

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Improving Public Safety)	
Communications in the)	
800 MHz Band)	WT Docket No. 02-55
)	
Consolidating the 900 MHz)	
Industrial/Land Transportation)	
and Business Pool Channels)	
)	
Wireless Telecommunications Bureau)	
Seeks Comment on “Supplemental)	DA 03-19
Comments of the Consensus Parties”)	
Filed in the 800 MHz Public Safety)	
Interference Proceeding)	

TO: The Commission

REPLY COMMENTS OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

By: Christine M. Gill
Kirk S. Burgee
Paul E. Malmud
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000

Attorneys for Consolidated Edison
Company of New York, Inc.

Dated: February 25, 2003

TABLE OF CONTENTS

I.	INTRODUCTION.....	1
II.	THERE IS BROAD BASED OPPOSITION TO THE CONSENSUS PLAN ON ALL KEY POINTS	2
A.	The Commenters Recognize That The Plan Does Not Offer A Solution To Public Safety Interference.....	2
1.	The Plan Expressly Contemplates A Multi-Year Rollout, With No Meaningful Near Term Or Interim Relief.....	2
2.	The Inadequate Funding Mechanism Undermines The Likelihood Of Success In The Long Term.....	3
B.	The Commenters Confirm The Extensive And Unnecessary Negative Impact Of Elements Of The Consensus Plan On Them.....	7
1.	Interference Standards.....	7
2.	Cellular Restrictions	9
3.	Freezes.....	10
4.	Administration/Implementation Of The Consensus Plan.....	11
III.	THERE IS BROAD BASED SUPPORT FOR A DEMONSTRABLY BETTER ALTERNATIVE	12
IV.	CONCLUSION	14

EXECUTIVE SUMMARY

The commenters agree that, despite being directed at resolving interference to Public Safety operations, the Consensus Plan would not provide significant relief from interference for many years. This period would be longer in the likely event of delays in the proposed timetable. Furthermore, the commenters rightly point out the significant risk that the funding identified will be insufficient to complete relocation. Based on the commenting parties' claims concerning their own projections of relocation costs and the percentage of required replacement of radios, it appears that the \$850 million in funds identified in the Consensus Plan will not be adequate.

Questions with regard to funding have serious ramifications for the efficacy of the Consensus Plan. Funding is a precondition to clearance of Business and I/LT licensees from the General Category, which is a precondition to relocation of NPSPAC. If any category of funding runs out, NPSPAC licensees could be left in a worse environment than they are in currently, an unacceptable result.

The interference thresholds received widespread objection in the comments from those licensees that will be affected by them. The commenters show that even the lowest of the thresholds is above what licensees are using currently and would require complex and expensive measures to address them, where this is even possible. These problems would be greatly magnified in the Guard Band.

Con Edison's objections to the cellular restrictions and freezes set forth in the Consensus Plan were also echoed by a significant number of commenters. There is substantial agreement among the parties that would be affected by them that these

measures would impose significant burdens upon licensees in the 800 MHz band without yielding any real benefit.

The proposed implementation of the Consensus Plan also received significant opposition in the comments. The remarkably one-sided proposal would subject licensees such as Con Edison to extremely harsh obligations while creating no countervailing penalties on the RCC or Nextel.

In contrast to the opposition to the Consensus Plan, there was considerable support for the implementation of an approach that fosters resolution of interference through technical solutions in a market-based context. The effectiveness of such an approach has been proven and it would not face the significant legal vulnerability associated with the Consensus Plan.

BEFORE THE
Federal Communications Commission
WASHINGTON, D.C. 20554

In the Matter of)	
)	
Improving Public Safety)	
Communications in the)	
800 MHz Band)	WT Docket No. 02-55
)	
Consolidating the 900 MHz)	
Industrial/Land Transportation)	
and Business Pool Channels)	
)	
Wireless Telecommunications Bureau)	
Seeks Comment on “Supplemental)	DA 03-19
Comments of the Consensus Parties”)	
Filed in the 800 MHz Public Safety)	
Interference Proceeding)	

REPLY COMMENTS OF
CONSOLIDATED EDISON COMPANY OF NEW YORK, INC.

