

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	
)	WT Docket No. 02-55
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels)	

**COMMENTS OF NEXTEL COMMUNICATIONS, INC.
AND NEXTEL PARTNERS INC.**

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December 2, 2004

Summary

Nextel Communications, Inc. (Nextel) and Nextel Partners Inc. (Nextel Partners) hereby comment on a number of issues raised in submissions filed by other parties regarding the Commission's *800 MHz Report and Order (R&O)*. The Commission should reject *ex parte* proposals and arguments that would prevent 800 MHz band reconfiguration from being achieved expeditiously, efficiently, and without imposing undue disruption on any incumbent licensee, including Nextel and Nextel Partners.

First, the Commission should reject the proposal by AIRPEAK Communications, LLC and Airtel Wireless Services that, as Enhanced Specialized Mobile Radio (ESMR) licensees, they be provided the option of relocating to the uppermost portion of the new cellular block in the realigned 800 MHz band. This proposal offers nothing to further the Commission's fundamental public policy objective in the *R&O* and this proceeding: improving public safety communications in the 800 MHz band. Rather, this proposal, if adopted, would make band reconfiguration more burdensome and would potentially disrupt Nextel's operations, given the shortage of cellular block channels in some markets. Non-Nextel, non-Southern LINC ESMR licensees should instead be relocated to the 816-817/861-862 MHz block, with additional consecutive replacement channels provided to these licensees above 817/862 MHz as necessary. These licensees are well-suited to operate in this spectrum, as they operate systems that will be good "spectrum neighbors" to public safety and other high-site licensees operating in the adjacent non-cellular block. Retuning non Nextel, non-Southern LINC ESMR licensees in this way ensures them comparable spectrum and that they are made whole.

The AIRPEAK/Airtel proposal would also undermine the assumptions underlying the Commission's valuation of Nextel's current and post-realignment 800 MHz spectrum holdings.

In the *R&O*, the Commission placed a lower value on non-contiguous spectrum than contiguous spectrum. The AIRPEAK/Airtel proposal would create an interleaved post-retuning spectrum environment that would result in Nextel operating on non-contiguous 800 MHz channels in a number of areas rather than on contiguous channels as contemplated by the *R&O*. Under the Commission's reasoning, this would lessen the value of Nextel's replacement spectrum, and Nextel would not be made whole in return for its multi-billion dollar contribution to the Commission's 800 MHz reconfiguration plan.

Second, contrary to suggestions by some non-ESMR licensees that seek relocation to the cellular block, incumbent SMR and B/ILT licensees that do not meet the Commission's definition of a cellularized system should be retuned only within the non-cellular block. Such licensees do not pose an interference risk to public safety operations, and therefore should continue operating in the non-cellular band. Certainly, the Commission should reject any effort by non-cellular licensees to game the rebanding process to enhance their spectrum positions. These licensees should receive comparable replacement channels consistent with their existing operations; there is no public interest reason for relocating them to the cellular band.

Third, the Commission should reject Verizon's arguments regarding the Commission's valuation of Nextel's spectrum contribution to the 800 MHz rebanding plan. Without any support, Verizon states that Nextel should not receive credit for its effective loss of approximately 0.5 MHz of spectrum at 862-863 MHz. This claim is without merit. New technical restrictions designed to protect public safety systems from interference will substantially limit Nextel's use of its licensed spectrum in this band segment. The Commission was fully justified when it accounted for this factor in its valuation of Nextel's contributions to remedying the public safety interference problem at 800 MHz.

In addition, counter to Verizon's claims, the Commission's valuation of Nextel's 800 MHz spectrum holdings should reflect Nextel's nationwide licensed authority in this band. Verizon's focus on Nextel's current level of service or signal coverage is misplaced. The Commission's 800 MHz spectrum valuations are based on the populations encompassed by licensees' geographic license areas; *i.e.*, the licenses Nextel and Nextel Partners are surrendering for reassignment to public safety licensees as part of the Commission's 800 MHz reconfiguration plan. Nextel's and Nextel Partners' licenses in the 806-817/851-862 MHz channel block authorize service to nearly 286 million persons throughout the United States. This is the relevant criteria for determining the value of Nextel's spectral contributions to 800 MHz realignment, not the population of its current iDEN service area.

