

June 22, 2005

BY ELECTRONIC FILING

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
The Portals
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 03-66
Ex Parte Presentation

Dear Ms. Dortch:

The Commission's *BRS-EBS Realignment Order* adopted a comprehensive plan to reconfigure the 2.5 GHz band.¹ A few parties to this proceeding, however, have recently renewed their calls for the Commission to reverse course and exempt some multi-channel video programming distributors (MVPDs) from the transition process necessary to make the 2.5 GHz band suitable for broadband deployment.² The Commission should reject these calls for a blanket exemption from the rules, affirm its original order, and prevent MVPDs from thwarting the comprehensive reconfiguration plan that the Commission adopted for the 2.5 GHz band.

Proposals to create an opt-out mechanism for incumbent MVPD operators would recreate the very problem that the Commission's *BRS-EBS Realignment Order* sought to solve. The purpose of *BRS-EBS Realignment Order* was to group like uses of the spectrum together. Prior to adoption of the *BRS-EBS Realignment Order*, channels in the 2.5 GHz band could alternate between high-site, high-power operations and low-site, low-power operations. The Commission found that the "the interleaved channelization scheme is particularly problematic when one licensee seeks to operate at low-power while the adjacent licensee operates at high power, because low-power services are especially susceptible to interference from high-power transmissions on adjacent channels."³ The Commission held that permitting MVPDs to opt-out of the

¹ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, 19 FCC Rcd 14165, ¶¶ 75-76 (2004) (*BRS-EBS Realignment Order*).

² See, e.g., Letter from Suzanne S. Goodwyn, Counsel to C&W Enterprises, Inc., to Marlene Dortch, Secretary, Federal Communications Commission (May 19, 2005); Letter from Karen Possner, Vice President, BellSouth Corp., to Marlene Dortch, Secretary, Federal Communications Commission (May 20, 2005).

³ *Id.* at ¶ 21.

transition would also “result in interference to licensees in neighboring population centers, which would prevent these neighboring locales from receiving wireless broadband services under the rules adopted today.”⁴

Nextel agrees.⁵ The blanket opt-out approaches recommended by some parties to this proceeding would ignore the public-interest costs to the successful deployment of wireless interactive multimedia services in the affected geographic area. In many cases, these costs are likely to be substantial. As the Commission acknowledged, islands of high-power, high-site operation would create zones of interference that could disrupt low-power, low-site services for many miles. Awarding an exemption to MVPD licensees would impose a costly new burden on BRS licensees that would need to work around the high-power operations during and after transition to the new band plan. If MVPD licensees were eligible for relief as a matter of right, BRS licensees would face these limitations in many markets and service to the public would suffer as a result or even be thwarted. The Commission should reject attempts to create new, blanket exemptions for MVPDs and instead balance the competing needs of legacy MVPD licensees against the public interest in rapid deployment of wireless interactive multimedia services in the 2.5 GHz band. The Commission should affirm its decision to consider individual MVPD waiver requests only in response to unique market circumstances.

Under section 1.1206(b)(2) of the Commission’s rules, 47 C.F.R. § 1.1206(b)(2), please associate this letter with the above-referenced docket.

Sincerely,

[/s/ Trey Hanbury](#)

Trey Hanbury
Senior Counsel
Nextel Communications

CC: Uzoma Onyeije
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⁴ *Id.* at ¶ 76.

⁵ The industry-consensus Coalition Proposal proposed a method by which to respond to particularly compelling factual situations without granting a blanket exemption to all MVPDs. Nextel initially supported this industry-consensus proposal in its petition for reconsideration in this docket; however, the current petitions from MVPD operators go far beyond anything ever envisioned under the industry-consensus proposal. Granting the current petitions from MVPD operators threatens to upend the fundamental basis of the *BRS/EBS Realignment Order*. Nextel, therefore, now opposes *any* MVPD exemption. Individual MVPD waiver requests in unique and compelling circumstances are preferable to any broad MVPD exemption.