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

In the Matter of)
)
Implementation of Sections 3(n)) GN Docket No. 93-252
and 332 of the Communications Act)
)
Regulatory Treatment of Mobile)
Services)

To: The Commission

COMMENTS OF NEXTEL COMMUNICATIONS, INC.

Nextel Communications, Inc.

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SUMMARY

Nextel Communications, Inc. ("Nextel") provides Specialized Mobile Radio ("SMR") and Enhanced Specialized Mobile Radio ("ESMR") services pursuant to Part 90 of the Rules and Regulations of the Federal Communications Commission ("Commission"). As such, Nextel currently is regulated as a private mobile radio services licensee. As of August 10, 1996, however, Nextel will be regulated as a "Commercial Mobile Radio Services" ("CMRS") licensee pursuant to the Commission's decision in the Second Report and Order in this Docket.

As CMRS providers, ESMR, cellular, Personal Communications Services ("PCS") and paging will be subject to the same general regulatory framework. The subject Further Notice of Proposed Rule Making ("FNPRM") focuses on the technical, operational, and licensing rules that currently apply to private radio licensees that have been reclassified as CMRS and attempts to create regulatory symmetry between these providers and other CMRS providers offering comparable services. Nextel supports rule changes that will achieve regulatory parity among all CMRS providers.

For example, the licensing of an ESMR system should be no more onerous than the licensing of a cellular system, as each can provide similar services to similar customers. Nextel urges the Commission to eliminate many of the unnecessary licensing hurdles currently required of ESMRs that are not similarly imposed upon

cellular. Likewise, Nextel urges Commission removal of antiquated operational and technical rules no longer applicable to ESMR systems.

Specifically, the Commission should create a 10 Mhz block of 200 contiguous 800 MHz frequencies exclusively for ESMR licensing defined on a Major Trading Area ("MTA") basis. Creation of a geographically-defined, exclusive use block of contiguous 800 MHz spectrum is essential to redress the substantial disparities between ESMR spectrum assignments and the licensing of cellular and PCS services. An ESMR spectrum block can be created within the existing 800 MHz SMR allocation by "retuning" existing non-ESMR stations currently using these channels to other equivalent 800 MHz private land mobile channels. ESMR licensees that benefit from creating a contiguous, exclusive use ESMR spectrum block would bear the cost of retuning.

Creating a 200 channel ESMR block would enhance the technical options and competitive viability of ESMR systems. It would not, however, establish an upper limit on the amount of SMR spectrum an ESMR operator can hold. ESMR operators may require substantially more spectrum to achieve operating economies competitive with other CMRS operators, i.e., a 200 channel block is significantly less than a cellular licensee's 416 exclusive channel assignment. Thus, ESMR licensees would be free to accumulate additional frequencies outside the ESMR block consistent with the proposed general CMRS spectrum cap.

The Commission must recognize that all spectrum is not allocated, assigned or used on an equal basis, resulting in wide-area services that, while similar, are not identical. As noted above, ESMR spectrum assignments consist of non-contiguous, non-exclusive channels, i.e., not broadband, while cellular and PCS licensees are assigned large blocks of broadband contiguous channels. ESMR licensees have limited use of their authorized channels in a service area and must account for and protect co-channel operators, while cellular has and PCS will have full and complete use of their assignments in any given market.

Therefore, the Commission, in making its determinations herein, must take into account the fact that ESMR spectrum is encumbered in ways that do not apply to cellular and PCS assignments. Accordingly, for the reasons set forth herein, Nextel opposes a spectrum cap. In the event the Commission imposes spectrum cap, however, the Commission must do so only upon the following two conditions: (1) ESMR spectrum must be properly counted, taking into account the significant differences between ESMR and other wide-area CMRS spectrum, and (2) SMR spectrum not used for services competitive with other CMRS services must be excluded from the cap.

Adoption of the proposals set forth in the FNPRM, if modified as discussed herein, will be a significant step towards the achievement of regulatory parity among CMRS services. Congress mandated that these rules be implemented by August 10, 1994 to correct the disadvantages under which reclassified private carriers

operate in competing with other CMRS services in the emerging advanced telecommunications market.

