

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

In the Matter of)		
)		
WESTINGHOUSE COMMUNICATIONS)	File Nos.	9701643 - 9701666
SERVICES, INC.)		9701699 - 9701710
)		
and)		
)		
NEXTEL COMMUNICATIONS, INC.)	File Nos.	9708173 - 9708176
)		
Requests for Waiver to Permit Provision)		
of Common Carrier Service on 2 GHz)		
Private Operational Fixed Microwave)		
Service Frequencies)		

ORDER

Adopted: February 24, 2000

Released: February 28, 2000

By the Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau:

I. INTRODUCTION

1. In this *Order*, we consider requests submitted by Westinghouse Communications Services, Inc. (Westinghouse) and Nextel Communications, Inc. (Nextel) seeking waiver of Section 101.603(b)(1) of the Commission's Rules¹ to permit common carrier service on 2 GHz band frequencies allocated exclusively to the Private Operational Fixed Point-to-Point Microwave Service (POFS). The waiver requests were placed on *Public Notice* on June 18, 1999.² We received six comments and three reply

¹ 47 C.F.R. § 101.603(b)(1).

² FCC Seeks Comment on Requests for Waivers to Permit Provision of Common Carrier Service on 2 GHz Private Operational Fixed Microwave Service Frequencies, *Public Notice*, DA 99-1036 (rel. June 18, 1999). The *Public Notice* also discussed an assignment application and waiver request filed by AP&T Wireless, Inc. (AP&T). However, on July 16, 1999, AP&T requested that its assignment application be dismissed and that its waiver request be dismissed as moot. On August 17, 1999, we granted AP&T's request. *See* Letter from D'wana R. Terry, Chief, Public Safety and Private Wireless Division, Wireless Telecommunications Bureau, to Tara S. Becht, attorney with Irwin, Campbell & Tannenwald, P.C. (Aug. 17, 1999). Therefore, this *Order* will not address AP&T's assignment application and related waiver request.

comments.³ For the reasons set forth below, we deny the waiver requests.

II. BACKGROUND

2. Section 101.603(b)(1) of the Commission's Rules prohibits POFS licensees from rendering a common carrier communications service of any kind.⁴ On February 29, 1996, the Commission released a *Report and Order* which consolidated the rules for the common carrier and private operational fixed microwave services contained in Parts 21 and 94 of the Commission's Rules, respectively, into a new Part 101.⁵ In the *Part 101 Report and Order*, the Commission rejected the request of some commenters seeking to delete Section 101.103(b)(1) of the Commission's Rules, which would allow POFS licensees to carry common carrier traffic on their excess capacity.⁶ The Commission concluded that it lacked a sufficient record to justify deleting the rule, but it stated that it would be receptive to a request to amend the Rules to permit POFS carriage of common carrier traffic if any party wished to pursue it, although further inquiry would be required.⁷ The Commission recently adopted a *Memorandum Opinion and Order and NPRM* in that proceeding, in which it affirmed its decision in the *Part 101 Report and Order* not to delete Section 101.603(b)(1), and, in order to create a sufficient record on this issue, sought additional comment on whether to delete the rule.⁸

3. In the *Part 101 Report and Order*, the Commission stated that private licensees who desire to carry common carrier traffic as well as internal communications may become common carrier licensees.⁹ Specifically, the Commission stated that an existing private operational fixed licensee operating on frequencies shared with common carriers, *i.e.*, frequencies in the 4, 6, 10, 11, 18, 31, and 38 GHz bands,

³ The Division received comments from Globetrotter Services, Inc., ICO Services Limited, ICO USA Service Group, Pacific Bell Wireless, Sprint Spectrum L.P. and United Telecom Council; and reply comments from Nextel, PrimeCo Personal Communications, L.P. and Westinghouse. In addition, on October 31, 1997, Centennial Wireless PCS Corp. (Centennial) filed an Informal Objection to Westinghouse's application and waiver request with respect to the following six Westinghouse stations: WGY265 (Villalba), WEH913 (San Juan), WNEO539 (Ceiba), WNEV776 (Caguas), WEH914 (Rio Grande) and KAI68 (Orocovis). On November 19, 1997, Westinghouse filed an Opposition to Centennial's Informal Objection. On November 25, 1997, Centennial filed a Reply to Westinghouse's Opposition to Informal Objection.

⁴ 47 C.F.R. § 101.603(b)(1).

