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

In the Matter of	)	Gen. Docket No. 90-314
	)	ET Docket No. 92-100
Amendment of the Commission's	)	RM-7140, RM-7175, RM-7617,
Rules to Establish New Personal	)	RM-7618, RM-7760, RM-7782,
Communications Services	)	RM-7860, RM-7977, RM-7978,
	)	RM-7979, RM-7980
	)	
	)	PP-35 through PP-40, PP-79
	)	through PP-85

To: The Commission

REPLY COMMENTS OF FLEET CALL, INC.

FLEET CALL, INC.

Robert S. Foosaner
Lawrence R. Krevor
601 13th Street, N.W.
Suite 1110 South
Washington, D.C. 20005
(202) 628-8111

January 8, 1993

No. of Copies rec'd 0+4
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SUMMARY

The Federal Communications Commission (the "Commission") has reallocated 220 MHz of spectrum in the 2 GHz band from existing users primarily for mobile radio communications services made possible by emerging telecommunications technologies. The subject Notice of Proposed Rulemaking (the "Notice") implements this extraordinary reallocation by proposing a regulatory structure for development of Personal Communications Services ("PCS") employing such emerging technologies.

Unfortunately, as noted by NTIA, the Notice presents a "paradox." On the one hand, the Commission defines PCS as a "family" of innovative mobile communications services for individuals and businesses intended to enhance and diversify the Nation's telecommunications infrastructure for the 21st century. On the other hand, the proposed rules include artificial limits on the number of PCS providers, unnecessarily large spectrum assignments and oversized markets that would limit competition and incent PCS providers to implement "proven" cellular-like services to minimize risk and assure a faster return on investment. The Notice suffers from a "rush to judgment" to establish "cellular clones" at the expense of emerging technologies services. This is fundamentally at odds with the Commission's emerging technologies reallocation goals.

If the Commission's goal is, in fact, to reallocate 2 GHz spectrum for competition with cellular, it should expressly say so,

inform Congress of the reason for displacing existing users, and adopt a regulatory structure directed toward that goal. If not, it must revise the proposals contained in the Notice by issuing a Further Notice of Proposed Rulemaking offering rules that will create a regulatory structure consistent with the emerging technologies spectrum allocation.

The Commission can achieve this by authorizing five licensees 20 MHz spectrum assignments for each MSA and RSA market. As recognized by the U.S. Department of Justice,

> "Licensing PCS by smaller service areas, coterminous with cellular MSAs and RSAs, would appear to create the greatest possibility that the licenses would come to be held by operators with the intention, financial resources and expertise to develop services that meet what might be quite varied local consumer demand."

In addition, the Commission should allow PCS licensees to determine whether to operate under a particular license on a common carrier or private carrier basis. This would provide licensees with the flexibility to offer services under the most advantageous regulatory framework. It would further the Commission's goals for the 2 GHz emerging technologies spectrum and help provide the broadest array of services to the public at the lowest cost.

Competitive bidding is the optimum licensing tool to assure that licenses go to those with the greatest incentives to effectively and expeditiously initiate innovative, competitive PCS services. Fleet Call believes that Congressional authorization for competition bidding is attainable and the Commission should pursue

auction authority while it proceeds with a Further Notice in this proceeding.

The Commission cannot use lotteries to license the anticipated "revolutionary" array of innovative and untried PCS services. Lotteries are only appropriate when there are insignificant differences among applicants proposing essentially similar services. The Commission is ipso facto precluded from making a finding supported by substantial evidence on the record in this rulemaking proceeding that there are no significant differences among PCS applicants such that the public interest would be served by random selection licensing for PCS. Moreover, there are no "fixes" or "reforms" that will effectively eliminate lottery speculation and abuse.

Finally, nearly all commenters agree that PCS providers should have a federally protected right to interconnect with the public switched telephone network. All mobile communications carriers are entitled to obtain interconnection that is reasonable for their particular systems, and that is no less favorable than that offered to any other service provider for comparable interconnection. The Commission must vigilantly monitor bottleneck local exchange carriers to guard against misuse of such facilities to delay or impede development of competing mobile communications systems.

