UNITED STATES
SECURITIES AND EXCHANGE COMMISSION
WASHINGTON, D.C. 20549-4561

DIVISION OF
CORPORATION FINANCE

March 29, 2012

Timothy O'Grady
Sprint Nextel Corporation
Timothy.Ogrady@sprint.com

Re: Sprint Nextel Corporation
Incoming letter dated February 23, 2012

Dear Mr. O'Grady:

This is in response to your letter dated February 23, 2012 concerning the shareholder proposal submitted to Sprint by the Nathan Cummings Foundation. We also have received a letter from the proponent dated March 1, 2012. On February 10, 2012, we issued our response expressing our informal view that Sprint could not exclude the proposal from its proxy materials for its upcoming annual meeting. You have asked us to reconsider our position. After reviewing the information contained in your letter, we find no basis to reconsider our position. In particular, we note your concern that our February 10, 2012 response used the phrase "sustained public debate" rather than "consistent topic of widespread public debate" in stating our view that net neutrality and the Internet raises significant policy considerations. We do not believe that this difference in phrasing represents, or should be viewed as, a new or different standard for determining whether a proposal raises policy issues so significant that it would be appropriate for a shareholder vote.

Under Part 202.1(d) of Section 17 of the Code of Federal Regulations, the Division may present a request for Commission review of a Division no-action response relating to Rule 14a-8 under the Exchange Act if it concludes that the request involves "matters of substantial importance and where the issues are novel or highly complex." We have applied this standard to your request and determined not to present your request to the Commission.

Copies of all of the correspondence on which this response is based will be made available on our website at http://www.sec.gov/divisions/corpfin/cf-noaction/14a-8.shtml. For your reference, a brief discussion of the Division's informal procedures regarding shareholder proposals is also available at the same website address.

Sincerely,

Jonathan A. Ingram
Deputy Chief Counsel

cc: Laura S. Campos
The Nathan Cummings Foundation
Laura.Campos@nathancummings.org

THE · NATHAN · CUMMINGS · FOUNDATION

March 1, 2012

Via email to shareholderproposals@sec.gov

Chairman Mary L. Schapiro
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: Sprint Nextel Corporation Request for Reconsideration of Division of Corporation's February 10, 2012 Decision on The Nathan Cumming Foundation Shareholder Proposal

Dear Chairman Schapiro,

This letter is in response to Sprint Nextel Corporation's ("Sprint" or the "Company") letters of February 23rd and 28th seeking reconsideration under 17 C.F.R. § 202.1(d) of the Division of Corporation Finance's February 10, 2012 letter denying the Company's request for a no-action letter under rule 14a-8 for a proposal filed by The Nathan Cummings Foundation ("Proponent") regarding the issue of wireless network neutrality.

We respectfully request that this request for reconsideration be denied as (1) misstating the "ordinary business" exclusion standard under rule 14(a)-8 and (2) otherwise failing to provide a basis for reconsideration under a novel theory of exclusion – regulatory pre-emption.

The Company first claims that the Staff's analysis in its February 10th decision has departed from the 14a-8(i)(7) standard and Commission position by stating:

> In view of the sustained public debate over the last several years concerning net neutrality and the Internet and the increasing recognition that the issue raises significant policy considerations, we do not believe that Sprint may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7)

The Company argues that this analysis is not the same as the "widespread public debate" factor that was articulated in Exchange Act Release 34-40018 (May 21, 1998) and Staff Legal Bulletin 14A in 2002 ("SLB14A"). The Company claims that the "widespread public debate" factor is the sole basis for concluding that a proposal is permissible under the "ordinary business" analysis of rule 14a-8(i)(7).

When one looks at the entire relevant section of the 1998 Release and the SLB14A, it is evident that the Staff's analysis is clearly within the four corners of these two authoritative documents. The 1998 Release states:

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> The policy underlying the ordinary business exclusion rests on two central considerations. The first relates to the subject matter of the proposal. Certain tasks are so fundamental to management's ability to run a company on a day-to-day basis that they could not, as a practical matter, be subject to direct shareholder oversight. Examples include the management of the workforce, such as the hiring, promotion, and termination of employees, decisions on production quality and quantity, and the retention of suppliers. However, proposals relating to such matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." Exchange Act Release 34-40018 (May 21, 1998).

