C. Contrary To Some Commenters' Claims, Wide-Area SMRs Are Not Warehousing Spectrum.

SMR WON claims that extended implementation enables wide-area SMR providers to warehouse spectrum needed by other SMR systems.91/ This allegation is meritless. In Nextel's case, for example, most of its SMR systems are constructed, operating systems providing analog SMR service to hundreds of thousands of customers. Moreover, Nextel's objective is to implement a nationwide digital SMR network capable of competing with other CMRS services. Since 1992, Nextel has been aggressively building low power, low tower digital mobile systems, as discussed below. As recognized by DCL, "those in receipt of extended implementation authority must adhere to strict construction benchmarks and deadlines. . ."92/ Allegations of warehousing in this context are simply ludicrous.

91/ On February 13, 1991, the Commission granted Nextel (then "Fleet Call, Inc.") an extended implementation period of five years to construct its wide-area SMR systems in recognition of the time necessary to implement this new, complex technology. At that time, the Commission's Rules required trunked SMR stations to be constructed within one year of license grant and eight months of license grant for conventional SMR facilities. *See* 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) (the "Fleet Call Waiver Order"), *recon. den.* 6 FCC Rcd 6989 (1991).

Other wide-area SMR providers have similarly been authorized extended implementation for their wide-area stations. The Commission recently revised its rules after notice and comment to codify extended implementation for wide-area SMR systems, rather than expending its resources on case-by-case waiver determinations. *See* Amendment of Part 90 of the Commission's Rules Governing Extended Implementation Periods, 8 FCC Rcd 3975 (1993).

92/ Comments of DCL at p. 3.

Nextel initiated wide-area SMR service in Los Angeles in August of 1993 -- only two and a half years after the Fleet Call Waiver Order and less than two years after receiving its first wide-area license.93/ This was a monumental accomplishment requiring Nextel to raise hundreds of millions of dollars for system construction and implementation; hire hundreds of new employees (including 500 new permanent jobs in California alone); purchase hundreds of millions of dollars of advanced radio infrastructure equipment; identify, negotiate and lease over 130 sites throughout the Greater Los Angeles area; construct these sites and the first GSM-based mobile switching center in North America; negotiate interconnection arrangements with the two local exchange carriers ("LECs") followed by a nearly year-long contested proceeding before the California Public Utilities Commission necessary to authorize the LECs to provide that service; establish billing systems, customer service support, a sales force and customer equipment installation facilities; conduct extensive RF propagation testing in one of the most challenging areas of the country; and manage the migration of channels from analog local service to the digital Los Angeles wide-area system.94/ Obviously, these activities could not possibly have been completed

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93/ Pursuant to the Fleet Call Waiver Order, base stations licenses for Nextel's Los Angeles digital wide-area system were granted beginning in September 1991.

94/ Nextel is serving approximately 20,000 customers in Southern California on its existing local SMRs and must manage the migration of both channels and interested customers to its wide-area service.

in the one-year period for placing traditional trunked SMR systems in operation.

Nextel initiated its Los Angeles service with 134 sites, providing near-seamless coverage from Santa Barbara to north of San Diego and from the coast to Palm Springs.95/ In contrast, the initial cellular system in Los Angeles included only 24 sites and a far smaller coverage area; even as late as 1988 -- three and one half years after grant of the initial cellular construction permit in Los Angeles -- that system had approximately 55 sites. In New York, five years after initial authorization, one of the cellular systems had only 66 sites; Nextel is initiating service in the New York City area including southern Connecticut and northern New Jersey with 111 sites.96/

95/ The capabilities of Nextel's digital mobile technology, which had only been operational for a short time, were well illustrated by Nextel's role in the aftermath of the 1994 California earthquake. After the earthquake, the American Red Cross communications network was virtually useless due to power outages and congestion on cellular systems. Nextel provided disaster relief agencies with unprecedented ability to coordinate their efforts through its digital services -- giving them instant access to each other in emergency situations.

