

Channel Movement Charts of Consensus Parties' Proposal and The Balanced Proposal

INTERLEAVE CHANNELS (151-400)  
 ASSUMES THAT GENERAL CATEGORY & LOWER 80 EA LICENSEES  
 HAVE NOT CONSTRUCTED AND DO NOT HAVE FIRM COMMITMENT

Channel Movement	Channel	Current Usage	Consensus Proposal	Channel Movement	Channel	Current Usage	Channel Movement	Channel	Current Usage																								
Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	L-Block	NEW PUBLIC SAFETY (8 CH.)	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	L-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	L-Block																								
	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	M-Block		NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	M-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	M-Block																					
		Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)		K-Block			NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	K-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	K-Block																		
			Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)			J-Block			NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	J-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	J-Block															
					Channel Movement			NEW PUBLIC SAFETY ALLOCATION (8 CH.)			H-Block			NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	H-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	H-Block												
								Channel Movement			NEW PUBLIC SAFETY ALLOCATION (8 CH.)			G-Block			NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	G-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	G-Block									
											Channel Movement			NEW PUBLIC SAFETY ALLOCATION (8 CH.)			F-Block			NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	F-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	F-Block						
														Channel Movement			NEW PUBLIC SAFETY ALLOCATION (8 CH.)			E-Block			NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	E-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	E-Block			
																	Channel Movement			NEW PUBLIC SAFETY ALLOCATION (8 CH.)			D-Block			NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	D-Block	Channel Movement	NEW PUBLIC SAFETY ALLOCATION (8 CH.)	D-Block
																				Channel Movement			NEW PUBLIC SAFETY ALLOCATION (8 CH.)			C-Block			NEW PUBLIC SAFETY (8 CH.)	Channel Movement		NEW PUBLIC SAFETY ALLOCATION (8 CH.)	C-Block
Channel Movement				NEW PUBLIC SAFETY ALLOCATION (8 CH.)			B-Block																NEW PUBLIC SAFETY (8 CH.)			Channel Movement			NEW PUBLIC SAFETY ALLOCATION (8 CH.)			B-Block	Channel Movement
	Channel Movement			NEW PUBLIC SAFETY ALLOCATION (8 CH.)		A-Block	NEW PUBLIC SAFETY (8 CH.)			Channel Movement													NEW PUBLIC SAFETY ALLOCATION (8 CH.)						A-Block			Channel Movement	



**Channel Movement Charts of Consensus Parties' Proposal and The Balanced Proposal**

INTERLEAVE CHANNELS (101-400)  
 ASSUMES THAT GENERAL CATEGORY & LOWER 80 EA LICENSEES  
 HAVE NOT CONSTRUCTED AND DO NOT HAVE FIRM COMMITMENT

CURRENT USAGE			CONSENSUS PROPOSAL	CHANNEL MOVEMENT	PREFERRED IMPROVEMENTS	CHANNEL MOVEMENT
G-Block	889	.0125	[Shaded]	[Shaded]	BILT (7 Ch.)	NEW BILT ALLOCATION (8 Ch.)
H-Block	"	.0375				
I-Block	"	.0625				
J-Block	"	.0875				
K-Block	"	.1125				
L-Block	"	.1375				
M-Block	"	.1625				
N-Block	"	.1875				
"	"	.2125				
"	"	.2375				
"	"	.2625				
"	"	.2875				
"	"	.3125				
"	"	.3375				
"	"	.3625				
"	"	.3875				
"	"	.4125				
"	"	.4375				
"	"	.4625				
"	"	.4875				
O-Block	"	.5125	[Shaded]	[Shaded]	PUBLIC SAFETY (5 Ch.)	[Shaded]
P-Block	"	.5375				
Q-Block	"	.5625				
R-Block	"	.5875				
S-Block	"	.6125				
T-Block	"	.6375				
U-Block	"	.6625				
V-Block	"	.6875				
"	"	.7125				
"	"	.7375				
"	"	.7625				
"	"	.7875				
"	"	.8125				
"	"	.8375				
"	"	.8625				
"	"	.8875				
"	"	.9125				
"	"	.9375				
"	"	.9625				
"	"	.9875				
G-Block	890	.0125	[Shaded]	[Shaded]	BILT (7 Ch.)	NEW SMR ALLOCATION (8 Ch.)
H-Block	"	.0375				
I-Block	"	.0625				
J-Block	"	.0875				
K-Block	"	.1125				
L-Block	"	.1375				
M-Block	"	.1625				
N-Block	"	.1875				
"	"	.2125				
"	"	.2375				
"	"	.2625				
"	"	.2875				
"	"	.3125				
"	"	.3375				
"	"	.3625				
"	"	.3875				
"	"	.4125				
"	"	.4375				
"	"	.4625				
"	"	.4875				
O-Block	"	.5125	[Shaded]	[Shaded]	PUBLIC SAFETY (5 Ch.)	NEW SMR ALLOCATION (8 Ch.)
P-Block	"	.5375				
Q-Block	"	.5625				
R-Block	"	.5875				
S-Block	"	.6125				
T-Block	"	.6375				
U-Block	"	.6625				
V-Block	"	.6875				
"	"	.7125				
"	"	.7375				
"	"	.7625				
"	"	.7875				
"	"	.8125				
"	"	.8375				
"	"	.8625				
"	"	.8875				
"	"	.9125				
"	"	.9375				
"	"	.9625				
"	"	.9875				

CONSENSUS PROPOSAL:  
 NEW ALLOCATION OF PUBLIC SAFETY SPECTRUM:

94-105 CHANNELS  
 50 CHANNELS

PREFERRED IMPROVEMENTS:  
 NEW ALLOCATION OF PUBLIC SAFETY SPECTRUM:  
 NEW ALLOCATION OF BILT SPECTRUM:

48 CHANNELS  
 40 CHANNELS  
 16 CHANNELS





## Channel Movement Charts of Consensus Parties' Proposal and The Balanced Proposal

INTERLEAVE CHANNELS (161-400)  
 ASSUMES THAT GENERAL CATEGORY & LOWER 80 EA LICENSEES  
 EITHER HAVE CONSTRUCTED OR HAVE FIRM COMMITMENT

CURRENT USAGE		CONSENSUS PROPOSAL	CHANNEL MOVEMENT	PREFERRED IMPROVEMENTS	CHANNEL MOVEMENT	
	* .9375	PUBLIC SAFETY (3 Ch.)		PUBLIC SAFETY		
	* .9625					
	* .9875					
G-Block	880 .0125			NEW BUILT ALLOCATION (8 Ch.)		BUILT
H-Block	* .0375					
I-Block	* .0625					
J-Block	* .0875					
K-Block	* .1125					
L-Block	* .1375					
M-Block	* .1625					
N-Block	* .1875					
	* .2125					
	* .2375					
	* .2625	PUBLIC SAFETY (3 Ch.)				
	* .2875					
	* .3125					
	* .3375					
	* .3625					
	* .3875					
	* .4125					
	* .4375					
	* .4625					
	* .4875					
O-Block	* .5125	NEW SMR ALLOCATION (8 Ch.)				
P-Block	* .5375					
Q-Block	* .5625					
R-Block	* .5875					
S-Block	* .6125					
T-Block	* .6375					
U-Block	* .6625					
V-Block	* .6875					
	* .7125					
	* .7375					
	* .7625	PUBLIC SAFETY (3 Ch.)				
	* .7875					
	* .8125					
	* .8375					
	* .8625					
	* .8875					
	* .9125					
	* .9375					
	* .9625					
	* .9875					
G-Block	880 .0125	NEW SMR ALLOCATION (8 Ch.)				
H-Block	* .0375					
I-Block	* .0625					
J-Block	* .0875					
K-Block	* .1125					
L-Block	* .1375					
M-Block	* .1625					
N-Block	* .1875					
	* .2125					
	* .2375					
	* .2625	PUBLIC SAFETY (3 Ch.)				
	* .2875					
	* .3125					
	* .3375					
	* .3625					
	* .3875					
	* .4125					
	* .4375					
	* .4625					
	* .4875					
O-Block	* .5125	NEW SMR ALLOCATION (8 Ch.)				
P-Block	* .5375					
Q-Block	* .5625					
R-Block	* .5875					
S-Block	* .6125					
T-Block	* .6375					
U-Block	* .6625					
V-Block	* .6875					
	* .7125					
	* .7375					
	* .7625	PUBLIC SAFETY (3 Ch.)				
	* .7875					
	* .8125					
	* .8375					
	* .8625					
	* .8875					
	* .9125					
	* .9375					
	* .9625					
	* .9875					

CONSENSUS PROPOSAL:	94-105 CHANNELS
NEW ALLOCATION OF PUBLIC SAFETY SPECTRUM:	50 CHANNELS
PREFERRED IMPROVEMENTS:	48 CHANNELS
NEW ALLOCATION OF PUBLIC SAFETY SPECTRUM:	40 CHANNELS
NEW ALLOCATION OF BUILT SPECTRUM:	18 CHANNELS

## Channel Movement Charts of Consensus Parties' Proposal and The Balanced Proposal

UPPER 10 CHANNELS LICENSES  
 (CHANNELS 401-600)  
 GENERAL CATEGORY & LOWER 80 EA LICENSES  
 HAVE NOT CONSTRUCTED AND DO NOT HAVE FIRM COMMITMENT

CURRENT USAGE			CONSENSUS PROPOSAL	CHANNEL MOVEMENT	PREFERRED IMPROVEMENS	CHANNEL MOVEMENT
"Upper 10" A - Block (20 Ch.)	861	.0125				
	"	.0375				
	"	.0625				
	"	.0875				
	"	.1125				
	"	.1375				
	"	.1625				
	"	.1875				
	"	.2125				
	"	.2375				
	"	.2625				
	"	.2875				
	"	.3125				
	"	.3375				
	"	.3625				
	"	.3875				
	"	.4125				
"	.4375					
"	.4625					
"	.4875					
"Upper 10" B - Block (60 Ch.)	"	.5125				
	"	.5375				
	"	.5625				
	"	.5875				
	"	.6125				
	"	.6375				
	"	.6625				
	"	.6875				
	"	.7125				
	"	.7375				
	"	.7625				
	"	.7875				
	"	.8125				
	"	.8375				
	"	.8625				
	"	.8875				
	"	.9125				
"	.9375					
"	.9625					
"	.9875					
"Upper 10" B - Block (cont.)	862	.0125				
	"	.0375				
	"	.0625				
	"	.0875				
	"	.1125				
	"	.1375				
	"	.1625				
	"	.1875				
	"	.2125				
	"	.2375				
	"	.2625				
	"	.2875				
	"	.3125				
	"	.3375				
	"	.3625				
	"	.3875				
	"	.4125				
	"	.4375				
	"	.4625				
	"	.4875				
	"	.5125				
	"	.5375				
	"	.5625				
	"	.5875				
	"	.6125				
	"	.6375				
	"	.6625				
	"	.6875				
	"	.7125				
	"	.7375				
	"	.7625				
	"	.7875				
	"	.8125				
"	.8375					
"	.8625					
"	.8875					
"	.9125					
"	.9375					
"	.9625					
"	.9875					

### Channel Movement Charts of Consensus Parties' Proposal and The Balanced Proposal

UPPER 10 CHANNELS LICENSES  
 (CHANNELS 401-600)  
 GENERAL CATEGORY & LOWER 80 EA LICENSEES  
 HAVE NOT CONSTRUCTED AND DO NOT HAVE FIRM COMMITMENT

CURRENT USAGE			CONSENSUS PROPOSAL	CHANNEL MOVEMENT	PREFERRED IMPROVEMENS	CHANNEL MOVEMENT
"Upper 10" C - Block (120 Ch.)	863	.0125				
	"	.0375				
	"	.0625				
	"	.0875				
	"	.1125				
	"	.1375				
	"	.1625				
	"	.1875				
	"	.2125				
	"	.2375				
	"	.2625				
	"	.2875				
	"	.3125				
	"	.3375				
	"	.3625				
	"	.3875				
	"	.4125				
	"	.4375				
	"	.4625				
	"	.4875				
	"	.5125				
	"	.5375				
	"	.5625				
	"	.5875				
	"	.6125				
	"	.6375				
	"	.6625				
	"	.6875				
	"	.7125				
	"	.7375				
	"	.7625				
	"	.7875				
"	.8125					
"	.8375					
"	.8625					
"	.8875					
"	.9125					
"	.9375					
"	.9625					
"	.9875					
"Upper 10" C - Block (cont.)	864	.0125				
	"	.0375				
	"	.0625				
	"	.0875				
	"	.1125				
	"	.1375				
	"	.1625				
	"	.1875				
	"	.2125				
	"	.2375				
	"	.2625				
	"	.2875				
	"	.3125				
	"	.3375				
	"	.3625				
	"	.3875				
	"	.4125				
	"	.4375				
	"	.4625				
	"	.4875				
	"	.5125				
	"	.5375				
	"	.5625				
	"	.5875				
	"	.6125				
	"	.6375				
	"	.6625				
	"	.6875				
	"	.7125				
	"	.7375				
	"	.7625				
	"	.7875				
"	.8125					
"	.8375					
"	.8625					
"	.8875					
"	.9125					
"	.9375					
"	.9625					
"	.9875					

## Channel Movement Charts of Consensus Parties' Proposal and The Balanced Proposal

UPPER 10 CHANNELS LICENSES  
 (CHANNELS 401-600)  
 GENERAL CATEGORY & LOWER 80 EA LICENSEES  
 HAVE NOT CONSTRUCTED AND DO NOT HAVE FIRM COMMITMENT

