

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

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

**CONSENSUS COMMENTS**

The Association of Public-Safety Communications Officials-International, Inc. (APCO); the International Association of Chiefs of Police (IACP); the International Association of Fire Chiefs, Inc. (IAFC) and International Municipal Signal Association (IMSA); the Major Cities Chiefs Association (MCC); the Major County Sheriffs' Association (MCSA); and the National Sheriffs' Association (NSA) (collectively, Public Safety Organizations); in conjunction with Aeronautical Radio, Inc. (ARINC); the American Mobile Telecommunications Association (AMTA); the American Petroleum Institute (API); Association of American Railroads (AAR); the Forest Industries Telecommunications (FIT); the Industrial Telecommunications Association, Inc. (ITA); the National Stone, Sand and Gravel Association (NSSGA), the Personal Communications Industry Association (PCIA); the Taxicab, Limousine and Paratransit Association (TLPA) (collectively, Private Wireless Coalition) and Nextel Communications, Inc. (Nextel) (collectively with the Public Safety Organizations and the Private Wireless Coalition, Joint Commenters) hereby submit these Consensus Comments to the *Public Notice* requesting

comments on the Consensus Plan, among others, in the above-referenced proceeding.<sup>1</sup> As noted in the Consensus Plan, the Joint Commenters, a group of seventeen parties representing every type of licensee operating on over 80% of the 800 MHz Land Mobile Radio Band, have been actively involved in this proceeding, and they or their members will be affected by its outcome.

## **I. Background**

On August 7, 2002, the Joint Commenters filed with the Commission the Consensus Plan that is currently under review by the Commission and the industry.<sup>2</sup> These Comments address outstanding issues brought to the attention of the Joint Commenters in the earlier Reply Comment round.

## **II. Discussion**

The Joint Commenters believe the Consensus Plan is the best option available to the Commission to promote public safety communications at 800 MHz. The Consensus Plan satisfies each of the Commission's public policy objectives in this proceeding by offering an

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<sup>1</sup> See, *Wireless Telecommunications Bureau Seeks Comment on 'Consensus Plan' Filed in the 800 MHz Public Safety Interference Proceeding*, Public Notice, DA 02-2202 (rel. Sept. 6, 2002) (Notice). See also, *Wireless Telecommunications Bureau Clarifies Scope of Comments Sought in 800 MHz Public Safety Proceeding*, Public Notice, DA 02-2306 (rel. Sept. 17, 2002) expanding the scope of comments to address all band plans and proposals put forth in Reply Comments of WT Docket No. 02-55 to develop a complete record.

<sup>2</sup> See, Reply Comments of Aeronautical Radio, Inc. (ARINC); The American Mobile Telecommunications Association (AMTA); The American Petroleum Institute (API); The Association of American Railroads (AAR); The Association of Public-Safety Communications Officials-International, Inc. (APCO); The Forest Industries Telecommunications (FIT); The Industrial Telecommunications Association, Inc. (ITA); The International Association of Chiefs of Police (IACP); The International Association of Fire Chiefs (IAFC) and International Municipal Signal Association (IMSA); The Major Cities Chiefs Association (MCC); The Major County Sheriffs' Association (MCSA); The National Sheriffs' Association (NSA); Nextel Communications, Inc.; The Personal Communications Industry Association (PCIA); The Taxicab, Limousine and Paratransit Association (TLPA), WT Docket No. 02-55, filed on August 7, 2002 at p. 2 (Consensus Plan). See also, letter to Chairman Powell from the National Sand, Stone and Gravel Association (NSSGA) and ITA, filed on August 15, 2002, officially adding NSSGA to the list of signatories. See also, Notice at p. 1.

effective, timely long-term solution to the problem of CMRS – public safety interference at 800 MHz; minimizing disruption to existing licensees in the band while correcting the interleaved spectrum allocation factors that are a fundamental barrier to correcting such interference; providing substantial funding to support the realignment; and making available additional near-term 800 MHz spectrum to meet increasingly-critical, post-September 11 public safety communications requirements.

Motorola, Inc. (Motorola) has also submitted an 800 MHz re-banding proposal to the Commission in the Reply Comment phase.<sup>3</sup> The Joint Commenters believe Motorola’s plan falls short of the Consensus Plan and therefore would not achieve the Commission’s objective in this proceeding of realizing improved public safety communications at 800 MHz. Motorola’s plan eliminates a guard band between cellularized and non-cellularized spectrum, opting instead for a “transition band” with both high-site and low-site operations in an undefined amount of spectrum.<sup>4</sup> The Joint Commenters believe that this omission will subject non-cellular, high-site licensees to more interference on the non-cellular channels adjacent to the cellular low-site block than would occur under the Consensus Plan, thereby rendering that spectrum less suitable for private wireless, high-site SMR or non-life safety communications services. The Motorola plan also lacks provisions for creating tangible “greenspace” for relocation, instead relying on Nextel’s future use of more efficient technology to create “greenspace.”<sup>5</sup>

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<sup>3</sup> Reply Comments of Motorola, Inc. at p. 9-14 (Motorola).

