

A real world example taken from Puerto Rico will illustrate the intent behind this proposal. In certain cases, TeleCellular participants have licenses on the same frequency at different points on the island. Pursuant to Section 90.621(b) of the Commission's rules, these two stations are entitled to a minimum of 55 miles protection. On Puerto Rico, the two stations have protection contours that overlap at the center of the island, meaning that there is no possible site on the island where a wide-area licensee could build a transmitter on that frequency. However, there would also be a large portion of the island not covered by the incumbents' 30 km fixed-radius construction contours. That area becomes an unserviceable no-man's land without the TeleCellular proposal. To solve this problem and encourage service on the frequency to all points on the island, the Commission should permit the incumbent to construct a new base station outside its fixed-radius protected service area. In this particular example, a new base station built between the two existing stations will not extend the protection contour already attributable to the existing stations. Accordingly, the wide-area licensee is not detrimentally impacted, and the incumbents are granted more flexibility in constructing their systems. To further ensure no detrimental impact to the wide-area licensee, the Commission could also issue licenses for such stations on a secondary basis.

While an incumbent's ability to offer SMR service should

be protected, TeleCellular also believes the Commission should provide some impetus for incumbent licensees to vacate the wide-area licensee's frequencies. To create this impetus, Telecellular recommends a mandatory relocation requirement at the end of a five year period. Five years after grant of the wide-area license, the wide-area licensee should be given the discretion to require any incumbent licensee to move off the wide-area frequencies. The ability to force this relocation would be contingent upon suitable alternative frequencies in the non-contiguous band. If there were insufficient non-contiguous channels to relocate all incumbent licensees, then the wide-area licensee should be given the discretion to decide which incumbents must move. By giving the wide-area licensee this discretion, the Commission would relieve itself of officiating disputes that might occur. The wide-area licensee would be responsible for all costs associated with the incumbent's relocation.

V. PENDING APPLICATIONS AND REQUESTS FOR EXTENDED IMPLEMENTATION

The FNPRM does not address the issue of whether the Commission will continue to process applications for additional facilities filed before August 9, 1994. A recent public notice indicated that, with help from the private sector, the Commission has started processing such applications. To the extent that the Commission is deciding whether such applications should be processed, TeleCellular strongly supports such processing. While a large number of

the backlogged applications undoubtedly cannot be granted, TeleCellular joint venture participants filed modifications earlier in 1994 that should raise no grantability issues and have a material impact on the rights attributed to them as incumbent licensees.

Similarly, the FNPRM makes no reference to how pending requests for extended implementation will be treated. The participating licensees of TeleCellular filed a joint request for extended implementation in May of 1994. The participating licensees made a good faith attempt to comply with the Commission's rules regarding extended implementation. The FNPRM does state that previously granted requests for extended implementation will continue to have effect. Except for the arbitrary factor of timing, TeleCellular's participating licensees occupy the same position as other recipients of extended implementation. There is no reason they should not be granted the same regulatory protections as those recipients that filed a few months earlier.

V. GENERAL CATEGORY AND INTER-CATEGORY SHARING

The Commission should pass rules that encourage the efficient use of available spectrum. This premise dictates against a blanket rule prohibiting the use of general category and inter-category sharing by SMR licenses. At the same time, TeleCellular agrees that Private Mobile Radio Service users may find no available frequencies for their use if SMR licensees were granted uninhibited access to those

frequencies. Accordingly, TeleCellular proposes a solution that permits use of general and inter-category channels upon a strong showing by the SMR licensee that it needs the channels. One possible way to show need would be to establish a new loading standard for digital systems. A wide-area licensee that can demonstrate loading, or some legitimate restriction on capacity (e.g., the existence of many incumbent licenses in a particular area of an MTA) should be permitted to apply for such channels. In conjunction with the application of existing rules pertaining to the use of such channels to local SMR operators, this proposal should ensure adequate spectrum for PMRS use, while maintaining flexibility for those SMR providers who truly need added capacity.

VI. ELIGIBILITY FOR THE INITIAL APPLICATION

The Commission has indicated that it will open application for wide-area licenses to any individual. However, TeleCellular contends that initial eligibility for wide-area licenses should be restricted to those entities that currently have licenses in a particular MTA, or, in TeleCellular's case, is composed of licensees in the MTA.

In a perfect market, with perfect information, an auction would ensure that the license goes to the bidder who values the license most. However, given the results of the IVDS auctions, where a significant number of bidders defaulted, and many bidders had little or no idea upon what they were bidding, it is clear that bidders do not have perfect

information. Given the existence of such bidders, it is not necessarily true that auctioning a license will result in its placement with the bidder who values it most.

