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MCDERMOTT, WILL & EMERY

April 7, 2004

Marlene H. Dortch, Esq.
Secretary
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, DC 20554

**Re: Notice of *Ex Parte* Meeting; Improving Public Safety Communications
in the 800 MHz Band, WT Docket No. 02-55**

Dear Ms. Dortch:

This is to notify you that undersigned counsel for Consumers Energy sent by e-mail the attached presentation in the above-referenced proceeding to Barry Ohlson, of Commissioner Adelstein's office, and to Jennifer Manner, of Commissioner Abernathy's office.

In accordance with the Commission's rules, one copy of this *ex parte* notice is being filed electronically for inclusion in the record of the above-referenced proceeding.

Very truly yours,

/s/ Jeffrey L. Sheldon

Jeffrey L. Sheldon

Attachment

**KEY REBANDING ISSUES
FOR
CONSUMERS ENERGY**

April 6, 2004

To the extent rebanding is part of the resolution of Nextel's interference problem at 800 MHz, Consumers Energy urges the FCC to provide the following safeguards for Critical Infrastructure licensees at 800 MHz:

1. Do not freeze 800 MHz licensing during rebanding.
 - Although a short period of time (*e.g.*, 30-90 days) might be needed to develop channel mapping plans for each region, there should not be a long-term freeze on 800 MHz licensing or a set-aside of 800 MHz channels to be vacated by Nextel that would effectively freeze B/ILT licensees from accessing much-needed 800 MHz spectrum.
2. Provide for additional 800 MHz spectrum for Business/ILT licensees, or at a minimum for Critical Infrastructure licensees such as electric and gas utilities.
 - Additional B/ILT spectrum is especially needed in Canadian border region due to the already limited B/ILT allocations in this region and Nextel's prior conversion of B/ILT allocations to commercial use. At least 0.5 MHz of additional B/ILT spectrum in the border region would be an improvement.
3. Require negotiated relocation agreements with nonbinding arbitration to resolve disputes.
 - Do not sanction a biased and unnecessary "Relocation Coordination Committee" to dictate a rebanding or reimbursement process.
 - Arbitrator's decision could be accepted by the parties, thus foreclosing need for FCC review, and appeal of arbitrator's award would not necessarily require *de novo* FCC review, thereby minimizing expenditure of FCC resources to resolve disputes.
4. The more detailed and complex the rules are, the more important it is that the FCC confirm that waivers are available as a "safety valve." For example:
 - If the FCC prohibits "cellular" architectures in a portion of the band, waiver process should be available to applicants wanting to upgrade to new, more efficient digital technologies.
 - If relocation timing is mandated by rule, waivers may be needed for licensees with systems that straddle multiple NPSPAC regions or that require more than an average amount of time to be retuned. Plans to retune utility radio systems could also be disrupted by events beyond the licensees' control, such as ice storms, hurricanes, etc.
5. To create proper incentives to complete the process, Nextel should not be given additional spectrum until rebanding is completed nationwide and all relocation costs have been paid.