



American Water Works Association

*Dedicated to Safe Drinking Water*

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February 20, 2003

Secretary, Marlene H. Dortch  
Office of the Secretary  
Federal Communications Commission  
445 12<sup>th</sup> St., S.W.  
Washington, DC 20554

RE: Improving Public Safety Communications in the 800 MHz Band and Consolidating  
the 900 MHz Industrial / Land Transportation and Business Pool Channels  
(Proceeding 02-55)

Dear Secretary Dortch:

On April 5, 2002, the Federal Communications Commission (FCC) published a Notice of Proposed Rule Making (NPRM) entitled Improving Public Safety Communications in the 800 MHz Band and Consolidating the 900 MHz Industrial / Land Transportation and Business Pool Channels. AWWA submitted comments in response to that NPRM. On December 24, 2002, a group of private interests submitted supplemental comments, which on January 3, 2003, the FCC deemed worth of public comment.

In AWWA's initial comments filed September 23, 2002, to this docket, the Association urged the FCC to promote a broad stakeholder discussion with relevant parties in order to resolve technical issues resulting in interference in the 800 MHz band. The group of private interests that submitted supplemental comments does not reflect a "consensus" group of licensees in the affected band. The FCC's current process fails to ensure a broad discussion of pertinent technical issues in a forum where all parties are represented equally and treated fairly.

The American Water Works Association (AWWA) is a member of United Telecommunication Council (UTC) and the Critical Infrastructure Coalition (CIC) and endorses the comments submitted by UTC in response to the Agency's initial public notice and the January 3, 2003, request for comment.

Secretary, FCC  
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Please contact me or Steve Via at (202) 628-8303 if you would like to discuss the attached.

Best regards,

/ signed 2-20-03 /

Thomas W. Curtis  
Deputy Executive Director

cc: Maria Ringold

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

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

**To: The Commission**

**REPLY COMMENT**

**American Water Works Association**  
Thomas W. Curtis  
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Dated: 20 February 2003

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## **Introduction**

The American Water Works Association (AWWA) is an international, nonprofit, scientific and educational society dedicated to the improvement of drinking water quality and supply. Founded in 1881, the Association is the largest organization of water supply professionals in the world. Our 57,000 plus members represent the full spectrum of the drinking water community: treatment plant operators and managers, environmentalists, scientists, academicians, and others who hold an interest in water supply and public health. Our membership includes approximately 4,300 water systems that supply water to roughly 80 percent of the people in the nation.

AWWA's utility members rely on wireless, internal communication systems to operate effectively and efficiently and to ensure the public's health and safety by providing drinking water that meets or surpasses federal drinking water quality standards and by providing water for fire suppression, sanitation, and commerce. Some of AWWA's members are licensees within the Business, Industrial & Land Transportation, and Public Safety allocations in the 800 MHz band.

AWWA has commented previously to the Agency on the lack of available spectrum for critical voice and data systems used by drinking water suppliers, the critical infrastructure in ensuring public safety, and interference affecting critical infrastructure systems.

## **Decision Process Must Have Basis in Law**

The Administrative Procedures Act (APA) provides the basis for dialog between private interests and regulatory agencies when a rulemaking is ongoing. There are specific provisions for the formation of committees known as Federal Advisory Committees (FACAs) when there is a need for a fair and open discussion of issues that affect a cross-section of stakeholders with different financial and/or policy interests. In particular APA provides policies and procedures for regulatory negotiations where all parties can reach agreement on the specific provisions of a regulatory construct.

The FCC's ongoing request for comments will not repair the damage inflicted on parties not present "at-the-table" when the Private Wireless Coalition (PWC) negotiated the band plan released for public comment January 3, 2003. AWWA has participated in numerous FACAs and

been involved in regulatory negotiations organized under APA. Neither PWC nor any other member of the “consensus plan” participants represent an important stakeholder in this issue, community water systems, moreover, the FCC’s reliance on the PWC discussions to support the current request for comments does not comply with the spirit or intent of APA.

