

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)	
)	
Wireless Telecommunications Bureau)	
Seeks Comment 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 XCEL ENERGY SERVICES INC.

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Dated: February 25, 2003

TABLE OF CONTENTS

I. THE INEQUITABLE AND DEFICIENT APPROACH SET FORTH IN THE “CONSENSUS PLAN” HAS GENERATED EXTENSIVE OPPOSITION FROM ACROSS ALL SEGMENTS OF THE 800 MHz LICENSEE COMMUNITY.2

II. THE COMMENTS DETAIL THE UNACCEPTABLY SEVERE NEGATIVE CONSEQUENCES OF THE CONSENSUS PLAN ON ALL LICENSEES IN THE 800 MHz BAND3

 A. All 800 MHz Licensees Would Be Impacted By The Lack Of Sufficient Interference Protection That Would Prevail Under the Consensus Plan.....4

 B. The Licensing Freeze Is Unnecessary And Will Only Prevent Licensees From Modifying Their Communication Systems6

III. THE COMMENTS HIGHLIGHT THE NUMEROUS FLAWS INHERENT TO THE PROPOSED ADMINISTRATION OF THE CONSENSUS PLAN7

IV. WHILE THE CONSENSUS PLAN CARRIES A SUBSTANTIAL POSSIBILITY OF MAKING THE OPERATING ENVIRONMENT WORSE, COMMENTERS HAVE OFFERED WORKABLE ALTERNATIVE APPROACHES TO ADDRESSING INTERFERENCE IN THE 800 MHz BAND9

V. CONCLUSION10

EXECUTIVE SUMMARY

The comments that were submitted in response to the supplemental filing of the Consensus Parties demonstrate strong opposition to the Consensus Plan from all types of licensees, including those licensed in the Public Safety Radio Service. The commenters overwhelmingly agree with Xcel Energy Services Inc.'s ("Xcel Energy's") position that the Consensus Plan would have unacceptable consequences for incumbent licensees.

For example, the Consensus Plan restricts a licensee's right to complain about interference while at the same time minimizing Nextel's accountability. In order to be protected from interference, a licensee's signal must be a sufficiently strong, the receivers must meet certain specifications, and the communications system must be current with regard to maintenance and service bulletins. If a licensee fails to meet any of these thresholds, Nextel can interfere with the licensee's communications system and not be required to take any corrective action.

Furthermore, the Consensus Plan proposes a licensing freeze that would preclude utilities from modifying their communication systems. The licensing freeze and the reduced interference protection impose unwarranted hardships for utilities at a time when they are seeking to increase security and improve the capabilities of their communications systems.

The rights of Critical Infrastructure Industry licensees will be further trampled as a result of the Relocation Coordination Committee ("RCC") implementing the rebanding process. A number of commenters are extremely concerned that the RCC will consist solely of supporters of the Consensus Plan. Because the powers of the RCC are

unchecked, this will give the proponents of the Consensus Plan pervasive control over the entire relocation process. If this occurs, the rights of all licensees will not be protected.

To address the interference problems, Xcel Energy and numerous other commenters advocate instituting firmer interference resolution obligations along with technical solutions. This will address the interference problems expeditiously and in the most economic manner.

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Xcel Energy Services Inc. (“Xcel Energy”), by and through its undersigned counsel, hereby files these supplemental reply comments in the above referenced proceeding pursuant to the Federal Communications Commission’s Public Notice soliciting comments and reply comments in response to the supplemental comments filed by the proponents of the “Consensus Plan.”¹ As set forth more fully below, the comments on the Consensus Parties’ supplemental comments illuminate the extensive deficiencies in the Consensus Plan and further erode the

¹ *Public Notice*, Wireless Telecommunications Bureau Seeks Comment on “Supplemental Comments of the Consensus Parties” Filed in the 800 MHz Public Safety Interference Proceeding, DA 03-19 (January 3, 2003).

Consensus Parties' claim that it is an accepted, objective or fair approach to resolving public safety interference.

I. THE INEQUITABLE AND DEFICIENT APPROACH SET FORTH IN THE "CONSENSUS PLAN" HAS GENERATED EXTENSIVE OPPOSITION FROM ACROSS ALL SEGMENTS OF THE 800 MHz LICENSEE COMMUNITY.

