

May 19, 2004

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: *Ex Parte* Presentation
WT Docket 02-55**

Dear Chairman Powell:

When I joined CTIA as President and CEO last November, the 800 MHz proceeding involving interference to Public Safety radios had already been going on for several years. As a relative newcomer to the proceeding, I soon learned how complex and difficult the issues were, both technically and legally. I shared the goal that I believe has been the focus of all parties to this proceeding: addressing the interference concerns of Public Safety. But of course agreement on the goals of the proceeding has not translated into agreement among the parties on how best to achieve those goals. It is regrettable that, as the debate has evolved, it has focused more on accusations and less on positive solutions.

However, in an effort to break through the impasse, I recently sent a letter to you and the other Commissioners with a revised proposal that I hoped would help resolve the complex issues in this proceeding.¹ In an effort to find common ground, I have worked with the members of CTIA to develop a proposal that moves the industry towards as many of the elements of the “Consensus Plan” as possible, while still being equitable and legally sustainable. We proposed replacement spectrum at 2.1 GHz *specifically because this was the spectrum band that Nextel itself had proposed as suitable replacement spectrum.*

Nextel has raised several concerns with the 2.1 GHz band as replacement spectrum over the last few weeks, including most recently a filing on May 14, 2004. CTIA has responded to these technical concerns in prior submissions.² In an attachment

¹ See Letter from Steve Largent, President and CEO, CTIA, to Michael K. Powell, Chairman, FCC, “CTIA Letter,” WT Docket 02-55 (April 29, 2004). This proposal: (a) requires Nextel to deposit a minimum of \$3 billion into a trust fund for Public Safety and Critical Infrastructure licensees to ensure adequate funding; (b) uses an independent trustee to manage the money and payments; (c) grants Nextel the spectrum it originally requested at 2.1 GHz; and (d) on a market-by-market basis, requires Nextel to pay for and relocate Public Safety first, before getting its spectrum grant, to provide a strong incentive to reband quickly and nationally.

² See e.g., Letter from Diane J. Cornell, Vice President, Regulatory Policy, CTIA, to Marlene H. Dortch, FCC, WT Docket 02-55 (May 7, 2004); Letter from Diane J. Cornell, Vice President, Regulatory Policy, CTIA, to Michael K. Powell, Chairman, FCC, WT Docket 02-55 (May 13, 2004).

to this letter, we respond to several new issues that Nextel raised in its most recent filing and offer a different viewpoint.

From the perspective of CTIA's members, the compromise we proposed is far from optimal, and it is a significant departure from the approach we have been advocating to date. Yet it maintains our focus on addressing interference to Public Safety in a way we believe is better for Public Safety than the "Consensus Plan," and more legally and operationally sustainable.

I believe the Compromise Plan CTIA filed on April 29th resolves the issues in a way that is fair to all involved and, above all, resolves the Public Safety interference concerns. I hope you will look to this solution in finalizing your approach in this proceeding.

Sincerely,



Steve Largent
President/CEO
CTIA

Attachment

cc: Commissioner Kathleen Abernathy
Commissioner Michael Copps
Commissioner Kevin Martin
Commissioner Jonathan Adelstein
Bryan Tramont
Sheryl Wilkerson
Jennifer Manner
Paul Margie

Sam Feder
Barry Ohlson
John Muleta
John Rogovin
Ed Thomas



Attachment

Nextel Argument: Nextel's May 14th letter³ argues that the 2.1 GHz spectrum is encumbered by microwave links used by the wireless industry for backhaul and that its competitors could therefore slow Nextel's access to the band or increase its costs.⁴

Response: There are several reasons why Nextel's concerns are unwarranted:

- First, nothing of significance has transpired in this band since Nextel first proposed it as replacement spectrum. The same licensees are there now that Nextel was going to relocate under its original proposal.
- The 2165 to 2180 MHz band, as is true of the entire 2110 to 2180 MHz band, is subject to rigid relocation requirements adopted originally by the Commission in 1993. This same framework was used to relocate fixed microwave incumbents from the PCS band without any substantial disagreements. In fact, the only modification to the relocation rules governing the 2.1 GHz band was a removal of the "voluntary" negotiation period, requiring all incumbent licensees to follow "mandatory" negotiation requirements immediately. The rules require incumbent licensees to negotiate in good faith with the new entrant or be subject to Commission review.⁵ If at the end of the two-year mandatory negotiation period there is no agreement between the parties, Nextel would be able to involuntarily relocate any incumbent.⁶
- The costs and procedures for relocating incumbent microwave licensees are well understood from the PCS experience, and an incumbent licensee would not be successful in holding out for unreasonable costs or throwing up logistical obstacles. The involuntary relocation rules would permit any legitimate relocation to occur with or without the agreement of the incumbent licensee. These FCC rules already have a proven track record of performance, and would prevent a licensee from "gaming the system."
- If Nextel remains concerned about the prospect of relocating incumbents in the 2165-2180 MHz band, one option that it did not discuss in its May 14 letter is CTIA's proposal to use the 2155-2160 MHz band as replacement spectrum.⁷ This band is deployed with fewer systems than the 2170-2175 MHz band currently used for fixed microwave systems, and would require fewer relocations. In fact, the spectrum is at least partially licensed to Nextel, so Nextel should have an easier time of clearing incumbent systems and making use of the band.

³ See Letter from Robert S. Foosaner, Senior Vice President and Chief Regulatory Officer, Nextel, to Marlene H. Dortch, FCC, "Nextel Letter," WT Docket 02-55, at 1 (May 14, 2004).

⁴ See Nextel Letter at 4-5.

⁵ See 47 C.F.R. § 101.73.

⁶ See 47 C.F.R. § 101.75.

⁷ See Letter from Diane J. Cornell, Vice President, Regulatory Policy, CTIA, to Marlene H. Dortch, FCC, WT Docket 02-55, at 3 (May 7, 2004).



Nextel Argument: Nextel's May 14th letter stated that it "must gain immediate, nationwide access to the replacement spectrum so it can begin taking the numerous steps necessary to make this spectrum useable and *ensure that the realignment process does not unduly disrupt service to its customers.*"⁸

Response: Nextel's realignment proposal has never contemplated utilizing any of the replacement spectrum for relocating users from the 800 MHz band. Indeed, any use of replacement spectrum, whether at 1.9 or 2.1 GHz, for relocation purposes could not occur before incumbents are relocated from the band, and certainly not without equipment development and costly delays. Therefore, any suggestion that the timing of access to replacement spectrum for Nextel would adversely affect rebanding in the 800 MHz band or disrupt service to customers is incorrect.

⁸ Nextel Letter at 7 (emphasis added).

