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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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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

REPLY COMMENTS

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Summary

Blooston supports the Commission's goal of finding a permanent solution to the interference issues being experienced by public safety systems in the 800 MHz band. The record in this proceeding demonstrates that public safety entities across the country are experiencing interference to their 800 MHz band systems from Nextel's cellular-architecture (low site) transmitters which are being operated in the portion of the 800 MHz band that was originally allocated for analog conventional SMR and Conventional Business/Industrial Land Transportation (B/ILT) services. Because Nextel appears to be the primary cause of this interference, the record demonstrates that Nextel should bear the financial responsibility for correcting the problem rather than sharing the cost with incumbent A/B-block cellular licensees or forcing long-time B/ILT licensees, analog SMR licensees and other small businesses using the 800 MHz band to relocate at their own expense.

Blooston understands that during the brief 30-day extension for filing reply comments in this proceed, an industry group has created a "consensus plan" that is designed to provide the Commission with a resolution to the 800 MHz problem that is purportedly fair and equitable to all affected parties. Blooston is unable to support this plan inasmuch as (i) there is no certainty that Nextel will be able to include the spectrum currently held by its affiliate, Nextel Partners, Inc.; (ii) the plan does not appear specifically to protect incumbent B/ILT and analog SMR licensees from being required to relocate to other spectrum at their own expense; (iii) the plan appears to require that funding from Nextel would only be earmarked towards relocation of public safety licensees and does not address funding for B/ILT licensees; and (iv) the plan does not demonstrate where funding sources, beyond the $500 million proffered by Nextel, would come from. In this regard, there has been informal discussion that Congress might allocate the balance of the funds necessary to relocate licensees. However, there is no certainty that the funds could be found as government revenue collections decline and the cost of prosecuting the war on terrorism increases. As a result, without adequate funding, analog SMR and B/ILT licensees would unfairly be left holding the bag for a problem that is not of their making and that should not be their responsibility to eliminate.

The crux of Nextel's proposal is that it receive a 10 MHz contiguous nationwide license in the 2.1 GHz MSS band. This proposal has been challenged in the record as creating an unfair competitive advantage for Nextel over its competitors. Several of Nextel's competitors have raised the legality of the grant of such a license to Nextel. And, because of the potential for litigation at the U. S. Court of Appeals, Blooston believes that the grant of the requested 10 MHz - 2.1 GHz license to Nextel would create uncertainty in the 800 MHz band and substantially delay, for a period of years, any interference solution that might be adopted by the Commission. This is because any solution would no doubt be tied to a surrender of incumbent licenses by Nextel, which would not occur until the issue was finally resolved.

Accordingly, Blooston believes that the best solution is the use of technical solutions and sound engineering practices. Interference would be mitigated on a case-by-case basis without the need to relocate licensees. Technical solutions have generally proven successful when used and would be far less disruptive and less expensive than a major relocation within the 800 MHz band or a relocation of licensees to other frequency bands.

Finally, the Commission should recognize that many of the licensees in the conventional 800 MHz band are entities that provide critical infrastructure services, including: generation and transport of electrical services, water and sewer services, waste hauling services, automobile emergency road services, transportation and hauling services, oil refining and distribution, etc. Because many of these licensees must respond quickly in the event of an emergency, natural disaster or terrorist attack, they require highly reliable communications at all times. Public utilities have evaluated the possibility of using commercial services as a substitute for their internal radio operations and have determined that the reliability of such communications, especially during emergencies when the public networks are likely to become over saturated, is insufficient to guarantee effective communications between emergency personnel in hazardous areas during emergencies. Therefore, commercial services would not be a suitable substitute for internal communications.

