BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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MAR - 1 1996

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

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To: The Commission

REPLY COMMENTS
OF
ENTERGY SERVICES, INC.

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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. Positions advanced by Commenters in this instant proceeding will profoundly affect the viability of Entergy's important 800 MHz communications system.

Entergy notes with great interest the number of commenters who have addressed the Commission's decision to redesignate and auction the General Category. Entergy supports the substantial opposition to both Commission proposals. In the event the Commission decides to proceed with the auction of the General Category, Entergy agrees with those several Commenters who oppose the mandatory relocation of <u>any</u> incumbent from the General Category. In addition, several Commenters argue for broader eligibility for the General Category auction. Entergy supports open eligibility for this auction so that all parties, including incumbents, can decide whether or not to participate in the auction.

Entergy has carefully reviewed the Comments of SMR WON, Nextel, AMTA, U.S. Sugar and others in which the parties propose a pre-auction market settlement plan that would allow General Category incumbents to secure Economic Area licenses prior to auction. Channels licensed pursuant to the proposal would not be subject to auction. Entergy cannot support this proposal because the proposal is driven by the Commission's efforts to auction the General Category, which Entergy opposes. Entergy believes that auctions should not occur. Moreover, the proposal presumes a licensing benefit which Entergy contends already exists under FCC rules and policies.

Finally, Entergy supports the retention of slow growth opportunities for all PMRS entities licensed on the General Category. However, Entergy opposes the suggestion that the Commission should retain the inter-category sharing freeze for the Public Safety 800 MHz spectrum pool.

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REPLY 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 offers these Reply Comments in response to the Comments submitted 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, with a combined operating company service territory that covers almost all of Arkansas and Louisiana, a portion of Texas and the western half of Mississippi. Under the Entergy umbrella, five operating companies operate an integrated electric utility system which serves over 2.3 million customers. For the benefit of both Entergy's customers and its employees, Entergy must conduct its utility operations in an exceptionally safe and efficient manner. These demands require Entergy to maintain as reliable a communications network as possible.

2. Entergy initially secured General Category channels in the New Orleans area during the early licensing of its 800 MHz wide-area land mobile radio system as a result of spectrum congestion in the other 800 MHz spectrum categories. In an effort to implement an appropriate channel re-use scheme throughout its service territory, Entergy has licensed or is in the processing of licensing these General Category channels at locations across its territory. The continued viability of the Entergy system hinges on its ability to re-use this group of General Category channels. Reallocation of the General Category spectrum and the inability to access these frequencies in the future could result in the complete loss of this core

group of channels with devastating consequences to Entergy's 800 MHz land mobile radio system.

3. Entergy's ability to meet internal and customer service demands with its Private Mobile Radio Service ("PMRS") 800 MHz land mobile radio system could be seriously jeopardized due to the proposals set forth by the Commission in the instant proceeding. In light of these critical interests, Entergy offers the following Reply Comments on the Comments submitted in response to the Commission's Second FNPRM.

II. Discussion

A. The FCC's Decisions To Redesignate the General Category as SMR and To Auction the General Category Are Strongly Opposed by Commenters.

4. While Entergy realizes that this is not the proper forum to debate the Commission's decision to reallocate the General Category to Specialized Mobile Radio ("SMR") status, it would be remiss in not commenting on the number of parties who have joined Entergy in protesting that Commission action.[2/] In addition, Commenters recognize, as Entergy did, that but for the Commission's underlying decision to redesignate the General Category, they would not

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[2/] See, e.g., Comments of General Motors Research Corporation ("GMRC") at 4, Duke Power Company at 12, City of Gainesville at 1, and Genesee Business Radio Systems at 9.

be forced to address a large number of the proposals -- auctions, geographic licensing, incumbent treatment, etc. -- raised by the Commission in the Second FNPRM.[3] Moreover, Commenters agree with Entergy that the Commission's decision in the First Report and Order appears to have little rationale in light of the dramatic impact of the action on PMRS licensees.[4] Consequently, a number of parties like Entergy either have filed a Petition for Reconsideration of the Commission's decision to reallocate the General Category to SMR or have expressly reserved their right to challenge the Commission's action at a later date.[5]

