

Before the
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

In the Matter of
Improving Public Safety Communications in the
800 MHz Band
New 800 MHz Band Plan for U.S. – Mexico
Sharing Zone
WT Docket 02-55

FOURTH FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: August 17, 2012

Released: August 17, 2012

Comment Date: (30 days after publication in the Federal Register).

Reply Comment Date: (45 days after publication in the Federal Register).

By the Chief, Public Safety and Homeland Security Bureau:

TABLE OF CONTENTS

Heading Paragraph #
I. INTRODUCTION 1
II. BACKGROUND 2
III. DISCUSSION 6
A. Post-Rebanding Domestic Channel Plan 6
1. Standard Channel Centers for Licensees in Sharing Zone 10
2. Channel Plan for Sharing Zone 15
3. Channel Plan for NPSPAC Region 5 (Southern California) 19
4. Channel Plan for Remaining Border-Area NPSPAC Regions 24
B. Implementation Issues 25
1. Planning, Negotiation and Mediation 26
2. Rebanding Implementation Timetable 32
3. Stages and Steps for Completing Rebanding 33
C. Additional Issues 37
D. Cost Benefit Analysis 41
IV. PROCEDURAL MATTERS 42
A. Comment Filing Procedures 42
B. Ex Parte Rules – Permit-But-Disclose Proceeding 46
C. Initial Regulatory Flexibility Analysis 47
D. Initial Paperwork Reduction Act of 1995 Analysis 48
V. ORDERING CLAUSES 49

I. INTRODUCTION

1. On June 8, 2012, the United States and Mexico signed an agreement modifying the international allocation of 800 MHz spectrum in the U.S.-Mexico border region (Amended Protocol),¹ which enables the U.S. to proceed with 800 MHz band reconfiguration in the border region. In this Notice, the Public Safety and Homeland Security Bureau (PSHSB or Bureau), on delegated authority, seeks comment on proposals for establishing and implementing the reconfigured 800 MHz channel plan along the U.S.-Mexico border.

II. BACKGROUND

2. Prior to signing the Amended Protocol, the U.S. and Mexico operated along their common border in the 800 MHz band pursuant to a bilateral protocol signed in 1994 (1994 Protocol),² which assigns access to spectrum between the two countries in a “Sharing Zone” consisting of the region extending 110 kilometers from the border into both countries.³ The 1994 Protocol divides access to 800 MHz spectrum in the Sharing Zone evenly, with each country having primary access to 50 percent of the channels in the band.⁴ Within the Sharing Zone, licensees may operate freely on channels designated as primary to their own country, subject to certain power and antenna height limits.⁵ Licensees may also operate in the Sharing Zone on channels primary to the other country so long as they do not exceed specified signal strength limits at and beyond the border.⁶ Because of the limits on signal strength, licensees are generally only able to operate low-powered systems on the other country’s primary spectrum within the Sharing Zone. Beyond the Sharing Zone, however, licensees in each country operate in the 800 MHz band without restriction.⁷

3. In July 2004, the Commission adopted the *800 MHz Report and Order*, which reconfigured the 800 MHz band in the U.S. to eliminate interference to public safety and other land mobile communication systems operating in the band.⁸ The Commission, however, deferred adopting band reconfiguration plans for the border areas, noting that “implementing the band plan in areas of the United States bordering Mexico and Canada will require modifications to international agreements for use of the 800 MHz band in the border areas.”⁹ The Commission stated that “[t]he details of the border band plans will be determined in our ongoing discussions with the Mexican and Canadian governments.”¹⁰ The

¹ See Protocol Between the Department of State of the United States of America and the Secretariat of Communications and Transportation of the United Mexican States Concerning the Allotment, Assignment and Use of the 806-824/851-869 MHz and 896-901/935-940 MHz Bands for Terrestrial Non-Broadcasting Radiocommunication Services Along the Common Border (June 8, 2012) (Amended Protocol).

² See Protocol Concerning the Use of the 806-824/851-869 and 896-901/935-940 MHz Band for Land Mobile Services Along the Common Border (June 16, 1994) (1994 Protocol).

³ 1994 Protocol at Article I, paragraph 1. The Sharing Zone is displayed in Appendix B, *infra*.

⁴ 1994 Protocol, Appendix A and B.

⁵ *Id.* at Article III, paragraph 3.

⁶ *Id.* at Article III, paragraph 4.

⁷ *Id.* at Article III, paragraph 6.

⁸ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*).

⁹ *Id.* at 14985-14986 ¶ 25.

¹⁰ *Id.* at 15063 ¶ 176.

Commission also recognized that these international negotiations could cause rebanding in the border regions to take longer than rebanding in non-border regions.¹¹

4. Following adoption of the *800 MHz Report and Order*, U.S. and Mexico representatives initiated negotiations to amend the 1994 Protocol to accommodate 800 MHz band reconfiguration by U.S. licensees in the border region. The negotiations focused on modifying the 1994 Protocol in a manner that would enable NPSPAC licensees in the Sharing Zone to relocate to the 806-809/851-854 MHz band – which the 1994 Protocol allocates on a primary basis to Mexico.¹² In June 2012, these negotiations culminated in the signing of the Amended Protocol, which reapportions spectrum in the Sharing Zone between the U.S. and Mexico as follows:

- The U.S. and Mexico each continue to have primary access to an equal number of channels in the 800 MHz band.¹³
- U.S. licensees have primary access to the lowest 6.25 x 6.25 megahertz paired block of spectrum (806-812.25/851-857.25 MHz).¹⁴
- Mexican licensees have primary access to the 6.25 x 6.25 megahertz paired block of spectrum immediately above the U.S. primary block (812.25-818.5/857.25-863.5 MHz).¹⁵
- U.S. and Mexican licensees may operate on channels in the other country's primary spectrum provided they do not exceed the specified maximum signal strength at any point at or beyond the border.¹⁶
- U.S. and Mexican licensees share co-primary access to the uppermost 5.5 x 5.5 megahertz paired spectrum block (818.5-824/863.5-869 MHz).¹⁷
- Antenna height limits in the Sharing Zone are based on antenna height above average terrain on standard radials in the direction of the common border while maximum power limits apply only in the direction of the common border.¹⁸

5. The spectrum reapportionment under the Amended Protocol will require some incumbent operators in the Mexican portion of the Sharing Zone to relocate out of spectrum that is being converted from Mexico primary to U.S. primary status. These Mexican operators will relocate either to replacement

¹¹ *Id.* at ¶ 176 n.471, 15125 ¶ 332.

¹² *See infra* Appendix C-1 and C-2.

¹³ Amended Protocol at Article I, paragraph 1.

¹⁴ *Id.* at Appendix II, Tables III and IV.

¹⁵ *Id.*

¹⁶ *Id.* at Article III, paragraph 4.

¹⁷ U.S. and Mexican licensees operating in the co-primary portion of the band will be permitted to operate up to a signal strength level at the border of -107 dBW/m² but may exceed this level if all counterpart operators agree to a higher level. *Id.* at Article III, paragraph 6.

¹⁸ *Id.* at Article III, paragraph 3, Table I. Licensees will retune to replacement channels at their existing power and antenna height. Licensees making modifications after rebanding, however, will need to comply with the power and antenna height limits listed in the Amended 800 MHz Protocol which, in most cases, are more flexible than limits in the previous agreement.

channels in the new Mexico primary band segment or to non-800 MHz channels.¹⁹ In some instances, these relocations will need to be coordinated with relocations on the U.S. side to ensure an orderly transition. The Amended Protocol provides for a joint U.S. – Mexico task force to coordinate transition of incumbent licensees on both sides of the border to new channels consistent with the band plan specified in the Amended Protocol.²⁰ The Amended Protocol also provides that licensees operating in the co-primary spectrum block will be responsible for covering the reasonable relocation costs of Mexican incumbents.²¹

III. DISCUSSION

A. Post-Rebanding Domestic Channel Plan

6. With the adoption of the Amended Protocol, the Bureau may now implement band reconfiguration in the NPSPAC regions bordering Mexico, *i.e.*, Southern California (NPSPAC Region 5), Arizona (NPSPAC Region 3), New Mexico (NPSPAC Region 29), Texas – El Paso (NPSPAC Region 50) and Texas – San Antonio (NPSPAC Region 53).²² Consequently, we propose a channel plan specific to U.S. licensees that operate in all of these NPSPAC regions within the Sharing Zone, *i.e.*, within 110 kilometers of the border. We also propose a channel plan for licensees operating in the portions of these NPSPAC regions that are outside the Sharing Zone.

7. As with channel plans previously adopted for non-border regions and the Canada border region, our goal is to separate—to the greatest extent possible—public safety and other non-cellular licensees from licensees in the band that employ cellular technology. Furthermore, we seek to maintain the ability of public safety licensees operating in the Sharing Zone to interoperate with counterpart licensees both inside and outside of the Sharing Zone.

8. Similar to reconfiguration in all other NPSPAC regions, the 800 MHz Transition Administrator (TA) will assign licensees post-band reconfiguration replacement channels based on the channel plan we adopt in this proceeding.²³ Sprint will then be responsible for paying the minimum reasonable costs of retuning incumbents to comparable facilities on their replacement channels.²⁴

9. We caution that in some cases there is likely to be little room for adjustment to the channel plan we propose below due to the limitations on spectrum use in the Sharing Zone combined with the requirement to accommodate all incumbent licensees within a region with comparable post-rebanding replacement channels.²⁵ Nonetheless, we seek comment on any alternatives to our proposals below. We

¹⁹ Mexico is considering relocating some Mexican incumbents out of the 800 MHz band.

²⁰ Amended Protocol at Article V.

²¹ *Id.* It is anticipated that these costs will be borne by Sprint and by NII Holdings, Inc., the parent company of Nextel Mexico, pursuant to a side agreement between them. *See* Letter from James B. Goldstein, Director – Spectrum, Sprint Nextel, to Ambassador Philip L. Verveer, Deputy Assistant Secretary of State, United States Coordinator for International Communications and Information Policy, US Department of State (June 8, 2010).

²² The Commission delegated authority to the Bureau in 2007 to propose and adopt border area band plans once the United States reached the required agreements with Canada and Mexico. Improving Public Safety Communications in the 800 MHz Band, *Second Memorandum Opinion and Order*, WT Docket No. 02-55, 22 FCC Rcd 10467, 10494-95 (2007) (*800 MHz Second Memorandum Opinion and Order*).

²³ *800 MHz Report and Order*, 19 FCC Rcd 15074 ¶ 198.

²⁴ *Id.* *See also* Improving Public Safety Communications in the 800 MHz Band, *Memorandum Opinion and Order*, 22 FCC Rcd 9818 (2007).

