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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C.

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

COMMENTS OF NASHTEL

NashTel, L.L.C. ("NashTel"), by its attorneys and pursuant to Sections 1.415 and 1.419 of the Commission's Rules, hereby submits its comments in the above-captioned Further Notice of Proposed Rule Making ("NPRM").[1/] NashTel urges the Commission to: (i) permit Specialized Mobile Radio ("SMR") operators already licensed on the General Category Channels to continue to hold their licenses; (ii) provide SMR operators with a five-year period to fully utilize a channel before the channel becomes available for sharing purposes by other operators; (iii) eliminate channel loading requirements based on number of units

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1/ Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band and Implementation of Section 309(j) of the Communications Act--Competitive Bidding 800 MHz SMR, PR Docket No. 93-144, PP Docket No. 93-253, FCC 94-271 (November 4, 1994). The Comment Date was extended from December 5, 1994 to January 5, 1995. See Order, DA 94-1326, November 28, 1994. The Reply Comment Date was extended from December 20, 1994 to January 20, 1995. Id.

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to determine whether a channel is fully utilized and, instead, permit SMR operators to claim that their channel is fully loaded if their grade of service approximates .02 erlang C; and (iv) allow unrestricted trunking of General Category Channels. As NashTel will demonstrate, these rule modifications would permit small operators to offer improved, more cost-efficient service and would help the Commission establish regulatory symmetry among all Commercial Mobile Radio Service ("CMRS") providers.

I. BACKGROUND

NashTel is a newly formed Tennessee limited liability company that constructs, operates and manages 800 MHz SMR systems for SMR licensees through management agreements. NashTel currently manages five one-channel General Category SMR systems in the Nashville, Tennessee area. The licensees operate their interconnected systems on a for-profit basis. As such, the licensees are considered CMRS providers under the Commission's rules.[2/] Each SMR system managed by NashTel received its SMR license after August 10, 1993, therefore, their licenses have been considered CMRS as of August 10, 1994.[3/]

In its NPRM, the Commission proposes to implement new rules for SMR systems in the 800 MHz band. The Commission states that the new rules must promote four objectives:

2/ See Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Second Report and Order, ("CMRS Second Report and Order") GN Docket No. 93-252, 9 FCC Rcd 1411 (1994), at ¶ 11.

3/ See CMRS Second Report and Order, at ¶¶ 82-109.

> (1) providing opportunities for 800 MHz SMR system operators in all areas of the country to develop wide-area systems while also protecting the viability of smaller systems; (2) ensuring that all SMR licensees make productive use of the spectrum by constructing and implementing their systems promptly; (3) encouraging more efficient use of the SMR spectrum, particularly in congested areas, through development of technologically advanced systems supporting enhanced services such as seamless wide-area roaming and high speed data transmission; and (4) removing any unnecessary regulatory burdens that hamper the efforts of 800 MHz SMRs to compete effectively with other CMRS offerings.[4/]

The Commission asks how it should treat existing SMR systems under its new regulatory framework, focusing on licensees operating on channels that will become part of the spectrum blocks to be licensed on a wide-area basis.[5/] Among the proposals is to allow currently licensed SMR systems to continue operating at their previously authorized sites and channels, while requiring new SMR licensees to provide co-channel interference protection to the incumbent systems.[6/]

Under the current rules, single channel 800 MHz SMR licensees may be licensed on either the 150 General Category Channels or the 100 Industrial/Land Transportation and Business Categories Channels (known as "Pool Channels").[7/] In its NPRM, the Commission proposes three alternatives for future licensing of the General Category and Pool Channels. The first alternative would be to prohibit SMR operators from being licensed on General

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4/ NPRM, at ¶ 13.

5/ NPRM, at ¶ 1.

6/ NPRM, at ¶ 12.

7/ See 47 C.F.R. §§ 90.615, 90.621.

Category and Pool Channels.[8] The second option would be to set aside part of the General Category Channels exclusively for SMR licensees, while prohibiting inter-category sharing by SMR licensees on the Pool Channels.[9] The final alternative would be to license only SMR applicants on the General Category Channels.[10]

II. CURRENT SMR LICENSEES SHOULD CONTINUE TO HOLD THEIR LICENSES

NashTel supports the Commission's statement that "SMR licensees with existing operations on the General Category or Pool Channels should be allowed to continue their operations on such channels..."[11] NashTel represents SMR system operators that have invested substantial amounts of money and effort constructing and operating their systems on their licensed channels. Dislocating these operators, most of whom are small businesses with limited financial resources, would cause these operators to lose their substantial investments in money, time and energy developing their systems. NashTel agrees with the Commission that forced relocation of current licensees would impose significant financial burdens on licensees and disrupt service to customers.[12]

8/ NPRM, at ¶ 53.

9/ NPRM, at ¶ 53.

10/ NPRM, at ¶ 53.

11/ NPRM, at ¶ 52.

12/ NPRM, at ¶ 34.

