

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

In the Matter of )  
 )  
CMARC Counties ) WT Docket No. 02-55  
and )  
Nextel Communications, Inc. )

TO: Public Safety & Homeland Security Bureau, FCC

REQUEST FOR WAIVER

Pursuant to the Commission's Public Notice, DA 06-2555,<sup>1</sup> and Section 1.925 of the Rules, the CMARC Counties ("CMARC")<sup>2</sup> request a waiver that would permit Nextel Communications, Inc. ("Nextel") to compensate CMARC for critical national interoperability sites not licensed until after the lifting of the "freeze" for Stage 2 of Wave 1 on December 14, 2006.<sup>3</sup>

**Background.** The Baltimore Metropolitan Area, home to over 2.5 million residents, is a growing geographic and culturally-diverse area composed of the jurisdictions of Baltimore City, Baltimore County, Annapolis (capital of Maryland), Anne Arundel County, Carroll County, Harford County and Howard County. From 1990 to 2000, the region's population increased by seven per cent;

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<sup>1</sup> Released December 20, 2006, hereafter "STA Notice."

<sup>2</sup> CMARC stands for Central Maryland Area Radio Communications. Anne Arundel, Baltimore, Carroll, Harford and Howard Counties are the CMARC members seeking the waiver. The City of Baltimore is also a CMARC member but does not require the relief sought.

<sup>3</sup> Permanent public safety licensing was suspended, or "frozen," to allow Nextel and licensees maximum flexibility in identifying replacement channels for those given

Howard County grew by one-third and Carroll and Harford Counties grew by one-fifth.

The region is home to nineteen colleges and universities with a combined enrollment of 80,000+ students from around the world. Adjacent to or in the region are several military bases and installations of note: Aberdeen Proving Ground, Andrews Air Force Base, Annapolis Naval Station, Fort Detrick, Fort Meade, Patuxent Naval Air Station, National Security Administration, Curtis Bay Coast Guard, and the U.S. Naval Academy. A Federal Reserve Bank is located in the City, and the nation's pension system, the Social Security Administration, is located in Baltimore County.

The inland location of the greater Baltimore region makes it the East Coast port that is closest to major Midwestern population and manufacturing centers and a day's drive to one-third of the nation's households via an efficient interstate network. This network includes I-70, I-83, I-95, I-97, and I-295; and US Routes 1, 29, 40, and 50. But, major tunnels and bridges along I-95 are vulnerable and could paralyze the Eastern Seaboard for days, as did the Howard Street tunnel fire in July, 2001. (Rail traffic was re-routed through Ohio in order to reach the southern coastal states.) The map shows many cities and towns that are within one day's drive. (Each circle is 100 miles.)

In this highly mobile region, major airports are located within two hours of each other (Baltimore-Washington International (BWI), Dulles International,

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up during reconfiguration. Report and Order, WT Docket 02-55, 04-168, released

Philadelphia International, Martin State Airport (which houses a National Guard Base) and Ronald Regan International.

There exists an extensive network of mass transportation services in the Baltimore region.

- \* Over 850 mass transit buses provide service on 66 routes and carry 270,000 passengers daily.
- \* A light rail system runs a distance of 30 miles with 32 stops from Northern Baltimore County through the City of Baltimore to Anne Arundel County.
- \* The rail system has been expanded to service Amtrak's Penn Station in Baltimore City and BWI in Anne Arundel County. The MARC commuter rail system operates 38 stations over three lines covering a total of 187 miles. The MARC trains operate on lines shared with Amtrak between northern Harford County, through Baltimore County, Baltimore City, Anne Arundel County, Howard County and into Washington D.C. Thirty-two thousand Baltimore-area residents commute into Washington, D.C. daily.
- \* The region's subway system serves Baltimore City and County. It has 14 stations along a 15.5 mile span and an average of 45,000 people use the subway system everyday.

