

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Nextel WIP License Corp.)	File No. EB-02-HL-078
Palehua Ridge, Hawaii)	
)	NAL/Acct. No. 200232860002
)	FRN 0002-2070-66

ORDER

Adopted: September 23, 2003

Released: September 26, 2003

By the Chief, Enforcement Bureau:

1. In this Order, we adopt the attached Consent Decree entered into between the Enforcement Bureau and Nextel WIP License Corp. ("Nextel WIP"). The Consent Decree terminates the Enforcement Bureau's forfeiture proceeding against Nextel WIP for apparently operating a radio station without Commission authorization in violation of Section 301 of the Communications Act of 1934, as amended ("Act").¹

2. The Consent Decree provides that, among other things, Nextel WIP will implement a Compliance Plan to ensure its future compliance with the Commission's Rules and will make a \$10,000 voluntary contribution to the United States Treasury.

3. After having reviewed the record and the Consent Decree, including the incorporated Compliance Plan, we believe that the public interest will be served by adopting the Consent Decree and terminating the Enforcement Bureau's forfeiture proceeding against Nextel WIP.²

4. Accordingly, **IT IS ORDERED** that, pursuant to Sections 4(i), 4(j), and 503(b) of the Act,³ and Sections 0.111 and 0.311 of the Commission's Rules,⁴ the Consent Decree attached to this Order **IS ADOPTED**.

5. **IT IS FURTHER ORDERED** that the Enforcement Bureau's forfeiture proceeding against Nextel WIP **IS TERMINATED**.

6. **IT IS FURTHER ORDERED** that Nextel WIP shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal

¹ 47 U.S.C. § 301.

² *Nextel WIP License Corp.*, NAL Acct. No. 200232860002 (Enf. Bur., Honolulu Office, rel. September 30, 2002).

³ 47 U.S.C. §§ 4(i), 4(j), 503(b).

⁴ 47 C.F.R. §§ 0.111, 0.311.

Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 200232860002 and FRN 0002-2070-66.

7. **IT IS FURTHER ORDERED** that a copy of this Order and Consent Decree shall be sent by Certified Mail Return Receipt Requested to Nextel WIP License Corp., 10120 West 76th Street, Eden Prairie, Minnesota 55344 and its counsel, Albert F. Catalano, Esq., Catalano & Plache, PLLC, 3221 M Street, N.W., Washington, DC 20007.

FEDERAL COMMUNICATIONS COMMISSION

David H. Solomon
Chief, Enforcement Bureau

CONSENT DECREE

1. The Enforcement Bureau of the Federal Communications Commission (“Commission” or “FCC”) and Nextel WIP License Corp. (“Nextel WIP”) hereby enter into this Consent Decree for the purpose of terminating a forfeiture proceeding arising from an investigation of Nextel WIP for alleged violation of Section 301 of the Communications Act of 1934, as amended (“Act”).⁵

BACKGROUND

2. Nextel WIP is a wholly-owned subsidiary of Nextel Partners, Inc., which is a publicly-traded company that provides digital wireless telecommunications services in various regions of the United States, including Hawaii. Nextel WIP is a license holding entity for Nextel Partners, Inc. Nextel WIP is licensed for operations on hundreds of 800 MHz channels at hundreds of locations in Hawaii.

3. On August 27, 2002, the FCC’s Honolulu, Hawaii Resident Agent Office (“Honolulu Office”) received a complaint of interference to a site receiver belonging to the local electric company. On August 28, 2002, an agent from the Honolulu Office determined that an interfering signal originated on frequency 854.7875 MHz from a transmitter operated by Nextel WIP at Palehua Ridge, Hawaii. On the same day, the FCC agent determined, and Nextel WIP confirmed, that Nextel WIP was not licensed on frequency 854.7875 MHz. Nextel immediately dispatched a technician to remove the transmitter from the air. Nextel WIP determined further that it was licensed on frequency 854.7375 MHz, which was not in use at the site.

