

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

In the Matter of)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 04-356
in the 1915-1920 MHz, 1995-2000 MHz,)	
2020-2025 MHz and 2175-2180 MHz Bands)	
)	
Service Rules for Advanced Wireless Services)	WT Docket No. 02-353
in the 1.7 GHz and 2.1 GHz Bands)	

REPLY COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Robert S. Foosaner
Senior Vice President and Chief Regulatory Officer
Lawrence R. Krevor
Vice President, Government Affairs
Trey Hanbury
Senior Counsel, Government Affairs
NEXTEL COMMUNICATIONS, INC.
2001 Edmund Halley Drive
Reston, VA 20191

Laura H. Phillips
Laura S. Gallagher
DRINKER BIDDLE & REATH LLP
1500 K Street, NW, Suite 1100
Washington, DC 20005-1209
(202) 842-8800

Its Attorneys

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SUMMARY

The Commission's initiative to implement service rules for H and J Block spectrum is a timely effort to expand competitive opportunities in the wireless market. The addition of H Block spectrum to the existing commercial wireless allocations will provide valuable opportunities for new entrants and existing mobile wireless service providers to offer new services. To assist the Commission with the difficult task of solving the complex technical issues associated with the H Block spectrum licensing, Nextel, Verizon Wireless and Sprint are submitting – in conjunction with their individual reply comments – a Joint Proposal addressing the potential for interference from H Block mobile transmitters into the PCS mobile receivers. This watershed proposal not only demonstrates the parties' commitment to ensuring the H Block spectrum is put to its highest, most valuable use, but also allows the Commission to ensure incumbent commercial mobile radio services remain protected against interference. The Commission should adopt the Joint Proposal in its entirety.

In addition, the Commission should adopt H Block licensing and service rules that are flexible enough to encourage competition and promote the most efficient use of the H Block spectrum. The Commission should heed the strong support in the record and adopt a BTA-based geographic license for H Block spectrum. BTAs will maximize flexibility and permit new and innovative technologies to develop in the H Block band. BTAs represent a uniquely appropriate licensing mechanism for CMRS carriers of varying sizes and spectrum requirements to enter the market and to deploy service. Furthermore, given the proximity of the H Block to PCS allocations, BTAs are particularly suitable license areas for H Block licensing. Use of a 2x5 MHz BTA will allow incumbent PCS licensees to further supplement the services provided under those PCS licenses more easily than if the spectrum were licensed using a different spectrum size. Alternatively, the use of either very small "county-by-county" licenses or a

single, nationwide license would prove economically and practically inefficient for most licensees, as well as block meaningful participation by a wide range of potential licensees.

The Commission should also adopt a “substantial service” standard for H Block service and build-out, which will allow for flexible service deployment plans. This standard is consistent with PCS and other CMRS service standards. There is no need for performance standards beyond substantial service for license renewal since it is likely that existing licensees will be utilizing the H Block spectrum to expand their service areas and offerings while also improving service.

The Commission should not impose eligibility restrictions on the H Block competitive bidding process. Such restrictions are unnecessary and contrary to the public interest. Eligibility restrictions are only appropriate when it can be shown that regulatory intervention to exclude participants is necessary to protect competition in the marketplace. The CMRS marketplace is extremely competitive, and opening the bands to a broad range of applicants will facilitate the development of new technologies and services, and guarantee efficient use of this spectrum. Thus, no “competitive protection” is warranted for the H Block.

On the issue of reimbursement for relocation expenses, the Commission should keep it simple. Nextel supports the proposal in the *Notice* that H Block licensees pay a pro-rata amount of the overall 1910-1930 MHz band clearing amount as determined by UTAM. Such an approach is easy to administer and provides auction bidders with clear-cut information concerning the extent of their reimbursement cost responsibilities.

Finally, a very few commenters raise unsubstantiated concerns over the health effects associated with radiofrequency exposure, and urge the Commission to examine further the possible dangers associated with radio frequency (RF) exposure prior to licensing the H Block spectrum. These concerns, however, are misplaced in this specific licensing context and would

be more appropriately addressed, if at all, in a separate proceeding concerning general RF exposure matters.

