

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

**STAMP & RETURN**

In the Matter of )  
 )  
Reauction of Certain C and F Block )  
Broadband PCS Licenses )

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FEDERAL COMMUNICATIONS COMMISSION  
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**PETITION FOR EXPEDITED RULEMAKING  
OR, IN THE ALTERNATIVE,  
WAIVER OF THE COMMISSION'S RULES**

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## SUMMARY

When the Commission adopted the C and F Block auction rules in 1994, it balanced a conflicting set of Congressional goals: prompt deployment of new technologies; service to rural areas; recovering a portion of the value of the spectrum; and making licenses available to a wide variety of applicants, including small businesses. The rules put substantial weight on providing opportunities for small businesses (or “designated entities”), in part, because the Commission concluded that smaller companies could succeed in the broadband CMRS marketplace.

Even before the C and F block licenses were awarded, however, market conditions changed so significantly that the Commission’s hopes could not be realized. Rather than producing a vigorous marketplace of local and niche services, the auctions resulted in a handful of designated entities obtaining the vast majority of C and F Block licenses. The auction winners could not, however, translate their plans into operations, in large part because they had overextended themselves in their efforts to obtain sufficient spectrum. Today, only a few designated entities operate in a tiny fraction of C and F Block spectrum, and the vast majority of this spectrum lies fallow. Rural America remains particularly unserved and, in the March 1999 reauction, many rural licenses were not sold.

The Commission now is reauctioning much of the C and F Block spectrum and must once again balance the statutorily-defined goals for spectrum auctions. In designing these auctions, the Commission should focus on the goals that were not met by the initial C and F Block auctions – prompt deployment of service and service to all, including those in rural and underserved areas. These goals are particularly important because the failures of C and F Block licensees have deprived consumers of competitive choices that should have become available years ago.

To achieve these goals, the Commission must craft a new set of eligibility and bidding rules for the C and F Block spectrum now scheduled for auction in July. Specifically, the Commission should adopt rules as follows:

- The designated entity set aside rules will not apply to the reauction. Qualified, bona fide designated entities will be entitled to participate in the reauction and should remain eligible for bidding credits similar to those adopted for the 700 MHz auctions.
- One block of spectrum will be auctioned at the end of May 2000, on a bulk bidding basis. This block will consist of (i) 20 MHz from each of the 30 MHz C Block licenses being reauctioned; and (ii) all 15 MHz licenses being reauctioned. The successful bidder in this auction will be required to begin service in each BTA by three years from the date of license.
- The remaining F Block spectrum, consisting of 93 new 10 MHz licenses from each of the 30 MHz C Block licenses and all of the other 10 MHz licenses, will be auctioned beginning July 26, 2000. There will be separate bidding for each license.

These rules balance the Congressionally mandated goals while recognizing the evolution of the wireless marketplace since 1994. Opening the auctions to all qualified bidders and imposing accelerated build-out requirements for the bulk bid licenses will ensure that these licenses do not lie fallow. **Accelerated build-out requirements for the bulk bid licenses will ensure that service is provided to many rural BTAs that do not now have PCS service.** The bulk bid element of the auction will give the successful bidder the nationwide footprint necessary to compete effectively against mature wireless providers like AT&T Wireless. At the same time, the proposal will give designated entities significant opportunities by providing them with bidding credits and auctioning licenses at the BTA level. Thus, the proposal will meet the Congressional goals that were not served by the original C and F Block auctions while preserving the ability of designated entities to participate meaningfully in the auction process.



Virtually none of the licenses identified by the Commission for the July 26 reauction have ever been used to provide service.<sup>2</sup> Consequently, the Commission's primary objective in this reauction should be to speed service to the public in a manner that enhances competition in both rural and urban areas. The Commission, therefore, should modify its rules as follows:

- Eligibility for the licenses available in the reauction should be expanded to all entities otherwise eligible under the Commission's rules to hold the licenses, rather than being restricted to small businesses that qualify as designated entities.
- The 30 MHz C Block licenses should be reconfigured into separate 20 MHz and 10 MHz licenses for each BTA. The 20 MHz licenses, together with the available resubmitted C Block 15 MHz licenses, would be auctioned together exclusively as a single "bulk bid" package in a reauction to commence May 31, 2000.<sup>3</sup> This bulk bid package would be subject to an expedited build-out schedule specifically to ensure that rural and underserved markets that went unsold in the last reauctions would receive service quickly.
- The new 10 MHz C Block and the F Block licenses would be auctioned on a BTA, market-by-market basis in the July 26, 2000 auction as planned. The availability of 93 new 10 MHz PCS licenses will enhance substantially designated entity opportunities to purchase these new licenses.

Nextel requests that the Commission place this petition on public notice immediately with an expedited pleading schedule so that rules can be adopted by April 15, 2000, for the two auctions described above.

Nextel's mobile radio roots are in the specialized mobile radio ("SMR") industry. Prior to the creation of PCS, Nextel proposed SMR rule waivers to allow it to introduce advanced

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<sup>2</sup> The Paducah, Kentucky license previously held by Southeast Telephone, Inc. may have been in service when the license was declared in default and cancelled for nonpayment.

<sup>3</sup> Consistent with past Commission practice, individual licenses would be granted for the BTAs included in the bulk bid auction package. Attachment A lists the licenses that would be included within the bulk bid package.

switched digital services to provide the first real facilities-based competition to the cellular duopoly. Nextel has assembled site-by-site SMR licenses and has participated in the Commission's wide area SMR auctions to gain a sufficient footprint to provide its iDEN<sup>sm</sup> services. While it has sufficient spectrum for its current operations, Nextel seeks to offer a wider array of advanced data and other innovative wireless communications services, and is interested in participating in the upcoming reauction.

As the Commission recently found, access to additional spectrum could allow Nextel to compete more effectively with large commercial mobile radio service ("CMRS") operators that have access to substantially more spectrum.<sup>4</sup> Adoption of these auction proposals also will benefit other communications companies that have not already obtained substantial amounts of wireless spectrum and are in a position to acquire these licenses and provide additional competition in the CMRS market. Furthermore, a broader range of wireless mobile providers will be eligible to bid for the additional 10 MHz licenses that the bulk bid proposal would make available in all markets. Thus, regardless of which companies ultimately acquire the PCS licenses to be made available in the upcoming reauction, as described below, it is manifestly in the public interest for the Commission to modify its upcoming reauction.

**I. WIRELESS MARKETS HAVE CHANGED DRAMATICALLY SINCE THE PCS DESIGNATED ENTITY SET-ASIDE WAS ADOPTED.**

The broadband CMRS market has undergone a substantial transformation since the Commission established its PCS auction regime and the C and F Block designated entity set-asides. Moreover, the wireless industry continues to evolve rapidly and the pace of change is

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<sup>4</sup> See *In re Applications of Various Subsidiaries and Affiliates of Geotek Communications, Inc., Debtor-In-Possession, Assignors, and Wilmington Trust Co. or Hughes* continued...

accelerating. Although designated entity set-asides may have been appropriate in the context of a nascent PCS market, set-asides are not well-suited to the current operational realities or future competitive developments in the CMRS market.

**A. In 1994, the Commission Reasonably Concluded That Small CMRS Operators Would Be Viable Competitors.**

The Commission promulgated its original PCS auction rules in 1994, when the broadband wireless mobile industry was characterized by a duopoly of cellular providers in each market providing analog mobile voice communications services.<sup>5</sup> To eliminate the cellular duopoly and introduce enhanced digital wireless services, the Commission concluded that six blocks of PCS spectrum should be made available for new entrants through competitive bidding, as mandated by Congress. Of these, Blocks C and F — 40 MHz of the 120 MHz assigned to licensed PCS operations — were set-aside for small businesses, or “designated entities,” required to have gross revenues and total assets below certain levels and to comply with *de facto* and *de jure* control requirements.<sup>6</sup> The Commission also decided to auction C and F Block PCS

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Electronics Corp, Assignors, For Consent to Assignment of 900 MHz Specialized Mobile Radio Licenses, *Memorandum Opinion and Order*, DA 00-89 (rel. Jan. 14, 2000) at ¶ 46.

