

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

In the Matter of)
)
Improving Public Safety Communications)
in the 800 MHz Band) WT Docket No. 02-55
)
Consolidating the 900 MHz Industrial/Land)
Transportation and Business Pool Channels)

To: The Commission

COMMENTS

Fisher Wireless Services, Inc. (“Fisher” or “Company”) respectfully submits its Comments in the above-entitled proceeding.¹ Fisher fully supports the Commission’s efforts to address the interference being experienced by public safety systems operating in the 800 MHz band, which interference is caused by in-band and adjacent band commercial operators utilizing cellular system architecture. The Notice focuses on the identification of an in-band restructuring approach that will alleviate the problem. It specifically requests comments on plans proposed by Nextel Communications, Inc. (“Nextel”), the so-called “White Paper” that was the genesis of this proceeding², an alternative 800 MHz rebanding approach suggested by NAM/MRFAC³, and a third 800 MHz realignment plan outlined by the FCC in the Notice.⁴

¹*Notice of Proposed Rule Making*, WT Docket No. 02-55, FCC 02-81 (rel. March 15, 2002) (“NPR” or “Notice”).

²Promoting Public Safety Communications – Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio – Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs, filed Nov. 21, 2001 (“White Paper”).

³See Letter of December 21, 2001, to Michael Powell, Chairman, Federal Communications

The FCC has described its objective in this proceeding as follow:

...to remedy interference to 800 MHz public safety systems consistent with minimum disruption to our existing licensing structure and assurance of sufficient spectrum for critical public safety communications.⁵

In the Company's opinion, none of the proposed solutions currently before the Commission will satisfy those objectives. As described below, Fisher believes achieving those goals will require a complementary short-term and long-term approach and will demand serious consideration of the 700 MHz band as the future home for public safety communications, including those serving increasingly significant interoperability needs.⁶

I. INTRODUCTION

1. Fisher has been engaged in the two-way radio business since 1985. The Company operates wireless communications systems in the States of California, Arizona and Nevada. Its facilities utilize spectrum in the 800 MHz, 900 MHz and 450 MHz bands. Although the Company has sold portions of its extensive 800 MHz network to Nextel, it continues to operate 800 MHz stations throughout much of the Imperial Valley in California and into parts of Arizona. Its network, like most analog Specialized Mobile Radio ("SMR") systems, provides a geographically expansive, relatively low-cost service to many thousands of subscriber units used by a variety of business, industrial, land transportation, local government and even federal government entities. 2. A

Commission, from Jerry Jasinowski, President, National Association of Manufacturers, and Clyde Morrow, Sr., President, MRFAC, Inc. ("NAM Proposal").

⁴NPR at ¶ 26.

⁵NPR at ¶ 2.

⁶It is Fisher's understanding that a significant portion of the broadband CMRS industry will support a reallocation of the 30 MHz of "Upper 700 MHz" spectrum assigned for CMRS use to public safety.

an 800 MHz incumbent, Fisher has first-hand experience with the “retuning” process that necessarily would be a component of any in-band public safety interference solution. It has been required to “retune” upper 200 800 MHz systems pursuant to FCC Rule Section 90.699 to permit Nextel to claim full geographic rights to channels previously assigned to Fisher. The Company’s 800 MHz operations likely will be affected significantly by any realignment of the band. Thus, Fisher has a direct interest in and experience directly related to the issues under consideration in this proceeding.

II. THE 800 MHz PUBLIC SAFETY/CMRS INTERFERENCE PROBLEM DEMANDS RESOLUTION AND WILL REQUIRE BOTH A SHORT-TERM AND LONG-TERM APPROACH

3. The two certainties in the instant proceeding are, first, 800 MHz public safety operations in certain markets are experiencing interference from in-band and adjacent band Commercial Mobile Radio Service (“CMRS”) systems that are deployed in a cellular configuration, and, second, there are no quick, easy or inexpensive solutions to the problem. The Company, through both its position on the Board of Directors of the American Mobile Telecommunications Association (“AMTA”) and its ongoing dealings with representatives of various segments of the Private Land Mobile Radio (“PLMR”) community whose users it serves, has given substantial consideration to the interference problem and the potential solutions. Based on those deliberations it is convinced that all 800 MHz public safety systems should move to the 700 MHz band (or other comparable spectrum identified by the FCC) as the long-term solution, and the only one certain to resolve the interference problem. Nonetheless, recognizing the substantial financial, logistical and political problems associated with implementing that approach, Fisher also supports the so-called