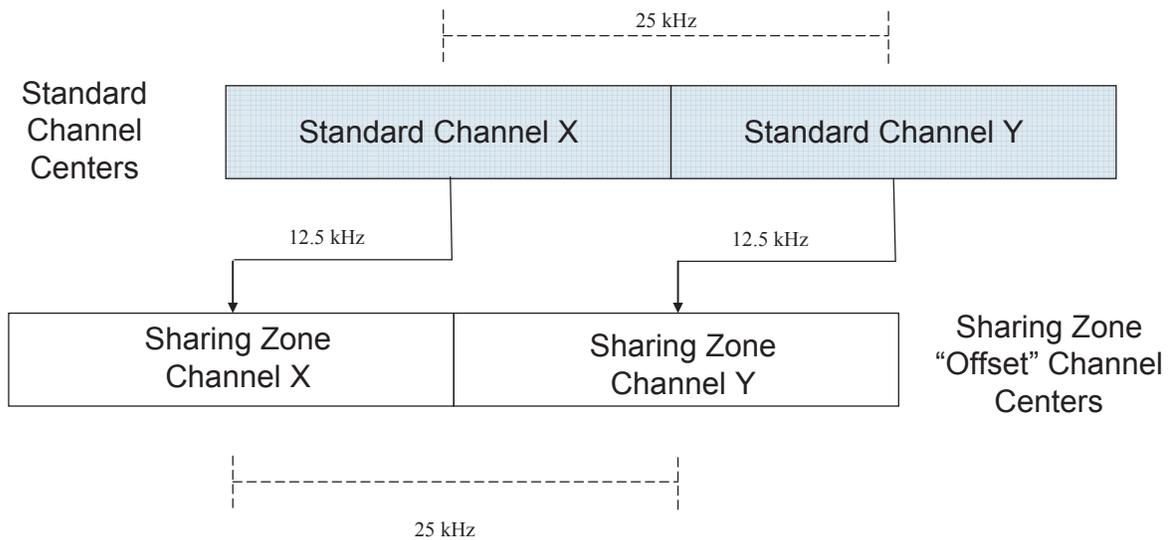
²⁵ 47 C.F.R. § 90.699(d).

also seek comment from individual licensees on any particular factors that they believe should be considered when assigning replacement channels, *e.g.*, the need for channels with a wide emission mask to accommodate data systems.²⁶

1. Standard Channel Centers for Licensees in Sharing Zone

10. Before discussing the details of our proposed channel plan, we propose a universal change to the center frequency definition for channels assigned to licensees in the Sharing Zone. Under current rules, as illustrated below, certain licensees in the Sharing Zone operate on channels with channel centers that offset 12.5 kilohertz lower in frequency than channel centers used by licensees throughout the rest of the U.S.²⁷

Figure 1 – Offset Channels In Sharing Zone



11. The Commission in 1981 first considered adopting offset channel centers in the Sharing Zone in Southern California to limit co-channel interference between licensees in San Diego County (who operate within the Sharing Zone) and adjacent licensees operating outside the Sharing Zone in Los

²⁶ In this regard, we remind licensees that, for the limited purpose of band reconfiguration, inter-category sharing is permitted in order to give the TA maximum flexibility in assigning replacement channels to licensees. *See* 47 C.F.R. § 90.677. Thus, the TA will consider the pool category of a replacement channel but is not bound by the eligibility requirements of that pool category.

²⁷ 47 C.F.R. § 90.619(a).

Angeles and Orange Counties.²⁸ In June of 1982, however, the United States signed a frequency sharing agreement with Mexico, which altered the Commission's original 1981 "Southern California" proposal and required licensees throughout the entire Sharing Zone to operate using offset channel centers.²⁹ As a result, today all licensees in the Sharing Zone operate on offset channels regardless of where they are located along the border.

12. We now revisit that approach and propose that the Commission adopt standard channel centers for the Sharing Zone. The changes to the 800 MHz band plan in the Amended Protocol provide us with new flexibility to eliminate offset channel centers and allow U.S. licensees to operate on standard channel centers in the Sharing Zone. Furthermore, we believe we can resolve the spectrum congestion issues in Southern California more effectively under the Amended Protocol by making maximum use, particularly in Los Angeles and Orange Counties, of channels newly established as primary to Mexico (812.25-818.5/857.25-863.5 MHz), which are sparsely used in San Diego County but which may be used without restriction outside the Sharing Zone.³⁰

13. Based on our experience with offset channels along the border, and in light of the changes made in the Amended Protocol, we tentatively conclude that the inefficiencies created by these offset channels outweigh their benefits. For instance, as a result of the offset, licensees operating outside the Sharing Zone and seeking to interoperate with licensees inside the Sharing Zone must program an additional set of offset channels into their radios. Similarly, licensees operating inside the Sharing Zone must program an additional set of non-offset channels into their radios in order to interoperate with counterpart licensees outside the Sharing Zone. We note that these inefficiencies affect licensees operating throughout the Sharing Zone despite the fact that the offset channel centers were established solely to resolve potential spectrum congestion in Southern California.³¹

14. Consequently, we believe that band reconfiguration offers us an opportunity to improve interoperability along the U.S.-Mexico border while eliminating the inefficiencies created by offset channels. Therefore, we propose to eliminate the channel center offsets in the Sharing Zone and use standard channel centers for all post-band reconfiguration channel assignments in the Sharing Zone. We also note that some licensees outside the Sharing Zone in the five NPSPAC regions bordering Mexico operate on offset channels. We propose to eliminate offset channels for these licensees as well and use standard channel centers for their post-band reconfiguration channel assignments. We seek comment on our tentative conclusions about the inefficiencies created by offset channels and our proposal to eliminate them and assign standard channels to all licensees along the Mexico border.

2. Channel Plan for Sharing Zone

15. For the Sharing Zone, we propose to adopt the channel plan depicted in Appendix C-4. This channel plan proposal is based on the terms of the Amended Protocol, which makes the 806-809/851-854

²⁸ See Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-866 MHz Bands and Adopt Rules and Regulations Which Govern Their Use, *Further Notice of Proposed Rule Making*, Docket 79-191, 46 F.R. 37927, 37931 ¶ 19 (1981).

²⁹ The 1982 agreement was a precursor agreement to the 1994 Protocol. See Agreement Between the United States of America Government and the Government of the United Mexican States Concerning Land Mobile Service Along the Common Border (June 18, 1982). See also Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-866 MHz Bands and Adopt Rules and Regulations Which Govern Their Use, *Second Report and Order*, 90 FCC 2d 1281, 1318-19 ¶¶ 185-186 (1982).

³⁰ See Amended Protocol at Article III, ¶ 8.

³¹ See *supra* n. 28.

MHz band segment primary to licensees in the U.S.³² Consequently, we propose establishing post-reconfiguration NPSPAC channels in this band segment in the Sharing Zone consistent with the post-reconfiguration NPSPAC band throughout the rest of the U.S. Thus, in the Sharing Zone, the NPSPAC band will consist of 225 channels (with 12.5 kHz spacing) and five mutual aid channels (with 25 kHz spacing). Incumbent NPSPAC licensees in the Sharing Zone will generally relocate 15 megahertz lower in frequency from their current location in the band.

16. We propose assigning the 85 channels immediately above the NPSPAC band to the Public Safety Pool. In this manner, the number of pool channels available to public safety eligible entities will remain the same after band reconfiguration as before band reconfiguration. We propose assigning the remaining 45 channels in the U.S. primary band segment at 809-812.25/854-857.25 MHz to the General Category.³³

17. We propose assigning the 250 channels in the Mexican primary band segment (812.25-818.5/857.25-863.5 MHz) to the General Category. In order to ensure compliance with the Amended Protocol, these channels will only be available for assignment without restriction outside the Sharing Zone, except that they may be assigned inside the Sharing Zone subject to the signal strength limits allowed by the Amended Protocol at and beyond the border.³⁴

18. Finally, we propose establishing an ESMR dividing line at 818.5/863.5 MHz and assigning channels in the 818.5-824/863.5-869 MHz band segment to the SMR Pool for use by licensees operating high-density cellular systems in the band. We seek comment on all elements of our channel plan proposal above or on any alternative channel plans that are consistent with the Amended Protocol and the Commission's overall goals for rebanding.

3. Channel Plan for NPSPAC Region 5 (Southern California)

19. NPSPAC Region 5 encompasses Southern California and is the most congested public safety region along the U.S.-Mexico border.³⁵ The southern portion of the region — approximately one-third of the region's total geographic area — is included in the Sharing Zone.³⁶ The remaining two-thirds of the region, which includes most of Los Angeles and Orange Counties, is outside the Sharing Zone. Because of the large number of incumbent 800 MHz licensees operating in this region, we propose establishing the channel plan depicted in Appendix C-5 for Region 5 licensees located outside the Sharing Zone. This proposed channel plan is identical to the channel plan for non-border 800 MHz regions, except that in the 815-817/860-862 MHz band segment we do not propose to establish an Expansion Band or Guard Band in NPSPAC Region 5.³⁷ We tentatively conclude that eliminating the Expansion and Guard Bands is

³² See *supra* ¶ 4.

³³ For purposes of band reconfiguration, licensees in the Sharing Zone may be provided replacement frequencies on any of these 130 channels without regard to Pool eligibility in order to accommodate combiner spacing and co-channel separation requirements.

³⁴ See Amended Protocol at Article III, ¶ 4. See also *infra* ¶ 40.

³⁵ NPSPAC Region 5 includes the following counties in California: Imperial, Kern, Los Angeles, Orange, Riverside, San Bernardino, San Diego, San Luis Obispo, Santa Barbara, Ventura.

³⁶ In NPSPAC Region 5, the Sharing Zone encompasses San Diego and Imperial Counties, the southern portions of Orange and Riverside Counties and portions of Santa Catalina Island and all of San Clemente Island, both of which are part of Los Angeles County. The remaining counties and portions of counties in NPSPAC Region 5 are outside of the Sharing Zone.

³⁷ In non-border regions, the Commission established the Expansion Band at 815-816/860-861 MHz and the Guard Band at 816-817/861-862 MHz as buffers to provide additional interference protection from high-density ESMR (continued....)

necessary to accommodate the large number of non-ESMR incumbents in Region 5. This proposed channel plan is also intended to maximize use outside the Sharing Zone of channels that are primary to Mexico inside the Sharing Zone, so as to avoid creating co-channel conflicts within the region while accommodating all incumbent licensees on post-rebanding replacement channels.