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REPLY COMMENTS

The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (Blooston), on behalf of its clients listed in Attachment A hereto who utilize spectrum in the 800 MHz band for commercial and private internal uses, hereby submits, pursuant to Section 1.415(c) of the Commission's Rules, the foregoing reply comments in the above-captioned proceeding. As demonstrated in its comments, Blooston supports the Commission's goal of finding a permanent solution to the interference issues being experienced by public safety systems in the 800 MHz band. Having reviewed the record thus far established in this proceeding, it appears that there is a virtual unanimous consensus that the source of the interference problem being experienced by public safety licensees is Nextel's use of cellular-architecture (low site) transmitters in the portion of the 800 MHz band that was allocated and designed for analog single base station operations by public safety and Business/Industrial Land Transportation (B/ILT) licensees. As a result, the consensus is that Nextel Communications, Inc. (Nextel) and

Nextel Partners, Inc. (Nextel Partners),[1] as the sources of the interference problem, should bear financial responsibility for correcting the problem, forcing long-time B/ILT licensees and small business SMRs to relocate at their own cost.

The "consensus plan" proposed by Nextel is not the correct alternative and does **NOT** represent an industry consensus. Rather, the Commission should require the use of well-established technical solutions for resolving interference on a case-by-case basis. This method is less disruptive to the 800 MHz licensees and is far less expensive than "rebanding" the 800 MHz band or relocating incumbent licensees to other frequency bands. This is because the 800 MHz band is heavily licensed with public safety, B/ILT users (public utilities; waste haulers; transportation providers – taxicabs, inter-city and intra-city motor coaches; automobile emergency road service providers), analog SMR, cellularized SMR, cellular A-Block and cellular B-Block licensees. And, like the public safety licensees, many B/ILT users provide critical infrastructure services (e.g., automobile emergency road services, electrical power, water and sewer services, waste hauling, etc.) to the public, which could be significantly disrupted by a frequency relocation within or outside the 800 MHz band.

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[1] Nextel Partners, in which Nextel is a minority shareholder, has been silent in this proceeding. As a result, Blooston is concerned whether Nextel has the ability to bind Nextel Partners to any consensus agreement or solution that Nextel may desire to enter into. (See Reply Comments of Small Business in Telecommunications at 47). This concern is significant inasmuch as Nextel Partners is licensed for significant amounts of spectrum in the relevant spectrum bands within small to mid-size markets throughout the United States, of which the Commission can take official notice.

I. Nextel is the Major Source of Interference to Analog Public Safety and Conventional Business/Industrial Land Transportation Service 800 MHz Systems.

The record in this proceeding indicates that cellularized operations in the conventional 800 MHz SMR – B/ILT band, such as that of Nextel, is the primary source of interference to analog licensees in the 800 MHz band. (See Comments of Carolina Power and Light and TXU Business Services at 1; Department of Information Technology, County of Fairfax, Virginia at 2; City of Austin, Texas at 1; Verizon Wireless at 2, 7; Consumers Energy Company at 9 – 10; Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 13).[2] This is because Nextel (and its predecessor-in-interest, Fleet Call, Inc.), through the use of multiple rule waivers and rule making actions, obtained the authority to introduce a cellular telephone-like service in spectrum that was allocated for and heavily licensed for non-cellular type analog services. (Comments of Carolina and TXU at 8 – 9). In order to justify this authority, Nextel and Fleet Call represented to the Commission that the use of the conventional 800 MHz band for a cellular-like service would not cause interference to incumbent licensees, including public safety entities, and in fact, would cause less co-channel and adjacent channel interference than conventional analog SMR systems due to the lower base station

[2] See also Wireless Week, Comments of Thomas Sugrue, Chief Wireless Telecommunications Bureau (March 19, 2002, page 4) (While Mr. Sugrue stated that he could not quantify the cause of the interference to 800 MHz public safety, he agreed that the cause was "more on the Nextel side."); Letters dated July 26, 2002 from Chairman Michael Powell to Hon. W.J. (Billy) Tauzin, Hon. Fred Upton and Hon. Vito J. Fossella transmitting 800 MHz license data which demonstrates that Nextel is the primary licensee in the 800 MHz band in the top 100 markets.

antenna heights. (Comments of Carolina and TXU at 8 – 9).[3] As Nextel's service has proliferated, the instances of interference between Nextel and conventional 800 MHz systems have increased. And, indeed Nextel has now conceded that its current system design is at the root of the problem. (See Nextel 10-K at 16).

