based on transmitter location. SMR WON has reached agreement with AMTA and Nextel that the 22 dBu contour coverage would be preserved for relocated licensees where the original system coverage currently crosses EA borders.

H. Protection of Incumbent 22 dBu contour. The FCC has proposed to permit incumbents to modify operations within their 22 dBu borders. SMR WON notes that this "protection", standing alone, relegates incumbents to second class license status. Licensing has two essential components - frequency allocation, and defining the area of spectrum exclusivity. If site-specific license A specifies a 35 mile radius for exclusivity, and EA license B specifies a 5,000 square mile area of exclusivity based on economic market trading areas, license A is an inferior license, in all measures, including economic measures - the ability to compete, attract customers, raise capital, obtain debt financing, realize resale value, and every other economic indicator. The industry proposal for market settlements to permit co-channel incumbents, including relocatees, to obtain EA licenses in the Lower 230 Relocation Channels solves this "second class status" license problem.

I. Balancing Act. The Commission's proposal does not "strike[s] the appropriate balance between the competing interests of market-area and incumbent licensees." Second Notice

The SMR industry has reached a solution which properly strikes that balance.

Balance denotes equal distribution of resources. The Commission's artificial regulatory plan for two license classes is economically unbalanced, and will drive the lower licensee class out of the market. The industry plan is balanced, because it would give all licensees, <u>including those already holding valid licenses</u> an opportunity to obtain a geographic license.

J. <u>Convert site-specific to geographic licenses</u>. The Commission's proposal to permit incumbents to "trade in" site-specific licenses for "geographic area licenses" based on those same, overlapping sites, is heading in the right direction, but the proposal does not go far enough. In fact, the proposal begs the question.[15] The Commission's concept of a "geographic license" for incumbents is constrained and limited by the site - it is still site-specific, and would not permit incumbents to move outside their existing 22 dBu contours.

The plan proposed by SMR WON for the Lower 230 Relocation Channels would permit conversion to full EA licenses to establish the conditions which will permit incumbent licensees to compete following displacement from their valuable spectrum -

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[15] For a further discussion of this problem, see SMR WON's discussion <u>infra</u> concerning "comparable facilities" and full and fair compensation.

the spectrum in which incumbents have created the public value now sought by others to the exclusion of incumbents.

K. Channel Assignments. The Commission has proposed to continue licensing the Lower 80 channels in 5-channel blocks.[16] SMR WON supports this proposal.

The Commission also sought comment on the appropriate size of the licensing blocks for the General Category channels.[17] Subject to the comments which follow, SMR WON believes 50 channel blocks are appropriate for small business use, provided that the Commission implements the pre-auction market settlements and subtracts these channels from the blocks, and further provided that eligibility on the Lower 230 Relocation Channels is limited to designated entities, and that channel disaggregation and partitioning are permitted.

Essentially, the industry compromise solution restricts eligibility on the Lower 230 Channel Blocks initially to incumbents and relocatees to permit them to enter into full market settlements to obtain EA licenses; in return, the designated entity set-aside applicable to auctions on two of the 50 channel Blocks in the General Category Band would be relaxed. The Lower 80 Channel Block and one of the three 50 channel blocks

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[16] Second Notice, ¶300.

[17] Id., at ¶301.

in the General Category band would continue to be classified for Entrepreneurial Block auctions, following full market settlements by incumbents.

SMR WON would support this compromise, but only if the Commission is prepared to implement it. If the Commission is not prepared to implement the full compromise reached, for example, if the Commission opposes permitting relocatees and other incumbents to obtain EA licenses through joint venture arrangements without auction, or obtain an EA license if the incumbent is the only licensee on that channel within the EA, then SMR WON's membership would continue to need the full protection of the designated entity/entrepreneurial block classification for the entire General Category Block in order to have <u>any</u> opportunity of surviving the new competitive environment with "second class", site-specific licenses. The industry compromise proposal depends on the Commission accepting the <u>full</u> proposal, not just parts of it. Otherwise, relocatees could find themselves without EA licenses, <u>and</u> without the protections built into the Commission's proposal to restrict access to the Lower 230 Relocation Blocks.

SMR WON's membership is willing to compromise on the restricted access issues, but only if EA licensing is effectively available as part of the relocation process and those relocation channels so settled are not subject to auction. SMR WON believes

implementing the full industry compromise to resolve this difficult docket will speed new service to the public by all affected licensees, in part by creating viable market licenses for all licensees offering service to the public.

