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**Before the  
Federal Communications Commission  
Washington, DC 20554**

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

To: The Commission

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September 23, 2002

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## SUMMARY

As a preliminary matter, the so-called “consensus” plan put forth by Nextel and others is not supported by every type of licensee operating in 800 MHz band – no cellular carriers were a party – nor does it represent the views of many public safety entities or B/ILT and SMR operators. More importantly, the plan does not satisfy the Commission’s public interest goals or other important public interest criteria:

- First, the proposed 800 MHz rebanding will not eliminate interference, only mitigate it, requiring permanent codification of the *Best Practices Guide*.
- Second, the plan does not minimize disruption. It requires substantial relocation in a complicated series of steps by public safety, B/ILT, conventional SMR, and enhanced SMR licensees.
- Third, the plan admittedly “will not satisfy future [public safety] spectrum requirements.”
- Fourth, the plan lacks adequate funding. It continues to provide only for a proposed contingent \$500 million contribution by Nextel to relocate public safety – but not B/ILT or SMR – and makes no provision for equipment upgrades necessary to resolve interference.
- Fifth, the plan provides a spectrum windfall to Nextel. Nextel’s spectrum “give-aways” at 700 and 900 MHz are nothing more than red herrings, as they are unrelated to the 800 MHz interference problem. Moreover, Nextel would be receiving more valuable and useful contiguous, nationwide spectrum in exchange for non-contiguous, non-nationwide spectrum.
- Finally, given the many contingencies attached to the proposal, its proposed implementation schedule is overly lengthy and extremely uncertain.

While a separate rebanding proposal by Motorola is much better than the revised Nextel plan in terms of disruption to existing services, the provision of sufficient spectrum for public safety and spectrum neutrality, it too does not solve interference to public safety. The Motorola plan also contains no provision for public safety to obtain new equipment.

By contrast, the 700 MHz Solution will *eliminate* interference by relocating only public safety to the 700 MHz band through the use of auction funds. The 700 MHz Solution will provide public safety with substantially increased and more useful spectrum rights, and the auction funding mechanism can be used to upgrade public safety equipment. It also provides benefits to all 800 MHz licensees, and calls for date-certain implementation. In short, the 700 MHz Solution is the only plan to comprehensively address all of the Commission’s goals in this proceeding, and should therefore be adopted.

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**FURTHER COMMENTS**

ALLTEL Communications, Inc., AT&T Wireless Services, Inc., Cingular Wireless LLC, Coupe Communications, Inc., Nokia Inc., Southern LINC, and United States Cellular Corporation (collectively, “Commenters”) hereby comment on the revised 800 MHz rebanding plan submitted by Nextel Communications, Inc. (“Nextel”) and others during the reply comment cycle of this proceeding (“revised Nextel plan”).<sup>1</sup> As discussed below, this plan does not eliminate interference, is unduly disruptive, and fails to provide public safety with sufficient spectrum resources. It also lacks an adequate funding mechanism, is not spectrum neutral, and contains significant contingencies that render its proposed implementation schedule overly lengthy and extremely uncertain. A separate rebanding proposal by Motorola, Inc. (“Motorola”) also fails to resolve public safety interference.

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<sup>1</sup> *Public Notice*, “Wireless Telecommunications Bureau Seeks Comment on ‘Consensus Plan’ Filed in the 800 MHz Public Safety Interference Proceeding,” DA 02-2202 (rel. Sept. 6, 2002); *Public Notice*, “Wireless Telecommunications Bureau Clarifies Scope of Comments Sought in 800 MHz Public Safety Proceeding,” DA 02-2306 (rel. Sept. 17, 2002).

Commenters reiterate their support for reallocating the upper 700 MHz band to public safety, and relocating 800 MHz public safety licensees to the 700 MHz band (“700 MHz Solution”). This plan is the only efficient and expeditious long-term solution for eliminating interference to public safety.

## INTRODUCTION

As a preliminary matter, the revised Nextel plan does not represent every type of licensee operating in the 800 MHz band – *no* cellular carriers were a party. Significantly, it does not represent all of public safety,<sup>2</sup> or many other Business/Industrial Land Transportation (“B/ILT”) and Specialized Mobile Radio (“SMR”) operators.<sup>3</sup> Other public safety groups, notably the Public Safety Improvement Coalition (“PSIC”), have raised serious questions regarding the proposal.<sup>4</sup> As one public safety licensee has made clear, “it is important to note that the views and comments of [the Nextel] coalition may not directly represent the views and wishes of public safety operating entities in this proceeding.”<sup>5</sup>

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<sup>2</sup> *See, e.g.*, Office of the Chief Technology Officer, Government of the District of Columbia (“OCTO”) Reply Comments at 4; *cf.* City of Portland (“Portland”) Reply Comments at 4. Notably, the National Emergency Number Association (“NENA”) is not a party to the revised plan.

<sup>3</sup> *See, e.g.*, Reply Comments of the National Association of Manufacturers and MRFAC, Inc. (“NAM/MRFAC”) at 4; Carolina Power & Light Company (“Carolina”) at 3. As a party to the instant comments, Southern LINC is also opposed to the revised Nextel plan as contrary to the public interest.

<sup>4</sup> *See* PSIC Reply Comments at 5-6; *see also* City of San Diego (“San Diego”) Reply Comments at 2-7. Notably, these public safety commenters object to being prohibited from using cellular-like architecture in the lower 800 MHz bands designated for their use. As San Diego explains, “[i]t is puzzling that the proposal allows such limited use of the spectrum by public safety agencies. The most crying need in the public safety community today is for high-speed mobile data.” San Diego Reply Comments at 3-4.

<sup>5</sup> OCTO Reply Comments at 4.

