

**SEMINOLE COUNTY GOVERNMENT  
AGENDA MEMORANDUM**

**SUBJECT:** 800 MHz Frequency Rebanding/Reconfiguration Signature Authority

**DEPARTMENT:** Information Technologies

**AUTHORIZED BY:** Colleen Rotella **CONTACT:** Greg Holcomb **EXT.** 1010

<b>Agenda Date</b> <u>9/26/2006</u> <b>Regular</b> <input type="checkbox"/> <b>Consent</b> <input checked="" type="checkbox"/> <b>Work Session</b> <input type="checkbox"/> <b>Briefing</b> <input type="checkbox"/>
<b>Public Hearing – 1:30</b> <input type="checkbox"/> <b>Public Hearing – 7:00</b> <input type="checkbox"/>

**MOTION/RECOMMENDATION:**

Adopt Resolution to authorize and approve the execution of associated agreements by the County Manager provided they are necessary to comply with the FCC Order for reconfiguration of the 800MHz spectrum and do not exceed financial limits on such delegated authority imposed by section 22.203(4) of the Administrative Code.

**BACKGROUND:**

On 5/23/06, the Board of County Commissioners authorized the use of Special Counsel to assist in negotiating the 800 MHz frequency Rebanding/Reconfiguration initiative required by the FCC. Seminole County and Shulman, Rogers, Gandal, Pordy & Ecker, P.A. are negotiating the requirements to accomplish the 800 MHz frequency Rebanding/Reconfiguration. Seminole County and Nextel are required to engage in good faith negotiations. As the negotiation and mediation process is governed by a series of deadlines controlled by the FCC, it is recommended that the County Manager be granted signature authority to expedite the execution of necessary agreements.

**Attachment:** Resolution  
Transition Authority Overview Fact Sheet

<b>Reviewed by:</b> <u>[Signature]</u> <b>Co Atty:</b> <u>[Signature]</u> <b>DFS:</b> _____ <b>Other:</b> <u>[Signature]</u> <b>DCM:</b> <u>[Signature]</u> <b>CM:</b> <u>[Signature]</u>
<b>File No.:</b> <u>9-26-CITT01</u>

**THE FOLLOWING RESOLUTION WAS ADOPTED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA AT THEIR REGULARLY SCHEDULED MEETING OF \_\_\_\_\_, 2006.**

**WHEREAS**, The Board of County Commissioners (the "Board") of Seminole County, Florida (the "County") is the Federal Communications Commission ("FCC") license holder for itself and the seven municipalities in the County relative to the assigned 800 MHz frequencies for public safety and emergency communications systems; and

**WHEREAS**, the FCC has in its Report and Order dated August 6, 2004 and its Supplemental Order and Order On Reconsideration dated December 22, 2004 (collectively, the "Order") mandated the reconfiguration of the 800MHz spectrum on a nationwide basis with the objective of reducing or eliminating interference with public safety communications systems caused by the collocation of certain special mobile radio (SMR) and cellular telephone networks in the 800 MHz spectrum;

**WHEREAS**, Seminole County is required to reconfigure all of its licensed systems by December 31, 2007 which requires the utilization of outside vendors to alter or replace its entire inventory of emergency and public safety radios, repeaters, base stations, transmitters, bi-directional amplifiers and software systems related thereto;

**WHEREAS**, as part of its Order, the FCC mandated Sprint-Nextel to fund the entire costs of reconfiguration for all units of government throughout the United States requiring no monetary outlay or costs incurred by the County; and

**WHEREAS,** the reconfiguration has heretofore required the entering into binding, written agreements for the retention of special legal counsel to conduct negotiations with the FCC and its appointed Transition Administrator, presently requires entering into a Frequency Reconfiguration Agreement with Sprint Nextel for planning and reconfiguration funding, and will require future agreements for funding as well as the actual reconfiguration services with vendors such as Motorola Corporation; and

**WHEREAS,** the reconfiguration is unique in its nature, subject to short time frames while requiring protracted negotiating sessions on highly technical aspects and requiring multiple subsequent agreements and amendments thereto with Sprint-Nextel and the selected reconfiguration vendors; and

**WHEREAS,** time is of the essence in executing such agreements to avoid the potential for failing to comply with FCC ordered deadlines:

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF COUNTY COMMISSIONERS OF SEMINOLE COUNTY, FLORIDA, THAT:**

(1) The above recitals are true and correct and form a material part of this Resolution.

(2) The Board finds and determines that the agreements of the type involved for this reconfiguration, a sample of which is in the form attached as Exhibit "A" hereto are of the type intended to be within the scope of Section 22.203(4) of the Administrative Code and that no further authorization is required for execution thereof by the County Manager.

(3) The Board hereby approves the execution of said agreements by the County Manager provided they are necessary to comply with the FCC Order and do not exceed financial limits on such delegated authority imposed by section 22.203(4) of the Administrative Code.

**ADOPTED** this \_\_\_\_\_ day of \_\_\_\_\_, 2006.

ATTEST:

BOARD OF COUNTY COMMISSIONERS  
SEMINOLE COUNTY, FLORIDA

\_\_\_\_\_  
MARYANNE MORSE  
Clerk to the Board of  
County Commissioners of  
Seminole County, Florida

By: \_\_\_\_\_  
CARLTON D. HENLEY, Chairman

Attachment:

Exhibit "A" - Initial Frequency Reconfiguration Agreement  
between Seminole County and Nextel South Corporation.

