CTIA
Building The Wireless Future™
Cellular Telecommunications & Internet Association

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April 29, 2004

The Honorable Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

In re: *Ex Parte* Presentation
WT Docket No. 02-55

Dear Commissioner Adelstein,

The Cellular Telecommunications & Internet Association ("CTIA") strongly believes that the focus of any solution in the 800 MHz proceeding should be on Public Safety. Throughout this proceeding, CTIA has sought a legally sustainable solution to the 800 MHz interference problem that would protect America's vitally important Public Safety and Critical Infrastructure users from harmful interference, while addressing the many concerns they have raised in the proceeding. For that reason, CTIA has advocated the most obvious and most legally responsible outcome of requiring the party causing interference to pay for fixing the problem, using a combination of improved technical measures, advance notification procedures and enhanced mitigation practices.

CTIA believes that the Commission can and should move forward to solve interference at 800 MHz consistent with the Public Safety community's needs. However, the Commission cannot and should not tie this effort to measures that undermine the legal sustainability of the overall approach. The record before the Commission fully documents the legal infirmities of any approach that involves a "private purchase" of new spectrum – infirmities that would ultimately doom the entire Public Safety solution to failure when presented to a reviewing court.

CTIA continues to believe that there are effective means in the record to address interference in the 800 MHz band that do not involve rebanding. CTIA recognizes, however, that the Commission is considering rebanding the 800 MHz band, as well as granting spectrum to Nextel to reflect Nextel's contribution to the rebanding process. If the Commission is determined to pursue rebanding and grant spectrum to Nextel outside the 800 MHz band, CTIA would like to propose several key principles that should be employed to better serve the interests of Public Safety, the Nation, and the Commission. These include: (a) requiring Nextel to deposit a minimum of $3 billion into a trust fund for Public Safety and Critical Infrastructure licensees to ensure adequate funding; (b) using an independent trustee

to manage the money and payments; (c) granting Nextel the spectrum it originally requested at 2.1 GHz; and (d) on a market-by-market basis, requiring Nextel to pay for and relocate Public Safety first, before getting its spectrum grant, to provide a strong incentive to reband quickly and nationally.

As described more fully below, CTIA is suggesting a framework for more effectively protecting Public Safety that addresses many of the Public Safety concerns in the record. As part of the solution involving rebanding of 800 MHz, Public Safety would work with a Trust Fund administrator to ensure that rebanding is completed and interference problems are solved efficiently, effectively, and in a timely manner -- to the satisfaction of Public Safety. To accomplish that goal, Public Safety, as well as other Critical Infrastructure 800 MHz licensees, would be guaranteed a minimum of $3 billion from Nextel to fund rebanding and other measures ordered by the Commission to address the interference problem. Finally, in addition to contiguous spectrum in the 800 MHz band after rebanding, Public Safety also would receive the additional 2.5 MHz of spectrum in the 800 MHz band as detailed in the Consensus Plan proposal.

Nextel also benefits from this proposal. Nextel addresses its interference problem and gets much more valuable nationwide, contiguous 800 MHz spectrum, as well as 10 MHz of spectrum at 2.1 GHz, in exchange for providing funding for Public Safety and giving up 2.5 MHz of non-contiguous spectrum at 800 MHz. Nextel also would retain the 700 and 900 MHz spectrum that it pledged to give up as part of its original proposal. For the public and taxpayers, this framework not only results in improved Public Safety communications, it also preserves for auction spectrum at 1.9 GHz expected to yield billions of dollars for the U.S. Treasury.

## A. ELEMENTS OF THE PROPOSAL

**A $3 Billion Public Safety Trust Fund Should Be Established to Ensure Adequate Funding for Rebanding and Remedying Interference.** Nextel has offered $850 million in funding for Public Safety and other 800 MHz licensee relocations. However, the record before the Commission strongly suggests that this commitment could greatly understate the real financial requirements for reconfiguring the 800 MHz band. Motorola, for example, has suggested that Nextel's estimate for Public Safety handset replacement may be significantly understated.[1] This understatement alone could result in over $2 billion in additional costs not accounted for by Nextel.[2] Many other Public Safety and Critical Infrastructure licensees have expressed concern in the record that the funding proposed by

[1] *See* November 3, 2003, Letter from Motorola to Edmond Thomas, Chief of the Office of Engineering and Technology and John Muleta, Chief of the Wireless Telecommunications Bureau, WT Docket 02-55 (Nov. 3, 2003).

