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

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In the Matter of	)	
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Amendment of Section 90.621	)	WT Docket No.
of the Commission Rules Consolidate The	)	RM-
800 MHz and 900 MHz Industrial	)	
and Business Pool Channels	)	

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To: The Commission

PETITION FOR RULEMAKING

The Personal Communications Industry Association, Inc. ("PCIA"),[1] pursuant to Section 1.401 of the Commission Rules, 47 C.F.R. §1.401, respectfully requests that the Commission consolidate the 800 MHz and 900 MHz Industrial and Business Pool channels into one pool by amending Sections 90.621 of the Commission's Rules. In support thereof, the following is shown:

I. BACKGROUND

In 1981, the Commission proposed that frequencies in the 851-866 MHz band be allocated into four separate pools: Specialized Mobile Radio; Business; Industrial/Land Transportation; and Public Safety.[2] The Commission reasoned that a distribution done by service categories would

[1] PCIA is an international wireless trade association dedicated to advancing seamless global communications through its strategic marketing, public policy expertise, events and educational programs. PCIA members include a broad base of interdependent mobile convergence players, including both commercial mobile radio service ("CMRS") and private mobile radio service ("PMRS") users and businesses involved in all facets of the personal communications industry. PCIA's membership alliances include: the Paging and Messaging Alliance, the PCS Alliance, the Mobile Wireless Communications Alliance, the Site Owners and Managers Alliance, and the Private System Users Alliance. In addition, PCIA is the FCC-appointed frequency coordinator for the Industrial/Business Radio Service, the 800 and 900 MHz Business and Special Industrial/Land Transportation Pools, 800 MHz General Category frequencies, and for the 929 MHz paging frequencies.

[2] Further Notice of Proposed Rule Making, PR Docket No. 79-191, 46 FR 379327 (July 23, 1981).

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"allow for the necessary growth of SMR systems while at the same time assuring an ample complement of frequencies for Public Safety eligibles."[3] The particular Pools were created with the intent of grouping eligible users "with similar communications requirements."[4] The Commission was also keenly aware of the need to foster growth, and proposed inter-category sharing between all-eligibles within the three non-SMRS categories.[5]

At the same time as the Commission called for the establishment of separate service category pools and inter-category sharing, it also recognized that the pool channel concept should only be temporary in nature. The Commission deemed that this framework would only be for a "limited time," allowing those users whom need a longer time to plan and implement to not have to compete for spectrum against other applicants whose communication needs could be more quickly implemented. Specifically, the Commission promised the PLMRS community that "frequencies assigned to one pool will not remain unused while the needs of other classes of eligibles go unmet."[6]

Based on the Commission's favorable experiences with the 800 MHz pool channel framework, the Commission proposed to apportion the 900 MHz land mobile spectrum in a similar fashion.[7] The Commission reasoned that the success of the 800 MHz pools as being "efficient, equitable and effective" provided sufficient rationale for establishing a similar construct for the 900 MHz. Once again, the Commission provided that the pool framework would only be for a limited time period when it held that the "pool approach also provides *a reasonable period of time* for potential users with similar types of mobile communication requirements to apply for spectrum without competing against applicants with substantially different types of mobile communications

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[3] *Amendment of Part 90 of the Commission's Rules to Release Spectrum in the 806-821/851-866 MHz Bands and To Adopt Rules and Regulations Which Govern Their Use*, Second Report and Order, 90 FCC 2d 1281 (1982) at para. 52.
[4] Id. at para. 55.
[5] Id. at para. 63.
[6] Id. at para. 66.
[7] *See,* Notice of Proposed Rule Making, Gen. Docket No. 84-1233, 50 FR 1582 (January 11, 1985).

requirements or applicants seeking to establish commercial radio systems."[8] The Commission concluded that due to the successful implementation of inter-category sharing in the 800 MHz band, it should also be implemented in the 900 MHz pool channels.[9]

The Commission's Pool system worked well for many years. However, the growth of SMR Systems, and the need for certain SMR operators to acquire significant amounts of spectrum to implement cellular-type technology, led to the conversion of massive amounts of 800 MHz Business and Industrial Pool channels to SMR operation, through inter-category sharing.

