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**VIA ELECTRONIC FILING**

Marlene H. Dortch, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W.  
Washington, DC 20554

**RE: In the Matter of Improving Public Safety  
Communications in the 800 MHz Band  
WT Docket No. 02-55  
Ex Parte Presentation**

Dear Ms. Dortch:

On behalf of AIRPEAK Communications, LLC ("AIRPEAK") and Airtel Wireless Services, LLC ("Airtel") (collectively "Companies"), and in accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), undersigned counsel hereby submits the instant notice of an *ex parte* presentation.

On December 14, 2004, James D. Boyer of AIRPEAK and James W. Brock of Airtel, along with undersigned counsel; Rew Goodenow, AIRPEAK's corporate counsel; and Mathew McCullough, Legislative Correspondent to Nevada Senator John Ensign, met with Sheryl J. Wilkerson, Legal Advisor to Chairman Michael K. Powell's office, to discuss issues relating to the Commission's recent Report and Order in WT Docket No. 02-55 and *ex parte* presentations by Nextel Communications, Inc. requesting clarification of certain aspects of the Order. Specifically, the Companies discussed the relocation options available to non-Nextel ESMR licensees and the positions detailed in the Companies' attached *ex parte* presentation.

Kindly refer any questions or correspondence regarding this matter to the undersigned.

Very truly yours,

/s/

Elizabeth R. Sachs

Enclosures

cc: Sheryl J. Wilkerson, Esq.

**AIRPEAK COMMUNICATIONS, LLC/  
AIRTEL WIRELESS SERVICES, LLC  
WT DOCKET NO. 02-55  
EX PARTE PRESENTATION**

- AIRPEAK/Airtel are ESMRs -- each operates 800 MHz digital cellular Harmony network in tertiary and rural markets (Harmony is a Motorola iDEN derivative technology that uses iDEN BSRs and subscribers units with a different switch):
  - ✓ Both use combination of EA and site-specific licenses like Nextel, Nextel Partners and Southern;
  - ✓ Both deployed cellularized networks with combination of low and high sites like Nextel, Nextel Partners and cellular, and sometimes co-located with Nextel and/or cellular sites;
  - ✓ Both serve areas unserved by Nextel or Nextel Partners.
- Order provides three relocation options for non-Nextel ESMR licensees (§ 162); one option is sharing ESMR band (862-869 MHz) with Nextel based on following FCC findings:
  - ✓ ESMR systems relocated to ESMR band “less likely to cause interference than ESMR systems operating in interleaved portion” (§ 161);
  - ✓ Confining ESMR licensees to non-ESMR bands “could adversely affect such licensees’ ability to provide adequate service to its subscriber in the future.” (§161);
  - ✓ Sharing spectrum with Nextel feasible because “...Nextel has additional spectrum at 900 MHz which can be used to offset the shortfall and is receiving spectrum at 1.9 GHz.” (§ 168).
- AIRPEAK/Airtel electing relocation to ESMR band for both EA and site-specific spectrum.
  - ✓ Like those of Nextel and Southern, AIRPEAK and Airtel networks use EA and site-specific spectrum. Given their relatively modest spectrum positions, site-specific spectrum critical to their operations.
  - ✓ Companies unable to acquire additional site-specific spectrum during pendency of this proceeding because of uncertain future regulatory status.
  - ✓ Upon adoption of R&O, AIRPEAK reactivated dormant and initiated new acquisition negotiations; acquired small number of channels in a few key markets to add needed network capacity.

