

**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)	

**PETITION FOR CLARIFICATION AND/OR RECONSIDERATION OF
NEXTEL COMMUNICATIONS, INC.**

Nextel Communications, Inc. (“Nextel”) hereby files this Petition for Clarification and/or Reconsideration (the “Petition”) of certain aspects of the Report and Order in the above-captioned proceeding.¹ Nextel has filed a number of *ex parte* filings in which it has sought clarification or modification regarding various issues raised by the *R&O*. Nextel files this Petition to preserve its rights to request reconsideration under the rules of the Federal Communications Commission (the “Commission”). To the extent the Commission issues a *sua sponte* reconsideration order modifying the *R&O* as requested in Nextel’s *ex parte* filings, Nextel will withdraw this Petition with respect to those issues.

¹ *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*”). See 47 C.F.R. § 1.429 (affording parties the right to file petition for reconsideration in rulemaking proceedings).

I. The Commission Should Make the Clarifications and Modifications to the R&O That Nextel Has Requested in Its *Ex Parte* Filings

In September and October 2004, Nextel submitted *ex parte* filings (“*Ex Parte* Filings”) that identified a number of instances where clarification or modification of the R&O would promote a more efficient and equitable spectrum reconfiguration plan to remedy interference to 800 MHz high-site public safety and private communications systems from low-site, high density cellular and other commercial mobile radio service (“CMRS”) operators.² The Commission can issue these clarifications and modifications through a *sua sponte* reconsideration order.³ Prompt Commission action would expedite

² See Letter from Regina M. Keeney, Counsel to Nextel, to Marlene Dortch, Secretary, FCC (Sep. 16, 2004) (“Sep. 16 *Ex Parte*”); Letter from Regina M. Keeney, Counsel to Nextel, to Marlene Dortch, Secretary, FCC (Sep. 21, 2004) (“Sep. 21 *Ex Parte*”) (attaching presentation on “800 MHz Public Safety Report & Order, Status Update” (“Sep. 21 *Ex Parte* Attachment”), and presentation on “Updated Calculation of Nextel’s Spectrum Contribution to 800 MHz Band Reconfiguration” (“Sep. 21 *Ex Parte* Spectrum Update”)); Letter from Regina M. Keeney, Counsel to Nextel, to Marlene Dortch, Secretary, FCC (Sep. 23, 2004) (“Sep. 23 *Ex Parte*”); Letter from Lawrence R. Krevor, Vice President – Government Affairs, Nextel Communications, Inc., to Marlene Dortch, Secretary, FCC (Sep. 28, 2004) (“Sep. 28 *Ex Parte*”) (attaching presentation on “Transition Period Interference Protection Standard” (“Sep. 28 *Ex Parte* Attachment”)); Letter from Regina M. Keeney, Counsel to Nextel, to Marlene Dortch, Secretary, FCC (Oct. 1, 2004) (“Oct. 1 *Ex Parte*”); Letter from Regina M. Keeney, Counsel to Nextel, to Marlene Dortch, Secretary, FCC (Oct. 13, 2004) (“Oct. 13 *Ex Parte*”). (All comments and *ex parte* submissions cited herein were filed in WT Docket No. 02-55.) On October 22, 2004, the Commission asked for comment on Nextel’s *ex parte* filings, as well as post-R&O *ex parte* filings by several other parties. *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) (“Public Notice”). On December 2, 2004, Nextel and Nextel Partners Inc. filed joint comments on this Public Notice. Comments of Nextel Communications, Inc. and Nextel Partners Inc. (“Joint Nextel Comments”). Nextel hereby incorporates by reference the Joint Nextel Comments in this Petition.

³ Under Section 1.108 of its rules, the Commission has authority to issue on its own motion an order on reconsideration of an underlying rulemaking action. 47 C.F.R. § 1.108. Pursuant to this authority, the Commission has issued numerous such *sua sponte* orders on reconsideration, including orders that significantly modified the Commission’s rules and policy decisions. In July 2003, for example, the Commission issued a *sua sponte* reconsideration order in its proceeding on Mobile Satellite Service-Ancillary

the resolution of these issues and the initiation of 800 MHz band reconfiguration, which in turn will alleviate the primary cause of CMRS – public safety interference. Pending the *sua sponte* Commission action on these issues, this Petition preserves Nextel’s rights to seek reconsideration and/or clarification of the *R&O* in this proceeding.⁴ Nextel consequently hereby incorporates herein by reference the clarification and modification requests set forth in its *Ex Parte* Filings.⁵

The *R&O* imposes on Nextel substantial responsibility for implementing the Commission’s band reconfiguration plan in accordance with the timetable set forth in the *R&O* and with minimal disruption to the operations of all incumbents, particularly public safety communications systems. Accordingly, Nextel’s *Ex Parte* Filings advocate certain clarifications and modification of the *R&O* necessary to achieve this goal, including:

Terrestrial Components (“MSS ATC”) that went beyond merely clarifying the Commission’s MSS ATC rules, eliminating its policy of conditional MSS ATC licensing and ruling that it would only award ATC authority after an MSS licensee had launched and deployed its MSS system. *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Order on Reconsideration, 18 FCC Rcd 13590 (2003). Other *sua sponte* reconsideration decisions in recent years have modified aspects of underlying Commission orders on universal service and access charge issues. See, e.g., *Federal-State Joint Board on Universal Service*, Order and Order on Reconsideration, 18 FCC Rcd 1421 (2003) (modifying definition of wireless “affiliate” originally adopted in *Federal-State Joint Board on Universal Service*, Report and Order and Second Further Notice of Proposed Rulemaking, 17 FCC Rcd 24952 (2002)). The Commission’s authority to reconsider the *R&O* on its own motion is beyond dispute given that it has requested comment on the *ex parte* filings submitted by Nextel and other parties, a step that the Commission did not take prior to issuing the various *sua sponte* orders referenced above. All interested parties have been given full notice and opportunity to comment on Nextel’s requested clarifications and modifications.

