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

In the Matter of	)	
	)	
Nextel Communications and	)	DA 01-1955; WT Docket 01-193
Chadmoore Wireless Group, Inc.	)	
Request for Assignment	)	

To: The Wireless Telecommunications Bureau
Commercial Wireless Division
Policy and Rules Branch

OPPOSITION
OF
CHADMOORE WIRELESS GROUP, INC.

1. Chadmoore Wireless Group, Inc. ("Chadmoore") hereby submits its opposition to the Comments filed in the above referenced matter wherein Commenters[1] oppose the assignment to Nextel Communications, Inc. ("Nextel") of certain Specialized Mobile Radio ("SMR") licenses in the 800 MHz and 900 MHz range currently licensed to Chadmoore ("Chadmoore Licenses"). Chadmoore submits that the issues raised by the Commenters are not applicable in the case of the Chadmoore Licenses and serve only to needlessly delay a private business transaction to the detriment of competition generally and Chadmoore's shareholders specifically. Furthermore, Commenters are seeking a change of the Commission's rules which is an undertaking more appropriately considered in a proceeding other than the current assignment application proceeding.

[1] The Commenters include the Cities of Philadelphia, Pennsylvania; Phoenix, Arizona; Scottsdale, Arizona; Queen Anne County, Maryland; the Government of the District of Columbia; County of Hamilton, Ohio; and Prince George's County, Maryland.

A. Chadmoore Licenses Do Not Trigger the Stated Technical Concerns for the Commenters

2. The Commenters discuss issues of a technical nature in their Comments which are not applicable to the Chadmoore Licenses. Chadmoore has examined its frequencies and has determined that none of the Chadmoore Licenses authorize a 22 dBu contour over the areas of the Commenters. Attached hereto as Exhibit A is a Declaration of Mr. Riaz Ali, Vice President of Operations, stating that a contour analysis was conducted in response to the Comments and it was determined that no Chadmoore Licenses cover the areas of the Commenters. Therefore, the assignment of the Chadmoore Licenses would have no impact on the Commenters or their technical licensing concerns.

B. Analysis of Assignment Application

3. Section 310(d) of the Communications Act of 1934, as amended, 47 U.S.C. § 310(d) (the "Act"), provides that "no construction permit, or station license, or any rights thereunder, shall be transferred, assigned or disposed of in any manner, voluntarily or involuntarily, directly or indirectly, or by transfer of control of any corporation holding such permit or license, to any person except upon application to the Commission and upon finding by the Commission that the public interest, convenience, and necessity will be served thereby."[2] Section 310(d) also requires the Commission to consider the license transfer or assignment application as if it were filed pursuant to section 308 of the Act, which governs applications for new facilities and for renewal of existing licenses. Section 308 provides that the Commission

[2] 47 U.S.C. § 310(d).

shall consider any such applications ". . . as if the proposed transferee or assignee were making application under Section 308 for the permit or license in question." [3]

4. The Commission's analysis includes a determination whether the proposed licensee is qualified to hold a Commission license and whether grant of the application would result in the proposed licensee violating any Commission rules.[4] All the Commenters recognize and state that Nextel is in compliance with Commission licensing rules and none have alleged that grant of the assignment application for the Chadmoore Licenses would result in the violation of any Commission rules. In fact, Commenters seem to recognize that should Nextel apply for the Chadmoore Licenses under Section 308, Nextel would be qualified for grant of the licenses under Nextel's current technical parameters.

5. The Commission typically considers, as part of its examination under the "public interest, convenience, and necessity" standard of section 310(d) of the Communications Act, the effects on competition of a proposed transfer.[5] This standard requires that the transaction not interfere with the objectives of the Communications Act and must include consideration of the possible competitive effects of the transfer.[6] None of the Commenters have presented any information, or even any allegation, of any adverse competitive effects of the proposed assignment of the Chadmoore Licenses. As a matter of fact, none of the Commenters have presented any concrete showing that the proposed assignment of the Chadmoore Licenses would

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[3] 47 U.S.C. § 308.

[4] *Applications of Airtouch Communications, Inc. and Vodafone Group, PLC*, 14 FCC Rcd 9430, 9433-9434 (WTB 1999).