CURRENT USAGE			CONSENSUS PROPOSAL	CHANNEL MOVEMENT	PREFERRED IMPROVEMENS	CHANNEL MOVEMENT
"Upper 10" C - Block (cont.)	965	.0125				
	"	.0375				
	"	.0625				
	"	.0875				
	"	.1125				
	"	.1375				
	"	.1625				
	"	.1875				
	"	.2125				
	"	.2375				
	"	.2625				
	"	.2875				
	"	.3125				
	"	.3375				
	"	.3625				
	"	.3875				
	"	.4125				
	"	.4375				
	"	.4625				
	"	.4875				
	"	.5125				
	"	.5375				
	"	.5625				
	"	.5875				
	"	.6125				
	"	.6375				
	"	.6625				
	"	.6875				
	"	.7125				
	"	.7375				
"	.7625					
"	.7875					
"	.8125					
"	.8375					
"	.8625					
"	.8875					
"	.9125					
"	.9375					
"	.9625					
"	.9875					

CONSENSUS PROPOSAL TOTALS:

0 CHANNELS

PREFERRED IMPROVEMENTS

30 CHANNELS IF CHANNELS 571-600 AVAILABLE

## Channel Movement Charts of Consensus Parties' Proposal and The Balanced Proposal

NPSPAC CHANNELS  
 (CHANNELS 601-720)  
 GENERAL CATEGORY & LOWER 80 EA LICENSEES  
 EITHER DO OR DO NOT HAVE FIRM COMMITMENT

CURRENT USAGE		CONSENSUS PROPOSAL	CHANNEL MOVEMENT	PREFERRED IMPROVEMENTS	CHANNEL MOVEMENT
866	.0125				
"	.0375				
"	.0625				
"	.0875				
"	.1125				
"	.1375				
"	.1625				
"	.1875				
"	.2125				
"	.2375				
"	.2625				
"	.2875				
"	.3125				
"	.3375				
"	.3625				
"	.3875				
"	.4125				
"	.4375				
"	.4625				
"	.4875				
"	.5125				
"	.5375				
"	.5625				
"	.5875				
"	.6125				
"	.6375				
"	.6625				
"	.6875				
"	.7125				
"	.7375				
"	.7625				
"	.7875				
"	.8125				
"	.8375				
"	.8625				
"	.8875				
"	.9125				
"	.9375				
"	.9625				
"	.9875				
867	.0125				
"	.0375				
"	.0625				
"	.0875				
"	.1125				
"	.1375				
"	.1625				
"	.1875				
"	.2125				
"	.2375				
"	.2625				
"	.2875				
"	.3125				
"	.3375				
"	.3625				
"	.3875				
"	.4125				
"	.4375				
"	.4625				
"	.4875				
"	.5125				
"	.5375				
"	.5625				
"	.5875				
"	.6125				
"	.6375				
"	.6625				
"	.6875				
"	.7125				
"	.7375				
"	.7625				
"	.7875				
"	.8125				
"	.8375				
"	.8625				
"	.8875				
"	.9125				
"	.9375				
"	.9625				
"	.9875				

## Channel Movement Charts of Consensus Parties' Proposal and The Balanced Proposal

NPSPAC CHANNELS  
 (CHANNELS 801-720)  
 GENERAL CATEGORY & LOWER 80 EA LICENSEES  
 EITHER DO OR DO NOT HAVE FIRM COMMITMENT

CURRENT USAGE		CONSENSUS PROPOSAL	CHANNEL MOVEMENT	PREFERRED IMPROVEMENTS	CHANNEL MOVEMENT
868	.0125				
"	.0375				
"	.0625				
"	.0875				
"	.1125				
"	.1375				
"	.1625				
"	.1875				
"	.2125				
"	.2375				
"	.2625				
"	.2875				
"	.3125				
"	.3375				
"	.3625				
"	.3875				
"	.4125				
"	.4375				
"	.4625				
"	.4875				
"	.5125				
"	.5375				
"	.5625				
"	.5875				
"	.6125				
"	.6375				
"	.6625				
"	.6875				
"	.7125				
"	.7375				
"	.7625				
"	.7875				
"	.8125				
"	.8375				
"	.8625				
"	.8875				
"	.9125				
"	.9375				
"	.9625				
"	.9875				

**CONSENSUS PROPOSAL TOTALS:**

**120 CHANNELS**

**PREFERRED IMPROVEMENTS:**

**120 CHANNELS**

**EXHIBIT C**

**EA MARKETS IN WHICH NEXTEL  
HOLDS ALL 800 MHz GENERAL CATEGORY  
AND LOWER 80 EA AUTHORIZATIONS**

**EA MARKETS WHERE NEXTEL HOLDS ALL OF THE LOWER 230 EA-LICENSED SPECTRUM**

NEXTEL		
EA Markets		
		Pops
1	BEA023	Charlotte-Gastonia-Rock Hill,
2	BEA042	Asheville, NC
3	BEA045	Johnson City-Kingsport-Bristol
4	BEA046	Hickory-Morganton, NC-TN
5	BEA052	Wheeling, WV-OH
6	BEA053	Pittsburgh, PA-WV
7	BEA055	Cleveland-Akron, OH-PA
8	BEA056	Toledo, OH
9	BEA057	Detroit-Ann Arbor-Flint, MI
10	BEA058	Northern Michigan, MI
11	BEA061	Traverse City, MI
12	BEA063	Milwaukee-Racine, WI
13	BEA064	Chicago-Gary-Kenosha, IL-IN-WI
14	BEA065	Elkhart-Goshen, IN-MI
15	BEA073	Memphis, TN-AR-MS-KY
16	BEA095	Jonesboro, AR-MO
17	BEA096	St. Louis, MO-IL
18	BEA098	Columbia, MO
19	BEA099	Kansas City, MO-KS
20	BEA131	Houston-Galveston-Brazoria, TX
21	BEA136	Hobbs, NM-TX
22	BEA142	Scottsbluff, NE-WY
23	BEA158	Phoenix-Mesa, AZ-NM
24	BEA159	Tucson, AZ
25	BEA160	Los Angeles-Riverside-Orange C
26	BEA161	San Diego, CA
27	BEA170	Seattle-Tacoma-Bremerton, WA
28	BEA175	American Samoa

**EXHIBIT D**

**EA MARKETS IN WHICH NEXTEL PARTNERS  
HOLDS ALL 800 MHz GENERAL CATEGORY  
AND LOWER 80 EA AUTHORIZATIONS**

**EA MARKETS WHERE NEXTEL PARTNERS HOLDS ALL LOWER 230 EA-LICENSED SPECTRUM**

NEXTEL PARTNERS		
EA Markets		
1	BEA005	Albany-Schenectady-Troy, NY
2	BEA006	Syracuse, NY-PA
3	BEA007	Rochester, NY-PA
4	BEA008	Buffalo-Niagara Falls, NY-PA
5	BEA047	Lexington, KY-TN-VA-WV
6	BEA054	Erie, PA
7	BEA059	Green Bay, WI-MI
8	BEA060	Appleton-Oshkosh-Neenah, WI
9	BEA068	Champaign-Urbana, IL
10	BEA071	Nashville, TN-KY
11	BEA072	Paducah, KY-IL
12	BEA090	Little Rock-North Little Rock,
13	BEA091	Fort Smith, AR-OK
14	BEA100	Des Moines, IA-IL-MO
15	BEA103	Cedar Rapids, IA
16	BEA104	Madison, WI-IL-IA
17	BEA105	La Crosse, WI-MN
18	BEA106	Rochester, MN-IA-WI
19	BEA108	Wausau, WI
20	BEA111	Minot, ND
21	BEA112	Bismarck, ND-MT-SD
22	BEA117	Sioux City, IA-NE-SD
23	BEA118	Omaha, NE-IA-MO
24	BEA119	Lincoln, NE
25	BEA133	McAllen-Edinburg-Mission, TX
26	BEA135	Odessa-Midland, TX
27	BEA149	Twin Falls, ID
28	BEA150	Boise City, ID-OR

APPENDIX I

APPLICATION OF *REPORT AND ORDER*,  
NEXTEL'S REQUESTS FOR CLARIFICATIONS  
AND PREFERRED'S IMPROVEMENTS TO  
SPECIFIC EA MARKETS

## I. Introduction

In seeking to resolve the apparent conflict in the paragraphs 159, 162-163 and 168 of the Report and Order with respect to the movement of EA- and Site-Licensed Spectrum held by Non-Nextel EA and Cellular-Architecture System Site Licensees, Preferred has examined the 800 MHz spectrum holdings in five (5) EA markets: (1) Sacramento, California; (2) Washington-Baltimore, D.C.-Maryland-Virginia-West Virginia-Pennsylvania; (3) Atlanta, Georgia-Alabama-North Carolina; (4) Puerto Rico; and (5) Staunton, Virginia-West Virginia.

With respect to the movement of the EA- and Site-Licensed Spectrum of the NCG, the Commission largely adopted the Enhanced Consensus Parties' Proposal. As a result, both the EA- and Site-Licensed Spectrum of these licensees moves into the ESMR portion of the band on an EA market wide Clean 1:1 basis (General Category Channels)<sup>1</sup> or is vacated and credited toward the purchase price of the nationwide 10 MHz license in the 1.9 GHz band (Interleave and Lower 80 Channels).<sup>2</sup> This result apparently also applies regardless of whether the Site-Licensed Spectrum held by the Nextel Control Group is constructed and incorporated into a Cellular-Architecture System as of the *Report and Order's* publication in the Federal Register.<sup>3</sup>

With respect to the movement of Non-Nextel EA licensees' EA-Licensed Spectrum, the Report and Order purportedly offers such licensees an "incentive" to relocate their respective Spectrum holdings by affording them the flexibility of three (3) options:

- (1) Relocate all of their systems in an EA market into the ESMR portion (817-824 MHz/862-869 MHz) portion of the band where they will share spectrum with Nextel, Nextel Partners and licensees which have executed a management or purchase option agreement with Nextel ("Nextel Control Group" or "NCG");
- (2) Relocate their systems as close as possible to the ESMR portion of the band but remain in the non-cellular portion of the band, i.e., in order of preference:

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<sup>1</sup> See *Improving Public Safety Communications in the 800 MHz Band*, Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, 19 FCC Rcd 14969 (*"Report and Order"*) at ¶ 23. The treatment of Site-Licensed Spectrum held by the Nextel Control Group and by Non-Nextel EA and Cellular-architecture Site Licensees conflicts with the Commission's previous decisions concerning whether such expansion of spectrum rights (frequency reuse throughout the geographical market area) involved the issuance of an initial license triggering the competitive bidding provisions of Section 309(j) of the Communications Act of 1934. See Verizon Wireless, LLC, Ex Parte Presentation, April 6, 2004, pp. 11-12 & n. 49 (*"Verizon Wireless White Paper"*).

<sup>2</sup> See *Report and Order*, at ¶ 35.

<sup>3</sup> See *id.*, at ¶¶ 23, 161; Nextel Partners, Inc. Form 10-K filed with the Securities and Exchange Commission for the period ended December 31, 2003, pp. 20-21.

- (a) the 816-817 MHz/861-862 MHz Guard Band;
- (b) the 815-816 MHz/860-861 MHz Expansion Band; and
- (c) channels below 815 MHz/860 MHz if necessary.

According to the FCC, these licensees will operate on a strict non-interference basis, subject to pre-coordination of any new or modified operations; or

- (3) Remain on their current channels in the non-cellular portion of the band on a strict non-interference basis, subject to pre-coordination of any new or modified operations.

If a Non-Nextel EA or Cellular-Architecture System Site Licensees elect to relocate to the ESMR portion of the band, their EA licenses will move upon an EA market wide, Clean 1:1 basis. The FCC also recognized that these Licensees also hold Site-Licensed Spectrum. The FCC therefore also determined to provide these Licensees the option of relocating their Site-Licensed Spectrum along with their EA-Licensed Spectrum to the ESMR portion of the band. However, to transfer Site-Licensed Spectrum, a Non-Nextel EA or Cellular- Architecture System Site Licensee must:

- (a) currently hold an EA license in the relevant EA market; and
- (b) be using the Site-Licensed Spectrum as part of a cellular-architecture system in that EA market as of the date of the publication of the *Report and Order* in the Federal Register.

Moreover, to create a more uniform licensing scheme, the transferred Site-Licensed Spectrum would be converted to EA-Licensed Spectrum on a Clean 1:1 basis. If Non-Nextel EA or Cellular-Architecture System licensees elect to move to Guard Band or must be relocated to the Expansion Band, or to the spectrum immediately below, when necessary, subject to the conditions set forth immediately above, their Site-Licensed Spectrum also would be converted to EA-Licensed Spectrum on a Clean 1:1 basis.

In footnote 444 to paragraph 168 of the *Report and Order*, the FCC seemingly contradicts the three (3) preceding paragraphs by placing an additional limitation upon the movement of EA- and Site-Licensed Spectrum held by Non-Nextel EA and Cellular-Architecture System Site Licensees into the ESMR portion of the band. In paragraph 164 the Commission had noted that in some EA markets insufficient spectrum in the ESMR portion of the band may be available due to multiple incumbent ESMR licensees already operating in the band. The FCC cited, but did not limit this possible problem of insufficient spectrum to, those markets in which Nextel or Nextel Partners and Southern Communications Services ("Southern") are offering service. In paragraph 164 the Commission had noted that in some EA markets insufficient spectrum in the ESMR portion of the band may be available due to multiple incumbent ESMR licensees already operating in the band. The FCC cited, but did not limit this possible problem of insufficient spectrum to, those markets in which Nextel or Nextel Partners and Southern Communications Services ("Southern") are offering service.

