EXHIBIT 2

0001
1 IN THE CIRCUIT COURT OF THE
FIFTEENTH JUDICIAL CIRCUIT, IN AND FOR
2 PALM BEACH COUNTY, FLORIDA
3 CASE NO. 50 2004 CA 005062 XXXX MB
4
5 CARVER RANCHES WASHINGTON PARK,
INC., on behalf of itself and all
6 others similarly situated,
7 Plaintiffs,
8 vs.
9 NEXTEL SOUTH CORPORATION, d/b/a
NEXTEL COMMUNICATIONS,
10
Defendant.
11
_____/
12
13
VIDEOTAPED DEPOSITION OF BERTRAM BOWE
14 TAKEN ON BEHALF OF THE DEFENDANT
15
16
17
18
19
20
DATE: January 27, 2005
21
22
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25
0002
1 January 27, 2005
2 INDEX
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5 BY MR. SURPRENANT 5
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7 EXHIBITS
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FOR IDENTIFICATION PAGE
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1 Document, second renotice. 70
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2 Letter dated February 16, 2004. 79
11
3 Communication dated October 22, 2002. 81
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13
(PLEASE NOTE: Exhibits not attached to
14 transcript.)
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0003
1 The videotaped deposition of BERTRAM BOWE
2 in the above-entitled and numbered cause, was
3 taken before me, TERRI BECKER, a Registered
4 Professional Reporter and Notary Public for the
5 State of Florida at Large, at 777 South Flagler
6 Drive, in the City of West Palm Beach, Palm Beach
7 County, in the State of Florida, beginning at the
8 hour of 10:40 o'clock a.m., pursuant to the
9 Notice in said cause for the taking of said
10 deposition which is annexed to the court file
11 herein, on behalf of the DEFENDANT in the
12 above-entitled action pending in the above-named
13 court.
14 The appearances at said time and place
15 were as follows:
16 MAGER, WHITE & GOLDSTEIN, LLP
Attorneys for Plaintiffs
17 2825 University Drive
Suite 350
18 Coral Springs, Florida 33065
BY: JAYNE A. GOLDSTEIN, ESQ.
19
20 GILMAN & PASTOR, LLP
Co-Counsel for Plaintiff
21 Stonehill Corporate Center, Suite 500
999 Broadway
22 Sangus, Massachusetts 01906
BY: DAVID PASTOR, ESQ.
23
24
25
0004
1 APPEARANCES (CONTINUED)
2 QUINN, EMANUEL, URQUHART,
OLIVER AND HEDGES, LLP
3 Attorneys for Defendant Nextel
865 South Figueroa Street
4 Tenth Floor
Los Angels, California 90017
5 Tel: (213) 624-7707
BY: DOMINIC SURPRENANT, ESQ.
6
7 GUNSTER, YOAKLEY & STEWART, P.A.
Co-Counsel for Nextel
8 777 South Flagler Drive
Phillips Point, Suite 500 East
9 West Palm Beach, Florida 33401
Tel: (561) 650-1980
10 BY: BRYAN S. MILLER, ESQ.
11
12 ALSO PRESENT:
13 MICHAEL KENNEDY, Videographer
14
15 ****
16
17
18
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0005
1 THEREUPON,
2 B E R T R A M B O W E
3 being by Terri Becker first duly sworn to tell
4 the whole truth, as hereinafter certified,
5 testified as follows:
6 DIRECT EXAMINATION
7 BY MR. SURPRENANT:
8 Q Good morning, sir.
9 A Good morning.
10 Q Could you please state and spell your
11 name.
12 A Bertram C. Bowe, B-e-r-t-r-a-m, Bowe,
13 B-o-w-e.
14 Q Mr. Bowe, are you employed by Carver
15 Ranches Washington Park, Inc.?
16 A No. I'm a volunteer.
17 Q What is your position at Carver Ranches?
18 A The president.
19 Q Do you receive -- excuse me. Have you
20 had your deposition taken before?
21 A Have I had it? Yes.
22 Q How many occasions?
23 A Twice.
24 Q Were these depositions related to
25 lawsuits in which Carver Ranches was a litigant?
0006
1 A No.
2 Q Were they personal?
3 A Yes.
4 Q Let me just give you a few ground rules
5 about the deposition. The court reporter is very
6 good, but it is difficult for her to take us down
7 if we talk over each other, as people do
8 frequently in social and business conversations
9 do, when both speaking at the same time. That
10 would be very difficult for the reporter to take
11 us both down, so I will try not to interrupt your
12 answer, and I would ask you to please not to
13 interrupt my question, even if you know where I'm
14 going.
15 It is important that you understand my
16 questions before answering them, so can we have
17 an agreement, if I ask a question and you don't
18 understand it, you won't guess, but you'll call
19 out to my attention that you don't understand it?
20 A Yes.
21 Q And just one other thing is, the oath
22 that you took just now is the same oath that you
23 would take if you were appearing before the judge
24 and the jury; you understand that, correct?
25 A Yes.
0007
1 Q What did you do, Mr. Bowe, to prepare
2 for your deposition?
3 A I met with my attorney.
4 Q And who is that?
5 A Jayne.
6 (Indicating.)
7 Jayne Goldstein, David Pastor.

