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

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

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 THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

Respectfully submitted,

By: Emmett B. Kitchen
President
Personal Communications
Industry Association
1019 19th Street, N.W.
Suite 1100
Washington, D.C. 20036
(202) 467-4770

OF COUNSEL:

Meyer, Faller, Weisman and
Rosenberg, P.C.
4400 Jenifer Street, N.W.
Suite 380
Washington, D.C. 20015
(202) 362-1100

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SUMMARY

The Personal Communications Industry Association ("PCIA") respectfully submits its Reply Comments in response to the Comments filed by various parties in the above-captioned proceeding.

PCIA's Comments supported a form of wide-area licensing that allows existing licensees flexibility in site selection and growth potentials, reduces speculative filings and reduces the Commission's burden to process applications quickly. PCIA also stated its adamant opposition to any mandatory relocation of existing SMR providers such as the plan proposed by Nextel Communications, Inc. ("Nextel") and its affiliates. PCIA opposed the assignment of 800 MHz wide-area licenses through an auction process as the Commission's auction proposal is contrary to Congressional intent and is unnecessary to serve the Commission's stated purpose to "create competition, not raise revenues."

PCIA believes that there is no evidence that an additional one to four mega-carrier systems with the same number of channels as a cellular operation are needed to create market competition. Rather, the evidence clearly demonstrates that there is an active, competitive marketplace consisting of companies of various sizes, each tailoring their service offerings to meet the demands of their customers, which would be damaged by the Commission's proposal.

Throughout the Commission's proceeding in GN Docket No. 93-252, it is clear that the overwhelming majority of independent SMR operators vehemently oppose mandatory relocation. No message could be louder or clearer. PCIA's membership believes that mandatory

re-tuning is unfair and cannot be accomplished without severely damaging the SMR industry.

PCIA does not suggest that Nextel should be precluded from accomplishing its goal. Nextel should be encouraged to continue to arrange for the relocations, utilizing Nextel's own recommendation of "... voluntary channel swaps, operating agreements, channel purchases and mergers..." However, Nextel's desire for contiguous spectrum should not be confused with a need on the part of the SMR industry for contiguous spectrum. Although 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, the need for a guardband is not necessary for wide-area operation. Once again, Nextel should be encouraged to seek and achieve its quest for contiguous spectrum, but the Commission must not eliminate a healthy, competitive industry by regulating that Nextel achieve its desired goal.

As demonstrated herein, the Commission cannot create a "relocation pool" with General Category and/or Business Pool 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 these pools. 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.

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**REPLY COMMENTS
OF THE
PERSONAL COMMUNICATIONS INDUSTRY ASSOCIATION**

The Personal Communications Industry Association ("PCIA"),¹ pursuant to Section 1.415(c) of the Commission's Rules, 47 C.F.R. §1.415(c), respectfully submits its Reply Comments in response to the Comments filed by various parties in the above-captioned proceeding.

¹PCIA is an international trade association created by the merger of the National Association of Business and Educational Radio, Inc. ("NABER") and PCIA to represent the interests of both commercial mobile radio service (CMRS) and private mobile radio service (PMRS) users and businesses involved in all facets of the personal communications industry. PCIA's Federation of Councils include: the Paging and Narrowband PCS Alliance, the Broadband PCS Alliance, the Specialized Mobile Radio Alliance, the Site Owners and Managers Association, the Association of Wireless System Integrators, the Association of Communications Technicians, and the Private System Users Alliance. In addition, NABER is the FCC-appointed frequency coordinator for the 450-512 MHz bands in the Business Radio Service, the 800 and 900 MHz Business Pools, 800 MHz General Category frequencies for Business eligibles and conventional SMR systems, and for the 929 MHz paging frequencies.

I. BACKGROUND

A. PCIA Proposed A Form Of Wide Area Licensing That Allows Existing Licenses Flexibility And Growth Potential And Reduces Speculative Filings

In its initial Comments, PCIA stated that its Specialized Mobile Radio Alliance ("SMRA"), which consists of more than 200 members, established a Task Force which was charged with the responsibility of reviewing the Commission's proposed rules and exploring options for wide-area licensing. The Task Force consisted of wide-area SMR licensees, independent SMR licensees and equipment manufacturers. The SMRA Council, which consists of additional wide-area licensees and independent operators supported the work of the Task Force and developed PCIA's position in this proceeding. Further, PCIA's Private System Users Alliance ("PSUA") Council, which represents PCIA user members such as Federal Express, Northwest Airlines and others, reviewed PCIA's proposal in this proceeding. Thus, PCIA's positions in this proceeding were developed through discussions with companies holding various industry viewpoints and representing a broad cross-section of the 800 MHz radio industry.

