

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

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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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 Sections 3(n) and 322 of )  
the Communications Act - Regulatory )  
Treatment of Mobile Services )

GN Docket No. 93-252

Implementation of Section 309(j) of the )  
Communications Act - Competitive Bidding )

PR Docket No. 93-253

To: The Commission

REPLY

Small Business in Telecommunications (SBT) a non-profit association of persons which are, in the main, protected under Section 309(j) of the Communications Act of 1934 (as amended) ("the Act") as being among that class of persons often referred to as "designated entities", hereby replies to Nextel Communications, Inc.'s Opposition to Petitions For Reconsideration to the Commission's Memorandum Opinion and Order ("MO&O") in this proceeding, released July 10, 1997, ("Opposition").

Nextel's General Objection Is Incorrect

At Page 2 of its Opposition, Nextel Communications, Inc. ("Nextel") states that the matters raised in SBT's Petition For Reconsideration ("SBT's Petition") are "repetitious" and, therefore, subject to dismissal. Nextel is simply incorrect. Nextel's objection does not reflect the specific matters raised in SBT's Petition and seeks, instead, to cause the Commission to

ignore the substantive contents of SBT's Petition. SBT is confident that the Commission will not treat SBT's Petition in such a cavalier manner and will, instead, provide to SBT and to AMTA the full consideration that the moving parties seek.

SBT's Petition sought reconsideration of (i) the Commission's still unclear basis for the creation of contiguous blocks of spectrum for operation of SMR systems; (ii) the Commission's still unreconciled use of auctions, which use is contrary to the specific tenets of 47 U.S.C. §309(j)(6)(E);<sup>1</sup> (iii) the Commission's inability to demonstrate that the termination of the finder's preference program was in accord with the agency's duties under Title 5 of the United States Code and 47 U.S.C. §309(j)(6)(D); (iv) the Commission's imposition of new requirements on incumbent licensees participating in the auction; (v) the Commission's unlawful delegation of authority to the Wireless Telecommunications Bureau to engage in rule making, contrary to the agency's own rules; (vi) the Commission's departure from past practices in the creation of bidding credits and elimination of installment payments; and (vii) the Commission's apparent failure to comply with recently adopted portions of the Act, 47 U.S.C. §§309(j)(3)(E) & 303(y)(2)(B). Although those issues enumerated above as (i) - (iii) might be viewed as a continuing request for clarification of the Commission's legal and logical basis for proceeding

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<sup>1</sup> That the Commission must revisit this issue has become apparent given the language contained at Section 3002(a) of the Conference Report, 1997 Budget Reconciliation Act, Title III -- Communication and Spectrum Allocation Provisions, which language clearly demonstrates that Congress' interpretation of the agency's authority is at odds with the agency's more expansive interpretation employed within the MO&O. SBT respectfully points to the fact that this language was not available to petitioners and commenters at a time previous to the filing of SBT's petition and, therefore, the issue is still appropriate for reconsideration in light of this new, official expression of the Commission's authority.

as announced,<sup>2</sup> Nextel's claim that SBT's Petition is repetitious is not accurate as to those matters enumerated as (iv) - (vii) above. SBT has not commented upon and had no opportunity to comment on those matters, as each has arisen for the first time within the MO&O. Accordingly, Nextel's request that SBT's Petition be dismissed as repetitious is simply without merit. As to those matters which SBT continues to seek clarification and justification, the public is entitled to receive a technical, legal, and factual basis for all agency decisions for the purpose of making meaningful comment. SBT avers that such bases have not, as yet, been provided by the agency and SBT has provided the agency an additional opportunity to fulfill its duties.

#### Elimination of Installment Payments

SBT disagrees with Nextel's conclusions regarding the Commission's use of installment payments in the past. Nextel's comments are based solely on the PCS Block C experience, which SBT argues is far from comparable to the matter at bar. More appropriate would be the Commission's experience arising out of its management of installment payments from successful participants in the 900 MHz SMR auction. Nextel provides no evidence of massive defaults or problems from that auction which would justify a precipitous elimination of installment payments. Nor can Nextel demonstrate that an increase in bidding credits will adequately mitigate against any injury to be sustained by designated entities arising out of such elimination. Rather, Nextel echoes the agency's conclusions which were not supported by any facts or

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<sup>2</sup> Although the specific issues for which SBT seeks clarification have been discussed earlier in the proceeding, a review of SBT's Petition would demonstrate that SBT's objections arise out of the Commission's decisions within the MO&O and do not rely solely on earlier claims, *e.g.* SBT's noted violation of 47 U.S.C. §309(j)(6)(D) in the elimination of the finder's preference program.

evidence which might demonstrate reasoned decision making in the sudden withdrawal of this vital benefit to small business.

