

ISSUE BRIEF #2

Cyren Call: Don't Be Fooled Again

History of a Government Giveaway

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Citizens Against Government Waste

Citizens Against Government Waste (CAGW) is a private, nonprofit, nonpartisan organization dedicated to educating the American public about waste, mismanagement, and inefficiency in the federal government.

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CAGW has more than 1.2 million members and supporters nationwide. Since 1986, CAGW and its members have helped save taxpayers more than \$944 billion. CAGW publishes special reports, its official newspaper *Government WasteWatch*, and the monthly newsletter *Wastewatcher* to scrutinize government waste and educate citizens on what they can do to stop it. CAGW's publications and experts are featured regularly in television, radio, print, and Internet media.

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Introduction

Morgan O'Brien might seem an unlikely candidate for welfare. The former chairman of the Nextel wireless company (which became Sprint Nextel after its merger with Sprint in 2005) drew \$4.4 million in compensation from Nextel in 2000 alone.¹ He made another \$21 million exercising his ample stock options by the summer of 2002.² He collected millions more in 2005 after the Sprint-Nextel merger. And last year he and wife put their 23-room beachfront mansion and surrounding estate in Maryland on the market for a reported \$29.5 million.³

Yet Mr. O'Brien was one of the chief architects and a leading beneficiary of arguably the biggest handout of corporate welfare ever bestowed by the U.S. government on a telecom company. That 2004 giveaway had the benign sounding name of the "Consensus Plan." The growing consensus is that Nextel received billions of dollars worth of radio spectrum in return for promises the company has still not kept to correct problems of its own making.

Now Mr. O'Brien and key executives from Nextel are in Washington lobbying for another supersize handout at public expense. This time they are doing business as Cyren Call. They are looking for a free slice of radio spectrum that the government already plans to auction off to the highest bidder. And just as they did when they were flying the Nextel flag in 2004, the Cyren Call principals are wrapping their handout request in the cloak of public safety. Their pitch to Congress and the Federal Communications Commission (FCC) is that such a deal will cure the wireless communications systems of America's more than 37,000 emergency first-responder agencies.

The taxpayers deserve to know why the same core group of performers back in Washington are singing the same song less than three years after America handed them a multi-billion dollar slice of spectrum at a fire sale price.

Emergency Services' Interoperability Problem Becomes A Crisis on 9/11

As the initial shock wave began to recede from the terrorist attacks of September 11, 2001, the country began to wrestle with difficult questions about what happened and why. On a tactical level, investigations soon showed that the incredible bravery of the emergency service people who responded to the World Trade Center attack in Manhattan contrasted with inadequate radio communications that made it difficult for personnel from different agencies to communicate and sometimes even hampered communications among first-responders within their own departments. Of the approximately 2,700 people who died that day, 403 were first-responders: 343 firefighters and 60 police officers.

Tom Kean, co-chairman of the 9/11 Commission, stated that people died simply because police officers couldn't talk to firefighters. He added that communication problems during the response to Hurricane Katrina were a re-run of 9/11. The core of the communication problem in both these disasters was lack of what the communications industry calls "interoperability," which means the ability of different communications systems in different departments to connect with each other.

While the 9/11 tragedy introduced America at large to the lack of interoperability, it is a problem first responders have been contending with for many years. The problem is rooted in the hodgepodge of independent mobile communications systems developed over the years that has emergency responders using many different segments of communications spectrum. As a result, many first responders can't communicate with their counterparts in other agencies or jurisdictions.

The Federal Government Responds

The federal government has periodically considered solving this problem through creation of a seamless, national first-responder network with uniform standards and technology. After 9/11 this effort got the intense attention it needed from Congress, the FCC and the White House.

But even with the best of intentions, solving the interoperability problem is a vast technical and financial challenge. It involves legislative and political coordination at all levels of government. In the aftermath of 9/11, policymakers at the federal level moved forward with time-consuming but necessary hearings and proposals. In February 2006, the President signed into law the Deficit Reduction Act of 2005, which included the Digital Television Transition and Public Safety Act (DTV). This law helps solve the interoperability problem by reserving 24 MHz of the 700 MHz spectrum band exclusively for use by emergency responders. Another 60 MHz of that valuable band will be sold at auction. One billion dollars of the proceeds expected from that auction will be used to help first responders across the country buy the equipment and make the adjustments necessary to convert to a fully interoperable nationwide system rooted in the 700 MHz band.

