

LAWLER, METZGER & MILKMAN, LLC

2001 K STREET, NW  
SUITE 802  
WASHINGTON, D.C. 20006

REGINA M. KEENEY

PHONE (202) 777-7700  
FACSIMILE (202) 777-7763

September 23, 2004

BY ELECTRONIC FILING

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

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

Dear Ms. Dortch:

On Wednesday, September 22, 2004, representatives of Nextel Communications, Inc. ("Nextel") met with staff of the Wireless Telecommunications Bureau ("WTB") and staff of the Office of General Counsel ("OGC") regarding the Commission's above-referenced rulemaking on public safety communications in the 800 MHz band. Attending on behalf of Nextel were Lawrence R. Krevor, Vice President – Government Affairs, Gary D. Begeman, Vice President and Deputy General Counsel, Paul Harner of Jones Day, counsel to Nextel, and Charles Logan and the undersigned of this firm. (Mr. Harner participated by telephone.) Attending on behalf of WTB were Michael Wilhelm and Nicole McGinnis. Attending on behalf of OGC were Jeffrey Dygert, Elizabeth Lyle, and Neil Dellar.

During the meeting, Nextel discussed a number of procedural and logistical issues regarding the letter of credit ("LOC") Nextel would be required to provide under the *Report and Order* ("R&O") in the above-referenced proceeding. Nextel stated that, due to the size of the LOC, and based on its discussions with the prospective lenders, it would be difficult if not impossible for the LOC to be issued by a single financial institution as contemplated by the R&O. Nextel stated that the Commission's objectives could be achieved by having one or more letters of credit totaling \$2.5 billion issued by a number of financial institutions, with each institution separately responsible for a proportionate share of the \$2.5 billion LOC amount. The LOC arrangements could be structured to provide for the designation of single agent to act on behalf of each of the issuing financial institutions. This arrangement would provide the same financial assurance that 800 MHz reconfiguration will be achieved, regardless of any changes in Nextel's financial well-being, as that intended by the single financial institution approach.

Nextel also requested that it be allowed to pay 800 MHz incumbent relocation costs directly as they are incurred during the course of the relocation process, with corresponding periodic reductions in the amount of the LOC, rather than having the LOC Trustee make frequent and recurring draws under the LOC to disburse funds to cover the costs relating to each incumbent relocation. Nextel explained that the latter arrangement would unnecessarily impose

significant additional costs and administrative burdens. In addition, Nextel discussed the circumstances under which the funds available under the LOC could be drawn by the Trustee if Nextel fails to pay incumbent relocation costs approved by the Transition Administrator and the Commission or in the event of a material, uncured breach by Nextel of its obligations under the *R&O*. Nextel also discussed the process for releasing the LOC upon completion of the band reconfiguration contemplated by the *R&O*. Nextel requested that the Commission clarify that, to the extent the funds available under the LOC have been drawn down to pay 800 MHz relocation costs or to make any payments owed to the U.S. Treasury, any funds remaining in the trust account contemplated by the *R&O* after such payments have been made would be paid to Nextel.

Nextel discussed during the meeting the appropriate qualifications of the LOC Trustee. Nextel recommends that the Commission clarify that an entity will be deemed to be independent and free of impermissible conflicts of interest, and thus qualified to act as the Trustee, if it meets the following requirements: (a) it is an entity that would be eligible under the Trust Indenture Act of 1939, 15 U.S.C. §§ 77aaa, *et. seq.*, to act as an indenture trustee for the debt obligations of Nextel or its subsidiaries; (b) the engagement of such an entity to act as Trustee would not constitute a “related party transaction” of Nextel of the type required to be disclosed pursuant to SEC Regulation SK, Item 404; (c) the entity does not, directly or through its affiliates, hold for its or such affiliates’ account, debt obligations of Nextel and its subsidiaries that total in the aggregate more than 1% of the total consolidated debt obligations of Nextel and its subsidiaries; (d) the entity is not, directly or through its affiliates, an issuer of the LOC required under the *R&O*; and (e) the entity has a combined capital and surplus of at least \$50 million.

Nextel also discussed the acknowledgment Nextel would be required to file pursuant to paragraph 87 of the *R&O*. Nextel stated that it interpreted this requirement to simply mean that, in the event a court invalidates the *R&O*, Nextel would be barred from bringing a civil action against the government to recover the costs it had incurred up to that point in implementing 800 MHz band reconfiguration. Nextel sought confirmation that paragraph 87 was not intended to imply or require that Nextel and the other affected parties must continue to perform their respective obligations under the *R&O* in such circumstances.

Pursuant to section 1.1206(b)(2) of the Commission’s rules, 47 C.F.R. § 1.1206(b)(2), this letter is being filed electronically for inclusion in the public record of the above-referenced proceeding.

Sincerely,

/s/ Regina M. Keeney  
Regina M. Keeney

*Counsel to Nextel Communications, Inc.*

cc: Michael Wilhelm      Elizabeth Lyle  
Nicole McGinnis      Neil Dellar  
Jeffrey Dygert