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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554
Communications Commission
Office of Secretary

In the Matter of)
)
Amendment of the Commission's Rules)
to Establish Part 27, the Wireless) GN Docket No. 96-228
Communications Service ("WCS"))

To: The Commission

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Senior Vice President -
Government Affairs

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006
202-296-8111

Dated: December 16, 1996

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I. INTRODUCTION

Pursuant to Section 1.415 of the Rules of the Federal Communications Commission ("Commission"), Nextel Communications, Inc. ("Nextel") respectfully submits these Reply Comments on the Commission's Notice of Proposed Rule Making ("NPRM") in the above-captioned proceeding.^{1/}

On December 4, 1996, 51 parties submitted Comments on the NPRM -- a vast majority of which opposed the Commission's proposed reallocation of the frequencies at 2305-2320 MHz and 2345-2360 MHz ("the 2.3 GHz band"). Nextel's review of the comments found consistent opposition to the Commission's plan to allocate the 2.3 GHz band in wide geographic areas to an essentially undefined group of services rather than allocating the spectrum to meet specifically defined -- and currently unmet -- communications needs.

Nextel is filing these Reply Comments to recommend a 2.3 GHz reallocation that addresses the many concerns raised by commenters,

^{1/} Notice of Proposed Rule Making, FCC 96-441, released November 12, 1996.

fulfills the Commission's spectrum allocation duties under the Communications Act, and carries out the statutory mandate of the Omnibus Appropriations Act of 1997 ("97 Appropriations Act").^{2/}

II. BACKGROUND

In the '97 Appropriations Act, Congress mandated that the Commission reallocate frequencies in the 2.3 GHz band to wireless services in a manner consistent with existing international agreements, and assign those frequencies through competitive bidding. Congress also required the Commission to "take into account the needs of the public safety radio services" and explore potential public safety uses for these frequencies.^{3/} The 2.3 GHz auctions must be commenced no later than April 15, 1997 and the funds derived therefrom deposited in the Federal Treasury no later than September 30, 1997.

In the NPRM, the Commission proposed a reallocation of the 2.3 GHz band that would permit nearly every known wireless service other than broadcast.^{4/} Those services, which the Commission labeled "WCS," would be auctioned in large blocks (up to 30 MHz) for large geographic areas -- regional or nationwide.^{5/} This overly-broad allocation and limited number of new licenses drew substantial opposition from commenters. A majority recommend a

^{2/} Omnibus Consolidated Appropriations Act, 1997, P.L. 104-208, 110 Stat. 3009 (1996).

^{3/} NPRM at paras. 2, 19.

^{4/} *Id.* at para. 9.

^{5/} *Id.* at paras. 10-13.

narrower service allocation and five or 10 MHz WCS licenses assigned on a Major Trading Area ("MTA") or Basic Trading Area ("BTA") basis.

Nextel supports these comments and, in accordance therewith, suggests a narrowed 2.3 GHz service allocation that would provide a specific vision for the future uses of this spectrum. A more specific allocation would fulfill unmet wireless communications needs -- as identified by a wide cross-section of the industry -- rather than merely adding spectrum for Commercial Mobile Radio Services ("CMRS") that have already been provided sufficient spectrum.^{6/} This approach would encourage competition and account for the wireless communications needs of public safety service providers while enabling the Commission to meet the statutory deadlines of the '97 Appropriations Act.

III. DISCUSSION

A. The Commission's Proposed Service Allocation Is Overly-Broad And Fails To Consider Existing, Unmet Communications Needs

Of the 51 parties submitting comments, more than half opposed the Commission's unfocused service allocation for WCS.^{7/} Rather

^{6/} See, e.g., Comments of ADC Telecommunications, Inc. ("ADC") at 15; BellSouth Corp. ("BellSouth") at 5; Lucent Technologies, Inc. ("Lucent") at 6; Personal Communications Industry Association ("PCIA") at 4; 21st Century Telesis, Inc at 1.

^{7/} See, e.g., Comments of ADC at 3; Airtouch Communications, Inc. ("Airtouch") at 3; Alcatel Networks Systems, Inc. ("Alcatel") at 2; BellSouth at 3; Cellular Telecommunications Industry Association ("CTIA") at 5; Lucent at 3; The Markle Foundation at 2; Motorola, Inc. ("Motorola") at 3; Omnipoint Corp. ("Omnipoint") at 2; PrimeCo Personal Communications, L.P. at 4; SBC Communications, Inc. ("SBC Communications") at 2; Sprint Spectrum/Sprint Corp. at 3; and Telecommunications Industry Association ("TIA") at 2.

than investigating the extent to which unmet communications needs could be addressed by this reallocation, the Commission would give potential licensees "*carte blanche*" authority to provide nearly every known wireless service other than broadcast. The proposal fails to consider whether there are other, more urgent needs that could be met by this reallocation.