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To: The Commission

REPLY COMMENTS OF FLEET CALL, INC.

I. INTRODUCTION

Fleet Call, Inc. (Fleet Call), pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission (the "Commission"), respectfully submits its Reply Comments in the above-captioned proceeding concerning a regulatory structure for Personal Communications Services ("PCS").1/

This proceeding is the implementation phase of the Commission's reallocation of 220 MHz of spectrum in the 2 GHz band from existing microwave users for services made possible by emerging telecommunications technologies.2/ The Commission displaced existing users to reallocate this spectrum specifically

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1/ Notice of Proposed Rulemaking, Gen. Docket No. 90-314, ET Docket No. 92-100, 7 FCC Rcd 5676 (1992) ("the Notice").

2/ Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, First Report and Order and Third Notice of Proposed Rulemaking, ET Docket No, 92-9, 7 FCC Rcd 6886 (1992) (the "Emerging Technologies Reallocation Order").

". . . to make possible the operation of a broad range of new communications services that employ emerging technologies."3/ The Commission found that "Advancements in digital technology and signal processing have increased possibilities for the development of a broad range of new radio communication services (emphasis added)."4/ These technological advances have increased the need for spectrum to foster the growth and development of new, primarily mobile, communications services.

Unfortunately, the Notice fails to adhere to these laudatory goals. The Notice defines PCS as a ". . . family of mobile or portable radio communications services which could provide services to individuals and business, and be integrated with a variety of competing networks."5/ The proposed rules would not, however, assure that this spectrum is used to develop a "family" of personal mobile radio communications services for the American public using new technologies. On the contrary, the Notice represents an unwarranted "rush to judgment" to establish cellular competition instead of new emerging technology services using the reallocated 2 GHz spectrum. The proposals contained in the Notice contradict the express purpose of the reallocation.6/

A number of commenters point out this fatal flaw in the Notice. Bell South states that "Allowing [PCS] licenses to operate

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3/ Id. at para. 1.

4/ Id. at para. 2.

5/ Notice at para. 29.

6/ Emerging Technologies Reallocation Order at paras. 9-10.

as cellular clones (i.e., high power and large-cell service) in this band would be inconsistent with the core objective of this proceeding, the *Emerging Technologies* docket, and the carefully balanced and specific regulatory scheme set out in the Communication Act."7/ The National Telecommunications Information Agency ("NTIA") similarly notes that the proposals set forth in the Notice are not true to the commitment made by the Commission in the Emerging Technologies Proceeding. NTIA states that:

> "the Notice presents a paradox. While it defines PCS broadly, it proposes rules and seeks comment on regulatory approaches based on that of the cellular service -- for example, a limited number of providers, numerous geographic license areas, power limits, and channelization plans. In some instances, the questions and proposals in the Notice appear to assure that PCS will develop in a way that, at the extreme, would make it virtually indistinguishable from the existing cellular service."8/

For these reasons, Fleet Call respectfully recommends that the Commission issue a Further Notice of Proposed Rulemaking in this proceeding proposing a revised PCS market and regulatory structure designed to stimulate the intended and desired array of new personal communications services.9/ In the Emerging Technologies

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7/ Comments of BellSouth at p. iv.

8/ Comments of NTIA at p. 4.

9/ See e.g., the comments of the New York State Department of Public Service ("NYDPS") stating that "in its haste to act" the Commission may be unintentionally limiting the full potential of PCS applications and structuring the PCS market prematurely. It recommends that the Commission refine its proposals through a (continued...)

Proceeding, the Commission has undertaken an extraordinary and far-reaching spectrum reallocation to create opportunities for new services that can potentially revolutionize the telecommunications infrastructure thereby improving the productivity of American businesses and creating new means to access information and to "stay in touch" for American consumers. The Commission should resist the pleas of PCS proponents to begin licensing immediately unless, of course, the Commission's unstated goal is to create cellular clones in the 2 GHz band rather than an "array" of new communications services made possible by emerging technologies.10/ Definitional, market structure and licensing mistakes at this critical juncture will thwart development of a competitive personal communications market structure and cause this scarce spectrum to be squandered on services that are merely duplicative of existing wireless communications offerings.