5. Commenters generally are concerned that, while the Commission in the First Report and Order noted that the overwhelming majority of General Category licensees are SMR,[6] it failed to address or recognize any impact of the redesignation of the block of 800 MHz spectrum on the 3,450 non-commercial licensees, including 450 State and local

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[3] See Comments of Personal Communications Industry Association ("PCIA") at 13-14, and the Industrial Telecommunications Association and the Telephone Maintenance Frequency Advisory Committee ("ITA/TELFAC") at 4, n.3.

[4] See generally Comments of the Association of Public-Safety Communications Officials-International ("APCO"), ITA/TELFAC, and UTC.

[5] See, e.g., Comments of APCO at 2-5, City of Coral Gables ("Coral Gables") at 4, n.6, and UTC at 3.

[6] First Report and Order at ¶ 137.

government agencies, operating on General Category frequencies.[7] To make matters worse, as one Commenter contends, the Commission has failed to adequately solicit participation by members of the PMRS community in a matter that will profoundly affect their access to spectrum:

> This proceeding has been captioned as essentially an SMR proceeding, and at no time has the Commission taken any specific steps to advise the public that public safety licensees were to be significantly affected in any way. ... [T]he Commission should devote at least as much of its resources to facilitate the full participation of state and local agencies as it does in publicizing it [sic] spectrum auctions.[8]

Entergy strongly agrees with this position. The record in this proceeding is shockingly devoid of comments and reply comments representing the interests of the PMRS community.

6. The reallocation is especially troubling because the Commission, as noted by the ITA/TELFAC, in 1994 commented that the General Category would <u>not</u> be subject to competitive bidding and suggested that the continued access to the General Category spectrum by SMR applicants could lead to the scarcity of spectrum for PMRS use.[9] Yet, in redesignating the General Category, the Commission has provided little justification for its actions, and, not

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[7] Comments of ITA at 6, and APCO at 2.

[8] Comments of Coral Gables at 3, n.4.

[9] <u>Further Notice of Proposed Rule Making</u> (FCC 94-271), PR Docket No. 93-144 and PP Docket No. 930-253, adopted October 20, 1994, released November 4, 1994, ¶ 52.

surprisingly, many parties are "puzzled and disappointed by this reversal of the Commission's views."[10]

7. As noted in part above, many Commenters oppose the auction of the General Category;[11] most argue that the General Category should never have been reallocated in the first place. Others correctly note that an auction of the General Category just does not make sense:

> Since: (1) it is the commission's [sic] intention that much of this spectrum will be for re-tuned SMR licensees from the Upper 200 Channel Block; (2) virtually all of this spectrum is already licensed; and (3) the Commission does not intend to have mandatory relocation of incumbent licensees in the ... 150 General Category pool frequencies, holding an auction in this band is extremely counter-productive to the Commission's purpose in this proceeding.[12]

Commenters agree with the Commission that there is virtually no clear spectrum available in the General Category; with the Commission's decision to permit relocation of incumbents from the upper 200 SMR channel block, there will be even less spectrum available. The Commission's efforts to auction the General Category are incongruous given the encumbrance of the spectrum and the lack of any apparent licensing benefits. Ultimately, it "makes absolutely no

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[10] Comments of ITA/TELFAC at 5.

[11] See, e.g., Comments of United States Sugar Corporation ("U.S. Sugar") at 13, Coral Gables at 6, Keller Communications at 2, and Fresno Mobile Radio et al at 23; see generally Comments of The Southern Company.

[12] Comments of PCIA at 17.

sense to disrupt ongoing operations in a mature band, where spectrum efficiency is not going to result."[13]

B. Commenters Express Overwhelming Support for the Grandfathering of PMRS Incumbents in the General Category.

8. If the Commission decides to reallocate and auction the General Category, a number of Commenters oppose mandatory relocation for any incumbents including PMRS licensees.[14] In supporting the grandfathering of all incumbents, many parties reference the Commission's own observation 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."[15] In light of these statements, LAPD properly notes that "it is puzzling as to why the Commission is even seeking comment on the possibility of relocating General Category incumbents." Entergy could not agree more. In many instances, PMRS entities like Entergy were forced in the first place to secure General Category spectrum due to

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[13] Keller Communications at 2.

