(b) Spectrum Block F1 consists of channels 236-260.

6. Paragraphs (g) and (h) of Section 90.617 are amended to clarify when public safety and CII licensees will have exclusive access to channels vacated by ESMR licensees or licensees relocating to the Guard Band.

§ 90.617 Frequencies in the 809.750-824/854.750-869 MHz, and 896-901/935-940 MHz bands available for trunked, conventional or cellular system use in non-border areas.

* * * * *

(g) In a given 800 MHz NPSPAC region, channels below 470 listed in Tables 2 and 4B which are vacated by an ESMR licensee and remain vacant after band reconfiguration will be available as follows:

(1) only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) five years after the release of a public notice announcing the completion of band reconfiguration in that region, these channels revert back to their original pool categories.

(h) In a given 800 MHz NPSPAC region, channels below 470 listed in Tables 2 and 4B which are vacated by a licensee relocating to channels 511-550 and remain vacant after band reconfiguration will be available as follows:

(1) only to eligible applicants in the Public Safety Category until three years after the release of a public notice announcing the completion of band reconfiguration in that region;

(2) only to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories from three to five years after the release of a public notice announcing the completion of band reconfiguration in that region;

(3) five years after the release of a public notice announcing the completion of band reconfiguration in that region, these channels revert back to their original pool categories.

* * * * *

7. Paragraph (b) of Section 90.621 is amended to include Spectrum Block F1 which will now remain intact after band reconfiguration.

§ 90.621 Selection and assignment of frequencies.

* * * * *

(b) Stations authorized on frequencies listed in this subpart, except for those stations authorized pursuant to paragraph (g) of this section and EA-based and MTA-based SMR systems, will be assigned frequencies solely on the basis of fixed distance separation criteria. The separation between co-channel systems will be a minimum of 113 km (70 mi) with one exception. For incumbent

licensees in Channel Blocks F1 through V, that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour (see §90.693), the separation between co-channel systems will be a minimum of 173 km (107 mi). The following exceptions to these separations shall apply:

(1) Except as indicated in paragraph (b)(4) of this section, no station in Channel Blocks A through V shall be less than 169 km (105 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California). Except as indicated in paragraph (b)(4) of this section, no incumbent licensee in Channel Blocks F1 through V that has received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall be less than 229 km (142 mi) distant from a co-channel station that has been granted channel exclusivity and authorized 1 kW ERP on any of the following mountaintop sites: Santiago Peak, Sierra Peak, Mount Lukens, Mount Wilson (California).

* * * * *

(3) Except as indicated in paragraph (b)(4) of this section, stations in Channel Blocks A through V that have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 169 km (105 mi). Except as indicated in paragraph (b)(4) of this section, incumbent licensees in Channel Blocks F1 through V that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour, have been granted channel exclusivity and are located in the State of Washington at the locations listed below shall be separated from co-channel stations by a minimum of 229 km (142 mi). Locations within one mile of the geographical coordinates listed in the table below will be considered to be at that site.

* * * * *

8. A new paragraph (b)(6) is added to Section 90.676

§ 90.676 Transition administrator for reconfiguration of the 806-824/851-869 MHz band in order to separate cellular systems from non-cellular systems.

* * * * *

(b) * * *

(6) Notify the Commission when band reconfiguration is complete in each 800 MHz NPSPAC Region and identify which vacant channels are exclusively available to eligible applicants in the Public Safety or Critical Infrastructure Industry Categories as set forth in §§ 90.615(a), (b) and §§ 90.617(g), (h).

9. Paragraph (b) of Section 90.685 is amended to include Spectrum Block F1 which will now remain intact after band reconfiguration.

§ 90.685 Authorization, construction and implementation of EA licenses.

* * * * *

(b) EA licensees in the 809–824/854–869 MHz band must, within three years of the grant of their initial license, construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its EA-based service area. Further, each EA licensee must provide coverage to at least two-thirds of the population of the EA-based service area within five years of the grant of their initial license. Alternatively, EA licensees in Channel Blocks F1 through V in the 809–824/854–869 MHz band must provide substantial service to their markets within five years of the grant of their initial license. Substantial service shall be defined as: "Service which is sound, favorable, and substantially above a level of mediocre service."