PCIA's Comments supported a form of wide-area licensing that allows **existing** licensees flexibility in site selection and growth potentials, reduces speculative filings and reduces the Commission's burden to process applications quickly. Further, incumbent licensees would continue to be permitted to move and reconfigure their systems within the confines of then existing interference contours.

PCIA also stated its adamant opposition to any mandatory relocation of existing SMR providers such as the plan proposed by Nextel Communications, Inc. ("Nextel") and its affiliates. PCIA pointed out that a mandatory relocation requirement would only benefit Nextel, since Nextel is the only entity with enough 856/860 MHz spectrum to move or "re-tune" incumbents. The mandatory relocation proposal creates an uneven playing field by making channels more valuable to Nextel alone, unfairly favoring one entity over others. The relocation requirement would limit participation in the wide-area licensing process to Nextel and a few other large providers. Small SMR licensees would not be able to participate, because they do not have enough spectrum available to "re-tune" Nextel. Potential applicants who are currently not 800 MHz SMR operators would similarly be discouraged from participation, because they have no spectrum at all to trade.

PCIA opposed the assignment of 800 MHz wide-area licenses through an auction process. PCIA believes that the Commission's auction proposal is contrary to Congressional intent and is unnecessary to serve the Commission's stated purpose to "create competition, not raise revenues."² The House Report attached to the Budget Reconciliation Act of 1993 suggests that the Commission should avoid interruptions in the on-going filing, processing and approval of applications for licenses for existing services, and

²Statement of Chairman Reed Hundt, released December 1, 1994.

instead focus on new services such as interactive video and narrowband PCS.³

Congress clearly stated that the Commission should limit auctions to "initial" applications. Here, the Commission is issuing licenses "on top of" existing authorizations, as 800 MHz SMR licenses have been issued for virtually every significant area of the country. Further, no "new service" is being created in this proceeding. Rather, wide-area licenses issued in this proceeding are intended to act as an operational enhancement of an existing license in the area, permitting the licensee flexibility in modifying and constructing the facilities and relieving pressure on the Commission to rapidly issues thousands of licenses for extremely minor modifications.

PCIA has represented to the Commission that there is virtually no unlicensed spectrum in the 800 MHz SMR Pool nationwide. As evidence, the Commission has recently informed PCIA that it will be able to grant less than twenty percent (20%) of the SMR applications currently being processed which were previously being held by the Commission. A substantial number of the applications which are grantable are wide-area applications. Thus, the Commission is dismissing tens of thousands of applications for new systems because no 800 MHz SMR Pool spectrum is available.

³H.R. Rep. No. 103-111, 103d Cong. 1st Sess. (1993) at 263. Although the 800 MHz SMR service has been subject to the type of application "mills" which Congress has sought to discourage, the implementation of the wide-area licensing scheme with incumbent rights will negate the impact of future application mill filings.

While PCIA supported assigning blocks of spectrum on a wide-area basis, PCIA stated that the Commission's 50 channel block proposal is too large to permit existing licensees to participate in wide-area licensing and thus create marketplace competition.⁴ PCIA supported a maximum channel block of 10 channels to be licensed in a geographic area. The 10 channel blocks would follow the same assignment pattern utilized today (i.e. 861/862/863/864/865 MHz of the same channel sets).

Smaller channel blocks allow smaller entities to participate in wide-area licensing. In addition, such smaller entities would have the ability to negotiate with co-channel licensees to combine or to have such co-channel licensees swap channels to "clean-up" channels and create larger service areas.

PCIA stated that the use of smaller channel blocks would permit larger entities to select the frequencies of particular interest to them for their applications. Utilizing the Commission's proposed 50 channel blocks, an entity that is the licensee of 30 of the channels in an area will be required to apply for an entire block of 50 channels, resulting in the needless bidding (in an auction) for 20 channels of no value to the applicant, since the applicant could not construct the channels anywhere in the area. In fact, the applicant would actually need to request all four blocks, since the Commission's current division of blocks would place the applicant's current spectrum in each

⁴The proposal would significantly limit the number of competitors in a market.

block. If smaller channel blocks are used, however, the large entity could select the 30 discrete channels which it values from the entire band, leaving an opportunity on the other channels for other incumbents to take advantage of wide-area licensing opportunities.

