Sample

4-1-13 Per telephone conversation Victor approval

Hon. Ramon Garcia
County of Hidalgo
100 E. Cano
Edinburg, Texas 78539

RE: Engagement of Legal Services

Honorable Judge Garcia:

We are pleased to submit to you a proposed agreement for the Law Firm of Best Best & Krieger L.L.P to serve as legal counsel for County of Hidalgo (hereinafter referred to as "County") in connection with reconfiguration of the County's 800 MHz public safety radio system as ordered by the Federal Communication Commission (hereinafter referred to as "FCC").

Basic Services

County engages the Law Firm to advise the County in connection with reconfiguration of the County's 800 MHz public safety radio system as ordered by the FCC, including, but not limited to: If necessary, filing extensions for additional time to complete any and all FCC and or Transition Authority (hereinafter referred to as "TA") deadlines; Facilitating biweekly updates to the TA regarding reconfiguration planning phase; Facilitating Cost Estimates to be submitted, and ensuring they meet FCC and TA requirements; Negotiating with Sprint/Nextel the reasonable estimated costs for reconfiguration; Facilitating request for payment to be submitted to Sprint/Nextel associated with the reconfiguration planning phase.

1. The Law Firm will provide the County with copies of all legal memoranda prepared as a result of this engagement, and if the engagement is for litigation, the Law Firm will provide copies of all relevant pleadings and timely status reports to the County Attorney; to the extent you require his assistance.

2. Notwithstanding the foregoing, since this is a professional service involving the attorney-client relationship, this service may be terminated (1) at any time by mutual consent of the parties or (2) by either party, in its discretion, effective on 30 days written notice to the other. If such should transpire, the Law Firm will ensure that it will co-operate in the termination of the service without prejudice to the County and County shall be responsible for payment of bills incurred up to date of termination.

3. All bills, status reports and communications relating to this service shall be submitted by the Law Firm to the Hidalgo County Emergency Management Coordinator.

4. All notices or other communication between parties shall be sent to :

Oscar Montoya
Hidalgo County
Emergency Management Coordinator
302 W. University
Edinburg, TX 78539

James R. Hobson
Best Best & Krieger LLP
2000 Pennsylvania Avenue N.W., Suite 4300
Washington, DC 20006-1812

Compensation

The attorneys in charge of this representation will be James R. Hobson and Gerard L. Lederer, whose hourly attorney standard rates for services -- which shall be reimbursed by Sprint/Nextel as provided -- are $515 per hour. Work performed at the direction of the County that is outside of the scope of work that is required to be reimbursed by Nextel will be at the firm's discounted municipal rate of $315 per hour. Such work would not be performed without written County permission.

Law Firm's fees for legal services in connection with reconfiguration of the County's 800 MHz public safety radio system ordered by the FCC will be based on the time we spend on the engagement. Statements for services will include itemized detail. As encouraged by the FCC orders, we will bill Sprint/Nextel directly at our standard rates. It is anticipated that most of the work on this project will be performed by James Hobson and Gerard Lavery Lederer at the hourly rates reflected in the paragraph above. In the course of the negotiations with

Sprint/Nextel, the Law Firm shall record in the eventual agreement that we expect payment from Sprint Nextel. Law Firm would have no recourse to County for payment unless County asks for services which are (1) agreed in advance and in writing to be outside the scope of reconfiguration planning and implementation for which the FCC has made Sprint/Nextel responsible; or (2) disputed between the County and Nextel as to Nextel's responsibility for payment and the County agrees to County payment in settlement of the dispute. All such additional work shall be subject to the billing practices outlined in this Letter of Engagement.

Additional Services

Law Firm attorneys are representing other clients with essentially identical interests in this matter. When work is performed for the benefit of two or more clients in this matter, the fees and charges will be appropriately allocated.

We understand that the parties potentially adverse to the County's interests are Sprint Nextel and possibly the Transition Administrator appointed by the FCC. Please inform us immediately if you become aware of any additional adverse parties.

The scope of representation by the firm's lawyers under this retainer is limited to matters as to which we are permitted to represent you by law, regulations or custom.

