

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

In the Matter of)
)
Improving Public Safety Communications) **WT Docket No. 02-55**
In the 800 MHz Band)
)
New 800 MHz Band Plan for)
U.S.-Canada Border Region)

To: Chief, Public Safety and Homeland Security Bureau

**COMMENTS OF
CONSUMERS ENERGY COMPANY**

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EXECUTIVE SUMMARY

Consumers Energy Company, one of the nation's largest gas and electric utilities, urges the Public Safety and Homeland Security Bureau ("PSHSB") not to adopt the profoundly flawed and inequitable band plan set forth in the *Further Notice of Proposed Rule Making*. As an 800 MHz licensee in Region 3, Region 7, and non-border areas, Consumers Energy recommends that the PSHSB instead formulate a band plan that resolves the interference problem for all licensees.

The proposed band plan contains several fundamental flaws that would result in the inequitable treatment of Business and Industrial/Land Transportation ("B/ILT") licensees, including Critical Infrastructure Industry ("CII") licensees. For example, the proposed band plan does not ensure that relocating licensees will receive "comparable facilities" (as opposed to "comparable spectrum") or that B/ILT licensees will have proportionate and equitable spectrum allocations after the completion of the band reconfiguration. The proposed band plan also does not appear to resolve the "double border" coordination problem for border area licensees. Furthermore, the proposed band plan would almost certainly exacerbate the existing interference problem for B/ILT licensees by (1) perpetuating an interleaved spectrum environment for incompatible Enhanced Specialized Mobile Radio ("ESMR") and non-ESMR technologies, or (2) failing to provide adequate spectral separation.

The PSHSB should instead adopt a 800 MHz band plan that provides all incumbent licensees with adequate spectrum and protection from unacceptable interference. In particular, the PSHSB should require Sprint Nextel to relocate its ESMR operations to the 900 MHz band. If Sprint Nextel must conduct some of its ESMR operations in the 800 MHz band, the PSHSB should relocate Public Safety and CII licensees to the lower portion of the U.S. primary block and create a Guard Band to protect non-ESMR licensees from unacceptable interference.

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Consumers Energy Company ("Consumers Energy"), by and through its undersigned counsel, hereby submits these Comments on the proposed 800 MHz band plan for the U.S.-Canada border regions,¹ pursuant to sections 1.415 and 1.419 of the Federal Communications Commission's ("FCC") rules.²

In this proceeding, the FCC has attempted to resolve the problem of unacceptable interference to incumbent licensees in the 800 MHz band by separating incompatible Enhanced Specialized Mobile Radio ("ESMR") and non-ESMR technologies and implementing new interference mitigation rules.³ Although the FCC promulgated the band reconfiguration rules

¹ In re Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Further Notice of Proposed Rule Making*, 22 FCC Rcd 19266 (2007) ("*Further Notice*").

² 47 C.F.R. §§ 1.415, 1.419 (2006).

³ In re Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Report and Order, Fifth Report and Order, Fourth Memorandum Opinion and Order, and Order*, 19 FCC Rcd 14969, 15034-45 ¶¶ 115-141, 15050-61 ¶¶ 151-174 (2004) ("*Report and Order*").

over three years ago, it deferred action in the U.S.-Canada border regions.⁴ Consumers Energy applauds the Public Safety and Homeland Security Bureau ("PSHSB") for proposing a new band plan for the U.S.-Canada border region. However, this proposed band plan is a profoundly flawed and inequitable approach to the interference problem that would likely exacerbate the existing interference problem for Business and Industrial/Land Transportation ("B/ILT") licensees, including Critical Infrastructure Industry ("CII") licensees. The PSHSB should instead adopt an approach that resolves the interference problem for all incumbent licensees.

I. BACKGROUND

Consumers Energy is one of the nation's largest electric and natural gas utilities. As the principal subsidiary of CMS Energy, an international corporation that is a leader in energy infrastructure businesses, Consumers Energy provides electric and natural gas service to almost 6.5 million of Michigan's 10 million residents and in all sixty-eight counties of Michigan's Lower Peninsula.

