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April 22, 2005

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VIA ELECTRONIC FILING

Marlene H. Dortch, Secretary
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. Dortch:

On behalf of AIRPEAK Communications, LLC ("AIRPEAK"), and in accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), undersigned counsel hereby submits the instant notice of an *ex parte* presentation.

On April 20, 2005, James D. Boyer of AIRPEAK, together with undersigned counsel, met with Ramona Melson and Roberto Mussenden, both of the Public Safety & Critical Infrastructure Division of the Wireless Telecommunications Bureau, to discuss issues relating to ESMR operations in the 800 MHz band, as described more fully in AIRPEAK's attached correspondence addressed to the 800 MHz Transition Administrator dated April 13, and April 15, 2005.

We apologize for the late filing of this notice; the Electronic Comment Filing System was experiencing technical difficulties yesterday afternoon. Kindly refer any questions or correspondence regarding this matter to the undersigned.

Very truly yours,

/s/

Elizabeth R. Sachs

Enclosures

cc: Ramona Melson, Esq.
Roberto Mussenden, Esq.

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Washington, DC 20044-0407

**RE: 800 MHz ESMR Election
AIRPEAK Communications, LLC
Supplemental Information**

Dear Mr. Kelly:

On behalf of AIRPEAK Communications, LLC ("AIRPEAK"), and pursuant to discussions with TA representatives, we wish to provide the following supplemental information in respect to the 800 MHz ESMR Election filed by AIRPEAK on January 21, 2005.

1) I have enclosed as Attachment 1 an overview system diagram of AIRPEAK's Mobile Switching Office ("MSO") and the related network interconnection functions. As indicated on the Attachment, the entire network is controlled through the MSO in Reno, NV. The operating cell sites in all AIRPEAK markets are integrated with one another and with cell sites in other markets through DS3/T1 connections back to the MSO. Attachment 2 identifies specific interconnection information for certain cell sites in the Reno/Sparks, NV and northern Nevada areas. As additional markets are deployed, they will have the same basic configuration and will be integrated with the rest of the network through the MSO in Reno. The diagram also identifies the interconnection methods by which AIRPEAK integrates the various features and functions that comprise its network, all of which are routed through the Reno MSO. Should the TA wish to review a more detailed system design with specific information regarding how each cell site in each market is interconnected to the network and other proprietary data, AIRPEAK will be pleased to provide it pursuant to appropriate confidentiality protections.

2) AIRPEAK is authorized for more than the twenty (20) twenty-five (25) kHz channels required to qualify as an ESMR, not at a single site, but at virtually every cell site it already has deployed or intends to build. Unlike a site-based analog environment at 800 MHz in which each licensed 25 kHz channel represents the right to establish a single voice path on the licensed channels at the authorized location (or at a subsequently licensed site(s) within its defined contour), AIRPEAK's digital network is comprised of both geographic and site-based spectrum and has a channel plan that is modified on a weekly basis in response to actual and predicted subscriber usage patterns. Because it operates a digital network, identical in this respect to the iDEN networks operated by Nextel and Southern LINC, each of the Company's twenty-five (25) kHz bandwidth authorizations actually supports three (3) or six (6) channels of voice communications, depending on whether the transmission is an interconnected or dispatch communication. Each cell site in AIRPEAK's network is typically designed to accommodate up to twenty-two (22) 25 kHz channels in an omni configuration. In a three sector environment up to thirty-nine (39) 25 kHz channels are configured with up to thirteen (13) channels per sector in each of three (3) sectors. Of course, as noted above, each of these 25 kHz channels actually carries anywhere from three (3) to six (6) communications channels (talk paths) depending on the interconnect/dispatch ratio.

For example, as shown on Attachment 3, an AIRPEAK site in Reno known as Red Peak is as the center of a cluster of cell sites, each of which is designed to operate between three (3) and thirty-nine (39) 25 kHz channels depending on subscriber usage patterns. All of these clustered sites have low level antenna radiation centers, with most having negative HAATs, and the 40 dBu/V contour of each overlaps the 40 dBu/V contours of the other sites and of Red Peak. Red Peak itself has an antenna height of substantially less than one hundred (100) feet and an HAAT of less than five hundred (500) feet. It is designed to operate with as many as thirty-nine (39) 25 kHz channels and is licensed for substantially more than that. The 25 kHz channels at Red Peak currently are deployed as follows: Sector 1 (Reno Sparks) – thirteen (13) channels; Sector 2 (Spanish Springs) – four (4) channels; Sector 3 (Stead/Lemmon Valley) – four (4) channels. See Attachment 4.

By comparison, AIRPEAK has been advised that the Southern LINC iDEN network uses no more than seventeen (17) 25 kHz channels at any of its more than five hundred (500) cell sites although, like Nextel and AIRPEAK, Southern LINC is licensed for a much larger number of channels at each site and deploys its infrastructure based on subscriber usage patterns.

