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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 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 OF
THE SMR SMALL BUSINESS COALITION

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SUMMARY

The SMR Small Business Coalition ("Coalition") respectfully opposes the Commission's proposed modifications to the 800 MHz band, because of the detrimental effects the proposal would have on the hundreds of thousands of small businesses who subscribe to and rely on basic, local SMR service.

The Commission's proposal to auction SMR frequencies in the 800 MHz band is both inappropriate and impracticable, for auctioning the SMR spectrum would disrupt existing SMR services that are currently enjoyed by the public, and would, in some cases, force incumbent licensees to relocate their operations. Such relocation would harm the numerous small businesses subscribing to incumbents' dispatch services, in contravention of Congressional intent to promote economic opportunity for small businesses. Moreover, auctioning of the 800 MHz spectrum is simply unnecessary, given the current availability of 50 MHz of cellular spectrum, 120 MHz of PCS spectrum, and 5 MHz of 900 MHz SMR spectrum.

The Coalition opposes the Commission's proposed restriction on incumbent expansion in the upper block, as it would prove highly detrimental to small businesses that rely on incumbents to provide uninterrupted dispatch service. An inability to expand would diminish the value of a given incumbent license and in many cases necessitate relocation to a frequency where expansion is possible. However, the inconvenience and costs of employee and vehicle downtime and travel time that would be generated if incumbents were forced to move off the upper block, would make the Commission's proposal to restrict expansion inequitable to small businesses

nationwide. Furthermore, the Commission's inadequate designation of an already-congested 4 MHz of spectrum for local SMR licensees (the "lower block") may, from the outset, preclude most incumbents seeking available spectrum. Likewise, the Commission's proposal to prohibit SMR licensees from applying in the General and Pool categories would be inequitable, as it would further restrict incumbents from available spectrum for relocation. The Coalition therefore urges that the Commission permit expansion within the upper block and that the Commission continue to permit SMR licensees to apply for General and Pool category channels.

The Commission's proposal, particularly because of its support for MTA licensee self-coordination, provides insufficient interference protection for incumbent co-channel stations on the upper block. The Coalition recommends that the Commission permit MTA licensees to self-coordinate the addition and movement of their base stations when those modifications occur beyond 70 miles from an incumbent licensee's facilities. However, in order to preserve the quality and continuity of the service its members provide to small businesses, the Coalition urges that within the 70 mile zone, the Commission require MTA licensees to either formally demonstrate compliance with current "short-spacing" standards or obtain consent of the incumbent licensee.

Finally, the Coalition urges that the Commission modify its proposal so as to provide more equitable treatment for small businesses subscribing to dispatch service in border areas. The

Coalition proposes that the Commission do so by allocating a minimum of thirty 800 MHz SMR channels for local use in border areas.

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To: The Commission

COMMENTS OF THE SMR SMALL BUSINESS COALITION

Advanced Electronics, Inc., Cleveland Mobile Radio Sales, Inc., Mobile Communications Service of Miami, Inc. and Ralph C. Parker (collectively, the "SMR Small Business Coalition" or "Coalition"), by their attorneys, hereby submit their comments in response to the Commission's Further Notice Of Proposed Rule Making, FCC 94-271, released November 4, 1994, in the captioned proceeding.

INTRODUCTION

The SMR Small Business Coalition is comprised of small businesses that provide dispatch and interconnected Specialized Mobile Radio ("SMR") services to thousands of other small businesses within the local service areas of their licensed 800 MHz SMR facilities in southern California, northern Ohio, southeastern Florida, and northwestern Texas.

Given that the 280 allocated 800 MHz SMR channels are already substantially licensed on a local basis in most markets, the Coalition believes that it is inappropriate and impracticable for

the Commission to concurrently license 200 of the same channels on a Major Trading Area ("MTA") basis via competitive bidding. Among other defects, the auctioning of such overlaid MTA systems would cause severe harm to the small businesses which operate incumbent 800 MHz SMR systems, as well as to the hundreds of thousands of small businesses which rely upon these SMR systems for low-cost, basic local communications.

