

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)
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)
Improving Public Safety Communications) **WT Docket No. 02-55**
in the 800 MHz Band)
)
Consolidating the 900 MHz)
Industrial/Land Transportation and)
Business Pool Channels)
)
Wireless Telecommunications Bureau)
Seeks Comments on "Supplemental) **DA 03-19**
Comments of the Consensus Parties" Filed)
in the 800 MHz Public Safety Interference)
Proceeding)

TO: The Commission

SUPPLEMENTAL REPLY COMMENTS OF
ENTERGY CORPORATION AND ENTERGY SERVICES, INC.

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EXECUTIVE SUMMARY

An overwhelming number of commenters representing every industry segment agree with Entergy's assessment of the Consensus Plan: it is a flawed and potentially dangerous approach to solving interference. First, commenters continue to find that the funding proposal is so inherently defective that it renders the Consensus Plan unworkable. Particularly, it vastly underestimates the costs associated with such a massive proposal and artificially caps Nextel's liability without offering any funding contingency if the monies are depleted. Moreover, commenters agree that that the "installment" plan is ill conceived, and should not be permitted. Most importantly, if funding is depleted, relocation could come to a grinding halt, leaving the promise of an interference resolution unfulfilled.

It is also clear from the comments that the -95/-98 dBm interference thresholds proposed by the Consensus Plan for the 851-859 MHz Band is not the currently employed standard, and would impose decreased interference protection on *all* licensees in this segment of the band. In order to meet this standard, licensees would have to invest a considerable amount of money in their systems, including increasing the number of base stations, to maintain their current coverage level for interference free communication - an expense which does not appear to be accounted for in the Consensus Plan funding proposal. Further, the scenario is even grimmer for those entities, such as Entergy, that would either be relocated into the proposed Guard Band or be forced to remain in the Guard Band after realignment. Entergy faces the potential loss of 96% of its interference protection in the Guard Band, which is clearly an unacceptable and inequitable result for a critical infrastructure licensee that has not contributed to the current interference problems.

Commenters are also virtually unanimous in their rejection of the proposed licensing freeze and the five-year licensing preference, finding that they would constitute an unnecessary and undue burden on licensees in the band. As for the RCC, commenters agree that the composition of the RCC would lead to biased decision-making, and would permit Nextel to exercise undue influence over the process. Moreover, commenters agree that the lack of clear appeal rights would further insulate the RCC's actions, and would create an environment in which the RCC could act with impunity. The formulation of policy, the implementation of the process, and review of disputes resulting from any relocation is clearly within the sole province of the FCC, and must not be delegated to a body of self-interested private parties. Commenters further find that the information requested from relocating licensees is excessive, and would likely pose a security risk given the insufficient safeguards for maintaining its confidentiality.

While Entergy fully supports the resolution of any interference being caused to Public Safety, Business, and I/LT licensees in the 800 MHz band, Entergy and other commenters recognize that there are alternatives available that would avoid the pitfalls and loopholes of the Consensus Plan. Particularly, by codifying interference mitigation obligations and the Best Practices guide, and by enforcing non-interference standards, the FCC can offer immediate relief *without rebanding*. Further, by implementing rule changes that would permit spectrum swapping and privately negotiated solutions, such as those recommended by Cinergy and Consumers, the parties themselves could effect a limited realignment in a manner that is directly proportionate to a given problem and is also self-funded. These suggestions offer a far simpler, and likely more effective, means of handling the issue than the Consensus Plan, and should be adopted by the FCC.

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**SUPPLEMENTAL REPLY COMMENTS OF
ENTERGY CORPORATION AND ENTERGY SERVICES, INC.**

Entergy Corporation and Entergy Services, Inc. (collectively "Entergy"), by and through its undersigned telecommunications counsel, hereby submit these supplemental reply comments in the above referenced docket in response to the Public Notice, DA 03-19, issued by the Wireless Telecommunications Bureau ("WTB" or "Bureau") on January 3, 2003.¹

¹ Wireless Telecommunications Bureau Seeks Comment on "Supplemental Comments of the Consensus Parties" Filed in the 800 MHz Public Safety Interference Proceeding, *Public Notice*, DA 03-19 (Jan. 3, 2003). By Public Notice dated January 16, 2003, the FCC granted a limited extension of time to file comments and reply comments responsive to these "Supplemental Comments."