20. Under our proposal, Region 5 NPSPAC licensees outside the Sharing Zone will generally relocate 15 megahertz lower in frequency from their current assignments in the 821-824/866-869 MHz band to the new NPSPAC band at 806-809/851-854 MHz. Furthermore, B/ILT licensees, SMR licensees (operating non-high density systems) and public safety licensees currently operating on pool channels will relocate to replacement channels above the new NPSPAC band in the 809-817/854-862 MHz band segment. However, the 130 channels immediately above the NPSPAC band (809-812.25/854.0-857.25 MHz) will likely be unavailable in the portion of Region 5 outside the Sharing Zone due to co-channel spacing requirements necessary to accommodate intensive use by incumbent licensees inside the Sharing Zone.³⁸

21. Nonetheless, because Region 5 licensees operating outside the Sharing Zone will have unrestricted access to Mexican primary channels, these licensees may retune to the 812.25-817/857.25-862 MHz band. Consequently, by proposing to eliminate the Expansion and Guard Bands, we make additional channel capacity available to compensate for 130 channels noted above that will be unavailable.³⁹

22. Based on examination of our licensing database we tentatively conclude that unless we eliminate the Expansion Band and Guard Band in Region 5, we will be unable to accommodate all Region 5 non-ESMR incumbent licensees below 817/862 MHz. By eliminating the Expansion Band and Guard Band for this region, we can avoid creating unacceptable co-channel short-spacing between adjacent licensees operating inside and outside the Sharing Zone. We emphasize that under our proposal, Region 5 licensees that are assigned replacement channels in the 815-817/860-862 MHz band (the segment of the band reserved for the Expansion or Guard Bands in non-border regions) will receive full protection against unacceptable interference from licensees operating cellular systems above 817/862 MHz.⁴⁰ In addition, licensees assigned channels in the 816-817/861-862 MHz band (the Guard Band in non-border regions) will not be required to operate with increased median received power levels in order to qualify for protection from unacceptable interference.⁴¹

23. We seek comment on our proposed channel plan for the non-Sharing Zone portions Region 5. In addition, we seek comment on what restrictions, if any, may be needed on licensees operating in the ESMR band above 817/862 MHz to ensure that these systems do not cause unacceptable interference to licensees operating below 817/862 MHz.

(Continued from previous page) _____
systems for public safety and other non-ESMR systems. *See 800 MHz Report and Order*, 19 FCC Rcd 15051-52 at ¶ 151.

³⁸ The minimum separation between co-channel systems is typically 113 kilometers unless licensees satisfy the requirements of a short-spacing table, in which case, co-channel systems may be spaced as close as 88 kilometers. Furthermore, some mountain top sites in Southern California require a greater co-channel separation than 113 kilometers. *See* 47 C.F.R. § 90.621(b).

³⁹ We note that under the band plan we propose, certain licensees operating north of the Sharing Zone in NPSPAC Region 5, which would otherwise not need to reband under the standard non-border Band Plan, will be required to retune to channels higher in the band in order to clear channels for licensees located in the Sharing Zone.

⁴⁰ *See* 47 C.F.R. § 90.672.

⁴¹ *See* 47 C.F.R. § 90.617(k).

4. Channel Plan for Remaining Border-Area NPSPAC Regions

24. In the four NPSPAC regions that border Mexico other than Region 5, we propose to adopt the channel plan depicted in Appendix C-6 for licensees operating outside the Sharing Zone. This proposed channel plan is identical to the reconfigured channel plan for the non-border regions, and would include the Expansion Band and Guard Band.⁴² We believe that this channel plan can accommodate all relocating licensees in these four regions because, unlike Region 5, these regions are not as heavily congested. We seek comment on this proposal.

B. Implementation Issues

25. We now turn to the sequencing and timing of rebanding activity along the U.S.-Mexico border. Once we have adopted a final channel plan for the border region, the TA will assign replacement channels to licensees that must retune their systems, and the transition period will begin for licensees to develop their reconfiguration plans, negotiate Frequency Reconfiguration Agreements (FRAs) with Sprint, and complete the rebanding process. We further anticipate that rebanding in the border region will proceed in stages and will require close coordination with Mexican operators that must relocate under the Amended Protocol. As discussed in greater detail below, we propose a 30-month transition period for the rebanding process in the border region, which would begin 60 days after the effective date of an order establishing the border area channel plan. We seek comment on this timetable and its constituent elements discussed below.

1. Planning, Negotiation and Mediation

26. We propose an expedited timeline for planning, negotiation, and mediation periods for licensees in the Mexico border region. As the Bureau noted when it established the identical timeline for rebanding in the Canadian border region, we believe the experience gained in non-border area rebanding has enabled the Commission and the TA to develop more efficient procedures for licensees to obtain planning funding, conduct planning, prepare cost estimates, and negotiate an FRA.

27. Consequently, we propose that within 60 days of the effective date of an order establishing the channel plan for the U.S.-Mexico border, each border area licensee that intends to negotiate a Planning Funding Agreement (PFA) with Sprint must submit a Request for Planning Funding (RFPF) to Sprint, after which the parties will have 30 days from the date of submittal of the RFPF to negotiate a PFA. Further, some licensees may already have negotiated PFAs but may need to amend them to complete the planning process after the channel plan for the U.S.-Mexico border become effective. In this instance, we propose that these licensees must submit a Change Notice within 60 days of the effective date of an order establishing channel plan for the U.S.-Mexico border, after which the parties will have 30 days from the date of submittal of the Change Notice to negotiate a PFA Amendment.

28. PFA and PFA Amendment negotiations will be monitored by a TA mediator, but without the start of formal mediation. If, however, parties are unable to negotiate a PFA or PFA Amendment within the 30 days noted above, the parties must participate in mediation for 20 working days.⁴³ We propose that, at the end of the 20-day mediation period, the TA mediator will refer any remaining disputed issues to the Bureau for *de novo* review within 10 days after the close of the mediation period.

29. Upon TA approval of a PFA or PFA Amendment (or an equivalent starting date designated by the TA for licensees without a PFA), we propose that the licensee must complete planning and submit

⁴² As with NPSPAC Region 5, certain licensees in these regions operating north of the Sharing Zone, which would otherwise not need to reband, will be required to retune to channels higher in the band in order to clear channels for licensees located in the Sharing Zone. *See supra* n. 39.

⁴³ The TA would specify the beginning of the 20-day mediation period.

a cost estimate to Sprint within 90 to 110 days, depending on the number of mobile/portable radio units in the licensee's system. For licensees with up to 5,000 units, we propose a period of 90 days to complete planning and submit a cost estimate. For licensees with 5,001-10,000 units, we propose a period of 100 days to complete planning and submit a cost estimate. Finally, for licensees with more than 10,000 units, we propose a period of 110 days to complete planning and submit a cost estimate. If the TA has not assigned a licensee its replacement channels by the date the TA approves its PFA or PFA Amendment (or the planning starting date designated by the TA for licensees without a PFA), the 90 to 110 day planning period will run from the date the licensee receives its replacement channel assignment. A licensee may petition the Bureau for additional time for planning, but any such petition must (a) explain why more time is necessary, (b) demonstrate that the licensee has exercised diligence in the time already allotted (e.g., commencing planning promptly after TA approval of its PFA, promptly reviewing statements of work prepared by its vendors, and completing planning tasks on schedule), and (c) set a firm schedule for planning completion. We seek comment on our proposed time periods for Mexican border licensees to complete planning.

30. Following the completion of planning and submission of a cost estimate to Sprint by the licensee, we propose that parties have 30 days to negotiate an FRA. Under our proposal, negotiations would be monitored by a TA mediator, but formal mediation would not begin. If, however, parties are unable to negotiate an FRA within 30 days, they must participate in mandatory mediation for 20 working days.⁴⁴ We propose that at the end of the 20-day mediation period, the TA mediator will refer any remaining disputed issues to the Bureau for *de novo* review within 10 days after the close of the mediation period. We seek comment on these proposed planning, negotiation, and mediation time periods for the Mexican border region.

31. As we have done in non-border regions and the Canadian border region, we also propose to allow licensees in the Mexican border region to negotiate with Sprint for a system upgrade whereby the licensee upgrades its system, Sprint pays the licensee the amount that it otherwise would have paid for rebanding to comparable facilities, and the licensee pays the additional cost of the upgraded system from its own funds. We propose that any licensee seeking such an upgrade notify the TA and Sprint, in writing, no later than the due date for submission of its cost estimate. The notice, which is subject to TA approval, must describe the nature of the upgrade, the cost, the source of funds, and the implementation schedule. We seek comment on our proposed policy regarding system upgrades. We note that upgrade proposals are given close scrutiny by the TA to ensure that the upgrade will not delay the rebanding schedule and that the upgrade funds are demonstrably available. Licensees contemplating an upgrade should consult the TA's upgrade guidelines.⁴⁵

2. Rebanding Implementation Timetable

32. Under our proposal above, the planning, negotiation, and mediation process for licensees along the U.S.-Mexico border would take approximately seven to eight months. This would leave Mexican border licensees approximately 22 to 23 months—within the 30-month transition timetable we propose—to implement the retuning of their systems to replacement channels assigned by the TA. This time period mirrors the implementation timetable we established for licensees along the Canadian border. We seek comment on this proposal. Commenting parties proposing a longer period of time for implementation should specify the particular circumstances along the U.S.-Mexico border that warrant a longer period of time.

⁴⁴ The TA would specify the beginning of this 20-day mediation period as well.

⁴⁵ The TA's upgrade policy is available in the TA's Reconfiguration Handbook. See Reconfiguration Handbook release 4.0 (Jan. 19, 2011), at 81-84, available at http://www.800TA.org/content/resources/Handbook_v4.0.pdf; see also http://www.800ta.org/content/resources/System_Upgrade_Fact_Sheet.pdf.

3. Stages and Steps for Completing Rebanding

33. We propose a two-stage approach to rebanding along the U.S.-Mexico Border similar to the process we have implemented in non-border regions and along the Canadian Border. Under our two-stage approach, B/ILT, non-cellular SMR, and public safety licenses on pool channels would retune first during Stage 1 and NPSPAC licensees would retune later during Stage 2. Below we describe in detail our proposal for the steps that would need to take place during each stage of the process.⁴⁶ In proposing this staged approach, we seek to minimize disruption to all licensees. Nonetheless, some U.S. licensees along the U.S.-Mexico border may need to retune certain frequencies twice in order to complete the rebanding process because of the need to coordinate frequency re-tunes with incumbents in Mexico and to clear the 130 pool channels immediately above the new NPSPAC band within the Sharing Zone.⁴⁷ Further, some licensees may be unable to retune to all of their replacement channels at the same time. Consequently, these licensees will need to retune to their replacement channels in stages.⁴⁸ We seek comment on our proposals detailed below.

a. Sharing Zone

34. In the Sharing Zone, transition to our proposed post-rebanding channel plan will require close coordination with licensees across the border in Mexico and among licensees on the U.S. side of the border. When U.S. licensees in non-border regions implement rebanding, they typically retune to replacement channels vacated by Sprint. In the Sharing Zone, however, some licensees will be able to retune to replacement channels only after one or more Mexican licensees have vacated channels on the other side of the border. Also, licensees converting from offset to standard channels may have to wait for clearing by more than one licensee on the U.S. side of the border.⁴⁹ In many cases, the vacating licensee will be Sprint or Sprint's roaming partner in Mexico—Nextel Mexico. Below we detail the steps we envision will need to occur in Stages 1 and 2 within the Sharing Zone in order to transition to our proposed channel plan.⁵⁰ The band segments we refer to in our description are depicted below in Figure 2.

