

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Amendment of Parts 1, 21, 73, 74 and 101 of the Commission's Rules to Facilitate the Provision of Fixed and Mobile Broadband Access, Educational and Other Advanced Services in the 2150-2162 and 2500-2690 MHz Bands	)	WT Docket No. 03-66 RM-10586
	)	
Part 1 of the Commission's Rules – Further Competitive Bidding Procedures	)	WT Docket No. 03-67
	)	
Amendment of Parts 21 and 74 to Enable Multipoint Distribution Service and the Instructional Television Fixed Service	)	MM Docket No. 97-217
Amendment of Parts 21 and 74 to Engage in Fixed Two-Way Transmissions	)	
	)	
Amendment of Parts 21 and 74 Of the Commission's Rules With Regard to Licensing in the Multipoint Distribution Service and in the Instructional Television Fixed Service for the Gulf of Mexico	)	WT Docket No. 02-68 RM-9718

**REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

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## SUMMARY

Nextel Communications, Inc. (“Nextel”) hereby replies to comments on the Third Notice of Proposed Rulemaking in the above-captioned proceeding (“*NPRM*”). Nextel is a proposed assignee for various Multipoint Distribution Service (“MDS”) licenses, and, if the Commission grants that application, it will have the most extensive spectrum holdings of any entity in the MDS/Instructional Television Fixed Service (“ITFS”) band. As a potential new licensee, Nextel brings a fresh perspective and “clean slate” to the issues facing MDS/ITFS operators, along with a proven track record of making the most of previously underutilized spectrum. Nextel agrees with the large number of commenters who have urged the Commission to take the steps necessary to revitalize the development of the long-underutilized MDS/ITFS band.

The proposal submitted last year by the Wireless Communications Association International, Inc. (“WCA”), the National ITFS Association (“NIA”), and the Catholic Television Network (“CTN”) (the “Coalition Proposal”) represents an important contribution to the development of the MDS/ITFS band. Most fundamentally, the Coalition recommends reconfiguring the MDS/ITFS band to separate high-site, high-power and low-site, lower-power systems. Nextel agrees that this is an essential step towards preventing interference between these two incompatible system designs and promoting the growth of advanced services in the band, goals that are nearly impossible to achieve under today’s band plan. Nextel is currently in the process of a detailed evaluation of the Coalition’s MDS/ITFS channelization plan, and looks forward to working with the Commission and other parties in this proceeding to develop a band plan

that maximizes spectrum efficiency and facilitates the delivery of new services to customers.

While the Coalition should be commended for providing such a comprehensive proposal for the industry's consideration, a few aspects of the Coalition Proposal do raise concerns. First, as the Commission notes in the *NPRM*, the Coalition supports a policy of technological flexibility that would permit MDS/ITFS licensees to deploy either Frequency Division Duplexing ("FDD") or Time Division Duplexing ("TDD") operations on neighboring channels in the reconfigured band. While Nextel generally agrees that spectrum licensees should have flexibility to deploy the technologies most responsive to market forces, the Commission in this proceeding must take account of the unique interfering characteristics of non-compatible systems. To this end, if the Commission permits the flexible provision of FDD and TDD services in the MDS/ITFS band, Nextel believes that the Commission's policy regarding interference in the band must be guided by the following fundamental principle: Operators utilizing non-compatible technologies must be required to protect each others' receivers, such that no degradation of customer service results from adjacent-channel or co-channel operations. Pursuant to this principle, the Commission must adopt appropriate technical rules and restrictions to minimize interference between non-compatible operations on neighboring systems, while bearing in mind that overly burdensome technical and operational constraints could greatly reduce spectrum efficiency and impede the development of advanced services in the MDS/ITFS band.

Nextel is also concerned with the absence of deadlines for the market-by-market transition process proposed by the Coalition. The Coalition's proposed transition

procedures provide useful measures that would make it difficult for licensees to extract “greenmail” from proponents or otherwise obstruct the band realignment process. Based on its extensive experience in other incumbent relocations, however, Nextel believes that the lack of a firm transition deadline could encourage some licensees to hold out unreasonably in an effort to obtain more favorable relocation terms. Rather than adopting the Coalition’s open-ended approach, the Commission should require that, in each market where a “proponent” triggers the realignment transition, the transition process be completed within 12 months of that initiation date.

