

BEFORE THE
FEDERAL COMMUNICATIONS COMMISSION
WASHINGTON, D.C. 20554

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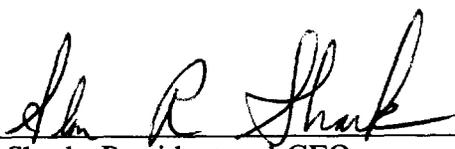
In the Matter of)	
)	
Implementation of Sections 309(j) and)	WT Docket No. <u>99-87</u>
337 of the Communications Act of 1934)	
as Amended)	
)	
Promotion of Spectrum Efficient)	RM-9332
Technologies on Certain Part 90)	
Frequencies)	
)	
Establishment of Public Service Radio)	RM-9405
Pool in the Private Mobile)	
Frequencies Below 800 MHz)	
)	
Petition for Rule Making of the American)	RM-9705
Mobile Telecommunications Association)	

To: The Commission

**COMMENTS OF THE
AMERICAN MOBILE TELECOMMUNICATIONS ASSOCIATION, INC.**

Respectfully submitted,

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Summary

In the FNPR, the Commission seeks comment on two important matters regarding the effective management of spectrum. The first issue, whether the Commission should adopt proactive rules to promote the implementation of more spectrum-efficient equipment in the “refarmed” bands, is responsive to a Petition for Rulemaking filed by the American Mobile Telecommunications Association (“AMTA” or “Association”) almost three years ago (“Petition”). The FCC tentatively has proposed to address the problem of continued use of spectrally inefficient technologies by prohibiting the manufacture or importation of equipment that fails to meet defined efficiency standards by specified dates. AMTA, however, remains convinced that the Commission must adopt a more pro-active approach, as it has done in other instances in which it determined that the public benefits of improved efficiency and/or advanced services justified imposing obligations on incumbents. AMTA urges the Commission to adopt an immediate freeze on the acceptance of applications for new wideband systems in the refarmed bands, at least in the urban markets identified herein. Additionally, consistent with its Petition, the Association advocates the adoption of a date certain after which licensees in markets with traditionally inadequate spectrum resources must move to more efficient technologies.

The second matter on which the Commission seeks comment is whether it should adopt a more flexible licensing scheme by permitting the conversion of Private Land Mobile Radio channels in the 900 MHz band for use in commercial Specialized Mobile Radio systems. AMTA supports permitting 900 MHz Business and Industrial Land Transportation licensees either to modify their authorizations to offer commercial service on their own systems or to assign their authorizations to other commercial providers. Amending the FCC's rules to permit such

conversion will serve a number of important objectives, including promoting regulatory symmetry among Commercial Mobile Radio Service providers and producing improved spectrum efficiency. Additionally, adoption of this change would be consistent with the FCC's, and the new administration's efforts to increase the role of the free marketplace in directing telecommunications activities.

The American Mobile Telecommunications Association, Inc. ("AMTA" or "Association"), in accordance with Section 1.415 of the Federal Communications Commission ("FCC" or "Commission") Rules and Regulations, respectfully submits its Comments in the above-entitled proceeding.¹ In the FNPR, the Commission seeks comment on two important matters regarding the effective management of spectrum. The first issue, whether the Commission should adopt proactive rules to promote the implementation of more spectrum-efficient equipment in the "refarmed" bands, is responsive to a Petition for Rulemaking filed by the Association almost three years ago. In that Petition, AMTA proposed dates certain by which Part 90 licensees in specified bands would be required to employ spectrum-efficient technologies.² The second matter on which the Commission seeks comment is whether it should adopt a more flexible licensing scheme by permitting the conversion of Private Land Mobile Radio ("PLMR") channels in the 900 MHz band for use in commercial Specialized Mobile Radio ("SMR") systems.³ AMTA supports that proposal also as consistent with the Commission's ongoing effort to deregulate and allow marketplace determinations to guide licensee activities where possible.

¹ 47 C.F.R. § 1.415; "Implementation of Sections 309(j) and 337 of the Communications Act of 1934 as Amended," *Report and Order and Further Notice of Proposed Rule Making*, WT Docket No. 99-87, FCC 00-403, ___ FCC Rcd ___ (rel. Nov. 20, 2000) (¶¶ 1-136 "BBA Order", ¶¶ 137-144 "Notice" or "FNPR").

