

their wide-area "footprints" and for multiple low power sites at which they could construct and implement digital mobile systems. At the same time, an "ancillary industry" of application mills developed which encouraged "laymen" to file applications in hopes of making a profit in the future. One result of this has been the overwhelming licensing application backlog at the Commission.^{35/}

Although the Commission has accepted the SMR industry's assistance in processing the backlog,^{36/} this is only a solution to the existing backlog. If the Commission again accepts site-by-site 800 MHz SMR applications, it would be deluged with applications. The SMR administrative morass will not be corrected by merely processing those applications currently on file.

For example, absent a geographic area license, wide-area SMR operators will continue to file thousands of applications to implement and expand their systems. One way to estimate the number of applications that could be filed is to use the number of cellular base stations in major markets as a rough measure. For

^{35/} For example, in 1993, the Commission received 64,108 requests for authorization at 800 MHz alone. See F.C.C. Annual Report, Fiscal Year 1993, Private Radio Statistics, p. 63. In addition to these applications, the Commission also received thousands of requests for Special Temporary Authority ("STA") to operate at 800 MHz.

^{36/} See News Release of the Federal Communications Commission, dated November 22, 1994, entitled "FCC and Industry To Speed Processing of 800 MHz Licenses."

example, as of July 1993,^{37/} the following number of cellular base stations were licensed in the listed markets:

<u>Market</u>	<u>Block</u>	<u>Number of Licensed Base Stations</u>
Los Angeles	A	907
Chicago	A	431
New York	B	427
San Francisco	A	189
Houston	B	106

These five cellular systems alone required 2060 base stations in 1993. Although wide-area SMR development is in its infancy today, to be competitive with the entrenched cellular systems and soon-to-be-developed PCS systems, wide-area SMRs will have to deploy thousands of additional base stations. Given that there are 301 other MSAs in the U.S. and an additional 428 Rural Statistical Areas ("RSAs"), implementing wide-areas systems across the U.S. under a site-by-site, frequency-by-frequency licensing system will require tens of thousands of new applications.

It gets worse. Because SMR base stations are currently licensed on a frequency-by-frequency basis, operators continually have to modify their licenses as they expand their systems and consolidate spectrum by purchasing traditional SMR systems. Under

^{37/} This is the most recent date for which the FCC reported the total number of base stations licensed to a cellular operator. Of course, in contrast to wide-area SMRs, cellular providers have a single license covering all of their base stations within their given geographic area. This is a regulatory disparity that can only be corrected by a geographic area-based license providing clear, contiguous spectrum for wide-area SMRs.

the present licensing scheme, wide-area licensees must submit new applications to modify each base station every time they add a new frequency to a system. Therefore, applications to modify the tens of thousands of base stations in wide-area SMR systems would be filed several times a year as wide-area providers develop their systems.

In addition, thousands of applications filed by processing mills have been granted or are being granted in the processing of the application backlog. The one-year construction deadlines have expired for many of the previously-granted stations.^{38/} Those now being granted will have to be constructed within one year, and there is little reason to believe that even a small portion of these stations will be constructed.^{39/} Thus, most of these licenses will be cancelled and the channels recovered for re-licensing.

The resulting unconstructed stations could open the door to a new flood of applications for channels recovered from thousands of canceled licenses. In an effort to use these newly-recovered channels to "greenmail" wide-area operators, an applicant could, for example, "engineer-in" a one-channel SMR station with one watt

^{38/} Because these are single channel or at most five channel grants for traditional single site SMRs, they do not receive extended implementation and must be constructed within at the longest, one year.

^{39/} See Waiver Request of Daniel R. Goodman, et al., filed March 21, 1994, seeking waiver of 47 C.F.R. Section 90.633 to extend the eight-month construction and operation deadline applicable to licenses held by parties who obtained their licenses through various application mills that had been placed into Receivership.

of power on a 20-foot antenna at, for example, Los Angeles International Airport ("LAX"). This station, though not economically viable, could meet the Commission's co-channel separation requirements and be granted.^{40/} Wide-area licensees will then be forced to file a closely-packed grid of stations to attempt to prevent such "greenmail," thereby increasing the Commission's licensing burden and undertaking costs not imposed on competing CMRS providers.

The solution is to license SMRs, like cellular and PCS, pursuant to geographic area-based licenses.^{41/} Once these geographic area licenses are auctioned and issued, placed on public notice and all petitions resolved, SMR licensing will be completed -- no more backlogs, no more finder's preferences, and no more of the archaic site-by-site licensing scheme. Auctioning MTA or BEA-

^{40/} This is not merely a hypothetical example. Shortly after Nextel obtained its initial wide-area base station licenses in Los Angeles, two applicants obtained very low power, extremely limited coverage five-channel licenses at LAX. Although neither station was commercially viable, the applications were granted consistent with the co-channel separation rules in place at that time. These stations appear to be intended solely to "greenmail" Nextel by denying it the use of these ten channels within at least a 45-mile radius of LAX in the heart of Los Angeles.

