Treatment of General Category Channels and Intercategory Sharing

- Where general category and/or pool channels remain unused by other eligible licensees, SMR operators should be permitted to continue to apply for them. (19)

SMR WON

- Trade association of 800 Mhz SMR operators and equipment manufacturers

Allocation Issues

- Regulatory Parity legislation of 1993 did not require the restructuring and elimination of the SMR industry Congress did not give the FCC the authority to auction spectrum being used by existing licensees to competitors in the same service The FCC is considering this because Motorola/Nextel's technology will not work unless Nextel has a clear band. (16, 30-31)

- The FCC is trying to create an additional cellular-like service to replace low-cost SMRs This idea is wrong for the following reasons:

  -- Motorola's MIRS technology does not yet work.

  -- Price competition will be reduced since low-cost competitors will be displaced. (31-33)

- Local SMRs are not trying to "turn back the clock." They are trying to prevent disruption of a low-cost service alternative. Spectrum warehousers are abusing the system for anticompetitive purposes and small SMR operators want the FCC to correct and prevent this behavior. Small operators have been successfully competing with cellular providers, but the warehousing of spectrum is now preventing them from expanding their businesses (33-36)

- There is currently virtually no unlicensed spectrum available for auction between 861-866 MHz in any major markets. (36-37)

- If the auction conditions described below are met, the FCC could auction two 50 channel blocks on a BEA market basis; one block of 50 channels, auctioned in blocks of 15-15-15-5, for small business and designated entities, auctioned on a BEA market basis; and one block of 50 channels, auctioned in blocks of 15-15-15-5 channels in BEA markets. Eligibility for the latter block would be limited to existing operators who were providing SMR service in the BEA market on June 20, 1994, the date of Nextel's original proposal to clear this spectrum Nextel and its affiliates

would be ineligible for this spectrum block, as would cellular operators. (57)

Auction Issues

- Although the FCC should not hold auctions, the commenter suggests the following if the auctions are held so that small SMR operators can compete in such auctions:

  -- Adoption of a sufficient relocation block to serve displaced SMR licensees and other 800 MHz licensees;

  -- Partial relinquishment of frequencies to the relocation pool by those holding unconstructed licenses having in excess of 50 unconstructed frequencies per license, with tax certificate treatment for such relinquishment.

  -- The re-management and elimination of short-spacing;

  -- Requiring that all licensees operating on January 5, 1994 be relocated;

  -- Establishing through a survey questionnaire of existing licensees that all operating licensees in a BEA market can in fact be relocated through the Relocation Pool; and

  -- Establishment of the Geographic Competitive Equity Premium for spectrum on which incumbents are relocated (see below). (54-56)

MTA Licensee Rights and Obligations

- Is not opposed to the implementation of pending wide-area proposals filed on or prior to August 10, 1994, where those proposals seek to reuse presently operating frequencies within the scope of the existing footprint. (58)

Incumbent Rights and Obligations

- There is currently insufficient spectrum for the relocation of licensees in the upper 200 channels. It is also a trap for the unwary licensee since compensation for the "cost of retuning" undervalues the bundle of separate property rights which a licensee holds in connection with the license. Relocation also does not take into account the prospective value

of the clear spectrum to the wide-area licensee. This value should go to the relocated licensee. (37-40)

- Mandatory relocation will deny the licensee the value of its license. Only truly voluntary frequency swaps, mergers, purchases, etc. will give the licensee its true value. However, voluntary relocation will not work because there is no enough available spectrum and small SMRs will be forced out of business. If the FCC is intent on auctioning the licensed SMR band, it should propose to restructure the geographic markets, re-auction cellular licenses in the upper 800 MHz band and "see how much support that proposal garners." (41-44)

- Since there is no available spectrum for relocation unless licensees are displaced from the lower bands, the only other alternative would be that the spectrum would have to come from existing licensees who win the auction and have sufficient spectrum to relocate existing users. Only Nextel has sufficient resources for such a proposal. Any other potential auction winner would have to buy additional frequencies or convince Nextel to sell some to it. Thus, the only player who could effectively participate in the auctions is Nextel. (45-46)

