DOCKET FILE COPY ORIGINAL

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

RECEIVED
MAR - 1 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF 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 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 THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.
ON THE FURTHER NOTICE OF PROPOSED RULE MAKING

Respectfully submitted,

AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

By: Alan R. Shark

Alan R. Shark, President
1150 18th Street, N.W., Suite 250
Washington, D.C. 20036

Of Counsel:

Elizabeth R. Sachs, Esq.
Lukas, McGowan, Nace & Gutierrez
1111 19th Street, N.W., Suite 1200
Washington, D.C. 20036
(202) 857-3500

No. of Copies rec'd 0+9
List ABCDE

March 1, 1995

TABLE OF CONTENTS

			Page
SUMMARY			i
I.	INTRODUCTION		2
II.	SUMMARY OF COMMENTS		5
	A.	Nextel Proposal	9
	B.	SMR WON Proposal	11
	C.	PCIA Proposal	14
III.	LICENSING PROPOSAL		16
	A.	Geographic Licensing	17
	B.	Spectrum Blocks	18
	C.	Treatment of Incumbent Licensees	20
		1. Notification	21
		2. Incumbents' Bill of Rights"	22
	D.	"Progressive Reconfiguration"	23
	E.	Lower Band Channels	26
		1. Spectrum Availability	26
		2. BEA Licensing	27
IV.	COMPETITIVE BIDDING PROCEDURES		28
	A.	Competitive Bidding Methodology	29
	B.	Bidding Procedures	31
	C.	Treatment of Designated Entities/ Entrepreneurs' Blocks	32
V.	CONCLUSION		33

SUMMARY

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") endorses generally the FCC's proposal to redefine the 800 MHz SMR licensing structure to promote the continued viability of traditional, local SMR systems and an enhanced competitive position for wide-area SMR operators. The number and variety of comments in this proceeding evidence its significance to the entire 800 MHz community, as well as the importance of balancing the myriad interrelated aspects of the FCC's proposal.

AMTA supports fully the assignment of the 200 contiguous SMR frequencies in the upper 861-865 MHz band for wide-area SMR systems. The Association recommends that this spectrum be further sub-divided into blocks of 120 and 80 channels to accommodate anticipated technological advances, and that the licenses be issued on a BEA, rather than MTA or BTA, basis.

The rights of incumbents in that band should be defined specifically by the Commission as described in AMTA's recommended "Incumbents' Bill of Rights". Among those entitlements should be a right to notification of the intention of the wide-area licensee within a relatively brief period of time. Negotiations between incumbents and wide-area licensees should first be subject only to marketplace forces and the individual business interests of the parties. Wide-area licensees should be permitted to "earn" mandatory retuning on a progressive basis at FCC-defined dates, predicated on a showing that the licensee has achieved substantial consolidation of constructed spectrum within the defined geographic area. At the end of those periods, mandatory retuning

should extend to any remaining, notified incumbent licensees.

The Association recommends that the General Category Pool frequencies be made available exclusively for SMR eligibles, and that SMRs prospectively be prohibited from acquiring spectrum from the Business or Industrial/Land Transportation Pools. Additionally, AMTA supports licensing of the lower 80 SMR channels and the General Category frequencies on a BEA basis as well. This approach will promote consolidation and expansion of systems operating in those bands, and will facilitate their integration into similarly authorized wide-area licenses.

If the FCC determines that it has statutory authority to award SMR licenses by competitive bidding procedures and demonstrates that the public interest supports the use of auctions in this band, then AMTA recommends that simultaneous, multiple round auctions should be conducted for both wide-area and local licenses. AMTA also supports substantial upfront and down payment requirements, as well as withdrawal, default and disqualification rules, to ensure that only serious, qualified bidders participate in auctions. It further recommends that existing SMR operators in an area be granted a preference in such auctions in lieu of provisions for Designated Entities or Entrepreneur Set-Asides, and supports adoption of flexible post-auction partitioning provisions.