I. INTRODUCTION

Because this issue strikes at the heart of Entergy's lifeline to its employees and its customers - its 800 MHz communications system - Entergy has diligently participated in this docket to seek a workable solution to the problems outlined by the Bureau. Entergy has filed Comments,² Reply Comments,³ Further Comments,⁴ and Supplemental Comments⁵ in this proceeding, recommending that the Commission adopt immediate interference mitigation measures, including the codification of Best Practices Guidelines and rule changes to permit market-based spectrum swaps and privately negotiated interference solutions. Entergy has opposed the adoption of each of the many variations of the "Consensus Plan,"⁶ which, as discussed more fully below, are "massively complex, inequitable and would not meet the goals of this proceeding."⁷ As is made clear by the opposing comments in each round, and in the most recent round of comments particularly, the Consensus Plan cannot fulfill its promise of interference resolution, it is contrary to the public interest, and it must not be adopted.

² Comments of Entergy Corp. and Entergy Services, Inc., WT Docket No. 02-55 (filed May 6, 2002) ("Entergy Comments").

³ Reply Comments of Entergy Corp. and Entergy Services, Inc., WT Docket No. 02-55 (filed August 7, 2002) ("Entergy Reply Comments").

⁴ Further Comments of Entergy Corp. and Entergy Services, Inc., WT Docket No. 02-55 (filed September 23, 2002) ("Entergy Further Comments").

⁵ Supplemental Comments of Entergy Corp. and Entergy Services, Inc., WT Docket No. 02-55 (filed February 10, 2003) ("Entergy Supplemental Comments").

⁶ See Reply Comments of Aeronautical Radio Inc., *et al*, WT Docket No. 02-55 (filed Aug. 7, 2002); Supplemental Comments of the Consensus Parties, WT Docket No. 02-55 (filed Dec. 24, 2002) (collectively, "Consensus Plan"). Entergy continues to use the FCC's shorthand names "Consensus Plan" and "Consensus Parties" for this proposal and its supporters out of convenience and the need for consistency, recognizing, as the Bureau did, that this does *not* imply that the Consensus Parties or its Plan represent the views of all interested persons.

⁷ Comments of the United Telecom Council and Edison Electric Institute, WT Docket No. 02-55, at 2 (filed Feb. 10, 2003) ("UTC/EEI Supplemental Comments").

II. MANY COMMENTERS URGE REJECTION OF THE CONSENSUS PARTIES' PROPOSALS

A tremendous number of commenters echo Entergy's concerns with respect to the terms and demands of the Consensus Parties. Above all, a majority of commenters do not endorse the adoption of the Consensus Plan as it has been presented, in light of the Consensus Plan's numerous flaws, including the fact that that it is "incomplete, inconsistent and contradictory, does not address previous concerns or questions raised by others, the border region plan is unworkable, and the technical parameters are unrealistic or undefined."⁸ Even Public Safety licensees, whom Nextel and the Consensus Parties claim as allies, continue to express doubt and trepidation about the plan, finding that "the Plan is premature and cannot be adopted in its current form."⁹ As Entergy has previously indicated, many other commenters also find that "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."¹⁰

While Entergy fully understands and supports the resolution of any interference to Public Safety, Business and I/LT operations in the 800 MHz band, there are alternatives to realignment that must be adequately explored and there are less drastic rebanding options than the plan presented by the Consensus Parties. For example, Cinergy and Consumers have submitted rules that would implement immediate technical solutions to interference, and would allow entities to

⁸ Comments of Palomar Communications Inc., WT Docket No. 02-55, at 2 (filed Feb. 10, 2003) ("Palomar Supplemental Comments"). *See generally*, Comments of ALLTEL, AT&T Wireless *et al.*, WT Docket No. 02-55 (filed Feb. 10, 2003) ("Commercial Wireless Supplemental Comments").

⁹ Comments of the City of Baltimore, Maryland, WT Docket No. 02-55, at 1 (filed Feb. 10, 2003) ("Baltimore Supplemental Comments").

