

communications services. This "real-world" experience has proven that Digital Mobile technology is feasible.^{25/} Nextel has convincingly demonstrated the ability of Digital Mobile technology to provide high quality, integrated, wide-area cellular, paging and dispatch services over 800 MHz SMR frequencies previously characterized as "low-tech" static-ridden taxicab dispatch frequencies. This achievement merits an 800 MHz wide-area SMR licensing preference.

B. As The Creator Of A "Unique" and "Innovative" Technology, Nextel Is Entitled To A Pioneer's Preference.

In the Fleet Call Waiver Order, the Commission specifically concluded that Nextel had developed a technology that is both "unique" and "innovative":

"We believe that Fleet Call's innovative proposal to increase spectrum efficiency through use of multiple, low-power SMR facilities on an integrated basis in each of six major markets . . . presents unique and special circumstances justifying wavier of the one-year construction rule."^{26/}

It is this innovative and unique technology which has expanded the use of and significantly increased the efficiency of the 800 MHz SMR spectrum and created the need for a new geographic-based

^{25/} The Commission has already recognized the feasibility of Nextel's Digital Mobile technology. See In re Amendment of the Commission's Rules to Establish New Personal Communications Services, 7 FCC Rcd 7794 (1992) ("PCS Tentative Decision") at para. 26.

^{26/} Fleet Call Waiver Order at para. 26 (emphasis added).

licensing scheme.^{27/} Nextel has committed hundreds of millions of dollars to pioneering the development of this advanced mobile telecommunications technology capable of operating in frequencies previously limited primarily to dispatch services.

Throughout all of its endeavors, however, Nextel has yet to receive any kind of preferential licensing reward for this enormous undertaking. It has received no licensing preference for its willingness to commit itself to the risks and costs associated with making possible this substantial enhancement of existing 800 MHz mobile services and the potential for a much more competitive mobile communications industry.

The Fleet Call Waiver Order cannot be labeled such a "reward." First, the Commission concluded that the Digital Mobile technology could be implemented consistent with the existing SMR licensing and operating rules and policies.^{28/} The only relief Nextel was granted was a waiver of the one-year construction deadline -- a waiver available to any SMR applicant proposing relatively complex, innovative or wide-area systems. Moreover, Nextel was required to individually license each of the hundreds of base stations in its ESMR systems in every market subject to providing co-channel interference protection to existing non-ESMR co-channel licensees.

^{27/} The Commission has already acknowledged that Nextel's Digital Mobile technology makes possible innovative, spectrally-efficient enhanced SMR services. See Fleet Call Waiver Order at paras. 26 and 36. It granted an extended construction period for Nextel's Digital Mobile ESMR systems finding the relief consistent with its treatment of other "unique communications systems."

^{28/} Fleet Call Waiver Order at para. 19.

In other words, the Commission has yet to recognize Nextel's pioneering efforts and revolutionary enhancements in 800 MHz wide-area SMR technology and services with any kind of licensing preference.

Moreover, in denying Nextel's application for a 2 GHz PCS pioneer's licensing preference, the Commission stated that,

"[Nextel's] preference request is a description of the technology and services it has designed and implemented within the SMR service. While Nextel discusses advances it has made to SMR services, it does not explain or otherwise demonstrate how it plans to use Digital Mobile technology for PCS in ways different than ESMR. . . ."29/

Although the Commission denied Nextel a PCS pioneer's preference on the basis that Nextel did not develop innovative technology specifically for operations in the PCS bands at 2 GHz, it recognized Nextel's 800 MHz technology achievements and that its enhancements to SMR are innovative when compared to existing SMR services.30/ The Commission's decision to initiate 800 MHz wide-area SMR licensing provides an appropriate pioneer's reward for Nextel's unmatched innovation in wide-area 800 MHz SMR services.

29/ In re Amendment of the Commission's Rules to Establish New Personal Communications Services, 9 FCC Rcd 1337 (1994) (the "PCS Final Decision") at para. 214, recon. pending.

30/ Id. at para. 215.

C. Nextel Presented Its Innovative Digital Mobile Service To The Commission Long Before The Commission Ever Considered A Wide-Area 800 MHz SMR Licensing Scheme.