The term of this agreement shall be for one year from the date of its approval by the County, but shall automatically extend for successive one year terms unless the County gives Law Firm notice of termination during the last month of any term. Additionally, the County may at any time after the first year from the date of approval terminate this agreement by giving Law Firm 30 days written notice of termination.

No provisions of this agreement shall be deemed to be an agreement or undertaking of any member of the Commissioners Court or any official or employee of the Issuer, and no such member, official or employee shall be personally liable in connection herewith or be subject to any personal liability or accountability by reason of the terms hereof.

This Agreement shall be construed under and in accordance with the laws of the State of Texas, and all obligations of the parties created hereunder are performable in Hidalgo County, Texas. The parties hereby consent to personal jurisdiction in Hidalgo County, Texas.

In the event that, during any term hereof, the Commissioner's Court does not appropriate sufficient funds to meet the obligations of the County under this Agreement, County may terminate this Agreement upon ninety (90) days written notice to Consultant(s). County agrees however, to use reasonable efforts to secure funds necessary for the continued performance of

this Agreement. The parties intend this provision to be a continuing right to terminate this Agreement at the expiration of each budget period of County pursuant to the provision of Tex. Loc. Govt. Code Ann §271.903 (Vernon Supp. 1995).

If this proposed agreement for service of Best Best & Krieger LLP as Legal Counsel is satisfactory, please evidence your acceptance and approval by executing two copies in the space provided below.

Sincerely,

BEST BEST & KRIEGER L.L.P.

By:_____

APPROVED AND ACCEPTED:

COUNTY OF HIDALGO

_____
County Judge, Ramon Garcia

ATTEST:

_____
County Clerk, Arturo Guajardo Jr.

APPROVED BY COMMISSIONERS COURT:

On this the _____day of _____20_____.

APPROVE AS TO FORM:_____
By: Victor M. Garza
Assistant District Attorney – County Affairs

800 MHz Transition Administrator
The Official Reconfiguration Manager

HIDALGO, COUNTY OF
Alvarez, Belinda/Radio Systems Manager
1615 S. Closner Ste G
Edinburg, TX 78539

August 28, 2012

Dear Belinda Alvarez/Radio Systems Manager,

As an 800 MHz licensee, you may be aware that the Federal Communications Commission (FCC) has mandated the reconfiguration of the 800 MHz band throughout the United States to correct interference caused by commercial wireless cellular systems (such as Sprint Nextel) and public safety licensees operating in the same band. The 800 MHz Transition Administrator, LLC (TA) is charged with overseeing 800 MHz band reconfiguration.

On August 17, 2012, the FCC issued a Notice of Proposed Rulemaking (NPRM) seeking comments on its proposed band plan for the U.S.-Mexico border region. The NPRM is available at http://800ta.org/content/fccguidance/DA_12-1343_08.17.12.pdf.

Based on the proposed band plan, your 800 MHz license contains frequencies that may be subject to 800 MHz band reconfiguration. This letter provides information about preparing for reconfiguration.

The TA will issue proposed replacement frequencies to you at a later date. Although you are not required to engage in planning or negotiation activities prior to receiving proposed replacement frequencies from the TA, the FCC encourages you to engage in such activities to the extent that they are not frequency-dependent and would not result in unnecessary duplication of costs. If planning funding is required, you should submit a Request for Planning Funding (RFPF) to the TA and negotiate a Planning Funding Agreement (PFA) with Sprint Nextel. The RFPF Form and Instructions are available on the TA's website at http://www.800TA.org/content/resources/forms.asp.

The reconfiguration process consists of planning for your reconfiguration, negotiating a Frequency Reconfiguration Agreement (FRA) with Sprint Nextel, implementing your reconfiguration, and closing your FRA. As part of your preparation for reconfiguration, it would be beneficial to familiarize yourself with the tasks involved in the different phases of the reconfiguration process. The TA recommends that you review the following resources, which are attached to this letter.

