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

In the Matter of)
)
Improving Public Safety Communications)
in the 800 MHz Band)
)
Consolidating the 900 MHz Industrial/)
Land Transportation and Business Pool)
Channels)

EX PARTE FILING

WT Docket No. 02-55

Supplemental Comments Of The Consensus Parties

- Aeronautical Radio, Inc. ("ARINC");
- The American Mobile Telecommunications Association ("AMTA");
- The American Petroleum Institute ("API");
- The Association of Public-Safety Communications Officials-International, Inc. ("APCO");
- The Forest Industries Telecommunications ("FIT");
- The Industrial Telecommunications Association, Inc. ("ITA");
- International Association of Chiefs of Police ("IACF");
- The International Association of Fire Chiefs, Inc. ("IAFC") and
International Municipal Signal Association ("IMSA");
- The Major Cities Chiefs Association ("MCC");
- The Major County Sheriffs' Association ("MCSA");
- The National Sheriffs' Association ("NSA");
- National Stone, Sand and Gravel Association ("NSSGA");
- Nextel Communications, Inc. ("Nextel");
- The Personal Communications Industry Association ("PCIA");
- The Taxicab, Limousine and Paratransit Association ("TLPA")

December 24, 2002

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¹ The Consensus Parties note that The Association of American Railroads ("AAR") is not currently a signatory to this document. Necessary approvals were not obtained due to business closures during the Holiday season. We anticipate their return as a signatory immediately after the holidays.

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SUMMARY

On September 23, 2002, the Consensus Parties listed on the cover page filed Comments demonstrating that its Plan meets all of the Federal Communications Commission's (the "Commission") public policy objectives in this proceeding; *i.e.*, a timely, long-term solution to CMRS – public safety interference that minimizes incumbent disruption and provides additional 800 MHz spectrum for post-September 11 public safety communications requirements.

The Consensus Parties now file these Supplemental Comments to provide additional implementation details concerning the Consensus Plan for realigning the 800 MHz Land Mobile Radio to mitigate CMRS – public safety interference. The Consensus Parties or their members represent every category of licensee operating in the 800 MHz Land Mobile Radio band and over 90 percent of the licensees affected by CMRS – public safety interference. The Consensus Plan is the only proposal before the Commission that enjoys this broad-based support.

These Supplemental Comments primarily address four issues: (1) funding the Consensus Plan; (2) procedures and processes for relocating 800 MHz incumbents; (3) post-realignment interference protection standards; and (4) border area realignment plans.

With the assistance of the other Consensus Parties, Nextel has now completed a detailed review of the costs of relocating the 800 MHz public safety licensees, private wireless licensees and high-site Specialized Mobile Radio ("SMR") systems required to retune their operations under the Consensus Plan. Nextel will fund, *up to a total of \$850 million, the relocation of all 800 MHz incumbents* -- not just public safety licensees -- required to move pursuant to the Consensus Plan, *provided* that the Commission grants Nextel a replacement 10 MHz nationwide CMRS license at 1910-1915/1990-1995 in exchange for the more than 10 MHz Nextel will surrender at 700 MHz, 800 MHz and 900 MHz to make possible the Land Mobile Radio band

realignment necessary to solve CMRS – public safety interference. Cost data and analysis supporting the sufficiency of Nextel’s funding commitment is set forth in this pleading and in Appendix A thereto.

The Consensus Parties propose herein a comprehensive process for implementing 800 MHz realignment in two phases: (1) clearing current incumbents from channels 1-120; and (2) moving incumbent NPSPAC public safety systems to channels 1-120. A committee representing private wireless licensees, public safety licensees and Nextel will oversee the relocation process including developing relocation frequency plans on a region-by-region basis for each of the existing 55 NPSPAC planning regions. This approach assures that the interests of all relocating licensees are considered in the realignment process.

Historically, the Commission’s rules provide only co-channel interference protection to 800 MHz Land Mobile Radio licensees. The Consensus Plan separates the land mobile spectrum into two blocks to mitigate interference: a 20 MHz contiguous channel block for public safety, private wireless and SMR licensees operating noise-limited, non-cellular, high-site systems; and a 16 MHz contiguous channel block for commercial operators using interference limited, cellular, low-site frequency reuse system designs. The separation of these incompatible systems through realignment will eliminate the majority of current interference in the Land Mobile Radio band.

The Consensus Plan goes further, however, and recommends that the Commission establish specific interference protection thresholds for non-cellular block licensees that for the first time provide real protection against any remaining intermodulation interference or interference from cellular out-of-band emissions (“noise”). These new interference thresholds will allow all 800 MHz licensees to use the spectrum effectively, while requiring cellular

licensees to remedy interference arising from their authorized operations, provided the non-cellular system meets certain operating parameters. New intermodulation and noise interference standards will protect non-cellular licensees in the new 800 MHz Guard Band (channels 321-400), with adjustments to reflect the reduced separation between these licensees and the beginning of the cellular channel block (channel 401). The Consensus Plan also proposes new receiver performance standards and future hardware and system design options to take full advantage of the interference elimination opportunities made possible by separating incompatible noise-limited and interference-limited land mobile systems through 800 MHz realignment.