L. Operational and Eligibility Restrictions. The Commission proposes that licensees in the Lower 230 Relocation Channels should be permitted to use these channels for any purpose consistent with the applicable technical rules, and to limit eligibility to designated entities.[18] While SMR WON generally supports this designation, SMR WON notes that the emerging industry solution calls for existing wide area licensees to relocate incumbents to the Lower 230 Relocation Channels, and for EA market settlements to eliminate mutual exclusivity on existing licensed channels. The industry solution would prevent the problem the Commission identified, namely, that:

> Operational restrictions ultimately may restrict the ability of smaller SMR operators to expand their service area and service offerings by such means as integrating their frequencies into a wide-area system or establishing a multiple-channel network."[19]

The proposed industry solution will permit "smaller SMR operators" to participate in such innovative expansion, and not be relegated to second-class economic status. A small business which cannot grow is a business that will quickly die.

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[18] Id., at ¶305.

[19] Id.

M. Channel Aggregation Limits. SMR WON generally supports the Commission proposal that there be no restrictions on channel aggregation in the Lower 230 Relocation Channels frequencies.[20]

N. Construction Requirements. SMR WON generally supports the Commission's proposals that EA auction winners be required to build out Lower 230 Relocation Channels, and commence service to subscribers, within 12 months of licensing, assuming that the Commission implements the EA market industry solutions proposed herein. SMR WON believes there may have to be some flexibility in the rule, if non-market settled, auctionable block sizes exceed 20 channels. SMR WON assumes that the Commission is proposing that an EA auction winner construct all licensed channels within 1 year of grant of license, and further provides that only incumbents and relocated licensees would be able to meet the 12-month construction and population coverage requirements after three years, and thus participate in any auctions of these channel blocks. SMR WON supports this concept, subject to the pre-auction full market EA settlements essential to the industry solution proposed in these comments.

The Commission's short-term construction requirements are consistent with an approach that encourages the auction participation of incumbent small business designated entities and

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[20] Id., at ¶308.

relocated incumbents in the Lower 230 Relocation Channel auctions. This approach is laudable. At the same time, however, incumbents, absent an EA market settlement solution, are likely not to be in a position to compete in the raising of capital. The proposed industry solution also will prevent fraud on the general public, reduce avoidance or evasion of the securities laws, prevent artificial inflation of SMR auction prices, and implement service to the public more quickly by incumbent small business operators who already have proven their ability to provide service.

O. Coverage Requirements. The Commission proposes to impose the same coverage requirements in the Lower 230 Relocation Channels as in the Top 200 channels - i.e., one-third population coverage within 3 years, and two-thirds by the end of five years, and that there be a "substantial service" requirement, i.e, that 50% of the channels in the block must be constructed in at least one location in the EA by the licensee directly within 3 years of licensing, and retain such channel usage during the remainder of the construction period[21]. These coverage requirements assume construction and operation of the channel in the first 12 months.

In order to eliminate speculators preying on the general public, SMR WON supports the concept that EA auction winners must satisfy construction and coverage requirements. SMR WON is

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[21] See new §90.685(d), Appendix A to the First Report.

continuing to study these construction and coverage requirements as they relate to the Lower 230 Channel Relocation Blocks discussed herein.

P. Competitive Bidding Design. SMR WON supports the FCC's competitive bidding design, with one exception. SMR WON opposes simultaneous multiple round auctions for the Lower 230 Relocation Channels. SMR WON supports market-by -market stopping rules, to discourage speculation, reduce the artificial inflation of auction prices, and encourage the participation of existing incumbents in this block.

Q. Financial Caps - Entrepreneur Blocks. SMR WON generally supports the $3 million and $15 million Designated Entity small business financial caps proposed by the Commission, with one important exception. The current rules applied in the 900 Mhz auctions, for example, require that the net worth of affiliates, officers and board of directors, among others, be counted toward the cap. The imposition of strict attribution rules on principals, officers, and directors would in fact have the result of disqualifying small business SMR operators whose SMR businesses otherwise would meet the $3 million and $15 million gross revenues cap, but which would exceed that cap through attribution of a principal's holdings in unrelated, non-communications businesses.

To encourage participation of existing SMR small business operators in the auctions, the Commission should create an exception to its financial cap attribution standards for those existing SMR businesses which can demonstrate that the individual or affiliate who holds greater than a 20% interest in the Designated Entity or is otherwise claiming an exemption from the financial attribution requirements was in fact affiliated with or an investor in the incumbent SMR service provider prior to December 15, 1995, the date of adoption of the Second Notice.