96/ Nextel's intention here is not to disparage the early implementation of cellular communications services. These providers introduced a service that freed the American public from "tethered" telephone service and initiated the wireless revolution underway today. Wide-area SMRs, with far less spectrum -- on a non-contiguous, non-exclusive basis -- are rapidly implementing systems offering expansive coverage, increased capacity and in-building penetration for hand-held units that was not required a decade ago. Customer demand and the competitive environment (i.e., competing against cellular's coverage area) are requiring wide-area SMRs (and mass-market future PCS providers as well) from the outset to construct and place in operation systems comparable to those it took the cellular industry nearly a decade to develop.

Thus, marketplace forces are ensuring that wide-area SMRs diligently and expeditiously construct and provide service -- it does not permit them to warehouse spectrum for future speculation.97/ At this time, Nextel has approximately 2,000 sites in planning, construction or operation; its wide-area SMR networks are in commercial service in Los Angeles, San Francisco and the Central Valley of California with expansion to San Diego, Las Vegas and Reno imminent; its wide-area systems are nearing commercial readiness in greater Chicago (including Milwaukee) and greater New York (including Southern Connecticut and northern New Jersey); initial site optimization is underway in the Baltimore/Washington area; system construction has begun in the other Midwest markets; and system engineering is underway in Nextel's Texas markets and in Florida.

In just under four years, Nextel has accomplished all of the above to offer the public a unique, integrated combination of private network dispatch, two-way mobile telephone (cellular-like), paging and, eventually, mobile data services all on a single handset using a single network with a single bill and one source customer support. Comments asserting that the Commission's SMR wide-area licensing policies have engendered unproductive spectrum warehousing, and denied the public access to services, seem foolish given these accomplishments, much less the fact that Nextel

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97/ In an auction environment, successful bidders have no economic incentives to warehouse spectrum; on the contrary, they have potent incentives to use the channels productively to generate the revenues needed to recover their up-front investment.

continues to be one of the Nation's leading providers of analog ("local") SMR dispatch services.

Wide-area SMRs are creating competitive new CMRS services which are already available today in a number of markets.98/ Nextel and other wide-area licensees have undertaken precisely the entrepreneurial risk that the Commission encouraged in the Fleet Call Waiver Order in the hope of stimulating wireless competition.

SMR WON argues that wide-area providers are licensing spectrum that its members want in rural areas. The fact is, however, that this spectrum was available for more than 15 years and these carriers -- enjoying their monopoly in rural areas -- did not undertake the risks of offering customers extended coverage areas or improved services. They unilaterally denied small business customers extended coverage or improved service. Now that competitors are obtaining licenses on this long-fallow spectrum, SMR WON asks the Commission to protect its members from competition. On the contrary, new wide-area competitors offer the public in rural areas the greatest hope of access to advanced systems. At this point in time, advanced wireless telecommunications services are much more likely to come from the wide-area licensee committed to building out this spectrum, than

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98/ OneComm is actively building its wide-area digital SMR systems. OneComm has initiated commercial operation in Denver and in the Seattle/Portland area. The proposed merger with Nextel is expected to result in an acceleration of OneComm's buildout of certain of its markets in the Western U.S. Nextel understands that Dial Page is also well along with construction of its wide-area SMR system in the Atlanta area.

from the local SMR operator that allowed the spectrum to remain fallow for years.

D. SMR WON's Claims Of Nextel's Market Dominance Are Not Supported In Fact Or Law.

1. SMR WON asks the Commission to Protect Competitors, Instead of Promoting Competition.

The overall thrust of SMR WON's comments is a plea that the Commission halt competitive innovation, protect its members from market forces, and deny consumers -- principally small businesses -- additional services. As discussed above, essentially the same argument was made in opposition to Nextel's merger with OneComm.99/ In approving the merger, the Bureau explicitly rejected these arguments now proffered by SMR WON, stating that "the Commission's priority is to protect competition, not competitors, for the benefit of consumers."100/

Moreover, SMR WON's position ignores the market forces driving the development of wide-area SMR systems. The movement to advanced wide-area systems reflects perceived consumer demand for higher functionality, combined with the huge economies of scale required to implement advanced technologies. Nextel has made significant

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99/ SMR WON makes essentially the same arguments here that its members Clarks Electronics, Inc., et. al., filed against the application of OneComm to transfer control to Nextel. *See* Preliminary Comments on Proposed Antitrust Final Judgment, filed November 30, 1994 on behalf of Clarks Electronics, Inc., Lewiston, Idaho; Teton Communications, Idaho Falls, Idaho; Radio Service Company, Burley and Twin Falls, ID; Zundel's Radio, Inc., Pocatello, ID; Business Radio, Inc., Kennewick, WA; and Accu Comm, Inc. *See also* Clark Comments on Proposed Antitrust Final Judgment, filed December 14, 1994.

