

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

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FEDERAL COMMUNICATIONS COMMISSION
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In the Matter 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

**Second Reply Comments Of
Small Business in Telecommunications**

SMALL BUSINESS IN TELECOMMUNICATIONS

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Summary

SBT opposes those plans, including the PWC plan, which fail to properly assign the responsibility for avoiding and correcting interference to those entities responsible for creating that interference. SBT opposes all plans, including the PWC, which do not provide for full and adequate funding of any relocation efforts to be initiated as a result of this proceeding. SBT opposes all plans which do not reflect the statutory obligations and limitations of the Commission and which seek to have the agency act outside its jurisdiction or contrary to its mandate.

SBT supports the creation of technical solutions, employing specific rules and standards to be applied to the operation of low-site cellular architecture, which standards include the agency's ability and willingness to direct any interfering operator to cease immediately the creation of harmful interference to reduce injury to public safety operations and all other adversely affected systems.

SBT provides herein a comprehensive overview of the applicable federal statutes which must direct the agency's decisions and demonstrates that the burden for resolving the subject problems should and must be leveled squarely upon the interfering CMRS operators, not only as a matter of equity and fairness, but as a matter of undisputed law.

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Pursuant to those requests made by the Commission within Wireless Telecommunications Bureau Seeks Comment on "Consensus Plan" Filed in the 800 MHz Public Safety Interference Proceeding, *Public Notice*, DA-02-2202 (released September 6, 2002) and Wireless Telecommunications Bureau Clarifies Scope of Comments South in 800 MHz Public Safety Proceeding (WT Docket 02-55), *Public Notice*, DA 02-2306 (released September 17, 2002), Small Business in Telecommunications (SBT) hereby provides comments to those plans and proposals submitted within this proceeding.

SBT has been fully involved in the instant proceeding and has offered its own plans and proposals for relieving the harmful interference received by public safety entities and others occupying the 800 MHz band. SBT has read carefully each of the plans and proposals, considering the practicality of each and the resulting impact each might have on SBT's members which include many small SMR operators throughout the Country. SBT has further considered the rights of licensees and the attendant duties to enjoying the federal privilege of being a Commission licensee. It has also considered carefully the statutory duties and limitations of the Commission in its laudable attempts to determine ways to provide immediate assistance to adversely affected operators, while setting forth a method of long-term improvement of the band by finding ways that would lead to peaceful coexistence among licensed operators.

In its comments to this proceeding, SBT has sought to reach each of the Commission's goals articulated within the NPRM, employing methods which balance carefully the needs of all licensees, but which further emphasize the equitable requirement that those parties which are responsible for creating the subject interference are primarily responsible for taking those actions necessary to relieve the problem. Any other outcome would result in innocent, non-interfering parties being held liable for the errant actions of others. SBT respectfully urges the Commission to consider carefully its statutory authority and its primary mandate, to assure the efficient use and appropriate enjoyment of the radio spectrum in a manner which provides the greatest opportunities for all members of the public to employ the radio spectrum without the constant threat of interference which has arisen due to the unilateral actions of a handful of operators.

To assist the agency in developing a clear understanding via a complete record of the issues, challenges and interests to be explored and resolved within this proceeding, SBT hereby offers its comments to those plans and proposals put forth by others, setting out with particularity those areas of primary concern. SBT appreciates this opportunity to provide additional assistance to the agency.

The PWC Plan

Although SBT does not question the sincerity of the PWC and nearly all of its members, SBT does not support the PWC plan for those reasons provided herein. SBT respectfully avers that the PWC plan does not provide a necessary priority of action, based on specific recommendations, which are likely to resolve the subject problem without needless delay, contention and likely litigation. Further, SBT doubts the existence of necessary statutory authority for execution of the PWC plan. Finally, SBT does not support any plan which suggests that the burden for providing necessary remedies should fall upon entities other than those interfering CMRS operators who are responsible for the creating this situation. This stated, there are portions of the PWC approach which SBT supports and SBT will be careful to point out these issues of shared concern.

