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May 12, 2005

Cathy Seidel, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th 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. Seidel:

On behalf of Airtel Wireless, LLC ("Airtel" or "Company"), we wish to respond to the April 19, 2005 *ex parte* comments ("Comments") filed by Nextel Communications, Inc. ("Nextel") regarding the Enhanced Specialized Mobile Radio ("ESMR") election filed by Airtel with the Transition Administrator ("TA").¹ The Company did not respond previously because Nextel had indicated it also might file comments relating to Airtel's April 13th Supplemental Filing with the TA.² To the best of Airtel's knowledge, Nextel has not submitted any further response.

As an initial matter, it is not clear why Nextel's objections to Airtel's ESMR election were filed with the Commission rather than the TA. The FCC has charged the TA with "detailing-by NPSPAC region-which relocation option each non-Nextel ESMR licensees (sic) has chosen."³ The FCC also has determined that the TA "will specify a replacement channel for each channel in the licensee's system that needs to be changed to a new channel."⁴ Of necessity, this means that the TA must make an initial determination whether some or all of an entity's

¹ Nextel's Comment also addressed the ESMR elections filed either with the TA or with the FCC directly by other parties.

² Comments at n. 29.

³ *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 at ¶ 201 (2004) ("800 MHz Order").

⁴ *Id.* at ¶ 198.

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channels qualify for relocation as an ESMR and to which channels they should be relocated. The FCC directed non-Nextel ESMRs to file their elections with the TA, with a copy to the FCC, since “the elections made by these non-Nextel ESMR operators are relevant data points in the TA’s planning of the band reconfiguration schedule.”⁵ It is unclear why Nextel has decided to bypass the TA on this matter and take its objections directly to the FCC.

Further, Airtel disagrees with Nextel’s assertions that the Company’s original January 21, 2005 ESMR election that included a request for confidentiality under Sections 0.457(d) and 0.459 of the FCC rules or the redacted version of that filing submitted on March 16, 2005 constituted an attempt to “hide pertinent information regarding its system.”⁶ Before requesting confidential treatment of the document, undersigned counsel contacted the FCC’s Wireless Telecommunications Bureau (“WTB”) to confirm that doing so would be permissible. The Company’s counsel was advised that it had the right to request confidential treatment of the information, that the FCC would review the confidentiality request if another party requested to review the filing, and that it would then make a decision as to the sufficiency of the confidentiality showing.

Nextel certainly expected Airtel to file an ESMR election. The Company made no secret of the fact that it had done so. In fact, its ESMR election was submitted to the FCC under a cover letter explaining that it was accompanied by a Confidentiality Request seeking “confidential treatment of the attachments to the TA letter.” Airtel specifically did not request that the FCC keep the letter accompanying and describing those attachments or the fact of its submission confidential. That decision was made by the Commission. In any event, Airtel submitted the redacted version promptly upon request from the TA.⁷

As to the specific objections to Airtel’s ESMR election filing, the Company provides the following responses:

- 1) Nextel’s fundamental position, and the basis for most of its complaints, is that ESMR status is determined on an EA-by-EA basis and demands a showing that the party meets the ESMR definition in each EA. But neither the 800 MHz Order, the Supplemental Order, nor the definition itself impose any such requirement. There is no geographic component to the definition, nor should there be. An ESMR network is an integrated system. It is not designed or defined by EAs, but by market-specific consumer demands.

⁵ *Order*, WT Docket No. 02-55, 19 FCC Rcd 22876 (2004).

⁶ 47 C.F.R. §§ 0.457(d) and 0.459.

⁷ Airtel did not submit its Supplemental Filing to the TA as “another bite at the apple,” Comments at p. 16. It did so at the request of the TA. Nextel may believe it has an infallible understanding of the 800 MHz Order and the *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 (2004) (“Supplemental Order”) in respect to ESMR elections. The TA is making a committed effort to reach a reasoned understanding of the complex, and sometimes contradictory, FCC statements regarding this subject that is consistent with the FCC’s objectives in this proceeding.

