



Public Safety Wireless Network

Saving Lives and Property Through Improved Interoperability

February 10, 2003

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Ms. Marlene H. Dortch
Secretary
Federal Communications Commission
445 Twelfth Street, SW
12th St. Lobby, TW-A325
Washington, DC 20554

Re: Comments of the Public Safety Wireless Network, *In the Matter of Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation Business Pools*, in response to Supplemental Comments of the Consensus Parties, **WT Docket No. 02-55**

Dear Ms. Dortch:

On behalf of the Public Safety Wireless Network (PSWN) Program and pursuant to Section 1.51 of the Commission's Rules, 47 C.F.R. § 1.51 (2000), enclosed herewith for filing are an original and four (4) copies of the PSWN Program's Comments in the above-referenced proceeding.

Kindly date-stamp and return the additional, marked copy of this cover letter and filing,

Should you require any additional information, please contact the undersigned

Respectfully submitted,

Steven Proctor
Executive Director
Utah Communications Agency Network
Executive Vice-Chair,
PSWN Executive Committee

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

Before the
Federal Communications Commission
Washington, DC 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)

WT Docket No. 02-55

February 10, 2003

COMMENTS OF THE
PUBLIC SAFETY WIRELESS NETWORK PROGRAM

**Before the
Federal Communications Commission
Washington, DC 20554**

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

To: The Commission

**COMMENTS OF THE
PUBLIC SAFETY WIRELESS NETWORK PROGRAM**

1. The Public Safety Wireless Network (PSWN) Program¹ respectfully submits the following Comments to the above-referenced docket.² The central topics that are the subject of the Supplemental Comments of the Consensus Parties³ include funding for the Consensus Plan, procedures and processes for relocating 800 megahertz (MHz) incumbents, post-realignment interference protection standards, and border realignment plans. The PSWN Program will address each topic impacting public safety in turn.

¹ The PSWN Program is a federally funded initiative operating on behalf of all local, state, federal, and tribal public safety agencies. The Department of Justice and the Department of the Treasury are jointly leading the PSWN Program's efforts to plan and foster interoperability among public safety wireless networks.

² See Public Notice DA 03-19, Wireless Telecommunications Bureau Seeks Comment on "Supplemental Comments of the Consensus Parties" Filed in the 800 MHz Public Safety Interference Proceeding—WT Docket No. 02-55, January 3, 2003.

³ See generally, Ex Parte Filing, Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, December 24, 2002 (*Supplemental Comments*).

I. STATEMENT OF INTEREST

2. **As** an advocate for local, state, and tribal public safety agencies—the group of incumbent licensees most impacted by incidents of harmful interference—the PSWN Program is familiar with the issues presented in this rulemaking and with the Commission’s efforts to resolve concerns regarding the quality and reliability of public safety communications. The PSWN Program has closely monitored the ongoing interference reported in the 800 MHz band and has already contributed comments and reply comments on this docket with respect to the proposed realignment plan.

II. BACKGROUND

3. The PSWN Program has followed this proceeding from the original white paper submitted by Nextel proposing the realignment of the 800 MHz band to reduce or eliminate interference to public safety operations.⁴ Several parties have also recommended alternative plans since that time. Nextel and the other parties’ responses to this proposed rulemaking have been overwhelming, prompting nearly 500 comments, reply comments, ex parte presentations, and other communications on this docket.

III. DISCUSSION

4. The most recent revisions to the realignment plans submitted by the Consensus Parties were prepared in December 2002 and released for public comment by the Commission on January 3, 2003. While this proposed plan has garnered the support of a number of parties, many

⁴ Nextel Communications, Inc., *Promoting Public Safety Communications: Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Public Radio–Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs*, November 21, 2001 (*Nextel White Paper*).

other commenters have been highly critical of the realignment plan.⁵ One party observed that no representatives of the utility industries that use the 800 MHz band have endorsed this plan.⁶ The PSWN Program acknowledges the Commission's proactive efforts in resolving interference and reorganizing the 800 MHz band in a manner that would balance the competing interests of the user community. The PSWN Program also appreciates the participation of the many parties that have offered thoughtful comments and proposed alternatives for realignment of the spectrum. In order for any solution to successfully remedy the issues identified by the Commission, the priorities of the public safety community must be addressed. The PSWN Program's concerns, and possible solutions to these complex issues, are highlighted in the following recommendations.

5. The primary purpose of this rulemaking is to eliminate the commercial mobile radio service (CMRS)—public safety interference currently experienced in the 800 MHz band. The Commission notes that “the nation’s public safety community requires effective radio communications systems free of harmful interference if public safety agencies are to adequately protect the safety of lives and property.”⁷ The PSWN Program recognizes that it would be nearly impossible to ensure the absolute prevention of harmful interference to public safety communications. However, considering the magnitude of both the problem and the undertaking to mitigate it proposed through the Consensus Plan, the PSWN Program requests that the Commission carefully examine the proposed solutions to guarantee that interference will be prevented as much as technologically feasible. The PSWN Program agrees with the proposed

⁵ See, e.g., Comments of Small Business In Telecommunications (*SBT*) to Supplemental Comments of The Consensus Parties, WT Docket No. 02-55, January 10, 2003 (*SBT Comments*).