Background

SBT was originally a member of the PWC and withdrew its support, along with other original members, for a number of reasons.¹ Those reasons will be explored herein, however, it should be

¹ Other original members include the 14,000 member companies of The National Association of Manufacturers ("NAM") and MRFAC which withdrew their support. Although NAM/MRFAC supports in principle many of the PWC's original proposals, NAM/MRFAC opposes giving to Nextel the 1.9 Ghz spectrum which was an essential element of Nextel's participation in the PWC's preparation of its reply comments. NAM/MRFAC explain, "no

stated that SBT believed that the original effort reflected in the PWC's comments to this rule making were a start toward developing the information necessary to address the myriad of issues raised in the NPRM. The PWC Comments are accurately identified as a "start" as the PWC plan contained within its reply comments has changed dramatically from the positions taken in the original comments. That the original PWC Comments possessed a number of problems with law, logic and logistics was to be expected and forgiven, due to the extremely short period provided by the Commission for comments. The problems are complex and the stakes are quite high. However, SBT believed that from the hastily drafted original comments would come a clear path of equity and law to provide to the agency proposed actions which would assist in resolving the problems, without sacrificing the investments of small operators and non-interfering entities.

It appears that in attempting to lead the Commission toward what the coalition deemed to be the least injurious path for resolving interference concerns of public safety entities, the coalition members determined a plan that would seek compromise (or capitulation) to public safety representative's quest for additional channels and which would feed Nextel Communications, Inc.'s unsatiable appetite for spectrum – preferably free spectrum. The original plan, albeit with numerous flaws, was scrapped in favor of something misnamed the "Consensus Plan." In fact, the plan represents only a consensus of the signatories and nothing more. Even a cursory review of the reply comments filed in this proceeding would show that a vast majority of the commenting parties do not support the PWC plan.

licensee should receive a spectrum windfall in return for ceasing interference it causes to others." NAM/MRFAC Reply Comments at 4-5. SBT wholeheartedly agrees.

To assure a complete record in this proceeding as the agency is reviewing all proposals, SBT will focus first on the PWC plan, both the former and the latter. Through this review the Commission will understand why SBT withdrew from the PWC and why the PWC plan should not be adopted.

The Original PWC Proposal

The Best Practices Guide: Although the PWC suggested that “at a minimum, an emphasis be placed on the Best Practices Guide,” PWC Comments at 6, the coalition’s reliance on this document as a basis for technical solutions is misplaced. The Best Practices Guide is a weak document containing loose guidelines that creates no obligation upon interfering parties to do much of anything other than, perhaps if followed, conduct endless tests and protracted negotiations while public safety systems continue to be bombarded with harmful interference. This public relations placebo has been as effective as might be expected given the lack of specific procedures which are designed to place the proper burden on interfering CMRS operators, and the too obviously missing threat of agency involvement in assuring that licensees avoid the creation of harmful interference.

The PWC, therefore, engaged in a lacuna of necessary logic in de-emphasizing the acute need for technical solutions to reach immediately and effectively the problem of harmful interference. By not addressing thoroughly both the need and potential of technical solutions, which solutions might contain necessary mandates for limitations on the operation of all low-site cellular facilities, the PWC provided tacit (albeit likely unintentional) approval of the continued construction and operation of known sources of harmful interference. The PWC position did not, therefore, address the

responsibility of the interfering CMRS operators to avoid the creation of harmful interference and to discontinue the sources of that interference when found. That such interference is unlawful and subject to immediate remedial action by the agency is addressed below. Although SBT had hoped that the coalition would continue to explore more thoroughly the issue of responsibility which might lead to technical solutions, this effort was largely abandoned in the PWC Reply Comments.

