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

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Federal Communications Commission
Bureau / Office Secretary

In the Matter of	)	
Improving Public Safety Communications In the 800 MHz Band	)	WT Docket 02-55
Consolidating the 800 and 900 MHz Industrial/Land Transportation and Business Pool Channels	)	
Amendment of Part 2 of the Commission's Rules Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems	)	ET Docket No. 00-258
Petition For Rule Making of the Wireless Information Networks Forum Concerning the Unlicensed Personal Communications Service	)	RM-9498
Petition For Rule Making of UT Starcom, Inc., Concerning the Unlicensed Personal Communications Service	)	RM-10024
Amendment of Section 2.106 of the Commission's Rules to Allocate Spectrum at 2 GHz for Use by the Mobile Satellite Service	)	ET Docket No. 95-18

To: The Commission

CITY OF BOSTON, ET AL.
PETITION FOR PARTIAL RECONSIDERATION

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Summary

Within its *Second Memorandum Opinion and Order*, the Commission attempted to create a new legislative rule that requires incumbent licenses to bear the cost of representation before the agency to resolve disputes arising out of negotiation of rebanding agreements with Sprint Nextel. The Commission's action is unsupported by a plain reading of the *Rebanding Orders* and, thus, cannot be found to be interpretive. Accordingly, the Commission's actions are contrary to the Administrative Procedures Act and the Unfunded Mandates Reform Act. Additionally, the Commission's statements are in conflict with the Regulatory Flexibility Act Analysis provided by the Commission in support of its rule making within this docket. Upon reconsideration, this Commission's actions should be summarily set aside as contrary to the due process rights afforded Petitioners under law.

The Commission possesses all authority to direct Sprint Nextel to pay the costs arising out of resolution of disputes, without regard to any finding that such costs arose post-mediation, and the Commission's new effort to create an arbitrary line between mediation and post-mediation costs is not supported by the record, equity, or the dictates of the APA.

Accordingly, for the reasons expressed herein and for good cause shown, Petitioners request that the Commission issue a decision consistent with the request made herein.

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PETITION FOR PARTIAL RECONSIDERATION

Petitioners[1] hereby request reconsideration of a single decision rendered in the Commission's Second Memorandum Opinion and Order in Improving Public Safety Communications in the 800 MHz Band, *Second Memorandum Opinion and Order*, WT Docket No. 02-55, FCC 07-102 (rel. May 30, 2007) (*Second Memorandum Opinion and Order*). Specifically, the full Commission threw its

[1] A list of the Petitioners is attached hereto as Exhibit One

weight behind the Wireless Telecommunication Bureau's unsupported assertion that Incumbent Licensees that do not reach agreement with Sprint Nextel during the mandatory mediation period "must bear their own costs associated all further administrative or judicial appeals of band reconfiguration issues, including *de novo* review by PSCID and appeal of any such review before an ALJ."[2] Although the Commission characterizes the Bureau's assertion as an interpretation of an existing rule, it is, in fact, created from whole cloth and, therefore, an improper legislative rulemaking for lack of notice and comment.[3] The Commission's adoption of the Bureau's version of the meaning of the *Report and Order* cannot cure its invalidity.

I. Background

On November 21, 2001, Sprint Nextel acknowledged that its operations at 800 MHz cause interference to existing operations, including public safety operations.[4] Sprint Nextel offered to

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[2] Wireless Telecommunications Bureau Reminds 800 MHz "Wave One" Channel 1-120 Licensees of Band Reconfiguration and Mediation Obligations, *Public Notice*, 20 FCC Rcd 20561 (WTB 2005) ("*Wave 1 Reminder PN*"). In fact, the *Second Memorandum Opinion and Order* seems to go further and remarkably ends Sprint Nextel's obligations to pay transactional costs at the end of mandatory negotiation. This determination shifts the burden of costs for change orders and reconciliation and closing processes, and even audits onto innocent Incumbents.

[3] Petitioners are not requesting that the Commission "change the rules." Rather, Petitioners request that the Commission enforce the clear language of the *Report and Order* and the associated *RegFlex Analysis* and the *Supplemental Order*. Therefore, Petitioners do not seek to have the Commission reconsider its earlier orders. The only decision, a new decision, for which Petitioners seek reconsideration is solely within the *Second Memorandum Opinion and Order*. Therefore, the Commission's statements at footnote 113 of the *Second Memorandum Opinion and Order* are not applicable to the instant matter. This petition is brought in strict accord with the procedural rules codified under 47 C.F.R. §1.106 and this petition is brought as a matter of right without regard to 47 C.F.R. §1.4.

[4] Commonly referred to as Nextel's "White Paper"

reband all incumbent licensees.[5] The Commission largely adopted Sprint Nextel's proposal in Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*Report and Order*), as reconsidered and amplified in Public Safety Communications in the 800 MHz Band, *Supplemental Order and Order on Reconsideration*, WT Docket No. 02-55, 19 FCC Rcd 25120 (2004) (*Supplemental Order*)(collectively, the *Rebanding Orders).* In the *Rebanding Orders,* the Commission afforded Nextel the unique opportunity to accept or reject the terms and conditions set forth in the *Rebanding Orders.* On February 7, 2005, Nextel accepted the terms and conditions of the *Rebanding Orders.*

The terms and conditions of the rebanding, as set forth in *Rebanding Orders* and accepted by Sprint Nextel, are clear. Sprint Nextel is to pay for *all* costs of rebanding the Incumbents to comparable facilities.[6] The *Report and Order* created a single exception to the costs to be paid by Sprint Nextel:

> Any dispute submitted to the Transition Administrator, or other mediator, shall be decided within thirty days after the Transition Administrator has received a submission by one party and a response from the other party. Any party thereafter may seek expedited non-binding arbitration which must be completed within thirty days of the Transition Administrator's, or other mediator's recommended decision or advice. The parties will share the cost of this arbitration.

Report and Order, Paragraph 194. The **only** exception to *all costs* set forth in the *Report and Order* is a share of the cost of a private arbitrator in non-binding arbitration. The *Supplemental Order* does not offer the Bureau's or the Commission's joint, new decision any support either. In fact, in a

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[5] *Id.*

[6] *Report and Order* at ¶ 29, *Separate Statement of Michael K. Powell, Chairman, Supplemental Order* at ¶ 70.

discussion of transactional costs, including the expense of negotiation, mediation and presentation of the matter to the Commission and/or an ALJ, the Commission was called upon to resolve a conflict between the requirement that Sprint Nextel pay all costs of rebanding, including all transactional costs, and a provision in its rules that limited transactional costs to two percent (2%) of the overall reimbursement to the Incumbent. The Commission rejected the cap, citing its determination in the *Report and Order* that Sprint Nextel must absorb all costs of band reconfiguration, including transactional costs. Later in that same paragraph, the Commission discussed the layers of review available for resolution of disputes over cost estimates. Although it could have, the Commission did *not* set forth *any* exception to Sprint Nextel's obligation to pay *all* costs of rebanding to comparable facilities. Clearly, in the*Report and Order* and the *Supplemental Order,* the Commission adopted no exception beyond a share of the cost of a private arbitrator in a non-binding private arbitration. Sprint Nextel voluntarily accepted that obligation.