<sup>4</sup> Motorola at p. 12-13.

<sup>5</sup> Motorola at p. 10-11. Motorola’s plan essentially asks Nextel to give up spectrum without receiving replacement channels. In contrast, the Consensus Plan states that “everyone must be made whole” in any rebanding plan adopted by the Commission. Motorola’s approach does not provide a reliable mechanism for creating the “greenspace” needed to carry out 800 MHz realignment.

Moreover, as noted by Motorola itself, the “costs of [its] plan can be expected to exceed plans that require less movement of licensees.”<sup>6</sup> The Motorola plan also provides no additional spectrum in the 800 MHz band for public safety use, a key benefit of the Consensus Plan. Finally, and arguably most importantly, the Motorola plan does not adequately address funding of the incumbent relocations necessary to effectuate realignment, which the public safety and private wireless communities have consistently stated must be included for any plan’s consideration.<sup>7</sup> Notwithstanding the issues discussed above, Motorola’s plan specifically endorses realigning the 800 MHz band to better separate low-site cellular architecture systems from high-site systems to mitigate CMRS – public safety interference.

While a couple of issues surrounding the Consensus Plan remain for future submission to the Commission, such as realignment in the border regions and detailed funding commitments, the Joint Commenters at this time would like to clarify open questions or mischaracterizations of the Plan presented in the Reply Comments. Furthermore, the Joint Commenters address cost concerns raised by a few utility commenters.

**A. The Consensus Plan Does Not Perpetuate Future Cellularization in the Non-Cellularized Block and Does Not Require Multiple Relocations**

One commenter states that the Consensus Plan perpetuates “the interference status quo by contemplating future contamination of cellularized systems into the proposed non-cellularized blocks.”<sup>8</sup> To the contrary, the Joint Commenters stated that a low-power, cellular-like

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<sup>6</sup> Motorola at p. 14.

<sup>7</sup> Motorola at p. 14, stating that possible sources of revenue include “spectrum auctions, voluntary funding, or legislation.” In addition to addressing funding arrangements, Motorola is in a unique situation, as it may have the resources to provide equipment or even discounted equipment, supporting 800 MHz realignment.

<sup>8</sup> Reply Comments of The Boeing Company at p. 9 (Boeing).

architecture would only be permitted in the 806-816/851-861 MHz high-site, non-cellularized block if approved through the Commission's rule waiver process. The Consensus Plan contemplates that the Commission should only grant such waivers if the applicant proves that its planned system configuration "would not create interference to [other non-cellularized band] incumbents and that approval of the waiver would promote the public interest."<sup>9</sup>

The Joint Commenters believe that this approach protects the high-site band from contamination; *i.e.* from a mix of incompatible high-site and low-site systems, while allowing incumbent public safety and private wireless licensees some flexibility to introduce lower-site, cellular-like technologies to meet localized service needs. In considering such waiver requests, the Commission should evaluate whether their grant could lead to a renewed mix of incompatible high-site and low-site interleaved systems that could recreate the current problem plaguing the band. Future technological advances, in particular, may reduce the need for a rigid standard. Licensees seeking such enhancement capabilities should have the opportunity to demonstrate, both to the Commission and the industry, that the enhancements will not jeopardize other operations in the band. However, the hurdle must be high, and subject to review by impacted licensees.

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<sup>9</sup> Consensus Plan at p. 10 and n. 41. One public safety commenter also raises concerns about public safety's ability to deploy future cellularized systems. *See*, Reply Comments of the Public Safety Improvement Coalition at p. 6 (PSIC); Reply Comments of the City of San Diego at p. 4. It is the view of the Joint Commenters that public safety entities, as well as other incumbents and geographic area licensees, endure the rule waiver process for future operation of a cellular-like system in the non-cellularized portion of the band. A public safety entity, arguably, would have an easier time proving to the Commission that the grant of such a waiver is in the public interest, but should still be required to protect its neighboring public safety and private wireless licensees in the band. Furthermore, while some public safety entities may find it necessary to use low site, low power operations in some locations, such use is unlikely to meet the more detailed definition of "cellularized" operations proposed in the Consensus Plan.

