

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, DC 20554

ORIGINAL
FILE

RECEIVED

OCT 5 1992

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
)
)
Revision of Part 22 of)
the Commission's Rules)
Governing the Public)
Mobile Services)
_____)

CC Docket No. 92-115

To: The Commission

COMMENTS

NYNEX Mobile Communications Company ("NMCC"), by its attorneys, submits the following Comments in response to the Notice of Proposed Rule Making ("NPRM"), released on June 12, 1992, in the above-captioned proceeding.

I. INTRODUCTION

NYNEX Mobile Communications Company applauds the Commission's efforts, embodied in the proposed revision of Part 22, to streamline the rules governing the provision of Public Mobile Services ("PMS"). In the main, NMCC views the proposed revisions to the rules as striking an appropriate balance between the need to reduce the administrative burdens on service providers, and the need for a continued and perhaps enhanced role for the Commission in the arbitration of disputes and the deterrence of abuse.

No. of Copies rec'd 0+9
List A B C D E

II. THE PROPOSED REORGANIZATION OF PART 22 IS BOTH LOGICAL AND OVERDUE

The Commission proposes to reorganize Part 22 to provide for a more logical grouping of rules. In addition, the Commission proposes to eliminate rules and information collection requirements that have become outdated or unnecessary (NPRM, paras. 3-5). NMCC fully supports the Commission's effort. The simple act of reorganizing and grouping by subject the current quilt-like nature of Part 22 is the first step to a more rational regulatory scheme. The grouping of rules common to all PMS followed by a subgroup for each individual Service will insure their easier comprehension, and with it, greater regulatory compliance.

III. THE FIRST COME, FIRST SERVED PROPOSAL WILL NOT BE IN THE PUBLIC'S INTEREST

The Commission proposes that all mutually exclusive applications in the PMS be processed using a "first come, first served" procedure. Under this procedure, only mutually exclusive applications filed on the same day would be entitled to be included in a random selection process (NPRM, para. 9). At first glance, the "first come, first served" approach to granting applications has appeal. As the Commission noted, a "first come, first served" approach would speed up the application process by acting as a stimulant to the filing of applications and by the avoidance of time-consuming comparative hearings (NPRM, para. 9). NMCC believes, however, that any benefit resulting from

expediting the processing of applications is more than offset by its disadvantages.

NMCC believes that the public interest is best served by permitting applicants or existing licensees ample time to determine whether to seek authority to provide service. In our view, such a policy promotes the public interest by permitting applicants to propose new systems, or existing licensees to propose extensions of their existing networks, in response to market demand and where justified by sound economics. NMCC is concerned that the "first come, first served" proposal set forth in the NPRM could have the undesirable effect of stimulating applications by speculators who choose to achieve personal financial gain by transferring their rights to bona fide applicants and, in that regard, could force sincere applicants to prematurely file their applications in order to protect themselves from the risk of being foreclosed from a market. For these reasons, NMCC supports the adoption and the use of traditional 60 day cut-off procedures as likely to best serve the public interest.

IV. NMCC SUPPORTS THE COMMISSION'S SUBSTANTIVE PROPOSALS THAT WILL EXPEDITE THE PROVISION OF SERVICE TO THE PUBLIC

The NPRM sets forth a number of proposals that are designed to eliminate unnecessary administrative burden and promote regulatory flexibility thereby expediting the process of providing service to the public. The proposals should be adopted.

A. The Proposed Use Of Conditional Grants Will Facilitate The Introduction Of Service

The Commission proposes to rely on the technical exhibits provided by applicants without verifying their accuracy prior to grant (NPRM, para. 11). The proposal will relieve the Commission of much of the administrative burden in the processing of applications by allowing the Commission to rely upon the certification of the applicant that the technical exhibits comply with the Commission's non-interference criteria. By requiring the immediate suspension of service if that certification proves incorrect, the Commission is placing the burden and onus on the applicant, where it belongs.

B. The Adoption Of A Finder's Preference Should Stimulate The Identification And Use Of Unused Spectrum

In an effort to "recapture" unused spectrum and to facilitate its use by persons who will use the spectrum efficiently, the Commission proposes to adopt a "finder's preference". Under this proposal, an applicant who files an application for a PMS channel that is assigned, but is not used, would be entitled to have its application considered "first filed" in the event that, upon subsequent Commission investigation and action, the channel was made available for reassignment (NPRM, para. 13). NMCC supports the Commission's proposal. The adoption of a finder's preference would be a clear reminder that the retention of spectrum is not a right but a privilege which can only be preserved through the licensee's expeditious use of the spectrum for the public benefit. By

rewarding initiative and deterring the acquisition of spectrum for speculative purposes, the proposal is a giant step forward.

Tempering the above "bounty" for hunters of unused spectrum is the proposal allowing an amnesty period during which licensees can, essentially, turn in unused channels without being subjected to penalties. The proposal strikes a sensible balance and NMCC supports its adoption.

