

ORIGINAL

BEFORE THE

Federal Communications Commission

WASHINGTON, D.C. 20554

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Federal Communications Commission
Office of the Secretary

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In the Matter of)
) RM-7985
Policies and Rules for Licensing)
Fallow 800 MHz Specialized)
Mobile Radio Spectrum Through)
a Competitive Bidding Process)

To: The Commission

**STATEMENT
OF THE
SPECIAL INDUSTRIAL RADIO SERVICE ASSOCIATION, INC.**

The Special Industrial Radio Service Association, Inc. (SIRSA), pursuant to Section 1.405(a) of the Rules and Regulations of the Federal Communications Commission (Commission), hereby respectfully submits these comments to the Petition for Rule Making filed by Fleet Call, Inc. (Fleet Call) on April 22, 1992.^{1/}

I. PRELIMINARY STATEMENT

1. The Special Industrial Radio Service Association, Inc., a non-profit association organized under the laws of the District of Columbia, is the Commission's certified frequency coordinator for the Special Industrial Radio Service and the Industrial/Land Transportation 800/900 MHz frequency "pools." SIRSA also coordinates channels from the general access pool for those entities (a) eligible to become Industrial/Land Transportation licensees, (b) wishing to expand trunked

^{1/} Public Notice, Report No. 1889, Petitions for Rule Making Filed, released May 11, 1992. Order Extending Comment Period, (DA 92-711), RM-7985, adopted June 5, 1992, and released June 9, 1992 (extending the 30-day period for filing of statements to July 17, 1992, and the reply date to August 3, 1992.)

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systems, or (c) consolidating conventional systems into a trunked system. SIRSA coordinates in excess of 6,000 applications per year on behalf of applicants seeking Commission authority to operate radio stations on frequency assignments allocated to the Special Industrial Radio Service and the enumerated 800/900 MHz frequency "pools."

2. SIRSA enjoys the support of a membership that includes more than 9,000 licensed two-way land mobile radio communications users and the following trade associations:

Alliance of Motion Picture and Television Producers
American Iron Ore Association
American Mining Congress
Associated Builders & Contractors, Inc.
Florida Citrus Processors Association
Florida Fruit & Vegetable Association
National Aggregates Association
National Agricultural Aviation Association
National Food Processors Association
National Propane Gas Association
National Ready-Mixed Concrete Association
National Utility Contractors Association
New England Fuel Institute
Petroleum Equipment Suppliers Association
United States Telephone Association

II. BACKGROUND

3. Fleet Call, in its Petition for Rule Making (Petition), first asks the Commission to establish "innovator blocks"^{2/} within specifically defined markets.^{3/}

^{2/} The use of "innovator blocks" is somewhat deceptive. This term would imply that the licensee of such spectrum is free to implement its own innovative technology in utilization of the channels. However, Fleet Call's petition would restrict the types of technology to be employed. Accordingly, we will use the term "Advanced Digital SMR Blocks" to describe these blocks of spectrum.

These blocks of spectrum would contain either 42, 63, 84, or 105 channels currently allocated to the 800 MHz SMR service category. The purpose of establishing these large blocks of spectrum is to promote the development of advanced digital nationwide, regional or wide-area SMR systems. Fleet Call asserts that the current regulation of SMR systems discourages the development of a seamless digital SMR network and that designation of the Advanced Digital SMR Blocks would encourage and facilitate the development of such digital systems.

4. However, should the Advanced Digital SMR Blocks be established, Fleet Call is concerned that the Commission's current licensing procedures are not adequate to guard against mere speculators applying for these large blocks of spectrum. Fleet Call, therefore, recommends that the Commission obtain expeditious approval from Congress to implement a pilot program to determine whether auctions are a viable alternative to use for the assignment of this spectrum and employ this mechanism to authorize use of the Advanced Digital SMR Blocks.

5. Fleet Call's Petition raises two separate issues: (1) amendment of the Commission's rules to facilitate development of a seamless nationwide digital SMR network similar to the cellular service; and (2) the introduction of auctions as a means of making assignments from an existing allocation of spectrum in the Private Land Mobile Radio Services. SIRSA supports any initiatives that promote the employment of spectrum-efficient technology in the spectrum allocated to Private Land Mobile Radio Services. Creating more communications options for persons in

3/(...continued)

3/ Fleet Call suggests these markets be similar to the Metropolitan Statistical Areas and Rural Statistical Areas as defined by Part 22 of the Commission's rules.

rural areas or serving new subscribers also should be encouraged. Therefore, Fleet Call's proposal to stimulate and encourage the use of fallow 800 MHz spectrum outside the major metropolitan areas is commendable. However, the means to achieve this goal does not require the reallocation and assignment of a large number of channels to one licensee, nor is a competitive bidding process necessarily the most effective means to assign these blocks of spectrum.