- Another problem with mandatory relocation is that the FCC proposes that the wide-area licensee would only be able to relocate the incumbent if it could find sufficient spectrum. What the wide-area licensee could do is simply not relocate the incumbent. However, the incumbent is prevented from expanding because the wide-area licensee has hemmed it in with unconstructed licenses. Thus, the incumbent licensee cannot meet customer demand and when the wide-area licensee constructs its system, it will face a significantly weaker competitor. (47-49)

- Truly mandatory relocation which would encourage auction participation and protect existing incumbents would require the FCC to form a Relocation Block. Two hundred channels for this purpose could be assembled from existing unconstructed but licensed channels subject to 5-year extended construction timetables, or from unconstructed General Category channels. For example, no unconstructed license at any site should have more than 50 channels. (50-51)

- A Relocation Block should be established prior to the auction. The FCC must establish geographic competition in which the incumbent operator is permitted to compete on relocated frequencies throughout the auction winner's market. This will promote competition by allowing local SMR service to continue to compete with wide-area service providers.

(Geographic Competitive Equity Premium). BEA sized markets will work best for implementing such a scheme since they most closely represent commuter patterns. (52-53)

- Tax certificates should be provided as an incentive to all incumbent SMR licensees who are forced to relocate, regardless of whether the FCC adopts a voluntary or mandatory relocation program. Tax certificates should also be available for the fair market value of any licensed but unconstructed frequencies donated or divested to the relocation pool. (58-61)

Other

- SMR services are distinct from cellular service which provides a price-competitive and valuable service. DOJ studies and independent analysis confirm this conclusion. (11-12)

- Agreements between Motorola, Nextel and other SMR service providers will reduce competition and inhibit deployment of alternative technologies. (13)

- SMR service providers have already formed wide-area networks to provide innovative services to the public. The monopolization of the SMR market threatens these innovations. (14-15)

- FCC rules have allowed potential wide-area SMR service providers, particularly Nextel, to warehouse large amounts of spectrum. (25)

- The consolidation of Nextel, Motorola, OneComm, and Dial Page/Dial Call have put significant amounts of SMR licenses with no constructed systems under common control. DOJ has determined that this will have an anti-competitive effect.

  -- This has prevented independent small business SMRs from expanding their products and markets.

  -- It has also enabled the frequencies which in 1993 were otherwise available for system expansion to be warehoused in unconstructed licenses using "aggregate loading" figures from high-density urban markets.

-- The warehousing licensees have designed their unconstructed facilities to short space exiting licensees, effectively reducing their competitors' geographic operating area. (26-27)

- The shortage of SMR spectrum has caused the call blocking rate to increase to 9%, which has encouraged customers to look for other service alternatives. (27)

- Attachments:

  A List of States where SMR WON members operate

  B Petition for Reconsideration in this proceeding filed December 21, 1994

  C Statements of SMR operators in support of SMR WON comments

  D EMCI Analysis of the Impact of the FCC's Wide Area SMR Licensing Proposal on the Business Radio Market

  E Statement of Fred Goodwin, SMR Consulting, regarding effect of Fleetcall acquisitions on SMR market

  F DOJ Complaint and CIS in the matter of United States of American v. Motorola Inc and Nextel Communications, Inc

  G Study by Doron Fertig on the history of SMRs and their regulation

  H Declaration by Rick E. Hafla of Teton Communications on the blocked call rate for SMRs

  I Chart on SMR Frequency Concentration in the Top 15 Urban Markets

  J SMR WON Seven Market Frequency Study

  K Declarations of Declarations of William A. Holesworth regarding Frequency Studies of SMR Licenses in several states

  L Wall Street Journal article on Nextel

THE SOUTHERN COMPANY

- 800 MHz wide-area SMR licensee

Allocation Issues

- Believes that the existing SMR regulatory regime is more suitable for the development of a competitive industry than the regulatory changes proposed in the FNPRM, questions the feasibility of the proposals due to the almost complete lack of SMR spectrum, and maintains that the proposals will foster an anticompetitive environment. (3)

- Argues that the Commission's rationale for issuing the FNPRM -- that 200 contiguous channels are needed -- is based on ill-conceived, unsubstantiated facts and is fatally flawed because the SMR landscape does not support a geographically-defined licensing scheme and the MTA proposal will foster an anticompetitive environment beneficial only to Nextel. (5)