8 Q You met with both of them?
9 A Yes.
10 Q On how many occasions?
11 A Once, last night.
12 Q For how long did you meet with them?
13 A About an hour.
14 Q You say you were the president of Carver
15 Ranches?
16 A Yes.
17 Q What does Carver Ranches do?
18 A It is a youth athletic association.
19 Q What services does it provide or offer?
20 A Sports programs for the kids in the
21 neighborhood and we have tutorial programs. We
22 have health awareness.
23 Q You say that you were a volunteer?
24 A Yes.
25 Q Do you receive any salary at all?
0008
1 A No.
2 Q Does Carver Ranches have any employees?
3 A No, not as of yet.
4 Q It has volunteers?
5 A Yes.
6 Q And how many volunteers does it have?
7 A About 90.
8 Q Nine volunteers?
9 A Ninety.
10 Q Ninety?
11 A Yes.
12 Q Thank you, sir.
13 Where is it located?
14 A City of Hollywood.
15 Q Does it have like an office or gym or
16 something?
17 A Yes. Washington Park. 5200 Pembroke
18 Road.
19 Q It is a nonprofit organization?
20 A Yes.
21 Q How does it receive, how does it obtain
22 funds that it uses to pay expenses?
23 A Usually through the city -- city give us
24 grants, Police Department grants, county grants
25 and the general membership.
0009
1 Q Membership, who are the members?
2 A The coaches, parents.
3 Q In your role as the president of Carver
4 Ranches, could you describe generally what your
5 responsibilities are?
6 A The oversight of everything. The youth
7 programs, the tutorial programs, the coaches, the
8 parents.
9 Q And do you have people that report to
10 you?
11 A Yes.
12 Q How many people report to you?
13 A Total of ten.
14 Q This would be fairly tedious but could
15 you please tell me who reports to you and a brief
16 description of what their function is?
17 A The two vice presidents -- we have a
18 vice president of administration, which is Sherry

19 Bowe, vice president of sports, which is Gary
20 Melvin. We have the treasurer, the secretary,
21 then I have commissioners for each sport.
22 Q How many sports do you have?
23 A Sports, we have five.
24 Q One, basketball?
25 A Basketball, yes.
0010
1 Q Soccer?
2 A No, no soccer.
3 Q Which are the other four?
4 A Basketball, football, golf, track and...
5 I think it is La Crosse. I'm not sure. I think
6 it is La Crosse.
7 Q There is a commissioner for each of
8 these sports?
9 A Yes.
10 Q And they report to you?
11 A Yes.
12 Q That's nine. There must be somebody
13 else.
14 A Yes, she does the etiquette class. I
15 don't know if you would call it etiquette but she
16 does the etiquette class. And she is a
17 commissioner. She does personal responds to the
18 parents. She responds to the parents. She gets
19 the class set up. She gets the grants and stuff
20 through the city for these classes.
21 Q Does Carver Ranches have a Board of
22 Directors?
23 A Yes.
24 Q Do you sit on the board?
25 A Yes.
0011
1 Q How many board members are there?
2 A Three.
3 Q Who are the other two board members?
4 A Sherry Bowe and Gary Melvin.
5 Q The vice president of sports and vice
6 president of administration?
7 A Yes.
8 Q Do board members receive any stipend for
9 sitting on the board?
10 A No.
11 Q Are you the chairman of the board?
12 A Yes.
13 .
14 Q What was your budget for last year?
15 A I think we turned a budget into the
16 city, I think it was $120,000.
17 Q When was Carver Ranches founded?
18 A ... That's a good question... Seven years
19 now, so -- this is our eighth year. It was eight
20 years ago.
21 Q Approximately '96/'97?
22 A I think '97.
23 Q How long have you been associated with
24 Carver Ranches?
25 A I started the program.
0012
1 Q Do you work full time at Carver
2 Ranches?
3 A Part time.