Despite holding themselves out as representative of 800 MHz licensees in general, the latest version of the Consensus Parties' Consensus Plan has generated voluminous objections and concerns from all types of 800 MHz licensees, most notably those licensed in the Public Safety Radio Service. The Michigan Department of Information Technology, for example, has strong reservations about the Consensus Plan, based on a variety of issues, as do the City of Baltimore, the City of New York, the City of Philadelphia, the State of Florida, the Public Safety Improvement Coalition, and the Public Safety Wireless Network Program.² Indeed, the Michigan Department of Information Technology rightly questions whether many of the Consensus Parties in fact have the specific and informed support of their membership in regard to the Consensus Plan.³ Given the potentially disastrous consequences of the Consensus Plan for virtually all 800 MHz licensees and the lack of significant endorsement by licensees themselves, this appears to be a particularly trenchant question. In this regard, American Electric Power

² Comments of Michigan Department of Information Technology, WT Docket No. 02-55 at 2-4 (February 10, 2003) ("*Michigan Comments*"); Comments of City of Baltimore, WT Docket No. 02-55 at 3-4 (February 10, 2003) ("*City of Baltimore Comments*"); Comments of City of New York, WT Docket No. 02-55 at 5 (February 10, 2003); Comments of City of Philadelphia, WT Docket No. 02-55 at 1-4 (February 10, 2003) ("*Philadelphia Comments*"); Comments of State of Florida, WT Docket No. 02-55 at 6 (February 10, 2003); Comments of Public Safety Improvement Coalition, WT Docket No. 02-55 at 2-3 (February 10, 2003) ("*Public Safety Improvement Coalition Comments*"); Comments of Public Safety Wireless Network Program, WT Docket No. 02-55 at 5 (February 10, 2003) ("*Public Safety Wireless Network Program Comments*").

points out that the Industrial Telecommunications Association, of which American Electric Power is a member, never sought American Electric Power's input in making a decision to support the plan.⁴

The Consensus Parties' supplemental comments have prompted a large number of 800 MHz *licensees* to comment, largely in opposition to the Consensus Plan in its revised format. This response is significant, Xcel Energy submits, because it demonstrates the very real adverse consequences that the Consensus Plan's radical rebanding will have on vital communications systems, which are now coming more fully to light.

II. THE COMMENTS DETAIL THE UNACCEPTABLY SEVERE NEGATIVE CONSEQUENCES OF THE CONSENSUS PLAN ON ALL LICENSEES IN THE 800 MHz BAND

In its supplemental comments, Xcel Energy pointed out the significant deleterious effects that the Consensus Plan would have on licensees in the 800 MHz band other than Nextel, making it an unacceptable approach to the problem it purports to solve: interference to Public Safety systems. The other comments filed in response to the Consensus Parties' supplemental comments further confirm the unacceptable consequences to vital operations in the 800 MHz band including, ironically, Public Safety operations.

³ *Michigan Comments* at 2-3.

⁴ Comments of American Electric Power Company, Inc., WT Docket No. 02-55 at 2-3 (February 10, 2003) ("*AEP Comments*").

A. All 800 MHz Licensees Would Be Impacted By The Lack Of Sufficient Interference Protection That Would Prevail Under the Consensus Plan

As a preliminary matter, the Consensus Plan does not appear to call for any meaningful change in the interference rules until after the completion of rebanding in a given region,⁵ which is likely to span a period of at least several years. As the Michigan Department of Information and Technology points out, “public safety personnel [will] continue to face an increasingly dangerous situation” during that period.⁶ Numerous other parties, including Public Safety licensees such as the City of San Diego, the County of San Diego and the City of Philadelphia, agree that the Consensus Plan is deficient in failing to provide relief for an extended period of time.⁷

With regard to their proposed post-realignment interference resolution framework, the Consensus Parties propose performance thresholds and other conditions that must be met before a licensee is entitled to complain of interference.⁸ The Consensus Parties claim that a base-to-mobile strength of -98 dBm, the lowest signal level that is afforded protection “represents a

