

EXECUTIVE SUMMARY

Consensus Parties' Proposal

- Impermissible Discrimination.
 - The Federal Communications Commission (“FCC” or “Commission”) lacks the authority to adopt the Consensus Parties’ movement methodology, which seeks to reserve all of the new Cellular Block Spectrum in the current NSPAC and 1.9 GHz exclusively to Nextel Communications, Inc. while simultaneously confiscating one or both of the spectrum rights of the Non-Nextel General Category and Lower 80 EA licensees and thus violating the Due Process, Equal Protection and Takings Clauses of the Fifth Amendment to the U.S. Constitution and the FCC’s statutory obligation to maintain regulatory parity and promote diversity of CMRS license ownership and competition.
 - Based upon the Consensus Parties’ exclusive allocation of the NSPAC Band and 1.9 GHz band spectrum to Nextel regardless of (1) the general application of their movement methodology and (2) its spectrum holdings in a particular EA market, it is clear that such allocation is based upon the desired result—exclusively allocating Clean and Contiguous Spectrum to Nextel—rather than modification of its spectrum holdings pursuant to an exchange on a “kHz-for-kHz” basis or as “replacement spectrum.” Such exclusive allocation therefore is based entirely upon the identity of the licensee rather than upon the identity, quantity, quality of the licenses sought to be exchanged.
 - By contrast, the “replacement spectrum” for the Non-Nextel EA licensees is determined by the Consensus Parties’ new Cellular Deployment Test that requires only Non-Nextel EA licensees to demonstrate either that they already have constructed a cellular network or have obtained a firm financial commitment to do so. If a Non-Nextel EA licensee fails to satisfy such new burdens or conditions upon its EA licenses, its EA and Site-Licensed Spectrum is moved to the Non-Cellular Block and it loses both of its EA-Licensed Spectrum rights. If such licensee satisfies these new burdens or conditions upon its licenses, its EA and Site-Licensed Spectrum is moved to the Upper 200 Channels beginning with Channel 401 on a geographic “footprint” basis only. As a result, it loses one of its EA-Licensed Spectrum Rights. Under neither scenario, do the Non-Nextel EA licensees receive compensation for the confiscation of their spectrum rights.
 - By converting the Nextel’s noncontiguous General Category, Lower 80 and Business and Industrial/Land Transportation Site-Licensed Spectrum into Contiguous, geographic Spectrum within the new Cellular Block, the Consensus Parties’ Proposal not only considerably (1) increases Nextel’s MHz/Pops quantity of Spectrum but also (2) enhances the quality of such Spectrum by replacing it with Clean and Contiguous Spectrum thereby providing only the Nextel with both

a clear spectrum and operating advantage moving forward. Such exclusive qualitative spectrum improvement arguably not only triggers the competitive bidding provisions of Section 309(j) but also violates the FCC's statutory mandates to maintain regulatory parity and promote diversity of CMRS license ownership and promote competition.

- Spectrum Holdings' Assumptions.
 - Nextel's "running average" spectrum calculations, which serves as the basis of the Consensus Parties' Rebanding Proposal and is used by them to justify their exclusive reservation of NSPAC and 1.9 GHz band to Nextel is (1) inaccurate, (2) misleading, (3) misrepresented in several filings by the Consensus Parties. and (4) fails to support Nextel's and the Consensus Parties' argument that such exclusive allocation of new Cellular Block spectrum, including 10 MHz of 1.9 GHz spectrum, involves a "kHz-for-kHz" exchange of spectrum or mere "replacement spectrum" either on a quantitative, or more importantly, on a qualitative basis.
 - According to Nextel's own spectrum presentation, the Nextel holds a "running average" of 17.77 MHz of 800 MHz band spectrum, 3.56 MHz of 900 MHz SMR spectrum and 3.66 MHz of 700 MHz Guard Band spectrum or a total of 24.99 MHz of such spectrum, rather than the 26.5 MHz represented by the Consensus Parties. Thus the Consensus Plan is just plain "giving" Nextel spectrum without any so-called exchange. Nextel gaining an average of 1 MHz of spectrum nationwide, with much more than that in individual markets. Moreover, this spectrum calculation does not take into account that a considerable portion of the Nextel's spectrum is encumbered and non-contiguous.
- Allocation of 1.9 GHz Band Spectrum.
 - By allocating to Nextel 10 MHz of 1.9 GHz band spectrum the Consensus Parties' Proposal effectively advocates that the Commission approve, not the modification of the Nextel's licenses, but rather a private sale of spectrum in every EA market involving only Nextel in exchange for its promise to contribute up to \$850 million to defray total relocation costs. Such private sale would be limited to Nextel even in EA markets in which Preferred, Southern or other Non-Nextel EA licensees hold all or a majority of the 800 MHz EA-Licensed Spectrum, or the 800 MHz General Category EA-Licensed Spectrum. Such a private sale cannot avoid the competitive bidding provisions of Section 309(j) under the guise of a spectrum exchange or as mere replacement spectrum.
- Total Relocation Cost Estimates.
 - The Consensus Parties' total relocation cost estimate is seriously flawed due to the use of unverified license data, unrealistically low cost assumptions and omission of

certain cost items. Furthermore, there is nothing in the Consensus Plan that addresses the logistical feasibility of the massive relocation, regardless of costs. As a result, the Consensus Parties' Proposal fails to provide sufficient funding to cover anything close to the probable costs of implementing the Proposal.

- Administration.
 - Confidentiality and security concerns are created by requirement that affected licensees reveal all system information to the Relocation Coordination Committee ("RCC").
 - Timelines in the Consensus Parties' Proposal apply only to Non-Nextel licensees. Such licensees are required to furnish all system information, enter into a relocation agreement and complete relocation within fixed timeframes. No such deadlines apply to Nextel.
 - Consensus Parties' Proposal fails to provide for extension of time deadlines.
 - If the RCC arbitrates disputes, Nextel will have a decided advantage since it will be largely controlled by Nextel.
 - Complex disputes are likely to arise when the Relocation Coordination Committee tries to "mix" and "match" EA licensees and site-specific incumbents with potentially overlapping "footprints." Disputes are likely to be even more contentious for EA licensees who relocate to the Upper 200 Channels and are allocated their old "footprints" to share with Nextel on a co-primary basis.
- Preferred's Recommended Solutions
 - The FCC should treat all General Category and Lower 80 EA licensees similarly with respect to movement within the 800 MHz band and fully protect their spectrum rights.
 - The FCC should treat Critical Infrastructure licensees (as defined in Section 309(j)(2)) similarly to Public Safety licensees with respect to movement within the 800 MHz band.
 - The FCC should adopt a rebanding methodology that works legally, practically and mathematically for all EA licensees in every EA market.
 - All General Category EA licensees would move to the former NPSPAC Channels and/or 1.9 GHz on a 1:1 clean basis. This is absolutely necessary and logical since the public safety licensees in the current NSPAC band are moving to (and displacing) the General Category EA licensees. Furthermore, under the Consensus Plan Public Safety will be relocated in a region-by-region basis, and will not be

required to move unless funding is available, therefore General Category Licensees should not move unless public Safety is moving in that region.

- The FCC should adopt a proposal that provides that all General Category and Lower 80 EA licensees who (1) forego reimbursement of their own relocation costs, and/or (2) promise to contribute funds to defray total relocation costs and/or, would be entitled to an allocation of additional 1.9 GHz band spectrum.