⁶ *Id.* at p. 2.

⁷ See Notice of Proposed Rulemaking, WT Docket 02-55, March 15, 2002, at para. 1.

solution of separating the frequencies of the high-site, high-power systems of public safety from the low-site, low-power CMRS systems.* To that end, the PSWN Program suggests that the Commission maximizes the band separation as much as possible and follow through with partitioning the 800 MHz band to relocate the two types of operations into two separate blocks of spectrum. The Consensus Parties assert that “separation of these incompatible systems through realignment will eliminate the majority of current interference in the Land Mobile Radio band.”⁹ This recommendation also carries the complementary step of establishing a 4 MHz guard band at 814–816/859–861 MHz to further reduce the likelihood of interference.¹⁰ The PSWN Program agrees with the Association of Public-Safety Communication Officials–International, Inc. (APCO) observation that the Joint Commenters believe that the omission of a guard band would only lead to more CMRS–public safety interference.¹¹ If this potential interference in the planned guard band does not materialize, then the spectrum’s licensing could always be changed in the future. Additional recommendations that have been provided, including the adoption of best practices and out-of-band emission limits, may also need to be incorporated into the plan to completely address all sources of interference.

6. In the cases where interference does persist, or a new source of interference is detected after the 800 MHz band realignment has been implemented, the Commission must react swiftly and decisively. As demonstrated in the past few years, the interference mitigation techniques

⁸ See Supplemental Comments, pp. 9–10.

⁹ *Id.*, at p. iii.

¹⁰ *Id.* at p. 10.

¹¹ See Comments of APCO, September 23, 2002, at p. 3.

and rules are not sufficient to protect many of the users in the band,¹² nor is the continued resolution of interference on a case-by-case basis satisfactory because this approach only addresses loss of service after the fact, often too late to prevent permanent damage. It is critical that the Commission crafts the new regulations in the 800 MHz band to provide immediate protection for public safety operations. The enforcement of regulations in this band would need to be stringent and the penalties incurred from recurring interference formidable, such as loss of licenses or heavy fines, to effectively discourage further non-compliance and compel an immediate resolution of the problem.

7. The PSWN Program reiterates the primary condition for acceptance and implementation of this plan is that any costs incurred in the reorganization of the 800 MHz band to eliminate interference would not be borne by public safety entities. Although the Consensus Plan Supplement points out that no public safety system would be moved unless the funding was already in place,¹³ the limited funding provided generates a ceiling that eliminates any guarantee that all incumbents will be moved. The Public Safety Organizations within the Consensus Parties note their uncertainty of the cost estimates due to variables such as the actual number of radios that need replacement versus retuning; however, the Public Safety Organizations asserted that the cost estimates are reasonable.¹⁴ To remove the uncertainty, the PSWN Program suggests that an independent study of costs be conducted to verify the estimates established in Appendix A of the Consensus Plan Supplement. Both the eventual Report and Order and the

¹² See *Project 39, Interference to Public Safety 800MHz Radio Systems, Interim Report to the FCC*, December 24, 2001. APCO undertook Project 39, and its members have gathered data on many interference cases and identified many of the interference mechanisms involved. Further information is available on the Internet at http://www.apcointl.org/frequency/project_39/.

¹³ See the Supplemental Comments at p. 7.

¹⁴ *Id.* at p. 6.

study of costs should account for any cost incurred to amplify signal strength or other costs that public safety would face in meeting new operational requirements in the band as the result of realignment. The PSWN Program notes that additional costs related to the migration itself may exist for agencies other than public safety, such as transportation entities, which have noted “any action taken as a result of the Consensus Plan must include funding of the physical act of migration, and also make a reasonable allowance for cost items that may not be directly included in ‘turning the screws.’”¹⁵ Many affected licensees cannot afford to spend any of their already limited budgets to accommodate new technical requirements brought on by interference created by CMRS providers.

8. Before the Commission releases a Report and Order or adopts any realignment proposal, a contingency plan should be established to complete the realignment if the funding falls short and not all National Public Safety Planning Advisory Committee (NPSPAC) Regions are migrated. The PSWN Program further suggests that the Commission explore alternative funding resources to fulfill this need for a contingency plan and to help guarantee that this much-needed solution can be implemented for all incumbents across the Nation. It is imperative that once realignment begins, all NPSPAC Regions are relocated in accordance with current frequency assignments, sufficient funding to complete this plan is identified, and sources of funds are confirmed.