Moving Public Safety To 700 MHz: SBT was in full agreement with the PWC and the majority of the commenting parties that this long-term solution is the most desirable for assuring public safety a safe haven for future operations. No rebanding of 800 MHz which results in public safety's continued occupation of the band will provide the level of assurance that all parties seek via this proceeding.² SBT recognizes that this use of the unauctioned upper 700 MHz spectrum is presently without statutory authority and that some accommodation from Congress is necessary. However, SBT is confident that with encouragement from the agency and interested parties, Congress can be educated to the fact that this use of that spectrum is superior to all other formerly considered uses.

Within its Reply Comments, SBT outlined a method for financing the relocation of public safety users to the 700 MHz spectrum, which method is consistent with the Commission's statutory authority and which does not require the Commission to be a banker or escrow agent. Either such

² “[I]t is the conclusion of this Coalition that an 800 MHz re-banding solution will not completely alleviate the interference problem without the purchase of all new equipment by all incumbent operators.” PWC Comments at 6-7. Estimated costs of new equipment is staggering and deployment of same would fully disrupt the use of the band for all incumbents, most of which are not responsible for the problem.

role is inconsistent with the expertise of the agency and its jurisdiction. Accordingly, in recognition of this fact, SBT has advocated a method of financing which relies on private contractual efforts, backed by mandated obligations; and which would further result in a more effective use of the 800 MHz spectrum abandoned by relocated public safety licensees.

In contrast, the PWC plan stated that auction revenues would, “help pay for the relocation of public safety entities to 700 MHz,” PWC Comments at 9. However, the funds to be raised by those proposed auctions would not be raised until following public safety’s migration, according the PWC Comments, id. This proposal is doubly flawed in that the funds would ostensibly be raised only following the payment of costs of relocation. Certainly funding would be necessary to pay for relocation at or before the time of relocation and not as compensation following relocation. The PWC’s proposal does not create the necessary financial assurances which public safety entities have urged in a number of comments. Nor did the PWC plan provide any assurances that the money raised by those proposed auctions would be sufficient to pay for relocation.³ It would be quite unfortunate for affected public safety users to rely upon a level of auction receipts which did not materialize. In all fairness, the PWC Comments were drafted prior to receipt of the comments of public safety entities which emphasized a need for financial certainty in participating in any relocation of existing systems.

³ See, e.g., the agency’s recent recognition of problems arising from the effect of tired financial markets on auction participation, *Wireless Telecommunications Bureau Seeks Comment On Request For Postponement of 1670-1675 MHz Band Auction*, DA 02-2283 (September 13, 2002).

The above problems noted, perhaps the greatest problem is that there exists no statutory or codified method for redistributing auction receipts to public safety licensees. Money received by the U.S. Treasury pursuant to Commission auctions is not subject to escrow or “earmarking” for the use suggested by the PWC. Although SBT recognizes that some legislative changes would be required to make available the subject 700 MHz spectrum for public safety’s use, the complex legislation which would be required for redistribution of auction receipts to finance public safety relocation is much more difficult to contemplate. Although the PWC’s original plan stated plainly that relocation of public safety systems to 700 MHz is the coalition’s first and best choice for long-term resolution of the problem (and SBT agrees) SBT respectfully notes that the manner of financing this activity had not been well articulated within the PWC Comments.⁴ Accordingly, SBT urges the Commission to adopt SBT’s suggested method of financing any relocation and move expeditiously to obtain legislative authority to employ the 700 MHz spectrum for this purpose.

SBT remains convinced that the cost of relocation should be borne by those entities which would reap the primary benefits from public safety’s relocation, which entities would include interfering CMRS operators and auction winners. By combining the benefits of auction with the cost of relocation, the agency need not seek additional legislative authority for funding alternatives to provide the financing necessary to accomplish its goals. Nor does the agency have to serve as

⁴ At footnote 31 within the PWC Comments, the coalition is wrestling with the costs of relocation versus rebanding. SBT submits that such discussion is academic unless the agency consents to use its influence on Congress to determine federal funding for either alternative. Such estimations are better made outside of this proceeding by entities participating in those auctions suggested by SBT, by which participation winning bidders would be agreeing to fund relocation of public safety entities.

banker, escrow agent, or mediator for accomplishing long term resolution. SBT can think of no better use of marketplace forces than to allow those entities which have created the interference to pay the cost of remedy while simultaneously reaping the benefit of additional valuable spectrum.

