

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

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In the Matter of)

Improving Public Safety Communications in)
the 800 MHz Band)

) WT Docket No. 02-55

Consolidating the 900 MHz Industrial/Land)
Transportation and Business Pool Channels)

REPLY COMMENTS OF NEVADA WIRELESS, LLC

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission, Nevada Wireless LLC respectfully submits these reply comments in response to the so-called "Consensus Plan" comments in the above-captioned proceeding. Nevada Wireless strongly opposes this plan for the reasons set forth below.

Background Information on iDen Interference correction

Nevada Wireless is a regional commercial wireless provider operating in 2nd and 3rd tier markets that utilizes similar iDen RF technology as Nextel. Nevada Wireless also uses low site "cellularized" system architecture and has had minor interference issues operating the iDEN platform with Public Safety and other carrier's. That interference is usually quickly corrected. In cases where there is interference, appropriate implementation of the *Best Practices Guide* does and should resolve most issues. Nevada Wireless cannot support the Nationwide restructuring of the 800 MHz band in an attempt

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to solve specific interference issues that should be corrected by Nextel's Technical Staff internally as the interfering carrier. Furthermore, the Consensus Plan proposes putting "non-Nextel EA licenses" such as Southern Linc, Preferred Communications and Nevada Wireless into the same spectrum as the Public Safety users it is trying to protect. If this plan were adopted, the commission would just be changing one adjacent channel iDEN carrier for another.

The commission has no basis for disrupting and dislocating innocent licensees with an "interim" solution when clearly the only long term solution to the problem of harmful interference is the migration of Public Safety to the 700 MHz band.

The Interfering Entity should correct the problem through technical means

There have been many comments on the responsibility of the entity causing interference to remedy that interference. To require nationwide 800 MHz relocation of innocent incumbent licensees based solely on individual Nextel/Public Safety problems is over reactionary and in no way equitable to the non interfering entities involved. Previous commenters have noted that in many regions, Public Safety is not yet even operating in the 800 MHz band. Why is the entire 800 MHz community being subjected to a strictly Nextel problem. A problem that in most cases Nextel can easily solve through technical means or change its own RF Carrier on that interfering cell site.

Loss of Spectrum and business disruption associated with re-banding

Nevada Wireless is transitioning into Motorola's Quad Base Radio format wherein four contiguous channels are housed in a single wide band Transmitter. Our business uses, needs and purchased from the government contiguous 25 channel blocks of radio spectrum. To re-band that contiguous spectrum to a non contiguous format is potentially illegal and certainly a poor policy choice for the FCC. Furthermore; If Nevada Wireless were forced to relocate from its current spectrum it would incur significant cost and service disruptions in the retuning of its infrastructure and all subscriber handset band maps. It is not only a profound inequity to force relocation cost (and burdens) on licensees that are causing no interference to Public Safety licensees, but scandalous to possibly put these licensees out of business trying to solve an interference issue that they have no part in. During the upper 200 retune that was forced upon carriers we experienced over 35% loss of customer base. This loss of customer base was a non reimbursable item under the retune regulations. The value of that customer base was far in excess of the retune compensation paid to us.

The Commission sold licenses under Auction #34 in the 806-809/851-854 band to licensees with Six 25 channel blocks of Contiguous Spectrum and specific rules regarding "white space". The Consensus Plan proposes to void the terms the spectrum was purchased under.

The consensus plan stipulates that "licensees currently residing in the non-cellularized block that wish to deploy cellular architecture may move up to the cellularized

block in exchange for their existing authorizations.” It further states “This option will only be available to licensees that own both the geographic license and the underlying site-specific license in the 806-809/851-854 MHz band.” Clearly the commission knows that bidders in auction 34 such as Preferred Communications, Southern Linc and Nevada Wireless were bidding specifically on contiguous channels to be used in the “white space” of this band and do not always have the underlying site specific channels for all of their holdings. Most purchasers of spectrum in Auction 34 and the Commission itself are aware of the numerous Speculative Paper Licenses in the former General Category channels that are not constructed. Frequency Monitoring of Nevada Wireless Spectrum Holdings has indicated that in most markets numerous Paper License’s exists only on paper and have never built or provided service to the public and that the Paper License should have its authorizations cancelled for Non-construction.

