

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

In the Matter of)	
)	
Amendment of Part 90 of the Commission's)	WT Docket No. 05-62
Rules to Provide for Flexible Use of the 896-)	
901 MHz and 935-940 MHz Bands Allotted to)	
the Business and Industrial Land)	
Transportation Pool)	
)	
Oppositions and Petitions for Reconsideration)	DA 04-3013
of 900 MHz Band Freeze Notice)	
)	

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

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Summary

In the Notice of Proposed Rulemaking (“*NPRM*”) in this proceeding, the Commission tentatively concludes that it should permit the flexible use of the unlicensed fallow channels that have been allocated to the Business and Industrial Land Transportation (B/ILT) Pools in the 900 MHz band. Nextel Communications, Inc. (“Nextel”) strongly supports this tentative conclusion and urges the Commission to auction Major Economic Area licenses for existing 900 MHz “white space” as soon as possible. This will serve two vitally important public interest objectives.

First, the Commission’s proposed rule changes will maximize the efficient use of 900 MHz spectrum. Large portions of this valuable spectrum have gone unused for nearly twenty years because of regulatory restrictions on its use that have outlived their usefulness. Lifting these restrictions and auctioning this spectrum will ensure it is put to its highest valued use as determined by the marketplace. It will also capture the market value of this spectrum for the U.S. Treasury. By applying its now firmly established flexible use policies to 900 MHz white space spectrum, the Commission will promote greater technological innovation and new services to help meet the exploding consumer demand for wireless services.

Second, adopting a pro-competitive paradigm for the initial licensing of 900 MHz white space will, as the Commission states in the *NPRM* (§ 3), “greatly aid in facilitating band reconfiguration occurring at 800 MHz.” The successful and timely implementation of 800 MHz band reconfiguration is critical to eliminating life-threatening interference to 800 MHz public safety systems. Under the Commission’s orders, Nextel will retune its 800 MHz facilities twice as part of a process of retuning other incumbent licensees and

clearing the lower portion of the reconfigured 800 MHz band for NPSPAC licensees. Although 800 MHz band reconfiguration is designed to minimize disruption to incumbent public safety and private radio licensees, it will place a significant strain on Nextel's network. The Commission consequently recognized in the 800 MHz Public Safety proceeding that Nextel will need access to additional 900 MHz spectrum to provide "green space" as it shifts its operations and retunes NPSPAC licensees. By lifting the current restrictions on the initial licensing of 900 MHz white space and conducting an auction of this spectrum, the rule changes proposed in the *NPRM* will provide Nextel and all other interested parties the opportunity to acquire 900 MHz spectrum.

Accordingly, Nextel urges the Commission to conclude this proceeding and conduct an auction of 900 MHz white space spectrum as soon as possible. This would expedite the licensing of spectrum that has been underutilized for many years. It would also be consistent with the Commission's objective of facilitating 800 MHz reconfiguration, which will very shortly commence in the first wave of system retunings.

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COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc. ("Nextel") hereby submits its comments on the Notice of Proposed Rulemaking ("*NPRM*") in the above-captioned proceeding.¹ Nextel commends the Commission for proposing more flexible use of the unlicensed channels that have been allocated to the Business and Industrial Land Transportation (B/ILT) Pools in the 900 MHz band.

The Commission's existing rules limit the initial licensing of this 900 MHz "white space" to B/ILT internal use and impose other inefficient restrictions on this valuable spectrum. These restrictions have led to the gross underutilization of this spectrum and, if unchanged, will impede the ability of the marketplace to respond to consumer demand. The Commission's proposed new licensing paradigm for 900 MHz white space will

¹ *Amendment of Part 90 of the Commission's Rules to Provide for Flexible Use of the 896-901 MHz and 935-940 MHz Bands Allotted to the Business and Industrial Land Transportation Pool*, Notice of Proposed Rulemaking and Memorandum Opinion and Order, FCC 05-31 (released Feb. 16, 2005).