II. The Shift of the Burden onto the Incumbents by the Bureau or the Commission violates Section 553 of the Administrative Procedure Act.

In spite of Sprint Nextel's agreement to pay *all* costs, in the *Wave 1 Reminder PN*, the Wireless Telecommunications Bureau stated for the first time that Incumbents would be responsible for their own costs of filing and prosecuting requests for *de novo* review of disputed issues and the costs of pursuing any subsequent administrative or judicial review. [1] The *Wave 1 Reminder PN* shifted the burden of the cost of rebanding to Incumbents by creating a new exception to Sprint

[1] *Second Memorandum Opinion and Order*, at ¶ 44, and *Wave 1 Reminder PN.*

Nextel's obligation to pay all of the costs of rebanding. Neither the Bureau nor the Commission gave prior notice or sought comment on the shift of the burden.

The Commission adopted a substantive rule in the *Report and Order* and reiterated it in the *Supplemental Order*. Sprint Nextel agreed to it. Specifically, the Commission ordered – and Sprint Nextel agreed – that Sprint Nextel reimburse each Incumbent for *all* costs associated with rebanding to comparable facilities. In the *Supplemental Order,* the Commission specifically rejected the limitations on reimbursement set forth in Section 90.699(c), 47 C.F.R. § 90.699(c).[2]

In the *Second Memorandum Opinion and Order,* the Commission argues that the shift of the burden is merely an interpretation of the *Report and Order* and the *Supplemental Order*.[3] The Commission argues that the *Report and Order* created some sort of bright line between mediation costs and post-mediation costs. To support its assertion that the bright line was developed in the *Report and Order,* the Commission discusses the *Report and Order*: First, it stated that parties could elect to enter non-binding arbitration after mediation, but that such arbitration costs would be shared by the parties. Second, it warned licensees of the potential costs of litigating rebanding disputes before the Commission, and therefore recommended that parties "consider possibly less burdensome

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[2] *Supplemental Order,* at ¶ 70.

[3] The Commission admits (1) that the allocation of the burden of the transactional costs is a legislative rule and (2) that to change it would also be a legislative rule making process. *Second Memorandum Opinion and Order,* ¶ 49. Truly, the only question is whether the *Rebanding Orders* meant what they said. If so, the shift of the burden attempted by the *Wave 1 Reminder PN* was a legislative rule making which required notice and comment under Section 553 of the Administrative Procedure Act.

and expensive resolution of their disputes through means of alternative dispute resolution." *Second Memorandum Opinion and Order* at paragraph 47, citing *Report and Order*, 19 FCC Rcd 15071-72, ¶ 194. Nothing in the cited sections of the *Report and Order* mentions "post-mediation." In fact, the words "post-mediation" do not even appear together in the *Report and Order*. Rather, the sole exception is stated clearly: if an incumbent elects to submit the matter to non-binding arbitration before a private arbitrator, that incumbent will pay a share of the cost of the arbitrator. The exception makes sense. Proceedings within the established process: negotiation, mediation, FCC, Court of Appeals, are binding and do not require separate payment for the decision maker. The proposed non-binding arbitration would be costly and could be wasteful if the either party chose not to be bound by the private arbitrator's decision. It is no wonder the cost should be shared by the party who chose it. The exception is clear on its face and needed no interpretation.

The Commission's second alleged basis is equally unsupporting. The warning that the potential costs of litigating rebanding disputes before the Commission, including encouragement to use less burdensome and expensive means of resolution, is clear on its face. It absolutely does not give Incumbents notice that the burden of some costs shifted onto the Incumbent.[4]

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[4] Nearly all Petitioners are governmental agencies or small businesses. Accordingly, the FCC's imposition of costs on local governments and private business arising out of the creation of the new legislative rule would result in an unfunded federal mandate, which action is guided by the *Unfunded Mandates Reform Act of 1995*, Public Law 104-4. Since the Commission's decision is inconsistent with Sections 201, 203 and 204 of that Act, codified as 2 U.S.C. §§ 1531, 1533 & 1534, the agency's actions are subject to judicial review under 5 U.S.C. §706(1), *see*, *also*, 2 U.S.C. §1571. Significantly and consistent with the Commission's requirements under Section 553 of the Administrative Procedures Act, the *Unfunded Mandates Reform Act* requires, *e.g.* that agencies "provide notice of the requirements to potentially affected small governments", *see*, 15 U.S.C. §203(a)(1) and "enable officials of affected small governments to provide meaningful and timely input," *see*, 15 U.S.C. §203(a)(2). Accordingly,

The Commission would use these two provisions of the *Report and Order* to undermine the clear statement that "incumbents should incur no costs for band reconfiguration, and ... the sole responsibility for paying all band reconfiguration costs – including the costs of preparing the estimate, negotiating the retuning agreement, and *resolving any disputes* – lies with Nextel."[5] The clear dictate of the Commission – that Sprint Nextel be responsible for *all* costs of rebanding – unless a party chooses a private arbitrator – was adopted through a notice and comment rule making proceeding and voluntarily accepted by Sprint Nextel. Any erosion of the meaning of "all" has a substantial impact on Incumbents, improperly shifting some of the financial burden of rebanding onto them.

The Bureau's shifting of any of the burden of rebanding onto Incumbents is a material, significant departure from the basic principle set forth in the *Rebanding Orders*. This substantive change in its existing rules constitutes a new "legislative rule," subject to the notice and comment requirement of Section 553 of the Administrative Procedure Act, 5 U.S.C. § 553. The Commission argues that the Bureau's pronouncement was a permissible "interpretive rule" and that Section 553 did not require notice and comment. In determining whether an action is a permissible interpretive rule, the courts will look to "whether it spells out a duty fairly encompassed within the regulation

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the Commission's failure to engage in notice and comment rule making in support of its new legislative rule violates the APA via a failure to provide due process rights to affected persons and equal protections afforded to those same persons by the *Unfunded Mandates Reform Act*. Congress' intent is, therefore, entirely clear. Notice and comment processes must be extended under the relevant circumstances.

