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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)	PR Docket No. 93-144
Future Development of SMR Systems)	RM-8117, RM-8030
in the 800 MHz Frequency Band)	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 --)	PP Docket No. 93-253
Competitive Bidding)	

To: The Commission

OPPOSITION OF NEXTEL COMMUNICATIONS, INC. TO
PETITIONS FOR RECONSIDERATION OF THE
MEMORANDUM OPINION AND ORDER

NEXTEL COMMUNICATIONS, INC.

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Dated: October 9, 1997

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I. INTRODUCTION

Pursuant to Section 1.429(f) of the Rules of the Federal Communications Commission ("Commission"),^{1/} Nextel Communications, Inc. ("Nextel") respectfully submits this Opposition to the Petitions for Reconsideration ("Petitions") filed in response to the Memorandum Opinion and Order ("MO&O") in the above captioned proceeding.^{2/}

The MO&O resolved petitions for reconsideration filed in early 1996 in response to the Commission's First Report and Order in this

^{1/} 47 C.F.R. Section 1.429(f).

^{2/} Memorandum Opinion and Order, 12 FCC Rcd 9972 (1997).

proceeding.^{3/} The First Report and Order established geographic area licensing and auction rules for the top 200 Specialized Mobile Radio ("SMR") channels ("the Upper Channels"), including the right of auction winners to retune incumbent operators out of the Upper Channels. The MO&O generally confirmed the Commission's decisions in the First Report and Order.

Two parties filed Petitions seeking reconsideration of the MO&O. The American Mobile Telecommunications Association ("AMTA") seeks reconsideration of the Commission's decision to eliminate installment payments for small businesses participating in the Upper Channel auction.^{4/} Small Business in Telecommunications ("SBT") seeks reconsideration of a number of issues, including the elimination of installment payments.

As the Nation's largest provider of SMR services and an active participant throughout this rulemaking proceeding, Nextel respectfully submits this Opposition to the Petitions. The Commission's decision in the MO&O to eliminate installment payments is in the public interest and should not be reversed. Because the Commission already has considered and affirmed most of the issues raised by SBT, its Petition may be dismissed as repetitious, as discussed below.^{5/}

^{3/} First Report and Order, 11 FCC Rcd 1463 (1995) ("First R&O").

^{4/} Petition of AMTA.

^{5/} See Section 1.429(i) ("...a second petition for reconsideration may be dismissed by the staff as repetitious."). 47 C.F.R. Section 1.429(i).

II. DISCUSSION

A. Installment Payments

In the MO&O, the Commission properly concluded that installment payments are not in the public interest and should be eliminated for the Upper Channel auction.^{6/} The Commission relied on its experiences from previous auctions in determining that installment payment plans can result in irresponsible bidding. The fiasco created by the use of installment payments in the C-block Personal Communications Services ("PCS") auction provides ample evidence that making such provisions available creates an incentive for irresponsible bidding, and encourages speculation.^{7/} Immediate investment in the license, on the other hand, encourages technological innovation, system development and diverse service offerings. Moreover, there is widespread consensus that offering installments payments places the Commission in the improper role of creditor/lender, which creates a conflict with its regulatory responsibilities in managing the use of public spectrum.

By eliminating installment payments, the Commission is not abdicating its responsibility to "disseminat[e] licenses among a wide variety of applicants, including small businesses. . ." under Section 309(j)(3)(B) of the Communications Act because small

^{6/} MO&O at para. 130.

^{7/} See Public Notice, "Wireless Telecommunications Bureau Seeks Comment on Broadband PCS C and F Block Installment Payment Issues," DA 97-679, released June 2, 1997; Comments of Nextel, filed June 20, 1996; Reply Comments of Nextel, filed July 8, 1997; and News Release, "FCC Adopts Menu of Options For Modifying C Block Payments; Seeks Comment on Implementation of Options," WT Docket No. 97-82, Report No. 97-37, released September 25, 1997.

businesses are entitled to significant bidding credits in the lower channels auction.^{8/} In fact, to further encourage small business participation, the Commission increased the bidding credits to 25% and 35% for small and very small businesses, respectively.^{9/} These bidding credits will place smaller businesses on a level playing field with larger companies by enabling them to obtain licenses at significantly reduced prices. Unlike installment payments, however, that price must be paid immediately and in full, thereby discouraging the irrational decision-making promoted by installment payment plans.^{10/}

B. SBT's Miscellaneous Issues

1. Contiguous Spectrum

SBT argues that the Commission should reconsider its conclusion that contiguous spectrum is necessary for SMRs to compete with other Commercial Mobile Radio Services ("CMRS").^{11/} This argument is both procedurally defective and devoid of merit. First, the Commission reached this conclusion its Third Report and Order in GN Docket No. 93-252 three years ago.^{12/} The time and

^{8/} *Id.* at para. 131.

