

TeleCellular de Puerto Rico, Inc.

EXHIBIT VI, 10(a) FCC FORM 430

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TeleCellular de Puerto Rico, Inc.

EXHIBIT VII, 10(b) FCC FORM 430

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November 21, 1997

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Federal Communications Commission
800 MHz Services
P.O. Box 358750
Pittsburgh, PA 15251-5750

**Re: Telecellular de Puerto Rico, Inc.
Three Involuntary Assignment Applications**

Dear Sir or Madam:

On behalf of Telecellular de Puerto Rico, Inc. ("TPR"), enclosed herewith are three FCC Form 490 applications which seek Federal Communications Commission ("Commission" or "FCC") approval to the involuntary assignment of nine Specialized Mobile Radio ("SMR") stations from Caribbean Spectrum, Inc., Island SMR, Inc. and Island Digital Communications, Inc. to TPR. In addition to the exhibit explaining the transaction, also enclosed are completed FCC Form 159s as well as three separate checks in the amount of \$135 made payable to the FCC to cover the requisite filing fee.

Should the Commission have any questions in regard to this application, please contact the undersigned.

Very truly yours,



Marilyn S. Mense

Enclosures

cc: Terry Fishel, Deputy Chief
Licensing and Technical Analysis Branch

E X H I B I T 22

COPY

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC

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)
)
Implementation of Sections 3(n) and 322)
of the Communications Act)
Regulatory Treatment of Mobile Services)
)
Implementation of Section 309(j))
of the Communications Act -)
Competitive Bidding)

PR Docket No. 93-144
RM-8117, RM-8030,
RM-8029

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JUN 20 1997

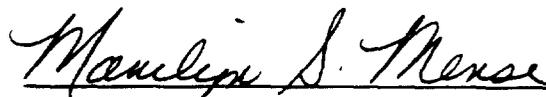
Federal Communications Commission
Office of Secretary

PP Docket No. 93-253

To: The Commission

PETITION FOR RECONSIDERATION

TELECELLULAR



By Its Attorneys:
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Filed: June 20, 1997

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SUMMARY

By counsel and pursuant to Federal Communications Commission ("FCC" or "Commission") Rule Section 1.106(f), the participating Specialized Mobile Radio ("SMR") licensees of TELECELLULAR respectfully request reconsideration of the Wireless Telecommunications Bureau's ("WTB") decision of May 20, 1997, which denied TELECELLULAR's rejustification of its extended implementation ("EI") authorization. In support thereof the following is shown:

The Courts have held that an agency commits reversible error when it penalizes an applicant based on standards of which the agency failed to provide notice. By shortening TELECELLULAR's EI and thus penalizing it, based on a finding that it had not pursued some undefined accelerated construction schedule of which the Commission failed to provide notice, the WTB erred. Because TELECELLULAR demonstrated its full compliance with the standards of which it had notice, its EI rejustification must be considered adequate and its EI authorization maintained. Had the Commission believed a more aggressive build-out schedule would have better served the public interest, it had the opportunity to request TELECELLULAR to modify its schedule. It is inequitable for the Commission to now, in hindsight, require a more exacting standard.

If the Commission affirms the application of the new standard to EI entities, TELECELLULAR respectfully requests that the Commission consider the facts presented herein which were not previously presented to the Commission, since consideration of these facts is in the public interest. The new information reveals the unique circumstances which prevented TELECELLULAR from pursuing a more aggressive buildout of its Network. Further, TELECELLULAR submits that the facts presented relate to events which have occurred since the last opportunity to present such matters, and as such should be considered.