[5] *Second Memorandum Opinion and Order,* at ¶ 48, citing *Supplemental Order,* 19 FCC Rcd 25129, ¶ 15. Emphasis added.

that the interpretation purports to construe."[6] The Supreme Court instructs that if an agency adopts "a new position *inconsistent with*" an existing regulation, or effects "*a substantive change* in the regulation," notice and comment are required.[7] Shifting the cost burden by creating a brand new exception to a requirement that Sprint Nextel reimburse Incumbents for *all* costs associated with rebanding to comparable facilities must be viewed as a substantive change which substantially affects the rights of Incumbents. This is particularly true when the original rule was adopted with a full discussion of transactional costs and their full reimbursement. *Wave 1 Reminder PN* clearly spelled out a duty not encompassed in the *Rebanding Orders.*

Section 553 of the Administrative Procedure Act requires that general notice of proposed rule making be published in the Federal Register, including the statement of the time, place, and nature of the public rule making proceedings, including a reference to the legal authority under which the rule is proposed and notice of the terms or substance of the proposed rule or a description of the subjects and issues involved. After the notice, interested persons must be afforded an opportunity to participate in the rule making process through submission of written data, views or arguments. After consideration of the relevant matter presented the agency shall incorporate in the rules adopted a concise general statement of the basis and purpose of the rules.

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[6] *Appalachian Power Co., et. al., v. E.P.A.,* 208 F.3d 1015, ____ (D.C. Cir. 2000).

[7] *United States Telecom Association and CenturyTel, Inc. v. F.C.C.*, 13 F. 3d ___ at (12 of the decision) (D.C. Cir. 2005) citing *Shalala v Gurensey Mem'l Hosp.,* 514 U.S. 87, 100 (1995).

In the *Second Memorandum Opinion and Order*, the Commission specifically noted the specific requirement that Sprint Nextel will pay the "full cost of relocation of all 800 MHz band . . . incumbents to their new spectrum assignments with comparable facilities."[8] The word "all" is not ambiguous. It is not modified. To the extent that the *Supplemental Order* amplified the requirement, it states that Nextel will pay the "full cost" of rebanding. Any departure from Sprint Nextel's obligation and agreement to pay all of the full costs of rebanding Incumbents' facilities is a legislative rule making subject to notice and comment. The Commission failed to issue notice and seek comment on the shift of the burden to the Incumbents before issuing the *Wave 1 Reminder PN* or the *Second Memorandum Opinion and Order*. With respect to the shift of that burden, the*Wave 1 Reminder PN* and the *Second Memorandum Opinion and Order* must be reconsidered and rescinded.

III. The Commission Failed to Observe Regulatory Flexibility Act Requirements

Sections 601-612 of the Administrative Procedure Act, 5 U.S.C. §601-612 , requires the Commission to evaluate the impact of its rules on small businesses. In its Regulatory Flexibility Analysis in the *Report and Order* (*RegFlex Analysis)* the Commission specifically stated that it "required Nextel to pay *all band reconfiguration costs* of public safety and other 800 MHz incumbents that result from transition to the new band plan." *Id.* at ¶ 2. (emphasis added) As noted above, the clear wording of the *Report and Order* includes transactional costs among the costs subject to reimbursement, with a single exception. If the Commission intended any exceptions to

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[8] *Report and Order*, 19 FCC Rcd 14977 ¶ 11

"all," it was required to mention the exceptions in the *RegFlex Analysis,* as shifting the cost burden would most assuredly impact public safety entities and small businesses. In fact, the *RegFlex Analysis* states that "[w]e have considered the costs of realignment and the limited resources of small entities, including public safety, in effectuating band realignment. We believe that our decision *will not have a significant impact on small entities in this regard because the cost of 800 MHz realignment will be borne by Nextel* (*i.e.* Nextel will pay relocation costs)." *Id.* at ¶ 28 (emphasis added). And regarding the specific matter related to the negotiation of agreements, the Commission clearly stated that, "we do not foresee *any* adverse impact on small entities. The channel swapping proposals to date have specified that *Nextel will bear the costs thereof.*" *Id* at ¶ 31. (emphasis added) Nothing in the *RegFlex Analysis* provided notice to the Incumbents that the Commission intended to levy post-mediation costs on them. The *Wave 1 Reminder Notice,* and the *Second Memorandum Opinion and Order* substantially shift the burden of cost to the Incumbents. In this respect, they cannot be reconciled with the existing *RegFlex Analysis.*

Therefore, insofar as the *RegFlex Analysis* provided any illumination to Incumbents regarding the content and intent of the Commission's actions taken under the *Report and Order*, the *RegFlex Analysis* may only be read to have provided to Incumbents a further guarantee that all costs of rebanding would be borne by Sprint Nextel. Conversely, the *Second Memorandum Opinion and Order* contradicts the plain reading of the *RegFlex Analysis*, attempting to remove or improperly limit that guarantee in a manner which cannot be supported by the *Rebanding Orders.*

IV. Inclusion of Post-Mediation Costs in "All" Costs is Within the Commission's Authority.

At paragraph 49 of the *Second Memorandum Opinion and Order*, the Commission states that it lacks the statutory authority to require Sprint Nextel to abide by its voluntary agreement to pay all costs of dispute resolution, including post-mediation costs. The Commission's new-found impotence is belied by its own history, codified in the "greenmail" rules. Additionally, the Commission has not explained the "post-mediation" bright line sufficiently. The bright line is particularly perplexing when there is some question as to whether the proceedings, even before the Commission or its ALJ, are actually litigation. Uniquely, the Commission's determination relates not to what an Incumbent will be paid, but to what amount of money the Commission considers to be reasonably necessary to accomplish rebanding to comparable facilities and, therefore, be credited against Sprint Nextel's debt under the *Rebanding Orders*. Even if all of the questions supported the Commission's decision, Sprint Nextel's acceptance of the terms and conditions set forth in the *Rebanding Orders* eviscerates any argument that the Commission has insufficient authority.

A. Sprint Nextel Agreed to the *Rebanding Orders*

On February 7, 2005, Tim Donahue, then, President and Chief Executive Officer of Nextel Communications, Inc., wrote to the Commission to "accept[] the responsibilities, obligations, license modifications, and conditions specified in [the *Report and Order*], as modified by the subsequent errata, public notice, and orders that have been issued by the Commission." Further, Nextel stated, "[w]e take the obligations and responsibilities that come along with this initiative seriously and *will meet all expectations fully*." (Emphasis added). Certainly, one of the expectations that Nextel voluntarily accepted was Incumbents' expectations that Nextel would pay all costs arising under

rebanding. Certainly, no other reading of Nextel's voluntary acceptance of the terms of the *Rebanding Orders* is possible.

Nextel's unconditional agreement to be bound by the *Rebanding Orders* allows the Commission to require Sprint Nextel to pay the costs of the Transition Administrator, the mediator, and *all* of the Incumbents' costs of rebanding, including transactional costs. Nextel and the Commission entered into a public/private contract. Incumbents and the Commission did not. The contract is set forth in the *Rebanding Orders,* which state, in relevant part, that Sprint Nextel will pay *all* costs of resolving disputes with Incumbents. If the Commission had no authority to enter into that agreement, requiring Sprint Nextel to pay post-mediation costs, it had no authority to enter into the agreement at all. That argument was not made, and seems not to lie in this instance, since despite the logical and legal extension of the Commission's recent justification for its challenged decision that would equally apply to whether the Commission had sufficient authority to enter into the totality of the *Rebanding Orders*, the fact remains that if the Commission deems itself possessed with sufficient authority to take all other actions under the *Rebanding Orders*, it must find that is also has sufficient authority to enforce Nextel's voluntary acceptance of the costs of dispute resolution without regard to any pre- or post-mediation status of such disputes.