**EXHIBIT "A"**

## FREQUENCY RECONFIGURATION AGREEMENT

THIS FREQUENCY RECONFIGURATION AGREEMENT (this "Agreement") is made as of this \_\_\_\_ day of \_\_\_\_\_, 2006 ("Effective Date"), by and between **Seminole County Board of County Commissioners**, a municipality of the State of Florida, ("Incumbent"), and **Nextel South Corp.** ("Nextel"), a wholly owned indirect subsidiary of Nextel Communications, Inc., a Delaware corporation (each is referred to in this Agreement as a "Party" and collectively as the "Parties").

### RECITALS

- A. On August 6, 2004, the Federal Communications Commission ("FCC") issued a Report and Order that modified its rules governing the 800 MHz band. The purpose of the Order was to reconfigure the 800 MHz band to minimize harmful interference to public safety radio communications systems in the band ("Reconfiguration").
- B. On December 22, 2004, the FCC issued a Supplemental Order and Order on Reconsideration. The August 6, 2004 and December 22, 2004 FCC orders, and any supplemental FCC Orders in the Reconfiguration proceeding or subsequent actions after the date of this Agreement, are collectively referred to as the "Order."
- C. Pursuant to the Order, Incumbent and Nextel are licensed on frequency allocations subject to Reconfiguration.
- D. Pursuant to the Order, Nextel will pay Incumbent an amount to effect a Reconfiguration of Incumbent's affected frequency allocations ("Reconfiguration Cost"). Incumbent will certify to the Transition Administrator appointed pursuant to the Order (the "Transition Administrator") that the Reconfiguration Cost is the minimum amount necessary to provide comparable facilities.

FOR GOOD AND VALUABLE CONSIDERATION, THE RECEIPT OF WHICH IS HEREBY ACKNOWLEDGED, THE PARTIES AGREE AS FOLLOWS:

### AGREEMENT

1. **Frequencies to be Reconfigured:** Pursuant to the Order, Incumbent shall relinquish the Incumbent Frequencies and relocate its system to the Replacement Frequencies. Incumbent is the licensee under the license(s) granted by the FCC identified in Schedule A (the "Incumbent Licenses") for the operation of certain 800 MHz frequencies at the locations identified on Schedule A (the "Incumbent Frequencies"). Nextel, including its subsidiaries or affiliates, is the licensee under license(s) granted by the FCC (the "Nextel Licenses") for the operation of Specialized Mobile Radio ("SMR") systems on the frequencies and at the locations identified in Schedule B (the "Replacement Frequencies").

2. **Frequency Reconfiguration Process:**

(a) On or before the Closing Date (as defined below) (i) Nextel or Incumbent will cause the modification of the Incumbent Licenses to add the Replacement Frequencies or Nextel will cause the creation of a new FCC license for Incumbent that includes the Replacement Frequencies; (ii) Incumbent will cause the assignment of the Incumbent Frequencies to Nextel or will cause the deletion of the Incumbent Frequencies from the Incumbent Licenses following Reconfiguration of Incumbent's system; and (iii) Nextel will cause the modification and/or cancellation of the FCC licenses it holds for the operation of 800 MHz frequencies that are co-channels of the Replacement Frequencies, to the extent required to meet the

technical short-spacing requirements of Section 90.621(b) of the FCC's Rules, 47 C.F.R. § 90.621(b), as such rule may be amended from time to time by the FCC.

(b) The FCC applications for the Replacement Frequencies and the Incumbent Frequencies will be filed by Nextel (or Incumbent) at a mutually agreeable time in order to meet the timelines set forth in Section 4.

3. **Reconfiguration Costs:**

(a) Acknowledgement of Obligations. Incumbent agrees that:

(i) the cost estimate set forth in Schedule C (the "Cost Estimate") sets forth all of the work required to replace Incumbent's existing frequencies with the Replacement Frequencies; and

(ii) after all of the work contemplated by the Cost Estimate has been performed in accordance with this Agreement and Nextel has paid all amounts required by this Agreement, the Incumbent's Replacement Frequencies shall be deemed for all purposes of the Order to be "comparable" to Incumbent's existing frequencies prior to Reconfiguration, and Nextel shall be deemed to have satisfied its obligations under the Order to pay the cost of replacing the Incumbent Frequencies with the Replacement Frequencies.

(b) Payment Terms. In order to facilitate the Incumbent's transition to the Replacement Frequencies, Nextel will pay the costs incurred to replace Incumbent's existing frequencies in an amount not to exceed the Cost Estimate, except as modified pursuant to Section 3(b)(iii) and Section 8, of this Agreement, Nextel will pay the amount of the Cost Estimate in accordance with the payment terms identified on Schedule C and as set forth below for both payments made directly to Incumbent and payments made on behalf of Incumbent directly to each third party service vendor identified on the Cost Estimate ("Vendor").

(i) Prior to the Closing Date, Incumbent will submit to Nextel documentation (including without limitation invoices, receipts, and timesheets or equivalent documentation) demonstrating the actual costs that Incumbent reasonably incurred or paid to other entities to reconfigure Incumbent's system ("Actual Costs"). Upon receipt by Nextel of documentation of the Actual Costs, Nextel and Incumbent will reconcile the Actual Costs against the payments made by Nextel to Incumbent and the Parties will agree upon the amount of any additional payments (subject to Section 8) due to Incumbent or any refunds due to Nextel. (The effective date of agreement on reconciliation and signing of the Closing documents is the "Reconciliation Date".) Should the parties be unable to agree upon the amount of the additional payments, the parties shall follow the resolution procedures detailed in the FCC Order.

(ii) Any additional payments due to Incumbent from Nextel will be disbursed to Incumbent within thirty (30) days of the Reconciliation Date, provided the additional payments do not result from Actual Costs that exceed the Cost Estimate (in which case the provisions of Section 3(b)(iii) of this Agreement will apply). Any refunds due from the Incumbent to Nextel will be made within thirty (30) days of the Reconciliation Date.