- AIRPEAK and Airtel also have requested confirmation the entire ESMR band is available, including NPSPAC spectrum, since NPSPAC vacant or minimally used in many markets in which they operate:
  - ✓ NPSPAC not yet deployed by public safety in a number of Companies' markets; in others, deployed minimally with great majority of channels not yet in use;
  - ✓ Relocation to vacant NPSPAC channels would disrupt neither public safety nor Nextel operations;
  - ✓ Relocation to vacant NPSPAC channels would accelerate 800 MHz relocation since Companies' operations could be moved immediately without need for channel clearing;
  - ✓ Relocation to vacant NPSPAC channels would eliminate need for Nextel to clear its operations from channels in lower ESMR band and eliminate associated costs and disruption;
  - ✓ Because of reduced costs, relocation to vacant NPSPAC channels satisfies requirement for incumbent certification that "funds requested are the minimum necessary to provide facilities comparable to those presently in use." (§ 198)
  
- Nextel wants "clarification" to eliminate option to relocate to ESMR band, and certainly not to NPSPAC portion of band, based on following assertions (Nextel Dec. 2, 2004 Comments) which are inconsistent with the Order or the facts:
  - ✓ May be insufficient ESMR spectrum to accommodate Nextel as well as other ESMRs (p. 4);  
**FCC considered and rejected insufficient spectrum for Nextel as basis for excluding ESMRs from ESMR band; Nextel holdings in tertiary and rural AIRPEAK/Airtel markets more than adequate to maintain high quality service (see Attachment 1).**
  
  - ✓ Non-ESMR spectrum "particularly well suited to the predominantly high-site ESMR networks of carriers such as AIRPEAK/Airtel" (p. 5);  
**Companies' facilities frequently are co-located with and no more "predominantly high-site" than Nextel, Nextel Partners, Southern and cellular systems in same or comparable markets; additional low sites will be deployed as systems grow.**
  
  - ✓ "...non-Nextel ESMR licensees (typically high-site iDEN operators) would be compatible neighbors to both Nextel's predominantly low-site network and adjacent high-site public safety and private wireless systems." (pp. 5-6);  
**While entirely compatible with iDEN, AIRPEAK/Airtel already proven not to be "good neighbors" to high-site public safety and private wireless systems as evidenced by AIRPEAK's Nextel-like interference to public safety systems in NV and WA; problems will escalate as ESMRs and public safety systems are expanded.**

- ✓ Relocation to ESMR band would replicate high-site, low-site interleaving that resulted in 800 MHz interference problem and “compromise” underlying principle of Order (p. 6);

**Nextel has co-existed with predominantly high-site Southern and with AIRPEAK with no evidence of ESMR-to-ESMR interference since all use compatible system architecture.**

- ✓ ESMR freedom to relocate anywhere within ESMR band that: (i) does not increase 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 (test proposed by AIRPEAK/Airtel), would “introduce additional complexity, delay and costs in the channel exchange process without any countervailing public safety benefit.” (p. 4);

**No explanation why relocation to NPSPAC spectrum would introduce additional complexity, delay and costs since AIRPEAK/Airtel conditions would preclude relocation in those circumstances. Further, relocation to NPSPAC is entirely neutral to public safety operations, but would advance public interest by accelerating rebanding process and minimizing costs, thereby maximizing funds for Federal Treasury. The choice of relocation spectrum must be dictated by that public interest obligation, not the strategic business interests of any party, including Nextel.**

- ✓ ESMR option to relocate within ESMR band would affect FCC valuation of Nextel spectrum holdings since based on contiguous channels.

**Nextel is correct that relocation to ESMR band must be to contiguous spectrum, whether at bottom or top end of band or some combination of two, so Nextel retains entirely contiguous 800 MHz spectrum and preserves FCC spectrum valuation.**

- Nextel “clarification” contrary to public interest and basic equity:

- ✓ Companies contracted for and began deployment of cellularized Harmony systems prior to submission of Nextel “White Paper”;
- ✓ Companies have invested millions bringing integrated dispatch/cellular telephone service to tertiary and rural markets that, in cases such as Montana, Nextel has elected not to serve;
- ✓ Nextel proposal would leave Companies on spectrum where cellularized operations permitted only on secondary, non-interference basis, a test AIRPEAK failed already;
- ✓ Continued funding not possible when authorized only on secondary basis, particularly in light of interference history of band, so Companies would be forced to curtail and ultimately cease operation;
- ✓ Result would be elimination of ESMR competition for Nextel except in Southern markets and elimination of service entirely in markets like Montana.

