

Nextel Communications
2001 Edmund Halley Drive, Reston, VA 20191



March 19, 2004

BY ELECTRONIC FILING

Marlene Dortch, Secretary
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Re: *Ex Parte* Submission, WT Docket No. 02-55

Dear Ms. Dortch:

Nextel Communications, Inc. ("Nextel") hereby requests that this filing be associated with WT Docket 02-55, *Improving Public Safety Communications in the 800 MHz Band*.

On March 1, 2004, Preferred Communication Systems, Inc., filed an *ex parte* presentation in the above-captioned proceeding.¹ Preferred's Filing, made four months after various *ex parte* meetings with Commission staff, purports to demonstrate that the Consensus Plan's December 24, 2002 estimate of the total costs of retuning incumbent 800 MHz public safety and private wireless licensees is too low. Preferred's Filing also provides an alternative band plan for 800 MHz Realignment. Nextel confines its response to Preferred's retuning cost analysis.²

¹ See *Ex Parte* Presentation of Preferred Communication Systems, Inc., WT Docket No. 02-55 (March 1, 2004) ("Preferred Filing").

² Nextel will not address Preferred's perplexing, ill-conceived notion that it too should receive replacement spectrum in the 1.9 GHz band based on its Economic Area ("EA") license holdings, its willingness to forego its own retuning costs, and its "offer" to contribute \$150 million to incumbent retuning. Preferred's offer to forego its own relocation cost reimbursement is particularly ironic because (with the possible exception of Puerto Rico) Preferred does not appear to have constructed and placed in operation any 800 MHz systems in the proposed new NPSPAC channel block that would require retuning. Nor has Preferred addressed the fact that much of its EA spectrum is encumbered by site-specific licensees to the extent that even meeting the Commission's construction requirements may be problematic in some of its EAs. Given these facts, Preferred's offer to help fund other licensees' retuning costs is most curious.

For the past year, Preferred has indicated in this proceeding its support for the “Balanced Plan,” advocated by UTC, CTIA and its large cellular member companies, which asserts that “Best Practices” can solve the public safety interference problem, rather than realignment.³ Preferred’s Filing, without any explanation, breaks from that approach. Unlike many of its former compatriots, Preferred’s Filing agrees that interference to public safety, private wireless, and other licensees is “increasing”⁴ and does not dispute that 800 MHz realignment will solve the public safety interference problem. Also contrary to the Balanced Plan advocates, Preferred appears to agree that Nextel should receive replacement spectrum in the 1.9 GHz band, agreeing with a key Consensus Plan principle that no 800 MHz incumbent licensee should lose spectrum as part of the realignment.⁵ While Nextel is pleased that Preferred now agrees with so many elements of the Consensus Plan, Nextel submits that Preferred’s analysis of the potential costs for incumbent relocations is so riddled with inaccuracies as to be virtually useless in this proceeding.

Preferred states that its research was based on licensing data obtained from the FCC in June 2000 and January 2003.⁶ Preferred apparently uses an unintelligible mixture of this data and, as a result, significantly misrepresents the state of 800 MHz licensing both from December 2002 and today. For example, Preferred’s Filing is grossly inaccurate with regard to the number of Economic Area (“EA”) licenses Nextel holds; Preferred attributes 33 different EA licenses as licensed to Motient that are now licensed to Nextel.⁷ Preferred also fails to account for other EA licenses that have been assigned from Mobile Relay Associates and Communications Equipment to Nextel. Preferred’s Filing, including Exhibits D, E, G, H, I and J, all appear to be based upon EA license holdings from the *results* of Auction Number 34, the General Category Channel auction, which was completed in December 2000⁸, without taking into account the numerous transactions that have taken place during the three-year interval

³ See *Ex Parte* presentation by CTIA, dated January 13, 2004.

⁴ Preferred Filing at page 51.

⁵ Preferred Filing at page 13.

⁶ Preferred Filing at page 20.

⁷ Nextel consummated this transaction with Motient on November 7, 2003.