3) The 800 MHz proceeding implicitly and explicitly recognizes that an ESMR designation applies to a licensee's entire, integrated network, including both EA facilities that already have been constructed, as well as those that have not yet been placed in operation in the network. In respect to AIRPEAK, both the original 800 MHz Order and the Supplemental Order identify the

company as operating a CMRS cellular-architecture network and refer to it as an ESMR.¹ The 800 MHz Order also specifically noted that AIRPEAK's cellularized system already operated in some markets and that the Company had represented that it "will be constructing Harmony systems in other markets."²

The definition of an ESMR system in Section 90.7 is not EA or otherwise geographically limited. It is satisfied, or not, based on the technical parameters of a defined number of facilities within a relatively limited geographic area. The rule does not require that an ESMR licensee make an individual showing in each cluster of sites, community, market or region in which it operates. Once the definition is met, the entire network is encompassed within that regulatory classification assuming, of course, that the additional facilities are integrated into the network that satisfied the ESMR definition.³

That approach is appropriate for entities with networks that have been determined by the FCC to have a potential for interfering with public safety operations. For example, in respect to Southern LINC, the FCC noted the following:

...there is no evidence that these operations currently cause interference to other 800 MHz band licensees. However, we can foresee that Southern LINC, in order to meet increasing subscriber demands, may desire to deploy "low site" cells which could be a source of interference to public safety and other non-cellular licensees. ... We therefore believe that the overall interference environment at 800 MHz would improve were we to allow licensees **such as** Southern LINC to relocate their systems to the ESMR portion of the band where they have less potential for interference to public safety and other non-cellular 800 MHz band licensees.⁴

The Commission correctly concluded that cellular-architecture systems should be designated as ESMR networks and relocated to the ESMR band, not only as they existed at the point at which they were determined to fall into that category, but as they are expanded in the future.

There is no provision in the rules or the text of the FCC's decisions that would support a distinction between the particular coverage area(s) in which the ESMR definition is met versus other operational markets, or between constructed and unconstructed facilities in an ESMR

¹ *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 at ¶ 159 (2004) ("800 MHz Order"); *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 at ¶ 75 (2004) ("Supplemental Order").

² 800 MHz Order at ¶ 159.

³ All ESMR networks, including those operated by Nextel and Southern LINC, continue to expand operations into additional markets and to more outlying areas within existing markets. A review Nextel's coverage map confirms that there are many areas in which it holds ESMR authorizations but has not yet deployed its digital iDEN network. The same is true for similarly situated AIRPEAK.

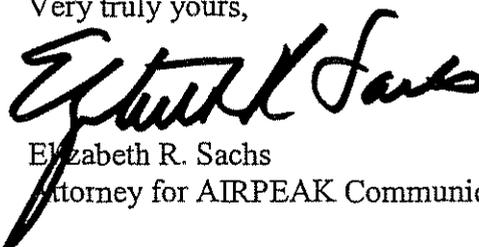
⁴ 800 MHz Order at ¶ 161 (footnote omitted; emphasis added).

Robert B. Kelly, Esq.
April 13, 2005
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network. Since the FCC was affirmatively aware that certain ESMR operators, including AIRPEAK, still were in the process of deploying additional markets, had it intended to establish such a distinction for purposes of ESMR classification it would have done so. The Commission did impose certain limitations on the site-based licenses held by ESMRs that could qualify for migration to the ESMR band.⁵ It also developed specific provisions for the relocation of non-ESMR EA licensees.⁶ It adopted no such limitations on subsequently constructed EA authorizations held by qualified ESMR licensees.

Please contact the undersigned if you have any further questions or require additional information.