TABLE OF CONTENTS

SUMMARY	i
I. INTRODUCTION	1
II. BACKGROUND	4
III. LICENSING RULES AND PROCEDURES	6
A. The Commission Must Establish a Geographically- Defined, Contiguous Frequency, Exclusive Assignment ESMR License	6
B. The Existing SMR Assignment Plan Disadvantages Both ESMR Systems and Traditional SMR Stations	9
C. The Commission Can Correct the CMRS Licensing Disparity By Establishing An ESMR Block License and "Retuning" Traditional SMRS to Operate on Non-ESMR Block Frequencies	11
1. Retuning Traditional SMRs Is In The Public Interest	12
2. ESMR Block Licenses Should be Established on an MTA Basis	14
3. Assigning Spectrum Blocks Within MTAs	16
4. Retuning of Incumbent SMR Systems	19
5. Operating Under an ESMR Block License	20
IV. CMRS SPECTRUM AGGREGATION LIMIT	21
A. A General CMRS Spectrum Cap Will Exacerbate the Dominant Market Power of the Cellular Carriers	22
B. ESMR Spectrum and Cellular Spectrum are not Equivalent For Spectrum Cap Purposes	28
C. The Equivalent Yield of Encumbered ESMR Spectrum Must be Evaluated Against the Non-Encumbered Spectrum of CMRS Competitors in Counting ESMR Spectrum Toward A CMRS Spectrum Cap	31

D.	Application of a CMRS Spectrum Cap	35
1.	Geographic Areas.	35
2.	Attribution Standards.	36
3.	Exclusion of Certain CMRS Spectrum	38
4.	Reclassified Part 90 licensees	39
V.	TECHNICAL AND OPERATIONAL RULES	39
A.	Modulation and Emission Mask	39
B.	Antenna Height and Transmitter Power Limits	41
C.	ESMR System Control Channels	42
D.	Equal Employment Opportunity	43
VI.	OTHER LICENSING ISSUES	43
A.	Construction and Operational Requirements	43
B.	Transferability	44
C.	Clarification of Section 90.137 Authority	46
D.	Application Fees	47
E.	Regulatory Fees	48
F.	Removal of Miscellaneous Outdated Regulatory Inequities	49
VII.	CONCLUSION	51

TABLE 1

SERVICE LIST

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I. INTRODUCTION

Nextel Communications, Inc. ("Nextel"), pursuant to Section 1.415 of the Commission's Rules, hereby respectfully submits its Comments in response to the Further Notice of Proposed Rule Making (the "FNPRM") in the above-captioned proceeding.^{1/}

On February 3, 1994, the Federal Communications Commission ("Commission") adopted its Second Report and Order (the "CMRS Order") in this proceeding,^{2/} implementing the basic provisions of Sections 3(n) and 332(c) of the Communications Act (the "Act") as amended by Section 6002(b) of the Omnibus Budget Reconciliation Act of 1993 ("Budget Act").^{3/} The CMRS Order established a comprehensive regulatory structure for the mobile services

^{1/} FCC 94-100, released May 20, 1994.

^{2/} Implementation of Sections 3(n) and 332(c) of the Communications Act, Regulatory Treatment of Mobile Services, 9 FCC Rcd 1411 (1994), erratum, Mimeo No. 92486, released March 30, 1994 ("CMRS Order").

^{3/} Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, §6002(b)(2)(B), 107 Stat. 312, 392 (1993).

including a new category of mobile communications providers --
"Commercial Mobile Radio Service" ("CMRS").4/

This proceeding is mandated by Section 6002(d)(3) of the Budget Act which requires that private land mobile licensees reclassified as CMRS providers be subject to technical requirements comparable to those that apply to providers of substantially similar common carrier services to assure regulatory parity.5/ Regulatory parity is necessary to ensure that no Commission regulation or policy places one service provider at a competitive disadvantage to other similarly situated service providers. As McCaw Communications has previously stated,

"disparate regulation will not 'enhance competition.' To the contrary, it is more likely to thwart the development of an advanced information infrastructure by impeding full competition among all providers of such services."6/

The Budget Act also provides that for a three-year transition period through August 10, 1996, existing private land mobile

4/ Congress defined a CMRS provider as one who provides interconnected mobile telecommunications service to the public (or a substantial portion thereof) for profit. CMRS services are subject to Title II of the Act as a common carrier service.

5/ Section 6002(d)(3)(B) provides that the Commission

". . . shall make such other modifications as may be necessary and practical to assure that licensees in such service are subjected to technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services."

