

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

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In the Matter of )  
)  
Improving Public Safety Communications in )  
The 800 MHz Band )  
)  
Consolidating the 900 MHz Industrial/Land )  
Transportation and Business Pool Channels )

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

WT Docket No. 02-55

To: The Commission

**REPLY COMMENTS ON  
SUPPLEMENTAL FILING BY THE CONSENSUS PARTIES**

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## Summary

The Commission should ensure that any action taken to protect public safety communications in the 800 MHz band also protects incumbent B/ILT licensees and critical infrastructure communications from the potential for harmful interference from cellularized operations. Likewise, the Commission should ensure that only those parties responsible for causing interference to public safety communications are responsible, financially or otherwise, for its mitigation. Because of the regulatory uncertainties created by the Revised Plan, Blooston urges the Commission to mandate the use of technical solutions. Finally, there should be no circumstance in which contributions from cellular carriers are required or incumbent analog SMR or B/ILT licensees are forced to fund their own frequency relocations.

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The law firm of Blooston, Mordkofsky, Dickens, Duffy & Prendergast (Blooston), on behalf of its clients listed in Attachment A hereto who utilize spectrum in the 800 MHz band for commercial and private internal uses, hereby submits its reply comments in the above captioned matter.’ As demonstrated in its comments, Blooston supports the Commission’s goal of finding a permanent solution to the interference issues being experienced by public safety systems in the 800 MHz band. The record in this proceeding indicates that the source of the interference problem being experienced by public safety licensees is the use of cellular-architecture (low site) transmitters Nextel Communications, Inc. (Nextel) and Nextel Partners, Inc. (Nextel Partners), in the portion of the 800 MHz band that was allocated and designed for analog single base station

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<sup>1</sup> Blooston notes that its February 10, 2003 Comments in this proceeding did not appear in the Commission’s Electronic Comment Filing System (ECFS) until February 24, 2003. As a result, Blooston has set forth in more detail, its arguments in order to incorporate points raised in its comments.

operations by public safety and Business/Industrial Land Transportation (B/ILT) licensees. **As** a result, a significant portion of 800 MHz band licensees have come to the correct conclusion that that Nextel and Nextel Partners should bear full financial responsibility for correcting the problem. Long-time B/ILT licensees and small business SMRs should not be forced to relocate at their own cost, if they choose not to relocate into the crowded spectrum designated as the “guard band” between public safety interleaved spectrum and the Cellular **A-** and B-blocks.

The “revised consensus plan” (Revised Plan) proposed by Nextel and its “consensus partners”<sup>2</sup> is not the correct alternative and still does **NOT** represent an industry consensus. The Revised Plan falls short for a variety of reasons, as enumerated below.

Because of the numerous issues that were raised in comments to the Revised Plan, the Commission should adopt the solution that has consistently been offered by the majority of commenters in this proceeding – namely, the use of well-established technical solutions for resolving interference on a case-by-case basis. This method is less disruptive to incumbent 800 MHz licensees and is far less expensive than “rebanding” the 800 MHz band or relocating incumbents to other frequency bands. This is because the 800 MHz band is heavily licensed with public safety, B/ILT users (public utilities; waste haulers; transportation providers – taxicabs, inter-city and inha-city motor coaches;

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<sup>2</sup> The Commission has already recognized that the Revised Plan is a consensus plan in name only and does not represent a true consensus of the industry See Public Notice, p. l. n. 3.

automobile emergency toad service providers), analog SMR, cellularized SMR, cellular A-Block and cellular B-Block licensees. And, like the public safety licensees, many B/ILT users provide critical infrastructure services (e.g., automobile emergency road sei-vices, electrical power, water and sewer services, waste hauling, etc.) to the public, which could be significantly disrupted by a frequency relocation within or outside the 800 MHz band. (February 10, 2003 Further Comments of East Bay Municipal Utility District at 8; Supplemental Comments of Consumers Energy Company at 14 – 15).

