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BY ELECTRONIC FILING

Marlene H. Dortch, Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

Re: WT Docket No. 02-55; ET Docket No. 00-258
Ex Parte Presentation

Dear Ms. Dortch:

On Monday, April 3, 2006, Lawrence Krevor, Vice President, Government Affairs – Spectrum, Sprint Nextel Corporation ("Sprint Nextel") and I met with Daniel Gonzalez, Chief of Staff to Chairman Kevin Martin, and Heather Dixon, Legal Advisor to Chairman Martin, to discuss the status of 800 MHz reconfiguration and the clearing of Broadcast Auxiliary Service ("BAS") facilities from the 1990-2025 MHz band. At this meeting, Mr. Krevor and I addressed issues raised in Sprint Nextel's "BAS Relocation Status Report," filed in the above-referenced proceedings on March 7, 2006. In particular, we pointed out that over the past twelve years, the Commission has established relocation rules for numerous different services and spectrum bands but has never required a new entrant to fund an incumbent licensee's individualized tax liabilities. Attached to this letter is a summary of Commission precedent demonstrating that tax consequences are not an element of the comparable facilities requirement for incumbent relocation.

Pursuant to section 1.1206(b)(2) of the Commission's rules, 47 C.F.R. § 1.1206(b)(2), this letter and the attachment are being filed electronically for inclusion in the public record of these proceedings.

Sincerely,

/s/ Regina M. Keeney
Regina M. Keeney

cc: Daniel Gonzalez
Heather Dixon

FCC Precedent: Incumbents Are Responsible for Income Tax Liabilities Arising Out of Relocation

- Over the past twelve years, the Commission has established relocation rules for numerous different services and spectrum bands. Not once has it required a new entrant to fund an incumbent's potential income or property tax liabilities.

- To the contrary, the Commission made clear in its *Emerging Technologies* proceeding that the new entrant is *not* responsible for any such tax liability the incumbent may face as the result of relocation.

- In that proceeding, which established the microwave relocation rules for PCS licensees, the FCC granted tax certificates that allowed certain microwave incumbents to avoid potential tax liabilities arising out of the relocation process. (The tax certificates were granted pursuant to statutory authority that has since been repealed.)

- The FCC agreed with parties who argued that the tax certificates should *not* be considered a component of relocation compensation.

  - Rather, the FCC granted tax certificates as a bonus above and beyond the entitlement to comparable facilities to give incumbents an incentive to enter into voluntary relocation agreements.

  - The FCC did *not* grant tax certificates to incumbents forced to relocate or that reached agreements after the mandatory negotiation period.

- The purpose and structure of the tax certificate program demonstrates that funding potential tax liabilities is *not* an element of the Commission's comparable facilities requirement.

  - There would have been no point in issuing tax certificates to encourage voluntary relocation agreements if new entrants were required to indemnify incumbents for tax liabilities under the comparable facilities standard.

  - Incumbents forced to relocate or enter into agreements after the mandatory negotiation period are nonetheless entitled to comparable facilities. Yet the FCC's decision made clear that such incumbents would not receive tax certificates and would be responsible for any income tax liabilities arising out of their relocation. The Commission thus necessarily found that funding these costs is not a component of a new entrant's obligation to provide an incumbent with comparable facilities.

- Cite: *Emerging Technologies MO&O*, 9 FCC Rcd 1943, ¶¶ 45-46 (1994).