U.S. SMALL BUSINESS ADMINISTRATION
WASHINGTON, D.C. 20416

OFFICE OF CHIEF COUNSEL FOR ADVOCACY

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Before the
Federal Communications Commission
Washington, DC 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

Comments of the Chief Counsel for Advocacy
of the United States Small Business Administration
on the Further Notice of Proposed Rulemaking

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Executive Summary

The Federal Communications Commission (FCC or Commission) initiated this further notice of proposed rulemaking to provide specific rules for auctioning spectrum and operation of wide-area specialized mobile radio (SMR) service.

The underlying premise of the FNPR is that wide-area SMR service is in the public interest and rules need to be developed to enhance the capability of firms interested in providing such service. The Office of Advocacy disagrees with the premise. The FCC's narrow focus on wide-area SMR service ignores the plight of current SMR licensees and, more importantly, their nearly 1,000,000 small business customers. The Office of Advocacy firmly believes that the Commission should step back from its appointed course and seek to ensure that current licensees can provide their valuable service to customers.

The Office of Advocacy recognizes that the Commission is unlikely to forestall its efforts to advance wide-area licensing through auctions. The Office of Advocacy does not dispute the FCC's finding that auctions represent an appropriate manner for allocating spectrum in the 800 MHz band. However, the Office of Advocacy believes that the Commission must do more than provide bidding credits and installment payments to participants in the auction.

The Office of Advocacy strongly urges the Commission to establish an entrepreneur's block for the SMR auctions as it did for licensing of broadband personal communication services. Firms with less than $15 million in gross revenue would be eligible as an entrepreneur. The Office of Advocacy also opines that the Commission should, unless technically infeasible, assign one of the 2.5 MHz blocks in the upper portion of the 800 MHz spectrum as the entrepreneur's block. If the FCC is incapable of doing that, then it absolutely must assign the lower 80 channels in the band for bidding by entrepreneurs. Failure to provide an entrepreneur's block in conjunction with the proposal not to cap control of spectrum in the band (a proposal which the Office of Advocacy opposes) could result in the inability of current licensees from obtaining any spectrum at all.

The Office of Advocacy also opines that the Commission's concern about warehousing of spectrum by local-area licensees is misplaced. These firms do not have the financial resources to gamble on the future value of spectrum and any purchases of spectrum made during an auction will likely be put to immediate use. However, firms interested in providing wide-area service have both the financial resources and the need to avoid immediately entering a potentially crowded wireless marketplace. These firms have the incentive to warehouse spectrum. The Office of Advocacy strongly urges the Commission to prohibit that by requiring wide-area licensees to institute service in portions of

the license area. This is akin to the service milestones adopted by the Commission for broadband personal communication services.

Finally, the Office of Advocacy believes that the Commission may not be adamant in its determination to protect incumbent licensees from incursions by wide-area licensees. The Office of Advocacy strenuously urges the Commission to adopt strong co-channel interference requirements for incumbent licensees and permit incumbent licensees to expand into the territory of the wide-area MTA licensee in order to provide service to customers.

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I. *Introduction -- History of the Current Proceeding*

Title VI of the 1993 Omnibus Budget Reconciliation Act[1] had a profound effect on the Federal Communications Commission's (FCC or Commission) regulation and assignment of spectrum for wireless communication services. OBRA bifurcated utilization of spectrum into licensees providing commercial mobile radio service (CMRS) and private mobile radio service. OBRA also authorized the Commission to auction spectrum for use in providing CMRS. The FCC instituted

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[1] Pub. L. No. 103-66, Title VI, 107 Stat. 312, 392 (hereinafter referred to as OBRA).

the instant further notice of proposed rulemaking (FNPR) to address issues related to the licensing of CMRS in the 800 MHz band.

The primary users of the 800 MHz band are so-called specialized mobile radio (SMR) service providers. When the Commission established the SMR service, it expected that almost all providers would be involved in radio dispatch communications for customers in local areas. Since the FCC action in 1974 to authorize SMR, the service generally has been utilized to provide radio dispatch service within local areas.