¹⁰ Baltimore Supplemental Comments at 1.

negotiate individually for spectrum swaps to remedy or avoid potential interference issues *without rebanding*.¹¹ The FCC must look past the rhetoric and the posturing, and take a hard look at what the practical implications of the various proposals are and what the motivations of the various parties may be. The FCC must not blind itself to the commercial interests involved, and "must parse out these private agendas and maintain focus on solving interference."¹²

III. COMMENTERS CONCUR THAT THE DEFICIENCIES ASSOCIATED WITH THE CONSENSUS PLAN'S FUNDING PROPOSAL COULD EXACERBATE THE INTERFERENCE PROBLEM

Even if relocation is the answer to the interference problem (which Entergy does not concede), the mechanism proposed to fund the realignment possesses considerable flaws that seem likely to leave the solution unimplemented for the vast majority of the country. A significant number of commenters point out errors in the method that Nextel used to estimate the cost of relocation. Specifically, commenters note that Nextel's estimates only allow for a 5% replacement rate for Public Safety handsets. If this increases by only 1%, it could cost an *additional* \$78 million - an extraordinary increase.¹³ Other parties estimate that up to 25, 30 or 40% of radios will need to be replaced, which would significantly increase the costs of realignment and clearly result in a budget shortfall.¹⁴ In order for the FCC to make a valid

¹¹ Supplemental Comments of Cinergy Corporation, WT Docket No. 02-55 (filed Feb. 10, 2003); Supplemental Comments of Consumers Energy Company, WT Docket No. 02-55 (filed Feb. 10, 2003).

¹² Comments of Access Spectrum, LLC, WT Docket No. 02-55, at 2 (filed Feb. 10, 2003) ("Access Supplemental Comments").

¹³ Comments of Preferred Communications Systems, Inc. on Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, at 9 (filed Feb. 10, 2003) ("Preferred Supplemental Comments").

¹⁴ Comments of Mobile Relay Associates on Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, at 13-14 (25% of all mobile units would have to be replaced) ("MRA Supplemental Comments"); Preferred Supplemental Comments at 9-10 (citing Motorola's estimate that 30-40% of mobile units will have to be replaced).

assessment of the benefit of rebanding as a solution to Public Safety interference, it must weigh that benefit against its true costs. Entergy submits that it is not reasonable to risk what could amount to billions of dollars in costs, all for the speculative benefit of rebanding. More must be known about the actual costs and benefits before a proper assessment could be made. Nextel has wisely hedged its bets against the risk of potentially enormous costs and low rewards by capping its funding commitment and insisting on a variety of technical conditions on a party's right to complain of interference. The FCC should not permit Nextel to limit its liability in this fashion.

In addition to the uncertainty over the required replacement, as Boeing points out, there are a significant number of non-Public Safety licensees whose costs have not been taken into account.¹⁵ It is likely that the actual cost of non-Public Safety relocation will significantly exceed the proposed funding pool in any case. This, asserts Boeing, raises the probability that only a partial solution will be funded.¹⁶ Far from mitigating the 800 MHz interference problems, a partially implemented solution could actually exacerbate the incidents of interference.¹⁷ Thus, Commenters recognize that it would be a dangerous precedent to allow an interfering party to cap its liability, and it could easily result in a situation in which all involved are worse off than before.¹⁸

Commenters have identified a number of additional deficiencies. First, no funding contingency has been identified to support the completion of the realignment once the primary

¹⁵ Comments of The Boeing Company, WT Docket No. 02-55, at 23 (filed Feb. 10, 2003) ("Boeing Supplemental Comments").

¹⁶ Boeing Supplemental Comments at 23.

¹⁷ Boeing Supplemental Comments at 23.

¹⁸ Comments of the National Rural Electric Cooperative Association Responding to the Public Notice of January 3, 2003, WT Docket No. 02-55, at 11 (filed Feb. 10, 2003) ("NRECA Supplemental Comments"); Comments of American Electric Power Company, Inc., WT Docket No. 02-55, at 9 ("AEP Supplemental Comments"); Commercial Wireless Supplemental Comments at 11-13.

fund is depleted.¹⁹ Further, while Public Safety licensees will not be required to move unless funding is available, it is unclear whether or not the same condition applies to Business and I/LT licensees.²⁰ Thus, Business and I/LT licensees relocated later in the proceeding may be left with no recourse for reimbursement, an unacceptable result given the potential magnitude of the associated costs. It is also unclear what would happen if the \$150 million Business/I/LT/SMR fund is depleted while money still remains in the \$600 million Public Safety allocation. Because Public Safety relocation in a given region is conditioned upon the relocation of Business/I/LT/SMR licensees from the General Category, Nextel would have an incentive to deplete the smaller Business/I/LT/SMR fund quickly, thus absolving it of fulfilling its much larger Public Safety obligation.