6/ See Comments of McCaw Cellular Communications, Inc. on the Notice of Proposed Rule Making, Docket No. 93-252, filed Nov. 8, 1993, at p. 7.

licensees subject to reclassification as CMRS providers will continue to be regulated as Private Mobile Radio Service ("PMRS") carriers.^{7/} In the words of Congressman Edward Markey, Chairman of the House Subcommittee on Telecommunications and Finance, the three years provide a time period,

". . . during which current providers of private land mobile service will continue to be treated in the same manner. The intent of this transition period is to provide those whose regulatory status is changed as a result of this legislation a reasonable time to conform with the new regulatory scheme."^{8/}

Congress intended that technical and operational rules for the new CMRS service be established in one year so that reclassified carriers would have a two-year transition period in which to conform their operations to an entirely new set of rules and regulations.^{9/} The timely completion of this rule making is essential to effectuating Congress' intent that reclassified carriers have a two-year period to adjust their operations, marketing and technology to the requirements of CMRS regulation.^{10/}

In order to achieve Congress' mandate that comparable CMRS mobile communications services be regulated similarly, the

^{7/} Section 6002(c)(2)(B) of the Budget Act.

^{8/} 139 Cong. Rec. H6163 (August 5, 1993).

^{9/} See Section 6002(c)(2)(B) of the Budget Act; See also CMRS Order at para. 280.

^{10/} During the transition period, Nextel may continue operating and expanding its systems pursuant to the private radio rules. See CMRS Order at para. 282.

Commission must modify its licensing scheme for the Specialized Mobile Radio ("SMR") service to create geographically-defined licensing areas for Enhanced Specialized Mobile Radio ("ESMR") systems.^{11/} The Commission must clear a 10 MHz block of contiguous SMR spectrum for exclusive ESMR use within these geographic areas and permit ESMR licensees to "retune" traditional "non-ESMR" co-channel SMR systems to operate on other 800 MHz private radio frequencies. This "retuning" process, in combination with other rule changes discussed herein, will, to the maximum extent possible, reconcile fundamental differences in the licensing and operation of SMR and competing CMRS services, thereby redressing the regulatory advantage of cellular carriers and moving toward regulatory parity as mandated by the Budget Act.

II. BACKGROUND

Nextel, established in 1987 as Fleet Call, Inc., is the largest provider of ESMR service and traditional SMR services in the country. ESMR services, also known as wide-area SMR services, provide customers with mobile telephone, paging and dispatch services all in a single handset along with improved clarity and reception and a host of enhanced features. Traditional SMR services, on the other hand, provide primarily fleet dispatch services.

^{11/} Nextel uses the term "ESMR" throughout this pleading to refer to mobile communications systems licensed on SMR or other private radio frequencies employing digital technology in a wide-area multiple base station configuration and providing high capacity mobile telephone services competitive with cellular communications systems.

Last month, Nextel initiated full commercial operation of its first ESMR service in Los Angeles. Nextel will expand its ESMR service to Northern California, including the San Francisco metropolitan area and the Central Valley by the third quarter of this year. By the end of 1996, Nextel intends to provide ESMR services to customers in 45 of the 50 largest wireless communications markets in the U.S.

ESMR, created and developed by Nextel, involves the accumulation of SMR stations, the application of digital technology, and the operation of multiple low-power base stations with significant channel reuse. These innovations -- introduced at a cost of over one billion dollars to Nextel -- make possible an advanced mobile communications system capable of providing mobile telephone service comparable to that currently provided by the cellular industry, as well as private network dispatch, paging and mobile data services.

Nextel's pioneering work in bringing ESMR service to the public provides the first real competitive choice in ten years to the duopoly cellular carriers. Although ESMR and cellular will be competitive in many ways, at this point in time they are completely unequal in terms of market penetration and customer base and, therefore, competitive significance. Cellular service is available in every market in the country -- large or small -- and currently serves more than 16 million domestic customers. The first ESMR system commenced full commercial service only last month and, while initial sales are impressive, the entire ESMR industry at this time

serves less than 5,000 customers. In short, Nextel, and ESMR licensees overall, have no market power and will serve as the first threat to the market power held by the cellular industry,

Nextel provides its comments on the proposed licensing rules for reclassified Part 90 ESMR licensees to achieve regulatory parity with competing common carrier mobile communications licensees, the proposed CMRS spectrum cap, and the proposed changes in the technical and operational rules that will apply to CMRS services. Without these changes, the cellular industry will retain regulatory superiority and "regulatory asymmetry" as against competing CMRS services contrary to the express Congressional directive set forth in the Budget Act.^{12/}

III. LICENSING RULES AND PROCEDURES

A. The Commission Must Establish a Geographically-Defined, Contiguous Frequency, Exclusive Assignment ESMR License

The Commission seeks comment on whether the channel assignment rules for ESMR systems should be revised to allow for licensing on a wide-area, multi-channel basis comparable to the cellular licensing scheme and how it can design these rule changes to minimize disruption to other segments of the SMR industry.