I. INTRODUCTION

Consolidated Edison Company of New York (“Con Edison”) is filing these Reply Comments to voice its continuing objection to the complex Consensus Plan proposed by Nextel and others. Like Con Edison, other commenters overwhelmingly opposed the Consensus Plan as ineffectual and detrimental to a large segment of 800 MHz licensees, including Public Safety entities. Con Edison urges the Commission to reject the Consensus Plan in favor of more immediate and equitable measures.

II. THERE IS BROAD BASED OPPOSITION TO THE CONSENSUS PLAN ON ALL KEY POINTS

A. The Commenters Recognize That The Plan Does Not Offer A Solution To Public Safety Interference

1. The Plan Expressly Contemplates A Multi-Year Rollout, With No Meaningful Near Term Or Interim Relief

The Consensus Plan is ostensibly directed at the ongoing problem of interference to Public Safety operations at 800 MHz. Nonetheless, as numerous parties, including many Public Safety licensees point out, there is a “protracted period between adoption of any order in this proceeding and completion of any regional realignment.”¹ The Michigan Department of Information Technology, for example, expresses its concern that the Consensus Plan will take years to implement and until then “public safety personnel [will] continue to face an increasingly dangerous situation.”² As demonstrated by the comments, numerous Public Safety licensees recognize that the Consensus Plan will not provide any type of wide scale relief for at least *several years* from the effective date of the order.

Furthermore, this estimate assumes an unimpeded rollout of the realignment plan even though “there are numerous points at which this implementation process can break down.”³ Problems with any of the Consensus Plan’s interdependent steps will lengthen this timeframe and wreak havoc with the overly optimistic schedule set out in the Consensus Plan. In the

¹ Comments of City and Country of San Diego, WT Docket No. 02-55 at 6 (February 10, 2003).

² Comments of Michigan Department of Information Technology, WT Docket No. 02-55 at 7 (February 10, 2003) (“*Michigan Comments*”).

³ Comments of National Rural Electric Cooperative Association, WT Docket No. 02-55 at 4 (February 10, 2003) (“*NRECA Comments*”).

interim, the Consensus Plan calls for parties to conform to the Best Practices Guide and to employ the FCC's informal complaint process.⁴ The Consensus Plan *does not contemplate any significant relief* for areas in which rebanding is not completed due to insufficient funding (see discussion below). This approach would essentially assure the status quo, or create a worse situation, for at least several years and, in many cases, indefinitely.

As such, the Consensus Plan is not a suitable approach to an ongoing problem. As detailed in its initial comments in this proceeding (the "Comments"), Con Edison is currently experiencing significant interference to its operations from Nextel and needs a solution in the immediate future.⁵ The comments recognize that Nextel must be held accountable in both the short and long terms for the interference it is causing, which the Consensus Plan does not accomplish.

2. The Inadequate Funding Mechanism Undermines The Likelihood Of Success In The Long Term

Many commenters agree with Con Edison that Nextel's refusal to fund all the relocation costs raises extraordinary risk that the process will not be completed to the detriment of Public

⁴ Supplemental Comments of Aeronautical Radio Inc., the American Mobile Telecommunications Association, the American Petroleum Institute, the Association of Public Safety Communications Officials - International, Forest Industries Telecommunications, the Industrial Telecommunications Association, Inc., the International Association of Chiefs of Police, the International Association of Fire Chiefs, the International Municipal Signal Association, the Major Cities Chiefs Association, the Major County Sheriffs Association, the National Sheriffs Association, the National Stone, Sand and Gravel Association, Nextel Communications, Inc., the Personal Communications Industry Association, and the Taxicab, Limousine and Paratransit Association, WT Docket No. 02-55 at App. F-1, §1.1 (December 24, 2002) ("*Supplemental Comments*").