Advances in technology have made it easier for SMR providers to construct networks that emulate cellular telephone service in geographic coverage[2] and interconnection to the wireline telephone network. To that end, a number of organizations filed petitions for rulemaking with the Commission to allow SMR providers to develop wide area networks to compete with cellular licensees.

The Commission, in response to these petitions for rulemaking and the enactment of OBRA, adopted its Third Report and Order in

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[2] SMR licenses are issued by individual channels and the area covered is coextensive with the area that can receive and transmit over that channel. These are referred to as local area licenses and usually cover a small city and its suburbs. Wide-area SMR service would dramatically expand the ability of an SMR customer to roam in a given region without losing access to the SMR provider.

its CMRS docket.[3] First, the FCC concluded that SMR providers have the technical capacity to compete against cellular telephone and broadband personal communication service (PCS) licensees. As a result, the FCC interpreted §§ 3(n) and 332 of the Communications Act, as amended by OBRA, as requiring SMR licensees to be treated as CMRS providers.[4] The FCC then determined that many of the restrictions on SMR licensees would hinder their ability to compete against cellular and PCS licensees. Finally, the Commission concluded that MTAs[5] would be the best method for allowing SMR licensees to provide wide-area coverage. However, specific rules for auctioning spectrum and operation of wide-area SMR service was left for a later rulemaking.

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[3] 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 (Sept. 14, 1994) (hereinafter CMRS Report and Order). The CMRS Report and Order is the subject of petitions for reconsideration by a number of entities including a coalition of current SMR providers interested in maintaining their current regulatory treatment by the FCC.

[4] The critical distinction in OBRA between private mobile service and CMRS is the ability of the licensee to offer common carrier service to all who wish it and the ability to interconnect into the switched wireline telephone network. 47 U.S.C. § 332(d).

[5] Rand-McNally, in the development of its commercial atlas, has divided the country into 51 areas called "major trading areas" or MTAs. Those 51 regions are further subdivided into 432 smaller areas called "basic trading areas" or BTAs. These geographic distinctions are the foundation of the Commission's licensing regime for both broadband and narrowband PCS. Cellular telephony licenses were issued according to urban and rural service areas which are equivalent to the Census Bureau's Standard Statistical Areas for Metropolitan and Rural areas in the United States. Due to consolidation in the cellular telephony market, a number of licensees can provide service that is nearly coextensive with the MTAs established for PCS and SMR service.

II. *The Further Notice of Proposed Rulemaking*

The FCC instituted the FNPR not only to address issues arising from the enactment of OBRA but also to provide specifics for the operation of a wide-area SMR service. The Commission proposals are far-reaching and represent a significant change from current operation of the SMR service.

The Commission proposes to designate the 10 MHz of continuous SMR spectrum in the 800 MHz band in four 2.5 MHz blocks for auctioning on a MTA basis for wide-area use.[6] Four MHz of spectrum making up 80 non-contiguous channels will be utilized for the provision of local-area service on a channel-by-channel basis as is currently done and this spectrum will be auctioned as well.

The FCC further proposes to grant MTA licensees the discretion to construct at any available site in the MTA and move locations within the MTA. Under this proposal, the MTA licensee will have the right to develop its own channelization plan subject to the prevention of co-interference with current licensees.

The FCC also proposes to permit the MTA licensee the first right to use any spectrum returned to the Commission as a result of

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[6] This portion of the spectrum is located in the higher end of the 800 MHz band and is often referred to as the upper portion. Similarly, the rest of the spectrum to be licensed is referred to as the lower portion.

license termination. A MTA licensee will be permitted to negotiate for the acquisition of any incumbent licensees within the MTA block based on a finding that all such purchases would be in the public interest.

The Commission also suggests that incumbent SMR licensees be permitted to operate only on already existing channel authorizations. To further protect incumbent licensees, new MTA licensees will be required to provide co-channel interference protection.