As a further consideration for limiting eligibility, the Commission should acknowledge that if it were not for entrepreneurs who acted within the Commission's existing rules, there would be no impetus behind the creation of wide-area licenses. In essence, these entrepreneurs created value by making 800 MHz wide-area systems feasible, and now the Commission is stepping in to auction off that value. Looking at the issue from a different angle, it is impossible for those entrepreneurs to recapture the vast amount of resources expended on creating the initial stages of a wide-area system in order to finance the amount of a winning bid.

Based on the backlog of SMR applications currently existing, the Commission must be aware of the allure SMR presented to investors looking for a quick buck. The concern is that auctions for wide-area SMR licenses will present a cheap alternative to PCS licenses for promoters not entirely committed to constructing a wide-area system. By limiting eligibility for SMR licenses, the Commission would help ensure timely construction and service to the public, as well as reward those entrepreneurs who created the valuable license in the first place.

VII. AUCTION ISSUES

A. Upfront Payments.

The Commission seeks comment on the amount of upfront payment to be required for SMR auctions. FNPRM, ¶81. The Commission should not use the same upfront payment standard for SMR licenses as it uses for PCS licenses. While TeleCellular understands that one purpose of upfront payments is to ensure only serious, qualified bidders participate in an auction, the Commission should also follow a policy that upfront payments bear some relation to the value of the spectrum to be auctioned. Few people would argue that the "polluted" SMR spectrum is as valuable as the PCS spectrum. Accordingly, the upfront payment for SMR licenses should not be as great as the upfront payments for PCS licenses. Furthermore, establishing an upfront payment that is too great harms designated entities who receive an installment payment preference. Installment payments allow a designated entity to bid on a license without having the entire amount of its bid available. Establishing an excessive upfront payment contravenes the installment payment benefit. At a minimum, the Commission should refrain from establishing an upfront payment for SMR auctions until after comparable auctions (e.g. Block F PCS licenses) occur so that the decision may be based upon experience rather than conjecture.

B. Designated Entity Provisions.

The Commission has proposed that small business shall be

entitled to installment payments for purposes of paying off their bids. TeleCellular contends, however, that this is an insufficient provision to ensure that small business has the opportunity to participate in wide-area SMR license auctions.

Recent reports indicate that only thirty applicants qualified to participate in the MTA PCS auctions. That means that thirty applicants will be splitting approximately 100 valuable PCS licenses. Contrary to the requirements of the auction legislation, this paltry figure indicates that designated entities, including small business, do not have legitimate opportunities for valuable licenses in the new world of FCC auctions. However, given that auctions exist and in some respects are preferable to lotteries, the Commission should maximize the opportunities for small business, which, in this case, means that bidding credits should be granted to small business.¹

¹ One efficient way to incorporate this proposal would be to simply adopt the Broadband PCS designated entity rules for the SMR auctions.

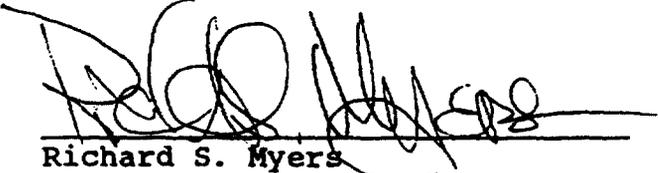
VIII. CONCLUSION

Based on the foregoing, the Commission should implement wide-area SMR licensing while at the same time issuing rules not only protecting incumbent licensees but ensuring that they have the flexibility to compete with new licensees.

Respectfully submitted,

TELECELLULAR DE PUERTO RICO, INC.

By:



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January 4, 1995

EXHIBIT 4

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March 1, 1995

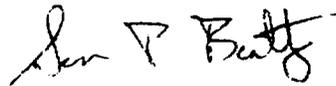
Mr. William Caton, Acting Secretary
Federal Communications Commission
1919 M Street, N.W., Room 222
Washington, D.C. 20554

Dear Mr. Caton:

On behalf of TeleCellular de Puerto Rico, Inc., enclosed for filing are an original and four copies of reply comments in the wide-area SMR rulemaking. Please stamp the file copy and return it to our courier.

If you have any questions regarding the foregoing, please contact the undersigned.

Very truly yours,



Sean P. Beatty

Enclosures

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Before the
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Washington, DC 20554

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

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

and

Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)
800 MHz SMR)

PP Docket No. 93-253

REPLY COMMENTS OF
TELECELLULAR DE PUERTO RICO, INC.

TeleCellular de Puerto Rico, Inc. ("TeleCellular"), by its attorneys, hereby files reply comments with respect to the Further Notice of Proposed Rulemaking ("FNPRM") released by the Commission on November 4, 1994 in the above referenced dockets.