⁵ Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, *Report and Order*, WT Docket No. 94-148, 11 FCC Rcd 13449 (1996) (*Part 101 Report and Order*), *on recon*, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, FCC No. 00-33 (adopted Feb. 2, 2000).

⁶ *Id.* at 13647 ¶ 42.

⁷ *Id.*

⁸ Reorganization and Revision of Parts 1, 2, 21, and 94 of the Rules to Establish a New Part 101 Governing Terrestrial Microwave Fixed Radio Services, *Memorandum Opinion and Order and Further Notice of Proposed Rule Making*, WT Docket No. 94-148, FCC No. 00-33, at ¶¶ 19,36 (adopted Feb. 2, 2000).

⁹ *Part 101 Report and Order*, 11 FCC Rcd at 13468 ¶ 43.

may elect common carrier status simply by notifying the Commission of its change in status by filing the appropriate form and tariff information.¹⁰ However, a private operational fixed licensee "operating on exclusive operational fixed service frequencies, *i.e.*, frequencies in the 900 MHz, 2.5, 12, and 23 GHz bands, must either request a waiver to operate as a common carrier on private operational fixed frequencies or file modification applications to use shared frequencies."¹¹ Notably, the Commission did not list frequencies in the 1850-1990 MHz, 2130-2160 MHz, and 2180-2200 MHz bands (collectively, the 2 GHz band¹²), which are at issue in this case, among those that could be converted to common carrier use under the procedures set out in the *Part 101 Report and Order*.

4. On February 26, 1997, Westinghouse¹³ filed an application to convert thirty-six POFS stations located in Puerto Rico from private to common carrier status.¹⁴ Each station uses 2 GHz band or 2.5 GHz band frequencies that are allocated exclusively for POFS use, and some also use shared private/common carrier frequencies in other bands. Accordingly, Westinghouse requests a waiver of Section 101.603(b)(1) to permit the utilization of the exclusive POFS frequencies for the provision of service on a common carrier basis.¹⁵

5. On September 11, 1998, Nextel filed applications seeking to convert the status of four POFS stations located in Nevada from private to common carrier status.¹⁶ The applications were accompanied

¹⁰ *Id.*

¹¹ *Id.*

¹² The 2 GHz band also includes frequencies in the 2110-2130 MHz and 2160-2180 MHz bands, which are allocated for common carrier services. *See* 47 C.F.R. § 101.101. These frequencies are not at issue herein.

¹³ On September 4, 1997, Westinghouse changed its name to CBS Communication Services, Inc. (CBS). On January 8, 1999, RSL COM U.S.A., Inc. acquired the thirty-six microwave facilities at issue from CBS. *See* Letter from Mary M. Shultz, Chief, Licensing and Technical Analysis Branch, Public Safety and Private Wireless Division, to Ed Thomas, RSL COM U.S.A., Inc. (Jan. 8, 1999). For ease of reference, this *Order* will refer to the waiver request as Westinghouse's waiver request.

¹⁴ Westinghouse Communication Services, Inc., Application for Authorization in the Microwave Service (FCC Form 415) (filed Feb. 26, 1997) (Westinghouse Application). Originally Westinghouse's Application sought to convert 37 microwave stations from private to common carrier status. However, on February 16, 2000, Westinghouse submitted for cancellation 25 licenses, but reiterated its desire to seek a waiver for the following 12 stations: KAI55 (Arecibo), WEH913 (San Juan), WEH914 (Rio Grande), WGY263 (Barranquitas), WGY265 (Villalba), WGY269 (Aibonito), WGY423 (Cayey), WHH989 (Orocovis), WHH990 (Jayuya), WHH997 (Ciales), WNEF732 (Cayey), and WNEV776 (Caguas). Therefore, this Order will consider Westinghouse's waiver request only with respect to these 12 stations.

¹⁵ Westinghouse Application, Exhibit 1 at 2-3.