The FCC then continues by stating that “[p]arties are hereby put on notice that disputed matters concerning the ESMR channels in any area of the country, including the area shown in Appendix G may be resolved by the Commission making a *pro rata* distribution of ESMR channels.” Citing footnote 444, the FCC then states in that footnote: “When the ESMR spectrum is not adequate to accommodate all eligible licensees that wish to relocate in the ESMR block, and parties are unable to agree, we may apportion the ESMR block as a function of the relative spectrum rights each licensee holds in a given EA. For example, in a hypothetical market, outside the area shown in Appendix G, in which licensee “A” currently has rights to 150 channels and licensee “B” has rights to 250 channels, the 320 channels in the ESMR block would be apportioned by giving licensee “A” access to 128 channels (40%) and licensee “B” access to 192 channels (60%).”

A. Spectrum Holdings in the Sacramento, California EA Market.

As set forth in the Chart immediately below, Nextel holds seventy-five (75) General Category EA-Licensed frequencies covering an average of 99.00% of the Sacramento, California EA market’s total population, or the equivalent of seventy-four (74) Channels of MHz/Pops Equivalent Spectrum. Likewise, due to its sixty-five (65) Lower 80 EA frequencies covering an average of 92.53% of the EA market’s total population, Nextel would hold the equivalent of sixty-four (64) Channels of MHz/Pops Equivalent Spectrum. Nextel holds forty-six (46) Business Category Channels in this EA market. Pursuant to the Commission’s decision allowing SMR licensees to purchase such Channels and convert them to CMRS, these Channels would be included. Due to these frequencies’ covering an average of 51.80% of the total population, Nextel would hold the equivalent of twenty-four (24) Channels of MHz/Pops Spectrum.

**MARKET BEA164 SACRAMENTO, CA EA MARKET  
NEXTEL CHANNELS SUMMARY**

	75	99.00%	74	75
	45	13.00%	6	
	65	92.53%	64	65
	0	0.00%	0	
	46	51.80%	24	
	0	0.00%	0	
	<b>231</b>		<b>168</b>	<b>130</b>
	<b>11.55</b>		<b>8.40</b>	<b>6.50</b>

**AIRPEAK/PCSI**

	75
	15
	50
	<b>140</b>
	<b>7.0</b>

	200	100.00%	200	200
	0		0	
	<b>200</b>		<b>200</b>	<b>200</b>
	<b>10.00</b>		<b>10.00</b>	<b>10.00</b>

	0.0
	<b>0</b>
	<b>0.00</b>

	431		368	330	0
	21.55		18.40	16.50	7.0
			371	18.55	

1. *Report and Order's Movement Methodology: (a) move the Nextel Control Group's General Category EA- and Site-Licensed Spectrum to the new Cellular Block on an EA market wide Clean 1:1 basis; (b) credit Nextel with a nationwide "running average" of the General Category, Interleave and Lower 80 Channels vacated by it, Nextel Partners and licensees which have executed a management or purchase option agreement with it and modify such spectrum by reassigning to Nextel 4.5 MHz of 1.9 GHz band spectrum; (c) move the Non-NCG's EA and Cellular-architecture Systems Site Licensees' EA-Licensed Spectrum to the new Cellular Block on an EA market wide, Clean 1:1 basis; however such Licensees' Site-Licensed Spectrum would move to the new Cellular Block on such basis only if (1) it is located in an EA market in which such Licensee holds an EA Authorization and (2) the Non-Nextel Control Group EA or Cellular-architecture System Site Licensee is using such Site-Licensed Spectrum as part of a Cellular-architecture System as of the date of the publication of the Report and Order in the Federal Register.*

Due to the presence of site-specific incumbents and EA licensees, Nextel, Nextel Partners and licensees who have executed a management or purchase option agreement with Nextel ("Nextel Control Group" or "NCG") hold one hundred sixty-eight (168) MHz/Pops Equivalent Lower 230 Channels. Upon their movement under the *Report and Order*, the Nextel Control Group would be allocated two hundred thirty-one (231) Channels on a Clean basis, a net gain of sixty-three (63) MHz/Pops Equivalent Channels. As noted in Preferred's Ex Parte Presentation filed on March 2, 2004, this result appears to belie the oft-repeated argument by the Consensus Parties that their Proposal involves only a "kHz-for-kHz exchange" or "replacement spectrum."<sup>4</sup> Under the *Report and Order*, this result will hold true in all of the 175 EA markets.

<sup>4</sup> See Preferred Communication Systems, Inc., Ex Parte Presentation, March 2, 2004, at pp. 27-29. The Preferred Spectrum Calculation Method credits Nextel in this EA market, and the Nextel Control Group generally, with more Total Spectrum than Nextel claims in its own calculations. Preferred's Total Spectrum calculation will be greater than Nextel's Total Spectrum figure for every EA market because it encompasses the entire EA market rather than only the more heavily urbanized or populated portions thereof. Interestingly enough, in this EA market, Preferred's MHz/Pops Equivalent Spectrum figure of 18.40 MHz approximates Nextel's published 18.55 MHz Total Spectrum figure. See Nextel

Since the *Report and Order* moves spectrum on a Total, rather than upon a MHz/Pops Equivalent basis, it moves all of the NCG's one hundred twenty (120) General Category EA- and Site-Licensed Channels (6 MHz) to the new Cellular Block. Presumably these Channels would be moved to and fully occupy the former NPSPAC Channels. The Nextel Control Group's one hundred eleven (111) B/ILT and Lower 80 Channels (5.55 MHz) would be modified by the Commission's reassigning to Nextel an identical number of frequencies in the 1.9 GHz band as part of the FCC's exclusive allocation to Nextel of a nationwide 10 MHz license in that frequency band. This result will hold true in the majority of the EA markets.<sup>5</sup>

## 2. Allocation of 1.9 GHz Band Spectrum Exclusively to Nextel.

Pursuant to the *Report and Order*, the FCC therefore allocates Nextel 5.55 MHz of 1.9 GHz band spectrum solely as the result of its 800 MHz band movement methodology, not as Nextel and the Consensus Parties repeatedly insisted in their respective filings, due to Nextel's returning its unrelated 700 MHz Guard Band holdings and promising to pay the total 800 MHz band relocation costs and its *pro rata* share of UTAM and all of the BAS licensee relocation costs in the 1.9 GHz band.<sup>6</sup> The *Report and Order's* private sale of the remaining portion (4.45 MHz) of the 1.9 GHz band spectrum in exchange for: (a) Nextel's 700 MHz Guard Band holdings unrelated to any reorganization of the 800 MHz band; (b) partially secured promise to pay the total 800 MHz band relocation costs; and (c) promise to pay its *pro rata* share of UTAM and all of

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Communications, Inc., Reply Comments, August 7, 2002, Appendix I to Nextel Reply Comments in WT 02-55—Nextel's Available Spectrum in Top 320 Markets.

<sup>5</sup> As discussed below, in the one hundred eighteen (118) EA markets where Nextel and Non-Nextel Control Group members share EA-Licensed Spectrum, the *Report and Order's* use of Total Spectrum as the basis for its movement methodology necessarily results in serious practical and mathematical problems. As Preferred will demonstrate, absent Nextel's vacating a considerable number of 800 MHz Upper 200 Channels, which are the core of its system, or opening up the allocation of 1.9 GHz spectrum to other General Category and Lower 80 EA licensees, 800 MHz rebanding would be difficult, if not impossible to implement. See Nextel Communications, Inc., Ex Parte Presentation, June 14, 2004, pp. 4-5; Southern Communication Services, Inc., Ex Parte Presentation, June 23, 2004, pp. 12-19. The Commission recognized and sought to address these problems by use of the *pro rata* distribution approach and separating 800 MHz rebanding from the allocation of 1.9 GHz band spectrum. As discussed below, this approach impermissibly discriminates against Non-Nextel Control Group EA and Cellular-Architecture System Site licensees in violation of the Due Process Clause to the Fifth Amendment to the U.S. Constitution and the FCC's statutory mandates to maintain regulatory parity and promote competition.

<sup>6</sup> Since the *Report and Order* moves Nextel's General Category and Business and Industrial/ Land Transportation Site-Licensed Channels to the 1.9 GHz band on an EA market wide, Clean, 1:1 basis thus increasing the amount of 800 MHz band spectrum needing to be replaced by 1.9 GHz band spectrum to 6.1 MHz of such spectrum.

the BAS licensee relocation costs in the 1.9 GHz band apparently was believed necessary by the Commission to avoid (1) connecting the award of 1.9 GHz band to the movement and modification of the 800 MHz EA- and Site-Licensed Spectrum of General Category and Lower 80 EA licensees (2) triggering the otherwise mandatory competitive bidding provisions of Section 309(j) by providing a basis for the FCC's limiting the participation in the allocation of the 1.9 GHz band spectrum to only Nextel.

Pursuant to its Section 316 modification authority, in this EA market the FCC would allocate 5.55 MHz of 1.9 GHz band spectrum, rather than the nationwide "running average" of 4.50 MHz of the 1.9 GHz band spectrum to Nextel to replace that company's already-existing 800 MHz band spectrum. The award of such 1.9 GHz band spectrum to replace Nextel's already-existing 800 MHz band spectrum clearly would not involve the issuance of an "initial" license by the Commission implicating the competitive bidding provisions of Section 309(j).<sup>7</sup> Under Sections 316, 301, 303 and 309(j)(6)(E), the Commission maintains in the *Report and Order* that it has the discretion to determine that it better serves the public interest to allow Nextel to purchase the remaining 4.45 MHz of 1.9 GHz band spectrum free from the filing of competing license applications.<sup>8</sup> While this position appears meritorious if the FCC were allocating this remaining 1.9 GHz band spectrum to the class of licensees whose spectrum holdings were being modified and moved—General Category and Lower 80 EA and Cellular-Architecture System licensees, it clearly violates the Commission's statutory mandates under the to maintain regulatory parity and promote competition<sup>9</sup> and the competitive bidding provisions of Section 309(j)<sup>10</sup> by restricting participation in such allocation to a single entity within such class of licensees.<sup>11</sup>

### 3. *Effect of Report and Order Upon Nextel's Total and Clean Spectrum.*

In the Sacramento, California EA market, prior to accommodating other Cellular Eligible Licensees, Nextel considerably increases its published Spectrum

<sup>7</sup> See *Report and Order*, at ¶¶ 65-68 & nn. 219-223.

<sup>8</sup> See *Report and Order*, at ¶¶ 73-74.

<sup>9</sup> See Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 6002(d) (3) (B), 107 Stat. 397 (1993)(mandating that Commission establish a uniform regulatory regime for all commercial mobile services)("1993 Act"), 47 U.S.C. § 332 (c); Implementation of Sections 3(n) and 332 of the Communications Act, GN Docket No. 93-252, Regulatory Treatment of Mobile Services, Third Report and Order, 9 FCC Rcd 7988, 7994, at ¶ 4 (1994)("CMRS Third Report and Order"); 47 U.S.C. § 309(j)(3)(B) & (4)(C); 47 U.S.C. § 257; see also Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Second Report and Order, 12 FCC Rcd 19079, 19080, at ¶ 15, 19103, at ¶ 61 (1997).

<sup>10</sup> See *Verizon Wireless White Paper*, at pp. 14-16 & n. 67.

<sup>11</sup> See Preferred Communication Systems, Inc., Ex Parte Presentation, April 23, 2004, at pp. 5-6; Preferred Communication Systems, Inc., Ex Parte Presentation, March 2, 2004, at pp. 37-38; Southern Communication Services, Inc., Ex Parte Presentation, June 23, 2004, at pp. 11-16.

holdings from 18.55 MHz to 26.0 MHz, its MHz/Pops Equivalent Spectrum from 18.40 MHz to 26.0 MHz, and its EA Wide Spectrum from 16.50 MHz to 26.0 MHz.<sup>12</sup> These spectrum increases occur because the *Report and Order's* (a) 800 MHz band movement methodology discussed immediately above and (b) the exclusive allocation to Nextel of 10 MHz of 1.9 GHz band spectrum.

4. *Increase in Value of Nextel's Spectrum Holdings (800 MHz and 1.9 GHz Band Spectrum).*

According to the *Report and Order*, the present average fair market value of Nextel's 800 MHz band spectrum to be exchanged as part of the Consensus Parties Proposal's movement methodology is \$1.61 MHz/Pop.<sup>13</sup> The FCC further determined that the present fair market value of the 800 MHz and 1.9 GHz band spectrum Nextel would receive in exchange would be \$1.70 MHz/Pop.<sup>14</sup>

Applying these figures to the Sacramento, California EA market, the present value of the Nextel Control Group's 800 MHz band spectrum to be exchanged under the *Report and Order* would be determined by multiplying Nextel's one hundred sixty-eight (168) Channels, or 8.40 MHz of MHz/Pop Equivalent Spectrum, by the EA market's total population of 2,311,567 (2003 Pops) and then multiplying the resulting figure of 19,417,163 by \$1.61 MHz/Pop. The resulting figure of \$31,261,632 would be the present value of the 800 MHz band spectrum the Nextel Control Group would exchange in this EA market under the *Report and Order*. However, since under the *Report and Order's* movement methodology, the NCG's EA- and Site-Licensed Spectrum moves on a Total Spectrum 1:1 basis, rather than upon a MHz/Pops Equivalent basis, the Nextel Control Group would receive a total of two hundred thirty-one (231) Clean 800 MHz (120 Channels in the former NPSPAC Channels) and 1.9 GHz band Channels (111 such Channels), or 11.55 MHz of such Spectrum, in exchange therefor. Nextel would receive an additional eighty-nine (89) Clean 1.9 GHz band Channels, or 4.45 MHz of such Spectrum, in exchange for its returning its 700 MHz Guard Band spectrum holdings, secured promise to pay the total 800 MHz band relocation costs and promise to pay its pro rata share of UTAM and all of the BAS licensee relocation costs in the 1.9 GHz band.