Finally, SBT notes and shares the PWC's concerns regarding interference-free operation by B/ILT operations. However, since the PWC's proposal did nothing to finance any rebanding by B/ILT licensees to accommodate cellularized operations, the plan was wholly inequitable or incomplete. In fact, the original plan did more than simply injure innocent analog operators by foisting upon each the cost of rebanding and the attendant disruption in business and operations, the PWC plan suggested that B/ILT operations be employed as a guardband. This suggestion begs the question of who guards the guardband operators? There is no answer within the PWC Comments. Accordingly, under the original PWC plan B/ILT operators would not only be inconvenienced and wrongfully made to finance rebanding, but also would appear to be volunteering for receipt of harmful interference from cellularized systems. SBT members are sympathetic to the problems suffered by public safety operators and all other adversely affected analog system operators, but its members do not volunteer for this duty.

Case-By-Case Resolution: Although SBT rejects references to the existing Best Practices Guide for reasons already articulated herein and more completely within its Reply Comments, SBT joins with the PWC Comments at Page 13, wherein the PWC urged the Commission to codify technical solutions for resolution of interference on a case-by-case basis. The PWC suggestions are general in nature and do not provide specific technical rules, which are vitally needed. And the PWC

Comments do not address the important issue of interference avoidance which is also necessary. And the PWC Comments do not emphasize the need to place the burden of resolution upon the interfering entity, while mandating cooperation from the entity receiving that interference. However, both the PWC and SBT concur that “[i]f [technical solutions] can eliminate the harmful interference, then relocation . . . could be delayed until new equipment can be deployed by the public safety or B/ILT entity.” PWC Comments at 13. “This alternative will certainly be much less costly than any relocation and re-banding proposal.” Id. Indeed, SBT avers that the Commission’s adoption of strict technical solutions would likely alleviate most incidents of interference and would reduce greatly the incidents of new cases. Any relocation should be contingent upon moving public safety operations to 700 MHz and should be financed entirely by interfering CMRS operators and/or auction winners.

Re-Banding At 800 MHz: The original PWC plan would require years to complete and would result in inequitable results. SBT applauds the PWC in its noting that such a rebanding is the least desirable alternative for resolution of the problem, however, insofar as any 800 MHz rebanding proposal is entertained, SBT notes that the original PWC plan was quite vague at pages 16-17 regarding its treatment of general category licensees. For example, the responsibility of an EA licensee’s desiring to relocate to the NPSPAC channels obligation to fund other entities’ relocation is not well defined and is left more vague by the contents of footnote 41. SBT could not determine whether the suggested, but undefined obligation, would result in necessary funding of analog SMR and B/ILT licensees’ relocation which would be required or made operationally necessary due to

rebanding. If not, the issues of financing and post rebanding operation between analog and low-site cellular operators remain open questions.

SBT was also confused by the “triggering” mechanisms articulated within the PWC Comments at 17-20. SBT’s confusion is a result of the following:

In its first example, the PWC suggested that “if a NPSPAC public safety incumbent is experiencing interference, the entity will be coordinated spectrum in the general category pool” and that such channels would be available because “the general category EA [sic] returned its license because the public safety entity initiated the process, as opposed to the general category EA licensees seeking comparable NPSPAC spectrum.” PWC Comments at 18 and footnote 42. The scenario does not, however, identify the interfering party. If the interference is due to operations by a cellular carrier, what action taken by the cellular carrier or some third party EA licensee within the general category pool would result in channels being made available for the purpose of coordinating the NPSPAC operator’s future use following relocation? If SBT was properly interpreting the scenario, it appears that upon receiving interference, the NPSPAC licensee can demand that a general category EA licensee vacate sufficient spectrum for the NPSPAC operator’s use following relocation. However, if the EA licensee is not responsible for the interference, how does this circumstance justify a demand that the EA licensee relocate? Frankly, the PWC plan was unclear in both its application and its justification.