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Nextel Communications, Inc., (Nextel) submits these reply comments in response to the Federal Communications Commission's (Commission) Notice of Proposed Rulemaking.¹ Concurrently with these reply comments, Nextel, together with Verizon Wireless and Sprint Corporation, submits a landmark Joint Proposal addressing the potential for interference associated with the deployment of spectrum in the 1915-1920/1995-2000 MHz block. These reply comments, therefore, address only the non-technical issues presented in this proceeding, including the proper geographic licensing area, as well as service and performance requirements.

I. INTRODUCTION

The *Service Rules Notice* sought comment on service rules for spectrum that the Commission recently allocated for the deployment of Advanced Wireless Services (AWS). Nextel supports the Commission's decision to expand competitive opportunities in the wireless communications market by establishing two blocks of paired spectrum: (1) the 1915-1920/1995-

¹ *Service Rules for Advanced Wireless Services in the 1915-1920 MHz, 1995-2000 MHz 2020-2025 MHz and 2175-2180 MHz Bands*, Notice of Proposed Rulemaking, 19 FCC Rcd 19263 (2004) (*Service Rules Notice*). Unless otherwise specifically noted, these comments address matters pertaining to H Block service rules and licensing.

2000 MHz block (the H Block); and (2) the 2020-2025 MHz/2175-2180 MHz block (the J Block), and proposing service rules.²

Nextel's commitment to ensure that H Block spectrum is put to its most efficient and practical use can be seen in the Joint Proposal submitted concurrently with this filing. This break-through proposal between Nextel, Sprint and Verizon Wireless represents the tireless efforts of company engineers, who have parsed through the record evidence to reach a workable interference solution. The Joint Proposal not only allows the Commission to move forward with its licensing efforts, but permits wireless providers to make the most practical use of the H Block spectrum. The Joint Proposal is an equitable interference solution that allows all parties to move forward and put the H Block spectrum to its highest most valuable use.

The addition of H Block spectrum to the existing commercial wireless allocations will provide valuable opportunities for wireless carriers to provide new services to benefit all consumers. To ensure this spectrum is put to its highest use, the Commission must adopt licensing, service and eligibility rules that are flexible and that encourage participation by a broad range of potential licensees. A "flexible use" framework should apply to the H Block spectrum which should be regulated under Part 24 of the Rules. As stated in Nextel's comments, and reflected in the comments of other parties, a flexible use allocation will promote more efficient spectrum markets and serve the public interest by encouraging investment in new technologies and services.³ In addition, the Commission should designate a 2x5 MHz spectrum

² *Amendment of Part 2 of the Commission's Rules to Allocate Spectrum Below 3 GHz for Mobile and Fixed Services to Support the Introduction of New Advanced Wireless Services, including Third Generation Wireless Systems*, Sixth Report and Order, Third Memorandum Opinion and Order, and Fifth Memorandum Opinion and Order, 19 FCC Rcd 20720 (2004) (*Allocation Order*).

³ Nextel Comments at 3. *See also* CTIA Comments at 2 ("a policy of flexible use, when combined with the other 'property-like' rights of exclusivity and transferability, promotes technology neutrality, fosters the development of innovative, state-of-the-art service offerings, and creates a strong incentive to put spectrum to its highest valued use."); Motorola Comments at 12.

block for the H Block coupled with a BTA-based licensing structure. The Commission should refrain from imposing rigid services standards and performance requirements on H Block licensees, which would restrict licensees ability to expand their service areas and limit the potential use of the spectrum – a result contrary to the Commission’s spectrum efficiency goals.

II. H BLOCK LICENSING AND SERVICE RULES SHOULD ENCOURAGE COMPETITION AND PROMOTE THE MOST EFFICIENT USE OF AVAILABLE SPECTRUM

A. BTA Licenses Are The Most Appropriate Geographic License Area for H Block Spectrum

The comments demonstrate overwhelming support for a geographic-based licensing regime, rather than site-by-site licensing.⁴ As one commenter aptly states, “geographic area licensing will maximize flexibility and permit new and innovat[ive] technologies to develop in the bands.”⁵ The record also reflects that geographic area licensing “reduces the regulatory burdens and transaction costs associated with site-by-site licensing.”⁶ The Commission time and again has recognized the advantages of using a geographic area over a site-by-site approach and its tentative conclusion to use geographic licensing should be adopted.⁷

⁴ See, e.g., CTIA Comments at 4-6 (“geographic area licensing affords licensees flexibility to respond to market demand, maximizes the use of spectrum by permitting licensees to coordinate usage across an entire geographic area, reduces the regulatory burdens and transaction costs associated with site-by-site licensing, and promotes economic efficiency and competition.”); NTCA Comments at 2-3 (“NTCA agrees that geographic area licensing will maximize flexibility and permit new and innovate technologies to develop in the bands.”); NTCH Comments at 3 (“relatively smaller geographic units substantially enhance the accessibility of spectrum to these carriers.”); Comments of United States Cellular Corporation at 3 (“The selection of small geographic service areas preserves opportunities for regional/local carriers to provide an important source of competition, variety and diversity in rural and less densely populated areas.”).

