

Before the
Federal Communications Commission
Washington DC

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)

COMMENTS OF EXELON CORPORATION
ON SO-CALLED “CONSENSUS PLAN”

Pursuant to the Public Notice issued by the Wireless Telecommunications Bureau,¹ Exelon Corporation submits these comments on the so-called “consensus plan” filed in response to the Commission’s Notice of Proposed Rule Making in this proceeding.² At the outset, Exelon would point out that, although it is labeled as a “consensus plan”, to Exelon’s knowledge, neither Exelon nor the United Telecom Council (“UTC”) – the industry group representing the interests of critical infrastructure service providers such as Exelon’s utility subsidiaries – were invited to partake in the development of the proposal.

Exelon supports the comments of the UTC on the plan, especially with respect to its opposition to mandatory relocation of incumbent systems in the 800 MHz band and its recommendation for correction of interference problems through market-based solutions

¹ *Wireless Telecommunications Bureau Seeks Comment on “Consensus Plan” Filed in the 800 MHz Public Safety Interference Proceeding*, DA 02-2202, released September 23, 2002 (“Public Notice”).

(whereby the party causing the interference is responsible for its resolution) coupled with real improvements in technical rules to prevent interference.

The record in this docket is now full of references to the hardship, expense, and potential risk that would be involved with the mandatory relocation of existing incumbent licensees – especially providers of critical infrastructure services such as electric and gas utilities. The Commission should be mindful of Congress’s particular concern for “the reliable provision of ...physical infrastructure services...including telecommunications, energy, financial services, water, and transportation.” In passing the Critical Infrastructures Protection Act of 2001 declared it to be the policy of the United States:

that any physical or virtual disruption of the operation of the critical infrastructures 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...

See 42 USCS §5195c(b), (c).

Exelon’s subsidiary, PECO Energy Company (“PECO”) serves about 1.5 million electricity and 430,000 natural gas customers in southeastern Pennsylvania (including Philadelphia). PECO currently has licenses for 33 channel pairs in the 800 MHz band, approximately 12 of which are in the “lower 150” general category band; and it estimates that it would cost approximately \$1.5 million to move these general category licenses to other portions of the 800 MHz band by retuning equipment, reconfiguring antennae, etc.

Although the “consensus plan” would involve less mandatory relocation than Nextel’s original proposal, it still lacks any mechanism for defraying costs incurred by

² *In the Matters of Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, Notice of Proposed Rulemaking, FCC 02-81, released March 15, 2002 (“NPRM”).

non-public safety entities that would be required to relocate. This gap exists even though the Joint Commenters who sponsor the plan state categorically that:

[I]ncumbent 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.

See Joint Commenters' Reply Comments at 19.

Because of the risk and uncompensated costs to incumbent licensees associated with the “consensus plan”, the Commission should reject it. Instead, Exelon continues to offer its proposal as a fair, highly workable and efficient solution – one that is completely consistent with the “first-in-time” policy endorsed by the Commission in other contexts. Specifically, any party newly arriving at a frequency (or making major changes to its system) should be technically and financially responsible for resolution of any interference caused by its operations to the operations of incumbent licensees, even if it is operating within published guidelines while causing the interference. The Commission should adopt rules that provide that the interfering party would have to resolve the interference problem within 60 days or cease operations unless an extension were agreed to by all affected parties. There would be no need for the Commission to specify the type of resolution that would be required. Economics would dictate whether it would be more efficient for the interfering party to modify its own equipment or pay the party experiencing interference to modify its equipment or even to move.

Such approach would avoid the massive dislocations involved with forced moves or rebanding, which may not even be necessary in locations in which there is no interference “victim” and which may not even solve the interference problem in locations in which there is.

Exelon, therefore, respectfully requests that the Commission reject the so-called “consensus plan” and, instead, adopt rules consistent with these comments.

Respectfully submitted,

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