In its second example, the victim is a non-public safety licensee. Although SBT agrees that the interfering operator should pay the cost of resolution, the PWC Comments provided no equitable basis for allowing the interfering operator to “request a frequency change.” PWC Comments at 18. An interfering party should not garner by its violation of agency rules the right to relocate the victim. Such a disturbance of an incumbent system to accommodate the business strategies and technical deficiencies of a low-site cellular operator is wholly injurious to the victim with no associated benefit for anyone except the interfering operator. Such an “earned” right would serve as an encouragement to the cellular operator to create interference to achieve a right to relocate the analog operator whose system stands in the way of the cellular operator’s business objectives.

Under the PWC’s “second scenario” one sees a domino effect, with a general category EA licensee beginning the chain without any interference having been experienced by anyone. Yet, the NPSPAC licensee accommodates the EA licensee, general category incumbents accommodate the NPSPAC licensee, and some unidentified entities accommodate the general category incumbents whose channels are found useful for such purpose at 856-860 MHz. Not only is the scenario needlessly complex, the transaction boggles the mind of any poor soul that would have to discern the rights, duties, costs, and the timing of each event for assuring that this logistical nightmare doesn’t create more harm than even the alleged good.

The PWC’s third trigger described at page 19 of its Comments is another conundrum. At the first paragraph, the scenario speaks to an upgrade of technology which “should begin for the licensee.” It is unclear as to whether the PWC is referring to a rebanding or simply an equipment

improvement. Further clarity is not provided in the next paragraph which premises relocation on the receipt of harmful interference, which premise is inconsistent with the previous paragraph. Thus, SBT is left to wonder whether this scenario is about interference or technology upgrades. And, again, SBT cannot fathom how the public safety entity in the example has made available to it those channels upon which it would be coordinated “as close to 855 MHz as possible.” In what way was the 855 MHz user relocated to make those channels available? At the end of this second paragraph, one notes that the PWC is now referring to a “fourth scenario” but as with the PWC’s third scenario, the complexity of the relocation is beyond a reasonable person’s ability to negotiate among the myriad of affected parties.

The PWC Comments then stated that “non-cellularized incumbent licenses [sic] would be entitled to full cost reimbursement of retuning” PWC Comments at 19. As the Commission fully recognized in its earlier adoption of rules for relocating 800 MHz licensees, the cost attributed to relocating a licensee’s system goes beyond the cost of “retuning.” For example, a relocation under Section 90.699 of the Commission’s Rules requires that relocating entities bear the cost of performing a seamless transition, including the construction of a parallel system. The PWC has provided no justification for reducing the compensation to relocated entities pursuant to its triggers and SBT argues that no such justification exists for entities made to suffer relocation to accommodate the interfering signals of others. Taking that important point aside, SBT cannot make consistent this general comment regarding compensation to incumbent licensees and the scenarios articulated by the PWC earlier in its first plan. It appears that there are instances where non-

cellularized incumbent operators would, in fact, be made to pay for relocation and this inconsistency is quite troublesome.

Finally, SBT was troubled by the analogy relied upon by the PWC in the LMCC's participation in coordinating 450 and 150 MHz spectrum pursuant to refarming, and the instant rebanding proposal. The relevance of the former to the latter is fully unclear. Nor was SBT mollified by the PWC's further reliance on the language of that *Second Report and Order*, PR Docket No. 92-235, which states in relevant part, "Rather than establish specific procedures at this time, however, we believe that the coordinators should attempt to reach consensus themselves on the applicable coordination procedures." It appears that the PWC was asking the agency to not establish procedures for rebanding, not create necessary specific safeguards for incumbents, and not provide technical rules for effecting any rebanding proposal, but rather to rely on the informal processes of the LMCC taken up without public comment. This request to allow the LMCC to usurp the rule making process was ultimately deemed unacceptable. That the PWC also relied on possible funding from Nextel does even less to allay SBT's fears of disaster.

