

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 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)	
)	
Wireless Telecommunications Bureau Seeks Comment on "Consensus Plan" Filed in the 800 MHz Public Safety Interference Proceeding)	DA 02-2202

To: The Commission

FURTHER COMMENTS OF SCANA CORPORATION

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EXECUTIVE SUMMARY

SCANA Corporation, an energy-based holding company whose regulated electric and natural gas utilities and other energy-related businesses operate communications systems in the 800 MHz band, opposes the adoption of the so-called Consensus Plan. This Plan does not offer a practical solution to the 800 MHz interference problem because it lacks the support of the commenters and fails to address several necessary components of a successful relocation process.

The Joint Commenters purport to comprise a representative group of 800 MHz licensees. While the Joint Commenters may appear to agree on certain issues, the separate filings by these parties reveal their lack of understanding on several key issues. In addition, the failure of the so-called Consensus Plan to provide any specificity on many logistical issues, as well as the opposition from a diverse group of commenters, further illustrate the absence of widespread support for this Plan.

The so-called Consensus Plan fails to provide sufficient protection for large critical infrastructure licensees during the relocation process. The Plan neglects to provide a predictable and orderly relocation process for critical infrastructure licensees, such as utilities. In particular, the Plan grants authority over the development of a bandplan to an unsuitable group of entities. For example, Nextel and the LMCC would have the authority to establish the relocation process for Business and I/LT licensees, despite their clear conflicts of interest. The Plan also does not define the rights of licensees. To protect these licensees from disruption, the FCC should develop a neutral bandplan and adopt self-executing rules that establish the rights and responsibilities of the licensees.

Instead of protecting critical infrastructure licensees during the relocation process, the so-called Consensus Plan proposes several recommendations that would inequitably harm these licensees. The Plan fails to provide these licensees with adequate and comparable replacement spectrum. While the Plan would relocate these licensees to a Guard Band, this spectrum is inadequate for wide-area, critical infrastructure licensees because it suffers from an increased likelihood of interference. The Plan also freezes access to vacated Nextel spectrum, preventing critical infrastructure entities from licensing these frequencies for at least eight to nine years. Moreover, the Plan does not provide incumbent licensees with a sufficient amount of time to complete their relocation. These recommendations are particularly unacceptable for utility communications systems that require a minimum of disruption to perform their critical public safety services.

The so-called Consensus Plan also precludes the deployment of advanced systems. Although the FCC encourages flexible use of the spectrum and innovative technologies, this provision would effectively foreclose the introduction of advanced systems in this band because of the overly burdensome waiver process.

The Plan lacks a sufficient funding mechanism for Public Safety licensees and provides no reimbursement for Business and I/LT licensees. Although the Plan provides some reimbursement for Public Safety licensees, it caps Nextel's liability and imposes several additional conditions. These conditions increase the likelihood that the money would run out prematurely and leave licensees stranded in interference-prone spectrum.

Finally, the FCC should reject the so-called Consensus Plan because the record does not support this costly and disruptive rebanding. The scope and extent of the interference problem remain uncertain because of the lack of empirical evidence. In

addition, Nextel's technical analysis does not inspire confidence that the proposed rebanding would resolve any existing interference problems.

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FURTHER COMMENTS OF SCANA CORPORATION

SCANA Corporation ("SCANA"), through its undersigned counsel, hereby files these Further Comments in the above-captioned matter in response to a *Public Notice* issued by the Wireless Telecommunications Bureau on September 6, 2002.¹ In this *Public Notice*, the Bureau seeks further comment on a so-called Consensus Plan filed in that docket.²

¹ Wireless Telecommunications Bureau Seeks Comment on "Consensus Plan" Filed in the 800 MHz Public Safety Interference Proceeding, DA 02-2202 (rel. Sept. 6, 2002).

² *Id.* By *Public Notice*, released September 18, 2002, the Wireless Telecommunications Bureau expanded the scope of its September 6th *Public Notice* to invite comment on any other rebanding plans or proposals raised in the reply comments. Wireless Telecommunications Bureau Clarifies Scope of Comments sought in 800 MHz Public Safety Proceeding (WT Docket 02-55), *Public Notice*, DA 02-2306 (rel. Sept. 18, 2002). However, because the Bureau did not extend the deadline for filing comments in response to all reply comments, the present comments are, of necessity, limited to addressing the so-called Consensus Plan, as directed by the September 6th *Public Notice*.

I. INTRODUCTION

SCANA continues to support the adoption of market-based technical solutions to resolve interference in the 800 MHz band. If the FCC were to determine that rebanding is necessary, however, SCANA urges the FCC not to adopt the so-called Consensus Plan because the Plan substitutes a variety of interest-driven proposals in place of a logical procedure. Because of this lack of coherence, the Plan fails to generate support even among the Joint Commenters.