[2] This estimate is based on multiplying Motorola's Public Safety handset replacement estimate detailed in its November 3, 2003, letter to the FCC (see n.1), by Nextel's own estimate for handset replacement costs from its December 24, 2002 *Ex Parte* filing to the Commission (See Supplemental Comments of the Consensus Parties, WT Docket 02-55, December 24, 2002, at appendix A-12.) *See also* November 10, 2003 *Ex Parte* Submission of the Cellular Telecommunications & Internet Association, WT Docket 02-55 (Nov. 10, 2003).

Nextel would not be adequate to cover the costs of remedying interference.[3] Nextel should, therefore, be required to fund no less than $3 billion to eliminate any risks to Public Safety and other 800 MHz licensees of financial shortfall during rebanding and provide a safety net for future unanticipated interference issues after rebanding.

**A Public Safety Trust Fund and Independent Trustee Should be Established to Protect Public Safety Users in the Rebanding Process.** The funding from Nextel should be deposited in a trust fund administered by an independent trustee. The independent trustee would be charged with protecting and advancing Public Safety and Critical Infrastructure user interests in the rebanding claim and payment process. This safeguard will help address critical oversight challenges given the large number of disbursements and significant sums of money involved, and help ensure reasonable, equitable disbursements across the country.

**Rebanding Funds Must Be Deposited Upfront To Avoid Another NextWave Situation.** Nextel's commitment would be no less than $3 billion in irrevocable payments into a Public Safety Trust Fund. The Commission should require a substantial upfront payment by Nextel to enable rebanding to get started, and the trust fund could then be replenished as necessary. This approach would avoid placing the government or Public Safety at risk of a creditor default after valuable spectrum changes hands.

**The Commission Should Grant Nextel Spectrum at 2.1 GHz Rather Than 1.9 GHz.** If the Commission determines that Nextel should be granted spectrum outside 800 MHz to accommodate Nextel's spectrum and financial contributions to rebanding, it should grant Nextel spectrum in 2.1 GHz, as Nextel itself proposed in its original filing.[4] While 2.1 GHz spectrum may be somewhat less valuable than the 1.9 GHz spectrum Nextel currently seeks, Nextel has advanced no sound public interest or technical reasons for challenging the grant of spectrum it originally desired. The 2.1 GHz spectrum continues to be viable and technically suitable spectrum for the services and technologies Nextel has indicated it intends to explore in the future.[5] Obviously Nextel had considered the costs and benefits of the 2.1 GHz spectrum when it originally proposed that band. Moreover, this proceeding is about protecting Public Safety, and nothing about the decision to use 2.1 GHz versus 1.9 GHz has

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[3] *See e.g.,* March 24, 2004, *Letter to the President from the Grand Lodge Fraternal Order of Police*, "We believe this is far short of what would be needed to replace literally millions of radios that would be rendered obsolete by the Plan's massive spectrum realignment, forcing public safety communications on to new channels. A number of local communities oppose the Plan for this reason alone;" *see also* March 25, 2004, *Letter to the President from the Federal Law Enforcement Officers Association*; *ex parte* submission by the Commonwealth of Pennsylvania, WT Docket 02-55 (June 26, 2003).

[4] Nextel proposed that it be granted spectrum at 2020-2025/2170-2175 MHz ("2.1 GHz") to compensate it for its contributions to remedying the public safety interference problem. *See* November 21, 2001, Nextel letter and accompanying White Paper to Mr. Thomas Sugrue, Chief, Wireless Telecommunications Bureau, *Eliminating CMRS-Public Safety Interference in the 800 MHz Band and Allocating Additional Spectrum to Meet Critical Public Safety Communications Needs*, "November 21, 2001 Nextel White Paper," at 15, (filed Nov. 21, 2001).

[5] *See* "Donahue Speaks on Spectrum, Technology and Consolidation", RCR Wireless News, April 26, 2004, at p. 8.

any impact on Public Safety. Given the intense industry interest in the opportunity to participate in competitive bidding for 1.9 GHz, the Commission should use 2.1 GHz as the solution to the Nextel spectrum demands. This approach would ensure that the significant proceeds of a 1.9 GHz auction would be available to the U.S. Treasury to meet such important public interest needs as the funding of first responder and other Homeland Security requirements.