II. BACKGROUND

Fleet Call has participated in the Commission's consideration of PCS since its initial Notice of Inquiry concerning personal communications services.11/ As a leading licensee of

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9/(...continued)
Further Notice of Proposed Rulemaking based on the comments in this proceeding and more thorough analysis of the data from PCS trials. Comments of NYDPS at pp. 2-4.

10/ If the Commission's objective is to create a competing cellular service at 2 GHz, it must initiate an entirely new reallocation proceeding. See Chocolate Manufacturers Association of the United States v. Block, 755 F. 2d 1098 (4th Cir. 1985).

11/ Gen. Docket No. 90-314, 5 FCC Rcd 3995 (1990). See Comments of Fleet Call, Inc., filed October 1, 1990; Reply Comments of Fleet Call, Inc., filed January 15, 1991.

Specialized Mobile Radio ("SMR") systems, Fleet Call has extensive experience and expertise in providing wireless communications services. Fleet Call and its subsidiaries provide communications for approximately 140,000 mobile units on a daily basis on both 800 MHz and 900 MHz SMR systems.

Fleet Call is pioneering the development of personal communications services in the 800 MHz band through its highly-efficient, wide-area digital Enhanced Specialized Mobile Radio ("ESMR") systems.12/ ESMR squarely fits within the Commission's proposed definition of PCS as a "family" of mobile radio services for businesses and individuals that can be integrated with other communications networks. ESMR incorporates state-of-the-art technology, including digital speech coding, Time Division Multiple Access transmission and frequency reuse yielding more than 15 times the customer capacity of existing SMR systems as well as improved transmission quality and enhanced services. Like PCS at 2 GHz, Fleet Call's ESMR systems share the 800 MHz SMR spectrum with existing SMR and other licensees.13/

Through its leadership in conceptualizing and creating ESMR systems, Fleet Call is leading the SMR industry toward construction

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12/ On February 13, 1991, the Commission authorized Fleet Call to construct and operate 800 MHz ESMR systems in Chicago, Dallas, Houston, Los Angeles, New York and San Francisco. See In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991), recon. den. 6 FCC Rcd 6989 (1991).

13/ Unlike cellular systems, which have exclusive use of a channel within a defined service area, Fleet Call must engineer around existing co-channel analog SMR licensees in its ESMR service areas.

of a ubiquitous, digital communications network using compatible technologies and providing common services across large areas. ESMR technology offers an optimum platform for PCS services in the 2 GHz band as well.14/ Fleet Call brings substantial expertise implementing innovative technologies to its participation in this proceeding.

In its comments in response to the Notice, Fleet Call advocated licensing five PCS providers for each of the 764 cellular Metropolitan Statistical Area ("MSA") and Rural Service Area ("RSA") markets. Fleet Call proposed competitive bidding as the optimum licensing method to select PCS licensees. In addition, Fleet Call would permit 2 GHz PCS licensees to choose whether to operate as private or common carriers as best promotes their particular offerings. Finally, Fleet Call endorsed a federally protected right to interconnection with the public switched telephone network ("PSTN") for all mobile communications carriers.

Thus, like the majority of commenters in this proceeding, Fleet Call did not support the Commission's proposed PCS market structure. Fleet Call's comments offered rules and policies that would ensure development of a competitive, diverse and innovative PCS market structure unlikely to be dominated by any one service provider or service offering. The fewer the competitors, both within a market and within the "industry," the less likely that a

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14/ Fleet Call is an applicant for a PCS pioneer's preference. See Request for a Pioneer's Preference, Gen. Docket. No. 90-314, filed May 4, 1992. See also Comments of GTE Corporation ("GTE") at p. 29-31 observing that Fleet Call's spectrally efficient ESMR technology is available today for PCS operations.

true "family" of innovative personal communications services employing emerging technologies will evolve. As the comments clearly indicate, the proposed rules are fundamentally at odds with the Commission's emerging technologies reallocation goals.