⁵ See Supplemental Comments of Aeronautical Radio Inc., the American Mobile Telecommunications Association, the American Petroleum Institute, the Association of Public Safety Communications Officials - International, Forest Industries Telecommunications, the Industrial Telecommunications Association, Inc., the International Association of Chiefs of Police, the International Association of Fire Chiefs, the International Municipal Signal Association, the Major Cities Chiefs Association, the Major County Sheriffs Association, the National Sheriffs Association, the National Stone, Sand and Gravel Association, Nextel Communications, Inc., the Personal Communications Industry Association, and the Taxicab, Limousine and Paratransit Association, WT Docket No. 02-55 at App. F-1, §§1.b and 1.1 (December 24, 2002) (“*Supplemental Comments*”).

⁶ *Michigan Comments* at 7.

⁷ Comments of City and County of San Diego, WT Docket No. 02-55 at 6-7 (February 10, 2003) (*City and County of San Diego Comments*); *Philadelphia Comments* at 8.

⁸ *Supplemental Comments* at App. F-2, F-3, §§2.1.1 and 2.1.2.

transmission only slightly higher than the minimum necessary for successful voice communications” and that “weaker signals are typically not reliable in any real world applications.”⁹

The comments, however, reveal that this is not the case and that licensees are using much lower signals for effective land mobile communications. Motorola, the leading manufacturer of 800 MHz land mobile equipment, indicates that Public Safety systems can get acceptable quality as low as -106 dBm.¹⁰ Palomar Communications, Inc., calls the Consensus Parties’ claim concerning the -98 dBm transmission levels “a bald faced lie,”¹¹ indicating that it is able to make effective use of signal strengths down to a level of -120 dBm.¹²

Xcel Energy’s own experience confirms that licensees can operate their communications systems at signal strengths significantly lower than -98 dBm because Xcel Energy typically designs its networks to the -113 dBm level. Accordingly, 800 MHz systems, including Xcel Energy’s, would commonly not be entitled to protection under even the most liberal of the Consensus Plan’s interference standards. The Consensus Plan calls for even higher standards in the Guard Band at 859-861 MHz and for “New or Replacement Systems” in the 851-859 MHz range, thus assuring that Nextel’s interference mitigation obligations would diminish even further over time as systems are replaced.¹³

In addition to these standards, the Consensus Plan would further condition a licensee’s right to complain of interference by requiring the licensee to ensure that its system was current

⁹ *Supplemental Comments* at 42.

¹⁰ Comments of Motorola, WT Docket No. 02-55 at 11 (February 10, 2003).

¹¹ Comments of Palomar Communications, Inc., WT Docket No. 02-55 at 8 (February 10, 2003).

¹² *Id.*

¹³ *Supplemental Comments* at App. F-2, §2.1.1.b

with regard to maintenance and service bulletins. As the City and County of San Diego point out, however, most manufacturer bulletins have no bearing on interference and meeting this requirement would not be feasible for most Public Safety licensees.¹⁴ This appears to be the point. As noted by the Michigan Department of Information Technology, the technical requirements applicable to cellular CMRS under the Consensus Plan “do not appear significant and may represent little more than just good engineering practice.”¹⁵ The entire structure of the Consensus Plan minimizes Nextel’s accountability for the interference problem, while creating numerous burdens and preconditions on other licensees’ right to complain of it. Interference cannot be regulated away and, as a multitude of commenters have maintained in this proceeding all along, the FCC should impose the burden of rectifying interference on the party causing it. This not only represents the most equitable approach, but it is the most efficient as Nextel is uniquely positioned to correct the problems it is causing.

B. The Licensing Freeze Is Unnecessary And Will Only Prevent Licensees From Modifying Their Communication Systems

As evidenced by the vigorous objections they received in the comments, the licensing freezes proposed in the Consensus Plan would have the effect of crippling utility and other radio systems in the 800 MHz band. As Carolina Power and Light indicates, the proposed spectrum freezes would cause unwarranted hardship for utilities at a time when they are seeking to increase security and improve their response capability.¹⁶ It is inappropriate, as American Electric Power notes, for the Consensus Parties to seek an indirect reallocation of Business and

¹⁴ *City and County of San Diego Comments* at 9.