On a number of other key MDS/ITFS issues, Nextel’s views are consistent with the Coalition Proposal and numerous comments. Specifically, to further the development of this band, the Commission should (i) establish a nationwide band plan for MDS/ITFS, (ii) adopt a “substantial service” performance requirement for this band, (iii) reject the use of two-sided auctions, and (iv) clarify that there will be no unlicensed, underlay service in this spectrum.

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**REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.**

Nextel Communications, Inc. (“Nextel”) hereby replies to comments on the Third Notice of Proposed Rulemaking in the above-captioned proceeding (“*NPRM*”).<sup>1</sup> As a proposed assignee for various Multipoint Distribution Service (“MDS”) and Multichannel Multipoint Distribution Services (“MMDS”) licenses (collectively “MDS” licenses), Nextel agrees with the large number of commenters who have urged the

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<sup>1</sup> Third Report and Order, Third Notice of Proposed Rulemaking and Second Memorandum Opinion and Order, 18 FCC Rcd 2223 (2003) (“*NPRM*”).

Commission to take the steps necessary to revitalize the development of the long-underutilized MDS/Instructional Television Fixed Service (“ITFS”) band at 2500-2690 MHz. The proposal submitted last year by the Wireless Communications Association International, Inc. (“WCA”), the National ITFS Association (“NIA”), and the Catholic Television Network (“CTN”) (the “Coalition Proposal”) is an important first step in this effort.<sup>2</sup> Most fundamentally, the Coalition recommends reconfiguring the MDS/ITFS band to separate high-site, high-power and low-site, lower-power systems, de-interleave the channel groups, and establish geographic service area licensing. Nextel agrees that these are essential steps towards preventing interference between these two incompatible system designs and promoting the development of advanced services in the band, goals that are nearly impossible to achieve under today’s band plan. Nextel is currently in the process of a detailed evaluation of the Coalition’s MDS/ITFS channelization plan, and looks forward to working with the Commission and other parties in this proceeding to develop a band plan that maximizes spectrum efficiency and facilitates the delivery of new services to customers.

The Coalition should be commended for providing such a comprehensive and workable proposal for the industry’s consideration. At the same time, however, a few aspects of the Coalition Proposal do raise concerns. First, as the Commission notes in the *NPRM*, the Coalition supports a policy of technological flexibility that would permit MDS/ITFS licensees to deploy either Frequency Division Duplexing (“FDD”) or Time Division Duplexing (“TDD”) operations on neighboring channels in the reconfigured

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<sup>2</sup> *A Proposal for Revising the MDS and ITFS Regulatory Regime* (attached to Letter from WCA, NIA, and CTN to Thomas Sugrue, FCC (Oct. 7, 2002) (“Coalition Proposal”).

band. Nextel is concerned about the potential for interference between these two technologies when they operate in nearby spectrum. Accordingly, the Commission must adopt appropriate safeguards to protect against such interference, while at the same time permitting innovation and the deployment of technologies that will provide the most benefit to consumers.

Second, Nextel is also concerned with the absence of deadlines for the market-by-market transition process proposed by the Coalition. To ensure that these transitions are not open-ended, the Commission should require that in each market where a “proponent” triggers the realignment transition, the transition process be completed within 12 months of that initiation date.

On a number of other key MDS/ITFS issues, Nextel’s views are consistent with the Coalition Proposal and numerous comments. Specifically, to further the development of this band, the Commission should (i) establish a nationwide band plan for MDS/ITFS, (ii) adopt a “substantial service” performance requirement for this band, (iii) reject the use of two-sided auctions, and (iv) clarify that there will be no unlicensed, underlay service in this spectrum.

**I. NEXTEL HAS A SUBSTANTIAL INTEREST IN THIS PROCEEDING**

*Nextel’s current business.* Nextel is a wireless industry leader in developing and providing innovative mobile voice, data, short messaging and Internet access services over Commercial Mobile Radio Service (“CMRS”) facilities and other platforms. As one of at least six CMRS providers with a national footprint, Nextel currently provides

CMRS to over 11 million subscribers in approximately 400 cities in the United States.<sup>3</sup> Nextel has invested more than \$7 billion in a national digital network that provides a full range of wireless communications services in competition with other CMRS providers.

