

contiguous spectrum which is not necessary for wide-area operation by the rest of the SMR industry.

b. **Guardbands Are Not Necessary For Wide Area Operations**

In footnote 52 of its Comments, Nextel states that a wide-area SMR (as it is defined by Nextel) must maintain a guardband on each frequency to preclude interference to adjacent channel, non-affiliated station. As shown above, the need for a guardband is not necessary for wide-area operation. Moreover, when Nextel (then Fleet Call) requested its original waiver, NABER members expressed to Nextel officials their concern over adjacent channel and co-channel interference at NABER's Annual Meeting in Tampa, Florida in May of 1990. In response, Nextel stated that:

FCI [Fleet Call] has noted apparent concern in the private land mobile community regarding the increased potential for adjacent channel interference from these emissions in an ESMR system. FCI initially proposed a 16-mile separation between ESMR base stations and adjacent channel existing SMR base station to control adjacent channel interference. In addition, FCI could "engineer around" such difficulties with additional mileage separations and other engineering modifications.

As discussed above, FCI has now become aware of Motorola's new digital transmission technology that will conform to the digital emission mask described in Section 90.209(g) of the Rules. The benefit of this approach is that by occupying less than the full 25 KHz bandwidth, adjacent channel interference concerns are eliminated. This new equipment will also utilize TDMA architecture to achieve the equivalent of six voice channels from the occupied bandwidth. In other words, this digital technology will provide for even greater efficiency than originally projected without creating adjacent channel

interference, while eliminating the need for a 16-mile separation.

Given the advantages of this approach, FCI no longer needs any restrictions on the ability of either present or future adjacent channel licensees to modify or move their transmitting facilities within the current specifications of the Commission's Rules. Thus, all interference concerns of adjacent channel and second-adjacent channel licensees should be resolved. FCI is willing to incur additional expense to implement this new technology to better protect other licensees and to achieve even greater capacity increases.²⁶

NABER (now PCIA) supported Nextel's Waiver Request based upon these representations. Although Nextel should be allowed every opportunity to solve its guardband problems, and create contiguous spectrum if it so desires, Nextel's problems should not be solved by the Commission requiring the re-tuning of hundreds of thousands of radios and the mandatory relocation of the independent SMR industry.

E. PCIA Opposes Changing The General Category Rules Because The Channels Are Heavily Used By All Segments Of The Land Mobile Industry

Nextel, OneComm, CellCall and some other SMR operators request that the Commission designate the General Category channels for SMR use only. Nextel states that "[o]utside of the large metropolitan areas ... relatively few SMR Systems are actually constructed."²⁷

²⁶Comments of Fleet Call, Inc., FCC File No. LMK-90036, filed June 7, 1990 at pp. 7-8. (footnotes omitted).

²⁷Nextel Comments at 8.

SMR WON suggests that unconstructed General Category channels could be used for the "Relocation Block" it has proposed.²⁸

As discussed in PCIA's original Comments, the General Category channels are heavily utilized by non-SMR entities in many areas of the country, well beyond the undefined "major urban areas" suggested in Nextel's Comments. On this basis PCIA, along with the Utilities Telecommunications Council ("UTC"), the American Petroleum Institute ("API"), the Industrial Telecommunications Association ("ITA") and the Association of Public-Safety Communications Officials-International, Inc. ("APCO"), opposed the reallocation of the General Category channels for SMR use only in their Comments.

Additionally, the General Category channels have been used extensively for years in all areas of the country by independent SMR operators. In many areas, legitimate SMR operators turned to General Category channels to expand their existing businesses when all of the remaining SMR Pool capacity was already assigned to other licensees. For many independent SMR operators, General Category channels represented the only compatible alternative spectrum source to expand growing SMR systems. Such channels can again become a limited resource for independent operator expansion

²⁸SMR Won Comments at 49-50. It is recognized that SMR Won presents this proposal only as an alternative. However, since it has been suggested as a "home" for displaced SMR licensees by both Nextel and SMR Won, the proposal must be examined thoroughly.

when the Commission resumes requesting construction information from licensees and recovers unconstructed licenses.²⁹

Unfortunately, the General Category channels are only a limited resource. As discussed above, a large number of General Category channels are utilized throughout the country by private users as well as long-time SMR operators using the channels for expanded capacity. PCIA's survey of ten (10) urban areas of various sizes (from New York City to Raleigh/Durham, North Carolina) indicates that private systems are licensed for 50% of the General Category channels in the ten (10) urban areas in the survey (See Exhibit 1).

As noted in a variety of forums, numerous General Category channels not already used by existing operators and private systems have been licensed through application mills. Certainly, a number of these channels are not constructed and hopefully will be recovered soon. However, a surprisingly large number of General Category channels licensed through application mills actually have been constructed through agreements reached with legitimate SMR operators where capacity was needed. In addition, a number of radio dealers who do not currently operate SMR systems have put together networks consisting exclusively of those channels and are beginning construction of systems.³⁰

²⁹The Commission has temporarily discontinued the mailing to licensees of FCC Form 800A letter, which requests construction information.

³⁰See, for example, the Comments of Chadmoore and DCL Associates, Inc.

The Commission cannot create a "relocation pool" as recommended by Nextel and SMR WON with General Category channels. Such channels are heavily used in urban areas, and widely used throughout the entire country. Just like the SMR Pool, the virgin spectrum just doesn't exist in this pool. No rationale exists to require the wholesale re-tuning of hundreds of thousands of radios to create contiguous spectrum for a single operator in the SMR Pool and no spectrum exists in the band to accomplish this impossible task.