¹⁵ *Michigan Comments* at 6.

¹⁶ Comments of Carolina Power and Light Company and TXU Business Services, WT Docket No. 02-55 at 3-4 (February 10, 2003) (“*Carolina and TXU Comments*”).

I/LT spectrum through the proposed five-year spectrum preference.¹⁷ If reallocation of spectrum to Public Safety is warranted, it should come from Nextel's spectrum allocation. At a minimum, reallocation must be carried out in an overt fashion with sufficient information available concerning the amount of spectrum at stake for informed comment and decision-making.

III. THE COMMENTS HIGHLIGHT THE NUMEROUS FLAWS INHERENT TO THE PROPOSED ADMINISTRATION OF THE CONSENSUS PLAN

As Xcel Energy stated in its supplemental comments, the Consensus Plan's proposals for implementing relocation are inequitable and would not lead to an orderly, prompt or fair relocation process.¹⁸ Other commenters agree with this view. Indeed, there was remarkably uniform objection to the lack of impartiality in the makeup of the Relocation Coordination Committee ("RCC") and its extraordinary authority over the relocation process. As the Public Safety Improvement Coalition notes, the relocation process is in "a few private hands."¹⁹ Carolina Power and Light expresses its view that the Consensus Parties are likely to have pervasive control over the RCC to the detriment of Critical Infrastructure Industry licensees and that the RCC will operate virtually unchecked.²⁰ Xcel Energy agrees and notes that either of these factors alone would make the RCC unsound and subject to challenge; together they will assure an extremely distorted process that will produce intolerable results.

Small Business in Telecommunications notes that the RCC would consist of, and be partial to the interests of, Consensus Parties, that the RCC's proposed licensing role would

¹⁷ *AEP Comments* at 10-12.

¹⁸ Supplemental Comments of Xcel Energy Services Inc., WT Docket No. 02-55 at 8-9 (February 10, 2003).

¹⁹ *Public Safety Improvement Coalition Comments* at 9.

²⁰ *Carolina and TXU Comments* at 7-8.

violate the Communications Act, and that non-Public Safety licensees are accorded inferior rights.²¹ The Public Safety Wireless Network Program anticipates months and years of legal challenges that would follow the adoption of the Consensus Plan's implementation proposals and other.²²

National Association of Manufacturers and MRFAC also object to the plan for a variety of reasons, among them the probable inclusion of Consensus Party members on the RCC and the limited scope of issues over which arbitration may be sought. They correctly point out, issues such as the adequacy of measures to avoid disruption cannot be arbitrated, thus omitting key issues from even this limited level of recourse, and leaving them in a regulatory "Twilight Zone."²³

In sum, the comments highlight a host of objectionable and legally unsound elements of the proposed administration of the relocation process. Xcel Energy submits that, if realignment of the 800 MHz band is necessary, it cannot, and should not, be carried out as the Consensus Parties' have proposed. Instead, relocation should be conducted more in accordance with past FCC band-clearing frameworks. In this regard, Xcel Energy notes that Cinergy Corporation and Consumers Energy Company have proposed a mechanism that would eliminate the need for the RCC, which would eliminate many of the commenters objections to the implementation of

²¹ Comments of Small Business In Telecommunications, WT Docket No. 02-55 at 23-30 (January 10, 2003).

²² *Public Safety Wireless Network Program Comments* at 8.

²³ Comments of National Association of Manufacturers and MRFAC, Inc., WT Docket No. 02-55 at 15 (February 10, 2003).

relocation.²⁴ Xcel Energy urges the FCC to give serious consideration to these parties' proposal in the event that it moves forward with relocation.

