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January 15, 2004

John A. Rogovin
General Counsel
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Inquiry Concerning *Ex Parte* Contacts in WT Docket No. 03-217

Dear Mr. Rogovin:

On behalf of Eldorado Communications, LLC ("Eldorado") and NY Telecom, LLC ("NY Telecom"), we write to express concern that publicly-reported contacts between NextWave and the Commission may have given rise to improper *ex parte* contacts in a restricted proceeding.

Eldorado and NY Telecom have jointly petitioned to deny NextWave Personal Communications Inc., NextWave Power Partners, Inc. (collectively, "NextWave") and Cingular Wireless LLC's ("Cingular") applications to assign thirty-four broadband PCS licenses.[1] That proceeding is restricted,[2] and *ex parte* contacts between parties and Commission decision-making personnel are not permitted.[3]

NextWave has, however, recently represented that it has "been working with the FCC . . . to evaluate and negotiate various scenarios with respect to the resolution of

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[1] Eldorado Communications, LLC and NY Telecom, LLC's Petition to Deny, WT Docket No. 03-217 (filed Nov. 5, 2003).

[2] *Cingular Wireless and NextWave Seek FCC Consent for the Full and Partial Assignment of Thirty-Four Broadband Personal Communications Services Licenses,* Public Notice, DA 03-3031 (WTB Oct. 6, 2003).

[3] 47 C.F.R. § 1.1208.

claims between [NextWave] and the FCC."[4] NextWave has also explained that consummation of the NextWave/Cingular transaction (which is contingent on Commission approval of that transaction) will be a "cornerstone" of its expected reorganization plan.[5]

In light of these reported contacts, of which Eldorado and NY Telecom would have been unaware but for press reports,[6] we are concerned about the steps being taken to assure that Commission decision-making personnel have not been, and will not be, influenced by these contacts. This concern is particularly compelling since these contacts come on the heels of what NextWave describes as:

> "thousands of hours of discussions, negotiations and drafting among the Debtors, Cingular, the FCC, the Committee and the prior DIP lender. In fact, part and parcel of the proposed transaction was the FCC term sheet, which governs the disposition and application of the proceeds of the sale vis-à-vis the Debtors and the FCC."[7]

In these circumstances, it is essential that the Commission make a rigorous effort to assure that decision-making personnel do not pre-judge the outcome of the referenced application and are able to reach a decision unaffected by the previous and continuing contacts with NextWave and Cingular.

Consequently, Eldorado and NextWave respectfully request that the Commission identify any safeguards that have been put in place to ensure that contacts between NextWave and the Commission do not concern the pending NextWave/Cingular applications or provide the opportunity to influence decision-making personnel in this restricted proceeding. Eldorado and NY Telecom also respectfully request that they be given prior notice and an opportunity to be present

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[4] Motion Pursuant to Sections 105 and 1121(d) of the Bankruptcy Code for an Order Extending the Debtors' Exclusive Period at ¶14, *In re NextWave Personal Communications*, No. 98 B 21529 (filed Dec. 29, 2003) [hereinafter NextWave Motion].

[5] *Id.* at ¶28.

[6] *See, e.g., Communications Daily* (Jan. 6, 2003).

[7] NextWave Motion at ¶28.

during any future contacts between NextWave representatives and Commission personnel involved in formulating a decision on the NextWave/Cingular applications.

Respectfully submitted,

Henry Goldberg
Counsel to Eldorado and NY Telecom

CERTIFICATE OF SERVICE

I hereby certify that a true and correct copy of the foregoing was sent by first-class mail, postage prepaid, this 15th day of January, 2004, to each of the following:

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