

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

In the Matter of )  
 )  
FCI 900, Inc. Expedited Request For 3-Year )  
Extension Of 900 MHz Band Construction )  
Requirements )  
 )  
And )  
 )  
Neoworld License Holdings, Inc. Request For )  
Waiver Of 900 MHz Band Construction )  
Requirements And Petition For Declaratory )  
Ruling )

**MEMORANDUM OPINION AND ORDER**

Adopted: May 25, 2001

Released: May 25, 2001

By the Chief, Wireless Telecommunications Bureau:

**I. INTRODUCTION**

1. The Wireless Telecommunications Bureau (Bureau) has before it a Request for Expedited Waiver filed on January 9, 2001 by FCI 900, Inc., a wholly-owned subsidiary of Nextel Communications, Inc. (collectively, Nextel),<sup>1</sup> and a Request for Waiver and Petition for Declaratory Ruling filed on January 10, 2001 by Neoworld License Holdings, Inc. (Neoworld), an indirect wholly-owned subsidiary of Neoworld License Holdings, LLC.<sup>2</sup> Neoworld and Nextel seek extension of the construction requirements in Section 90.665(c) of the Commission's rules,

<sup>1</sup> See Letter dated January 9, 2001 from Robert S. Foosaner, Senior Vice President, Government Affairs, Nextel to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission (Nextel Request) and *Public Notice*, "Wireless Telecommunications Bureau Seeks Comment on FCI 900, Inc.'s Expedited Request for 3-Year Extension of 900 MHz Band Construction Requirements," DA 01-121 (2001 WESTLAW 40756 FEDCOM FCC library) (WTB rel. Jan. 18, 2001).

<sup>2</sup> See Request for Waiver of 900 MHz Band Construction Requirements and Petition for Declaratory Ruling (Neoworld Request) and *Public Notice*, "Wireless Telecommunications Bureau Seeks Comment on Neoworld License Holdings, Inc.'s Request for Waiver of 900 MHz Band Construction Requirements and Petition for Declaratory Ruling," DA 01-122 (2001 WESTLAW 40758, FEDCOM FCC library) (WTB rel. Jan. 18, 2001). Appendices A and B hereto provide a list of parties filing comments and replies in this proceeding, respectively.

which requires 900 MHz Specialized Mobile Radio (SMR) service Major Trading Area (MTA)<sup>3</sup> licensees to provide coverage to at least two-thirds of the MTA population within five years of original license grant or to demonstrate at the five-year mark that they are providing substantial service.<sup>4</sup> In addition, Neoworld requests a declaratory ruling regarding the elements of a substantial service demonstration under Section 90.665(c). For the reasons stated below, we find that the public interest would be served by an extension of the five-year construction requirement from August 12, 2001<sup>5</sup> until December 31, 2002 for all MTA licensees in the 900 MHz band.<sup>6</sup> We decline at this time, however, to issue the declaratory ruling requested by Neoworld regarding demonstration of substantial service under Section 90.665(c).<sup>7</sup>

## II. BACKGROUND

### A. 900 MHz Specialized Mobile Radio Construction Rules

2. Section 90.665(c) of the Commission's rules requires a 900 MHz MTA licensee to construct and place into operation a sufficient number of base stations to provide coverage to at least one-third of the population of its MTA within three years of original license grant, and at least two-thirds of the MTA population within five years of original license grant.<sup>8</sup> Alternatively, Section 90.665(c) provides that an MTA licensee may demonstrate to the Commission at the five-year mark that it is providing substantial service.<sup>9</sup> Section 90.665(d) provides that if an MTA licensee fails to timely meet these construction requirements, it forfeits the license except for any grandfathered sites it held prior to MTA licensing.<sup>10</sup>

3. In FCC Auction No. 7, the Commission auctioned 1,019 900 MHz SMR licenses

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<sup>3</sup> MTAs are based on material copyrighted by Rand McNally & Company, 1992.

<sup>4</sup> 47 C.F.R. § 90.665(c).

<sup>5</sup> The FCC granted most 900 MHz MTA licenses on August 12, 1996. *See Public Notice*, "FCC Announces Grant of 900 MHz Specialized Mobile Radio MTA Licenses," 12 FCC Rcd. 13055 (1996). The Section 90.665(c) 5-year construction deadline for most licensees therefore is August 12, 2001.

<sup>6</sup> If a 900 MHz MTA licensee's five-year construction date is after December 31, 2002, its five-year construction deadline is not affected by this order.