Consumers Energy has an extraordinary stake in the reconfiguration of the 800 MHz band in the border areas. In particular, Consumers Energy has constructed an extensive 800 MHz private land mobile radio system to support its CII operations. This system consists of 74 frequencies at 18 sites in Region 3, 49 frequencies at 13 sites in Region 7, and 129 frequencies at 36 sites in non-border regions. The proposed band plan would directly impact 51 frequencies at 17 sites in Region 3, 7 frequencies at 5 sites in Region 7, and 48 frequencies at 25 sites in non-border regions by forcing channel relocations. The proposed band plan also has the potential to impact all 252 frequencies at all 67 sites by allowing the interleaving of ESMR licensees with

⁴ *Id.* at 15063 ¶ 176.

B/ILT licensees. Based on this estimate, the proposed band plan will impact the vast majority of Consumers Energy's system.

These land mobile operations ensure that Consumers Energy has the uninterrupted communications necessary to properly serve its customers. For example, Consumers Energy relies on its land mobile radio system to dispatch operating crews for daily operations, such as routine construction and maintenance work. Consumers Energy also uses the system to notify and direct field personnel responding to any problems. In times of emergency, Consumers Energy uses the system to mobilize work crews to address such issues as system outages and downed power lines. Consumers Energy must respond to these situations rapidly and maintain communications during assessment, containment, and repair to avoid further damage and risk to its employees and the public. The integrity of Consumers Energy's 800 MHz system is vital to its ability to deliver electricity and natural gas to its customers in a safe and efficient manner. Consumers Energy's utility operations and the communications that support them have a direct impact on the well being of the public in its service area.

II. THE PROPOSED BAND PLAN IS A PROFOUNDLY FLAWED AND INEQUITABLE APPROACH TO THE INTERFERENCE PROBLEM

The proposed band plan contains several fundamental flaws that would result in the inequitable treatment of B/ILT licensees. As discussed below, to remedy these flaws, the PSHSB should (1) clarify that relocating licensees will receive comparable facilities; (2) ensure that B/ILT licensees will have proportionate and equitable spectrum allocations after the completion of the band reconfiguration; (3) avoid the "double border" coordination problem; (4) not perpetuate an interleaved spectrum environment for incompatible ESMR and non-ESMR technologies; and (5) provide adequate spectral separation between transmit frequencies, without interleaving ESMR and non-ESMR operations.

A. The PSHSB Should Clarify the Definition of "Comparable Spectrum"

The PSHSB should clarify that relocating licensees will receive comparable facilities. In the *Further Notice*, the PSHSB indicated that "[a]ll relocating licensees will receive *comparable spectrum* assignments as defined in prior Commission orders in this proceeding."⁵ Although the FCC has used the term "comparable spectrum" sparingly in the 800 MHz band reconfiguration orders, it has never "defined" that term. The FCC has instead granted relocating licensees "comparable facilities."⁶ Even though the PSHSB cross-references the rule governing "comparable facilities,"⁷ it has not indicated whether relocating licensees in the border regions will receive the same treatment as other relocating licensees nationwide or would receive only certain components of "comparable facilities."

B. The Proposed Band Plan Should Maintain Proportionate and Equitable Spectrum Allocations

The PSHSB must ensure that the new band plan contains proportionate and equitable spectrum allocations. In the *Further Notice*, the PSHSB stated that "the current allocation of 800 MHz primary spectrum between the U.S. and Canada set forth in Arrangement F will be

⁵ *Further Notice*, 22 FCC Rcd 19266 ¶ 7 (emphasis added).

