

KATHLEEN WALLMAN  
9332 RAMEY LANE  
GREAT FALLS, VA 22066  
April 6, 2004

Re: 02-55

Ms. Marlene Dortch  
Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., SW  
Washington, DC 20554

Dear Ms. Dortch:

On April 5, 2004, I, a consultant to Pegasus Communications, sent the following emails to Commission staff regarding proposals to reduce public safety interference in the 800 MHz band.

Very truly yours,

//signed//

Kathleen Wallman

Sent to Elizabeth Lyle of the Office of General Counsel, as follow up to a conversation earlier in the day covering the same points:

Elizabeth, I hope that my elaboration on the ex parte was helpful today. In a nutshell, Pegasus is concerned that if the Nextel 700 MHz guard band spectrum is given over to public safety users to use as a free or substantially discounted resource, this will destroy the business plan upon which Pegasus's \$91.4 million bid for guard band spectrum was premised. It has been Pegasus's plan to build a business in that spectrum under the existing service rules that would make the majority of the spectrum licensed to Pegasus available to qualified third parties for trunked radio systems. If that business has to compete against "free" spectrum, it cannot succeed.

We have some understanding that the idea of reallocating the Nextel 700 MHz spectrum to public safety is under consideration in hopes that it will mitigate the risk of successful litigation against the plan. We think that this strategy will be unavailing, however, because if the FCC goes forward with this change to the plan, Pegasus will be constrained to take legal action to protect its position. I expect that Pegasus would challenge the plan on APA grounds, given that we have had no reasonable opportunity to react to this possible change. We have diligently followed this item and we have been speaking with the Commissioners' advisers over the last month without any hint that a change of this nature was possible or under consideration. We understand, of course, that proposals may change over the course of their consideration by the Commission, but we believe, and would argue in court, that no reasonable notice of this change, which substantially and adversely affects Pegasus, was provided and no reasonable opportunity to comment was afforded.

Additionally, Pegasus would challenge the plan as an unconstitutional and uncompensated taking, since the impact of the Commission's actions would be to destroy the economic value of the licenses.

If the Commission continues to consider a reallocation of the Nextel 700 MHz spectrum to the public safety community, we ask: at a minimum that the item not be noticed for Sunshine for the April meeting. We understand that many in the Commission have worked long and hard on this item, and that public safety needs a solution to the interference problem. We have so far taken only such advocacy steps as have been necessary to ensure that Pegasus's interests would not be harmed, and though we received no guarantees, we reasonably took the direction of the debate to be leading away from steps that would affect the guard band licenses. If this change is now a real possibility, we request that we receive appropriate additional time to respond.

If the Commission deems it necessary to move forward with reallocation of the Nextel 700 MHz spectrum, we believe that in fairness and to obviate the need for litigation, Pegasus should also receive an equivalent opportunity to swap its 700 MHz spectrum for spectrum at 1.9 GHz. Alternatively, Pegasus would be content to receive a full refund of its license payments with interest at the Treasury rate.

Please call me at 202-641-5387 if you need more information. Thank you.

Kathleen Wallman

Sent to Sheryl Wilkerson, Jennifer Manner, Teri Swinton, Barry Ohlson and Sam Feder:

Dear Advisors,

This email is a follow up to the meeting that Pegasus had in March with each of your offices regarding Pegasus's concerns about the Nextel-initiated plan to eliminate commercial interference with public safety users.

Pegasus is one of two 700 MHz guard band licensee in dozens of markets where Nextel holds the other license. (List attached.) Pegasus came to see you in the 02-55 proceeding because we had a concern, which then seemed remote, that if the plan adopted by the FCC entailed a give back of Nextel's 700 MHz spectrum to public safety users, Pegasus would be adversely and substantially affected.

At the time, as we discussed, the Commission's deliberations appeared to be veering away from any impact on 700 MHz. We learned today, just a few days before Sunshine, that a proposal that would affect 700 MHz guard band licensees is now under consideration. We outline below our specific concerns and what we urge needs to be done to ensure fair treatment of Pegasus.

In a nutshell, Pegasus is concerned that if the Nextel 700 MHz guard band spectrum is given over to public safety users to use as a free or substantially discounted resource, as is apparently under consideration, that this will destroy the business plan upon which Pegasus's \$91.4 million bid for guard band spectrum was premised. It has been Pegasus's plan to build a business in that spectrum under the existing service rules that would make the majority of the spectrum licensed to Pegasus available to qualified third parties for trunked radio systems. If that business has to compete against "free" spectrum, it cannot succeed.

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Kathleen Wallman

Sent to Paul Margie:

Dear Paul,

I'm writing to alert you to an issue that I thought was not going to require your attention, but the situation has changed.

Pegasus is one of two 700 MHz guard band licensee in dozens of markets where Nextel holds the other license. (List attached.) Pegasus visited most of the 8<sup>th</sup> floor offices in the 02-55 proceeding because we had a concern, which then seemed remote, that if the plan adopted by the FCC entailed a give back of Nextel's 700 MHz spectrum to public safety users, Pegasus would be adversely and substantially affected.

At the time of our meetings, the Commission's deliberations appeared to be veering away from any impact on 700 MHz. We learned today, just a few days before Sunshine, that a proposal that would affect 700 MHz guard band licensees is now under consideration. We outline below our specific concerns and what we urge needs to be done to ensure fair treatment of Pegasus.

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