⁵ Comments of Consolidated Edison Company of New York, Inc., WT Docket No. 02-55 at 4 (February 10, 2003) ("*Con Edison Comments*").

Safety and other licensees.⁶ The commenters detail a variety of considerations that indicate that Nextel's pledged \$850 million (\$700 for Public Safety and \$150 for non-Public Safety licensees) will not suffice to cover the full cost of relocation. As the Michigan Department of Information Technology notes, the Consensus Parties' cost study does not "provide realistic estimates of the costs or complexity involved in modifying [Michigan's] . . . 181-site system" because the Consensus Parties surveyed much smaller communications systems.⁷

The relocation cost estimates provided by commenters further confirm that the \$150 million provided to relocate Business, I/LT, and high-site SMR licensees is likely to be inadequate. Alliant Energy, for example, estimates its relocation costs at \$60 million⁸ while Con Edison's costs could exceed \$10 million.⁹ After relocating just these two companies, almost 50% of the funds allocated to non-Public Safety licensees could be depleted. The remaining funds would be clearly inadequate to relocate all other Business, I/LT, and high-site SMR licensees.

Another factor undermining the legitimacy of the Consensus Plan's funding estimate is the fact that the Consensus Parties appear to have vastly *underestimated* the percentage of radios that would have to be replaced versus retuned (the Consensus Parties estimate a 5% radio replacement percentage for Business/Industrial/SMR licensees and 1% for Public Safety licensees).¹⁰ Several commenters confirm that these replacement estimates are too low,¹¹ with

⁶ See e.g. Comments of City of New York, WT Docket No. 02-55 at 5 (February 10, 2003).

⁷ *Michigan Comments* at 3.

⁸ Comments of Alliant Energy Corporation, WT Docket No. 02-55 at 4 (February 10, 2003) ("*Alliant Comments*").

⁹ *Con Edison Comments* at 18-19.

¹⁰ *Supplemental Comments* at App. A-4.

Preferred Communications¹² and Mobile Relay Associates¹³ estimating that 25% of all radios would have to be replaced. As a result, the relocation of Public Safety licensees would give rise to an additional \$1.9 billion in relocation costs.¹⁴ Because the relocation costs vary so dramatically based on the percentage of radios replaced, numerous parties rightly object to the uncertainty associated with the Consensus Parties' assumptions.¹⁵ Indeed, as the Consensus Parties have admitted that a small variation from their estimate concerning the percentage of radios that would require retuning would substantially increase actual relocation costs,¹⁶ they cannot deny that an increase in the percentage of radios requiring replacement would also substantially increase actual relocation costs well beyond their estimates and exhaust their proposed capped dollar pools before the suggested relocation is completed.

Finally, the estimated costs fail to account for the costs of administering the Relocation Coordination Committee and of mediation and arbitration, which are unknown at this point but are likely to be significant.

¹¹ See e.g. Comments of Ameren Corporation, WT Docket No. 02-55 at 5 (February 10, 2003) ("*Ameren Comments*").

¹² Comments of Preferred Communication Systems, Inc., WT Docket No. 02-55 at 10 (February 10, 2003) ("*Preferred Communication Comments*").

¹³ Comments of Mobile Relay Associates, WT Docket No. 02-55 at 13 (February 10, 2003) ("*Mobile Relay Comments*").

¹⁴ *Preferred Communication Comments* at 9.

¹⁵ *Ameren Comments* at 5-6; Comments of Blooston, Mordkofsky, Dickens, Duffy & Prendergast, WT Docket No. 02-55 at 5-6 (February 10, 2003) ("*Blooston Comments*"); Comments of City of Philadelphia, WT Docket No. 02-55 at 3 (February 10, 2003); *Mobile Relay Comments* at 13-14; *Preferred Communication Comments* at 8-11; Comments of Public Safety Improvement Coalition, WT Docket No. 02-55 at 2-6 (February 10, 2003) ("*Public Safety Improvement Coalition Comments*"); Comments of Public Safety Wireless Network Program, WT Docket No. 02-55 at 5 (February 10, 2003).

