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FEDERAL COMMUNICATIONS COMMISSION
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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 Concerning Future Development of SMR Systems in the 800 MHz Frequency Band	)	PR Docket No. 93-144 RM-8117, RM-8030 RM-8029
	)	
Implementation of Section 3 (n) and 332 of the Communications Act Regulatory Treatment of Mobile Services	)	GN Docket No. 93-252
	)	DOCKET FILE COPY ORIGINAL
Implementation of Section 309(j) of the Communications Act Competitive Bidding 800 MHz SMR	)	PP Docket No. 93-253

To: The Commission

STATEMENT IN PARTIAL SUPPORT AND PARTIAL OPPOSITION OF DUKE POWER COMPANY

Duke Power Company ("Duke"), by its attorneys, hereby respectfully submits its Statement In Partial Support and Partial Opposition to the Petitions For Reconsideration filed in the above-captioned proceeding.[1] As licensee of a wide area private 800 MHz system, Duke, along with numerous petitioners, is vitally concerned with the Commission's ultimate decision in this matter since it will affect Duke's "lifeline" telecommunications facilities.

[1] 61 Fed. Reg. No. 72 at 16252 (April 12, 1996).

I. BACKGROUND AND PRELIMINARY STATEMENT

1. Duke is a major public utility which is certificated by the states of North Carolina and South Carolina to provide electric power throughout the Piedmont and Western sections of the Carolinas. Duke is one of the nation's largest public utility companies and is responsible for providing electric power to approximately 1.8 million customers throughout a 22,000 square mile service area. Duke's power network includes numerous generating stations and substations as well as nuclear power plant facilities.

2. Management and operation of Duke's power system encompasses numerous functions for which reliable private telecommunications support is essential. Among these functions are routine maintenance of the Duke Power system, answering of service calls, service installations and deletions, as well as the handling of emergency situations which may be caused by accidents or natural disasters. In the mid-1950's Duke applied for and was awarded licenses to construct a Private Land Mobile Radio Service ("PMRS") system which operated on low-band frequencies. This system was expanded in the 1970's to quadruple its capacity. Continued growth in Duke's operations as well as population shifts which dramatically increased its customer base, soon rendered this system obsolete. Duke subsequently applied for and received authorization to construct a wide area 800 MHz system to provide basic telecommunications services throughout the entire Duke service area. This system has now been successfully constructed and operated for several years. Duke has invested millions of dollars in this quite complex system which encompasses over 41 base and/or mobile relay sites, 4300 mobile radios, 850 portable radios, 255 control stations and three main dispatch console systems.

3. Thirty of the sixty-three channel pairs currently authorized to the Duke system are contained within the "upper 200" Special Mobile Radio ("SMR") channel block which the Commission has decided will be auctioned for wide area commercial operations. Duke is greatly concerned by these developments and has actively participated in this proceeding in an effort to maintain its telecommunications system which is vital to the safe and efficient provision of electric power throughout the Carolinas.

II. DISCUSSION

4. Duke notes that several petitioners seek reconsideration of certain Commission decisions in this proceeding because these decisions may negatively impact the continued operation of PMRS systems. Duke agrees with these petitioners that the Commission should reconsider and modify the newly adopted rules which pertain to the continued operation of internal PMRS systems and the availability of spectrum for such systems from the General Category channels. On the other hand, one petitioner has requested that the Commission shorten the incumbent system migration time table by a period of one year. Duke adamantly opposes this particular proposal.

A. Duke Supports The Petitions Of Parties Seeking Modification of the Commission's Rules Concerning General Category Channels.

5. Among other things, the Commission's newly adopted 800 MHz rules reallocate the General Category channels to wide area CMRS operations. Numerous petitioners seek

reconsideration of this reallocation.[2] Duke fully supports the position of these petitioners. Duke is convinced that the Commission's decision to reallocate the General Category channels for use by commercial system licensees is arbitrary and capricious. A significant rationale offered by the Commission to support this decision was its belief that most current licensees in the General Category channels are commercial SMR operators and that consequently, the reallocation to an all commercial service in the General Category channels would have a minimal impact upon private systems. However, as the petitioners point out, the Commission's simple record review does not take into account the number of systems actually constructed and operating on General Category channels as opposed to commercial entities, including numerous speculators, which hold licenses for unbuilt systems.

6. Duke agrees with the petitioners who note that when the number of private systems critical to the public welfare in operation at this time on General Category channels is balanced with the actual number of commercial SMR systems operating on General Category channels, a much different picture emerges. The current General Category channel licensee records do not, standing alone, justify reallocation of these channels exclusively to commercial operations. Moreover, commercial demand for 800 MHz spectrum has made it practically impossible for private system operators to locate channels which will allow expansion of their systems where necessary. Accordingly, the General Category channels must remain available to PMRS

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[2] Petitions of Industrial Telecommunications Association ("ITA") at 4-10; Federal Express at 2-3; UTC The Telecommunications Association at 2-7; Warner Communications Company at 1-2; Starrick Plumbing, Inc. at 1-2, Consumer's Power at 9-10; J.A. Placek Construction Company at 1-2 and Entergy Company at 11-13.

licensees. The General Category channels must not be reallocated for commercial purposes and auctioned. Duke agrees with the petitioners that the Commission must rethink its rules with respect to the General Category channels.