It has also been brought to our attention that guard band interference needs clarification under the Consensus Plan. Licensees in the guard band have the potential to experience more interference than licensees in the lower portions of the band by the very nature of their position near the 816/861 MHz cellularization threshold. The potential for these licensees to experience interference under the Consensus Plan, however, will be diminished from their current environment due to the de-interleaving of cellularized systems and the relocation of these systems above 816/861 MHz.<sup>10</sup>

Boeing also asserts that the Plan forces “non-interfering B/ILT and SMR licensees to relocate several times in order to remain in the 800 MHz band...[to] a cramped guard band for at least five years (a ‘double hop’ if some B/ILT licensees want to stay in the 800 MHz band) or relocating to the 900 MHz band.”<sup>11</sup> This is incorrect. Implementation of the Consensus Plan does not “force” or require more than one retune for any 800 MHz Land Mobile Radio incumbent other than Nextel. The Consensus Plan avoids retuning of the 809-814/854-859 MHz incumbents, whether B/ILT, high-site SMR or public safety; only the relatively fewer incumbents in the new NPSPAC block, 806-809/851-854 MHz, and those licensees that need to be relocated from the new 814-816/859-861 MHz guard band would be required to relocate one time, and one time only. Licensees will not be required to retune again after their channel-for-channel exchange with Nextel at 800 MHz and licensees that seek to double their spectrum

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<sup>10</sup> It may be prudent, nevertheless, for the organizations creating a final, comprehensive bandplan for this spectrum to relocate mission-critical operations out of the guard band when crafting specific channel allotments for each licensee. Furthermore, if it is deemed appropriate for such mission-critical licensees to move away from adjacent cellularized operations, funding for their relocation should be made available.

<sup>11</sup> Boeing at p. 9. Boeing’s mischaracterizations of the Consensus Plan may be due to changes in the Consensus Plan that were made immediately before filing. Nevertheless, the Joint Commenters deem it necessary to clear the record so that everyone understands the plan as filed.

capacity by relocating to 900 MHz would do so before retuning a first time at 800 MHz.<sup>12</sup> The Consensus Plan also stipulates that 800 MHz incumbents may relocate to 900 MHz only during the retuning of their NPSPAC geographical Region.<sup>13</sup> In short, only one move is required of any incumbent (with the exception of Nextel) in the 800 MHz band and moving operations to 900 MHz will be strictly optional.

One public safety licensee also expresses concern that retuning the NPSPAC channels would involve a “‘clean-sweep’ reallocation” within each Region.<sup>14</sup> On the contrary, a principal attribute of the Consensus Plan is that it avoids just that result, by assuring the retention of all relative NPSPAC channel assignments and allotments within each existing NPSPAC Regional Plan. No “wholesale re-sorting” is necessary. Rather, all existing assignments and allotments within a Region simply “slide down 15 MHz from 821-824/866-869 MHz to 806-809/851-854 MHz.”<sup>15</sup>

## **B. Costs of Relocation**

A few commenters have suggested that relocation costs will be too great under the Consensus Plan for implementation. For example, Alliant Energy (Alliant) claims “all proposed plans will create unnecessary interruption of service and heavy expense.”<sup>16</sup> Carolina Power & Light Company and TXU Business Services state that Nextel’s \$500 million pledge will be insufficient to cover the costs of relocation for public safety and “critical infrastructure”

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<sup>12</sup> Presumably, a licensee that doubled its spectrum at 900 MHz would not seek to relocate again after receiving such a benefit.

<sup>13</sup> Consensus Plan at p. 18 and n. 53. A decision would be made by the B/ILT or traditional SMR licensee during its retuning phase as to whether or not it would like to swap with Nextel and remain in the 800 MHz band or double its spectrum by relocating once to the 900 MHz band.

<sup>14</sup> PSIC at p. 6 (referring to concerns raised by the City of Philadelphia).

<sup>15</sup> Of course, where the Regional Planning Committees and the affected incumbents believe that some minor modifications would be beneficial, they should not be precluded from doing so.

<sup>16</sup> Comments of Alliant Energy at p. 2.

licensees at 800 MHz.<sup>17</sup> However, neither Alliant (or its holding companies, Interstate Power and Light & Wisconsin Power and Light) nor Carolina Power and TXU will be required to retune a single channel under the Consensus Plan. The Joint Commenters have conducted a database search of channels 1-120 in the 800 MHz band; none of the above-listed entities hold licenses for channels in the 3 X 3 MHz block (channels 1-120) that must be cleared to create the new NPSPAC block at 806-809/851-854 MHz. Accordingly, their statements as to cost should be accorded no weight in this proceeding.

