Atlanta, Georgia and Birmingham, Alabama.[14] In addition to this major urban area competition, even Nextel recognizes the unique ability of the Southern system to serve rural areas. As noted in the trade press, Nextel's executive director of investor relations, Paul Blalock, has said: "There's plenty of room in the market for Southern. We think they are positioned a little differently, focused on a different part of the southeast. Nextel's emphasis is covering the southeast highway corridor; Southern's network covers expansive rural areas."[15] Almost all "commercial" wireless telecommunications systems focus on urban areas and roaming corridors (interstate highways). Due to its foundation in wide-area, utility service communications, Southern's system provides highly reliable, robust, and almost total urban and rural area coverage.

34. Southern's system offers an array of wireless services to businesses, including voice (mobile telephony), two-way dispatch, and text/numeric messaging and data communications. Southern is unique among wide area telecommunications providers in that it provides extensive rural coverage. Moreover, it covers virtually 100 percent of its 120,000 square mile utility service area throughout Georgia, Mississippi, Alabama and

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[14] In fact, the Department of Justice recently approved the required divestiture by Nextel of 42 800 MHz channels in Atlanta to a viable competitor, Southern, so that market concentration in Atlanta, Georgia would be decreased.

[15] "Utilities Firm Markets SMR to Businesses," Radio Communications Reports, February 12, 1996, p.1.

Florida.[16] Hence, its utility-based design features provide rural areas with a depth and quality of coverage traditionally reserved for urbanized areas.[17]

35. The wide-area coverage provided by Southern's system stands in contrast to the largely urban-based focus of wide-area SMR and broadband PCS systems. This is not meant as a criticism of wide-area SMR or PCS systems, but merely to point out that the Commission's construction requirements for wide-area SMR/PCS systems creates an incentive for licensees to provide service first to major urbanized areas before providing service to rural areas, if ever.[18] Broadband PCS licensees of the 30 MHz blocks must provide service to one-third of the population of their

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[16] Southern also covers a small area of Tennessee.

[17] Other wide area communications systems, such as those licensed to Nextel Communications, Inc., are "top 10 market" urban area systems. Rural areas are covered only where they lie between two major cities such as Los Angeles and San Francisco. On the other hand, Southern, with the need for wide-area coverage of its electrical distribution grid, provides equal grades of coverage to both rural and urban areas.

[18] For example, in many, if not all, Major Trading Areas, the two-thirds service requirement can be met simply by providing coverage to the two or three Basic Trading Areas surrounding each major urbanized area within the MTA. For MTAs in the southeastern U.S., this coverage often includes only <u>one</u> major urbanized area. Each Economic Area (EA) consists of one or more economic nodes (metropolitan areas) and the surrounding counties that are economically related to the nodes. Commuting patterns are the main factor used in determining the (EA) economic relationship among counties. <u>See</u> 60 <u>Fed. Reg.</u> 13,114 (March 10, 1995). While EAs are considerably smaller than MTAs (but larger than BTAs), the fact remains that EA coverage benchmarks can be achieved by serving Metropolitan Statistical Areas without covering rural areas.

geographic area within five years, and two-thirds after ten years. Broadband PCS licensees of the 10 MHz blocks need only serve one-quarter of the population of their Basic Trading Areas within five years of license grant.[19]

36. The wide-area SMR Service construction rules for 800 MHz and 900 MHz systems also have a predisposition that encourages licensees to construct their systems so as to serve the cores of urban areas long before rural areas are served, if ever. Economic Area (EA) licensees in the 800 MHz SMR service will only have to serve one-third of the population of the EA service area at the three-year point in their license term, and serve two-thirds at the five-year benchmark. For 900 MHz Major Trading Area SMR licenses, one-third of the MTA population must be covered at the three-year point in the license term, with two-thirds coverage required five years into the ten-year license term.[20]

VII. SOUTHERN'S SYSTEM COULD BE EMPLOYED BY FEDERAL AGENCIES THAT ARE UNDER THE 1993 BUDGET ACT MANDATE TO CONVERT TO COMMERCIAL OPERATIONS

37. The 1993 Budget Act requires the Federal Government to convert government radiocommunications operations to private

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[19] Broadband PCS construction requirements are set forth in 47 C.F.R. Section 24.203.

