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RAYMOND J. KIMBALL

July 17, 1992

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Ms. Donna R. Searcy
Secretary
Federal Communications Commission
1919 M Street, N.W.
Room 222
Washington, D.C. 20554

RE: Fleet Call) Petition for Rule Making
RM-7985

Dear Ms. Searcy:

Transmitted herewith on behalf of Idaho Communications Limited Partnership is an original and 9 copies of its Opposition to Petition for Rule Making.

Should additional information be necessary in connection with this matter, kindly communicate with this office.

Sincerely,



Raymond J. Kimball
Counsel to
Idaho Communications
Limited Partnership

RJK/rid

Enclosures

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Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

In the Matter of

Policies and Rules for)
licensing 800 MHz)
Specialized Mobile Radio) RM-7985
Spectrum Through a Competitive)
Bidding Process)

To: The Commission

OPPOSITION TO PETITION FOR RULEMAKING

**IDAHO COMMUNICATIONS
LIMITED PARTNERSHIP**

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Its Counsel

DATE: July 17, 1992

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EXHIBITS

- Exhibit A - SMR Embedded Infrastructure Investment
Economic and Management Consultants
International, Inc.
- Exhibit B - Wait-Listed MSA Markets In Which
Fleet Call Claims Frequency Availability
- Exhibit C - Technical Statement in Support of
Comments on Petition for Rule Making
du Treil, Lundin & Rackley

Summary of Argument

Idaho Communications Limited Partnership, ("ICLP") shares Fleet Call's interest in digitizing the SMR industry. However, investment in nationwide digital SMR systems does not depend upon assembly of Fleet Call's spectrum blocks. ICLP would favor elimination of the loading requirement and the 40-mile rules,¹ consolidation of frequencies in smaller SMR markets, rapid growth and greater roaming capability.

Idaho opposes and objects to most other aspects of Fleet Call's proposal, specifically, the creation of one "super block" of remaining 800 MHz SMR frequencies in each MSA and RSA; the reorientation of the market to cellular-type small cell coverage; and the use of auctions. Finally, Fleet Call's request for a freeze on SMR growth in markets it previously had no interest in, is most offensive and anti-competitive. One or two companies cannot be allowed to bring an entire industry's growth to a standstill.

Fleet Call's factual support is insufficient, and highly inaccurate concerning frequency availability and other issues. The Petition is self-serving, and misleading in that it denies the rapid, competitive, and highly successful development of the SMR industry within the presently confining framework of the FCC's loading and ownership restrictions.²

¹ 47 C.F.R. §§ 90.627, 90.631.

² Id.

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Policies and Rules for)	
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Spectrum Through a Competitive)	
Bidding Process)	

To: The Commission

OPPOSITION TO PETITION FOR RULE MAKING

Idaho Communications Limited Partnership ("ICLP") through counsel and pursuant to Section 1.405 of the Federal Communications Commission's ("Commission" or "FCC") rules, hereby files its opposition to Fleet Call, Inc.'s ("Fleet Call") Petition for Rule Making to reconstitute the SMR industry into a third nationwide cellular telephone service. In support hereof, the following is respectfully submitted.

I. Idaho Communications Limited Partnership

ICLP is a limited partnership which owns and manages an 800 MHz SMR system in the Boise, Idaho MSA (MSA No. 190). ICLP recently purchased the Boise system and in the first six months of operation has rapidly expanded the subscriber base. As a result of

this expansion, ICLP, in the normal course of business and prior to Fleet Call's petition, applied for and constructed new frequencies in existing and expanding market areas of Idaho.³

The Boise MSA⁴ experienced 20% population growth between 1980 and 1990. The Boise MSA is a mixed urban/agricultural area. A traditionally strong agricultural industry in the Snake River Valley and northern Nevada Desert, combined with significant business and population growth in the Boise area has created substantial demand for wide-area SMR service. SMR in Boise competes successfully with cellular telephone because SMR provides substantial coverage at lower prices than cellular telephone. ICLP, in fact, successfully markets its SMR service as an effective, low-cost alternative to high-priced cellular telephone service.