**I. Nextel is the Major Source of Interference to Analog Public Safety and Conventional Business/Industrial Land Transportation Service 800 MHz Systems.**

The record in this proceeding indicates that cellularized operations in the conventional 800 MHz SMR – B/ILT band, such as that of Nextel, are the primary sources of interference to analog licensees in the 800 MHz band. (See February 10, 2003 Comments of Consumers Energy Company at 6; Joint Comments of ALLTEL Communications, Inc., AT&T Wireless Services, Inc., Cingular Wireless, LLC, Sprint Corporation, Southern Link and United States Cellular Corporation (ALLTEL et. al.) at 5; Comments of American Electric Power Company. Inc. at 16-17; May 6, 2002 Comments of Carolina Power and Light and TXU Business Services at 1; Department of Information Technology, County of Fairfax, Virginia at 2; City of Austin, Texas at 1; Vel-izon Wireless at 2, 7; Consumers Energy Company at 9 – 10; Joint Comments of

Cingular Wireless, LLC and ALLTEL Communications, Inc. at 13).<sup>3</sup> This is because Nextel (and its predecessor-in-interest, Fleet Call, Inc.), through the use of multiple rule waivers and rule making actions, obtained the authority to introduce a cellular telephone-like service in spectrum that **was** allocated for and heavily licensed for non-cellular type analog services. (February 10, 2003 Comments of American Electric Power Company, Inc. at 17; May 6, 2002 Comments of Carolina and TXU at 8 – 9). In order to justify this authority, Nextel and Fleet Call represented to the Commission that the use of the conventional 800 MHz band for a cellular-like service would not cause interference to incumbent licensees, including public safety entities, and in fact, would cause less co-channel and adjacent channel interference than conventional analog SMR systems due to the lower base station antenna heights. (May 6, 2002 Comments of Carolina and TXU at 8 – 9).<sup>4</sup> The record reflects that, as Nextel’s service proliferated, the instances of interference between Nextel and conventional 800 MHz systems increased. (See February 10, 2003 Comments of American Electric Power Company, Inc. at 16). And, indeed Nextel has now conceded that its current system design **is** at the root of the problem. (See Nextel 10-K at 16).

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<sup>3</sup> See also Wireless Week, Comments of Thomas Sugrue, Chief Wireless Telecommunications Bureau (March 19, 2002, page **4**) (While Mr. Sugrue stated that, while he could not quantify the cause of the interference to 800 MHz public safety, he agreed that the cause was “more on the Nextel side.”); Letters dated July 26, 2002 from Chairman Michael Powell to Hon. W.J. (Billy) Tauzin, Hon. Fred Upton and Hon. Vito J. Fossella transmitting 800 MHz license data which demonstrates that Nextel **is** the primary licensee in the 800 MHz band in the top 100 markets.

<sup>4</sup> Fleet Call, Inc. also indicated that in those rare instances of interference, such interference could be eliminated by “utilizing a number of frequencies, reducing power or

The architecture of Nextel's ESMR system demonstrates that Nextel does not use its spectrum in a manner designed to minimize interference to others. In particular, Fairfax County noted in this proceeding that certain aspects of Nextel's system design, which are unique to Nextel only, exacerbate the problem. These characteristics include:

- a. Nextel transmitters constantly transmitting regardless of whether there is data or voice traffic;
- b. Nextel transmitters operating with significantly more transmitter power than is required to effectively communicate with subscriber units;
- c. Nextel operating multiple transmitters at each cell site in order to provide necessary capacity to its subscribers; and
- d. Nextel using a "hybrid" combiner at certain sites, to combine the signals from these multiple transmitters into a single antenna. **As** a result, the combiner does not provide any attenuation of the transmitter side-band noise and spurious emissions which can cause elevated floor noise in the vicinity of the Nextel cell site and thus, interference to analog 800 MHz radios operating in the area.

See May 6, 2002 Comments of Fairfax County at 5 – 6). Nextel may be operating within the technical parameters of its licenses. However, Blooston agrees with other commenters that Nextel must correct the design flaws in its ESMR system, or take other steps to eliminate the interference it is causing to public safety and B/ILT systems. (See February 10, 2003 Comments of ALLTEL et. al. at 18; Comments of Cellular Telecommunications & Internet Association at 12; Supplemental Comments of Consumers Energy Company at 4 – 5; May 6, 2002 Comments of Fairfax County at 6).

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height. or re-orienting or changing directional antennas or employing electrical or mechanical beam tilt." See Fleet Call Waiver Request, Appendix A at 13.