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<sup>12</sup> With the movement of Preferred's EA-Licensed Spectrum and AirPeak's EA- and Site-Licensed Spectrum into the one hundred forty (140) Upper 200 Channels to be vacated by Nextel, its Total, Clean or MHz/Pops Equivalent and Cellular Spectrum would be reduced by 7 MHz. Nextel therefore would hold 19.0 MHz of Total, Clean or MHz/Pops Equivalent and Cellular Spectrum in this EA market.

<sup>13</sup> See *Report and Order*, at ¶¶ 314-323. The Commission determined that the present fair market value of the Nextel Control Group's General Category Channels was \$1.70 per MHz/Pop. Due primarily to the limited use by the NCG of its band edge channels to avoid interference with BILT and public safety licensees, the FCC applied a twelve and one-half percent (12.5%) discount and determined that the present fair market value of such Channels held by the NCG was \$1.4875 per MHz/Pop. See *id.*, at ¶ 318.

<sup>14</sup> See *id.*, at ¶¶ 293-297.

Under the *Report and Order*, the fair market value of this Spectrum would be determined by multiplying 16 MHz of Clean Spectrum by the EA market's total population of 2,311,567, and then multiplying the resulting figure by \$1.70 MHz/Pop. The resulting figure of \$62,874,622 would be the fair market value of the Clean Spectrum the NCG would receive under the *Report and Order*. The \$31,612,990 difference in the fair market values of the spectrum to be exchanged under the *Report and Order* arguably is the amount of the Nextel Control Group's 800 MHz band spectrum enhancement.

5. *Effect of Report and Order Upon Non-Nextel EA and Cellular-Architecture Site Licensees' Spectrum Holdings.*

Preferred Communication Systems, Inc. ("Preferred") holds seventy-five (75) General Category EA Channels (3.75 MHz) in this EA market. Due to the presence of site-specific incumbents, Preferred's Channels cover 80.33% of this EA market's total population. Preferred therefore holds sixty (60) MHz/Pops Equivalent Channels. AirPeak Communications, LLC ("AirPeak") holds fifteen (15) Lower 80 EA Channels in this EA market. Due to the presence of site-specific incumbents, AirPeak's Channels cover 80% of this EA market's total population. AirPeak therefore holds twelve (12) 800 MHz/Pops Equivalent Channels. AirPeak also holds fifty (50) B/ILT Channels in this EA market.

Under paragraph 163 of the *Report and Order*, Preferred's and AirPeak's EA- and Site-Licensed Spectrum would move to the new Cellular Block on an EA market wide, Clean 1:1 basis. As a result, their one hundred forty (140) channels presumably would move to the Upper 200 Channels in the new Cellular Block beginning with Channel 401 on an EA market wide, Clean 1:1 basis. Nextel would vacate these Channels but retain Channels 541-600 and its 900 MHz band spectrum in this EA market.<sup>15</sup>

Under the *Report and Order*, the value of this 800 MHz band spectrum vacated by Nextel would be determined by multiplying Nextel's one hundred forty (140) channels (7 MHz) by the EA market's total population of 2,311,567 (2003 Pops) and then

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<sup>15</sup> See *Report and Order*, at ¶ 168 ("...a pro rata apportionment could reduce the number of channels available to Nextel. However, we observe that Nextel has additional spectrum at 900 MHz which can be used to offset the shortfall and is receiving spectrum at 1.9 GHz.") This conclusion is based upon the assumption that Nextel holds two hundred (200) Clean Channels within the Upper 200 Channels in this EA market. In this EA market that assumption proves to be correct. See Non-Nextel Site License Spreadsheet developed by Concepts To Operations, Inc., a RF engineering and consulting firm headquartered in Annapolis, Maryland, on Preferred's behalf and attached hereto as **Schedule 3** to its *Analysis of the Relocation of Non-Nextel SMR, BILT and Public Safety Site Licensees in Channels 1-150 and 401-600 Under the FCC's Report and Order* attached hereto as **Exhibit A**.

multiplying the resulting figure of 16,180,969 by \$1.70 MHz/Pop.<sup>16</sup> The resulting figure of \$27,507,647 would be the present value of the 800 MHz band spectrum in the Upper 200 Channels Nextel would vacate to facilitate the movement of the EA- and Site-Licensed Spectrum held by Non-Nextel EA and Cellular-architecture System Site Licensees in this EA market. Thus, even if Nextel vacates its one hundred forty (140) Channels in the Upper 200 Channels on an EA market Clean 1:1 basis to Preferred and AirPeak, it would realize a \$4,105,343 increase or enhancement of its spectrum holdings in this EA market.

6. *Effect of Report and Order Upon Other 800 MHz Licensees' Spectrum Holdings.*

Under the *Report and Order*, the Site Channels held by other Non-Nextel Control Group licensees in the General Category Channels (Channels 1-150) and in the Upper 200 Channels would move to the forty-six (46) Interleave and sixty-five (65) Lower 80 Channels to be vacated by the NCG. In this EA market, other Non-Nextel Control Group licensees hold thirty-one (31) General Category Site Channels. Other Non-Nextel Control Group licensees do not hold any Site Channels in the Upper 200 Channels.<sup>17</sup> According to the *Report and Order*, these Site Channels would receive comparable facilities and their present geographic "footprint."

7. *Effect of Adoption of Preferred's Improvements.*

If the FCC determines to adopt Preferred's Improvements set forth in the its accompanying Petition for Reconsideration, Channels 1-25 of the General Category EA Authorizations held by Preferred would move to Channels 576-600 of the Upper 200 Channels held by Nextel, and available to be vacated, on an EA market wide Clean 1:1 basis. Preferred's remaining fifty (50) General Category EA Channels would move to Channels 601-650 of the former NPSPAC Channels on an EA market wide Clean 1:1 basis.

Under Preferred's Improvements, AirPeak would have the option of moving its fifteen (15) Lower 80 EA Channels to either (1) the 1.9 GHz band or (2) Channels 561-575 of the Upper 200 Channels held by Nextel, and available to be vacated, on an EA market wide Clean 1:1 basis. Since AirPeak complies with the condition set forth for moving its Site Channels to the new Cellular Block on an EA market wide, Clean 1:1 basis, it would have the election to move its fifty (50) Site Channels in this EA market

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<sup>16</sup> See *Report and Order*, at ¶¶ 321-322.

<sup>17</sup> These figures are based upon the Commission's nationwide 800 MHz Private Land Mobile radio database downloaded by Concepts To Operations, Inc., a RF Engineering and System Design firm headquartered in Annapolis, Maryland ("CTO"). CTO summarized the license database in the Non-Nextel Site Licenses Spreadsheet attached hereto as **Schedule 3** hereto. CTO has acted as a consulting firm to Preferred in this proceeding.

either to (1) the 1.9 GHz band or (2) Channels 511-560 of the Upper 200 Channels held by Nextel, and available to be vacated, on a MHz/Pops Equivalent basis.

Under such approach, Nextel would move its seventy-five (75) General Category EA Channels to the former NPSPAC Channels on an EA market wide Clean 1:1 basis. If AirPeak elects to move its sixty-five (65) Lower 80 EA and Site Channels to the Upper 200 Channels held by Nextel, and available to be vacated, Nextel would hold sixty-five (65) fewer Channels within the Upper 200 Channels. Nextel therefore would retain seventy-five (75) additional Channels within the Upper 200 Channels than it would under the *Report and Order*.

Under Preferred's Improvements, both Nextel's sixty-five (65) Upper 200 and Lower 80 EA Channels, and its remaining five (5) General Category EA Channels would move to the 1.9 GHz band on an EA market wide Clean 1:1 basis. Its General Category and B/ILT Site Channels would move to the 1.9 GHz band on a MHz/Pops Equivalent basis. Nextel therefore would move such Site Channels to the 1.9 GHz band for thirty (30) Channels in the 1.9 GHz band on an EA market wide and Clean basis. Nextel therefore would hold one hundred sixty-five (165) Channels, or 8.25 MHz, rather than the nationwide "running average" of 4.5 MHz of such 1.9 GHz band spectrum on an EA market wide and Clean basis as replacement spectrum for its vacated 800 MHz band spectrum.

Under such approach, in this EA market the FCC would award the remaining thirty-five (35) Channels or 1.75 MHz of 1.9 GHz band spectrum by a private sale or other means. However, unlike under the *Report and Order*, Preferred's Improvements would expand the eligibility to participate in the allocation of such 1.9 GHz band spectrum to the entire class of General Category and Lower 80 EA licensees whose EA- and Site-Licensed Spectrum was moved and modified in this proceeding. Licensees within such class who would forego reimbursement of their own relocation costs, such as Nextel Partners apparently is willing to do, would be entitled to receive an allocation of 1.9 GHz band spectrum on an EA market wide and Clean basis. Preferred already has indicated in several previous filings that it would be willing to forego reimbursement of its relocation costs in exchange for an allocation of 1.9 GHz band spectrum in the EA markets in which it holds EA Authorizations. Absent AirPeak's or another Non-Nextel Control Group EA licensee's foregoing reimbursement of its relocation costs, Preferred would seek an allocation of the thirty-five (35) Channels or 1.75 MHz of 1.9 GHz band spectrum in this EA market. Such award of 1.9 GHz band spectrum would not violate the otherwise mandatorily competitive bidding provisions of Section 309(j) since the Commission has the authority under Section 309(j)(6)(E) to avoid mutual exclusivity and would not violate the FCC's statutory mandates to maintain regulatory parity and promote competition.

#### 8. Conclusion.

Under the *Report and Order's* approach, the NCG increases its published Total Spectrum figure, its MHz/Pops Equivalent and its EA Wide Spectrum in this EA

market increases.<sup>18</sup> With Nextel's vacating one hundred forty (140) channels in the Upper 200 Channels in the new Cellular Block, the Nextel Control Group would hold three hundred eighty (380) total and MHz/Pops Equivalent 800 MHz and 1.9 GHz band channels (19 MHz) as compared to the three hundred and seventy-one (371) published Total, and three hundred sixty-eight (368) MHz/Pops Equivalent channels it presently holds. According to the *Report and Order*, the value of the 800 MHz and 1.9 GHz band spectrum the Nextel Control Group would receive in this EA market would exceed the value of the 800 MHz band spectrum it would vacate by \$13,852,066 (the value of the spectrum Nextel would receive would be determined by multiplying 2,311,567 Pops (2003 figure) by (a) 13.5 MHz of 800 MHz and 1.9 GHz Band spectrum; the resulting figure of 31,206,155 is then multiplied by (b) \$1.70 per MHz/Pop producing a figure of \$53,050,463; the value of the spectrum Nextel would vacate would be determined by multiplying the Pops figure by (a) 4.4 MHz of 800 MHz Band spectrum (Interleave Channels) and (b) 7 MHz of 800 MHz Band spectrum<sup>19</sup>; the resulting figures of (a) 10,170,882 and (b) 16,180,969 are then multiplied respectively by (a) \$1.4875 per MHz/Pop and (b) \$1.70 per MHz/Pop producing a figure of \$42,636,834; the difference between \$53,050,463 and \$42,636,834, or \$10,413,629 would be the amount of Nextel's spectrum enhancement in this EA market.

The Non-Nextel EA and Cellular-Architecture System Licensees in this EA market experience an increase in their respective MHz/Pops Equivalent Channels. Preferred's and AirPeak's Clean Spectrum, respectively, increases from sixty (60) (3 MHz) to seventy-five (75) (3.75 MHz) Channels and from (52) (2.60 MHz) Channels to sixty-five (65) (3.25 MHz) Channels. Since their EA-Licensed and Site-Licensed Spectrum moves on a Total, rather MHz/Pops Equivalent Channels basis, these Licensees' Total Channels remain unchanged.

NEXTEL AFTER REBANDING					Airpeak/PCSI
	60	100%	3.0	60	140
	120	100%	6.0	120	0
	200	100%	10.0	200	0
	380	100%	19.0	380	0

<sup>18</sup> In addition to the 800 MHz and 1.9 GHz Spectrum Nextel is to receive FCC amended its rules so that Nextel could use its 900 MHz Band Spectrum holdings to offer CMRS. Moreover, the Commission's amendment permitted other licensees holding such Spectrum to sell or otherwise assign their respective holdings to Nextel for CMRS use. See *Report and Order*, at ¶ 6. According to Nextel's published figures, on a nationwide "running average" basis Nextel's Total, MHz/Pops Equivalent and EA Wide Spectrum therefore would increase by approximately seventy-two (72) channels, or 3.6 MHz.

<sup>19</sup> These figures would include the eighty-eight (88) Clean or MHz/Pops Equivalent Interleaved Channels' spectrum (Lower 80 and BILT Channels) and the one hundred forty (140) EA market wide Clean Upper 200 Channels to be vacated by Nextel.

**NEXTEL BEFORE AND AFTER PICTURE**

	371	380
	18.4	19.0
	16.5	19.0

**PREFERRED & AIRPEAK BEFORE AND AFTER PICTURE**

	140	140
	7.0	7.0
	4.5	7.0

**NEXTEL AFTER REBANDING—ADOPTION OF IMPROVEMENTS**

	135	100%	6.75	135
	45	100%	2.25	45
	165	100%	8.25	165
	345	100%	17.25	375

**Airpeak/PCSI**

65
75
35
175

**NEXTEL BEFORE AND AFTER PICTURE**

	371	345
	18.55	17.25
	16.5	17.25

**PREFERRED & AIRPEAK BEFORE AND AFTER PICTURE**

	140	175
	7.0	8.75
	4.5	8.75

b. Spectrum Holdings in the Washington-Baltimore, D.C.-Maryland, Virginia-West Virginia-Pennsylvania EA Market.