In addition, there is no schedule for Nextel's contributions, and no way to determine if a default has occurred that would trigger the sale of the assets held in trust.²¹ As a result, Nextel would not be bound to provide additional funding, Nextel could wash its hands of the matter with little or no repercussions, and the band could be left in a worse position than it is in now.²² In short, commenters have found myriad deficiencies in the funding plan, which could bring any rebanding effort to a grinding halt. If this aspect of the plan is not solid, it jeopardizes any benefit that could be had from a rebanding effort. In its current flawed state, therefore, the funding mechanism must be rejected, and absent funding, the "solution" proposed by the Consensus Parties is illusory.

¹⁹ Comments by the State of Florida to the Supplemental Comments, WT Docket No. 02-55, at 2 (filed Feb. 10, 2003) ("Florida Supplemental Comments").

²⁰ Comments on Revised 800 MHz Consensus Plan by Clients of Blooston Mordorfsky, Dickens, Duffy & Pendergast, WT Docket No. 02-55, at 6 (filed Feb. 10, 2003) ("Blooston Supplemental Comments").

²¹ Comments of Harbor Wireless, LLC on the Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, at 9 ("Harbor Supplemental Comments").

IV. COMMENTERS RECOGNIZE THE DANGER AND INEQUITY OF DECREASING INTERFERENCE PROTECTION AND PLACING UTILITIES IN THE PROPOSED GUARD BAND

The Department of Homeland Security issued a warning on February 7, 2003, raising the terrorist threat level from yellow to orange, and indicating that "soft targets" and other strategic targets may be at risk, including critical infrastructure such as energy and electric facilities.²³ Given this climate, when the nation is asking operators of nuclear and other conventional electric plants and distribution networks to secure and make more efficient their networks, it would be devastating and potentially dangerous to reduce their ability to address incidents of harmful interference to their systems in any part of the 800 MHz band or to relegate critical utility communications systems to interference prone Guard Band frequencies.²⁴ To do so could severely hamper utilities' ability to quickly and safely respond to potentially widespread service disruption to their customers, or to otherwise improve their customer service.²⁵

A. Decreased Interference Protection Is Not Acceptable For Critical Utility Communications in Any Part of the Band

The Consensus Parties suggest, however, that a licensee will not be entitled to protection from interference in the 851-859 MHz band unless their systems meet several stringent criteria, including maintaining either a -98dBm or -95dBm received signal strength, utilizing receivers meeting TIA Class A standards, and being current on service and maintenance

²² Blooston Supplemental Comments at 3.

²³ See Remarks by Secretary Ridge, Attorney General Ashcroft, and Director Mueller (Feb. 7, 2003), *available at* <http://www.dhs.gov/dhspublic/display?theme=44&content=451>.

Comments of Carolina Power and Light Company and TXU Business Services, WT Docket No. 02-55, at 4 (filed Feb. 10, 2003) ("CP&L/TXU Supplemental Comments").

²⁵ CP&L/TXU Supplemental Comments at 4.

bulletins from the manufacturer.²⁶ Commenters state, however, that these standards are not currently being employed and would constitute a significant burden upon current licensees, including those in the Public Safety radio services.²⁷ Furthermore, there are no provisions to reimburse licensees who would have to bring their systems up to these levels before they would be entitled to interference protection. This omission places the legitimacy of the Consensus Parties' cost estimates in doubt, and would unnecessarily and unjustifiably burden many licensees.

As conceived, the performance thresholds would "require public safety/private licensees to make significant investments merely to *qualify* for interference protection in substantial portions of their coverage areas after rebanding."²⁸ This change alone would reduce the area to which Entergy is entitled to protection to 72% of its current coverage in the 851-859 MHz band.

While higher signal strengths could improve systems coverage, the systems modifications that would be required would be extremely expensive to implement and would not be covered by the relocation fund. If, however, licensees were unable to make these significant investments, they would receive no interference protection and would have to accept even harmful levels of interference, which would, as illustrated above, significantly reduce their usable coverage areas.²⁹ This would impact Public Safety, Business and I/LT licensees operating in the 851-859 MHz band, and is an unacceptable outcome for these critical systems.

Moreover, the proposed interference resolution protocols associated with these thresholds would only be implemented *after* realignment is completed. While many of the proposals in

²⁶ Supplemental Comments of Aeronautical Radio, Inc. *et al*, WT Docket No. 02-55, at 41 (filed Dec. 24, 2002) ("Consensus Parties' Supplement").