100/ Nextel/OneComm Order, *supra*. at fn.4, at para. 30.

investments in new technology because it views advanced wireless systems as an opportunity to expand consumer choice and compete across a broader range of the wireless marketplace. SMR WON, for obvious reasons, views the onset of new, innovative technology as a threat. In the Nextel/OneComm Order, the Commission rejected SMR WON's request to protect competitors, not competition, because it would foreclose the systems and services that the market is demanding solely to preserve the less-efficient systems and services SMR WON's members choose to provide.101/

SMR WON, with all of its talk of impending monopoly, ignores the dynamic nature of the wireless telecommunications market and the Commission's wisdom to guide the industry toward increased competition and innovation. As the Commission has already concluded, 800 MHz SMR is hardly a market unto itself.102/ SMR is but one of a number of radio formats for the provision of wireless telecommunications services, a format that competes directly with radio dispatch and interconnect services on other bands, potentially competes with cellular telephone, and soon will compete with PCS and perhaps other emerging wireless technologies. SMR WON claims that this conclusion by the Commission is "erroneous

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101/ As characterized by Dr. Ordover, SMR WON's is "an unreasonably static and confined view of competition in the wireless telecommunications sector and largely represent[s] a plea to be relieved from the challenge of competing against more advanced SMR systems." *See* Attachment A at p. 2.

102/ *See* Third Report and Order at paras. 22-79, in which the Commission concluded that all CMRS services are competitive or potentially competitive. *See also* Nextel/OneComm Order, at para. 28, in which the Bureau affirms this conclusion and reiterates the breadth of the wireless telecommunications marketplace.

and unsupported."103/ SMR WON, however, fails to acknowledge the fact that community repeater systems on conventional channels are serving mobile business customers that are similar, if not identical, to customers served by 800 MHz SMR operators in terms of fleet size, radio usage and other parameters of customer preference.104/

Additionally, SMR WON totally disregards regulatory initiatives -- contemplated, announced and under implementation -- that reflect the Commission's dedication to expansion of competitive opportunities throughout the radio services. Initiatives like PCS, spectrum refarming below 800 MHz, further licensing of 900 MHz systems, 220 MHz SMRs, cellular dispatch, among others, all have the potential to greatly expand the spectral capacity available to the business radio consumer, thereby negating any suggestion that the holder of a significant channel position on the 800 MHz band will have anything approaching market power.

Finally, SMR WON's comments repeat again its refusal to acknowledge the conclusions of the United States Department of Justice ("DOJ") which has fully reviewed competitive concerns regarding wide-area SMR consolidation.105/ DOJ concludes that the preservation of independent SMR competitors on the 900 MHz band, as required by the consent decree, "substantially eliminated"

103/ Comments of SMR WON at p. 10.

104/ *See* Attachment A at p. 9.

105/ *See* United States v. Motorola, Inc., Civil Action No. 94-2331, (D.D.C.), concerning the acquisition by Nextel of Motorola's 800 MHz SMR systems.

any risk to competition posed by Nextel's control over large blocks of 800 MHz spectrum.106/ Therefore, the antitrust arguments raised by SMR WON have been fully considered and disposed of by DOJ.107/

2. The Small Business Administration's Comments Blindly Repeat SMR WON's Comments, Errors and All.

The United States Small Business Administration ("SBA") filed comments on this rule making which are nothing more than a repeat, in some cases virtually *verbatim*, of arguments already proffered by SMR WON. In doing so, the SBA apparently did little research or investigation into the facts and issues at stake herein, resulting in comments which merely reiterate the same unsubstantiated, exaggerated and false statements contained in SMR WON's pleading.