*Nextel's interest in MDS/ITFS.* On August 15, 2003, Nextel Spectrum Acquisition Corp., a Nextel subsidiary, and subsidiaries of WorldCom (debtor-in-possession) jointly filed an application requesting approval of the assignment of various MDS licenses from WorldCom to Nextel.<sup>4</sup> Upon grant of the pending assignment and closing of the transaction with WorldCom, Nextel will have the most extensive spectrum holdings of any entity in the MDS/ITFS band. While Nextel is still developing specific business and technical plans for the use of these MDS licenses, the proposed assignment would provide Nextel with additional spectrum capacity and flexibility to expand and enhance its digital wireless services and 3G mobile innovations.

*Nextel's development of underutilized spectrum.* Nextel has a proven track record of acquiring underutilized spectrum, investing significantly in innovative technology, and substantially increasing the number of subscribers supported on that spectrum. Nextel plans to apply this expertise to its proposed MDS spectrum, which, as the Commission

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<sup>3</sup> See *In the Matter of Implementation of Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services*, Eighth Report, 18 FCC Rcd 14783, ¶ 40 (2003).

<sup>4</sup> See *Commission Seeks Comment on Applications to Assign Wireless Licenses from WorldCom, Inc. (Debtor-in-Possession) to Nextel Spectrum Acquisition Corp.*, Public Notice, DA 03-2948, WT Docket No. 03-203 (rel. Sep. 25, 2003) (“Nextel-WorldCom Public Notice”). Nextel and WorldCom also concurrently filed applications requesting authority for the assignment of licenses in a number of other services, including the Wireless Communications Service (“WCS”), point-to-point microwave, 800 MHz land mobile radio service, and cable television relay service (“CARS”). Nextel-WorldCom Public Notice at 3-4.

and commenters agree, has been significantly underutilized for several decades. Nextel can also play a key role in facilitating the transition of incumbent licensees to the realigned band plan. Over the past five years, Nextel has relocated over one thousand incumbent licensees in the 800 MHz band, clearing Specialized Mobile Radio (“SMR”) channels for CMRS use in Economic Areas (“EAs”) throughout the country. Nextel intends to apply this experience to the planning and implementation of the Commission’s proposed realignment of the MDS/ITFS band.

## **II. THE COALITION SHOULD BE COMMENDED FOR ITS PROPOSAL TO RESTRUCTURE THE MDS/ITFS BAND**

Nextel commends the Coalition for its extensive efforts in its proposed realignment of the MDS/ITFS band. Nextel agrees with the vast majority of commenters that the Coalition Proposal is an important step towards revitalizing the long-underutilized 2500-2690 MHz band. Nextel also agrees that by restructuring this band along the lines of the Coalition Proposal, the Commission would substantially reduce the interference that results from the existing interleaved channel allocation scheme in this spectrum. As virtually all commenters point out, high-site, high-power systems and low-site, low-power operations are not compatible spectrum neighbors in this band.<sup>5</sup> Consistent with the findings of the Commission’s Spectrum Policy Task Force, the Commission should work to avoid the interleaving of incompatible systems wherever possible, whether in the MDS/ITFS band or in the interleaved 800 MHz Land Mobile Radio band, where Nextel, public safety, and private wireless licensees are currently

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<sup>5</sup> See, e.g., Motorola Comments at 11-12; BellSouth Comments at i; Ericsson Comments at 3-4; Lucent Comments at 2; EarthLink Comments at 6.

working to address significant interference issues.<sup>6</sup> The Coalition made this same point in its Proposal, stating that, “[a]s the Commission recognized in developing rules for the upper 700 MHz band and as is at the heart of the effort to reform the 800 MHz band, high-power, high-site systems are fundamentally incompatible with low-power cellular systems.”<sup>7</sup>

In the MDS/ITFS band, the Commission’s separation of cellularized systems and traditional high-power systems into distinct band segments would benefit both types of services. ITFS licensees in the Coalition’s proposed Middle Band Segment (“MBS”) would be able to maintain their valuable educational services on their legacy technologies to the extent they wish, while commercial licensees and other ITFS educators in the rest of the band would be positioned to develop and deploy a broad range of innovative and advanced mobile services in the Lower and Upper Band Segments. In combination with the de-interleaving of channel groups, the establishment of geographic licensing of ITFS “white space spectrum,” and appropriate technical rules, this realignment of the MDS/ITFS band would enhance spectrum and administrative efficiency, promote facilities-based competition, and increase the overall utility and commercial and educational value of the MDS/ITFS spectrum.