7. Duke also supports the position that no mandatory relocation of private non-commercial incumbent licensees from General Category channels should be required.[3] The Commission has noted its concern that adequate spectrum remain available for PMRS operations. Yet, in this proceeding the Commission has acted not only to convert to commercial operations those few channels which may remain available from the General Category for PMRS operations, but has also mandated relocation of non-commercial incumbents from General Category channels. Taken in combination, this action could sound the death knell for vital PMRS systems. Accordingly, Duke supports reconsideration of the Commission's decision concerning mandatory relocation of non-SMR incumbents from General Category channels.

8. The Commission's new rules also have failed to establish a measure to minimize commercial SMR licensee operation on channels from the Industrial/Land Transportation ("I/LT") and Business pools. Duke supports the position expressed by ITA that the Commission should refine its rules to provide that I/LT and Business pool channels will primarily be available to non-commercial, internal-system operators.[4] The Commission's acknowledgement that there is a scarcity of spectrum available for critical PMRS operation compels a set aside of spectrum

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[3] Petition of General Motors Research Corporation at 2-5.
[4] Petition of ITA at 11-13.

specifically for such operations. Duke urges the Commission to promptly adopt changes in its rules to accommodate the special needs of PMRS licensees.

B. The Commission Must Ensure Adequate Transition Policies For A Smooth Migration From Frequencies In The "Upper 200" Spectrum Block.

9. Certain petitioners have requested that the Commission reconsider or clarify several elements of its spectrum relocation plan. Duke supports the imposition of a requirement that EA licensees be required to pre-pay the incumbent licensee's relocation costs or alternatively, post a cash bond to cover such costs.[5] Duke further suggests that the Commission adopt language to clarify that this provision will be applied whether the incumbent licensee is a commercial or PMRS operator. Additionally, Duke agrees that assurances should be given that replacement spectrum for any displaced licensee must be within the 800 MHz band.[6] Spectrum outside the 800 MHz range will be of little value as replacement spectrum due to equipment limitations and retuning difficulties, and the Commission should adopt the requested clarification of its rules. Moreover, the Commission should act to clarify that this provision will apply in all instances regardless of whether the displaced entity is a commercial or PMRS operator.

10. Duke strenuously opposes the request that the mandatory relocation period be shortened to one year.[7] As Duke has fully explained in its earlier comments in this proceeding,

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[5] Petition of Pro-Tec Mobile Communications, Et. Al., at 7.
[6] Petition of Resource Benefits, Inc. At 5-6.
[7] Petition of NEXTEL at 15.

its system, like those of other large scale internal safety-oriented system operators is quite complex and system redesign and spectrum migration will present numerous technical obstacles. Such technical difficulties will include but not be limited to, re-engineering of channels in a manner which will not create objectionable interference to adjacent licensees, as well as system redesign to accommodate multiple frequency reuse. Such complicated system changes cannot be performed on a truncated timetable. Any assertion that 800 MHz system migrations will be less complicated than those in the 2 GHz proceeding is erroneous and must be discounted. The Commission must, at a minimum, preserve the total three year transition time frame.

III. CONCLUSION

11. Duke reminds the Commission that the public interest requires that essential safety-oriented internal telecommunications systems continue to serve the public without any interruptions. To that end, Duke supports the position expressed by several petitioners that no relocation of any incumbent 800 MHz private system operator from General Category channels should be required. Duke also believes that I/LT and Business pool spectrum should be reserved to meet the needs of internal-system licensees. Additionally, the Commission must act to ensure that the transition from current spectrum assignments is orderly and that basic public needs are not compromised. Accordingly, Duke supports the modification of the Commission's rules to stipulate prepayment of relocation costs by new EA licensees and to provide assurances that

replacement spectrum would come from the 800 MHz range. Duke strenuously opposes any attempts to shorten the Commission's three year transition plan.

WHEREFORE, THE PREMISES CONSIDERED, Duke Power Company respectfully requests that the Federal Communications Commission act upon the Petitions for Reconsideration filed in this proceeding in a manner fully consistent with the views expressed herein.

Respectfully submitted,

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Dated: April 29, 1996

CERTIFICATE OF SERVICE

I, Vanessa N. Duffy, hereby certify that on this 29th day of April, 1996, copies of the foregoing "Statement In Partial Support And Partial Opposition Of Duke Power Company" have been served by hand delivery or by first-class U.S. mail, postage pre-paid, upon the following:

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