

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

In the Matter of)	
)	
Improving Public Safety Communications in the 800 MHz Band)	WT Docket 02-55
)	
New 800 MHz Band Plan for U.S. – Canada Border Region)	

FURTHER NOTICE OF PROPOSED RULE MAKING

Adopted: October 31, 2007

Released: November 1, 2007

Comment Date: December 3, 2007

Reply Comment Date: December 18, 2007

By the Chief, Public Safety and Homeland Security Bureau:

1. The Federal Communications Commission's Public Safety and Homeland Security Bureau (PSHSB), on delegated authority, seeks comment on proposals for establishing a reconfigured 800 MHz band plan in the U.S.- Canada border region in order to accomplish the Commission's goals for band reconfiguration.

I. BACKGROUND

2. The U.S and Canada currently operate along the common border in the 800 MHz band pursuant to a bilateral agreement (Arrangement F) that distributes primary spectrum in the U.S. – Canada border region between the two countries.¹ Under Arrangement F, the border region extends 140 kilometers from the border on either side, and is divided into eight geographic regions.² In four of the regions (Regions 1, 4, 5, 6), the U.S. and Canada divide the 800 MHz band evenly. In two other regions, the spectrum is divided unevenly: in Region 2 (Buffalo/Toronto), the U.S. has 30 percent of the channels and Canada has 70 percent, while in Region 3 (Detroit/Windsor) the U.S. has 70 to 85 percent of the channels and Canada has 15 to 30 percent, depending on the band segment. The remaining two regions (Regions 7 and 8) are "buffer zones" starting at 100 kilometers from the border and extending to 140 kilometers from the border. In these regions, both countries have access to 100 percent of the channels on a primary basis, subject to power and antenna height limits designed to limit signal strength at the border.

3. In the July 2004 *800 MHz Report and Order*, the Commission reconfigured the 800 MHz band to eliminate interference to public safety and other land mobile communication systems operating in

¹ See Arrangement Between the Dept. of Communications of Canada and the FCC of the United States Concerning the Use Along the US-Canada Border of the Band 806-890 MHz (Jan. 1994, addendum, Dec. 1994) (Arrangement F). See also Arrangement Between the Dept. of Communications of Canada and the FCC of the United States Concerning the Use Along the US-Canada Border of the Bands 821-824 MHz and 866-869 MHz (Sep. 1990, addendum, Dec. 1994).

² The regions are displayed in Appendix B.

the band.³ However, the Commission deferred consideration of 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.”⁴ The Commission stated that “the details of the border plans will be determined in our ongoing discussions with the Mexican and Canadian governments.”⁵ The Commission also noted that international negotiations could cause rebanding in the border regions to take longer than the 36-month period established for rebanding in non-border regions.⁶

4. In the *800 MHz 2nd Memorandum Opinion and Order*, adopted in May 2007, the Commission delegated authority to PSHSB to propose and adopt border area band plans once agreements are reached with Canada and Mexico.⁷ Specifically, the Commission noted that “once those discussions are completed, and any necessary modifications to our international agreements have been made, we will need to amend our rules to implement the agreements and identify the portions of the 800 MHz band that will be available to U.S. licensees on a primary basis. In addition, we will need to adopt a band plan for the border regions that specifies the ESMR and non-ESMR portions of the band and the distribution of channels to public safety, B/ILT, and SMR licensees.”⁸

II. DISCUSSION

A. Status of Negotiations

5. The U.S. and Canada have met numerous times over the past three years to discuss reconfiguration of the 800 MHz band along the U.S. – Canada border. These negotiations have centered on modifying Arrangement F to allow the U.S. to proceed with band reconfiguration in the border area. In July 2007, the negotiations resulted in an agreement between Industry Canada and the Commission on a process that enables the U.S. to proceed with rebanding in the border region prior to formal revision of Arrangement F.⁹ The elements of the agreement reached in July 2007 include:

- The current allocation of 800 MHz primary spectrum between the U.S. and Canada set forth in Arrangement F will be maintained, although minor revisions to Arrangement F may be necessary.
- The U.S. will proceed with developing an 800 MHz rebanding band plan for the U.S. based on the current allocation of primary spectrum.

³ 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*).

⁴ *Id.* at 14895-96 ¶ 25.

⁵ *Id.* at 15063 ¶ 176.

⁶ *Id.* at ¶ 176 n. 471, 15125 ¶ 332.

⁷ *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 2nd Memorandum Opinion and Order*).

⁸ *Id.*

⁹ See Letter from Michael Binder, Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Industry Canada, to Kevin J. Martin, Chairman, Federal Communications Commission (September 7, 2007); Letter from Kevin J. Martin, Chairman, Federal Communications Commission, to Michael Binder, Assistant Deputy Minister, Spectrum, Information Technologies and Telecommunications, Industry Canada (October 31, 2007).

- Upon finalization of the U.S. band plan and after the 800 MHz Transition Administrator has issued frequency assignments to border area licensees, the U.S. and Canada will discuss minor revisions to Arrangement F.
- Issues to be discussed will include: 1) whether certain Canadian facilities that have been authorized on U.S. primary spectrum under Specialized Coordination Procedures (SCP) can be grandfathered, and 2) seeking to avoid any adverse impact on Canadian radio operations that will support the 2010 Vancouver Olympics.¹⁰

B. Parties' Band Plan Proposal Submissions

6. During the course of the 800 MHz rebanding proceeding, several groups have submitted rebanding proposals for the U.S. – Canada border region. In 2002, the Consensus Parties submitted a border area band plan proposal as part of their supplemental comments.¹¹ In March 2007, the regional planning committee for NPSPAC Region 43 (Washington State) submitted specific recommendations for rebanding in U.S. – Canada regions 4, 5, and 7.¹² In July 2007, representatives from regional planning committees in Ohio and New York submitted a draft band plan proposal for U.S. – Canada regions 1, 2, 3, 4 and 7.¹³ We have also received comments on border band plan alternatives for Region 2 and Region 7 from the Commonwealth of Pennsylvania.¹⁴ All of these proposals seek to relocate public safety systems to U.S. primary spectrum in the lower portion of the band while placing B/ILT and ESMR systems higher in the band on U.S. primary spectrum above 815/860 MHz. These proposals also contain certain region-specific variations. The band plan that we seek comment on in this Further Notice of Proposed Rulemaking is based on the region-by-region approach in these proposals, which we incorporate by reference.

C. PSHSB Band Plan Proposal

7. We seek comment on the following proposal for 800 MHz band reconfiguration in the eight U.S. – Canada border regions, and on potential alternatives.¹⁵ As in the 800 MHz rebanding plan previously adopted for non-border areas, our goal is to separate—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band. In all eight regions, the proposed band plan contains the following elements:

- All relocating licensees will receive comparable spectrum assignments as defined in prior Commission orders in this proceeding.¹⁶

¹⁰ *Id.*

¹¹ See Supplemental Comments of the Consensus Parties, *ex parte* filing, Appendix G (Dec. 24, 2002). This and other band plan filings referenced herein are available on the Commission's Electronic Comment Filing System http://fjallfoss.fcc.gov/prod/ecfs/comsrch_v2.cgi.

¹² Letter from Steve Taylor, Chair, NPSPAC Region 43 Regional Planning Committee, to Ambassador David Gross, U.S. Department of State, and Kevin Martin, Chairman, Federal Communications Commission (March 21, 2007) (Region 43 Letter).

¹³ *Ex Parte* Letter from Paul Mayer, Region 33 Regional Planning Committee Chair; Sean O'Hara, Region 30, 55, and 8 Regional Planning Committee Member; David Cook, Region 30 Regional Planning Committee Chair; and Captain Joseph Grube, Region 55 Regional Planning Committee Chair (July 27, 2007) (Great Lakes Letter).

¹⁴ Letter from Charles Brennan, Office of Public Safety Radio Services, Commonwealth of Pennsylvania, to David L. Furth, Associate Chief, and Dana Shaffer, Deputy Chief, Public Safety and Homeland Security Bureau (July 16, 2007) (Pennsylvania Letter).

¹⁵ Current and proposed band plans for each region are displayed in Appendix C.

¹⁶ See 47 C.F.R. § 90.677(f).