* * * * *

10. Paragraphs (c), and (d)(2) of Section 90.693 are amended to include Spectrum Block F1 which will now remain intact after band reconfiguration.

§ 90.693 Grandfathering provisions for incumbent licensees.

* * * * *

(c) *Special provisions for Spectrum Blocks F1 through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour shall have their service area defined by their originally-licensed 36 dBμV/m field strength contour and their interference contour shall be defined as their originally-licensed 18 dBμV/m field strength contour. The "originally-licensed" contour shall be calculated using the maximum ERP and the actual HAAT along each radial. Incumbent licensees seeking to utilize an 18 dBμV/m signal strength interference contour shall first seek to obtain the consent of affected co-channel incumbents. When the consent of a co-channel licensee is withheld, an incumbent licensee may submit to any certified frequency coordinator an engineering study showing that interference will not occur, together with proof that the incumbent licensee has sought consent. Incumbent licensees are permitted to add, remove or modify transmitter sites within their original 18 dBμV/m field strength contour without prior notification to the Commission so long as their original 18 dBμV/m field strength contour is not expanded and the station complies with the Commission's short-spacing criteria in §§90.621(b)(4) through 90.621(b)(6). Incumbent licensee protection extends only to its 36 dBμV/m signal strength contour. Pursuant to the minor modification notification procedure set forth in 1.947(b), the incumbent licensee must notify the Commission within 30 days of any changes in technical parameters or additional stations constructed that fall within the short-spacing criteria. See 47 CFR 90.621(b).

* * * * *

(d) * * *

(2) *Special Provisions for Spectrum Blocks F1 through V.* Incumbent licensees that have received the consent of all affected parties or a certified frequency coordinator to utilize an 18 dBμV/m signal strength interference contour operating at multiple sites may, after grant of EA licenses has been completed, exchange multiple site licenses for a single license. This single site license will authorize operations throughout the contiguous and overlapping 36 dBμV/m field strength contours of the multiple sites. Incumbents exercising this license exchange option must submit specific information on Form 601 for each of their external base sites after the close of the 800 SMR auction. The incumbent's geographic license area is defined by the contiguous and overlapping 18 dBμV/m contours of its constructed and operational external base stations and interior sites that are constructed within the construction period applicable to the incumbent. Once

the geographic license is issued, facilities that are added within an incumbent's existing footprint and that are not subject to prior approval by the Commission will not be subject to construction requirements.

* * * * *

APPENDIX B

ILLUSTRATIVE FORM OF LETTER OF CREDIT

[Subject to Issuing Bank Requirements]

No. _____

[Date of Issuance]

[Trustee]

[Address]

Ladies and Gentlemen:

We hereby establish, at the request and for the account of Nextel Communications, Inc., in your favor, as required under the [Report and Order and Fifth Report and Order and Fourth Memorandum Opinion and Order, and Order dated as of _____, 2004] issued by the Federal Communications Commission ("FCC") in the matter of Improving Public Safety Communications in the 800 MHz Band (the "Order"), our Irrevocable Letter of Credit No. _____, in the amount of [NOTE: the initial aggregate amount of all letters of credit shall add to $2,500,000,000 (Two Billion Five Hundred Million United States Dollars)], expiring at the close of banking business at our office described in the following paragraph, on [the date which is five years from the date of issuance/ or the date which is one year from the date of issuance, provided the Issuing Bank includes an evergreen clause that provides for automatic renewal unless the Issuing Bank gives notice of non-renewal to the Trustee, with a copy to the FCC, at least sixty days but not more than ninety days prior to the expiry thereof], or such earlier date as the Letter of Credit is terminated by the Trustee (the "Expiration Date"). Capitalized terms used herein but not defined herein shall have the meanings accorded such terms in the Order.