- *Mexican Border Region Licensees Fact Sheet*: The Fact Sheet provides guidance for Mexican border region licensees about reconfiguration and non-frequency-dependent activities that such licensees may engage prior to receiving their proposed replacement frequencies from the TA. The Fact Sheet can be viewed at http://www.800ta.org/content/resources/Mexico_Border_Region_Reconfig_Fact_Sheet.pdf.

- *Process Guide*: The Process Guide describes the phases of the reconfiguration process and the steps involved in completing them. The phases are the Planning and Negotiation Phase, the Reconfiguration Implementation Phase, and the Closing Phase. The Process Guide also provides information about resources and guidance to assist with each phase. The Process Guide can be viewed at http://www.800ta.org/content/resources/Process_Guide.pdf.

800 MHz Transition Administrator
The Official Reconfiguration Manager

Additional information regarding the reconfiguration process for Mexican border region licensees is available on the TA's website at http://www.800TA.org/content/resources/mexicoborder.asp.

If you have not submitted a Point of Contact (POC) Form to the TA, please complete the attached form. Please fill in the names and contact information for the person(s) who will be your points of contact, print out the form, sign it and fax it back to the TA at 888-701-4380. If you previously submitted a POC Form to the TA, please take this opportunity to review and update it, if necessary. The TA will use this information to keep you informed when further steps are required in the rebanding process.

The TA also recommends that you review and update your contact information on your FCC licenses in the Universal Licensing System (ULS) database located on the FCC's website at http://wireless.fcc.gov/uls/index.htm?job=home. Please note that it is your regulatory obligation to ensure the accuracy of all the information on your FCC licenses.

The TA would be pleased to answer any questions that you may have regarding the reconfiguration program. You may contact the TA via email at comments@800TA.org or by phone at 888-800-8220.

Sincerely,

Brett S. Haan

Brett Haan
800 MHz Transition Administrator, LLC

Attachments:

- Mexican Border Region Licensees Fact Sheet
- Process Guide
- Point of Contact Form

About the 800 MHz Transition Administrator, LLC

800 MHz Transition Administrator, LLC ("TA LLC") is the Transition Administrator ("TA") for the reconfiguration of the 800 MHz band mandated by the Federal Communications Commission ("FCC"). TA LLC has contracted with Deloitte Consulting LLP, Squire Sanders (US) LLP, and Baseline Wireless Services, LLC perform the duties of the TA. Among its duties, the TA establishes reconfiguration guidelines, specifies replacement channels, reviews reconfiguration cost estimates, monitors payment of reconfiguration costs, manages the relocation schedule, facilitates issue resolution and administers the alternative dispute resolution process. TA LLC uses information it receives solely for the purposes of administering the 800 MHz reconfiguration process and may disclose such information to the FCC or other authorized parties pursuant to the requirements of the 800 MHz Order or other authorized parties pursuant to the requirements of the 800 MHz Order or other applicable laws.

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

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	WT Docket 02-55
	)	
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels	)	
	)	ET Docket No. 00-258
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	)	RM-9498
	)	
Petition for Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service	)	RM-10024
	)	
Petition for Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service	)	ET Docket No. 95-18
	)	
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for use by the Mobile Satellite Service	)	

REPORT AND ORDER, FIFTH REPORT AND ORDER, FOURTH MEMORANDUM OPINION AND ORDER, AND ORDER

Adopted: July 8, 2004 **Released: August 6, 2004**

By the Commission: **Chairman Powell, Commissioners Abernathy, Copps, and Adelstein issuing separate statements.**

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I. INTRODUCTION

1. The Homeland Security obligations of the Nation's public safety agencies make it imperative that their communications systems are robust and highly reliable.[1] Accordingly, in this *Report and Order*, we adopt technical and procedural measures designed to address the ongoing and growing problem of interference to public safety communications in the 800 MHz band.[2] In reaching our decisions herein, we are fulfilling the Commission's obligation to "promote safety of life and property through the use of wire and radio communication."[3] We also reiterate our continuing commitment to "ensuring that essential public health and safety personnel have effective communications services available to them in emergency situations."[4]

[1] 47 U.S.C. § 337(f) defines "public safety services" as services:

(continued....)