II. Brief Description of the Growth of the SMR Industry

Since the establishment of the SMR industry by the FCC in 1974, market demand for SMR service has grown dramatically. The number of SMR units has grown from 240,000 units in 1984, to over one million units by year end 1990.⁵ Current projections are that

³ In most instances, these applications were filed prior to the filing of Fleet Call's Petition and request for a freeze.

⁴ (1990 Census population 205,775; 1980 Census population 173,125).

⁵ Economic and Management Consultants International, Inc. ("EMCI"), The State of SMR: A Look At SMR and the Private Radio Industry (3rd edition 1991).

there were 1.2 million SMR subscriber units in operation at the end of 1991, and will be 1.3 million in operation at the end of 1992.⁶

Since its inception in the early 1980s, SMR entrepreneurs have invested over \$850-\$950 million in embedded infrastructure, which includes base station equipment, repeaters, trunking equipment, antennas, transmission lines and other radio frequency equipment. See the economic study prepared by EMCI, attached hereto as Exhibit A. This investment was made in substantial reliance on the availability of the 800 MHz spectrum the Commission allocated to the SMR industry. As demonstrated below, this spectrum is needed for future expansion of the existing SMR industry.

SMR can compete with other mobile communication services on price while offering similar, although not identical, mobile services, for two basic reasons. First, the present FCC rules⁷ are premised upon, and thus permit, wide-area coverage from an SMR system, thereby making the capital investment in SMR radio-frequency (RF) and switching equipment much less costly than cellular. Second, SMR technology in both the end-user and switching equipment, are technologically less complex than cellular

⁶ See attached EMCI Study, Exhibit A, hereto.

⁷ I.e., the 70-mile Co-Channel Separations Standard; 47 C.F.R. § 90.621(b).

telephone technology.⁸ The lower cost infrastructure can provide the public with lower monthly subscriber charges with SMR than can be obtained from cellular service.

III. The Commission's Regulatory Scheme for SMR

Cellular telephone technology was well-known to the Commission at the time the Commission adopted a trunked SMR technology first in the early 1970's⁹, and again in 1982 when it released the remaining 250 private land mobile channels and effectively created the present SMR industry¹⁰. By providing for both cellular and SMR technology, the Commission made a deliberately promote competition by creating alternative communications technology choices for the public.

⁸ This is primarily because SMR does not presently incorporate hand-off features between cells. The SMR technology to date has not been premised on a hand-off capability, since the coverage of a single SMR antenna is greater than a cellular antenna's coverage area. Customers are willing to forego cellular's hand-off features to obtain the lower equipment costs and lower monthly subscription charges which the current SMR industry provides.

⁹ The FCC simultaneously allocated 30 MHz of spectrum to what became the SMR private radio service, and 40 MHz of spectrum to the new cellular telephone service in Second Report and Order, Docket 18262, 46 FCC 2d 752 (1974); See also, Memorandum Opinion and Order, Docket 18262, 51 FCC 2d 945 (1975) aff'd, National Association of Regulatory Utility Commissioners v. FCC, 525 F. 2d 630 (D.C. Cir.), cert. den., 425 U.S. 992 (1976)

¹⁰ Second Report and Order, PR Docket No. 79-191, 90 FCC 2d 1281 (1982). The modern cellular telephone industry, with small cell hand-off capability, was created at about the same time. 86 FCC 2d 409 (1981) Reconsidered, 86 FCC 2d (1982).

The Commission itself has observed that the SMR industry has experienced strong and solid growth:

The demand for, and growth of, SMR facilities has been strong, especially in major cities....The period 1984-1986 demonstrated strong growth in the demand for SMR facilities.¹¹

Certainly the Commission has concluded in the past that SMR service provided a popular, economic, rapid and efficient use of the radio spectrum.