RECEIVED
MAR - 1 1995
FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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 THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.
ON THE FURTHER NOTICE OF PROPOSED RULE MAKING

1. The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), pursuant to Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Reply Comments in the above-entitled proceeding.[1/] The matters addressed in this proceeding are fundamental to the near and long term future of the 800 MHz Specialized Mobile Radio ("SMR") industry. It is critical that the Commission achieve an appropriate balance among the various interests affected by the instant Notice, including local and

[1/] Further Notice of Proposed Rule Making, PR Docket No. 93-144, 9 FCC Rcd. __, FCC 94-271 (November 22, 1994). Reply Comment date extended by Order, DA 95-67, released January 18, 1995 ("Notice" or "FNPR").

wide-area operators, equipment suppliers and the public that is and will be served on SMR and other Commercial Mobile Radio Service ("CMRS") systems. The Association has determined that the regulatory structure described in these Reply Comments is a viable framework responsive to the fundamental concerns of those disparate industry elements, and recommends that the Commission adopt rules consistent with it.

I. INTRODUCTION

2. In its Comments in this proceeding, AMTA stated that, "While the Association recognizes the difficulty of reconciling certain of these issues to the full satisfaction of all interested parties, AMTA considers adoption of distinct, but complementary, licensing approaches for all 800 MHz systems critical to the continued success of this valuable wireless industry."[2/] That objective paralleled the Commission's own goals which were "to establish a flexible regulatory scheme for the 800 MHz SMR service that will allow for more efficient licensing, eliminate unnecessary regulatory burdens on both existing and future licensees, and thereby enhance the competitive potential of SMR services in the mobile services marketplace." FNPR at ¶ 2. Those FCC goals were developed in the context of what the agency described as its "overriding goal in the CMRS proceeding...to achieve regulations that maximize competition among CMRS providers and eliminate regulatory distortions in the mobile services market." Id.

3. The difficulty of achieving those objectives was evidenced by the multitude of comments filed in this proceeding. More than eighty parties submitted individual

---

[2/] AMTA Comments at ¶ 17.

Comments. While a significant percentage were formulaic in their format (whatever the merits of the position espoused), an even greater number represented the individualized, deeply held beliefs of those with substantial investments in and commitments to this business. The recommendations proffered were as varied as the size, geographic locations, and business plans of the participants. The record in this proceeding constitutes a mosaic of the 800 MHz SMR industry, with an emphasis on its variety rather than its commonality.

4. The Association's Comments supported the FCC's proposal to allocate the 200 contiguous SMR frequencies in the 861-865 MHz band for wide-area SMR systems. While AMTA questioned the Commission's authority to auction this spectrum, and challenged any determination as to a public interest rationale for doing so, it accepted the FCC's decision to assign those channels in four 50 channel blocks. It recommended, however, that licenses be issued on a BEA, rather than MTA or BTA, basis and suggested modifications of the wide-area construction requirements to encourage the inclusion of rural subscribers and rural SMR operators in this service on a timely basis.

5. The Association also supported the reallocation of the General Category Pool to the SMR service in conjunction with prospective restrictions on SMR access to the Business and Industrial Land/Transportation Pool frequencies. It detailed the complexity of converting local system licensing from a site-specific to geographic basis. Further, it strongly endorsed the adoption of a protected service area for all 800 MHz trunked licensees, one adequate to protect the coverage of the very substantial embedded 800 MHz trunked SMR subscriber base.

6. The Association deferred taking a position regarding the matter of voluntary versus mandatory retuning on which the FNPR sought comment. Instead, AMTA attempted to outline the advantages and disadvantages of each of those approaches. It did so because the Association was unable at that point to identify a consensus on that issue within its Board of Directors, within its membership or within the industry at large. AMTA hoped that defining, rather than deciding, the issue might provide useful to the deliberations of the 800 MHz SMR community and to the Commission.

7. The Association has remained committed to working toward consensus on this and the myriad interrelated, highly sensitive matters in the FNPR throughout the course of this proceeding. To that end, it has met repeatedly with members of all segments of the 800 MHz SMR community to discuss the matters raised in the Notice, and to elicit their recommendations as to the optimal 800 MHz regulatory approach. It has evaluated the feasibility of a variety of proposals from a broad cross-section of the industry. It did so because it had committed to the Commission and to its members that it would attempt to facilitate the broadest possible consensus, at least on certain fundamental principals that should be observed in whatever regulatory structure was implemented.