Indeed, MDS/ITFS band restructuring is supported by virtually all commenters in this proceeding, including large MDS operators, ITFS licensees and educational

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<sup>6</sup> See Report of the Spectrum Policy Task Force, ET Docket No. 02-135, at 22 (filed Nov. 15, 2002) (“*Spectrum Policy Task Force Report*”); see also *Improving Public Safety Communications in the 800 MHz Band, Consolidating the 900 MHz Industrial/Land Transportation and Business Pool Channels*, Notice of Proposed Rulemaking, 17 FCC Rcd 4873 (2002).

<sup>7</sup> Coalition Proposal at 10.

institutions, CMRS interests, major equipment manufacturers, and independent and rural MDS licensees. For example, the Cellular Telecommunications & Internet Association (“CTIA”) recognizes that “a reorganization of the 2500-2690 MHz bands is the best way to increase the overall utility and utilization of MDS and ITFS spectrum.”<sup>8</sup> Motorola points out that “the present configuration of the band, with interleaved ITFS and MDS bands, prevents efficient utilization of the spectrum,” and says that “[r]econfiguration of the 2500-2690 MHz spectrum is necessary to allow the development and deployment of new services, including mobile broadband services.”<sup>9</sup>

In this reply, Nextel does not address the specific elements of the Coalition’s proposed MDS/ITFS channelization scheme beyond its support for the general restructuring, as described above. As a pending applicant for MDS licenses in numerous top 100 markets, Nextel continues to evaluate the Coalition’s band plan. As this proceeding progresses, Nextel looks forward to working with the Commission and other interested parties to ensure that the band configuration adopted by the Commission permits licensees to maximize the use of their spectrum and to provide advanced wireless services to customers.

### **III. NEXTEL IS CONCERNED ABOUT SOME ASPECTS OF THE COALITION PROPOSAL**

As a potential new MDS licensee, Nextel brings a fresh perspective and “clean slate” to the issues facing MDS/ITFS operators, along with a proven track record of making the most of previously underutilized spectrum. While the Coalition should be

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<sup>8</sup> CTIA Comments at 3.

<sup>9</sup> Motorola Comments at 4.

commended for its comprehensive proposal, it reflects a compromise between different interests and therefore cannot be a perfect plan for all interested parties. As described below, Nextel is concerned that certain aspects of the proposed restructuring could prevent licensees from making the most efficient use of this long-underutilized band. Accordingly, the Commission should focus on the Coalition's proposals regarding FDD/TDD flexibility and the market-by-market transition process.

**A. The Commission Must Find the Appropriate Balance Between Technological Flexibility and the Need to Protect MDS/ITFS Licensees from Interference**

In the *NPRM*, the Commission asks for comment on the Coalition's Proposal to permit licensees to deploy either FDD or TDD systems in the reconfigured MDS/ITFS band.<sup>10</sup> Under the Coalition Proposal, post-realignment licensees could migrate from TDD to FDD and back again in response to technological innovations and market demand.<sup>11</sup> According to the Coalition, this flexibility would allow marketplace forces to determine the best mix of services and technologies to be deployed over time in the 2500-2690 MHz band.

As a general matter, Nextel agrees that spectrum licensees should have flexibility to deploy the technologies most responsive to market forces, since such flexibility can enhance spectrum efficiency. At the same time, in determining the extent of this flexibility in the MDS/ITFS band, Nextel agrees with CTIA, Motorola, and Nokia that the Commission must take account of the unique interfering characteristics of TDD

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<sup>10</sup> *NPRM* ¶ 142.

<sup>11</sup> Coalition Proposal at 15.

systems.<sup>12</sup> To this end, if the Commission permits the flexible provision of FDD and TDD services in the MDS/ITFS band, Nextel believes that the Commission's policy regarding interference in the band must be guided by the following fundamental principle: Operators utilizing non-compatible technologies must be required to protect each others' receivers, such that no degradation of customer service results from adjacent-channel or co-channel operations.

