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

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In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030
	)	
Implementation of Section 3(n) and 332 of the Communications Act - Regulatory Treatment of Mobile Services	)	GN Docket No. 93-252
	)	
Implementation of Section 309(j) of the Communications Act - 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

REPLY

Small Business in Telecommunications (SBT), by its attorneys, hereby files its Reply to the Reply to Opposition to Petitions for Reconsideration (Nextel Reply) filed in the above captioned matter by Nextel Communications, Inc. (Nextel). In support of its position, SBT shows the following.

Preliminarily, it must be explained that Nextel incorrectly characterized as an opposition the Comments which SBT filed, and, therefore, Nextel styled its pleading as if it were replying to an opposition to someone's petition for reconsideration. In fact, SBT filed comments, clearly titled, "Comments".[1] The Nextel Reply was, in fact, an opposing comment, and, accordingly, SBT here files its Reply to Nextel's opposing comments.

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[1] The Commission specifically requested such comments by public notice.

93.4 Percent Of All Statistics Are Wrong

Nextel's tortured attempt to play a numbers game would be merely embarassingly silly, were Nextel not trying ever so hard to divert attention from the genuine issues in this matter. Nextel is incorrect in its assertion that SBT's Comments supported "only" four petitions for reconsideration. Nextel's mischaracterization is a transparent attempt to have the Commission totally disregard that those four petitions cited by Nextel were filed by 58 separate petitioners, consolidated according to four sets of primary concern. Nextel would have the Commission regard the Mormon Tabernacle Choir as only one unit and disregard the chorus of committed voices, ranging from bass to soprano, of which the Choir is comprised.

Because of the crush of work thrown onto the Commission by the Telecommunications Act of 1996, the Commission has requested that parties, where possible, consolidate their positions in joint pleadings. SBT trusts that in considering such consolidated pleadings, the Commission will disregard attempts such as Nextel's to make mischief by counting as one each consolidated petition and carefully overlooking the number of petitioners who share the positions expressed. In supporting those four petitions, SBT certainly recognized that it was supporting the positions of 58 consolidated parties.

If the Commission's earlier expressed preference for consolidated petitions was communicated in good faith, which SBT believes it was, then the Commission must rightfully conclude that at least sixty petitions for reconsideration were received, with fifty eight such petitions being consolidated into four documents for the Commission's convenience. To treat

petitioners' actions otherwise, as is improperly suggested by Nextel, would be to draw the Commission into a position whereby petitioners employing a consolidated approach, in good faith reliance upon the Commission's earlier statements, would be penalized.

It must be clearly understood that SBT is not congruent with the law firm which serves as SBT's general counsel, Brown and Schwaninger. As demonstrated by the attached statement from Lonnie Danchik, Chairman of SBT, SBT is governed by its 11-member board of directors; not by its general counsel. Pursuant to the by-laws of SBT, Brown and Schwaninger has one seat on the SBT board. However, the Brown and Schwaninger representative recused himself from the board's vote on SBT's participation in the above captioned matter.

Nextel would underestimate SBT. The interests of SBT are not limited to the above captioned matter. SBT has filed Comments and Reply Comments in WT Docket No. 96-18, Revision of Part 22 and Part 90 of the Commission's Rules to Facilitate Future Development of Paging Systems, to express the interests of its members which are engaged in the provision of paging services. A significant number of the members of SBT are incumbent operators of 2 GHz microwave systems. Therefore, although still young, SBT will participate WT Docket No. 95-157, Amendment of the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation.

The agenda of SBT and its members is the support of regulation which is beneficial to the interests of small business operating within the telecommunications industry. Its interest in

the instant proceeding is only one of numerous matters which have and will come before the agency, affecting the rights, duties and opportunities of small business. Although SBT opposes the Commission's conclusions within this proceeding, SBT hopes to work closely with the Commission and other associations in the future to cooperate in creating progressive regulation that will enable the telecommunications marketplace to enjoy the full fruits of its competitive environment while providing real opportunities for small operators throughout the industry.

It should not be surprising that more than 125 parties in the above-captioned matter, as well as SBT, have chosen as their counsel a law firm which wholeheartedly supports their views. However, each party represented by Brown and Schwaninger, including SBT, stands on its own as a business entity separate from every other party and separate from Brown and Schwaninger.[2] It is a little ironic that Nextel's position supports coalitions of small operators for the purpose of obtaining licenses, but rejects such coalitions for the purpose of making comments.