[20] For 800 MHz EA systems, see 47 C.F.R. Section 90.685(c), as published at 61 Fed. Reg. 6158 (February 16, 1996). For 900 MHz systems, see 47 C.F.R. Section 90.665(c) (1995).

sector ("commercial") providers to the maximum extent practicable.[21] This requirement derives from the 1993 Budget Act mandate that specific amounts of government spectrum be transferred, on a timetable, to the jurisdiction of the Federal Communications Commission for subsequent reallocation and assignment by the Commission. Southern's system provides a highly reliable, wide-area telecommunications service that could easily accommodate the needs of Federal agencies whose radiocommunications requirements are under pressure to be converted to commercial operations.

38. Recently, Senator Pressler introduced draft legislation that proposes to, among other things, hasten the reallocation of spectrum used for Federal Government radiocommunications operations to the private sector, to be regulated by the Federal Communications Commission.[22] Under the draft legislation, federal agencies would be encouraged to consolidate their radiocommunications operations, employing private sector (FCC-regulated) commercial providers to the maximum extent feasible.[23] Southern's system has the reliability and

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[21] Section 113(c)(B)(i) of Title VI of the 1993 Budget Act.

[22] "Spectrum Reform Discussion Draft, Electromagnetic Spectrum Management Policy Reform and Privatization Act, 104th Congress, Second Session, introduced by Senator Pressler, May 9, 1996.

[23] Section 6(b) of draft legislation amending Section 113 of the National Telecommunications and Information Administration Organization Act (47 U.S.C. § 901 et seq.)

coverage that would make it a good candidate for relocated or consolidated federal government operations.[24]

VIII. THE COMMISSION IS STATUTORILY REQUIRED TO IMPLEMENT REGULATORY SYMMETRY AMONG "SUBSTANTIALLY SIMILAR" CMRS PROVIDERS

A. Statutory Mandate

39. In passing the 1993 Budget Act amendments, Congress mandated regulatory parity in the Commercial Mobile Radio Service legislative scheme. Section 6002(d)(3) of the 1993 Budget Act requires the Commission to promulgate regulations applicable to CMRS entities that were previously private land mobile service providers. This section provides, in relevant part:

> [The Commission] shall make such other modifications or terminations as may be necessary and practical to assure that licensees in such service are subjected to the technical requirements that are comparable to the technical requirements that apply to licensees that are providers of substantially similar common carrier services[.]

1993 Budget Act, Title VI, § 6002(d)(3)(B). According to the legislative history, Congress intended "to provide that equivalent mobile services are regulated in the same manner."[25] It directs the Commission to review its rules and regulations to

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[24] See, "Southern Wins SEC Approval to Invest $179 million in Communications Unit," Electric Utility Week, January 9, 1995, p.12.

[25] See H.R. Rep. No. 111, 103rd Cong. 1st Sess. 253, (1993) at 259, reprinted in 1993 U.S.C.C.A.N. 572, 586.

achieve regulatory parity among services that are substantially similar.[26]

40. The legislative history further reveals that "the rules are intended to ensure that services that were formerly private land mobile services and become common carrier services as a result of this Act are subjected to technical requirements that are comparable to the technical requirements that apply to similar common carrier services."[27] Consistent with the congressional objective of regulatory parity, the legislative history states that Congress intended that the Commission refrain from granting "any right to a licensee [pursuant to auction] different from the rights awarded to licensees who obtained their license through assignment methods other than competitive bidding."[28]

B. Federal Communications Commission's Application Of The Statutory Mandate.

41. In the CMRS Third Report and Order, the Commission stated its intention to adopt rules for the CMRS marketplace that would: (1) facilitate technology; (2) provide better coverage to the public; and (3) promote competition thereby lowering costs to

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[26] Id.

[27] H.R. Conf. Rep. No. 103-213, 103d Cong., 1st Sess. 498 (1993) (hereinafter "House Conf. Rep.").