The disruption of entire industries is not an appropriate response to Nextel's failure to live up to its interference protection promises

## **II. The Revised Plan Does Not Represent All Incumbent 800 MHz Licensees' Needs.**

Even though several industry groups have worked with Nextel to formulate a "consensus" under the Revised Plan, based upon the record in this proceeding, and in particular, in response to the Revised Plan, it can hardly be said that there is a consensus among the incumbent 800 MHz licensees. (See e.g. February 10, 2003 Comments of ALLTEL et. al.; Comments of Ameren Corporation; Comments of The National Rural Electric Cooperative Association; Comments of Harbor Wireless, LLC; Comments of Cellular Telecommunications & Internet Association; Supplemental Comments of Consumers Energy Company; Further Comments of East Bay Municipal Utility District). In fact, quite the contrary can be stated. The Revised Plan fails to qualify as a true "industry consensus", and fails to resolve the vexing 800 MHz interference problem, because of numerous issues that have been raised in the February 10, 2003 comments, including, but not limited to:

- (a) the adequacy of Nextel's proposed \$850 million proffer to resolve interference in the 800 MHz band versus the actual cost for a nationwide resolution (February 10, 2003 Comments of The National Association of Manufacturers and MRFAC, Inc. at 4 - 5; Supplemental Comments of Consumers Energy Company at 19 - 20);<sup>5</sup>

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<sup>5</sup> There is a serious question as to whether Nextel is truly contributing \$850 million toward the relocation of public safety and incumbent B/ILT licensees in the 800 MHz band. This is because Nextel has indicated that "its commitment to the funding is further cemented by its additional, immediate contribution of its 700 MHz band licenses with a minimum value of \$354,711,000." Revised Plan at 8. What is not clear is whether

- (b) whether Nextel is offering sufficient security to guarantee payment of its proffer (February 10, 2003 Comments of Ameren Corporation at 3 – 5; Comments of Harbor Wireless, LLC at 7 – 10; Comments of ALLTEL et. al. at 12 – 13; Supplemental Comments of Consumers Energy Company at 22 – 23);
- (c) the propriety of creating a special “Relocation Coordination Committee” and whether the composition of the committee would fairly represent the interests of incumbent B/ILT licensees (since three of the five seats would be filled by Nextel and public safety representatives) (February 10, 2003 Supplemental Comments of Consumers Energy Company at 25);
- (d) whether rebanding on a National Public Safety Planning Advisory Committee (NPSPAC) regional basis is feasible, inasmuch as it could create situations where 800 MHz critical infrastructure and other B/ILT licensees (including analog 800 MHz SMR) find themselves with portions of their systems utilizing different portions of the band, thereby eliminating “roaming” and interoperability throughout their systems (February 10, 2003 Comments of Ameren Corporation at 6);
- (e) whether it is legal (much less competitively fair) for Nextel to receive a 10 MHz nationwide 1.9 GHz license without being required to obtain the license through competitive bidding, and if so, whether it is proper to award the license as Nextel demands – prior to resolving the interference issues within the 800 MHz band (February 10, 2003 Comments of ALLTEL et. al. at 10);
- (f) whether technical solutions are still the best course, especially since the Revised Plan concedes that it will not resolve all interference (February 10, 2003 Comments of ALLTEL et. al. at 14 – 17; Comments of the National Rural Electric Cooperative Association at 6);

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Nextel is offering this spectrum in addition to the \$850 million cash or is seeking to offset its obligation, such that it would really be contributing \$495,289,000 towards relocation costs. See Comments of Harbor Wireless, LLC at 10. If Nextel is truly seeking to offset its \$850 million proffer with its contribution of 700 MHz band spectrum, then Nextel would be seeking a far greater advantage by further reducing its financial obligations in the amount of cash that must be proffered, and by overstating the value of its 700 MHz spectrum. The Commission can take official notice, in the wake of the bankruptcy of Winstar and others, that the value of spectrum has significantly declined in the recent past See February 10, 2003 Supplemental Comments of Consumers Energy Company at 22