The plan itself calls for a number of complicated and interrelated steps. First, public safety at 806-809/851-854 MHz or 814-816/859-861 MHz would swap channels on a one-for-one basis with Nextel in the 809-814/854-859 MHz band. Second, site-licensed B/ILT and SMR licensees at 806-809/851-854 MHz would relocate to vacated public safety spectrum or Nextel spectrum (swapped on a one-for-one basis) at 814-816/859-861 MHz or vacated spectrum at 809-814/854-859 MHz. Third, non-Nextel Economic Area (“EA”) SMR licensees would move out of 806-809/851-854 MHz to 809-816/854-861 MHz after December 20, 2003. At the end of these three steps, Nextel would have all of the 806-809/851-854 MHz band. Fourth, the NPSPAC licensees will relocate from 821-824/866-869 MHz to 806-809/851-854 MHz, swapping with Nextel. Finally, Nextel would clear out of the 809-816/854-861 MHz band.

As a result of these moves, a 20 MHz (2 x 10 MHz) non-cellularized block of spectrum would be created at 806-816/851-861 MHz, with the lowest portion occupied by public safety, the interleaved middle portion occupied by public safety, B/ILT and conventional SMR, and the upper portion used as a guard band. A 16 MHz (2 x 8 MHz) cellularized band would be created at 816-824/861-869 MHz and occupied primarily by Nextel. Nextel claims these swaps will result in a net loss to it of 2.5 MHz of spectrum at 800 MHz. Nextel also proposes to “give up” its non-nationwide 700 MHz guard band spectrum (4 MHz in 40 markets) for public safety expansion spectrum, and a “running average” of 4 MHz of non-nationwide, non-contiguous 900 MHz spectrum for voluntary B/ILT or conventional SMR relocation. Thus, in addition to obtaining 16 MHz of nationwide contiguous spectrum at 816-824/861-869 MHz, Nextel claims that it must further be “made whole” through the allocation of an additional 10 MHz of nationwide contiguous spectrum – 5 MHz at 1910-1915 MHz and 5 MHz at 1990-1995 MHz.

As shown below, the revised Nextel plan does not satisfy the Commission’s public interest goals or other important public interest criteria and should be rejected. As one

commenter notes, the revised Nextel plan “is detrimental to PMRS incumbents and does not best achieve the Commission’s goals for resolving 800 MHz interference (namely, interference elimination, minimum disruption to existing services, and the provision of sufficient spectrum for public safety).”<sup>6</sup> A separate proposal by Motorola to realign the band also fails to eliminate interference to public safety systems and likewise should be rejected.

By contrast, the 700 MHz Solution “is appropriate, feasible and highly desirable for the advancement of interoperability and expansion of vital public safety systems, while assuring that the problems cited within this proceeding receive a long-term solution.”<sup>7</sup> For the reasons reiterated below, the 700 MHz Solution should therefore be adopted.

**I. THE REVISED NEXTEL PLAN DOES NOT SATISFY THE COMMISSION’S GOALS OR OTHER IMPORTANT PUBLIC INTEREST CRITERIA**

The *Notice* states that “[w]e encourage commenting parties to submit any original band restructuring plan . . . and to discuss how their plans address the following issues: (a) interference elimination; (b) minimum disruption to existing services; and (c) provision of sufficient spectrum for public safety.”<sup>8</sup> Other important public interest considerations include funding,<sup>9</sup> spectrum neutrality,<sup>10</sup> and timing.<sup>11</sup> The revised Nextel plan, however, does not

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<sup>6</sup> Boeing Company (“Boeing”) Reply Comments at 8.

<sup>7</sup> Small Business in Telecommunications (“SBT”) Reply Comments at i; *see generally* Reply Comments of ALLTEL Communications, Inc., AT&T Wireless Services, Inc., Cingular Wireless LLC, Coupe Communications, Inc., First Cellular, Nokia Inc., Southern LINC, and United States Cellular Corporation (“Joint Reply Comments”).

<sup>8</sup> *Improving Public Safety Communications in the 800 MHz Band*, WT Docket No. 02-55, *Notice of Proposed Rulemaking*, 17 F.C.C.R. 4873 (2002) (“*Notice*”).

<sup>9</sup> *See id.* at 4896-99.

eliminate interference, it requires substantial reshuffling of nearly all 800 MHz band licensees, and it fails to provide sufficient spectrum for public safety. It also lacks adequate funding (Nextel proposes only a \$500 million contingent contribution) while providing Nextel with a spectrum windfall. Moreover, given the contingent nature and legislative components, including the need for legislative action to obtain full funding of the revised Nextel plan, its implementation timescale is at best equivalent to, and likely much longer than, the preferred 700 MHz Solution addressed in Section III. As a result, the revised Nextel plan is not in the public interest.

**A. The Plan Does Not Eliminate Interference**

The revised Nextel plan admits it does not eliminate interference; rather, interference will only be “mitigated” or “significantly reduced.”<sup>12</sup> It is therefore nothing more than a “‘quick fix’

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<sup>10</sup> See Cingular Wireless LLC and ALLTEL Communications, Inc. (“Cingular/ALLTEL”) Reply Comments at 5-6; NAM/MRFAC Reply Comments at 6 (“The Commission needs to fashion an equitable alternative that . . . does not unduly benefit or disadvantage a particular company or industry.”); see also, e.g., *Principles for Reallocation of Spectrum to Encourage the Development of Telecommunications Technologies for the New Millennium, Policy Statement*, 14 F.C.C.R. 19868, 19882 (1999) (“[T]he Commission must ensure that the public interest is best served through both efficient *and equitable* allocations.”) (emphasis added).

<sup>11</sup> See *Notice*, 17 F.C.C.R. at 4907 (“Given the urgency of remedying interference to 800 MHz public safety systems, it is important that any band restructuring proposals be timely effected, taking into consideration, however, the fact that too precipitous an implementation schedule could unreasonably burden stations that are required to relocate.”).