[14] See, e.g., Comments of the Los Angeles Police Department ("LAPD") at 6, GMRC at 4-5, UTC at 15, ITA/TELFAC at 8-9, E.F. Johnson Company at 6, and American Mobile Telecommunications Association ("AMTA") at 27.

[15] Second FNPRM at ¶ 315.

the unavailability of other spectrum.[16] Many licensees no doubt then relied on the Commission's representations regarding continued access to the General Category and invested significant resources and effort into their 800 MHz systems licensed on the spectrum.[17] To impose mandatory relocation on these same incumbents simply is not a feasible option.

9. PMRS licensees must be entitled to assurances now from the Commission that they will not be forced to relocate in the future. Entergy agrees with LAPD's assessment that the adoption of mandatory relocation rules in the apparent absence of replacement spectrum would serve little purpose as few if any incumbents would be relocated.[18] "However, the mere possibility of forced relocation would create uncertainty and hinder public safety agencies such as LAPD from making necessary commitments to develop and improve their communications systems."[19]

10. Entergy must take one exception with the Comments of LAPD, APCO, Coral Gables, and others who have supported

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[16] See Comments of LAPD at 6-7, County of San Bernardino at 2, and Coral Gables at 5.

[17] Supra, ¶ 6.

[18] See Comments of LAPD at 8.

[19] Id.

allowing only public safety agencies to remain in the General Category.[20] Entergy strongly believes that all PMRS entities licensed in the General Category should be grandfathered. Utilities, pipeline companies and other PMRS licenses face many of the same public interest communications requirements as traditional public safety entities. The Commission should not extend certain incumbent rights to the public safety community without extending them to all PMRS licensees in the General Category.

C. Entergy and Others Continue To Support Open Eligibility if Auctions Are Imposed.

11. Entergy notes that several Commenters have expressed support for a broader eligibility for the General Category auctions. Specifically, PCIA and others argue that incumbents should be allowed to participate at auction.[21] UTC also strongly opposes the Entrepreneur Block designation as it would add "insult to injury by saying in effect to utilities, and pipelines and many other incumbents that even assuming you were willing and able to go through auctions, you are still ineligible for the General Category

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[20] See, e.g., Comments of Coral Gables at 5.

[21] See Comments of PCIA at 21, E.F. Johnson Company at 9, and Pittencrief Communications at 11-12. However, Entergy opposes these Comments to the extent that they support a separate allocation for entrepreneurs generally.

frequencies because your gross revenues exceed the small business cap."[22] Entergy would go one step further in arguing that all entities, including incumbents, must be allowed access to General Category auctions, it they occur.

D. Entergy Cannot Support the Proposals of SMR WON, Nextel, U.S. Sugar, AMTA and Others Because these Proposals Deem Auctions as Acceptable.

12. Entergy notes with great interest the essentially similar proposal set forth by SMR WON, Nextel, U.S. Sugar, AMTA and others to allow incumbents in the General Category (before auction) to negotiate with other licensees within the Economic Area ("EA") in an effort to receive from the Commission an incumbent EA license.[23] It is generally anticipated that these 're-claimed' channels would then be removed from the block of spectrum available for auctions. It is hoped that this "industry consensus plan" would prompt incumbents to relocate from the upper 200 and would encourage lower 230 incumbents to enter into full market settlements prior to auctions to eliminate mutual exclusivity.[24]

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[22] Comments of UTC at 14.

[23] See generally Comments of SMR WON, Nextel, U.S. Sugar, and AMTA.

[24] See Comments of SMR WON.