8. The proposal detailed herein represents the thoughtful, informed judgment of the Association, as distilled through the Association's voting procedures. It was developed after exhaustive discussion and is based on consideration of the very broad gamut of positions represented in the Association's deliberations. The Association

believes that it offers a workable approach toward balancing those many concerns, but recognizes that it does not satisfy all of the interests of any party to this proceeding. At this juncture, that may be the most reliable standard by which the viability of any regulatory approach may be evaluated.

II. SUMMARY OF COMMENTS

9. One area on which there was virtual unanimity among the commenting parties was the extraordinary complexity of the task at hand: adoption of a new, comprehensive regulatory structure for the already extensively developed 800 MHz SMR industry. This effort was dictated and generally defined by Congressional directive as part of a broader effort to promote regulatory parity among potentially competitive services, an origin which unquestionably will be reflected in the decisions reached herein.[3/] That legislative imperative requires the FCC to consider not only the impact various provisions would have on the rights and obligations of existing and prospective 800 MHz SMR operators, but on the optimal competitive balance among a number of CMRS services, in particular those designated by the Commission as "broadband CMRS": wide-area SMR, cellular and PCS.[4/]

10. Nonetheless, the Comments did reflect general agreement at least on certain fundamental matters. For example, most parties agreed that the so-called "upper"

[3/] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI § 6002(b), 107 Stat. 312, 392 (1993)(Budget Act).

[4/] Third Report and Order, GN Docket No. 93-252, FCC 94-212 (adopted August 9, 1994, released September 23, 1994).

200 SMR channels, those from 861.0125 MHz through 865.9875 MHz, should be designated for use by wide-area SMR systems.[5/] There also was substantial agreement that such systems should be licensed on a broad geographic basis, with some commenters supporting the FCC's proposal to issue licenses based on Metropolitan Trading Areas ("MTAs")[6/] and others opting for smaller areas such as Basic Trading Areas ("BTAs") or the areas created by the Bureau of Economic Analysis ("BEAs").[7/] Parties that endorsed a wide-area licensing approach, for the most part, also urged the Commission to adopt stringent construction and coverage requirements to deter speculation and channel hoarding.[8/]

11. A commonality of opinion also extended generally to the FCC's recommendation to license the "lower" 80 SMR channels on a local basis in channel increments comparable to those available for local SMR systems under the current rules.[9/] Numerous parties also noted that the inherent complexity of converting from a site-specific to a geographic-based licensing scheme on those frequencies might

---

[5/] See, e.g., Comments of E.F. Johnson Co.("EFJ"), Morris Communications, Inc. ("Morris"), Personal Communications Industry Association ("PCIA"), Council of Independent Communications Suppliers ("CICS") and SMR WON.

[6/] See, e.g., Comments of Dial Call Communications ("Dial Call"), Pittencrieff Communications, Inc. ("PCI") and Spectrum Resources, Inc. ("SRI").

[7/] See, e.g., Comments of AMTA, Cumulous Communications, Inc. ("Cumulous"), Advanced MobileComm, Inc. ("AMI"), PCIA, SMR WON and Total Com., Inc. ("Total").

[8/] See, e.g., Comments of AMTA, PCI, PCIA, CellCall, Inc. ("CellCall"), Dial Call and Nextel Communications, Inc. ("Nextel").

[9/] See.e.g., Comments of AMTA, AMI, B & C Communications ("B&C"), Motorola, Inc. ("Motorola"), OneComm Corporation ("OneComm") and PCIA.

outweigh the benefits of securing a geographic authorization.[10/]

12. A significant number of commenters suggested that the General Category Pool be reclassified as SMR spectrum in light of the intensive use that already has been made of that spectrum by SMR licensees.[11/] AMTA specifically recommended that the reclassification of that Pool be balanced with the prospective exclusion of SMRs from the Business and Industrial Land Transportation Pools. That approach was opposed by representatives of non-commercial 800 MHz interests who argued for restrictions or even a prohibition on the use of these channels by SMR operators alleging that commercial use of these frequencies was "speculative" and would deprive other eligibles of a needed spectrum "safety valve".[12/] Those same parties argued that the FCC's auction authority could not extend to spectrum shared by commercial and non-commercial licensees.

