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Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, SW
Washington, DC 20554

Re: *Ex Parte* Notification
WT Docket No. 02-55
ET Docket No. 00-258

Dear Ms. Dortch:

On March 28, 2006, David Donovan of the Association for Maximum Service Television ("MSTV"); Scott Patrick of Dow Lohnes and Albertson; Mike Hines of Dow Lohnes and Albertson; Doc Bodensteiner of Wiley Rein & Fielding; and the undersigned met with John Giusti and Bruce Gottlieb, Legal Advisors to Commissioner Capps; and, in a separate meeting, with Barry Ohlson, Senior Legal Advisor to Commissioner Adelstein. On March 29, 2006, the same group met with Heather Dixon, Legal Advisor to Chairman Martin. Larry Walke of the National Association of Broadcasters also attended the meeting with Ms. Dixon. In a separate meeting on March 29, 2006, the undersigned and Messrs. Donovan, Patrick, Bodensteiner and Walke met with Aaron Goldberger, Legal Advisor to Commissioner Tate.

The purpose of these meetings was to provide the Legal Advisors with a status update on the progress being made toward the clearing of Broadcast Auxiliary Service ("BAS") facilities from the 1990-2025 MHz band ("2GHz Band"). In particular, we emphasized the extensive efforts being made by broadcasters to comply with Sprint Nextel's requests and prepare for the relocation of their 2GHz Band facilities, as recognized by Sprint Nextel in its most recent "BAS Relocation Status Report." We also discussed the significant progress made in the negotiations of the Frequency Relocation Agreements governing the relocation process for individual broadcasters.

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We also provided an update on the status of broadcasters' cooperative efforts with Sprint Nextel to seek clarification from the Treasury Department and IRS that the relocation qualifies as an involuntary conversion under Section 1033 of the IRS Code. We also discussed the potential tax costs in the context of FCC policy and precedent. Attached to this letter is a handout presented at the meetings addressing the matter.

Finally, we discussed the issues raised in MSTV's "Petition for Clarification" filed in WT Docket No. 02-55 regarding BAS equipment licensed to television translator stations.

This letter is being provided to your office in accordance with Section 1.1206 of the Commission's rules. A copy of this letter has been delivered by e-mail to the parties listed below.

Please direct any questions regarding this notice to the undersigned.

Respectfully submitted,



John M. Burgett

cc: Heather Dixon
Barry Ohlson
John Giusti
Bruce Gottlieb
Aaron Goldberger

2 GHz BAS RELOCATION – NEXTEL IS RESPONSIBLE FOR ALL COSTS

- The fundamental premise of the Commission’s spectrum reallocation and reimbursement policies is that Incumbents are not harmed and do not incur costs, including taxes.
 - The *Emerging Technologies* and *Microwave Cost-Sharing* proceedings require that relocated Incumbents must be “***no worse off than they would be if relocation were not required.***” *Microwave Cost-Sharing, First R&O and FNPRM*, 11 FCC Rcd 8825, ¶ 32 (1996).
- The Commission was equally clear in this proceeding that Nextel solely was responsible for making BAS licensees whole in the 2 GHz reallocation.
 - “We emphasize here that ***incumbents should incur no costs*** for band reconfiguration, and that ***the sole responsibility for paying all band reconfiguration costs...lies with Nextel.***” *Improving Public Safety Communications in the 800 MHz Band, Supplemental Order and Order on Recon.*, 19 FCC Rcd 25120, ¶ 15 (2004).
- Making Incumbents whole is the only sensible reallocation policy. If Incumbents were required to subsidize New Entrants, the Commission practically could not accomplish further spectrum reallocations.
 - This is why, when tax certificates were available, the Commission employed them to obviate tax liabilities so there would be no tax cost. Now that no tax certificates are possible, any tax cost (like any other cost) must be the responsibility of the New Entrant.
- “Nextel is ***unconditionally liable for payment of the full cost*** of band reconfiguration and clearing.” *Supplemental Order*, ¶ 19.
 - ***A tax is a cost***, and the Commission routinely accounts for them as so (e.g., rules setting carrier and cable rates). To ensure that the 2 GHz relocation is timely completed, the Commission should not change policies to relieve Nextel of its unconditional responsibility to pay all costs and thereby force BAS licensees to subsidize Nextel’s acquisition of new spectrum.