Campus Systems and Motient: Insofar as SBT avers that no class of operators and no single operator is sufficiently unique to justify any reduction or increase in the rights afforded by equal application of law, SBT opposes the creation of a class of systems known as "campus systems" which would again be made unwillingly to volunteer to serve as the bulwarks against harmful interference. The PWC provided little justification for this reduced status of operation other than a general comment that this newly created class of systems "tends to be more immune to

interference” which comment is not explained or supported. The PWC’s suggestion that campus systems might enjoy the benefit of employing 100 kHz of contiguous spectrum for deployment of some sophisticated system is mere supposition regarding future uses, and is not convincing as a carrot to attract affected operators to accept this portion of the proposal. Finally, SBT finds nothing which might justify a special treatment of Motient’s systems. Motient’s relocation costs are no higher for it than those to be suffered by a 5-channel SMR operator when viewed in relative terms. Nor is Motient entitled to greater rights than local SMR incumbent operators or B/ILT operators. Accordingly, SBT rejects the PWC’s special entitlement then suggested for Motient.

The Evolution

As stated above, the original plan articulated within the PWC’s Comments had numerous legal and logical flaws. However, the plan also had a thematic elements which were highly attractive to SBT for its participation: (1) that the responsibility for corrective action rested with the interfering operators; (2) that technical rules must be codified to provide immediate relief; (3) that the financing of any rebanding must come from sources other than non-interfering operators; (4) that the interference suffered by public safety entities is not confined to that group, and is suffered by or threatened to all analog 800 MHz operators; and (5) that the outrageous proposals suggested in the Nextel White Paper were to be rejected and not serve as a basis for comments to rule making. Each of these positions is shared by SBT and its members.

It was an SBT hope that the problems noted above could be resolved and the original plan improved upon for the purpose of providing its members equitable treatment under law. It was

hoped that the coalition would hang together to support the five elements outlined above and that on reply the PWC would strengthen its resolve to assure fundamental fairness to affected parties. That hope was not going to be met as the PWC decided on a different course that focused moreover on attracting support from Nextel and APCO, than on engaging each in a discourse which would require each to accept that the most logical and equitable path for resolution of the problems laid in technical solutions borne from a recognition of statutory responsibility. Accordingly, SBT prepared and filed its own Reply Comments, in support of its own plan, which seeks fairness in construction, operation, and interference resolution, relying primarily on specific technical resolutions and safeguards.

The New PWC Plan

Rebanding 800 MHz: The new plan breaks the 800 MHz band into two parts, below and above 861 MHz, with the upper for cellular-type architecture and the lower for public safety, analog, and high-site systems. Between 859-861, the PWC would again install a guardband which would again be made up of campus systems and existing incumbents. PWC Reply Comments at 9. Yet, the PWC does not explain why or how existing incumbents which do not operate the styled “campus” systems should be made to serve as the not-so-green space between operators on lower channels and the injurious low-site cellular operators. Like campus systems, the PWC is drafting this group for duty at the front and nothing in the PWC Reply Comments suggest that this group is more immune to harmful interference.

Although the PWC would restrict the use of cellularized systems below 861 MHz, the definition of what constitutes such facilities falls short of providing a clear definition that focuses on interference potential from operation. This issue of interference potential must necessarily include some reflection of ERP, power density at ground level, and those instances where facilities are located immediately next to rising terrain that affects the 100-foot AGL standard. SBT has addressed these elements within its recommended technical solutions. SBT acknowledges that its suggested definition and technical proposals should be vetted by industry comments to assure that the recommended technical solutions are fully workable, however, SBT avers that something more is needed than what the PWC provides.

