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BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Implementation of Section 309(j))
of the Communications Act)
Competitive Bidding)
)

PP Docket No. 93-253

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosner
Lawrence R. Krevor
601 13th Street, N.W.
Suite 1100 South
Washington, D.C. 20005
(202) 628-8111

November 30, 1993

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I. INTRODUCTION.

Nextel Communications, Inc. ("Nextel"), pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (the "Commission"), hereby submits its Reply Comments in the above-captioned Notice of Proposed Rulemaking (the "Notice") concerning use of competitive bidding to award licenses for use of the radio spectrum.¹

Nextel is a leader in developing advanced, highly-efficient, wide-area digital mobile communications systems. Nextel's Enhanced Specialized Mobile Radio ("ESMR") systems employ state-of-the-art technology to increase up to 50 times the capacity of existing communications systems while providing improved transmission quality and enhanced services. Nextel's first ESMR system became operational in Los Angeles in the summer of 1993. Through its merger with

¹Implementation of Section 309(j) of the Communications Act: Competitive Bidding, Notice of Proposed Rulemaking, PP Dkt. No. 93-253, FCC 93-455 (released October 12, 1993).

Dispatch Communications, Inc., and other acquisitions, Nextel will hold authorizations to construct and operate digital wide-area ESMR systems in the top ten markets in the nation with a combined population of over 100 million persons.

Nextel supports the Commission's proposal to use oral bidding as its primary method for assigning mutually exclusive individual Personal Communications Services ("PCS") licenses. Nextel believes that sequential oral bidding provides both the substance and appearance of fairness, and is well suited to encouraging participation by bidders with innovative ideas but limited resources. Nextel endorses the Commission's proposal to combine oral individual bidding with sealed bidding for license groups, and recommends use of a second round of bidding in which the winners of the individual auctions and the sealed-bid auctions of license groups could each make their best and final offers.

Nextel supports the concept of combinatorial bidding if it is not limited to two nationwide groups of Major Trading Area ("MTA") licenses. Combinatorial bidding should permit submission of bids on any and all combinations of licenses. In this way the marketplace will determine the optimal groupings of licenses.

In addition, all licenses should be freely transferable. Restrictions on sale of licenses make it difficult to raise capital for innovative projects and would undercut the Commission's goal of promoting participation by designated entities in the development of PCS services.

II. DISCUSSION

A. **The Commission Should Offer Both 30 MHz PCS Licenses in a Given MTA Before Moving on to the Next MTA.**

In its comments, Nextel opposed the Commission's proposal to award all 51 of the 30 MHz PCS licenses in Block A before offering any of the licenses in Block B.² Nextel proposed instead that, for all PCS licenses, the Commission follow a coordinated approach in which all of the licenses in one geographical area would be auctioned before moving on to the next area.³ The Commission's proposal unduly favors the few parties able to bid on nationwide combinations. Nextel's proposal, on the other hand, will give a broader group of applicants the best possible chance to obtain 30 MHz MTA licenses.

Commenting parties have proposed many variations on the sequence and timing of PCS auctions. Various rationales are offered for following a sequence like that proposed in the Notice. The Cellular Telecommunications Industry Association ("CTIA"), for example, favors that sequence because, in its view, aggregation of PCS spectrum across geography is more important than aggregation of spectrum blocks.⁴ If Nextel's proposal for full combinatorial bidding is adopted, however, a party seeking to aggregate across geography will

² See Notice, ¶ 120.

³ Specifically, Nextel proposed the following sequence for PCS licenses: (1) auction all Basic Trading Area ("BTA") licenses before any MTA licenses; (2) within each MTA, offer all the licenses in the largest BTA first, then proceeding in descending order of population; (3) auction all licenses in the largest MTA, then proceed in descending order of population. See Comments of Nextel at 8.

⁴ Comments of CTIA at 23-24.

have ample opportunity to submit a bid reflecting the value it places on the group of licenses it needs to develop its services.⁵ It is unfair, unnecessary and inconsistent with the public interest to design the individual auctions to favor parties seeking to aggregate licenses across MTAs.

Other parties argue that proceeding block-by-block is desirable because it provides more information to potential bidders than proceeding area-by-area.⁶ The major piece of information that would be generated by completing the auction of all licenses in Block A before offering any license in Block B will be the minimum price that a bidder with deep pockets would have to offer to acquire all of the licenses in Block B. This information would discourage active bidding for individual licenses in Block B.

B. The Commission Should Not Employ Electronic Bidding Mechanisms in the PCS Auctions.

In the Notice the Commission tentatively concluded that it should experiment with electronic bidding methods.⁷ It specifically sought comment on the feasibility of implementing simultaneous ascending bid electronic auctions in time to meet the statutory deadlines for commencing PCS licensing.⁸ Several

⁵ See Comments of Nextel at 9-11.

⁶ See, e.g., Comments of Nynex, Exhibit I at 16-17.

⁷ Notice, ¶48.

⁸ Id., ¶56.

parties responded with auction designs that require electronic implementation.⁹

The Commission should forego any experiment with electronic bidding for PCS licenses at this time. Any electronic system would have to be thoroughly tested under a variety of realistic conditions before the Commission could be confident that it would work under normal circumstances. The Commission would also need to plan for all the mishaps that could occur in an electronic system. What would happen, for example, if a bidder was cut off in the middle of an auction by a telecommunications network outage or a natural disaster? How would unauthorized participation and hacking be prevented? There is simply not enough time between now and May 7, 1994 to select, test and debug an electronic auction system.