(iii) In the event Incumbent's Actual Costs exceed the Cost Estimate, Incumbent must submit a Change Notice pursuant to Section 8 of this Agreement describing the change in scope of work that resulted in Incumbent's Actual Costs exceeding the Cost Estimate. Approval of any Change Notice will not be automatic but will be processed in accordance with Section 8 of this Agreement. Additional payments due to Incumbent, which result from an excess of Actual Costs over the Cost Estimate, as agreed on the Reconciliation Date, will be disbursed to Incumbent within thirty (30) days of the Transition Administrator's approval of a Change Notice.

(iv) Prior to the Closing Date, Nextel will pay on behalf of itself and Incumbent, both Parties' applicable sales and transfer taxes, if any, and all FCC fees in connection with the preparation and filing of the necessary FCC applications for the assignment(s) described in Section 2 of this Agreement.

4. **Reserved.**

5. **Retuning Cooperation:** Nextel will ensure that the Replacement Frequencies will be cleared of all users no earlier than (a) November 1, 2007; or (b) 60 days prior to the Interfering Licensee beginning to operate on the Incumbent Frequency (or a frequency offset from the Incumbent Frequency by 12.5 kHz). Nextel will notify Incumbent of the decommissioning of the Replacement Frequencies within five (5) days following completion of the decommissioning. Incumbent will then have until December 31, 2007 to clear all users from the Incumbent Frequencies. However, should an Interfering Licensee seek to begin use the Incumbent Frequency (or a frequency offset from the Incumbent Frequency by 12.5 kHz) prior to December 31, 2007, Incumbent will decommission the Incumbent Frequency no earlier than thirty (30) days after receiving Notice from the Interfering Licensee (or Nextel) of the date upon which the Interfering Licensee intends to begin using the Incumbent Frequency (or a frequency offset from the Incumbent Frequency by 12.5 kHz) and no later than thirty (30) days before the Interfering Licensee intends to begin such usage. Incumbent will notify Nextel that Incumbent has cleared the Incumbent Frequencies of users within five (5) days following the clearing.

An Interfering Licensee is defined as a current Licensee in the 800 MHz NPSAC band which will be relocated to the Incumbent Frequency (or a frequency offset from the Incumbent Frequency by 12.5 kHz), with operations are spaced at a distance from the Incumbent's operations which would not satisfy the technical short-spacing requirements of Section 90.621(b) of the FCC's Rules, 47 C.F.R. § 90.621(b), as such rule may be amended from time to time by the FCC.

6. **Representations and Warranties:** Each Party represents and warrants to the other as follows:

(i) it is duly organized, validly existing and in good standing under the laws of the state of its incorporation;

(ii) this Agreement has been duly authorized and approved by all required organizational action of the Party;

(iii) neither the execution and delivery of this Agreement nor the consummation of the transactions contemplated by this Agreement will conflict with, or result in any material violation or default under, any term of its articles of incorporation, by-laws or other organizational documents or any agreement, mortgage, indenture, license, permit, lease, encumbrance or other instrument, judgment, decree, order, law or regulation by which it is bound;

(iv) it is the lawful and exclusive FCC licensee of its respective license(s) described in this Agreement, such licenses are valid and in good standing with the FCC, and it has the authority to request the FCC to assign, modify or cancel such licenses;

(v) there is no pending or threatened action or claim that would have the possible effect of enjoining or preventing the consummation of this Agreement or awarding a third party damages on account of this Agreement; and

(vi) to the best of its knowledge, all information provided to the other Party concerning the transactions contemplated by this Agreement is true and complete.

All representations and warranties made in this Agreement shall survive the Closing (defined below) for two (2) years.

7. **Covenants:** From the Effective Date until the Closing Date (defined below), each Party will promptly notify the other Party upon becoming aware of any pending or threatened action by the FCC or any other governmental entity or third party to suspend, revoke, terminate or challenge any license described in this Agreement or to investigate the construction, operation or loading of any system authorized under such licenses. From the Effective Date until the Closing Date, Incumbent will not enter into any agreement resulting in, or otherwise cause, the encumbrance of any license for the Incumbent Frequencies, and Nextel will not enter into any agreement resulting in, or otherwise cause, the encumbrance of any of the Replacement Frequencies.

8. **Changes:** The Parties acknowledge that as the Reconfiguration of Incumbent's facilities proceeds in accordance with the work contemplated by the Cost Estimate, the need for changes to the scope of such work may arise. The Parties agree that their review of any such needed changes must be performed expeditiously to keep the work on schedule and that they will provide sufficient staff to manage changes. If either Party believes that a change to the work contemplated by the Cost Estimate is required (including changes by Vendors), such Party will promptly notify the other Party in writing. Such written notice (the "Change Notice") shall set forth (i) a description of the scope of the change to the work contemplated by the Cost Estimate believed to be necessary and (ii) an estimate of any increase or decrease in the Cost Estimate and in the time required to reconfigure Incumbent's existing facilities to operate on the Replacement Frequencies. A Party receiving a Change Notice shall immediately perform its own analysis of the need for and scope of the change and its impact on the Cost Estimate and schedule and negotiate the change in good faith with the other Party. After the Parties have agreed upon a change to this Agreement, they shall prepare a proposed amendment to this Agreement pursuant to Section 25 and submit to the Transition Administrator a copy of the proposed amendment together with a written request for its approval. Such request shall be accompanied by reasonable documentation supporting the need for and scope of the change and any proposed increase or decrease in the Cost Estimate and in the time required to reconfigure Incumbent's existing facilities to operate on the Replacement Frequencies. Incumbent is responsible for all unauthorized changes necessary as it relates to work performed by a Vendor on behalf of Incumbent. No change to the Cost Estimate, the work contemplated by the Cost Estimate or the time required to reconfigure Incumbent's existing facilities to operate on the Replacement Frequencies shall become effective until the Transition Administrator has approved the change in writing and both Parties have signed an amendment incorporating such approved change into this Agreement pursuant to Section 25. In this regard, in the event that the Transition Administrator is unable to approve the proposed amendment within ten (10) business days, then the deadline by which the Incumbent must clear all users from the Replacement Frequencies, pursuant to Section 5, will be automatically extended by the number of days beyond ten (10) business days in which the Transition Administrator does not take final action to approve the proposed amendment. Should the Transition Administrator not approve the proposed amendment, either Party may appeal the decision consistent with the FCC Order, in which event the deadline in Section 5 will be extended by the number of days it takes for such appeal to be resolved. If the Parties are unable to agree on modification of this Agreement consistent with the Change Notice, either Party may request mediation consistent with the FCC Order. Once mediation has been requested, the deadline in Section 5 will be extended by the number of days it takes for all appeals to be resolved.