TELECELLULAR's implementation efforts effectively were sabotaged by a lawsuit filed against it by an entity named Telecellular, Inc. ("TI"). TI President Pendelton Waugh and its Vice-President Paul Conrad claimed to have all rights to the EI Network. Through a previous relationship with an individual who subsequently became part of the TELECELLULAR management team, Mr. Waugh had become aware of the joint venture's activities, including its successful negotiations with both Ericsson and GTE. As detailed in its Petition, TELECELLULAR has defended itself against the lawsuit and has successfully counter-sued. The lawsuit was frivolous and designed to wrest control of a legitimate, operational telecommunications venture, or, at a minimum, to extract payment to terminate the litigation. Despite these problems, TELECELLULAR has continued its Network implementation efforts to the extent possible. It has maintained communications with Paine Webber in Puerto Rico, and, at the expected dismissal of the lawsuit, as discussed more fully below, the parties expect to sign a Letter of Engagement to allow Paine Webber to assist in raising additional funds for the project. GTE has committed to resume its involvement with the project at the signing of the Letter of Engagement with Paine Webber, including a promise to dedicate people at its expense while monies are being raised.

According to the EI Order, if TELECELLULAR desires a to provide wide-area 800 SMR service, it will have an opportunity to bid for the necessary spectrum under flexible construction requirements in the 800 MHz auction. TELECELLULAR submits that this conclusion is not entirely correct, at least in any reasonable time period. Under its original EI authority, TELECELLULAR has authority to redeploy the 170 frequencies associated with its 38 participating SMR stations at a projected 73 base station sites. The 170 frequencies are a mixture of the "upper 200" and "lower 80" SMR channels. It is expected that the Order finalizing the rules for the "Upper 200" frequencies will be issued shortly with an anticipated auction sometime in the fall. However, it is doubtful that an auction for the "lower 80" frequencies will be conducted until 1998 at the earliest. Although TPR intends to participate in the upcoming auction for the upper 200 channels, even if it is successful its anticipated spectrum supply will be reduced by almost fifty percent (50%), with no certainty as to when the FCC will undertake auctioning the "lower 80" channels. Accordingly, TELECELLULAR will not be able to recover at auction what it now has.

For these reasons, TELECELLULAR urges the Commission not to negate TELECELLULAR's efforts to bring its proposed Network to the public, a decision that would result in a loss to the company of the many hundreds of thousands of dollars already spent on this effort. Instead, TELECELLULAR urges the FCC to reconsider the WTB's decision and find that the company will retain its EI authority as currently granted.

By counsel and pursuant to Federal Communications Commission ("FCC" or "Commission") Rule Section 1.106(f), the participating Specialized Mobile Radio ("SMR") licensees of TELECELLULAR respectfully request reconsideration of the Wireless Telecommunications Bureau's ("WTB") decision of May 20, 1997, which denied TELECELLULAR's justification of its extended implementation ("EI") authorization.¹ In support thereof the following is shown:

I. BACKGROUND

1. On May 24, 1994, TELECELLULAR² requested approval from the FCC for EI authority to redeploy the 170 frequencies associated with its 38 participating SMR stations at a projected 73 base stations pursuant to FCC Rule Section 90.629.³ TELECELLULAR explained that the existing 800 MHz SMR licensees whose stations were identified in that filing had expressed a serious interest in joining with TELECELLULAR to develop a wide-area SMR system ("Network") covering the vast majority of the island of Puerto Rico, having a service area of approximately 3,772 square miles and a population of approximately 3,721,000. TELECELLULAR indicated its intention to construct its system using Motorola Integrated Radio System ("MIRS") digital radio equipment. Further, TELECELLULAR stated its expectation that construction of the Network could be completed within five years, and requested EI authority consistent with its construction schedule. Amendments to TELECELLULAR's request were filed on July 29, 1994 and September 13, 1994.

¹ 47 C.F.R. § 1.106(f); Order, PR Docket No. 93-144, DA 97-1059, 12 FCC Rcd ____ (rel. May 20, 1997) ("EI Order").

² Telecellular is a joint venture which includes 13 separate SMR licensees.

³ 47 C.F.R. § 90.629.

2. The Commission granted TELECELLULAR's EI request on February 27, 1995, specifying a five-year construction period, and conditioning the approval on the outcome of the then-pending Further Notice of Proposed Rule Making, PR Docket No. 93-144. Thus, the termination date of this EI authority was February 27, 2000.