III. THE COMMISSION'S RUSH TO JUDGMENT IN THIS PROCEEDING UNDERMINES ITS PCS AND EMERGING TECHNOLOGIES LICENSING OBJECTIVES

As noted above, the PCS market structure that would result from the proposed rules would encourage entrants to implement "proven" cellular-like services to minimize risk and assure a faster return on investment.15/ It would undermine development of an array of personal communications services to enhance and diversify the Nation's telecommunications infrastructure for the 21st century. Thus, the Notice evidences a certain degree of "regulatory schizophrenia." On the one hand, it defines PCS as a "family" of new PCS offerings based on emerging technologies to expand the Nation's wireless infrastructure. On the other hand, the proposed rules appear designed to incent 2 GHz PCS licensees to implement "more cellular" service at the expense of innovative and

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15/ GTE asserts that the Notice would drive PCS in the direction of established cellular services rather than new offerings based on microcellular technologies. It states that the 2 GHz band appears best suited to promote a vast array of new services and capabilities -- as intended by the Commission in its Emerging Technologies Reallocation Order -- and that the better objective would be to foster these innovative new offerings and new alternatives for consumers. Comments of GTE at pp. 21-22. Fleet Call agrees that this spectrum should not be used to simply replicate existing mobile services less effectively and efficiently in a higher spectrum band.

diversified personal communications offerings.16/

Fleet Call agrees with those characterizing this outcome as a "tremendous waste" -- particularly given the substantial efforts necessary to relocate existing 2 GHz microwave systems from the emerging technologies spectrum. The Commission concluded that its emerging technologies reallocation would encourage the provision of new technologies and services, as mandated by Section 7 of the Communications Act of 1934, as amended (the "Act"), and encourage the larger and more effective use of radio in the public interest, as required by Section 303(g) of the Act. 17/ The proposed PCS rules would create a market structure and licensing regime that would contravene these objectives.

A. The Comments Support Maximizing Opportunities For Entry to Create a Competitive PCS Market Structure

Most commenters did not support the Commission's proposal to grant three 30 MHz licenses in markets larger than MSAs/RSAs. Minimal support was expressed for nationwide licenses, Basic

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16/ In a recent speech, Cellular Telecommunications Industry Association ("CTIA") President Thomas Wheeler expressed concern that the PCS Notice would create "more cellular" rather than the promised array of new PCS offerings. See Remarks of Thomas E. Wheeler, WCG Center for Technology Distinguished Lecture Series, December 15, 1992. See also Comments of GTE at pp. 20-22 stating that throughout the Notice is the suggestion that duplication of the existing cellular industry structure and services is a "paramount regulatory goal" of this proceeding. GTE asserts that this is neither desirable nor an "optimal use of spectrum given the inherent technical and service differences between cellular and the proposed 2 GHz offerings."

17/ See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, Notice of Proposed Rulemaking, 7 FCC Rcd 1542 at para. 8.

Trading Areas, Major Trading Areas or LATAs.18/ Some supporters of larger licensing areas did so out of concern that they better represent commercial areas of interest or would enable more expeditious licensing,19/ while others focused on perceived engineering advantages.20/ Most agreed, however, that any advantages that could be derived from "oversized" licensing areas would be outweighed by the limitations on competition and consumer choice implicit in fewer licensees.21/

The overwhelming consensus of the comments supports granting PCS licenses for MSA/RSA markets. This would provide a familiar referent for licensees, the mobile communications industry,

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18/ For example, Telocator states that concentrating spectrum in a national licensee would defeat all other Commission PCS objectives by sharply reducing the diversity of PCS services and hindering PCS deployment. Comments of Telocator at p. 8. See also Comments of Southwestern Bell Corporation ("Southwestern Bell") at pp. 21-24; Comments of CTIA at Section IV.