4 Q Are you otherwise employed?
5 A Yes.
6 Q What is your other employment?
7 A Department of Corrections.
8 Q For the State of Florida?
9 A Yes.
10 Q What is your position?
11 A Vocational instructor.
12 Q Who do you instruct?
13 A Inmates. We teach them trades.
14 Q How to make license plates?
15 A No, as a matter of fact, it is
16 carpentry.
17 Q That's a good trade.
18 Does Carver Ranches, to your knowledge,
19 have a contract or contracts with Nextel?
20 A Yes.
21 Q Do you know how many?
22 A Now, it should be three.
23 Q Are these three contracts for three
24 units?
25 A Yes.

0013

1 Q Are these for individual officers or
2 employees or volunteers?
3 A Volunteers, yes.
4 Q So you have a phone?
5 A Yes.
6 Q And Miss Voss has a phone?
7 A No, Sherry?
8 Q Yes.
9 A Yes, Sherry.
10 Q Who is the other phone?
11 A Gary.
12 Q Were all three contracts entered into at
13 the same time?
14 A No.
15 Q When was the first contract entered
16 into?
17 MR. PASTOR: The first of the three
18 current ones?
19 MR. SURPRENANT: Yes.
20 A There should have been mine... Well, we
21 opened up the contract, and I really don't know
22 what year it was we started, but all three was
23 about the same time we started.
24 Q You have three contracts with one hand
25 set on each contract?

0014

1 A Yes.
2 Q Is the contract between Carver Ranches
3 and Nextel?
4 A Yes.
5 Q As opposed to being, for example,
6 between you personally and Nextel?
7 A No, it is Carver Ranches.
8 Q Do you have a Nextel handset today?
9 A Yes.
10 Q What model?
11 A Uh... I-90.
12 Q Since Carver Ranches entered into a
13 contract with Nextel on your behalf, have you
14 changed handsets?

15 A Yes.
16 Q How many occasions?
17 A I'm guessing. I think once, myself.
18 MR. PASTOR: Don't guess.
19 Q Sherry's last name is Vonn?
20 A No, Bowe.
21 Q Bowe, like is she related to you?
22 A She is my wife.
23 Q And Gary's last name is Melvin?
24 A Yes.
25 Q Do you know if your wife, since she
0015
1 became a Nextel user through Carver Ranches's
2 entering into a contract with Nextel, whether her
3 handset, she's changed handsets?
4 MR. PASTOR: Object to the form of the
5 question.
6 You can answer if you can understand?
7 A Repeat it, please.
8 Q Let me restate it. Do you know if your
9 wife, since she became a Nextel user, through the
10 contract Carver Ranches entered with Nextel,
11 whether she's changed her handset?
12 A Yes.
13 Q On how many occasions?
14 A Once.
15 Q How about Mr. Melvin, do you know since
16 he's become a Nextel subscriber through the
17 Carver Ranches contract with Nextel, whether he's
18 changed his handset?
19 A Yes.
20 Q Do you know how many times?
21 A Once.
22 Q And do you know when the -- at the time
23 the handset was changed, whether Carver Ranches
24 entered into a new contract with Nextel?
25 A Yes.
0016
1 MR. PASTOR: Objection. Which contract
2 are we talking about? Or which handset, I
3 guess?
4 MR. SURPRENANT: I ask the questions. I
5 don't answer them.
6 MR. PASTOR: No, but you have to clarify
7 them.
8 MR. SURPRENANT: I don't have to do
9 anything I don't want to.
10 MR. PASTOR: Yes, you do.
11 MR. SURPRENANT: Colloquy is not
12 helpful.
13 Q At the time you changed your handset,
14 did that involve entering into a new contract?
15 A Yes.
16 Q Do you know at the time your wife
17 changed handsets, whether that involved entering
18 a new contract?
19 A Yes.
20 Q And when Mr. Melvin changed handsets,
21 did that involve entering into a new contract?
22 A Yes.
23 Q Has Carver Ranches ever paid an early
24 termination fee to Nextel?
25 A No.

0017

Q Who authorized Carver Ranches to enter into these three contracts with Nextel?

MR. PASTOR: Object to the form of the question.

Q You can answer.

A Yes, I did.

Q Did you read the contract before you signed it?

A Yes.

Q Were there any aspects that you didn't understand?

A No.

Q How did you do it? Did you go down to the Nextel store and look around and ask them questions and then decide to become a subscriber?

MR. PASTOR: Object to the form of the question.

Q You can answer.

Your attorney is making objections, formal objections, and there is no judge here or magistrate so no one can rule on them. He's preserving his objections for the record but unless he instructs you not to answer, you can answer.