¹⁶ *Supplemental Comments* at 6-7.

The fact that Nextel is insisting on a limit on its obligation to fund relocation costs demonstrates that Nextel has little faith in its cost estimates.¹⁷ In addition, the Consensus Parties propose two separate funds, one for Public Safety and another for non-Public Safety licensees. The only reason that the funds would need to be separated, however, is to protect one fund from being depleted by licensees who have already exhausted the other fund.¹⁸ If the funding is sufficient, as the Consensus Parties contend, then there would be no need to separate the funds because the relocation costs of all licensees would be covered. The creation of two separate, capped funds should be viewed as evidence that the Consensus Parties themselves believe that the proposed relocation funds are insufficient.

Significantly, funding is a precondition to the clearance of I/LT licensees, such as Con Edison, from the General Category, which in turn is a precondition to relocation of NPSPAC licensees to the General Category. Accordingly, the depletion of the non-Public Safety allocation would bring the entire process to a halt, regardless of whether Public Safety funds were still available.¹⁹

Given what is at stake, even the *possibility* of inadequate funding is unacceptable. There is significant agreement among users that an *incomplete rebanding process would leave Public Safety licensees in a far worse operating environment than they face currently.*²⁰ Among other reasons, Public Safety licensees would lose interoperability with other users and find themselves

¹⁷ Comments of the Small Business In Telecommunications, WT Docket No. 02-55 at 6 (January 10, 2003) (“*Small Business Comments*”).

¹⁸ Comments of Carolina Power and Light Company and TXU Business Services, WT Docket No. 02-55 at 6 n. 16 (February 10, 2003) (“*Carolina and TXU Comments*”).

¹⁹ See e.g. Comments of the State of Florida, WT Docket No. 02-55 at 1 (February 10, 2003) (“*Florida Comments*”).

²⁰ See e.g. *Michigan Comments* at 3.

co-channel to low-site SMR operations at and near the borders of NPSPAC regions.²¹ The FCC simply cannot adopt an approach that carries such a significant potential to exacerbate substantially the problem that it purports to resolve.

B. The Commenters Confirm The Extensive And Unnecessary Negative Impact Of Elements Of The Consensus Plan On Them

The substantial harm that the Consensus Plan would cause to 800 MHz licensees other than Nextel renders it inappropriate as a solution to Public Safety interference.

1. Interference Standards

In its comments, Con Edison urged the FCC to affirm the unconditional right of all 800 MHz licensees to be free of interference.²² As numerous other commenters point out, the Consensus Plan's proposed 95-98 dBm interference threshold standards would have a massive detrimental impact on systems operating in the 851-859 MHz band, including, ironically, Public Safety licensees.²³ Motorola indicates that the proposed signal strength thresholds do not reflect the usable strength of Public Safety systems, which can get acceptable quality as low as -106 dBm.²⁴ Palomar indicates that usable signal strengths currently extend to -120 dBm.²⁵ The

²¹ *Public Safety Improvement Coalition Comments* at 2; Comments of ALLTEL Communications Inc., AT&T Wireless Services, Inc., Cingular Wireless LLC, Sprint Corporation, Southern LINC, and United States Cellular Corporation, WT Docket No. 02-55 at 11 (February 10, 2003). *Blooston Comments* at 3-4; Supplemental Comments of Consumers Energy Company, WT Docket No. 02-55 at 20 (February 10, 2003) (“*Consumers Supplemental Comments*”); *Florida Comments* at 2; *Small Business Comments* at 22.

²² *Con Edison Comments* at 5-7.

²³ See e.g. Comments of Statewide Wireless Network, New York State Office for Technology, Inc., WT Docket No. 02-55 at 13 (February 10, 2003) (“*New York State Comments*”).