ESMR systems currently are licensed through the assimilation of traditional dispatch SMR stations and applications for new SMR sites. Once sufficient spectrum has been obtained and fully loaded

^{12/} Coupled with long term cellular customer contracts and permissive bundling regulations, the Commission would be undercutting its competitive marketplace goal for the wireless industry if it fails to make these regulatory changes for ESMR licensees.

on an aggregate basis, the licensee can then implement an ESMR wide-area system through additional station-by-station applications and through a showing pursuant to Section 90.629 of the Commission's Rules that an extended construction period of up to five years is necessary to implement the advanced technology ESMR system.^{13/}

The procedural burdens and constraints of building ESMR systems on a station-by-station basis, and the fact that ESMR operators continue to share spectrum with other operators, as discussed below, denies ESMRs regulatory parity and places them at a distinct competitive disadvantage. Other CMRS services have exclusive licenses for broadband contiguous spectrum. The present ESMR licensing regime has led to a "goldrush" of applications for 800 MHz systems -- many of which have been filed by speculative parties hoping to "cash in" on the popularity of ESMR by selling their licenses to ESMR entrepreneurs. This has created a severe backlog in the licensing process impeding both the initial licensing and subsequent growth, expansion and modification of legitimate operations. In addition, unscrupulous licensing scams have occurred necessitating action by the Federal Trade Commission.

^{13/} See Section 90.629 of the Commission's Rules. Prior to the adoption of rule changes last year, an ESMR applicant had to demonstrate that a waiver of the standard SMR construction requirements (eight months for non-trunked channels, one year for trunked systems) was warranted. See Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods, 8 FCC Rcd 3975 (1993).

Despite these licensing obstacles, Nextel's ESMR service is the most spectrally efficient service using the 800 MHz Private Land Mobile spectrum. Indeed, it is the most efficient CMRS service in operation. A typical SMR station trunks five analog channels at a high power, high elevation repeater site serving a 20 to 30 mile radius. At any one time, only five subscribers can use these channels in this broad service area. The Nextel ESMR system uses digital speech compression and Time Division Multiple Access ("TDMA") modulation to transmit six voice channels on each traditional SMR channel. The Nextel network incorporates frequency reuse from many low power, low height transmit sites located within the traditional SMR service area. The increased trunking efficiency gained by the six way time slice and frequency reuse results in more than 30 times the customer capacity of existing SMR systems.

These spectrum improvements were conceptualized, designed and constructed by Nextel at its own expense and without additional spectrum allocation. They have made it possible for Nextel to provide the most advanced wireless communications system in commercial service today. Not only does ESMR provide advanced mobile telephone capabilities, but it has solved the Commission's dispatch service frequency congestion problems by dramatically increasing the capacity of existing spectrum to provide wide-area, high-quality private network dispatch communications. These phenomenal improvements in the efficient use of SMR spectrum by

ESMR operators can be maximized by ESMR block licensing and warrant such action.

B. The Existing SMR Assignment Plan Disadvantages Both ESMR Systems and Traditional SMR Stations

Under the Commission's current regulations, 800 MHz private land mobile operators are assigned spectrum in the 806-821/851-866 MHz spectrum bands. The frequencies are assigned in pairs, with the mobile and control station transmitting in the 806-821 MHz band and the base station transmitting in the 851-866 band. The spectrum is divided into 600 25 kHz channels. Of the 600 channels, 280 are available primarily for trunked SMR systems. The other channels include 170 which are divided among public safety, industrial/land transportation, and business users while the remaining 150 channels are assigned to a general category of all eligible users.

As shown on Figure 1, these 25 kHz channels essentially are assigned in three blocks. The general category channels occupy the contiguous group of channels 1 to 150, 200 of the SMR channels occupy the contiguous group of channels 401 to 600, the remaining 80 SMR channels and the public safety, industrial/land transportation, and business channels are interleaved among channels 151 to 400.