<sup>12</sup> Aeronautical Radio, Inc. *et al.* (“Nextel Group”) Reply Comments at 21, 23; see SBT Reply Comments at 6 (“[N]o form of rebanding/relocation within the 800 MHz band, as a single answer, will result in elimination of harmful interference.”); Southern LINC Reply Comments at 25 (“[B]and realignment proposals will impose great expense, disruption, and hardship upon licensees but will not resolve public safety interference.”).

that does not represent a true solution and will lead to additional problems.”<sup>13</sup> This is largely due to the fact that the revised Nextel plan focuses almost solely on rebanding the 800 MHz band<sup>14</sup> without providing for public safety equipment upgrades to eliminate receiver overload and intermodulation interference.<sup>15</sup> As one commenter notes, “almost all commenters agree . . . that merely rebanding of 800 MHz *will not solve all interference problems.*”<sup>16</sup> The City of Portland is even more direct: “[t]he band re-alignment approach would *not resolve* the interference problems currently being experienced by the Portland mobile data system.”<sup>17</sup>

Under the revised Nextel plan, intermodulation will be somewhat mitigated given the greater frequency separation between public safety and CMRS, and out-of-band emissions will be mitigated to the extent Nextel is no longer interleaved with public safety. The proposal has absolutely *no impact*, however, on receiver overload, because Nextel’s operations and a portion of the cellular bands would still be within the public safety receiver’s filter bandpass. Moreover, as Nextel points out, intermodulation could be further mitigated if public safety receivers had narrower front-ends. Accordingly, “[r]ebanding does nothing to narrow such receivers or make

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<sup>13</sup> Boeing Reply Comments at 10; *see* SBT Reply Comments at 6 (“Rebanding within 800 MHz band is a false panacea . . .”).

<sup>14</sup> Extraneous spectrum manipulations are also required at 700 MHz, 900 MHz and 1.9 GHz.

<sup>15</sup> *See, e.g.*, Cingular/ALLTEL Reply Comments at 4-5; Joint Reply Comments at 12-14; Southern LINC Reply Comments at i.

<sup>16</sup> American Electric Power Company, Inc. (“American Electric”) Reply Comments at 5 (emphasis in original); *see also* SBT Reply Comments at i (“SBT opposes strongly any rebanding of the 800 MHz spectrum. As the comments demonstrate, rebanding of 800 MHz will not resolve the interference issues . . .”).

<sup>17</sup> Portland Reply Comments at 4 (emphasis in original).

them less susceptible to intermodulation interference. This fact alone makes merely rebanding of 800 MHz spectrum risky, as . . . . [m]illions of dollars could be invested in rebanding with no improvement upon completion.”<sup>18</sup> Thus, the revised Nextel plan “is a poor alternative if the Commission’s goal is to effectively eliminate interference to Public Safety at 800 MHz.”<sup>19</sup>

Importantly, while the revised Nextel plan recognizes that upgrading public safety equipment and replacing receivers is an important part of this process, it provides no funding to do so.<sup>20</sup> Absent such funding, which is explicitly excluded from Nextel’s contingent contribution, there is no incentive for public safety to upgrade equipment and thus interference will continue to occur. As a result, the plan requires the codification of the *Best Practices Guide*, not just as an interim solution, but as part of its long-term solution.<sup>21</sup>

#### **B. The Plan Does Not Minimize Disruption**

The revised Nextel plan requires substantial relocation by nearly all licensees in the 800 MHz band, including public safety, B/ILT, and commercial SMR, in a complicated series of steps one commenter describes as “an extended game of ‘musical chairs’ within the band.”<sup>22</sup> The movements include: (i) low-site SMR below 816/861 MHz moving above 816/861 MHz; (ii)

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<sup>18</sup> American Electric Reply Comments at 6.

<sup>19</sup> Boeing Reply Comments at 8.

<sup>20</sup> See Nextel Group Reply Comments at 22 & 23 n.66.

<sup>21</sup> See *id.* at 22-23; *Avoiding Interference Between Public Safety Wireless Communications Systems and Commercial Wireless Communications Systems at 800 MHz – A Best Practices Guide*, Dec. 2000 (“*Best Practices Guide*”), available at <<http://wireless.fcc.gov/publicsafety>>.

<sup>22</sup> Boeing Reply Comments at ii; see also NRECA Reply Comments at 3 (describing 800 MHz rebanding as an “immense undertaking” whose attendant “implementation and coordination issues can not be overstated”).

all parties, including public safety, in 806-809/851-854 MHz moving out; (iii) public safety moving from 814-816/859-861 MHz to 809-814/854-859 MHz; (iv) Nextel moving out of 806-809/851-854 MHz; and (v) NPSPAC moving to 806-809/851-854 MHz. As just one example, the plan calls for B/ILT licensees to relocate several times in order to remain in the 800 MHz band, most likely at their own expense, or to relocate to the 900 MHz band where new equipment will be necessary.<sup>23</sup> In sum, the plan is extremely disruptive and is contrary to one of the essential goals of the Commission in this proceeding.

**C. The Plan Does Not Provide Sufficient Spectrum for Public Safety**

The increase in public safety spectrum under the revised Nextel plan admittedly “will not satisfy future [public safety] spectrum requirements.”<sup>24</sup> The actual spectrum gained for public safety is hard to ascertain, but it is certainly not consistent nationwide. For example, 4 MHz of guard band spectrum would be made available in the 700 MHz band, but only in 40 markets. In the 800 MHz band, the amount of spectrum Nextel proposes to vacate amounts to approximately 1.8 MHz, assuming Nextel’s calculations are accurate.<sup>25</sup> While this amount could increase slightly if 800 MHz B/ILT and conventional SMR licensees opt to relocate to 900 MHz, such relocation is purely voluntary and thus cannot be justifiably included in the total amount of spectrum gained by public safety. Recognizing the lack of sufficient spectrum it provides, the

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<sup>23</sup> See Boeing Reply Comments at 9.

