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

In the Matter of	)	
	)	PR Docket No. 93-144
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	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

ONECOMM COMMENTS

ONECOMM CORPORATION

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SUMMARY

The Commission faces an ambitious task in reordering the already crowded specialized mobile radio ("SMR") spectrum.

OneComm proposes a forward-looking, balanced approach that will achieve the Commission's dual objectives of (1) assisting the development of wide-area SMR service into a full competitor to cellular and PCS services while (2) protecting the rights of stand-alone and dispatch SMR licensees.

Four key points should be emphasized. First, contiguous spectrum is of utmost importance to the future development of SMR. Second, establishment of two MTA licenses of 6 MHz and 4 MHz respectively, will stimulate a maximum development of new technology while also encouraging competition among MTA licensees. Third, only a voluntary-to-mandatory frequency relocation plan will assure contiguous spectrum. The Commission already crafted such a balanced mandatory relocation program in the Emerging Technologies Docket. That program, already tested through several rounds of rulemaking and reconsideration, should be adapted for 800 MHz SMR providers. Fourth, the local SMR providers should have the opportunity to create wide-area systems either individually or in concert with other providers.

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COMMENTS OF ONECOMM CORPORATION

OneComm Corporation ("OneComm"), pursuant to Section 1.415 of the rules of the Federal Communications Commission ("Commission" or "FCC"),[1] hereby submits its Comments in response to the Further Notice of Proposed Rule Making ("Further NPRM"), FCC 94-271, released November 4, 1994, in the above-captioned proceeding.[2]

The Further NPRM proposes a framework for licensing 800 MHz specialized mobile radio ("SMR") systems that builds upon the Commission's earlier proposal to establish a new

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1 47 C.F.R § 1.415.

2 The initial comment date was December 5, 1994, with reply comments due December 20, 1994. By public notice released November 28, the comment date was extended to January 5, 1995, with reply comments due January 20, 1995.

framework for 800 MHz wide-area licensing that would promote additional competition among mobile service providers,[3] as well as the Commission's implementation[4] of the new regulatory framework for mobile services enacted by Congress in the Omnibus Budget Reconciliation Act of 1993.[5]

I. INTEREST OF ONECOMM

OneComm is one of the nation's largest providers of SMR service. OneComm is headquartered in Denver, Colorado, has more than 375 employees, and serves more than 45,000 subscribers. OneComm provides SMR service in the following major cities: Seattle, Washington; Portland, Oregon; Denver, Colorado; Cincinnati and Columbus, Ohio; Indianapolis, Indiana; Oklahoma City, Oklahoma; Minneapolis, Minnesota; Pittsburgh, Pennsylvania; and Kansas City, Kansas and Missouri.

OneComm provides wide-area digital SMR service in several markets, specifically Denver, Seattle, Portland and the Interstate-5 corridor between Seattle and Portland. OneComm has constructed test sites in other cities and will

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3 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, Notice of Proposed Rule Making, 8 FCC Rcd 3950 (1993)("NPRM").

4 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, 76 RR 2d (P & F) 326 (1994) ("CMRS Third Report and Order").

5 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993).

continue to introduce wide-area digital SMR service in additional markets where it currently operates.

OneComm has applied to transfer control of OneComm Corporation, N.A. and its affiliate C-Call Corp. to Nextel Communications, Inc. ("Nextel").[6] Until the transfer application is approved and the merger consummated, however, OneComm continues its independent operation.

II. INTRODUCTION AND BACKGROUND

In recent years the Commission has in various proceedings encouraged the development of competition between certain 800 MHz SMR providers and other mobile service providers. In 1991, the Commission granted Fleet Call, Inc. (now Nextel) a waiver of the required one-year construction period to permit the development of a wide-area digital SMR system.[7] In 1993, the Commission further developed its regulation of wide-area SMR systems by adopting rules providing for a five-year construction period for such systems[8] and clarifying its policies that permit applicants for wide-area systems to aggregate mobiles to satisfy loading requirements necessary to obtain additional

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6 Applications of Nextel Communications, Inc. for Transfer of Control of OneComm Corporation, N.A. and C-call Corp., filed August 12, 1994. File Nos. 903335, 903534, DA 94-1087.

