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

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 SMR WON

Raymond J. Kimball

ROSS & HARDIES
888 16th Street, N.W.
Suite 400
Washington, D.C. 20006
(202) 296-8600

Attorneys for SMR WON

Date: March 1, 1995

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EXHIBIT 1 - J.P. MORGAN REPORT

EXHIBIT 2 - SMR WON STUDY OF FOUR BEA MARKETS

EXHIBIT 3 - ALTERNATIVE LICENSING PLANS STUDIED 806 - 821/851-866 mHz

EXHIBIT 4 - SUMMARY OF SMR REVISED PLAN

SUMMARY OF ARGUMENT

SMR WON opposes auctions unless the Commission first identifies and establishes a relocation block to which SMR and non-SMR incumbents can be relocated. Also, relocated SMR incumbents must receive geographic exclusivity within the BEA market on their relocated channel.

The relocation problem is very severe and difficult to solve, based on the market studies performed. See Exhibit 2. Relocatees generally oppose auctions; relocators admit that not enough relocation spectrum is available. Accordingly, under the above conditions, and others, SMR WON would propose that 100 channels (i.e., Chs. 500-600) be auctioned, in order to obtain a manageable relocation solution. This plan is summarized in Exhibit 3. Further important details appear in the text.

SMR WON opposes the AMTA/Nextel "plan" for "Mandatory Call Relocation." There is no relocation plan at all. The proposal simply leaves relocation decisions solely in the hands of the auction winner, as did Nextel's original proposal.

The attached J.P. Morgan market study is recommended reading, and is consistent with the EMCI market study and SMR WON's assertions about the state of the SMR market and technology.

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REPLY COMMENTS OF SMR WON

SMR WON, by counsel, hereby files its reply comments in the above referenced docket.

SMR WON is an association of 130 Specialized Mobile Radio (SMR) operators and equipment manufacturers throughout the United States. Only formed in September, 1994, SMR WON has continued to grow in membership since then.

In preparation for these comments, SMR WON has met since January with virtually every trade association and equipment manufacturer who filed initial comments, the FCC staff and most Commissioners' offices.[1/] The purpose was to refine and review the ideas and proposed solutions presented in the comments, and to determine whether an industry consensus could be reached. Because of the difficult problems accompanying a proposal to auction an already licensed band and relocate incumbent licensees, this is a continuing process, which likely will extend beyond the reply comment date herein. SMR WON intends to continue working with the other associations and commenters on possible solutions.

I. RESOLVING INCUMBENT RELOCATION DRIVES ALL THE PROPOSALS

Proposals to resolve the issues presented in this docket were submitted by SMR WON, Nextel, and PCIA in initial comments. Since that time, the parties have refined and studied their plans further. It now appears that revised proposals will be submitted by AMTA, on behalf of the Nextel/Motorola group and certain other of its members, PCIA, and SMR WON. The plans submitted or under

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[1/] SMR WON's officers and board of directors have made three trips to Washington since January 5, and have met on multiple occasions with AMTA, PCIA, ITA, Ericcson, Uniden, EF Johnson, Maxon, Motorola, Pittencrief, and other commenters.

consideration are summarized briefly here, and discussed more fully below:

1. SMR WON Proposal. SMR WON is opposed to auctions as unlawful and impractical in this licensed band.[2] The auctions, as proposed, would create two classes of licenses - geographic licenses and site-specific licenses for incumbent operators. The competitive disadvantages to incumbents holding "second-class" site specific licenses are so severe that the current auction proposal would eliminate such licensees, mostly small businesses based in the communities they serve. This would have a substantial negative impact on the public interest by reducing service in smaller markets and rural areas, raising prices, and reducing operator and manufacturer competition.

SMR WON opposes the Commission's auction plan set forth in the FNPRM. SMR WON understands that PCIA is developing a non-auction plan, which SMR WON will review upon submission in the reply comments. SMR WON also is examining other non-auction alternate plans.

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[2] See, SMR WON Petition for Reconsideration in Gen. Docket 93-252, filed December 21, 1995.