⁶ The FCC defined "comparable facilities" as "those that will provide the same level of service as the incumbent's existing facilities, with transition to the new facilities as transparent as possible to the end user." *Report and Order*, 19 FCC Rcd at 15077 ¶ 201. "Comparable facilities" include (1) equivalent channel capacity, defined as the same number of channels with the same bandwidth; (2) equivalent signaling capability, baud rate, and access time; (3) coextensive geographic coverage; and (4) operating costs. *Id.* ¶ 201, 201 n.527; In re Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Memorandum Opinion and Order*, 20 FCC Rcd 16015, 16031-33 ¶ 37-40; see In re Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket 93-144, *Second Report and Order*, 12 FCC Rcd 19079, 19112-14 ¶ 89-95 (1997); In re Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, WT Docket 95-157, *First Report and Order and Further Notice of Proposed Rulemaking*, 11 FCC Rcd 8825, 8840-43 ¶ 27-32 (1996).

⁷ *Further Notice*, 22 FCC Rcd 19266 ¶ 7 (citing 47 C.F.R. § 90.677(f)).

maintained."⁸ Although the PSHSB also attached proposed band plans in Appendix C, these band plans fail to disclose the relative number of channels assigned to the B/ILT and ESMR categories after the completion of the band reconfiguration. The band plans instead combine the B/ILT and ESMR channels into a single indistinguishable allocation. Thus, the band plans preclude any interested party from determining whether the B/ILT category will suffer a disproportionate loss of spectrum, as was proposed in the Consensus Plan.⁹

The PSHSB also should not promulgate any other rules that would disrupt the existing allocation of scarce spectrum resources in the border regions. For example, the PSHSB should not adopt the proposed set aside that would restrict eligibility for ESMR-vacated spectrum exclusively for licensing by public safety entities for three years after the completion of rebanding.¹⁰ The PSHSB also should not relocate NPSPAC licensees that operate on a secondary basis on Canadian primary channels to U.S. primary channels.¹¹ Finally, the PSHSB should not grant primary status to Canadian facilities that operate on U.S. primary spectrum under Specialized Coordination Procedures.¹²

⁸ *Id.* ¶ 5.

⁹ Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, Appendix G-3 (Dec. 24, 2002). The PSHSB should not permanently reallocate frequencies from B/ILT licensees to ESMR licensees. Even if ESMR licensees have acquired a number of B/ILT channels at specific locations, this licensing does not support a wholesale and permanent reallocation of the frequencies allocated to the private services. B/ILT licensees also currently have the right to short-space or, in the event of cancellation, license this spectrum. Supplemental Comments of Consumers Energy Company, WT Docket No. 02-55, 11 (Feb. 10, 2003). Incumbent licensees also must have access to enough spectrum to expand their systems after the completion of the band reconfiguration.

¹⁰ *Further Notice*, 22 FCC Rcd 19266 ¶ 7.

¹¹ *Id.* ¶ 17.

¹² *Id.* ¶ 5.

C. The Proposed Band Plan Exacerbates the "Double Border" Problem

The proposed band plan should attempt to avoid the "double border" coordination problem for border area licensees. In the *Report and Order*, the FCC warned of the possibility of a "double border" problem "if the overall U.S. band plan differs from a band plan for the border regions."¹³ Although the FCC acknowledged that extensive channel relocations would exacerbate this double border problem, it hoped that negotiations with Canada would address any double border issues.¹⁴

The PSHSB would create a "double border" problem for Consumers Energy by proposing an incongruous band plan for Region 3. The double border problem directly implicates Consumers Energy because it operates an expansive private land mobile radio system in Michigan. This system uses dozens of discrete 800 MHz frequency pairs in Regions 3 and 7, as well as several frequency pairs in non-border areas. In Region 7 and non-border areas, Consumers Energy could operate its radio system under a common band plan. In Region 3, however, Consumers Energy would have to share channels with ESMR licensees using the same channels in Region 7. This double border is a significant problem for Consumers Energy because Sprint Nextel has substantial operations in southern Michigan. Thus, Consumers Energy would not have full access to the B/ILT channels in Region 3 and would likely be subject to additional unacceptable interference.¹⁵

¹³ *Report and Order*, 19 FCC Rcd at 15063 ¶ 176.