Nextel developed the wide-area 800 MHz SMR concept and first presented the idea to the Commission in its 1990 Fleet Call Waiver Request. Until Nextel's waiver request, the use of 800 MHz SMR spectrum for multiple site, low-power systems employing channel re-use and call hand-off and offering two-way voice and data service, had never been presented to the Commission. The Commission acknowledged the efficiency of the proposal in the 1991 Fleet Call Waiver Order.^{31/} In 1992, Nextel followed up with a proposal to auction unused 800 MHz spectrum for wide-area services.^{32/} Prior to Nextel's proposal, the concept of auctioning SMR spectrum had likewise never been proffered to the Commission. Although the Commission dismissed Nextel's 1992 block licensing proposal, Nextel proposed a wide-area block licensing scheme in its Comments and

^{31/} Fleet Call Waiver Order at para. 11 ("The Communications Act directs us 'to . . . generally encourage the larger and more efficient use of radio in the public interest' [and] . . . Fleet Call's proposal falls squarely within the spirit of our statutory mandate.").

^{32/} In 1992, Nextel petitioned the Commission for a rule making to auction unused SMR spectrum and to create a wide-area 800 MHz SMR licensing procedure. See In re Policies and Rules for Licensing Fallow 800 MHz Specialized Mobile Radio Spectrum Through a Competitive Bidding Process, Petition for Rule Making of Fleet Call, Inc., filed April 22, 1992. There, Nextel asked the Commission to "rethink its licensing procedures and grant exclusive use of a block of unassigned channels" to wide-area licensees in a defined geographic service area using auctions. Nextel's leadership in advocating wide-area SMR licensing through auctions, along with its development of innovative technology making state-of-the-art wide-area SMRs possible, is well established.

Reply Comments in the Commission's Third Report proceeding.^{33/} Nextel's licensing proposal in this context asked that SMR channels be licensed in contiguous blocks in an effort to achieve regulatory licensing parity with other CMRS providers.

It was only upon Nextel's presentation and successful development and operation of its Digital Mobile technology that the Commission was moved to adjust its licensing scheme to permit the implementation of this spectrally-efficient service. As both the creator and developer of ESMR services, as well as the catalyst for the Commission's decision to consider revamping its 800 MHz licensing scheme, Nextel is entitled to a pioneer's preference for the New York MTA.

IV. CONCLUSION

Enhanced Specialized Mobile Radio is an innovative and unique technology that has substantially changed and improved the use of 800 MHz SMR spectrum. Creating at least 25 times more capacity and making possible an array of integrated services, Digital Mobile technology enables SMR licensees to provide service responsive to customer demand that may compete with cellular and other broadband services.

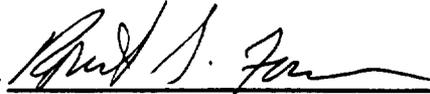
Nextel conceptualized this higher and better use of the 800 MHz SMR spectrum, and for seven years Nextel has worked to create, develop, implement and operate this new and improved technology. Currently operating in Los Angeles and Northern California, Nextel's efforts have culminated in a commercially feasible mobile

^{33/} See n. 2, supra.

communications system. To reward Nextel's endeavors and to ensure its participation in the future provision of ESMR services, the Commission should award Nextel a pioneer's preference for the forthcoming 800 MHz wide-area SMR license in the New York MTA.

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CERTIFICATE OF SERVICE

I, Ladonya D. Miller, hereby certify that on this 6th day of October 1994, I caused a copy of the attached Request for Pioneer's Preference of Nextel Communications, Inc., to be served by hand delivery or first-class mail, postage prepaid to the following:

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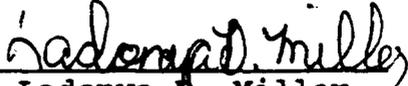
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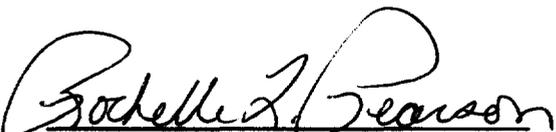
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