The Commission also tentatively concludes that it is appropriate to limit local licensees to only five of the available 80 channels in a given geographic area on an initial basis. The FCC proposes that local licensees will be able to obtain more channels only after the five currently authorized are in operation. The Commission also proposes to require that all channels granted pursuant to the current license (five channels) be built within one year of license grant.

The FCC determined that the proposals contained in the FNPR would have a significant economic impact upon a substantial number of small entities. As a result, the Commission prepared an initial

regulatory flexibility analysis as required by the Regulatory Flexibility Act, 5 U.S.C. §§ 601-12.[7]

III. *The SMR Industry Today*

There are approximately 1.6 million customers[8] of SMR licensees. The providers can be broken down into two groups: 1) the vast majority of SMR licensees are small businesses who operate in local regions; and 2) one large entity Nextel -- which has 600,000 customers throughout the United States.[9] Most SMR providers operate in smaller metropolitan and rural areas -- regions to which cellular telephony came significantly after SMR systems were operating.[10] In general, dispatch service is the

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[7] The initial regulatory flexibility analysis does not itself contain a discussion of potential alternatives that might reduce the impact of the proposals on small entities. However, the text of the FNPR does contain such a discussion and the RFA permits an agency to incorporate other analyses into the initial regulatory flexibility analysis.

[8] These customers include a range of mobile radio users -- professionals, construction companies, delivery services, transportation operators, and public safety entities.

[9] Nextel achieved this customer base mainly through acquisition of other SMR licensees. Nextel's primary goal is to provide wide area service that competes with cellular and PCS service. In its efforts to take this strategy to fruition, Nextel purchased the largest SMR provider west of the Mississippi -- OneComm. The customer count for Nextel does not include the OneComm acquisition.

[10] Part of the failure of cellular to penetrate these markets was the Commission's method for licensing cellular service. Large urban markets were licensed first. This gave SMR providers an opportunity to serve mobile communication needs in areas that had not been licensed for cellular telephony. Many of these customers

(continued...)

prevalent use of SMR service in large metropolitan areas. In smaller markets, dispatch service could not maintain a viable ongoing business and SMR licensees provide interconnection into the wireline telephone network. Generally, approximately 60% of SMR business is dispatch service and 40% is the provision of interconnection to the wireline telephone market.

IV. *The Commission's Proposal is not in the Public Interest*

The FCC is required by the Federal Communications Act to allocate spectrum in the public interest. 47 U.S.C. §§ 309(a), 310(d). The Commission has determined that the proposals outlined in the FNPR will be in the public interest. The Office of Advocacy strongly disagrees.

The Commission believes that "many SMR licensees have expressed interest in providing wide-area service that is comparable to cellular or broadband PCS...." FNPR at ¶ 13. The Commission cites no statistics, such as the number of applicants seeking wide-area service status, to support its conclusion of the inexorable march by the SMR industry into wide-area service. In fact, only a few SMR licensees, albeit the largest ones in the industry, support utilization of SMR for wide-area service that

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[10](...continued)
stayed with their SMR provider once smaller urban and rural markets were licensed.

emulate cellular or PCS.[11] Thus, the vast majority of SMR providers do not support the concepts undergirding the FNPR.

Opposition to changes in service, by itself, does not conclusively determine whether the current or proposed spectrum allocation scheme is in the public interest.[12] The public interest benefits go beyond those of service providers. The primary goal of the Federal Communications Act was to provide an efficient, rapid, and cost-effective interstate and worldwide communications system to the American public. 47 U.S.C. § 151. Thus, the most important factor in determining whether a particular spectrum allocation scheme is in the public interest is to consider the impact that the plan will have on users of that service.

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[11] One of those licensees is OneComm which has agreed to transfer its licenses to the largest SMR operator -- Nextel. As the FCC is well aware, Nextel is the prime movant in seeking modification of SMR service so it can compete with cellular and PCS.