Pursuant to this principle, the Commission must adopt appropriate technical rules and restrictions to minimize interference between non-compatible operations. In developing these rules, the Commission should bear in mind that overly burdensome technical and operational constraints could greatly reduce spectrum efficiency and impede the development of advanced services in the MDS/ITFS band. Accordingly, the Commission must put in place easily defined and consistent technical safeguards, not a crazy-quilt patchwork of technical requirements that would complicate efforts to achieve seamless nationwide networks. The Commission should also avoid technical measures that might result in extensive guard bands; such guard bands would leave significant portions of MDS/ITFS spectrum unused, an outcome that flies in the face of the Commission's commitment to greater spectrum efficiency.<sup>13</sup>

As the *NPRM* notes, the Coalition has proposed technical rules to address non-compatible technology related interference concerns.<sup>14</sup> While these proposed restrictions

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<sup>12</sup> CTIA Comments at 4; Motorola Comments at 13; Comments of Nokia at 2-3.

<sup>13</sup> See, e.g., *Spectrum Policy Task Force Report* at 21-22.

<sup>14</sup> *NPRM* ¶¶ 133-141; Coalition Proposal at 26-30. Under the Coalition proposal, to avoid TDD-related interference, an adjacent-channel licensee could require, upon request, that an operator using a "non-synchronized" technology (such as TDD) comply with a

provide a means of avoiding mutual interference, Nextel continues to assess whether those rules would protect Nextel's planned operations in the reconfigured MDS/ITFS band, and whether and to what extent the Coalition's proposal might be enhanced.

After decades of underutilization, the Commission must not jeopardize the commercial development of the MDS/ITFS band by overemphasizing the need for technological flexibility. Rather, the Commission should take a hard look at these issues and take appropriate steps to prevent non-compatible operators from causing interference to neighboring systems, while avoiding placing burdensome technical restraints on those neighbors.

**B. The Commission Should Supplement the Coalition Proposal With a Twelve-Month Deadline for Market-by-Market Band Transitions, Measured from the Time a Proponent Initiates the Transition**

In the *NPRM*, the Commission describes the Coalition's Proposal for the MDS/ITFS transition process and asks for comment on that plan and any alternative transition policies.<sup>15</sup> The Coalition proposes a market-by-market transition process that would permit current licensees to continue their operations until another MDS/ITFS licensee or lessee in their market (the "proponent") triggers that transition. Following a Commission realignment order, a proponent could initiate the transition in its market at

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more stringent out-of-band emission limit, *i.e.*,  $67 + 10 \log_{10}$  dB. *NPRM* ¶ 141. With respect to co-channel licensees, the Coalition has recognized that the standard signal strength limit (at the service area boundary) of  $-47$  dBuV/m (applied to broadband PCS and various Part 27 services) would be insufficient to protect a co-channel licensee in geographically-adjacent areas from interference from a licensee using TDD (or another "non-synchronized" technology). To address this vulnerability, the Coalition has proposed a "safe harbor" mechanism that would enable co-channel licensees to secure greater interference protection at base station receive sites where they limit the height of their antenna facilities.

<sup>15</sup> *NPRM* ¶¶ 98-106.

any time by serving notice on affected licensees. Market-by-market transitions would have four basic phases: (i) identifying the MDS and ITFS licensees that would have to participate in a given transition; (ii) a 90-day period for planning the transition; (iii) physically shifting educational ITFS programming to MBS spectrum, including the provision of improved downconverters to eligible ITFS receive sites; and (iv) terminating operations in transitioned markets that do not comport with the new rules.<sup>16</sup>

Under the Coalition Proposal, proponents would be required to fund any conversion costs incurred by ITFS operators, while MDS licensees would have to pay their own conversion costs. Following the 90-day transition planning period, proponents would provide affected licensees with a specific transition proposal, which could include a number of “safe harbor” transition provisions that licensees would be obligated to accept. Finally, while the Coalition proposes that disagreements between proponents and licensees be subject to an arbitration process, it does not propose any fixed deadlines for these market-by-market transitions.

Nextel recognizes that the Coalition’s proposed safe harbor provisions and arbitration process would make it difficult for licensees to extract “greenmail” from proponents or otherwise obstruct the band realignment process. At the same time, like another commenter, Nextel is concerned with the absence of any deadline for these market-by-market transitions.<sup>17</sup> As described above, Nextel has extensive experience in band restructuring, having over the past five years relocated over one thousand incumbent licensees in the 800 MHz band to clear SMR channels for CMRS use in EAs

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<sup>16</sup> Coalition Proposal, Appendix B, at 4.