¹⁴ *Id.* ¶ 175, 176.

¹⁵ Furthermore, the proposed band plan would also cause a problem for simulcast operations in Regions 3 and 7. Because of the disparate spectrum allocations, licensees could not use or re-use certain existing channels. Thus, the proposed band plan would disrupt the seamless operation of simulcast systems and increase the spectrum requirements for similar functionality.

D. The Proposed Band Plan Must Not Perpetuate an Interleaved Spectrum Environment

An interleaved spectrum environment is an unacceptable solution for the 800 MHz interference problem in Region 3. As described below, the proposed band plan for Region 3 would betray the underlying purpose of the 800 MHz Public Safety Interference proceeding by continuing to interleave incompatible ESMR and non-ESMR technologies. Although the FCC created spectral separation for these technologies throughout the rest of the nation, it will subject non-ESMR (high-site B/ILT and SMR) licensees to an increased risk of interference in certain border areas. While this interleaved band will perpetuate the existing interference problems for B/ILT licensees, it also could worsen this problem by consolidating a larger number of licensees using incompatible technologies into a smaller spectrum band. This interleaved spectrum environment would create legal, technical, and practical problems.

1. The FCC Has Recognized that Interleaved Spectrum Will Cause Unacceptable Interference

The PSHSB must revise the proposed band plan to conform to the FCC's conclusions regarding the separation of incompatible technologies. If the PSHSB deviates from these conclusions, it would accord disparate treatment to B/ILT licensees in comparison to Public Safety licensees in the border areas and to B/ILT licensees nationwide. This disparate treatment would be arbitrary and capricious in violation of the Administrative Procedure Act.

The FCC has determined that unacceptable interference is unavoidable in an interleaved spectrum environment. In the *Report and Order*, the FCC specifically recognized that "[t]he interference problem in the 800 MHz band is caused by a fundamentally incompatible mix of two types of communications systems: cellular architecture multi-cell systems—used by ESMR and cellular telephone licensees – and high-site noncellular systems – used by public safety,

private wireless, and some SMR licensees."¹⁶ To resolve this interference problem, the FCC "reconfigur[ed] the 800 MHz band to separate these incompatible technologies."¹⁷

The FCC repeatedly affirmed this conclusion in subsequent orders. For example, in the *Supplemental Order*, the FCC stated that "one of the basic tenets of this proceeding . . . [is] that incompatible 'high-site' non-ESMR technology must be segregated from 'low-site' ESMR technology if unacceptable interference is to be avoided."¹⁸ In the *Memorandum Opinion and Order*, the FCC again noted that the interleaving of incompatible technologies "is inconsistent with the fundamental interference abatement goals of this proceeding."¹⁹

The proposed band plan undermines this fundamental purpose of the 800 MHz Public Safety Interference rulemaking proceeding. Even though the FCC concluded that the only practical solution to the interference problem is the spectral separation of incompatible technologies, the PSHSB inexplicably proposed a Region 3 band plan that interleaves ESMR and non-ESMR operations.²⁰ For non-border areas, the FCC required Sprint Nextel to create spectral separation for these incompatible technologies and otherwise protect B/ILT licensees from unacceptable interference. The PSHSB should provide the same interference protection for B/ILT licensees in the border areas.

¹⁶ *Report and Order*, 19 FCC Rcd at 14972 ¶ 2.

¹⁷ *Id.* at 15045 ¶ 142.

¹⁸ In re Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Supplemental Order and Order on Reconsideration*, 19 FCC Rcd 25120, 25156 ¶ 81 (2004) ("*Supplemental Order*").

¹⁹ *Memorandum Opinion and Order*, 20 FCC Rcd at 16028 ¶ 30.

²⁰ *Further Notice*, 22 FCC Rcd 19266 ¶ 7 (stating that "some interleaving of ESMR and non-ESMR systems may be necessary").