4. On September 30, 2002, the Honolulu Office issued a *Notice of Apparent Liability for Forfeiture* (“NAL”) to Nextel WIP in the amount of \$10,000 for the apparent willful violation of Section 301 of the Act by operating a radio station without Commission authorization. On October 30, 2002, Nextel WIP submitted a response to the NAL indicating that the facts alleged in the NAL were, in Nextel WIP’s view, insufficient to sustain a finding of violation of Section 301 because, in Nextel WIP’s view, there is no indication that Nextel WIP had knowledge that it was operating on frequency 854.7875 MHz, prior to being contacted by the Honolulu Office Agent on August 28, 2002.

DEFINITIONS

5. For the purposes of this Consent Decree, the following definitions shall apply:
- (a) The “Commission” means the Federal Communications Commission.
 - (b) The “Bureau” means the Enforcement Bureau of the Commission.
 - (c) “Nextel WIP” means Nextel WIP License Corporation and all of its subsidiaries and affiliates.
 - (d) The “Order” means the Bureau’s order adopting this Consent Decree.
 - (e) “Enforcement Proceeding” means the investigation of the alleged rule violation by Nextel WIP culminating in the *Notice of Apparent Liability for Forfeiture*.
 - (f) “*Notice of Apparent Liability for Forfeiture*” means *Nextel WIP License Corp.*, File No. EB-02-HL-078, NAL/Acct. No. 200232860002 (Enf. Bur., Honolulu Office, rel. September 30, 2002).

⁵ 47 U.S.C. § 301.

AGREEMENT

6. Nextel WIP acknowledges and agrees that the Bureau has jurisdiction over the matters referenced in this Consent Decree and that the Bureau has the authority to enter into and adopt this Consent Decree.

7. Nextel WIP and the Bureau agree that this Consent Decree does not constitute either an adjudication of the merits, or a factual or legal finding or determination regarding any compliance or noncompliance by Nextel WIP with the requirements of the Act or the Commission's Rules, including Section 301 of the Act. Nextel WIP and the Bureau agree that this Consent Decree is for settlement purposes only and that by agreeing to this Consent Decree, Nextel WIP does not admit or deny any liability for violating the Act or Commission's Rules in connection with the matters that are the subject of this Consent Decree. Nextel WIP and the Bureau agree further that the Bureau will not use this Consent Decree or otherwise consider the violations alleged in the *NAL* for any purpose in any future Commission proceeding against Nextel WIP or any of its affiliated companies.

8. The Bureau agrees that it will not institute or recommend to the Commission, on its own motion, any new proceeding, formal or informal, or take any action on its own motion against Nextel WIP for possible past violations of Section 301 of the Act. The Bureau also agrees that, in the absence of material new evidence related to this matter, it will not use the facts developed in this proceeding through the effective date of this Consent Decree or the existence of this Consent Decree to institute on its own motion any proceeding, formal or informal, or take any action on its own motion against Nextel WIP with respect to its basic qualifications, including the character qualifications, to be a Commission licensee. Nothing in this Consent Decree shall prevent the Bureau from instituting new investigations or enforcement proceedings against Nextel WIP pursuant to Section 4(i), 403 and 503 of the Act, 47 U.S.C. §§ 4(i), 403 and 503, in the event of any alleged future misconduct, for violation of this Consent Decree, or for violation of Section 301 of the Act consistent with the provisions of this Consent Decree.

9. Nothing in this Consent Decree shall prevent the Bureau from adjudicating complaints filed pursuant to Section 208 of the Act, 47 U.S.C. § 208, against Nextel WIP or its subsidiaries for alleged violations of Section 301 of the Act as modified by this Consent Decree, or for any other type of alleged misconduct, regardless of when such misconduct took place. If any such complaint is made, the Bureau's adjudication of that complaint will be based solely on the record developed in that proceeding.