² AMTA Petition for Rulemaking (RM-9332) (filed June 19, 1998) ("Petition").

³ Although the FNPR uses the term Commercial Mobile Radio Service ("CMRS") to refer to commercial SMR systems, AMTA assumes the proposal contemplates the conversion of PLMR spectrum from private internal to commercial usage, whether in an interconnected CMRS system or a non-interconnected, for-profit Private Mobile Radio Service ("PMRS") system.

I. INTRODUCTION

1. AMTA is a nationwide, non-profit trade association dedicated to the interests of the specialized wireless communications industry. The Association's members include trunked and conventional 800 MHz and 900 MHz SMR operators, licensees of wide-area SMR systems and commercial licensees in the 220 MHz and 450-512 MHz bands. These members provide commercial wireless services throughout the county to the PLMR user community, including the bands under consideration in the instant proceeding. Thus, the Association and its members have a significant interest in the outcome of the proceeding.

II. REFARMING ISSUE

A. BACKGROUND

2. The genesis of the Commission's inquiry into the current pace of migration to more spectrally efficient technology in the Private Land Mobile bands is AMTA's Petition.⁴ In that Petition, AMTA recommended that all non-Public Safety Part 90 licensees in the bands between 222 MHz and 896 MHz should be required to implement technology that achieves a minimum of two times the capacity of current channelization, i.e., technology with the equivalent of one voice path per 12.5 kHz of spectrum based on a 25 kHz bandwidth channel.⁵ The Petition also proposed dates certain by which the spectrum-efficient technologies had to be employed. Licensees that

⁴ Notice at ¶ 137.

⁵ The Petition recommended exempting from these requirements spectrum that was subject to competitive bidding such as the 220 MHz band and the 800 MHz channels in bands A-V.

elected not to implement equipment capable of meeting the efficiency standard would be afforded secondary, rather than primary, status on their channels.

3. The instant FNPR indicates that the Commission is inclined to agree with AMTA's assessment that the current refarming rules have not prompted licensees to adopt more spectrum-efficient technologies as quickly or aggressively as needed to keep pace with projected capacity demands. The FCC tentatively has proposed to address this problem by prohibiting the manufacture or importation of equipment that fails to meet defined efficiency standards by specified dates.⁶ However, the agency also left open the possibility of adopting other approaches to balance the interests of incumbents and new entrants in these bands:

We continue to be concerned that requiring the employment of new spectrum-efficient technologies by certain dates, as proposed by AMTA, would impose unreasonable burdens on licensees and we acknowledge the concerns raised by opponents of AMTA's proposal that it would be unfair to require users to replace systems in which they have recently invested substantial amounts. On the other hand, a user that continues to employ spectrally inefficient equipment, when more efficient alternatives are available, is harming other users with whom it is sharing the frequencies in these bands. Therefore, we are also concerned with a system that permits users to remain on spectrally inefficient systems indefinitely.⁷

4. The Association recognizes the tension between the broader, public interest in maximizing the efficient use of limited spectrum resources and the individual interest of incumbents who are reluctant to replace their existing, less efficient equipment. In a perfect world,

⁶ Since some licensees in these bands continue to use "legacy", and obviously well-built, equipment from the 1960s and 1970s, it is unclear whether this approach would have the desired effect of prompting users to invest in more spectrum-efficient systems as long as used legacy equipment remains available.

⁷ FNPR at ¶ 142.

incumbent users would identify an advantage in moving to more advanced technologies that would prompt them to do so voluntarily, thereby obviating the need for governmental action.

5. Unfortunately, that has not proven to be the case in the refarmed bands. As described in AMTA's Petition, and confirmed in the three intervening years, because the refarming rules do not award an incumbent who moves to more efficient technology with the right to use the additional capacity created thereby, there is little incentive for existing wideband licensees on the original 25 kHz bandwidth channels to deploy more advanced equipment.⁸ They eventually may do so in self-defense as their wideband systems become subject to increasing interference from now full-power, adjacent channel 12.5 kHz systems, but that is hardly a recipe for good spectrum management; it will result in improved spectrum utilization in only a haphazard, uncoordinated way.