R. Partitioning. SMR WON supports the Commission's proposal that geographic partitioning of EA license markets in the Lower 230 Relocation Channels be available to all incumbents, not just rural telephone companies.[22] Partitioning should be available to incumbents as part of the EA market settlements proposed herein by SMR WON and other industry representatives. Availability of the partitioning mechanism will encourage settlements consistent with regulatory goals for the rapid and efficient implementation of service, as the Commission has recognized in MDS and other licensing contexts.

S. Channel Disaggregation. SMR WON similarly endorses the Commission's channel disaggregation proposal for the Lower 230 Relocation Channels.[23] This will permit the more

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[22] Second Notice, ¶403.

[23] Second Notice, at ¶257.

effective management of spectrum blocks both with regard to the relocation process and the EA full market license settlements among incumbents proposed herein.

T. Comparable Facilities. Commenters were asked to address the definition of "comparable facilities" for relocated incumbents. The Commission proposed three parts to the "comparable facilities" definition. Incumbents would:

a) receive the same number of channels with the same bandwidth;

b) have their entire system[24] relocated not just those frequencies desired by a particular EA licensee;

c) once relocated, have a 40 dBu service contour that encompasses all of the territory covered by the 40 dBu contour of its original system.

SMR WON generally supports (a) and (b), subject to a satisfactory definition of "system". SMR WON also supports the Commission's conclusions in the First Report that 800 MHz channels constitute the only spectrum for providing "comparable facilities." [25]

However, SMR WON cannot support limitation of relocated incumbents to the 40 dBu contour in this service area. To ensure comparability, the Commission must require that the new 22dBu

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[24] See discussion immediately following concerning the definition of "system".

[25] See new §90.699.

contour match the original system 22dBu contour. Limiting the comparability analysis to the 40 dBu contour can reduce the facility provided to the relocated incumbent in certain circumstances. The Commission has addressed this issue in part by requiring relocation on other 800 MHz channels.[26] However, to fully protect incumbents, the analysis for comparable facilities must rely on comparison of the coverages provided by the original and relocated frequency to the 22 dBu predicted contour.

U. EA License vs the 22 dBu Contour License.

Competitive opportunity, commonly described as the "level playing field" requires examination of full, fair, and complete compensation for relocation that the phrase "comparable facilities" does not encompass. The Commission's description of the territorial scope of "comparable facilities" is insufficient, under the circumstances. Cellular, PCS, and now SMR licensees -- all SMR WON's members' competitors--receive geographic licenses defined by market trading area boundaries --MSAs, RSAs, MTAs, and EAs. Only incumbent SMR licensees, the ones who built the value and the SMR industry, are relegated and confined to site-specific radius licenses.[27]

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[26] Id.

[27] Permitting site-specific incumbent licenses to be "traded in" for "geographic licenses" based on overlapping sites does not mask the reality that these substitute "incumbent geographic licenses" are still limited by the existing coverage from a (continued...)

The industry's proposed solution will eliminate this dichotomy, this regulatory imbalance and unfairness, by creating one geographic licensing plan for all incumbents. The only possible opposition to the industry proposed plan is a minor regulatory "irritation" that those who built the industry might "get more than they now have" as a result of being relocated.[28]

We will set aside for the moment the obvious observation that such an objection stems from the "taking without just compensation" theories. SMR WON has firmly maintained that this license displacement is a taking of property. SMR WON's licensees hold valid licenses, and are entitled to the "proceeds

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[27](...continued)
specific tower site or sites. Incumbents are still confined to their original 22 Dbu contour.

[28] The spectrum from which incumbents are being displaced is the most suitable spectrum for offering mobile communications services like SMR. There is no question that the top 200 channels in the 800 Mhz band are ideally suited to the type of voice and data communications: a) currently offered by incumbents, soon to be displaced, and; b) proposed by those who would displace them. There is no substantial difference between the types of communications offered. The only significant difference is the area to be served by the communications, i.e., the size of the Superhighway, be it regional or national. Incumbents are being forced to give up extraordinarily valuable and efficient spectrum and their geographic exclusivity on that spectrum encompassed within their current licenses.