The design of Nextel's ESMR system demonstrates that Nextel does not use its spectrum in a manner designed to minimize interference to others. In particular, Fairfax County notes that certain aspects of Nextel's system design, which are unique to Nextel only, exacerbate the problem. These characteristics include:

a. Nextel transmitters constantly transmitting regardless of whether there is data or voice traffic;
b. Nextel transmitters operating with significantly more transmitter power than is required to effectively communicate with subscriber units;
c. Nextel operating multiple transmitters at each cell site in order to provide necessary capacity to its subscribers; and
d. At certain sites, Nextel is using a "hybrid" combiner to combine these multiple transmissions into a single antenna. As a result, the combiner does not provide any attenuation of the transmitter side-band noise and spurious emissions which can cause elevated floor noise in the vicinity of the Nextel cell site and thus, interference to analog 800 MHz radios operating in the area.

See Comments of Fairfax County at 5 – 6). Nextel may be operating within the technical parameters of its licenses. However, Blooston agrees with other commenters that Nextel must correct the design flaws in its ESMR system or take other steps to eliminate the interference it is causing to public safety and B/ILT systems. (Comments of Fairfax

[3] Fleet Call, Inc. also indicated that in those rare instances of interference, such interference could be eliminated by "utilizing a number of frequencies, reducing power or height, or re-orienting or changing directional antennas or employing electrical or mechanical beam tilt." See Fleet Call Waiver Request, Appendix A at 13.

County at 6). The disruption of entire industries is not an appropriate response to Nextel's failure to live up to its interference protection promises.

II. The 800 MHz Compromise Proposal Does Not Adequately Protect and Represent All Incumbent 800 MHz Licensees' Needs.

Blooston understands that several industry groups have been working with Nextel in order to formulate a "consensus plan" that would provide the Commission with a fair and equitable solution towards resolving the interference being experienced by public safety licensees in the 800 MHz band.[4] Blooston has been advised by industry sources that the current compromise has the following elements: (a) there would be two blocks of contiguous spectrum with one block for non-cellularized systems (806 – 816/851 – 861 MHz) and a second block for cellularized systems (816 – 824/861 – 869 MHz); (b) the non-cellularized block would be reserved for public safety, B/ILT and analog non-cellularized SMR systems; (c) There would be a "guard band" within the non-cellularized block to help prevent further interference to public safety licensees; (d) The "guard band" (814-816/859-861 MHz) would consist of "campus-type" systems, which are systems with an area of operation of five miles or less; (e) Frequency relocation would occur, as follows: (i) Nextel would relocate its facilities out of the non-cellularized block, (ii) Analog SMR and B/ILT licensees operating at 806-809/851-854 MHz would move to 809-814/854-859 MHz or the "guard band" channels between 814-816/859-861 MHz, (iii) public safety operations between 806-809/851-854 MHz would move to 809-

[4] It was on the basis of this group that the Commission issued a 30-day extension of time for the filing of reply comments in the instant proceeding.

814/854-859 MHz and (iv) licensees on the National Public Safety Planning Advisory Committee (NPSPAC) channels would be relocated into the non-cellularized block at 806-809/851-854 MHz; (e) in addition to the approximately 2.5 MHz of non-contiguous non-nationwide 800 MHz spectrum vacated by Nextel in the non-cellularized 800 MHz channel block, Nextel would also return its 700 MHz and 900 MHz spectrum to the Commission and in exchange, would receive 10 MHz of contiguous and nationwide spectrum at 1910 – 1915/1990 – 1995 MHz MSS spectrum at no charge; and (f) Nextel would pledge $500 million for funding relocation costs. No mention has been made as to where the balance of the funds would be secured from, although Blooston has heard some discussion that future legislation might be necessary in order to secure sufficient funding).

Blooston is unable to support this plan because there is no certainty that Nextel will be able to swap all of its spectrum and Nextel Partners' spectrum,[5] and the plan does not explicitly protect incumbent B/ILT and analog SMR licensees from being required to fund their own spectrum relocations. Rather, the plan relies on a $500 million dollar pledge from Nextel[6] (which the record in this proceeding reflects is woefully insufficient

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[5] As discussed above, Nextel holds a minority interest in Nextel Partners. As a result, there is no certainty in the record that Nextel will be able to obtain Nextel Partners' concurrence to any spectrum swap that is being proposed as part of the industry compromise or in accordance with the Nextel White Paper. The lack of such concurrence could result in a collapse of either proposal.

