

ORIGINAL

San Diego  
San Francisco  
Washington, D.C.  
Woodland Hills  
Affiliate Office  
Geneva, Switzerland

Cleveland  
Columbus  
Dallas  
Dayton  
Irvine  
Los Angeles

1801 K Street, N.W., Suite 4WK  
Washington, D.C. 20006-1304

telephone 202.775.7100  
facsimile 202.857.0172

Mark Van Bergh  
Direct Dial: (202) 775-7983  
E-mail: VanBergh@arterhadden.com

April 3, 2003

RECEIVED

APR - 3 2003

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

Ms. Marlene Dortcli  
Secretary  
Federal Communications Commission  
The Portals, TW-A325  
445 Twelfth Street, SW  
Washington, D.C. 20554

Re: Notice of Oral Ex Parte Presentation  
WT Docket No. 02-55

Dear Ms. Dortcli:

Pursuant to Section 1.1206(b)(2) of the Commission's Rules, this notice is provided to confirm that on Wednesday, April 2, 2003, William K. Keane and undersigned counsel to the National Association of Manufacturers (NAM) and MRFAC, Inc., Larry Fineran of the NAM, James Pakla of MRFAC, and the following representatives of NAMIMRFAC member companies met with Commissioner Jonathan S. Adelstein and his legal advisor, Barry Ohlson, regarding the above-referenced proceeding. The attending NAMIMRFAC member company representatives were Marvin McKinley, Dan Fiest, Stan Jenkins, David Hogge, Patrick Calpin, Frank Weaver and Clark Hart.

During the meeting NAM/MRFAC's representatives discussed their interest in and the issues raised in the Docket 02-55 proceeding. In particular, they addressed matters raised in NAM/MRFAC's Comments filed February 10, 2003, and the matters set forth in the attached document, a copy of which was provided to Commissioner Adelstein and Mr. Ohlson.

An original and one copy of this letter are submitted for inclusion in the above-referenced proceeding.

Sincerely,



Mark Van Bergh  
Counsel to NAMIMRFAC, Inc.

No. of Copies rec'd 011  
LVA:ALGDE

**ARTER & HADDEN<sub>LLP</sub>**

Ms. Marlene Dortch

April 3, 2003

Page 2

Enclosure

cc (w/encl.): Commissioner Jonathan S. Adelstein  
Barry Ohlson

## 800 MHz REALIGNMENT

**Background** - The Commission has been presented with several compelling proposals for dealing with 800 MHz interference created by Nextel and other cellular systems. These include proposals from the utility community, cellular carriers, and a coalition which includes Nextel, public safety interests, and a number of business sectors, among others.

**The Issue** - How best to correct 800 MHz interference in a way that: (1) protects incumbent licensees; and (2) minimizes transaction costs and regulatory complications.

**The Solution** - In the absence of Congressional action authorizing a 700 MHz solution, a re-banding proposal which separates cellular from non-cellular systems is the best approach, combined with strengthened “Best Practices”.

**Implementation** - The Commission should modify its existing 800 MHz relocation Rule (90.699) as follows:

- Require mandatory negotiations commencing on effective date of Report and Order with end dates keyed to relocation date for each Region
- Retain requirement that new facilities be comparable to replaced facilities
- Direct Nextel (which has relocated nearly 1,000 800 MHz licensees already) to complete negotiations and effect relocations in each Region by the applicable date certain
- Condition availability of any new spectrum on Nextel completing relocations
- Retain the existing Rule’s provision for involuntary relocation in the absence of agreement
- Require resort to alternative dispute resolution on expedited basis in the event of disagreements over comparability and/or reimbursement
- Create expedited process for Commission review of any unresolved disputes
- Require that Nextel be responsible for relocation costs of incumbents users
  - B/ILT licensees needing to relocate from proposed Guard Band
  - Five years operating costs per current Rule 90.699

## **The Coalition Proposal Is Flawed**

- Would create a very complex, and wholly unnecessary regime to implement retuning and reimbursement process -- an untested apparatus with radically restricted Commission oversight
- Improperly limits reimbursement of operating costs to two years (versus five under current Rule)
- Subjects B/ILT incumbents to disparate treatment compared with public safety and CMRS
  - B/ILT users relegated to the Guard Band which would experience increased interference
  - B/ILT users not allowed to review and approve their own applications
  - Five year set-aside of vacant frequencies for public safety only
  - Reduces the amount of spectrum available for B/ILT use
- Would unlawfully delegate Commission functions to an administrative entity lacking safeguards against discriminatory practices
- Would improperly limit appellate rights of incumbent licensees
- Insists on a form of arbitration inappropriate to the task
- Proposes an application freeze and public safety set-aside that would preclude new or modified B/ILT facilities for years to come
- Questions remain concerning the adequacy of Nextel's funding commitment