The SBA essentially asks the Commission to promote small, traditional SMR operators by providing them free spectrum on which they can continue to provide a technologically archaic, inefficient service at the expense of introducing new, more spectrally efficient, state-of-the art technology. This not only ignores the public benefits derived from improved efficiencies, but ignores the many small business customers of SMRs who are being injured by the lack of needed services from capacity-constrained operators, particularly in urban areas. The SBA claims that the Commission "is willing to trample the rights of current license holders"

106/ *See Id.*, Competitive Impact Statement at p. 10.

107/ Attachment F is an analysis of SMR WON's wildly exaggerated claims of Nextel's spectrum position in certain Northwestern states.

rather than assisting "current licensees who already provide a valuable service."108/

The SBA's position, however, would itself trample the rights of the public, particularly the small business SMR customer. Promotion of inefficient technologies adversely affects those small businesses, who are in need of wireless telecommunications services, but who cannot access them due to a lack of needed services. In taking this position, the SBA appears to be ignorant of the fact that providers such as Nextel are current licensees providing valuable services to tens of thousands of small business customers every day.

Nextel's customers include every kind of small business, such as local lawn services, delivery services, caterers, construction companies, florists and many others that rely on mobile communications to do their business more efficiently. The exponential growth of the SMR industry over the past decade is largely the result of the fact that SMRs can provide communications services to small business more economically, effectively and efficiently than they themselves can do.109/ Their success, and resultant spectrum congestion, has incented providers such as Nextel to undertake the investments and risks necessary to offer

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108/ Comments of SBA at p. 29.

109/ Indeed, the Commission created SMRs as for-profit carriers because it believed that such entrepreneurs could introduce more efficient and economic communications technologies beyond the reach of plumbers, delivery services and other small businesses to whom communications is a support service, not their primary business activity. *See* Second Report and Order, 46 FCC 2d 752, 766 (1974).

customers additional capacity and more effective mobile communications services. Inexplicably, SBA appears willing to sacrifice the communications needs of small business customers to protect the inefficient, outmoded services available from some small SMR providers.110/

Relying on the position of SMR WON, without conducting its own independent research of the facts and issues, and the need for SMR licensing changes, the SBA filed a pleading rife with factual errors. For example, the SBA states that today's SMR market is 60% dispatch services and 40% interconnected services.111/ However, the SBA provides no supporting evidence for this bold statement. Had the SBA researched the relevant market studies, it would have found that the actual percentage of interconnected service in the SMR industry is 21 percent.112/

Another crucial error in the SBA's pleading, one that was clearly copied from SMR WON's pleading and one that could easily have been corrected with only minimal independent research, is the SBA's statement that Nextel controls over 75% of the SMR channels

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110/ It is unsettling that an agency of the United States Government would so carelessly rely on the position of a single party to a proceeding in which the SBA had previously not participated. More disturbing is SBA's failure to accept Nextel's offer to meet with its staff to discuss the issues in this proceeding and at least engage in an exchange of viewpoints. Perhaps most disturbing, however, is the SBA's willingness to promote positions which encourage businesses, albeit small, to use scarce spectrum in an inefficient, archaic manner, which ultimately disadvantages the public, including small business customers.

111/ Comments of the SBA at p. 7.

112/ AMTA/EMCI Study at p. 136.

in certain states in the Northwest.113/ Rather than double-checking the validity of SMR WON's methodology, the SBA blindly reiterated SMR WON's claims of spectrum control. As set forth in Attachment F, SMR WON's assertions are wildly exaggerated, unsubstantiated, and full of factual errors.114/ By neglecting to do its own research prior to filing comments, the SBA has likewise misled the Commission as to Nextel's true spectrum position.115/

113/ Comments of the SBA at p. 24, fn. 36. Here, the SBA copies, *verbatim*, the statistics proffered by SMR WON. *See* Comments of SMR WON at p. 29.

114/ Attachment F demonstrates that SMR WON employs a clever and misleading counting methodology that does not accurately reflect the actual availability of and use of this spectrum.

