

May 13, 2004

The Honorable Michael K. Powell
Chairman
Federal Communications Commission
445 Twelfth Street, S.W.
Washington, D.C. 20554

**Re: *Ex Parte* Presentation
WT Docket 02-55**

Dear Chairman Powell:

On April 29, 2004, the Cellular Telecommunication & Internet Association (“CTIA”) submitted a proposal to the Commission that was intended to strike an equitable balance among all the interests in this proceeding, while strengthening the benefits for the most important interested party: Public Safety.¹ Contrary to the representations in a letter filed on May 11 in this proceeding by Nextel,² the CTIA plan is not only more legally and operationally sustainable, it is far better for Public Safety interests than Nextel’s proposal.

The FCC’s responsibility, of course, is to do what is best for Public Safety, not what is best for Nextel or any other private party. To any observer, particularly those who have been involved in this proceeding for years, CTIA’s Compromise Plan clearly is better for Public Safety. Given the record that shows that Nextel’s \$700 million commitment is far from sufficient to complete the rebanding of thousands of Public Safety systems across the nation, CTIA’s plan would remedy this by: (1) requiring Nextel to deposit a minimum of \$3 billion into a trust fund for Public Safety; (2) employing an independent trustee to manage the funds; (3) granting Nextel the 10 MHz of spectrum at 2.1 GHz that Nextel itself originally sought; and (4) requiring Nextel, on a market-by-market basis, to relocate and to pay the relocation costs of Public Safety before it receives the spectrum. As the attached chart demonstrates, this approach would far better address Public Safety’s concerns than the plan backed by Nextel.

¹ See Letter from Steve Largent, President and CEO, CTIA, to Michael K. Powell, Chairman, FCC, WT Docket 02-55 (April 29, 2004).

² See Letter from Timothy M. Donahue, CEO & President, Nextel Communications, to Michael K. Powell, Chairman, FCC, “Nextel Letter,” WT Docket 02-55 (May 11, 2004).

CTIA also submits that there are several statements in the Nextel letter that are not correct:

- Nextel asserts that “None of our competitors has made a remotely comparable offer – despite the fact that they are causing at least 25 percent of the interference and getting a free ride on the Consensus Plan solution.”³ In fact, the Balanced Approach plan that CTIA and many utility, Public Safety and other users of the 800 MHz band have backed for a year would require the interfering party to pay for the necessary fixes to Public Safety interference – and take important steps to prevent it from occurring in the future. In addition, there is nothing in the record – apart from a completely unsubstantiated statement from Nextel – that supports Nextel’s statement that other carriers are responsible for anything close to 25 percent of the problem. In reality, the record indicates just the opposite: that Nextel is responsible for the vast majority of the problem, and other carriers may be responsible for at most a very small percentage of the interference incidents.
- Nextel suggests several reasons why it “rejects” 2.1 GHz spectrum, but – significantly – does not even attempt to claim that the spectrum would not be technically suitable.⁴ CTIA’s May 7, 2004, filing rebuts Nextel’s concerns about 2.1 GHz spectrum in detail, and explains why this spectrum block would be a more reasonable “compensation” for Nextel’s contributions in this proceeding. It is understandable that Nextel has more recently set its sights on the more desirable 1.9 GHz block, but even Nextel implicitly concedes that there is nothing about the 2.1 GHz band that would prevent it from offering 3G or even 4G broadband technology to its consumers.⁵ Indeed, it would be difficult for Nextel to argue to the contrary, since it has itself asked to be awarded the 2.1 GHz block.
- Nextel further claims that its plan is “fair to all stakeholders, including the American taxpayer.”⁶ But its plan is not “fair” to Public Safety when compared to the CTIA Compromise Plan. It asks for a spectrum grant **before** it completes any efforts to relocate Public Safety, the opposite of what is proposed in the CTIA Compromise Plan. Our plan, in contrast, provides the proper incentives to ensure that the goal of this proceeding – resolving Public Safety interference – is achieved first, and that “replacement” spectrum is awarded only **after** interference is eliminated through rebanding. Also, its plan is not fair to the American taxpayer, as it would cost the Government billions of dollars in revenues from a future auction of spectrum. Nextel’s demand would grant valuable CMRS spectrum to a single company when there is clear interest from other potential bidders for that spectrum, and would confer a significant windfall upon Nextel via a “private sale.” Not only does this deprive the Treasury of significant funds that could be used for such worthy causes as meeting Public Safety’s needs, but also it creates a very real risk that the entire rebanding process could be stalled or completely overturned by legal challenges.

³ See Nextel Letter at 1-2.

⁴ *Id.* at 2-3.

⁵ *Id.* at 2.

⁶ *Id.* at 3.



- Nextel’s statement that its proposal is the “only” means to achieve the goals of this proceeding also is not correct. As the CTIA Compromise Plan illustrates, the Commission is not faced with the choice of accepting Nextel’s proposal or doing nothing at all. The Commission always has the power to order the affected parties, including Nextel, to remedy interference in this proceeding, whether or not it grants spectrum as “compensation.”⁷ Nextel’s consent is not needed, nor does it hold a veto power over any remedy the Commission may choose. The Commission may clearly order actions to resolve the interference problem by invoking over half a century of legal precedent governing the obligations of one licensee not to interfere with other licensees.

This proceeding presents a difficult challenge to the Commission. However, the Commission’s role is not to satisfy the ideal business needs of any one party, but rather to solve the Public Safety interference problem in the most legally sustainable, equitable and effective way. CTIA’s proposal does just that. It represents a significant movement from the CMRS industry’s original position toward a position that truly is a compromise. CTIA believes that the proposal it submitted on April 29th is the best means of balancing the interests of all affected parties in this proceeding, and clearly offers the most benefits for Public Safety.

Respectfully Submitted,

Diane Cornell

Diane J. Cornell
 Vice President, Regulatory Policy
 CTIA – The Wireless Association™

Attachment

cc: Commissioner Kathleen Abernathy	Sam Feder
Commissioner Michael Copps	Barry Ohlson
Commissioner Kevin Martin	John Muleta
Commissioner Jonathan Adelstein	John Rogovin
Bryan Tramont	Ed Thomas
Sheryl Wilkerson	
Jennifer Manner	
Paul Margie	

⁷ See Letter from R. Michael Senkowski, Wiley Rein & Fielding LLP, to Marlene Dortch, Secretary, FCC WT Docket 02-55, (Apr. 7, 2004) (attaching white paper entitled *The Federal Communications Commission Lawfully May Order Nextel To Pay The Costs Of Relocating Incumbent 800 MHz Licensees*).