2. Technical Solutions Would Not Eliminate Unacceptable Interference on Interleaved Spectrum

The PSHSB should not rely on technical solutions to resolve the unacceptable interference caused by Sprint Nextel's ESMR operations. In the *Further Notice*, the PSHSB asked "whether other technical rules are required to mitigate potential interference between ESMR and non-ESMR systems."²¹ If the PSHSB were to maintain an interleaved spectrum environment for ESMR and non-ESMR licensees in Region 3, neither new technical rules nor new equipment would protect B/ILT licensees from unacceptable interference from ESMR operations.

New technical rules would not adequately protect B/ILT licensees from unacceptable interference in an interleaved spectrum environment. Although Consumers Energy and other commenters advised the FCC to mitigate the 800 MHz interference problem using technical solutions,²² the FCC ultimately determined that technical solutions were, at best, only a short-term remedy.²³ For a long-term solution, the FCC instead separated the incompatible ESMR and non-ESMR technologies into different bands and inserted a one megahertz Guard Band as a buffer to protect non-ESMR operations from unacceptable interference.²⁴

New equipment also would not enable ESMR and non-ESMR operations to coexist on interleaved spectrum in the 800 MHz band. Although Sprint Nextel could conceivably reduce

²¹ *Id.*

²² *E.g.*, Supplemental Comments of Consumers Energy Company, WT Docket No. 02-55, 4-6, Appendix A; Comments of the Border Area Coalition, WT Docket No. 02-55, 18-23 (Feb. 10, 2003).

²³ *Report and Order*, 19 FCC Rcd at 15036 ¶ 121, 15037 ¶ 122, 15037-45 ¶ 124-141.

²⁴ Although the FCC adopted slightly different technical rules to mitigate interference for licensees in the Guard Band, it designed those rules to mitigate interference from adjacent (not interleaved) ESMR operations. *Id.* at 15054 ¶ 157-158. To the extent the PSHSB adopts an interleaved band plan, it must develop new technical rules.

the amount of interference to interleaved non-ESMR operations by making technical changes to its equipment,²⁵ these changes would not completely eliminate the interference problem. The FCC also decided against adopting "across-the-board new technical standards," such as power levels, combiners, and antenna patter characteristics, on ESMR providers.²⁶ Furthermore, no equipment exists that would enable incumbent licensees to operate efficiently without at least 500 kHz of separation between their transmit channels. Thus, because of spectrum shortages and technical problems, ESMR and non-ESMR licensees apparently could not operate on an interleaved basis in the same spectrum block at 800 MHz without the occurrence of unacceptable interference.

3. An Interleaved Environment Would Waste Resources

Even if technical solutions could mitigate some occurrences of unacceptable interference, an interleaved environment would create practical problems for incumbent licensees. In the *Report and Order*, the FCC observed that "the inevitable increase in the number of potential and actual interference situations . . . could strain the effectiveness of the mitigation techniques and increase their cost, possibly rendering interference abatement ineffective and unaffordable."²⁷ Consumers Energy agrees that incumbent licensees would have to devote a substantial amount of time and resources to investigating, documenting, and resolving interference problems. The

²⁵ Commenters identified several technical changes that could mitigate unacceptable interference from Sprint Nextel. For example, commenters suggested that the FCC require (1) a reduction in power; (2) the use of combiners with band-pass/tunable cavities or filters designed to minimize interference where appropriate; (3) the elimination of wide-band hybrid type combiners; (4) the regulation of out-of-channel emission specifications at low-site/low-power sites. Comments of the Border Area Coalition, WT Docket No. 02-55, 12.

²⁶ *Report and Order*, 19 FCC Rcd at 15028 ¶ 103.

²⁷ *Id.* at 15036 ¶ 121.

unacceptable interference also would lower workforce productivity and create hazardous working conditions because field crews would lack reliable and efficient communications.