Other SMR licensees are interested in expanding their service territory including the provision of SMR service on a wide-area basis. However, these licensees have not shown any great interest in building systems that would duplicate the services provided by cellular or PCS licensees.

[12] For example, current fixed-point microwave users strenuously objected to the placement of broadband PCS service in the 2 GHz band. Nevertheless, the interests of the public in having PCS outweighed the needs of current incumbents. The Commission also required that new PCS licensees pay for the relocation of current incumbents in the 2 GHz band if necessary. Thus, the Commission accommodated all interests in the licensing of broadband PCS.

Unlike many other services that the Commission considers, SMR service is currently and almost exclusively utilized by businesses, the vast majority of which are small. Yet, the FCC's analysis, in either the CMRS Report and Order or the FNPR, is completely devoid of any consideration of the impact that changes to SMR service will have on customers. In fact, the absence of such analysis may be the result of the Commission's recognition that the proposals, as outlined in the FNPR, will be deleterious to the interests of the vast majority of SMR customers.

Current SMR service, whether it is dispatch or interconnection service, provides an inexpensive alternative to other methods of two-way mobile communication. While cellular telephony is an option in the provision of mobile communications, it is extremely expensive for many small businesses to equip an entire fleet of delivery vehicles with cellular telephones.[13] Current paging technology does not lend itself to efficient two-way communication because access to a telephone (either wireline or cellular) is

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[13] For example, the cheapest cellular telephone plan offered to consumers requires a monthly minimum charge of 20 dollars per month with call time extra. If one assumes that a commercial operation could obtain these prices (an unlikely scenario), then to equip twenty vehicles (not a large number for bicycle messenger services or taxicabs) with cellular telephones would cost approximately five thousand dollars per year. The Office of Advocacy suspects that monthly fees, exclusive of usage, would be significantly higher for commercial users. In addition to monthly service charges, most commercial users will be making calls during peak times thereby incurring the highest usage charges.

necessary.[14] Thus, the FCC's headlong rush to modify the licensing of SMR to permit a few select large entities[15] to provide an effective alternative to cellular or broadband PCS will be of little utility to the vast majority of SMR customers -- small businesses that need reliable, cost-effective two-way communication.

Nor can the FCC rest its public interest finding on the need to increase competition in the market for wireless voice communication. The Commission's current licensing regime for PCS is designed to provide five potential competitors to the two incumbent cellular licensees. The Office of Advocacy does not see the public interest benefit of providing yet another competitor in what will, by all accounts, be an extremely crowded provider marketplace. Thus, the pursuit of competition for its own sake, which appears to be the FCC's primary objective, is not in the public interest, particularly when current customers will be adversely affected.

While the Office of Advocacy strongly disagrees with the public interest foundation of the FNPR, the Office of Advocacy

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[14] Narrowband PCS will significantly enhance the capabilities of paging systems to provide two-way communications. However, narrowband PCS still will not provide direct two-way voice communication.

[15] The Office of Advocacy recognizes that companies such as Nextel, OneComm, and CellCall are not large within the context of the telecommunications industry as a whole. However, they certainly are very large when compared to the typical SMR licensee.

recognizes that the Commission is likely to take Admiral Farragut's advice to damn the torpedoes and move full speed ahead in modifying its SMR licensing process. Given that, the Office of Advocacy believes that a number of changes are needed to ensure the survival of current SMR providers and the services they offer to a wide range of small business customers.

V. *Auctions*

The Commission proposes to auction spectrum for the 800 MHz band. The Office of Advocacy believes that auctions represent the most efficient mechanism for resolving disputes among mutually exclusive applications. Moreover, the Office of Advocacy opines that auctioning spectrum in the 800 MHz band comports with the intent of Congress as expressed in OBRA. Given that the Commission intends to auction spectrum, the Office of Advocacy believes that a number of steps must be taken to comport with the Congressional mandate that special consideration be given to designated entities.[16]

The FCC proposes that designated entities be afforded a diverse variety of assistance most of which has already been

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[16] In OBRA, Congress defined designated entities as small businesses, firms controlled by women and minorities, and rural telephone companies. The Office of Advocacy takes no position at this time on the issue of rural telephone company entry into SMR or what special auction provisions should be established for rural telephone companies.

adopted for other spectrum auctions. The Commission proposes that firms owned by women and minorities be eligible for bidding credits and tax certificates. The bidding credit would be 40% for the 10 MHz block of spectrum and 25% for the 80 non-contiguous channels. FNPR at ¶ 92. The FCC also recommends that small businesses be eligible for installment payments. *Id.* at ¶ 97.