<sup>17</sup> See IPWireless Comments at 11-12.

throughout the country. Based on this experience, Nextel believes that the lack of a firm transition deadline could unduly delay the transition to the new band plan and possibly encourage some licensees to hold out unreasonably in an effort to obtain more favorable relocation terms.

Thus, rather than adopt the Coalition's open-ended approach, the Commission should require that, in each market where a proponent triggers the transition, the transition process be completed within 12 months of that initiation date. Following this deadline, licensees that have not yet relocated pursuant to a mechanism that falls within one of the safe harbors or an arbitration ruling would have to transition to the new band plan *at their own cost*. This sunset date would serve as an important safeguard against delay, providing sufficient incentive for all parties to complete the transition expeditiously. In light of the Coalition's view that market-by-market transitions would often be completed in little more than 90 days,<sup>18</sup> Nextel's proposed one-year deadline appears conservative and should become a consideration in only in a small portion of cases.

#### **IV. OTHER MDS/ITFS BAND REALIGNMENT AND SPECTRUM USE ISSUES**

On a number of other key MDS/ITFS issues, Nextel's views are entirely consistent with the Coalition Proposal and numerous comments. Specifically, to further the development of this band, the Commission should (i) establish a nationwide band plan for MDS/ITFS, (ii) adopt a "substantial service" performance requirement for this

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<sup>18</sup> Coalition Comments at 39.

band, (iii) reject the use of two-sided auctions, and (iv) clarify that there will be no unlicensed, underlay service in this spectrum.

**A. The Commission Should Establish a Nationally Uniform Band Plan for the 2500-2690 MHz Band**

In the *NPRM*, the Commission asks for comment on “whether every market requires a uniform band plan, or whether different band plans would be appropriate for different markets.”<sup>19</sup> In response, a number of commenters urge the Commission to exempt rural licensees from the requirements of an MDS/ITFS band realignment, or to take other steps to account for the different market and spectrum conditions in rural areas.<sup>20</sup> Under one suggested scenario, rural licensees would in effect have the right to “opt out” of a national band plan, a policy that would grandfather a licensee’s operations either indefinitely or until some extended deadline.<sup>21</sup> Alternatively, some parties assert that a non-uniform band plan for the 2500-2690 MHz band could be tailored to rural needs on a market-by-market basis.<sup>22</sup> Finally, two educational commenters suggest that the size of the high-power MBS band could vary from market to market, depending on the extent of local demand for high-power, educational services.<sup>23</sup>

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<sup>19</sup> *NPRM* ¶ 54.

<sup>20</sup> See Adams Telcom Comments at 3-7; Blooston, Mordkofsky, Dickens, Duffy & Prendergast Comments at 8-9 (“Blooston Comments”); Teton Wireless Television Comments at 7-12 (“Teton Comments”); NTCA Comments at 3-4.

<sup>21</sup> Teton Comments at 8-9; Adams Telcom Comments at 3-4.

<sup>22</sup> Blooston Comments at 8.

<sup>23</sup> Stanford/Northeastern Comments at 9; Illinois Institute of Technology Comments at 18.

The Commission should reject calls for non-uniform band plans customized to different regions or markets, and should instead establish a nationally uniform MDS/ITFS band plan. As the Coalition pointed out in its proposal, a nationwide band plan at 2500-2690 MHz would have numerous benefits that would not be outweighed by rural or other regional needs.<sup>24</sup> First, this approach would yield economies of scale in equipment design and manufacture. The same filtering could be used in all cellularized consumer equipment in the band, enhancing the competitiveness of these devices in terms of size and cost. In the MBS, high-power licensees across the country would be able to use the same downconverters, a factor that would reduce the cost of this equipment. Second, a uniform band plan would enhance interoperability within the band. Mobile handsets could likely roam and receive high-quality service in any market in the U.S. If the band plan were non-uniform, however, equipment that performed well in one market might not be equipped with the filtering needed to perform well in another market. In addition, non-uniform band plans might be incompatible with the architectural needs of FDD systems, which require a nationwide band plan so that the duplex filter in consumer devices can be standardized.