As set forth in the Chart immediately below, Nextel holds fifty (50) General Category EA-Licensed frequencies covering an average of 75.85% of the Washington-Baltimore, D.C.-Maryland-Virginia-West Virginia-Pennsylvania EA market's total population, or the equivalent of thirty-eight (38) channels. Likewise, due to its eighty (80) Lower 80 EA frequencies covering an average of 99.74% of the EA market's total population, Nextel would hold the equivalent of eighty (80) Channels of MHz/Pops Equivalent Spectrum. Nextel holds thirty-three (33) Business Category Channels in this EA market. Pursuant to the Commission's decision allowing SMR licensees to purchase such Channels and convert them to CMRS, these Channels would be included. Due to these frequencies' covering an average of 54.00% of the total population, Nextel would hold the equivalent of eighteen (18) Channels of MHz/Pops Equivalent Spectrum.

**MARKET BEA013 WASHINGTON-BALTIMORE, DC-MD-VA-WV-PA EA MARKET**

**NEXTEL CHANNELS SUMMARY**

	50	75.85%	38	50
	73	50.00%	36	
	80	99.74%	80	80
	0	0.00%	0	
	33	54.00%	18	
	0	0.00%	0	
	<b>236</b>		<b>172</b>	<b>130</b>
	<b>11.80</b>		<b>8.60</b>	<b>6.50</b>

**PCSI**

	100
	<b>100</b>
	<b>5.00</b>

	200	99.72%	199	200
	0		0	
	<b>200</b>		<b>199</b>	<b>200</b>
	<b>10.00</b>		<b>9.99</b>	<b>10.00</b>

	0.0
	<b>0</b>
	<b>0.00</b>

	<b>436</b>		<b>371</b>	<b>330</b>
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	<b>0</b>
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	<b>21.80</b>		<b>18.55</b>	<b>16.50</b>
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	<b>5.00</b>
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	355	17.75
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1. Report and Order's Movement Methodology: (a) move the Nextel Control Group's General Category EA- and Site-Licensed Spectrum to the new

*Cellular Block on an EA market wide Clean 1:1 basis; (b) credit Nextel with a nationwide "running average" of the General Category, Interleave and Lower 80 Channels vacated by it, Nextel Partners and licensees which have executed a management or purchase option agreement with it and modify such spectrum by reassigning to Nextel 4.5 MHz of 1.9 GHz band spectrum; (c) move the Non-NCG's EA and Cellular-architecture Systems Site Licensees' EA-Licensed Spectrum to the new Cellular Block on an EA market wide, Clean 1:1 basis; however such Licensees' Site-Licensed Spectrum would move to the new Cellular Block on such basis only if (1) it is located in an EA market in which such Licensee holds an EA Authorization and (2) the Non-Nextel Control Group EA or Cellular-architecture System Site Licensee is using such Site-Licensed Spectrum as part of a Cellular-architecture System as of the date of the publication of the Report and Order in the Federal Register.*

Due to the presence of site-specific incumbents and EA Licensees, the Nextel Control Group holds one hundred seventy-two (172) MHz/Pops Equivalent Lower 230 Channels. Upon their movement under the *Report and Order*, the NCG would be allocated two hundred thirty-six (236) Channels on a Clean basis, a net gain of sixty-four (64) MHz/Pops Equivalent Channels. As noted in Preferred's Ex Parte Presentation filed on March 2, 2004, this result appears to belie the oft-repeated argument by the Consensus Parties that their Proposal involves only a "kHz-for-kHz exchange" or "replacement spectrum."<sup>20</sup> As noted above, under the *Report and Order*, this result will hold true in a majority of the 175 EA markets.

Since the *Report and Order* moves spectrum on a Total, rather than upon a MHz/Pops Equivalent basis, it moves one hundred twenty (120) (6 MHz) of the NCG's one hundred and twenty three (123) General Category EA- and Site-Licensed Channels to the former NPSPAC Channels. The NCG's remaining three (3) General Category and its one hundred thirteen (113) B/ILT and Lower 80 Channels (5.80 MHz) would be modified by the Commission's reassigning to Nextel an identical number of frequencies in the 1.9 GHz band as part of the FCC's exclusive allocation to Nextel of a nationwide 10 MHz license in that frequency band. As noted above, this result will hold true in a majority of the EA markets.<sup>21</sup>

## *2. Allocation of 1.9 GHz Band Spectrum Exclusively to Nextel.*

Pursuant to the *Report and Order*, the FCC therefore allocates Nextel 5.80 MHz of 1.9 GHz band spectrum solely as the result of its 800 MHz band movement methodology, not as Nextel and the Consensus Parties repeatedly insisted in their respective filings, due to Nextel's returning its unrelated 700 MHz Guard Band holdings

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<sup>20</sup> See n. 4 *supra*. Interestingly enough, in this EA market, Preferred's MHz/Pops Equivalent Spectrum figure of 18.55 MHz exceeds Nextel's published Total Spectrum figure of 17.75 MHz.

<sup>21</sup> See n. 5 *supra*.

and promising to pay the total 800 MHz band relocation costs and pro rata share of UTAM and all of the BAS licensee relocation costs in the 1.9 GHz band.<sup>22</sup> The *Report and Order*'s sale of the remaining portion (4.20 MHz) of the 1.9 GHz band spectrum in exchange for (a) Nextel's 700 MHz Guard Band holdings unrelated to any reorganization of the 800 MHz band; (b) secured promise to pay the total 800 MHz band relocation costs; and (c) promise to pay its pro rata share of UTAM and all of the BAS licensee relocation costs in the 1.9 GHz band apparently was believed necessary by the Commission to avoid (1) connecting the award of 1.9 GHz band to the movement and modification of the 800 MHz EA- and Site-Licensed Spectrum of General Category and Lower 80 EA licensees (2) triggering the otherwise mandatory competitive bidding provisions of Section 309(j) by providing a basis for the FCC's limiting the participation in the allocation of the 1.9 GHz band spectrum to only Nextel.

Pursuant to its Section 316 modification authority, in this EA market the FCC would allocate 5.80 MHz of the 1.9 GHz band spectrum to Nextel to replace that company's already-existing 800 MHz band spectrum. As noted above, the award of such 1.9 GHz band spectrum therefore clearly would not involve the issuance of an "initial" license by the Commission implicating the competitive bidding provisions of Section 309(j).<sup>23</sup> Under Sections 316, 301, 303 and 309(j)(6)(E), the Commission maintains in the *Report and Order* that it has the discretion to determine that it better serves the public interest to allow Nextel to purchase the remaining 4.20 MHz of 1.9 GHz band spectrum free from the filing of competing license applications.<sup>24</sup> While this position appears meritorious if the FCC were allocating this remaining 1.9 GHz band spectrum to the class of licensees whose spectrum holdings were being modified and moved—General Category and Lower 80 EA licensees, it clearly violates the Commission's statutory mandates under the to maintain regulatory parity and promote competition<sup>25</sup> and the competitive bidding provisions of Section 309(j)<sup>26</sup> by restricting participation in such allocation to a single entity within such class of licensees.<sup>27</sup>

### 3. *Effect of Report and Order Upon Nextel's Total and Clean Spectrum.*

In the Washington-Baltimore, D.C.-Maryland-Virginia-West Virginia-Pennsylvania EA market, Nextel considerably increases its Total Published Spectrum from 17.75 MHz to 26.0 MHz, its MHz/Pops Equivalent Spectrum from 18.55 MHz to 26.0 MHz, and its EA Wide Spectrum from 16.50 MHz to 26.0 MHz.<sup>28</sup> These spectrum

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<sup>22</sup> See n. 6 *supra*.

<sup>23</sup> See n. 7 *supra*.

<sup>24</sup> See n. 8 *supra*.

<sup>25</sup> See n. 9 *supra*.

<sup>26</sup> See n. 10 *supra*.

<sup>27</sup> See n. 11 *supra*.

<sup>28</sup> With the movement of Preferred's EA-Licensed Spectrum into the one hundred (100) Upper 200 Channels to be vacated by Nextel, its Total, Clean or MHz/Pops Equivalent and Cellular Spectrum set forth immediately above would be reduced by 5.0 MHz.

increases occur because the *Report and Order's* (a) 800 MHz band movement methodology discussed immediately above and (b) the exclusive allocation to Nextel of 10 MHz of 1.9 GHz band spectrum.

4. *Increase in Value of Nextel's Spectrum Holdings (800 MHz and 1.9 GHz Band Spectrum).*

According to the Report and Order, the present average fair market value of Nextel's 800 MHz band spectrum to be exchanged as part of the Consensus Parties Proposal's movement methodology is \$1.61 MHz/Pop.<sup>29</sup> The FCC further determined that the present fair market value of the 800 MHz and 1.9 GHz band spectrum Nextel would receive in exchange therefor would be \$1.70 MHz/Pop.<sup>30</sup>

Applying these figures to the Washington-Baltimore, D.C.-Maryland-Virginia-West Virginia-Pennsylvania EA market, the present value of the Nextel Control Group's 800 MHz band spectrum to be exchanged under the *Report and Order* would be determined by multiplying Nextel's one hundred seventy-two (172) Channels, or 8.60 MHz/Pops Equivalent Spectrum, by the EA market's total population of 8,400,923 (2003 Pops) and then multiplying the resulting figure of 72,247,938 by \$1.61 MHz/Pop. The resulting figure of \$116,319,180 would be the present value of the 800 MHz band spectrum Nextel would exchange in this EA market under the *Report and Order*. However, since under the *Report and Order's* movement methodology, the NCG's EA- and Site-Licensed Spectrum moves on a Total Spectrum 1:1 basis, rather than upon a MHz/Pops Equivalent basis, the NCG would receive a total of two hundred thirty-six (236) Clean 800 MHz (120 Channels in the former NPSPAC Channels) and 1.9 GHz band Channels (116 such Channels), or 11.80 MHz of such Spectrum, in exchange therefor. Nextel would receive an additional eighty-four (84) Clean 1.9 GHz band Channels, or 4.20 MHz of such Spectrum, in exchange for its returning its 700 MHz Guard Band spectrum holdings, secured promise to pay the total 800 MHz band relocation costs and promise to pay its pro rata share of UTAM and all of the BAS licensee relocation costs in the 1.9 GHz band.

Under the *Report and Order*, the fair market value of this Spectrum would be determined by multiplying 16 MHz of Clean Spectrum by the EA market's total population of 8,400,923, and then multiplying the resulting figure by \$1.70 MHz/Pop. The resulting figure of \$228,505,106 would be the fair market value of the Clean Spectrum the Nextel Control Group would receive under the *Report and Order*. The \$112,185,926 difference in the fair market values of the spectrum to be exchanged under the *Report and Order* is the amount of the NCG's 800 MHz band spectrum enhancement.

5. *Effect of Report and Order Upon Non-Nextel EA and Cellular-architecture*

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Nextel therefore would hold 21.0 MHz of Total, Clean or MHz/Pops Equivalent and Cellular Spectrum in this EA market.

<sup>29</sup> See n. 13 *supra*.

<sup>30</sup> See n. 14 *supra*.

*Site Licensees' Spectrum Holdings.*

Preferred Communication Systems, Inc. ("Preferred") holds one hundred (100) General Category EA Channels (5 MHz) in this EA market. Due to the presence of site-specific incumbents, Preferred's Channels cover 49.75% of this EA market's total population. Preferred therefore holds fifty (50) MHz/Pops Equivalent Channels.

Under paragraph 163 of the *Report and Order*, Preferred's EA- and Site-Licensed Spectrum would move to the new Cellular Block on an EA market wide, Clean 1:1 basis. As a result, its one hundred (100) channels presumably would move to the Upper 200 Channels in the new Cellular Block beginning with Channel 401 on an EA market wide, Clean 1:1 basis. Nextel would vacate these Channels but retain Channels 501-600 and its 900 MHz band spectrum in this EA market.<sup>31</sup>

Under the *Report and Order*, the value of this 800 MHz band spectrum vacated by Nextel would be determined by multiplying Nextel's one hundred (100) channels (5 MHz) by the EA market's total population of 8,400,923 (2003 Pops) and then multiplying the resulting figure of 42,004,615 by \$1.70 MHz/Pop.<sup>32</sup> The resulting figure of \$71,407,846 would be the present value of the 800 MHz band spectrum in the Upper 200 Channels Nextel would vacate to facilitate the movement of the EA- and Site-Licensed Spectrum held by the Non-Nextel Licensee in this EA market. Thus, even if Nextel vacates its one hundred (100) Channels in the Upper 200 Channels on an EA market Clean 1:1 basis to Preferred, it would realize a \$40,778,080 increase or enhancement of its spectrum holdings in this EA market.

6. *Effect of Report and Order Upon Other 800 MHz Licensees' Spectrum Holdings*

Under the *Report and Order*, the Site Channels held by other Non-Nextel Control Group licensees in the General Category Channels (Channels 1-150) and in the Upper 200 Channels would move to the thirty-three (33) Interleave and eighty (80) Lower 80 Channels to be vacated by the NCG. In this EA market, other Non-Nextel licensees hold one hundred forty-six (146) General Category Site Channels. Other Non-Nextel licensees hold fifty-four (54) Site Channels in the Upper 200 Channels.<sup>33</sup> According to the *Report and Order*, these Site Channels would receive comparable facilities and their present geographic "footprint." A total of two hundred (200) General Category and Upper 200 Site Channels therefore would be moved into one hundred

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<sup>31</sup> See n. 15 *supra*. This conclusion is based upon the assumption that Nextel holds two hundred (200) Clean Channels within the Upper 200 Channels in this EA market. However, according to the Non-Nextel Site License Spreadsheet developed by CTO on Preferred's behalf and attached hereto as **Schedule 3**, Nextel holds only one hundred forty-six (146) Clean Channels in the Upper 200 Channels in the Washington-Baltimore, DC-Maryland-Virginia-West Virginia-Pennsylvania EA market.

<sup>32</sup> See n. 16 *supra*.

