

**Before the
Federal Communications Commission
Washington, D.C. 20554**

In the Matter of)	
)	
Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 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
)	
The Establishment of Policies and Service Rules for the Mobile-Satellite Service in the 2 GHz Band)	IB Docket No. 99-81
)	
Amendment of the U.S. Table of Frequency Allocations to Designate the 2500-2520/2670- 2690 MHz Frequency Bands for the Mobile- Satellite Service)	RM-9911
)	
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service)	RM-9498
)	
Petition for Rule Making of UTStarcom, Inc., Concerning the Unlicensed Personal Communications Service)	RM-10024
)	

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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SUMMARY

Nextel Communications, Inc. (“Nextel”) urges the Commission to pair the 1910-1915 MHz and 1990-1995 MHz bands, re-designate that paired band to licensed wireless services, and assign that spectrum to Nextel as delineated in the Consensus Plan for 800 MHz Realignment (the “Consensus Plan”). The Consensus Plan is the only practical and effective choice before the Commission for eliminating harmful interference to 800 MHz public safety licensees, while allocating much-needed additional 800 MHz spectrum to public safety services with minimal disruption to incumbent licensees.

Like Nextel, the majority of commenters on the Third Notice of Proposed Rulemaking in the above-captioned proceeding (“*NPRM*”) – including Commercial Mobile Radio Service (“CMRS”) providers, equipment manufacturers, and Multipoint Distribution Service (“MDS”) operators – favor pairing the 1910-1915 MHz and 1990-1995 MHz bands and re-designating those frequencies to licensed CMRS operations. All agree with Nextel that the 1910-1915/1990-1995 MHz band can be re-designated to licensed CMRS operations without causing harmful interference either to Broadband Personal Communications Service (“PCS”) operations above 1930 MHz or to MSS/ATC systems above 2 GHz.

The Consensus Plan solves the CMRS – public safety interference problem by spectrally separating the Commission’s mixed spectrum allocations for commercial, private and public safety licensees *at both 800 MHz and 900 MHz* into exclusive channel blocks. This makes it possible to separate these now interleaved licensees – whose respective users are best served by fundamentally different and incompatible technologies

– into separate spectrum blocks so that incompatible systems are no longer licensed among each other in the same geographic areas, thereby correcting the problem.

Implementing this spectrum realignment to eliminate interference requires, however, sufficient separation between the channels allocated for use by public safety first-responders and those allocated to cellular providers. There is insufficient space in the 800 MHz Land Mobile Radio band to do this unless some incumbent or incumbents vacate at least a portion of the band. The Consensus Plan recognizes that the optimal approach – considering incumbent license assignments and all technical, operational, and financial factors – is for Nextel to vacate the 806-816/851-861 MHz block to create sufficient spectral separation between public safety and cellular, low-site systems to mitigate CMRS – public safety interference. This requires Nextel to surrender 2.5 MHz of its incumbent 800 MHz position.

The Consensus Plan also requires Nextel to surrender its 4 MHz position at 900 MHz to eliminate interleaving among low-site cellular and high-site private wireless licensees and thereby preempt the same interference problems now plaguing 800 MHz. It also provides new growth opportunities for private wireless licensees at 900 MHz and the option for some to voluntarily migrate from 800 MHz, thereby freeing more 800 MHz channels for public safety use including enhanced interoperability. The Consensus Plan also requires Nextel to surrender its 4 MHz of Guard Band licenses at 700 MHz to provide public safety licensees with additional spectrum for specialized applications and to better insulate the new 700 MHz public safety channel block from future adjacent commercial (likely low-site, incompatible) operations.

Thus, assigning the 1910-1915/1990-1995 MHz band to Nextel is an indispensable component of the Consensus Plan proposal because it makes Nextel whole in return for its spectral contributions to the Plan. Nextel paid \$2 billion in Commission auctions and the secondary market for the 10.5 MHz of spectrum it would surrender. The Consensus Plan also requires Nextel to make substantial financial commitments to make interference-solving realignment possible, including contributing up to \$850 million to fund the relocation, where required, of incumbent public safety and private wireless licensees, as well as approximately \$150 million for Nextel to retune twice to further ease the retuning burden on non-cellular incumbents. Nextel will also have to spend considerable funds to relocate incumbent Broadcast Auxiliary Service licensees from the 1990-1995 MHz block as well as a *pro rata* share of the cost of clearing microwave incumbents from the 1910-1915 MHz block. All of this is necessary to correct the root cause of CMRS-public safety (and private wireless) interference *without any incumbent licensee losing a single channel while providing funding for all required relocations*. This is why the Consensus Plan enjoys the support of over 90 percent of affected 800 MHz Land Mobile Radio licensees.

