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October 27, 2003

Ex Parte

Ms. Marlene H. Dortch, Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: In the Matter of Improving Public Safety Communications
in the 800 MHz Band; WT Docket No. 02-55

Dear Ms. Dortch:

The Commission is considering proposals for reducing harmful interference to public safety operations in the 800 MHz band, including Nextel's "Consensus Plan". Comments filed by public safety entities, electric utilities, CMRS providers, and others have identified serious problems with this Plan. There is extensive data in the record that the Consensus Plan (1) would impose substantial financial and operational burdens on 800 MHz users, (2) would not resolve the interference problems experienced by public safety, (3) cannot be funded with the limited amount offered by Nextel, (4) relies on an unworkable and unenforceable funding commitment, and (5) would result in an unlawful windfall to Nextel, the entity that is responsible for the vast majority of interference in the band. Each of these well-documented problems is reason alone for the Commission to reject the Consensus Plan and, instead, consider other approaches such as that advocated by the 800 MHz Users Coalition.

This ex parte submission supplements the existing record on point (5), by quantifying the huge increase in the value of Nextel's spectrum holdings that it would enjoy if the Consensus Plan were adopted. Kane Reece Associates, a national appraisal firm experienced in wireless industry appraisals, conducted an appraisal of Nextel's proposal. Kane Reece appraised the fair market value of Nextel's current spectrum holdings as well as the value of spectrum that Nextel would acquire under its proposal. A copy of the study is attached. Kane Reece's appraisal concludes that if the Consensus Plan were adopted, **the value of Nextel's spectrum holdings would increase by \$7.2 billion.**

As detailed in the Kane Reece study, while Nextel asserts that it will merely “swap” nearly equivalent amounts of spectrum, the value of the spectrum it would receive is radically greater than the value of what it will turn in. Just as two ten-room houses may be the same size but have very different values depending on how the houses are built and where they are located, the 16 MHz of spectrum that Nextel would receive is far more valuable than the 16 MHz it would turn in.

The spectrum that Nextel would give up is seriously impaired, while the spectrum it proposes to get is not. Much of the spectrum for which Nextel holds licenses in the 800 and 900 MHz bands is encumbered and non-contiguous, making it unsuitable for future advanced wireless services. In addition to being encumbered, the 700 MHz guard band spectrum that Nextel proposes to turn in is subject to restrictions designed to protect adjacent public safety systems. FCC rules prohibit that spectrum from being used for cellularized mobile services. In return, Nextel wants a nationwide license for 10 MHz of contiguous, unencumbered spectrum in the 1.9 GHz PCS band and an additional 6 MHz of contiguous, unencumbered spectrum at 800 MHz.

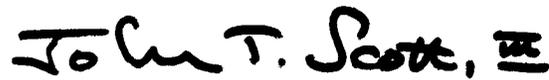
Kane Reece estimates that the fair market value of the spectrum that Nextel proposes it be granted is \$8.45 billion, while the impaired spectrum it would give up is worth \$1.26 billion. Kane Reece thus concludes that **the net gain in spectrum value to Nextel from adoption of the Consensus Plan would be \$7.2 billion.** Taking into account the amount that Nextel has pledged to pay for relocation, which Kane Reece computes has a net present value of \$700 million, the Consensus Plan represents a **windfall to Nextel in the amount of \$6.5 billion.** (Even assuming that the full \$850 million were paid up front, the net gain to Nextel would still be more than \$6.2 billion). The report explains the appraisal methodology that Kane Reece used to reach its conclusions, which it states were prepared in conformity with the Uniform Standards of Professional Appraisal Practice.

Kane Reece also details various reasons why it concludes that its analysis is conservative and thus likely understates the windfall to Nextel. These include the trend toward wideband technologies and high-speed data, which Nextel’s iDEN technology cannot support as efficiently, economy of scale penalties that would impact Nextel more than other carriers, and the use of published year-end 2002 data, which Kane Reece believes marked a low point in spectrum valuations. Kane Reece concludes that the use of current data may create an even greater windfall. Kane Reece also cites numerous analyst reports in support of its assessments.

Nextel knew the limitations of its current spectrum holdings when it acquired licenses for the 700, 800, and 900 MHz bands at auction. It knew that the bands were heavily encumbered and that use of some of the bands was restricted. And it knew that the spectrum was interleaved with spectrum used by public safety and other licensees. It now wants to extricate itself by “trading” spectrum that would in fact drastically improve the value of what it holds – and to get there by bypassing Communications Act requirements that spectrum be auctioned for the highest and best use.

Any giveaway of spectrum would raise major legal and policy concerns. But a giveaway that allows one company to profit by supplanting lower value spectrum with enormously more valuable spectrum would be an affront to the spectrum policies that Congress and the Commission have long followed. As Chairman Powell wrote in his recent letter to Congressman Frank Wolf, Chairman of the House Appropriations' Subcommittee on Commerce, Justice, State and the Judiciary, regarding license assignments in the 12 GHz band, the grant of a significant spectrum windfall to a private entity would clearly not be in the public interest. In contrast, an auction of the 1.9 GHz spectrum that Nextel wishes to acquire would not only ensure that it goes to the entity that values it the most, but it would ensure that American taxpayers reap the benefits of this public resource.

Sincerely,

Handwritten signature of John T. Scott, III in black ink.

John. T. Scott, III
Vice President & Deputy General Counsel

Enclosure

cc: Bryan Tramont
Sheryl Wilkerson
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