<sup>33</sup> See n. 17 *supra*.

thirteen (113) Interleave and Lower 80 Channels to be vacated by Nextel on a geographic "footprint" basis. While Nextel's Lower 80 Channels cover an average of 100% of the EA market's population, its BILT Channels cover an average of only 54% of this EA market's population. If the average geographical "footprint" of the General Category and Upper 200 Site Channels is greater than Nextel's BILT Channels to be vacated, insufficient spectrum would be available to accommodate the movement of the Site Channels held by Non-Nextel licensees in this EA market.<sup>34</sup>

#### 7. *Effect of Adoption of Preferred's Improvements.*

If the FCC determines to adopt Preferred's Improvements set forth in the Overview to this First Request For Clarifications, Channels 1-25 of the General Category EA Authorizations held by Preferred would move to Channels 576-600 of the Upper 200 Channels held by Nextel, and available to be vacated, on an EA market wide Clean 1:1 basis. Preferred's remaining seventy-five (75) General Category EA Channels would move to Channels 601-675 of the former NPSPAC Channels on an EA market wide Clean 1:1 basis.

Under Preferred's Improvements, Nextel would move its forty-five (45) General Category EA Channels to the former NPSPAC Channels on an EA market wide Clean 1:1 basis.

Under such approach, both Nextel's twenty-five (25) Upper 200 and eighty (80) Lower 80 EA Channels would move to the 1.9 GHz band on an EA market wide Clean 1:1 basis. Its General Category and B/ILT Site Channels would move to the 1.9 GHz band on a MHz/Pops Equivalent basis. Nextel therefore would move such Site Channels to the 1.9 GHz band for fifty-four (54) Channels in the 1.9 GHz band on an EA market wide and Clean basis. Nextel therefore would hold one hundred sixty-four (164) Channels, or 8.2 MHz, rather than the nationwide "running average" of 4.5 MHz of such 1.9 GHz band spectrum on an EA market wide and Clean basis as replacement spectrum for its vacated 800 MHz band spectrum.

Under Preferred's Improvements, in this EA market the FCC would award the remaining thirty-six (36) Channels or 1.8 MHz of 1.9 GHz band spectrum by a private sale or other means. However, unlike under the *Report and Order*, Preferred's Improvements would expand the eligibility to participate in the allocation of such 1.9 GHz band spectrum to the entire class of General Category and Lower 80 EA licensees whose EA- and Site-Licensed Spectrum was moved and modified in this proceeding. Licensees within such class who would forego reimbursement of their own relocation costs, such as Nextel Partners apparently is willing to do, would be entitled to receive an

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<sup>34</sup> See *id*; see also Concepts To Operations, Inc., *Analysis of the Relocation of Non-Nextel SMR, BILT and Public Safety Site Licensees in Channels 1-150 and 401-600 Under the FCC's Report and Order*, attached hereto as **Exhibit A**. To Preferred's knowledge, neither Nextel nor the Consensus Parties ever addressed this issue in their filings in this proceeding.

allocation of 1.9 GHz band spectrum on an EA market wide and Clean basis. Preferred already has indicated in several previous filings that it would be willing to forego reimbursement of its relocation costs in exchange for an allocation of 1.9 GHz band spectrum in the EA markets in which it holds EA Authorizations. Absent AirPeak's or another Non-Nextel Control Group EA licensee's foregoing reimbursement of its relocation costs, Preferred would seek an allocation of the thirty-six (36) Channels or 1.8 MHz of 1.9 GHz band spectrum in this EA market. Such award of 1.9 GHz band spectrum would not violate the otherwise mandatorily competitive bidding provisions of Section 309(j) since the Commission has the authority under Section 309(j)(6)(E) to avoid mutual exclusivity and would not violate the FCC's statutory mandates to maintain regulatory parity and promote competition.

#### 8. Conclusion.

Under the *Report and Order's* approach, while the NCG suffers a decrease in its Total Spectrum in this EA market, its MHz/Pops Equivalent Spectrum in this EA market increases. With Nextel's vacating one hundred (100) channels in the Upper 200 Channels in the new Cellular Block, it would hold four hundred twenty (420) total and MHz/Pops Equivalent 800 MHz and 1.9 GHz band channels (21 MHz) as compared to the three hundred and fifty-five (355) Total Published, and three hundred seventy-one (371) MHz/Pops Equivalent channels it presently holds. According to the *Report and Order*, the value of the 800 MHz and 1.9 GHz band spectrum the Nextel Control Group would receive in this EA market would exceed the value of the 800 MHz band spectrum it would vacate by \$60,161,109 (the value of the spectrum Nextel would receive would be determined by multiplying 8,400,923 Pops (2003 figure) by (a) 13.5 MHz of 800 MHz and 1.9 GHz Band spectrum; the resulting figure of 113,412,461 is then multiplied by (b) \$1.70 per MHz/Pop producing a figure of \$192,801,183; the value of the spectrum Nextel would vacate would be determined by multiplying the Pops figure by (a) 4.9 MHz of 800 MHz Band Spectrum (Interleaved Channels) and (b) 5 MHz of 800 MHz Band Spectrum (Upper 200 Channels)<sup>35</sup>; the resulting figures of (a) 41,164,523 and (b) 42,004,615 then respectively multiplied by (c) \$1.4875 per MHz/Pop (d) \$1.70 per MHz/Pop producing a figure of \$132,640,074; the difference between \$192,801,183 and \$132,640,074, or \$60,161,109.

The Non-Nextel EA licensee in this EA market experiences an increase in their respective MHz/Pops Equivalent Channels. Preferred's Clean Spectrum, respectively, increases from fifty (50) (2.5 MHz) to one hundred (100) (5 MHz) Channels. Since its EA-Licensed Spectrum moves on a Total, rather MHz/Pops Equivalent Channels basis, its number of Total Channels remains unchanged.

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<sup>35</sup> These figures would include both the ninety-eight (98) Clean or MHz/Pops Equivalent Interleaved Channels' Spectrum (Lower 80 and BILT Channels) and the one hundred (100) EA market wide Clean Upper 200 Channels to be vacated by Nextel.

**NEXTEL AFTER  
REBANDING**

	100	100%	5.0	100
	120	100%	6.0	120
	200	100%	10.0	200
	420	100%	21.0	420

**PCSI**

100
0
0
5

**NEXTEL BEFORE AND AFTER PICTURE**

	355	420
	18.55	21.0
	16.5	21.0

**PREFERRED BEFORE AND AFTER PICTURE**

	100	100
	2.50	5.00
	5.00	5.00

**NEXTEL AFTER  
REBANDING—  
IMPROVEMENTS**

	175	100%	8.75	175
	45	100%	1.0	45
	164	100%	7.55	164
	384	100%	17.3	384

**PCSI**

25
75
36
136

**NEXTEL BEFORE AND AFTER PICTURE**

	355	384
	18.55	19.2
	16.5	19.2

**PREFERRED BEFORE AND AFTER PICTURE**

	100	136
	2.50	5.00
	5.00	6.8

a. Spectrum Holdings in the Atlanta, Georgia-Alabama-North Carolina EA Market.

As set forth in the Chart immediately below, Nextel holds twenty-five (25) General Category EA-Licensed frequencies covering an average of 74.27% of the EA market's total population, or the equivalent of nineteen (19) Channels of MHz/Pops Equivalent Spectrum. Likewise, due to its sixty (60) Lower 80 EA frequencies covering an average of 81.59% of the EA market's total population, Nextel would hold the equivalent of forty-nine (49) Channels of MHz/Pops Equivalent Spectrum. Nextel holds nine (9) Business Category Channels in this EA market. Pursuant to the Commission's decision allowing SMR licensees to purchase such Channels and convert them to CMRS, these Channels would be included. Due to these frequencies' covering an average of 45.99% of the total population, Nextel would hold the equivalent of four (4) Channels of MHz/Pops Equivalent Spectrum.

**MARKET BEA040 ATLANTA, GA-AL-NC EA MARKET  
NEXTEL CHANNELS SUMMARY**

<b>NEXTEL CHANNELS SUMMARY</b>				<b>SOUTHERN</b>
	25	74.87%	19	25
	91	25.35%	23	13
	60	81.59%	49	20
	20	77.59%	16	
	9	45.99%	4	93
	0	0.00%	0	
	<b>205</b>		<b>111</b>	<b>251</b>
	<b>10.25</b>		<b>5.55</b>	<b>12.55</b>
	200	91.09%	182	0.0
	0		0	
	<b>200</b>		<b>182</b>	<b>0</b>
	<b>10.00</b>		<b>9.10</b>	<b>0.00</b>
	<b>405</b>		<b>293</b>	<b>251</b>
	<b>21.80</b>		<b>14.65</b>	<b>12.55</b>



methodology. The *Report and Order* therefore would sell 5.75 MHz of the 1.9 GHz band spectrum in this EA market to Nextel in exchange for (a) Nextel's 700 MHz Guard Band holdings unrelated to any reorganization of the 800 MHz band; (b) secured promise to pay the total 800 MHz band relocation costs; and (c) promise to pay its pro rata share of UTAM and all of the BAS licensee relocation costs in the 1.9 GHz band apparently was believed necessary by the Commission to avoid (c) connecting the award of 1.9 GHz band to the movement and modification of the 800 MHz EA- and Site-Licensed Spectrum of General Category and Lower 80 EA licensees (b) triggering the otherwise mandatory competitive bidding provisions of Section 309(j) by providing a basis for the FCC's limiting the participation in the allocation of the 1.9 GHz band spectrum to only Nextel.

Pursuant to its Section 316 modification authority, in this EA market the FCC would allocate 4.25 MHz of 1.9 GHz band spectrum to Nextel to replace that company's already-existing 800 MHz band spectrum. As was the case in the Sacramento and Washington-Baltimore EA markets, the award of such 1.9 GHz band spectrum in this EA would not involve the issuance of an "initial" license by the Commission implicating the competitive bidding provisions of Section 309(j).<sup>38</sup> Under Sections 316, 301, 303 and 309(j)(6)(E), the Commission maintains in the *Report and Order* that it has the discretion to determine that it better serves the public interest to allow Nextel to purchase the 10 MHz of 1.9 GHz band spectrum free from the filing of competing license applications.<sup>39</sup> While this position appears meritorious if the FCC were allocating this remaining 1.9 GHz band spectrum to the class of licensees whose spectrum holdings were being modified and moved—General Category and Lower 80 EA licensees, it clearly violates the Commission's statutory mandates under the to maintain regulatory parity and promote competition<sup>40</sup> and the competitive bidding provisions of Section 309(j)<sup>41</sup> by restricting participation in such allocation to a single entity within such class of licensees.<sup>42</sup>

### 3. *Effect of Report and Order Upon Nextel's Total and Clean Spectrum.*

In the Atlanta, Georgia-Alabama-North Carolina EA market, Nextel considerably increases its Total Published Spectrum from 14.60 MHz to 26.0 MHz, its MHz/Pops Equivalent Spectrum from 14.65 MHz to 26.0 MHz, and its CMRS Cellular Service Eligible Spectrum from 14.25 MHz to 26.0 MHz.<sup>43</sup> These spectrum increases

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<sup>38</sup> See n. 7 *supra*.

<sup>39</sup> See n. 8 *supra*.

<sup>40</sup> See n. 9 *supra*.

<sup>41</sup> See n. 10 *supra*.

<sup>42</sup> See n. 11 *supra*.

<sup>43</sup> With the movement of Southern's EA- and Site-Licensed Spectrum into the one hundred forty (140) Upper 200 Channels to be vacated by Nextel, its Total and MHz/Pops Equivalent Spectrum set forth immediately above would be reduced by 7.00 MHz. Nextel therefore would hold 19.0 MHz of Total, Clean or MHz/Pops Equivalent and Cellular Spectrum in this EA market.

occur because the *Report and Order's* (a) 800 MHz band movement methodology discussed immediately above and (b) the exclusive allocation to Nextel of 10 MHz of 1.9 GHz band spectrum.

4. *Increase in Value of Nextel's Spectrum Holdings (800 MHz and 1.9 GHz Band Spectrum).*

According to the *Report and Order*, the present average fair market value of Nextel's 800 MHz band spectrum to be exchanged as part of the Consensus Parties Proposal's movement methodology is \$1.61 MHz/Pop.<sup>44</sup> The FCC further determined that the present fair market value of the 800 MHz and 1.9 GHz band spectrum Nextel would receive in exchange therefor would be \$1.70 MHz/Pop.<sup>45</sup>

Applying these figures to the Atlanta, Georgia-Alabama-North Carolina EA market, the present value of the Nextel Control Group's 800 MHz band spectrum to be exchanged under the *Report and Order* would be determined by multiplying Nextel's one hundred eleven (111) Channels, or 5.55 MHz of Clean Spectrum, by the EA market's total population of 5,471,412 (2003 Pops) and then multiplying the resulting figure of 30,366,634 by \$1.61 MHz/Pop. The resulting figure of \$48,889,802 would be the present value of the 800 MHz band spectrum Nextel would exchange in this EA market under the *Report and Order*. However, since under the *Report and Order's* movement methodology, the NCG's EA- and Site-Licensed Spectrum moves on a Total Spectrum 1:1 basis, rather than upon a MHz/Pops Equivalent basis, and the FCC allocates all 10 MHz of 1.9 GHz band spectrum exclusively to Nextel by a private sale, the NCG would receive a total of three hundred twenty (320) Clean 800 MHz (120 Channels in the former NPSPAC Channels) and 1.9 GHz band Channels (200 such Channels), or 16.00 MHz of such Spectrum.