^{41/} Chadmoore Communications, Inc. ("Chadmoore") opposes wide-area licenses, and promotes instead continued use of site-by-site licensing in its proposal to auction all remaining 800 MHz spectrum as mutually exclusive applications are received. Comments of Chadmoore at p. 19. Although Chadmoore attempts to promote this as an alternative to the Commission's proposal, it has failed to explain how the Commission will actually implement this licensing scheme. For example, determining mutually exclusive applications on a site-by-site basis is wrought with complexities. Further, Chadmoore's proposal does not provide licensing parity with cellular and PCS since it provides no geographic-based license of contiguous, clear spectrum.

based SMR licenses is the most up-to-date, efficient means of spectrum licensing, and it will ensure prompt delivery of new technologies to the public.

C. The Commission Properly Concluded That Wide-Area SMR Licenses Should Be Granted on an MTA Basis.

The Commission has already concluded in the Third Report and Order that MTAs are the appropriate geographic area for licensing wide-area SMRs.^{42/} MTAs provide sufficient flexibility and are large enough for introducing competitive wide-area SMR services, thereby providing wide-area SMRs parity with geographically licensed cellular and PCS. Many wide-area SMR systems already cover large enough areas that any licensing area smaller than an MTA would not make sense.^{43/}

The concerns of some smaller, local SMR operators that MTAs are too large are not convincing.^{44/} For example, PCIA states that MTAs are too large for the smaller buildout areas of existing local, independent SMRs.^{45/} PCIA's sole focus is to create a limited buildout area for expansion of local SMR service. It completely ignores PCS licensing for MTAs and BTAs, and the Budget

^{42/} Third Report and Order at para. 99.

^{43/} Basic Trading Areas ("BTAs") are simply too small to provide the coverage, economies and roaming needed to compete with broadband PCS and cellular services.

^{44/} Comments of Advanced Mobilecomm, Inc. ("AMI") at p. 3; AMTA at pp. 25-26; Cumulus Communications Corporation ("Cumulus") at p. 3; Geneese Business Radio Systems, Inc. ("Geneese") at p. 2; Lagorio Communications ("Lagorio") at p. 10; PCIA at p. 19; and The Southern Company ("Southern Company") at p. 13.

^{45/} Comments of PCIA at pp. 19-20.

Act's regulatory symmetry requirements for wide-area SMRs. This, coupled with PCIA's support for limiting wide-area licenses to 10 channels, or 0.5 MHz, and opposition to auctions, is intended to cripple the development of wide-area SMRs, impede competition among providers of advanced wireless services, shield from competition local SMRs using outmoded technology, and force the Commission to continue indefinitely the site-by-site SMR licensing process.

Those parties wishing to participate in wide-area services, but who believe the MTA geographic area is too large, can participate through consortia, through arrangements with the MTA licensee to partition or subdivide its service area, or through other arrangements made possible by sufficiently flexible auction and licensing rules.^{46/} Flexibility in these rules will serve the public interest and alleviate the concerns raised by these parties.

A wide-area SMR license based on MTAs will aid wide-area SMRs in their efforts to effectively compete with other CMRS providers and will further the Commission's mandate of providing all CMRS with a similar regulatory framework.^{47/} At the same time, the MTA license will assist in relieving the Commission of its current repetitive and unnecessary site-by-site licensing duties and will

^{46/} See Comments of Organization For The Protection And Advancement Of Small Telephone Companies ("OPASTCO") and the National Telephone Cooperative Association ("NTCA") for support of partitioning.

^{47/} As discussed above, Nextel would as an alternative support licensing wide-area SMRs on a Cluster BEA basis. This would provide many of the same benefits as MTA-based licensing.

provide, in lieu thereof, a single license. By implementing MTAs moreover, the Commission's auction responsibilities will be further reduced by limiting the number of licenses to be auctioned.

D. A 10 MHz Wide-Area SMR License Is Required To Achieve Regulatory Parity and Make Possible the Implementation Of Competitive Technologies.

Wide-area SMRs must be granted a 10 MHz license. In light of cellular's 25 MHz block of spectrum and PCS' 10 and 30 MHz blocks of spectrum, the 10 MHz block is the only option that comes close to providing regulatory licensing parity. Proposals for 2.5 MHz or 5 MHz fall short of the Congressional mandate.

Nonetheless, several commenters support the 2.5 MHz (50-channel) block.^{48/} Most of the arguments supporting four 50-channel blocks point to the potential that there could be multiple wide-area SMR providers in each MTA or other licensing area.^{49/} What these commenters fail to acknowledge, however, is that a 50 channel block is not sufficient to provide wide-area service with sufficient capacity or capabilities to compete with similar CMRS

^{48/} See, e.g., Comments of AMI at p. 2; AMTA at p. 11; Atlantic Cellular Company L.P. ("Atlantic Cellular") at p. 2; DCL Associates ("DCL") at p. 7; Deck Communications ("Deck") (and all other Pittencrieff filings) at p. 2; Dru Jenkinson, Inc. ("Dru Jenkinson") at p. 4; E.F. Johnson Company ("E.F. Johnson") at p. 6; and Pittencrieff Communications, Inc. ("Pittencrieff") at p. 5. It should be noted that one party, Cellcall, Inc. ("Cellcall"), proposed two 100-channel blocks per geographic area. Comments of Cellcall, Inc. at p. 12. PCIA's ridiculous 10 channel proposal has already been discussed, *supra*.