On April 5, 1995, the Commission decided to place a freeze on the filing of new applications for inter-category sharing on all private mobile radio service (PMRS) frequencies in the 806-821/851-866 MHz bands.[10] The freeze was necessitated by the influx of Business and Industrial applicants seeking out-of-category sharing of the Public Safety category channels because the Business and Industrial Pool frequencies had been depleted by inter-category sharing by SMR applicants. The Commission concluded that without the freeze, "SMR applicants seeking to avoid auction may render these channels unavailable to other Part 90 services that need them..."[11]

Even while the Commission considered the benefits of a freeze, it also considered a more direct approach of designating the General Category Pool as exclusively SMR, ".... mak[ing] a clear demarcation between the allocation of spectrum for SMR and for other Part 90 services in order to eliminate the risk of SMR encroachment on non-auctionable spectrum."[12] Therefore, the two primary reasons cited by the Commission for the freeze was to protect the Public Safety channels from being overrun and reduce the risk of SMR licensees obtaining non-auctionable spectrum. The

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[8] *Amendment of Parts 2 and 22 of the Commission's Rules Relative to Cellular Communications Systems*, Report and Order, Gen. Docket No. 84-1233, 2 FCC Rcd 1825 (1986) at para. 46 (emphasis added).
[9] Id. at para. 52.
[10] *In the Matter of Intercategory Sharing of Private Mobile Radio Frequencies in the 806-821/851-866 MHz*, Order, 10 FCC Rcd 7350 (1995).
[11] Id. at para. 3.
[12] Id. at para. 4.

Commission deemed the freeze only a "temporary action" until the Part 90 spectrum allocation issues were resolved.[13]

Shortly thereafter, the Commission designated the entire General Category pool for licensing exclusively to SMR applicants.[14] The Commission believed the exclusivity would completely "eliminate the risk of SMR encroachment on non-auctionable PMRS spectrum."[15]

While the Commission actions sought to protect the Public Safety channels and eliminate SMR encroachment on non-auctionable PMRS spectrum, it has also had the unintended consequences of creating inefficiency in the band. Specifically, the continued existence of two separate and distinct pools for Industrial and Business eligibles serves as an impediment on a number of levels. PCIA requests that the Commission remove these impediments and further the Commission's goal of regulatory symmetry in the wireless community.

II. PETITION FOR RULEMAKING

The existence of two separate and distinct Pool Channels, an Industrial and a Business service, is outdated. In the consolidation of the PLMR service channels below 800 MHz, the Commission explained that its desire was to "organize channel allocations that will enable licensees to more easily utilize advanced technologies and to organize the services in such a manner to achieve more efficient and flexible spectrum use." Many of the same issues that were faced by licensees in the spectrum below 800 MHz are also faced by licensees in the 800 MHz band.

While the Commission's past decisions in the area of an inter-category sharing freeze at 800 MHz focused primarily upon preventing further encroachment of SMR into non-auctionable PMRS spectrum and reducing the influx of non-Public Safety applicants into the Public Safety Pool, the interests of Business eligibles has been largely ignored. Numerous legitimate business entities are

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[13] Id. at para. 8.

[14] *Amendment of Part 90 of the Commission's Rules to Facilitate Future Development of SMR Systems in the 800 MHz Frequency Band*, First Report and Order, Eight Report and Order and Second Further Notice of Proposed Rulemaking, PR Docket No. 93-144, GN. Docket No. 93-252, PP Docket No. 93-253, 11 FCC Rcd 1463 (1995) at para. 141 ("*800 MHz SMR Report and Order*").

[15] Id.

faced with continuous wireless communication issues due to their inability to utilize necessary technologies or acquire available spectrum. While the opportunity does exist for licensees to seek a waiver to utilize Industrial Pool channels, the costs associated with preparing and filing waivers are often considered prohibitive for situated entities.

The consolidation of non-public safety channels into a single pool channel allows users greater access to a larger pool of frequencies. Further, as the Commission noted in the *Refarming Second Report and Order*, consolidation allows for increased flexibility of advanced technologies, such as trunking.[16] The increased flexibility will not only enhance non-public safety operations, but also public safety operations, by reducing the costs of building and operating public safety communications.