^{9/} *Id.*

^{10/} SBT's claim that the Commission cannot change bidding rules through the release of Public Notices is out of place in this proceeding. Petition of SBT at p. 17. The Commission has issued no Public Notices relating to the lower channels bidding rules. Therefore, the issue is beyond the scope of this proceeding. See 47 C.F.R. Section 1.429(b).

^{11/} Petition of SBT at p. 2.

^{12/} Third Report and Order, 9 FCC Rcd 7988 (1994).

place for reconsideration of that decision, therefore, was within the time frames provided for in that proceeding.

Second, the Commission concluded that geographic area licenses are necessary for SMRs to fully compete with other CMRS providers not only because they would enable licensees to obtain contiguous spectrum, but also because geographic area licenses would give SMRs the same flexibility (e.g., construction anywhere within their licensed service area) available to their CMRS competitors, and would reduce the administrative burden on both the Commission staff and SMR licensees imposed by antiquated site-by-site licensing.^{13/} Congress mandated in the Omnibus Budget Reconciliation Act of 1993 that the Commission eliminate such regulatory disadvantages among CMRS licensees, and provide them "regulatory parity" in matters such as licensing and spectrum access.^{14/}

Nextel expressly rebuts SBT's claim that contiguous spectrum is not necessary for SMRs to compete with other CMRS providers. Cellular and PCS licensees are assigned contiguous blocks of spectrum on which they have the flexibility to implement a broad range of technology alternatives. Contiguous spectrum provides the capability to implement, for example, broadband spread spectrum technologies such as CDMA. Because all CMRS licensees are entitled

^{13/} Third Report and Order, 9 FCC Rcd 7988 (1994) at paras. 95-97.

^{14/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI Section 6002(b), 107 Stat. 312, 392 (1993), codified at 47 U.S.C. Section 332(c), at Section 6002(d)(3).

to regulatory parity, the Commission correctly concluded that such technological flexibility must be available to all competing CMRS carriers. Geographic area licensing provides SMR licensees comparable opportunities to obtain contiguous spectrum and thereby implement efficient, innovative technological options available now only to their CMRS competitors. This will not only enhance the competitiveness of SMR operators, but it will also enhance the overall competitiveness of the CMRS marketplace, thereby benefitting wireless telecommunications consumers.

2. Finder's Preference

SBT seeks untimely reconsideration of the Commission's decision to eliminate the finder's preference program in the 800 MHz SMR services.^{15/} The Commission eliminated the program in the First Report and Order in this proceeding,^{16/} and did not change that decision in the MO&O. Thus, because the Commission did not modify its decision in the MO&O, SBT's Petition is repetitive and should be dismissed.^{17/} SBT offers no new facts or legal interpretation that it could not have offered previously in a timely manner. SBT's opportunity to seek reconsideration of this decision has come and gone.

III. CONCLUSION

Nextel supports the Commission's MO&O affirming the adoption of geographic area licensing, using competitive bidding, on the top

^{15/} Petition of SBT at p. 9.

^{16/} First Report and Order at para. 60.

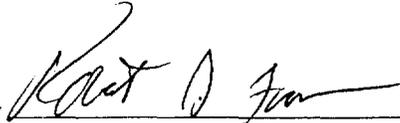
^{17/} 47 C.F.R. Section 1.429(i).

200 SMR channels. The Commission properly concluded, based on its other auction experiences, that installment payments are not in the public interest. Small businesses will have adequate opportunity to bid on Upper Channel licenses via the bidding credits provided in the Commission's rules.

To the extent SBT raises issues previously resolved by the Commission, Nextel respectfully requests dismissal of the Petition.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

By,  _____

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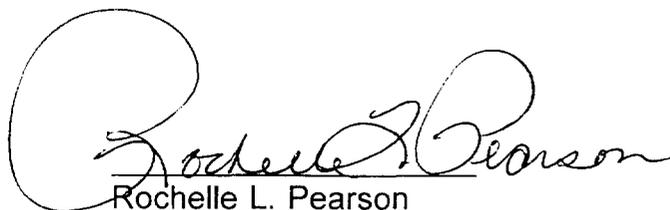
Dated: October 9, 1997

CERTIFICATE OF SERVICE

I, Rochelle L. Pearson, hereby certify that on this 9th day of October, 1997, I caused a copy of Opposition of Nextel Communications, Inc. to be served hand delivery or first-class mail, postage prepaid to the following:

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