9. **Closing:** The closing ("Closing") of the transactions contemplated by this Agreement will take place within thirty (30) days after (i) FCC approval of the assignment of the Incumbent Frequencies to Nextel and/or deletion of the Incumbent Frequencies from the Incumbent Licenses, (ii) FCC approval of the modification to add the Replacement Frequencies to the Incumbent Licenses with no material conditions or the creation of a new license for Incumbent with no material conditions that includes the Replacement Frequencies, (iii) the earlier of notification by Incumbent to Nextel that the Incumbent

Licenses have been decommissioned and 65 days following the date Nextel notifies Incumbent that the Replacement Frequencies have been decommissioned, (iv) delivery by Incumbent of all receipts, invoices and other documentation required to substantiate the Actual Cost, (v) FCC approval of the modification and/or cancellation of the FCC licenses Nextel holds for the operation of 800 MHz frequencies that are co-channels of the Replacement Frequencies, to the extent required to meet the technical short-spacing requirements of Section 90.621(b) of the FCC's Rules, 47 C.F.R. § 90.621(b), as such rule may be amended from time to time by the FCC, (vi) the refund to Nextel or payment to Incumbent as described in Section 3(b)(ii), (if applicable) and (vii) the satisfaction of all other conditions specified in this Agreement (the "Closing Date").

10. **Closing Conditions:** Performance of each Party's Closing obligations is subject to satisfaction of the following conditions (except to the extent expressly waived in writing by the other Party):

(a) the continued truth and accuracy of the other Party's representations and warranties set forth in this Agreement;

(b) all of the covenants of the other Party described in this Agreement are performed in all material respects; and

(c) execution and delivery by the other Party of Closing documents as well as any other Closing instruments and documents either Party or its counsel may reasonably request. Incumbent will execute and deliver to Nextel a closing certification required by the Transition Administrator.

(d) The Parties will cooperate in good faith and exercise their reasonable best efforts to finalize and execute these instruments and documents on or prior to the Closing Date in order to effect the Reconfiguration contemplated.

11. **Review Rights:** Incumbent agrees to maintain records and other supporting evidence related to the costs that Incumbent has expended in connection with the Reconfiguration contemplated by this Agreement and that Nextel has paid or will pay to Incumbent pursuant to this Agreement. Incumbent agrees to maintain such records and make them reasonably available to the Transition Administrator for review or reproduction until eighteen (18) months after the date of Incumbent's executed Completion Certification required by this Agreement or for a longer period if Incumbent, for its own purposes, retains such records for a longer period of time. As used in this provision, "records" includes books, documents, accounting procedures and practices and other data regardless of type and regardless of whether such items are in written form, in the form of computer data or in any other form. Nextel shall be responsible for all post-Closing audit expenses of the Incumbent, except those expenses resulting from fraudulent activity on behalf of the Incumbent. To the extent that any post-Closing audit determines that Nextel paid a third-party vendor more than provided for under the FCC Order, Nextel's sole remedy is to seek reimbursement directly from the third-party vendor, unless such overpayment was the result of fraud or negligence of the Incumbent.

12. **Excluded Assets; No Assumption of Liabilities:** Nothing in this Agreement should be construed as a transfer or assignment from either Party to the other Party of any assets (including FCC licenses) except as expressly set forth in this Agreement. Other than as expressly provided in this Agreement, neither Party is obligated to assign and transfer to the other Party any asset, tangible or intangible, nor is either Party entitled to assume any asset, tangible or intangible. Neither Party is assuming, nor is either Party responsible for, any liabilities or obligations of the other Party arising out of or in connection with the other Party's licenses (or related systems and facilities) that are the subject of this Agreement.

13. **Confidentiality:** (a) The terms of this Agreement and any proprietary, non-public information regarding the Incumbent Frequencies, Replacement Frequencies, Nextel's business and Incumbent's business must be kept confidential by the Parties and their employees, shareholders, agents, attorneys and accountants (collectively, "Agents"), which confidentiality will survive the Closing or termination of this Agreement, provided, however, that each Party will cause all of its Agents to honor the provisions of this Section.

(b) Notwithstanding the provisions of subsection 13(a), the Parties acknowledge that this contract is subject to Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes and nothing in this Agreement shall be deemed to restrict, impair, or burden the Incumbent's and/or its Agents' compliance with the Florida Public Records Law. In accordance therewith, the Parties agree that absent a valid exemption, including status as a "trade secret," Incumbent and its Agents shall allow public access to all documents, papers, letters, or other material subject to Article 1, Section 24, Florida Constitution and Chapter 119, Florida Statutes that are made or received by the Incumbent in conjunction with this Agreement.