- Challenges the assumption that 200 contiguous channels are necessary for SMRs to compete with cellular, arguing that: (1) wide-area SMRs are not designed to compete with cellular, but will complement it by reaching distinct parts of the market through enhanced dispatch service; and (2) all 200 channels are not needed to build a competitive system. (6-8)

- Recommends that a 140-channel SMR spectrum cap be adopted to preserve the competitive environment for all SMR licensees. (8)

- Suggests that, if the Commission believes that 200 contiguous channels are necessary to compete with other services, it makes no sense for the Commission to also propose to divide the upper 10 MHz of SMR spectrum into four blocks of 2.5 MHz, which would in effect divide the contiguous channels into four separate blocks within each MTA, and suggests that if a number less than 200 channels are required, the proceeding should be terminated (9)

- Argues that there is inadequate spectrum to justify MTA licensing, as illustrated by the AMTA and ITA reports appended as Exhibits A and B, and several independent studies appended as Exhibits C, D, E, and F. (10-12 and attachments)

- The alternative to license the remaining 80 non-contiguous SMR channels on a BTA basis is also infeasible because these channels are also scarce. (12)

- Argues that allowing MTA applicants to bid on an unlimited number of blocks within the same MTA would allow one SMR licensee to emerge within the MTAs. Thus, if the Commission decides to proceed with MTA licensing, it should limit the number of frequency blocks one entity can bid on in an MTA to two 50 channel blocks. (15)

Auction Issues

- Argues that the FNPRM fails to acknowledge that the lack of spectrum will not attract bidders, leaving Nextel with the largest incentive to participate in the proposed SMR auctions. (19-20 and Exhibits I, J, K, L, M, N, O, P)

- Claims that Nextel is uniquely positioned to benefit from the proposed MTA/SMR auctions in view of its considerable SMR license holdings, and suggests that auctions will only solidify Nextel's dominance and eliminate competition. (21)

MTA Licensee Rights and Obligations

- Allowing the MTA licensee to automatically receive an incumbent's authorization within the MTA if the incumbent fails to construct or operate inhibits competition and moots a potentially mutually exclusive situation where auctions could be conducted. (16)

- Opposes giving MTA licensees the right to negotiate with incumbent licensees for the purchase or relocation of their facilities, which is tantamount to a transfer of control or assignment without a public interest determination. (17)

Application Procedures

- Adopts by reference its comments filed in GEN Docket 93-252 with respect to the proposed application procedures for MTA licensees. (22)

Other Issues

- Urges the Commission to designate control channels for wide-area SMR systems to facilitate user roaming, as suggested by Southern in its comments in the Equal Access and Interconnection proceeding. (22-24)

SOUTHERN MINNESOTA COMMUNICATIONS, INC.

- SMR operator

Allocation Issues

- Supports proposal to divide the upper 10 MHz into four 2.5 MHz blocks of 50 channels, but, to allow for two MTA licensees in each market, proposes that no more than 7.5 MHz of the 10 MHz be available to any one entity. (2-3)

- Under the above proposal, if an MTA licensee required more channels, it could secure them from the lower 80 SMR and 150 General Category channels. (3)

- Supports continuation of site specific licensing for all local channels. If the Commission proceeds with area specific licensing, urges limiting this approach to areas where there is currently no use of the spectrum to be licensed. (3)

Auction Issues

- Opposes auctioning local SMR channels. (6)

MTA Licensee Rights and Obligations

- MTA licensees should be required to observe a 40/22 dBu co-channel separation, as should all licensees. (4)

- MTA licensees should not be able to construct within the 22 dBu contour of incumbent co-channel licensees and local licensees should be prohibited from locating their sites within the 22 dBu contour of other local licensees. (4)

Construction Requirements

- Supports strict enforcement of the one year construction deadline for local SMRs, and the requirement that licensees begin serving customers by the end of the construction period. Also supports strict construction for MTA licensees and license forfeiture for failure to comply. (5)

Incumbent Rights and Obligations

- Opposes mandatory relocation. Relocation should occur only on mutually acceptable terms and conditions. (3-4)