2. With many of our Nation's first responders using the 800 MHz band for critical public safety communications (*e.g.*, to communicate with their respective dispatchers and each other at the scene of an incident), this band has become a linchpin in their ability to communicate effectively. In recent years, however, public safety systems in this band have encountered increasing amounts of interference from commercial mobile radio service (CMRS) providers. The interference problem in the 800 MHz band is caused by a fundamentally incompatible mix of two types of communications systems: cellular-architecture multi-cell systems—used by ESMR and cellular telephone licensees[5]—and high-site non-cellular systems—used by public safety, private wireless, and some SMR licensees and stems primarily from the operations of Nextel Communications, Inc. (Nextel), an "Enhanced" Specialized Mobile Radio (ESMR) provider in the 800 MHz band,[6] as well as the operations of cellular telephone providers in the Cellular A and B bands.[7] Throughout this proceeding, we have sought a solution to the interference problem that achieves the following paramount goals:

- a solution that abates "unacceptable interference" caused by ESMR and cellular systems to

(Continued from previous page)

(A) the sole or principal purpose of which is to protect the safety of life, health, or property;

(B) that are provided
  (i) by State or local government entities; or
  (ii) by nongovernmental organizations that are authorized by a government entity whose primary mission is the provision of such services; and

(C) that are not made commercially available to the public by the provider.

[2] For purposes of this proceeding, "800 MHz band" refers to spectrum from 806-824/851-869 MHz, which is licensed to public safety, commercial, and private wireless operators pursuant to Part 90 of the Commission's rules.

[3] 47 U.S.C. § 151.

[4] Federal Communications Commission Strategic Plan FY 2003-FY2008, p.5 (2002).

[5] For the purposes of this proceeding, the term "800 MHz cellular system" will refer to systems which employ a "high-density cellular" architecture. *See* ¶ 172 *infra* for a definition of "800 MHz cellular systems."

[6] Specialized Mobile Radio (SMR) systems provide land mobile communications services (other than radiolocation services) in the 800 MHz and 900 MHz band on a commercial basis. *See* 47 C.F.R. §§ 90.7, 90.601 *et seq.* ESMR is a term coined by Nextel to describe SMR systems, such as Nextel's, that use cellular architecture, *i.e.*, systems that use multiple, interconnected, multi-channel transmit/receive cells and employ frequency reuse to serve a larger number of subscribers than is possible using non-cellular technology. The particular ESMR technology used by Nextel—the Motorola iDEN system—is capable of using cellular architecture in non-contiguous spectrum. A similar, derivative Motorola technology, known as "Harmony," is also in limited use. Although the term "ESMR" does not appear in the Commission's rules, it has appeared in the Commission's case law. *See* Request of Fleet Call, Inc. *Memorandum Opinion and Order*, FCC 91-56, 6 FCC Rcd 1533 ¶ 13(1991). More recently, the Wireless Telecommunications Bureau has defined ESMR as an alternative method to provide wireless service that is based on digital TDMA technology and operates with individual base stations. *See* "Wireless Telecommunications Bureau Seeks Comment on Qualcomm Inc.'s Petition," *Public Notice*, 15 FCC Rcd 2580, 2619 (WTB 2000).

[7] Cellular telephone providers are licensed in the Cellular Radiotelephone Service, pursuant to Part 22 of the Commission's rules, and operate cellular architecture systems in the Cellular A and B bands (824-849/864-894 MHz), which lie immediately above the 800 MHz band. *See* 47 C.F.R. § 22.99. Hereinafter, for brevity's sake, we refer to these systems as "cellular telephone" or "cellular" systems. While cellular telephone systems are similar to ESMR systems, they operate in contiguous spectrum and employ somewhat different technology.

800 MHz public safety systems;[8]

- a solution that is both equitable and imposes minimum disruption to the activities of all 800 MHz band users, including public safety, non-cellular[9] SMR, and Business, Industrial and Land Transportation (B/ILT) systems;[10]
- a solution that results in responsible spectrum management; and
- a solution that provides additional 800 MHz spectrum that can be quickly accessed by public safety agencies and rapidly integrated into their existing systems.

