PALMER COMMUNICATIONS INCORPORATED

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Via Federal Express

Mr. William F. Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Re: Comments of Palmer Communications Incorporated
PR Docket No. 93-144, RM-8117, RM-8030, RM-8029, PP Docket 93-253
FCC 94-271

Dear Mr. Caton:

Transmitted herewith, on behalf of Palmer Communications Incorporated, is one original and 9 copies of Comments in the above-referenced Further Notice of Proposed Rule Making proceeding. Please stamp the enclosed file copy and return it to the undersigned in the enclosed postage pre-paid envelope. Do not hesitate to call me if you have any questions regarding this filing.

Sincerely,

Marianne H. LePera
Staff Attorney

Enclosures
cc: R. Engelhardt
P. Meehan

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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 Future 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

To: The Commission

COMMENTS

Palmer Communications Incorporated ("Palmer"), a multiple license operator of SMR Systems under Part 90 of the Commission's Rules, hereby comments on the above-captioned *Further Notice of Proposed Rule Making* (*FNPRM*). The stated purpose of the *FNPRM* in restructuring the SMR allocation framework is to achieve two important goals: 1) to encourage the development of wide-area, multi-channel SMR systems capable of competing with cellular and broadband Personal Communications Services ("PCS"); and 2) to preserve station-by-station licensing to smaller SMR systems which provide primarily local service. *FNPRM* at ¶ 1.

I. Equitable Division of SMR Spectrum. In Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Third Report and Order*, FCC 94-212, adopted August 9, 1994, released September 23, 1994 (*CMRS Third Report and Order*), the Commission determined that a portion of the 800 MHz

SMR band should be allocated for MTA-based licensing. *CMRS Third Report and Order* at ¶ 97. The *FNPRM* proposes to set aside 10 MHz of the available 14 MHz SMR spectrum, to be licensed in four 2.5 MHz blocks in each MTA. *FNPRM* at ¶ 12. This allocation of the 200 contiguous channels which form the 10 MHz block is intended to stimulate the development of wide-area SMR and thus satisfy the first goal, mentioned above.

In order to preserve the local SMR service provided by primarily smaller SMR operators, the Commission proposes to allocate 4 MHz of spectrum for licensing on a channel-by-channel basis. Applicants for these 80 non-contiguous channels will be limited to operating no more than five channels at any one time within a single geographic area. *Id.* Palmer believes that the current proposal will handicap, rather than protect, the smaller, local SMR providers. Thus, the second goal in reallocating the spectrum will not be achieved.

The Commission states in its *FNPRM* that "our proposals attempt to strike a fair and equitable balance between the competing interests of local and wide-area SMRs operating in the 800 MHz band." *Id.* at ¶ 2. However, as proposed, the spectrum is unfairly divided between the two types of SMR providers vying for the same SMR channels. An overwhelming majority of the SMR bandwidth, 10 MHz, will be assigned for wide-area use. In comparison, a limitation to the remaining 4 MHz of spectrum will cripple growth in the local SMR markets. Such a lopsided allocation to wide-area SMR operators arbitrarily favors the regional and national SMR empires, as well as their equipment supplier and equity partner.

Palmer proposes that the spectrum should be more fairly divided between those channels available for wide-area SMR and those to be assigned on a local basis. An <u>equal</u> division of spectrum would be more appropriate. Instead of diving the spectrum into a 10 MHz and 4 MHz

allocation, Palmer proposes the assignment of 7 MHz of the contiguous channels for wide-area licensing. The remaining 3 MHz of contiguous channels, in addition to the 4 MHz of non-contiguous channels would afford an equal 7 MHz available for licensing on a local channel-by-channel basis.