²⁴ Comments of Motorola, Inc., WT Docket No. 02-55 at 11 (February 10, 2003) (“*Motorola Comments*”).

comments reinforce Con Edison's findings that existing interference protection will be reduced because licenses will not meet the signal strength requirements throughout much of their service area.²⁶

While measures are theoretically available to meet the thresholds, in a congested spectrum environment they will not be practically achievable and, when they are, will be extremely costly.²⁷ In Motorola's example, a Public Safety licensee with 10 sites currently might need to expand to as many as 33 sites to achieve the -95 dBm, *just to retain the same right to be free of interference that it enjoys currently.*²⁸ The New York State Office for Technology estimates a three to five-fold increase in the number of sites necessary to meet the threshold requirements.²⁹ Adding to the unreasonableness of the thresholds is the fact that the projected \$850 million in relocation funding does not appear to account for expenditures that are necessary to increase the signal strength, which are likely to be orders of magnitude greater than estimated given the scale of the necessary measures.

Many parties agree that the enhanced thresholds in the proposed Guard Band would greatly magnify the reduction in service area and the complexity of establishing protected service contours. Loss of protected service area will be a given, with only the extent left in question.³⁰ By United Telecom Council's estimate, the adoption of the thresholds would result in its utility

²⁵ Comments of Palomar Communications, Inc., WT Docket No. 02-55 at 8 (February 10, 2003) ("*Palomar Comments*").

²⁶ *Con Edison Comments* at 6.

²⁷ *See New York State Comments* at 12.

²⁸ *Motorola Comments* at 11-12.

²⁹ *New York State Comments* at 13.

³⁰ *Ameren Comments* at 9.

members sustaining an average loss of 70-75% in coverage area.³¹ At its worst, the Guard Band will be utterly useless to the licensees located in it.³² Accordingly, Con Edison strongly supports the comments of other Critical Infrastructure Industry licensees who argue against a Guard Band in the spectrum allocated to them or for a right to relocate in the event that one is established.³³

2. Cellular Restrictions

The comments voiced significant opposition to the Consensus Plan's proposal to restrict cellular operations below 861 MHz. In addition to impacting Con Edison, which would face an immediate issue concerning the status of its system, the Consensus Plan proposal has cast uncertainty over a number of commenters' plans for the implementation of advanced iDEN systems. Baltimore Gas & Electric, the City of Baltimore and MidAmerican Energy all have expressed concern over the impact of the proposal and indicated, as Con Edison did, that the restrictions are unnecessary and counterproductive.³⁴ As the United Telecom Council and Edison Electric Institute state, there is "no reason why the FCC would want to stifle innovation

³¹ Comments of United Telecom Council and the Edison Electric Institute, WT Docket No. 02-55 at 12 (February 10, 2003) ("*UTC and EEI Comments*").

³² *Palomar Comments* at 9.

³³ *Ameren Comments* at 10; Comments of American Electric Power Company, Inc., WT Docket No. 02-55 at 15 (February 10, 2003) ("*AEP Comments*"); *Carolina and TXU Comments* at 2-5; Comments of Central Maine Power Company, WT Docket No. 02-55 at 5 (February 11, 2003); Supplemental Comments of Cinergy Corporation, WT Docket No. 02-55 at 8-12 (February 10, 2003) ("*Cinergy Supplemental Comments*"); *Consumers Supplemental Comments* at 12-15; Supplemental Comments of Entergy Corporation and Entergy Services, Inc., WT Docket No. 02-55 at 5-12 (February 10, 2003) ("*Entergy Supplemental Comments*"); *NRECA Comments* at 13-14; *UTC and EEI Comments* at 11-12.