The Consensus Parties propose specific realignment plans for each of the regions in the United States – Canada Border Area and the United States – Mexico Border Area. The Land Mobile Radio spectrum in the Canadian and Mexican Border Areas is divided between the respective countries along their common borders; as a result, the reduced U.S. primary spectrum in the border areas is allocated among the various land mobile radio services differently than it is in the rest of the country. The Consensus Parties propose border area realignment plans that separate public safety and cellular systems to the maximum extent possible, consistent with the national realignment plan. *No current primary border area licensee will lose any channels due to realignment*, and secondary use of Mexican and Canadian channels by U.S. licensees in the U.S. Border Areas is preserved.

The Consensus Plan offers the Commission a comprehensive and effective solution to the continuing problem of CMRS – public safety interference. Every provision of the Consensus Plan is interrelated and complements every other provision to assure that *no 800 MHz incumbent licensee loses spectrum due to realignment*, while putting into place 800 MHz reorganization essential to mitigating CMRS – public safety interference. In short, the Consensus Plan must be

adopted as a whole; any material changes will jeopardize the voluntary commitments of the affected licensees and their representative associations essential to successful implementation.

Accordingly, the Commission should expeditiously release a Report and Order adopting in full the 800MHz Consensus Plan.

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

In the Matter of)	EX PARTE FILING
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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
)	

SUPPLEMENTAL COMMENTS OF THE CONSENSUS PARTIES

The Association of Public-Safety Communications Officials-International, Inc. (“APCO”); the International Association of Chiefs of Police (“IACP”); the International Association of Fire Chiefs, Inc. (“IAFC”) and International Municipal Signal Association (“IMSA”); the Major Cities Chiefs Association (“MCC”); the Major County Sheriffs’ Association (“MCSA”); and the National Sheriffs’ Association (“NSA”) (collectively, “Public Safety Organizations”); in conjunction with Aeronautical Radio, Inc. (“ARINC”); the American Mobile Telecommunications Association (“AMTA”); the American Petroleum Institute (“API”); Forest Industries Telecommunications (“FIT”); the Industrial Telecommunications Association, Inc. (“ITA”); the National Stone, Sand and Gravel Association (“NSSGA”), the Personal Communications Industry Association (“PCIA”); the Taxicab, Limousine and Paratransit Association (“TLPA”) (collectively, the “Private Wireless Coalition”) and Nextel Communications, Inc. (“Nextel”) (collectively with the Public Safety Organizations and the Private Wireless Coalition, the “Consensus Parties”) hereby submit

these Supplemental Comments on the Federal Communications Commission's ("the Commission") *Public Notice* regarding the Consensus Plan.'

I. INTRODUCTION AND SUMMARY

On September 23, 2002, the Consensus Parties filed Comments in this Docket on their proposal to realign the 800 MHz Land Mobile Radio band to mitigate CMRS – public safety interference. Since that filing, the Consensus Parties have more fully developed certain aspects of the Consensus Plan, including additional details concerning a number of issues on which the Commission sought comment in its Notice of Proposed Rule Making in this Docket: but that were not completely addressed by the Consensus Parties in their previous filings! Specifically, these Supplemental Comments provide more detail on the following issues:

- Funding the Consensus Plan for 800 MHz Realignment, including funding the costs of all licensees relocating under the Plan.
- The timeline and mechanics for relocating 800 MHz incumbent licensees under the Consensus Plan, for Nextel relocating from and contributing spectrum in the 700 MHz, 800 MHz and 900 MHz bands to enable realignment, and for granting Nextel replacement licenses in the 1.9 GHz band.
- Implementing the Consensus Plan in the border areas adjacent to Canada and Mexico.

²

By Public Notices dated September 6, 2002 and September 17, 2002, the Commission invited comments on the Consensus Plan and other proposals under consideration herein. *See* Public Notice, "Wireless Telecommunications Bureau Seeks Comment on 'Consensus Plan' Filed in the 800 MHz Public Safety Interference Proceeding," DA 02-2202 (rel. Sep. 6, 2002); *see also* Public Notice, "Wireless Telecommunications Bureau Clarifies Scope of Comments Sought in 800 MHz Public Safety Proceeding (WT Docket 02-55)," DA 02-2306 (rel. Sep. 17, 2002).

³

See Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels, Notice of Proposed Rulemaking, 17 FCC Rcd 4873 (2002) ("*NPRM*").

⁴

In their September 23, 2002 Comments, the Consensus Parties stated that they would file at a later date additional details Concerning certain aspects of the Plan, such as funding requirements and border area realignments.

- The rights and obligations of 800 MHz Land Mobile Radio and Commercial Mobile Radio Service ("**CMRS** ") licensees during and after realignment.
- Relocating Southern LINC and non-Nextel Economic Area ("EA") Specialized Mobile Radio ("SMR") licensees from the "new" NPSPAC channels, 806-809/851-854 MHz.

The widely-supported Consensus Plan stands **as** the only proposal that will achieve the Commission's goals in this proceeding; *i.e.*, improving public safety communications at 800 MHz with minimal disruption to incumbent licensees, while making available additional near-term 800 MHz spectrum for public safety communications services.' This supplemental filing addresses the remaining concerns with the Consensus Plan. With this additional information, the Commission has a comprehensive record and a solid basis upon which to move forward expeditiously to adopt and implement the Consensus Plan for improving public safety communications at 800 MHz.