The arguments of cellular and MDS operators against Nextel receiving the 1910-1915/1990-1995 MHz block as a “windfall” are unsupported, unrealistic, and ultimately hypocritical in light of their own statements and activities. Nextel’s near \$3 billion contribution in spectrum and realignment expenditures far exceeds CTIA’s own estimated value of the 1910-1915/1990-1995 MHz band. Hypocritically, at the same time Cingular decries the Consensus Plan’s assignment of replacement spectrum to Nextel, one of Cingular’s joint venture parents, BellSouth, seeks to exchange its one-way,

upstream MDS channels at 2150-2162 MHz for a 12 MHz assignment overlapping the same 1910-1915/1990-1995 MHz block (1910-1916/1990-1996 MHz). Were the Commission to adopt BellSouth's proposal, MDS licensees could deploy Frequency Division Duplex ("FDD") applications that *are not possible today in the 2150-2162 MHz band*. BellSouth could then assign its licenses for MDS Channels 1 and 2 to Cingular for CMRS use, a step that would substantially enhance the value of BellSouth/Cingular's spectrum assets. At the same time, MDS operators and cellular providers continue to seek dramatic and far-reaching rule changes to their bands, on top of those already adopted by the FCC in the past, including wholesale spectrum swaps and band realignments all of which substantially increase the value of their spectrum holdings. The cellular and MDS industries cannot have it both ways; they cannot on the one hand argue for rule changes that increase the value of their spectrum, while on the other hand labeling other licensees' efforts to improve their spectrum environment as attempted "windfalls."

There is no greater public interest achievement than furthering the nation's Homeland Security mission by improving the quality of public safety and emergency communications. The public interest benefits from the Consensus Plan and the assignment to Nextel of the 1910-1915/1990-1995 MHz band far outweigh any possible benefits from assigning this spectrum to MDS incumbents. Moreover, relocation to this band is not the only viable relocation option for MDS Channels 1 and 2; MDS Channels 1 and 2 could be relocated to a 12 MHz portion of the 2155-2180 MHz band with no adverse effects.

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REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. (“Nextel”) hereby replies to comments on the Third Notice of Proposed Rulemaking in the above-captioned proceeding (“*NPRM*”).¹ As Nextel argued in its comments, the Commission should pair the 1910-1915 MHz and 1990-1995 MHz bands, re-designate that paired band to licensed wireless services, and assign that spectrum to Nextel in conjunction with the Consensus Plan for 800 MHz Realignment (the “Consensus Plan”).

¹ *Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order*, 18 FCC Rcd 2223 (2003) (FCC 03-16) (“*NPRM*”).

Nextel has conclusively demonstrated that its assignment to 1910-1915/1990-1995 MHz as part of the Consensus Plan is the spectrum use that best serves the public interest. Assignment of this replacement spectrum to Nextel is a critical element to improving the spectrum environment for public safety and emergency communications in the 800 MHz band, furthering the nation's Homeland Security mission. This essential component of the Plan will make Nextel whole for its substantial spectral contributions to solving the CMRS – public safety interference problem in the 800 MHz band, allow the Commission to allocate additional spectrum to public safety use, and permit the implementation of the only practical, viable plan to remedy interference to public safety systems at 800 MHz. These public interest benefits far outweigh any possible benefits from the use of this spectrum by Multipoint Distribution Service (“MDS”) incumbents, for whom a number of alternative bands are suitable relocation homes.

I. THE RECORD SUPPORTS THE PAIRING OF 1910-1915 MHz AND 1990-1995 MHz AND THE DESIGNATION OF THAT BAND TO BROADBAND CMRS OPERATIONS

A. The Re-Designation of 1910-1915/1990-1995 MHz to Licensed CMRS Operations Will Not Cause Interference to Adjacent Operators

Like Nextel, the majority of commenters on the *NPRM* favor the pairing of the 1910-1915 MHz and 1990-1995 MHz bands and the re-designation of those frequencies to licensed commercial mobile radio service (“CMRS”) operations, such as Broadband PCS-type services. Supporters of this use of the spectrum include CMRS providers,²