Finally, Nextel and Nextel Partners, Nextel's affiliate serving smaller and rural markets, take this opportunity to emphasize that Nextel Partners has committed itself "to participate in the system relocations, license swaps and associated actions and procedures involving its 800 MHz licenses necessary to effectuate the Consensus Plan for 800 MHz realignment." The county-by-county compilation of the spectrum Nextel will surrender under the Commission's 800 MHz reconfiguration plan, set forth in Nextel's September 21, 2004 *ex parte* presentation to the Commission, includes Nextel Partners' entire licensed spectrum in the 806-817/851-862 MHz channel block.

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**COMMENTS OF NEXTEL COMMUNICATIONS, INC.
AND NEXTEL PARTNERS INC.**

Nextel Communications, Inc. (Nextel) and Nextel Partners Inc. (Nextel Partners) hereby file these joint comments in response to the Public Notice released in this proceeding on October 22, 2004.¹ The Public Notice seeks comment on a number of *ex parte* submissions Nextel and others have filed regarding the Federal Communications Commission's (the "Commission's") *800 MHz Report and Order (R&O)* released on August 6, 2004.² In its submissions, Nextel has asked the Commission to clarify certain aspects of the *R&O* to ensure that reconfiguration of the 800 MHz band is achieved expeditiously, efficiently, and without imposing undue disruption on any incumbent licensee, including Nextel and Nextel Partners.

Nextel and Nextel Partners file these comments to address a number of issues raised by other parties in *ex parte* filings in this proceeding. First, as explained below, the Commission

¹ *800 MHz Public Safety Interference Proceeding; Request for Comments on Ex Parte Presentations and Extension of Deadlines*, 69 Fed. Reg. 67880 (rel. Oct. 22, 2004; published Nov. 22, 2004) (*October 22 Public Notice*).

² *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969 (2004) ("*R&O*").

should reject the proposal by some Enhanced Specialized Mobile Radio (ESMR) licensees that they be given the option of relocating to channels in the cellular block. This proposal is not justified by the Commission's public safety objectives in this proceeding, and would make band reconfiguration more burdensome and potentially disrupt Nextel's operations. Non-Nextel, non-Southern LINC ESMR licensees should instead be retuned to the 816-817/861-862 MHz block, with additional replacement channels, if necessary, beginning at 817/862 MHz on consecutive channels. This will ensure that these licensees are retuned to spectrum comparable to the channels they currently utilize.

Second, contrary to suggestions by some non-ESMR licensees that seek retuning to the cellular block, incumbent SMR and B/ILT licensees that do not meet the Commission's definition of a cellularized system should be retuned within the non-cellular block, if they need to be relocated at all. Such licensees do not pose an interference risk to public safety operations and therefore should continue operating in the non-cellular band. These licensees should receive comparable replacement channels consistent with their existing operations; there is no public interest reason for retuning them to the cellular channel block and sound reasons for their remaining with other compatible high-site licensees.

Third, the Commission should reject Verizon's arguments regarding the Commission's valuation of Nextel's spectrum contribution to the 800 MHz rebanding plan. Verizon makes the unsupported claim that Nextel should not receive credit for the lost use of certain channels necessary to comply with new technical restrictions designed to protect public safety systems from interference. These restrictions will substantially limit Nextel's use of its licensed spectrum at 817-818/862-863 MHz. In many cases, Nextel will be required to "back off" from the band edge, effectively losing the use of approximately 0.5 MHz of its licensed spectrum. The

Commission was fully justified when it accounted for this factor in its valuation of Nextel's spectrum contributions to remedying the public safety interference problem at 800 MHz.