<sup>24</sup> Nextel Group Reply Comments at 27

<sup>25</sup> See *infra* Section I.E.1

revised Nextel plan calls for the allocation of additional public safety spectrum in the upper 700 MHz band.<sup>26</sup>

**D. The Plan Does Not Provide Adequate Funding to Realign the 800 MHz Band, Let Alone Encourage Public Safety Equipment Upgrades**

The amount of funding provided in the revised Nextel plan is insufficient in three separate instances, each of which is fatal to the realization of the plan. First, Nextel's "commitment" would only pay up to \$500 million for public safety retuning costs,<sup>27</sup> which commenters and even Nextel acknowledge is inadequate.<sup>28</sup> In fact, the record shows that the costs to be incurred by public safety entities under the revised Nextel plan are likely to be at least \$1.5 billion, which does not include the costs to B/ILT and SMR operators under the plan.<sup>29</sup> Second, the plan discourages the public safety equipment upgrades necessary to cure receiver overload and intermodulation, as all equipment capable of being retuned "must be retuned rather than replaced."<sup>30</sup> Thus, the cost of equipment or system enhancements must be borne by public safety. Finally, the revised Nextel plan also makes no provision for the funding of any retuning/relocation costs incurred by non-public safety entities,<sup>31</sup> other than the possibility of

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<sup>26</sup> See *infra* Section III.A.

<sup>27</sup> See Nextel Group Reply Comments at 21; Nextel Reply Comments at 30.

<sup>28</sup> See Reply Comments of Nextel at 30 ("Nextel acknowledges that public safety relocation costs could exceed \$500 million . . ."); Comments of Austin Energy at 1 (filed Sept. 13, 2002) (describing the \$500 million contribution for public safety as "severely inadequate").

<sup>29</sup> See SBT Reply Comments at 49-50.

<sup>30</sup> Nextel Group Reply Comments at 21

<sup>31</sup> See *id.* at 19 & n.56 ("While the parties have no formal plan at this time, Nextel and the private wireless community are currently discussing funding issues with respect to private  
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additional spectrum if they relocate out of the band to spectrum at 900 MHz.<sup>32</sup> Therefore, not only is the proposed funding inadequate even to pay public safety relocation costs, it neither provides incentives for public safety to obtain new receivers, nor addresses non-public safety relocation costs, thereby perpetuating interference to public safety.

The failure to adequately address funding is a fundamental flaw. As Southern LINC notes, “[t]o implement any of the realignment plans, the Commission would have to design mechanisms for funding the relocation of displaced public safety, B/ILT, and SMR licensees. Although this obligation has been glossed over by many of the commenters proposing realignment, it cannot be glossed over by the Commission.”<sup>33</sup> As the revised Nextel plan admits, “Public Safety Organizations and Nextel continue to discuss more specific details of the funding process, which must be resolved for the Consensus Plan to proceed.”<sup>34</sup>

In a self-serving attempt to cover the funding shortfall, in its reply comments, Nextel again asserts that “cellular carriers should also contribute to public safety relocations costs” because it contends they will “benefit significantly from the Consensus Plan by being relieved of the burdens of *ad hoc* interference resolution.”<sup>35</sup> Astonishingly, Nextel even proposes that “other CMRS providers collectively should provide any funding necessary for public safety

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wireless relocation.”); Nextel Reply Comments at 30 n.64 (admitting that the parties to the consensus plan “have no formal plan or commitment at this time . . . with respect to [funding] private wireless relocation”); *see also* Comments of Austin Energy at 1; Carolina at 5.

<sup>32</sup> *See* Nextel Group Reply Comments at 18.

<sup>33</sup> Southern LINC Reply Comments at 36-37.

<sup>34</sup> Nextel Group Reply Comments at 21 n.60.

<sup>35</sup> Nextel Reply Comments at 9 n.8, 30-31.

relocations beyond Nextel's \$500 million contribution."<sup>36</sup> Thus, if total costs exceed \$ 1.5 billion, as some estimate, CMRS carriers who may contribute only minimally to the interference would be forced to pay the majority of the relocation costs.<sup>37</sup>

Moreover, Nextel's contribution is contingent upon a number of occurrences, including adoption of the entire plan as proposed, resolution of "all appeals and challenges" to the order adopting the plan, and Nextel's approval of a fund administrator.<sup>38</sup> In addition, no public safety entity is required to move until funding is available, and if "the \$500 million is exhausted before the completion of retuning . . . , Nextel has complete discretion whether to provide additional funding."<sup>39</sup> In other words, unless additional funding is somehow made available through uncertain means, the retuning process comes to an abrupt halt or, at best, is only completed in selected markets.

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<sup>36</sup> Nextel Reply Comments at 31.

<sup>37</sup> Cingular and other cellular carriers have previously demonstrated the low incidence of interference caused by cellular carriers, and therefore continue to object to blanket payments to cure interference that they have not contributed to and is caused by others, namely Nextel. *See* Comments of Cingular/ALLTEL at 2-3, 14-15; Reply Comments of Cingular/ALLTEL at 8 & n.27, 15-16; *see also* Comments of U.S. Cellular Corp. at 3; Reply Comments of SBT at 1 ("SBT is fully aware of the interference suffered by public safety operators, since many of its members are similarly plagued by equal interference caused over 90% of the time by operations of facilities by Nextel . . . ."); *id.* at 7 (describing the "pervasive nature of the Nextel interference"). Moreover, virtually all instances of CMRS/public safety harmful interference can be resolved by parties using the *Best Practices Guide* adopted by the public safety and wireless community – practices that will continue to be necessary under the revised Nextel plan. *See, e.g., infra* notes 76-77 and accompanying text.

<sup>38</sup> *See* Nextel Reply Comments at 31-32.

<sup>39</sup> Nextel Group Reply Comments at 20.