6. For these reasons, AMTA remains convinced that the Commission must adopt a more pro-active approach, as it has done in other instances in which it determined that the public benefits of improved efficiency and/or advanced services justified imposing obligations on incumbents.⁹ As described below, AMTA is convinced that the Commission can adopt rules that will accelerate the transition to more efficient technologies without unduly burdening incumbents in these bands.

⁸ Applicants for "offset" channels are required to employ narrowband equipment.

⁹ *First Report and Order*, ET Docket No. 92-9, 7 FCC Rcd 6886 (1992) (Establishing procedures for 2 GHz microwave relocation); *Fifth Report and Order*, MM Docket No. 87-268, 12 FCC Rcd 12809 (1997) (Establishing a specific date after which incumbent broadcasters are required to relocate to other spectrum); *First Report and Order, Eighth Report and Order*, 11 FCC Rcd 1463 (1995)(Creating a mechanism for relocation of incumbent licensees on the upper 200 800 MHz channels).

B. THERE ARE SPECIFIC STEPS THE COMMISSION SHOULD TAKE TO JUMPSTART THE MIGRATION TO EFFICIENT TECHNOLOGIES.

7. As a first step, AMTA urges the Commission to adopt an immediate freeze on the acceptance of applications for new wideband systems in the refarmed bands, at least in the urban markets identified below.¹⁰ Such an action will not place an unreasonable burden on applicants, as the industry has been on notice since 1995 that the subject bands were being transitioned to narrowband technology.¹¹ Further, equipment that satisfies this requirement is readily available from a variety of equipment manufacturers. The continued licensing of new wideband systems is inconsistent with the goal of improved spectrum efficiency and will perpetuate the Commission's concern about licensees being required to abandon recent investments in inefficient equipment. If there are entities that have a specific, justifiable need to operate a new 25 kHz bandwidth system in one of the urban markets identified below, they will be free to demonstrate that requirement in a waiver showing.

8. The next critical step, in the Association's opinion, is adoption of a date certain after which licensees in markets with traditionally inadequate spectrum resources must move to more efficient technologies. The type acceptance provisions already adopted by the Commission have proven ineffective for their purpose; they have not prompted either incumbents or even new entrants to embrace narrowband equipment for use on 25 kHz bandwidth channels. The

¹⁰ AMTA recommends "wideband" be defined as any system proposing to operate at greater than 12.5 kHz bandwidth.

¹¹ See "In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them," *Report and Order and Further Notice of Proposed Rule Making*, PR Docket No. 92-235, 10 FCC Rcd 10076 (1995).

Association is not optimistic that the modifications proposed in the instant FNPR, or the corollary importation restrictions, will prove more efficacious, at least not in any reasonable timeframe or in any orderly, business-like fashion. Licensees with other incentives to migrate, either to enhance their commercial radio operations or to improve their internal communications capabilities, will be inclined to do so with or without these provisions. Unfortunately, their efforts will not be sufficient if the bands remain populated by a very significant number of incumbents with working wideband systems and no independent reason to invest in more advanced equipment unless and until their systems are neither repairable nor replaceable.

9. Thus, AMTA still believes, as proposed in its Petition, that the Commission should adopt a date-certain by which all existing and new licensees must migrate to 12.5 kHz equipment or accept secondary status. AMTA has reviewed the dates proposed in the Petition and has concluded that they remain reasonable. As noted above, the industry has been on notice for at least six years that the core objective of the refarming initiative was a transition to more efficient technologies. The equipment to do so is readily available. Therefore, the Association again submits that the dates by which licensees would be required to implement more spectrum-efficient equipment should be defined by the urban area rankings set out in FCC Rule Section 90.741 as follows:

Markets 1 through 50 - 12/31/2003

Markets 51 through 100 - 12/31/2008

All other markets - 12/31/2020.¹²

¹² See FNPR at n.379.

10. As recommended in its Petition, AMTA suggests that incumbents who elect not to implement equipment capable of meeting the efficiency standard would be afforded secondary, rather than primary, status on their channels and would be subject to whatever primary licensing provisions the FCC subsequently adopts for their frequencies. Under this approach, licensees in rural areas likely would be able to use their current wideband equipment for an extended time since a wideband licensee would become secondary only if its use of the spectrum precluded a new entrant's primary, narrowband use.