- (g) the “take it or leave it” approach of the Revised Plan. requiring that Nextel be given what it wants without modification (February 10, 2003 Comments of Ameren Corporation at **4**);
- (h) capping Nextel’s responsibility for rebanding the 800 MHz band at \$850 million regardless of cost, thereby making it almost a certainty that the rebanding effort will not be completed nationwide on a NPSPAC regional basis (February 10, 2003 Comments of ALLTEL et. al. at 11; Comments of The National Rural Electric Cooperative Association at 11; Supplemental Comments of Consumers Energy Company at **19**);
- (i) whether rebanding will continue if the \$150 million earmarked for B/ILT licensees is exhausted even though there is sufficient funding for public safety relocations, and if so, what rights to B/ILT licensees have (February 10, 2003 Comments of Ameren Corporation at 6); and
- (j) whether Nextel can legally require the Commission to terminate an 800 MHz band license for a B/ILT licensee that does not successfully negotiate a relocation agreement and does not subject itself to binding arbitration under the Revised Plan (February 10, 2003 Further Comments of East Bay Municipal Utility District at 7).

Because of these issues, Blooston must agree with numerous other commenters that the Commission has no choice but to reject the Revised Plan and require Nextel to resolve any harmful interference that it is causing on a case-by-case basis

### **III. Problems with Nextel’s Proposed Frequency Exchange for 1.9 GHz MSS Spectrum Could Create Uncertainty in Resolving Interference to Public Safety.**

It has been well established in this proceeding that the crux to Nextel’s plan for resolving the public safety interference issue is an exchange of frequencies that would give Nextel a 10 MHz contiguous nationwide license in the 1.9GHz MSS Band. Nextel demands that this license must be granted upon the effective date of a Report and Order

in this proceeding. Revised Plan at 13, 34.<sup>6</sup> Throughout this proceeding, several parties have repeatedly questioned (and continue to question) the wisdom, legality and competitive impact of giving Nextel a nationwide license that would no doubt sell for billions of dollars at auction, in exchange for a \$850 million dollar pledge (formerly \$500 million under the Original Plan) and what is largely encumbered and non-contiguous spectrum. See February 10, 2003 Comments of ALLTEL et. al. at 7 – 10; Comments of Cellular Telecommunications & Internet Association at 15 – 19; Comments of The National Rural Electric Cooperative Association at 11; Comments of Harbor Wireless, LLC at 11; Comments of Verizon Wireless at 11 – 14; May 6, 2002 Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 11-13; Comments of Supreme Radio Communications, Inc. at 12-13; Comments of United States Cellular Corporation at 4-5; Comments of Verizon Wireless at 13-15; Comments of Southern Linc at 50-52; Comments of AT&T Wireless Services, Inc. at 20-21. The threshold question beyond fairness is whether it would be legal, under Section 309(j) of the Communications Act of 1934, as amended (the Act). for the Commission to award Nextel the requested 10 MHz license in the 1.9 GHz MSS Band through means other than competitive bidding.

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<sup>6</sup> It must be noted yet again that it would be premature for the Commission to immediately issue a report and order adopting a “Consensus Plan.” While the Commission requested comment on rebanding the 800 MHz band in order to resolve interference issues to public safety, the Commission has not yet formulated proposed *rules to implement* any consensus **plan**, which must be subject to a Notice of Proposed Rulemaking that requests public comment. See Section 1.413 of the Commission’s Rules, 47 C.F.R. §1.413 (2001). The Revised Plan and the comments requested to date in this proceeding do not satisfy this requirement, since the public has seen no draft rules that would implement the proposed substantive changes to very important portions of the spectrum.

This is because Section 309(j) of the Act requires the Commission to grant initial licenses which are the subject of mutually exclusive applications through competitive bidding.<sup>7</sup> (February 10, 2003 Comments of Harbor Wireless, LLC at 11; Comments of Verizon Wireless at 12; May 6, 2002 Joint Comments of Cingular Wireless LLC and ALLTEL Communications, Inc. at 11-12; Comments of Verizon Wireless at 13-15; Comments of United States Cellular Corporation at 5; Comments of Southern Linc at 54-56).