IV. Fleet Call's Proposal

Fleet Call proposes that "fallow" SMR frequencies in the major markets and smaller markets be assembled into a single "innovator block" per market to be used for digital SMR. Having assumed that the only way to implement digital technology is through its large "innovator blocks", Fleet Call goes on to assert that "entrepreneur's" (meaning Fleet Call's) ability to finance a digital system depends upon such large innovator blocks:

The economics of implementing digital technology in smaller markets requires that entrepreneurs have access to sufficient spectrum capacity for future growth and to link their systems with the major market systems if they are to risk the investment required for digital SMR systems. Investors are ready and willing to bid for exclusive use of large blocks of vacant 800 MHz SMR spectrum to construct advanced digital SMR systems in

¹¹ Report and Order, PR Docket No. 86-404, 3 FCC Rcd 1838 (1988)

market which have not yet responded to existing marketplace forces.¹²

ICLP fundamentally disputes the totally unsupported and misleading characterizations Fleet Call uses to advance its arguments. Having determined that it wishes to expand outside its six initial markets, Fleet Call proposes to freeze and hold all existing spectrum for one monopolistic licensee in each market, to the exclusion of the existing entrepreneurs who have risked hundreds of millions of dollars in capital to invest in the present business, and some of whom are presently sitting on "wait lists," awaiting the "availability" of exactly those frequencies which Fleet Call asserts are lying fallow.

In order to justify this frequency reallocation, Fleet Call has to disparage the industry it has participated in, by making the following assertions and assumptions:

1. Frequencies are lying fallow after ten year's availability; the SMR industry has not made good use of the frequencies, or taken advantage of the market, and has wasted spectrum.¹³
2. Frequencies are lying fallow because existing licensees "have not yet responded to existing marketplace forces."¹⁴
3. SMR Digital technology for the "smaller markets" (other than the six ESMR waiver markets) will not be financed or

¹² Fleet Call Petition for Rule Making at ii. RM-7985 (April 22, 1992). (Hereinafter "Fleet Call Petition".)

¹³ Id. p. 1.

¹⁴ Id., at ii.

implemented unless the large, exclusive frequency blocks are established.¹⁵

4. These large spectrum blocks should be auctioned.¹⁶

These "assertions" and "assumptions" have been manufactured by Fleet Call to reach its desired result. These assumptions lack merit.

By proposing cellular-type service using smaller cells, frequency reuse and handoff capabilities, characteristics not all customers need or want, Fleet Call proposes to destroy some of the very characteristics of the SMR industry which make it a lower cost, attractive competitor to cellular telephone.

V. The SMR Industry Will Embrace Digital Technology Without Government Intervention and Without Reliance On Monopolistic Frequency Blocs

Neither Government intervention nor the creation of monopolistic "super blocs" of frequencies is a prerequisite for SMR investment in digital technology to meet public demand, as Fleet Call asserts.¹⁷ The SMR industry stands ready to invest in and

¹⁵ Id., at ii.

¹⁶ Id., at 24.

¹⁷ See, for example, Fleet Call Petition at 16. The core of Fleet Call's argument is that new capital will not be attracted to invest in SMR and the conversion to digital in smaller SMR markets unless its large frequency blocks are created. Id. This assertion is unsupported. Fleet Call has enlisted no documentation to support its broad assertions about the financial community generally, or its prediction about the willingness of the financial community to invest in regional or national SMR projects. The

incorporate digital technology to enhance existing spectrum capacity in all markets, both large and small, as soon as the technology is commercially readily available.¹⁸ ICLP also submits, based on its experience in locating existing investment sources for SMR, that sources of financing also will be available for existing licensees to convert to digital SMR communications as the market demands. The marketplace forces which will dictate conversion to digital technologies can be recognized through an understanding of the dynamics of the SMR industry.