If the Commission nonetheless proceeds to adopt its tentative proposal for the auctioning of 800 MHz SMR channels on an MTA basis, the Coalition believes that it must significantly strengthen its proposed safeguards for incumbent 800 MHz SMR systems. Specifically, the Commission should: (a) permit incumbent licensees to expand into unserved areas and to obtain additional "upper band" SMR channels; (b) limit the right of MTA licensees to use spectrum and to add or move site locations on a "self-coordinated" basis within 70 miles of co-channel facilities of incumbent licensees; (c) continue the eligibility of SMR operators to apply for available General Category channels and Pool Channels; and (d) ensure that adequate numbers of Canadian and Mexican Border Area channels remain available for local (non-MTA) SMR operators.

PUBLIC INTEREST BENEFITS OF SMALL, LOCAL SMR OPERATIONS

In Section 309(j) of the Communications Act, Congress repeatedly ordered the Commission consider the impact of spectrum auctions upon small businesses. One of the four primary objectives specified by the Congress for the design of competitive bidding

systems was "promoting economic opportunity and competition and ensuring that new and innovative technologies are readily accessible to the American people by avoiding excessive concentration of licenses and by disseminating licenses among a wide variety of applicants, including small businesses [and other designated entities]." 47 U.S.C. §309(j)(3)(B). In adopting competitive bidding systems, the Congress told the Commission to "prescribe area designations and bandwidth assignments that promote...economic opportunity for a wide variety of applicants, including small businesses [and other designated entities]," and to "ensure that small businesses [and other designated entities] are given the opportunity to participate in the provision of spectrum-based services." 47 U.S.C. §§309(j)(4)(C) and (D). Finally, Congress required the Commission to report back to it in September, 1997 whether and to what extent "small businesses [and other designated entities] were able to participate successfully in the competitive bidding process." 47 U.S.C. §309(j)(12)(D)(iv).

From its creation of the industry, the Commission has sought to ensure that SMR facilities remain available as a business opportunity for small entrepreneurs. Eligibility for the Specialized Mobile Radio Services (GN Docket No. 94-90), 9 FCC Rcd 4405, 4407 (1994); Eligibility for the Specialized Mobile Radio Services (PR Docket No. 86-3), 7 FCC Rcd 4398 (1992). It is small businesses like the Coalition members that have built the U.S. SMR industry from one serving 5,000 units in 1979 to one serving approximately 1.1 million units by the end of 1990. Business Wire,

Inc., February 13, 1991. Notwithstanding recent consolidation due to mergers and acquisitions primarily involving Nextel Communications, Inc. ("Nextel"), small SMR operators continue to serve hundreds of thousands of customers, most of which are small businesses.

The types of small businesses served by Coalition members include taxi services, towing companies, medical clinics, heating and air conditioning providers, construction firms, painters, farmers, ranchers, realtors, security firms, oil field companies, and similar local service providers. Their typical customer is a small, family-owned firm, which requires service on 3-to-10 radios that it has purchased in order to maintain contact with its vehicles as they operate within the local area. Because these small business customers generally function on narrow profit margins with little room for error, their primary needs are for a reliable basic local service that eliminates unnecessary coverage and frills in order to keep prices low and steady. They normally do not want: (a) to pay anything extra for wide-area coverage, because their spheres of operation are entirely local; (b) to use call forwarding, call waiting and similar add-on services, because such "bells and whistles" drive up their communications costs; (c) to receive widely fluctuating monthly bills, because they must carefully manage their cash flows; or (d) to change frequencies, because they have bought their own radios and want to avoid the inconvenience and cost entailed in retuning or replacing such equipment.

The Coalition members and their counterparts in other parts of the United States have been meeting the local communications needs of small businesses for over a decade. A recent nationwide survey by the American Mobile Telecommunications Association ("AMTA") estimates that the average monthly bill for dispatch service was $14.60 per unit in 1994 (down from $15.50 in 1993), while the average monthly bill for interconnected two-way service (which represents 21 to 25 percent of the SMR customer base) was $52.70 per unit during the year (up from $51.90 in 1993). Land Mobile Radio News, December 9, 1994, p. 2.