19/ See e.g., Comments of Comcast PCS Communications Inc. at p. 8; Comments of PCN America, Inc. at p. 2; Comments of U.S. West at p. 12-13 (licensing one block by Major Trading Areas).

20/ See e.g., Comments of American Personal Communications ("APC").

21/ Similarly, the Commission's proposal to impose strict construction benchmarks on PCS licensees to control speculation would have the same effect. The record herein demonstrates that a single set of construction requirements is ipso facto unsuitable to encouraging sophisticated, innovative mobile communications offerings of varying scope and complexity. Construction benchmarks tailored to promoting expeditious construction of cellular-type offerings would be unlikely to provide the optimum stimulus for a well-designed wireless alternative local access offering or a wireless local area network in a corporate campus or university setting.

regulators and the financial community.22/ It would assure greater entry opportunities for new and diverse services and service providers. Licensing multiple PCS operators for these smaller markets would allow marketplace forces to determine optimum market size through consolidations and combinations of licensing areas in response to service characteristics, customer needs and changing demand.23/

Moreover, MSA/RSA licensing areas are well-matched to the technical and market characteristics of the microcellular systems that the Commission intended to foster through its 2 GHz PCS reallocation. As the United States Department of Justice ("DOJ") notes,

> "Licensing PCS by smaller service areas, coterminous with cellular MSAs and RSAs, would appear to create the greatest possibility that the licenses would come to be held by operators with the intention, financial resources and expertise to develop services that meet what might be quite varied local consumer demand. Moreover, by starting with smaller service areas, but permitting firms to consolidate service areas by acquiring additional licenses in non-overlapping areas and to integrate service areas, the Commission will facilitate any market adjustment needed to achieve efficient service areas."24/

22/ See e.g. Comments of NYDPS at pp. 7-8; Comments of CTIA at pp. 35-40.

23/ Fleet Call believes that the process by which cellular MSAs/RSAs have been combined and consolidated to form larger service areas is a desirable result of the normal operation of marketplace forces. It is not, as suggested by some, a deficit of this licensing approach.

24/ Comments of the United States Department of Justice ("DOJ") at p. iii.

Thus, the Commission's tentative conclusion that PCS service areas should be larger than those initially used for cellular fails to account for important economic and technological differences between them.25/ Cellular required licensing areas designed to enable users to "stay-in-touch" while travelling in automobiles. Increased acceptance of cellular created demand for expanded coverage areas leading to the establishment of larger, integrated service areas in response to marketplace demands. It would be spectrally inefficient to initially create larger-than-MSA/RSA PCS service areas if PCS is actually intended to meet more "parochial" or local telecommunications needs.26/ PCS providers, like cellular licensees, may subsequently consolidate into larger service areas in response to marketplace dynamics. As DOJ and other commenters recognize, consolidation of smaller service areas is far easier to accomplish than disassembling "oversize" areas to better match low power, microcell PCS systems.27/

A few commenters assert, however, that cellular licensing by MSA/RSA was too slow and will also be too slow to accommodate the urgent public need for PCS services.28/ This assertion does not withstand scrutiny. First, there is no empirical evidence of

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25/ That is, of course, unless the Commission intends PCS as no more than a cellular clone.

26/ Comments of NYNEX Corporation ("NYNEX") at pp. 22-24.

27/ See e.g., Comments of NYNEX at p. 24; Comments of CTIA at p. 40.

28/ See e.g., comments of NTIA at pp. 14-15.

extraordinary pent-up demand for PCS.29/ Second, the cellular licensing experience is not necessarily predictive of the prospective pace of MSA/RSA-based PCS licensing. Delays in cellular licensing resulted initially from the Commission's attempts to use comparative hearings, and later to the Commission's application processing resources being overwhelmed by speculators, mass-marketed filing schemes and other abuses that inevitably accompany lottery selection. Despite all efforts to the contrary, selecting communications licenses by lotteries is inherently susceptible of abuse.30/ All of this can be avoided, and expeditious licensing assured, by selecting PCS licensees using competitive bidding procedures, as Fleet Call advocates below.