A. Designated Entity Spectrum Blocks

The Office of Advocacy supports the Commission's tentative conclusions to use these various special auction provisions. However, the Office of Advocacy believes that more must be done to assure that small SMR facilities have the capacity to obtain spectrum in an auction. The Office of Advocacy opines that only one alternative exists, within the current allocation scheme, to assure small businesses that provide SMR service the necessary access to spectrum in the upper portion of the SMR band.[17]

The Commission should designate a small business block similar to the entrepreneur's block developed for the broadband PCS

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[17] Small SMR providers, for both technical and economic reasons, cannot rely solely on the 80 non-contiguous channels for their service. Some may need upper band spectrum to compete in a new wireless market dominated by PCS. Others may need the spectrum to offer dispatch service in wider areas more efficiently than they could under channel-by-channel licensing offered in the lower portion of the 800 MHz band. Finally, some SMR providers may require upper portion spectrum to resolve current and future capacity problems.

auctions.[18] The Office of Advocacy believes that certain firms currently offering SMR service would use their financial resources to outbid other SMR providers. This would prevent small SMR providers from obtaining spectrum needed to enhance their own services or provide necessary expansion as their customers expand operations.[19]

One possible auction plan would be to maintain the FCC division of the upper portion of the 800 MHz band into four blocks. However, two of those blocks (or 5 MHz) would be licensed on a MTA basis. The other two blocks would be licensed by BTA and be limited to designated entities. To ensure that current SMR users have access to needed spectrum, the Commission may wish to further restrict bidding in one of the BTAs to small businesses.[20] The Office of Advocacy only offers this as a potential alternative and

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[18] *See* Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Fifth Report and Order ¶¶ 118-29 (July 15, 1994) (hereinafter Fifth Report and Order).

[19] The access to resources could be especially problematic if the Commission decides to eliminate the current prohibition on wireline telephone companies from offering SMR service. In particular, the large local exchange carriers, such as the Regional Bell Operating Companies and the General Telephone Operating Companies, may decide to utilize SMR spectrum to fulfill their PCS needs if they are unsuccessful in current spectrum auctions. Even the FCC recognizes that small entities cannot hope to compete against the financial resources of some of the largest companies in America -- companies which have guaranteed rates-of-return.

[20] As the Commission is well aware, some very large entities, such as the Washington Post and Cox Communications, qualify as designated entities. The Office of Advocacy does not believe that these enterprises should be competing against Teton Communications, a SMR provider in Idaho Falls, Idaho.

would support other allocations of spectrum blocks as long as small SMR providers can obtain needed upper portion spectrum without competing in auctions against well-financed large businesses be they Nextel, PacTel, or Cox Communications.[21]

Nor does this alternative prevent SMR providers interested in obtaining maximum spectrum for use in constructing a wide-area network from doing so. The Commission could establish a mechanism by which BTA SMR licensees can partition their territories if they do not wish to service the entire BTA.[22] This would enhance the capacity of large licensees to acquire needed spectrum and territory to provide wide-area service that competes with cellular and PCS.

The FCC asseverates that it cannot set aside a block of spectrum in the upper portion of the 800 MHz band due to crowding by incumbent users. *Id.* at ¶ 104. In a similar context, the Commission was able to find sufficient space in the supposedly crowded 2 GHz band for an entrepreneur's block to conduct auctions in the PCS broadband service. The Office of Advocacy strongly

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[21] For example, the Commission may decide to assign only one 2.5 MHz block to small businesses and provide other incentives such as bidding credits to other designated entities when they bid for the other blocks. Since the vast majority of firms owned by women and minorities also would qualify as small businesses, this allocation scheme would only operate to the detriment of a few designated entities that are large businesses.