¹⁶ Nextel Communications, Inc., Applications for Authorization in the Microwave Services (FCC Form 415) (filed Sept. 11, 1998) (Nextel Application). Nextel's applications sought to convert the following microwave stations from private to common carrier status: WNER464 (Laughlin), WNER465 (Laughlin), WNER466 (Henderson) and WNER467 (Las Vegas). On July 16, 1999, Nextel filed Reply Comments in this proceeding stating that subsequent to the filing of its application and waiver request, Nextel cancelled the licenses for Stations

by a request for waiver of Section 101.603(b)(1) to permit carriage of common carrier traffic on 2 GHz frequencies allocated exclusively to the POFS.¹⁷

III. DISCUSSION

6. Section 1.925 of the Commission's Rules states that rule waivers will not be granted unless an applicant affirmatively shows that either (a) the underlying purpose of the rule will not be served or would be frustrated by its application in the particular case, and that grant of the waiver is in the public interest; or (b) the unique facts or unusual circumstances of a particular case render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest, or the applicant has no reasonable alternative.¹⁸ Additionally, legal precedent has established that "when an applicant seeks a waiver of a rule, it must plead with particularity the facts and circumstances which warrant such action."¹⁹

A. Westinghouse Waiver Request

7. In its waiver request, Westinghouse argues that waiver of Section 101.603(b)(1) is appropriate because "the frequency paths are an integral component of an overall microwave system which otherwise qualifies for common carrier status under Part 101 of the Commission's Rules."²⁰ Westinghouse states that as integral segments of an overall microwave system, it is necessary that the same regulatory classification apply to these frequencies, notwithstanding their designation as exclusive private frequencies.²¹

8. Only one commenter, United Telecom Council (UTC), which represents electric, gas, and water utilities and natural gas pipelines, fully supports grant of the waiver requests. UTC states that numerous POFS licensees have been approached by Personal Communications Service (PCS), cellular, Specialized Mobile Radio (SMR) and other licensees to lease reserve microwave capacity on a private carrier basis.²² Under the current rules, however, a POFS licensee can enter such into such agreements

WNER464 and WNER465. Nextel Reply Comments at 2. Therefore, Nextel's waiver requests will be considered moot with respect to these two stations. Nextel also states that it cancelled the following paths: the 1940 MHz and 1960 MHz paths on Station WNER466, and the 1860 MHz path on Station WNER467. *Id.* A review of the Commission's licensing records shows that Nextel's modification applications seeking to cancel these paths are currently pending. However, given Nextel's modification applications seeking to cancel these paths, Nextel's waiver request will be considered moot with respect to these paths. Therefore, this *Order* will consider Nextel's waiver request only with respect to the 2138 MHz and 2149 MHz paths of Station WNER467.

¹⁷ Nextel Application, Exhibit 1.

¹⁸ 47 C.F.R. § 1.925(b)(3) (formerly 47 C.F.R. § 101.23).

¹⁹ *WAIT Radio v. FCC*, 418 F.2d 1153, 1157 (D.C. Cir. 1969) (citation omitted), *cert. denied*, 409 U.S. 1027 (1972).

²⁰ Westinghouse Application, Exhibit 1 at 4.

²¹ *Id.*

²² UTC Comments at 3.

only if it is willing to re-license its microwave system as a "common carrier" system, and UTC states that many private microwave licensees choose not to do so in order to avoid being regulated as common carriers.²³ Therefore, UTC contends that the restriction found in Section 101.603(b)(1) is an impediment to the introduction of competitive telecommunications services.²⁴ Another commenter, Globetrotter Services, Inc., a telecommunications engineering firm, supports a conditional grant of the waivers as long as POFS licensees may use the 2 GHz band frequencies allotted exclusively to Common Carrier Fixed Point-to-Point Microwave Service licensees²⁵ pending their ultimate relocation.²⁶

9. Westinghouse argues that the waiver procedures set forth in the *Part 101 Report and Order* are applicable to POFS licensees operating in the 2 GHz band, despite the fact that the *Part 101 Report and Order* does not make specific reference to this band.²⁷ It also states that although these frequencies are subject to relocation pursuant to the Commission's ET Docket No. 92-9,²⁸ it has yet to be determined when such relocation will take place.²⁹ Thus, Westinghouse argues that "temporary use of the frequencies for common carrier purposes, pending such relocation, will not adversely affect the relocation process."³⁰ It also argues that PCS licensees will not be harmed or adversely affected by the requested change in status because the Commission's relocation rules apply regardless whether the incumbent is a private or common carrier licensee.³¹

²³ *Id.*

²⁴ *Id.*

²⁵ *I.e.*, 2110-2130 MHz and 2160-2180 MHz. *See* 47 C.F.R. § 101.101.

²⁶ Globetrotter Services, Inc. Comments at 2.

²⁷ Westinghouse Opposition to Informal Objection at 6-7.

²⁸ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *Third Report and Order and Memorandum Opinion and Order*, ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).