**A Policy of Granting New Spectrum to Nextel After Rebanding on a Market-by-Market Basis Would Provide Increased Incentives for Rapid Resolution of Public Safety Interference Problems.** Under its plan, Nextel would get its spectrum reward of a new national license before completing any Public Safety interference resolution. This proposed sequence disadvantages Public Safety because it does not provide the necessary incentives for Nextel to undertake rebanding expeditiously. In contrast, an approach that creates the right incentives to protect Public Safety/Critical Infrastructure interests would be to employ a policy along the following lines: (a) Nextel and Public Safety would complete rebanding on a market-by-market basis, using an appropriate definition of markets (*e.g.,* the 55 existing Public Safety regional coordination areas); (b) upon certification of completion of rebanding in each market, Nextel would receive a portion of the 2.1 GHz spectrum in that market; and (c) upon completion of rebanding nationally and meeting its obligations to provide $3 billion in funding, Nextel would then receive the remaining 2.1 GHz spectrum for each market. This approach would help address the concern that rebanding might occur first and only in the largest cities, but leave smaller communities who also will incur significant rebanding costs without a solution. Finally, in order to ensure that rebanding is completed in a reasonable time frame, the Commission should require all affected parties to complete all rebanding nationwide within the time frame Nextel proposed in the Consensus plan, three and a half years.

**B. Analysis of Relevant Spectrum Bands**

**2.1 GHz Spectrum** -- On April 22, 2004, Nextel filed an ex parte letter opposing any use of 2.1 GHz spectrum as an alternative to the 1.9 GHz spectrum. Nextel attempts to make the case that the record in this proceeding is devoid of discussion of 2.1 GHz and that 2.1 GHz is an inferior spectrum home. This opposition to 2.1 GHz is ultimately ill-founded for several reasons.

First and foremost, Nextel itself proposed use of 2.1 GHz spectrum.[6] There is no hint in Nextel's prior filings of concern about the suitability, cost or technical characteristics of those frequency bands. To the contrary, Nextel specifically and affirmatively requested that it be given 2020-2025 MHz paired with 2170-2175 MHz. Even when Nextel, without any explanation in the record, shifted its target to 1.9 GHz, there was no evidence supplied to suggest that use of 2.1 GHz would be problematic in any respect.

Second, Nextel's newly advanced claim that the record could not support a decision to use 2.1 GHz is refuted by its own submissions. Based upon Nextel's request, the

[6] November 21, 2001 Nextel White Paper at 29, 51.

Commission's Notice of Proposed Rulemaking identified several bands, including the 2.1 GHz band, as potential candidates for replacement spectrum.[7] In response, Nextel reiterated its support for the 2.1 GHz band, arguing that a spectrum swap of its 700 MHz, 800 MHz and 900 MHz licenses in exchange for 2.1 GHz would "substantially advance the public interest" in part by "affording Nextel replacement spectrum for its use in providing terrestrial mobile services."[8] Nextel tries to make much of the ensuing disputes over 1.9 GHz valuations and the absence of debate over 2.1 GHz. However, in its own filings in the proceeding, Nextel has assumed that either 2.1 GHz spectrum or 1.9 GHz spectrum were technically suitable to meet its needs.

Last, but not least, Nextel has offered the recurring and correct theme that this proceeding is all about protecting Public Safety. However, nothing about the decision to use 2.1 GHz versus 1.9 GHz has any impact on Public Safety.

**1.9 GHz Spectrum** -- Verizon Wireless's filing has provided a tangible indication of interest in pursuing the 1.9 GHz spectrum through competitive bidding and the level of financial interest that a 1.9 GHz auction could be expected to attract. For its part, CTIA simply notes that its members want the opportunity to competitively bid for 1.9 GHz spectrum and that Congress has provided that spectrum be licensed through that market-based mechanism. To the extent that 1.9 GHz has been affirmatively identified as a spectrum home of such intense interest, the Commission should recognize that reality in addressing the resolution of this 800 MHz proceeding, and should move forward to auction the 1.9 GHz spectrum for the fiscal benefit of the government and to improve service offerings for consumers.

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[7] Improving Public Safety Communications in the 800 MHz Band and Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, Notice of Proposed Rule Making, WT Docket No. 02-55, 17 FCC Rcd 4873 (2002) at ¶ 50.

[8] *See* Nextel Comments, WT Docket 02-55, at 49 (filed May 6, 2002).

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In conclusion, CTIA recognizes the difficult challenges inherent in shaping a legally sustainable, effective and equitable outcome in this important proceeding. The suggestions offered here are designed to further the fundamental goal shared by all participants in the docket – protecting our nation's critically important first responders from interference. We believe this proposed package will considerably strengthen the benefits for Public Safety, and achieve a balance that treats all interested parties fairly. We submit that these proposals, which build on concepts that have all been extensively discussed in the record, could serve as the basis for a speedy, effective and equitable solution to this proceeding.

Sincerely,

Steve Largent

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cc: Barry Ohlson