[28] See 47 U.S.C. § 309(j)(6)(D); House Conf. Rep. at 485.

consumers.[29] In defining the CMRS marketplace, the Commission concluded that all CMRS licensees-- including paging, SMR, PCS, and cellular-- are actual or potential competitors with one another, and therefore should be regarded as substantially similar for determining whether the statutory requirement for comparable technical rules applies.[30]

42. The Commission recognized that the congressional mandate to treat similarly situated CMRS providers equally derives from the Congressional goal "to ensure that economic forces--not disparate regulatory burdens--shape the development of the CMRS marketplace."[31] The Commission has stated that its goal in regulating the CMRS marketplace is to "minimize[] the potentially distorting effects of asymmetrical regulation."[32] "This in turn leads [the Commission] to conclude that, to the extent practical, technical and operational rules should be comparable for virtually all existing and reclassified CMRS services."[33] The Commission further stated that it intended to maximize flexibility "so that carriers have a real opportunity to

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[29] See CMRS Third R&O ¶ 1.

[30] First R&O and Order ¶ 42 (citing Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, Third Report and Order, 9 FCC Rcd 7988, 8009-8035 ¶¶ 37-77 (1994)).

[31] CMRS Third R&O at 7994 ¶ 4.

[32] Id. at 7996 ¶ 13.

[33] Id. at 7997 ¶ 14.

use their allocated spectrum in ways that adapt quickly to changing consumer demand." Id. 8011 at 41.

43. Over the years, the Commission has granted scores of waivers and extended implementation requests to SMR and other licensees proposing to construct wide area enhanced technology systems. See Fleet Call, Inc., 6 FCC Rcd. 1533 (1991); Powerspectrum, 8 FCC Rcd. 4452 (1993); Nextel Communications, Inc., 10 FCC Rcd. 3361 (1995). A primary reason the Commission originally authorized extended implementation authority was to encourage development of more competitive wide-area, digital SMR systems. Fleet Call, Inc., 6 FCC Rcd. at 1533. The Commission has previously stated that allowing SMR systems the opportunity to install advanced digital technology to establish wide-area systems is essential to maintaining competition in the CMRS marketplace.[34/] Prior Commission rules force SMR systems to compete with cellular systems on an uneven playing field because of discriminatory regulatory burdens and the excessive costs of providing service.[35/]

C. The Commission Justified The Rules Adopted In The First R&O By Pointing To The Statutory Mandate.

44. For the reasons stated above, throughout the First R&O, the Commission attempted to craft rules that would allow EA

[34/] CMRS Second R&O ¶ 143.

[35/] CMRS Second R&O ¶ 143; CMRS Third R&O pp. 85, 95 and 96.

auction winning licensees to compete on an equal basis with cellular and PCS providers. The Commission stated that the rules in the First R&O will "further the congressionally mandated goal of regulatory symmetry between 800 MHz SMR licensees and other competing providers of Commercial Mobile Radio Services (CMRS)."[36]

45. For example, the Commission determined that "a key element in any new licensing scheme for wide-area SMR systems is to afford licensees the same flexibility, to the extent feasible, as cellular and broadband PCS licensees in terms of location, design, construction, and modification of their facilities throughout their service areas."[37] For this reason, the Commission adopted construction requirements that allow an EA auction winner substantial flexibility in terms of system design. First, the Commission determined that EA licensees should have a five-year construction period.[38] Second, the Commission

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[36] First R&O ¶ 2. Even Nextel, the primary beneficiary of the rules promulgated in the First R&O, recognizes that regulatory parity is the key to effective competition in the CMRS marketplace. According to Nextel, "[t]he First R&O addresses Congress' mandate in the Omnibus Budget Reconciliation Act of 1993 ("Budget Act") that the Commission create regulatory parity for all Commercial Mobile Radio Services ("CMRS") providers in order to promote competition. It ensures that competitive advantages are determined in the telecommunications marketplace rather than by regulatory obstacles or benefits." Nextel Communications, Inc. Pet. for Partial Recon. and Clarification at 3 (March 18, 1996).