### **E. The Plan Does Not Maintain Spectrum Neutrality**

The revised Nextel plan continues to promote Nextel's blatant attempt to grab 10 MHz of nationwide spectrum outside the 800 MHz band;<sup>40</sup> it has only altered the spectrum being sought to 1910-1915 MHz paired with 1990-1995 MHz. As a preliminary matter, this spectrum (and the spectrum Nextel proposes to "give up" in the 700 MHz and 900 MHz bands) continues to have nothing to do with the interference being caused to public safety licensees in the 800 MHz band. There also is more than one request for the 1910-1915 MHz/1990-1995 MHz of spectrum sought by Nextel. MDS licensees are seeking to use this spectrum to relocate their MDS 1 and MDS 2/2A facilities to open up additional needed spectrum for third generation wireless services.<sup>41</sup>

Moreover, as discussed below, the 1900 MHz spectrum sought by Nextel represents more valuable nationwide contiguous spectrum compared to the non-nationwide, non-contiguous spectrum holdings Nextel would be relinquishing. For example, Nextel does not hold 700 MHz guardband spectrum nationwide. Further, the Nextel spectrum being given up at 900 MHz is non-nationwide and non-contiguous. Thus, rather than a one-for-one relationship, it is nothing more than an attempt to trade in poor spectrum for enhanced, more valuable spectrum. Indeed,

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<sup>40</sup> See, e.g., Reply Comments of Boeing at 9 ("If the Commission grants the Nextel Consensus Proposal, Nextel will be made more than whole – it will benefit from causing interference at the expense of others."); Preferred Communications at 5 ("This so-called Compromise Plan is not a short-term or long-term solution to public safety interference, but rather a spectrum grab for Nextel . . .").

<sup>41</sup> See Letter from BellSouth Corp. *et al.* to Michael K. Powell, Chairman, FCC, ET Docket No. 00-258 (filed July 11, 2002); see also Letter from BellSouth Corp. *et al.* to Michael K. Powell, Chairman, FCC, ET Docket No. 00-258 (filed Aug. 29, 2002).

were the FCC to adopt the revised Nextel plan, Legg Mason predicts it would instantly increase Nextel's asset value between \$1.2 billion to \$4.8 billion.<sup>42</sup>

### 1. 800 MHz Holdings

The Commission must not be misled by Nextel's "running averages" used to justify its effort to acquire 2 x 5 MHz of clear, contiguous nationwide spectrum. Nextel overstates the quantity and quality of its spectrum holdings. The "consensus" reply comments claim that Nextel has a "running average" of 18.5 MHz of spectrum throughout the 800 MHz band,<sup>43</sup> which would be exchanged for 16 MHz at 816-824/861-869 MHz.<sup>44</sup> Due to restrictions on 800 MHz channel use in border areas, as well as spectrum holdings by other ESMR providers (particularly in the southeastern U.S where Southern LINC operates), and lack of nationwide data, Nextel's calculations are suspect. Even assuming, *arguendo*, the validity of Nextel's numbers, the "running average" of 18.5 MHz is misleading as it is the median, not an average – the average is 17.8 MHz.<sup>45</sup> Therefore, while Nextel claims to be giving up 2.5 MHz of spectrum at 800 MHz,<sup>46</sup> the number is closer to 1.8 MHz. But what it is ceding varies by market and is not contiguous,<sup>47</sup>

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<sup>42</sup> See Craig Mallitz, Legg Mason Wood Walker, Inc., "NXTL: To File Consensus Spectrum-Swap Plan with the FCC," at 3 (rel. Aug. 7, 2002) ([see http://screen.yahoo.com/reports.html](http://screen.yahoo.com/reports.html)).

<sup>43</sup> Nextel Group Reply Comments at 17; *see also* Nextel Reply Comments, App. I at 7.

<sup>44</sup> See Nextel Reply Comments at 7, 9 n.7.

<sup>45</sup> See *id.*, App. I at 7.

<sup>46</sup> See Nextel Group Reply Comments at 18.

<sup>47</sup> For example, based on recent site-based data submitted by the FCC to Congress, Nextel does not have equal spectrum holdings throughout the top 100 markets in the United States – it holds as much as 23.35 MHz in one market (Scranton, PA) and as little as 2.85 MHz in another (McAllen, TX). Moreover, its spectrum holdings within a given market are not  
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and in return it is getting paired 8 MHz *contiguous blocks of nationwide spectrum*. Given that contiguous spectrum is more useful, efficient,<sup>48</sup> and valuable for wide-area commercial networks like Nextel's,<sup>49</sup> Nextel is improving the quality of its spectrum holdings at 800 MHz despite the arguably *de minimis* loss in actual holdings. Thus, the 2.5 MHz Nextel claims to be losing at 800

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contiguous. In New York, where Nextel is the licensee for 427 channels (21.35 MHz of spectrum), it does not hold site-based licenses for, e.g., channels 229-240 (856.7125-856.9875 MHz), 269-280 (857.7125-857.9875 MHz), 329-340 (859.2125-859.4875 MHz) and 369-380 (860.2125-860.4875 MHz). In Los Angeles, where Nextel is the licensee for 329 channels (16.45 MHz of spectrum), it holds less than one-third of channels 1-400, no more than 7 of which are contiguous at any point with the remainder being interleaved. *See, e.g.*, Letter from Michael K. Powell, Chairman, FCC to the Honorable W.J. Tauzin, Chairman, Committee on Energy and Commerce, U.S. House of Representatives, Exhibits 4-5 (July 26, 2002). Although Nextel also holds EA licenses, the utility of this spectrum is limited by the extensive non-Nextel site-based license holders throughout the U.S.

<sup>48</sup> The FCC has recognized the inefficiency of the 800/900 MHz band in determining how much SMR spectrum to attribute under the CMRS spectrum cap, concluding that "SMR spectrum is not currently equivalent to cellular or broadband PCS spectrum . . . ." *Implementation of Sections 3(n) and 332, Third Report and Order*, 9 F.C.C.R. 7988, 8113-14 (1994). Thus, Section 20.6(b) of the rules states that "no more than 10 MHz of SMR spectrum in the 800 and 900 MHz SMR services will be attributed to an entity when determining compliance with the cap." 47 C.F.R. § 20.6(b).