SMR WON made it clear in its initial comments that it would accept auctions of this already licensed band only under certain conditions:

(a) correct the licensing inequities and unfair regulatory advantages[3] in the present system;

(b) eliminate warehousing;

(c) provide for fair competition between incumbents and auction winners on equivalent geographic licenses;

(d) identify relocation spectrum and provide for voluntary relocation of all incumbents to the identified band.

SMR WON submitted an economic study with its initial comments from the respected communications economic consulting firm, EMCI, which demonstrated the adverse impact auctions would have on competition among operators and manufacturers. The EMCI study also questioned the wisdom or need for additional competitors to cellular following the PCS auctions, and observed that a fifth or sixth competitor would have little, if any, impact on competition or price.[4] The study also pointed out the fragile nature of present manufacturer competition, the eroding

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[3] I.e., "aggregate loading," short spacing, extended construction, over-licensing of spectrum and frequency warehousing. These regulatory advantages were given to urban operators and have now been aggregated by Nextel through merger. However, the majority of SMR service is being provided by small businesses who have been denied the opportunity to take advantage of these regulatory programs.

[4] The EMCI forecast was prescient. Since it was prepared, other economic analysts have questioned the ability of the current digital SMR digital system design to compete with cellular. See J.P. Morgan Report, attached hereto as Exhibit 1.

base of the non-dominant SMR equipment manufacturers, and the potential anti-competitive impact of warehousing and further changes in SMR market share between operators and manufacturers.

SMR WON suggested a compromise establishing Relocation Blocks and Geographic BEA exclusivity on relocated channels. Relocation would have to be determined in advance, to provide incumbents with the certainty they need to continue uninterrupted service to the public, and to prevent competitors taking unfair advantage of a relocation and retuning plan. Incumbents would not be confined to "second-class" site specific "island" licenses, which would be uncompetitive with larger geographic licenses. Incumbents would obtain a BEA license also, permitting them to expand their businesses. SMR WON proposed the Geographic Competitive Equity premium in lieu of a 6:5 or 2:1 channel premium; a channel premium only exacerbates the relocation problem. SMR WON advocated a spectrum cap of 10 MHz for SMR,[5] separate from the cumulative CMRS spectrum cap of 40 MHz, with no "spectrum aggregation" rules permitting SMRs to hold more than 10 MHz of SMR spectrum without full attribution.

2. Nextel Plan. Nextel proposed Mandatory Call Relocation, whereby the auction winner could "call" for relocation only those incumbent licenses which the auction winner wanted to retune. The decision by the auction winner to retune,

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[5] Both base station and mobile radio frequencies would be counted toward the spectrum cap. The "SMR" band would include any frequencies held in the 806/821, 851/866 MHz band. See SMR WON Petition for Partial Reconsideration, supra.

i.e., to "call" other licenses, would be market-driven. However, once the "call" was made, the incumbent licensee must accept retuning; hence, the plan was described as "mandatory". Nextel admitted it could not retune everybody. An incumbent would be retuned only if there were sufficient frequencies.[6]

Nextel also divided the country into "Urban" and rural markets. Urban were the top 50 markets with 100 mile radii covering most of the U.S. population; rural was everything else. "Rural" licensees received multiple "benefits", but were entitled to those "benefits" only if relocated and retuned. "Urban" licensees received few benefits. The most important "benefit" in the package, 70-mile protection on new frequencies, could not be assured by Nextel, based on the presence of other co-channel licensees on the retuned channels, and the insufficiency of relocation channels.

Among the most interesting of the proposals, Nextel offered that, under certain conditions, 5-year construction periods for warehoused channels outside the top 200 would be "cancelled", and the unconstructed frequencies returned to the FCC.[7] This was the first admission by any wide area party that over-licensing and frequency warehousing has occurred. It provides a starting point for further examination of the warehousing issue.

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[6] See, Nextel Comments at 33.

[7] Nextel Comments at 36.