115/ The SBA further reveals its unease with the facts and substance of this proceeding by resorting to misplaced and offensive analogies. Most offensive is SBA's comparing the Commission's licensing proposal to the "Trail of Tears" saga of the American Indian:

> "The Commission's treatment of incumbent licensees calls to mind a sordid chapter in American history -- the treatment of Native Americans. The deal being proffered by the FCC is only slightly better than what Native Americans received. Yes, the Native Americans had free reign to organize their affairs on reservations so long as they stayed on reservations (which usually were no prime pieces of American territory). In a similar vein, incumbent licensees have unlimited operational flexibility as long as they stay within their confined and often Balkanized territory." Comments of SBA at pp. 28-29.

It is beyond Nextel's comprehension how an agency of the federal government can be so cavalier as to trivialize the historic mistreatment of Native Americans by comparing it to competing views of the best way to license mobile communications systems.

V. THE AUCTION PROCESS

A. Auction Time-Frames.

Nextel proposes that wide-area SMR license auctions commence within 90 days after the Commission adopts a Report and Order herein. This minimal time-frame is essential to the build-out of competitive wide-area SMR networks. With each day that passes, cellular providers continue to sign up tens of thousands of customers while wide-area SMRs await the necessary regulatory approvals. Continued delay only assures deeper entrenchment for the cellular provider relative to its potential competitors.

B. Eligibility For The Wide-Area Auctions.

Existing wide-area licensees have invested significant time, money and effort to aggregate spectrum to construct and implement wide-area systems and will be logical bidders for the MTA licenses. Although Nextel does not propose any restrictions on eligibility to bid on MTA licenses, a new SMR regulatory framework should include provisions designed to thwart speculation and anti-competitive, obstructionist activities. Awarding an MTA license for the entire 200-channel block, along with the appropriate interim coverage requirements and competitive bidding procedures, are the minimum safeguards necessary to assure that only *bona fide* providers can bid on the MTA block licenses.116/

116/ These provisions should not limit the ability of licensees to enter into bidding consortia for wide-area MTA/ Cluster BEA licenses, nor to agree, if they win the auction, to subdivide the MTA/Cluster BEA along BTA/BEA boundaries. The Commission should permit these kind of arrangements in applications for wide-area SMR licenses similar to the bidding consortia that are permitted and are participating in the PCS auctions.

C. Flexibility In The Auction Rules.

The Commission must establish flexibility in its wide-area SMR auction rules to allow the formation of bidding consortia, partnerships and other arrangements prior to the auction. Such rules, when coupled with the ability to subdivide and partition licenses, will provide SMR participants the maximum flexibility for participating in both local and wide-area SMR operations.

D. Bidding Rules.

The wide-area SMR licenses should be auctioned on a simultaneous, multiple round basis due to the high degree of interdependence between the licenses. The opportunity to purchase all 51 MTA licenses or 45 Cluster BEA licenses or some combination thereof to provide major market, regional or nationwide advanced SMR services is essential to increase the ability of a wide-area SMR operator to compete with cellular and emerging PCS providers. In addition, the potential for an SMR operator to bid upon and obtain MTA licenses enabling it to offer customers coast-to-coast seamless coverage is in the public interest and will further enhance competition. Therefore, all of the MTA licenses are highly interdependent.

The wide-area SMR auction rules must also include minimum bid increments, simultaneous stopping rules, an upfront payment of $.02 x MHz x total pops to be bid upon in any single round, and a twenty percent down payment. Although some parties argued that the Commission's proposed upfront payment is too high for these

auctions,117/ Nextel supports the Commission's conclusion. If the Commission decides that it should auction four blocks of 50 channels, the need for the proposed upfront payment is even more important (and should perhaps even be increased). Given the minimal payment that would be required to bid on a single, 50-channel block and the corresponding impact the purchase of one block could have on a wide-area system, the Commission must establish an upfront payment that is high enough to discourage insincere parties.

A larger upfront payment, *e.g.*, an upfront payment based on bidding for all 200 channels in an MTA, even if the bidder intends to bid on only one 50 channel block, would be necessary to discourage parties from blocking the implementation of wide-area systems. In combination with appropriate eligibility restrictions and interim coverage requirements, this would help to ensure that MTA bidders are sincere and have the capability of providing wide-area SMR services in that MTA if it obtains the license.