- Incumbent licensees should be permitted to relocate their existing systems at least within their 22 dBu coverage contour. Although a 40/22 dBu co-channel interference standard is generally optimal, separation could be reduced in favor of local licensees within the coverage area of an MTA system unless the MTA licensee has already constructed co-channel facilities at a particular site. (4)

Treatment of General Category Channels and Intercategory Sharing

- Urges the Commission to designate all 230 channels (lower 80 and 150 General Category) for SMR use, arguing that without access to all 230 channels, local licensees will be foreclosed from offering service or expanding. (2-5)

- These channels would be able to be used by local licensees, existing wide-area systems, or combined to form new wide-area systems, but should be subject to existing rules, with greater co-channel interference protection. They should not be authorized for use throughout an MTA unless actually licensed and constructed at sites in the MTA. (2)

- Urges the Commission not to foreclose local SMRs from the Business and Industrial/Land Transportation channels for expanding their operations. (5-6)

Other Issues

- Urges the Commission to take this opportunity to strengthen its co-channel interference criteria to a strict 40-22 dBu standard and to restrict "short spacing." (3)

- The FCC should presumptively classify all MTA licensees as CMRS. There should be no presumption of CMRS status on the lower 80 or 150 General Category channels. (6)

SPECTRUM RESOURCES, INC.

- Provider of consulting engineering services and management services for mobile communications spectrum

Incumbent Rights and Obligations

- Mandatory relocation requirements are necessary. Without the relocation of incumbent licensees, the MTA-based licensee will not have the same flexibility as competing cellular and PCS providers due to internal boundary restrictions. (4)

- The intensive manner in which TDMA technology utilizes spectrum renders the TDMA system more susceptible to interference. The solution is to eliminate interstitial sharing of the band by moving the high-power users to comparable spectrum. Moreover, the relocation of high-power users will allow the future implementation of wideband technologies. (5)

- Contiguous "clear" spectrum is necessary to provide confidence to investors so that competitive SMR services are properly funded. (5)

- Mandatory relocation provides MTA licensees with something of real value while providing incumbent licensees with a viable exit strategy. (5)

- Mandatory relocation would eliminate the creation of "greenmail" situations where incumbent licensees try to extract exorbitant prices for their licenses. (6)

- SRI suggests a mandatory relocation proposal in which an incumbent would have the following three options:

    1) Incumbent licensees could relocate to other 800 MHz spectrum. The MTA licensee would be required to "re-tune" the incumbent's system. (6)

    2) Incumbent licensees could relocate to 900 MHz spectrum. This would require the Commission to provide for the licensing of incumbents either through direct licensing or the assignment of any available 900 MHz channels on a two-for-one basis. (6)

    3) The MTA licensee could buy the incumbent licensee's system. There would be no requirement that the incumbent sell its system.

Instead, the incumbent would have the option of taking the offer, or relocating under options 1 or 2. The buy-out offer would be a formula adopted by the Commission based on SMR transactions, utilizing a common denominator of a multiple of current revenues, or a certain number of Dollars/Pop, whichever is greater. The mandatory transition would have to occur within three years. (6-8)

C.T. SPRUILL

- Analog SMR operator

Allocation Issues

- C.T. Spruill believes that the FCC's proposal to auction 200 SMR channels on an MTA basis is impractical and unworkable and, if attempted, would injure the already established SMR industry. (Incorporates its Reply Comments opposing Nextel's original proposal in this proceeding.) (1-2)

ROD STALVEY d/b/a STALVEY COMMUNICATIONS

- No description (appears to be local SMR operator)

Allocation Issues

- Stalvey believes that the FCC's proposal to auction 200 SMR channels on an MTA basis is impractical and unworkable and, if attempted, would injure the already established SMR industry. (Incorporates its Reply Comments opposing Nextel's original proposal in this proceeding.) (1-2)

SUPREME RADIO COMMUNICATIONS, INC.