² See Comments of Nextel Communications, Inc.; Comments of the Cellular Telecommunications & Internet Association (“CTIA”); Comments of Cingular Wireless LLC; Comments of Verizon Wireless. (Unless otherwise indicated, all comments referenced herein were filed April 14, 2003 in ET Docket No. 00-258.)

equipment manufacturers,³ and MDS operators.⁴ According to these commenters, the Commission should designate 1910-1915 MHz for mobile transmit operations and 1990-1995 MHz as the base transmit band. All of these parties agree with Nextel that the 1910-1915/1990-1995 MHz band can be re-designated to licensed CMRS operations services without causing harmful interference to operators in adjacent services. Commenters such as the Cellular Telecommunications and Industry Association (“CTIA”), Verizon Wireless, and Motorola all believe that mobile transmissions at 1910-1915 MHz would not cause harmful interference to Broadband PCS operations above 1930 MHz, and that base station operations can be located at 1990-1995 MHz without causing harmful interference to MSS/ATC systems above 2 GHz.⁵

While Unlicensed Personal Communications Service (“UPCS”) commenters UTAM and UTStarcom oppose re-designation of the UPCS spectrum at 1910-1920 MHz to licensed CMRS, neither presents any evidence or even claims that broadband CMRS operations at 1910-1915 MHz would cause harmful interference to Broadband PCS operations above 1930 MHz.⁶ (Their comments are addressed further in Section I.B.

³ See Comments of Ericsson, Inc.; Comments of Motorola, Inc.

⁴ See Comments of DCT Los Angeles, L.L.C.; Comments of Ad Hoc MDS Alliance; Comments of Nucentrix Broadband Networks, Inc.; Comments of Wireless Communications Association International (“WCA”).

⁵ CTIA Comments at 3-5; Verizon Wireless Comments at 4-6; Motorola Comments at 5-7. Commenters supporting the creation of a “G Block” at 1910-1915/1990-1995 MHz do recognize the need for sufficient frequency separation between this re-designated band and adjacent Broadband PCS and MSS/ATC systems.

⁶ Comments of UTAM, Inc. at 2-5; Comments of UTStarcom, Inc. at 4-6. In fact, UTAM concedes that the re-designation of 1910-1915 MHz will leave in place a sufficient guard band between the Broadband PCS mobile and base transmit bands. UTAM Comments at 5.

below.) Similarly, while ICO Global Communications (“ICO”) disputes the Commission’s decision to reallocate the 1990-2000 MHz band, it does not argue that CMRS operations at 1990-1995 MHz would interfere with MSS/ATC systems operating above 2 GHz.⁷

B. Re-designation of the 1910-1915 MHz Band Will Not Harm the Development of UPCS

As indicated above, UTAM argues that the Commission should leave intact the current UPCS allocation at 1910-1930 MHz. UTAM claims that re-designation of significant spectrum from that band would cause substantial harm to the UPCS community.⁸

UTAM has objected repeatedly to the proposed re-designation of UPCS spectrum, not only in this proceeding but also in response to the *Public Safety NPRM*.⁹ In this latest filing, UTAM presents no new relevant information on harm to UPCS, and its arguments remain without merit. UTAM’s assertions regarding the UPCS industry’s need for 20 MHz of spectrum are contradicted by the fact that, as the Commission noted in the

⁷ Comments of ICO at 2-3. In its comments, the Society of Broadcast Engineers (“SBE”) states that, with the reallocation of the 1990-2000 MHz band to terrestrial fixed and mobile services, the relocation of Broadcast Auxiliary Service (“BAS”) facilities from 1990-2025 MHz to spectrum above 2025 MHz should be changed to a one-step process. Comments of SBE at 1. Nextel is open to a reassessment of the BAS relocation rules, and representatives of Nextel recently met with broadcast parties concerning BAS relocation. While the *NPRM* deferred consideration of BAS relocation issues to an upcoming proceeding, the Commission should resolve BAS relocation issues expeditiously in order to provide regulatory certainty as this band is assigned to new licensees.

⁸ UTAM Comments at 2-3.

⁹ See, e.g., Comments of UTAM, Inc., WT Docket No. 02-55 (Feb. 10, 2003); *Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, Notice of Proposed Rulemaking, WT Docket No. 02-55, 17 FCC Rcd 4873 (2002) (“*Public Safety NPRM*”).