13. The comments evidenced almost unanimous opposition to the FCC's proposed use of auctions for the future assignment of SMR licenses, particularly as to local SMR systems.[13/] Most parties challenged the FCC's statutory authority to employ auctions in an existing service when "new" authorizations generally reflect the relicensing of already operational stations rather than authorizations for new systems. The

---

[10/] See, e.g. Comments of AMTA, AMI, PCI and Dakota Electronics ("Dakota"),

[11/] See, e.g., Comments of AMTA, AMI, Nextel, Morris, PCI and Dakota.

[12/] See, e.g., Comments of UTC, The Telecommunications Association (formerly the Utilities Telecommunications Council) ("UTC"), Association of Public-Safety Communications Officials-International, Inc. ("APCO") and American Petroleum Institute ("API").

[13/] See, e.g., Comments of AMTA, Dakota, Morris, AMI, SMR WON, PCIA, EFJ, Dial Call and the Ericsson Corporation ("Ericsson").

commenters urged that the Commission follow the Congressional directive to avoid unnecessarily creating mutually exclusive situations which could trigger the use of auctions. However, to the extent that auctions were employed for the selection of wide-area SMR authorizations, certain parties suggested that simultaneous, multiple-round competitive bidding would be appropriate given the interrelated nature of the properties being auctioned.[14/]

14. Appropriate resolution of each of these matters is, of course, vital to the development of the comprehensive 800 MHz regulatory structure envisioned by the Commission. However, they must be addressed within the context of the broader issue of whether the Commission intends to designate the upper 800 MHz SMR channels for wide-area systems and, if so, what, if any, regulatory provisions should be adopted to permit or promote the implementation of such systems. The Commission must determine whether negotiations between incumbents and wide-area licensees should continue on a purely voluntary basis, or whether the FCC's rules should provide a mechanism whereby the wide-area licensee may dictate that the band be cleared. In short, the Commission must decide whether it will authorize voluntary or mandatory retuning. Further, whether it adopts a voluntary or mandatory approach, the FCC must still determine the rights to which both incumbents and wide-area licensees on that spectrum would be entitled.

15. The Association recognizes that this issue is vitally important to virtually all members of the 800 MHz SMR community. AMTA has devoted enormous time and effort to reviewing the proposals of various parties regarding this issue, as well as to

---

[14/] See, e.g., Comments of Nextel and AMI.

discussing and debating the merits and drawbacks of those proposals with their proponents and internally. As discussed below, the Association is unable to endorse fully the recommendations of certain parties for the reasons described, and instead has developed the proposal detailed infra. Nonetheless, to the extent that a broad industry consensus on this matter is highly desirable, AMTA remains committed to working with other interested parties to craft a regulatory scheme which further balances the multiplicity of interests in the 800 MHz industry.

A. Nextel Proposal

16. The most vocal, albeit not the only, proponent of mandatory migration was Nextel.[15/] Nextel argued that marketplace forces, in the form of frequency swaps, mergers and acquisitions, would not be sufficient to clear the entire 200 channels needed to establish the regulatory symmetry dictated by Congress among wide-area SMRs, cellular and broadband PCS.

17. It proposed, therefore, that the Commission establish in "congested areas" a one-year period commencing upon issuance of each wide-area license to complete the migration of local SMRs from the upper band to other 800 MHz spectrum. The first six months of that period would be for voluntary negotiations and incumbents that agreed to migrate or otherwise make their channels available for wide-area use within that time would be entitled to "inducement benefits" such as FCC tax certificates, prospective 70-mile co-channel protection and immunity from subsequent retuning. Thereafter, retuning

---

[15/] See also Comments of SRI, AMI, OneComm and the Cellular Telecommunications Industry Association ("CTIA").

would be mandatory.