The proposal submitted in PCIA's Comments would enable operators who desire a 42 channel block to select the most appropriate small channel blocks for their operations, considering the current licensing environment in the particular market. Thus, PCIA's plan accommodates both the large operator and the small operator. Further, incumbent licensees who do not seek or do not acquire a geographic license should be permitted to make modifications as necessary consistent with their current interference contours. The public interest is not served if existing licensees are not allowed to improve the coverage and service offerings to their customers so long as such licensees do not change the current interference contours of their systems.

PCIA opposed the suggestion that the Commission should allocate the General Category channels solely for carrier use or preclude carrier use entirely. PCIA supported continued licensing of General Category systems on a site-by-site basis with open eligibility, with rigorous enforcement of the Commission's construction rules. Additionally, licensees who have already received wide-area authority utilizing General Category channels should be permitted to continue the build-out of such channels as originally represented in the licensees' wide-area requests.

PCIA recommended that the Commission resume accepting 800 MHz SMR Pool applications in two phases. In Phase 1, existing licensees would have the opportunity to ask for a wide-area license to convert existing operations into wide-area operations. A Phase 1 license would not be considered to be a new license. Instead, a Phase 1 license would be a operational modification of an existing license on such channels in the market. As a modification, such licenses would not be subject to auctions. After licensing, operators should be permitted to work out channel-swaps or networking agreements. If certain channels are not licensed for geographical areas after Phase 1, the Commission could conduct Phase 2 licensing, which would permit licensees not already operating on the subject channels to apply.

Under PCIA's plan, the Commission would be prohibited by 47 U.S.C. §309(j) from conducting an auction with regard to the Phase 1 applications proposed by PCIA, as such applications would not be applications for initial licenses, but rather applications for modification. Issuing licenses in the manner suggested by PCIA would be consistent with 47 U.S.C. §309(j)(6)(E), which requires the Commission to "... continue to use engineering solutions, negotiation, threshold qualifications, service regulations, and other means in order to avoid mutual exclusivity in licensing proceedings." The licensing plan developed by PCIA is the type of "engineering solutions" and "threshold qualifications" that Congress envisioned to avoid mutually exclusive applications. As the geographic licenses to be issued by the Commission are for

spectrum which is already assigned, such licenses cannot be considered to be "initial" licenses. Thus, the wide-area licenses, either Phase 1 or Phase 2, cannot be regarded as initial licenses and should not be subject to auction.

PCIA opposed the Commission's proposal to issue licenses on a Major Trading Area ("MTA") or Basic Trading Area ("BTA") basis. PCIA stated that MTAs are too large and BTAs are too small for a reasonable system build-out. Instead, PCIA suggested the use of Metropolitan Service Areas ("MSAs") with the use of Consolidated Metropolitan Service Areas ("CMSAs") for larger areas.⁵ Beyond CMSAs and MSAs, RSAs could be used. Alternatively, PCIA stated that the Commission could use the "Basic Economic Areas" ("BEAs") recently defined by the Department of Commerce, which is also more akin to the normal pattern of wide-area wireless service areas.⁶

B. A Number Of Comments Of Other Parties Show Support For The PCIA Plan

Many of the initial Comments in this proceeding were strongly divided between "consolidators" and independent operators, with

⁵CMSAs consist of: New York/Northern New Jersey/Long Island; Chicago/Gary/Kenosha; Los Angeles/Riverside/Orange County; San Francisco/Oakland/San Jose; Dallas/Fort Worth; Houston/Galveston/Brazoria; Washington/Baltimore; Philadelphia/Wilmington/Atlantic City; Boston/Worcester/Lawrence; Sacramento/Yolo; Miami/Fort Lauderdale; Detroit/Ann Arbor/Flint; Cleveland/Akron; Cincinnati/Hamilton; Denver/Boulder/Greeley; Milwaukee/Racine; Seattle/Tacoma/Bremerton; and Portland/Salem.