There are currently dozens of members of SBT, most of which are separate small businesses in telecommunications,[3] and each of which, in apparent contrast to Nextel, must make a profit and could not have afforded to lose more than $118 million dollars in the first-quarter of 1996. Instead, the commenting parties have sought cost effective means to express their dissatisfaction with the Commission's decision, in accord with the Commission's expressed

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[2] See, attached statement of Brown and Schwaninger.

[3] A few of SBT's non-voting members are large telecommunications manufacturers who support the continued effort of small business to exist and thrive in the future.

wishes and good business practices. Accordingly, Nextel's attempts to suggest, for example, that SBT is nothing more than Brown and Schwaninger, see, Nextel Reply at n. 5; or that SBT must be Banks Tower Communications, Ltd, see, *id.* at 5; or, must be Fresno Mobile Radio, Inc., see, *id.* at n. 22, were without basis and should be disregarded by the Commission.

The Real Issuses

If it is not obvious to Nextel, it should be obvious to the Commission that there is no industry consensus supporting Nextel's position in the above captioned matter. Even PCIA is not sufficiently confident in its support of the consensus to withdraw PCIA's petition for reconsideration and stand solely on support for the so-called consensus. While SBT is all in favor of incumbent licensees reaching voluntary agreements with one another which will improve the extent and quality of service which is made available to the public, there is no consensus within the industry in support of Nextel's position.[4] [5]

The "opportunity" for small business to participate in an auction of the Upper 200 SMR channels is ephemeral. What Nextel would have the Commission disregard is that for any

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[4] The fact that the Commission has received petitions for reconsideration from over sixty interested parties belies the existence of any consensus upon which the Commission may rely. That further opposition to the consensus was received by SBT, ITA and UTC further indicates a total lack of commonality of position among affected persons. In sum, Nextel's claimed consensus is nothing more than one of many articulated positions and does not represent any significant unification by the industry regarding this issue.

[5] Nextel's bizarre claim that a party's decision not to file a petition for reconsideration indicates happiness with a particular Commission action, is wholly without logical support. There is nothing in law or logic which supports the proposition that silence is properly deemed assent.

business, large or small, to participate in an Upper 200 auction for 20 channels, it would have to have a sufficiently large warehouse of channels on hand to relocate incumbent licensees on all channels on which they are operating, which one may reasonably assume would require a warehouse of at least 100 channels.[6] Nextel's own warehouse of relocation channels may have blinded it to that inescapable fact.[7] Nextel did not identify a single small business which is currently positioned to win an auction and relocate the incumbents of the 20 channel block.

What was wrong with the extent to which the Commission attempted to provide opportunities for small business and businesses owned by women and minorities in the 900 MHz band SMR auction was not that it "encourage[d] participants to bid astronomical amounts of money and engage in speculation and warehousing," *id.* at n 20, but that the Commission's efforts were unsuccessful in providing the congressionally mandated opportunities for small business participants.

A careful analysis of the 900 MHz auction results demonstrate the following:

1. Small Business and Very Small Business (as defined by the Commission) represented 78% of the original participants in the auction.

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[6] The typical SMR-Trunked system is authorized for five channels. To achieve value from participation in auction, the winning bidder would not only be required to relocate each incumbent from the channels which the bidder had won, but would be required to participate in relocating each incumbent on all of the incumbent's Upper 200 channels.

[7] The existence of spectrum warehousing created by abuses of the Commission's application processes has not, however, escaped the notice of SBT which seeks remedies for past ills as necessary preparation for assuring that unjust enrichment of auction winners is avoided.

2. Despite making up the vast majority of the participants, Small Business and Very Small Business were able to purchase only 26% of the auctioned channel blocks and only 21% of the available activity units.

3. Although Small Business and Very Small Business acquired via auction only 21% of the available activity units, the proportion of the money to be paid by those entities as compared to the total revenue from auction is 31% of the total revenue, even after discounting for bidding credits.

4. When calculated on a per activity unit basis, the Commission will determine that Small Business and Very Small Business paid $0.33 per activity unit, while Large Business paid a mere $0.20 per activity unit. That is, designated entities paid 65% more for spectrum!

