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

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030, RM-8029
	)	
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 THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.

Respectfully submitted,

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ASSOCIATION, INC.

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S U M M A R Y

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association") generally supports the instant proposal. SMR licensees operating on the upper 200 SMR channels and on the lower 80 SMR and General Category frequencies must be afforded geographic licensing opportunities comparable to those available to competitive CMRS offerings. In the Association's opinion, the combined effect of the rules adopted in the First Report and Order in this proceeding and those proposed in the Second Further Notice of Proposed Rule Making will strike a reasonable balance among large and small operators, upper and lower band licensees, incumbents and new entrants.

The Association endorses the proposal to permit the disaggregation and partitioning of EA licenses in the upper 200 SMR channels. Both options will enhance licensee flexibility, and thereby competition in the marketplace. In respect to the remaining mandatory relocation issues, AMTA urges the Commission to expand the criteria by which "comparability" will be defined to include such factors as equal or superior co-channel separation and comparable age equipment. It agrees that the FCC must insist that retuned incumbents be made entirely whole as to the costs of retuning, including specifically the costs of retuning subscriber units and of upgraded antennae if required to achieve system comparability. It also is appropriate to require EA licensees to minimize to the extent possible the disruption associated with the process. If the retuning parameters are defined adequately at the

outset, there should be only a limited number of instances in which disputes will require third party resolution. Those matters should be referred first for non-FCC alternative dispute resolution, possibly by trade associations such as AMTA, and to the FCC only if those efforts are unsuccessful.

AMTA applauds the FCC's decision to detail its proposed licensing structure for the lower 80 SMR and General Category channels in conjunction with its resolution of matters relating to geographic licensing of the upper 200 channels. The interrelationship of this spectrum, as evidenced by the number of SMR operators employing frequencies from both segments, dictates that these matters must be addressed in tandem if parties are to made rational business decisions.

The Association supports the FCC's proposed framework for licensing the lower channels, including its proposal to issue licenses on an EA geographic basis. However, AMTA urges the Commission to exercise its discretion in such matters and adopt eligibility standards by which an individual incumbent or a consortium of all co-channel incumbents in an EA would be permitted to seek EA authority on a channel-by-channel basis. By definition, the process would not permit the submission of mutually exclusive applications. Thereafter, to the extent channels were unclaimed, they would be awarded through a competitive bidding process.

Irrespective of the licensing process by which they are awarded, AMTA recommends that the lower 80 SMR channels continue to be assigned in the current five-channel non-contiguous blocks.

General Category frequencies should be grouped into three blocks of fifty contiguous frequencies each, minus whatever channels are claimed through the process described above. Assuming adoption of that procedure, AMTA believes that an appropriate competitive environment will be maintained in the SMR marketplace, and that there may be a consensus within the industry that some segment of the General Category channels could be excluded from the Entrepreneur's Block designation.

Consistent with its previous positions, AMTA supports strict construction and coverage requirements to ensure the use of scarce spectrum for the public benefit. Nonetheless, the Association is still considering how best to effect that result in light of the extensive degree of incumbency on the frequencies in question.

AMTA recommends that the FCC not permit the mandatory relocation of any incumbents on the lower 80 and General Category channels, whether SMR or non-commercial licensees. It also urges that the FCC adopt co-channel interference standards for these incumbents which are at least as protective as that for the upper 200 channel licensees.

AMTA suggests that simultaneous multiple round auctions and simultaneous stopping rules will be needed to reflect both the interdependency of the spectrum to be auctioned and the physical reality that the coverage of many existing systems transcends the boundaries of a single EA. The Association recommends bidding increment rules that are limited to five percent (5%) of the previous high bid, and urges the Commission to run only a single

auction round each day.

Finally, AMTA submits that there is no evidence of any sort to support a suggestion that the SMR industry has a history of race- or gender-based discrimination. To the contrary, this industry has been characterized since its inception by relatively low entry costs, extensive vendor financing, and multiple competitive opportunities. No prophylactic measures are necessary or appropriate in this regard.

