[redacted]

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

In the Matter of:	)	
	)	GEN Docket No. 90-314
Amendment of the Commission's Rules	)	ET Docket No. 92-100
to Establish New Narrowband Personal	)	
Communications Services	)	

PETITION FOR CLARIFICATION OR PARTIAL RECONSIDERATION

Mobile Telecommunications Technologies, Inc. ("Mtel"), by its attorneys, hereby submits a petition for clarification, or, in the alternative, partial reconsideration in the above-captioned proceeding.[1] Mtel believes that the Commission's order allocating spectrum and adopting rules for new 900 MHz narrowband PCS systems will permit a vast array of important new services to the public. While Mtel wholeheartedly supports the Commission's actions in this docket, one specific aspect of the new rules warrants attention. In particular, the Commission should clarify that Section 99.17 is intended to focus on service to the public rather than service to geographic areas.

I. THE COMMISSION SHOULD CLARIFY THE APPLICATION OF THE COVERAGE REQUIREMENTS OF SECTION 99.17(a)(4)

Mtel enthusiastically endorses the Commission's overall regulatory framework for introducing narrowband PCS services in the 900 MHz band. Mtel has been a longstanding and vocal advocate of regulations that allow licensees technical flexibility to introduce a wide

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[1] *New Narrowband Personal Communications Services*, GEN Docket 90-314, ET Docket 92-100 (July 23, 1993) ["*Narrowband PCS Order*"].

range of new services. To protect against abuse of regulatory flexibility, however, Mtel has also argued for benchmarks to ensure that licensees build out proposed systems.

The Commission has, quite properly, required such minimum construction commitments from narrowband PCS licensees in Section 99.17 of its rules. Under Subsection (a)(1) of this section, nationwide licensees will be required to "construct at least 250 base stations within five years of being licensed and at least 500 base stations within ten years of being licensed."[2] Subsection (a)(2), for its part, requires MTA licensees to provide coverage to 25 percent of the geographic area of their licensed service area within five years and 50 percent of the geographic area within 10 years or, alternatively, to construct at least 25 base stations within five years and 50 base stations within 10 years.[3] Finally, local licensees, under Section 99.17(a)(3), are required to construct at least one base station within one year of being licensed.[4]

The FCC's base station and geographic coverage requirements are generally consistent with the comments in this proceeding and construction requirements in other services.[5] However, Section 99.17(a)(4) goes on to state:

> In evaluating compliance with the above construction requirements, each base station will be considered to serve a geographic area of 3000 square kilometers. In the case where a licensee constructs low power

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[2] 47 C.F.R. § 99.17(a)(1) (Adopted by *Narrowband PCS Order* July 23, 1993).

[3] 47 C.F.R. § 99.17(a)(2) (Adopted by *Narrowband PCS Order* July 23, 1993).

[4] 47 C.F.R. § 99.17(a)(3) (Adopted by *Narrowband PCS Order* July 23, 1993).

[5] *See, e.g.*, Comments of Mobile Telecommunication Technologies Corporation at __, GEN Docket 90-314, ET Docket No. 92-100 (Nov. 9, 1992); Comments of American Paging, Inc. at __, GEN Docket 90-314, ET Docket No. 92-100 (Nov. 9, 1992); Reply Comments of Mobile Telecommunication Technologies Corporation at 19, GEN Docket 90-314, ET Docket No. 92-100 (Jan. 8, 1993); *Use of the 220-222 MHz Band*, 6 FCC Rcd 2356, 2366 (1991); *Private Carrier Paging Channel Exclusivity*, 8 FCC Rcd 2227, 2230-31 (1993).

> base stations, compliance with the construction requirements will be determined by aggregating the actual service areas of the low power stations divided by 3000 square kilometers to determine an equivalent number of base stations.[6]

This subsection is confusing because it is not clear whether it applies solely to construction benchmarks based on geographic coverage (*i.e.*, Subsection (a)(2) on MTA coverage), or whether it applies to construction of *any* base station. If Subsection (a)(4) only applies to MTA coverage requirements, Mtel would seek clarification of the rule to that extent. If Subsection (a)(4) applies to all construction benchmarks, Mtel would seek reconsideration of the rule as discussed below.

II. BUILD-OUT REQUIREMENTS SHOULD FOCUS ON SERVICE TO THE PUBLIC RATHER THAN STRICT GEOGRAPHIC COVERAGE

Section 99.17(a)(4) appears to be an attempt to equalize the construction obligations imposed on low power and high power narrowband PCS licensees.[7] As such, the FCC's rules seem calculated to ensure that service benchmarks cannot be evaded by unscrupulous licensees that erect inexpensive, low-power transmitters to fulfill a numeric requirement without regard to whether the transmitters provide useful service to the public. However, the purposes of the rule would be better served by construction benchmarks that emphasize service to the public rather than simply mandating coverage of geographic areas, which may

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[6] 47 C.F.R. § 99.17(a)(4) (Adopted by *Narrowband PCS Order* July 23, 1993).