I. INTRODUCTION

TeleCellular takes this opportunity to address three specific issues raised in comments filed in this rulemaking. First, many commenters addressed the Commission's proposal to provide incumbent licensees the ability to modify their systems within specific constraints. Second, several commenters recommended replacing the Major Trading Area ("MTA") market definition for wide-area licenses. Finally, at least one commenter proposed permitting short-spacing of existing systems without requiring a waiver request for proposals that do not conform with the short-spacing table found in Section 90.621(b)(4).

II. MODIFICATION OF INCUMBENT SYSTEMS

Most commenters support the concept of permitting incumbent licensees to modify their systems, provided that the incumbent's service area contour is not extended as a result of the modification. TeleCellular supports the principle of flexibility, but strongly urges the Commission not to use the "authorized service area contour" to limit this flexibility.

As Nextel notes in its comments, existing wide-area licensees have made strategic business decisions in reliance upon Commission pronouncements regarding the "footprint" for wide-area systems. See Comments of Nextel Communications, Inc., p.49, January 5, 1995; Letter, dated December 23, 1992, from Ralph A. Haller, Chief, Private Radio Bureau, to David E. Weisman, on behalf of the Ad Hoc Specialized Mobile Radio Industry Group ("Weisman Letter"). The footprint is defined as a 35-mile radius from the coordinates of a primary licensed station. See Weisman Letter, p.3. TeleCellular, in reliance upon the footprint concept, has expended significant resources developing and organizing a wide-area system. In the regulatory environment that existed before August 9, 1994, the height and power of a particular site played no role in determining the extent to which a licensee could apply for microcells on a frequency for which it had a license. Now, however, the Commission has proposed limiting an incumbent's ability to construct fill-in transmitters based on the operating parameters of the primary site. This proposal

prejudices licensees participating in a wide-area system that applied for frequencies without plans to build a traditional high-power SMR system, and therefore did not apply for frequencies using operating parameters that would maximize their service area contours.

TeleCellular offers the following proposal as a solution. Licensees that are part of a system for which extended implementation was requested prior to August 9, 1994 clearly applied for frequencies with the intention of operating as a wide-area system. Those licensees should not be constrained by the operating parameters of the primary licensed facility. Instead, such licensees should be permitted to construct fill-in transmitters at any place so long as the 40 dBu contour of the fill-in does not extend past a 35 mile contour centered at the primary licensed facility. Those licensees that are not part of an extended implementation request did not intend to operate as part of a wide-area system, and therefore, should not be permitted to extend the 40 dBu contour of their authorized facility.

III. MARKET DEFINITION.

In its comments, TeleCellular originally expressed support for the use of MTAs as the basis upon which the Commission should issue wide-area licenses. TeleCellular has reconsidered its position and now supports the use of market definitions created by the Bureau of Economic Analysis, referred to as "BEAs". TeleCellular believes that the

Commission should avoid using market definitions protected by private proprietary interests. In the case of MTAs and Basic Trading Areas ("BTAs"), Rand McNally has asserted its rights to these definitions. Although Rand McNally has entered a license agreement for PCS and 800 MHz services, such an agreement does not exist for other services, specifically 900 MHz and 220 MHz services. Instead of continuing a framework that makes Commission licensees subject to the licensing demands of a private company, the Commission should begin the transition to alternative market definitions. For future 800 MHz licensing, TeleCellular contends that an adequate alternative exists in the form of BEAs.

Currently, the Bureau of Economic Analysis has not created BEAs for Puerto Rico. It is TeleCellular's understanding that BEAs are based, in part, on commuter patterns of citizens in particular areas. Accordingly, TeleCellular recommends that one BEA cover the island of Puerto Rico.¹ For purposes of wide-area licensing, this single BEA would fill the role of the BEA "cluster" recommended by the American Mobile Telecommunications Association, Inc. ("AMTA"). Local licensing would also occur on this single BEA basis. By using a single BEA in Puerto Rico, the Commission would provide flexibility for a wide-area system licensee across the island, while also creating a

¹ Under the Commission's MTA licensing framework, the Virgin Islands were included in the Puerto Rico MTA.

market large enough so as not to constrain traditional high power SMR licensees operating on the lower frequencies, a possible constraint associated with BTA licensing of lower frequencies.

IV. SHORT-SPACING.

Nextel has proposed permitting short-spacing without a waiver even when the distance between transmitters is less than the minimum distance provided for in the Commission's short-spacing table. See Comments of Nextel Communications, Inc., p.48, January 5, 1995; 47 C.F.R. § 90.621(b)(4). TeleCellular adamantly opposes any attempt to further deteriorate the co-channel separation to which an SMR licensee is entitled.

