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

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
	)	
Implementation of Sections 3(n) and 332 of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
	)	
Implementation of Section 309(j) of the Communications Act -- Competitive Bidding	)	PP Docket No. 93-253

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To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.
TO THE SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

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Dated: February 15, 1996

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SUMMARY

On December 15, 1995, the Federal Communications Commission ("Commission") released three orders relating to the licensing of 800 MHz Specialized Mobile Radio ("SMR") services. Two of those orders established new geographic-area licensing rules for the upper 200 SMR channels and competitive bidding rules to govern the licensing of those channels. The third order, a Second Further Notice of Proposed Rule Making ("FNPRM") in PR Docket No. 93-144, sought comment on specific issues implementing mandatory relocation of incumbents in the upper 200 channels as well as the future licensing of the lower 80 SMR channels and the 150 former General Category channels.

Nextel strongly opposes the FNPRM's proposed set-aside of 55% of the SMR spectrum for "entrepreneurial" companies. Restricting eligibility for geographic-area based licensing of more than half of the SMR spectrum to small businesses only -- thereby denying numerous SMR providers access to those channels -- violates the fundamental mandate of Congress that the Commission establish regulatory parity among all CMRS providers. No comparable restriction on spectrum access applies to any other CMRS provider, resulting in a substantial regulatory disadvantage for SMRs vis-a-vis CMRS competitors.

Moreover, the proposed small business set-aside would make the lower 80 and 150 former General Category SMR channels less valuable by arbitrarily restricting larger SMRs from obtaining geographic-area licenses for this spectrum and using it to develop innovative

new services. The set-aside would limit SMRs building advanced, digital wide-area systems to the upper 200 800 MHz channels -- a total of only 10 MHz -- which the Commission has already recognized falls well short of the 45 MHz PCS/cellular/SMR spectrum cap. Just as all CMRS providers (including large and small SMRs, cellular, paging and PCS providers) are eligible to apply for and bid on Economic Area (EA) licenses in the upper 200 channels, all CMRS providers should be free to apply for and bid on EA licenses for the lower SMR channels in response to their business judgment as to the highest and best use for this spectrum. This will foster a more competitive CMRS marketplace and thus benefit the public.

Nextel supports geographic-area licensing of the lower 80 and 150 channels using competitive bidding to resolve mutually exclusive applications. The 80 channels should be licensed in five channel blocks; the 150 channels in three 50-channel contiguous blocks. In recognition of the extensive existing licensing of these channels, the anticipated relocation of upper 200 channel incumbents to the lower channels, and the fact that the Commission did not propose relocation of non-EA licensee incumbents (either existing or relocated) from the lower channels, Nextel proposes a channel-by-channel, EA-by-EA settlement process to minimize mutually exclusive applications and speedily award geographic-area licenses to incumbent/relocatee settlement groups prior to auction.

The settlement process would work as follows. If there is a single incumbent or retunee on a channel in an EA, the incumbent or retunee could apply to the Commission and receive an EA license for

that channel. If there is more than one incumbent licensee/retunee on a channel within an EA, they could jointly agree, on a channel-by-channel basis, to enter into consortia, partnerships, joint ventures, buy-outs or any similar arrangement such that a single entity would receive the EA license for that channel. Any channels that do not settle within the 80 or 150 lower channels would be auctioned. The settlement process would provide a more clearly defined landscape for auctioning the lower 80 and 150 channels that do not settle, and would reduce the Commission's administrative licensing burdens.

Nextel supports the FNPRM's proposals for the upper 200 channels concerning sharing of incumbent relocation/retuning costs and for refinement of its 800 MHz SMR mandatory relocation procedures and policies (*e.g.*, the definitions of a "system," of "comparable facilities" and of eligible relocation costs), as well as using Alternative Dispute Resolution ("ADR") for resolving relocation cost and facilities disagreements. In this regard, the Commission's rules should ensure that one EA licensee cannot block or hinder the relocation/retuning efforts of another EA licensee simply because the incumbent's base stations are located in both licensees' channel blocks. Given the Commission's requirement that an incumbent's entire system be relocated/retuned, one EA licensee's disinterest, refusal or inability to relocate/retune an incumbent should not prevent the other affected EA licensee(s) from relocating the incumbent. The Commission should permit flexible arrangements among EA licensees to facilitate clearing the upper

200 channels for the EA licensee's exclusive use in a fair and expeditious manner.

