BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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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
	)	
Implementation of Sections 3(n) and 322 of the Communications Act Regulatory Treatment of Mobile Services	)	GN Docket No. 93-252
	)	
Implementation of Section 309(j) of the Communications Act - Competitive Bidding	)	PP Docket No. 93-253

To: The Commission

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COMMENTS
OF
ENTERGY SERVICES, INC.

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TABLE OF CONTENTS

EXECUTIVE SUMMARY ii

I. Statement of Interest 2

II. Discussion 5

A. Entergy Strongly Opposes the FCC's Decision to Redesignate the General Category to SMR. . 6

B. The FCC's Efforts to Re-License and Auction the General Category are Flawed. 7

C. The Commission Must Allow All Eligibles To Participate in the General Category Auction. 11

D. Entergy Supports Indefinite Grandfathering for SMR and Non-SMR Incumbents. 13

Conclusion 16

EXECUTIVE SUMMARY

Entergy Services, Inc. ("Entergy") and its subsidiaries provide electric utility services to over 2.3 million customers. In conducting these critical utility operations in as safe a manner as possible, the companies rely heavily on 800 MHz land mobile operations in order for emergency personnel to communicate effectively. Proposals advanced by the Commission in this instant proceeding will profoundly affect the viability of Entergy's important 800 MHz communications system.

Entergy submits the instant Comments to address four specific issues. First, Entergy apprises the Commission of its opposition to the Commission's recent decision to redesignate the General Category as Specialized Mobile Radio ("SMR") and to the legal basis for Commission's proposal to auction the General Category; Entergy is preparing a Petition for Reconsideration of these two actions. Second, Entergy believes that the Commission's efforts to create geographic licensing with the General Category and to auction that very same spectrum are flawed. The presence of incumbents and the lack of available spectrum to accommodate relocation will render moot any benefits the Commission had hoped would derive from the new licensing/auction scheme.

Third, Entergy believes that the Commission must not limit the General Category auction to entrepreneurs. While Entergy is not sure what licensing advantages stem from winning the auction, the Commission must allow all incumbents and other eligibles to decide if they want to bid at auction. Finally, Entergy supports the indefinite grandfathering of all incumbents including non-SMR incumbents. In the event the Commission adopts mandatory relocation for non-SMR incumbents, Entergy has proposed some necessary relocation safeguards.

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COMMENTS
OF
ENTERGY SERVICES, INC.

Entergy Services, Inc. ("Entergy"), through its undersigned counsel and pursuant to Section 1.415 of the Rules and Regulations of the Federal Communications Commission ("FCC" or "Commission"), 47 C.F.R. § 1.415, hereby submits these Comments on the Commission's Second Further Notice of Proposed Rule Making ("Second FNPRM") issued in the above-captioned proceeding.[1/]

[1/] First Report and Order, Eight Report and Order, and Second Further Notice of Proposed Rule Making, Released December 15, 1995.

I. Statement of Interest

1. Entergy is one of the largest electric utility holding companies in the country; its subsidiaries include five electric utility operating companies (or "OPCOs") -- Gulf State Utilities, Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, and New Orleans Public Service Company. Together, the OPCOs constitute an integrated electric utility system under the Entergy umbrella which serves over 2.3 million customers. The Entergy service territory includes most of Louisiana, almost all of Arkansas, a portion of Texas and the western half of Mississippi. Collectively, Entergy and its OPCOs hold numerous authorizations for land mobile radio facilities in the 800 MHz frequency band.

2. Entergy's utility operations are critical to the normal functioning of society within its service territory. Most aspects of modern life in this portion of the south are dependent upon Entergy's electricity. As recent natural disasters across the country have demonstrated, without electricity, hospitals are forced to dramatically reduce service, traffic snarls and deadlocks, businesses must close, and even state and local public safety agencies are severely hampered in performing their duties.

3. Moreover, for the benefit of both Entergy's customers and its employees, Entergy must conduct its utility operations in an exceptionally safe and efficient manner. Although its customers rely on Entergy to maintain its facilities and recover from calamities as quickly as possible, Entergy's electric services demand that its line crews and other emergency response personnel exercise extreme care at every step in the restoration process. Obviously, these conditions require Entergy to maintain as reliable a communications system as possible. Reliable land mobile radio communications links are, in essence, the direct lifeline to Entergy personnel and, as such, are part of the larger lifeline between the electric utility and the public.

