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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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

In the Matter of	)	
	)	
Amendment of Parts 2 and 90 of the	)	
Commission's Rules to Provide for the	)	PR Docket No. 89-553
Use of 200 Channels Outside the	)	
Designated Filing Area in the	)	
896-901 MHz and the 935-940 MHz Bands	)	DOCKET FILE COPY ORIGINAL
Allotted to the Specialized Mobile	)	
Radio Pool	)	
	)	
Implementation of Section 309(j)	)	
of the Communications Act -	)	PP Docket No. 93-253
Competitive Bidding	)	
	)	
Implementation of Sections 3(n) and 332	)	
of the Communications Act	)	GN Docket No. 93-252
	)	

PETITION FOR PARTIAL RECONSIDERATION OR CLARIFICATION

**NEXTEL COMMUNICATIONS, INC.**

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Government Affairs

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Director - Government Affairs

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Suite 1001  
Washington, D.C. 20006  
202-296-8111

Date: June 5, 1995

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**PETITION FOR PARTIAL RECONSIDERATION OR CLARIFICATION OF  
NEXTEL COMMUNICATIONS, INC.**

**I. INTRODUCTION**

Pursuant to Rule 1.106 of the Federal Communications Commission's ("Commission") Rules, Nextel Communications, Inc. ("Nextel") hereby submits this Petition For Partial Reconsideration or Clarification of the Commission's Second Report and Order ("Second R&O") in the above-referenced docket.<sup>1/</sup>

The Second R&O proposed a number of new service rules for the 900 MHz Specialized Mobile Radio ("SMR") service. Among those new rules is a modification of the Commission's existing permanent

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<sup>1/</sup> On April 17, 1995, the Commission released its "Second Report and Order and Second Further Notice Of Proposed Rule Making," which established new service rules for 900 MHz SMR service and proposed competitive bidding rules for the upcoming auction of these 900 MHz SMR channels. See Second Report and Order and Second Further Notice Of Proposed Rule Making, PR Docket No. 89-553, FCC 95-159, released April 17, 1995.

discontinuance rule as it applies to both 900 MHz SMR and 800 MHz SMR services. Under the modified rule, these SMR licensees are permitted to discontinue operations for no more than 90 contiguous days without license cancellation.<sup>2/</sup> Nextel is filing this Petition to seek clarification of this rule modification, as more fully discussed herein.<sup>3/</sup>

## II. BACKGROUND

Nextel is one of the largest providers of SMR and wide-area enhanced SMR services in the Nation. Because Nextel provides these services on both 800 MHz SMR spectrum and 900 MHz SMR spectrum, Nextel has an interest in the new service rules to be applied to 900 MHz SMR services. Because the change in the deconstruction rule is such a drastic one, shrinking the time period for deconstruction by nine months, Nextel is seeking herein guidance on its applicability to current SMR operations.

## III. DISCUSSION

### A. The Commission Must Clarify That The Modified Deconstruction Rule Is Applicable Only To Stations Deconstructed After The Effective Date Of The Second R&O.

In the Second R&O, the Commission modified the permanent deconstruction rule as it applies to 800 MHz and 900 MHz SMR licensees to ensure that these SMR providers would be subject to

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<sup>2/</sup> Second R&O at para. 65.

<sup>3/</sup> Nextel also takes this opportunity to support the Commission's decision to "allow incumbents to continue existing operations" while also permitting them sufficient "flexibility to modify or augment their systems. . ." Such flexibility is a paramount concern for incumbent operators as they attempt to enhance their existing operations and provide a more efficient service to the public.

the same deconstruction requirements currently applicable to cellular and Personal Communications Services ("PCS").<sup>4/</sup> Prior to this modification, 800 MHz and 900 MHz SMR providers could deconstruct for up to one year without forfeiting their licenses.<sup>5/</sup> SMR providers, moreover, were permitted to seek extensions of the year-long deconstruction period. Cellular providers and prospective PCS providers, on the other hand, are permitted to deconstruct for no more than 90 consecutive days without forfeiting their licenses, and they are provided no mechanism for seeking an extension of this time period.<sup>6/</sup> Therefore, as a means of ensuring regulatory parity among these Commercial Mobile Radio Services ("CMRS"), the Commission concluded that the SMR deconstruction rule must be modified to conform with the cellular and PCS rule.

The Commission's attempt herein to create "parity" among cellular, PCS and SMRs actually results in a greater disparity due to the still-existing differences in the licensing of wide-area SMRs and their competitors, cellular and PCS. Cellular and PCS providers, which are licensed on a geographic area basis, are not significantly affected by the 90-day deconstruction rule since the

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<sup>4/</sup> *Id.*

<sup>5/</sup> Section 90.631(f) of the Commission's Rules. Prior to this rule change, the Commission had reduced the deconstruction period from one year to 60 days. However, the Commission suspended the effectiveness of the 60-day period in response to industry concerns. Prior to adopting this 90-day rule, the Commission sought no comment and provided no notice that the one-year rule could be changed to a 90-day rule.

<sup>6/</sup> Section 22.317 of the Commission's Rules.

license grants them exclusive use of the spectrum, and permits them to put up and take down stations without gaining prior Commission approval. Wide-area SMRs, on the other hand, must comply with the 90-day period as they are attempting to reconfigure analog systems into wide-area digital systems. This reconfiguration process can include the deconstruction of certain stations and the replacement of those stations with digital sites. This new rule further increases the hurdles that wide-area SMRs face in attempting to implement new, competitive digital systems.

Notwithstanding the above, Nextel does not specifically oppose the change from a one-year deconstruction period to a 90-day deconstruction period, provided it applies on a prospective basis only. Accordingly, Nextel seeks clarification that the new 90-day period will only apply to those stations deconstructed after the effective date of the Second R&O -- June 5, 1995. All stations deconstructed prior to that time period should remain subject to the one-year rule that was in effect at the time they were deconstructed. The one-year period was the rule in effect at the time these stations were deconstructed, licensees had no notice of any change in the rule or even any impending change in the rule, and they therefore should not be retroactively subjected to the Commission's modified deconstruction rules.

#### IV. CONCLUSION

Nextel files this Petition seeking clarification that the new 90-day deconstruction rule will not be applied to carriers retroactively. Because the Second R&O is not clear as to the

specific applicability of the rule, Nextel asks that the Commission take this opportunity to ensure that the rule will only apply to those stations that are deconstructed after the effective date of the Second R&O -- June 5, 1995.

Respectfully submitted,  
**NEXTEL COMMUNICATIONS, INC.**

By, 

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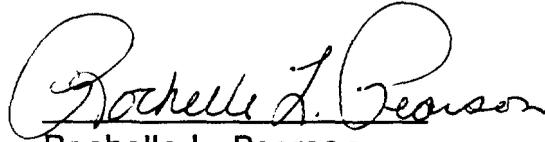
Date: June 5, 1995

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 5th day of June 1995,  
I caused a copy of the attached Petition For Partial Reconsideration or  
Clarification of Nextel Communications, Inc. to be served by hand delivery to  
the following:

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