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FEDERAL COMMUNICATIONS COMMISSION  
OFFICE OF THE SECRETARY

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

In the Matter of	)	
	)	
Reallocation of the 216-220 MHz,	)	ET Docket No. 00-221
1390-1395 MHz, 1427-1429 MHz,	)	RM-9267
1429-1432 MHz, 1432-1435 MHz,	)	RM-9692
1670-1675 MHz and 2385-2390 MHz	)	RM-9797
Government Transfer Bands	)	RM-9854

To: The Commission

**REPLY COMMENTS OF  
IN-SYNC INTERACTIVE CORPORATION**

In-Sync Interactive Corporation ("In-Sync"), by counsel and pursuant to Section 1.415(c) of the Commission's Rules, hereby submits the following Reply Comments in connection with the Notice of Proposed Rule Making, ET Docket 00-221, released November 20, 2000 (the "NPRM").

**Background**

In the *NPRM*, the Commission proposes to allocate a total of 27 megahertz of spectrum from various bands identified for transfer from Government to non-Government use pursuant to the Omnibus Budget Reconciliation Act of 1993 and the Balanced Budget Act of 1997.<sup>1</sup> In its Comments on the *NPRM*, In-Sync urged the Commission to retain the existing spectrum allocations for the 216-220 MHz band and to reject the proposal of Regionet Wireless License, LLC ("Regionet")<sup>2</sup> to reallocate the 216-217 MHz and 218-219 MHz segments for two-way paging services.<sup>3</sup> As the In-Sync Comments and those of other commenters confirm, the 218-

<sup>1</sup> See Omnibus Budget Reconciliation Act of 1993, Pub. L. 103-66, 107 Stat. 312 (1993) ("OBRA-93"); Balanced Budget Act of 1997, Pub. L. 105-33, 111 Stat. 251 (1997).

<sup>2</sup> Petition for Rule Making, RM-9692 (filed June 10, 1999).

<sup>3</sup> See Comments of In-Sync Interactive Corporation ("In-Sync Comments").

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List A B C D E

219 MHz Service is a viable industry poised to offer a host of compelling, wireless services. Stimulated by rule changes the Commission adopted in 1999, In-Sync has raised substantial investment capital to acquire licenses, develop technology and business and consumer applications, and bring spectrally efficient and cost-effective services to market.

Despite the present success of and prospects for In-Sync and others, some commenters attempt to dismiss and even eliminate the 218-219 MHz Service. These commenters seek to eviscerate viable wireless offerings on the verge of commercial deployment and thwart the sound business plans and expansion paths of all participants in the existing and future 218-219 MHz Service auctions in favor of “repurposing” the spectrum for their speculative uses. As discussed below, and consistent with the views expressed by the overwhelming majority of commenters in this proceeding, In-Sync respectfully submits that the public interest does not favor the re-allocation of the 216-220 MHz band, and urges the Commission to retain the existing allocation rules.

### Discussion

#### **I. RE-ALLOCATING THE 216-220 MHz BAND WOULD DISRUPT EXISTING USES AND SHOULD BE REJECTED.**

The vast majority of commenters strongly oppose efforts to allocate new services to the 216-220 MHz band. For example, commenters representing the interests of persons with hearing impairments, as well as hundreds of private individuals utilizing assistive listening devices (“ALDs”), have registered strong opposition to re-allocating the 216-217 MHz portion of the 216-220 MHz band for new services.<sup>4</sup> These commenters assert generally that the introduction of new services would disrupt the existing use of ALDs and would undermine significant

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<sup>4</sup> See, e.g., Comments of The Alexander Graham Bell Association for the Deaf and Hard of Hearing; Comments of Phonic Ear, Inc.; Comments of the National Association of the Deaf.

investment by parents, schools and others in systems designed to facilitate the use of ALDs.<sup>5</sup> Other commenters that oppose the introduction of new services in this band currently use 216-220 MHz for services such as radio telemetry in geophysical exploration<sup>6</sup> and security systems in the health care industry,<sup>7</sup> and these commenters are understandably concerned about the interference such new services could cause.

Several commenters specifically challenge Regionet's proposal to reallocate the 218-219 MHz band to the Paging and Radiotelephone Service and, significantly, even Regionet's corporate parent now admits that there are more appropriate uses than two-way paging services.<sup>8</sup> This retreat corresponds with the position of several commenters asserting that Regionet's initial proposal is not technically sound<sup>9</sup> and would not represent the public interest,<sup>10</sup> that sufficient bandwidth already exists for two-way paging<sup>11</sup> and that an additional allocation not only would

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<sup>5</sup> *Id.*

<sup>6</sup> See Comments of Fairfield Industries, Inc. at 7-9 ("Fairfield Comments").