<sup>5</sup> While the Regional Bell Operating Companies had significant in-market cellular holdings, no single carrier had coast-to-coast licenses, and regional and local carriers were common. In 1994, cellular providers that offered “national” wireless mobility did so through inter-carrier roaming arrangements. These arrangements typically included a significant surcharge on all calls made while roaming outside of a subscriber’s home area.

<sup>6</sup> In the Matter of Implementation of Section 309(j) of the Communications Act — Competitive Bidding, *Fifth Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 5532, 5574-88 (1994) (“*Fifth Report and Order*”). See 47 C.F.R. § 24.709.



spectrum in 493 BTA licenses and to limit the total number of licenses that any single designated entity could obtain to facilitate distribution of licenses among a wide variety of applicants.<sup>7</sup>

The Commission premised its actions establishing the C and F Blocks upon two fundamental assumptions. First, as is evident from the structure of the C and F Blocks (493 BTA licenses per Block) versus the A and B Blocks (52 MTA licenses per Block), the Commission assumed that designated entities would obtain licenses and implement PCS systems in smaller geographic markets. Second, given the early stage of the PCS industry's development and the assertions in the record by interested small businesses, the Commission assumed that small businesses would be able to implement viable niche services in these more limited geographic markets and compete effectively with large regional and national wireless services providers by differentiating their offerings and forming cooperatives as necessary to counter any economies of scale realized by larger competitors.<sup>8</sup> In the intervening years, however, this prediction did not prove true. Although there are many PCS licensees, consumer demand for national wireless services is plainly driving all CMRS carriers to national service offerings featuring "all you can eat" buckets of local and long distance minutes. Accordingly, today's carriers must have either effectively national or regional footprints or arrangements that replicate the economics of a nationwide footprint.

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<sup>7</sup> *Fifth Report and Order*, at 5538.

<sup>8</sup> For example, the Small Business PCS Association told the Commission that a small business operating in a single BTA service region could effectively compete with larger companies. *See Fifth Report and Order* at n.100.

**B. By 1996, the Need for Broad Geographic Coverage Had Become Apparent.**

Although the Commission promulgated its PCS auction rules in July 1994, the C Block PCS auction was delayed for a variety of reasons and did not commence until December 1995, well after the conclusion of the A and B Block PCS auction. In addition, the C Block auction was quite lengthy and did not conclude until May 1996. The idea that there would be many designated entity licensees successfully operating small regional PCS systems was shattered by the emergence of several large designated entities that had amassed significant license holdings. These so-called small businesses eliminated most of the real designated entities through their bidding strategies.<sup>9</sup>

**C. Since 1998, CMRS Consolidation and Nationwide Footprints Have Been the Rule.**

The trend in the CMRS industry towards larger geographic footprints has become more apparent since the conclusion of the C Block auction. Indeed, in its annual reports to Congress on competition in the CMRS industry, the Commission has identified consolidation and expansion of geographic coverage as the primary trends in the CMRS industry.<sup>10</sup> The 1997

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<sup>9</sup> By asking that the designated entity set-aside be eliminated for this reauction, Nextel is not attacking the wisdom of the PCS auction rules and designated entity set-asides originally adopted by the Commission. It is obvious, however, that small, start-up entities with hundreds of millions of dollars in debt are doomed to fail in competitive markets in which some of the nation's largest communications firms operate. Furthermore, an entity that believes itself capable of bidding and timely making license payments totaling billions of dollars is not a small business by any stretch of the definition. Thus, despite the Commission's best intentions in devising a designated entity program that would benefit small businesses, it is evident that many participants in the first C Block auction had no intention of meeting the spirit of the Commission's small business rules. Indeed, as Commissioner Furchtgott-Roth has recently stated, the C Block "experience is a case study in good intentions gone awry." See "Commissioner Harold Furchtgott-Roth Reacts to NextWave Decision," News, Federal Communications Commission (rel. Jan. 12, 2000).

<sup>10</sup> See Implementation of Section 6002(B) of the Omnibus Budget Reconciliation Act of 1993, Annual Report and Analysis of Competitive Market Conditions with Respect to

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*CMRS Annual Report* recognized that CMRS operators acquired new wireless licenses through consolidation to gain efficiencies of larger and/or more cohesive footprints.<sup>11</sup> In the *1998 CMRS Annual Report*, the Commission reported that the primary focus of PCS operators was expansion of their footprints and that consolidation in the industry was continuing.<sup>12</sup>

A driving force behind these trends was the introduction of “digital one-rate” price plans in 1998.<sup>13</sup> The introduction of these pricing plans substantially changed the economics of the industry and made it significantly less cost effective for smaller regional CMRS providers to compete effectively with large wireless operators with national footprints. Even the more established CMRS carriers needed to find new ways to deliver improved seamless coverage as customers demanded wider coverage areas and lower rates in response to innovative new service offerings such as Nextel’s early offer of nationwide service with no charges for roaming.

In 1998, in efforts to achieve the needed critical mass, three of the top 25 operators in subscribership consolidated their operations with other carriers.<sup>14</sup> These transactions included

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Commercial Mobile Services, *Third Report*, 13 FCC Rcd 19746, 19753-56 (1998) (“*1997 CMRS Annual Report*”); 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, *Fourth Report*, 14 FCC Rcd 10145, 10158-59 (1999) (“*1998 CMRS Annual Report*”).

<sup>11</sup> *1997 CMRS Annual Report*, at 19766-67.

<sup>12</sup> *1998 CMRS Annual Report* at 10159-60, 10175.

<sup>13</sup> While the details of various operators’ plans differ, they generally include some combination of the following: bundles of large quantities of minutes for a fixed monthly rate that translate into a low per-minute price; no long distance charges when used on the operator’s network; no roaming charges when used on the operator’s network; reduced roaming charges when off the operator’s network; and, in some cases, no extra roaming charges anywhere. *Id.* at 10155.

<sup>14</sup> *1998 CMRS Annual Report*, at 10159.

AirTouch's merger with U S West Media Group, ALLTEL's merger with 360° Communications and AT&T's acquisition of Vanguard. That trend continued in 1999 as major wireless carriers such as AT&T, AirTouch, SBC and GTE continued to purchase other carriers, and new national combinations such as Omnipoint – VoiceStream – Aerial were proposed.<sup>15</sup>

**D. C Block Licensees Have Largely Been Unable to Finance and Implement Their Systems in the Present CMRS Market.**

While dramatic structural changes were taking place in the CMRS industry since 1994, many C Block licensees found themselves unable, or unwilling, to pay the large sums owed for their licenses. Less than a year after the C Block auction concluded, the Wireless Telecommunications Bureau suspended payment obligations for C Block licensees.<sup>16</sup> After considering several industry proposals on how to restructure C and F Block financial obligations, the Commission concluded that any outright forgiveness of the debt would undermine the credibility of the Commission's rules and would give an unfair advantage those who bid too high compared with those who withdrew when the bidding began to exceed their financial resources.<sup>17</sup>

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<sup>15</sup> For example, in 1999 SBC acquired Comcast Cellular Communications, AT&T and Dobson Communications announced plans to purchase American Cellular Corp., AirTouch announced plans to purchase CommNet Cellular, and GTE announced plans to purchase 20 Ameritech wireless properties in partnership with minority-owned Georgetown Partners. See AT&T and Dobson Buy American Cellular for \$2.32 Billion, *Communications Daily*, Oct. 18, 1999; GTE and Partner Pay \$3.27 Billion for Ameritech Wireless Properties, *Communications Daily*, Apr. 6, 1999.