Clearly the Staff's conclusions in the February 10th decision describing the "sustained public debate" about net neutrality and reaching the conclusion that "the issue raises significant policy considerations" fall within the language of the 1998 Release which requires that the proposal "focus on sufficiently significant social policy issues".

In addition, the Staff made it clear in SLB14A that the "widespread public debate" standard was not the exclusive factor in making a 14a-8(i)(7) determination, but only *one factor*. SLB14A stated:

> The Division has noted many times that the presence of widespread public debate regarding an issue *is among the factors to be considered* in determining whether proposals concerning that issue "transcend the day-to-day business matters." (emphasis added)

The Company's request for reconsideration has ignored this language in SLB14A in an effort to make "widespread public debate" the sole factor and accordingly its argument is misplaced and without merit. While we strongly believe that the Proposal focuses on a matter of widespread public debate and have documented it as such in our letter to the Staff on January 26, 2012, clearly that is not the only evidence to be considered by the Staff. The Proposal, and our January 26th letter document the multiple ways in which the subject matter of the Proposal addresses a significant policy issue confronting the Company by documenting the importance of net neutrality to the economy, political discourse and equality for underserved populations, and it is unnecessary to re-argue that entire matter here.

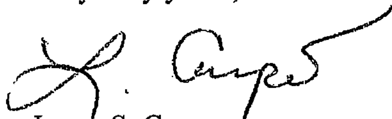
Accordingly the Company's reference to *American Federation of State, County & Municipal Employees, Employees Pension Plan v. American International Group, Inc.*, 462 F.3d 121 (2d Cir. 2006) is inapposite as the Staff's February 10th decision does not conflict with the 1998 Release or SLB14A nor constitute a changed position or departure from those postions. Quite to the contrary, it is completely consistent with the 1998 Release and SLB14A.

With respect to the company's second argument that the Federal Communications Commission action on net neutrality should be a bar on a shareholder proposal we respectfully contend that this argument is not only without basis (the company does not point to any precedent to support this proposition and 17 C.F.R. § 202.1(d) does not provide this as a basis for reconsideration) but it would be contrary to the policy goals of rule 14a-8. To adopt the Company's reasoning would create a regulatory pre-emption of rule 14a-8 and would create an unprecedented level of regulatory interference in the investor-issuer relationship and the ability of market participants and shareholders to seek business solutions to policy challenges. Clearly, that is not a desirable outcome and is contrary to rule 14a-8 which is intended to facilitate shareholder communications with management and fellow shareholders.

* * * *

If you have any questions or need anything further, please do not hesitate to call me at (212) 787-7300. The Foundation appreciates the opportunity to be of assistance in this matter.

Very truly yours,



Laura S. Campos
Director of Shareholder Activities

cc: Timothy O'Grady at Aisha.Reynolds@sprint.com
Vice President – Securities & Governance
Sprint Nextel Corporation

Thomas J. Kim
Chief Counsel & Associate Director
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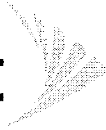
U.S. Securities and Exchange Commission



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Timothy O'Grady
Vice President – Securities & Governance

February 23, 2012

VIA E-MAIL

Office of Chief Counsel
Division of Corporation Finance
Securities and Exchange Commission
100 F Street, NE
Washington, DC 20549

Re: *Sprint Nextel Corporation*
Request for Reconsideration
Shareholder Proposal of The Nathan Cummings Foundation
Securities Exchange Act of 1934—Rule 14a-8

Ladies and Gentlemen:

On December 21, 2011, Sprint Nextel Corporation (the "Company") submitted a letter (the "Initial Request") notifying the staff of the Division of Corporation Finance (the "Staff") of the Securities and Exchange Commission (the "Commission") that the Company intended to omit from its proxy statement and form of proxy for its 2012 Annual Meeting of Shareholders (collectively, the "2012 Proxy Materials") a shareholder proposal and supporting statement (the "Proposal") received from The Nathan Cummings Foundation (the "Proponent"). The Initial Request indicated our belief that the Proposal could be excluded from the 2012 Proxy Materials pursuant to Rule 14a-8(i)(7) under the Securities Exchange Act of 1934, as amended (the "Exchange Act"), because it deals with a matter relating to the Company's ordinary business operations. On January 26, 2012, the Proponent submitted a letter (the "Proponent's Letter") to the Staff arguing that the proposal focuses on a significant policy issue, and therefore should not be excluded under Rule 14a-8(i)(7).