The Consensus Plan is the only proposal before the Commission that enjoys the support of organizations representing over 90 percent of the 800 MHz Land Mobile Radio licensees affected by CMRS – public safety interference. It articulates a comprehensive solution that reflects the participation and contributions of the full range of licensees in the 800 MHz Land Mobile Radio band. All provisions of the Consensus Plan are interrelated, and each of these parts is an essential component of this solution. Every part of the Consensus Plan works with every other part to assure that *no 800 MHz incumbent loses spectrum due to realignment*, while at the same time, implementing the spectrum allocation changes necessary to mitigate CMRS – public safety interference, increasing public safety spectrum at both 800 MHz and 700 MHz, minimizing disruption of incumbent licensees and separating spectrally non-compatible

⁵ *NPRM* at para. 5.

technologies. Any material modification of the Consensus Plan would eliminate the voluntary commitments of and cooperation among the affected licensees indispensable to its successful and expeditious implementation.

In the following section, the Consensus Parties detail financial arrangements for funding the relocation costs of all 800 MHz incumbent licensees required to relocate under the Consensus Plan realignment. Following that section is an executive *summary* of the Consensus Plan setting forth major benchmarks and timelines; subsequent sections provide additional details for implementing the Consensus Plan, including creating representative entities to identify relocation channels, perform frequency coordination, and provide overall guidance for the realignment process. This supplemental filing also sets forth specific realignment plans for the U.S. – Mexico and U.S. – Canada Border Areas, Nextel’s interim use and subsequent return of its 900 MHz licenses to the Commission, and specific provisions for relocating certain unique 800 MHz incumbent licensees.

II. FUNDING INCUMBENT RELOCATION COSTS

A. Nextel’s Funding Commitment

In the Consensus Plan, Nextel agreed to contribute up to \$500 million to cover the costs of relocating 800 MHz public safety licensees consistent with the Plan! In previous comments in this proceeding, the Consensus Parties indicated that they were continuing to discuss the possibility of Nextel or other sources providing funding support for all licensees required to

⁶ Nextel’s funding offer was and is expressly conditioned on the Commission adopting the comprehensive Consensus Plan for correcting CMRS – public safety interference substantially as proposed, including granting Nextel a replacement 10 MHz nationwide CMRS license at 1910-1915/1990-1995 GHz in return for the 700 MHz, 800 MHz and 900 MHz spectrum Nextel would surrender to make realignment possible and thereby mitigating such interference.

relocate to effectuate the Plan: as well as undertaking research to better identify and validate the costs of retuning 800 MHz incumbent licensees consistent with the Consensus Plan.

Nextel, with the cooperation of the other Consensus Parties, has now completed a detailed review of the costs of relocating incumbent 800 MHz public safety licensees both National Public Safety Planning Advisory Committee (“NPSPAC”) and non-NPSPAC, Business and Industrial/Land Transportation (“BELT”) licensees, and high-site *SMR* (“H-SMR”) licensees in accordance with the Consensus Plan. The analysis included collecting detailed information about all incumbent licensees including, but not limited to: numbers of handsets and mobile units in service, types of base station/transceiver equipment deployed, whether handsets and base station equipment can be retuned to the channels specified in the Consensus Plan or require replacement, the availability of crystals, code plugs and other hardware and software required for retuning this equipment, consulting/legal fees, and other actual retuning costs. The analysis also identified procedures and processes for assuring minimal disruption to all incumbents, including temporarily deploying duplicate systems where necessary to prevent downtime, and processes for collecting and retuning handsets consistent with the entity’s daily operating requirements. Appendix A contains a *summary* of the cost information Nextel has collected with the cooperation from the Consensus Parties

Based on the information, analyses and determinations described above, Nextel will fund the required relocation of 800 MHz incumbent licensees pursuant to the Consensus Plan ***up to a total of \$850 million, of which \$700 million is dedicated for public safety licensees and \$150 million is dedicated for non-public safety licensees.*** Nextel’s increased commitment includes funding the relocation costs of all 800 MHz incumbents required to relocate pursuant to the

⁷ See August 7, 2002 Reply Comments of the Consensus Parties at page 19 and the September 23, 2002 Consensus Parties Comments at pages 9-10.

Consensus Plan, not just public safety communications licensees, provided that the Commission grants Nextel a replacement 10 MHz nationwide CMRS license at 1910-1915/1990-1995 GHz in the Report and Order in exchange for the spectrum the Consensus Plan requires Nextel to surrender to effectuate realignment and mitigate CMRS – public safety interference.

The Private Wireless Coalition is highly confident that this commitment will cover the reasonable costs of retuning/relocating B/ILT and H-SMR incumbents to comparable channels in accordance with the realigned non-cellularized channel block at 806-816/851-861 MHz, new Guard Band at 814-816/859-861 MHz, and cellularized channel block at 816-824/861-869 MHz, as set forth in the Consensus Plan. Nextel is also highly confident that its commitment will cover the reasonable retuning/relocation costs of B/ILT and H-SMR incumbents, as described above, as well as the required relocation of 800 MHz incumbent public safety licensees pursuant to the Consensus Plan.