I. Non-Nextel/Non-Southern LINC ESMR Licensees Should Be Relocated to the 816-817/861-862 MHz Band

Nextel has requested that the Commission clarify that ESMR licensees (other than Nextel and Southern LINC) that elect to be relocated out of the non-cellular channel block be retuned first to the 816-817/861-862 MHz block (starting at 861.9875 MHz and working downward) in the reconfigured band. To the extent the 816-817/861-862 MHz block does not contain a sufficient number of replacement channels to retune an ESMR licensee in a particular area, its remaining channels would be retuned to 817/862 MHz and above on consecutive, contiguous channels.³

In an *ex parte* filing, AIRPEAK Communications, LLC and Airtel Wireless Services, LLC (AIRPEAK/Airtel), assert that they are ESMR licensees and that they should be retuned to the uppermost part of the current National Public Safety Plan channels (the "NPSPAC" channels) (821-824/866-869 MHz), the channels just above the "upper 200" SMR channels and adjacent to the Cellular A Block channels, currently allocated and licensed for exclusive public safety use.⁴ Under the Commission's 800 MHz band reconfiguration plan, the current NPSPAC channels will be relocated to a new NPSPAC channel block at 806-809/851-854 MHz; the current NPSPAC channels will then become part of the new cellular channel block at 817-824/862-869 MHz. AIRPEAK/Airtel argue that they should be able to select the specific channels in the cellular block to which they will be retuned, provided their choice (i) does not

³ See Letter from Regina M. Keeney, Counsel to Nextel, to Marlene Dortch, FCC Secretary, at 2 (Sept. 16, 2004). (Unless otherwise indicated, all comment and *ex parte* submissions referenced herein were filed in WT Docket No. 02-55.)

⁴ See Letter from Elizabeth Sachs, Counsel for AIRPEAK and Airtel, to Marlene Dortch, FCC Secretary (Oct. 5, 2004).

increase the cost of retuning their systems; (ii) does not delay the retuning process; and (iii) does not adversely impact the ongoing operations of either Nextel or public safety entities.⁵

AIRPEAK/Airtel's proposal offers nothing to further the Commission's fundamental public policy objective in the *R&O*: improving public safety communications in the 800 MHz band. AIRPEAK/Airtel make no showing that retuning their systems to the current NPSPAC channel block is necessary to eliminate public safety interference, or that such retuning is necessary to provide them with comparable channels or network capabilities. On the contrary, the *R&O* expressly provides for Nextel to retune its network to operate in part on the current NPSPAC channels as part of the channel exchange process by which current NPSPAC licensees will retune to the new NPSPAC channel block at 806-809/851-854 MHz.⁶ AIRPEAK/Airtel's proposal would introduce additional complexity, delay, and costs in the channel exchange process without any countervailing public safety benefit.

Additionally, there may be insufficient cellular block channels to accommodate Nextel, AIRPEAK/Airtel, and other non-Nextel ESMRs in some markets, leading to complex negotiations over how to resolve such channel shortages and resulting in retuning delay and possibly service interruptions for existing customers. The Commission recognized in the *R&O* that a shortage of channels already exists in the southeastern United States where both Nextel and Southern LINC operate ESMR networks, and it expanded the cellular block to 813.5-

⁵ *Id.*, Attachment at 1. AIRPEAK/Airtel maintain that all non-Nextel ESMR licensees should be able to select the channels they want to be retuned to within the new cellular channel block (817-824/862-869 MHz).

⁶ *R&O* ¶¶ 151-153. The Commission's retuning plan requires Nextel to swap channels with all 806-809/851-854 MHz incumbents so that Nextel is the sole licensee with which current NPSPAC incumbents must coordinate as they retune to the new NPSPAC channel block through channel exchanges with Nextel. A NPSPAC licensee will be fully retuned when it is operating on comparable channels in the 806-809/851-854 MHz (new NPSPAC) channel block and Nextel has taken its place in the 821-824/866-869 MHz current NPSPAC channel block.

