

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

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket 02-55
)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels)	

**OPPOSITION OF NEXTEL COMMUNICATIONS, INC.
TO AIRPEAK REQUEST FOR WAIVER**

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Senior Vice President and Chief Regulatory Officer

Lawrence R. Krevor
Vice President – Government Affairs

James B. Goldstein
Senior Attorney – Government Affairs

2001 Edmund Halley Drive
Reston, VA 20191

Regina M. Keeney
Charles W. Logan
Stephen J. Berman
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
(202) 777-7700

Counsel for Nextel Communications, Inc.

March 28, 2005

Summary

The Commission should summarily dismiss the waiver request filed by AIRPEAK Communications, LLC (“AIRPEAK”) on March 17, 2005 in this proceeding. AIRPEAK requests that the Commission waive its rules so that many more of its site-specific licenses are eligible for retuning to the Enhanced Specialized Mobile Radio (“ESMR”) spectrum block established under the Commission’s 800 MHz band reconfiguration plan. In addition, AIRPEAK asks for a waiver that would enable it to convert site-based licenses that are retuned to the ESMR block to full-blown, incumbent-free EA licenses.

AIRPEAK’s waiver request duplicates a pending petition for reconsideration it has filed challenging virtually every aspect of the Commission’s decisions in this proceeding concerning the retuning rights of non-Nextel, non-Southern LINC ESMR licensees. As such, the waiver request amounts to a collateral reconsideration request that would effectively eviscerate the underlying rules that are essential to ensuring a successful reconfiguration of the band and that were the result of the Commission’s careful balancing of a range of public interest considerations. The waiver request should consequently be dismissed as procedurally flawed consistent with Commission precedent to deny waiver requests that would essentially nullify the rule in question.

Moreover, the rule modifications AIRPEAK seeks in its waiver request are completely unrelated to the Commission’s fundamental public policy objective in the *R&O*: improving public safety communications in the 800 MHz band. Rather, AIRPEAK’s waiver request boils down to a spectrum grab intended to enhance its competitive position. It offers no public interest justification to support its proposal to

exchange certain of its site-based stations for EA-wide, incumbent-free channels in the ESMR band. Nor is there any public interest basis for granting AIRPEAK's other waiver requests, which seek to retune site-based licenses to the ESMR block that clearly are ineligible for such retuning under the carefully crafted criteria the Commission established to ensure an efficient, expeditious reconfiguration of the band. Grant of AIRPEAK's waiver request would undermine these objectives. It is also unnecessary, as the record indicates that these site-specific licenses are well-suited for the type of low-density cellular architectures that can be operated in the non-ESMR block without causing interference to public safety communications.

Grant of AIRPEAK's waiver request would harm Nextel. The additional frequencies above 817/862 MHz that AIRPEAK would receive under its requested waivers would be spectrum that would come directly out of Nextel's post-reconfiguration holdings. This would impose an inequitable burden on Nextel given its significant spectral and financial contributions to 800 MHz band reconfiguration, and could disrupt Nextel's continued service to its nationwide ESMR customers.

Table of Contents

I. BACKGROUND..... 2

II. THE COMMISSION SHOULD DENY AIRPEAK’S
WAIVER REQUEST BECAUSE IT WOULD EFFECTIVELY
NULLIFY THE RULES IN QUESTION.....5

III. AIRPEAK’S REQUEST FAILS TO SATISFY
THE STANDARDS FOR A WAIVER AND WOULD
HARM THE PUBLIC INTEREST.....8

 A. AIRPEAK’s Effort to Enhance Its Spectrum Position
 Has Nothing to Do With the
 Commission’s Public Safety Goals.....9

 B. Grant of AIRPEAK’s Waiver Request Would
 Harm Nextel, Which is Making Substantial
 Contributions to 800 MHz Band Reconfiguration.....11

 C. The Three-Year Pendency of the 800 MHz Band
 Reconfiguration Proceeding Does Not Justify
 AIRPEAK’s Inactivity.....13

IV. CONCLUSION.....14

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

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket 02-55
)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels)	

**OPPOSITION OF NEXTEL COMMUNICATIONS, INC.
TO AIRPEAK REQUEST FOR WAIVER**

Nextel Communications, Inc. (“Nextel”) hereby opposes the request for waiver filed by AIRPEAK Communications, LLC (“AIRPEAK”) on March 17, 2005 in the above-captioned proceeding. AIRPEAK requests that the Commission waive its rules so that the following site-specific stations are eligible for retuning to the Enhanced Specialized Mobile Radio (“ESMR”) spectrum block to be established under the Commission’s 800 MHz band reconfiguration plan:

- 1) Stations that were leased by AIRPEAK for use in its network but whose licenses had not yet been assigned to AIRPEAK as of November 22, 2004, the cut-off date established by the Commission for determining eligibility for retuning to the ESMR block;
- 2) Stations that, as of November 22, 2004, were not an integral part of AIRPEAK’s ESMR system under the eligibility criteria established by the Commission (*i.e.*, have a 40 dB μ /V coverage contour overlap with another cell integral to the ESMR system and have “hand off” capability);
- 3) Stations that had not been deployed as of the November 22, 2004 eligibility cut-off date, but which will be placed in AIRPEAK’s ESMR network before November 22, 2005.

Additionally, AIRPEAK requests that the Commission waive its rule limiting site-based stations that are eligible for retuning to the ESMR block to the 40 dB μ /V coverage contour provided by the station as of November 22, 2004. More significantly, AIRPEAK requests that site-based stations whose larger 22 dB μ /V contours provide coverage to more than fifty percent (50%) of the applicable EA population be transformed into EA-wide, incumbent-free channels in the ESMR block.

AIRPEAK's waiver request thus challenges virtually every aspect of the Commission's decision in WT Docket No. 02-55 concerning the retuning rights of non-Nextel, non-Southern LINC ESMR licensees as part of the overall reconfiguration of the 800 MHz band. As such, AIRPEAK's request duplicates its pending petition for reconsideration in that docket. Thus, this waiver request is really a collateral reconsideration request, as AIRPEAK has not demonstrated any circumstances unique to it warranting special relief. Granting such waivers would effectively eviscerate the underlying rules that are essential to ensuring efficient, expeditious reconfiguration of the band. Therefore, the Commission should summarily dismiss AIRPEAK's waiver request.

I. BACKGROUND

The Commission's fundamental public policy objective in this proceeding is to improve public safety communications by eliminating the 800 MHz interference that threatens the lives of police, firefighters, and other first responders, as well as the citizens they serve.¹ AIRPEAK itself "recognizes the urgency of completing the 800 MHz

¹ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels,*

rebanding process so interference to public safety will be alleviated.”² As the long-term solution to this growing interference problem, the Commission has adopted a plan to reconfigure the 800 MHz band to separate public safety and other high-site licensees from commercial mobile radio service (“CMRS”) systems in the 800 MHz band utilizing low-site, high-density cellularized architecture.³ As the Commission has recognized, the spectral proximity of these incompatible technologies is the root cause of this unacceptable public safety interference.⁴

AIRPEAK claims that it operates an ESMR network in several smaller markets in the western United States.⁵ The *R&O* provides non-Nextel, non-Southern LINC ESMR licensees who make a sufficient showing of current ESMR status, which may or may not include AIRPEAK, the opportunity to retune their EA licenses to the ESMR (cellular, low-site) portion of the band above 817/862 MHz. If a non-Nextel, non-Southern LINC ESMR licensee elected to retune its operations to the ESMR block, its EA license will be

Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order, 19 FCC Rcd 14969, ¶ 1 (2004) (“*R&O*”).

² AIRPEAK Waiver Request at 12.

³ *See generally R&O* ¶ 2.

⁴ *Id.* ¶ 2.

⁵ AIRPEAK Waiver Request at 2. On March 16, 2005, AIRPEAK filed with the Commission a redacted version of its ESMR “election” that purports to demonstrate that it had a built an operational ESMR network in various markets in the United States by the Commission’s November 22, 2004 deadline. *See* Letter from Elizabeth R. Sachs, Counsel for AIRPEAK Communications, LLC, to Marlene H. Dortch, Secretary, FCC, WT Docket No. 02-55 (Mar. 16, 2005). Nextel is reviewing AIRPEAK’s “election” and will be filing an opposition or critique of AIRPEAK’s election filing in the coming weeks.

transferred on a channel-by-channel basis, giving it exclusive, incumbent-free use of its new EA channels.⁶