For purposes of relocation, an 800 MHz "system" should include only those base stations whose coordinates are located within an EA licensee's geographic area and the mobiles that regularly operate thereon. Nextel supports the proposed definition of "comparable facilities" with the clarification that the new facilities meet the co-channel separation requirements of Section 90.621(b) of the Commission's rules. Finally, Nextel supports the FNPRM's proposals for partitioning and disaggregation of EA licensees. This would provide greater flexibility for all SMR providers, and increase the number and variety of 800 MHz SMR providers.

The Commission's FNPRM represents another step in achieving the Commission's Congressionally-mandated regulatory parity mission. With the changes proposed herein, particularly eliminating the proposed set-aside of over half of the SMR spectrum, the Commission will achieve substantial licensing and spectrum access parity among CMRS providers.

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To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.
TO THE SECOND FURTHER NOTICE OF PROPOSED RULE MAKING

I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission") and the Second Further Notice Of Proposed Rule Making ("FNPRM") in PR Docket No. 93-144 ("the December 15 Order"),1/ Nextel Communications, Inc. ("Nextel") respectfully submits Comments on the Commission's proposals for geographic-area based licensing of 800 MHz Specialized Mobile Radio ("SMR") systems.

1/ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, FCC 95-501, released December 15, 1995. On January 11, 1996, the Commission extended the Comment deadline from January 16 to February 15. Public Notice, DA 96-2, released January 11, 1996.

II. BACKGROUND

The December 15 Order consists of three interrelated orders: a First Report and Order establishing geographic-area licensing of SMRs on the upper 200 contiguous 800 MHz SMR Category channels on an Economic Area ("EA") basis; an Eighth Report and Order adopting competitive bidding rules and procedures for selecting among mutually exclusive EA applications; and a Second Further Notice of Proposed Rule Making (the "FNPRM") proposing: (1) additional rules to permit EA licensees to subdivide their licensed blocks -- either channel-by-channel, or by geographic area; (2) specific provisions for relocating/retuning incumbent licensees from the upper 200 channels; and (3) geographic-area based licensing, service and competitive bidding rules for SMRs operating on the lower 80 SMR Category and 150 former General Category channels.2/

The stated goal of these Orders is to establish a clear path for wide-area SMRs to more effectively compete with other Commercial Mobile Radio Service ("CMRS") providers offering similar or substitutable services, as required by Congress in the Omnibus Budget Reconciliation Act of 1993 ("OBRA '93").3/ In September

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2/ In the First Report and Order, the General Category channels were re-categorized prospectively as SMR Category channels. *See* December 15 Order at para. 137.

3/ Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002(b), 107 Stat. 312, 392 (1993). OBRA '93 required the Commission to establish new rules and regulations that would regulate similarly situated services in a similar manner. Prior to the OBRA '93, some wireless services, including SMRs, were classified as "private" services and were subject to different rules and regulations than those imposed on cellular and other commercial service providers. For example, SMRs were

(continued...)

1994, pursuant to OBRA '93, the Commission released its Third Report and Order on CMRS implementation. This began the process of creating a level regulatory playing field by eliminating or modifying certain technical and operational rules imposed on cellular, SMRs and other services.4/ Therein, the Commission concluded that regulatory parity requires that SMRs be licensed on a geographic-area basis through competitive bidding. However, to elicit further comment on geographic-area SMR licensing, the Commission issued a Further Notice of Proposed Rule Making proposing to license the upper 200 800 MHz SMR channels on a geographic-area basis using Major Trading Areas ("MTAs").5/

The December 15 Order is the result of that proceeding. EA licensing through competitive bidding will enable SMRs to operate on a defined geographic-area basis -- like their cellular and Personal Communications Services ("PCS") competitors -- without the burdensome and costly requirements of seeking prior Commission approval for even minor modifications of transmitter sites, much less the ongoing construction, modification and deconstruction of

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3/(...continued)
licensed on a site-by-site basis, requiring hundreds of individual licenses for a single wide-area SMR system. Cellular and PCS, on the other hand, have only one license which governs all of the sites within a single system. OBRA '93 reclassified all similarly situated services, including cellular, PCS and interconnected SMRs, as "CMRS" and mandated that the Commission create a regulatory framework for all CMRS that would eliminate historical regulatory disparities.

4/ Third Report and Order, 9 FCC Rcd 7988 (1994).

