

ORIGINAL FILE

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

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

RM-7985

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

To: The Commission

**REPLY COMMENTS
OF
NATIONAL ASSOCIATION OF BUSINESS
AND EDUCATIONAL RADIO, INC.**

The National Association of Business and Educational Radio, Inc. ("NABER"), pursuant to Section 1.401 of the Commission's Rules, 47 C.F.R. Section 1.401, hereby respectfully submits its Reply Comments in response to the Comments filed in the above-captioned proceeding.

I. BACKGROUND

In its initial Comments, NABER supported the concept of Innovator Blocks. However, NABER expressed its concern for the areas in which the Blocks would be implemented, the availability of spectrum for the plan and the assignment mechanism to be used. NABER proposed that the Commission: (1) limit the number of frequencies to be assigned as a block to 42; (2) restrict Innovator Blocks to MSAs and RSAs outside of Waiting List Areas; (3) utilize General Category frequencies for Innovator Blocks; and (4) assign the Blocks via a modified Lottery process.

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While the Comments filed by other parties were split as to the value and necessity of Innovator Blocks,¹ the proposal to auction Innovator Blocks was overwhelmingly opposed by SMR operators, land mobile trade associations, equipment manufacturers and common carrier interests.² Similarly, with a single exception, all commenting parties opposed any "freeze" on the processing of non-Innovator SMR applications.³

Several commenting parties noted the disparity in the number of channels which Fleet Call listed as available versus the number of channels available on a non-short spaced basis.⁴ Other Comments point to Petitions for Rule Making filed by NABER, A & B Electronics and AMTA as better means by which to achieve the same goal of encouraging the expansion of advanced technology SMR Systems into rural areas.⁵

¹See, for example, the Comments of United Mobile Networks, Inc. ("United"), Dispatch Communications, Inc. ("Dispatch") and the American Mobile Telecommunications Association ("AMTA") supporting Innovator Blocks, versus the Comments of Idaho Communications Limited Partnership ("ICLP"), Florida SMR Coalition ("Florida SMR") and the American Petroleum Institute ("API").

²The only parties supporting auctions were United and Dispatch. Some common carrier interests asked that the Commission defer consideration of the proposal until the Commission receives auction authority from Congress. See, for example, the Comments of McCaw Cellular Communications, Inc. ("McCaw") and the National Telephone Cooperative Association ("NTCA").

³See, for example, the Comments of the Special Industrial Radio Service Association, Inc. ("SIRSA"), Florida SMR, United and Ericsson Corporation ("Ericsson").

⁴See, Comments of ICLP, Florida SMR and Telecommunications Industry Association ("TIA").

⁵See, for example, the Comments of Florida SMR, ICLP and the Utilities Telecommunications Council ("UTC").

II. REPLY COMMENTS

A. Channels Available For Innovator Blocks

Other than the assignment of Innovator Blocks through an auction process, the greatest difficulty expressed with Fleet Call's proposal by some Private Land Mobile interests was the continued availability of spectrum for non-Innovator Block licensees.⁶ However, as shown in NABER's initial Comments, limiting the Innovator Blocks to 42 channels and assigning the Blocks only in areas outside of the Waiting List areas should leave more than adequate spectrum for other users, including competing digital systems.

AMTA conditions its support of a freeze upon its recommendation that the Commission amend its rules to make General Category frequencies available for existing and new trunked SMR applicants. However, adoption of NABER's approach of using General Category frequencies for Innovator Blocks eliminates the need for such a rule change or a freeze. Further, as shown below, NABER's proposal will leave more channels available for non-SMR users than AMTA's recommendation.

Using the examples cited by NABER in its initial Comments, NABER compared the number of channels available for non-SMR users pursuant to NABER's proposal as compared to AMTA's proposal. As before, in each case it is assumed that 42 channels are made available for an Innovator Block, 15 trunked SMR applicants have

⁶See, for example, the Comments of API and SIRSA.

filed applications and been granted licenses for new systems,⁷ and an oil company is now filing an application for a new system. The figures are derived from the chart attached to NABER's initial Comments as Exhibit 3.

Huntsville, Alabama

Under NABER's proposal, 42 of the 136 General Category channels would be assigned to the Innovator, leaving 94 General Category frequencies. Thirteen of the fifteen (15) trunked SMR applicants would be assigned all sixty-four (64) SMR Pool frequencies, with the remaining applicants being placed on the Waiting List for the area.⁸ In this case, the oil company would have 138 frequencies available for its use.

