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February 7, 2005

Marlene Dortch, Secretary
Office of the Secretary
Federal Communications Commission
445 Twelfth Street SW
Washington, DC 20554

Re: Petition for Partial Stay of Decision; WT Docket No. 02-55

Dear Ms. Dortch:

Enclosed is a Petition for Partial Stay of Decision, being filed by Mobile Relay Associates and Skitronics, LLC, as well as four copies.

Out of an abundance of caution, Mobile Relay and Skitronics are filing this motion both manually and electronically on the ECFS filing system. Although being filed in two ways, they are one and the same document.

Sincerely,



David J. Kaufman

Enclosures

cc: Service List
Michael Wilhelm, Chief, PS&CID
Mobile Relay Associates
Skitronics, LLC

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 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)	
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)	ET Docket No. 00-258 EMERGENCY FILING! EXPEDITED HANDLING REQUESTED
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service)	RM-9498
Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service)	RM-10024
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service)	ET Docket No. 95-18

To: Chief, Public Safety & Critical Infrastructure Division

PETITION FOR PARTIAL STAY OF DECISION

Mobile Relay Associates ("MRA") and Skitronics, LLC ("Skitronics") (collectively, "Petitioners"), by their attorney, hereby submit this Petition for Partial Stay of Decision ("New Stay Request"), seeking partial and temporary stay of the rebanding process. Petitioners seek herein to stay the same portions of

the *Report and Order*¹ herein as they previously sought to have stayed.²

Petitioners recognize that their earlier request for similar relief was recently denied by the Chief, Public Safety & Critical Infrastructure Division (“Division”), by *Order*, DA 05-82, released January 14, 2005 herein. In the *Order*, the Division denied Petitioners’ motion seeking a stay pending appellate review of the same portions of the *Commission Orders*. However, since the issuance of the *Order*, material new information, not previously available through the exercise of reasonable diligence, has come to light, showing that the Transition Administrator, Bearingpoint is not and would not be fair, impartial or independent of Nextel Communications, Inc. (“Nextel”), and is unqualified to act as Transition Administrator. The relevant facts and argument are set forth in Petitioners’ “Emergency Motion for Removal of Bearingpoint, Inc. from Transition Administrator Team and Cessation of Transition Process Pending Announcement of Replacement Administrator” (“Emergency Motion”), being filed with the Division simultaneously herewith, and incorporated herein by reference. (Even with the Emergency Motion, this Petition fits within the maximum page length for such a request.) Additionally, this New Stay Request is requesting only a temporary stay, until the Commission removes Bearingpoint and replaces it with a new

¹*Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order (WT Docket 02-55)*, 19 FCC Rcd 14969 (2004), as corrected by three *Errata*; summary published in the Federal Register November 22, 2004, *see* 69 Fed Reg 67823 (2004) (“*Report and Order*”); *partially reconsidered and modified, Supplemental Order and Order on Reconsideration*, FCC 04-294, in WT Docket No. 02-55 (“*Supplemental Order*” or, collectively with the *Report and Order*, the “*Commission Orders*”).

²Specifically, Petitioners do not seek a stay of the effectiveness of the following: a) changes to Part 22; b) revised Section 90.621(f); and c) new Sections 90.672 thru 90.675. Petitioners request that all other rules adopted in the *Commission Orders* be stayed pending the replacement of Bearingpoint, Inc. (“Bearingpoint”) with an impartial and independent Transition Administrator, as discussed in the text, *infra*.

independent and impartial Transition Administrator.

For the reasons set forth in the Emergency Motion, the equities are now different than they were when the *Order* was issued, and even assuming the *Order* reached the correct result based upon the facts then available (an assumption with which Petitioners disagree), Petitioners would be irreparably harmed if they were forced to continue the transition process with an unqualified Transition Administrator that is beholden to Nextel. Therefore, Petitioners request that the Commission stay the transition process temporarily, until a replacement Transition Administrator can be retained.

This would be a far shorter period than would the period previously requested (*i.e.*, a stay to continue pending appellate review), because the Commission can re-assemble the Transition Administrator Search Committee (“TASC”) and obtain one or more new recommendations within a few months. Indeed, the previous selection process took only about two months (August 6 to October 12, 2004). Given the shorter period requested, and the infinitely greater harm to Petitioners than was previously perceived, Petitioners certainly meet the four-part test for grant of a temporary stay as set forth in *Washington Metropolitan Area Transit Comm’n. v. Holiday Tours, Inc.*, 559 F.2d 841, 843 (D.C. Circuit, 1977).