Funds under this Letter of Credit are available to you against your draft in the form attached hereto as Annex A, drawn on our office described below, and referring thereon to the number of this Letter of Credit, accompanied by your written and completed certificate signed by you substantially in the form of Annex B-1 attached hereto and, if applicable, the Transition Administrator's written and completed certificate signed by the Transition Administrator substantially in the form of Annex B-2 attached hereto. Such draft and certificates shall be dated the date of presentation or an earlier date, which presentation shall be made at our office located at [BANK ADDRESS] and shall be effected either by personal delivery or delivery by a nationally recognized overnight delivery service. We hereby commit and agree to accept such presentation at such office, and if such presentation of documents appears on its face to comply with the terms and conditions of this Letter of Credit, on or prior to the Expiration Date, we will honor the same not later than the first banking day after presentation thereof in accordance with your payment instructions. Payment under this Letter of Credit shall be made by [check/wire transfer of Federal Reserve Bank of New York funds] to the payee and for the account you designate, in accordance with the instructions set forth in a draft presented in connection with a draw under this Letter of Credit.

Partial drawings are permitted under this Letter of Credit, and the amount of this Letter of Credit shall be reduced by each such partial draw hereunder.

This Letter of Credit shall be subject to automatic amendment by a decrease in the amount available hereunder to the amount specified in a Transition Administrator's certificate purportedly signed by the Transition administrator or, if not an individual, by two authorized representatives of the Transition Administrator, and countersigned by an authorized signatory of the FCC in the form attached as Annex C, which amendment shall automatically become effective upon receipt of such certificate.

This Letter of Credit shall be canceled and terminated upon receipt by us of the Transition Administrator's certificate purportedly signed by the Transition Administrator or, if not an individual, by two authorized representatives of the Transition Administrator, and in either case countersigned by an authorized signatory of the FCC in the form attached as Annex D.

This Letter of Credit is not transferable or assignable in whole or in part, except that this Letter of Credit may be assigned or transferred to any successor trustee succeeding you upon **[insert Issuing Bank's standard practice language, such as language regarding requirements for timely notification and supplemental documentation.]**

This Letter of Credit sets forth in full the undertaking of the Issuer, and such undertaking shall not in any way be modified, amended, amplified or limited by reference to any document, instrument or agreement referred to herein, except only the certificates and the drafts referred to herein and the ISP (as defined below); and any such reference shall not be deemed to incorporate herein by reference any document, instrument or agreement except for such certificates and such drafts and the ISP.

This Letter of Credit shall be subject to, governed by, and construed in accordance with, the International Standby Practices 1998, International Chamber of Commerce Publication No. 590 (the "ISP"), which is incorporated into the text of this Letter of Credit by this reference, and, to the extent not inconsistent therewith, the laws of the State of New York, including the Uniform Commercial Code as in effect in the State of New York. Communications with respect to this Letter of Credit shall be addressed to us at our address set forth below, specifically referring to the number of this Letter of Credit.

[NAME OF BANK]

[BANK SIGNATURE]

APPENDIX B
ANNEX A

Form of Draft

To: [Issuing Bank]

DRAWN ON LETTER OF CREDIT No: _____

AT SIGHT

PAY TO THE ORDER OF _____[insert name of Trustee] BY [CHECK/WIRE TRANSFER OF FEDERAL RESERVE BANK OF NEW YORK]

FUNDS TO: _____

_____

_____

Account (_____)

AS 800 MHz RELOCATION and TRANSITION PAYMENTS

[AMOUNT IN WORDS] DOLLARS AND NO/CENTS

$[AMOUNT IN NUMBERS]

[TRUSTEE]

By: _____

APPENDIX B
ANNEX B-1

Draw Certificate

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the [Trustee] and (b) [paragraph 332] of the [Report and Order and Fifth Report and Order and Fourth Memorandum Opinion and Order, and Order] dated as of _____, 2004] issued by the Federal Communications Commission in the matter of Improving Public Safety Communications in the 800 MHz Band (the "Order"), pursuant to which Nextel Communications, Inc. (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the Order), that:

[i. The Transition Administrator has certified to the Trustee that pursuant to the Order, a payment in the amount of $_____ is appropriate to be made to the Trustee to hold in trust and disburse to _____ to satisfy a payment obligation of the LC provider, and further certifying that the Transition Administrator instructs the Trustee to make such payment via draw on Letter of Credit No. _____; and

ii. A copy of the signed certification referred to in clause (i) above and in the form of Annex B-2 to Letter of Credit No. _____, purportedly signed by or on behalf of the Transition Administrator is attached hereto.]