Very truly yours,



Elizabeth R. Sachs
Attorney for AIRPEAK Communications, LLC

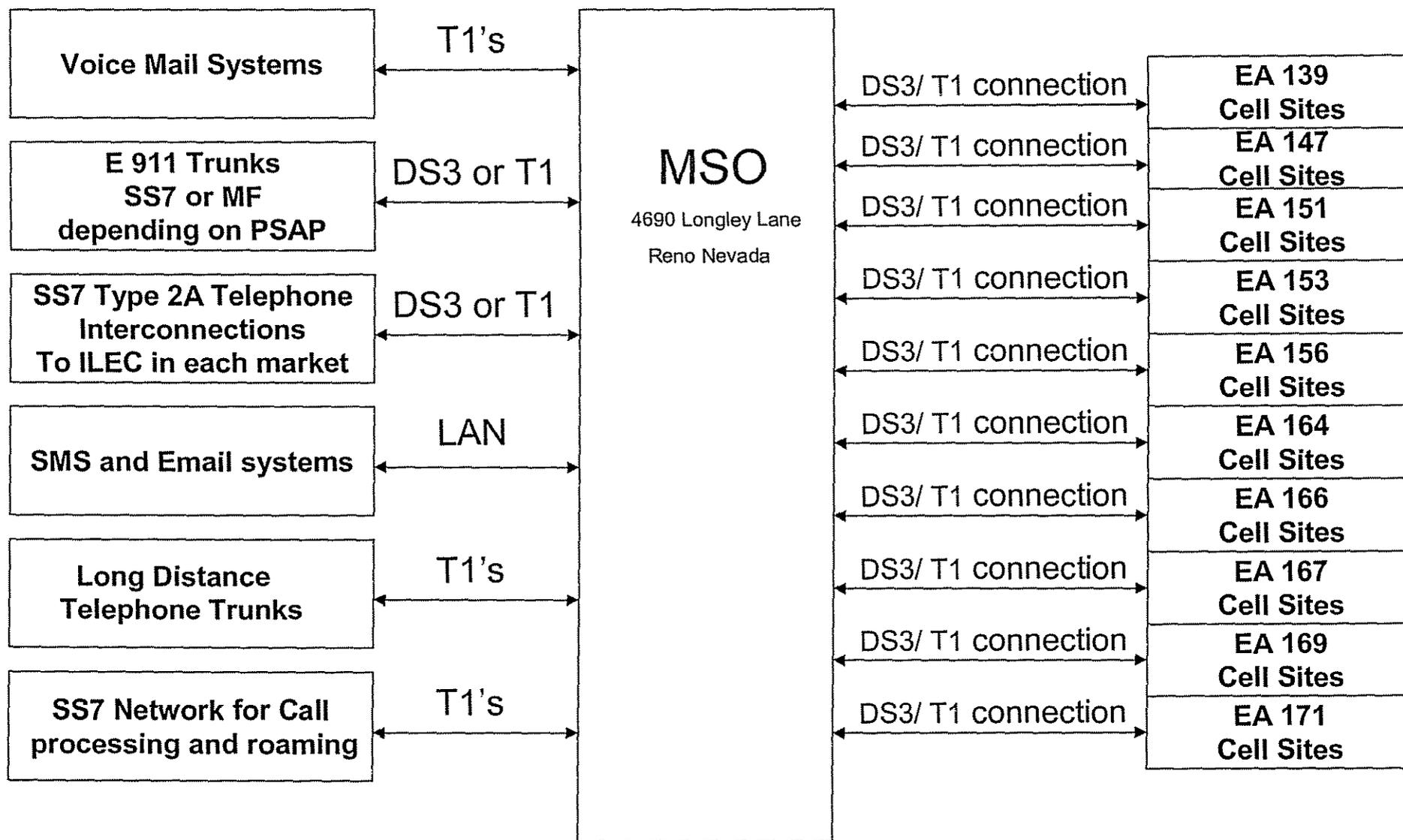
Enclosures

⁵ See, e.g., 800 MHz Order at ¶ 163; Supplemental Order at ¶ 78. AIRPEAK has requested reconsideration of certain aspects of those provisions in the Supplemental Order and also has requested a waiver to allow it to relocate identified site-based licenses to the ESMR band.

⁶ Supplemental Order at ¶ 79.



MSO overview





EA 151 Reno/ Sparks, Nevada Cell Sites

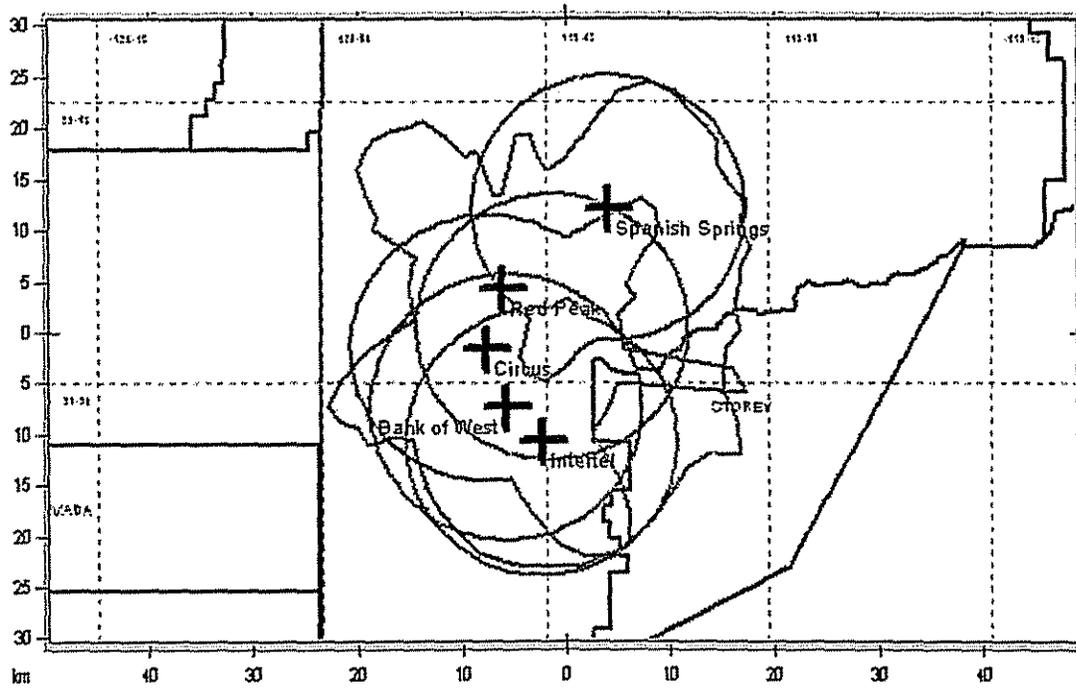
Spanish Springs	← Microwave to East Red Peak – DACS Port 4 - via SBC T1 →
55 East Nugget	← SBC T1 →
2030 W 1st Ave unit B	← DACS Port 2 - SBC T1 →
10125 Peavine Rd	← SBC T1 →
500 North Sierra Street	← SBC T1 →
Longley Lane Industrial Park	← Microwave to MSO →
North Valleys, Stead	← Microwave to West Red – DACS PORT 2 - SBC T1 →
2500 East 2nd Street	← SBC T1 →
4950 Kietzke Lane	← SBC T1 →
885 Trademark Dr	← SBC T1 →
22224 Mt Rose Hwy	← SBC T1 →
Cold Springs	← Microwave to Peavine - SBC T1 →