⁴ The deadline for filing petitions for reconsideration of the *R&O* is December 22, 2004. See 47 C.F.R. §§ 1.4(b)(1), 1.429(d); Letter from Regina M. Keeney, Counsel to Nextel, to Marlene Dortch, Secretary, FCC (Sep. 3, 2004).

⁵ See note 2, *supra*.

- Incumbent channel use flexibility during the reconfiguration transition,⁶
- Band reconfiguration progress milestones,⁷
- The process of and the role of the Transition Administrator in retuning negotiations between Nextel and 800 MHz incumbents,⁸
- The retuning rights of Enhanced Specialized Mobile Radio (“ESMR”) and non-ESMR Economic Area (“EA”) licensees,⁹
- Transition period interference protection standards for 800 MHz high-site public safety and private wireless incumbents,¹⁰
- The Commission’s requirements concerning a letter of credit to secure Nextel’s retuning funding obligations,¹¹
- Retuning costs eligible for credit against Nextel’s payment obligation,¹² and
- The valuation of Nextel’s spectrum contribution to effectuating band reconfiguration.¹³

Nextel also requests that the Commission clarify the requirement set forth in paragraphs 325 and 344 of the *R&O* regarding the filing of letters from affiliates of Nextel. Under this requirement, Nextel is obligated to arrange for the filing of letters from any “part[y] having a financial or equitable interest in any existing or proposed 800 MHz system, whether in the United States, Mexico or Canada, and connected in any way to Nextel by way of being a subsidiary, partner, or otherwise,” with such letters

⁶ See Sep. 16 *Ex Parte* at 1; Sep. 21 *Ex Parte* Attachment at 2.

⁷ See Sep. 16 *Ex Parte* at 2-3; Sep. 21 *Ex Parte* Attachment at 3.

⁸ See Sep. 16 *Ex Parte* at 2; Sep. 21 *Ex Parte* Attachment at 4.

⁹ See Sep. 16 *Ex Parte* at 2; Sep. 21 *Ex Parte* Attachment at 5.

¹⁰ See Sep. 16 *Ex Parte* at 3; Sep. 21 *Ex Parte* Attachment at 6; Sep. 28 *Ex Parte* Attachment.

¹¹ See Sep. 23 *Ex Parte*; Oct. 1 *Ex Parte*; Oct. 13 *Ex Parte*.

¹² See Sep. 16 *Ex Parte* at 2-3; Sep. 21 *Ex Parte* Attachment at 7.

¹³ See Sep. 21 *Ex Parte* Spectrum Update.

acknowledging that these parties are bound to perform the obligations imposed upon Nextel to the extent necessary to complete 800 MHz reconfiguration. As presently worded, this requirement could require a letter from entities over which Nextel has no control or influence. Nextel requests, therefore, that the Commission clarify that this requirement applies only to Nextel Partners Inc. or any other similarly situated partners, subsidiaries, or affiliates of Nextel that hold 800 MHz licenses in the United States.¹⁴

II. The Commission Should Make the Modifications Requested by the Broadcast Community

On December 2, 2004, the National Association of Broadcasters (“NAB”), the Association for Maximum Service Television (“MSTV”), and the Society of Broadcast Engineers, Inc. (“SBE”) filed a request that the Commission extend the deadlines for completing mandatory negotiations with Nextel for relocating Broadcast Auxiliary Service (“BAS”) licensees in the 1.9 GHz band.¹⁵ As indicated in Nextel’s December 2, 2004 comments, Nextel supports this request. Specifically, broadcasters ask 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*). These extensions are consistent with the

¹⁴ In their December 2, 2004 joint comments on the Public Notice, Nextel and Nextel Partners took the 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.” This includes spectrum contributions from Nextel Partners as necessary to achieve the Commission’s 800 MHz band reconfiguration. *See* Comments of Nextel Communications, Inc. and Nextel Partners Inc., at 11 (Dec. 2, 2004); Comments of Nextel Communications, Inc. and Nextel Partners Inc., at 3 (Feb. 10, 2003).

¹⁵ *See* Letter from Larry Walke, NAB, David Donovan, MSTV, and Christopher Imlay, Counsel for SBE (Dec. 2, 2004).

original intent of the joint BAS relocation proposal submitted by NAB, MSTV and Nextel and will help ensure an efficient BAS relocation process with minimal disruption to incumbent licensees.

III. Conclusion

Nextel urges the Commission to clarify and modify the *R&O* as requested in Nextel's *ex parte* filings and December 2, 2004 comments submitted in the record of this proceeding. Such action will ensure that reconfiguration of the 800 MHz band is achieved expeditiously, efficiently, and without imposing undue disruption on any incumbent licensee.

Respectfully submitted,

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