NPRM, not a single piece of UPCS equipment has been authorized for use at 1910-1920 MHz.¹⁰ The undeniable reality is that asynchronous UPCS applications have not developed at 1910-1920 MHz as the Commission and others originally envisioned. Given that these frequencies now lie fallow, the Commission would serve the public interest by re-designating a portion of this spectrum at 1910-1915 MHz to licensed wireless services.¹¹

The Commission should also reject UTStarcom's proposal for low-power "community wireless" services throughout the 1910-1920 MHz band, whether on a licensed or unlicensed basis.¹² UTStarcom's proposed services are designed primarily for small communities and rural areas, and would not lead to the full and efficient use of this spectrum. To the extent the Commission considers UTStarcom's proposal, however, it should do so only as it relates to the 1915-1920 MHz band; UTStarcom itself concedes that operators could provide mobile local loop voice services "[b]y using only the spectrum between 1915MHz and 1920MHz."¹³

As Nextel and others have pointed out and as the *NPRM* contemplates, the Commission could complement the re-designation of 1910-1915 MHz by extending isochronous UPCS operations into the 1915-1920 MHz band, currently reserved for

¹⁰ *NPRM* ¶ 46.

¹¹ *Id.*

¹² *See* UTStarcom Comments at 1-2.

¹³ *Id.* at 3.

asynchronous transmitters.¹⁴ This additional bandwidth for isochronous applications could spur growth and innovation in the UPCS industry.

C. Nextel is Committed to the Fair Reimbursement of UTAM for Its Band-Clearing Costs

In its comments, UTAM states that in conjunction with any reallocation of UPCS spectrum, it must be reimbursed for a *pro rata* percentage of its overall costs for clearing incumbent microwave facilities from the 1910-1930 MHz band.¹⁵ UTAM says that this reimbursement scheme should include certain elements, such as a method for cost allocation among new licensees and the assumption of accelerated installment payment obligations.¹⁶

As made clear in its comments, if assigned replacement spectrum at 1910-1915 MHz, Nextel is committed to reimbursing UTAM for its *pro rata* share of the band-clearing costs for the 1910-1930 MHz band. Nextel has also indicated that it will fund its *pro rata* share of any additional band clearing following this assignment.¹⁷ This equitable approach is consistent with the Commission's proposal in the *NPRM*.¹⁸

¹⁴ See Reply Comments of Nextel Communications, Inc. and Nextel Partners Inc., WT Docket No. 02-55, at 18 (Feb. 25, 2003); *NPRM* ¶ 52.

¹⁵ UTAM Comments at 5-7.

¹⁶ *Id.* at 6-7.

¹⁷ Nextel Comments at 15-16.

¹⁸ *NPRM* ¶ 59.

II. THE COMMISSION SHOULD ADOPT THE CONSENSUS PLAN AND ASSIGN NEXTEL TO THE 1910-1915/1990-1995 MHz BAND

A. Assignment of 1910-1915/1990-1995 MHz to Nextel in Conjunction with the Consensus Plan is the Spectrum Use That Best Serves the Public Interest

There can be no greater public interest goal than furthering the nation's Homeland Security mission by improving the spectrum environment for public safety operations in the 800 MHz band. As the Commission stated in the *Public Safety NPRM*, "[t]he Commission has long recognized that the nation's public safety community requires effective radio communications systems free of harmful interference if public safety agencies are to adequately protect the safety of lives and property."¹⁹ Unfortunately, as the record developed in response to the *Public Safety NPRM* makes clear, in recent years public safety systems operating in the 800 MHz band have been subject to increasing levels of harmful interference from CMRS operations in that band, even though all affected licensees are operating in full compliance with FCC rules and the parameters set forth in their licenses. The fundamental cause of this interference is the 800 MHz band plan, initially adopted in 1974, which permits two incompatible system architectures – high-site, high-power public safety (and private wireless) systems and low-site, low-power cellular systems – to operate on mixed, interleaved, and adjacent 800 MHz channels. The 800 MHz band must be realigned as soon as possible, or interference in the band will increase as public safety and CMRS licensees expand their networks.

There is also an urgent need to allocate additional spectrum to public safety communications systems. In 1996, the Public Safety Wireless Advisory Committee ("PSWAC"), established by the FCC and the National Telecommunications and

¹⁹ *Public Safety NPRM* ¶ 1.