3. Based on the extensive record of this proceeding and the goals we seek to accomplish, we conclude that the most effective solution to the public safety interference problem in the 800 MHz band is a Commission-derived plan, which is comprised of both long-term and short-term components. As the short-term vehicle by which we ensure a more effective response to the ongoing interference problem, we implement technical standards defining unacceptable interference in the 800 MHz band as well as procedures detailing who bears responsibility for abating this interference and what steps responsible parties must take. For the long-term, we reconfigure the 800 MHz band to address the identified root cause of the interference by separating generally incompatible technologies.

4. To achieve this new 800 MHz band plan, we establish a transition mechanism by which (1) there is minimal disruption to the operations of all affected 800 MHz incumbents during the transition period; (2) the associated reconfiguration costs are funded; and (3) the public safety community and, later, critical infrastructure industries (CII),[11] obtain access to an average additional 4.5 megahertz of 800 MHz

[8] "Unacceptable interference" is a term of art adopted for the limited purposes of this proceeding. *See* ¶¶ 97-107 *supra*. It defines a bright-line test for interference protection that takes into account, among other factors, the strength of the desired signal and the characteristics of the receiver being employed. It is not intended to determine what level of interference is unacceptable for any other purpose or in any other band.

[9] "Non-cellular" systems are systems that provide service to their mobile users or subscribers from one or a small number of base stations, which are typically "high site" (*i.e.*, located at high elevations, on towers, mountains, hill tops, or tall buildings) multiple, interconnected, multi-channel transmit/receive cells and employ frequency reuse to serve a larger number of subscribers. For the purposes of this proceeding, the term non-cellular will refer to systems which do not employ a "high-density cellular" architecture. *See* ¶¶ 170-174 *infra*.

[10] Business and Industrial/Land Transportation (B/ILT) licensees are licensed in the Private Land Mobile Radio Service pursuant to Part 90 of the Commission's Rules and utilize their systems for private, internal needs in a variety of commercial applications (e.g., factories, taxis. B/ILT typically use "high-site, high power" systems in the 800 MHz and 900 MHz. See 47 C.F.R. 90.35. *See also* n. 9 for a description of high site, high power systems.

[11] For purposes of this *Report and Order*, we define as CII licensees those entities, outside of the scope of the "public safety service" definition of 47 U.S.C. § 337(f), *see* n. 1 *supra*, but which operate "public safety" radio services within the scope of Section 309(j)(2) of the Act. 47 U.S.C. § 309(j)(2) defines "public safety radio services" as including private internal radio services used by State and local governments and non-government entities, and including emergency road services provided by not-for profit organizations, that: (i) are used to protect the safety of life, health, or property; and (ii) are not made commercially available to the public.

Examples of CII licensees include 800 MHz systems that provide private internal radio services used by utilities, railroads, metropolitan transit systems, pipelines, private ambulances, volunteer fire departments, and not-for-profit organizations that offer emergency road services, such as the American Automobile Association (AAA).

We recognize that the section 309(j)(2) definition is more encompassing than that proposed by Nextel in the "White Paper." *See* Promoting Public Safety Communications, Realigning the 800 MHz Land Mobile Radio (continued....)

band spectrum. We believe that the totality of these measures will both eliminate unacceptable interference currently encountered by 800 MHz public safety and CII systems[12] and reflect sound spectrum management principles. Our plan incorporates essential elements of a proposal developed by Nextel, the major public safety organizations, and various private wireless organizations (the so-called "Consensus Parties").[13]