The SMR industry consists of two customer bases: fleet dispatch and interconnect customers. Fleet dispatch, such as taxi services, delivery services, and others, have fairly steady traffic volume, but must have frequencies available throughout the business day. Fleet dispatch customers contribute substantially to the

robust state of the industry and Fleet Call's own growth belie its unsupported assertions.

The nation's investment community is a large, diverse structure, composed of local, regional, and national lending institutions, venture capital firms, large and small securities broker/dealers, and many more. For Fleet Call to state that only "with the right economic incentives, entrepreneurs are willing to risk the capital necessary to implement ubiquitous digital SMR technology..." provides no evidentiary basis whatsoever to support Fleet Call's proposals. Fleet Call Petition at 16. The rapid growth of SMR on a more regionalized basis, as originally envisioned by the Commission, belies the broad, over-generalization about the investment community and intentions of "entrepreneurs".

¹⁸ Even the cellular industry primarily employs analog technology, and is slowly but steadily converting to digital. The SMR industry will keep pace. Conversion to digital is a classic case in which the Commission should avoid unnecessary regulation and permit marketplace forces to dictate conversions to new technologies.

"loading" base of an SMR system for purposes of the Commission's rules.

Interconnect customers, while very important to the growth of the SMR industry, contribute additional dynamics to the SMR business. Interconnect customers do not contribute as many mobile units to the "loading" base of a system, and do not use the SMR system on as frequent a "per customer" basis as dispatch customers. However, interconnect customers, such as construction companies, agricultural businesses, and "urban" service businesses, tend to use the systems more often during "peak drive time" hours. Interconnect customers want to have frequencies available during peak hours, when they most use the SMR services. If sufficient frequency capacity is not available, interconnect customers will not continue with the SMR service for very long.

These customer demands and dynamics place two very important responsibilities on the successful SMR entrepreneur. First, an SMR operator must meet current FCC loading requirements, and will have difficulty meeting those requirements based on interconnect customers alone. Fewer interconnect customers can be accommodated on a trunked system, because of the interconnect customer's demand for service during peak periods.

The second and competing consideration is that the SMR operator must have sufficient present frequency capacity and future capacity available for system expansion to meet the needs of the interconnect customers. This means that, even if an SMR operator meets the loading criteria based on dispatch customers, it must

have sufficient additional capacity available to meet the demands of the interconnect customers. The SMR operator, then, must constantly keep ahead of the loading criteria in order to satisfy customer demand for frequency availability and quality of service.

As a result, the SMR operator has a substantial business incentive to invest in digital technology. Digital technology holds the promise of permitting SMR operators to accommodate many more interconnect customers on existing frequencies. It will be easier for SMR operators to accommodate both the fleet dispatch and interconnect customer demands on existing frequencies.

It is wrong for Fleet Call to assume that smaller market operators do not have sufficient incentive to invest in digital technology once available. It is wrong for Fleet Call to assume that investment funds will not be available for existing operators to convert to digital technology.

It is totally misleading for Fleet Call to assert or imply that large spectrum blocs must be created in order to make the SMR industry capable of investing in digital technology. Spectrum blocs have nothing to do with digital conversion, as ICLP has demonstrated herein. Spectrum blocks have everything to do with creating an additional cellular-type service. The real issue Fleet Call is asking the Commission to address is whether a third cellular operator should be or can be created from the "remaining" SMR frequencies.

The Commission's current loading rules are a constant source of concern to an SMR operator which is attempting to build

its business based on interconnect customers. While ICLP opposes the creation of spectrum blocks as proposed by Fleet Call, ICLP would support elimination of the loading criteria and the 40 mile rule concerning ownership restrictions. Elimination of these rules would result in major industry improvements in efficiently delivering service in the smaller markets.

A. Fleet Call's List of "Fallow" Frequencies is Flawed

Frequencies are not lying fallow as a result of the industry's failure to respond to existing marketplace forces. Indeed, in many instances, Fleet Call's list of "fallow" frequencies in each market¹⁹ is totally incorrect and misleading.

