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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

April 8, 2004

BY HAND

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street SW
Washington, DC 20554

Re: Notice of Oral and Written *Ex Parte* Presentation;
WT Docket No. 02-55

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this notice is being filed. On Wednesday, April 7, 2004, Mark J. Abrams of Mobile Relay Associates, Charles M. Austin of Preferred Communication Systems, Inc., Kent Foster of Silver Palm Communications and I met with Paul Margie, Senior Legal Adviser to Commissioner Copps, regarding the above-referenced proceeding.

During the meeting, we stated that we continued to believe that: a) there is no nationwide 800 MHz harmful interference problem, but at most a localized problem in a handful of markets; b) the Balanced Approach proposal endorsed by the 800 MHz Users' Coalition remains the optimal solution; and c) the Commission lacks the power to implement a solution along the lines of the Nextel plan. We indicated, however, that if the Commission were to conclude that it does have the power to implement a solution based upon the outlines of the Nextel plan, that at the very least such a plan should be modified to ameliorate the harm to innocent licensees. We thereupon presented the attached summary of such modifications for the Commission's consideration. To emphasize, we did not opine that the Commission has the power to implement a solution along the lines of the attached proposal -- rather, we said that if the Commission already has concluded that it has the power, the attached proposal is a more appropriate way to exercise that power.

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An original and one copy of this letter are submitted for inclusion in the file of the above-referenced proceeding. Please direct any questions to the undersigned.

Sincerely,


David J. Kaufman

Enclosure

cc: Paul Margie
Mark J. Abrams
Charles M. Austin
Kent Foster

**COMPROMISE PROPOSAL BY NON-NEXTEL
800 MHz EA AND SITE-BASED LICENSEES**

- I. FCC Must Treat All Members of a Class Similarly
 - A. If Nextel is offered the opportunity to pay money in return for 1.9 GHz spectrum, that same opportunity must be offered to all 800 MHz EA licensees in either General Category or Lower 80 (because both are proposed to become cellular-prohibited)
 - B. FCC should establish a value (e.g., \$3-5 billion range) for the 1.9 GHz spectrum, with the money to be paid not to U.S. Treasury, but to a relocation "Fund"
 - C. Each EA licensee should have the option to be treated the same as Nextel, *i.e.*, to pay its own relocation costs and pay into the "Fund" in return for its *pro rata* share of the 1.9 GHz spectrum in its EA. Each EA licensee should be allowed to make this election on a market-by-market basis.
 - D. Each EA Licensee also moves into 800 MHz cellular-allowable spectrum, either current NPSPAC or upper 200 or combination thereof.

- II. FCC Can Accomplish Goals by Providing Choices
 - A. EA licensees that choose not to acquire 1.9 GHz spectrum would instead receive clean cellular-allowable spectrum at 800 MHz, and also would have their relocation costs paid from the Fund. That would increase the amount of 1.9 GHz spectrum available for Nextel to pay (into the Fund) to acquire.
 - B. Site-based licensees would choose whether they will move to cellular-available spectrum or to cellular-prohibited spectrum, and have their relocation costs paid from the Fund either way.
 - C. Respecting cellular-available spectrum, the order of priority within a given EA would be as follows: 1) non-Nextel EA licensees that chose not to acquire 1.9 GHz spectrum; 2) site-based licensees that elected cellular-allowable spectrum; 3) EA licensees (including Nextel) that elected to acquire 1.9 GHz spectrum. Those that elected to acquire 1.9 GHz spectrum would not receive clean spectrum at 800 MHz, but instead would receive whatever cellular-available spectrum remains, encumbered by relocated site-based licensees.
 - D. Relocation costs are not done via the Consensus Plan; rather, they are seamless relocations, including redundant systems and no harm to the innocent licensees being relocated
 - E. This methodology results in FCC avoiding confiscation (and attendant constitutional problems), and also avoids issue of non-auction "sale" of spectrum, because FCC is merely modifying a whole class of licensees to free up spectrum for Public Safety. This is no different than if the FCC had allocated the 1.9 GHz spectrum directly to Public Safety.
 - F. This methodology also assures that the money is there as needed for relocation, because it is paid in at the front end.

III. Additional Provisions

- A. Licensees need not deploy cellular technology by any deadline. A licensee that elects to be in the cellular-available band using non-cellular technology accepts the day-to-day interference issues that go with such election, to the same extent that such issues exist today while co-existing with Nextel in the General Category Band. For those that are more sensitive to such interference concerns, there is the choice to move into the new cellular-prohibited band.
- B. Where the NPSPAC spectrum is insufficient to provide sufficient cellular-available spectrum to all current licensees, then the EA licensee(s) within that EA which are acquiring the 1.9 GHz spectrum must either: a) make available additional 800 MHz spectrum from within the upper-200 channels; or b) take less cellular-available 800 MHz spectrum themselves in that EA (and have a concomitant reduction in the size of their contribution to the Fund to compensate for the lost spectrum).
- C. Extension of all 800 MHz EA five-year construction deadlines on a day-for-day basis for the period between the release of the NPRM in Docket 02-55 and the date of *Federal Register* publication of the Report & Order issuing the decision in this case, because the pendency of this proceeding eliminated the possibility of financing for non-Nextel EA auction licensees so long as there remained an outstanding proposal to force their relocation to cellular-prohibited spectrum.
- D. Where one or more EA licensees elect not to acquire 1.9 GHz spectrum, the other EA licensees in that EA may elect to acquire, and if more than one so elects, they shall share the cost and the spectrum.