1. The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its comments in the above-entitled proceeding.[1] The instant Notice is the most recent, and perhaps the final, step in a multi-stage proceeding wherein the FCC has fundamentally restructured the 800 MHz Specialized Mobile Radio ("SMR") Service environment. During this process, the Commission has replaced its system of awarding authorizations on a frequency-by-frequency, site-by-site basis with a geographic licensing approach analogous to those used in other Commercial Mobile Radio Services ("CMRS").[2]

2. AMTA generally supports these FCC efforts, including the instant proposal which addresses certain remaining issues relating to the licensing of Economic Area ("EA")[3] systems in the upper 200 SMR channels, as well as a proposal for geographic licensing in the lower 80 SMR channels and the 150 General Category channels.[4]

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[1] First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making, PR Docket 93-144, FCC 95-501 (rel. Dec. 15, 1995) (hereafter "1st R&O", "8th R&O" and "2nd FNPR" or "Notice" respectively). Comment date extended by Public Notice DA 96-2, rel. Jan. 11, 1996.

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

[3] See, "Final Redefinition of the BEA Economic Areas," 60 Fed. Reg. 31,114 (Mar. 10, 1995).

[4] The 150 General Category frequencies have been redesignated as SMR channels in the companion 1st R&O in this proceeding.

Whatever the virtues of the licensing scheme used heretofore to award SMR licenses, it is apparent that dwindling Commission resources, coupled with dramatically escalating demands on the agency, dictate against retention of a relatively labor-intensive licensing approach. The realities of the CMRS marketplace, in which most offerings competitive to SMR already use or are poised to adopt geographic licensing provisions, demand that SMR operators enjoy similar flexibility. SMR providers will be handicapped in that marketplace if they are constrained by cumbersome, outdated regulatory requirements.

3. Nonetheless, as it has done throughout this proceeding, AMTA has endeavored to balance the necessity of adapting to, indeed formulating, new, innovative regulatory approaches with appropriate recognition of incumbents on the frequencies under consideration. Certain proposals in earlier stages of this proceeding have elicited strongly held, diametrically different positions from various segments of the SMR community. Indeed, few industry participants have been dispassionate about the core issues involved, including, but not limited to, the reassignment of the upper 200 channels for so-called wide-area, now EA, licenses, the awarding of such licenses on this substantially encumbered spectrum through an auction process, and the approval of a mandatory migration process whereby EA licensees have the right to relocate incumbents from those channels if their systems can be retuned to comparable spectrum. Both those supporting and those opposing those provisions have had a stake in the industry's past. All hope

to have a stake in its future.

4. Throughout the course of the proceeding, certain parties have maintained a dialogue in an effort to identify areas of agreement and to negotiate areas in which compromise will be required. AMTA believes that these discussions have already resulted in the narrowing of disputed matters. Moreover, the Association is optimistic that this effort is producing an almost universal industry consensus relating to critical aspects of the instant proposal. Specifically, and as discussed more fully below, there is broad support for a licensing process which would award geographic authorization on the lower 80 SMR and 150 General Category channels to the incumbent or incumbents on those frequencies if they are able to reach full agreement with one another regarding the use of the channel. Frequencies on which no such agreement is reached, as well as any on which there are no incumbents, would be assigned pursuant to competitive bidding procedures. AMTA encourages the Commission to affirm this consensus position which would enable all SMRs to participate successfully in the competitive CMRS marketplace of this century and the next, and which also would recognize the substantial investment already made in this industry by those who built it.

I. INTRODUCTION

5. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area

SMR systems, and commercial licensees in the 220 MHz band. These members provide commercial wireless services throughout the country. Many of them are vitally interested in all aspects of the 800 MHz regulatory environment, including issues relating to how that spectrum is awarded and regulated. AMTA has participated in each stage of this proceeding, perhaps the most significant in the regulatory history of the SMR industry. Thus, the Association has a significant interest in the outcome of this proceeding.