The Commission also established very clean and precise rules governing the retuning of ESMR licensees with both EA and site-specific licenses. In order to retune a licensed site-based facility into the ESMR segment, an incumbent licensee has to: (i) hold an EA license in the relevant market; and (ii) be using the licensed site-based facility as an integral part of its ESMR system within the relevant EA as of the Federal Register publication date of the *R&O* (November 22, 2004).⁷ To be an “integral part” of an ESMR system, a site-based license has to have a 40 dB μ /V coverage contour overlapping the 40 dB μ /V coverage contour of another cell integral to the ESMR system, and be capable of “handing off” calls to and from the cell with which its 40 dB μ /V contour overlaps.⁸ Finally, while a non-Nextel, non-Southern LINC incumbent that meets these criteria may retune its site-based licenses into the cellular block, a new license is limited to the 40 dB μ /V coverage contour it provided as of the *R&O*’s November 22, 2004 publication date.⁹

⁶ *R&O* ¶ 163. The Commission has charged the Transition Administrator with the task of determining the specific cellular block frequencies to which non-Nextel, non-Southern LINC incumbents should be retuned, stating that incumbents are entitled only to comparable facilities not their choice of channels. The Commission did say, however, that it envisioned that the TA would retune these incumbents to channels immediately above 817/862 MHz and then progress upward, unless otherwise indicated by considerations of sound spectrum management principles. *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Supplemental Order and Order on Reconsideration, 19 FCC Rcd 25120, ¶ 76 (2004) (“*Supplemental Order*”).

⁷ *R&O* ¶ 163; *Supplemental Order* ¶ 78.

⁸ *Supplemental Order* ¶ 78.

⁹ *Id.*

In short, the retuning rights of an ESMR licensee are determined by the configuration of that licensee's network as of November 22, 2004. The basic premise of the Commission's decision on these factors was to ensure that all retunees receive comparable facilities – no more and no less. Moreover, the Commission's decision does not prevent any non-Nextel, non-Southern LINC ESMR licensee from continuing to use its site-specific licenses in an integrated network.

II. THE COMMISSION SHOULD DENY AIRPEAK'S WAIVER REQUEST BECAUSE IT WOULD EFFECTIVELY NULLIFY THE RULES IN QUESTION

On March 10, 2005, AIRPEAK filed a petition for reconsideration of the Commission's *Supplemental Order*, opposing key aspects of the Commission's 800 MHz reconfiguration framework as applied to non-Nextel, non-Southern LINC ESMR licensees.¹⁰ Nextel will oppose AIRPEAK's petition when a filing deadline is established.¹¹ AIRPEAK's waiver request asks for much of the same relief as its reconsideration petition, and consequently suffers from the same substantive flaws. But, its waiver request suffers from an additional procedural flaw: the significant rule changes it seeks cannot be addressed through a waiver process. This alone warrants denial of AIRPEAK's request.

In its petition for reconsideration, AIRPEAK objected to the Commission's definition of site-based facilities that constitute an "integral part" of a non-Nextel, non-

¹⁰ Petition for Reconsideration, AIRPEAK Communications, LLC, WT Docket No. 02-55 (Mar. 10, 2005) ("AIRPEAK Petition").

¹¹ On March 23, 2005, the Commission released a public notice listing petitions for reconsideration of the *Supplemental Order*, including the AIRPEAK Petition. See *Petitions for Reconsideration of Action in Rulemaking Proceeding*, Public Notice, Report No. 2697 (Mar. 23, 2005). Oppositions to those petitions will be due fifteen days following publication of that public notice in the Federal Register.

Southern LINC EA licensee's ESMR system and therefore warrant retuning to the ESMR portion of the 800 MHz band.¹² Specifically, AIRPEAK challenged the Commission's requirement that, as of November 22, 2004, a site-based facility have a 40 dBμ/V contour overlapping with the 40 dBμ/V contour of another cell integral to the ESMR system, and also be capable of call "hand-offs" to that overlapping cell.¹³ In place of this eligibility requirement, AIRPEAK argued that a non-Nextel, non-Southern LINC ESMR licensee's site-based facility should be eligible for retuning to the cellular block as long as, on that same date, the incumbent was using its facility as part of a cellular-architecture system *somewhere* within the market containing its EA license.¹⁴ In addition, AIRPEAK asked for reconsideration of the Commission's rule limiting the license area of non-Nextel, non-Southern LINC licensees' retuned ESMR site-based systems to the 40 dBμ/V coverage contour provided as of November 22, 2004.¹⁵ AIRPEAK argued that such site-specific facilities should instead be converted to full-blown, incumbent-free EA licenses if their 22 dBμ/V contours provide coverage to more than fifty percent of the population of their EAs.¹⁶

AIRPEAK's waiver request urges the Commission to take these same actions for it in advance of a determination on the merits of the pending petition for reconsideration.¹⁷ AIRPEAK fails to satisfy the specific requirements of the

¹² AIRPEAK Petition at 5-7.