<sup>49</sup> *See* Nextel Reply Comments at 33 (noting the "long-term benefits of . . . access to additional, contiguous spectrum"); *Development of SMR Systems in the 800 MHz Band, Third Report and Order*, 9 F.C.C.R. 7988, 8046, ¶ 103 (1994) ("[A]ssigning contiguous spectrum, where feasible, is likely to enhance the competitive potential of wide-area SMR providers."); *Development of SMR Systems in the 800 MHz Band, Further Notice of Proposed Rulemaking*, 10 F.C.C.R. 7970, 8009 (1994) ("[B]ecause of the non-contiguous nature of the channels, there does not appear to be a high degree of interdependency among them; and, the limited geographic scope of the licenses is likely to make them less valuable than the licenses for the MTA blocks."); *see also Development of SMR Systems in the 800 MHz Band, Memorandum Opinion and Order on Reconsideration*, 14 F.C.C.R. 17556, 17564-65 (1999) ("[B]locks of contiguous spectrum allow for more flexibility in terms of technological applications and innovation. Single channel licensing would not foster the kind of technological advancements that would allow SMR licensees, which typically operate multichannel systems, to compete with other CMRS licensees.") (footnote omitted); *id.* at 17565 n.32 (citing Nextel support for the licensing of contiguous spectrum).

MHz cannot be used as justification for the 2 x 5 MHz of clear, contiguous nationwide spectrum it seeks at 1910-1915/1990-1995 MHz.

## 2. 700 MHz Holdings

Nextel also offers to “give up” its 4 MHz guard band spectrum holdings in the 700 MHz band as part of its effort to acquire 2 x 5 MHz of clear, contiguous nationwide spectrum. However, it only holds 700 MHz spectrum in 40 markets (*i.e.*, not nationwide), and thus its actual “average” 700 MHz spectrum holdings is closer to 3.7 MHz.<sup>50</sup> Nextel is also restricted in its ability to use the spectrum, *e.g.*, cellular architecture is not allowed in the guard bands, Nextel is required to lease 50% of capacity, and there are substantial operating limits on the use of the band, including extremely tight out-of-band emission limits.<sup>51</sup> In other words, the spectrum Nextel would be giving up is in no way comparable to what it is seeking. Also, the spectrum is not the cause of any interference to public safety, and its only apparent role in the proposed solution is for public safety expansion spectrum. Thus, the 700 MHz spectrum Nextel proposes to “give up” cannot be counted as part Nextel’s effort to be made “whole.”<sup>52</sup>

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<sup>50</sup> See Nextel Reply Comments, App. I at 7.

<sup>51</sup> See, *e.g.*, 47 C.F.R. §§ 27.2(b), 27.53(d), 27.603(c).

<sup>52</sup> If the Commission is going to look to the 700 MHz band as a solution to public safety spectrum constraints, it makes more sense to look to the reallocation of the 30 MHz nationwide spectrum proposed under the 700 MHz solution rather than 4 MHz in only 40 markets nationwide. See *infra* Section III.

### 3. 900 MHz Holdings

Finally, Nextel offers to “give up” a “running average” of 4 MHz of spectrum in the 900 MHz band as part of its effort to acquire 2 x 5 MHz of clear, contiguous nationwide spectrum.<sup>53</sup> Again, Nextel overstates its spectrum holdings. The “running average” of 4 MHz is the median, not the average – the average using Nextel’s calculation is 3.6 MHz – and the spectrum is not nationwide and only rarely contiguous.<sup>54</sup> Moreover, there is only the possibility that the 900 MHz band will be used by any of the 800 MHz licensees.<sup>55</sup> B/ILT and conventional SMR licensees are not required to relocate to the vacated 900 MHz spectrum under the plan, nor should they be, particularly given the dearth of available equipment for the band.<sup>56</sup> Because the spectrum has no direct relevance to the revised Nextel plan and is not needed to resolve public safety interference in the 800 MHz band, it cannot be counted as part of Nextel’s effort to be made “whole.”

### 4. The Proposed Exchanges Do Not Add Up

In sum, what Nextel is purporting to “give up” to be “made whole” is in no way comparable to what it is seeking in return – and interference to public safety will not be

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<sup>53</sup> Nextel has an end-of-year construction deadline on this spectrum. Thus, if Nextel does not meet this deadline, they will not have anything to “give up”. *FCI 900, Inc., Memorandum Opinion and Order*, 16 F.C.C.R. 11072 (WTB 2001).

<sup>54</sup> See Nextel Reply Comments, App. I at 7.

<sup>55</sup> To create an “incentive” for B/ILT and conventional SMR licensees to vacate the 800 MHz band, the plan proposes to offer a 50 kHz channel for every 25 kHz 800 MHz channel vacated. Nextel admits, however, that “[t]his 50 kHz channel assignment may not necessarily be for contiguous 12.5 kHz channels.” Nextel Reply Comments at 8 n.6.

<sup>56</sup> iDEN® equipment has only recently been made to operate in the 900 MHz band. See Nextel Reply Comments at 10 n.9.

eliminated. In addition, the 700 MHz and 900 MHz portion of the plan will not do anything to resolve interference. As Preferred notes:

Nextel offers to give up certain 700 MHz and 900 MHz spectrum it owns, in return for more valuable spectrum in the 800 MHz and 1.9 GHz bands. . . . But no one is asking Nextel to give up this 700/900 MHz spectrum, and Nextel's giving up of this spectrum is not even needed to implement the so-called Compromise Plan!<sup>57</sup>

Such a disproportionate exchange is contrary to Section 309(j), case law precedent, and FCC policy of not favoring competitors.<sup>58</sup> As NAM/MRFAC explains: "Nextel today occupies spectrum which is generally non-contiguous. The 800 MHz Plan would give Nextel a bounty of unencumbered, contiguous spectrum. This, in and of itself, is a basis for concern as it indirectly rewards the party who is responsible for the interference. The Commission should not put itself in the position of seeming to improve the interfering party's position."<sup>59</sup>

#### **F. The Plan Is Time Consuming and Contingent**

The Consensus Plan and Nextel state that 3-4 years is an "aggressive" estimate of how long it will take to complete the relocation efforts under the plan after the order adopting the plan is published in the Federal Register, *i.e.*, approximately 2006.<sup>60</sup> This statement, however, does not adequately account for the fact that the source of funding currently provided for under the

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<sup>57</sup> Preferred Reply Comments at 7.