promote the efficient use of this spectrum consistent with the Commission’s marketplace spectrum management policies. As the Commission states in the *NPRM* (¶ 1), this “will facilitate the provision of telecommunications services to consumers ... and ... provide greater flexibility in deploying the spectrum to respond to evolving market demands.” As the Commission further recognizes, the proposed new licensing framework will also “greatly aid in facilitating band reconfiguration occurring at 800 MHz.”²

I. THE COMMISSION SHOULD BE GUIDED BY TWO PUBLIC INTEREST OBJECTIVES IN THIS PROCEEDING: PROMOTING EFFICIENT USE OF SPECTRUM AND FACILITATING 800 MHz BAND RECONFIGURATION

The *NPRM* emphasizes two overarching public interest objectives that will guide the Commission’s decision in this proceeding: promoting spectrum efficiency by removing unnecessary regulatory restrictions and facilitating the successful implementation of 800 MHz band reconfiguration.

A. The Commission Should Use Market-Based Spectrum Management Policies to Promote the Efficient Use of 900 MHz White Space

The Commission emphasizes that one central goal in this proceeding is to “facilitate the provision of telecommunications services to consumers by eliminating unnecessary regulatory restrictions, and thereby provide greater flexibility in deploying the spectrum to respond to evolving market demands.”³ This goal reflects the Commission’s now firmly established policy of providing flexible service rules to maximize spectrum efficiency. As the Commission’s Spectrum Policy Task Force has

² *NPRM* ¶ 3.

³ *Id.* ¶ 1.

stated, there is “explosive demand” for wireless services, and “flexibility in spectrum regulation is critical to improving access to spectrum.”⁴

Although there are circumstances, such as promoting public safety communications, where the Commission may need to prescribe particular spectrum uses to achieve important public interest objectives, in the past ten years the Commission’s licensing policies have relied more on flexibility and competition to promote an innovative, competitive wireless marketplace.⁵ The Commission should apply these principles here just as it has done in other recent proceedings.⁶ This will further the public interest by promoting efficient use of the spectrum, encouraging innovation, and enabling the marketplace to ensure that licensees meet the rising demand for wireless services.⁷ Following a marketplace approach furthers the Commission’s statutory

⁴ Spectrum Policy Task Force Report, ET Docket No. 02-135, at 12, 16 (Nov. 2002).

⁵ See e.g., *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24817, ¶ 7 (2003).

⁶ See, e.g., *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*, Report and Order and Further Notice of Proposed Rulemaking, 19 FCC Rcd 14165, ¶ 1 (2004) (“2.5 GHz Report and Order”) (adopting fundamental restructuring of 2.5 GHz licensing scheme to “greatly enhance[] flexibility in order to encourage the highest and best use of spectrum domestically and internationally, and the growth and rapid development of innovative and efficient communications technologies and services”); *Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets*, Report and Order and Further Notice of Proposed Rulemaking, 18 FCC Rcd 24817, ¶ 2 (2003) (adopting flexible spectrum leasing rules that “continue our evolution toward greater reliance on the marketplace to expand the scope of available wireless services and devices, leading to more efficient and dynamic use of the important spectrum resource to the ultimate benefit of consumers throughout the country”).

⁷ See Gregory L. Rosston and Jeffrey S. Steinberg, *Using Market-Based Spectrum Policy to Promote the Public Interest*, 50 Fed. Comm. L. J. 87 (1997).

mandate to “encourage the provision of new technologies and services to the public,”⁸ and “allocate electromagnetic spectrum so as to provide flexibility of use.”⁹

B. Auctioning 900 MHz White Space Spectrum Will Facilitate Successful 800 MHz Band Reconfiguration

Under the pro-competitive licensing policies proposed in the *NPRM*, all interested parties, including Nextel, would be given the opportunity to bid for 900 MHz white space licenses in an auction that assigns such licenses to entities that value them the most. This will not only promote the efficient use of this spectrum, it “will greatly aid in facilitating band reconfiguration occurring at 800 MHz.”¹⁰

In the *800 MHz R&O*, the Commission took vitally important steps to improve public safety communications by adopting a comprehensive decision that will remedy interference that endangers the lives of first responders operating 800 MHz public safety systems. The fundamental element of this plan is reconfiguring the 800 MHz band to separate public safety and other high-site licensees from low-site, high-density cellularized commercial mobile radio service (“CMRS”) operations.¹¹ As the Commission has recognized, the spectral proximity of these incompatible technologies is the root cause of this unacceptable interference to public safety systems.¹² The

⁸ 47 U.S.C. § 157(a).