Nextel has claimed that the total value of its company is in the neighborhood of \$6 billion. Nextel's participation in the auction shall be against entities which have total values of less than \$3 million. Simple math will demonstrate that the 35% bidding credit does not create an equal playing field against these bidders. The deck was already stacked. Now, Nextel would attempt to remove another shred of competitiveness from small business by supporting elimination of installment payments. Nextel's actions might be understandable. It is attempting to garner every possible advantage to lower the amount which it might have to bid at auction and the number of competitors for that spectrum -- a logical action considering it is a publicly traded corporation with a duty to its shareholders to take such actions. However, the same cannot be said for the Commission. Its mandated duties under the Act require a more equitable approach to support dissemination of licenses among designated entities. The elimination of installment payments is, therefore, contrary to the Commission's duties.

#### Contiguous Spectrum

SBT within its Petition has already addressed fully Nextel's contentions regarding the Commission's mandated use of contiguous spectrum and Nextel's claims simply confirm SBT's doubts and confuse the matter more. The use of contiguous spectrum has little to do with area wide licensing, unlike Nextel's claims at Page 5 of its Opposition. The two are not linked logically and Nextel's comments to the contrary are without merit. SBT notes that even the

Commission did not refer to the Omnibus Reconciliation Act of 1993 in its MO&O since that portion of that legislation which spoke to "regulatory parity" has reached its sunset period and is no longer valid for justifying the use of contiguous spectrum. Finally, Nextel's claims regarding a need to employ contiguous spectrum for the purpose of competing with other carriers is belied by its own advertising, claims to shareholders, and every other medium which Nextel employs outside of this proceeding. Nextel claims in the marketplace to be fully competitive and even superior to competing carriers.<sup>3</sup> Yet, solely within the confines of this proceeding, it claims to require contiguous spectrum to compete. It is apparent that Nextel is being disingenuous with consumers or the agency or both.

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<sup>3</sup> Nextel's claims of fully competitive service are evidenced in its advertising, a sample of which is attached hereto.

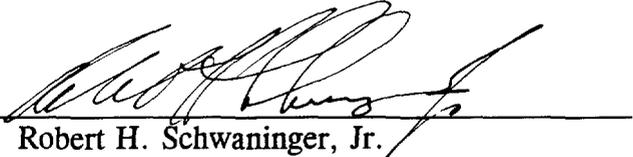
Conclusion

Nextel's Opposition has added nothing to the matter, excepting a reiteration of its desire to achieve success by removing local operators' ability to obtain necessary spectrum and compete in the marketplace. Nextel's self-serving protests to the contrary, SBT's Petition is well brought and fully sets forth the bases for its requested relief.

Respectfully submitted,

SMALL BUSINESS IN TELECOMMUNICATIONS

By

  
Robert H. Schwaninger, Jr.

Dated: 10/14/97

Its General Counsel  
Brown and Schwaninger  
1835 K Street, N.W.  
Suite 650  
Washington, D.C. 20006  
202/223-8837

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a success.

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But what if you didn't need all these services separately? What if a single mobile communication network could provide everything you need in **one single service through one single phone**? It would be really convenient, wouldn't it?

Well, you can enjoy that convenience, right now, thanks to Nextel. It starts with **America's largest guaranteed all-digital network**. A network that's based on iDEN™ technology to give you crystal clear digital calls and protection from cloning.

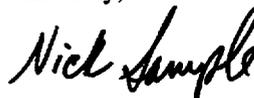
It gets better with the **Nextel Phone** manufactured by Motorola®. This **single streamlined unit** gives you a cellular phone ... an alpha/numeric pager with 4-line display ... plus the **Nextel Direct Connect**™ two-way radio feature that lets you speak to one or all of your employees at the touch of one button.

Nextel believes their billing should be as easy to understand as their service. So you pay home market rates for local calls no matter where you travel on the Nextel national network, and flat rates for all your long distance calls. You never pay landline connection charges or roaming fees, and all digital cellular calls are rounded to the nearest second after the first minute. Finally, individual calls are pooled in one company-wide account to get you the best possible rates. And you see it all in **one simple monthly statement**.