“Consensus” plan endorsed by a number of PLMR entities as the next best alternative, and one which also may be necessary as an interim step until 700 MHz is practically available.⁷

1. Fisher Does Not Support Any of the In-Band Proposals in the Notice

4. As an 800 MHz incumbent, Fisher cannot support any of the three in-band realignment plans on which the Notice seeks comment. The NAM Proposal has been superseded by the Consensus plan which is a more detailed approach that takes into account the complex variety of systems and users that populate this band. The FCC’s own proposal also is inferior to the Consensus plan in its scope

⁷Fisher understand the Consensus Plan will be filed as a Comment in this proceeding signed by organizations such as MRFAC, AAR, ITA and PCIA.

5. The proposal in the Nextel White Paper is entirely unacceptable, indeed breathtaking in its opportunistic aplomb. In the name of public safety, it would have the FCC disavow the rights of all non-public safety incumbents in the 851-861 MHz band.⁸ Licensees such as Fisher could continue to operate, but their authorizations would be reduced to secondary status subject to being directed off the air at any time by a public safety entity.⁹ Alternatively, they could abandon their 800 MHz spectrum and move their operations to 700 MHz or 900 MHz spectrum that Nextel proposes to return to the Commission on a first-come, first-served basis. Even more extraordinary, the White Paper not only would have 800 MHz incumbents fund their own forced migration to 700 MHz or 900 MHz, if that spectrum is available, but contemplates requiring them to contribute to the cost of retuning public safety systems within the 800 MHz band.

6. In return for relinquishing its own, largely encumbered spectrum, and volunteering the spectrum of third parties like Fisher, all of which would be allocated to public safety, Nextel would acquire two exclusive, contiguous spectrum blocks: 861-869 MHz and an additional 10 MHz at 2.1 GHz. It presumably would reduce substantially the interference its digital iDEN network causes to public safety operations and would eliminate the risk of causing interference to non-public safety 800 MHz incumbents. It would disrupt, often for the second time, the operation of the remaining competitive commercial providers in the band and would be a powerful incentive for

⁸The 861-866 MHz band, the “upper 200 channels”, already belongs to Nextel virtually exclusively nationwide and would be unchanged by the White Paper proposal. That proposal also would result in the assignment to Nextel of the adjacent NPSPAC public safety allocation at 866-869 MHz.

⁹It is difficult, if not impossible, to arrange financing for a system that must discontinue operation immediately if directed to do so by a “primary” licensee.

private internal systems to move to a commercial system such as Nextel's rather than go out of pocket for an entirely new radio system at either 700 MHz or 900 MHz.¹⁰

¹⁰The Notice queries what number of such licensees could relocate to 700 MHz or 900 MHz merely by retuning their equipment. The answer is none. Among other differences, the base/mobile separation at 800 MHz is 45 MHz; at 900 MHz it is 39 MHz; at 700 MHz it is 30 MHz.

7. The White Paper clearly is beneficial to Nextel and offers public safety additional 800 MHz spectrum.¹¹ However, it does so at the expense of incumbents such as Fisher that **have never caused any interference to public safety** by depriving them of primary rights to their authorized spectrum and requiring them to finance both their own and public safety's relocation costs. This "solution" should not be given serious consideration. If the FCC determines that public safety requires additional allocations, as it may, it is incumbent upon all interested parties to develop a strategy for addressing that need, a strategy that does not involve the disenfranchisement of thousands of 800 MHz systems at an extraordinary cost.

2. The Consensus Plan is a Better Alternative

8. It is difficult for Fisher to endorse any further disruption of its own 800 MHz customer base, or users on other 800 MHz systems, even in support of public safety.¹² Nonetheless, it reluctantly has come to the conclusion that some in-band realignment may be needed should 700 MHz prove unfeasible or, as an alternative approach on a case-by-case basis, pending implementation of a long-term interference solution. Based on that predicate, the Company has reviewed a number of rebanding proposals and has concluded that the Consensus plan is a reasonable balancing of the many types of licensees and systems that operate at 800 MHz.

