

Nextel Communications, Inc.  
2001 Edmund Halley Drive, Reston, VA 20191



March 18, 2003

Via Electronic Mail Delivery

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

Re: **Notice of Written Ex Parte Communication**  
Federal Preemption of Anne Arundel County Ordinance Regarding  
Radio Frequency Interference, WT Docket No. 02-100

Dear Ms. Dortch:

On March 17, 2003, Nextel Communications, Inc. ("Nextel") forwarded this written *ex parte* communication to Gary Oshinsky of the Wireless Telecommunications Bureau regarding the above-captioned proceeding.

This proceeding involves the use by Anne Arundel County, Maryland (the "County"), of its zoning and siting regulations (the "County Ordinance") to impermissibly regulate wireless operations and radio frequency interference, matters which are under the exclusive jurisdiction of the Federal Communications Commission ("FCC" or "Commission"). The County's Ordinance requires wireless carriers, as a pre-condition to obtaining zoning approval for new telecommunications sites, to comply with a host of requirements and provide a Certificate of Non-Interference. Nextel and other commercial mobile radio service providers in the County have requested that the FCC pre-empt this Ordinance as unlawful and have previously reported to the Commission the adverse impact that the County's enforcement of its regulations is having upon wireless carriers and their customers.<sup>1</sup>

In its previous *ex parte* submissions in this proceeding, Nextel informed the Commission that County approval for three proposed Nextel sites that would provide increased coverage and services to its customers, the citizens of Anne

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<sup>1</sup> See *Ex Parte* Letter dated February 19, 2003 by Cingular and Sprint PCS; *Ex Parte* Letter dated January 27, 2003 by Cingular; *Ex Parte* Letter dated January 8, 2003 by Sprint; and *Ex Parte* Letter dated December 19, 2002 by T-Mobile USA.

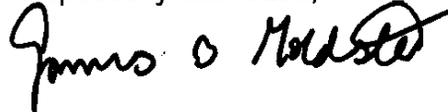
Arundel County, are being held in limbo.<sup>2</sup> While previously indicating that the County would not seek to enforce its Ordinance by requiring wireless carriers to provide certificates of "non-interference" prior to obtaining a building permit or zoning approval, the County, has, in fact, now informed Nextel that it will not approve these wholly permissible sites, pending Nextel filing non-interference certificates. Attached to this letter is a set of questions that were sent to Nextel as part of a routine zoning/building permit application for its Cromwell Bridge site that was originally sent to the County in September 2002. Specifically the County requires that a Certificate of Non-Interference be submitted or approval for permit #B02182829 will be withheld.

While Nextel has waited almost one-year for a Commission decision in this matter, these continued actions by the County indicate that swift and decisive Bureau action is required. Nextel has demonstrated its commitment to working with the County to avoid and mitigate interference that may be related to Nextel's operations. In lieu of a mere paper "certification", Nextel has repeatedly demonstrated to the County its commitment to coordination and joint testing to ensure that Nextel's operations do not cause interference to the County's public safety communications system.

The Bureau should make clear that the FCC has exclusive jurisdiction over radio frequency interference and declare that Anne Arundel's ordinance is preempted.

Pursuant to Section 1.1206 of the Commission's Rules, Nextel has electronically filed this *ex parte* notification in the above-captioned docket. Should there be any questions in regards to this matter, please contact the undersigned.

Respectfully submitted,



James B. Goldstein  
Senior Attorney – Government Affairs

cc: Gary Oshinsky

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<sup>2</sup> *Ex Parte* Letter dated January 28, 2003 by Nextel.

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**YOUR APPLICATION HAS BEEN REVIEWED FOR COMPLIANCE WITH APPLICABLE  
ZONING REGULATIONS. THE FOLLOWING COMMENTS MUST BE ADDRESSED.**  
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Permit #:B02182829

1. Certificate of Non-Interference is required to be submitted thru this Office?
2. Transportation & Public Safety Fees to be paid prior to issuance of the permit?

If you have any questions, please contact Peter Thorson at (410) 222-7710.

A Certificate of Occupancy approves the safety of a structure for use and occupancy purposes; however, a Zoning Certificate of Use is a separate type of permit which is required by zoning regulations for each operating business. If you do not have one for this business, call (410) 222-7446 for further information on the application process.