- Non-public safety (B/ILT and SMR) systems in the lowest block of U.S. primary spectrum will relocate to spectrum higher in the band.
- NPSPAC systems will relocate from the top portion of the band to the lowest portion of the band, so that they are assigned channels that are also used for new NPSPAC operations in non-border areas.
- As in non-border areas, spectrum that is vacated by Sprint Nextel Corporation (Sprint) and that is not required for relocation of incumbent licensees will be made exclusively available to public safety entities for three years after the completion of rebanding in each region, and to both public safety and critical infrastructure entities in the fourth and fifth years.¹⁷
- To the extent feasible, existing non-NPSPAC public safety systems will remain in the lowest 800 MHz block, though some may have to retune to different channels within the block to accommodate relocation of NPSPAC systems. This may create technical issues because non-NPSPAC public safety systems operate on channels with 25 kHz spacing, while NPSPAC systems operate on 12.5 kHz spaced channels and are subject to tighter emission masks.¹⁸ We therefore seek comment on channelization alternatives for accommodating both NPSPAC and non-NPSPAC public safety systems in the same spectrum block. Are special technical rules needed to reduce the possibility of interference between non-NPSPAC and NPSPAC public safety licensees? Should we permit non-NPSPAC licensees to operate on 12.5 kHz spaced channels if they satisfy the relevant emission mask requirements?
- Mutual aid channels with 25 kHz spacing will be included in the new band plan to match the mutual aid channels in the non-border NPSPAC band plan.¹⁹ In addition, existing cross-border mutual aid channels in the former NPSPAC band that fall on U.S. primary spectrum will be maintained so that they can continue to be used for mutual aid on the Canadian side of the border.²⁰ These channels will be kept clear and protected from ESMR operations in the border regions.
- In the upper portion of the band, we seek to separate non-ESMR systems (high-site B/ILT and SMR) from ESMR systems to the extent feasible. However, due to the limited amount of U.S. primary spectrum available in the border regions, some interleaving of ESMR and non-ESMR systems may be necessary to provide non-ESMR systems with sufficient internal spacing of their channels to enable them to make effective use of combiners.²¹ We seek comment on the degree to which the border area band plan should accommodate such interleaving. We also seek comment on whether other technical rules are required to mitigate potential interference between ESMR and non-ESMR systems.

¹⁷ See *800 MHz Report and Order*, 19 FCC Rcd at 14984 ¶ 23.

¹⁸ See Pennsylvania Letter at 2-3.

¹⁹ See, e.g., Region 43 Letter, Attachment at 1.

²⁰ In regions 1, 4, 5 and 6, the existing cross-border mutual aid channels that will be maintained are 822.5125/867.5125 MHz and 823.0125/868.0125 MHz. In Region 3, the existing mutual aid channels that will be maintained are 821.5125/866.5125 MHz, 822.0125/867.0125 MHz, 822.5125/867.5125 MHz, and 823.0125/868.0125 MHz. There are no cross-border mutual aid channels on U.S primary spectrum in Region 2, 7, or 8.

²¹ Combiners are used in trunked systems to combine the output of multiple transmitters into a single antenna. However, combiners can introduce excessive signal loss if used with channels that are too closely spaced. See *800 MHz Report and Order*, 19 FCC Rcd at 15053 ¶ 156.

- The dividing line between Regions 2 and 3 will align with the Pennsylvania-Ohio border (at 80° 30' WL) as defined in the 1990 Arrangement between the U.S. and Canada covering NPSPAC operations in the 800 MHz band.²²

8. We also seek comment on the following region-specific elements of the proposed band plan.

1. Regions 1, 4, 5, 6

9. The proposed band plan for Regions 1, 4, 5, and 6 is set forth in Appendix C. We propose a uniform band plan for these four regions because the allocation of 800 MHz spectrum between the U.S. and Canada is identical in these regions. We also note that this band plan is similar in many respects to the band plan proposed for Regions 1 and 4 in the Great Lakes Letter and Region 5 in the Region 43 Letter.²³ In all of these regions, there are currently 114 U.S. NPSPAC channels (with 12.5 kHz spacing) and two mutual aid channels (with 25 kHz spacing) in the U.S. portion of the NPSPAC band. We propose to relocate all of these channels to corresponding positions 15 megahertz lower in a new NPSPAC block at 807.5-809/852.5-854 MHz. We propose to consolidate non-NPSPAC public safety systems into the band segments immediately above and below the new NPSPAC block (806-807.5/851-852.5 MHz and 809-809.75/854-854.75 MHz). Existing B/ILT and SMR systems on channels below 809.75/854.75 MHz will be relocated to channels in the U.S. primary block at 817.25-821/861.25-866 MHz. We seek comment on these proposals and on any alternatives that are consistent with the Commission's overall rebanding goals for this proceeding.

2. Region 2

10. The proposed band plan for Region 2 is set forth in Appendix C. Region 2 presents unique challenges because only 30 percent of the 800 MHz band in this region is allocated to the U.S. Currently, there are 71 U.S. NPSPAC channels in the U.S. portion of the NPSPAC band in this region. We propose to relocate these channels to the existing U.S. primary block at 806-808.25/851-853.25 MHz. Because of the limited amount of U.S. primary spectrum in this region, this requires NPSPAC licensees to relocate more than 15 megahertz below their current channels assignments. We also recognize that there is limited channel capacity in the 806-808.25/851-853.25 MHz block to accommodate both Region 2 NPSPAC and non-NPSPAC public safety systems, and that there are differing views on how to configure this block as a result. One view, advanced in the Great Lakes Letter, is that existing non-NPSPAC systems should remain in place and that NPSPAC licensees should be relocated to vacant channels in the band freed up by clearing of non-public safety incumbents.²⁴ Pennsylvania, on the other hand, suggests that non-NPSPAC systems operating on 25 kHz spaced channels may need to conform to the tighter emission masks applicable to NPSPAC systems.²⁵ We seek comment on how Region 2 NPSPAC and non-NPSPAC channels should be configured within this block to ensure that all licensees receive comparable spectrum and that NPSPAC and non-NPSPAC public safety systems can operate effectively and without causing or receiving harmful interference.²⁶

²² See Arrangement Between the Dept. of Communications of Canada and the FCC of the United States Concerning the Use Along the US-Canada Border of the Bands 821-824 MHz and 866-869 MHz (Sep. 1990, addendum, Dec. 1994).

²³ See Great Lakes Letter, Attachment at 5; Region 43 Letter, Attachment at 4.

²⁴ Great Lakes Letter, Attachment at 7.

²⁵ Pennsylvania Letter at 3-4.

²⁶ We note that the repacking of licensees in NPSPAC Region 2 must be performed in such a manner as to not conflict with licensees operating in adjacent NPSPAC Regions 1, 3 and 7.

11. We propose that existing B/ILT and SMR systems operating in the 806-808.25/851-853.25 MHz block be relocated to channels in the U.S. primary block at 818.75-821/863.75-866 MHz. We seek comment on this proposal, and on how ESMR and non-ESMR systems should be accommodated within the channelization plan for this block.

12. Finally, because of the limited amount of spectrum allocated to the U.S. in Region 2, we have received a proposal that we adopt a non-standard band plan for the portion of Region 7 that is adjacent to Region 2.²⁷ We seek comment on this alternative in the discussion of Region 7 below.

3. Region 3

13. The proposed band plan for Region 3 is set forth in Appendix C. In Region 3, 70 percent of the channels in the 806-821/851-866 MHz band are allocated to the U.S. on a primary basis, as are 85 percent of the NPSPAC channels. Currently, there are 191 NPSPAC channels in the U.S. portion of the NPSPAC band in this region, as well as four mutual aid channels. We propose to relocate all of these channels to corresponding positions 15 megahertz lower in a new NPSPAC block at 806.45-809/851.45-854 MHz. In order to accommodate this NPSPAC relocation, we propose to consolidate non-NPSPAC public safety systems into the band segments immediately above and below the new NPSPAC block (806-806.45/851-851.45 MHz and 809-811.25/854-856.25 MHz). However, in order to ensure that the new band plan contains the same number of non-NPSPAC public safety channels as the old band plan, we will need to add a small block of public safety channels above 815.75/860.75 MHz, and relocate some public safety licensees to these channels.²⁸ Existing B/ILT and SMR systems on channels below 811.25/856.25 MHz will also be relocated to positions in the U.S. primary block above the public safety segment. We seek comment on these proposals and on any alternatives that are consistent with the Commission's overall rebanding goals for this proceeding.