³⁴ Comments of Baltimore Gas and Electric Company, WT Docket No. 02-55 at 2 (February 10, 2003); Comments of City of Baltimore, Maryland, WT Docket No. 02-55 at 7 (February 10, 2003) ("*City of Baltimore Comments*"); Comments of MidAmerican Energy, WT Docket No. 02-55 at 1 (February 10, 2003) ("*MidAmerican Energy Comments*").

in the 800 MHz band by restricting all licensees other than Nextel to old technology.”³⁵ Con Edison’s experience demonstrates that “cellular architecture” need not cause interference and that it is how the system using that architecture is operated that is significant (*i.e.* Nextel’s operations have been overwhelmingly identified as causing interference problems). The FCC should not compound the harm that Nextel is causing by adopting an overbroad restriction that prohibits system upgrades.

3. Freezes

In its Comments, Con Edison also urged the Commission not to take any action that would impair utilities’ ability to acquire spectrum.³⁶ Other commenters overwhelmingly agree with this sentiment and vigorously oppose the Consensus Plan’s proposals to establish freezes on Business/I/LT/SMR white space and spectrum vacated by Nextel. As noted by numerous parties the freeze on white space could severely compromise wide area systems by limiting the ability of licensees to adjust and modify their systems.³⁷ The freeze is unsound given the system modifications that would be necessitated by the interference thresholds the Consensus Parties have proposed. The National Association of Manufacturers, MRFAC, Inc. and the National Rural Electric Cooperative Association correctly point out that the five-year freeze on Nextel-

³⁵ *UTC and EEI Comments* at 6.

³⁶ *Con Edison Comments* at 15-16.

³⁷ *Alliant Comments* at 4; *Ameren Comments* at 11; *AEP Comments* at 9-10; *Consumers Supplemental Comments* at 17; *Carolina and TXU Comments* at 3; Comments of Duquesne Light Company, WT Docket No. 02-55 at 2 (February 10, 2003).

vacated spectrum would also impair system modifications by depleting the net Business/I/LT spectrum allocation and should likewise be rejected.³⁸

4. Administration/Implementation Of The Consensus Plan

As Con Edison made clear in its Comments, the Consensus Plan would compromise important licensee interests and rights in pursuit of the questionable benefits of rebanding. Other commenters strongly agree. On the issue of timing, Gainesville Regional Utilities expresses significant concern that, despite efforts that it has already undertaken, it will not be able to complete relocation of its system from the current NPSPAC allocation in the 19 months allotted for this purpose, which is an even greater timeframe than has been provided for Business and I/LT licensees to relocate from the General Category.³⁹ Consumers Energy Company likewise notes that the proposed timeframes are unrealistic for complex wide-area systems.⁴⁰ As Small Business in Telecommunications rightly observes, the Consensus Plan departs from FCC precedent in placing a premium on speed at the expense of due process by limiting the time for review of applications and providing for automatic cancellation of incumbent licenses where timeframes are not met.⁴¹

Furthermore, the Consensus Parties create no countervailing penalties for delay caused by RCC or Nextel, thus underscoring the fundamental self-interest and bias underlying the

³⁸ Comments of National Association of Manufacturers and MRFAC, Inc., WT Docket No. 02-55 at 9 (February 10, 2003) (“*NAM and MRFAC Comments*”); *NRECA Comments* at 14-15.

³⁹ Comments of Gainesville Regional Utilities, WT Docket No. 02-55 at 2 (February 10, 2003) (“*Gainesville Regional Utilities Comments*”).

⁴⁰ *Consumers Supplemental Comments* at 16-17.

⁴¹ *Small Business Comments* at 27-28.

Consensus Plan.⁴² Numerous commenters object to the framework for implementation of the Consensus Plan on this basis. In particular, they object to the undue influence that Nextel and the other Consensus Parties' would have over the RCC as well as the lack of redress for relocated licensees.⁴³ There was also significant comment echoing Con Edison's objection to the requested information disclosures.⁴⁴ The intensity and scope of the comments opposing the implementation of the Consensus Plan make clear that it is not the product of a consensus among 800 MHz licensees and that the plan will face continual challenges if adopted.