[5] The Commission has stated "[w]here the transfer or assignment of licenses involves telecommunications service providers, the Commission's public interest determination must be guided primarily by the Communications Act, as amended." *Id.* at 9435. The Commission also recognized that the 1996 amendments to the Act were specifically intended to produce competitive telecommunications markets. *Id.* at 9436 (citing *AT&T Corporation, et al., v. Iowa Utils. Bd.*, 119 S. Ct. 721, 724 (1999)).

[6] *Id.* at 9435.

adversely effect any of them, competitive, technical or otherwise, relating to operation of Chadmoore Licenses by Nextel.

C. A Rule Making Proceeding is the Proper Form for Commenters

6. Commenters present issues not specific to the assignment application relating to the Chadmoore Licenses.[7] Rather, Commenters raise general issues relating to the Commission's licensing rules and appear to be requesting a change to those licensing rules. The proper forum for such a request is a rulemaking proceeding, not opposition to the assignment of the Chadmoore Licenses. Denial or delay of the assignment of the Chadmoore Licenses will not benefit the Commenters at all and shall serve to both punish Chadmoore shareholders and to inhibit competition in the mobile telecommunications services market. The Commenters will only succeed in impeding a purely private transaction to the detriment of those shareholders.

7. Several of the Commenters request the Commission to forbear allocation of any additional frequencies to Nextel.[8] However, the frequencies are already validly licensed and Chadmoore has been operating them without any interference to these entities. As a matter of fact, due to competitive concerns, Chadmoore probably would have had to upgrade the licenses to a system similar to that of Nextel and would be allowed to do so under the Commission's

[7] Chadmoore in no way comments on the relative merit of the technical concerns of Commenters. Public safety entities and concerns have always been of the utmost concern to Chadmoore and Chadmoore has always attempted to support those entities and concerns. However, in this case, the Commenters attempt to use this proceeding to address technical licensing issues is misplaced.

[8] *See* Government of the District of Columbia at 1, County of Hamilton at 1.

rules. Therefore, the Commenters are in no different position than they would have been whether Chadmoore or Nextel is the licensee of the Chadmoore Licenses.[9]

Conclusion

8. Chadmoore and Nextel have met their burden of showing that the proposed transaction is in the public interest and will benefit competition. Commenters can not and have not presented any information demonstrating that the assignment of the Chadmoore Licenses to Nextel is adverse to the public interest or detrimental to the specific systems of Commenters. The Commenters simply attempt to inappropriately utilize the current proceeding to obtain a change in the Commission's rules. A delay or denial of assignment of the Chadmoore Licenses, in addition to being unrelated to the interests and concerns of Commenters, would be detrimental to a purely private transaction and to shareholders. For the reasons stated herein, the Commission should grant the assignment applications in the above-referenced proceeding.

Respectfully submitted,

Rick D. Rhodes
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Michelle A. McClure
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Date: September 27, 2001

[9] As previously stated, the Commenters are not in a position of any harm due to the operation of the Chadmoore Licenses.

Exhibit A

DECLARATION OF RIAZ ALI

Riaz Ali hereby declares as follows:

1. I am Vice President of Operations of Chadmoore Wireless Group, Inc.

2. I supervised a contour analysis of the Chadmoore Licenses and their effect on the geographical area of Commenters.

3. A 22 dBu contour analysis was conducted of the Chadmoore Licenses determining that no 22 dBu contour of the Chadmoore Licenses covered any of the areas of Commenters.

4. I have reviewed the foregoing Opposition and verify that the facts set forth therein are true and correct to the best of my knowledge, information and belief.

I declare under penalty of perjury that the foregoing is true and correct.

Riaz Ali

Executed on September 25, 2001

CERTIFICATE OF SERVICE

I, Shannada Pickett do hereby certify that on this 26th day of September, 2001, copies of the foregoing "Opposition" have been served by hand delivery or first class mail, postage prepaid, upon the following:

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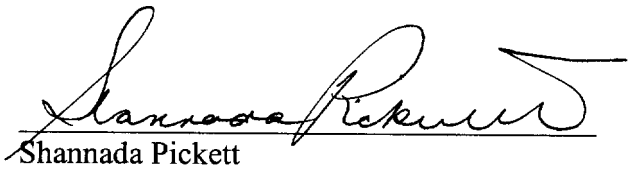

Shannada Pickett

*Denotes Hand Delivery