Counsel for SCANA communicated its concerns about the disjointed nature of the proposals to the principal sponsors of the Consensus Plan prior to the filing of the Private Wireless Coalition's Comments and again before the submission of the Joint Commenters' Consensus Plan. While SCANA would welcome the adoption of a plan based on a true consensus among all industry sectors using the 800 MHz band, SCANA cannot endorse this so-called Consensus Plan for the reasons explained in these Further Comments.

In particular, SCANA cannot endorse the so-called Consensus Plan because the Plan: (1) fails to provide a predictable and orderly process that includes the involvement of individually affected licensees; (2) subjects utilities and other large system users to interference by forcing them into a "Guard Band"; (3) neglects to provide a funding mechanism for all displaced licensees; (4) caps Nextel's liability to an amount that even the Joint Commenters concede is insufficient to cover Public Safety expenses; (5) precludes the deployment of advanced systems by Business, I/LT, and Public Safety licensees; and (6) lacks evidence to justify the cost and disruption of such a massive rebanding effort. The FCC should decline to adopt any rebanding plan that does not address these issues.

II. THE SO-CALLED CONSENSUS PLAN LACKS WIDESPREAD SUPPORT FROM 800 MHZ LICENSEES

The "Consensus Plan" is a misnomer. While the Joint Commenters promote their rebanding proposal as the product of a coordinated effort by a representative group of 800 MHz licensees,³ the Plan fails to generate the support of either the Joint Commenters themselves or other commenters. The Joint Commenters may agree on certain aspects in the Plan, but an examination of the separate reply comments filed by the individual parties reveals that they harbor irreconcilable views and frequently interpret the vague provisions of the Plan differently. In particular, the Joint Commenters disagree on the funding mechanism,⁴ the nature of the prohibition on cellular architecture,⁵ and the logistical issues of the rebanding.⁶

In addition, the Plan also does not garner the support of other licensees. Despite the so-called Consensus Plan's claim to comprise a representative cross-section of licensees, an equally diverse group of licensees vigorously oppose the Plan. For example, licensees that object to the

³ Reply Comments of Aeronautical Radio, Inc., American Mobile Telecommunications Association, American Petroleum Institute, Association of American Railroads, Association of Public-Safety Communications Officials-International, Inc., Forest Industries Telecommunications, Industrial Telecommunications Association, Inc., International Association of Chiefs of Police, International Association of Fire Chiefs, Inc. and International Municipal Signal Association, Major Cities Chiefs Association, Major County Sheriffs' Association, National Sheriffs' Association, Nextel Communications, Inc., Personal Communications Industry Association, National Stone, Sand and Gravel Association, and Taxicab, Limousine and Paratransit Association 2 (Aug. 7, 2002) [hereinafter *Consensus Plan*].

⁴ Compare Reply Comments of Nextel Communications, Inc. 29-32 (Aug. 7, 2002) [hereinafter *Nextel Reply Comments*] with Comments of American Mobile Telecommunications Association 10 (Aug. 7, 2002) [hereinafter *AMTA Reply Comments*] and Reply Comments of Association of Public-Safety Communications Officials-International 4 (Aug. 7, 2002). In addition, Nextel and the International Association of Fire Chiefs appear to disagree on the necessity of Public Safety receiver standards. Compare *Nextel Reply Comments* at 24 n.50 with Comments of International Association of Fire Chiefs 6 (May 6, 2002).

⁵ Compare *Nextel Reply Comments* at 5 with *AMTA Reply Comments* at 8.

⁶ *Consensus Plan* at 19 n.56, 21 n.60.

Plan include Public Safety commenters,⁷ utilities,⁸ commercial SMR licensees and large CMRS providers,⁹ trade associations,¹⁰ and at least one equipment manufacturer.¹¹

III. THE PLAN NEGLECTS TO PROVIDE A PREDICTABLE AND ORDERLY RELOCATION PROCESS

The so-called Consensus Plan fails to provide a predictable relocation process for Business and I/LT licensees. While the so-called Consensus Plan incorporates general measures to protect Public Safety licensees during their relocation, Business and I/LT licensees receive no protection from disruption. The Plan actually makes the relocation process more disruptive by (1) delegating the development of a bandplan to entities with clear conflicts of interest and (2) neglecting to establish the rights and responsibilities of the parties.