<sup>7</sup> 47 C.F.R. § 90.665(c).

<sup>8</sup> *Id.*

<sup>9</sup> At the three-year construction deadline, each licensee was required to notify the Commission either that it had met the one-third-coverage requirement or that it intended to submit a showing of substantial service at the five-year mark. The Bureau waived the requirement that licensees that elect substantial service indicate, at the three-year mark, how they intend to demonstrate substantial service at the five-year mark. *See Construction Requirements for Metropolitan Area-Based Licenses in the 896-901/935-940 MHz Band, Order*, DA 99-1564 (WTB rel. Aug. 6, 1999).

<sup>10</sup> 47 C.F.R. § 90.665(d).

in 51 MTAs. The FCC granted most of the licenses on August 12, 1996.<sup>11</sup> The Section 90.665(c) 5-year construction deadline for most 900 MHz MTA licensees therefore is August 12, 2001. The top three bidders by number of licenses won in Auction No. 7 were Geotek Communications, Inc. (Geotek, 181 licenses), Nextel (bidding as FCI 900, Inc., 177 licenses), and Paging Network, Inc. (PageNet, 126 licenses). Geotek and PageNet subsequently filed for bankruptcy protection. In January 2000, the Bureau approved Nextel's acquisition of 109 MTA licenses from Geotek.<sup>12</sup> In August 2000, the Bureau approved Neoworld's acquisition of 79 MTA licenses from Geotek.<sup>13</sup> In November 2000, PageNet merged with Arch Wireless, Inc. (Arch).<sup>14</sup> Arch subsequently filed an application to assign the former PageNet licenses and an additional 8 MTA licenses to Nextel,<sup>15</sup> which the Bureau grants today.<sup>16</sup>

## B. Neoworld Waiver Request

4. On August 4, 2000, the Bureau approved the assignment of 79 of Geotek's 900 MHz licenses in fourteen MTAs to Neoworld.<sup>17</sup> In its Waiver Request, Neoworld states that it intends to use these licenses to deploy a nationwide 900 MHz digital dispatch system, but that it is not possible to secure digital voice equipment in time to meet the August 12, 2001 construction deadline.<sup>18</sup> Shortly after acquiring its 900 MHz licenses, Neoworld entered into an agreement

<sup>11</sup> See *Public Notice*, "FCC Announces Grant of 900 MHz Specialized Mobile Radio MTA Licenses," 12 FCC Rcd. 13055 (1996).

<sup>12</sup> Geotek Communications, Inc., *Memorandum Opinion and Order* 15 FCC Rcd. 790 (WTB 2000), *recon. denied*, (2001 WESTLAW 15660, FEDCOM FCC library) (WTB rel. Jan. 9, 2001).

<sup>13</sup> In re Applications of Neoworld License Holdings, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd. 13410 (WTB rel. Aug. 4, 2000). The 14 MTAs are Atlanta, Boston, Chicago, Dallas, Denver, Detroit, Houston, Miami, New York, Philadelphia, San Francisco, Seattle, Tampa, and Washington, D.C./Baltimore. In June 1998, Geotek filed a voluntary petition for reorganization under Chapter 11, Title 11 of the U.S. Code. Thereafter, Geotek's creditors filed applications to assign a number of Geotek's 900 MHz MTA licenses to Neoworld. For a detailed history of the Geotek reorganization and subsequent events, see Hughes Network Systems Wilmington Trust Company, *Order*, 15 FCC Rcd. 15837 (WTB rel. Aug. 23, 2000). On September 30, 2000, Neoworld advised the Commission that it intended to demonstrate substantial service to the 14 MTAs five years from the original grant of licenses to Geotek (*i.e.*, by August 12, 2001). Application of Neoworld License Holdings, Inc., Required Notification, File No. 000222256, filed Sept. 20, 2000.

<sup>14</sup> See Arch Communications Group, Inc. and Paging Network, Inc., WT Docket No. 99-365, *Memorandum Opinion and Order* (WTB rel. Apr. 25, 2000). On December 8, 2000, Arch advised the FCC that it had consummated the PageNet merger effective November 10, 2000. See FCC File No. 0000053846.

<sup>15</sup> See *Public Notice*, "Arch Wireless, Inc. and Nextel Communications, Inc. Seek Consent to Assign 900 MHz SMR Licenses," DA 01-499 (2001 WESTLAW 40758, FEDCOM FCC library) (WTB rel. Feb. 26, 2001).