Nextel currently holds licenses in each of these blocks of channels, excepting public safety. An ESMR licensee neither controls a contiguous block of channels nor is assured exclusive use of any single channel in a geographic region. For example, San Francisco is Nextel's strongest market in terms of number of

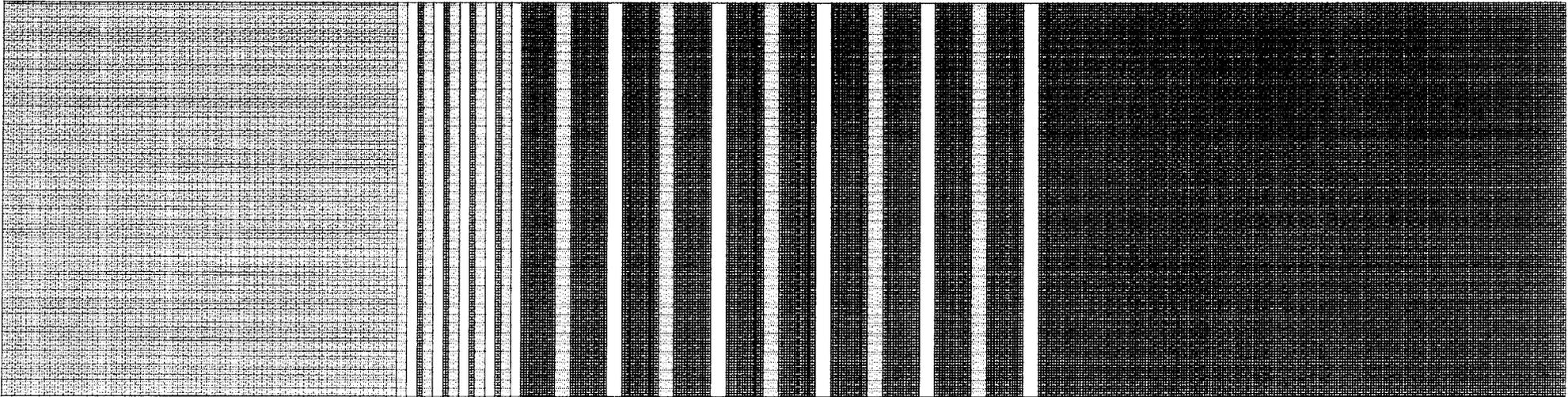
806-821/851-866 MHz CHANNEL ALLOCATION PLAN

1

150

400

600



GENERAL CATEGORY



INDUSTRIAL/LAND TRANSPORTATION



BUSINESS



PUBLIC SAFETY



SMRS

25 kHz Channels

FIGURE 1

frequencies. In the San Francisco Major Trading Area ("MTA"), Nextel is licensed to operate on 357 discrete channels but only two are unshared -- 42 of these are in the general category block, 115 are in the shared block, and 200 are in the contiguous SMR block.^{14/} Other licensees also operate on 355 of the channels licensed to Nextel in the San Francisco MTA. Three hundred and ninety seven other operators hold or have applied for private radio licenses in the San Francisco MTA, with a total of 4,420 channels that are co-channel with Nextel on both its analog and/or ESMR systems.

The overlap of licenses on these frequencies creates operational and licensing inefficiencies for Nextel or any ESMR operator vis a vis competing CMRS providers. This requires the ESMR operator to utilize buffer zones in a spectrally inefficient manner. As the Commission recognizes in the FNPRM, the Budget Act requires the Commission to develop comparable channel assignment procedures for SMR licenses that will enhance their ability to compete with other CMRS services.^{15/} The block license plan described, infra., while not achieving total parity, would redress, in part, the disparity between ESMR and cellular spectrum assignments.

^{14/} The number of channels listed herein includes channels that have already been acquired, as well as those that are in the process of acquisition.

^{15/} See FNPRM at paras. 29-30.

C. The Commission Can Correct the CMRS Licensing Disparity By Establishing An ESMR Block License and "Retuning" Traditional SMRS to Operate on Non-ESMR Block Frequencies

In an effort to conform the licensing schemes of cellular, PCS and ESMRs, to streamline application processing, and to minimize the impact of digital ESMR systems on traditional dispatch providers, Nextel proposes that the Commission establish a contiguous 10 MHz block of 200 SMR channels -- channels 401 to 600 -- for ESMR systems on an exclusive use basis.^{16/} This would ensure ESMR operators a contiguous block of channels for their exclusive use, without interference from traditional SMR operators, similar to the spectrum block currently provided to cellular operators. Continuity and exclusive ESMR channel assignments in a geographically-defined service area are imperative to creating and maintaining regulatory parity among CMRS service providers. As long as an ESMR system must deal with unaffiliated co-channel SMR operators within its boundaries, its channels are encumbered and spectral and operating efficiency reduced, thereby preventing regulatory parity with competing services.