The CMARC system consists of the national 800 Calling (8CALL90) and Tactical channels (TAC91, 92, 93, and 94) that are made available to every public safety licensee occupying that spectrum. These frequencies are deployed throughout the jurisdictions comprising CMARC. The system was funded through federal grants as part of the interoperability initiatives arising from the attacks of September 11, 2001. It is a key element in the Tactical Interoperability Communications Plan required by the U.S. Department of Homeland Security.

Construction of this system started prior to the enactment of the freeze with some of the sites already being licensed. Because funding was available, the CMARC technical team decided to expand the system to provide for a better RF footprint. The license

applications for these additional sites were submitted after the freeze was enacted. Only temporary authority (STAs) could be issued for these sites. By jurisdiction, the STAs were granted as follows:

JURISDICTION	CALL SIGN	NUMBER OF SITES
Anne Arundel	WQCG694	3
Baltimore County	WQGF951	4
Carroll	WQGF946	4
Harford	WQGF947	4
	WQFR343	1
Howard	WQHK897	4

**Justification for waiver.** Pursuant to Section 1.925 of the Commission’s Rules, the FCC may grant a request for waiver if it is shown that (i) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case, and that a grant of the requested waiver would be in the public interest; or (ii) in view of unique or unusual factual circumstances of a given case, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>4</sup> The STA Notice (at 3) provided the following gloss on these general waiver principles, focused on “exceptional cases” in refinement of prong (ii):

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<sup>4</sup> 47 C.F.R. §1.925(a)(3)

[W]e expect that licensees will demonstrate that: (a) the need for the facility could not reasonably have been anticipated before the end of the mandatory negotiation period; and (b) safety considerations dictate that the modified facilities must be activated before band reconfigurations is completed in the relevant NPSPAC region.

As explained above, some of the sites at issue were installed before the onset of the freeze. However, the important later decision to expand the RF footprint of the system – post-dating the end of mandatory negotiation for Stage 2 of Wave 1 October 31<sup>st</sup> -- meant that additional sites could not be licensed in time. The licensing freeze for Stage 2 began December 30, 2005. A contract for construction of the expanded footprint of the CMARC system was not in place until late in the second quarter of 2006. Because of grant deadlines, installation of equipment at the expanded footprint sites and the licensing process moved forward simultaneously. Final site selection and equipment installation was not completed until late in the last quarter of 2006, which is after the end date for mandatory negotiations. STAs were obtained for the sites in the expanded footprint in December of 2006.

With respect to the second prong of the waiver test in the STA Notice, use of the National Calling and Tactical Channels is a key element in the Tactical Interoperability Communications Plan required by the U.S. Department of Homeland Security. In order to ensure interoperability during a catastrophic incident (including an act of terrorism) and thereby address the safety considerations of the communities in Central Maryland, it is vital to authorize permanently the facilities licensed under STAs earlier this year. The surest way to

achieve this is for Nextel to pay for their reconfiguration. We cannot afford to wait until the scheduled end of band reconfiguration in Region 20.

The FCC recently clarified that Nextel may offset these STA conversion payments against its anti-windfall obligations to the U.S. Treasury.<sup>5</sup> Grant of the waiver requested here is reinforced by the Commission's observation, in this letter of clarification at 3, that "the NPSPAC mutual aid channels provide a critical foundation for interoperability among 800 MHz public safety licensees."

**Conclusion.** For these reasons, CMARC asks that its additional Calling and Tactical channel sites now operating only under STA be ruled eligible for Nextel-compensated reconfiguration.

Respectfully submitted,

CMARC COUNTIES

By \_\_\_\_\_  
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September 13, 2007  
 County

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### Certificate of Service

The foregoing Petition for Waiver has been served electronically today upon:

david.furth@fcc.gov  
[Lantagne, Stacey M.](#)

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<sup>5</sup> Letter of February 12, 2007 from David L. Furth of the Public Safety & Homeland Security Bureau to James B. Goldstein of Nextel, 2.

[TAmidiation@ssd.com](mailto:TAmidiation@ssd.com)

September 13, 2007

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James R. Hobson