Information Administration (“NTIA”) to investigate the wireless communications needs of public safety agencies through the year 2010, issued a report recommending the allocation of an additional 97.5 MHz of spectrum for public safety communications.²⁰ The report stated “unless immediate measures are taken to alleviate spectrum shortfalls and promote interoperability, Public Safety agencies will not be able to adequately discharge their obligation to protect life and property in a safe, efficient, and cost effective manner.”²¹ The need for additional public safety spectrum has grown more acute in the wake of the September 11 terrorist attacks.²²

The Consensus Plan greatly promotes the public interest by providing an effective remedy to CMRS – public safety interference in the 800 MHz band without unduly disrupting incumbent licensees, and by providing additional, near term spectrum for public safety communications. It addresses the interference problem by realigning the 800 MHz band to isolate incompatible technologies into separate, exclusive spectrum blocks, and by recommending additional post-realignment technical measures to prevent interference. It helps address the shortage of public safety spectrum by allocating additional spectrum to public safety in the 700 and 800 MHz bands.

²⁰ Final Report of the Public Safety Wireless Advisory Committee to the FCC and NTIA, WT Docket No. 96-86, ¶ 2.2.1 (Sept. 11, 1996).

²¹ *Id.*, Executive Summary at 2.

²² See Statement of Glen Nash, President, Association of Public-Safety Communications Officials-International, Inc., Before the United States Senate Commerce, Science and Transportation Committee, Communications Subcommittee (Mar. 6, 2002) (“Unfortunately, for far too many years, public safety agencies across the nation have faced a severe shortage of radio spectrum available for their communications systems. ... Now, with new Homeland Security responsibilities being placed on public safety personnel, there will be even greater demand for public safety spectrum.”).

Assigning the 1910-1915/1990-1995 MHz band to Nextel is an indispensable component of achieving these vital public interest objectives, as it will make Nextel whole in return for its spectral contributions under the Consensus Plan. As part of the Plan's proposal to remedy CMRS – public safety interference in the 800 MHz band and allocate additional spectrum to public safety, Nextel will be required to surrender 10.5 MHz of spectrum. This includes 2.5 MHz of spectrum in the 800 MHz band that will be used both to accommodate the relocation of incumbent non-cellularized systems in the realigned band, and to make additional 800 MHz spectrum available to public safety systems. This contribution also includes Nextel's 4 MHz of 700 MHz guard band spectrum, which will be re-designated for public safety use and which will be adjacent to the spectrum already allocated to public safety at 700 MHz. And it includes Nextel's 4 MHz of 900 MHz spectrum, which will be made available to Business and Industrial/Land Transportation (“B/ILT”) and high-site SMR (“H-SMR”) licensees. The Consensus Plan encourages 800 MHz B/ILT and H-SMR incumbent licensees to relocate voluntarily to this 900 MHz spectrum by offering them an eventual 50 kHz channel assignment for each 25 kHz 800 MHz channel vacated. This in turn will make more spectrum available to public safety licensees in the 800 MHz band.

This additional 800 MHz spectrum could be used immediately to expand public safety system capacity nationwide, and to promote interoperability among public safety systems. Providing additional 800 MHz to public safety is particularly advantageous because the propagation characteristics of this band are well-suited for the wide-area coverage requirements of public safety systems. Moreover, many public safety licensees already operate in the 800 MHz band throughout the country, resulting in greater

economies of scale in the design and production of new equipment for public safety operators.

Designating Nextel's 4 MHz of 700 MHz Guard Band spectrum for public safety communications will also help address public safety's spectrum needs. Public safety systems could immediately be deployed in areas that are not encumbered by broadcast television stations currently operating in the 700 MHz band. Even in markets where television stations will be operating until the end of the digital television transition, public safety systems may be able to use this spectrum for localized, campus-type operations. The assignment of Nextel's 700 MHz Guard Band spectrum to public safety systems is particularly appropriate because this spectrum is directly adjacent to the spectrum bands that have already been allocated to public safety services at 700 MHz. As with the 800 MHz band, the propagation characteristics of the 700 MHz band are well-suited for wide-area public safety systems, and public safety operators will also be able to take advantage of the economies of scale in the design and production of public safety communications equipment that will be used at 700 MHz. In addition, designating this Guard Band spectrum for public safety use will provide additional assurance that operations in this spectrum will be compatible with public safety operations in the adjacent spectrum bands, consistent with the Congressional mandate that public safety services in the 700 MHz band be protected against interference.²³

²³ See H.R. Conf. Rep. No. 105-217, at 12 (1997), *reprinted in* 1997 U.S.C.C.A.N. 201 (Conference Report to the Balanced Budget Act of 1997 stating that public safety services in the 746-806 MHz band should "continue to operate free of interference from any new commercial licensees").