A. The FCC Should Not Delegate the Authority to Develop a Bandplan

While Public Safety licensees have the right to approve their relocation,¹² the so-called Consensus Plan would force the FCC to delegate its spectrum management authority over the

⁷ *E.g.*, Reply Comments to the Proposed "Consensus Plan" of the County of Maui and the County of Kauai 1 (Sept. 23, 2002); Reply Comments of Office of the Chief Technology Officer, District of Columbia 7-8 (Aug. 7, 2002); Reply Comments of City of San Diego 2, 4-5 (Aug. 7, 2002) [hereinafter *City of San Diego Reply Comments*].

⁸ *E.g.*, Reply Comments of UTC 18 (Aug. 7, 2002) [hereinafter *UTC Reply Comments*]; Reply Comments of Carolina Power & Light and TXU Business Services 3 (May 6, 2002); Reply Comments of Pinnacle West Capital Corporation 5-6 (Aug. 7, 2002); Reply Comments of Ameren 12 (Aug. 7, 2002) [hereinafter *Ameren Reply Comments*] (noting that Business and I/LT licensees should not relocate to a "Guard Band" to protect Public Safety licensees).

⁹ Reply Comments of Mobile Relay Associates 3-4, 5-6 (Aug. 7, 2002); Reply Comments of Southern LINC 24-44 (Aug. 7, 2002); Reply Comments of Cingular/Alltel 4 (Aug. 7, 2002); Reply Comments of Alltel Communications, Inc., Cingular Wireless, LLC, AT&T Wireless Services, Inc., Coupe Communications, Inc., First Cellular, Southern LINC, Nokia, Inc., United States Cellular 12-14 (Aug. 7, 2002) [hereinafter *Commercial Wireless Reply Comments*].

¹⁰ *E.g.*, Reply Comments of National Association of Manufacturers and MRFAC, Inc. 4-6 (Aug. 7, 2002) [hereinafter *NAM/MRFAC Reply Comments*]; *UTC Reply Comments* at 11-16.

Business and I/LT relocation process. Specifically, the Plan would have Nextel, the Land Mobile Communications Council ("LMCC"), and the Public Safety Regional Planning Committees develop a bandplan for Business and I/LT licensees.¹³

Nextel should not participate in the development of a bandplan because it has an overwhelming conflict of interest with Business and I/LT licensees. As a commercial provider, Nextel's primary goal is to decrease its operating costs and increase its customer base. Because Nextel has demonstrated its interest in providing commercial service to Business and I/LT licensees, and especially utilities,¹⁴ it has every reason to impose an arduous, costly, and time-consuming rebanding on these entities. In addition, Nextel is responsible solely to its shareholders, not to the public interest, and has no incentive to act in the best interests of Business and I/LT licensees.

LMCC also possesses a conflict of interest that disqualifies it from participating in the development of a bandplan. LMCC is a loose configuration of individual frequency coordinators, such as PCIA and ITA, which would derive significant financial revenue from the coordination of Business and I/LT licensees. In addition, the nature of the organization should also exclude the LMCC from serving as a architect of an 800 MHz bandplan. Specifically, LMCC is a voluntary organization that lacks a permanent staff and is ill-equipped to reach full industry consensus on issues that affect interests as diverse as those in the 800 MHz band.

¹¹ Reply Comments of Motorola, Inc. 6-14 (Aug. 7, 2002) (supporting a separate rebanding plan).

¹² *Consensus Plan* at 15.

¹³ *Id.* at 17.

¹⁴ *E.g.*, In re National Telecommunications Information Administration (NTIA) Report on Current and Future Spectrum Use by the Energy, Water, and Railroad Industries, Comments of Nextel Communications, Inc. 99 (Mar. 6, 2002) (questioning the ability of critical infrastructure

Significantly, LMCC has not even participated in this docket or expressed willingness to oversee the thousands of system relocations that would be required by the so-called Consensus Plan.

Finally, the Regional Planning Committees are also improperly equipped to handle this responsibility. While the Regional Planning Committees perform a commendable service for Public Safety licensees, they will undoubtedly have more than enough to keep them busy with the NPSPAC channels, especially if the so-called Consensus Plan compels the relocation of all of the NPSPAC licensees. In addition, the Regional Planning Committees do not have experience with Business and I/LT systems and do not share these licensees' commitment in protecting their private wireless systems. Thus, if the FCC adopts the so-called Consensus Plan, SCANA believes that the FCC should develop a suitable bandplan itself in order to protect incumbent Business and I/LT licensees.