The area of exclusivity encompassed within current SMR licenses prevents the Commission from auctioning wider-area licenses to provide essentially the same services. The Commission is displacing existing licensees as much because their current exclusive license <u>area</u> prevents construction of the new communications Superhighway, as it is taking action to obtain these ideal frequencies for those proposing a new commercial venture.

from the sale of those licenses", i.e., their full market value. The Commission is taking those licenses to hand their full value over to competitors. By the mere taking, or threat of taking, the Commission reduces the value of the license to the incumbent -- nevertheless, the licensee is entitled to the full value under "just compensation" law. The Commission's notion that licensees must receive comparable facilities is based on the Constitutional principle that the federal government cannot take property rights without full compensation.

Under the circumstances, full compensation in a competitive communications business environment, as opposed to a residential relocation, must include recognition that consigning incumbents to the same license area they had, while reassigning their licenses to others with a larger market coverage area actually gives back to licensees less value than they originally had. Now, all competitors have site specific licenses, and compete within that sphere. Aggregation of site specific licenses is being carried on by any number of licensees, using a number of different techniques and strategies -- acquisition, wide area licenses, roaming arrangements, switching integration, and management agreements.

Once the Commission changes the rules and creates two license classes, incumbents actually, at the end of the day, come away with less ability to compete within their bureaucratically

redefined business -- the SMR business -- than they had prior to the new rules. Therefore, the use of the phrase "comparable facilities" unlawfully narrows the scope of the inquiry as to what it is necessary to provide in the way of compensation to a relocated business. More than "comparable facilities" is required under the Constitution and eminent domain law to award full and adequate compensation to a relocated SMR business.

In residential real estate relocations, the size, value, and location of the property are relevant factors. In business, location, geography, traffic, customer base, value, projected revenue flow, added expenses all are relevant. In competitive mobile communications relocations, the coverage available to customers in competition with the industry standards generally is a key consideration.

The proposed industry solution solves this problem by properly recognizing that "just compensation" considerations in relocating incumbents must include, and must not ignore, geographic coverage. Full, fair and "just compensation", i.e., justice, which includes the ability to compete effectively, and not the definition of "comparable facilities," is the issue. The industry solution must be made available to all displaced - those who go voluntarily because they read the wind, or those who go

reluctantly and only when forced to under a "mandatory negotiation" program. The law requires no less.[29]

V. Definition of "System". The definition of "system" incorporated in the Commission's description of incumbent rights[30] must take into account the current operational and design characteristics of the relocated incumbent. This is important with respect to at least three competitive characteristics - system integration through switching arrangements, customer offerings, and roaming.

W. System integration. Currently, licensees integrate their systems with one another through shared switching arrangements, including the integrated operation of managed licenses. This permits SMR operators to engage in cost sharing of expensive equipment, compete effectively at reasonable rates with cellular telephone providers and other mobile radio

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[29] We all know of instances where "hold-outs" are nevertheless entitled to the full protection of "just compensation" law. For example, an important bypass to the Bourne Bridge, one of two bridge approaches to Cape Cod, Massachusetts, was held up for twenty years because one farm owner exercised all her rights to full and fair compensation. For years hundreds of thousands of motorists were stalled in massive summer weekend traffic jams on narrow local roads trying to cross Cape Cod Canal. Nevertheless, this one woman's property rights were protected. So it must be here. SMR WON is pleased that an industry sponsored solution is emerging which would, properly implemented, similarly protect the rights and interests of every small business SMR operator required to relocate.

[30] See ¶283.

operators, and provide their customers with extended coverage areas.

The definition of "integrated system" must include separate licensees who use a common switch or a tandem of switches. If any licensee sharing a common or tandem switch is to be relocated, all licensees sharing common or tandem switching arrangements must be relocated together.

X. Customer offerings. It is standard and customary practice in the industry that commonly owned and managed systems offer subscribers the option to program their mobile radios at multiple sites which do not share common switching. While hand-off is not available through such "programming" arrangements, the customer can select to extend his geographic coverage to fit the areas covered by his business use of mobile radios. This gives the subscribers the ability to control costs by choosing various coverage options, and to change those coverage requirements seasonally or otherwise. Many customers take advantage of this highly flexible and popular option. Customers rightly consider such coverage, whether offered under commonly owned or commonly managed licenses, to constitute a single "system" from which they can make these flexible choices.

Accordingly, to provide relocated incumbents and customers with a "seamless transition" to new frequencies, the

definition of "integrated system" must also include those systems, not commonly switched, which offer subscribers geographic coverage options on commonly owned or commonly managed systems.