Another method by which the Commission may help to eliminate competitive bidding abuse would be to impose stricter penalties on bid withdrawal.118/ Given the potential for parties to bid up the price of the MTA licenses for no other purpose than increasing

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117/ *See, e.g.*, Comments of Geneese at p. 4; Pittencrieff at p. 19; and SBA at p. 20.

118/ As the Commission stated in its Narrowband PCS competitive bidding rules, bidders must be aware that "there will be a substantial penalty assessed if they withdraw a high bid, are found not to be qualified to hold licenses or are unable to pay a balance due." Third Report and Order, PP Docket No. 93-253, 9 FCC Rcd 2941, 2960 (1994) (the "Narrowband Rules").

the cost to the ultimate MTA licensee, the Commission must impose withdrawal and default penalties that are more strict than those imposed in the PCS auction rules. Under the PCS auction rules, a party could bid up the price, drop out of the auction, and then pay nothing more than the difference between the withdrawn bid and the next-highest bid.119/ Punitive penalties, designed to curtail obstructionist activities, are necessary in the wide-area SMR auctions due to the potential for such abuse.

VI. CONGRESSIONAL MANDATE AND FEDERAL COMMUNICATIONS COMPETITION COMMISSION OPPORTUNITY

In creating the new CMRS category, Congress mandated that the Commission eliminate regulatory disparities among different types of mobile service providers offering competing services. The regulatory parity provisions were designed to promote fair competition among CMRS providers such as wide-area SMRs, cellular and PCS.

The Commission must take advantage of this unique opportunity to satisfy its Congressional mandate by writing a new, comprehensive, more competitive set of licensing rules for the SMR industry. Wide-area SMRs should be licensed, through competitive bidding, to operate on a clear, contiguous 10 MHz block of spectrum on an MTA or Cluster BEA basis. Given the significant licensing which has already occurred in the SMR band, this can only be

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119/ *See* Narrowband Rules at 2961. In some cases, this could be perhaps a few thousand dollars. While such a penalty may seem substantial, it would be worthwhile to the withdrawing bidder who managed to double or triple the price the incumbent might have otherwise paid.

achieved if the Commission ensures that the new wide-area SMR licensing scheme is accompanied by the right to retune incumbent systems out of the 10 MHz block. This will create regulatory symmetry among wide-area SMRs and cellular and PCS providers guaranteed them by Congress in the Budget Act and essential to promote vigorous competition among CMRS providers.

At the same time, the licensing framework proposed herein would give retunees and other local SMRs increased opportunities to continue their services and to grow their businesses, including creating regional networks and the ability to aggregate spectrum to implement advanced technologies. The public will benefit from lower, more competitive prices; numerous new technologies; and more efficient and effective telecommunications services.

VII. CONCLUSION

The proposals set forth herein provide the Commission with a roadmap to effectuate the transition from site-by-site SMR licensing to geographic area licensing. This will enable the Commission to complete licensing of the 800 MHz SMR spectrum and prevent reoccurrence of an SMR licensing logjam that is inevitable if site-by-site licensing remains in place. It will promote enhanced competition in the mobile marketplace, reduced application processing burdens on the Commission staff, more efficient radio technology and greater spectrum fees to the U.S. Treasury.

Nextel urges the Commission to expeditiously adopt these proposals and initiate wide-area SMR licensing pursuant thereto. Unnecessary and unwarranted delays deny the public new services and

the benefits of increased price competition. The sooner the Commission achieves regulatory symmetry among competing CMRS services, the sooner the public will receive the benefits of real competition among CMRS service providers.

