Preferred
communication systems

VIA ELECTRONIC FILING

August 22, 2008

Marlene H. Dortch
Secretary
Federal Communications Commission
445 12th Street, SW
Washington, D.C. 20554

Re: Comments – Second Further Notice of Proposed Rulemaking – WT Docket No. 02-55

Dear Ms. Dortch:

Pursuant to the Second Further Notice of Proposed Rulemaking[1] in the above-referenced proceeding, I hereby am submitting our Reply Comments with respect to (1) an Alternative Rebanding Plan for Puerto Rico and the U.S. Virgin Islands and (2) the Transition Administrator's ("TA") Proposal for Adoption of an Alternative 800 MHz Band Plan and Negotiation Timetable for Puerto Rico and the U.S. Virgin Islands filed on October 19, 2007.

Pursuant to Section 1.913(b) of the Commission's rules, 47 C.F.R. § 1.913(b), this letter and attachment are being filed electronically for inclusion in the public record in the above-captioned proceeding. Please let me know if there are any questions regarding this matter.

Sincerely,

/s/ Charles M. Austin
Charles M. Austin, President

Attachment

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[1] In the Matter of Improving Public Safety Communications in the 800 MHz Band, *Second Further Notice of Proposed Rulemaking*, WT Docket No. 02-55, DA 08-1530 (released June 30, 2008)("Second FNPR").

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of	)	
	)	
Improving Public Safety Communications in the 800 MHz Band	)	WT Docket No. 02-55
	)	
	)	
New 800 MHz Band Plan for Puerto Rico	)	

REPLY COMMENTS

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SUMMARY

Pursuant to the Federal Communications Commission's ("FCC" or "Commission") directives in its *Second Further Notice of Proposed Rulemaking*, Preferred Communication Systems, Inc. ("Preferred" or the "Company"), analyzed the 800 MHz Private Land Mobile Radio Band (806-824 MHz/851-869 MHz)("PLMRB" or the "Band") in Puerto Rico as a whole. In so doing, Preferred recognized that Public Safety licensees utilized only one-half of the (1) former NPSPAC Channels and (2) seventy (70) Channels within the Interleaved Channels allocated to them. It also recognized that due to Sprint Nextel's holding relatively little EA- and Site-Licensed spectrum and multiple non-Nextel EA Authorization holders seeking to move into and remaining within the ESMR portion of the PLMRB that the ESMR Band would be considerably overcrowded unless expanded.

Cognizant of the FCC's directive that an alternative rebanding plan fully account for the relocation of Site-Licensed Channels within the Upper 200 Channels downward from the ESMR Band and provide them comparable facilities, in its Comments Preferred proposed an alternative rebanding plan that would move all Public Safety licenses into new Channels 1-230 (806.0125-808.9875 MHz/851.0125-853.9875 MHz) on a geographic "footprint" basis. Following such relocation more than three-quarters (173) of these Channels covering the Western half of Puerto Rico and one-third (82) of these Channels covering the Eastern half of the Island remained vacant and available for expansion by the existing Public Safety systems.

In moving Public Safety licensees downward from the old Interleaved and Expansion Band Channels, Preferred's alternative rebanding plan would increase the available

Channels within the middle portion of the PLMRB by seventy (70). Such increase allows the Company's alternative rebanding plan the flexibility not only to expand the ESMR Block from two hundred eighty (280) Channels to three hundred fifty (350) Channels (815.2625-823.9875 MHz/860.2625-868.9875 MHz) but also relocate all of the Site-Licensed Channels presently in the Upper 200 Channels to the non-ESMR Block and provide them with comparable facilities.

In reviewing the 800 MHz SMR licenses presently in both the Interleaved and Upper 200 Channels, we have determined that Crown Castle International Corp. de Puerto Rico is operating a Motorola, Inc. Smartzone system that arguably meets the definition of a "800 MHz cellular system" set forth in Section 90.7 of the Commission's rules. As a result, Preferred would propose to modify its Alternative Rebanding Plan by moving Crown Castle International Corp. de Puerto Rico's Channels into the forty (40) Guard Band Channels (new Channels 441-480 or 814.2625-815.2375 MHz/859.2625-860.2375 MHz) and the seven (7) Channels covering the Eastern Half of Puerto Rico next available within the Interleaved Channels.

Since Preferred holds the dominant 800 MHz SMR licensing position in Puerto Rico it believes that it should bear the financial responsibility to pay all reasonable costs directly related to the rebanding process in this EA market. In exchange for assuming such responsibility, it proposed that Sprint Nextel assign it 10 MHz of 1.9 GHz Band spectrum for both the Puerto Rico and U.S. Virgin Islands markets.

Preferred proposed a voluntary rebanding approach for Puerto Rico. Pursuant to such approach, it requested that the Commission afford it sixty (60) days from the date of an

effective Order to secure Voluntary Frequency Reconfiguration Agreements ("VRAs") from all affected licensees.

Finally, although Preferred proposes to track the rebanding timeline for Sprint Nextel in the U.S., it anticipates moving rapidly to relocate 800 MHz licensees in Puerto Rico in accordance with its Alternative Rebanding Plan. Unlike Sprint Nextel, which has a financial interest in conducting the reconfiguration process slowly, Preferred would seek to complete the process in Puerto Rico as rapidly as possible so that it might launch a major Enhanced Specialized Mobile Radio System in this market.

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To: The Commission

REPLY COMMENTS

I. INTRODUCTION

Preferred Communication Systems, Inc. ("Preferred" or the "Company") respectfully replies to comments filed in response to the *Second Further Notice of Proposed Rulemaking* released June 30, 2008 in the above-captioned matter.[1] As the FCC recognized in its *Second Memorandum Opinion and Order* released on May 30, 2007, due to its unusual 800 MHz licensing history Puerto Rico is a "unique" market distinct from the vast majority of Economic Area ("EA") markets in the continental U.S.[2]

Instead of specifying an alternative rebanding plan for Puerto Rico, the Commission directed the Transition Administrator to propose such a rebanding plan and negotiation timetable for the market within sixty (60) days from the effective date of its Order.