EA 151 Northern Nevada Cell Sites



EA151 Reno Nevada



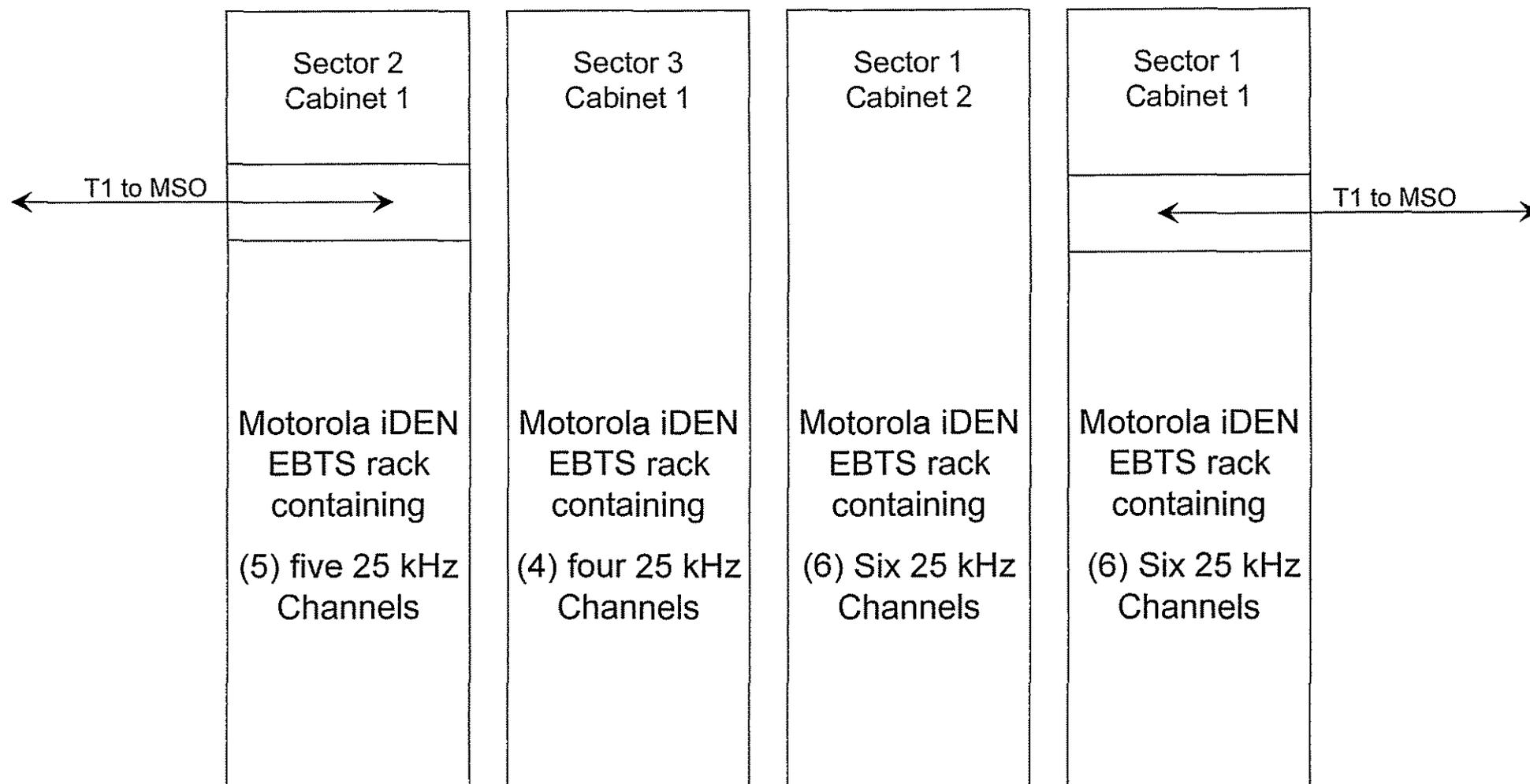
Five Cells with 40 dBu overlapping contours

County Borders State Borders Lat/lon Grid

Map Scale: 1:571676 1 cm = 5.72 km VFD Size: 60 95 x 98 49 km



21 Channel configuration.



**Red Peak Cell Site 2030 W First Ave. Lat 39-35-03N Lon 119-47-51
HAAT 255' Antenna Height 40'**

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April 15, 2005

HAND DELIVERED

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Washington, DC 20044-0407

**RE: 800 MHz ESMR Election
NPSPAC Channel Exchange
AIRPEAK Communications, LLC/
Airtel Wireless, LLC**

Dear Mr. Kelly:

AIRPEAK Communications, LLC ("AIRPEAK") and Airtel Wireless, LLC ("Airtel") (AIRPEAK and Airtel, each a "Company" and, collectively, the "Companies") both have filed ESMR Election notices with the Transition Administrator ("TA") in respect to their 800 MHz ESMR networks.¹ Both have elected to relocate to the ESMR portion of the 800 MHz band (817-824/862-869 MHz). Assuming the TA concurs that the Companies operate cellular architecture networks that qualify for relocation to the ESMR band, the Commission has conferred on the TA "considerable discretion...with respect to the choice of replacement channels."²

For the reasons described herein, the Companies propose to exchange their currently assigned 800 MHz frequencies below 817/862 MHz for geographically, operationally and technically comparable NPSPAC channels between 821-824/866-869 MHz. Grant of this request will serve the public interest in effecting a band realignment the Commission has determined is essential for the safety of first responder communications by: (i) accelerating the relocation of the Companies' networks; (ii) eliminating any disruption of Nextel

¹ The Federal Communications Commission ("FCC" or "Commission") has identified both Companies as ESMRs. See *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 at ¶ 159 (2004) ("800 MHz Order"); *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 at ¶ 75 (2004) ("Supplemental Order"). To the best of the Companies' knowledge, the TA has not yet confirmed that it agrees with that FCC determination.

² Supplemental Order at ¶ 76.

Communications, Inc.'s ("Nextel") network and substantially reducing disruption of the Companies' networks; (iii) minimizing the costs associated with relocating the Companies' networks and preserving for the Federal Treasury monies that otherwise would be expended on relocating the networks; and (iv) eliminating the Companies as continuing sources of potential interference to public safety operations on interleaved spectrum as promptly as possible.³

I. THE TA HAS SUBSTANTIAL DISCRETION TO DETERMINE THE MOST APPROPRIATE REPLACEMENT CHANNELS FOR THE COMPANIES' NETWORKS.

The Commission has determined that the TA will specify for each 800 MHz incumbent whose system must be relocated "a replacement channel for each channel in the licensee's system that need to be changed to a new channel."⁴ More specifically, the FCC has conferred substantial discretion on the TA in identifying comparable replacement channels for ESMR incumbents such as the Companies, noting that it anticipates the TA will "commence relocations on channels immediately above 817/862 MHz and progress upward, unless otherwise indicated by considerations of sound spectrum management principles."⁵

The Companies believe specifying comparable, available NPSPAC spectrum as replacement channels for their ESMR networks would be fully consistent with sound spectrum management principles. It would eliminate any further interference problems between AIRPEAK's cellularized network and public safety systems⁶ -- the fundamental objective of the 800 MHz rebanding proceeding⁷ and a core FCC responsibility.⁸ It would result in the least possible disruption of the Companies' and Nextel's existing 800 MHz operations and eliminate the need for modifying additional facilities deployed by any of these companies during the multi-year 800 MHz reconfiguration process. The result would be considerable cost savings to Nextel and, thereby, the public since Nextel will pay to the Federal Treasury the difference between the FCC-determined value of the replacement spectrum it will acquire and the value of the spectrum it is relinquishing plus the cost of rebanding its own and incumbent systems.⁹

AIRPEAK currently is in the process of another substantial build-out in its markets. It is prepared to divert the infrastructure intended for that project to be used instead to relocate its

³ If the TA and the FCC determine that Special Temporary Authority, and possibly waivers, are needed to allow the Companies to begin redeployment to NPSPAC channels from which they otherwise would be barred because of eligibility restrictions, the Companies are prepared to request such authority. Consistent with the requirements of FCC Rule Section 1.931(a), this would allow interim operation on the channels requested to "provide substantially the same service as previously authorized" since "there are extraordinary circumstances requiring operation in the public interest and...delay in the institution of such service would seriously prejudice the public interest."

⁴ 800 MHz Order at ¶ 198

⁵ Supplemental Order at ¶ 76.

⁶ AIRPEAK already has experienced interference problems with local government operations using non-NPSPAC 800 MHz spectrum in the States of Nevada and Washington.

⁷ 800 MHz Order at ¶ 1.

⁸ One of the FCC's primary responsibilities is promoting interference protection. *See, e.g.,* FCC Spectrum Policy Task Force, Report of the Interference Protection Working Group (Nov. 15, 2002).

⁹ *See* 800 MHz Order at ¶ 329.

existing operations to vacant NPSPAC spectrum, if it is authorized to do so no later than July 1, 2005. In that event, that Company will fund all of its own relocation costs and will not request any reimbursement from Nextel. Airtel is not able to make the same commitment, but will engage in good faith negotiations with Nextel to develop a relocation proposal that is in full compliance with the FCC's requirements.

II. VACANT NPSPAC SPECTRUM IS THE OPTIMAL, COMPARABLE SPECTRUM FOR THE COMPANIES' RELOCATION IN TERMS OF SPEED, DISRUPTION, COST, AND ELIMINATION OF INTERFERENCE.

