

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

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

**COMMENTS OF THE CITY OF PHILADELPHIA ON THE
“CONSENSUS PLAN” FILED BY THE ASSOCIATION OF PUBLIC
SAFETY COMMUNICATIONS OFFICIALS-INTERNATIONAL, INC., ET AL.**

Nelson A. Diaz, City Solicitor
Michael C. Athay, Divisional Deputy
City Solicitor
Robert A. Sutton, Senior Attorney
Douglas Kubinski, Assistant City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Attorneys for The City of Philadelphia

Dated: September 23, 2002

**COMMENTS OF THE CITY OF PHILADELPHIA ON THE
“CONSENSUS PLAN” FILED BY THE ASSOCIATION OF PUBLIC SAFETY
COMMUNICATIONS OFFICIALS-INTERNATIONAL, INC., ET AL.**

The City of Philadelphia submits the following comments on the so-called “consensus plan” for revising frequencies in the 700 MHz, 800 MHz. and 1900 MHz bands that was proposed by the Association of Public Safety Communications Officials-International, Inc. and others in reply comments jointly submitted in above-captioned proceeding on August 7, 2002 (respectively, the “Consensus Plan” and “Joint Reply Comments”). The City joined in comments and reply comments filed in this proceeding by the Public Safety Improvement Coalition. These comments further express the City’s specific concerns regarding the proposed consensus plan, and describe the heavy monetary and logistical burden that will be shouldered by the City – and other users of the NPSPAC frequencies – if the plan’s proposal to relocate these frequencies in their entirety is implemented.

The growing problem of commercial interference with public safety communications in the 800 MHz band is of tremendous concern to the City, as to all municipal owners of 800 MHz radio systems, and it is the City’s intent to cooperate to achieve a timely and, we hope, permanent solution. We agree with proponents of the Consensus Plan that long-term resolution requires both contiguous public safety blocks and more public safety spectrum. However, the proposed plan places an unexpected, untimely and very expensive burden on the City, with no certainty of reimbursement even for equipment costs, let alone the much larger personnel and lost-productivity costs that will be incurred to re-tune and reprogram thousands of police and fire radios while maintaining continuous emergency communications capability.

Philadelphia is more than midway through its conversion to a city-wide 800 MHz digital trunked radio system that has been in the planning for a decade and taken more than three years and cost more than \$50 million to build. Philadelphia is among the NPSPAC licensees that would be relocated from the 821-824/866-969 MHz block to the 806-809/851-854 MHz block under the proposed plan. The proposed plan would require the City to recommit resources to totally re-tune and reprogram a new system that is just entering the final stages of implementation, with public safety users and the Philadelphia International Airport scheduled to complete transition to the new system within the next few months. After spending tens of millions of dollars on this project, the City is not able to spend millions more to relocate the

entire system shortly after putting it in service. Approximately 6,000 newly acquired radios that have taken over a year to program will require reprogramming, as will several hundred base stations at numerous locations throughout the City. Depending on the specific frequencies assigned to Philadelphia under a relocation plan, antennas may have to be modified or replaced as well.

For major metropolitan systems, “re-tuning” is a euphemism for massive disruption and, inevitably, the potential for risk to public safety resulting from interrupted communications. Thousands of radios on which police and firefighters will depend for communications must be recalled and reprogrammed, in exact coordination with base station reprogramming – all without removing officers and vehicles from service for significant periods, and without any interruption in communications capability. The City’s consultants estimate that the entire process, if done in a manner that minimizes risk to public safety, will take at least a year to complete (plus the time required to resolve the virtually inevitable reallocation problems within the Region); and will require staff far in excess of the City’s present manpower for radio system support. Our conservative preliminary estimates are that re-tuning base station equipment, the easiest part of the task, will cost in excess of half a million dollars, and that project management, engineering, personnel and other costs of taking radios and vehicles out of service to change frequencies would be somewhere between \$1 million and \$3 million. The City does not have the funds to cover these expenses – particularly given the major and unexpected costs we have incurred and continue to incur to address post September 11 security requirements.