[6] Blooston is also concerned how the $500 million pledge from Nextel will be made available to affected licensees. Is it money that would be paid directly to the Government, the FCC or some other independent organization that would be responsible for overseeing the implementation of any spectrum relocation or rebanding? If the money is paid to the FCC or the Government, how is the money kept out of the general

to fund a public safety relocation much less a relocation, of numerous B/ILT and analog SMR systems),[7] and potentially, the hope of securing future funding from Congress. Because the plan only appears to specify funding from Nextel which would be earmarked towards relocation of public safety licensees (and does not address funding for B/ILT licensees or request Congressional funding that would be utilized for payment of **all** relocation expenses (regardless of whether the affected licensee is public safety or otherwise)), Blooston is concerned that the B/ILT and analog licensees will be left holding the bag for something that should not be their financial responsibility.[8]

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fund of the U.S. Treasury? Is congressional legislation required either for the Government to accept the pledge or for the pledge to be paid to a third party and if so, what is the likelihood of securing such legislation? What if Nextel files for bankruptcy? If the pledge is paid to a third party, what protections exist to prevent the money from being lost in the event that the third party files for bankruptcy or otherwise misappropriates the money? These questions (among others) regarding Nextel's proposed pledge have yet to be answered, and must be before any plan can be implemented.

[7] The Boeing Company estimates that its cost to relocate to another frequency band would be over $50 million alone while retuning would cost several million dollars (Comments of The Boeing Company at 6-7; Consumers Energy Company estimates that equipment costs for its system at $40 million, including the construction of additional tower sites. (Comments of Consumers Energy Company at 20). See also Comments of Fairfax County at 5, wherein Fairfax County estimates that the $500 million pledge from Nextel would only cover only five to ten percent of the total expected cost that would be incurred by all public safety entities nationwide. This estimate does not include the costs to incumbent B/ILT and analog SMR licensees. (Comments of Fairfax County at 5).

[8] The Comments of Bosshard Radio Service (Bosshard) are very illustrative on this point. In its comments, Bosshard estimates that it would cost approximately $1.2 million to relocate its system to another frequency band (comments of Bosshard at 3) and of course, substantially less if it only had to retune to another set of frequencies within the 800 MHz band. Nonetheless, to make Bosshard responsible for this substantial cost when its annual gross revenues are approximately $120,000 amounts to a surrender of its 800 MHz licenses without compensation. (Comments of Bosshard at 3). This, Bosshard states, is unacceptable considering it is not responsible for causing harmful interference to 800 MHz public safety systems. (Comments of Bosshard at 3).

Further, even if the plan contemplated that the balance of funding for the relocation of Public Safety and B/ILT licensees would come come from future legislation in Congress, Blooston is likewise concerned that Congressional funding may not ultimately be available, especially as tax collections decrease and governmental expenses in prosecuting its war on terrorism increase. As a result, Blooston fears that it will be the small B/ILT licensees and even the cellular licensees, neither of whom are the root cause of the interference problem, that will be forced to pay for their own relocations and/or contribute a substantial amount of money to relocate public safety licensees, as envisioned by Nextel's original plan. (See Nextel White Paper at 39 and 41; NPRM at 15). Without guaranteed funding to protect all incumbent licensees, Blooston believes that there can be no true industry consensus. See e.g., Comments of United States Cellular Corporation at 6; Comments of Coupe Communications, Inc. at 5; Comments of Fairfax County at 3, 7; Comments of The Boeing Company at 8; Comments of Supreme Radio Communications, Inc. at 8 – 9 (which question why any party other than Nextel should be funding relocation costs).

III. Problems with Nextel's Proposed Frequency Exchange for 2.1 GHz MSS Spectrum Could Create Uncertainty in Resolving Interference to Public Safety.