^{49/} See Comments of AMTA at p. 11 (50 channels provide the proper balance between economies of scale and the protection of competition); American SMR Company, L.C. ("American SMR") at pp. 5-6 (to avoid license concentration, no entity should be permitted to accumulate all four licenses); and E.F. Johnson at p. 6 (no evidence that 2.5 MHz is not sufficient).

offerings.^{50/} Many of the commenters recognize this and support allowing a single applicant to aggregate all four 50-channel blocks within an MTA. Cellcall, for example, which supports two 100-channel blocks, notes that "restricting a single entity to less than [the 10 MHz upper band] is inconsistent with the goal of creating competition to other CMRS providers, who are authorized a minimum of 10 MHz."^{51/}

If, on the other hand, the Commission auctioned a single 200-channel license per MTA or Cluster BEA, the Commission could significantly cut down on its administrative involvement in the SMR licensing process. There would be fewer licenses to auction and fewer post-auction transactions requiring regulatory approval. Four 50-channel licenses will lead to significant licensing aggregation once the auctions are completed. Each of these transactions would require Commission approval, again burdening the Commission with avoidable SMR licensing overhead.^{52/}

Two hundred channels are necessary if wide-area SMRs are to have the ability to implement new technologies that can compete in

^{50/} This limitation would, of course, be a disincentive to investment and would reduce competitive bidding revenues as well as competition.

^{51/} Comments of Cellcall at p. 13.

^{52/} Onecomm Corporation ("Onecomm") also points to continued fragmentation in the SMR licensing process and a perpetuation of the licensing complexities and burdens that will result from auctioning four 2.5 MHz blocks: ". . . allocation of four 2.5 MHz license blocks will result in the disbursement across several MTA license blocks of channels licensed to a single incumbent SMR system. Such a fragmented allocation would require cooperation among multiple MTA licensees in order to relocate even one incumbent system." Comments of Onecomm at p. 8.

the CMRS marketplace. Not one commenter has presented evidence to the contrary.^{53/} For example, a 50-channel block is insufficient to implement even one channel using Code Division Multiple Access ("CDMA") digital transmission. A 100-channel block could accommodate one CDMA channel; however, a commercially viable system would require at least three CDMA channels necessitating nearly 200 contiguous channels. As to Global System for Mobile Communications ("GSM") technology, a seven cell, three sector reuse pattern requires 8.4 MHz of contiguous spectrum, or a minimum of 168 contiguous SMR channels. These and other advanced technologies are available to all cellular and PCS systems because the Commission assigns them sufficient contiguous, exclusive-use spectrum for their implementation.^{54/}

Moreover, wide-area SMR licensees with four 50-channel blocks in some MTAs or Cluster BEAs, and fewer than four blocks in others, would not have any incentive to deploy advanced broadband technologies even where possible. Since it would not be economical to deploy advanced broadband technologies in markets where the licensee has fewer than four blocks, the provider would be forced to deploy incompatible technologies in those MTAs or Cluster BEAs -

^{53/} E.F. Johnson claims only that there is no evidence that 200 channels are needed. Comments of E.F. Johnson at p. 6. However, E.F. Johnson does not present any evidence of any type of spread-spectrum technology that can operate on 50 channels.

^{54/} Motorola, Inc. ("Motorola"), a company which has extensive experience with technologies at all levels of the spectrum, also presented evidence that a 10 MHz block is necessary to support advanced technologies. See Comments of Motorola at pp. 5-7.

- hindering if not preventing customers from roaming between the incompatible systems. To make roaming possible, the licensee would be forced to implement the less efficient technology throughout its systems. Auctioning wide-area SMR licenses in four 50-channel blocks will create a regulatory disparity that will fragment this spectrum across the U.S., preventing the deployment of seamless, nation-wide, spectrally-efficient systems to compete based on utilization of the same advanced technologies as are available to cellular and PCS systems.

A single 200-channel block is not only a technical necessity, but a practical necessity as well. Auctioning wide-area SMRs on four 50-channel blocks will make retuning of incumbent SMRs unnecessarily complex and burdensome thereby imposing unwarranted costs, delays and confusion for wide-area licensees, retunees and ultimately the Commission, as detailed below.

An incumbent SMR station typically has one channel in three of the 50-channel blocks and two channels in the remaining 50-channel block.^{55/} If the contiguous block of spectrum is auctioned in 50-channel blocks and more than one wide-area bidder is successful in an MTA or Cluster BEA, an incumbents' channels will lie in the spectrum of more than one wide-area licensee. It is likely that the different wide-area licensees in a single MTA or Cluster BEA

^{55/} This results from the Commission's practice of assigning groups of five channels to SMR stations with each channel separated by 40 channels or 1 MHz. For example, a station licensed on the channel 401 block would have two channels, 401 and 441, in the first 50-channel block, one channel, 481, in the second block, one channel, 521, in the third block, and one channel, 561, in the fourth block.

would have different business plans and time tables. Each may well have predictable incentives not to cooperate in retuning of incumbents, such as where refusing to do so would tie up more of the other auction winner's channels.^{56/} In this scenario, the Commission could become embroiled in conflicts among uncooperative wide-area licensees seeking financial relief from each other and questioning each others qualifications as a licensee.^{57/}

Nextel submits that all of these problems can easily be avoided by licensing wide-area SMRs for a single 200-channel block. A licensing framework which could result in less than 10 MHz of contiguous spectrum being licensed to a single operator in an MTA or Cluster BEA is not in the public interest. No commenter has presented credible evidence that 50 channels are sufficient for viable wide-area SMR operations, while existing operators have demonstrated that 200 channels are needed for minimal technological

^{56/} Some auction winners may simply refuse to take part in the retuning process thus forcing the other auction winners to bear all of the expense of retuning incumbents.