5. Perhaps the biggest indication that the Commission failed in the creation of adequate protection for designated entities is in the fact that Very Small and Small Business incumbents, bidding for spectrum in areas in which they were the incumbent, paid the highest price of all, $0.35 per activity unit!

If the Commission is to meet its mandate to provide meaningful opportunities for designated entities, it must increase the extent of relief to be provided to them. Special opportunities must be provided for small business incumbents to avoid victimization at auction by larger carriers. Small business must receive exclusive opportunities, such as entrepreneurial blocks, so that the auction is upon an equal playing field. And the agency should not provide loopholes via allowed financial arragements which will allow companies to obtain designated entity status despite substantial financial support from huge publicly traded corporations.

The recent record is clear in the agency's inability, thus far, to provide meaningful mandated protections to designated entities employing the techniques suggested in this proceeding and others. SBT seeks greater effort by the Commission to do better. Accordingly, SBT joins with others in opposition to Nextel's suggestions that the agency's past woes with attempting to reach its mandate should serve as a justification to quit trying to protect the interests of

designated entities. This recommended resignation is not in accord with the Communications Act and cannot be justified employing any reasonable, equitable balancing test.

Nextel Has Again Forgotten Customers

Amid all of its bluster and bile, Nextel has forgotten the customers which rely on service from small operators. As much as small operators' interests are being ignored in this process or dismissed as a mere impediment to concentration of the market, their customers are rendered invisible in Nextel's equations. There are approximately 1,000,000 mobile and control units operating in association with systems run by small business and which are targeted by Nextel's efforts. Nextel's plan does nothing to compensate the thousands of businesses whose revenues will be lost during any relocation process.

SBT points to these mostly silent victims of Nextel's machination as further evidence of the fact that no consensus exists as among the affected members of the public. Who speaks for these businesses? Who will protect their investment in equipment? Nothing in Nextel's plan even suggests any consideration has been given to these persons. Yet, employing Nextel's logic, each of these persons would have needed to have filed separate petitions for reconsideration to be counted among those persons who object to the Commission's Report and Order.

Conclusion

For all the foregoing reasons, SBT affirms its support of certain petitions for reconsideration in the above captioned matter.

Respectfully submitted,

SMALL BUSINESS IN TELECOMMUNICATIONS

By _____
Dennis C. Brown

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Dated: May 21, 1996

STATEMENT OF LONNIE DANCHIK

I, Lonnie Danchik, am Chairman of the association Small Business in Telecommunications. I serve as one of eleven Board members, each of which represents individual companies and persons which are geographically dispersed throughout the United States. The association also represents its membership and the bylaws preclude use of a Board position to forward any one entity's personal agenda.

SBT comments were prepared by General Counsel following a unanimous vote of the Board directing such action, from which vote General Counsel abstained. General Counsel abstained due to its earlier participation in this proceeding, which participation would be relied upon SBT in making its comments.

The comments, expressions, arguments, points of emphasis, direction and requested relief are those of SBT and no other. All assertions to the contrary are incorrect and improper, evidencing a fanciful imagination by the party so asserting.

Insofar as the Commission would seek verification of the comments as written, this Statement is intended to serve as verification of the statements made within this Reply and SBT's earlier comments.

Lonnie Danchik

Lonnie Danchik, Chairman

Dated: 5/20/96

STATEMENT OF BROWN AND SCHWANINGER

Brown and Schwaninger has participated in PR Docket 93-144 as commenter and counsel for commenting parties. When comments were prepared on behalf of specific clients, such necessary and proper attribution was supplied. When comments were made by the firm, proper attribution was similarly supplied. Nextel's unsupported assertion to the contrary, the firm properly *represents* its clients as advocate, however, it does not offer to accept the identity of its clients. That is properly reserved to each individual person and company whose attribution is provided in each such document. That we also believe in the correctness of our many clients' positions in this proceeding is a matter of record, without legal or procedural importance.

Robert H. Schwaninger, Jr.

Dated: May 21, 1996

CERTIFICATE OF SERVICE

I, Tara S. Williams, hereby certify that on this 21st day of May 1996, I caused a copy the the attached Reply of Small Business in Telecommunications to be served by hand delivery or first class mail, postage prepaid to the following:

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