II. BACKGROUND

6. The instant Notice was adopted in conjunction with final rules governing both the future licensing of the upper 200 800 MHz SMR channels and the competitive bidding processes pursuant to which wide-area, EA licenses in that band will be issued.[5] In summary, the FCC has determined to designate the upper 200 channels as spectrum for wide-area SMR licensing. Authorizations will be assigned in blocks of 120, 60 and 20 channels for geographic areas designated as EAs. Successful applicants in those auctions will acquire both the right to use their frequencies throughout the EA, subject to normal co-channel protection for incumbents, and also will be permitted to "retune" incumbents on those frequencies to comparable 800 MHz channels, with the expenses for doing so paid by the EA licensee. The FCC has specified a one-year voluntary,

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[5] 1st R&O, 8th R&O, 2nd FNPR or Notice, PR Docket 93-144, FCC 95-501, at ¶¶ 9-256. These portions of the Commission's action have not yet been published in the Federal Register and, thus, are not yet effective or appealable. AMTA anticipates seeking clarification or reconsideration of certain aspects of those decisions.

followed by a two-year mandatory, negotiation period for the retuning process, after which the EA licensee may request authority from the FCC to retune the channels on an involuntary basis, again at its cost and assuming the availability of comparable spectrum.

7. Although the FCC has reached decisions on these fundamental aspects of the upper 200 SMR channel EA licensing framework, certain highly significant matters relating to the implementation of the retuning process require additional consideration. Thus, the FCC has requested further comments in the FNPR on issues such as how to distribute relocation costs among EA licensees, what relocation costs should be the responsibility of an EA licensee and which should be reimbursable among EA licensees, how comparable facilities should be defined, and what negotiation guidelines should apply during the mandatory negotiation period.

8. Additionally, the FNPR seeks initial comment on the FCC's proposal to implement a geographic-based licensing scheme for the lower 80 SMR channels and the 150 General Category channels redesignated in the 1st R&O as SMR spectrum. Among other matters, the Commission has invited comments on the appropriate service areas, channel assignments, operational and eligibility restrictions, channel aggregation limits, construction and coverage requirements, incumbent rights, and co-channel interference criteria for its proposed licensing approach. The FNPR also seeks input regarding a variety of competitive bidding issues in the event that its licensing framework is adopted. A balanced resolution of the issues in both segments of the Notice will help ensure

that the SMR industry remains robustly competitive internally, as well as in relation to the rest of the CMRS marketplace.

III. DISCUSSION

9. As an initial matter, AMTA applauds the FCC's decision to address future licensing of the lower 80 and General Category channels in conjunction with its final deliberations on the upper 200 channel regulatory structure. The Association, as well as numerous other interested parties, has urged the Commission to consider these issues together because operations across all of these bands are significantly intertwined. Many, perhaps the majority of SMR operators currently operate systems that combine frequencies from several or all of these allocations. To the extent those parties must develop coherent strategies for their entire SMR businesses, whether those deliberations focus on participating in the upcoming EA auctions or preparing for the possibility of being retuned, it would not be possible to do so if decisions affecting the upper 200 channel licensing structure were divorced from those regarding the lower frequencies. The possible disconjunction of these areas was of particular concern to smaller SMR operators who needed some concept of what the lower band licensing process is likely to entail before determining how or whether to participate in the upper EA auctions and how to approach retuning negotiations.

10. As stated previously, AMTA is in general agreement with the licensing plan presented in the Notice. Lower band operators should have the opportunity, although not the obligation, to migrate from site-by-site to geographic-based licensing so that

their operating authority is at least geographically coterminous with that of their competitors. The Association also supports this FCC effort to reduce the burden on both the agency staff and the industry associated with a site-by-site licensing structure.