While Nextel states that the grant of a 1.9 GHz license would be the result of a swap for spectrum surrendered as part of a realignment plan, (Nextel White Paper at 39, 54), Cingular Wireless, LLC, ALLTEL Communications, Inc., Verizon Wireless and others assert that Nextel should be required to bid on this valuable spectrum since there is no doubt that there would be multiple applicants. (May 6, 2002 Joint Comments of Cingular Wireless LLC and ALLTEL Communications, Inc. at 12; Comments of Verizon Wireless at 15). Because of the concerns raised by Verizon Wireless, Cingular Wireless, LLC, ALLTEL Communications, Inc., Harbor Wireless, LLC and other cellular and two-way CMRS carriers, the grant of the 10 MHz nationwide 1.9GHz MSS Band license to Nextel, without a competitive bidding process, is risky at best. This plan will likely result in protracted litigation before the Court of Appeals and potentially, the United States Supreme Court. This litigation would create uncertainty in the 800 MHz band and would substantially delay any interference solution that the Commission adopts, since the

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<sup>7</sup> As Harbor Wireless, LLC noted in its comments, the Commission has concluded that even where an applicant seeks to modify its license by changing frequency to new spectrum, the application will be treated as an initial application, which is subject to

solution would no doubt be tied to a sun-ender of certain spectrum by Nextel for use in relocating incumbent licensees within the 800 MHz band. As a result, it could be several years, if not longer, before the Commission is able to resolve with any certainty the interference issues that currently plague the public safety licensees within the 800 MHz band.

**IV. The Record Demonstrates that Technical Solutions and Sound Engineering Practice are the Best Course of Action.**

The record in this proceeding continues to support the conclusion that the best course of action in this proceeding is to utilize technical solutions in order to remedy interference concerns, rather than restructuring the 800 MHz band. (February 10, 2003 Comments of Verizon Wireless at 14 – 15; Comments of Cellular Telecommunications & Internet Association at 11; May 6, 2002 Comments of Fairfax County at 4; Comments of Motorola at 24; Comments of Private Wireless Coalition at 12 -- 13 (supporting use of technical solutions on an interim basis pending any future frequency relocations); Comments of Verizon Wireless at 8 – 10; Comments of Consumers Energy Company at 11). This conclusion is bolstered by the terms of the Revised Plan, which concede that further interference mitigation steps will be required even after completion of the 800 MHz rebanding. See Revised Plan at 39, Appendix F (which proposes a different methodology from the Best Practices Guide for this purpose); February 10, 2003

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Section 309(j) of the Act. See Section 22.131 of the Commission's Rules; February 10, 2003 Comments of Harbor Wireless, LLC at 11

Comments of ALLTEL et. al. at 14 – 17; The National Rural Electric Cooperative Association at 6).

**As** previously demonstrated, it appears that through the use of well-established mitigation methods, the Best Practices Guide and sound engineering practices, much of the interference now experienced by public safety entities can be mitigated. (May 6, 2002 Comments of Fairfax County at 5). As noted above, there is concern that the architecture of Nextel's system may be exacerbating the interference problem. (May 6, 2002 Comments of Fairfax County at 4-5). Further, it cannot be disputed that, from time-to-time, NE-block cellular carriers have likewise caused interference to public safety entities in the 800 MHz band. (February 10, 2003 Comments of Nextel Communications, Inc. and Nextel Partners, Inc. at 6; May 6, 2002 Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 2-3; Comments of United States Cellular Corporation at 3). Nonetheless, the instances of cellular interference have been relatively few and far between, and when such instances have arisen, they have been mitigated using sound engineering practice and mitigation techniques. (May 6, 2002 Joint Comments of Cingular Wireless, LLC and ALLTEL Communications, Inc. at 3; Comments of United States Cellular Corporation at 3).

The record reflects that “rebanding” the 800 MHz band is likely to ultimately cost well over a billion dollars (especially when soft costs such as lost productivity, inconvenience to customers, etc. are factored in). This money would be far better spent elsewhere, especially given the difficulties facing telecommunications operations on Wall

Street.’ Further, rebanding would substantially disrupt communications by 800 MHz licensees during the transition to the new channels. Because rebanding the 800 MHz band would be such a major and costly undertaking, with significant disruptions not only to public safety licensees but also to incumbent analog **SMR**, B/ILT and cellular licensees, the Commission should use less drastic measures to remedy the problem.

