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

In the Matter of	)	
	)	GN Docket No. 93-252
Implementation of Sections 3(n) and 332 of the Communications Act	)	
	)	
Regulatory Treatment of Mobile Services	)	

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To: The Commission

REPLY COMMENTS

Marc Sobel d/b/a Airwave Communications (Airwave), by his attorneys, hereby files its Reply Comments in the above captioned matter. In support of its position, Airwave shows the following.

Airwave Has A Direct Interest In Opposing The Nextel Suggestion

Airwave is an operator of SMR-Conventional systems in the Los Angeles, California, area. Airwave provides traditional SMR service to a variety of small business end users. Because Airwave's radio systems operate on frequencies in the General Category (851.0125 - 854.7375 MHz), Airwave is intimately familar with the existing usage of the General Category channels in the Los Angeles area, which is Nextel's initial ESMR demonstration market.

Although Nextel proposes to relocate existing SMRs which are currently authorized to operate in the 861-866 MHz band, all 800 MHz band frequencies are currently assigned in the Los Angeles area and none would be available to be used in Nextel's relocation plan. There are, in fact, already too many stations assigned on the General Category channels to allow all to operate without suffering harmful interference. The excessive number of stations in the band

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results from earlier actions of the frequency coordinators and the Commission in which co-channel stations were granted at distances of more than 70 miles, but under circumstances of mountainous terrain in which the stations still cause harmful interference to one another. Therefore, any effort to add stations to the General Category channels would have a devastating effect on existing stations.

Airwave's experience with the lower frequencies is that they are already subject to a higher level of interference than the band 861-866 MHz. Radio stations in the Los Angeles area are concentrated at mountaintop locations from which they can provide effective communications service to mobile units at greater distances than in most communities. Consequently, radio stations in the Los Angeles have, for many years, suffered from essentially the same problem as the problem about which Nextel only now complains, namely, that mobile units of co-channel stations or adjacent channel stations may operate much closer to another system's base station than their own and cause interference to mobile units attempting to use the other system.

Airwave has long experienced exactly the same "near-far" problem, or, more precisely, the same signal level discrepancy problem, as Nextel uses as a hook for its spectrum snatching scheme. The difference is that Airwave has succeeded in living with the problem, while Nextel would prefer to have the Commission destroy its competitors than to be as realistic concerning the existing radio environment as its SMR competitors have been and must be.

Review of the Commission's actions concerning Nextel's request for waiver of its Rules shows that the Commission considered Nextel's needs and granted the relief which the Commission found that Nextel needed and which would serve the public interest. If Nextel went ahead with its system knowing that the relief provided was insufficient, then any problem which Nextel has encountered is entirely its own.

Review of the Commission's actions concerning Nextel's rule waiver request also show that the Commission took care to protect the flexibility and effective competitiveness of other SMR operators. To the extent that Nextel has found that it cannot live with its competitors if it does not impair their flexibility or effectiveness, Nextel has simply made a bad business decision and should live with the consequences of it. Nextel has no warrant at this time to request that the Commission impair its competitors in any way to allow Nextel to fix up a fatally flawed system.

Nextel was not forthcoming with whether Nextel recognized the problem on which it now bases its demand for relief prior to the time that it commenced construction of its ESMR system. A pioneering genius such as Nextel styles itself, Nextel comments at 34, should have recognized the problem from the beginning. The pioneers whose names we remember started their adventures with sufficient genius to recognize the obvious problems. We remember the name of Daniel Boone, who thought to take a knife into the deep, dark woods because he appreciated that there might be bears. We don't much remember Elihu Pharp, who failed to take the bears into account before setting out on his most excellent, and final adventure.

If Nextel failed to appreciate the problem which it now says bears on its situation, then Nextel deserves to live in memory as long as the ill-fated Pharp, for it has merely demonstrated that it lacks the technical qualifications to be the licensee of a pioneering ESMR system. If, on the other hand, Nextel has appreciated the problem for a long time, and waited to spring it on the Commission until it could hope that the Commission would feel pressed to help it without adequate time for full consideration, then Nextel has merely made its own peril and should be left to make its own remedy.

Nextel's technical problem appears to be that its existing choice of equipment does not work satisfactorily in a shared spectrum environment. Airwave is informed that the Ericsson General Electric Company is offering on the open market a digital technology which competes directly with the Motorola brand M.I.R.S. system and which does not suffer the same technical vulnerabilities as the Motorola system. Airwave is informed that the Ericsson General Electric system succeeds in avoiding the vulnerabilities of the Motorola brand system by allocating a higher level of power to each digitized voice channel, compared to the M.I.R.S. system. Unless Nextel can demonstrate that no alternative technology will allow it to operate a wide area SMR system in a shared frequency environment, the Commission should dismiss or disregard Nextel's suggested frequency reallocation plan.[1] Accordingly, the Commission should determine whether

[1] Airwave recognizes that there is a close relationship between Nextel and Motorola. However, nothing in the Commission's Rules would prohibit Nextel from chosing a different vendor's equipment and nothing in sound business practice would prevent Nextel from selecting equipment which it can actually make operate in accord with the Commission's Rules, regardless of the other interests of any of its investors.