3. On May 17, 1995, TELECELLULAR sought FCC approval of an amendment of the construction schedule for the Network. In that request, TELECELLULAR explained that there had been a number of substantive changes in the SMR regulatory and business environment since development of the original Network implementation schedule. Most notably, TELECELLULAR indicated that the Commission's SMR application freeze⁴ prevented the joint venture from proceeding with the buildout plan for its Network as described in its EI request. In addition, due to the regulatory uncertainties, TELECELLULAR indicated that it had been unable to finalize an agreement for financing and equipment associated with the buildout. The Commission granted the amendment on July 31, 1995.

4. TELECELLULAR moved ahead with implementing its system. In October, 1995, Telecellular de Puerto Rico, Inc. ("TPR")⁵ signed a \$2 million loan agreement (Bridge Loan) with Ericsson, Inc. ("Ericsson). Ericsson advanced \$1 million to TPR for development money

⁴ On November 7, 1994, TELECELLULAR requested a waiver of the SMR application freeze on 800 MHz applications imposed by the Third Report and Order in which it asked the Commission to process 30 SMR applications to enable TELECELLULAR to move forward with the implementation of the wide-area system. The Commission conditionally granted the waiver request on June 30, 1995.

⁵ Telecellular de Puerto Rico, Inc. has a Network management role in relation to the individual licensees participating in the Network. It has responsibility for facilitating and managing all activities necessary for the construction and ongoing operation of the Network, consistent with the rules and policies governing the management of FCC-licensed stations.

while TPR worked to finalize a full vendor's financing package to fund the complete project. At the same time, TPR signed an Acquisition Agreement with Ericsson, agreeing to purchase Ericsson's new "down-band cellular" technology.⁶ The money to be provided by the vendor's financing package was to pay for this equipment.

5. While TELECELLULAR was proceeding with its network implementation efforts, the FCC was reviewing its own determinations pursuant to which various entities had been granted EI authority. The Commission amended its licensing rules to provide for geographic area licensing of "upper band" 800 MHz SMR systems in December 1995.⁷ In conjunction with those rule changes, the FCC concluded that the construction deadline for all EI authorizations previously granted to SMR incumbents should be accelerated, and that such incumbents should be required to rejustify the need for extended time to construct their facilities.⁸ Accordingly, the Commission required SMR incumbents seeking to rejustify their EI grants to submit detailed information regarding their systems.

6. If a licensee's EI rejustification were approved, the Commission indicated that the licensee would be afforded a construction period of two years or the remainder of its current EI

⁶ TELECELLULAR notes that Ericsson fully anticipated that TELECELLULAR's Puerto Rican system would be the test case for its new digital equipment. Instead, due to the circumstances described herein, Hawaiian Wireless's Hawaiian system was the first. See, Land Mobile Radio News, Vol. 51, No. 7 (Feb. 14, 1997).

⁷ First Report and Order, Eighth Report and Order, And Second Further Notice of Proposed Rule Making, PR Docket No. 93-144, 11 FCC Rcd 1463, 1525, ¶ 111 (1995) ("800 MHz R&O").

⁸ 800 MHz R&O at ¶ 111.

period, whichever was shorter.⁹ Licensees whose showings were deemed inadequate would have six months from the denial of their requests to construct the remaining facilities covered under their implementation plans.¹⁰ Licensees that failed to submit a showing would have six months from the last day they could timely file such a showing to construct their remaining facilities.¹¹ After the six month period, authorizations for facilities still unconstructed would cancel automatically.¹² The Commission also stated that it would entertain requests for additional time to complete implementation of licensee proposals, provided that licensees justified the need for additional time.¹³

7. Based on its ongoing, aggressive efforts to proceed promptly with system implementation, TELECELLULAR anticipated no difficulty in rejustifying its EI authority. TELECELLULAR had filed its First Annual Implementation Report on behalf of itself and all the participants in its Network on February 27, 1996. That Report documented TELECELLULAR's compliance with the amended benchmarks and demonstrated the joint venture's need for continued EI authority.

8. In March, 1996, TPR signed an agreement with GTE Services, Inc. to engineer, manage and construct the project. The project was estimated to be in the 10 Million dollar

⁹ Id. at ¶ 112.

¹⁰ Id.