²⁷ Comments of Motorola, Inc., WT Docket No. 02-55, at 10 (filed Feb. 10, 2003) ("Motorola Supplemental Comments").

²⁸ Motorola Supplemental Comments at 11 (emphasis added).

Appendix F are inappropriate, Entergy has consistently advocated the codification of interference mitigation obligations and the Best Practices guide *before* any rebanding is undertaken as an *immediate* avenue to rectify interference.³⁰ No licensee, however, should be subject to a reduction in its current interference protection rights by virtue of the adoption of an interference resolution plan. Preventing licensees from *complaining* about interference does not reduce the *occurrences* of interference.

B. Forced Relocation To The Guard Band Is Inequitable and Guard Band Spectrum Is Not Comparable

Entergy and many others have argued that Guard Band spectrum is inappropriate for the sensitive communications needs of Critical Infrastructure Industry licensees. Nextel itself concedes that high-site Business and I/LT licensees such as Entergy are vulnerable to CMRS interference,³¹ and yet the Consensus Parties insist on shunting them into the Guard Band to act as a buffer between the proposed cellular and non-cellular allocations. Further, rather than making the interferors remedy the interference problems they have created, the plan would merely "shift the burden of this interference to critical infrastructure systems which would be locked into a Guard Band and forced to accept higher levels of interference..."³² If the FCC is serious about *eliminating* interference in this band, then it is inappropriate merely to shift the problem from one class of licensees to another. This is not a solution, but merely a redirection of the harm.

²⁹ Motorola Supplemental Comments at 11.

³⁰ Entergy Reply Comments at 9-11; NRECA Supplemental Comments at 6-8.

³¹ Comments of Nextel Communications, Inc. and Nextel Partners, Inc., WT Docket No. 02-55, at 15 (filed Feb. 10, 2003)("Nextel Supplemental Comments").

³² CP&L/TXU Supplemental Comments at 2.

In its Supplemental Comments, Entergy outlined the tremendous impact that the suggested Guard Band interference criteria would have on its ability to protect its system from harmful interference, reducing Entergy's interference-protected operations by approximately 96% at the upper end of the Guard Band.³³ From the comments submitted, it is clear that Entergy is not alone in this predicament. The United Telecom Council has indicated that its members "have calculated the differences against their systems, and noted that the average base station will lose 70-75 percent (70-75%) of its usable coverage area, making vital communications systems virtually useless" in the Guard Band.³⁴ Ameren also estimates that it will lose approximately 75% of its interference protection under the Guard Band's sliding received signal strength standard,³⁵ and AEP states bluntly that it "believes that creating a guard band will deliberately put critical infrastructure radio systems at risk."³⁶

Commenters also noted the inequity in the treatment between Public Safety licensees and critical infrastructure licensees, whose systems are also included within the statutory definition of *public safety radio services* and should not be given inferior spectrum rights by being forced to serve as a buffer. Placing critical infrastructure licensees in the Guard Band "will impose a continued environment of interference on critical infrastructure providers while their Public Safety counterparts will enjoy some (albeit limited) additional protection from Nextel's system."³⁷ This disparity is unwarranted and deplorable. Moreover, "utilities and other critical infrastructure entities, which have built ubiquitous coverage into their communications systems

³³ Entergy Supplemental Comments at 8-11.

³⁴ UTC/EEI Supplemental Comments at 12.

³⁵ Comments of Ameren Corporation, WT Docket No. 02-55, at 8-10 (filed Feb. 10, 2003) ("Ameren Supplemental Comments").

³⁶ AEP Supplemental Comments at 15.

³⁷ AEP Supplemental Comments at 15.

because field personnel must have it, simply cannot suffer interference across three-quarters of their service areas. Moving [Critical Infrastructure] systems into deficient spectrum, where they are unable to move out and unable to seek relief from interference, is completely unacceptable."³⁸

As Entergy has previously suggested, if rebanding is instituted and if a Guard Band is indeed necessary to protect non-cellular licensees from interference generated by cellular operations, then the Guard Band should be located in the cellular allocation. In the alternative, licensees should not be forced to relocate their operations into the Guard Band, nor should they be required to stay if they have the misfortune of already being located at 859-861 MHz. As Entergy has already argued, because of the projected interference characteristics and the decreased interference protection in this band, it does not constitute comparable replacement spectrum.

