

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

In the Matter of)
)
State of Indiana)
) WT 02-55
and)
)
Nextel Communications, Inc.)

To: The Commissioners

**STATE OF INDIANA
REPLY**

The State of Indiana, by and through counsel, and in accord with Section 1.115 of the Commission's Rules hereby submits its Reply to Nextel's Opposition to the State's Application For Review of the *Memorandum Opinion and Order on Reconsideration* adopted by the Public Safety and Homeland Security Bureau in the above captioned matter, released on April 4, 2011 (*Reconsideration Order*) and states the following:

I. Licensing Costs: Despite the claims made by Nextel in its Opposition, its actions by contract belie the claims made in the Opposition. Within its Opposition, Nextel claims that the cost of preparing license applications is not relevant and that the costs associated with the work are to be determined on a per call sign basis. However, on May 9, 2011, the parties entered into Amendment No. 1 to the FRA which clearly states that the parties agree that the cost for performing the services is determined on a per application, not per call sign basis. The relevant page is attached hereto and shows at Task 3 that Nextel has agreed to pay "FCC Form 601 (\$ per application) (154 @ \$335.00/unit) = \$51,590.00". Accordingly, the issue is no longer in dispute as the State accepts this

pricing model, Nextel has agreed to pay this amount, and the Transition Administrator has approved the pricing model.

Having rendered the matter no longer in dispute and having agreed by contract to pay the requested \$335 per application, the Commission should summarily dismiss Nextel's Opposition to this issue. The State will fully expect that Nextel will perform in accord with the terms of the legally binding Amendment No. 1, which amendment was drafted by Nextel with full knowledge of the matter pending before the Commission.

For the foregoing reasons and good cause shown, the State of Indiana requests that the Commission render a decision that is consistent with the actions of Nextel in its drafting and entrance into Amendment No. 1, i.e. that the price for licensing work is \$335 per application.

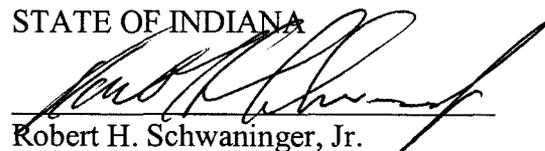
II. First Touch Costs: As always, Nextel's Opposition seeks to alter the terms of the FRA to fit its agenda. In its Opposition, Nextel now tries to add language that simply does not exist within the agreement as to whether the milestones shown at Schedule C apply to "new adds" or existing subscriber units. There is no language within the Opposition that makes this distinction. There is no additional line item in the milestones that separate the subscriber units into two distinct groups. In sum, the language of the FRA simply does not support any such interpretation. Despite the lengthy explanation provided by Nextel's pejorative references to the State's position, the fact remains that the language in the FRA is plain that the commencement of the treatment of the subscriber units was not scheduled, by mutual agreement of the parties, until 30 days following the parties' entrance into the FRA. If Nextel meant for the language to be different within the FRA, it could have drafted such language for inclusion in the FRA. It did not and its secretly held position

does not create a logical basis for its bald attempt to improve its position in violation of law. Nor should Nextel be allowed to self-interpret its agreements after the fact in ways that are fully contradicted by the plain language of its FRAs. Accordingly, the State respectfully requests that the Commission accept that the plain terms of the FRA are appropriate to bind the parties, without regard to whether Nextel will receive credit as against any obligation it has to the U.S. Treasury.

III. Conclusion: The State of Indiana entered into the FRA and the Amendment No. 1 in good faith and in full reliance upon the terms and conditions therein. All the State of Indiana has requested of Nextel and the Commission is to act in accord with the terms and conditions within the FRA and Amendment No. 1, without addition, subtraction or modification to suit Nextel's singular agenda that has no basis in those agreements. Absent such a finding by the Commission, all licensees will be left to wonder whether the rebanding agreements are ever binding on Nextel, or whether Nextel will always have available to it the ability to complain to the Commission that the plain language and binding terms of the FRA are little more than a chimera.

Respectfully submitted,

STATE OF INDIANA



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<p>\$205.00 /hr = \$9,225.00)</p> <ul style="list-style-type: none"> • Administrative (6hrs @ \$35.00 /hr = \$210.00) <p>Task 3 – FCC Licensing</p> <ul style="list-style-type: none"> • FCC Form 601 (\$ Per application) (154 @ \$335.00 /unit = \$51,590.00) <p>Task 6 - System Certification/FRA Reconciliation Process</p> <ul style="list-style-type: none"> • Senior Project Manager (60hrs @ \$205.00 /hr = \$12,300.00) • Administrative (120hrs @ \$35.00 /hr = \$4,200.00) <p>Task 4 - IPSC Trunked, Mutual Aid, and RDLAP Reprogramming FNE Transition (Subcontractor Motorola) Professional Services</p> <ul style="list-style-type: none"> • PM - Project Manager (154hrs @ \$190.00 /hr = \$29,260.00) • SE - System Engineer (213hrs @ \$190.00 /hr = \$40,470.00) • ST - System Technologist (96hrs @ \$190.00 /hr = \$18,240.00) • TE - Travel Expenses (1 @ \$29,614.00 /unit = \$29,614.00) 		
<p>V. Contracts and Legal Costs</p> <ul style="list-style-type: none"> • Attorney (25hrs @ \$81.84 /hr = \$2,046.00) 	<p>(Incumbent) Indiana, State</p>	<p>\$2,046.00</p>
<ul style="list-style-type: none"> • Attorney (100hrs @ \$400.00 /hr = \$40,000.00) • Disbursements (1 @ \$6,000.00 /unit = \$6,000.00) • Contingency (1 @ \$2,300.00 /unit = \$2,300.00) • Additional Legal Fees (100hrs @ \$400.00 /hr = \$40,000.00) • Additional Legal Fees (10hrs @ \$95.00 /hr = \$950.00) • Additional Legal Fees for Closing (80hrs @ \$400.00 /hr = \$32,000.00) 	<p>(Vendor) Schwaninger & Associates</p>	<p>\$122,010.00</p>

Certificate of Service

I, Robert H. Schwaninger, Jr., certify that on the 31st Day of May, 2011, the foregoing Reply to Opposition to Application For Review was sent electronically to the following person.

Laura H. Phillips
Drinker Biddle & Reath, LLP
laura.phillips@dbr.com

A handwritten signature in black ink, appearing to read "Robert H. Schwaninger, Jr.", written over a horizontal line.