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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

APR 10 2000

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 Future)	RM-8117, RM-8030,
Development of SMR Systems in the)	RM-8029
800 MHz Frequency Band)	
)	
Implementation of Section 3(n) and)	GN Docket No. 93-252
322 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

OPPOSITION OF NEXTEL COMMUNICATIONS, INC.
TO PETITION FOR RECONSIDERATION OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

Robert S. Foosner
Senior Vice President
and Chief Regulatory Officer
Lawrence R. Krevor
Senior Director - Government Affairs
James B. Goldstein
Attorney - Government Affairs

2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-4141

April 10, 2000

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OPPOSITION OF NEXTEL COMMUNICATIONS, INC.
TO PETITION FOR RECONSIDERATION OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Nextel Communications, Inc. ("Nextel") hereby respectfully submits this Opposition to the Petition for Reconsideration ("Petition") filed by the American Mobile Telecommunications Association, Inc. ("AMTA") on January 19, 2000 in the above-captioned proceeding.¹ AMTA requests reconsideration of one aspect of the Federal Communications Commission's (the "Commission") Memorandum Opinion and Order on Reconsideration

¹ On March 16, 2000, the Commission announced via Public Notice Report No. 2395 that parties interested in filing comments regarding the AMTA petition must be filed within 15 days of the date of public notice in the Federal Register. Notice was published in the Federal Register March 24, 2000. Therefore, this Opposition is hereby timely filed.

("MO&O"); specifically, the Commission's decision to not require "progress payments" to effectuate relocation of 800 MHz upper-200 channel incumbent licensees.² As demonstrated below, the Commission properly determined that progress payments should not be mandatory, but can be part of the negotiating process.

I. Background

Nextel was the predominant winner of Economic Area ("EA") licenses in the 800 MHz upper-200 SMR channel auction.³ Since the beginning of the voluntary relocation period in December 1998, Nextel has initiated relocation discussions with over 90% of the nation's upper-200 channel incumbents and has already reached agreements to acquire or relocate over 50% of the total number of incumbent channels that Nextel, as the EA licensee, may relocate to achieve contiguous spectrum. Nextel's experience in negotiating relocation agreements with upper-200 channel incumbents gives it extensive background from which to comment on whether changing the existing rules is warranted. As discussed below, the current rules require no modification.

² 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, 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(f) of the Communications Act – Competitive Bidding, PP Docket No. 93-253, Memorandum Opinion and Order on Reconsideration, 64 FR 71042, 14 FCC Rcd 17556 (October 8, 1999).

³ Nextel was initially awarded 475 EA licenses.

II. THE COMMISSION SHOULD CONTINUE TO ALLOW THE RELOCATION PROCESS TO PROCEED WITHOUT FURTHER REGULATION

The Commission's upper-200 channel incumbent relocation rules were designed to achieve an appropriate balance between the needs of EA licensees and incumbents.⁴ Intervention into the negotiation process, at this late stage⁵, will only serve to hinder negotiations and delay relocations, which are proceeding, according to both AMTA's and PCIA's own admissions, without "significant" or "specific problems."⁶ Therefore, the Commission should uphold its previous determination that an appropriate balance of EA licensee and incumbent needs will be maintained by not requiring payment of relocation costs until an incumbent has been "fully relocated and the frequencies are free and clear."⁷

In the MO&O, the Commission reasoned that the relocation process would function best by not requiring EA licensees to pay for relocation costs as they are incurred, recognizing that an EA licensee -- by dint of having outbid competing bidders for the license -- has sufficient incentive to relocate

⁴ MO&O at para. 58.

⁵ The one-year voluntary negotiation period is over and only eight months remain in the involuntary negotiation period.

⁶ AMTA petition at page 2. PCIA Comments at page 2. Because AMTA can cite to no actual or specific problems in the relocation process, AMTA's petition should be denied for failure to raise any new facts requiring Commission review.

⁷ MO&O at para. 58.

incumbent licensees.⁸ Nextel has demonstrated the accuracy of this conclusion by negotiating and completing hundreds of transactions with incumbent licensees across the entire country.⁹

The Commission also recognized that EA licensees and incumbents may choose to change the timing of reimbursing relocation costs.¹⁰ However, this is an *option* for the parties negotiating the transaction and should not be mandated by the Commission. Nextel, for example, often agrees to compensate an incumbent licensee with a large percentage of the anticipated relocation costs upon reaching an agreement and initiating relocation, with the remainder of the costs paid either in progress payments or upon completion of the transaction.¹¹ The best approach for providing compensation for the incumbent's eligible expenses often depends, however,

⁸ MO&O at para. 58.

⁹ Contrary to AMTA's assertion at page six, Nextel has negotiated transactions with large and small incumbent licensees in all parts of the country – both rural and urban.

¹⁰ MO&O at para. 58.