7 Fleet Call, Inc., Memorandum Opinion and Order, 6 FCC Rcd. 1533 (1991), recon. dismissed, 6 FCC Rcd 6989 (1991).

8 Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods, Report and Order, 8 FCC Rcd 3975 (1993).

channels.[9] In May 1993, the Commission adopted an NPRM in this proceeding which proposed to establish an Expanded Mobile Service Provider license that would permit acquisition of a block of 800 MHz channels within a Commission-defined service area.[10]

Congress' subsequent amendment of Section 332 of the Communications Act[11] provided a statutory imperative for the Commission's efforts to facilitate competition among various mobile service providers and changed the ground rules for regulation of 800 MHz SMR providers. Section 332, as amended, created two categories of mobile service, "commercial mobile service" and "private mobile service."[12] Commercial mobile service licensees must be treated as common carriers.[13] Congress directed that the new statutory structure be implemented expeditiously,[14] and required the FCC to review competitive market conditions in mobile services.[15]

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9 Letter from Ralph A. Haller, Chief, Private Radio Bureau to David Weisman, 8 FCC Rcd. 143 (1992).

10 NPRM at 7-8.

11 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b) 107 Stat. 312, 392 (1993).

12 47 U.S.C. § 332(d).

13 47 U.S.C. § 332(c)(1)(A).

14 Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(d), 107 Stat. 312, 396.

15 47 U.S.C. § 332(c)(1)(C).

One of Congress' principal objectives in amending Section 332 was to create a new statutory classification so that similar services are accorded similar regulatory treatment.[16] Indeed, one of the factors that led Congress to revise Section 332 was its view that SMR providers seeking to compete with cellular and PCS should be subject to comparable regulation.[17]

To this end, the Commission established the common carrier commercial mobile radio service ("CMRS") which includes inter-connected SMR service.[18] The Commission's "overriding goal in the CMRS proceeding has been to achieve regulations that maximize competition among CMRS providers and eliminate regulatory distortions in the mobile services market."[19] In reviewing the state of competition within mobile services, the Commission concluded that "800 MHz SMR licensees either compete or have the potential to compete with . . . cellular and broadband PCS licensees."[20] Based on this finding, the Commission determined that the 800 MHz SMR licensing regime should track, to the extent feasible,

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16 Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Second Report and Order, 9 FCC Rcd. 1411, 1418 (1994) ("CMRS Second Report and Order").

17 Further NPRM at 8.

18 CMRS Second Report and Order, 9 FCC Rcd at 1451.

19 Further NPRM at 5.

20 Id. at 9, citing CMRS Third Report and Order at 356.

the PCS and cellular rules.[21] Perhaps the single most important regulatory distinction remaining between cellular and PCS operations on the one hand and SMR operations on the other is that cellular and PCS rules permit significantly more efficient operation through, among other things, the assignment of exclusive use of large blocks of contiguous spectrum.[22]

In an attempt to remedy this situation and meet its statutory obligation to establish regulatory parity for similarly situated service providers, the Commission has defined four objectives for new 800 SMR rules: (1) promote the development of wide-area systems while protecting the viability of smaller systems, (2) ensure prompt construction and operation of SMR systems, (3) encourage more efficient use of SMR spectrum through introduction of advanced technology and services, and (4) remove regulatory burdens hampering the efforts of 800 MHz SMR systems to compete with other CMRS offerings.[23] In order to meet these objectives, the NPRM proposes to:

(1) Designate 10 MHz (200 channels) of contiguous 800 MHz SMR spectrum for licensing in four 2.5 MHz blocks within each Major Trading Area ("MTA").

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21 Id. at 9.

22 Id., citing CMRS Third Report and Order at 356.

23 Id. at 12.

(2) Designate the remaining 80 non-contiguous 800 MHz SMR channels for local licensing on a channel-by-channel basis with operational rules similar to existing SMR rules.

(3) Auction mutually exclusive applications.

(4) Grant MTA licensees the right to: (a) self-coordinated construction, frequency use, and channelization over all of the licensed MTA/frequency block, (b) automatic use of any frequencies within the licensed MTA/frequency block that are recovered by the Commission, and (c) voluntary, negotiated frequency relocation of incumbent licensees.

(5) Require the MTA licensee to provide service to one-third of the MTA population within three years, and two-thirds within five years of license issuance.