[37] First R&O ¶¶ 49-52.

[38] Id. ¶ 104.

determined that EA licensees need only provide coverage to one-third of the population of their respective EAs within three years of the initial license grant and to two-thirds by the end of their five-year construction period so long as the EA winner uses fifty percent of its discrete channels ("the interim coverage requirements").[39]

46. Similarly, in rejecting a spectrum aggregation limit for EA auction winners, the Commission stated that a spectrum aggregation limit for the 800 MHz SMR spectrum "could handicap these potential competitors to broadband PCS and cellular providers with equal or larger spectrum holdings."[40] Moreover, the Commission determined that the automatic recovery of spectrum by the EA auction winner will increase competition because "the CMRS market in general and not the 800 MHz SMR service in particular is the relevant market for assessing the competitive impact in this context."[41]

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[39] Id. ¶ 121.

[40] See First R&O ¶ 44.

[41] Id. ¶ 61.

IX. BECAUSE THE COMMISSION IS STATUTORILY COMPELLED TO TREAT SIMILARLY-SITUATED CMRS PROVIDERS EQUALLY, THE COMMISSION MUST APPLY THE EA CONSTRUCTION RULES TO SOUTHERN

A. Application of the Interim Coverage Requirements to Southern is Mandated By the 1993 Budget Act and the Commission's Implementation of the Act.

47. Because Southern is a CMRS provider operating in the 800 MHz spectrum band, and because the Commission determined that such CMRS providers effectively compete with PCS and cellular, there is no reasoned basis for denying Southern the same type of construction flexibility that applies to EA license winners, cellular and PCS providers. The Budget Act directs the Commission to review its rules and regulations to achieve regulatory parity among services that are "substantially similar." Indeed, the Commission rationalized many of the rules adopted in the First R&O in an effort to heed this command.[42] For this reason, the Commission cannot severely handicap Southern by imposing site-by-site, channel-by-channel construction requirements on Southern while allowing other CMRS competitors the flexibility inherent in the population coverage construction standard. Such action simply cannot be reconciled with the statutory mandate or prior rulings by the Commission.

48. For example, the Commission determined that "continuing to impose mobile loading requirements on some CMRS providers but not others contravenes the Congressional goal of regulatory

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[42] See Discussion infra VIII.C.

symmetry and could unfairly impair the ability of certain licensees to compete."[43] In light of the statutory mandate to achieve parity and all of the above-referenced policy and rule pronouncements, it would be contradictory and inequitable for the Commission to put only the EA winners in a position to compete with cellular and PCS.

49. More significantly, however, the import of the 1993 Budget Act parity command is no where more acute than when applied to CMRS providers within the same service. Southern will directly compete with the EA licensees for customers in the dispatch market. Because Congress, the Commission and the Department of Justice have indicated their concern with maximizing competition in every facet of the CMRS marketplace, it absolutely is irreconcilable for the Commission to fail to level the playing field so that Southern can operate under construction rules applicable to other CMRS licensees.[44]

50. The Commission has stated that the purpose of the EA auction is to provide the auction winning SMR with sufficient

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[43] CMRS Third R&O at 8081 ¶ 190.

[44] How the CMRS entity originally obtained its spectrum is irrelevant to the requirement of regulatory parity. Southern obtained its spectrum through the FCC licensing process. Cellular entities obtained their spectrum either by lottery or routine licensing. PCS, and future SMR EA providers obtain theirs through auction.

"contiguous spectrum" to compete in the CMRS market place.[45] The EA auction winner is not buying more favorable regulatory treatment, but instead is buying contiguous spectrum that is technically similar to cellular and PCS spectrum blocks. The Commission has also determined to apply to EA licensees construction requirements that are measured by the percentage of the population covered and the number of channels used.[46] These construction measures allow the EA auction winner sufficient flexibility in building and operating its system so that the EA auction winner can provide immediate competition to PCS and cellular, while not foregoing the opportunity to respond to future changes in demand for service in the CMRS marketplace. Because Southern already provides a service that directly competes with existing CMRS providers, there is no reasoned basis for failing to afford Southern the construction flexibility similar to that granted to the EA auction winner.[47] More importantly, however, such discriminatory action directly violates the 1993 Budget Act because it unjustifiably erects a

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[45] Indeed, this need for contiguous spectrum justified the Commission's decision to permit mandatory relocation of all incumbents out of the Upper 200 channels in the 800 MHz spectrum.

