

**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 )

**REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.  
AND NEXTEL PARTNERS INC.**

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## SUMMARY

The Consensus Plan strikes a careful balance among the varying interests in this proceeding and provides the only detailed, practical, and sustainable means of achieving the Commission's public interest objectives. It will effectively address CMRS – public safety interference, minimize disruption to incumbent licensees, ensure that licensees required to relocate under the Plan receive suitable replacement spectrum, and provide additional, near-term spectrum for public safety communications services. Nextel and Nextel Partners fully endorse the Consensus Plan, as do organizations representing the overwhelming majority of 800 MHz Land Mobile Radio licensees.

CMRS – public safety interference is a complex problem resulting from numerous actions and developments over the last several decades, including the Commission's 800 MHz allocation decisions, public safety radio operators' choice of system architecture to best serve their users given financial and technical realities, the adoption of new, Commission-approved technologies by SMR and cellular providers, and the unanticipated growth in CMRS and public safety traffic. CMRS – public safety interference results from a combination of technical factors relating to both CMRS and public safety operations, and has arisen even though all parties are in full compliance with FCC rules and policies and the terms and conditions of their licenses. In stark contrast to the obstructionist tactics of a few commenters, Nextel has recognized that it will be both affected by and is an integral part of any 800 MHz CMRS – public safety solution, and it has stepped forward as a responsible Commission licensee and corporate citizen to undertake a proactive and cooperative role therein.

An essential element of the Consensus Plan is assigning replacement spectrum for Nextel at 1910-1915/1990-1995 MHz in return for the substantial spectral contribution Nextel is making under the Plan. Arguments advanced by members of the cellular/PCS industry against such an assignment are meritless and contradict positions these parties have taken in other proceedings. The Consensus Plan will relieve cellular licensees of the burdens of mitigating CMRS – public safety interference on a case-by-case basis without requiring these licensees to retune one piece of equipment or pay one cent to fund incumbent relocation costs. Moreover, the assignment of this 1.9 GHz spectrum to Nextel will not harm the development of unlicensed PCS services, as UTAM claimed in its comments. Nor will this assignment trigger section 309(j) of the Communications Act, as amended (the “Act” or the “Communications Act”) or the *Ashbacker* doctrine. The Commission has ample statutory authority to assign the 1910-1915/1990-1995 MHz band to Nextel, just as it has statutory authority to designate Nextel’s 700 MHz Guard Band spectrum for public safety use as proposed in the Consensus Plan.

Finally, some 900 MHz licensees have raised concerns that their noise-limited systems will be subject to interference from Nextel’s operation on its licensed 900 MHz channels during the 800 MHz realignment process. Nextel believes the potential for such interference in the 900 MHz band can be managed and minimized during realignment. These concerns nonetheless serve to highlight the benefits of the Consensus Plan and the fact that relocating Nextel and its cellularized technology out of the 900 MHz band after the realignment process is completed is an integral part of this proceeding. Under the Plan, Nextel will vacate all of its 900 MHz licenses within six months of completion of Phase II of the realignment process. This will prevent the same problem from occurring

in the 900 MHz band that has led to interference in the 800 MHz band – the long-term deployment of an interleaved mix of noise-limited and interference-limited systems on the same set of channels.

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**REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.  
AND NEXTEL PARTNERS INC.**

Nextel Communications, Inc. (“Nextel”) and Nextel Partners Inc. (“Nextel Partners”) respectfully submit these Reply Comments in support of the Supplemental Comments of the Consensus Parties filed in this proceeding on December 24, 2002 (“Supplemental Comments”).<sup>1</sup> Nextel and Nextel Partners fully endorse the Consensus Plan as well as the Reply Comments filed by the Consensus Parties in response to the *January 2003 Public Notice*. Nextel and Nextel Partners file these Reply Comments to emphasize the substantial public interest benefits offered by the Consensus Plan and to respond to several specific arguments raised by the commenters in this proceeding.

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<sup>1</sup> By Public Notice dated January 3, 2003, the Commission invited comments and reply comments on the Supplemental Comments. See 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 (released Jan. 3, 2003) (“*January 2003 Public Notice*”).

**I. THE RECORD DEMONSTRATES THAT THE CONSENSUS PLAN PROVIDES A BALANCED APPROACH TO ACHIEVING THE COMMISSION'S GOALS IN THIS PROCEEDING**

The Federal Communications Commission (“Commission”) initiated this proceeding in response to increasing concerns regarding commercial mobile radio service (“CMRS”) – public safety interference in the 800 MHz band. The first reports of this interference arose four years ago. In response, public safety and CMRS licensees, including CTIA on behalf of the A and B Block cellular licensees that contribute to this interference, initially attempted to address the problem by developing and adopting the *Best Practices Guide*.<sup>2</sup> Since that time, however, there have been increasing instances of interference throughout the country, even though all licensees are operating in compliance with the Commission’s rules and the terms and conditions of their licenses. Without a comprehensive solution, CMRS – public safety interference will increase as public safety communications networks grow to meet expanded responsibilities and threats to Homeland Security, while Nextel and the cellular licensees operating in the 800 MHz band expand their systems to meet consumer demand for mobile services. Leaving this problem unsolved would present a serious threat to the nation’s public safety communications systems and their critical role in safeguarding the security of our country.

Faced with this pressing problem, Nextel proposed a proactive solution in a White Paper filed with the Commission on November 21, 2001.<sup>3</sup> Nextel’s White Paper

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<sup>2</sup> See *FCC News Release, Wireless Telecommunications Bureau Announces Best Practices Guide for Avoiding Interference Between Public Safety and Commercial Wireless 800 MHz Communications Systems* (Feb. 9, 2001).

<sup>3</sup> See “Promoting Public Safety Communications: Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio – Public Safety Interference

urged the Commission to implement an effective, long-term solution: realigning the 800 MHz Land Mobile Radio Band to retune noise-limited public safety and interference-limited CMRS systems to separate spectrum blocks, thereby eliminating the spectrally-mixed licensing of incompatible system designs that is the underlying cause of CMRS – public safety interference.

The Commission issued its Notice of Proposed Rulemaking (“*NPRM*”) in this proceeding nearly a year ago, seeking comment on Nextel’s White Paper and other proposals “on how best to remedy interference to 800 MHz public safety systems consistent with minimum disruption to our existing licensing structure and assurance of sufficient spectrum for critical public safety communications.”<sup>4</sup> Over the next several months, Nextel worked closely with the public safety and private wireless communities to develop a consensus solution to achieve these vital goals. These parties represent a broad cross-section of interests and existing licensees in the 800 MHz band, and, not surprisingly, they brought to the table a wide range of views on the issues in this proceeding.