5/ Further Notice Of Proposed Rule Making, 9 FCC Rcd 1647 (1994).

stations in response to shifting demand. The December 15 First Report and Order permits EA licensees to retune or relocate unaffiliated incumbents to other 800 MHz SMR channels, thereby enabling an EA licensee to obtain contiguous channels in its EA block throughout the geographic area. This will permit EA licensees to employ the advanced broadband technologies necessary to provide more competitive wireless communications services. In addition, geographic licensing will substantially reduce the Commission's administrative burdens associated with site-by-site SMR licensing, thereby facilitating the delivery of new, efficient services to the American people.

At the same time, the December 15 Order provides opportunities for incumbent SMRs to continue offering competitive services, creates incentives for voluntary relocation/retuning of incumbents, and assures that incumbents subject to mandatory relocation will receive comparable facilities replicating their existing service capabilities with costs borne by the EA licensee. With some refinements, the proposals set forth in the FNPRM can provide additional opportunities for SMR incumbent operators to expand, upgrade, and consolidate their systems to meet evolving consumer demands.

Nextel generally supports the Commission's proposal to employ geographic-area based licensing on the lower 80 channels and the 150 former General Category channels through competitive bidding. Nextel submits that in those instances where there is only a single licensee on a particular channel in the lower 80 and 150 channels

in an EA, or where all such licensees operating on the same channel in the EA agree, the objectives discussed above can be most efficiently achieved by awarding the incumbents EA licenses, upon application to the Commission, on a channel-by-channel, EA-by-EA basis. Only the channels that do not "settle" in this manner would need to be auctioned, as discussed in detail below. Since the establishment of contiguous spectrum is not a stated Commission goal -- or even a possibility -- on the lower channels, relocation/retuning is not warranted, as clearly it is in the upper 200 channels.

Nextel strongly opposes the Commission's proposal to designate the lower 80 and the 150 SMR channels as an entrepreneur's block, with eligibility limited to small businesses. This would create a "set-aside" for small businesses of 55% of the total 800 MHz spectrum allocated for SMR service, which would unreasonably and arbitrarily deny numerous SMR operators access to more than half of the SMR spectrum, and adversely impact the value of the lower channels by eliminating a large group of potential SMR providers.6/ The proposed set-aside would artificially limit wide-area SMRs to only 10 MHz of spectrum -- an amount the Commission has recognized "would fall well short of the 45 MHz PCS/cellular/SMR spectrum cap."7/

6/ The proposal would set aside 230 of the 430 channels now available for SMR use.

7/ December 15 Order at para. 43.

Moreover, the unwarranted set-aside would contravene the important steps the Commission has just taken to achieve regulatory parity among competitive CMRS services. No cellular spectrum was set aside for small businesses, and only one-third of the PCS allocation has been earmarked for small businesses. Limiting larger SMRs to only 10 MHz and excluding them from more than half of the SMR allocation -- which is not only substantially smaller than the 30 MHz PCS licenses and the 25 MHz cellular licenses to start with, but also is encumbered with incumbent SMR licensees -- would undercut the Congressionally-mandated regulatory parity among CMRS services.8/ While Congress authorized the Commission to make special provisions for designated entities, it did not intend that such provisions overcome the fundamental objective of a level regulatory playing field among competitive and potentially competitive CMRS services.

III. THE LOWER 80 AND 150 CHANNELS

The December 15 Order's FNPRM seeks comments on several issues related to both the upper 200 SMR channels and the lower 80 and 150 channels. In the following discussion, Nextel offers its views on issues related to all of the SMR channels since all 430 are impacted by this rule making and all will be an important

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8/ Indeed, cellular, paging and PCS competitors are eligible to bid on the upper 200-channel EA SMR blocks, and Paging Network Inc.'s active participation in the 900 MHz SMR auctions evidences that their participation is a real possibility. The fact that these licensees can bid on the 10 MHz upper 200-channel licenses further militates against the proposed set aside on the lower channels. The public interest is best served by allowing CMRS providers to bid on all SMR frequencies.

ingredient to the future competitiveness of SMRs in the CMRS marketplace.