^{57/} As this scenario indicates, if the Commission chooses to adopt four 50-channel blocks, it will have to create a process for coordinating retuning of an incumbent with channels among all or some of the multiple wide-area licensees. For example, assume that an incumbent has channels in each of the blocks of the four wide-area licensees in an MTA and one of them proposes retuning the incumbent. The Commission could adopt rules providing that each of the remaining wide-area licensees must also agree to retune the incumbent within 90 days of the first wide-area licensee's notice, or lose the right to retune the incumbent's channels within their respective blocks. This would provide the incumbent with either a one-time, coordinated retuning of its channels, or at least certainty that some of its channels would not be retuned. On the other hand, this approach would constrain the flexibility of each wide-area licensee to develop its own business plans and undercut the possibility of increased competition from licensing multiple wide-area providers in each market.

and spectrum access parity with competing CMRS services. Four 50-channel blocks would preclude wide-area SMR deployment of the most advanced technologies, thereby limiting the capacity and therefore the competitiveness of wide-area SMRs.

E. Mandatory Retuning Is Essential To Regulatory Parity And Creating A Competitive CMRS Marketplace.

1. Mandatory retuning is required by the Budget Act.

A wide-area SMR license providing the licensee with contiguous channels in a geographic area does not have regulatory symmetry with broadband CMRS competitors unless the licensee is able to use those channels throughout the licensed area.^{58/} Cellular licensees are granted 25 MHz of "clear," contiguous spectrum on which they can provide cellular services throughout that area. PCS licensees will be granted contiguous blocks of spectrum, which will be cleared through the **mandated** retuning of incumbent microwave users, thereby obtaining exclusive use of the spectrum. Wide-area SMR licensees must have a comparable ability to clear existing co-channel licensees from its service area in order to have the exclusive use of the spectrum covered by the license. Regulatory parity requires that competing providers have, to the extent

^{58/} AMI recognizes the necessity of clear spectrum for wide-area SMRs, stating that the "Rules must provide the prevailing auction winners sufficient assurance that they will not be further encumbered by additional licensees on their channels. . . Moreover, the FCC's Rules should promote and encourage the migration of incumbent licensees in a timely and fair manner." Comments of AMI at pp. 6-7.

feasible, contiguous exclusive use spectrum assignment on a geographically-defined basis.^{59/}

Clear spectrum, as recognized by AMI, is required for a wide-area licensee "to configure its system and optimize its service to the public."^{60/} To clear the spectrum and thereby achieve parity with cellular and PCS, a wide-area licensee must be granted the authority to retune incumbents.^{61/} Conferring no more than a right to negotiate with incumbents is "illusory because it confers nothing new."^{62/}

Contrary to some comments, however, mandatory retuning would not benefit wide-area SMRs at the expense of other SMR operators. Local/traditional SMR operators will find themselves, at a minimum,

^{59/} See Comments of AMI at p. 8; Cellcall at p. 7; Cellular Telecommunications Industry Association ("CTIA") at pp. 4-6; Onecomm at pp. 6, 15; and Spectrum Resources, Inc. ("Spectrum Resources") at pp. 4-5. As Cellcall noted in its Comments, opposition to Nextel's earlier-proposed wide-area licensing scheme focused on mandatory retuning, but none of the comments disputed "the need for clear spectrum, contiguous spectrum, in order to compete with other CMRS offerings." Comments of Cellcall at p. 7.

^{60/} Comments of AMI at p. 8.

^{61/} See also Comments of McCaw Cellular Communications, Inc. ("McCaw"). In its Comments, McCaw recognizes the necessity for clear spectrum for wide-area SMRs in the context of the Budget Act's regulatory symmetry requirements, and McCaw agrees that the Commission has authority to provide for it, provided that CMRS rules apply to wide-area SMRs when licensing parity is achieved.

^{62/} Comments of Onecomm at p. 16. Similarly, E.F. Johnson recognizes in its Comments the necessity of clear spectrum for competitive and parity purposes. According to E.F. Johnson, an auction of wide-area SMR licenses is a "waste of the public's resources" if the license provides no retuning rights because, after the auction, the industry and the industry's licensees will have been little-changed without retuning of incumbent licensees. Comments of E.F. Johnson at pp. 5-6.

in the same competitive position they were in prior to retuning. In many cases, retuned local SMRs will be placed in an enhanced position since they will no longer be surrounded by wide-area SMRs which have impeded their ability to grow.