To clear the blocked channels for the exclusive use of ESMR operators, existing traditional analog SMR stations in the 401-to-600 band would be "retuned" to operate on the remaining channels of the 800 MHz Private Land Mobile allocation. No existing traditional SMR licensee would lose any channels under this plan.

^{16/} Different channel plans will be necessary in the Mexican and Canadian border regions to accommodate the channel allocations in these areas.

This retuning would be completed at the expense of the ESMR operator, as discussed further below.

The creation of a 200 channel block reflects a minimal effort to enhance the technical options and competitive viability of ESMR-based CMRS. It is not intended, nor should it operate, to establish an upper limit on the amount of SMR spectrum an ESMR operator can hold. ESMR systems require more than 200 of the 600 private radio frequencies to be effective competitors to other CMRS providers. The 200 channel block still would leave the ESMR operator at a significant spectral disadvantage relative to other CMRS licensees -- cellular operators in particular. ESMR operators may require substantially more spectrum than exists in the 200 channel block to achieve operating economies competitive with their spectrally advantaged competitors. The interests of competition will be served by a narrowing of that gap through the the auction process and the gradual migration of spectrum through market forces. Thus, establishing an ESMR spectrum block would not prevent ESMR operators from accumulating SMR spectrum outside the block subject, of course, to their retuning obligations.

1. Retuning Traditional SMRs Is In The Public Interest

Nextel's retuning proposal should require no physical relocation of traditional SMR systems, but merely the retuning of transmitters and mobiles to operate on alternative but functionally identical frequencies. It is well-established that the "radio spectrum is a public resource in which no user gains a vested

right."^{17/} The Commission has authority to relocate licensees anytime it determines that such migration is in the public interest.

Nextel's proposal to "retune" rather than relocate traditional SMR systems to clear an ESMR spectrum block is in the public interest and is a simpler, much less intrusive solution than the mandated relocation of existing licensees to accommodate emerging technologies. Most recently, the Commission determined that the 2 GHz band was more appropriate for the provision of emerging technologies, including Personal Communications Services ("PCS"), than for the fixed microwave services which had been occupying that spectrum.^{18/} Because there was a "pressing need" for PCS spectrum, and because the 2 GHz band met the needs of this emerging technology, the Commission determined that it was in the public interest to relocate the existing 2 GHz users to a higher band despite its less desirable propagation characteristics.^{19/}

In contrast, under Nextel's proposal, the retuning of traditional SMR systems would provide those licensees with identical propagation on adjacent 800 MHz private radio frequencies. Traditional SMR operators can provide the same quality of service on any of the 800 MHz private land mobile radio

^{17/} In Re: Table of Television Channel Allotments, 83 FCC 51, 110 (1980); see also RKO General, Inc. (WNAC-TV), 78 FCC2d 1, 48 (1980) ("...the radio spectrum is a scarce public resource.")

^{18/} First Report and Order/Third Notice of Proposed Rule Making, 7 FCC Rcd 6886 (1992).

^{19/} Id. at 6887.

channels. Retuning the traditional SMR operators from the 401-600 channel band to other channels will require minimal effort, no disruption of service, limited expense and will be transparent to customers. It must be recognized that additional channels in the 1-400 group will be necessary for ESMR operations. Importantly, if retuning is implemented, the undesired impact of ESMR multiple co-channel and adjacent-channel interferers on traditional analog SMR dispatch stations will be minimized.

Nextel's ESMR block licensing and retuning proposal is a "win-win" solution. It benefits the traditional SMR operator, the ESMR operator, the Commission and the general public. ESMR operators would have a contiguous block of exclusive channels similar to the assignments in other CMRS services. Traditional SMR licensees would be clustered in a more friendly spectrum environment, thereby lessening interference potential. It may also end the artificial licensing competition created by speculators, thereby greatly reducing the Commission's application processing burden. Finally, as noted above, ESMR licensees would bear the burden of retuning the traditional SMR to the non-ESMR channels. In today's SMR industry, most equipment is operable on all of the frequencies within the Private Land Mobile band. Therefore, very few, if any, hardware changes would be required for retuning.