0018

A Okay.

MR. SURPRENANT: With that, Ms. Reporter, may I have the question read?

THE COURT REPORTER: Certainly.

(The record was read.)

A No.

MR. PASTOR: Same objection.

Q Did they come to you?

A No.

Q Where did you sign a contract?

A I went to the Nextel store -- as a matter of fact I called Nextel. My -- the contract that I have with my phone, I called Nextel and Sherry's, I called Nextel and told them to upgrade the phones, and being that we upgraded the phones, we had to do another contract.

Q When did that upgrade happen, approximately?

THE WITNESS: Can I guess?

MR. PASTOR: No.

Q Don't guess, but this is an example that's kind of overused but it is not a bad one. There is a difference between making an estimate or an informed judgment and guessing. If I were

0019

to ask you how long this table is, this conference table, you could give me an estimate and it wouldn't be a guess, even though you don't have a tape measure, but if I were to ask you what the size of my dining room table is, you would have to guess, because you've never been in my dining room. The latter would be a guess and the former would be an informed judgment, so are you able to approximate or narrow the range when these upgrades happened?

11 A Sherry's, I would say.... About four
12 months ago, five months.
13 Q And that's for Sherry's phone?
14 A Yes.
15 Q And how about your phone? When was it
16 upgraded?
17 A ... I can't recall.
18 Q Was it less than five years ago?
19 A Yes.
20 Q Was it more than one year ago?
21 A I'm not sure.
22 Q I'll try and determine that.
23 How about Mr. Melvin's phone, when was
24 it upgraded?
25 A It has been a couple of years.
0020
1 Q was your phone upgraded before or after
2 Mr. Melvin's phone?
3 A After.
4 Q Was it a couple of months after or a
5 year after or somewhere in between?
6 MR. PASTOR: Object to the form.
7 You can answer.
8 A Somewhere in between. I really don't...
9 Q Now, with respect to the upgrade four
10 months ago of your wife's phone, you called up
11 Nextel on the Nextel phone and identified the
12 user number and said you wanted to be upgraded --
13 A Yes.
14 Q -- is that essentially what happened?
15 A Yes.
16 Q Did the Nextel person that you spoke to,
17 did they -- did you ask them any questions?
18 MR. PASTOR: Object to the form.
19 Q Let me try and make it more precise.
20 Did you ask them any questions about the
21 contract?
22 A No.
23 Q Did you ask them any questions about the
24 rate plan?
25 A No.
0021
1 Q Did you ask them any questions about
2 whether the contract had an early termination
3 fee?
4 A No.
5 Q You just indicated to them that you
6 wanted to upgrade your wife's phone?
7 A Yes.
8 Q Did they tell you that would require you
9 entering into a new contract?
10 A Yes.
11 Q And you agreed with that?
12 A Yes.
13 Q You asked them to send you the
14 contract?
15 A No, they never sent me the contract.
16 Q Oh, okay.
17 Now, when Mr. Melvin's phone was
18 upgraded a few years ago, a couple of years ago,
19 did you call Nextel or did Mr. Melvin?
20 MR. PASTOR: Object to the form.
21 A I did.

22 Q Do you recall if you asked the Nextel
23 representative any questions about the contract?
24 A No.
25 Q Any questions about the rate plan?
0022
1 A No.
2 Q Any questions about whether the contract
3 would have an early termination fee?
4 A No.
5 Q But you indicated that you wanted Mr.
6 Melvin's handset to be upgraded?
7 A Yes.
8 Q When your own phone was upgraded, which
9 was something less than a couple of years ago, I
10 take it you called Nextel?
11 A Yes.
12 Q Indicated you wanted to upgrade your
13 handset?
14 A Yes.
15 Q And they agreed?
16 A Yes.
17 Q And you got a new handset in the mail?
18 A Yes -- no, I got it from the store.
19 Q You went down to the store?
20 A Right. I called from the store.
21 Q I see.
22 When was the last time you had been in a
23 Nextel store?
24 A A while.
25 Q Did you see that there were phones that
0023
1 you could buy on a prepaid basis, you would buy
2 the minutes prepaid?
3 A No.
4 Q Are you aware that Nextel offers its
5 phones without an early termination fee and
6 without any term contract, through a prepaid
7 minute option?
8 A No. I didn't know that.
9 Q The first contract between Carver
10 Ranches and Nextel that was entered into, you
11 authorized that, correct?
12 A Yes.
13 Q What were the circumstances? Did you
14 personally go to the Nextel store?
15 A No, they came to us.
16 Q A Nextel representative came by Carver
17 Ranches?
18 A Yes.
19 Q Do you recall who the representative
20 was?
21 A No.
22 Q How did that first meeting come about?
23 A Because most of the cities, the City of
24 Hollywood, most of their functions are on Nextel,
25 they actually told us about Nextel, about us
0024
1 getting on Nextel and it would be more convenient
2 for them, and us, so we agreed and they had a
3 representative come out to us.
4 Q Is the direct connect function on your
5 Nextel handset, a function you use?
6 A Yes.