18. In either case, the wide-area licensee would be responsible for all costs involved in completing the retuning, comparable to the obligations imposed on PCS licensees who wished to relocate 2 GHz microwave users.[16/] Moreover, an incumbent could be relocated only to comparable alternative frequencies available in the lower 80 SMR, 50 Business, or 150 General Category channel blocks. If comparable spectrum was not available, the incumbent could not be moved out of the upper band spectrum.

19. Additionally, Nextel proposed that greater spectrum availability in "non-congested areas" warranted a somewhat different approach. It recommended that wide-area licensees be limited to 280 channels in those markets for a five-year period, regardless of existing extended implementation authorizations, and that channels beyond that amount be assigned to local, retuned incumbents on a pro rata basis to the number of frequencies retuned. Uncongested areas were defined as those generally more than 100 miles from the 50 largest metropolitan areas in the country.[17/]

20. Although AMTA has become convinced that the FCC's intention to create a 10 MHz band of contiguous spectrum for wide-area SMR service will not be accomplished without some form of mandatory negotiation among the parties, it does not support the plan proposed by Nextel. The Association believes that a six-month

---

[16/] Third Report and Order, ET Docket No. 92-9, 8 FCC Rcd 6589 (1993).

[17/] The uncongested areas correspond approximately to the Designated Filing Areas ("DFAs") established by the Commission for 900 MHz SMR filing purposes. Private Land Mobile Application Procedures for Spectrum in the 896-901 MHz and 935-940 MHz Bands, Public Notice of November 4, 1986, 1 FCC Rcd 546.

voluntary period, followed by mandatory negotiations, is entirely too brief from the incumbents' perspective. It is substantially more abbreviated than the period permitted for microwave incumbents, and would deprive existing licensees of a reasonable negotiating opportunity.

21. This approach is also deficient in that it fails to address the necessity of preserving the integrity of incumbents' integrated systems. Wide-area licensees should not be permitted to devalue a competitor's business by retuning facilities on a selective frequency-by-frequency or station-by-station basis. A substantial percentage of 800 MHz operators provide their customers with multi-site system configurations which enable customers to operate over extended geographic area. Others are in the process of implementing wide-area systems authorized by the FCC pursuant to its waiver policy.[18/] Designing such systems is a formidable task in an environment of site and frequency specific licensing. Any piecemeal disruption of the frequency plans used in those operations, and in particular of the designated system control channels, could render them unworkable. A retuning policy that does not include an integrated system approach is an invitation to anti-competitive activities at minimal cost and should not be considered.

B. SMR WON Proposal

22. SMR Won, an organization of small SMR licensees operating throughout the United States, offered a different approach to the retuning issue. SMR WON is not

---

[18/] See Letter from Ralph A. Haller, Chief, Private Radio Bureau, to Mr. David E. Weisman, 8 FCC Rcd 143 (1992) ("Weisman Letter").

opposed to mandatory retuning. In fact, unlike most other mandatory migration proponents, SMR WON would require that **all** incumbents be moved from the upper band to alternative 800 MHz spectrum, in conjunction with the relinquishment, presumably by the wide-area licensee, of unconstructed frequencies in excess of 50 in the market. The upper 200 channels would then be auctioned in ten discrete blocks over BEAs.[19/] Two 50 channel authorizations would be available for any entity, and a single party could acquire both. The remaining 100 frequencies would be further subdivided into six 15 and two 5 channel blocks; half of each category would be available exclusively for Designated Entities with the other half reserved for existing SMR operators in that market.

23. SMR WON concluded that mandatory retuning would be possible using this frequency assignment plan if the Commission first identified a "Relocation Pool" of approximately 200 800 MHz frequencies to which incumbents could be relocated, and if the retunees were granted a "Geographic Competitive Equity Premium". This would entitle retunees to the use of their replacement channels throughout an entire BEA, thereby awarding them geographic parity with wide-area licensees that acquire their authorizations in an auction process.

24. AMTA is in fundamental agreement with SMR WON's objectives, although not with its methods which the Association considers unworkable. It would, of course, be the optimal result if an appropriately-sized block of contiguous spectrum

---

[19/] Like numerous parties in this proceeding, SMR WON does not recognize the FCC's authority to auction this spectrum, but nonetheless has included a competitive bidding process in its proposal.

could be assigned for wide-area SMR systems with enough remaining spectrum to provide BEA-wide licenses to market incumbents, Designated Entities and retunees. However, the Association has reviewed this approach in depth and remains convinced that there is no practical way of creating the Relocation Pool on which SMR WON's proposal is based, short of replicating the miracle of the loaves and the fishes.