2. Commenters' claims that mandatory retuning will be detrimental to their operations are unfounded.

Numerous commenters stated their opposition to mandatory retuning, arguing, among other things, that it would injure small businesses,^{63/} it would burden the Commission's resources by dragging the Commission into retuning disputes,^{64/} there are not sufficient channels on which to retune incumbents,^{65/} and it would be too expensive and disrupt service.^{66/} These arguments however are unfounded. SMR WON, for example, claims that the Commission's proposed licensing changes will displace lower-priced services with a more expensive digital service.^{67/} According to the AMTA/EMCI study submitted by SMR WON, however, SMR WON's claim

^{63/} See, e.g., Comments of SMR WON at pp. 42-43; U.S. Sugar Corporation ("U.S. Sugar") at pp. 5-6. In a far-reaching effort to find support for its position that small businesses must be protected in this rule making -- even at the expense of implementing more efficient use of the spectrum -- SMR WON cites to the "Contract With America," the 1994 campaign platform of Republican candidates for the U.S. House of Representatives. It should not be lost on the Commission that SMR WON is requesting an entitlement program for its members. Comments of SMR WON at p. 16.

^{64/} Comments of Applied Technology Group, Inc. ("Applied Technology") at 10.

^{65/} Comments of Chadmoore at p. 24; and SMR WON at p. 38.

^{66/} Comments of the Council of Independent Communications Suppliers ("CICS") at p. 3.

^{67/} Comments of SMR WON at pp. 8-9.

is simply not supported by the facts, given that the study found that the average cost of an analog SMR radio is \$696 while the average cost of a digital SMR radio is \$650.^{68/} Airtime charges for comparable dispatch-only service will also be competitive.^{69/}

Implementing a transition plan similar to the one implemented in the PCS proceeding will establish requirements for involuntarily retuning incumbents. To avoid being dragged into retuning disputes, the Commission -- as it proposed in the PCS proceeding -- can ensure that there are strong incentives for voluntary agreement and require the use of alternative dispute resolution and mediation to resolve disagreements.^{70/} Moreover, a transition plan that

^{68/} AMTA/EMCI Study at p. 73. The AMTA/EMCI Study found that the average life of an analog SMR unit is approximately five years, a life span that is decreasing due to an SMR industry that has begun to attract new customers and allow for decreasing equipment costs. AMTA/EMCI Study at p. 68. Therefore, focusing on the future, the Commission must craft a licensing scheme that focuses on providing unimpeded opportunities for new, state-of-the art technologies.

^{69/} Dr. Ordovery's study explains that the price of individual wireless services -- within an integrated package of services that a wide-area digital operator could offer -- will be constrained by the price of the stand-alone service provided by other companies. Thus, dispatch prices on wide-area SMR systems are competitive with the price of stand-alone dispatch services. Similarly, the price of paging on a multiple functionality wide-area system, like Nextel's, is competitive with an unbundled paging offering. See Attachment A at pp. 11-12.

^{70/} See Third Report and Order, 8 FCC Rcd 6589 (1993) at para. 39. See also Further Comments of Telocator (former name of PCIA), filed January 12, 1993 in ET Docket No. 92-9, at p. 12 ("the process of resolving relocation disputes must satisfy two fundamental criteria. First, the process must minimize the imposition on limited agency resources. Second, it must contain strong incentives for prompt settlement.")

requires (1) no disruption of service; (2) comparable facilities on similar frequencies; (3) no costs on the retunee; and (4) an assurance of no future involuntary retuning, will ensure that no retunee is harmed by the process.^{71/}

3. Retunees will be assured comparable frequencies.

Several commenters attempted to bolster their opposition to mandatory retuning with allegations that are simply not supported by the facts. For example, Chadmoore argues that the retuning will place incumbents on "inferior" channels.^{72/} The mandatory retuning proposal supported by Nextel would retune incumbents from the top 200 channels to the 80 SMR channels, the new SMR block channels (the 150 General Category channels and the 50 Business channels), or, if an eligible, the Industrial, Land Transportation 50 channels, all of which have the same propagation characteristics and operational capabilities as channels 401-600. Unlike the PCS model, where incumbents were moved to higher frequencies with less favorable propagation characteristics, SMR incumbents will be retuned to frequencies having the exact same propagation. Similar

^{71/} See p. 7, *supra.*, for the benefits provided incumbents agreeing to voluntary retuning. In addition, some commenters, although expressing opposition to mandatory retuning, also recognize that it may not be technologically impossible and therefore ask for certain safeguards in the event it is required. See Comments of American Petroleum Institute ("API") at p. 4; CICS at p. 4; the Utilities Telecommunications Council ("UTC") at p. 6; and U.S. Sugar at pp. 7-9. Other parties, although not necessarily supporting mandatory retuning, do not argue with the feasibility of a mandatory retuning plan. See Comments of Centennial Telecommunications, Inc. ("Centennial") at p. 2; and Vanguard Cellular Systems, Inc. ("Vanguard") at p. 3.

^{72/} Comments of Chadmoore at p. 25.

to the PCS microwave relocation plan, no licensee would be retuned if the wide-area licensee cannot provide comparable channels at the licensee's existing base station(s) or acceptable alternative sites on a one-for-one basis.^{73/} Thus, no incumbent/retunees would receive "inferior" channels.^{74/}

Cumulus similarly claims that "one well-known wide-area operator has planned to offer channels below 800 MHz as purportedly comparable channels."^{75/} Nextel knows of no such proposal. As

^{73/} See Comments of Telocator, filed June 8, 1992, in ET Docket No. 92-9, at p. 5. Telocator (now PCIA), one of the moving forces behind the microwave relocation transition plan, explained in its comments that, while most microwave incumbents would be relocated, there would be "exceptions." In some instances, Telocator explained, comparable facilities may not be possible and there will be no relocation.