The Public Safety Organizations believe that Nextel's revised funding commitment reflects a reasonable estimate of total costs for public safety licensees, subject however, to several significant variables. In particular, the Public Safety Organizations believe that there continues to be uncertainty as to the number of radios that will need to be replaced as part of the plan, which could have a significant impact on the total costs. The Public Safety Organizations agree with Nextel that the vast majority of radios will not require replacement to accommodate the new frequency assignments. The Public Safety Organizations also believe, however, that a relatively small, *but still uncertain*, percentage of radios in use (specifically, certain older models that may still be in use on NPSPAC systems) may need to be replaced due to reprogramming constraints. The substantial cost difference between replacing and reprogramming a radio is such that small variations in the total number of radios to be replaced will have a significant impact on

the total cost of implementing the Consensus Plan. This uncertainty is mitigated, however, by two factors in the Consensus Plan: (1) the basic requirement that no public safety licensees will be required to move without full compensation, and (2) the requirement that funding be secured to move an entire NPSAPC Region before any moves are initiated in that Region. These factors assure that no public safety incumbent will be required to relocate should Nextel's commitment prove inadequate.

B. Funding Mechanism

In previous filings herein: the Consensus Parties proposed creating an escrow account funded by Nextel to provide security for Nextel's then-commitment of up to \$500 million to cover public safety's 800 MHz relocation costs. Upon further consideration, the Consensus Parties have modified the earlier proposal to provide additional security for Nextel's increased funding commitment consistent with accepted commercial practices, ~~as~~ described below.

The Consensus Parties will establish a Relocation Fund to finance incumbent retuning costs, funded by Nextel, and managed by an independent Fund Administrator acceptable to Nextel, and subject to the reasonable consent of APCO, IACP, IAFC, IMSA, and the Private Wireless Coalition. Nextel has agreed to pay up to \$850 million for the relocation expenses of incumbents required to relocate to carry out 800 MHz realignment consistent with the Consensus Plan. Within five business days of the effective date of the Commission's Report and Order adopting the Consensus Plan (the "Consensus Plan Order"), Nextel will make an initial \$25 million cash contribution to the Fund, and will continue to make periodic contributions so that the Fund Administrator has funds on deposit from which to pay Plan retuning costs.

⁸ See August 7, 2002 Reply Comments of the Consensus Parties at page 2; Nextel's August 7, 2002 Reply Comments at pages 31-32.

In addition, Nextel will make the following arrangements to assure the Commission and incumbent licensees that its funding commitment over the life of the Plan will be satisfied. Nextel will secure its ability to fund the Plan retuning costs by setting up a separate corporate entity(ies), the purpose of which is to hold assets to secure the Nextel funding obligation. The stock of the entity(ies) will be pledged to an escrow agent/trustee, with the power to sell the assets and hold the cash proceeds in escrow for the benefit of the Fund Administrator in the event Nextel fails to meet its payment obligations under the Plan. The assets to be held in the corporate entity(ies) will be the 10MHz of replacement spectrum in the 1.9GHz band for which Nextel will be granted licenses upon the effective date of the Report and Order? Nextel's commitment to the funding is further cemented by its additional, immediate contribution of its 700 MHz band licenses with a minimum value of \$354,711,000.¹⁰

III. CONSENSUS PLAN -- EXECUTIVE SUMMARY

As the Consensus Parties have explained in their previous filings, the Consensus Plan recognizes that the underlying cause of CMRS – public safety interference is the Land Mobile Radio Band's mixed spectrum allocation for different communications services with conflicting

⁹ Nextel reserves the right to use the pledged spectrum during the duration of the Plan, and the right at any time to contribute cash or cash equivalents to the escrow in place of the pledged spectrum (for example, irrevocable letters of credit issued by one or more domestic banks whose deposits are federally insured) equal to the amount of its then remaining funding obligations or, with the reasonable consent of the Consensus Partners whose interests remain affected, securities or other assets with value equal to or greater than the amount of those remaining funding obligations. Nextel also reserves the right to remove excess collateral from the Plan as its obligations are reduced.

¹⁰ Nextel purchased its 700 MHz spectrum in two separate auctions, once in September 2000 and the other in February 2001. Nextel also acquired two 700 MHz Guard Band licenses I March 2002 for a total sum of \$354,711,000. Nextel's surrender of this spectrum to the Commission as it receives the 10MHz 1.9 GHz license at the commencement of the realignment plan further evidences its commitment to the plan and to funding incumbent relocation expenses.

design principles and communications goals.” Complicating this reality is the adjacency of the upper end of the Land Mobile Radio Band to the spectrum allocated for the two Cellular Telecommunications Service providers in each market, at 824/869 MHz. The fundamental remedial action necessary to correct CMRS – public safety interference at 800 MHz is to separate high-site and low-site system architectures into two distinct spectrum blocks, with the low-site block adjacent to the architecturally compatible Cellular allocation. Accordingly, the Consensus Plan would create two blocks of contiguous spectrum in the 800 MHz Land Mobile Radio Band: a 20 MHz block for non-cellularized (high-site, high-power) operations, and an adjacent 16MHz block for cellularized (low-site, low-power) system architecture.”

The new non-cellularized block would be composed of three band segments. First, the lower 6 MHz, 806–809/851-854 MHz (channels 1-120), would be cleared for relocating the current NPSPAC licensees at 821-824/866-869 MHz (channels 601-720) that is currently adjacent to the Cellular-A Block.¹³ This would occur during Phase I of the realignment process, as discussed further below. Second, the 10 MHz of spectrum at 809–814/854–859 MHz (channels 121-320) would remain allocated to interleaved non-NPSPAC public safety, B/ILT

¹¹ See Consensus Party August 7, 2002 Comments at pages 8-9, and Consensus Parties September 23, 2002 Comments at page 5.

