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October 4, 2005

VIA ELECTRONIC FILING

Heather Dixon, Esq.
Office of the Chairman
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. Dixon:

On behalf of AIRPEAK Communications, LLC ("AIRPEAK" or "Company"), and in accordance with Section 1.1206(b) of the Commission's Rules, 47 C.F.R. § 1.1206(b), we wish to respond to certain allegations in the September 30, 2005 *Ex Parte Presentation* notice filed by Sprint Nextel Corporation ("Sprint Nextel"). The *Presentation*, and presumably the statements made by Sprint Nextel during your September 29, 2005 meeting with them, do not present an accurate description of AIRPEAK's Petition for Reconsideration in the above-identified proceeding or the impact the requested relief would have on Nextel's post-reconfiguration spectrum position.

AIRPEAK agrees that the three objectives identified by Sprint Nextel are primary to the 800 MHz reconfiguration process: (1) resolution of public safety interference; (2) additional public safety spectrum; and (3) comparable spectrum for all incumbents. However, each is important in its own right, and they are not necessarily inter-dependent. The public interest does not demand that AIRPEAK's request include any specific protection or advancement of public safety. As long as it does not undermine public safety objectives, is consistent with the Commission's commitment not to disadvantage incumbents in this process (beyond the disruption and competitive disadvantage that inevitably will result from having to reconfigure a commercial systems that serves many thousands of customers) and conforms to the public interest, the Company's reconsideration request may and should be granted.

Contrary to Nextel's representation, and as described in detail in the Company's Petition for Reconsideration and related filings, the limited relief requested by AIRPEAK is specifically

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designed to provide the Company with comparable facilities as contemplated by the Commission's decisions in this proceeding. Even if the FCC were to grant every aspect of AIRPEAK's request, the number of channels and markets involved is so limited that it could not reasonably be described as undermining the spectrum exchange adopted by the FCC and accepted by Nextel.

For example, the *Presentation* is accompanied by a contour map that Nextel describes as documenting a "spectrum grab" by AIRPEAK. In fact, the Company has requested that the FCC reconsider two aspects of its decisions in regard to site-based facilities. First, it has asked that the coverage of ESMR site-based licenses be defined by their 22 dBu/V contour rather than their 40 dBu/V contour. This is entirely consistent with the current rules governing 800 MHz site-based licenses. FCC Rule Section 90.693 allows licensees of site-based 800 MHz SMR stations to modify or add sites anywhere within their 22 dBu/V contour, provided they do not expand that contour and satisfy the co-channel requirements of FCC Rule Section 90.621(b). Defining the area within which reconfigured systems are permitted to provide service by that same 22 dBu/V contour would simply preserve a right already granted by the FCC – the very essence of comparability. AIRPEAK also has asked that site-based licenses with coverage areas that encompass more than a majority of the population in an EA be exchanged for EA-wide authorizations. This approach would be consistent with the Commission's original decision in this proceeding, with established FCC geographic coverage requirements and with a simplified licensing process. While AIRPEAK cannot speak for Nextel's method of assessing spectrum valuations, a station that encompasses more than fifty percent of the population within an EA undoubtedly covers the major population centers and their connecting routes. It is doubtful that the remaining population scattered throughout the outer portions of the EA would contribute value to any substantial degree.

Please feel free to contact me if you would like to discuss this matter in any greater detail or if you have any other questions about the treatment of non-Nextel ESMRs in the context of this proceeding.

Very truly yours,
/s/
Elizabeth R. Sachs

cc: Barry Ohlson, Senior Legal Advisor, Legal Advisor for Spectrum and
International Issues, Office of Commissioner Jonathan S. Adelstein
John Giusti, Spectrum and International Legal Advisor,
Office of Commissioner Michael J. Copps
John Branscome, Acting Legal Advisor for Wireless, Technology, and
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