Taking into account all of these views, and based on many hours of negotiation and analysis, seventeen organizations (the “Consensus Parties”)<sup>5</sup> – representing over 90

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and Allocate Additional Spectrum to Meet Critical Public Safety Needs,” Nextel Communications, Inc., ET Docket Nos. 00-258, *et al.* (Nov. 21, 2001).

<sup>4</sup> *Improving Public Safety Communications in the 800 MHz Band; Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, Notice of Proposed Rulemaking, 17 FCC Rcd 4873, ¶ 2 (2002).

<sup>5</sup> The Consensus Parties include Nextel and the following entities: the Association of Public-Safety Communications Officials-International, Inc.; the International Association of Chiefs of Police; the International Association of Fire Chiefs, Inc. and International Municipal Signal Association; the Major Cities Chiefs Association; the Major County Sheriffs’ Association; and the National Sheriffs’ Association; Aeronautical

percent of 800 MHz Land Mobile Radio licensees – filed the Consensus Plan with the Commission in August 7, 2002. The Consensus Parties subsequently worked together to refine their proposal, and on December 24, 2002 filed their Supplemental Comments in this proceeding. The Consensus Plan strikes a balance among the varying interests in this proceeding and provides the only detailed, practical, and sustainable means of achieving the Commission’s public interest objectives. The Consensus Plan will:

- Address the root cause of CMRS – public safety interference by realigning the 800 MHz band to move cellular and non-cellular systems into separate bands;
- Provide sufficient funding to cover the relocation costs of all public safety and Business/Land Transportation (“B/ILT”) and high-site Specialized Mobile Radio (“H-SMR”) licensees that are required to relocate under the Plan;<sup>6</sup>
- Significantly minimize the number of incumbent B/ILT and H-SMR licensees that will need to be relocated, and provide those licensees that will need to be relocated with comparable replacement facilities;
- Establish comprehensive technical standards that will improve the Radio Frequency (“RF”) environment for *all* Land Mobile Radio licensees;

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Radio, Inc.; the American Mobile Telecommunications Association; the American Petroleum Institute; Association of American Railroads; Forest Industries Telecommunications; the Industrial Telecommunications Association, Inc.; the National Stone, Sand and Gravel Association; PCIA – The Wireless Infrastructure Association; and the Taxicab, Limousine and Paratransit Association.

<sup>6</sup> Nextel will contribute up to \$850 million to cover public safety, B/ILT, and H-SMR relocation costs (an increase of \$350 million over the contribution proposed in Nextel’s White Paper); Nextel will fund its own relocation costs, which will be greater than those of any other licensee; contribute over 10 MHz of spectrum at 700 MHz, 800, MHz, and 900 MHz for which it paid approximately \$2 billion in Commission auctions and in secondary market transactions; and it will (separate and above the \$850 million for incumbent relocation) (i) contribute its proportionate share of the costs of relocating Broadcast Auxiliary Service licensees at 1.9 GHz, and (ii) reimburse UTAM for clearing the 1910-1915 MHz unlicensed Personal Communications Service channel block upon the assignment to Nextel of the 1.9 GHz replacement spectrum.

- Provide additional near-term and long-term spectrum to meet critical public safety needs;
- Provide additional spectrum for B/ILT and H-SMR systems; and
- Provide suitable replacement spectrum for Nextel in the 1.9 GHz band.

There have now been three rounds of comments in this proceeding, with two of those rounds addressing the Consensus Plan. A minority of parties in this proceeding – primarily from the cellular and utility industries – continue to oppose the Consensus Plan. The positions of these detractors demonstrate the balance inherent in the Consensus Plan. For example, the cellular commenters, CTIA, and Southern LINC would banish all 800 MHz public safety licensees to 700 MHz as the long-term solution to CMRS – public safety interference.<sup>7</sup> In contrast, certain private licensees and public utilities that declined to participate in developing the Consensus Plan oppose any relocation of 800 MHz incumbents; these parties support continued case-by-case interference mitigation measures and undefined “private market agreements” to control interference.<sup>8</sup> Similarly, the cellular commenters blame CMRS – public safety interference primarily on insufficient public safety receiver front-end selectivity and filtering and criticize the Consensus Plan for insufficiently emphasizing improving public safety receiver design.<sup>9</sup>

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<sup>7</sup> Comments of CTIA at 14-15; Comments of AllTel Communications, Inc.; AT&T Wireless Services, Inc.; Cingular Wireless LLC; Sprint Corporation; Southern LINC; United States Cellular Corporation (“Cellular Coalition”) at 18-19. (Unless otherwise indicated, all comments referenced herein were filed February 10, 2003 in WT Docket No. 02-55.)

<sup>8</sup> Comments of the United Telecom Council and the Edison Electric Institute (“UTC/EEI”) at 3; Comments of National Rural Electric Cooperative Association (“NRECA”) at 6-7; Comments of Cinergy at 6-7.

<sup>9</sup> Comments of Verizon Wireless at 4-7; Comments of Cellular Coalition at 3-4. What appears to elude the cellular commenters is that the wide front-end of public safety receivers – and the resulting vulnerability of these radios to receiver overload and IM

At the same time, Motorola, the leading public safety radio equipment manufacturer, strongly contends that “it is inappropriate to focus on receiver performance as the principal means of providing interference protection for 800 MHz users.”<sup>10</sup> Some commenters think the proposed Consensus Plan realignment timetable is too fast,<sup>11</sup> yet CTIA savages the Consensus Plan as being too slow given the urgency of eliminating interference to public safety communications.<sup>12</sup>

The Consensus Parties have steered a steady course away from these extreme, contradictory positions, developing a careful plan that advances the public interest rather

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interference – is largely a result of the interleaved allocation in the 800 MHz Land Mobile Radio band. Because of the interleaving of public safety operations across the 806–824/851–869 MHz band, equipment manufacturers have been compelled to build public safety receivers to be capable of spanning this entire band. Public safety receivers therefore “respond to” not only the desired transmissions from public safety communicators, but also to any strong B/ILT, SMR, CMRS (Nextel, Southern LINC, and cellular) transmissions across the 851-869 MHz band and even to transmissions in the cellular A-band allocation at 869–881.5 MHz. Only when public safety and commercial channel allocations are no longer interleaved will it be possible to design receivers with narrower front-end filtering that will “hear” only public safety transmissions and filter out other systems’ signals within the band. The adoption of public safety receiver standards without fundamental realignment of the 800 MHz band is not a viable solution to CMRS – public safety interference.