¹¹ Id.

¹² Id.

¹³ Id. These six month construction periods are identical to the time allotted to entities whose EI authorizations are revoked because they have failed to comply with the construction obligations granted to them. See, 47 C.F.R. § 90.629(c).

range by completion. The contract was contingent on finalizing the Ericsson funding. GTE completed its engineering, designated people to move to Puerto Rico for the project, began gathering information on site acquisition and assisted in marketing discussions.

9. Then, on April 12th, 1996, TELECELLULAR's efforts effectively were sabotaged. TPR was notified that a lawsuit had been filed against it by an entity named Telecellular, Inc. ("TI"). TI President Pendelton Waugh and its Vice-President Paul Conrad claimed to have all rights to the Network. Through a previous relationship with an individual who subsequently became part of the TELECELLULAR management team, Mr. Waugh had become aware of the joint venture's activities, including its successful negotiations with both Ericsson and GTE. As detailed below, TELECELLULAR has defended itself against the lawsuit and has successfully counter-sued. The lawsuit was frivolous and designed to wrest control of a legitimate, operational telecommunications venture, or, at a minimum, to extract payment to terminate the litigation.

10. The impact of the lawsuit was immediate and devastating. After TPR notified Ericsson of the suit, that company advised TPR that the loan agreement was in default. TPR returned to Ericsson all monies from the deposit which had not already been spent to fund Telecellular start-up activities. Ericsson then notified TPR that the Acquisition Agreement was cancelled, and that Ericsson was unwilling to fund or discuss the project further until TPR could resolve the court case and reimburse Ericsson for the loan money spent, with interest.

11. Despite these problems, TELECELLULAR has continued its Network implementation efforts to the extent possible. It has maintained communications with Paine Webber in Puerto Rico, and, at the expected dismissal of the lawsuit, as discussed more fully

below, the parties expect to sign a Letter of Engagement to allow Paine Webber to assist in raising additional funds for the project. GTE has committed to resume its involvement with the project at the signing of the Letter of Engagement with Paine Webber, including a promise to dedicate people at its expense while monies are being raised.

12. Additionally, TPR has continued to discuss implementation of the network with digital equipment vendors, and has consistently been advised that multiple potential suppliers are eager to support the development of a digital SMR network in Puerto Rico.¹⁴ TPR also has continued to maintain an office in Puerto Rico under the direction of its General Manager. Among other activities, that office recently completed an extensive, updated market study.¹⁵

13. On July 15, 1996, TELECELLULAR submitted its EI rejustification. TELECELLULAR explained that it was in compliance with the benchmarks approved by the Commission, and that it anticipated it would be able to implement a fully digital system within the two year time frame indicated by the FCC.¹⁶ Accordingly, TELECELLULAR requested that it retain its EI authority. For the reasons detailed below, TELECELLULAR did not note the pending litigation in its submission

14. On May 20, 1997, the WTB released the Order which reviewed the thirty-seven EI rejustification submissions. The Bureau granted twenty-nine entities EI approvals of two years from the release of the Order or the remainder of their current EI authorization period,

¹⁴ See, Exhibit 1.

¹⁵ See, Exhibit 2.

¹⁶ As explained further below, TELECELLULAR did not inform the FCC of the pending legal proceedings described herein.

whichever was less. It denied the requests of eight entities, including TELECELLULAR, and granted them only six months from the release of the Order, that is until November 20, 1997, to construct their systems. According to the WTB, the eight entities denied further EI authority had indicated in their rejustifications that they had not undertaken any construction since receiving EI authority.¹⁷ Based on this fact alone, the Commission concluded that these licensees had failed to meet the standard for continuation of their EI authority.¹⁸

15. For the reasons detailed herein, TELECELLULAR respectfully requests the Commission to reconsider its decision, as it relates to TELECELLULAR.

II. THE COMMISSION'S DECISION TO CURTAIL TELECELLULAR'S EI IS REVERSIBLE ERROR AS IT IS BASED UPON STANDARDS OF WHICH THE FCC DID NOT PROVIDE NOTICE.