⁵ NTCA Comments at 2.

⁶ CTIA Comments at 4-5.

⁷ See, e.g., *Service Rules Notice*, 19 FCC Rcd at ¶ 19; *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, ¶ 31 (2003) (stating same); *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, ¶ 14 (2002) (stating same);

Numerous commenters also agree with Nextel that Basic Trading Areas (BTAs) should be adopted as the building block for H Block competitive bidding and licensing.⁸ As these parties observe, the wireless industry's spectrum holdings and capacity requirements differ throughout the country.⁹ BTA licensing areas permit multiple carriers of varying sizes to enter the market and to deploy service. As T-Mobile's comments illustrate, not all CMRS carriers need spectrum over a large geographic area. Indeed, many providers only need spectrum in a single BTA or in a few areas to fill out a footprint.¹⁰ Thus, while it is conceivable that these carriers could bid on a larger geographic service area license and then sell off unneeded spectrum in secondary markets, this would "create financial barriers to acquiring spectrum, add transaction costs, and delay deployment of services over this spectrum."¹¹ In addition, a BTA-based H Block auction would allow parties interested in larger market areas the opportunity to aggregate

Unlicensed Operation in the Band 3650-3700 MHz; Additional Spectrum for Unlicensed Devices Below 900 MHz and in the 3 GHz Band; Amendment of the Commission's Rules With Regard to the 3650-3700 MHz Government Transfer Band, Notice of Proposed Rulemaking, 19 FCC Rcd 7545, ¶ 87 (2004) (As opposed to site-by-site licensing, geographic licenses "provide the flexibility to dynamically adjust spectrum usage depending upon market demands."); see also Gregory L. Rosston & Jeffrey S. Steinberg, *Using Market-Based Spectrum Policy to Promote the Public Interest*, 50 FED. COMM. L.J. 87, 94 (1997) (In addition to avoiding regulations that impede competition, the Commission should also affirmatively orient its policies, where possible, to create the conditions under which market forces can most effectively work. . . . Thus, in allocating spectrum, the . . . Commission should also exhaustively license spectrum in bands that are now licensed on a site-by-site basis by issuing flexible, geographic-area overlay licenses and creating mechanisms for voluntary changes in spectrum use, including, . . . procedures for new, geographic-area licenses. . . .").

⁸ See, e.g., T-Mobile Comments at 12-14; CTIA Comments at RCA Comments at 2-3; NTCA Comments at 2-3 NTCH Comments at 3; Comments of United States Cellular Corporation at 3.

⁹ See, e.g., T-Mobile Comments at 12; NTCH Comments at 3 (noting that the spectrum needs of smaller regional carriers differ from those of nationwide carriers); RCA Comments at 2 (noting same).

¹⁰ T-Mobile Comments at 12.

¹¹ *Id.*

BTAs and to create larger geographic license areas without incurring the additional transaction costs associated with acquiring these licenses through the secondary market.¹²

Furthermore, as the *Notice* recognizes, the Commission's general approach in licensing spectrum is to attempt to match the size of the initial geographic license area to the business plans of the initial licensees.¹³ Given the proximity of the H Block to broadband PCS allocations, it is particularly suitable that the Commission use BTAs for H Block licensing. Use of a 2x5 MHz BTA as the basic licensing building block will allow incumbent PCS licensees, both large and small, the chance to further supplement the services provided under those licenses more easily than if the spectrum were licensed on a different geographic basis or using a different spectrum size.¹⁴ As such, the Commission "should adopt a geographic area licensing scheme that recognizes this potential and facilitates the ability of PCS licensees to add nearby H Block spectrum to specific markets where additional spectrum is needed."¹⁵ For these reasons, BTA licensing represents the most practical and economically efficient geographic service area. Licensing the H Block on a BTA basis will increase competitive pressure in the market, facilitate