<sup>58</sup> See Joint Reply Comments at 10-11 (citing precedent and comment record); see also *Hawaiian Telephone Co. v. FCC*, 498 F.2d 771, 776 (D.C. Cir. 1974) (finding that the Commission cannot subordinate the public interest to the interest of "equalizing competition among competitors"); accord *W.U. Telephone Co. v. FCC*, 665 F.2d 1112, 1122 (D.C. Cir. 1981).

<sup>59</sup> NAM/MRFAC Reply Comments at 5. See also *supra* note 49.

<sup>60</sup> See Nextel Group Reply Comments at 25; Nextel Reply Comments at 52.

plan, Nextel's \$500 million, is contingent upon an order adopting the plan *en toto* becoming a "final order, with all appeals and challenges to the [order] resolved."<sup>61</sup>

One element of that plan in particular – Nextel's ability to procure enhanced spectrum rights where it does not currently hold a license and without bidding for it at auction – is extremely questionable and is likely to result in administrative and judicial challenges.<sup>62</sup> Other aspects of the plan – including the need to obtain additional funding, allocate additional spectrum to public safety, and ensure spectrum clearing by a date certain – require a legislative solution.<sup>63</sup> Given that any public safety relocation under the plan is itself contingent on the availability of funds,<sup>64</sup> which have yet to be fully accounted for, and the likelihood of challenges to any order awarding Nextel a spectrum windfall,<sup>65</sup> a more realistic estimate of the timing to implement the revised Nextel plan is 2007 or later – if ever.<sup>66</sup> In addition, Nextel states that if its conditions

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<sup>61</sup> Nextel Reply Comments at 31; *see id.* at 9 n.7 ("Nextel's funding commitment is contingent on the Commission adopting the Consensus Plan, including a 16 MHz block from 816-824/861-869 MHz licensed primarily to Nextel, and a 10 MHz replacement spectrum block licensed to Nextel for CMRS services at 1910-1915/1990-1995 MHz.").

<sup>62</sup> *See infra* note 65.

<sup>63</sup> *See infra* notes 70-73 and accompanying text.

<sup>64</sup> No public safety entity would be required to relocate unless costs for conversion are covered by a third party and all new NPSPAC channels are made available. *See* Nextel Group Reply Comments at 20.

<sup>65</sup> *See, e.g.,* SBT Reply Comments at i ("[R]ebanding of the 800 MHz [band] will not resolve the interference issues and will do little more than result in delay, cost, complexity, litigation, contention, and inequity among licensees.").

<sup>66</sup> *See also infra* note 80.

“are not satisfied within two years after the release of a Report and Order adopting the proposed Consensus Plan, *Nextel reserves the right to have all of its contributions to the fund refunded.*”<sup>67</sup>

## **II. THE MOTOROLA PLAN DOES NOT SOLVE INTERFERENCE TO PUBLIC SAFETY**

Motorola also proposes an 800 MHz realignment.<sup>68</sup> It would move the National Public Safety Planning Advisory Committee (“NPSPAC”) channels to 806-809/851-854 MHz, and place public safety, B/ILT and high-site SMR in a band directly above this new NPSPAC band and low site SMR below the cellular A block. The resulting allocations in these bands would not be fixed across the country, but would vary by geographic market depending on the amount of spectrum currently licensed in each category.

While this plan is far better than the revised Nextel plan in terms of disruption to existing services, the provision of sufficient spectrum for public safety and spectrum neutrality, it, too, does not solve interference to public safety. Again, there is no provision for public safety to obtain new equipment. As such, adopting the Motorola plan would also be a myopic attempt at a solution.

## **III. THE 700 MHz SOLUTION WILL BEST ACHIEVE THE COMMISSION’S GOALS**

The 700 MHz Solution will *eliminate* interference by relocating public safety to the 700 MHz band through the use of auction funds. The 700 MHz Solution will also provide public safety with substantially increased spectrum rights, and the auction funding mechanism can be

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<sup>67</sup> Nextel Reply Comments at 32-33 n.67 (emphasis added). Given the numerous contingencies and Nextel’s ability to retrieve its funds if these are not met, this begs the question of when would Nextel get access to the spectrum it seeks in the 1.9 GHz band. Could it receive the spectrum without ever having to relocate or pay the full \$500 million?

<sup>68</sup> See Motorola Reply Comments at 6-21.

used to upgrade public safety equipment – something the revised Nextel plan does not address. Moreover, the solution provides benefits to all 800 MHz licensees, and calls for date-certain implementation. In short, the 700 MHz Solution it is the only plan to comprehensively address all of the Commission’s goals in this proceeding, and should therefore be adopted.

**A. Criticism of the 700 MHz Solution Is Disingenuous Because the Nextel Consensus Plan Can Be Challenged on the Same Grounds**

As an initial matter, the proponents of the revised Nextel plan criticize the 700 MHz Solution because of the need for legislation to redesignate the upper 700 MHz band to public safety, establish a date-certain for incumbent broadcasters to vacate the band, and approve the use of revenues from the auction of vacated 800 MHz spectrum to help fund public safety relocation/equipment upgrades.<sup>69</sup> The revised Nextel plan, however, requires similar legislation. First, because the plan admittedly “will not satisfy future spectrum requirements,” proponents call for the allocation of additional spectrum in the upper 700 MHz band.<sup>70</sup> Proponents acknowledge that “*this spectrum allocation would require legislation.*”<sup>71</sup> Second, plan proponents state that “*legislative efforts are also necessary* to provide a date-certain for nationwide public safety access to 700 MHz band spectrum already allocated to public safety and to additional Upper 700 MHz spectrum.”<sup>72</sup> Finally, Nextel states that “*federal funding should be*

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<sup>69</sup> Nextel Group Reply Comments at 6.

<sup>70</sup> Nextel Group Reply Comments at 26-27.

<sup>71</sup> Nextel Group Reply Comments at 26 (emphasis added).

<sup>72</sup> Nextel Group Reply Comments at 27 (emphasis added).