<sup>10</sup> Comments of Motorola at 16. In its comments, Motorola asserts that public safety receiver standards alone cannot resolve CMRS – public safety interference. Motorola states that “[w]hile [it] generally supports the adoption of appropriate receiver performance criteria, it is inappropriate to focus on receiver performance as the principal means of providing interference protection for 800 MHz users. Interference is a function of the overall system design and the environment in which the radio operates.” *Id.* It adds that “[t]he only effective way to reasonably ensure interference-free operation is to define the overall environment and to allow manufacturers to design equipment accordingly.” *Id.* at 17.

<sup>11</sup> See Comments of Southern LINC at 26-29; Comments of Consumers Energy at iii-iv; Comments of City of Baltimore at 1-2.

<sup>12</sup> Comments of CTIA at 5-6. Ironically, CTIA’s unfunded permanent solution – moving all 800 MHz public safety licensees to 700 MHz – would not even commence until the Consensus Plan is nearly completed.

than any individual private agenda. The Consensus Plan will achieve the Commission's goals by solving the CMRS – public safety problem, improving public safety communications at 800 MHz, and enabling all 800 MHz licensees to make more effective use of their licensed spectrum.

## **II. THE COMMISSION SHOULD REJECT THE CELLULAR INDUSTRY'S ANTI-COMPETITIVE OPPOSITION**

In its Comments, Nextel pointed out that throughout this proceeding the cellular industry has opposed constructive proposals to resolve CMRS – public safety interference.<sup>13</sup> The industry has maintained this opposition despite the fact that the Consensus Plan would greatly benefit cellular carriers, virtually eliminating cellular transmissions as a cause of public safety interference without requiring these providers to relocate their operations or offer up a single cent of funding for 800 MHz relocation.<sup>14</sup> Meanwhile, as it works to thwart real progress, the cellular industry has failed to present any viable alternative solution, concocting instead dubious attacks against the Consensus Plan while presenting alternatives that either are known to be completely infeasible, such as the 700 MHz Plan, or are ineffective.

What is the explanation for this stubborn opposition to the Consensus Plan, resistance that comes despite cellular providers' potential "free ride" out of the CMRS – public safety interference problem? Nextel believes the answer is straightforward. Driven by anti-competitive motives, the cellular industry has mounted a campaign to (i)

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<sup>13</sup> Comments of Nextel Communications, Inc. and Nextel Partners Inc. at 6-11 ("Nextel Comments").

<sup>14</sup> As Nextel described in its Comments, cellular providers are solely or partially responsible for a substantial proportion of existing CMRS – public safety interference. Nextel Comments at 6-8.

burden Nextel and other Land Mobile Radio band licensees with the ongoing expense and disruption associated with the obsolete 800 MHz band plan and increasing levels of interference; and (ii) prevent Nextel from receiving replacement spectrum at 1.9 GHz. Cellular providers claim to have the public interest in mind, but they are obviously calloused to the harm their opposition could cause to emergency first-responders and other public safety personnel, who continue to experience delay in the improvement of their radio capabilities.

The cellular/PCS industry offers no legitimate counterproposal to the Consensus Plan. Instead, the cellular strategy now appears to be to overload the Commission with a full menu of ill-conceived, chronological “alternatives”: in the short term the rigorous application of the *Best Practices Guide*, including the adoption of public safety receiver standards;<sup>15</sup> a “medium-term” offering in the form of “interim” 800 MHz rebanding, including negotiated market-based agreements and channel swaps;<sup>16</sup> and, finally, the so-called long-term solution, the shift of all 800 MHz public safety systems to the 700 MHz band (the “700 MHz Plan”).<sup>17</sup>

These proposals, both individually and collectively, fail to offer effective solutions for correcting 800 MHz CMRS – public safety interference. The *Best Practices Guide*, while extremely valuable, offers mostly reactive rather than proactive interference mitigation practices. Even a “rigorous” application of its principles cannot correct the fundamental incompatibility of noise-limited and interference-limited systems in

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<sup>15</sup> Comments of CTIA at 11-13; Comments of Cellular Coalition at 18.

<sup>16</sup> Comments of Verizon Wireless at 15-16; Comments of CTIA at 13-14.

<sup>17</sup> Comments of CTIA at 14-15; Comments of Cellular Coalition at 18-19.

interleaved spectrum.<sup>18</sup> Nor would new public safety receiver standards be beneficial in the short term because: (1) new receiver standards will not be effective in reducing intermodulation interference if the current non-contiguous, interleaved 800 MHz public safety spectrum is not realigned into an exclusive, contiguous block,<sup>19</sup> and (2) even if new receiver standards could reduce intermodulation interference, public safety licensees cannot replace their equipment “in the short term” given public funding realities.

The cellular industry’s suggestion of a medium-term “interim” 800 MHz-only rebanding is unworkable for several reasons. First, an 800 MHz-only rebanding does not provide enough spectrum to consolidate all noise-limited systems into a contiguous exclusive block with additional spectrum for expanding public safety systems. Even without expansion spectrum for public safety, some incumbents could lose channels – an unacceptable result from any incumbent’s perspective. Second, an “interim” 800 MHz-only realignment would unnecessarily disrupt public safety communications systems twice: first with the interim move, and then with cellular’s proposed “long-term” solution of moving all public safety systems to 700 MHz. Third, the cellular commenters fail to explain how they would fund the interim move. Fourth, an 800 MHz-only realignment ignores the similar interleaving of SMR and private wireless channels in the

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<sup>18</sup> On the other hand, once realignment is completed, a revised *Best Practices Guide* will be efficient and effective in avoiding and/or mitigating the few remaining instances of possible interference. See Supplemental Comments at App. F-5.

<sup>19</sup> Verizon Wireless and the Cellular Coalition claim that the Consensus Plan fails to address public safety receiver issues, and that the Plan therefore will not remedy CMRS – public safety interference. Comments of Verizon Wireless at 4-7; Comments of Cellular Coalition at 3-5. This position evidences a basic misunderstanding of the interrelated spectral and system design factors that produce CMRS – public safety interference, as discussed above at note 9 *supra* and as detailed in the Consensus Parties’ concurrently filed Reply Comments.

900 MHz band; without realignment, 900 MHz noise-limited licensees will experience interference from adjacent interference-limited systems – just as in the 800 MHz band.<sup>20</sup>

Finally, the cellular industry's 700 MHz Plan is highly uncertain, given the fact that broadcast licensees at TV channels 60-69 are not required to vacate the 700 MHz band until the end of 2006. The Consensus Plan would be nearly complete before such a move could even begin. Nor can there be any assurance that Congress would pass legislation earmarking revenues from an auction of vacated 800 MHz spectrum to fund relocation of public safety licensees to 700 MHz, or that those auction revenues would constitute sufficient funding for such public safety relocation.