Respectfully submitted,

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ATTACHMENT A

THE ECONOMIC IMPLICATIONS OF LICENSING SPECIALIZED MOBILE RADIO SYSTEMS ON A CONTIGUOUS SPECTRUM, GEOGRAPHIC-AREA BASIS

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March 1, 1995

1. INTRODUCTION

The wireless telecommunications industry in the United States is in the midst of radical competitive reformation. New technologies and increasing consumer demand for enhanced telecommunications services are the major forces driving the explosion of new investment and innovation in the wireless sector. Regulatory reform also has played a significant role in facilitating progress, stimulating competition, and inducing a more efficient utilization of radio spectrum. The Federal Communications Commission ("Commission") presently is seeking comments on its Further Notice of Proposed Rule Making ("FNPRM") with respect to amendment of Part 90 and implementation of the Commercial Mobile Radio Services ("CMRS"). Among other things, the proposed rules would facilitate greater regulatory parity between Specialized Mobile Radio ("SMR") - based vendors of wireless telecommunications services and other present and future CMRS providers by licensing a block of contiguous 200 channels on 800 MHz spectrum for exclusive use on a Major Trading Area ("MTA") basis. Because, in certain geographic areas, some of these channels have already been licensed, the implementation of this licensing plan will require that some of the existing licensees be reassigned ("retuned") to other portions of the 800 MHz spectrum. This Report addresses the economic implications of the proposed rules from the public policy perspective.

Consultants in Industry Economics, L.L.C., was engaged by Nextel Communications, Inc., ("Nextel") to provide an economic assessment of the proposed rules. The Report was authored by Janusz A. Ordover, who is an expert in industrial organization economics generally and in relation to the telecommunications industry specifically. Dr. Ordover has served as a consultant to American Telephone and Telegraph, several Regional Bell Operating Companies, McCaw, and Nextel, among others. Dr. Ordover formerly served as the Deputy

Assistant Attorney General for Economics in the Antitrust Division of the U.S. Department of Justice, where he was one of the principal authors of the 1992 Agency Horizontal Merger Guidelines. Dr. Ordover has considerable experience in the evaluation of competitive performance and public policies in markets characterized by innovation-driven rivalry. A copy of Dr. Ordover's *curriculum vitae* is attached to this Report.

2. SUMMARY OF PRINCIPAL CONCLUSIONS

Based upon review of the competitive developments in the wireless sector of the telecommunications industry and the policy rationales for the proposed rules, we conclude that block licensing of the upper 200 contiguous SMR channels will have significant procompetitive effects and is in the public interest. In particular, the block licensing proposal will create a more effective platform than currently exists for the introduction and growth of new, spectrum-efficient technologies on the 800 MHz band. This will enable wide-area SMR-based CMRS providers to offer enhanced services and to generate spectrum economies similar to those that are presently available on cellular systems and that will be available on Personal Communications Services ("PCS") systems. Consumers will benefit from the added capacity, improved functionality, and broader geographic coverage these new systems will offer and from enhanced competition between SMR-based and other wireless service providers.

These benefits are less likely to be realized if the Commission fails concomitantly to adopt a channel relocation scheme that would, in fact, make aggregation of the assigned contiguous channels feasible. A relocation scheme based on Emerging Technologies relocation principles should accomplish this objective.

We also conclude that the adverse comments submitted by SMR WON and their consultants, Economic & Management Consultants International, Inc. ("EMCI"), reflect an unreasonably static and confined view of competition in the wireless telecommunications sector and largely represent a plea to be relieved from the challenge of competing against more advanced SMR systems. SMR WON's

objections and EMCI's analysis contain significant errors in their approach to issues of market definition and to other aspects of competitive analysis of the proposed rules and relocation mechanism. Therefore, SMR WON's objections should be rejected.

Finally, we conclude that the auction and relocation features of the proposed rules will facilitate bidding for spectral resources based on perceived economic value, while effectively preserving competitive opportunities for incumbents. The auction rules will allow capital markets and consumer preference to allocate spectrum according to its highest and best uses.

In sum, the proposed rules will provide significant future benefits to consumers and providers alike. The proposed rules will not adversely affect current subscribers to SMR services. Instead, the proposed rules will help to encourage innovation and adoption of new wireless application technologies.

3. BLOCK LICENSING OF 800 MHZ SPECTRUM IS PROCOMPETITIVE AND WILL ADVANCE THE PUBLIC INTEREST

The fundamental premise underlying the deregulatory proposals embodied in PR Docket No. 93-144 has been that there exists a paramount public interest in creating regulatory parity between wide-area 800 MHz SMR licensees and other wireless telecommunications vendors in the CMRS category. In the absence of such regulatory parity, the beneficial consequences of competition among various participants in the evolving CMRS marketplace will be stunted, or may never materialize.

