



## GAO gives OK to FCC rebanding order for 800 MHz

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The U.S. Government Accountability Office (GAO) this afternoon declared the FCC's 800 MHz rebanding order to be unprecedented but legal, clearing the final major legal hurdle for Nextel Communications to pay for the rebanding process and receive 10 MHz of 1.9 GHz spectrum.

Nextel still has to decide whether it will accept the terms of the 800 MHz order, but most analysts believe there is little question the wireless carrier eventually will agree to swap \$4.8 billion in spectrum and cash for contiguous spectrum it needs to offer advanced wireless services. For the government, the rebanding effort is expected to alleviate interference to public-safety communications in the 800 MHz band.

Sen. Frank Lautenberg (D-N.J.) requested the GAO issue a legal opinion whether the FCC overstepped its authority in directing the use of funds received from the award of spectrum—something Congress does after the FCC auctions spectrum under normal circumstances.

The GAO opinion found that the FCC order does not violate federal law but noted that the 800 MHz item “reflects an expanded use of the Commission’s authority for which there is no exact precedent.”

Lautenberg said he is “satisfied” with the GAO opinion and is glad public safety will be able to realize the benefits of the rebanding order. However, Lautenberg said he believes Congress should address the issue as it revisits telecom legislation to clarify the roles of lawmakers and FCC commissioners regarding the distribution of spectrum.

“When Congress begins rewriting the Communications Act next session, we should review the appropriate division in spectrum management between Congress and the FCC,” Lautenberg said in a prepared statement. “This broader issue remains, but I am delighted that much needed spectrum and relocation funding will be available to our public safety agencies in an expedited manner.”

Combined with last week’s settlement with Verizon Wireless, the favorable GAO report removes the two greatest points of legal uncertainty for Nextel as it considers whether to accept the terms of the FCC order. The FCC this month is receiving comments on possible changes to the order, including Nextel’s request to decrease the minimum amount of cash it must pay by at least \$400 million from the \$3.2 billion cited in the 800 MHz order.

Nextel likely will not have to make its decision until late January, because the order has not been published yet in the Federal Register. However, FCC sources are hopeful the order will be published in the Federal Register this week, after which Nextel will have 75 days to announce its intentions.