¹³ *Id.*

¹⁴ *Id.* at 7 (requesting that the rule adopted in the *Supplemental Order* be vacated).

¹⁵ *Id.* at 7-9.

¹⁶ *Id.* at 8-9.

¹⁷ AIRPEAK Waiver Request at 9-12, 14-16.

Commission's waiver standard, described in Section 1.925 of its rules.¹⁸ AIRPEAK does nothing to distinguish *its* case and *its* factual circumstance from the situation facing other parties, and fails to demonstrate how *it in particular* is aggrieved by these rules. AIRPEAK's waiver request is therefore a request for reconsideration of the Commission's rulemaking decision. Grant of this request would effectively undercut the Commission's carefully considered and balanced rules for retuning site-specific licenses. Commission precedent and practice is to deny waivers that would essentially nullify the rules.¹⁹

The Commission's 800 MHz reconfiguration framework reflects a careful balance of numerous competing considerations, and the effective nullification of the rules targeted by AIRPEAK's waiver request would have far-reaching effects. The Commission should only consider such changes in its rulemaking processes, and should not use individual waiver requests as a vehicle for such important policy steps.²⁰ In contrast to waiver requests, which are not automatically placed on public notice, the Commission's reconsideration procedures provide interested parties with an opportunity

¹⁸ 47 C.F.R. § 1.925.

¹⁹ See *Application of Empire Broadcasting Co., Inc.*, Memorandum Opinion and Order, 62 FCC 2d 963, ¶ 7 (1977) (denying request for waiver of AM broadcast overlap rules, given that a waiver based only on the benefits of increased signal coverage would effectively nullify the Commission's Section 73.37(a) overlap prohibition); *Application of Stereo Corporation*, Memorandum Opinion and Order, 61 FCC 2d 76, ¶ 6 (1976) (denying request for waiver of FM maximum power rules, given that a waiver based only on the benefits of increased service area and population covered would nullify the Commission's Section 73.206(b) FM power limits).

²⁰ Such use of the waiver mechanism would be particularly inappropriate in this case, given that AIRPEAK filed its waiver request with the Wireless Telecommunications Bureau rather than with the full Commission. Certainly, the Bureau does not have the authority to effect such significant policy changes on its own. See, e.g., 47 C.F.R. § 0.331.

to comment, and enable the Commission to develop a complete record as the basis for its decision.

III. AIRPEAK'S REQUEST FAILS TO SATISFY THE STANDARDS FOR A WAIVER AND WOULD HARM THE PUBLIC INTEREST

The Commission should deny AIRPEAK's waiver request not only because it is procedurally defective, but also because grant of the request would undermine the Commission's public interest goals. AIRPEAK is seeking to retune to the ESMR band site-specific licenses that it did not hold, or that were not an integral part of its ESMR system as November 22, 2004, or that it has not even constructed yet. It also seeks to expand the amount of spectrum covered by those site-specific licenses that are eligible for retuning. Thus, AIRPEAK's waiver request is simply an attempt to enhance its current spectrum position at the expense of other licensees and would in no way further the Commission's objective of improving public safety communications in the 800 MHz band. To the contrary, the special treatment AIRPEAK has requested would only create uncertainty and hamper implementation of the Commission's 800 MHz reconfiguration plan.

A. AIRPEAK's Effort to Enhance Its Spectrum Position Has Nothing to Do With the Commission's Public Safety Goals

AIRPEAK's waiver request 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's waiver request boils down to a spectrum grab intended to enhance its competitive position.