(6) Permit incumbent SMR systems to continue operating under existing authorizations and receive co-channel interference protection.[24]

OneComm commends the Commission for articulating proper goals and objectives for this proceeding and for its attempt to balance the diverse interests among the SMR industry. If implemented as proposed, however, the Further NPRM will not fulfill these goals and objectives. Most important, the proposal will not ensure the development of contiguous spectrum for wide-area SMR providers, an essential component of effective and robust competition with

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24 Id. at 10-12.

other CMRS providers. Moreover, if implemented, the Further NPRM proposals would perpetuate existing fragmented nature of SMR spectrum because purely voluntary frequency relocation procedures from the contiguous 10 MHz of spectrum[25] offer little or no incentive to incumbents to accept frequency relocation offers. As important, allocation of four 2.5 MHz license blocks will result in the disbursement across several MTA license blocks of channels licensed to a single incumbent SMR system. Such a fragmented allocation would require cooperation among multiple MTA licensees in order to relocate even one incumbent system. Since most MTAs have dozens of SMR operations, the proposed allocation scheme literally guarantees that little or no frequency relocation will actually occur.

OneComm therefore proposes an alternative approach that can better meet the Commission's 800 MHz goals and objectives.

III. SUMMARY OF ONECOMM'S PROPOSAL

OneComm supports the Further NPRM proposal to establish MTA-wide licenses[26] in the upper 10 MHz of

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25 The Further NPRM apparently uses the term "relocation" to refer to relocating to new frequencies. OneComm's Comments therefore will similarly use the term "frequency relocation" to mean relocating to different frequencies within the same licensed service area.

26 However, OneComm could support, as a compromise, other forms of geographic wide-area licensing.

contiguous SMR spectrum and to designate the remaining 800 MHz SMR category channels for local licensing on a station-by-station basis.[27] OneComm, however, urges that the Commission adopt a model similar to that outlined in the Emerging Technologies docket[28] for establishing frequency relocation procedures. Specifically, the voluntary-to-mandatory frequency relocation procedure adopted there should be implemented with modification for 800 MHz SMR providers, rather than the purely voluntary program proposed by the Further NPRM.[29] Furthermore, the MTA license blocks should be allocated between two licenses, one 120-channel, 6 MHz block, and one 80-channel, 4 MHz block.[30] The MTA

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27 Further NPRM at 12-13.

28 See Redevelopment of Spectrum to Encourage Innovation in the Use of New Telecommunications Technologies, ET Docket No. 92-9, First Report and Order and Third Notice of Proposed Rule Making, 7 FCC Rcd. 6886 (1992); Second Report and Order, 8 FCC Rcd. 6495 (1993); Third Report and Order and Memorandum Opinion and Order, 8 FCC Rcd. 6589 (1993) ("ET Docket Third Report and Order"). In this proceeding, the Commission implemented, for relocation from licensed PCS spectrum, a two-year voluntary negotiation period followed by a one-year mandatory period. ET Docket Third Report and Order at 6589-90. During the initial voluntary period, the parties are encouraged to negotiate a relocation agreement but are not required to do so. Id. at 6595. During the mandatory period, the parties are required to negotiate in good faith. Id. In case of involuntary relocation (pursuant to mandatory negotiation), the PCS licensee must: (1) guarantee payment of all relocation costs; (2) complete all activities necessary for placing the new facilities into operation; and (3) build and test the new system. Id. at 6591. Reimbursable relocation costs include all engineering, equipment, and site costs and FCC fees as well as any additional reasonable costs. Id.

29 See Further NPRM at 22.

30 See id. at 15-16.

licenses would be auctioned upon receipt of mutually exclusive applications.

With respect to the frequency relocation issue, OneComm proposes that MTA licensees be permitted to negotiate to relocate incumbent systems from the upper 200 contiguous 800 MHZ SMR channels according to the following voluntary-to-mandatory schedule. During the first year, all frequency relocation would be purely voluntary, accomplished by agreement between the MTA licensee and the incumbent. During the next two years (the second and third years after implementation of final rules in this rulemaking proceeding), mandatory frequency relocation would be triggered upon application to the Commission by the MTA licensee.

Under this proposal, the MTA licensee would be responsible for providing equivalent target frequencies to which the incumbent would relocate. All 800 MHz channels (including the lower 80 and General Category 150 channels) would be designated as equivalent to the upper 200 channels and would presumptively be proper frequency relocation target channels. Frequency relocation to other available bands, e.g., 150 MHz, 220 MHz, 450 MHz or 900 MHz could be performed only upon consent of the incumbent licensee. OneComm believes that this proposal is consistent with the approach taken by the Commission in the Emerging

Technologies proceeding and provides ample practical opportunity for successful frequency relocation.

OneComm also proposes that the MTA licensee would be responsible for paying reasonable frequency relocation expenses, or performing the relocation itself, under the incumbent's supervision.

