July 26, 2005

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

RE: Notice of Ex Parte Presentation, WT Docket No. 05-63; CC Docket No. 94-102

Dear Ms. Dortch:

In the context of the above-referenced proceedings, Nextel Communications, Inc. ("Nextel"), herein provides further information regarding its activities related to the Federal Communications Commission's ("Commission") E911 handset deployment benchmarks. While Nextel has met prior E911 benchmarks, as it has detailed in numerous documents filed with the Commission and in meetings with Commission staff, it does not anticipate that it will meet the December 31, 2005, 95 percent assisted Global Positioning System ("A-GPS") handset deployment benchmark.[1] Accordingly, by September 30, 2005, Nextel will file with the Commission a request for waiver of the 95 percent handset deployment benchmark, as discussed further below.

Nextel reluctantly concludes that it must seek this waiver despite its long-standing commitment and ongoing efforts to comply with the Commission's E911 Phase II requirements. When initially faced with the Commission's Phase II mandate, Nextel considered a number of technological options, but based on substantial testing and analysis of all potentially available alternatives quickly concluded that its unique iDEN network could accommodate only one possible compliant solution—A-GPS developed and provided by Motorola. Nextel found that it simply had no practical option other than developing a Phase II E911 solution with its sole handset and network infrastructure supplier, Motorola, the world's only manufacturer of iDEN handsets and infrastructure (with the limited exception of the BlackBerry handset).[2]

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[1] *See* Nextel Communications, Inc. Phase I and Phase II E911 Quarterly Report, CC Docket No. 94-102, at 5-7, 10-11 (May 2, 2005); Nextel Communications, Inc. Phase I and Phase II E911 Quarterly Report, CC Docket No. 94-102, at 5-7, 12 (February 1, 2005); Letter from Laura L. Holloway, Vice President – Government affairs, Nextel Communications, Inc., to Marlene H. Dortch, Secretary, Federal Communications Commission, CC Docket No. 94-102 (October 14, 2004).

[2] *See* Nextel Communications, Inc. and Nextel Partners, Inc. Joint Report on Phase II Location Technology Implementation and Request For Waiver, CC Docket No. 94-102, filed November 9, 2000. *See also*, Revision of the Commission's Rules To Ensure Compatibility with Enhanced 911 Emergency Calling Systems; Wireless E911 Phase II Implementation Plan of Nextel Communications, Inc., *Order*, CC Docket No. 94-102, 16 FCC Rcd. 18277 (2001).

Beginning in 2000, well before the Commission established Nextel's Phase II implementation timeline, Nextel and Motorola began to research, develop, test and install the network hardware and software that was necessary to launch A-GPS capable iDEN handsets. At that time, no GPS capability existed for the iDEN platform, although a GPS solution was already well underway for more common platforms and air interfaces (*i.e.* CDMA). Thus, Motorola developed an iDEN A-GPS solution "from scratch," making it technologically infeasible to complete such development and deployment throughout Nextel's network prior to October 1, 2002.

Nextel launched its first A-GPS capable handset in October 2002—less than a year after the Commission approved Nextel's use of an A-GPS solution—as the Commission required.[3] Nextel met the Commission's subsequent handset deployment benchmarks for the next approximately 20 months. Then, on July 17, 2004, a latent software problem in the electronic chips used in Motorola's iDEN A-GPS handsets rendered *all* A-GPS services—including transmission of location information to Phase II-capable Public Safety Answering Points ("PSAPs")—unusable as of midnight, Greenwich Mean Time, July 18, 2004. Thus, on that day, several million of Nextel's A-GPS capable handsets suddenly ceased transmitting E911 Phase II location information, effectively reducing Nextel's A-GPS handset base to zero.

Within hours of uncovering the software issue, Nextel and Motorola implemented a temporary network-wide fix to ensure that the GPS problem did not adversely impact customers' ability to make 911 calls.[4] Working quite literally around the clock and coordinating efforts among multiple vendors and network operators, Nextel and Motorola personnel determined the root cause of the software issue, developed and tested a "fix," and installed new software throughout Nextel's network to ensure a fully functioning Phase II E911 capability wherever PSAPs are deployed with Phase II service. This network update re-enabled the transmission of latitude and longitude information to Phase II-capable PSAPs within just six days after discovery of the software glitch.

The second part of the solution required updating, or "reflashing," Motorola software in the affected handsets, including those already in customers' hands as well as those in Nextel's and Motorola's inventories. This phase of the fix requires "touching" each affected handset. On July 26, 2004, beginning with software for Nextel's most popular handset at the time, the i730, Nextel and Motorola began reflashing handsets in warehouses. Approximately one million handsets in

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[3] In fact, to ensure Phase II service would be available to Nextel customers as soon as possible, Nextel and Motorola launched the i58sr A-GPS-capable handset in approximately half the time normally required for iDEN handset deployment – a then-unprecedented accomplishment.