^{74/} Organizations representing companies that use private radio systems for their own internal communications use (non-carrier systems) and public safety organizations generally opposed prospectively licensing the 150 General Category and 50 Business channels only to SMRs. See Comments of the Association of Public-Safety Communications Officials-International, Inc. ("APCO") at p. 2; API at p. 4; UTC at p. 2; and the Industrial Telecommunications Association ("ITA") at p. 4. These commenters represent private users presently licensed on these channels and who are naturally seeking to defend their current licensing positions.

Nextel's proposal to establish new SMR blocks, however, does not include spectrum allocated for public safety or for true private radio systems (the 70 public safety channels and the 50 Industrial/Land Transportation channels coordinated by ITA). This spectrum would be protected as SMRs would be prospectively foreclosed from being licensed on the ITA channels by repealing existing intercategory sharing provisions. Public safety would retain exclusive access to the public safety pool. Prospectively licensing the General Category and the Business channels only to SMRs takes account of the reality of explosive marketplace demand for SMR-based communications in contrast to purely private systems.

^{75/} Comments of Cumulus at p. 12, fn. 3. Cumulus provides no evidence of this alleged statement and does not even provide the name of the alleged "wide-area operator" making the claim.

discussed above, if it obtains a wide-area license, Nextel proposes offering a prospective retunee comparable channels on a one-for-one basis at the retunee's existing sites from among the essentially fungible 80 SMR channels, the 150 General Category Channels, and the 50 Business channels. Mandatory retuning would not take place unless it can be accomplished on channels that are comparable with the licensee's operations in the top 200 channels.

Chart II depicts the current 800 MHz licensing plan, the chaotic, actual licensing of SMR and other private systems on this spectrum today, and the licensing plan proposed herein, including wide-area licensing on the upper 200 SMR channels, mandatory retuning and BEA licensing of the local SMR channels. The proposed channel allocation plan would rationalize the SMR licensing process, preserve competitive opportunities for all SMRs, promote competition among CMRS competitors, and simplify the transition from site-by-site licensing to a geographic-area licensing framework.

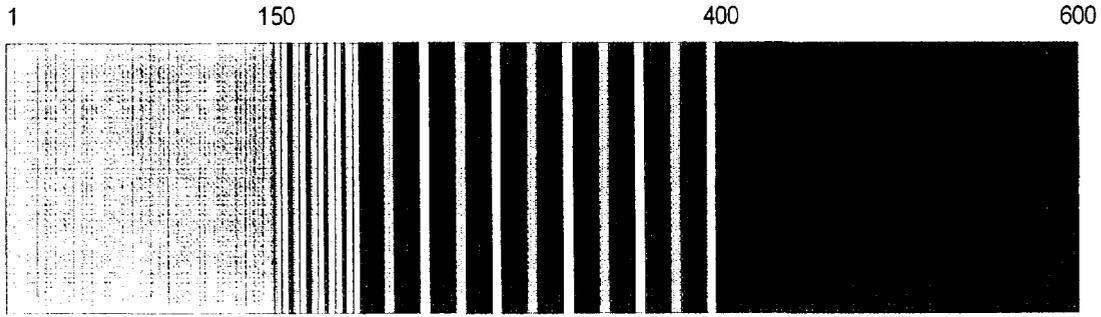
IV. REPLIES TO COMMENTS

A. Comment Overview

In sharp contrast to Nextel's detailed licensing proposal, most of the 85 commenters in this proceeding provided no alternative licensing plans.^{76/} Most of them simply seek something for nothing and their "solutions" would maintain or in some instances, such as PCIA's proposal, even increase the

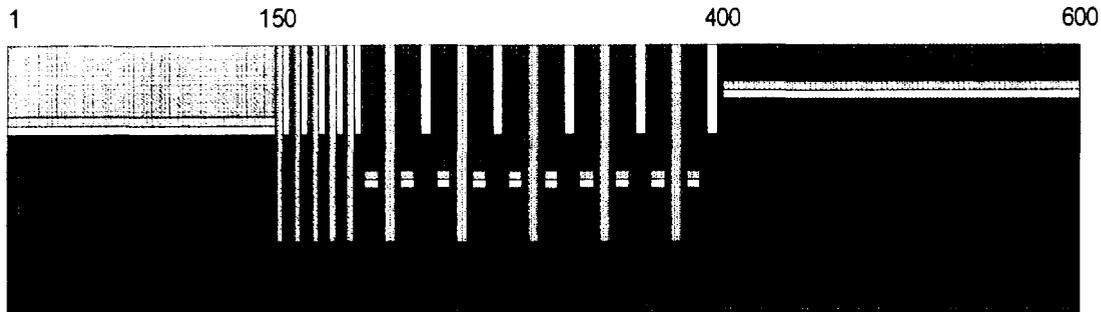
^{76/} Although 85 comments were filed in this proceeding, approximately 37 were generated by only two sources -- Pittencrieff and the law firm of Brown and Schwaninger, as discussed below.