### **III. THE UTILITY INDUSTRY'S OPPOSITION TO THE CONSENSUS PLAN IS UNFOUNDED**

Spearheaded by the United Telecom Council and the Edison Electric Institute, parties representing the utility industry continue to oppose the Consensus Plan. They object to various elements of the Plan, including the procedures governing the proposed Relocation Coordination Committee ("RCC") and the Consensus Plan's proposal to relocate some B/ILT and H-SMR licensees from channels 1-120 (the new NPSPAC block) to a Guard Band at 814-816/859-861 MHz.<sup>21</sup> UTC/EEI, for example, asserts that this will relegate utility licensees to "near-secondary status" in the 800 MHz band and subject them to greater interference.<sup>22</sup> These objections completely lack merit, as the

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<sup>20</sup> Solving the 900 MHz CMRS – public safety interference problem is an integral part of this proceeding (*see* the caption) and an integral part of the Consensus Plan, as discussed further in Section VII, *infra*.

<sup>21</sup> Reply Comments of Consensus Parties at 9 (Aug. 7, 2002); Supplemental Comments at 10, 15-17.

<sup>22</sup> Comments of UTC/EEI at 13. *See also, e.g.*, Comments of Consumers Energy at 12-15; Comments of Consolidated Edison of New York at 9-12.

Consensus Parties demonstrate in their Reply Comments. Moreover, many of the utility industry objections to the Consensus Plan are predicated upon misunderstandings or misrepresentations of the Consensus Plan, or calculated omissions with respect to key details of the Plan.

For instance, UTC/EEI distorts the record in suggesting that the Consensus Plan would require all B/ILT and H-SMR licensees to relocate to the Guard Band.<sup>23</sup> The Consensus Plan does no such thing. As the Supplemental Comments made clear, “[u]nder the Consensus Plan, over 70% of all high-site SMR and B/ILT incumbent licensees would not be relocated[.]”<sup>24</sup> Only those incumbent H-SMR and B/ILT incumbent licensees operating in Channels 1-120 (the new NPSPAC block) would be relocated to the Guard Band.<sup>25</sup> *B/ILT and H-SMR licensees operating in Channels 121-320 would continue to operate there, as they would not be required to retune under the Consensus Plan.*

UTC/EEI and other utility parties also distort the record in claiming that licensees operating in the Guard Band will be subject to greater interference under the Consensus Plan than they are today. The opposite is true. As explained in the Consensus Parties Reply Comments, 800 MHz Land Mobile Radio licensees, *including licensees in the*

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<sup>23</sup> See Comments of UTC/EEI at 10-11 (the Consensus Party proposal regarding the Guard Band “would result in critical infrastructure, and all other non-public safety licensees, being forced into deficient spectrum with no hope of relief.”); *id.* at 11 (“the guard band is to be the preferred home for *all* non-public safety licensees”) (emphasis in original).

<sup>24</sup> Supplemental Comments at 10.

<sup>25</sup> The RCC would look first to retune B/ILT and H-SMR incumbents at channels 1-120 to Nextel-vacated channels in the new Guard Band, channels 320-400; if insufficient channels are available, such incumbents may be retuned anywhere within the non-cellular channel block, channels 121-400.

*proposed Guard Band*, will receive *greater* interference protection than they enjoy today. This is because, under the Consensus Plan, cellular and non-cellular systems will be separated into separate blocks, with noise-limited B/ILT and H-SMR systems (including those in the Guard Band) no longer being subject to the interference that results from the interleaving of their channels with the licensed frequencies used in Nextel's interference-limited integrated Digital Enhanced Network ("iDEN™"). In addition, as set forth in Appendix F to the Supplemental Comments, the Consensus Plan would for the first time establish a comprehensive set of interference protection measures that would protect against adjacent-channel interference, including Intermodulation interference and out-of-band emissions.

UTC's arguments also flatly contradict positions it has taken in other proceedings. UTC - which broadly represents utility interests - has previously endorsed the use of 700 MHz Guard Band spectrum by non-cellular private wireless licensees as the best means of protecting 700 MHz band public safety licensees from interference.<sup>26</sup> Far from raising any concerns in that proceeding about its member companies suffering interference from adjacent cellular operators in the 700 MHz band, UTC actually filed comments in which it "strongly support[ed]" the allocation of 700 MHz band spectrum to private wireless users.<sup>27</sup>

Instead of realigning the 800 MHz band, the utility parties propose to rely on case-by-case mitigation, technical measures (even though these will not work without band realignment), and ill-defined "private market agreements" as the sole means of

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<sup>26</sup> Comments of Land Mobile Communications Council, WT Docket No. 99-168 (Jan. 18, 2000) (listing UTC as a member).

<sup>27</sup> Comments of UTC/EEI, WT Docket No. 99-168, at 2-3 (Jul. 20, 1999).

mitigating CMRS-public safety interference.<sup>28</sup> As the Consensus Parties and the vast majority of licensees affected by this interference recognize, “modest rule changes” will not remedy the worsening problem of CMRS – public safety interference at 800 MHz. They would, however, leave public safety first-responders in increasing jeopardy of disrupted communications.

#### **IV. THERE IS NO LEGITIMATE LEGAL, POLICY, OR FACTUAL JUSTIFICATION FOR BLAMING ANYONE FOR CMRS – PUBLIC SAFETY INTERFERENCE**

CMRS – public safety interference is a complex problem resulting from numerous actions and developments over the last several decades, including the Commission’s 800 MHz allocation decisions, public safety radio operators’ choice of system architecture to best serve their users given financial and technical realities, the adoption of new, Commission-approved technologies by SMR and cellular providers, and the unanticipated growth in CMRS and public safety traffic.<sup>29</sup> Almost every case of CMRS – public safety interference results from a combination of technical factors relating to both CMRS and public safety operations: relatively strong CMRS signals; relatively weak public safety transmissions (frequently far from a base station or near the edges of coverage); public safety radios with less than optimal intermodulation rejection; co-located CMRS cell sites that permit the signals of CMRS providers to combine and create intermodulation products on public safety channels; and other similar circumstances in which the wideband sensitivity of public safety receivers – driven by the 800 MHz

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<sup>28</sup> Comments of UTC/EEI at 3, 13-16; Comments of Entergy at 30; Comments of Cinergy at 6-7; Comments of Consumers Energy at 4-6; Comments of Consolidated Edison of New York at 5-7; Comments of XCel Energy Services at 10.