14. **Cooperation:** The Parties will cooperate with each other and the Transition Administrator with respect to the Reconfiguration work contemplated by this Agreement. Without limiting the foregoing obligations, the Parties agree to cooperate in the preparation of any applications required to be filed with the FCC, and Incumbent agrees to provide reasonable access to its facilities so that the Transition Administrator may comply with any audit obligations and so any Reconfiguration work contemplated by this Agreement may be performed in accordance with the Cost Estimate and performance schedule. If a Party is subject to a denial of FCC benefits for delinquent non-tax debts owed to the FCC that would prevent or delay the timely processing of any FCC applications, such Party shall cure such delinquency in an expeditious manner and at its sole expense.

15. **Indemnification:**

(a) The following indemnifications, subject to Florida Statutes, shall not apply to claims, actions, damages, obligations, liabilities or liens arising from (i) sole negligence, (ii) intentional misconduct (iii) any breach of any covenant, agreement, representation or warranty contained in, or made pursuant to, the Agreement, or (iv) any and all liabilities or obligations relating to periods prior to the Closing Date resulting from Incumbent's operation of the system pursuant to the Incumbent Licenses, or the ownership or use of those licenses, shall survive the termination of this Agreement.

(b) Nextel shall, at its sole cost and expense, indemnify and hold harmless the Incumbent and all associated, affiliated, allied and subsidiary entities of the Incumbent, now existing or hereinafter created, and their respective officers, boards, commissions, representatives, employees, agents, attorneys, contractors, and elected and appointed officials (hereinafter referred to as "Indemnitees") from and against:

(1) any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants) which may be imposed upon, incurred by, or be asserted against the Incumbent or the Indemnitees by reason of any act or omission of Nextel, its personnel, employees, or agents, resulting in personal injury, bodily injury, sickness, disease or death to any person or damage to, loss of use, or destruction of tangible or intangible property of any person, entity, firm or corporation, libel, slander, invasion of privacy or any other right of any person, entity, firm or corporation, including actions under Chapter 688, Florida Statutes (the Uniform Trade Secrets Act), any other copyright, patent, trademark or mask work, infringement or violation which may arise out of or be in any way connected with Nextel's performance of this Agreement, including but not limited to: (i) any breach of any covenant, agreement, representation or warranty of Nextel and any negligent or intentional actions or

omissions in connection therewith; or (ii) Nextel's failure to comply with any Federal, State or local statute, ordinance or regulation.

(2) any and all liability, obligation, damages, penalties, claims, liens, costs, charges, losses, and expenses (including, without limitation, reasonable fees and expenses of attorneys, expert witnesses and consultants), which may be imposed upon, incurred by or be asserted by reason of any claim or lien arising out of reconfiguration related work, labor, materials or supplies or the procurement thereof which are brought about solely by Nextel's failure to adequately or timely pay for same as required by this Agreement.

(3) Section 768.28, Florida Statutes, shall be deemed as controlling with respect to any actions in tort naming Incumbent as a defendant, and nothing in this Agreement or in this Section shall be construed as constituting a waiver of the sovereign immunity conferred on Incumbent by said statute.

(c) Defense of the Incumbent. In the event that any action or proceeding is brought against the Incumbent by reason of any matter for which the Incumbent is indemnified hereunder, Nextel shall, upon notice from the Incumbent, at Nextel's sole cost and expense, resist and defend the same with legal counsel acceptable to the Incumbent; provided, however, that Nextel shall not admit liability in any such matter on behalf of the Incumbent without the written consent of the Incumbent and, provided further, that the Incumbent shall not admit liability for, nor enter into any compromise or settlement of, any claim for which it is indemnified hereunder without the prior written consent of Nextel. Incumbent reserves the right to retain its own counsel pursuant to paragraph (d) below, if, in the opinion of the Incumbent, Nextel's own counsel or that retained by its insurer cannot adequately represent the Incumbent's interest in the litigation.

(d) Notice, Cooperation and Expenses. Incumbent shall give Nextel prompt notice of the making of any claim or the commencement of any action, suit or other proceeding covered by the provisions of this section. Nothing herein shall be deemed to prevent the Incumbent from cooperating with Nextel and participating in the defense of any litigation by the Incumbent's own counsel. Nextel shall pay all expenses incurred by the Incumbent in response to any such actions, suits or proceedings. These expenses shall include, but not be limited to, all out of pocket expenses such as reasonable attorney fees, the reasonable value of any other costs or services rendered by the Incumbent's attorneys, the actual expenses of the Incumbent's agents, employees and expert witnesses, and disbursements and liabilities assumed by the Incumbent in connection with such suits, actions or proceedings.

16. Disputes: The Parties agree that any dispute related to the Replacement Frequencies, Nextel's obligation to pay any cost of the Reconfiguration of Incumbent's system contemplated by this Agreement, or the comparability of Incumbent's reconfigured system to Incumbent's existing system prior to Reconfiguration, which is not resolved by mutual agreement, shall be resolved in accordance with the dispute resolution provisions of the Order, including the dispute resolution procedures adopted by the Transition Administrator, as they may be amended from time to time.

17. No Gratuities: No gift, gratuity, credit, thing of value or compensation of any kind shall be offered or provided by Incumbent, directly or indirectly, to any officer, employee or official of either Party for the purpose of improperly obtaining or rewarding favorable treatment under this Agreement.

18. Liens: If any liens or security interests attach to any of Incumbent's facilities in favor of any vendor or service provider that is performing any Reconfiguration work contemplated by this Agreement as a result of Nextel's breach of any obligation to make direct payment (not in dispute) to such

vendor or services provider, Nextel will cooperate to remove any Liens within sixty (60) days upon receipt of Notice from Incumbent.