B. The Commission Should Grant Five 20 MHz PCS Assignments In Each MSA and RSA Market.

A diverse plurality of commenters, including local exchange carriers, interexchange carriers, wireline and nonwireline cellular licensees, cable operators and trade associations conclude that 20 MHz PCS assignments will permit successful PCS implementation while allowing spectrum to be held in reserve for future growth. Most agree that five licensees per market can be accommodated in this

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29/ Comments of GTE at p. 5; Comments of Southwestern Bell at p. 8-10.

30/ Whenever the Commission assigns valuable spectrum rights by chance, creative entrepreneurs will inevitably invent means to increase their chances of selection or otherwise skew the lottery process. For a discussion of a particularly egregious RSA cellular application marketing scheme, See In re Application of Algreg Cellular Engineering, et. al., Initial Decision of Administrative Law Judge Walter C. Miller, CC Docket No. 91-142, FCC 92D-64, released December 22, 1992 (the "Algreg Initial Decision").

assignment structure and will promote the desired competition and array of PCS services.

The commenters supporting larger-than-20 MHz assignments focus on maximizing the quantity of spectrum immediately available for PCS given existing fixed microwave assignments -- particularly in frequency congested areas.31/ They ignore the Commission's reallocation of the 2 GHz band as a spectrum reserve for primary use by emerging technology licensees, including PCS. The record developed herein demonstrates that the public's needs would not be unmet during the relocation of microwave stations.32/

Moreover, commenters take issue with the Commission's PCS demand assumptions. For example, GTE asserts that there is little empirical evidence to justify larger-than-20 MHz spectrum assignments per licensee; i.e., there is insufficient proof of demand, particularly given the PCS variations proposed, to justify assigning more spectrum at this time.33/ It notes that the demand studies relied on in the Notice are basically "technical trials" and were not designed to accurately and statistically capture demand data.34/

31/ Comments of APC at p. 8, 25-26.

32/ These advocates appear more concerned with proving the efficacy of frequency agile technologies than implementing optimum spectrally efficient systems.

33/ NYNEX notes that the majority of PCS services currently under development by holders of experimental licenses require no more than 20 MHz. Comments of NYNEX at p. 26, n. 45.

34/ See also Comments of the NYDPS at p. 2. New York asserts that more research and experimentation is needed before making

(continued...)

It would be spectrally inefficient to make unnecessarily large assignments for unproven services of indeterminate demand.35/ Granting PCS licensees 30 or 40 MHz of spectrum is unprecedented in the land mobile industry and would obviate incentives to employ spectrally efficient technologies.36/ In sharp contrast, Fleet Call's spectrally-efficient ESMR technology will create capacity for hundreds of thousands of customers with less than 14 MHz of nonexclusive spectrum in each market. Issuing five licenses per market is consistent with both the "long-run concern" about fostering competition as well as the "short-term concern" about speed of deployment. This will provide customers with the widest array of choices of both providers and services.37/

IV. COMPETITIVE BIDDING IS THE ONLY LICENSING METHOD THAT CAN ACHIEVE THE PUBLIC POLICY OBJECTIVES OF A BROADLY-DEFINED PERSONAL COMMUNICATIONS SERVICE

The Notice asks for comments on whether lotteries or competitive bidding (if authorized by Congress) is the most appropriate PCS licensing mechanism. It recounts difficulties in

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34/(...continued)
premature spectrum allocation decisions and unnecessarily displacing existing users.

35/ *See e.g.* Comments of Southwestern Bell at p. 10: "The Commission should proceed with caution, and should scale down its proposed spectrum reallocation." Southwestern Bell asserts that limited spectrum encourages innovation and new ways to operate more efficiently within a limited allocation.

36/ The Commission's 30 MHz three PCS licensee proposal looks more like its cellular assignments (25 MHz for each of two licensees per market) than one designed to promote diverse and innovative new services.