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[1] Improving Public Safety Communications in the 800 MHz Band—New 800 MHz Band Plan for Puerto Rico, WT Docket No. 02-55, *Second Further Notice of Proposed Rulemaking*, DA 08-1530 (released June 30, 2008)("800 MHz Second FNPR").

[2] Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Second Memorandum Opinion and Order*, 22 FCC Rcd 10467, at ¶ 32 (2007)("800 MHz Second MO&O").

Unfortunately, instead of analyzing the entire Private Land Mobile Radio Band (806-824 MHz/851-869 MHz) ("PLMRB" or the "Band") in Puerto Rico and proposing creative solutions to the spectrum overcrowding problem at the upper end of the Band, it retained the generally applicable Non-ESMR (new Channels 1-550 or 806.0125-816.9875 MHz/851.0125-861.9875 MHz) and ESMR Blocks (new Channels 551-830 or 817.0125-823.9875 MHz/862.0125-868.9875 MHZ). The only change in the Commission's generally applicable rebanding plan it proposed was to enlarge the Expansion Band by twenty (20) Channels and decrease the Guard Band by an identical number of Channels.

Although the FCC had emphasized that a "presumption" exists that Non-Nextel licensees who relocate to the ESMR Block will be able to 'replicate their existing channel capacity to the degree specified in the Commission's orders, and will not be required to reduce their capacity on a *pro rata* basis,[3] the Transition Administrator's Alternative Rebanding Proposal apparently placed little importance upon preserving such licensees' full spectrum rights.[4]

As a result, under the Transition Administrator's Alternative Rebanding Proposal the PLMRB in Puerto Rico is relatively vacant in new Channels 1-230 (806.0125-808.9875 MHz/851.0125-853.9875 MHz) and considerably overcrowded in new Channels 551-830 (817.0125-823.9875 MHz/862.0125-868.9875 MHz). Moreover, it is unclear from a careful reading of its Alternative Rebanding Plan, how the Transition Administrator treated the Site-Licensed Channels of Sprint Nextel Corp. ("Sprint Nextel") and North

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[3] *Id.*, at ¶ 30.

[4] Transition Administrator, Ex Parte Notification, WT Docket No. 02-55, filed on October 19, 2007 ("TA Alternative Rebanding Proposal").

Sight Communications, Inc. that presently encumber EA Authorizations held by another licensee.[5]

II. DISCUSSION.

A. Alternative 800 MHz Rebanding Plan for Puerto Rico

(1) Public Safety Licensees

Unlike in many U.S. EA markets, in the Puerto Rico EA market Public Safety licensees use relatively few of the 230 available NPSPAC frequencies and 70 available Interleaved and Expansion Band Channels.[6] As a result, Concepts To Operations, Inc. ("CTO") recommended in its Report commissioned by Preferred[7] that all Public Safety licenses be relocated to new Channels 1-230 on a geographic "footprint" basis. After such relocation, eighty-two (82) Channels covering the Eastern Half of Puerto Rico and one hundred seventy-three (173) Channels covering the Western Half of the Island would remain available for expansion. Preferred adopted such recommendation in its Comments which provide all Public Safety licensees comparable facilities and considerable frequencies for system expansion.

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[5] *See generally* North Sight Communications, Inc., Comments, WT Docket No. 02-55, filed on August 8, 2008.

[6] According to the Commission's ULS database, one hundred eleven (111) NPSPAC frequencies are used that cover the Eastern Half of Puerto Rico and fifty-three (53) NPSPAC frequencies are used covering the Western Half of the Island. Only thirty-seven (37) of the frequencies reserved for Public Safety licensees within the Interleaved and Expansion Band Channels are used that cover the Eastern Half of Puerto Rico and four (4) such frequencies are used that cover the Western Half of the Island.

[7] *See* Concepts To Operations, Inc., "Alternative Reconfiguration Plan for Puerto Rico and the U.S. Virgin Islands," attached as Exhibit A to Preferred Communication Systems, Inc., Comments, WT Docket No. 02-55, filed on August 8, 2008.

(2) EA Authorization Holders

In Puerto Rico, unlike the vast majority of U.S. EA markets, Sprint Nextel did not win the majority of the Upper 200 Channels' EA Authorizations.[8] Moreover, unlike the U.S. EA markets, the Upper 200 Channels' EA Authorization holders did not relocate the underlying Site-Licensed Channels either to the former General Category Channels or the Interleaved Channels.[9] Finally, unlike the vast majority of U.S. EA markets, Sprint Nextel did not win the majority of the General Category EA Authorizations.

As a result, under the FCC's generally applicable 800 MHz rebanding plan three hundred eighty-one (381) ESMR or ESMR-Eligible Channels covering the Eastern Half of Puerto Rico and three hundred fifty-six (356) ESMR or ESMR-Eligible Channels covering the Western Half of the Island would be "squeezed" into the two hundred eighty (280) Channels allocated to the ESMR Block. According to the TA's Alternative Rebanding Approach, the "excess" and Channels would be reduced in accordance with the provisions set forth by the Commission in its *800 MHz Second MO&O.*[10]

Directed by the FCC's "presumption" that licensees other than Sprint Nextel who remain or relocate to the ESMR Band "replicate their existing channel capacity to the degree specified in the Commission's orders,"[11] CTO's Report recommended an expansion of the ESMR Block from two hundred eighty (280) to three hundred fifty

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[8] The Puerto Rico EA market was the only EA market with respect to which Nextel did not win the C Frequency Block license in FCC Auction #16 (1997).

[9] *See generally* Preferred, Comments, WT Docket NO. 02-55, filed on August 8, 2008, at 21-24; North Sight Communications, Inc., Petition for Partial Reconsideration, PR Docket No. 93-144, filed on December 12, 1997; North Sight Communications, Inc., Reply to Opposition to Petition for Partial Reconsideration, PR Docket No. 93-144, filed on February 27, 1998.

[10] TA Alternative Rebanding Proposal, at ii.

[11] 800 MHz Second MO&O, at ¶ 30.

