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

In the Matter of	)	
	)	RM-7985
Policies and Rules for	)	
Licensing Fallow 800 MHz	)	
Specialized Mobile Radio	)	
Spectrum Through a Competitive	)	
Bidding Process	)	

ORIGINAL

OPPOSITION STATEMENT OF THE
NATIONAL TELEPHONE COOPERATIVE ASSOCIATION

The National Telephone Cooperative Association ("NTCA") submits this Statement of Opposition to the Petition for Rulemaking of Fleet Call, Inc. ("Fleet Call"). The Federal Communications Commission ("FCC") gave notice of the petition and the time for filing statements in a Public Notice ("Notice") (Report No. 1889), released May 11, 1992.

NTCA is an association of over 480 small exchange carriers ("ECs") providing telecommunications services to subscribers and interexchange carriers ("IXCs") throughout rural America. Both the local exchange services offered by NTCA ECs, as well as the cellular services in which some members have an interest will be adversely affected if the FCC adopts the rule requested by Fleet Call.

DISCUSSION

Fleet Call's Petition requests that the Commission commence a proceeding to revise its rules so as to provide for a pilot project in which it will auction blocks of unlicensed channels in the 800 MHz Specialized Mobile Radio ("SMR") frequency spectrum. Fleet Call states the SMR services serve more than 1.2 million

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users today. The service includes dispatch, mobile phone and other two-way radio services used primarily by fleets of vehicles. Fleet Call is the second largest owner and operator of SMR systems in the United States. It provides SMR services in Los Angeles, San Francisco, New York, Chicago, Dallas and Houston. It also urges the Commission to seek Congressional authority to adopt competitive bidding procedures to award fallow spectrum which it claims will facilitate the creation of a nationwide digital SMR network.

NTCA opposes Fleet Call's Petition and believes it is inappropriate for the Commission to initiate a rulemaking to consider competitive bidding at this time. Fleet Call admits that the legislative history of Section 332 of the Communications Act evinces a Congressional intent to prohibit the use of auctions or similar economic methods of managing private land mobile spectrum.[1] NTCA agrees that the Commission does not have the authority to auction spectrum and believes it should not engage in unnecessary rulemaking. In the absence of appropriate authority to conduct auctions, Fleet Call's Petition should be denied. There is no need for the Commission to conduct a rulemaking to decide whether it should request Congressional authority to award radio licenses by selling spectrum to the highest bidder. Even if the Commission had the authority to conduct auctions, the public interest would be adversely affected

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[1] Petition, at p. 27, citing H.R. Report No. 97-765, 97th Congress, 2nd Sess. (1992).

if the Commission revised its rules to permit the services Fleet Call proposes.

The Commission should not adopt revised rules which advantage SMR operations while eroding the operations of common carriers. While Fleet Call and other SMR providers now operate as private carriers under the Commission's rules, the Fleet Call Petition describes nationwide services which should be classified as common carrier services to protect the public interest. Fleet Call's Petition states that the unlicensed spectrum that is available now is in the core areas of approximately 180 of the 306 Metropolitan Statistical Areas (MSAs) and in virtually all of the adjacent Rural Service Areas (RSAs).[2] Those areas have a population of more than 110 million.

Fleet Call proposes that the Commission sell innovator blocks of unassigned 800 MHz trunked SMR channels. It states that an optimum innovator block would have 105 analog channels and that a 5-cell digital system using these 105 channels could serve approximately 25,000 subscribers.[3] Fleet Call's assertions about its extended area coverage shows that its digital SMR nationwide service is intended as a substitute for common carrier services offered by local exchange service and cellular service providers. In NTCA's view, the Commission must consider this proposed service as common carrier service in order

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[2] Fleet Call Petition, p. 8 and Appendix B.

[3] Fleet Call Petition, p. 7.

to fairly balance the interests of Fleet Call in expanding its coverage area and continuing to operate as a private carrier and the public interest's in even-handed competition.

