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April 2, 2004

Ms Marlene H Dortch
Secretary
Federal Communications Commission
445 – 12th Street, S W , Room TW-A325
Washington, D C 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Re **Notice of Oral *Ex Parte* Presentation**
Improving Public Safety Communications in the 800 MHz Band
WT Docket No 02-55

Dear Ms Dortch

On April 1, 2004, Brian F Fontes, Vice President–Federal Relations and Jim Bugel, Executive Director–Federal Regulatory representing Cingular Wireless LLC (“Cingular Wireless”), met with Barry Ohlson, Legal Advisor and Anne M Perkins, Special Assistant, Office of Commissioner Jonathan Adelstein, regarding the above-referenced rule making proceeding on public safety communications in the 800 MHz band. Cingular Wireless supports the goal of mitigating interference caused to public safety radio systems in this band, but recognizes the likelihood that, whatever the outcome of this proceeding, it will be challenged in court. During our meeting, we discussed Cingular Wireless’s concerns relating to the legal defensibility of certain aspects of the “Consensus Plan” proposed in this proceeding.

In particular, we discussed with Mr Ohlson and Ms Perkins that the Commission lacks the legal authority to grant Nextel Communications, Inc (“Nextel”) a nationwide authorization in the 1.9 GHz band, as proposed in the Consensus Plan, or to accept a monetary payment from Nextel for that authorization. Such a grant would be tantamount to a private sale of spectrum, outside the Commission’s normal licensing process and in contravention of Section 309(j) of the Communications Act. In addition, we noted that, under the relevant precedent, such a grant cannot be characterized as a modification of Nextel’s licenses.⁵

The realignment of the 800 MHz band proposed in the Consensus Plan would enable Nextel to exchange non-contiguous spectrum for contiguous spectrum. Such an exchange would benefit Nextel substantially and would outweigh any loss of 800 MHz spectrum that Nextel would suffer under the Consensus Plan. Jim Bugel and I pointed out that the Commission has ample legal authority to impose the obligation to fund

⁵ These legal issues were more comprehensively addressed in an *ex parte* filing made by the Cellular Telecommunications & Internet Association, submitted on December 4, 2003 in this proceeding. See Attachment to *ex parte* letter from Diane Cornell, CTIA, to Marlene H Dortch, dated December 4, 2003.

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incumbent relocation costs upon parties who stand to benefit from that relocation, and noted that a Commission decision to impose such a requirement on Nextel with respect to the relocations made necessary by the Consensus Plan's proposed 800 MHz realignment would likely be affirmed

Pursuant to Section 1.1206(b)(2) of the Commission's rules, this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding

Sincerely,



Brian F. Fontes

Vice President-Federal Regulatory Relations
Cingular Wireless LLC

cc Barry Ohlson
Anne M. Perkins