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FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C.

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

In the Matter of:)
Replacement of Part 90 by Part 88)
to Revise the Private Land Mobile)
Radio Services and Modify the)
Policies Governing Them)

PR Docket No. 92-235

**REPLY COMMENTS
OF THE
UNITED STATES TELEPHONE ASSOCIATION**

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July 30, 1993

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Summary

The revision of Part 90 and recodification of its provisions into a new Part 88 should be accompanied by constructive change, but not disruption in the provision of affected services. Adjustments in the recodification are necessary in light of Commission practice and the impacts identified in the comments.

USTA supports efforts to eliminate the continuing defects in the handling of SMRS. Wireline common carriers and related entities should be able to compete for these licenses. The comments identify myriad violations of the APA in a continuing shell game which penalizes USTA members of all sizes, and their customers.

Related to the SMRS issue is the issue of innovative spectrum use. Exchange carriers, who have technological, financial and creative resources, should be fully eligible to seek and receive channel assignments.

Carriers also are licensees for their own use. Their use of channels covered by the proposed Part 88 is significant and contributes to the achievement of many fundamental purposes of the Act. They should have time to transition their equipment.

A number of other issues are addressed here - the impact on rural customers, private carrier paging demands, equivalent efficiency concepts and the benefit of exclusive channel assignments.

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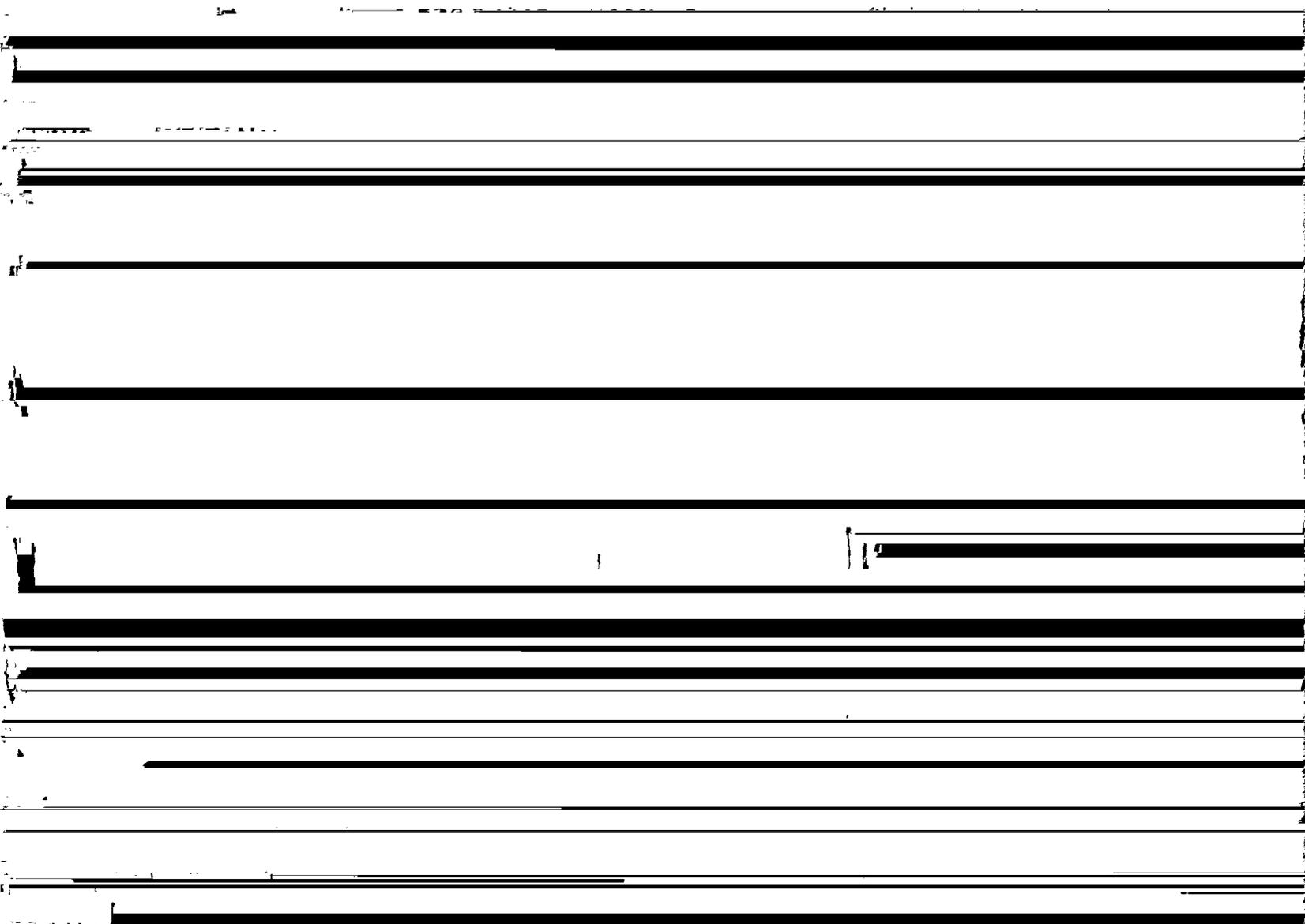
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The United States Telephone Association (USTA) respectfully submits these
Reply Comments on the Commission's Notice of Proposed Rulemaking (NPRM) in



