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

FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF SECRETARY

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In the Matter of

Amendment of Part 90 of the	)	
Commission's Rules to Provide	)	
for the Use of the 220-222 MHz Band	)	PR Docket No. 89-552
by the Private Land Mobile	)	RM-8506
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, 220-222 MHz	)	

To: The Commission

**COMMENTS OF METRICOM, INC. IN  
RESPONSE TO  
PETITIONS FOR RECONSIDERATION**

Metricom, Inc. ("Metricom"), pursuant to Section 1.429(f) of the Commission's Rules, by its attorneys, hereby submits these Comments in Response to the Petitions for Reconsideration of the Commission's Third Report and Order ("Order") issued in the above-captioned proceeding.<sup>1/</sup> In particular, Metricom supports the proposals by ComTech Communications, Inc. ("ComTech"), Global Cellular Communications, Inc. ("Global"), and Rush Network Corp. ("Rush") to modify the Commission's rules to specify that Phase I nationwide licensees need not secure site specific authorizations and reasserts the need for the Commission to modify the

<sup>1/</sup> Public Notice of the filing of the Petitions appeared at 62 Fed. Reg. 27603 (May 20, 1997).

construction benchmarks applicable to Phase I nationwide licensees.<sup>2/</sup> Metricom also supports the request by Glenayre Technologies, Inc. ("Glenayre") for reconsideration of the 500 watt ERP limit imposed on nationwide licensees' base station frequencies.<sup>3/</sup> However, Metricom opposes Glenayre's request for reconsideration of the spectrum efficiency standard adopted in the Order.<sup>4/</sup> Metricom also opposes the request by INTEK Diversified Corp. ("INTEK") that the Commission place requests for waiver of the spectrum efficiency standard on public notice for comment by interested parties.<sup>5/</sup>

#### **I. STATEMENT OF INTEREST**

1. Metricom is a young, rapidly growing, technologically innovative company based in Silicon Valley. Metricom has been a pioneer in the development of state-of-the-art data communications systems, and it has invested significant sums of money, time and energy to successfully develop, manufacture and market its sophisticated, cost-effective systems.

2. In February, 1996, Metricom purchased an option to acquire Overall Wireless Communications Corporation ("Overall"), licensee of a five channel, nationwide 220 MHz license (WPCU 518).

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<sup>2/</sup> See Petition for Reconsideration of ComTech, p. 11; Petition for Reconsideration of Global, pp. 3-5; and Petition for Reconsideration of Rush, pp. 2-3.

<sup>3/</sup> Petition for Reconsideration of Glenayre, pp. 2-3.

<sup>4/</sup> See Petition for Reconsideration of Glenayre, p. 6.

<sup>5/</sup> See Petition for Reconsideration of INTEK, p. 8.

Metricom anticipates that it will exercise its option when Overall completes forty percent (40%) construction of the 220 MHz system. In accordance with the existing construction benchmarks of Section 90.725 of the Commission's Rules, this construction must be completed by July 29, 1997.<sup>6/</sup>

3. Metricom is interested in employing 220 MHz frequencies to provide non-voice, innovative, leading edge technology services to the public, in accordance with the Commission's stated purpose for this proceeding. Unfortunately, no 220 MHz equipment is available which can provide the types of services both the Commission and Metricom envision. Accordingly, Metricom actively participated in this rule making proceeding, filing Comments, Reply Comments and a Petition for Reconsideration seeking to encourage the Commission to allow maximum flexibility, and minimal regulation, so that technological advances would be fostered in the nascent 220 MHz band.

**II. THE COMMISSION SHOULD MODIFY THE CONSTRUCTION BENCHMARKS FOR PHASE I NATIONWIDE LICENSEES.**

4. Several petitioners, including ComTech and Global, sought clarification that Section 90.769 of the Commission's Rules, which establishes construction benchmarks for Phase II nationwide licensees, does not apply to Phase I nationwide licensees.<sup>7/</sup> ComTech requested this clarification because its business plan is

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<sup>6/</sup> If and when Metricom exercises its option, all of the installed equipment will have to be replaced as it is only capable of providing two-way voice service.

<sup>7/</sup> Comments of ComTech, pp. 11-12; Comments of Global, p. 9.

premised on the construction of facilities on a market-by-market approach rather than on specified geographic or population coverage.<sup>8/</sup> Metricom does not disagree with this request, but recommends that the Commission modify the construction benchmark time periods applicable to Phase I nationwide licensees to account for the new equipment necessary to provide the new services that have been authorized for the 220 MHz band.

