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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 Section 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services	)	GN Docket No. 93-252
	)	DOCKET FILE COPY ORIGINAL
Implementation of Section 309(j) of the Communications Act - Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

PARTIAL OPPOSITION TO PETITION FOR RECONSIDERATION

The Personal Communications Industry Association ("PCIA")[2], through its counsel and pursuant to Section 1.106(g) of the Commission's Rules, 47 C.F.R. §1.106(g), hereby respectfully submits its partial Opposition to the Petition for Partial Reconsideration and Clarification of the Federal Communications

[2]PCIA is the only international trade association representing the interests of both commercial mobile radio service ("CMRS") and private mobile radio service ("PMRS") users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

Commission's ("FCC") First Report and Order, Eighth Report and Order and Second Further Notice of Proposed Rule Making ("First Report and Order")[3] filed by Nextel Communications, Inc. ("Nextel") in the above-captioned proceeding.[4]

I. BACKGROUND

The First Report and Order establishes technical and operational rules for new licensees in the upper 10 MHz block with service areas defined by the U.S. Department of Commerce Bureau of Economic Areas (EAs), and defines the rights of incumbent SMR licensees already operating or authorized to operate on these channels. The Eighth Report and Order establishes competitive bidding rules for the upper 10 MHz block. In the 2nd FNPRM the FCC set forth proposals for new licensing rules and auction procedures for the "lower 80" SMR and General Category channels.

PCIA has requested reconsideration of four decisions by the Commission in the First Report and Order: (1) the Commission's decision to license the Upper 200 channels via auction; (2) the Commission's decision to impose mandatory relocation on Upper 200 channel incumbent licensees; (3) the Commission's decision to reallocate the General Category channels for SMR use only; and (4) the Commission's decision to permit EA licensees to place a 40 dBuV/m signal strength contour at the geographic boundaries of the license. Further, PCIA seeks clarification of the Commission's co-

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[3] First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, FCC 95-501, released December 15, 1995.

[4] 61 FR 16252 (April 12, 1996).

channel interference protection requirement for geographic licensees.

Nextel requested reconsideration of five decisions by the Commission in the First Report and Order:

1. Nextel sought to have the Commission modify the auction rules to eliminate the minimum bid increment rule with regard to the utilization of $.02 per MHz-pop (while retaining the alternative minimum of a minimum five percent increase);

2. Nextel requested that the installment payment option for small businesses be eliminated;

3. Nextel requested a reduction in the mandatory negotiation period from two years to one year;

4. Nextel requested that the Commission modify the pre-auction settlement rules to provide that all negotiations must result in the movement of incumbents out of the upper 200 channels;

5. Nextel requested that the Commission limit pre-auction settlements to incumbent SMR licensees.

Nextel requested clarification of four decisions by the Commission in the First Report and Order:

1. Nextel requested clarification that EA licensees must cooperate in retuning or relocating incumbents so that a single EA licensee is not able to block or delay the relocation or retuning of incumbents with channels in multiple EAs and/or EA blocks;

2. Nextel requested clarification that the 90-day notice requirement is satisfied by notifying the SMR licensee at the address shown in the Commission's database;

3. Nextel requested clarification that an incumbent may not "drag" channels through an aggregate 22 dBμ contour;

4. Nextel sought clarification of the requirements for licensees with extended implementation authority.

II. PARTIAL OPPOSITION

First, it should be noted that PCIA supports several aspects of Nextel's Petition.[5] Specifically, PCIA supports Nextel's request that the Commission limit pre-auction settlements to incumbent SMR licensees. However, PCIA's support is conditioned on the recognition that a third-party may "acquire" the incumbent's right to enter into pre-auction settlements through acquisition of the incumbent system. The SMR marketplace should not be frozen during the pre-auction settlement period. Transactions whereby licensees purchase one another or third parties seek to accumulate spectrum through acquisition must be permitted to continue without harm to the system's relocation rights. Thus, the ability to participate in the pre-auction settlement process must "travel with the license".

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[5]It should be noted that PCIA's Opposition herein is predicated on the Commission's retention of its newly adopted mandatory relocation and auction rules. PCIA has petitioned for reconsideration of the Commission's decisions on auctions and mandatory relocation. Thus, this pleading should not be construed as support of the Commission's new rules, only as a recognition of the Commission's consistent position favoring auctioning overlay licenses. Nextel's April 16, 1996 Opposition at page four is therefore incorrect when it characterizes PCIA's position as "supporting" the Commission's decision to auction the upper 200 SMR channels in conjunction with adoption of PCIA's January, 1995 proposal for the lower 80 SMR channels and the General Category frequencies. Further, Nextel is incorrect when it asserts at footnote 6 of its April 16, 1996 Opposition that "... not a single SMR operator [outside of the Petitions filed by Brown and Schwaninger] challenged the new licensing process established in the First R&O." PCIA's Petition was filed on behalf of its SMR member operators, and is fully supported separately by more than one hundred SMR operators who have filed Comments with the Commission opposing auctioning of this spectrum.