IV. ELEMENTS OF ONECOMM'S PROPOSAL

A. Contiguous Spectrum Is Necessary To Achieve Regulatory Parity

As the Commission has acknowledged, contiguous spectrum is an essential component of robust SMR competition with other CMRS providers including cellular and PCS.[31] OneComm agrees that contiguous spectrum for wide-area SMR operations is necessary to achieve regulatory parity.[32]

Contiguous spectrum will enable wide-area SMR operators to utilize efficient digital technologies currently enjoyed by cellular and PCS providers. These technologies include Code Division Multiple Access ("CDMA"), Global System for Mobile Communications ("GSM"), Wide-band CDMA, and others. Because the technologies rely on contiguous spectrum, however, SMR operators cannot currently utilize them. Accordingly, SMR contiguous spectrum will

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31 See id. at 9.

32 As discussed below, however, competition cannot be achieved if MTA licensees must rely on purely voluntarily negotiated relocation arrangements with incumbent licensees.

allow SMR providers to enjoy the new technologies currently available to their cellular and PCS competitors.

In addition, contiguous spectrum licensing will allow SMR operators to take advantage of economies of scale with respect to equipment. The costs of cellular and PCS equipment utilizing contiguous spectrum are lower because they are spread out over the broader CMRS market. SMR equipment manufacturers, by contrast, must continue to amortize special research and development costs (necessitated by fragmented spectrum allocation) over the narrower SMR subscriber base, resulting in higher equipment costs. Contiguous spectrum would increase competition in the equipment manufacturing market and therefore equalize these costs.

B. Regulatory Parity Requires A Larger MTA Frequency Block Size Than That Proposed In The Further NPRM

The Further NPRM proposed multiple blocks for MTA-wide licensing based upon an expressed desire to allow competing MTA licensees and a calculation that wide-area systems could be implemented on smaller block sizes.[33] The Commission therefore solicited comment on the utility of establishing four licenses of 2.5 MHz each per MTA, or any other alternative designs suggested by commenters.[34]

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33 Further NPRM at 15-16.

34 Id.

For the following reasons, OneComm believes that a single 10 MHz (200 channel) block would better fulfill the Commission's 800 stated MHz goals and objectives than the proposed four block allocation. Should the Commission finally determine that multiple MTA licensees would further the public interest, however, OneComm proposes a compromise allocation of two licenses, one with 120 channels (6 MHz) and a second with 80 channels (4 MHz).

OneComm believes that the allocation proposal in the Further NPRM is flawed in several respects. First, allocation of the upper 200 MHz channels to four 2.5 MHz licenses per MTA is unworkable and would severely hamper relocation efforts. A typical five-channel incumbent system is not licensed on five contiguous channels fitting neatly in one of the proposed four MTA blocks. The incumbent system, instead, is usually licensed for five noncontiguous channels spaced one MHz apart, thereby placing the incumbent system within all four proposed MTA blocks. An MTA licensee desiring to relocate the five-channel incumbent system therefore would be forced to coordinate with the other (competing) MTA licensees "sharing" the incumbent's channels. Even if these competing MTA licensees were amenable to cooperation, the relocation logistics and payment issues would be insurmountable. Relocation under these circumstances would be nearly impossible to perform.

For this reason alone, a single 10 MHz license should be allocated in each MTA. However, if the Commission determines that multiple MTA licensees would best fulfill the public interest, reducing from four to two the number of MTA licensees per MTA would reduce the potential for incumbent system overlap on multiple MTA licenses and ameliorate resulting coordination problems.

Second, the proposed allocation of 50 channels per MTA license apparently is based on the Commission's calculation that a minimum of 42 channels is needed to implement existing wide-area SMR technology.[35] OneComm, however, urges that the Commission look beyond existing wide-area systems using technology specially adapted to fragmented SMR spectrum, and provide an allocation that will enable wide-area SMR providers to use the most advanced technologies.

OneComm therefore proposes an allocation of two MTA block licenses, a 120 channel license (6 MHz) and an 80 channel license (4 MHz). Such allocation is based upon a minimum CDMA block size of 62 channels (50 channels of contiguous spectrum with 6 channel guard bands on both sides). A 120 channel license would accommodate two CDMA minimum size blocks, since guard band channels are not necessary between the two CDMA blocks. This approach at

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35 Id. at 15-16.

least would allow development of new SMR technology to more vigorously compete with other mobile services.