OR

[The FCC has certified to the Trustee that pursuant to paragraph 184 of the Order and the Commission's finding that Nextel is in material breach of the terms of the Order, the Trustee is entitled to receive payment of $_____, to hold in trust and disburse in accordance with the terms of the Order.

OR

[The FCC has certified to the Trustee that pursuant to paragraph 185 of the Order, the Commission has approved the use of $_____ of letter of credit proceeds to compensate [the Transition Administrator/the Trustee] for their services.]

OR

[The FCC has certified to the Trustee that given notice of non-renewal of Letter of Credit No. _____ and failure of the account party to obtain a satisfactory replacement thereof, pursuant to the Order, the Trustee is entitled to receive payment of $_____ representing the remaining amount of Letter of Credit No. _____, to hold in trust and disburse pursuant to the Order.]

OR

[The FCC has certified to the Trustee that pursuant to [paragraph 186 of the Order, the Commission has determined that $_____ of letter of credit proceeds be drawn for payment to the United States Treasury/pursuant to paragraph 330 of the Order,

Nextel has elected to apply $_____ of letter of credit proceeds for payment to the United States Treasury.]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of [specify time of day] on the ____ day of _____, 200__.

[TRUSTEE]

By: _____
Name:
Title:

APPENDIX B
ANNEX B-2

Draw Certificate of Transition Administrator

The undersigned hereby certifies to the[Trustee] (the "Trustee"), with reference to [paragraph 332 of the [Report and Order and Fifth Report and Order and Fourth Memorandum Opinion and Order, and Order dated as of _____, 2004] issued by the Federal Communications Commission in the matter of Improving Public Safety Communications in the 800 MHz Band (the "Order"), pursuant to which Nextel Communications, Inc. (the "LC Provider") has provided the Letter of Credit (all capitalized terms used herein but not defined herein having the meaning stated in the Order), that:

i. _____[Name of licensee] is an 800 MHz licensee that has obtained a quotation for [estimated expenses/final expenses] in the amount of $ _____ in connection with transition from _____ [specify spectrum] to _____ [specify spectrum]. On _____[date] (the "Obligation Date"), this quotation was [deemed reasonable by the Transition Administrator/deemed final after application of the dispute resolution mechanisms in the Order], and notification thereof was made to the LC Provider for payment. The period of forty (40) days has expired since the Obligation Date, without evidence of payment of such obligation by the LC Provider. The Transition Administrator has determined no good causes existed for the LC Provider to fail to honor such payment obligation.

ii. The undersigned has established and will maintain for [specify time period] a file containing documents and records that demonstrate with reasonable specificity according to industry standards and [financial standards for expense documentation / other standards or standards contained in the Order] conclusions stated in its certification in clause (i) above, and such file shall be available during regular business hours for inspection or audit by the auditors specified in the tri-party agreement between the Transition Administrator, the Letter of Credit Trustee and Nextel Telecom dealing with, ***inter alia***, the subject matter hereof.

Based on the foregoing, the Transition Administrator hereby directs the Trustee to draw on the Letter of Credit in the amount and for the benefit of the party specified in clause (i) above, and to make payment of the above amount (from the proceeds of the Letter of Credit) by _____[INSERT DATE seventy (70) days after the Obligation Date] to _____ [name of licensee] payable as follows: [Insert Payment Instructions for licensee/or indicate payment instructions to follow in separate documentation]

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the ____ day of _____, 200__.