5. The Commission recognized the need of Phase II nationwide licensees for sufficient time to develop and install newly designed equipment capable of providing the new and innovative services the Commission envisioned in the 220 MHz band. Phase II nationwide licensees were given five years to meet their first construction benchmark. The construction benchmarks for Phase I nationwide licensees, however, have remained unchanged despite the fact that some licensees are facing imminent construction benchmarks which can only be met by installing equipment which cannot provide new services and which is, in the case of a potential licensee like Metricom, useless. Accordingly, the equipment that Phase I nationwide licensees use to meet the rapidly approaching construction benchmark will need to be replaced as soon as new equipment is available in order for the licensees to be competitive and provide the innovative new services envisioned by the Commission.

6. Establishing different construction benchmarks for Phase I and Phase II nationwide licensees is contrary to Congress'

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<sup>8/</sup> Comments of ComTech, p. 12.

mandate in the Omnibus Reconciliation Act that the Commission treat similarly situated communications entities similarly.<sup>9/</sup> The Commission itself has stated that "services should be considered substantially similar if they compete or have the reasonable potential, broadly defined, to compete in meeting the needs and demands of consumers."<sup>10/</sup> Phase I and Phase II nationwide licensees will obviously compete with one another.

7. In modifying the construction benchmarks for Phase I nationwide licensees, the Commission should also specify the criteria that will be used to determine whether nationwide licensees have provided "substantial service to the public." While Metricom appreciates the flexibility the Commission is attempting to provide licensees in meeting this construction requirement, if the licensee's definition of substantial service differs from the Commission's, the licensees face automatic revocation of their licenses.<sup>11/</sup>

8. The substantial service requirement, as contained in the Order, would impose a significant amount of uncertainty on licensees and would make it difficult for licensees to determine whether they have complied with the Commission's Rules. The U.S. Court of Appeals for the D.C. Circuit has held that when a sanction is as drastic as dismissal without any consideration of the merits,

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<sup>9/</sup> See Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d), 107 Stat. 312 (1993).

<sup>10/</sup> Regulatory Treatment of Mobile Services (Third Report and Order), 76 RR 2d 326, 339 (1994).

<sup>11/</sup> Order at ¶ 158.

elementary fairness compels clarity in the notice of the material required as a condition for consideration. "The less forgiving the FCC's acceptability standard, the more precise its requirements must be."<sup>12/</sup> Accordingly, the Commission must remove the uncertainty regarding the definition of substantial service as it applies to complying with the Commission's construction benchmarks by providing licensees with notice of what they must demonstrate to show compliance with the Commission's Rules.

**III. THE COMMISSION SHOULD ELIMINATE SITE SPECIFIC AUTHORIZATIONS FOR PHASE I NATIONWIDE LICENSEES.**

9. Metricom supports the requests by ComTech, Global and Rush for clarification or modification of the Commission's rules to specify that Phase I nationwide licensees need not secure site specific authorizations. As Rush noted in its Petition, requiring Phase I nationwide licensees to adhere to site specific licensing places them at a disadvantage over Phase II nationwide licensees because of the delays associated with obtaining Commission authorization for each site. Furthermore, requiring Phase I, but not Phase II, nationwide licensees to obtain site specific authorizations is contrary to the requirement that the Commission

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<sup>12/</sup> Salzer v. FCC, 59 RR 2d 639, 645 (D.C. Cir. 1985), citing Radio Athens, Inc. (WATH) v. FCC, 401 F.2d 398, 404 (D.C. Cir. 1968); Bamford v. FCC, 535 F.2d 78, 82 (D.C. Cir. 1976) ("elementary fairness requires clarity of standards sufficient to apprise an applicant of what is expected"), cert denied, 429 U.S. 895 (1976).

treat similarly situated entities similarly.<sup>13/</sup> Therefore, the Commission should allow Phase I nationwide licensees to demonstrate compliance with the construction benchmarks through the reporting requirements contained in Section 90.725(d) of the Commission's rules.<sup>14/</sup> Such action would also avoid needless wasting of Commission resources in processing site specific applications.