4. To address its land mobile radio needs, Entergy has initiated an extensive upgrade of its land mobile communications network over the past several years. The principal goal of the upgrade is to implement a wide-area 800 MHz system for all of Entergy. This upgrade is critical to more efficiently utilize ratepayers' resources over the long term and to meet demands for safer, more reliable electric service. Entergy's territory-wide 800 MHz communications system will be critical to enhancing emergency responsiveness, to coordinating bulk movement of personnel and material in response to outages and other

regionalized needs, and to the safe repair of high voltage transmission and distribution lines.

5. In the early stages of developing the 800 MHz land mobile radio system, the highest priority of Entergy and its OPCOs was the licensing of 800 MHz spectrum in New Orleans (the largest city in the Entergy service area). However, despite their best efforts, the companies were unable to secure I/LT, Business, Public Safety or Specialized Mobile Radio ("SMR") spectrum through the inter-category sharing process due to spectrum congestion in the other 800 MHz spectrum pools. Instead, Entergy's subsidiary Louisiana Power & Light Company requested and received a waiver of the Commission's rules to allow the utility to license over 30 General Category channels. These channels were to form the basis of the Entergy 800 MHz land mobile radio system since, in an effort to implement an appropriate channel re-use scheme throughout its service territory, Entergy has licensed or is in the process of licensing these same General Category channels across its territory. The viability of the Entergy system hinges on its ability to re-use this core group of General Category channels. Without access to this spectrum, the Entergy 800 MHz land mobile radio system could be devastated.

6. Entergy's abilities to maintain and expand its 800 MHz system and to meet internal and customer service demands could be seriously compromised due to the proposals set forth by the Commission in the instant proceeding. Needless to say, because of the importance of Entergy's communications operations as set forth above, the continued viability of all aspects of its 800 MHz radio system is vital and must be sustained at all times.

II. Discussion

7. The Commission's actions in this proceeding will have a dramatic and adverse impact on the ability of Entergy to provide land mobile radio communications service in support of their important utility functions. It is Entergy's belief that the Commission is turning a blind eye to the needs of Private Mobile Radio Service ("PMRS") licensees who have relied on the Commission's existing 800 MHz rules in developing their wireless communications networks. For instance, the Commission has systematically diminished the pool of 800 MHz spectrum available to Industrial/Land Transportation ("I/LT") entities. While I/LT applicants once had access to 600 800 MHz channels through the inter-category sharing process, the Commission has reduced the number of available channels to 50. It is critical that the Commission is fully aware of the hardship it is imposing on the PMRS community.

8. PMRS entities, like utilities and public safety entities, require highly redundant, wide-area wireless communications capabilities in performing their life-saving duties. Traditional commercial networks often do not find it cost-effective to provide such a high level of service. The Commission must continue to support the communications endeavors of PMRS applicants by providing them access to more spectrum and by allowing them continued access to the General Category spectrum for which they already are heavily licensed. It is against this backdrop that Entergy submits the following Comments on the Commission's Second FNPRM.

A. Entergy Strongly Opposes the FCC's Decision to Redesignate the General Category to SMR.

9. Entergy is strongly opposed to the Commission's decision in the First Report and Order to redesignate the General Category exclusively for SMR use.[2/] In addition, Entergy believes that such a significant decision -- denying non-SMR applicants and incumbents from, respectively, accessing and re-using General Category spectrum to meet new coverage requirements -- warrants more than one paragraph of comment. The severity of this decision cannot be understated. Because this decision was made in the First Report and Order, Entergy is in the process of evaluating

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2/ First Report and Order at ¶ 137.

whether or not it should challenge this treatment of the General Category in another procedural forum.

10. Entergy also objects to the Commission's rationale for proposing to auction the General Category. In the Second FNPRM, the Commission tentatively concludes that because it already has decided that the upper 200 channels of the SMR service are auctionable in the Eighth Report and Order, the General Category, now redesignated to SMR status, also is auctionable.[3/] Since the Commission has relied so heavily on its earlier determination in the Eight Report and Order regarding its ability to auction SMR spectrum, Commenters essentially will have no choice but to protest that pivotal decision in order to argue that General Category spectrum should not be auctioned. Consequently, Entergy may decide to challenge the Eight Report and Order in arguing against the auction of SMR spectrum.

B. The FCC's Efforts to Re-License and Auction the General Category are Flawed.

11. One of the goals of the Commission in proposing geographic licensing on the General Category is that "in many instances, existing licensees will seek to obtain market-area licenses for those areas in which they already operate, which would enable them to consolidate and expand

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[3/] Second FNPRM at ¶¶ 323-325.

their operations under a more flexible regulatory regime."[4] Yet, the Commission later tentatively (and properly in Entergy's estimation) concludes that there should be no mandatory relocation mechanism for SMR incumbents.[5] How will auction winners be able to "expand their operations under a more flexible regulatory regime" when incumbents cannot be forced to relocate and, even if incumbents were subject to involuntary relocation, there is no spectrum to accommodate them? Based on these two elements alone, Entergy argues that the auctioning of the General Category will not meet its stated objectives of enabling system expansion and licensing flexibility.