**B. The Commission Should Move to a “Substantial Service” Performance Requirement for Geographically-Licensed MDS and ITFS Licensees**

In the *NPRM*, the Commission requests comment on whether it should maintain the existing build-out requirements for MDS Basic Trading Area (“BTA”) licensees or instead replace the current requirement with the “substantial service” performance

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<sup>24</sup> See Coalition Proposal at 17-18; Coalition Comments at 18-21.

standard now applicable to Part 27 flexible use services.<sup>25</sup> Nextel agrees with the Coalition and numerous other commenters that, in conjunction with band realignment, the Commission should move to a “substantial service” requirement for geographically-licensed MDS and ITFS operators.<sup>26</sup> Under this standard, an MDS/ITFS licensee would be required to demonstrate at license renewal that it has provided substantial service to its license area at some time during its license term. If it met this requirement, it would be entitled to a renewal expectancy.

By adopting a substantial service requirement, the Commission would provide MDS/ITFS licensees with the flexibility to deploy their new services in a manner that is responsive to marketplace demand, rather than to arbitrary regulatory deadlines.<sup>27</sup> As both the Coalition and Sprint note, the Commission has highlighted this flexibility in applying the substantial service standard to other wireless services, stating that “[c]ompared to a construction standard, a substantial service requirement will provide

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<sup>25</sup> *NPRM* ¶ 191.

<sup>26</sup> Coalition Comments at 83-95; BellSouth Comments at 31-33; Sprint Comments at 15-16; Ad Hoc MMDS Coalition Comments at 22; Blooston Comments at 4-5. Nextel also agrees with the Coalition that the Commission’s “substantial service” evaluation for an MDS BTA licensee should encompass not only the service areas of site-by-site/Protected Service Area (“PSA”) MDS facilities in that market that are directly owned by that BTA licensee, but also the service areas of PSA facilities owned by any entity controlled by the same ultimate parent company as the BTA licensee. *See NPRM* ¶ 197.

<sup>27</sup> If the Commission rejects the substantial service standard and instead applies the existing five-year build-out rules to geographically-licensed MDS/ITFS licensees, it will have to decide how and when these currently-suspended construction requirements should be re-effectuated. In that scenario, Nextel believes that all licensees should be provided a new five-year period in which to construct facilities that are consistent with the realigned band and revised technical rules. This five-year build-out period should become effective in a given market at the earlier of the two following dates: (i) two years after the Commission’s Report and Order adopting the restructured band plan, or (ii) the date the band plan transition has been completed in that market.

licensees greater flexibility to determine how best to implement their business plans based on criteria demonstrating actual service to end users, rather than on a showing of whether a licensee passes a certain proportion of the relevant population.”<sup>28</sup> In addition, by adopting a substantial service standard for MDS/ITFS, as it has for other wireless services, the Commission would further its goal of regulatory parity between like services.

The Commission in the *NPRM* also asks for comment on whether it should retain those rules that subject MDS/ITFS licenses to cancellation if spectrum goes unused for temporary periods, or if it should instead liberalize these “discontinuance” rules in light of the likely band realignment.<sup>29</sup> Nextel agrees with the Coalition that these discontinuance rules should be eliminated.<sup>30</sup> At the very least, any surviving discontinuance rules should be suspended during the pendency of this proceeding and should not apply during the transition.

**C. The Commission Should Not Use the “Two-Sided” Auction Mechanism as a Means of Transitioning to the Realigned Band**

In the *NPRM*, the Commission suggests that “two-sided” auctions could be an efficient mechanism for restructuring the MDS/ITFS band, and asks for comment on this

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<sup>28</sup> See Coalition Comments at 87; Sprint Comments at 7; *Amendments to Parts 1, 2, 27, and 90 of the Commission’s Rules to License Services in the 216-220 MHz, 1390-1395 MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz, and 2385-2390 MHz Government Transfer Bands*, Report and Order, 17 FCC Rcd 9980, 10010 (2002).

<sup>29</sup> *NPRM* ¶ 186-188.