9. Central to the crucial need to resolve this interference problem is the requirement for reliable and available communications for public safety personnel at all times. If and when the

¹⁵ See Comments of the San Francisco Bay Area Rapid Transit District. September 25, 2002. at p. 2

Commission chooses a realignment plan for implementation, that plan must be executed in a well-planned manner so that the public safety operations do not experience any disruption of service. The very nature of the emergency work often facing public safety providers does not allow for prediction of occurrence or slack periods. Robust communications must be available at any moment because no one knows when an emergency could occur. The Consensus Parties have stated that “[t]he Consensus Plan would expeditiously realign the Land Mobile Radio band with minimal disruption to incumbent licensees.”¹⁶ The PSWN Program requests that the Commission continue to explore additional methods that would help to ensure that this migration does not put the public at risk in an emergency because of inadequate communications capabilities of local police, fire, and emergency medical providers. Redundant, backup systems should be made available, and their performance tested under demanding, real-life conditions to guarantee that mission-critical and day-to-day public safety communications are never interrupted.

10. One of the original qualifications that the Commission established for an 800 MHz band realignment plan was the generation of more exclusive spectrum for public safety use. The PSWN Program notes that the Consensus Plan provides avenues for this to occur and supports encouraging the voluntary early migration of incumbents from the 700 MHz band to open those channels reallocated for public safety use.¹⁷ This spectrum is desperately needed because many densely populated metropolitan areas around the country currently depend on 800 MHz systems that are already operating at maximum capacity. Furthermore, local, state, and tribal public safety agencies have yet to be granted access to the 74 MHz of spectrum allocated in the

¹⁶ *Id.*, at p. 14.

¹⁷ *See* **Balanced Budget Act of 1997**, 47 U.S.C. § 337

700 MHz band¹⁸ and in the 4.9 gigahertz (GHz) band.¹⁹ This spectrum is critical to **support** the continually increasing communications needs of public safety agencies.²⁰

11. The PSWN Program is also concerned about the legal ramifications of the Consensus Plan and its proposals. SBT asserts that “[M]any of the most important legal aspects of the [Consensus] Plan are fully lacking,” and questions the Commission's power to approve and implement the proposed band realignment.²¹ The PSWN Program echoes these concerns and recommends that the Commission should examine its statutory authority to undertake this plan. Some specific areas of concern that need further elaboration include the reallocation of 1.9GHz band channels for land mobile radio services and assignment to Nextel, the development of the funding mechanism, and possible violation of incumbents' rights. The PSWN Program suggests that if the Commission does not have the authority to direct all of the changes that will be part of the final realignment plan, congressional approval should be sought to expand the Commission's prerogative to approve reorganization plans. This could require legislation or independent review by a court of competent jurisdiction to examine whether and by what means a realignment of the 800MHz band should be accomplished. Such an inquiry could remove many of the doubts expressed regarding the legal premises for taking this action. The Commission's actions now could ensure that any plan finally implemented will not be contested or challenged for months or years while interference and limited access continue unabated.

¹⁸ See generally, Reallocation of Television Channels 60–69, the 746–806 MHz Band, ET Docket No. 97-157, Report and Order, rel. July 9, 1997.

¹⁹ See the Second Report and Order and Further Notice of Proposed Rulemaking of WT Docket 00-32 at p. 2.

²⁰ See The Public Safety Wireless Advisory Committee (PSWAC) Final Report, September 11, 1996, at p. 3.

²¹ See SBT Comments at p. 11.

IV. CONCLUSION

12. The PSWN Program thanks the Commission for the opportunity to contribute to this rulemaking and recognizes the many other parties that have considered these issues and provided their input for this rulemaking proceeding. The PSWN Program reiterates that its previous responses with respect to this rulemaking are amplified to the extent that further information and assurances must be provided. The 800MHz band realignment plan selected by the Commission must eliminate harmful interference to public safety users to the greatest extent possible, cause minimal disruption, and provide an absolute guarantee that all costs to public safety entities are paid by the parties responsible for the interference. The PSWN Program is confident that the Commission will ensure that these conditions are met and that further study of costs, timing, and implementation of realignment will make certain that the estimates and expectations presented in this proposal are accurate

Respectfully submitted,



Steven Proctor
Executive Director
Utah Communications Agency Network
Executive Vice-Chair,
PSWN Executive Committee

**Before the
Federal Communications Commission
Washington, DC 20554**

Certificate of Service

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)	

I, Richard N. Allen, Senior Associate, Booz Allen Hamilton, 8283 Greensboro Drive, McLean, Virginia, 22102-3838, hereby certify that on this date I caused to be served, by first-class mail, postage prepaid (or by hand where noted) copies of the Public Safety Wireless Network Program's Comments, *In the Matter of Improving Public Safety Communications in the 800 MHz Band [and] Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, WT Docket No. 02-55, the original of which is filed herewith and upon the parties identified on the attached service list.

DATED at Fair Oaks, Virginia this 10th day of February 2003.

Richard N. Allen

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