25. All 800 MHz spectrum, including but not limited to SMR channels, is fully utilized in numerous market areas and has been for a number of years. It was that frequency congestion that prompted the FCC to approve the wide-area system reconfiguration concept originally proposed by Nextel.[20/] The predicate for SMR WON's retuning proposal is that the Commission first identify, or somehow cause the creation of, a total of 400 channels clear throughout a BEA in this heavily congested band, a magician's trick which would be worthy of Houdini. Indeed, this approach would dictate an elaborate sequence of musical chairs with licensees from the upper 200 channels displacing General Category and other Pool licensees which would in turn be required to squeeze into the remaining available 800 MHz spectrum,[21/] presumably by implementing some form of as yet unidentified narrowband technology.

26. Even if the Commission had some basis for believing the necessary Relocation Pool could be created, and even if it had provided sufficient notice of this

---

[20/] In Re Request of Fleet Call, Inc. for Waiver and Other Relief to Permit Creation of Enhanced Specialized Mobile Radio Systems in Six Markets, 6 FCC Rcd 1533 (1991), recon. den. 6 FCC Rcd 6989 (1991).

[21/] SMR WON's Comments do not include a proposal that some displaced non-commercial licensees might be "migrated" to another spectrum band, yet that possibility seems to be a necessary by-product of this retuning proposal.

prospect in the FNPR to satisfy the requirements of the Administrative Procedures Act,[22] and even if the agency thought the public interest would be served by this degree of licensee dislocation, it is not clear how the costs of implementing this arrangement would be borne. It may be that SMR WON intends that the wide-area auction winners would underwrite the entire cost of migration. Alternatively, the beneficiary of the Geographic Competitive Equity Premium might be responsible for some or all of the costs of clearing the spectrum for its BEA-wide license. That essential element of SMR WON's proposal has not been fully addressed.

27. In AMTA's opinion, the mandatory relocation proposal advanced by SMR WON cannot withstand scrutiny. However, if the Commission is able to identify the pool of spectrum desired by SMR WON or even a practical approach to creating such a pool, the Association would be pleased to discuss this matter further with the agency.

C. PCIA Proposal

28. PCIA's Comments reflected the deliberations of its Specialized Mobile Radio Alliance ("SMRA") Task Force which was charged with developing options for an 800 MHz wide-area licensing scheme. PCIA opposed any mandatory relocation of upper band licensees. Instead, PCIA recommended assigning the 200 800 MHz SMR channels in 10 channel blocks over geographic areas smaller than MTAs. The application process would have two phases. In Phase 1 existing licensees would have the opportunity to convert existing authorizations from site- specific to geographic-based authorizations in 10 channel increments. Phase 2 applicants could apply for frequencies

---

[22] Administrative Procedures Act, 5 USC § 553 (1994).

and areas not assigned in Phase 1, again limited to 10 channel licenses. PCIA opposed the use of auctions for issuance of Phase 1 or Phase 2 licenses but did not otherwise address how the Commission might resolve instances of mutual exclusivity.

29. AMTA recognizes PCIA's desire to adopt a regulatory process which awards a preference to existing licensees. However, the Association cannot endorse a licensing approach that further disjoins an already fragmented block of potentially contiguous spectrum. The Commission must determine what it believes to be the most publicly beneficial use of this allocation. If the Commission wishes to facilitate the development of a broadband competitor, or even competitors, to cellular and PCS, as the FCC previously has indicated, then the PCIA plan must be rejected.