⁶The largest BEAs use the same geographic area definitions as the CMSAs discussed above.

most consolidators requesting Major Trading Area geographic grants,⁷ large channel blocks,⁸ and mandatory relocation.⁹

The initial Comments of five independent SMR operators (including two operators with wide-area authority from the Commission and one with applications pending) supported the PCIA proposal.¹⁰ However, numerous independent operators stated in very strong terms that the Commission's proposal should be dropped altogether.¹¹ Most of the concerns addressed by these operators relate to Nextel's mandatory relocation proposal.¹² Some independent operators' comments were focused primarily on attacking

⁷See, for example, the Comments of Nextel, Inc. ("Nextel"), DialCall, Inc. ("DialCall"), CellCall, Inc. (CellCall), and OneComm, Inc. ("OneComm").

⁸See, for example, the Comments of Nextel (one 200 channel block), DialCall (one 200 channel block), CellCall (two 100 channel blocks), and OneComm (one 120 channel block and one 80 channel block). The American Mobile Telecommunications Association ("AMTA") also supported a large channel block approach (four 50 channel blocks).

⁹See, for example, the Comments of Nextel, OneComm and Advanced MobileComm, Inc. ("AMI").

¹⁰See, the consolidated Comments of Banks Tower, Peacock's Radio and Wild's Computer Service, Inc., Speed-Net, Parkinson Electronics Company and Mobile Relays, Inc.

¹¹See, for example, the Comments of Southern Companies ("Southern"), Douglas L. Bradley and Dennis Hulford ("Bradley and Hulford"), Chadmoore Communications, Inc. ("Chadmoore"), Fisher Communications, Inc. ("Fisher"), Communications Unlimited, Inc. ("CUI") and the "SMR Coalition". PCIA intent in this proceeding is not to impede development of wide-area, low power, digital system, but rather to create a licensing process in a balanced way to preserve the rights and competitive positions of existing operators, many of whom are small business operators.

¹²See, for example, the Comments of Fisher.

Nextel, and did not yield constructive suggestions on how best to license 800 MHz spectrum in the future.¹³

Another group of independent operators had comments prepared by Pittencrieff Communications, Inc. ("Pittencrieff"). These identical comments seem to view the Commission's proposal as inevitable, and seek to maintain some spectrum for independent operators in the 856-860 MHz band.¹⁴ PCIA now understands that some of the parties that submitted Pittencrieff-prepared Comments have since come forward to support PCIA's plan.¹⁵

Other than "tweaks" to certain aspects of the Commission's plan (such as a single 200 channel block proposed by Nextel), the only Comments submitting true alternatives were PCIA and SMR WON. Finally, associations other than PCIA which represent users of wireless communications requested that the Commission restrict access to the General Category channels.¹⁶

¹³See, for example, the Comments of Kevin Lausman d/b/a Communications Service Center ("Lausman"), Fresno Mobile Radio, Inc. ("Fresno") and Joriga Electronics, Inc. ("Joriga").

¹⁴See, for example, the Comments of Automated Business Communications ("Automated"), E.T. Communications Co. ("E.T.") and Bolin Communication Systems ("Bolin").

¹⁵See, the Reply Comments of Morris Communications, Inc. ("Morris"), Deck's Communications, Inc. ("Deck"), Radio Communications Center ("Radio Comm."), and Rayfield Communications, Inc. ("Rayfield").

¹⁶See, for example, the Comments of the Utilities Telecommunications Council ("UTC"), the Association of Public-Safety Communications Officers ("APCO") and the American Petroleum Institute ("API").

II. REPLY COMMENTS

A. The Commission Can Achieve Its Goal To Resolve Its Current Licensing Difficulties Without Damaging Existing Operations

There is no question that the Commission has a significant backload of applications, that the process of being able to license and operate SMR systems over a wide-area should be revised, and that application mills have brought significant problems to the SMR industry. Addressing these problems are the proper goals of this proceeding. However, fixing these problems is a far cry from cobbling together by regulatory fiat reallocation of spectrum for the creation of mega-carriers at the expense of existing operators.

PCIA agrees with Nextel that the Congress wanted the Commission to adopt "... regulations that 'maximize competition among CMRS providers and eliminate regulatory distortions in the mobile services marketplace'".¹⁷ PCIA also agrees with Nextel that "... assigning contiguous spectrum, where feasible, will enhance the competitive potential of wide-area SMR providers..."¹⁸ However, PCIA strongly believes that the FCC was not required to accomplish these tasks at the expense of a competitive SMR marketplace, which PCIA believes will be a consequence which will result from adoption of the Commission's or Nextel's proposal.