C. Licenses Used as Intermediate Links in End-To-End Services Should Not be Subject to Competitive Bidding.

In the Notice the Commission proposed that licenses used in services as intermediate links in the provision of a continuous, end-to-end service would be subject to competitive bidding.¹⁰ Nextel concurs with the numerous parties who oppose this proposal.¹¹ Competitive bidding would serve only to encourage

⁹ See, e.g., Comments of National Telecommunications and Information Administration at 14-22; Comments of NYNEX at 13-16.

¹⁰ Notice ¶¶ 28-29.

¹¹ See, e.g. Comments of California Microwave, Inc. at 3-7; Comments of Comcast Corporation at 14-15; Comments of Nynex at 12; Comments of Pacific Bell at 18-19. Representative John Dingell, a principal sponsor of the authorizing legislation for spectrum auctions, reportedly has written to the Commission concurring that intermediate links were not intended to be covered. See Communications Daily, Nov.17, 1993 at 6-7.

speculative applications in a service for which mutually exclusive applications have until now generally been avoided through prior coordination.

D. Applicants Must Certify at the Time of Application That They are Eligible to Hold the Licenses on Which They Plan to Bid.

In establishing its framework for licensing PCS, the Commission found that the public interest required adoption of eligibility and attribution rules designed to limit the exercise of market power by cellular operators. (These limitations were not supported by Nextel.) Specifically, a cellular operator may hold only one 10 MHz BTA license in any area in which there is a 10% overlap between its cellular and PCS service areas.¹² Cellular ownership is attributed to parties with a 20 percent or greater interest in a cellular entity.¹³ Accordingly, the Notice proposed to require applicants seeking to participate in spectrum auctions to certify at the time of application that they are qualified to hold the license on which they plan to bid.¹⁴

Bell Atlantic, NYNEX, Ameritech, and others object to this straightforward

¹² Amendment of the Commission's Rules to Establish New Personal Communication Services, Second Report and Order, Gen. Docket No. 90-314, FCC 93-451, ¶106 (released Oct. 22, 1993) (PCS Order).

¹³ Id., ¶107. MCI's suggestion that the Commission expand its cross-ownership rules for cellular and PCS to include SMR frequencies is plainly beyond the scope of this proceeding. Comments of MCI at 22, n6. MCI abuses the Commission's processes with this desperate non-market response to the threat it perceives from the AT&T-McCaw merger. Having fought long and hard for the right to compete in the interexchange marketplace, MCI should be ashamed to propose eligibility restrictions for new-entrant competitors with no market power in the growing wireless communications marketplace.

¹⁴ Notice, ¶¶ 98-99.

requirement.¹⁵ They contend that cellular-affiliated PCS applicants should be permitted to certify instead that they will come into compliance with PCS ownership restrictions if they are awarded a PCS license. They would thus be free to acquire licenses they are not eligible for, and then later decide which of their incompatible holdings to divest.

This Commission must reject this proposal and insist that only parties qualified to hold a license be allowed to bid on that license. To do otherwise would provide cellular entities the unwarranted opportunity to purchase PCS licenses in their service areas, not for the purpose of providing PCS services, but for the purpose of delaying provision of such services by anyone else.¹⁶ BOC-affiliated cellular providers in particular have both the incentives and the access to sufficient capital to allow them to purchase and hold spectrum licenses in this manner. In addition, adoption of these proposals would introduce tremendous administrative delay and uncertainty into the process. This delay could have the unfortunate effect of substantially slowing down the emergence of standards and deployment of PCS services.

¹⁵ Comments of Bell Atlantic at 7-9; Comments of NYNEX at 15, Comments of Ameritech at 2.

¹⁶ The Commission should thus reject Bell Atlantic's suggestion that participation by cellular affiliates in bidding on nationwide license groups is somehow necessary either for the technical development of PCS or for the development of competition. See Comments of Bell Atlantic at 8.

III. CONCLUSION.

Auctions are the most economically efficient method of placing spectrum in the hands of entities that will put it to its highest and best use. In designing the PCS auctions, the Commission should eschew elaborate electronic mechanisms and rely on oral auctions for individual PCS licenses. To assure that smaller participants have a fair opportunity to compete for MTA licenses, the Commission should organize the PCS auction by geographical area and not, as proposed, by spectrum block. Only entities eligible to hold a license should be allowed to bid on that license.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.



Robert S. Foosaner
Senior Vice President
Government Affairs

Lawrence R. Krevor
Director-Government Affairs

Its Attorneys

Of Counsel

Leonard J. Kennedy
Jane E. Jackson

DOW, LOHNES & ALBERTSON
1255 23rd Street, N.W.
Washington, D.C. 20037
(202) 857-2500

November 30, 1993

CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Reply Comments of Nextel Communications, Inc. has been hand-delivered this 30th day of November 1993, to the following:

**Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554**

**Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554**

**Commissioner Andrew C. Barrett
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554**

**Commissioner Ervin S. Duggan
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554**

**Mr. Robert M. Pepper
Chief, Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 822
Washington, D.C. 20554**

**Karen Brinkman, Esquire
Legal Advisor
Office of Chairman Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554**

**Mr. Brian F. Fontes
Office of Commissioner Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554**

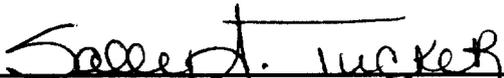
Linda L. Oliver, Esquire
Legal Advisor
Office of Commissioner Duggan
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

John C. Hollar, Esquire
Legal Advisor
Office of Commissioner Duggan
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Byron F. Marchant, Esquire
Legal Advisor
Office of Commissioner Barrett
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Kent Y. Nakamura, Esquire
Legal Assistant, PRB
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Mr. Even Kwerel
Office of Plans and Policy
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554


Sally A. Tucker