¹¹As discussed below, how much additional spectrum will depend on the separation required to insulate public safety systems from cellularized CMRS interference, a question that is not raised specifically in the Notice and not answered in any record of which Fisher is aware.

¹²Fisher must remind the FCC that it and many other 800 MHz analog SMR systems support numerous local government, including public safety, and federal government operations. Any in-band realignment or out-of-band relocation necessarily will impact those public safety users.

9. Fisher will leave to the Consensus plan proponents a detailed explanation of how it would be implemented. The Company can support it because it includes several essential factors. First, in-band frequency swaps would be triggered only by the occurrence of specific events, not as a wholesale migration within the band. This permits relatively immediate action on actual interference situations. Conversely, to the extent the triggering events do not occur, no move would be required. Second, it identifies who is obligated to compensate a dislocated licensee for the cost of moving to different channels. A compensation mechanism, in Fisher's opinion, is an absolutely essential feature of any acceptable plan.¹³ Third, the Consensus realignment plan is compatible with the long-term relocation of public safety to the 700 MHz band.

¹³The costs involved in addressing the needs of the public safety community may require a more universal funding mechanism that is assessed upon all citizens, not just telecommunications entities.

10. The Company wishes to emphasize its grave concern about any 800 MHz band realignment. Fisher and other upper 200 channel licensees were promised by the Commission that they would not be moved again once they were retuned down to lower 800 MHz channels by EA auction winners.¹⁴ The Company urges the FCC not to breach that commitment unless and until it determines beyond a reasonable doubt that there is no viable solution to the 800 MHz interference problem other than an 800 MHz realignment. If that determination is made, the FCC, at a minimum, must ensure that such licensees are compensated fully for their costs in changing channels.¹⁵

3. 700 MHz is the Long-Term Solution for Public Safety Interference

11. There is substantial disagreement and uncertainty within the wireless community about the cause, or causes, and thus the optimal solution, or solutions, to the public safety/CMRS interference problem. It is imperative that the Commission develop a technical record in this proceeding to support whatever resolution it adopts. However, even the most optimistic recognize that interference will continue to be a problem to some greater or lesser degree as long as public safety and cellularized CMRS systems operate in proximate bands and, in particular, as long as public safety receivers are designed to operate across interfering CMRS spectrum which is the case

¹⁴See, *First Report and Order, Eighth Report and order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1596 at ¶ 74 (1995) (“...any incumbent that is relocated from frequencies within the upper 10 MHz block, either voluntarily or involuntarily, will not be required to relocate again if we adopt our geographic area licensing proposal for the lower 80 and General Category channels.”)

¹⁵Of course, no funding mechanism is likely to compensate companies like Fisher for the business that is lost when they are required – again – to advise their customers that they must change frequencies on their subscriber units. Some operators have estimated they will lose 30 - 50 % of their customer base if they must retune, even to other 800 MHz channels.

today with Nextel's iDEN system located between lower 800 MHz public safety channels and the NPSPAC allocation.

12. Migrating public safety down to the 700 MHz band, over time, will resolve those problems. It will provide a substantial buffer (or guard band) between public safety systems and cellular system architecture. It will permit public safety receivers to be designed with a substantially narrower front end. It will expand significantly the spectrum devoted entirely to public safety operations, thereby facilitating the dedication of channels for what the nation now recognizes as a critical interoperability need.

13. Fisher appreciates the significant financial, political and logistical issues that must be addressed before public safety will enjoy access to unencumbered 700 MHz spectrum. Those challenges have prompted the Company to support the Consensus plan as an alternative, hopefully interim solution. However, if there is a public interest that can overcome those formidable barriers and transcend more parochial interests, surely it is the needs of the nation's public safety community.

III. CONCLUSION

14. Fisher urges the Commission to adopt rules that will promote the migration of 800 MHz public safety users to the 700 MHz band, both the existing 24 MHz allocation and the 30 MHz currently assigned for CMRS use. To the extent the FCC determines that an 800 MHz rebanding is needed to alleviate the public safety/CMRS interference problem, at least on an interim basis, the Company recommends adoption of the Consensus plan.

Respectfully submitted,

Fisher Wireless Services, Inc.

By: _____ /s/
Dana B. Fisher, Jr., President
14530 S. Commercial St.
Blythe, CA 92225
(760) 922-4150