19. **Vendor Performance Issues:** Incumbent will select and contract directly with any vendor or service provider performing work required to reconfigure the Incumbent’s existing facilities to operate on the Replacement Frequencies. Neither the Transition Administrator nor Nextel will be responsible for, or assume the risk of any failure of that Vendor to perform its obligations under any contract entered into between Incumbent and such Vendor in connection with the Reconfiguration contemplated by this Agreement.

20. **Reserved.**

21. **Termination:** This Agreement may be terminated and the transactions contemplated by this Agreement abandoned: (i) by mutual consent of the Parties provided in writing; (ii) for cause by either Party upon material breach of the other Party, following a thirty (30) day period for cure by the breaching Party following written notice of the breach; (iii) by Incumbent, in the event that a proposed amendment is not approved, pursuant to Section 8; or (iv) by Nextel prior to Closing in the event of any Adverse Decision affecting the Order by any governmental entity of competent jurisdiction. For purposes of this Agreement, an “Adverse Decision affecting the Order” means an order, decree, opinion, report or any other form of decision by a governmental entity of competent jurisdiction that results, in whole or part, in a stay, remand, or reversal of the Order, or otherwise in any revision to the Order that Nextel determines, in its sole discretion, to be adverse to its interests. In the event of termination, the Parties shall take all necessary action (including preparing and filing FCC documents) to return the *status quo ante* on the date of this Agreement. In the event of termination, Nextel shall pay all costs associated with the return to the *status quo ante*, as well as all Incumbent costs expended in the Agreement negotiations and implementation, except if such termination was due to an uncured material breach by Incumbent. Should Incumbent terminate this Agreement pursuant to subsection (iii), Incumbent shall not be released of its obligations under the Order.

22. **Attorney’s Fees:** In any legal proceeding by a Party to enforce its rights under this Agreement against the other Party, the Party prevailing in such proceeding will be entitled to recover its reasonable attorney’s fees and costs from the other Party.

23. **Notices:** All notices and other communications under this Agreement must be in writing and will be deemed given (i) the same day if delivered personally or sent by facsimile; (ii) the next business day if sent by overnight delivery via a reliable express delivery service; or (iii) after five (5) business days if sent by certified mail, return receipt requested, postage prepaid. All notices are to be delivered to the Parties at the following addresses:

<p>If to Incumbent, to:                  Seminole County Board of County Commissioners                  150 Bush Blvd., Suite 3-105                  Sanford, FL 32773                  Attn: Greg Holcomb, IT Mgr.                  Phone: (407) 665-1005</p>	<p>If to Nextel, to:                  Nextel South Corp.                  c/o Nextel Communications, Inc.                  2000 Edmund Halley Drive                  Reston, VA 20191                  Attn: Heather P. Brown, Esq.                  Phone: (703) 433-4000                  Fax: (703) 433-4483</p>
<p>With a copy that shall not constitute Notice:</p>	<p>With a copy that shall not constitute Notice:</p>



**SCHEDULE A**

**Incumbent Frequencies**

Incumbent Name: County of Seminole, FL

**Incumbent Assigns to Nextel:**

<b>Call Sign</b>	<b>Licensee</b>	<b>Lat (N)</b>	<b>Long (W)</b>	<b>City</b>	<b>State</b>	<b>Issue Date</b>	<b>Frequencies</b>
WNFW605	Seminole County Board of County Commissioners	28-48-40	81-20-26.2	PAOLA	FL	06/07/2001	851.3875
WNFW605	Seminole County Board of County Commissioners	28-44-32	81-18-3.2	SANFORD	FL	06/07/2001	851.3875
WNFW605	Seminole County Board of County Commissioners	28-40-9	81-25-21.3	FOREST CITY	FL	06/07/2001	851.3875
WNFW605	Seminole County Board of County Commissioners	28-44-11	81-7-.2	GENEVA	FL	06/07/2001	851.3875
WNFW605	Seminole County Board of County Commissioners	28-37-57	81-7-31.2	CHULUOTA	FL	06/07/2001	851.3875
WNFW605	Seminole County Board of County Commissioners	28-39-14	81-12-4	OVIEDO	FL	06/07/2001	851.3875
WNFW605	Seminole County Board of County Commissioners	28-48-40	81-20-26.2	PAOLA	FL	06/07/2001	851.4375
WNFW605	Seminole County Board of County Commissioners	28-44-32	81-18-3.2	SANFORD	FL	06/07/2001	851.4375
WNFW605	Seminole County Board of County Commissioners	28-40-9	81-25-21.3	FOREST CITY	FL	06/07/2001	851.4375
WNFW605	Seminole County Board of County Commissioners	28-44-11	81-7-.2	GENEVA	FL	06/07/2001	851.4375
WNFW605	Seminole County Board of County Commissioners	28-37-57	81-7-31.2	CHULUOTA	FL	06/07/2001	851.4375
WNFW605	Seminole County Board of County Commissioners	28-39-14	81-12-4	OVIEDO	FL	06/07/2001	851.4375

**SCHEDULE B**

**Replacement Frequencies**

Incumbent Name: County of Seminole, FL

**Nextel Assigns to Incumbent:**

<b>Replacement Channels (MHz)</b>	<b>Lat (N)</b>	<b>Lon g (W)</b>	<b>ERP (w)</b>	<b>Grnd Elev. (ft)</b>	<b>Ant Hgt. (ft)</b>	<b>New Licensee</b>	<b>Comments</b>
854.5625	28-37-57	81-7-31.2	349	66	240	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.5625	28-39-14	81-12-4	263	82	148	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.5625	28-40-9	81-25-21.3	418	85	171	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.5625	28-44-11	81-7-2	406	66	180	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.5625	28-44-32	81-18-3.2	216	46	259	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.5625	28-48-40	81-20-26.2	406	59	190	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.8375	28-37-57	81-7-31.2	349	66	240	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.8375	28-39-14	81-12-4	263	82	148	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.8375	28-40-9	81-25-21.3	418	85	171	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.8375	28-44-11	81-7-2	406	66	180	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.8375	28-44-32	81-18-3.2	216	46	259	Seminole County Board of County Commissioners	Frequencies to call sign WNF605
854.8375	28-48-40	81-20-26.2	406	59	190	Seminole County Board of County Commissioners	Frequencies to call sign WNF605