**IV. THE COMMISSION SHOULD REMOVE THE 500 WATT ERP LIMIT ON NATIONWIDE LICENSEES' BASE STATION FREQUENCIES.**

Metricom agrees with Glenayre that there is no need to impose a 500 watt ERP limit on nationwide licensees' base station frequencies.<sup>15/</sup> This is based on the fact that there is no potential for co-channel interference in neighboring areas with nationwide licensees. The only interference that could result is intrasystem interference. As Glenayre noted in its Petition, this artificial ERP limit places additional, unnecessary, costs on nationwide licensees because nationwide licensees will be forced to construct more base stations to cover the same geographic area. Furthermore, for these same reasons, the Commission should raise the permissible ERP for nationwide licensees' fixed operations on the mobile frequency band as Metricom asserted in its Reply Comments in this proceeding.<sup>16/</sup>

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<sup>13/</sup> See Omnibus Reconciliation Act of 1993, Pub. L. No. 103-66, Title VI, § 6002(d), 107 Stat. 312 (1993).

<sup>14/</sup> 47 C.F.R. § 90.725(d) (1996).

<sup>15/</sup> See Petition for Reconsideration of Glenayre, p. 2.

<sup>16/</sup> See Reply Comments of Metricom in PR Docket 89-552, p. 6.

V. **THE COMMISSION SHOULD NOT ADOPT  
VARYING EFFICIENCY STANDARDS.**

Metricom opposes Glenayre's request that the Commission adopt a varying spectrum efficiency standard. Under Glenayre's proposal, Phase I and Phase II licensees would be subject to an efficiency standard equal to 0.256 bps/Hz immediately, a higher standard of 1 bps/Hz by December 31, 2001, an even higher efficiency standard of 2 bps/Hz by December 31, 2006, and elimination of any efficiency standard as of December 31, 2011.<sup>17/</sup> Metricom disagrees with the imposition of any efficiency standard because it believes that the marketplace should dictate the type of equipment to be employed, and the Commission should not foreclose new technological advances that may, in fact, yield greater efficiencies. Glenayre's proposal is totally unnecessary because competition in the provision of wireless services will force licensees to employ greater efficiencies or face the consequences of losing business. In addition, it could cause Phase I licensees to replace equipment for no other reason than to comply with the changing efficiency standards. Rather than adopting a new efficiency standard, the Commission should allow the market to dictate the standard that will be used so that technological advances will be encouraged in the nascent 220 MHz band.

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<sup>17/</sup> See Petition for Reconsideration of Glenayre, p. 6.

**V. THE COMMISSION SHOULD NOT PLACE ALL EQUIPMENT WAIVER REQUESTS ON PUBLIC NOTICE.**

Metricom also opposes INTEK's proposal that requests for waiver of the spectrum efficiency standard be placed on public notice.<sup>18/</sup> Placing all requests for waiver of the efficiency standard on public notice is totally unnecessary. The Commission has specified the criteria for the grant of a waiver, and only a technical determination is necessary. There are no policy considerations involved with the waivers as those issues have already been decided by the Commission. Furthermore, placing waiver requests on Public Notice would cause a significant delay in the provision of service by the licensees requesting a waiver, as well as place an unnecessary administrative burden on the Commission.

**VI. CONCLUSION**

For all of the foregoing reasons, Metricom hereby requests that the Commission grant the requests to modify the rules governing Phase I nationwide licensees to modify the construction benchmark time periods and eliminate any requirement to obtain site specific authorizations. The Commission should also remove the 500 watt ERP limit on nationwide licensees' base station frequencies,

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<sup>18/</sup> See Petition for Reconsideration of INTEK, p. 8.

deny the request by Glenayre to adopt a varying efficiency standard, and deny the request by INTEK to place requests for waiver of the efficiency standard on public notice.

Respectfully submitted,

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By



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Dated: June 4, 1997

CERTIFICATE OF SERVICE

I, Barbara Guzzy, a secretary at the law offices of Ginsburg, Feldman & Bress, Chartered, hereby certify that on this 4th day of June, 1997, a copy of the foregoing Comments on Petitions for Reconsideration was mailed, first class, postage prepaid, to the following:

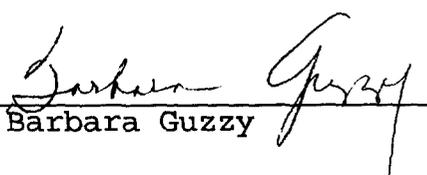
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