<sup>16</sup> In re Application of AWI Spectrum Co., LLC, Assignor; and ACI 900, Inc. Assignee, *Order*, DA 01-1268, File No. 00003700897 (WTB rel. May 25, 2001)

<sup>17</sup> In re Applications of Neoworld License Holdings, Inc., *Memorandum Opinion and Order*, 15 FCC Rcd. 13410 (WTB rel. Aug. 4, 2000).

<sup>18</sup> Neoworld Request at 23.

with Motorola to deliver initial system infrastructure by February 2001, with subscriber equipment delivery by August 2001.<sup>19</sup> Neoworld states that if system testing is successful, it will commence service in the Chicago MTA in August 2001 and that, by December 2001, it will serve at least seven additional MTAs.<sup>20</sup> Neoworld states that, by December 2002, it will serve more than ten additional MTAs.<sup>21</sup> Neoworld requests an extension for itself, until December 31, 2002, to demonstrate coverage to at least two-thirds of the population of each MTA.<sup>22</sup> In its Reply Comments, however, Neoworld urges the Commission to apply any extension of the construction requirements to *all* 900 MHz MTA licensees.<sup>23</sup> Neoworld also requests a declaratory ruling that, if it has not achieved two-thirds population coverage within each MTA by December 31, 2002, it will be deemed to have satisfied its substantial service obligations if it is making at least twenty channels available to its customers in each MTA and has made a satisfactory demonstration of service to the public.<sup>24</sup>

### C. Nextel Waiver Request

5. Nextel presently holds 379 licenses in the 900 MHz band, at least one in 47 of the 51 MTAs.<sup>25</sup> Nextel contends that it could build analog facilities in time to meet the 5-year construction deadline, but that such construction would be contrary to the public interest.<sup>26</sup> Nextel also contends that the relatively short construction period for 900 MHz MTA licenses (five years compared to ten years in other services)<sup>27</sup> and the lack of 900 MHz digital voice network equipment, “warrant[] an extended construction period not only for Nextel, but for all 900 MHz MTA licensees.”<sup>28</sup> Nextel argues that a waiver is necessary because digital voice equipment is not

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<sup>19</sup> *Id.* at 13.

<sup>20</sup> *Id.* at 13-14. In addition to the former Geotek MTAs, Neoworld has an assignment application (file no. 0000284824) pending for the New Orleans MTA, and has entered into binding agreements to acquire the licenses for Buffalo, Jacksonville, Los Angeles, Phoenix, Portland, and San Antonio MTAs.

<sup>21</sup> *Id.* at 14-15.

<sup>22</sup> *Id.* at 15.

<sup>23</sup> Neoworld Reply Comments at 5 (filed Feb. 8, 2001).

<sup>24</sup> Neoworld Request at 15.

<sup>25</sup> In a separate order today, the Bureau grants the assignment of 134 MTA licenses in the 900 MHz band from Arch to Nextel. *See* n.16, *supra*. The Bureau also recently consented to an assignment of 59 MTA licenses in the 900 MHz band from Motorola to Nextel. *See* In Re Applications of Motorola, Inc.; Motorola SMR, Inc.; and Motorola Communications and Electronics, Inc. Assignors; and FCI 900, Inc. Assignee, *Order*, DA 01-947 (2001 WESTLAW 388253, FEDCOM FCC library) (WTB rel. Apr. 17, 2001). According to FCC records, Motorola and Nextel have not yet consummated that assignment.

<sup>26</sup> Nextel Request at 3.

<sup>27</sup> *See, e.g.*, 47 C.F.R. § 24.203(a) (30 MHz broadband PCS licensees).

<sup>28</sup> Nextel Request at 1.

yet available to integrate its 900 MHz spectrum into its existing nationwide 800 MHz integrated Digital Enhanced Network (iDEN).<sup>29</sup> According to Nextel, an extension of the construction requirement would also enable the company to deploy a digital 900 MHz “pico cell” technology developed by Littlefeet, Inc. to resolve coverage holes, and to alleviate near-far interference between its 800 MHz commercial operations and adjacent 800 MHz public safety communications systems.<sup>30</sup> Nextel initially requested a three-year extension of the 5-year construction deadline for all 900 MHz MTA licensees,<sup>31</sup> indicating that a three-year extension would enable the company to deploy advanced 800/900 MHz iDEN service throughout its nationwide network.<sup>32</sup> On March 19, 2001, however, Nextel advised the Commission that the projected delivery and implementation schedule for 900 MHz digital equipment had substantially improved and would allow Nextel, barring unforeseen circumstances, to meet the 900 MHz MTA five-year construction requirements by December 31, 2002.<sup>33</sup>