13. Entergy cannot support the so-called industry consensus plan. Ultimately, the proposal is driven by the Commission's efforts to auction the General Category, and, in proposing the plan, Entergy believes that these Commenters are tacitly approving spectrum auctions. The plan essentially is a vehicle to limit the quantity of General Category which the Commission is able to auction. Clearly, a better suggestion is that the Commission simply not hold auctions for the heavily encumbered General Category spectrum block.

14. It is Entergy's impression that the proposal set forth above would create a licensing scenario which is substantially similar to that which was created by the licensing rules and policies in place before the Commission ordered application freezes and the General Category reallocation. Under the consensus plan, incumbents would be permitted to negotiate with other incumbents pre-auction in an effort to create a mutually-compatible EA environment. Presumably, if Incumbent One relocates Incumbent Two, Incumbent One then controls more of the EA license. Entergy believes that this plan is virtually identical to the Commission's existing licensing rules, except, of course, for the auction piece. Licensees have always been allowed to negotiate with each other to gain access to spectrum or

to expand service territories.[25] Entergy would argue that whatever the licensing result -- an 'EA license' or a license with several specific sites -- the end result is the same: a channel is licensed to one or more entities, and the licensees are protected from 'unfriendly' co-channel users in accordance with the co-channel protection standards set forth in Section 90.621 of the Commission's rules, 47 C.F.R. § 90.621. Entergy suggests that there is no difference between an EA license partitioned to three entities and three entities within an EA holding individual site-specific licenses. Entergy encourages all parties to look beyond the perceived appeal of the industry proposal, and, instead look, at what the proposal represents -- an excuse for the Commission to hold auctions for a licensing benefit which in fact is no greater than what the Commission's rules traditionally allowed.

15. Finally, Entergy balks at the suggestion that this proposal has any type of wide-spread industry support, despite Comments to the contrary.[26] While Entergy acknowledges that certain Commercial Mobile Radio Service ("CMRS") entities and trade associations have supported the

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[25] In fact, several of the public safety Commenters noted that they were forced to acquire General Category spectrum in order to expand their land mobile radio systems. See generally Comments of LAPD and Corral Gables.

[26] See Comments of SMR WON at iii and 5.

plan, it is gravely concerned that the plan does not adequately take into consideration the interests of PMRS licensees. Clearly, the CMRS industry generally has an agenda that differs from that of the PMRS industry. Entergy would argue that most 800 MHz General Category licensees are complete unaware of the market settlement proposal discussed herein. If the Commission intends to seriously consider this matter, it must do so in a separate proceeding so that all interested parties have an opportunity to comment on the CMRS proposal.

E. Entergy Supports Slow Growth for PMRS General Category Incumbents, and Opposes the Continued Freeze on Inter-Category Sharing.

16. Entergy agrees with APCO's argument that public safety licensees should continue to be allowed slow growth authority in the build out of their 800 MHz land mobile radio communications systems on General Category spectrum.[27] Entergy supports extending this same condition to all PMRS licensees that either have or have requested slow growth status in constructing General Category spectrum. Many utilities, for example, are subject to the same demands as public safety agencies: "multiple levels [sic] government approval, complex and other slow funding mechanisms, and other factors that impede rapid

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[27] See Comments of APCO at 8.

deployment ... ."[28] The Commission should continue to allow all of these entities to retain or apply for slow growth status.

17. Finally, Entergy must take exception to another proposal set forth by APCO, specifically, the maintaining of the freeze on 800 MHz inter-category sharing.[29] Entergy strongly opposes this proposal; Industrial/Land Transportation ("I/LT") and Business eligibles must once again be allowed to access Public Safety spectrum for their frequency demands. As APCO correctly noted, the Business and I/LT channel pools are depleted.[30] Consequently, there is no legitimate reason to restrict the access of I/LT and Business eligibles from the only remaining pool of 800 MHz spectrum that may be available to them.[31] Without this spectrum source and with the redesignation of the General Category, the Commission will essentially freeze all I/LT and Business licensing in the future, absent the relief requested herein.

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[28] Id.

[29] Id.

[30] Id. at 9.

[31] First Report and Order at ¶ 138-142.

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

Respectfully submitted,

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