E. Incumbent Licensees Require Internal Channel Spacing

The PSHSB also must ensure that incumbent licensees have adequate separation between their transmit frequencies, without resorting to interleaved spectrum. In the *Further Notice*, the PSHSB proposes to reduce the amount of spectrum between the high and low ends of the B/ILT allocation in Region 3.²⁸ Although the current allocation provides almost fourteen megahertz of separation, the proposed band plan would compress these operations into less than 5.25 megahertz of spectrum.²⁹

This proposed band plan would impair the operations of Consumers Energy. In the *Report and Order*, the FCC found that Public Safety channels required separation of 500 kHz.³⁰ The PSHSB also recognized that channels spacing is necessary to avoid undermining the performance of combiners in a land mobile communications system.³¹ As with public safety entities, Consumers Energy must have at least 500 kHz of separation between channels to allow for the proper functioning of its combiners.

If Consumers Energy lacks adequate channel separation, it would have to increase the transmit power or add more sites in order to maintain the current performance of its communications system. Unfortunately, Consumers Energy cannot increase the transmit power because the equipment already operates at its design level. Consumers Energy also likely could not build additional sites because of spectrum scarcity. Thus, because the limited amount of

²⁸ *Further Notice*, 22 FCC Rcd 19266 App. C.

²⁹ *Id.*

³⁰ *Report and Order*, 19 FCC Rcd at 15054 ¶ 156.

³¹ *Further Notice*, 22 FCC Rcd 19266 ¶ 7.

spectrum available in Region 3 requires the interleaving of incompatible technologies, and the interleaving of incompatible technologies causes unacceptable interference, the proposed band plan would necessarily degrade the performance of Consumers Energy's critical radio operations.

III. THE PSHSB SHOULD ADOPT AN ALTERNATIVE 800 MHZ BAND PLAN FOR REGION 3

The PSHSB should revise the proposed band plan to ensure that all incumbent licensees receive adequate spectrum and protection from unacceptable interference. As discussed above, the proposed band plan would not provide these fundamental assurances because of spectrum shortages, interleaving of incompatible technologies, inadequacy of technical solutions, and other problems.

The only feasible solution to these problems is to relocate Sprint Nextel's operations to the 900 MHz band. If the 900 MHz band would not accommodate all of Sprint Nextel's existing operations, the PSHSB could allow Sprint Nextel to relocate its overflow operations to a new ESMR band in the upper portion of the 800 MHz band. However, the PSHSB would need to relocate Public Safety and CII licensees to the U.S. primary block at 806-806.45/851-851.45 MHz and 809-811.25/854-856.25 MHz or to the lower portion of the U.S. primary block at 815.75-821/860.75-866 MHz. The PSHSB also would need to create a Guard Band to protect non-ESMR licensees from unacceptable interference.

A. Sprint Nextel Should Relocate to the 900 MHz Band

The FCC should relocate Sprint Nextel's ESMR operations to the 900 MHz band. In the *800 MHz Report and Order*, the FCC determined that spectral separation is necessary to prevent Sprint Nextel from causing unacceptable interference to non-ESMR licensees in the 800 MHz band. If insufficient spectrum exists to create sufficient spectral separation in Region 3, the FCC should relocate Sprint Nextel's ESMR operations to the 900 MHz band.

Sprint Nextel is perfectly capable of operating its ESMR system in the 900 MHz band. In the *Report and Order*, the FCC concluded that Sprint Nextel "will have to shift some of its operations from the 800 MHz band to the 900 MHz band in order to provide the 'green space' necessary to effect reconfiguration of the 800 MHz band."³² The FCC also stated that Sprint Nextel "likely will need to use this spectrum to accommodate subscriber demand during 800 MHz band reconfiguration . . . [and] possible thereafter."³³ Even though Sprint Nextel would have to bear the financial costs of this relocation, the FCC has included Sprint Nextel's self-relocation costs as recoverable expenses in this rulemaking proceeding.³⁴