As CTIA pointed out in its Comments, the Commission's WCS proposal is an abdication of its statutory responsibilities.^{8/} Under the Communications Act, the Commission is responsible for allocating spectrum to a particular service prior to assigning that spectrum to individual licensees.^{9/} The Commission proposes abdicating that responsibility by using auctions -- a license assignment tool -- to allocate the spectrum, thereby illegally conveying its allocation duties to the auction winner, who would determine what services would be provided on the spectrum. The Commission is only authorized to use competitive bidding to select among mutually exclusive applicants for a license, and not as a substitute for spectrum allocation decisions after notice and comment.^{10/}

Further, the Commission's proposed WCS allocation would result in a number of inefficiencies. Under the Commission's proposal, equipment manufacturers would have no incentive to develop new technologies since they would have no direction for new

^{8/} Comments of CTIA at p. 4.

^{9/} See 47 U.S.C. Section 303(b).

^{10/} 47 U.S.C. Section 309(j)(1).

developments.11/ As Lucent, a telecommunications equipment manufacturer stated in its Comments, a more specific service allocation is necessary to provide manufacturers guidance on what will be needed by service providers operating on the 2.3 GHz spectrum.12/ Without specific service allocations, manufacturers will be "paralyzed," waiting until the last minute to develop products -- once they know what services will be provided by 2.3 GHz licensees.13/ Motorola added that equipment costs would be higher under such a broad service allocation since manufacturers would be developing individualized products for particular providers rather than new products for an entire industry.14/

Proper spectrum allocations are based on need, *i.e.*, how can the available spectrum be employed to meet critical wireless service needs.15/ "Unrestricted spectrum flexibility" as the Commission proposes here, does not even consider what these needs are, much less satisfy them.16/

11/ See, e.g., Comments of Motorola at 6; Alcatel at 3; Omnipoint at 2; PCIA at 5; TIA at 13.

12/ Comments of Lucent at 3. See also Comments of Motorola at 6; Alcatel at 3; Omnipoint at 2; PCIA at 5; TIA at 13.

13/ Comments of Alcatel at 4.

14/ Comments of Motorola at 6.

15/ Comments of CTIA at 7.

16/ See Comments of PCIA at 2.

B. The Commission Should Allocate The 2.3 GHz Band To Specific Services

In allocating the 2.3 GHz band to meet existing unmet communications needs, the Commission should focus on a "set of services that does not include CMRS."^{17/} Given the recent and not yet fully assigned 120 MHz PCS allocation, a further allocation for CMRS services would be inefficient and unnecessary. A significant number of new entrant PCS CMRS providers who have not yet had opportunities to build out their systems are already facing a shortage of capital and a CMRS marketplace "saturated with current and potential providers."^{18/} As PCIA stated in its Comments, the Commission should look to those services that are currently underserved rather than focusing on those -- like CMRS -- that have already been allocated sufficient spectrum.^{19/}

In addition, the Commission is required by the '97 Appropriations Act to "pay particular attention to how the needs of public safety as well as commercial applicants may best be met in determining how to design this auction."^{20/} Allocation of a portion of the 2.3 GHz spectrum for public safety uses and

^{17/} Comments of PCIA at 4. See also Comments of 21st Century Telesis, Inc at 1; Pocket Communications, Inc. at 2. Nextel, however, supports the imposition of build-out requirements regardless of the services to be provided.

^{18/} Comments of PCIA at 7. The Commission has not yet even completed all of the PCS auctions.

^{19/} *Id.* at 7-8. See also Comments of BellSouth at 3. If a WCS licensee provides CMRS services, the CMRS cap spectrum should apply.

^{20/} NPRM at para. 19, quoting Letter from Chairman Bliley and Congressman Dingell of the House Commerce Committee.

selecting licensees by competitive bidding is consistent with Section 309(j) of the Communications Act because the spectrum "will involve . . . the licensee receiving compensation from subscribers" in return for wireless communications services.^{21/} Licensees could be, for example, entrepreneurs or manufacturers, desiring to serve public safety users on a for-profit basis, or the users themselves desiring to build out wireless systems for use by other public safety institutions on a for-profit basis.

C. The Commission Should Auction Three 10 MHz Licenses Per BTA

Like the majority of commenters, Nextel opposes assigning 2.3 GHz WCS licenses on a nationwide basis.^{22/} A nationwide license would severely limit opportunities for potential participants, would result in a WCS system that does not rapidly or efficiently

^{21/} 47 U.S.C. Section 309(j)(2):

(2) USES TO WHICH BIDDING MAY APPLY.-A use of the electromagnetic spectrum is described in this paragraph if the Commission determines that-

(A) the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers in return for which the licensee-

(i) enables those subscribers to receive communications signals that are transmitted utilizing frequencies on which the licensee is licensed to operate. . .