Truly, the agreement between Sprint Nextel and the Commission is valid and enforceable against both Sprint Nextel and the Commission. The Incumbents, as third party beneficiaries, relied on the clear wording of the *Rebanding Orders* – specifically, that Sprint Nextel would be required to reimburse *all* of the costs of rebanding, including transactional costs, without limitation. Creation

of a new exception to "all" works to the detriment of Incumbents without notice and opportunity to comment and brings into serious question Incumbents' ability to rely on all of the guarantees created under the *Rebanding Orders*.

B. The Greenmail Rules Set the Precedent

The Commission's defense that it has no authority to order any party to pay the costs of litigation is belied by its own greenmail rules. Section 1.935[9] allows parties to agree to pay one another's costs of filing and prosecuting applications before the Commission, including the costs of litigation, in settlement of conflicting applications. Petitioners question how the instant situation is any different. The entire rebanding proceeding is designed to resolve interference caused by Nextel's operations. Sprint Nextel agreed on February 7, 2005, to pay *all* costs of rebanding for each Incumbent. Consistent with the greenmail rules, no Incumbent is entitled to profit from its participation in rebanding but, again, consistent with the greenmail rules, each is entitled to full recovery of its costs incurred in the process, including transactional costs and all costs arising out of resolution of disputes.

Clearly, the Commission recognizes its statutory authority to allow and certify such payments when the action is voluntary and when such costs are intended for the purpose of creating a cost neutral event. The Commission's encouragement of resolution of disputes under Section 1.935 by sanctioning the payment of attorney's fees is wholly consistent with the rebanding rubric. Sprint Nextel voluntarily accepted the obligation to render each incumbent whole for its rebanding,

[9] 47 C.F.R. § 1.935. *See also,* 47 C.F.R. §§73.3524 and 73.3525.

including the payment of *all* costs – including *all* transactional costs. Sprint Nextel's acceptance is no different in effect than an agreement certified under Section 1.935 and the Commission has found that it has sufficient authority to recognize such voluntary agreements. Its authority is equally powerful in the rebanding context.

C. Nature of the Proceedings

The Commission also attempts to characterize the relevant process before it as "litigation," however this characterization is not accurate. The process in which incumbent licensees and Sprint Nextel are engaged is negotiation of a private contract. Within its underlying orders, the Commission repeatedly noted that the parties are engaged in the negotiation of a private contract and that the Commission is not the proper forum for seeking specific performance under the terms of such agreements, or damages arising out of a party's breach of such an agreement. Accordingly, the process before the Commission is only an extension of that negotiation and does not include litigation. Rather, the decisions made by the Commission, either at the Bureau or by an ALJ, are declarations of an official opinion regarding whether the cost estimates and terms conform to the mandates under Docket WT 02-55. They are, in essence and effect, simply opinions. That the Commission is only offering opinion is evinced by the fact that the Commission does not and cannot order an Incumbent to enter into a contract that reflects the opinion of the agency. The Commission may exercise other remedies for the parties' failure to enter into an agreement, but none of those remedies include the Commission's ability to dictate terms under the agreements to which an incumbent licensee will be bound.

D. Not What Gets Paid – What Gets Credited

Indeed, the true nature of the Commission's and the Transition Administrator's opinions is *an application of the dictates of the Rebanding Orders* upon Sprint Nextel to determine whether payments made by Sprint Nextel to incumbents are consistent with the language of the arrangement voluntarily accepted by Sprint Nextel and whether such payments are subject to credit against the amount owed by Sprint Nextel to the U.S. Treasury as a portion of the amount charged Sprint Nextel for the 1.9 GHz spectrum it is to receive. Both the Commission and the TA are making determinations regarding Sprint Nextel's compliance with the specific language of the deal that Sprint Nextel accepted as a condition to its obtaining its coveted 1.9 GHz spectrum. Accordingly, what the Commission is deciding is whether Nextel is living up to its deal – a deal that the Commission published in its *Report and Order* and *Supplemental Order*, and upon which the Commission encouraged incumbent licensees to rely in their collective participation in rebanding. This is clearly an action, not akin to litigation, but akin to enforcement of a consent decree by the overseeing agency.

When one further considers that the nature of the Commission's enforcement actions is to assure that the U.S. Treasury is fully compensated for any amounts not employed as rebanding costs, the Commission's authority is made clearer. Obviously the Commission would find that it has sufficient authority to take whatever actions are deemed appropriate in enforcing the clear and unambiguous terms of a consent decree that included contributions to the U.S. Treasury. That same authority is at work here. The Commission is merely being asked to exercise its authority which it

would not hesitate to do if the amounts to be paid by Sprint Nextel were going to the U.S. Treasury instead of Incumbents.

Thus, the Commission's analysis of its authority within the *Second Memorandum Opinion and Order* is wholly misplaced. It is not relevant whether the Commission obtained specific statutory authority relevant to the subject costs. The Commission's authority to accept and enforce the terms of a settlement or a consent decree is sufficient for the subject purposes. Sprint Nextel admitted to the creation of harmful interference to public safety systems. Pursuant to that admission and the notice and comment rule making that arose following that admission, the Commission issued its *Report and Order* subject to Sprint Nextel's acceptance of the terms under the *Report and Order*. The process bore a striking resemblance to the negotiation of a consent decree between the agency and a violator of the Commission's rules, except part of this settlement provided for the interfering party to create a long term solution to the interference by agreeing to bear all reasonable and prudent costs arising out of rebanding, including without limitation, all costs arising out of the resolution of disputes. In exchange for Spirnt Nextel's agreement to bear the costs of correcting its past problems and for Sprint Nextel's obtaining exclusive use of the 1.9 GHz spectrum, the Commission required that Sprint Nextel assure a cost neutral outcome for affected licensees. That was the deal. After sufficient deliberation, Spritn Nextel consented to the deal.[10] Now, the Commission is stating that

[10] Sprint Nextel argues that requiring it to act in accord with the language of the *Report and Order* would be "unfair."*Second Memorandum Opinion and Order* at ¶ 46. There is no unfairness in compelling Sprint Nextel to perform under the terms of the *Report and Order* into which it voluntarily entered. Sprint Nextel was given the opportunity to accept the deal or reject it. It accepted the deal. Thus, Sprint Nextel is the entity seeking to revisit untimely the *Report and Order*, not Petitioners.

the clear terms of that deal are subject to further negotiation and material revision by Sprint Nextel, without regard to the rights of incumbent licensees that reasonably relied on the Commission's Orders. The Commission's actions are inequitable under contract law, the APA, and basic fairness to affected Incumbents.