824/858.5-869 MHz in that area.⁷ Southern LINC's operations will be retuned to the lower portion of this expanded cellular block, *i.e.*, the spectrum channels that will be directly adjacent to the non-cellular block. Southern LINC's operations have posed a low risk of interference to public safety systems even in the current interleaved spectrum environment,⁸ making Southern LINC an ideal neighbor to the non-cellular block in the realigned band.

The Commission should adopt a similar approach for other non-Nextel, non-Southern LINC ESMRs, including AIRPEAK/Airtel, by ordering that they be retuned to the 816-817/861-862 MHz channel block directly adjacent both to the cellular block and the non-cellular, high-site channel block. These channels are particularly well suited to the predominately high-site ESMR networks of carriers such as AIRPEAK/Airtel, which operate in less-intensely populated markets and rural areas primarily as two-way radio dispatch services for business and government users.⁹ They rarely experience the subscriber demand that requires implementing a predominately low-site (*i.e.*, below 100 feet AMSL), high-density, numerous base station architecture with its inherently higher risk of CMRS – public safety interference. In fact, Nextel initially proposed contributing its spectrum at 816-817/861-862 MHz to the 800 MHz band reconfiguration plan both to provide additional spectrum to public safety and other high-site networks *and* because this spectrum could accommodate non-Nextel ESMRs. In other words, non-Nextel ESMR licensees (typically high-site iDEN operators) would be compatible neighbors

⁷ R&O ¶ 169.

⁸ See Comments of Southern LINC at 6 (May 6, 2002); Reply Comments of Southern LINC, Executive Summary at 1 (Aug. 7, 2002); Comments of Motorola at 14 n.24 (May 6, 2002).

⁹ Letter from Elizabeth Sachs, Counsel for Airtel and Nevada Wireless, to Marlene Dortch, FCC Secretary, Attachment at 2 (Nov. 7, 2003); Letter from Elizabeth Sachs, Counsel for AIRPEAK, to Marlene Dortch, FCC Secretary, Attachment at 1 (March 10, 2004); Letter from Elizabeth Sachs, Counsel for AIRPEAK and Airtel, to Marlene Dortch, FCC Secretary, Attachment at 2 (Feb. 12, 2004).

to both Nextel's predominately low-site network and adjacent high-site public safety and private wireless systems.¹⁰

On the contrary, granting non-Nextel, non-Southern ESMR licensees the option of being retuned anywhere within the 817-824/862-869 MHz cellular channel block, as AIRPEAK/Airtel proposes, would recreate in part the interleaving of high-site and low-site systems that resulted in the interference problem that made this proceeding necessary. A fundamental premise of the *R&O* is to spectrally separate incompatible high-density, low-site systems from high-site systems.¹¹ AIRPEAK/Airtel's proposal would unnecessarily compromise that principle and increase the probability of non-Nextel ESMR licensees experiencing interference from the fully FCC-compliant operations of Nextel and cellular block licensees.¹²

The AIRPEAK/Airtel proposal would also undermine the assumptions underlying the Commission's valuation of Nextel's current 800 MHz spectrum holdings and the 800 MHz spectrum on which it will operate post-retuning. In the *R&O*, the Commission placed a lower value on non-contiguous spectrum than contiguous spectrum.¹³ The AIRPEAK/Airtel proposal would permit non-Nextel ESMR licensees to select their replacement channels in any portion of the cellular block, creating an interleaved post-retuning spectrum environment that would result in Nextel operating on non-contiguous 800 MHz channels in a number of areas rather than on contiguous channels as contemplated by the *R&O*. Under the Commission's reasoning, this

¹⁰ See Letter from Robert S. Foosaner, Senior Vice President and Chief Regulatory Officer, Nextel Communications, Inc., to Marlene Dortch, FCC Secretary, at 2-4, 6-8 (June 9, 2004).

¹¹ *R&O* ¶¶ 2-3.

¹² Relocating non-Nextel, non-Southern LINC ESMRs to the very top of the cellular channel block would place them adjacent to the cellular A block licensee, further heightening the probability that they would receive interference from cellular licensees, Nextel or a combination of cellular and Nextel operations.