Y. **Relocation Costs**. All items affecting the system must be taken into account for relocation. These include the factors identified by the Commission[31], and also include end user equipment, tower site leases, tower site costs, and redundant facilities or services required to build out a parallel system, such as buildings, backhaul facilities such as microwave or landline services, new power facilities, and related costs, such as the need for new environmental impact statements necessary in connection with adding additional communications facilities at existing government sites. The addition of new antennas as part of a parallel system in many instances will require the renegotiation, at significant cost, of tower site leases and associated costs. These costs must be borne by the EA licensee, not the incumbent who is being relocated.

Costs should be shared by all EA auction winners in the three affected blocks, based on the ratio of frequencies held by a licensee who is being fully relocated which are in that EA winner's purchased block of frequencies. If, however, the agreement is reached on relocation prior to auction, the party

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[31] Second Notice, at ¶272.

making that agreement is fully liable to the relocated incumbent for all costs. The offering party, not the relocated incumbent, should seek reimbursement as necessary from later EA auction winners.

Z. Relocation Guidelines -- Good Faith Negotiations Require a Performance Bond from the EA licensee Demanding Mandatory Relocation

The Commission has requested comment on what constitutes good faith negotiations during the mandatory relocation period. The Commission has proposed that the mere "offer" by an EA licensee "to replace an incumbent's system with comparable facilities constitutes a good faith offer." However, the incumbent has no way of knowing whether or not the EA licensee can fulfill his offer. If the incumbent agrees to be relocated under the conditions "offered" during voluntary[32] or mandatory negotiations, and the EA licensee later defaults, declares bankruptcy or loses his license, the incumbent could likewise be forced out of business.

In the purchase and sale of communication properties, it is standard and customary that an offeror must demonstrate its financial capability to bid even prior to being allowed by a potential seller to enter into offering discussions, receive

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[32] The more availability of the mandatory period and the FCC's proposed lax standard reduces the incentive of the offeror to negotiate in good faith, during the voluntary period.

confidential economic and business information, or negotiate. Incumbents should be put in no worse position during the mandatory negotiation period than they are when entering into voluntary negotiations for the sale of their facilities.

This means, purely and simply, that the EA licensee must submit a performance bond in favor of the incumbent for the reasonable costs of relocation at the time of making its offer to replace an incumbent's system with comparable facilities. The EA licensee must also be able to demonstrate that it has the 800 Mhz frequencies[33/] reasonably available to it to relocate the incumbent and all other incumbents in the market who receive mandatory relocation notices.

If an EA licensee cannot afford to find sufficient surety to provide a performance bond, given the substantial economic obligations it has undertaken to submit the winning bid at auction, construct the facilities, and clear the Top 200 channel band, then its offer is not presumptively in good faith. Good faith negotiations require a "ready, willing, and <u>able</u>" offeror. The offer must be prepared to demonstrate its economic ability to perform.

[33/] The Commission already has determined that 800 Mhz frequencies are the only comparable frequencies, and SMR WON supports this conclusion. See new §90.699.

While the Commission believes that "the time for expansive negotiation is during the voluntary negotiation period and that...only the bare essentials of comparability should be required...." during the mandatory relocation period,[34] that may not be the case. The Commission's proposal falls far short of customary and standard economic practice. The proposal leaves the incumbent vulnerable to an underfinanced EA auction winner who perhaps can pay the auction price and construct part of its system, but cannot afford the costs of relocation or does not have sufficient channel capacity available to engage in good faith negotiations.

AA. Mediation. The Commission has proposed mediation through its own Compliance and Information Bureau or through trade associations. In eminent domain cases, the displace party has full access to all legal remedies, and access to such remedies promotes fair and good faith negotiations. By proposing to cut off such remedies, the Commission again is proposing to place incumbents in an inferior position vis a vis the EA auction winners. Much as SMR WON would be prepared to provide such mediation services, SMR WON believes trade associations are neither equipped or sufficiently disinterested to serve as dispute resolution institutions or decision makers. Furthermore, the Commission has long taken the position that, outside its licensing process, it neither has the jurisdiction, capacity, nor

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[34] Second Notice, ¶126.

expertise to resolve private contractual disputes between licensees.

The Commission's proposal is not sufficiently specific for SMR WON to be able to comment fully or endorse. It is unclear, for example, what rights an incumbent would be relinquishing if it submits to arbitration or mediation. The availability to the incumbent of the full panoply of legal rights may encourage early market settlements, and encourage attractive offers from those desiring to relocate incumbents. SMR WON believes the mediation or alternative dispute resolution requires further development and analysis.

