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VIA ELECTRONIC FILING

Catherine W. Seidel, Deputy Chief
Wireless Telecommunications Bureau
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. Seidel:

In our meeting last week, you requested additional information about the recent acquisition of certain 800 MHz site-specific spectrum by AIRPEAK Communications, LLC ("AIRPEAK" or "Company"). The following is intended to provide both the background for the acquisitions and more detailed information about the filing process we followed.

As you know, from the time of submission of the Nextel "White Paper" in November 2001 until release of the WT 02-55 Report and Order in August 2004, it was uncertain whether entities such as AIRPEAK would be permitted to continue operating cellularized networks in the 800 MHz band and, if so, under what conditions. This regulatory uncertainty effectively precluded the Company from completing spectrum acquisitions of anything more than nominal cost during that almost three year period since it did not know whether additional spectrum investments would prove worthless. Once the Order was released, AIRPEAK promptly reactivated acquisition negotiations that had been dormant and initiated discussions with one additional entity as well.

The channels it acquired were needed to provide additional capacity in a handful of markets in which the Company's network has been deployed. The Company pursued these acquisitions believing them to be fully consistent with the decisions reached in the Order. The Order recognized that non-Nextel ESMRs use a combination of site-specific and EA licenses in their networks (as do Nextel and Southern). It specified that site-specific channels could be relocated to the ESMR band along with EA authorizations under two conditions: first, the

licensee must currently hold an EA license in the relevant market; and second, the site-based license needed to be deployed in the cellular network as of the date of publication of the Order in the Federal Register, or by November 22, 2004. The FCC could have, but did not, limit the site-specific rebanding opportunity to spectrum authorized and deployed on the date the Order was adopted, the date it was published or some other earlier point. Instead, it selected the Federal Register publication date as the line of demarcation. It was that deadline against which AIRPEAK measured the acquisition activities described below. It did so knowing that this would be its last opportunity to increase its spectrum capacity since thereafter all remaining spectrum rights in the ESMR band would belong to Nextel.¹

Since adoption of the Order, the Company has acquired spectrum rights of between five (5) and approximately thirty (30) additional channels in five (5) markets in which it holds EA licenses acquired at auction and in which it has deployed its Harmony network: Eugene, OR; Pendleton, OR; Pasco, WA; Reno, NV and Las Vegas, NV.² Recognizing that the FCC's license assignment process can take several months and that the Federal Register publication date was uncertain, AIRPEAK entered into both spectrum acquisition and short-term *de facto* spectrum lease agreements with the parties. The lease applications were filed between September 24, 2004 and October 15, 2004 and granted within days thereafter, thereby authorizing the Company to deploy the channels in its cellular network prior to publication of the Order.³ The assignment applications were filed between September 30, 2004 and October 15, 2004, and FCC consent to the assignments was granted between October 28, 2004 and December 10, 2004.

Contrary to Nextel's assertions, AIRPEAK is not "gaming" the system by acquiring very limited numbers of additional channels in a small number of markets. Rather, like Nextel which acquired the majority of all non-public safety 800 MHz spectrum nationwide and then significantly expanded its areas of coverage through the concept of composite contours, the Company simply is attempting to acquire sufficient capacity to meet its anticipated customer requirements. The period between release of the Order and its publication represented AIRPEAK's last opportunity to do so. Having already invested millions of dollars in deploying its Harmony network, it had every reason and every right to rely on the Commission's Order to secure the spectrum it believed necessary to meet its business objectives.

¹ The only spectrum available for AIRPEAK's expansion purposes was site-specific licenses since Nextel holds all remaining EA authorizations in the markets in question.

² One of the Las Vegas stations is actually located in Laughlin, NV, approximately 67.5 miles from the center of the city. Because of the height of the transmitter location, the station's contour comes close to Las Vegas. AIRPEAK's acquisitions also include a one-channel system in Cobb, CA. The Company has not yet determined whether that station will be included in its ESMR conversion.

³ One of the parties held certain licenses individually and others in a corporate name. Two of the stations had become associated with an incorrect FRN and it took the licensee several weeks to have the problem corrected by the FCC. The lease and assignment applications for those two stations were submitted and granted somewhat later than the others.

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

Very truly yours,

/s/

Elizabeth R. Sachs

cc: Chairman Michael K. Powell
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Commissioner Kathleen Q. Abernathy
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