Nothing in the Fleet Call Petition indicates that the services to be offered involve private carriage or services that will be functionally different from common carriage provided by operators in the Public Mobile Service or Basic Exchange Telecommunications Radio Service. Fleet Call does not indicate that it or any grantee will function differently from common carriers utilizing radio licenses to provide these services. It does not state that it or any grantee will selectively serve some of the public or make their services available to a select or limited eligible group. Commission decisions require at the least such a threshold showing.[4]

NTCA believes that a rule revision adopting Fleet Call's proposal would be unfair and ultimately detrimental to the public interest in adequate service at reasonable charges for all the people of the United States. The common carrier operations of NTCA members and other LECs are closely correlated to the Title 1, Section 1, universal service goal of the Communications Act. Moreover, all the common carrier operations of these carriers, including those in the Public Land Mobile Service, are constrained by Title II and various state laws regulating common carriers.

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[4] See, First Report and Order, Private Systems in the Private Operational Fixed Microwave Service, 50 Fed. Reg. 13338, at 13349, para. 65 (April 4, 1985).

Before initiating any rule revisions or requesting changes to the Act, the Commission should give consideration to the fact that private carriers like Fleet Call have a distinct advantage in providing mobile radio services. Under Section 332(c)(3), the states are preempted from regulating private carriers. Private carriers are also free of Commission and state authority to monitor their operations and to assure that they charge just and reasonable rates, provide service upon reasonable request, and do not unreasonably discriminate among customers. As a result, SMR providers like Fleet Call are allowed to offer discriminatory rates, cross subsidize operations and compete in unfettered fashion for the business which NTCA members must provide on a common carrier basis.

Under the Fleet Call proposal, designated blocks of as many as 105 channels in the 800 MHz frequency band would be licensed to the successful bidder. Blocks subject to bidding would include those within geographic areas mirroring the MSAs or RSAs outside the 100-mile radius of urban areas in which the FCC maintains waiting lists for 800 MHz SMR frequencies. The introduction of competitive bidding is not, in NTCA's view, a palliative for the ills implicit in the Fleet Call proposal to expand its service. The fact that the United States Treasury would incidentally benefit from spectrum sales cannot be contradicted. However, that fact does not transform the otherwise adverse effect of unfairness to a favorable effect consistent with the public interest. The Commission's duty to

consider the public interest cannot be abandoned for a perceived opportunity to generate funds, particularly in a case such as this where Congress has not delegated revenue generation responsibilities to the Commission. NTCA is opposed to Fleet Call's auction proposal and its request that the Commission seek Congressional authority to conduct auctions for the additional reason that it believes auctions and market-based spectrum-allocation schemes would be unfair to the small telephone companies that provide service to rural and sparsely populated areas of the country.[5] Rewarding radio licenses used to provide telecommunications services of any kind to the highest bidder would, in most instances, eliminate the small telephone companies that makes up NTCA's membership. NTCA believes that auctions would only allow large firms with plentiful cash supplies to win bids. The small telcos should not be required to bid for licenses for needed and complementary telecommunications services that are most efficiently provided by radio. If high bidders are allowed to buy up the spectrum for use in conjunction with existing or new services, small carriers and the communities they serve will be vulnerable to the possibility of not being able to provide the complete modern and efficient service now provided by interfacing wire and radio systems. Further, there

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[5] In Amendment of the Commissions Rules to Establish New Personal Communications Services (Gen. Docket No. 90-314 and ET Docket No. 92-100), the Commission is seeking comments on whether competitive bidding would be appropriate in the event authorized by Congress but it does not assume it can use competitive bidding now.

is a possibility that small telcos will be left with the obligation to provide adequate service at reasonable rates but with inadequate facilities and the least desirable portions of wireline networks constructed to provide service to rural communities.

NTCA is also opposed to proposals to award SMR or other licenses on a national basis. Award of spectrum to national licensees alone will deprive rural and sparsely populated areas of the services. Rural companies have demonstrated that they can provide quality and innovative services tailored to meet the needs of rural communities if given the opportunity. They should not be foreclosed from those opportunities by licensing schemes that provide for auctioning spectrum to the highest bidder.

CONCLUSION

For the above stated reasons, NTCA urges the Commission to deny Fleet Call's Petition.

Respectfully submitted,

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July 17, 1992

CERTIFICATE OF SERVICE

I, Rita H. Bolden, certify that a copy of the foregoing Opposition Statement of the National Telephone Cooperative Association in RM-7985 was mailed this 17th day of July 1992, by first-class, U.S. Mail, postage prepaid, to the following persons:

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