Similarly, Delmarva Power & Light Company and Atlantic City Electric Company (Delmarva and Atlantic) assert that relocation costs would be overly expensive and that the necessary modifications to their systems would cost millions of dollars.<sup>18</sup> Delmarva and Atlantic also note that retuning will require substantial down-time for modifications and the construction of a duplicate system will be necessary.<sup>19</sup> Again, however, pursuant to the Consensus Plan, neither of these commenters would have to retune a single channel, making their concerns moot.

Alliant, Carolina Power, Delmarva and Atlantic all operate between channels 120-400 in the 800 MHz band, which would no longer be required to retune under the Consensus Plan. These cases are just a few examples of the Consensus Plan's ability to minimize the amount of disruption that could be realized by incumbent licensees in the 800 MHz band. The key point here is that the Consensus Plan, unlike Nextel's original proposal and some of the other

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<sup>17</sup> Reply Comments of Carolina Power & Light Company and TXU Business Services at p. 5 (Carolina Power).

<sup>18</sup> Reply Comments of Delmarva Power & Light Company and Atlantic City Electric Company at p. 37 (Delmarva and Atlantic).

<sup>19</sup> Delmarva and Atlantic at p. 36-37. Even if these entities were licensed for channels that require retuning, it is not a given that a redundant system must be constructed. Rather, depending upon the type of equipment being utilized, the retune could be as difficult as constructing a redundant system or as "easy" as reprogramming repeaters without the need to "touch" subscriber units.

suggestions in this proceeding, minimizes the amount of relocations necessary to effectuate realignment.<sup>20</sup> Specifically, many B/ILT and high-site SMR incumbent licensees will not have to retune a single channel; some will have to retune only a few channels while the majority of their systems require no action.

Despite the substantial decrease in the number of licensees required to retune under the Consensus Plan, some licensees will be required to retune and costs must be addressed. The Consensus Plan recognizes that funding plays an important role in the consensus solution.<sup>21</sup> As the Joint Commenters noted in the Consensus Plan, “incumbent licensees, including public safety, B/ILT and traditional SMR, should not bear the burden of relocation costs caused by the introduction of incompatible system architectures in the 800 MHz band.”<sup>22</sup> The Joint Commenters continue to work diligently toward a funding solution for *all* 800 MHz incumbents

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<sup>20</sup> Nextel’s White Paper would have relocated B/ILT and traditional SMR licensees on channels 1-400 to either the 700 MHz or 900 MHz band. *See*, “Promoting 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 by Nextel Communications, Inc, on November 21, 2001 (White Paper) at p. 42-43. The Private Wireless Coalition’s original re-banding proposal would have required retuning for B/ILT licensees on channels 1-240. *See*, Comments of the Private Wireless Coalition filed on May 6, 2002, (PWC Comments) at p. 15-16. A 700 MHz plan, assuming it would seek to relieve interference for B/ILT systems and not re-create a similar interference-prone environment at 800 MHz, would require retuning of virtually every B/ILT and traditional SMR incumbent at 800 MHz. *See*, PWC at p. 11-12. Furthermore, Motorola’s plan in its Reply Comments would rely heavily on licensee habitation in a given market and cannot offer the promise that B/ILT entities, such as Alliant or Carolina Power, would not be required to retune. *See*, Motorola at p. 10, stating that it believes “the realignment of the 800 MHz band should take...market-by-market variations into account.”

<sup>21</sup> Funding has been a primary concern for the public safety community throughout this proceeding and continues to be the primary concern for B/ILT and traditional SMR licensees. Without adequate funding arrangements for both of these groups of licensees, no plan can be supported by the public safety community or private wireless licensees.

<sup>22</sup> Consensus Plan at p. 19. On the other hand, the Joint Commenters believe that all entities contributing to the interference should also contribute to the funding mechanism supporting its elimination.

that will be required to relocate.<sup>23</sup> We expect to finalize and file with the Commission these funding arrangements by no later than October 23, 2002.

### III. Conclusion

The Joint Commenters recognize that a comprehensive border region plan and finalized funding negotiations will significantly fill in the remaining blanks in the Consensus Plan. The Joint Commenters are working expeditiously to complete these tasks and will release the appropriate information as it becomes finalized. We appreciate the Commission's invitation to receive comments on this Plan, as we continue to believe it achieves the Commission's objectives for this proceeding and are confident that the record indicates additional support. The Joint Commenters urge the Commission to act expeditiously on this request by adopting the Consensus Plan as it has been proposed in the Reply Comment stage and enhanced today.

Respectfully Submitted,

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<sup>23</sup> Consensus Plan at n. 56, stating that “[w]hile the parties have no formal plan at this time, Nextel and the private wireless community are currently discussing funding issues with respect to private wireless relocation.”

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# Appendix A — Consensus Plan