<sup>16</sup> See Installment Payments for PCS Licenses, *Order*, DA 97-649, 12 FCC Rcd 17325 (1997). A month later similar payment relief was granted to F Block licensees. See "FCC Announces Grant of Broadband Personal Communications Services D, E and F Block Licensees," *Public Notice*, DA 97-883, 13 FCC Rcd 1286 (1997) at 2.

<sup>17</sup> See Amendment of the Commission's Rules Regarding Installment Payment Financing for Personal Communications Services (PCS) Licenses, *Second Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 97-82, 12 FCC Rcd 16436, 16447 (1997) (the "Restructuring Order").

The major C Block industry players quickly responded to the Commission's restructuring options: they declared bankruptcy. At present, at least eight C and F Block licensees holding more than 190 licenses, including the largest C Block license holder, NextWave Personal Communications, Inc. ("NextWave"), have declared bankruptcy.<sup>18</sup> These bankruptcy cases have tied up the licenses in lengthy and complex proceedings and have had a snowball effect of freezing most build-out activity in the C Block.<sup>19</sup> Only a few of the nearly 1,000 licenses acquired in the C and F Block auctions have been constructed and are in commercial operation; the vast majority remain unbuilt. As of January 3, 2000, only 21 C Block and 4 F Block licenses are constructed and providing services over some portions of their markets.<sup>20</sup> In its annual report to Congress on CMRS competition, the Commission also reported that as of June 1999, C Block licensees implemented PCS services in regions covering only 6.7 percent of the U.S. population,

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<sup>18</sup> See *In re Pocket Communications, Inc. and DCR PCS, Inc.*, Case Nos. 97-5-4105-ESD and 97-5-4106-ESD (Bankr. D. Md.) (filed March 31, 1997); *In re GWI PCS1, Inc. et al.*, No. 3:97-39676-SAF-11 (Bankr. N.D. Tex.) (filed Oct. 10, 1997); *In re NextWave Personal Communications, Inc.*, Case No. 98-B-21529 (Bankr. S.D.N.Y.) (filed June 8, 1998); *In re Magnacom Wireless, L.L.C.*, Case No. 98-39048 (Bankr. W.D. Wash.) (filed Oct. 28, 1998); *In re NextWave Communicators PCS Limited Partnership*, Case No. 98-47996 (Bankr. S.D.N.Y.) (filed Nov. 5, 1998); *In re Kansas Personal Communications Services, Ltd.*, Case No. 99-21747 (filed July 19, 1999); *In re Airadigm Communications, Inc. d/b/a Wireless Communication PCS d/b/a Einstein PCS*, Case No. 99-33500 (Bankr. W.D. Wis.) (filed July 28, 1999); *In re Personal Communications Network, Inc.*, Case No. 99-20207 (filed Aug. 6, 1999).

<sup>19</sup> Recent press reports indicate that of the 56 companies that made successful bids in the C Block auction, only about 15 are offering service. See Peter S. Goodman, *Budget Talks Focus on Wireless Spectrum Issue*, WASH. POST, November 17, 1999. See also Hearing of The Communications Subcommittee of the Senate Commerce, Science & Transportation Committee: FCC Reauthorization, May 13, 1998 (Chaired by: Senator Conrad Burns (R-Mt); Witness: Dan Phythyon, Chief, Wireless Bureau, FCC) (noting that recent C Block bankruptcies have "thrown . . . an incredible curve ball at this [auction] process and the Commission already is getting additional requests for relief, for delays, for clarity....").

<sup>20</sup> See "Buildout Schedule and Technology Chosen by C Block Licensees" and "Buildout Schedule and Technology Chosen by D, E and F Block Licensees," available on the FCC web site at <<http://www.fcc.gov/wtb/pcs>> (updated Jan. 3, 2000).

while F Block licensees provided services in areas covering only 11.3 percent of the U.S. population.<sup>21</sup>

## **II. RURAL AND UNDERSERVED AREAS HAVE BENEFITED LEAST FROM THE C AND F BLOCK LICENSES.**

As the Commission's report to Congress shows, the C and F Block PCS licenses, nearly one-third of all new competitive spectrum available since the cellular duopoly days, have not been used to provide competition in rural and underserved areas. Carriers did not acquire these licenses to enter niche markets, as the Commission hoped when it established the designated entity program. Rather, C and F Block licensees chased the same urban customers who now already receive service from up to five different wireless competitors. The lack of carrier interest in rural and underserved markets is highlighted by the fact that 45 15 MHz licenses of the 154 total licenses available in this reauction went unsold in the March, 1999 reauction. These 45 unsold licenses primarily cover small populations in rural areas.

To ensure that rural and underserved area consumers are not left behind, these 15 MHz licenses should be packaged with the primarily urban 20 MHz licenses into a "bulk bid" package, as discussed more fully below. The entire package would then be subject to an accelerated build-out requirement under which the holder of the bulk bid licenses would be required to serve one-third of the population in each BTA within three, rather than the current five, years. In addition, Nextel pledges that if it is the winner of the bulk bid package at the conclusion of the

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<sup>21</sup> See Annual Report and Analysis of Competitive Market Conditions with Respect to Commercial Mobile Services, *Fourth Report*, FCC 99-136 (June 24, 1999) at Table 13C. The C Block figure likely overstates the actual implementation of C Block spectrum, however, because a number of the relevant C Block licensees returned their C Block licenses and are providing services using licenses acquired by Sprint PCS in the A or B Blocks. *Id.*

May 31, 2000 bulk bid auction, it will provide service to the many Native Americans living on reservations in the BTAs covered by the bulk bid package.<sup>22</sup>

**III. PERMITTING NON-DESIGNATED ENTITIES TO PARTICIPATE IN THE REACTION WILL RESULT IN SUBSTANTIAL PUBLIC BENEFITS AND IS FULLY CONSISTENT WITH THE COMMISSION'S STATUTORY MANDATE.**

Section 309(j)(3) of the Communications Act outlines the objectives to be promoted by the Commission through competitive bidding for spectrum licenses. They include: (i) "the development and rapid deployment of new technologies, products, and services . . . ;" (ii) "promoting economic opportunity and competition . . . by disseminating licenses among a wide variety of applicants, including small businesses . . . ;" (iii) "recovery for the public of a portion of the value of the public spectrum resource made available for commercial use . . . ;" and (iv) "efficient and intensive use of the electromagnetic spectrum."<sup>23</sup> The courts have recognized that these statutory objectives are potentially conflicting and have held that the Commission has discretion to determine which of these competing objectives to advance in its decisionmaking.<sup>24</sup>

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<sup>22</sup> The Commission recently released two notices of proposed rulemaking principally concerned with improving telecommunications services, including wireless services, to tribal lands. Indeed, the Commission even has sought comment on whether it should allow designated entity to non-designated entity license transfers if the non-designated entity pledges to provide service to tribal lands and other unserved areas. See *Extending Wireless Telecommunications Services to Tribal Lands*, WT Docket 99-266, *Notice of Proposed Rulemaking*, FCC 99-205 (rel. Aug. 18, 1999) at ¶ 36. See also *Federal-State Joint Board on Universal Service: Promoting Deployment and Subscriberhip in Unserved and Underserved Areas, Including Tribal and Insular Areas*, CC Docket 96-45, *Further Notice of Proposed Rulemaking*, FCC 99-204 (rel. Sept. 3, 1999) at ¶ 6 ("The Commission has been particularly concerned that Indians on reservations, in comparison to other Americans, have less access even to basic telecommunications services.").