Indeed, cell sites may provide coverage into multiple EAs and the optimal coverage for a market may be from a site outside the EA in which it is located. In Airtel's, as in Nextel's and SouthernLINC's iDEN systems, cell sites at locations throughout the network operate seamlessly through the controlling network switch or switches without FCC-related geographic distinctions.

This approach is fully consistent with the Commission's objective of separating the operations of ESMR, cellular architecture systems from high-site facilities operated by public safety and other incumbents to avoid present and future interference. In doing so, the FCC expressly recognized that ESMR systems were not static entities, but would be modified and expanded over time. For example, it specifically noted there was no evidence that the iDEN network operated by SouthernLINC had caused interference to other incumbents. Nonetheless, it acknowledged that SouthernLINC should have the option of relocating *in toto* to the ESMR band, because its system used a cellular architecture and future deployment which "could be a source of interference to public safety and other non-cellular licensees."⁸ It considered that system (and Nextel's) as a whole, not by EA or some other arbitrary geographic parcel, and treated it as an integrated network.⁹

The same must be true for Airtel. Once qualified as operating an ESMR network, both the FCC's rules and its policy objectives in this proceeding confirm that the Company is allowed to elect relocation of all its spectrum to the ESMR band that otherwise meet FCC requirements.

- 2) Nextel also argues that the information provided in the Company's ESMR election is insufficient to establish AIRTEL's ESMR retuning rights. Its criticism falls into two general categories:
 - A. Nextel complains that the information provided is not sufficiently detailed to allow confirmation of its accuracy and, further, that Airtel has not demonstrated operation of more than five overlapping sites that otherwise satisfy the ESMR definition.

The Comments have brought to Airtel's attention that the map it provided was a version created on the assumption that the Commission would adopt the language proposed by the Consensus Parties that defined a high-density cellular system as having **five or more** overlapping, interactive sites featuring hand-off capability.¹⁰

⁸ 800 MHz Order at ¶ 161.

⁹ An investigation of Nextel's system on an EA-by-EA basis would confirm that Nextel is not currently operating an ESMR system in many parts of the country.

¹⁰ 800 MHz Order at ¶ 171, citing Reply Comments of Consensus Parties to Supplemental Comments of Consensus Parties at 28.

For reasons that are not noted in the 800 MHz Order, the criterion adopted by the FCC referenced **more than five** overlapping, interactive sites featuring hand-off capability.¹¹

Airtel regrets this error and has attached hereto a map depicting the 40 dBu/V contours of multiple, overlapping sites in its network, several of which satisfy the other criteria in the FCC's definition.¹² It believes the legend on the Attachment provides all technical information the FCC might need, but the Company would be pleased to supply any additional information requested by the TA or the FCC relating to this or any other information provided in the ESMR election filing or to host site visits by their representatives.

- B. Additionally, the Comments argue in respect to the AIRPEAK Communications, LLC system that the ESMR definition calls for 20 operational channels at a cell site relied upon to meet the definition. It does not raise that objection specifically in its comments on Airtel's network, but Airtel assumes that Nextel is not proposing different standards for these technically identical systems.

Yet Airtel notes that the definition does not use the term operational in reference to the number of channels. It says that one of the sites used to define an ESMR must have "twenty or more paired frequencies."¹³ The criterion was recommended to the Commission as part of a test intended to capture the characteristics of a cellular architecture system with the potential to cause interference. The fact that a system might have 20 or more analog channels operating at a particular site was not itself significant even if the facility was "low-site." Many traditional analog systems operate much larger low-site or combination low-site/high-site facilities without causing interference. However, unless a licensee had at least 20 licensed 25 kHz bandwidth channels at a site (more probably at multiple sites) it was unlikely to have sufficient capacity to warrant investing in and deploying a cellular architecture network that would allow those channels to be subdivided into a multiple of 20 voice paths and repeated at multiple locations within close proximity of one another.