denying to the public the potential benefits that a new group of providers could deliver. The failure to allow wireline carriers and entities related to wireline carriers to be fully involved in SMRS has limited the participation of an entire class of providers who could deliver public benefits, for a period now approaching twenty years. See Comments of PacTel Paging at 7; Comments of BellSouth Corporation (BellSouth) at 9-13 and notes 44-45. (It is not clear what the Commission's rule regarding SMRS eligibility by non-carrier affiliates of wireline carriers really is. Comments of BellSouth at note 45.)

A number of wireline and wireline affiliate commenters have submitted filings in this proceeding on this topic. See Comments of BellSouth at 1-20; Comments of Southwestern Bell at 2-15; Comments of PacTel Paging at 7-8. To the Commission, this may be a small part of the Part 90 rewrite. To the wireline carriers, it is a serious issue and one of principle. The most extensive comment analyses were provided by BellSouth and Southwestern Bell. USTA largely agrees with their conclusions. The handling of the SMRS eligibility issue in this proceeding appears to constitute use of yet another shell in a continuing shell game, where the Commission seems adamant that it will succeed in hiding the pea from wireline carriers, regardless of the APA.

simply because of one factor that is unrelated to the public interest - because they have no relationship with a wireline exchange carrier. Even if a company is separate and unregulated, it is irrevocably tainted - with respect to SMRS anywhere - if it has any affiliation with a wireline common carrier. See Comments of BellSouth at 3 and note 6. See also Comments of Southwestern Bell at 10-13.

The rationale for the rule is inconsistent with the rule. Id. at 10-13. Comments of Southwestern Bell at 2. The rationale doesn't work for nonregulated affiliates of carriers; it also doesn't work for regulated carriers not in the cellular business; and it does not limit cellular carriers or their affiliates when these carriers and their affiliates are not related to LECs. But See Comments of BellSouth at 13, note 46 (retargeting of barrier to cellular requires new notice and comment).

Since 1986, the Commission has started a rulemaking to eliminate the restriction, stated a basis for that action, waited six years, and then ended the proceeding in summary fashion without acting. SMR Eligibility, PR Docket No. 86-3, NPRM, 51 Fed. Reg. 2190 (January 22, 1986); Order, 7 FCC Rcd 4398 (1992). Indeed, the Commission failed to take other action that would have been more responsive to the issues. Comments of BellSouth at 16; See also Williams Natural Gas v. FERC, 872 F.2d 438 (D.C. Cir. 1989). The Commission has sought to hold the carrier's appeals in abeyance pending reconsideration, but has failed to address the reconsideration petitions to date. Meanwhile, it has not hesitated to deal with myriad SMRS issues that surround the fundamental eligibility issues. See Comments of BellSouth at 5-6 (list of actions). This selective withholding of Commission

resources on a fundamental issue in the SMRS area is transparent, and unsupportable. Comments of Southwestern Bell at 10-13.

