

**Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554**

In the Matter of)	
)	
Nextel Partners Petition for Limited Waiver of)	WT Docket No. 05-286
the December 31, 2005 Deadline to Achieve)	
Ninety-Five Percent Penetration of Location-)	
Capable Handsets among its Subscribers)	

COMMENTS OF MOTOROLA, INC.

Motorola, Inc. (“Motorola”) supports the request of Nextel Partners, Inc. (“Nextel Partners”) for a temporary waiver of the December 31, 2005 wireless Enhanced 911 (“E-911”) deadline for its wireless handsets.¹ Nextel Partners was to have 95 percent of its active subscriber handsets be E-911 location-capable by that date. The information presented in its request clearly demonstrates that Nextel Partners has met all of the criteria for a waiver. Nextel Partners has shown good cause for the waiver, based on a customer “churn” rate that has been lower than originally anticipated by the Commission, and based on a software issue that occurred in its GPS-capable handsets after distribution, which affected their location capability. Nextel Partners and Motorola have taken concrete steps to address these problems and come into compliance with the Commission’s E-911 rules. It is now possible, and has been possible for over a year, for any Nextel Partners subscriber with a handset impacted by the software issue, to self upgrade the software in the convenience of his/her home or office, and in taking this

¹ Petition for Limited Waiver of Nextel Partners, Inc., CC Docket No. 94-102 (filed Oct. 21, 2005) (“*Nextel Partners Waiver Request*”).

action to be eligible for special services and prizes. Accordingly, there is good cause for the waiver and waiver is not inconsistent with the public interest.

As a primary basis for its request, Nextel Partners has explained that the rate of customer “churn” relied on by the Commission in establishing the current December 2005 deadline² has not occurred among Nextel Partners’ subscribers.³ This lower than anticipated churn rate is due, in large part, to the governmental, commercial, and business nature of users who subscribe to Nextel Partners’ service. These customers tend to have long-term equipment replacement cycles. Indeed, as noted in Nextel Partners’ Request, approximately 60 percent of its group subscribers use their original handsets.⁴ In addition, Nextel Partners has focused on strong customer service over the last several years, resulting in even lower customer “churn.” To encourage these customers to replace their existing handsets with location-capable devices, Nextel Partners has provided incentives to subscribers to exchange their older phones for newer, better-featured phones at no-cost or highly subsidized costs, and calls customers with older, non-A-GPS handsets directly to offer these customers even more attractive upgrades, including discounts of up to \$250 on new handsets.⁵ In addition, Nextel Partners plans to offer its group and government users additional economic incentives to upgrade or replace their phones and increase its mass advertising efforts that highlight the benefits of

² See *Revision of the Commission’s Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems*, Third Report & Order, 14 FCC Rcd 17399, ¶ 50 n. 71 and 72 (1999).

³ See *Nextel Partners Waiver Request* at 14, 17 (reporting lower churn rates than initially expected).

⁴ *Id.* at 18.

⁵ *Id.* at 22.

location-capable handsets.⁶ Nextel Partners' customers, however, are generally content with their handsets and as a result are hesitant to swap them for newer A-GPS handsets. From the customer perspective, such a swap could result in a significant loss of employee productivity or lost time due to the need to reprogram the new handset without any real increased functionality.

As many have recognized, including the Commission's independent analyst Professor Dale Hatfield,⁷ it is not appropriate or fair to adhere to a penetration deadline that was based on an incorrect estimate of the rate of churn. Moreover, it is particularly inappropriate to sanction a carrier whose distinguishing characteristic is that customers *like their phones so much* that they do not want to exchange them. In this case, Nextel Partners, supported by Motorola, has done everything reasonably possible to meet this deadline and its inability to do so stems from a good-faith churn rate estimate that turns out (in hindsight) to have been overly optimistic when applied to its special user base. Accordingly, a temporary waiver of this deadline is appropriate and fair.

On July 19, 2004, a handset software issue occurred in certain GPS-capable handset models. This required the quick modification of Nextel Partners' network 911 software (an action that was completed by July 25, 2004), the development of software patches for its existing E-911 location-capable handsets, and the distribution of the software patches to every one of the affected handsets, including those already in

⁶ *Id.*

⁷ "A Report on Technical and Operational Issues Impacting the Provision of Wireless Enhanced 911 Services," Professor Dale N. Hatfield, 44-45 (rel. Oct. 16, 2002).

customers' hands and those in the inventories of Nextel Partners and Motorola.⁸ Once the handset is reflashed with the software patch, the GPS location capabilities in that handset are instantly turned back on.