The PWC plan calls for the NPSPAC licensees to move down to the 851-854 MHz band, presumably onto channels abandoned by Nextel, while still maintaining Regional Plans. PWC Reply Comments at 11-12. The presumption being, of course, that Nextel (absent Nextel Partners, Inc. which did not join the PWC) has licenses for the necessary swap. In fact, that presumption runs throughout the PWC plan for many such swaps. The PWC plan states nothing about the potential that such Nextel-licensed spectrum is, in fact, not available at all areas throughout the Country. Meanwhile, public safety licensees operating within the 859-861 MHz band receive fair warning by the PWC that if they remain in that band, they will join the ranks of the other draftees occupying the DMZ of the new guardband. Any resolution of interference to this group will receive assistance on a case-by-case basis, which one must presume would be provided in accord with that silly document entitled "Best Practices Guide." In the meantime, the PWC suggests that affected public safety entities operating within the 859-861 MHz band engage in their own rechannelization, moving

critical communications to a position as far away from 861 MHz as possible. The PWC plan does not explain if such action is possible or if such activity would be funded by other than the victims who are directed to flee down the spectrum to safety.

The next drafttees to guardband duty are the non-public safety incumbents at 851-854 MHz, which will be relocated a channel at a time to the 859-861 MHz band. Such activity would occur first upon channels which the PWC presumes will be vacated by public safety entities rushing downward to avoid cellular interference; or if not available, to channels vacated by Nextel in the 859-861 MHz band; or if not available, to channels vacated by Nextel in the 854-859 MHz band. PWC Reply Comments at 12-13. As a first objection to this element of the PWC plan, SBT notes that the PWC Plan fails to provide one nickle of financing for this relocation. Not only does this fact fly in the face of the PWC's earlier position articulated within its original comments, it is wholly inequitable to cause non-interfering entities to have to expend monies for a problem not of their making, outside of their control, and due solely to the business interests of large, well-funded telecommunications carriers.⁵

It should also not avoid notice that the channels occupied by Nextel become available last, presumably to allow Nextel the longest possible opportunity for continued operation. However, that presumed extended operation would be the greatest within the 854-859 MHz band, which continued operation is the most likely to maintain the threat and sources of interference to affected analog

⁵ It also is violative of the agency's duties in accord with the Regulatory Flexibility Act.

operators. Therefore, the PWC plan promotes continued interference over the short term of the next few years.

Finally, the PWC addresses the EA licensees below 854 MHz, and moves each to alternative spectrum, again presumably available from Nextel. PWC Reply Comments at 13-14. And, once again, the PWC provides not a dime of financing for affected operators. Adding insult to injury, the PWC claims that no “retuning will occur [until] after the first construction deadline for General Category EA licenses.” PWC Reply Comments at 13. Stated more practically, EA licensees are made to build upon those channels which will be retuned, thereby adding economic waste to SBT’s objections. Since Nextel is employing trading stock channels upon which it has never built for the purpose of meeting expectations under the PWC rebanding proposal, it is incredible that the PWC would require others to reach a construction standard that its cohort is not similarly required to meet.

As accurately stated, the PWC intends that Nextel will become the sole licensee of the 851-854 MHz band for some extended period. PWC Reply Comments at 14. The PWC intends that this status will enable NPSPAC licensees to deal solely with Nextel in arranging spectrum swaps to the lower channels. What the PWC fails to mention is that similar consideration is not provided for all of the entities whose systems have been removed from the 851-854 MHz band. Those entities don’t “deal” with Nextel. There is no deal. It’s simply “move, now, on your own dime! Get out of the way so that Nextel is not inconvenienced in its discussions with NPSPAC licensees.” While the PWC is reweaving the 800 MHz band for the sole reason of accommodating the business strategies of Nextel, all affected utility companies, small public safety entities not operating on NPSPAC

channels, distribution companies, trucking fleets, small SMR operators, and any licensee of an 800 MHz channel which is inconveniently in the way for this final Yalta Conference between NPSPAC licensees and Nextel must be pushed, sacrificed and tossed on the heap of the newly created guardband, with nothing more than the feigned caring suggested in the wholly inadequate Best Practices Guide to protect them.