C. NMCC Generally Supports The Proposed Elimination Of FCC Form 489 Notifications

NMCC supports, with some reservations, the Commission's desire to reduce much of the administratively burdensome and costly notifications currently embodied in the FCC Form 489 process. Under the proposed revision, licensees would no longer have to notify the Commission of minor modifications to existing systems as well as additions of transmitters to such systems (NPRM, para. 18). Clearly, the proposals would save time and expense for both the Commission and industry.

At the same time, we are cognizant of the fact that the current regulatory scheme of Form 489 notifications provides a function beyond that of simply notifying the Commission. It also serves as an internal check on each service provider which helps ensure compliance with the various regulatory schemes applicable to the Services (e.g., FAA, environmental, health, etc.). Although NMCC has confidence in its own self-policing competence, we can not, obviously, make the same representation on behalf of other providers and would-be providers. Notwithstanding the

foregoing, we believe that a balancing of risks and rewards supports the Commission's proposal. We are encouraged in that conclusion by the fact that the Commission retains the right to periodically request pertinent technical and administrative information of the type currently set forth in the Form 489, and we trust that such auditing mechanisms will be an effective tool for compliance. However, the Commission may want to consider whether the impact of exterior sites on such issues as frequency interference and the identification of unserved areas would not argue for carving external sites out of the proposal, thus eliminating the Form 489 requirement only for internal sites.

D. The Commission Has Proposed Other Procedures That Will Eliminate Administrative Delay And Benefit The Public

The Commission proposes that renewal applications must be filed prior to, but no more than 30 days before the license expiration (NPRM, Appendix A, Section 22.145). NMCC supports the adoption of this proposal. By eliminating the current "gap" (applicants can file no sooner than 60 but no later than 30 days prior to expiration), any confusion by licensees regarding the period in which it must file a renewal application is eliminated, and the process is made more rational and comprehensible.

If the elimination of confusion in the filing of renewal applications is desirable, so too is the Commission's proposal to eliminate any uncertainty regarding the time limit for system construction (NPRM, para. 19). NMCC, therefore, supports the automatic expiration of authorization for failure to timely

commence construction. By drawing a bold line, while at the same time allowing exceptions only for causes outside licensee's control, the Commission is sending the appropriate message to permittees that they will be expected to construct their proposed systems expeditiously.

The emphasis on timely commencement of service with limited excuses is reinforced by the proposed rules granting the Commission more authority in requiring proof from the applicant that its objective in acquiring the license is not speculation, and that the applicant possesses the financial qualifications to, in fact, build the system (NPRM, Appendix A, Section 22.937).¹

V. THE MORE PROACTIVE STANCE PROPOSED BY THE COMMISSION IN THE SETTLEMENT OF DISPUTES IS WARRANTED

The Commission correctly recognizes that in some situations, increased regulatory involvement can make for a more, and not less efficient process. Such is the case in the settlement of mutually exclusive applications, and in agreements to dismiss challenges to applications. NMCC wholeheartedly supports the proposal requiring Commission approval of agreements leading to the withdrawal of a mutually exclusive application, and the limitations of settlement amounts in agreements to withdraw such applications as well as petitions to deny (NPRM, Appendix A, Section 22.129). The Commission understands that adopting a laissez faire attitude to such negotiations favors the

¹ The NPRM also contains a number of other proposed rule changes of a more technical nature. NMCC's comments on these proposals are set forth in Addendum I attached hereto.

speculator who, while not interested in building a system, is in a position to extract large sums of money from the applicant who is. Having experienced first hand the difficulty in defending against and dealing with challengers of questionable intent, there is no doubt on the part of NMCC that involvement by the Commission and the capping of settlement amounts would be an enormous deterrent to such abuse of the application process.

For the above reasons, NMCC also supports the proposal (NPRM, Appendix A, Section 22.135) by which the Commission can mandate the participation of contending parties in a settlement conference. Such conferences would, in many cases, expedite the resolution of controversies and would, in the case of a speculative challenger, go far toward depriving such abuser of their most potent weapon, delay.

VI. THE COMMISSION'S PROPOSAL TO REDUCE FRAUD IN THE USE OF CELLULAR EQUIPMENT DESERVES SUPPORT

The Commission proposes (NPRM, Appendix A, Section 22.919) to establish anti-fraud technical specifications for mobile equipment. NMCC agrees with the Commission that the need for a rule establishing anti-fraud technical specifications for mobile equipment, primarily to deter the tampering with electronic serial numbers ("ESN"), is clear. NMCC differs with the Commission only on the method. To be more effective, NMCC believes that the ESN chip should not be secured to the main circuit board of the mobile transmitter as proposed, but to the frame of the radio and attached to the logic board by cable. In

addition, we believe that deterrence of fraud argues in favor of having the software encoded and/or scattered over different memory chips.

IX. CONCLUSION

The Commission has proposed changes to its rules that would eliminate unnecessary administrative requirements and would offer increased flexibility to service providers. These rules recognize that such a reduction in the scope of the Commission's regulatory oversight is warranted by the vigorous competitive markets in which these services are provided. NMCC wholeheartedly agrees, and NMCC supports the Commission in its efforts.

WHEREFORE, for the reasons set forth herein, NMCC supports adoption of the rules proposed by the Commission in the Notice of Proposed Rulemaking as modified by these Comments.