(350) Channels (new Channels 481-830 or 815.2625-823.9875 MHz/860.2625-868.9875 MHz). Preferred's Comments adopted this recommendation which accommodates all ESMR and ESMR-Eligible Channels and provides them with comparable facilities.[12]

(3) Site-Licensed Channels within the Upper 200 Channels

As noted above, in Puerto Rico the holders of the Upper 200 Channels' EA Authorizations failed to relocate the Site-Licensed Channels on their respective Frequency Block licenses. Consistent with the FCC's directives in its *800 MHz Memorandum Opinion and Order* and *Second MO&O* in this proceeding,[13] CTO's Report recommended relocating such Site-Licensed Channels to the Interleaved Channels (new Channels 231-440) on a geographic "footprint" basis. Preferred's comments adopted such recommendation that meets the Commission's directive by fully accommodating them and providing them with comparable facilities.

(4) Crown Castle International Corp. de Puerto Rico's Channels

In reviewing the PLMRB in Puerto Rico, Preferred determined that Crown Castle International Corp. de Puerto Rico's ("CCIPR") forty-seven (47) Site-Licensed

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[12] Consistent with the FCC's directive in the 800 MHz Second MO&O to minimize disruption to the existing licensing scheme, CTO's Report recommended that the excess General Category EA Channels (Channels 121-125 in the F Frequency Block and Channels 125-150 in the FF Frequency Block) be relocated to new Channels 481-510 (815.2625-815.9875 MHz/860.2625-860.9875 MHz) that would be included as part of the Expanded ESMR Block. CTO's Report also recommended relocating the underlying Site-Licensed Channels within Channels 121-150 to new Channels 481-510 but on a geographic "footprint" basis only. See also 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 (2004) as amended by *Erratum*, 19 FCC Rcd 19651 (WTB PCSID 2004) and *Erratum*, 19 FCC Rcd 21818 (WTB PCSID 2004)("800 MHz First Report & Order"), at ¶ 2.

[13] See Improving Public Safety Communications in the 800 MHz Band, WT Docket No. 02-55, *Memorandum Opinion and Order*, 20 FCC Rcd 16015 (2005), as amended by *Erratum*, 20 FCC Rcd 18970 (PCSID WTB 2005)("800 MHz MO&O").

Channels covering the Eastern Half of Puerto Rico and thirty-seven (37) Channels covering the Western Half of the Island should be relocated either to the ESMR Block or to the Guard Band and Channels immediately adjoining it.

Unlike the other Non-ESMR and Non-ESMR Eligible licensees holding Site-Licensed Channels in the Upper 200 Channels in Puerto Rico, CCIPR's Site-Licensed Channels were subject to an Extended Implementation Authority ("EIA") that provided it with a five (5)-year construction period and the ability to design, construct and operate a digital cellular system.[14] Pursuant to the Commission's rules upon the expiration of its construction period, CCIPR's Site-Licensed Channels operating on thirteen sites had a coverage area determined by their composite outer 22 dBu v/M contour. Within such coverage area CCIPR is entitled to "short space" its frequencies as long as such additional sites do not expand its outer 22 dBu v/M contour.[15]

In determining ESMR Block eligibility, the Commission has focused upon whether a particular licensee held an EA Authorization and constructed a "800 MHz cellular system" as of November 22, 2004.[16] Following the *Fresno Mobile Radio* decision,[17] the Commission determined to treat EA Authorizations and EIAs as equivalent for purposes of their construction requirements.[18]

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[14] *See generally* Amendment of Part 90 of the Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, Memorandum Opinion and Order, DA 97-1059 (May 20, 1997)("Extended Implementation Order").

[15] *See* Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rulemaking, 11 FCC Rcd 1463 (1995)("800 MHz SMR First R&O"), at ¶ 86.

[16] *See* 800 MHz MO&O, at ¶¶ 23-31.

[17] Fresno Mobile Radio, Inc., et al v. FCC, 165 F.3rd 965 (D.C. Cir. 1999).

[18] Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, PR Docket No. 93-144, *Memorandum*

Section 90.7 defines a "800 MHz cellular system" as follows:

> "In the 806-824 MHz/851-869 MHz band, a system that uses multiple, interconnected, multi-channel transmit/receive cells capable of frequency reuse and automatic hand-off between cell sites to serve a larger number of subscribers than is possible using non-cellular technology."

CCIPR operates a Motorola, Inc. Smartzone system throughout Puerto Rico on thirteen (13) sites. In a Smartzone system each site is tied to a Zone Controller that usually assigns channels for each conversation. The received audio from each Channel is sent to an audio switch ("AMB"). The AMB is controlled by a serial data circuit from the Zone Controller. The AMB takes the received audio from the radio site that is currently receiving for a talkgroup and routes that audio to outbound audio circuits to whichever site or sites affiliated radios then are using.

Subscriber radios will search to find the best receive signal if it is an area that is covered by more than one repeater site. When a subscriber radio moves out of coverage of the site with which it currently is affiliated, it will find another site and automatically switch to that new site and affiliate with the system so the Zone Controller can locate it.

For both licensing and operational purposes, CCIPR's wide-area system in Puerto Rico is similar to that of High Tech Communications Services, Inc. (A Frequency Block; operates a Motorola, Inc. Smartzone system throughout Puerto Rico) and North Sight (C Frequency Block; Motorola, Inc.'s Harmony system). Like these EA Authorization holders, CCIPR holds an 800 MHz SMR "wide area" authorization.[19]

Opinion and Order and Order on Remand, FCC 99-399 (released December 23, 1999), at ¶ 12 ("The record on remand demonstrates that incumbent wide-area SMR licensees such as Southern do provide service that is similar, if not identical to that provided by EA licensees and other CMRS providers.").

[19] CCIPR's authorization is composed of its individual call signs. As noted above, its coverage is determined by its licenses' composite outer 22 dBu v/M contour.

Operationally, CCIPR's Smartzone systems works much like that of North Sight's Harmony system. As noted by analysts, Smartzone systems afford automatic roaming between sites that is transparent to the end user. To a user of such a system, when properly configured, a Smartzone system appears as one large system, when in fact the end user actually is roaming between several different sites at different locations.