3. PCIA Proposal. PCIA advanced a two-phase non-auction proposal favorable to wide-area licensees who have not yet constructed. In Phase 1, applicants would apply for a wide-area license. In Phase 2, areas not applied for would open for subsequent applications. This two-step procedure would diminish mutual exclusivity situations. Market licenses would be granted on an MSA or BEA basis. General Category Pool licensing would stay "as is" - single channel, site specific licensing, and open eligibility.[8]

Under PCIA's original plan, incumbent licensees not included in the application by wide-area licensees for a geographic license would be confined to their current "second class" site specific "island" license, short-spaced by others. During the week of February 20, 1995, and prior thereto, PCIA, through its counsel, solicited signature pages from SMR operators for this plan. However, based on SMR WON's objections to the plan expressed in a meeting on February 23, 1995, and SMR WON's specification of a number of changes, PCIA apparently revised its plan to some extent this week. PCIA's SMR Regulatory Council voted on the revised plan on Monday, February 27. SMR WON received a short summary of the revised proposal February 27, 1995. SMR WON is studying the plan, but has not had sufficient time to complete that study for these comments. SMR WON will continue discussions with PCIA after it sees the complete plan as set forth in PCIA's reply comments.

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[8] PCIA comments at 17-21.

A. The Revised Plans.

1. The SMR WON Revised Plan.

The difficult relocation issue again drove the revised plans being submitted on reply. SMR WON found in its continuing studies of markets that there simply were not enough available frequencies in 851-861 MHz to meet the documented relocation needs of both displaced SMR licensees in 861-866 MHz and displaced Industrial, Business, and general category users.[9] Studies by PCIA of other markets confirmed SMR WON's findings.

As a result, SMR WON sought the input of equipment manufacturers and others on whether suitable spectrum existed in other bands to relocate incumbent SMR and private radio licensees displaced by the Commission's proposal. A manufacturer review identified 470-512 MHz, currently occupied by TV channels 14-20, as one of the few possible suitable bands. Of course, SMR would need only a small portion of this band for relocation purposes. The 15 MHz of spectrum available from government reallocations would not be suitable.[10]

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[9] See Exhibit 2. SMR WON analyzed the number of licensed channels in the 851-861 MHz band in the General Category (channels 1-150), the Pooled Channel Block (channels 151-400), and the SMR Category (channels 401-600) in the following four markets: Columbia, South Carolina; New Orleans, Louisiana; Boise, Idaho; and Salt Lake City, Utah. The results of this channel survey shows that the small number of vacant channels in this band is insufficient to accommodate the number of existing licensed channels that would be displaced.

[10] I.e., 4660-4685 MHz. Allocation of Spectrum Below 5 GHz Transferred from Federal Government Use, First Report and Order and Second Notice of Proposed Rule Making, ET Docket No. 94-32, FCC 95-47 (released February 17, 1995).

Unless the Commission, working with the commenters herein, locates and makes available additional spectrum, the parties must confine their discussion to the existing spectrum band.[11] Trying to locate 30% more licensees in an already crowded spectrum leads to the substantial relocation problems which all commenters have been struggling to resolve.

SMR WON estimates in consultation with equipment manufacturers that the imbedded capital investment in SMR equipment and mobile units requiring retuning or replacement is approximately $2 billion. The massive size and complexity of the relocation problem has made industry consensus elusive.

As a result, SMR WON proposes that the size of the auction block be reduced to 100 channels, i.e., channels 500-600, in two 50-channel blocks auctioned on a BEA basis, in order to reduce the magnitude of the so far intractable relocation issue.[12]. The second block of 50 channels would be auctioned in 5 blocks of 10 channels each, to permit the reasonable entry of small businesses. Also, channel growth of 10 channels is efficient use of the spectrum in rural areas; licensing only 50-channel blocks will result in significant frequency warehousing in rural areas. SMR WON believes that it would be possible,

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[11] SMR WON renews its request that the Commission work with the commenters to attempt to identify other suitable spectrum, if the Commission desires to proceed with auctions and relocation in this band.