[TRANSITION ADMINISTRATOR]

[TWO SIGNATURES REQUIRED IF TRANSITION ADMINISTRATOR IS AN ENTITY; ONE SIGNATURE REQUIRED IF TRANSITION ADMINISTRATOR IS A NATURAL PERSON]

By: _____
Name:
Title:

[By: _____]
Name:
Title:

APPENDIX B
ANNEX C

Certificate Regarding Reduction of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the [trustee], and (b) [paragraph 332] of the [Report and Order and Fifth Report and Order and Fourth Memorandum Opinion and Order, and Order] dated as of _____, 2004] issued by the Federal Communications Commission ("FCC") in the matter of Improving Public Safety Communications in the 800 MHz Band (the "Order"), (all capitalized terms used herein but not defined herein having the meaning stated or described in the Order), that:

(1) the undersigned Transition Administrator has documented, pursuant to the Order, that $_____ [amount] of payments have been made directly by Nextel Communications, Inc. ("Obligor") with respect to Obligor's obligations under the Order to pay for the reconfiguration of the 800 MHz band (the "Reconfiguration Obligations"), and that such amount has not yet been applied towards a reduction of any letter of credit supporting the Reconfiguration Obligations; and (2) the amount of the Letter of Credit shall be reduced to the amount equal to $_____ [_____Dollars];and

(3) after applying the reduction referred to in clause (2) above, the aggregate undrawn face amount of all letters of credit supporting the Reconfiguration Obligations will not be less than $850 million.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the ____ day of _____, 200_.

[TRANSITION ADMINISTRATOR]

[TWO SIGNATURES REQUIRED IF TRANSITION ADMINISTRATOR IS AN ENTITY; ONE SIGNATURE REQUIRED IF TRANSITION ADMINISTRATOR IS A NATURAL PERSON]

By: _____
Name:
Title:

[By: _____]
Name:
Title:

COUNTERSIGNED:

Federal Communications Commission

By: _____
Name:
Its Authorized Signatory

APPENDIX B
ANNEX D

Certificate Regarding Termination of Letter of Credit

The undersigned hereby certifies to [Name of Bank] (the "Bank"), with reference to (a) Irrevocable Standby Letter of Credit No. [Number] (the "Letter of Credit") issued by the Bank in favor of the [trustee], and (b) [paragraph 332] of the [Report and Order and Fifth Report and Order and Fourth Memorandum Opinion and Order, and Order] dated as of _____, 2004] issued by the Federal Communications Commission ("FCC") in the matter of Improving Public Safety Communications in the 800 MHz Band (the "Order"), (all capitalized terms used herein but not defined herein having the meaning stated or described in the Order), that:

(1) [include one of the following clauses, as applicable]

(a) The Order has been fulfilled in accordance with the provisions thereof;

(b) Nextel Communications, Inc. has paid to the appropriate parties all amounts it is required to pay pursuant to the terms of the Order; or

(c) Nextel Communications, Inc. has provided a replacement letter of credit satisfactory to the FCC.

(2) By reason of the event or circumstance described in paragraph (1) of this certificate, and effective upon the receipt by the Bank of this certificate (countersigned as set forth below), the Letter of Credit is terminated.

IN WITNESS WHEREOF, the undersigned has executed this certificate as of the ____ day of _____, 200_.

[TRANSITION ADMINISTRATOR]

[TWO SIGNATURES REQUIRED IF TRANSITION ADMINISTRATOR IS AN ENTITY; ONE SIGNATURE REQUIRED IF TRANSITION ADMINISTRATOR IS A NATURAL PERSON]

By: _____
Name:
Title:

[By: _____]
Name:
Title:

COUNTERSIGNED:

Federal Communications Commission

By: _____
Name:
Its Authorized Signatory

APPENDIX B
ANNEX E

Terms for Documents Establishing the 800 MHz Relocation Trust and the Relationship between Nextel and the Letter of Credit Trustee (the "Trustee")

Basic Terms related to the Establishment of the 800 MHz Relocation Trust. The Letter of Credit trustee (the "Trustee") shall incorporate language to fully effectuate the following summary terms into each item of documentation establishing (i) the trust to receive proceeds of the letter of credit contemplated by the Report and Order (the "800 MHz Relocation Trust") and (ii) the relationship between Nextel and the Trustee of said trust with respect thereto. Each such document shall be subject to Commission review and approval prior to execution.