4. Region 7

14. The proposed band plan for Region 7 is set forth in Appendix C. In this region, the U.S. has access to the entire 800 MHz band on a primary basis, subject to technical limits designed to limit signal strength at the border. Therefore, for all portions of Region 7 except the portion that is adjacent to Region 2, we propose to employ the same band plan that has been previously adopted for non-border areas.²⁹

15. We propose a non-standard band plan for the portion of Region 7 that is adjacent to Region 2.³⁰ Because of the limited amount of spectrum available to U.S. licensees in Region 2, particularly in western New York and northwestern Pennsylvania, expanding the availability of public safety and B/ILT channels in Region 7 could provide statewide or regional licensees with greater flexibility to use channels in Region 7 that are not available in Region 2, thereby conserving Region 2 channels for use in areas where they are needed most. The draft band plan contained in the Great Lakes Letter includes such a proposal for Region 7.³¹ We believe that this general approach has merit, and therefore, in this segment of Region 7, we propose to provide 170 public safety channels in the 809-816/854-861 MHz portion of the band and eliminate the Expansion Band at 815-816/860-861 MHz. We seek comment on this proposal. However, we also note Pennsylvania's concern that the specific

²⁷ Great Lakes Letter, Attachment at 8-9.

²⁸ This is an element of the Great Lakes proposal for Region 3. *Id.* at 11.

²⁹ See Appendix C, proposed band plan for Region 7A.

³⁰ See Appendix C, proposed band plan for Region 7B.

³¹ Great Lakes Letter, Attachment at 9.

configuration of this portion of Region 7 could have a “domino effect” on rebanding in non-border areas of the state.³² We seek comment on how best to address this concern.

5. Region 8

16. The proposed band plan for Region 8 is set forth in Appendix C. In this region, as in Region 7, the U.S. has access to the entire 800 MHz band on a primary basis, subject to technical limits designed to limit signal strength at the border. Therefore, we propose to employ the same band plan for Region 8 that has been previously adopted for non-border areas. We seek comment on this proposal.

D. Additional Issues

17. We also seek comment on the following issues:

- Some U.S. NPSPAC licensees in the border regions operate on a secondary basis on Canadian primary channels in the 821-824/866-869 MHz band.³³ How should we accommodate relocation of these operations? Given the limited amount of U.S. primary spectrum available in some regions, it may be difficult to relocate these secondary operations to U.S. primary channels. Alternatively, should these operations be relocated to the lowest available Canadian primary channels in the band, where they would continue to have secondary status but would be more closely aligned with the new U.S. NPSPAC channels?
- Sprint currently operates in the border region on certain Canadian primary channels below 817/862 MHz pursuant to a Special Coordination Procedure (SCP) signed in October 2001.³⁴ In non-border regions, however, Sprint is required to vacate all spectrum below 817/862 MHz as part of rebanding.³⁵ Should Sprint similarly be required to clear its operations in the Canadian border region on SCP channels below 817/862 MHz?³⁶ If Sprint is allowed to continue operating on SCP channels in the border region, what if any conditions should be placed on such operations to protect U.S. licensees operating on these channels in non-border areas?
- We seek comment on the sequence and timing of rebanding activity in the Canadian border region once a final band plan is adopted and the 800 MHz Transition Administrator issues rebanding channel assignments to border area licensees. It is our intent to proceed with rebanding in the Canadian border region as quickly as is feasible consistent with the Commission’s goals in this proceeding, and to minimize any delay between rebanding in non-border and border regions. We anticipate that rebanding in the border region will need to proceed in stages similar to Stage 1 and Stage 2 in non-border areas, *i.e.*, a first stage consisting of clearing and relocation of lower-band incumbents from channels needed for NPSPAC relocation, and a second stage in which NPSPAC licensees relocate to their new channel assignments. We seek comment on this staged approach, the amount of time that should be allotted for each stage, and whether any adjustments to this approach are needed due to the unique disposition of 800 MHz licensees in the border areas.³⁷ We also seek

³² Pennsylvania Letter at 4.

³³ See Region 43 Letter, Attachment at 1.

³⁴ See Special Coordination Procedure for the Use of Frequencies in the Bands 806-821 MHz and 851-866 MHz for Land Mobile Services (Oct. 2001).

³⁵ 800 MHz Report and Order, 19 FCC Rcd at 14977 ¶ 11.

³⁶ Region 43 supports this approach. Region 43 Letter, Attachment at 3.

³⁷ For example, the Great Lakes commenters indicate the need to carefully coordinate rebanding in Regions 2 and 7. Great Lakes Letter, Attachment at 7.

comment on the sequence and timing of licensee planning activity and negotiations and mediation between border area licensees and Sprint. In general, we propose to establish expedited timelines for planning, negotiations, and mediation similar to those established in the Commission's September 2007 *Public Notice* for non-border licensees.³⁸ We seek comment on this proposal.

III. PROCEDURAL MATTERS

A. Comment Filing Procedures

18. 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 Further Notice of Proposed Rulemaking 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 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.
 - For ECFS filers, if multiple dockets or rulemaking numbers appear in the caption of this proceeding, filers must transmit one electronic copy of the comments for each docket or rulemaking number referenced in the caption. In completing the transmittal screen, filers should include their full name, U.S. Postal Service mailing address, and the applicable docket or rulemaking number. Parties may also submit an electronic comment by Internet e-mail. To get filing instructions, filers should send an e-mail to ecfs@fcc.gov, and include the following words in the body of the message, "get form." A sample form and directions will be sent in response.
- Paper Filers: Parties who choose to file by paper must file an original and four copies 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 (although we continue to experience delays in receiving U.S. Postal Service mail). All filings must be addressed to the Commission's Secretary, Office of the Secretary, Federal Communications Commission.

- The Commission's contractor will receive hand-delivered or messenger-delivered paper filings for the Commission's Secretary at 236 Massachusetts Avenue, N.E., Suite 110, Washington, DC 20002. The filing hours at this location are 8:00 a.m. to 7:00 p.m. All hand deliveries must be held together with rubber bands or fasteners. Any envelopes 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.

³⁸ See FCC Announces Supplemental Procedures and Provides Guidance for Completion of 800 MHz Rebanding, *Public Notice*, 22 FCC Rcd 17227 (2007).

- U.S. Postal Service first-class, Express, and Priority mail must be addressed to 445 12th Street, S.W., Washington, DC 20554.

19. Comments and reply comments and any other filed documents in this matter may be obtained from Best Copy and Printing, Inc., in person at 445 12th Street, S.W., Room CY-B402, Washington, DC 20554, via telephone at (202) 488-5300, via facsimile at (202) 488-5563, or via e-mail at FCC@BCPIWEB.COM. The pleadings will be also available for public inspection and copying during regular business hours in the FCC Reference Information Center, Room CY-A257, 445 12th Street, S.W., Washington, DC 20554, and through the Commission's Electronic Filing System (ECFS) accessible on the Commission's Web site, <http://www.fcc.gov/cgb/ecfs>.

20. 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).

21. Commenters who file information that they believe is 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. Initial Regulatory Flexibility Analysis

22. Pursuant to the Regulatory Flexibility Act (RFA),³⁹ 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 Further Notice of Proposed Rulemaking (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 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 FNPRM, including the IRFA, to the Chief Counsel for Advocacy of the Small Business Administration.⁴⁰

C. Initial Paperwork Reduction Act of 1995 Analysis

23. This document does not contain proposed information collection(s) subject to the Paperwork Reduction Act of 1995 (PRA), Public Law 104-13. In addition, therefore, it does not contain any 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).

³⁹ *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).

⁴⁰ 5 U.S.C. § 603(a).

IV. ORDERING CLAUSES

24. 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 Further Notice of Proposed Rulemaking IS ADOPTED.

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

26. IT IS FURTHER ORDERED that pursuant to applicable procedures set forth in Sections 1.415 and 1.419 of the Commission's rules, 47 C.F.R. §§ 1.415, 1.419, interested parties may file comments on this Further Notice of Proposed Rulemaking on December 3, 2007, and reply comments on December 18, 2007.

FEDERAL COMMUNICATIONS COMMISSION

Derek K. Poarch
Chief
Public Safety and Homeland Security Bureau

APPENDIX A

Initial Regulatory Flexibility Analysis

1. As required by the Regulatory Flexibility Act of 1980, as amended (RFA),⁴¹ the Commission has prepared this present Initial Regulatory Flexibility Analysis (IRFA) of the possible significant economic impact on a substantial number of small entities by the policies and rules proposed in this Further Notice of Proposed Rulemaking (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 FNPRM. The Commission will send a copy of the FNPRM, including this IRFA, to the Chief Counsel for Advocacy of the Small Business Administration (SBA).⁴² In addition, the FNPRM and IRFA (or summaries thereof) will be published in the Federal Register.⁴³

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

2. In the FNPRM, we consider proposals submitted by the Consensus Parties, the Commonwealth of Pennsylvania, and representatives from regional planning committees in Ohio, New York, and Washington State for reconfiguring the 800 MHz band in the U.S. – Canada border regions. These parties propose relocating public safety licensees to U.S. primary spectrum in the lower portion of the band while placing B/ILT and ESMR systems higher in the band on U.S. primary spectrum above 815/860 MHz. These proposals also include region-specific variations. The reconfiguration of the 800 MHz band in the U.S. – Canada border regions is in the public interest because it will allow the Commission to eliminate interference in these regions to public safety and other land mobile communication systems. Interference is eliminated by separating—to the greatest extent possible—public safety and other non-cellular licensees from licensees that employ cellular technology in the 800 MHz band.