In fact, allowing wireline common carriers into the SMRS business will deliver public benefits. Comments of Southwestern Bell at 5-7. USTA agrees that allowing wireline carriers to be eligible for SMRS licenses would expand SMRS choices, increase SMRS capacity, constrain prices, promote innovation, and add incentives for better quality service. It could lend support for better matching of SMRS and common carrier services, and promote standards development that can provide a platform for new applications. This has occurred to a degree in the few systems affiliated with wireline carriers that have been permitted. Comments of Southwestern Bell at 6.

The Commission has an opportunity in Part 90 to return to the equilibrium of evenhanded and neutral regulation. It should retarget its proposal, to achieve that end in accord with the APA.

II. EXCHANGE CARRIERS SHOULD HAVE THE OPPORTUNITY TO APPLY FOR AND RECEIVE CHANNEL ASSIGNMENTS IN THE RANGES RESERVED FOR INNOVATIVE SPECTRUM USE.

The Commission has proposed that 258 PLMR channel pairs be designated in the 150-162 MHz band for wide area innovative use systems. A licensee would receive authority to use the channel(s) assigned to it in one of seven proposed regions, corresponding to the regions of the Regional Bell Holding Companies (RBOCs). The purpose would be to afford wide latitude to experiment and employ innovative technical applications. See NPRM at proposed Rule § 88.1005 and Appendix A. Unfortunately, the NPRM rejects here the Commission's oft-articulated

policy of open entry, in favor of a circumscribed and less beneficial exclusionary arrangement, denying wireline carriers eligibility for these innovative use channels.

Many commenters flatly oppose any allocation proposed for innovative use, to anyone, arguing variously that the channels are subject to demand for other uses, that the applications that are of most value are local and not regional, and that innovation can occur on existing channels under the Commission's proposal. See Comments of ITA/CICS/TELFAC at 19-21; Comments of Coal Industry and Land Transportation Land Mobile Radio Users at 25; Consensus Plan of LMCC. See also Comments of PacTel Paging at 5 (five regions it identifies make more sense.)

USTA supports the innovative use system concept, which is present in some respects in other Commission rules promoting experimental services. 47 CFR § 5.1 et. seq. If innovative use channels are made available, exchange carriers should be able to participate in this experiment in innovation, like anyone else. The Commission should evaluate the requests for channel assignment in this spectrum range on the basis of merit, not on the basis of the identity of the applicant. Unbiased assignment will maximize the public interest benefit.

The exclusionary position taken in the NPRM was challenged by a number of wireline commenters who are willing to invest in new technology. See Comments of GTE at 4-5; Comments of PacTel Paging at 6-8; Comments of Southwestern Bell at 16 (stating that the Commission has not stated any acceptable rationale for denying an otherwise-qualified entity from seeking a license to provide innovative narrowband services.)

USTA strongly agrees that exchange carriers should be eligible for participation in the licensing of these 258 "innovative use" channel pairs. Further, to the extent that wireline affiliates may be denied the opportunity to participate because of the affiliation, the Commission's added restriction is without foundation. There is no valid basis for reversing a fundamental Commission presumption in favor of open competition, so as to deny to wireline carriers or their affiliates the ability to implement innovative proposals here.

This is not only an RBOC or Bell Company issue. There may be some initial perception that the regional line-drawing operates as a form of cross-ownership boundary or duopoly-promoting structure. It is not. The ban proposed in the new Part 88 extends to carriers who do not serve customers by region, and who may seek any of a number of other forms of providing the relevant PLMR service. A number of USTA members operate their local telephone networks across many regions. Most, however, operate their networks in only a small part of a single state within a single region. The seven region concept, then, has no relevance to any of them. For a Bell Company, the seven region proposal could be perceived to hold some impliedly greater support for eligibility than for the restriction. An individual Bell Company is not a region-wide company in almost every RBOC region, but, to the extent the Commission anticipates licensing a regional spectrum innovation to have it deployed regionwide, an RBOC would be as well situated as anyone to deploy it.

III. THE COMMISSION MUST ALLOW CARRIERS AND OTHER LICENSEES SIGNIFICANT TIME TO DEAL WITH THE ENORMOUS COSTS OF EQUIPMENT CHANGE.