²⁹ Westinghouse Application, Exhibit 1 at 4. The Commission has reallocated portions of the 2 GHz band from fixed microwave service to emerging technology (ET) services, including the Personal Communications Service. Amendment to the Commission's Rules Regarding a Plan for Sharing the Costs of Microwave Relocation, *First Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 96-196, 11 FCC Rcd 8825 (1996) (*Cost Sharing First Report and Order*). The Commission has encouraged incumbent fixed microwave licensees and ET service providers to enter into voluntary relocation agreements. Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, *First Report and Order and Third Notice of Proposed Rule Making*, ET Docket No. 92-9, 7 FCC Rcd 6886, 6890 ¶ 24 (1992) (*ET First Report and Order*). However, if the parties fail to reach an agreement, the ET service provider can request involuntary relocation of the incumbent. *Id.*

³⁰ Westinghouse Application, Exhibit 1 at 4-5.

³¹ Westinghouse Opposition to Informal Objection at 4.

10. Centennial Wireless PCS Corp. (Centennial), a PCS licensee in Puerto Rico, and Pacific Bell Wireless (Pacific Bell) oppose granting the waiver requests. They argue that the waivers should be denied because the Commission specifically excluded 2 GHz frequencies from being eligible for conversion to common carrier use.³² They also argue that the continued intervention and modification of the microwave rules and regulations in the 2 GHz band would unduly complicate the relocation process of 2 GHz incumbents by PCS licensees.³³ Providers of Mobile Satellite Services (MSS) also express concern that since some 2 GHz frequencies have been reallocated to MSS, the Commission should not make any decision that could create harmful interference with 2 GHz MSS handsets.³⁴

11. We find that Westinghouse has failed to demonstrate that the underlying purpose of the rules will not be served or would be frustrated by their application in its particular case, and that grant of the waiver is in the public interest. In the *Part 101 Report and Order*, the Commission specifically excluded the 2 GHz band from the list of frequencies for which a POFS licensee could seek a waiver in order to provide common carrier service on private frequencies.³⁵ The Commission did so because, in a *First Report and Order and Third Notice of Proposed Rule Making* in ET Docket No. 92-9, the Commission reallocated the 2 GHz band from private and common carrier fixed microwave services to emerging technology (ET) services.³⁶ In this connection, the Commission developed rules designed to relocate incumbents in these frequencies to other portions of the spectrum in order to foster the introduction of ET services, including PCS.³⁷ The goals of the 2 GHz licensing rules are not only to limit relocation costs, as Westinghouse suggests, but also to clear the 2 GHz spectrum.³⁸ The Commission found that limiting incumbent microwave licensees' flexibility to modify their operations was necessary to protect the interests of PCS (and other ET) licensees.³⁹ Given the Commission's intent in those proceedings, we find that allowing Westinghouse to offer common carrier service over frequencies allocated exclusively for POFS service would frustrate the purpose of the Commission's Rules by encouraging other incumbent licensees to remain in place, rather than enter into voluntary negotiations to relocate their facilities to another portion of the spectrum.⁴⁰

³² Centennial Informal Objection at 3; Pacific Bell Wireless Comments at 2.

³³ Centennial Informal Objection at 3; Pacific Bell Comments at 4.

³⁴ See ICO Services Limited Comments at 1-2; ICO USA Service Group Comments at 3.

³⁵ See *Part 101 Report and Order*, 11 FCC Rcd at 13468 ¶ 43.

³⁶ *ET First Report and Order*, 7 FCC Rcd at 6893 ¶ 40.

³⁷ *Id.*

³⁸ See *Duke Power Co., Order*, DA 99-2574, at ¶ 6 (WTB PSPWD rel. Nov. 18, 1999).

³⁹ *Id.* (citing *Cost Sharing First Report and Order*, 11 FCC Rcd at 8869 ¶ 88).

⁴⁰ See *Cost Sharing First Report and Order*, 11 FCC Rcd at 8869 ¶ 90 (holding that the microwave relocation rules adopted in ET Docket No. 92-9 apply to all emerging technologies services, including non-PCS services in the 2110-2150 and 2160-2200 GHz, which have not yet been licensed).