The lynchpin to Nextel's plan for resolving the public safety interference issue appears to be a frequency exchange, that would give Nextel a 10 MHz contiguous nationwide license in the 2.1 GHz MSS Band. Several parties have questioned the fairness and competitive impact of giving Nextel a nationwide license that would no

doubt sell for billions of dollars at auction, in exchange for a $500 million dollar pledge and what is largely encumbered and non-contiguous spectrum. See Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 11-13; Comments of Supreme Radio Communications, Inc. at 12-13; Comments of United States Cellular Corporation at 4-5; Comments of Verizon Wireless at 13-15; Comments of Southern Linc at 50-52; Comments of AT&T Wireless Services, Inc. at 20-21. The threshold question beyond fairness is whether it would be legal, under Section 309(j) of the Communications Act of 1934, as amended (the Act), for the Commission to award Nextel the requested 10 MHz license in the 2.1 GHz MSS Band through means other than competitive bidding. This is because Section 309(j) of the Act requires the Commission to grant initial licenses which are the subject of mutually exclusive applications through competitive bidding. Joint Comments of Cingular Wireless LLC and ALLTEL Communications, Inc. at 11-12; Comments of Verizon Wireless at 13-15; Comments of United States Cellular Corporation at 5; Comments of Southern Linc at 54-56).

While Nextel states that the grant of a 2.1 GHz license would be the result of a swap for spectrum surrendered as part of a realignment plan, (Nextel White Paper at 39, 54), Cingular Wireless, LLC, ALLTEL Communications, Inc., Verizon Wireless and others assert that Nextel should be required to bid on this valuable spectrum since there is no doubt that there would be multiple applicants. (Joint Comments of Cingular Wireless LLC and ALLTEL Communications, Inc. at 12; Comments of Verizon Wireless at 15). Because of the concerns raised by Verizon Wireless, Cingular Wireless, LLC, ALLTEL Communications, Inc. and other cellular and two-way CMRS carriers, the grant of the 10

MHz nationwide 2.1 GHz MSS Band license to Nextel, without a competitive bidding process, could result in protracted litigation before the Court of Appeals and potentially, the United States Supreme Court. This litigation would create uncertainty in the 800 MHz band and would substantially delay any interference solution that the Commission adopts since the solution would no doubt have been tied to a surrender of certain spectrum by Nextel for use in relocating incumbent licensees within the 800 MHz band. As a result, it could be several years, if not longer, before the Commission is able to resolve with any certainty the interference issues that currently plague the public safety licensees within the 800 MHz band.

IV. Technical Solutions and Sound Engineering Practice are the Best Course of Action.

The record supports the conclusion that the best course of action in this proceeding is to utilize technical solutions in order to remedy interference concerns, rather than restructuring the 800 MHz band. (Comments of Fairfax County at 4; Comments of Motorola at 24; Comments of Private Wireless Coalition at 12 – 13 (supporting use of technical solutions on an interim basis pending any future frequency relocations); Comments of Verizon Wireless at 8 – 10; Comments of Consumers Energy Company at 11).

It appears that through the use of well-established mitigation methods, the Best Practices Guide and sound engineering practices, much of the interference now experienced by public safety entities can be mitigated. (Comments of Fairfax County at 5). Blooston notes that while there is no significant discussion in the record to support

the notion that Nextel is not operating its stations within the parameters of its licenses, there is discussion that the architecture of Nextel's system may be exacerbating the situation. (Comments of Fairfax County at 4-5). Further, it cannot be disputed that, from time-to-time, A/B-block cellular carriers have likewise caused interference to public safety entities in the 800 MHz band. (Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 2-3; Comments of United States Cellular Corporation at 3). Nonetheless, the instances of cellular interference have been relatively few and far between, and when such instances have arisen, they have been mitigated using sound engineering practice and mitigation techniques. (Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 3; Comments of United States Cellular Corporation at 3).