E. The American Rule

Finally, the Commission's analysis of the need for specific statutory authority in accord with the "American Rule" is inapplicable to the instant matter. The American Rule is not applicable to areas where one party has voluntarily agreed to reimburse the other. Ergo, the Court in *Turner v. FCC*, 514 F.2d 1354 (D.C. Cir. 1975) while concurrently applying the American Rule to *Turner*, further stated, [i]t is one thing to approve a voluntary agreement in which a litigant has agreed to reimburse his adversary his expenses and attorney's fees in a particular case. It is another for an agency to order a litigant to bear his adversary's expenses." *Id.* at 1356. Petitioners are not requesting that the Commission order Sprint Nextel to bear any costs for which Sprint Nextel, by accepting the terms of the Commission's *Report and Order*, did not volunteer to bear. By Nextel's acceptance of the *Report and Order* and by Sprint Nextel's acceptance of the terms of the *Supplemental Order*, Sprint Nextel evinced its willingness to bear all costs arising out of resolution of disputes. Such acts were voluntary. Accordingly, the Commission's use of the American Rule is wholly misplaced. There does not exist any need for specific statutory authority related to the Commission's award of attorney's fees. The Commission is not being asked to award fees. The Commission is being asked to recognize Sprint Nextel's voluntary agreement to bear the costs of such fees.

For the above stated reasons, it is apparent that the Commission possesses all necessary authority to recognize the effect of Sprint Nextel's voluntary act and to enforce the terms of the public/private contract into which Sprint Nextel voluntarily entered. Additionally, absent the Commission's finding of such authority, the Commission would be bound by law to initiate a further rule making to determine whether, given its newly published position in material contrast to the *Report and Order* and the *Supplemental Order*, the imposition upon licensees of the cost of representation before the Commission is in the public interest, convenience and necessity. Certainly, no such publication of this obligation occurred prior to the issuance of the *Second Memorandum Opinion and Order*, thus, the dictates of the APA would demand such a proceeding.

V. The Decision Is Necessarily Arbitrary and Capricious

For reasons that the Commission fails to explain or justify, it has decided that an arbitrary line exists between mediation and post mediation costs of dispute resolution. This new line did not exist under the previous orders. And it is an incorrect line for all reasons stated hereunder and because it does not recognize Incumbents' need to employ legal representation during the time following the execution of a contract, whether for planning or for reconfiguration, to assist licensees in providing advice and counsel relative to performance under the agreements; in participation in reconciliations and closing; in participating and negotiating change notices and amendments; in preparing and filing applications to modify affected licenses; and in representing clients pursuant to any later audit by the Transition Administrator. Each and all of these could create additional disputes subject to further negotiation and perhaps mediation. Until the publication of the *Second Memorandum Opinion and Order*, there was no doubt in any licensee's mind that all such costs,

including additional reasonable and prudent costs associated with such representations and actions, were fully covered by Sprint Nextel. The nature of the Commission's decision is such that it calls into doubt whether these costs will be covered or be deemed "post mediation" and thus, not subject to reimbursement. Accordingly, the Commission's decision does not clarify the parties' responsibilities, but rather casts doubt on much of the process.

But even if the Commission in its *Second Memorandum Opinion and Order* did not intend to reach beyond stating that the costs of legal representation before the agency are not reimbursable by Sprint Nextel, the Commission failed to state any justification for carving out this one area where costs are not included among the "all" costs that Sprint Nextel was to bear. The Commission has not stated why legal costs are appropriately reimbursed for everything related to negotiation and mediation and preparation, but not if the parties are before the Commission. What is different about matters before the agency that make such costs ineligible for reimbursement? Certainly, as proven above, it is not the American Rule. That does not apply. Nor is it the Commission's authority. As shown clearly above, the Commission maintains all necessary authority to enforce the *Report and Order* and *Supplemental Order* as written.

The only logical conclusion is that the Commission does not wish to invest its own resources in providing necessary oversight to the process and seeks to discourage Incumbents from requesting that oversight. Combined with the Commission's desire to move the process along by nearly any means, the Commission's agenda becomes even clearer. But even if the Commission is giving a higher priority to administrative efficiency than to the rights of public safety entities (which it is),

the Commission's decision must be based on some logical application of the facts and circumstances that serve as a foundation for its creation of the new line. No logical support exists for the new line. If the public interest is served by enforcing the terms of the *Report and Order*, then that public interest must be deemed to extend to all of the *Report and Order*, not just the portions that do not increase the agency's responsibility in providing necessary oversight.

The capricious nature of the Commission's decision to create its new arbitrary line should, on reconsideration, be summarily rejected. There is no justification for this new line. There exists no compelling public interest. Certainly the Commission's comment regarding the effect on the amounts to be deposited into the U.S. Treasury[11] does not provide any justification, since the Commission arbitrarily decided that mediation costs are not unfair to the Country's taxpayers, but costs of activity before the Commission are, for reasons that remain wholly unexplained.

In the final analysis, the Commission's decision must be found to be arbitrary and capricious and not the result of reasoned decision making under applicable law and the dictates of the APA. For this reason alone, upon reconsideration the Commission should reverse its decision and return the parties to their previous status as existed prior to the release of the *Second Memorandum Opinion and Order*.

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[11] *Second Memorandum Opinion and Order* at ¶ 50

VI. Equity Demands Grant Of This Petition

Having demonstrated fully above that the Commission's decision within its *Second Memorandum Opinion and Order* is not supportable under a plain reading of the *Report and Order*, the *Supplemental Order*, the *RegFlex Analysis*, the Administrative Procedures Act or the "American Rule", Petitioners now respond to the Commission's statements at paragraph 50 of the *Second Memorandum Opinion and Order*. Therein, the Commission stated, [e]ven if we had the statutory authority to grant Petitioners' request, we conclude that the Commission's prior orders strike the appropriate balance between licensee rebanding costs that must be borne by [Sprint Nextel] and licensee litigation costs that must be borne by the licensee." This statement is without citation to the underlying record. The reason no citation is provided is because none exists. No where in the *Report and Order* does the Commission address striking such a balance or that a balance of this nature was even considered in any context other than non-binding arbitration. Belated application of a self-styled balancing test, without any reference to same within the record, again demonstrates the complete lack of notice regarding this matter. Additionally, upon thorough review of the *Report and Order* and the *Supplemental Order*, the Commission will seek in vain any such balancing of affected parties' interests as it relates to costs. The constant theme in the earlier orders is an assurance that rebanding would be cost neutral to the Incumbent, without regard to a balancing of interest between licensees and Sprint Nextel. The Commission's recent tipping of the scales is, therefore, wholly contrary to its earlier published decisions.

