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April 2, 2004

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms Marlene H Dortch
Secretary
Federal Communications Commission
445 - 12th Street, S W , Room TW-A325
Washington, D C 20554

Re **Notice of Oral Ex Parte Presentation**
Improving Public Safety Communications in the 800 MHz Band
WT Docket No 02-55

Dear Ms Dortch

On March 31, 2004, Brian F. Fontes, Vice President-Federal Relations and Jim Bugel, Executive Director-Federal Affairs representing Cingular Wireless LLC ("Cingular Wireless"), met with Sam Feder, Legal Advisor to Commissioner Kevin J. Martin, regarding the above-referenced rule making proceeding on public safety communications in the 800 MHz band. Cingular Wireless supports the goal of mitigating interference caused to public safety radio systems in this band, but recognizes the likelihood that, whatever the outcome of this proceeding, it will be challenged in court. During our meeting, we discussed Cingular Wireless's concerns relating to the legal defensibility of certain aspects of the "Consensus Plan" proposed in this proceeding.

In particular, we discussed with Mr. Feder that the Commission lacks the legal authority to grant Nextel Communications, Inc. ("Nextel") a nationwide authorization in the 1.9 GHz band, as proposed in the Consensus Plan, or to accept a monetary payment from Nextel for that authorization. Such a grant would be tantamount to a private sale of spectrum, outside the Commission's normal licensing process and in contravention of Section 309(j) of the Communications Act. In addition, we noted that, under the relevant precedent, such a grant cannot be characterized as a modification of Nextel's licenses.²

The realignment of the 800 MHz band proposed in the Consensus Plan would enable Nextel to exchange non-contiguous spectrum for contiguous spectrum. Such an exchange would benefit Nextel substantially and would outweigh any loss of 800 MHz spectrum that Nextel would suffer under the Consensus Plan. Jim Bugel and I pointed out that the Commission has ample legal authority to impose the obligation to fund incumbent relocation costs upon parties who stand to benefit from that relocation, and noted that a Commission decision to impose such a requirement on Nextel with respect to

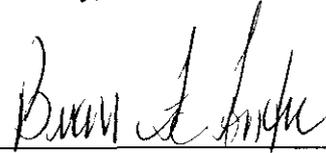
² These legal issues were more comprehensively addressed in an *ex parte* filing made by the Cellular Telecommunications & Internet Association, submitted on December 4, 2003 in this proceeding. See Attachment to *ex parte* letter from Diane Cornell, CTIA, to Marlene H. Dortch, dated December 4, 2003.

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the relocations made necessary by the Consensus Plan's proposed 800 MHz realignment would likely be affirmed

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding

Sincerely,

A handwritten signature in black ink, appearing to read "Brian F. Fontes". The signature is written in a cursive style with a horizontal line underneath it.

Brian F. Fontes
Vice President—Federal Regulatory Relations
Cingular Wireless LLC

cc Sam Feder