A. Regulatory Parity Between SMRs And Their CMRS Competitors Requires That All SMR Channels Be Made Available To All Potential SMR Providers

As summarized above, the fundamental flaw in the FNPRM is the proposal to limit eligibility for the lower 80 and the 150 channels to small businesses that qualify for "entrepreneurial" status.9/ This improperly denies many potential and existing SMR providers the ability to obtain licenses on over half of the spectrum available for SMR services. Pursuant to OBRA '93, the Commission has concluded that all CMRS services are competitive or potentially competitive, thereby creating a single CMRS marketplace requiring similar regulatory treatment of all competitors.10/ Because "SMR service is one of many competitive wireless services striving to meet the needs of consumers who desire mobile communications," the Commission must ensure that all SMRs are

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9/ Although not defined by the Commission in the FNPRM, the entrepreneurial definition would likely limit participation to those entities with less than $15 million in average annual gross revenues for the past three years.

10/ *See* Third Report and Order, 9 FCC Rcd 7988 at para. 37; Order on OneComm Transfer of Control, 10 FCC Rcd 3361 (1995) at para. 28; Order on Motorola Assignments, 10 FCC Rcd 7783 (1995) at para. 18; and Order on Dial Page Transfer of Control, DA 95-2379, released November 22, 1995, at para. 25. *See also* December 15 Order at para. 42 ("We determined that all CMRS licensees -- including paging, SMR, PCS and cellular -- are actual or potential competitors with one another, and therefore should be regarded as substantially similar for determining whether the statutory requirement for comparable technical rules applies.").

provided maximum flexibility and access to spectrum, particularly when compared to that of cellular and PCS.11/

The Commission has previously concluded that all CMRS providers should be limited to 45 MHz of CMRS spectrum -- whether cellular, PCS, or SMR.12/ In establishing this CMRS spectrum cap, the Commission expressly recognized the convoluted licensing of SMR spectrum when it concluded that no SMR licensee would ever be attributed more than 10 MHz of SMR spectrum for purposes of the CMRS spectrum cap.13/

There is no justification for limiting any SMR to only the upper 200 channels. The CMRS cap has already addressed these concerns. The FNPRM's proposal to create a small business ("entrepreneur's") set-aside on more than half of the SMR spectrum, expressly contradicts all of the Commission's CMRS spectrum aggregation decisions for CMRS providers, and would exacerbate the spectrum disparity between SMRs and their CMRS competitors. This is in sharp contradiction to the Commission's congressional mandate to provide regulatory parity.

To achieve regulatory parity with cellular and PCS, SMRs must have the maximum flexibility and spectrum access available in the SMR channel allocation. Flexibility will ensure that providers put the SMR channels to their highest and best use -- whether that be

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11/ Order on Dial Page Transfer of Control at para. 25.

12/ Third Report and Order, 9 FCC Rcd 7988 at para. 263.

13/ *Id.* at para. 275. In reaching this conclusion, the Commission recognized that past licensing has heavily encumbered the SMR spectrum.

wide-area or traditional services. In the December 15 Order, the Commission recognized that licensees "may desire to establish regional networks on [the lower 80 and 150] frequencies."14/ The Commission further recognized that the services provided on the lower 80 and 150 channels would be CMRS, thus competing with other CMRS services such as cellular and PCS.15/ Making these channels available to all potential SMR providers is not only inherent in the Commission's desire to foster the development of SMRs as innovative, dynamic CMRS competitors, but will ensure that the public benefits by the highest and best use of the SMR spectrum. Denying potential providers access to any SMR channels (totaling less than a single cellular license), or limiting the use of those channels, burdens SMR operators with disproportionate restrictions not imposed upon their CMRS competitors, reduces the value of the set-aside channels, and artificially constrains the CMRS market's competitiveness.

The Commission's justification for limiting lower channel eligibility, *i.e.*, to ensure that licensees in the upper 200 channels do not acquire large numbers of additional channels "intended for other use,"16/ is inconsistent with its expectation that the lower channels may be used for regional or wide-area services. The Commission should encourage the most efficient use of all SMR spectrum, which may or may not involve

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14/ December 15 Order at para. 322.

15/ *Id.*

16/ *Id.* at para. 305.

upper 200-channel licensees using channels in the lower 80 and 150 for wide-area operations and may vary from market to market. Some SMR providers may have to merge their operations and establish wide-area systems using any and all available SMR channels. The Commission has previously recognized that coordinated efforts, whether through mergers, partnerships, or other vehicles, facilitate more efficient use of SMR channels and enhance CMRS competition, thereby benefitting the public.17/

Some SMR channels may be most efficiently utilized by entities providing traditional, localized service. The Commission, however, should allow the marketplace to make this determination. It should not predetermine their use through unwarranted artificial eligibility limitations. In addition, SMR operators in the border areas would be particularly disadvantaged by the Commission's set-aside proposal. Because the set-aside is so large, encompassing all SMR channels except the upper 200, operators in the border areas could be limited to no more than 30 channels, or 1.5 MHz, in some cases.18/

17/ *See* Order on Dial Page Transfer of Control, *supra,* fn. 10, at para. 23 ("The Commission has identified a trend toward this type of convergence among CMRS offerings and has concluded that convergence will ultimately produce wide-spread direct competition among service providers.")

