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Federal Communications Commission
Office of Secretary

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

In the Matter of	)	
	)	
Amendment of Part 1 of the	)	
Commission's Rules --	)	WT Docket No. 97-82
Competitive Bidding Proceeding	)	

To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

NEXTEL COMMUNICATIONS, INC.

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TABLE OF CONTENTS

SUMMARY i

I. INTRODUCTION 1

II. DISCUSSION 2

A. Amended Auction Rules Should Be Applied Prospectively 2

B. Nextel Opposes Real Time Bidding, Minimum Opening Bids, Maximum Bid Increments, The Offering Of Defaulted or Disqualified Licenses to the Second-Highest Bidder, And The Proposed Exception To The Anti-Collusion Rules 3

1. Real Time Bidding. 3

2. Minimum Opening Bids 7

3. Maximum Bid Increments 7

4. Re-Auction of Defaulted or Disqualified Licenses 8

5. Exceptions to the Anti-Collusion Rules 9

C. Nextel Requests That The Commission Establish A Minimum "Between-Rounds" Time Period For All Auctions 10

III. CONCLUSION. 11

SUMMARY

In this Notice Of Proposed Rule Making ("NPRM"), the Federal Communications Commission ("Commission") proposes amendments to its general auction rules in an effort to streamline those rules and establish a more efficient auction process. Nextel Communications, Inc. ("Nextel") submits these comments to applaud the Commission's efforts, but also to ensure that these new rules are not applied to auctions for which rules are already established, *e.g.*, the 800 MHz Specialized Mobile Radio upper 200 channel auction. Moreover, the goal of speeding the auction process should not overshadow the importance of providing an process that enables legitimate bidders to place informed bids and ensures that licenses are awarded to those bidders who value them most highly.

The Commission's proposal for real time bidding places the desire for speedy auctions above the legitimate needs of auction participants. While real time bidding might be useful in an auction of a single item, it is unworkable in a simultaneous multiple round auction in which participants may be bidding on hundreds of licenses at the same time. Bidders cannot continuously monitor activity on hundreds of licenses and react to each and every bidding change on every license in a matter of seconds. Bidders have significant sums of money at stake in these auctions, and each and every bid must be carefully considered before being placed. Bidding on, in many cases, hundreds of different licenses requires significant review and analysis -- tasks which require

more than the few minutes or seconds that would be provided under a real time bidding scenario. The ultimate goal of an expeditious license process, *i.e.*, rapid implementation of new products and services, would be undercut by uninformed bidding.

Additionally, the Commission's proposals for minimum opening bids and maximum bid increments are contrary to the purposes of auctioning licenses. The Commission should, in most instances, re-auction returned licenses to ensure that the price paid is the current market price and to eliminate any artificial incentive to file petitions to deny that could be created by awarding those licenses to the second-highest bidder. The public interest would not be served by an exception to the anti-collusion rules that would permit "movement" of an investor's capital from one bidder to another after the investor's original bidding entity has dropped out of the auction. The benefits of providing this "recycled" source of capital is outweighed by the potential for collusion that this exception would create. Finally, the Commission should establish a one-hour minimum time period between rounds to ensure that bidders have sufficient time to analyze the previous round's results and develop a strategy for the next round.

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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 Comments on the Commission's Notice Of Proposed Rule Making ("NPRM") in the above-captioned proceeding.1/

In the NPRM, the Commission proposes to streamline its general auction rules based on its experiences in completed auctions and feedback from auction participants.2/ Nextel is filing these comments to oppose the proposed real-time bidding methodology, the minimum opening bid, the maximum bid increment, the award of returned licenses to the second-highest bidder and the proposed exception to the anti-collusion rules that would permit investors to move their investment from one bidder to another when the first bidder drops out of the auction. Nextel also opposes the

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1/ Order, Memorandum Opinion and Order and Notice Of Proposed Rule Making, WT Docket No. 97-82, released February 28, 1997.

2/ *Id.* at para. 1.

imposition of these rules on any auction for which rules have been established, *e.g.*, the auction of the upper 200 800 MHz Specialized Mobile Radio ("SMR") channels.3/ The Commission should apply the new rules only on a prospective basis.

