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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030 RM-8029
	)	
and	)	
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

REPLY COMMENTS

Robert Fetterman d/b/a R.F. Communications (Fetterman), by his attorneys, hereby submits his reply to comments filed in the above-captioned matter. Fetterman opposes the adoption of the proposals contained within the FNPRM. In support os his position, he states the following:

Fetterman owns and operates numerous SMR facilities within the Commonwealth of Pennsylvania. Fetterman has been quite successful in his business and provides service to many customers. These customers desire continued dispatch service at a reasonable price.

Fetterman finds it ironic that the Commission has embarked on this path seeking theoretical regulatory parity at the behest of an entity which it has not yet been determined is qualified to be a Commission licensee eligible to provide ESMR services. A challenge has been made to whether Nextel Communications, Inc. (Nextel) is qualified to be a Commercial Mobile Radio Service licensee.[1] The Commission has never acted upon the opposition, filed by Kevin Lausman of Florida, to Nextel's CMRS Foreign Ownership Petition. Mr. Lausman contended that Nextel acted to allow too much foreign control of its business and/or engaged in impermissible increases in its foreign ownership beyond the statutory date set by Congress.[2] Fetterman believes it is premature and foolhardy for the Commission to consider many of the proposals contained within the FNPRM until such time as the Commission determines whether Nextel is eligible to hold licenses.

That the foregoing determination be made is quite important to this proceeding. If, in fact, Nextel is found to be ineligible to provide CMRS services, its position is radically altered, placing it in the same position as an analog SMR dispatch operator and

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[1] *See*, In the Matter of Nextel Communications, Inc., Commercial Mobile Radio Service Foreign Ownership Petition, Opposition filed by Kevin Lausman (Dated March 11, 1994) wherein Lausman noted that Nextel's ownership and control was in violation of the Communications Act of 1934, as amended, at 47 U.S.C. §332(c)(6), citing among other issues, Nextel's foreign control and impermissible increase in foreign ownership beyond the date for such increases. See, also, Comments of Kevin Lausman filed in this proceeding.

[2] Nextel denied Mr. Lausman's contentions, but has never demonstrated how its actions are in accord with the statutory requirements of Section 332(c)(6) of the newly amended Communications Act of 1934.

creating a likely reversal of its position relative to the proposals offered within this proceeding.

Is this Really Necessary?

Nextel should be made to explain, to the satisfaction of the Commission and the industry, why its system requires contiguous spectrum. The Commission fully considered Nextel's spectrum needs in its Memorandum Opinion and Order granting the original waiver to Nextel's original incarnation, Fleet Call:

> [P]roviding Fleet Call blanket protection from new co-channel licensees is not necessary to the implementation of its proposal. Our analysis shows that the current operating environment in these markets already provides Fleet Call with much of the protection it requires from new applicants. That is, the co-channel protection that is afforded all SMR licensees in these areas, including Fleet Call, essentially precludes the assignment of new stations. We therefore see no reason to place a formal restriction against new co-channel applications in Fleet Call's intended service areas.

Memorandum Opinion and Order, File No LMK-90036, 6 FCC Rcd. 1533 at ¶17, *recon. denied*, 6 FCC Rcd. 6989 (1991). Nextel has not explained what has changed between 1991 and 1995 which invalidates the Commission's earlier finding.[3]

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[3] Fetterman recognizes the effect that passage of the Omnibus Budget Reconciliation Act of 1993 ("the Budget Act") has had on the agency's regulation of services, however, Nextel's proposals do not conform with the agency's mandate expressed within the Budget Act.

Indeed, perhaps Nextel does not care to justify its request for additional, contiguous spectrum on a technical basis while its stockholders are watching the free fall of their investment. Perhaps that is why Nextel seized upon the term "regulatory symmetry" in a desperate attempt to save its plummeting fortunes by buoying its sagging stock performance through a regulatory interpretation that might salvage its poor economic fortunes.

In fact, Congress did not require regulatory symmetry within the Budget Act. Instead, Congress merely directed the Commission to take necessary and practical steps to provide technical parity. Had Congress intended the redistribution of frequencies, like a redistribution of wealth, it would have mandated that the Commission take the necessary steps to redistribute spectrum, take back frequencies and conform mature industries into neat geographic pockets. Indeed, the Commission's distribution of PCS frequencies belies the argument that different services are entitled to equivalent amounts of spectrum. There has been no challenge to the distribution of spectrum in 10 and 30 MHz blocks, rather than equal blocks of 20 MHz, which, by Nextel's definition would have been the only way of achieving "regulatory symmetry." The Commission should not be swayed by the vehemence of Nextel's argument, but rather, should see it for what it is -- a desperate grab for spectrum to compensate for technical problems of its own making.

There is an additional unflattering and supportable view that Nextel's support of these proposals is merely an attempt to improve the quality of its inventory of spectrum stored within the spectrum warehouses of its ESMR systems. Rather than having to try to make a silk purse out of the remnants of channels that Nextel has gathered together, Nextel might be allowed to collect neat blocks of contiguous spectrum for the purpose of future resale. This suggestion is all too credible given Nextel's brief history which is characterized more by acquisition of spectrum than construction of systems. Any objective evaluation of Nextel's record thus far provides a plethora of evidence to demonstrate that Nextel is engaged in a commodity business, banking on spectrum futures, and improving the quality of its commodity by and through this proceeding. If, as Fetterman respectfully suggests, this is found to be the true nature of this proceeding, the Commission should summarily reject these proposals as not parallel with the agency's mandate to act to provide service to the public, not quality investment opportunities for a small cadre of corporations which have demonstrated little, if any, concern for the remainder of the industry or the public interest.

In sum, Fetterman believes that the FNPRM is premature and that the Commission should reevaluate the necessity and desirability of disrupting a mature industry at the behest of an entity which has not demonstrated that it is qualified to be a Commission licensee, much less the need for such disruption.

Conclusion

For all the foregoing reasons, Fetterman respectfully requests that the Commission reject the proposals contained in the above-captioned FNPRM.

Respectfully submitted,
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Dated: March 1, 1995

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I hereby certify that on this first day of March, 1995, I served a copy of the foregoing Reply Comments on the following by placing a copy in the United States Mail, first class postage prepaid:

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