⁴⁶ The process is divided into geographical regions in the description below, however, the processes will have to be coordinated across the noted regions. For instance, certain licensees in the Los Angeles and Orange County area will have to clear frequencies in the 854.0 to 857.25 MHz range before licensees in the San Diego area can move onto replacement frequencies in the Sharing Zone in that range. Certain steps will also be concurrent across NPSPAC regions. For instance Step 1A in the Sharing Zone should be done at the same time as Steps 1A, 1B and 1C in areas north of the Sharing Zone across all NPSPAC regions.

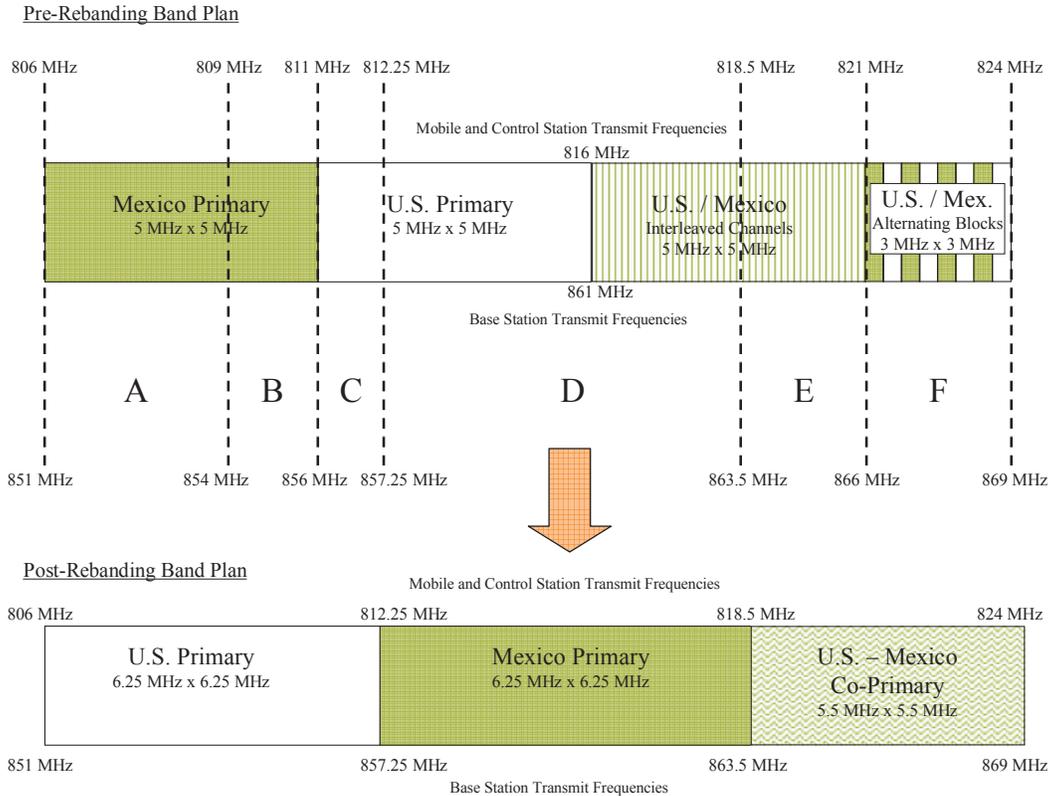
⁴⁷ Sprint will be obligated to pay the reasonable cost of any multiple relocations that are necessary under this proposal.

⁴⁸ This would be similar to Public Safety licensees in other regions who had to first clear channels 1-120 and then clear NPSPAC frequencies in a subsequent move.

⁴⁹ To make available one replacement standard channel in the Sharing Zone, two offset channels must be cleared. For instance, for 856.1125 MHz to become available, it may be necessary to first clear offset channels 856.1000 MHz and 856.1250 MHz.

⁵⁰ See *infra* Appendix C-4.

Figure 2 - Band Plan for Sharing Zone



Stage 1 – Non-NPSPAC Licensees in Sharing Zone

- **Step 1A:** Mexican licensees (other than Nextel Mexico) in band segments A and B, above, retune to replacement channels in band segment D vacated by Sprint and Nextel Mexico.⁵¹ Sprint and Nextel Mexico may temporarily backfill the channels vacated in band segments A and B until they are needed for Step 1B.⁵²
- **Step 1B:** B/ILT, non-cellular SMR, and public safety licensees in band segment C retune from offset channels to replacement channels with standard channel centers in band

⁵¹ As noted above, some Mexican licensees may relocate out of the 800 MHz band rather than to replacement channels in the 800 MHz band. *See supra* n.19.

⁵² By backfill, we mean Sprint or Nextel Mexico will temporarily operate on a channel vacated by a licensee retuning to a replacement channel. Backfilling is necessary in order for Sprint and Nextel Mexico to maintain capacity during the transition.

segments B and C vacated by Sprint, Nextel Mexico, and other Mexican licensees relocated as part of Step 1A.⁵³

- Step 1C: B/ILT, non-cellular SMR, and public safety licensees in band segments D and E retune to replacement channels in band segments B and C vacated by Sprint, Nextel Mexico, and licensees retuning under Step 1B.⁵⁴ Licensees retune from offset channels to replacement channels with standard channel centers. Sprint and Nextel Mexico may backfill the channels vacated in band segments D and E.
- Step 2A: Additional Mexican licensees (other than Nextel Mexico) in band segments A and B retune to replacement channels in band segment D vacated by U.S. licensees in Step 1C.
- Step 2B: Additional B/ILT, non-cellular SMR, and public safety licensees in band segment C retune from “offset” channels to replacement channels with standard channel centers in band segments B and C vacated by Sprint, Nextel Mexico, and other Mexican licensees relocated as part of Step 2A.
- Step 2C: Additional B/ILT, non-cellular SMR, and public safety licensees in band segments D and E retune to replacement channels in band segments B and C vacated by Sprint, Nextel Mexico, and licensees retuning under Step 2B. Licensees retune from offset channels to replacement channels with standard channel centers.⁵⁵ Sprint and Nextel Mexico may backfill the channels vacated in band segments D and E.

Stage 2 — NPSPAC Licensees in Sharing Zone

- Step 1: NPSPAC licensees in band segment F retune 15 megahertz lower in frequency to replacement channels in band segment A vacated by Sprint and Nextel Mexico. Sprint and Nextel Mexico backfill the channels vacated in band segment F. Some repacking of NPSPAC licensees in band segment A may be necessary, including relocating certain licensees to pool frequencies in segments B and C, if necessary, or to Mexico primary channels if the licensee is currently operating on Mexico primary channels.
- Step 2: Any remaining Sprint and Nextel Mexico stations in band segments A, B, C or D retune to replacement channels in band segments E and F.

⁵³ It will also be necessary to clear any blocking U.S. licensees north of the Sharing Zone currently occupying one of the 130 pool channels in segments B and C prior to undertaking Steps 1B and 1C.

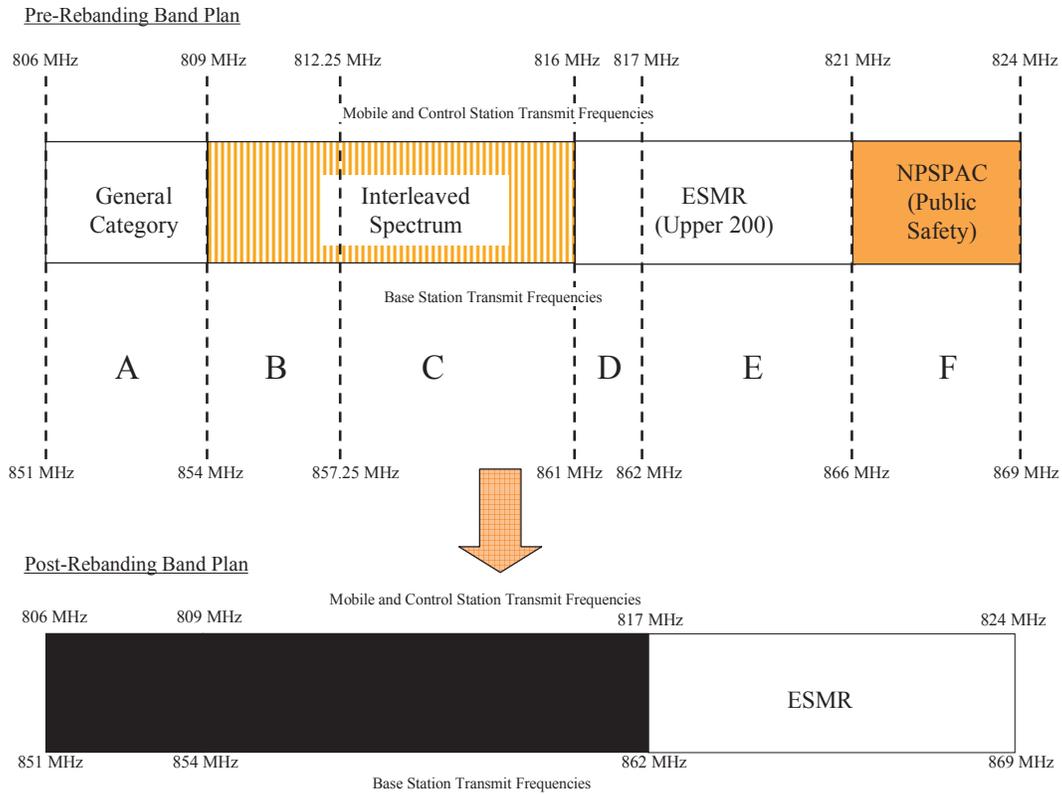
⁵⁴ Many Sharing Zone licensees will have frequencies involved in both Steps 1B and 1C, as well as 2A and 2B. Some licensees with frequencies in band segment C, which must retune as part of Step 1B, may have to move to an intermediate offset channel in another band segment temporarily in order to clear segment C, and then retune to their final non-offset channel as part of Step 1C.