Simply put, licensees causing interference to others should be required to utilize technical solutions such as: (a) the installation of filtering equipment to eliminate spurious emissions and intermodulation products, (b) reconfiguration of cell-site transmitters to reduce the potential for interference to 800 MHz public safety and B/ILT receivers, (c) use of “tighter” specifications in the design of CMRS systems and sound engineering practices to reduce the potential for interference in the first instant. (February 10, 2003 Supplemental Comments of Consumers Energy Company at 4; May 6, 2002 Comments of Fairfax County at 6; Comments of Snohomish County Emergency Radio System at 1; Consumers Energy Company at 6, 8 – 9, 11).

**V. Those Responsible for Causing Interference Should Bear the Responsibility, Financial or Otherwise, to Cure the Interference.**

The record clearly supports that the conclusion that those causing interference in the 800 MHz band should bear responsibility, financial or otherwise, for mitigating such interference. (February 10, 2003 Supplemental Comments of Consumers Energy

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<sup>8</sup> It appears that this estimate may not be that far off, especially since Nextel is willing to put up a total of \$850 million towards rebanding the 800 MHz band, an amount which may be woefully inadequate based upon assumptions made as to the percentage of equipment that will ultimately require replacement versus retuning.

Company at 5 – 6; May 6, 2002 Comments of Fairfax County at 3; Comments of Carolina Power and Light Company and TXU Business Services at 17-18; Comments of Verizon Wireless at 16; Comments of Intel Corporation at 3). Blooston remains very concerned that the Revised Plan which is currently before the Commission does not offer a true solution to the 800 MHz interference problem (a problem largely of Nextel’s own creation) or guarantee that all incumbent 800 MHz licensees, including B/ILT licensees who have made significant investments in equipment and infrastructure in order to meet their internal communications needs, will be made whole. This is because the Revised Plan has been constructed in a manner in which there is no certainty that the 800 MHz rebanding will ever be implemented on a nationwide basis due to the lack of a **firm** commitment from Nextel to ensure that all costs associated with the 800 MHz rebanding are paid for. Rather, Nextel has offered \$850 million, of which \$150 million is earmarked for relocation expenses encountered B/ILT licensees in the 800 MHz rebanding process. Revised Plan at 5. Tied to this offer is a significantly “watered-down” payment obligation and “strong arm” provisions which will ensure that Nextel pays the minimal amount for each relocation. (See February 10, 2003 Supplemental Comments of Consumers Energy Company at 19; Comments of The National Association of Manufacturers and MRFAC, Inc. at 15)<sup>9</sup>. Further, Nextel has indicated

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<sup>9</sup> Such tactics include the utilization of unfair binding arbitration proceedings that have been described as baseball style arbitration, in as much as the arbitrator would not be permitted to fashion his own resolution; unreasonably short deadlines to provide information regarding system parameters, with sever penalties for a failure to meet the deadline; the threat of license revocation for failure to reach a license relocation

that it will not pay for relocations of incumbent B/ILT licensees to non-guardband channels that are created under the Revised Plan. See Revised Plan at 10, n. 14; February 10, 2003 Comments of The National Rural Electric Cooperative Association at 13.

The record reflects the concerns of several commenters in this proceeding that Nextel's commitment to fund the rebanding of the 800 MHz band is inappropriately capped at \$850 million, and that this financing plan amounts to "smoke and mirrors". (February 10, 2003 Comments of Ameren Corporation at 3 – 5; Comments of Harbor Wireless, LLC at 7 – 10; Supplemental Comments of Consumers Energy Company 22 -- 23; Comments of ALLTEL et. al. at 10, 12–13). Unlike the Original Plan, Nextel is no longer willing to pay 100 percent of its contribution up front. Rather, Nextel is now offering only to contribute \$25 million up front, a mere 2.9 percent of the total \$850 million Nextel claims will be required to complete the retuning process. Revised Plan at 7 Nextel proposes to secure its remaining obligation by either (a) placing its 1.9 GHz nationwide license in a subsidiary and pledging the stock of that subsidiary to a fund administrator or (b) pledging "cash or cash equivalents". Revised Plan at 8, n. 9 However, Nextel has reserved the right, in its sole discretion, to substitute other assets or securities of "equal value". and to retain the 1.9GHz license free and clear of any liens, subject to the "reasonable" consent of the remaining Consensus Parties. Revised Plan at 8, n. 9. This approach places into question the security of Nextel's obligation, especially if Nextel defaults and/or is forced into bankruptcy protection. If this were to happen.

