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August 29, 1994

Federal Communications Commission  
Office of The Secretary  
1919 M Street, N.W.  
Washington, D.C. 20554

Re: Pending 800 MHz SMR Applications (GN Docket 93-252)  
and Maxcell

Dear Sirs:

MTI, Inc. ("MTI") is an 800 MHz SMR Licensee and applicant. It is wholly-owned by Charles M. Bruce, an attorney and member of the District of Columbia Bar. MTI filed a letter earlier concerning Commission's News Release, Report DC-2638. MTI's FCC counsel has informed it that the Commission is now considering two ill-advised and likely illegal alternatives: (1) inviting new applications to file on top of pending SMR applications and then conducting an auction or (2) taking some other type of action that would subject pending SMR applications to auction. This letter respectfully urges the Commission not to do any such thing, but, rather, to begin processing again all pending 800 MHz SMR applications.

MTI's FCC counsel has said: the Maxcell case (in which the Court sustained the Commission's application of lottery rules to cellular applications that were filed under the comparative criteria standards) is being used as the basis for the imposition of auction standards upon the long-pending 800 MHz SMR applications, but Maxcell is not applicable in the instant situation for reasons including the following.

(1) The auction legislation is applicable to mutually exclusive applications, not to those filed on a first-come, first-served basis.

(2) The auction legislation specifically states that money shall not be the only consideration; other factors, such as competition, small business and minorities, must be considered.

(3) In Maxcell, new applications were not permitted.

(4) In Maxcell, pending applicants were not obligated to incur new liabilities nor to expend more money.

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(5) In Maxcell, there was prior notice of the possibility of such a reversal of standards, in earlier Commission notices and orders.

(6) In Maxcell, the imposition of lotteries reduced the licensing time, thus expediting the date of cellular service to the public. Here, the imposition of auction processes will impose material delays in service to the public (not to mention the virtual certainty of protracted litigation from the appeals of pending applicants), giving cellular and PCS even greater "head starts."

(7) In Maxcell, minority and small business applicants were not prejudiced by the change in the licensing procedures; in SMR, hundreds of minority and small business applicants will literally be eliminated from the SMR business.

(8) In Maxcell, cellular was not a one-company-monopoly industry, as SMR has become, by virtue of the waivers that Nextel has received from the Commission. Nextel is owned in material part by Motorola, the SMR industry's only equipment supplier. Nextel has now purchased every other meaningful SMR competitor. Hence, the only competition that Nextel will ever face in SMR will come from the pending application of small business people for the smaller U.S. markets. By auctioning the licenses sought thereby, the Commission is virtually guaranteeing a total Nextel monopoly of SMR service in the U.S. This was never the intention of the Congress.

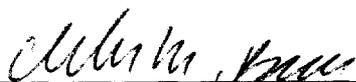
(9) The SMR industry already suffers many competitive disadvantages to cellular and PCS. A failure to process pending applications will only serve to exacerbate those competitive disadvantages.

(10) In Maxcell, there was no loss of vested property rights by the applicants. Every single one of them emerged with valuable minority interests. In the case of the pending 800 MHz SMR applications, 99% of them will lose everything, all that they have invested and all of their potential profits; and they will do so without due process by virtue of an unconscionable ex post facto rule-change by the Commission.

For all of the above reasons, the Commission is respectfully requested to take no action that would subject pending 800 MHz SMR applications to auctions and to commence processing of those applicants at an early date.

Very truly yours,

MTI, Inc.

By:   
Charles M. Bruce  
President

cc: Commissioners