<sup>30</sup> Coalition Comments at 92-93.

mechanism.<sup>31</sup> The Commission indicates that two-sided auctions could reduce the transaction costs associated with the band transition, “enabl[ing] interested parties to restructure the band rapidly by helping them learn the cost of combining and obtaining encumbered and unencumbered spectrum for new uses, without engaging in costly and time consuming bilateral and multi-lateral negotiations.”<sup>32</sup>

Nextel agrees with the Coalition and other commenters that two-sided auctions are not preferable to the private market as a means of facilitating productive channel aggregation by MDS/ITFS licensees.<sup>33</sup> The Commission should not overstate the transaction costs associated with the unfettered operation of the private marketplace in this band; the MDS/ITFS band has already experienced significant consolidation over the past twenty years, and it now features only a relatively small number of commercial operators. As Sprint points out, “[t]here are a variety of secondary market mechanisms already in place that allow service providers to consolidate spectrum holdings and licensees to obtain maximum value for their licenses at the time and under the terms of their choosing.”<sup>34</sup>

In comparison, two-sided auctions of MDS/ITFS spectrum would be extraordinarily complex, and, given the novel regulatory issues raised, it would likely take many months for the Commission to establish the rules and procedures for this

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<sup>31</sup> *NPRM* ¶¶ 241-243.

<sup>32</sup> *Id.* ¶ 241.

<sup>33</sup> *See* Coalition Comments at 106-117; Sprint Comments at 20-22; Oklahoma Western Telephone Co. Comments at 8; Media Access Project *et al.* Comments at 6.

<sup>34</sup> Sprint Comments at 20.

process. According to the Coalition, “[a] substantial expenditure of time, energy, and money [will be] required to participate in a band restructuring auction of the magnitude envisioned by the Commission,” and the true costs of such participation “likely will exceed whatever transaction costs licensees and system operators are likely to incur to effectuate future private market transactions.”<sup>35</sup> If the Commission believes that additional regulatory action is necessary to ensure that MDS/ITFS licensees achieve productive channel combinations, it should seek this result not through two-sided auctions, but through other appropriate policies that will minimize transaction costs.

Any effort to conduct two-sided auctions would also be complicated by the fact that most ITFS spectrum is used pursuant to Commission-approved lease agreements. ITFS lease agreements (often long-term in duration) typically restrict the ability of third parties to use that licensed spectrum, thereby effectively prohibiting those licensees from participating in any two-sided auction.<sup>36</sup> As a result, reliance on two-sided auctions might undermine these lease relationships, and could lead to numerous legal challenges and additional delay in the MDS/ITFS transition. Alternatively, if parties abided by these lease prohibitions, two-sided auctions might lack the widespread participation necessary to make them an effective spectrum assignment mechanism.

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<sup>35</sup> Coalition Comments at 108.

<sup>36</sup> See Sprint Comments at 21-22.

**D. The FCC Should Not Permit Unlicensed Underlay Operations in the MDS/ITFS Band**

In response to the *NPRM*, virtually every commenter opposes unlicensed underlay operations in the 2500-2690 MHz band.<sup>37</sup> Nextel fully agrees with this view. Unlicensed underlay operations would create an unreasonable risk of harmful interference to licensed MDS/ITFS operations. There is no evidence that such services could be deployed without causing interference to licensed operations in the band, and there are no policies or standards in place to protect licensees from such interference. As CTIA states in its comments, “any unlicensed ‘underlay’ operations will likely only have the effect of further diminishing the value of the 2500-2690 MHz band spectrum by subjecting licensed operations in those bands to unacceptable levels of interference.”<sup>38</sup> In fact, the uncertainty resulting from the deployment of unlicensed underlay services could undermine the evolution of the MDS/ITFS band as a home for mobile and wireless broadband services. Unlicensed operations are not permitted in the cellular or PCS bands, and future service providers in the MDS/ITFS band deserve no less protection than those incumbents.

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<sup>37</sup> *NPRM* ¶¶ 143-148; see Coalition Comments at 64-68; CTIA Comments at 5-6; BellSouth Comments at 26-28; Sprint Comments at 7-15; Motorola Comments at 15-16; Stanford/Northeastern Comments at 21-23; Earthlink Comments at 13-15; IPWireless Comments at 20-21.

<sup>38</sup> CTIA Comments at 6.

**V. CONCLUSION**

As a proposed assignee for various MDS licenses, Nextel urges the Commission to take the actions necessary to revitalize the commercial and educational development of the long-underutilized MDS/ITFS band. Nextel is confident that the Commission can achieve this important goal by addressing the issues raised herein.

Respectfully submitted,

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