Blooston is concerned that "rebanding" the 800 MHz band will cost billions of dollars that would be better spent elsewhere; and would substantially disrupt communications by 800 MHz licensees during the transition to the new channels. Because rebanding the 800 MHz band would be such a major and costly undertaking, with significant disruptions not only to public safety licensees but also to incumbent analog SMR and B/ILT licensees, the Commission should use less drastic measures to remedy the problem. Simply put, licensees causing interference to others should be required to utilize technical solutions such as: (a) the installation of filtering equipment to eliminate spurious emissions and intermodulation products, (b) reconfiguration of cell-site transmitters to reduce the potential for interference to 800 MHz public safety and B/ILT receivers, (c) use of "tighter" specifications in the design of CMRS systems and

sound engineering practices to reduce the potential for interference in the first instant. (Comments of Fairfax County at 6; Comments of Snohomish County Emergency Radio System at 1; Consumers Energy Company at 6, 8-9, 11). In this way, as instances of interference arise, the offending party can resolve the interference on a case-by-case basis and at significantly less cost than the billions of dollars that would be contemplated by a rebanding of the 800 MHz band.

V. Those Responsible for Causing Interference Should Bear the Responsibility to Cure the Interference.

The record clearly supports that the conclusion that those causing interference in the 800 MHz band should bear financial responsibility for mitigating such interference. (Comments of Fairfax County at 3;Comments of Carolina Power and Light Company and TXU Business Services at 17-18; Comments of Verizon Wireless at 16; Comments of Intel Corporation at 3). Blooston remains very concerned that neither the Nextel proposals currently before the Commission (nor the purported industry "consensus plan") do not offer any assistance to B/ILT users who have made significant investments in equipment and infrastructure in order to meet their internal communications needs, (Comments of Blooston at 5) and may impose unwarranted financial obligations on cellular licensees. This is because Nextel has proposed that B/ILT and analog SMR licensees fund their own relocation to other frequency bands and that Cellular A and B-block licensees contribute to the relocation of public safety licensees to other spectrum. (NPRM at15). This would be inconsistent with the Commission's rules and policies.

Rule Section 90.173(b) provides in pertinent part, as follows:

(b) All applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the use of any frequency at a given geographical location may be denied when, in the judgement of the Commission, its use in that location is not in the public interest; the use of any frequency may be restricted as to specify geographical areas, maximum power, or other such operating conditions, contained in this part or in the station authorization.

Rule Section 90.403 provides in pertinent part, as follows:

(e) Licensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.

Nextel's justification for requiring B/ILT, and analog SMR licensees to surrender spectrum at their own expense and for cellular licensees to contribute toward any public safety relocation plan is that each of these licensees will receive a benefit under the Nextel plan. This assertion is simply untrue. With respect to incumbent B/ILT licensees and analog SMR licensees, they are largely innocent by-standers and not the cause of the interference problems experienced by public safety. Further, the Nextel plan would place severe financial hardships on these licensees, many of whom are small businesses that can ill afford to have significant investments in radio equipment stranded in this manner. (Comments of Bosshard Radio Service at 3; Comments of The Boeing Company. at 6-7; Comments of AVR, Inc. at 2; Comments of Intel Corporation at 2).

Blooston also notes that most cellular carriers have not had on-going interference problems with public safety licensees in adjacent portions of the 800 MHz band. (Comments of United States Cellular Corporation at 6). Rather, where interference problems have occurred that were caused by cellular base stations, cellular carriers have promptly resolved the interference through the use of technical solutions.[9] (Comments of United States Cellular Corporation at 6; Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 3). Inasmuch as these instances of interference have been relatively isolated, Blooston agrees that A and B-block cellular carriers are not burdened with the coordination requirements, operational limitations and channel use restrictions that Nextel asserts they will be relieved of. (Comments of United States Cellular Corporation at 7; Comments of Verizon Wireless at 16). Because the cellular carriers have been successful in resolving interference complaints on a case-by-case basis, the Commission should require Nextel to resolve the interference without causing other 800 MHz licensees to incur any costs.

VI. Communications of B/ILT Licensees That Provide Critical Infrastructure Services Must be Protected.

The Commission can take official notice from its Universal Licensing System (ULS) database that numerous licensees in the conventional 800 MHz band are engaged

[9] Verizon Wireless states that APCO's Interim Report identifies it as the source of six cases of interference. In response to this report, Verizon Wireless points out that it has not been notified of interference in four cases by the affected public safety entities and in the remaining two cases, testing demonstrated that it was, at most, only a "negligible contributor" to the interference being received by the public safety entity. Comments of Verizon Wireless at 7.

in the provision of critical infrastructure services, including: generation and transport of electric services, water and sewer services, waste hauling services, automobile emergency road services, transportation and hauling services, oil refining and distribution, etc.

