

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

RECEIVED

OCT 20 1997

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)	
)	
Amendment of Part 90 of the Commission's)	PR Docket No. 93-144
Rules to Facilitate Future Development of)	RM-8117, RM-8030,
SMR Systems in the 800 MHz Frequency Band)	RM-8029
)	
Implementation of Sections 3(n) and 322 of)	GN Docket No. 93-252
the Communications Act -- Regulatory)	
Treatment of Mobile Services)	
)	
Implementation of Section 309(j) of the)	PP Docket No. 93-253
Communications Act - Competitive Bidding)	
)	

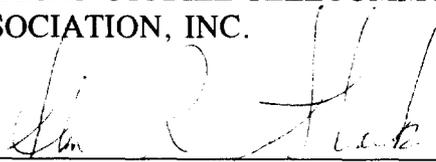
To: The Commission

**REPLY TO OPPOSITION TO PETITION FOR RECONSIDERATION OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.
ON THE SECOND REPORT AND ORDER**

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS
ASSOCIATION, INC.

By:


 Alan R. Shark, President
 1150 18th Street, N.W., Suite 250
 Washington, D.C. 20036

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

October 20, 1997

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.429(g) of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply to certain matters raised by Nextel Communications, Inc. ("Nextel") in its Opposition to AMTA's Petition for Reconsideration in the above-entitled proceeding.¹ As it did in that Petition for Reconsideration, the Association again urges the Commission to resolve the outstanding issues relating to the regulatory framework of the "lower 80" Specialized Mobile Radio ("SMR") channels and the 150 General Category frequencies expeditiously so that licensing can begin again in these bands.

I. THE FCC'S EXPERIENCE TO DATE DOES NOT SUPPORT THE CONCLUSION THAT INSTALLMENT PAYMENT PROVISIONS ARE UNWORKABLE.

1. AMTA's Petition urged the Commission to retain installment payment provisions for the lower channel auctions. It advised the FCC that the Association's small business members uniformly identified installment payments as the most critical factor in permitting them to compete successfully in auctions, and enumerated the practical impediments encountered by small businesses in securing financing for spectrum acquisition purposes. AMTA also reminded the FCC that, contrary to the agency's experience with a small number of PCS C Block licensees, there had been few, if any, problems in administering the 900 MHz SMR installment payment program, a program that resulted in the acquisition of 900 MHz geographic authorizations by a number of qualified, small business licensees. In fact, those 900 MHz licensees contributed significantly to the FCC's ability to claim successful small business participation in its auction process.

¹ Second Report and Order, PR Docket No. 93-144. FCC 97-223 (rel. July 10, 1997) ("Order").

2. Thus, contrary to Nextel's assertion that AMTA has ignored the lessons learned from previous auctions regarding the efficacy of installment payments, it is Nextel that has mischaracterized their impact on the auction process. There simply is no evidence to support Nextel's claim that the availability of installment payments "create[s] an incentive to bid irresponsibly, encourage[s] speculation or result[s] in spectrum warehousing" as a general matter.² Those problems did not occur in the 900 MHz SMR auction, and are not likely to arise in the 800 MHz context. Rather, retention of the installment payment program would be the single most useful action the FCC could take to enhance the ability of small businesses, in particular small business incumbents on those frequencies, to acquire the geographic right to frequencies on which they operate already. AMTA urges the Commission to fulfill its statutory obligation to promote meaningful small business participation in its auction process by including provisions for installment payments in the 800 MHz lower channel auctions.

II. AN EA LICENSEE'S RETUNING OBLIGATIONS MUST INCLUDE PROGRESS PAYMENTS.

3. In response to a request for clarification in a Petition for Reconsideration in this proceeding, Nextel's Opposition states that there is no support for the proposition that geographic-based Economic Area ("EA") licensees be required to make progress payments to retuned incumbents. Instead, Nextel claims that the issue should be left to be negotiated by the parties.³

4. AMTA strongly disagrees to the extent Nextel's statement reflects that company's

² Nextel Opposition at p. 6.