<sup>7</sup> See Comments of InstanTel, Inc. at 4-6 ("InstanTel Comments").

<sup>8</sup> See Comments of Mobex Communications, Inc. ("Mobex Comments") at 3-4.

<sup>9</sup> Several commenters note that the two-way paging proposal would not protect incumbents from interference. See, e.g., Initial Comments of U.S. Telemetry Corporation at 8-9 ("USTC Comments") (noting the interference potential attendant to the "[i]nsertion of new services into the existing mix"); Comments of Electronic Tracking Systems, L.L.C. at 7-9 ("Electronic Tracking Comments") (noting that the introduction of new high-power operations in the band would cause severe interference to the many secondary low-power services already operating in the band, such as law enforcement tracking systems); InstanTel Comments at 4-8 (noting that two-way paging operations would likely create unacceptable interference with a broad range of incumbent uses, including operations of unlicensed radio frequency devices authorized under Part 15); Fairfield Comments at 7-8 (noting that lower power services such as auditory assistance devices, LPRS, the Amateur Service and telemetry are "extremely susceptible" to interference from high-power services and that Fairfield's geophysical telemetry operations would face reduced effectiveness in exploring for new and expanded oil and gas reserves).

<sup>10</sup> See, e.g., Comments of Millennium Networks, Inc. at 3 ("Millennium Comments") (arguing that the 216-220 MHz spectrum should be used for "innovative new services" rather than expanding the existing bandwidth for two-way paging); USTC Comments at 8-9 (referencing the consumption of FCC resources to referee interference disputes between new and existing services in the 216-220 MHz band and the reduction in value of existing and yet-to-be auctioned licenses in the band from the "sandwiching of spectrum").

<sup>11</sup> See, e.g., Millennium Comments at 3.

be unnecessary but would squeeze out small businesses that have devoted significant resources toward efficient and valuable use of the spectrum.<sup>12</sup> In-Sync applauds Mobex/Regionet's acknowledgment that changed circumstances and the evolving marketplace have undermined the efficacy of Mobex/Regionet's proposed allocation, and In-Sync concurs with other commenters' objections to the proposal.

## **II. PROPOSALS FOR NEW SERVICE ALLOCATIONS ARE CONTRARY TO THE PUBLIC INTEREST.**

Several commenters propose new allocations and/or licensing structures for the 216-220 MHz band. In-Sync asserts that new allocations in this band would nullify the recent flexibility granted to the 218-219 MHz Service and would unduly deprive, *ex post*, 218-219 MHz licensees of the value of the licenses they purchased pursuant to the Commission's auction procedures. Although they endeavor to discredit incumbent services, these commenters' efforts are nothing more than a transparent attempt to grab spectrum for speculative purposes at the expense of those that have purchased and developed it for beneficial use and those that seek to exploit it for efficient and cost-effective commercial and public safety purposes. In-Sync respectfully submits that the public interest does not support these reallocations because they would, as a practical matter, greatly undermine, if not gut entirely, the provision of viable service offerings that are on the threshold of widespread deployment.

Mobex, the corporate parent of Regionet, now agrees that allocation of the 218-219 MHz band to the Paging and Radiotelephone Service "may have been overtaken by events" and that allocation of the band to two-way paging does not represent the most appropriate use of the

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<sup>12</sup> *Id.*; see also USTC Comments at 6.

band.<sup>13</sup> Nevertheless, Mobex now seeks an additional allocation to boost its AMTS business,<sup>14</sup> to the detriment of consumers that are ready to receive other services in the band, including the 218-219 MHz Service.

Mobex' comments, on their face, demonstrate a reliance on an out-dated perception of the services and opportunities available in the 218-219 MHz band. Mobex proposes to do away with the planned 218-219 MHz Service auctions for remaining MSAs and RSAs and, instead, reallocate spectrum in those markets for AMTS.<sup>15</sup> In making this suggestion, Mobex cites the purported lessons of the "unsuccessful IVDS market,"<sup>16</sup> characterizing the service as "moribund" and having "no manufactured products in operation and no users of which Mobex is aware."<sup>17</sup> As evidence that this is not the case now and will not be true in the future, the Commission need look no further than the comments filed in this proceeding and its own records demonstrating the influx of investment capital, the growth and success of new technology and the retention of more than 80 percent of 218-219 MHz Service licenses.<sup>18</sup> To separate allocations of existing licenses from those to be auctioned or re-auctioned would create an unworkable hodgepodge of regulation. Moreover, Mobex' proposal would hinder the ability of present 218-219 MHz Service licensees to continue to develop their services successfully by capping the number of markets in which such services would be available thus creating a non-contiguous patchwork of

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<sup>13</sup> See Mobex Comments at 3-4.