USTA members face an implementation problem that is similar in kind to that faced by other commenters, but significantly greater in magnitude than most. If the Commission adopts its proposal to force licensees to move to a narrowband framework, and also to reduce the maximum allowable power limit for licensees, many licensees will have to incur major costs to retrofit, upgrade or replace their equipment. Some licensees will have greater burdens than others. See Comments of County of Los Angeles at 4-5 (noting anticipated costs of \$67 million to replace only the sheriff department system, and costs of \$27 million for another system); Comments of Centralina County at 1-2 (noting the fact that its outdated system must be replaced now, and that because of absence of complying equipment, it will have to replace the replacement later); Comments of Alaska Division of Information Services at 1-2 (noting need for conversion or replacement of more than 10,000 units.)

The telephone industry is a heavy user of the Telephone Maintenance Radio Service, a service used to assure that the deployment of telephone facilities and services occurs in an efficient manner. The extensive size of many service territories and the vigilance required of maintenance and repair crews demand that telephone companies have responsive systems. The potential ratemaking impacts demand that the carriers' costs for those systems be reasonable. Like the County of Los Angeles and others, the telephone companies will be at great financial risk from a requirement for precipitous change in PLMR systems.

The comments of telephone companies illustrate the significance of the risk. The Bell Atlantic companies provide a detailed estimate of the costs their telephone companies might have to incur, an amount that may approach \$21 million. Comments of Bell Atlantic Personal Communications at 1-3 and Appendix A. Bell Atlantic notes the current absence of conforming equipment, and states that its systems cannot be retrofitted. It supports a flexible and graduated transitional schedule. Southwestern Bell describes systems that appear to be larger and more extensive than those of Bell Atlantic. Southwestern Bell describes 90 base transmitter stations in Texas alone, with about 5000 mobile receiver units in use. Comments of Southwestern Bell at 17-18. Southwestern Bell states that it, too, may have to replace all existing units, and also states that it will have to deploy additional units because of the expectation that power limits will be lowered. *Id.*

Independent telephone companies have the same types of problems as the Bell Companies, and many of them operate a number of PLMR systems that will be made obsolete by virtue of this proposed Commission action. For many of these independent companies in rural areas, there is no unmanageable demand or pent-up pressure in the marketplace that is requiring Commission action to replace the affected systems.

On balance, then, the Commission must reconsider the net benefit of its proposed overall transition plan. One comment places the total cost of compliance for licensees at more than \$25 billion. Comments of ITA/CICS/TELFAC at 14-15. To the extent the Commission can act to reduce that expense through consideration of

less drastic alternatives, it should do so. Additional time is one of a number of options that can be combined to reduce the financial burden on licensees.

IV. THE RURAL PUBLIC MAY NOT SEE ANY NET BENEFIT FROM EXPANSION OF MANY ASPECTS OF THE PART 88 PROPOSAL OUTSIDE HIGHLY POPULATED AREAS.

A number of commenters oppose the Commission's proposals insofar as they interfere with currently operational systems in less populated areas. These systems are reasonably priced, are deployed effectively, and are not subject to spectrum demands by new entrants or interested applicants. See Comments of Cascade

at 12; Comments of Network USA at 14. Network USA goes further and demands that the Commission set just and equal interconnection rates in this proceeding. Id.

USTA disagrees with these comments. They are wrong and they are misplaced here. A radio common carrier network involves common carriage, and anticipates the possibility of much more than paging as an offering. These distinctions are critical. See the discussion concerning the statutory distinction between private carriage and common carriage in the mobile services area in the Comments of BellSouth at 20-23. BellSouth addresses a slightly different issue - the differentiation maintained by the Commission in its regulatory treatment of cellular and SMRS operations - but the underlying analysis provides a wealth of detail that confirms why there is nothing unreasonable about the differentiation between private carrier paging operations and radio common carrier operations.

The second reason that these comments should be rejected is that they are out of place in this proceeding. The arguments made here by Celpage and Network USA are not Part 90 or Part 88 comments. They are in reality complaints about unreasonable rates and ratemaking by common carriers. As such, they should not be addressed here. When a carrier files rates, the private carrier paging companies have the opportunity to petition against the carrier's tariff filing. These private carrier paging companies also have the opportunity to submit a petition complaining about purported unreasonable discrimination under section 202. Evaluation of the justifications for differentiating private and common carrier radio spectrum licensees does not materially contribute to the outcome of this proceeding.