Well before that legislation was signed, however, there were initiatives underway to fix a similar problem. And Nextel recognized the opportunity for a huge government handout in the form of the Consensus Plan it sold to the FCC.

The “Consensus Plan”—A Sweetheart Deal for Nextel

Ironically, Nextel was a major cause of the emergency communications problems that the FCC’s 2004 Consensus Plan was intended to solve. Nextel was serving millions of cell phone customers with a jumble of radio frequencies. Those frequencies butted up against those used by police, fire and emergency medical response units. This created a chronic problem of signals from Nextel’s cell towers interfering with emergency communications traffic. The Consensus Plan called for solving that interference problem through realignment of the 800 MHz spectrum band to separate public safety systems from commercial wireless systems.

A Multi-Billion Dollar Giveaway and Un-kept Promises

As part of the Consensus Plan, Nextel agreed to give up some of its localized 800 MHz spectrum worth about \$1.6 billion. In return, it got a nationwide slice of prime 1.9 MHz spectrum with an estimated value of as much as \$5 billion had it been sold at public auction.⁴ Instead, it went to Nextel, giving the company a windfall for Nextel at the taxpayers’ expense.

Nextel also agreed to finance the technical changes involved in implementing the realignment of the 800 MHz spectrum. This “rebanding” process, as industry and the FCC refer to it, has gone nowhere. Sprint Nextel already has its high-priced spectrum while emergency responders wait for the promised rebanding. The company has asked for a delay of at least another two years, and last September actually blamed the lack of action on the emergency services community.

It's surprising that so many safety agencies refuse to negotiate a move or even seek reimbursement for planning costs, [Robert] Foosaner [Sprint Nextel Senior Vice President of Government Affairs and Chief Regulatory Officer] said. "We can't get them to sit down and talk and you're coming up on the timeframe when they're supposed to move," he said: "Sprint Nextel is not going to be blamed because public safety is not ready." Foosaner's warning was the strongest yet from Sprint Nextel that the Commission's 3 year rebanding deadline, part of 2004's landmark 800 MHz rebanding order, must be delayed. A Sprint Nextel request for a year's extension was rejected by the Commission. In August, at the Association of Public Safety Communications Officials meeting in Orlando, concern over rebanding bubbled over, startling some FCC officials. APCO and other public safety groups, while acknowledging problems, haven't asked for a slowdown in the rebanding timetable.⁵

That is the same community Nextel originally convinced to endorse the Consensus Plan with an aggressive outreach effort, according to *The Wall Street Journal*.⁶

The bottom line on the Consensus Plan is discouraging but simple. An agreement was made. A timeframe was agreed to for completing the process. Billions of dollars worth of spectrum went to Nextel rather than being auctioned for the benefit of the public treasury. And promises were broken.

Three Years Later And Nobody Is Safer

The company simply hasn't delivered on the promise made in 2004. That means taxpayers have given up billions of dollars for nothing. Even worse, the unkept promises of the Consensus Plan mean there have been no improvements in public safety communications. No one is any safer today because of this plan than they were three years ago.

Let's Not Be Fooled Again

Today Mr. O'Brien and his partners in Cyren Call are back, looking for what Citizens Against Government Waste called a second bite out of taxpayers. In some ways, the government giveaway Cyren is looking for is more audacious than Nextel's Consensus plan. It would roll back the progress made with the legislation signed by the President last year.

Follow the Law

The DTV Act provides a bi-partisan solution to the interoperability problem. This 700 MHz band is valuable real estate which TV broadcasters will vacate as part of the nationwide conversion to all-digital signals that goes into effect in two years. The Act requires the FCC to terminate all licenses for analog transmission by full-power TV stations by February 18, 2009.