For example, Fleet Call lists 185 frequencies lying "fallow" in Charlotte, North Carolina.²⁰ In reality, Charlotte, North Carolina is a wait-listed community with no available frequencies.²¹ In addition, Fleet Call has listed several other communities which are within 100 miles of Charlotte, North Carolina (and therefore also wait-listed) as having available frequencies.²²

Similar misleading assertions have been made about frequency availability in Michigan, Texas, Georgia, and quite possibly many

¹⁹ See, Fleet Call Petition, Exhibit C.

²⁰ Id.

²¹ FCC Public Notice "Private Radio 800 MHz Radio Systems Application Waiting List" Released May 22, 1992.

²² See Exhibit B, attached hereto, which identifies the wait-listed communities included in Fleet Call's "frequency availability" tables.

other MSA's.²³ Exhibit B lists those wait-listed communities which Fleet Call erroneously has identified as having frequencies available.

How can Fleet Call assert that these frequencies are lying "fallow"? They are "fallow" only because Fleet Call's methodology for determining whether a frequency is available in a given market is not the methodology currently enforced by the Commission! See the attached engineering statement of David Dickman of du Treil, Lundin & Rackley, attached hereto as Exhibit C. Also, the Wait List procedures prevent processing of applications within 100 miles of the reference coordinates. See Wait List, supra; Public Notice #4670, April 4, 1976; 47 C.F.R. §§ 90.611(d) and 90.631(d).

In non-wait listed markets, Fleet Call's methodology also overstates the number of frequencies currently available. By using a 55-mile co-channel separation rather than the normal 70-mile co-channel separation which most applicants must follow for determining frequency availability, Fleet Call overstates the number of frequencies available in each market. See Exhibit C, the Engineering Statement of the engineering firm of du Treil, Lundin, and Rackley.²⁴

²³ Id.

²⁴ Because Fleet Call wanted to freeze SMR applications pending on its filing date of April 22, 1992, it included in its list of "fallow" frequencies those which SMR operators had applied for in the normal course of business prior to April 22 to expand their business or open new markets.

If frequencies are available in some markets, it is not because the SMR entrepreneurs "have not yet responded to existing marketplace forces," as Fleet Call asserts, whatever that phrase means. They are fallow only because Fleet Call's methodology for determining whether a frequency is available in a given market is different from the Commission's current licensing methodology.

B. Mileage Separation vs. Interference Methodology

Fleet Call's proposal depends on the use of frequency interference methodologies (i.e., 55 mile co-channel separation) which, if generally employed, would substantially injure present licensees.

Currently there are 48 communities in the United States which are described as "wait-listed". This means that all communities within 100 miles of the community are wait-listed also. See Wait List, supra, May 22, 1922. The 100-mile rule is but one example that the Commission, up to this point, essentially has regulated frequency assignments in the SMR industry based on mileage separations.

Ordinarily, co-channel SMR frequencies must be located 70 miles apart. 47 C.F.R. §90.621(b). This basic separation led the Commission to establish the 100-mile radius for wait-listed communities in which there was frequency congestion. However, in determining whether frequencies were "available" and thus "fallow", Fleet Call instructed its engineering firm to use a co-channel

separation of approximately 55 miles (89 kilometers). See Fleet Call Petition, Exhibit C. This assumption, not accepted by the Commission in determining wait listed areas or in routinely licensing frequencies, conveniently conforms with Fleet Call's request for smaller SMR "cells" than the current rules anticipate and permit.

Fleet Call may desire that the Commission abandon its mileage separation methodology for determining frequency availability, and instead employ an interference standard based on 55-mile separations. However, as digital technology becomes commercially readily available,²⁵ it will not be necessary to reduce cell size as Fleet Call proposes, because frequency capacity will increase substantially.

Fleet Call employs classic circular reasoning in order to create a factual basis for its proposal. It uses a methodology assuming smaller cell sites to: (a) "create" frequency availability; (b) to support a proposal for the assumed smaller cell sites; (c) to support the creation of frequency blocks, and (d) to "freeze" the use of the 800 MHz spectrum by existing licensees in markets Fleet Call, up to this point, has shown no interest in entering.