Airtel operates a digital network, identical in this respect to the iDEN networks operated by Nextel and SouthernLINC. Each of the Company's 25 kHz bandwidth authorizations actually supports 3 or 6 channels of voice communications, depending on whether the transmission is an interconnected or dispatch message. Each cell site in Airtel's network is typically designed to accommodate up to 22 25 kHz channels in an omni configuration. In a 3 sector

¹¹ 800 MHz Order at ¶ 172; 47 C.F.R. § 90.7.

¹² See Attachment I.

¹³ 47 C.F.R. § 90.7.

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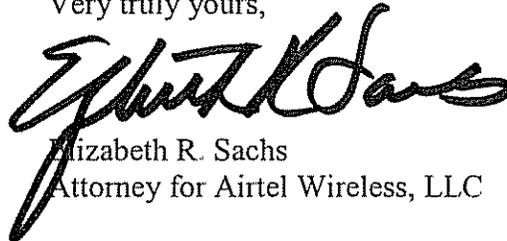
environment, up to 39 25 kHz channels are configured with up to 13 channels per sector in each of 3 sectors. Of course, as noted above, each of these 25 kHz channels actually carries anywhere from 3 to 6 communications channels (talk paths) depending on the interconnect/dispatch ratio.

This system design is entirely consistent with the cellular architecture networks operated by Nextel and SouthernLINC. Indeed, Airtel has been advised that the SouthernLINC iDEN network uses no more than 17 25 kHz channels at any of its more than 500 cell sites; although, like Nextel and Airtel, SouthernLINC is licensed for a much larger number of channels at each site and deploys its infrastructure based on subscriber usage patterns. It surely would be a surprise to SouthernLINC that, under Nextel's analysis, SouthernLINC's operation would not "have the density or channel use that would be found in a full ESMR system."¹⁴

Airtel has satisfied the FCC's test to qualify as an ESMR system. Having done so, it is entitled to elect relocation of all EA and qualified site-based licenses to the ESMR band and it has done so.

Should the Commission or the TA require any further information or documentation in respect to this matter, please contact the undersigned.