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But don't wait. You must act now. This offer is good for a limited time only.

Sincerely,



Nick Sample  
Marketing Director

\* Certain restrictions apply. Your Nextel representative can give you full details.

**GET SMART. GET NEXTEL<sup>SM</sup>. 1-800-598-1341**

**NEXTEL**

Dennis C Brown  
Partner  
Brown and Schwaninger  
1835 K St NW Ste 650  
Washington, DC 20006-1210

Ref. No.: MDAOSL-05

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Title \_\_\_\_\_

Phone (\_\_\_\_\_) \_\_\_\_\_

Best time to call \_\_\_\_\_  a.m.  p.m.

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# one Single network

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**Only Nextel® has the nation's largest guaranteed all-digital network** that provides crystal clear calls without fading or crosstalk ... and puts an end to dialing PINs and access codes.

# one Single unit

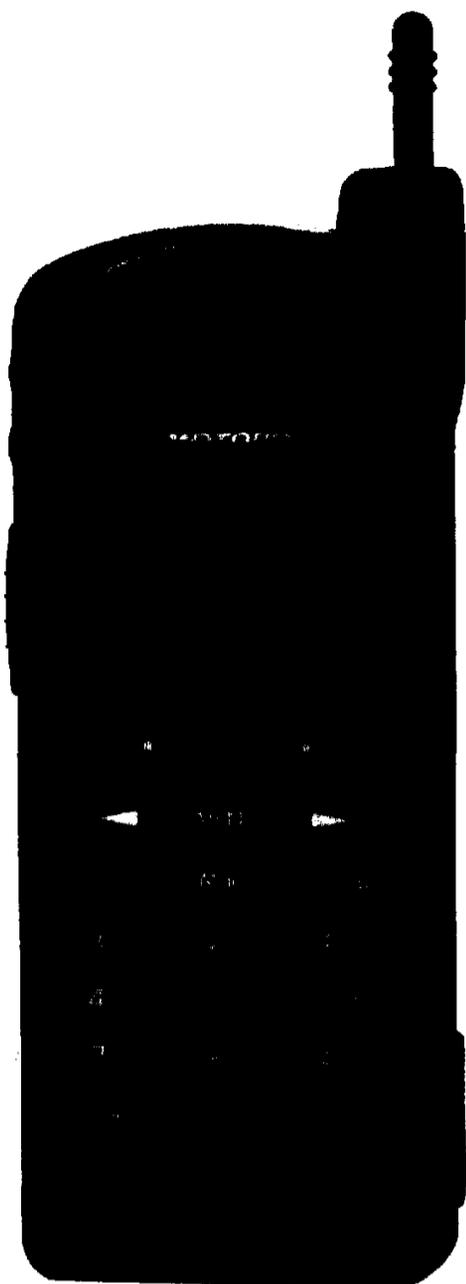
Pick up the **Nextel Phone manufactured by Motorola®**, and you'll be amazed by all it can do. First, it works with Nextel's digital network to provide high-quality, digital cellular service that offers state-of-the-art sound clarity, cloning protection, and more.

But that's just the start. The Nextel Phone also provides guaranteed delivery of **text and numeric paging**, and a **voice mail** feature that offers both visual and audio message notification.

Finally, the **Nextel Direct Connect™** 2-way radio feature lets you reach one or all of your employees, and talk for a fraction of the cost of a typical cellular call. Just push a single button on the side of your Nextel Phone, and you'll be connected instantly.

The Nextel network is based on iDEN™ technology developed by Motorola®.

Motorola, iDEN, and Message Mail are trademarks of Motorola, Inc.



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Why pay one provider for cellular service, another for paging, and still another for 2-way radio connections, when Nextel sends you one simple, easy to understand bill?

You'll save time and money. Nextel has **flat local and long distance rates ... pools individual usage ... rounds all digital cellular calls to the nearest second after the first minute ... eliminates roaming fees, landline connection charges, and monthly paging fees.**

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Only Nextel can provide you with a **total mobile communication network** that works. Give us a call at **1-800-598-1341**. Find out how easy it can be to stay connected to your business.

# one Single Way to Stay Connected

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**NEXTEL**

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You have customers  
and employees  
in **Many** locations.



You need one  
**Single** Way  
to Stay **Connected.**



CERTIFICATE OF SERVICE

I, hereby certify that on this 14th day of October, 1997, I served a copy of this Reply to Opposition of Nextel Communications, Inc. via first-class mail, postage prepaid to the following:

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