[22] The Commission already has adopted this strategy for rural telephone companies acquiring spectrum in the 2 GHz band. Fifth Report and Order at ¶¶ 148-53.

urges the FCC to request that its engineers examine the spectrum in the upper portion of the 800 GHz to see whether this is feasible.[23] It may require the Commission, rather than assigning the same spectrum block to designated entities across the country, to assign different blocks of 2.5 MHz in different regions depending upon incumbent usage in the area. Only if the Commission, for technical reasons, is unable to develop an appropriate upper band spectrum block for designated entities should it nominate the 80 non-contiguous channels in the lower portion of the band for designated entities.[24]

An auction scheme as outlined by the Office of Advocacy will make it somewhat more difficult for SMR providers to offer wide-area service in competition with cellular and PCS. However, the greater public interest is in ensuring that current SMR licensees can offer optimal levels of cost-effective service to their approximately one million customers. This outweighs any additional

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[23] As the Commission is well aware, it took a second effort at allocation in the 2 GHz band to arrive at the current licensing regime for broadband PCS. The Office of Advocacy does not understand why such an effort should not be made for SMR.

[24] If the FCC is unable, for purely technical reasons (as opposed to administrative simplicity or economic valuation concerns) to designate upper band spectrum for an entrepreneur's block, then the Commission should increase the number of channels that designated entities could obtain in any given auction. One possibility would be to increase the number of channels that could be controlled prior to full operation to 10 from the FCC's proposal of 5. The Office of Advocacy is convinced that the fine engineers in the Commission's new Wireless Bureau could develop an appropriate number that would not crimp the capacity of local-area SMR providers.

burdens imposed on large SMR licensees seeking maximum amounts of spectrum for their wide-area service.

B. Definition of Small Business

The FCC is yet again faced with determining the size of business that will be eligible for any special provisions adopted in auctioning the 800 MHz spectrum. The Commission's job is made more difficult by requirements in the Small Business Act that any size standard adopted that does not currently comport with those promulgated by the Small Business Administration (SBA) must be approved by the Administrator of the SBA.[25] To complicate matters even further, § 3 of the Small Business Act was amended in 1994 to provide a wider range of criteria upon which an agency and the Administrator may base a small business definition.

In its initial effort to implement OBRA's auction authorization, the Commission determined that a small business would be one that had no more than six million dollars in net assets and two million dollars in net income.[26] This standard was developed by the SBA to define eligibility for its financial

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[25] The Commission is aware of this requirement. *See* Letter from General William Kennard to Administrator Erskine Bowles (August 20, 1994).

[26] *See* Fifth Report and Order at ¶ 172.

assistance programs.[27] It was not, as the Office of Advocacy had noted on numerous occasions, an appropriate standard to determine eligibility for assistance in spectrum auctions or any other regulatory program. Nevertheless, this standard was utilized in the recent auction of ten nationwide licenses for narrowband PCS.

The Commission, after significant discussions with, among others, the Office of Advocacy determined that the financial assistance standard adopted by the SBA would be inappropriate for use in the broadband PCS auction. The FCC adopted the Office of Advocacy's proposal[28] that any entity with less than $40 million in gross revenue would be considered a small business and eligible for any special provisions developed by the Commission.[29] The FCC also adopted the $40 million revenue standard for regional narrowband PCS auctions.

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[27] The SBA also has developed size standards for various industries. If an entity falls below that standard, it can participate in various government contracting programs established for small businesses. The SBA size standard for mobile communications is any firm with less than 1,500 employees. The Office of Advocacy, the SBA, and the FCC all concur that this is an inappropriate definition for the purpose of implementing OBRA's auction requirements.