<sup>23</sup> 47 U.S.C. § 309(j)(3).

<sup>24</sup> See *Fresno Mobile Radio, Inc. v. FCC*, 165 F.3d 965, 971 (D.C. Cir. 1999); *Melcher v. FCC*, 134 F.3d 1143, 1154 (D.C. Cir. 1998). In *Melcher*, the court concluded that Section 309(j)(3)(B) "articulates a number of potentially conflicting objectives" and that "the Commission may decide how much precedence particular policies will be granted when several

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In view of the significant changes in the CMRS industry and the substantial difficulties experienced by C and F Block PCS licensees in building their systems, the Commission has both the basis for and the obligation to revise its competitive bidding rules in structuring the upcoming PCS reauction. Because these developments have dramatically changed the market and the common understanding of the elements necessary for viability and sustained successful commercial operations, the Commission's set-aside policy must be eliminated. The Commission should now address how it may best promote the objectives of Section 309(j)(3) of the Communications Act in light of the fundamental changes in the marketplace.<sup>25</sup>

**A. Designated Entities Now Face Significantly Greater Competitive Obstacles than They Have in the Past.**

This scheduled reauction presents the Commission with competitive circumstances that are even more disadvantageous to the potential success of small businesses than were obstacles at the time of the 1994 C Block auction. The PCS licenses available in the upcoming reauction must be won, financed and built out in the face of formidable facilities-based national competition such as Vodafone/ AirTouch-Bell Atlantic/GTE, Sprint PCS and AT&T Wireless, as

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are implicated in a single decision." *Melcher*, at 1154 (quoting *Mobitel, Inc. v. FCC*, 107 F.3d 888, 895 (D.C. Cir. 1997)). The court's view recently was affirmed in *Fresno Mobile Radio*. "When an agency must balance a number of potentially conflicting objectives, which these are, judicial review is limited to determining whether the agency's decision reasonably advances at least one of those objectives and its decisionmaking process was regular." *Fresno Mobile Radio*, at 971.

<sup>25</sup> As noted by the U.S. Court of Appeals for the D.C. Circuit in discussing its reliance on the Commission's predictive policy judgment, "a month of experience will be worth a year of hearings." *Syracuse Peace Council v. FCC*, 867 F.2d 654, 660 (D.C. Cir. 1989) (quoting *American Airlines, Inc. v. CAB*, 359 F.2d 624, 633 (D.C. Cir. 1966) (en banc), cert. denied, 385 U.S. 843 (1966)). In this case, the Commission's years of experience with the CMRS industry and the C Block, in particular, overwhelmingly demonstrate that the public interest would be best

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well as with continued strong regional competition from the other Regional Bell Operating Companies such as SBC and BellSouth. Each of these competitors has been operating for years, provides nationally or regionally available broadband cellular and PCS offerings, and possesses significant marketing advantages, such as well recognized brands.

It is manifest that the Commission's earlier assumptions concerning measures necessary to facilitate small business participation in broadband PCS do not reflect the realities of the national CMRS market. The severe difficulties experienced by C and F Block licensees confirm that small businesses with limited resources face daunting obstacles in obtaining financing, building out their systems and competing successfully with entrenched incumbents.<sup>26</sup>

Accordingly, limiting the scheduled reauction to designated entities guarantees that the problems experienced by previous C Block designated entity licensees will be repeated and the spectrum will remain fallow. The Commission should acknowledge here, as it has elsewhere, that the competitive conditions of the CMRS market have changed dramatically and modify its rules accordingly.<sup>27</sup> Indeed, the eligibility change proposed is consistent with the Commission's

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served by modifying the PCS competitive bidding rules and eliminating the designated entity set-aside.

<sup>26</sup> The sales of Vanguard to AT&T Wireless in 1998 and Comcast Cellular to SBC in 1999 are evidence that even established, non-designated entity regional operators are exiting the business. See Comcast Corp. Sells Cellular Telephone Operations for \$1.7 Billion, *Press Release*, Jan. 20, 1999 (quoting President Brian Roberts as stating that "with this sale, we acknowledge the trend toward national and global competitors in the wireless industry"); Bill Menezes, "Is Vanguard Just the Beginning?," *Wireless Week*, Oct. 12, 1998 (quoting Vanguard's CEO as stating that "For a company such as Vanguard that only owns the network that performs the cellular part of the mix, we believe we could find ourselves continually signing up more customers yet generating unsatisfactory operating results. We believe this situation has created a new level of financial risk we have to put into our mix").

<sup>27</sup> See 1998 Biennial Regulatory Review Spectrum Aggregation Limits for Wireless Telecommunications Carriers, WT Docket 98-205, *Report and Order*, FCC 99-244 at ¶ 48 (rel.

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early acknowledgement when creating the program that designated entity benefits should not “delay service to the public by encouraging under-capitalized firms to receive licenses for facilities which they clearly lack the resources adequately to finance.”<sup>28</sup> Because continuing a set-aside creates unacceptable risks of an indefinite denial of additional competitive PCS service to the public, the Commission should modify its rules to expand participation in the upcoming reauction.

**B. Expanding Participation in the Reauction to Non-Designated Entities Will Enhance Competition and Further Important Public Interest Objectives.**

A fundamental objective embodied in the Communications Act of 1934 is the deployment of “rapid, efficient Nation-wide ... wire and radio communication service with adequate facilities at reasonable charges ...”<sup>29</sup> Congress adopted even more explicit objectives when it amended the Communications Act in the Omnibus Budget Reconciliation Act of 1993, directing “the development and rapid deployment of new technologies, products, and services for the benefit of the public . . . [and] efficient and intensive use of the electromagnetic spectrum.”<sup>30</sup>

The objectives of rapid deployment and efficient use of spectrum are nowhere more evident than in the development of the PCS band plan and services rules. There, the Commission set out as its initial goals promoting “universality; speed of deployment; diversity of

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Sept. 22, 1999) (“In the CMRS markets, we have seen substantial progress in competitive conditions as the result of the recent influx of new entrants.”) (“1999 Spectrum Cap Order”).

<sup>28</sup> Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order*, PP Docket No. 93-253, 9 FCC Rcd 2348, 2390 (1994).

<sup>29</sup> See 47 U.S.C. § 151.

<sup>30</sup> See 47 U.S.C. § 309(j)(3)(A).

services; and competitive delivery.”<sup>31</sup> Indeed, in one challenge to its licensing procedures, the Commission stated that even a temporary delay in the issuance of PCS licenses would not be in the public interest because it would delay the introduction of new competition and services.<sup>32</sup> Moreover, the Commission has routinely held that “spectrum should not lie fallow when there are applicants ready and willing to use it.”<sup>33</sup> This policy is so important that the Commission has waived its rules when necessary to prevent usable spectrum from remaining idle.<sup>34</sup>

By expanding the pool of participants in the C and F Block reauction to companies that are better positioned to implement successfully new PCS systems, the Commission will significantly enhance competition in wireless telecommunications services. Non-designated entity wireless companies possess the operational expertise and substantial resources necessary

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<sup>31</sup> Amendment of the Commission’s Rules to Establish New Personal Communications Services, *Notice of Proposed Rulemaking and Tentative Decision*, GEN Docket No. 90-314, ET Docket No. 92-100, 7 FCC Rcd 5676, 5679 (1992). See also Amendment of the Commission’s Rules to Establish New Personal Communications Services, *Memorandum Opinion and Order*, GEN Docket No. 90-314, 9 FCC Rcd 4957, 4961 (1994) (“Rapid deployment is important so that consumers do not have to wait for the benefits of the new services.”); Amendment of Rules Re Installment Payment Financing, *Second Report and Order*, WT Docket No. 97-82, 12 FCC Rcd 16436, 16438 (1997) (“It is in the public interest to adopt provisions to facilitate use of C block licenses without further regulatory or marketplace delay.”).