Very truly yours,



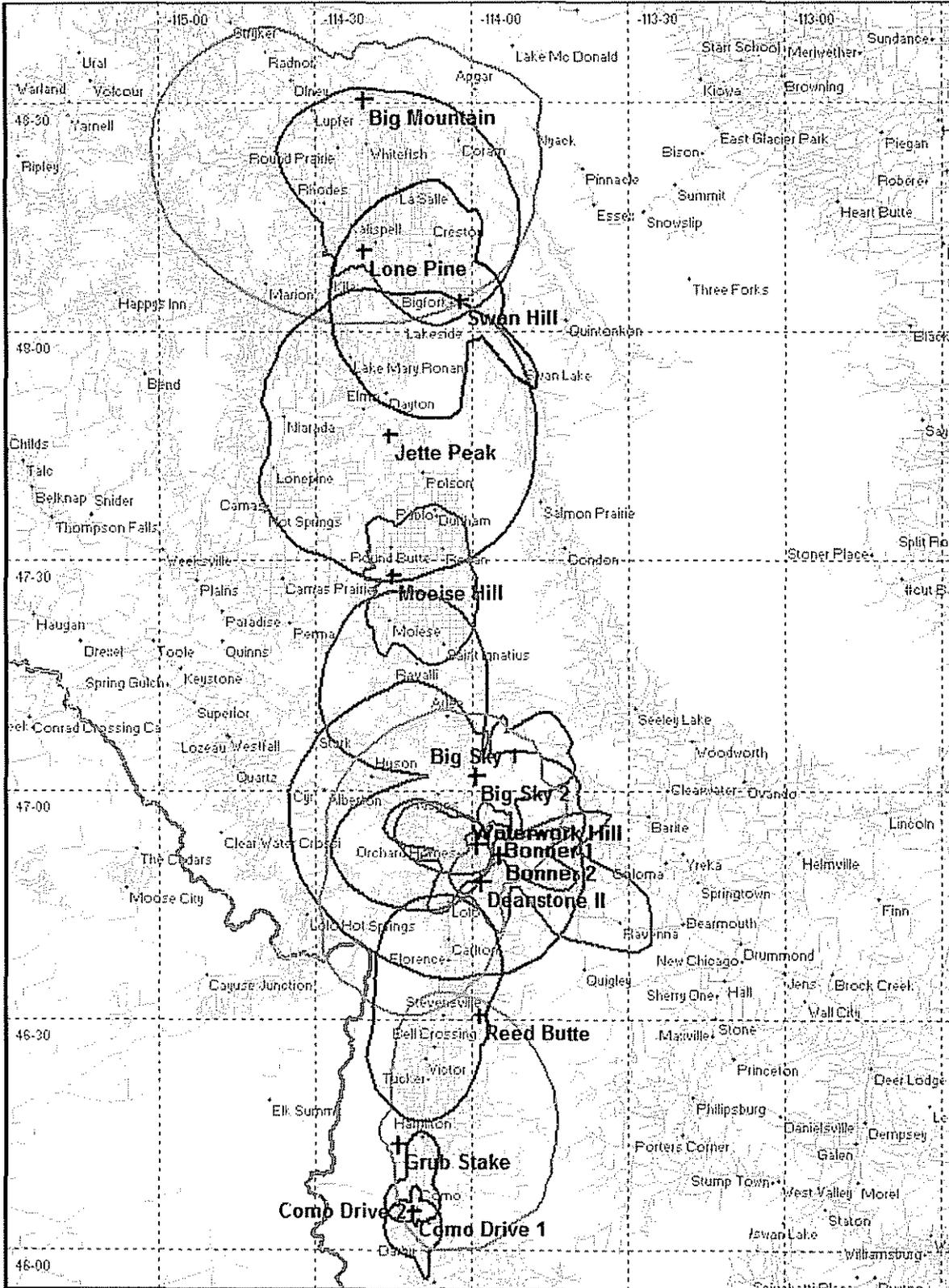
Elizabeth R. Sachs
Attorney for Airtel Wireless, LLC

Attachment

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Robert B. Kelly,
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James Goldstein, Nextel Communications

¹⁴ Comments at p. 15.

AirTEL Wireless EA-146
40 dBu Service Contours



Big Mountain - N48-30-22.0 W114-20-53.0 AMSL 6888.1 AGL 100.0 HAAT 2575.6
Lone Pine - N48-10-34.2 W114-21-00.3 AMSL 3887.6 AGL 170 HAAT 466.8
Swan Hill - N48-04-04.0 W114-02-21.0 AMSL 3880.5 AGL 160 HAAT 392.2
Jette Peak - N47-46-25.0 W114-16-07.0 AMSL 5231.9 AGL 35 HAAT 1875.2
Moeise Hill - N47-28-04.0 W114-15-33.0 AMSL 3425.8 AGL 40 HAAT 392.6
Big Sky - Sectors 1 & 2 N47-01-55.0 W113-59-35.0 AMSL 7625.0 AGL 120 HAAT 2473.5
Waterwork Hill - N46-52-56.0 W113-59-16.0 AMSL 3688.5 AGL 40 HAAT -411.8
Bonner - Sectors 1 & 2 N46-51-35.0 W113-54-54.0 AMSL 5683.0 AGL 70 HAAT 1062.4
Deanstone II - N46-48-07.8 W113-58-23.2 AMSL 6189.3 AGL 60 HAAT 1985.2
Reed Butte - N46-30-37.0 W113-58-47.5 AMSL 4768.3 AGL 60 HAAT 499.6
Grub Stake - N46-13-48.0 W114-14-11.0 AMSL 5527.0 AGL 66 HAAT 429.4
Como Drive - Sectors 1 & 2 N46-05-02.0 W114-11-15.9 AMSL 4263.7 AGL 95 HAAT -970.0
Coordinates NAD-83 AMSL, AGL, & HAAT in Feet