Since both CCIPR's licenses and operating system that was constructed as of November 22, 2004, are substantially similar to that of North Sight's, Preferred contends that CCIPR's 800 MHz SMR Channels presently located in the Interleaved, Expansion Band, Guard Band and ESMR Block should be entitled to be relocated to or remain in the ESMR Block. However, since Preferred's Alternative Rebanding Plan seeks to accommodate fully all EA-Licensed Channels within an expanded ESMR Block, it would propose to relocate CCIPR's Channels within the Guard Band (new Channels 441-480 or 814.2625-815.2375 MHz/859.2625-860.2375 MHz) and seven (7) additional Channels immediately below the Guard Band covering the Eastern Half of Puerto Rico.

(5) Business and Industrial/Land Transportation Channels in the Expansion Band and Interleaved Channels

To accommodate CCIPR, Preferred has modified its Alternative Rebanding Plan to relocate Business and Industrial/Land Transportation Category ("B/ILT") pool licensees presently in new Channels 441-510 downward in the Interleaved Channels on a geographic "footprint" basis. Preferred's modified Rebanding Plan fully accommodates these B/ILT licensees and provides them comparable facilities.

(6) Site Licensed Channels in Old Channels 1-120

Preferred's Alternative Rebanding Plan moves the Site-Licensed Channels held by Non-ESMR and Non-ESMR Eligible licensees to the interleaved Channels on a geographic "footprint" basis only. All of these licensees receive comparable facilities.

B. Payment of Relocation Costs and 1.9 GHz Band Network

As the holder of a dominant 800 MHz SMR licensing position in the Puerto Rico market, Preferred believes that it, rather than Sprint Nextel, should bear the financial responsibility for all of the costs directly related to completion of the 800 MHz reconfiguration process. Preferred proposes to collateralize its 800 MHz rebanding financial commitment in the same manner as did Sprint Nextel in 2005—by providing a standby letter of credit. The amount of such letter of credit would be negotiated with the Commission and reflect the anticipated rebanding costs of Preferred's Alternative Rebanding Plan.

In exchange for Preferred's assumption of financial responsibility for completion of the 800 MHz rebanding process in Puerto Rico, Sprint Nextel would assign to Preferred or one of its affiliates a 10 MHz license in the 1.9 GHz Band covering Puerto Rico and the U.S. Virgin Islands.[20]

C. Timetable

As noted above and in its Comments,[21] Preferred does not believe that the FCC's generally applicable Rebanding Plan provides all Public Safety, B/ILT and SMR

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[20] *See* 800 MHz First Report & Order, at ¶ 326.

[21] *See* Preferred, Comments, WT Docket No. 02-55, filed on August 8, 2008, at 39-40.

licensees "comparable facilities."[22] As a result, its Alternative Plan proposes a voluntary rebanding approach. To implement its Alternative Rebanding Plan, it requests that the Commission afford it sixty (60) days to obtain executed Voluntary Frequency Reconfiguration Agreements from all affected 800 MHz licensees in Puerto Rico.

Preferred proposes generally to track the 800 MHz rebanding timetable. However, since unlike Sprint Nextel, it has a financial incentive to complete 800 MHz rebanding as soon as possible, it anticipates completion of the 800 MHz rebanding process in Puerto Rico well before the completion of the U.S. rebanding process.

D. Miscellaneous

In its Comments Sprint Nextel challenged the TA's inclusion of Preferred's EA- and Site-Licensed Channels in its Alternative Rebanding Proposal based upon the (1) FCC's administrative hearing with respect to the character qualifications of Preferred, Preferred Acquisitions, Inc. ("PAI"), its wholly-owned subsidiary, and its management and two former consultants and (2) unresolved status of Preferred's waiver request filed on December 1, 2005 with respect to its thirty-eight (38) EA Authorizations.[23]

North Sight also raised the Commission's administrative hearing in its Comments as a basis for excluding PAI's EA-Licensed Channels from the ESMR Block in Puerto Rico. Moreover, it called for the FCC to revoke Preferred's and PAI's licenses due to the

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[22] *See* 47 C.F.R. § 90.699(d)(1-4); Concepts To Operations, Inc., "Analysis of the Impact of 800 MHz Rebanding," enclosed as Exhibit 1 to Preferred, Request for Stay, WT Docket No. 02-55, filed on November 9, 2005.

[23] Sprint Nextel, Comments, WT Docket No. 02-55, filed on August 8, 2008, at 3-4 and nn. 6-7.

latter company's failure to construct licenses and Preferred management's apparent lack of intent to construct and operate 800 MHz SMR systems.[24]

Preferred believes that these companies' comments not only are ill-founded but also procedurally barred. With respect to Preferred's waiver request, it complies in all material respects to the Commission's standards set forth in paragraph 206 of the *800 MHz First R&O* and Section 1.925 of its rules. Moreover, in 2006-2007 the Commission granted SouthernLINC[25] and Herschel Bruce and Linda Sue Williamson[26] a waiver based upon facts less favorable to the licensee than set forth in Preferred's waiver request. Finally, since Preferred's waiver request has yet to be placed on public notice Sprint Nextel lacks any procedural basis for its supposed challenge.

Sprint Nextel and North Sight's attempt to challenge Preferred's status as a licensee is equally unavailing. First, it is the wrong proceeding. If these licensees considered it advisable to comment upon Preferred, PAI, these companies' management or consultants, it could have filed a petition to intervene in the Commission's administrative proceeding. Apparently, these companies chose not to avail themselves of the opportunity to present their respective views to the appropriate Commission Bureau. Having failed to do so, it certainly is both inappropriate and disrespectful of the Commission's rules and procedures to raise such arguments in this proceeding.

Preferred would note that this is not the first occasion North Sight has sought to challenge the status of an 800 MHz licensee in Puerto Rico based upon character

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[24] *See* North Sight Communications, Comments, WT Docket No. 02-55, at 3-4 and nn. 5.

[25] *See* SouthernLINC Waiver Grant, DA 06-2558 (released on December 20, 2006).

