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November 26, 1996

The Honorable Reed E. Hundt  
Chairman, Federal Communications Commission  
1919 M Street, N.W.  
Room 814  
Washington, D.C. 20054

Via Messenger

The Honorable James H. Quello  
Commissioner, Federal Communications Commission  
1919 M Street, N.W.  
Room 802  
Washington, D.C. 20054

The Honorable Rachelle B. Chong  
Commissioner, Federal Communications Commission  
1919 M Street, N.W.  
Room 844  
Washington, D.C. 20054

The Honorable Susan Ness  
Commissioner, Federal Communications Commission  
1919 M Street, N.W.  
Room 832  
Washington, D.C. 20054

RE: 220-222 MHz SMR Phase II Licensing  
PR Docket No. 89-552  
GN Docket No. 93-252  
PP Docket No. 93-253

Ex Parte Submission of Roamer One, Inc.

Dear Chairman Hundt and Commissioners Quello, Chong, and Ness:

This letter is being written on behalf of Roamer One, Inc. ("Roamer") with respect to the Commission's proposal to hold Phase II auctions for licenses in the 220-222 MHz band. See generally 220-222 MHz Phase II Licensing, 11 FCC Rcd 188 (1996) (PR Dkt. No. 89-522) (Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking) ("Third NPRM").

As Roamer describes, the public interest will be served if the Commission were to adopt auction procedures which permit bidders to state their intention to use any Phase II 220-222 MHz licenses acquired by competitive bidding for either Commercial Mobile Radio Service ("CMRS") or a Private Mobile Radio Service

("PMRS") purposes. Such procedures would permit Roamer to bid for 220-222 MHz licenses without risking challenges to its winning bids and the potential liability for forfeitures based on the current and anticipated future level of alien ownership.

To the best of Roamer's knowledge, this issue was not explicitly raised in the Third NPRM or its comments, perhaps because interconnected 220-222 MHz licenses were grandfathered as PMRS when the Third NPRM was released in 1995. However, issues regarding 220-222 MHz auction procedures unquestionably are within the scope of the proceeding, and the Commission may act upon Roamer's proposal at this time.

**Description of Roamer.** Roamer is a wholly owned subsidiary of Intek Diversified Corporation ("Intek"), a publicly traded Delaware corporation listed on NASDAQ. Founded and staffed by experienced communications personnel, Roamer's sole business function is to construct and manage 220 MHz SMR systems across the country. Roamer has participated actively in the Commission's CMRS, Competitive Bidding, and 220-222 MHz rulemakings.

Roamer's current business operations serve the public interest by actively developing the 220 MHz spectrum. Roamer placed its first 220 MHz SMR system in operation during February 1994, almost three years ago. At present, Roamer is now operating approximately one-hundred-eighty-nine (189) 220 MHz SMR systems for those licensees, and has acquired RF equipment or begun installation for approximately fifty (50) more systems. Thus, Roamer and its managed licensees have made substantial investments based upon the existing 220 MHz authorizations.

Based on its evaluation of the SMR marketplace, Roamer operates the systems that it manages exclusively for dispatch purposes, i.e., without telephone interconnection. Thus, although a few of its managed licenses have interconnection authority, Roamer's 220-222 MHz systems operate consistently with a PMRS classification.<sup>1/</sup>

Roamer's parent company Intek currently has approximately thirty-four percent foreign ownership, almost exclusively Canadian. However, Intek has entered into a definitive agreement with

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<sup>1/</sup> See Public Notice, "Information for Part 90 Licensees Subject to Reclassification as Commercial Mobile Radio Service Providers on August 10, 1996 -- Wireless Bureau Answers Frequently Asked Questions Regarding CMRS Status", 11 FCC Rcd \_\_\_\_\_ (DA 96-1245, August 6, 1996) (220 MHz licensee classified as CMRS only if station authorized for interconnection) ("CMRS Notice").

Securicor Communications, a United Kingdom company ("Securicor") to acquire its wholly owned subsidiary Securicor Radiocoms, Ltd. Pending shareholder and regulatory approval, Securicor will have approximately sixty-seven percent ownership in Intek as a result of the transaction. As a result, Roamer would have approximately seventy-nine percent indirect foreign ownership, primarily from the United Kingdom.

