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

In the matter of	)	
	)	
Amendment of Part 90 of the	)	
Commission's Rules to Facilitate	)	**PR Docket No. 93-144**
Future Development of SMR	)	**RM 8117, RM-8030**
Systems in the 800 MHz	)	**RM-8029**
Frequency Band	)	
and		
Implementation of Section	)	
309(j) of the Communications	)	**PP Docket No. 93-253**
Act- Competitive Bidding	)	
800 MHz SMR	)	

COMMENTS OF E.T. COMMUNICATIONS CO.

E.T. Communications Co. ("E.T."), pursuant to the provisions of Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), hereby submits its Comments in response to the Further Notice of Proposed Rule Making in the above referenced proceeding[1] in which the FCC plans to implement a new framework for licensing Specialized Mobile Radio ("SMR") systems in the 800 MHz band.

I. INTRODUCTION

E.T. has been a provider of SMR service since 1980. E.T. provides dispatch and telephone interconnect services to the northeastern Wisconsin areas, with three sites centered around Green Bay, Wisconsin. Because E.T. will be significantly affected by the FCC's proposals, it is pleased to have this opportunity to submit the following comments.

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1 Further Notice of Proposed Rule Making ("Further Notice"), FCC Docket No. 93-144, Released November 4, 1994 (FCC 94-271). The deadline for the submission of Comments and Reply Comments in this proceeding was extended to January 5, and January 20, respectively. See, Order, P.R. Docket No. 93-144, DA 94-1326 (released November 28, 1994).

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II. COMMENTS

A. Channel Assignment and Service Areas

1. Spectrum Designated for MTA Licensing

The FCC proposes to license the "upper" 200 channels in the 800 MHz band for wide area SMR systems on a Major Trading Area ("MTA") basis. The FCC would license the "lower" 80 channels currently designated for SMR service for local systems.

E.T. believes that the lower 80 channels, as well as the 150 channels currently designated for General Category use, should be available for SMR systems. These channels could be used by local licensees, existing wide area systems, or combined to make future wide area systems. However, the rules governing these channels would remain as they are today (with greater protection for co-channel licensees). These channels would not, therefore, be authorized for use throughout an MTA, unless they were actually licensed and constructed at sites throughout the MTA. There would be no automatic protection for these sites throughout an MTA. This approach would permit local licensees to expand their operations, and permit them to form wide area systems in the future, if market demand requires.

2. Size of MTA Spectrum Blocks and Spectrum Aggregation Limit

The Commission proposes to divide the upper 10 MHz of 800 MHz SMR spectrum into four blocks of 2.5 MHz each, corresponding to 50 channels per block. E.T. agrees with the Commission's proposal. E.T. proposes that no more than 7.5 MHz of spectrum, of the 10 MHz available for MTA based licensing, be initially controlled by one entity. This would provide at least two MTA based licensees in each market. To the extent that the MTA based licensee found

that it required the use of additional spectrum, it could employ channels from the lower 80 SMR and the 150 General Category, under the rules appropriate for their use.

3. Licensing of Non-Contiguous Local Channels

E.T. strongly supports the continuation of site specific licensing for all local channels -- both the current lower 80 SMR channels as well as the 150 General Category channels that E.T. believes should be available for SMR use. Should the Commission nevertheless proceed with area specific licensing, E.T. urges that this approach be limited to areas where there is currently no use of the spectrum to be licensed. Because of the existing crowded spectrum environment, it makes little sense to license local systems, where in a particular market, there may be one or more licensees already providing local service.

Because E.T. urges the use of site specific licenses, the Commission should take the opportunity of this proceeding to strengthen the co-channel interference criteria. A minimum of a 40/22 dBu separation criteria should be strictly observed. The Commission should restrict operators' ability to authorize systems that "short space" this interference criteria. By allowing short spacing, the Commission makes the provision of SMR service less financially feasible. A stricter separation standard will make it less likely that competing systems will "lock in" co-channel licensees to existing sites.

B. Rights and Obligations of MTA Licensees

1. Treatment of Incumbent Systems

E.T. agrees with the Commission's conclusion that incumbent SMR systems should not be subject to mandatory relocation to new frequencies. Relocation should only occur on the terms and conditions mutually agreeable to the incumbent and MTA licensees. There is no

adequate policy basis for mandatory relocation. While in other instances[2] the Commission has imposed mandatory relocation on existing licensees, those actions were undertaken to create a new service. In this instance, wide area SMR systems already exist. It is unnecessary to expend the significant social and financial resources of spectrum relocation in order to offer a new service, particularly because the proponents of mandatory migration can achieve on a voluntary basis many of the same goals they seek without disrupting existing services. It is patently unfair and against the public interest to require disruption to services in existence without justification.