Nextel can solve its problem merely by selecting different equipment for its ESMR system. If so, then the Commission should leave Nextel to select suitable equipment for its own use, at a burden to no one other than Nextel.

At the root of Nextel's argument is the claim that "the overlap of licenses on these frequencies creates operational and licensing inefficiencies for Nextel or any ESMR operator vis a vis competing CMRS providers," Nextel comments at 10. Nextel indulges in the entirely unproved assumption that its competitors are the two systems in each market which are authorized in the Domestic Public Cellular Telecommunications Radio Service. While it is possible that Nextel may someday pose a competitive challenge to Cellular operators, at present it is authorized to operate as a competitor with other Specialized Mobile Radio Systems, many of which must share use of the channels for which they are authorized. Nextel may hope to grow up to be just like Big Daddy Cellular, but, at present it is nothing more than an overgrown kid SMR, and should be treated as nothing more than a playground bully who complains that he just can't play happily unless the other kids get off of "his" block.

There are distinct differences between Cellular service and Nextel's ESMR service. Nextel is permitted to offer dispatch service to its customers, while Cellular systems are not permitted to offer dispatch service. Cellular system operators are authorized to make a profit on the telephone service with which their systems interconnect, while Nextel is not. Cellular operators have more than decade of experience in providing highly reliable service to the public. For these reasons, among others, it is clear that, however much Nextel might hope to become

the functional equivalent of a Cellular system it is, at this time, and will remain until Nextel is able to demonstrate a change, nothing more or less than a fancy SMR system.

Nextel has absolute regulatory parity with most of its SMR competitors. As to those with which it does not have absolute parity, Nextel has the clear advantage.[2] Since Nextel's primary competitors are other SMRs, and since Nextel already enjoys regulatory parity with its known competitors, there is no basis in law for the Commission to regulate Nextel as if it were a Cellular operator.

The Commission Is Under No Obligation To Revise The Rules Applicable To Nextel

There is no requirement, whatsoever, that the Commission revise its licensing procedures or frequency allocations to make ESMR regulation more like Cellular regulation, or vice-versa. Section 6002(d)(3)(B) of the Omnibus Budget Reconcilliation Act of 1993 provides that the Commission shall make such revisions and terminations in its regulations "as may be necessary and practical to assure that licensees in [of CMRS stations in the Private Radio Service] are subjected to the technical requirements that apply to licensees that are providers of substantially similar common carrier services." Nextel has not demonstrated that the services which it, in

[2] Nextel may actually have a regulatory advantage over many of its SMR competitors. For example, Nextel has been permitted to aggregate far more frequencies than its SMR competitors. Nextel's 800 MHz band systems are authorized for twice the channel bandwidth as its 900 MHz band competitors. In contrast to competing private carrier operators in the bands below 800 MHz, Nextel can obtain express authorization to trunk channels together. Nextel did not, however, suggest that it should lose any of these regulatory advantages over any of its existing competitors.

fact, provides as an ESMR operator are substantially similar to the services provided by Cellular operators. Even were the Commission to determine that Nextel's ESMR service is substantially similar to the service of DPCRTS operators, that would not mean that the Commission was required to reallocate frequencies solely to ESMR use. There are other, less disruptive steps which the Commission could take to provide for technical parity between ESMR and Cellular systems.

The Cost To Others Would Not Be In The Public Interest

The costs of changing the frequencies of existing SMR stations would far exceed the glossy treatment which Nextel afforded to the process. Nextel proposed to change the operating frequencies of radio equipment, but it offered nothing to compensate end user customers for their loss of time and profit potential. Nextel offered nothing to compensate competing SMRs for the loss of goodwill among their customers. Nextel offered nothing to operators such as Airwave which would suffer from any additional base stations on its frequencies in the Los Angeles area. Until such time as Nextel is able to present a plan compensating all affected persons for the full costs which Nextel's scheme would impose on them, the Commission should disregard Nextel's request.

Nextel Needs No Help From The Commission

A good pioneer makes sure that he has the resources which he will need on his trek. All Nextel needs to do is open its saddlebags and pull out the cash necessary to buy out those few remaining SMR operators in the old frequency band which it has not already bought out. If

Nextel finds itself in the position of not having packed enough victuals for its trek, then Nextel is free to turn around and go back to the starting location and do something else until it has a sufficient grubstake to carry out its ambitious plan. If Nextel's pioneering genius is everything which Nextel believes it to be, it needs no help from the Commission.

Conclusion

For all the foregoing reasons, Airwave respectfully requests that the Commission dismiss or deny the suggestion offered by Nextel's comments.

Respectfully submitted,
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Dated: July 11, 1994

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