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Before The
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

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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

REPLY COMMENTS OF JOHN H. PHIPPS, INC. D/B/A PORTA-PHONE

John H. Phipps, Inc. d/b/a Porta-Phone ("Porta-Phone"), by its attorneys and pursuant to Section 1.415(c) of the Commission's Rules and Regulations, 47 C.F.R. § 1.415(c), hereby submits reply comments in this proceeding.

A. Introduction.

Porta-Phone is a small regional communications company operating in the southeastern United States, specializing in personal communications services such as paging, mobile radio, voice mail, air-to-ground radiotelephone, etc. Porta-Phone has been in operation since 1975. Its current FCC-licensed systems include 800 MHz SMR systems in the pan handle section of Florida and nearby regions in northern Florida, southern Georgia, and southern Alabama. Accordingly, Porta-Phone has a keen interest in the issues in this proceeding.

B. Porta-Phone Strongly Opposes Efforts, Championed Almost Exclusively by Nextel Communications, Inc. and OneComm Corporation, to Displace and Destroy by Governmental Coercion the Competitive SMR Industry Comprised of Small Businesses.

The overwhelming majority of the commenters in this proceeding oppose the Commission's proposal to trample under a viable, vibrant, and competitive industry of small and moderately sized SMR operators for the sole benefit of a small group of operators. While a notice and comment rulemaking

proceeding is not an exercise in majority rule, the Commission should nonetheless pause to ask itself why the opposition to this proposal is so widespread.

The Commission is proposing to auction off already-licensed spectrum. That may not be the way the proposal technically reads, but that *is* the essence of the proposal. The Commission wants to put on the auction block 200 contiguous 800 MHz SMR channels. In the region served by Porta-Phone, there is no market area of any significant size where most, if not all, of those channels are not already licensed. The license holders are, as a general rule, small and medium sized businesses who obtained their authorizations and maintained their systems under rules and procedures established by the Commission. But they are now being told that their systems are going to be effectively frozen in capacity and coverage area so that the Commission can sell off whatever remaining spectrum may fill in the cracks of channel assignments and the crevices of contour coverage. The proponents of this plan know that no viable system can be built on such "white space," so the existing SMR operators are also being told that they may even have to pull up stakes and move their systems to different frequencies should the successful speculator so demand.

The thinking behind this mad rush to disenfranchise the hundreds, if not thousands, of small business licensees for the benefit of a single national licensee is baffling. In the PCS proceeding the Commission bent over backwards in an effort to assure the opportunity of small businesses to participate in the auction process. The Commission set aside two broadband PCS blocks totaling 40 MHz in bandwidth have been set aside for so-called "entrepreneurs," and will provide special bidding credit and financing incentives to small businesses who bid on these blocks. The stated policy is to foster and encourage small business participation in the mobile telecommunications industry. But when it comes to SMR, where small business has already flourished under existing rules, the Commission wants to sweep aside the rules and the small business players in favor of big business speculators.

The Commission (both through official pronouncement as well as public statements by its officials) frequently advocates the cause of competition in the telecommunications industry and repeatedly states that a competitive marketplace is a better and more efficient protector of the public interest than government regulation. This is a golden opportunity to learn whether such statements truly reflect

Commission policy or are, rather, nothing more than rhetoric. We have in the SMR industry a truly competitive marketplace--both in terms of the provision of service to the public and the distribution of the licenses to service providers. If there is a bona fide need to amalgamate the 800 MHz spectrum into a larger channel blocks and wider geographic areas, then it will happen. If 50 or 100 or 200 channels are more valuable in one or two hands than many, then those one or two hands will acquire them. But there can be no justification for the Commission to force amalgamation if the need and/or value for it does not exist in an unfettered, free market.

For the same reasons, Port-Phone joins the overwhelming majority of the commenters in this proceeding in opposing the mandatory migration or relocation of incumbent 800 MHz licensees should the Commission proceed with any version of this proposal. If the relocation of an incumbent licensee is not valuable enough to the wide-area licensee as to enable a mutually acceptable business arrangement between the two, it is absurd to think that the mere force of a government requirement will magically change the economic realities of the situation.

C. If the Commission Proceeds With Geographic Licensing, PCIA's Proposal for a Two Phase Licensing Scheme Should Be Adopted.

If the Commission moves to a wide-area, geographic based (i.e., MTAs, BEAs, BTAs, etc.), Porta-Phone urges the Commission to incorporate a system similar to the two-phase licensing mechanism proposed by The Personal Communications Industry Association ("PCIA"). *See* PCIA Comments at pp. 17-19. The PCIA scheme provides an opportunity, during phase I, for incumbent licensees to elect to expand their existing systems into wide area systems, without the threat of being subject to auctions. The entire proposal to auction 800 MHz spectrum which is so heavily populated by incumbent licensees is open to serious legal challenge. In Porta-Phone's view, and the view of many others, the Commission would far exceed its statutory authority (which restricts auctions to "initial" licensing) to authorize wide-area carriers on top of incumbents. Even assuming the wide-area scheme were otherwise prudent, this aspect alone will result in years of delay (or at least business uncertainty) while these questions are litigated in the courts.

Not only is the PCIA proposal sound from a legal and policy standpoint, it is also the only equitable way to implement wide-area, geographic based licensing. Existing SMR operators obtained the authorizations for their existing systems based on certain assumptions and expectations under the Commission Rules with respect to future system expansion. Subject to channel loading and mileage separation requirements, it was understood that systems could be expanded both in terms of capacity and geographic coverage. Most licensees adopted prudent business plans that called for the establishment and development of viable systems in core areas before further expansion. The Commission should not now take actions that will preclude further expansion of these systems without first giving the incumbent licensees and opportunity to adjust to the new licensing scheme.

Respectfully submitted,

JOHN H. PHIPPS, INC. D/B/A PORTA-PHONE

By: Robert J. Keller

Robert J. Keller
Its Attorney

ROBERT J. KELLER, P.C.
4200 Wisconsin Avenue, N.W. #106-261
Washington, DC 20016-2146
301-229-5208

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