37/ Comments of NYNEX at p. 26.

using lottery selection in the cellular and 220 MHz licensing proceedings and solicits comments on various means to reduce the costs and delays of lotteries.38/ It proposes very substantial filing fees intended to prevent speculation, similar to those imposed on applicants for nationwide 220 MHz licenses.39/ The Notice recognizes, however, that even with such measures large numbers of applications were filed for licenses in the 220 MHz band causing a huge administrative burden for the Commission and ongoing licensing delays.40/

The Commission's experiences with lotteries have repeatedly demonstrated that speculation and abuse cannot be prevented when it

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38/ See Notice at para. 87. The Commission proposes short filing windows, stricter entry limitations, narrow eligibility requirements, submission of engineering and business plans and construction and operational requirements to reform the lottery selection process.

39/ Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, Report and Order, 6 FCC Rcd 2356 (1992).

40/ Concern over speculative filings caused the Commission to formally consider whether to select from among 174 applications for 8 nationwide 220 MHz licensees through comparative hearings. See Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Services, PR Docket No. 89-552, Further Notice of Proposed Rulemaking, 7 FCC Rcd 898 (1992), Memorandum Opinion and Order, 7 FCC Rcd 4484 (1992). Although the Commission affirmed using lottery selection, it has not yet conducted the nationwide lotteries and only recently accepted required financial demonstrations by nationwide applicants. Nor has the Commission issued licenses to any of the local 220 MHz applicants. Despite the Notice's support for lottery reform patterned after the 220 MHz proceeding, applications were filed in May 1991 and have not been granted. The unassailable fact is that these "reforms" did not and will not prevent speculation, delay and crippling administrative overhead. It will only be worse in PCS.

"gives away" valuable spectrum rights. "Lotteries" inevitably invite speculation which leads to abuse.41/ Any time a spectrum franchise is awarded for nothing, it will attract creative entrepreneurs devising innovative ways to "stack the deck" in hopes of a license award bonanza. Lottery reforms such as engineering plans, business plans and "firm financial commitments" have already been tried in the cellular licensing and 220 MHz proceedings and found wanting.

As Fleet Call stated in its Comments, there is nothing new in the various suggestions in the Notice for "reforming" the lottery selection process, nor have the comments offered any promising new solutions.42/ The Commission should recognize that these measures have been tried and have failed to prevent speculation and application abuse.43/

Moreover, using lotteries to select PCS licensees is

41/ As Judge Miller has stated, "When it adopted a lottery allocation program, the Commission must have been aware that it was extending an open invitation to every gambler, speculator and confidence man within reading distance." Algreg Initial Decision at para. 78.

42/ Setting filing fees to deter speculation, rather than to recover the administrative costs of the licensing process, would require enabling legislation. If the Commission must seek legislative approval, the public interest would be best served by pursuing auction authority, as discussed below. Higher filing fees simply beget more creative schemes and do not guarantee that speculation will be eliminated.

43/ NTIA strongly states that no proposal to "fix" the lottery mechanism can address the fundamental inefficiencies and distributional problems of lotteries, which allow private parties to obtain a windfall from the award of a Commission license by selling those licenses in the secondary market. Comments of NTIA at p. 23.

irreconcilable with the Commission's commitment to a broadly-defined personal communications service using developing emerging technologies. Lotteries have been found appropriate when there are insignificant differences among mutually exclusive applicants proposing essentially similar services and meeting basic qualifying standards.44/ In its decision to use lotteries to select cellular licenses, the Commission concluded that:

> "while there may be differences among applicants, the record does not show that the differences will be of sufficient magnitude and impact on public service to warrant the intense scrutiny and corresponding delay and burden of a comparative hearing."45/

The Commission also relied on the fact that many cellular applicants proposed "turn-key" systems from leading equipment manufacturers.46/ Therefore, the Commission concluded that there were no significant technical differences among competing mutually exclusive applicants and, under these circumstances, the public interest would be disserved by the expense, delay and

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44/ See Cellular Lottery Rulemaking, 98 FCC 2d 175, 184-185 (1984).

45/ Id. at 185.