(Continued from previous page)
Band to Rectify Commercial Mobile Radio - Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs, Nextel Communications, Inc, submitted by Robert S. Foosaner, Nextel Communications, Inc., to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, FCC (cover letter dated Nov. 12, 2001) (White Paper) at 46. In this regard, we observe that in the White Paper, Nextel cites a study undertaken by the Department of Commerce, National Telecommunications and Information Administration, which requested comment on a broader definition of CII, including pipelines and railroads. *See* White Paper at n. 60; Request for Comment on Energy, Water and Railroad Service Providers' Spectrum Use Study, 66 Fed Reg. 18447 (2001). Section 309(j)(2) also is broader than the definition proposed by the Critical Infrastructure Communications Council (CICC), which is composed of the following organizations: The American Gas Association, the American Petroleum Institute, the American Public Power Association, the American Water Works Association, the Association of American Railroads, the Edison Electric Institute, the Interstate Natural Gas Association of America, the National Association of Water Companies, the National Rural Electric Cooperative Association, and the United Telecom Council (UTC). *See* UTC Comments at n. 2. We nonetheless believe that this expanded definition is appropriate in this context because it recognizes that the very nature of the services provided by the included entities involves potential hazard to life and property and that CII entities often work hand in hand with public safety officials at the scene of an incident. Indeed, reliable CII radio communications have long proven essential in speeding recovery from natural or man-made disasters. Our decision to define CII is confined to this proceeding and does not represent a Commission decision that CII entities are public safety entities.

[12] Although we focus on the benefits to public safety and CII, we do not intend to imply that other 800 MHz radio systems will not be beneficiaries of the actions we take today. Except where specifically stated otherwise, the interference protections we afford today inure to the benefit of all 800 MHz non-cellular licensees. "Non-cellular 800 MHz licensees," as used herein, refers to public safety, CII, B/ILT and non-cellular SMR licensees.

[13] The proponents of this proposal have referred to themselves as the "Consensus Parties" and we use that term for reference purposes in this *Report and Order*. The Consensus Parties' members are the Association of Public Safety Communications Officials-International (APCO), International Association of Chiefs of Police (IACP), International Association of Fire Chiefs, Inc. (IAFC), International Municipal Signal Association (IMSA), Major Cities Chiefs Association (MCCA), Major County Sheriffs' Association (MCSA), National Sheriffs' Association (NSA), Aeronautical Radio, Inc. (ARINC), American Mobile Telecommunications Association (AMTA), American Petroleum Institute (API), Association of American Railroads (AAR), Forest Industries Telecommunications (FIT), Industrial Telecommunications Association (ITA), PCIA - The Wireless Infrastructure Association (PCIA), Taxicab, Limousine and Paratransit Association (TLPA), National Stone, Sand and Gravel Association (NSSGA), and Nextel. *See* Letter, dated October 29, 2002, from Robert M. Gurss, Esq., Counsel for APCO to Marlene H. Dortch, Secretary, Federal Communications Commission. *See* n. 172 *infra*. However, while the Consensus Parties represent a broad coalition of commercial and public safety entities, we recognize that their position does not reflect a consensus of all of the various parties to this proceeding, including some public safety entities that object to the Consensus Parties' proposal or elements thereof. *See, e.g.*, Letter, dated March 24, 2004, from Chuck Canterbury, National President, Fraternal Order of Police (FOP) to George W. Bush, President, United States of America: Letter, dated March 25, 2004 from Art Gordon, National Executive Vice President, Federal Law Enforcement Officers Association to George W. Bush, President, United States of America. With regard to the Fraternal Order of Police letter, we observe that on July 1, 2004, the FOP indicated that their concerns over the Consensus Plan have been addressed and that they now support the Consensus Plan. *See* Letter dated July 1, 2004, from Chuck Canterbury, National President, Fraternal Order of Police, to Michael K. Powell, Chairman, Federal Communications Commission.

5. In recognition of the public interest benefit derived from robust and reliable public safety communications coupled with the spectrum rights Nextel will surrender as well as financial commitments that Nextel will incur in connection with band reconfiguration, upon acceptance of Nextel of the conditions and obligations that we place on it in this R&O, we will modify certain Nextel licenses to provide it with rights to operate on ten megahertz of spectrum in the 1.9 GHz band, conditioned on fulfillment of the obligations we place on it in this *Report and Order*.[14] As a necessary predicate for the license modifications, we also take action by this Order in ET Docket No. 00-258 and ET Docket No. 95-18 to redesignate the spectrum for the provision of licensed Fixed and Mobile services to be used for Advanced Wireless Services (AWS).[15] To ensure that by these actions Nextel, other licensees and the public are treated equitably, and that Nextel does not realize any windfall gain, we confer these 1.9 GHz spectrum rights on a "value for value" basis. Under this approach, we credit Nextel for (1) the net value of spectrum rights that Nextel is relinquishing to public safety, CII, and other 800 MHz band licensees; (2) the actual cost of 800 MHz band reconfiguration (including both Nextel's costs to support relocation by other licensees and Nextel's own relocation costs); and (3) costs incurred by Nextel to clear the 1.9 GHz band, less any reimbursed expenses. If these combined offsets ultimately total less than the value determined by this *Report and Order* for the 1.9 GHz spectrum rights, we require Nextel to make a payment to the U.S. Treasury at the conclusion of the transition process equal to the difference.[16]