16. The 800 MHz R&O which required SMR incumbents seeking to rejustify their EI grants was specific in the information it sought.¹⁹ The Commission required incumbents to demonstrate their compliance with their already-approved extended implementation schedules;

¹⁷ Id. at ¶ 12.

¹⁸ Id.

¹⁹ Specifically, 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 thereof; (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. 800 R&O at ¶ 111.(footnotes omitted).

it did not ask incumbents to explain why they had not exceeded their authorized benchmarks.

17. In adopting EI provisions for SMR licensees, the Commission cautioned that it would not permit the rule to be used for spectrum warehousing.²⁰ It specifically noted that it would:

scrutinize all slow-growth requests closely, especially those filed by applicants who have yet to obtain necessary funding to construct their systems or who are applying for SMR Category channels.²¹

TELECELLULAR's EI approval and subsequent amendment was granted pursuant to this rule, and, presumably, after surviving the scrutiny deemed appropriate by the FCC in granting such requests.²² According to Rule Section 90.629, EI authorizations are:

conditioned upon the licensee constructing and placing its system in operation within the authorized implementation period and in accordance with an approved implementation plan of up to five years.²³

Pursuant to that rule, if the Commission were to conclude that an entity had failed to meet its authorized commitments, then the FCC is authorized to terminate authority for the EI period.²⁴

Although TELECELLULAR's EI authority was specifically conditioned on the outcome of the 800 MHz R&O, that Order in no way indicated that an entity's EI authorization would be curtailed even if there had been no failure to meet its authorized benchmarks. Rather, the

²⁰ EI Order at ¶ 12. 7

²¹ Id.

²² 47 C.F.R. § 90.629.

²³ 47 C.F.R. § 90.629(c).

²⁴ Even the entities in default of their commitments by FCC rule are entitled to the same six-month construction period awarded to compliant parties such as TELECELLULAR.

reverse is true. The only reasonable interpretation to be drawn from the data required to rejustify EI authority was that compliance with FCC-approved benchmarks would justify retention of at least a two-year construction period.

18. As demonstrated by its EI submission, as of the filing of its rejustification TELECELLULAR was in compliance with the benchmarks approved by the Commission. Nevertheless, the EI Order indicated that TELECELLULAR's compliance with its construction commitments was insufficient to support a continuation of its EI authority.²⁵ Instead, the WTB terminated that authority on the basis that TELECELLULAR had failed to commence construction of new facilities.²⁶

19. The Courts have held that an agency commits reversible error when it penalizes an applicant based on standards of which the agency failed to provide notice.²⁷ By shortening TELECELLULAR's EI and thus penalizing it, based on a finding that it had not pursued some undefined accelerated construction schedule of which the Commission failed to provide notice, the WTB erred. Because TELECELLULAR demonstrated its full compliance with the standards of which it had notice, its EI rejustification must be considered adequate and its EI authorization maintained. Had the Commission believed a more aggressive build-out schedule would have better served the public interest, it had the opportunity to request TELECELLULAR to modify its schedule. It is inequitable for the Commission to now, in hindsight, require a more exacting

²⁵ EI Order at ¶ 27.

²⁶ Id. at ¶ 12.

²⁷ See, e.g., CHM Broadcasting Ltd. Partnership v. FCC, 24 F.3rd 1453, 1457 (D.C. Cir. 1994) citing Greater Boston Television Corp. v. FCC, 444 F.2d 841, 850 (D.C. Cir. 1970), cert. denied, 403 U.S. 923 (1971).

standard.

III. CONSIDERATION OF THE FACTS PRESENTED HEREIN WHICH WERE NOT PREVIOUSLY PRESENTED TO THE COMMISSION IS IN THE PUBLIC INTEREST.

20. If the Commission affirms the application of the new exacting standard to EI entities, TELECELLULAR respectfully requests that the Commission consider the facts presented herein which were not previously presented to the Commission, since consideration of these facts is in the public interest. According to Rule Section 1.106(c), a petition for reconsideration which relies on facts not previously presented to the Commission may be granted if the facts relate to events which have occurred since the last opportunity to present such matters, if the facts could not have been learned through the exercise of ordinary diligence, or if the designated entity determines that consideration of the facts relied on is required in the public interest.²⁸

A. The 800 MHz R&O Did Not Indicate That Incumbents in Compliance With Their EI Benchmarks Had To Justify Not Pursuing A More Accelerated Build Out Schedule.