**SCHEDULE C**

**800 MHZ RECONFIGURATION**

**COST ESTIMATE – CERTIFIED REQUEST**

**Incumbent’s Name:** Seminole County, FL

**Request for Reconfiguration Funding**

Pursuant to the Order, Incumbent is required to reconfigure its existing facilities and requests Nextel to fund the following estimated reconfiguration costs:

**Incumbent Payment Terms:** Nextel will pay Incumbent an amount not to exceed the Estimated Cost(s) for Incumbent with respect to each category of work, as set forth below. Nextel will pay Incumbent \$0 within 15 days (30 days if Incumbent elects to be paid by check rather than electronic funds transfer) after receipt by Nextel of the fully executed Agreement and fully completed Incumbent Information Form (as set forth on Exhibit A). Nextel will pay any outstanding balance of the Actual Costs due to Incumbent within 30 days after the Reconciliation Date (as “Actual Costs” and “Reconciliation Date” are defined in Section 3(b)(i)).

**Vendor Payment Terms:** Nextel will pay each Vendor an amount not to exceed the Estimated Cost(s) for that Vendor with respect to each category of work, as set forth below. Nextel will pay each Vendor within 30 days after receipt by Nextel of (A) an invoice from the Vendor and (B) Incumbent’s approval of receipt of goods and services and approval of associated costs included on the Vendor invoice.

<b>Description of Work To Be Performed</b>	<b>Payee (separately identify Incumbent and each Vendor being paid for work performed)</b>	<b>Estimated Cost(s) for Incumbent and each Vendor (Not to exceed listed amount)</b>
Legal Fees: Contract negotiations, Contract negotiations Review of contract and Closing documents Meetings with client Mediation calls (25 hours @ not to exceed \$400/hr)	Shulman Rogers Gandal Pordy & Ecker, P.A. (Vendor) 11921 Rockville Pike Rockville, MD 20852 Attention: Alan Tilles	\$10,000.00
FCC Regulatory Filings 2 sets of applications and STA extension Permanent application modification Consummation Notices Rebanding deadline notices and deadline coordination (8 hours @ \$175 per hr)		\$1,400.00
<b>Total Estimated Costs</b>		\$11,400.00

**Certification**

Pursuant to the Order, Incumbent hereby certifies to the Transition Administrator appointed pursuant to the Order that the funds requested above are the minimum necessary to provide Incumbent reconfigured facilities comparable to those presently in use. Incumbent further certifies, to the best of Incumbent's knowledge, that any vendor costs listed on Schedule C are comparable to costs that vendor previously charged Incumbent for similar work.

Signature: \_\_\_\_\_  
Print Name: \_\_\_\_\_  
Title: \_\_\_\_\_  
Phone Number: \_\_\_\_\_  
E-mail \_\_\_\_\_  
Date: \_\_\_\_\_

Exhibit A

Incumbent Information

The following questions are required for processing Electronic Funds Transfers and if Incumbent wants Nextel to complete the FCC filings on its behalf. All information contained herein shall be kept strictly confidential and will be used only in completion of the Frequency Reconfiguration transaction.

I. INCUMBENT INFORMATION

Please provide the following information:

Company/Name: \_\_\_\_\_
Contact: \_\_\_\_\_ Title: \_\_\_\_\_
Address: \_\_\_\_\_
City/State/Zip: \_\_\_\_\_
Phone: \_\_\_\_\_
Fax: \_\_\_\_\_

If not identified in the contract, please provide the following:

If Incumbent is a Partnership, please provide name, address and phone numbers of all other partners:

Name: \_\_\_\_\_ Name: \_\_\_\_\_
Address: \_\_\_\_\_ Address: \_\_\_\_\_
City/State/Zip: \_\_\_\_\_ City/State/Zip: \_\_\_\_\_
Phone: \_\_\_\_\_ Phone: \_\_\_\_\_

II. BANK ACCOUNT INFORMATION (Required for payment via electronic funds transfer.)

Name of Bank: \_\_\_\_\_
Address of Bank: \_\_\_\_\_
City/State/Zip: \_\_\_\_\_
Bank Phone #: \_\_\_\_\_
ABA (Routing #): \_\_\_\_\_
Account #: \_\_\_\_\_
Name on Account: \_\_\_\_\_
Federal, State or Individual SS #: \_\_\_\_\_
Name of Brokerage Firm (if applicable): \_\_\_\_\_
Brokerage Account # (if applicable): \_\_\_\_\_

In the event Incumbent will not provide information for electronic funds transfer, Incumbent acknowledges that all payments made by check will be mailed within thirty (30) days of the date of performance required by Incumbent ( for each payment) as stipulated in the Agreement.

Acknowledged by Incumbent: \_\_\_\_\_ (signature
required only if Incumbent does not want an electronic funds transfer)

**III. TAX INFORMATION**

The Internal Revenue Service and state tax authorities require Nextel to report all transactions, even if the transaction is exempt from taxation (if so, it will be reported to the IRS as a like-kind exchange). Therefore, it is necessary for Nextel to collect the information below. If you have specific questions about your tax implications in this transaction, you should consult your own accountant or financial advisor.