11. AMTA also concurs that certain matters involved in the implementation of the mandatory relocation process require further consideration. Adoption of appropriate safeguards for both incumbents and EA licensees should facilitate satisfactory negotiations from both parties' perspectives and minimize the number of instances in which dispute resolution will be required. It also should accelerate completion of the relocation process after which SMR operators will finally be freed from the spectrum "freezes" that have inhibited system growth for far too long given the intensely competitive CMRS environment.

A. UPPER 200 CHANNEL ISSUES

1. Disaggregation/Partitioning of Upper 200 Channel Blocks

12. The Commission has tentatively determined to permit both the disaggregation of EA license blocks, thereby allowing licensees to sublease portions of their frequencies to other parties, Notice at ¶ 261, and the partitioning of subsections of the EA geographic area to other entities, Notice at ¶ 266. In both instances, the agency has concluded that its approach will enhance the efficient use of this spectrum by allowing the marketplace to determine the appropriate number of providers employing it and the geographic areas in which they do so. It is proposed that each option could

be accomplished either by a group of entities forming a bidding consortium with post-auction agreements to subdivide the spectrum acquired, or by private negotiation to sublease the desired capacity from the auction winner. The Commission queries whether EA licensees should be required to retain some portion of their spectrum or territory, and whether disaggregated or partitioned systems should be subject to the EA construction and coverage requirements.

13. AMTA continues to support rules that would permit both disaggregation and partitioning of upper 200 channel EA licenses. The FCC is correct in concluding that the market is a more accurate determinant of the optimal configuration of this spectrum than is government regulation. The Association anticipates that a variety of prospective EA applicants will have differing business plans even for the same spectrum blocks, which may or may not fit precisely into the FCC's necessarily cookie-cutter block assignment plan. Flexibility to sublease particular channels or territory will attract parties to the auctions which otherwise would not participate. In particular, it will enable coalitions of smaller entities to combine their interests and their resources which individually might not justify bidding for even the smallest block.

14. For these reasons, AMTA supports the FCC's proposal. The Association does not believe that limitations on these provisions are necessary or appropriate since the auction itself presumably will ensure that the spectrum is acquired by the party or parties that will put it to best use. AMTA does agree that EA licensees

who elect to sub-divide their capacity, either by disaggregation or partitioning, should still be required to satisfy both the construction and coverage standards adopted in the 1st R&O.

2. Mandatory Relocation Provisions

(a) Distributing Costs among EA Licensees

15. The FCC has already determined that EA licensees will have the right to relocate co-channel incumbents within their authorized area, conditioned on the EA licensee identifying comparable 800 MHz frequencies to which they can be retuned and on the EA licensee paying all costs associated with the retuning process. FNPR at ¶ 272. The rules governing this process require EA licensees to notify incumbents that they intend to retune within ninety (90) days after issuance of the Public Notice commencing the voluntary negotiation period. Id. They also specify that incumbents so notified may elect to have those EA licensees whose frequencies they use engage in collective, rather than individual or sequential, negotiations regarding the retuning process. Id. Because it has adopted these safeguards, the FCC has concluded tentatively that it need not adopt detailed EA cost-sharing provisions similar to that proposed for broadband PCS, but seeks comment on that determination. Id.

16. AMTA strongly supports the measures already adopted by the Commission in this area. Because the EA spectrum blocks will be comprised of contiguous channels while incumbents typically utilize frequencies separated by at least 250 KHz or as much as 1 MHz, the retuning process is likely to involve multiple parties,

not simply one incumbent and one EA operator. For this reason, the Association had recommended that the FCC mandate a notification provision, as well as an incumbent right to collective negotiation. To the extent that they simplify this process from the perspective of the incumbent and clarify the obligations of all parties, they should promote timely, satisfactory completion of this complex process.