III. THERE IS BROAD BASED SUPPORT FOR A DEMONSTRABLY BETTER ALTERNATIVE

Due to the timing and funding deficiencies associated with the Consensus Plan, it will not solve the interference problems of Public Safety licensees in the short term and it is possible that it will not solve the interference problems of many licensees at all. It is telling that Nextel takes the position that its interfering operations do not violate the FCC rules.⁴⁵ Given such a view, it is not surprising that interference would prevail under the proposed Consensus Plan and that the

⁴² *Id.* at 28.

⁴³ *Alliant Comments* at 3; *Ameren Comments* at 12-13; *AEP Comments* at 12-14; *City of Baltimore Comments* at 6; *Comments of the Boeing Company*, WT Docket No. 02-55 at 25-26 (February 10, 2003); *Consumers Supplemental Comments* at 25-26; *Carolina and TXU Comments* at 3; *Comments of East Bay Municipal Utility District*, WT Docket No. 02-55 at 10 (February 10, 2003); *Michigan Comments* at 4; *Mobile Relay Comments* at 16; *NAM and MRFAC Comments* at 12-13; *NRECA Comments* at 12-13; *Preferred Communication Comments* at 14; *Public Safety Improvement Coalition Comments* at 9; *Small Business Comments* at 23-27; *UTC and EEI Comments* at 8-9.

⁴⁴ *Alliant Comments* at 3; *AEP Comments* at 14; *Gainesville Regional Utilities Comments* at 2; *Michigan Comments* at 5; *Comments of the Small Business In Telecommunications*, WT Docket No. 02-55 at 6-7 (February 10, 2003)

⁴⁵ *Promoting Public Safety Communications -- Realigning the 800 MHz Land Mobile Radio Band to Rectify Commercial Mobile Radio - Public Safety Interference and Allocate Additional Spectrum to Meet Critical Public Safety Needs* at 14-15 (Nov. 21, 2001).

resolution of interference problems would be through a drawn out process. As detailed in its Comments, Con Edison currently faces ongoing interference from Nextel's operations at approximately 30 locations.⁴⁶ The resolution of these and any similar interference problems that may be encountered by other licensees should not be unduly delayed. Given the enormous deficiencies associated with the Consensus Plan, Con Edison submits that the FCC cannot reasonably adopt it, or any approach that substantially resembles it. The FCC does, however, have the means at its disposal to effect a near-immediate positive impact on interference. Specifically, by establishing sufficient accountability for interference through consistent enforcement of existing interference rules, the employment of technical solutions, and granting further access to information, the FCC will encourage interference avoidance and enable all interested parties to address interference problems promptly and relatively inexpensively as compared to rebanding. Certainly, the FCC must eliminate any doubt that a licensee has an absolute obligation to rectify all interference to other operations so that a licensee cannot claim, as Nextel does, that it is within the rules when it harms another licensee's operations.

A key element that is missing from the current regulatory framework is ready access to information concerning potential interfering stations. The FCC's rules do not currently require EA-based SMR licensees to supply information about station construction as it is undertaken. Instead, the rules provide for EA licensees to provide this within 10 days upon request.⁴⁷ Parties thus are not able to research on a real time basis the likely sources of interference. The FCC should rectify this deficiency in the rules by requiring, and enforcing, *advance* notification of construction or modification of SMR stations within an EA.

⁴⁶ *Con Edison Comments* at 4.

⁴⁷ 47 C.F.R. §90.683(a)(4).