¹² Throughout this proceeding, commenters have referred to the 800 MHz band and both existing and proposed sub-bands therein variously by 800 MHz channel numbers and by megahertz designation. This filing primarily uses channel numbers in describing the relocation process. For ease of reference, Appendix B hereto provides a chart setting forth the 800 MHz band segments at issue herein by both megahertz range and channel numbers.

¹³ For consistency, the Consensus Parties have used channel designations in 25 kHz increments. Thus, while the NPSPAC spectrum band is defined in the Commission’s Rules as starting at channel 601 and continuing to channel 830, the Consensus Parties have converted these channel designations to 25 kHz equivalents to make the channels consistent with the remainder of channels in the 800 MHz band.

and H-SMR incumbents; these systems have operated and can continue to operate in interleaved spectrum without mutual interference. No incumbent licensee, other than Nextel, would be required to relocate from these frequencies. Third, a 4 MHz “Guard Band” would be created at 814-816/859-861 MHz (channels 321-400) and assigned primarily to campus-type B/ILT systems and other “interference-resistant” BDLT and high-site SMR systems.¹⁴ *Under the Consensus Plan, over 70% of all high-site SMR and B/ILT incumbent licensees would not be relocated;* those that would be retuned (incumbents in the 1-120 channel block) would remain at 800 MHz.¹⁵

Phase II of the Consensus Plan involves moving the NPSPAC licensees as a group from their current assignments to the new NPSPAC channels. Moving the NPSPAC licensees in a block retains the spectrum licensing and spectrum use efficiencies developed over the past decade by the NPSPAC regional planning committees. Thus, NPSPAC licensees would relocate as a group 15 MHz lower to preserve the license assignments developed under each of the 55 NPSPAC regional plans and to be adjacent to future Public Safety allocations in the 700 MHz

¹⁴

Public safety incumbents will have the option to relocate from the new Guard Band to the interleaved spectrum at 809-814/854-859 MHz. Such public safety incumbent relocation will be eligible for reimbursement from the Relocation Fund. The Relocation Coordination Committee (“RCC”), as discussed herein, will consider requests by non-public safety systems licensed in the Guard Band to relocate outside of the Guard Band should a particular licensee demonstrate that the nature of its operations would significantly benefit from relocating out of the Guard Band. These non-public safety licensees would be responsible for all of their own relocation costs and would not be eligible to receive reimbursement from the Relocation Fund. The RCC would generally assign such Guard Band licensees replacement channels that would not otherwise become available for exclusive public safety licensing (i.e., not channels vacated by Nextel.)

¹⁵

Remaining at 800 MHz minimizes the cost and disruption of relocating these licensees since, in the vast majority of cases, their existing equipment can be easily retuned within the 800 MHz band. Some of the other proposals before the Commission would require relocating the vast majority of B/ILT incumbents, in some cases to 900 MHz, or even the more drastic proposal of relocating all of Public Safety to 700 MHz, causing billions of dollars in new equipment with no identified funding.

band. The old NPSPAC channels would then become part of the low-power spectrum block at 816 – 824/861 – 869 MHz (channels 401-720). Licensees such as Nextel, currently operating in the non-cellularized block using a cellular, low-site architecture, would move up to the cellularized block in exchange for their existing authorizations.¹⁶

Implementing the Consensus Plan will require Nextel to relocate at least twice: first, by swapping out channel 1-120 incumbents to Nextel assignments in the 121-400 channel block; and second, by relocating from the 1-120 channel block (and any remaining assignments in the 121-400 channel block) to the then-vacated old NPSPAC channels at 821-824/866-869 MHz. No other 800 MHz incumbent licensees will have to relocate a channel more than once to implement the Consensus Plan.

Under the terms of the Consensus Plan, relocation planning and implementation would occur on a regional basis using the 55 NPSPAC Regional Planning Areas established by the Commission.” Phase I relocations would not commence within a Region unless full funding for

¹⁶

As discussed herein, the Consensus Parties propose that incumbent licensee Southern LINC be permitted to continue to operate cellular mixed high-site and low-site architecture in the non-cellular block in its current geographic service area with certain safeguards against CMRS – public safety interference.

¹⁷

In 1986, the Commission released the then-reserved channels at 821-824/866-869 MHz for public safety use. See Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems, Amendment of Parts 2, 15, and 90 of the Commission's Rules and Regulations to Allocate Frequencies in the 900 MHz Reserve Band for Private Land Mobile Use, Amendments of Parts 2, 22, and 25 of the Commission's Rules to Allocate Spectrum for, and to Establish Other Rules and Policies Pertaining to the Use of Radio Frequencies in a Land Mobile Satellite Service for the Provision of Various Common Carrier Services, Report and Order, 2 FCC Rcd 1825, ¶ 99 (1986) ("NPSPAC Order"). The Commission created 55 Regional Planning Areas for these channels and required the establishment of Regional Planning Area Committees to coordinate the licensing of these channels, including prioritizing competing needs for public safety communications within each region. The Consensus Plan would preserve the licensing priorities and efficiencies realized by these Committees over the past 15 years.

all Phase I relocations within the Region is committed and available; the same pre-funding commitment requirement would apply in Phase II. Nextel is committing funds sufficient to implement and complete the relocations required by the Consensus Plan, as discussed in Section I, *infra*. In addition, a region-by-region relocation process provides additional assurance that no incumbent licensees will be required to relocate within a Region, under either Phase I or Phase II, unless funding is available for all of the licensee relocations required in that Region.