These phones, when purchased by Nextel Partners and sold to subscribers, *were* location-capable. The fact that the phones later developed a technical issue that affected the phone's usability is not something that should count against Nextel Partners in terms of compliance with the Commission's mandate. This situation is similar to a broken "9" key or a broken antenna in the sense that any of these things could prevent a phone from being able to complete an E-911 call or provide location information. Such a post-introduction incident should not be counted against the carrier, when the phone had full E-911 location capability as sold to the user. For this and other reasons described below, at this point, all of these phones (whether they have been reflashed or not) should be included as compliant phones in calculating achievement of the 95 percent goal.

All of these phones *are* E-911-location-capable in a very real sense. First, they have GPS E-911 location capability in them and simply need to be reflashed in order to again communicate 911 location information – a process that takes only a few minutes. Second, every user has readily available to him the ability to reflash his phone and turn the GPS E-911 location capability of his phone on.⁹

⁸ See *Nextel Partners Waiver Request* at 19-21 (providing a full description of this problem and solution).

⁹ The fact that the user needs to perform a relatively simple action to correct the GPS capability should not prevent these phones from being deemed GPS-capable (just as the fact that a subscriber has to load friends' names on a cell phone does not mean the phone does not have a phone-book capability). In the case of *any* phone, user action is necessary to ensure the availability of E-911 location capability. Any user has to put a charged battery in his phone, power up his phone, and position himself in a place that has system coverage, in order to make an E-911 call. In the current case, the user has the

Motorola and Nextel Partners have gone to great lengths to ensure that every user is in a position to reflash the E-911 location capability so as to turn the GPS capability on in a matter of minutes with little effort and at no cost. Specifically, Nextel Partners sent its affected customers a letter informing them of the issue and encouraging them to come to a Nextel Partners store to have it reflashed. In addition, as detailed in Nextel Partners's request, over 389,000 self-reflash kits were sent to subscribers with all necessary cables and software so that they could reflash their handsets at their home or office.¹⁰

Nextel Partners also has offered several appealing incentives for customers that visited an authorized service center to have their phones reflashed, including a free 30-day trial offer of Nextel Partners' commercial GPS TeleNav service and participation in the A-GPS re-flash sweepstakes with prizes that included a Cadillac and round-trip airfare tickets.¹¹ Meanwhile, Motorola put together an incentive package including cash payments to encourage all independent dealers handling affected phones to reflash the software in every affected phone brought in by customers for any reason, and, of course, Motorola reflashed every affected phone that was sent to Motorola for any kind of service.¹²

These efforts continue today, and will continue in the future. Nextel Partners continues to reflash A-GPS handsets affected by the software issue and all upgrades are

ability in a matter of minutes to reflash the phone to enable it to make E-911 calls with GPS location information.

¹⁰ *Nextel Partners Waiver Request* at 21.

¹¹ *Id.* at 21.

¹² Despite these combined efforts, over two hundred thousand handsets remain to be either reflashed or swapped out. *Id.* at 21-22.

made at no cost to the customer. Nextel Partners also continues to send representatives to large corporate customers to perform the software upgrades. Given these continuous efforts by Nextel Partners and Motorola, the fact that certain users have chosen not to activate the E-911 GPS capability in their phones should not be counted against Nextel Partners. Some portion of users are simply going to act only when they are ready to, and no manner of incentives will compel them to do so before that time. Indeed, for many, there is less reason for them to restore the E911 location capability because their local emergency call centers are not yet in a position to accept such information.

CONCLUSION

Based on the foregoing, Motorola supports the Nextel Partners request for additional time to reach the 95 percent goal, and believes that Nextel Partners has shown that its request meets all the requirements for such a waiver. Achieving 95 percent by the new deadline remains a very aggressive goal and will require the continuation of the significant efforts that have been expended to upgrade users. It appears that many iDEN users just want to keep their old pre-GPS “tried and true” phones and do not want to acquire or learn a new phone. Another portion of customers, whose phones have a GPS location capability that they could easily turn on, have chosen not to do so. Nextel Partners, supported by Motorola, will continue to encourage users of the older phones to exchange their handsets to increase the churn rate, and will continue to offer incentives to those who merely need to take a few minutes to turn on their GPS capability. With respect to the latter group, the Commission should conclude that the phones where the GPS location capability is merely awaiting easy turn-on by the user *are* E-911 location-capable for the purpose of this requirement, where Nextel Partners can demonstrate that

users have been provided the means and instructions to make their phones GPS-capable easily and at no cost.

Respectfully submitted,

By: */s/ Mary E. Brooner*

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