessarily preclude that solution. Nextel's opposition to the MDS Industry Compromise should be rejected, and the MDS Industry Compromise promptly adopted.

Respectfully submitted,

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³³ See Comments of The Wireless Communications Association International, Inc., IB Docket No. 01-185, at 3-5 (filed Oct. 22, 2001).

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Lauren M. Van Wazer
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