## COMPARATIVE SPECTRUM POSITIONS\*

Market	Market Name	Nextel			Airtel/ AIRPEAK	Nextel Total
		800	900	1.9	800	
BEA144	Billings, MT-WY	14.00	4.25	10.00	4.20	24.05
BEA145	Great Falls, MT	14.00	4.25	10.00	4.60	23.65
BEA146	Missoula, MT	14.00	4.25	10.00	3.75	24.50
BEA094	Springfield, MO	14.00	3.25	10.00	2.50	24.75
BEA136	Hobbs, NM-TX	14.00	4.00	10.00	1.25	26.75
BEA138	Amarillo, TX-NM	14.00	4.00	10.00	2.50	25.50
BEA139	Santa Fe, NM	14.00	4.25	10.00	5.00	23.25
BEA147	Spokane, WA-ID	14.00	4.25	10.00	3.75	24.50
BEA148	Idaho Falls, ID-WY	14.00	3.00	10.00	2.50	24.50
BEA151	Reno, NV-CA	14.00	4.50	10.00	6.45	22.05
BEA153**	Las Vegas, NV-AZ-UT	14.00	3.25	10.00	3.70	23.55
BEA154	Flagstaff, AZ-UT	14.00	3.25	10.00	2.50	24.75
BEA155	Farmington, NM-CO	14.00	4.25	10.00	1.25	27.00
BEA156	Albuquerque, NM-AZ	14.00	4.25	10.00	2.50	25.75
BEA157	El Paso, TX-NM	14.00	4.25	10.00	3.75	24.50
BEA162**	Fresno, CA	14.00	4.50	10.00	0.25	28.25
BEA163**	San Francisco-Oakland-San Jose, CA	14.00	4.50	10.00	0.25	28.25
BEA164**	Sacramento-Yolo, CA	14.00	4.50	10.00	3.30	25.20
BEA165	Redding, CA-OR	14.00	4.50	10.00	0.30	28.20
BEA166	Eugene-Springfield, OR-CA	14.00	4.50	10.00	3.05	25.45
BEA167**	Portland-Salem, OR-WA	14.00	4.50	10.00	0.75	27.75
BEA168	Pendleton, OR-WA	14.00	4.25	10.00	2.75	25.50
BEA169	Richland-Kennewick-Pasco, WA	14.00	4.25	10.00	3.75	24.50
BEA171	Anchorage, AK	14.00	4.75	10.00	5.00	23.75

\*In MHz

\*\* Markets with populations of more than 1,000,000.



- > PHONES & RATE PLANS
- > SERVICES
- > CUSTOMER SUPPORT
- > MY NEXTEL
- > ABOUT NEXTEL



### > SERVICES

#### Coverage

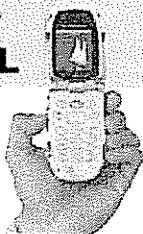
- ▣ National
- ▣ Worldwide

### National Coverage

Nextel and its affiliates cover approximately 89% of the U.S. population. Select a city map below or enter your zip code to see Nextel coverage in your area.

Enter your ZIP Code:

### TRADE UP TO NEXTEL



> Bring Your Number With You

▣ Click. Win. Smile. Enter to win a new i860 camera phone. Send and receive pictures, text and audio in one message.