These SMR prices are significantly lower than the prospective prices for enhanced or wide area SMR services. A recent study by The Yankee Group reports that the enhanced SMR providers will target customers willing to pay at least $60.00 to $80.00 per month per unit for an integrated package of digital mobile phone, paging, short messaging, two-way voice dispatch and data transmission services. Land Mobile Radio News, August 5, 1994, p. 8. Likewise, Nextel has indicated that its planned enhanced SMR services will target "the high end of the dispatch market, which then overlaps with what might have been previously considered the pure cellular business market." Land Mobile Radio News, September 16, 1994, p. 5.

The Yankee Group study found that "[t]here is a significant future in basic SMR" and that enhanced SMR service will not be attractive to people needing traditional SMR dispatch or interconnected two-way service. Land Mobile Radio News, August 5,

1994, p. 8. Largely ignored or priced out of the markets for existing cellular services and for prospective enhanced SMR services, small local businesses continue to demand the traditional no-frills, low-cost services provided by local SMR systems. For example, the number of analog dispatch SMR subscribers increased by 18 percent nationwide during 1994, while overall SMR industry churn averaged a mere 0.3 percent to 1.5 percent. Land Mobile Radio News, December 9, 1994, p. 2. Particularly in light of the transitioning of Nextel and others from analog to digital SMR systems during 1994 and of the pendency of the Commission's freeze on additional SMR spectrum since August 9, 1994, these figures demonstrate the existence of a substantial and growing demand for traditional local SMR services.

In light of this continuing demand for local SMR services and in light of the fact that such services are furnished and used predominately by small businesses, the Commission should look -- in fact, is required by Section 309(j) to look -- very carefully at the nature and extent of the impact of its proposed new 800 MHz SMR licensing framework upon such local services and small businesses.

THE AUCTIONING OF WIDE AREA SMR LICENSES SUPERIMPOSED UPON EXISTING LOCAL SMR LICENSES IS INAPPROPRIATE

Congress has authorized the Commission to employ competitive bidding only with respect to initial licenses or construction permits. 47 U.S.C. §309(j)(1). The Commission itself has expressly excluded from its competitive bidding procedures all license renewal applications and most license modification

applications (except those proposing modifications so major as to dwarf previously authorized facilities). 47 C.F.R. §1.2102(b)(1) and (2); Second Report And Order (PP Docket No. 93-253), 9 FCC Rcd 2348, 2355 (1994).

The policy reasons for this exclusive focus upon initial licenses are clear. Congress wanted to permit "the development and rapid deployment of new technologies, products and services for the benefit of the public . . . without administrative or judicial delays," 47 U.S.C. §309(j)(3)(A), not to take away, degrade or disrupt existing services being enjoyed by the public. Likewise, Congress wanted to promote "economic opportunity and competition . . . by disseminating licenses among a wide variety of applicants, including small businesses," 47 U.S.C. §309(j)(3)(B), not to allow well-financed auction participants to acquire from the Commission existing licenses being operated by small businesses or to force such small businesses to relocate their facilities and/or curb their future growth.

The Commission has expressly recognized that "[a]t present, the 800 MHz SMR service is substantially licensed in most markets." Eligibility for the Specialized Mobile Radio Services (GN Docket No. 94-90), 9 FCC Rcd 4405, 4406 (1994). A recent study by AMTA and the Industrial Telecommunications Association ("ITA") found that SMR frequencies are currently depleted or nearly depleted in 200 of the top 300 markets. For example, ITA/AMTA determined that only eight 800 MHz band SMR channels remain available within 70 miles of the 50 largest cities in the United States. In markets

51 to 100, they found that 36 cities have no SMR frequencies available. Land Mobile Radio News, October 7, 1994, p. 6.

Coalition members are extremely familiar with the fully licensed status of 800 MHz SMR service and the dearth of available channels. For several years, the Commission has maintained long waiting lists for 800 MHz SMR channels in southern California, northern Ohio, southeastern Florida and north central Texas. The preparation and prosecution of Finder's Preference Requests under 47 C.F.R. §90.173(k) to bring substantial rule violations to the Commission's attention, have long presented the primary means for existing SMR operators to obtain needed additional channels in these areas.