¹² *Id.* at 13. Of course, other spectrum opportunities exist for carriers to obtain larger geographic area licenses. For example, the Commission designated Regional Economic Area Grouping and Economic Area licensing areas in the 90 MHz of Advanced Wireless Service spectrum already allocated. That spectrum will be auctioned starting as early as mid-2006. *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, ¶¶ 35-38 (2003); see also Press Release, National Telecommunications and Information Administration, *90 MHz of Spectrum Coming to Market: NTIA Kicks Off Agency Process for 2006 Auction* (January 6, 2005), available at <http://www.ntia.doc.gov/ntiahome/press/2005/auction_01062005.pdf> (reporting that spectrum in the 1.7 GHz and 2.1 GHz bands may be auctioned off as early as June 2006).

¹³ *Service Rules Notice*, 19 FCC Rcd at ¶ 22.

¹⁴ See Nextel Comments at 51; see also T-Mobile Comments at 13. As T-Mobile observes, the PCS A-B block licenses, while licensed on an Major Trading Area (MTA) basis, are made up of a number of non-overlapping BTA service areas. Thus, BTAs, which are the building blocks for MTAs, are most appropriate for *all* existing PCS license holders in extending and integrating their service offerings. T-Mobile Comments at 13.

¹⁵ CTIA Comments at 5.

innovation, increase the introduction of new service offerings and decreasing prices for consumers.

While geographic licensing of the H Block using BTAs raises certain copyright licensing issues with Rand McNally, the copyright holder of the BTA market area concept, Nextel believes that the Commission – with the assistance of interested parties and CTIA – can and should negotiate an additional blanket license with Rand McNally to use the Rand McNally designations for licensing the H Block.¹⁶

Only a single commenter advocated the use of very small “county-by-county” licenses.¹⁷ Such a licensing mechanism would be ill-advised, as it would result in approximately 3,143 distinct geographic area licenses. Licenses of this extremely small size would prove economically and practically inefficient for most would-be licensees. Indeed, large-scale deployments by wireless providers seeking to offer regional or even wide-scale service offerings would be unduly costly and cumbersome to assemble when starting with a county-level licensing structure. They would also present a complete mismatch for broadband PCS providers seeking to acquire additional spectrum in the markets in which they currently operate. As the *Service Rules Notice* recognizes, larger geographic license areas help to reduce the potential for expensive technical and co-channel adjacency issues that would undoubtedly arise – as in any site-by-site licensing context – with more than 3,000 small county-by-county licenses.¹⁸

¹⁶ *Id.* at 5, n. 15. CTIA’s comments state that it has entered fruitful discussions with Rand McNally to discuss the use of the BTA for further Commission spectrum allocations. CTIA Comments at 5. Nextel has also entered discussions with Rand McNally. These discussions continue to progress.

¹⁷ UTStarcom Comments at 2-4.

¹⁸ *Service Rules Notice*, 19 FCC Rcd at ¶ 29. Indeed, a county-by-county licensing regime would not represent a major advancement from site-by-site licensing that the Commission properly rejects as unwieldy.

Geographic licensing on a county-by-county basis would thwart the Commission's spectrum management goals, including flexible and efficient spectrum use.¹⁹

At the opposite extreme is MCI's proposal for a single nationwide H Block license.²⁰ National or even super-regional territories²¹ for licensing are impractical alternatives and would be unworkable for the H Block spectrum.²² First, while MCI claims that nationwide licensing would benefit the public, a nationwide licensing scheme would likely reduce competition by eliminating the possibility of entry by entrepreneurial and regional wireless carriers, as well as blocking meaningful participation by small minority-owned and rural businesses in the H Block spectrum auction.²³ As stated in Nextel's comments, auctioning a nationwide license for the H Block spectrum will ensure only that an extraordinarily small number of bidders participate.²⁴ The Commission will get the most efficient results by selecting BTAs for the H Block geographic license area.

B. Service Standards and Performance Requirements

A number of commenters took different approaches to answering the questions in the *Service Rules Notice* concerning H Block service standards and build-out requirements. CTIA and T-Mobile, for example, prefer that no particular service or radio coverage standards be

¹⁹ *Id.* at ¶ 23 (citing 47 U.S.C. § 309(j)(3)(D)).

²⁰ *See* MCI Comments at 3-4.