In the case of a natural disaster or even a future terrorist attack on this country, many of these licensees will be required to respond to the scene of a disaster or major incident in order to abate hazards that will be encountered by police, fire, emergency medical services and other first responders. In order to effectively respond to these emergencies (and control their internal infrastructure during an emergency), these licensees have heavily invested in 800 MHz voice and data systems in order to maintain reliable communications with their personnel at all times. (Comments of Carolina Power and Light Company and TXU Business Services at 4; Comments of Consumers Energy Company at 3-4; Comments of American Public Transportation Association at 3). These investments in internal communications systems have been made because commercial systems are either not available or, in the case of emergency, are simply not sufficiently reliable in order to assure 100 percent reliable communications at all times.[10] (Comments of Boone Electric Cooperative at 2). And, because of the critical nature of these communications, any proposal to relegate these B/ILT licensees to anything but primary

[10] The Commission can take official notice of the disruptions to the public switched telephone network and other public communications infrastructure in the days immediately following the terrorist attacks on September 11, 2001. It is for this reason that companies with critical communications needs rely on internal communications systems. (Comments of Boone Electric Cooperative at 2).

status in the 800 MHz band would be imprudent. (Comments of Carolina Power and Light Company and TXU Business Services at 5; Boone Electric Cooperative at 2).

Should the Commission adopt a solution that involves the migration of B/ILT licensees to 900 MHz or other frequency bands, the ramifications would be much more serious. Aside from the costs of system redesign and development, equipment and installation (which could be in the tens of millions of dollars per system), there may not be enough available sufficient spectrum to meet the B/ILT requirements in the 900 MHz band. This is a critical consideration due to the valuable services provided by public utilities, automobile emergency road services, waste haulers, and other critical infrastructure service providers. As a result, critical infrastructure communications would be forced onto commercial networks over which B/ILT licensees would have no control. These networks would likely become unavailable during a disaster or emergency for the instantaneous communications needs of these licensees due to a lack of system capacity or over saturation by the public. That said, the risks to first responders and to critical infrastructure personnel trying to protect life and property and abate hazards during an emergency will only be exacerbated if the infrastructure service providers are unable to communicate with their employees. (Comments of Carolina Power and Light Company and TXU Business Services at 5). As a result, Blooston urges the Commission to retain the current frequency assignments, on a primary basis, for B/ILT licensees engaged in critical infrastructure activities.[11] In addition to the frequency change

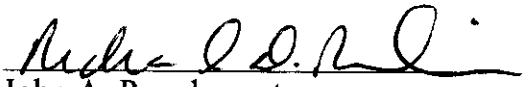
[11] Blooston also proposes that such licensees be permitted to modify their licenses to add additional facilities in order to keep up with the growth of their infrastructure.

considerations and the loss of radio communications during the transition, there would be added costs, which per licensee could amount to millions, if not tens of millions of dollars and would be too costly to implement.

VII. Conclusion.

For the foregoing reasons, the Commission should ensure that any action taken to protect public safety communications in the 800 MHz band also protects incumbent critical infrastructure communications. Likewise, the Commission should ensure that only those parties responsible for causing interference to public safety communications are responsible for its mitigation. In this regard, the Commission should mandate the use of technical solutions and should not seek contributions from cellular carriers or require incumbent analog SMR or B/ILT licensees to fund their own frequency relocations.

Respectfully submitted,
BLOOSTON, MORDKOFSKY, DICKENS, DUFFY & PRENDERGAST

By: 
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Attachment A

Electronic Specialties, Inc.
Computer Car, Inc.
US Unwired, Inc.
Copper Valley Wireless, Inc.
Radio Communications Systems, Inc. d/b/a RCS Communications
3M Company
CC Communications
Southern Illinois RSA Partnership

CERTIFICATE OF SERVICE

I, Kathleen A. Kaercher, do hereby certify that on this seventh day of August, 2002, I served a copy of the foregoing Reply Comments by hand or by first class United States mail, postage prepaid, to each of the parties listed below:

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The Honorable Kathleen Q. Abernathy
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