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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554

In the Matter of	)	
	)	
Amendment of Part 90 of the Commission's	)	
Rules To Provide for the Use of the	)	PR Docket No. 89-552
220-222 MHz Band by the Private Land	)	RM-8506
Mobile Radio Service	)	
Implementation of Sections 3(n) and 332	)	
of the Communications Act	)	GN Docket No. 93-252
	)	
Regulatory Treatment of Mobile Services	)	
Implementation of Section 309(j) of the	)	
Communications Act -- Competitive	)	PP Docket No. 93-253
Bidding	)	

**COMMENTS OF INTEK DIVERSIFIED CORP.  
ON THE FIFTH NOTICE OF PROPOSED RULEMAKING**

INTEK Diversified Corp. ("INTEK"), by its attorneys, respectfully submits the following comments on the *Fifth Notice of Proposed Rulemaking* ("*Fifth NPRM*") in the above captioned dockets.<sup>1</sup> INTEK is the parent company of Securicor Radiocom Ltd., a leading equipment manufacturer in the 220-22 MHz band, and Roamer One, a leading service provider in the 220-222 MHz band.

In the *Fifth NPRM*, the Commission seeks comment on whether to permit geographic partitioning and spectrum disaggregation of Phase I and Phase II licenses in the 220 MHz band. In general, INTEK supports full flexibility for all licensees in the band. The Commission should

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<sup>1</sup> *Amendment of Part 90 of the Commission's Rules To Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket No. 89-552, *Third Report and Order; Fifth Notice of Proposed Rulemaking*, FCC 97-57 (released March 12, 1997).

provide such flexibility by permitting any licensee, including Phase I non-nationwide licensees, to disaggregate and partition its authorization. As long as licensees are provided adequate interference protection within their service contours, full flexibility will enhance the potential for a greater number of entrants and more innovative service offerings in the band.

In several recent decisions in ongoing docket proceedings, the Commission has moved to open up wireless services generally to geographic partitioning and spectrum disaggregation.<sup>2</sup> The Commission has taken these actions for good reason, recognizing that both partitioning and disaggregation:

provide ... licensees with desirable flexibility to determine the amount of spectrum they will occupy and the geographic area they will serve. We believe that such flexibility will (1) facilitate the efficient use of spectrum by providing licensees with the flexibility to make offerings directly responsive to market demands for particular types of service; (2) increase competition by allowing market entry by new entrants; and (3) expedite the provision of service to areas that otherwise may not receive ... service in the near term.<sup>3</sup>

These benefits will accrue to the 220 MHz band as well, but can only be fully realized by extending disaggregation and partitioning authority to all Phase I and Phase II licensees. Among other things, allowing 220 MHz licensees to partition their service area or disaggregate their authorization will create opportunities for new entrants to come into the band at significantly less cost than obtaining a license at auction. This approach increases opportunities for small businesses, in particular, to enter the market without facing burdensome capitalization costs. It also allows

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<sup>2</sup> See *id.* at notes 555-562.

<sup>3</sup> *Geographic Partitioning and Spectrum Disaggregation by Commercial Mobile Radio Services Licensees*, WT Docket No. 96-148, *Report and Order and Further Notice of Proposed Rulemaking*, FCC 96-474, ¶ 1 (released Dec. 20, 1996).

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Phase I incumbents to expand their systems by obtaining additional channels or enlarging their service area post auction.

In addition, permitting all 220 MHz licensees to partition and disaggregate their authorizations will increase consumer choice in the band by expanding the amount and type of services offered. For example, partitioned service areas provide opportunities for new entrants to offer niche or innovative new services. Alternatively, new entrants may provide services similar to the existing licensee, increasing competition overall. Moreover, full flexibility allows both Phase I and Phase II licensees to adapt and respond quickly to market conditions. Finally, the ability to partition and disaggregate can expedite build-out of Phase I and Phase II systems, reducing the amount of spectrum "lying fallow" at any given time.

The Commission has tentatively concluded that non-nationwide Phase I licensees should not be allowed to partition their service areas because such licenses were awarded on a site specific basis.<sup>4</sup> Geographic specificity should not prevent partitioning of Phase I non-nationwide licenses. Instead, partitioning of these licensees' service areas should be permitted as long as a partitioned user stays within the protected service contour of the license. To enforce these limits, the Commission could require that any partitioned user submit an engineering study demonstrating such compliance. Such a requirement would ensure that partitioning would not affect or interfere with other co-channel licensees.

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<sup>4</sup> *Fifth NPRM* at ¶ 322.

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In the *Third Report and Order*, the Commission adopts a similar requirement to ensure that Phase II licensees do not interfere with the co-channel operations of incumbent Phase I licensees. For example, a Phase II licensee may "short space" a co-channel Phase I licensee (*i.e.*, locate a base station with less than 120 km separation) by demonstrating through an engineering study that it provides 10 db of protection to the co-channel Phase I licensee's 38 dbuV/m service contour. A similar requirement on partitioned users could protect any incumbent co-channel licensee in the area. Thus, the Commission should extend the flexibility of spectrum partitioning and disaggregation to all 220 MHz licensees to maximize the benefits of such flexibility in the 220 MHz marketplace.

### CONCLUSION

In the *Third 220 MHz NPRM*,<sup>5</sup> the Commission stated that:

Our primary goal in this proceeding is to establish a flexible regulatory framework that will ... eliminate unnecessary regulatory burdens on both existing and future licensees, and enhance the competitive potential of the 220 MHz service in the mobile services marketplace.<sup>6</sup>

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<sup>5</sup> *Amendment of Part 90 of the Commission's Rules to Provide for the Use of the 220-222 MHz Band by the Private Land Mobile Radio Service*, PR Docket 89-552, *Second Memorandum Opinion and Order and Third Notice of Proposed Rulemaking*, 11 FCC Rcd 188 (released Aug. 28, 1995) ("*Third 220 MHz NPRM*").

<sup>6</sup> *Id.* at 193.

The Commission can make significant strides toward achieving this goal by allowing full flexibility for all 220 MHz licensees to disaggregate their license and partition their service areas as they see fit.

Respectfully submitted,

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