B. Legal Basis

3. The legal basis for any action that may be taken pursuant to this FNPRM is contained in Sections 4(i) and 332 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 332.

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

4. 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.⁴⁴ The RFA generally defines the term “small entity” as having the same meaning as the terms “small business,” “small organization,” and “small governmental jurisdiction.”⁴⁵ In addition, the term “small business” has the same meaning as the term “small business concern” under the Small Business Act.⁴⁶ A small business concern is one which:

⁴¹ 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).

⁴² See 5 U.S.C. § 603(a).

⁴³ *Id.*

⁴⁴ 5 U.S.C. §§ 603(b)(3), 604(a)(3).

⁴⁵ 5 U.S.C. § 601(6).

⁴⁶ 5 U.S.C. § 601(3) (incorporating by reference the definition of “small business concern” in the Small Business Act, 15 U.S.C. § 632). 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 terms which are appropriate to the activities of the agency and publishes such definitions(s) in the Federal Register.”

(1) is independently owned and operated; (2) is not dominant in its field of operation; and (3) satisfies any additional criteria established by the Small Business Administration (SBA).⁴⁷

5. Nationwide, there are a total of approximately 22.4 million small businesses, according to SBA data.⁴⁸ A “small organization” is generally “any not-for-profit enterprise which is independently owned and operated and is not dominant in its field.”⁴⁹ Nationwide, as of 2002, there were approximately 1.6 million small organizations.⁵⁰ The term “small governmental jurisdiction” is defined generally as “governments of cities, towns, townships, villages, school districts, or special districts, with a population of less than fifty thousand.”⁵¹ Census Bureau data for 2002 indicate that there were 87,525 local governmental jurisdictions in the United States.⁵² We estimate that, of this total, 84,377 entities were “small governmental jurisdictions.”⁵³ Thus, we estimate that most governmental jurisdictions are small. Below, we further describe and estimate the number of small entities - - applicants and licensees - - that may be affected by the proposals, if adopted, in this FNPRM.

6. *Public Safety Radio Licensees.* Public safety licensees who operate 800 MHz systems in the U.S. – Canada border region would be required to relocate their station facilities according to the band plans proposed in this FNPRM.⁵⁴ As indicated above, all governmental entities with populations of less than 50,000 fall within the definition of a small entity.⁵⁵

7. *Business, I/LT, and SMR licensees.* Business and Industrial Land Transportation (B/ILT) and Special Mobile Radio (SMR) licensees who operate 800 MHz systems in the U.S. – Canada border region would be required to relocate their station facilities according to the band plans proposed in this FNPRM. Neither the Commission nor the SBA has developed a definition of small businesses directed specifically toward these licensees.

8. *Wireless Service Providers.* Wireless Service Providers who operate 800 MHz systems in the U.S. – Canada border region would be required to relocate their station facilities according to the band plans proposed in this FNPRM. The SBA has developed a small business size standard for wireless firms within the two broad economic census categories of “Paging”⁵⁶ and “Cellular and Other Wireless Telecommunications.”⁵⁷ Under both categories, the SBA deems a wireless business to be small if it has 1,500 or fewer employees. For the census category of Paging, Census Bureau data for 2002 show that there were 807 firms in this category that operated for the entire year.⁵⁸ Of this total, 804 firms had

⁴⁷ 15 U.S.C. § 632.

⁴⁸ See SBA, Programs and Services, SBA Pamphlet No. CO-0028, at page 40 (July 2002).

⁴⁹ 5 U.S.C. § 601(4).

⁵⁰ Independent Sector, The New Nonprofit Almanac & Desk Reference (2002).

⁵¹ 5 U.S.C. § 601(5).

⁵² U.S. Census Bureau, Statistical Abstract of the United States: 2006, Section 8, page 272, Table 415.

⁵³ We assume that the villages, school districts, and special districts are small, and total 48,558. See U.S. Census Bureau, Statistical Abstract of the United States: 2006, section 8, page 273, Table 417. For 2002, Census Bureau data indicate that the total number of county, municipal, and township governments nationwide was 38,967, of which 35,819 were small. *Id.*

⁵⁴ The U.S. – Canada border region extends 140 kilometers into the U.S. from the border.

⁵⁵ 5 U.S.C. § 601(5).

⁵⁶ 13 C.F.R. § 121.201, NAICS code 517211.

⁵⁷ 13 C.F.R. § 121.201, NAICS code 517212.

⁵⁸ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517211 (issued Nov. 2005).

employment of 999 or fewer employees, and three firms had employment of 1,000 employees or more.⁵⁹ Thus, under this category and associated small business size standard, the majority of firms can be considered small. For the census category of Cellular and Other Wireless Telecommunications, Census Bureau data for 2002 show that there were 1,397 firms in this category that operated for the entire year.⁶⁰ Of this total, 1,378 firms had employment of 999 or fewer employees, and 19 firms had employment of 1,000 employees or more.⁶¹ Thus, under this second category and size standard, the majority of firms can, again, be considered small.

9. Also, Sprint Corporation will be affected by the band plan proposals in this FNPRM but it is not a small carrier.

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

10. The *Further Notice of Proposed Rulemaking* does not propose a rule that will entail additional reporting, recordkeeping, and/or third-party consultation or other compliance efforts. As noted in Section C, *supra*, public safety, B/ILT, SMR licensees and wireless service providers who operate 800 MHz systems in the U.S. – Canada border region would be required to relocate their station facilities according to the band plans proposed in this FNPRM. Also, Sprint Corporation will pay the cost of relocating incumbent licensees.

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

11. The RFA requires an agency to describe any significant, specifically small business 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) and exemption from coverage of the rule, or any part thereof, for small entities.”⁶²

12. In the FNPRM, the Bureau seeks comment on proposals to relocate public safety systems to U.S. primary spectrum in the lower portion of the band while placing B/ILT and ESMR systems higher in the band on U.S. primary spectrum above 815/860 MHz. These proposals also contain certain region-specific variations. Because the reconfiguration of the 800 MHz band in the U.S. – Canada border regions seeks to eliminate interference to public safety and other land mobile communication systems, these proposals, if adopted, minimize the cost that licensees would otherwise incur to resolve interference. Further, Sprint Corporation will pay the cost of relocating incumbent licensees. Additionally, the Bureau specifically seeks comment on alternatives to the proposed band plans and will consider such alternatives as may be recommended in comments to the FNPRM.

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

13. None.

⁵⁹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

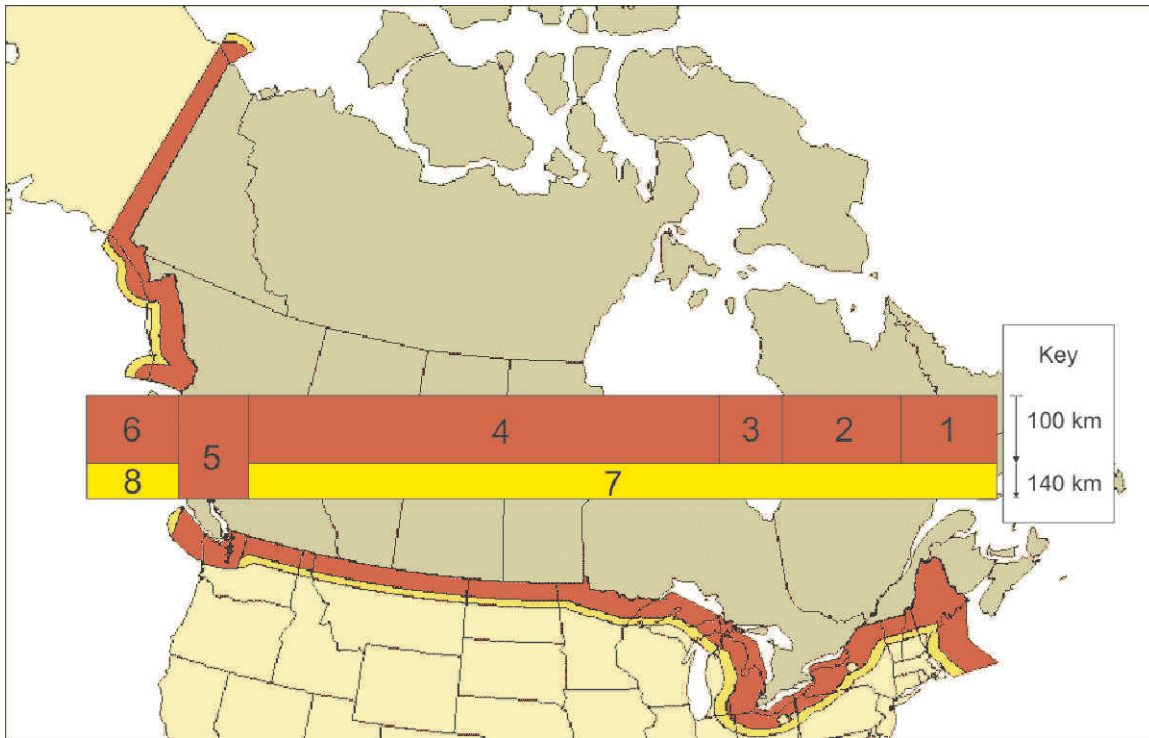
⁶⁰ U.S. Census Bureau, 2002 Economic Census, Subject Series: Information, “Establishment and Firm Size (Including Legal Form of Organization,” Table 5, NAICS code 517212 (issued Nov. 2005).