17. AMTA also believes that incumbents should be required to respond to the EA licensees' notifications within a reasonable period of time, perhaps sixty (60) days, and advise them of its negotiation preferences as well as the facilities which the incumbent believes constitutes the "system" to be retuned. This obligation will ensure that a dialogue between the parties is initiated promptly, and will help focus the attention of all participants on the task at hand. Although many existing systems provide coverage in multiple EAs, AMTA recommends that retuning rights and obligations be determined by the base station coordinates of individual facilities to avoid disputes among EA licensees as to their financial responsibilities. If a system, as defined below, includes stations in multiple EAs, the incumbent must have the right to require collective negotiation with EA licensees in all such markets to ensure as seamless a transition as possible. Given the sensitive nature of some of this data, and in light of the fact that the incumbent and EA licensees will be marketplace competitors, all information provided by the incumbent regarding its operation should be treated as confidential by the EA licensees.

18. Assuming the incumbent wishes to complete the entire retuning process simultaneously and so notifies the EA licensees, AMTA concurs that the total cost of doing so should be distributed among those entities on a pro rata basis determined by the number of incumbent frequencies in each participating EA licensee's spectrum block, thereby avoiding any need to assess specific retuning costs on a channel by channel basis. Of course, EA licensees will be free to negotiate a different arrangement as long as the incumbent is made entirely whole. Thus, the Association agrees with the assessment that no elaborate EA cost-sharing mechanism is required.

19. It is possible, however, that one or more EA licensee will not be prepared to undertake the retuning process within the same timeframe as the others, or that the EA licensee may decide it does not need to retune a particular incumbent's frequencies. The FCC's rules should specify that an EA licensee opting not to participate in the collective negotiation process is foreclosed thereafter from invoking either involuntary negotiation or involuntary relocation provisions. Alternatively, the participating EA licensees may elect to retune the entire incumbent system, absorbing the costs of retuning channels outside their own spectrum blocks on whatever basis they negotiate. In that case, the EA licensees would succeed to all rights held by the incumbent vis-a-vis the non-participating EA licensee.

(b) Relocation Costs

20. As noted above, the FCC has determined already that EA licensees will be responsible for relocation costs. Id. at ¶ 270.

These include both the "actual" cost of completing the relocation process, and any "premium payment" negotiated by the parties. The instant Notice tentatively concludes that premium payments should not be reimbursable by other EA licensees, since they typically are used to accelerate the relocation process to the benefit of a single EA operator. The FNPR also seeks comment on the items it believes should be included in a definition of "actual relocation costs".

21. Initially, the Association questions whether the FCC's concerns about the competitive impact of premium payments apply in this situation. Unlike PCS, wherein multiple licenses affected by the same incumbent microwave system will be issued at different points in time and there is no provision for collective negotiation, all EA licenses will be issued simultaneously and all affected parties likely will be negotiating with the incumbent on a collaborative basis so the system undergoes the disruption of retuning only once. This is the very essence of the FCC's 800 MHz relocation concept. Given this framework, it is not clear how the scenario described by the FCC would arise since there is not expected to be any need for a "reimbursement" process.

22. The inventory of "actual relocation costs" developed by the FCC is accurate, but not entirely complete. It should be expanded to include specifically the costs of retuning or, if necessary, replacing subscriber units as well as the cost of providing whatever antenna configuration is needed to ensure that the retuned system is capable of providing truly comparable service.

AMTA also suggests that the FCC provide incumbents with a formal notification which they may, in turn, pass on to their customers regarding the Commission's requirement that subscriber units be subject to the retuning process. This will help incumbents explain to recalcitrant customers that the retuning process is mandatory, not discretionary, which also should expedite completion of the work.