The Companies have carefully considered to which ESMR Band channels they should relocate. This analysis has focused on two factors. First, because AIRPEAK already has experienced interference problems with public safety systems in the States of Nevada and Washington, expediting that Company's relocation to channels that effectively will eliminate any interference potential should be paramount. Airtel has not had public safety interference problems to date. However, it must assume that incidents could occur as public safety users in Montana migrate to the 800 MHz band.

Second, both Companies continue to deploy additional facilities and attract new subscribers. AIRPEAK, in particular, has embarked on an aggressive deployment schedule in several markets. While these activities are essential to serving subscriber needs and meeting internal objectives, every transmitter and subscriber added to these networks also increases the cost, complexity and disruptive nature of their subsequent relocation.

There are two spectrum pools within the ESMR Band to which the Companies could relocate. Nextel currently utilizes the 816-820/861-865 MHz ("Upper 200") portion of the band in its digital iDEN network that operates throughout the nation. Although Nextel also uses its considerable spectrum position between 806-815/851-860 MHz in that network, to the best of the Companies' knowledge, Nextel's control channels fall within the Upper 200 segment of the ESMR band. The remaining spectrum, the 821-824/866-869 MHz NPSPAC allocation, is immediately above Nextel's spectrum and is in the process of being deployed by public safety organizations throughout the country. It undoubtedly is used intensively in a number of areas. However, public safety entities in less populated regions such as those in which the Companies operate have not yet begun NPSPAC system deployment or have made limited use of this spectrum to date. It is because the NPSPAC spectrum is entirely vacant or minimally used that it represents the optimal choice for replacement spectrum for the Companies' networks.

A. Assigning Replacement NPSPAC Spectrum Will Accelerate Significantly the Relocation of the Companies' Networks.

The Commission has established a very ambitious schedule for completing the 800 MHz rebanding process, consistent with the need to eliminate interference to public safety and other incumbents as promptly as possible. The Regional Prioritization Plan developed by the TA to effectuate the FCC's objectives also emphasizes the importance of speed:

The criteria identified foremost by the Commission – population and interference – informed our analysis, **as did the need to deliver a plan that enables the stakeholders to meet the critical timeline established by the Commission.**¹⁰

That objective will be advanced by assigning NPSPAC rather than Nextel Upper 200 channels as the Companies' replacement spectrum.

Nextel currently is using its Upper 200 spectrum intensively, including the spectrum it would need to make available for the Companies' relocation. It is unlikely that Nextel plans to surrender those Upper 200 channels at the outset of the reconfiguration process since it will face capacity constraints throughout it.¹¹ Yet AIRPEAK holds both 25-channel General Category EA licenses and 5-channel "lower 80" EA licenses in a number of Wave 1 markets.¹² Because the Company operates across multiple regions, in accordance with the RPP its entire network reconfiguration will begin with that first wave.¹³

Unless Nextel intends first to retune AIRPEAK's Channel 1-120 holdings to spectrum Nextel vacates in the 809-816/854-861 MHz band, and ultimately to relocate those channels again, plus the Company's "lower 80" EA and site-specific spectrum outside of Channels 1-120, to the ESMR Band, a significant portion and perhaps all of the Company's network will need to be relocated to the ESMR Band as the first step in Wave 1 which is scheduled to begin on June 27, 2005. Vacating sufficient Upper 200 spectrum to accommodate AIRPEAK would be problematic, particularly since Nextel's control channels operate on the spectrum it would need to clear. While the Companies cannot speak for Nextel's intentions, it is obvious that the relocation would require extensive coordination and system modifications by all parties. It is unlikely that it could be completed expeditiously.

By contrast, there is little or no NPSPAC licensing activity, and sometimes no NPSPAC operation at all, in a number of the markets in which the Companies' channels will need to be relocated to the ESMR Band. For example, the attached Exhibits 1 - 4 illustrate the very limited licensing of NPSPAC spectrum in and around the population centers of EA 156 (Albuquerque); EA 171 (Anchorage); EA 169 (Spokane); and EA 151 (Reno). No attachments are included for EA 144 (Billings); EA 145 (Great Falls); or EA 146 (Missoula) since there are no NPSPAC systems licensed in the State of Montana. Even EA 153 (Las Vegas), one of the most densely populated of the Companies' markets, has a relatively limited number of licensed NPSPAC systems. See Exhibit 5. Those authorizations frequently are separated by two (2) or more 12.5

¹⁰ Regional Prioritization Plan of the 800 MHz Transition Administrator filed on January 31, 2005 at p. i ("RPP") (emphasis added).

¹¹ See, e.g., *Notice of Proposed Rulemaking and Memorandum Opinion and Order*, WT Docket No. 05-62 at ¶ 8 (rel. Feb. 16, 2005) noting that 900 MHz rule changes were needed "...to provide the 'green space' necessary to effect reconfiguration of the 800 MHz band..." Nextel itself recently stated that it would need that spectrum "to make up for any shortfall of 800 MHz replacement spectrum resulting from the retuning of non-Nextel ESMR licensees to the ESMR segment of the reconfigured 800 MHz band." Nextel Opposition to Request for Extension of Time, WT Docket No. 05-62, filed April 12, 2005.