On February 10, 2012, the Staff issued a response (the "Staff Decision") to the Initial Request stating that it was unable to concur in the Company's view that it may exclude the Proposal under Rule 14a-8(i)(7) because the Staff concluded that "net neutrality and the Internet" are a significant policy issue. The Staff based this conclusion, in part, on "the sustained public debate" regarding these topics, a standard that neither the Staff nor the Commission had ever previously articulated.

We hereby request that the Staff reconsider and reverse the Staff Decision. For the reasons discussed below, we believe that this topic continues not to be a matter of widespread public debate and therefore not to raise significant policy issues.

If the Staff declines to do so, we request Commission review of the Staff Decision. Commission review is appropriate for "matters of substantial importance and where the issues are novel or highly complex." 17 C.F.R. § 202.1(d). This matter differs from the typical situation in which the Staff is addressing whether a shareholder proposal implicates significant policy issues for two reasons:

- the Staff Decision was based on a different standard from the standards articulated in past Commission and Staff guidance, including the standard cited in the Staff's decision regarding a very similar shareholder proposal issued just last year, and therefore this matter presents the novel issue of what the appropriate standard is for determining whether a topic is a significant policy issue under Rule 14a-8(i)(7); and
- the Staff Decision that the topic raises a significant policy issue was just months after the federal regulator with primary responsibility over this topic, the Federal Communications Commission (the "FCC"), issued final regulations resolving the complex technical and business matters implicated by the Proposal, and the Commission should defer to the primary federal regulator on the resolution of this topic instead of opening a new forum of debate in company proxy statements.

I. Background

On December 21, 2010, after a long public process in which it considered many competing interests, the Federal Communications Commission (the "FCC") adopted a report and order that included rules aimed at "preserving the open internet." *See* "In the Matter of Preserving the Open Internet Broadband Industry Practices," GN Docket No. 09-191, WC Docket No. 07-52 (Dec. 23, 2010). These rules were published in the Federal Register on September 23, 2011. *See* "Preserving the Open Internet," 76 FR 59192 (Sept. 23, 2011).

The FCC stated that its rules "establish[] protections for broadband service to preserve and reinforce Internet freedom and openness." 76 FR at 59192. The rules are based on three principles:

i. *Transparency.* Fixed and mobile broadband providers must disclose the network management practices, performance characteristics, and terms and conditions of their broadband services;

ii. *No blocking.* Fixed broadband providers may not block lawful content, applications, services, or non-harmful devices; mobile broadband providers may not block lawful Web sites, or block applications that compete with their voice or video telephony services; and

iii. *No unreasonable discrimination.* Fixed broadband providers may not unreasonably discriminate in transmitting lawful network traffic. *Id.*

The FCC rules grant more leeway to wireless, or mobile broadband, providers than to fixed broadband providers. For example, while the rules prohibit fixed broadband providers from "unreasonably discriminat[ing] in transmitting lawful network traffic over a consumer's broadband Internet access service," 47 C.F.R. § 8.7, this prohibition does not apply to mobile broadband providers. The rules regarding blocking of internet sites also are less exacting on wireless providers than on fixed broadband providers. They provide that fixed broadband providers "shall not block lawful content, applications, services, or non-harmful devices, subject to reasonable network management." 47 C.F.R. § 8.5(a). The restrictions on wireless providers, on the other hand, only state that such providers "shall not block consumers from accessing *lawful Web sites*, subject to reasonable network management; nor shall such person block *applications that compete with the provider's voice or video telephony services*, subject to reasonable network management." 47 C.F.R. § 8.5(b) (emphasis added).

The FCC explained that its reason for allowing more leeway to wireless providers than to fixed broadband providers was that "existing mobile networks present operational constraints that fixed broadband networks do not typically encounter." 76 FR at 59210. In particular, mobile networks have more limited spectrum than fixed broadband networks. In addition, the FCC recognized that the need for regulations governing wireless networks is lessened by the fact that "most consumers have more choices for mobile broadband than for fixed (particularly fixed wireline) broadband." *Id.* Thus, the type and extent of limitations providers place on mobile networks can be governed by competition in the marketplace.