⁹ *Id.* § 303(y). *See also* Telecommunications Act of 1996, Pub. L. No. 104-04, purpose statement, 110 Stat. 56, 56 (1996) (purpose of the 1996 Act is to “promote competition and reduce regulation in order to secure lower prices and higher quality services for American telecommunications consumers and encourage the rapid deployment of new telecommunications technologies”).

¹⁰ *NPRM* ¶ 3.

¹¹ *See generally* *800 MHz R&O* ¶ 2.

¹² *Id.* ¶ 2.

Commission's reconfiguration plan will further promote the public interest by providing additional spectrum for public safety communications.

Implementing the Commission's reconfiguration decision will require numerous incumbent 800 MHz public safety and B/ILT licensees to retune their systems to operate on the new band plan, with their retuning costs funded by Nextel. Nextel itself, however, will undergo far more retuning and network reconfiguration than any other licensee under the Commission's plan. The *800 MHz R&O* recognized that "Nextel will have to shift some of its operations from the 800 MHz band to 900 MHz in order to provide the 'green space' necessary to effect reconfiguration of the 800 MHz band."¹³ To ensure a smooth retuning process for other incumbent 800 MHz licensees, Nextel will be retuning many of its 800 MHz facilities twice: first, by swapping out Channel 1-120 incumbents to Nextel assignments in Channels 121-400, and second, by retuning its facilities from Channels 1-120 (and any remaining assignments in Channels 121-400) to the new Enhanced Specialized Mobile Radio ("ESMR") segment channels above 817/862 MHz as NPSPAC licensees are retuned to the cleared Channels 1-120 (806-809 MHz/851-854 MHz).

This process is designed to minimize disruption to public safety and other incumbent licensees. It will, however, place a significant strain on Nextel's operations. Over 50% of Nextel's network currently operates on channels below 817/862 MHz; during the transition to the new band plan, the Commission's reconfiguration decision will significantly reduce Nextel's access to many of these channels without providing it

¹³ *800 MHz R&O* ¶ 336. See also Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, at 33 (Dec. 24, 2002) ("Maintaining sufficient capacity in the 900 MHz band is essential to Nextel's ability to provide service to existing and new customers while clearing the 'green space' needed to make realignment possible.").

immediate replacement spectrum.¹⁴ As the *800 MHz R&O* (§§ 6, 147, 198) recognizes, it is consequently essential for Nextel to have access to “green space” channels in the 900 MHz band to avoid service disruptions to its more than 16 million customers.¹⁵ Because Nextel operates a dual-band 800 MHz/900 MHz iDEN network, Nextel is uniquely suited to undertake the large-scale band reconfiguration project adopted by the Commission.

Eliminating outmoded eligibility restrictions on the 900 MHz B/ILT pool channels will enable Nextel and other interested parties to apply for them with mutually exclusive applications resolved by competitive bidding. In the *800 MHz R&O* (§ 337), the Commission took the first step toward a market-oriented licensing paradigm by amending its rules to permit Nextel and other parties to acquire spectrum rights from incumbent 900 MHz Private Land Mobile Radio (“PLMR”) licensees and convert those channels to commercial use. The *NPRM* in the instant proceeding is another essential step toward this goal. It proposes eliminating anti-competitive set-asides in the initial

¹⁴ For example, to accommodate NPSPAC licensees migrating from the old to the new NPSPAC channel block, Nextel will need to phase out of its temporary exclusive position on Channels 1-120 (the new NPSPAC block) as NPSPAC incumbents begin retuning to those channels. In some NPSPAC regions, Nextel could be required to migrate from nearly all of the 1-120 channel blocks and at the same time consequently lose access to these channels before it can retune to and make significant use of the old NPSPAC channels. There will be unavoidable time lags between clearing the 1-120 channel block and Nextel being able to retune to the subsequently vacated old NPSPAC channels given the intensive use of these channels and the restrictions necessary to minimize CMRS – public safety interference in the transitional environment.