30. The practical implications of implementing a plan such as that proposed by PCIA must also be considered. Given the intensive re-use of the upper SMR frequencies throughout most of the country, mutual exclusivity could be avoided only by issuing licenses on a geographic basis so small as not to constitute a "wide-area" authorization at all. This, in turn, will significantly increase the number of applications which must be filed, reviewed and ultimately authorized, and will require applicants to request licenses in sufficient contiguous market areas to reconstruct their current system coverage. Larger areas will increase the probability of mutual exclusivity among applicants which must be resolved through some licensing mechanism, whether lotteries, auctions or some alternative approach. Since each of these schemes would have to be repeated 20 times per market, based on the proposed 10 channel license grants, it is apparent that the administrative burden for the agency and for the industry would be

significant and would substantially delay the implementation of competitive wide-area SMR systems. For these reasons, AMTA cannot support the approach recommended by PCIA.

III. LICENSING PROPOSAL

31. AMTA's efforts toward industry consensus in this proceeding have focused on three goals: 1) to enhance the present and future value of 800 MHz SMR spectrum, both to licensees and to the rapidly-growing numbers of the public making use of SMR services; 2) to ensure that licensees operating on this relatively small amount of heavily-licensed spectrum can compete effectively within the FCC's defined CMRS marketplace; and 3) to provide a time line which will neither unnecessarily delay the implementation of new technologies and services, nor cause unnecessary hardship to existing licensees now providing service to many thousands of customers. The most difficult task facing the Association throughout this process has been to find a licensing framework which would strike a balance between traditional SMR operators with growing businesses and wide-area operators seeking necessary spectrum to develop new systems using emerging technologies.

32. The proposal contained herein is not a consensus of the entire SMR industry. Much as AMTA would like to have found such a position, it is the Association's reluctant view that the strongly-held positions of various industry segments make full consensus impossible at this time. Rather, the following proposal is a compromise among a wide variety of interests which AMTA believes best meets the goals stated above, without creating an excessive administrative burden for either

licensees or the Commission.

A. Geographic Licensing

33. AMTA continues to agree with the Commission that geographic area licensing is preferable to the site-specific allocations heretofore in place for SMR systems. FNPR at ¶ 9. In its Comments, AMTA noted that those SMR operators seeking to provide efficient, wide-area service are severely hampered by site-specific, frequency-by-frequency licensing, and that no other broadband CMRS service is so burdened.[23/] AMTA expressed doubts about the effectiveness of Rand McNally's Major Trading Area ("MTA") and Basic Trading Area ("BTA") designations, and suggested that the Commission consider using the Economic Areas developed by the Department of Commerce's Bureau of Economic Analysis ("BEAs") as the most appropriate geographic area for both wide-area and local SMR licensing.[24/]

34. After extensive discussions with large and small SMR operators and Commission staff members, AMTA continues to urge the use of BEAs for future SMR licensing in both the upper and lower portions of the 800 MHz band. The Association believes that, due to their number, size and configuration, BEAs will meet most effectively the needs of both "wide-area" and traditional SMR licensees.

35. BEAs were developed along commuting patterns, with home and workplace locations grouped into one geographic area; thus, they are ideal for mobile wireless licensing, with its emphasis on communications in the area of customers' daily

---

[23/] AMTA Comments at ¶ 24.

[24/] Id. at ¶ 25.

travel.[25] Also, AMTA's discussions with its members have revealed that, akin to Goldilocks, while MTAs are too big, and BTAs are too small for effective service coverage, BEAs appear to be "just right". The counties included in a BEA often closely match the existing service areas of traditional SMR licensees.

36. By employing the same size geographic area for both "wide-area" and local licensing,[26] the FCC would ensure that no part of the SMR band will be classified as "second-class spectrum", with lesser value than other channels. It is vital to the continued growth of the SMR industry that the value of existing licensees' businesses be protected: this includes the potential to develop a future system that can compete with or be attractive to larger operators. An identical service area makes this goal more achievable, and encourages smaller operators to assemble larger numbers of channels into more efficient and competitive systems.

B. Spectrum Blocks

37. In its Comments, AMTA supported the FCC's proposal to reallocate the upper 200 channels of the 800 MHz SMR pool for prospective large-block use. The

---

[25] The system of 183 BEAs formulated in 1977 is currently being updated to reflect changing population and commuting patterns. See proposed Redefinition of the BEA Economic Areas, 59 Fed. Reg. 55,416 (November 7, 1994). A map of the proposed new system of 174 BEAs, as printed in the Federal Register, is attached hereto as Attachment 1. AMTA understands that the final version of this map is expected to include 172 BEAs, with two proposed BEAs to be combined in both Alaska and western Montana. Since no BEAs were developed for U.S. territories such as Puerto Rico and Guam, AMTA suggests that the FCC create single BEAs for licensing purposes in each of those separate geographic areas.

