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October 13, 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 Tuesday, October 12, 2004, Charles Logan and the undersigned of this firm spoke by telephone with Jeffrey Dygert and Elizabeth Lyle of the Commission's Office of General Counsel. We discussed issues related to the letter of credit ("LOC") Nextel Communications, Inc. ("Nextel") would be required to provide under the *Report and Order* ("R&O") in the above-referenced proceeding. These issues are summarized in *ex parte* letters Nextel filed in the record of this proceeding on September 23, 2004 and October 1, 2004. Nextel, through counsel, hereby provides the following additional information in response to questions from the Commission staff.

As stated in its prior *ex parte* filings, it will be less costly and burdensome if Nextel pays 800 MHz incumbent relocation costs directly as they are incurred during the relocation process, with corresponding periodic reductions in the amount of the LOC, rather than having the LOC Trustee make frequent, recurring draws under the LOC to disburse funds to cover the costs relating to each incumbent relocation. At the same time, the Trustee should be permitted to draw on the LOC to pay an incumbent's relocation costs in the event Nextel is in material, uncured breach of an obligation to pay such costs.

Accordingly, Nextel recommends that the Commission instruct the Transition Administrator, in consultation with the LOC Trustee and Nextel, to develop procedures for determining when such a remedy is warranted. These procedures should reflect the following principles: First, Nextel's obligation to pay an incumbent's retuning costs should be triggered when it receives a valid invoice for such costs consistent with the terms of the retuning agreement with that incumbent, or, if such costs or invoice are disputed, when the dispute is resolved by the Commission or the appropriate alternative dispute resolution process. Second, Nextel should have a commercially reasonable period (*i.e.*, 30 days) after the obligation is triggered to satisfy a payment obligation. Third, in the event Nextel fails to satisfy a payment obligation within the required period, the Transition Administrator should notify Nextel that if it

fails to satisfy the payment obligation within 10 days of such notice, the LOC Trustee will draw on the LOC to pay the costs in question. The procedures developed by the Transition Administrator should promote timely and efficient payment of incumbent relocation costs, while affording parties the opportunity to protect their rights by seeking resolution of disputes by the Commission or an alternative dispute resolution process.

In its September 23 *ex parte* filing, Nextel recommended criteria for determining whether an entity has impermissible conflicts of interest that would disqualify it from acting as the LOC Trustee. Nextel would support a process under which Nextel and the proposed Trustee would be required to disclose to the Commission any potential conflicts of interest, with the Commission then determining whether such potential conflicts are disqualifying under the applicable criteria. Nextel urges the Commission to use the criteria it has recommended in making this determination.

The *R&O* (¶ 184) states that “[o]n the occasion of a material breach by Nextel of its obligations hereunder, as declared by the Commission, [the] trustee shall be entitled to draw on the letter of credit as specified in such instrument.” Nextel requests that the Commission clarify that Nextel will have 30 days to cure any such apparent breach before the Trustee is empowered to draw on the LOC. In addition, Nextel requests that the Commission clarify that the Trustee will be empowered to draw on the LOC only in instances in which Nextel fails to pay required incumbent retuning costs as described above or in the event of a material breach of Nextel’s financial obligations in carrying out 800 MHz band reconfiguration, *i.e.*, if Nextel (1) files for bankruptcy protection, or (2) fails to make a payment to the U.S. Treasury within 30 days of the issuance of the Public Notice as described in paragraph 330 of the *R&O*.

It is Nextel’s understanding that it will be able to terminate the LOC, and receive any funds remaining in the LOC trust account, after band reconfiguration is complete and after the financial reconciliation process set forth in the *R&O* is complete (including any payments to the U.S. Treasury). *See R&O* ¶ 331. To confirm this understanding, the Commission should clarify one of the terms set forth in Appendix E, Annex E governing the tri-party agreement among Nextel, the Transition Administrator, and the LOC Trustee. Specifically, the third to last bullet on page 249 of the *R&O* should be clarified to read:

“specifies that the corpus of the trust(s) shall be forfeit to the United States Treasury in the event that Nextel fails to make any of the payments owed to the Treasury by the date specified in the Commission’s Report and Order, provided that the amount of any such forfeiture shall not exceed the amount owed to the United States Treasury by Nextel and any remaining amounts after such forfeiture shall be paid to Nextel.”

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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: Jeffrey Dygert
Elizabeth Lyle