[46] See Discussion infra ¶ 44.

[47] Southern is already at a slight disadvantage in the CMRS marketplace because of its lack of contiguous spectrum.

regulatory barrier to competition in the CMRS marketplace for one participant.[48] This, the Commission cannot do.

B. Southern's Request is Unique Because the Relief That it Seeks Will Not Interfere With the Commission's Auction of the Upper 200 Channels In the 800 MHz Spectrum.

51. The clear majority of Southern's relatively few channels in the Upper 200 are already constructed. Therefore, Southern's request does not conflict with the Commission's wide-area licensing scheme for the Upper 200 channels in the 800 MHz spectrum band. The Commission's rationale for requiring the rejustification is based on its concern for EA license winners. Specifically, the Commission was concerned about unconstructed incumbents infringing on the rights of the EA license winner because of the prohibition on the transfer of unconstructed facilities.[49] For this reason, the Commission's concern over any adverse impact on potential EA license winners is not implicated by granting Southern construction parity.

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[48] Such action seems particularly egregious considering that the Commission has recognized that the CMRS marketplace is dominated by the "largest wireless companies." CMRS Third R&O at 239. As such, competing against such formidable companies is difficult enough without having to overcome substantial regulatory burdens.

[49] First R&O ¶ 110.

X. APPLICATION OF THE INTERIM COVERAGE REQUIREMENTS SHOULD BE APPLIED TO SOUTHERN ON A SYSTEM-WIDE BASIS

52. Parity requires application of the interim coverage requirements discussed above to Southern's 800 MHz SMR system. However, parity dictates that it not be on an EA-by-EA basis.[50] The EA construct was created in order to facilitate the auctioning of the Upper 200 channels in the 800 MHz spectrum. The determination to license on an EA basis largely was motivated by a desire to maximize the number of potential bidders at auction "because small and medium-sized operatives will have incentives to seek EA licenses in those markets where they are the largest incumbents."[51]

53. The EA construct was not developed with Southern's service territory in mind. Southern's service territory currently spans over four states, serving all or parts of 22 EAs. Because Southern's service territory does not mirror the EA geographic designation, it simply does not make sense to apply the EA construct to Southern's request. For this reason the geographic limitations of the EA construct should not apply to the construction relief which Southern is seeking. As such, Southern requests that the population and discrete channel

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[50] Notably, application of the interim coverage requirements to Southern's system is also consistent with past actions of the Commission. For example, in 1991, the primary reason the Commission made an exception to its construction requirements was to encourage development of a more competitive wide-area, digital SMR system. See Discussion infra ¶ 42.

[51] First R&O Discussion ¶ 23.

construction criteria as discussed above be applied to Southern on a system-wide basis. Therefore, since Southern has constructed over 50 percent of its discrete 800 MHz SMR channels and has covered over 90 percent of the population in its service territory, it has met and indeed exceeded the appropriate construction standards of a CMRS provider.

Respectfully submitted,

THE SOUTHERN COMPANY

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Its Attorneys

Dated: July 15, 1996

AFFIDAVIT

I, Paul J. DeNicola, Executive Vice President and Group Executive of The Southern Company, hereby certify that I have read the "Response to Request for Rejustification of Extended Implementation Authority of The Southern Company." I further certify that the factual statements contained in the aforementioned document are accurate and true.