46/ In other words, the Commission believed that even if a speculator won the lottery and was found qualified, it could purchase a "turn key" cellular system from an equipment vendor and engage the vendor to manage the system, particularly in smaller markets, thus initiating satisfactory service. Id. at 186. In reality, of course, speculator tentative selectees made extremely lucrative deals with bona fide cellular operators enabling them to meet the Commission's construction requirements and then sell their licenses. The Commission eventually abandoned this facade permitting permittees to sell authorizations for unconstructed stations for a profit. See Application of Bill Welch, FCC 88-338, released November 14, 1988.

inefficiency necessary to identify marginal differences among applicants.47/

This is not the case for personal communications services in which various applicants propose differing services ranging from "wireless replacement for ordinary residential and office telephones to communication devices capable of sending and receiving voice and data to and from virtually anywhere."48/ There will and should be significant technical or other substantive differences among prospective PCS applicants. In fact, the Commission in its companion decision on the PCS Pioneer Preference requests, tentatively concluded that three parties have developed "new [PCS] communications services and technologies...." and are responsible for "significant innovations."49/

The Commission defines and expressly contemplates PCS as a "family" of services incorporating different innovations and technological advancements to expand the number and types of wireless telecommunications services available to the American public. They include "advanced forms of cellular telephone service, portable facsimile services, wireless private branch exchange services, wireless local area network services, among

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47/ Cellular Lottery Rulemaking at 187.

48/ Notice at para. 29.

49/ Tentative Decision And Memorandum Opinion And Order, Gen. Docket No. 90-314, released November 6, 1992, para 2-3.

others."50/ The Commission characterizes these prospective services as:

> "revolutionary; depending on their application, they can be used through the existing public switched network or through alternative local networks such as cable television systems. They can even exist independently of local wired networks, filling gaps in existing communications and creating new markets."51/

Yet, incredibly, the Commission continues to contemplate *randomly* selecting PCS licensees to provide these innovative, untried and in many cases dissimilar services. How can the Commission describe this PCS "family" of new and very different potential offerings as "revolutionary" and in the same breath propose selecting only three licensees per oversized market by the luck of the draw? Fleet Call respectfully submits that the Commission is ipso facto precluded from making a finding supported by substantial evidence on the record in this rulemaking proceeding that there are no significant differences among PCS applicants such that the public interest would be served by random selection licensing of PCS licensees. Common sense dictates that the Commission's vision of a rich, diverse family of competitive personal communications services will not be realized selecting PCS licensees by random chance.

On the other hand, competitive bidding is the optimum tool to license mutually exclusive applicants proposing new and diverse PCS

50/ Notice at para. 3.

51/ Id.

services. Competitive bidding will best assure that licenses go to those who value them the most and have the greatest incentives to effectively and expeditiously initiate service. It would accelerate the pace of innovation by assuring that "productive innovators" have access to the spectrum they need to implement their innovations. Auctions would virtually eliminate speculation, making the Notice's anti-speculation proposals unnecessary and irrelevant.

In addition, PCS auctions would generate very substantial revenues for the United States Treasury thereby compensating the American people -- as opposed to "lucky lottery winners" -- for the use of valuable public spectrum resources. Fleet Call believes that Congressional authorization of competitive bidding is attainable.52/ The Commission should move expeditiously to obtain PCS auction authority as it proceeds with a Further Notice of Proposed Rulemaking in this proceeding.

V. THE NOTICE FAILS TO ADDRESS HOW PERSONAL COMMUNICATIONS SERVICES WOULD AFFECT THE EXISTING TELECOMMUNICATIONS INFRASTRUCTURE AND THE PUBLIC SWITCHED TELEPHONE NETWORK

In its cogent analysis, GTE points out that the Notice does not address or seek comments on how to integrate prospective new PCS services to strengthen the Nation's telecommunications infrastructure.53/ It states that the Notice fails to consider the potential effects of PCS on the local wireline telephone

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52/ See Staff Draft of the Spectrum Competitive Bidding Amendment to S. 218, "The Emerging Telecommunications Technologies Act of 1991."

53/ Comments of GTE at p. 14.