

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

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

REPLY COMMENTS OF THE CITY OF BALTIMORE, MARYLAND

1. The City of Baltimore, Maryland ("Baltimore City") hereby submits these Reply Comments in response to the Commission's public notice of January 3, 2003 (DA No. 03-19) in the above-captioned proceeding. As indicated in its initial comments, Baltimore City believes realignment of the 800 MHz band is premature at this time as the scope of the interference problem has not been adequately explored and less intrusive and less disruptive means of mitigating interference problems are available. Even if the Commission found realignment of the band to be necessary, the Consensus Plan could not be adopted in its current form because it (1) lacks assurances that sufficient funds will be made available to relocate all public safety licensees, (2) lacks contingencies if pledged funds run out, (3) fails to ensure that public safety systems are not interrupted during the retune process, (4) requires Public safety entities to disclose detailed and highly sensitive information concerning public safety communications systems that must be safeguarded, and (5) includes draconian forced migration policies that are not acceptable, especially when they are applied to public safety licensees.

2. Baltimore City supports those commenters that believe realignment of the 800 MHz band is premature.¹ Realignment appears to a large extent to be a solution in search of a problem, as the record does not currently support such an overly intrusive and disruptive approach to an interference problem that may be remedied on a local level. As outlined by the comments of Access Spectrum, LLC, the Commission should address interference where it occurs, or where it is likely to occur, which will limit the disruption to unaffected incumbent licensees.² In its comments Access Spectrum urges the Commission to remedy the interference problem in the least intrusive manner, and Baltimore City supports this proposal. Access Spectrum believes interference can be resolved by identifying interference hot spots and developing a set of policies and procedures for resolving interference on a local level.³ Other commenters urge the Commission to enforce its current rules and adopt the Best Practices Guide.⁴ Whether the Commission adopts new policies and procedures to resolve interference or adopts the Best Practices Guide, it is clear that less intrusive means of resolving interference exist and rebanding should only be implemented as a last resort.

3. If the Commission determines that retuning is necessary, the record in this proceeding supports that Public safety entities should not be required to pay to retune their systems. However,

¹ See Comments of Access Spectrum, LLC; Comments of The State of Florida filed on February 10, 2003 at p. 1 (The State of Florida “remains concerned that a “cap” on the funding may result in an incomplete [public safety] realignment.”)

² Access Spectrum Comments at p. 3.

³ Access Spectrum Comments at p. 3-4.

⁴ Supplemental Comments of Cinergy Corporation filed February 10, 2003 at p. 6.

several commenters⁵ and Baltimore City believe the Consensus Plan's funding mechanisms will not ensure the availability of funds necessary to cover all of the costs of retuning public safety systems nationwide.⁶ The Plan itself recognizes that the funds pledged by Nextel may run out before all NPSPAC licensees are retuned;⁷ but the Plan fails include contingencies if the funds are depleted, nor has a determination been made of how many public safety systems can be retuned and how many cannot be retuned and will require more costly replacement.⁸ What will happen to NPSPAC licensees that are not retuned before the funds run out?⁹ The State of Florida recognizes that a funding gap may result in the relocation of some public safety entities and not others, which it believes will produce "bottlenecks in the realignment process and potentially dangerous

⁵ Cinergy Supplemental Comments at pp. 44-50; Comments of The Communications Division, Michigan Department of Information Technology Representing Michigan's Public Safety Communications System filed February 10, 2003 at p. 3; Comments of The City of New York filed February 10, 2003 at p. 5.

⁶ The National League of Cities, National Association of Telecommunications Officers and Advisors, National Association of Counties and the United States Conference of Mayors filed Joint Comments stating that the Plan "*ensures* that no state or local government agency will be required to expend their own resources to implement the Plan." Comments of The National League of Cities, National Association of Telecommunications Officers and Advisors, National Association of Counties and the United States Conference of Mayors filed February 10, 2003 at p. 3 (emphasis supplied). Unfortunately, the Plan does not ensure that all Public safety systems will be fully funded. Rather, the Plan caps Public safety reimbursement at \$700 million and fails to address how state and local governments will fund the relocation of public safety systems once the pledged \$700 million runs out.

⁷ Supplemental Comments of the Private Wireless Coalition and Nextel Communications, Inc. filed December 24, 2002 at p. 7.

⁸ Comments of The State of Florida filed February 10, 2003 at ¶ 3; Comments of The City of New York at p. 5.

⁹ See Cinergy Supplemental Comments at p. 46. Cinergy also questions what will happen to Nextel's temporary use of channels 1-150 if the retuning funds run out? Will Nextel continue to operate on these temporary channels?

communications gaps between regions.”¹⁰ The issue of ensuring sufficient funding for public safety retuning must be resolved before the Commission adopts a nationwide realignment plan.

4. Baltimore City supports The State of Florida’s comments that public safety licensees must be reimbursed for not only initial retuning and/or replacement costs but also additional ongoing costs resulting from retuning to new channels and that these costs must be based on the inherent life expectancy of the public safety equipment.¹¹ Reimbursement of ongoing costs should not be limited to two years. Baltimore City also supports The State of Florida’s clarification that public safety entities must be provided with funds to support relocation efforts before retuning begins, rather than as a reimbursement, because they do not have funds on hand to finance retuning and cannot absorb the risk of inadequate reimbursement.¹² Requiring Public safety entities to seek reimbursement of retuning costs after the fact will only further strain their limited budget resources.

5. The Consensus Plan requires public safety entities to provide detailed system information regarding critical public safety infrastructure. While Baltimore City recognizes that much of this information is publicly available, the compilation and disclosure of this information may make it easier for one to undermine the integrity and reliability of public safety systems. Safeguarding this information is a matter of public security. Neither Baltimore City, nor any other public safety entity, can afford to have the integrity of its communications system jeopardized. Therefore, this information must be protected from public disclosure.

¹⁰ Comments of The State of Florida at ¶ 2 (emphasis supplied).

¹¹ Comments of The State of Florida at ¶ 7.

¹² Comments of The State of Florida at ¶ 21.

6. Baltimore City emphasizes that the forced migration policies proposed in the Plan are an unacceptable means of retuning public safety operations and are without legal basis. The Plan proposes rules that would involuntarily cancel a public safety entity's license or reduce the license to secondary status if the system's retune is not completed within a specified time frame. Essentially, under this proposal, an incumbent Public safety licensee could be involuntarily forced to move to new frequencies or face cancellation, even if the delay were due to the acts of third parties over which the licensee had no control. Under no circumstances should a Public safety licensee be faced with the possibility of losing its license or having its license reduced to secondary status.

Conclusion

7. It is not clear from the current record that nationwide realignment of the 800 MHz band is necessary or that less intrusive solutions are not available. Baltimore City supports the proposal that the Commission enforce its existing rules, adopt the Best Practices Guide, and resolve interference on a local level as these measures are the least disruptive to public safety operations. Nationwide retuning of all public safety systems is one of the most intrusive ways of resolving public safety interference, particularly for those systems, like Baltimore City, that are not experiencing detrimental interference. To force all systems to realign would involve significant risks of interruption of vital of public safety communications and an unfunded federal mandate if reimbursement falls short of full initial and ongoing costs, without sufficient assurance that whatever problems exist will in fact be fully and permanently solved. However, if the Commission finds that the record supports realignment of the band, it cannot adopt the

Consensus Plan in its current form as it contains too many uncertainties and too many unanswered questions.

Respectfully submitted,

/s/ Tara B. Shostek

Peter Tannenwald

Tara B. Shostek

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

February 25, 2003

Special Counsel for the City
of Baltimore, Maryland