Although Petitioners recognize and agree that the Commission stated encouragement for Sprint Nextel and licensees to resolve disputes without the need for litigation, *Id.*, the Commission's means of encouraging participants in negotiation did not extend to a threat that licensees would be required to bear the cost of representation before the Commission. That language does not exist under the earlier orders. Additionally, Petitioners recognize the Commission's recent statements within Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, FCC 07-92 (rel. May 18, 2007) that relaxed to a small degree the application of the minimum reasonable and prudent standard, intending to further encourage resolution of disputes. However, the Commission's material change of the status of the parties relevant to representation before the Commission does not bestow any benefit on affected licensees and, as stated in earlier comments to the Commission, places licensees in the position of having engaged in good faith negotiations in complete accord with the Commission's orders, only to be forced to bear the costs of representation to seek that which should have been given by Sprint Nextel pursuant to negotiations. This is not equitable, particularly in view of the fact that licensees' participation is mandatory, not voluntary.

Lost in the Commission's analysis is the fact that licensees did not seek this result, do not glean any advantage by this process, and are engaged in this process because they were victims of harmful interference caused by the operation of Sprint Nextel's system. [12] Left with no desirable

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[12] The Commission opted not to employ its statutory authority given under 47 U.S.C. §301 as a remedy to the interference and, instead, determined that the rebanding, pursuant to equitable considerations on behalf of affected Incumbents would be employed to relieve public safety entities of the interference generated by Sprint Nextel's system.

options, licensees have been imposed upon to engage in rebanding their radio systems for the benefit of Sprint Nextel. Yet, despite the obvious fact that rebanding is an unwelcome, mandatory burden on licensees, the Commission would renege on its one clear promise, cost neutrality, and force public safety entities to bear the cost of the Commission's mandated due process procedures. The Commission's statement that its decision will "minimize the burden rebanding imposes on public safety licensees"[13] is either complete folly or evinces a clear lack of appreciation of the results of the agency's newly published decision.

The Commission's depiction of Pilate when it blithely concludes, [w]e expect this clarification to result in more agreements being reached through negotiations and mediation, and to reduce the likelihood of litigation" ignores the cost of such efficiency. The cost is the removal of licensee's appellate rights in accord with the plain language of the earlier orders. The cost is the relative strength of bargaining position previously granted, say, Aurora, Illinois versus the billions of dollars in resources that can be brought to bear by Sprint Nextel. In essence, the Commission is stating, "if we remove a material portion of an incumbent's rights to engage in arms length negotiations, then this thing will move along faster." The Commission is likely correct, but only after it has victimized dozens of affected licensees.

Nor do the Bureau's decisions bear out the Commission's position. For examples, the City of Manassas, Virginia was forced to appear before the Commission to obtain its internal project

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[13] *Second Memorandum Opinion and Order* at ¶ 50

management costs;[14] and Montgomery County, Maryland was compelled to appear before the Bureau to obtain reimbursement of a host of costs, including testing, police officers' salaries, acceptance testing, etc.[15] The Bureau decided that the costs were subject to reimbursement, but only after Sprint Nextel had repeatedly refused to accept those costs. Therefore, how can equity demand that Manassas and Montgomery County pay the cost of asserting those rights which Sprint Nextel attempted to deny them? How can it be found fair or equitable to allow Sprint Nextel to attempt to breach its agreement with the Commission, *i.e.* the *Report and Order*, then cause licensees to give up their goal of a cost neutral outcome while seeking Sprint Nextel's performance under law? And what if the party that is initiating the use of the Commission's processes is Sprint Nextel? Should a public safety licensee be made to pay for Sprint Nextel's recalcitrance? The simple answer is, no equity can reside when a multi-billion dollar corporation is allowed to bully licensees into taking a bad deal or suffer the cost of litigation, a cost that is relatively minor for Sprint Nextel but exacts a material hardship on public safety entities.

Finally, the Commission's statement within the *Second Memorandum Opinion and Order*, that it does not believe that its allowance of Sprint Nextel's breaching of its duty to pay all costs related to resolution of disputes will tip the scale in favor of Sprint Nextel in negotiations, is without any factual basis. The Commission does not state the basis of its belief. It is merely printed within the *Second Memorandum Opinion and Order* without citation to record, experience or facts. And

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[14] In the Matter of Manassas, Virginia and Sprint Nextel, *Memorandum Opinion and Order*, DA 07-1999 (rel. May 4, 2007)

[15] In the Matter of Montgomery County, Maryland and Sprint Nextel, *Memorandum Opinion and Order*, DA 06-2268 (rel. November 3, 2006)

its belief is wrong. The experience of Petitioners in negotiating numerous of these agreements is in stark contrast to the Commission's belief. Since the Commission has not experienced the tenor, strategies, and methods of negotiation employed by Sprint Nextel in its rebanding negotiations, it is, respectfully, ignorant on this topic. Were it not, it would harbor an entirely different and wholly contrary belief. If let stand, the decision that the Commission made within its *Second Memorandum Opinion and Order* will have a material and drastic effect on future negotiations by providing a substantial bullying tactic to Nextel. Accordingly, equity demands that the Commission return licensees to the *status quo* that existed under the *Report and Order* and enforce Sprint Nextel's voluntary promise to pay such costs, upon which Petitioners reasonably relied.

VII. The Commission Has Other Remedies

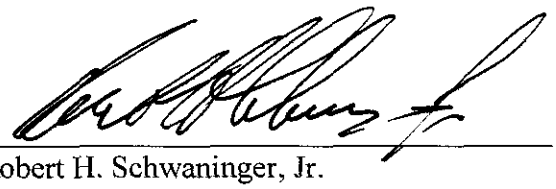
Perhaps one of the most vexing elements of this matter is that the Commission's decision is unnecessary. The rebanding process was moving along without it. A very small percentage of matters have reached the Commission and most of that small amount will be resolved pursuant to the Bureau's orders. Therefore, only a small handful will be decided before an ALJ. These circumstances demonstrate that most participants are acting in good faith, in accord with the Commission's Rules, and are providing necessary efforts to participate in rebanding in accord with the agency's objectives. Said simply, the process was not broken and did not require the Commission's intrusion into the negotiating process.

In those instances where matters are brought to the Commission, the Commission is positioned to invoke its enforcement powers against a licensee that has either not negotiated in good faith or whose appearance before the agency is shown to be an abuse of process. In either instance the Commission has all the enforcement power it requires to discourage such actions by licensees. Removing Incumbents' rights to reimbursement of legal expenses is, therefore, an unnecessary, additional burden placed on licensees that is unwarranted, unsupported by the earlier orders, and inequitable. Indeed, it is the good faith requirement that works best to assure cooperation among participants. Adding to Sprint Nextel's arsenal of negotiation tactics by rewriting the *Report and Order* is not required when viewed among the Commission's other and better remedies.