[12] See attached Summary of SMR WON's Proposal, Exhibit 3, which outlines SMR WON's revised proposal, and Exhibit 4 which graphs the proposal in relation to the 800 MHz spectrum band affected.

using spectrum relinquished by auction winners outside Channels 500-600, and vacant spectrum, that the Commission could require that an auction winner retune all incumbent SMR licensees off the top 100 channels, without the need for substantial retuning of private industrial and business licensees.

SMR WON's revised plan is based upon the same fairness principles advanced in its initial comments. This alternate proposal is suggested to meet the concerns of those who believe the Relocation Block for a 200 channel auction block could not be achieved within the band. Clearly, a plan which does not propose to relocate existing licensees, and which proposes "first class" geographic and "second class" site specific licenses can be implemented, but it is neither fair to incumbents already serving the public, nor consistent with the public interest in continued service and robust SMR competition. Notwithstanding the Commission's analysis that all mobile radio systems (paging and SMR, cellular) compete or may in the future compete,[13/] the Commission can be assured that this sizeable market will lose its low-cost character if the Commission does not preserve competition from existing small business operators through this rule making.

Other characteristics of the revised SMR WON plan include the following.

Protection of Adjacent BEAs. Any conversion to geographic licenses will cause overlap problems with adjacent

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[13/] See Third Report and Order, 9 FCC Rcd. 7988 (1994) at ¶12.

markets. Licensees must protect co-channel licensees in adjacent areas. Until the spectrum is cleared, there will be many site-specific licenses which currently overlap adjacent BEAs. Therefore, new operations must not place a 40 dbu signal across a BEA border, and must also protect existing site-specific operations to their protected contour areas, without using the short-spacing tables. Licensees in adjacent BEAs must coordinate to eliminate interference, and work together as they relocate incumbent licensees.

Short Spacing. The short-spacing rules should be eliminated. No further short-spacing of existing licensees should be permitted.

2. AMTA Revised Plan.

SMR WON has had extensive meetings with AMTA and its members concerning its proposals. SMR WON understands AMTA is making a proposal incorporating the following points.

The AMTA plan relies on Nextel's one-way Mandatory Retuning, which is "call" retuning only. That is, the auction winner will "call" those licenses which it desires to retune. If the incumbent is notified of the "call" within 6 months, the incumbent may be entitled to be moved. If an incumbent does not get a notification that the auction winner intends to relocate and retune him, the incumbent would not be retuned.

This is fundamentally different from SMR WON's insistence that no incumbent be left with a second class site

specific license following retuning, and that all licensees must be retuned. The AMTA proposal does not specify a relocation block, nor does it provide for BEA licenses for retuned licensees. Also, the AMTA proposal is not based on any market data information proving that it will work.[14]

The Nextel/AMTA proposal does not necessarily depend upon market studies, since the proposal does not propose complete retuning. First, only those notified will be retuned. Even those notified are not assured they will be retuned:

> "Notification would not bind the wide-area licensee to reconfiguring the systems of every incumbent notified."[15]

The "Progressive Reconfiguration" proposal put forward by OneComm, which is under contract to Nextel, and adopted by AMTA, would base its 80% threshold for mandatory retuning only on "notified" licensees. Thus, if a 100-channel operator in a 120 channel block did not receive notice of retuning in a BEA market, the 80% threshold for mandatory retuning would be implemented, under AMTA's proposal, after the retuning of only 16 frequencies!

The "Reconfiguration Premiums" are inadequate, because they create two classes of license - one geographic based, and the other site-based. The continued reliance on a site-based

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[14] SMR WON suggested certain markets to Motorola for study. However, Motorola apparently had insufficient time and information to complete the studies. SMR WON would be willing to work with any parties undertaking channel studies of existing SMR markets to provide information on ownership and management, to the extent SMR WON can obtain such information from its members, and subject to certain confidentiality requirements.

[15] AMTA circulated proposal of February 23, 1995.

licensing mechanism which has proven inadequate, and whose original sound purpose has been unfairly distorted through fictitious "aggregate loading" principles, predatory short spacing and frequency warehousing, would be maintained to thwart the business plans of those operators it already has hurt the most.