For example, airlines are presently business-only eligibles. However, many of the uses of ground radio systems at airports are public safety-related. As discussed more fully in the Petition for Rule Making filed by PCIA to raise the permissible ERP for 450 MHz Airport Terminal Frequencies, security personnel and other employees with safety-related jobs utilize the local radio system. Unfortunately, the limited number of available 800 MHz and 900 MHz Business Pool frequencies (even for campus-type operation), has resulted in the need for airlines to file numerous waivers in order to be able to utilize Industrial Pool frequencies.[17] It is indeed unfortunate that spectrum in the band should lay fallow while legitimate users are ready to implement systems to meet critical communication needs.

The two pool channel structure also makes certain spectrum efficient technologies more difficult to implement. Several of the industry technologies require adjacent or contiguous channels. The absence of such a technical makeup, creates a situation where spectrum is not utilized to its full technical potential. Some digital multiple access techniques, including time

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[16] 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) at para. 19 ("*Refarming Second Report and Order*").

[17] Northwest Airlines, Inc., 16 FCC Rcd 2525 (PSPWD 2001).

division multiple access (TDMA), require several adjacent channels to operate efficiently. Because specific channel allocations for each of the radio services are generally scattered within the PLMR bands, rather than in contiguous blocks, spectrum necessary to implement such techniques is difficult to amass. As noted in another proceeding involving consolidation of pool channels, without consolidation, implementation of spectrum efficient technologies would be "cumbersome."[18]

In the Commission's *Refarming* proceeding the Commission consolidated twenty radio services in the PLMR bands below 800 MHz into two radio services.[19] The Commission's stated purpose of consolidation was to "simplify interservice sharing procedures, to organize channel allocations that will enable licensees to more easily utilize advanced technologies, and to organize the services in such manner to achieve more efficient and flexible spectrum use."[20] After a thorough review of the comments and the pertinent issues, the Commission concluded that the consolidation should consist of two radio services; Public Safety and non-Public Safety (known as the Industrial/Business Pools). The consolidation of the PLMR bands below 800 MHz will ultimately result in greater spectrum efficiency to all related licensees when all of the Commission's decisions for the band have taken hold.

In the 1991, in the *Refarming Notice of Inquiry,* the Commission recognized that "the need for spectrum efficiency is greater than ever."[21] Due to the increased demand for spectrum coupled with the inter-category-sharing freeze at 800 MHz, this issue is just as relevant now as it was then.

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[18] *Replacement of Part 90 by Part 88 to Revise the Private Land Mobile Radio Services and Modify the Policies Governing Them*, Notice of Proposed Rule Making, PR Docket No. 92-235, 7 FCC Rcd 8105 (1992) at para. 16 ("*Refarming Notice*").

[19] The twenty (20) PLMR services were the Public Safety Radio Services (Local Government, Police, Fire, Highway Maintenance, Forestry-Conservation, and Emergency Medical), the Special Emergency Radio Service, the Industrial Radio Services (Power, Petroleum, Forest Products, Video Production, Relay Press, Special Industrial, Business, Manufacturers, and Telephone Maintenance), and Land Transportation Radio Services (Motor Carrier, Railroad, Taxicab, and Automobile Emergency).

[20] *Refarming Second Report and Order* at para. 8.

[21] *In the Matter of Spectrum Efficiency in the Private Land Mobile Radio Bands In Use Prior to 1968*, Notice of Inquiry, 6 FCC Rcd 4126 (1991) at para. 86 ("*Refarming NOI*").

The continued existence of service-specific channels fosters an environment where "an underallocation can exclude users from that band at the same time that other service allocations are relatively little used."[22] The Commission appropriately recognized at it would be difficult to gauge which users most need the spectrum and opted instead to let market forces dictate. As a result of the two separate and distinct pools in the 800 MHz band, there are numerous examples where legitimate business owners are unable to apply for spectrum because their respective entity is not qualified in the Industrial Pool.

The consolidation of the Industrial and Business Pool channels into one single pool would have a negligible adverse effect on licensees themselves. As the Commission noted when it consolidated the same two pools in the PLMR bands below 800 MHz, "although each organization may have slightly different requirements based on the type of business they conduct, the majority of communications systems are used in a similar fashion – for support of day-to-day business activities, such as dispatching and diverting personnel or work vehicles, coordinating the activities of workers' and machines on location, or remotely monitoring and controlling equipment."[23] While the instant petition concerns a different band, the types of entities that the Commission referred to in the preceding docket remain the same.