<sup>29</sup> See Reply Comments of Nextel Communications, Inc., at 38-45 (Aug. 7, 2002) (“Nextel August Reply”).

allocation – makes them vulnerable to signals from spectrally and geographically adjacent or nearby commercial systems. These factors have led to a severe and widespread problem that is truly nationwide in scope, contrary to some commenters’ claims that CMRS – public safety interference is limited to certain local areas and is not a national issue.<sup>30</sup>

CMRS operators whose signals interfere with public safety communications are typically operating in full compliance with their licenses. In particular, Nextel has operated and continues to operate in full compliance with the terms and conditions of its licenses and the regulatory structure for SMR licensees,<sup>31</sup> and, as the Commission has repeatedly recognized, Nextel provides essential competition in the CMRS marketplace.<sup>32</sup>

Given these factors, there is no legitimate legal, policy, or factual justification for imposing the remediation burden solely on any licensee. Nextel invested in the build-out of its nationwide digital SMR network with the encouragement and approval of the

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<sup>30</sup> See, e.g., Comments of Access Spectrum LLC at 5-6.

<sup>31</sup> The Commission specifically authorized Nextel’s digital cellular (interference-limited) architecture in 1991. See *Request of Fleet Call, Inc.*, Memorandum Opinion and Order, 6 FCC Rcd 1533 (1991), *recon. dismissed*, 6 FCC Rcd 6989 (1991) (“*Fleet Call Order*”). Nextel has at all times complied with the Commission’s general operating requirements in sections 90.173 and 90.403, having taken all reasonable steps to avoid interference to public safety and other licensees. 47 C.F.R. §§ 90.173, 90.403. Nextel has also complied with all other technical and operational requirements in Part 90, Subpart S, that are applicable to its digital SMR system.

<sup>32</sup> See, e.g., *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Seventh Report, 17 FCC Rcd 12985, 12996-97 (2002); *Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services*, Fourth Report, 14 FCC Rcd 10145, 10177-78 (1999).

Commission.<sup>33</sup> Nextel became cognizant of the full scope of the unanticipated CMRS – public safety interference problem in the past few years. Since then, its overriding priority has been to resolve the growing CMRS – public safety interference issues. In the last nine months, Nextel has joined with a broad cross-section of public safety and private wireless entities to develop a compromise plan that achieves the Commission’s goals. The Consensus Plan requires much of Nextel: it will relinquish 10.5 MHz of spectrum acquired at a cost of approximately \$2 billion; contribute up to \$850 million to pay for public safety, B/ILT, and H-SMR incumbents’ retuning costs; fund its own relocation costs, including the cost of retuning much of its 800 MHz network twice; and contribute its proportionate share of BAS relocation expenses and UTAM band clearing expenses.

Nextel’s proactive efforts toward a solution in the public interest stand in stark contrast to the obstructionist tactics of a few commenters, including parties from the cellular and utilities industries. Nextel has recognized that it will be both affected by and is an integral part of any 800 MHz CMRS – public safety solution, and it has stepped forward as a responsible Commission-licensee and corporate citizen to undertake a proactive and cooperative role therein.

**V. THE COMMISSION SHOULD REJECT OPPOSITION TO THE CONSENSUS PLAN’S ASSIGNMENT OF 1.9 GHz SPECTRUM TO NEXTEL**

**A. The Cellular/PCS Industry’s Claims Regarding the Assignment of Replacement Spectrum are Contradictory and Meritless**

As the Consensus Parties have recognized, Nextel will contribute extremely valuable assets and resources under the Consensus Plan. In addition to the very

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<sup>33</sup> See *Amendment of Part 90, Subparts M and S, of the Commission’s Rules*, Report and Order, 3 FCC Rcd 1838, ¶ 88 (1988), *recon. denied and clarification granted*, 4 FCC

substantial financial commitments it has made to the Plan,<sup>34</sup> Nextel will contribute 10.5 MHz of spectrum in the 700, 800, and 900 MHz bands to provide replacement spectrum for licensees that are required to relocate and to provide additional spectrum for public safety communications. The assignment of the 1910-1915/1990-1995 MHz band to Nextel will simply make Nextel whole in return for these substantial spectral contributions.

It is consequently wholly inaccurate for CTIA and other members of the cellular/PCS industry to claim that such an assignment would give Nextel a spectrum windfall.<sup>35</sup> These claims also flatly contradict positions the cellular/PCS industry has taken in other proceedings. As Nextel has explained previously, the Commission has amended its rules a number of times to give cellular licensees greater flexibility in the type of technologies they may use and in the types of services they may provide to customers.<sup>36</sup> These rule changes allowed cellular licensees to increase their operational capability and pursue new business opportunities. Far from objecting to these steps as “windfalls,” cellular carriers aggressively advocated for these opportunities.

CTIA’s position is also directly inconsistent with the proposal BellSouth and Sprint have made, through the Wireless Communications Association International

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Rcd 356 (1989); *Fleet Call Order*.

<sup>34</sup> See, *supra*, note 6.

<sup>35</sup> See Comments of Cellular Coalition at 5-10; Comments of CTIA at 15-16; Comments of Verizon Wireless at 11-14.

<sup>36</sup> Nextel August Reply at 26-27 (describing FCC decisions allowing cellular carriers to deploy new technologies and services, including digital service and paging, and FCC decision allowing cellular and other CMRS providers to provide fixed wireless services on a co-primary basis with commercial mobile services).

("WCA"), to realign the ITFS and MDS bands. Under this proposal, the Commission would "[e]stablish a new bandplan for the 2.5 GHz band which provides for the isolation of high-power, high-site one-way systems from two-way cellular systems to facilitate interference protection."<sup>37</sup> If adopted, this proposal would substantially modify the MDS and ITFS regulatory regime and likely increase significantly the value of the license and lease rights Sprint and BellSouth hold in those bands. Yet CTIA has not charged that the WCA plan would constitute a "windfall" for Sprint and BellSouth; in fact, CTIA has expressed no concern whatsoever about the WCA proposal, which – unlike the Consensus Plan – has not been prompted by a public interest effort to improve public safety communications.