¹³ *R&O* ¶¶ 313, 317-322.

would lessen the value of Nextel's replacement spectrum and Nextel would not be made whole in return for its multi-billion dollar contribution to the Commission's 800 MHz reconfiguration plan.

The *R&O* imposes substantial responsibilities on Nextel to implement 800 MHz reconfiguration within 36 months at Nextel's expense. Nextel will expend at least \$4.86 billion dollars to complete reconfiguration and obtain replacement spectrum. AIRPEAK/Airtel's proposal would not advance the 800 MHz reconfiguration process; on the contrary, it would likely add costs, cause delays and increase the probability of interference within the new cellular channel block. Nor is AIRPEAK/Airtel required to contribute any funding to 800 MHz reconfiguration. The *R&O* also incorporates a significant additional benefit for AIRPEAK/Airtel and other retuned non-Nextel, non-Southern LINC ESMR licensees by requiring that they be retuned to exclusive, incumbent-free channels, regardless of whether their current geographic licenses are encumbered by site-licensed incumbents.¹⁴ Yet AIRPEAK/Airtel would take advantage of the Commission's public safety interference solution by seeking the right to retune to their choice of cellular block channels solely for possible strategic business advantage. The Commission should not permit these or other non-Nextel, non-Southern LINC ESMR licensees to use the Commission's carefully crafted plan to eliminate public safety interference to advance their individual business interests. Retuning non-Nextel, non-Southern LINC ESMR licensees to the 816-817/861-862 MHz channel block (with any excess channels retuned to 817/862 and up on consecutive channels) provides them with more than comparable channels and is fully consistent with the requirements and provisions of the *R&O* and all applicable precedent.

¹⁴ *R&O* ¶ 163.

II. Non-ESMR EA Licensees Should Be Retuned to Comparable Channels in the Non-Cellular Block

Nextel has asked the Commission to clarify that incumbent non-ESMR EA licensees operating on channels 1-120 will be retuned to comparable channels below 861.400 MHz, *i.e.*, they will receive comparable channel availability and interference protection from high-density cellular operators.¹⁵ Consistent with the public policy basis of the *R&O*, these licensees should receive comparable replacement channels in the non-cellular block; *i.e.*, if they have site-specific encumbered EA licenses today, they will be retuned to comparably encumbered EA licenses below 861.400 MHz.¹⁶

The Commission should reject any effort by non-cellular licensees to game the rebanding process to enhance their spectrum positions. For example, the Commission should dismiss claims made by Mobile Relay Associates (MRA) and Skitronics, LLC (Skitronics) that their high-site SMR licenses will be devalued if they are not relocated to the cellular block.¹⁷ These claims are based on unsupported speculation and incorrectly assume that the Commission is in the business of guaranteeing the purported business plans of these parties rather than ensuring that they receive comparable facilities if they are relocated. The facilities operated by MRA and Skitronics are high-site, non-cellular SMR systems. As Nextel has explained in its Opposition to a motion for partial stay filed by Skitronics and MRA, the Commission has a strong basis for

¹⁵ Letter from Regina Keeney, Counsel for Nextel, to Marlene Dortch, FCC Secretary, at 2 (Sept. 16, 2004).

¹⁶ It is possible that in effectuating retuning, some non-ESMR EA licensees could be retuned to an EA license that is less encumbered by site-specific licenses than their current EA license. The Commission should clarify, however, that non-ESMR EA licensees are not entitled to nor guaranteed any enhancement of their spectrum position.

¹⁷ Letter from David Kaufman, Counsel for MRA and Skitronics, to Marlene Dortch, FCC Secretary (Sept. 30, 2004); Letter from David Kaufman, Counsel for MRA and Skitronics, to Marlene Dortch, FCC Secretary (Oct. 8, 2004).

distinguishing such licensees – which by their own admission have never caused interference to public safety systems – from cellular systems that pose a significant interference risk and therefore warrant retuning to the cellular block.¹⁸ MRA and Skitronics are entitled to comparable facilities in the non-cellular block, nothing more and nothing less, and will not be harmed by the retuning process.¹⁹ Their arguments to the contrary have nothing to do with the Commission’s public safety objectives in this proceeding or the public interest and should be rejected.