²⁵ See Section V above.

**C. The SMR Industry Has Responded
Energetically to Marketplace Conditions**

Having demonstrated that Fleet Call's methodology artificially manufactures frequency availability, even in wait-listed communities where no frequencies currently are available, it is then appropriate to examine whether Fleet Call is accurate in blaming SMR industry inefficiency for the "fallow" frequencies it has "found" using its methodology.

The Commission itself recently found that the SMR industry has been dynamic and robust:

This plan to promote use of the spectrum by encouraging the entrepreneurial offering of private land mobile service has been immensely successful. Of the four 800 MHz service categories, the SMR category has shown the highest activity. It has also shown a great degree of operational and technical sophistication....[E]ach time the amount allocated has not been enough to meet the demand for SMR facilities, particularly in large urban markets.²⁶

This is not the description of an unsuccessful, lethargic industry which is unable to meet public demand for sophisticated radio communications technologies. The SMR industry, in ten short years, has become and will continue to be a highly successful, innovative, sophisticated telecommunications industry which meets the public's needs.

²⁶ Report and Order in PR Docket No. 86-404, 3 FCC Rcd. 1838, 1839 (1991) (emphasis added).

However, the SMR industry's infrastructure investment of approximately \$1 billion is placed at risk by Fleet Call's "spectrum bloc" proposal. Fleet Call proposes that these valuable 800 SMR frequencies be consolidated into a single bloc for a third cellular telephone system, and that future eligibility effectively be denied by auction to the very industry that has made the frequencies valuable.²⁷ Digital technology does not place the SMR industry's sizeable investment at risk. ICLP and other SMR entrepreneurs will embrace digital technology as it becomes available, just as the SMR industry embraced trunking technology as that became available, and just as the SMR industry fought for interconnect capability.

**VI. Roamer Traffic and "National Service"
Demands Are Insufficient to Support
Fleet Call's Spectrum Blocs**

Initially, Fleet Call assumes that the public is demanding "ubiquitous (i.e., nationwide) mobile communications systems".²⁸ Having made this unsupported assumption about demand for nationwide roamer SMR services (Fleet Call submits no SMR roamer traffic demand studies), Fleet Call concludes that the industry has failed to meet this public "demand", and that this accounts for the "fallow frequencies."

²⁷ Fleet Call does not limit auction participation to existing private carriers. Since it projects hundreds of millions of dollars in spectrum auction fees, presumably all large telecommunications carriers would be able to participate. The smaller carriers in the smaller markets effectively would be frozen out of such an auction.

²⁸ Fleet Call Petition at 9, note 15.

ICLP estimates, based on the experience with Boise and other systems, that roamer traffic in the smaller markets would amount to, at the most, two percent (2%) to three percent 3(%) of total traffic, even assuming digital use. This is consistent with the average experience of cellular operators also.

ICLP does not agree that nationwide "ubiquitous" service and roaming capability are sufficiently compelling objectives in the SMR service to require the reconstitution of the industry in the manner sought by Fleet Call. First, roaming traffic is not sufficient to justify such a radical change. Increased roaming traffic could be accomplished by installation of digital technology, industry consolidation and roamer agreements. Secondly, SMR was created as a cost-effective regional alternative to other mobile communications technologies. The industry does not have to be turned into a high-priced clone of cellular in order to achieve "ubiquitous" service objectives for a small segment of the market.