II. DISCUSSION

A. Amended Auction Rules Should Be Applied Prospectively

In the NPRM, the Commission queries whether the proposed rules should be applied only to those services for which auction rules are in the process of being established or applied to those auctions as well as any for which rules are already established but have yet to commence.4/ Nextel opposes imposing these new rules on auctions for which rules are established. The Upper 200-channel 800 MHz SMR auction has had established auction rules for over a year. Potential bidders have reviewed these rules and begun to prepare auction strategies based upon them. Although the auction has yet to commence, it should begin shortly, and any changes to the auction rules at this late date could only slow the start of the auction and create confusion among potential bidders who have familiarized themselves with existing rules. Moreover, the rules for the 800 MHz SMR upper channel auction are similar to rules used in previous similar auctions, *e.g.*, 900 MHz SMR auction, and therefore have been tried and tested by the Commission and the industry.

3/ First Report and Order, Eighth Report and Order, Second Further Notice Of Proposed Rule Making, 11 FCC Rcd 1463 (1995).

4/ *Id.* at para. 18.

B. Nextel Opposes Real Time Bidding, Minimum Opening Bids, Maximum Bid Increments, The Offering Of Defaulted or Disqualified Licenses to the Second-Highest Bidder, And The Proposed Exception To The Anti-Collusion Rules

1. Real Time Bidding

The Commission's proposed "real time" bidding is misguided. The proposal would not necessarily speed the auction process, while it would create unwarranted complexities and confusion for bidders, would make it impossible to craft informed bidding strategies during the auction, and would increase the administrative costs of participating in an auction. In essence, the Commission is attempting to apply to a simultaneous auction of hundreds of items, rules that can only function in an auction of one item at a time.

As proposed by the Commission,5/ real time bidding would require bidders to constantly monitor the bidding activities on every license in which it is interested in every round. For many bidders in the 900 MHz SMR auction, this would have meant monitoring every single license in the country. In the upcoming 800 MHz SMR auction, a bidder interested in creating a nationwide system, like Nextel, likely would have to simultaneously and constantly watch the bidding progress on 525 licenses at the same time and be prepared to react instantaneously to bidding changes on any and all of them. Moreover, the closed bidding period would not resolve this problem since bidders still would be forced to make critical -- and potentially very expensive -- decisions on every license within a short time period.

5/ NPRM at para. 79.

Monitoring hundreds of licenses in this manner would require significant increases in auction manpower and would increase the amount of time spent "on-line" in order to instantly observe bidding moves by competing bidders. Both of these requirements would significantly increase the cost of participating in the Commission's auction process -- costs which could exclude some smaller bidders.

Even those bidders with the financial capability to meet these additional administrative burdens may find it impossible to comply with the constraints of real time bidding. Bidders commonly are subject to internal checks and balances created by the bidding entity for quality control purposes. Some bidders, for example, may be required to obtain approval of a board or a committee before upping a bid to a certain amount. Such approval processes would be impossible under the Commission's proposal. Even with little or no formal approval process, a bidder could not possibly make instantaneous strategic bidding decisions under the real time proposal. Bidders have significant sums of money at stake in these auctions, and each and every bid must be carefully considered before being placed. Bidding on, in many cases, hundreds of different licenses requires significant review and analysis -- tasks which require more than the few minutes or seconds that would be provided under a real time bidding scenario.

Although adamantly opposed to a real time bidding process, Nextel would not be opposed to combining the bid and the bid withdrawal periods as long as the rounds are structured in a manner

that permits proper and accurate measures of bidders' activity levels. This could be accomplished as follows. First, the Commission should limit bidders to a single bid on any license in any round. Second, the Commission should allow withdrawal of that bid during the round, but it should not permit the withdrawn bid to count toward the bidder's activity levels for that round. Finally, if a bid is withdrawn in a round and there are no other bids on that license during the round, the high bid should remain with the party who had the high bid from the previous round, and that standing bid should count as activity for the standing high bidder in the next round.