The impact of the proposed plan on Philadelphia would be particularly severe given the status of our 800 MHz system implementation, but all users of NPSPAC frequencies would be heavily affected – indeed, disproportionately so, relative to other users. For older systems, it is likely that equipment would have to be replaced and possible that entire systems would require replacement with current technology in order to carry out the relocation. These impacts and their costs must be fully understood before the Commission proceeds with a relocation plan. We urge the Commission to search for an alternative relocation scheme that does not so heavily burden one group of public safety users.

The proposers of the Consensus Plan agree with the position of public safety users, stated in earlier comments and reply comments, that state and local governments should not be required to fund relocations mandated by the Commission, or to pay the costs of correcting interference

caused by incompatible architectures, in many cases introduced by commercial users, operating in the 800 MHz band. Joint Reply Comments at 19. But they simultaneously note that they “have no formal plan” for funding at this time (*see* Joint Reply Comments at note 56), nor has any “formal plan” for funding been forthcoming as yet in this proceeding. In particular, there is no reason at this point in the proceeding to believe that the \$500 million contribution to public safety conversion pledged by Nextel will cover more than a fraction of total conversion costs.¹ The Consensus Plan does not merit serious consideration until the true costs of public safety conversion, direct and indirect, are ascertained and federal and/or industry funds are committed to fully cover those costs. Funding commitments must provide for up-front payment or prompt reimbursement schedules. The City urges the Commission to complete these inquiries and open the findings to comment before proceeding further in its evaluation of the Consensus Plan, and certainly before making any determination on reallocation of public safety spectrum.

The proposers suggest two conditions be placed on implementation of the relocations required by their plan – that all conversion costs be covered by a third party, and that no NPSPAC system be required to move unless conversion is assured for all NPSPAC public safety licensees in the Region and the Nextel frequencies in the Region are vacated and incorporated in the Regional plan. Joint Reply Comments at 20. These conditions must be rigorously enforced if the Consensus Plan or any version of it is adopted by the Commission.

The proposed plan also raises serious concerns about how exactly the new NPSPAC frequencies would be reallocated in the Philadelphia Region. The last wholesale regional reallocation of frequencies in this Region took nearly two years to complete. The current use of two competing systems within NPSPAC in the Philadelphia Region, which have different parameters for optimal frequency allocation, may make the wholesale reallocation required by the proposal even more difficult and time consuming. A well articulated plan for each Region,

¹In the almost certain event that major funding beyond the Nextel pledge is necessary to cover public safety conversion costs, the burden should be placed substantially on those commercial parties that are the cause of the interference. As stated in our joint reply comments with the Public Safety Improvement Coalition, the impasse created by the current policy that assumes equal stature for commercial and public safety licensees must be resolved. Public Safety entities should not be made to shoulder the burden of clearing interference caused by commercial entities, nor can they afford the burden. The compromise proposal suggests that no regional conversion or relocation will occur unless funding is available. This promise must be adhered to. It is the commercial carriers who will receive the commercial gain, and that gain should not be at the expense of public safety users or the citizens who rely on them for emergency services.

acceptable to all affected users, should be in place before relocation is mandated or timelines for relocation established.

CONCLUSION

The City recognizes the critical importance of eliminating interference with public safety radio communications in the 800 MHz band, and agrees that the problem will grow in severity if not addressed and resolved now. We urge the Commission to look for a solution that does not require wholesale relocation of NPSPAC users and the resulting disproportionate burden on Philadelphia and other NPSPAC users. In the event the Consensus Plan or a version of it is adopted, we ask that the Commission ensure full funding for public safety conversion costs, and require that fully articulated relocation plans be in place for each Region before any user is required to move.

Dated: September 23, 2002

Respectfully submitted,
Nelson A. Diaz, City Solicitor

By: /s/ Michael C. Athay
/s/ Robert A. Sutton

Michael C. Athay, Divisional Deputy
City Solicitor
Robert A. Sutton, Senior Attorney
Douglas Kubinski, Assistant City Solicitor
City of Philadelphia Law Department
1515 Arch Street, 17th Floor
Philadelphia, PA 19102

Attorneys for The City of Philadelphia