**B. UTAM Again Presents No Reason Not to Assign the 1910-1915/1990-1995 MHz Band to Nextel**

In its comments, UTAM, Inc. ("UTAM") again objects to the Consensus Plan's proposed assignment to Nextel of replacement spectrum at 1910-1915 MHz, currently part of the Unlicensed Personal Communications Service ("UPCS") allocation at 1910-1930 MHz.<sup>38</sup> UTAM says nothing new in its filing, and its objections remain meritless. In particular, UTAM's strained claims regarding the continued need for 20 MHz of UPCS spectrum conflict with the Commission's proposal earlier this month to reallocate the 1910-1920 MHz band to licensed wireless services.<sup>39</sup> In the *MSS Reallocation*

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<sup>37</sup> "A Proposal for Revising the MDS and ITFS Regulatory Regime," at 11, attached to Letter from the WCA, the National ITFS Association, and the Catholic Television Network to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (filed Oct. 7, 2002). See also Public Notice, *Wireless Telecommunications Bureau Seeks Comment on Proposal to Revise MMDS and ITFS Rules*, 17 FCC Rcd 20526 (2002).

<sup>38</sup> See Comments of UTAM, Inc.

<sup>39</sup> *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3*

*NPRM*, the Commission stated that asynchronous UPCS applications have not developed at 1910-1920 MHz as originally envisioned, *and that not a single piece of UPCS equipment has been authorized for use at 1910-1920 MHz.*<sup>40</sup> According to the Commission, the public interest would be disserved by allowing the 1910-1920 MHz band to lie fallow given the existence of other applications that could put those frequencies to good use.<sup>41</sup>

Accordingly, consistent with the Commission's tentative conclusions, assigning the 1910-1915 MHz band to Nextel would not harm UPCS development.<sup>42</sup> In fact, as the Commission noted in the *MSS Reallocation NPRM*, this assignment would leave intact the isochronous allocation at 1920-1930 MHz, and the 1915-1920 MHz portion of the little-used asynchronous UPCS band could still be reallocated to isochronous UPCS. Reallocation of the 1910-1915 MHz channels from asynchronous UPCS to fixed and mobile commercial services, and its assignment to Nextel paired with the 1990-1995 MHz band, would not harm future UPCS development.<sup>43</sup>

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*GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, ET Docket No. 00-258, FCC 03-16 (rel. Feb. 10, 2003) ("*MSS Reallocation NPRM*").

<sup>40</sup> *MSS Reallocation NPRM* ¶ 46.

<sup>41</sup> *Id.*

<sup>42</sup> In the *MSS Reallocation NPRM*, the Commission discusses various options for the use of reallocated UPCS spectrum, including the pairing of such frequencies with spectrum from the 1990-2000 MHz band and the assignment of those bands to Nextel as part of the Consensus Plan. *MSS Reallocation NPRM* ¶ 47.

<sup>43</sup> Nextel reiterates that if assigned the 1910-1915 MHz band, it will reimburse UTAM for all reasonable expenditures related to the relocation of incumbent microwave facilities from that 5 MHz channel block. Going forward, Nextel will fund its *pro rata* share of any additional band clearing. As discussed above, Nextel's funding commitment to UTAM, as well as its contribution of funds to help relocate Broadcast Auxiliary

**C. The Consensus Plan's Assignment of the 1910-1915/1990-1995 MHz Band Does Not Implicate Section 309(j) of the Communications Act**

A handful of commenters have argued that the Consensus Plan's proposed assignment to Nextel of replacement spectrum in the 1910-1915/1990-1995 MHz band would implicate the competitive bidding provisions of Section 309(j) of the Act.<sup>44</sup> Such arguments have no merit. As Nextel has previously shown,<sup>45</sup> and as it briefly demonstrates again below, the Commission has legal authority under Section 316 of the Act to implement the Consensus Plan without triggering Section 309(j).<sup>46</sup> Nor would the proposed reassignment of replacement spectrum to Nextel implicate the competitive hearing requirements of *Ashbacker Radio Corp. v. FCC* ("Ashbacker").<sup>47</sup>

As the Commission has recently emphasized, the "clear and unequivocal" language of Section 316 allows the Commission to modify the frequency assignments of an existing licensee,<sup>48</sup> as long as the Commission concludes that such action will promote

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Service licensees at 1990-1995 MHz, is separate and apart from Nextel's \$850 million commitment to fund the relocation of incumbent licensees in the 800 MHz band.

<sup>44</sup> 47 U.S.C. § 309(j)(1). See Comments of CTIA at 16-17; Comments of Preferred Communication Systems at 12; Comments of Boeing at 19; Comments of Access Spectrum at 17-18.

<sup>45</sup> Comments of Nextel Communications, Inc. at 56-64 (May 6, 2002); Nextel August Reply at 61-68.

<sup>46</sup> 47 U.S.C. § 316.

<sup>47</sup> *Ashbacker Radio Corp. v. FCC*, 326 U.S. 327 (1945).

<sup>48</sup> *Establishing Rules and Policies for the Use of Spectrum for Mobile Satellite Services in the Upper and Lower L-Band*, Report and Order, 17 FCC Rcd 2704, ¶ 22 (2002) ("MSS Report and Order").

the public interest.<sup>49</sup> In particular, once spectrum in a given band has been reallocated (as is the case for the 1990-1995 MHz band, formerly allocated to MSS, and has been proposed by the Commission with respect to the UPCS spectrum at 1910-1915 MHz), the Commission has authority under Section 316 to substitute that reallocated spectrum for channels currently assigned to licensees in another frequency band.<sup>50</sup> Such action does not trigger either Section 309(j) or *Ashbacker* because, as is well established, the Commission has full discretion to promulgate rules that limit eligibility to apply for a license, as long as such rules promote the public interest.<sup>51</sup>

Section 309(j) is not triggered for the additional reason that it applies only to the award of “initial” spectrum licenses.<sup>52</sup> In this case, rather than awarding Nextel an initial license to use spectrum, the Commission would be modifying Nextel’s already-existing licenses under Section 316 to permit Nextel to operate on *replacement* spectrum at 1910-1915/1990-1995 MHz. The fact that Nextel’s replacement spectrum comes from a reallocated band would not make these licenses “initial” because, as the term

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<sup>49</sup> See *id.* ¶ 25 (recognizing that “the Commission is afforded significant latitude when it exercises its Section 316 authority[,]” including the latitude “to expand a licensee’s authority”).

<sup>50</sup> See *Amendment of the Commission’s Rules to Relocate the Digital Electronic Message Service from the 18 GHz Band to the 24 GHz Band and to Allocate the 24 GHz Band for Fixed Service*, Order, 12 FCC Rcd 3471, ¶ 14 (1997), *recon. denied*, 13 FCC Rcd 15147, ¶ 59 (1998) (holding that: (i) under Section 316, the Commission can assign reallocated spectrum in another frequency band to existing licensees if such action promotes the public interest, and (ii) the auction requirements of Section 309(j) were not applicable to the relocation of licensees in the Digital Electronic Message Service (“DEMS”) to a newly allocated band).