Each of these requirements should help speed the auction process. Bidders can decide to withdraw a bid without awaiting the Commission's specifically designated bid withdrawal period, and they can move that bid from one license to another in the same round, thus quickly changing their strategy as the round develops. Thus, strategies could develop and change more quickly, but there would be none of the flaws that would exist under the real time bidding process described above. Once a bid was placed in a round, that bid would not change (other than being withdrawn), thereby eliminating the impossible task of crafting and developing a coherent bidding strategy for hundreds of licenses in a matter of seconds.

Allowing only one bid per round encourages legitimate bids rather than the gamesmanship created by placing, withdrawing and

potentially re-placing a bid on a single license in a single round.6/ The knowledge that activity units would be lost on a license if the bid were withdrawn should encourage bidders to consider their bids more carefully and place them on those licenses they truly seek to acquire. Given the "penalty" associated with withdrawing bids, *i.e.*, loss of activity units and the inability to place another bid on that same license in the same round, "signalling" to other bidders would not be as easy or as likely under this proposal.7/

Finally, by permitting the standing bid to continue as the high bid in subsequent rounds where it has not been topped by another bidder, the Commission would not force bidders to "outbid" themselves. Moreover, it would eliminate the incentive for a bidder to outbid the standing high bid, only to withdraw it and thereby force the standing high bidder to outbid itself. Such tactics are nothing more than gamesmanship and should be eliminated. Discouraging this gamesmanship and encouraging legitimate bids should help to speed the auction process -- a laudable goal for which Nextel applauds the Commission's efforts.

6/ NPRM at para. 93.

7/ Granted, signalling could continue to some extent, but it should be curtailed given that bidders risk the loss of activity, and they would be forced to find another license on which to bid to maintain the requisite level of activity. For example, a bidder could withdraw its bid on License A in Tulsa, Oklahoma, but to maintain the proper level of activity, it might be forced to then bid on a license in Oklahoma City, Oklahoma. This should ensure that bidders think very carefully before withdrawing a bid on any license, and it could limit most withdrawals to those bids that were placed mistakenly.

However, this goal should not overshadow, and thereby jeopardize, the strategic and bidding capabilities of legitimate auction participants -- seeking licenses to build and operate ongoing businesses -- merely to hurry along the process.

2. Minimum Opening Bids

Minimum opening bids are completely at odds with the very essence of the Commission's auction process and should not be imposed in any future auction.8/ The auction process is intended to award spectrum licenses at a price determined by the marketplace based on what bidders are willing to pay for them. Establishing a minimum opening bid attempts to put the Commission in the shoes of the marketplace by dictating to the market the worth of a particular license. This flies in the face of the Commission's auction processes and should not be included in the auction rules.

3. Maximum Bid Increments

The Commission's proposal to limit the maximum amount a bidder can raise its bid from one round to the next is likewise contrary to the objectives of an auction.9/ The Commission's auctions are based on free market decisions by participants seeking particular spectrum licenses. Certain bidders naturally place a higher value on some licenses than others, given their business plans and strategies. Thus, according to auction theory, a bidder's significantly increased bid from one round to the next would not prevent other bidders from obtaining a license; rather, it ensures

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8/ *Id.* at para. 86.

9/ *Id.* at para. 88.

that the bidder who places the highest value on the license is in the high bidder's position. That bidder should not be precluded from bidding whatever price it is willing to pay for that license -- even if it means shutting out some other bidder who is not willing to match or overtake that bid. This is the very essence of an auction and ensures the award of licenses to those bidders who value them most.

A maximum bid increment, therefore, would not necessarily preclude a party from obtaining a particular license if it places the highest value on it. However, a bid increment cap would most certainly slow the auction process -- a result that is at odds with the Commission's objectives in this proceeding. A party intent on obtaining a license -- even for a very high price -- would be forced by the Commission's proposal to bid on it incrementally, thus potentially dragging out the length of the auction proceeding. For these reasons, Nextel opposes a cap on bid increments.