¹⁵ Although the *800 MHz R&O* modified Nextel’s licenses to provide it replacement spectrum in the 1.9 GHz band, this spectrum will not immediately provide the necessary green space for Nextel in the 800 MHz band reconfiguration process. As the Consensus Parties explained, “[o]perating a CMRS system at 1.9 GHz will not solve this problem in time, given the need to clear incumbent Broadcast Auxiliary Service licensees from the [1.9 GHz] band and build new CMRS facilities.” Supplemental Comments of the Consensus Parties, WT Docket No. 02-55, at 33 (Dec. 24, 2002). The 1.9 GHz band clearing process will be running concurrently to 800 MHz band reconfiguration and is not scheduled to be completed until September 2007.

licensing of 900 MHz white space and opening up this valuable spectrum for all interested bidders in an FCC auction. This would give Nextel the opportunity to bid for additional 900 MHz spectrum to provide the “green space” necessary to implement the 800 MHz reconfiguration decision.

II. NEXTEL STRONGLY SUPPORTS THE COMMISSION’S PROPOSALS TO PERMIT FLEXIBLE, EFFICIENT USE OF 900 MHz WHITE SPACE SPECTRUM

A. Flexible Use, Geographic Area Licensing, and Assignment Through Competitive Bidding Will Serve the Public Interest

The Commission makes three critical tentative conclusions in the *NPRM*:

- Licensees should have the flexibility to use 900 MHz white space for any use permitted by the United States Table of Frequency Allocations contained in Part 2 of the FCC’s rules, *i.e.*, fixed or mobile services.¹⁶
- The 900 MHz white space should be licensed by geographic areas rather than the current station-defined, site-by-site licensing approach.¹⁷
- If a geographic licensing approach is adopted, mutually exclusive applications should be resolved through competitive bidding.¹⁸

Nextel urges the Commission to adopt each of these tentative conclusions. They will work hand-in-hand to promote the Commission’s public interest objectives in this proceeding. All three – flexible use, geographic area licensing, and competitive bidding – will collectively give interested parties the opportunity to acquire 900 MHz spectrum based on marketplace demand. They will also help maximize the efficient use of this

¹⁶ *NPRM* ¶¶ 12-14.

¹⁷ *Id.* ¶¶ 17-19.

¹⁸ *Id.* ¶ 16.

valuable spectrum – substantial amounts of which have gone unused for nearly two decades.

1. *Flexible Use*

In the *800 MHz R&O* (¶ 337), the Commission modified its rules to allow 900 MHz PLMR licensees to initiate CMRS operations on their currently authorized spectrum or to assign their authorizations to others for CMRS use. Consistent with its tentative conclusions in the *NPRM*, the Commission should take the next logical step and permit entities to acquire initial licenses for 900 MHz white space for CMRS use via competitive bidding at auction. Continuing to limit the initial licensing of this spectrum to B/ILT licensees on a site-by-site, “first come, first served” basis will encourage speculators who have no genuine need for the spectrum to acquire white space licenses and then “flip” the licenses by selling them to CMRS licensees for a quick profit. This would only delay the efficient use of the spectrum and prevent the government from capturing the value of valuable spectrum rights for the U.S. Treasury.