Incumbent’s Federal, State or Individual Tax ID #,  
FEIN (Federal) or SSN (individuals): \_\_\_\_\_

State(s) – sales tax license, resale permit,  
employment, etc.): \_\_\_\_\_

Local (if applicable): \_\_\_\_\_

Current State and County location for your  
principal executive office: \_\_\_\_\_

If there has been more than one location for the  
principal executive office within the past five (5)  
years, list each such City/County/State location:  
\_\_\_\_\_  
\_\_\_\_\_

**IV. REGULATORY INFORMATION**

**Would you like Nextel’s Regulatory department to prepare and file all necessary FCC paperwork on your behalf?                      Yes   /   No**

*If yes*, please provide the following **Universal Licensing System (“ULS”)** information for your licenses:

**FRN** (FCC Registration Number):  
\_\_\_\_\_

**ULS PASSWORD:**  
\_\_\_\_\_

**Contact Representative for any FCC related issues:**

Name:  
\_\_\_\_\_

*If no*, please provide the following information regarding who will take care of the preparation and filing of all necessary FCC paperwork on your behalf:

Contact Name: \_\_\_\_\_

Organization: \_\_\_\_\_

Address: \_\_\_\_\_

City: \_\_\_\_\_

State/Zip: \_\_\_\_\_

Phone Number: \_\_\_\_\_

Email Address: \_\_\_\_\_

Phone Number: \_\_\_\_\_

.....

*I hereby acknowledge that all of the information provided herein is true and correct as of the date signed below.*

**Incumbent Signature:** \_\_\_\_\_

**Print Name:** \_\_\_\_\_

**Title:** \_\_\_\_\_

**Date:** \_\_\_\_\_

## **Transition Authority Overview Fact Sheet**

### **Overview**

Public safety radio systems—those used by police, firefighters, emergency medical technicians, and other systems operating on the 800 MHz Band—have been experiencing increasing levels of interference and “dead zones” as a result of commercial wireless carriers operating in the same or adjacent spectrum bands.

Rebanding/Reconfiguration is designed to alleviate this interference by spectrally separating the two types of systems. The 800 MHz reconfiguration program is part of the FCC’s plan to promote safety and protect the lives of first responders and other emergency personnel by addressing the harmful interference to public safety communication systems operating in the 800 MHz Band. 800 MHz Transition Administrator, LLC (TA, LLC) is the Transition Administrator (TA) for the reconfiguration of the 800 MHz Band mandated by the FCC.

### **Who needs to reconfigure in the 800 MHz Band?**

Many 800 MHz systems, including public safety, critical infrastructure industries (CII), private business (B/ILT), and commercial (SMR) systems operating at 806-824 MHz/851-869 MHz will be required to relocate with the following general guidelines:

- Licensees in the 806-809 MHz/851-854 MHz Band (Channels 1-120) will be relocated.
- NPSPAC licensees in the 821-824 MHz/866-869 MHz Band will be relocated.
- Certain licensees in the newly created “Expansion” Band and “Guard” Band will have the option of relocating within the 800 MHz Band.
- Enhanced Specialized Mobile Radio (ESMR) operators, such as Sprint Nextel, will be relocated. In addition, there are alternative band plans affecting the Expansion, Guard and ESMR bands for an area in the Southeastern Region of the United States and also for the Atlanta area.

### **Regional Prioritization Plan**

The TA developed the Regional Prioritization Plan (RPP) that lists the order in which the 55 National Public Safety Planning Advisory Committee (NPSPAC) regions will start the process of reconfiguration in the 800 MHz Band in the United States.

- The RPP contains four reconfiguration “Waves” or groups of NPSPAC regions, and the reconfiguration schedule for each Wave.
- Each Wave consists of two “Stages”: Stage 1 includes Channels 1-120 or the non-NPSPAC Channels which reconfigure first; and Stage 2 includes NPSPAC Channels which reconfigure after Channels 1-120.

### **Reconfiguration Costs**

Sprint/Nextel is generally responsible for the cost of relocating all affected 800 MHz incumbents to new spectrum with comparable facilities to those presently in use. Per the FCC, comparable facilities are those that provide the same level of service as the incumbent's existing facilities, including: equivalent channel capacity; equivalent signaling capability, baud rate and access time; coextensive geographic coverage; and equivalent operating costs. Licensees must certify that cost estimates are the "minimum necessary" to provide facilities comparable to those presently in use. To ensure that adequate funding is available for the entire 800 MHz reconfiguration, the FCC has required Sprint Nextel to secure irrevocable letters of credit for \$2.5 billion and commit to providing additional funding if necessary. Costs that are reasonable, prudent, and directly related to obtaining comparable facilities to those presently in use are reimbursable. Upon review and approval of the licensee's Request for Planning Funding or Cost Estimate pursuant to a Frequency Reconfiguration Agreement by Sprint Nextel and the TA, Sprint Nextel will initiate steps for payment of these upon the receipt of an invoice and approval by the licensee.

### **Negotiations**

Reconfiguring 800 MHz licensees are required to negotiate the specifics of their reconfigurations with Sprint Nextel directly. There is a three-month voluntary negotiation period for Stage 1 (Channels 1-120) licensees that begin at the start of each "Wave," followed by a three-month mandatory negotiation period. The start of negotiations for Stage 2 licensees (on NPSPAC Channels) is dependent on the completion of the reconfiguration for Stage 1. If the licensee and Sprint Nextel do not reach an agreement by the end of the mandatory negotiation period, they will enter mediation as outlined in the Alternative Dispute Resolution (ADR) Plan, wherein the TA will mediate the negotiation of an agreement between the licensee and Sprint Nextel. The TA will refer the matter to the FCC if not resolved at the end of the ADR process.