Request for Rule Waiver

The attached application seeks the consent of the Federal Communications Commission ("FCC" or "Commission) to the *pro forma* transfer of control of an experimental authorization held by Nextlink Wireless, Inc. ("Nextlink").[1/] Because this request for FCC consent is not submitted in accordance with the provisions of Section 5.79 of the Commission's rules, which otherwise require that holders of experimental authorizations seek prior approval of the assignment of their licenses, pursuant to Section 5.65(c)(2) of the FCC's rules, Nextlink hereby requests waiver of Section 5.79 and seeks *nunc pro tunc* approval of the *pro forma* transfer of control described herein.

Nextlink holds a license (the "License") covering the operation of an experimental station with the call sign WC9XHQ (the "Station"). Previously, 100% of the shares of Nextlink were held by XO Communications, Inc. ("XO Communications"). On or about February 28, 2006, XO Communications merged with and into XO Communications, LLC and the shares of Nextlink's predecessor, LMDS Holdings, Inc. ("LMDS Holdings") were transferred to XO Holdings (the "Streamlining Transaction"). Therefore, today, XO Holdings is the parent of XO Communications, LLC and Nextlink.

The ownership of XO Holdings is the same as the former ownership of XO Communications. Moreover, the management and governance of Nextlink remain the same. Accordingly, this action constitutes a *pro forma* transfer of control of Nextlink. Nextlink is the licensee of numerous local multipoint distribution services ("LMDS") and 39 GHz authorizations.

On November 4, 2005, XO Communications, Inc. announced an agreement, as amended on March 1, 2006, which provided for XO Communications, Inc. to sell its national wireline telecommunications business to Elk Associates LLC, an entity owned by XO Communications controlling stockholder, Carl Icahn (the "Privatization Transaction"). The Streamlining Transaction was undertaken to simplify the corporate structure of XO Communications and related entities in contemplation of the Privatization Transaction. As announced on March 31, 2006, the Privatization Transaction will not proceed.

What was then LMDS Holdings (now Nextlink) planned to request prior approval of the transfer of control of LMDS Holdings with respect to the experimental authorization that is the subject of this application prior to completion of the Privatization Transaction. However, LMDS Holdings inadvertently neglected to recognize that the intermediate Streamlining Transaction independently required prior approval from the FCC as well. It was only when the Privatization Transaction did not occur that LMDS Holdings, which had since changed its name to Nextlink, recognized that action regarding prior approval of the intermediate step of the Streamlining Transaction was immediately necessary.

[1/] The Commission will note that LMDS Holdings notified the FCC on April 20, 2006 of the change of its corporate name to Nextlink. This application is therefore premised on the processing of the change of the licensee's name from LMDS Holdings, Inc. to Nextlink.

Waiver of the rules and *nunc pro tunc* approval of the *pro forma* transfer of control of Nextlink is appropriate in this circumstance. Section 1.925 of the regulations provides that waiver may be granted when: (1) the underlying purpose of the rule would not be served or would be frustrated by application to the instant case and the public interest would be met; or (2) because of unique or unusual factual circumstances, application of the rule would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.[2/] In this case, grant of the waiver would serve the underlying purpose of the rule and would be in the public interest.

The Commission has allowed carriers to change their ownership structure or internal organization without regulatory delay, where such delay serves no useful function.[3/] In this case, grant of the waiver would be in the public interest because the ownership of the Station continues exactly as it had previously without effect on the operation of the Station. If the FCC declines to approve this waiver request, the Nextlink will apply for an experimental authorization with precise parameters under which the former LMDS Holdings is currently authorized. Such an exercise would be administratively inefficient because it would require the FCC to expend resources to approve an application seeking a license for which authorization was already granted. Therefore, the underlying purpose of the rule would be frustrated or not served by application to the present case. Further, no other party will be prejudiced by grant of the waiver. It is therefore in the public interest to grant this request for waiver and approve *nunc pro tunc* the *pro forma* transfer of control of Nextlink.

If there are questions regarding this notification, the FCC is asked to contact Russell Fox of Mintz, Levin, Cohn, Ferris, Glovsky and Popeo, P.C., outside counsel for Nextlink at 202-434-7483 or rfox@mintz.com

2/ See 47 CFR §1.925(b)(1); see also WAIT Radio v. FCC, 16 RR 2d 2107 (1969).

3/ Federal Communications Bar Association's Petition for Forbearance from Section 310(d) of the Communications Act Regarding Non-Substantial Assignments of Wireless Licenses and Transfers of Control Involving Telecommunications Carriers and Personal Communications Industry Association's Broadband Personal Communications Services Alliance's Petition for Forbearance For Broadband Personal Communications Services, Memorandum Opinion and Order, 13 FCC Rcd 6293 at para. 16 (Rel. Feb. 4, 1998).