In addition, as described in its comments, Nextel's surrender of 900 MHz spectrum will greatly advantage current and future licensees in the 900 MHz band, another crucial benefit of the Consensus Plan. B/ILT and H-SMR licensees currently operate on 900 MHz channels that are interleaved with Nextel's channels in this band. The interleaving of the high-site, high-power B/ILT and H-SMR and Nextel's low-site, low-power cellularized systems creates the potential for significant interference in the future, similar to the situation that has arisen in the 800 MHz band. The move of Nextel's cellularized technology out of the 900 MHz band will prevent the prolonged interleaving of high-site and low-site systems at 900 MHz, thereby preempting the development of the same interference problems now experienced at 800 MHz.²⁴

Contrary to the suggestion of WCA,²⁵ the Consensus Plan is the only detailed, practical, and sustainable means of improving public safety communications in the 800 MHz band and achieving the Commission's objectives in the *Public Safety NPRM*. As a result, the Consensus Plan enjoys the support of over 90 percent of 800 MHz Land Mobile Radio licensees. As described above, a critical element of this comprehensive, integrated proposal is the exchange of Nextel's 10.5 MHz of spectrum in the 700, 800 and 900 MHz bands for 10 MHz at 1910-1915/1990-1995 MHz. This spectrum will be used to implement the realignment of the 800 MHz band, provide the public safety community with much needed additional spectrum, and preempt a serious future interference problem in the 900 MHz band. As the Consensus Plan recognizes, achieving

²⁴ In addition, this relocation option will almost double 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.

²⁵ WCA Comments at 47.

these vital public interest goals requires that Nextel be made whole by assigning it replacement spectrum on a kHz for kHz basis at 1910-1915/1990-1995 MHz.²⁶ Certainly, the resulting public interest benefits far outweigh any alternative uses of the 1910-1915/1990-1995 MHz band, including the use of this spectrum to relocate MDS Channels 1 and 2.

B. Arguments by the Cellular and MDS Industries Against the Consensus Plan Are Unsupported and Hypocritical

The Consensus Plan will require Nextel to relinquish extremely valuable assets and resources. As described above, Nextel will have to surrender to the Commission 10.5 MHz of spectrum in the 700, 800, and 900 MHz bands. Nextel paid \$2 billion in FCC auctions and the secondary markets to acquire these licenses. In addition, the

²⁶ Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, at 13 (Dec. 24, 2002). WCA, whose members include BellSouth and Sprint, has strongly opposed the Commission's suggestion that MDS licensees relocating from MDS Channels 1 and 2 "could be accommodated using substantially less spectrum than that of the existing 2150-2160/62 MHz allocation." *NPRM* ¶ 72. WCA emphasizes the importance, from both a legal and policy perspective, of assigning replacement spectrum on a kHz for kHz basis when incumbent licensees providing wide-area service to multiple points within a geographic service area are required to relocate from their existing frequency assignments. *See* WCA Comments at 28-44. For example, WCA states in its comments that "secondary markets cannot function efficiently unless spectrum rights are clear and well-defined. That condition, obviously, cannot be satisfied if potential buyers and lessees of spectrum are exposed to an ongoing threat that the Commission may at any time reclaim the spectrum they are buying or leasing without giving them an identical amount of replacement spectrum in return." *Id.* at 41-42. *See also id.* at 43-44 ("[I]ncumbent MDS licensees paid substantial sums for the rights to their spectrum, and have invested even more towards deploying that spectrum for broadband and other services. The integrity of those investments is put at risk where the Commission repossesses and re-auctions that spectrum at will without providing dispossessed licensees an identical amount of replacement spectrum.").

These arguments apply with greater force to Nextel's situation; *i.e.*, Nextel should similarly receive an identical amount of replacement spectrum in exchange for the spectrum it will be required to contribute under the Consensus Plan, as well as for the considerable expense and detrimental impact it will endure during the realignment process.

Consensus Plan will require Nextel to make substantial financial commitments. Nextel will be required to contribute up to \$850 million to fund the relocation of all public safety and private wireless licensees. Nextel will also cover its own relocation costs, including the cost of retuning much of its 800 MHz network twice; this expense will be significantly greater than the cost incurred by any other licensee. In addition, Nextel will contribute its proportionate share of funds, above and beyond the \$850 million for 800 MHz incumbent relocation, to relocate Broadcast Auxiliary Service (“BAS”) licensees and reimburse UTAM once Nextel has been assigned the 1910-1915/1990-1995 MHz band.