The above described plan is dependent on Nextel Communications, Inc.'s (not Nextel Partners, Inc.) claim that it is licensed for sufficient spectrum in all areas to accommodate the plan. Although ITA and PCIA have verified the claim that on average Nextel appears to have sufficient spectrum, SBT doubts that Nextel alone, without contribution of channels from Nextel Partners, could pony up the channels in all markets.

The plan also relies on Nextel's abandonment of 700 and 900 MHz spectrum for use by other operators. Within its Reply Comments, SBT has already shown that this contribution is a canard and will not repeat those arguments here. Therefore, in exchange for the questionable contribution of 4 MHz within 40 markets of 700 MHz upon which Nextel might only use 50% in accord with rule, and 4 MHz of 900 MHz which Nextel failed to construct in a timely manner and instead came up with a whopper of a tale regarding future technology which might be deployed on those channels for one of the weakest waiver requests ever granted by the Commission, the PWC would grant to Nextel 10 MHz of virgin spectrum, throughout the United States and its possessions, allowing Nextel to compete more effectively in the market against PCIA and ITA's members, not to mention every broadband carrier that was made to expend billions in earlier PCS auctions. Further, SBT concurs

with NAM/MRFAC that the use of the 1.9 Ghz spectrum to buy Nextel's cooperation would upset ongoing efforts to provide greater communications capacity to rural areas and would undermine the agency's efforts in those related matters, e.g. *The Establishment of Policies and Service Rules for the Mobile Satellite Service in the 2 Ghz Band*, 15 FCC Rcd 16127 (2000); *Inquiry Concerning the Deployment of Advanced Telecommunications Capability to All Americans in a Reasonable and Timely Fashion, and Possible Steps to Accelerate Such Deployment Pursuant to Section 706 of the Telecommunications Act of 1996*, FCC 02-33. NAM/MRFAC Reply Comments at 5-6.

The funding for the PWC plan would come from Nextel and unknown sources in the form of \$500 million, to fund public safety relocation and no other operator's cost of accommodation. Although the PWC states that non-interfering operators "should not bear the burden of relocation costs caused by the introduction of incompatible system architectures in the 800 MHz band." PWC Reply Comments at 19, the PWC has not devised any method of funding beyond the \$500 million to be escrowed by Nextel and claims to have "no formal plan at this time" for funding private wireless relocation. So what the PWC has is a plan without nearly adequate funding, even sufficient funding to relocate public safety entities.

SBT asks the Commission to take official notice of the fact that the Commission lacks statutory authority to create private contractual relationships in the form of escrow agreements. Therefore, even the vaunted \$500 million offer cannot be adopted or recognized as a basis for adoption of the PWC plan. Nor has the PWC set forth adequate proposals for collection or distribution of any escrowed funds. Since the Commission lacks authority to order the creation of

the escrow, Nextel is not legally obligated to pay the money. Since the Commission will not itself administer the escrow (if it could) the method of use is without rule, guideline, or necessary oversight. And if the escrow runs out and other sources of funding are not found, what then? Half a relocation would be far worse than none at all.

Ignoring for a moment the too obvious funding problems, SBT must point out that the plan put forth by PWC on reply has moved almost entirely away from the five elements of its original Comments. Incumbent licensees' rights are now sacrificed on the altar of capitulation. The certainty urged by countless public safety commenters has been forgotten and replaced with unenforceable promises of too little funding. And the PWC now speaks of "retuning" rather than relocation, to diminish by language the extreme cost and disruption of adopting the PWC plan. Finally, SBT cannot help but notice that the PWC Reply Comments could have been shortened considerably to state, **"On Reply, the PWC hereby requests adoption of the entirety of the Nextel White Paper with two minor changes: (1) no licensee within the 800 MHz band will be made to accept secondary status and (2) Nextel will receive spectrum at 1.9 Ghz rather than at 2.1 Ghz."** Precious little else was necessary to say.

For the reasons stated above, SBT opposes adoption of the PWC plan.

The Motorola Plan

Although well intentioned, the Motorola plan suffers from a lack of funding sources for its rebanding proposals and a reliance upon the availability of 700 MHz spectrum to be employed by