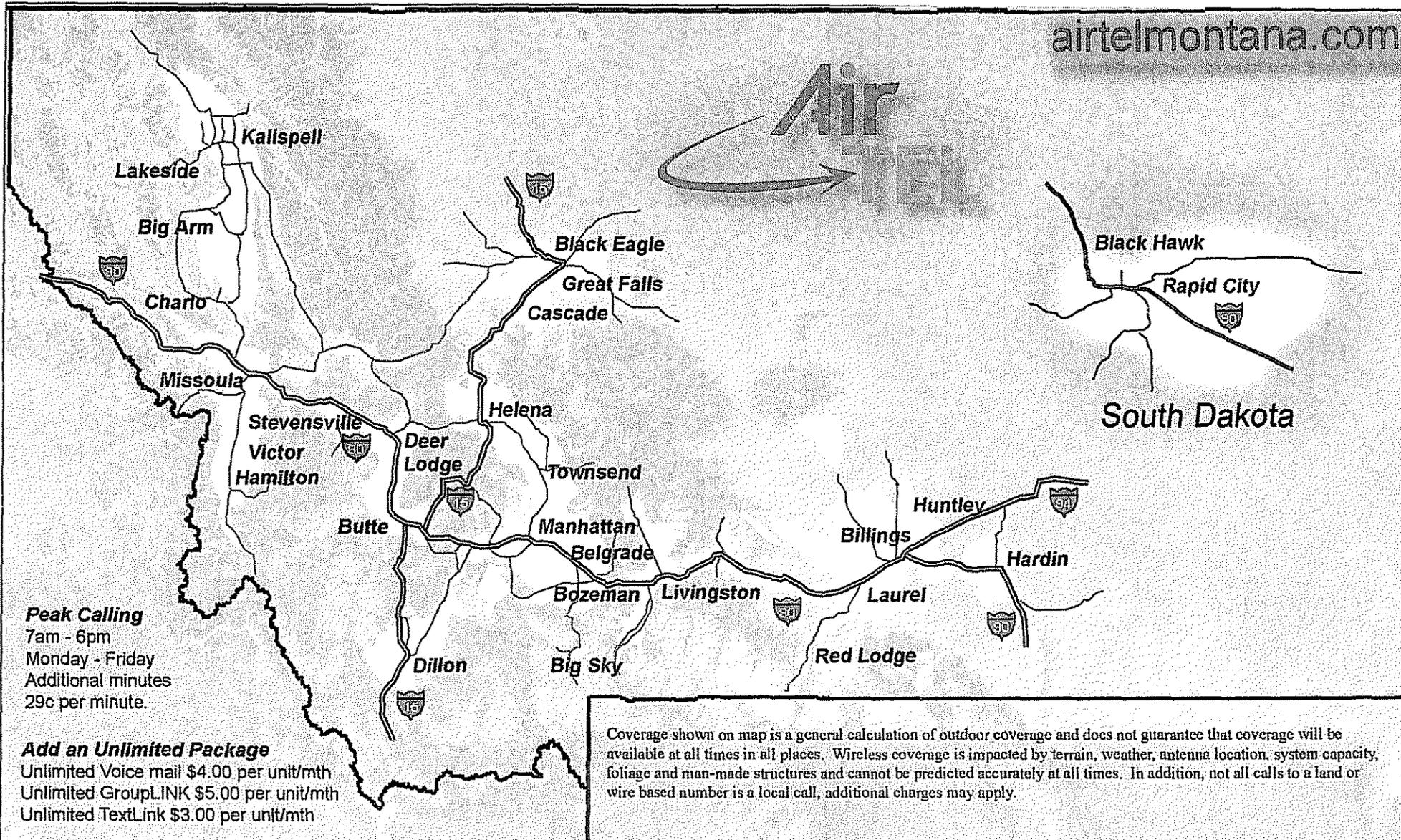


Map does not depict local or long-distance calling areas or availability of local versus nationwide walkie-talkie coverage. Additional charges for long distance or nationwide talkie coverage may apply and will vary by your market and rate plan. Coverage bou shown herein as of September 2004 are approximate and for illustrative purposes onl Coverage shown on the coverage maps is a general prediction of outdoor coverage, a not guarantee that coverage will be available at all covered geographic areas at all tir Wireless coverage is impacted by, among other things, terrain, weather, antenna loca system modification, foliage and man-made structures (such as buildings), and theref cannot be predicted precisely at all times. Nextel's Nationwide Network serves 297 of 300 markets.