This motive is quite evident in AIRPEAK's request that site-based stations with 22 dB μ /V contours covering more than 50% of the EA population be exchanged for EA-

wide, incumbent-free channels in the ESMR band.²¹ The Commission's carefully considered *Supplemental Order* (§ 78) makes clear that an eligible site-specific license that is returned to the ESMR band "is limited to the 40 dB μ /V coverage contour it provided as of the date of the *R&O* was published in the Federal Register." This limitation is entirely reasonable, given that site-based stations are entitled to protection only within their 40 dB μ /V contour and that the Commission's reconfiguration plan is intended only to provide licensees with *comparable* replacement spectrum. AIRPEAK, however, seeks to *enhance* the spectrum it holds under dozens of its limited site-specific licenses by exchanging those limited use stations for EA-wide, incumbent-free channels in the ESMR block that would be taken from Nextel. AIRPEAK offers no public interest support for this self-serving proposal to upgrade site-specific authorizations to EA licenses.²² AIRPEAK claims that it will make good use of these channels and that Nextel can "make do" with its other spectrum holdings.²³ The Commission should not expend the public's resources considering such nonsense.

AIRPEAK's other waiver requests are similarly unrelated to remedying the public safety interference problem or providing incumbent licensees with comparable replacement channels. With these requests, AIRPEAK seeks to obtain channels in the ESMR block in exchange for site-specific facilities that, as of the *R&O*'s Federal Register publication date,

²¹ AIRPEAK Waiver Request at 14-16.

²² AIRPEAK also fails to provide any legitimate rationale for its use of 22 dB μ /V interference contours rather than 40 dB μ /V service contours in its calculation of population coverage for site-specific licenses.

²³ AIRPEAK Waiver Request at 16.

(1) were not constructed (including some of which *still have yet to be constructed*),²⁴

(2) were leased but not yet assigned to AIRPEAK,²⁵

(3) do not comply with the Commission's requirement that AIRPEAK's site-specific licenses may only be retuned to the ESMR block if they are an integral part of its EA ESMR system (*i.e.*, have a 40 dB μ /V coverage contour overlap with another cell integral to the ESMR system and have "hand off" capability),²⁶ or

(4) all of the above.

The Commission should reject these requests. Nowhere in its waiver request does AIRPEAK demonstrate that the retuning of such site-specific facilities is necessary to prevent interference to 800 MHz public safety systems. To the contrary, the facts suggest AIRPEAK can operate these facilities using a low-density cellular architecture that can be operated in the non-ESMR block without causing this interference.

AIRPEAK's facilities serve "very small communities."²⁷ They are in predominantly rural, often sparsely populated areas that do not require intensive spectrum reuse and high-density cellular architectures to provide the service AIRPEAK offers. Indeed, although AIRPEAK has held licenses in these rural areas for five years or more in many cases, it was not until very recently that it apparently began building out these licenses; further, some have yet to be constructed. Some of the cell sites in question do not have overlapping 40 dB μ /V coverage overlaps with other cells in AIRPEAK's network, further indicating that AIRPEAK can and does provide service in these areas using low-density, high-site facilities. Moreover, AIRPEAK's recent buildout appears to

²⁴ AIRPEAK Waiver Request at 12-14.

²⁵ *Id.* at 8-9.

²⁶ *Id.* at 9-12.

²⁷ *Id.* at 11.

have been driven not by consumer demand but by a belated effort to dress up these site-based facilities for the sole purpose of persuading the Commission that these stations should be retuned to the ESMR block. This last-minute attempted make-over, however, cannot hide the fact that low-density, high-site facilities are well-suited to provide the type of service AIRPEAK purportedly hopes to provide in these small communities. The *R&O* (¶¶ 172-73) expressly permits low-density cellular networks to operate in the non-ESMR block. As the Commission has more recently stated, “low density cellular technology . . . is much more compatible with public safety systems.”²⁸

There is consequently no public interest need to retune these site-specific facilities to the ESMR block. They do not pose a risk of harmful interference to public safety systems, and retuning is not required to provide AIRPEAK comparable facilities. In addition, there is no technical or operational impediment that prevents facilities that are eligible for retuning above 817/862 MHz and non-eligible facilities remaining below 817/862 MHz from being integrated into the same network. Under the pre-*R&O* band plan, Nextel has for years operated a network spanning the upper and lower portions of 800 MHz Land Mobile Radio band.

