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Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554

JUN 11 1992

Federal Communications Commission  
Office of the Secretary

In the Matter of )  
)  
Amendment of Part 90 of the ) PR Docket No. 92-79  
Commission's Rules to )  
Eliminate Separate Licensing )  
of End Users of Specialized )  
Mobile Radio Systems )

JOINT COMMENTS

GTE Mobilnet Incorporated and Contel Cellular Inc.  
(collectively, "the Parties") hereby submit their Joint Comments  
in response to the Commission's Notice of Proposed Rulemaking  
("Notice") in the proceeding captioned above.<sup>1</sup>

In this proceeding, the Commission is considering changes to  
its licensing and mobile loading requirements in the Specialized  
Mobile Radio ("SMR") service. The primary change proposed by the  
Commission is the elimination of end user licensing. The  
Commission states in the Notice that it is proposing this change  
in its Rules because eliminating end user licensing "would result  
in enormous savings to the public and the Commission."<sup>2</sup> As a  
result of its proposal to eliminate end user licensing, the  
Commission also proposes several other related rule  
modifications, such as modifications to its requirements  
regarding mobile loading data.<sup>3</sup>

As a general matter, the Parties support all of the  
Commission's efforts to streamline regulation and thereby

<sup>1</sup> FCC 92-172, released May 5, 1992.

<sup>2</sup> Notice at ¶4.

<sup>3</sup> Id. at ¶7.

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eliminate costs and burdens for the Commission, the carriers, and the public. However, the Parties find the Commission's proposal to be troubling in several respects.

As the Commission acknowledges in its Notice,<sup>4</sup> the Commission rejected a petition proposing the elimination of end user licensing just two years ago.<sup>5</sup> The Commission based its decision on its belief that the information it obtains from end user licenses "is required to carry out functions integral to [the Commission's] licensing process" and that "there is no viable alternative before [the Commission] that would result in the collection of end user information essential to [its] processes at this time."<sup>6</sup> The Commission fails to explain in the Notice what has changed in the last two years that would justify its proposal in this proceeding. Specifically, the Commission fails to explain why it no longer needs information it believed was so vital to the regulatory process in 1990, or why the alternatives it has now developed (i.e., fleet licensing with reports of average loading levels required at least once a year) are adequate.

Thus, while the Parties support the elimination of unnecessary regulation, we believe it is incumbent upon the Commission to explain why the rules in question are unnecessary and why their elimination serves the public interest. The Commission fails to do this in the Notice. It appears to the

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<sup>4</sup> Id. at ¶3.

<sup>5</sup> Amendment of Part 90 of the Commission's Rules to Modify Application Requirements for End Users of Specialized Mobile Radio Systems, 5 FCC Rcd. 2975 (1990).

<sup>6</sup> Id.

Parties that the end user licensing requirements do have some valid function in monitoring the SMR industry, which is to provide a mechanism for ensuring compliance with the Commission's end user eligibility rules.<sup>7</sup> If end users are no longer required to have licenses and base station licensees need only report the number of mobiles operating on their systems, it will be much more difficult for the Commission to determine whether ineligible end users are operating on a particular system. Knowledge of such difficulties in enforcing compliance might encourage a less scrupulous base station licensee to allow ineligible users on its system, leading to uses of the frequency which are not intended by the Commission.

Finally, the Parties are troubled by what the Commission's proposal represents; specifically, it represents another change in the SMR regulatory scheme that blurs the distinction between SMR and common carrier wireless services such as cellular. Over the last ten years the Commission has made numerous changes in the regulatory requirements imposed on SMR licensees.<sup>8</sup> With its most recent incarnation - "enhanced" SMR, as proposed by Fleet Call<sup>9</sup> - SMR service has become the functional equivalent of

<sup>7</sup> See 47 CFR §90.603.

<sup>8</sup> For example, the Commission has eliminated key loading requirements and has disavowed the channel recovery program. See Amendment of Part 90, Subparts M and S, of the Commission's Rules, 3 FCC Rcd. 1839-1842, 1845 (1988). Further, liberal interconnection is now permitted. See Amendment of Parts 89, 91, 93, and 95 of the Commission's Rules to Prescribe Policies and Regulations to Govern Interconnection of Private Land Mobile Radio Systems with the Public Switched Telephone Network, First Report and Order, 69 FCC 2d 1831 (1978); Second Report and Order, 89 FCC 2d 741 (1982); Memorandum Opinion and Order, 93 FCC 2d 1111 (1983).

<sup>9</sup> In re Request of Fleet Call, Inc., 6 FCC Rcd. 1533 (1991).

cellular service. Yet SMR licensees are free to provide their services with none of the costs and burdens imposed on common carriers.<sup>10</sup>

Now the Commission is proposing to eliminate end user licensing for SMR, a requirement that Fleet Call itself saw as one of the crucial distinctions between enhanced SMR and cellular service.<sup>11</sup> Clearly the Commission believes that its proposal will have some benefit for the public. But the Parties submit that the Commission must consider the impact its proposal will have on the competitive environment in determining whether adoption of its proposal will serve the public interest.

Eliminating end user licensing requirements will make SMR and common carrier wireless services more fungible from the end user's perspective. Yet SMR and common carrier wireless service providers are not similarly situated, because SMR licensees are not required to fulfill the obligations of common carriers.

It does not promote competition and thereby serve the public interest to require one of the competitors to compete with its proverbial hands tied behind its back. Accordingly, the Parties

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<sup>10</sup> For example, common carriers are required to offer their services on a non-discriminatory basis at just and reasonable rates. See 47 U.S.C. §§201-202. In contrast, private carriers are free to refuse service to certain segments of the public and to charge discriminatory rates. While the Communications Act limits the investment of foreign entities in common carrier licensees, see 47 U.S.C §310(b), there are no such restrictions regarding private carrier license holders. Finally, the Parties note that the states are allowed to regulate common carrier wireless service providers but are not allowed to impose rate or entry regulation on private land mobile carriers. See 47 U.S.C. §332(c)(3).

<sup>11</sup> Reply Comments of Fleet Call in Reference No. LMK-90036, July 30, 1990, at 11-12.

believe it is incumbent upon the Commission to address whether the continued distinction between private SMR service and common carrier wireless services has any basis in today's highly competitive mobile services market. The Commission should address this issue before taking any final action on its proposal in the pending proceeding.

Respectfully Submitted,

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and Contel Cellular Inc.**

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