The Commission should consequently extend its flexible use policy to the initial licensing of 900 MHz white space spectrum as proposed in the *NPRM*. The *NPRM* (¶¶ 12-13) is correct in concluding that this proposal satisfies the criteria of section 303(y) of the Communications Act: flexible use will be consistent with international agreements, it will foster, not deter, technological development and investment in communications services, and it will not result in harmful interference among users. As the Commission stated, “the public interest benefits of flexibility are manifold. The Commission has identified the establishment of maximum feasible flexibility in both spectrum

designations and allocations and service rules as a critical means of ensuring that spectrum is put to its most beneficial use.”¹⁹

Nextel has previously submitted to the Commission a White Paper prepared by Dr. Gregory L. Rosston regarding the Commission’s implementation of its auction authority and the elimination of artificial licensing restrictions on 800 MHz PLMR frequencies.²⁰ In this White Paper, Dr. Rosston described the public interest benefits of flexible use, which apply with equal strength to 900 MHz white space:

Spectrum flexibility is the key to efficient usage and the rapid deployment of innovative new services. Without flexibility, there are artificial barriers to the efficient use of spectrum. Flexibility eliminates those artificial barriers and enables spectrum users to respond quickly to changing public demands for new and different services. Flexibility also facilitates the rapid introduction of innovative services and technologies because it eliminates administrative costs and delays and enables licensees to reap the rewards of their investments in more efficient use of spectrum. With flexibility, licensees can increase their own use of the spectrum or transfer some or all of it to someone else with a higher valuation. Without spectrum flexibility, CMRS services such as Nextel, PCS, wireless data, and wireless internet services would not exist or would be significantly less valuable to consumers. Flexibility allows service providers to adapt to changing market conditions or correct inefficient service offerings.²¹

Given the well-established benefits and FCC precedent in favor of flexible use, the *NPRM* (¶ 14) appropriately places the burden of proof on commenters favoring the

¹⁹ *NPRM* ¶ 13.

²⁰ See Reply Comments of Nextel, WT Docket No. 99-87 (Sept. 30, 1999), attaching Declaration of Gregory L. Rosston (“Rosston White Paper”). Dr. Rosston is Deputy Director of the Stanford Institute for Economic Policy Research and a Visiting Lecturer in Economics at Stanford University. Prior to joining Stanford, Dr. Rosston served as Deputy Chief Economist at the FCC where he assisted in designing and implementing the Commission’s first-ever spectrum auctions. Dr. Rosston has written a number of articles on telecommunications competition, implementation of the Telecommunications Act of 1996, and spectrum auctions and policy.

²¹ Rosston White Paper at 14.

continuation of “command-and-control” regulation that currently limits the initial licensing of 900 MHz white space to B/ILT licensees. It is not a burden easily overcome. Private radio set asides “artificially restrict[] the movement of spectrum to its most valuable use” and “frustrate the FCC’s ability to adequately maximize the value of the spectrum.”²² Indeed, large amounts of 900 MHz white space spectrum are going unused even though these channels have been available for licensing since 1986 – nearly 20 years. Channels in the 900 MHz B/ILT pool are unlicensed or underutilized in many parts of the country.

The opportunity cost of these unused and underutilized frequencies is substantial. The 900 MHz spectrum is highly valuable given the well suited propagation characteristics of the band which can help meet the explosive growth in consumer demand for mobile wireless services. There is consequently a compelling public interest justification for permitting flexible use of this spectrum.

2. *Geographic Licensing Areas*

Nextel fully supports the Commission’s tentative conclusion to license 900 MHz white space in geographic areas rather than use the existing station-defined, site-by-site licensing approach. The *NPRM* (§ 19) correctly places the burden on commenters opposing geographic area licensing given the well-established public interest benefits of this approach. Geographic area licensing has successfully promoted maximum spectrum use and technological innovation in numerous licensed services, including 800 MHz and 900 MHz SMR services, Personal Communications Service (“PCS”), and Cellular

²² *Id.* at 5.

Radiotelephone Service. Recognizing these public interest benefits, the Commission has recently adopted geographic area licensing for licensees in the 2.5 GHz band.²³

Nextel agrees with the findings set forth in the *NPRM* (§ 18) concerning the numerous benefits of geographic area licensing:

Geographic area or wide-area licensing ... allows a licensee substantial flexibility to respond to market demand, which results in significant improvements in spectrum utilization. In particular, geographic area licensing permits economies of scale because it allows a licensee to coordinate usage across an entire geographic area to maximize the use of spectrum. It also reduces regulatory burdens and transaction costs, because wide-area licensing does not require site-by-site approval and a licensee can aggregate its service territories without incurring the administrative costs and delays associated with site-by-site licensing. This approach is especially advantageous where spectrum is likely to be used for services that require ubiquity and mobility over wide areas. As a result, licensees can more rapidly roll out their services Finally, we believe that geographic area licensing would enable the most efficient use of the licensed spectrum, and would be suitable for policies that facilitate the availability of spectrum for a wide variety of users and uses through secondary market mechanisms, including partitioning, disaggregation, and spectrum leasing.