⁵⁵ We anticipate that this will have to be a closely coordinated implementation process that may require licensee-by-licensee, and possibly frequency-by-frequency, implementation management. To the extent Steps 2A through 2C do not fully clear Sharing Zone band segments C and D, additional cycles may be necessary.

b. NPSPAC Region 5 (Outside the Sharing Zone)

35. Below we detail the proposed steps during Stages 1 and 2 for transition of Region 5 licensees operating outside the Sharing Zone.⁵⁶ The band segments we refer to in our description are depicted below in Figure 3.

Figure 3 – Band Plan for NPSPAC Region 5 North of Sharing Zone



⁵⁶ See *infra* Appendix C-5.

Stage 1 – Non-NPSPAC Licensees in Region 5 Outside the Sharing Zone⁵⁷

- **Step 1A:** B/ILT, non-cellular SMR, and Public Safety licensees in band segment B retune to replacement channels in band segments C and D vacated by Sprint. Band segment D will only be used for Public Safety if there are no available replacement frequencies in band segment C. The number of licensees that relocate in this step will be determined by the need for segment B channels in the Sharing Zone. Sprint may temporarily backfills the channels vacated in band segment B.
- **Step 1B:** B/ILT and non-cellular SMR licensees in band segment A retune to replacement channels in band segments C and D vacated by Sprint. Sprint may temporarily backfills the channels vacated in band segment A.
- **Step 1C:** Public safety licensees in band segment A retune to replacement channels in band segment C. Sprint may temporarily backfill the channels vacated in band segment A.⁵⁸

Stage 2 – NPSPAC Licensees in Region 5 Outside the Sharing Zone

- **Step 1:** NPSPAC licensees in band segment F retune 15 megahertz lower in frequency to replacement channels in band segment A vacated by Sprint. Sprint backfills channels vacated in band segment F.
- **Step 2:** Any remaining Sprint stations in band segments A, B, C or D retune to replacement channels in band segment F.

c. Remaining Mexican Border NPSPAC Regions (Outside the Sharing Zone)

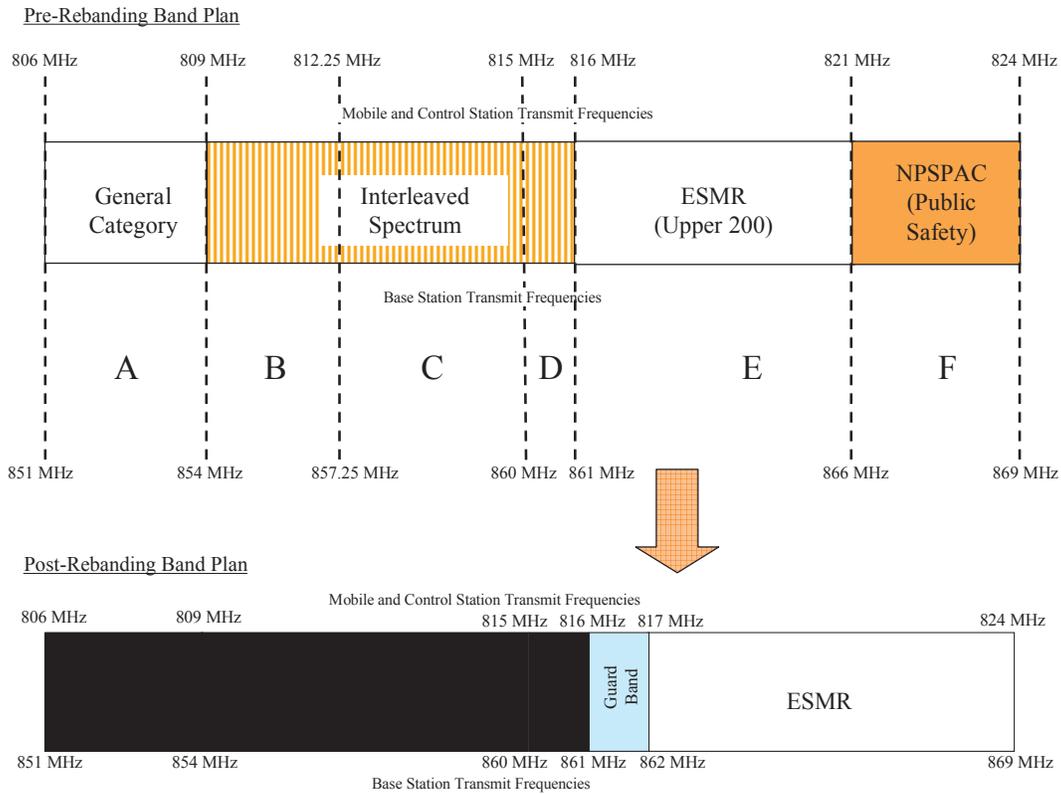
36. In the remaining NPSPAC regions that border Mexico, we propose implementing the standard post-rebanding channel plan for stations located outside the Sharing Zone.⁵⁹ In these regions, the rebanding implementation steps will be generally consistent with those described above for Region 5 outside the Sharing Zone. In these regions, however, Mexico stations will not be a factor, and licensees will retune to replacement channels vacated by Sprint or that are otherwise unoccupied. Below we detail the proposed steps during Stages 1 and 2 for transition of these licensees. The band segments we refer to in our description are depicted below in Figure 4.

⁵⁷ Licensees in Region 5 outside the Sharing Zone will perform Steps 1A, 1B, and 1C concurrently to the extent feasible, depending on the availability of replacement channels and completion of FRA negotiations. We may also request licensees to voluntarily concur with temporary co-channel short spacing pursuant to Section 90.621(b)(5) of our rules in order to expedite implementation.

⁵⁸ Licensees in the northernmost parts of Region 5, such as those in Kern or San Louis Obispo Counties, may also be reconfigured into band segment B.

⁵⁹ See *infra* Appendix C-6.

Figure 4 – Band Plan for NPSPAC Regions 3, 29, 50 and 53 North of Sharing Zone



Stage 1 – Non-NPSPAC Licensees in Regions 3, 29, 50 and 53 Outside the Sharing Zone⁶⁰

- **Step 1A:** Some B/ILT and non-cellular SMR licensees in band segment B will retune to replacement frequencies in band segments C and D vacated by Sprint. Some Public Safety licensees in band segment B may retune to replacement channels in band segments C vacated by Sprint. The number of licensees that relocate in this step will be determined by the need for band segment B channels in the Sharing Zone.
- **Step 1B:** B/ILT and non-cellular SMR licensees in band segment A retune to replacement channels in band segments C and D vacated by Sprint. Sprint may temporarily backfills the channels vacated in band segment A.⁶¹
- **Step 1C:** Public safety licensees in band segment A retune to replacement channels in band segment C vacated by Sprint. Sprint may temporarily backfill the channels vacated in band segment A.⁶²

⁶⁰ Licensees in Regions 3, 29, 50 and 53 outside the Sharing Zone will perform Steps 1A, 1B and 1C concurrently to the extent feasible, depending on the availability of channels replacement channels and completion of FRA negotiations.

⁶¹ *Id.*

Stage 2 – NPSPAC Licensees in Regions 3, 29, 50 and 53 Outside the Sharing Zone

- **Step 1:** NPSPAC licensees in band segment F retune 15 megahertz lower in frequency to replacement channels in band segment A vacated by Sprint. Sprint backfills channels vacated in band segment F.
- **Step 2:** Any remaining Sprint stations in band segments A, B, C or D retune to replacement channels in band segment F.

C. Additional Issues

37. *Special Coordination Procedure Channels.* Sprint currently operates on certain Mexico primary channels in the Sharing Zone pursuant to a Special Coordination Procedure (SCP).⁶³ Sprint's operation on these channels facilitates cross-border roaming with Nextel Mexico. Under the Amended Protocol, however, all Mexico primary channels are below 818.5/863.5 MHz, and thus are below the band segment in which ESMR will be allowed in the U.S. under the post-reconfiguration band plan.⁶⁴ Consequently, we seek comment on whether to require Sprint to vacate Mexican primary channels in the Sharing Zone or to allow Sprint to continue operating on these channels to support cross-border roaming under a revised SCP after band reconfiguration, and, if so, under what circumstances. If we allow Sprint to continue using these channels even though they are below the ESMR line, are there conditions or limitations that we should apply? We note that under similar circumstances along the Canadian border, we permitted Sprint to operate on Canada primary channels below the ESMR line provided that Sprint maintained at least one megahertz of separation from the highest Canada primary channel used by a U.S. public safety licensee. Would a similar restriction be appropriate for Mexico primary spectrum?

38. *Vehicular Repeaters.* Many licensees in the 800 MHz band use vehicular repeater stations (VRS) to extend radio coverage. VRS units, which are mounted inside public safety vehicles, extend or improve radio coverage from hand-held units to distant base station repeaters and are most frequently used to provide in-building coverage. For example, when a public safety official exits a vehicle to enter a building, he or she tunes a hand-held unit to transmit on the input frequency of the VRS unit, which then relays the signal to a distant repeater on a separate mobile frequency. VRS operations, however, require a relatively large spectral separation between their input and output frequencies. We seek comment on whether the channel plan we propose for the Mexico border region will provide licensees operating VRS units with the spectral separation necessary to continue VRS operations, and any alternative approaches to achieve the required separation that are consistent with the Amended Protocol and the Commission's 800 MHz rebanding objectives. For example, could VRS units be retuned to transmit on channels primary to Mexico in the Sharing Zone in order to create the proper spectral separation between the input and output frequencies of these units?

39. *Power Loss in Combiners.* Due to the limited availability of channels in some areas under the Amended Protocol and our proposed Mexico border channel plan, it may be difficult to spectrally separate the replacement channels assigned to some licensees. This reduced spectral separation could

(Continued from previous page) _____

⁶² Licensees in the northern parts of these NPSPAC regions more than 113 km away from the Sharing Zone may also be reconfigured into band segment B.

⁶³ See Special Coordination Procedure for the Use of Certain Frequencies in the Bands 806-824 MHz and 851-869 MHz for Land Mobile Services (Nov. 2000). See also Letter from Donald Abelson, Chief, International Bureau, Federal Communications Commission, to Sr. Fernando Carrillo, Coordinator General, Comission Federal de Comunicaciones (Aug. 20, 2004).