[28] The Office of Advocacy's standard was also adopted by the Administrator of the SBA in a letter sent to the Chairman of the Commission. Letter from Administrator Erskine Bowles to Chairman Reed Hundt at 2 (June 24, 1994).

[29] In the context of broadband PCS, small businesses are eligible to participate in the entrepreneur block auction, may make installment payments, and may form consortia with other small businesses even if the gross revenue of a consortium exceeds $40 million. The Office of Advocacy believes that the consortium idea, particularly for bidding in MTA auctions, would be beneficial to small SMR licensees.

The Office of Advocacy and the Commission focused on revenue data because of the constricts of amendments to the Small Business Act. The 1992 amendments to the Small Business Act required that alternative size standards be based on revenue for non-manufacturing businesses.[30] The Administrator had no discretion to approve a service industry size standard on any other factor.

In 1994, Congress revisited this issue in its reauthorization of the SBA.[31] Congress decided that the original focus on revenue for non-manufacturing industries (and employee number for manufacturing industries) was too restrictive. It authorized the Administrator to approve a size standard based on any number of relevant factors. Thus, the Commission is no longer restricted to developing a size standard for the SMR auction solely on gross revenue. While other proxies for measuring small businesses in the SMR industry may exist (such as channels controlled, area covered, or population served), the Office of Advocacy opines that a revenue test remains the best and least problematic guideline for determining whether a business is small.

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[30] Small Business Credit and Business Opportunity Enhancement Act, Pub. L. No. 102-366, § 222, 106 Stat. 986, 999 (1992).

[31] Small Business Administration Reauthorization Act of 1994, Pub. L. No. 103-403, § 301, 108 Stat. 4187.

The Commission has noted that definition of a small business should be done on a service-specific basis.[32] The Office of Advocacy concurs and does not believe that the Commission should adopt its PCS small business definition for the 800 MHz auction. First, most current licensees, particularly those providing local-area service, have revenues significantly less than $40 million. If entities with up to $40 million are allowed to participate, smaller SMR licensees would find it difficult to compete for needed spectrum. Second, the buildout requirements for SMR systems, especially those providing local or limited wide-area service, are relatively modest. Thus, smaller firms are able to compete in the provision of SMR service without the large financial resources needed in PCS. For these reasons, the Office of Advocacy believes that a smaller revenue figure, such as $15 million may be appropriate.

The Office of Advocacy strongly urges the FCC to obtain revenue or other size data on firms in the SMR industry. SMR trade groups would be more than willing to share such data in an effort to determine the most appropriate size standard. The Office of Advocacy stands ready to assist the Commission in analyzing the data and shepherding any decision through the SBA's approval process.

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[32] Implementation of Section 309(j) of the Communications Act -- Competitive Bidding, PP Docket No. 93-253, Second Report and Order, 9 FCC Rcd 2348, *recon*. Second Memorandum Opinion and Order at ¶ 145 (August 15, 1994).

C. Miscellaneous Auction Measures

The Office of Advocacy generally supports all other aspects of the Commission's tentative conclusions concerning the auction process as it relates to small business. Sealed, single round bidding is a relatively easy method for small businesses to understand and should be used whether the Commission designates an entrepreneur's block in the upper or lower portion of the 800 MHz band. No auction and game theory consultants will have to be hired; SMR licensees will have to use their knowledge of the business to determine appropriate bids. The Office of Advocacy also supports a reduced down payment for SMR licensees and believes that the down payment figures adopted for PCS are appropriate for SMR service (since the auction prices will be lower so will the actual down payment amounts).

However, the Office of Advocacy cannot support the Commission's proposed upfront payment (the amount needed to enter the auction). The $.02 per pop (with each pop equally a potential customer) may be a relevant figure in the PCS arena in which systems are built to serve an entire area's population. However, SMR licensees, especially when providing dispatch service, do not hold themselves out as common carriers in the same manner as PCS or cellular licensees. The amount of population served in a given area is less important than the number of actual customers. The Office of Advocacy believes that the upfront payment for entry into