I. Petitioners Will Certainly Prevail on the Merits

There is virtually no part of the framework of our system of democracy that is more fundamental than the right to be judged by a fair, independent and impartial arbiter. A special master making recommended decisions to a trial court is viewed the same as a judge with respect to his/her special master functions, and is required to adhere to the same ethical standards as apply to judges. As explained in the Emergency Motion, Bearingpont’s continued presence in the Transition Administrator position violates Canons 4A and 4D of the ABA Model Code of Judicial Conduct. Thus, Petitioners are virtually certain

to prevail in having Bearingpoint removed.

Whether or not Petitioners have a high likelihood of prevailing in their pre-existing judicial appeal Case No. 04-1413, pending before the District of Columbia Circuit, a reviewing court will certainly overturn any rebanding process where the arbiter of transition disputes between Petitioners and Nextel is beholden to Nextel. Since the requested stay period is only that needed to eliminate this problem, the only “substantive” issue is whether Petitioners have a high likelihood of prevailing on the issue of removing the tainted arbiter, not whether they are likely to prevail on overturning the *Commission Orders* herein.

II. The Harm to Petitioners Is Huge and Irreparable

For the same reason that Petitioners are certain to prevail on the merits of the relevant substantive issue, they are facing huge and irreparable harm if they are forced to participate in a transition process tainted by a Transition Administrator that is beholden to Nextel. It is not sufficient to claim that Petitioners could always seek a reversal on review by the Division or the full Commission, because the impartiality taints the entire process, and the burden of proof in any appeal would be on Petitioners. As noted above, the right to an impartial arbiter is so fundamental that the potential availability of later appellate correction is never deemed sufficient to justify forcing a litigant to face such a stacked deck. Once Petitioners are forced to go before this tainted forum, they are irreparably harmed.

MRA, in particular, is facing immediate irreparable harm, because the January 31, 2005 Transition Plan filed by the current Transition Administrator has named the Colorado NPSPAC Region (where all of MRA’s 800 MHz spectrum licenses are located) as the second NPSPAC region in the United States (behind only northern California, and ahead of such regions as New York and Chicago) to undergo the forced migration. Equity requires that MRA not be required to undergo this process under a Transition

Administrator that is partial to Nextel.

III. No Party Is Irreparably Harmed by a Temporary Stay Pending a New Administrator

No party would be irreparably harmed by a temporary stay pending the announcement of a new, impartial Transition Administrator. As noted by Petitioners in their previous motion for partial stay, the Enhanced Best Practices have now been put in place via rule, and will act to address immediate short-term problems. Moreover, virtually all police and fire department radios in major metropolitan areas operate on multiple frequencies, and the chances of all available frequencies being knocked simultaneously are minimal. As APCO, *et al.* admitted in their opposition to Petitioners' motion for stay before the Court of Appeals in Case No. 04-1413, no public-safety officer has ever been seriously injured or killed due to harmful interference from other 800 MHz ESMR operations – the fear is that due to increasing ESMR volume, it might happen eventually.

Under the circumstances, a temporary delay of two or three months pending the location and retention of a new Transition Administrator does not constitute irreparable harm to Public Safety.

IV. The Public Interest Warrants a Temporary Stay

In a dictatorship or a society not based upon the rule of law, such as Putin's Russia, there is no tension between the need to protect individual rights and the needs of the state. In such societies, the needs of the state, which may change at the whim of any judge or bureaucrat, are paramount. However, in the United States we do not live that way – this society remains one of the rule of law. Here, trials are not stacked decks; powerful and politically connected corporations cannot yet hamstring their competitors and steal their competitors' assets through tainted judges under their control. The awful spectacles going on in Russia today, with the assets of Yukos being sold to its politically-connected competitors at fire-sale

prices, highlight the importance of maintaining the rule of law in the United States.

There is a powerful and overriding public interest in the integrity of the administrative and judicial processes, and once the sanctity of the fairness of those processes is eroded for short-term purposes, no matter how laudable they may seem at the moment, it may well be impossible to repair the damage. Thus, there is a strong public interest here in ensuring the integrity of the Commission's processes, including the rebanding process, which requires a temporary halt pending the retention of a new Transition Administrator.

CONCLUSION

For all of the foregoing reasons, Petitioners request that the Division enter a temporary stay pending the retention of a replacement Transition Administrator for the unqualified Bearingpoint.

Respectfully submitted,
MOBILE RELAY ASSOCIATES
SKITRONICS, LLC

February 7, 2005

By: _____



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CERTIFICATE OF SERVICE

I, Stephen Denison, a paralegal in the office of Brown Nietert and Kaufman, Chartered, hereby certify that I caused a copy of the foregoing "**PETITION FOR PARTIAL STAY OF DECISION**" to be served via hand delivery, this 7th day of February, 2005, upon each of the following:

Regina M. Keeney
Lawler Metzger & Milkman, LLC
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Stephen Denison