<sup>14</sup> *Id.* at 6.

<sup>15</sup> *Id.* at 7.

<sup>16</sup> *Id.*

<sup>17</sup> *Id.* at 5, 6.

<sup>18</sup> See generally In-Sync Comments; USTC Comments; Comments of Celtronix Telemetry, Inc.

service areas sure to frustrate customers and hobble commercial and consumer adoption of new services.<sup>19</sup>

Securicor Wireless Holdings, Inc. (“Securicor”), whose subsidiaries are licensees in the 220 MHz Service, proposes to revamp the licensing system for non-Government operations in the 216-220 MHz band. Securicor argues that a “significant amount” of spectrum has yet to be licensed on a primary basis in 216-220 MHz band and that this spectrum should be subject to a so-called “Phase II” auction and licensed in a manner similar to spectrum in the 220 MHz Service.<sup>20</sup> Securicor argues that this re-allocation would “level the playing field” by creating similar regulatory parameters across neighboring frequency bands.<sup>21</sup>

Securicor’s proposal is nothing more than an attempt to pilfer spectrum from one viable service and annex it to another service based on misfounded beliefs and unproven claims. Indeed, Securicor’s argument is based on the fact that its 220 MHz Service spectrum happens to be adjacent to the 216-220 MHz band, and gives mere lip service to the public interest benefits offered by existing users in that band. Although Securicor acknowledges that its proposal must protect incumbent users authorized in 216-220 MHz band, including the 218-219 MHz Service, it offers only bare assertions that such protection is afforded by its proposal.<sup>22</sup> In fact, Securicor suggests that incumbent operations should be relocated if interference protection is inadequate, but utterly fails to demonstrate how such relocation would be technologically or economically feasible for incumbents.<sup>23</sup>

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<sup>19</sup> See Mobex Comments at 7.

<sup>20</sup> See Comments of Securicor Wireless Holdings, Inc. at 4-6 (“Securicor Comments”).

<sup>21</sup> *Id.* at 5.

<sup>22</sup> *Id.* at 6.

<sup>23</sup> *Id.*

Furthermore, Securicor characterizes the licensing of the 216-220 MHz band, including the 218-219 MHz portion, as “haphazard and piecemeal,” without acknowledging the historical development of existing services or the technical, regulatory and other impediments that limited development of the 218-219 MHz Service before the Commission’s 1999 rule changes.<sup>24</sup> Of course, any divisions of spectrum segments are necessarily arbitrary, and the existing allocations throughout the 216-220 MHz band should be viewed as efficient rather than tainted with Securicor’s pejorative label. Moreover, Securicor’s call for spectrally efficient and market-based spectrum allocations has already been answered in the 218-219 MHz band, where enhanced service and technical flexibility engendered by the *218-219 MHz Order* have paved the way for efficient use of that band.<sup>25</sup> Comments submitted by 218-219 MHz licensees demonstrate this fact.

Warren C. Havens proposes scrapping the existing licensing system for frequencies in the 216-225 MHz band and reallocating the entire nine megahertz for a self-named “Advanced Technology 220 MHz Service.”<sup>26</sup> As conceived, this service apparently would replace, after an unknown period, existing services such as the 220 MHz Service, the 218-219 MHz Service and AMTS with something called a “National Environmental Wireless Service.”<sup>27</sup> Without a shred

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<sup>24</sup> *Id.* at 2.

<sup>25</sup> *See generally* Amendment of Part 95 of the Commission’s Rules to Provide Regulatory Flexibility in the 218-219 MHz Service, Report and Order and Memorandum Opinion and Order, FCC 99-239, WT Docket No. 98-169, RM-8951, 15 FCC Rcd 1497 (1999)(“*218-219 MHz Order*”). The Commission has made clear these 1999 rule changes were designed “to improve the efficiency of spectrum use, reduce the regulatory burden on spectrum users, encourage competition and provide services to the largest feasible number of users within the 218-219 MHz band.” *Id.* at ¶¶ 1-2.

<sup>26</sup> *See* Comments of Warren C. Havens at 2 (“Havens Comments”).