B. The Plan Does Not Define the Rights of Incumbent Licensees

The FCC should promulgate neutral relocation rules that establish the rights and responsibilities of the licensees. Specifically, the FCC could adopt rules similar to those adopted in the Emerging Technologies proceeding and for the Upper 200 SMR channels,¹⁵ which grant incumbent licensees the right to (1) relocate to comparable spectrum, which is defined as spectrum with the same bandwidth, reliability, and operating costs;¹⁶ (2) receive full reimbursement for the relocation;¹⁷ (3) negotiate the terms of relocation, including the right to a

industries to build and operate modern, complex digital networks and recommending that they take service from a commercial provider).

¹⁵ 47 C.F.R. §§ 101.69-101.75, 90.699(b) (2001).

¹⁶ *Id.* §§ 101.75(b), 90.699(d).

¹⁷ *Id.* §§ 101.71-101.73, 90.699(b)-(c).

system-wide relocation;¹⁸ (4) examine the replacement facilities for a reasonable period of time in order to make adjustments, determine comparability, and ensure a seamless handoff;¹⁹ and (5) use the replacement spectrum for a trial period.²⁰ While this list provides a basic idea of the types of rights that the FCC should afford to incumbent licensees, SCANA expands on several of these rights in other sections of these Further Comments.

In addition to protecting incumbents, the FCC should also adopt clearly defined rights and responsibilities for the party that will relocate the displaced licensees, *i.e.*, Nextel.²¹ By balancing the rights and responsibilities of the respective licensees, the FCC would ensure a fair and neutral transition that offers safeguards to prevent against any service disruptions, which are particularly unacceptable for critical infrastructure industry licensees, including utilities such as SCANA.

IV. THE SO-CALLED CONSENSUS PLAN DOES NOT ADEQUATELY PROTECT BUSINESS AND I/LT LICENSEES

The so-called Consensus Plan imposes several inequitable restrictions on Business and I/LT licensees in the 800 MHz band. In particular, the so Plan neglects to provide comparable and adequate spectrum to displaced licensees, restricts access to spectrum by eligible entities, and fails to set aside a sufficient amount of time for licensees to relocate their systems. To protect these licensees, the FCC should adopt the same interference-reducing rules for all systems in the 800 MHz band. If the FCC were to adopt the Plan, however, then it should take the actions described in the following sections.

¹⁸ *Id.* §§ 101.69(a); 101.73(b), 90.699(a)-(b).

¹⁹ *Id.* § 101.75(c).

²⁰ *Id.* § 101.75(d).

²¹ For example, the FCC should forbid Nextel from selling or assigning its licenses in the 809-816/854-859 MHz band after the commencement of the relocation process.

A. The Guard Band Would Not Provide Comparable and Adequate Spectrum

The so-called Consensus Plan fails to provide comparable and adequate spectrum to displaced licensees, especially wide-area, critical infrastructure licensees. Under the Plan, incumbent Business and I/LT licensees in the General Category would have to relocate to the 814-816/859-861 MHz Guard Band, while incumbent Business and I/LT licensees in the proposed Guard Band would have to remain in the Guard Band.²² By contrast, Public Safety entities would not have to relocate to the proposed Guard Band and, if they currently operate in the Guard Band, could relocate to the 809-814/854-859 MHz band.²³ After the proposed realignment, the Guard Band would serve as a buffer zone, protecting Public Safety operations in the 809-814/854-859 MHz band from interference caused by Nextel's systems in the cellular block above 816/861 MHz.²⁴

This Guard Band requirement is particularly damaging for licensees in the critical infrastructure industries, such as SCANA, that operate wide-area systems. Ameren states that the Guard Band is unsuitable spectrum for utility systems because these systems "protect people and property in all conditions and at all times."²⁵ Even Nextel concedes that licensees operating in this spectrum would suffer an increased risk of harmful interference, recommending the use of this band by interference-resistant systems operated for "non-life safety, non-mission critical communications services."²⁶ These licensees would also presumably have to comply with stricter technical standards and would lose their right to require Nextel either to avoid causing, or

²² *Consensus Plan* at 12-15.

²³ *Id.*

²⁴ *Id.*

²⁵ *Ameren Reply Comments* at 12.

²⁶ *Nextel Reply Comments*, Appendix II at 4.

to resolve, the interference it creates. Because wide-area systems, such as those operated by SCANA and other utilities, are not interference-resistant and require the same reliable, interference-free communications as Public Safety licensees, they are particularly vulnerable on the Guard Band.