The Commission's approach to fostering competition among CMRS providers has been to stimulate functional convergence among different wireless applications technologies. To this end, the Commission has progressively removed various constraints on the provision of wireless services by different industry participants that heretofore inhibited full-fledged inter-category competition in the wireless sector of the telecommunications industry. As the Commission pointed out, "... technological innovation, currently and in the future, acts as a powerful engine in driving mobile offerings towards convergence to similar service offerings designed

to respond to customer demand for these similar services."1/ However, the wide-area SMR-based vendors are still hampered in this competition by spectrum and technological disadvantages stemming from a legacy of regulatory rules that were not designed for the dynamic wireless marketplace that already has emerged. Consequently, sound public policy compels that impediments to technological progress and service innovation by wide-area SMR-based vendors be removed as quickly as possible.

When these impediments are removed, the broad CMRS marketplace that encompasses the full range of existing services, as well as services likely to be offered as new applications and technologies emerge, will become a reality. SMR WON might be correct when it alleges in its opposition to Nextel's filing that the convergence between cellular services and SMR services has not been as rapid as some may have expected.2/ However, it draws a completely erroneous conclusion from this observation.3/ SMR WON seems to conclude that this warrants slowing down the transition to the broad CMRS marketplace. In fact, the opposite conclusion is warranted: whatever impediments continue to distort competitive forces, they must be removed as quickly as possible. In its recent decision, In the Matter of Applications of Nextel Communications, Inc. For Transfer of Control of Onecomm Corp., N.A., and C-Call Corp.,4/ the Commission fully

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1/ Implementation of Sections 3(n) and 332 of the Communications Act -- Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988 (1994) at para. 59.

2/ See Comments of SMR WON at pp. 2-3.

3/ Indeed, SMR WON states that in many areas SMR already provides "a low cost" alternative to cellular service, which seems to imply that consumers perceive these service offerings to be reasonable substitutes. Moreover, EMCI reports that SMR customers who subscribe to interconnected services spend about $50 per month on average on the service. This closely compares to $70 per month in revenue from an average cellular subscriber.

4/ DA 95-263, released February 17, 1995.

reconfirmed its view of a broader CMRS marketplace in which SMR, cellular, and PCS providers will be vying for potential consumers.

The key step in promulgating regulatory parity and promoting a fully competitive CMRS marketplace is to auction 200-channel blocks of contiguous SMR frequencies for exclusive use over an MTA. This should give SMR-based CMRS providers operational opportunities similar to those that exist in cellular telephone service and likely will exist in the provision of PCS. Although certain SMR providers, including Nextel, already hold licenses for substantial numbers of channels in various geographic areas, those frequencies by and large represent a patchwork of non-contiguous channels and in most instances will require wide-area licensees to design and operate their systems around the systems of incumbent operators.

Nextel presently is implementing its wide-area systems using the Motorola Integrated Radio System ("MIRS") technology. This system technically can operate on any 800 MHz channel and does not require contiguous spectrum. MIRS makes much more efficient use of the available radio spectrum than the standard analog SMR technology. However, MIRS is not as efficient in utilizing the spectrum as the emerging digital technologies likely to be deployed by cellular and PCS vendors. A three-channel narrow band Code Division Multiple Access ("CDMA") system, for example, requires 8.6 MHz of contiguous spectrum; a wide-band CDMA system requires 10 MHz of contiguous spectrum. If employed on a contiguous block of 200 SMR channels, the narrow band CDMA technology is more than twice as efficient as MIRS, and the wide band CDMA technology is more than three times as efficient.5/

It is important to stress here that the 200-channel block of frequencies, which amounts to 10 MHz of radio spectrum, is not comparable to the amount of spectrum allocated to cellular and to PCS. That is, even with a 200-channel block,

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5/ These comparisons are based on analysis of the number of subscribers that can be served at a cell site using the alternative technologies discussed.