6. In complying with the obligations we place upon it in this *Report and Order,* we recognize that Nextel may have to shift some of its operations from the 800 MHz band to 900 MHz band frequencies in order to provide the "green space" necessary to effect reconfiguration of the 800 MHz band. Moreover, in some areas, Nextel may have to share spectrum in the 817-824 MHz/862-869 MHz segment of the reconfigured band with other ESMR licensees.[17] To the extent that such sharing may reduce the amount of 800 MHz spectrum available to Nextel, we believe we should provide the regulatory flexibility necessary for Nextel to make up the shortfall by using 900 MHz band channels. We therefore amend our rules to allow 900 MHz band licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use.[18]

7. The totality of the actions we take today are based on unique and compelling public interest considerations in the record before us regarding the serious and continuing public safety interference problems in the 800 MHz band. These considerations require that we take the most effective actions, in the short-term and long-term, to promote robust and reliable public safety communications in the 800 MHz band to ensure the safety of life and property. While we are mindful of our statutory obligations under Section 309(j) of the Act regarding the use of competitive bidding procedures for the assignment of

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[14] We make these modifications under the authority granted us by Sections 4, 301, 303 and 316 of the Act, 47 U.S.C. §§ 316, 303, 301, and 154(i). We set forth a detailed description of our legal authority in ¶¶ 62-87 *infra.*

[15] *See* ¶¶ 223-276 *infra.* AWS is the collective term we use for new and innovative fixed and mobile terrestrial wireless applications using bandwidth that is sufficient for the provision of a variety of applications, including those using voice and data (such as Internet browsing, message services, and full-motion video) content. Although AWS is commonly associated with so-called third generation (3G) applications and has been predicted to build on the successes of such current-generation commercial wireless services as cellular and Broadband PCS, the services ultimately provided by AWS licensees are only limited by the fixed and mobile designation of the spectrum we allocate for AWS and the service rules we ultimately adopt for the bands.

[16] *See* ¶¶ 210-212 *infra.*

[17] *See* ¶¶ 159-163 *infra.*

[18] *See* 47 C.F.R. § 90.621(f) in Appendix C *infra.*

spectrum, we nonetheless believe the license modifications we approve today are consistent with Section 309(j) of the Act and our other spectrum management obligations. This action does not signal any change in the Commission's policy of using competitive bidding as a licensing tool in other contexts, consistent with statutory requirements.

II. EXECUTIVE SUMMARY

8. In this *Report and Order,* we adopt a two-prong solution to the public safety interference problem in the 800 MHz band, with each prong having several components. First, to more adequately respond to individual interference events immediately, we establish an objective standard for defining "unacceptable interference" to 800 MHz non-cellular systems, establish rules and procedures for the expeditious implementation and enforcement of this standard, and endorse a variety of technical solutions and mechanisms, defined as "Enhanced Best Practices," to address interference abatement in the short-term. Second, to provide a better spectrum environment for public safety in the long-term, we adopt a plan for reconfiguration of the 800 MHz band and provide for a thirty-six-month transition by incumbent licensees from their current frequency assignments to new frequency assignments in the band.