### III. DISCUSSION

#### A. Extension of the Construction Requirement

6. As explained below, we find that the record supports an extension of the five-year 900 MHz MTA construction requirements for all 900 MHz MTA licensees.<sup>34</sup> We find that an extension will serve the public interest because it will allow the introduction of innovative digital 900 MHz voice services, thus benefiting consumers and promoting competition.<sup>35</sup> By this Order,

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<sup>29</sup> *Id.* at 2.

<sup>30</sup> *Id.* at 5.

<sup>31</sup> *Id.* at 8.

<sup>32</sup> *Id.*

<sup>33</sup> See Letter dated March 19, 2001 from Lawrence R. Krevor, Vice President, Government Affairs, Nextel to Michael Ferrante, Wireless Telecommunications Bureau, Federal Communications Commission (Nextel March 19, 2001 *Ex Parte*).

<sup>34</sup> Thirteen of the sixteen parties in this proceeding support an extension of the construction deadline for all 900 MHz MTA licensees. Nextel Request at 1; Neoworld Reply at 2. See Comments filed February 1, 2001 of American Mobile Telecommunications Association, Inc. at 1 (AMTA), Arch Wireless, Inc. at 3 (Arch), Chadmoore Wireless Group, Inc. at 2 (Chadmoore), Commenco Wireless, L.L.C. at 1 (Commenco), DW Communications, Inc. at 5 (DW), Houston 936 SMR Inc. at 1 (Houston 936), MobileCall, Inc. at 1 (MobileCall), Pat Thess at 1 (Thess), Western NY SMR Net L.L.C. (Western NY), and Reply Comments filed February 8, 2001 of Independence Communications, Inc. at 1 and Majestic Communications, Inc. at 2 (Majestic). One of the three parties opposing industry-wide relief, Southern LINC, does not oppose relief limited to Neoworld. Southern LINC *Ex Parte* Submission at 2 (filed March 2, 2001). Saia Communications, Inc. (SAIA) and Small Business in Telecommunications (SBT) both oppose extension of the five-year construction requirement. See SAIA Opposition to Requests for Waiver (filed Feb. 1, 2001) (SAIA Opposition) and SBT Comments on Neoworld Request (filed Feb. 1, 2001) and SBT Comments on Nextel Request (filed Feb. 1, 2001).

<sup>35</sup> A party seeking waiver of a Commission rule must show that “[t]he underlying purpose of the rule(s) would not be served, or would be frustrated by application to the instant case, and that a grant of the request would be in the public interest . . . .” 47 C.F.R. § 1.925(b)(3)(i). Alternatively, a party may show that “[i]n view of unique or (continued....)

we extend the deadline for meeting the five-year 900 MHz MTA construction requirements until December 31, 2002.<sup>36</sup>

7. The record reflects that Nextel, Neoworld, and other 900 MHz MTA licensees intend to deploy advanced digital 900 MHz systems, but that digital voice equipment will not be commercially available in sufficient quantities in time to meet the five-year construction deadline.<sup>37</sup>

Records of the Commission's Office of Engineering and Technology confirm that, as of February 7, 2001, there was no 900 MHz SMR digital voice equipment (using any of the four major digital technologies)<sup>38</sup> type accepted for marketing, sale, and use in the United States. Commenco states that "there is no 900 MHz digital SMR equipment to buy."<sup>39</sup> DW states that it "has not been able to obtain a commitment for the provision of digital equipment."<sup>40</sup> Majestic explains that "the lack of 900 MHz SMR digital equipment . . . has delayed the ability of 900 MHz licensees to construct systems with long term commercial viability within the limited time period prescribed by the Commission's rules."<sup>41</sup> The record also reveals, however, that digital equipment will soon become available to licensees in the 900 MHz band. Neoworld, for example, expects Motorola to deliver subscriber equipment by August 2001.<sup>42</sup> Nextel anticipates that Motorola will deliver dual-band 800/900 MHz equipment in the first quarter of 2002.<sup>43</sup>

8. We find that extension of the 900 MHz MTA construction deadline will promote the public interest by facilitating the deployment of advanced 900 MHz digital voice technologies. The record demonstrates substantial public interest benefits associated with deploying digital voice technology to provide SMR services. The *Fifth Competition Report*, for example, explains

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unusual factual 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." 47 C.F.R. § 1.925(b)(3)(ii).