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agreement, unless the parties are in binding arbitration. **All** of these mechanism would give Nextel an unfair advantage over small incumbent B/ILT licensees.

Nextel's obligation under the Revised Plan would be extinguished, thereby jeopardizing funding for whatever portion of the 800 MHz band relocation remains.

The Revised Plan is thus inconsistent with the Commission's rules and policies, as discussed in the record of this proceeding. In this regard, Rule Section 90.173(b) provides in pertinent part, as follows:

- (b) All applicants and licensees shall cooperate in the selection and use of frequencies in order to reduce interference and make the most effective use of the authorized facilities. Licensees of stations suffering or causing harmful interference are expected to cooperate and resolve this problem by mutually satisfactory arrangements. If licensees are unable to do so, the Commission may impose restrictions including specifying the transmitter power, antenna height, or area or hours of operation of the stations concerned. Further, the use of any frequency at a given geographical location may be denied when, in the judgement of the Commission, its use in that location is not in the public interest; the use of any frequency may be restricted as to specify geographical areas, maximum power, or other such operating conditions, contained in this part or in the station authorization.

Rule Section 90.403 provides in pertinent part, as follows:

- (e) Licensees shall take reasonable precautions to avoid causing harmful interference. This includes monitoring the transmitting frequency for communications in progress and such other measures as may be necessary to minimize the potential for causing interference.

incumbent B/ILT licensees and analog SMR licensees are not the cause of the interference problems experienced by public safety licensees. Many of the B/ILT licensees have indicated that the proposed 800 MHz guard band will *not* be a suitable location for their systems, due to the critical nature of their internal communications. (February 10, 2001 Comments of The National Rural Electric Cooperative Association at 13; Comments of Carolina Power and light Company and TXU Business Service at 4 -

5). As a result, it would be more feasible for them to relocate to interleaved channels. Such relocations would not be paid for by Nextel under the Revised Plan. (See Revised Plan at 10, n. 4; February 10, 2003 Comments of The National Rural Electric Cooperative Association at 13). This would place a severe financial hardship on these licensees, thereby stranding significant investments in radio equipment. (May 6, 2003 Comments of Bosshard Radio Service at 3; Comments of The Boeing Company. at 6-7; Comments of AVR, Inc. at 2; Comments of Intel Corporation at 2).

Nextel admits that it has been able to resolve interference problems on a case-by-case basis. (February 10, 2003 Comments of Nextel at 8). While it is possible that a case-by-case resolution of interference may be less convenient for Nextel (and potentially more expensive than desired), the Commission should nonetheless require Nextel to resolve the interference to public safety licensees in a manner that does not result in any costs (financial or otherwise) to other 800 MHz licensees, especially since the record in this proceeding clearly reflects that Nextel's operations are the primary source of the interference.

**VI. Communications of B/ILT Licensees That Provide Critical Infrastructure Services **Must** be Protected.**

The Commission can take official notice from its Universal Licensing System (ULS) database that numerous licensees in the conventional 800 MHz band are engaged in the provision of critical infrastructure services, including: generation and transport of electric services, alarm monitoring and dispatch, water and sewer services, waste hauling

services, automobile emergency road services, transportation and hauling services, oil refining and distribution, etc.

In the case of a natural disaster or even a future terrorist attack on this country, many of these licensees will be required to respond to the scene of a disaster or major incident, in order to abate hazards that will be encountered by police, fire, emergency medical services and other first responders, and in order to ensure that citizens have the best chance to protect themselves from the fallout of such incidents. In order to effectively respond to these emergencies (and control their internal infrastructure during an emergency), these licensees have heavily invested in 800 MHz voice and data systems. (May 6, 2002 Comments of Carolina Power and Light Company and TXU Business Services at **4**; Comments of Consumers Energy Company at **3-4**; Comments of American Public Transportation Association at **3**). These investments in internal communications systems have been made because commercial systems are either not available or, in the case of emergency, are simply not sufficiently reliable enough to assure reliable communications at all times. (May 6, 2002 Comments of Boone Electric Cooperative at 2). And, because of the critical nature of these communications, any proposal to relegate these B/ILT licensees to anything but primary status in the 800 MHz band would be imprudent. (May 6, 2002 Comments of Carolina Power and Light Company and TXU Business Services at **5**; May 6, 2002 Boone Electric Cooperative at 2).

