

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

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)	
)	
To: The Commission		

COMMENTS OF THE CITY OF BALTIMORE, MARYLAND

1. The City of Baltimore, Maryland ("Baltimore City") here by submits these Comments in response to the Commission's public notice of January 3, 2003 (DA No. 03-19) in the above-captioned proceeding. Baltimore City filed initial comments on May 6, 2002, reply comments on August 7, 2002 and Supplemental Comments on September 23, 2002. These Comments address the Supplemental Comments ("Supplement") of the Private Wireless Coalition and Nextel Communications, Inc. (collectively referred to as the "Consensus Parties"), filed on December 24, 2002.

2. Baltimore City appreciates the magnitude of the work the Consensus Parties have undertaken to craft the Consensus Plan¹ and Supplement (collectively referred to as the "Plan"), particularly given the short time period within which they were developed. However, Baltimore City continues to believe that the Plan is premature and cannot be adopted in its current form, because the scope of the interference problem has not been sufficiently investigated, and the cause has not been accurately enough determined, to justify the adoption of a remedy as drastic as band realignment. Only

¹ Reply Comments of The Association of Public-Safety Communications Officials-International, Inc., the International Association of Chiefs of Police; the International Association of Fire Chiefs, Inc. and International Municipal Signal Association *et. al.*, to Notice of Proposed Rulemaking in WT Docket No. 02-55 (August 7, 2002) (hereinafter "Consensus Plan").

after the extent of the interference problem has been clearly defined can it be determined whether it is necessary to realign the 800 MHz band. Prior to any band realignment, the Commission should focus on enforcing its existing rules, and only if interference continues should the Commission consider going so far as to realign the band. If, after careful consideration, the Commission finds the record supports realignment of the 800 MHz band, it must adopt a plan that protects incumbent licensees' current operations. The Commission cannot accept the Plan in its current form for several reasons: (1) the plan's funding mechanism is lacking and does not explain how Public Safety systems will be retuned without interruption; (2) the Plan does not establish that retuned parties will be protected from future interference; (3) the proposed forced migration policies are against public policy and without legal basis; and (4) the Plan does not adequately protect the interests of Public Safety licensees and does not recognize that it is a matter of life and death that Public Safety operations not be interrupted during the realignment process.

The Scope of the Interference Problem Must Be Fully Explored Prior to Realignment.

3. The current record has not established that the interference problem is so pervasive as to require a nationwide retune of the 800 MHz band. Baltimore City recognizes that interference must be eliminated in the affected areas; however, Baltimore City also believes that the full scope of the interference problem must be established before the entire band is realigned. It is possible that much of the interference would be eliminated if the Commission enforced its existing rules and licensees followed the Best Practices Guide.² At a minimum, strict enforcement of existing rules should be implemented before the entire 800 MHz band is realigned.

² See *Avoiding Interference Between Public Safety Wireless Communications System and Commercial Wireless Communications Systems at 800 MHz – A Best Practices Guide*, December 2000 (“Best Practices Guide”).

Any Adopted Realignment Plan Must Ensure There is No Post-Alignment Interference.

4. Baltimore City believes that if the Commission determines that realignment of the band is necessary, the realignment plan must ensure that the interference problem will be eliminated and will not creep back up a few years down the line. It would be a great waste of time and resources if the 800 MHz band were realigned, and the existing NPSPAC licensees were retuned, only to find that Public Safety entities operating in the new NPSPAC band were once again subject to harmful interference. New interference would be particularly troubling for Baltimore City since the City is not currently experiencing detrimental interference.

The Plan Does Not Include Assurances
That Adequate Funding Will Be Available To Complete the Retune.

5. The Consensus Parties' original Plan proposed that before any retuning began, Nextel would put \$500 million in escrow to fund Public Safety realignment. While the Supplement proposes to make \$850 million in funding available (\$700 million for Public Safety licensees and \$150 million for other relocating licensees)³ the Supplement proposes only that Nextel make voluntary periodic contributions to the relocation Fund. The Supplement does not propose to require Nextel to contribute, nor does it establish that the Commission has the legal authority to compel Nextel to make these payments. Nextel's pledge is entirely voluntary. This funding mechanism is unacceptable. The Supplement does not include contingencies should the \$700 million pledged by Nextel be insufficient to retune all Public Safety systems, nor does it include assurances that Nextel will contribute to the fund,

³ Nextel initially agreed to commit \$500 million dollars to cover the costs of retuning Public Safety operations. Now, Nextel has committed a total of \$850 million to cover the costs of retuning Public Safety and other 800 MHz operators, but only if the Commission grants it a 10 MHz nationwide CMRS license. The Plan fails to address how the Commission is authorized to grant Nextel this license

nor does it provide any contingencies should Nextel be unable or unwilling to make the pledged contributions.

6. Furthermore, the Supplement itself recognizes that the \$700 million pledged by Nextel may not be sufficient to retune all Public Safety entities.⁴ What happens if only regions prioritized 1-14 are relocated to the new NPSPAC band before the Fund runs out of money? Will regions prioritized 15-55 be left without the resources to move? Will the NPSPAC band remain bifurcated, with some licensees remaining in the existing NPSPAC band and others in the new band, or will some licensees be forcibly retuned? If they are forcibly retuned, who will pay for the move? These are significant unanswered questions that must be addressed before a realignment plan is adopted.