On several occasions, Sprint Nextel has boasted of its dual-band technology that permits operation across the 800 MHz and 900 MHz bands. For example, Sprint Nextel justified its request for an extension of its 900 MHz construction requirements by claiming that it could deploy very low power "pico cells" on its 800 MHz channels and interconnect them with its 900 MHz spectrum as a means of preventing interference to Public Safety.³⁵ In the 900 MHz rulemaking proceeding, Sprint Nextel stated that it is "uniquely suited" to relocate undertake rebanding "because [it] . . . operates a dual-band 800 MHz/900 MHz iDEN network."³⁶ Sprint Nextel also recently filed an *ex parte* letter stating that "over the past several years its [sic] has acquired and continues to acquire hundreds of Business/Industrial Land Transportation ('B/ILT') 'site-based' licenses and wide-area Specialized Mobile Radio ('SMR') licenses in the 900 MHz

³² *Report and Order*, 19 FCC Rcd at 15127 ¶ 336.

³³ *Id.* at 15079 ¶ 207.

³⁴ *Supplemental Order*, 19 FCC Rcd at 25150 ¶ 69.

³⁵ In re FCI 900, Inc. Expedited Request for 3-Year Extension of 900 MHz Band Construction Requirements, *Memorandum Opinion and Order*, 16 FCC Rcd 11072, 11076 ¶ 5 (2001).

³⁶ Comments of Nextel Communications, Inc., WT Docket No. 05-62, 6 (May 18, 2005).

band to gain additional spectrum capacity to support its dual band 800 MHz/900 MHz iDEN® network."³⁷

B. Sprint Nextel Should Conduct Only Overflow ESMR Operations in the 800 MHz Band

If the 900 MHz band would not accommodate all of Sprint Nextel's existing operations in the U.S.-Canada border area, the PSHSB could allow Sprint Nextel to relocate its overflow operations to a new ESMR band in the upper portion of the 800 MHz band. In the *Report and Order*, the FCC required Sprint Nextel to relocate its operations above 817/861 MHz and created a Guard Band at 816-817 MHz/861-862 MHz to mitigate unacceptable interference to incumbent non-ESMR licensees.³⁸ The PSHSB should adopt a similar spectral separation requirement for Sprint Nextel's overflow operations in Region 3 by limiting ESMR operations to the upper portion of the 800 MHz band.

If Sprint Nextel must continue some ESMR operations in the 800 MHz band, the PSHSB should relocate Public Safety and CII licensees to the lower portion of the 800 MHz band. Specifically, Public Safety and CII licensees should operate in the U.S. primary block at 806-806.45/851-851.45 MHz and 809-811.25/854-856.25 MHz or in the lower portion of the U.S. primary block at 815.75-821/860.75-866 MHz. As the FCC has recognized in this proceeding, Public Safety and CII licensees warrant special consideration because their operations ensure the safety of lives and property.³⁹

³⁷ Letter from James B. Goldstein, Director – Spectrum, Sprint Nextel Corporation, to Marlene H. Dortch, Secretary, FCC at 1 (May 4, 2007). Sprint Nextel further "indicated its intention to continue acquiring additional 900 MHz spectrum from incumbent licensees in the secondary market to support its network and customers." *Id.*

³⁸ *Report and Order*, 19 FCC Rcd at 14984 ¶ 23, 15054 ¶ 157.

³⁹ *Id.* at 14973-74 ¶ 4 n.11, 15037-38 ¶ 124, 15051 ¶ 151, 15052-53 ¶ 152-153, 15054 ¶ 158.

The PSHSB also should create a Guard Band to protect non-ESMR licensees from unacceptable interference. This Guard Band would provide spectral separation between the incompatible ESMR and non-ESMR technologies. The Guard Band should be at least one megahertz wide and should be reserved for high-site B/ILT and SMR operations, other than those of Public Safety and CII licensees.

WHEREFORE, THE PREMISES CONSIDERED, Consumers Energy respectfully requests that the FCC consider these Comments and proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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