9. Based on the extensive and comprehensive record of the proceeding, we are convinced that neither band reconfiguration alone, nor application of "technical fixes" on a case-by-case basis would adequately address the interference to 800 MHz public safety communications systems. Thus, we have adopted a Commission-derived solution which, in addition to decisions we have reached independently, incorporates both recommendations made by the proponents of case-by-case "technical fixes" and the proponents of band reconfiguration. In reaching this solution, we were aided by technical and economic studies, research data and legal analyses contained in the record.[19] We believe that the approach we adopt is technically and legally sound, logistically achievable, and representative of the collective expertise of all of the various interests which have addressed this significant issue.

10. In the first prong of this *Report and Order*, we take a number of steps to provide for immediate abatement of interference to 800 MHz band public safety and other non-cellular systems:

- We adopt a new, objective definition of "unacceptable interference," for purposes of this proceeding only, to determine when public safety and other non-cellular 800 MHz band licensees are entitled to interference protection.[20]

- We assign strict responsibility for eliminating unacceptable interference to the ESMR or cellular telephone operator(s) implicated in the interference occurrence, and assign joint responsibility to all involved commercial operators if unacceptable interference results from a combination of signals from multiple systems.[21]

- We require ESMR and cellular telephone licensees, on request, to notify public safety and

[19] A detailed overview of the record is set forth in ¶ 61 *infra.* For citation purposes, we refer to comments received to the *Notice of Proposed Rulemaking* in this proceeding using the following format: [Party Name] Comments/Reply Comments at [Page or Paragraph Number]. We refer to comments received in response to the Consensus Parties Reply Comments using the following format: Comments of [Party Name] to the Consensus Parties Reply Comments at [Page or Paragraph Number]; we refer to comments received in response to the Supplemental Comments of the Consensus Parties using the following format: Comments/Reply Comments of [Party Name] to Supplemental Comments of the Consensus Parties at [Page or Paragraph Number].

[20] *See* ¶ 107 *infra.*

[21] *See* ¶ 130 *infra.*

CII licensees prior to activating new or modified cells, and require public safety and CII licensees receiving such information to notify ESMR and cellular telephone licensees of changes in system parameters.[22]

11. Under the second prong of the *Report and Order*, we take steps to reconfigure the 800 MHz band to separate public safety, CII, and other non-cellular systems on the one hand, and ESMR systems, such as Nextel's, on the other:

- We designate fourteen megahertz in the upper portion of the 800 MHz band (817-824 MHz/862-869 MHz) for ESMR systems, while designating eighteen megahertz in the lower portion of the 800 MHz band (806-815 MHz/851-860 MHz) for use by public safety, CII, and other non-cellular systems.[23] Between the upper and lower band segments, we establish an Expansion Band and a Guard Band to separate ESMR operations from public safety and CII operations and protect the latter from interference.

- As part of band reconfiguration, we require Nextel to relinquish all of its 800 MHz band spectrum holdings below 817 MHz/862 MHz.[24] This will result in an additional average of 4.5 megahertz of 800 MHz band spectrum becoming available to the public safety community, particularly in the major markets where the shortage of public safety spectrum is most acute.

- We require band reconfiguration to be completed through a phased transition process within thirty-six months of release of a Public Notice announcing the start date of reconfiguration in the first NPSPAC region.[25] We provide for an independent Transition Administrator to oversee the band reconfiguration process.[26]

- We assign financial responsibility to Nextel for the full cost of relocation of all 800 MHz band public safety systems and other 800 MHz band incumbents to their new spectrum assignments with comparable facilities, *i.e.*, systems with comparable technological and operational capability.[27] We adopt financial, licensing, and administrative safeguards to ensure completion of band reconfiguration regardless of Nextel's financial condition.[28]

12. In connection with the reconfiguration of the 800 MHz band, as described above, we take the following additional spectrum-related actions:

- We accept Nextel's relinquishment of its current spectrum rights in the 700 MHz Guard Band and contemplate a future *Further Notice of Proposed Rulemaking* to determine the

[22] *See* ¶¶ 124-127 *infra.*

[23] *See* ¶ 151 *infra.*

[24] *See* ¶ 198 *infra.*

[25] *See* ¶ 201 *infra.*

[26] *See* ¶¶ 190-200 *infra.*

[27] *See* ¶¶ 177-178 *infra.*

[28] *See* ¶¶ 180-187 *infra.*