After completing the realignment and relocation process in each NPSPAC region, including licensing and relocating Nextel's assignments from the non-cellularized block to the old NPSPAC channels, any remaining 800 MHz spectrum vacated by Nextel in the non-cellularized block and any remaining white space on Public Safety Pool channels would be available exclusively for public safety use for five years. After this five-year period, any of the 800 MHz non-cellularized block channels vacated by Nextel (other than Public Safety Pool channels) that have not been licensed to public safety communications providers will become available for licensing to B/ILT and high-site SMR eligibles, as well as public safety communications entities.¹⁸

¹⁸ There is one clarification to the above: either B/ILT or Public Safety applicants may, after completion of the Consensus Plan realignment in a market, file applications for new licenses on unlicensed ("white space") BALT Pool channels in the new Guard Band that had been vacated by B/ILT licensees electing to relocate to channels 120-320 or 900 MHz (i.e., not Nextel). Public Safety applicants would be eligible for such Guard Band BALT channels only upon a showing that no 800 MHz Public Safety Pool channels are available to satisfy their requested use. The Consensus Parties also note that B/ILT licensees electing to relocate voluntarily out of the Guard Band to channels 121-320 would, whenever possible, be assigned to channels that would not otherwise be subject to the five-year exclusive period for public safety applications.

The Consensus Plan calls for the Commission to redesignate Nextel’s 700 MHz Guard Band spectrum, 4 MHz virtually nationwide”, for public safety use, and Nextel’s 4 MHz of 900 MHz SMR spectrum to BLLT and high-site SMR operations. The Consensus Plan offers an incentive for 800 MHz BLLT and high-site SMR incumbents to relocate voluntarily to 900 MHz by offering them an eventual 50 kHz channel assignment for each 25 kHz 800 MHz channel vacated. This option is intended to encourage B/ILT and high-site SMR operators desiring additional spectrum and/or contemplating equipment change outs to move expeditiously to 900 MHz, thereby reducing congestion on the 800 MHz band and creating additional “green space” to facilitate the realignment process.”

To make 800 MHz realignment possible, Nextel will also contribute a running average of 2.5 MHz at 800 MHz for accommodating the relocations of non-cellularized systems and for making additional 800 MHz spectrum available for public safety communications systems. Nextel will also contribute up to \$850 million for funding public safety and private wireless incumbent relocations. The Consensus Plan calls for Nextel to be made whole on a spectral basis by the Commission assigning Nextel, as part of the Report and Order in this proceeding, a nationwide license for 10 MHz of paired spectrum at 1910-1915/1990-1995 MHz for CMRS services.

¹⁹ In 92 of the top 100 cities nationwide, Nextel is the 700 MHz Guard Band licensee for the 4 MHz block. Nextel’s 700 MHz licenses cover 94% of the U.S. population.

²⁰ In the context of this document, “green space” refers to spectrum that incumbent licensees will vacate to make way for relocating other incumbents to effectuate 800 MHz realignment. “White space” refers to spectrum available for initial licensing either now, prior to realignment, or at the completion of the Consensus Plan realignment.

Thus, to summarize, the Consensus Plan for improving public safety communications at 800 MHz consists of the following basic actions. Each is described in detail in the following sections of this filing.

- *Phase I:* All non-Nextel incumbents relocate from channels 1-120 to comparable channels licensed to Nextel (or if necessary to “white space”) in the non-cellular block (channels 121 – 400) on a 1:1 swap basis in each NPSPAC Region; Nextel temporarily exclusively occupies channels 1- 120.
- B/ILT and high-site SMR incumbents voluntarily relocating to 900 MHz will be relocated during Phase I or as quickly as possible thereafter.
- *Phase II:* On a region-by-region basis, all NPSPAC licensees relocate to channels 1-120 through 1:1 channel swaps with Nextel, maintaining existing co-channel separation and Regional Plan assignments (Regional Planning Committees can modify Plans prior to relocation to improve spectrum efficiency), and resulting in Nextel relocating to the vacated “old NPSPAC channels,” (channels 601-720). Incumbent public safety licensees in the new 800 MHz Guard Band (channels 321 – 400) have the option of relocating to Nextel assignments (or if necessary public safety pool “white space”) in the non-cellular block outside the Guard Band (channels 121 – 320).
- Nextel vacates any remaining incumbency in the non-cellular block; the resulting “white space” vacated by Nextel is available only to public safety applicants for five years.

IV. THE CONSENSUS PLAN – A DETAILED FRAMEWORK FOR 800 MHz REALIGNMENT

A. Overview

The NPRM requested comment on how “a proposal for reconfiguration of the 800 MHz land mobile band . . . would be implemented.”²¹ The Consensus Parties now provide a detailed schedule and procedures for the 800 MHz incumbent relocations required under the Consensus Plan. The Consensus Plan would expeditiously realign the Land Mobile Radio band with minimal disruption to incumbent licensees, as described further below and detailed in the “800 MHz Realignment Draft Rule Framework” (“Realignment Framework”), attached as Appendix

²¹ NPRM at para. 32.