<sup>32</sup> Deferral of Licensing of MTA Commercial Broadband PCS, *Memorandum Opinion and Order*, PP Docket No. 93-253, 11 FCC Rcd 17052, 17060 (1996).

<sup>33</sup> Mobilcomm Pittsburg, Inc., *Memorandum Opinion and Order*, 8 FCC Rcd 351 (1993). See also Amendment of Section 73.202(b), Table of Assignments, FM Broadcast Stations, *Memorandum Opinion and Order*, 62 FCC 2d 76, 80 (1976) (finding “little benefit to the public interest in allowing a channel to lie fallow and unused . . . .”); Aeronautical Radio Inc., *Memorandum Opinion and Order*, 3 FCC Rcd 6994, 6995 (1998) (stating that the FCC’s channel recovery policies ensure that scarce spectrum space is either put to prompt use by the existing licensee or returned for reassignment to another ready and able to construct).

<sup>34</sup> For example, the FCC waived a minimum loading requirement to avoid spectrum lying fallow, which it described as “the least efficient alternative.” Petition for Declaratory Ruling Concerning Waiver of the Loading Requirements in 47 C.F.R. § 21.710(d), *Declaratory Ruling and Order*, 11 FCC Rcd 1911, 1912 (1996). See also *BellSouth v. FCC*, 162 F.3d 1215, 1225

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to construct and operate viable PCS systems in the face of formidable competition from wireless providers that have substantial "head starts" in the CMRS market. As a result, eliminating the designated entity set-aside in the reauction will promote the near-term implementation of new PCS competition and the provision of additional service choices to the public.

Permitting non-designated entities to participate in the reauction also will promote the proper functioning of the Commission's auction process and ensure that the public receives the full market value of the available spectrum. Congress adopted competitive bidding for spectrum licenses to promote an assignment process that would utilize marketplace forces to assign licenses to those parties that value the spectrum most highly. If the Commission retains a designated entity set-aside for this reauction, it will thwart this Congressional directive. Allowing all qualified entities, regardless of their size, to participate in the reauction will ensure that the auction process works rationally and maximizes the value of the spectrum, thereby providing that the public receives full value for this spectrum.

**C. Small Businesses Will Have the Opportunity to Participate Fully in the Reauction.**

While Nextel believes that small businesses face formidable obstacles in entering the CMRS marketplace, expanding participation in the C and F Block reauctions to companies other than designated entities will in no way undermine their opportunity to participate in the reauction. First, the continued availability of bidding credits will provide small businesses with an enhanced ability to bid competitively against other applicants. Second, designated entities will be able to pursue whatever bidding strategy best complements their circumstances. For

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(D.C. Cir. 1999) (FCC stating in oral argument that it would allow exceptions to its spectrum cap rules where necessary to prevent spectrum from lying fallow).

example, designated entities with F Block licenses not in default might seek to acquire additional 10 MHz C Block licenses. New entrant designated entities might seek to acquire available C or F Block licenses.<sup>35</sup> Finally, nothing would preclude any qualified designated entity from acquiring the national 20 MHz/15 MHz bulk bid package of licenses.

Indeed, the bulk bid reauction proposal actually *enhances* the ability of small businesses to participate fully in the reauction because it provides a large number of additional PCS licenses all across the country by reconfiguring available 30 MHz C Block licenses into a 20 MHz/15 MHz bulk bid package and 10 MHz BTA licenses. Thus, all auction participants will have more choices and licenses can be acquired more easily by designated entities. By creating a large number of additional PCS licenses that will be auctioned on a BTA, market-by-market basis, the bulk bid proposal makes it significantly easier and less expensive for designated entities and other applicants to break into new markets or to expand existing operations.

Moreover, the Commission has moved away from establishing small business set-asides like the C and F Block PCS licenses in its more recent auctions. In rejecting small business set-asides, the Commission generally has cited “the large number of licenses available” and the effectiveness of bidding credits and other special provisions that allow for extensive participation of small businesses without the use of spectrum set-asides.<sup>36</sup> In other cases, the Commission has

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<sup>35</sup> Additionally, under existing rules, designated entities can disaggregate and partition licenses to other qualified designated entities without triggering unjust enrichment penalties.

<sup>36</sup> See Service Rules for the 746-764 and 776-794 MHz Bands, WT Docket No. 99-168, *First Report and Order*, FCC 00-5 (2000) at ¶¶ 74, 134 (“*Channels 60-69 Order*”); Amendment of Part 90 of the Commission’s Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service, *Third Report and Order, Fifth Notice of Proposed Rulemaking*, PR Docket 89-552, 12 FCC Rcd 10943, 11077 (1997); Revision of Part 22 and Part 90 of the Commission’s Rules To Facilitate Future Development Of Paging Systems; and Implementation of Section 309(j) of the Communications Act – Competitive Bidding, *Second Report and Order and Further Notice of Proposed Rulemaking*, WT Docket No. 96-18, PP

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simply relied on its substantial bidding credits and other small business preferences in declining to adopt small business set-asides.<sup>37</sup> Most recently, when the Commission created twelve large regional licenses to be auctioned and provided for a nationwide bid that would operate as a “winner take all” auction assignment mechanism, it determined that no small business assistance devices, beyond bidding credits, would be appropriate or necessary.<sup>38</sup>

#### **IV. THE BULK BID PROPOSAL IS STRONGLY PRO-COMPETITIVE AND WILL RESULT IN SUBSTANTIAL PUBLIC BENEFITS.**

Consistent with the post-auction experience of licensee disaggregation of 30 MHz licenses, Nextel proposes that the Commission reconfigure the available 30 MHz C Block licenses into separate 20 MHz and 10 MHz BTA authorizations.<sup>39</sup> The Commission would then offer the new 20 MHz and the available 15 MHz PCS licenses exclusively on a bulk bid package basis in an expedited auction that would begin on May 31, 2000, with full license payment to be made by September 30, 2000. It would offer the remaining new 10 MHz BTA licensees and the

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Docket No. 93-253, 12 FCC Rcd 2732, 2820 (1997); 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, *Notice of Proposed Rule Making and Order*, ET Docket No. 95-183, PP Docket No. 93-253, 11 FCC Rcd 4930, 4975 (1995).

<sup>37</sup> See Amendment of the Commission’s Rules to Establish Part 27, the Wireless Communications Service (“WCS”), *Report and Order*, GN Docket No. 96-228, 12 FCC Rcd 10785, 10882 (1997).

<sup>38</sup> See *Channels 60-69 Order*, FCC 00-5 at ¶ 134 (establishing no set-aside and stating that bidding credits “will provide adequate opportunities for small businesses of varying sizes to participate in spectrum auctions”).

<sup>39</sup> In October 1997 for example, AT&T entered into a partnership in which Triton PCS received 20 MHz of AT&T’s MTA licenses in several BTAs throughout the Southeast. AT&T later formed similar ventures with TeleCorp, Inc. and Cincinnati Bell. See Annual Report and Analysis of Competitive Market Conditions With Respect to Commercial Mobile Services, *Third Report*, 13 FCC Rcd 19746, 19781 (1998).

available 10 MHz F Block licensees in the reauction on a BTA, market-by-market basis that would begin on July 26, 2000.