10. Nextel WIP agrees to the following:

(a) Within thirty (30) days of the release date of the Order, Nextel WIP will make a voluntary contribution to the United States Treasury in the amount of Ten Thousand Dollars (\$10,000.00). Nextel WIP shall make its voluntary contribution to the United States Treasury by mailing a check or similar instrument, payable to the order of the Federal Communications Commission, to the Forfeiture Collection Section, Finance Branch, Federal Communications Commission, P.O. Box 73482, Chicago, Illinois 60673-7482. The payment should note NAL/Acct. No. 20023286002 and FRN 0002-2070-66.

(b) No later than thirty (30) days of the release date of the Order, Nextel WIP will undertake the following improvements to its frequency use monitoring program in Hawaii:

(1) All frequencies placed in use by Nextel WIP in Hawaii will be cross-checked against the FCC's licensing database prior to being used to ensure against unauthorized operation;

- (2) This cross-check will include verification that Nextel WIP has appropriate authorization for use of the frequency;
- (3) This cross-check will also verify that there is no other conflicting licensee on the frequency in the relevant service area;
- (4) This check will be conducted on a bi-monthly basis for all frequencies in use at any location in Hawaii; and
- (5) All personnel will receive training for the new procedure.

11. Nextel WIP and the Bureau acknowledge and agree that this Consent Decree will constitute a final settlement between them of the Enforcement Proceeding.

12. In express reliance upon the covenants and representations contained herein, the Bureau agrees to terminate the Enforcement Proceeding at such time as both parties sign this Consent Decree and the Bureau adopts this Consent Decree.

13. In consideration for the termination of the Enforcement Proceeding, Nextel WIP agrees to the terms, conditions, and procedures detailed in this Consent Decree.

14. Nextel WIP waives any and all rights it may have to seek administrative or judicial reconsideration, review, appeal or stay, or to otherwise challenge or contest the validity of this Consent Decree and the Order adopting this Consent Decree, provided the Order adopts the Consent Decree without modification.

15. Nextel WIP and the Bureau agree that the effectiveness of this Consent Decree is expressly contingent upon issuance of the Order, provided the Order adopts the Consent Decree without modification.

16. Nextel WIP and the Bureau agree that, in the event any court of competent jurisdiction renders this Consent Decree invalid, the Consent Decree shall become null and void and may not be used in any manner in any legal proceeding.

17. Nextel WIP and the Bureau agree that, if the Commission, or the United States on behalf of the Commission, brings a judicial action to enforce the terms of the Order adopting this Consent Decree, neither Nextel WIP nor the Commission will contest the validity of the Consent Decree or Order and Nextel WIP will waive any statutory right to a trial *de novo* with respect to the matter upon which the Order is based, and shall consent to a judgment incorporating the terms of this Consent Decree.

18. Nextel WIP agrees to waive any claims it may otherwise have under the Equal Access to Justice Act, 5 U.S.C. Section 504 and 47 C.F.R. Sections 1.1501 *et seq.*

19. Nextel WIP agrees that any violation of the Consent Decree or the Order adopting this Consent Decree will constitute a separate violation of a Commission order, entitling the Commission to exercise any rights or remedies attendant to the enforcement of a Commission order.

20. Any provision of this Consent Decree affected by or inconsistent with any subsequent rule or order adopted by the Commission will be superseded by such Commission rule or order.

21. Nextel WIP and the Bureau agree to be bound by the terms and conditions stated in this Consent Decree.

22. Nextel WIP and the Bureau agree that the terms and conditions of this Consent Decree shall remain in effect for a period of twenty-four (24) months, which shall begin on the release date of the Order.

23. This Consent Decree may be signed in counterparts.

FEDERAL COMMUNICATIONS COMMISSION

By: _____ Date: _____
David H. Solomon
Chief, Enforcement Bureau

NEXTEL WIP LICENSE CORP.

By: _____ Date: _____
Donald J. Manning
Vice President and General Counsel