¹¹ Contrary to PCIA's assertion at page three, an EA licensee has an incentive to offer progress payments if it believes that is the best way to achieve the ultimate goal of relocation. Nextel recognizes that it would be burdensome for smaller incumbents to shoulder all relocation costs until completion. Accordingly, permitting the parties to negotiate upfront or progress payments facilitates relocation while at the same time maintaining the balance the Commission initially found would assure all parties move responsively to complete the relocation process. Accordingly, progress payments should remain a matter of negotiation among the parties, not an inflexible Commission mandate.

on the interplay of all of the other contract provisions and therefore is best determined as part of the overall relocation transaction. Thus, the timing of the payment of reimbursement expenses should continue to be negotiable among the parties who are in the best position to select the payment schedule and other terms that meet the unique requirements of the individual transaction. An EA licensee's right condition *full* payment on the completion and closing of the transaction preserves the EA licensee's expectancy to relocate incumbents and create contiguous spectrum, while providing an opportunity for relocatees to receive sufficient reimbursement/compensation to cover incurred costs.¹²

Both AMTA and PCIA request codification of something that is best left to the negotiation process. Neither cites even one instance of an EA licensee that did not agree to some form of progress payments or of an incumbent who has been harmed by the current rule structure. Instead, both offer only hypotheticals and speculation. In summary, the AMTA Petition is a solution in search of a problem.

III. CONCLUSION

Both AMTA and PCIA admit the relocation process is working smoothly to date; accordingly, the Commission should affirm the MO&O.

¹² EA licensees have complete access to the "cleared" channels only upon closing the relocation transaction. The Commission's current rules regarding reimbursement of expenses creates incentives for incumbent licensees to close relocation transactions in a timely manner and will help achieve the Commission's goals of facilitating relocations.

Neither AMTA nor PCIA have demonstrated why a change in the present rule will encourage relocations, speed the relocation process or otherwise serve the public interest. On the contrary, the proposed change is likely to hinder relocation by changing the balance of incentives carefully crafted by the Commission to facilitate upper 200 SMR channel incumbent relocation. Therefore, the Commission should deny AMTA's petition and allow the relocation process to continue under the present rules.

Respectfully submitted,

NEXTEL COMMUNICATIONS, INC.

A handwritten signature in black ink, appearing to read "Robert S. Foosaner", written over a horizontal line.

Robert S. Foosaner
Senior Vice President
and Chief Regulatory Officer

Lawrence R. Krevor
Senior Director – Government Affairs

James B. Goldstein
Regulatory Attorney – Government Affairs

2001 Edmund Halley Drive
Reston, VA 20191
(703) 433-4141

April 10, 2000

CERTIFICATE OF SERVICE

I, James B. Goldstein, hereby certify that on this April 10, 2000, caused a copy of the attached Opposition of Nextel Communications, Inc. to be served by hand delivery to the following:

Chairman William E. Kennard
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Susan Ness
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Harold Furchtgott-Roth
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Michael Powell
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Commissioner Gloria Tristani
Federal Communications Commission
445 12th Street, SW
Washington, DC 20554

Thomas Sugrue, Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C207
Washington, DC 20554

James D. Schlichting, Deputy Chief
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 3-C207
Washington, DC 20554

Amy Zoslov, Chief
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A624
Washington, DC 20554

Mark Bollinger, Deputy Chief (Legal)
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A624
Washington, DC 20554

Louis Sigalos, Deputy Chief (Operations)
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A624
Washington, DC 20554

Gary D. Michaels
Auctions and Industry Analysis Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A624
Washington, DC 20554

Steve Weingarten, Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-C207
Washington, DC 20554

Jeff Steinberg, Deputy Chief
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-C207
Washington, DC 20554

Paul D'Ari, Chief
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A207
Washington, DC 20554

Donald Johnson
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A207
Washington, DC 20554

Scott Mackoul
Policy and Rules Branch
Commercial Wireless Division
Wireless Telecommunications Bureau
Federal Communications Commission
445 12th Street, SW
Room 4-A207
Washington, DC 20554

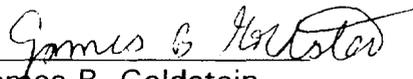
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Federal Communications Commission
445 12th Street, SW
Suite CY-A257
Washington, DC 20554

International Transcription Services, Inc.*
1231 20th Street, NW
Washington, DC 20037

Elizabeth R. Sachs, Esquire*
Lukas, Nace, Gutierrez & Sachs
1111 19th Street, NW, Suite 1200
Washington, DC 20036
Counsel for AMTA

Alan S. Tiles, Esquire*
Shulman, Rogers, Gandal, Pordy & Ecker
11921 Rockville Pike, Third Floor
Rockville, MD 20852-2743
Counsel for PCIA

Jere W. Glover*
Chief Counsel for Advocacy
Small Business Administration
409 3rd Street, SW
Suite 7800
Washington, DC 20416


James B. Goldstein

* Via First Class Mail