2. ESMR Block Licenses Should be Established on an MTA Basis

To ensure that ESMR licensing is comparable to other CMRS providers, the Commission must not only assign a block of channels to ESMR providers, but must delineate a geographic area within

which ESMR providers have exclusive use of those channels. To ensure some uniformity among CMRS services, the Commission should adopt a geographic service area similar to those used for PCS services.

Specifically, Nextel proposes that the Commission define ESMR geographic service areas based upon MTAs. As the Commission has stated previously, MTAs are appropriate for ESMRs because they are "large enough to permit systems to re-use spectrum efficiently, ... and provide licensees the flexibility and coverage required to fulfill their customers' desires for complete coverage throughout their particular business areas."^{20/} An MTA-defined service area is large enough that it allows for economies of scale, represents the natural commercial markets within the United States, facilitates roaming, reduces the need for interference coordination, and provides uniformity with other CMRS service areas.

Conversely, self-defined service areas are not a particularly effective or efficient use of the spectrum as they encourage "spectrum grabs," nuisance greenmail applications and licensing backlogs. Finally, because self-defined service areas are ever-changing they would perpetuate the current operational and licensing disparities between ESMR systems and cellular, in contradiction of Congressionally-mandated regulatory symmetry.

^{20/} See Amendment of Part 90 of the Commission's Rules To Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, 8 FCC Rcd 3950 (1993) ("EMSP Order").

3. Assigning Spectrum Blocks Within MTAs

Transactional activity over the last several years has largely resolved the issue of assigning the 200 channel blocks within an MTA. The economic viability of ESMR systems requires large numbers of frequencies over large geographic areas. Indeed, an ESMR system with a small number of frequencies would not be economically viable, and likely would never be built. Moreover, it is highly doubtful that any market can economically support more than one ESMR, particularly given the onset of digital cellular, the creation of PCS and the coming implementation of satellite-based wireless telecommunications systems. By and large, firms pursuing the ESMR initiative unilaterally have established distinct, non-overlapping service areas. Accordingly, in most areas of the country the assignment of ESMR spectrum blocks will be a non-issue for the Commission.

The implementation of MTA-defined ESMR service areas -- as distinguished from the self-defined service "footprints" presently in place and being proposed -- will create some ESMR licensing overlaps. Accordingly, the Commission should establish an ESMR block assignment procedure that first seeks voluntary resolution of conflicting ESMR claims and would impose a Commission-ordered solution only as a matter of last resort. The following framework would be workable and consistent with the goals of the FNPRM.

As an initial matter, to ensure that only legitimate ESMR providers are licensed for the ESMR blocks, the Commission must limit eligibility to licensees with an ESMR (wide-area) grant or

ESMR application pending within the MTA as of August 10, 1994. This cut-off date will prevent the Commission from being bombarded with ESMR applications upon the issuance of these rules. Moreover, the Commission must strictly construe all ESMR applications so that it does not inadvertently grant an ESMR spectrum block to a party with no real intentions of providing ESMR services.^{21/}

Once the Commission identifies eligible licensees for the ESMR block channels within a particular MTA, it can then assign those channels. If the MTA has only one qualified ESMR licensee, then the Commission will grant that licensee authority to use all 200 contiguous channels (Nos. 401-600) within the MTA. Should an MTA have more than one eligible ESMR licensee, the Commission should institute a voluntary consultation period lasting no more than three months. In most instances, the natural contours of existing service areas will be clear, and the parties will be able to propose an appropriate geographic solution that suits their individual needs.

In the unlikely event of an impasse at the end of the three-month voluntary consultation period, the Commission should impose a settlement on the parties. The fairest and most equitable division of the ESMR block in an MTA with multiple eligible

^{21/} By letter dated December 23, 1992, the Chief, Private Radio Bureau articulated the necessary criteria for differentiating between a traditional SMR license application and an ESMR, or wide-area, license application. Strict application of these criteria is critical to assigning the ESMR blocked channels to deserving applicants and to ensuring the most efficient and effective use of spectrum for public benefit. See Letter from Ralph A. Haller, Chief, Private Radio Bureau, to David E. Weisman, on behalf of the Ad Hoc Specialized Mobile Radio Industry Group.