### **Need for Restructuring**

As evidenced by the comments submitted to the FCC in WT Docket 02-55 a significant component of the licensees affected by this proceeding disagree with Nextel’s and other’s quick conclusion that re-banding is the only solution to the problem of interference. AWWA does not believe the conclusion that band restructuring is a necessary or sound solution for interference occurring in the 800 MHz band. Ample examples were provided in the body of comments to WT Docket 02-55 that restructuring will not address interference in the band.

AWWA remains concerned that the Agency is setting an unacceptable precedent by allowing Nextel, an admitted source of interference in the band, to fail to meet its duty under existing Part 90 regulations. AWWA believes the FCC should uphold the private land mobile community’s long standing practice of operating under a first-in-time policy whereby the party coming to a frequency (or presumably, making major changes to its operations such as replacing an analog with a cellularized digital system), must bear the financial and general responsibility for eliminating any interference it causes to an existing station. Nextel has a duty to resolve the interference it is causing; the FCC’s first and foremost responsibility is to hold Nextel accountable to make necessary changes to resolve interference not impose significant burdens on other users in the band.

The joint filing by the United Telecommunications Council (UTC) and Edison Electric Institute (EEI) in response to the January 3, 2003, request for comments clearly draw this same conclusion, suggesting that private market agreements are the best way to solve interference within the FCC’s legal and policy framework. UTC and EEI argue that the current approach to developing a band plan through a secretly negotiated contract among a subset of impacted parties is a failure of process that has resulted in a badly flawed proposal. AWWA strongly agrees with UTC and EEI in this finding.

The FCC's failure to employ an administrative process available under federal statute appears even more inappropriate when other licensees, like AWWA's members, and the public observe that the licensee responsible for the interference is dictating the terms of mitigation to the Commission. AWWA's members are incredulous that the FCC would rely on the interfering party for policy guidance in revising an entire band plan where they are clearly unable or unwilling to comply with existing technical rules and have failed to provide adequate remedies to licensees where they are causing interference. AWWA believes that the FCC is violating the public trust with which it is charged when it relies on parties that are not in good faith compliance with existing rules and regulations to develop major spectrum policy changes that provide significant benefits to themselves, fail to provide sound solutions, and cause significant harm to licensees not included in developing the spectrum plan.

### **Technical Limitations of "Consensus Plan"**

The "consensus plan" includes incentives to move public safety users to 700 MHz, Business and Industrial / Land Transportation (B-I/LT) to 900 MHz. Public Safety officials and critical infrastructure entities believe that critical infrastructure should have spectrum adjacent to that of public safety to facilitate shared systems between public safety and critical infrastructure. Developing and maintaining shared systems becomes much more difficult when public safety and critical infrastructure are forced to operate in two very different frequency bands.

Secondly, the equipment available in the 900 MHz band (856-901 MHz) to which B-I/LT licensees would migrate is not comparable to that available in 800 MHz. Also, many 900 MHz licensees are also concerned about the proposed move of some of Nextel's system into its 900 MHz SMR licenses during the transition, as they are likely to suffer interference as a result.

The "consensus plan" proposes an 859-861 MHz guard band that is harmful to critical infrastructure entities including drinking water utilities. Indeed the proposal has changed from *"General Category moves into vacated Nextel frequencies in the middle of the band, campus systems go to 859-861 MHz, and remaining former Nextel frequencies go to Public Safety for five years,"* to *"General Category licensees move mostly into the guardband next to Nextel's cellular system at 861 MHz (thus becoming subject to increasing interference), while only Public Safety moves into the vacated Nextel frequencies below 859 MHz to the extent possible."* Critical infrastructure and indeed all 800 MHz users are entitled to operate free of interference and

should not have to serve as a buffer. UTC entered a number of cogent arguments into the docket in response to the FCC request for Supplemental Comments. AWWA strongly encourages the FCC to reflect in particular on the points made by UTC with regard to the “consensus plan” guard band concept and the onerous management strategy imposed on B-I/LT licensees.