⁶⁴ See *infra* Appendix C-4.

cause licensees that use combiners in their current systems to experience power loss in the combiners.⁶⁵ We propose allowing such licensees to recover from Sprint the reasonable costs associated with mitigating the impact of reduced spectral separation on combiner power. Mitigation steps could include new combiners, related antennae system changes, tower work, and other associated costs, converting operations from standard pool channels to NPSPAC channels, or vice versa. We seek comment on this proposal.

40. *Licensees on Mexico Primary Channels.* We note that some U.S. licensees currently operate in the Sharing Zone on channels primary to Mexico. We propose instructing the TA to assign these licensees with replacement channels in the U.S. primary portion of the band under the Amended Protocol if such channels are available, and otherwise to assign to these licensees Mexico primary channels.⁶⁶ We seek comment on our proposal.

D. Cost Benefit Analysis

41. We believe that the benefits of our proposal for establishing and implementing a reconfigured 800 MHz channel plan along the U.S.-Mexico border outweigh any potential costs. This proposal is part of the FCC's rebanding effort to eliminate interference to public safety and other land mobile communication systems operating in the band by addressing its root cause and separating generally incompatible technologies.⁶⁷ The homeland security obligations of the Nation's public safety agencies make it imperative that their communications systems are robust and highly reliable.⁶⁸ The changes proposed herein will further that goal by separating—to the greatest extent possible—public safety and other non-cellular licensees from licensees in the band that employ cellular technology. Furthermore, Sprint, the major commercial provider in the band, will benefit from the changes proposed herein by obtaining contiguous spectrum at the end of the program on which it will be able to transition to advanced wireless technologies.⁶⁹ Moreover, the costs are further justified in this case because Sprint will be responsible for paying the reasonable costs of retuning incumbent licensees to comparable facilities on their replacement channels. Furthermore, Sprint has received equitable compensation for the costs it will incur in the form of spectrum rights to the 1.9 GHz band.⁷⁰ We therefore conclude that the changes proposed herein outweigh any potential costs.

IV. PROCEDURAL MATTERS

A. Comment Filing Procedures

42. Pursuant to Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments and reply comments on or before the dates indicated on the first page of this document. All filings related to this Fourth Further Notice of Proposed Rulemaking (Fourth FNPRM) should refer to **WT Docket No. 02-55**. Comments may be filed using: (1) the Commission's Electronic Comment Filing System (ECFS), (2) the Federal Government's eRulemaking Portal, or (3) by

⁶⁵ A combiner, as the name implies, feeds multiple transmitters into a single antenna. See *800 MHz Report and Order*, Appendix D, 19 FCC Rcd 15203 at ¶ 6.

⁶⁶ Licensees operating on channels primary to Mexico will be eligible for protection from unacceptable interference as defined in Section 90.672 in the same manner as all other licensees in the band.

⁶⁷ See *800 MHz Report and Order*, 19 FCC Rcd 14971-73 ¶¶ 1-3.

⁶⁸ *Id.* at 14971 ¶ 1.

⁶⁹ See *Improving Spectrum Efficiency Through Flexible Channel Spacing and Bandwidth Utilization for Economic Area-based 800 MHz Specialized Mobile Radio Licensees*, *Report and Order*, 27 FCC Rcd 6489 (2012).

⁷⁰ See *800 MHz Report and Order*, 19 FCC Rcd 15080-15125 ¶¶ 210-332.

filing paper copies. *See* Electronic Filing of Documents in Rulemaking Proceedings, 63 Fed. Reg. 24,121 (1998).

- Electronic Filers: Comments may be filed electronically using the Internet by accessing the ECFS: <http://www.fcc.gov/cgb/ecfs> or the Federal eRulemaking Portal: <http://www.regulations.gov>. Filers should follow the instructions provided on the website for submitting comments.
- Paper Filers: Parties who choose to file by paper must file an original and one copy of each filing. If more than one docket or rulemaking number appears in the caption of this proceeding, filers must submit two additional copies for each additional docket or rulemaking number.

Filings can be sent by hand or messenger delivery, by commercial overnight courier, or by first-class or overnight U.S. Postal Service mail. All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- All hand-delivered or messenger-delivered paper filings for the Commission's Secretary must be delivered to FCC Headquarters at 445 12th St., SW, Room TW-A325, Washington, DC 20554. The filing hours are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes and boxes must be disposed of before entering the building.
- Commercial overnight mail (other than U.S. Postal Service Express Mail and Priority Mail) must be sent to 9300 East Hampton Drive, Capitol Heights, MD 20743.
- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, SW, Washington DC 20554.

43. Interested parties may view documents filed in this proceeding on the Commission's Electronic Comment Filing System (ECFS) using the following steps: (1) Access ECFS at <http://www.fcc.gov/cgb/ecfs>. (2) In the introductory screen, click on "Search for Filed Comments." (3) In the "Proceeding" box, enter the numerals in the docket number. (4) Click on the box marked "Retrieve Document List." A link to each document is provided in the document list. The public may inspect and copy filings and comments during regular business hours at the FCC Reference Information Center, 445 12th Street, SW, Room CY-A257, Washington, DC 20554. The public may also purchase filings and comments from the Commission's duplicating contractor, Best Copy and Printing, Inc., Portals II, 445 12th Street, SW, Room CY-B402, Washington, DC 20554, telephone 1-800-378-3160, or via e-mail to fcc@bcpiweb.com. The public may also download this Fourth Report and Order and Fifth Further Notice of Proposed Rulemaking from the Commission's web site at <http://www.fcc.gov/>.

44. People with Disabilities: To request materials in accessible formats for people with disabilities (braille, large print, electronic files, audio format), send an e-mail to fcc504@fcc.gov or call the Consumer & Governmental Affairs Bureau at 202-418-0530 (voice), 202-418-0432 (tty).

45. Commenters who file information that they believe should be withheld from public inspection may request confidential treatment pursuant to Section 0.459 of the Commission's rules. Commenters should file both their original comments for which they request confidentiality and redacted comments, along with their request for confidential treatment. Commenters should not file proprietary information electronically. *See* Examination of Current Policy Concerning the Treatment of Confidential Information Submitted to the Commission, *Report and Order*, 13 FCC Rcd 24816 (1998), *Order on Reconsideration*, 14 FCC Rcd 20128 (1999). Even if the Commission grants confidential treatment, information that does not fall within a specific exemption pursuant to the Freedom of Information Act

(FOIA) must be publicly disclosed pursuant to an appropriate request. *See* 47 C.F.R. § 0.461; 5 U.S.C. § 552. We note that the Commission may grant requests for confidential treatment either conditionally or unconditionally. As such, we note that the Commission has the discretion to release information on public interest grounds that does fall within the scope of a FOIA exemption.

B. Ex Parte Rules – Permit-But-Disclose Proceeding

46. This proceeding shall be treated as a “permit-but-disclose” proceeding in accordance with the Commission’s ex parte rules.⁷¹ Persons making ex parte presentations must file a copy of any written presentation or a memorandum summarizing any oral presentation within two business days after the presentation (unless a different deadline applicable to the Sunshine period applies). Persons making oral ex parte presentations are reminded that memoranda summarizing the presentation must (1) list all persons attending or otherwise participating in the meeting at which the ex parte presentation was made, and (2) summarize all data presented and arguments made during the presentation. If the presentation consisted in whole or in part of the presentation of data or arguments already reflected in the presenter’s written comments, memoranda or other filings in the proceeding, the presenter may provide citations to such data or arguments in his or her prior comments, memoranda, or other filings (specifying the relevant page and/or paragraph numbers where such data or arguments can be found) in lieu of summarizing them in the memorandum. Documents shown or given to Commission staff during ex parte meetings are deemed to be written ex parte presentations and must be filed consistent with 47 C.F.R. § 1.1206(b). In proceedings governed by 47 C.F.R. § 1.49(f) or for which the Commission has made available a method of electronic filing, written ex parte presentations and memoranda summarizing oral ex parte presentations, and all attachments thereto, must be filed through the electronic comment filing system available for that proceeding, and must be filed in their native format (*e.g.*, .doc, .xml, .ppt, searchable .pdf). Participants in this proceeding should familiarize themselves with the Commission’s ex parte rules.

C. Initial Regulatory Flexibility Analysis

47. Pursuant to the Regulatory Flexibility Act (RFA),⁷² the Bureau has prepared an Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the proposals considered in this Fourth FNPRM. The text of the IRFA is set forth in Appendix A. Written public comments are requested on this IRFA. Comments must be filed in accordance with the same filing deadlines for comments on the Fourth FNPRM, and they should have a separate and distinct heading designating them as responses to the IRFA. The Bureau will send a copy of the Fourth FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁷³

D. Initial Paperwork Reduction Act of 1995 Analysis

48. This document proposes no additional information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13 beyond those already approved for this proceeding.⁷⁴ Therefore, it contains no new or modified “information collection burden for small business concerns with fewer than 25 employees,” pursuant to the Small Business Paperwork Relief Act of 2002, Public Law 107-198, *see* 44 U.S.C. § 3506(c)(4).

⁷¹ 47 C.F.R. § 1.1200 *et seq.*

⁷² *See* 5 U.S.C. § 603. The RFA has been amended by the Contract with America Advancement Act of 1996, Pub. L. No. 104-121, 110 Stat. 847 (1996) (CWAAA). Title II of the CWAAA is the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA).

⁷³ 5 U.S.C. § 603(a).

⁷⁴ *See* OMB Control No. 3060-1080 for Improving Public Safety Communications in the 800 MHz Band (exp. September 30, 2014).

V. ORDERING CLAUSES

49. Accordingly, IT IS ORDERED, pursuant to Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 332, that this *Fourth Further Notice of Proposed Rulemaking* IS ADOPTED.

50. IT IS FURTHER ORDERED that the Commission's Consumer and Governmental Affairs Bureau, Reference Information Center, SHALL SEND a copy of this *Fourth Further Notice of Proposed Rulemaking*, including the Initial Regulatory Flexibility Analysis, to the Chief Counsel for Advocacy of the Small Business Administration.