Dr. Rosston described similar public interest benefits resulting from geographic area licensing in the White Paper Nextel previously submitted to the Commission.²⁴

In the *NPRM* (§§ 21-24), the Commission seeks comment on whether to adopt Major Economic Areas (“MEAs”) or Basic Economic Areas (“BEAs”) to license 900 MHz white space. Nextel supports using MEAs rather than the smaller BEAs. As the Commission notes in the *NPRM* (§ 22), MEAs are roughly equivalent to Major Trading

²³ 2.5 GHz Report and Order § 54 (“Implementing geographic area licensing will allow licensees to rapidly deploy and modify facilities within their geographic licensing areas to provide ubiquitous service without the regulatory burdens of notifying and securing Commission approval. Geographic area licensing for [the 2.5 GHz band] will also have the benefit of eliminating inefficient, administratively burdensome site-by-site licensing rules, the transaction costs of which are too high to permit competitive businesses to flourish using next generation technology.”).

²⁴ Rosston White Paper 13-14.

Areas (“MTAs”), which are currently used in licensing 900 MHz SMR channels. The Commission has further recognized that MEAs are sufficiently large to provide licensees the opportunity to “increase spectrum efficiency, provide better quality service to end users, and ... reach potential end users that may otherwise be without adequate communications options.”²⁵ In its 1994 decision to license 900 MHz SMR spectrum by MTAs, the Commission expressly rejected the use of smaller geographic licensing areas, finding that its prior use of such smaller areas had hampered the deployment of 900 MHz systems.²⁶ This finding further supports the use of MEAs in licensing 900 MHz white space.

Nextel urges the Commission to adopt its tentative conclusion that geographic area licensees of 900 MHz white space be permitted to construct stations at any authorized site and on any available channel within their licensing area.²⁷ Licensees should also be allowed to expand or modify facilities throughout their service areas without prior FCC approval, so long as the system continues to be in compliance with all applicable technical and operational rules.²⁸ This flexibility is a necessary corollary to the geographic service area and flexible use policies and will facilitate more efficient service to the public and avoid unnecessary regulatory burdens.

²⁵ *NPRM* (¶ 23).

²⁶ *Implementation of Sections 3(n) and 332 of the Communications Act*, Third Report and Order, 9 FCC Rcd 7988, ¶ 114 (1994).

²⁷ *NPRM* ¶¶ 32-33.

²⁸ *Id.*

3. *Competitive Bidding*

Nextel agrees with the Commission that, consistent with section 309(j) of the Act,²⁹ geographic area licenses for 900 MHz white space should be assigned through competitive bidding.³⁰ As the Rosston White Paper (at 2) states, “[a]uctions are the fastest, fairest and most efficient way to make initial license assignments.” Assigning licenses to 900 MHz white space through auctions will help ensure that this valuable spectrum is placed expeditiously in the hands of the entity that will put it to its most productive, efficient use. Auctions will also recover the market value of this spectrum for the U.S. Treasury.

Nextel urges the Commission to conclude this proceeding and conduct an auction of 900 MHz white space spectrum as soon as possible. This would expedite the licensing of spectrum that has been underutilized for many years. It would also provide Nextel an opportunity to bid for 900 MHz channels in the auction to help it address its “green space” needs arising from 800 MHz reconfiguration, which will very shortly commence in the first wave of system retunings.³¹

The need for expedited action in this proceeding militates against the Commission using a “two-sided” auction. In a two-sided auction, incumbent licensees would be given the option of exchanging their licenses in conjunction with an FCC

²⁹ 47 U.S.C. § 309(j).