There is no regard given to the monetary value of spectrum being swapped

The so-called “Consensus Plan” moves parties in and out of their FCC licensed spectrum positions with no regard to the monetary value of said spectrum or its operational value to the licensee based on its contiguous or non-contiguous nature. Nevada Wireless purchased licenses in both Auctions 34 and 36 but spent more than 10 times as much money in Auction 34 because of the value of this spectrum. The Commission should note that it raised \$319 million from the sale of the lower 150 channels 806-809/851-854 but only \$29 million from the middle 80 channels 809-816/854-861. How can the commission sell spectrum for one price then turn around and

move the licensee into other spectrum without fully understanding the value of that spectrum to the licensee.

This is nothing more than a spectrum grab by Nextel

Under the so-called compromise plan all EA Auction winners (except Nextel) are giving up spectrum or being asked to bear relocation cost when Nextel is the source of the interference. Under this plan Nextel clearly comes out with a better spectrum position than before but can the same be said of the rest of the licensees? The other EA Auction winners would have their business plans destroyed and any potential competitor to Nextel eliminated under the so called Consensus Plan. The Commission cannot assume the Consensus Plan contains accurate information. Appendix B does not say if it is for Economic Areas or just individual cities but in either case the numbers do not reflect what is in the commission's records. As an example the non Nextel holdings in Most Markets are grossly understated.

Alternative Plans to re-banding 800 MHz

Numerous alternative plans to complete re-banding have been presented. The plan presented by Southern Linc appears to offer the best long term solution for public safety. The revenue raised from auctioning the NPSPAC Channels would go a long way towards purchasing next generation hardware for the Public Safety Users. In the interim the interference problem that Nextel is causing can clearly be resolved by Technical Means if

Nextel would simply follow the *Best Practices Guide* more regularly. Further comments on the Southern Linc Plan should be solicited as this plan has been carefully thought through and would suit the public's interest much better than any re-banding of 800 MHz would.

Alternative Plans to the Consensus Plan for Re- banding 800 MHz

Motorola has submitted an in band alternative that might possibly provide immediate interim and permanent relief for Public Safety. That plan begins to address how the six twenty five channel Blocks sold to Auction 34 participants (150 channels total) might fit into the smaller NSPAC 120 channel block by pulling spectrum from 859 and 860 MHz channelized blocks. The plan as it sits today is non specific, full of questions (it doesn't address exactly how the additional thirty channels would come from) but does offer a fundamental starting point that the so called Consensus plan does not begin to touch on, namely the rights of the Auction 34 participants to have there six 25 channel blocks of Contiguous spectrum. Allowing for the further conversion of Business, industrial and Land transportation to Commercial iDen operators is very important to increase the overall spectrum efficiency of this band.

If any re-banding of 800 MHz were to take place the Commission would serve the public interests best by getting the UNAMIOUS Consent of all Auction 34 purchasers before adopting any plan. Not to mention such consent would then preclude the numerous legal challenges certain to be raised by the non Nextel EA License holders if any of the

current Re- Banding Proposals where adopted. Further comments on the Motorola Plan should be solicited as this plan offers an in band potential solution.

Conclusion

Nevada Wireless respectfully requests that the commission act in the public's best interest and sets aside any consideration of the so called Consensus Plan. The alternative proposals submitted by Southern Linc and Motorola appear to consider all users of the 800 MHz band equally wherein the Consensus Plan clearly does not.

Respectfully Submitted

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Dated September 19th, 2002

Certificate of Service

I Steven R Sixberry to hereby certify that on this 19th day of September 2002I caused a copy of the "Reply Comments of Nevada Wireless" to be sent via US Mail to each of the following:

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