Partitions. Partitioning is included in a proposal in this Docket for the first time on Reply. Partitioning is a process which only favors the large licensee. Partitioning does not solve any of the fundamental problems in this rulemaking. Partitioning permits a dominant licensee to go into an auction only with those it desires, and partition spectrum only to those who are part of the group. Most incumbents in a market could be left out of a post-auction partitioning plan, never "notified" for retuning, and slowly strangled through short spacing and extended warehousing.

If the Commission is going to "fix" the problems created by site-specific SMR licensing, it should implement a complete overhaul, not a "partial fix" - one which favors one dominant licensee. Too often in the past few years the Commission has adopted revised licensing rules favoring Nextel, with undesirable and unintended consequences on the public interest and the rest of the SMR industry. The Commission's FNPRM proposes to do so again, which is why SMR WON was formed, and why its members have been so vocal.

The laissez faire, self executing program advanced by AMTA/Nextel invokes Commission enforcement through "Alternative Dispute Resolution" (i.e., arbitration) procedures only to implement the auction winner's predetermined, private relocation strategy, without regard to the public interest in robust competition between incumbent licensees and auction winners. The plan can be used for anticompetitive purposes, and is detrimental to the interests of smaller licensees.

3. The PCIA Plan.

SMR WON does not know many of the details of the PCIA plan, but will comment on what it does know. The PCIA plan is a purely voluntary plan in which wide area licensees, either singly or in combination, may apply for a geographic license for all or part of the channels in the SMR spectrum.

SMR WON has observed to PCIA that the plan must be all-inclusive to prevent consigning small or large competitors, not part of the geographic application, to site-specific island licenses. If a wide-area applicant is not able to come to agreement with an existing licensee, that applicant must give up sufficient spectrum in the market so that all operators receive geographic licenses as a result of "clearing" the spectrum. Until SMR WON has more details on the PCIA proposal, it is not able to comment further on the plan now.

B. **Summary of the Plans.**

Issue by issue, the three major proposals address the issues as follows:

1. Spectrum auction. AMTA/Nextel propose auctioning 200 channels in two blocks of 120 and 80 channels.[16] SMR WON conditionally proposes auctioning 100 channels in two 50-channel blocks, subject to the establishment in advance of a minimum 100 channel Relocation Plan, with frequencies from unconstructed wide area applicants, auction winners, vacant channels, or relocation. If the Commission decides to auction 200 channels, SMR WON endorses the block sizes set forth in its initial comments.[17] PCIA proposes no auctions.

2. Geographic Market. SMR WON, AMTA, and PCIA all endorse the BEA market size. No "cluster" market auctions are endorsed by any of the major associations. Small operators simply cannot compete in BEA "cluster" auctions, which are the equivalents of MTA markets. BEAs accurately reflect SMR use and marketing patterns.

3. Relocation Block. SMR WON endorses a plan to relocate all incumbents displaced by second licenses. AMTA endorses "overlay" second licenses, but does not endorse

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[16] Preliminarily, SMR WON believes 120 and 80 channel blocks are too large. Earlier filings by Nextel and others suggest that adequate frequency reuse can be accomplished using 42-50 frequencies. See, SMR WON Comments at 21-23. The 120/80 block sizes would discourage small businesses from successfully participating in auctions then could not reasonably win.

[17] Id. at 57.

relocating all incumbents. SMR WON is not aware of PCIA's final position on accommodating all incumbents under its voluntary plan.

4. Mandatory/Voluntary Relocation. AMTA endorses mandatory relocation after a four-year voluntary period, but requires "notification" within six months. AMTA requires certain incumbents who would be relocated to "volunteer" for relocation in order to receive a limited "benefits" package, perhaps in lieu of receiving full compensation for the value of frequencies being transferred. SMR WON endorses voluntary relocation. PCIA also endorses voluntary relocation. Mandatory relocation amounts to a taking of the value of an operator's business for the coffers of the Federal Government auction without just compensation.