CURRENT 806-821/851-866 MHz CHANNEL ALLOCATION PLAN



- | | |
|--------------------------------|---------------|
| GENERAL CATEGORY | PUBLIC SAFETY |
| INDUSTRIAL/LAND TRANSPORTATION | SMRS |
| BUSINESS | |

ACTUAL LICENSING



- | | |
|--------------------------------|----------------|
| GENERAL CATEGORY | PUBLIC SAFETY |
| INDUSTRIAL/LAND TRANSPORTATION | SMRS |
| BUSINESS | WIDE AREA SMRS |

PROPOSED CHANNEL ALLOCATION PLAN



- | | |
|--------------------------------|---------------|
| SMRS | PUBLIC SAFETY |
| INDUSTRIAL/LAND TRANSPORTATION | BROADBAND SMR |

Commission's SMR processing workload. Most commenters who opposed the Commission's discussion of mandatory retuning provided no alternative to achieving regulatory parity among competing CMRS services;77/ they opposed a single 200-channel wide-area SMR block license per MTA without providing any empirical studies, technical or economic evidence that a smaller block is adequate for viable, competitive wide-area SMR systems;78/ they asserted that the Commission's wide-area SMR licensing policies encourage spectrum warehousing despite the rapid implementation of spectrally efficient wide-area SMR systems offering new services to the public;79/ and they opposed using competitive bidding to license SMR systems from among competing applications without identifying a legal, much less a practical and feasible, alternative.80/ In

77/ See, e.g., Comments of American Industrial & Marine Electronics, Inc. ("AIME") at p. 2; API at p. 6; Applied Technology at p. 10; Automated Business Communications ("ABC") at p. 3; Brandon Communications, Inc. ("Brandon") at p. 2; DCL at p. 9; Dru Jenkinson at p. 7; E.F. Johnson at p. 8; The Ericsson Corporation ("Ericsson") at p. 6; Parkinson Electronics Company ("Parkinson") at p. 6; PCIA at p. 10; the Small Business Administration ("SBA") at p. 27; and SMR WON at p. 38.

78/ See, e.g., AMI at p. 2; AMTA at p. 11; Atlantic Cellular at p. 2; DCL at p. 7; Deck (and associated Pittencrieff filings) at p. 2; Dru Jenkinson at p. 4; and E.F. Johnson at p. 6.

79/ Attachment C is a press release from OneComm Corporation illustrating the unique, state-of-the-art features that its wide-area SMR network offers wireless users. This combination of services, coupled with the greater efficiencies of digital technology, enable users to combine all of their telecommunications needs into a single unit offering private, secure conversations.

80/ Comments of Cellcall at p. 25; CICS at p. 6; Dial Call Communications, Inc. ("Dial Call") at p. 5; Ericsson at p. 5; Fisher Communications, Inc. ("Fisher") at p. 3; Parkinson at p. 11; PCIA at p. 18; SMR WON at p. 30; and SMR Small Business Coalition ("the Coalition") at pp. 6-8.

short, most commenters offered no constructive solutions to the problems of transitioning from inefficient and antiquated site-by-site SMR licensing to the statutorily-required, geographic area licensing used for competing CMRS services.

The unfortunate fact is that the commenters cited above offered neither a workable solution to current SMR licensing problems nor a method for achieving the Commission's stated objectives in the Further Notice of Proposed Rule Making ("FNPRM"). On the contrary, some advocated that the Commission maintain the SMR licensing *status quo*.^{81/} Rather than offering constructive solutions to streamline and simplify SMR licensing and promote competition, some commenters even asked the Commission to "roll back the clock" by revoking licenses on which existing SMRs have based far-reaching plans and committed substantial resources to implement advanced wide-area services.

B. Two Parties Attempted to Artificially Bolster Their Positions Through Repetitive Filings While A Third Bombarded The Commission With Repetitive Documents.

Although 85 comments were filed in this proceeding, 37 of them represent the views of only two entities -- Pittencrieff Communications ("Pittencrieff") and the Law Firm of Brown and Schwaninger. In an apparent effort to exaggerate the extent of

^{81/} One commenter, AIME, even suggested -- in complete contradiction to the origins, purpose and success of the SMR industry and its regulatory structure -- that the Commission cannot change its rules to meet technological changes. See Comments of AIME at p. 2 where it states, "why bend the rules to meet technology?" See also Comments of Douglas L. Bradley and Dennis Hulford at p. 1; Communication Unlimited, Inc. ("Unlimited") at p. 1; and Thomas Luczak ("Luczak") at pp. 2-3.

opposition to the Commission's proposed new SMR licensing framework, Pittencrieff undertook a campaign to generate opposition among small SMR operators.82/ Eighteen parties -- more than 20% of all commenters -- "filed" comments opposing mandatory retuning of incumbent SMRs on the proposed wide-area license channels.83/ Each of these comments are identical except for the description of the filing party.84/ Thus, what at first glance might appear to be a widespread industry view is, in reality, the Pittencrieff position.85/

82/ Attachment D is a letter distributed throughout the industry by Pittencrieff.

83/ Comments of ABC; B & C Communications; Bis-Man Mobile Phone, Inc.; Bolin Communications Systems; Deck; Diamond "L" Industries, Inc.; E.T. Communications Co.; Keller Communications, Inc.; Morris Communications, Inc.; Neilson Communications, Inc.; Nodak Communications; Radio Communications Center; Raserco, Inc.; Rayfield Communications, Inc.; Southern Minnesota Communications, Inc.; and Vantek Communications, Inc.

84/ Each of these comments identically supported Pittencrieff's position to change all 150 General Category channels to SMR-only channels, and that all of these 150 channels should continue to be licensed on a site-specific basis.