**A. The Bulk Bidding Proposal Will Establish a Viable, Nationwide PCS Competitor and With Result in Expedited Service to Rural and Underserved Areas.**

Because wireless operators have expanded their geographic footprints on a regional and national scale, the Commission must adapt its auction mechanisms to allow bidders to achieve competitive parity, *i.e.* nationwide aggregation of licenses.<sup>40</sup> Offering new 20 MHz PCS licenses, together with available 15 MHz licenses, exclusively on a bulk bid basis would provide sufficient spectrum and geographic coverage to support the entry of a new or spectrum constrained facilities-based PCS provider that would be able to compete effectively against entrenched wireless incumbents on a nationwide scale.<sup>41</sup> The introduction of a viable, new or enhanced nationwide PCS competitor will expand service choices for users, heighten incentives for national carrier efficiency, hasten technological innovation and put new pressure on all CMRS providers to offer higher quality services at reduced costs. Thus, the bulk bid proposal is strongly pro-competitive and will significantly enhance competition within the CMRS market.

The need for a bulk bidding option in the upcoming reauction is underscored by the most recent Commission review of competition in the CMRS market.<sup>42</sup> In the most recent *CMRS Annual Report*, the Commission reported that the primary focus of PCS operators was expansion

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<sup>40</sup> Operators with large footprints can achieve economies of scale and increased efficiencies, and the proliferation of one-rate pricing plans has enhanced the need for geographic expansion because it can be significantly more expensive to provide this feature when a wireless customer roams outside of its home network. *1998 CMRS Annual Report*, at 10159.

<sup>41</sup> In view of developments in wireless technology, Nextel believes that 20 MHz of PCS spectrum is sufficient to support a fully competitive PCS system that can provide a full range of CMRS services.

<sup>42</sup> *1998 CMRS Annual Report*.

of their footprints and that consolidation in the industry is continuing.<sup>43</sup> Indeed, as the Commission has recently recognized, concentration currently prevails in the CMRS marketplace. Consequently, Commission policy is to “foster more vigorous competition in markets in which adequate competition has not yet been realized, and to inhibit the erosion of competition from undue consolidation of spectrum in markets in which competitive conditions may have advanced significantly.”<sup>44</sup> The bulk bid package will foster more vigorous competition. In addition, including the predominantly rural 15 MHz licenses in the package will ensure that these areas are built out soon.<sup>45</sup> Thus, the bulk bid proposal will ensure that all consumers in all markets subject to reauction, both rural and urban, enjoy the benefits of additional PCS service offerings at the earliest possible time.

**B. The Commission Can Immediately Implement the Bulk Bidding Proposal.**

The Commission has the authority to reconfigure the licenses in the manner proposed and to specify use of a bulk bidding mechanism. In this regard, there are many aspects of the Channels 60-69 national bid proposal that could be modified or adapted for use in reauctioning 20 MHz PCS licenses in bulk.<sup>46</sup> Indeed, the FCC has proposed a “winner take all” national bid method for the announced Channels 60-69 auction.<sup>47</sup>

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<sup>43</sup> *Id.* at 10159-60, 10175. The *CMRS Annual Report* cited the AirTouch/US West, ALLTEL/360° Communications, and SBC/SNET transactions and the planned ALLTEL/Aliant, SBC/Comcast, SBC/Ameritech, Bell Atlantic/GTE and AT&T/Vanguard transactions as examples of the trends towards consolidation in the CMRS market. *Id.*, at 10159.

<sup>44</sup> See *1999 Spectrum Cap Order*, FCC 99-244 at ¶ 27.

<sup>45</sup> As discussed above, the 15 MHz licenses are those that went unsold in the last C Block reauction held in March of 1999.

<sup>46</sup> See *Channels 60-69 Order*, FCC 00-5.

<sup>47</sup> See *id.* at ¶¶ 126-27.



Unlike the Channels 60-69 auction, however, the Commission need not delay the auction to await the development of software capable of processing combinatorial bids. No additional auction software is necessary to implement the Nextel bulk bidding plan because it necessarily reflects an aggregation of available spectrum and markets. Thus, the Commission can easily implement the bulk bidding proposal without delaying the PCS reaction and should accelerate the bulk auction to May 31, 2000. By holding the bulk bid auction soon, the public will quickly benefit from new service offerings at the earliest possible time.<sup>48</sup>

**C. Additional Proposals Related to Bulk Bidding.**

In connection with offering the new 20 MHz C Block licenses and the available 15 MHz C Block licenses exclusively on a bulk bid package basis, the following additional measures are proposed to facilitate the bulk bid auction and expedite deployment of the spectrum. Given the substantial value of the PCS spectrum at issue, the Commission should adopt an up-front payment and minimum opening bid of \$2 billion for the bulk bid auction package. This substantial payment and bidding requirement will ensure that only those applicants that can commit substantial resources to acquiring and building out the spectrum participate in the bulk bid auction and that the public receives the full value of the spectrum.

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<sup>48</sup> Indeed, a bulk bid auction could easily conclude in 2 or 3 days and thus enable buildout to begin promptly.

Nextel also proposes that the Commission establish accelerated system construction and service implementation schedules for all markets in the bulk bid auction. Specifically, to ensure that the licenses are put to use quickly, the Commission's five-year construction deadline should be shortened to three years.<sup>49</sup> Imposing accelerated implementation schedules for these markets will ensure those applicants that participate in the bulk bid auction are committed to building out all of the licensed areas in a timely manner, thus promoting the rapid introduction of new PCS systems and services to the public.

**D. The Availability of Additional 10 MHz C Block Licenses in Many Major Markets Will Enhance the Ability of All Applicants to Participate in the Reauction.**

In addition to creating 20 MHz licenses to be offered exclusively in bulk, the bulk bid proposal to reconfigure the available 30 MHz C Block licenses will create a large number of 10 MHz PCS licenses for major markets throughout the United States. A total of 93 *additional* 10 MHz PCS licenses would be available as a result of the bulk bid proposal, which would supplement the 40 F Block licenses available in the scheduled reauction. All of these 10 MHz PCS licenses be auctioned on a BTA, market-by-market basis.

The availability of a substantial number of additional PCS licenses in the upcoming reauction will enhance the ability of all potential bidders, including small businesses, to participate fully in the reauction. Because these additional 10 MHz PCS licenses will cover many of the most significant and populous U.S. markets, they would be desirable to many existing players as well as to new entrants.

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<sup>49</sup> Current rules require licensees of 30 MHz licenses to serve one-third of the population of their service area within five years and two-thirds of the population within ten years. Licensees of 10 MHz and 15 MHz licenses must serve one-quarter of the population of their service area within five years or make a showing of substantial service. 47 C.F.R. § 24.203.

Furthermore, because the acquisition of 10 MHz of PCS spectrum should cost less than acquisition of 30 MHz of spectrum in the same market, it would be easier for small businesses to acquire a 10 MHz license. Not only would the availability of additional 10 MHz PCS licenses attract new small businesses to the CMRS market, these licenses create a path for existing designated entity F Block licensees to more easily expand existing operations. The availability of additional 10 MHz PCS licenses also would provide an adequate means for other existing wireless operators to “fill in” their geographic footprint or expand their PCS offerings. Thus, reconfiguration of the 30 MHz C Block licenses enhances the ability of all potential bidders, including small businesses, to participate in the reauction by creating a large number of additional 10 MHz PCS licenses that otherwise would not be available.

**V. THE COMMISSION ALTERNATIVELY SHOULD WAIVE ITS RULES TO IMPLEMENT THIS AUCTION PROPOSAL.**

Section 1.3 of the Rules permits the Commission to grant a waiver of its rules “if good cause therefor is shown.”<sup>50</sup> The “good cause” standard is met if a petitioner demonstrates: (i) that special circumstances warrant a deviation from the general rule; and (ii) that such deviation will serve the public interest.<sup>51</sup> Similarly, under Section 1.925(b)(3) of the Rules, the Commission may grant a waiver of the broadband PCS rules where a showing is made that:

(i) The underlying purpose of the rule(s) will not be served or would be frustrated by its application in a particular case, and that the grant of the requested waiver would be in the public interest, *or*

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<sup>50</sup> 47 C.F.R. § 1.3.

