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

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FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF THE SECRETARY

In the Matter of)
)
Redevelopment of Spectrum to)
Encourage Innovation in the Use of)
New Telecommunications)
Technologies)

ET Docket No. 92-9

RM-7981

RM-8004



COMMENTS

GTE Service Corporation,
on behalf of its domestic, affiliated,
telephone, equipment and service
companies

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January 13, 1993

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SUMMARY

GTE applauds the FCC's efforts to establish a spectrum reserve for new technologies and at the same time protect the interests of the 2 GHz incumbent users of that spectrum. GTE opposed any arbitrary transition period that would strip current users of their right to use certain spectrum, when there had been no showing that the spectrum was actually needed for any new service. GTE advocated a "case-by-case" approach. In its final rules, the FCC has stated that the current 2 GHz licensee maintains its primary status "unless and until an emerging technology service licensee requests mandatory relocation." GTE supports this bonafide request approach. The voluntary negotiation period cannot practically begin until there is someone to negotiate with, and, thus, the bonafide request is the appropriate trigger for the beginning of the transition period for a particular licensee's spectrum. GTE believes sound public policy supports having the voluntary transition period duration indefinite. This was the position advocated by Telocator and is what the FCC is proposing for public safety users. If the FCC does not choose an indefinite period, then GTE would recommend a transition period after the request of ten years -- the higher end of the range proposed by the Commission. In no event should it be less than the unexpired license term of the incumbent 2 GHz user. The Chairman of the FCC testified before a Senate Subcommittee that the period would be "an extended, perhaps indefinite, period of time." If the triggering event is the bonafide request to use the licensee's spectrum, then GTE sees no reason to have different time periods for different regions or particular services.

With respect to comparability issues, GTE urges the FCC to specifically enumerate the items that are to be included under the phrase "all costs of relocation," and include training, spare parts, test equipment, old equipment

removal and disposal costs, and tax costs if tax certificates are not used.

Technical comparability issues should be worked out in industry fora.

Acceptance criteria can be developed. However, the ultimate determination of comparability must be from the point of view of the incumbent. If the incumbent engineered an existing system to perform better than industry standards, then a "blue-light special" or even an industry standard system would not be comparable.

GTE agrees with Commissioner Barrett that "all incentives" should be used to encourage voluntary relocations, and, thus, supports the availability of tax certificates. Without such tax certificates, then any tax costs incurred by incumbents would have to be included under the term "all costs of relocation" which are to be paid by the new technology service provider.

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COMMENTS

GTE Service Corporation, on behalf of its domestic, affiliated, telephone, equipment and service companies ("GTE"), hereby offers its Comments in response to the Commission's First Report and Order and Third Notice of Proposed Rule Making ("3rd NPRM"), FCC 92-437, released October 16, 1992.¹ In the Order portion of the 3rd NPRM, the FCC provided for the redevelopment of 220 MHz of spectrum in the 1.85 to 2.2 GHz band for future communications services that employ emerging technologies. Although the FCC did not allocate spectrum for any particular new service yet, the Commission has established a plan and amended Part 2 of its rules to allocate a spectrum reserve for new emerging technologies. Specifically, the FCC has allocated the 1850-1990, 2110-2150, and 2160-2200 MHz bands for the development and implementation of emerging technologies on a shared basis with the current incumbent 2 GHz fixed services. (3rd NPRM, para. 21) The FCC has asked for comment on the appropriate transition period to evolve to the new emerging technologies, how

¹ The Commission amended the 3rd NPRM by an Erratum released October 29, 1992. Several parties have filed Petitions for Clarification or Reconsideration on the Order portion of the 3rd NPRM. These Comments only address the issues raised in the rulemaking portion of the 3rd NPRM.

disputes that arise during any involuntary relocation should be resolved, the use of tax certificates, and other issues.

DISCUSSION

GTE supports the creation of the spectrum reserve, but believes current incumbent 2 GHz licensees should only be required to relocate if necessary and, then, only after a bona fide request and opportunity to negotiate the relocation.

