



reconfiguration at issue herein. Airtel has supported the FCC's decision to bifurcate the band so that ESMR and non-ESMR systems will be separated in the future. It is prepared to move forward with the reconfiguration of its system at the earliest opportunity. However, as detailed in the Waiver Request and herein, the FCC's reversal of its earlier decision governing the exchange of site-based and EA spectrum has a unique impact on Airtel and would be contrary to the public interest.<sup>2</sup> Waiver relief is warranted in accordance with FCC Rule Section 1.925.

**II. THE RELIEF REQUESTED IS CONSISTENT WITH FCC WAIVER STANDARDS, WILL HAVE ONLY A MINIMAL IMPACT ON NEXTEL, AND WILL SERVE THE PUBLIC INTEREST BY PROMOTING THE DEPLOYMENT OF ADVANCED IDEN TECHNOLOGY IN THE STATE OF MONTANA.**

Airtel's Request addressed only one rule governing the relocation of site-based EA licenses held by qualified ESMR licensees such as the Company. In the original 800 MHz Order, the Commission itself had determined that eligible site-based spectrum would be exchanged for unencumbered EA-wide spectrum in the ESMR band:

Furthermore, to create a more uniform licensing scheme, the transferred site-based license will be converted to an EA-wide, incumbent-free license in the ESMR portion of the band.<sup>3</sup>

It subsequently reversed that decision in the Supplemental Order without explanation and without any party suggesting on the record that it do so:

Such a site-based cell may be moved into the ESMR spectrum, but is limited to the 40 dBu/V coverage contour it provided as of the date the *800 MHz R&O* was published in the Federal Register.<sup>4</sup>

Airtel endorses what presumably was the FCC's reasoning in changing its position, although not the scope of the new rule. The Company agrees that site-based licenses that were

---

<sup>2</sup> As noted in the Opposition, AIRPEAK Communications, LLC, another ESMR operator, has requested reconsideration of this aspect of the Supplemental Order.

<sup>3</sup> 800 MHz Order at ¶ 163.

<sup>4</sup> Supplemental Order at ¶ 78 (footnote omitted).

shoe-horned into an EA while providing only nominal population coverage should not be allowed to “trade up” to unencumbered EA spectrum. However, that is not the case in this instance.

Airtel operates in a very sparsely populated state with pockets of population separated by substantial distances. The Company provides digital iDEN service in major communities within Montana, to a number of highways connecting those communities, and, increasingly, in the more rural areas surrounding the population centers. In fact, it is the only iDEN carrier providing service in the State of Montana; neither Nextel nor Nextel Partners has ever deployed a network to serve the citizens of the State.

The Waiver Request suggested that service to thirty-five percent (35%) percent of the population in Montana constituted substantially more than minimal coverage in those markets. It noted that the Commission routinely considers service to one-third of the population within an EA as demonstrative of a satisfactory level of service that justifies retention of the spectrum throughout the EA.<sup>5</sup>

That same conclusion is warranted when, as in this instance, Airtel’s site-based coverage was not limited because of the presence of a co-channel licensee that has the right to the use of the channels in other parts of the EA. In fact, Airtel’s site-based channels generally are available at most locations throughout the EA and would have been licensable by Airtel. However, Airtel has limited its spectrum requests to locations where it had a present subscriber demand for spectrum. It has not attempted to stockpile spectrum for future use by securing licenses in areas

---

<sup>5</sup> In the 218-219 MHz service, in order to satisfy the “substantial service” standard at the end of the license term, the licensee must only provide service to twenty percent (20%) of the market population. *See* 70 of Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, FCC 990239, rel. September 10, 1999. (20% coverage is one of the “safe harbor” options for “substantial service.”) Also, the build-out requirements for 10 MHz PCS licenses require only a one-fourth population coverage or substantial service within the first five years in order to preserve its license. 47 C.F.R. § 24.203(b).

with insufficient population to independently support the deployment of facilities. Having not requested such licenses, it has not sought to preserve them by installing “site saver” transmitters that arguably meet the letter of the FCC’s construction requirements but are not intended to and do not provide service to consumers. That course of action should not now be penalized by depriving Airtel of the right it would have had absent the 800 MHz rebanding proceeding – the right to license its site-based channels at other locations throughout the EA as customer demand and economics dictate.