[26] *See* Herschel Bruce and Sue Williamson Waiver Grant, DA 07-6 (released on January 6, 2007.

grounds. In February 1998, some ten and one-half years ago, North Sight challenged Telecellular, Inc.'s ("TCI") and nine License Corporations' status based upon TCI's having hired Pendleton Waugh as a consultant. As TCI's FCC attorneys pointed out, Mr. Waugh neither participated in TCI's management nor was a shareholder.[27]

Finally, with respect to North Sight's contention that Preferred and PAI should not be "rewarded" by the FCC in having its EA- and Site-Licensed Channels relocated to the ESMR Block, it should be noted that Preferred successfully competed in FCC Auction #34 not only against Sprint Nextel but also North Sight. Moreover, Preferred promptly paid over $31.67 million to the Commission for its thirty-eight (38) EA Authorizations.

The decision whether and when to construct 800 MHz and other FCC licenses lies within a particular licensee management's discretion. In the case of Aloha Partners, L.P., it purchased 700 MHz licenses in Metropolitan Service Area ("MSA") and Rural Service Area ("RSA") markets in FCC Auctions #44, 49 and 60 and in the secondary market covering 196 million Pops for slightly more than $100 million. In five years it failed to construct any of these licenses. It then sold them to AT&T Mobility for $2.5 billion. To our knowledge, no one questioned Aloha Partners, L.P.'s right to profit considerably from its 700 MHz licenses.

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[27] Telecellular, Inc., Comments, PR Docket 93-144, filed on March 13, 1998, at 3-4 and n. 7. Telecellular, Inc. buttressed its position by including in its Attachments an affidavit from Ms. June D. McNally, its Chairperson. Interestingly, Waugh was the beneficiary of a Voting Trust holding shares of TCI's common stock that was formed pursuant to the execution of a Voting Trust Agreement with language identical to that in the Voting Trust Agreement questioned in the Commission's present administrative hearing. *See* A.S.D. Answer Service, Inc., 1 FCC Rcd 753 (1986)(former chairman of a common carrier who was required to step down as part of a settlement agreement was allowed to retain a 17% ownership interest in the licensee even though he had been involved personally in the wrongdoing.)

Like Aloha Partners, L.P. and the other 700 MHz licensees who participated in the 700 MHz public auctions during 2002-2004, 800 MHz General Category and Lower 80 Channels EA Authorization holders faced a considerable barrier to obtaining equity capital and debt financing to launch major commercial systems. In the context of the 700 MHz licensees, it was the presence in many MSA markets of UHF broadcasters on the auctioned spectrum. In the context of the 800 MHz General Category and Lower 80 Channels EA Authorization holders who had not yet constructed a wide-area digital system, it was the 800 MHz rebanding proceeding. From the release of Nextel's "White Paper" in November 2001 until the release of 800 MHz Supplemental Order in December 2005 and its 800 MHz MO&O in October 2005, it remained unclear whether such 800 MHz licensees would be allowed to relocate their respective EA- and Site-Licensed Channels into the ESMR Block.[28] With such uncertainty, sources of equity capital and debt financing justifiably refused to commit their funds.

Fortunately, the regulatory uncertainty of the 800 rebanding proceeding largely has been lifted. It is clear under the FCC's *800 MHz Supplemental Order, Memorandum Opinion and Order and Second Memorandum Opinion and Order* that Preferred's and PAI's EA- and Site-Licensed Channels are entitled to move to the ESMR Block.[29]

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[28] *See, e.g.,* Consensus Parties, Supplemental Comments, WT Docket No. 02-55, filed on December 24, 2002, at 19 (Cellular Deployment Test determinative of whether permitted to relocate to the ESMR Block); Consensus Parties, Reply Comments, WT Docket No. 02-55, filed on February 25, 2003, at 27-28; Nextel, Ex Parte Presentation, WT Docket No. 02-55, filed on September 16, 2004, at 2; *see generally* Sprint Nextel, Petition for Reconsideration, WT Docket No. 02-55, filed on January 27, 2006, at 2-12.

[29] Frankly, if North Sight had been so concerned about Preferred's failure to construct its EA-Licensed Channels in Puerto Rico, it could and should have filed a Petition for Reconsideration of the FCC's *First Report and Order* and the Orders set forth in the text challenging the Commission on this issue. Having failed to do, North Sight is long since procedurally barred from raising this argument.

Preferred now is prepared to move forward and undertake the reconfiguration of the 800 MHz PLMRB in Puerto Rico as well as construct its 800 MHz EA-Licensed Channels in nine EA markets in the U.S.

III. CONCLUSION.

The Commission has long recognized that its generally applicable 800 MHz rebanding approach fails legally, practically and mathematically in markets with multiple licensees holding ESMR and/or ESMR Eligible spectrum.[30] In these markets the two hundred eighty (280) Channels usually allocated to the ESMR Block simply cannot accommodate the three hundred fifty (350) or more Channels that would remain or be relocated there.

In the Southeast Region, the FCC expressly recognized this problem and resolved it by enlarging the ESMR Band by one hundred forty (140) Channels or 3.5 MHz and permitting Sprint Nextel and SouthernLINC to apportion the enlarged ESMR Block by voluntary agreement.[31] In the Puerto Rico market this ESMR Block "spectrum crowding" issue is further complicated by the failure of the Upper 200 Channels' EA Authorization holders to relocate underlying Site-Licensed Channels during the voluntary and mandatory relocation periods following FCC Auction #16.[32]

In the *800 MHz Second MO&O* the FCC recognized that much like the Southeast Region Puerto Rico is a unique market for purposes of SMR licensing. Furthermore, it indicated that subject to (1) fully accommodating Non-ESMR and Non-ESMR-Eligible

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[30] *See* 800 MHz First Report & Order, at ¶¶ 164-169.

[31] *Id.*, at ¶ 169. In the Southeast Region the Commission also eliminated the Guard Band.