VI. EXCLUSIVE CHANNEL ASSIGNMENTS SHOULD BE PREFERRED IN THE PROVISION OF SPECTRUM BASED SERVICES.

The Commission's proposed rewrite of Part 90 adopts what it characterizes as an "Exclusive Use Overlay." A number of commenters support the use of this Overlay. See Comments of American Petroleum Institute at 11; Comments of ITA/CICS/TELFAC at 18. While the Part 90 proceeding focuses on private land mobile radio uses, USTA emphasizes to the Commission that the Commission still has before it a Petition for Rulemaking related to the Basic Exchange Telecommunications Radio Service (BETRS), in which USTA has sought exclusive channel assignments for BETRS spectrum in common carrier channel assignments for that service, so as to promote the efficient deployment of spectrum based BETRS telephone service. Reply Comments of USTA, et.al., filed February 23, 1993, in Petition to Authorize Co-Primary Sharing of the 450 MHz Air-Ground Radio Telephone Service, RM-8159.

The issues are somewhat comparable. If anything, the Commission's rationales favoring exclusivity in the assignment of channels in the PLMR here are at least as strongly applicable to BETRS. See Comments of PacTel Paging at 4, noting that shared use has caused a "seemingly endless number of disputes regarding sharing by highly competitive operators." USTA encourages the Commission to consider the place of BETRS in its spectrum assignment plans, as it anticipates changes in the PLMR, and to give the request for channel exclusivity made by USTA the same degree of attention in its decisionmaking processes, so that BETRS will not

ultimately be relegated to inferior status as a "poor cousin" to the private radio marketplace in spectrum use.

VII. THE COMMISSION SHOULD NOT ASSUME THAT ITS CONCEPT OF EQUIVALENT EFFICIENCY IS APPLICABLE TO ALL SERVICES.

The Commission's proposal for new Part 88 includes an alternative by which a licensee can retain primary status for its licensed systems by using 12.5 KHz bandwidth under a "equivalent efficiency" arrangement. Some commenters with basic needs for PLMR assignments - needs that serve a unique role in the economy - but who do not share or resell, have expressed concern about the extent to which equivalent efficiency will be pursued. See Comments of AAA at 22-25 (services of value need to be evaluated in terms of actual spectrum use and function, not hypothetical tests.)

Although this proceeding does not directly affect common carrier services, USTA is concerned about the potential ramifications of "equivalent efficiency" on those common carrier services. There are other considerations that enter the common carrier area and that are at least as significant as equivalent efficiency. These include meeting the "holding out" expectations of state commissions in a timely fashion, continuing service stability, network reliability and performance standards, all of which can affect loading and channel use. The exchange carriers seek to be efficient in the design and application of their networks; rules must recognize all practical constraints in providing common carrier services. This holds for the rural radio services, for BETRS, and for other common carrier services.

VIII. CONCLUSION.

The proposed revision of Part 90 still needs work. Part 88 should not inherit the defects of Part 90; of the Commission's arbitrary and unreasoned SMR decisions; and of the discriminatory effects of lingering-but-unjustified discriminating sentiment against wireline carriers.

Respectfully submitted,

UNITED STATES TELEPHONE ASSOCIATION

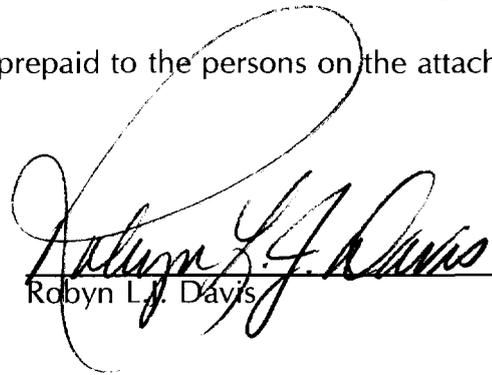
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CERTIFICATE OF SERVICE

I, Robyn L.J. Davis, do certify that on July 30, 1993 copies of the Reply Comments of the United States Telephone Association were either hand-delivered, or deposited in the U.S. Mail, first-class, postage prepaid to the persons on the attached service list.


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