Under AMTA's proposal 42 of the 64 SMR Pool channels would be assigned to the Innovator.⁹ The remaining 22 SMR Pool channels would be assigned to the first four (4) trunked SMR applicants, with the fifth applicant still needing three (3) channels. Under AMTA's proposal, the fifth trunked SMR applicant and the remaining trunked SMR applicants would be assigned 53 General Category frequencies on a trunked basis. This would leave 83 General Category, 15 Business and 29 Industrial frequencies available for

⁷Fifteen (15) applications for new trunked SMR systems over a two year period of time would not be unusual in an MSA adjoining a Waiting List area as such areas continue to grow.

⁸The remaining applicants would also have the option of applying instead for conventional authorizations, but would only be assigned a total of two (2) channels.

⁹AMTA did not propose that the Innovator Block be limited to 42 channels. However, in order to compare the two proposals fairly, it will be assumed that the Innovator Block is 42 channels.

the oil company, for a total of 127 available channels, decrease of 11 frequencies compared to NABER's proposal.

Wilmington, North Carolina

Under NABER's proposal, 42 of the 143 General Category channels would be assigned to the Innovator, leaving 101 General Category frequencies. All fifteen (15) trunked SMR applicants would be assigned seventy-five (75) SMR Pool frequencies, leaving seventeen (17) channels available in the Pool. In this case, the oil company would have 200 frequencies (which would include the 17 SMR Pool channels) available for its use.

Under AMTA's proposal, 42 of the 92 SMR Pool channels would be assigned to the Innovator. The remaining 50 SMR Pool channels would be assigned to the first (10) trunked SMR applicants. The remaining trunked SMR applicants would be assigned 25 General Category frequencies on a trunked basis. This would leave 118 General Category, 43 Business and 39 Industrial frequencies available for the oil company, for a total of 200 available channels. Thus, in this example, there is no net gain through the use of General Category frequencies.

Louisville, Kentucky

Under NABER's proposal, 42 of the 115 General Category channels would be assigned to the Innovator, leaving 73 General Category frequencies. Four (4) trunked SMR applicants would be assigned the twenty (20) SMR Pool frequencies, with the remaining eleven (11) applicants being placed on the Waiting List. In this

case, the oil company would have 115 frequencies available for its use.

Under AMTA's proposal, all 20 of the available SMR Pool channels would be assigned to the Innovator. It can be assumed that the remaining 22 channels needed for the Innovator Block would be assigned from the General Category, leaving 93 General Category frequencies. All fifteen (15) trunked SMR applicants would be assigned seventy-five (75) General Category frequencies on a trunked basis. This would leave 18 General Category, 28 Business and 14 Industrial frequencies available for the oil company, for a total of 60 available channels, a decrease of 55 channels from NABER's proposal.

In every case, the number of available channels for the hypothetical oil company does not diminish through the use of General Category frequencies. Thus, NABER believes that adoption of its proposal will ensure the continued availability of spectrum for such individual users.

B. Common Carrier Comments

The common carrier industry has taken the opportunity in this proceeding to once again argue that every advancement in the state of the art in SMR utilization and technology "blurs the distinction" between private and common carriers.¹⁰ However, once again the fact remains that the Petition for Rule Making does not change the standard for compliance of an SMR System with Section 332 of the Communications Act. The anti-competitive efforts of

¹⁰See, for example, the Comments of McCaw, NTCA and Telocator.

some to inhibit the growth and development of the SMR industry should not deter the Commission from promoting the efficient utilization of 800 MHz spectrum in rural areas. The proposal should be analyzed by the Commission on its merits to determine the suitability of Innovator Blocks to encourage the development of wide-area SMR Systems.

III. CONCLUSION

WHEREFORE, the National Association of Business and Educational Radio, Inc. respectfully requests that the Commission act in accordance with the views expressed herein.

Respectfully submitted,

**NATIONAL ASSOCIATION FOR BUSINESS
AND EDUCATIONAL RADIO, INC.**

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CERTIFICATE OF SERVICE

I, Ruth A. Buchanan, a secretary in the law offices of Meyer, Faller, Weisman & Rosenberg, P.C. hereby certify that I have on this 3rd day of August, 1992 sent via first class mail, postage prepaid, a copy of the foregoing "Reply Comments" to the following:

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