6. SIRSA, therefore, takes this opportunity to comment on the regulatory aspects of Fleet Call's proposal to amend the Commission's rules to promote the introduction of advanced digital technology in suburban and rural areas. We support a properly crafted initiative that would encourage the use of SMR channels in non-wait list areas so long as other 800 MHz applicants/licensees, not affiliated with Fleet Call, are not adversely affected.

7. However, SIRSA opposes Fleet Call's proposal to establish auctions or competitive bidding as a means to assign spectrum in the Private Land Mobile Radio Services. We foresee more harm than good to the public interest in the initiation of a competitive bidding process for the licensing of systems in the Private Land Mobile Radio Services.

III. STATEMENT

A. Establishment of Spectrum Blocks

8. Fleet Call has made clear from its action in the past year that it intends to compete head-to-head with the cellular service providers regulated under Part 22 of the Commission's rules via its Enhanced Specialized Mobile Radio

(ESMR) systems when they are constructed in the top six metropolitan markets: New York, Chicago, Los Angeles, San Francisco, Dallas-Fort Worth, and Houston. Although SMR operators are not as regulated as are the cellular providers, many of the Commission's rules do not permit an SMR licensee the same flexibility as provided cellular licensees. Nor does Subpart S of the Commission's rules governing the SMR service facilitate the accumulation of large blocks of spectrum without a demonstration by the licensee of sufficient mobile use to warrant the additional spectrum. Cellular licensees, on the other hand, obtain authorizations for large blocks of spectrum without the same showings required by an SMR operator.

9. Fleet Call, in essence, wants the Commission to establish a separate service dedicated to promoting advanced digital SMR systems, and reallocate a portion of the SMR spectrum for a cellular-like service in the Private Land Mobile Radio Services. Fleet Call's proposal, even though the current trend is consolidation of SMR and the establishment of wide-area SMR systems, appears to benefit only Fleet Call. Implementation of the proposal could promote anti-competitive acts and have a detrimental affect on the continued operation of localized systems that serve a specific community. These blocks would deplete the SMR frequencies available for expansion of existing SMR systems, and require these SMR operators to expand these systems by assignment of out-of-category channels though intercategory sharing.^{4/} Conversely, the depletion of the 800 MHz SMR channels would effectively eliminate the intercategory sharing provisions of Section 90.621(g), and prevent existing licensees of 800 MHz Industrial/Land Transportation systems from expanding their

^{4/} See 47 C.F.R. § 90.621(g).

systems, should there be no channels available in the Industrial/Land Transportation category. Therefore, we are unable to support the proposal promoted by Fleet Call.

10. We concur with Fleet Call, however, that the Commission's rules do not facilitate the implementation of wide-area SMR systems and the introduction of advanced digital technologies. In light of the rule waivers granted or requested that are similar to Fleet Call's initial request to establish its ESMR, the Commission must take steps to update its rules governing trunked systems in the 800 and 900 MHz bands. However, rules that recognize only one means to implement the advanced technologies, or give one licensee market control, are not in the public's interest. The rules adopted should equalize the licensing and operation of both commercial and non-commercial systems in the 800/900 MHz bands.

B. Moratorium on SMR Applications in Identified MSAs

11. Fleet Call also calls for the Commission to implement an immediate moratorium on applications filed for SMR channels in the MSAs identified in the Petition. This aspect of Fleet Call's Petition highlights the need for the Commission to address, clarify and strengthen its licensing, construction and operational requirements for the SMR service. However, as discussed below, implementation of a competitive bidding processing in the Private Land Mobile Radio Services is not the only means available to guard against undesirable speculators in this and other private land mobile radio services.

12. Regardless of the action that the Commission takes in response to Fleet Call's request for a moratorium, it will harm at least one group of

applicants/licensees. There are existing SMR operators in these identified areas who could demonstrate legitimate requirements for the spectrum sought to be reallocated by Fleet Call. Prohibiting their ability to license the spectrum specifically allocated for the provision of SMR service is unwarranted. On the other hand, because the Commission's current application procedures facilitate the filings anticipated by Fleet Call, failure to initiate a moratorium hinders the Commission flexibility to take action in this matter. Accordingly, SIRSA does not support Fleet Call's request for a moratorium on the SMR applications, but urges the Commission to strengthen and clarify its application requirements for commercial, private carrier systems.