Further, Airtel can easily explain why the Company’s contour analysis relied on a 22 dBu/V rather than a 40 dBu/V contour. As Nextel most assuredly knows, the 22 dBu/V contour is the current definition of the area within which a site-based 800 MHz licensee may relocate or add facilities.<sup>6</sup> The Company is fully aware that the 800 MHz rules limit protection to the station’s 40 dBu/V contour.<sup>7</sup> Nevertheless, facilities, including facilities operated by Nextel, routinely are located at sites outside that zone of protection in accordance with the FCC’s rules. There is no indication in the Supplemental Order that the Commission intended to modify that rule or circumscribe the current rights of site-based 800 MHz licensees. Thus, at a minimum, Airtel should retain the right to locate facilities anywhere within the 22 dBu/V contour of its site-based licenses.

Finally, the Company is at a loss to understand how grant of the Request could “cause direct harm to Nextel”<sup>8</sup> or “disrupt Nextel’s continued service to its nationwide ESMR customers.”<sup>9</sup> It certainly would not impact Nextel ESMR customers in the State of Montana as there are none. As noted above, neither Nextel nor Nextel Partners has ever deployed iDEN

---

<sup>6</sup> 47 C.F.R. § 90.693.

<sup>7</sup> Opposition at p. 9.

<sup>8</sup> *Id.* at p. 5.

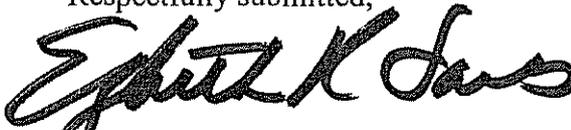
<sup>9</sup> *Id.* at p. 6.

service in the State as confirmed by Nextel's publicly available nationwide coverage map. To argue that the public interest would be better served by denying Airtel the right to expand iDEN coverage to other communities within the State for the purpose of preserving Nextel's right to use those channels when, or more importantly **if**, it ever elects to deploy iDEN facilities in Montana is to turn the concept of the public interest on its head.

### III. CONCLUSION

Airtel supports the objective of the 800 MHz proceeding. The Company is prepared to begin the relocation process promptly once a plan for its migration is approved by the TA and, as appropriate, by Nextel. However, Airtel respectfully requests that the FCC grant the waiver relief requested. Such an action would promote the public's interest in access to a more robust iDEN network in the State of Montana while having, at most, a *de minimis* impact on Nextel.

Respectfully submitted,



Elizabeth R. Sachs  
Counsel for Airtel Wireless, LLC

Lukas, Nace, Gutierrez & Sachs, Chartered  
1650 Tysons Blvd., Ste. 1500  
McLean, VA 22102  
(703) 584-8678

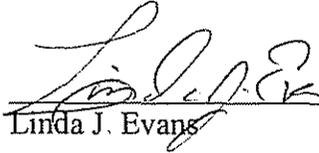
April 11, 2005

**CERTIFICATE OF SERVICE**

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this 11th day of April, 2005, caused to be mailed, first-class, postage prepaid a copy of the foregoing to the following:

James B. Goldstein, Esq.  
Senior Attorney – Government Affairs  
Nextel Communications  
2001 Edmund Halley Dr.  
Reston, VA 20191

Charles W. Logan, Esq.  
Lawler, Metzger, Milkman & Keeney, LLC  
2001 K St., N.W., Ste. 802  
Washington, D.C. 20006  
Counsel for Nextel Communications, Inc.

  
Linda J. Evans