18/ *See* December 15 Order at para. 45. In the Mexican border area, SMRs are limited to 30 channels in the upper 200. Thus, if an upper 200 EA licensee were operating in the Mexican border area and the Commission imposed its proposed set-aside, that licensee would have no opportunity to obtain any more than 30 channels in a geographic area, significantly limiting its competitive opportunities.

Nextel recognizes that PCS providers were faced with a set-aside block in the PCS auction. However, the Commission set aside only 33% of the 120 MHz of PCS spectrum -- leaving 80 MHz of unrestricted PCS spectrum in comparison to the total 800 MHz SMR spectrum allocation of 21.5 MHz. It set aside no cellular spectrum for exclusive licensing of small businesses. Given that SMRs start with a significant spectrum deficit vis-a-vis PCS and cellular, the Commission should not place such a drastic limitation on the permissible use of SMR spectrum.

Finally, Nextel believes that the Commission cannot justify the use of any designated entity provisions in the lower 80 and former General Category auctions for the same reasons that they could not be justified in the upper 200 or the 900 MHz SMR auctions. There simply is no evidence that designated entities have been historically discriminated against in the SMR industry.

B. Competitive Bidding for Geographic-Area Licenses In The Lower Channels

In the FNPRM, the Commission proposes to auction the lower 80 and 150 channels on an EA basis. With the modifications discussed herein, Nextel supports this proposal. Licensing these channels on a geographic-area basis would further the Commission's mandate to provide regulatory parity among SMRs, cellular and PCS. A geographic-area based license on the lower channels also would provide more flexibility to both wide-area and traditional SMR systems, enhancing the competitiveness of SMRs vis-a-vis their CMRS competitors.

The FNPRM proposes to auction the lower 80 channels in five-channel blocks consistent with past assignment practices. Nextel concurs. As to the lower 150 channels, Nextel submits that they be grouped into three blocks of 50 channels each. Given the extensive existing incumbent licensing of this spectrum -- as a result of not only the Commission's use of channel-by-channel licensing but also shared use assignments on the 150 channels -- 50 channels offers the potential for a reasonable amount of capacity in an EA with the possibility of aggregating the three blocks if required by an applicant's business plans.

Nextel believes that the public interest would be best served by initiating an immediate settlement process that would permit pre-existing lower channel incumbents and retuned incumbents, *i.e.*, those licensees retuned out of the upper 200 channels by EA licensees, to convert their authorizations to EA licenses prior to any auction of the lower channels. To ensure these incumbents speedy access to geographic licenses, and to secure a stable environment for the lower 80 and 150 channel auctions, the Commission should require that these settlement negotiations be conducted within the voluntary relocation period for the upper 200 channels. Pre-auction settlements would provide incumbent licensees with greater and immediate spectrum access, would benefit retunees from the upper 200 channels, would allow them to more expeditiously construct and operate new, more efficient systems, and would eliminate unnecessary burdens on the Commission staff.

First, if on a channel-by-channel basis there is only one incumbent in an EA on a channel, it would be permitted to apply to the Commission for and receive an EA license for that channel. Second, if there are multiple incumbents on a channel in an EA, they could enter into settlements, buyouts, joint ventures, partnerships, or other arrangements such that the surviving entity/licensee receives an EA license for the channel. The channels licensed on an EA basis in this manner would be subtracted from the appropriate lower channel auction blocks, leaving the non-settled channels to be auctioned. Prior to the auction, prospective auction participants would be notified as to which channels had been "settled" and were no longer available for EA licensing in a particular block -- as was recently done in the 900 MHz SMR auction.