IV. Comments on Upper 200 Block Issues.

The Commission requested comment on disaggregation of channels blocks and partitioning, and cost sharing as part of mandatory relocation in the upper 200 channels of 800 MHz spectrum.[35]

SMR WON's comments on these "upper 200 channel" issues should not be taken as acquiescence in the decisions made in the First Report. The Commission's interest in implementing the industry solution proposed herein is essential to SMR WON's evaluation of the impact on incumbents of the First Report. SMR

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[35] Second Notice, §257.

WON has been opposed to auctioning the upper 200 band and relocating incumbents without adequate safeguards, including EA licenses and a level playing field. SMR WON reserves its rights with respect to the First Report, notwithstanding its comments herein on ancillary issues.

A. Disaggregation of Upper 200 Channel Blocks

SMR WON supports disaggregation (i.e., sublicensing of smaller blocks) in Blocks B (60 channels) and C (120 channels) of the upper 200 channel blocks in order to accommodate incumbents. Block A, of 20 channels, is too small for disaggregation. SMR WON assumes that the Commission intends by disaggregation that an EA auction winner in an upper 200 channel block would provide some incumbents with EA licenses on disaggregated channels, where the auction winner did not have sufficient spectrum to relocate all incumbents to the Lower 230 Relocation Channels.

Disaggregation should be limited initially to accomplishing relocation. A licensee should not be permitted to sublicense to others until it has shown that it has cleared all other incumbents licensed in the Block, or has entered into agreements with non-relocated licensees in which they agree to waive their rights to be relocated. Such a showing must include

licensees who did not receive notices that they were subject to relocation.

B. Partitioning in the Upper 200 Channel Block

SMR WON also supports partitioning in the upper 200 channels of 800 MHz SMR spectrum for "rural telephone companies...incumbents, and eligible SMR licensees generally."[36] Partitioning would be available in all three upper 200 channel blocks.

As with disaggregation, partitioning should be used as a relocation tool. Partitioning can be an exceptionally useful tool for accommodating incumbents in the Block who could not otherwise be moved, or to permit incumbents to continue to provide service to smaller urban areas and rural areas within an EA.

The Commission should adopt rules which would encourage and require use of partitioning for these purposes, i.e., relocation and rural service. An EA licensee should be required to demonstrate that it has cleared all incumbents from the band, or has dedicated and set aside sufficient spectrum to clear all

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[36] Second Report, §221.

incumbents[37], before the EA licensee would be permitted to partition portions of the license to those who are not incumbents in that block of spectrum. Partitioning EA markets to incumbents would be permitted without such a showing.

C. Cost Sharing in the Upper 200 Band.

SMR WON previously has commented on relocation reimbursement issues, and incorporates those comments by reference.

SMR WON is concerned that many, if not the vast majority, of incumbents subject to relocation hold licenses in more than one channel block. If an incumbent is given notice by the EA licensee for Block B that the incumbent is subject to relocation, that notice would bind the EA licensees for Block A and C, so that full relocation is possible. It would be up to the EA auction winners, not the incumbents, to work out cost sharing issues. There should be joint and several liability for relocation between the incumbent and all EA auction block winners in the upper 200 channel block once notice of relocation is given by any one of the auction block winners. The EA license winner giving notice should be required to keep other block winners

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[37] Including incumbents not notified that they are subject to relocation.

informed of potential cost sharing obligations, but such other block winners should not have a right to veto. Only if another block winner also gives notice of its intent to relocate an incumbent, and submits an acceptable performance bond for its reasonably estimated portion of the relocation costs, would that EA license winner be permitted to participate in the voluntary or mandatory relocation negotiations. Nevertheless, an EA licensee not notifying an incumbent would be liable for its share of the relocation costs to another EA licensee and for the full amount of the relocation costs should the incumbent be unable to obtain reimbursement of those costs from the EA licensee who gave notice of relocation.

This discussion makes clear the importance of performance bonds to the relocation process, as SMR WON has discussed above.

Finally, incumbents must have the <u>option</u> to retune or change out customer equipment directly, and elect not to have this service performed by the EA licensee responsible for the costs. Incumbents want to avoid anticompetitive activities by the EA licensee, and to prevent EA licensee access to customer lists or the customer. Also, other measures should be the subject of rule by the Commission to avoid anti-competitive practices, such as requiring the EA licensee to enter into covenants not to compete for incumbent customers directly for a