The proposals of both the Commission and Nextel in this proceeding seem to rely on a faulty premise. The premise is that the Commission should create another mega-sized mobile radio

¹⁷Nextel Comments at 21.

¹⁸Id.

provider with the same number of channels as the cellular companies from spectrum allocated for the Specialized Mobile Radio Service. The Budget Act does not ask for or require this action by the Commission. To the extent that a company has made a strategic decision to acquire spectrum in a mature market through acquisitions, it should be allowed to create a competitor of such size through the workings of the marketplace. However, such a business plan should not be completed through the forced relocation of those independent SMR operators still in business.

Five United States Senators, in a letter dated January 17, 1995 and addressed to Chairman Hundt, asked the Commission:

Given that each market in the nation already has two operating cellular systems and that the FCC will soon license three to six new PCS systems to serve each area, what evidence does the FCC have that an additional one to four new cellular-type SMR systems are needed in each Major Trading Area (MTA)?

PCIA believes that there is no evidence that an additional one to four mega-carrier systems with the same number of channels as a cellular operation are **needed** to create market competition in each Major Trading Area (MTA). Rather, the evidence as presented by PCIA, SMR WON and dozens of individual SMR companies participating in this proceeding clearly demonstrates that there is an active, competitive marketplace consisting of companies of various sizes, each tailoring their service offerings to meet the demands of their customers. If an SMR operator **wants** to compete for customers and services with cellular companies, the SMR operator should be able to do so. However, the Commission's action

will choke off competition with cellular systems by hurting or bankrupting the hundreds of independent operators who are currently in operation.

In the Third Report and Order, the Commission recognized that competition for mobile users does not necessarily have to come from technologically or ideologically identical companies. "...[A]ll commercial mobile radio services compete with one another, or have the potential to compete with one another, to meet the needs of consumers to communicate while on the move."¹⁹ The Commission reiterated the belief that wireless competitors of a variety of sizes and technology offerings compete in the same mobile marketplace.²⁰ However, in this proceeding the Commission's proposed rules, and Nextel's proposed amendments, will eliminate one of the competing classes of wireless service providers for no practical reason, as independent SMR operators will be unable to grow and expand their businesses.

**B. The Independent SMR Industry Is Not "Thwarting",
But Is Fostering The Introduction Of New Technology**

PCIA strongly disagrees with Nextel's comment that "[e]xisting operators using 20-year old, inefficient technology have not in the past and should not now be accorded the right to thwart the

¹⁹Third Report and Order, GN Docket No. 93-252, FCC 94-212, released September 23, 1994 at para. 43.

²⁰See, Applications of Nextel Communications, Inc., DA 95-263, released February 17, 1995 at para. 28.

introduction of more efficient technology and new improved services".²¹

First, the Commission has never concluded that SMR trunked technology is "inefficient". To the contrary, the Commission continues to strive to allocate additional spectrum in the same manner as the 800 MHz band. The 220 MHz allocation, the 900 MHz allocation and many of the Commission's proposals in the "Refarming" proceeding rely on the ground-breaking technical innovations that began at 800 MHz. In particular, the technical flexibility which is the hallmark of 800 MHz service has proved successful in enabling operators to choose the technology and service they wish to provide. The radio user community has never been able to obtain relatively inexpensive dispatch communications without channel monitoring before the advent of technologies introduced for the first time in the 800 MHz band. In fact, it is the success of this technology which has fueled the capacity shortage in the largest urban areas.

In addition, analog SMR operations are constantly being updated to offer new and improved services to customers. There are few, if any, services which Nextel offers or plans to offer which cannot be offered on an analog SMR System, provided there is a customer demand. For example, it is PCIA's understanding that Ericsson's EDACS system incorporates all of the customer services which Nextel purports to provide, including dispatch and interconnect call hand-off, in an analog format. Uniden's ESAS

²¹Nextel Comments at 9.

technology can provide all of the customer service except interconnect call hand-off.

The Commission must differentiate **capacity** issues from **service offering** issues. Nextel has selected a technology which permits additional **capacity** to be made available through the use of digital transmission and cellular-type configurations featuring frequency reuse. Other technologically-advanced operators have chosen a different technology to offer similar services. While the technologies and the philosophy of the companies using the technologies may differ, PCIA believes that the Commission's proposals in this proceeding will promote a single technology choice at the expense of other, existing technologies.