5. Coalitions/Partitioning. AMTA proposes partitioning apparently as a substitute for relocation. The FNPRM did not give any notice that partitioning was being considered in this rule making; further rulemaking would be required to address the issue. Preliminarily, SMR WON opposes partitioning, because it does not know how it would operate, and would not provide adequate protections to incumbent licensees, if it is to be designed in the same way partitioning was used in the PCS auctions. PCIA's proposal does not include partitioning.

6. Premiums for Relocation. SMR WON endorses granting geographic market licenses to incumbent SMRs as the only way to achieve competition and maintain existing service to the public from small business operators experienced in a market.

Nextel apparently opposes geographic licenses as "too expensive". AMTA, as a result, does not include geographic market licenses in its list of "premiums" for relocation, instead basing its list in part on that submitted by Motorola, Nextel's partner and affiliate.[18]

7. Open Architecture. SMR WON believes open architecture, and interoperability, are essential to the future development of the SMR industry.

8. Lower Band SMR Channels. Under SMR WON's plan, lower band channels only become involved in this process to the extent auction winners are required to relinquish channels in the lower band to relocate existing licensees. AMTA calls for auctions in this band, but almost all licenses already are licensed. SMR WON is uncertain whether AMTA now is calling for geographic overlay licenses of these 80 channels also; to the extent such a proposal is made, SMR WON would oppose it.

9. General Category Band. Based on its studies, SMR WON believes the General Category band is the most likely candidate for the Relocation Block of channels. In many markets studied, General Category licensees, whether they be wide-area SMR filers such as OneComm/Nextel, or application mill

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[18] The AMTA relocation premiums are insufficient and illusory. Tax certificates are under attack in Congress; the Commission has not endorsed their use in this context. SMR WON is not opposed to tax certificates as an additional premium, but the tax certificate is not a substitute for a geographic license. "Prospective 70-mile co-channel protection" is illusory, because, as Nextel admits, it cannot guarantee that the relocated frequencies would be any more free from short spacing than the incumbent's current frequencies.

speculators, are unconstructed. Moving unconstructed licensees to the Intercategory Pool mid-band (channels 150-400, other than safety or SMR) should be workable. AMTA states only that this band should be reallocated to SMR, without any plan on how to do so, or where to relocate existing licensees. Apparently AMTA proposes market overlay licenses in this band.

10. Spectrum Warehousing. SMR WON submits a specific proposal concerning spectrum warehousing. See the Summary attached hereto as Exhibit 3.

11. Spectrum Cap. SMR WON supports a 10 MHz spectrum cap with no attribution maximums.

12. Extended Construction. Currently, licensees have 5-year extended construction waivers, and the clock is ticking. However, re-auctioning could restart the five-year construction clock, and the licensee would get an additional five years to construct the frequencies under a geographic license. No construction would be required on already licensed frequencies for an eight (8) to ten (10) year period; meanwhile, incumbents have no access to those frequencies to meet existing public demand for service.

Any auction winner having an existing extended construction waiver in a market for a frequency should be required to construct under the original 5-year construction schedule, and should not be permitted to "buy" another five-year construction extension. Indeed, any channels not constructed within 3 years should returned for retuning existing licensees.

13. Overlay Licenses. One comment on market overlay licenses which the Commission should consider. Since the Commission proposed market overlay licenses, the stock prices of publicly traded SMRs such as Nextel and Pittencrief have fallen dramatically. Frequency sharing has proved to be a palatable licensing scheme only in certain paging bands which require limited spectrum and short communication time. Frequency sharing has not proven workable for voice communications. "Overlay" markets represent two licenses for the same frequency in the same geographic area, with no clear plan for resolving dual licensing/frequency sharing. The proposal in the Third Report and Order and the FNPRM, and all the licensing uncertainty it has created, has depressed market value and created investor uncertainty. Overlay, dual licenses do not make good business in commercial mobile voice communications.