²¹ *See, e.g.*, Comments of United States Cellular Corporation at 4 (suggesting the use of Economic Area licenses). As previously noted, the Commission will be making EA licenses available as part of its upcoming 90 MHz 3G auctions and there is no compelling reason for them to be made available here.

²² In those instances when the Commission was deciding between the use of large and small geographic area licenses – as was the case with MDS – the FCC has chosen to use BTAs, finding that “BTAs offer a compromise in size that may best approximate MDS service areas.” *Amendment of Parts 21 and 74 of the Commission's Rules With Regard to Filing Procedures in the Multipoint Distribution Service and in the Instructional Television Fixed Service*, Report and Order, 10 FCC Rcd 9589, ¶ 27 (1995).

²³ The two other commenters with “wireless local loop” business plans similar to MCI's – UTStarcom and NTCH – both oppose large geographic licenses as a barrier to small business entry.

²⁴ Nextel Comments at 52.

adopted, but rather suggest that the Commission rely upon license holders to use licensed spectrum efficiently.²⁵ CTIA alternatively suggests that the Commission’s longstanding “substantial service” requirement, used for broadband PCS and ESMR, among other services, would also be acceptable. The Rural Telecommunications Group (RTG), on the other hand, advocates adoption of a “keep what you use” service standard, which would lead to wholesale spectrum take-backs of licensed areas that the Commission deems at some future date to be “unserved.”²⁶

Nextel believes that the Commission can better promote its goals of competition and spectrum efficiency by adopting a “substantial service” standard for H Block licensees. First, as the comments demonstrate, by and large the H Block is considered by many to be “additional” PCS spectrum available for a variety of flexible uses. Simply on the ground of regulatory parity alone, the Commission would be justified in setting substantial service as the standard similar to PCS standards. Substantial service has the virtue of allowing the Commission to use its judgment on a case-by-case basis to evaluate the particular circumstances of an actual service deployment. The standard is also consistent with allowing truly flexible service deployment plans, in which some licensees may have different business plans than others.

By comparison, the “keep-what-you-use” approach neither allows flexible responses to changing service-deployment plans, nor permits the Commission to exercise its expertise in response to specific market conditions. The Commission initially adopted a “keep what you use” framework for cellular service, but later abandoned it in PCS as a inflexible, blunt instrument that caused disruptions and unnecessary disputes between existing and new licensees.

²⁵ CTIA Comments at 8; T-Mobile Comments at 16.

²⁶ RTG Comments at 6.

The “keep what you use” or “fill-in” licensee in cellular often entered the market sensing the opportunity simply to be a nuisance operator and to be bought off by the existing licensee. Fortunately, there is no similar history in the broadband PCS market, where licensees meet specific coverage requirements or have the alternative of demonstrating “substantial service.”²⁷ A “keep what you use” approach would ignore the long history of successful service deployment in PCS. Substantial service represents an appropriate middle ground between absolute reliance on the market and the draconian and regulatory, intrusive nature of a “keep what you use” regime.

Consistent with the *Service Rules Notice*, the Commission should provide for renewal at the end of the license term so long as the licensee has provided substantial service during its license term.²⁸ As T-Mobile states, a longer license term and renewal expectancy here will allow AWS licensees sufficient time to relocate incumbents, deploy infrastructure, and receive a reasonable return on their investment before the license must be renewed.”²⁹ Critically, however, any substantial service benchmark that is ultimately adopted by the Commission must be adjusted to reflect use restrictions or limitations on how applicants may use H Block spectrum.

On the separate issue of appropriate performance standards for renewal of an H Block license, Nextel agrees with the comments of T-Mobile, which state there is no need for specific performance standards for license renewal, as there is every expectation that existing licensees will be using this new spectrum to expand their service areas and offerings while also improving service. As a result, T-Mobile observes: “there is substantial demand for this spectrum and

²⁷ 47 C.F.R. § 24.203.

²⁸ *Service Rules Notice*, 19 FCC Rcd at ¶ 70.

²⁹ T-Mobile Comments at 15-16.

licensees are under significant pressure to deploy infrastructure and start providing services over this spectrum in order to recoup their investments.”³⁰ Because of the demand for services, no PCS-like build-out requirements that feature radio coverage to a certain percentage of the population either at the time of license renewal, or at some other benchmark point, should be adopted.³¹

C. Reimbursement for 1915-1920 MHz Relocation Expenses

As stated in Nextel’s initial comments, Nextel’s own history of dealing with incumbent operator relocation both through voluntary and mandatory mechanisms demonstrates that rules governing relocation and reimbursement are best kept simple and non-contingent.³² Nextel supports the proposal in the *Service Rules Notice* that H Block licensees pay a pro-rata amount of the overall 1910-1930 MHz band clearing amount as determined by UTAM, and Nextel’s comments provide suggestions on straightforward means to accomplish just that.

