

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

In the Matter of)
)
Biennial Regulatory Review - Amendment) WT Docket No. 03-264
of Parts 1, 22, 24, 27, and 90 to Streamline)
and Harmonize Various Rules Affecting)
Wireless Radio Services)

To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc., on behalf of its wholly-owned subsidiaries (collectively "Nextel") and pursuant to Section 1.415 of the Commission's Rules¹, respectfully submits its Comments in response to the Federal Communications Commission's ("Commission's") Notice of Proposed Rulemaking ("NPRM") issued January 7, 2004, in the above-referenced proceeding.²

In the NPRM, the Commission seeks comment on a number of rule changes designed to update and eliminate, where appropriate, certain provisions governing wireless radio services ("WRS"). Specifically, the Commission has proposed revisions to Parts 1, 22, 24, 27, and 90 of the rules to ensure consistent regulatory treatment of licensees and to modify or eliminate rules that have become outdated as a result of technological changes, changes to related Commission rules, or increased competition in

¹ 47 C.F.R. §1.415.

² *Biennial Regulatory Review - Amendment of Parts 1, 22, 24, 27, and 90 to Streamline and Harmonize Various Rules Affecting Wireless Radio Services, Notice of Proposed Rulemaking*, WT Docket No. 03-264 (Rel. Jan. 7, 2004) ("Biennial Regulatory Review NPRM").

the WRS.

I. INTRODUCTION

Nextel is a Commercial Mobile Radio Service ("CMRS") provider with a national footprint that serves some 400 cities. As a CMRS licensee with approximately 40,000 WRS licenses, Nextel applauds the Commission's efforts to streamline, harmonize and update its rules affecting WRS and, in particular, its efforts to streamline, harmonize and update the Parts 1 and 90 rules applicable to Nextel's CMRS licenses. In the 2002 biennial review proceeding, a number of parties suggested revisions to the Commission's rules. For the reasons set forth herein, Nextel supports many of the Commission's conclusions regarding the suggested revisions and believes the revisions discussed below will improve efficiency, eliminate burdens and delays, and provide greater clarity to WRS licensees.

II. DISCUSSION

Classification of Part 90 Frequency and/or Transmitter Site Deletions as Minor Modifications under Part 1. In its NPRM, the Commission tentatively concluded that an applicant's request to delete a channel or base station site from a multi-site authorization under Part 90 should be considered a minor modification that does not require frequency coordination or prior Commission approval.³ Nextel concurs with the Commission's tentative conclusions and supports these changes. As CTIA has observed, frequency coordination is not necessary when all frequencies are deleted from a license.⁴ Similarly, coordination should not be required when a channel or base station site from a

³ *Id.*, p. 5, para. 9.

⁴ Petition for Rulemaking of the Cellular Telecommunications & Internet Association, filed July 25, 2002 ("CTIA Petition"), p. 27.

multi-site license is deleted. Requiring frequency coordination for the deletion of a channel or base station site serves no useful purpose now that frequency coordinators can obtain up-to-date license information on the Universal Licensing System ("ULS"). This requirement is unduly burdensome to Part 90 licensees and should be eliminated.

The Commission also sought comment on whether there remains a need for licensees to notify the applicable frequency coordinator of any deletion, if the rules are modified as proposed.⁵ Due to the timeliness and effectiveness of the information contained in the Commission's ULS, Nextel believes notification of the frequency coordinator is not necessary. Coordinators, licensees and the public have quick and easy access to information concerning the frequencies and transmitter sites currently utilized by Part 90 licensees via the ULS.

Effective Radiated Power/Equivalent Isotropically Radiated Power. After evaluating a suggestion that the Commission use EIRP rather than using both EIRP and ERP throughout its rules in order to eliminate confusion, the Commission has tentatively determined this change should not be made.⁶ Nextel agrees and supports the Commission's tentative conclusion that restating all ERP limits as EIRP limits could actually result in greater confusion among wireless licensees, coordinators and the public.

Frequency Coordination for 800 MHz General Category Frequencies. The Commission seeks comment on its proposal to eliminate the frequency coordination requirement for those incumbent 800 MHz General Category licensees operating on a non-shared basis, where such licensees propose new and/or modified facilities that do not

⁵ Biennial Regulatory Review NPRM, p. 5, para. 9.

⁶ *Id.*, p. 6, para. 11.

expand their interference contour.⁷ CTIA requested that the Commission amend Section 90.175(i)(8) of the Rules in order to expand the exceptions to the coordination requirements of Section 90.175(i) to include the 800 MHz General Category frequencies.⁸ Because of concerns raised in the 2002 Biennial Regulatory Review Staff Report, however, the Commission proposed that the exception be extended to incumbent 800 MHz General Category licensees operating on a non-shared (i.e. exclusive) basis but not licensees operating on frequencies shared with other licensees.⁹ Nextel believes that the limitations imposed on grandfathered incumbent 800 MHz licensees by section 90.693¹⁰ of the Commission's rules alleviates the need for frequency coordination, whether the General Category licensee operates on shared or non-shared channels. Therefore, Nextel supports CTIA's request that the exception to frequency coordination requirements be extended to all incumbent 800 MHz licensees in the General Category band. However, in view of the relatively few shared channel licensees remaining in the General Category Band, Nextel also would support the staff proposal to expand the exceptions to the coordination requirement to include only non-shared (i.e. exclusive) incumbent 800 MHz General Category licensees.

800 MHz and 900 MHz Supplemental Information. Nextel supports the Commission's tentative conclusion that Section 90.607(a) of the Rules should be deleted,

⁷ *Id.*, p. 9-10, para. 20.