<sup>36</sup> The five-year construction deadline for most 900 MHz MTA licensees is August 12, 2001 because most licenses were granted on August 12, 1996. See Public Notice, "FCC Announces Grant of 900 MHz Specialized Mobile Radio MTA Licenses," 12 FCC Rcd. 13055 (1996). If a 900 MHz MTA licensee's five-year construction date is after December 31, 2002, its five-year construction deadline is not affected by this order.

<sup>37</sup> See Nextel Request at 1 and Neoworld Request at 13.

<sup>38</sup> The four technologies are Code Division Multiple Access (CDMA), iDEN, Global System Mobile Communications (GSM), and Time Division Multiple Access (TDMA).

<sup>39</sup> Commenco Comments at 1.

<sup>40</sup> DW Comments at 1. See also Chadmoore Comments at n.1 ("Chadmoore has consistently planned on constructing the 900 MHz licenses utilizing digital technology."); Houston 936 SMR Comments at 1 ("Neoworld and Nextel have aptly explained the reason why many MTA licensees have been delayed in building systems as hoped - chiefly, the lack of available 900 MHz SMR digital equipment.").

<sup>41</sup> Majestic Reply Comments at 1-2.

<sup>42</sup> Neoworld Request at 13.

<sup>43</sup> Nextel March 19, 2001 *Ex Parte* at 1.

that “digital technologies have enabled SMR providers to become more significant competitors in mobile telephone markets,”<sup>44</sup> because digital technology enables service providers to expand their “capacity without degradation of service for existing customers.”<sup>45</sup> Added capacity, in turn, allows carriers to provide advanced services such as short messaging service.<sup>46</sup> AMTA states that digital technology is vital “to remain competitive and to satisfy increasingly sophisticated customer demands.”<sup>47</sup> Nextel notes that digital technologies will provide “cost savings, increased customer capacity, enhanced system robustness, improved coverage, accelerated introduction of 3G services, and additional flexibility to mitigate and/or prevent interference with certain adjacent channel 800 MHz public safety communications systems.”<sup>48</sup> MobileCall states that digital technology will “provide the spectrum and cost efficiencies the dispatch market so critically needs.”<sup>49</sup>

9. By contrast, the public interest would be ill served by compelling 900 MHz MTA licensees to devote scarce resources to the construction of stopgap legacy analog systems in order to meet the five-year construction deadline. The record demonstrates that demand for analog technology is decreasing in the mobile telephone sector, in which numerous SMR providers compete. In 1999, the number of analog subscribers declined “from 48.5 million to 41.9 million.”<sup>50</sup> At the same time, the number of digital subscribers “doubled from approximately 20.7 million to 44.1 million.”<sup>51</sup> Commenco states that “[t]here is no question that digital is well on its way to replacing analog as the technology of choice . . . .”<sup>52</sup> AMTA notes “that a number of its members with MTA authorizations, [including] . . . small operators holding as little as a single ten-channel block in a single MTA, have deferred system implementation in the hope that they would have an opportunity to choose between analog and digital technology.”<sup>53</sup> We find that subscribers would incur inconvenience and expense if they must acquire and subsequently change out obsolete analog handsets. The handsets will have little or no market value and subscribers would experience downtime. One 900 MHz MTA operator contends that “construction of analog

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<sup>44</sup> 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, *Fifth Report*, 15 FCC Rcd. 17660, 17689 (2000) (*Fifth Competition Report*).

<sup>45</sup> *Id.* at 17686.

<sup>46</sup> *Id.*

<sup>47</sup> AMTA Comments at ¶ 10.

<sup>48</sup> Nextel Request at 2-3.

<sup>49</sup> MobileCall Comments at 1; Thess Comments at 1 (digital SMR technology will provide “features and efficiencies more and more customers demand”).

<sup>50</sup> *Fifth Competition Report*, 15 FCC Rcd. at 17672.

<sup>51</sup> *Id.*

<sup>52</sup> Commenco Comments at 1.