III. 900 MHz LICENSING FLEXIBILITY

A. BACKGROUND

11. On July 21, 1999, the Commission issued an Order conditionally granting in part and denying in part certain Requests for Waiver filed by Nextel Communications, Inc. ("Nextel") requesting FCC consent to assignment of 800 MHz Business and Industrial/Land Transportation ("B/ILT") channels from various licensees to Nextel.¹³ The Waiver Requests stated that Nextel proposed to use the channels either as replacement spectrum for incumbents relocated from the upper 200 800 MHz SMR band or to expand Nextel's own digital iDEN system.¹⁴

12. The Commission granted the Waiver Requests for purposes of relocating 800 MHz incumbents, but, with certain exceptions, denied them to the extent Nextel proposed to incorporate the channels in its own system.¹⁵ The FCC considered the practical effect of the latter as

¹³ *Order*, DA 98-2206, 14 FCC Rcd ___ (rel. July 21, 1999).

¹⁴ *Id.* at ¶ 6.

¹⁵ *Id.* at ¶¶ 26-27.

establishing a rule of general applicability pursuant to which the channels in question would be assignable to all qualified SMR licensees, and determined that such an issue must properly be decided in the context of a rule making proceeding.¹⁶ Accordingly, in 1999, the Bureau incorporated into the Balanced Budget Act proceeding¹⁷, the question of whether the Commission's 800 MHz licensing rules should be amended to allow spectrum assigned for B/ILT use to be acquired for or converted to commercial usage.¹⁸

13. On November 9, 2000, the Commission adopted its Report and Order in the Balanced Budget Act ("BBA") Proceeding.¹⁹ In the BBA Order the Commission found that allowing 800 MHz PLMR spectrum to be used in commercial systems "would create additional flexibility for both PLMR licensees seeking to fill their communications needs and for CMRS licensees seeking additional spectrum."²⁰ Accordingly, the Commission amended FCC Rule Section 90.621(e)(2) as follows:

Notwithstanding paragraph (e)(5) of this section, licensees of channels in the Industrial/Land Transportation and Business categories may request a modification of the license, see §1.947 of this chapter, to authorize use of the channels for commercial operation. The licensee may also, at the same time or thereafter, seek

¹⁶ *Id.* at ¶ 31.

¹⁷ *Implementation of Section 309(j) and 337 of the Communications Act of 1934 as Amended; Promotion of Spectrum Efficient Technologies on Certain Part 90 Frequencies; Establishment of Public Service Radio Pool in the Private Mobile Frequencies Below 800 MHz*, WT Docket No. 99-87.

¹⁸ *See Public Notice*, 14 FCC Rcd 11795 (1999).

¹⁹ *See*, n.1 *supra*.

²⁰ *Id.* at ¶ 109.

authorization to transfer or assign the license, see §1.948 of this chapter, to any person eligible for licensing in the General or SMR categories. . .²¹

14. Thus, after careful consideration, the Commission determined with respect to the 800 MHz band it no longer was in the public interest to preserve an inflexible demarcation between spectrum allocated for commercial SMR and for other Part 90 services, finding instead that the "alienability of PLMR licenses will enhance spectral use and efficiency".²² The Commission did not adopt a similar rule for the 900 MHz band since it concluded that it had not sought comment on whether it should extend this rule change beyond the 800 MHz band. The instant FNPR now seeks comment on whether the same flexibility afforded PLMR licensees at 800 MHz should be extended to the 900 MHz band.

15. AMTA supports permitting 900 MHz B/ILT licensees either to modify their authorizations to offer commercial service on their own systems or to assign their authorizations to other commercial providers. For fifteen years the 900 MHz band has been sub-divided based on an approximately twenty-year old Commission prediction of the needs of various categories of Part 90 users.²³ PLMR eligibles have had ample opportunity to deploy this spectrum to meet purely private, internal communications needs and to assess whether those needs are better satisfied on their own or on a third party system. AMTA believes it now is appropriate for the FCC to

²¹ 47 C.F.R § 90.621(e)(2).

²² BBA Order at ¶ 110.