GTE supports the FCC's decision to create a spectrum reserve for emerging technologies. GTE urged such action in its earlier Comments in this proceeding.² However, as a major user of the 2 GHz band, GTE is also very concerned about any forced relocation of existing 2 GHz microwave users to higher frequencies or alternative media. GTE opposed the earlier FCC proposal to have current 2 GHz licensees dropped to a secondary status after some arbitrary cut-off.³ The Commission's current plan to have existing 2 GHz users maintain at least a co-primary status is much more workable.

The basic components of the FCC's transition plan appear to be:

- (i) encouragement and incentives for parties to negotiate relocation agreements,
- (ii) a reasonable period of time during which negotiations can take place, and
- (iii) after failure of negotiations or the expiration of the transition period, an involuntary relocation, with all costs of relocation being borne by the emerging technologies licensee, including a "spectrum-back" guarantee.

² See Comments of GTE Service Corporation at 5-6 and 19, ET Docket No. 92-9 (June 5, 1992).

³ *Id.*, at 13-15 ("GTE urges a case-by-case approach be taken for specific facilities.")

Since the Commission has requested comment on the "appropriateness" of its transition plan, GTE will address the various component parts.

GTE agrees with the Comments of Commissioner Barrett that in order to promote an efficient transition to the emerging new services, "the Commission should provide all incentives possible."⁴ Thus, allowing parties to negotiate a relocation agreement that covers all the costs of a relocation is appropriate for the transition plan. The use of tax certificates as discussed below would be further encouragement and should also be a part of the transition plan. The voluntary negotiations are a critical and key component of the FCC's plan.

In his testimony before the Subcommittee on Communications of the Committee on Commerce, Science, and Transportation of the United States Senate on June 3, 1992 concerning this Docket, at 10, Chairman Sikes noted that some other countries took the draconian step of forcing current users to vacate spectrum to make way for emerging technologies. He testified:

Not only will we not take that step, we will not undertake to specify in detail the steps which incumbents and new entrants must take to reach a mutually satisfactory accommodation. We believe -- and our experience indicates -- that, given an incentive to reach such an accommodation, the private sector has ample technical and engineering means of doing so. Phrased a bit differently, the private sector will only decline to negotiate if it believes that Government will somehow intervene to spare it the burden of doing so.

However, key to having successful negotiations, is someone to negotiate with. This can occur only after: (i) the Commission allocates some of the spectrum reserve for a particular new service, (ii) the FCC identifies by licensing

⁴ See Separate Statement of Commissioner Andrew C. Barrett at 2, (emphasis added).

or otherwise who is to use this particular spectrum,⁵ (iii) the new user determines that it "needs" the spectrum in question for its operation and cannot overlay or otherwise share it on a non-interfering basis, (iv) the FCC has identified and provided technical rules to accommodate relocation to higher bands, and (v) equipment for use on the higher bands has been developed and is available. Then and only then can negotiations commence. Thus, GTE believes the date of the starting point for the transition period for a particular licensee's spectrum must be a bonafide request from the new user to negotiate relocation.⁶

In many areas of the country it may be a long period of time -- exceeding even ten years -- before such a request could come. This could be due to delays in allocating the spectrum for the new service, delays in licensing the new spectrum user, insufficient demand in that geographic area for the new service to warrant deployment, or use of technology that allows overlay, non-interfering operation with the current 2 GHz user. The starting date for transition, therefore,

5 For these Comments GTE will assume the new user has been identified by some assignment method, whether a licensing mechanism, a pioneer's preference, or, for unlicensed spectrum, some other method. For brevity, GTE will call this party (or group of parties), the new user. For unlicensed spectrum uses, the new user who will negotiate could be an association of manufacturers who will negotiate and compensate the incumbent 2 GHz users to relocate.