⁶¹ *Id.* The census data do not provide a more precise estimate of the number of firms that have employment of 1,500 or fewer employees; the largest category provided is for firms with “1000 employees or more.”

⁶² 5 U.S.C. §§ 603(c)(1)-(c)(4).

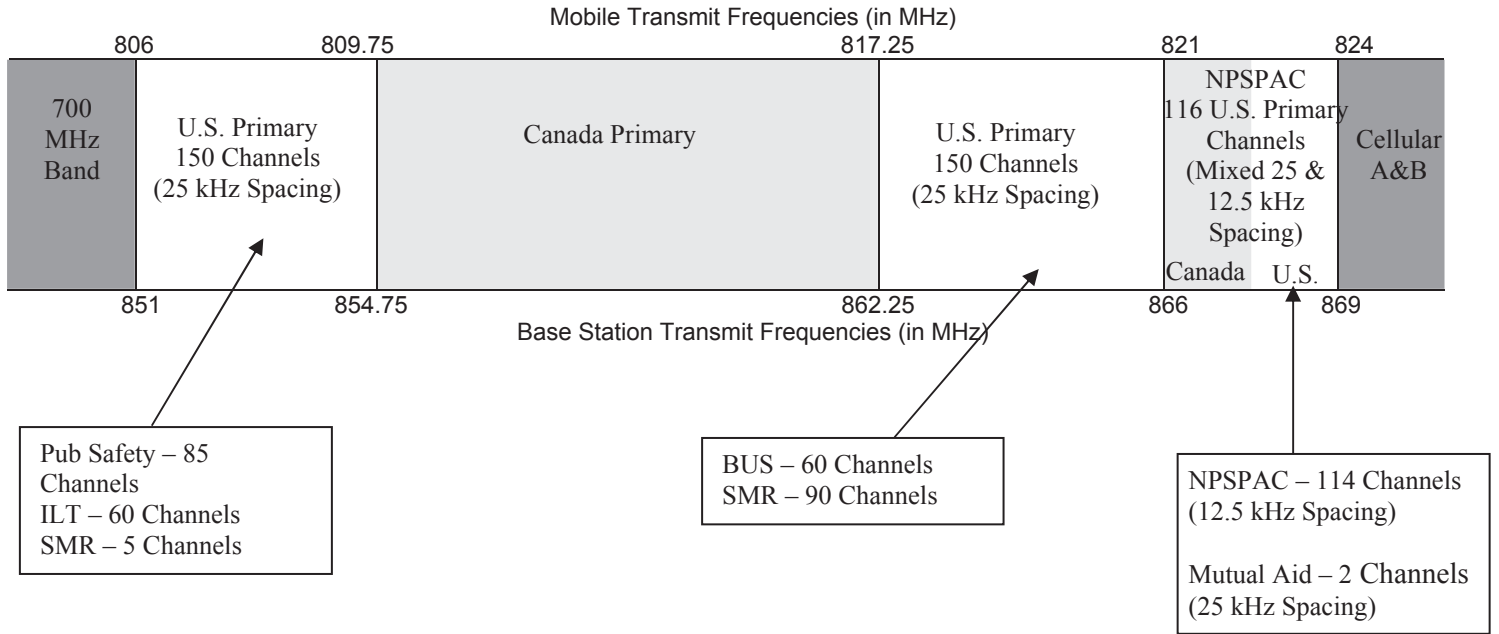
APPENDIX B