[26] Since AMTA proposes to license both the upper and lower SMR band channels on a BEA basis, the use of "wide-area" to describe prospective upper-band licensees is inappropriate. These licensees hereinafter will be described as "large-block" licensees.

Association further supported the Commission's proposed division of the spectrum into four 50-channel blocks.[27] However, a review of comments filed, along with discussions with AMTA's members, have led the Association to revise its view of the optimal division of the upper 10 MHz of SMR spectrum, to meet the needs of current and prospective licensees.

38. AMTA now supports OneComm Corporation's proposal of two channel blocks for large-block use, one of 120 channels and one of 80 channels, both of which could be aggregated by a single licensee.[28] Authorizing only two blocks per BEA will reduce the number of licensees with which existing operators, who typically are assigned non-contiguous channels, will have to negotiate for relocation. Further, while existing wide-area technology is frequency-agile, new licensing rules should be designed to accommodate future generations of equipment. For example, as OneComm notes, Code Division Multiple Access (CDMA) technology requires blocks of at least 62 channels; thus, a BEA block of 120 channels (with the elimination of some unnecessary guard band channels) would accommodate two minimum CDMA blocks.[29] An 80 channel license would accommodate one larger CDMA block. Such a division of proposed large-block channels would better equip SMR operators to compete with other mobile wireless services in the future.

39. With the likelihood that new generations of technology will be

---

[27] AMTA Comments at ¶ 19.

[28] See OneComm Comments at pp. 13-15.

[29] Id. at p. 14.

implemented to provide SMR services, AMTA recommends that the FCC require open architecture for large-block systems. Any new technology must be widely available to all prospective users to encourage interoperable systems that meet customer service demands. AMTA does not recommend that the FCC bind operators to any particular technology, as the result would likely be a service that would rapidly become obsolete in this era of blinding-speed change. However, open architecture requirements would encourage competition by making the same technology potentially available to all licensees.

C. Treatment of Incumbent Licensees

40. The most controversial issue facing the SMR industry in this proceeding has been the impact of spectrum reallocation on those operators now licensed on proposed large-block channels. This issue, more than any other, continues to sharply divide the SMR industry. In its Comments, the Association detailed the arguments both for and against mandatory migration of incumbent licensees. Here, AMTA outlines a compromise proposal which would reward those licensees choosing to relocate to other channels, allow other operators to continue operating on current channels for a reasonable length of time, and encourage large-block licensees to negotiate with incumbent operators. The proposal is designed to encourage market forces to drive the relocation process before government intervention is required, and to provide as much certainty as possible to both incumbent and new licensees during the transition period to new use of the upper band.

1. Notification

41. One of the significant concerns of incumbent operators is the level of uncertainty caused by reallocation of upper band channels: will they be approached to relocate their systems; at what time; how many of their channels will be affected? Such uncertainty makes development of business plans extremely difficult, and discourages system expansion and investment in new equipment. To reduce the level of apprehension, AMTA urges the FCC to require each large-block licensee to notify all incumbents of its wish to reconfigure the incumbent system to other channels.[30/] Notification would be required within six months after its selection as a large-block licensee. Those incumbent licensees not notified within the six-month period would not be subject to any future reconfiguration requirements.

42. While it is likely that most large-block licensees would notify most, if not all, incumbents operating on its block channels, there may be some licensees whose channels and service area, for various reasons, can continue to coexist with the large-block operation. These licensees would receive assurance within a short time that they could continue to develop their businesses on current channels. All other incumbents would be on notice, and could contact the large-block licensee to begin negotiations for retuning if they wished.

[30/] AMTA wishes to ensure that the notification process provides genuine, timely assurance to incumbents regarding the future of their business operations. Therefore, the FCC may need to adopt procedures that discourage large-block licensees from being overly inclusive in their notification decisions.