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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)	PR Docket No. 93-144
Commission's Rules to Facilitate)	RM-8117, RM-8030,
Future Development of SMR Systems)	RM-8029
in the 800 MHz Frequency Band)	
)	
Implementation of Sections 3(n))	GN Docket No. 93-252
and 332 of the Communications Act)	
Regulatory Treatment of Mobile)	
Services)	
)	
Implementation of Section 309(j))	PP Docket No. 93-253
of the Communications Act -)	
Competitive Bidding)	

To: The Commission

REPLY TO NEXTEL OPPOSITION TO
PETITIONS FOR RECONSIDERATION
OF THE SECOND REPORT AND ORDER

FILED ON BEHALF OF
ENTERGY SERVICES, INC. AND DELMARVA POWER

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Dated: October 20, 1997

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**REPLY TO NEXTEL OPPOSITION TO
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Entergy Services, Inc. ("Entergy"), and Delmarva Power ("Delmarva"), through their undersigned counsel and pursuant to § 1.429(g) of the rules and regulations of the Federal Communications Commission ("FCC" or "Commission") submit this Reply to Nextel Communications, Inc.'s (Nextel's) Opposition to Petitions for Reconsideration of the Second Report and Order.^{1/}

^{1/} Second Report and Order ("Second R&O" or "Order"), FCC 97-223, released July 10, 1997, in the above-captioned proceedings.

I. CONVERTING SITE-SPECIFIC LICENSES TO GEOGRAPHIC LICENSES

1. As set forth in the Petition for Reconsideration/Clarification filed by Entergy and Delmarva in this proceeding, the Commission should permit incumbent licensees converting from site-based to geographic licensing to include authorized but not yet constructed station contours within their geographic license, and to operate in otherwise unusable "white space." Nextel argues that Entergy's and Delmarva's request violates the proposed geographic licensing scheme by denying Economic Area (EA) licensees spectrum and exceeding the authority of incumbent licensees.^{2/} The proposals of Entergy and Delmarva do not undermine the EA licensing scheme or unjustifiably expand incumbent licensees' operating areas, but in fact promote spectrum efficiency and comport with the goals of EA licensing.

A. Authorized But Not Yet Constructed Internal Stations

2. In its Second R&O, the FCC established that incumbent site-specific licensees may exchange their multiple licenses for a single geographic license covering the area defined by the contiguous and overlapping 22 dBu (18 dBu with consent of affected co-channel licensees) contour of the incumbent's previously authorized sites.^{3/} The FCC requests incumbents to

^{2/} Opposition of Nextel at 7.

^{3/} Second Report and Order ¶ 72.

file data and provide construction information on its "external base station sites."^{4/} The language of the Second R&O indicates, on its face, that internal stations need not be constructed in order to obtain a geographic license for the area surrounded by an incumbent's external sites, as long as they are subject to valid authorizations.

3. Entergy and Delmarva support the FCC's decision in the Second R&O insofar as it establishes that an incumbent's geographic license should include all authorized internal sites that are not yet constructed, provided that the specific station's construction deadline has not passed. Contrary to Nextel's assertions, this approach will not "award incumbents authority well beyond that conferred by existing licenses..."^{5/} Instead this approach will ensure that incumbents with valid licenses will be able to avail themselves of the benefits of geographic licensing as soon as possible. Where the FCC has granted slow-growth implementation authority to an incumbent it is consistent with both that grant and with the Order to allow an incumbent to include its slow-growth sites within its geographic license. In addition, the extension of the license to cover these internal sites will balance the twin goals of efficient spectrum use and economically feasible construction schedules.

^{4/} Id.

^{5/} Opposition of Nextel at 7.

B. Unusable White Space

4. In its Second R&O, the FCC did not specifically address the treatment of trapped, unusable "white space" in the transition from site-based to geographic licensing. Unusable white space includes that space that is either completely surrounded by a contiguous and overlapping 22/18 dBu contour or, if not completely surrounded, inaccessible to any other licensee by virtue of the incumbent interference protection standards established in the Second R&O. In the past, the FCC has granted waivers to incumbent licensees allowing them to construct stations that provide coverage in these areas. Entergy and Delmarva are simply suggesting that the Commission adopt a similar solution in this instance in order to avoid wasting valuable spectrum.

5. Spectrum in trapped white space will lie fallow unless incumbents are permitted to make use of it. Permitting incumbents to include otherwise unusable white space within geographic contours, on the other hand, will promote greater spectrum use and will not work to the detriment of the EA licensee. An incumbent availing itself of this approach would, by definition, not occupy spectrum that is available for use by the EA winner.

Nextel notes correctly that EA licensees have a reversionary interest in an incumbent's spectrum.^{6/} The approach suggested by Entergy and Delmarva will in no way impair this right. The suggested standard is based upon the protection offered constructed stations. Accordingly, where licensed spectrum reverts to the EA winner, the residual incumbent contour would be re-defined in accordance with the protection owed to the remaining constructed stations, and would include any white space unusable by the EA winner by virtue of the residual contour configuration. This will not result in the EA licensee receiving any less spectrum than would be the case if the white space were not included. It will, however, result in greater flexibility to the incumbent, and greater spectrum utilization, in many instances.

II. MODIFICATION OF INCUMBENT SYSTEMS

6. Entergy and Delmarva disagree with Nextel's objections to the methods for measuring an incumbent's interference contour proposed by PCIA and AMTA.^{7/} The interpretation set forth by PCIA and AMTA is consistent with the method established by the Commission to measure interference contours as between short-spaced incumbents.^{8/} PCIA accurately observes that all

^{6/} Id.

^{7/} Opposition of Nextel at 5; Petition of PCIA at 20; Petition of AMTA at 6.

^{8/} See 47 C.F.R. § 90.621(b). See also Petition of AMTA at 6-7; Petition of PCIA at 20-22.

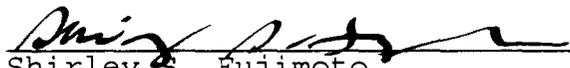
incumbents will effectively be short-spaced once geographic licensing is in place, therefore the FCC should apply the same standard in this instance.^{9/} Entergy and Delmarva support this position.

Conclusion

WHEREFORE, THE PREMISES CONSIDERED, Entergy Services, Inc., and Delmarva Power urge the Commission to deny Nextel's Opposition to Petitions for Reconsideration to the extent it is inconsistent with the views expressed herein.

Respectfully submitted,

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Dated: October 20, 1997

^{9/} Petition of PCIA at 21-22.

CERTIFICATE OF SERVICE

I, hereby, certify that on this 20th day of October, 1997, I caused true and correct copies of the REPLY COMMENTS OF ENTERGY SERVICES, INC., ET AL. to be served via hand delivery on:

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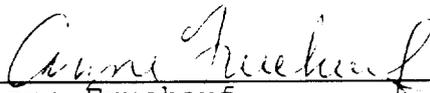
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