<sup>53</sup> AMTA Comments at ¶ 14.

facilities, then promptly discarding all of that equipment to replace it with digital equipment . . . would have to be reflected in higher prices to the public.”<sup>54</sup>

10. We also find that extension of the 900 MHz MTA construction deadline will facilitate Nextel’s deployment of innovative digital 900 MHz “pico cell” technology developed by Littlefeet, Inc.<sup>55</sup> Significantly, this new technology will mitigate near-far interference between Nextel’s nationwide 800 MHz SMR system and adjacent 800 MHz public safety communications systems and can be used to resolve coverage holes as well.<sup>56</sup> Nextel’s scheduled implementation (July 2001) of this low-power, low-height technology would be adversely affected by a requirement to deploy the high-power, high site analog facilities necessary to meet the present five-year construction deadline.<sup>57</sup>

11. Although only Nextel and Neoworld filed extension requests, we conclude based on the record in this proceeding that extension of the construction deadline for all 900 MHz SMR licensees is appropriate. The record demonstrates that a number of licensees intend to deploy digital 900 MHz equipment to provide advanced services.<sup>58</sup> Affording all 900 MHz licensees additional time to deploy digital equipment will serve the public interest by enhancing competition among 900 MHz licensees and between 900 MHz licensees and other digital CMRS providers. An extension for all 900 MHz MTA licensees also will speed the delivery of innovative services to the public, and obviate the need for licensees to construct obsolete analog systems solely to satisfy the present five-year construction deadline. Accordingly, we find that relief for all 900 MHz MTA licensees is warranted.

12. We note as well that the 16-month extension of the construction deadline that we adopt today will not undermine the Commission’s policy against spectrum warehousing, as Southern LINC contends.<sup>59</sup> The record confirms that extension of the construction deadline is necessitated by the near-term lack of digital 900 MHz voice equipment.<sup>60</sup> The record, moreover, demonstrates that Nextel and Neoworld are committed to rapidly deploying 900 MHz digital equipment, rather than warehousing spectrum.<sup>61</sup> Just 90 days after its authorizations were issued, Neoworld entered into an agreement to purchase digital equipment from Motorola, with delivery of initial system infrastructure and subscriber equipment by February and August 2001,

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<sup>54</sup> DW Comments at p. 2.

<sup>55</sup> Nextel Request at 5-7.

<sup>56</sup> *Id.* at 6.

<sup>57</sup> *Id.* at 7.

<sup>58</sup> See discussion at ¶ 7, *supra*.

<sup>59</sup> Southern LINC Comments at 10 (filed Feb. 1, 2001).

<sup>60</sup> See discussion at ¶ 7, *supra*.

<sup>61</sup> In fact, Nextel asserts that it could build analog facilities in time to meet the 5-year construction deadline, but that such construction would be contrary to the public interest. Nextel Request at 3.

respectively.<sup>62</sup> Nextel will take delivery of Motorola 800/900 MHz dual band iDEN handsets and begin seeding the market in the first quarter of 2002,<sup>63</sup> and intends to deploy 900 MHz digital network infrastructure in the second quarter of 2002.<sup>64</sup>

13. Saia Communications, Inc. (SAIA), SBT, and Southern LINC argue that, instead of granting a three-year extension, the Commission should re-auction any spectrum that is not utilized by the present five-year 900 MHz MTA construction deadline.<sup>65</sup> Each of these parties contends that Nextel's original request for a three-year extension of the construction deadline (until August 2004) would unduly and unnecessarily delay the introduction of service in the 900 MHz band. Southern LINC does not oppose Neoworld's request for a more limited extension of the construction deadline until December 31, 2002.<sup>66</sup> As discussed above, Nextel has recently indicated that the projected delivery and implementation schedule for 900 MHz digital equipment has substantially improved and would allow Nextel to meet the five-year construction requirements by December 31, 2002.<sup>67</sup> Nextel, moreover, has stated that it would construct analog facilities rather than lose valuable 900 MHz spectrum.<sup>68</sup> We expect that many other 900 MHz MTA licensees would also construct analog facilities to avoid forfeiting their licenses. We also note that no objecting party has suggested that it would deploy a technologically innovative service if we declined to grant an extension.<sup>69</sup>

14. Contrary to arguments by SAIA and Southern LINC, we find that an extension of the deadline under these circumstances is not inconsistent with the *PageNet Order*.<sup>70</sup> The Commission there denied PageNet's request for a five-year extension of, or forbearance from, the 900 MHz five-year construction deadline.<sup>71</sup> SAIA argues that the *PageNet Order* requires rejection of Nextel's and Neoworld's requests for an extension of the 900 MHz construction

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<sup>62</sup> Neoworld Reply Comments at 9. "Neoworld contacted a number of potential suppliers and had serious discussions with two prior to making its equipment choice." *Id.*, n.18.