If the FCC were to adopt the so-called Consensus Plan, it should provide critical infrastructure licensees with the same level of protection as Public Safety licensees. Because critical infrastructure industries qualify as Public Safety entities under section 309(j)(2) of the Communications Act, as amended,²⁷ they should have the right to relocate to the interleaved channels in the 809-814/854-859 MHz portion of the band. Specifically, if an incumbent licensee operates in the proposed Guard Band, such as SCANA, then it should have the right to relocate to the interleaved channels.²⁸

B. The So-Called Consensus Plan Imposes a Licensing Freeze on Utility Spectrum

The so-called Consensus Plan should not limit access in the Business and I/LT pools by eligible entities. Under the Plan, Public Safety licensees are the only eligible recipients of this spectrum for five years after the relocation of all NPSPAC licensees in a given Region.²⁹ Based

²⁷ 47 U.S.C. § 309(j)(2) (Supp. 2001) (defining "public safety radio services" to include "private internal radio services used by . . . non-governmental entities"); House Conf. Rep. No. 105-217, 105th Cong., 1st Sess., at 572 (1997), *reprinted in* 1997 U.S.C.C.A.N. 176, 192 (stating that section 309(j)(2) covers private internal radio services used by utilities); *see also* Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA PATRIOT) Act, Pub. L. No. 107-56 § 1016, 115 Stat. 400 (2001) (requiring "that any physical or virtual disruption of the operation of the critical infrastructure of the United States be rare, brief, geographically limited in effect, manageable, and minimally detrimental to the economy, human and government services, and national security of the United States").

²⁸ Similarly, if an incumbent licensee operates in the General Category frequencies, then it should have the right to relocate not to the Guard Band, but to the interleaved frequencies.

²⁹ *Consensus Plan* at 15-16. Because the NPSPAC relocations would comprise the next-to-last step of the rebanding, Business and I/LT licensees would not have access to Nextel channels in

on Nextel's optimistic projection that rebanding could occur within three to four years,³⁰ this provision would preclude Business and I/LT access to vacated Nextel channels in the 809-816/854-861 MHz band for at least eight or nine years.

This restricted access is detrimental for Business and I/LT licensees. These licensees require additional spectrum in order to expand and modify their systems in accordance with customer demand. If the Plan does not permit Business and I/LT licensees to access this reserved spectrum, then they would effectively lose the ability to expand their systems for at least eight or nine years.

This flexibility is particularly crucial for utility licensees and other critical infrastructure entities that use their systems to support public service.³¹ Utilities, such as SCANA, need to acquire additional spectrum and expand their systems depending on future population growth and movement. Without this additional spectrum, utilities could not operate communications systems over their entire service areas, resulting in more power outages and increased repair times. In license freezes imposed with respect to overlay auctions, utilities at least have the ability to purchase a portion of the spectrum from the auction winner. Under the so-called Consensus Plan, however, utilities would have no relief because FCC and coordinators would have to reserve the spectrum for a Public Safety licensee. This reservation would remain in place even if no Public Safety licensee staked a claim. Thus, to continue providing their critical public safety services, utilities require access to the reserved spectrum.

the 809-816/854-861 MHz band for at least 8-9 years (and this is based on Nextel's optimistic projection that rebanding could occur within 3-4 years after the release of the Report and Order).

³⁰ *Nextel Reply Comments* at 29.

³¹ Reply Comments of American Electric Power 8 (Aug. 7, 2002).

C. Displaced Incumbent Licensees Require Several Years to Complete the Relocation Process

The record suggests that incumbent licensees would need several years to relocate their systems. While the so-called Consensus Plan does not set a timetable for the relocation, Nextel estimates that the total realignment could be completed in three to four years.³² In addition, by restricting the availability of funding to a certain time period, as discussed below, Nextel essentially places a time limit on the relocation process that is completely out of keeping with a realistic projection of the required time to reband.

Business and I/LT licensees, as well as Public Safety licensees, require a sufficient amount of time to relocate their systems. Based on the immensity of the proposed rebanding, Nextel's estimate appears overly optimistic. Because the proposed relocations must occur sequentially, the time period necessary to complete the process equals the sum of the time required to relocate each group of licensees. Even though single channel swaps take approximately one year, this rebanding is on a much larger scale. Thus, the relocation of Public Safety licensees to the 809-814/854-859 MHz band would last at least three years.

After the completion of the Public Safety relocation, Business and I/LT licensees would commence their relocation to the Guard Band or the 809-814/854-859 MHz band. Because of the size and complexity of their wide-area systems, critical infrastructure licensees would take years to complete the relocation. During the initial construction of their systems, the modifications to the frequency re-use plans and the handset changes for these wide-area systems took several years to implement and fine tune. By the time the Public Safety, Business, and I/LT licensees could complete their relocation, six years will have elapsed in the relocation process, and Nextel's funding offer will have expired without the relocation of either the NPSPAC

³² *Nextel Reply Comments* at 29.

licensees or Nextel. Thus, the FCC should set a realistic schedule for any rebanding that might be required.

