

December 2, 2004

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

**Re: *WT Docket No. 02-55 ; ET Docket No. 95-18 ; ET Docket No. 00-258 ;
IB Docket No. 01-185***

Dear Ms. Dortch:

The National Association of Broadcasters (“NAB”), the Association for Maximum Service Television (“MSTV”), and the Society of Broadcast Engineers, Inc. (“SBE”), hereby jointly request that the Commission adjust the timetable for the mandatory negotiation periods for incumbent Broadcast Auxiliary Service (“BAS”) licensees and Nextel Communications, Inc. (“Nextel”), established by the Report and Order in WT Docket No. 02-55.¹ As explained below, the Commission should provide that the deadline for mandatory negotiations for “stage one” relocations be 14 months from the effective date of the *800 MHz Report and Order*, and that the deadline for “stage two” negotiations be 26 months from the effective date of that order. NAB, MSTV, and SBE request that the Commission establish these new mandatory negotiation deadlines for BAS relocation as part of any order it issues in response to the requests for clarification and modification of the *800 MHz Report and Order* set forth in various *ex parte* filings submitted by various parties.²

The Commission adopted the *800 MHz Report and Order* on July 8, 2004, with the goal of realigning the 800 MHz band to remedy interference to public safety systems in that band. Pursuant to this realignment plan, Nextel will be assigned nationwide replacement spectrum at 1910-1915 MHz/1990-1995 MHz. As a condition of Nextel’s licensing at 1.9 GHz, the Commission also adopted a new framework for the relocation of incumbent BAS licensees from the 1990-2025 MHz band, based largely on the MSTV-

¹ *Improving Public Safety Communications in the 800 MHz Band, Report and Order*, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004) (“*800 MHz Report and Order*”).

² The Commission has issued a Public Notice seeking comment on these *ex parte* filings. *800 MHz Public Safety Interference Proceeding; Request for Comments on Ex Parte Presentations and Extension of Deadlines*, 69 Fed. Reg. 67880 (Nov. 22, 2004) (“November 22 Public Notice”).

NAB-Nextel BAS Relocation Plan submitted in the above-referenced dockets.³ Under the order, Nextel is first required to relocate all BAS incumbents in markets where it chooses to operate immediately, as well as in any adjacent markets that raise inter-market coordination and interference problems. Nextel must complete this “stage one” relocation process within 19½ months of the effective date of the *800 MHz Report and Order*. In “stage two,” Nextel must relocate incumbent BAS licensees in all remaining markets within 31½ months of that effective date.⁴

The *800 MHz Report and Order* established mandatory negotiation periods for incumbent BAS licensees and Nextel. Rather than tying its negotiation deadlines to the effective date of the *800 MHz Report and Order*, however, the Commission established specific end dates for these negotiations. Under the order (as modified by the November 22 Public Notice), the mandatory negotiation period for stage one relocations terminates on July 15, 2005, while the negotiation period for stage two relocations concludes on May 15, 2006. This unintended shortening of the mandatory negotiation period works to the disadvantage of BAS and LTTS incumbents.

NAB, MSTV and SBE request that the Commission adjust the timetable for these mandatory negotiations to ensure that BAS licensees have sufficient time to negotiate their relocation on terms that they find acceptable. These negotiations will require careful planning and coordination because BAS licensees will be relocating to a significantly different channel plan and because of the shared nature of BAS channel use and the need to avoid inter-market coordination and interference problems. A moderately extended negotiation period will provide broadcasters the time they will need to coordinate among themselves as they negotiate with Nextel, to inventory their BAS equipment, and to respond to any unforeseen problems or interruptions in the negotiations.

In addition, the negotiations can only commence after Nextel has accepted the license modifications and obligations set forth in the *800 MHz Report and Order*, which was recently published in the Federal Register on November 22, 2004 and has not yet become effective. While the Commission’s deadlines for BAS relocation run from the effective date of the *800 MHz Report and Order*, the Commission’s mandatory negotiation deadlines are based on pre-established dates that are not automatically adjusted to take into account when the *800 MHz Report and Order* becomes effective. Thus, although the *800 MHz Report and Order* has not yet become effective, the negotiation “clock” continues to tick, and these mandatory negotiation periods are now likely to be several months shorter than anticipated.

³ Joint Proposed BAS Relocation Plan, from David Donovan, MSTV, Edward O. Fritts, President and CEO, NAB, and Roberts S. Foosaner, Senior Vice President and Chief Regulation Officer, Nextel (May 3, 2004).

⁴ The November 22 Public Notice (at 2) extended the BAS relocation deadlines established in the *800 MHz Report and Order* by 45 days.

The Commission should consequently adjust the schedule for mandatory BAS relocation negotiations to provide BAS licensees and Nextel sufficient time for these negotiations and tie this schedule to the effective date of the *800 MHz Report and Order*. Specifically, the Commission should permit stage one negotiations to continue through a period concluding 14 months from the effective date of the *800 MHz Report and Order*, *i.e.*, 60 days after its publication in the Federal Register. *See 800 MHz Report and Order* ¶ 341. Mandatory negotiations for stage two relocations should be concluded by 26 months from that effective date. Thus, the deadline for completing stage one mandatory negotiations would be March 21, 2006, and the deadline for completing stage two mandatory negotiations would be March 21, 2007. With these adjusted deadlines, incumbent BAS licensees and Nextel should have sufficient time to negotiate and complete BAS relocation.

Most important to the Commission's consideration is that modification of mandatory negotiations timetable will not require any changes to the 19½-month and 31½-month deadlines for actual completion of the BAS relocations. In addition, Nextel will still be required to file progress reports on the status of BAS relocation within 13½ months and 25½ months of the *800 MHz Report and Order's* effective date. Also, Nextel must still indicate within 13½ months of that effective date whether it will seek reimbursement from MSS licensees for its BAS relocation costs, and must still file its BAS relocation plan for stage one markets within 75 days of that date.

NAB, MSTV and SBE have discussed with Nextel their proposed changes to the Commission's timetable for mandatory negotiations, and Nextel has expressed support for this proposal. Moreover, like Nextel, NAB, MSTV and SBE remain supportive of the overall framework for BAS relocation that the Commission has now put in place with the *800 MHz Report and Order*. As previously indicated, NAB, MSTV and SBE believe that this new approach will yield great benefits. The Commission's action minimizes the potential for inter-market interference, prevents BAS licensees in any market from having

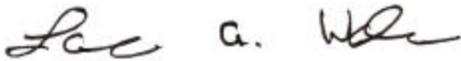
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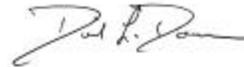
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to reduce their number of BAS channels, and serves both the Commission's and the public's interest in more robust public safety services and improved on-the-spot coverage of news and sports.

Respectfully submitted,



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