Congress recognized that this vacant spectrum had huge value as a financial asset and as the source of new spectrum needed to solve the interoperability problem. Perhaps with the Consensus fiasco in mind, Congress was very clear that the auction of this spectrum must begin no later than January 28, 2008 and the proceeds received no later than June 30, 2008.

Legislation is in place to once and for all help correct the interoperability problem. But a familiar voice is now asking taxpayers and regulators to hold on and consider scrapping half of the auction by putting a sizable portion of this valuable spectrum into the hands of Mr. O'Brien and his Cyren Call partners, the very same beneficiaries of the Consensus Plan giveaway.

The New Cyren Song

Cyren Call wants the FCC to pull out 30 MHz of the 700 MHz band spectrum and essentially give it to Cyren Call. They have hired lobbyists to win control of public property worth as much as \$10 billion at auction. Rather than bidding on this spectrum, Cyren Call wants to be paid to create a commercial network that would manage emergency communications as well as commercial traffic. They would be paid handsomely for that network. Meanwhile, taxpayers and first responders would have to live without the billions the spectrum was supposed to generate at auction.

The new company's appetite for public giveaway money appears bottomless. They have promised to make the Treasury "whole" as a result of the money the U.S. would sacrifice by not auctioning off the 30 MHz of spectrum Cyren wants for free. These vague promises are reminiscent of the unkept Nextel promises under the Consensus Plan. And even the pay-back promises now offered by Cyren Call were only made after a firestorm of criticism of this proposal as a giant money-grab that uses the nation's first-responders as a front. Mr. O'Brien's first preference was to have the spectrum placed in trust without any fees from Cyren Call to the U.S. Treasury. He retreated from that position, but while he's now offering to pay \$5 billion for the spectrum, he wants federal loan guarantees to do it.

Whatever other talents he might have, Mr. O'Brien has proved himself a master at manipulating the corporate welfare system, while making millions of dollars on taxpayers' backs.

Conclusion: Not This Time

Free-market spectrum auctions successfully completed by the FCC have provided billions of dollars to the treasury on behalf of the taxpayers and that path should be followed again. One unearned windfall for Mr. O'Brien and associates is more than enough. Congress has already approved the 24 MHz of spectrum needed by first-responders and is working with the FCC on implementation. But so far Cyren Call is not discouraged. Rebuffed by the FCC, they are taking their thinly veiled case for a handout to Congress. Our elected representatives will hopefully be just as adverse to this giveaway as the regulators at the FCC. To borrow an old expression: fool me once, shame on you; fool me twice, shame on me.

An April 17, 2007 *Wall Street Journal* editorial said it best:

Mr. O'Brien says Cyren Call deserves this treatment because it will use the spectrum to help public safety agencies—police and fire departments and other first-responders—communicate with each other during emergencies. As a for-profit venture, however, Cyren Call would also lease the spectrum to commercial wireless carriers. In other words, Mr. O'Brien is trying to get the government to subsidize his new cellphone company. We don't blame him for trying, but if Mr. O'Brien thinks the U.S. needs another wireless carrier, then he should bid for the spectrum at auction with everyone else.⁷

The nation's brave first responders deserve the best technology and communications infrastructure in the world. The Consensus Plan has not lived up to its glorious promises; there is no reason to think Cyren Call will do so.

The collective message Washington needs to deliver to Cyren Call is: "We won't be fooled again."

¹ "Summary Of Executive Pay For Northern Virginia Tech Companies," *The Associated Press*, 7/29/01.

² David Leonhardt, "Bubble Beneficiaries," *The New York Times*, 8/25/02.

³ "The Reliable Source," *The Washington Post*, 6/30/06.

⁴ Vito Fossella & Eliot Engel, "Equipping America's First Responders," *The New York Post*, 4/3/04.

⁵ Howard Buskirk, "Sprint Nextel to Ask FCC to Freeze 800 Rebanding Timetable," *Communications Daily*, 12/21/06.

⁶ Jesse Drucker and Anne Marie Squeo, "Interference Call: Nextel's Maneuver For Wireless Rights Has Rivals Fuming," *The Wall Street Journal*, 4/19/04.

⁷ "The Spectrum Game," *The Wall Street Journal*, 4/17/07; P. A18.