- acknowledgment of purpose to effect the 800 MHz transition in support of public safety, and agreement to work in good faith with the other parties pursuant to the Report and Order
- representation and warranty by the Trustee that such entity (not an individual) meets the qualifications set forth in the Report and Order (e.g., independence and absence of conflicts of interest)
- designation of the Commission as an intended third-party beneficiary; no other party to be an intended third-party beneficiary
- definition of completion of the reconfiguration
- term—five years, or until the 800 MHz transition is complete, whichever is earlier
- successor Trustee requires approval of the Commission
- replacement of Trustee at Nextel's request—define "cause" and require showing of cause and 14 days advance notice to the parties and to the Commission
- election by Trustee to withdraw from arrangement—requires 14 days advance notice to the parties and to the Commission; may require ongoing monetary obligation or duty of Trustee, as applicable (for example, to support transition)
- change of control of Trustee—requires approval of Nextel (so long as Nextel is not then in Default under the Report and Order) and the Commission, which approval shall not be unreasonably withheld but which may be conditional
- notice procedure - specifies which notices shall be copied to the Commission

Terms Specific to the Establishment of the 800 MHz Relocation Trust. At the option of the Trustee, the following points may be covered in one or more agreements (for example, there may be a separate fee letter).

- corpus of trust to be proceeds of one or more LOCs issued for the account of Nextel pursuant to the Report and Order
- Trustee agrees to hold money as fiduciary for 800 MHz licensees and for the Commission; fiduciary obligations fulfilled via handling of funds according to standards applied to corporate trustees, and via disbursement of funds pursuant to instructions issued by the Transition Administrator or the Commission. The Trustee should be a fiduciary of the Transition Administrator
- specifies record-keeping obligations pursuant to the Report and Order
- specifies reporting obligations pursuant to the Report and Order
- specifies audit and inspection rights of Nextel and the Commission, including allocation of costs thereof
- specifies details concerning fees to be paid by Nextel to the Trustee
- specifies that the trust agreement may not be amended, modified or rescinded without approval of the Commission
- specifies that the corpus of the trust(s) shall be forfeit to the United States Treasury to the extent that Nextel fails to make any of the payments owed to the Treasury by the date specified in the Commission's Report and Order
- specifies additional terms of a customary nature for agreements establishing a corporate trust

Terms for Tri-Party Agreement among Nextel, the Transition Administrator and the Letter of Credit Trustee (the "Trustee")

Basic Terms. The Tri-Party Agreement among Nextel, the Transition Administrator (sometimes referred to herein as the "TA") and the Trustee shall incorporate language to fully effectuate the following summary terms and shall be subject to Commission review and approval prior to execution:

- acknowledgment of purpose to effect the 800 MHz transition in support of public safety, and agreement to work in good faith with the other parties pursuant to the Report and Order
- representation and warranty by each of the Transition Administrator and the Trustee that such person (individual or entity) meets the qualifications set forth in the Report and Order (e.g., independence and absence of conflicts of interest)
- designation of the Commission as an intended third-party beneficiary; no other party to be an intended third-party beneficiary
- definition of completion of the reconfiguration
- term—five years, or until the 800 MHz transition is complete, whichever is earlier
- successor Transition Administrator/Trustee requires approval of the Commission
- replacement of Transition Administrator/Trustee at Nextel's request—define "cause" and require showing of cause and 14 days advance notice to the parties and to the Commission
- election by Transition Administrator/Trustee to withdraw from arrangement—requires 14 days advance notice to the parties and to the Commission; may require ongoing monetary obligation or duty of Transition Administrator/Trustee, as applicable (for example, to support transition)
- change of control of Transition Administrator/Trustee—requires approval of Nextel (so long as Nextel is not then in Default under the Report and Order) and the Commission, which approval shall not be unreasonably withheld but which may be conditional
- replacement/successor Transition Administrator to be selected by the search committee pursuant to this *Report and Order*
- notice procedure - specifies which notices shall be copied to the Commission
- Note: language to be harmonized as appropriate if the Transition Administrator is a natural person rather than an entity