¹² See RPP at pp. 21-24.

¹³ *Id.* at p. 22.

kHz channels that could be combined to support a 25 kHz iDEN channel. Even if all of the licensed NPSPAC systems are fully operational, a doubtful proposition based on the Companies' knowledge of their markets and the natural inclination of public safety entities to slow deployment in anticipation of relocation to the "new" NPSPAC spectrum, there is sufficient immediately available spectrum to accommodate all of AIRPEAK's control channels and perhaps some of its voice channels.¹⁴

Both Companies believe that they could complete their relocation to vacant NPSPAC spectrum within sixty (60) days of TA assignment of those channels. In markets such as Anchorage, Spokane, and Albuquerque there are very few licensed public safety entities with which to coordinate and ample available channels. The Las Vegas and Reno markets would require some greater care to ensure that the small number of operating public safety systems is not adversely impacted.¹⁵ However, by comparison with the coordination effort that would be required to clear Nextel Upper 200 channels, and thereby avoid conflicts between two iDEN networks with access to the same channels in the same markets, relocation to NPSPAC spectrum could be accomplished quickly and easily.

B. Assigning Replacement NPSPAC Spectrum Will Eliminate Any Disruption of Nextel's Network and Substantially Reduce Disruption of the Companies' Networks.

Nextel generally has objected to the relocation of non-Nextel, non-Southern LINC ESMR operators to the ESMR Band.¹⁶ Those objections presumably are grounded, at least in part, on the disruption that will be caused to Nextel's network by having to relinquish intensively used Upper 200 spectrum, including some of its control channels.

The Companies are well aware of the impact such changes have on a system, particularly one with the number of subscribers that Nextel enjoys. For example, AIRPEAK believes there are at least two hundred fifty (250) Nextel sites within approximately seventy (70) miles of the market center of Reno, one hundred forty (140) around Las Vegas, fifty (50) around Spokane and twenty (20) around Albuquerque that would need to be retuned to make Upper 200 channels available for AIRPEAK's use.¹⁷ Among other steps, Nextel will need to ensure that the channels

¹⁴ In Las Vegas and perhaps Reno, it might be necessary for AIRPEAK to continue using some of its channels between 809-815/854-861 MHz for voice operations until the current NPSPAC spectrum has been cleared entirely. However, their subsequent exchange for those NPSPAC channels would be a simple, subscriber-transparent process because the network control channels would have been moved previously.

¹⁵ The Companies are committed to ensuring that their operations do not cause interference to whatever NPSPAC systems are operating in the area. AIRPEAK already has contacted users and other public safety representatives in some markets and will coordinate its deployment with them to avoid any such problems.

¹⁶ See, e.g., Nextel Sept. 16, 2004 and Sept. 21, 2004 *Ex Parte* filings.

¹⁷ Relocating Airtel's network will be less difficult. Montana is a Wave 2 NPSPAC region so the process will be delayed by approximately ninety (90) days and Nextel does not provide iDEN service in the State. However, absent a compelling rationale for relocating Airtel to the Upper 200 spectrum already licensed to Nextel, it would be desirable to move the Company to the same portion of the ESMR band in which AIRPEAK will be operating, preferably the NPSPAC band. The Companies are the only two deployed non-Nextel, non-Southern LINC iDEN operators in the nation. It is conceivable that they might seek to join their operations at some future date. Doing so would be simplified considerably if their control channels were in the same segment of the band. Since the

it is relinquishing are not included in or are removed from its band plan so that its subscribers' handsets do not inadvertently attempt to access the AIRPEAK network and experience service denials. The time, effort and cost associated with these system modifications will be considerable.

While moving the entire AIRPEAK network to Nextel's existing Upper 200 spectrum as a first rebanding step undoubtedly would be disruptive for Nextel, the disruption to AIRPEAK if the process is done in multiple stages would be considerable and inconsistent with the FCC's directive that "transition to the new facilities [be] as transparent as possible to the end user."¹⁸ As noted above, Nextel may intend to relocate the Company's Channel 1-120 holdings to the 809-816/854-861 MHz band to clear the lower spectrum for eventual NSPPAC relocation and, sometime thereafter, relocate those same channels and others to the ESMR Band once Nextel has expanded its operations to vacated NPSPAC spectrum. That approach would be unacceptably disruptive to AIRPEAK's network. It would require the Company to change its control channels at least twice which is an intolerable prospect for a commercial service provider and its subscribers. Every time an operator must "touch" a customer's handset there is a significant possibility that the subscriber will instead move to another service provider. That churn is devastating to a commercial system.

Relocation of the Companies' networks to already vacant NPSPAC spectrum is a far superior approach. It would leave Nextel's network entirely untouched. Nextel would need to make no changes to its system to accommodate the AIRPEAK and Airtel networks. Similarly, it would minimize disruption of the Companies' operations. The relocation of control channels in all markets, and some or all voice channels as well, would be completed in a single step. Moreover, that step could be taken almost immediately, thereby impacting the smallest number of subscribers and affecting the smallest amount of infrastructure. In a proceeding in which some level of disruption is unavoidable, assigning available NPSPAC channels for use by the Companies would significantly reduce that problem both for the Companies and for Nextel itself.