Despite its complexity the “consensus plan” continues to fail to adequately address border area frequency pools. The City of San Diego’s supplemental comments speak directly to this point. AWWA notes that there are numerous major metropolitan areas as well as rural communities located in border regions for which the current flawed proposal is even more inadequate.

The Agency should recognize that inherent to the complexity of the proposal is the likelihood of the proposal failing. In the event of failure the proposal is so complicated that it will not be possible for the FCC, having given administration to another entity, to re-establish control and complete implementation of the proposal. Consequently, with implementation of the “consensus plan” critical infrastructure licensees will be arguably in a worse situation than they are currently. If the goal is eliminating interference, the “consensus plan” is not only a poor process with high likelihood of failed implementation; it will not provide critical infrastructure and many other users sound technical remedies for existing interference and is likely to create new conflicts impairing critical infrastructure applications.

## **Funding**

In AWWA’s initial filing in this docket AWWA indicated that the proposed “consensus plan” fails to provide adequate resources to incumbents to fund relocations associated with the band plan and fails entirely to address the cost of managing interference under the band plan. These concerns were foremost in comments received by the FCC in this docket from a number of public safety entities, in particular, the cities of New York, Philadelphia, and San Diego, as well as East Bay Municipal Utility District.

The consensus plan is based on an inadequate estimate of resource burden and shields Nextel from its obligation to not interfere with other users by inclusion in the December, 2002 submittal of a corporate shield between Nextel and its financial responsibilities. Nextel would also benefit under the “consensus plan” from a “cap” on Nextel’s financial responsibilities. Nextel argues that as a publicly traded company it needs surety as to its liability under the “consensus plan.”

AWWA's members and most other licensees in the band believed that there was surety in the band in that the FCC would hold interfering parties accountable for their actions rather than reward intransigence. Licensees believed that there was a basic commitment that licensees bear the cost of relocating other licensees when changes in the FCC regulations are intended to facilitate migration of band uses. Allowing Nextel access to a financial cap on its responsibilities under any band plan or the use of a corporate shield is inappropriate. It would be irresponsible of the FCC to adopt a plan that places significant financial costs and impairs business function for many licensees in the band without holding the party responsible for the interference that is driving change in the band accountable.

## **Coordination**

Again, AWWA reminds the FCC that any serious consideration of a re-banding plan by the Commission should be preceded by a serious technical discussion of that plan and reasonable alternatives to it. FCC has not facilitated to-date, including the "consensus plan" development, such a discussion. AWWA, UTC and others have suggested in previous comments that management of the 800 MHz band would benefit from such a discussion.

Moreover, the Supplemental filing in December, 2002 was not only developed without substantive open technical discussion by affected licensees, it would institute a regulatory framework that is "grossly unfair and unlawful" as aptly characterized by Consolidated Edison Company in its recent comments to this docket. Quoting Consolidated Edison Company,

*"...The proposed Relocation Coordination Committee, essentially an extension of the Consensus Parties themselves, would wield non-delegable FCC powers in its control of the relocation process. The danger of entrusting this group with virtually unchecked authority over the private land mobile community can be seen in such measures as the proposed licensing freezes and the highly compressed timeframes proposed for relocation. Establishing an across-the-board requirement that licensees relocate from the General Category demonstrates a virtually complete disregard for the sensitive and complex operations carried out by companies, such as Con Edison"*

AWWA agrees with Consolidated Edison and other commenters that the Relocation Coordination Committee concept is illegal as proposed. AWWA's members provide safe drinking water to the nation's cities, towns, and rural communities. To accomplish their core mission they rely on frequencies heavily impacted by the "consensus plan". The "consensus plan" will force these systems to operate voice systems in spectrum that is specifically intended to bear the brunt of interference from the consensus plan developers, including Nextel. To put these water system's mission critical communication essential to the public's safety at risk and then subject those systems to the whim of the organizations that are the origin of the scheme causing their dilemma is not fair. It is not sound public policy, and it would be an embarrassment to the FCC and the congressional committee's that oversee the Agency.