- specifies the rights of Nextel vis-à-vis the relocation process absent an event of default by Nextel under the Report and Order
- during the continuance of an event of default by Nextel under the Report and Order, specifies the remedies of the TA and the Trustee (i.e., the consequences to Nextel, such as Nextel losing veto rights concerning a project's cost)
- specifies record-keeping and reporting obligations of each party pursuant to the Report and Order
- specifies audit and inspection rights of Nextel and the Commission, including allocation of costs thereof
- specifies details concerning fees and expenses to be paid by Nextel to the TA and to the Trustee; fees and expenses of the Transition Administrator to conform to notification of Search Committee pursuant to the *Report and Order*
- specifies how the TA and Trustee may be paid in the event of a default by Nextel in the payment of fees to the TA and/or the Trustee -- including a mechanism whereby relief may be sought from the Commission authorizing the proceeds of the LOC be applied against such fees
- specifies that the Tri-Party Agreement may not be amended, modified or rescinded without approval of the Commission
- specifies an order of precedence—that the Tri-Party Agreement would govern in the event of a conflict between the terms of the Tri-Party Agreement and the terms of a bilateral agreement among two of the parties
- specifies a procedure and criteria for Transition Administrator to certify that the 800 MHz relocation is complete, which certification shall allow TA, with Commission's concurrence to seek termination of the Letter(s) of Credit. Termination will also trigger early termination of the Trust and Tri-Party Agreement
- specifies items for which the Transition Administrator may properly seek draws under the Letter of Credit, consistent with the *Report and Order*
- specifies items for which the Transition Administrator may not seek draws under the LOC (such as reimbursement of UTAM, relocation of BAS incumbents) consistent with the *Report and Order*
- specifies that the corpus of the trust(s) shall be forfeit to the U.S. Treasury in the event that Nextel fails to make any of the payments to the Treasury specified in the Commission's *Report and Order*
- specifies responsibilities and guidelines for record-keeping, accounting and dispute resolution related to calculation of the offset described in the *Report and Order*.
- specifies responsibilities and timeliness related to certification of project completion by the Transition Administrator and rendering of the final accounting required in the Report and Order.

Terms Specific to Tri-Party Agreement

- tasks the TA with working with the Trustee to set up the trust
- tasks the TA with designing the payment system subject to reasonable approval of Nextel and the Trustee (up front payments vs. progress payments; timing and logistics of payments in conjunction with the LOC system [for example, clearly defining when Nextel's payment obligation arises, logistics for transmitting payment requests to Nextel, etc.]; how to handle true-ups [either a payment made in excess of an estimate, or a refund collected if the estimate exceeded actual cost]; logistics for obtaining payment approvals, including the approval of Nextel, and for resolving disputes related to payment amounts)
- states the Transition Administrator will not handle any project funds; specifies procedures for the TA to turn over funds it may receive in connection with the project to the Trustee
- specifies how the Trustee will dispose of any refunds it may receive during or after the relocation process
- specifies the Trustee will follow the details of the payment system devised by the TA pursuant to the Tri-Party Agreement
- tasks the TA with developing a system to ensure vendors are not filing mechanics liens or equipment financing liens against the licensees in connection with the transition (or, in the alternative, tracking the release of liens in connection with payments to vendors)
- tasks the TA, as the project manager, with creating a standardized bid package for use by the municipality licensees—including a standardized scope of project, and a standardized documentation package. NOTE: The standardized documentation package could contain the requirement that the vendor obtain a performance bond, which bond would be paid for via the LOC proceeds as part of the cost of the transition. The standardized bid package would be subject to Nextel's reasonable approval.
- tasks the TA with developing standardized bidding procedures for the municipal licensees to follow
- specifies that neither the Trustee nor the Transition Administrator bears the risk that a particular vendor fails to perform, and allocates such risk between Nextel and the licensees—since the municipality/licensees will have control over the award of the contract, it is reasonable they would bear the risk (and where appropriate, the risk could be managed via the performance bond mentioned above)
- specifies additional terms of a customary nature in agreements for management of a project by a third party Project Administrator
- specifies additional terms of a customary nature in agreements for management of payments by a third party Paying Agent (to the extent not covered in the documentation establishing the trust)
- specifies details of dispute resolution mechanisms, including time frames and escalation procedures