If ubiquitous, nationwide service for the small percentage of predicted future roamer traffic is a Commission objective for SMR, it should not to be accomplished in the manner proposed by Fleet Call. SMR operators should be permitted to continue to expand in the 800 MHz frequency bloc. Fleet Call's spectrum bloc, if it is to be created at all²⁹, should be accommodated from the 900 MHz spectrum allocated for mobile radio,

²⁹ ICLP does not endorse the creation of such a frequency bloc in any event, since the need has not been shown.

where many frequencies have been turned back into the Commission for failure to construct.³⁰

**VII. New PCS Service Will Meet Any
Additional Demand for Ubiquitous
Nationwide Mobile Service**

Yesterday, the Commission adopted Notices of Proposed Rule Making to create a new Personal Communications Service³¹:

PCS will likely consist of a variety of new mobile and portable services and technologies, such as small, lightweight telephone handsets that work at home, in the office, or on the streets; portable, wireless facsimile machines; wireless PBxs; advanced "smart paging devices; and wireless electronic mail services.

The advent of PCS could have a great impact on the future development and configuration of all telecommunications networks.³²

These PCS services will in many ways provide services similar to those requested by Fleet Call. There is no need to create

³⁰ Fleet Call has not proposed to use this obvious 900 MHz frequency bloc, instead choosing to request monopolization of the much more attractive and successful 800 MHz band. However, the harm to SMR embedded investment which would be caused by the inability to meet new growth through use of the 800 MHz band would be much greater than that caused by reallocating the 900 MHz band. Since digital equipment still is under development in any event, the equipment could be equipped to operate in both bands. The 900 MHz band contains sufficient spectrum, given digitization, to handle the relatively low volume of roamer traffic which would demand "ubiquitous" nationwide SMR service.

³¹ See FCC News Release, "New Personal Communications Services Proposed" (Gen Docket No 90-314, ET Docket 92-100), July 16, 1992

³² Id.

frequency blocs at the expense of the SMR industry, after hundreds of millions of dollars of investment, when Fleet Call can apply for and bid on PCS frequency blocs (should there be auctions) which will provide comparable services in the small-cell configuration favored by Fleet Call. Also, the Commission's determination to make additional spectrum available for mobile PCS voice and data services obviates the need for any freeze on the 800 MHz spectrum in order to provide these services in a new, cellular form.

**VIII. Loading Requirements and Ownership Limitations
Should be Eliminated**

The Commission's own regulatory restrictions have prevented consolidation and expansion of the SMR industry. The loading requirements place artificial regulatory restraints on the marketplace development of licensed frequencies, and place those licenses in jeopardy if loading is not accomplished.

The loading rules restrict investment also. The loading rules act as a major ownership restriction, since a licensee cannot own additional facilities within 40 miles unless its systems are loaded³³. These ownership restrictions, if removed, would generate additional investment interest in SMR, since investors favorably respond to market consolidation.

Simply by eliminating the loading requirements and 40-mile rule restrictions, the Commission could accomplish many of the

³³ 47 C.F.R. §§ 90.627, 90.631.

objectives advanced by Fleet Call, while still permitting existing SMR licensees in the markets to participate in market consolidation. Larger frequency blocks could be created through acquisition, just as Fleet Call has done in six major markets where systems are loaded, and the 40-mile rule loading restrictions have not been an impediment to consolidation. There would be no need to artificially freeze SMR expansion by creating large new frequency blocks from available spectrum.

IX. A&B Electronics Rule Making

On May 26, 1991, A & B Electronics, Inc. filed a Petition for Rule Making requesting modification of the loading requirements and the 40-mile rule.³⁴ This Petition is much less radical than the Fleet Call proposal, and would be less disruptive on the further marketplace development of the SMR industry. While ICLP still is studying the A&B Petition, and has made no final judgment thereon, it appears that the A&B proposal offers a more moderate vehicle for evaluating changes in the SMR rules. Accordingly, ICLP proposes that the Commission dismiss Fleet Call's Petition for Rule Making, and instead institute an inquiry concerning the loading criteria and 40- mile rule based on the A&B Petition. If the

³⁴ A & B Electronics, Inc., Petition for Rule Making, RM - 8030 , (filed May 22, 1992). This Petition was placed on public notice on July 13, 1992, and comments are due August 12, 1992.