²³ *Report and Order*, Gen Docket No. 84-1231, 2 FCC Rcd 1825 (1986) (in which the Commission allocated 100 channel pairs to the Business Radio Service, 99 channel pairs to the I/LT Radio Service and 200 channel pairs to the SMR Service).

permit these entities the same opportunity available to licensees in virtually all Part 90 bands; the right to make their own determinations as to the optimal use to which their spectrum can be put.²⁴

B. ADOPTION OF A FLEXIBLE LICENSING PLAN AT 900 MHz WOULD SERVE THE PUBLIC INTEREST.

16. AMTA believes that amending the FCC's rules to permit existing 900 MHz B/ILT licensees to convert their authorizations to commercial use or to enter into voluntary assignment agreements with commercial operators will serve a number of important objectives. First, as the Commission already has concluded, doing so would be consistent with the agency's statutory obligation to promote regulatory symmetry among CMRS providers.²⁵ The Association also anticipates that conversion to commercial operation is likely to produce improved spectrum efficiency. Commercial operators have a distinct incentive to deploy highly spectrum-efficient equipment, an incentive that is not necessarily applicable when spectrum is used to meet purely private, internal communications needs.²⁶ Adoption of this change also would be entirely

²⁴ See "In the Matter of Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them," *Second Report and Order*, PR Docket No. 92-235, 12 FCC Rcd 14307 (1997)(where the Commission consolidated the twenty PLMR Services into two pools-- one for Public Safety and One for Industrial/Business) and 47 C.F.R. § 90.179 (shared use of radio stations).

²⁵ FNPR at ¶ 144.

²⁶ This is not to say that PLMR licensees are disinterested in spectrum efficiency. However, the practical reality is that a licensee with enough capacity to meet its internal requirements has no reason to invest in more efficient technology. By contrast, commercial providers are motivated to derive the maximum capacity from their assigned spectrum since capacity gains typically mean increased profits.

consistent with the FCC's, and the new administration's, efforts to permit free marketplace forces a more prominent role in directing telecommunications activities.

17. The Commission has recognized that "in general, the best way to realize the maximum benefits from the spectrum is to permit and promote the operation of market forces in determining how spectrum is used."²⁷ In its Policy Statement summarizing its efforts to develop a comprehensive plan for managing spectrum effectively, the Commission stated:

Information presented at the two *En Banc* hearings provided insight from industry and academia on their views of how the Commission's spectrum management responsibilities should evolve. Two key focus areas emerged: 1) promote greater efficiency in spectrum use and 2) make more spectrum available. Flexibility was again emphasized for both allocations and service rules.²⁸

While the Commission noted in its Policy Statement, and as AMTA recognizes, the communication needs of PLMR licensees "may have spectrum needs that are not addressed under a market approach"²⁹, the subject rule change balances the benefit of market forces with the PLMR licensee's interest by allowing "PLMR licensees to assess marketplace needs and economic factors when determining the best and most efficient use of spectrum."³⁰

18. AMTA appreciates that concerns have been expressed by certain representatives of the PLMR community that adoption of the proposed rule change could deprive qualified B/ILT

²⁷ "In the Matter of Principles for Promoting the Efficient Use of Spectrum by Encouraging the Development of Secondary Markets," *Policy Statement*, __ FCC Rcd __ (rel. Dec. 1, 2000) ("Policy Statement").

²⁸ *Id.* at ¶ 9.

²⁹ *Id.*

³⁰ BBA Order at ¶ 111.

eligibles of channels needed for internal systems. However, the Association believes the FCC has taken several important steps to ensure that such users will have appropriate communications options. First, as the Commission has correctly noted, the spectrum eligible for conversion is unlikely to become available for future PLMR users in any event. The Association agrees with the Commission's assessment:

... licensees do not in any large measure turn back to the Commission PLMR frequencies they no longer need or are using inefficiently; rather, they continue to hold the spectrum. Consequently, we believe that allowing licensees to modify their licenses for CMRS use or assign or transfer these frequencies to CMRS entities will not materially affect the supply of available spectrum for licensing from the PLMR pool.³¹

However, to the extent B/ILT remains unassigned³² or is returned to the FCC by existing licensees, those frequencies would remain available exclusively for use by PLMR eligibles. The Commission specifically declined to allow commercial providers to apply for unassigned or recovered 800 MHz B/ILT spectrum, and presumably would adopt a similar restriction at 900 MHz.