³⁰ *NPRM* ¶ 16.

³¹ See Regional Prioritization Plan of the 800 MHz Transition Administrator, WT Docket No. 02-55 (Jan. 31, 2005) (first wave commences June 27, 2005); Public Notice, “Wireless Telecommunications Bureau Approves the Band Reconfiguration Schedule Put Forth in the Transition Administrator’s 800 MHz Regional Prioritization Plan,” DA 05-619, WT Docket No. 02-55 (March 11, 2005).

auction of 900 MHz white space.³² Although Nextel generally supports regulatory efforts that facilitate the exchange of spectrum rights, establishing and implementing such untested auction mechanisms could delay the white space auction. The Commission should proceed with the white space auction as quickly as possible, and permit licensees to transfer spectrum rights in the secondary market as already provided under existing FCC rules.

B. The Commission Should Adopt Service Rules that Promote Spectrum Efficiency and Successful 800 MHz Band Reconfiguration

1. *Channel Blocks*

Nextel supports the Commission's proposal to license 900 MHz white space in nineteen blocks of ten contiguous channels each, and one block of nine contiguous channels.³³ As proposed, each block would be separately licensed, with licensees permitted to aggregate blocks. Nextel further agrees with the Commission's finding that it should not impose any eligibility restrictions on the licensing of this spectrum.³⁴

The Commission's proposed channel configuration fits well within the existing 900 MHz band plan. The proposed channel blocks are the maximum amount of contiguous spectrum available given the interleaving of these blocks with the 900 MHz SMR channels. The Commission should adopt its tentative conclusion to permit licensees to partition or disaggregate their spectrum holdings as provided under current

³² *NPRM* ¶¶ 37-40.

³³ *Id.* ¶ 26.

³⁴ *Id.* ¶ 27.

FCC rules.³⁵ The adoption of these proposals will further the efficient use of this spectrum.

2. *Treatment of Incumbent Systems*

Nextel supports the Commission's proposal in the *NPRM* (§ 34) to impose on geographic area licensees of 900 MHz white space the same obligation to protect co-channel incumbent B/ILT systems from interference as required under existing 900 MHz SMR rules.³⁶ B/ILT licensees in the 900 MHz band would be entitled to protection within their originally-licensed 40 dB μ V/m field strength contours, just as incumbent "grandfathered" 900 MHz SMR operators have remained protected from 900 MHz SMR-auction licensees. Basing the co-channel interference protection requirements for white space licensees on existing 900 MHz SMR interference rules will provide certainty regarding the rights and obligations of licensees in the band and will also provide sufficient protection for incumbent licensees. Similarly, Nextel agrees with the Commission's tentative conclusion in the *NPRM* (§ 36) to permit incumbent licensees to add or modify sites so long as their existing 40 dB μ V/m service area is not expanded. Incumbents should be limited to the 40 dB μ V/m service area because: (1) it will provide certainty for all licensees, both incumbents and potential auction participants, and reflects the applicable service area for an incumbent today, and (2) it will maximize the amount of white space that would be available at auction.

³⁵ *Id.* § 20.

³⁶ Under these rules, geographic area licensees must protect co-channel incumbent B/ILT operations by: (1) locating their stations at least 113 km (70 miles) from any incumbent's facilities; (2) complying with the co-channel separation standards of the FCC's "short-spacing" rule if they seek to operate stations located less than 113 km (70 miles) from an incumbent licensee's facilities, or (3) negotiating an even shorter distance with the incumbent licensee. *See* 47 C.F.R. § 90.621(b).

In addition, Nextel supports the Commission's tentative conclusion in the *NPRM* (§ 34) that a geographic area licensee's obligation to protect an incumbent station would cease if the incumbent's license is revoked or cancelled for any reason. In such a case, the service area and channels that were covered by the cancelled license should automatically revert to the geographic area licensee. In addition, as noted above, geographic area licensees will have the opportunity to acquire incumbent station license rights through secondary market transactions.