This pre-auction settlement process would reduce the administrative burdens placed on the Commission by an auction and the associated post-auction licensing. It would speed the resolution of wide-area licensing on the lower channels, promote voluntary retuning from the upper 200 channels, facilitate wide-area buildout, and ensure speedier delivery of new, enhanced services to public. Accordingly, Nextel urges the Commission to modify its proposals in the FNPRM and adopt the above-described settlement process to facilitate wide-area licensing.19/

19/ To achieve a consensus position within the entire SMR industry, Nextel would support -- if it is coupled with the settlement process discussed herein -- the proposal of SMR WON, which we believe is supported by the American Mobile

(continued...)

Nextel supports the Commission's proposal to impose on the lower EA licensees the same coverage and construction requirements as it adopted for EA licensees in the upper 200 channels.

C. Nextel Supports The Commission's Proposed Bidding Rules For The Auction Of The Lower 80 And The 150 Channels

For the auction of the lower 80 and the 150 channels, Nextel supports the use of simultaneous multiple round bidding and simultaneous stopping rules, which have been used successfully in the Commission's PCS and 900 MHz SMR auctions. Nothing herein suggests that these auctions justify a different method. Although the 5-channel blocks in the lower 80 may have less interdependence than, for example, the 900 MHz SMR licenses, they are sufficiently related to each other to justify simultaneous auctions and stopping rules.

The only competitive bidding rule which should be adjusted for the 800 MHz auctions -- both the upper 200 auction and the lower 80 and 150 auctions -- is the minimum bid increment. While Nextel supports some minimum bid increment, the current rule used, for example, in the 900 MHz SMR auctions, is too extreme. Rather than basing the increment solely on the previous round's bid, the

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19/(...continued)
Telecommunications Association ("AMTA"), to set aside channels 101-150 of the former General Category channels and all of the Lower 80 SMR channels as an entrepreneur's block. There would be no limitations on participating in the auctions for former General Category channels 1-100. This set-aside would be a narrowly-tailored solution to the Commission's goal of including small businesses in the SMR auction process, and, at the same time, promoting a broad array of SMR services on all of the available 800 MHz SMR channels. The percentage of set-aside, moreover, would be comparable to that of the small business set-aside in PCS.

Commission ties to it an absolute minimum: five percent of the previous round's bid <u>or</u> $.02 per MHz-pop, whichever is greater. The effect of the absolute minimum is to establish an artificial minimum value for every license rather than allowing the marketplace to determine the value of a license. Nextel supports a five percent minimum bid increment because it will ensure active participation by bidders, but it will not require such a significant increase from one round to the next if the marketplace has determined that a particular license is not valued at the Commission's minimum bid level.

Moreover, the Commission should not provide installment payments for small businesses in the upper 200 channel auction. In previous auctions, the availability of delayed payments or installment payments has only encouraged speculation and warehousing. Immediate investment in the license, on the other hand, encourages technological innovation, system development and diverse service offerings.

Nextel also supports two separate auctions for the lower channels -- one for auctioning the lower 80 channels and one for the 150 former General Category channels -- to be conducted after completion of the upper 200-channel auction. In each of the lower channel auctions, the Commission should auction every license in every market simultaneously. This will be no more complicated than any of the previous auctions conducted by the Commission, and it will further ensure speedy delivery of these new services to the public.

IV. THE UPPER 200 CHANNELS

The FNPRM in the December 15 Order also addresses several issues related to the process of clearing spectrum through retuning incumbents after the upper 200-channel auction. Among the issues addressed herein by Nextel are (1) how to determine when an incumbent has been provided "comparable facilities," (2) how to ensure that EA licensees share the cost of relocating a single incumbent, and (3) whether to permit EA licensees to disaggregate and partition the upper 200-channel EA licenses.

A. Nextel Supports The Commission's Cost Sharing Proposal

1. The Historical Method of Licensing SMRs Dictates Requiring EA Licensees To Coordinate Their Relocation Efforts and Share In Relocation Costs

In the First Report and Order, the Commission concluded that incumbents may demand, at any time (whether during the voluntary or mandatory relocation period), a joint negotiation with all of the EA licensees intending to relocate that incumbent.20/ This requirement expressly recognizes the necessity of coordination and cooperation among EA licensees in the relocation process.21/ In the FNRPM, the Commission addresses this mandate for cooperation by proposing a cost sharing requirement for EA licensees. Nextel

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20/ December 15 Order at para. 78.

