



PUBLIC NOTICE

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DA 00-2694
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WIRELESS TELECOMMUNICATIONS BUREAU SEEKS COMMENT ON PETITION FOR DECLARATORY RULING CONCERNING THE REQUIREMENT FOR GOOD FAITH NEGOTIATIONS AMONG ECONOMIC AREA LICENSEES AND INCUMBENT LICENSEES IN THE UPPER 200 CHANNELS OF THE 800 MHz BAND

PR Docket No. 93-144

Comment Date: December 14, 2000

Reply Date: December 21, 2000

Pursuant to Section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 554(e), and Section 1.4 of the Commission's Rules, 47 C.F.R. § 1.4, the Wireless Telecommunications Bureau (Bureau) hereby seeks comment on a Petition for Declaratory Ruling filed by Nextel Communications, Inc. (Nextel), on October 26, 2000 (Petition).

One of Nextel's subsidiaries, Nextel License Acquisition Corp. (NLAC), and one of its affiliates, Nextel WIP Corp., are Economic Area (EA) licensees in the upper 200 channels of the 800 MHz band. Nextel states that, pursuant to Section 90.699 of the Commission's Rules,¹ it is conducting relocation negotiations with incumbent licensees in the upper 200 channels of the 800 MHz band on behalf of both NLAC and Nextel WIP Corp. Nextel states that "[a] small number of incumbents have explicitly taken the position that there is no requirement under the Commission's rules or policies for them to provide any technical data [e.g., system protocol, transmitter height, combiner scheme, *etc.*] upon the EA licensee's request." Nextel states that such technical data is necessary for an EA licensee to prepare a relocation offer of "comparable facilities,"² and that publicly available information is insufficient to enable an EA licensee to make an offer of comparable facilities.

Nextel requests that the Commission clarify that an incumbent's obligation to negotiate in "good faith"³

¹ 47 C.F.R. § 90.699.

² See 47 C.F.R. § 90.699(d) (definition of comparable facilities).

³ See 47 C.F.R. § 90.699(b)(2) (duty to negotiate in good faith).

during the mandatory negotiation period⁴ includes the obligation to provide basic, non-proprietary technical information to an EA licensee. Nextel urges the Commission to declare that an incumbent licensee breaches its duty to negotiate in good faith if it fails to provide basic technical information to an EA licensee seeking to develop a good faith relocation proposal. Alternatively, Nextel asks the Commission to declare that a general relocation plan, based essentially on publicly available information regarding the number of channels and location, constitutes a good faith offer of relocation by an EA licensee.

If an EA licensee fails to negotiate in good faith with an incumbent licensee during the mandatory negotiation period, Nextel requests that the Commission initiate revocation proceedings against that incumbent. Specifically, Nextel urges the Commission to seek revocation of an incumbent's license if an incumbent fails to provide basic system-specific technical data when requested by an EA licensee. Finally, Nextel contends that "[a]t the very least, an incumbent's failure to provide technical data needed to develop a relocation plan should create a strong presumption that a plan developed by the EA licensee based only on publicly available information meets the four-factor comparability test" under Section 90.699(d) of the Commission's Rules.⁵

This matter shall be treated as a "permit but disclose" proceeding in accordance with the Commission's *ex parte* rules. 47 C.F.R. §§ 1.1200(a) & 1.1206. Persons making oral *ex parte* presentations are reminded that memoranda summarizing the presentations must contain summaries of the substance of the presentations and not merely a listing of the subjects discussed. More than a one or two sentence description of the views and arguments presented is generally required. See 47 C.F.R. § 1.1206(b). Other rules pertaining to oral and written *ex parte* presentations in permit-but disclose proceedings are set forth in Section 1.1206(b) of the Commission's rules, 47 C.F.R. § 1.1206(b).

Comments on the Petition must be filed on or before December 14, 2000, and reply comments by December 21, 2000. All documents filed in this proceeding should indicate in the caption that this matter is before the Wireless Telecommunications Bureau, Commercial Wireless Division, Policy and Rules Branch and reference PR Docket No. 93-144. Comments may be filed via the Commission's Electronic Comment Filing System (ECFS) via the Internet to <http://www.fcc.gov/e-file/ecfc.html>. In completing the transmittal screen, commenters should include their full name, Postal Service mailing address, and the reference number PR Docket No. 93-144. Parties may also submit electronic comments by Internet e-mail. To get filing instructions for e-mail comments, commenters should send an e-mail to: ecfs@fcc.gov, including "get form < your e-mail address >" in the body of the message. A sample form and directions will be sent in reply.

Interested parties who choose to file by paper must file an original and four copies of their comments with the Office of the Secretary, Federal Communications Commission, 445 Twelfth St., S.W., Room TW-A325, Washington, D.C. 20554.

In addition, parties should send: one paper copy to Richard Arsenault, Room 4A-267, and one paper copy to Policy and Rules Branch, Room 4-A-207, Commercial Wireless Division, Wireless Telecommunications Bureau, Federal Communications Commission, 445 Twelfth Street, S.W. Washington D.C. 20554; one

⁴ The Bureau recently extended the mandatory negotiation period 90 days, until March 5, 2000. *Public Notice*, "Wireless Telecommunications Bureau Extends the Mandatory Negotiation Period for the Relocation of Incumbent Licensees in the 800 MHz Band until March 5, 2001," DA 00-2672 (rel. Nov. 27, 2000).

⁵ 47 C.F.R. § 90.699(d).

paper copy to the Public Reference Room, Federal Communications Commission, 445 Twelfth Street, S.W, 20554; and one paper copy and one diskette copy to ITS, Room CYB-400, 445 Twelfth St. S.W., Washington D.C. 20554.

FOR FURTHER INFORMATION CONTACT: Richard Arsenault of the Commercial Wireless Division at (202) 418-7240 or rarsenau@fcc.gov.

By the Chief, Commercial Wireless Division, Wireless Telecommunications Bureau.