UTAM’s comments propose a population-based reimbursement formula, rather than the pro-rata approach proposed by the Commission.³³ For the reasons Nextel discussed in its comments, a pro-rata license approach is simpler to predict and administer and provides auction bidders with more transparent information about the likely scope of their reimbursement cost responsibilities. Under either scenario, however, UTAM will be fully reimbursed for its

³⁰ *Id.* at 16.

³¹ NTCH, a small PCS provider, argues in its comments that performance benchmarks serve a purpose by creating a strong incentive for small businesses to build and operate. NTCH Comments at 8. Nextel submits that strict performance benchmarks of any sort are unsuitable. Moreover, any benchmarks the Commission might select could unfairly tend to favor one type of AWS business plan over another.

³² Nextel Comments at 54.

³³ UTAM Comments at 2-3 (proposing to apportion a proportionate share of clearing costs to new AWS licensees based on the number of POPs in their market areas, divided by the total number of POPs for all market areas won at the auction).

microwave relocation expenses. Nextel urges the Commission to select a 1915-1920 MHz reimbursement plan that is transparent and straightforward to administer.

III. THERE IS NO NEED FOR ELIGIBILITY RESTRICTIONS ON COMPETITIVE BIDDING

Most commenters addressing the issue agree with the Commission's tentative conclusion that eligibility restrictions placed on the H Block competitive bidding process are unnecessary and contrary to the public interest.³⁴ Indeed, eligibility restrictions are only appropriate in those rare instances when "open eligibility would pose a significant likelihood of substantial harm to competition in specific markets and when an eligibility restriction would be effective in eliminating that harm."³⁵ And, there must be a "compelling showing that regulatory intervention to exclude potential participants is necessary," before the Commission will intervene to disrupt market forces.³⁶

³⁴ See CTIA Comments at 7. See also NTCH Comments at 6 (advocating closed auctions but acknowledging that "The difficulty with closed auctions, or, indeed, with any type of bidding credit scenario, is that companies will game (and have gamed) the system to take advantage of the credit.")

³⁵ *Service Rules Notice*, 19 FCC Rcd at ¶ 69 ("Given the current state of competition in the CMRS industry, we tentatively conclude that open eligibility in the 1915-1920 MHz, 1995-2000 MHz, 2020-2025 MHz and 2175-2180 MHz bands will not pose a significant likelihood of substantial harm to competition in any specific markets and that therefore an eligibility restriction in these bands is not warranted."); see also CTIA Comments at 7.

³⁶ *Service Rules Notice*, 19 FCC Rcd at ¶ 69 (citing *Allocations and Service Rules for the 71-76 GHz, 81-86 GHz and 92-95 GHz Bands*, Report and Order, 18 FCC Rcd 23318, ¶ 70 (2003); *Amendment of Parts 2 and 25 of the Commission's Rules to Permit Operation of NGSO FSS Systems Co-Frequency with GSO and Terrestrial Systems in the Ku-Band Frequency Range, Amendment of the Commission's Rules to Authorize Subsidiary Terrestrial Use of the 12.2-12.7 GHz Band by Direct Broadcast Satellite Licensees and Their Affiliates, and Applications of Broadwave USA, PDC Broadband Corporation, and Satellite Receivers, Ltd. to Provide A Fixed Service in the 12.2-12.7 GHz Band*, Memorandum Opinion and Order and Second Report and Order, 17 FCC Rcd 9614, ¶¶ 159-70 (2002); *Amendment of Parts 1, 2, 87 and 101 of the Commission's Rules To License Fixed Services at 24 GHz*, Report and Order, 15 FCC Rcd 16934, ¶¶ 30-32 (2000); *Amendment of the Commission's Rules Regarding the 37.0-38.6 GHz and 38.6-40.0 GHz Bands, Implementation of Section 309(j) of the Communications Act – Competitive Bidding, 37.0-38.6 GHz and 38.6-40.0 GHz*, Report and Order and Second Notice of Proposed Rule Making, 12 FCC Rcd 18600, ¶¶ 32-35 (1997)).