PCIA also disagrees with Nextel's statement that analog SMR operators are attempting to "thwart" technological innovation. In fact, the opposite is true. There is an analog SMR service which is a healthy, thriving, competitive business.²² It is PCIA's goal in this proceeding to ensure that such competition continues to exist and that the marketplace ultimately decides which operators and technologies will be the most successful.

Many independent SMR operators began offering trunked SMR service when the technology was untried, expensive and unreliable, a scenario not altogether different than the current efforts to introduce digital wireless communications. Prior to the creation of the specialized mobile radio service, many of the same operators were at the "cutting edge" in introducing new technology when the

²²See, Comments of SMR WON at Exhibit D.

bandwidth in the private services was reduced in stages from the original 60 kHz allocation to the current incarnation of 5 kHz, which is used in the 220 MHz band. These SMR operators understand the importance of growing and developing a business with new technology because they have already done it.

The record demonstrates that independent SMR operators are not trying to "thwart" technological innovation. Rather, most independent SMR operators are only trying to ensure that: (1) all operators have the opportunity to use innovative technology; (2) the "innovations" are not at the regulatory expense of existing operators; and (3) future licensing remains on a "level playing field".

The Commission need only look at companies such as Southern Company (which is implementing a MIRS System), Industrial Communications and Electronics (which is also implementing a MIRS System), Racom Corp. (which is implementing an EDACS system), Parkinson Electronics Corp. (which is also implementing an EDACS system) as well as many other companies that are investing millions of dollars in new equipment and technology to see that independent SMR operators continue to improve their service offerings and spectral efficiency.

Similarly, PCIA's Comments, filed on behalf of its hundreds of constituent members, cannot be viewed as an attempt to "thwart" innovation. In its Comments, PCIA presented a fair, balanced proposal which can lead to the implementation of technological innovation by all parties on a level playing field. Previously,

NABER (prior to merging with PCIA) supported the original Fleet Call waiver as well as other efforts to introduce new technologies such as narrowband transmissions in the 220 MHz band.

C. Nextel's "Definition" Of Wide-Area Operation Is Too Limited

In footnote 5 of its Comments, Nextel seeks to define "wide-area SMR" systems as:

... those that use a digital transmission technology in a low-power, multiple base station configuration incorporating frequency reuse and call hand-off and that are capable of providing high-capacity, two-way cellular-like mobile telephone, fleet dispatch and customized dispatch service over large geographic areas. Wide-area SMR base stations in urban areas typically operate at less than 100 watts ERP and at less than 100 watts ERP and at less than 200 foot antenna heights.... Although some local SMRs use a series of high power base stations to provide wider-area or regional coverage, they do not employ spectrum efficient technologies with a frequency reuse architecture or call hand-off capability.

Nextel's proposed "definition" is too limited without justification. Nextel would be the only "wide-area SMR" under the proposed definition. However, Nextel has not presented any evidence that existing technologies are not "spectrum efficient". EDACS, Geotek's Frequency Hopping Multiple Access ("FHMA") technology (which uses high power sites) or any other technology, which does not necessarily ~~need~~ frequency reuse, are examples of spectrum efficient technologies which do not conform to Nextel's proposed definition.

The Commission has never adopted a definition of "spectrum efficient". However, in this context a definition is unnecessary. It is not the technology choice which governs the use of frequency

reuse. Frequency reuse in a cellular-type pattern is not necessary to wide-area operation. In fact, many wide-area systems operate today using "20 year old" analog technology providing satisfied customers with inexpensive communications over a multi-state area. Rather, it is choice of the operator in deciding whether frequency reuse will best serve its customers which dictates whether this configuration is most efficient.

In areas where additional channel capacity is not necessary, a cellular-type implementation results in much higher infrastructure costs and needless costs for consumers. Frequency reuse is useful and necessary only in those areas where capacity is critical for the operator's particular service. Motorola recognized this when it announced several years ago that it intended to implement "high MIRS" in cities across the country. Yet "high MIRS", EDACS and FHMA are no less wide-area systems when implemented over a large geographic basis than Nextel's proposed implementation.

D. Opposition to Mandatory Relocation Is Loud And Clear

Throughout the Commission's proceeding in GN Docket No. 93-252, it is clear that the overwhelming majority of independent SMR operators vehemently oppose mandatory relocation. No message could be louder or clearer.