⁸ Preferred’s Filing is not just inaccurate with respect to Nextel. Preferred miscounts the spectrum holdings of SouthernLinc as well.

since that auction. This mistake drastically undercounts and misrepresents the license holdings of Nextel, and other 800 MHz incumbents, today.⁹

Preferred's methodologies to estimate the costs of realignment are similarly flawed. Preferred's Filing does not use a consistent set of data on which to draw its conclusions. Instead it picks and chooses data supplied to the Commission over the past two years, typically using the highest-end of a range of estimates, and conveniently ignores virtually irrefutable facts that have since been provided by parties with much more reliable data.

For example, Preferred recalculates the costs of realignment by doubling the estimated rate of retuning public safety radios from \$50 to \$100, which is contrary to Nextel's experiences in reaching retuning agreements with over 1000 800 MHz licensees. As the Consensus Parties described in their extensive December 24, 2002 filing, the Consensus Parties conducted significant research into the costs of retuning, providing an estimate that the costs of retuning a public safety radio would *average* \$50 per radio. These findings were reconfirmed by the largest manufacturer of public safety radios, Motorola, in its November 3, 2003 filing.¹⁰ The Consensus Plan's estimate has also been confirmed in public safety-related retuning transactions over the past year – Anne Arundel County, Maryland and a large utility provider in the South. Preferred's doubling of the costs of retuning public safety radios adds hundreds of millions of dollars to its cost estimate.

Similarly, Preferred chooses to ignore the Consensus Plan's estimate¹¹ of the number of public safety radios that may require replacement as part of realignment, choosing to use instead Motorola's pre-Consensus Plan 30% estimate from May 2002.¹² Preferred ignores, however, both Motorola's *ex parte* filing of November 3, 2003, which provided significant caveats and explanations

⁹ Nextel and the Consensus Plan parties have provided significant description of the methodologies used to quantify the amount of spectrum licensed in the 800 MHz bands, and Nextel continues to stand behind those filings. If anything, Nextel's spectrum holdings have only *increased* across the country since its initial detailed submission to the FCC in August 2002.

¹⁰ See Motorola Letter dated November 3, 2003 at page 11.

¹¹ The Consensus Plan estimates 1% or 26,000 radios, based on a total public safety radio base of 2.6 million radios, would require replacement as a result of realignment.

¹² Preferred Filing at page 4 of Appendix K.

as to its earlier figures,¹³ as well as Nextel's *ex parte* filing of February 2, 2004, which further amplified why Motorola's estimate is overstated and, in any case, applies to only a small subset of all public safety radios.¹⁴ Preferred then uses the Consensus Plan's high-end estimate of the total number of public safety radios existing in the band and applies a 30% replacement rate figure, concluding that the costs of realignment will total over \$3.3 billion. The record plainly indicates that the 30% estimate, even if valid, could apply only to NPSPAC-capable radios – not all 2.6 million public safety units.¹⁵ Instead of providing useful information on which radio models will actually require replacement as opposed to retuning, Preferred misuses statements in the record to grossly miscalculate the likely costs of realignment.

Preferred's Filing comes over one year after the last pleading cycle of this proceeding ended -- a pleading cycle in which the FCC specifically requested comment on the Consensus Plan's December 24, 2002 costs estimates. Preferred's Filing not only provides little helpful information to assist the FCC, but, without justification, uses erroneous and misleading data to draw its

¹³ See Motorola Letter dated November 3, 2003. Motorola offered no analysis or survey of the existing population of 800 MHz public safety systems to support its suggestion that 30 percent of NPSPAC radios might need to be replaced. Indeed, Motorola acknowledged that "[w]ithout the final details of a rebanding plan and an audit of individual public safety systems Motorola does not have sufficient information to provide an estimate." Motorola Letter at 11.

¹⁴ See Nextel's *ex parte* filing of February 2, 2004. Motorola has not filed to rebut Nextel's filing.

¹⁵ See Nextel's *ex parte* filing of February 2, 2004. The Consensus Parties have gathered more recent information from public safety licensees which indicates that there are fewer 800 MHz public safety radios in service than it initially estimated – about 2 million units. Nextel has nonetheless continued to use the higher count to provide additional security than its \$850 million commitment will be sufficient.

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conclusions. Preferred's Filing should therefore be disregarded as a last minute attempt to muddy the waters and delay resolution of this vitally important proceeding.

Respectfully submitted,

/s/ Lawrence R. Krevor

Lawrence R. Krevor
Vice President – Government Affairs

cc: Michael J. Wilhelm, Wireless Telecommunications Bureau