Because the Commission recommends against mandatory relocation, it must address the ability of incumbent licensees to relocate existing systems. E.T. generally suggests that incumbent licensees be permitted to relocate their facilities at least within their 22 dBu coverage contour. To restrict licensees to their existing facilities would make them hostages to site owners. While E.T. recommends a 40/22 dBu co-channel separation standard in general, that separation could be reduced in favor of a local licensee within the coverage area of an MTA system, unless the MTA licensee had already constructed co-channel facilities at a particular site. The MTA licensee, like any other co-channel licensee, would be required to observe the 40/22 dBu co-channel separation requirement as it applied to the local licensee.

2. Co-Channel Interference Protection

MTA licensees should not be able to construct facilities within the 22 dBu contour of incumbent co-channel licensees. Likewise, local licensees should be prohibited from locating their sites within the 22 dBu contour of other local licensees. However, incumbent licensees should be able to move within their 22 dBu service area, if not otherwise blocked by another

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2 See e.g., Memorandum Opinion and Order, ET Docket No. 92-9, 9 FCC Rcd. 1943 (1994).

local licensee or a constructed MTA channel. This will protect local licensees from being blocked in by the MTA licensee. It is unlikely that there would similarly be local licensees on all sides of an incumbent licensee, otherwise preventing a move.

C. Construction Requirements

The Commission seeks comment on whether strict enforcement of a one year construction period will be an adequate protection against spectrum warehousing on frequencies occupied by local SMR systems. E.T. agrees that the Commission should strictly enforce the one year construction deadline, as well as the requirement for licensees to begin serving customers by the end of their construction period. The MTA licensee should also be held to strict construction requirements. E.T. agrees with the Commission's proposal to impose license forfeiture on MTA licensees that fail to comply with construction requirements.

D. SMRs on General Category Channels & Inter-Category Sharing

The Commission should designate all 230 channels (the 80 lower SMR channels as well as the 150 General Category) for SMR use. These channels have been available for many years. The SMR service is plainly expanding to meet the needs of many entities, as the Commission envisioned when it created the service. Without access to all 230 non-MTA channels, local licensees will be foreclosed from either offering service in the first place, or expanding their systems.

Similarly, the Commission should not necessarily foreclose local SMR licensees from using Business and Industrial/Land Transportation Pool channels to expand operating systems. These operating systems are serving customers that might otherwise employ the Pool channels. To the extent that the Pool channels remain unused, it is logical that local SMR licensees be

permitted to access the spectrum, to provide the communications services to the very entities for whom the channels were originally designated.

E. Regulatory Classification of Licensees

The FCC would presumptively classify all MTA based licensees as commercial mobile radio service ("CMRS") providers. It asks whether the same presumption should apply to licensees authorized for the lower 80 channels. E.T. believes the FCC erroneously characterized all SMR providers as substantially similar when it adopted the Third Report and Order in the Docket No. 93-252 proceeding.[3] Accordingly, there should be no presumption that CMRS status attaches to the lower 80 (or the 150 General Category) channels.

F. Competitive Bidding Issues

E.T. disagrees with the requirement to auction local SMR channels. This proposal ignores existing SMR systems that are already providing service and is based on the Commission's flawed logic that local SMR systems are substantially similar to other mobile communications services. Moreover, auctions favor those with the deepest pockets and work against those local SMR operators who are currently providing efficient and effective service.

III. CONCLUSIONS

All General Category and the "lower 80" SMR channels should be designated for SMR use. The rules governing these channels should remain as they are today. The establishment of rights for MTA based licensees should not come at the expense of incumbent SMR licensees. Finally, there should be no presumption that all SMR providers are CMRS providers. SMR

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[3] Implementation of Sections (n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Third Report and Order, FCC 94-212, released September 23, 1994 ("Third Report and Order").

services are not substantially similar to other CMRS services and should not be subject to the same regulatory scheme as CMRS providers.

WHEREFORE, THE PREMISES CONSIDERED, E.T. Communications Co. hereby submits its Comments in the foregoing proceeding and urges the FCC to act in a fashion consistent with the views expressed herein.

Respectfully submitted

E.T. COMMUNICATIONS CO.

By: _____

2040 Radisson Street
Green Bay, Wisconsin 54302
(414) 468-7373

Dated: January 4, 1995

I verify under penalty of perjury that the foregoing is true and correct. Executed on January 4, 1995.

By: _____

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