<sup>27</sup> *Id.* at 2, 4-5.

of evidence, Havens argues that these existing services are “lightly used” and implies that his proposed services would constitute a higher and better use for the spectrum.<sup>28</sup>

Havens’ proposal is an absurd proposition that warrants no serious consideration. First, Havens proposes to reallocate spectrum in the 220-225 MHz band, which is not designated for transfer in the instant proceeding; thus, the proposal exceeds the scope of the Government spectrum identified for reallocation by the National Telecommunications and Information Administration (“NTIA”) in its efforts to implement OBRA-93 and BBA-97.<sup>29</sup> Moreover, to the extent that the technical aspects of Havens’ proposal are predicated upon the availability of 220-225 MHz spectrum, these proposals are not sustainable.

Second, Havens’ proposal fails to demonstrate any protection to incumbent primary licensees; to the contrary, Havens proposes that “incumbent ... licensees in these bands could elect to operate under the AT 220 MHz rules until a certain date, after which they would be required to conform.”<sup>30</sup> As the Commission noted, “[a]ny new service allocated on a primary basis in this spectrum will be required to protect existing primary licensees, including AMTS licensees and licensees in the 218-219 MHz Service.”<sup>31</sup> Havens makes no claim that his proposed services can adequately protect incumbent users in the band consistent with existing rules. By positing that incumbents should be required to conform to new rules specified for his proposed services, and by proposing tax incentives to spark participation therein, Havens misconstrues both the scope and effect of the instant rule making and of the Commission’s

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<sup>28</sup> *Id.* at 3.

<sup>29</sup> *See NPRM* at ¶¶ 1-4.

<sup>30</sup> *See Havens Comments* at 3.

<sup>31</sup> *See NPRM* at ¶ 11.

authority to rule on certain aspects of his proposals. Even so, the merits of his proposal are dubious at best. For these reasons, Havens' proposal must be summarily rejected.

### **III. ELEVATION OF SECONDARY SERVICES TO CO-PRIMARY STATUS IS NOT IN THE PUBLIC INTEREST.**

Some commenters have proposed elevating certain secondary services such as telemetry and Low Power Radio Service ("LPRS") to co-primary status in the 216-220 MHz band.<sup>32</sup> They suggest that existing interference protection rules would provide adequate interference protection to incumbent primary services.

These arguments miss the point. First, it would be unfair to 218-219 MHz licensees that purchased their licenses through the competitive bidding process to face new interference from existing users receiving an upgrade to primary service. This result would devalue existing licenses, mere months after licensees elected to retain more than 80 percent of their licenses. Second, the prospect of interference from co-primary service in the 218-219 MHz band would devalue the MSA and RSA licenses that remain subject to future auction, reducing interest and resulting in lower auction bids. The Commission is well acquainted with the adverse impact that auctioning encumbered spectrum would cause,<sup>33</sup> and certainly should not take affirmative steps to create such devaluation by designating certain services as co-primary. Those entities interested in providing telemetry services on a primary basis are certainly free to participate in upcoming 218-219 MHz auctions or negotiate partitioning, disaggregation or other private contracts with 218-219 MHz Service licensees capable of providing those services today. As the Commission correctly concluded, it would be "inappropriate" to permit new, co-primary services

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<sup>32</sup> See, e.g., Millennium Comments at 4; Instantel Comments at 2, 8-11; Electronic Tracking Comments at 15-16.

<sup>33</sup> See, e.g., Service Rules for the 746-764 and 776-794 MHz Bands, and Revisions to Part 27 of the Commission's Rules, WT Docket No. 99-168, First Report and Order, 15 FCC Rcd 476 (2000).

in the 218-219 MHz band, in light of “the potential to disrupt or limit the operation of the primary licenses.”<sup>34</sup>

**Conclusion**

As In-Sync’s Comments and Reply Comments demonstrate, any effort to change the allocation of the 218-219 MHz band would disrupt incumbent services, threaten the long-standing efforts of In-Sync and others to develop the spectrum and undermine future benefits to the American public. Accordingly, In-Sync respectfully submits that the Commission should maintain the allocations currently applicable to the 216-220 MHz band and should reject proposals to re-allocate this band.

Respectfully submitted,

**IN-SYNC INTERACTIVE CORPORATION**

By:



Stephen E. Coran  
Jonathan E. Allen

RINI, CORAN AND LANCELLOTTA, P.C.  
1350 Connecticut Avenue, N.W.  
Suite 900  
Washington, D.C. 20036  
(202) 296-2007

Its Attorneys

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<sup>34</sup> See *NPRM* at ¶ 15.