US - Canada Border Regions

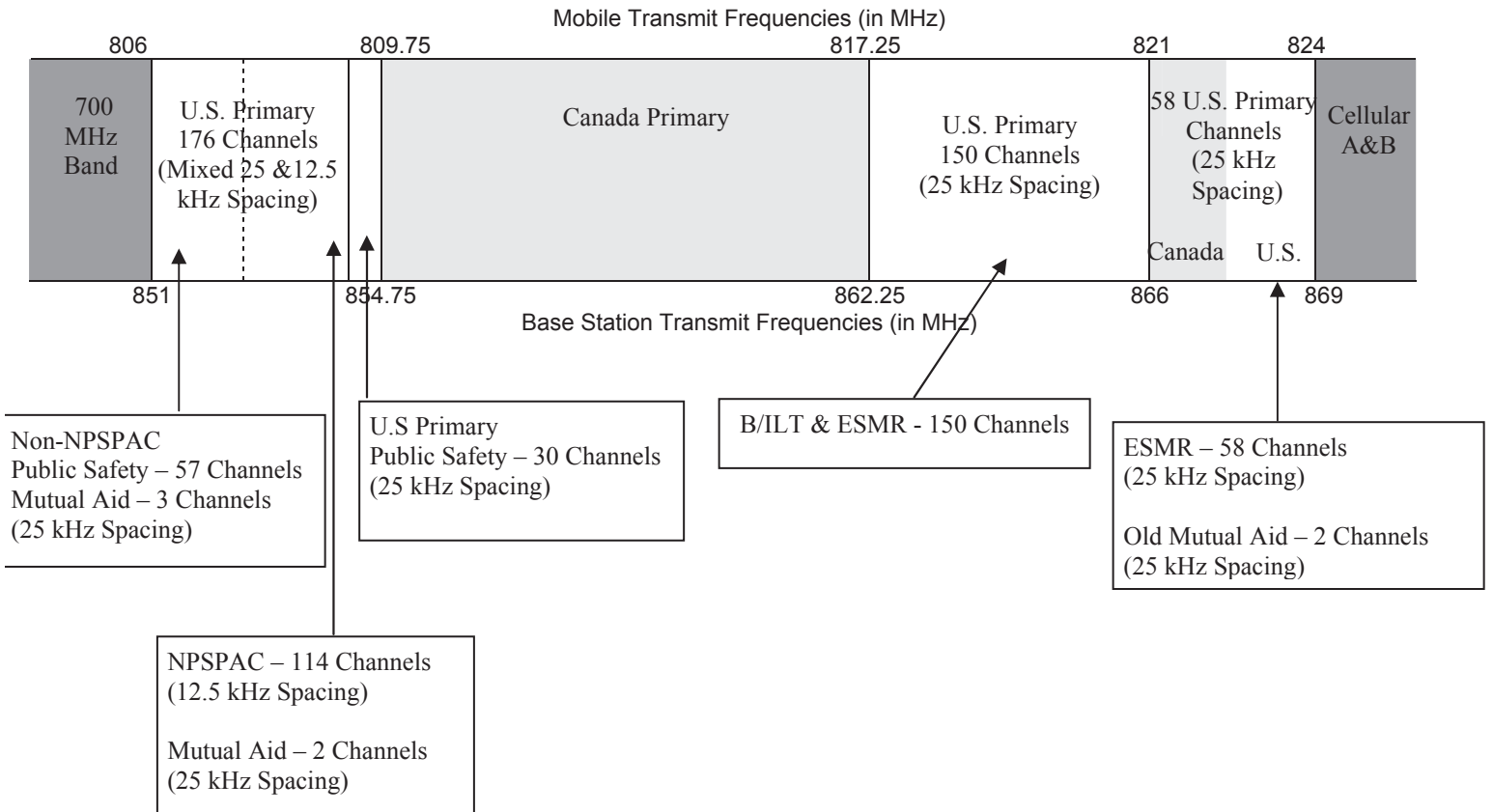


APPENDIX C

Current Band Plan – Canadian Border Regions 1, 4, 5, 6

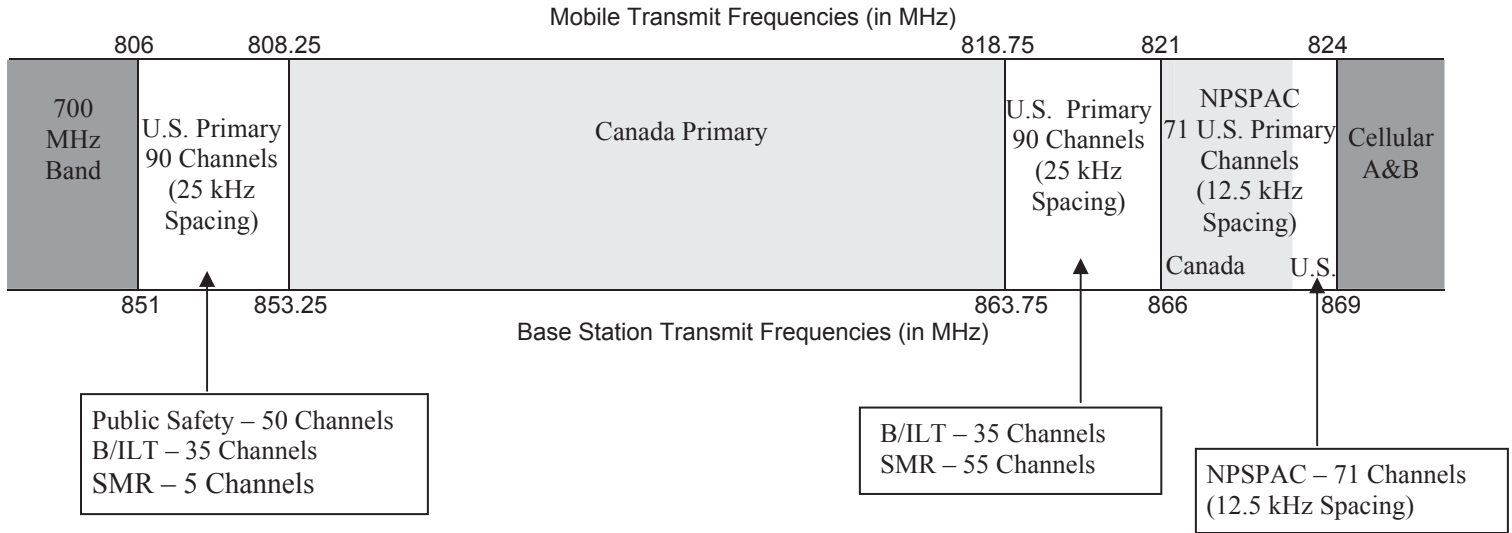


Proposed Band Plan – Canadian Border Regions 1, 4, 5, 6

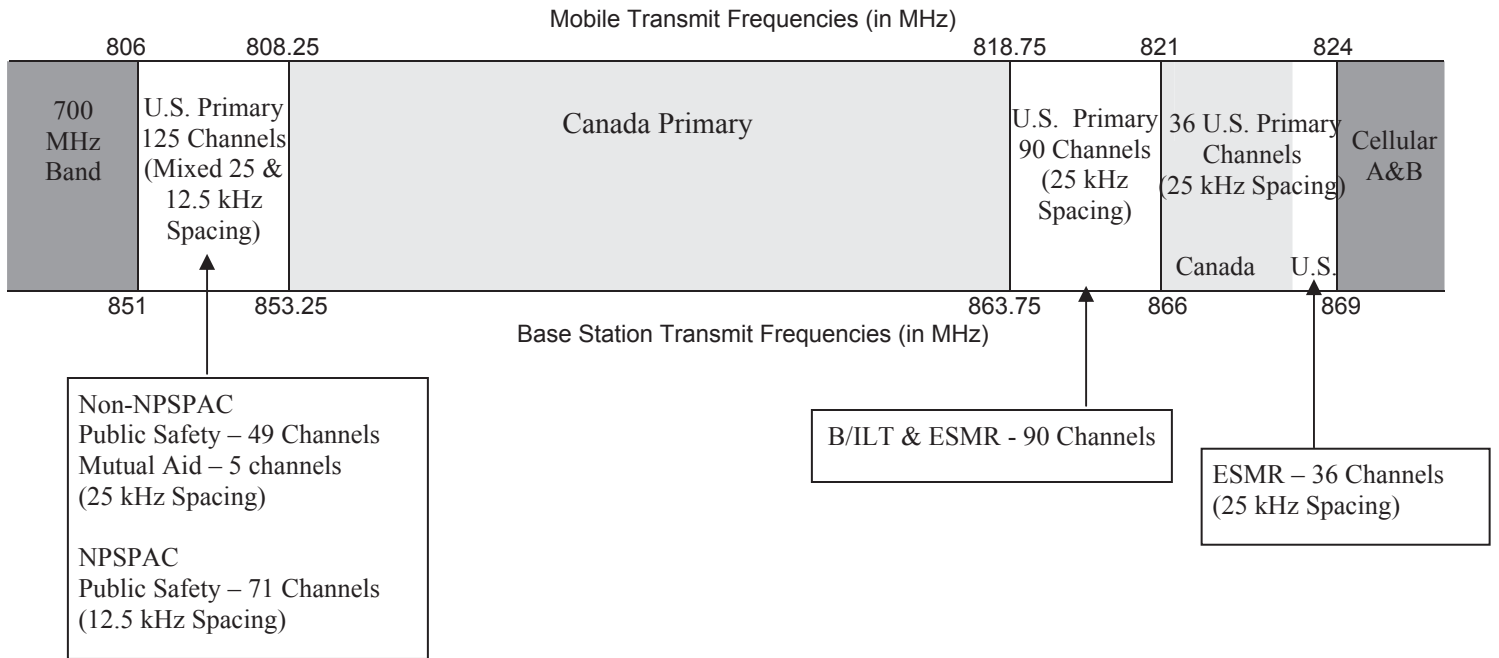


APPENDIX C (cont.)