III. Nextel Should Reject Verizon’s Arguments Regarding the Commission’s Valuation of Nextel’s Spectrum Contribution

Verizon has filed an *ex parte* presentation arguing that Nextel should not receive credit for the effective loss of 0.5 MHz of its licensed spectrum at 817-818/862-863 MHz due to the operational restrictions imposed by the *R&O* to protect public safety and other licensees in the non-cellular block from interference.²⁰ Verizon offers no analysis, facts, or public interest rationale to support its position.

The *R&O* adopts new technical standards to protect public safety and other licensees in the 806-817/851-862 MHz channel block, and imposes “strict responsibility for eliminating unacceptable interference” on Nextel and other cellular carriers.²¹ Even licensees in the upper two megahertz of the non-cellular block, referred to as the Guard Band (816-817/861-862 MHz), receive enhanced interference protection from commercial cellular licensees despite being

¹⁸ Opposition of Nextel to Motion for Partial Stay at 6-10 (Nov. 26, 2004).

¹⁹ *Id.* at 10-13.

²⁰ See Letter from R. Michael Senkowski, Counsel to Verizon, to FCC Chairman Powell, at 4 (Sept. 15, 2004) (*Verizon Ex Parte*).

²¹ *R&O* ¶ 10.

directly adjacent to the new cellular channel block.²² Meeting these new interference protection requirements will impose significant restrictions on Nextel's operations on its 817-818/862-863 MHz channels. Nextel will employ a variety of measures to comply with these requirements, e.g., restricting low site deployments, operating at lower power levels, frequency planning to avoid using these channels at all in areas of high interference probability, eliminating antenna downtilt and other measures to provide the required level of protection to adjacent channel non-cellular block licensees. Thus, under the *R&O*, Nextel will lose the full use and value of these channels and should be credited for the diminution in the value of this spectrum as a result of 800 MHz realignment. Accordingly, the Commission correctly credited Nextel with surrendering 0.5 MHz of this channel block in valuing Nextel's spectral contributions to the Commission's 800 MHz band reconfiguration plan.²³ Verizon has provided no facts or arguments that warrant a different result.

Verizon also claims that Nextel's 800 MHz spectrum position is less than nationwide, and, in support, attaches a coverage map from Nextel's corporate website.²⁴ This coverage map is irrelevant, however, since it was designed only to show existing and potential customers the extent of Nextel's current network build-out and signal coverage. As Verizon should know, the Commission's 800 MHz spectrum valuations are based not on current service coverage, but on the population encompassed by Nextel's 800 MHz license areas.²⁵ As demonstrated by the licensing data attached to Nextel's September 21, 2004 *ex parte*, Nextel and Nextel Partners

²² *Id.* ¶ 19. Guard Band licensees must satisfy a sliding scale of increased minimum signal strength to receive interference protection. *Id.* ¶ 158.

²³ *R&O* ¶ 316.

²⁴ Verizon *Ex Parte* at 4.

²⁵ See *R&O* at ¶ 320.

together currently hold and will contribute to 800 MHz band reconfiguration licenses for areas that encompass nearly 286 million persons throughout the United States.²⁶

In that regard, Nextel and Nextel Partners take this opportunity to emphasize that Nextel Partners, Nextel's affiliate serving smaller and rural markets, has committed itself "to participate in the system relocations, license swaps and associated actions and procedures involving its 800 MHz licenses necessary to effectuate the Consensus Plan for 800 MHz realignment."²⁷ This includes spectrum contributions from Nextel Partners as necessary to achieve the Commission's 800 MHz band reconfiguration. Accordingly, under the Commission's reconfiguration plan, both Nextel and Nextel Partners will surrender all of their licensed spectrum in the 806-817/851-862 MHz channel block, as set forth in Nextel's September 21 *ex parte* filing. Post-reconfiguration, Nextel and Nextel Partners will together have a total of 14 MHz at 800 MHz. Nextel will coordinate with Nextel Partners to ensure that the latter is made whole in return for its spectrum contribution.