23. The rules do not, and should not, specify by which party the retuning process will be handled. In some cases, the incumbent may want the EA licensees to assume all responsibility for completing the work on a turnkey basis. Many incumbents, however, will want to do the work themselves for competitive reasons. In those instances, AMTA recommends that incumbents be permitted to require a reasonable upfront payment from the EA licensees, perhaps up to fifty percent (50%), to fund the not inconsiderable out-of-pocket expenses that will be incurred. Without such a provision, incumbents may be financially incapable of performing this work despite legitimate concerns about introducing their customers to an existing or prospective competitor. If an incumbent invokes this provision, the EA licensees should be permitted to specify a reasonable timeframe in which the work must be completed. To the extent the FCC creates these types of reciprocal rights and obligations in the retuning process, as well as incentives for its expeditious completion, there is reason to believe that all parties will work cooperatively toward a seamless transition with little need for dispute resolution.

24. The Association strongly endorses the FCC's proposal to use non-Commission alternative dispute resolution ("ADR") procedures when disagreements arise regarding any aspect of the relocation process, with FCC intervention a last resort. These procedures have proven effective in numerous situations and will relieve the FCC from assuming that burden in all but the most intractable situations.

25. The Commission should designate multiple arbiters to ensure that parties have a choice in this matter, and also provide a veto mechanism as to at least one of the other party's selections. AMTA appreciates the FCC's suggestion that industry trade associations, such as AMTA, could perform a valuable service for the SMR community by applying their substantial industry expertise in the role of arbiter. The Association is actively evaluating a business plan which would enable it to act in that capacity, and will advise the Commission of its determination on this matter promptly.

(c) Comparable Facilities

26. It is reasonable to assume that reaching agreement regarding what constitutes a "comparable" facility will prove the most contentious part of the relocation process. Like pornography, it is easier to recognize in specific factual situations than it is to define. Again, to the extent the FCC creates a regulatory incentive for incumbents to migrate from the upper 200 to the lower channels, parties are less likely to engage in protracted disputes about the actual comparability of the proposed substitutes.

27. In general, the industry appears to agree that comparability means a system will perform tomorrow at least as well as it did yesterday. The factors already delineated by the Commission unquestionably are essential ingredients: the same number of channels with the same bandwidth; relocation of the entire system as opposed to individual frequencies; and a resulting 40 dBu service contour that includes all of the territory in which the system currently provides coverage. However, there are additional criteria which also should be used to define comparability.

28. For example, there should be a requirement that the retuned system have at least as good co-channel separation as existed before being migrated. Any degradation in the co-channel interference protection of a system, by definition, would not satisfy a comparability test. Incumbents should also be entitled either to the same separation between frequencies that they have in their current system, or to a technical solution, such as an improved antenna scheme, that guarantees comparable service quality. To the extent that their equipment must be replaced rather than retuned, the substitute equipment must be no older or have fewer features than the original gear. Additionally, in such instances, incumbents must be permitted to select a particular equipment vendor unless the selection is demonstrably unreasonable. As the Commission is aware, unlike cellular, vendors of trunked SMR equipment often have proprietary signalling schemes. The equipment is not interoperable. Moreover, some operators have a relationship with a particular manufacturer(s) and specific expertise in imple-

menting and maintaining their equipment. However, AMTA does agree with the FCC's assessment that incumbents will not be entitled to have analog equipment replaced with digital unless there is no reasonable analog substitute.

29. For purposes of implementing the retuning process, it also is necessary to define what constitutes a system. AMTA proposes that a system be defined as any base station facility(s) which are utilized by mobiles on an inter-related basis, and the mobiles that operate on them. Thus, if an incumbent operates two separate base stations within a single EA and different mobiles utilize each, each such base station and its associated mobiles would be considered a separate system for this purpose. By contrast, if some or all of the incumbent's mobiles operated on both base stations, then those two facilities and all of the mobiles associated with them would constitute a single system. An inter-related system might be comprised of base station facilities in more than one EA in which case it still would be entitled to be retuned as a single system. In those instances, the incumbent would be permitted to require collective negotiation with all affected EA licenses in those EAs.