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**Peak Calling**  
 7am - 6pm  
 Monday - Friday  
 Additional minutes  
 29c per minute.

**Add an Unlimited Package**  
 Unlimited Voice mail \$4.00 per unit/mth  
 Unlimited GroupLINK \$5.00 per unit/mth  
 Unlimited TextLink \$3.00 per unit/mth

Coverage shown on map is a general calculation of outdoor coverage and does not guarantee that coverage will be available at all times in all places. Wireless coverage is impacted by terrain, weather, antenna location, system capacity, foliage and man-made structures and cannot be predicted accurately at all times. In addition, not all calls to a land or wire based number is a local call, additional charges may apply.

Montana 15	\$15.00	Montana 19	\$19.00	Montana 24	\$24.00	Montana 29	\$29.00
<b>Unlimited Digital 2Way</b>		<b>Unlimited Digital 2Way</b>		<b>Unlimited Digital 2Way</b>		<b>Unlimited Digital 2Way</b>	
		<b>100 Peak Local Minutes</b>		<b>500 Peak Local Minutes</b>		<b>Unlimited Local Minutes</b>	
		<b>Unlimited Nights and Weekends</b>		<b>Unlimited Nights and Weekends</b>		<b>Unlimited Nights and Weekends</b>	

## Your local, Low cost, Wireless Service Provider

Change plans anytime, without penalty. All cell minutes are pooled. Cell minutes rnd up to 30 sec increments, not next minute. Night/Weekend cell minutes start at 6pm, not 9pm. Rates and coverage subject to change without notice

Cell Site Location	Nextel Colocated	Adjacent or collocated w/Cellular	Very Low Level
Circus Circus Hotel		YES	
Eagle Ridge Silver Springs	YES	Yes	
Longley Lane Industrial Park		Yes	YES
Mt. Baldy , Medford oregon	YES	YES	
Red Peak Reno Nevada	YES	YES	
Fallen Leaf Lake Tahoe		unserved by cellular	
Peavine Stead		YES	
Peavine Verdi		YES	
Cold Springs		YES	
Pond Peak Wadsworth		YES	
Rattlesnake Hill Fallon	YES	YES	
Virginia Peak		YES	
Mt. Pluto Truckee	YES	YES	
Truckee USA Media		YES	
Slide Mtn. Washoe Valley		YES	
Poito Gerlach		unserved by cellular	
Peavine Corban		YES	
Bald Mtn. - Yerington		YES	
Genoa - Minden	YES	YES	
Spanish Springs		YES	
Bank of West Reno		YES	YES
Snowflake Lodge	YES	YES	
Mc Carran Qualitel Inn		YES	
Patrick Industrial Park	Yes	YES	
Chantry Hill Auburn	YES	YES	
Legislative Building Carson City		YES	YES
Harrahs Lake Tahoe	YES	YES	
Blossom Hill Post Falls	YES	YES	
Tropicanna Hotel Las Vegas		YES	
Fitzgeralds Hotel Las Vegas		YES	
Krell Hill Spokane	YES	YES	
Fancher Airport Beacon Spokane	YES	YES	
Best Hill CDA Idaho		YES	
Lookout Mead Washington		YES	
Antoine Ridge Spokane		unserved by cellular	
West Mesa Alb. New Mexico	YES	YES	
Wrights Hill 4 Lakes washington		YES	
Mac KBUL Tower Carson City		YES	
Advanced Tower Sante Fe New Mexico		YES	YES
Intertel Facility Reno		YES	YES
Bruce Industries Dayton		YES	YES
Sawmill Gardnerville Nevada		YES	YES
Sacred Heart Hospital Spokane		YES	
Jump Off Joe Butte Passco Washington	YES	YES	
Quarry Hill Eugene Oregon	YES	YES	
Anchorage PCS Tower		YES	
Ardan Tower		YES	
MT Elden Flagstaff	YES	YES	
Percentage	35.42%	93.75%	14.58%