In sum, initial licenses for virtually all of the allocated 800 MHz SMR spectrum have been granted previously by the Commission, and the vast majority of such licensed facilities have been constructed and placed in operation. Whereas the Commission clearly has the authority to assign via competitive bidding those few 800 MHz SMR channels remaining available in scattered markets as well as SMR channels becoming available in the future due to automatic license cancellations for untimely or improper construction, it does not possess authority under the clear and express wording of new Section 309(j) of the Act to auction the vast majority of SMR spectrum that has been previously licensed and is presently in operation. This conclusion holds true whether the Commission directly auctions existing SMR licenses or whether it superimposes so-called "new" MTA licenses upon such existing SMR

licenses.

THE AUCTIONING OF WIDE AREA SMR LICENSES SUPERIMPOSED UPON EXISTING LOCAL SMR LICENSES IS ALSO IMPRACTICABLE

At paragraph 13 of its Further Notice Of Proposed Rulemaking herein, the Commission recognized that "the large number of SMR systems already licensed in the 800 MHz band creates complications for converting to a new regulatory regime." In fact, the superimposition of the tentatively proposed MTA auction plan upon the fully licensed, existing local SMR service will create massive service disruptions and litigation without any perceptible benefits.

The Further Notice Of Proposed Rule Making gives no indication that the Commission has conducted any studies to determine what frequencies, if any, will be initially available to successful bidders in which portions of each MTA. As indicated above, the recent AMTA/ITA study, as well as the direct experience of the Coalition members, indicate that there are very few "white areas" remaining in the 800 MHz SMR service, and virtually none within significantly populated areas.

In the absence of significant unoccupied 800 MHz SMR spectrum, there is little or no incentive for new entrants to apply and bid for the proposed MTA licenses. Likewise, traditional local SMR operators have little or no incentive to apply and bid for MTA licenses, because their local small business customers generally do not need and want to pay for wide area services. Rather, the sole entity with an incentive to apply and bid for the MTA license

in many areas is Nextel, because the MTA license may be needed to protect its existing local and wide area facilities. If, as is quite possible in many MTAs, there are no other mutually exclusive applicants for the MTA licenses, the "auction" will become a giveaway to Nextel.

Regardless of who obtains the MTA licenses in each area, the three-year and five-year construction requirements of proposed Section 90.655(c) of the Rules will create conflicts between such MTA licensees and local SMR operators. Put simply, many MTA licensees are going to have to get some local SMR operators to move off of their "upper band" channels -- either voluntarily or involuntarily -- in order to meet the Commission's proposed 33.3 percent and 66.7 percent population coverage minimums. In addition to disrupting the service of local customers, these conditions are virtually certain to give rise to interference and other problems that will have to be settled by the Commission or the courts. In other words, the result will be the very "administrative or judicial delays" which the Congress in 47 U.S.C. §309(j)(3)(A) sought to avoid.

Whereas, as detailed above, there is a substantial and growing need among local small businesses for reliable and low-cost traditional SMR dispatch and interconnected services, there is no such proven need justifying the reassignment of over 70 percent (10 MHz of 14 MHz) of the allocated 800 MHz SMR spectrum for wide area wireless services. Rather, the existing needs for enhanced and wide area wireless services can be adequately met for the

foreseeable future by the 50 MHz of spectrum presently assigned to cellular operators, by the 120 MHz of spectrum being auctioned during 1995 to broadband Personal Communications Service ("PCS") applicants, and by the 5 MHz of 900 MHz SMR spectrum which is unoccupied outside the 50 largest markets. Put another way, the Commission has previously licensed two cellular systems per MSA/RSA market (may of which operate either formally or informally on a regional basis); is presently licensing three-to-six broadband PCS systems on an MTA/BTA basis; and has proposed in PR Docket No. 89-553 to license three nationwide and six regional 900 MHz SMR systems. Altogether, these existing and future allocations will provide the public with 14-to-17 wide area wireless services per market. Particularly before it is determined whether there is sufficient public demand to support the future PCS and 900 MHz systems, the Coalition sees no need for the Commission to disrupt the service of hundreds of thousands of local small business SMR customers in order to create an additional one-to-four wide area 800 MHz SMR systems.