Date: 7/15/96

Paul J. DeNicola
Executive Vice President and
Group Executive

The Southern Company

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

ORDER

Adopted: June 13, 1996 Released: June 13, 1996

By the Chief , Commercial Wireless Division:

1. We have received requests from The Southern Company ("Southern"), Entergy Services, Inc. ("Entergy"), and the American Mobile Telecommunications Association, Inc. ("AMTA")[1] for an extension of time for licensees who wish to file extended implementation

[1] AMTA has filed its motion on behalf of its membership and Nextel Communications, Inc., Pittencrieff Communications, Inc., DCL Associates, Atlantic Cellular Company, L.P., Centennial Telecommunications, Inc., D&L Communications, Inc., Davis Electronics, Inc., Hawaiian Wireless, Inc., Industrial Communications & Electronics, Inc., Palmer Communications, Inc., d/b/a Illowa Communications, Potomac Corporation d/b/a Crescent Communications, William R. Miller d/b/a Russ Miller Rental, New England Wireless Partners, Norcal Wireless, Radiophones, JV, Spectrum Resources, Inc., Spectrum Resources of the Midwest, Inc., Western Wireless, Mobex Idaho, Inc., and Mobex North Carolina, Inc.

rejustifications as required by the *800 MHz SMR Report and Order*.[2] Southern and Entergy request that the Commission extend the deadline for filing extended implementation rejustifications by thirty days, until July 17, 1996.[3] AMTA requests that the Commission extend the deadline for filing extended implementation rejustifications until July 15, 1996.[4] No opposition to these requests has been filed to date.

2. Southern, Entergy, and AMTA seek an extension based on the Public Notice, issued by the Wireless Telecommunications Bureau ("Bureau") on June 4, 1996, which outlined the information to be provided by 800 MHz SMR licensees seeking to retain extended implementation authority.[5] All three movants argue that prior to the release of the Public Notice, they were unaware of the scope of information required of them, and release of the Public Notice less than two weeks before the June 17, 1996, filing deadline leaves licensees with an insufficient amount of time in which to collect the requested information.[6] They further emphasize that collecting the information will require additional time due to the size and complexity of the rejustifying systems and the variety of licensing processes used to create these systems.[7]

3. In light of the concerns raised by Southern, Entergy, and AMTA we believe that the public interest would be served by granting an extension of time to enable licensees to compile the information requested by the *Rejustification Public Notice*.[8] Nevertheless, this extension of time to file will not affect the timing or duration of any extended implementation grant that may be granted by the Bureau. Thus, the six month minimum and two year maximum periods will continue to toll from the dates established in the *800 MHz SMR Report*

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[2] 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, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463, 1525, ¶ 111 (1995) ("*800 MHz SMR Report and Order*"); *see also* 47 CFR § 90.629(e).

[3] Southern Motion at 1 (filed June 6, 1996); Entergy Motion at 1 (filed June 6, 1996).

[4] AMTA Motion at (filed June 10, 1996).

[5] *See* Recommended Filing Format for 800 MHz SMR Licensees Rejustifying Need for Extended Implementation Authority, DA 96-894, (June 4, 1996) ("*Rejustification Public Notice*").

[6] AMTA Motion at 3-4; Entergy Motion at 5; Southern Motion at 4.

[7] AMTA Motion at 3; Entergy Motion at 5.

[8] We do not believe that Public Notice asked for any information not contemplated in the *800 MHz SMR Report and Order* or Section 90.629(e) of the Commission's rules.

and Order.[9] With the above-mentioned conditions, we believe that an extension for filing extended implementation rejustifications is appropriate.

4. Accordingly, IT IS HEREBY ORDERED that the Motions of Extension of Time filed by The Southern Company, Entergy Services, Inc., and the American Mobile Telecommunications Association are hereby GRANTED to the extent stated herein.

5. IT IS FURTHER ORDERED, pursuant to Section 1.46 of the Commission's Rules, 47 C.F.R. § 1.46, that the deadline for filing extended implementation rejustifications in this proceeding is extended from June 17, 1996 to July 15, 1996.

FEDERAL COMMUNICATIONS COMMISSION

David L. Furth
Chief, Commercial Wireless Division
Wireless Telecommunications Bureau

[9] *800 MHz SMR Report and Order*, 11 FCC Rcd at 1525-26, ¶¶ 112-13; *see also* 47 CFR § 90.629(e).