No such showing can be made for H Block. The CMRS marketplace is extremely competitive, as the Commission repeatedly has found. Over the past year, for example, the CMRS industry “continued to experience increased service availability, intense price competition, innovation, and a wider variety of service offerings.”³⁷

Contrary to the assertions of certain commenters, limiting the H Block to only new entrants,³⁸ or small businesses,³⁹ needlessly limits the utility of the H Block spectrum by drastically reducing the number of parties capable of utilizing it – a result antithetical to the Commission’s goal of promoting the “efficient and intensive use of the electromagnetic spectrum.”⁴⁰ Restrictions on eligibility are also contrary to the Spectrum Policy Task Force recommendations, which focus on increasing access to spectrum, rather than on imposing further regulatory limits on the ability of parties to acquire new spectrum rights.⁴¹

The Commission has more sophisticated methods available to assist auction participation by small business and new market entrants than outright eligibility restrictions. They include bidding credits, proper sizing of geographic licensing areas, and partitioning and disaggregation. Spectrum leasing arrangements and secondary markets further mitigate any concern over smaller businesses gaining access to the H Block spectrum.⁴² Thus, the Commission should confirm for

³⁷ *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*, Ninth Report, 19 FCC Rcd 20597, ¶ 20 (1994).

³⁸ MCI Comments at 3.

³⁹ NTCH Comments at 4.

⁴⁰ *Service Rules Notice*, 19 FCC Rcd at ¶ 69.

⁴¹ *See Spectrum Policy Task Force Report*, ET Docket No. 02-135, at 15 (rel. November 2002) (noting that “[i]n the near term, the Commission should consider adopting policies that increase opportunities for access to the radio spectrum through granting additional flexibility.”).

⁴² *See, e.g., Section 257 Triennial Report to Congress; Identifying and Eliminating Market Entry Barriers For Entrepreneurs and Other Small Businesses*, Report, 19 FCC Rcd 3034, ¶ 154 (2004) (noting that

H Block what it recognizes more generally: “opening these bands to as wide a range of applicants as possible w[ill] encourage efforts to develop new technologies and services, while helping to ensure efficient use of this spectrum.”⁴³

IV. RADIOFREQUENCY EXPOSURE CONCERNS ARE UNSUBSTANTIATED AND SHOULD NOT BE CONSIDERED.

Certain commenters raise generalized concerns over the health effects associated with radiofrequency (RF) exposure, and urge the Commission to study further the risks associated with RF exposure prior to H Block licensing.⁴⁴ These concerns, however, are not unique to this spectrum and are more appropriately addressed, if at all, in a separate proceeding concerning RF exposure.

On the substance of these claims, the Commission has preexisting compliance guidelines in place to mitigate any potential hazards associated with human exposure to RF electromagnetic fields.⁴⁵ The Commission also is *required* by NEPA to evaluate the effect of emissions from Commission-regulated transmitters on the quality of the human environment.⁴⁶

recent Commission initiatives, *such as the Secondary Markets proceeding*, “enhance the ability of small businesses and entrepreneurs to obtain access to wireless spectrum and provide new services.”)

⁴³ *Service Rules Notice*, 19 FCC Rcd at ¶ 69.

⁴⁴ *See, e.g.*, Comments of Canyon Area Residents for the Environment at 2-3; Comments of the EMR Policy Institute at 1; Comments of the American Skin Association at 1; Comments of Richard A. Albanese at 1-2.

⁴⁵ *See* OET Bulletin No. 56, *Questions and Answers About the Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields*.

⁴⁶ There is no universally applied federal standard for acceptable RF exposure levels. Several non-government organizations, such as the American National Standards Institute (ANSI), the Institute of Electrical and Electronics Engineers, Inc. (IEEE), and the National Council on Radiation Protection and Measurements (NCRP) have issued recommendations for human exposure to RF electromagnetic fields, and the Commission’s guidelines are based on recommended exposure criteria issued by these expert bodies. *See* OET Bulletin No. 56, *Questions and Answers About the Biological Effects and Potential Hazards of Radiofrequency Electromagnetic Fields*, at 6.

