

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

In the Matter of Partial )  
Waiver of Application )  
Fees Relating to the )  
Transfer of Control )  
of Specialized Mobile Radio )  
Licenses of Nextel )  
Communications, Inc. )

**MEMORANDUM OPINION AND ORDER**

Adopted: February 2, 2000; Released: February 8, 2000

By the Commission:

1. This memorandum opinion and order denies an application for review filed by Nextel Communications, Inc. ("Nextel") of the letter ruling of the Managing Director, which rejected Nextel's request for a partial fee waiver. Nextel sought the waiver in connection with its transfer of control of specialized mobile radio ("SMR") licenses to Digital Radio, L.L.C. ("Digital").

Background

2. In seeking a fee waiver, Nextel stated that the transaction with Digital involved approximately 3,800 SMR call signs and 2,000 pending SMR license applications and, that, because the Commission imposes a \$45 application fee per call sign, the total fee required would be \$261,000. Nextel argued that the fee exceeds the Commission's processing costs and that good cause exists for a waiver because the Commission is obligated to achieve regulatory parity between substantially similar service providers. Accordingly, Nextel submitted a provisional fee of \$22,500, which, it stated, is comparable to the fee of \$24,840 paid in the transfer of control of McCaw Cellular Communications, Inc. to AT&T, 9 FCC Rcd 5836, and requested that the amount tendered be accepted as payment in full for the transfer of all the licenses under consideration. In denying Nextel's waiver request, the Managing Director pointed out that Congress significantly revised the Commission's Fee Schedule in 1989 to include provisions for reduced fees for certain categories of multiple application filings, but did not provide for a reduction of fees in the case of multiple filings involving SMR licenses. Because Congress has already enumerated those categories where a fee reduction may be appropriate in the case of multiple filings, and did not include the service in question among them, the Managing Director declined to reduce Nextel's fee payment. The Managing Director also rejected Nextel's argument regarding "regulatory parity" between services,

noting that only Congress can amend the application Fee Schedule to achieve such equality.

3. In its application for review, Nextel argues that the Managing Director disregarded past fee waiver precedents by not explaining how the total fee imposed on it bears any relation to the Commission's reasonable costs of processing the transaction, citing Letter to Gerald S. McGowan, dated September 7, 1989. It maintains that the Managing Director also ignored the fact that Part 90 SMR licensing has changed dramatically since 1991, evolving from a single station service to a multiple base station/site service involving hundreds of low power sites in an area previously covered by a few high power sites. Nextel contends that at the time Congress amended the Fee Schedule to provide for reduced fees for multiple station applications, SMR providers were still typically applying for single site licenses and, that, had Part 90 SMR license applicants sought multiple sites at the time Congress amended the fee provisions, "it is not unreasonable to conclude that Congress would have likewise provided a reduced fee for multiple Part 90 SMR applications." Application for Review at 6-7. Nextel also contends that now that the Commission has amended its technical, operational, and licensing rules for CMRS carriers "to ensure that economic forces -- not disparate regulatory burdens -- shape the development of the CMRS marketplace," citing Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Third Report and Order, 9 FCC Rcd 7988, 7994 (1994) ("Third Report"), it would be unfair to impose a greater fee on Nextel than a cellular carrier would pay. Nextel concludes that equity in this case simply requires a fee waiver, not an amendment to the Fee Schedule, as the Managing Director believed.

#### Discussion

4. We conclude that the Managing Director correctly applied prevailing fee waiver precedents in denying Nextel's request. Although the Commission has discretion to "waive . . . payment of charges in any specific instance for good cause shown, where such action would promote the public interest," 47 U.S.C. §158(d)(2); see also 47 C.F.R. §1.1117(a), this waiver authority is construed narrowly. See Fee Decisions of the Managing Director, 7 FCC Rcd 4708, 4718 (1992) (GTE letter); Establishment of a Fee Collection Program, 3 FCC Rcd 5987 at ¶5 (1988) (fee represents average cost of processing and will only be waived in most unusual cases). In addition, after Congress acted to create a two-tiered system incorporating reduced filing fees for certain categories of multiple applications, and indicated in making these comprehensive revisions to the Fee Schedule that the new fees "represent a fair approximation of how the Commission's costs should be distributed," see Establishment of a Fee Collection Program to Implement the Provisions of the Omnibus Budget Act of 1989, 5 FCC Rcd 3558, 3574 (1990), recon. in part, 6 FCC Rcd 5919 (1991), the Managing Director has consistently ruled that further ad hoc fee reductions in the case of multiple filings would not be appropriate. See, e.g., Fee Decisions of the Managing Director, 11 FCC Rcd 3683 (1996) (AirTouch Communications letter); Letter to Kathryn A. Zachem and Kelley A. Baione, dated April 3, 1996; Fee Decisions of the Managing Director, 7 FCC Rcd 3641, 3656 (1992) (U S West letter); Letter to Jill Abeshouse Stern, dated September 30, 1992; Letter to Robert

S. Koppel, dated April 8, 1992;

Letter to Robert S. Koppel, dated April 2, 1992. The McGowan letter, relied on by Nextel, is inapt because it preceded enactment and implementation of the revised fee provisions.

5. Further, as to regulatory parity with cellular service providers, the Commission, in the Third Report, considered whether Part 90 licensees should pay the same application fees as Part 22 carriers, and concluded that "this is an issue appropriately to be decided by Congress . . . [because] . . . Congress has not granted the Commission the authority to amend the application fee schedule." 9 FCC Rcd at 8127. With regard to recent changes in the nature of SMR service and licensing, we cannot grant a waiver premised on Nextel's speculative assertion that Congress would have made provision for a reduced fee for SMR licensees had they customarily applied for multiple site stations prior to the time Congress revised the Fee Schedule. Moreover, because Nextel's position in this regard rests on asserted developments affecting the entire SMR industry, as distinct from considerations peculiar to Nextel, we agree with the Managing Director that the broad relief it seeks appropriately should be addressed through statutory amendments to 47 U.S.C. §158 and not through the case-by-case waiver process, which is designed to address the particular circumstances of individual applicants.

6. ACCORDINGLY, IT IS ORDERED That the application for review filed by Nextel Communications, Inc. IS DENIED.

FEDERAL COMMUNICATIONS COMMISSION

Magalie Roman Salas  
Secretary