Finally, the proposed auctions are not necessary to develop and deploy enhanced or wide area 800 MHz SMR systems, where existing licensees want or need to construct them. Through waivers and acquisitions, Nextel is already creating such systems and is free to continue its efforts under the existing 800 MHz SMR regulatory structure. However, particularly when Nextel has not yet demonstrated that its prospective enhanced SMR services are technically feasible or desired by substantial portions of the

public, it should not be permitted to transform its private desires to compete with cellular[1] and PCS carriers into a Commission reallocation of more than 70 percent of the existing 800 MHz SMR spectrum for unproven and unnecessary wide area use.

THE COMMISSION SHOULD, UNDER NO CIRCUMSTANCES, PERMIT MANDATORY RELOCATION OF INCUMBENT SMR LICENSEES BY MTA LICENSEES

At paragraph 34 of its Further Notice Of Proposed Rule Making, the Commission tentatively concluded not to subject incumbent SMR systems to mandatory relocation to new frequencies pursuant to Nextel's proposed "band-clearing" approach. The Commission recognized that such mandatory relocation would impose significant costs and disruptions upon incumbent licensees and their customers. Even if comparable channels were available and all relocation costs were paid by the MTA licensee, the Commission found that mandatory relocation would create disputes over substitutability of channels, compensable costs, and related matters. However, the Commission nonetheless sought further comment on mandatory relocation as an alternative to voluntary arrangements between MTA licensees and incumbents. Id. at par. 36.

The Coalition submits that the Commission's tentative conclusion is wholly correct -- mandatory relocation of incumbent

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[1] In fact, to the extent that certain SMR operators wish to compete with cellular, Commissioner Quello has recently indicated that SMR auctions "would have the effect of delaying or weakening the ability of [SMR] service providers to provide a competitive alternative to cellular." Land Mobile Radio News, October 7, 1994, p. 7.

local SMR licensees will neither serve the public interest nor be workable. Unlike the situation in the "Emerging Technologies" rulemaking (ET Docket No. 92-9) where microwave licensees will be relocated from the 2 GHz PCS band, there are virtually no frequencies available in the "lower 80 channels" of the 800 MHz SMR spectrum to accommodate relocations of incumbents from the 200 channels in the upper band. Considered alone, this critical absence of potentially substitutable channels requires rejection of the mandatory relocation alternative.

In addition, unlike the relocation of largely private microwave licensees in the "Emerging Technologies" docket, the relocation of "upper band" SMR facilities will disrupt the daily operations of hundreds of thousands of small business customers who depend upon these SMR services. As indicated above, most of these customers have purchased their own radio equipment. Even if the MTA licensee pays (as it should) the full cost of the modification or replacement of such customer equipment, the customers themselves will still be saddled with the inconvenience and costs of the employee and vehicle down time and travel time necessary to make such equipment changes. On the basis of their knowledge of their customers, the Coalition members believe that such equipment modifications and replacements accompanying relocation will give rise to considerable customer complaints and dissatisfaction. The service disruptions and associated costs imposed upon these small business customers are wholly antithetic to the goals of the Congress to promote (rather than hamper) the development of small

businesses via the competitive bidding process. 47 U.S.C. §309(j)(3).

IF ADOPTED, A SMR COMPETITIVE BIDDING SYSTEM MUST INCLUDE SUBSTANTIAL AND EFFECTIVE PROTECTION FOR INCUMBENT OPERATORS

As detailed above, the Coalition believes that the tentatively proposed auctioning of MTA licenses superimposed upon existing local SMR licenses is inappropriate and impracticable. However, if the Commission nevertheless proceeds to implement such a competitive bidding system, it needs to modify its present proposal to include substantial and effective safeguards for incumbent licensees and their customers. These protection should include: (a) the right for incumbent licensees to expand into unserved areas and to obtain additional "upper band" channels; (b) the limitation of the MTA licensee's right to use spectrum and to add or move site locations on a "self-coordinated" basis within 70 miles of co-channel facilities of incumbent licensees; (c) the continuation of the eligibility of SMR operators to apply for available General Category channels and Pool Channels; and (d) the allocation of sufficient Canadian and Mexican Border Area channels to accommodate the needs of local (non-MTA) SMR operators.