21. The 800 MHz R&O which required SMR incumbents seeking to rejustify their EI grants was specific in the information it sought.²⁹ The data sought was factual and straight forward. The Commission required incumbents to demonstrate their compliance with their already-approved extended implementation schedules. Neither it, nor the subsequent Public

²⁸ 47 C.F.R. § 1.106(c).

²⁹ See, n.19 supra.

Notice³⁰ asked incumbents to explain why they had not exceeded their authorized benchmarks.

22. Nevertheless, the EI Order indicated that TELECELLULAR's compliance with its benchmarks was insufficient to support a continuation of its EI authority.³¹ Instead, the WTB found key in its determination the fact that TELECELLULAR had not yet commenced construction of new facilities.³²

23. Because the 800 MHz R&O in no way indicated that the Commission would consider that fact determinative, even if no FCC-authorized implementation benchmark had been missed, TELECELLULAR requests that the Commission consider the new information submitted herein which reveals the unique circumstances which prevented TELECELLULAR from pursuing a more aggressive buildout of its Network.³³

B. The "New" Facts Presented Herein Relate to Events Which have Occurred Since the Last Opportunity to Present Such Matters.

24. Further, TELECELLULAR submits that the facts presented herein relate to events which have occurred since the last opportunity to present such matters, and as such should be considered. TELECELLULAR submitted its EI rejustification on July 15, 1996. As explained in detail below, at the time TELECELLULAR submitted its filing, it was embroiled in a multi-

³⁰ "Recommended Filing Format for 800 MHz SMR Licensees Rejustifying Need for Extended Implementation Authority," Public Notice, DA 96-894, 11 FCC Rcd. ___ (rel. June 4, 1996).

³¹ EI Order at ¶ 27.

³² Id. at ¶ 12.

³³ As discussed more fully below, penalizing TELECELLULAR based on standards of which the FCC failed to provide notice is reversible error. See, Greater Boston Television Corp. v. FCC, 444 F.2d 841, 850 (D.C. Cir. 1970) cert. denied, 403 U.S. 923 (1971).

part nuisance lawsuit. In response to the lawsuit, TELECELLULAR counterclaimed and requested from the Court a provisional remedy in the nature of injunctive relief. TELECELLULAR hoped such relief would enable it to take the necessary steps to begin construction of its Network. It was nearly three months after the filing of TELECELLULAR's EI rejustification that the San Juan Superior Court issued a Resolution and Order which granted the provisional remedy requested. Further, on April 11, 1997, one of TELECELLULAR's counter suits was resolved when the Superior Court in San Juan found that the initial suit brought against TELECELLULAR constituted tortious interference. TELECELLULAR has received indications from the court that a decision involving the last remaining case will be issued shortly. Based on the decision in its counter suit, Telecellular has been advised by its attorneys that the result is expected to be favorable.

25. TELECELLULAR submits that it did not bring this legal situation to the Commission's attention, not only because it did not realize the Commission would consider it decisionally significant, but also because all the suits were pending, and it did not know if the airing of the issues before the FCC would in any way prejudice the cases in Puerto Rico. Accordingly, as the resolution of two of the cases occurred since TELECELLULAR's last opportunity to present such matters to the Commission, TELECELLULAR respectfully requests that Commission consider the facts surrounding the litigation in its re-examination of the WTB's decision.

IV. FAILURE OF TELECELLULAR TO ACCELERATE THE BUILDOUT OF ITS DIGITAL SYSTEM WAS DUE TO UNFORESEEN CIRCUMSTANCES BEYOND ITS CONTROL.

26. TELECELLULAR requests that the Commission consider the new information submitted herein which reveals the unique circumstances which prevented TELECELLULAR from pursuing a more aggressive buildout of its Network.