FEDERAL COMMUNICATIONS COMMISSION

David S. Turetsky
Chief, Public Safety and Homeland Security Bureau

APPENDIX A

Initial Regulatory Flexibility Analysis

51. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁷⁵ the Federal Communications Commission's Public Safety and Homeland Security Bureau (Bureau) has prepared this Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on small entities by the policies and rules proposed in this *Fourth Further Notice of Proposed Rule Making (Fourth FNPRM)*. Written public comments are requested on this IRFA. Comments must be identified as responses to the IRFA and must be filed by the deadlines for comments on the first page of the *Fourth FNPRM*. The Commission will send a copy of this *Fourth FNPRM*, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁷⁶ In addition, the *Fourth FNPRM* and IRFA (or summaries thereof) will be published in the Federal Register.⁷⁷

A. Need for, and Objectives of, the Proposed Rules

52. In the *Fourth FNPRM*, we propose a channel plan for reconfiguring the 800 MHz band along the U.S.-Mexico border. The channel plan we propose in the *Fourth FNPRM* will be incorporated into the Commission's rules and are needed to implement and complete the Commission's band reconfiguration program along the U.S.-Mexico border. The Commission ordered reconfiguration of the 800 MHz band to address an ongoing nationwide problem of interference created by a fundamentally incompatible mix of technologies in the band.⁷⁸ The Commission determined to resolve the interference by reconfiguring the band to spectrally separate incompatible technologies.⁷⁹ The Commission delegated authority to the Bureau in May 2007 to propose and adopt a channel plan for implementing band reconfiguration along the U.S.-Mexico border.⁸⁰ The band plan we propose in the *Fourth FNPRM* will separate incompatible technologies along the U.S.-Mexico border and thus resolve the ongoing interference problem in that region.

B. Legal Basis

53. The proposed action is authorized under Sections 4(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307 of the Communications Act of 1934, as amended, 47 U.S.C. Sections 154(i), 301, 302, 303(e), 303(f), 303(r), 304 and 307.

C. Description and Estimate of the Number of Small Entities to Which the Proposed Rules Will Apply

54. The RFA directs agencies to provide a description of and, where feasible, an estimate of the number of small entities that may be affected by the proposed rules, if adopted.⁸¹ The RFA generally

⁷⁵ See 5 U.S.C. § 603. The RFA, see 5 U.S.C. § 601 – 612, has been amended by the Small Business Regulatory Enforcement Fairness Act of 1996 (SBREFA), Pub. L. No. 104-121, Title II, 110 Stat. 857 (1996).

⁷⁶ See 5 U.S.C. § 603(a).

⁷⁷ *Id.*

⁷⁸ See Improving Public Safety Communications in the 800 MHz Band, *Report and Order*, WT Docket No. 02-55, 19 FCC Rcd 14969 (2004) (*800 MHz Report and Order*).

⁷⁹ *Id.* at 14872-73 ¶¶ 2-3.

⁸⁰ Improving Public Safety Communications in the 800 MHz Band, *Second Memorandum Opinion and Order*, WT Docket No. 02-55, 22 FCC Rcd 10467, 10494-95 (2007) (*800 MHz Second Memorandum Opinion and Order*).

⁸¹ 5 U.S.C. § 603(b)(3).

defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁸² In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁸³ A small business concern is one which: (1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the SBA.⁸⁴ Pursuant to [5 U.S.C. § 601\(3\)](#), the statutory definition of a small business applies “unless an agency, after consultation with the Office of Advocacy of the Small Business Administration and after opportunity for public comment, establishes one or more definitions of such term which are appropriate to the activities of the agency and publishes such definition(s) in the Federal Register.” Below, we further describe and estimate the number of small entities that may be affected by the rules changes proposed in this *Fourth FNPRM*.

55. *Private Land Mobile Radio Licensees (PLMR)*. PLMR systems serve an essential role in a range of industrial, business, land transportation, and public safety activities. These radios are used by entities of all sizes operating in all U.S. business and public sector categories, and are often used in support of the licensee’s primary (non-telecommunications) operations. For the purpose of determining whether a licensee of a PLMR system is a small entity as defined by the SBA, we use the broad census category, Wireless Telecommunications Carriers (except Satellite). This definition provides that a small entity is any such entity employing no more than 1,500 persons.⁸⁵ The Commission does not require PLMR licensees to disclose information about number of employees, so the Commission does not have information that could be used to determine how many PLMR licensees constitute small entities under this definition. We note that PLMR licensees generally use the licensed facilities in support of other business and governmental activities, and therefore, it would also be helpful to assess PLMR licensees under the standards applied to the particular industry subsector to which the licensee belongs.⁸⁶

56. As of May 2012, there were approximately 220 PLMR licensees operating in the PLMR band between 806-824/851-869 MHz along the U.S. - Mexico border.⁸⁷ We note that many government and commercial actors are eligible to hold a PLMR license, and that any revised rules in this context could therefore potentially impact small entities covering a great variety of industries.

D. Description of Projected Reporting, Recordkeeping, and Other Compliance Requirements

57. The *Fourth FNPRM* does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts beyond those already approved for this proceeding.⁸⁸

⁸² 5 U.S.C. § 601(6).

⁸³ 5 U.S.C. § 601(3).

⁸⁴ 15 U.S.C. § 632.

⁸⁵ See 13 C.F.R. §121.201, NAICS code 517210.

⁸⁶ See generally 13 C.F.R. §121.201.

⁸⁷ This estimate was provided by the 800 MHz Transition Administrator (TA). The TA is an independent party charged with overseeing reconfiguration of the 800 MHz band. See Wireless Telecommunications Bureau Concur with Search Committee Selection of a Transition Administrator, *Public Notice*, WT Docket No. 02-55, 19 FCC Rcd 21923 (2004). See also <http://www.800ta.org/>.

⁸⁸ See OMB Control No. 3060-1080 for Improving Public Safety Communications in the 800 MHz Band (exp. September 30, 2014).

E. Steps Taken to Minimize Significant Economic Impact on Small Entities, and Significant Alternatives Considered

58. The RFA requires an agency to describe any significant alternatives that it has considered in reaching its proposed approach, which may include the following four alternatives (among others): (1) the establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities; (2) the clarification, consolidation, or simplification of compliance or reporting requirements under the rule for small entities; (3) the use of performance, rather than design, standards; and (4) an exemption from coverage of the rule, or any part thereof, for small entities.⁸⁹

59. The *Fourth FNPRM* will create no significant economic impact on small entities because Sprint Nextel Corporation will pay all reasonable costs associated with retuning incumbent licensees to the post-reconfiguration channel plan proposed by the Bureau. Further, once the channel plan proposed in the *Fourth FNPRM* is implemented, licensees will no longer be subject to on-going interference in the band and will therefore save costs that would otherwise be associated with resolving interference. Finally, the Bureau specifically seeks comment on alternatives to the proposed channel plan and will consider such alternatives as may be recommended in comments to the *Fourth FNPRM*.

F. Federal Rules that May Duplicate, Overlap, or Conflict with the Proposed Rules

60. None.

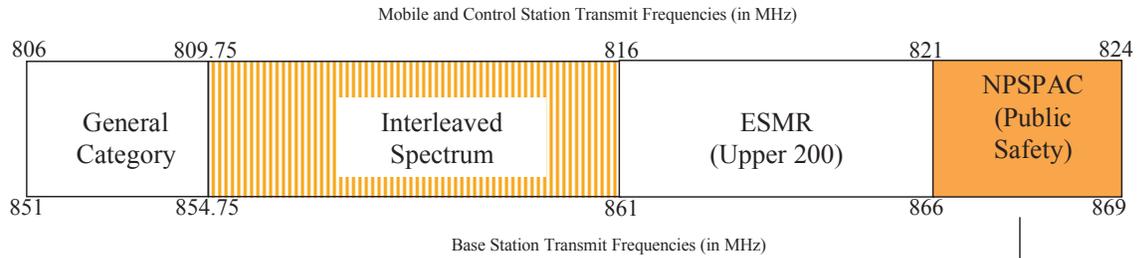
⁸⁹ See 5 U.S.C. § 603(c).

APPENDIX B

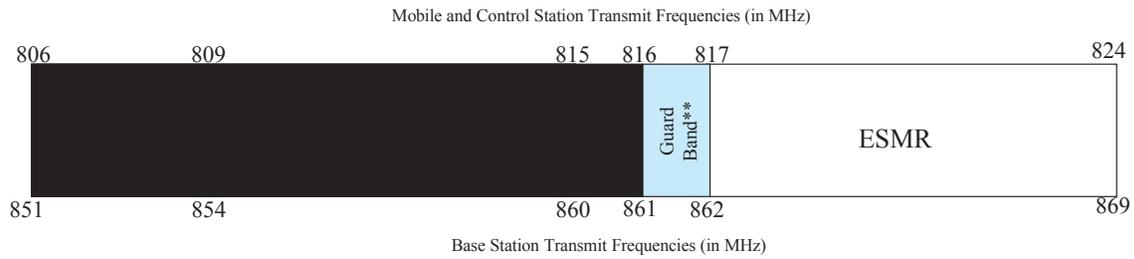
U.S. – Mexico Sharing Zone

APPENDIX C-1

Pre-Rebanding Channel Plan



Post-Rebanding Channel Plan

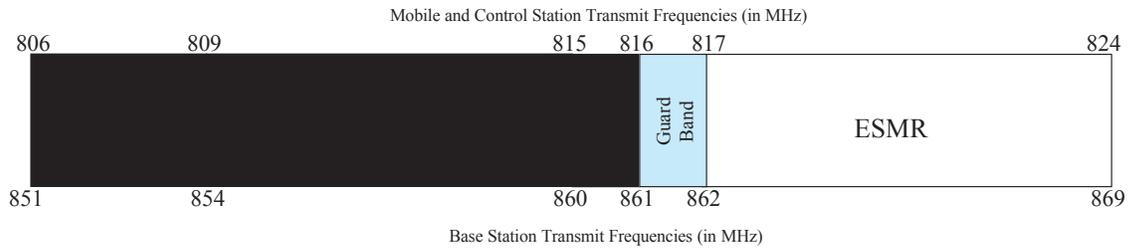


* No public Safety licensee will be required to remain in or relocate to the Expansion Band; although it may do so if it so chooses.

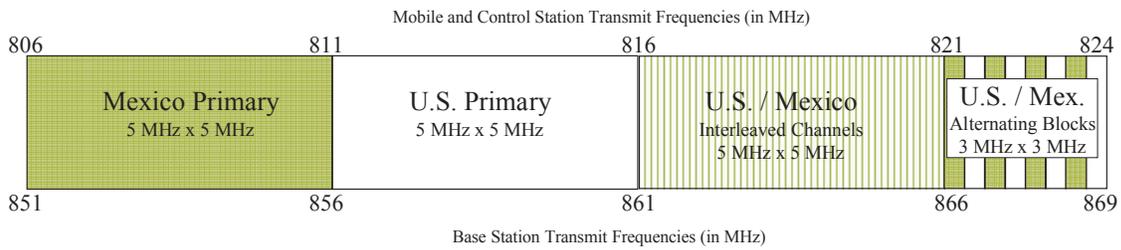
** No public safety or CII licensee may be involuntary relocated to the Guard Band.