C . A chart depicting each of the realignment steps detailed below and the associated timeline for each step is included at Appendix D. The Consensus Parties urge the Commission to incorporate this comprehensive realignment framework into its Report and Order in this proceeding.

To facilitate the relocation process, the Consensus Parties recommend creation of a “Relocation Coordination Committee” (“RCC”) to carry out certain frequency designation and coordination, dispute resolution and licensing application responsibilities during the realignment process.²² The RCC would oversee the realignment process generally, and through constituent committees, develop and certify to the Commission the relocation plans for both Phase I and Phase II of the realignment process. The RCC should be representative of all 800 MHz incumbents subject to relocation under the Consensus Plan, such as public safety licensees, private land mobile radio licensees including utilities, traditional commercial operators (“H-SMRs”) and Nextel. While the RCC should be representative of the various categories of 800 MHz licensees and end users, it need not include a representative for every type of licensee and end user. The RCC should be sized to incorporate the skill sets and licensing knowledge critical to implementing and completing the Consensus Plan realignment quickly and efficiently. The Consensus Parties intend that the RCC remain small enough to work efficiently and respond quickly to resolve relocation issues.

Accordingly, the Consensus Parties recommend that the Land Mobile Communications Council (“LMCC”) be asked to designate from among its membership four members of the five-member RCC. The LMCC is a nonprofit association representing nearly all of the diverse

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The reasonable expenses of the RCC and its private wireless and public safety members are eligible for compensation from the relocation fund.

interests in the land mobile telecommunications sector, such as public safety, industrial/land transportation, private radio, specialized mobile radio and utilities. Two designees would represent public safety licensees, two would represent private wireless licensees. The final RCC member would be Nextel – the holder of the largest number of licenses in the band and the licensee that will relocate more often than **any** other in this process.²³

As part of its responsibility for generally overseeing 800 MHz realignment the RCC would, as one of its first actions, prioritize the 55 NPSPAC Regions for realignment relocations in descending order of population as modified to give relocation priority to those Regions with the greatest incidence and severity of **CMRS – public safety interference**.²⁴ The RCC will also be responsible, during the realignment process, for working with public safety licensees constructing new communications systems to have them built on their post-alignment channels wherever possible, rather than on their current channel assignments. The Consensus Parties recognize that some 800 MHz licensees, including a number of public safety communications licensees, plan to commence new 800 MHz system deployments during the proposed relocation period. Some wide-area; *i.e.*, statewide public safety communications networks, have already commenced construction and have scheduled phased deployments over the next several years. The Consensus Parties recommend that the Commission direct such licensees, from the effective date of the Report and Order herein, to construct such stations and systems on the channels they will be licensed on post-realignment, to the extent possible, thereby avoiding the unnecessary

²³ Further details of the RCC’s structure are described at Appendix C, Section I. E.

²⁴ Appendix E provides a sample realignment prioritization of the 55 NPSPAC Regions in accordance with the criteria set forth above. A final priority determination would be made by the RCC taking into account existing inter-regional planning and the benefits and costs of relocating incumbent licensees within certain adjoining regions simultaneously.

cost and inconvenience of relocating such recently-constructed facilities. Accordingly, the RCC would be responsible for working with such incumbents, and the current licensees of the channels to which they will be relocated, to arrange their initial construction and deployment on the realigned channels whenever possible. Constructing new systems on the realignment channels will facilitate the overall realignment process, reduce realignment costs, and minimize the disruption of incumbent licensee services, consistent with the Commission's objectives as articulated in the Notice."

B. Phase I of the Realignment Framework Clearing Incumbents from the New NPSPAC Block

Phase I of the Realignment Framework would begin on the effective date of the Report and Order of this proceeding and be completed within 33 months. During Phase I, all incumbent licensees would relocate out of the new NPSPAC Block at 806-809/851-854 MHz (channels 1-120). Incumbent public safety licensees at 806-809/851-854 MHz would be relocated either to spectrum vacated by Nextel in the non-cellularized block at 809-814/854-859 MHz (channels 121-320), or to currently unlicensed Public Safety Pool spectrum in that band segment. B/ILT and high-site SMR licensees at 806-809/851-854 MHz electing to remain in the 800 MHz band would be moved either to spectrum given up by Nextel at 814-816/859-861 MHz (the "Guard Band" channels 321-400) or, if there is insufficient spectrum in the Guard Band, to the Nextel-vacated or otherwise available B/ILT pool channels in the non-cellularized band at 809-814/854-859 MHz (channels 121-320).

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See e.g., NPRM at para. 2. Consistent therewith, the Consensus Parties note that some public safety systems and wide-area private licensees operate across NPSPAC Region boundaries. Public safety systems that cross NPSPAC boundaries will retune once -- they would not have to partially retune for one Region, and then complete retuning for the portion of their system that lies in a different Region. Certain wide-area private systems will be retuned in whole prior to beginning region-by-region retuning, as discussed *infra*.

These relocations will be achieved through channel exchanges with Nextel as described above. To guide this process, the RCC would establish a Phase I Planning Committee. The Phase I Planning Committee shall be appointed by and responsible to the RCC, and will be composed of one RCC-member representative each representing (1) a public safety certified frequency coordinator; (2) a B/ILT certified frequency coordinator; and (3) Nextel. Both the public safety and B/ILT certified coordinators so selected must have extensive prior experience in the planning and coordination of 800 MHz radio systems. The experience and reputation of the Phase I Planning Committee members is important to ensure that incumbent licensees have a high degree of confidence that their interests are being considered in the channel relocation process.

