

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of))	
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Improving Public Safety Communications in the 55 800 MHz Band))	WT Docket 02-
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Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels))	
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Amendment of Part 2 of the Commission's Rules To Allocate Spectrum Below 3 GHz for Mobile And Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems))	ET Docket No. 00-258
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Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service))	RM-9498
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Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service))	RM-10024
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Amendment of Section 2.106 of the Commissions's 95-18 Rules to Allocate Spectrum at 2 GHz for use by The Mobile Satellite Service))	ET Docket No.

Second Petition for Reconsideration

On December 22, 2004, I filed a Petition for Reconsideration of the FCC's Report & Order "R&O" (dated August 6, 2004) in this proceeding. The FCC's response to my

petition was released on October 5, 2005 and was published in the Federal Register on December 28, 2005.

The FCC's response to my petition was tantamount to a non-response, as it thoroughly failed to adequately address the issues I raised in my petition. The FCC's response did not address certain issues and while addressing some issues, completely ignored the facts in the record of this proceeding, resulting in a disingenuous response.

The issues I raised in my petition for reconsideration did not reflect a categorical opposition to the R&O, nor were they in conflict with, or contrary to the fundamental elements of the R&O. Instead, my petition pointed to errors by the FCC that caused it to completely fail to meet its objectives of equitable treatment for all licensees and no "windfall" for Nextel. The FCC's "objectives" concerning Nextel and non-Nextel licensees is clearly reflected in paragraph 5 of the R&O, which states: *"To ensure that by these actions Nextel, other licensees and the public are treated equitably, and that Nextel does not realize any windfall gain, we confer these 1.9GHz spectrum rights on a 'value for value' basis."*

I respectfully request that the FCC carefully re-examine each of the items in my petition for reconsideration as they individually and collectively prove inequitable treatment of non-Nextel licensees and a "windfall" for Nextel.

The following summarizes one of the most significant deficiencies in the FCC's response to my petition for reconsideration:

Valuation of 1.9 GHz Spectrum My petition for reconsideration pointed to a sale of a New York license on July 8, 2004 at a value that, for reasons discussed in my petition, completely discredited the FCC's valuation calculation. In doing so, I proved that the FCC undervalued the 1.9GHz spectrum by at least a billion dollars, thus giving Nextel a "windfall". The FCC's response to my petition is that they could not take this into account as it would delay a final resolution in the proceeding. This is false excuse for two reasons. First, the sales price for the New York license in question was established in the Next Wave bankruptcy case, with the involvement of the FCC, as reflected in a filing in that case on June 4, 2004. Thus, the FCC knew of this valuation for likely weeks before June 4, which was plenty of time to consider it in this proceeding. Second, the FCC revisited the valuation issue subsequent to July 8, 2004, by increasing Nextel's spectrum value by almost \$500 Million on December 22, 2004. This was nearly six months after the R&O was adopted. Thus, contrary to the FCC's response to my petition, they had plenty of time.

EQUITABLE TREATMENT OF PREFERRED MUST REFLECT THE FOLLOWING:

- A. Preferred has been damaged as a result of this proceeding (02-55). Within a year of Preferred acquiring its EA licenses in FCC Auction #34, this proceeding commenced and the NPRM presented re-banding proposals that would remove

Preferred for the 800 MHz band. Throughout the proceeding, the Consensus Parties proposals had Preferred moving to the non-cellular band. To this day, Nextel is campaigning for Preferred to be moved to the non-cellular band. Consequently, Preferred was effectively precluded from developing its systems since it would be fiscally imprudent to launch any system, given the uncertainties of this proceeding.

- B. Preferred acquired cellular eligible spectrum in FCC Auction #34, EA licenses in 10 markets covering 29 million pops.
- C. Preferred's General Category EA licenses provide it with the right to any and all encumbered frequencies within its block of frequencies to the extent that any underlying site licenses is removed.
- D. The R&O moves General Category site licenses to the non-cellular band and requires Nextel to relinquish all of its site licenses (and is providing other compensatory benefits) to Nextel, thus Preferred, is entitled to clean access to frequencies for which it acquire the rights in the Auction. Thus, it must receive clean channels (one for one) in the cellular block equal in number to the blocks of channels acquire in the Auction.
- E. The FCC has no choice but to treat Puerto Rico as a unique market. The FCC's plan in the R&O is based on Nextel having an average of 18.5 MHz of 800 MHz spectrum in all markets, and that Nextel is relinquishing an average of 4.5 MHz. In Puerto Rico, Nextel claims to have only 4.5 MHz, thus they are relinquishing all of their 800 MHz spectrum in that market. Accordingly,

Preferred (as the largest 800 MHz licensee in that market) should be awarded the 1.9 GHz former NPSMC spectrum in exchange for paying for the relocation of public safety systems in that market.

F. Preferred should be given equal access to the 1.9 GHz section in its markets.

Respectfully Submitted

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