<sup>63</sup> Nextel March 19, 2001 *Ex Parte* at 1.

<sup>64</sup> *Id.*

<sup>65</sup> SAIA Opposition at 5; SBT Comments on Nextel Request at 3; SBT Comments on Neoworld Request at 3; Southern Linc Comments at 8.

<sup>66</sup> See Southern LINC *Ex Parte* Submission at 2, dated March 6, 2001.

<sup>67</sup> Nextel March 19, 2001 *Ex Parte*.

<sup>68</sup> Nextel Request at 3, 8-9.

<sup>69</sup> The only alternative use suggested by an objecting party is the provision of analog SMR service in one particular market. SAIA Opposition at n.1.

<sup>70</sup> Paging Network, Inc., Request for Waiver of Section 90.665 of the Commission's Rules Relating to the Construction of 900 MHz SMR MTA Facilities, *Order*, 15 FCC Rcd. 12141 (2000) (*PageNet Order*).

<sup>71</sup> *Id.*

deadline in this proceeding.<sup>72</sup> Southern LINC claims that the Nextel waiver request is “highly comparable.”<sup>73</sup> We disagree. The record indicates that the factors that led the Commission to deny PageNet’s request for an extension of, or forbearance from, the construction deadline do not exist here. First, unlike PageNet, Nextel and Neoworld do not seek relief limited to themselves; they request relief for all 900 MHz MTA licensees.<sup>74</sup> Second, PageNet sought a five-year extension, while the extension that we grant here is significantly shorter and tied to the availability of needed equipment.<sup>75</sup> Third, in the *PageNet Order* the Commission found a lack of record “evidence demonstrating that PageNet has taken measures since the grant of its licenses to utilize the 900 MHz SMR spectrum.”<sup>76</sup> By contrast, the evidence in this proceeding demonstrates that Nextel and Neoworld are taking concrete steps to deploy digital 900 MHz voice equipment.<sup>77</sup>

15. Finally, we reject arguments by SAIA that both waiver requests are procedurally defective and should be dismissed without prejudice.<sup>78</sup> SAIA states that Nextel filed its waiver request in paper form, rather than electronically through the Commission’s Universal Licensing System (ULS). SAIA also asserts that Neoworld did not file its request on ULS. SAIA contends that “failure to employ ULS . . . renders it difficult to assess precisely which licenses are covered by the requests.”<sup>79</sup>

16. First, Neoworld’s Waiver Request was properly filed and assigned ULS File No.0000320045.<sup>80</sup> Neoworld also provided a list of MTAs where it holds 900 MHz licenses.<sup>81</sup> Second, although Nextel’s paper filing of its waiver request does not comply with the electronic filing requirements of Section 1.913(b),<sup>82</sup> it is clear which licenses are covered by the request because Nextel unequivocally seeks relief on behalf of all 900 MHz MTA licensees.<sup>83</sup> Section

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<sup>72</sup> SAIA Opposition to Requests for Waiver at 3-4 (filed Feb. 1, 2001) (SAIA Opposition); Southern LINC Comments at 11.

<sup>73</sup> Southern LINC *Ex Parte* Submission at 4 (filed March 2, 2001).

<sup>74</sup> In *PageNet*, the Commission observed that “there is nothing in the record to suggest that forbearance is warranted for PageNet but not other 900 MHz SMR licensees.” *PageNet Order*, 15 FCC Rcd. at 12146, ¶ 16.

<sup>75</sup> *Id.*

<sup>76</sup> *Id.*, 15 FCC Rcd. at 12144 ¶ 10.

<sup>77</sup> See Nextel March 19, 2001 *Ex Parte* at 1; Neoworld Reply Comments at n.18.

<sup>78</sup> SAIA Opposition at 2-3.

<sup>79</sup> *Id.* at n.3.

<sup>80</sup> ULS File Number 00000241755, cited by SAIA in its Opposition, was assigned to an earlier-filed Waiver Request which was withdrawn voluntarily by Neoworld, effective January 6, 2001.

<sup>81</sup> Neoworld Waiver Request, Schedule A.

<sup>82</sup> 47 C.F.R. § 1.913(b).

<sup>83</sup> Nextel Waiver Request at 1.