[4] Since the day the issue surfaced, Nextel has continually updated its customers through a special website created solely for this issue: www.nextel.com/gpsupdates. Nextel has reached out repeatedly to the Commission and to the Public Safety Answering Points ("PSAPs"), directly contacting all Phase II-capable PSAPs on multiple occasions to inform them that our customers' GPS capabilities were impacted and to detail the steps we are taking to address the issue.

inventory were reflashed prior to being sold to consumers. All new activations are A-GPS capable units.

As to handsets in customers' hands, Nextel embarked on an unprecedented campaign to encourage customers to upgrade their handsets' software. We included messages on all of our customers' bills notifying them of the A-GPS problem and how to have it corrected at no charge. All Nextel stores were—and continue to be—capable of reflashing customer handsets, and whenever a customer brings a handset in for any reason, Nextel updates the software. Independent dealerships that carry Nextel handsets are also capable of reflashing customer handsets, and Motorola has put in place an incentive program for dealers to reflash a handset brought in for any reason. In addition, Nextel's large corporate customers received software upgrades for the affected handsets on site.

In addition, Nextel and Motorola mailed self-reflash kits consisting of a CD-ROM containing the software updates and a data cable to the approximately 2.14 million customers with affected handsets (many customers have multiple units that may be reprogrammed by a single kit). The kits enable customers to reflash their handsets at their home or office at no charge, with no need to visit a Nextel store or service center. To our company's knowledge, providing these self-reflash kits directly to all affected customers is unprecedented in this—or any—industry. Nextel and Motorola have provided not only notice and repair information but also the tools necessary to enable customers to fix their handsets themselves.[5]

Despite the latent handset software glitch, Nextel's extraordinary efforts have succeeded in regaining and even surpassing its A-GPS handset penetration prior to the problem. Nextel's A-GPS handset penetration has grown from effectively zero one year ago to approximately 50 percent today. Nextel projects that on a stand-alone basis it would achieve A-GPS handset penetration of approximately 70 percent of its customer base by December 31, 2005. On a merged basis, Sprint Nextel would likely achieve 80-85 percent handset penetration by the end of this year. Given that the replacement rate for non-compliant handsets has varied significantly from month-to-month, this estimate could be either too optimistic or unduly conservative. Nextel's experience is that our customers like their phones. A substantial number of them choose to retain their older, non-A-GPS capable handsets, which function just as the customer desires, regardless of the benefits of A-GPS capability.[6] Thus, Nextel anticipates that Sprint Nextel will likely not achieve the Commission's 95% A-GPS handset penetration requirement until December 31, 2007.

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[5] Providing customers with self-reflash kits is one part of Nextel's ongoing communications and information campaign concerning the handset glitch. *See supra* fn. 4.

[6] *See* CTIA-The Wireless Association and the Rural Cellular Association's *Joint Petition For Suspension Or Waiver Of The Location-Capable Handset Penetration Deadline*, CC Docket No. 94-102 (filed June 30, 2005), at 5 (noting that approximately 15% of carriers' customers do *not* upgrade handsets in the typical 18-24 month timeframe).

Given all of the above, Nextel recognizes that achieving 95 percent A-GPS handset penetration by December 31, 2005 has become unlikely either on a stand-alone or a merged-company basis. Accordingly, Nextel will file a request for waiver of the Commission's 95 percent A-GPS handset penetration rule no later than September 30, 2005. The request will specifically address a proposed path to full compliance with the Commission's E911 rules, as required by the *Fourth Memorandum Opinion and Order*.[7]

Of course, Nextel expects to be entitled to any industry-wide or other generally applicable E911 relief that may be granted by the Commission. If the Commission determines that the forthcoming waiver request should not be granted, Nextel (or Sprint Nextel) will work closely with the Commission to achieve a path to full compliance with the Commission's rules on reasonable terms and conditions.

Pursuant to 47 C.F.R. § 1.1206(b)(2), this letter is being filed electronically in the records of the above-referenced proceedings. Please let me know if you have any questions.

Sincerely,

/s/ Lawrence R. Krevor
Lawrence R. Krevor

[7] *See* Revision of the Commission's Rules to Ensure Compatibility with Enhanced 911 Emergency Calling Systems, *Fourth Memorandum Opinion and Order*, CC Docket 94-102, 15 FCC Rcd 17442 (2000).