7. Baltimore City cannot and should not be expected to fund the retune of its 800 MHz system. All of the costs associated with any retune must be funded by an outside source. The initial Consensus Plan proposed that if the funds pledged by Nextel are insufficient to cover all of a public safety's retuning costs, the Public Safety entity would have an incentive to "seek other sources of funding."⁵ The Supplement thus on its face recognizes that Nextel's pledge money may be insufficient to cover the costs of retuning all Public Safety systems,⁶ yet it does not propose a solution to the problem. Baltimore City does not have the resources to raise the funds needed to retune its system. The Plan's funding mechanism is inadequate and cannot be relied upon to fund the retune of all Public Safety systems.

without an Act of Congress.

⁴ Supplement at p. 7.

⁵ Consensus Parties' Plan at p. 20.

⁶ Supplement at p. 7.

The Plan Fails To Address How Public Safety Systems
Will Be Retuned Without a Redundant System and Without Interruption.

8. While the Supplement states that “a number of operators [believe] that continuous, reliable communications can be maintained without constructing a parallel, interim duplicate system”⁷ the Plan does not explain how Public Safety systems will be transitioned seamlessly without system interruption or degradation. The Consensus Parties fail to explain how Baltimore City’s system, or any other Public Safety system, can be seamlessly retuned without constructing a fully redundant system. The Plan also fails to address Baltimore City’s concerns that not all 800 MHz channels are the same. While the Plan may predict that the replacement channels will meet the city’s current service contour, there are no safeguards to ensure this is the case. Baltimore City continues to stress the critical importance of continuous full service throughout its existing service contour. Baltimore City’s police, fire, and Public Safety officials cannot afford to miss or drop a single emergency call. Unlike some other situations where the Commission has relocated incumbent operators, there is zero margin for error, as lives and safety are at stake.

The Forced Migration of Public Safety Systems is
Against Public Policy and Without Legal Basis.

9. The Plan recommends that the Commission adopt rules forcing the migration of Public Safety entities to new channels if they are unable to reach an agreement with Nextel during the mandatory negotiation period or a public safety’s system is not retuned within thirty-three months of the release of the Report and Order in this proceeding.⁸ The proposed forced migration policy also

⁷ Consensus Plan at Appendix A, note 3.

⁸ The Supplement proposes that timelines be based on the release of the Report and Order in this proceeding. However, it is likely that any rules adopted in this proceeding will be subject to a court challenge. If the Commission were to adopt timelines for implementation of the proposed realignment, those timelines should be based on the latter of the effective of new rules or Report and Order

proposes rules that would involuntarily cancel a public safety entity's license or reduce the license to secondary status if the system's retune is not completed within a specified time frame. Essentially, under this proposal, an incumbent Public Safety licensee could be involuntarily forced to move to new frequencies or face cancellation, even if the delay were due to the acts of third parties over which the licensee had no control. This proposal is wholly unacceptable and flies in the face of Section 303(m) of the Communications Act, which requires the Commission to provide licensees with notice and an opportunity for hearing prior to license suspension.⁹ Under no circumstances should a Public Safety licensee be faced with the possibility of losing its license or having its license reduced to secondary status.

Binding Arbitration To Resolve Disputes Is Unacceptable for Public Safety Entities.

10. The Supplement proposes that relocating licensees be required to enter into binding arbitration with Nextel if they cannot reach an agreement on retuning terms and conditions. However, the Supplement fails to explain where the Commission has the authority to require binding arbitration. Even if the Commission did have the authority to require binding arbitration, the RCC, which includes Nextel as its member, should not have the sole discretion to choose the arbitration panel. It is a conflict of interest for the Nextel to be a member of the committee responsible for forming the panel that will arbitrate disputes with incumbent licensees. If Nextel is to be given the opportunity to vote on who will arbitrate these disputes, relocating licensees should be given the same opportunity. Baltimore City believes that if the Commission claims the authority to require binding arbitration, each party should have the opportunity to elect one member to the panel and the parties should mutually agree upon the third member.

becoming final, not upon its release.

The Plan Should Not Confine Public Safety Entities to Existing Technologies.

11. The Consensus Plan is premised on segregating systems with relatively high-powered centralized transmitters from those with lower powered cellularized transmitters. By placing Public Safety entities currently using centralized systems into a band reserved for the former category, it would restrict the ability of these systems to adopt new technologies to improve coverage. For example, Baltimore City's system currently uses several transmitters and essentially falls somewhere in between the single transmitter and cellularized configurations. It would be against the public interest if the Plan left Baltimore City unable to improve coverage of critical areas of its jurisdiction by installing fill-in base stations.

Conclusion

12. The record in this proceeding and the Plan in its current form contain too many uncertainties and too many unanswered questions to be adopted by the Commission. The record has not adequately established that there is a pervasive interference problem that requires a plan as drastic as the Consensus Plan; nor is Baltimore City satisfied that the process of moving its system to new channels would be adequately funded, would not result in dangerous service interruption, and would result in a system as good as the one that is now in place. There is much to investigate with existing operations before any serious thought should be given to a controversial and disruptive reorganization of the 800 MHz band. The risks of band realignment are enormous, and the need seems to be driven as much by

⁹ 47 U.S.C. § 303(m).

Nextel's desire for new spectrum as an interference problem that might be resolved by more careful attention to good engineering practices.

Respectfully submitted,

/s/ Tara B. Shostek
Peter Tannenwald
Tara B. Shostek

Irwin, Campbell & Tannenwald, P.C.
1730 Rhode Island Ave., N.W., Suite 200
Washington, DC 20036-3101
Tel. 202-728-0400
Fax 202-728-0354

February 10, 2003

Special Counsel for the City
of Baltimore, Maryland