3. *Technical Rules*

The Commission proposes emissions limits and field strength limits based on current SMR and broadband PCS rules.³⁷ The Commission also proposes in the *NPRM* (§ 53) to apply the general technical provisions of Part 90 (including power and antenna height limits, types of emissions, frequency stability, and transmitter measurements) to geographic area licensees of 900 MHz white space. Nextel supports these proposals.

In the *NPRM* (§ 35), the Commission seeks comment on whether it should adopt specific 900 MHz interference protection requirements, including the interference abatement requirements that now apply to 800 MHz band licensees. Beyond voluntary "Best Practices", and a commitment by 900 MHz CMRS licensees to cooperative case-by-case interference mitigation, strict requirements are not necessary in the 900 MHz band. First, as the Commission indicated in the *800 MHz R&O* (§ 336), "[w]e have less

³⁷ See *NPRM* § 42 ("[O]n any frequency in a geographic area licensee's spectrum block that is adjacent to a non-geographic area frequency, we propose that the power of any emission shall be attenuated below the transmitter power (P) by at least 43 plus 10 log₁₀(P) decibels or 80 decibels, whichever is the lesser attenuation."); *id.* § 43 ("We also tentatively conclude that the predicted or measured field strength at any location on the border of the service area for geographic area licensees should not exceed 40 dBμV/m unless all bordering geographic area licensees agree to a higher field strength.").

concern about unacceptable interference resulting from ... 900 MHz ESMR use because there are no public safety channels allocated in the 900 MHz band.” Second, unlike public safety licensees at 800 MHz, which rely on taxpayer funding and face limited budgets to improve their systems in the case of interference, B/ILT licensees have the resources to construct and maintain more robust, interference resistant systems. Indeed, some 900 MHz licensees are among the largest companies in the world. Thus, B/ILT operators at 900 MHz bear responsibility for the systems they choose to deploy.

Third, while the spectrum environment at 900 MHz is similar to the interleaved environment at 800 MHz, there were and are far fewer instances of interference at 800 MHz between CMRS and B/ILT systems as compared to CMRS and public safety operations. There should also be few if any 900 MHz interference cases as well. The recent history of operations in the 900 MHz band bears this out. Nextel has been operating its dual band 800 MHz/900 MHz ESMR system since 2002, and has not received a single interference complaint from a 900 MHz B/ILT licensee.³⁸ Despite the interleaved environment, there is consequently no need to require 900 MHz commercial licensees to comply with the interference abatement measures adopted in the *800 MHz R&O*. These measures would impose substantial operational burdens on 900 MHz licensees, and would be contrary to the “flexible use” policies proposed in the *NPRM*.

4. *Performance Requirements*

In the *NPRM* (¶ 45), the Commission proposes to require 900 MHz white space licensees to demonstrate substantial service in their licensed area within ten years of being licensed. Nextel agrees with this proposal. It is consistent with the Commission’s

³⁸ In fact, Nextel has been the *recipient* of interference from adjacent band Cellular operations as well as interference from intra-band railroad facilities operating high-power facilities on the uplink path of 896-901 MHz.

flexible use objectives and will permit licensees to deploy service and new technologies in response to marketplace demand. Nextel also agrees with the Commission's proposal to modify existing 900 MHz SMR coverage requirements and adopt a ten-year substantial service showing for existing SMR licensees as well.³⁹ This would promote regulatory symmetry and provide flexibility for all 900 MHz licensees.

In the *NPRM* (§ 52) the Commission proposes to eliminate the loading requirements for existing B/ILT licensees. Nextel agrees that these outdated requirements can be eliminated so long as the Commission continues its freeze on acceptance of applications for initial licensing and auctions the applicable white space in the 900 MHz band.

III. CONCLUSION

Nextel urges the Commission to act expeditiously in adopting its tentative conclusions to license 900 MHz white space according to flexible use, market-oriented spectrum management policies. This approach will maximize the efficient use of this

³⁹ *NPRM* § 50. As stated in the *NPRM*, licensees that have already met their construction requirements would not be required to take any further action.

valuable spectrum and facilitate the implementation of the Commission's 800 MHz band reconfiguration decision.

Respectfully submitted,

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