Current Band Plan – Canadian Border Region 2

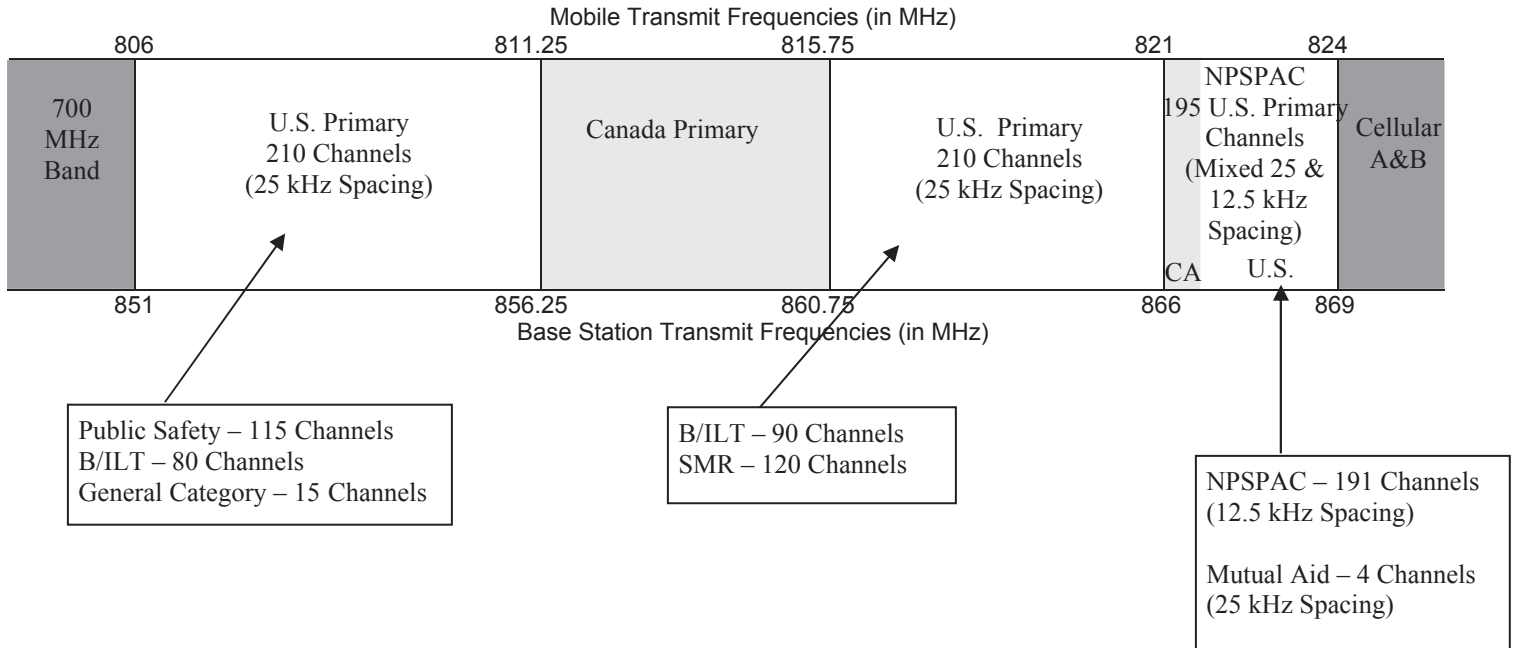


Proposed Band Plan – Canadian Border Region 2

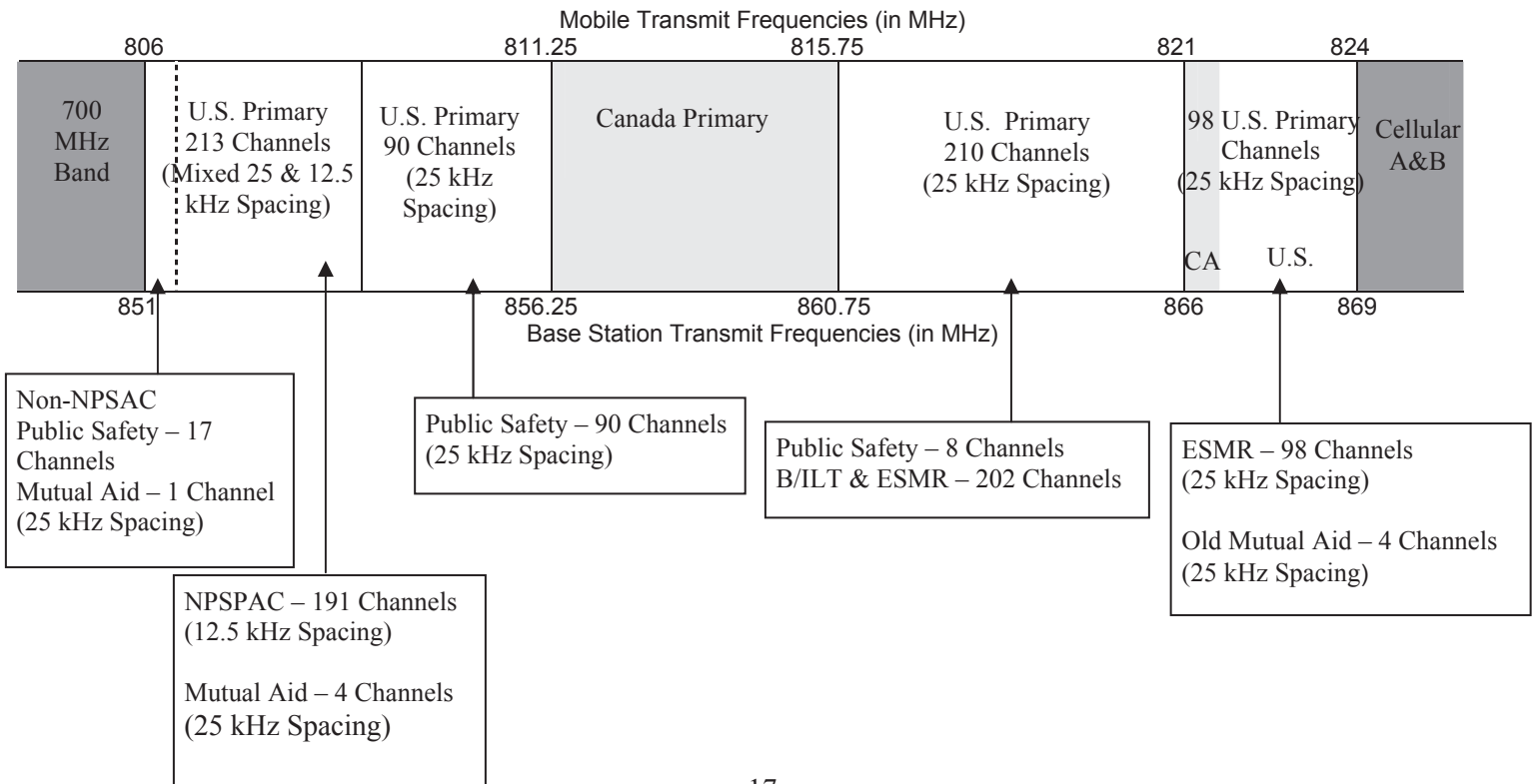


APPENDIX C (cont.)