V. THE FUNDING MECHANISM IS INSUFFICIENT

The availability of funding is essential to the success of any rebanding proposal. Despite the importance of funding to the resolution of Nextel's interference problem, the so-called Consensus Plan fails to provide a sufficient funding mechanism. While the Plan offers no reimbursement to displaced Business and I/LT licensees, it provides only a conditional amount of funding to Public Safety licensees.

A. The Plan Fails to Compensate Business and I/LT Licensees for Their Relocation Expenses

Business and I/LT licensees should receive full reimbursement for any relocation.³³

Although the applicable legal and regulatory precedents would compel Nextel, as the interference-causing entity,³⁴ to reimburse the relocation expenses of a displaced licensee,³⁵ the so-called Consensus Plan does not provide any reimbursement for Business and I/LT licensees.

³³ Comments of SCANA Corporation 32-35 (May 6, 2002); Reply Comments of SCANA 26-27 (Aug. 7, 2002); *e.g.*, *Ameren Reply Comments* at 9; *see also* *NAM/MRFAC Reply Comments* 6 (noting that the FCC should "fashion an equitable alternative that . . . does not place the burden of fixing the problem on innocent parties"); Reply Comments of Boeing Company 7 (Aug. 7, 2002).

³⁴ APCO Project 39, http://www.apcointl.org/frequency/project_39/downloads/combined.txt

³⁵ *E.g.*, *Teledesic LLC v. FCC*, 275 F.3d 75, 84-87 (D.C. Cir. 2001); In re Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile-Satellite Service, ET Docket No. 95-18, *Memorandum Opinion and Order and Third Notice of Proposed Rulemaking and Order*, 13 F.C.C. Rcd. 23949, 23955 (1998); In re Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *First Report and Order and Second Further Notice of Proposed Rule Making*, 11 F.C.C. Rcd. 1463, 1510 (1995).

While certain Joint Commenters acknowledge that Business and I/LT licensees should not bear the cost of relocating,³⁶ the so-called Consensus Plan utterly fails to address the reimbursement of these licensees.³⁷ A footnote in the Plan states that "the parties have no formal plan at this time, [but that] Nextel and the private wireless community are currently discussing funding issues"³⁸ By neglecting to reach an agreement on one of the most important issues in the docket, and releasing Nextel from its financial responsibilities, the Plan further confirms suspicions that Nextel has dictated the terms of the "consensus." Thus, because the so-called Consensus Plan does not provide sufficient reimbursement to reimburse displaced Business and I/LT licensees for their relocation expenses, the FCC should reject this rebanding proposal.

B. The So-Called Consensus Plan Would Not Fully Fund the Relocation of Public Safety Licensees

In addition to ignoring the reimbursement needs of Business and I/LT licensees, the so-called Consensus Plan also fails to allocate funding sufficient to relocate all Public Safety licensees. The Joint Commenters artificially cap Nextel's financial liability for its interference problem, accepting Nextel's initial offer of \$500 million from the White Paper.³⁹ Although Nextel and other Joint Commenters concede that relocation will exceed this arbitrary amount,⁴⁰ the Plan grants Nextel "complete discretion as to whether to provide additional funding."⁴¹

³⁶ *APCO Reply Comments* at 4; *AMTA Reply Comments* at 8.

³⁷ SMR licensees would also not receive any reimbursement for their relocation, even though Nextel is the only SMR licensee causing documented interference to Public Safety licensees and is the only SMR licensee to receive a benefit from relocation. *Consensus Plan* at 19 n.56. Thus, the so-called Consensus Plan also contravenes judicial, statutory, and regulatory precedent when it requires SMR licensees to relocate at their own expense.

³⁸ *Id.* at 19 n.56.

³⁹ *Id.* at 20.

⁴⁰ *E.g.*, *Nextel Reply Comments* at 30-31; *APCO Reply Comments* at 4-5.

⁴¹ *Consensus Plan* at 20.

In addition, Nextel unilaterally places several unagreed-upon conditions on its contribution that would enable it to rescind its funding and continue its interference-causing operations. For example, Nextel may withdraw from the rebanding plan if the FCC does not adopt the entire proposal or if any of a number of specified administrative or judicial events fails to occur within a given time frame.⁴² Nextel also reserves the ability to cease payment and recapture the already-allocated funds after six years, regardless of the status of the relocation process.⁴³ Thus, the so-called Consensus Plan entails a significant risk that the funding will terminate or run out before the completion of the rebanding process, stranding innocent licensees in interference-prone spectrum.