The FCC adopted its rules after a long public process in which many competing views and interests were expressed. The Company issued the following statement when the rules were adopted:

> "Sprint commends the FCC for the careful and deliberate approach it has taken on this issue. It is an important next step in ensuring the freedom and openness of the Internet, while also recognizing the differences between fixed and mobile networks and the importance of providing all broadband providers with the flexibility to manage their networks."
>
> "While Sprint will study carefully the text of the Order, the outline presented at today's meeting appears to be a fair and balanced approach to a difficult issue. Sprint is encouraged that the Commission has resolved this issue and is moving forward."

"Sprint Statement on Federal Communications Commission's Net Neutrality Vote," Dec. 21, 2010, available at http://newsroom.sprint.com/article_display.cfm?article_id=1749.

The Company believes that the requirements imposed on wireless providers are balanced and that they include appropriate exceptions. For example, the FCC rules permit internet providers to "prioritize communications from emergency responders, or block

transfers of child pornography," 76 FR at 59212, whereas the Proposal would not permit those actions. Also, the Company believes that the FCC rules strike a proper balance regarding the regulation of wireless versus fixed broadband networks. In not imposing an anti-discrimination requirement on wireless providers, the rules appropriately take into account the fact that wireless networks operate on a more limited spectrum than fixed broadband networks do and that technology for addressing the implications of wireless spectrum capacity limitations is evolving rapidly in the wireless market.

Thus, the FCC, which is the principal regulator of internet networks, has weighed the competing interests attendant to net neutrality and, through its rules, has largely settled the debate regarding net neutrality as applied to wireless providers. The FCC found it appropriate to permit wireless providers to, in the words of the Proposal, "privilege, degrade or prioritize" certain communications and applications.

As noted above, the FCC regulations that apply to wireless providers are "subject to reasonable network management." The FCC decided that it is appropriate to permit wireless providers to take measures to manage the very difficult and complex network management issues that arise with handling traffic over a limited spectrum. Deciding which websites and applications to prioritize is a very complicated business issue, and "it is impracticable for shareholders to decide how to solve such problems at an annual shareholders meeting." Exchange Act Release No. 40018 (May 21, 1998) (the "1998 Release"). Furthermore, this task is "so fundamental to management's ability to run [the Company] on a day-to-day basis that [it] could not, as a practical matter, be subject to direct shareholder oversight." *Id.*

II. The Standard For Determining Whether A Topic Is A Significant Policy Issue Includes "Widespread Public Debate."

The Commission stated in the 1998 Release that "proposals relating to [ordinary business] matters but focusing on sufficiently significant social policy issues (e.g., significant discrimination matters) generally would not be considered to be excludable, because the proposals would transcend the day-to-day business matters and raise policy issues so significant that it would be appropriate for a shareholder vote." In that same release, the Commission provided guidance on how to assess whether a particular topic is such a policy issue. In the 1998 Release, the Commission overturned a Staff position regarding employment-related shareholder proposals and stated that "the relative importance of certain social issues relating to employment matters has reemerged as a consistent topic of *widespread public debate*" (emphasis added).

The Staff has adopted the "widespread public debate" standard. *See* Staff Legal Bulletin No. 14A (July 12, 2002) (recognizing shareholder approval of equity compensation plans as a significant policy issue "in view of the widespread public debate" regarding the topic); *Verizon Communications Inc.* (avail. Jan. 23, 2003) ("In view of the widespread public debate concerning the impact of non-audit services on auditor independence and the

increasing recognition that this issue raises significant policy issues, we do not believe that Verizon may omit the proposal from its proxy materials in reliance on rule 14a-8(i)(7).").

In fact, as recently as last year, the Staff applied the "widespread public debate" standard to net neutrality and concluded, "[W]e do not believe that net neutrality has emerged as a consistent topic of widespread public debate such that it would be a significant policy issue for purposes of rule 14a-8(i)(7)." *AT&T Inc.* (avail. Feb. 2, 2011).