[32] *See* 800 MHz Second FNPR, at ¶ 2; 800 MHz Second MO&O, at ¶¶ 31-33.

licensees' Site-Licensed Channels that need to be relocated downward from the Upper 200 Channels and (2) providing a Guard Band, Puerto Rico also was a market in which expansion of the ESMR Block was appropriate.[33]

In formulating its Alternative Rebanding Proposal, the TA largely ignored this market's significant differences from the majority of EA markets in the U.S. and sought in its own words, to "conform the alternative band plan to the standard United States 800 MHz reconfiguration plan to the extent feasible in order to minimize disruption to licensees, particularly those that have already begun reconfiguration..."[34] As a result, the TA failed to analyze the PLMRB in this EA market in its entirety and recognize the licensing imbalance between its relatively vacant NPSPAC and Public Safety Channels within the Interleave and Expansion Band Channels and the considerable number of EA-Licensed Channels that need to be accommodated within an ESMR Block.

CTO's Report, which provides the basis for Preferred's Alternative Rebanding Plan, addresses the deficiencies in the TA's approach and sets forth an alternative that both matches the 800 MHz SMR licensing realities of the Puerto Rico market and follow the Commission's guidelines set forth in its *800 MHz Second MO&O* and *800 MHz Second FNPR*. Preferred therefore respectfully requests that the Commission adopt Preferred's Alternative Rebanding Plan for Puerto Rico and commence a similar proceeding for the U.S. Virgin Islands.

Consistent with the FCC's approach in the Southeast Region, Preferred initially proposes a voluntary rebanding approach. Preferred therefore requests that the Commission afford it sixty (60) days to obtain the execution of VRAs from all affected

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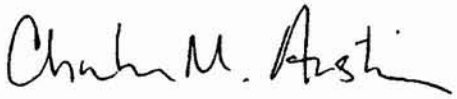
[33] 800 MHz Second MO&O, at ¶ 32.

[34] TA Alternative Rebanding Proposal, at i.

licensees. Preferred also would request that the FCC remind all licensees of their respective duty to negotiate diligently and in good faith.[35]

Respectfully submitted,



Charles M. Austin,
President

[35] *See* 800 MHz First Report & Order, at ¶ 202; *see also* AT&T, Letter, WT Docket No. 02-55, filed on April 20, 2007; at 4, 7-8; Sprint Nextel, Comments, WT Docket No. 02-55, at 4 & n. 7 ("The negotiation of Preferred's Frequency Reconfiguration Agreement ("FRA") and the retuning of its site-based licenses in 1-120 channels has been held in abeyance for over two years pending the outcome of the above-referenced enforcement proceedings, as well as due to the FCC's consideration of Preferred's request for a construction waiver.")

CERTIFICATE OF SERVICE

I, Charles M. Austin, do hereby certify that on this 22nd day of August, 2008, a copy of the foregoing "Reply Comments" was served by first class United States mail, postage prepaid, addressed to:

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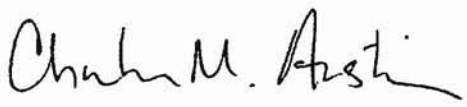
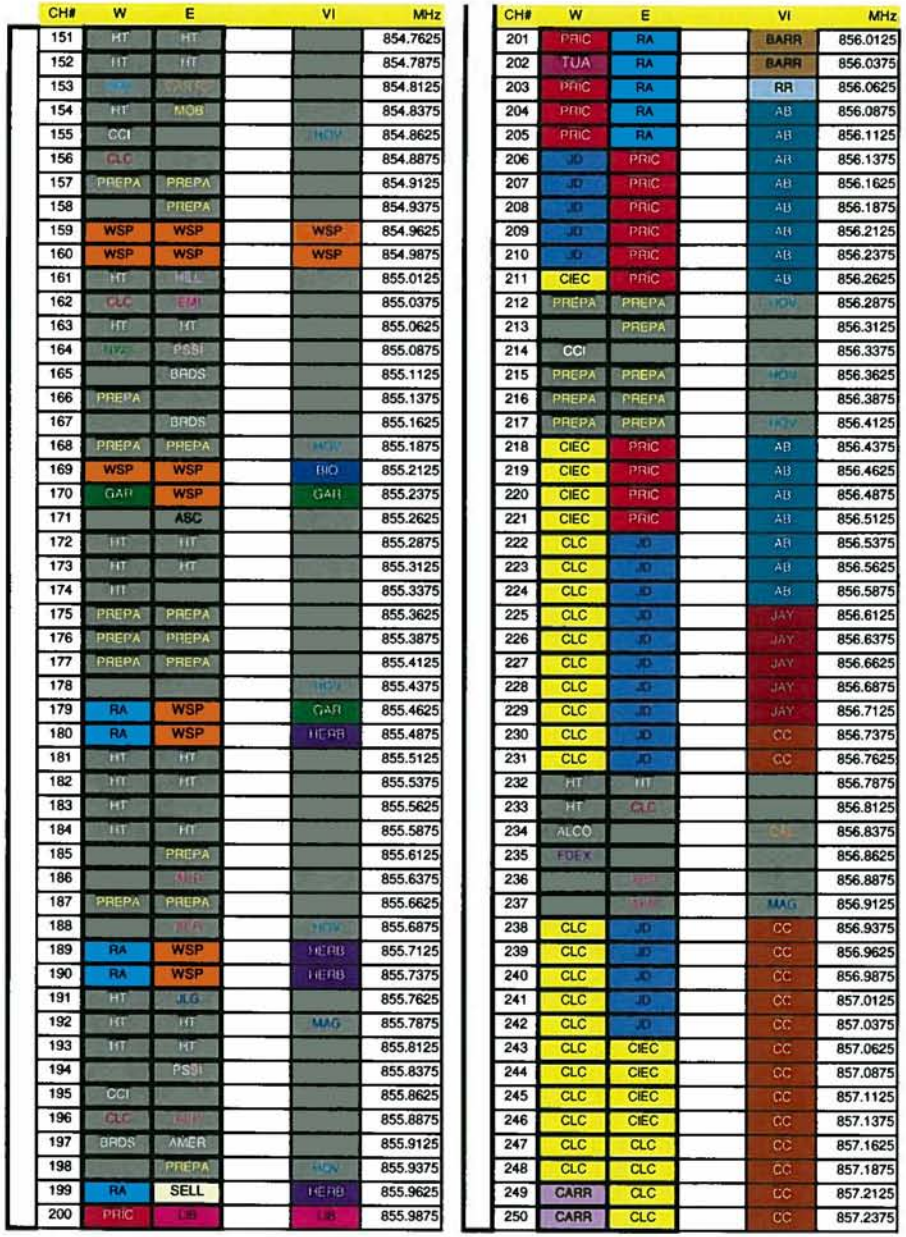