6 It seems clear that the Commission has not yet established the starting point for the transition period. In paragraph 24 of the 3rd NPRM, the FCC discusses a transition period that would commence "upon the effective date of the Report and Order on the Further Notice of Proposed Rule Making in this docket dealing with re-channelization . . ." (emphasis added) In paragraph 27 of the 3rd NPRM, the FCC states the transition period would commence on the adoption date of the Commission's Report and Order that addresses . . . channeling of the higher . . . bands." (emphasis added) As discussed infra, the actual rules adopted seem to require a bonafide request to start the transition.

must be a bonafide request. This is consistent with the FCC's adopted rules that state the current licensee maintains primary status "unless and until an emerging technology service licensee requests mandatory relocation of the fixed microwave licensee's operations in these bands." (See Sections 21.50(b), 22.50(b), and 94.59(b), emphasis added)

The next component of the transition plan is how long a period of time after commencing the transition period should be allowed before involuntary relocation becomes an option. The Commission has proposed a minimum of three years for the transition period and a maximum of ten years. (3rd NPRM, para. 27) Although Utilities Telecommunications Council ("UTC") originally supported an "indefinite" period for co-primary status for incumbent 2 GHz licensees, it compromised on a ten-year voluntary negotiation period followed by involuntary relocation. (3rd NPRM, para. 22) Telocator had no cut-off date for voluntary negotiations. (Id.) The Senate Amendment would have required a minimum period of eight years, but the voluntary period could have been significantly longer. (3rd NPRM, Appendix C)

Given the unknowns with respect to equipment availability for higher frequency use, and to ensure that the current 2 GHz licensee gets the full value of its license term, GTE supports those proponents of an indefinite transition period (or at least 10 years).⁷ Chairman Sikes' June 3, 1992 Senate

⁷ Although GTE urges that sound policy supports the indefinite transition period for voluntary negotiations (or at least 10 years), the minimum period should be the remaining period of the 2 GHz incumbent's license term for the spectrum at issue after receipt of the request. For existing 2 GHz licensees in public safety and special emergency radio services, including state and local governments, police, fire, and medical emergency communications, the FCC has allowed an indefinite period. (3rd NPRM, para. 26) As GTE noted in its Comments, many common carriers, both local exchange carriers and cellular carriers, handle similar public safety transmissions over their networks. (See GTE's June 5, 1992

Subcommittee testimony promised at 10: "Existing uses would almost certainly be accorded what is known in the frequency management business as 'co-primary' status for an extended, perhaps indefinite, period of time. . . . [N]ew entrants would not be allowed to cause harmful interference . . . and entrants would be required to negotiate a mutually satisfactory solution." (emphasis added)

The Commission has also asked whether any areas require "no transition period" (3rd NPRM, para. 27) or "whether different transition periods may be appropriate for certain areas (i.e., urban areas versus rural areas) or due to certain technical considerations" (Id., footnote 36). GTE believes all current users are entitled to a fair transition period. Even if the new use of spectrum is for unlicensed devices, some new user will need to make a request and negotiate with the incumbents. Since requests to negotiate will come as demand for new services warrants deployment, GTE sees no need for different rules for different areas of the country. For some new services, rural areas may be deployed sooner than urban areas. For other new services, urban may be the first priority. Until new services are identified and defined and their technical rules established, it is difficult to know what areas will have the earlier demand or what technical factors will be present. The rule as proposed by GTE should accommodate all situations.⁸

Comments, ET Docket No. 92-9 at 12-15. Since similar services are provided, similar rules should apply.

⁸ To the extent that a new user believes it requires a shorter transition period in a particular area, it could always file a Waiver Request with the FCC and make a special showing as to why the public interest requires a shorter transition period for its particular application in a particular geographic area. If such Waivers are filed and granted, the FCC can always revisit the issue of transition periods after it has gained such experience.

Facilities used for relocation must be comparable to those proposed to be replaced.