TeleCellular's concern parallels that expressed by the SMR Small Business Coalition. Permitting short-spacing below the minimum criteria could create interference problems more harmful to an incumbent licensee than to a wide-area licensee. See Comments of The Small Business Coalition, p.17, January 5, 1995. As the parties dicker over how to resolve interference created by such unregulated short-spacing, the incumbent's service to its customers suffers, while the wide-area licensee can simply forego loading the interfering channel until the dispute is resolved. As Motorola's comments imply, it is impractical to control signal strength levels to absolutely prevent interference to co-channel licensees. See Comments of Motorola, Inc., p.13 n.18, January 5, 1995. To permit a wide-

area licensee to short-space simply because on paper there is no 40/22 dBu contour overlap does not account for the real world. Accordingly, the Commission should maintain its existing short-spacing standards as solid protection for incumbent licensees.

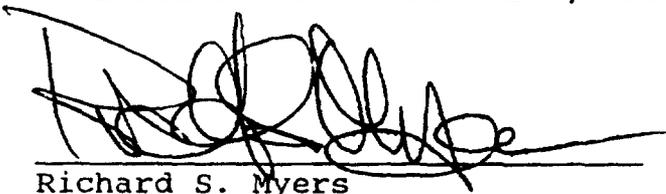
VIII. ~~CONCLUSION~~

Based on the foregoing, the Commission should allow licensees participating in a wide-area system for which extended implementation was requested prior to August 9, 1994 to construct fill-in transmitters out to a thirty-five mile radius from the primary licensed facility. The Commission should replace the MTA and BTA market definitions with BEAs. Finally, the Commission should maintain the short-spacing criteria embodied in Section 90.621(b) of its rules.

Respectfully submitted,

TELECELLULAR DE PUERTO RICO, INC.

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May 26, 1995

VIA HAND DELIVERY

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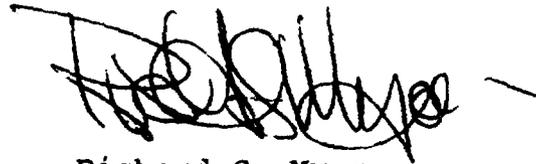
Re: Ex Parte Presentation by Telecellular
PR Docket No. 93-144

Dear Mr. Caton:

On behalf of Telecellular, enclosed is an original and one copy of a memorandum summarizing a presentation made to Rosalind Allen, Chief of the Commercial Wireless Division, Wireless Telecommunications Bureau. The presentation occurred on May 26, 1995.

If any questions arise concerning this matter, please contact the undersigned.

Very truly yours,



Richard S. Myers

Enclosure

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Telecellular Presentation Before FCC Staff

Telecellular is a joint venture of SMR licensees organized to provide wide area, digital, mobile telecommunications service to the island of Puerto Rico. The Commission has granted extended implementation authority to Telecellular, conditioned on the outcome of the rulemaking in PR Docket No. 93-144. Telecellular's presentation to the FCC staff addressed the following issues related to PR Docket No. 93-144:

■ Telecellular has expended a substantial amount of resources in organizing the buildout of a wide area system in Puerto Rico under extended implementation authority. Telecellular has encountered substantial delay caused by the SMR application freeze. Last November, it submitted a request for waiver of the freeze to allow processing of 30 microcell applications, which remain pending. Telecellular believes that the waiver request and microcell applications can and should be granted within the next two weeks.

■ The framework for resolving issues related to the treatment of SMR licensees that have been granted extended implementation authority should draw no distinctions between grantees whose authority was conditioned on the outcome of the rulemaking and those who happened to have such authority prior to the commencement of the rulemaking. The issue for all grantees of extended implementation authority (regardless of the date such authority was granted) should be whether they should continue to have the five year period for construction, or a lesser amount of time.

■ A current grantee of extended implementation authority should continue to have the full five years to construct its wide area system. Telecellular's currently proposed extended implementation schedule calls for the construction of 73 sites by the end of the fifth year. These sites will cover at least 80% of the Puerto Rican population. Telecellular estimates that, by the time its waiver request is granted, it will have approximately 4½ years left of its extended implementation authority to reach the 80% coverage figure. Assuming a wide area license is granted 9 months from now, at that point Telecellular would have just 4 years to build 73 sites covering at least 80% of the population. In contrast, the wide area licensee would have 5 years to cover only

66 $\frac{2}{3}$ (2/3) of the population under the Commission's proposed rule Section 90.665(c). In sum, preserving the full 5-year construction period for Telecellular's extended implementation authority would result in wide area system coverage to a larger percentage of the population more quickly than what would be required of the wide area licensee.