VI. THE SO-CALLED CONSENSUS PLAN PREVENTS THE DEPLOYMENT OF ADVANCED SYSTEMS

The so-called Consensus Plan should not prohibit the use of cellular architecture below 816/861 MHz⁴⁴ because it contravenes the FCC's long-standing spectrum management policy. The FCC has encouraged flexible spectrum use and the development of innovative technologies to "put [spectrum] to its best and highest value use."⁴⁵ Although the FCC encourages flexible

⁴² *Nextel Reply Comments* at 31-32.

⁴³ *Id.* at 32.

⁴⁴ *Consensus Plan* at 9. The Plan defines "cellular architecture" as consisting of all the following characteristics: (1) more than 5 overlapping, interactive sites featuring hand-off capability; (2) sites with antenna heights of less than 100 feet above ground level on HAATs of less than 500 feet; and (3) sites with more than 20 paired frequencies. *Id.* at 10.

⁴⁵ Spectrum Policy Task Force Seeks Public Comment on Issues Related to Commission's Spectrum Policies, ET Docket No. 02-135, *Public Notice*, 17 F.C.C. Rcd. 10560 (2002); e.g., FCC Chairman Michael K. Powell Announces Formation of Spectrum Policy Task Force, *Press Release* (June 6, 2002); In re Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, *Policy Statement*, 14 F.C.C. Rcd. 19868 ¶ 2 (1999).

and innovative uses of spectrum, the FCC protects Public Safety licensees by balancing the need for flexibility and innovation with adequate protections against Public Safety interference.⁴⁶

The so-called Consensus Plan disregards this FCC spectrum policy by imposing a total prohibition on cellular architecture below 816/861 MHz instead of balancing flexibility and innovation with interference protection.⁴⁷ This prohibition would deny Public Safety, Business, and I/LT licensees the flexibility to deploy advanced technologies, even though several licensees have expressed interest in advanced systems.⁴⁸

In addition, the prohibition on cellular architecture is unnecessary to protect Public Safety licensees from harmful interference. No documented correlation exists between cellular architecture and interference to 800 MHz licensees, while the anecdotal evidence that does exist attributes interference to Nextel's system and not cellular architecture generally.⁴⁹ Thus, the FCC

⁴⁶ In re Petitions for Reconsideration of the Second Memorandum Opinion and Order, Service Rules for the 746-764 and 776-794 MHz Bands and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, *Third Memorandum Opinion and Order*, 17 F.C.C. Rcd. 13985 ¶ 2 n.7 (2002).

⁴⁷ *Consensus Plan* at 9. Although the so-called Consensus Plan includes a waiver provision, it would offer no meaningful relief because engineering studies could not conclusively prove the absence of interference, as required by the Plan. *Id.* at 10 n.41. Even if an applicant could demonstrate non-interference, the Plan would impose a condition akin to secondary licensing status on the advanced telecommunications system. *Id.* No one would invest in new technology under these conditions.

⁴⁸ *E.g.*, *UTC Reply Comments* at 15 (observing that a prohibition "would hamper unnecessarily the growth of advanced technology and discriminate against existing systems"); Reply Comments of Public Safety Improvement Coalition 6 (Aug. 7, 2002); Reply Comments of Cinergy Corporation 65-66 (Aug. 7, 2002); *City of San Diego Reply Comments* at 3-4 ("there are site-by-site cases where public safety *must* put in place cellular-like architecture").

⁴⁹ *E.g.*, APCO Project 39, http://www.apcointl.org/frequency/project_39/downloads/combined.txt (citing Nextel as the source of interference in overwhelming majority of reported cases of interference); Comments of Skitronics, LLC 21 (May 6, 2002) ("Southern LINC uses equipment substantially the same . . . as that used by Nextel without creating the problems that Nextel creates"). Even a Joint Commenter of the so-called Consensus Plan recognizes that not all cellular systems cause interference. *AMTA Reply Comments* at 8

should reject this absolute ban on cellular systems below 816/861 MHz because it fails to strike a reasonable balance between flexibility and interference protection.

VII. THE RECORD OFFERS NO SUPPORT FOR A COSTLY AND DISRUPTIVE REBANDING

The FCC should not adopt the so-called Consensus Plan because the record lacks evidence to justify the cost and disruption of such a massive rebanding effort. Specifically, the scope and extent of the interference problem remain unknown and the proposed rebanding would not resolve the interference problem.

A. The So-Called Consensus Offers No Proof of a Widespread Interference Problem Sufficient to Support a Massive Rebanding

The Plan bases this nationwide rebanding on anecdotal reports of interference.⁵⁰ Although commenters repeatedly requested additional information to support the alleged existence of a widespread interference problem,⁵¹ the Joint Commenters simply conclude that no disagreement exists with respect to the existence of an interference problem.⁵² While commenters may agree that Nextel causes interference in the 800 MHz band, the Plan offers no proof of the scope and extent of the interference problem.