4. Re-Auction of Defaulted or Disqualified Licenses

Nextel generally supports the re-auction of any license returned to the Commission after an auction -- whether due to default, failure to make down payments or disqualification. A separate auction ensures, particularly in the case of licenses returned due to disqualification of the licensee, that the price paid is the current market price rather than the price that was applicable at the time of the first auction. Moreover, unlike offering the license to the second-highest bidder, re-auctioning would not encourage litigation by providing an incentive for the

other bidders to file petitions to deny against the winner in hopes of having the license offered to them should their petitions be granted.10/ However, Nextel does not oppose the Commission's discretion to award the license to the second-highest bidder when the default occurs soon after the close of the auction and there has been no opportunity to file petitions to deny. In such instances, there would be little or no risk of significant changes in the market price and no risk of encouraging unnecessary petitions to deny.

5. Exceptions to the Anti-Collusion Rules

Nextel opposes the Commission's proposal to permit "movement" of an investor's capital from one bidder to another after the investor's original bidding entity has dropped out of the auction.11/ While this arguably could provide new sources of capital for bidding entities, it creates an enormous potential for the very collusive activities the Commission seeks to prevent.

10/ The Commission faced a similar situation in its cellular lotteries. Initially, the Commission picked several lottery winners, and then offered the license to the first party chosen. If the first party was disqualified for any reason, the second party was automatically offered the license. On reconsideration, the Commission concluded that it should "relottery" applications that are not granted to the initial winner. First Report and Order and Memorandum Opinion and Order on Reconsideration, 6 FCC Rcd 6185 (1991) at para. 79. More recently, the Commission acknowledged that "ranking applicants," *i.e.*, providing "runners-up" for the license, "encourages the filing of frivilous petitions to deny." Further Memorandum Opinion and Order and Order on Reconsideration, CC Docket No. 90-6, FCC 96-56, at para. 5 (released January 31, 1997).

11/ *Id.* at para. 101.

For example, if Investor A has an interest in Bidder A, and Bidder A drops out in Round 75, Investor A must immediately seek out a new bidder for its investment. Presumably, Investor A has had no previous discussions with any other bidders so Investor A must initiate new talks as soon as possible. Investor A might initiate discussions with Bidder B, learn B's bidding strategies, and then conclude that Bidder B is not a good investment. Investor A could then contact Bidder C about a potential investment, negotiate with C, learn C's strategies and then conclude that C also is not the proper bidding vehicle for his/her investment. Finally, Investor A may decide Bidder D is a good investment, but at this point, Investor A knows the bidding strategies of Bidders B, C and D. This result is contrary to the Commission's anti-collusion rules, and provides unacceptable opportunities for abuse. Thus, the Commission should not consider permitting such "re-investment" in any auction. The benefits of providing "recycled" sources of capital for bidders does not outweigh the potential for collusion among the auction's investors and bidders.

C. Nextel Requests That The Commission Establish A Minimum "Between-Rounds" Time Period For All Auctions

Although the Commission is seeking avenues for speeding up the auction process, Nextel asserts that the time period between rounds should not be compromised. At the end of each round, the Commission releases a list of the final bids from the previous round. Bidders then carefully review the bids and develop their strategy for the next round. This process is essential to bidders' overall strategy development and their ability to obtain the

licenses they value most highly. Given its importance, this review can be a time-consuming task. Therefore, Nextel proposes that while the Commission retains discretion to vary the allotted time between rounds, *i.e.*, longer periods early in the auction when more licenses are in play, it should adopt a minimum time period below which the time between rounds can never fall. The Commission should establish a one-hour minimum on the amount of time it provides bidders between rounds.

III. CONCLUSION

Nextel supports the Commission's attempt to streamline its auction rules to provide for more effective and efficient auctions. However, as discussed herein, some of these proposals -- in particular, the real time bidding proposal which strips bidders of the ability to make informed decisions about their bidding strategies -- are contrary to the public interest and should not be adopted. Moreover, the Commission should not apply any of these

amended rules to those auctions for which there are auction rules in place.

Respectfully submitted,

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Dated: March 27, 1997

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 27th day of March 1997, caused a copy of the attached Comments of Nextel Communications, Inc. to be served by hand delivery or first-class mail, postage prepaid to the following:

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