Notwithstanding Nextel’s substantial contributions under the Consensus Plan, Cingular asserts that the assignment of the 1910-1915/1990-1995 MHz band to Nextel would constitute a windfall.²⁷ This assertion recycles the same argument made repeatedly by Cingular, CTIA, and other cellular carriers in the *Public Safety NPRM* proceeding;²⁸ they again offer nothing more than overheated rhetoric to support their claim. In fact, CTIA has offered an estimate of the value of the 1910-1915/1990-1995 MHz band that flatly contradicts these windfall arguments. Noting that the 1910-1915/1990-1995 MHz band “is adjacent to the top of the existing PCS band,” CTIA stated in comments filed in the 800 MHz proceeding that “[o]ther carriers paid on average close to \$1.3 billion for 10 MHz (2x5) MHz of comparable spectrum in the 1994

²⁷ See Cingular Comments at 7.

²⁸ See Comments of ALLTEL Communications, Inc.; AT&T Wireless Services, Inc.; Cingular Wireless LLC; Sprint Corporation; Southern LINC; United States Cellular Corporation (“Cellular Coalition”), WT Docket No. 02-55, at 5-10 (Feb. 10, 2003); Comments of CTIA, WT Docket No. 02-55, at 15-16 (Feb. 10, 2003); Comments of Verizon Wireless, WT Docket No. 02-55, at 11-14 (Feb. 10, 2003).

A and B block [PCS] auction.”²⁹ As noted, Nextel paid \$2 billion for the 10.5 MHz of spectrum it will exchange for the assignment at 1.9 GHz under the Consensus Plan. This, of course, far exceeds CTIA’s own estimated value of the 1910-1915/1990-1995 MHz band, and does not include Nextel’s additional substantial financial commitments to the Plan, as enumerated above.

The arguments of Nextel’s competitors are also hypocritical. At the same time Cingular decries the Consensus Plan’s assignment of replacement spectrum to Nextel, one of Cingular’s joint venture parents, BellSouth, seeks to exchange its one-way, upstream MDS channels at 2150-2162 MHz for a 12 MHz assignment overlapping the 1910-1915/1990-1995 MHz block (1910-1916/1990-1996 MHz).³⁰ Were the Commission to adopt this proposal, MDS licensees could deploy Frequency Division Duplex (“FDD”) applications not possible today in the 2150-2162 MHz band. In this scenario, BellSouth could assign its licenses for MDS Channels 1 and 2 to Cingular for CMRS use, a step that would substantially enhance the value of BellSouth/Cingular’s spectrum assets. If anyone is guilty of seeking a windfall in this proceeding, it is BellSouth/Cingular.

These windfall arguments are also inconsistent with current and past efforts by MDS operators and cellular providers to seek rule changes, including spectrum swaps and band realignments, that substantially increase the value of their spectrum holdings. For example, the Commission has provided incumbent MDS and Instructional Television Fixed Service (“ITFS”) licensees greater flexibility in recent years, substantially

²⁹ Further Comments of CTIA, WT Docket No. 02-55, at 6-7 (Sep. 23, 2002).

³⁰ Comments of WCA, WT Docket No. 02-55, at 3-4 (Feb. 10, 2003).

increasing the value of their spectrum licenses. In 1996, the Commission permitted MDS and ITFS operators to use digital technologies.³¹ In 1998, the Commission allowed these licensees to construct cellularized, digital two-way systems capable of providing fixed broadband Internet services.³² In the same decision, the Commission permitted MDS and ITFS licensees to shift and swap channels, enabling incumbent licensees to assemble contiguous frequency blocks and facilitate their provision of two-way broadband service.³³ As the Commission itself recognized, these rule changes resulted in “competitive benefits to the MDS industry.”³⁴ In 2001, the Commission added a mobile service allocation to the 2500-2690 MHz band, thus permitting advanced wireless services in this band.³⁵

WCA, BellSouth, and Sprint – another CTIA member – have recently sought greater competitive benefits for the MDS industry, proposing a “radical reworking of the MDS and ITFS regulatory structure.”³⁶ In response, the Commission issued the

³¹ *Use of Digital Modulation by Multipoint Distribution Service and Instructional Television Fixed Service Stations*, Declaratory Ruling and Order, 11 FCC Rcd 18839 (1996).

³² *Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and Instructional Television Fixed Service Licensees to Engage in Fixed Two-Way Transmissions*, Report and Order, 13 FCC Rcd 19112 (1998).

³³ *Id.* ¶¶ 101, 106.