*pursued*” under its revised plan, admitting that public safety relocation costs alone “could exceed \$500 million.”<sup>73</sup>

Nextel also criticizes the 700 MHz Solution’s utilization of a case-by-case approach to resolve interference, through continued reliance on the *Best Practices Guide*, until a permanent solution can be implemented.<sup>74</sup> The revised Nextel plan, however, relies upon permanent imposition of the *Best Practices Guide* because its plan will not eliminate interference and hence case-by-case solutions will still be required:

Despite the giant strides this proposal takes towards mitigation of interference for public safety and other 800 MHz licensees, it will still be necessary for the Commission to codify, and to the extent necessary revise, the *Best Practices Guide*. . . . Codifying *Best Practices* solutions and clearly defining responsibility for fixing interference are essential for two reasons: (1) implementing this or any other band plan will take time, and problems must be addressed in the interim; and (2) there will continue to be the potential for interference after the band shift is completed, and the band plan will not absolve anybody of their obligation to immediately “fix” the interference problem.<sup>75</sup>

Notably, Nextel admits that the majority of interference cases *can* be mitigated on a case-by-case basis,<sup>76</sup> and at least one public safety licensee demonstrated that “the parties involved can work cooperatively to resolve many of the interference problems in the short term.”<sup>77</sup> Indeed, reliance

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<sup>73</sup> See Nextel Reply Comments at 9 n.8, 30 (emphasis added); see also Group Comments at 20-21 & n.60.

<sup>74</sup> See Nextel Reply Comments at v.

<sup>75</sup> Nextel Group Reply Comments at 22-23.

<sup>76</sup> See Nextel Reply Comments at 40.

<sup>77</sup> City of Portland Reply Comments at 2.

on the *Best Practices Guide* is only necessary in the short-term under the 700 MHz Solution, as the solution will eliminate interference in the long term.

**B. The 700 MHz Solution Meets the Commission’s Public Interest Goals**

The broadly-supported 700 MHz Solution uniquely has the following benefits:<sup>78</sup>

- ***Interference elimination*** – the 700 MHz Solution will “permanently resolve the harmful interference problem,”<sup>79</sup> not just mitigate it.
- ***Minimize disruption*** – the 700 MHz Solution requires the movement of only public safety licensees,<sup>80</sup> rather than nearly all 800 MHz licensees.
- ***Increased spectrum*** – the 700 MHz Solution offers more than 20 MHz of additional contiguous nationwide spectrum to public safety,<sup>81</sup> as opposed to less than 8 MHz of non-contiguous, non-nationwide spectrum.
- ***Adequate funding*** – the 700 MHz Solution will fund public safety relocation and equipment upgrades through auction revenues,<sup>82</sup> rather than a capped \$500 million contingent contribution for relocation only.
- ***Spectrum neutrality*** – the 700 MHz Solution solves the interference problem in a spectrum-neutral manner,<sup>83</sup> unlike the revised Nextel plan which rewards Nextel,

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<sup>78</sup> See Small Business in Telecommunications Reply Comments at i (“SBT joins with nearly every commenting party in supporting the migration of public safety operations to 700 MHz.”).

<sup>79</sup> Boeing Reply Comments at i; see Joint Reply Comments at 17; Southern LINC at ii, 21-23; cf. City of Portland Reply Comments at 5 (“Portland believes a long-term ‘zero tolerance’ interference solution may require moving public safety to a ‘public safety only’ frequency band further separated from the existing frequencies.”).

<sup>80</sup> See Joint Reply Comments at 15.

<sup>81</sup> See Joint Reply Comments at 17; Southern LINC Reply Comments at 23-24; see also Boeing Reply Comments at i.

<sup>82</sup> See Joint Reply Comments at 17; see also Boeing Reply Comments at i; Public Safety Improvement Coalition at 9 (stating that it “would be pleased to join with the agency in seeking Congressional action” to use funds from the auctioning of vacated spectrum to fund public safety relocations).

<sup>83</sup> See Cingular/ALLTEL Reply Comments at 4, 6-7.

the primary causer of interference to public safety, with dramatically enhanced spectrum rights.

- **Timing** – the 700 MHz Solution calls for a date-certain to implement the permanent aspects of its plan – 2007 or earlier<sup>84</sup> – while the revised Nextel plan has a number of contingencies which make a firm date indiscernible.<sup>85</sup>

In light of these benefits, Commenters reiterate their support for the 700 MHz Solution as the only solution to public safety interference in the 800 MHz band.

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<sup>84</sup> The 700 MHz Solution calls for working with Congress to enact legislation requiring broadcasters to exit the upper 700 MHz band by December 31, 2006 or sooner. *See, e.g.*, Cingular/ALLTEL Comments at 18. The City of Portland urges the Commission to move forward with a 700 MHz solution “on a schedule that would allow systems to be licensed and implemented starting in 2006 or before.” Portland Reply Comments at 2. Draft legislation has been circulated that would require broadcasters to vacate the band by December 31, 2006. *House Bill Would Enforce Original 2006 Deadline for Broadcasters*, Comms. Daily, Sept. 20, 2002. As noted above, the 700 MHz Solution calls for continued use of the *Best Practices Guide* in the interim. *See, e.g.*, Joint Reply Comments at 1, 14-15.

<sup>85</sup> *See* Southern LINC Reply Comments at 19-20 (“Implementation of Nextel’s realignment plan would undoubtedly take nearly as long, if not longer, than the four and one-half years it will currently take to reach the December 31, 2006 broadcaster clearance date, and it would not even eliminate interference.”); SBT Reply Comments at 28 (“SBT supports public safety being given spectrum at 700 MHz, to occupy immediately if no broadcaster’s authorized operation prevents same, or to migrate onto following the broadcaster’s departure which SBT hopes will be sooner, *i.e.* 2006, rather than later. Although much has been made of the problems associated with this recommendation, . . . SBT finds such arguments quite weak when viewed in practical terms. Other rebanding proposals would take years to effect, including Nextel’s . . . and all variations thereof. Those rebanding efforts would be contentious, cumbersome, expensive, and, not unimportantly, unlikely to create a substantive long-term solution.”).

**CONCLUSION**

For the foregoing reasons, the Commission should adopt rules and policies implementing the 700 MHz solution.

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September 23, 2002