V. COMMENTERS VEHEMENTLY OPPOSE THE PROPOSED LICENSING FREEZES

Commenters were almost universally opposed to the suggested licensing freeze. Specifically, commenters believe that both the freeze proposed for the duration of the relocation process and the freeze resulting from the five year Public Safety preference will endanger the ability of Business and I/LT licensees (and utilities in particular) to meet the needs of their customers, to ensure the safety of their employees, and to ensure the integrity this Country's electric, gas and water infrastructure.

Several commenters note that the initial freeze is a particularly problematic proposal given the current need to increase communications and fortify security around this Nation's

³⁸ UTC/EEI Supplemental Comments at 12.

critical infrastructure.³⁹ As Motorola states, "[g]iven a climate in which terrorism is of significant concern, a number of the nation's utilities, petroleum companies and others are busy planning and implementing improvements to their communications systems. Such improvements may very well include expansion of service contours to resolve coverage issues... Freezing the ability to include coverage expansion as a part of such improvements would create unnecessary burdens on licensees and hinder the development of effective communications networks."⁴⁰

Several commenters also agree with Entergy that the proposed freeze is unnecessary to achieve its stated purpose. While the Consensus Parties represent that it is necessary to prevent speculators from licensing up available white space and delaying any relocation, "given congestion of the 800 MHz channels, it is unlikely that there is any significant white space present on these channels, especially in the top 50 markets."⁴¹ And, while insufficient to attract speculators, this spectrum is vital for the use of existing licensees to expand and fine-tune their current systems.⁴² The harm of the proposed freeze on existing licensees, therefore, would far outweigh any presumed benefit described in the Supplemental Comments.⁴³

As for the five year "preference," which would effectively operate as a freeze on Business and I/LT licensing, "when viewed in conjunction with other provisions of the Supplemental Comments, the proposed five year preservation of the white space is especially damaging to [Critical Infrastructure] entities ... who have an existing and future need to expand their networks in the 800 MHz band."⁴⁴ Ameren suggests that the Commission should provide that,

³⁹ CP&L/TXU Comments at 3.

⁴⁰ Motorola Supplemental Comments at 5.

⁴¹ Motorola Supplemental Comments at 5-6.

⁴² *Id.*; *See also*, NRECA Supplemental Comments at 14.

⁴³ Motorola Supplemental Comments at 5-6.

⁴⁴ Ameren Supplemental Comments at 11.

once a region is coordinated, any remaining white space should be available to Critical Infrastructure and Public Safety entities on an equal basis.⁴⁵ Others find that the realignment should not be used as a means to deplete Business and I/LT channels by redesignating them for Public Safety use,⁴⁶ or, at a minimum, parties argue that the FCC should provide an application window prior to instituting such a freeze to permit Business and I/LT entities to file needed applications.⁴⁷ Entergy agrees that Business and I/LT should not lose channels through realignment or through any other interference resolution techniques. Business and I/LT licensees are already struggling to find spectrum they need, and a "preference" such as the one proposed is inappropriate, particularly when the amount of spectrum at issue is unknown.

VI. COMMENTERS FIND THE RCC CONCEPT TO BE UNACCEPTABLE

Parties have found the RCC concept to be inherently flawed, and the majority of commenters object to it in its current form. Licensees from all segments of the 800 MHz band object to three primary aspects of the RCC proposal: (1) the composition of the RCC, (2) the processes to be employed by the RCC, and (3) the powers with which the RCC has been endowed with under the Consensus Parties' proposal. Entergy concurs, and believes that the RCC must not be adopted as the mechanism to implement realignment, should realignment prove necessary.

⁴⁵ Ameren Supplemental Comments at 11.

⁴⁶ AEP Supplemental Comments at 7, 10-12.

⁴⁷ Comments of the National Association of Manufacturers and MRFAC, Inc., WT Docket No. 02-55, at 811 (filed Feb. 10, 2003) ("NAM/MRFAC Supplemental Comments").