12. The Commission itself is well aware that the General Category is heavily licensed[6] and that "there are no equitable means of relocating incumbents to alternative channels, and that there are no identifiable alternative channels to accommodate all such incumbents."[7] It is unclear then why the Commission is attempting to create a new geographic licensing scheme when the spectrum already is

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[4] Id. at ¶ 294.

[5] As discussed below, Entergy supports the grandfathering of both SMR and non-SMR incumbents in the General Category.

[6] "In light of the heavy congestion of these [General Category] channels ... ." First Report and Order at ¶ 44, note 166.

[7] Id. at ¶ 315.

heavily occupied on a site-specific basis, and there clearly is no alternative spectrum to accommodate incumbents. In reality, and especially after the relocation from the upper 200 SMR channels,[8] the licensing situation the Commission is hoping to create following the proposed auction exists already -- incumbents can seek to relocate, on a voluntary basis, other co-channel incumbents in an effort to expand existing systems. The auction will add nothing more. It simply will limit this licensing flexibility, which is available to all incumbents now, to only the few who pay at auction.

13. The Commission must concede that in re-licensing and auctioning the General Category, many, if not most, auction winners will receive virtually no spectrum and little licensing flexibility. Of course, there likely will be numerous auction participants because the Commission continues to tout that the auction will bring value -- "[c]ompetitive bidding will ensure that the qualified applicants who place the highest value on the available spectrum, and who will provide valuable services rapidly to

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[8] The Commission has designated the General Category as a possible relocation resource for incumbents relocated by auction winners from the upper 200 channels of 800 MHz SMR spectrum. First Report and Order at ¶¶ 73-79.

the public, will prevail in the selection process."[9] In response to this assertion, Entergy poses the following:

(a) What available spectrum? The Commission has noted that the General Category is heavily congested. (First Report and Order at ¶ 44, note 166.) Additionally, the grandfathering of SMR incumbents ensures that the overwhelming majority of General Category channels will not be available to auction winners.

(b) How will competitive bidding ensure that valuable services will be provided rapidly to the public? If, as the Commission says, the overwhelming majority of General Category channels are licensed for SMR service, Entergy would presume that valuable SMR services already are being provided to the public. Otherwise, why would the Commission deny non-SMR incumbents access to the General Category spectrum? Entergy would argue that the auctions will in fact temporarily delay the provision of valuable SMR services while the spectrum is churned from one SMR provider to another and auction revenues are reaped.

14. The Commission's efforts to re-license and auction the General Category are flawed. As a licensee of a block of General Category spectrum, Entergy is befuddled by these Commission proposals. General Category channels were assigned in no particular order. I/LT, Business, SMR and Public Safety entities all are licensed throughout the 851.1250-854.7375 MHz block; they have had to co-exist for years. The General Category has been the proverbial "catch-all" of applicants. Yet, simply because SMR licensees hold the majority of spectrum, the Commission now believes that the service is ripe for a geographic-area, contiguous spectrum, licensing make-over. With the large and diverse

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[9] Second FNPRM at ¶ 325 (underline added).

incumbent population in the General Category, this makeover simply will not work. The Commission cannot lose sight of the existing licensing landscape no matter how the General Category is redesignated.

C. The Commission Must Allow All Eligibles To Participate in the General Category Auction.

15. Assuming, arguendo, that the Commission elects to proceed with the auction of the General Category, Entergy strongly opposes the Commission's tentative conclusion that the General Category should be designated an entrepreneur's block.[10/] While Entergy supports the Commission's efforts to encourage smaller SMR operators -- through bidding credits, installment payments and reduced down payments -- to have the opportunities to maintain competitive systems and to develop wide-area operations if appropriate, it feels that the Commission's sweeping set-aside proposal is not appropriately tailored to the Commission's stated goals and adversely impacts those incumbents that may not fall under the financial caps for the entrepreneur block. Moreover, the proposal fails to account for the significant stake which many PMRS licensees have in the General Category.