III. THE PERIOD FOR EXCLUSIVE USE OF A CHANNEL SHOULD BE EXTENDED TO FIVE YEARS

Under the Commission's Rules, an SMR licensee operating a conventional system has a 12-month period in which to construct and begin operations.[13/] By the end of the 12-month period, the licensee also must have each channel loaded to 70 mobile stations or risk sharing the channel with other operators.[14/] The Commission originally instituted the channel loading requirement to ensure efficient use of the spectrum.[15/]

NashTel urges the Commission to eliminate the rule that a channel be fully loaded within the construction period in order for the licensee to obtain exclusive use of the channel. Instead, NashTel asks the Commission to give SMR licensees a five-year period in which to fully utilize a channel before the

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13/ Third Report and Order, Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band, Amendment of Parts 2 and 90 of the Commission's Rules to Provide for the Use of 200 Channels Outside the Designated Filing Areas in the 896-901 MHz and 935-940 MHz Band Allotted to the Specialized Mobile Radio Pool ("CMRS Third Report and Order"), GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, FCC 94-212 (September 23, 1994), at ¶ 177. In order for a licensee to obtain additional time to construct and begin operating its system, the licensee must "demonstrate unique circumstances beyond its control to justify an extension." Id.

14/ 47 C.F.R. § 90.625(a). Although the Commission eliminated loading requirements that resulted in the "take back" of channels from trunked SMR providers, there is no indication that the Commission eliminated the requirement that General Category SMR providers fully load their channels within the construction period in order to obtain exclusive use of their licensed channels. See CMRS Third Report and Order, at ¶¶ 190, 193.

15/ CMRS Third Report and Order, at ¶ 185.

channel becomes available for sharing purposes by other licensees. Further, NashTel believes that the more appropriate method of determining whether a channel is fully utilized would be to permit SMR operators (at the end of the five-year period) to claim that their grade of service approximates .02 erlang C during the busy hour--a common loading standard used by the telephone and cellular industries.

The requirement that a channel be loaded to 70 mobile units within 12 months in order to obtain exclusive use of the channel is anachronistic. The Commission, at the direction of Congress, has begun the task of establishing uniform rules for all CMRS providers.[16/] The Commission has already eliminated the channel loading requirement that resulted in the "take back" of channels from trunked SMR providers. It makes no sense to keep the channel loading requirement for General Category SMR operators to retain exclusive use of the channel when other SMR providers are not subject to the same rule. In sum, channel loading requirements are outdated and outmoded.

However, if the Commission does not see fit to eliminate channel loading requirements for General Category SMR systems, it nevertheless makes little sense to require a system to be fully loaded at the moment it is constructed. It takes time to market the service and place customers on the system. Therefore, a General Category SMR operator should be given five years to load the channel before it is subject to sharing. Moreover, the Commission need not concern itself with warehousing of channels

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16/ See CMRS Third Report and Order, at ¶ 1.

once the system is constructed. After all, the licensee can recover its investment only if it places customers on the system. On the other hand, failure to provide the licensee with sufficient time to load the system prior to opening the channel up to sharing handicaps the licensee from the start.

NashTel also believes that the current channel loading standard is an inaccurate method for determining whether a licensee is fully utilizing its system. A small number of customers making heavy use of air time are loading a channel just as much as a large number of customers using the air time lightly. Therefore, a channel loading standard of 70 mobile units per channel is at best a procrustean method of regulation. If the Commission is going to require channel loading, the more appropriate method would be to permit SMR operators to demonstrate that their grade of service approximates .02 erlang C during the busy hour--a common loading standard used by telephone and cellular operators.

V. TRUNKING SHOULD BE ALLOWED

Under the Commission's rules, conventional SMR systems generally operate on one to four channels with no trunking allowed.[17/] This forces a user to scan each channel until it finds an available one. A conventional SMR operator applying to convert its system to the trunked mode may only apply to convert the number of channels not to exceed one more channel than its

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17/ *See* 47 C.F.R. § 90.615.

current loading warrants,[18] thus severely limiting its ability to trunk channels.

Trunked systems, on the other hand, automatically direct users to the first available channel or, if no channel is available, place the user in a queue to be served in turn. Thus, trunking provides a more efficient use of the spectrum in that fewer users are blocked when trying to place a call.

NashTel urges the Commission to allow conventional SMR operators to trunk their systems as the market demands, instead of being required to first fully load their systems according to Commission standards. Requiring an SMR operator to fully load its channels before allowing it to trunk its system is inefficient. Retaining a regulation that promotes inefficient use of the spectrum is antithetical to good government. NashTel is unable to ascertain any public interest reason why the Commission would prevent a more efficient use of the spectrum.

In order to obtain greater efficiency, the Commission should permit SMR operators to trunk their systems as they deem necessary. Trunking is expensive.[19] SMR operators will not trunk their systems unless they believe that trunking will be cost effective and there is adequate consumer demand to justify the expense. That decision should not be made by government regulation. Further, according to the Commission, "[s]pectrum

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18/ 47 C.F.R. § 90.615(b)(1).

19/ See Trunking in the Private Land Mobile Radio Services for More Effective and Efficient Use of the Spectrum, ("Trunking Report and Order") PR Docket No. 87-213, FCC 90-234, 67 RR 2d 1473, at ¶ 5.

efficiency considerations warrant encouraging trunking of conventional systems where desired."[20/]

VI. CONCLUSION

For the reasons asserted herein, NashTel asks the Commission to accordingly modify its rules regulating licensees of General Category SMR systems.

Respectfully submitted,
NASHTEL, L.L.C.

By: _____
Eliot J. Greenwald
Kevin M. Walsh

Its Attorneys

Fisher Wayland Cooper Leader
& Zaragoza, L.L.P.
2001 Pennsylvania Avenue, N.W.
Suite 400
Washington, D.C. 20006
(202) 659-3494

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20/ Trunking Report and Order, at ¶ 41.