19. Recent FCC actions also confirm that the future PLMR user will not be deprived of an opportunity to operate its own system. The Commission has allocated 4 MHz of spectrum at 700 MHz which is at least inferentially ear-marked for future PLMR use.³³ The FCC has

³¹ *Id.* at ¶ 112.

³² As noted above, the 900 MHz B/ILT channels have been available for licensing for some fifteen years. There are few, if any, urban markets of significant size in which any of the channels remain unassigned, and channel recovery is very limited.

³³ See "In re Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules," *Second Report and Order*, WT Docket No. 99-168, 15 FCC Rcd 5299 (1999).

designated the band as a Guard Band between Public Safety systems and wideband commercial operations, and has licensed Guard Band Managers whose authorizations require them to lease at least a majority of their spectrum to entities that are prohibited from deploying systems with cellular configurations. It is expected that this allocation, which occupies prime spectrum for two-way mobile communications applications, will satisfy the requirements of a significant number of future PLMR eligibles.

20. Additionally, the Commission has initiated a rule making proceeding in which it has proposed, *inter alia*, to allocate a portion of the 1.4 GHz band for PMRS use exclusively.³⁴ While it cannot yet be determined when, or if, the FCC will adopt such an allocation, this proceeding further evidences the FCC's commitment to creating PLMR licensing opportunities for future applicants.

21. These initiatives are the appropriate vehicles for addressing prospective PLMR needs. By contrast, it is not optimal spectrum management for the FCC to attempt to preserve available spectrum indefinitely for the "unborn" user, and thereby deny access to it by existing entities prepared to put it into immediate, production operation. The 900 MHz B/ILT channels under consideration have been restricted to PLMR applications for a decade and a half. It now is in the public interest to remove what were from the outset arbitrary assessments of how much 900

³⁴ " In The Matter of Reallocation of The 216-220 MHz, 1390-1395MHz, 1427-1429 MHz, 1429-1432 MHz, 1432-1435 MHz, 1670-1675 MHz and 2385-2390 MHz," *Notice of Proposed Rule Making*, ET Docket No. 00-221, FCC 00-395, 13 FCC Rcd ____ ¶¶ 31-33 (rel. Nov. 20, 2000).

MHz spectrum any particular class of eligible would require and permit B/ILT licensees to make their own, reasoned determinations as to the type of system they wish to operate.³⁵

22. Finally, it is important to note that the FCC's decision on this issue actually will affect how, not whether, PLMR communications requirements are satisfied. AMTA's members, indeed the entire SMR industry, have provided cost-effective, spectrum-efficient communications service to PLMR eligibles for more than two decades. The spectrum that might be converted pursuant to this proposed rule change nonetheless will be used by PLMR eligibles in meeting their internal communications needs. The difference is that those needs will be satisfied through the use of a third party system rather than a stand-alone facility.

23. The benefits of such systems are manifold and well-documented by the FCC. Although AMTA consistently has recognized that some PLMR requirements are not well-suited for third party service and supports the FCC's initiatives described above to ensure spectrum options for such users, it has become increasingly evident that many PLMR entities prefer the typically more feature-rich, wider-coverage, cost-effective service offered by third party providers. To the extent they elect to use their spectrum to expand the availability of such offerings, that result clearly serves the public interest.

IV. CONCLUSION

24. For the reasons detailed herein, the Association urges the Commission to proceed expeditiously to adopt rules comments with the instant Comments.

³⁵ Similar to the 800 MHz band, the 900 MHz PLMR and CMRS channels are interleaved and, thus, are "particularly suited to such flexibility". BBA Order at ¶109. It is evident that a number of new and prospective advanced technologies will require access to the broader bandwidths that can be created by aggregating contiguous channels.

CERTIFICATE OF SERVICE

I, Linda J. Evans, a secretary in the law office of Lukas, Nace, Gutierrez & Sachs, hereby certify that I have, on this March 5, 2001 caused to be mailed, first-class, postage prepaid, a copy of the foregoing Comments to the following:

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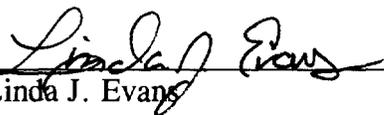
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