A. The Composition of the RCC Will Result in Biased Decision Making

As to the composition of the RCC, Alliant charges that the RCC represents a conflict of interest, and unfairly advantages some parties.⁴⁸ The Michigan Department of Information Technology also recognizes that the financial interests of the coordinators who would likely sit on the RCC render their motives suspect,⁴⁹ and NAM warns that there are no rules to prevent the RCC from discriminating in favor of certain licensees or classes of licensees.⁵⁰ Parties were also troubled by the notion that the FCC should "deputize Nextel and others to develop a band plan for their Proposal to be submitted later to the Commission for approval," which is then "deemed" to be in the public interest with little or no input or review from the FCC.⁵¹ Furthermore, several commenters concurred that the Federal Advisory Committee Act is applicable, and requires that committees like the one proposed here "not be inappropriately influenced by . . . any special interest," and that the suggested composition would violate that mandate.⁵² As Carolina Power and Light and TXU argue, "at the very least, non-Proponent representatives of affected Critical Infrastructure licensees and members of the Commission's own staff should be included on any

⁴⁸ Comments of Alliant Energy, WT Docket No. 02-55, at 3 (filed Feb. 10, 2003) ("Alliant Supplemental Comments").

⁴⁹ Comments of the Communications Division, Michigan Dep't of Information Technology Representing Michigan's Public Safety Communications System to Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, at 4 (filed Feb. 10, 2003) ("Michigan Public Safety Supplemental Comments").

⁵⁰ NAM/NRFAC Supplemental Comments at 12. *See also*, Comments of Small Business in Telecommunications on Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, at 23-24 (filed Jan. 10, 2003) ("SBT Supplemental Comments").

⁵¹ Comments on 'Consensus Plan' of Carolina Power & Light and TXU Business Services, WT Docket 02-55, at 9-10 (filed Sept. 23, 2002) (internal citations omitted) ("CP&L/TXU September Comments").

⁵² CP&L/TXU September Comments at 9-10 (internal citations omitted).

advisory committee. Further, as required by federal statute, the proceedings of that committee should be conducted in open public proceedings and not behind closed doors."⁵³

The proposed composition would also allow Nextel and Public Safety to consistently overrule the other interests on the RCC.⁵⁴ The same would hold true for the planning committees and, since the RCC appoints arbitrators, it would also stand to reason that the arbitrators selected would be more inclined to accept proposals that benefit Nextel and Public Safety to the exclusion of other licensees.⁵⁵ Accordingly, the FCC must not abdicate its role in this process, and must not delegate its authority (if it can delegate it at all) to a biased group.

B. The Processes Employed by the RCC Violate Due Process

The methods that the Consensus Parties propose for the operation of the RCC are also clearly inadequate to ensure that the process is carried out in a fair and transparent manner. The proposed operation of the RCC would effectively grant the Consensus Parties unreviewable power to implement the plan they've proposed.⁵⁶ One of the most objectionable omissions of the RCC process is the lack of clear appeal rights. This creates an environment in which the RCC can act with impunity, and shroud its actions in the cloak of the FCC's authority without the safeguards of agency processes.⁵⁷ Commenters consistently argued that "there should also be an adequate and transparent appeals process,"⁵⁸ and while they appreciate the need for an

⁵³ CP&L/TXU September Comments at 9-10 (internal citations omitted).

⁵⁴ NRECA Supplemental Comments at 12-13.

⁵⁵ NRECA Supplemental Comments at 12; Baltimore Supplemental Comments at 6.

⁵⁶ CP&L/TXU Supplemental Comments at 7-8.

⁵⁷ UTC/EEI Supplemental Comments at 8.

⁵⁸ Boeing Supplemental Comments at 26.

expeditious resolution, "general considerations of fairness cannot be compromised by the desire for swift implementation."⁵⁹

Commenters also particularly objected to the idea that the RCC would submit applications directly to the FCC on behalf of Business and I/LT licensees without their review, while Public Safety frequencies would be submitted through a Public Safety coordinator.⁶⁰ As NAM argues, if the RCC submits the application, there is no safeguard that the information submitted is correct, and there is no basis upon which to hold the licensee responsible for the representations made on the application.⁶¹ At its most basic, the FCC's rules require that an officer or employee of the licensee sign applications, and proposing otherwise would violate this requirement.⁶²

C. The RCC Would Possess Inappropriate Power

As several commenters argued, it is by no means clear that the FCC would have the statutory authority to endow a body consisting of private entities with the authority to implement the proposed realignment.⁶³ Further, by omitting any provisions for appeals or review, the RCC would essentially be usurping the FCC's powers and its duty to act in the public interest.⁶⁴ As the Public Safety Improvement Coalition states, while the FCC can accept

⁵⁹ Boeing Supplemental Comments at 26.