II. NEXTEL CANNOT IMPLEMENT THE BUSINESS IT HAS PROPOSED

The premises for this FNPRM were introduced by Nextel, which alleged that, based on its spectrally efficient introduction of MIRS technology in Los Angeles and San Francisco, it could construct and operate a very large regional or a national system to compete with cellular technology. Accordingly, Nextel proposed that the spectrum be relicensed so it could implement such a system and compete with cellular.

Nextel has not demonstrated that it has the requisite technology. The MIRS system, using TDMA voice sampling

technology, has not proven that it can compete with Cellular and has been rejected by interconnect customers to date.[19] In addition, Nextel is not financially capable of establishing such a system. Id. at 4-5, 13. Because it is neither technically nor financially capable of establishing such a system, Nextel has itself changed its business emphasis, announcing that it will emphasize its dispatch customer base and continue to rely and install further analogue SMR technology.

Digital SMR technology has not yet proven itself to be the panacea replacement for analogue technology on a large scale. As SMR WON members have maintained throughout this proceeding, spectrum efficient technology, introduced consistent with sound business principles over time, without disrupting existing public approval and acceptance of analogue technology, will resolve the Commission's concerns about using the SMR spectrum more efficiently. But digital technology is neither a panacea nor a replacement for analogue technology. It has not yet proven to be

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[19] As demonstrated in the J.P. Morgan Securities, Inc.'s report, these technical design problems will not be solved by establishing a contiguous block of channels. The problems are inherent in the digital sampling design, which cannot reproduce the human voice as faithfully as analogue technology and had not won widespread consumer acceptance for interconnect use. J.P. Morgan Report at p. 16-18. Thus, there is no sound technological basis on which the Commission can base a finding upon this record that spectrally efficient digital technology is available for SMR use in the contiguous band or bands to be created.

so in cellular, where it does not yet enjoy widespread consumer acceptance either.[20]

There are analogue based technologies competing with digital technologies which promise to introduce spectrum efficiencies equal to or surpassing digital technology. For example, linear modulation narrow-band technology currently is being installed by licensees in the 220 MHz band. These technologies would derive a 5:1 efficiency improvement on a 25 kHz channel. Such technology currently is being manufactured by SEA, Uniden, and EF Johnson. Those manufacturers have indicated they would modify this technology for 800 MHz. Linear modulation technology may be more efficient than the MIRS technology, which is only providing 4:1 channel efficiencies, not 6:1, in digital dispatch communications, and will only provide 2:1 efficiencies for cellular voice. See J.P. Morgan Study, attached hereto. ESAS and Ericcson FTDMA technology also employ techniques which are not "digital" technologies in all respects.

III. CONCLUSION

In conclusion, SMR WON submits that its plan is the most comprehensive, specific, and feasible of the plans presented, and best meets the interests of all parties. Not everyone agrees. The party most vociferous in its opposition is the party which has seen its share price fall to new lows since

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[20] The J.P. Morgan Report indicates digital cellular technology, which is superior to the MIRS SMR technology, only accounts for less than 3% of the entire cellular market. Millions of analogue radios still are being sold and introduced each year by the cellular industry. See J.P. Morgan Report at 4.

its proposal was made last June. Its unwillingness to compromise has created deep divisions within the SMR industry, hurting its own business plans as much as they have hurt others. Presumably this does not phase that company, which appears steeled in the belief that, in the end, the bondholders, market traders, regulators, and industry associations will see things their way, enabling them to complete their monopolistic acquisitions and reduce competition both among SMR operators and equipment manufacturers.

SMR WON has made many a step toward compromise - swallowing hard its own opposition to auctions, and indicating that the establishment of a Relocation Block and geographically equivalent licenses for relocated incumbents would lead to further progress on the outstanding issues. SMR WON has encountered nothing but intransigence on the most central issues - mandatory relocation, and whether all incumbents would be relocated. SMR WON will fight auctions in this licensed band unless a fair relocation plan is established to minimize disruption and loss in property value to incumbent business licensees.

In some instances, "auction" is not the equivalent of "competition". Political tides must be faithful to sound business principles and the public interest, or the Commission