1. "Re-tuning" The Entire 800 MHz Band Is Unwise And Unnecessary

The Commission's proposal to allocate channels in four 50 channel blocks would result in the need to re-tune every radio that operates in the 861-865 MHz portion of the band. Currently, a five

channel authorization is issued for five channels separated by 1 MHz each (i.e. 861.0125, 862.0125, 863.0125, 864.0125 and 865.0125 MHz). The Commission's proposal would allocate the five channels into four separate blocks. Therefore, even if the licensee was a successful applicant for one 50 channel block, the licensee would have to re-tune every radio in the licensee's system as each radio is already operating on channels assigned in all four blocks. Unless the licensee is the successful applicant for all four blocks, re-tuning of the radios must be accomplished to keep the radios within the 50 channel block. This re-tuning presents a logistical problem which the Commission has failed to consider.

In contrast, PCIA's proposal to allocate geographic licenses in 10 channel blocks in a pattern similar to today's assignment methodology would avoid this problem and reduce the need to re-tune any radios to a bare minimum.

PCIA's membership believes that mandatory re-tuning is unfair and cannot be accomplished without severely damaging the SMR industry. Nextel provides the Commission with information detailing how "re-tuning" of incumbents could be accomplished by using the Denver and Chicago areas as examples. However, Nextel's analysis only demonstrates that: (1) mandatory re-tuning would not accomplish the task of creating a 200 channel block; and (2) only Nextel has sufficient spectrum to come close to this task.

First, Nextel uses Chicago and Denver for its examples of how re-tuning would work. These two cities are locations where Nextel holds a significantly large portion of the 800 MHz SMR spectrum.

Thus, these examples presumably present the "best case" scenario of re-tuning for Nextel.

However, even in its best case environment, Nextel can still not re-tune 16 of 65 existing SMR systems in Chicago. More importantly, no other operator (other than companies which Nextel is acquiring) has the spectrum to accomplish what Nextel can barely accomplish in two of its best case scenarios. Thus, mandatory relocation is only possible in a limited manner if Nextel alone is the recipient of a geographic license from the Commission.

PCIA does not suggest that Nextel should be precluded from accomplishing its goal. As Nextel points out, it could successfully relocate all incumbents in the 861/865 MHz band in Denver. Nextel should be encouraged to continue to arrange for the relocations, utilizing Nextel's own recommendation of "... voluntary channel swaps, operating agreements, channel purchases and mergers..."²³ Further, Nextel has the ability to use economic incentives to achieve its purpose.

2. Nextel's "Desire" Is Not The SMR Industry's "Need"

Nextel's **desire** for contiguous spectrum should not be confused with a **need** on the part of the SMR industry for contiguous spectrum. Once again, Nextel should be encouraged to seek and achieve its quest for contiguous spectrum, but the Commission must

²³Nextel Comments at 39. In addition, Nextel and Geotek recently announced a channel "swap" whereby Nextel assigned some 900 MHz SMR channels to Geotek, and Geotek assigned some 800 MHz channels in the New York/New Jersey area to Nextel.

not eliminate a healthy, competitive industry by **regulating** that Nextel achieve it's desired goal.

a. **Contiguous Spectrum Is Not Necessary For Wide Area Operations**

Nextel claims that "[w]ide-area SMRs must have access to exclusive-use, contiguous channels assigned on a geographic basis like those available to every other broadband CMRS competitor.²⁴ However, while this is certainly a **desirable** result of any operator, it is not a **must**. Although contiguous spectrum may be a **must** for the technology which Nextel wishes to implement, other wide-area operators do not believe it necessary. For example, the Comments of Southern Company, which is implementing a MIRS system, rejects Nextel's proposal.

The greatest unsubstantiated assumption of this proceeding is that contiguous spectrum, especially the upper 200 SMR channels, is needed for SMR to compete with cellular. First, wide-area SMR systems are not designed to compete head-to-head with cellular telephony, but rather will complement cellular service, reaching distinct parts of the mobile services market. Second, all 200 channels are not necessary to build a competitive wide-area system. Third, the digital design of wide-area SMR equipment does not require contiguous spectrum.²⁵

In its Comments, Ericsson Corporation, which is now selling its highly efficient EDACS technology, has stated that contiguous spectrum is not necessary for EDACS. Thus, as the only service provider which claims to need contiguous spectrum, it appears that Nextel has chosen to implement a system that requires the use of

²⁴Nextel Comments at 2.

²⁵Southern Company Comments at 6.