1.925(a) of the Commission's rules provides that the Commission may, on its own motion, waive specific requirements of its rules.<sup>84</sup> We find that Nextel's request for relief for all licensees in the 900 MHz band warrants waiver of the electronic filing requirement contained in Section 1.913(b) with respect to Nextel's Waiver Request.<sup>85</sup>

### B. Neoworld Declaratory Ruling Request

17. Neoworld requests a declaratory ruling that, if it has not achieved two-thirds population coverage within each MTA by December 31, 2002, it will be deemed to have satisfied its substantial service obligations if it is making at least twenty channels available to its customers in each MTA and has made a "satisfactory demonstration" of service to the public.<sup>86</sup> Neoworld asserts that "the substantial service test contemplates a showing of ongoing commitment to system implementation, although not necessarily on an MTA-by-MTA basis."<sup>87</sup>

18. We are unable to rule meaningfully on Neoworld's request because it has not sufficiently described how it would make "a satisfactory demonstration of service to the public."<sup>88</sup> We take this opportunity to clarify that 900 MHz MTA licensees seeking to satisfy the construction requirement by a showing of substantial service must make that showing on an MTA-by-MTA basis. Our decision not to rule on Neoworld's request at this time does not preclude Neoworld from seeking a ruling at a later date based on a more substantial factual showing.

## IV. ORDERING CLAUSES

19. Accordingly, IT IS ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), and Section 1.925(a) of the Commission's rules, 47 C.F.R. § 1.925(a), the electronic filing requirement contained in Section 1.913(b) of the Commission's rules, 47 C.F.R. § 1.913(b), is waived with respect to the Request for Expedited Waiver filed by FCI 900, Inc. on January 9, 2001.<sup>89</sup>

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<sup>84</sup> 47 C.F.R. § 1.925(a).

<sup>85</sup> We note that Nextel could not have filed individual waiver requests on ULS for the 900 MHz MTA licenses that it does not hold. SAIA also argues that Neoworld's request should be dismissed for non-remittance of a filing fee. SAIA Opposition at 3. Nextel remitted a single waiver fee of \$145 with its request. Pursuant to Section 1.1116(b) of the Commission rules, 47 C.F.R. § 1.1116(b), the FCC billed Neoworld and Nextel the appropriate fees and assessed a late charge of 25%. Both parties have since remitted the appropriate fees and late charges.

<sup>86</sup> Neoworld Request at 15.

<sup>87</sup> *Id.* at 16.

<sup>88</sup> *Id.*

<sup>89</sup> See Letter dated January 9, 2001 from Robert S. Foosaner, Senior Vice President, Government Affairs, Nextel to Thomas J. Sugrue, Chief, Wireless Telecommunications Bureau, Federal Communications Commission.

20. IT IS FURTHER ORDERED that, pursuant to Section 4(i) of the Communications Act, as amended, 47 U.S.C. § 154(i), Section 5(e) of the Administrative Procedure Act, 5 U.S.C. § 5(e), and Sections 1.4, 1.925(c), and 90.665(c) of the Commission's rules, 47 C.F.R. §§ 1.4, 1.925(c), and 90.665(c), the Request for Expedited Waiver filed by FCI 900, Inc. on January 9, 2001<sup>90</sup> and the Request for Waiver of 900 MHz Band Construction Requirements and Petition for Declaratory Ruling filed by Neoworld License Holdings, Inc. on January 10, 2001 are granted to the extent indicated above.

FEDERAL COMMUNICATIONS COMMISSION

Thomas J. Sugrue  
Chief, Wireless Telecommunications Bureau

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<sup>90</sup> *Id.*

**Appendix A, Parties Filing Comments on Waiver Requests**

American Mobile Telecommunications Association, Inc.

Arch Wireless, Inc. (Nextel Request Only)

Chadmoore Wireless Group, Inc.

Commenco Wireless, L.L.C.

DW Communications, Inc.

Houston 936 SMR, Inc.

Mobilecall, Inc.

Neoworld License Holdings, Inc. (Nextel Request only)

Nextel Communications, Inc. (Neoworld Request only)

Pat Thess

Saia Communications, Inc.

Small Business in Telecommunications

Southern LINC (Nextel Request only)

Western NY SMR Net L.L.C. (Nextel Request only)

**Appendix B, Parties Filing Reply Comments on Waiver Requests**

Arch Wireless, Inc. (Nextel Request only)

Independence Communications, Inc.

Majestic Communications, Inc.

Neoworld License Holdings, Inc.

Nextel Communications, Inc.