IV. WHILE THE CONSENSUS PLAN CARRIES A SUBSTANTIAL POSSIBILITY OF MAKING THE OPERATING ENVIRONMENT WORSE, COMMENTERS HAVE OFFERED WORKABLE ALTERNATIVE APPROACHES TO ADDRESSING INTERFERENCE IN THE 800 MHz BAND

Xcel Energy supports the objective of addressing interference in the 800 MHz band. In the latest take-it-or-leave-it version, however, the Consensus Plan has evolved into a highly politicized effort in which a small number of entities seek to advance their own interests at the expense of others. Because of Nextel's insistence on a funding cap, furthermore, the Consensus Parties cannot represent that the plan will accomplish any defined minimal level of relocation. Accordingly, under the express terms of the plan, relocation could cease after only one or a few regions were rebanded, with the result both that Nextel and NPSPAC licensees would occupy the same bands in different parts of the country. Not only would this disrupt Public Safety interoperability and undermine efforts to implement equipment-based measures, but Nextel and NPSPAC licensees would also be co-channel in many instances. The FCC cannot reasonably adopt this approach.

Fortunately, the record contains a number of workable tools for resolving interference in an effective and fair way, not just to Public Safety licensees but to all licensees in the 800 MHz band. Along with Xcel Energy, a variety of commenters advocate the institution of measures such as firmer interference resolution obligations and establishing avenues to resolve

²⁴ Supplemental Comments of Consumers Energy Company, WT Docket No. 02-55 at App. B (February 10, 2003) ("*Consumers Supplemental Comments*"); Comments of Cinergy Corporation, WT Docket No. 02-55 at App. B (February 10, 2003) ("*Cinergy Supplemental Comments*").

interference quickly (including providing for access to information about potentially interfering operations, timeframes, and regulatory flexibility to engage in spectrum swaps).²⁵ While the use of such methods does not provide Nextel with spectrum at 1.9 GHz, it would permit it to keep its 700 MHz and 900 MHz spectrum holdings, or use them in swap arrangements as it saw fit. Furthermore, such an approach would avoid the problems associated with a rebanding that was left uncompleted; Nextel would be under a continuous obligation to remedy interference.

Xcel Energy submits that, if firmly enforced, the measures will have a profound beneficial effect on the interference problem in the 800 MHz band. Where there is greater ease of identifying interfering sites, clear obligations and predictability of enforcement consequences, parties will modify their behavior to prevent interference from occurring in the most economic way. Xcel Energy urges the FCC to reject the Consensus Parties' call for a bloated and ineffective vehicle for resolving this problem and, instead, pursue the more sensible path of promoting resolution through increased enforcement.

V. CONCLUSION

The comments filed in response to the Consensus Parties' supplemental comments only reinforce the profound problems associated with the Consensus Plan. That the comments reflect a striking level of opposition to the Consensus Plan is to be expected given its deficiencies.

²⁵ Comments of Alliant Energy Corporation, WT Docket No. 02-55 at 1-2 (February 10, 2003); Comments of Ameren Corporation, WT Docket No. 02-55 at 14 (February 10, 2003), *AEP Comments* at 17; *Cinergy Supplemental Comments* at 6-7; *City of Baltimore Comments* at 1-2; *Consumers Supplemental Comments* at 4-6; Supplemental Comments of Entergy Corporation and Entergy Services, Inc., WT Docket No. 02-55 at 30-31 (February 10, 2003); Comments of MidAmerican Energy, WT Docket No. 02-55 at 1 (February 10, 2003), Comments of National Rural Electric Cooperative Association, WT Docket No. 02-55 at 6-8 (February 10, 2003); Comments of United Telecom Council and the Edison Electric Institute, WT Docket No. 02-55

While offering only a hope of resolving interference, the Consensus Plan would exact an extraordinary price from the private land mobile community, which is not a source of the interference problem. Given these problems and the availability of effective alternatives, the FCC must adopt a more balanced and objective approach to the resolution of the interference in the 800 MHz.

WHEREFORE, THE PREMISES CONSIDERED, Xcel Energy Services Inc. respectfully requests that the Commission consider these supplemental reply comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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at 3, 5, 14-16 (February 10, 2003); Comments of Verizon Wireless, WT Docket No. 02-55 at 15 (February 10, 2003).

CERTIFICATE OF SERVICE

I, Christine Biso, do hereby certify that on this 25th day of February 2003, I caused a copy of the foregoing “Supplemental Reply Comments of Xcel Energy Services Inc.” to be hand-delivered to each of the following:

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