12. We also find that Westinghouse has failed to demonstrate the existence of unique facts or unusual circumstances that would render application of the rule inequitable, unduly burdensome, or otherwise contrary to the public interest, or that it has no reasonable alternative. Westinghouse states that its microwave facilities were originally used to service its affiliates, and thus did not need common carrier status.⁴¹ Westinghouse explains that once it became a global telephony and network services provider operating as a common carrier, it sought to interconnect its facilities in Puerto Rico to its overall network so that it could better serve customers.⁴² Because Westinghouse's stations were private carrier facilities, such interconnection to serve the general public was not permitted.⁴³ Thus, Westinghouse states that it desires to interconnect its microwave facilities with its overall network "so that it can provide the kind of comprehensive, integrated network service that its customers and the general public demand."⁴⁴ We find, however, that Westinghouse's business decision to create a comprehensive and integrated network to serve customers is not the kind of "unique fact or unusual circumstance" that would render application of Section 101.603(b)(1) inequitable. In addition, Westinghouse did not submit any information that indicates that it cannot transmit common carrier traffic at another higher-frequency band where such communications are permitted, or that migration to another band would result in degradation of service quality that would be unacceptable for the communications carried on the system. Therefore, we find that Westinghouse has failed to demonstrate that no reasonable alternatives exist.

13. We also deny Westinghouse's request for a waiver regarding its 2.5 GHz POFS frequencies. As previously stated, a private operational fixed licensee operating on exclusive operational fixed service frequencies, *i.e.*, frequencies in the 900 MHz, 2.5, 12, and 23 GHz bands, must either request a waiver to operate as a common carrier on private operational fixed frequencies or file modification applications to use shared frequencies.⁴⁵ However, the basis for Westinghouse's waiver request is that "the frequency paths are an integral component of an overall microwave system," and "as integral segments of an overall microwave system, it is necessary that the same regulatory classification apply to these frequencies."⁴⁶ Given our decision to deny Westinghouse's waiver request with respect to the 2 GHz frequencies, Westinghouse's rationale for a waiver with respect to the 2.5 GHz frequencies also fails.

B. Nextel Waiver Request

14. In its waiver request, Nextel states that the requested modification would allow the stations to carry customer traffic in support of its SMR service.⁴⁷ Nextel argues that reclassification of its private

⁴¹ Westinghouse Reply Comments at 2.

⁴² *Id.*

⁴³ *Id.*

⁴⁴ *Id.*

⁴⁵ *See Part 101 Report and Order*, 11 FCC Rcd at 13468 ¶ 43.

⁴⁶ *See* Westinghouse Application, Exhibit 1 at 4.

⁴⁷ Nextel Application, Exhibit 1 at 1.

microwave licenses is appropriate because, effective August 10, 1996, its SMR system was reclassified as Commercial Mobile Radio Service (CMRS),⁴⁸ and, therefore, "it appears that SMR customer traffic now should be carried on Common Carrier Microwave systems."⁴⁹ Nextel argues that the requested waiver is consistent with the Commission's intent in establishing the new Part 101 and providing additional flexibility while continuing to protect existing microwave licensees.⁵⁰ Finally, Nextel contends that the *Part 101 Report and Order* indefinitely grandfathered all microwave facilities authorized prior to August 1, 1996, including 2 GHz licensees, so the waiver requests were not mandated, but were filed simply to clarify the regulatory status of valid licenses.⁵¹

15. Sprint Spectrum L.P. (Sprint) argues that Nextel's SMR services compete with the PCS services offered by Sprint, and that Nextel simply wants the right to use licensed PCS spectrum to compete against Sprint and other PCS licensees.⁵² Sprint also argues that Nextel has failed to meet the waiver standard, and that the only "unique circumstance" that Nextel has shown is that it has already been using this spectrum for common carrier purposes in violation of Section 101.603(b)(1).⁵³ Nextel responds that although it competes with Sprint using its SMR frequencies, it merely uses the referenced 2 GHz paths to backhaul traffic.⁵⁴

16. We find that Nextel has failed to demonstrate that waiver of Section 101.603(b)(1) is appropriate. First, the reasons underlying our conclusion that granting a waiver for Westinghouse's 2 GHz POFS frequencies would frustrate the underlying purpose of the Commission's Rules apply with equal force to Nextel. In addition, we disagree with Nextel's argument that it is entitled to change the licensing status of its stations because the Commission grandfathered indefinitely all microwave systems authorized prior to August 1, 1996. The Commission did indicate in the *Part 101 Report and Order* that because of the differences between the new Part 101 and Parts 21 and 94 with respect to licensing guidelines, operational requirements, and technical rules, all microwave systems authorized prior to August 1, 1996, would be grandfathered indefinitely, but this grandfathering provision applies only to technical issues and, contrary to Nextel's suggestion, does not allow licensees to operate these stations to carry common carrier traffic in violation of other Part 101 provisions, namely, Section 101.603.⁵⁵

⁴⁸ See Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, *Second Report and Order*, GN Docket No. 93-252, 9 FCC Rcd 1411, 1450 ¶¶ 88-93 (1994).