³ Nextel Opposition at n. 25.

position regarding an EA licensee's retuning payment obligations even if no agreement is reached during the one-year voluntary negotiation period. Indeed, the Association finds that position entirely inconsistent with Nextel's previous assertions that retuning can be accomplished easily and essentially transparently to both the retuned incumbent and customers of the system.

5. AMTA agrees, of course, that no specific retuning obligations should be imposed on EA licensees during the initial one-year voluntary negotiation period. During that year, both parties are free to come to any mutually agreeable arrangement on the economic, technical and other aspects of their negotiations. However, once incumbents enter the second-year mandatory negotiation period or even the subsequent involuntary retuning period, the rules must provide for periodic retuning payments by the EA licensee if they are intended to maintain some measure of balance in the rights and responsibilities of the parties.

6. Under Nextel's approach, an EA licensee could effectively "starve" an incumbent into agreeing to an otherwise unacceptable retuning proposal. The costs of retuning a system may be substantial, particularly if, as the FCC has suggested already, a "seamless" transition can be effected only by building a new, essentially duplicative system that will operate simultaneously with the system being retuned to avoid service disruption until the migration process is completed.⁴ The cost of building and operating two systems could be prohibitive, particularly in conjunction with the other expenses involved in retuning an entire customer base. In AMTA's opinion, the EA licensee should be responsible for paying all such costs as they become due, and perhaps even for establishing an escrow account against which the incumbent

⁴ First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, 11 FCC Rcd 1463 at ¶ 79 (1995).

can draw to pay those obligations. The incumbent certainly should not be expected to spend his own money to retune his own system for the benefit of an EA licensee, with only a promise for repayment at some future date.

7. AMTA believes that Nextel's interpretation of an EA licensee's obligations cannot be reconciled with the FCC's admonition that the retuning process be essentially seamless. However, because there apparently is disagreement on that point, AMTA urges the FCC to clarify this aspect of its rules in unambiguous terms.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, McGowan, Nace & Gutierrez, hereby certify that I have, on this October 20, 1997, caused to be hand carried a copy of the foregoing Reply to Opposition to Petition for Reconsideration to the following:

Chairman Reed E. Hundt
Federal Communications Commission
1919 M Street, N.W., Room 814
Washington, D.C. 20554

Commissioner James H. Quello
Federal Communications Commission
1919 M Street, N.W., Room 802
Washington, D.C. 20554

Commissioner Rachelle B. Chong
Federal Communications Commission
1919 M Street, N.W., Room 844
Washington, D.C. 20554

Commissioner Susan Ness
Federal Communications Commission
1919 M Street, N.W., Room 832
Washington, D.C. 20554

Dan Phythyon, Acting Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Gerald Vaughan, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Rosalind K. Allen, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Karen Gulick, Assistant Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Jeanine Polticonieri, Associate Bureau Chief
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5002
Washington, D.C. 20554

Kathleen O'Brien Ham, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5322
Washington, D.C. 20554

Alice Elder, Attorney
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Room 5322
Washington, D.C. 20554

David Furth, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W., 7th Floor, Room 24
Washington, D.C. 20554

Sandra Danner, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2025 M Street, N.W., Rm. 7130
Washington, D.C. 20554

Ramona Melson, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W.
7th Floor, Rm. 101A
Washington, D.C. 20554

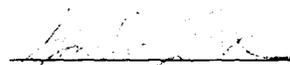
Shaun A. Maher, Attorney
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
2100 M Street, N.W.
7th Floor, Rm. 93
Washington, D.C. 20554

*Terry L. Fishel, Chief
Land Mobile Branch
Division of Operations
Wireless Telecommunications Bureau
Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17325

** Robert S. Foosaner
Lawrence R. Krevor
Laura L. Holloway
Nextel Communications, Inc.
1450 G Street, N.W.
Suite 425
Washington, D.C. 20005

International Transcription Services, Inc.
2100 M Street, N.W., Ste. 140
Washington, D.C. 20037

*Via Hand Delivery October 21, 1997
**Via First Class Mail



Linda J. Evans