PUBLIC NOTICE

FEDERAL COMMUNICATIONS COMMISSION
1919 M STREET, N.W.
WASHINGTON, D.C. 20554 DA 96-894

News Media Information (202) 418-0500. Recorded listing of releases and texts (202) 418-2222.

June 4, 1996

RECOMMENDED FILING FORMAT FOR 800 MHz SMR LICENSEES REJUSTIFYING NEED FOR EXTENDED IMPLEMENTATION AUTHORITY

Due on or before June 17, 1996.

In the *800 MHz SMR Report and Order*, the Commission required incumbent 800 MHz SMR licensees with extended implementation authority to demonstrate that such extended time to construct their facilities is warranted and furthers the public interest.[1] Such showings are due on or before June 17, 1996.[2] The requirements are as follows:

> a licensee seeking to retain extended implementation authority must: (a) indicate the duration of its extended implementation period (including commencement and termination date); (b) provide a copy of its implementation plan, as originally submitted and approved by the Commission, and any Commission-approved modifications thereto; (c) demonstrate its compliance with Section 90.629 of our rules if authority was granted pursuant to that provision, including confirmation that it has filed annual certifications regarding fulfillment of its implementation plan; and (d) certify that all facilities covered by the extended implementation authority proposed to be constructed as of the adoption date of this *First Report and Order* are fully constructed and that service to subscribers has commenced as defined in the *CMRS Third Report and Order*.[3]

The Wireless Telecommunications Bureau has received numerous inquiries regarding the content and

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[1] 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, *First Report and Order, Eighth Report and Order, and Second Further Notice of Proposed Rule Making*, 11 FCC Rcd 1463, 1525, ¶ 111 (1995) ("*800 MHz SMR Report and Order*"); *see also* 47 CFR § 90.629(e).

[2] The *800 MHz Report and Order* appeared in the Federal Register on February 16, 1996. 61 Fed. Reg. 6138. The rule changes became effective thirty days later on March 18, 1996. Showings are due 90 days after the effective date of the rules, which is June 17, 1996. *See* 47 C.F.R. § 90.629(e); *see* also 47 C.F.R. 1.4(j).

[3] *800 MHz SMR Report and Order*, 11 FCC Rcd at 1525, ¶ 111 (citation omitted); *see also* Implementation of Sections 3(n) and 332 of the Communications Act, Regulatory Treatment of Mobile Services, GN Docket No. 93-252, *Third Report and Order*, 9 FCC Rcd 7988, 8075-76, ¶ 178 (1994) ("*CMRS Third Report and Order*").

format of the extended implementation showings required by the *800 MHz SMR Report and Order*.[4] By this Public Notice, we recommend that licensees submit their showings in letter or pleading form, with additional information provided in exhibits as described below.

We also clarify that licensees whose applications were granted in the October 31, 1995 Public Notice announcing the processing of the 800 MHz backlog,[5] and who had extended implementation requests associated with such applications, may treat such requests as granted for purposes of the rejustification filing requirement. Thus, any licensee who requested extended implementation in connection with a license grant listed in the October 31, 1995 Public Notice must file an extended implementation showing under these procedures in order to justify retaining extended implementation authority for two years pursuant to the terms of the *800 MHz SMR Report and Order*.

In their submissions, licensees should include a general overview of the original extended implementation request or waiver filing. Such a description should include the geographic area covered by the system, the number of channels in the system, the number of base stations in the system, and the date extended implementation authority will expire. Licensees may also wish to include information regarding the type of technology being used, the type of services being provided, the number of subscribers currently on the system, the size of the market covered by the licensee's system, etc. The submission also should include: (1) a description of the development plan for the build-out of the system; and (2) a description of what portion of the system has been constructed and what remains to be constructed. Finally, the licensee should state whether the full construction period or two years is required.[6] If the licensee states that it needs its full construction period or two years, the licensee should provide justification for such a request.

In support of each licensee's submission the Bureau recommends attaching the following information in exhibit form.

Exhibit A. Licensees should provide the following breakdown of licensing and construction information for each system or systems that have received extended implementation grants:

- The call signs of the stations that are part of the licensee's extended implementation authority. Include only primary sites in these showings, not any secondary sites that have been authorized.