For facilities to be considered comparable, they must be comparable in the eyes of the 2 GHz incumbent. For example, if the incumbent owns its current facilities, then the new facilities must also have title in the incumbent. If the incumbent engineered a higher than industry standard performance level on its links, then a facility proposed at industry standard level would not be comparable. Although GTE is pleased that the FCC has stated that all relocation costs must be paid and has specifically listed "engineering, equipment, site and FCC fees, as well as any reasonable, additional costs" (3rd NPRM, para. 24), GTE urges the FCC to expand the list to also include removal and disposal of old equipment, training, spares and test equipment, so that there is no dispute as to these items. By having a detailed list of covered items, there will be less of a need for Alternative Dispute Resolution ("ADR") or other methods to resolve disputes. Similarly, on the technical side, the Commission should request technical standards fora and other industry groups to establish acceptance criteria that would be required to be met to demonstrate comparability or equivalency to the current systems.⁹ There are numerous technical and spectrum coordination groups that could develop the comparability criteria that would have to be shown in order to declare a proposed system "comparable."

⁹ The FCC has relied on industry groups to establish functional equivalence before. In its Part 68 program, the FCC asked the industry to establish functional criteria for equivalency of new plug and jack plating alternatives to gold plating and the industry satisfied the request. 5 FCC Rcd 4686 at 4700, ¶71.

GTE still believes Tax Certificates should be part of the Incentives used to facilitate relocations.

In its earlier June 5, 1992 Docket No. 92-9 Comments at 19-22, GTE outlined the benefits of providing Tax Certificates as an incentive to encourage relocation of current incumbents. The Commission now questions whether tax certificates could still be used under the transition plan it is now proposing where the costs of relocation are borne by the new user on either a negotiated basis or as part of the involuntary relocation rules. GTE still encourages the FCC to follow Commissioner Barrett's advice (at 2) and provide "all incentives possible." Commissioner Barrett advises that: "From a policy perspective, if the use of the tax certificate will provide an efficient alternative for emerging technology providers to negotiate with existing users and gain access to clear spectrum, then [Commissioner Barrett] supports its use." If an incumbent receives compensation to relocate from its current facilities and purchase new facilities, the tax treatment of compensation received in excess of the tax basis of the current facilities must be addressed. If such gain requires the current payment of additional taxes, then such additional taxes become another "cost of the relocation" that needs to be added into the negotiations or involuntary relocation computation. If the FCC grants a tax certificate in such circumstances, the tax cost of relocation will be avoided, thus, facilitating an earlier and more economical close to negotiations. The FCC should remove all financial disincentives to relocations of incumbents. Tax certificates should be used for both higher frequency band relocations as well as relocations to other media.

CONCLUSION

GTE supports the FCC's efforts to create a spectrum reserve for emerging new technologies. However, in doing so, current users operating at 2 GHz should not be harmed. GTE supports the indefinite transition plan advocated by Telocator which will also be the approach used for the public safety users. If the FCC must specify a period of time, then GTE believes it should be 10 years after receipt of a bonafide request for negotiation. There are still many unknowns, including the availability of equipment to work at the higher frequencies under a new channelization plan. GTE sees no reason why different regions of the country should have arbitrarily-shortened transition periods. Since no spectrum has been allocated to any particular new service, one cannot tell where the new services will be first deployed or what their technical characteristics will be.

In order to minimize the number of disputes over relocation, GTE urges the Commission to enumerate all items that are included under the heading of costs of relocation, and specifically include equipment removal and disposal costs, training, spares, test equipment, and increased taxes. As a further

incentive to facilitate relocation, GTE recommends the issuance of tax certificates when requested.

Respectfully submitted,

GTE Service Corporation,
on behalf of its domestic, affiliated,
telephone, equipment and service
companies

By:  Daniel L. Bart

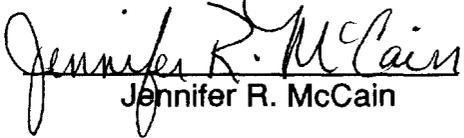
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January 13, 1993

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Certificate of Service

I, Jennifer R. McCain, hereby certify that copies of the foregoing "Comments of GTE" have been mailed by first class United States mail, postage prepaid, on the 13th day of January, 1993 to all parties of record.


Jennifer R. McCain