The Phase I Planning Committee will act by consensus. Among other things, the Phase I Committee must review each channel designation to assure that the selected channels for each relocatee will not create or receive harmful co-channel interference for the relocatee, or for channels 121-400 non-cellular block incumbents, particularly public safety communications incumbents and other incumbent licensees providing communications used for protecting life, health and property.

To facilitate this process, the Commission must require all channel 1-120 incumbents in NPSPAC regions 1-14, as prioritized by the RCC,²⁶ to provide to the Commission and to the

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The Consensus Parties have used the NPSPAC Planning Region prioritization set forth in Appendix E as *the* basis for allocating realignment resources and establishing manageable timelines for relocating 1-120 block incumbents in Phase I, and NPSPAC channel incumbents in Phase II. The first 14 regions include approximately half of the total number of incumbent systems that must be retuned in the 1-120 channel block, and the NPSPAC block, respectively. Accordingly, the Consensus Parties propose retuning in Phase I all 1-120 channel block incumbents in regions prioritized 1-14 first, followed by retuning of all 1-120 channel block incumbents in the regions prioritized 15-55. Similarly, in Phase II, the Consensus Parties would retune current NPSPAC incumbents in regions prioritized 1-14 first, followed by the NPSPAC

RCC a full description of their licensed systems as specified in Appendix C, within 45 days of the effective date of the Report and Order herein.²⁷ The Commission's Rules should be amended, **as** may be necessary, to provide for the confidentiality of this information and limit its use by the RCC and its constituent committees, or any participant thereto, solely to the frequency coordination and frequency planning activities necessary to complete 800 MHz **realignment**.²⁸

Based on this information, the Phase I realignment process would proceed as follows. First, within 90 days of the effective date of the Report and Order, the Phase I Committee would establish a plan for relocating the 13 non-Nextel incumbent constructed EA licensees in the 1-120 channel block to comparable existing Nextel EA licenses in channels 121 - 400.²⁹ The goal of the Consensus Plan is for all non-Nextel EA licenses in channels 1-120 to be exchanged for Nextel EA licenses in channels 121-400.³⁰ At the same time, the Phase I Committee would also

incumbents in regions prioritized 15-55. If the RCC significantly revises the NPSPAC Planning Regions prioritization in Appendix E, the realignment plan may have to be revised accordingly to maintain a manageable number of incumbent relocations in each timeframe.

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The Consensus Parties request that the Rules adopted in this proceeding provide for the Commission to issue, within five days of the effective date of the Report and Order, a Public Notice directing channel 1-120 non-Nextel incumbents (including the EA and wide-area licensees discussed below) to provide this information to it and to the RCC. The Public Notice would also direct the RCC to send the Public Notice to each affected 1-120 licensee, by certified mail, return receipt requested, or other proof of delivery service.

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The same confidentiality provisions should apply to the system information necessary for retuning provided by incumbent NPSPAC licensees and public safety Guard Band licensees.

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Thirteen entities other than Nextel hold EA licenses in the 1-120 channel block. Nearly all of the 13 licensees hold more than one EA license.

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EA licensees moving from channels 1-120 will receive spectrum equivalent to their current channels; *i.e.*, (1) comparable incumbency; and (2) contiguous channels to the extent available. In very few EAs, however, there may not be enough Nextel EA licenses in channels 121-400 to accommodate all 1-120 block relocating EA licensees. In such cases, non-Nextel EA licensees unable to relocate to channels 121-400 would have two alternatives available to them: (1) remaining in their current spectrum in the 1-120 channel block, subject to consent of the

establish a relocation plan for incumbent licensees operating certain wide-area systems that span multiple NPSPAC regions; *i.e.*, incumbents operating across more than three states with more than 400 channels?’ The Phase I Committee would then certify to the Commission the clearing plans for these licensees.³²

Slotting first the relocations of EA and wide-area incumbent licensees will simplify the region-by-region relocation process by taking these more complex relocations “off the table” and clarifying destination channel availability; attempting to fit them in later could require substantial reworking of regional relocation plans. Accordingly, the Consensus Parties would identify first the channel swaps necessary for these incumbents to best facilitate the overall clearing of the 1-120 channel block. Non-Nextel 1-120 channel block EA licensee relocation costs, as well as those of the wide-area licensees, will be covered in the same manner as any other relocating 1-120 incumbent.

appropriate NPSPAC regional committee(s); or (2) relocating to channels in the cellularized spectrum. Where a non-Nextel EA licensee selects this second option and moves to the cellularized spectrum block, it would be given contiguous spectrum comparable to the existing “white space” on its current EA licensed frequencies and would be reassigned to the lowest channels available beginning with channel 401. The non-Nextel EA licensee would have rights to the same geographic area and amount of spectrum as it has under its current license.

³¹ Specifically, this category includes 1-120 incumbents Entergy, American Electric Power, Motient and Southern LINC; the latter two are also EA licensees.

³² The RCC would not, however, seek Commission approval of the plans; instead, the RCC would, upon completion of negotiations between Nextel and each channel 1-120 incumbent as to timing and relocation costs, submit reciprocal assignment applications for each channel exchange necessary to complete Phase I relocations. These applications would be placed on 30-day Public Notice giving any parties with standing the opportunity to oppose any specific channel swap.