Numerous Commission documents support a recognition that non-public safety service categories are no longer necessary or efficient. In addition, the Commission established competitive coordination in the 800 MHz and 900 MHz Business and Industrial/Land Transportation bands.[24] The current competitive coordination environment would allow for the proposed consolidation to one combined pool channel to be virtually seamless. Additionally, the issuance of the *Secondary Markets NPRM*, which solicits comments on whether service rules, such

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[22] Id.

[23] Id. at para. 40.

[24] United Telecom Council, DA 01-944 (PSPWD 2001) at para. 17. This decision certified the United Telecom Council, Manufacturers Radio Frequency Advisory Committee, ITA, and PCIA to coordinate PLMR frequencies in the 800 MHz and 900 MHz Business and Industrial Land Transportation bands.

as eligibility or regulatory status, should be maintained in a leasing context, is further evidence of the erosion of service specific frameworks.[25]

Although the entire Refarming proceeding and the consolidation of the relevant pool channels apply to completely different bands, the issues faced by the 800 MHz and 900 MHz licensees in the Industrial and Business Pools are exactly the same. The Commission should readily apply its own reasoning that "the majority of communications systems are used in similar fashion" and dissolve the artificial barrier that only serves as an impediment to the respective licensees. Furthermore, in the *Refarming R&O* the Commission stated that "[o]ur goal is to generally equalize the opportunity cost of spectrum usage across the *PLMR environment*. In addition, consolidation will permit licensees to utilize technologically innovative and efficient equipment."[26] The Commission's reference to "PLMR environment" was meant to encompass the **entire** PLMR industry and not simply portions of it. Failure to consolidate the two pools will have the practical effect of ignoring the Commission's declared goal.

In the alternative, should the Commission choose not to further consolidate the Pool Channels, the Commission should remove the freeze on inter-category sharing between the two pool channels at 800 MHz.[27] The Commission's decision to mandate a freeze on inter-category sharing between the Pool Channels in the 800 MHz band was promised only as an interim measure. Specifically, the Commission asserted that it would only be in place "until the Commission resolved the eligibility and geographic area licensing issues regarding the 800 MHz band."[28]

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[25] *See, Promoting Efficient Use of Spectrum Through Elimination of Barriers to the Development of Secondary Markets, WT Docket No. 00-230*, Notice of Proposed Rulemaking, 15 FCC Rcd 24203 (2000).

[26] Replacement of Part 90 by Part 88 to Revise the Private Land Mobile radio Services and Modify the Policies Governing Them and Examination of Exclusivity and Frequency Assignment Policies of the Private Land Mobile Services, PR Docket No. 92-235, Report and Order and Further Notice of Proposed Rule Making, 10 FCC Rcd 10076, para. (1995) ("*Refarming R&O*").

[27] PCIA is not at the time requesting a review by the Commission of the preclusion of inter-category sharing of Public Safety Pool channels.

[28] Nextel Communications, Inc., DA 98-2206 (rel. July 21, 1999) at para. 2.

Due to the fact that the proceeding concerning the very issues that prompted the freeze has been completed, the rationale for continuing the freeze no longer exists. In addition, based on the Commission's own admission that it "cannot perfectly gauge the relative needs of each radio user group,"[29] an elimination of the inter-category-sharing freeze is necessary.

III. CONCLUSION

WHEREFORE, the premises considered, it is hereby respectfully requested that the Commission AMEND Section 90.621 of the Commission's Rules, 47 C.F.R. § 90.621, to consolidate the Industrial and Business Pools into one single pool, consistent with the views expressed herein.

Respectfully submitted,

PERSONAL COMMUNICATIONS
INDUSTRY ASSOCIATION

By: Jason Kerben

Alan S. Tilles, Esquire
Jason Kerben, Esquire
Shulman, Rogers, Gandal, Pordy & Ecker, P.A.
11921 Rockville Pike, Third Floor
Rockville, Maryland 20852
(301) 230-5200

Harold Salters
Senior Director, Government Relations
PCIA
500 Montgomery Street - Suite 700
Alexandria, Virginia 22314
(703) 739-0300

Date: November 14, 2001

[29] *Refarming Notice of Inquiry* at para 82.