16. As discussed at length above, the Commission has stated its expectation that General Category incumbents will

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[10/] Second FNPRM at ¶ 399.

seek to obtain market-area licenses for those areas in which they already operate. Yet, as a result of the instant set-aside proposal, the Commission will immediately foreclose a group of incumbents from having access to this claimed licensing benefits. This position appears to be highly inequitable. The Commission is trumpeting the benefits of geographic licensing in the General Category, and then denies certain larger incumbents from participating at auction. While it remains unclear what benefits will arise from geographic licensing of the General Category, all incumbents must be allowed the opportunity to determine whether or not they will participate in auctions. In addition, Entergy believes that all eligibles should also be allowed to participate in the General Category auction if one occurs.

17. Additionally, a set-aside proposal is not appropriate for a situation in which the Commission recognizes that incumbents must be grandfathered. In auctioning the General Category and adopting the entrepreneur's block, the Commission not only is 'land-locking' all incumbents, but it is unfairly denying a portion of that group from the opportunity to potentially protect their now land-locked asset. The Commission should allow parties to participate at auction so that all incumbents are on essentially equal footing. Let the

incumbents, not the Commission, decide if there is any reason to bid at auction.

D. Entergy Supports Indefinite Grandfathering for SMR and Non-SMR Incumbents.

18. Assuming, arguendo, that the Commission elects to pursue geographic area licensing and auction authority for the General Category, Entergy encourages the Commission to adopt grandfathered status indefinitely for all incumbents in response to the Commission's request for comment on the treatment of non-SMR incumbents.[11] Entergy believes that, as in the case of SMR incumbents, there are no equitable means of relocating non-SMR incumbents to alternative channels, nor are there alternative spectrum homes to accommodate non-SMR incumbents.[12] Most importantly, utilities and public safety entities licensed for General Category spectrum cannot be placed in a position of uncertainty as to the status of these life-saving networks. Grandfathering non-SMR incumbents indefinitely is the only appropriate means to provide these PMRS entities with some assurance now that they will not be relocated involuntarily in the future. In reliance upon the Commission's rules, these companies have invested substantial resources in 800 MHz land mobile radio systems which utilize General

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[11] Id. at ¶ 315.

[12] Id.

Category spectrum. There is no justification for imposing mandatory relocation and harming the interests of PMRS entities simply to create the illusion of commercial competition.

19. As grandfathered licensees, non-SMR incumbents should be treated in the same fashion as proposed for SMR incumbents. In particular, non-SMR incumbents should be allowed (a) co-channel interference protection as currently provided for in the Commission's rules, (b) the ability to relocate or add facilities within the 22 dBu contour without prior notification to the Commission, and (c) the option to convert multiple site licenses to a single license. Also, non-SMR incumbents must either be notified by auction winners of system modifications or have access to an FCC-authorized database detailing the same information. Given the public interest purpose of the non-SMR incumbent systems, incumbent licensees must be fully aware of auction winner activity to avoid interference problems before they occur.

20. In the event, the Commission imposes mandatory relocation on non-SMR incumbents, the Commission must put certain safeguards into place to ensure that the critically important land mobile radio operations of Entergy and other

utilities are properly protected during the relocation process. Such safeguards include:

(a) relocation to, at a minimum, comparable facilities -- in particular, Entergy feels it is critical that auction participants be apprised of the undertaking associated with complete system relocation for an incumbent like Entergy;[13/]

(b) all or nothing system relocation -- "a relocated incumbent would ... have its entire system relocated, not just those frequencies desired by a particular EA licensee ...";[14/]

(c) relocation to non-SMR spectrum;

(d) the requirement that EA licensees must notify incumbents of their intention to relocate within 90 days of the release of the Public Notice commencing the voluntary negotiation period;[15/]

(e) the ability of the incumbent to require that all EA licensees negotiate with the incumbent together;[16/]

(f) a seamless cut-over;[17/] and

(g) premium payments should be reimbursable amongst EA licensees -- it is anticipated that many PMRS entities like utilities will be forced to incur consulting, professional and legal fees at all stages of the relocation process.

While some auction participants may consider these safeguards onerous, Entergy argues that these are the absolute minimum requirements if the Commission is to

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[13/] Entergy supports the definition of comparable facilities proposed for mandatory relocation of incumbents from the upper 200 SMR channels. Id. at ¶ 283.

[14/] Id.

[15/] See First Report and Order at ¶ 78.

[16/] Id.

[17/] Id. at ¶ 79.

adequately protect the interests of non-SMR incumbents who are forced to relocate from their current spectrum home. If the Commission insists on the re-licensing, the auctioning and mandatory relocation of the General Category, nothing less should be adopted.

WHEREFORE, THE PREMISES CONSIDERED, Entergy Services, Inc. urges the Commission to consider these Comments and to proceed in a manner consistent with the views expressed herein.

Respectfully submitted,

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