On the other hand, in the Staff Decision, the Staff took the position that a topic can become a significant policy issue for purposes of Rule 14a-8(i)(7) based on "sustained public debate" regarding the topic. However, under Staff precedent and Commission guidance, "sustained" public and policy debate – a mere continuation that is not notably different from what has occurred in the past – is not sufficient; the public debate must be "widespread," and as discussed below, the public debate regarding net neutrality is no more widespread now than it was last year when the Staff made its *AT&T* decision.

We believe that the proper application of this standard is reflected in the Staff's recent decisions concurring with the exclusion of shareholder proposals addressing the rotation of auditors. In the context of setting forth the bases for exclusion of such proposals under Rule 14a-8(i)(7), companies demonstrated that debate over the topic has long been a matter of public policy consideration, but has not emerged as a topic of widespread public debate. *Hewlett-Packard Co.* (avail. Nov. 18, 2011; reconsid. denied Dec. 16, 2011). In the same manner, net neutrality remains a topic of public policy discussion, but has not emerged as an issue of "widespread public debate."

III. Net Neutrality Is Not A Significant Policy Issue For Purposes Of Rule 14a-8(i)(7).

The Staff concluded in *AT&T* that the level of public debate regarding net neutrality was not sufficiently "widespread" so as to make net neutrality a significant policy issue. Since the time of the *AT&T* decision, the public debate on net neutrality has not become more widespread than it was when that decision was issued.

AT&T submitted its no-action request on December 10, 2010, before the FCC had adopted its regulations and when public debate regarding net neutrality was at its peak. The *AT&T* decision was reached shortly thereafter, and since the *AT&T* decision, the public debate has not increased. In fact, there has been increased recognition that the FCC's rules, which took a measured approach to net neutrality for wireless networks, have settled the debate. We do not believe it is appropriate that net neutrality was recognized as a significant policy issue after the primary regulator in this area had considered all of the complex arguments and largely settled the issue as to wireless networks, which is the topic covered by the Proposal.

All of the information presented to the Staff in the Proponent's January 26, 2012 letter demonstrates that the debate regarding net neutrality has continued to be confined almost entirely to a narrow subset of Americans, such as policy makers, special-interest groups and the companies impacted by the topic, as it was prior to the *AT&T* decision. Similarly, virtually all of the media coverage cited in the Proponent's Letter addresses the regulatory and political developments on this issue, not general media articles on the topic of net neutrality. In fact, the one instance in which the Proponent's Letter purports to provide data addressing public awareness of the issue actually demonstrates that public debate over net neutrality has *not* become "widespread." The letter describes a survey in which voters expressed their opinions of net neutrality, but tellingly, the letter states that the survey participants expressed their opinions only "after hearing a description of net neutrality." The fact that the participants in the survey needed a description of net neutrality demonstrates that net neutrality is not a topic of interest to most members of the public, let alone a topic of widespread public debate.

The Proposal also attempts to portray net neutrality on wireless networks as a social issue by stating that minorities and "economically disadvantaged communities" use their wireless devices to access the internet more than other groups of people do. The ability of minorities and members of economically disadvantaged communities to access the internet through wireless devices may reflect differences between wireless and fixed broadband devices, but it does not demonstrate any discrimination between different social or ethnic groups.

Because the level of public debate regarding net neutrality is no more widespread than it was at the time of the *AT&T* decision in 2011, and because the public debate regarding net neutrality within wireless networks has largely subsided as a result of the FCC rulemaking, the topic of the Proposal—net neutrality on wireless networks—does not meet the historical standard for being a significant policy issue. We therefore request that the Staff reconsider and reverse the Staff Decision.

IV. Request For Commission Review.

If the Staff declines to reverse the Staff Decision, we hereby request Commission review of the Staff Decision. Commission review is appropriate for "questions . . . which involve matters of substantial importance and where the issues are novel or highly complex." 17 C.F.R. § 202.1(d). The Commission has stated that when the Staff receives a request for Commission review, "[t]he staff . . . endeavors to forward all such requests to the Commission, provided they are received sufficiently far in advance of the scheduled printing date for the management's definitive proxy materials to avoid a delay in the printing process." Exchange Act Release No. 12599 (July 7, 1976). In this case, the Company intends to print its definitive proxy materials on April 5, 2012, so we do not believe presenting this matter for Commission review would cause a delay in the Company's printing process.