The Commission maintains RF exposure guidelines for both mobile handsets and transmission facilities. For example, the Commission maintains the Maximum Permissible Exposure limits recommended by the National Council on Radiation Protection and Measurements for field strength and power density for the transmitters operating at frequencies of 300 kHz to 100 GHz.⁴⁷ With respect to mobile devices, the Commission maintains specific absorption rate (SAR) limits for devices operating within close proximity to the body that fall within the ANSI/IEEE C95.1-1992 guidelines.⁴⁸

Furthermore, in OET Bulletin 65, the Commission provides detailed guidelines to assist in determining whether proposed or existing transmitting facilities, operations or devices comply with acceptable limits for human exposure to RF.⁴⁹ These RF exposure guidelines, along with the other exposure limits adopted by the Commission, rely upon well-considered research by expert bodies to gauge the hazards of excessive exposure to RF radiation. The claims of health concerns, including skin melanoma,⁵⁰ associated with exposure to RF emissions, are wholly unsubstantiated.⁵¹ Citing to provisions in the National Environmental Policy Act (NEPA), several commenters assert that the Commission failed to assess appropriately the effect of H Block spectrum use on human health.⁵² Unsupported claims that RF exposure pose risks to human health, however, simply are not credible.

⁴⁷ *Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation*, Report and Order, 11 FCC Rcd 15123 (1996).

⁴⁸ *Id.*

⁴⁹ The bulletin “offers guidelines and suggestions for evaluating compliance.” OET Bulletin No. 65.

⁵⁰ *See* Comments of the American Skin Association at 1.

⁵¹ While it appears the commenters oppose the Commission’s tentative conclusions with regard to fixed transmission facilities, it is not obvious that the commenters also do not take issue with the RF emissions from mobile devices.

⁵² *See* Comments of the EMR Policy Institute at 3.

Finally, the Commission already specifically addressed H Block RF matters and tentatively determined that fixed facilities operating within this spectrum band pose no serious health risk.⁵³ Indeed, as the *Service Rules Notice* states, the Commission recently adopted a 1000-watt effective radiated power (ERP) threshold for licensees operating in the 1710-1755 and 2110-2155 MHz bands, determining that this power limit was appropriate to ensure compliance with pre-existing Commission RF exposure guidelines.⁵⁴ These exposure guidelines are very similar to those of the H and J Blocks.⁵⁵ This ensures that parties operating in the H Block will be in compliance with applicable Commission RF exposure guidelines. Without any H Block specific research or findings suggesting any particular RF exposure problem unique to these frequencies, there simply is no basis to stall the licensing of this band based on unsubstantiated health effect claims.

⁵³ The Commission also determined that “[e]valuation of mobile and portable devices in these bands will follow the rules adopted in sections 2.1091 and 2.1093.” *Service Rules Notice*, 19 FCC Rcd at ¶ 114.

⁵⁴ *Service Rules Notice*, 19 FCC Rcd at ¶ 114 (citing *Service Rules for Advanced Wireless Services in the 1.7 GHz and 2.1 GHz Bands*, Report and Order, 18 FCC Rcd 25162, ¶ 133 (2003)).

⁵⁵ See 47 C.F.R. § 1.1310. Thus, the Commission set the threshold for environmental review of fixed transmission facilities at an ERP of greater than 1000 watts. *Service Rules Notice*, 19 FCC Rcd at ¶ 114.

V. CONCLUSION

The comments demonstrate wide-spread support for the Commission's efforts to allocate the spectrum in the 1915-1920/1995-2000 MHz and the 2020-2025 MHz/2175-2180 MHz blocks for advanced wireless services. This spectrum allocation will offer new and existing licensees valuable opportunities to expand their service territories, and increase their product offerings. The landmark Joint Proposal submitted by Nextel Verizon Wireless and Sprint addresses the highly complex technical issues associated with licensing the H Block spectrum. Flexible service standards for H Block will permit licensees to maximize the potential use of the spectrum – a result that is in-line with the Commission's pro-growth, pro-consumer spectrum policies.

Respectfully submitted,



Laura H. Phillips

Laura S. Gallagher

DRINKER BIDDLE & REATH LLP

1500 K Street, NW, Suite 1100

Washington, DC 20005-1209

(202) 842-8800

Robert S. Foosaner

Senior Vice President and Chief Regulatory Officer

Lawrence R. Krevor

Vice President, Government Affairs

Trey Hanbury

Senior Counsel, Government Affairs

NEXTEL COMMUNICATIONS, INC.

2001 Edmund Halley Drive

Reston, VA 20191

Its Attorneys

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