⁶⁰ NAM/MRFAC Supplemental Comments at 14.

⁶¹ NAM/MRFAC Supplemental Comments at 14.

⁶² *See* 47 C.F.R. §1.917.

⁶³ Comments of the Public Safety Wireless Network Program, WT Docket No. 02-55, at 8 (filed Feb. 10, 2003) ("PSWN Supplemental Comments"); SBT Supplemental Comments at 11-13.

⁶⁴ Further Comments of East Bay Municipal Utility District, WT Docket No. 02-55, at 10 (filed Feb. 10, 2003) ("East Bay Supplemental Comments").

recommendations, it must retain the ultimate authority and policy-making role that Congress assigned it;⁶⁵ it cannot delegate this role to the RCC.

VII. INFORMATIONAL DISCLOSURES OF THE MAGNITUDE PROPOSED ARE UNWISE

Many parties object to the breadth and detail of the information that is to be turned over to the RCC, which is unprecedented in previous relocation regulatory frameworks. Many are concerned that the accumulation of detailed data on so many Public Safety and Critical Infrastructure systems in the RCC database could create a potential security risk.⁶⁶ As UTC and EEI note, "[i]n an era when the Federal Energy Regulatory Commission (FERC) is removing data about critical infrastructure systems from its public records and imposing cyber-security protection and reporting requirements on critical infrastructure entities, the FCC should be making public less, not more, information about Public Safety and critical infrastructure telecommunications systems. Still less should that information be placed in the hands of a third-party group with no inherent interest in, or responsibility for, keeping it secure."⁶⁷ Entergy expressed similar concerns in its Supplemental Comments, not to mention the competitive value that this information would have.⁶⁸ The Consensus Parties' plan, however, provides no

⁶⁵ Comments of the Public Safety Improvement Coalition, WT Docket No. 02-55, at 7 (filed Feb. 10, 2003) ("PSIC Supplemental Comments").

⁶⁶ Motorola Supplemental Comments at 9. *See also*, UTC/ EEI Supplemental Comments at 10 (internal citations omitted); Alliant Supplemental Comments at 3.

⁶⁷ UTC/EEI Supplemental Comments at 10 (internal citations omitted). *See also*, Comments of Gainesville Regional Utilities, WT Docket No. 02-55, at 2 (filed Feb. 7, 2003) ("GRU Supplemental Comments").

⁶⁸ Entergy Supplemental Comments at 20-23; AEP Supplemental Comments at 14.

mechanisms to ensure that proper controls will be placed on the information, nor is there any definition as to what would constitute the proper use of the System Information.⁶⁹

The requirements are burdensome from a number of perspectives, and the information is sensitive from a competitive and security standpoint.⁷⁰ Moreover, the time frame established for gathering such information is entirely unrealistic given the size of some extensive multistate systems such as that of Entergy. Accordingly, Entergy reiterates its position that the publicly available information in the ULS database is sufficient, with supplementation by individual companies only on an as needed basis.

VIII. CONCLUSION

In sum, an overwhelming number of commenters agree that the Consensus Plan is a flawed and potentially dangerous approach to solving interference. While Entergy fully supports the resolution of any interference being caused to Public Safety, Business, and I/LT licensees in the 800 MHz band, Entergy and other commenters recognize that there are alternatives available that would avoid the pitfalls and loopholes of the Consensus Plan. Particularly, by codifying the Best Practices guide and enforcing non-interference standards, the FCC can offer immediate relief *without rebanding*. Further, by implementing rule changes, such as those recommended by Cinergy and Consumers, that would permit spectrum swapping and privately negotiated market solutions, the parties themselves could effect a limited realignment in a manner that is directly proportionate to a given problem and is also self-funded. These suggestions offer a far simpler, and likely more effective, means of handling the issue than the Consensus Plan, and should be adopted by the FCC.

⁶⁹ AEP Supplemental Comments at 14.

⁷⁰ AEP Supplemental Comments at 14.

WHEREFORE, THE PREMISES CONSIDERED, Entergy respectfully requests that the Commission consider these Reply Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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Dated: February 25, 2003

CERTIFICATE OF SERVICE

I, Christine S. Bisio, do hereby certify that on this 25th day of February 2003, I caused a copy of the foregoing "Supplemental Reply Comments of Entergy Corporation and Entergy Services, Inc." to be hand-delivered to each of the following:

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