

Magalie Roman Salas, Secretary  
Federal Communications Commission  
445 Twelfth Street, S.W., TW-A325  
Washington, D.C. 20554

Attn: Policy and Rules Branch, Commercial Wireless Division, Wireless  
Telecommunications Bureau

Re: Nextel Request for Declaratory Ruling in PR Docket No. 93-144

Dear Ms. Salas:

I am the licensee of an 800 MHz SMR station in California. As an incumbent, I have been approached by Nextel concerning the relocation of my facilities and in fact am currently negotiating with Nextel for the relocation or sale of my facilities.

I am writing in response to Nextel's request that the FCC issue a ruling that it negotiates in "good faith" if incumbents such as myself do not provide the technical information that Nextel believes it needs. Further, Nextel suggests that incumbents who do not provide such technical information should have their licenses revoked.

I submit that the obligation to negotiate in good faith should apply equally to both incumbents and Nextel, and it would be unfair to apply a particular good faith standard unilaterally upon incumbents. I have been negotiating in good faith and have no reason to believe at this point that Nextel is not doing the same. Therefore, the FCC need not adopt any particular rule that dictates when an incumbent acts in good faith or not. Because the negotiation process is necessarily complex and fact-specific, the Commission should instead address any alleged failure to negotiate in good faith on a case-by-case basis.

In addition, under no circumstances should an incumbent's license be revoked just because the licensee has not provided Nextel with the information it believes is necessary. As an initial matter, license revocation is the most drastic measure the FCC has at its disposal. There is no clear standard as to the type of information or level of cooperation that would be sufficient. Furthermore, the prospect of license revocation in such circumstances would create a bargaining "chip" which would unfairly strengthen Nextel's bargaining position. The FCC should instead remain the neutral judge of what, on a fact-specific basis, constitutes bad faith.

A ruling on this matter impacts all incumbents subject to the required transfer of spectrum to Nextel. This request comes within just a few days of the end of the mandated two year negotiation cycle. Notwithstanding the 90 day delay of the onset of the involuntary relocation period, a ruling changing the standards so close to the deadline date will negatively impact all the incumbents. The commission granted the 90 day delay well after Nextel requested this declaratory ruling. On the anticipated time table it would have been virtually impossible for all the incumbents to receive the information contained in any ruling, review it with council, and act appropriately before the deadline. Even with the additional 90 days, incumbents will be significantly disadvantaged if the commission grants this request so late in the cycle.

Therefore, I submit that there is no need for the FCC to issue the ruling

that Nextel seeks, and the FCC should address any problems in the negotiation process on a case-by-case basis.

Sincerely,

Robin Critchell