■ Moreover, the Commission has already reasoned that a 5-year extended implementation period is required for wide area system construction. The concept of wide area licensing should have no effect on the amount of time reasonably required to build a wide area system pursuant to existing extended implementation authority.

EXHIBIT 6

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SEP 25 1995

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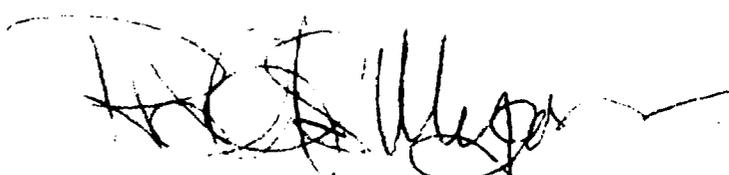
FEDERAL COMMUNICATIONS COMMISSION
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Re: Ex Parte presentation by TeleCellular de Puerto Rico,
Inc.
Docket No. 93-144

On behalf of TeleCellular, enclosed is an original and one copy of a memorandum summarizing a presentation made to Ms. Rosalind Allen, Chief of the Commercial Wireless Division of the Wireless Telecommunications Bureau, pertaining to the above referenced docket. The presentation occurred on September 25, 1995.

If you have any questions regarding this matter, please contact the undersigned.

Very truly yours,



Richard S. Myers
Counsel for TeleCellular de Puerto Rico, Inc.

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TeleCellular de Puerto Rico, Inc.'s Presentation To FCC Staff

TeleCellular de Puerto Rico, Inc. ("Telecellular") is a joint venture of SMR licensees organized to provide wide area, digital, mobile telecommunications service to the island of Puerto Rico. TeleCellular's presentation to the FCC staff offered comments on the staff's recommendations to the full Commission in Docket No. 93-144. A summary of TeleCellular's presentation is provided below.

Bidding Credits and Installment Payments should be made available to small business bidding for licenses in the upper channels.

Telecellular believes that the staff should reconsider its recommendation that small businesses should only be provided with bidding credits and installment payments when bidding for licenses in the lower 80 and GX channel blocks and not for licenses in the upper 200 channel block. Unlike PCS, in which a Block C license is equivalent to a Block A or Block B license for the same geographic area, a license in the upper 200 channels is likely to be significantly superior to a license in the lower 80 or GX channels. Wide area upper 200 channel licenses have the right to mandatorily relocate incumbent licenses to the lower 80 and GX channels, subject to whatever comparability rules are finally adopted, whereas wide area licensees on the lower 80 and GX channels do not have the right to relocate incumbents. In addition, as a result of the mandatory relocation of incumbent licensees to the lower 80 and GX channels, these latter licenses are likely to be crowded with licensees, thus limiting the capacity available (and future growth) to a wide area licensee. As a result, a wide area license on the lower or GX channels is likely to have significantly less potential value than a similar license on the upper 200 channels.

If a small business wide area licensee is to have a meaningful opportunity to compete with larger businesses, as mandated by Congress' directive to the FCC, then the small business will need an upper 200 wide area license. To be in a position to do this, the small business will require assistance in participating in the auction process through bidding credits and installment payments, in a manner similar to that which is envisioned for 900 MHz. For the 900 MHz auctions, small businesses will be given bidding

credits and installment payments while competing with large businesses for the same licenses.

In determining whether relocation of an incumbent licensee is mandatory, "comparable facilities" should mean relocation to a frequency in the same service, covering the same geographic area, with the same number of channels and which employs equipment providing the same level of service to the public.

An incumbent licensee has expended both time and resources in developing its license and business. While it is important to provide a wide area licensee with as clear spectrum as possible, relocation should only be mandatory when the wide area licensee is able to provide the incumbent with relocation that allows the incumbent to provide its customers with at least the same service, at the same level of quality, and at the same cost. Accordingly, a wide area licensee should not be able to mandatorily relocate an incumbent licensee unless the relocation allows the incumbent:

- to provide the same types of services prior to relocation;
- to service the same customer base, which means the new authorization should cover the same geographic area;
- to have the same potential for expansion of the business, which means that the new authorization provides at least the same number of channels as previously held; and
- to provide the same level of quality of service at no more than the previous cost to the incumbent, which means that the licensee should be able to use the same equipment without significant modification, or if this is not possible, that the wide area licensee provide the incumbent with new equipment, at no cost to the incumbent, that allows the incumbent to provide the same service without an increase in operating cost or a decrease in the quality of service.

EXHIBIT 7