Finally, the proposed allocation of four 2.5 MHz licenses would undercut Congressionally mandated regulatory parity to CMRS providers. The Commission found that cellular and PCS rules provide significantly greater flexibility by, among other things, assigning to the licensee exclusive use of contiguous spectrum.[36] The proposed 2.5 MHz of spectrum is insignificant when compared to the permissible maximum of 40 MHz of combined cellular and PCS spectrum, or a 30 MHz PCS license, or a 25 MHz cellular license. Thus, splitting the 10 MHz of contiguous 800 MHz SMR spectrum into 2.5 MHz slivers would merely continue regulatory disparity brought about by fragmented SMR spectrum. A single 10 MHz license would better implement regulatory parity by providing a somewhat closer match to PCS and cellular block sizes.

C. Only Voluntary-To-Mandatory Relocation Will Achieve Contiguous SMR Spectrum

The Further NPRM proposed to implement purely voluntary relocation and rely on the marketplace to effect relocation, frequency swaps, mergers, purchases or other arrangements.[37] The Further NPRM noted that "[m]any

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36 Id. at 9, citing CMRS Third Report and Order at 356.

37 Id. at 22.

licensees who are currently building wide-area SMR systems . . . have previously used such transactions to acquire consolidated blocks of frequencies, and we fully expect this process to continue."[38] The Further NPRM therefore proposed that "the MTA license confer the right to negotiate with incumbent systems within the MTA to purchase or relocate their facilities."[39] The Further NPRM, however, also sought comment on whether mandatory frequency relocation should be implemented, and solicited description of possible mandatory frequency relocation programs.[40]

As more fully described below, conferring the right to negotiate is illusory because it confers nothing new. Without a mandatory frequency relocation element as part of a voluntary-to-mandatory program, any assignment of contiguous SMR spectrum blocks would similarly be illusory because little or no frequency relocation would be accomplished. Finally, the Commission need not necessarily resort to purely voluntary frequency relocation in order to protect the viability of smaller systems. As demonstrated by the voluntary-to-mandatory program implemented by the Emerging Technologies docket, incumbents' rights can be fully protected with a properly structured mandatory frequency relocation element. OneComm urges that the

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38 Id.

39 Id. at 20.

40 Id. at 22-23.

relocation model approved by the Commission in the Emerging Technologies proceeding be adapted for 800 MHz SMR providers.

1. Voluntary Frequency Relocation Alone For Wide-area SMR Providers Will Not Yield Contiguous Spectrum

It has been OneComm's experience that reliance on market forces alone is insufficient to assemble contiguous SMR spectrum.[41] If it were, wide-area SMR providers, some of whom have been assembling SMR systems for more than five years, already would have acquired contiguous SMR spectrum. As the Commission acknowledged, however, SMR spectrum remains fragmented. Therefore, something more than reliance on purely voluntary frequency relocation is needed.

OneComm has gained extensive experience on this point while negotiating to purchase many small systems in its effort to develop wide-area systems. During that process, many incumbent licensees opposed the development of advanced wide-area systems on principle, or for competitive reasons and would not accept any inducement to sell, no matter how reasonable. Other incumbent licensees found it advantageous to "hold-out," i.e., refusing to negotiate seriously in anticipation of later commanding a premium over market price. Consequently, OneComm has concluded that even offering above-market inducements in voluntary negotiations

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41 Id. at 22.

does not necessarily ensure that MTA licensees will be able to fulfill the Commission's goal of encouraging advanced technology deployment which requires contiguous spectrum.[42]

The Further NPRM's proposals could provide an even stronger economic incentive for incumbent licensees to hold-out and demand above-market prices. The proposed voluntary frequency relocation procedure,[43] combined with the Commission's proposal that MTA licenses be forfeited for failure to meet coverage benchmarks,[44] places the MTA licensee in an untenable position. The proposed structure incents incumbents to refuse to sell or relocate, and instead to wait as the MTA licensee's construction and coverage deadlines approach. They can then demand higher-than-market-value prices to move to comparable frequencies. MTA licensees would therefore, be forced to protect their high-bid investment by paying above-market hold-out premiums merely to get sufficient spectrum to meet construction and coverage requirements. This approach stacks the deck against a wide-area SMR provider and devalues its MTA license.

The potential negative impact of voluntary frequency relocation would become even more acute if the proposed allocation of four MTA license blocks of 2.5 MHz

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42 See id.