<sup>51</sup> See, e.g., *United States v. Storer Broadcasting Co.*, 351 U.S. 192 (1956); *Aeronautical Radio, Inc. v. FCC*, 928 F.2d 428, 439 (D.C. Cir. 1991); *MSS Report and Order* ¶¶ 21-29.

<sup>52</sup> 47 U.S.C. § 309(j)(1).

“replacement spectrum” obviously implies, such spectrum would merely replace spectrum already held by Nextel under its existing licenses.

Likewise, the Consensus Plan would not result in modifications to Nextel’s licenses that are so “major” as to be the equivalent of a grant of an “initial” license. In its *Section 309(j) Second Report and Order*, the Commission defined the rare situation when a “major modification” should be treated as an initial application and subject to Section 309(j)’s auction procedures:

Where a modification would be so major as to dwarf the licensee’s currently authorized facilities and the application is mutually exclusive with other major modification or initial applications, the Commission will consider whether these applications are in substance more akin to initial applications and treat them accordingly for purposes of competitive bidding.<sup>53</sup>

The license modifications resulting from the Consensus Plan do not come close to satisfying the criteria under this test. Nextel – and other incumbents – would receive approximately the same amount of spectrum, on a kHz-for-kHz basis, as they currently hold. Moreover, Nextel’s 800/900 MHz licenses arguably are more valuable to it today than the proposed replacement spectrum. While Nextel is already selling handsets capable of dual band 800/900 MHz operations, it has no 800 MHz/1.9 GHz band handsets or network infrastructure. Certainly, there is no reason to believe that the subject license modifications and spectrum exchanges would so enhance Nextel’s facilities as to dwarf its currently authorized nationwide 800 MHz iDEN™ network serving over 10 million subscribers. There are simply no factual grounds for classifying

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<sup>53</sup> *Implementation of Section 309(j) of the Communications Act – Competitive Bidding*, Second Report and Order, 9 FCC Rcd 2348, ¶ 37 (1994) (“*Section 309(j) Second Report and Order*”).

Nextel's proposed modifications as equivalent to "initial" applications under Section 309(j).

Moreover, as indicated above, the Commission will not treat a proposed modification, no matter how significant, as an "initial" application under Section 309(j) unless it also "is mutually exclusive with other applications."<sup>54</sup> As explained above, the public interest benefits of the Consensus Plan permit the Commission to limit the category of licensees eligible for Nextel's replacement spectrum and preclude mutually exclusive applications for those frequencies. Accordingly, the Commission can assign this spectrum to Nextel without triggering Section 309(j)'s competitive bidding provisions.<sup>55</sup>

The "major modification" and "mutual exclusivity" principles described above were most recently affirmed in the *MSS Flexibility Order*, in which the Commission permitted existing MSS licensees to integrate ancillary terrestrial components ("ATCs") into their MSS networks.<sup>56</sup> In its order, the Commission expressly rejected the arguments

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<sup>54</sup> *Implementation of Sections 309(j) and 337 of the Communications Act of 1934 As Amended, Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies, Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz*, Notice of Proposed Rule Making, 14 FCC Rcd 5206, ¶ 5 (1999).

<sup>55</sup> Similarly, "the Commission is not required [under *Ashbacker*] to open all frequencies for competing applications, so long as it provides a reasoned explanation for not doing so." *MSS Report and Order* ¶ 25. A "reasoned explanation" for precluding competing applications for the 1.9 GHz band is certainly readily available to the Commission: precluding competing applications would be a crucial component of a spectrum realignment designed to alleviate CMRS – public safety interference and allocate critically needed additional spectrum to public safety communications.

<sup>56</sup> *Flexibility for Delivery of Communications by Mobile Satellite Service Providers in the 2 GHz Band, the L-Band, and the 1.6/2.4 GHz Bands*, Report and Order and Notice of Proposed Rulemaking, IB Docket Nos. 01-185, 02-364, FCC 03-15 (Feb. 10, 2003).

of some commenters that this action implicated the competitive bidding provisions of Section 309(j). Specifically, the Commission held that “the license modifications associated with ATC will not be modifications so different in kind or so large in scope and scale as to warrant treatment as ‘initial’ licenses subject to section 309(j)(1).”<sup>57</sup> Likewise, because the class of licensees eligible to acquire terrestrial rights in the MSS bands was limited to pre-existing MSS operators, the Commission held that “section 309(j)(1)’s requirement of mutually exclusive applications will not be met.”<sup>58</sup>

## **VI. THE FCC HAS AUTHORITY TO DESIGNATE NEXTEL’S 700 MHz GUARD BAND SPECTRUM FOR PUBLIC SAFETY USE**

Section 337(a) of the Communications Act requires the Commission, “[n]ot later than January 1, 1998,” to allocate certain spectrum at 746-806 MHz “for commercial use to be assigned by competitive bidding.”<sup>59</sup> The Commission has fully satisfied this statutory mandate with respect to Nextel’s 700 MHz Guard Band spectrum. In particular, the Commission has: (1) reallocated 36 MHz of the Upper 700 MHz Band, including the 6 MHz of Guard Band spectrum, in a manner that made this spectrum available for “commercial use”;<sup>60</sup> and (2) completed an auction of the Guard Band spectrum.

Having fully discharged all of its statutory obligations under Section 337(a) with respect to the Guard Band spectrum, the Commission is now free to exercise its normal spectrum-management authority over the Guard Band spectrum, including the power to

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<sup>57</sup> *Id.* ¶ 225.

<sup>58</sup> *Id.* ¶ 221.

<sup>59</sup> 47 U.S.C. § 337(a).

<sup>60</sup> *See Reallocation of Television Channels 60-69, the 746-806 MHz Band*, Report and Order, 12 FCC Rcd 22953, ¶ 17 (1997).

allocate or designate this spectrum for public safety services.<sup>61</sup> Neither the express language of Section 337 nor its legislative history contains any indication that Congress intended to abridge the Commission's discretion to manage the spectrum at 746-806 MHz.<sup>62</sup> Absent a clearly expressed congressional intention to the contrary, it is well established that all provisions of a statute must be given force.<sup>63</sup> Section 337 thus must be interpreted in a manner that is consistent with other sections of the Communications Act, including sections that grant the Commission broad authority to manage spectrum.