<sup>51</sup> *Northeast Cellular Telephone Co. v. FCC*, 897 F.2d 1164, 1166 (D.C. Cir. 1990); *WAIT Radio v. FCC*, 418 F.2d 1153 (D.C. Cir. 1969) (cited in *Wireless Co., L.P.*, 1 CR 793 (1995)).

(ii) In view of unique facts and circumstances of the instant case, application of the rule(s) would be inequitable, unduly burdensome or contrary to the public interest, or the applicant has no reasonable alternative.<sup>52</sup>

The United States Court of Appeals for the D.C. Circuit and the Commission have recognized that no substantive difference exists between the general Section 1.3 waiver standard and the PCS-specific waiver standard of Section 1.925.<sup>53</sup>

The courts have afforded the Commission substantial deference in determining the circumstances warranting grant of a waiver request, especially when the waiver request requires the expertise of the agency. For instance, in *Bell South Corp. v. FCC*, the United States Court of Appeals for the District of Columbia Circuit stated that “[w]hen . . . an agency is obligated to make policy judgments where no factual certainties exist or where facts alone do not provide the answer, our role is more limited; we require only that the agency so state and go on to identify the considerations it found persuasive.”<sup>54</sup>

If the Commission elects to act by waiver rather than by expedited rulemaking, it should treat the proposals to expand participation in the reauction to non-designated entities, to reconfigure available 30 MHz licenses, and to auction the new 20 MHz licenses on a bulk bid basis, as a requested waiver of its PCS auction rules. For the reasons set forth in the preceding sections, the waiver standards enunciated in Sections 1.3 and 1.925(b)(3) are fully satisfied in

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<sup>52</sup> 47 C.F.R. § 1.925(b)(3) (emphasis added).

<sup>53</sup> See *Bell South Corp. v. FCC*, 162 F.3d 1215, 1225 n.10 (D.C. Cir. 1999); Application for Review of BellSouth Wireless, Inc., *Memorandum and Order*, WT Docket No. 96-59, 12 FCC Rcd 14031, 14037-38 (1997).

<sup>54</sup> *BellSouth Corp. v. FCC*, 162 F.3d 1215, 1221 (D.C. Cir. 1999) (quoting *Melcher v. FCC*, 134 F.3d 1143, 1152 (D.C. Cir. 1998)).

this case. Nextel envisions that this waiver would not be limited to Nextel, but would operate as a blanket waiver to allow auction participation by all interested and qualified bidders.<sup>55</sup>

## VI. CONCLUSION.

As demonstrated in this Petition, the reauction proposals discussed herein would further important public interest objectives, including allowing the spectrum to be put to use promptly in major urban and smaller rural markets, significantly enhancing competition in wireless services, promoting small business participation in the PCS reauction and ensuring that the public receives the full value of the spectrum. Accordingly, Nextel respectfully requests that the Commission conduct an expedited rulemaking proceeding to modify its rules as necessary to adopt these reauction proposals. Alternatively, if the Commission elects to shape its reauction standards via

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<sup>55</sup> The FCC has previously issued blanket waivers applicable to similarly-situated entities, particularly when such waivers would avoid unnecessary delay and administrative burden. *See, e.g.,* Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, *Report and Order*, MM Docket No. 92-264, 8 FCC Rcd 6828 (1993); Implementation of the Pay Telephone Reclassification and Compensation Provisions of the Telecommunications Act of 1996, *Memorandum Opinion and Order*, CC Docket No. 96-128, 13 FCC Rcd 4998 (CCB 1998); BellSouth Corporation Petition for Waiver of Section 32.22 of the Commission's Rules, *Memorandum Opinion and Order*, 2 FCC Rcd 5146 (CCB 1987).

a waiver process, Nextel requests that the Commission waive its rules as necessary to implement Nextel's proposals as presented in this Petition.

Respectfully submitted,

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**ATTACHMENT A**

## PROPOSED BULK BID PACKAGE

Lic. #	MTA	MTA Name	BTA/ Market	BTA/ Market Name	Population	MHz
PBB004C	41	Oklahoma City	4	Ada, OK	52,677	20
PBB007C	1	New York	7	Albany, NY	1,028,615	20
PBB008C1	39	El Paso-Albuquerque	8	Albuquerque, NM	688,612	15
PBB010C	1	New York	10	Allentown, PA	686,688	20
PBB020C	6	Charlotte-Greensboro-Greenville-Raleigh	20	Asheville, NC	510,055	20
PBB027C	7	Dallas-Ft. Worth	27	Austin, TX	899,361	20
PBB029C	10	Washington-Baltimore	29	Baltimore, MD	2,430,563	20
PBB036C	24	Seattle (Excluding Alaska)	36	Bellingham, WA	127,780	20
PBB043C2	1	New York	43	Binghamton, NY	356,645	15
PBB045C	12	Minneapolis	45	Bismark, ND	123,682	20
PBB047C	31	Indianapolis	47	Bloomington, IN	217,914	20
PBB051C	8	Boston-Providence	51	Boston, MA	4,133,895	20
PBB055C2	24	Seattle	55	Bremerton, WA	189,731	15
PBB056C	33	San Antonio	56	Brownsville, TX	277,825	20
PBB059C	14	Houston	59	Bryan, TX	150,998	20
PBB063C2	1	New York	63	Burlington, VT	369,128	15
PBB064C	42	Spokane	64	Butte, MT	65,252	20
PBB067C	19	St. Louis	67	Carbondale, IL	209,497	20
PBB074C	6	Charlotte-Greensboro-Greenville-Raleigh	74	Charlotte, NC	1,671,037	20
PBB077C	22	Denver	77	Cheyenne, WY	103,939	20
PBB081C	18	Cincinnati-Dayton	81	Cincinnati, OH	1,990,451	20
PBB084C	16	Cleveland	84	Cleveland, OH	2,894,133	20
PBB093C	31	Indianapolis	93	Columbus, IN	139,128	20
PBB095C	38	Columbus	95	Columbus, OH	1,477,891	20
PBB106C	18	Cincinnati-Dayton	106	Dayton, OH	1,207,689	20
PBB110C	22	Denver	110	Denver, CO	2,073,952	20
PBB117C2	21	Pittsburgh	117	Du Bois, PA	124,180	15
PBB128C	39	El Paso-Albuquerque	128	El Paso, TX	649,860	20
PBB127C2	1	New York	127	Elmira, NY	315,038	15
PBB130C	41	Oklahoma City	130	Enid, OK	85,998	20
PBB135C	26	Louisville-Lexington-Evansville	135	Evansville, IN	504,859	20
PBB136C	49	Alaska	136	Fairbanks, AK	92,111	20
PBB159C	37	Jacksonville	159	Gainesville, FL	260,538	20
PBB172C	22	Denver	172	Greeley, CO	131,821	20
PBB174C	6	Charlotte-Greensboro-Greenville-Raleigh	174	Greensboro, NC	1,241,349	20
PBB179C	10	Washington-Baltimore	179	Hagerstown, MD	327,693	20
PBB188C	42	Spokane	188	Helena, MT	58,752	20
PBB189C	6	Charlotte-Greensboro-Greenville-Raleigh	189	Hickory, NC	292,409	20
PBB196C	14	Houston	196	Houston, TX	4,054,253	20
PBB203C2	21	Pittsburgh	203	Indiana, PA	89,994	15
PBB204C	31	Indianapolis	204	Indianapolis, IN	1,321,911	20
PBB212C	37	Jacksonville	212	Jacksonville, FL	1,114,847	20
PBB215C	35	Buffalo	215	Jamestown, NY	186,945	20
PBB218C	21	Pittsburgh	218	Johnstown, PA	241,247	20