After the merger, Roamer and affiliates will have demonstrated expertise in all aspects of 220-222 MHz systems. Intek's subsidiary Midland U.S.A. has an extensive dealer distribution network for two-way equipment throughout the country. Securicor Radiocoms has developed and is manufacturing and selling narrow-band 220-222 MHz radio systems. Thus, the combined companies now manufacture, distribute, and operate 220-222 MHz systems, and their participation in the 220-222 MHz auctions is a logical next step in their business development.

**Statutory Background.** The Omnibus Budget Reconciliation Act of 1993 (the "Budget Act") required the Commission to classify all wireless licenses as either CMRS or PMRS. As adopted by the Budget Act, Section 332(d)(1) of the Communications Act defined CMRS as "any mobile service ... that is provided for profit and makes interconnected service available (A) to the public or (B) to such classes of eligible users as to be effectively available to a substantial portion of the public...." Similarly, Section 332(d)(3) defined PMRS as "any mobile service ... that is not [CMRS] or the functional equivalent of [CMRS]."

The Budget Act also adopted Section 309(j) of the Communications Act, which authorizes the Commission to use competitive bidding to select between mutually exclusive applications. Section 309(j)(2)(A) limits the use of competitive bidding to authorizations in which "the principal use of such spectrum will involve, or is reasonably likely to involve, the licensee receiving compensation from subscribers...."

Finally, Section 310(b)(4) of the Communications Act prohibits "any corporation directly or indirectly controlled by any other corporation of which more than one-fourth of the capital stock is owned of record or voted by [aliens] if the Commission finds that the public interest will be served by the refusal or revocation of such license" from holding a CMRS authorization.<sup>2/</sup>

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<sup>2/</sup> See Section 332(c)(6) of the Communications Act (private land mobile licensee reclassified as CMRS subject to Section 310(b); Regulatory Treatment of Mobile Services, 9 FCC Rcd 1056 (1994) (GN Dkt.No. 93-252).

November 26, 1996

Page 4

**Description of the Problem.** Roamer desires to be an eligible bidder in the anticipated 220-222 MHz (Phase II) auction. As noted above, Roamer's current and anticipated level of foreign ownership requires explicit Commission approval before it can hold any CMRS authorizations. There might not be sufficient time before the 220-222 MHz auction for Roamer to obtain such approval, and it is problematical whether the Commission would pre-approve Roamer's eligibility for the auction.

However, Roamer manages 220-222 MHz systems for others on a non-interconnected, PMRS basis. Roamer would be prepared to participate in the 220-222 MHz auction to obtain PMRS licenses. As a PMRS licensee, Roamer would not be subject to Section 310(b). Accordingly, Roamer hereby requests that the Commission adopt procedures which would permit Roamer and others desiring PMRS 220-222 MHz licenses to participate in the auction.

**Roamer's Proposal.** Roamer hereby requests that, as part of its 220 MHz auction decision, the Commission adopt procedures which permit bidders to state their intention to use any Phase II 220-222 MHz licenses acquired by competitive bidding for either CMRS or PMRS purposes. The following text would be sufficient:

*In accord with our treatment of PCS bidders, we will presume that all 220-222 MHz bidders qualify, or will qualify, as CMRS providers. Bidders who seek to bid on a PMRS basis must include an exhibit with their FCC Form 175, describing the basis of this qualification. Bidders can qualify for PMRS by stating that they do not propose to interconnect their licensed facilities with the public switched network.*

*We will not consider challenges during the auction to the classification of bidders as CMRS or PMRS based on their future use of any licensed facilities acquired by competitive bidding. Winning PMRS bidders will be prohibited from requesting interconnection as part of their initial licenses, although all winning bidders may subsequently modify their licenses to add or eliminate the right to interconnect with the public switched network. We expect that all licensees will interconnect their systems with the public switched network only when authorized to do so. In appropriate situations, we will consider post-licensing allegations that licensees are not in compliance with their license requirements, or that licensees should be reclassified from PMRS to CMRS based on the actual operation of their systems.*

If adopted, this suggested text would permit Roamer and others desiring PMRS classification to bid for Phase II 220-222 MHz licenses without concern that they would be subject to post-auction challenges based on that classification. This text is fully consistent with established Commission practices, and would serve the public interest by making more qualified bidders eligible for the 220-222 MHz auctions.