43 Id.

44 See id. at 29-30.

each is adopted. As noted above, such an allocation would virtually ensure that most or all incumbent systems would be licensed over multiple MTA blocks. Incumbents could not only hold out against a single MTA licensee, but also could play MTA licensees against each other. The combination of hold-out incumbents (occasioned by purely voluntary frequency relocation) and the necessity of coordination among four MTA licensees (required by four 2.5 MHz blocks) would likely result in little or no frequency relocation being accomplished under currently proposed rules. For this reason, among others, OneComm instead suggests the voluntary-to-mandatory frequency relocation scheme set forth below and (as discussed above) allocation of a maximum of two MTA blocks.

Furthermore, purely voluntary frequency relocation might draw the Commission into untold disputes.[45] MTA licensees that in fact make a substantial high-bid investment could be compelled to litigate to resolve incumbent hold-outs in order to forestall impending MTA license forfeiture. As a result, the Commission might be asked to resolve cosmic questions of whether "sufficient inducement" had been offered by the MTA licensee or whether incumbents' refusals were reasonable.

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45 See id. at 21-22.

2. OneComm's Proposed Voluntary-to-Mandatory Relocation Program Satisfies The Commissions Goals Of Developing Wide-area SMR While Protecting The Viability Of Smaller Systems

OneComm supports the Commission's twin goals of "providing opportunities . . . to develop wide-area systems while also protecting the viability of smaller systems."[46] The specific proposals outlined below protect the viability of smaller system by ensuring, as does the ET Docket voluntary-to-mandatory program, "that an incumbent licensee will not be faced with a sudden or unexpected demand for relocation . . . ."[47] The proposals outlined herein will provide for an orderly migration without imposing undue expense or disruption on incumbent systems. OneComm's frequency relocation proposal achieves this balance. Specifically, OneComm proposes that:

1. Frequency relocation would become mandatory only after one year from the effective date of the final rules in this docket. During the first year, frequency relocation would be accomplished by voluntary negotiation. Upon termination of the one-year voluntary period, the MTA licensee would have two years to request mandatory frequency relocation. Relocation would be triggered by the MTA licensee's application to the Commission.

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46 Id. at 12.

47 ET Docket Third Report and Order at 6595.

Incentives should be awarded to incumbents who voluntarily relocate. For example, the Emerging Technologies Docket precedent should be followed by award of tax certificates to incumbents who agree to relocate within the initial voluntary period.[48] Similarly, an incumbent agreeing to relocate during the initial voluntary period should be guaranteed that no further short spacing could be performed within a 70 mile radius of the relocated station.

2. All 800 MHz SMR channels would be designated as equivalent for frequency relocation purposes, and frequency relocation to any 800 MHz channel presumptively would further the public interest. Frequency relocation to other available bands, e.g., 150 MHz, 220 MHz, or 450 MHz, or 900 MHz could be performed only by consent of the incumbent, regardless of whether accomplished during the two-year voluntary period or the subsequent mandatory period. Frequency relocation to these other bands must assure the incumbent licensee exclusive use of the target frequency. The MTA licensee would be responsible for procuring target frequencies to exchange for upper 10 MHz SMR channels currently licensed to incumbents.

3. Relocation would be performed at the expense of the MTA licensee by (a) MTA licensee performance of the relocation, under the supervision of the incumbent, or (b)

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48 See ET Docket Third Report and Order at 6605-06.

incumbent licensee performance of the frequency relocation with reimbursement by the MTA licensee, or (c) a third-party contractor performance of the relocation with reimbursement of reasonable expenses by the MTA licensee. The Commission should define in this rulemaking what expenses would be reimbursable.

4. If an incumbent is relocated from a frequency re-used by other stations licensed to the incumbent in the MTA, the incumbent may require relocation of that frequency for all such stations within the MTA. Similarly, an incumbent may require that, once relocation is requested for a frequency licensed to a station, all frequencies licensed to that station that are subject to mandatory relocation be relocated within a reasonable period. However, the foregoing applies only to frequencies located within the MTA licensee's authorization. As discussed, supra, the proposed four blocks of 2.5 MHz each virtually ensure that most incumbent systems will be spread over two or more MTA blocks. OneComm therefore proposes that MTA licensees should not be responsible for relocating frequencies outside of the MTA block license.

5. The relocated system must operate at the same quality and capacity as the old system. The relocated system must provide equivalent control channel capacity.

6. During the one-year voluntary phase, licensing would be accomplished by joint application between the MTA