Nextel's request that the Commission eliminate the $.02 per MHz-pop is appropriate for the 800 MHz SMR Services. The amount of "clear" spectrum which is being auctioned in this proceeding is minimal. As a result, the use of the $.02 per MHz-pop needlessly inflates the bid increment system.

Additionally, PCIA supports Nextel's requested clarification that EA licensees must cooperate in retuning or relocating incumbents so that a single EA licensee is not able to block or delay the relocation or retuning of incumbents with channels in multiple EAs and/or EA blocks. It is also proper that the Commission recognize that the 90-day notice requirement is satisfied by notifying the SMR licensee at the address shown in the Commission's database. PCIA also supports Nextel's requested clarifications regarding the ability to "drag" channels through an aggregate 22 dBμ contour and the requirements for licensees with extended implementation authority.

A. Installment Payments Must Be Retained

PCIA opposes the elimination of the installment payment option. PCIA is sympathetic to Nextel's concerns that installment payments make bidding by insincere applicants easier. However, PCIA believes that the installment payment option is the only means by which independent, incumbent SMR operators will be able to participate in the auction.[6]

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[6]PCIA also supports the reconsideration request of the American Mobile Telecommunications Association ("AMTA") which requests that the Commission adopt small business bidding credits for the upper 200 SMR Pool auctions.

This auction is unique, as the Commission has never auctioned spectrum which is almost entirely licensed to incumbent operators in the same business. Incumbent operators must have every opportunity to participate in the auction, and must be given every possible option to ensure their success.[7] PCIA believes that other means exist by which the Commission can ensure that ~~auction~~ participants have a genuine intent to construct their systems.

B. **Pre-Auction Settlements Should Include Intra-Band Moves**

PCIA disagrees with Nextel that the ability to utilize the pre-auction settlement procedures should be limited to situations whereby an incumbent is relocating out of the upper 200 SMR channels. Since all incumbent licensees in the upper 200 SMR channels have frequencies which reside in each channel block, incumbent licensees must have the opportunity to negotiate with other incumbent licensees to move channels if desired to "line-up" their incumbent spectrum into a single block.

Permitting incumbent licensees to negotiate movement within the upper 200 channels may help reduce the number of auction participants for certain channels and is consistent with the Congressional requirement that the Commission "... continue to use engineering solutions, negotiations, threshold qualifications,

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[7]PCIA had previously recommended to the Commission that participation in the first round of auctions be limited to incumbent operators. In the High Definition Television proceeding, the Commission has found that it has the authority to limit eligibility in precisely this manner. Notice of Proposed Rule Making, PR Docket No. 90-481, 55 FR 46834 (November 11, 1990).

service regulations, and other means in order to avoid mutual exclusivity in application and licensing procedures."[8]

A limitation on pre-auction settlements is prejudicial to incumbent licensees who have no lower band channels to trade. "In-band" settlements promote the public interest as much as, if not more than, "out-of-band" settlements. There is no reason to create an artificial restriction which only serves to limit pre-auction settlements to those incumbents who are already rich in spectrum.

C. Mandatory Relocation Period Reduction

PCIA does not per se object to Nextel's request that the Commission reduce the mandatory relocation period from two years to one year. However, the Commission must take steps to ensure that EA Licensees have an incentive to negotiate during the voluntary period.

EA Licensees must not have the ability to wait out the entire voluntary period and then declare several months later that mandatory negotiations must commence, leaving little time for the incumbent to make necessary preparations or conduct meaningful negotiations. Therefore, if the Commission elects to reduce the mandatory relocation period, the one year period must not commence until actual notification by the EA licensee to the incumbent that mandatory negotiations are commencing. Further, the EA Licensee must be able to demonstrate, should the issue arise, a bona fide attempt to negotiate during the voluntary period.

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[8]House Conf. Rep. No. 103-213, supra at 585, 1174.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to modify its rules for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

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Date: April 29, 1996

CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 29th day of April, 1996 sent via first class mail, postage prepaid, a copy of the foregoing Partial Opposition to Petition for Reconsideration to the following:

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