SEPARATE STATEMENT OF COMMISSIONER
MICHAEL J. COPPS
Concurring

RE: Improving Public Safety Communications in the 800 MHz Band (Supplemental Order and Order on Reconsideration; released December 22, 2004).

In this order the Commission resolves many important issues related to our effort to reduce interference to public safety in the 800 MHz band. I am pleased that we are taking this step and support the result of this order, which moves us significantly closer to the initiation of a successful rebanding process.

I am uncomfortable, however, with the decision to change the valuation of Nextel's spectrum by close to half a billion dollars -- an increase of nearly twenty percent. While I believe that Nextel has demonstrated that its spectrum holdings are different than the assumption we made in the original order, I am concerned that the process that the Commission has used here to determine value has become too imprecise. Given the short time available, I do not believe that the Commission had the capacity to independently pinpoint the exact nature of Nextel's holdings, as we do here but did not do in the previous order. Additionally, if we must reassess the value of Nextel's spectrum, I would have preferred to reassess the MHz/POP multiplier that we employ in light of changes in the marketplace and transactions that occurred after we adopted our first order. Given the magnitude of the valuation at issue, I will therefore concur.

STATEMENT OF
COMMISSIONER JONATHAN S. ADELSTEIN

Re: Improving Public Safety Communications in the 800 MHz Band; Supplemental Order and Order on Reconsideration; WT Docket No. 02-55

Everyone agrees that the top priority of this proceeding has been resolving the 800 MHz interference problem currently experienced by our nation's first responders. In addressing that critical goal, though, one of my next top objectives has been to minimize the impact of our decision on 800 MHz licensees not directly affected or implicated by the interference problem. Over the last decade or so, the 800 MHz band has evolved into one of the premier land mobile radio communications bands and is now the home to thousands of licensees from all sectors of industry and state and local government. I have worked hard to protect the rights of these licensees during this proceeding because it simply is the right thing to do.

In this regard, I am pleased to support the clarifications in this Order addressing the relocation of one group of 800 MHz licensees – those non-Nextel, non-SouthernLINC licensees who hold Economic Area (EA) licensees. We rightly confirm that existing ESMR licensees like AIRPEAK and Airtel have the option to be relocated at Nextel's expense to the ESMR portion of the band (862-869 MHz). We also clarify that site-based licenses used within ESMR systems can be relocated at Nextel's expense to the 862-869 MHz block – even if they are not located within the licensee's EA – provided that the conditions laid out in paragraph 163 of the 800 MHz Report and Order are satisfied. If ESMR licensees think that this standard is too restrictive for certain operational sites in their system, they should file a waiver request detailing why this outcome is not in the public interest.

In the item, we also provide an opportunity to EA licensees who presently do not meet the ESMR definition but are interested in operating an ESMR system in the above 862 MHz band. These licensees can choose to move to the ESMR band and retain the "white space" they currently hold through their EA license provided they are willing to operate a cellular system in the band pursuant to technical rules clarified in this item. In the alternative, these EA licensees can remain in the band below 862 MHz, and operate "high-site" systems. The choice is theirs, and that is the right outcome of this proceeding.

Finally, I very much appreciate the support of my colleagues and the hard work of the Wireless Telecommunications Bureau in providing for the important clarifications in this Order.