The Staff Decision presents the question of what the appropriate standard is for determining that a topic is a significant policy issue for purposes of Rule 14a-8(i)(7). Although the Staff makes these determinations many times each year, this particular Staff Decision presents a substantially important, novel and highly complex question because it introduced a new standard for determining whether a topic is a significant policy issue. In view of the new lack of clarity on what the standard is, we believe it is expedient that the Staff present this matter to the Commission for its review.

As discussed above, prior to the Staff Decision, the standard for a topic to be a significant policy issue involved the presence of "widespread public debate," and the Staff found that this standard was not satisfied as to net neutrality last year in *AT&T*. As demonstrated by the Proponent's January 26, 2012 letter to the Staff, the public debate regarding net neutrality has continued among the same narrow group of participants that it has involved all along, and it has not become more widespread since the time of the *AT&T* decision. Even so, the Staff decided that the fact that the public debate has been "sustained," albeit at a level that the Staff found last year not to be "widespread," was sufficient to make net neutrality a significant policy issue.

The Staff's decision runs counter to Commission guidance in the 1998 Release stating that "In applying the 'ordinary business' exclusion to proposals that raise social policy issues, the Division seeks to use the most well-reasoned and *consistent* standards possible, given the inherent complexity of the task" (emphasis added). We recognize the Commission's observation in the 1998 Release that, "[f]rom time to time, . . . the Division adjusts its view with respect to 'social policy' proposals involving ordinary business." However, changes in the Staff's recognition of a topic as a significant policy issue should result from the topic coming to satisfy the standard where it previously did not rather than by the Staff applying a different standard.

We recognize that the Staff considers decisions relating to whether a particular topic is a significant policy issue to be one of the most difficult and complicated aspects of administering Rule 14a-8. This particular Proposal, involving the topic of net neutrality, is especially complex. Thus, the excludability or non-excludability of the Proposal tests precisely where the line at which a topic ceases to be a matter of ordinary business and becomes a significant policy issue is. We understand that in assessing the level of public debate, the Staff considers factors such as media coverage, public awareness of the topic and legislative and regulatory activity. However, as discussed above, the media coverage cited in the Proponent's Letter largely identifies only stories about legislative and regulatory activity on the issue, public awareness of the issue remains scant, such that pollers must describe the issue before seeking the public's views, and legislative and regulatory attention on the issue has not significantly changed since the Staff issued the *AT&T* decision.

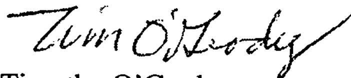
The one issue that has changed is that the FCC, the primary federal regulator responsible for addressing this issue, has weighed the considerations raised by the Proponent and others and has finalized regulations to resolve the competing interests. Because the

rulemaking and comment process was on-going at the time the Staff issued the *AT&T* decision, we do not believe that the issuance of final regulations should be viewed as thrusting the issue into the realm of being a significant policy issue subject to widespread public debate. The FCC's rules have instead narrowed the issue by stating that wireless providers "shall not block consumers from accessing lawful Web sites, subject to reasonable network management; nor shall such person block applications that compete with the provider's voice or video telephony services, subject to reasonable network management." They recognize that complex technological issues support the need to allow for "reasonable" network management practices in this context. We respectfully believe that the Commission should not view this resolution of a complex regulatory issue as creating a "significant policy issue." Instead, the rulemaking demonstrates that the issue involves complex technical and business issues regarding network management that are exactly the type of matter intended to be excluded under Rule 14a-8(i)(7).

For the foregoing reasons, we respectfully ask the Staff to reconsider and reverse the Staff Decision and, if it declines to do so, to present the matter for Commission review.

If we can be of any further assistance in this matter, please do not hesitate to call me at (913) 794-1513 or Aisha Reynolds at (913) 315-1620. Pursuant to Rule 14a-8(j), we have concurrently sent a copy of this correspondence to the Proponent.

Sincerely,



Timothy O'Grady
Vice President – Securities & Governance

cc: Ronald O. Mueller, Gibson, Dunn & Crutcher LLP
Laura Campos, The Nathan Cummings Foundation