^{22/} Comments of Airtouch at 6-7; ALLTEL Mobile Communications, Inc. at 3; Bell Atlantic NYNEX Mobile, Inc. ("BANM") at 3; BellSouth at 8; CTIA at 13-14; Competition Policy Institute at 4; Guam Telephone Authority at 2; Pacific Telesis Group at 2; PACS Providers Forum at 12; SBC Communications at 5; Telephone and Data Systems, Inc. at 1; UTC, The Telecommunications Association ("UTC") at 3; Vanguard Cellular Systems, Inc. at 3.

serve rural and less-populated areas of the country, would undermine the reasonable expectations of those entities who have already invested in CMRS licenses, and would make it significantly more difficult to secure financing.^{23/} It would provide WCS licensees an unfair advantage over existing CMRS providers who bid on and obtained their licenses based on the assumption that the Commission would not assign any nationwide licenses. The Commission concluded in the PCS proceeding that nationwide licenses are not in the public interest; nothing has changed that would dictate a different result in this proceeding.^{24/}

A BTA license is most appropriate for the 2.3 GHz services discussed above, particularly services that would be provided to public safety users with typically more localized communications needs.^{25/} BTAs would provide comparable rules for WCS and other CMRS providers, would ensure that a broad range of applicants can participate in the auction, and would provide applicants an opportunity to achieve the advantages of nationwide licensing -- interoperability and roaming, among others -- without the associated disadvantages.^{26/} Not only would BTA service areas provide a good fit for tailoring services to the localized needs of

^{23/} See Comments of PCIA at 3-4.

^{24/} See Comments of BANM at 4; BellSouth at 8; PCIA at 12.

^{25/} A number of commenters expressed support for BTA-based licensing. See Comments of ADC at 17; BANM at 3; BellSouth at 6; CTIA at 13-14; GTE Service Corp. ("GTE") at 4; Omnipoint at 8; SBC Communications at 4.

^{26/} See Comments of PCIA at 16-17.

public safety agencies, they would promote efficient use of the spectrum, broad dissemination of licenses, and rapid deployment of new services.^{27/} Moreover, a BTA auction, coupled with the appropriate auction rules, could be completed within the statutory time frames.

As proposed by several commenters,^{28/} the Commission should assign the WCS spectrum in three 10 MHz blocks. As AT&T Wireless recognized, 10 MHz licenses have many advantages: (1) they would encourage broad participation, innovation and competition; (2) aggregation and disaggregation policies would enable a broad variety and size of firms to participate; and (3) three licenses per market would make it possible to meet the Congressional auction deadlines.^{29/} Additionally, this assignment structure would enable the Commission to provide for the needs of public safety users by setting aside one or more 10 MHz BTA licenses for entities predominately serving public safety users.

Should an entrepreneur's business plans focus on providing service in larger-than-BTA geographic areas, *i.e.*, metropolitan, regional or larger, that bidder could aggregate licenses throughout

^{27/} A number of commenters expressed support for BTA-based licensing. See Comments of ADC at 17; BANM at 3; BellSouth at 6; CTIA at 13-14; GTE at 4; Omnipoint at 8; SBC Communications at 4.

^{28/} AT&T Wireless Services, Inc. ("AT&T Wireless") at 2; CTIA at 13-14; Digivox Corp. at 3; GTE at 5; PACS Providers Forum at 3-4; Puerto Rico Telephone Co. at 4; SBC Communications at 4; UTC at 5.

^{29/} Comments of AT&T Wireless at 3-4.

a state or a region.^{30/} The Commission should not, however, require that all bidders bid on large areas just to "carve them up" post-auction. Smaller licenses will best meet the needs of all potential licensees by attracting both large and small bidders to bid on either a small geographic area through a single license or on a larger geographic area through aggregation.

IV. CONCLUSION

The reallocation of the 2.3 GHz spectrum presents the Commission with a unique opportunity to encourage the provision of new, wireless telecommunications services for public safety uses. The Commission can best fulfill its licensing responsibilities by licensing the 2.3 GHz spectrum in three 10 MHz blocks on a BTA basis.

Respectfully submitted,
NEXTEL COMMUNICATIONS, INC.

By, 

Robert S. Foosaner
Senior Vice President -
Government Affairs

Lawrence R. Krevor
Director - Government Affairs

Laura L. Holloway
General Attorney

Nextel Communications, Inc.
800 Connecticut Avenue, N.W.
Suite 1001
Washington, D.C. 20006
202-296-8111

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^{30/} See, e.g., Comments of GTE at 4; Omnipoint at 9.