Should the Commission adopt a solution that does not require Nextel to pay for the retuning of B/ILT licensees to 800 MHz band frequencies outside the guard band, the

ramifications could be serious. Putting aside the costs of system redesign, equipment acquisition and installation (which could cost millions of dollars per system), the public interest would suffer from the potential loss of the valuable services provided by public utilities, automobile emergency road services, waste haulers, and other critical infrastructure service providers. As the Commission can take official notice, commercial telecommunications networks frequency become unavailable during a disaster or emergency for the instantaneous communications needs of these licensees due to a lack of system capacity or over saturation by the public.<sup>10</sup> The risks to first responders and to critical infrastructure personnel trying to protect life and property and abate hazards during an emergency will only be exacerbated if the infrastructure service providers are unable to communicate with their employees. (May 6, 2002 Comments of Carolina Power and Light Company and TXU Business Services at 5). As a result, Blooston urges the Commission to either (a) retain the current frequency assignments, on a primary basis, for B/ILT licensees engaged in critical infrastructure activities, or permit critical infrastructure licensees to relocate. at Nextel's expense, to suitable spectrum in the 800 MHz band which is located outside the 800 MHz guardband."

## **VII. Conclusion.**

For the foregoing reasons, the Commission should ensure that any action **taken** to protect public safety communications in the 800 MHz band also protects incumbent

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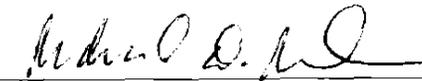
<sup>10</sup> The Commission can take official notice of the disruptions to the public switched telephone network and other public communications infrastructure in the days immediately following the terrorist attacks on September 11, 2001.

B/ILT licensees and critical infrastructure communications. Likewise, the Commission should ensure that only those parties responsible for causing interference to public safety communications are responsible, financially or otherwise, for its mitigation. Because of the regulatory uncertainties created by the Revised Plan, Blooston urges the Commission to mandate the use of technical solutions. Finally, there should be no circumstance in which contributions from cellular carriers are required or incumbent analog SMR or B/ILT licensees are forced to fund their own frequency relocations.

Respectfully submitted,

**BLOOSTON, MORDKOFISKV, DICKENS,  
DUFFV & PRENDERGAST**

By:



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Filed: February 25, 2003

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<sup>11</sup> Blooston also proposes that such licensees be permitted to modify their licenses to add facilities in order to keep up **with** the growth of their infrastructure.

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## Attachment 4

Elechonic Specialties, Inc.

Computer Car, Inc.

US Unwired, Inc.

Copper Valley Wireless, Inc.

Radio Communications Systems, Inc. d/b/a RCS Communications

3M Company

CC Communications

Southern Illinois RSA Partnership

Instant Signal & Alarm Co., Inc.

Thelen Sand & Gravel, Inc.

**Certificate of Service**

I, Althea Pierce, an employee of the law ~~firm~~ of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, do hereby certify that on Tuesday, February 25, 2003, the foregoing Reply Comments on Supplemental Filing by the Consensus Parties were mailed to the following via First Class, United States Mail, postage prepaid, unless otherwise noted:

Michael K. Powell, Chairman  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-B201  
Washington, D.C. 20554

Kathleen Q. Abernathy, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-B115  
Washington, D.C. 20554

Michael J. Copps, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A302  
Washington, D.C. 20554

Kevin J. Martin, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-A204  
Washington, D.C. 20554

Jonathan S. Adelstein, Commissioner  
Federal Communications Commission  
445 12<sup>th</sup> Street, S.W., Room 8-C302  
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John Muleta, Chief  
Wireless Telecommunications Bureau  
Federal Communications Commission  
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D'Wana R. Terry, Chief  
Public Safety and Private Wireless Div.  
Wireless Telecommunications Bureau  
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Althea B. Pierce