Expansion By Incumbent Licensees. While requesting comment on whether incumbent "upper band" systems should be permitted to construct stations anywhere within a defined protected service area, the Commission has tentatively proposed to prohibit expansion by incumbent local SMR licensees beyond their existing service areas on MTA-licensed channels without the consent of the MTA

licensee. Further Notice Of Proposed Rule Making, par. 37, 40. The Commission justifies the proposed restriction on the grounds that incumbent expansion would "substantially diminish the value of the MTA license and would create continuing uncertainty for MTA applicants and licensees alike." Id. at par. 37.

As detailed above, incumbent SMR operators provide critically important local communication services to hundreds of thousands of small businesses. The public interest benefits of improving this service -- both inside and outside existing service areas -- substantially outweigh the monetary "valuation" of the proposed MTA licenses by the Commission or prospective bidders. In fact, the Congress has expressly prohibited the Commission from considering the expectation of federal revenues in its auction-related decisions, while encouraging it to continue considering consumer demand for spectrum-based services. 47 U.S.C. §§309(j)(7)(B) and (C).

Moreover, to the extent that the "value" of SMR licenses is an appropriate concern, the Commission should also consider the value of the local licenses of incumbent SMR operators. Coalition members and the other small businesses holding these licenses have expended substantial amounts of their time, money and effort for more than a decade to establish and develop their local SMR services. Just like other wireless services, these local SMR operators need to obtain additional channels to maintain the level and quality of service demanded by their customers. If, as proposed, the Commission denies these local SMR operators the right

to expand their systems, the value of such systems will decline. In other words, the Commission's proposed restructuring will have yet another adverse impact upon small businesses.

The Coalition members recognize that there are very few, if any, 800 MHz SMR channels available in their service areas, or anywhere else in the country. However, where an "upper band" channel has remained available for 120 days or more or where it is possible to extend the service contours of an existing station into a presently unserved area without interfering with any operations of the MTA licensee, incumbent SMR licensees should be expressly permitted by the Commission to file applications requesting expansion of their "upper band" facilities. Likewise, incumbent SMR licensees discovering substantive construction and operational violations should continue to be able to request and obtain dispositive Finder's Preferences for bringing these violations to the Commission's attention. This will neither "diminish the value of MTA licenses" nor "create continuing uncertainty" for any party. Rather, it will give incumbent local SMR operators the opportunity to improve the services of their customers on channels which the MTA licensee has not valued enough to promptly utilize.

Interference Protection. In its CMRS Third Report And Order,[2] the Commission required MTA and other wide area SMR licensees to afford interference protection to incumbent co-channel stations by locating stations at least 70 miles from an existing facility or

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[2] Third Report and Order Regulatory Treatment of Mobile Services, GN Docket No. 93-252, PR Docket No. 93-144, PR Docket No. 89-553, par. 145 (released September 23, 1994).

complying with short-spacing rules and procedures. The Commission now asks whether applying these existing interference rules to MTA licensees would hamper their ability to fully construct their systems. Further Notice Of Proposed Rule Making, par. 39. Moreover, the Commission tentatively concludes that MTA licensees should be authorized to construct stations at any available site and on any available channel within their MTAs, and to "self-coordinate" the addition and movement of base stations without prior Commission consent. Id., par. 30.

As noted above, the three-year and five-year construction requirements of proposed Section 90.655(c) of the Rules will give MTA licensees an incentive to try to push incumbent local SMR operators off of their channels, in order to minimize the risk of forfeiture of their investments. The "self-coordination" procedures proposed by the Commission will hand MTA licensees the very weapon capable of accomplishing this. Without any prior notice or approval, MTA licensees will be able to establish facilities that interfere with the existing operations of incumbent licensees, and force the incumbent licensees to seek Commission relief while their service is being disrupted. Moreover, as soon as one interference problem is resolved, there is nothing to prevent the "self-coordinating" MTA licensee from establishing another interfering facility. The end result is that the incumbent licensees will be constantly expending their resources to resolve interference problems, while steadily losing customers that need reliable service.

