

FHH Telecom Law
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800 MHz Band Plan Resolved -- Yet Again

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Last summer we reported how the FCC had resolved (for the time being) the controversy over whether and how to simplify the 800 MHz band plan. It offered to give Nextel the 1.9 GHz spectrum it wanted in exchange for some of Nextel's existing 800 MHz spectrum, plus Nextel's commitment to pay for relocating incumbent licensees out of the band, and also Nextel's payment of roughly \$2.35 billion to the treasury. That last item caused Nextel some heartburn, since it had expressed a willingness to pay only about \$850 million.

In an unusual procedural move, the FCC entertained *ex parte* submissions from Nextel suggesting that it be credited with a much higher dollar amount for the 800 MHz spectrum it was turning in, based on a more accurate population count. December 23 then brought Nextel an early Christmas gift: a 67-page reconsideration order that increased Nextel's credit for loss of its existing spectrum by \$452 million. In addition, the FCC clarified a host of smaller points which had confused the parties to the massive 800 MHz migration. Significantly, non-Nextel licensees are now allowed to have wide-area cellular systems if they so elect.

Nextel has a month to decide whether to accept the new version of the deal. Verizon and Cingular have dropped their opposition, after having fighting the plan for years. Though challenges by smaller disgruntled parties have already been filed with the Court of Appeals, acquiescence of the major carriers increases the likelihood that the plan will pass its remaining legal hurdles.