VIII. Conclusion

For the reasons stated above and for good cause shown, Petitioners seek reconsideration of the Commission's recent denial of reimbursement of the cost of representation before the agency.

Respectfully submitted,



Dated: June 14, 2007

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EXHIBIT ONE

LIST OF PETITIONERS

City of Boston, Massachusetts; State of Indiana; Town of Plainfield, Indiana; Allen County, Indiana; Bartholomew County, Indiana; Benton County, Indiana; Boone County, Indiana; Carroll County, Indiana; Cass County, Indiana; Clay County, Indiana; Clinton County, Indiana; Dearborn County, Indiana; Elkhart County, Indiana; Fountain County, Indiana; Fulton County, Indiana; Hancock County, Indiana; Hendricks County, Indiana; Howard County, Indiana; Huntington County, Indiana; Jasper County, Indiana; Jay County, Indiana; Jefferson County, Indiana; Jenning County, Indiana; Johnson County, Indiana; Kosciusko County, Indiana; Lagrange County, Indiana; Silke Communications, Inc, Oregon; Lake County, Indiana; Laporte County, Indiana; Madison County, Indiana; Marshall County, Indiana; Miami County, Indiana; Boston Public Health Commission, Massachusetts; Monroe County, Indiana; Montgomery County, Indiana; Morgan County, Indiana; Noble County, Indiana; Ohio County, Indiana; Parke County, Indiana; Porter County, Indiana; Putnam County, Indiana; Ripley County, Indiana; Saint Joseph County, Indiana; Shelby County, Indiana; Steuben County, Indiana; Sullivan County, Indiana; Tippecanoe County, Indiana; Tipton County, Indiana; Vermillion County, Indiana; Vigo County, Indiana; Wabash County, Indiana; Warren County, Indiana; White County, Indiana; Whitley County, Indiana; City of Carmel, Indiana; Cicero Police Department, Indiana; City of Fishers, Indiana; Wayne Township, Indiana; Town of Atlanta, Indiana; City of Sheridan, Indiana; Town of Westfield, Indiana; City of Noblesville, Indiana; White River, Indiana; Jackson Township, Indiana; Conseco Corporate Security, Indiana; Hamilton County, Indiana; Cicero Fire Department, Indiana; Vanderburgh County, Indiana; Vanderburgh County Sheriff's Department, Indiana; Evansville Police Department, Indiana; Evansville Fire Department, Indiana; German Township Fire Department, Indiana; Knight Township Fire Department, Indiana; Perry Township Fire Department, Indiana; McCutchanville Fire Department, Indiana; Scott Township Fire Department, Indiana; Evansville City Clerk, Indiana; Evansville Regional Airport, Indiana; Casino Aztar, Indiana; Catholic Diocese of Evansville,

Indiana; Evansville/Vanderburgh County School Corporation, Indiana; Marrs Township Volunteer Fire Department, Indiana; LectraCom, Inc, Indiana; LectroCom, Indiana; Bruce Ruckert, Florida; William A. Morgan, Texas; Kennedy Associates, Inc, Texas; Kevin Kneupper, Texas; Urban Kneupper, Texas; County of Blanco, Texas; County of Bastrop, Texas; JRJ Paving, LP, Texas; Ilano County, Texas; Capital Aggregates, Ltd, Texas; Allen Wireless Group, Inc, California; Fresno Mobile Radio, Inc, California; City of Chicago, Illinois; City of Aurora, Illinois; City of Naperville, Illinois; City of Joliet, Illinois; Grundy County, Illinois; Illinois Public Safety Agency, Illinois; City of Broken Arrow, Oklahoma; City of Jenks, Oklahoma; City of Cambridge, Massachusetts; City of Fall River, Massachusetts; Commonwealth of Massachusetts Department of Corrections; City of Hartford, Connecticut; D&L Specialties, Inc, Minnesota.; Michael D. Smith, Oregon; Mobile Telephone & Paging, Inc, Hawaii; Industrial Communications, Inc, Pennsylvania.; Liberty Communications, Florida; Maricopa County, Arizona; State of Connecticut Department of Corrections; Communications Professionals, Ltd, Texas; Avoyelles 9.1.1., Lousiana; AALCOM Communications, Florida; Alarm 24, Inc, Missouri; All Points Communications, Texas; BKT Corporation, Texas; CEB Enterprises, Ohio; Centerpointe Communications, Texas; EMR Consulting, Indiana; Kalona Cooperative Telephone, Oklahoma; Kalorama Network Services, Washington, DC; Lovelace Gas Service, Florida; Madera Radio, Dispatch, Inc, California; Pennsylvania; Pro-Tec Mobile Communications, Inc, Arizona; Shelcomm, California; Specialty Electronics Company, Inc, Virginia; Supreme Radio Communications, Inc, Illinois; T&K Communications, Inc, New York; Wiztronics, Washington; Abingdon Police Department, Illinois; Algonquin Police Department, Illinois; Alpha Police Department, Illinois; Annawan Police Department, Illinois; Aroma Fire Protection District, Illinois; Arlington Heights Police Department, Illinois; Aroma Park Police Department, Illinois; Ashton Police Department, Illinois; Athens Police Department, Illinois; Atkinson Police Department, Illinois; Barrington Hills Police Department, Illinois; Barrington Police Department, Illinois; Bartlett Police Department, Illinois; Bartonville Police Department, Illinois; Batavia Fire Department, Illinois; Batavia Police Department,

Illinois; Bedford Park Police Department, Illinois; Belgium Police Department, Illinois; Bellwood Police Department, Illinois; Belvidere Police Department, Illinois; Berkeley Police Department, Illinois; Blue Island Police Department, Illinois; BNSF Railway Police, Illinois; Boone County Special Police Department, Illinois; Buffalo Grove Police Department, Illinois; Bourbonnais Fire Department, Illinois; Bourbonnais Police Department, Illinois; Bradley Fire Department, Illinois; Bradley Police Department, Illinois; Bistol Kendall Fire Department, Illinois; Brookfield Police Department, Illinois; Bull Valley Police Department, Illinois; Burbank Police Department, Illinois; Byron Police Department, Illinois; Calumet Park Police Department, Illinois; Carpentersville Police Department, Illinois; Cary Police Department, Illinois; Catlin Police Department, Illinois; Chebanse Police Department, Illinois; Cherry Valley Police Department, Illinois; Chicago Heights Police Department, Illinois; Chillicothe Police Department, Illinois; Cicero Police Department, Illinois; College of Lake County DPS, Illinois; Colona Police Department, Illinois; Cook County Forest Preserve Police Department, Illinois; Cook County SAO, Illinois; Cortlant Police Department, Illinois; Country Hills Police Department, Illinois; Countryside Police Department, Illinois; Crest Hill Police Department, Illinois; Crystal Lake Park District Police Department, Illinois; Crystal Lake Police Department, Illinois; Danville Police Department, Illinois; Darien Police Department, Illinois; Dekalb County Special Police Department, Illinois; Department of Natural Resources Police Department, Illinois; De Palines Fire Department, Illinois; Des Plains Police Department, Illinois; Dolton Police Department, Illinois; Douglas County Special Police Department, Illinois; East Dundee Police Department, Illinois; East Galesburg Police Department, Illinois; East Hazel Crest Police Department, Illinois; Elburn Police Department, Illinois; Elgin Police Department, Illinois; Elmwood Park Fire Department, Illinois; Elk Grove Village Police Department, Illinois; Elmwood Police Department, Illinois; Evanston Police Department, Illinois; Fairmount Police Department, Illinois; Flossmoor Police Department, Illinois; Fox Lake Police Department, Illinois; Galesburg Police Department, Illinois; Galva Police Department, Illinois; Geneseo Police Department, Illinois; Geneva Fire Department, Illinois; Geneva Police Department, Illinois; Genoa Police Department, Illinois;