The only way to avoid this situation is for the Commission to retain the interference protection of 47 C.F.R. §90.621(b) for incumbent licensees. MTA licensees proposing to construct base station facilities more than 70 miles from an incumbent licensee's facilities could be permitted to "self-coordinate." However, within the 70-mile zone, MTA licensees should be required to file a formal application with the Commission demonstrating compliance with the "short-spacing" standards of 47 C.F.R. §90.621(b)(4), which application should be served upon all affected incumbent licensees. In the alternative, the MTA licensee could obtain the written consent of all affected incumbent licensee s <u>before</u> constructing or modifying any facilities.

<u>General Category and Pool Channels</u>. While permitting SMR licensees to continue existing operations on General Category channels and on Industrial/Land Transportation and Business Category ("Pool") channels, the Commission has tentatively proposed to prohibit SMR applicants from applying for such channels in the future. <u>Further Notice Of Proposed Rule Making</u>, par. 53.

If the Commission adopts its tentative MTA proposal, incumbent local SMR operators will not be able to expand on "upper band" channels. In fact, whether or not the Commission adopts its MTA proposal there are virtually no "upper band" or "lower band" SMR channels available to new or existing SMR licensees for expansion. General Category and Pool channels represent the <u>only</u> frequencies available for SMR expansion in some areas.

Given that incumbent SMR operators provide critically

important communications services to hundreds of thousands of local small businesses, expansion of their channel capacity serves an important public interest. Therefore, where General Category and/or Pool channels remain unused by other eligible licensees, SMR operators should be permitted to continue to apply for them.

Canadian and Mexican Border Area Channels. The Commission proposes to treat MTA blocks in a uniform manner nationwide, without distinguishing border from non-border areas. Further Notice of Proposed Rule Making at para. 28. As such, the Commission proposes to permit MTA licensees to use any available border area channels within the 10 MHz of upper block spectrum allocated to MTA licensees nationwide. Id. Although the number of available upper block channels would be significantly reduced from the 200 available in non-border areas, MTA licensees in, for example, the Canadian border area would still have access to anywhere from 55 to 120 channels in the upper block. Id. at para. 27.

However, this aspect of the Commission's proposal creates problems for local licensees, because in the Canadian border area, for instance, none of the lower 80 channels are available. Id. at para. 28. This would leave incumbent licensees who are forced to move off the "upper block" in order to expand their systems without any place to turn, effectively foreclosing the operation of most local SMR systems in the Canadian border area.

In order to provide for continued service to local SMR customers in border areas, the Coalition urges the Commission to

allocate a minimum of forty 800 MHz SMR channels for local (non-MTA) use in all border areas.

CONCLUSION

The Coalition urges the Commission to reject its tentative proposal to license previously licensed and operational channels in the 800 MHz SMR spectrum on an additional MTA basis via competitive bidding. The proposal inappropriately exceeds the Commission's authority under Section 309(j) of the Act to auction initial licenses and construction permits. It is also impracticable, particularly because it will constrain and disrupt basic local SMR services needed by small businesses, while adding unnecessary further wide area wireless services to a market already crowded with regional cellular, broadband PCS and 900 MHz SMR services.

Should the Commission proceed with the proposed 800 MHz SMR auctions, it should affirm its tentative conclusion not to subject incumbent local SMR systems to mandatory relocation to new frequencies pursuant to Nextel's proposed "band-clearing" approach. In addition, it should modify its present proposal to include substantial and effective safeguards for incumbent licensees and their customers, including: (a) the right for incumbent licensees to expand into unserved areas and to obtain additional "upper band" channels; (b) the limitation of the MTA licensee's right to use spectrum and to add or move site locations on a "self-coordinated" basis within 70 miles of co-channel facilities of incumbent licensees; (c) the continuation of the eligibility of SMR operators