[7] For example, in the text of the order adopting the rule the FCC explains that "[i]n cases where a licensee constructs lower-powered base stations that serve smaller areas, the licensee must aggregate those facilities to provide a service area equivalent to 3000 square kilometers." *Narrowband PCS Order* at ¶37 n.22.

lead to coverage in sparsely populated areas where service is not needed and not economically justified.

For example, Section 99.17 could be interpreted to require nationwide licensees to serve approximately 1,500,000 square kilometers of land area, or about 16.4 percent of the nation. Mtel believes that this figure may be excessive considering the population distribution of the United States. As of 1990, 75.2 percent of the total U.S. population lived within Census Bureau-defined "urban areas" that constituted a total of 230,000 square kilometers, or 2.5 percent, of the United States. This high degree of urban concentration has previously been recognized by the Commission in adopting build-out policies for other services, including the cellular service and the 220-222 MHz private land mobile service,[8] and in adopting benchmarks for achieving exclusivity in the 929-930 MHz private carrier paging band.[9]

Consequently, Mtel believes that the Section 99.17 of the Commission's rules should be modified. Mtel suggests retaining the 500 transmitter construction requirement, but reorienting the emphasis of the rule to create service benchmarks based on population or geographic area, not solely geographic area. In this manner, the FCC could assure both that a minimal level of service to the public is provided and that carriers do not evade construction requirements by merely achieving a numerical benchmark. Mtel has attached,

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[8] *See Cellular Lottery Rulemaking*, 98 F.C.C.2d 175, 209-11 (1984) (requiring cellular carriers in the MSAs and NECMAs below the top-90 to cover either 75 percent of the geographic area of the market or 75 percent of the population in the market); *Use of the 220-222 MHz Band*, 6 FCC Rcd 2356, 2366 (1991) (requiring 220-222 MHz national service providers to provide service 28 of the top 100 markets in four years and in the 70 top MSAs in 10 years).

[9] *Private Carrier Paging Channel Exclusivity*, 8 FCC Rcd 2227, 2230-31 (1993) (requiring at least 300 transmitters, coverage of at least 50 markets, coverage of at least 25 of the top-50 markets, and coverage of at least 2 markets in each of the 7 Regional Bell Operating Company territories to achieve national exclusivity).

as Exhibit I, a redacted version of Section 99.17 that would accomplish this goal by, for example, permitting a nationwide licensee to meet the construction requirements by serving 37.5 percent of the U.S. population within 5 years of being licensed and 75 percent of the U.S. population within 10 years of being licensed.

Respectfully submitted,

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APPENDIX I
Proposed Amendments to Section 99.17

Suggested additions italicized and in boldface (*e.g.*, ***addition***) and suggested deletions struck out (*e.g.*, ~~deletion~~)

(a) For narrowband PCS systems:

(1) Licensees of nationwide service area channels must construct at least 250 base stations ***providing a composite service area covering at least 750,000 square kilometers or 37.5 percent of the U.S. population*** within five years of being licensed and at least 500 base stations ***providing a composite service area covering at least 750,000 square kilometers or 75 percent of the U.S. population*** within ten years of being licensed and notify the Commission when each benchmark is met.

(2) MTA licensees must construct base stations to provide coverage to approximately 25% of the geographic area of their licensed service area within five years of being licensed and 50% of the geographic area of their licensed service area within ten years of being licensed. Alteratively, licensees of MTA service area channels must construct at least 25 base stations ***providing a composite service area covering at least 75,000 square kilometers or 37.5 percent of the population in the MTA*** within five years of being licensed and 50 base stations ***providing a composite service area covering at least 150,000 square kilometers or 75 percent of the population in the MTA*** within ten years of being licensed. In either case, the MTA licensee must notify the Commission when each benchmark is met.

(3) Licensees of BTA service area channels must construct at least one base station ***providing a composite service area covering at least 3,000 square kilometers or 37.5 percent of the population in the BTA*** and begin providing service in their licensed service area within one year of being licensed and notify the Commission when the benchmark is met.

(4) ~~In evaluating compliance with the above construction requirements, each base station will be considered to serve a geographic area of 3000 square kilometers. In the case where a licensee constructs low power base stations, compliance with the construction requirements will be determined by aggregating the actual service areas of the low power stations divided by 3000 square kilometers to determine an equivalent number of base stations.~~

~~(5)~~ Failure by any licensee to meet the above construction requirements will result in forfeiture of the license and the licensee will be ineligible to regain it.