⁸ *CTIA Petition*, p. 26-27.

⁹ 2002 Biennial Review, WT Docket No. 02-310, *Staff Report of the Wireless Telecommunications Bureau* (rel. concurrently with 2002 Biennial Regulatory Review, Report on March 14, 2003), Appendix at 85-86.

¹⁰ 47 C.F.R. §90.693.

as suggested by the PCIA - The Wireless Infrastructure Association ("PCIA").¹¹ Many of the requirements set forth in that rule section are now outdated. For example, as PCIA points out, the system diagrams that were used when the 800 MHz band was originally conceived have not been used for years and are no longer necessary.¹² Nextel agrees with the Commission that the reporting requirements set forth in Section 90.607(a) are no longer necessary in light of competitive market forces at work within the wireless industry.

Emissions Masks. The Commission has tentatively proposed to revise Section 90.210(g) of its rules to eliminate paragraph (g)(1), which pertains to Emission Mask G.¹³ Motorola advocated this change, arguing that Emission Mask G limits design flexibility without any corresponding value in improved interference control.¹⁴ Nextel agrees that elimination of this rule will afford greater flexibility to manufacturers and will conform this emission mask rule with other emission mask provisions applicable to Part 90 services.

800 MHz and 900 MHz Trunked Systems Loading, Construction and Authorization Requirements. The Commission has tentatively concluded that the "waiting list" exception that applies to authorizations in rural areas should be eliminated

¹¹ Reply Comments of PCIA, The Wireless Infrastructure Association, WT Docket No. 02-310, filed Nov. 4, 2002 ("PCIA Reply Comments"), p. 4.

¹² *Id.*

¹³ Biennial Regulatory Review NPRM, p. 10, para. 21.

¹⁴ Comments of Motorola filed in WT Docket No. 02-310 on October 18, 2002, p. 1-2 ("Motorola Comments").

for both the 800 MHz and 900 MHz bands.¹⁵ Nextel supports this change and also supports eliminating other references to waiting lists contained in Section 90.631(d) of the rules. As PCIA noted, waiting lists for 800 MHz and 900 MHz SMR frequencies were eliminated in 1995 when the Commission switched to competitive bidding and geographic area licensing.¹⁶ Nextel agrees that this amendment is a necessary update to the Commission's rules.

The Commission has also tentatively concluded that paragraph (i) of Section 90.631 of the rules should be eliminated, as requested by CTIA.¹⁷ Section 90.631(i) of the Rules states that an incumbent 900 MHz SMR licensee that has not met its loading requirements at the end of its five-year license term will only be granted a renewal period of two years. CTIA requested that the Commission delete paragraph (i) from Section 90.631 because the deadline for site-specific SMR 900 MHz systems to satisfy the loading requirements has long since expired.¹⁸ Nextel agrees that Section 90.631(i) is an outdated provision that should be eliminated.

800 MHz and 900 MHz Power and Antenna Height. PCIA has requested that the Commission modify Section 90.635 of the Rules to remove the distinction between urban and suburban sites when setting maximum power and height restrictions for conventional 800 MHz and 900 MHz systems.¹⁹ The Commission seeks comment on

¹⁵ Biennial Regulatory Review NPRM, p. 12, para. 26.

¹⁶ PCIA Reply Comments, p. 4

¹⁷ Biennial Regulatory Review NPRM, p. 12-13, para. 27.

¹⁸ CTIA Petition, p. 28.

¹⁹ PCIA Reply Comments, p. 5.

PCIA's proposal to modify Section 90.635, finding that, "there is a significant question as to whether the justification for such distinction remains relevant in today's marketplace."²⁰ Nextel agrees that the distinction between urban and suburban sites, for purposes of setting power and height restrictions, is no longer necessary. Nextel supports an amendment to Section 90.635 to eliminate this distinction.

System Authorization Limit in Geographic Areas. The Commission has tentatively concluded that Section 90.653 of the Rules should be removed, as requested by CTIA in its Petition.²¹ Section 90.653 of the rules provides that "[t]here shall be no limit on the number of systems authorized to operate in any given area except that imposed by allocation limitations."²² Nextel agrees with CTIA that this rule is redundant.²³ As the Commission recognizes, the 800 and 900 MHz have been and will continue to be licensed through competitive bidding for geographic-area authorizations.²⁴ Thus, Section 90.653 serves no regulatory purpose and should be deleted.

Reporting Requirement for Trunked SMR Loading Data. Nextel supports the Commission's tentative conclusion that Section 90.658 of the Rules, which requires site-based licensees of trunked SMR systems licensed prior to June 1, 1993 to provide loading data in order to acquire channels or renew their licenses, should be eliminated. As both PCIA and CTIA have observed, all SMR licenses issued prior to June 1, 1993 have now

²⁰ Biennial Regulatory Review NPRM, p. 14, para. 29.

²¹ CTIA Petition, p. 28.

²² 47 C.F.R. § 90.653.

²³ CTIA Petition, p. 28.

²⁴ Biennial Regulatory Review NPRM, p. 14-15, para. 31.

been through at least one renewal period.²⁵ Accordingly, Nextel agrees this rule is outdated and should be deleted.

III. CONCLUSION

Nextel supports the revisions to the Commission's rules discussed above. Nextel believes these rule changes will further the Commission's goal of streamlining, harmonizing, and updating the rules relating to WRS.

Respectfully Submitted,

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Dated: April 23, 2004

²⁵ CTIA Petition, p. 27-28; PCI Reply Comments, p. 6.