- SMR-trunked system operator

Allocation Issues

- Opposes allowing large, publicly-traded ESMR companies to force frequency swaps or migration upon independent SMR operators. ESMR companies already enjoy many advantages not offered to the independents and those systems are stifling the growth of local SMRs by warehousing spectrum. (3)

- Even the proposal for four 50-channel blocks rather than a single 200-channel block will be insufficient to curtail Nextel's anticompetitive impact on the SMR market. The FCC's proposal would merely exacerbate the current market dominance established by Nextel. (4-5)

Auction Issues

- Nextel's dominance suggests that it will be the only likely bidder in many instances. Therefore, auctions will not assist the Commission in determining who is most likely to bring service to the public. Rather, auctions would create opportunities for spectrum warehousing by Nextel. (4-5)

Incumbent Rights and Obligations

- Allowing forced frequency exchanges or migration would be disastrous for independent operators who would be at the mercy of ESMR operators' business strategies There would be no concurrent benefit to those operators or to the public (3)

T & K COMMUNICATIONS SYSTEMS. INC.

- SMR operator

Allocation Issues

- Questions the availability of comparable spectrum for retuning. Suggests that FCC may be considering 450 MHz channels that might become available via refarming, but which cannot yet be deemed to be a legitimate alternative. (2-3)

- The FCC's proposal would be anticompetitive by favoring ESMR operators with MTA-wide authority and injuring traditional operators and their subscribers. (3)

Auction Issues

- The use of auction authority as proposed will harm small businesses and is ill-advised. Only Nextel would be interested or qualified to participate. (4)

Other Issues

- Implementation of the FCC's proposal will require an unjustified investment of substantial agency resources that would benefit neither the public nor the majority of the SMR industry. (5)

TOTAL COM, INC.

- Radio dealer and SMR service provider

Allocation Issues

- The upper 200 MHz channels should be reserved for wide area SMRs, but the market should determine the owner/operator. (4) The 200 channels should be divided into 50 channel blocks. There needs to be a limit of 200 channels licensed to any one entity at 800 MHz. (5)

- 80 channels is insufficient for local SMR service. Recommends the following transition:

  - retune all public safety to 866-870 MHz
  - retune private land mobile to 850-855 MHz
  - Local/regional SMR at 856-860 MHz
  - Wide-area SMR at 860-865 MHz

- MTA's are too large and would limit the number of competitors. BEAs, as defined by the Department of Commerce are more appropriate. (4)

- Geographical licensing of local area SMRs is advantageous but increased fees should be implemented to eliminate warehousing. (6)

- Incumbent licensees should be able to file applications for wide area operations with self-coordination for their service footprints as of Jan. 5, 1995. (10)

Auction Issues

- Opposes the use of auctions. (11)

MTA Licensee Rights and Obligations

- Supports self-coordination for wide-area licensees. Any recovered channels should not automatically be assigned to the wide-area licensee. (7)

- Wide area licensees should protect incumbents with 70 miles separation and no short-spacing allowed (9)

Construction Requirements

- Warehousing of spectrum needs to be addressed. Local SMR licensees should have 90% of their channels constructed before additional channels are authorized. Extended implementation schedules must be strictly monitored. (6)

Incumbent Rights and Obligations

- Opposes mandatory relocation. (7)

- Retuning would require dual systems to prevent service interruptions. Commenter would require about 1.3 million dollars in equipment for a transition period of 6 months and $75-$100 per subscriber to retune. (8)

- Any relocation of incumbents must include geographic expansion opportunities in exchange for contiguous spectrum. (8)

TRIANGLE COMMUNICATIONS, INC.

- SMR operator

Allocation Issues

- Triangle believes that the FCC's proposal to auction 200 SMR channels on an MTA basis is impractical and unworkable and, if attempted, would injure the already established SMR industry. (Incorporates its Reply Comments opposing Nextel's original proposal in this proceeding.) (1-2)

UNITED STATES SUGAR CORPORATION

- Large private radio user operating 21 channel SMR for internal use. Excess capacity is leased to small business

Incumbent Rights and Obligations

- Opposes mandatory retuning because it places small SMRs at a distinct operational and negotiating disadvantage. (5)

- The success of auctions does hinge upon mandatory retuning. (6)

- If mandatory retuning is adopted, incumbents must be able to operate "dual" systems for 6 months to ensure continuous operations during the transition period (7,8)