Under the *Report and Order*, the fair market value of this Spectrum would be determined by multiplying 16 MHz of Clean Spectrum by the EA market's total population of 5,471,412, and then multiplying the resulting figure by \$1.70 MHz/Pop. The resulting figure of \$148,822,406 would be the fair market value of the Clean Spectrum the Nextel Control Group would receive under the *Report and Order*. The \$99,932,504 difference in the fair market values of the spectrum to be exchanged under the *Report and Order* is the amount of the NCG's 800 MHz band spectrum enhancement.

5. *Effect of Report and Order Upon Non-Nextel EA and Cellular-Architecture Site Licensees' Spectrum Holdings.*

Southern Communications Services, Inc. ("Southern") holds one hundred twenty-five (125) General Category EA Channels (6.25 MHz) in this EA market. Due to the presence of site-specific incumbents, Southern's Channels cover 63.04% of this EA

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<sup>44</sup> See n. 13 *supra*.

<sup>45</sup> See n. 14 *supra*.

market's total population. Southern therefore holds seventy-nine (79) MHz/Pops Equivalent Channels. Moreover, Southern also holds thirteen (13) General Category Site Channels within the twenty-five (25) General Category EA authorization held by Nextel in this EA market. These Site Channels cover an average of 28.04% of the EA market's population and therefore are equivalent to four (4) Channels of MHz/Pops Equivalent Spectrum. Further, Southern holds twenty (20) Lower 80 EA-Licensed Channels. Due to these frequencies covering an average of 23.45% of the population of this EA market, they are equivalent to five (5) Channels of MHz/Pops Equivalent Spectrum. In addition, Southern holds six (6) Lower 80 Site Channels within the sixty (60) Lower 80 EA Channels held by Nextel in this EA market. Due to these frequencies' covering an average of 12.03% of the total population of this EA market, they are the equivalent of one Channel of Clean or MHz/Pops Equivalent Spectrum. Finally, Southern holds ninety-three (93) BILT and three (3) Upper 200 Channels in this EA market. Since these BILT and Upper 200 Channels respectively cover an average of 28.15% and 2.50% of this EA market's total population, they are the equivalent of twenty-six (26) and one (1) Channel(s) of MHz/Pops Equivalent Spectrum.

Under paragraph 163 of the *Report and Order*, Southern's EA- and Site-Licensed Spectrum generally would move to the new Cellular Block on an EA market wide, Clean 1:1 basis. As a result, two hundred sixty (260) channels presumably would move to the former NPSPAC and Upper 200 Channels in the new Cellular Block on an EA market wide, Clean 1:1 basis.<sup>46</sup> The problem, of course, under the *Report and Order* is that Nextel is allocated the former NPSPAC Channels in every EA market regardless of its relative 800 MHz band spectrum holdings in a particular EA market.

Under the approach suggested above, Southern's two hundred sixty (260) EA- and Site-Licensed Channels would move to the new Cellular Block on an EA market wide, Clean 1:1 basis. One hundred twenty (120) of Southern's Channels would move to the former NPSPAC Channels. Its remaining one hundred forty (140) Channels would move to the Upper 200 Channels to be vacated by Nextel beginning presumably with Channel 404 (Southern's three Upper 200 Channels presumably would be moved to Channels 401-403). Nextel would retain Channels 541-600 and its 900 MHz band spectrum in this EA market.<sup>47</sup> Moreover, under this approach Nextel would be allocated two hundred (200) Channels of 1.9 GHz band spectrum as replacement for its two hundred five (205) EA- and Site-Licensed 800 MHz band spectrum the FCC would move and modify. Such approach would appear clearly preferable to the Commission's *pro*

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<sup>46</sup> However, due to the "insufficient" spectrum in the ESMR portion of the band to replicate the existing channel capacity of both Nextel and Southern in EA markets in Georgia, Alabama, southeastern Mississippi and northern Florida, on its own motion the FCC expanded the ESMR portion of the band in these EA markets by 2.5 MHz to include 813.5-816 MHz/858.5-861 MHz. Having such portion of the band in these EA markets, the FCC then left it up to Nextel and Southern to reach an agreement concerning the apportionment of their respective channels within the expanded ESMR portion of the band. See discussion at pp. 2-3 *supra*.

<sup>47</sup> See n. 15 *supra*.

*rata* allocation set forth in paragraph 168 and n. 444 thereto in the *Report and Order* since it would allocate 1.9 GHz band spectrum as a replacement of Nextel's already existing 800 MHz band spectrum under the FCC's Section 316 modification authority rather than exclusively allocating such spectrum to Nextel by a private sale in contravention of the otherwise mandatory competitive bidding provisions of Section 309(j).<sup>48</sup>

Under the *Report and Order*, the value of this 800 MHz band spectrum vacated by Nextel would be determined by multiplying Nextel's one hundred forty (140) channels (7 MHz) by the EA market's total population of 5,471,412 (2003 Pops) and then multiplying the resulting figure of 38,299,884 by \$1.70 MHz/Pop.<sup>49</sup> The resulting figure of \$65,109,803 would be the present value of the 800 MHz band spectrum in the Upper 200 Channels Nextel would vacate to facilitate the movement of the EA- and Site-Licensed Spectrum held by the Non-Nextel Licensee in this EA market. Thus, even in this EA market, if Nextel vacates its one hundred forty (140) Channels in the Upper 200 Channels on an EA market Clean 1:1 basis to Southern, it would realize a \$34,822,701 increase or enhancement of its spectrum holdings.

#### 6. *Effect of Report and Order Upon Other 800 MHz Licensees' Spectrum Holdings*

Under the *Report and Order*, the Site Channels held by other Non-Nextel Control Group licensees in the General Category Channels (Channels 1-150) and in the Upper 200 Channels would move to the thirty-three (33) Interleave and eighty (80) Lower 80 Channels to be vacated by the NCG. In this EA market, other Non-Nextel licensees hold forty-six (46) General Category Site Channels. Other Non-Nextel licensees hold fifty-four (54) Site Channels in the Upper 200 Channels.<sup>50</sup> According to the *Report and Order*, these Site Channels would receive comparable facilities and their present geographic "footprint." A total of one hundred (100) General Category and Upper 200 Site Channels therefore would be moved into sixty-nine (69) Interleave and Lower 80 Channels to be vacated by Nextel on a geographic "footprint" basis. While Nextel's Lower 80 Channels cover an average of 81.59% of the EA market's population, its BILT Channels cover an average of only 45.99% of this EA market's population. If the average "footprint" of the General Category and Upper 200 Site Channels is greater than Nextel's BILT Channels to be vacated, insufficient spectrum would be available to

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<sup>48</sup> See *Verizon Wireless White Paper*, at pp. 4-11. Under the FCC's *pro rata* distribution approach, Southern would be allocated 33.72% of the 320 Channels in the ESMR portion of the 800 MHz band or 108 Channels since it holds 145 of the 430 total EA Channels in the Atlanta EA market. Southern therefore would lose 152 total Channels. Nextel would be allocated 220 Channels, or 66.28% of the 320 Channels in the ESMR portion of the 800 MHz band. Nextel therefore would lose 185 total Channels. Of course, Nextel exclusively would be allocated 200 Channels in the 1.9 GHz band by a private sale. Nextel's total Channels therefore would increase by 15 Channels.

<sup>49</sup> See n. 26 *supra*.

<sup>50</sup> See n. 17 *supra*.

accommodate the movement of the Site Channels held by Non-Nextel licensees in this EA market.<sup>51</sup>

### 7. *Effect of Adoption of Preferred's Improvements.*

If the FCC determines to adopt Preferred's Improvements set forth in the Overview to this First Request For Clarifications, Channels 1-25 of the General Category EA Authorizations held by Southern would move to Channels 576-600 of the Upper 200 Channels held by Nextel, and available to be vacated, on an EA market wide Clean 1:1 basis. Southern's remaining one hundred (100) General Category EA Channels would move to Channels 601-700 of the former NPSPAC Channels on an EA market wide Clean 1:1 basis.

Under Preferred's Improvements, Nextel would move twenty (20) of its twenty-five (25) General Category EA Channels to the former NPSPAC Channels on an EA market wide Clean 1:1 basis.

Under such approach, Nextel's five (5) remaining General Category EA, one hundred eight (108) Upper 200 and sixty (60) Lower 80 EA Channels would move to the 1.9 GHz band on an EA market wide Clean 1:1 basis. Its General Category and B/ILT Site Channels would move to the 1.9 GHz band on a MHz/Pops Equivalent basis. Nextel therefore would move such Site Channels to the 1.9 GHz band for forty-one (41) Channels in the 1.9 GHz band on an EA market wide and Clean basis. Nextel therefore would hold two hundred fourteen (214) Channels, or 10.70 MHz, rather than the nationwide "running average" of 4.5 MHz of such 1.9 GHz band spectrum on an EA market wide and Clean basis as replacement spectrum for its vacated 800 MHz band spectrum.

Under Preferred's Improvements, in this EA market the FCC would need to allocate an additional fourteen (14) Channels or .70 MHz of 1.9 GHz band spectrum to Nextel. Due to the unique licensing situation in Southern's core markets (Georgia, Alabama, southeast Mississippi and northern Florida), little or no "excess" 1.9 GHz band spectrum remains after replacing Nextel's or Nextel Partners' vacated 800 MHz band spectrum. In these EA markets, the Commission clearly has the authority to allocate 1.9 GHz band spectrum under Section 316 since it is largely reassigning frequencies for already existing 800 MHz band spectrum.

### 8. *Conclusion.*

Under the *Report and Order's* approach, the NCG experiences an increase in its both its Total Spectrum and MHz/Pops Equivalent or Clean Spectrum in this EA

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<sup>51</sup> See *id.* If Southern's General Category and Lower 80 EA- and Site-Licensed Channels and BILT Channels move into the new Cellular Block, it would vacate 93 Interleave Channels thereby freeing up sufficient spectrum to accommodate the General Category and Upper 200 Site Channels of other licensees.

market. With Nextel's vacating one hundred eight (108) channels in the Upper 200 Channels in the new Cellular Block, it would hold four hundred twelve (412) Total and Clean 800 MHz and 1.9 GHz band channels (20.6 MHz) as compared to its present four hundred five (405) Total, and two hundred ninety-three (293) MHz/Pops Equivalent channels it presently holds. According to the *Report and Order*, the value of the 800 MHz and 1.9 GHz band spectrum the Nextel Control Group would receive in this EA market would exceed the value of the 800 MHz band spectrum it would vacate by \$32,380,500 (the value of the spectrum Nextel would receive would be determined by multiplying 5,471,412 Pops (2003 figure) by (a) 13.5 MHz of 800 MHz and 1.9 GHz Band spectrum; the resulting figure of 73,864,062 is then multiplied by (b) \$1.70 per MHz/Pop producing a figure of \$125,568,905; the value of the spectrum Nextel would vacate would be determined by multiplying the Pops figure by (c) 3.45 MHz of 800 MHz Band Spectrum (Interleaved Channels) and (d) 7 MHz of 800 MHz Band Spectrum (Upper 200 Channels)<sup>52</sup>; the resulting figures of (a) 18,876,371 and (b) 38,299,884 are then multiplied respectively by (e) \$1.4875 per MHz/Pop and (f) \$1.70 per MHz/Pop producing a figure of \$93,188,405; the difference between \$125,568,905 and \$93,188,405, or \$32,380,500 would be the amount of Nextel's spectrum enhancement in this EA market.

By contrast, the Non-Nextel EA Licensee in this EA market experiences a decrease in both its MHz/Pops Equivalent Channels and Total Channels. Southern's Clean Spectrum decreases from one hundred nine (109) (5.45 MHz) to one hundred eight (108) (5.40 MHz) Channels. Its Total Channels decrease from two hundred sixty (260) Channels (13 MHz) to one hundred eight (108) Channels.<sup>53</sup>

Under the *Report and Order's pro rata* allocation approach, Southern would lose one hundred fifty-two (152) Total Channels (7.6 MHz), most of which are BILT Channels currently used by it as an integral part of its system. According to the *Report and Order*, such Spectrum would have a value of \$1.4875 MHz/Pop or \$61,854,313. Arguably, the difference of \$61,854,313 is the amount of Southern's loss in spectrum or spectrum rights that effectively were transferred to the NCG, which received one hundred nineteen (119) additional Channels of Clean Spectrum, or a considerable portion of the one hundred fifty-two (152) such Channels Southern would be denied by the *Report and Order's* impermissible discriminatory movement methodology. Preferred maintains that this uncompensated loss, and spectrum enhancement to the Nextel Control Group,

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<sup>52</sup> These figures would include the sixty-nine (69) Clean or MHz/Pops Equivalent Interleaved Channels' Spectrum (Lower 80 and BILT Channels) and the one hundred forty (140) EA market wide Clean Upper 200 Channels to be vacated by Nextel.

<sup>53</sup> Under the preliminary agreement reached between Southern and Nextel, Southern would hold one hundred eight (108) Channels in an expanded Cellular Block extending to 813.5/858.5 MHz. Pursuant to such Agreement, Southern therefore would lose one hundred fifty-two (152) Total Channels (7.6 MHz) in the Atlanta EA market while Nextel would gain seventy-five (75) Total Channels (3.75 MHz).

represents a portion of Nextel's promised contribution of to defray the total relocation costs.<sup>54</sup>

Preferred would maintain that the Report and Order's *pro rata* allocation approach as set forth in paragraph 168 and note 444 violates the Due Process, Equal Protection and Takings Clauses of the Fifth Amendment to the U.S. Constitution<sup>55</sup> and the FCC's statutory mandate to maintain regulatory parity and promote competition.<sup>56</sup>

Moreover, it would appear that the proposed agreement set forth between Southern and Nextel described in paragraph 168 of the *Report and Order* is mathematically unworkable due to the number of Non-Nextel and Non-Southern SMR and B/ILT Site licenses in Channels 1-150 and 401-600.<sup>57</sup> As noted above, the proposed agreement would expand the ESMR portion of the band in Southern's core markets (Georgia, Alabama, Southeast Mississippi and Northern Florida) by one hundred (100) paired channels or 2.5 MHz from Channel 401 or 816.0125/861.0125 MHz downward to Channel 301 or 813.5125/858.5125 MHz. Pursuant to such proposed agreement, Southern would be allocated these one hundred (100) paired channels and the forty (40) paired channels beginning with Channel 401 within the Upper 200 Channels.