B. Grant of AIRPEAK’s Waiver Request Would Harm Nextel, Which is Making Substantial Contributions to 800 MHz Band Reconfiguration

Grant of AIRPEAK’s waiver request would cause harm to Nextel. The additional frequencies above 817/862 MHz that AIRPEAK would receive under its requested waivers would, in all cases, be spectrum that comes directly out of Nextel’s post-reconfiguration holdings. This would impose an inequitable burden on Nextel given its

²⁸ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Order, 20 FCC Rcd 641, ¶ 9 (2005).

significant spectral and financial contributions to 800 MHz reconfiguration, and could disrupt Nextel's continued service to its nationwide ESMR customers.

Nextel's substantial and indispensable contributions to reconfiguration of the 800 MHz band are well documented in this proceeding. To make 800 MHz reconfiguration possible, Nextel is returning spectrum in the 700 and 800 MHz bands worth over \$2 billion, and is paying billions more to retune incumbent licensees in the 800 MHz and 1.9 GHz bands. In addition, at the end of the 800 MHz retuning process, Nextel must pay to the U.S. Treasury any difference between the value of the 1.9 GHz spectrum rights granted Nextel (determined by the FCC to be \$4.86 billion) and the value of Nextel's spectral and financial contributions to this process.

Given the extent of Nextel's contributions, the Commission must ensure that Nextel is fairly and adequately compensated with new, contiguous spectrum in the 800 MHz and 1.9 GHz bands. Grant of AIRPEAK's requested waivers would take 800 MHz spectrum directly from Nextel and jeopardize the Commission's ability to make Nextel whole for its efforts. In developing its 800 MHz band reconfiguration plan, the Commission conducted comprehensive proceedings regarding the valuation of Nextel's spectral and financial contributions and the replacement spectrum it should receive to ensure that it is made whole. The Commission should not permit AIRPEAK, as part of its blatant spectrum grab, to upset the careful balancing the Commission struck in this valuation analysis. AIRPEAK is making no contribution to band reconfiguration and is entitled only to facilities that are comparable to those it now operates.

C. The Three-Year Pendency of the 800 MHz Band Reconfiguration Proceeding Does Not Justify AIRPEAK's Inactivity

In an attempt to justify its request for waiver of the Commission's November 22, 2004 date for determining ESMR-eligible licenses, AIRPEAK claims that it would have been "financially imprudent" for it to move forward with the deployment of additional facilities or pursue new spectrum acquisitions during the three-year pendency of WT Docket No. 02-55.²⁹ AIRPEAK's effort to attribute its inactivity to the Commission's rulemaking processes is nonsense. The Commission's 2002 *NPRM* placed no restriction on AIRPEAK's deployment or acquisition of new facilities or spectrum prior to the adoption of the *R&O*.³⁰ Nextel faced the same if not greater uncertainty during that time, yet did not forego construction of new facilities to serve its customers, building more than three thousand sites over the past three years during the pendency of this proceeding. The Commission should deny AIRPEAK's waiver request and adhere to its decision to use the *R&O*'s Federal Register Publication date as the date for establishing a "settled spectrum landscape"³¹ for band reconfiguration implementation.

²⁹ AIRPEAK Waiver Request at 4, 13.

³⁰ *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels*, Notice of Proposed Rulemaking, 17 FCC Rcd 4873 (2002).

³¹ AIRPEAK Waiver Request at 12.

IV. CONCLUSION

The Commission should deny AIRPEAK's waiver request. It would overturn the careful balance the Commission has struck in designing its 800 MHz band reconfiguration plan and impede the efficient, expeditious implementation of this plan.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

/s/ Robert S. Foosaner

Robert S. Foosaner
Senior Vice President and Chief Regulatory Officer

Lawrence R. Krevor
Vice President – Government Affairs

James B. Goldstein
Senior Attorney – Government Affairs

2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-4141

Regina M. Keeney
Charles W. Logan
Stephen J. Berman
Lawler, Metzger, Milkman & Keeney, LLC
2001 K Street, NW, Suite 802
Washington, DC 20006
(202) 777-7700
Counsel for Nextel Communications, Inc.

March 28, 2005

Certificate of Service

I, Charles W. Logan, hereby certify that on this 28th date of March, 2005, I caused true and correct copies of the foregoing Opposition of Nextel Communications, Inc. to Request for Waiver of AIRPEAK Communications, LLC to be mailed by electronic mail to:

Elizabeth R. Sachs
Lukas, Nace, Gutierrez & Sachs, Chartered
1650 Tysons Boulevard, Suite 1500
McLean, VA 22102
lsachs@fcclaw.com

/s/ Charles W. Logan
Charles W. Logan