21/ Although the Commission uses the term "relocation," moving an incumbent from the upper 200 channels may not involve physical relocation of a system or even the physical replacement of equipment. Because many SMR transmitters and mobiles are capable of operating on any 800 MHz channel, the EA licensee may have to do nothing more than "retune" the existing equipment (base stations and mobiles) to operate on different 800 MHz channels. Nextel's use of the term "relocate" encompasses "retuning."

supports the Commission's requirement for joint negotiations as well as its proposal to require cost sharing among all affected EA licensees since there is a substantial likelihood that the relocation of a single incumbent will involve more than one block winner within an EA.

Under the historical method of licensing SMR systems, a five-channel trunked SMR system was licensed on separate channels spaced 1 MHz apart. Thus, a single five-channel system licensed on the upper 200 channels would operate, for example, on Channels 401, 441, 481, 521 and 561, placing that incumbent's system in each of the three blocks in a single EA.22/ Further, if an incumbent is operating an integrated system, *i.e.*, more than one base station, the incumbent's system could include base stations located in adjacent EAs. In this example, the relocation of an integrated system, operating on the above-listed five channels, could involve cooperation by up to six EA licensees.23/

The December 15 Order states that an incumbent licensee subject to mandatory retuning is entitled to have its entire "system" retuned. Therefore, relocation will require significant

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22/ Under the Commission's December 15 Order, the three EA blocks will be (1) channels 401-420; (2) 421-480; and (3) 481-600. As another example, a typical 20-channel SMR system could be licensed on the following four five-channel groups: 414, 420, 425, 440, 454, 460, 465, 480, 494, 500, 505, 520, 534, 540, 545, 560, 574, 580, 585 and 600. Again, the incumbent's system would include channels in each of the three EA licensed blocks.

23/ The three EA licensees in EA-1 and the three EA licensees in EA-2. Depending on the channels assigned to a particular incumbent, there could be any number of variations on this example, requiring the cooperation of one or more of the EA licensees in adjoining EAs.

cooperation and coordination among affected EA licensees. The proposed cost-sharing rules are a good first step toward this objective. The Commission, however, needs to go further. The cost-sharing rules should be only one aspect facilitating cooperation among all affected EA licensees and retunees. Only through coordinated efforts will the Commission be able to ensure adequate protection for incumbent licensees and expeditious clearing of EA blocks for exclusive use by the EA licensee. The Commission's decision to permit an incumbent to demand that all affected EA licensees jointly plan its relocation, and that they relocate the incumbent's entire system, requires that the Commission encourage and promote cooperation among EA licensees. The rules cannot permit a single EA licensee to prevent or hinder the ability of other affected EA licensees to relocate the incumbent's entire system simply because it cannot or will not relocate incumbents within its own block.

During the voluntary negotiation period, EA licensees should be free to negotiate both with incumbents and among themselves to conclude relocation arrangements. As a starting point for cost sharing, EA licensees should share all jointly agreed upon costs on a pro rata basis according to each EA licensees' number of affected channels. If the parties proceed to the mandatory negotiation period, the Commission should require all jointly agreed upon eligible costs to be shared on a pro rata basis according to the number of incumbent channels within each EA license area.

There may, however, be instances in which one of the EA licensees does not want to retune incumbents in its frequencies. Suppose, for example, Licensee A, the 20-channel block EA licensee, is not interested in retuning the channels of an incumbent within its channel block. On the other hand, Licensee B, the 60-channel block licensee, and Licensee C, the 120-channel block licensee in the same EA, want to retune that same incumbent system in their blocks.24/ If Licensee A cannot or will not relocate the incumbent, Licensees B and C should be free to relocate the incumbent by offering the incumbent comparable facilities without the cooperation of Licensee A. For example, Licensees B and C may be able to offer the incumbent comparable facilities by retuning only four of the five channels to the lower 80 and/or 150, thereby leaving one channel in Licensee A's block in the upper 200 as part of the retuned system.25/

Another way around Licensee A's reluctance to relocate the incumbent is for Licensees B and C to provide the incumbent one of their channels in the lower 80 or the 150 to account for the channel in Licensee A's block. This swap would result in Licensee B or C (or a partnership or joint venture including the two) becoming the incumbent on the affected channels in Licensee A's

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24/ Or perhaps the 20-channel block licensee does not have lower 80 and 150 channels suitable for retuning that particular incumbent.

25/ Many SMR systems today operate on channels in both the lower and upper channels. Thus, an incumbent could operate an SMR system using four channels in the lower 80 and/or the 150 and one channel in the upper 200. As long as all of the requirements for "comparable facilities" are met, the incumbent can be relocated.