Indeed, the designation of Nextel's 700 MHz Guard Band spectrum for public safety use is fully consistent with the goal of both Congress and the Commission to protect public safety licensees in the Upper 700 MHz Band from interference. As the Commission has stated,

a primary goal of our [Upper 700 MHz] band plan structure is to ensure that activation of services in these 36 megahertz of spectrum will not impair public safety operations in the former channels 63-64 and 68-69 through harmful interference. The Conference Report [to the Balanced Budget Act of 1997] states that the Commission should ensure that public safety service licensees in the 746-806 MHz band "continue to operate free of interference from any new commercial licensees."<sup>64</sup>

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<sup>61</sup> See, e.g., 47 U.S.C. §§ 303(c), 316(a). In contrast, the Commission has *not* yet discharged its obligations under Section 337 with respect to the 30 MHz of spectrum at 747-762/777-792 MHz because this spectrum has not yet been assigned by competitive bidding as required by the statute. The Commission consequently lacks the authority to relocate all 800 MHz public safety licensees to this 30 MHz block of spectrum in the 700 MHz band, as CTIA and other parties have proposed.

<sup>62</sup> See Balanced Budget Act of 1997, Conference Report, H. Conf. Rep. 105-217 (July 30, 1997); Balanced Budget Act of 1997, Report of the Committee on the Budget, H.R. Rep. No. 105-149 (June 24, 1997).

<sup>63</sup> See, e.g., *FCC v. NextWave Personal Communications Inc.*, -- U.S. --, 2003 Lexis 1059, \*21 (Jan. 27, 2003).

<sup>64</sup> *First 700 MHz Order* ¶ 33 (quoting H. Conf. Rep. No. 105-217, at 12 (1997), reprinted at 1997 U.S.C.C.A.N. 201).

Designating Nextel's Guard Band spectrum for public safety use will provide additional assurance that operations in this Guard Band spectrum will be compatible with public safety operations in channels 63-64 and 68-69 and thus further the legislative intent of the Balanced Budget Act of 1997.

## **VII. NEXTEL IS A 900 MHz INCUMBENT LICENSEE ALREADY AUTHORIZED TO PROVIDE SERVICE**

As stated in the Supplemental Comments, Nextel will use its licensed facilities at 900 MHz to maintain system capacity and avoid network disruption while it engages in the 800 MHz channel swaps called for under the realignment plan.<sup>65</sup> At the same time, it will surrender 900 MHz channels as necessary to accommodate 800 MHz B/ILT and H-SMR incumbents voluntarily electing to relocate to Nextel channels in the 900 MHz band. Finally, Nextel will vacate all of its 900 MHz licenses within six months of completion of Phase II of the realignment process. This licensed spectrum will then become "white space" available for licensing exclusively to B/ILT and H-SMR eligibles, thereby creating a nearly 10 MHz contiguous block for B/ILT and H-SMR licensing at 900 MHz.

A group of 900 MHz licensees filed comments expressing concern that Nextel's use of the 900 MHz band will cause interference to their operations.<sup>66</sup> These commenters point to the interleaved allocation of SMR and B/ILT channels in the 900 MHz Land

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<sup>65</sup> Supplemental Comments at 33-34. Nextel has been a 900 MHz individual site licensee in major cities for more than a decade; it became the largest licensee of 900 MHz Major Trading Area ("MTA") geographic-area licenses through Auction No. 7 in 1996 and subsequently purchased additional MTA licenses. Nextel is licensed to provide low-site, cellularized systems under its 900 MHz licenses.

<sup>66</sup> Comments of The 900 MHz Industrial User Group at 3-8; Comments of Electrocom, Inc. at 3-7.

Mobile Radio Band and the possibility that low-site cellularized systems and high-site non-cellularized architecture in close spectral and geographic proximity will also be incompatible at 900 MHz and replicate the interference problems experienced at 800 MHz by non-cellularized operators.

Nextel submits that non-cellularized licensees using the interleaved Land Mobile Radio spectrum allocation at 900 MHz will experience the same interference problems as their 800 MHz counterparts *if* an interleaved mix of noise-limited and interference-limited systems is permitted to develop fully over the next five years. Absent Nextel's agreement to abandon the 900 MHz band as part of the spectrum exchanges included in the Consensus Plan, the Commission would eventually be forced to de-interleave the 900 MHz Land Mobile Radio spectrum just as it must do at 800 MHz.

For this reason, relocating Nextel and its cellularized technology and service out of 900 MHz is an integral part of this proceeding.<sup>67</sup> Upon completion of the Consensus Plan, the Commission will have improved public safety and private wireless communications at 800 MHz. It will have preempted the development of interference problems at 900 MHz. Additionally, the Commission will have almost doubled the amount of spectrum available to private wireless users at 900 MHz for noise-limited, non-cellularized system technologies that economically and effectively meet many of their mobile communications requirements.

Incumbent 900 MHz licensees to date have not been affected by CMRS – public safety interference because Nextel has only recently initiated low-site cellularized service

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<sup>67</sup> Accordingly, the Cellular Coalition is dead wrong when it says that “the 900 MHz spectrum has no direct relevance to the Nextel plan and is not needed to resolve public

at 900 MHz. Over the next three and a half years, Nextel will continue to develop its cellularized iDEN™ service at 900 MHz as part of an integrated, seamless dual band 800 MHz/900 MHz network. Because Nextel will use 900 MHz as an adjunct to its existing 800 MHz infrastructure, it can more readily manage the factors that foster CMRS – public safety interference. This would be far more difficult to accomplish and impossible to sustain – both spectrally and commercially – were the 900 MHz base stations part of a permanent, stand-alone network.

Under the Consensus Plan, Nextel can manage its 800 MHz and 900 MHz infrastructures jointly to maintain service capacity and quality while at the same time taking advantage of its experience in operating on interleaved channels with noise-limited systems to minimize CMRS – public safety type interference. Nextel will follow the provisions of the *Best Practices Guide* and will plan its 900 MHz deployment to control its use of sites lower than 100 feet with numerous channels in operation – especially in areas that have proved susceptible to CMRS – public safety interference. To further address interference, the Commission should instruct all 900 MHz licensees to adhere to the guidelines set forth in the *Best Practices Guide* during the Consensus Plan realignment. These licensees should cooperate to avoid creating interference and to mitigate such interference if it occurs despite such efforts.

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safety interference in the 800 MHz band,” and that the “900 MHz [band] has nothing to do with solving interference . . . .” Comments of Cellular Coalition at 9-10.

## VIII. CONCLUSION

Parties in this proceeding have had full opportunity to comment on the Consensus Plan, including the elements of the plan described in the Supplemental Comments. The record demonstrates that the Consensus Plan is the only detailed, practical, and sustainable means for improving public safety communications in the 800 MHz band and meeting all of the Commission's objectives in this proceeding. Nextel and Nextel Partners urge the Commission to act expeditiously and adopt the Plan in its entirety.

Respectfully submitted,

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