This absence of information in the record leads the City of Baltimore to state that "there are substantial questions of fact concerning the extent of the public safety problem."⁵³ Thus,

⁵⁰ While the so-called Consensus Plan does not cite any specific evidence, APCO's Project 39, has only compiled a list of approximately 100 anecdotal reports of interference nationwide. APCO Project 39, http://www.apcointl.org/frequency/project_39/downloads/combined.txt.

⁵¹ *E.g.*, Comments of City of Baltimore 6 (May 6, 2002); Comments of Kenwood Communications 3 (May 6, 2002); Comments of Preferred Communications Systems 7 (May 6, 2002).

⁵² *Consensus Plan* at 2.

⁵³ Reply Comments of City of Baltimore 3 (May 7, 2002).

because of these unresolved questions of fact, the FCC should investigate the scope and extent of the interference prior to adopting a rebanding plan.

B. The Proposed Rebanding Would Not Eliminate Interference Caused by Nextel's Operations

The record also lacks any evidence that the proposed rebanding would eliminate the 800 MHz interference problem. The so-called Consensus Plan bases its rebanding proposal on a technical analysis performed by Nextel, but this analysis contains fatal flaws and obscures critical information. Because of these problems, "receiver overload and intermodulation will continue" under the Plan, even for Public Safety licensees in the new NPSPAC channels.⁵⁴

1. Nextel Would Cause Interference to the NPSPAC Licensees

The proposed rebanding would not eliminate interference for the relocated NPSPAC licensees. In its technical analysis, Nextel asserts that "significant IM products from Nextel transmitters in the 861-866 MHz range will not fall below 856 MHz and will not fall above 871 MHz. Therefore, relocating the NPSPAC channel block below 856 MHz virtually eliminates Nextel-only IM products on the relocated channels."⁵⁵

While the technical analysis appears reasonable at first blush, it neglects to mention the consequences of Nextel's proposed inheritance of the NPSPAC block at 821-824/866-869 MHz. If Nextel locates its transmitters all the way from 861 MHz to 869 MHz, it could cause significant third order IM products to fall as far away as 853 MHz and 877 MHz, resulting in interference for one-third of the "new" NPSPAC channels at 806-809/851-854 MHz. Thus,

⁵⁴ *Commercial Wireless Reply Comments* at 12.

⁵⁵ *Nextel Reply Comments*, Appendix II at 3.

Nextel's technical analysis omits this potentially damaging information on the effectiveness of this rebanding plan.

2. Nextel Would Also Interfere with Public Safety Licensees in the 809-814/854-859 MHz Band

The proposed rebanding also fails to eliminate interference for licensees in the 809-814/854-859 MHz band. While Nextel claims that consolidating its channels in the former NPSPAC band "would enable Nextel to manage its frequency usage more effectively to minimize IM products falling on the interleaved public safety channels at 854-859 MHz," it fails to consider the impact of the so-called Consensus Plan on the band.⁵⁶ Under the Plan, the number of Public Safety systems would increase *throughout* the 854-859 MHz band because Public Safety systems relocating from 851-854 MHz and 859-861 MHz could relicense anywhere within the 854-859 MHz band, not just on "Public Safety" allocations, and would have exclusive access to vacated Nextel channels for eight or nine years after the adoption of the Report and Order. Thus, the proposed rebanding may actually create more interference problems in this portion of the band.

3. Nextel's Technical Analysis Ignores a Type of Harmful Interference

Fifth order intermodulation interference would also continue to exist after the proposed rebanding. While the Nextel technical analysis disregards this type of interference, claiming that third order intermodulation "is almost always going to be the only IM issue in play,"⁵⁷ other commenters have found that fifth order intermodulation products "are the most common form of

⁵⁶ *Id.* at 21.

⁵⁷ *Id.* Appendix II at 6.

IM interference received by public safety and industrial systems in the 800 MHz band.⁵⁸ Thus, because the proposed rebanding would not eliminate third order and fifth order intermodulation interference, and in some cases would increase it, the FCC should reject the so-called Consensus Plan.

⁵⁸ Comments of Motorola 18 n.27 (May 6, 2002).

WHEREFORE, THE PREMISES CONSIDERED, SCANA Corporation respectfully requests that the FCC consider these Further Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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Dated: September 23, 2002

CERTIFICATE OF SERVICE

I, Christine S. Bisio, do hereby certify that on this 23rd day of September 2002, I caused a copy of the foregoing "Further Comments of SCANA Corporation" to be hand-delivered to each of the following:

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