Roamer has discussed its proposal briefly with some Commission personnel. The next sections of this letter address specific questions which Roamer was asked to consider:

**1. Does the Commission permit mixed CMRS and PMRS services in the 220-222 MHz band?**

Yes. The 220-222 MHz band is one of the Part 90 frequency bands in which licensees may be either in the CMRS or the PMRS. In the case of Specialized Mobile Radio ("SMR") operations, the CMRS/PMRS classification turns on whether that station is authorized for interconnection with the public switched network.<sup>3/</sup>

**2. Can the Commission auction 220-222 MHz PMRS licenses?**

Yes. The Commission has been careful in both the Auction and Regulatory Treatment rulemakings to draw a distinction between the CMRS/PMRS classification for Section 332 purposes and the eligibility for competitive bidding under Section 309(j):

[t]he distinction between "private mobile service" and "Commercial Mobile Service" in [amended] Section 332 turns on several criteria that are not relevant to Section 309(j), e.g., whether the service is interconnected to the public switched network and provided to a substantial portion of the public... . Thus, it appears that a service could be classified as a private mobile service for purposes of Section 332 but not be deemed "private" for purposes of Section 309(j).<sup>4/</sup>

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<sup>3/</sup> Regulatory Treatment of Mobile Services, 9 FCC Rcd 2863, 2864 (1994) (GN Dkt. No. 93-252) (Further Notice of Proposed Rule Making) (220-222 MHz licensees are not required to be classified as CMRS; classification depends on satisfaction of statutory standards); CMRS Public Notice, *supra* (CMRS/PMRS classification depends on interconnection).

<sup>4/</sup> Regulatory Treatment of Mobile Services, 9 FCC 1411, 1429 n.74 (1994) (GN Dkt. No. 93-252), quoting Competitive Bidding, 8 FCC Rcd 7635, 7639-40 (1993) (PP Dkt. No. 93-253).

In other words, a commercial 220-222 MHz SMR system (which qualifies for competitive bidding as providing services for compensation) could nevertheless be classified as PMRS under Section 332 if it were not interconnected with the public switched network.

**3. Should the Commission draw any distinctions between CMRS and PMRS 220-222 MHz licenses awarded by competitive bidding?**

No. Roamer is not seeking any special treatment in the 220-222 MHz auction by virtue of its classification as PMRS. CMRS and PMRS bidders will be bidding against each other for the same authorizations, and should be subject to the same auction rules and procedures. The only distinction is that winning PMRS bidders would be prohibited from requesting interconnected operations on their initial long-form applications (FCC Form 600).<sup>5/</sup>

**4. How does Roamer's proposal serve the public interest?**

The public interest would be served if the widest range of potential bidders were eligible for the 220-222 MHz auction, and if they could use their licenses for a broad range of permissible services. Although Roamer believes that the existing Commission precedent (quoted herein) likely permits it to participate in the 220-222 MHz auctions on a PMRS basis, the absence of a Commission ruling on this matter would make it subject to post-auction challenges if it were to be a winning bidder.<sup>6/</sup>

Further, if Roamer's PMRS status in the auction were successfully challenged, Roamer could well be subject to substantial forfeitures for bid withdrawals, loss of up-front payments, or license revocations caused by its disqualification. In the absence of advance Commission rulings on PMRS bidding procedures,

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<sup>5/</sup> Assuming that a winning PMRS licensee were in compliance with the Commission's CMRS requirements, the licensee should be permitted to modify its license (following the grant of its initial license) to permit interconnection.

<sup>6/</sup> To be sure, Roamer could seek either a Declaratory Ruling regarding its compliance with Section 310(b) or a waiver of the auction rules to participate in the 220-222 MHz auctions with its foreign ownership structure. However, neither of those procedures appears fast enough that Roamer could have a pre-auction ruling approving its participation in the 220-222 MHz auction. Adoption of procedures to permit Roamer to participate in the auction on a PMRS basis eliminates the need for any such rulings.

November 26, 1996  
Page 7

those substantial risks can only inhibit Roamer's participation in the auction.

Finally, Roamer's proposal does not affect the Commission's ability to regulate its licensee's conduct. The Commission would be unfettered to challenge false statements in auction filings, improper conduct during the auction, or defective post-auction applications. Similarly, any PMRS licensee with unauthorized interconnections to the public switched network, or whose PMRS operations were deemed to be the functional equivalent of CMRS, would be subject to the Commission's normal regulatory powers. However, by eliminating post-auction challenges to PMRS status, the Commission could potentially accelerate its processing of 220-222 MHz auction winning applications.

Accordingly, Roamer respectfully requests that the Commission adopt procedures which permit bidders to state their intention to use any Phase II 220-222 MHz licenses acquired by competitive bidding for PMRS purposes.

Respectfully submitted,



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WJF/mtf

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