APPENDIX C-2

**Post-Rebanding Channel Plan
(non-border)**



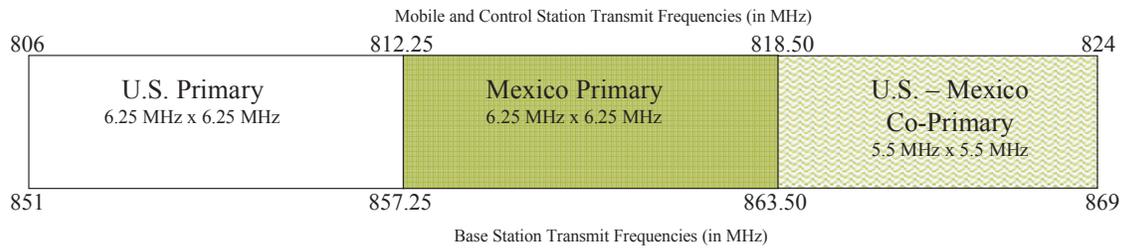
**Previous Distribution of Primary Spectrum in Sharing Zone
(Based on 800 MHz Protocol)**



-  Mexico Primary
-  U.S. Primary

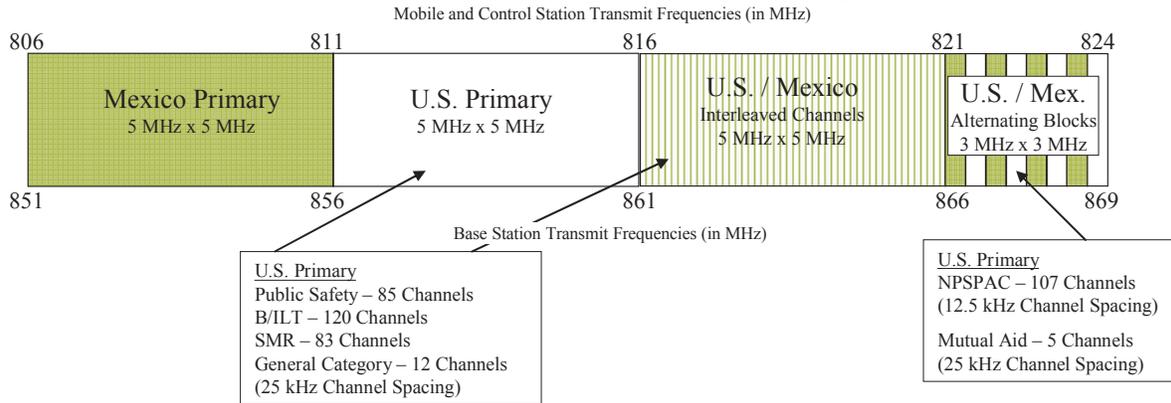
APPENDIX C-3

**Updated Distribution of Primary Spectrum in Sharing Zone
(Based on Updated 800 MHz Protocol)**

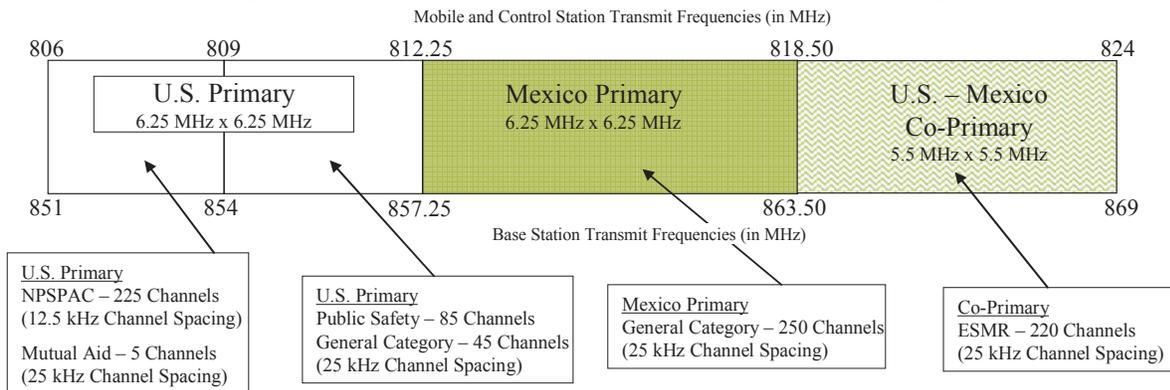


APPENDIX C-4

Pre-Rebanding Channel Plan in Sharing Zone

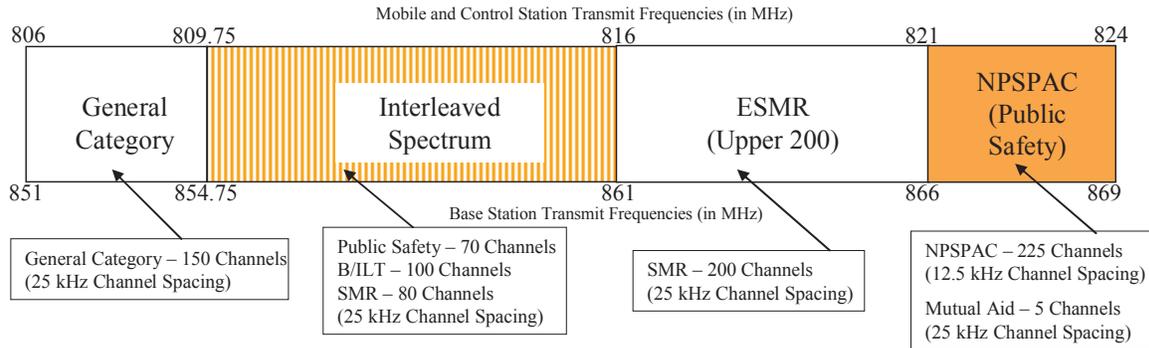


Proposed Post-Rebanding Channel Plan in Sharing Zone

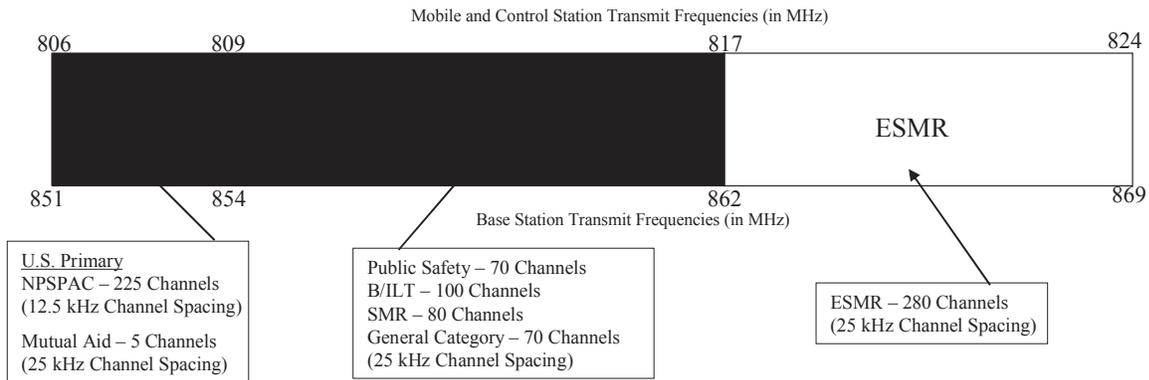


APPENDIX C-5

**Pre-Rebanding Channel Plan
(Non – Border)**

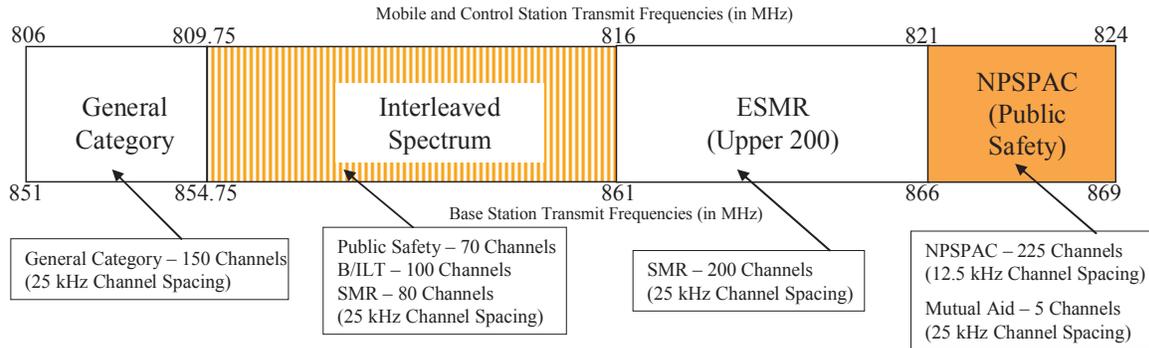


**Proposed Post-Rebanding Channel Plan – NPSPAC Region 5
(North of Sharing Zone)**

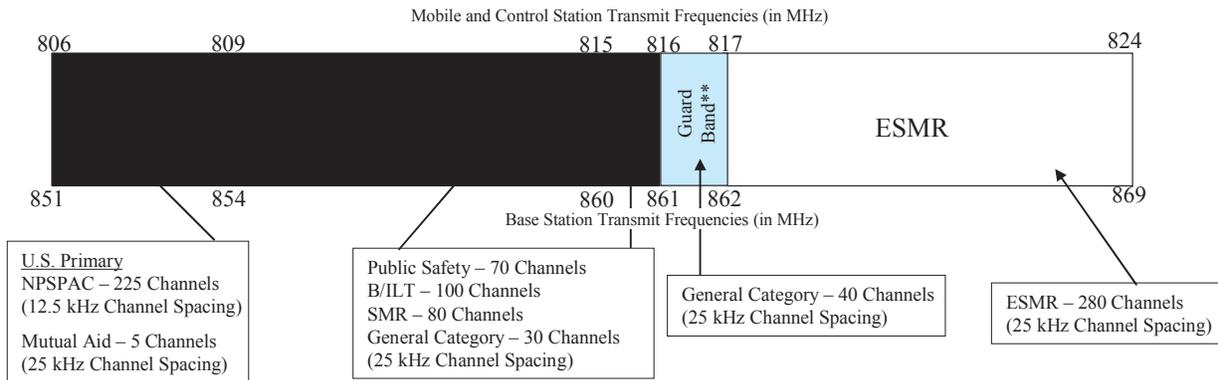


APPENDIX C-6

**Pre-Rebanding Channel Plan
(Non – Border)**



**Proposed Post-Rebanding Channel Plan – NPSPAC Region 3, 29, 50 and 53
(North of Sharing Zone)**



* No public Safety licensee will be required to remain in or relocate to the Expansion Band; although it may do so if it so chooses.

** No public safety or CII licensee may be involuntary relocated to the Guard Band.