Charles M. Austin

Exhibit A

Revised Channel Plan

ABBREVIATION	COMPANY NAME
AB	American Beeper
AER	Aeronautical Radio
ALCO	ALCO Corporation
AMER	American Machinery, Inc.
ASC	Aeromed Services Corp.
BARR	Don Barr
BRDS	Betterroads Asphalt Corp.
CAL	Calypso Communications, L.L.C.
CARR	Indieras (rubias) Bo. Carrizales
CC	Choice Communications, L.L.C.
CCI	Crown Castle International
CDC	Caribbean Digital Communications
CEN	Centro De Comunicciones De Puerto Rico
CIEC	Communications & Industrial Electronics Corp.
CLC	Communications Leasing Corp.
DMC	Demaco Corporation
EMI	Estilo Moderno
FS	Freddy Salado
FDEX	Federal Express Corp.
GAR	Garland, George
HERB	Clinton F. Herby/John Herby/ Martha Herby
HOV	Hovensa, L.L.C.
HT	High Tech Communications
HILL	Hill Construction Co.
JAY	Jays Electronics, Inc.
JD	Jose Davila
JLG	Jose L. Gonzalez
LAZ	Lazaro Canto
LIB	Liberty Custom Forms
MAG	Magical Cruise Company Limited
MOB	Mobile & Portable Comm., Ltd.
MOD	Estilo Moderno
N	NEXTEL
NS	North Sight Communications
NWS	Nortwest Security Management, Inc.
PREPA	Puerto Rico Elec. Power Authority
PRIC	Puerto Rico Island Commuications
PSSI	Professional Security Support
RA	R A Electronic
RR	Richard Raabe
SELL	Sell, Clyde
TSP	Trunked Systems of Puerto Rico
TUA	Tua, Gustavo
WCCE	Warner Chilcot
WSP	Wireless Services of Puerto Rico



CH#	W	E		VI	MHz
151	HT	HT			854.7625
152	HT	HT			854.7875
153	[illegible]	[illegible]			854.8125
154	HT	MOB			854.8375
155	CCI			HOU	854.8625
156	CLC				854.8875
157	PREPA	PREPA			854.9125
158		PREPA			854.9375
159	WSP	WSP		WSP	854.9625
160	WSP	WSP		WSP	854.9875
161	HT	HLL			855.0125
162	CLC	EMI			855.0375
163	HT	HT			855.0625
164	HYD	PSSI			855.0875
165		BRDS			855.1125
166	PREPA				855.1375
167		BRDS			855.1625
168	PREPA	PREPA		HOU	855.1875
169	WSP	WSP		BIO	855.2125
170	GAR	WSP		GAR	855.2375
171		ASC			855.2625
172	HT	HT			855.2875
173	HT	HT			855.3125
174	HT				855.3375
175	PREPA	PREPA			855.3625
176	PREPA	PREPA			855.3875
177	PREPA	PREPA			855.4125
178				HOU	855.4375
179	RA	WSP		GAR	855.4625
180	RA	WSP		HERB	855.4875
181	HT	HT			855.5125
182	HT	HT			855.5375
183	HT				855.5625
184	HT	HT			855.5875
185		PREPA			855.6125
186		[illegible]			855.6375
187	PREPA	PREPA			855.6625
188		[illegible]		HOU	855.6875
189	RA	WSP		HERB	855.7125
190	RA	WSP		HERB	855.7375
191	HT	JLG			855.7625
192	HT	HT		MAG	855.7875
193	HT	HT			855.8125
194		PSSI			855.8375
195	CCI				855.8625
196	CLC	[illegible]			855.8875
197	BRDS	AMER			855.9125
198		PREPA		HOU	855.9375
199	RA	SELL		HERB	855.9625
200	PRIC	LIB		LIB	855.9875

CH#	W	E		VI	MHz
201	PRIC	RA		BARR	856.0125
202	TUA	RA		BARR	856.0375
203	PRIC	RA		RR	856.0625
204	PRIC	RA		AB	856.0875
205	PRIC	RA		AB	856.1125
206	JD	PRIC		AB	856.1375
207	JD	PRIC		AB	856.1625
208	JD	PRIC		AB	856.1875
209	JD	PRIC		AB	856.2125
210	JD	PRIC		AB	856.2375
211	CIEC	PRIC		AB	856.2625
212	PREPA	PREPA		HOU	856.2875
213		PREPA			856.3125
214	CCI				856.3375
215	PREPA	PREPA		HOU	856.3625
216	PREPA	PREPA			856.3875
217	PREPA	PREPA		HOU	856.4125
218	CIEC	PRIC		AB	856.4375
219	CIEC	PRIC		AB	856.4625
220	CIEC	PRIC		AB	856.4875
221	CIEC	PRIC		AB	856.5125
222	CLC	JD		AB	856.5375
223	CLC	JD		AB	856.5625
224	CLC	JD		AB	856.5875
225	CLC	JD		JAY	856.6125
226	CLC	JD		JAY	856.6375
227	CLC	JD		JAY	856.6625
228	CLC	JD		JAY	856.6875
229	CLC	JD		JAY	856.7125
230	CLC	JD		CC	856.7375
231	CLC	JD		CC	856.7625
232	HT	HT			856.7875
233	HT	CLC			856.8125
234	ALCO			CLC	856.8375
235	FOEX				856.8625
236		[illegible]			856.8875
237		[illegible]		MAG	856.9125
238	CLC	JD		CC	856.9375
239	CLC	JD		CC	856.9625
240	CLC	JD		CC	856.9875
241	CLC	JD		CC	857.0125
242	CLC	JD		CC	857.0375
243	CLC	CIEC		CC	857.0625
244	CLC	CIEC		CC	857.0875
245	CLC	CIEC		CC	857.1125
246	CLC	CIEC		CC	857.1375
247	CLC	CLC		CC	857.1625
248	CLC	CLC		CC	857.1875
249	CARR	CLC		CC	857.2125
250	CARR	CLC		CC	857.2375

