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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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 Section 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 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

REPLY COMMENTS

The Personal Communications Industry Association ("PCIA"), through its counsel and pursuant to Section 1.106(h) of the Commission's Rules, 47 C.F.R. §1.106(h), hereby respectfully submits its Reply Comments in response to the Opposition of Nextel Communications, Inc. ("Nextel") to Petitions for Reconsideration of the Federal Communications Commission's ("FCC") Second Report and Order ("Second Report and Order") in the above-captioned proceeding.

Initially, PCIA is pleased that Nextel has supported PCIA's proposal to limit eligibility in the "lower 80" and General Category 800 MHz auction to incumbent licensees. PCIA agrees with Nextel that PCIA's proposal would "... ensure that incumbents have an opportunity to bid on licenses that could affect their existing operations... [and] decrease the potential for speculation and manipulation

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of the auction process...." However, as detailed below, PCIA disagrees with Nextel's evaluation of PCIA's other disagreements with the Commission's implementation of new 800 MHz rules.

I. Incumbent Modifications And Protection Criteria

On page 5 of its Opposition, Nextel opposes PCIA's "proposal" that the Commission

> base the contour on the incumbent's maximum power and actual HAAT rather than the incumbent's actual power and originally licensed HAAT. Likewise, Nextel opposes AMTA's proposal that the Lower 230 channel incumbents be entitled to protection based on the station's maximum power and licensed height.

It is Nextel's claim that PCIA and AMTA's "proposals" are "unjustified departures from long-standing Commission policy that would improperly deny EA licensees access to spectrum." However, Nextel misreads both PCIA and AMTA's Petitions as well as applicable Commission Rules.

This portion of PCIA's Petition for Reconsideration was not a "proposal", rather it was PCIA's request that the Commission clarify what is already in its Rules. First, with regard to Nextel's concern that EA licensees will somehow be "improperly denied access to spectrum", PCIA wishes to point out that Section 90.621(b)(4) already provides that incumbent licensees are protected from interference from other licensees based upon the incumbent licensee's maximum power and directional HAAT.[1] Thus, there is no diminution of an EA licensee's spectrum as the result of PCIA's requested clarification, nor does Nextel provide any citations showing any "long-standing Commission policy" to the contrary.[2]

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[1]In this regard, AMTA misstates Section 90.693(c). This new section does not define incumbent protection, as stated by AMTA, but only defines incumbent modifications, which is the subject of PCIA's clarification request.

[2]In fact, Nextel participated extensively in the industry task force convened by PCIA (then the National Association of Business and Educational Radio) which developed the short-spacing criteria now encompassed in Section 90.621, which has always been based upon protecting the incumbent licensee for maximum power.

PCIA's clarification request relates solely to the methodology for determining the area in which an incumbent licensee can modify it authorization. This calculation for the original contour is already based upon maximum power if the incumbent licensee has been short-spaced, pursuant to Section 90.621(b)(6). PCIA only seeks clarification that this same criteria applies where the there is no incumbent licensee who has short-spaced the incumbent system.[3] This approach makes sense, because modifications on the channel which has not been short-spaced presents less of an interference danger than modifications on the channel that has been short-spaced.

II. Clarification Of Retuning Rules

It is Nextel's opinion that PCIA's request that the Commission clarify certain retuning rules is "... redundant, unnecessary and not the subject of this proceeding." PCIA is confused by this claim. Paragraphs 85-130 of the Second Report and Order quite clearly discuss relocation of Upper 200 channel licensees. This section, titled "Relocation of Incumbents from the Upper 200 Channels" discusses: Comparable Facilities; the Definition of a System; Capacity; Quality of Service; Operating Costs; Sharing Relocation Costs on a *Pro Rata* Basis; Triggering a Reimbursement Right; Compensable Costs; Payment Issues; Resolution of Disputes that Arise During Relocation; and Administration of a Cost Sharing Plan. Thus, PCIA's discussion of these issues in its Petition for Reconsideration is perfectly appropriate.

Nextel, however, fails to discuss the merits of PCIA's clarification request. Nextel attempts to utilize its Reply Comments to argue that the five year term for repayment of recurring expenses (which PCIA believes should be longer) should be reduced to three years. Nextel also argues that

[3]In PCIA's view, as soon as the Commission issues the EA licenses, each incumbent system would presumptively be short-spaced, and would therefore qualify for Section 90.621(b)(6) treatment.

there is "no support" for PCIA's "proposal" that EA licensees be required to make progress payments to incumbent licensees, and instead the issue should be left to "good faith negotiations". PCIA explained in detail the need for this clarification (which was again not a "proposal"). Nextel does not provide any evidence that PCIA's concerns are not warranted or inaccurate. In addition, PCIA's clarification request relates to the mandatory relocation period, not the voluntary period. During the voluntary period, parties might be expected to negotiate the issues discussed by PCIA in good faith, as Nextel suggests. However, in the mandatory period, any negotiations by the EA licensee would be strictly by the terms of the rules established by the Commission. PCIA believes, therefore, that the rules should be as clear as possible.[4]

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[4]PCIA once again points out its agreement with the views of Small Business in Telecommunications, Genesee Business Radio, Automobile Club of Southern California and others with regard to the permissibility and rationality of an auction for these frequencies. However, since the Commission has repeatedly rebuked the efforts of PCIA and others to establish alternative licensing methodologies, PCIA's MWCA Council has decided that the best use of its efforts is to help construct an auction that is most beneficial to incumbent licensees.

III. CONCLUSION

For the foregoing reasons, PCIA urges the Commission to modify its proposed rules for 800 MHz licensing consistent with the views expressed herein.

Respectfully submitted,

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Date: October 22, 1997

CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law office of Meyer, Faller, Weisman and Rosenberg, P.C. hereby certify that I have on this 22nd day of October, 1997 sent via first class mail, postage prepaid, a copy of the foregoing Reply Comments to the following:

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