Respectfully submitted,

NYNEX Mobile Communications Company

By: Edward R. Wholl
Edward R. Wholl
Stephen B. Wiznitzer
Stephen B. Wiznitzer

Its Attorneys
2000 Corporate Drive
Orangeburg, New York 10962
(914) 365-7515

October 5, 1992

ADDENDUM I

1. System Identification Numbers ("SID") (NPRM, Appendix A, Section 22.941)

NMCC has no objection to a Form 489 notification for a SID code change in place of the cumbersome, and ill-defined process of letter requests to the Commission. NMCC suggests that in the absence of an organization presently competent and willing to assume the role of assigning SID codes in the first instance, the proposal for transferring that function from the Commission to a private body is premature.

2. Written Applications, Standard Forms, Microfiche, Magnetic Disks (NPRM, Appendix A, Section 22.105)

The Commission proposes that all applications and any filing pertaining to a current or pending application or an existing authorization be filed on microfiche and that this microfiche have a black background. It further proposes that applicants submit technical and administrative data on 3 1/2" diskettes that are formatted in MS DOS 2.0 or higher.

While generally supportive of efforts at standardization, NMCC believes that the Commission may be over-regulating in this specific area, and that applicants can be given more flexibility without impairing the process. NMCC does not believe that all microfiche need to appear on black backgrounds. Currently, microfiche appear on black, purple and blue backgrounds, depending on the microfiche duplicating

equipment. In order to comply with the proposed rule, NMCC would have to replace its equipment or ask for a waiver of the rules. NMCC believes that the Commission's standard should be based on legibility rather than the color of fiche's background. In terms of reading microfiche, color is not nearly as important as clarity.

NMCC believes that it is feasible to submit the data comprised within applications on magnetic disk. Because NMCC uses 1.4 MB 3 1/2" diskettes, it would prefer the use of MS DOS 3.3 or higher.

3. Revised Uses For FCC Forms 401 And 489 (NPRM, para. 18)

NMCC supports the Commission's proposal that Form 489 be used for notifications, and that Form 401 be used for applications, amendments and other requests requiring Commission action or response. We believe that this will result in a useful streamlining of the process. We would only note that Form 401 itself would require revision, specifically additional space for the licensee to indicate the reasons for the Form's submission.

4. Computation Of Average Terrain Elevation (NPRM, Appendix A, Section 22.159)

NMCC supports the Commission's proposal that except in cases of dispute, when both methods would be appropriate, elevation determination should be performed by computer rather than manually. It represents a sensible streamlining of the

process as well as the adoption of the most accurate method of calculation.

5. Conversion To Metric (NPRM, para. 6)

The Commission's proposed conversion to metric is in line with the Metric Conversion Act of 1975 which encouraged the use of the metric system by federal agencies. The adoption of the metric system, with its comparative simplicity, can only facilitate the Commission's work. We would only note that the need for uniformity dictates that Parts 17 and 21, governing FAA compliance, and point to point microwave, also be converted simultaneously.

6. Call Sign Postings (NPRM, Appendix A, Section 22.303)

NMCC supports the proposal requiring call signs to be clearly and legibly marked on every (non-mobile) transmitter of the station. This posting will better enable licensees to identify and police one another in the context of coordination and interference protection.

7. Control Points (NPRM, Appendix A, Section 22.325)

The Commission is proposing to eliminate the current requirement that cellular operators obtain Commission approval prior to moving the location of the control points beyond the boundary of the Cellular Geographic Service Area ("CGSA"). NMCC supports the proposal as a recognition that technological changes

have provided cellular operators with the flexibility to provide control outside the served area, as well as to combine the control of a number of CGSAs at one point. Allowing this flexibility will represent a cost savings for the providers, thus freeing resources for more productive efforts.

8. Cellular Service (NPRM, Appendix A, Section 22.901)

NMCC agrees with the proposed elimination of the rule that Basic Exchange Telephone is the only fixed service that can be provided by cellular carriers. We believe that the flexible use of cellular spectrum, provided that it does not adversely impact the quality of cellular service, is a benefit not only to cellular carriers, but, more importantly, to the public which will be the prime beneficiary of more services.

9. Hearing Procedures For Cellular Applications (NPRM, Appendix A, Section 22.935)

The Commission proposes to change the current rule (22.916) which sets forth hearing procedures for cellular applications. The Commission proposes to eliminate certain portions of the rule relating to the initial hearings for the top 30 markets. The remaining rules would be utilized in comparative renewal hearings. NMCC supports the deletion of those provisions relating to the introduction of service in the top 30 markets. NMCC agrees that the remaining provisions are relevant to the cellular renewal process and should be retained.

10. Canadian Condition (NPRM, Appendix A, Section 22.955)

NMCC supports the proposed requirement that licensees for cellular systems within 72 kilometers of the U.S., Canadian border coordinate transmitter installations with their Canadian counterparts. Having experienced, first hand, the difficulty coordinating with Canadian licensees, NMCC believes the proposal is overdue, and expects to see similar action on the part of Canadian regulatory authorities.