7 Q Is it an important, from your own
8 perspective, is it an important element of the
9 packages of service you get from Nextel?
10 MR. PASTOR: Object to the form.
11 A Yes.
12 Q And do you use the direct connect
13 function to talk to people who work in the City
14 of Hollywood?
15 A Yes.
16 Q Do you use the direct connect function
17 to talk to your wife and Mr. Melvin?
18 A Yes.
19 Q So the Nextel representative came out
20 and talked to you?
21 A Yes.
22 Q Was it a he or a she?
23 A A he.
24 Q Did he speak to anyone else?
25 A Yes.
0025
1 Q Who else was there?
2 A Gary Melvin, Benny Walker, Howard
3 Dorsett, Bernard Greer.
4 Q Bernard, what was the last name?
5 A Greer.
6 Q Like Rosie Greer?
7 A Yes.
8 Q You look a little like Rosie Greer.
9 A Don't tell me that.
10 Q He was a Ram?
11 A I don't know what Rosie... He was just a
12 big man.
13 Q Yes, he was. Anybody else?
14 A Basically that's all I can remember.
15 Q The representative came and addressed
16 Mr. Melvin, Mr. Walker, Mr. Dorsett, Mr. Greer
17 and yourself, and did he leave any promotional
18 material?
19 A No.
20 Q Do you recall what he told you about
21 Nextel service at this original meeting?
22 MR. PASTOR: Object to the form.
23 You can answer.
24 A Yes, it was already predetermined, we
25 was going to go on the business plan because
0026
1 that's basically what the city was on and that's
2 with the free incoming minutes, free incoming.
3 Q That's a good plan to be on.
4 A It was predetermined already what we was
5 going to do so we didn't have to discuss any
6 plans or anything.
7 Q Who had predetermined that?
8 A Pretty much I did, because we were
9 talking to the city and then when they talked to
10 the representative, he came out and he pretty
11 much knew what we wanted.
12 Q Were there any questions, do you recall
13 anybody there asking the Nextel representative
14 any questions about the Nextel service?
15 A No.
16 Q Did the Nextel representative --
17 (Pause in the proceedings due to knock

18 on the door.)
19 Q Did the Nextel representative give you a
20 contract?
21 A Yes.
22 Q Did you read it?
23 A Yes.
24 Q Did you understand it?
25 A Yes.
0027
1 Q Were there any aspects you didn't
2 understand?
3 A No.
4 Q Did you understand that the contract had
5 a term limit; in other words, it was for a year?
6 A Yes.
7 Q Did you understand that if you
8 discontinued Nextel service prior to the time the
9 contract expired, that there would be an early
10 termination fee?
11 A Yes.
12 Q Did you understand that if you were a
13 subscriber and paid your fees throughout the life
14 of the year contract, after the year contract --
15 after a year, the contract would then
16 automatically change to a month-to-month contract
17 with no ETF's?
18 A Yes.
19 MR. PASTOR: Object to the form.
20 Q Was there anything at all that the
21 Nextel representative said verbally that you have
22 since found out was untrue?
23 A No.
24 Q Is there anything that was stated in the
25 contract that you have since found out was
0028
1 untrue?
2 A No.
3 Q Do you know one way or another whether
4 other cell providers have early termination fees
5 of the sort that Nextel has?
6 A Yes.
7 Q And what is your information on that
8 topic?
9 A Same thing. They don't have the
10 business plan but they have early termination fee
11 after a year -- before a year.
12 Q Has the existence of the early
13 termination fee in the Nextel contracts, has that
14 affected any decision you've made about who your
15 cellular provider is?
16 MR. PASTOR: Object to the form of the
17 question.
18 You can answer.
19 A No.
20 Q Has the existence of the early
21 termination fees in the Nextel contracts between
22 Carver Ranches and Nextel, has it affected any
23 business decision Carver Ranches has made?
24 A Yes.
25 Q What decision has it affected?
0029
1 A You can tell we went from about nine to
2 ten phones. I think we had nine. We are down to