Puerto Rico EA Market

CH#	W	E	VI	MHz
251	CARR	CLC	CC	857.2625
252	PREPA	PREPA	HOV	857.2875
253		PREPA		857.3125
254	CCI			857.3375
255	PREPA	PREPA	HOV	857.3625
256	PREPA	PREPA		857.3875
257	PREPA	PREPA	HOV	857.4125
258	CARR	CLC	CC	857.4375
259	CARR	CLC	CC	857.4625
260	NS	CLC	CC	857.4875
261	NS	CLC	CC	857.5125
262	NS	CLC	CC	857.5375
263	NS	CLC	CC	857.5625
264	NS	CLC	CC	857.5875
265	NS	CLC	CC	857.6125
266	NS	CLC	CC	857.6375
267	NS	CLC	NS	857.6625
268	NS	CLC	NS	857.6875
269	NS	CLC	NS	857.7125
270	NS	CLC	NS	857.7375
271	NS	CLC	NS	857.7625
272	HT	HT	MAG	857.7875
273	CLC			857.8125
274		HT		857.8375
275		FDEX		857.8625
276		ABS		857.8875
277		ABS		857.9125
278	NS	CLC	NS	857.9375
279	NS	CLC	NS	857.9625
280	NS	LAZ	NS	857.9875
281	NS	LAZ	NS	858.0125
282	NS	LAZ	NS	858.0375
283	NS	LAZ	NS	858.0625
284	NS	LAZ	NS	858.0875
285	NS	CEN	NS	858.1125
286	N	CEN	NS	858.1375
287	N	CEN	NS	858.1625
288	N	CEN	NS	858.1875
289	N	CEN	NS	858.2125
290	N	TSP	NS	858.2375
291	N	TSP	NS	858.2625
292	PREPA	PREPA	HOV	858.2875
293	PREPA	PREPA		858.3125
294	CCI			858.3375
295	PREPA	PREPA	HOV	858.3625
296	PREPA	PREPA		858.3875
297	PREPA	PREPA	HOV	858.4125
298	N	TSP	NS	858.4375
299	N	TSP	NS	858.4625
300	N	FS	NS	858.4875

CH#	W	E	VI	MHz
301	N	FS	NS	858.5125
302	N	FS	NS	858.5375
303	N	FS	FS	858.5625
304	N	FS	FS	858.5875
305	N	FS	FS	858.6125
306	PREPA	PREPA	HOV	858.6375
307		PREPA		858.6625
308	CCI			858.6875
309	PREPA	PREPA	HOV	858.7125
310	PREPA	PREPA		858.7375
311	PREPA	PREPA	HOV	858.7625
312	HT			858.7875
313		ALCO	MAG	858.8125
314	ALCO	MOD		858.8375
315	FDEX			858.8625
316		ABS		858.8875
317		ABS		858.9125
318	HT		MAG	858.9375
319	HT			858.9625
320	HT	HT		858.9875
321	HT	FDEX		859.0125
322		ABS		859.0375
323	ABS			859.0625
324	PREPA	PREPA	HOV	859.0875
325		PREPA		859.1125
326	CCI		HOV	859.1375
327		PREPA	HOV	859.1625
328	PREPA	PREPA		859.1875
329	PREPA	PREPA	HOV	859.2125
330	HT			859.2375
331	HT	HT		859.2625
332	PREPA	WCCE		859.2875
333		FDEX	FDEX	859.3125
334		ABS		859.3375
335		ABS		859.3625
336	N	CCI	NS	859.3875
337	N	CCI	NS	859.4125
338	N	CCI	NS	859.4375
339	N	CCI	NS	859.4625
340	N	CCI	NS	859.4875
341	CCI	CCI	NS	859.5125
342	CCI	CCI	NS	859.5375
343	CCI	CCI	NS	859.5625
344	CCI	CCI	NS	859.5875
345	CCI	CCI	NS	859.6125
346	CCI	CCI	NS	859.6375
347	CCI	CCI	NS	859.6625
348	CCI	CCI	NS	859.6875
349	CCI	CCI	N	859.7125
350	CCI	CCI	N	859.7375

CH#	W	E	VI	MHz
351	CCI	CCI	N	859.7625
352	CCI	CCI	N	859.7875
353	CCI	CCI	N	859.8125
354	CCI	CCI	N	859.8375
355	CCI	CCI	N	859.8625
356	CCI	CCI	N	859.8875
357	CCI	CCI	N	859.9125
358	CCI	CCI	N	859.9375
359	CCI	CCI	N	859.9625
360	CCI	CCI	N	859.9875
361	CCI	CCI	N	860.0125
362	CCI	CCI	N	860.0375
363	CCI	CCI	N	860.0625
364	CCI	CCI	N	860.0875
365	CCI	CCI	N	860.1125
366	CCI	CCI	N	860.1375
367	CCI	CCI	N	860.1625
368	CCI	CCI	N	860.1875
369	CCI	CCI	N	860.2125
370	CCI	CCI	N	860.2375
371	N	P	N	860.2625
372	N	P	N	860.2875
373	N	P	N	860.3125
374	N	WSP	N	860.3375
375	N	P	N	860.3625
376	N	P	N	860.3875
377	N	P	N	860.4125
378	N	N	N	860.4375
379	N	P	N	860.4625
380	N	P	N	860.4875
381	P	P	N	860.5125
382	N	N	N	860.5375
383	N	P	N	860.5625
384	N	P	N	860.5875
385	P	P	N	860.6125
386	N	N	N	860.6375
387	N	P	N	860.6625
388	N	P	N	860.6875
389	P	N	N	860.7125
390	N	N	WSP	860.7375
391	N	P	N	860.7625
392	P	N	N	860.7875
393	P	N	N	860.8125
394	P	N	N	860.8375
395	N	N	N	860.8625
396	P	P	P	860.8875
397	P	P	P	860.9125
398	P	P	P	860.9375
399	P	P	P	860.9625
400	P	P	P	860.9875

Puerto Rico EA Market