85/ PCIA is apparently following this model and offering to pay the costs of reply comments supporting its licensing proposal while attacking the Commission's proposals and those of other commenters. PCIA's counsel has circulated the following solicitation:

"Attached is the first draft of Joint Reply Comments we are preparing. PCIA is picking up the costs. Could I interest you in signing on?" See Attachment E.

Similarly, the Law Firm of Brown and Schwaninger filed comments on behalf of 19 parties.^{86/} Though filed separately, each is a direct attack on the Commission's attempts to remedy an administrative morass and on the industry's attempts to implement new and more efficient technology. A number of them, moreover, are not newly-filed pleadings at all; ten of the 19 comments filed by Brown and Schwaninger are nothing more than copies of the "Reply Comments" filed by these particular parties in GN Docket No. 93-252 on July 11, 1994, in response to the Further Notice of Proposed Rule Making that resulted in the Third Report and Order.^{87/} These parties have not responded to the questions and proposals in the instant FNPRM, but simply resubmitted their previously-filed comments on issues addressed by the Third Report and Order. The FNPRM herein was specifically designed to address issues reserved for further comment in the Third Report and Order; accordingly, these previously-filed comments are non-responsive to the proposals at issue in this proceeding.

The comments filed by Brown and Schwaninger are filled with trite remarks and *ad hominem* attacks on the Commission, but are remarkably lacking in substantive solutions to the SMR licensing

^{86/} See Comments of Applied Technology; August Berate Carver t/a Action Radio; Communications Service Center; Cumulus; Eden Communications, Inc.; Robert Fetterman d/b/a R.F. Communications; Fresno Mobile Radio, Inc.; James A Kay, Jr.; Joriga Electronics, Inc.; Lagorio; Kevin Lausman; Madera Radio Dispatch, Inc.; Marc Sobel d/b/a Airwave Communications; Rod Stalvey d/b/a Stalvey Communications; Supreme Radio Communications, Inc.; T&K Communications, Inc.; Luczak; and Triangle Communications, Inc.

^{87/} See fn. 7, *supra*.

dilemma, not to mention the regulatory symmetry requirements of the Budget Act.^{88/} Among their remarks are: a "company run by Rube Goldberg or the Denver airport designers;" "the devil is in the details;" "if it ain't broke, don't fix it;" "look before you leap;" "balancing the scales;" "the shoe should fit the actual foot;" and, perhaps most colorful of all, "You shouldn't try to teach a pig to sing; you'll only frustrate yourself and annoy the pig."

The third party contributing disproportionately to the volume of paper in this docket is SMR WON. It appears that SMR WON is a devotee of the tactic of smothering the opposition in paper by repeatedly filing the same documents in separate proceedings. Counsel for SMR WON repeatedly files studies and other documents, as well as its own prior pleadings, as attachments to its pleadings, resulting in filings that are -- as in this case -- some three inches thick, but contain little information not previously filed with the Commission.

^{88/} For previous examples of Brown and Schwaninger's tactics, see Letter of September 22, 1993 from Terry Fishel, Chief of the Land Mobile Branch, to Dennis C. Brown and others. Although stopping short of finding Brown's petition to be a strike petition because some of Brown's arguments were "at least colorable," Mr. Fishel did conclude that the petition "border[ed] on being a strike petition." See also Letter of October 24, 1994 from William H. Kellett, Attorney, Licensing Division, to Mr. Dennis C. Brown and Mr. Lewis H. Goldman. In the letter, Mr. Kellett denies a finder's preference request filed against a station licensed to one of Mr. Brown's clients, James A. Kay, Jr. Mr. Brown argued that the petitioners be sanctioned and prosecuted for perjury. Mr. Kellett denied Brown's request for sanctions, finding the accusations "at most inadvertently inaccurate."

For example, SMR WON filed a Petition for Reconsideration of the Third Report and Order in GN Docket No. 93-252 on December 21, 1994. Attached to that pleading were several pages of documents, including SMR WON's comments on the Nextel/OneComm transfer of control application, and numerous copies of Nextel's *ex parte* filings in the Docket.^{89/} When SMR WON filed its comments in the instant proceeding on January 5, 1995, it again "refiled" this Petition for Reconsideration (which repeats many of the same meritless arguments proffered by SMR WON in this proceeding), and all of its attachments thereto, as a repeat attachment to these Comments. Other attachments included statements of SMR operators which had already been filed in other proceedings (some on behalf of "Clarks Electronics," another client of the same counsel and a member of SMR WON). Most of the issues raised in these identical pleadings have already been considered and rejected on the merits by the Commission in the Nextel/OneComm Order.^{90/}

SMR WON's tactics are nothing more than a transparent attempt to avoid addressing the issues involved in rationalizing licensing and spectrum access for all SMRs and achieving regulatory symmetry among substitutable CMRS services, as required by the Budget Act. SMR WON's voluminous comments make no effort to directly respond to industry concerns with a legally permissible, much less a practical, solution.

^{89/} See Petition For Reconsideration of SMR WON, filed December 21, 1994 in GN Docket No. 93-252, attached herein as Exhibit B to SMR WON's Comments.

^{90/} See Nextel/OneComm Order, *supra*. fn. 4, at paras. 28-33.