⁴⁹ Nextel Application, Exhibit 1 at 2.

⁵⁰ *Id.* at 3.

⁵¹ *Id.* at 2; see also Nextel Reply Comments at 3-4.

⁵² Sprint Spectrum L.P. Comments at 2.

⁵³ *Id.* at 2.

⁵⁴ Sprint Spectrum L.P. Comments at 2.

⁵⁵ *Part 101 Report and Order*, 11 FCC Rcd at 13477-78 ¶ 81. The Commission stated in the *Part 101 Report and Order* that, "This [the grandfathering provision] means that licensees of these systems will not be required to conform their operations to the new interference protection criteria, channel loading requirements, and

17. Finally, the fact that Nextel's SMR systems interconnected to the public switched telephone network were reclassified as CMRS does not represent a unique or unusual circumstance that would require conversion of its stations operating on exclusive private operational fixed service frequencies. Nextel argues that its waiver request merely involves a change in regulatory classification in order to utilize the facilities to carry SMR customer traffic.⁵⁶ However, as previously discussed, while the Commission set forth how private licensees above 2 GHz could elect common carrier status, it excluded operations in the 2 GHz band from obtaining common carrier status under the procedures set out in the *Part 101 Report and Order*. In addition, the Commission developed rules to relocate incumbents such as Nextel to other portions of the spectrum.⁵⁷ Finally, Nextel did not submit any information that indicates that it cannot transmit common carrier traffic at another higher-frequency band where such communications are permitted, or that migration to another band would result in degradation of service quality that would be unacceptable for the communications carried on the system. Therefore, we find that Nextel has failed to address the existence of reasonable alternatives.

IV. CONCLUSION

18. In the *Part 101 Report and Order*, the Commission excluded 2 GHz band POFS frequencies from its listing of private frequencies that could be converted to common carrier use. Westinghouse and Nextel have failed to demonstrate that the underlying purpose of this exclusion, or of Section 101.603(b)(1) of the Commission's Rules, which prohibits common carrier services on non-shared POFS frequencies, would be frustrated in their respective cases. Furthermore, we find that neither party has demonstrated the existence of unique facts or unusual circumstances that render application of the rules inequitable, unduly burdensome, or otherwise contrary to the public interest. Therefore, we deny the requests filed by Westinghouse and Nextel seeking waivers to permit common carrier service on 2 GHz band and 2.5 GHz band non-shared POFS frequencies.

V. ORDERING CLAUSES

19. ACCORDINGLY, IT IS ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 C.F.R. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the request filed by Westinghouse Communications Services, Inc. on February 26, 1997, seeking waiver of Section 101.603(b)(1) of the Commission's Rules with respect to the non-shared POFS portions applications FCC File Nos. 9701643, 9701651, 9701652, 9701656, 9701657, 9701660, 9701661, 9701663, 9701664, 9701701, 9701705, and 9701708, IS DENIED, and the above-captioned applications WILL BE REFERRED to the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division for further review and processing consistent with this *Order*.

20. IT IS FURTHER ORDERED pursuant to Section 4(i) of the Communications Act of 1934, as amended, 47 C.F.R. § 154(i), and Section 1.925 of the Commission's Rules, 47 C.F.R. § 1.925, the

antenna performance standards." *Id.* See also Pacific Bell Wireless Comments at 2.

⁵⁶ Nextel Application, Exhibit 1 at 3.

⁵⁷ *ET First Report and Order*, 7 FCC Rcd at 6893 ¶ 40.

request filed by Nextel Communications, Inc. on September 11, 1998, seeking waiver of Section 101.603(b)(1) of the Commission's Rules, is DENIED IN PART and DISMISSED AS MOOT IN PART, to the extent indicated herein, and the above-captioned applications WILL BE REFERRED to the Licensing and Technical Analysis Branch of the Public Safety and Private Wireless Division for further review and processing consistent with this *Order*.

21. This action is taken pursuant to Sections 0.131 and 0.331 of the Commission's Rules, 47 C.F.R. §§ 0.131, 0.331.

FEDERAL COMMUNICATIONS COMMISSION

D'wana R. Terry
Chief, Public Safety and Private Wireless Division
Wireless Telecommunications Bureau