27. Telecellular de Puerto Rico, Inc. ("TPR"), is a Delaware corporation with a single purpose of developing a wireless telecommunications system in Puerto Rico. TPR entered into identical project agreements with 15 corporations that hold 800 MHz licenses in Puerto Rico to develop the Network. The project documents included a Joint Venture Agreement, Construction/Management Agreement and Purchase Option Agreement ("Project Documents") The Project Documents superseded a previous joint venture agreement between the same parties and designated TPR as the manager of the joint venture.³⁴ As compensation for entering into the Project Documents, each License Corporation received shares of TPR common stock.

28. As noted supra, TPR entered into an Equipment Acquisition Agreement and a \$2 Million Dollar, six month Bridge Loan in October 1995 with Ericsson. A total of \$879,000 was advanced under the loan. It was the intent of the agreement with Ericsson that the Bridge Loan would be converted into a full project loan. As final documents were being completed, the nuisance law suit described herein was filed which disrupted the process.³⁵ Ericsson

³⁴ TPR had originally filed in Puerto Rico as "Telecellular, Inc., a Puerto Rico Corporation." In order to assuage any potential investor concerns about being subject to Puerto Rican law, that corporation was dissolved and a new "Telecellular de Puerto Rico, Inc." was filed in Delaware.

³⁵ A Litigation Calendar which describes the law suit is attached hereto as Exhibit 3.

canceled the Acquisition Agreement and demanded repayment of funds advanced under the Bridge Loan when notified of the institution of this litigation.

29. In a lawsuit filed on July 17, 1996, the entity known as Telecellular, Inc. and eight corporations with licenses in the 800 MHz band (collectively "License Corporations") requested that certain contracts which dealt with the establishment of the EI Network in Puerto Rico between the License Corporations and TPR be declared null. Five of the eight License Corporations subsequently withdrew from the suit. Together with Telecellular, Inc., only Caribbean Spectrum, Inc.; Island SMR, Inc.; and Island Digital Communication, Inc. remain in the lawsuit.

30. In essence, the allegation of the lawsuit is that co-plaintiff "Telecellular, Inc., a Delaware Corporation" ("TEL-INC.") a corporation organized in December, 1993 by an employee of Pendelton Waugh,³⁶ is the true and legitimate "TELECELLULAR," that TEL-INC is the corporate entity with whom the License Corporations executed the First Joint Venture Agreement in 1994, and that it is the entity that requested and obtained from the FCC the EI granted on behalf of the joint venture called "TELECELLULAR". The Complaint goes on to allege that, notwithstanding the above, Messrs. Conrad, Nemeth and Crane created a new entity called "Telecellular de Puerto Rico, Inc." ("TEL-PR"), registered in Puerto Rico, in an attempt to obtain control of the matters commenced by TEL-INC.

³⁶ As indicated in Exhibit 4, Mr. Waugh has an extensive history in telecommunications activities. Those activities have been reviewed in some detail by at least the FCC, the FTC and the FBI. Mr. Waugh's sojourn in Leavenworth was specifically related to certain of his telecommunications ventures.

31. It also is alleged that TEL-PR was illegally dissolved and that Messrs. Nemeth and Crane organized Telecellular de Puerto Rico, Inc. a Delaware Corporation ("TPR-DEL"), with the purpose of deceiving the License Corporations, Conrad and Waugh. According to the Complaint, the defendants, TPR-DEL, Nemeth and Crane, deceived the License Corporations into executing a Second Joint Venture Agreement, a Construction and Management Agreement, a Purchase Agreement, a Stock Security Agreement and Consent to Collateral Assignment of Agreement (the latter two with Ericsson). The License Corporations allegedly were led to believe that the Second Joint Venture and related agreements were being executed between them and the same entity that executed the First Joint Venture (TEL-INC.), when in fact they were now signing the contract with a different corporate entity (TPR-DEL). In the context of these allegations, the plaintiffs requested damages and asked for a determination that the prevailing contract be the First Joint Venture between the three License Corporations and TPR. The three License Corporations are also stockholders of TPR.

