

A Partnership Including
Professional Corporations
600 13th Street, N.W.
Washington, D.C. 20005-3096
202-756-8000
Facsimile 202-756-8087
<http://www.mwe.com>

Shirley S. Fujimoto
Attorney at Law
sfujimoto@mwe.com
202-756-8282

Boston
Chicago
Düsseldorf
London
Los Angeles
Miami
Munich
New York
Orange County
Silicon Valley
Washington, D.C.

MCDERMOTT, WILL & EMERY

March 12, 2003

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

Re: Notice of *Ex Parte* Meeting: Improving Public Safety Communications in the
800 MHz Band, WT Docket No. 02-55

Dear Ms. Dortch:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this is to notify you that Shirley S. Fujimoto and Jeffrey L. Sheldon, representing Cinergy Corporation, Consumers Energy Company, Entergy Corporation and Entergy Services, Inc., met with Michael Wilhelm, Karen Franklin, Brian Marengo, and John Evanoff, of the Wireless Telecommunications Bureau, to discuss the issues in the above-referenced docket.

We discussed the positions advanced by these utility companies in their written comments and reply comments in this proceeding, and in particular the severe disruption that would be caused in the 800 MHz band were the FCC to adopt the so-called "Consensus Plan" filed by Nextel and other parties. We pointed out that other proposals have been advanced in the docket that would lead to more immediate mitigation of interference to Public Safety radio systems and that some of these proposals could be adopted whether or not rebanding is adopted.

To the extent the FCC determines that the costs and disruption of rebanding are justified, we noted that such realignment could be accomplished entirely within the 800 MHz band through procedures comparable to those used in the relocations in the 2 GHz PCS band and the upper 200 SMR channels. We noted, by way of example, the suggested rule language included in the appendices to the Supplemental Comments of Cinergy Corporation, filed February 10, 2003, in this docket. These appendices, copies of which are attached hereto, include provisions for proactive measures to prevent interference, strict procedures for resolving interference, and a market-based transition plan that would realign the 800 MHz band in a manner consistent with that of the Consensus Parties but without depending on a "voluntary" and unenforceable funding commitment, an arbitrary limit on funding, or a cumbersome and unlawful delegation of authority to a "relocation coordination committee."

Marlene H. Dortch, Esq.

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We pointed out there is no need to reward Nextel with additional spectrum and that the value of Nextel's spectrum holdings would likely increase by a significant amount even if realignment is confined to the 800 MHz band. We noted a recent estimate by Legg Mason that the value of Nextel's 800 MHz spectrum would increase by \$1.3 Billion, even after deducting its \$850 million "contribution" to incumbent relocation, if Nextel were to receive contiguous nationwide spectrum in the 800 MHz band through realignment. (This information was cited at page 9, n.36, of the February 10, 2003, Comments of Alltel, *et al.* in this proceeding.) We also noted that there is no law or rule that prohibits Nextel, as a publicly traded company, from being subject to an open-ended liability, and in any event, a requirement to relocate incumbent licensees would not create an "open-ended" liability but would, in fact, be no different than the relocation obligation imposed on other licensees (including Nextel) in other licensing proceedings. (This point was further discussed at page 47 of the Supplemental Comments of Cinergy Corporation, filed February 10, 2003).

Pursuant to the Commission's Rules, one copy of this notice is being filed electronically with the Commission. If there are any questions concerning this matter, please let me know.

Very truly yours,

[/s/ Shirley S. Fujimoto](#)

Shirley S. Fujimoto

cc: Michael Wilhelm
Karen Franklin
Brian Marenco
John Evanoff