As noted above, Nextel holds only sixty (60) Lower 80 EA Channels and nine (9) B/ILT Channels in this EA market. Non-Nextel and Non-Southern SMR and B/ILT Site licensees hold one hundred (100) channels in Channels 1-150 and 401-600 that need to be moved into the Lower 80 EA and B/ILT Site Channels Nextel would vacate. Given

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<sup>54</sup> This argument also clearly would apply in any EA market with respect to which the Transition Administrator and the Commission apply the *pro rata* distribution approach set forth in footnote 444 of the *Report and Order* to reduce the total number of channels held by a Non-Nextel EA or Cellular-Architecture System licensee while increasing both the Total Spectrum and Clean or MHz/Pops Equivalent Spectrum held by the Nextel Control Group in that market.

<sup>55</sup> See Southern Communications Services, Inc., Ex Parte Presentation, June 23, 2004, p. 11 & n. 46; Preferred Communication Systems, Inc., Ex Parte Presentation, March 2, 2004, pp.41-43 & n. 97; Preferred Communication Systems, Inc., Ex Parte Presentation, April 23, 2004, p. 5.

<sup>56</sup> See Southern Communications Services, Inc., Ex Parte Presentation, June 23, 2004, pp. 12 & n. 48; pp. 13-16; Preferred Communication Systems, Inc., Ex Parte Presentation, March 2, 2004, p. 41 & n. 94; Preferred Communication Systems, Inc., Ex Parte Presentation, April 23, 2004, p. 5-6 & nn. 16-17.

<sup>57</sup> Southern recently recognized this problem in the Atlanta EA market and filed a request for clarification to eliminate the proposed Expansion Band due to lack of spectrum resulting from the movement of Non-Nextel and Non-Southern Site Channels in Channels 1-150 to the Interleave Channels. If the Commission were to move the fifty (50) Non-Nextel and Non-Southern Site Channels in the Upper 200 Channels to the Interleave Channels to accommodate the relocation of Southern's channels, this problem would be further exacerbated. See generally Southern Communications Services, Inc., Ex Parte Presentation, October 8, 2004.

the relatively small contours and population coverage of Nextel's B/ILT Channels in this EA market, it appears unlikely that their geographic "footprint" would accommodate the "footprint" of the Non-Nextel and Non-Southern Site licenses to be relocated. Thus, Nextel likely holds only sixty (60) usable channels to which these one hundred (100) Non-Nextel and Non-Southern Channels would be moved. The approximately forty (40) excess Channels presumably would be moved to Southern's B/ILT Channels thus necessitating moving Southern's Channels from Channels 301-400 to the Upper 200 Channels. Southern therefore would move its Channels upward from Channel 440 to Channel 480 or 816.9875/861.9875 MHz to 817.9875/862.9875 MHz. If Public Safety licensees were to retain their fifteen (15) Channels within Channels 301-400 in this EA market, fifteen (15) additional Southern Channels would be required to be shifted into the Upper 200 Channels moving its Channels upward from Channel 440 to Channel 495 or 816.9875/861.9875 MHz to 818.3875/863.3875 MHz. Nextel would retain the remaining 105 Channels in the Upper 200 Channels or 5.25 MHz.

As discussed above, the problem with shifting Southern's EA- and Site-Licensed Spectrum upward to accommodate this excess Non-Nextel and Non-Southern Site-Licensed Spectrum is that Nextel apparently is unwilling to surrender more than seventy (70) of its Total Channels in the Upper 200 Channels.

**NEXTEL AFTER REBANDING**

	CHANNELS	PERCENT	PERCENT OF TOTAL	PERCENT OF TOTAL
	92	100%	4.6	92
	120	100%	6.0	120
	200	100%	10.0	200
	412	100%	20.6	412

**SOUTHERN**

108
0
0
108

**NEXTEL BEFORE AND AFTER PICTURE**

405	412
14.65	20.6
16.5	20.6

**SOUTHERN BEFORE AND AFTER PICTURE**

260	140
6.1	7.0
12.30	7.0

**NEXTEL AFTER  
REBANDING—  
IMPROVEMENTS**

	89	100%	4.45	92
	0	100%	0.0	0
	214	100%	10.7	208
	303	100%	15.15	303

**OTHERS**

111
120
0
231

**NEXTEL BEFORE AND AFTER PICTURE**

405	303
14.65	15.15
16.5	15.15

**SOUTHERN BEFORE AND AFTER  
PICTURE**

260	231
6.1	11.55
12.30	11.55

**d. Spectrum Holdings in the Puerto Rico EA Market.**

As set forth in the Chart immediately below, Nextel holds twenty-five (25) General Category EA-Licensed frequencies covering an average of 73.59% of the EA market's total population, or the equivalent of eighteen (18) Channels of Clean Spectrum. Likewise, due to its eighty (80) Lower 80 EA frequencies covering an average of 75.85% of the EA market's total population, Nextel would hold the equivalent of sixty-one (61) Channels of Clean Spectrum. Nextel does not hold any Business or Industrial/Land Transportation Category Channels in this EA market.

**MARKET BEA174 PUERTO RICO EA MARKET  
NEXTEL CHANNELS SUMMARY**

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	25	73.59%	18	25	125
	0	0.00%	0		19
	80	75.85%	61	80	
	0	0.00%	0		10
	0	0.00%	0		
	0	0.00%	0		
	<b>105</b>		<b>79</b>	<b>105</b>	<b>154</b>
	<b>5.25</b>		<b>3.95</b>	<b>5.25</b>	<b>7.7</b>
	60	23.61%	14	60	120
	54	23.37%	12.6		16
	<b>113</b>		<b>26.6</b>		<b>146</b>
	<b>5.65</b>		<b>1.33</b>	<b>3.00</b>	<b>7.3</b>
	<b>219</b>		<b>117</b>	<b>165</b>	<b>300</b>
	<b>10.9</b>		<b>5.28</b>	<b>8.25</b>	<b>15</b>

1. *Report and Order's Movement Methodology: (a) move the Nextel Control Group's General Category EA- and Site-Licensed Spectrum to the new Cellular Block on an EA market wide Clean 1:1 basis; (b) credit Nextel with a nationwide "running average" of the General Category, Interleave and Lower 80 Channels vacated by it, Nextel Partners and licensees which have executed a management or purchase option agreement with it and modify such spectrum by reassigning to Nextel 4.5 MHz of 1.9 GHz band spectrum; (c) move the Non-NCG's EA and Cellular-architecture Systems Site Licensees' EA-Licensed Spectrum to the new Cellular Block on an EA market wide, Clean 1:1 basis; however such Licensees' Site-Licensed Spectrum would move to the new Cellular Block on such basis only if (1) it is located in an EA market in which such Licensee holds an EA Authorization and (2) the Non-Nextel Control Group EA or Cellular-architecture System Site Licensee is using such Site-Licensed Spectrum as part of a Cellular-architecture System as of the date of the publication of the Report and Order in the Federal Register.*

Due to the presence of site-specific incumbents, the NCG holds seventy-nine (79) MHz/Pops Equivalent Lower 230 Channels. Upon their movement under the *Report and Order*, the Nextel Control Group would be allocated one hundred five (105) Channels on a Clean basis, a net gain of twenty-six (26) MHz/Pops Equivalent Channels.

As noted in Preferred's Ex Parte Presentation filed on March 2, 2004, this result appears to belie the oft-repeated argument by the Consensus Parties that their Proposal involves only a "kHz-for-kHz exchange" or "replacement spectrum."<sup>58</sup> As noted above, under the *Report and Order*, this result will hold true in a majority of the 175 EA markets.<sup>59</sup>

Since the *Report and Order* moves spectrum on a Total, rather than upon a MHz/Pops Equivalent basis, it moves the NCG's twenty-five (25) General Category EA Channels to the former NPSPAC Channels. Its eighty (80) Lower 80 EA-Licensed Channels would be reassigned an identical number of frequencies in the 1.9 GHz band.

## 2. Allocation of 1.9 GHz Band Spectrum Exclusively to Nextel.

Under the *Report and Order*, therefore, Nextel would be allocated eighty Channels (4 MHz) of 1.9 GHz band spectrum solely as the result of its 800 MHz band movement methodology. Pursuant to the *Report and Order*, the FCC would sell 6 MHz of the 10 MHz of the 1.9 GHz band spectrum in this EA market to Nextel in exchange for (a) Nextel's 700 MHz Guard Band holdings unrelated to any reorganization of the 800 MHz band; (b) secured promise to pay the total 800 MHz band relocation costs; and (c) promise to pay its pro rata share of UTAM and all of the BAS licensee relocation costs in the 1.9 GHz band apparently was believed necessary by the Commission to avoid (1) connecting the award of 1.9 GHz band to the movement and modification of the 800 MHz EA- and Site-Licensed Spectrum of General Category and Lower 80 EA licensees (2) triggering the otherwise mandatory competitive bidding provisions of Section 309(j) by providing a basis for the FCC's limiting the participation in the allocation of the 1.9 GHz band spectrum to only Nextel.

Pursuant to its Section 316 modification authority, in this EA market the FCC would allocate 4 MHz of 1.9 GHz band spectrum to Nextel to replace that company's already-existing 800 MHz band spectrum. The award of such 1.9 GHz band spectrum in this EA therefore clearly would not involve the issuance of an "initial" license by the Commission implicating the competitive bidding provisions of Section 309(j).<sup>60</sup> Under Sections 316, 301, 303 and 309(j)(6)(E), the Commission maintains in the *Report and Order* that it has the discretion to determine that it better serves the public interest to allow Nextel to purchase 6 MHz of the 1.9 GHz band spectrum free from the filing of

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<sup>58</sup> See n. 4 *supra*. Interestingly enough, Nextel did not include a Total Spectrum for any city in Puerto Rico, including San Juan, even though it, Ponce, Mayaguez, Arecibo and Aguadilla are Metropolitan Service Areas ("MSA") markets ranked 91, 147, 169, 202 and 204 by population (1990 Pops). As Preferred noted in its March 2, 2004 Ex Parte Presentation, including such cities in Nextel's Top 320 Markets reduces the Nextel Control Group's nationwide "running" average of 800 MHz band spectrum to 17.57 MHz. See Exhibit E to Preferred Communication Systems, Inc., Ex Parte Presentation, March 2, 2004.

<sup>59</sup> See n. 15 *supra*.

<sup>60</sup> See n. 7 *supra*.

competing license applications.<sup>61</sup> While this position appears meritorious if the FCC were allocating this remaining 1.9 GHz band spectrum to the class of licensees whose spectrum holdings were being modified and moved—General Category and Lower 80 EA licensees, it clearly violates the Commission's statutory mandates under the to maintain regulatory parity and promote competition<sup>62</sup> and the competitive bidding provisions of Section 309(j)<sup>63</sup> by restricting participation in such allocation to a single entity within such class of licensees.<sup>64</sup>

### 3. *Effect of Report and Order Upon Nextel's Total and Clean Spectrum.*

In the Puerto Rico EA market, Nextel considerably increases its Total Spectrum from 10.95 MHz to 16.95 MHz, its MHz/Pops Equivalent Spectrum from 5.28 MHz to 14.88 MHz, and its EA Wide Spectrum from 8.25 MHz to 14.25 MHz.<sup>65</sup> These spectrum increases occur because the *Report and Order's* (a) 800 MHz band movement methodology discussed immediately above and (b) the exclusive allocation to Nextel of 10 MHz of 1.9 GHz band spectrum.

### 4. *Increase in Value of Nextel's Spectrum Holdings (800 MHz and 1.9 GHz Band Spectrum).*

According to the *Report and Order*, the present average fair market value of Nextel's 800 MHz band spectrum to be exchanged as part of the Consensus Parties' movement methodology is \$1.61 MHz/Pop.<sup>66</sup> Following adoption by the Commission of the Consensus Parties' Proposal, the fair market value of the 800 MHz and 1.9 GHz band spectrum Nextel would receive in exchange therefor would be \$1.70 MHz/Pop.<sup>67</sup>

Applying these figures to the Puerto Rico EA market, the present value of the Nextel Control Group's 800 MHz band spectrum to be exchanged under the *Report and Order* would be determined by multiplying Nextel's seventy-nine (79) Channels, or 3.95 MHz of Clean Spectrum, by the EA market's total population of 4,000,000 (2003 Pops) and then multiplying the resulting figure of 13,400,000 by \$1.61 MHz/Pop. The resulting figure of \$25,438,000 would be the present value of the 800 MHz band spectrum Nextel would exchange in this EA market under the *Report and Order*. However, since under the *Report and Order's* movement methodology, the NCG's EA- and Site-Licensed Spectrum moves on a Total Spectrum 1:1 basis, rather than upon a MHz/Pops Equivalent

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<sup>61</sup> See n. 8 *supra*.

<sup>62</sup> See n. 9 *supra*.

<sup>63</sup> See n. 10 *supra*.

<sup>64</sup> See n. 11 *supra*.

<sup>65</sup> With the movement of Preferred's EA- and Site-Licensed Spectrum into the sixteen (16) Upper 200 Channels to be vacated by Nextel, its Total and MHz/Pops Equivalent Spectrum set forth immediately above would be reduced by .80 MHz.

<sup>66</sup> See n. 13 *supra*.

<sup>67</sup> See n. 14 *supra*.