C. Competitive Bidding

13. Fleet Call proposes the use of auctions to assign the proposed Advanced Digital SMR Blocks because of the failure of the Commission to deter "speculators" from abusing the licensing process. For example, when the Commission allocated and accepted applications for assignment of the 900 MHz SMR channels in the 50 top metropolitan markets, the Commission was inundated with applications that delayed the licensing process for many months. In hindsight, a majority of the applications were filed by persons without an interest in constructing and operating an SMR system, but having only an interest to obtain and sell rights to the spectrum to the highest bidder, in a so-called "private auction." On the other hand, as demonstrated with the relatively small number of nation-wide applications filed in the 220-222 MHz exercise, when the Commission sets a higher filing fee structure and implements more stringent construction and financial requirements, the number of applications filed for previously unassigned spectrum is significantly reduced.

14. We agree that in many instances the current licensing processing is costly, lengthy, and administratively burdensome. The Commission, however, should be cautious in implementing auctions for spectrum when the major argument relied upon is a one-time generation of revenue to the Government in the assignment of the channels. Since it is non-depletable, spectrum does not lose its value over time and may increase in value as the number of proposed spectrum uses increases. Thus, the Government's assignment of spectrum without amendment to the renewal rights of a licensee may not serve the public interest over the long term.

15. Comparison of the competitive bidding process in regulation of other federal government resources, such as mineral rights and grazing lands, and the regulation of spectrum assignment and allocation is inappropriate. These other resources, such as mineral rights and grazing land, are depleted during the duration of the license granted by the federal government to the third-party. It would be against the public interest to permit the value of the resource to be depleted without compensation to the general public. Additionally, these resources are also owned by non-government entities, and the Government has a basis on which to place a value on the use of the resource. Spectrum is totally owned by the Federal Government and is non-depletable. Therefore, there is no criteria upon which the Commission could base minimum bids, and implement regulations to ensure the public is duly compensated and that collusion does not occur in the bidding process.

16. Finally, SIRSA continues its opposition to the initiation of auctions in the Private Land Mobile Radio Services because of the adverse affect such a

process may have on the non-commercial use of the spectrum. SIRSA's members use their systems as production enhancements to conduct day-to-day business. These communications are ancillary to the business, and no independent "value" can be placed on the actual use of the channels. No direct profit is obtained from the use of the systems. SIRSA is concerned that establishing auctions in a private radio service, even one commercial in nature, could set a precedent for establishment of auctions in all private radio services. Accordingly, SIRSA is opposed to implementing a "pilot program" that utilizes spectrum that is available to non-commercial users.^{5/}

IV. CONCLUSION

17. The Fleet Call Petition proposes to radically change the structure of the SMR channel assignment in the 800 MHz band. Licensing of a large spectrum block, with no flexibility in the technology employed and to one licensee per market, is anti-competitive and may adversely affect other 800 MHz applicants/licensees. There are other methods available to facilitate development of an advanced digital SMR networks. Fleet Call's proposed scheme is one very liberal, but unacceptable, means to accomplish the goal.

18. Competitive bidding is very alluring because of the ability to generate larger revenues than can be obtained from the imposition of licensing fees and the arguable reduction in Commission resources in licensing lucrative blocks of spectrum. Nevertheless, there are other methods that may be employed to guard

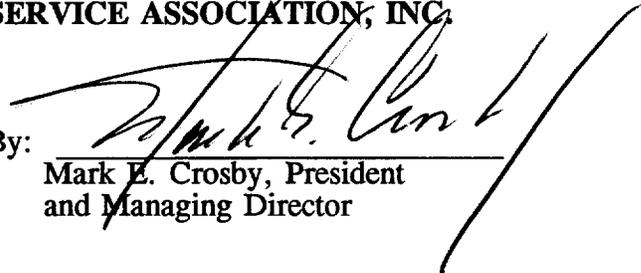
^{5/} Under Section 90.621(g), Industrial/Land Transportation eligibles may expand existing, loaded systems using SMR channels should no channels be available in the Industrial/Land Transportation service pool in that geographic area.

against unwanted speculation. The Commission should be extremely cautious about implementing the competitive bidding process when the underlying licensing scheme eliminates competition.

WHEREFORE, THE PREMISES CONSIDERED, the Special Industrial Radio Service Association, Inc. respectfully requests the Federal Communications Commission to dismiss the Petition for Rule Making filed by Fleet Call, Inc. for the reasons set forth above, but urges the Federal Communications Commission to initiate a comprehensive rule making proceeding to update and strengthen the licensing and operational regulations in Part 90 of its rules.

Respectfully submitted,

**SPECIAL INDUSTRIAL RADIO
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