Georgetown Police Department, Illinois; Gilberts Police Department, Illinois; Glasford Police Department, *Illinois; Glenview Police Department, Illinois; Golf Police Department, Illinois*; Glencoe Police Department, Illinois; Grand Park Fire Department, Illinois; Grant Park Police Department, Illinois; Garyslake Police Department, Illinois; Harper College, Illinois; Harvey Police Department, Illinois; Harvard Police Department, Illinois; Hazel Crest Police Department, Illinois; Henry County Sheriff's Office; Herscher Police Department, Illinois; Hickory Hills Police Department, Illinois; Hinkley Police Department, Illinois; Hodgkins Police Department, Illinois; Hoffman Estates Police Department, Illinois; Holiday Hills Police Department, Illinois; Hometown Police Department, Illinois; Homewood Police Department, Illinois; Huntley Police Department, Illinois; Indian Head Park Police Department, Illinois; Indian Harbor Belt Rail Road Police Department, Illinois; Joliet Police Department, Illinois; Justice Police Department, Illinois; Kane County Forest Preserve Police Department, Illinois; Kankakee County Special Police Department, Illinois; Kankakee Police Department, Illinois; Kendall County Police Assistance Team, Illinois; Kewanee Police Department, Illinois; Kingston Police Department, Illinois; Kirkland Police Department, Illinois; Knox County Special Police Department, Illinois; Knoxville Police Department, Illinois; LaGrange Park Police Department, Illinois; LaGrange Police Department, Illinois; Lake Bluff Police Department, Illinois; Lake County MEG, Illinois; Lake in the Hills Police Department, Illinois; Lakemoor Police Department, Illinois; Lealand Police Department, Illinois; Lincolnshire Police Department, Illinois; Lincolnwood Police Department, Illinois; Lisle Police Department, Illinois; Lynwood Police Department, Illinois; Lyons Police Department, Illinois; Malta Police Department, Illinois; Manteno Fire Department, Illinois; Manteno Police Department, Illinois; McCook Police Department, Illinois; McCullom Lake Police Department, Illinois; Melrose Park Police Department, Illinois; METRA Police Department, Illinois; Millington Police Department, Illinois; Mokena Police Department, Illinois; Momence FPD, Illinois; Momence Police Department, Illinois; Monee Police Department, Illinois; Monmouth Police Department, Illinois; Morton Grove Park District Police Department, Illinois; Morton Grove Police Department, Illinois; Mt. Morris Police

Department, Illinois; Mount Prospect Police Department, Illinois; Mundelein Police Department, Illinois; Newark Police Department, Illinois; Newman Police Department, Illinois; Niles Police Department, Illinois; Norridge Police Department, Illinois; North Riverside Police Department, Illinois; Norwood Police Department, Illinois; Oak Forest Police Department, Illinois; Oakwood Police Department, Illinois; Olympia Fields Police Department, Illinois; Oregon Police Department, Illinois; Orion Police Department, Illinois; Oswego Police Department, Illinois; Palatine Police Department, Illinois; Park City Police Department, Illinois; Park Ridge Fire Department, Illinois; Peoria County SPD, Illinois; Peoria Heights Police Department, Illinois; Peoria Park District Police Department, Illinois; Plano Police Department, Illinois; Polo Police Department, Illinois; Posen Police Department, Illinois; Potomac Police Department, Illinois; Prospect Heights Police Department, Illinois; Ridge Farm Police Department, Illinois; River Grove Police Department, Illinois; Riverside Police Department, Illinois; Riverwoods Police Department, Illinois; Rochelle Police Department, Illinois; Rockford Park District Police Department, Illinois; Rockford Police Department, Illinois; Rockton Village Police Department, Illinois; Rolling Meadows Fire Department, Illinois; Rolling Meadows Police Department, Illinois; Roscoe Police Department, Illinois; Round Lake Beach Police Department, Illinois; Round Lake Heights Police Department, Illinois; Round Lake Police Department, Illinois; Sandwich Police Department, Illinois; Sauk Village Police Department, Illinois; Schaumburg Police Department, Illinois; Schiller Park Police Department, Illinois; Sleepy Hollow Police Department, Illinois; Somonauk Police Department, Illinois; South Barrington Police Department, Illinois; South Chicago Heights Police Department, Illinois; St.Anne Police Department, Illinois; St. Charles Police Department, Illinois; Streamwood Police Department, Illinois; Stickney Police Department, Illinois; Summit Police Department, Illinois; Sycamore Police Department, Illinois; Thorton Police Department, Illinois; Tilton Police Department, Illinois; Tinley Park Police Department, Illinois; Tuscola Police Department, Illinois; Union Pacific Police Department, Illinois; VA-Chicago Westside Police Department, Illinois; VA-Danville Police Department, Illinois; Vermillion County SPD, Illinois; Villa Grove Police Department, Illinois; Waterman

Police Department, Illinois; Wayne Police Department, Illinois; West Police Department, Illinois; Westchester Police Department, Illinois; Western Springs Police Department, Illinois; Westville Police Department, Illinois; Wheaton Police Department, Illinois; Wheeling Police Department, Illinois; Williamsfield Police Department, Illinois; Willmette Police Department, Illinois; Willow Springs Police Department, Illinois; Winnebago County SPD, Illinois; Winnebago Police Department, Illinois; Winnetka Police Department, Illinois; Woodhull Police Department, Illinois; Woodstock Police Department, Illinois; Yates City Police Department, Illinois; Yorkville Police Department, Illinois

* The above list includes public safety entities which are licensees and public safety entities which will be adversely affected by the Commission's ruling due to their reliance upon licensees' systems to be rebanded. Additionally, the list includes small businesses, commercial licensees, and individuals who oppose the Commission's actions.