Current Band Plan – Canadian Border Region 3

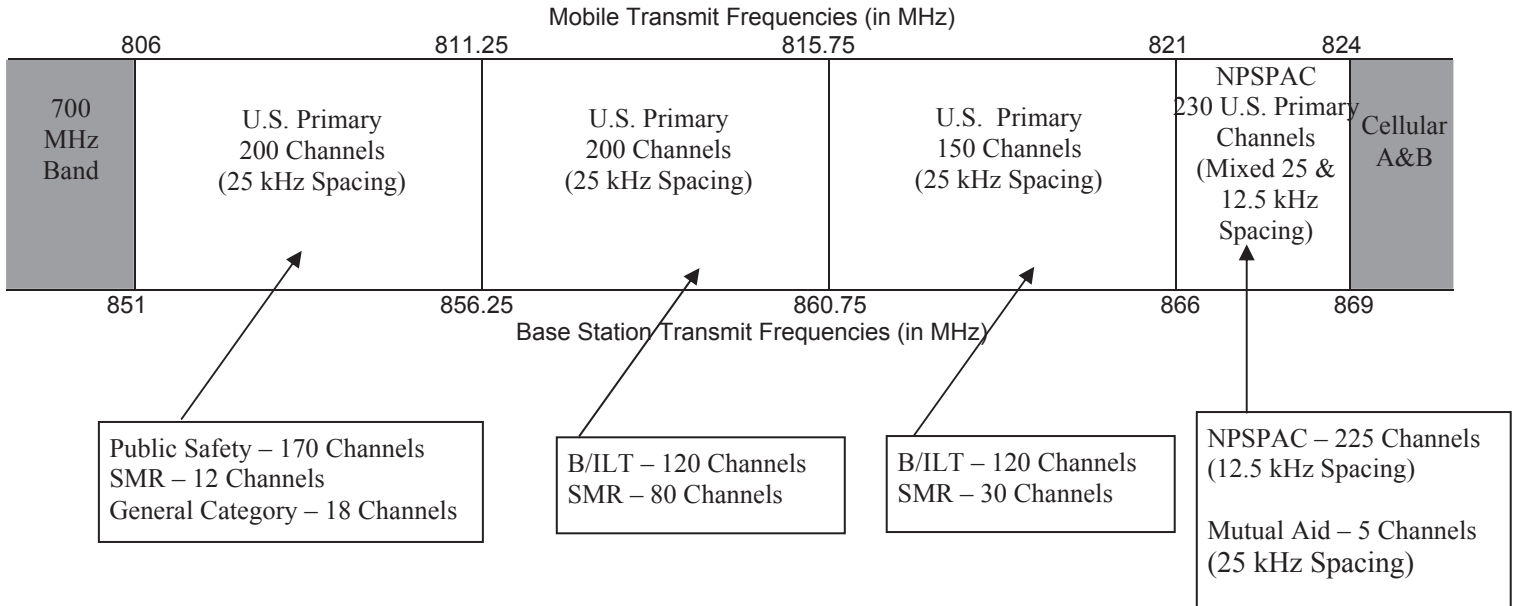


Proposed Band Plan – Canadian Border Region 3

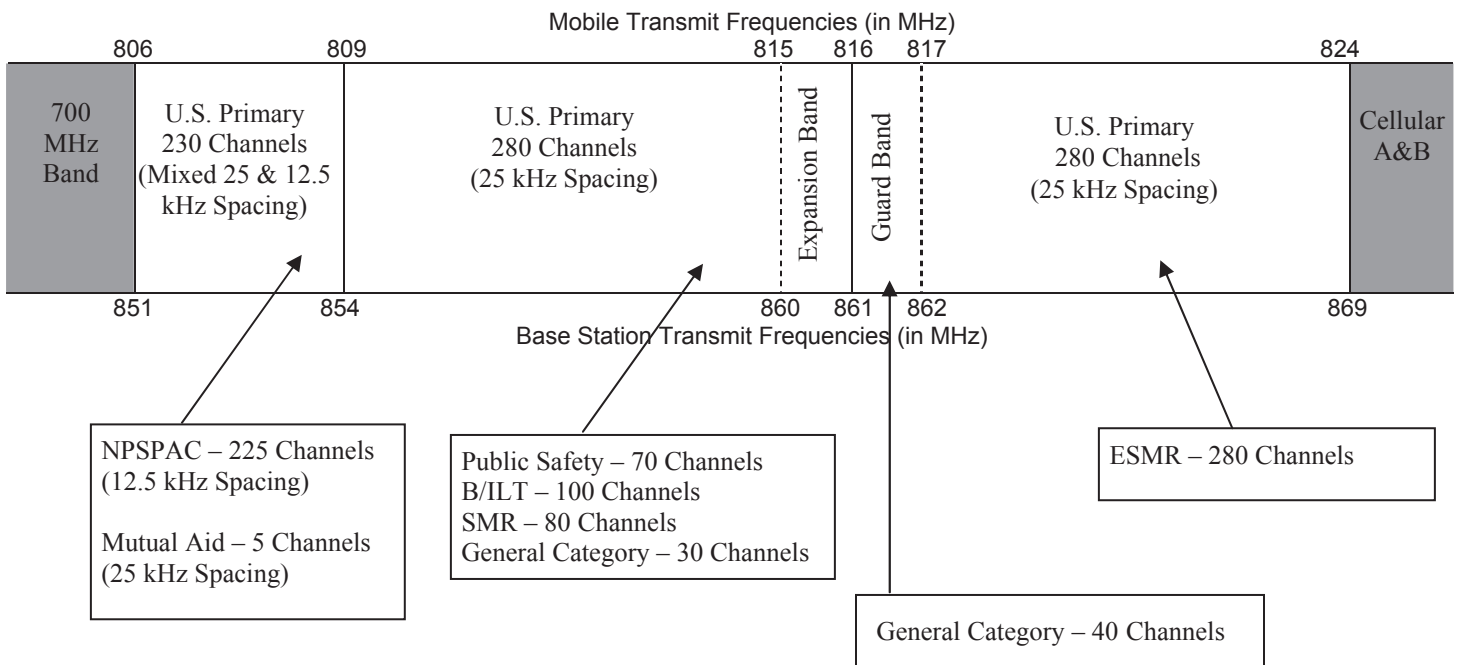


APPENDIX C (cont.)

Current Band Plan – Canadian Border Region 7

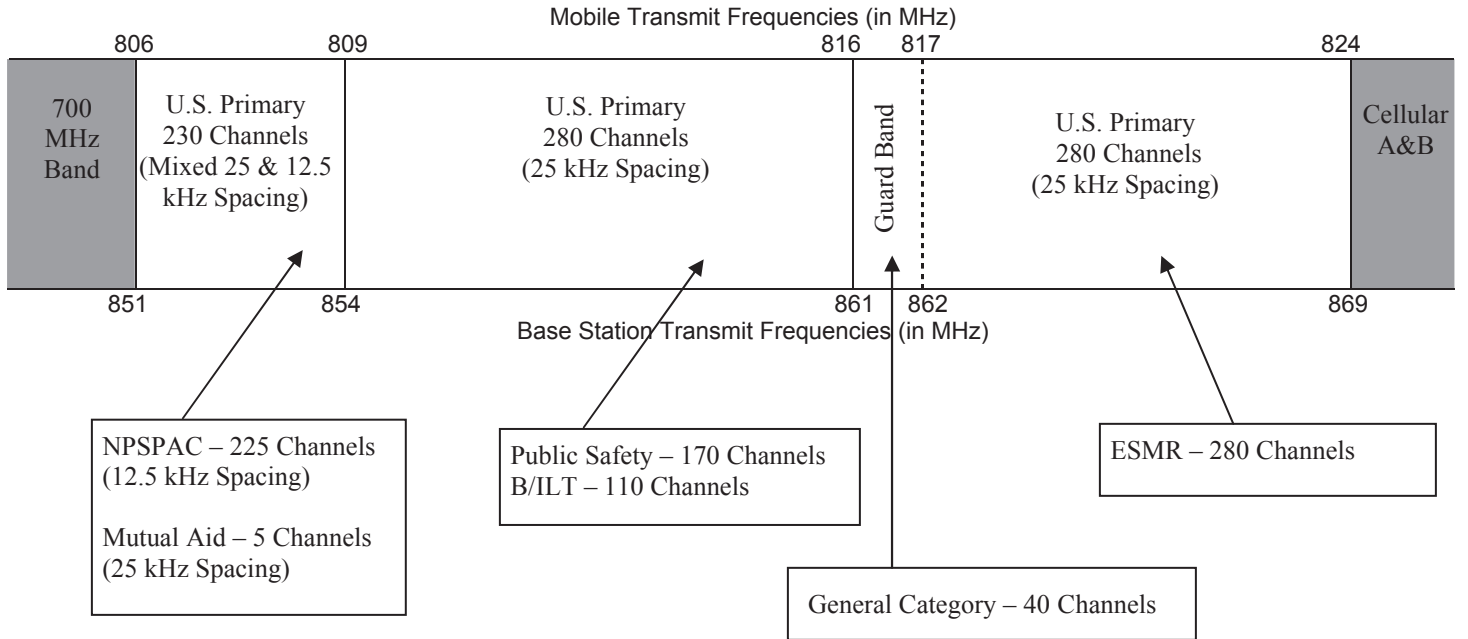


Proposed Band Plan – Canadian Border Region 7A (Not Adjacent to Region 2)



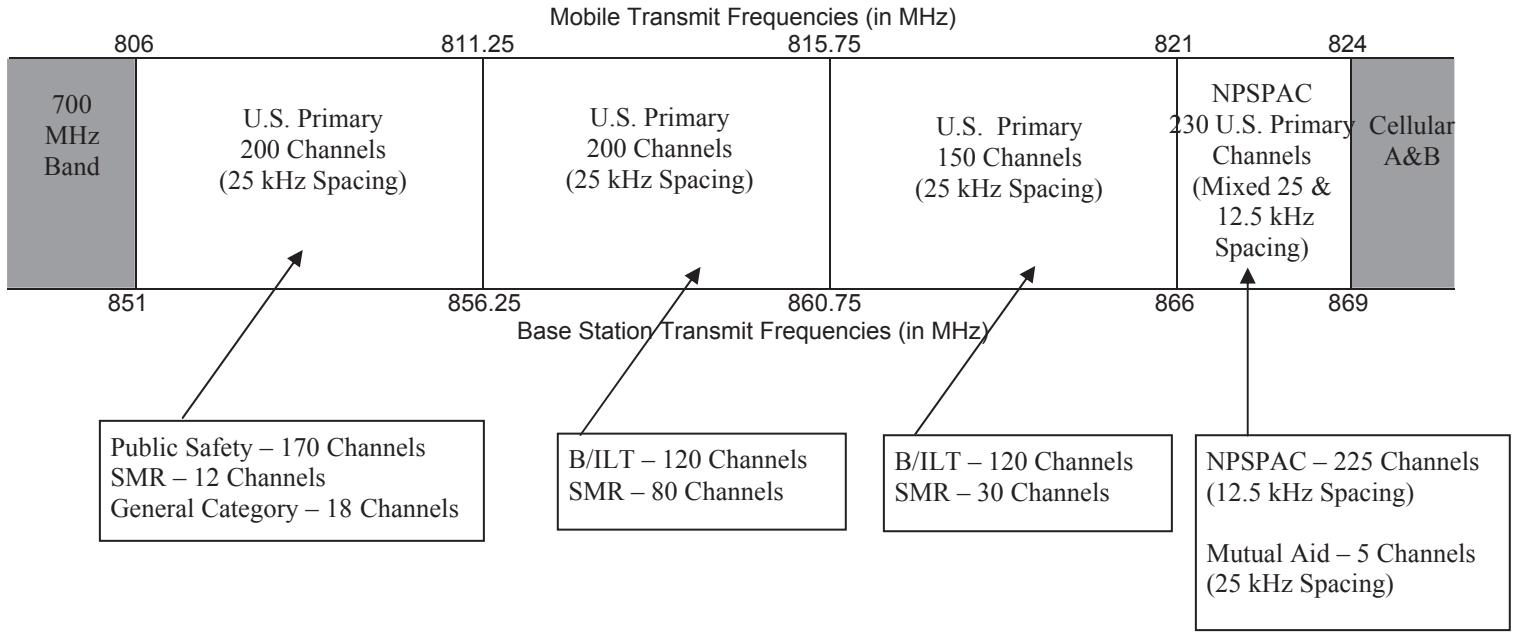
APPENDIX C (cont.)

Proposed Band Plan – Canadian Border Region 7B (Adjacent to Region 2)



APPENDIX C (cont.)

Current Band Plan – Canadian Border Region 8



Proposed Band Plan – Canadian Border Region 8