32. In addition to answering the Complaint and denying its allegations, TPR-DEL, filed a counterclaim seeking declaratory judgment to the effect that the Second Joint Venture Agreement and related documents, including the Ericsson loan agreements and security documents, are valid and enforceable, and also seeking to enforce the Stock Option Agreements executed by the License Corporations in favor of TPR-DEL. TPR-DEL further requested from the Court a provisional remedy in the nature of an injunctive relief to the effect that the License Corporations be obliged to execute all necessary documents for TPR-DEL to exercise its

operations to take the necessary steps to begin construction of the Network and to exercise its options to acquire the licenses.³⁷

33. On November 8, 1996, the court issued a Resolution and Order which granted the provisional remedy requested by TEL-DEL.³⁸ It is based on a determination that TEL-PR has a high probability of prevailing at trial. The court determined that TEL-INC had failed to demonstrate that it had even achieved corporate viability. That entity never conducted any meetings and three of its purported, original directors confirmed that they were entirely unaware of the corporation's existence. The court dismissed the plaintiffs allegations that the corporation calling itself "Telecellular, Inc." was involved in obtaining the EI grant for the joint venture, and specifically found that the project had been paralyzed because of the lawsuit.³⁹

³⁷ This right is, of course, contingent on satisfying all applicable FCC requirements.

³⁸ A copy of the Resolution and Order translated to English is attached hereto as Exhibit 5.

³⁹ In this manner, from the evidence presented it comes forth that the project is paralyzed. Because of the lawsuit, there is no loan for financing the system, the contracts with GTE for consulting services in training employees in the operation and maintenance of the system, are not being acted upon. Exh. 17. TPR understands that if the court grants the provisional remedy negotiations could be initiated for financing as well as other services for the implementation of the system.

In this same manner, it comes from the evidence, that there is a small amount of time to get radio frequency engineers; find and negotiate sites for antennae; obtain approvals from ARPE and other Puerto Rico government agencies; acquire and receive equipment; complete construction; get contractors and bring personnel into the project.

If the provisional remedies are not granted, TPR is at risk of losing the investment it has already made and also its reputation in front of Ericsson (the entity that gave the project its initial financing) and GTE. Exh. 16. TPR's entrance into the market will also be affected. Currently, because of this lawsuit, TPR will be the fifth most important to enter the market when it could have been the third. See, Exh. 22. Finally, the defendants referred to the people of Puerto

34. On April 11, 1997, the final judgment in Civil KAC 96-1112 (905) Superior Court, San Juan TeleCellular de Puerto Rico, Inc. v. Paul J. Conrad & Caribbean Spectrum, Inc., upheld the validity of the Joint Venture agreements and related documents that entrust TEL-PR and its management with the development of the Network, found that the acts of the defendant, Paul J. Conrad, individually and as director and only stockholder of Caribbean Spectrum, Inc. constituted a tortious interference in the contractual relations of TEL-PR with Ericsson and GTE and also with the contractual relations of TEL-PR with the License Corporations. The court awarded TPR damages in excess of \$20 million.⁴⁰ As a result of this judgment, the claim of Caribbean Spectrum, Inc. against TEL-PR in Civil 96-0263 is subject to dismissal through collateral estoppel by judgment. Since default has been entered against the only two remaining License Corporations in the case, TEL-INC, the non-existent corporation, as the sole remaining plaintiff with an extremely remote and unlikely probability of success.

V. DESPITE THE NUISANCE LAWSUITS, TELECELLULAR HAS WORKED DILIGENTLY TOWARD IMPLEMENTING ITS NETWORK.

35. Despite the nuisance lawsuits, TELECELLULAR has taken every reasonable step to proceed with the implementation of its Network. Upon dismissal of the lawsuit, TPR is prepared to sign a Letter of Engagement with Paine Webber in Puerto Rico to allow Paine

Rico being affected if the remedies are not granted because of loss of jobs that this project would generate. Resolution and Order on Provisional Remedies, English Translation, Sect. I, ¶¶ 13-15.

⁴⁰ An English translation of the court's determination of acts, conclusions of law and judgement is attached hereto as Exhibit 6.