- The discrete frequency (or frequencies) of the channel(s) authorized.

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[4] *See 800 MHz SMR Report and Order*, 11 FCC Rcd at 1525, ¶ 111.

[5] *See* Wireless Bureau Vacates and Supersedes Grants to SMRs Announced by March 17, 1995 Public Notice, *Public Notice*, No. 52823, (October 31, 1995).

[6] The *800 MHz SMR Report and Order* limits the construction period of licensees with extended implementation authority to two years or the remainder of its current extended implementation period, whichever is shorter. *See 800 MHz SMR Report and Order*, 11 FCC Rcd at 1525-26, ¶ 112.

- The date the original license was granted.

- The latitude and longitude coordinates of each base station in decimal degrees (not degrees, minutes, seconds).

- The city and state where the base site is located.

- When the facility was constructed and service to subscribers commenced.[7] If the facility is not constructed or service to subscribers has not commenced,[8] list the deadline for completing construction and commencing service to subscribers.[9]

- The total number of channels authorized for this particular call sign.

- For each call sign, the total number of constructed channels.

- For each call sign, the total number of unconstructed channels.

We recommend that licensees provide this information on computer disk as well as in hard copy. Licensees providing information on disc should use ASCII text format, delimiting each data field with a "/" delimiter, on a 3.5 inch diskette. All date fields should be provided in "MONTHMONTHDAYDAYYEARYEAR (MMDDYY) format.[10] This exhibit should also be provided in hard copy. List the following information in tabular form similar to Attachment B.[11]

Exhibit B. Licensees should submit date-stamped copies of (1) extended implementation requests and (2) modifications, that were accepted by the Commission. Licensees should also submit copies of any approvals of (1) extended implementation requests and (2) modifications.

Exhibit C. Licensees with extended implementation authority pursuant to Section 90.629 of the Commission's rules must also demonstrate their compliance with Section 90.629 of the Commissions's rules.[12] This documentation would include the following:

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[7] *See CMRS Third Report and Order*, 9 FCC Rcd at 8075-76, ¶ 178.

[8] *CMRS Third Report and Order*, 9 FCC Rcd at 8075-76, ¶ 178.

[9] When possible, licensees should submit copies of equipment orders, with delivery dates, for those licenses which have not yet been constructed.

[10] An example of this file is attached in Attachment A.

[11] See Attachment B for an example of the format.

[12] *See* 47 C.F.R. § 90.629.

• Copies of the annual certifications required by Section 90.629(c) of the Commission's rules.

• Originally-signed certification that the annual certifications were submitted to the Commission in a timely fashion.

• If the licensee requested an amendment to its "commitments," a copy of the amendment and a copy of the Commission's approval.[13]

These requests must be submitted on or before June 17, 1996, to the Wireless Telecommunications Bureau's Licensing Division in Gettysburg at the following address:

Federal Communications Commission
1270 Fairfield Road
Gettysburg, PA 17326
Attn: EXTENDED IMPLEMENTATION REJUSTIFICATIONS

For further information contact the Land Mobile Branch Technical Section at (717) 338-2604 (technical questions) or David C. Kirschner, Commercial Wireless Division, Wireless Telecommunications Bureau at (202) 418-0620 (legal questions).

[13] *See* 47 C.F.R. § 90.629(c).

ATTACHMENT A

The attached diskette files must be in an ASCII text delimited file, and for this example they would look as follows:								
/WNEW333/861.0125/031192/32.3322/88.2322/Anyplace,NJ/081094/6/3/3/								
/WNEW333/863.7125/031192/32.3322/88.2322/Anyplace,NJ/070894////								
/WNEW333/863.7375/031192/32.3322/88.2322/Anyplace,NJ/070894////								
/WNEW333/863.7625/031192/32.3322/88.2322/Anyplace,NJ/110196////								
/WNEW333/863.7875/031192/32.3322/88.2322/Anyplace,NJ/120596////								
/WNEW333/863.8125/031192/32.3322/88.2322/Anyplace,NJ/120596////								