- All costs associated with the retuning must be covered by the MTA licensee. Also, a 20% premium should be paid for the disruption to the incumbents. This premium could also take the form of additional channels or improved facilities upon the incumbent's approval. (9)

UTC, THE TELECOMMUNICATIONS ASSOCIATION

- National representative on communications matters for the nation's electric, gas and water utilities, and natural gas pipelines

MTA Licensee Rights and Obligations

- Licensees should not be eligible for both MTA and local licensing in the same geographic markets. A single monolithic carrier will be unlikely to offer the specialized services that utilities often require and will concentrate on mass market volume. The existence of additional carriers will ensure choice and price competition while allowing small traditional SMRs to continue to provide services. (7)

Incumbent Rights and Obligations

- Opposes mandatory retuning of incumbent systems. If the FCC does adopt a mandatory relocation plan, it should adopt a modified version of the plan for microwave relocation from 2 GHz spectrum, with a four year voluntary negotiation period since MTA licensees will not need to approach many 800 MHz incumbents during the initial two years of the license grant. (5-6)

- The rules should specify that an incumbent cannot be forced to relocate its facilities more than once. In addition, incumbent licensees should have the terms of their original license grants grandfathered with regard to their replacement facilities. (7)

- Incumbents should be "grandfathered" with primary licensing rights vis-a-vis new licensees in terms of co-channel interference protection. A new licensee would be required to afford protection to incumbents as provided under § 90.621(b), either by locating its stations at least 113 km from the facilities of any incumbent or by complying with the co-channel separation standards set forth in the FCC's short spacing rule. (5)

- Incumbent systems should be allowed to construct stations anywhere within a defined "protected service area" which would allow them to establish fill-in base stations without prior FCC approval. The protected service area should be based on a fixed radius of 30 km from the center of the incumbent system.

Treatment of General Category Channels and Intercategory Sharing

- Supports FCC proposal to revise intercategory sharing rules to prohibit SMR and non-SMR applicants from applying for the same channels. (2)

- Since the FCC is going to auction SMR channels, it should eliminate intercategory SMR access to Pool Channels. If these channels remain available, more SMR applicants will seek to use them to avoid the auctioned spectrum. (3)

- SMR use of the general category channels should also be eliminated because the FCC has determined that these channels are not subject to auctions. General Category spectrum should not be subdivided into Pool Channels and SMR channels since PMRS licensees operate throughout these channels and should be able to expand their systems to meet evolving needs, and PMRS users currently suffer from severe congestion problems. (3-4)

VANGUARD CELLULAR SYSTEMS, INC.

- Cellular radio service provider

Incumbent Rights and Obligations

- Any reallocation scheme must include requirements that all associated costs to the incumbent are borne by the incoming licensee and that incumbents are provided sufficient time to retune existing facilities. (3)

Other Issues

- Supports CTIA's petition in that all CMRS offerings should be governed by the same objective of eliminating restrictions on licensees' ability to compete against other carriers. (2)

VANTEK COMMUNICATIONS, INC.

- SMR operator

Allocation Issues

- Supports proposal to divide the upper 10 MHz into four 2.5 MHz blocks of 50 channels, but, to allow for two MTA licensees in each market, proposes that no more than 7.5 MHz of the 10 MHz be available to any one entity. (2-3)

- Under the above proposal, if an MTA licensee required more channels, it could secure them from the lower 80 SMR and 150 General Category channels. (3)

- Supports continuation of site specific licensing for all local channels. If the Commission proceeds with area specific licensing, urges limiting this approach to areas where there is currently no use of the spectrum to be licensed. (3)

Auction Issues

- Opposes auctioning local SMR channels. (6)

MTA Licensee Rights and Obligations

- MTA licensees should be required to observe a 40/22 dBu co-channel separation, as should all licensees. (4)

- MTA licensees should not be able to construct within the 22 dBu contour of incumbent co-channel licensees and local licensees should be prohibited from locating their sites within the 22 dBu contour of other local licensees. (5)

Construction Requirements

- Supports strict enforcement of the one year construction deadline for local SMRs, and the requirement that licensees begin serving customers by the end of the construction period. Also supports strict construction for MTA licensees and license forfeiture for failure to comply. (5)