F. Business Pool Frequencies Are Extensively Used By Private Systems Throughout The Country

Nextel recommends that the Commission reassign the 50 Business Pool frequencies for SMR use only. Nextel's proposal is based upon its assertion that "... the 50 Business channels are primarily used for SMRs..."³¹ and "... most Business Radio licensees provide commercial service to third parties on a carrier basis."³²

PCIA disagrees with Nextel's assertions. First, the Business Pool channels are not "primarily" used for SMRs. In fact, PCIA's research, as the designated frequency advisory committee for the service, demonstrates the opposite.

In researching the same ten (10) urban areas discussed above, PCIA found that only twenty percent (20%) of the Business Pool channels were used for trunked SMR operation in core areas of these

³¹Nextel Comments at 9.

³²Nextel Comments at 26.

markets.³³ Similarly, Nextel's representation that "... most Business Radio licensees provide commercial service to third parties on a carrier basis" is also incorrect. The FCC has clearly stated that Business Radio Service licensees operating on 800 MHz Business Pool channels may not offer for-profit service.³⁴

Community repeater operations are permitted in the 800 MHz Business Radio Pool. A community repeater owner may or may not also be licensed to use the system.³⁵ A review of the same cities reveals that only eight percent (8%) of the Business Pool channels are licensed to community repeater systems, whereas sixty-three (63%) of the Business Pool channels are licensed for private system use.

The Business Pool channels are licensed for private use by companies such as Federal Express and Airborne Freight, public safety entities and utilities. Not only are the Business Pool channels used primarily by non-carriers, they are used extensively throughout the country. PCIA estimates that less than five (5) Business Pool channels are available in the 30 largest urban areas of the country. Clearly, these channels cannot be used as a "relocation pool" as suggested by Nextel.

³³See Exhibit 2 attached hereto.

³⁴47 C.F.R. §90.179(f). See, Letter from Robert S. Foosner, Chief, Private Radio Bureau to Emmett B. Kitchen, Jr., dated September 3, 1986; Notice of Proposed Rule Making, PR Docket No. 86-404, 51 FR 45025 (December 16, 1986) at para. 98.

³⁵Community repeaters have been reclassified by the Commission as a Commercial Mobile Radio Service.

G. PCIA Opposes The SMR WON ESMR Channel Recovery Proposal

PCIA appreciates the efforts made by the members of SMR WON to develop an alternative solution to the Commission's proposal. PCIA also appreciates that SMR WON is making a genuine effort to accommodate Nextel's desires without severely penalizing SMR WON's members. However, PCIA believes that SMR WON's proposal is not workable and penalizes independent SMR operators.

PCIA has already described above that there is no "relocation pool" to be found in the 800 MHz band. SMR WON also suggests that a relocation pool could partially be created by recovering channels in excess of 50 channels that a current wide-area licensee does not have constructed at a transmitter site. Even if the recovery of channels from legitimate licensees could be justified, the channels would be a patchwork of various channels spread all over the band. It would be a logistical impossibility for the Commission to determine which channels go to which relocated entity at which site for which service, etc.

In addition, SMR WON's ESMR channel recovery plan seriously disadvantages independent SMR operators who have obtained wide-area authorizations. Many independent SMR operators have only recently received their wide-area authority. To require such operators to return unconstructed channels in one year totally negates their ability to perform the time-consuming planning and construction which is necessary to construct a system which involves multiple interacting transmitter sites. Thus, the SMR WON plan, which at first glance seems to require Nextel to complete

its construction expeditiously, actually will result in reducing competition to Nextel by recovering channels from legitimate independent wide-area licensees.

PCIA believes that there is no justification for recovering channels from licensees who have legitimately demonstrated their qualifications to the Commission. The Commission should be vigilant in ensuring that operators which have received construction extensions fulfill their promises, with channel recovery for unconstructed channels at the end of the license term. However, SMR WON's proposal would take away from these independent operators the ability to compete with Nextel, a goal which SMR WON members themselves seek to achieve.³⁶

³⁶It should be noted that PCIA has had numerous meetings and conversations with SMR WON members regarding PCIA's plan and possible alternatives. PCIA hopes to achieve a consensus with SMR WON that will be presented to the Commission in an ex parte presentation.

III. CONCLUSION

At this time, PCIA's Comments represent a consensus position of a broad cross-section of the 800 MHz radio industry. PCIA's proposal is a plan which is fair and equitable to all participants. It accomplishes the Commission's goals in this proceeding and thus is consistent with Congressional mandates to the Commission.

WHEREFORE, the Personal Communications Industries Association respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

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EXHIBIT 1

Private System Use of 150 Gen. Cat. Pool Channels

<u>City</u>	<u>Frequencies Licensed to Private Systems</u>
New York	122
Chicago	123
Los Angeles	89
San Francisco	96
Tampa	81
Kansas City	34
Raleigh/Durham	39
New Orleans	108
Austin	15
Cincinnati	42

EXHIBIT 2

Trunked SMR Use of 50 Business Pool Channels

<u>City</u>	Frequencies Licensed	
	<u>to</u> <u>SMR Systems</u>	<u>to</u> <u>Private Systems</u>
New York	3	47
Chicago	11	38
Los Angeles	26	22
San Francisco	5	32
Tampa	22	21
Kansas City	4	32
Raleigh/Durham	10	27
New Orleans	2	41
Austin	12	27
Cincinnati	6	27