C. Assigning Replacement NPSPAC Spectrum Will Significantly Reduce the Cost of Relocating the Companies' Networks.

The Commission has made it clear that relocation costs will not be determined solely by the private interests of the parties negotiating the agreement. Unnecessary expenses will not be permitted because they potentially deprive the American public of funds to which it is entitled. The FCC has determined that Nextel may deduct from its obligation to the Federal Government both its own retuning costs and the costs it incurs retuning incumbents like the Companies.¹⁹

Companies have no overlapping coverage, common control channels at this stage would not present any operational challenges.

¹⁸ 800 MHz Order at ¶ 201. The FCC should not underestimate the disruption AIRPEAK's network will experience during the rebanding process. Any unnecessary delays that result in an even greater number of AIRPEAK customers being affected would be contrary to the FCC's express directive and would adversely impact ESMR competition in markets in which Nextel also operates.

¹⁹ The FCC has valued the replacement spectrum at \$4.86B and the spectrum Nextel is surrendering at \$2.059B. Accepting Nextel's estimates of the rebanding costs, including the \$850M it has stated will be sufficient to reband

However, mindful of the fact that the American public is entitled to the difference between the necessary costs of rebanding and the value the FCC has placed on the spectrum Nextel will receive, the Commission has imposed on each incumbent an obligation to certify to the TA (and thereby to the FCC) that “the funds requested are the minimum necessary to provide facilities comparable to those presently in use.”²⁰

Given the many issues and complications associated with Nextel migrating its operations off the Upper 200 ESMR band channels and relocating the Companies to that spectrum, it could be an extended period before that process is completed. In the meantime, both AIRPEAK and Airtel will continue to add facilities and subscribers, further increasing the expense of reconfiguring their network. By contrast, if the Companies were to relocate to NPSPAC spectrum, Nextel would incur no retuning costs for modifying its own system. AIRPEAK would pay its own relocation costs, and the expenses associated with Airtel’s relocation would be minimized because the process could begin immediately, thereby reducing the amount of infrastructure and the number of subscriber handsets that would need to be modified.

The Companies will be required to provide their “minimum cost” certification when they submit their estimated costs to the TA.²¹ For the reasons described above, there would be a very substantial financial differential between moving immediately to vacant NPSPAC spectrum versus migrating at some much later date to channels currently occupied by Nextel. AIRPEAK would not and Airtel might not be able to provide the certification demanded by the Commission if relocated to Nextel’s Upper 200 channels. The American public would be disserved if the much more economical relocation to immediately available NPSPAC spectrum is rejected.

D. Assigning Replacement NPSPAC Spectrum Will Quickly Minimize the Possibility of Interference to and Will Free Additional Spectrum for Public Safety Operations.

As noted in the record in this proceeding, AIRPEAK already has experienced interference with non-NPSPAC public safety systems in the States of Nevada and Washington. The problem arose because of the proximity of their public safety channels to the Company’s channel assignments. AIRPEAK has resolved those problems to date, but must assume that others will develop as it and public safety licensees continue to expand their operations. The problem likely will be exacerbated if it is relocated from its Channel 1-120 spectrum to vacated Nextel frequencies in the intensively interleaved center portion of the 800 MHz band.

Relocating AIRPEAK’s network to vacant NPSPAC spectrum instead will minimize or eliminate that interference potential. As noted above, there is only a very limited number of operating NPSPAC systems in any of the markets in question. The Company already has contacted some of those licensees and is committed to working with the NPSPAC community in each Region to ensure that its system design will provide the necessary interference protection.

all 800 MHz incumbents, the United States Treasury may receive a substantial payment from Nextel when the true-up occurs.

²⁰ 800 MHz Order at ¶ 198.

²¹ Of course, if the TA specifies NPSPAC replacement channels as proposed herein and AIRPEAK does not request reimbursement of its costs, no certification would be required.

Additionally, relocation to NPSPAC spectrum would make available to public safety users on an expedited basis all of the channels below 817/862 MHz that the Companies will vacate. In that, as in all other respects, this approach would promote the technical, economic and public interest objectives of the 800 MHz Order.

III. CONCLUSION

The Companies believe that the replacement channel proposal outlined herein is fully consistent with sound spectrum management principles and with the FCC's intent in adopting the 800 MHz reconfiguration scheme. It would not compromise the FCC's commitment to Nextel that it will receive contiguous spectrum in exchange for the 800 MHz spectrum it is surrendering. The Companies simply would relocate to contiguous channels beginning at the very upper end rather than the bottom portion of the ESMR Band. In either case, Nextel will retain all rights to the remaining contiguous spectrum, but the approach recommended will serve the FCC's intention of promoting a prompt, non-disruptive, and cost-efficient 800 MHz reconfiguration process for the benefit of 800 MHz incumbents generally and public safety users in particular.

Kindly refer any questions or comments to the undersigned.

Very truly yours,



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Attachments