(d) Relocation Guidelines - Good Faith Requirement

30. The FCC has tentatively concluded to adopt a "good faith negotiation" definition similar to that under consideration in the PCS relocation process. Notice at ¶ 286. Specifically, the Commission has proposed to require parties to negotiate in good faith during the mandatory negotiation period, and to define good

faith negotiation as the offer and/or the acceptance of an offer of comparable facilities. Id. The FCC has noted that no such limitation would apply during the one-year voluntary negotiation period.

31. Although AMTA does not disagree with this aspect of the Notice, as noted in the previous section, whether a particular proposal constitutes an offer of comparable facilities may itself be a matter of debate. Migration is most likely to drag on into the involuntary negotiation or even the involuntary relocation periods when the parties genuinely disagree as to these matters. For this reason, although AMTA does not oppose the FCC's proposal, the Association is convinced that incentives, rather than penalties, are most likely to accelerate both sides to complete the retuning process expeditiously.

(e) BETRS Eligibility on Upper 200 Channels

32. The FCC has proposed that stations in the Basic Exchange Telecommunications Radio Service ("BETRS") no longer be eligible for licensing on those 800 MHz frequencies under consideration in this proceeding. Notice at ¶ 288. The Commission has correctly determined that BETRS licenses have exhibited little or no interest in utilizing these frequencies, and properly has determined that it will no longer accept such applications.

B. LICENSING OF LOWER 80 AND GENERAL CATEGORY CHANNELS

33. Initially, AMTA applauds the FCC's efforts in consolidating the 1st R&O and 2nd FNPR as a single item. It demonstrates the Commission's recognition that operations on these frequencies are

substantially intertwined. Adoption of a licensing structure for the upper 200 channels cannot, or at least should not, be divorced from that proposed for the lower channels if the Commission intends to permit parties to develop coherent business strategies for their 800 MHz SMR businesses.

34. Adoption of comprehensive, internally consistent proposals for both segments of the 800 MHz SMR band is particularly critical in light of the FCC's adoption of a mandatory relocation process for the upper 200 channels and its decision to award those geographic licenses through a competitive bidding process. It would not be possible for potential EA licensees to craft a rational auction strategy or for incumbents subject to retuning to develop a business plan for that process without some understanding of the FCC's intentions for the lower SMR channels. Thus, the more comprehensive approach taken by the Commission in this Order is responsive to the needs of an industry in transition, and should help smooth that process for all affected parties.

35. AMTA generally supports the lower channel licensing approach outlined in the FNPR. While the levels of incumbency on these channels is extensive, and will be even more so after completion of the retuning process, parties utilizing them should have an opportunity to obtain geographic-based licenses which parallel in geography the upper 200 channel EA authorizations.

36. Nonetheless, while AMTA supports geographic licensing in these bands, it is not convinced that such authorizations should be awarded exclusively through a competitive bidding process. The

very substantial number of licensees already providing service on these channels, plus those that will be moved to these frequencies pursuant to mandatory relocation procedures, collectively have service areas that effectively leave no white space on this spectrum. Two decades of intensive development of these bands by commercial and private operators, often on a shared basis with multiple facilities co-existing in close proximity, coupled with the FCC's relatively liberal co-channel protection criteria for even exclusive frequencies, have produced a mosaic of overlapping coverage contours in all but the most underpopulated areas of the country. In AMTA's opinion, auctioning this spectrum would not offer any genuine opportunity for entry by new providers. It will not enhance competition, CMRS or otherwise, on these channels. Rather, it would simply provide one incumbent somewhat greater and the remaining co-channel licensees somewhat less flexibility in redeploying the channel(s) within the defined area.

37. For this reason, and in light of the fact that some number of the affected parties will already have been subjected to mandatory relocation procedures, AMTA recommends a different approach, one that has been discussed extensively within the industry and which has attracted seemingly unanimous support. Prior to accepting applications for auctions on these channels, the Commission should permit incumbents to request geographic-based licenses on their existing frequencies on a channel-by-channel basis. In most instances, even if the FCC adopts an EA licensing structure, this will require multiple co-channel parties to agree