IV. Nextel Supports the Broadcast Industry's Request to Extend the Mandatory Negotiation Period Deadlines for BAS Relocation

The National Association of Broadcasters (NAB), the Association for Maximum Service Television (MSTV), and the Society of Broadcast Engineers, Inc. (SBE), are today filing a request that the Commission extend the deadlines for completing the mandatory negotiations with Nextel for the relocation of Broadcast Auxiliary Service (BAS) licensees in the 1.9 GHz

²⁶ In its recent Form 10-Q filing with the Securities and Exchange Commission, Nextel stated that, "together with Nextel Partners, Inc., [it] currently utilize[s] the iDEN technology to serve 297 of the top 300 United States markets where about 259 million people live or work." Form 10-Q, Nextel Communications, Inc., at 19 (Nov. 8, 2004). Again, this figure measures only Nextel's current build-out and signal coverage, and does not reflect the total population encompassed by Nextel's licensed spectrum holdings at 800 MHz.

²⁷ See Comments of Nextel Communications, Inc. and Nextel Partners Inc., at 3 (Feb. 10, 2003).

band.²⁸ Broadcasters are requesting that the Commission extend the deadline for “stage one” mandatory negotiations from July 15, 2005 to March 21, 2006 (14 months from the effective date of the *R&O*), and extend the deadline for “stage two” mandatory negotiations from May 15, 2006 to March 21, 2007 (26 months from the effective date of the *R&O*). Nextel fully supports this request. It will help ensure that Nextel and BAS licensees have sufficient time to negotiate relocation agreements and promote a more efficient BAS relocation process that minimizes disruption to incumbent licensees. The modification of these negotiation deadlines will not require any changes to the Commission’s deadlines for completing BAS relocation.

Nextel also requests that the Commission clarify a statement relating to BAS relocation in its recent decision concerning Advanced Wireless Services. In this decision, the Commission stated that “Nextel is obligated to complete the relocation of all BAS incumbents by May 2007.”²⁹ Although the Commission clarified the meaning of this statement in a footnote,³⁰ the statement itself is technically incorrect. Under the *R&O*, Nextel – should it accept the rebanding plan the Commission has adopted – would be obligated to complete the relocation of all BAS incumbents within 31½ months of the effective date of the *R&O*.³¹ The *R&O* will become effective on January 21, 2005; accordingly, BAS relocation should be completed 31½ months from that date.

²⁸ See Letter from Larry Walke, NAB, David Donovan, MSTV, and Christopher Imlay, Counsel for SBE (Dec. 2, 2004).

²⁹ *Amendment of Part 2 of the Commission’s Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order, 19 FCC Rcd 20720, ¶ 67 (2004) (FCC 04-219) (*AWS Order*).

³⁰ *Id.* ¶ 67 n.141.

³¹ *R&O* ¶ 352 (as numbered in the *Second Erratum*). See also *October 22 Public Notice at 2* (extending BAS relocation deadlines by 45 days).

V. Conclusion

Nextel and Nextel Partners urge the Commission to clarify the *R&O* as requested in Nextel's *ex parte* filings submitted in the record of this proceeding. Expeditious action on these issues will help ensure the implementation of 800 MHz rebanding in a timely, efficient manner, thus advancing the Commission's goals of remedying the serious 800 MHz public safety interference problem with minimal disruption to incumbent licensees.

Respectfully submitted,

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December 2, 2004

Certificate of Service

I, Ruth E. Holder, hereby certify that on this 2nd day of December, 2004, I caused true and correct copies of the foregoing Comments of Nextel Communications, Inc. and Nextel Partners Inc. to be mailed by electronic mail to:

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