A large number of commenters support the implementation of the sensible approach of promoting resolution through technical solutions in a market-based context. Access Spectrum, Alliant Energy, Ameren Corporation, Cinergy Corporation, Consumers Energy Company, Carolina Power and Light, Entergy Corporation, Entergy Services, MidAmerican Energy, National Rural Electric Cooperative Association, Small Business in Telecommunications, United Telecom Council and Xcel Energy join Con Edison in advocating the use of technical solutions and regulatory enforcement, rather than realignment, to address the issue of interference.⁴⁸ Unlike the rebanding proposed in the Consensus Plan, technical approaches have a demonstrated history of effectiveness and can be implemented immediately upon the adoption of an FCC order. An approach that extrapolates from current rules has the added benefit of being less vulnerable to legal challenge than the highly controversial and inflammatory Consensus Plan.

IV. CONCLUSION

The comments to the Consensus Parties' Supplemental Comments demonstrate substantial, broad-based objections by the 800 MHz licensee community to the Consensus Plan. It is clear from these comments that the Consensus Plan, even with its purported improvements, cannot serve as a model for resolving interference at 800 MHz. Rebanding is an irreversible undertaking and there is simply too little assurance that the process will reach completion or provide any calculable benefit to accept the proposal. Fortunately, the FCC has at its disposal proven measures to address this situation that can be implemented without delay. Con Edison

⁴⁸ Comments of Access Spectrum, LLC, WT Docket No. 02-55 at 9-11 (February 10, 2003); *Alliant Comments* at 1; *Ameren Comments* at 14; *Cinergy Supplemental Comments* at 6-7; *Consumers Supplemental Comments* at 4-6; *Carolina and TXU Comments* at 8-10; *Entergy Supplemental Comments* at 30; *MidAmerican Energy Comments* at 1; *NRECA Comments* at 6-8;

urges the FCC to reject the Consensus Plan and adopt a more pragmatic approach that can address interference immediately.

WHEREFORE, THE PREMISES CONSIDERED, Con Edison respectfully requests that the Commission consider these reply comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

**CONSOLIDATED EDISON COMPANY OF
NEW YORK, INC.**

By: /s/ Christine M. Gill
Christine M. Gill
Kirk S. Burgee
Paul E. Malmud
McDermott, Will & Emery
600 13th Street, N.W.
Washington, D.C. 20005-3096
(202) 756-8000

Attorneys for Consolidated Edison
Company of New York, Inc.

Dated: February 25, 2003

UTC and EEI Comments at 3. Supplemental Comments of Xcel Energy Services Inc., WT Docket No. 02-55 at 10 (February 10, 2003).

CERTIFICATE OF SERVICE

I, Christine S. Bisio, do hereby certify that on this 25th day of February 2003, I caused a copy of the foregoing “Reply Comments of Consolidated Edison Company of New York” to be hand-delivered to each of the following:

Michael K. Powell
Chairman
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Emily Willeford
Commissioner Kevin J. Martin’s Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Kathleen Q. Abernathy
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Bryan Tramont
Chairman Michael K. Powell’s Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Michael J. Copps
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Paul Margie
Commissioner Michael J. Copps’s Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Kevin J. Martin
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Barry Ohlson
Commissioner Jonathan S. Adelstein’s
Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jonathan S. Adelstein
Commissioner
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Marsha J. MacBride
Chairman Michael K. Powell’s Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Samuel Feder
Commissioner Kevin J. Martin’s Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

Jennifer Manner
Commissioner Kathleen Q. Abernathy's
Office
Federal Communications Commission
445 12th Street, S.W.
Washington, DC 20554

John B. Muleta, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Kathleen O'Brien-Ham
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Catherine W. Seidel
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

David Furth
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Shellie Blakeney
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

D'wana R. Terry
Wireless Telecommunications Bureau Federal
Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Thomas P. Stanley
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Michael Wilhelm
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Karen Franklin
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Julius P. Knapp
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Ed Thomas, Chief
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Bruce A. Franca
Office of Engineering and Technology
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Alan Scrimme
Office of Engineering and Technology Federal
Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

Robert Pepper, Chief
Office of Plans and Policy
Federal Communications Commission
445 12th Street, S.W.
Washington, D.C. 20554

BY: /s/ Christine Biso
Christine Biso