## PROPOSED BULK BID PACKAGE

PBB220C	34	Kansas City	220	Joplin, MO	215,095	20
PBB221C	49	Alaska	221	Juneau, AK	68,989	20
PBB224C	42	Spokane	224	Kalispell, MT	59,218	20
PBB226C	34	Kansas City	226	Kansas City, MO	1,839,569	20
PBB227C	8	Boston	227	Keene, NH	111,709	20
PBB235C	31	Indianapolis	235	Lafayette, IN	247,523	20
PBB239C	13	Tampa-St. Petersburg-Orlando	239	Lakeland, FL	405,382	20
PBB241C	5	Detroit	241	Lansing, Mi	489,698	20
PBB244C	39	El Paso-Albuquerque	244	Las Cruces, NM	197,166	20
PBB251C2	8	Boston	251	Lewiston, ME	221,697	15
PBB252C	26	Louisville-Lexington-Evansville	252	Lexington, KY	816,101	20
PBB259C	18	Cincinnati	259	Logan, WV	43,032	20
PBB261C	30	Portland	261	Longview, WA	85,446	20
PBB262C	2	Los Angeles-San Diego	262	Los Angeles, CA	14,549,810	20
PBB263C	26	Louisville-Lexington-Evansville	263	Louisville, KY	1,352,955	20
PBB265C	14	Houston	265	Lufkin, TX	144,081	20
PBB274C	8	Boston-Providence	274	Manchester, NH	540,704	20
PBB281C	38	Columbus	281	Marion, OH	92,023	20
PBB268C	33	San Antonio	268	McAllen, TX	424,063	20
PBB287C2	16	Cleveland	287	Meadville, PA	86,169	15
PBB289C	13	Tampa-St. Petersburg-Orlando	289	Melbourne, FL	398,978	20
PBB295C2	44	Knoxville	295	Middlesboro, KY	121,217	15
PBB298C	12	Minneapolis-St. Paul	298	Minneapolis, MN	2,840,561	20
PBB299C	12	Minneapolis	299	Minot, ND	122,687	20
PBB307C	5	Detroit	307	Mount Pleasant, Mi	118,558	20
PBB317C2	21	Pittsburgh	317	New Castle, PA	96,246	15
PBB318C	1	New York	318	New Haven, CT	978,311	20
PBB319C	1	New York	319	New London, CT	357,482	20
PBB321C	1	New York	321	New York, NY	18,050,615	20
PBB324C	23	Richmond-Norfolk	324	Norfolk, VA	1,635,296	20
PBB328C2	21	Pittsburgh	328	Oil City, PA	105,882	15
PBB329C	41	Oklahoma City	329	Oklahoma City, OK	1,305,472	20
PBB330C	35	Buffalo	330	Olean, NY	239,343	20
PBB331C	24	Seattle (Excluding Alaska)	331	Olympia, WA	258,937	20
PBB333C2	1	New York	333	Oneonta, NY	107,742	15
PBB336C	13	Tampa-St. Petersburg-Orlando	336	Orlando, FL	1,256,429	20
PBB339C	26	Louisville	339	Paducah, KY	217,082	20
PBB341C	7	Dallas	341	Paris, TX	89,422	20
PBB350C	21	Pittsburgh	350	Pittsburgh, PA	2,507,839	20
PBB352C	1	New York	352	Plattsburgh, NY	123,121	20
PBB356C2	24	Seattle	356	Port Angeles, WA	76,610	15
PBB357C	8	Boston-Providence	357	Portland, ME	471,614	20
PBB358C	30	Portland	358	Portland, OR	1,690,930	20
PBB359C	18	Cincinnati	359	Portsmouth, OH	93,356	20
PBB361C	1	New York	361	Poughkeepsie, NY	424,766	20
PBB363C	8	Boston	363	Presque Isle, ME	86,936	20

## PROPOSED BULK BID PACKAGE

PBB364C	8	Boston-Providence	364	Providence, RI	1,509,789	20
PBB374C	23	Richmond-Norfolk	374	Richmond, VA	1,090,869	20
PBB376C	23	Richmond-Norfolk	376	Roanoke, VA	609,215	20
PBB388C2	1	New York	388	Rutland, VT	97,987	15
PBB390C	5	Detroit	390	Saginaw-Bay, Mi	615,364	20
PBB398C	10	Washington	398	Salisbury, MD	163,043	20
PBB401C	33	San Antonio	401	San Antonio, TX	1,530,954	20
PBB402C	2	Los Angeles-San Diego	402	San Diego, CA	2,498,016	20
PBB407C1	39	El Paso-Albuquerque	407	Santa Fe, NM	174,526	15
PBB408C	13	Tampa-St. Petersburg-Orlando	408	Sarasota, FL	513,348	20
PBB412C	1	New York	412	Scranton, PA	678,410	20
PBB413C	24	Seattle (Excluding Alaska)	413	Seattle, WA	2,708,949	20
PBB414C2	34	Kansas City	414	Sedalia, MO	79,705	15
PBB416C2	16	Cleveland	416	Sharon, PA	121,003	15
PBB428C	19	St. Louis	428	Springfield, MO	532,880	20
PBB431C	21	Pittsburgh	431	Steubenville, OH	142,523	20
PBB435C2	1	New York	435	Stroudsburg, PA	95,709	15
PBB440C	13	Tampa-St. Petersburg-Orlando	440	Tampa, FL	2,249,405	20
PBB441C	7	Dallas-Ft. Worth	441	Temple, TX	291,768	20
PBB447C1	27	Phoenix	447	Tucson, AZ	666,880	15
PBB461C	10	Washington-Baltimore	461	Washington, DC	4,118,628	20
PBB463C2	1	New York	463	Watertown, NY	296,253	15
PBB470C	19	St. Louis	470	West Plains, MO	67,165	20
PBB480C	8	Boston-Providence	480	Worcester, MA	709,705	20

**CERTIFICATE OF SERVICE**

I, Constance Randolph, do hereby certify that on this 31st day of January, 2000, I caused copies of the foregoing "Petition for Expedited Rulemaking or, In the Alternative, Waiver of the Commission's Rules" to be served via hand delivery upon the following:

Magalie R. Salas  
Secretary  
Federal Communications Commission  
445 12th Street, SW  
Washington, DC 20554

Michael K. Powell  
Commissioner  
Federal Communications Commission  
445 12th St., SW, Room 8-A204  
Washington, DC 20554

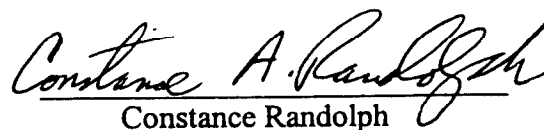
William E. Kennard  
Chairman  
Federal Communications Commission  
445 12th St., SW, Room 8-B201  
Washington, DC 20554

Gloria Tristani  
Commissioner  
Federal Communications Commission  
445 12th St., SW, Room 8-C302  
Washington, DC 20554

Susan Ness  
Commissioner  
Federal Communications Commission  
445 12th St., SW, Room 8-B115  
Washington, DC 20554

Kathleen O'Brien Ham  
Wireless Telecommunications Bureau  
Federal Communications Commission  
445 12th Street, SW, Room 3-C255  
Washington, DC 20554

Harold Furchtgott-Roth  
Commissioner  
Federal Communications Commission  
445 12th St., SW, Room 8-A302  
Washington, DC 20554

  
Constance Randolph

January 31, 2000