³⁴ *Id.* ¶ 10.

³⁵ *See Amendment of Part 2 of the Commission’s Rules to Allocation Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, First Report and Order and Memorandum Opinion and Order, 16 FCC Rcd 17222 (2001).

³⁶ *Amendment of Parts 1, 21, 73, 74 and 101 of the Commission’s Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands*, Notice of Proposed Rule Making

MDS/ITFS Rebanding NPRM that, among other things, proposes to reconfigure the 2500-2690 MHz band to “facilitate the provision of advanced wireless communications services by incumbent licensees.”³⁷ MDS and ITFS channels are interleaved under the current band plan; this configuration inhibits the deployment of low power, cellularized MDS systems, which are incompatible with the high-power, high-site ITFS operations prevalent in that band. The *MDS/ITFS Rebanding NPRM* seeks comment on realigning the entire band into separate contiguous blocks for low-power, cellular systems and high-power ITFS systems. This would transform a spectrum band that was used for fixed, one-way video transmission services less than ten years ago into a band that is well suited for advanced wireless mobile services. Interestingly, CTIA has remained silent on this proposal.

The changes contemplated in the *MDS/ITFS Rebanding NPRM*, including the incumbents’ shift to new spectrum channels in the realigned band, would confer a significant financial benefit on BellSouth and other MDS licensees. Indeed, the Commission states in the *MDS/ITFS Rebanding NPRM* that it “realize[s] that if the FCC provides existing ITFS and MDS licensees with greater flexibility, those licensees may capture the increased value given that they could not have paid for that value when they obtained their original license.”³⁸ Not surprisingly, BellSouth and the rest of the MDS

and Memorandum Opinion and Order, FCC 03-56, WT Docket No. 03-66, ¶ 30 (released April 2, 2003) (“*MDS/ITFS Rebanding NPRM*”) (quoting Letter from WCA, the National ITFS Association, and the Catholic Television Network to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau (Oct. 7, 2002)).

³⁷ *MDS/ITFS Rebanding NPRM* ¶ 2.

³⁸ *Id.* ¶ 116.

industry do not see this result as a windfall that would justify the Commission's denial of their requested flexibility.

Nor have any of the critics of the Consensus Plan, including Cingular and CTIA, taken issue with prior Commission decisions that enhanced the value of cellular licenses. The Commission has on numerous occasions over the years amended its rules 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.³⁹ 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.

The real public interest question is not whether a proposal will give one or another licensee a "windfall" – a red herring that Nextel's competitors unfairly throw at Nextel but ignore in proceedings which may increase the value of *their* spectrum holdings – but whether it will promote the Commission's statutory mandate by, for example, increasing the efficient use of the spectrum⁴⁰ or promoting public safety.⁴¹ As described above,

³⁹ See Reply Comments of Nextel Communications, Inc., WT Docket No. 02-55, at 26-27 (Aug. 7, 2002) (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).

⁴⁰ See, e.g., 47 U.S.C. § 303(g) (requiring the FCC to "generally encourage the larger and more effective use of radio in the public interest"); FCC, Strategic Plan FY 2003 – FY 2008 at 5 (2002), available at: <<http://www.fcc.gov/omd/strategicplan/strategicplan2003-2008.pdf>> (describing FCC's goal to "[e]ncourage the highest and best use of spectrum domestically and internationally in order to encourage the growth and rapid deployment of innovative and efficient communications technologies and services").

contrary to the arguments made by Nextel's competitors, the assignment of the 1910-1915/1990-1995 MHz band to Nextel would simply make it whole in exchange for its spectral and other contributions to the Consensus Plan. Assigning this channel block to Nextel makes it possible to implement the band realignment and channel swaps necessary to improve public safety communications throughout the nation. This will achieve a vital public interest goal and better safeguard the lives and safety of first responders and the public they serve.

⁴¹ See, e.g., 47 U.S.C. § 151 (stating that the FCC was created in part to make available a “rapid, efficient ... radio communication service ... for the purpose of promoting safety of life and property”).

III. CONCLUSION

For the aforementioned reasons, Nextel urges the Commission to re-designate the 1910-1915 MHz band from UPCS to licensed commercial wireless services, pair that spectrum with the 1990-1995 MHz band, and assign these paired frequencies to Nextel as replacement spectrum. This assignment will permit the Commission to implement an effective solution to CMRS – public safety interference and significantly improve public safety communications in the 800 MHz band.

Respectfully submitted,

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