Palmer's proposal is supported by basic notions of fairness, and better meets the Commission objective of balancing the needs of two competing interests in the same spectrum. The original justification for allocating a full 10 MHz of spectrum to wide-area licensing rests on the comparison to the minimum bandwidth which would be licensed as a single PCS block, and thus presumably, the minimum necessary to compete with PCS. *FNPRM* at p. 13 n.40. However, this justification is fatally undercut by the Commission's proposal to divide the 10 MHz band into four separate 2.5 MHz blocks. *Id.* at ¶ 20. Indeed, Palmer's proposal to reallocate 3 MHz of the proposed wide-area spectrum does not deprive wide-area operators of the opportunity to apply for the associated channels. The *FNPRM* proposes to permit wide-area operators to apply for local channels on the same terms as local operators. *Id.* at ¶ 26. Accordingly, setting aside a block of 10 MHz for wide-area use becomes simply arbitrary.

Palmer's proposal to aggregate the remaining 3 MHz of contiguous channels with the 4 MHz of non-contiguous channels for licensing on a local basis will satisfy the concerns voiced by the Commission in its *FNPRM*. The Commission recognizes that the non-contiguous channels which it proposes to reserve for local licensing are "already heavily licensed." *FNPRM* at ¶ 18. The reservation of these needed additional 3 MHz of channels for local operators will alleviate the shortage of channel capacity for local use. In addition, local operators will be able to enter the "frequency swapping" market envisioned by the Commission on equal footing with wide-area

operators. *See Id.* Parity in bargaining strength between the typical small local operator and the usual large wide-area operator would be fostered by parity in channel availability. Moreover, reducing the size of the wide-area allocation and increasing the number of channels available on a channel-by-channel basis will better prevent the "warehousing" of spectrum which could result from the virtually unlimited aggregation of spectrum proposed. *Id.* at ¶ 23. All of these goals envisioned by the Commission can be appropriately served by the equal allocation of SMR spectrum between wide-area and local SMR operators.

II. Preservation of Local, Site-specific Licensing. In the *FNPRM*, the Commission considers two alternatives for the licensing of non-contiguous SMR channels. The first alternative preserves the existing site-specific licensing of SMR channels. The second proposes to utilize BTAs to assign a block of frequencies within a small geographic area. *FNPRM* at ¶¶ 24-25.

Palmer supports the preservation of the current licensing regimen for the non-contiguous channels, as well as for the 3 MHz Palmer proposes to excise from the wide-area set aside. Thus, licensing of these channels would be on a site-specific, local basis. Palmer supports the issuance of up to five channels per license. In so regulating these channels, SMR applicants would fashion the most efficient immediate use of the spectrum. Consequently, the warehousing of channels would be severely limited, since channels would not be sitting idle, reserved for future proposed service areas within a larger defined geographic region. Moreover, maintaining the present licensing system will eliminate the problems associated with the wide-area set aside, such as relocation or protection of incumbent licensees.

III. Protection of Incumbent SMR Operators. In the *FNPRM,* the Commission tentatively concludes that incumbent licensees on existing operating channels may not be required

to vacate the channels located in a wide-area SMR block. *FNPRM* at ¶¶ 31-34. Palmer supports this tentative conclusion and vehemently opposes any proposal which would mandate the relocation of existing operators to alternate channels. Palmer agrees with the Commission, that voluntary negotiations among the involved parties will produce the solution dictated by the marketplace. The present SMR technology can serve the business community throughout the US at a very low and efficient cost-per-mobile radio unit, unless the Commission forces the industry to relocate and re-build to accommodate the larger regional and national SMR operators. Such a result would not serve the public interest, but merely benefit the financial interest of the regional and national SMR operators and the industry's major equipment manufacturer.

IV. Conclusion. Palmer believes that an equal division of spectrum between wide-area and local SMR operators will supply the best balance of power between these two competing interests. In order to maintain a healthy local SMR marketplace, the protection of incumbent SMR licensees is essential. The retention of site-specific licensing for local channels will provide the stability and continuity the SMR industry will need to thrive during the proposed restructuring of the regulatory framework. Palmer Communications Incorporated respectfully submits the foregoing Comments in the above-captioned proceeding.

Respectfully Submitted,

PALMER COMMUNICATIONS INCORPORATED

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CERTIFICATE OF SERVICE

I, Lucille J. DiMare, a secretary with Palmer Communications Incorporated, do hereby certify that the foregoing **COMMENTS** were served, via First Class United States mail, postage prepaid, on this 4th day of January, 1995, upon the following parties:

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